

**Case No. 84221**

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

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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.*

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Eighth Judicial District Court, Clark County, Nevada

Case No. A-17-758528-J

Honorable Timothy C. Williams, Department 16

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

**VOLUME 17**

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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 17** was filed electronically with the Nevada Supreme Court on the 8<sup>th</sup> 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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/s/ Sandy Guerra

An Employee of the Law Offices of Kermitt L. Water

1 Q. So who all was on your team to work on  
2 this?

3 A. As part of the team we -- our division  
4 basically works as a team. I have -- during this  
5 process I have conversations with Doug Rankin. I've  
6 had conversations with the planning supervisor at the  
7 time.

8 Q. Who would that be?

9 A. It could have been Andy Read. He left the  
10 City I believe -- I don't know if it was early 2016  
11 or late part of 2015.

12 Q. Do you know where he went?

13 A. He's at Nellis. I think he's the  
14 planning -- community planner for Nellis Air Force  
15 Base.

16 Q. Okay.

17 A. And then Steve Gebeke, Steve Swanton and  
18 then when -- eventually the items go before our  
19 design review team for recommendations, that's the  
20 entire case planning division.

21 Q. Did you say Steve Swan?

22 A. Swanton.

23 Q. Swanton?

24 A. He's a senior planner in the case planning  
25 division.

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1 Q. And you say when items go to our design  
2 review team for recommendation, that's the entire  
3 case planning division?

4 A. Our current policy is that when we -- when  
5 we have all the applications submitted for a certain  
6 planning commission meeting, all those items are then  
7 vet and the design review team, which is composed of  
8 all of the members of the case planning division, as  
9 far as the case planners, not any administrative  
10 assistants or anything like that.

11 Q. So how many people would that be?

12 A. Again, I'm going to go to the fingers.  
13 It's approximately six not including the supervisor  
14 and a manager. So potentially eight.

15 Q. And what would these eight people provide?

16 A. Their own input into whichever issues is  
17 being discussed and their own recommendation on it  
18 and coming to a consensus at the end.

19 Q. Would Mr. Summerfield be one of those  
20 people?

21 A. A member of long range planning is  
22 requested to be as part of the design review team to  
23 get their perspective on its implications on the  
24 general plan or master plan. I don't recall if he  
25 was directly in there or it was some other

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1 representative. Or if any representative was in from  
2 long range.

3 Q. So what's Mr. Summerfield's role at the  
4 City?

5 A. He is the planning section manager over  
6 the long range division.

7 Q. And to whom does he report.

8 A. He reports to Tom Perrigo as the director  
9 and Karen Duddleston as the deputy director.

10 Q. So of these other people, eight other  
11 people you said were in your design review team, was  
12 there anyone of those eight people that was  
13 principally responsible for this matter?

14 A. At the time when an application is  
15 submitted, then it would be assigned to a case  
16 planner to review, prepare, and write a staff report.  
17 I believe -- depending on which applications you are  
18 speaking to, Steve Swanton was responsible, was the  
19 assigned case planner.

20 Q. Were there any others other than  
21 Mr. Swanton assigned, designated as the assigned case  
22 planner for the Badlands Golf Course applications?

23 A. No.

24 Q. All right. You indicated that one of the  
25 first things you did after you spoke with Mr.

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1 Perrigo, was you set up a meeting with the developer?

2 A. I don't know what the overall timeline  
3 from his initial letting me know that this project  
4 had come about to when I set the meeting but it was  
5 organizing the City side and the community to the  
6 developer side to coordinate that meeting or those  
7 meetings from there on.

8 Q. Where was the first meeting held?

9 A. I imagine it would be in the Charleston  
10 conference room on the third floor at the development  
11 service center at 333 North Rancho Drive.

12 Q. All right.

13 And do you recall -- do you keep a log of  
14 who attends those meetings?

15 A. No.

16 Q. Do you recall who was in attendance?

17 A. Not with specificity -- not specifically.  
18 I imagine from our side, we had public works, which  
19 would be either Lucien Piet or Bart Anderson. We  
20 would have fire. At that time it could have been  
21 either Chief Nolan, Chief Robert Bash, who's no  
22 longer with the City or David Klein, which I don't  
23 think it was him. Traffic, which would have been  
24 Victor Bolanos. I don't know if we had building and  
25 safety in the room. If they were it was Michael

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004957  
RA 03615

1 Cunningham or Mike Bouse. And then on the developer  
2 side, more than likely it was at a minimum, Frank  
3 Pankratz, Mr. Lowie, and probably -- I don't know who  
4 else was probably there, but over the course of  
5 different meetings there was different people that  
6 were in the meeting.

7 Q. Who was -- who would be in attendance at  
8 that first meeting from your department?

9 A. It would be Mr. Perrigo, myself. I  
10 believe at that point that might have been the only  
11 two.

12 Q. And what was the purpose of that first  
13 meeting?

14 A. I guess it's tantamount to like a kickoff  
15 meeting, have everybody in the room to discuss scope  
16 of the project and then to go from there to see what  
17 issues or concerns on both sides.

18 Q. Did the developer show plans?

19 A. Not that I recall. It's a possibility

20 Q. Did the developer -- what was your  
21 impression from that first meeting of what the  
22 developer was planning to do or going to propose to  
23 do?

24 A. As I stated before, to propose a  
25 redevelopment of that property into both multifamily

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1 and single family development.

2 Q. This property was already within the  
3 Peccole Ranch residential development, correct?

4 A. The Peccole Ranch Master Development Plan?

5 Q. Yes.

6 A. Yes. The subject property is --

7 Q. Is within?

8 A. -- is encompassed by that, yes.

9 Q. Is it already -- is this property within  
10 the Queensridge residential area?

11 A. The Queensridge is a marketing name.

12 Q. Okay.

13 A. So is it -- can you be specific in the  
14 question?

15 Q. Well, let me rephrase it this way then.  
16 Is this property located within a residential  
17 development, the golf course? Is it located within a  
18 residential development?

19 MR. JIMMERSON: Object to the form of the  
20 question.

21 MR. BYRNES: Are you asking him what the  
22 surrounding uses are or are you asking him --

23 BY MR. BICE:

24 Q. Did he consider the golf course to be  
25 located within a residential development?

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1 A. It was within Peccole Ranch Master  
2 Development.

3 Q. Is Peccole Ranch Master Development, is it  
4 a residential development?

5 A. It is a combination of uses which  
6 encompass commercial, multifamily and single family  
7 development.

8 Q. What about phase two, is phase two of the  
9 Peccole Ranch master plan development a residential  
10 development?

11 A. Phase two is also composed of those  
12 various components.

13 Q. Do you consider it to be a residential  
14 development?

15 MR. JIMMERSON: Object to the form of the  
16 question.

17 MR. BYRNES: Object. Vague and ambiguous.

18 BY MR. BICE:

19 Q. Have you ever -- I'll rephrase. Have you  
20 ever told anyone that it is a residential  
21 development, Peccole Ranch, phase two?

22 A. Not to my recollection.

23 Q. Have you ever discussed it inside the City  
24 that it is a residential development?

25 A. Not to my recollection.

47

1 Q. So do you consider it to be a residential  
2 development, the Peccole Ranch phase two?

3 A. I consider it to be a master development  
4 plan as it was approved.

5 Q. What do you mean by master development  
6 plan?

7 A. That is what it was approved as through  
8 the city council. A master development plan is an  
9 overall development plan for an area, which in this  
10 particular case was composed of at a minimum three  
11 different categories of commercial, multifamily,  
12 residential, public facilities, open space, drainage,  
13 all those numbers -- those components.

14 Q. Okay. So this master plan had multiple  
15 components that were approved?

16 A. The development plan, yes.

17 Q. So was the -- when you met with Mr.  
18 Pankratz and company, the applicant, were they  
19 planning on changing those components in any fashion?

20 A. The subject property, its current use to  
21 another use, so yes.

22 Q. And what was the current use of the  
23 property that they were going to change?

24 A. It is known as the Badlands Golf Course.

25 Q. Okay. What is its current use?

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RA 03616

1 A. As recreation. It's a golf course.  
2 Q. And what were they going to change it --  
3 what were they wanting to change it to?  
4 MR. JIMMERSON: Object to the question as  
5 being asked and answered..  
6 THE WITNESS: To be a multifamily and  
7 single family development.  
8 BY MR. BICE:  
9 Q. And did they -- when you first met with  
10 them, did they talk about how many units that they  
11 wanted to develop?  
12 A. When we had our on going meetings, then  
13 the unit count was made known. And so I don't know  
14 which particular meeting it was that we got the exact  
15 unit counts that were being asked for originally.  
16 Q. What were the original unit counts?  
17 A. I'm going to try and recall, but I think  
18 it was 3,020 or 3,060, somewhere in there. So I  
19 don't know exactly but I think it's one of those two  
20 numbers.  
21 Q. Okay. And was that broken up into single  
22 family and multifamily resident?  
23 A. If I recall there was one portion of it  
24 being single family, those were called out and then  
25 the other side was multifamily units.

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1 Q. So is it fair to say that from the time in  
2 which you knew their plans, Mr. Pankratz and  
3 company's plans, you knew that they intended to  
4 develop this for multiple residences.  
5 A. Meaning more than one single-family  
6 residence, yes.  
7 Q. Yes. You knew that they intended to have  
8 several hundred residences, correct?  
9 A. To develop it with multiple units as you  
10 originally stated, that being whatever the unit count  
11 was, yes.  
12 Q.  
13 So would it be accurate to say that you  
14 knew that was the intended use as of August's of  
15 2015?  
16 MR. JIMMERSON: Object. That misstates  
17 the witness' testimony.  
18 BY MR. BICE:  
19 Q. Are you saying you didn't know that as of  
20 August 2015?  
21 A. I don't recall. But I would assume if I  
22 started to learn about the project in July, by August  
23 it would be some understanding.  
24 Q. Okay.  
25 So how many meetings or discussions did you

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1 have with Mr. Perrigo about this project?  
2 MR. JIMMERSON: Object to the question as  
3 being vague as to time period. No foundation.  
4 THE WITNESS: I don't recall.  
5 BY MR. BICE:  
6 Q. Would it literally be in the hundreds?  
7 A. It could be. I don't know a number.  
8 Q. How about with Mr. Gebeke, would it again  
9 similarly be in the hundreds?  
10 A. Probably less than that.  
11 Q. Probably less than that. How about with  
12 Mr. Rankin?  
13 A. Since he hasn't been employed with the  
14 City for some time, so it would be less than that as  
15 well.  
16 Q. Okay. When did Mr. Rankin leave the City?  
17 A. Not 100 percent sure. I think it was in  
18 this past calendar year.  
19 Q. And what was his role -- well strike that.  
20 What was Mr. Gebeke's role in this project?  
21 A. As the planning supervisor, he would have  
22 reviewed the staff report and made sure that it was  
23 finished in time for the -- our regular deadlines,  
24 internal.  
25 Q. And what would Mr. Rankin's role have been

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1 when he was there?  
2 A. When he was there, as the planning  
3 manager, you know, he still would have been a point  
4 of -- basically a person in which I could go to or  
5 any other staff member could go to and discuss the  
6 project with. I don't exactly recall what his role  
7 at that moment.  
8 Q. Well, when you -- when he was planning  
9 manager, did you report to him?  
10 A. Yes.  
11 Q. And were you then reporting to him  
12 concerning this project or this redevelopment plan  
13 when he was there?  
14 A. I don't recall if it was in August then  
15 when became section manager and I was reporting to  
16 Mr. Perrigo then we were in transition, and there was  
17 a number -- you know if he was still working on  
18 projects or whatever his assignment changes may have  
19 been pursuant to whatever Mr. Perrigo assigned him,  
20 there's a possibility that there was overlap. But in  
21 regards to the functions of case planning, he was  
22 still part of it in regards to annexations and some  
23 other things, but once again, those assignments and  
24 roles and responsibilities, that wasn't something  
25 that I was necessarily privy to. That would be the

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RA 03617

1 director's decision.

2 Q. All right. So I need a little bit of

3 clarification. My apologies if this is backtracking

4 a little bit. You said that when you became section

5 manager --

6 A. Planning section manager to clarify.

7 Q. Planning section manager. What was your

8 role then relative to Mr. Rankin at that point?

9 A. I was a planning section manager, I was

10 over case and public. He was also over some

11 functions that were both in case and public. So

12 there was no clear demarcation where it was a split.

13 There was overlap in responsibilities that he would

14 still have to do as the planning manager.

15 Q. Was -- was your -- the position that you

16 assumed, section manager, was that a new position

17 for -- was that a newly created position at the City?

18 A. No. The former planning director, Flint

19 Fagg actually created it.

20 Q. Okay.

21 A. And I believe it was first instituted in

22 business licensing division and then subsequently it

23 was filled in the planning divisions, meaning long

24 range and current planning.

25 Q. So if you -- so when Mr. Fagg was there,

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1 who would be the people that would have reported

2 directly to him?

3 A. As far as -- everybody reports to him.

4 He's the director.

5 Q. Mr. Lowenstein, I understand. That's not

6 a very good -- not a well phrased question. Here's

7 what I'm trying to have you sort of conceptually draw

8 for me, the hierarchy chart. You would have Mr. Flag

9 would have been the planning director?

10 A. Mm-hmm.

11 Q. And directly below Mr. Fagg would have

12 been whom.

13 A. For a period when there was no deputy

14 director, it was just the planning manager.

15 Q. And that would have been Mr. Rankin at

16 that time.

17 A. That is correct.

18 Q. An at some point did Mr. Fagg have a

19 deputy director.

20 A. I believe that's when Karen Duddleston

21 became deputy.

22 MR. JIMMERSON: Mr. Bice, could you just

23 help with a time? In other words, the time for a

24 deputy manager. {

25 ///

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1 BY MR. BICE:

2 Q. I'm just talking about when Mr. Fagg was

3 there. Mr. Fagg was the planning director for two

4 years. Or was it longer than that?

5 A. I don't recall exactly whenever the former

6 director Margo Wheeler left he assumed that role. I

7 don't know the exact dates. So it could have been

8 two plus.

9 Q. All right. So the hierarchy while at

10 least towards the end of Mr. Fagg's tenure, let's

11 deal with this towards the end of his tenure, he was

12 obviously the director, the deputy director would

13 have been Karen Duddleston and then below her would

14 have been the planning manager, which would have been

15 Mr. Rankin; is that correct?

16 A. That is correct.

17 Q. And so then where -- who would have been

18 below Mr. Rankin?

19 A. It would have been the supervisors.

20 Q. The supervisors. And were you one of

21 those supervisors?

22 A. That is correct.

23 Q. Okay. So it's sort of below Mr. Rankin it

24 sounds like the chart would spread out then; is that

25 fair?

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1 A. Is your question in regards to the

2 creation of the section manager?

3 Q. Yes, sir.

4 A. I can't really attest to what the thinking

5 of the director was in regards to why they created

6 that position.

7 Q. Okay. So were those -- the creation of

8 the section managers, was that sort of someone to be

9 on par with Mr. Rankin as the planning director?

10 A. Mr. Rankin as the planning manager.

11 Q. Planning manager. My apologies. You're

12 right.

13 A. And to my recollection from our

14 discussions when we were hired, meaning

15 Mr. Summerfield and I were in a meeting with the

16 director and the managers that it would alleviate

17 some of the daily grind stuff and allow them to focus

18 on our strategic initiatives, some of the larger

19 initiatives in the department and the goals within

20 the City of Las Vegas.

21 Q. Got it. So when you became section

22 manager did you really sort of have two reporting

23 lines at that point one to the planning manager and

24 one to the planning director slash deputy director?

25 A. There was, as I said a period of overlap

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RA 03618

1 where there was transition, so I would say yes, for a  
2 period of time. I don't know exactly how long that  
3 was.

4 Q. When Mr. Rankin left, is there still the  
5 position of planning manager?

6 A. There's a manager position I believe that  
7 was filled in the business licensing side of the  
8 planning department.

9 Q. Okay. But was his position, the position  
10 that he was fulfilling at the planning department,  
11 was it essentially subsumed by the people in your  
12 position, the section managers?

13 A. As of this point there is no planning  
14 manager as far as if it's still a vacant position  
15 that could be filled, I don't know.

16 Q. Okay. But is it fair to say that now the  
17 role of planning manager has really been allocated to  
18 the section managers for the respective sections?

19 A. That could be a fair statement.

20 Q. All right. Okay. So let's back up  
21 then -- actually not back up. Jump forward now since  
22 I got a little clarification on the hierarchy, which  
23 I appreciate. So you understand, as of this first  
24 meeting that you had with them, that they were  
25 proposing a residential development for the golf

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1 course. And do you think that that's sometime as of  
2 August of 2015?

3 A. As I stated, I think it was somewhere in  
4 July and then we started having meetings going  
5 towards August forward.

6 Q. Got it. Okay so would have that first  
7 meeting that you think you had would have been  
8 sometime in August probably?

9 MR. BYRNES: Objection. Asked and  
10 answered.

11 MR. BICE: My apologies Phil. If it was  
12 I'm not saying it wasn't I'm just a little fuzzy on I  
13 guess the difference between meetings where he was  
14 meeting with the developer as opposed to to meetings  
15 with Mr. Perrigo, which I understood that first one  
16 hand in July. So if I'm retracing some ground my  
17 apologies I just want to make sure for my own self  
18 it's clear.

19 A. As far as meetings, coordinating City  
20 meetings with the developer, it could have been the  
21 end of July and then into August.

22 Q. Got it. Now, would you take notes of  
23 these meetings?

24 A. As I stated, I would take meeting notes on  
25 outstanding issues.

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1 Q. And in your experience, do the other  
2 participants at these meetings on behalf of the City,  
3 do they take their own notes relative to their  
4 involvement?

5 A. I can't say definitively, but I would  
6 assume they take some of their own notes.

7 Q. Okay.

8 MR. BICE: Can we stake a short restroom  
9 break?

10 MR. BYRNES: Sounds okay to me.

11 MR. BICE: Let's go off the record.

12 THE VIDEOGRAPHER: Going off the video  
13 record. The time is approximately 11:02 a.m.

14 THE VIDEOGRAPHER: This is the beginning  
15 of video recording number 3 in the continuing  
16 deposition of Peter Lowenstein. The time is  
17 approximately 11:09 a.m. We're back on the video  
18 record.

19 BY MR. BICE:

20 Q. All right. So before we took the break,  
21 Mr. Lowenstein, we were talking about these meetings  
22 that you were setting up or the first meeting you had  
23 set up with the developer and who had attended. So  
24 let's go to the next meeting that you can recall.  
25 Did you set up another meeting after the first one?

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1 A. I assume so. My recollection, I don't  
2 know if there was immediately, but eventually there  
3 was a reoccurring standing meeting on Thursdays,  
4 starting at I believe 2:00 o'clock that could go  
5 until 430 was the regular schedule.

6 Q. All right. Were these meetings -- do you  
7 maintain any form of a calendar.

8 A. Through Microsoft outlook. I just add  
9 those things to the calendar and add the invitees.

10 Q. Would those -- and this is on your City  
11 computer, correct?

12 A. Yes.

13 Q. All right. Would the original meeting  
14 that you had with the developers be reflected on your  
15 calendar?

16 A. It should be yes.

17 Q. And would it reflect who the attendees  
18 were or the invitees I guess?

19 A. It would be the invitees.

20 Q. And would each subsequent meeting that you  
21 had with the developer be reflected on that calendar?

22 A. It should be, yes.

23 Q. Who is responsible for maintaining your  
24 calendar? Do you personally do it or do you have an  
25 assistant?

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RA 03619

1 A. Primarily myself, but I do have meetings  
2 that come up on there that are from other people  
3 requesting or from the executive assistant.  
4 Q. Okay. And who is the executive assistant  
5 that assists you?  
6 A. Currently -- sorry. I don't know her full  
7 name is. Miles is her abbreviated name.  
8 Q. Okay. And how long has she been the  
9 executive assistant assisting you?  
10 A. She's not my direct executive assistant,  
11 she's the executive assistant to the administrative  
12 side of things, primarily the director appear the  
13 deputy director.  
14 Q. Do you have a direct administrative  
15 assistant?  
16 A. No. We have office assistants that we can  
17 call upon, and as I inferred, we can call upon the  
18 executive assistant as well.  
19 Q. So I'll refer to her as Miles. Is she the  
20 person though that would -- to the extent you're not  
21 handling your meetings or calendaring, would she be  
22 the one that would do that?  
23 A. It's a possibility, yes. There really has  
24 been no need on my side for -- I mean I essentially  
25 get double booked, I don't get quadruple booked.

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1 Q. Would it be accurate to say she is  
2 principally the assistant for Mr. Perrigo and  
3 Mrs. Duddleston?  
4 A. Yes, that's fair to say.  
5 Q. So let's keep marching along. You said at  
6 point there would be a weekly meeting set for  
7 Thursdays at 2:00 o'clock?  
8 A. Mm-hmm.  
9 MR. BYRNES: Is that a yes?  
10 THE WITNESS: Yes. Sorry I apologize.  
11 BY MR. BICE:  
12 Q. And how many people would attend those  
13 meetings, generally.  
14 A. It depends on the scope of outstanding  
15 issues, it depended on other people's schedules. It  
16 could range, but to put an average, maybe three on  
17 the developer side and five to six on the City side.  
18 Q. Who would generally be the attendees on  
19 behalf of the developer?  
20 A. Most predominantly would have been Mr.  
21 Pankratz, Mr. Lowie, and I'm forgetting -- well, they  
22 also had their technical side. So there could have  
23 been somebody from GCW Engineering there or from any  
24 other company. The other individual would be Brent  
25 and I'm forgetting his last name at the moment. I'm

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1 sorry.  
2 Q. Brett?  
3 A. I think it's -- I think it's Brett.  
4 Instead of Brent. I think it's Brett.  
5 Q. Now, were these meetings -- can you tell  
6 me when these weekly meetings started relative to  
7 when they first submitted an application?  
8 A. I don't recall exactly, but if they  
9 started at the end of July or into August, then the  
10 application, the formal applications for the Badlands  
11 17 was scheduled for January of '16. So it would  
12 have been either the month before, at a minimum.  
13 Q. Month before they submitted any  
14 applications?  
15 A. No. Before they -- something is scheduled  
16 at the planning commission meeting. I'm working in  
17 my head backwards from the meeting it was scheduled  
18 from to potentially when they could have submitted  
19 their applications, because I don't know the exact  
20 dates. There is -- just to clarify there is a lag  
21 because when you formally go through the process,  
22 there are internal deadlines that need to be met and  
23 state statutes that need to be met before the item  
24 can be heard. So our processes are built backwards  
25 from that meeting date for when somebody's able to

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1 submit there's an application closing deadline and  
2 it's usually -- approximately a month back from the  
3 actual meeting dates.  
4 So just so I'm a little clear on this,  
5 were these weekly meetings started before an  
6 application is submitted or after?  
7 A. Before.  
8 Q. Before. Okay. Do you recall -- do you  
9 recall an application that was proposed by City staff  
10 to add an asterisk to certain density limitations in  
11 the general plan?  
12 A. I do.  
13 Q. In 2015?  
14 A. I do.  
15 Q. What was your involvement in that?  
16 A. As the section manager, I was asked in  
17 regards to the planning community development  
18 designation within the general plan or plaster plan,  
19 to look at that as ability to be used as a tool which  
20 would give the city council the discretion to grant  
21 additional density for certain development that met  
22 criteria. And in that process, reviewed that with  
23 the other section manager and the planning manager,  
24 and a consensus came up with those as potential -- as  
25 a potential zoning tool.

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004962  
RA 03620

1 Q. Well, who was the other section manager?  
2 A. There was only one other, and that's  
3 Robert Summerfield.  
4 Q. Okay. And the planning manager that you  
5 were referencing would be have been Mr. Rankin; is  
6 that correct?  
7 A. That is correct.  
8 Q. So the three of you discussed adding this  
9 asterisk to the density criteria?  
10 A. It would be to one of the tables within  
11 the land use element of the Las Vegas 2020 master  
12 plan. That asterisk, as I said, would provide the  
13 city council the discretion to grant additional  
14 density if it met the criteria of that, but in  
15 reviewing that as a tool, we, as in that group,  
16 discussed its feasibility for use in the City as a  
17 whole.  
18 Q. How did it first come up, this tool, what  
19 you're calling the tool?  
20 A. In reviewing the -- in reviewing the  
21 development and utilization of the planned community  
22 development and planned development zoning district,  
23 that was looked at having the most flexibility and  
24 the most security as a tool for dynamic projects.  
25 (Mr. Harrison entered the proceedings.)

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1 Q. You say in reviewing the development and  
2 utilization of the planned community development.  
3 What development are you talking about?  
4 A. So in reviewing -- in light of the  
5 Badlands project, brought focus to the potential need  
6 for a tool that would help development in infill  
7 projects. Now, as a City wide effect, because this  
8 is not development specific, this is City specific.  
9 I mean, it impacts the entire City.  
10 Q. You say infill projects. What do you mean  
11 by that?  
12 A. Well, there is infill where you have --  
13 such as undeveloped land or even developed land such  
14 as Cashman center. You have a large property if it's  
15 going to be redevelopment or infill development, then  
16 you can use that interchangeably.  
17 Q. So in other words, when you say infill  
18 development, you mean property that is otherwise  
19 surrounded by existing development; is that correct?  
20 A. Infill it could have adjacent to it some  
21 undevelopment there is different circumstances but  
22 yes, that's one scenario.  
23 Q. So in this particular case, this idea  
24 about an asterisk to grant the City discretion to  
25 increase the density beyond eight was developed in

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1 conjunction with the Badlands -- the plans for the  
2 Badlands Golf Course correct?  
3 MR. JIMMERSON: Object to the form of the  
4 question. Misstates the witnesses testimony.  
5 THE WITNESS: No.  
6 Q. It's not correct because -- let me  
7 rephrase. Is it your testimony this was developed  
8 prior to the Badlands project being proposed?  
9 A. No.  
10 Q. Do you dispute that Mr. Perrigo told you  
11 come up with some tool to accommodate the Badlands  
12 plans proposed?  
13 MR. JIMMERSON: Objection. Misstates Mr.  
14 Perrigo's testimony. You can read his deposition.  
15 THE WITNESS: Yes.  
16 Q. He did tell that you didn't he.  
17 A. That wasn't your question.  
18 Q. Did he tell you that?  
19 A. No.  
20 Q. So he never suggested to you that you  
21 needed to find a tool to accommodate the developer  
22 here; is that right?  
23 A. He did not tell me.  
24 Q. Did you ever tell that to Mr. Rankin?  
25 A. Not to my recollection.

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1 Q. So this tool that you're referencing  
2 according to you is unrelated to the Badlands Golf  
3 Course; is that right?  
4 MR. BYRNES: Objection. Vague and  
5 ambiguous based on unrelated. Go ahead and answer.  
6 THE WITNESS: My mindset is it brought  
7 light to a need for the City.  
8 Q. What brought light to a need?  
9 A. In reference to your question, the  
10 Badlands development brought into focus the potential  
11 need for a tool for development.  
12 Q. How is it that the Badlands development  
13 brought into focus the potential need for a tool for  
14 development? How did it do that?  
15 A. Well, based on the complexity of such a  
16 project, the planned community development and the  
17 associated planning -- the planned development zoning  
18 district, that -- that zoning district allows for the  
19 ability to create something that would be more  
20 compatible and harmonious with the adjacent uses in  
21 the sense that it has flexibility, it also has  
22 assurances and in addition to that, its most usually  
23 asked for a development agreement in addition to  
24 that.  
25 Q. You say the complexity of such a project,

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004963  
RA 03621

1 the planned community development and the associated  
 2 planning. What do you mean by planned community  
 3 development?  
 4 A. Can you repeat that?  
 5 Q. Sure. I'm just reading your answer, sir.  
 6 You said, based on the complexity of such a project,  
 7 the planned community development and the associated  
 8 planning. So what do you mean by planned community  
 9 development?  
 10 A. Planned community development, land use  
 11 designation with the associated planned development  
 12 zoning district is what I was referring to.  
 13 Q. What do you mean by planned community  
 14 development?  
 15 A. As a master plan land use designation.  
 16 Because to -- we have to have compatibility between  
 17 the general plan and the zoning district and as such,  
 18 the equivalent general plan designation associated  
 19 with the planned development zoning district is  
 20 planned community development land use within the  
 21 general plan.  
 22 Q. Planned community development is a planned  
 23 development; is that right?  
 24 MR. JIMMERSON: Object to the form of the  
 25 question.

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1 THE WITNESS: The planned community  
 2 development is found all throughout the northwest on  
 3 undeveloped land. It has been used for master plan  
 4 communities.  
 5 REPORTER'S NOTE check if he said  
 6 undeveloped or developed land.  
 7 THE WITNESS: It has -- in my recollection  
 8 of when it was adopted out there was for almost a  
 9 place holder because they didn't know how it was  
 10 going to develop.  
 11 BY MR. BICE:  
 12 Q. You said master planned communities. Tell  
 13 me what you consider to be a plaster planned  
 14 community.  
 15 A. Cliff's Edge, also known as Providence.  
 16 Lone Mountain.  
 17 Q. Any others?  
 18 A. Lone Mountain West.  
 19 MR. JIMMERSON: I'm sorry, something west.  
 20 THE WITNESS: Just to reiterate, Lone  
 21 Mountain and Lone Mountain West are both special area  
 22 plans and master planned communities.  
 23 Q. Does the City maintain a map of what it  
 24 calls planned communities?  
 25 A. If it does it would be in the land use

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1 element.  
 2 Q. Okay. Canyon Gate would be one, would it?  
 3 A. Potentially, yes.  
 4 Q. How about Desert Shores?  
 5 A. Potentially, yes.  
 6 Q. Los Prados?  
 7 A. Possibly.  
 8 Q. Painted Desert?  
 9 A. Possibly.  
 10 Q. Peccole Ranch?  
 11 A. As a --  
 12 Q. Planned communities.  
 13 A. As a planned community.  
 14 Q. Uh-huh?  
 15 A. Possibly yes.  
 16 Q. When you say possibly are they in fact  
 17 designated as planned communities by the City the  
 18 ones I've just listed?  
 19 A. Well, the planned community PC zoning  
 20 district is associated with Summerlin. The other  
 21 ones are other designations. They could be planned  
 22 PD, planned development. They could be a RPD,  
 23 residential planned development zoning district.  
 24 Q. Are they designated as master plan --  
 25 master development plan areas? Canyon Gate?

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1 A. It's possible.  
 2 Q. How about the lakes?  
 3 A. I don't know off the top of my head.  
 4 Q. Okay. How about South Shores, is that  
 5 designated as a master plan -- master development  
 6 plan area?  
 7 A. I'm not familiar with south shores.  
 8 Q. How about Peccole Ranch?  
 9 A. It's possible.  
 10 Q. Sun City?  
 11 A. Sun City is part of Summerlin.  
 12 Q. Well would it be fair to say you  
 13 researched all this as part of working on the  
 14 redevelopment for Badlands golf courses?  
 15 MR. BYRNES: Objection vague and  
 16 ambiguous. What do you mean all of this?  
 17 BY MR. BICE:  
 18 Q. Did you research the planned community  
 19 designations in the City's code and the City's maps?  
 20 A. Well, as far as the procedures in which to  
 21 address a special area plan, yes, we looked at the  
 22 land use element, which defloats which ones require  
 23 major modifications and the other ones that don't.  
 24 Other ones that don't would go through a general plan  
 25 amendment, similar to what has occurred in Peccole

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004964  
 RA 03622

1 Ranch.  
2 Q. Have you ever heard much the term -- have  
3 you ever heard of the term parent final map before?  
4 A. Yes.  
5 Q. What does that mean?  
6 A. It is indicative of a final map that  
7 denotes large developer parcels that would be  
8 developed in the future.  
9 Q. What do you mean --  
10 A. With subsequent mapping actions.  
11 Q. What do you mean it's indicative of a  
12 final map? Is there a difference between a final map  
13 and a parent final map?  
14 A. No.  
15 Q. So a parent final map is just a final map?  
16 A. That is correct.  
17 Q. What is the reference to the word parent,  
18 do you know?  
19 A. It's as I stated it would show large  
20 developer parcels which would then be subsequently  
21 developed with future mapping actions, other final  
22 maps.  
23 Q. Was there a final map recorded on the  
24 Peccole Ranch phase two?  
25 A. I don't know off the top of my head but I

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1 would assume so.  
2 MR. JIMMERSON: Objection move to strike  
3 the answer calling for an assumption, speculation.  
4 Q. As part of your research did you locate  
5 the final map regarding Peccole Ranch phase two?  
6 A. I don't recall. I may have.  
7 Q. Was the golf course designated as a  
8 particular parcel under -- strike that. was it  
9 designated as a particular parcel, do you recall?  
10 A. It currently is. I can't speak to what  
11 was on the map without reviewing it.  
12 Q. Well let me show you. Have you ever heard  
13 of something called FM896?  
14 A. Not that I recall.  
15 Q. Is FM in reference to final map typically  
16 on the City's designations for maps?  
17 A. For application numbers it's usually  
18 either FM, FMP dash, then a series of numbers, then  
19 dash, for indicating the year or it's FMP dash and a  
20 series of numbers in the newer system.  
21 Q. What does FMP mean?  
22 A. Final map.  
23 Q. Is there a difference between FM and FMP?  
24 A. It is just the cataloging that was used by  
25 the City as far as application types.

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1 Q. All right.  
2 A. And databases.  
3 Q. I'll show you this one and see if we're  
4 talking about the same thing and you can explain it  
5 to me. Mark this as one please.  
6 (Exhibit Number Num was marked.)  
7 BY MR. BICE:  
8 Q. Showing you what's Exhibit number 1, do  
9 you think you've seen this document before?  
10 A. It's possible.  
11 Q. Can you tell me what it looks like to you?  
12 A. This looks to me to be the recorded final  
13 map of Peccole west as titled book 77, page 23.  
14 Q. And do you know what Peccole west is?  
15 A. It is a title.  
16 Q. Have you ever seen that description  
17 anywhere else before?  
18 A. I've seen the reference of the Peccole  
19 name in numerous places.  
20 Q. Does this show what you understand to be  
21 Peccole phase two?  
22 MR. JIMMERSON: Object to the question.  
23 He's not been able to demonstrate he has the ability  
24 he know. He said doesn't know and his answer -- {  
25 MR. BICE: That's an inappropriate

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1 speaking objection, Mr. Jimmerson.  
2 MR. JIMMERSON: Objection. Calling for  
3 speculation in light of the answer that you and I  
4 both listened to, counsel.  
5 MR. BICE: Then if you want to list your  
6 objection it calls for speculation, fine, but stop  
7 trying to coach the witness.  
8 MR. JIMMERSON: And I have stopped --  
9 coaching the witness? I have never met the man  
10 before. Stop this coaching the witness. That's an  
11 unfair characterization and that's the second time  
12 you have made that.  
13 MR. BICE: That's right. And I'm going to  
14 continue to do it every time you do it.  
15 MR. JIMMERSON: It's false. Don't lie.  
16 MR. BICE: Stop doing it.  
17 MR. JIMMERSON: Don't misrepresent on this  
18 record, Counsel.  
19 MR. BICE: Then you stop making those  
20 inappropriate statements.  
21 MR. JIMMERSON: I said I object on the  
22 grounds it calls for speculation.  
23 MR. BICE: No, you did not. Read the  
24 transcript. Nice try.  
25 MR. JIMMERSON: I'm happy to do that.

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RA 03623

1 MR. BICE: Nice try at saving yourself.  
2 MR. JIMMERSON: I didn't suggest any  
3 answer in any comment that I made, Counsel.  
4 MR. BICE: Yes, you did.  
5 MR. JIMMERSON: What did I say that  
6 suggested --  
7 MR. BICE: Read the transcript. Let's see  
8 if says what you just represented.  
9 MR. JIMMERSON: You can't even answer a  
10 simple question.  
11 MR. BICE: Let's move on.  
12 MR. BYRNES: Could you repeat your  
13 question.  
14 BY MR. BICE:  
15 Q. I can. Does this map show what you  
16 understand to be Peccole phase two?  
17 A. No.  
18 Q. What does it represent relative to  
19 Peccole, do you know?  
20 A. A portion thereof.  
21 Q. A portion thereof. Do you know which  
22 portion?  
23 A. From the geographical boundaries shown on  
24 here, it shows east of the Hualapai, a portion south  
25 and a portion north of Alta Drive, north of

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1 Charleston and to the west of Rampart Boulevard.  
2 Q. Do you know what that shows in laymen's  
3 terms? Is that the golf course?  
4 A. It shows the geographical area and that  
5 shows the number of lots to be recorded.  
6 Q. Is one of those lot five?  
7 A. There's 11 lots on here, so I believe five  
8 would be one of them.  
9 Q. All right. Do you know, is there a parcel  
10 five?  
11 A. Referred to as lots.  
12 Q. Okay.  
13 I think I'm missing the second page of this  
14 but I'll see what I can do to find it. Mark this two  
15 please.  
16 (Exhibit Number Num was marked.) two.  
17 BY MR. BICE:  
18 Q. I believe there's a second page of this  
19 letter that I'm missing Mr. Lowenstein, but for right  
20 now have you seen this letter before?  
21 A. Not that I recall. But it's possible.  
22 Q. All right.  
23 MR. JIMMERSON: Mr. Bice before you go  
24 forward today, would you explain to us what is the --  
25 who is the author of the box at paragraph two.

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1 MR. BICE: I am. It's my intention to ask  
2 the witness.  
3 MR. JIMMERSON: Are you the one who drew  
4 the box.  
5 MR. BICE: No. But my team did.  
6 MR. JIMMERSON: But the point is.  
7 MR. BICE: It was not on the original.  
8 MR. JIMMERSON: Not there when it was  
9 originally produced?  
10 MR. BICE: That is absolutely correct.  
11 BY MR. BICE:  
12 Q. Looking at paragraph number 2 the one that  
13 we have placed in a box, it says parcel five must be  
14 shown on this final map as public drainage easement  
15 with private maintenance as per the approved master  
16 drainage plan. Do you see that?  
17 A. Do you see that?  
18 Q. Do you know whether that is in reference  
19 to the golf course the Badlands Golf Course or not?  
20 A. Well, if this is -- once again we don't  
21 have the complete document.  
22 Q. Right.  
23 A. These are the conditions of approval by  
24 the planning commission on the approval of a final  
25 map. And that corresponding final map number shows

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1 itself, or does it?  
2 MR. JIMMERSON: Mr. Bice, can you make a  
3 representation as to who is the author of the letter  
4 since we don't have page 2 or 3 three however many it  
5 is.  
6 MR. BICE: I can't right now.  
7 THE WITNESS: I don't -- unless can you  
8 pointed it out to me, I don't see the final map  
9 number recommend ever represented on Exhibit 1.  
10 Q. So you don't know whether exhibited one is  
11 the final map or not; is that correct?  
12 A. Repeat the question.  
13 Q. So you don't know whether Exhibit 1 is the  
14 final map that is being referenced in exhibit  
15 number 2; is that correct?  
16 A. There's -- common practice is to have the  
17 final map number on the actual recorded final map,  
18 above the bottom right-hand corner. I don't see  
19 that, but on the assumption that it is.  
20 MR. BYRNES: The question is do you know  
21 if it is.  
22 Q. I'll rephrase. Do you believe that it is?  
23 MR. JIMMERSON: Move to strike the answer  
24 as being irrelevant. Calling for assumption.  
25 THE WITNESS: Yes, it is. Yes based on

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004966  
RA 03624

1 similar titles.  
2 BY MR. BICE:  
3 Q. All right. So would you agree that this  
4 is the final map for what is known as the Pecc --  
5 what is identified as the Peccole west subdivision?  
6 MR. JIMMERSON: Object to form of the  
7 question in light the prior answer. Calling for  
8 speculation.  
9 THE WITNESS: Exhibit 1.  
10 BY MR. BICE:  
11 Q. Yes?  
12 A. Yes.  
13 Q. How does one go about amending a  
14 subdivision map, approved -- strike that. How does  
15 one go about amending a final map of a subdivision.  
16 A. Well, mapping is -- tends to be fairly  
17 complicated and we usually rely on the City surveyor.  
18 There are different processes to accomplish different  
19 outcomes. So if you could be more specific, I might  
20 be able to give you one of the mechanisms but  
21 ultimately it's the City surveyor that makes the  
22 determination on what is the best mapping action.  
23 Q. Well, didn't you -- strike that. maybe I  
24 don't know this. I'll phrase it this way. Did you  
25 previously work in mapping as part of your

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1 responsibilities?  
2 A. There was something called a maps team.  
3 Maps teams reviewed building permits. Some of them  
4 reviewed civil improvement plans and some reviewed  
5 final maps.  
6 Q. Have you ever told anyone that adding  
7 additional lots to a final map of a subdivision  
8 requires a new tentative map process?  
9 MR. JIMMERSON: Object to the question as  
10 to lack of foundation, form. It's unfair to the  
11 witness.  
12 THE WITNESS: It's possible.  
13 BY MR. BICE:  
14 Q. Did you in fact tell the applicant here  
15 that it required a new tentative map process?  
16 A. It's possible.  
17 Q. Did someone ask you to allow the developer  
18 to subdivide the property without going through the  
19 tentative map process?  
20 MR. JIMMERSON: Object to the question  
21 lack of foundation. Move to strike that.  
22 MR. BICE: I'll rephrase.  
23 Q. To further subdivide the property without  
24 going through the tentative map process.  
25 MR. JIMMERSON: Same objection. Lack of

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1 foundation, when and where and between whom.  
2 THE WITNESS: I don't recall. As I said,  
3 the mapping actions we usually defer to our City  
4 surveyor.  
5 Q. Well did you talk to anyone in the City  
6 about the mapping process for subdividing the golf  
7 course?  
8 A. Not that I recall. But it's not out of  
9 the realm of possibility.  
10 Q. So to find out -- is it your position to  
11 find out about mapping, the person that you would --  
12 or that I would need to consult is the City surveyor?  
13 A. Yes.  
14 Q. Okay. But you have been involved in  
15 mapping before, have you not?  
16 A. Through my tenure at the City, yes.  
17 Q. Okay. Have you -- are you aware of any  
18 circumstance where the City has allowed further  
19 subdividing of a subdivision without going through  
20 the tentative map process?  
21 MR. BYRNES: Objection. That's an  
22 incomplete hypothetical.  
23 MR. JIMMERSON: Join.  
24 THE WITNESS: Quite possibly in the Sky  
25 Canyon and one of their developer parcels.

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1 BY MR. BICE:  
2 Q. When would the City have allowed that?  
3 A. In maybe 2016. Other examples I would  
4 have to do research to see.  
5 Q. Did you ever discuss the applicant wanting  
6 to subdivide the golf course property without going  
7 through the tentative map process with anyone in the  
8 City?  
9 A. Not that I recall. I recall having  
10 conversations about mapping in general, but as -- not  
11 in light of your question.  
12 Q. Who did you discuss mapping in general  
13 with about this applicant?  
14 A. Well, in regards to applications being  
15 submitted, we wanted separate parcels for -- so we  
16 didn't create any kind of split designated parcel.  
17 Q. What do you mean you want separated  
18 parcels?  
19 A. A portion of a larger parcel so that as  
20 not to create a split designated either zoning  
21 district and/or land use designation.  
22 Q. Okay. So you wanted the developer here to  
23 subdivide the property further, correct?  
24 A. As part of the submittal, we were looking  
25 for that to be accomplished prior to notification,

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004962

004967  
RA 03625

1 yes.  
2 Q. And so did the applicant then further  
3 subdivide the property?  
4 A. I think they had -- to my recollection it  
5 was a subdivision prior to that and then subsequent  
6 to that.  
7 Q. So prior to your request, you say that  
8 they had already subdivided it once?  
9 A. Possibly. I would have to go and look at  
10 all the mapping actions to be clear on what dates.  
11 Q. Okay. I'm going to have you mark this  
12 white piece of paper as an exhibit.  
13 (Exhibit Number Num was marked.)  
14 BY MR. BICE:  
15 Q. I'm going to show you a blank piece of  
16 paper as Exhibit Number 3.  
17 A. I see it.  
18 Q. All right. Would you slide that over to  
19 me.  
20 I want to understand your understanding of  
21 what the City has done in the past. So if this is --  
22 if this is the parcel. Let's say this is parcel  
23 number 5. It's the golf course. I understand this  
24 is rectangle. But let's assume that it is. If I  
25 want to subdivide that into two lots, do I have to go

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1 through the tentative map process?  
2 A. To my understanding, no, the tentative map  
3 process would be used to establish an actual  
4 subdivision of as a subdivision -- as a residential  
5 subdivision.  
6 Q. Okay. But if I'm coming to you -- if I  
7 want to divide it into four lots, do I have to go  
8 through the tentative map process?  
9 A. To my understanding if there are still  
10 builder parcels and they're not actual eminent  
11 development, no.  
12 Q. All right. Even though you know I'm going  
13 to subdivide it further, is that right, for  
14 residential development?  
15 MR. JIMMERSON: Objection. Calls for  
16 speculation.  
17 THE WITNESS: That's calling for me to  
18 assume that they're going to divide it into a  
19 subdivision.  
20 BY MR. BICE:  
21 Q. In other words, someone comes to you and  
22 you know they're going to subdivide it further and  
23 further and further. But it's your position as long  
24 as they just do four lots, they don't have to go  
25 through the tentative map process; is that correct?

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1 A. 4 lots or less.  
2 Q. 4 lots or less. Okay. So they can do  
3 this and then they can do this, correct, because now  
4 you've got a new lot over here and we can subdivide  
5 that down into four more lots, is that right, without  
6 going through the tentative map process?  
7 A. Yes. And that has occurred in the  
8 northwest yes.  
9 Q. And then they can do this.  
10 A. There's -- just I see your drawing.  
11 Q. Right.  
12 A. At a certain point for improvements and  
13 things like that, the Department of Public Works  
14 would step in.  
15 Q. Well, what do you mean at a certain point?  
16 Who determines that certain point?  
17 A. That's something that either -- public  
18 works would be able to answer.  
19 Q. Well, what's public work's involvement in  
20 mapping?  
21 A. They include the City surveyor under its  
22 umbrella.  
23 Q. Okay. So at what -- do you know what  
24 point it is where you're not going to allow them to  
25 just subdivide it under a parcel map amendment?

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1 A. Well, from my own opinion, would be where  
2 it shows that it's imminently turning into a  
3 residential subdivision. It's not a parcel -- it's  
4 actual development versus laying for future  
5 development.  
6 Q. Well how many parcels does that require?  
7 A. I imagine it's a matter of scale.  
8 Q. Well where would I find the scale in the  
9 City code so that I would know when I need to go  
10 through the tentative map process as opposed to using  
11 parcel maps to simply break it up?  
12 A. I'm not aware if there is a scale in the  
13 code. It would probably go to the point where the  
14 City has the ability to interpret its code.  
15 Q. Are you aware that at Peccole Ranch, that  
16 the City required the Peccoles to go through the  
17 tentative map process to just create two parcels?  
18 MR. JIMMERSON: Objection. Assumes facts  
19 not in evidence.  
20 THE WITNESS: I'm not aware. It's  
21 possible.  
22 BY MR. BICE:  
23 Q. Well, have you investigated that?  
24 A. I don't believe I investigated ever  
25 mapping action in the Peccole master plan.

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004963

004968  
RA 03626

1 Q. Well, did you investigate any mapping  
2 actions at all concerning the Peccole Master Plan?  
3 A. I would assume at some point I have looked  
4 at the entitlements that lead themselves to mapping.  
5 Q. Have you specifically looked at any  
6 mapping action concerning the Peccole Master Plan?  
7 A. Yes, I just looked at Exhibit 1.  
8 Q. Okay. Any others, prior to the deposition  
9 have you looked at any mapping actions?  
10 A. It is quite possible that I have.  
11 Q. But you don't recall any of them?  
12 A. There are at least one, two, three, four,  
13 five potential subdivisions or less, more or less, in  
14 there.  
15 Q. Did you investigate any of those?  
16 A. I may have looked at the recorded final  
17 maps, yes.  
18 Q. Did you -- did you look into the mapping  
19 action -- or did you look into any of the mapping  
20 actions in response to this lawsuit?  
21 A. No.  
22 Q. Did you ever tell anyone in the City that  
23 you're not allowed to amend an existing subdivision  
24 map by way of a parcel map?  
25 A. I don't recall.

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1 Q. Is that your -- is that how -- is it your  
2 understanding that you can't amend an existing  
3 parcel -- an existing subdivision map by way of a  
4 parcel map?  
5 A. So if you have a subdivision of a hundred  
6 lots and you want to add two more lots to it.  
7 Q. Yes?  
8 A. The approved tentative map for -- and  
9 we're talking lots for development of another  
10 residential home on it, so that's what a sub --  
11 residential subdivision is for individual homes, then  
12 that approval that you received on the tentative map  
13 was less intense. The intensification requires the  
14 new tentative map.  
15 Q. If you're going to increase the intensity  
16 of an existing subdivision, you have to file for a  
17 new tentative map, correct?  
18 A. Correct.  
19 Q. Even if you're just going to create two  
20 lots?  
21 A. Correct.  
22 Q. And, in fact, the City has uniformly  
23 applied that to everyone, has it not, to your  
24 knowledge?  
25 A. To my knowledge, yes.

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1 Q. Bear with me one second and it was your  
2 understanding is it not that since day one, the  
3 intent of the developer here was to create a  
4 residential planned development?  
5 A. Was to create a -- redevelop the site to  
6 have multifamily and single family development.  
7 Q. Do you know what a residential planned  
8 development is?  
9 A. In reference to the legacy zoning  
10 district, R-PD.  
11 Q. Sure?  
12 A. That is what -- to my recollection what a  
13 residential planning development is?  
14 Q. So this property was already a residential  
15 planned development, correct?  
16 A. It is zoned residential plan development,  
17 seven dwelling units per acre. 7 is indicative of  
18 the density.  
19 Q. Can you mark this provision of the City  
20 code please.  
21 (Exhibit Number Num was marked.)  
22 MR. JIMMERSON: Counsel may I have copies  
23 of your white piece of paper and have it marked  
24 please.  
25 Did you mark it as an exhibit?

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1 MR. BICE: It is marked as Exhibit  
2 Number 3.  
3 MR. JIMMERSON: So this will be four.  
4 MR. BICE: This will be four.  
5 (Exhibit Number Num was marked.)  
6 BY MR. BICE:  
7 Q. Showing you what's been marked as Exhibit  
8 Number 4, have you seen this provision of the City  
9 code before?  
10 MR. BYRNES: Can you identify which  
11 version of the code this is?  
12 MR. BICE: I think this is from 2011.  
13 Q. Do you know whether it still exists in the  
14 City code, this requirement.  
15 A. One moment. You want me to review what's  
16 in the box.  
17 Q. In the box, yes. Your copy is in red.  
18 That's my highlighting to bring it to your attention.  
19 MR. JIMMERSON: Counsel, what is your  
20 citation to this code? What is this code section?  
21 MR. BICE: 19.06.  
22 MR. JIMMERSON: Point what?  
23 MR. BICE: .040, sub H, I believe.  
24 MR. JIMMERSON: That's what I understand  
25 because it's not apparent on the document, at least

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004964

004969  
RA 03627

1 in my review of it. I see the H but I don't see the  
2 040.

3 MR. BYRNES: For the record has your  
4 office added the box to this page?

5 MR. BICE: Yes? But my apologies Phil. I  
6 thought I made that clear. We added the box to  
7 bring -- to focus the witness' attention.

8 Thank you.

9 THE WITNESS: I have reviewed the box.

10 BY MR. BICE:

11 Q. Yes. Are you familiar with that  
12 provision?

13 A. After reading it -- after reading it,  
14 yeah, it hasn't been utilized since the adoption of  
15 the Unified Development Code and prior to that we  
16 were in recession, so there really wasn't much  
17 development. So it's been quite some time.

18 Q. Okay. But this code provision says that a  
19 residential planned development shall follow the  
20 standard subdivision procedure, correct?

21 A. Yes, that's what it reads.

22 Q. And from day one you knew that this  
23 developer was planning to create a residential  
24 subdivision, correct?

25 A. They were planning on doing a multifamily

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1 and single family development multifamily does not  
2 necessarily include a mapping action.

3 Q. Did the -- does the single family  
4 residential include a mapping action?

5 A. It would.

6 Q. Including a requirement that they submit a  
7 tentative map, correct?

8 MR. JIMMERSON: Objection. Misstates the  
9 witness' testimony.

10 THE WITNESS: It says follow standard  
11 subdivision procedure.

12 Q. Let's then walk through what you  
13 understand the standard subdivision procedure to be.

14 MR. BYRNES: Are you saying now or in  
15 2011?

16 MR. BICE: I'll actually ask him now and  
17 ask him if it's changed.

18 BY MR. BICE:

19 Q. What is it now?

20 A. Depending on the type of development, so  
21 do you have a specific type of development you would  
22 like me to speak to.

23 Q. Sure let's talk about the plans for the  
24 Badlands Golf Course that you knew what they were  
25 planning since July of '15. At least you personally

94

1 did. Correct?

2 A. That's when the initial conversation that  
3 development was being looked at on there. But as far  
4 as the full plans, I can't tell you exactly which  
5 date that was.

6 Q. All right. So what sort of mapping action  
7 would be required if I came to you telling you that  
8 I'm going to put more than 50 residential units on  
9 the golf course? What's the mapping action that you  
10 would require of me?

11 MR. BYRNES: Can you answer that  
12 hypothetical. I object as incomplete hypothetical.  
13 Are you saying single family? Multifamily? Break it  
14 down.

15 Q. Let's do single family residential. I'm  
16 going to put more than 50 units on this piece of  
17 property. What's the mapping action that you  
18 require, that the City requires?

19 A. Besides all the other lands use  
20 entitlements, specifically to the mapping action you  
21 would do a tentative map and then a final map.

22 Q. You would have to submit a sensitive map.  
23 And tell me how does the 10 map process work?

24 A. You would start with a preapplication  
25 conference. You would then receive a preapplication

95

1 check list including a 10 map check list from the  
2 Department of Public Works. If both of those were  
3 signed off and agreed it could move forward for  
4 submittal, then it would submit then it on would be  
5 scheduled for the planning commission meeting and it  
6 would then be heard on the consent agenda.

7 Q. On the planned commission agenda it gets  
8 noticed to the public, correct?

9 A. As a consent item, it does not.

10 Q. It does not. So you're saying --

11 A. If anything the agenda is published and  
12 the public has the ability to view the agenda.

13 Q. So in other words, it's a public hearing,  
14 correct?

15 A. I would have to defer to the city attorney  
16 as far as the open meeting law and what a public  
17 hearing constitutes in regards to the consent agenda  
18 versus the regular public hearing portion of the  
19 agenda.

20 Q. Can you subdivide -- can you subdivide  
21 property for purposes of creating a residential plan  
22 development by way of administrative action without  
23 the tentative map?

24 A. I don't believe so.

25 Q. Has the City ever allowed anyone to

96

004965

004970  
RA 03628

1 subdivide property of an existing subdivision to  
2 create greater density without going through the  
3 tentative map process?  
4 MR. JIMMERSON: Object to the question  
5 assumes facts not in evidence incomplete  
6 hypothetical.  
7 MR. BYRNES: Join in that.  
8 THE WITNESS: Going back to your previous  
9 time you asked that in asking for examples, I would  
10 say yes, because if it was a developer parcel not  
11 imminent to a residential subdivision, there has been  
12 points where they have allowed additional  
13 subdivisions into say smaller development parcels  
14 which would then have future residential subdivisions  
15 to create the actual lots for building and  
16 constructing homes on.  
17 Q. And the one you can think of was Sky  
18 Canyon, right?  
19 A. At this point in time. I'm sure there's  
20 other examples.  
21 Q. Well tell me what they are, if you say  
22 you're sure of it.  
23 A. Well, I can't recall the entire mapping  
24 history of the City of Las Vegas.  
25 Q. I don't think I was asking you for the

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1 entire mapping history. I think I was asking you  
2 since you said you're sure of something, tell me what  
3 you're talking about?  
4 A. I apologize.  
5 MR. JIMMERSON: Object to the question as  
6 argumentative.  
7 THE WITNESS: It's quite possible that it  
8 happens in the Summerlin villages. It is quite  
9 possible that it has happened in Cliff's Edge. It is  
10 quite possible that large parcels have done  
11 subdivided in the north west. 5-acre parcels that  
12 are chopped into two and a half acres and then are  
13 chopped into basically half acres.  
14 BY MR. BICE:  
15 Q. But you don't know, you're saying it's  
16 possible.  
17 A. I'm saying it's more than likely I would  
18 have to go and research it to give you exact  
19 examples.  
20 Q. So you would be able to research those and  
21 find those for us or someone could, right?  
22 A. Yes.  
23 MR. BYRNES: For the record, I don't know  
24 of any provision of rule 30 that allows the  
25 assignment of homework.

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1 MR. BICE: I'm not saying it does but  
2 rule 33 does. I have no intention of assigning him  
3 that as part of the deposition, Phil.  
4 BY MR. BICE:  
5 Q. All right. Why don't we -- it's 1210.  
6 Why don't we take our quick lunch break and we'll see  
7 you back here whenever you can come back, Phil a  
8 little after one?  
9 MR. JIMMERSON: 1:15 okay.  
10 THE VIDEOGRAPHER: Going off the video  
11 record. The time is 12:04 p.m.  
12  
13 THE VIDEOGRAPHER: This is the beginning  
14 of video recording number 4 in the continuing  
15 deposition -- sorry, I forgot your name.  
16 Q. Mr. Lowenstein you understand you're still  
17 under oath correct.  
18 A. I do.  
19 Q. All right. Let's go back to your proposed  
20 general plan amendment that the staff had proposed  
21 concerning the asterisks that we talked about. Do  
22 you recall that?  
23 A. I do.  
24 Q. Do you recall when that item was put on  
25 the planning commission agenda?

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1 A. I believe it was the September planning  
2 commission in 2015.  
3 Q. Did you have any meetings with Mr.  
4 Perrigo -- strike that.  
5 Did you have any meetings internally in the  
6 planning department concerning that submittal for the  
7 planning commission meeting?  
8 A. The submittal was or City initiated?  
9 Q. The City initiated submittal.  
10 A. There was a conversation with Robert  
11 Summerfield and Doug Rankin regarding the creation of  
12 the tool itself and then from there on those  
13 recommendations were given to the director and when  
14 he said it was to move forward, we placed it on the  
15 agenda and prepared the public notification, the  
16 neighborhood meeting in compliance with the meeting  
17 law.  
18 Q. What neighborhood meeting was held?  
19 A. There was one neighborhood meeting. It  
20 was advertised and held at the development service  
21 center, I believe.  
22 Q. Did anybody show up at it?  
23 A. I don't recall the attendance.  
24 Q. I'm sorry, were you in attendance?  
25 A. I don't recall the attendance. I don't

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004966

004971  
RA 03629

1 know if I was in attendance either.  
 2 Q. When did the notice go out for that  
 3 neighborhood meeting, do you know?  
 4 A. It would have to have been probably 10  
 5 days or greater from the date of the meeting.  
 6 Q. And you're sure that it went out before  
 7 the meeting date was set?  
 8 A. I would have to double-check but I'm  
 9 pretty sure, yes.  
 10 Q. Did you give any notice to the impacted  
 11 homeowners in the areas where you knew this tool was  
 12 being made available for?  
 13 A. We met the intent of the open meeting law  
 14 and that discretion was up to the director.  
 15 Q. But did you internally discuss whether or  
 16 not you should give notice to homeowners that you  
 17 knew were going to be impacted?  
 18 A. I gave a statement to the director as far  
 19 as we met the open meeting law and any other meetings  
 20 would be at his discretion.  
 21 Q. Did you and Mr. Rankin strike that did you  
 22 discuss with anyone whether or not additional people  
 23 should be notified?  
 24 A. I don't recall.  
 25 Q. Do you dispute that you did?

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1 A. If I don't recall how can I dispute it?  
 2 Q. Okay. Do you recall whether you discussed  
 3 that specific fact with Mr. Rankin?  
 4 A. I'm not sure. I don't recall.  
 5 Q. Well, did you and Mr. Perrigo have any  
 6 discussions -- were you at the planning commission  
 7 meeting when this item was heard?  
 8 A. I believe I was.  
 9 Q. Did you have any discussions with Mr.  
 10 Rankin in advance of the planning commission meeting  
 11 about making sure that the matter wasn't held in  
 12 abeyance?  
 13 A. That's not in my purview.  
 14 Q. That's --  
 15 A. That's not on my scope. I don't have any  
 16 conversation like that.  
 17 Q. I'm sorry?  
 18 A. I did not have any conversation like that.  
 19 Q. Did you overhear any conversations like  
 20 that?  
 21 A. No.  
 22 Q. Did you ever discuss that fact with the  
 23 deputy director?  
 24 MR. JIMMERSON: Objection. Assumes facts  
 25 not in evidence.

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1 THE WITNESS: No.  
 2 MR. JIMMERSON: The question is failed  
 3 because it claims it to be a fact when there is no  
 4 facts to demonstrate yet.  
 5 Q. Did you discuss the issue of abeyance with  
 6 Mr. Rankin?  
 7 A. No. Not that I did.  
 8 Q. What happened to that agenda item?  
 9 A. That agenda, item if I recall the meeting  
 10 was held in abeyance.  
 11 Q. Was there any controversy about holding it  
 12 in abeyance?  
 13 A. There was public input on it and regarding  
 14 that public public inputs the item was held in  
 15 abeyance.  
 16 Q. Did you provide any input to the planning  
 17 commission concerning that item?  
 18 A. The only time I would have had the ability  
 19 to do so would be at the PC -- the planning  
 20 commission chair briefing which is usually attended  
 21 by the director and planning manager.  
 22 Q. Were you in attendance at that?  
 23 A. I'm not sure. I would have to check the  
 24 calendar and make sure that I was there or not, but I  
 25 don't recall off the top of my head.

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1 Q. Well, was the chairman of the planning  
 2 commission informed that this tool was being -- that  
 3 this tool was being put on the agenda now because of  
 4 the forthcoming plans on the Badlands Golf Course?  
 5 A. Well, I don't recall if I was at the  
 6 meeting first. If I was at the meeting, I don't  
 7 recall that conversation.  
 8 Q. Is that something that would customarily  
 9 be disclosed to the chairman of the planning  
 10 commission?  
 11 A. The item would be discussed as far as its  
 12 impact on the City.  
 13 Q. Would the item be -- would the impact on  
 14 specific neighborhoods be discussed or disclosed to  
 15 the planning commission?  
 16 MR. BYRNES: Are you asking a hypothetical  
 17 as to a conversation?  
 18 MR. BICE: I'm asking his general  
 19 practice.  
 20 MR. BYRNES: Just any planning commission.  
 21 MR. BICE: The chairman's meeting.  
 22 MR. BYRNES: But as to any planning  
 23 commission item.  
 24 BY MR. BICE:  
 25 Q. As to a planning commission item, if it

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004967

004972  
 RA 03630

1 was going to impact a specific neighborhood, would  
2 you discuss that with the planning commission  
3 chairman?

4 MR. JIMMERSON: Objection to form.  
5 Incomplete hypothetical.

6 THE WITNESS: In regards to planning  
7 commission items they are discussed. As far as site  
8 specific and then you have the secondary impacts of  
9 the applications.

10 BY MR. BICE:

11 Q. Well did you disclose or would you  
12 disclose to the chairman or any other planning  
13 commissioners that an application had been already  
14 filed in anticipation of this -- of this change to  
15 the general plan?

16 MR. JIMMERSON: Objection. Assumes facts  
17 not in evidence.

18 MR. BYRNES: Also incomplete hypothetical.

19 THE WITNESS: I don't recall.

20 Q. Well, did you not know that the applicant  
21 had already filed an application on August 26<sup>th</sup> to  
22 try and take advantage of this anticipated change?

23 A. Yes.

24 Q. Did you disclose that to any of the  
25 planning commissioners?

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1 A. It is possible, yes.

2 Q. Well, I didn't ask -- let's break it down.  
3 Did you actually do so or are you saying maybe you  
4 did?

5 A. I don't recall I you're asking Mr.  
6 Lowenstein personally.

7 Q. Yes, I am?

8 A. I personally don't recall.

9 Q. Did you disclose it to anyone in the city  
10 council?

11 A. I personally don't recall.

12 Q. Was that application filed before you held  
13 was you characterize as the neighborhood meeting?

14 A. I would have to know the dates to be able  
15 to answer that he question.

16 Q. Well if the neighborhood meeting was going  
17 to be held after that application would be filed,  
18 wouldn't you want to alert the specific neighborhood  
19 where the application was pending?

20 A. Would I?

21 Q. Yes.

22 A. As a mat are of preference is what you're  
23 asking?

24 Q. Yes.

25 A. I was following the standard policies of

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1 our department. And to initiate additional  
2 notification is something that would have to be the  
3 call of the director.

4 Q. But did you make any recommendations for  
5 the director about issuing additional notifications?

6 A. As I previously stated I made a statement  
7 to him saying that any other notifications would be  
8 at his discretion.

9 Q. Did you make a recommendation to him as to  
10 whether he should exercise his discretion in any  
11 particular fashion?

12 A. Not that I recall.

13 Q. Did anyone else, to your knowledge?

14 A. Not that I recall.

15 Q. When the item was held in abeyance did you  
16 get a phone call from anyone?

17 A. No.

18 MR. BYRNES: Regarding the item.

19 BY MR. BICE:

20 Q. Regarding that item yes.

21 MR. BYRNES: I'm sure he's received phone  
22 calls.

23 MR. BICE: I'm sure he has too.

24 Q. Did you talk to anyone about the item  
25 being held in abeyance?

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1 A. Not that I recall, no.

2 Q. Did you ever subsequently talk to Mr.  
3 Perrigo about the item?

4 A. As he's the director of the department I'm  
5 sure I spoke to him.

6 Q. Okay what about?

7 A. About the -- what he wanted to do with the  
8 item?

9 Q. And what was done with it?

10 A. I think ultimately his recommendations was  
11 to table it for further consideration.

12 Q. And was that done?

13 A. I believe the planning commission accepted  
14 that recommendation and approved the tabling of the  
15 item.

16 Q. Have you taken any further action on the  
17 item?

18 A. To my knowledge, no.

19 Q. Did you -- were you involved in the  
20 preparation of the staff report for that item?

21 A. The senior planner, James Marshall, also  
22 known as Jim Marshall, prepared that staff report.

23 Q. I understand. But were you also involved  
24 in its preparation?

25 A. Not to my recollection, no.

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004968

004973  
RA 03631

1 Q. You didn't provide any input into it.  
2 A. He was given direction as far as what the  
3 zoning tool was supposed to be. That direction was  
4 given to him both by Robert Summerfield, myself and  
5 the planning manager he got his input from.  
6 Q. Did you review the report?  
7 A. The planning supervisor reviewed the  
8 report and I may have reviewed the report as well.  
9 Q. Did you make any changes to the report?  
10 A. I don't recall.  
11 Q. Do you know whether or not the report was  
12 prepared after the application was filed, the  
13 application from Mr. Lowie's company to take  
14 advantage of the change, assuming it passed?  
15 MR. JIMMERSON: Objection to the form of  
16 the question. Assumes facts not in evidence, and  
17 quote to take advantage of the change, end quote.  
18 THE WITNESS: I'm not aware of which date  
19 the report was completed. I would have to look in  
20 the system to see the last date it was modified which  
21 even then the agenda technicians tend to format after  
22 certain dates getting it ready for agendas. So it's  
23 hard to say. I don't have an exact answer or  
24 knowledge of what that date would be.  
25 ///

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1 BY MR. BICE:  
2 Q. Well, tell me -- you had indicated that  
3 it's within the planning director's discretion as to  
4 whether to call for more notice than the statutory  
5 minimum. Tell me, in your experience, how is that  
6 discretion exercised or when is it exercised?  
7 A. Currently our notification radiuses exceed  
8 the state statute requirements. So in all items, our  
9 notification radius exceeds state statute. Items of  
10 larger significance maybe request to have meetings by  
11 the planning commission to have additional  
12 neighborhood meetings or even at -- if it's reached  
13 city council level, they can request additional  
14 neighborhood meetings.  
15 Q. My question though was in your experience  
16 what guides the planning director's discretion as to  
17 whether to have additional notice beyond the minimum  
18 required.  
19 A. I can't begin to think what the director  
20 would be thinking.  
21 Q. Have you not been involved in  
22 circumstances where additional notice was given?  
23 A. I'm sure there might be an example of  
24 that, but then again I still don't know what the  
25 director was thinking when asking for it.

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1 Q. So you and the director have never  
2 discussed when additional notice should be given; is  
3 that correct?  
4 A. To my knowledge, I don't recall.  
5 Q. Did you and Mr. Summerville discuss the  
6 impact that this change would have on Queensridge  
7 community.  
8 MR. JIMMERSON: Object to the form of the  
9 question vague and/or ambiguous.  
10 THE WITNESS: No. The scope of the  
11 conversation that we had with Mr. Rankin in the room  
12 as the planning manager was in regards to the City  
13 wide.  
14 BY MR. BICE:  
15 Q. So you never discussed with  
16 Mr. Summerville or with Mr. Rankin the impact of this  
17 change for the Queensridge community; is that  
18 correct?  
19 A. Not that I recall.  
20 Q. How -- was it you that came up with this  
21 idea?  
22 A. I don't --  
23 MR. BYRNES: Could you clarify what idea?  
24 BY MR. BICE:  
25 Q. Sure. The idea for the change, the

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1 asterisk is what we're calling it.  
2 A. Not that I recall. My recollection is  
3 being directed to look at the PCD by the director and  
4 having that discussion with the group, and out of  
5 that group coming the option for the City counsel to  
6 have the discretion to grant additional density for  
7 developments that met certain criteria.  
8 Q. And how did you determine what that  
9 criteria would be?  
10 A. Once again, I don't recall the specifics.  
11 It was coming out of that meeting.  
12 Q. Well, you said that you were directed to  
13 look at the PCD by the director. What do you mean by  
14 that?  
15 A. The planning community development and the  
16 associated plan development zoning district is, as I  
17 previously stated, something that allows for  
18 flexibility for complex projects, as well as a level  
19 of assurance with it, usually associated development  
20 agreement, as a potential tool for large  
21 redevelopment projects.  
22 Q. And so the -- when did the director tell  
23 you to look at that?  
24 A. I don't recall a specific date.  
25 Q. Well, when you were directed to look at

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004969

004974  
RA 03632

1 it, were you aware of the current applicant's plans  
2 to submit an application?  
3 A. Yes.  
4 Q. And were you aware of the current  
5 applicant's plans to submit an application to take  
6 advantage of that change assuming that it passed?  
7 MR. JIMMERSON: Object as to form of the  
8 question assumes facts not in evidence and that such  
9 an intent was possessed by the applicant.  
10 THE WITNESS: I was aware if the City  
11 counsel deemed it a tool that they wanted to utilize,  
12 then the applicant would be requesting to ask the  
13 counsel for discretion to see if they would be able  
14 to use that.  
15 Q. And you knew that at the time that you  
16 were directed to prepare -- well strike that. you  
17 knew that at the time that the agenda was being  
18 prepared, correct?  
19 MR. BYRNES: Agenda for what.  
20 MR. BICE: I'm sorry.  
21 MR. BYRNES: What agenda?  
22 MR. BICE: The agenda for the amendment to  
23 add the asterisk.  
24 THE WITNESS: Could you restate the  
25 question.

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1 Q. Sure. You've already testified let me go  
2 back and make sure I read it correctly you already  
3 testified that you knew the applicant was going to  
4 submit an application if it passed, correct?  
5 A. That's correct.  
6 Q. And knew that the applicant had already  
7 submitted the application even before it was -- went  
8 before the planning commission, correct?  
9 A. I don't know the exact dates but if you're  
10 referring to when we had the meeting with the  
11 planning manager and Robert Summerfeld, if one was  
12 before the other or after the other, I don't recall.  
13 Q. So at the time that the agenda for that  
14 item was prepared to be before the planning  
15 commission, you knew that the applicant had already  
16 submitted an application, correct?  
17 A. Can you restate that, please?  
18 Q. At the time that the agenda for that item  
19 was prepared to go before the planning commission,  
20 you knew that the applicant had already submitted  
21 their application to the City, correct?  
22 MR. JIMMERSON: I'm just going to object.  
23 I don't know that this witness has identified that  
24 date Mr. Bice. I'm concerned by your question.  
25 MR. BYRNES: Also object it's asked and

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1 answered.  
2 THE WITNESS: The agenda prepared, I'm not  
3 specifying sure what you're referring to. When it  
4 was post, meaning when it was completed and posted to  
5 the public or prior to it when it was being -- from  
6 the date of application closing.  
7 Q. Was when? October what?  
8 A. The date for the October planning  
9 commission?  
10 Q. Yes?  
11 A. What is the closing date for that?  
12 Q. Yes.  
13 A. It would -- I don't have the specific date  
14 but it would be about a month before.  
15 Q. When was the application submitted do you  
16 know was it August 26<sup>th</sup>?  
17 MR. JIMMERSON: That's the date you're  
18 suggesting Mr. Bice?  
19 MR. BICE: I'm asking him if it was that  
20 day.  
21 THE WITNESS: I don't recall. I would  
22 have to refer to our internal database system to get  
23 you a specific date.  
24 MR. BICE: Mark that please.  
25 (Exhibit Number Num was marked.)

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1 BY MR. BICE:  
2 Q. Showing you what's been marked as Exhibit  
3 Number 5, have you seen this before?  
4 A. I don't recall it's a possibility yes.  
5 Q. Can you tell me what it is?  
6 A. These are submittal materials.  
7 Q. Submittals for what?  
8 A. These are statement of financial  
9 interests, which is a standard form in the City of  
10 Las Vegas. There is an application petition form,  
11 which is another standard form to be filled out for  
12 an application submittal.  
13 Q. An application for what?  
14 A. Land use entitlement. The next part of  
15 this is a grant bargain sale deed with associated  
16 legal description to it, declaration of value,  
17 justification letter dated August 28<sup>th</sup>, and a  
18 neighborhood meeting notice, then a City prepared  
19 radius map. Okay. What's the justification letter  
20 say that is being sought? It reads Fore Stars,  
21 Limited is requesting approval of a general plan  
22 amendment for the 250.92 acres represented by APNs.  
23 Also known as assessors parcel numbers,  
24 138-31-702002, 138-21-801002, 138-32-202001 and APN  
25 138-32-301004. The amendment request for these APNs

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004970

004975  
RA 03633

1 changed in their designation from parks recreation  
2 open space (PR-OS), parenthesis to planned community  
3 development, (PCD), a subsequent rezoning and site  
4 development review will be submitted and be heard  
5 this GPA period. Thank you for your consideration.  
6 Q. What was -- and what was your  
7 understanding of the change to the planned community  
8 development that was being sought?  
9 A. It is a change of the general plan land  
10 use designation on the subject sites from PROS to  
11 planned community development.  
12 Q. And that the agenda item with the  
13 asterisks to change the general plan had been  
14 approved, this application would have sought to take  
15 advantage of that, that was your understanding  
16 correct?  
17 A. Correct.  
18 MR. JIMMERSON: Objection. Assumes facts  
19 not in evidence.  
20 MR. BYRNES: Also calls for speculation.  
21 THE WITNESS: But yes. They would -- at  
22 the time this application would be heard, if it was  
23 approved, they would have the ability to request for  
24 subsequent applications, meaning through a site  
25 development review, additional density at the

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1 discretion of the City counsel counsel.  
2 Q. And this additional discretion that was  
3 going to be given to the City counsel was done in  
4 anticipation of the application, wasn't it? Are you  
5 denying that?  
6 MR. JIMMERSON: Objection. Compound.  
7 THE WITNESS: As I previously stated, this  
8 development was basically put a focus on the need for  
9 such a tool.  
10 Q. Okay. So the tool was going to be  
11 created.  
12 A. Mm-hmm, yes.  
13 Q. And it would be applied in this  
14 circumstance and potentially others down the road,  
15 correct?  
16 A. It could be.  
17 Q. It could be but the only circumstance that  
18 was presently that you were aware of where it would  
19 be applied to was Exhibit Number 5?  
20 MR. JIMMERSON: Objection. Assumes facts  
21 not in evidence.  
22 MR. BICE: Correct.  
23 MR. JIMMERSON: Objection. Assumes facts  
24 not in evidence.  
25 THE WITNESS: Potentially, yes.

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1 BY MR. BICE:  
2 Q. Did you ever meet with Mr. Borgel about  
3 Exhibit Number 5?  
4 A. With reoccurring meetings, it is a  
5 possibilities, but I don't recall.  
6 Q. Did Mr. Borgel ever attend any of these  
7 preapplication meetings that you've described?  
8 A. I'm not sure who the attendees were at  
9 these early on set meetings. He's been in meetings  
10 about the development agreement and other things, at  
11 these regularly scheduled Thursday meetings.  
12 Q. Do you recall being -- you said you were  
13 at this planning commission meeting, correct, for the  
14 agenda, right?  
15 A. To my recollection I was in attendance.  
16 Q. Do you recall any of the planning  
17 commissioners asking out loud who was the real  
18 applicant behind that amendment?  
19 A. I don't recall.  
20 Q. Did any -- did anyone, any of the planning  
21 commissioners want to know whether there was a  
22 particular applicant that wanted this amendment?  
23 MR. JIMMERSON: Objection. Assumes facts  
24 not in evidence. The amendment according to the  
25 witness was sponsored by the City.

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1 THE WITNESS: I don't recall but it is  
2 recorded so one can review that tape and assess.  
3 BY MR. BICE:  
4 Q. Did you volunteer that information to any  
5 of the planning commissioners?  
6 A. I did not present the item.  
7 Q. Whose responsibility would it have been to  
8 answer that question if it was asked?  
9 A. That would be Mr. Doug Rankin because I  
10 believe he presented the item.  
11 Q. So you don't recall whether you ultimately  
12 answered that question when it was repeated or not;  
13 is that fair?  
14 MR. BYRNES: Objection. Asked and  
15 answered.  
16 THE WITNESS: I don't recall if that was  
17 the specific question asked of me.  
18 BY MR. BICE:  
19 Q. What was the question that you believe you  
20 answered then?  
21 MR. JIMMERSON: Objection excuse me.  
22 Object. There has no been no foundation on the  
23 circumstances that even such a question was asked Mr.  
24 Bice. I object on that basis.  
25 THE WITNESS: I don't recall the

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004971

004976  
RA 03634

1 specifics. I would have to rewatch the video to see  
 2 where the -- if there was any question and where it  
 3 came from.  
 4 Q. Do you recall speaking at all on this  
 5 agenda item?  
 6 A. I may have.  
 7 Q. Why would you speak on it?  
 8 A. If Mr. Rankin did not have information and  
 9 was looking for something, I would assist him.  
 10 Q. Well did Mr. Rankin know about the plans  
 11 for the Badlands Golf Course at this point in time?  
 12 A. Yes.  
 13 Q. So to your knowledge no further action had  
 14 been taken relative to that asterisk amendment  
 15 correct?  
 16 MR. BYRNES: Objection. Asked and  
 17 answered.  
 18 BY MR. BICE:  
 19 Q. Is that correct?  
 20 A. I don't -- to my recollection, I don't  
 21 believe so.  
 22 Q. And Exhibit Number 5 was the application  
 23 was withdrawn, correct?  
 24 A. This application, if I recall, was  
 25 withdrawn before it was publicly noticed.

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1 Q. It was withdrawn after the planning  
 2 commission tabled the amendment, correct?  
 3 A. I don't know the exact dates.  
 4 Q. I understand you don't know the exact  
 5 dates but it was sometime after September the eighth,  
 6 correct?  
 7 A. Well the item --  
 8 MR. JIMMERSON: Object to form the  
 9 question. 2 years, year and a half later.  
 10 THE WITNESS: If you recall the September  
 11 planning commission meeting was the meeting in which  
 12 it was held in abeyance.  
 13 BY MR. BICE:  
 14 Q. Right.  
 15 A. And then it was not tabled until the  
 16 subsequent planning commission meeting which would  
 17 have been in October.  
 18 Q. Okay. So it was held in abeyance, and  
 19 after it was held in abeyance by the planning  
 20 commission the application in Exhibit Number 5 was  
 21 withdrawn, correct?  
 22 A. I would have to research the date of the  
 23 request for withdrawal.  
 24 Q. Well do you believe it was withdrawn prior  
 25 to the planning commission meeting on September the

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1 eighth, sir?  
 2 A. I don't recall. I don't think so.  
 3 Q. So you believe that it was withdrawn  
 4 sometime after the September 8<sup>th</sup> planning  
 5 commission meeting correct.  
 6 It's possible.  
 7 Q. Is it likely?  
 8 MR. JIMMERSON: Objection calls for  
 9 speculation in light of the last three answers.  
 10 THE WITNESS: What's the difference?  
 11 BY MR. BICE:  
 12 Q. You know, that's a fair question but  
 13 you're the one using this language so I guess I need  
 14 to really drill down. So you say it's possible. I  
 15 think we both know that it was so I don't know why  
 16 you're trying to qualify the answer but I'm going to  
 17 press you to give me an actual answer?  
 18 MR. BYRNES: Do you have a document?  
 19 MR. JIMMERSON: Objection. Move to strike  
 20 the question as being argumentative and  
 21 editorializing the question is improper.  
 22 MR. BYRNES: Do you have a document that  
 23 establishes the date you can show the witness?  
 24 MR. BICE: I do, Phil, but I think this  
 25 witness knows it and I don't think I need to waste my

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1 time pulling out documents on things that he  
 2 absolutely knows the answer to. So if he wants to  
 3 play this game, I'll just keep it up all day long.  
 4 MR. JIMMERSON: Objection. The only game  
 5 being played is { guessing what the witness knows and  
 6 doesn't know  
 7 Q. Do you want to tell me that you know it  
 8 was withdrawn sometime after the planning commission  
 9 meeting on September the 8<sup>th</sup>, Mr. Lowenstein?  
 10 A. Sure.  
 11 Q. What's that?  
 12 A. I will but I don't know the exact date.  
 13 Q. I told you I didn't care whether you knew  
 14 the exact date. I asked you whether it was withdrawn  
 15 after that meeting?  
 16 MR. JIMMERSON: Object to the question.  
 17 BY MR. BICE:  
 18 Q. And you knew that it was.  
 19 A. Well, I'm assuming it was.  
 20 MR. JIMMERSON: Excuse me, guys, if you  
 21 don't mind I would like to make an objection before  
 22 the two of you continue the re parte. Object to the  
 23 question as calling for speculation, arguing with the  
 24 witness and editorializing improperly.  
 25 ///

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004972

004977  
 RA 03635

1 BY MR. BICE:  
 2 Q. Why do you assume that it was?  
 3 A. For the simple fact that if an application  
 4 was still looming forward, one would be able to still  
 5 entertain the possibility of using planned community  
 6 development but it's all in light of what would be  
 7 the subsequent applications, if it conformed to the  
 8 density requirements of the current planned community  
 9 development, it still would have been a viable  
 10 application.  
 11 Q. You knew that it was not in conformity  
 12 with the current density requirements, didn't you?  
 13 A. From previous understanding of the unit  
 14 counts it did not seem that it was going to be in  
 15 conformance but one can always amend their  
 16 applications at any point.  
 17 Q. Do you believe that this application was  
 18 amended?  
 19 A. I would have to speculate as far as what  
 20 they would want to do with their own property.  
 21 Q. My question, sir, is do you believe that  
 22 this application was amended?  
 23 A. They had not submitted any amendments to  
 24 us or subsequent applications to show it would be  
 25 amended so at that point I don't have an idea if they

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1 were going to amend it or not.  
 2 Q. What was a master development plan in  
 3 1990, do you know what the City considered that to  
 4 be?  
 5 A. Not having worked here, then the  
 6 terminology and the institutional knowledge is no  
 7 longer available in our department for me to  
 8 accurately answer that.  
 9 Q. Can you apply for one today?  
 10 A. For a?  
 11 Q. Master development plan.  
 12 A. We would call it a plan development under  
 13 the PD, a special area plan. Master plan community.  
 14 Q. What is a planned development?  
 15 A. It's a zoning district which has criteria  
 16 if you apply for it, minimum size requirement, a  
 17 number of different things being required as far as  
 18 development standards, infrastructure, things of that  
 19 nature.  
 20 Q. Okay. Is it different than a residential  
 21 plan development?  
 22 A. Yes. Residential plan development is a  
 23 legacy zoning district currently.  
 24 Q. Okay. What's the difference?  
 25 A. Well, there's two distinct zoning district

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1 that have been both in existence at the same time,  
 2 one has a zoning district which delineates the  
 3 density in its title with R-PD and then associated  
 4 number with it. The other is a planned development  
 5 which is a comprehensive development plan for more of  
 6 a community approach where you have multiple  
 7 developer parcels.  
 8 Q. And what is -- what did a R-PD consist of?  
 9 A. Residential plan developments in my tenure  
 10 at the City have consisted of single family  
 11 residential subdivisions.  
 12 Q. Single family residential decisions?  
 13 A. Correct.  
 14 Q. Anything beyond that?  
 15 A. Not while I've been at the City that I'm  
 16 aware of.  
 17 Q. Multifamily -- do they include multifamily  
 18 in your experience.  
 19 A. It's my recollection it's possible that  
 20 they could use an R-PD for a multifamily. Usually  
 21 associated with condominium maps but I don't see why  
 22 they couldn't use it for multifamily apartments.  
 23 Q. And you say that that designation doesn't  
 24 exist any longer?  
 25 A. Since the adoption of the Unified

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1 Development Code, it has become a legacy zoning  
 2 district, so it does not -- no longer exists in a --  
 3 as -- in the zoning ordinance as a zoning district in  
 4 which someone who doesn't already have it can apply  
 5 for.  
 6 Q. Understood. But it still exists correct?  
 7 A. Still exists as a legacy district. So as  
 8 our commercial design district, our neighborhood  
 9 services district, our other examples of legacy  
 10 district.  
 11 Q. And what's the most analogous to it today?  
 12 A. Today we go with -- and the terminology  
 13 starts -- we have the straight zoning. Basically  
 14 there are associated zoning district have you that  
 15 zoning district you comply with those minimum lot  
 16 sizes and you go forward with tentative maps.  
 17 Q. What do you mean by straight zoning?  
 18 A. The existing zoning district and the  
 19 Unified Development Code, they all have minimum  
 20 development standards. You would then, if you  
 21 currently have the one that meets your needs, you  
 22 utilize that and follow those development standards  
 23 and create the tentative map. If we're talking about  
 24 a residential subdivision.  
 25 Q. What if you were doing it as a planned

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004973

004978  
 RA 03636

1 development, then you would follow PD.  
2 A. The planned development has its own  
3 prescribed application requirements.  
4 Q. If you were going to do a Peccole Ranch  
5 master plan development today, what would be the  
6 zoning clarification that you would look to?  
7 MR. JIMMERSON: Object to the form of the  
8 question as vague and ambiguous.  
9 THE WITNESS: I would look towards it as a  
10 PD,  
11 (Exhibit Number Num was marked.)  
12 BY MR. BICE:  
13 Q. When say that you look towards a PD,  
14 that's even though it would be residential, correct?  
15 A. Sorry?  
16 Q. You said that you would look towards a PD  
17 today, under today's code.  
18 A. Do you have to be to accomplish something  
19 similar to the Peccole Ranch Master Development Plan?  
20 Q. Yes?  
21 A. Yes, I would look towards something as a  
22 planned development, planned development zoning  
23 district.  
24 Q. The R in the former R-PD designation stood  
25 for residential, correct?

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1 A. Yes.  
2 Q. So it stood for residential planned  
3 development, right?  
4 A. Correct.  
5 Q. Okay. I'm showing you now what's been  
6 marked as Exhibit Number 6, I believe. Have you seen  
7 this before?  
8 A. It's possible. I probably have.  
9 Q. If you look at the second paragraph is  
10 that an accurate description of what you understand  
11 R-PD to mean?  
12 A. It's more than likely verbatim out of the  
13 zoning code.  
14 Q. So is it accurate to say the R-PD district  
15 was to provide flexibility and invasion in  
16 residential development? Is that your understanding  
17 of what it was designed to do?  
18 A. Correct.  
19 Q. And with emphasis on enhanced residential  
20 amenities. What sort of amenities?  
21 A. During my tenure there was a requirement  
22 for it to have a provision of open space based on  
23 our -- a calculation of dwelling units per acre times  
24 I believe it's 1.65 and then you would have how much  
25 open space was required for a residential planned

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1 development.  
2 Q. Okay. And so is that open space  
3 considered to be one of the amenities under the  
4 zoning clarification?  
5 A. I would assume so, yes.  
6 Q. And then it goes to resite efficient  
7 utilization of open space do you see that.  
8 A. I see that.  
9 Q. And what is the purpose of efficient  
10 utilization of open space in the R-PD designation?  
11 A. My understanding of it is that it's not  
12 to be little fringe slivers of common elements that  
13 act as landscape buffers or things of that nature, it  
14 has to be utilized or to be able to be utilized or  
15 enjoyed by the development.  
16 Q. Would golf courses fall within that  
17 definition of efficient utilization of open space?  
18 A. I see no reason why not.  
19 Q. Well, in your experience would that be  
20 something that the City would consider to be an  
21 efficient utilization of open space?  
22 MR. JIMMERSON: Objection calls for  
23 speculation and/or expert witness testimony to which  
24 this witness has not yet been designated. Calls for  
25 opinion.

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1 THE WITNESS: In my tenure, I haven't had  
2 a development with a golf course as part of it. But  
3 in light of as recreation and open space is part of  
4 it, it could be considered that, yes.  
5 BY MR. BICE:  
6 Q. And you have reviewed the Peccole Master  
7 Plan, have you not?  
8 A. Yes, I have.  
9 Q. And was there a representation about open  
10 space as part of that master plan?  
11 MR. JIMMERSON: Objection. Vague and  
12 ambiguous as to what's being referred to, what part  
13 of the plan, what time.  
14 THE WITNESS: There are segments in that  
15 plan that speak to open space. There's tables that  
16 reflect acreage. There's -- even going back to the  
17 Venetian foothills and speculative where they were  
18 going to place certain things, ultimate design, you  
19 know is what we have today.  
20 BY MR. BICE:  
21 Q. Okay. And then you say ultimate design of  
22 what we have today. Let me show you -- bear with me  
23 one second.  
24 (Exhibit Number Num was marked.)  
25 ///

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004974

004979  
RA 03637

1 BY MR. BICE:  
2 Q. Showing you what's been marked as Exhibit  
3 Number 7, and again just for the record, Phil and  
4 counsel, the red -- the two red blocks, the one on  
5 the plan and the one on the description on the right,  
6 under the land use categories, those are mine, so as  
7 to draw attention to the questions I want the witness  
8 to answer.  
9 Have you seen Exhibit Number 7 before?  
10 A. It's possible this is the southwest sector  
11 land use categories of the Las Vegas 2020 Master  
12 Plan.  
13 Q. Well let's --  
14 A. I'm just saying because there are  
15 different additions.  
16 Q. Right. So I want to bring to your  
17 attention, if you look down the right-hand corner  
18 there are some dates.  
19 A. Okay.  
20 Q. So --  
21 A. Yes.  
22 Q. I just -- before you committed to a  
23 particular timeframe on this, I wanted you to be  
24 aware that I'm not representing to you that this is  
25 the current map?

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1 A. Okay.  
2 Q. Okay.  
3 But does it look like to you, knowing with  
4 your experience, that this is the map that at least  
5 exist as of August 18 of 1999?  
6 A. Yes.  
7 MR. JIMMERSON: Object to the question  
8 with regard to this document not bearing that date.  
9 Calls for speculation.  
10 BY MR. BICE:  
11 Q. So what is the Pecc -- what is the  
12 Badlands Golf Course designated under this map as of  
13 August 18 of 1999?  
14 A. It is designated as green which  
15 corresponds to the legend of park slash recreation  
16 slash open space.  
17 Q. Now you said that you had looked at the  
18 master plan, the Peccole Ranch Master Plan and you  
19 had indicated there were various areas that were  
20 designated or there were various descriptions about  
21 open space as part of the R-PD zoning; is that  
22 correct?  
23 A. As part of the development, master  
24 development plan, there was a booklet, the plan or  
25 brochure, whichever you want to call it, which had

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1 called for in this particular case we're talking  
2 about this is the amendment and phase two rezoning.  
3 That booklet.  
4 Q. Yes?  
5 A. Which has tables which showed what was  
6 the -- what was amended or had the verbiage as far as  
7 what's being amended, tables of what's in phase two  
8 and as total data for the entire Peccole Ranch Master  
9 Development.  
10 Q. Just so we make sure we're talking about  
11 the same document, let me get that marked.  
12 (Exhibit Number Num was marked.)  
13 Q. Is this the Peccole Ranch Master Plan  
14 amendment and phase two rezoning application that you  
15 just previously referenced?  
16 A. Yes.  
17 Q. And this is in the City's files?  
18 A. Yes.  
19 Q. And as part of your research into the  
20 current application, is this one of the documents  
21 that you researched and found?  
22 A. Yes, as part of looking at previous land  
23 use entitlements this is one of the documents that's  
24 part of that.  
25 Q. Is this one of the documents that the City

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1 has relied upon in evaluating the application?  
2 A. This document was given consideration. It  
3 was one of the reasons that the department requested  
4 that a major modification to this document be filed.  
5 Q. Okay. When you looked at the document and  
6 you were talking about unit counts, is this the  
7 document that you were looking at in evaluating unit  
8 counts?  
9 A. No.  
10 Q. You were looking at planning commission or  
11 city council approval letters on the unit counts?  
12 A. May I ask you a question?  
13 Q. Absolutely.  
14 A. When you say researching unit counts, do  
15 you mean as far as what's existing out there, as far  
16 as what was proposed originally, what they're held to  
17 as far as the overall community?  
18 Q. Yes?  
19 A. Which specific one.  
20 Q. Fair enough. Let's break it down. What  
21 are they allowed to build?  
22 A. The overall unit count comes from the  
23 conditions of approval out of an action letter for  
24 the associated zoning action, which is the Z-17-90 if  
25 I recall correctly.

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004975

004980  
RA 03638

1 Q. And is that the 14 -- 4,247 units?  
2 A. I believe that's correct.  
3 Q. 2807 of single family and 1440 of  
4 multifamily, correct?  
5 A. The condition doesn't state that.  
6 Q. What's that?  
7 A. The condition doesn't state that. The  
8 condition just says that there's a maximum of 4247.  
9 Q. Of units?  
10 A. Mm-hmm.  
11 MR. BYRNES: Is that a yes?  
12 THE WITNESS: Yes. Sorry.  
13 BY MR. BICE:  
14 Q. And where did those numbers come from?  
15 A. Where did the number and condition of  
16 approval come from?  
17 Q. Or do you believe that it was plucked out  
18 of thin air by someone?  
19 MR. JIMMERSON: Object to the form of the  
20 question. Argumentative.  
21 THE WITNESS: At the point when this was  
22 done, I wasn't working at the City of Las Vegas but  
23 on assumption I would have based it on their related  
24 document that they submitted.  
25 ///

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1 BY MR. BICE:  
2 Q. Would that be Exhibit 8?  
3 A. Exhibit 8 would be part of the  
4 development -- the master development plan that was  
5 heard either -- was related to the zoning action.  
6 Q. And when did you did your research in  
7 determining the number of units, the number of actual  
8 units are set forth in this master plan amendment and  
9 phase two rezoning application, correct?  
10 A. I'm sorry, can you repeat that?  
11 Q. Sure. And when you did your research to  
12 determine the number of units, the number of actual  
13 units are set forth in Exhibit 7, the master plan  
14 amendment and phase two rezoning application,  
15 correct?  
16 A. Well, if you're referring to Exhibit 8 --  
17 Q. Oh, Exhibit 8, you're right. My  
18 apologies.  
19 A. In reviewing it we looked at the maximum  
20 unit count from the action letter. We've also looked  
21 at these tables.  
22 Q. And as part of your research did you  
23 determine where those unit counts had come from that  
24 were contained in the action letter?  
25 A. As I just stated we looked at that

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1 condition of the approval letter in addition to this  
2 document on the table.  
3 Q. That meaning Exhibit 8.  
4 A. Exhibit 8, yes. Sorry.  
5 Q. And did that approval letter also state  
6 that in addition to the maximum -- a maximum of 4247  
7 dwelling units be allowed for phase two, that it  
8 was -- another condition was conformance to the  
9 conditions of approval for the Peccole Ranch Master  
10 Development Plan, phase two?  
11 A. I believe so if you're reading it right  
12 from the document. I imagine there would be a second  
13 condition. In my research I have never found any  
14 conditions for the development of the master  
15 development plan.  
16 Q. Just the plan itself.  
17 A. In reference to the condition you just  
18 read.  
19 MR. JIMMERSON: Please stop now. Will you  
20 please read the last two questions and answers  
21 please.  
22 (Record read back by the reporter.)  
23 MR. JIMMERSON: Move to strike the  
24 question and answer. Calls for speculation and  
25 assuming facts not in evidence. I was trying to make

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1 my objection between the question and answer but it  
2 happened so quick.  
3 BY MR. BICE:  
4 Q. When was the Peccole Ranch Master Plan  
5 closed out?  
6 A. That's under the assumption that it is  
7 closed out. There are undeveloped parcels within the  
8 Peccole Ranch Master Plan that have yet to be  
9 developed.  
10 Q. So that means it's not closed out? Is  
11 that your position?  
12 A. What is the definition of closed out?  
13 Q. What's the City's definition of closed out  
14 in every other project except for this one?  
15 MR. JIMMERSON: Object to the question as  
16 being either. Calling something that's not relevant  
17 to the case.  
18 THE WITNESS: I'm not aware of we have a  
19 definition of something is closed out.  
20 BY MR. BICE:  
21 Q. You don't know or you're saying the City  
22 doesn't have one?  
23 MR. JIMMERSON: Object to the question as  
24 it being ambiguous, compound.  
25 THE WITNESS: There's nothing in the

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004976

004981  
RA 03639

1 Unified Development Code that says closed out as  
 2 being defined. And to your second point, I don't  
 3 know.  
 4 BY MR. BICE:  
 5 Q. So is it your -- let's just deal with your  
 6 position -- is it your position, as long as there's  
 7 an empty lot in any planned development, it's not  
 8 completed?  
 9 A. The subdivision or or commercial property  
 10 if it's not completely built out is not -- just that.  
 11 It's not closed out and there's still ability to  
 12 construct in it, develop in it.  
 13 Q. How many bonds are left on the Peccole  
 14 Ranch phase two?  
 15 A. I don't know.  
 16 Q. Did you do any research into that?  
 17 A. Not that I am aware of, no.  
 18 Q. Did you ask anyone on the staff to do any  
 19 research on that?  
 20 A. Those matters usually fall to land  
 21 development which is either part of building and  
 22 safety or if need be from the Department of Public  
 23 Works to review those matters.  
 24 Q. But my question was did you ask anyone to  
 25 do it.

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1 A. Not that I recall.  
 2 Q. Have you since learned about whether there  
 3 are any bonds left on the project?  
 4 A. Only by reading through the deposition of  
 5 Mr. Ferrigo.  
 6 Q. Who was the -- who was the developer of  
 7 the Peccole Ranch Master Plan?  
 8 A. The initial developer?  
 9 Q. Is there more than one?  
 10 A. Through the land use entitlement history  
 11 there have been other applicants but is your question  
 12 specific to Exhibit 8 who?  
 13 Q. Talking about the Peccole Ranch Master  
 14 Plan. Who was the developer?  
 15 A. I believe it was Peccole, the Peccole  
 16 Trust.  
 17 Q. The Trust?  
 18 A. I've seen it stated Peccole Trust, I've  
 19 seen Peccole Trust 1982. I've seen it just as  
 20 Peccole.  
 21 Q. Got it. And what is the status of -- who  
 22 is the declarant on the development?  
 23 MR. JIMMERSON: Object to the extent it  
 24 calls for a legal conclusion or attempting to use  
 25 this witness as an expert witness improperly.

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1 Q. Do you know?  
 2 A. Are you referring to CC&Rs?  
 3 Q. No, I'm not referring to CC&Rs who is the  
 4 development declarant do you know if you don't, I  
 5 understand?  
 6 MR. JIMMERSON: Object. Assumes facts not  
 7 in evidence that there exists such a thing as a  
 8 development declarant.  
 9 THE WITNESS: There is an applicant and  
 10 that's what I'm aware of.  
 11 Q. And that applicant is the Peccole Trust  
 12 1982 as far as you know, correct.  
 13 A. Correct.  
 14 MR. JIMMERSON: Objection. He indicated  
 15 there were three different applicants.  
 16 Q. What is the status of that applicant  
 17 today, do you know?  
 18 A. I don't know.  
 19 (Exhibit Number Num was marked.) nine  
 20 BY MR. BICE:  
 21 Q. Showing you what's been marked as  
 22 Exhibit 9, Mr. Lowenstein, have you seen this exhibit  
 23 before?  
 24 A. Possibly.  
 25 Q. Well --

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1 A. And more than likely -- it looks like the  
 2 justification letter for one of the applications, so  
 3 yes.  
 4 Q. It's addressed to you, do you see that?  
 5 A. I do.  
 6 Q. So you don't have any reason to believe  
 7 that you didn't receive it?  
 8 A. That is correct.  
 9 Q. All right. By this point in time, this is  
 10 November 24, 2015. Would you be considered the lead  
 11 on this plan?  
 12 A. This is the formal application submittal,  
 13 so at this time it would have been assigned to the  
 14 case planner.  
 15 Q. And that would have been.  
 16 A. That would have been Steve Swanton.  
 17 Q. And would you oversee his work on this  
 18 case?  
 19 A. His supervisor would review his staff  
 20 report and if he had any questions, he's more than  
 21 able to ask his supervisor, his section manager. We  
 22 all have open door policies.  
 23 Q. And who would be his supervisor?  
 24 A. At this time I believe it was -- it could  
 25 have either been Andy Reid or Steve Gebeke. I would

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004977

004982  
 RA 03640

1 have to double-check when Andy had left the City.  
2 Q. All right. You'll see near the second  
3 sentence of the first paragraph, the land zoning  
4 designation is R-PD7 and under the general plan is  
5 PR-OS, correct?  
6 A. Second sentence, yes, I see.  
7 Q. Right.  
8 A. Yes.  
9 Q. And then it goes on to say, it says the  
10 17 acres is in the process of being subdivided into a  
11 separate parcel and will have its own APN. Do you  
12 see that?  
13 A. I do.  
14 Q. And what was the plan that was being  
15 submitted as this land was going to be subdivided?  
16 A. This -- in relation to this letter, this  
17 is an application for 720 multifamily units on the  
18 17.49 acres.  
19 Q. If you go to below the first bullet point  
20 there is a sentence there that starts the land is and  
21 all caps says not a part end all caps of any common  
22 interest community, CC&Rs nor is it permitted a  
23 property with the CC&Rs of adjacent properties nor is  
24 it in any way under the control of the HOAs and the  
25 adjacent properties. Do you see that?

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1 A. I see that.  
2 Q. Does that have any significance to you?  
3 A. No.  
4 REPORTER'S NOTE check reading.  
5 Q. Do you know why the applicant was  
6 emphasizing that point?  
7 A. I don't.  
8 Q. Is that a consideration that the City  
9 would give under its -- as it was considering this  
10 application?  
11 A. Can you restate the question please.  
12 Q. Is that a consideration for the City in  
13 deciding what to do with this application?  
14 A. No.  
15 Q. Why not?  
16 A. The City does not take into account CC&Rs.  
17 Q. Because those are just private contracts?  
18 A. I believe they're -- yes, they're civil  
19 contracts between two private parties.  
20 Q. Right. So you'd leave it up to them to  
21 work out what those provisions are, correct?  
22 A. If there was anything to be worked out,  
23 yes.  
24 Q. Have you ever heard of Nevada Revised  
25 Statutes Chapter 116?

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1 A. In regards to HOAs? Because I do sit on  
2 an HOA board.  
3 Q. Yes.  
4 A. Yes.  
5 Q. And you understand that property that is  
6 subject to a homeowner's association or CC&Rs is  
7 governed by Chapter 116, correct?  
8 MR. BYRNES: Objection. Calls for a legal  
9 conclusion.  
10 THE WITNESS: I'm assuming yes.  
11 BY MR. BICE:  
12 Q. And the homeowner here is an affirm -- the  
13 property owner here is affirmatively representing  
14 that this property isn't subject to Chapter 116.  
15 Would you agree?  
16 MR. JIMMERSON: Object. That  
17 mischaracterizes the letter.  
18 THE WITNESS: All I can do is read the  
19 statement that's here. It doesn't state NRS 116.  
20 BY MR. BICE:  
21 Q. So you in interpreting this, I don't  
22 believe this is a disclaimer that Chapter 116 doesn't  
23 apply to this property.  
24 MR. BYRNES: Objection. Calls for  
25 speculation.

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1 THE WITNESS: It is not part of my  
2 consideration of the justification letter.  
3 BY MR. BICE:  
4 Q. Are there any -- any other statutes that  
5 you are aware of concerning homeowner's associations  
6 outside of Chapter 116?  
7 MR. BYRNES: Objection. Calls for a legal  
8 conclusion.  
9 MR. JIMMERSON: Joinjustification. Also  
10 mischaracterizes the letter, Exhibit 9.  
11 THE WITNESS: Actually, until very  
12 recently, no.  
13 BY MR. BICE:  
14 Q. And did you very recently determine  
15 something else?  
16 A. No. I didn't determine anything it was  
17 just made aware that the 116 is also in 278A, I  
18 believe.  
19 Q. Oh.  
20 A. Unless I'm incorrect.  
21 Q. Who brought that to your attention?  
22 A. I believe that was in talk with counsel.  
23 Q. Oh, well then don't tell me what you  
24 learned from legal counsel.  
25 MR. BYRNES: Stop there.

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RA 03641

1 BY MR. BICE:  
2 Q. I'll rephrase it next time. You didn't  
3 learn that from anyone outside of your discussions  
4 with the City attorney is that fair?  
5 A. Yes, that's fair.  
6 Q. Okay. And when was that, that you became  
7 aware?  
8 A. I'm thinking in the last three weeks.  
9 Q. Okay.  
10 MR. JIMMERSON: Could I just ask aware of  
11 what?  
12 MR. BICE: I'm sorry?  
13 MR. JIMMERSON: Aware of what?  
14 MR. BICE: Aware of his testimony that he  
15 referenced Chapter 116's reference in 278A.  
16 BY MR. BICE:  
17 Q. Is it your view, Mr. Lowenstein, that  
18 there's a difference between a planned unit  
19 development and a plan development?  
20 A. I've never worked with a planned unit  
21 development pursuant to the 278A.  
22 Q. Does the City have code provisions that  
23 deal with planned use developments?  
24 A. To my knowledge.  
25 MR. BYRNES: Objection. Calls for a legal

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1 conclusion.  
2 THE WITNESS: To my knowledge in reference  
3 to that section of NRS, no.  
4 BY MR. BICE:  
5 Q. Have you ever looked at old versions of  
6 the municipal code about whether it contained terms  
7 about planned unit developments?  
8 A. No.  
9 Q. So tell me what you believe the difference  
10 is between a residential planned development and a  
11 planned unit development, if you think that there is  
12 one?  
13 MR. BYRNES: Objection. Calls for a legal  
14 conclusion.  
15 MR. JIMMERSON: Objection. Calls for  
16 speculation on the last two answers.  
17 THE WITNESS: I would have to defer to the  
18 City attorney as far as what that difference of state  
19 statute would be.  
20 BY MR. BICE:  
21 Q. I understand. But as you're sitting here  
22 at least working in the planning department, you  
23 can't identify any differences that you are aware?  
24 MR. JIMMERSON: Objection. That  
25 mischaracterizes his testimony. He said he

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1 considered them to be distinct.  
2 MR. BYRNES: Calls for a legal conclusion.  
3 THE WITNESS: Without further review and  
4 consultation with the City attorney, I can't give you  
5 an answer.  
6 BY MR. BICE:  
7 Q. Can you identify any distinctions  
8 yourself?  
9 A. One is a residential plan development and  
10 one's -- residential plan -- planned unit  
11 development.  
12 Q. Okay. Other than the name, can you  
13 identify any distinctions for us?  
14 A. Two sections of NRS.  
15 Q. Okay. Other than two sections of NRS and  
16 the name, can you identify any other distinctions for  
17 us?  
18 MR. BYRNES: Objection. Calls for a legal  
19 conclusion.  
20 THE WITNESS: As I said without further  
21 review of both of them, I can't give you an answer on  
22 the difference between the two.  
23 BY MR. BICE:  
24 Q. Well did you review them for your work on  
25 this case?

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1 A. I did not review planned unit developments  
2 as part of this case.  
3 Q. As part of the application, did you review  
4 any of the provisions of the Nevada revised statutes?  
5 MR. JIMMERSON: Object to the question as  
6 vague and ambiguous and/or irrelevant.  
7 THE WITNESS: As part of these  
8 applications for development agreements, they are  
9 covered in NRS 278 and, therefore, I didn't review  
10 Nevada statutes in regards to the development  
11 agreement.  
12 BY MR. BICE:  
13 Q. Okay. Which provisions did you review?  
14 A. I don't recall exactly which one. It  
15 would just be me spouting off some of the familiar  
16 ones without being accurate, so I don't recall the  
17 exact reference.  
18 Q. Anything other than pertaining to the  
19 development agreement? Did you review any other  
20 provisions?  
21 A. Not to my knowledge, no.  
22 Q. Are there any planning books that you  
23 consult other than the City code and the Nevada  
24 Revised Statutes?  
25 A. Are you referring to any adopted books

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RA 03642

1 from the City or any literature in general?  
 2 Q. Let's break it down. Is there anything  
 3 that the City counsel has adopted that you would  
 4 consult other than the planning code -- the City's  
 5 municipal codes or the Nevada Revised Statutes?  
 6 A. The Las Vegas 2020 Master Plan, its  
 7 associated elements.  
 8 Q. All right. Anything else?  
 9 A. As part of some of the submittals there's  
 10 documentation from ULI, which is the Urban Land  
 11 Institute.  
 12 Q. Is that adopted by the City?  
 13 A. No, that is not.  
 14 Q. But that's something you would consult?  
 15 A. That is an accredited I guess disciplined  
 16 journal, I guess for lack of better terminology.  
 17 Q. Any others that you would consult? Any  
 18 other sort of planning journals or anything like  
 19 that?  
 20 A. I'm not sure if I did or did not, but if I  
 21 was to use -- I would use the American Planning  
 22 Association's website. It has a searchable database  
 23 for journal articles or just articles in general.  
 24 Q. Did you ever consult the Urban Land  
 25 Institute residential land development handbook?

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1 A. Not on a very frequent basis.  
 2 Q. Okay. How about the international City  
 3 manager's associations, the practice of local  
 4 government planning?  
 5 A. I don't believe so.  
 6 Q. Okay. How about the American Planning  
 7 Association's Growth Smart Legislative Guidebook?  
 8 A. I'm not particularly sure if I reviewed  
 9 that or not.  
 10 Q. Would you agree that a planned development  
 11 means an area of land controlled by a landowner,  
 12 which is to be developed as a single entity for one  
 13 or more planned unit residential developments, one or  
 14 more public quasi public commercial or industrial  
 15 areas or both?  
 16 MR. JIMMERSON: Objection. Calls for an  
 17 expert opinion to which this witness has not been  
 18 retained.  
 19 MR. BYRNES: Are you asking for a  
 20 statutory definition or --  
 21 Q. I'm asking if he disputes that that's what  
 22 a planned development is.  
 23 MR. JIMMERSON: Objection. Assumes facts  
 24 not in evidence.  
 25 THE WITNESS: That definition is stating

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1 that it's solely one person. My experience had been  
 2 that there is one entity that creates such a thing  
 3 and it is then sold off and and other people then  
 4 develop within the confines of that development plan.  
 5 BY MR. BICE:  
 6 Q. Sure. They develop parts of it, right?  
 7 A. Correct. Or the majority. It depends on  
 8 what sales go through.  
 9 Q. But that doesn't mean it's not a planned  
 10 development correct, or do you maintain that it does?  
 11 A. Are you asking if that definition -- I'm  
 12 kind of losing your questioning: Your train of  
 13 questioning. Can you --  
 14 Q. Sure. You had indicated that a single  
 15 owner will develop the plan and then will maybe sell  
 16 off certain segments of it for I guess development by  
 17 an individual, like a home builder or something like  
 18 that. is that what you meant?  
 19 A. Correct.  
 20 Q. All right. Even though that may happen  
 21 you're not disputing that that is still a planned  
 22 development are you?  
 23 MR. JIMMERSON: Objection.  
 24 Mischaracterizes the witness' testimony.  
 25 THE WITNESS: An individual, depending on

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1 how much property they own, they could go the route  
 2 of a planned development or they could do it through  
 3 a piecemeal approach as well.  
 4 Q. So is it your position that a planned  
 5 development has to be that the developer has to  
 6 individual lie develop each segment in order to be a  
 7 planned development if he sells part of it after  
 8 getting the plan approved it's no longer a planned  
 9 development?  
 10 A. No, that's not what I was saying. I was  
 11 stating that you could establish a planned  
 12 development --  
 13 Q. Got it.  
 14 A. -- as one mode of development.  
 15 Q. Right.  
 16 A. As a separate mode of development. You  
 17 could not do a planned development and piecemeal  
 18 develop a site is what I was stating.  
 19 Q. And do you dispute that the Peccole Ranch  
 20 is a planned development?  
 21 A. It is as it states a master planned --  
 22 master planned development.  
 23 Q. And that's what it is, isn't it?  
 24 A. That is what the city council approved as  
 25 a master planned development.

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 RA 03643

1 Q. You're not contending it's not a master  
2 plan development, are you?

3 A. No. That's the City counsel action they  
4 took was for a master planned development.

5 Q. And as part of your processing of  
6 applications for the current applicant, you treat the  
7 Peccole Ranch Master Plan as a master plan  
8 development, correct?

9 MR. JIMMERSON: Objection. Misstates the  
10 testimony in evidence.

11 THE WITNESS: In light of the development,  
12 it was determined that a major modification would be  
13 requested in light of the land use element is not  
14 denoted as one of the special area plans that require  
15 a major modification. So out of the concern of the  
16 scope of the proposed changes, that determination was  
17 made.

18 BY MR. BICE:

19 Q. The scope of the proposed changes were so  
20 significant that you all determined that a major  
21 modification to the 1990 plan was required; is that  
22 correct?

23 MR. JIMMERSON: Objection. Lack of  
24 foundation as to when where and what project was  
25 being discussed.

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1 THE WITNESS: In regards to the  
2 development of the property, the major modification  
3 was -- was required by staff based on the scope of  
4 the project.

5 BY MR. BICE:

6 Q. When you say development of the property  
7 what do you mean? Development of the golf course?

8 A. Development of the 250.92 acres.

9 Q. Okay. What about -- did you originally  
10 require a major modification for the development of  
11 the seven acres after it was subdivided?

12 MR. JIMMERSON: Objection. The question  
13 makes no sense under the facts of this case.

14 BY MR. BICE:

15 Q. Or 17.

16 A. I understood.

17 Q. If I misspoke, my apologies.

18 A. In reference to the 17.49 acres those  
19 applications were held in abeyance in an effort to  
20 having a comprehensive package being submitted which  
21 subsequently were, and we were requesting major  
22 modification as part of that for that overall.

23 Q. Was that subsequently changed?

24 A. The requirement for a major modification;  
25 is that your question?

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1 Q. Yes.

2 A. Yes.

3 Q. Why? Well strike that. First let me ask  
4 you, who made that decision that it would be changed?

5 A. The decision that a major modification  
6 would be required after the withdrawal of the overall  
7 plan?

8 Q. Yes.

9 A. That decision would have had to have been  
10 made by the director.

11 Q. Did the director have meetings with the  
12 applicant about that change?

13 A. Not that I recall. I imagine the director  
14 had meetings with counsel.

15 Q. Meaning legal counsel?

16 A. (Witness nodded head.)

17 Q. I need you to answer yes or no.

18 A. Yes. Sorry.

19 Q. No problem.

20 A. Constant reminders help.

21 Q. Don't worry about it. We all do it.

22 MR. JIMMERSON: Can I clarify, you mean  
23 city attorney counsel, Mr. Perrigo -- Mr. Lowenstein.

24 THE WITNESS: That is correct.

25 MR. JIMMERSON: Thank you.

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1 MR. BICE: Let's take a short break.

2 THE VIDEOGRAPHER: Going off the video  
3 record. The time is approximately 2:52 p.m.

4

5 THE VIDEOGRAPHER: This is the beginning  
6 of video recording number 5 in the continuing  
7 deposition of Mr. Lowenstein. We're back on the  
8 video record. The time is approximately 3:05 p.m.

9 BY MR. BICE:

10 Q. Mr. Lowenstein, have you discussed this  
11 application or strike that.

12 Have you discussed the redevelopment of the  
13 Badlands Golf Course with councilman beers?

14 A. Not to my recollection. Direct access to  
15 the counsel persons are usually held by the director,  
16 so I have very limited exposure.

17 Q. Have you discussed it with the mayor?

18 A. No. Not to my recollection.

19 Q. All right. Have you personally discussed  
20 it with any of the planning commissioners?

21 A. The planning commissioners had briefings,  
22 so in that regard they had scheduled meetings with  
23 the planning department, and I was part of those  
24 briefings, so that would -- I assume that's yes.

25 Q. Did each of the planning commissioners

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004986  
RA 03644

1 have such a meeting?

2 A. They were held in groups and all were

3 invited if they -- I'm not particularly recalling

4 which ones did not appear but they were in groups of

5 either two, potentially three.

6 Q. Did you tell -- did you tell any of the

7 planning commissioners of any particular number of

8 units that were purportedly available for development

9 on the golf course?

10 MR. BYRNES: You're asking him personally

11 or --

12 MR. BICE: Yes.

13 MR. BYRNES: -- or the department?

14 BY MR. BICE:

15 Q. Him?

16 A. I don't know that I recall.

17 Q. I know you talked about some maps earlier

18 but I believe Mr. Perrigo said you were the one that

19 was looking into the unit allocation.

20 A. Or my direct staff.

21 Q. Or your direct staff. Did you ever make a

22 determination of what you contend are the number of

23 allowed units on the golf course?

24 A. The number of allowed units on -- within

25 the phase two area is called out by the condition of

161

1 approval. As far as units on the golf course, one

2 has the right to petition their government for an

3 amendment and that is what was applied for.

4 Q. Because under the current -- under what

5 was approved there are no allowed units on the golf

6 course?

7 MR. JIMMERSON: Objection.

8 Mischaracterizes the testimony. Mischaracterizes

9 Exhibit 8.

10 MR. BYRNES: Calls for a legal conclusion.

11 BY MR. BICE:

12 Q. I'm correct, am I not?

13 MR. JIMMERSON: Same objection.

14 THE WITNESS: In regards to what this plan

15 called out and as far as on the table, as far as

16 allocation of the units, it does not state units -- a

17 density associated with parks, recreation and open

18 space. However, it shows an area where additional

19 golf course was built on top of where single family

20 was in addition to that.

21 Q. That's the nine holes that were later

22 added correct.

23 A. Additional nine holes, correct.

24 Q. But under your code, when you say that

25 they have the right to petition the government to

162

1 change, to change what the general plan?

2 A. I has -- I believe has a constitutional

3 right.

4 Q. To petition the government?

5 A. To petition the government.

6 Q. But when you're saying it could change,

7 the change in the general plan.

8 A. It could be any land use entitlement is

9 that petition.

10 Q. But in this particular case you understood

11 that they would need to petitions to change the

12 general plan because the property has all been

13 designated as open space correct?

14 MR. JIMMERSON: Objection calls for a

15 legal conclusion also absence of foundation.

16 THE WITNESS: One of the submitted

17 applications are for amendments to the general plan

18 amendments.

19 BY MR. BICE:

20 Q. To change the open space designation to

21 allow residential on the open space, what is

22 currently designated as open space?

23 A. The applications that were submitted were

24 from parks recreation open space designation to

25 either H high density residential or -- it's either

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1 desert rural or rural I apologize I don't recall

2 exactly what the other designation was. It may be in

3 one of these other exhibits if you want me to look.

4 Q. When you met with Mr. Lowie and his team,

5 did they ever -- did they ever deny that they knew

6 that the property was designated as open space at the

7 time that they purchased?

8 A. I don't recall that specifically.

9 Q. Did they ever suggest to you that they

10 didn't know it was open space at the time they

11 purchased it?

12 MR. JIMMERSON: Objection. Assumes facts

13 not in evidence that they even exist as open space at

14 the time.

15 THE WITNESS: I don't recall conversations

16 like that.

17 BY MR. BICE:

18 Q. Did you ever hear them, Mr. Lowie or any

19 of his representatives claim that they didn't know it

20 was open space at the time that they purchased it?

21 MR. BYRNES: Objection. Asked and

22 answered.

23 MR. JIMMERSON: Same objection.

24 THE WITNESS: I don't recall that

25 conversation.

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004987  
RA 03645

1 BY MR. BICE:

2 Q. At the time that they submitted -- when I  
3 say they Mr. Lowie's company submitted the  
4 application for the 720 multifamily units, were they  
5 told that they wouldn't have to do a major plan  
6 modification?

7 A. I don't recall the moment in which they  
8 were required to submit a major modification. As I  
9 previously stated on the record, it was in light of  
10 an overall plan being submitted that the major  
11 modification was being required of them.

12 Q. Well, did the staff originally say that --  
13 do you recall them -- do you recall there being a  
14 staff report that they would need to do a major  
15 modification even on the 17 acres?

16 A. I don't recall. I believe it was in light  
17 of an overall package coming that the major  
18 modification was requested.

19 Q. And how was it determined that they would  
20 not need to do a major modification on -- if they  
21 just applied on the 17 acres?

22 A. The overall number of units would still be  
23 in line with the 4247, and in the mode of development  
24 of phase one and subsequently phase two, it still met  
25 that -- it still met the overall number of units

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1 within phase two, that 4247.

2 Q. Well, how many units are you saying were  
3 left of the 4247 that hadn't already been built or  
4 hadn't already been entitled?

5 A. Exact number, I'm not aware, but I believe  
6 it's about 1200 plus or minus.

7 Q. And how many of those unentitled or  
8 unbuilt units were of the 1440 multifamily that had  
9 been approved?

10 A. Based on the previous development of phase  
11 I and II, it doesn't differentiate between them.

12 Q. What doesn't differentiate between them?

13 A. The total number unit count. For phase  
14 one, it exceeds the multifamily that's called out in  
15 in this plan. In phase two there were still a lot of  
16 units, both multifamily and single family.

17 Q. Well, so are you -- so when you claim that  
18 there are multiple units available, you said about  
19 1200?

20 A. Well, if you look at all the entitled and  
21 existing or even nonconstructed, there is a still a  
22 delta of approximately 1200 units.

23 Q. Of -- for phase two; is that correct?

24 A. I believe so, yes.

25 Q. And so those are -- they weren't construct

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1 where, within phase two or are you also -- here's  
2 what I'm trying to clarify. Are you reaching into  
3 areas of phase one as well or are you just saying in  
4 phase two alone?

5 A. In phase two alone.

6 Q. And what is your basis for contending that  
7 the current purchaser of the golf course has an  
8 entitlement to claim those units?

9 A. Can you restate the question?

10 Q. Sure. You're saying those units are  
11 somehow available, it sounds like; is that correct,  
12 but there are 1200 units available for someone to to  
13 develop is what it sounds like you're saying?

14 A. I'm saying the condition of approval from  
15 the City council action allotted a specific number of  
16 units and those number of units are still available  
17 unless they did a review of condition of that zoning  
18 action to either delete, amend, what have you, to  
19 increase or eliminate any kind of density unit cap.

20 Q. The condition of approval for whom? Who  
21 were those units allotted to?

22 A. Well, referring back to -- I don't know if  
23 it is one of the exhibits you gave me.

24 Q. Yep.

25 A. No, I don't think we have that. I'm sorry

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1 I got distracted can you repeat the question.

2 Q. Sure you just said -- I'm reading what you  
3 said. You said I'm saying the conditions of approval  
4 from the City council action allocated a specific  
5 number of units, and those units are still available.  
6 Okay? They allocated a specific number of units to  
7 whom?

8 A. At the time of entitlement it would have  
9 been the applicant.

10 Q. The applicant got an approval for a  
11 certain number of units correct.

12 A. Within a geographical area.

13 Q. Within a geographical area and the  
14 applicant also designated within that geographical  
15 area a certain amount of that was open space,  
16 correct?

17 A. On the plan as was adopted, yes.

18 Q. And that's what the City ultimately  
19 recorded as part of its master plan, correct?

20 MR. JIMMERSON: Objection. I think it  
21 misstates the record. It's not accurate.

22 THE WITNESS: The zoning action and the  
23 master development plan did not amend the master plan  
24 or the general plan at that point.

25 ///

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004988  
RA 03646

1 BY MR. BICE:  
2 Q. Right.  
3 A. Subsequent action adopting a general plan  
4 to the -- as far as my knowledge the map reflects  
5 what was approved through the master development  
6 plan.  
7 MR. JIMMERSON: May I have the last  
8 question and answer, please.  
9 (Record read back by the reporter)  
10 BY MR. BICE:  
11 Q. And what you're saying is the map reflects  
12 the plan of the general plan reflects what was  
13 approved, correct?  
14 A. The map of the general plan.  
15 Q. Right.  
16 A. Reflects what was approved through the  
17 master development plan which is known as Peccole  
18 Ranch Master Plan Exhibit 8.  
19 Q. And Exhibit 7 is a copy of -- if I  
20 understand the date is 1999 but that map reflects  
21 what was approved as of that date for Peccole Ranch,  
22 correct?  
23 MR. JIMMERSON: Objection.  
24 THE WITNESS: No.  
25 MR. JIMMERSON: Misstates the record and

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1 also is confusing as to the date.  
2 BY MR. BICE:  
3 Q. It shows the open space that was  
4 designated by the City -- by the applicant, correct?  
5 A. I understand what you're asking but the  
6 one that was adopted in '92 does not reflect this  
7 configuration.  
8 Q. I understand but the one in '99 does  
9 reflect the configuration, correct?  
10 MR. JIMMERSON: Objection. Misstates the  
11 record.  
12 THE WITNESS: The one adopted in 1999 is  
13 showing the existing configuration of the golf  
14 course.  
15 BY MR. BICE:  
16 Q. The 1992 didn't reflect the nine holes,  
17 correct?  
18 A. Correct. It reflected the composition  
19 shown in the master development plan, not the  
20 composition of how it was constructed and exists  
21 today.  
22 Q. Right. And then how it was constructed  
23 and exists today is reflected in the 1999 map?  
24 A. In regards to Exhibit 7, yes, it does.  
25 Q. Correct? As approved by the City?

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1 A. It says adopted August 18<sup>th</sup>, 1999, so I  
2 imagine that would be the City council action  
3 adopting that.  
4 Q. And the property owner of the land at that  
5 point in time would get notice prior to this  
6 adoption, correct?  
7 A. I can't speak to how the open meeting law  
8 was met on this particular thing. It was prior to my  
9 time. But if it is a general plan, we don't send  
10 notice to every owner within the City of Las Vegas.  
11 Q. Right.  
12 A. We do a general posting through the  
13 newspaper.  
14 Q. Well let's -- can we agree on this? The  
15 property owner in that case at the time of the  
16 adoption of the general plan map got just as much  
17 notice as all the homeowners did in September of 2015  
18 about the amendment with the asterisk correct?  
19 MR. JIMMERSON: Objection. Misstates the  
20 records in light of the witness' earlier testimony  
21 about greater radius and greater notice.  
22 THE WITNESS: As I stated before, I don't  
23 know how they noticed this one but if the minimum  
24 open meeting law was being met, then yes.  
25 ///

171

1 BY MR. BICE:  
2 Q. And as your research, did you find any  
3 proof that the property owner disputed the  
4 designation -- the property owner at the time --  
5 disputed the designation as open space as reflected  
6 on that 1999 map?  
7 A. I personally haven't but I personally  
8 haven't researched everything that the City clerk may  
9 have regarding to this.  
10 Q. Has anyone told you that the property  
11 owner at the time disputed that designation?  
12 A. Not to my recollection.  
13 Q. Does the property owner obtain a  
14 significant benefit under that designation, open  
15 space?  
16 MR. JIMMERSON: Objection. Calls for  
17 expert opinion and testimony that this witness has  
18 not been retained or compensated.  
19 THE WITNESS: I can't speculate as far as  
20 who would -- you know, what benefit one would garner  
21 for it. Are you asking as an overall community open  
22 space is a benefit?  
23 BY MR. BICE:  
24 Q. No?  
25 A. Or is it an individual that owns open

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004984

004989  
RA 03647

1 space do they get a benefit?  
2 Q. Well the applicant in this particular  
3 case, the Peccole's got a benefit did they not by  
4 designating all that area as open space?  
5 A. I imagine if they were trying to create a  
6 community based around golf courses that would be a  
7 sales pitch, you know.  
8 MR. JIMMERSON: Move to strike the answer  
9 as calling for speculation. Mr. Bice, please. When  
10 I'm speaking please don't speak and I'll give the  
11 same respect.  
12 MR. BICE: If you have an actual objection  
13 that's fine but if you're going to give more of the  
14 lengthy speaking objections I don't think that's  
15 appropriate.  
16 MR. JIMMERSON: I said move to strike  
17 because the answer says I would imagine. I said  
18 therefore the answer evidences speculation and I  
19 stopped. But you continued talking and that's  
20 disrespectful and I just asked you so the court  
21 reporter gets it all down. That's all.  
22 MR. BICE: I wasn't trying to be  
23 disrespectful, Mr. Jimmerson. I thought you had  
24 ended your statement, so --  
25 MR. JIMMERSON: I have.

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1 MR. BICE: So you were?  
2 MR. JIMMERSON: And I move to strike and  
3 yes, thank you.  
4 MR. BICE: So I'm not sure why you  
5 interrupted you.  
6 MR. JIMMERSON: Because I was still  
7 speaking and you started talking again and then you  
8 started asking the next question. That's why I  
9 voiced a concern.  
10 BY MR. BICE:  
11 Q. In addition to trying to create a  
12 community around a golf course are you aware whether  
13 or not the property owner by designating it as open  
14 space gets any tax advantages?  
15 MR. JIMMERSON: Calls for speculation.  
16 The question is also misstating earlier testimony of  
17 the witness.  
18 THE WITNESS: I don't know. I would have  
19 to defer to counsel.  
20 BY MR. BICE:  
21 Q. Okay. So back to my earlier question, you  
22 said that you thought that there was something around  
23 1200 units that hadn't been developed of what had  
24 been approved. But those 1200 units had been  
25 approved for the Peccole family trust correct?

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1 MR. JIMMERSON: Objection. Calls for  
2 speculation.  
3 THE WITNESS: That criteria came as a  
4 condition of approval on the zoning -- the final  
5 action letter for the zoning approval which I believe  
6 the applicant at that time was Peccole Trust 1982 or  
7 Peccole Trust.  
8 BY MR. BICE:  
9 Q. And the Peccole Trust has sold a lot of  
10 that property to other people, correct?  
11 A. I don't know to what extent.  
12 Q. Well, do you know that Mr. Schreck owns a  
13 piece of the property in Peccole Ranch was created or  
14 approved as part of this master plan? Do you know  
15 that?  
16 A. I do.  
17 Q. Does Mr. Schreck have the right to develop  
18 additional houses on his property?  
19 A. He's held to the confines of the zoning  
20 ordinance and the approval of his individual  
21 subdivision.  
22 Q. What individual subdivision?  
23 A. His home is one lot within a  
24 subdivision --  
25 Q. Okay.

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1 A. -- and to establish the development  
2 standards and that configuration of lots it went  
3 through a subsequent action which has its own  
4 conditions of approval for setbacks and things like  
5 that, and he's also held to the Las Vegas Municipal  
6 Code and then the zoning code, he would be held to  
7 the legacy district. As far as multiple dwelling  
8 units with kitchens and things like that, there are a  
9 number of things that he would have to deviate from  
10 to be able to do so.  
11 Q. In order to do so, right? Can he just  
12 knock down his house and build multiple units on his  
13 lot, his large lot?  
14 A. He can demolish his house. He can  
15 petition and go through the many applications it  
16 would take. He has the right to petition to do so.  
17 Q. Well, how many units then are allocated to  
18 Mr. Schreck's property of this 1200 that you say were  
19 never used up?  
20 A. Well he would get all 1200 if he could  
21 develop it.  
22 Q. What's that?  
23 A. If he entitled it, to have 1200 on his  
24 lot.  
25 Q. On his lot then he could -- the 1200 are

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004990  
RA 03648

1 his?

2 A. Well, it's a geographical area and if he's

3 within that area he's held to that condition of

4 approval as well.

5 Q. Here's what I'm confused by, Mr.

6 Lowenstein. How would the 1200 be available to the

7 owner of the golf course property which was

8 designated as open space under the approved plan?

9 How is it that those 1200 are somehow available to

10 somebody who bought property designated as open

11 space?

12 MR. JIMMERSON: Objection. The question

13 is argumentative, assumes facts not in evidence. The

14 property was never designated as open space in 1990.

15 BY MR. BICE:

16 Q. Go ahead.

17 A. As I said you have the act to petition

18 your government. In this case it would be up to the

19 council's discretion to amend it from open space to

20 something else and allot the units.

21 Q. Just so -- so I guess the units are just

22 as much available to everybody else that owns

23 property in this community as they are to the golf

24 courses; is that what you're saying?

25 A. Saying within that geographical area there

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1 is developable land and within that whoever petitions

2 their government is still able to ask for those

3 units.

4 Q. All right. Is this the first come first

5 serve principle?

6 MR. JIMMERSON: Object to the form of the

7 question. Argumentative.

8 MR. BYRNES: Join in that.

9 THE WITNESS: That's one way somebody

10 could put it.

11 BY MR. BICE:

12 Q. Is that codified anywhere in the City

13 code?

14 A. Not --

15 MR. BYRNES: Calls for a legal conclusion.

16 THE WITNESS: Not that I am aware of. If

17 you have a condition that limits the number of units

18 and you still have that available number of units,

19 what curtails someone from applying for it?

20 BY MR. BICE:

21 Q. And I think the difference that you and I

22 are talking about is you say you still have those

23 available number of units. Who has them available?

24 The people got an approval or just somebody who comes

25 along 25 years later and buys open space? That's

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1 what I'm trying to understand.

2 MR. BYRNES: Objection. Asked and

3 answered this is really beating a dead horse. This

4 is about the 15<sup>th</sup> time you asked the same question.

5 MR. BICE: Phil I'm not trying to be

6 argumentative. I don't think it is. I don't

7 understand how it is that those units are -- and if

8 he has an explanation I'd like to hear it. I don't

9 know how it is some guy comes out of the woodwork 25

10 years later and says 1200 units that were approved

11 for Mr. -- for the particular, 30 plus years ago are

12 somehow his. Can you explain to me?

13 MR. JIMMERSON: Object to the question as

14 calling for -- object to all editorialization and all

15 the argumentative nature of it. Also there's not

16 establishing in effect. { Assuming facts not in

17 evidence that it was open space in 1990.

18 THE WITNESS: So to your question in

19 regard to land use entitlement, it stays with the

20 property. The geographical that was with the initial

21 rezoning stays with the property regardless of

22 property owner other than that I'll defer to counsel

23 for my answer.

24 BY MR. BICE:

25 Q. Is it fair to say Mr. Lowenstein that you

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1 have simply calculated the number of unentitled or

2 unbuilt units and that being around 1200, and you

3 have simply made the assumption that those units are

4 available to that phase two land, regardless of who

5 owns it at any particular moment in time? Is that

6 fair?

7 A. That would be fair.

8 Q. How many -- under the City's current code,

9 how many residential units are permitted to be built

10 within a drainage easement?

11 A. What's the zoning district?

12 Q. Does it depend on the zoning district?

13 A. The general plan and the zoning district

14 determine your allowable densities and the

15 development centers in which you're going to to

16 develop the next question is the drainage easement

17 needed in its current configuration if it is then the

18 Department of Public Works will restrict what can be

19 constructed their own title of municipal code which I

20 can't really speak to.

21 Q. In your research, how many housing units

22 of the 4200 that were approved originally for

23 Peccoles, how many of those housing units were

24 reserved, planned or approved for the open space?

25 MR. JIMMERSON: Objection. Assumes facts

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004991  
RA 03649

1 not in evidence that open space was even referenced  
2 within that 4247.  
3 THE WITNESS: Can you restate the question  
4 please.  
5 BY MR. BICE:  
6 Q. Let me make sure I read it back correctly.  
7 In your research, how many housing units of the 4200  
8 were approved originally for the Peccoles, or that  
9 were approved originally for the Peccoles, how many  
10 of those housing units were reserved planned or  
11 approved for the open space?  
12 MR. JIMMERSON: Same objection.  
13 THE WITNESS: So referring to Exhibit 8 --  
14 BY MR. BICE:  
15 Q. Yes?  
16 A. -- in Exhibit 8 there are associated  
17 tables with it which delineates acreages, net  
18 densities, regarding various different uses of land  
19 use.  
20 Q. Yes.  
21 A. And the golf course drainage does not  
22 indicate a net density or net units.  
23 Q. Is it accurate to say to my question --  
24 would it be an accurate answer to my question to say  
25 zero?

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1 MR. JIMMERSON: Objection. Same --  
2 objection as I incorporate by reference before the  
3 witness has already answered the question.  
4 THE WITNESS: Yes.  
5 MR. JIMMERSON: Is there an answer to the  
6 question?  
7 THE COURT REPORTER: Yes.  
8 MR. JIMMERSON: So he said yes to the  
9 answer zero.  
10 MR. BICE: Yes.  
11 THE WITNESS: My answer is yes of this  
12 Exhibit 8 does not illustrate a number. This has a  
13 dash you can refer to a dash technically as a zero.  
14 BY MR. BICE:  
15 Q. Have you ever socialized with Mr. Lowie or  
16 Mr. Pankratz?  
17 A. Outside of the regularly scheduled  
18 meetings?  
19 Q. Yes.  
20 A. I've seen Mr. Lowie out in passing and in  
21 Tivoli outside of the Cafe Leon.  
22 Q. Okay. Any other circumstances?  
23 A. Not that I recall.  
24 Q. Have you ever been to either of their  
25 residences?

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1 A. I have not been to Mr. Pankratz'  
2 residence. I have been to Mr. Lowie's residence  
3 once.  
4 Q. And when was that?  
5 A. I don't recall the exact date.  
6 Q. Has it been within the last year?  
7 A. I don't recall.  
8 Q. What was the circumstances you were at Mr.  
9 Lowie's residence?  
10 A. I had asked him as well as my director,  
11 because they were traveling international, to see if  
12 they could procure me a bottle of Blanton's bourbon.  
13 Q. Okay. Mr. Lowie was traveling  
14 internationally; is that what you're saying?  
15 A. Yes. Same as my director was.  
16 Q. Were they traveling together?  
17 A. No. Separate things. I'm just stating  
18 because of their travels internationally, I had asked  
19 to see if they could procure a bottle of Blantons  
20 bourbon in their travels.  
21 Q. And Mr. Lowie did?  
22 A. He was able to and and I went to his house  
23 and refunded his money, \$56 for the bottle.  
24 Q. And that was --  
25 A. It was just a very cordial conversation,

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1 he he showed me the landscaping and that was the  
2 extent of it.  
3 Q. Do you know whether or not Mr. Perrigo has  
4 ever socialized with Mr. Lowie or Mr. Pankratz?  
5 A. Not that I am aware of. I've read the  
6 deposition, so the only thing I can say is what was  
7 in there.  
8 Q. Have you ever been to dinner with Mr.  
9 Lowie or Mr. Pankratz?  
10 A. Not that I recall.  
11 Q. How about lunch?  
12 A. No, not that I recall.  
13 Q. I'll pass the witness.  
14 THE VIDEOGRAPHER: Going off the video  
15 record the time is approximately 3:36 p.m.  
16 (Exhibit Number Num was marked.) A.  
17  
18  
19 EXAMINATION  
20 MR. JIMMERSON: Good afternoon, Mr.  
21 Lowenstein. Are we back on the record.  
22 THE VIDEOGRAPHER: We're back on the  
23 record the time is approximately 3:46 p.m.  
24 BY MR. JIMMERSON:  
25 Q. Mr. Lowenstein, good afternoon. My watch

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RA 03650

1 tells me it's about five minutes to 4:00, 3:55 is  
2 what my phone says. I had the privilege -- and we've  
3 just met this morning -- I have the privilege of  
4 representing Fore Stars, 180 Land Company and Seventy  
5 Acres in this litigation that was brought by  
6 Mr. Binion and others against the City of Las Vegas  
7 and against my clients. Do you understand that?  
8 A. Yes, I do.  
9 Q. Before this morning, had you and I ever  
10 met?  
11 A. Not to my recollection.  
12 Q. And had we ever had any conversations  
13 before now, I mean in terms other than good morning  
14 or hello my name is Jim Jimmerson my name is Peter  
15 Lowenstein. Have we had any communication at all?  
16 A. Not that I recall.  
17 Q. Thank you, sir. Now I've shown you what's  
18 been marked as Exhibit A. And this is the first  
19 amended complaint that has been filed by the  
20 plaintiff through Mr. Bice who was examining you this  
21 morning from about 950 this morning to the present.  
22 And I want to know, have you ever seen that  
23 document before?  
24 A. I may have from counsel.  
25 Q. And counsel would be Mr. Byrnes or

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1 Mr. Jerbic?  
2 A. Correct.  
3 Q. There are allegations here that claim that  
4 the City of Las Vegas, through its representatives,  
5 have colluded with Fore Stars, 180 Land Company  
6 and Seventy Acres as a group to try to achieve an  
7 improper purpose or improper result. Are you aware  
8 of any such basis for such a claim like that?  
9 MR. BICE: Objection to form.  
10 THE WITNESS: No.  
11 MR. BICE: Go ahead.  
12 THE WITNESS: Sorry. No.  
13 BY MR. JIMMERSON:  
14 Q. Has the City in any way colluded with the  
15 entities that I represent relative to the  
16 partialization that was occurred in order to receive  
17 zoning change in zoning entitlements?  
18 MR. BICE: Objection to form.  
19 THE WITNESS: No, not that I am aware of.  
20 No.  
21 BY MR. JIMMERSON:  
22 Q. Has the City of Las Vegas as far as you  
23 are personally involved been complicit, as is alleged  
24 at page six, line seven, quote, "The City's  
25 complicity in deriving surrounding homeowners of

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1 legal notice and an opportunity to be heard." To  
2 your knowledge, has the City been complicit to  
3 deprive surrounding homeowners of legal notice and an  
4 opportunity to be heard?  
5 MR. BICE: Objection. Form.  
6 THE WITNESS: My understanding is that the  
7 City followed the open meeting law requirements.  
8 BY MR. JIMMERSON:  
9 Q. So the answer's no?  
10 A. That would be correct.  
11 Q. And what is your understanding that the  
12 City follows legal notice requirements if not gone  
13 beyond that as you've indicated on your direct  
14 examination?  
15 A. Can you restate that please?  
16 Q. You said no to your knowledge that -- the  
17 legal requirements of notice have been satisfied.  
18 What's the basis for your answer, sir?  
19 A. That a neighborhood meeting was held,  
20 depending on which applications we're talking about,  
21 public notification cards were mailed out,  
22 neighborhood meetings were held and all of that done  
23 in a timely manner and in accordance with the open  
24 meeting law.  
25 Q. You've been asked about meetings that

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1 you've had with any representative of the defendants  
2 Fore Stars, 180 Land Company and Seventy Acres by  
3 opposing counsel this morning, correct?  
4 A. Yes.  
5 Q. You were asked about the one occasion when  
6 you paid \$56 to procure a bottle of bourbon that had  
7 been brought from somewhere outside the United  
8 States. You mentioned that, right?  
9 A. I did.  
10 Q. You mentioned that you have attended  
11 meetings where Mr. Lowie and Mr. Pankratz have been  
12 present?  
13 A. I did.  
14 Q. And perhaps a person by the name of Brett  
15 whose last name may be Harrison who you met right?  
16 A. That is correct.  
17 Q. Are those all in accordance with how you  
18 deal with every person of property owner who seeks to  
19 receive land entitlements or some consideration for  
20 land use from your department?  
21 MR. BICE: Objection. Form.  
22 BY MR. JIMMERSON:  
23 Q. You may answer the question.  
24 A. Have regular meetings?  
25 Q. Yes.

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004993  
RA 03651

1 A. Yes.  
2 Q. Has there been anything untoward or  
3 inappropriate in any communications you've had with  
4 anyone that you recognize to be a representative of  
5 my clients?  
6 MR. BICE: Objection to form.  
7 THE WITNESS: Not that I am aware of.  
8 BY MR. JIMMERSON:  
9 Q. Have you conducted yourself in any manner  
10 that you believe to be inappropriate with regard to  
11 dealing with this applicant and these applications?  
12 A. No. Not to my understanding.  
13 Q. Have you observed Mr. Perrigo conduct  
14 himself in any manner that would be, in your  
15 judgment, inappropriate in dealing with these  
16 applications and these applicants?  
17 A. No, not to my knowledge.  
18 Q. Have you conducted yourself appropriately  
19 with regard to these applicants as you have with all  
20 applicants that appear before the City of Las Vegas?  
21 A. I have.  
22 Q. Do you know of any basis upon which the  
23 plaintiffs would be able to successfully demonstrate  
24 any complicity on the part of the City of Las Vegas  
25 and in particular Pete Lowenstein towards my clients?

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1 MR. BICE: Objection to form.  
2 MR. JIMMERSON: You may answers the  
3 question sir.  
4 THE WITNESS: I'm not aware of that.  
5 BY MR. JIMMERSON:  
6 Q. Any such allegations you believe -- any  
7 such allegations to be false?  
8 MR. BICE: Objection to form.  
9 THE WITNESS: There is no basis for the  
10 allegations?  
11 Q. And why do you say so?  
12 A. To my knowledge and my own actions,  
13 there's nothing that would have been construed as  
14 being complacent or preferential.  
15 Q. All right. Now, following the allegations  
16 in the amended complaint, there is some requirement,  
17 I believe, for all of us in this room to look back at  
18 records that may have existed in the late 1980s and  
19 early 1990s since none of us were directly involved  
20 with the applications at that time. Fair statement?  
21 MR. BICE: Objection to form.  
22 THE WITNESS: As part of researching  
23 projects, one is called upon to look at entitlements  
24 and previous zoning codes, potentially codes or  
25 general plans from air as before them.

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1 BY MR. JIMMERSON:  
2 Q. And that's what you have done in this  
3 case?  
4 A. I have, as previously stated, reviewed  
5 some documents, land use entitlements on the  
6 property. I've looked at the associated document,  
7 the Peccole Ranch Master Plan as part of that, and  
8 the 1992 at that time what was the general plan, the  
9 label, and current versions of the Las Vegas 2020  
10 Master Plan Unified Development Code.  
11 Q. And Mr. Bice representing the plaintiffs  
12 has asked you many many questions with regard to  
13 events and documents that predate your involvement  
14 with the City of Las Vegas?  
15 A. They have asked me regarding materials  
16 that predate my employment at the City of Las Vegas.  
17 Q. All right. From your observations of  
18 documents you reviewed, you observed that there was a  
19 conceptual master plan developed by the Peccole  
20 family to develop proper that they owned in Northwest  
21 Las Vegas?  
22 MR. BICE: Objection to form.  
23 BY MR. JIMMERSON:  
24 Q. You may answer the question, sir?  
25 A. In the deposition we were making reference

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1 to the Peccole Ranch Master Plan as it's titled. It  
2 was agendad on the City counsel as a master  
3 development plan.  
4 Q. And, in fact, on the face of the document  
5 it was called conceptual, correct?  
6 A. In reference to Exhibit 8, I don't see the  
7 word conceptual, but --  
8 Q. Do you understand that these types of  
9 plans are in fact conceptual in nature?  
10 MR. BICE: Objection to form.  
11 THE WITNESS: Well, reading in the first  
12 paragraph on page 1, it calls it a conceptual master  
13 plan.  
14 BY MR. JIMMERSON:  
15 Q. My words exactly. Thank you. And you've  
16 dealt with other master plans from other developers,  
17 correct?  
18 A. I have.  
19 Q. And from a judge's perspective, a jury's  
20 perspective, a juror's perspective, a lay person's  
21 perspective, this is a landowners vision of what they  
22 would like to develop, at least at a point in time  
23 isn't that what a master plan is?  
24 MR. BICE: Objection to form. Calls for  
25 speculation and misstates the legal standard.

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004994  
RA 03652

1 MR. JIMMERSON: I only want to respond by  
2 saying these are the very kinds of questions you  
3 asked Mr. Lowenstein for five hours and now you're  
4 objecting to the same question he's being asked.  
5 It's just so unfair.  
6 MR. BICE: Actually, I disagree with you  
7 Mr. Jimmerson. My questions are quite different and  
8 if you can't recognize from the caption on which side  
9 of the case you're aligned, that is an issue for you.  
10 My objection --  
11 MR. JIMMERSON: This is cross examination  
12 counsel. This is a party that is separate and apart  
13 and distinct from my clients and somebody I may or  
14 may not have agreement with, Counsel.  
15 MR. BICE: I've noted my objection for the  
16 record.  
17 MR. JIMMERSON: Thank you.  
18 BY MR. JIMMERSON:  
19 Q. Now return to the question which was a  
20 while ago.  
21 MR. BYRNES: Do you recall what the  
22 question is?  
23 BY MR. JIMMERSON:  
24 Q. I'll ask it again. A master plan is a  
25 developer vision of what he would like to develop

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1 conceptually; is that correct?  
2 MR. BICE: Objection to the form.  
3 Misstates the legal standard.  
4 THE WITNESS: Master plans to my  
5 understanding and my experience working with them,  
6 they are overall layout of how the development is to  
7 occur. The specifics on the subdivision are  
8 subsequent actions.  
9 BY MR. JIMMERSON:  
10 Q. And master plans -- is it true that master  
11 plans can change over time?  
12 A. They can.  
13 Q. And what are some of the factors, some of  
14 the reasons why a developer's, you know, intent or  
15 vision or conceptual plan might change?  
16 A. Land use designations within the plan  
17 based on their own -- whatever their reasons are,  
18 they can petition to amend those to be from a  
19 residential to a commercial or vice versa. I don't  
20 know what drives the master developer. It could be  
21 market driven it could be any other number of reasons  
22 I won't speculate why but they would be able to  
23 petition the City council to amend that plan to go  
24 forward with whatever their vision is on or their  
25 amended vision is.

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1 Q. And in 199 -- 1986 there was this original  
2 plan, the Venetian plan I think you referenced  
3 correct?  
4 A. That is correct. I'm not sure on the date  
5 but there was the Venetian foothills.  
6 Q. And then you saw the -- your first master  
7 plan I think you told opposing counsel was in 1989,  
8 with an amended plan in 1990 is that right?  
9 A. As far as the Peccole Ranch Master Plan,  
10 yes.  
11 Q. And as indicated on page 1 of the master  
12 plan it was his conceptual plan; is that right?  
13 A. In Exhibit A?  
14 Q. Yes. Exhibit A.  
15 A. On page 1, it reads the proposed  
16 569.6-acre Peccole Ranch Master Plan is being  
17 submitted to the City of Las Vegas for the approval  
18 of and amendment to the over all conceptual master  
19 plan along with the rezoning of a 996.4 acres in  
20 phase two to R-PD7 and R3 and C1 designations.  
21 Q. Okay. Now, what does the word conceptual  
22 in the term conceptual master plan mean to you as you  
23 have just read it into the court record?  
24 MR. BICE: Objection to form.  
25 THE WITNESS: That it has, you know,

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1 flexibility to be further amended.  
2 BY MR. JIMMERSON:  
3 Q. Are you familiar with Nevada Supreme Court  
4 decisions that speak to how to interpret master plans  
5 and conceptual master plans?  
6 A. No.  
7 Q. As part of your working in your own work  
8 and perhaps even with, you know, your City attorney's  
9 office, have you been advised of Nevada Supreme Court  
10 precedent that talks in terms of master plans not  
11 being a straight jacket to City councils and county  
12 councils?  
13 A. I don't recall any direct conversations.  
14 I imagine I've talked with counsel but I don't know  
15 any court cases that I can reference.  
16 Q. If I gave a case, which I do have here  
17 that says that conceptual master plans are not a  
18 straight jacket to City or county, you know, councils  
19 would you have had that kind of conversation or had  
20 that kind of knowledge in the course of your work?  
21 A. No. Not unless Council brought it to my  
22 attention.  
23 Q. Fair enough. But as you understand the  
24 word conceptual, that you attach it to the term and I  
25 agree, the term flexibility, correct?

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004990

004995  
RA 03653

1 MR. BICE: Objection to form.  
2 BY MR. JIMMERSON:  
3 Q. Have I characterized or summarized your  
4 testimony correctly?  
5 A. As I stated, it gives it the ability to  
6 amend at a future date and one would ever could apply  
7 the word flexible to that.  
8 Q. And you in fact did apply the word  
9 flexibility?  
10 A. I'm not sure. We'll have to ask the  
11 stenographer.  
12 Q. Now, looking at the map of the proposed  
13 master plan would you look please at page -- it's  
14 Bates stamped number 297 or 8297 of Exhibit 8. Now,  
15 do you see that this plan is a plan from 1989 and is,  
16 in fact, not the final plan approved by the City of  
17 Las Vegas in 1990?  
18 MR. BICE: What's the page number?  
19 MR. JIMMERSON: 8297, Counsel.  
20 MR. BICE: Thank you.  
21 THE WITNESS: I don't see an associated  
22 date on the page. It's referenced as Exhibit B  
23 within the document, so individual to read the  
24 document to say as far as what its full purpose is.  
25 ///

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1 BY MR. JIMMERSON:  
2 Q. Well, do you look at this to see, in fact,  
3 the top right-hand corner phase one, 1989? Right at  
4 the top of the very same page of the map.  
5 A. At the top of the page it reads, on the  
6 right-hand side it says site data, hyphen, phase one.  
7 Q. And isn't it true that Z-17-90 the plan  
8 that was approved a year later is very different than  
9 the map that's shown here on 8297, Exhibit 8.  
10 MR. BICE: Objection to form.  
11 BY MR. JIMMERSON:  
12 Q. And I can show you the Z-17-90 if you need  
13 to. It's a separate document.  
14 THE VIDEOGRAPHER: This is the beginning  
15 of video recording number seven in the continuing  
16 deposition of Peter Lowenstein. We're back on the  
17 video record.  
18 BY MR. JIMMERSON:  
19 Q. Thank you. What I want you to confirm Mr.  
20 Lowenstein if you can is to review the phase one map,  
21 Bates stamp number 8297 of Exhibit 8, which I believe  
22 is the phase one 1989 map with the later approved map  
23 of Z-17-90 in 1990 and then satisfy yourself by  
24 looking at Exhibit 1 that the map indicates what was  
25 actually built in 1999 to confirm that the master

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1 plan map in Exhibit 8 was not followed by the  
2 developer. So I need -- we're still waiting for that  
3 one piece of paper, Z-17-90, but that's the task I'm  
4 asking you to take a moment and look at. While we're  
5 waiting for that document, can you --  
6 MR. BICE: Here it is.  
7 MR. JIMMERSON: Thank you.  
8 MR. BICE: Can I just take one?  
9 MR. JIMMERSON: Of course.  
10 (Exhibit Number Num was marked.)  
11 BY MR. JIMMERSON:  
12 Q. Now before you you have three documents,  
13 you have Exhibit 8 the 1989 phase one document,  
14 document 8297, you have Exhibit B, the Z-17-90  
15 approved by the City Council in 1990, April 4<sup>th</sup>,  
16 and you have Exhibit 1, Lowenstein 1, which has  
17 the -- what purports -- what you testified purports  
18 to be an as-built of the golf course in 1999. So you  
19 have those three documents in front of you, right?  
20 A. That is correct. I have these documents.  
21 Q. Just to make it easier, why don't we stick  
22 with the '89 draft of Exhibit 8 and compare it to the  
23 1999 golf course of Exhibit 1. And can you tell me  
24 the differences that you observe as to the location  
25 of holes and other infrastructure between that which

199

1 was conceptual in nature in 1989 compared to what was  
2 actually built in 1999 ten years later?  
3 A. Just for point of clarification, Exhibit 1  
4 is 1996.  
5 Q. I thought your testimony -- maybe I was  
6 mistaken, was 1999, based upon --  
7 A. Are you referring to Exhibit 7, which is  
8 the southwest sector land use plan?  
9 Q. I may have been. Let me show you another  
10 exhibit.  
11 (Exhibit Number Num was marked.) C.  
12 THE WITNESS: I assume -- I'm assuming the  
13 same question regarding all now --  
14 BY MR. JIMMERSON:  
15 Q. Yes, you have four exhibits. I'm trying  
16 to show you what's been built versus what was  
17 conceptualized by the Peccole family in 1989 and to  
18 point out that the master plan that was conceptual in  
19 1989 was changed a decade later.  
20 MR. BICE: Objection to form. Go ahead.  
21 THE WITNESS: So between -- sorry.  
22 Exhibit 8, the master plan from -- as referenced as  
23 Binion 008297 in comparison with the other documents,  
24 there are differences.  
25 ///

200

004991

004996  
RA 03654

1 BY MR. JIMMERSON:

2 Q. What are they that you can easily observe  
3 just in the short time you have been given by myself?

4 A. In looking at it I can see the assignment  
5 of the Alta Drive. I can see single family has been  
6 changed to commercial center. Looking at the  
7 composition of the golf course that has also changed.

8 Q. And referring to the composition of the  
9 golf course, can you give me a little bit more  
10 specifics and details?

11 A. Well, in --

12 Q. The design of the course is significantly  
13 different, would you agree?

14 MR. BICE: Objection. Form.

15 A. The original, referring to the Binion  
16 00297, shows 18 holes in pretty much a triangular  
17 pattern, and when looking at the Peccole West map,  
18 there are now fingerlings to it.

19 Q. And you're referring to Exhibit C, the  
20 as-built, the thick someone Exhibit C.

21 A. Well I was referring to Peccole West  
22 Exhibit 1 and you can also see that it's different  
23 from the Binion 008297 in regards to the composition  
24 of the golf course. This is Exhibit C, sorry,.

25 Q. You're doing fine.

201

1 A. Which is labeled final map for Peccole  
2 West. It also differs in composition.

3 Q. Have you completed your answer?

4 A. In regards to those four exhibits that's  
5 what I --

6 Q. And -- all right. And in order to -- well  
7 what approvals, if any, would the City make to the  
8 changes that the developer has obviously made between  
9 1989, Exhibit 8297, and 1999 in the as-built that you  
10 have in Exhibit C? In other words, how does the City  
11 get involved to approve the developer changes in all  
12 the differences you've identified?

13 A. From the Z-17-90, that amended the  
14 original Peccole Master Plan and included the  
15 rezoning of phase two as part of it. Subsequent  
16 actions were done by parentheticals of that zoning  
17 action, as well as changing the land use plan were  
18 done through general plan amendments, meaning the  
19 land use plan of the general plan, the designations  
20 that were existing at that time.

21 Q. And how is that accomplished, the change  
22 of designations of the general plan?

23 A. Through a general plan amendment  
24 application which was then followed by a rezoning  
25 application to have a compatible zoning district with

202

1 land use designation amended to.

2 Q. And was that done by the applicant or was  
3 that at the City's instruction? In other words, is  
4 the City changing what I call the cloud above the  
5 zoning or is the applicant seeking the general plan  
6 amendment?

7 MR. BICE: Objection to form.

8 BY MR. JIMMERSON:

9 Q. If you know.

10 A. From previous entitlement history for  
11 parcels specific like the corners that have changed  
12 in some of these maps, they have been applicant  
13 driven for their desire to do either multifamily or  
14 single family development where some other  
15 designation was previously.

16 Q. And would you identify Exhibit--  
17 Exhibit B, Z-17-90, I don't know that I asked you to  
18 do that yet. So would you identify what Z-17-90 is,  
19 please, exhibit B?

20 A. Sorry, I'm on the wrong exhibit.

21 Q. It's this document here.

22 A. Can you repeat the question please?

23 Q. Well can you identify what this document  
24 is, please?

25 A. It's Exhibit B -- well, which is dated

203

1 2/22 of 2016, but I believe this is a document that  
2 was out of the entitlement folder for Z-17-90.

3 Q. And what is Z-17-90?

4 A. That is a rezoning application that went  
5 before the City Council and was related to the  
6 development -- master development plan which was the  
7 item before it on the agenda.

8 Q. And what zoning was placed on this  
9 property by action on April 4<sup>th</sup> of 1990 as  
10 reflected by Z-17-90, Exhibit B to your deposition?

11 A. There were multiple zoning distributions  
12 which were applied to the overall geographical error  
13 encompassed by that zoning action. I believe it's  
14 R-PD7, R-3 and C-1.

15 Q. And as it relates to the property and what  
16 I would call phase two or what opposing counsel has  
17 called phase two, was the vast majority of that all  
18 zoned R-PD7?

19 A. From the document that the surveyor -- the  
20 City surveyors put together, the majority of the  
21 geographical area was in the R-PD7 designation.

22 Q. Including the golf course where you see it  
23 drawn now was all R-PD7, correct.

24 A. Correct.

25 Q. And the golf course then came later? In

204

004992

004997  
RA 03655

1 other words, the property is zoned R-PD7 and then the  
2 golf course is super imposed on that later as we see  
3 in the 1995/96 time period?

4 MR. BICE: Objection to form.

5 THE WITNESS: I'm trying to follow the  
6 question. Can you restate that.

7 BY MR. JIMMERSON:

8 Q. The majority of the land as you indicated  
9 and the land that is being sought to be developed by  
10 my clients is presently zoned R-PD7; is that correct?

11 A. That is correct.

12 Q. And it was zoned R-PD7, as far as you're  
13 looking at the historical documents, on or about  
14 April 4<sup>th</sup> of 1990, correct?

15 A. Correct.

16 Q. Originally through a resolution of intent  
17 correct?

18 A. I believe that was the zoning practice at  
19 the time, yes.

20 Q. And then we know formally in October of  
21 2001 a hard ordinance that did confirm R-PD7 for all  
22 that property owned by my clients, correct.

23 A. I don't recall the exact ordinance that  
24 solidified the zoning out of a resolution of intent  
25 but there is an ordinance that did so.

205

1 Q. The way it was described to me, Mr.  
2 Lowenstein, and correct me if I'm wrong it's an atlas  
3 where all the property where for all the City was  
4 confirmed and it was then through City ordinance  
5 approved and passed as being whatever the particular  
6 property location would be assigned a zoning  
7 entitlement.

8 A. Through the zoning plan atlas is the term  
9 for the overall zoning of the City. To amend that  
10 they do that by ordinance and they did an ordinance  
11 which included these properties as part of it which  
12 then solidified it as R-PD7.

13 Q. You have been present at the meeting of  
14 the planning commission before the City Planning  
15 Commission in I think it was October of 2016 where  
16 the seven applications, I believe, were pending.  
17 Were you present for that meeting?

18 A. That is correct.

19 Q. And then you recall that four were  
20 withdrawn and three went to full hearing before the  
21 City counsel on November 16<sup>th</sup> of 2016?

22 A. I believe all of them were heard at  
23 planning commission. The withdrawal occurred at city  
24 council.

25 Q. That's what I said if I misstated or if

206

1 you misheard. All seven were heard by City planning  
2 commission?

3 A. That is correct.

4 Q. And then three were formally heard to vote  
5 by City Council.

6 A. Not to be a stickler but City Council,  
7 they heard all the items. They took a vote on the  
8 request for withdrawal, which they did.

9 Q. And you are right.

10 A. And then they reviewed the subsequent  
11 three applications.

12 Q. Good for you. And thank you for the  
13 correction. I mean that. I want you to be careful  
14 for not only my clients protection, the City's  
15 protection and the plaintiff's protection as well.

16 So the withdrawal occurred without  
17 prejudice at the time of the City Council meeting on  
18 November 16<sup>th</sup> but you were present for both  
19 meetings?

20 A. That is correct.

21 Q. You were present to hear Mr. Jurbic's  
22 response to questions asked by the chairman of the  
23 City Planning Commission with regard to the hard  
24 zoning that existed on my clients.

25 (Reporter interruption.)

207

1 Q. You were present to hear Mr. Jurbic's  
2 words in answering a question by the planning  
3 commission chairman, whose name I don't recall, where  
4 he stated, in response to a question asked, that the  
5 applicants had hard zoning for R-PD for the property  
6 in question, correct?

7 MR. BICE: Objection to the form.

8 BY MR. JIMMERSON:

9 Q. Did you hear those words?

10 MR. BICE: Objection to form the record  
11 speaks for itself.

12 MR. JIMMERSON: Thank you counsel.

13 THE WITNESS: I was present at the  
14 meeting. I don't recall the specific conversation  
15 but it is recorded, so I could refresh my memory to  
16 answer that if you like.

17 BY MR. JIMMERSON:

18 Q. When I resume your deposition in the next  
19 day, I might play it for you and you can listen to it  
20 again.

21 But do you agree that the property owned by  
22 my clients enjoys hard zoning for R-PD7?

23 MR. BICE: Objection to the form. States  
24 a legal conclusion. Go ahead.

25 THE WITNESS: I agree that the property is

208

004993

004998  
RA 03656

1 hard zoned R-PD7.  
 2 BY MR. JIMMERSON:  
 3 Q. And as you answered the questions earlier  
 4 to opposing counsel that allows a -- the landowner to  
 5 petition to request for a density up to 7.49 units  
 6 per acre?  
 7 A. The zoning district inherent in an R-PD7  
 8 designates the number of dwelling units. The  
 9 applicant who has that designation on their property  
 10 would have to petition the City Council for approval  
 11 of -- of that action, and it is -- in reviewing it,  
 12 we would review the proposed development, any other  
 13 applications that would be required, and that  
 14 includes reviewing the general plan and the zoning  
 15 district and the development standards that they're  
 16 proposing.  
 17 Q. Agreed. And I'm not suggesting otherwise.  
 18 What I'm saying is the zoning entitlement the hard  
 19 zoning has a, by category, an ability to develop up  
 20 to 7.49 units per acre, subject to all the other  
 21 considerations you've mentioned correct?  
 22 MR. BICE: Objections to the form. Calls  
 23 for a legal conclusion and misstates the law.  
 24 BY MR. JIMMERSON:  
 25 Q. You may answer the question.

209

1 THE WITNESS: My understanding of it is  
 2 that the designation of R-PD has associated with it  
 3 an unit number -- a density, and that is the maximum  
 4 in which can be developed through that zoning  
 5 district without requesting something else.  
 6 BY MR. JIMMERSON:  
 7 Q. And that density limit is 7.49 units per  
 8 acre.  
 9 A. Yes.  
 10 MR. BICE: Same objections as before.  
 11 Sorry Mr. Lowenstein.  
 12 THE WITNESS: Yes that's how the R-PD7 --  
 13 BY MR. JIMMERSON:  
 14 Q. Now, you were asked to look at in  
 15 Exhibit 8, if you'll turn to Exhibit 8, you were  
 16 asked to look at page 18. Withdraw I'm sorry. 1  
 17 other question before we get to page 18. Would you  
 18 look at page Bates stamped number 8303 within  
 19 Exhibit 8.. It looks like this.  
 20 A. Yes, sir.  
 21 Q. What does this purport to show?  
 22 A. The title of it is Peccole Ranch Resort.  
 23 It's kind of granular but it shows park and fields,  
 24 tennis courts. I can't make out much more. Shows  
 25 adjacent to a golf course. And it has a number of

210

1 buildings in the center of it.  
 2 Q. Where is it located? What intersection?  
 3 A. The roadways are -- it's hard to discern  
 4 but it's just south of Angel Park which you can make  
 5 out, so that would be Alta on the east west road, and  
 6 my assumption is that this is Rampart or at that  
 7 point it might have still been Fort Apache.  
 8 Q. And is that a golf course that runs --  
 9 that crosses the road?  
 10 A. I can't really discern that. I see what  
 11 looks to be fairways and greens on the west side of  
 12 the road.  
 13 Q. Crossing the road right?  
 14 A. Well crossing the road. I'm not sure if  
 15 that's golf course. I don't see any fairway or  
 16 greens. I can't discern.  
 17 Q. Was any of this built as we now sit here  
 18 in 2016?  
 19 A. In this composition, no.  
 20 BY MR. JIMMERSON:  
 21 Q. Can you let me know which page number  
 22 you're looking at.  
 23 MR. JIMMERSON: I did and I put it in the  
 24 record 8303 counsel.  
 25 MR. BICE: Thank you.

211

1 BY MR. JIMMERSON:  
 2 Q. Now looking at page 18 of the document you  
 3 were asked several questions by opposing counsel.  
 4 A. Okay.  
 5 Q. No problem at all.  
 6 Now -- can I see your copy, please? Thank  
 7 you. Mr. Bice, will you agree that the handwriting  
 8 and the circles and stuff is not Mr. Lowenstein's?  
 9 MR. BICE: Yes. I'm not sure who it is it is  
 10 in the version we were using was the clean version.  
 11 MR. JIMMERSON: Well I don't know. What  
 12 I'm looking at doesn't suggest that.  
 13 MR. BICE: Yeah, I know I see now what  
 14 you're saying Jim but the version we used with Tom  
 15 didn't have this on it.  
 16 MR. JIMMERSON: But this is what you have  
 17 used to and I just want to say the handwritten words  
 18 in the circle is not original.  
 19 MR. BICE: Those written words are not  
 20 from the City. I know that.  
 21 MR. JIMMERSON: Fair enough.  
 22 BY MR. JIMMERSON:  
 23 Q. Now the caption of this Peccole Ranch land  
 24 use data phase two, correct?  
 25 A. Correct.

212

004994

004999  
 RA 03657

1 Q. And for the benefit of the judge who might  
2 read this transcript or who might have it read to him  
3 or the jury who might listen to this this is  
4 relating to phase two and would you agree with me  
5 that would be the property north of Charleston?  
6 A. Primarily, phase two includes, for lack of  
7 better terms, basically a peninsula that runs all the  
8 way down to Sahara.  
9 Q. Got it. Thank you so much. So the land  
10 use is identified in these these seven or eight  
11 categories? Would you read those land use categories  
12 please?  
13 A. Single family, multi family, commercial  
14 slash office, resort-casino, golf course drainage,  
15 right of way, elementary school.  
16 Q. Did you happen to notice whether or not  
17 there was a golf course in the 1986 to 1990 time  
18 period scheduled for the phase one of the Peccole  
19 Ranch Master Plan?  
20 A. In relation to this document?  
21 Q. No. Phase one south of Charleston.  
22 A. I would have to review it. I don't  
23 recall. My recollection says there may have been  
24 actual golf course holes on the southern portion, but  
25 I would have to review that to confirm.

213

1 Q. But in any event it's clear it was  
2 eliminated by 1989, correct?  
3 MR. BICE: Objection to form.  
4 THE WITNESS: Well if it was part of  
5 Venetian Foothills and then '89 and then '90, the '90  
6 obviously doesn't reflect it.  
7 BY MR. JIMMERSON:  
8 Q. There is no golf course built there now  
9 south of Charleston between Rampart and wall pie or  
10 Rampart and -- correct?  
11 A. Not as part of the Peccole Ranch Master  
12 Development.  
13 Q. All right. Now, looking at these land  
14 uses, there is proposed acreage to be allocated to  
15 these different land uses, correct?  
16 A. There are associated acreages in the  
17 column to the right of the land uses.  
18 Q. But this is conceptual, it can vary,  
19 correct?  
20 MR. BICE: Objection to the form.  
21 BY MR. JIMMERSON:  
22 Q. Can it vary? Can 402 acres be used for  
23 single family?  
24 MR. BICE: Same objection. Go ahead.  
25 THE WITNESS: On page 1 of this Exhibit B

214

1 it says it's conceptual. Then as subsequent land use  
2 applications have modified land use designations, my  
3 answer would be yes.  
4 BY MR. JIMMERSON:  
5 Q. You said you read Mr. Perrigo's  
6 deposition.  
7 A. That is correct.  
8 Q. Mr. Perrigo was clear to denominate the  
9 many departures from this conceptual plan that  
10 occurred from 199 to the present, correct?  
11 MR. BICE: Objection to the form.  
12 Foundation.  
13 THE WITNESS: My recollection is that he  
14 made mention that there were instances.  
15 Q. And he used the word in fact on several  
16 occasions inconsistencies. Do you recall?  
17 MR. BICE: Objection to the form. Go  
18 ahead.  
19 THE WITNESS: It was a long deposition and  
20 a lot of reading.  
21 BY MR. JIMMERSON:  
22 Q. Yes, it was?  
23 A. So I'm not sure if I'm retaining  
24 everything from that.  
25 Q. But your own words would observe that there

215

1 are wholesale number of inconsistencies between what  
2 the conceptually was discussed in 1989 and what was  
3 actually constructed in the years that followed to  
4 the present date, agreed?  
5 MR. BICE: Objection. Sorry are you done?  
6 MR. JIMMERSON: Thank you counsel.  
7 MR. BICE: Objection to the form. Go  
8 ahead.  
9 THE WITNESS: There are changes from that  
10 original master development plan from '90 going on  
11 forward. As far as his deposition, I don't know if  
12 he had any examples, but there are, you know -- my  
13 only recollection of things that would differ would  
14 be northern portion of Boca Park, the Queensridge  
15 towers, the southwest corner of wall -- sorry, it  
16 would be the northeast corner of Hualapai and  
17 Charleston and there's some other examples. Those  
18 off the top of my head I know are different from the  
19 90 plan.  
20 Q. Now does the fact that -- what  
21 significance if any do you take from the fact that  
22 there is a place holder of a dash next to commercial  
23 slash office?  
24 MR. BICE: Objection to the form and the  
25 representation that a dash is a quote place holder.

216

004995

005000  
RA 03658

1 THE WITNESS: As previously stated, one  
2 can infer that it has a zero as I stated. It could  
3 be inferred as other things. If, in fact, somebody  
4 applies to amend something, then obviously the  
5 acreage would change.  
6 BY MR. JIMMERSON:  
7 Q. Well under this conceptual plan, how  
8 much -- how many offices -- how many offices could be  
9 placed in the commercial office category? How many  
10 could be built under the conceptual master plan?  
11 BY MR. BYRNES:  
12 Q. Of commercial slash office.  
13 MR. BYRNES: Acres.  
14 Q. No I want to know how many offices can be  
15 built.  
16 MR. BICE: Units.  
17 BY MR. JIMMERSON:  
18 Q. How much square foot can be built. I'll  
19 withdraw the objection.  
20 BY MR. JIMMERSON:  
21 Q. How many units?  
22 REPORTER'S NOTE while withdraw?  
23 A. This table does not delineate any units.  
24 It doesn't speak to that. It just says acreage dash  
25 on density dash on units, both of which are met.

217

1 Q. It certainly allows it to be constructed  
2 would you agree?  
3 A. Yes.  
4 Q. Okay. But the amount isn't determined at  
5 least at the conceptual time of this in 1989?  
6 MR. BICE: Objection to form.  
7 BY MR. JIMMERSON:  
8 Q. Correct?  
9 A. Yes.  
10 MR. BICE: I'm sorry object to form and  
11 objection to the reference 1989.  
12 BY MR. JIMMERSON:  
13 Q. Even if this were deemed to be in 1990,  
14 there's no limitation on how many units are going to  
15 be placed in commercial office at this time, correct?  
16 A. Not by this table.  
17 Q. And if you will read the next line,  
18 resort-casino, supposedly going to be on 56 acres, we  
19 don't know how many with -- what the density for that  
20 hotel is going to be, correct, how many rooms are  
21 going to be built, how many square foot of casino?  
22 A. Right. As far as a resort-casino it's not  
23 looked at in regards to density. It's just the  
24 development. There are hotel rooms associated with  
25 it, but they're not looked at in the sense of

218

1 density.  
2 Q. So if I understand your testimony, and  
3 this is an area where you're teaching me, Mr.  
4 Lowenstein, you wouldn't use the hotel/casino as a  
5 count against 4742. Is that what you're saying?  
6 MR. BICE: Objection. Form. Go ahead.  
7 THE WITNESS: That is correct.  
8 BY MR. JIMMERSON:  
9 Q. Did you understand my question?  
10 A. I did.  
11 Q. Okay. But nonetheless there is no attempt  
12 in 1989 or 1990 when the master plan is being  
13 discussed in Exhibit 8 to identify the density or the  
14 number of hotel rooms or the like associated with the  
15 resort-casino. Agreed?  
16 A. I would have to read through the verbiage  
17 of the entire document but pursuant to this table it  
18 does not address that.  
19 Q. All right. And the golf course drainage  
20 talks about 211.6 acres if I'm reading that correct.  
21 A. I am assuming there should be a decimal  
22 point there, yes.  
23 Q. If there's not then my mind put it in.  
24 Thank you.  
25 A. There's not a decimal.

219

1 Q. How many acres are now -- how many acres  
2 are presently utilized for the golf course here in  
3 2016?  
4 A. Going off the public notifications on the  
5 applications, I'm basing it on 250.92 acres.  
6 Q. And is all of that golf course?  
7 A. I believe so. If anything, it may include  
8 where the clubhouse is.  
9 Q. Okay. And how would it have changed --  
10 and how many acres are devoted to drainage in the  
11 present development?  
12 A. I don't know.  
13 Q. Now, drainage is an issue that the  
14 developer works with the City, correct?  
15 A. They work with the City City yes it would  
16 be with the Department of Public Works.  
17 Q. And at least from your expertise but also  
18 being involved in the City, you saw what Mr. Lowie  
19 and others did with the Tivoli development across the  
20 street?  
21 A. Yes.  
22 Q. And what I mean there was a significant  
23 issue of dealing with drainage at that location.  
24 Would you agree?  
25 A. Through conversations and on the existing

220

004996

005001  
RA 03659

1 projects about the box culverts and things like that,  
2 I have been made aware of the conditions that needed  
3 to be remedied.

4 Q. You and I could drive right there to Alta  
5 and Rampart we could be on the golf course side on  
6 see where the drainage is, we could then go over to  
7 Tivoli and see how they dealt with the drainage  
8 there, building over it. That's a fair statement,  
9 correct?

10 A. Yes, that is correct.

11 Q. All I'm trying to get at is the City can  
12 work with the developer resolve issues involving  
13 drainage, and was, you have indicated, with the  
14 proper permissions you can build over drainage, you  
15 can build around drainage, you can solve the issue as  
16 long as you have both federal and state approval.  
17 Agreed?

18 A. I agree to that, yes. I previously stated  
19 that drainage easements if they're not needed in  
20 their current configurations or immediate, it's  
21 pretty much up to the Department of Public Works.

22 Q. Within the City of Las Vegas.

23 A. If they agreed ever agree it's immediate  
24 they would also be able to tell you if -- whichever  
25 process your meeting, if you can build (CHECK).

221

1 Q. And you work with the City to solve that  
2 issue or at least you agree it can't be solved and it  
3 has to be left to drainage?

4 MR. BICE: Object to form.

5 THE WITNESS: The applicant would work  
6 with, yes the Department of Public Works.

7 Q. And the Department of Public Works is part  
8 of the City of Las Vegas.

9 A. That is correct.

10 Q. It's one of your sister departments at the  
11 City.

12 A. Yes, a fellow department.

13 Q. Now, looking at the right of way, there  
14 are 60.4 acres that are guesstimated to be right of  
15 way. Do you see that?

16 A. I do.

17 Q. And there is, again, no place -- I call it  
18 a dash, not a zero, but a dash, right?

19 A. That is correct, there's a dash.

20 Q. And what do you understand is being  
21 communicated by the term right of way?

22 A. The public roadways.

23 Q. Could it also include open space, small  
24 parks?

25 MR. BICE: Objection to the form.

222

1 BY MR. JIMMERSON:

2 Q. You know roundabouts, things like that?

3 A. I would have to defer to counsel as far as  
4 the full scope of what right of way could entail.

5 Q. But at least as you understand it, it's  
6 the roads and the ability to egress and ingress on  
7 the property. Would that be a fair statement?

8 A. Yes, that would.

9 Q. And then you have elementary school for  
10 13.1 acres. Do you ever do you know with dash as  
11 density how do you treat density relative to an  
12 elementary school. Does that count against density  
13 is really the question or do you treat it like a  
14 resort-casino, it does not count against density?

15 MR. BICE: Objection to form.

16 Q. First of all do you understand my  
17 question.

18 A. I do understand the question.

19 Q. Now answer to the best of your ability  
20 please.

21 A. The type of development would not be  
22 subject to any density. It's not calculated similar  
23 to how I stated on the resort-casino.

24 Q. Then you have total of 995.4 acres if I'm  
25 inserting the point correctly. Do you see that?

223

1 A. The one I'm looking at 99- -- 99 -- 996  
2 and I'm assuming there is a point and four.

3 Q. Again, based upon the total acreage of  
4 doing the math at that time, that's roughly 4.5  
5 dwelling units per acre, correct?

6 A. That is correct.

7 Q. For a total of net units of 4,247?

8 A. Correct.

9 Q. I have read that correctly?

10 Yes.

11 Q. Would you read the note right below that  
12 please?

13 A. Note: Overall density based on all areas  
14 except right of way.

15 Q. Now, what did that mean to you as you read  
16 those words then as you study this and now?

17 A. That the right of way acreage was not  
18 included in the acreage to calculate the overall  
19 density.

20 Q. So excluding 60.4 acres, the density was  
21 computed upon the other categories except for right  
22 of way; is that right?

23 A. I'm assuming so. I would have to do the  
24 math.

25 Q. All right. Now, because hard zoning on

224

004997

005002  
RA 03660

1 this property owned by my clients occurred first in  
 2 time in 1990 and then as you have noted in 1996 a  
 3 golf course was constructed that originally as you  
 4 have seen in the plans was supposed to be 18 holes  
 5 and turned out to be 27 holes and we can look at it  
 6 and know it was 27 holes. Is that a reason why the  
 7 City has -- and your department believes that my  
 8 client has the right to build on the golf course?  
 9 MR. BICE: Objection. Were you done?  
 10 MR. JIMMERSON: I am.  
 11 MR. BICE: Okay. Countless objections.  
 12 Objections to form. Calls for a legal conclusion.  
 13 Calls for speculation by the witness. And misstates  
 14 the law.  
 15 BY MR. JIMMERSON:  
 16 Q. I'm going to revise the question.  
 17 Is it your understanding based upon your  
 18 work at the City of Las Vegas and your position there  
 19 and knowing the hard zoning that exists there, that  
 20 my clients have the right to build towards 7.49 units  
 21 on the property that they own, otherwise you and I  
 22 would call is the golf course?  
 23 MR. BICE: Objection to form. Calls for a  
 24 legal conclusion. Misstates the facts and objection  
 25 that it misstates the law.

225

1 BY MR. JIMMERSON:  
 2 Q. I must be getting to the heart of the  
 3 matter.  
 4 MR. BICE: Go ahead. I just want to  
 5 preserve my objection?  
 6 MR. JIMMERSON: Please answer.  
 7 MR. BICE: I would like to hear the  
 8 answer.  
 9 THE WITNESS: The applicant has the right  
 10 to petition the City Council to develop their  
 11 property.  
 12 Q. And does it have the right to develop the  
 13 property with the zoning that exists, some form of  
 14 development on the property?  
 15 MR. BICE: Same objections. Go ahead.  
 16 MR. BYRNES: I think I would also say  
 17 legal conclusion there. Go ahead and answer.  
 18 THE WITNESS: In their petition to develop  
 19 their property, they're going to have to apply for  
 20 all required applications and then ultimately the  
 21 decision by the City Council as to what is --  
 22 whatever their finding may be compatible harmonious  
 23 with the surrounding area, but it would be their --  
 24 their discretion.  
 25 ///

226

1 BY MR. JIMMERSON:  
 2 Q. Did you support the project of 770  
 3 units -- 720 units, excuse me, when it was proposed  
 4 in August of 2015?  
 5 MR. BYRNES: Are you asking Mr. Lowenstein  
 6 personally?  
 7 MR. JIMMERSON: Yes.  
 8 MR. BYRNES: Or --  
 9 BY MR. JIMMERSON:  
 10 Q. Good distinction. Asking Mr. Lowenstein  
 11 as part of the planning department.  
 12 A. As part of the planning department? Our  
 13 original design review meeting from that as the  
 14 department, we came out with an understanding that we  
 15 were getting an overall package, so we did not come  
 16 out with a recommendation until the overall package  
 17 was submitted. Subsequently, then we had a  
 18 recommendation of approval on the application. With  
 19 the withdrawal of the other items, it went forward  
 20 with the recommendation of approval and then at the  
 21 meeting, the director, based upon the discussion,  
 22 council withheld a recommendation.  
 23 BY MR. JIMMERSON:  
 24 Q. Why did you conclude -- why did the  
 25 department conclude that a major modification was not

227

1 required, initially on the 720 and now here more  
 2 recently on the 720?  
 3 MR. BICE: Objection. Objection to form.  
 4 Go ahead, sir.  
 5 THE WITNESS: As previously stated, that  
 6 there was -- within the geographical area of the  
 7 original zoning that capped the number of units at  
 8 4,247 if I quoted that right, there were still  
 9 allowable units within that, and that with that they  
 10 were petitioning through the general plan amendment  
 11 rezoning and the site development review and a  
 12 modification wasn't necessary.  
 13 Q. When you look at Exhibit 8, page 18 which  
 14 is what you and I would call is the table of land use  
 15 data, the one we were looking together, is there any  
 16 category there under land use called open space? You  
 17 can answer the question sir?  
 18 MR. BICE: Is it eight?  
 19 MR. JIMMERSON: Exhibit 8 Bates stamp  
 20 number 8310 the one we went through together.  
 21 Q. Is there any land use here designated open  
 22 space?  
 23 A. No.  
 24 Q. Was there any requirement in the Z-17-90  
 25 to maintain open space imposed upon the Peccole Trust

228

004998

005003  
 RA 03661

1 when they received the City Council approval on  
2 April 4<sup>th</sup> of 1990?  
3 MR. BICE: Objection to the form.  
4 THE WITNESS: The conditions of approval  
5 for that zoning action, I don't recall having  
6 something specific to required amount of even space.  
7 BY MR. JIMMERSON:  
8 Q. What were, to the best of your  
9 recollection, the only condition or conditions placed  
10 upon the approval of Z-17-90 and the R-PD7 zoning for  
11 this land in April 1990?  
12 A. Just to be specific, the rezoning had  
13 multiple zoning district. It was applicable to all  
14 of those district. They had a maximum number of  
15 units as a condition placed on them. As previously  
16 discussed, they had a condition to conformance of the  
17 conditions of the master development plan, which I  
18 have stated I have not been able to find any. And  
19 then I imagine there are a number of other conditions  
20 from public works and other departments, they're all  
21 roped into one letter.  
22 MR. JIMMERSON: Thank you. Can we pause  
23 just for a minute please.  
24 Q. I have never seen on this property a  
25 condition that requires the Peccole Trust to comply

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1 with a master plan. I'm trying to square your last  
2 answer if you'll be more clear to me with regard to  
3 what it is you mean when you say I have never been  
4 able to confirm as I stated I have not been able to  
5 find any. Would you please help us understand your  
6 testimony or at least help me understand your  
7 testimony better, please?  
8 MR. BICE: Objection to the form and the  
9 factual representation.  
10 BY MR. JIMMERSON:  
11 Q. You can go ahead and answer the question.  
12 A. So in doing the research of the land use  
13 entitlements and specifically this zoning action and  
14 then reviewing that conditions of approval part of  
15 it.  
16 Q. Referring to April of 1990.  
17 A. Correct referring to Z-17-90 as the  
18 rezoning application and the condition in there, I  
19 don't know if it's condition number 2 or three on  
20 that a-- on that final action letter, rereviewing the  
21 minutes from -- and the agenda from that same  
22 meeting, I have not been able to find any conditions  
23 that are specific to that agenda item which is the  
24 master development plan, regarding phase two.  
25 Q. Meaning there's no minutes or any

230

1 requirement you can find to comply with the phase two  
2 master plan. Is that what you mean by that last  
3 answer?  
4 MR. BICE: Objection to form.  
5 BY MR. JIMMERSON:  
6 Q. You can answer the question sir.  
7 A. Meaning there weren't -- as the zoning  
8 action Z-17-90 had its own specific condition  
9 approval letter.  
10 Q. I understand.  
11 A. The master development plan did not have  
12 have its own specific letter with conditions imposed  
13 that I have found at this point.  
14 Q. And what is the significance of that?  
15 A. The condition that it says to conform to  
16 it, if there are no conditions, then it's moot.  
17 Q. And you don't find any conditions at least  
18 through your research in studying the minutes and the  
19 folder that you examined is that right?  
20 MR. BICE: Objection to form. Go ahead.  
21 THE WITNESS: Based upon the research, I  
22 have not found an action letter regarding that  
23 development -- master development plan item.  
24 BY MR. JIMMERSON:  
25 Q. And so I understand -- in my vernacular,

231

1 therefore, there is no condition that you have been  
2 able to find that requires compliance with the  
3 conceptual master plan in the Z-17-90 action by the  
4 City Council; is that correct?  
5 MR. BICE: Objection to form. Misstates  
6 the law. Misstates the facts.  
7 Go ahead, sir.  
8 THE WITNESS: The items are related. I  
9 would have to defer to counsel on their  
10 interpretation.  
11 BY MR. JIMMERSON:  
12 Q. I'm asking what you found. I'm trying to  
13 understand wht you're saying. You're saying,  
14 Mr. Jimmerson, I don't see any condition that  
15 requires compliance with a master plan in my  
16 research. Is that what you're telling us?  
17 MR. BICE: I apologize, sir. I need to  
18 state my objection. Object to form. Misstates the  
19 law and misstates the facts. Go ahead, sir.  
20 THE WITNESS: The zoning action has a  
21 condition that says to conform to the conditions of  
22 the master development -- master development plan. I  
23 have not been able to locate a separate conditions of  
24 approval letter for that master development plan.  
25 That is what I'm stating.

232

004999

005004  
RA 03662

1 BY MR. JIMMERSON:

2 Q. All right. And did you observe that the  
3 approval the City Council in April of 1990 had a five  
4 year limit after which it expired?

5 A. Without reviewing the condition of  
6 approval, if it had resolution of intent it would  
7 have been listed as a condition on it. Some actions  
8 don't and run indefinitely.

9 Q. What happens if there's a five year limit  
10 to the approval?

11 A. That is usually the duration in time which  
12 the council has deemed for the entitlement to be  
13 exercised.

14 Q. Now, you mentioned something called PR-OS.  
15 Right? I heard a question asked of you this morning  
16 about that.

17 A. Yes. Throughout the course of this  
18 deposition, we have referred to a general land use or  
19 in the Las Vegas 2020 Master Plan a designation  
20 called PR dash OS which is parks recreation and open  
21 space.

22 Q. In 1990 was there any designation for this  
23 ground as PR-OS?

24 A. From my research the designation on this  
25 property or this general area would have been to

233

1 the -- in the 1985 general plan which did not have  
2 specific designations but more of -- and it's I guess  
3 they called it the title might be a general land use  
4 plan in the sense that it's not a site specific. It  
5 had swaths of rural, suburban or urban designations.

6 Q. So PR-OS was not something that was -- was  
7 not a designated land use in 1990 when Mr. Pecuniary  
8 or the Peccole Trust obtained its entitlements before  
9 the City Council?

10 A. Not to my knowledge.

11 Q. Is it your contention today, now in 2016,  
12 December, that there is a land use designation for  
13 the golf course owned by the companies that I  
14 represent that they're subject to PR-OS land use  
15 designation?

16 A. As reflected on the current southwest  
17 sector land use map, yes.

18 Q. And when was the PR-OS land use  
19 designation affixed to the property owned by my  
20 clients, to the best of your knowledge?

21 A. I don't know. Research would have to be  
22 done. I understand there's a 92 plan and then  
23 there's the adoption of the Las Vegas 2020 Master  
24 Plan in 2000.

25 Q. Could it have been done as recently as

234

1 February of 2015?

2 A. I don't think so.

3 Q. Have you -- did you have any -- have you  
4 heard any claim -- withdrawn.

5 Have you seen any document that lists the  
6 property -- withdrawn.

7 The golf course was constructed in the 1996  
8 to 2000 time period. Is that your understanding?

9 A. I don't know the exact date when it was  
10 constructed.

11 Q. Not the exact four years, but would you  
12 agree it was about that time period?

13 A. I don't know if it was '96 or not. I  
14 review airline photography to tell you exactly when  
15 the construction started.

16 Q. All right. Now the land that's owned by  
17 my clients 180 Land Company, Seventy Acres and Fore  
18 Stars, they own the golf course as it's built, as  
19 built that I was showing you in Exhibit D correct?

20 MR. BICE: Objection to form.

21 THE WITNESS: Is it C?

22 BY MR. JIMMERSON:

23 Q. Thank you Exhibit C.

24 A. If this is the current configuration of  
25 the 1827, yes.

235

1 Q. And since we know that the location of the  
2 golf course has significantly changed from what was  
3 conceptually thought about in 1989 or 1990, how does  
4 the land use designation change to match the -- you  
5 know, the current as built location? How does that  
6 work?

7 MR. BICE: Objection to the form. Go  
8 ahead.

9 MR. BYRNES: Do you understand the  
10 question?

11 THE WITNESS: Are you asking how did the  
12 golf course become designated parks recreation open  
13 space?

14 Q. The answer is yes, but what I'm trying to  
15 understand is you couldn't have the current land use  
16 desig -- I'm asking. I'm not telling you. I'm  
17 asking. You would not have a land use designation of  
18 PR-OS on the golf course that's built today until  
19 it's built today, until it was built. Agreed?

20 A. I'm not sure.

21 Q. Do you understand the question? You  
22 couldn't put a PR-OS land use on another location,  
23 that didn't happen in this case right I mean we don't  
24 have PR-OS in 1990 when my clients not my clients but  
25 the owner, obtains the Z-17-90 right of entitlement

236

005000

005005  
RA 03663

1 under zoning the golf course as-built in '96 to 1999  
2 time period. So the PR-OS designation land use would  
3 have had to occur after you know where the location  
4 of the golf course is built. Would that be a fair  
5 statement?

6 MR. BICE: Objection to form.

7 THE WITNESS: From my recollection in the  
8 1992 general plan, there was a comprehensive survey  
9 and that is where they designated land use  
10 designations.

11 Q. Was PR-OS designated on my clients  
12 property in 1992?

13 A. I believe the designation it could have  
14 been P, I'm not sure if PR-OS existed, but P existed  
15 and it would be in the configuration of I believe the  
16 master development plan.

17 Q. And what configuration in 1992 was that?

18 A. That would be the configuration as I'm  
19 assuming it's the configuration of the Z-17-90 phase  
20 two rezoning and and subsequent amendment of over all  
21 Peccole Ranch Master Development.

22 Q. When was PR-OS as a designated land use  
23 created by the City of Las Vegas?

24 A. I don't know research would have to be  
25 done.

237

1 Q. Was it before or after you became a  
2 planner in 2003?

3 A. As a guess I would say before.

4 Q. It existed at the time you came to work  
5 there?

6 A. I believe so. I mean I can look at  
7 Exhibit 7, which says it's adopted in 1999, which has  
8 parks recreation and open space.

9 Q. And how is a PR-OS -- how is a land use  
10 designation like PR-OS adopted by the City of Las  
11 Vegas? What has to be done to adopt it?

12 A. My limited exposure with the overall  
13 process, this is where Mr. Summerfeld would probably  
14 be more apt to speak to, but there is a lot of public  
15 input, {shurets and public outreach in coming up with  
16 the general plan and then there are neighborhood  
17 meetings when the plan is towards the final draft and  
18 then obviously it goes before the City Council for  
19 adoption and ordinance.

20 Q. And is the affected -- are there any  
21 notice of the landowner of PR-OS being placed upon  
22 their property?

23 A. As I previously stated earlier, I believe  
24 as it's a City-wide effect that they don't notice  
25 every individual property owner but once again I

238

1 wasn't here when they did it, so I can't confirm.

2 Q. What if there is a conflict as we have  
3 here with hard zoning of R-D7 since 1990 and possibly  
4 working together PR-OS being put on this property in  
5 the late 1990s?

6 MR. BICE: Objection to form. Objection  
7 to the representation of conflict.

8 Q. First of all would you agree, as Mr.  
9 Perrigo, said that's a conflict, R-PD7 zoning and  
10 building rights and a land use designation of PR-OS?

11 MR. BICE: Objection to form and objection  
12 to the representation that Mr. Perrigo said it's a  
13 conflict.

14 BY MR. JIMMERSON:

15 Q. He used the word inconsistency. Would you  
16 agree that there is an inconsistency between this  
17 property having a hard zoning of 1990 of R-PD7 and  
18 sometime thereafter a PR-OS placement of land use  
19 designation by the City?

20 MR. BICE: Objection to the form.  
21 Objection to the representation he claimed it was a  
22 an inconsistency.

23 MR. JIMMERSON: You can answer the  
24 question. I'm quite satisfied that's the word Mr.  
25 Perrigo used.

239

1 Q. I'm asking your opinion, Mr. Lowenstein,  
2 your observation. I'll state it quickly is there an  
3 inconsistency between the R-PD7 rights to build,  
4 zoning rights, entitlements, and placing a land use  
5 designation of PR-OS on that very same land?

6 MR. BICE: Objection to form. Objection  
7 to the representation that a zoning grants a right to  
8 build. Go ahead.

9 Q. The question didn't include that but go  
10 ahead.

11 A. If somebody wanted to exercise the R-PD7  
12 for single family development, the Unified  
13 Development Code and the -- being the zoning code  
14 strives to have consistency between the general plan  
15 and the associated zoning district. In this instance  
16 the zoning district actually has its own dense tee  
17 called out appear the parks recreation open space  
18 does not. So we would look for that consistency and  
19 require it it be amended to have a designation that  
20 matches whatever the proposed development's overall  
21 density is going to be. In that light there are  
22 other situations where there are R-PD zoned  
23 properties with parks recreation and open space  
24 underneath it.

25 Q. What's underneath the zoning coming first?

240

005001

005006  
RA 03664

1 MR. BICE: Objection.  
2 THE WITNESS: I'm just using -- sorry.  
3 MR. BICE: Objection to form. Go ahead.  
4 THE WITNESS: I'm using that as far as the  
5 hierarchy of land use and general plan, broad stroke  
6 and then you go to on finer point and underrring with  
7 the general plan and zoning above.  
8 Q. But requesting a change in general  
9 amendment is because there is an inconsistency in the  
10 R-PD7 and the PR-OS?  
11 MR. BICE: Objection to form.  
12 Q. Otherwise there wouldn't be a need to  
13 amend the general plan, correct?  
14 A. For the exercising of that residential  
15 plan, yes.  
16 Q. And as between any conflict between PR-OS  
17 and R-PD7, the zoning trumps the land use  
18 designation, isn't that true, by statute?  
19 MR. BICE: Objection.  
20 THE WITNESS: That I would have to defer  
21 to counsel.  
22 MR. BICE: Object to form. Misstates the  
23 law.  
24 BY MR. JIMMERSON:  
25 Q. Let me ask your opinion. If there is a

241

1 conflict between land use designation and zoning what  
2 trumps what?  
3 MR. BYRNES: Just object calls for a legal  
4 conclusion go ahead and answer.  
5 THE WITNESS: It's my understanding a zone  
6 district gives a property owner property rights.  
7 Q. So therefore it trumps the land use  
8 designation when they are inconsistent.  
9 MR. BICE: Objection to form go ahead.  
10 BY MR. JIMMERSON:  
11 Q. You can answer the question yes or no sir?  
12 MR. BICE: Also can you hold on one  
13 second. I need to make this objection. Phil, if you  
14 allow him to answer this question, since he says it's  
15 his understanding, I'm going to follow up and ask him  
16 what's the basis for that understanding if he's  
17 giving a representation.  
18 MR. JIMMERSON: You don't have to,  
19 Counsel, I'll be asking the next question following  
20 that.  
21 MR. BICE: All I'm saying if he's going to  
22 claim it's -- I don't think he's allowed to testify  
23 that he has an understanding of X based on something  
24 told to him by the City attorney's office but then  
25 turn around and say I'm not going to explain X on the

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1 basis of privilege.  
2 MR. JIMMERSON: But he's not relied upon  
3 the City attorney. He can rely on Tom Perrigo who  
4 said the very same thing at page 52 and 53 of his  
5 deposition.  
6 MR. BICE: Actually, he didn't say that  
7 and for you to represent --  
8 MR. JIMMERSON: I'll read it to you,  
9 Counsel.  
10 MR. BICE: There's a lot of things he did.  
11 MR. JIMMERSON: I'll read it counsel.  
12 MR. BICE: Go ahead, Jim, read whatever  
13 you like.  
14 MR. JIMMERSON: Can we have the answer to  
15 the question?  
16 BY MR. JIMMERSON:  
17 Q. The property rights trumps the land use  
18 designation, correct?  
19 MR. BICE: Objection to form. Misstates  
20 the law and the City code.  
21 MR. BYRNES: And legal conclusion.  
22 Q. You may answer the question, sir. Your  
23 understanding.  
24 A. The zoning district as I said gives the  
25 property owner certain rights. For example, if you

243

1 had a commercial zoning district in a rural  
2 designation underneath it, you would be able to  
3 develop and be permitted the land uses under the C-1  
4 zoning district. In regards to a R-PD7, the zoning  
5 district has an inherent -- the number in that  
6 delineates the density of that zoning district, but  
7 to exercise it you still have to go through the  
8 discretion.  
9 Q. I'm not quarreling with that I'm saying to  
10 you you still have that zoning trumping the land use,  
11 and the difference is because you never get the  
12 landowners consent to the land use. You never get a  
13 written document by the landowner please approve  
14 PR-OS, correct?  
15 MR. BICE: Objection to the form.  
16 BY MR. JIMMERSON:  
17 Q. You can answer the question. You know  
18 exactly what I'm asking you.  
19 A. Can you just restate it?  
20 Q. Do you obtain the written consent of a  
21 landowner to the land use designation that the City  
22 puts on a piece of property?  
23 MR. BYRNES: In the general plan?  
24 Q. One by one. Did you get Mr. Peccole's  
25 consent to PR-OS if, in fact, he put it on there in

244

005002

005007  
RA 03665

1 1999?  
2 MR. BICE: Objection to the form. Go  
3 ahead.  
4 THE WITNESS: I have no idea of knowing  
5 that.  
6 BY MR. JIMMERSON:  
7 Q. In your time, have you ever obtained the  
8 landowners written consent to a land use designation  
9 that the City has imposed upon property?  
10 A. To my extent, I don't know of any time  
11 that the City has imposed.  
12 Q. And are you -- and -- okay. So you don't  
13 think it's an imposition upon a person's properties  
14 to try to change the land use designation when you  
15 have an existing building? Just exactly what you  
16 said. Somebody's got C-1 zoning and you've got --  
17 you want to put rural as a designation. He still has  
18 the right to build a commercial center, correct?  
19 MR. BICE: Objection to the form. Go  
20 ahead.  
21 MR. BYRNES: Do you understand?  
22 THE WITNESS: The example I gave was  
23 existing designations, not the City changing it by  
24 their own, you know --  
25 ///

245

1 BY MR. JIMMERSON:  
2 Q. Well what was the land use designation on  
3 this property before PR-OS was placed upon it, if you  
4 know?  
5 A. As I believe I stated in the 92 plan it  
6 was probably parks and either medium low density  
7 residential and then prior to that in the '85 plan it  
8 was suburban.  
9 Q. Is there any requirement for parks within  
10 the planned approved Z-17-90 upon the developer, is  
11 there any request for parks or recs as part of that  
12 zoning approval?  
13 A. Not to my knowledge as far as the  
14 documents. There's no request for parks.  
15 Q. Mr. Perrigo at page 52, line 25 and  
16 page 53, lines one through eight stated as follows:  
17 My position is that the zoning is -- that's what the  
18 proper way to say. What's the proper way to say it?  
19 The zoning governs more.  
20 Question: So --  
21 Answer: If the land use and the zoning  
22 aren't in conformance, then the zoning would be a  
23 higher order entitlement, I guess.  
24 Question: So it's your position that  
25 zoning supersedes the general plan?

246

1 Answer: Yes.  
2 Or the master plan?  
3 Answer: Yes.  
4 Is that also your understanding Mr.  
5 Lowenstein as it is Mr. Perrigo's?  
6 A. Similar in nature. The zoning -- zoning  
7 is the implementation of the general plan, and it has  
8 inalienable rights, it has property rights,  
9 associated with certain development standards.  
10 MR. BICE: Objection to form.  
11 BY MR. JIMMERSON:  
12 Q. What does the term inalienable rights mean  
13 to you as you use it?  
14 A. Meaning it has that entitlement.  
15 Q. I would like to take a restroom break and  
16 also try to work with you counsel with regard to --  
17 it's 5:20. I would like to find another time before  
18 Christmas where we can complete both Mr. Perrigo's  
19 and Mr. Lowenstein's depo with of course the consent  
20 of you Mr. Lowenstein, Mr. Perrigo and Mr. Byrnes.  
21 Why don't we go off the record to discuss scheduling.  
22 It's 5:20. I have worked long enough today. But I  
23 will need additional time.  
24 THE VIDEOGRAPHER: Going off the video  
25 record. The time is approximately 5:11 p.m.

247

005003

005008  
RA 03666

# Exhibit 161



# CITY OF LAS VEGAS

## 2050 Master Plan

A COMPREHENSIVE THIRTY-YEAR PLAN PREPARED  
FOR THE RESIDENTS AND BUSINESSES OF  
LAS VEGAS TO PROVIDE FOR THEIR HEALTH,  
SAFETY, PROSPERITY, SECURITY, COMFORT,  
AND GENERAL WELFARE



# LAND USE

✓ NRS 278.160.1(d)



## GOALS

- A. Develop compact and mixed-use neighborhoods with walkable access to jobs, amenities, education, services, and transit.
- B. Focus new development in infill and redevelopment areas.
- C. Utilize new development models that provide a broad mix of housing and neighborhood types to accommodate residents with varied incomes and in different stages of life.
- D. Improve the quality of districts and neighborhoods to promote an authentic, vibrant sense of place.
- E. Preserve and reuse historic structures and sites.

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I.A INTRODUCTION



A VISION FOR LAND USE AND CHARACTER

While previous master plans have focused on ways to classify use, density, and land use arrangements, this plan adds character and scale as key considerations. Character impacts how residents and visitors feel about a place and influences their decisions on where to live and visit. First impressions about a place go well beyond just land use and design plays a more significant role. Blending land use and character will guide future development and redevelopment that best fit the goals of this Master Plan. This builds upon the strategies in the Downtown Vision 2045 and subsequent zoning amendments towards a form-based approach that prioritizes character and place.

APPROACH

It is necessary to plan for future land use and development in a manner consistent with community goals and objectives. Las Vegas is a community with quality residential neighborhoods, commercial and industrial areas to provide tax base and employment, with quality municipal services and recreational opportunities. The land use plan provides a long-range focus to help continue this balance.

New land use and community character challenges arise as Las Vegas continues to mature: Competition for desirable land uses from surrounding communities will increase; redevelopment of aging sites will increase in importance; management of traffic on an existing roadway network will continue to be a priority; greater transit support will require greater supportive densities; and public infrastructure systems will continue to age. As a result, the development strategy has shifted towards focusing on vacant or under utilized property to provide for quality redevelopment.

The Place Types Framework Map is a representation of general physical features/land use activities in the city in 2050 and does not imply that all of the changes will or should occur in the near term. Development and redevelopment will proceed in a manner consistent with policies on the environment, transportation, and infrastructure capacity, and other matters which help determine the appropriate timeframe. Also, zoning decisions should, over time, produce changes that gradually establish greater conformity between the Zoning Map and General Plan. The General Plan should be carefully considered to ensure consistency is maintained when making decisions on planning and development matters: community changes which directly conflict could undermine the long-term objectives of the city and should be avoided.

MASTER PLAN	GENERAL PLAN	ZONING ORDINANCE
Provides <b>general policies</b> , a guiding framework	Finer grain detail of parcel-specific <b>future</b> land use	<b>Provides specific regulations, the law</b>
<b>Describes what should happen in the future,</b> recommends land use for the next 10 to 20 years	Implements the goals and strategies of this plan and sets the stage for <b>future rezonings</b>	<b>Describes what is and what is not allowed today</b>
Adopted under NRS 278.150	Adopted under NRS 278.160.1(d)	Adopted under NRS 278.250 as LVMC Title 19
Includes recommendations that involve other agencies and groups		Deals only with development-related issues under city control
<b>Flexible</b> to respond to changing conditions	<b>Amended over time</b> via subarea planning to implement place type strategies	<b>Fairly rigid, requires formal amendment to change</b>

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# Exhibit 163

**SPECIAL PLANNING COMMISSION MEETING  
OCTOBER 18, 2016  
VERBATIM TRANSCRIPT – ITEMS 6-12**

1443 **STEVE CARIA**

1444 Yeah, well, thank you. The absolute support from the City staff in rubberstamping this project is  
1445 at epic levels. Having done developments both inside the United States and outside the United  
1446 States, this is an egregious project. It just doesn't comply with the standards that I'm used to or  
1447 that I've ever seen.

1448

1449 Councilman Bob Beers, I met with him personally at one of the meetings, had a conversation  
1450 with him, and he said that this was absolutely an inverse condemnation issue and \$100 million  
1451 was going to be paid by the City of Las Vegas in the event that this project was turned down. I  
1452 asked Mr. Jarvis, I'm sorry, I won't pronounce your name correctly, if that in fact was the case  
1453 because I've heard from other people that is not the case. I've also heard the developer as well as  
1454 Bob Beers make the statement that this is a done deal. Wow, a done deal. To change a planned  
1455 community like this is a done deal. Think about it. Just of course just more fantasy. But one  
1456 question that has already been brought up to you is, if this was in your backyard, in your  
1457 community, I wonder how you would vote under those circumstances. I don't think that you  
1458 would be very appreciative of this existing.

1459

1460 The developers are working the political landscape to the maximum. They seem to have done  
1461 some things in terms of the politics, but the reality of this is, going back to what I said before, it  
1462 has changed many times, it's worn down a lot of the people, we have a lot of our residents are in  
1463 their 70s, 80s, and 90s, they don't even attend all of this, and many of them are not even here.  
1464 We ask that you adamantly vote against this particular project and not support it. Thank you.

1465

1466 **CHAIRMAN MOODY**

1467 Thank you. And before we move on, I'm going to ask Mr. Jerbic. I've heard this comment now a  
1468 few times about inverse condemnation and perhaps you could address that for us.

1469

1470 **BRAD JERBIC**

1471 I'll be happy to. The, with all due respect to what everybody says, this is what I believe are the  
1472 facts. When EMB acquired the property in Queensridge, that's the Badlands Golf Course, they

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1473 requested of the Planning Department a letter asking what the zoning classification, if there was  
1474 any, for the golf course was at that time. Planning provided two letters, one addressed three APN  
1475 numbers, one addressed one APN number. Both of those letters identified those properties as  
1476 having hard zoning R-PD7. R-PD7 no longer exists in our zoning code, but at the time it did  
1477 exist, it allowed up to, that is up to 7.49 units per acre. Because R-PD stands for Residential  
1478 Planned Development, the reason it is up to is, you have to be compatible with surrounding land  
1479 uses. So, as I've opined before, in my opinion, just my opinion, that if an individual were to  
1480 come forward with R-PD7 and ask for 7.5 units per acre next to acre parcels, half-acre parcels,  
1481 quarter-acre parcels, the Planning Department would not ever recommend approval of that cause  
1482 it's not harmonious and compatible.

1483

1484 The other thing a lot of people have said is that gives you a right to build up to 7.9 units per acre.  
1485 I have said it does not give you a right to build 7.92 units per acre; it gives you a right to ask.  
1486 Now, is denial of 7.49 units per acre amount to inverse condemnation? Absolutely not. Mr.  
1487 Schreck is correct. I've told him that. I've told the HOA meetings. Every meeting I've gone to I  
1488 have said that, and the developer here will say the same thing, they do not believe that there is an  
1489 inverse condemnation case if 7.49 units per acre were denied. However, and this is where there  
1490 will be some disagreement, I'm sure, the developer did acquire property that has hard zoning.  
1491 Many other golf courses here in town are zoned very specifically for civic use or for open space  
1492 use. This golf course was not. I don't know why, but 25 years ago or more when the hard zoning  
1493 went into place, it covered the entire golf course, the 250 that was referenced by Mr. Kaempfer.  
1494 As a result, the developer has a right to come in ask for some development there. What that  
1495 development is, how much there is, is up to this Planning Commission and up to the Las Vegas  
1496 City Council. Having said that, I'll be glad to answer any questions.

1497

1498 **CHAIRMAN MOODY**

1499 Okay. So, let's resume with the two minute presentations. Unless you walk up with at least five  
1500 or more people whose time you are taking, I'm going to give you two minutes.

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3418 **CHAIRMAN MOODY**

3419 Thank you. Public works?

3420

3421 **LUCIEN PAET**

3422 Sure, Mr. Chairman, through you. The water is going the same as it's been going for the last 20

3423 years. So, it's essentially the same conveyance corridor. If they want to build on top of the

3424 conveyance corridor, they need to build according to regional flood standards and as some things

3425 that were mentioned in the meeting, the Army Corps of Engineers and that type of thing. So,

3426 they'll – need to handle it through an approved drainage study, and it's basically the same

3427 conveyance as it is working today.

3428

3429 **CHAIRMAN MOODY**

3430 Okay. Thank you. Commissioner Trowbridge.

3431

3432 **COMMISSIONER TROWBRIDGE**

3433 Thank you, Chairman. I've got three questions, and then if no one else has any other additional

3434 questions, I'd be ready to make a motion. But my first question is, will our vote on this particular

3435 project create a precedent for other golf courses in the Valley or in the City, I guess? That's

3436 probably a question for staff.

3437

3438 **BRAD JERBIC**

3439 I'll be glad to answer that to the extent that I have an answer. The, recently, I think that there has

3440 been some evidence that the demand for golf in Las Vegas is down as it is across the country, and

3441 as a result, there are a number of courses, not just this one, that are seeking to convert to

3442 something else. Another one that has been cited in some of the meetings I've had with neighbors

3443 is Silverstone. Silverstone is completely different than Queensridge. As I stated at the

3444 beginning, for whatever reason, I wasn't here then, but the **Council gave hard zoning to this golf**

3445 **course, R-PD7, which allows somebody to come in and develop.** The Silverstone is zoned Civic,

3446 I believe, but beyond that, it is a drainage easement recorded over the entire property, and the

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3447 grass that is part of that golf course is integral to drainage. And Lucien, you will correct me if I  
3448 have misstated that, but that's what I believe to be true.

3449

3450 **LUCIEN PAET**

3451 That's correct.

3452

3453 **BRAD JERBIC**

3454 So, when the individuals who took over Silverstone attempted to turn off the water and kill the  
3455 grass, the City stepped in and required them to keep it open because of that drainage easement  
3456 and the requirement of the turf. If there is another golf course in town that has hard zoning like  
3457 this one does, I would be surprised, but it's not impossible that that isn't true. And if that were  
3458 true, then they would have the same rights as this applicant to come in and ask for either a  
3459 development agreement that gives them something beyond what you would be entitled to with  
3460 just the zoning or to come in and just follow the zoning and make that kind of request. So, I  
3461 believe to the extent that this is the first that you've seen converted, it would require the same  
3462 characteristics this golf course has, hard zoning, R-PD7 and the like, in order for somebody to  
3463 say no, to say no to a golf course where there is hard zoning.

3464

3465 As somebody said earlier, I wrote it down, it was Mr. Roesener, and he was exactly right. He  
3466 said there's no obligation to modify the Master Plan out here or the development. That's true, but  
3467 the flip side is also true, that something can happen here. And if this is denied, the applicant has  
3468 every right to come in and ask for the kinds of things that Mr. Kaempfer indicated in his  
3469 introduction, which is zoning consistent with the surrounding land uses.

3470

3471 **COMMISSIONER TROWBRIDGE**

3472 Thank you. So, I heard you say that the action we take on this is really not the matter, it's what  
3473 the hard zoning is for the parcel that's involved.

3474

3475 **BRAD JERBIC**

3476 Correct.

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3743 **COMMISSIONER CREAR**

3744 Okay. Thank you. Mr. Chairman, I have a question for you. There still seems to be some debate  
3745 about this R-PD7, and I just want to make sure that we're understanding, you're saying that that is  
3746 not in discussion? It is R-PD7, or the developer can build on this land without any, getting any  
3747 additional entitlements, that if this doesn't go through, they have the ability to build 7.49 homes  
3748 per acre on that land?

3749

3750 **BRAD JERBIC**

3751 It's a little more complicated than that.

3752

3753 **COMMISSIONER CREAR**

3754 Okay.

3755

3756 **BRAD JERBIC**

3757 And I think that I'll ask Mr. Kaempfer to feel free to disagree with me as I walk through it slowly.

3758 It is hard zoned R-PD7 according to our records. That is Residential Planned Development up

3759 to, up to 7.49 units per acre. The planned part of the residential plan development makes the  
3760 developer come in with projects that are compatible with surrounding land uses. Since this is  
3761 pretty built out, there's a lot of surrounding land uses; some are on acres, some are on half-acres,  
3762 some are on third acres. I don't want to speak for Mr. Perrigo, and I'll let him chime in here at the  
3763 end, but typically what staff would do is if somebody came in with a recommendation to build on  
3764 acre next to an already developed acre, they would probably say that's harmonious and  
3765 compatible. Now, that's part of the equation here. If they came in and said, we want to build 7.5  
3766 units per acre next to acre homes, Planning staff would no doubt say that's not compatible, and  
3767 the developer, I doubt, would even ask for that. I think Mr. Kaempfer is in agreement. I see him  
3768 nodding yes.

3769

3770 The next thing to keep in mind is that all of this land that's zoned R-PD7 is also unimproved  
3771 land. So, there is a portion of it that nobody could build anything in right now because it's in a  
3772 FEMA flood zone. So – that is something the developer is aware of, and he knows that before he

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3773 can even apply for any unit per acre that has to be removed from a FEMA flood zone. So, that's  
3774 what Lucien was talking about when he was talking about the flood control. Something is going  
3775 to have to occur to remediate that problem, and it's going to have to occur with City engineers  
3776 agreeing and it's going to have to occur ultimately with the federal government agreeing and  
3777 taking it out of a FEMA flood zone.

3778  
3779 Other things that have to occur, roads have to be built, and utilities have to be built, all of that has  
3780 to be built. So, to say that you could come in today and do anything, you can't do anything at this  
3781 moment because nothing is improved to develop on. But assuming that the land is improved,  
3782 that if the off sites are created to City standards, the flood control issues are remediated, and the  
3783 traffic and fire studies say what they say right now, which is no impact or an impact that can be  
3784 mitigated through other means, then the developer has a right to come in and ask for things that  
3785 are compatible with the surrounding land uses.

3786  
3787 This plan, to the extent that there's high density in the northeast quadrant, is not compatible with  
3788 the surrounding land uses, they're asking for more, and what they're asking for in exchange is we  
3789 will reduce the density, something far, far less than what we'd be entitled to in Area 4, which we  
3790 now call the Badlands Golf Course. That's pretty much the deal. If that is not approved, and it's  
3791 totally within your discretion, there's no obligation to approve it and there's no inverse  
3792 condemnation if you deny it, but if it is not approved, the developer will come in, as Mr.  
3793 Kaempfer has indicated, and look for a more traditional development that accepts existing zoning  
3794 and compatibility with surrounding land uses.

3795  
3796 **COMMISSIONER CREAR**

3797 Okay.

3798  
3799 **TOM PERRIGO**

3800 And I would just, Mr. Chairman, just real quick, I agree with everything that Mr. Jerbic said. I  
3801 would just add one thing that in order to exercise that entitlement, in other words, they don't just  
3802 bring in, the applicant would not just bring in a plan to staff. That comes to the Planning

# Exhibit 183

## APPRAISAL OF REAL PROPERTY

### **A 34.07 Acre Vacant Site**

Located at the southeast corner (SEC) of  
Alta Drive & Hualapai Way  
Las Vegas, Clark County, Nevada 89102

### **PREPARED FOR:**

180 Land Co., LLC  
c/o Mr. James J. Leavitt, Esq.  
Ms. Autumn Waters, Esq.  
The Law Offices of Kermit Waters  
704 South 9th Street,  
Las Vegas, Nevada 89101

### **EFFECTIVE DATE OF THE APPRAISAL:**

Retrospective - September 14, 2017

### **REPORT FORMAT:**

Appraisal Report

### **PREPARED BY:**

Tio S. DiFederico, MAI  
The DiFederico Group  
7641 W. Post Road  
Las Vegas, NV 89113

### **THE DiFEDERICO GROUP**

File Number: 19-035

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**005212**

**RA 03679**

# THE DiFEDERICO GROUP

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INTERNATIONAL APPRAISAL & CONSULTING

April 23, 2021

180 Land Co., LLC  
c/o Mr. James J. Leavitt, Esq.  
Ms. Autumn L. Waters, Esq.  
The Law Offices of Kermit Waters  
704 South 9<sup>th</sup> Street  
Las Vegas, NV 89101

**SUBJECT:** The subject of the attached analysis involves a vacant 34.07-acre site located at the southeast corner (SEC) of Alta Drive and Hualapai Way, Las Vegas, Clark County, NV 89145. Assessor Parcel Number 138-31-201-005.

Dear Mr. Leavitt and Ms. Waters:

The DiFederico Group is pleased to submit the attached appraisal report of the above referenced property. The purpose of the appraisal was to develop an opinion of the just compensation due to the landowner for the City of Las Vegas' taking of the subject property. The effective date of value is September 14, 2017. The client and intended user of the report is the 180 Land Co., LLC, c/o James J. Leavitt, Esq., and Autumn L. Waters, Esq., of the Law Offices of Kermit Waters. The intended use of this appraisal report is for litigation purposes.

The appraisal report is intended to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. To report the assignment results, I used the appraisal report option of Standards Rule 2-2(a) of USPAP. The attached appraisal report contains discussions of the data, reasoning, and analyses used in the appraisal process. The depth of discussion contained in the report is specific to the needs of the client and the intended use of the appraisal.

The attached analysis involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, Clark County, Nevada. As of the effective date of value, the site's Alta and Hualapai frontages were improved with concrete curbs, gutters, sidewalks, and landscaping. The site was reported to have had general access to public roadways along Hualapai Way to the west and Alta Drive to the north. Public sewer easements had been provided to connect the subject property to the City of Las Vegas sanitary sewer system and the drainage study and soils reports indicated that the property was suitable for development.

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**RA 03680**

The subject property's zoning was recently addressed in a hearing before District Court Judge Timothy C. Williams. In the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners Motion to Determine "Property Interest," Judge Williams stated, "the Court bases its property interest decision on eminent domain law. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties. Therefore, the Landowners' Motion to Determine Property Interest is Granted in its entirety and it is hereby Ordered that:

- 1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and
- 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential."

Although the site had been zoned R-PD7 since the early 1990's, the property had historically been used as a portion of the Badlands Golf Course. The landowner had leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses.

According to that operator, revenue in 2015 was down 11% from 2014. The 2016 revenue was down another 25% from 2015, and the 2016 net operating income (NOI) was down over 85% from that reported in 2015. The landowner tried to re-lease the property to that operator at a lower rate. The operator refused saying they would still lose money. The landowner then offered it to the operator for a year for free. The operator said that they would still lose money and passed. It is my understanding that two (2) other golf course operators were approached to take over, but both refused. The landowner then offered the golf course operations to the Queensridge Homeowner's Association (HOA) for one (1) year for \$1.00. The HOA did not respond. At that point, December 1, 2016, the golf course was closed.

According to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend being experienced in 2016 was referred to as "correction." This was because at that time golf course closures occurring throughout the U.S. indicated there was an oversupply that required market correction. And local market data showed that the Badlands wasn't an outlier struggling in a thriving golf course market. Based on what was happening in the national and local golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of that "correction."

After looking at the historical operations of the golf course, which were trending downward rapidly, I concluded that operating the golf course was not a financially feasible use of this property as of September 14, 2017. Based on my research, I concluded that the highest and best use of this property was a residential development. This use would be similar to the surrounding uses in the Queensridge and Summerlin communities.

On September 21, 2017, the Clark County Assessor sent the landowner a letter that stated since the subject property had ceased being used as a golf course on December 1, 2016, the land no longer met the definition of open space and was “disqualified for open-space assessment.” The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes.

**NRS 361A.280 Payment of deferred tax when property converted to higher use.** If the county assessor is notified or otherwise becomes aware that a parcel or any portion of a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred tax, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to [NRS 361A.277](#) for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The county assessor shall assess the property pursuant to [NRS 361.227](#) for the next fiscal year following the date of conversion to a higher use.

While the taxes were being increased, the owner was attempting to develop the property with a residential use. The site was zoned and taxed by the government as residential land, but the City of Las Vegas prevented the legal use of the property as it would not allow the landowner to develop the property with a residential use. Instead, the City of Las Vegas has required that the property remain vacant.

With the City preventing the legally permitted use of property, and requiring the property to remain vacant, I concluded that the property had no value in the “after condition.” That is because there is no market that I can find interested in purchasing property taxed as if it can be used for residential development but restricted to remain vacant.

In this case, the landowner purchased this residentially zoned site and submitted an application to the City of Las Vegas for approval to develop the property with a residential development. The City of Las Vegas denied the landowner’s application.

NRS 37.112 provides that any decrease or increase in the fair market value of a property before the date of valuation which is caused by the public work or public improvement for which the property is acquired; or the likelihood that the property would be acquired for such a purpose, has to be disregarded when estimating the value of the property. Therefore, when valuing this property in the before condition, I must value the property as of September 14, 2017, the effective date of value, disregarding the City’s actions to prevent the legal use of the property. This will be referred to as the “before condition” throughout the attached report. I will then value the property as of September 14, 2017, considering the City’s actions to prevent the legal use of the property. This will be referred to as the “after condition” throughout the report.

For this assignment I first analyzed the property as if it were available to be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. After concluding the "before value", I analyzed the remainder. Due to the effect of the government's actions, I concluded there was no market to sell this property with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the "after value" would be zero.

Based on the analyses and conclusions in the accompanying report and subject to the definitions, assumptions, and limiting conditions expressed in this report, it is my opinion that the retrospective just compensation due to the landowner for the government's actions, as of September 14, 2017, was as follows:

Estimated Just Compensation Due to Landowner	
1. Value before taking	\$ 34,135,000
2. Less value after the taking	- \$ -
3. Damages to the remainder	= \$ 34,135,000
4. Less special benefits to remainder	- \$ -
5. Just compensation due to property owner	= \$ 34,135,000

The previous values are based on the following extraordinary assumption and its use might have affected the assignment results:

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,

**THE DiFEDERICO GROUP**



Tio S. DiFederico, MAI  
Certified General Real Estate Appraiser  
Nevada Certificate #A.0000150-CG

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**RA 03683**

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## SUMMARY OF SALIENT FACTS AND CONCLUSIONS

<b>Property Type:</b>	Vacant Land
<b>Location:</b>	SEC Alta Drive & Hualapai Way, Las Vegas, Clark County, NV 89145
<b>Assessor Parcel Numbers (APN):</b>	138-31-201-005
<b>Owner of Record:</b>	180 Land Co, LLC
<b>Date of value opinion - Retrospective:</b>	September 14, 2017
<b>Date of inspection:</b>	August 12, 2020
<b>Date of report:</b>	April 23, 2021
<b>Property rights appraised:</b>	Fee Simple estate
<b>Land Area:</b>	34.07 acres / 1,484,089 square feet
<b>Zoning Designation</b>	Residential Planned Development District (R-PD7), under the jurisdiction of the City of Las Vegas.
<b>Flood Panel / Designation / Date</b>	Panel 2145 and 2150 of 4090 / Zone X / 11/16/11 and 09/27/02, respectively.
<b>Client/Intended user/Intended use:</b>	The client and intended user is the 180 Land Co., LLC, c/o Mr. James J. Leavitt, Esq., and Autumn Waters, Esq., of the Law Offices of Kermit Waters. The intended use is for litigation purposes.
<b>Highest and Best use in the Before Situation:</b>	Residential Development.

Based on the analyses and conclusions in this report and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the just compensation due the property owner due to the government actions, as of September 14, 2017, was:

Estimated Just Compensation Due to Landowner	
1. Value before taking	\$ 34,135,000
2. Less value after the taking	- \$ -
3. Damages to the remainder	= \$ 34,135,000
4. Less special benefits to remainder	- \$ -
5. Just compensation	= \$ 34,135,000

**The above value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

## GENERAL INFORMATION

### IDENTIFICATION OF SUBJECT

The subject of this report is a 34.07-acre site located at the southeast corner of Alta Drive and Hualapai Way, Las Vegas, Nevada. The property can also be identified as Clark County Assessor Parcel Number (APN) 138-31-201-005. A brief legal description of the property is as follows:

A PORTION OF THE SOUTH HALF (S ½) OF THE NORTHWEST  
QUARTER (NW ¼) AND THE NORTH HALF (N ½) OF THE SOUTHWEST  
QUARTER (SW ¼) OF SECTION 31, TOWNSHIP 20 SOUTH, RANGE 60  
EAST, M.D.M., CLARK COUNTY, NEVADA

### CURRENT OWNERSHIP AND SALES HISTORY

A guideline of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP) is that any pending or prior sales of the subject property over the last three years must be analyzed.

The subject property was transferred with another 216.85 acres from Fore Stars, LTD., to 180 Land Co. LLC, an affiliated entity, on November 16, 2015. The subject property had been held by Fore Stars, LTD., since April 14, 2005 when it was transferred from the Peccole 1982 Trust (45%) and William Peter and Wanda Ruth Peccole Family L.P. (55%), a business entity of which grantor is the 100% owner. The property had been transferred to the Peccole 1982 Trust and William Peter and Wanda Ruth Peccole Family L.P.; three (3) days prior from the Larry Miller Trust.

In researching the sales history, I interviewed Yohan Lowie, CEO & Founder of EHB Companies. Mr. Lowie's relationship with the Peccole family began in 1996 when he and his partners purchased their first custom home lot in the Queensridge community. They traded that lot but ended up building the new owner's home on that lot. They purchased three (3) additional lots, built homes on them, and sold them. This was followed by the purchase of two additional lots. After these developments, Mr. Lowie's company entered into partnerships with the Peccole family on properties outside of Queensridge, including the office building that EHB Companies currently occupies, land, Tivoli Village and a site at Sahara Avenue and Hualapai Way. By early 2000, Mr. Lowie and his partners had entered into a 25 custom home lot purchase that they would take down in five (5) lot increments every three (3) to five (5) months. Mr. Lowie stated that they ended up purchasing and developing 40 of the 106 custom home lots in the Queensridge community.

It was in early 2001, while Mr. Lowie's company was building a home that he noted dirt being moved behind it on what was known as the Badlands golf course. He stated that was when he learned that the Peccole family was looking to develop homes on what had been the Badlands golf course. Mr. Lowie stated that the Peccole family halted this development due to a waterline easement that ran under that portion of the site.

By 2004 Mr. Lowie had negotiated with the Peccole family to buy the +/- 14.5 acre site to construct four (4) towers at Queensridge, two (2) of which have been built. The Peccole family retained a 30% interest in the Queensridge Towers development. However, to build these Towers, two (2) holes on the Badlands golf course had to be rearranged. This included converting a Par 5 hole that abutted the Tower site to a Par 4 and converting a Par 4 close to the Queensridge Charleston Boulevard entrance to a Par 5. The following aerials from

Google Earth reflect the before and after situation of the land and golf course where the two (2) towers were constructed.



*Photo taken March 30, 2004.*



*Photo taken February 28, 2008.*

In 2005, the golf course was being leased by American Golf. Mr. Lowie stated that after the above hole conversion was completed, at a cost of approximately \$800,000 to Mr. Lowie's company, American Golf informed the Peccole family that they had broken their lease by changing the course and using a portion of it for development. American Golf demanded the Peccole family buy out the lease for \$30 million. At the same time there was a cash call for the partners in the Queensridge Towers, of which the Peccole family had a 30% interest.

To resolve the issues, Mr. Lowie worked a deal with his then partners to borrow money to cover the Peccole family obligation to American Golf and buy them out of their joint ventures. Mr. Lowie agreed to pay the Peccole family a total of \$90 million for the interests in these ventures, plus give them four (4) units in the Queensridge Towers that he valued at \$10 million. This included the \$30 million for them to buy out the golf course lease. Therefore, the total price agreed upon in 2006 was \$100MM.

It was during this period of 2006, that Troon Golf, LLC., approached the Peccole family about leasing and operating the Badlands golf course. The Peccole family approached Mr. Lowie with the suggestion that he let them lease the golf course to Troon Golf since he was busy with the Towers and Tivoli Village at that time. Mr. Lowie agreed. The Troon Golf lease was approximately three (3) years. Par 4 leased and operated the course thereafter. In March of 2015, Mr. Lowie and his partners, through their entities, purchased Fore Stars, the entity that owned the 250 acres of land that the Badlands Gold Course was operated on. Elite Golf then took over operations until it closed in December of 2016.

According to Mr. Lowie, the property had never been listed for sale and the 2015 transfer of the golf course for \$15 million was just the final payment of the \$100MM buyout and had nothing to do with the property's value. In addition, this was agreed to over ten (10) years prior to the effective date of value in this analysis.

After considering all of the previous information about the subject property's transfer, the fact that market conditions had seen dramatic changes during the ten (10) years prior to the effective date of value, and the values I estimated in this report, it is my opinion that the final payment of \$15 million had no relationship to the subject site's September 14, 2017 market value.

To the best of my knowledge, while the property transferred in November 2015 to a related entity, there had been no market based sale of the subject property within the three (3) years prior to the effective date of value, September 14, 2017, and as of the effective date of this appraisal assignment, the property was not in escrow, subject to an option to buy, nor was it listed for sale.

## **PURPOSE, PROPERTY RIGHTS AND EFFECTIVE DATE**

The purpose of this appraisal is to develop an opinion of the just compensation due to the property owner due to the government actions that resulted in taking of the landowner's property rights. The effective date of value is September 14, 2017.

## **CLIENT, INTENDED USER AND INTENDED USE**

The client and intended user of the report is 180 Land Co., LLC, c/o Mr. James J. Leavitt, Esq., and Autumn Waters, Esq., of the Law Offices of Kermit Waters. The intended use of this appraisal report is for litigation purposes.

## **APPLICABLE REQUIREMENTS**

This appraisal is intended to conform to the requirements of the following:

- Uniform Standards of Professional Appraisal Practice (USPAP)
- Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute

## **DEFINITION OF CONDEMNATION**

The act or process of enforcing the right of eminent domain. Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

**DEFINITION OF EMINENT DOMAIN**

The right of government to take private property for public use upon the payment of just compensation. The Fifth Amendment of the U.S. Constitution, also known as the *takings clause*, guarantees payment of just compensation upon appropriation of private property. Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

**DEFINITION OF EXTRAORDINARY ASSUMPTION**

An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions. Source: USPAP, (*2016-2017 ed*).

**DEFINITION OF HYPOTHETICAL CONDITION**

A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Source: USPAP, (*2020-2021 ed*).

**DEFINITION OF INVERSE CONDEMNATION**

An action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings; also termed *constructive condemnation, reverse condemnation*. (*Black's Law Dictionary, tenth edition*).

**DEFINITION OF JUST COMPENSATION**

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken. Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

The Nevada Constitution has a similar definition:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

**DEFINITION OF MARKET VALUE**

Market value is defined as:

The highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property. (Added to NRS by 1959, 596; A 1989, 548; 1993, 525; 1995, 501; 2007, 331)

The Nevada Constitution has a similar definition:

In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

## DEFINITION OF PROPERTY RIGHTS APPRAISED

Fee simple estate is defined as an: “Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.” Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

## DEFINITION OF RETROSPECTIVE VALUE OPINION

Retrospective value opinion is defined as an: “A value opinion effective as of a specified historical date. The term *retrospective* does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date.” Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

## SCOPE OF WORK

This analysis involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, Clark County, Nevada. As of the effective date of value, the site’s Alta and Hualapai frontages were improved with concrete curbs, gutters, sidewalks, and landscaping.

According to the City of Las Vegas’ Planning Department, the site has been zoned Residential Planned Development District (R-PD7) since at least 1990. This was recently confirmed after a hearing on September 17, 2020. After that hearing, District Court Judge Timothy C. Williams ordered that:

- 3) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and
- 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

The single-family residential dwelling density that is allowed in the R-PD District is reflected by the numerical designation for that district. According to Title 19, R-PD7 allows up to 7.49 dwelling units per gross acre. The development standards for a R-PD project, including minimum front, side and rear yard setbacks, grade changes, maximum building heights, and other design and development criteria, are to be as established by the approved Site Development Plan Review (SDR) for the development.

This appraisal assignment involves estimating the just compensation due to the property owner for the government actions requiring the property to remain in a vacant state and not allow the landowner to develop a residentially zoned property with a residential development. To perform this assignment, I took the following steps to gather, confirm, and analyze relevant data.

- I inspected the subject property and surrounding area on August 12, 2020. The photographs included in this report were taken by Tio S. DiFederico, MAI, during that inspection.
- I collected factual information about the property and the surrounding market and confirmed that information with various sources as of the effective date of value. This included numerous articles in the local newspapers regarding the Las Vegas golf

courses, correspondence between the landowner, Par 4 and then Elite Golf, The National Golf Foundation's "Golf Facilities in the U.S., 2017 Edition," a report on the Badlands Golf Course prepared by Global Golf Advisors (GGA), site development costs (included in my workfile), the City of Las Vegas Unified Development Code, Title 19, and numerous other publications identified within this report.

- I then performed a highest and best use analysis of the subject site as of September 14, 2017, the effective date of value. Based on the highest and best conclusion, I estimated the market value of the fee simple estate in the subject site as if the permitted right to develop the property with single-family residences would have been allowed. (i.e., I excluded the project).
- Appraisers usually consider the use of three approaches to value when developing a market value opinion for real property. These are the cost approach, sales comparison approach and income capitalization approach. For this assignment, I used the Sales Comparison Approach and the Discounted Cash Flow Analysis in Subdivision Development Analysis in the Income Capitalization Approach. These methodologies are considered to offer the best indications of the property's market value.
- Since the Cost Approach is not considered applicable when appraising vacant land, this approach was not used in this analysis.
- The next part of the report involves analyzing and estimating the value of the property in the before and after condition. In this case, the landowner had a residentially zoned site and the legal right to develop it with a residential use. However, when the landowner attempted to get government approval for a residential development, the City of Las Vegas denied the landowner any economic use of the property and instead required the property stay in a vacant state. Therefore, I first analyzed the value of this property as if it were available to be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. After concluding that value (the "before value"), I analyzed the value of the property in the after condition, subject to the government actions (the "after value"). I then considered what, if any, damages accrue to the remainder due to the effect of these government actions as of September 14, 2017, the effective date of value for this assignment.

#### REPORT FORMAT

The report has been prepared under the Appraisal Report option of Standards Rule 2-2(a) of USPAP. As such, it contains discussions of the data, reasoning, and analyses that are used in the appraisal process. Supporting documentation is retained in my file. The depth of discussion contained in this report is specific to the needs of the client and the intended use of the appraisal.

## MARKET AREA ANALYSIS

### Nevada Labor Force Summary

(Estimates in Thousands)						
LABOR FORCE SUMMARY		Sep-17	Sep-16	CHANGE	% CHANGE	Aug-17
NEVADA STATEWIDE Seasonally Adjusted						
LABOR FORCE		1451.4	1430.8	20.6	1.4%	1445.6
EMPLOYMENT		1379.7	1353.6	26.1	1.9%	1375.0
UNEMPLOYMENT		71.7	77.2	-5.5	-7.1%	70.6
UNEMPLOYMENT RATE		4.9%	5.4%	-----	-----	4.9%
NEVADA STATEWIDE Non Seasonally Adjusted						
LABOR FORCE		1457.8	1432.3	25.4	1.8%	1449.8
EMPLOYMENT		1385.5	1355.1	30.4	2.2%	1377.5
UNEMPLOYMENT		72.3	77.3	-5.0	-6.5%	72.3
UNEMPLOYMENT RATE		5.0%	5.4%	-----	-----	5.0%
Las Vegas-Paradise MSA Includes Clark County						
LABOR FORCE		1073.6	1050.8	22.8	2.2%	1068.7
EMPLOYMENT		1017.6	992.1	25.5	2.6%	1012.8
UNEMPLOYMENT		56.0	58.7	-2.7	-4.6%	55.9
UNEMPLOYMENT RATE		5.2%	5.6%	-----	-----	5.2%
Reno-Sparks MSA Includes Washoe and Storey Counties						
LABOR FORCE		237.9	234.5	3.4	1.4%	234.8
EMPLOYMENT		228.4	223.8	4.6	2.0%	225.3
UNEMPLOYMENT		9.5	10.7	-1.2	-11.4%	9.5
UNEMPLOYMENT RATE		4.0%	4.6%	-----	-----	4.1%
Carson City MSA						
LABOR FORCE		24.8	24.7	0.1	0.3%	24.8
EMPLOYMENT		23.6	23.3	0.3	1.2%	23.6
UNEMPLOYMENT		1.2	1.4	-0.2	-14.2%	1.2
UNEMPLOYMENT RATE		4.8%	5.6%	-----	-----	4.7%

UNEMPLOYMENT RATES BASED ON UNROUNDED DATA

Employment adjusted by census relationships to reflect number of persons by place of residence.

Information compiled by DETR's Research & Analysis Bureau

Source: Nevada Department of Employment, Training and Rehabilitation.

## ECONOMIC BASE

While overall the number of new jobs increased in September 2017, Nevada's largest population centers saw mixed job growth. The Las Vegas Metropolitan Statistical Area (MSA) lost 500 jobs after only adding 3,900 jobs when 4,400 were expected to be gained, due to seasonal movement. Reno saw a seasonally adjusted increase of 2,000 jobs, the result of a jump of 3,000 jobs when only 1,000 were expected. In the state capital, Carson City, jobs held steady years over year with the seasonal expectations.

The economic base of the Las Vegas area consists of the tourist industry, service industry, military-base, the Nevada Test Site, governmental and municipal agencies, and mining and manufacturing. Nevada Development Authority is one of the area's premier economic development agencies. According to the Nevada Department of Employment, Training & Rehabilitation (DETR), as of September 2017, the statewide unemployment rate was 4.9%, down 0.5% from the same month of 2016. "The metro area economic indicators continue to follow statewide positive trends," Bill Anderson, chief economist for Nevada's Department of Employment, Training and Rehabilitation, said. "As reported last week, the statewide unemployment rate stands at 4.9%. Employers continue to add jobs. Despite a slight uptick in new jobs statewide, Nevada's largest population centers saw mixed job growth in September."

## Non-Seasonally Adjusted Establishment Based Industrial Employment Las Vegas-Paradise MSA

Includes Clark County  
(Estimates In Thousands)

	Sep-17	Sep-16	CHANGE	% CHANGE	Aug-17
<b>Total All Industries</b>	<b>983.5</b>	<b>960.1</b>	<b>23.4</b>	<b>2.4%</b>	<b>979.6</b>
<b>Goods Producing</b>	<b>89.6</b>	<b>78.8</b>	<b>10.8</b>	<b>13.7%</b>	<b>89.7</b>
Natural Resources & Mining	0.4	0.3	0.1	33.3%	0.4
Construction	66.3	56.2	10.1	18.0%	66.4
Construction of Buildings	9.6	8.5	1.1	12.9%	9.4
Specialty Trade Contractors	51.0	42.0	9.0	21.4%	51.4
Building Foundation & Exterior Contractors	13.1	10.7	2.4	22.4%	13.7
Building Finishing Contractors	13.9	11.5	2.4	20.9%	13.7
Manufacturing	22.9	22.3	0.6	2.7%	22.9
Durable Goods	13.0	12.7	0.3	2.4%	13.0
Other Miscellaneous Manufacturing	4.1	4.1	0.0	0.0%	4.1
Non-durable Goods	9.9	9.6	0.3	3.1%	9.9
<b>Service Providing</b>	<b>893.9</b>	<b>881.3</b>	<b>12.6</b>	<b>1.4%</b>	<b>889.9</b>
<b>Private Service Providing</b>	<b>790.2</b>	<b>780.2</b>	<b>10.0</b>	<b>1.3%</b>	<b>791.9</b>
Trade, Transportation & Utilities	167.1	170.7	-3.6	-2.1%	168.2
Wholesale	21.2	21.8	-0.6	-2.8%	21.1
Retail	106.6	106.9	-0.3	-0.3%	107.3
Food & Beverage Stores	17.9	17.4	0.5	2.9%	17.8
Health and Personal Care Stores	7.8	7.7	0.1	1.3%	7.9
Trans, Warehousing & Utilities	39.3	42.0	-2.7	-6.4%	39.8
Utilities	2.6	2.6	0.0	0.0%	2.6
Transportation & Warehousing	36.7	39.4	-2.7	-6.9%	37.2
Air	6.5	6.4	0.1	1.6%	6.5
Transit and Ground Passenger	12.8	13.4	-0.6	-4.5%	13.0
Taxi and Limousine Service	9.7	9.8	-0.1	-1.0%	9.7
Information	10.7	10.8	-0.1	-0.9%	10.8
Telecommunications	2.8	2.9	-0.1	-3.4%	2.8
Financial Activities	49.9	48.4	1.5	3.1%	50.5
Finance and Insurance	27.2	26.8	0.4	1.5%	27.8
Credit Intermediation & Related	15.8	14.9	0.9	6.0%	15.7
Real Estate and Rental and Leasing	22.7	21.6	1.1	5.1%	22.7
Professional & Business Services	141.5	136.4	5.1	3.7%	141.7
Professional, Scientific and Technical	39.5	39.4	0.1	0.3%	40.2
Management of Companies	20.5	19.8	0.7	3.5%	20.5
Administrative & Support and Waste Mgt.	81.5	77.2	4.3	5.6%	81.0
Administrative and Support Services	79.4	74.6	4.8	6.4%	79.0
Employment Services	15.3	14.2	1.1	7.7%	15.3
Other Support Services	12.1	11.8	0.3	2.5%	11.1
Education and Health Services	96.7	92.8	3.9	4.2%	96.4
Health Care and Social Assistance	86.0	82.9	3.1	3.7%	86.7
Ambulatory Health Care Services	39.9	37.6	2.3	6.1%	40.1
Hospitals	20.9	20.4	0.5	2.5%	20.9
Leisure and Hospitality	291.6	289.3	2.3	0.8%	291.4
Arts, Entertainment and Recreation	21.6	21.0	0.6	2.9%	21.8
Accommodation and Food Service	270.0	268.3	1.7	0.6%	269.6
Accommodation	168.7	167.0	1.7	1.0%	168.5
Casino Hotels and Gaming	159.9	158.4	1.5	0.9%	159.5
Casino Hotels	154.8	153.5	1.3	0.8%	154.4
Gaming Industries	5.1	4.9	0.2	4.1%	5.1
Food Services and Drinking Places	101.3	101.3	0.0	0.0%	101.1
Full-Service Restaurants	49.9	50.3	-0.4	-0.8%	49.7
Limited-Service Restaurants	36.6	37.7	-1.1	-2.9%	36.6
Other Services	32.7	31.8	0.9	2.8%	32.9
Government	103.7	101.1	2.6	2.6%	98.0
Federal	13.0	12.9	0.1	0.8%	13.0
State	18.3	19.1	-0.8	-4.2%	16.8
Local	72.4	69.1	3.3	4.8%	68.2

Non-Seasonally Adjusted Data.

Data may not add due to rounding. Employment by place of work. Does not coincide with labor force concept. Includes multiple job holders.

Source: Nevada Department of Employment, Training and Rehabilitation.

**Key Points:**

- In Las Vegas, the unemployment rate stayed the same from August, at 5.2%. But it is down 40 basis points from the same time last year.
- Reno's unemployment rate is at 4.0%, down 10 basis points from August and down 60 basis points from last year.
- The unemployment rate in Carson City is up 10 basis points over the month, to 4.8%, but is down 80 basis points from September 2016.

**Job Growth since September 2016**

- Statewide: 32,300 jobs were added over the year (2.5% growth rate)
- Reno: added 5,500 jobs (2.5% growth rate)
- Las Vegas: added 21,600 jobs over the year (2.3% growth rate)
- Carson City: unemployment unchanged year-over-year

Over the year, job growth increased in the State as a whole and in all major population centers this month. Statewide, 32,300 more jobs have been added since September of 2016, a growth rate of 2.5%. Reno had the highest year-over-year growth rate at 2.5%. The Reno area saw payrolls gain 5,500 jobs, with 2,000 goods-producing and 2,300 service-providing jobs. Las Vegas realized the largest nominal growth of 21,600 jobs, an increase of 2.3%. Of the Las Vegas area's total nominal gain, service providing industries saw the addition of 12,600 jobs and goods-producing industries increased by 10,800 jobs. Carson City was flat year-over-year, with both service-providers and goods-producers adding 100 jobs in the area before adjustments were made for seasonality.

The latest information from Current Employment Statistics (CES) monthly estimates show as the recession unfolded, Statewide employment fell 14.3%, from a pre-recession peak of 1,297,200 to a low of 1,111,500 jobs in September 2010. Seven years later, the Silver State has surpassed the pre-recession peak by 3.9%, or 50,800 more jobs. Las Vegas lost 134,400 jobs during the recession, a decline of 14.4%. Since bottoming out, the region has added 183,900 jobs, an increase of 23.1%. Employment currently stands 49,500 higher than the previous peak.

Tourism has historically been one of Nevada's major economic drivers, and continues to account for a larger share of employment than any other sector in the State. Monthly visitor volumes for the State's two largest metro areas are important indicators for the health of the many industries supported by tourism.

Another indicator of the area's economic health is provided by UNLV's Center for Business & Economic Research (CBER) Southern Nevada Coincident and Leading Indexes. This is put out by the Nevada Department of Employment, Training & Rehabilitation Research and Analysis Bureau and UNLV's Center for Business and Economic Research.

The CBER Nevada coincident and leading indexes use the Department of Commerce index construction method. The CBER Nevada coincident index measures the ups and downs of the Nevada economy, while the CBER Nevada leading index provides an indication for the future direction of the coincident index.

The coincident index provides the benchmark series that defines the business cycle or reference cycle in Nevada. The leading index then tracks the economy relative to that reference cycle. The coincident index peaked in February 2007 and then fell dramatically

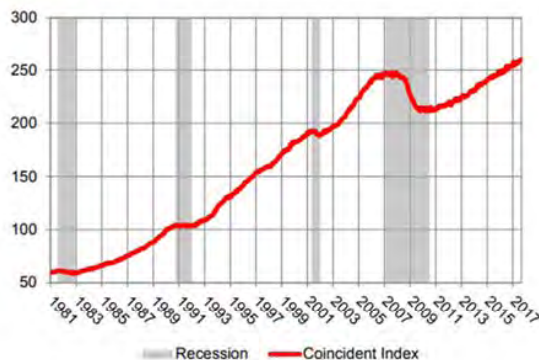
through June 2010. Prior to the Great Recession, identified by the benchmark Nevada coincident index, the Nevada leading index peaked in November 2005, 14 months before the Nevada coincident index peaked. Then the Nevada leading index bottomed out in May 2009, 13 months before the Nevada coincident index troughed. All series are seasonally adjusted (SA).

- CBER's Southern Nevada Coincident Index increased 0.4% in August 2017 relative to the prior month and a significant 3.7% increase year-over-year.
- CBER's Southern Nevada Leading Index decreased 1.3% in August 2017 relative to the prior month and was up 1.0% compared to last year.
- CBER's Clark County Construction Index increased 0.1% in August 2017 relative to the prior month; and is up a healthy 4.3% over last year.
- CBER's Southern Nevada Tourism Index dropped 0.1% in August 2017 relative to the prior month; but is up 1.5% over last year.



## Southern Nevada Coincident Index

*The CBER Southern Nevada coincident index advanced in August on a monthly and yearly basis.*



Series	Date	Latest Period	Month-Over-Month	Year-Over-Year
Taxable Sales (SA)	Aug-17	3,484,358,509	0.7%	3.6%
Gaming Revenue (SA)	Aug-17	855,812,043	2.4%	16.4%
Nonfarm Employment (SA)	Aug-17	983,439	0.1%	3.2%
<b>Overall Index Change</b>	Aug-17	259.8	0.4%	3.7%

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Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada coincident index rose 0.4% in August 2017 from the previous month. Gaming revenue (2.4%), taxable sales (0.7%) and nonfarm employment (0.1%) all rose compared to July 2017. On a yearly basis, all three components also rose this month. Year-over-year, Clark County taxable sales were up by 3.6% and gaming revenue, strongly supported by higher gaming activity due to the Mayweather-McGregor boxing match, was up 16.4%. Nonfarm employment was up 3.2% since last year. Overall, the index was up 3.7% year-over-year.



## Southern Nevada Leading Index

The CBER Southern Nevada leading index continued its yearly upward trend.

Date	Index	Month-Over-Month	Year-Over-Year
Aug-16	103.9	1.3%	6.8%
Sep-16	101.7	-2.1%	3.3%
Oct-16	102.3	0.6%	2.7%
Nov-16	105.3	2.9%	7.1%
Dec-16	105.5	0.1%	5.0%
Jan-17	103.3	-2.0%	4.6%
Feb-17	102.4	-0.9%	-0.2%
Mar-17	104.5	2.1%	2.5%
Apr-17	103.6	-0.9%	2.5%
May-17	105.0	1.3%	2.6%
Jun-17	104.7	-0.3%	2.2%
Jul-17	106.2	1.5%	3.5%
Aug-17	104.9	-1.3%	1.0%



Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada leading index posted a slight monthly increase in August of 0.2%, mainly due to mixed results. On the positive side, there was a 35.0% increase in housing permits in Clark County. In addition, the S&P 500 index was up 2.1% and the 10-year Treasury bond yield (inverted) inched up 0.2%. In contrast, initial claims for unemployment insurance (inverted) and passenger volume at McCarran International Airport declined 0.8% and 0.1%, respectively. Also, construction permits for commercial building posted the largest monthly decline, down 27.6%. The overall index, however, posted a 1.7% increase compared to August of last year. This gain resulted from a robust annual increase of 92.7% in housing permits, which was partially offset by a 16.6% fall in commercial construction permits. On the national level, the S&P 500 index advanced 15.5% in August compared to August 2016, which highlighted favorable growth of the U.S. economy.



## Southern Nevada Construction Index

The CBER Southern Nevada construction index rose strongly in August compared to last year.



Series	Date	Latest Period	Month-Over-Month	Year-Over-Year
Construction Employment (SA)	Aug-17	65,611	1.0%	19.1%
Housing Permits (SA)	Aug-17	1,303	35.0%	92.7%
Commercial Permits (SA)	Aug-17	31	-27.6%	-16.6%
Overall Index Change	Aug-17	113.2	0.1%	4.3%

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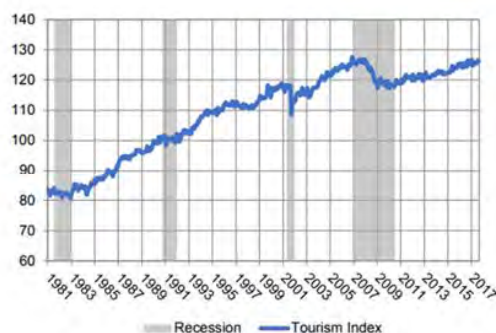
Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada construction index peaked in August at its highest value since the end of the housing crisis. The index increased by 0.1% and 4.3% in August compared to the previous month and year, respectively. On a monthly basis, the index was supported by higher housing permits and construction employment, up by 35.0% and 1.0%, respectively. Construction permits for commercial buildings, however, dropped 27.6% in August compared to July. Although commercial building permits fell significantly on a monthly basis, the overall index registered a monthly gain. Housing permits and construction employment fueled a push upwards year-over-year in August. Residential permits were up 92.7% and close to 10,500 new workers in the construction industry were added (seasonally adjusted data). As a result, the overall index was up strongly by 4.3% from a year ago.



## Southern Nevada Tourism Index

The CBER Southern Nevada tourism index increased in August due to higher gaming activity.



Series	Date	Latest Period	Month-Over-Month	Year-Over-Year
McCarran Passengers (SA)	Aug-17	4,071,634	-0.1%	3.6%
Gaming Revenue (SA)	Aug-17	855,812,043	2.4%	16.4%
LV Hotel/Motel Occupancy Rate (SA)	Aug-17	0.890	-1.5%	-0.7%
Overall Index Change	Aug-17	126.3	-0.1%	1.5%

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Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada tourism index fell slightly by 0.1% in August compared to the previous month. This loss was mainly due to a decrease of 1.5% in the Las Vegas hotel/motel occupancy rate. Passenger volume at McCarran fell by 0.1%, relative to the a month ago. Although gaming revenue increased by 2.4%, it did not completely offset losses in the other two components. On a yearly basis, however, the index grew 1.5% in August. Two of the three components (McCarran passengers and gaming revenue) increased 3.6% and 16.4%, respectively, compared to August 2016. The increase in gaming revenue was the direct result of the Mayweather-McGregor fight in Las Vegas. Hotel/motel occupancy rate declined 0.7% year-over-year.

## HOUSING

Through the first ten (10) months of 2017, statistics from GLVAR and its Multiple Listing Service showed that homes sold so far in 2017 continue to run about 10% ahead of the pace from 2016, when 41,720 total properties were sold in Southern Nevada. At the current sales pace, 2017 sales would surpass the total number of properties sold in 2013, 2014 and 2015 and might approach the total from 2012 — when GLVAR tracked 45,698 sales.

The GLVAR reported a total of 3,633 sales in October 2017, which is up from 3,225 total sales in October of 2016. Compared to the previous year, October sales were up 13.3% for homes and up 16.1% for condos and townhomes. Strong demand and a very tight housing supply are driving this surge. Over the past few months, the inventory of local homes available for sale has dropped to less than a two-month supply when a six-month supply is ideal.

At the same time, homes and condos continue to sell faster each month. In October, GLVAR reported that 81.9% of existing local homes and 89.0% of existing local condos and townhomes sold within 60 days. That was faster than a year ago when 75.2% of

existing local homes and 76.2% of existing local condos and townhomes sold within 60 days. GLVAR reported that the median price of existing single-family homes sold during October was up 13.4% from a year ago.

## THE STRIP MARKET AREA

The Strip is a major tourist attraction, and houses some of the most famous hotel casinos in the world. There has been continuous building and renovation along the Strip. For years, Nevada was the only state in which casino gambling was legally allowed. Then, in 1976, New Jersey approved legislation to allow gaming in Atlantic City. From 1989 to 1998, nine additional states authorized casino gambling. And, by the beginning of 2004 various levels of gambling was legal in 48 of our states, with Hawaii and Utah being the exceptions.

While it is recognized that a recession began in the US around March 2001, the Las Vegas market was mostly unaffected until September 11, 2001. However, the impact of closing McCarran International Airport in September was a blow since over 45% of tourists arrived by air. The highest recorded gaming revenue through the first three quarters of any given year up to then was in 2001 at \$5.838 billion, when the US was in a recession. The 4<sup>th</sup> quarter 2001 gaming revenue dropped by over 7.3% from that reported in 2000. Even with that drop, Nevada casinos won 2.2% more from gamblers in fiscal year 2001 than 2000.

Las Vegas' gaming revenue recovered and reached another all-time high for the 2003 calendar year, which it then surpassed in 2004, 2005, 2006 and 2007. The 2004 win marked the first time the total cracked the \$10 billion barrier. Nevada casinos closed fiscal 2007 with a record \$12.74 billion win. However, expenses were also up, which resulted in a decline in the reported EBITDA (Earnings Before Interest Taxes Depreciation & Amortization). The result was a net decline of 4.0% when comparing 2007 to 2006.

This indicated that the Las Vegas Gaming market was not immune to the national problems that the economy was experiencing. The plan to combat this was to build more resorts. And history had shown that the Las Vegas economy rebounded from economic slumps when the Strip went through a building boom. But there were major concerns in 2008. This included problems at resorts under construction as well those that were still planned.

## GAMING & TOURISM

Nevada's gaming revenues for non-restricted licensees peaked in 2007 but dropped in 2008 and then hit bottom in 2009. Revenues then increased each year through 2013. In 2014, seven months reported a decline in revenues and five an increase, with the year-end revenue down 1.13%. In 2015, gaming revenues were up six of the 12 months, with the year-over-year revenues being up 0.57% for the State of Nevada. Gaming revenue in 2016 reflected an increase of 3.49% increase over 2015.

For January 2017, statistics released by the state Gaming Control Board reflected a statewide gaming win of \$1.04 billion, up 12% over January 2016, a Clark County win total up 14.3% to \$926.2 million, and downtown up 32.1% to \$55.5 million. It was the 35th time the state has recorded more than \$1 billion in win, a level first achieved in March 2005. The highest win ever came in October 2007 when the state recorded \$1.165 billion.

Analysts cautioned that the January percentage increases were high because of the timing of reporting, but the three-month running average shows significant growth in casino win. For November, December and January, state and Clark County win was up 2.5% from the comparable period in 2015-16, the Strip climbed 2.9% and downtown Las Vegas was up

7%. “This was obviously a strong month for Clark County but not any kind of record,” Michael Lawton, senior research analyst for the Gaming Control Board’s Tax and License Division, said of January’s numbers. Lawton indicated January’s county win total was just outside of the top 10 highest recorded for the county.

The February 2017 gaming win for the State, \$945,597,573, was down 4.48% compared to February 2016. Clark County reported \$825,864,681, a 4.35% decrease compared to last year and the Strip reported \$541,900,719, which was down 4.98% from last year. Based on February’s gambling win, the state collected \$51,986,240 in percentage fees during March 2017. This represented a 2.87% increase compared to the prior year’s February, when percentage fee collections were \$50,536,977.

In March 2017, the State gaming win was \$991,023,123, which was up 7.45% compared to March 2016. Clark County reported \$857,351,888, a 7.60% increase compared to last year and the Strip reported \$526,092,942, which is up 8.07% from last year. For the fiscal year-to-date, July 1, 2016 through March 31, 2017, the State is up 3.23%, Clark County is up 3.34%, and the Strip is up 3.68%. The state’s March statistics show more increases than decreases, with only three (3) of the sixteen (16) areas reporting throughout the state reporting decreases.

In the most recent report, June 2017, the win was up just 0.3% in Clark County. Statewide, the win was up 0.9% to \$895.4 million for the month over last year while the Las Vegas Strip’s win increased over June 2016 by 1.6% to \$497 million. The heated-up downtown Las Vegas market that had been reporting double-digit percentage increases in win over the past year increased 8.7% to \$46 million. The three-month win average, which is considered a more reliable gauge of performance, showed the state win up 1.9% for April, May and June. The three-month averages also showed Clark County up 1.8%, the Strip up 0.5% and downtown up 13.2%.

The Control Board also announced 12-month totals showing the state’s casino win was up 2.9% to \$11.4 billion. Clark County win was up 3% to \$9.9 billion for the year, the Strip went up 2.9% to \$6.5 billion and downtown Las Vegas ended 10.7% higher than the previous year with \$608.7 million in winnings.

Of the state’s 15 studied markets, only two had win declines for the fiscal year compared with the previous year. North Shore Lake Tahoe was off 2.5% to \$25.3 million while the Boulder Strip declined 0.5% to \$793.9 million. The Boulder Strip downturn was attributed to an 8.4% decline in table-game win that was somewhat offset by a 0.7% increase in slot-machine win. Table win was off in nine of the 15 markets statewide during the 2016-17 fiscal year, but slot win was up in every market except North Shore Lake Tahoe. The following data was compiled by the DiFederico Group from the Nevada Gaming Control Board's monthly releases through July of 2017.

## NEVADA, CLARK COUNTY &amp; LAS VEGAS STRIP GAMING REVENUES 2011 THROUGH JUNE 2017 (RELEASED JULY 27, 2017)

Nevada Gaming Revenue														
Month	2017	% Change	2016	% Change	2015	% Change	2014	% Change	2013	% Change	2012	% Change	2011	% Change
January	\$ 1,036,265,398	12.02%	\$ 925,066,268	-2.90%	\$ 952,665,050	7.74%	\$ 884,191,833	-2.76%	\$ 909,267,893	-12.43%	\$ 1,038,359,335	18.34%	\$ 877,412,366	-0.67%
February	\$ 945,597,573	-4.48%	\$ 989,909,589	8.06%	\$ 916,087,062	-1.08%	\$ 926,086,897	-13.71%	\$ 1,073,261,160	15.14%	\$ 932,175,507	5.72%	\$ 881,758,357	-6.85%
March	\$ 991,023,123	7.45%	\$ 922,329,184	-3.03%	\$ 951,187,038	-3.16%	\$ 982,175,517	7.60%	\$ 912,784,688	6.81%	\$ 854,590,337	-10.86%	\$ 958,694,504	5.12%
April	\$ 886,528,810	1.19%	\$ 876,135,199	-2.43%	\$ 897,974,105	5.40%	\$ 851,977,865	-0.27%	\$ 854,287,264	-0.16%	\$ 855,674,603	6.15%	\$ 806,072,327	-0.54%
May	\$ 991,604,782	3.51%	\$ 957,937,998	-4.54%	\$ 1,003,479,007	3.32%	\$ 971,220,551	8.22%	\$ 897,438,790	1.40%	\$ 885,086,491	-10.05%	\$ 984,006,380	16.15%
June	\$ 895,427,384	0.90%	\$ 887,464,756	6.81%	\$ 830,908,905	-8.37%	\$ 906,851,820	14.35%	\$ 793,058,748	-4.74%	\$ 832,534,319	-6.01%	\$ 885,745,934	15.98%
July			\$ 1,015,014,676	9.96%	\$ 923,035,888	-0.95%	\$ 931,875,046	0.66%	\$ 925,763,611	-7.96%	\$ 1,005,877,250	16.95%	\$ 860,076,138	3.66%
August			\$ 860,696,184	-5.23%	\$ 908,240,162	-1.39%	\$ 921,016,033	-3.58%	\$ 955,231,126	11.17%	\$ 859,261,683	-3.11%	\$ 886,835,278	-6.10%
September			\$ 948,961,678	3.55%	\$ 916,466,663	1.54%	\$ 902,607,141	-5.87%	\$ 958,894,854	7.42%	\$ 892,698,404	3.33%	\$ 863,971,309	-5.87%
October			\$ 986,203,125	11.12%	\$ 887,510,784	-2.86%	\$ 913,642,221	-4.26%	\$ 954,319,750	-2.58%	\$ 979,596,839	1.96%	\$ 960,719,191	8.12%
November			\$ 930,424,600	-1.47%	\$ 944,346,453	7.77%	\$ 876,244,082	0.03%	\$ 875,941,506	11.90%	\$ 782,770,511	-11.06%	\$ 880,127,660	7.06%
December			\$ 956,095,364	-2.73%	\$ 982,971,649	3.41%	\$ 950,594,006	-8.07%	\$ 1,034,017,068	9.61%	\$ 943,359,499	10.25%	\$ 855,660,242	2.05%
Year to Date	\$ 5,746,447,070	3.37%	\$ 11,256,238,621	3.37%	\$ 11,114,872,766	3.37%	\$ 11,018,483,012	-1.13%	\$ 11,144,266,458	2.60%	\$ 10,861,984,778	1.50%	\$ 10,701,079,686	2.85%

Source: Nevada Gaming Control Board, compiled by The DiFederico Group.

Clark County Gaming Revenue														
Month	2016	% Change	2016	% Change	2015	% Change	2014	% Change	2013	% Change	2012	% Change	2011	% Change
January	\$ 926,169,328	14.30%	\$ 810,285,924	-3.33%	\$ 838,161,351	7.84%	\$ 777,198,392	-3.15%	\$ 802,503,904	-13.28%	\$ 925,439,857	21.57%	\$ 761,222,824	-0.41%
February	\$ 825,864,681	-4.35%	\$ 863,403,371	8.35%	\$ 796,882,585	-1.71%	\$ 810,733,520	-15.24%	\$ 956,464,461	17.77%	\$ 812,138,236	5.55%	\$ 769,459,750	-7.05%
March	\$ 857,351,888	7.60%	\$ 796,765,997	-3.58%	\$ 826,353,937	-3.96%	\$ 860,456,893	9.49%	\$ 785,912,248	7.15%	\$ 733,494,157	-12.23%	\$ 835,682,725	7.21%
April	\$ 763,200,286	1.37%	\$ 752,884,541	-4.25%	\$ 786,282,727	5.87%	\$ 742,701,785	0.87%	\$ 736,312,721	-0.99%	\$ 743,642,956	8.89%	\$ 682,947,680	-1.02%
May	\$ 860,706,072	3.48%	\$ 831,721,218	-4.40%	\$ 870,044,892	3.38%	\$ 841,600,419	8.93%	\$ 772,619,685	0.86%	\$ 766,054,024	-10.24%	\$ 853,491,149	19.43%
June	\$ 764,317,815	0.35%	\$ 761,673,524	7.33%	\$ 709,629,802	-10.21%	\$ 790,355,849	17.33%	\$ 673,640,327	-4.76%	\$ 707,328,411	-7.87%	\$ 767,718,004	19.94%
July			\$ 867,204,278	10.22%	\$ 786,792,140	-1.70%	\$ 800,383,799	2.20%	\$ 783,179,933	-9.67%	\$ 866,984,158	21.17%	\$ 715,533,451	3.19%
August			\$ 724,286,387	-6.76%	\$ 776,797,233	0.27%	\$ 774,708,317	-5.15%	\$ 816,753,285	12.34%	\$ 727,052,083	-3.35%	\$ 752,241,866	-6.68%
September			\$ 808,829,309	3.63%	\$ 780,486,667	1.30%	\$ 770,437,448	-6.85%	\$ 827,052,173	8.74%	\$ 760,554,185	3.67%	\$ 733,652,647	-6.63%
October			\$ 856,941,011	13.37%	\$ 755,886,405	-4.01%	\$ 787,457,297	-6.23%	\$ 839,739,768	-2.34%	\$ 859,878,780	2.79%	\$ 836,511,582	10.43%
November			\$ 811,140,859	-2.05%	\$ 828,092,842	8.39%	\$ 763,976,569	0.93%	\$ 756,931,128	12.70%	\$ 671,610,384	-12.99%	\$ 771,876,435	7.83%
December			\$ 827,707,084	-4.34%	\$ 865,259,976	3.77%	\$ 833,854,494	-9.69%	\$ 923,295,369	11.82%	\$ 825,668,815	11.22%	\$ 742,363,872	1.21%
Year to Date	\$ 4,997,610,070	3.76%	\$ 9,712,843,503	3.76%	\$ 9,620,670,557	3.76%	\$ 9,553,864,782	-1.25%	\$ 9,674,405,002	2.92%	\$ 9,399,846,046	1.92%	\$ 9,222,701,985	3.53%

Source: Nevada Gaming Control Board, compiled by The DiFederico Group.

Las Vegas Strip Gaming Revenue														
Month	2016	% Change	2016	% Change	2015	% Change	2014	% Change	2013	% Change	2012	% Change	2011	% Change
January	\$ 608,927,565	14.40%	\$ 532,275,993	-7.72%	\$ 576,811,306	15.40%	\$ 499,833,194	-1.41%	\$ 507,001,515	-18.69%	\$ 623,512,323	29.16%	\$ 482,732,006	-2.49%
February	\$ 541,900,719	-4.98%	\$ 570,303,264	7.32%	\$ 531,381,708	-4.37%	\$ 555,674,971	-20.17%	\$ 696,102,184	31.17%	\$ 530,689,743	3.31%	\$ 513,707,187	-9.56%
March	\$ 526,092,942	8.07%	\$ 486,819,711	-3.96%	\$ 506,867,800	-9.61%	\$ 560,770,697	10.91%	\$ 505,601,948	12.69%	\$ 448,683,420	-14.91%	\$ 527,297,151	12.89%
April	\$ 475,375,212	-3.25%	\$ 491,369,187	-1.50%	\$ 498,866,485	7.77%	\$ 462,916,539	3.19%	\$ 448,589,857	-2.34%	\$ 459,356,130	7.44%	\$ 427,530,165	-2.23%
May	\$ 546,791,525	2.97%	\$ 531,003,569	-11.68%	\$ 601,198,083	1.39%	\$ 592,963,057	17.32%	\$ 505,444,951	6.39%	\$ 475,068,431	-18.15%	\$ 580,412,680	28.93%
June	\$ 496,989,362	1.65%	\$ 488,928,905	9.75%	\$ 445,510,980	-16.31%	\$ 532,362,928	22.45%	\$ 434,747,965	-10.13%	\$ 483,737,953	-4.53%	\$ 506,706,925	32.31%
July			\$ 613,018,688	16.77%	\$ 524,969,570	-2.09%	\$ 536,158,717	4.83%	\$ 511,448,358	-14.40%	\$ 597,455,491	27.51%	\$ 468,540,294	1.56%
August			\$ 449,560,957	-14.76%	\$ 527,382,779	-4.66%	\$ 553,185,699	-6.08%	\$ 589,021,971	19.98%	\$ 490,941,203	-1.19%	\$ 496,868,291	-8.72%
September			\$ 542,540,638	7.46%	\$ 504,864,095	2.02%	\$ 494,850,592	-12.13%	\$ 563,134,277	13.35%	\$ 496,822,754	1.20%	\$ 490,939,768	-5.69%
October			\$ 562,747,074	14.00%	\$ 493,626,774	-5.12%	\$ 520,287,756	-5.63%	\$ 551,321,768	-5.07%	\$ 580,738,708	3.60%	\$ 560,535,216	13.28%
November			\$ 516,992,327	-3.48%	\$ 535,615,075	5.38%	\$ 508,256,276	-4.00%	\$ 529,427,120	22.59%	\$ 431,863,654	-12.80%	\$ 495,281,895	9.02%
December			\$ 590,707,123	-1.67%	\$ 600,750,793	8.20%	\$ 555,236,453	-16.41%	\$ 664,216,285	12.90%	\$ 588,345,305	13.49%	\$ 518,432,562	3.61%
Year to Date	\$ 3,196,077,325	3.08%	\$ 6,376,267,436	3.08%	\$ 6,347,845,448	3.08%	\$ 6,372,496,879	-2.05%	\$ 6,506,058,199	4.81%	\$ 6,207,215,115	2.28%	\$ 6,068,984,140	5.07%

Source: Nevada Gaming Control Board, compiled by The DiFederico Group.

## GAMING REVENUES 2006 THROUGH 2016



Source: Nevada Gaming Control Board, compiled by The DiFederico Group


The Las Vegas Convention and Visitors Authority (LVCVA) has been reporting increases in other tourism related categories. In 2013, visitation down slightly by 0.1% to 39.7 million people. Room inventory was less in 2013 than it was the previous year in 10 out of 12 months. So, even though Las Vegas maintained an 84.3% occupancy rate for the year, the fewer available room nights led to a visitation decline. Even so, 2013 was the second best year for visitor volume in the city's history. One of the reasons it fell behind 2012 was because that leap year had an additional day. Had the 2013 calendar had the extra day, Las Vegas would have set a record for the year based on average daily visitation. This trend carried over to 2014 as Las Vegas set a record with more than 41.1 million tourists, surpassing 40 million for the first time in the city's history; the previous record was 2012's 39.7 million.

And 2015 broke records in terms of visitor volume, surpassing 42.3 million visitors. The LVCVA predicted that 2016 would surpass the 2015 record with 42.5 million visitors. And they were right, as there were 42.9 million visitors, which was up 1.5% over 2015.

As of September 2017, citywide occupancy was 90.2% for the year, which is up 0.1% from that of 2016. Hotel occupancy was slightly higher at 91.9%, up 0.2% from a year ago. The Strip's Average Daily Room Rate (ADR) in September was up 1.4% to \$150.41, and \$140.90 for the year, up 4.0%. Of the 25 statistical categories in the authority's report, 19 showed an upswing for the nine months of 2017. The following data was compiled by the DiFederico Group from the LVCVA's releases for visitor statistics for year-end 2011 through 2016.

Visitor Statistics												
Year	2011	Δ%	2012	Δ%	2013	Δ%	2014	Δ%	2015	Δ%	2016	Δ%
Visitor Volume	38,928,708	4.3%	39,727,022	2.1%	39,668,221	-0.1%	41,126,512	3.5%	42,312,216	6.7%	42,936,109	4.4%
Room Inventory	150,161	0.8%	150,481	0.2%	150,593	0.1%	150,544	0.0%	149,213	-0.9%	149,339	-0.8%
Citywide Occupancy	83.8%	4.2%	84.4%	0.7%	84.3%	-0.1%	86.8%	2.8%	87.7%	4.0%	89.1%	2.6%
Average Daily Room Rate	\$ 105.11	10.7%	\$ 108.08	2.8%	\$ 110.72	2.4%	\$ 116.73	8.0%	\$ 119.94	8.3%	\$ 125.96	7.9%
Convention Attendance	4,865,272	8.8%	4,944,014	1.6%	5,107,416	3.3%	5,169,054	4.6%	5,891,151	15.3%	6,310,616	22.1%
Total Air Passengers	41,479,814	4.3%	41,667,596	0.5%	41,857,059	0.5%	42,869,517	2.9%	45,389,074	8.4%	47,435,640	10.7%
Avg. Daily Auto Traffic	99,844	15.1%	100,774	0.9%	102,244	1.5%	102,823	2.0%	109,204	6.8%	115,229	12.1%

Source: Las Vegas Convention and Visitors Authority, compiled by The DiFederico Group.

		LVCVA EXECUTIVE SUMMARY					
		September			September YTD		
		2016	2017	Change	2016	2017	Change
<b>Visitor Volume</b>		3,657,797	3,566,685	-2.5%	32,469,130	32,108,552	-1.1%
<b>Room Inventory (as of Sep 30)</b>		149,273	148,532	-0.5%	149,273	148,532	-0.5%
<b>Citywide Occupancy</b>		92.9%	91.1%	-1.8	90.1%	90.2%	0.1
Hotel Occupancy		94.2%	92.7%	-1.5	91.7%	91.9%	0.2
Motel Occupancy		80.1%	75.2%	-4.9	74.2%	73.6%	-0.6
Weekend Occupancy		96.5%	96.0%	-0.5	95.4%	95.5%	0.2
Midweek Occupancy		91.1%	88.3%	-2.8	87.8%	87.8%	0.1
Strip Occupancy		93.9%	92.3%	-1.6	91.5%	91.6%	0.1
Downtown Occupancy		86.1%	85.2%	-0.9	83.2%	83.9%	0.6
<b>Average Daily Room Rate (ADR)</b>		\$137.11	\$139.57	1.8%	\$125.69	\$130.56	3.9%
Strip ADR		\$148.29	\$150.41	1.4%	\$135.53	\$140.90	4.0%
Downtown ADR		\$72.58	\$80.58	11.0%	\$65.38	\$69.69	6.6%
<b>Revenue Per Available Room (RevPAR)</b>		\$127.38	\$127.15	-0.2%	\$113.25	\$117.61	3.9%
Strip RevPAR		\$139.24	\$138.83	-0.3%	\$124.04	\$128.94	3.9%
Downtown RevPAR		\$62.49	\$68.65	9.9%	\$54.40	\$58.36	7.3%
<b>Total Room Nights Occupied</b>		4,137,860	4,013,338	-3.0%	36,699,459	36,331,468	-1.0%
<b>Convention Attendance</b>		614,924	463,565	-24.6%	5,035,625	5,139,247	2.1%
<b>Conventions &amp; Meetings Held</b>		1,866	1,938	3.9%	15,975	15,166	-5.1%
<b>Total En/Deplaned Air Passengers</b>		4,053,362	4,071,128	0.4%	35,585,107	36,418,754	2.3%
<b>Avg. Daily Auto Traffic: All Major Highways</b>		114,244	114,687 e	0.4%	115,928	117,582 e	1.4%
<b>Avg. Daily Auto Traffic: I-15 at NV/CA Border</b>		43,788	43,774	0.0%	45,681	45,272	-0.9%
<b>Gaming Revenue: Clark County</b>		\$808,861,000 r	\$831,713,000	2.8%	\$7,218,091,000 r	\$7,519,482,000	4.2%
Gaming Revenue: Las Vegas Strip		\$542,541,000	\$567,890,000	4.7%	\$4,705,817,000 r	\$4,875,112,000	3.6%
Gaming Revenue: Downtown		\$49,247,000	\$49,255,000	0.0%	\$413,519,000 r	\$466,638,000	12.8%
Gaming Revenue: Boulder Strip		\$56,477,000	\$52,993,000	-6.2%	\$600,536,000 r	\$614,383,000	2.3%

Source: Las Vegas Convention and Visitors Authority

## McCarran International Airport

McCarran International Airport is one of the most modern airports in the country. According to the Federal Aviation Administration, it is also one of the fastest growing facilities in the United States. McCarran had been ranked the nation's fifth-busiest passenger airport on the Airports Council International-North America's annual traffic ranking of 2006. And it held the 7<sup>th</sup> position in their 2007 and 2008 reports.

Passenger activity at McCarran increased 76% during the 1990s. Based on a projected growth rate, McCarran was forecast to reach capacity by 2012. However, passenger activity decreased three straight years after peaking in 2007. This was a drop of 16.7% and the lowest figure reported since 2003. Since 2010, the trend has been up. McCarran welcomed 42.8 million arriving and departing passengers in 2014, making that year McCarran's busiest since 2008 when the airport served slightly more than 44 million passengers. The 2014 total marked a 2.4% increase from 2013. McCarran reported 45.4 million arriving and departing passengers in 2015. Passenger traffic was up 5.8%, extending the recent trend of year-over-year increases for the fifth consecutive year. It was also the busiest year at the airport since the economic downturn. In 2016, the number of passengers served was 47.4 million, the second busiest year in the airport's 68-year history and the sixth consecutive year of the upward trend.

McCarran International Airport saw another busy month in September 2017. In its most recent report, the number of passengers was up from September 2016 by 0.4%. September also marked the seventh consecutive month that the nation's eighth-busiest airport logged more than four million passengers. And the year-to-date total was up, with 2017 seeing 2.3% more passengers than the same time period of 2016. County aviation director Rosemary Vassiliadis said that year that she believed McCarran was on track to break its annual record of 47.8 million passengers, set in 2007. The following reflects the most current data of arriving and departing passengers.

#### **ARRIVING & DEPARTING PASSENGERS MONTHLY TOTAL**

<b>SEPTEMBER 2017</b>	<b>SEPTEMBER 2016</b>	<b>PERCENT CHANGE</b>
<b>4,071,128</b>	<b>4,053,362</b>	<b>0.4%</b>

#### **ARRIVING & DEPARTING PASSENGERS YEAR-TO-DATE (YTD) TOTAL**

<b>2017 YTD</b>	<b>2016 YTD</b>	<b>PERCENT CHANGE</b>
<b>36,418,754</b>	<b>35,585,107</b>	<b>2.3%</b>

*Source: McCarran International Airport Web site (<http://www.mccarran.com/>)*

Looking forward, McCarran officials continue to evaluate the airport's infrastructure and operations for ways to improve efficiencies and increase capacity in anticipation of the air traffic growth expected as new hotel rooms come online over the next several years. Additionally, airport leadership has been working with partner agencies such as U.S. Customs and Border Protection and the Transportation Security Administration to improve the customer experience by reducing wait times at the port of entry and security checkpoints.

The County Aviation Department was developing a plan for a second international airport on 6,500 acres of land owned by the Bureau of Land Management in the Ivanpah Valley, south of Las Vegas. They were anticipating a 2019 opening. However, due to the Great Recession, this has been pushed back until the demand returns.

In addition to McCarran, there are the Boulder City, Henderson, and North Las Vegas Airports. The North Las Vegas Airport, which is the general aviation reliever airport for McCarran, recently extended and resurfaced the runways.

## **SUMMARY AND CONCLUSIONS**

The four forces (social, economic, political, and environmental) that influence market values have been discussed. The various governing bodies have sponsored growth with their pro-development attitudes. The administrations also promote funding and infrastructure necessary for growth.

The area is also benefiting from strong national growth. U.S. gross domestic product expanded and increased economic diversification helped the comeback. However, the Southern Nevada economic recovery is still strongly tied to the tourism sector and since the national economy is doing well, Las Vegas' core sector also benefits. Leisure and hospitality will stay the city's most important jobs sector for the foreseeable future, but Brookings' best are now education, health care and business services. Contrary to Las Vegas' history, population growth is likely to be moderate

and not the driver of economic growth in the coming years. But tourism and gaming will remain the driving force behind the region's economic growth.

There have been several announcements involving major projects planned or under construction. These include:

- The Fontainebleau, Las Vegas' towering monument to the recession, was sold on August 29, 2017 for \$600 million. Billionaire Carl Icahn, who purchased the property on February 18, 2010 for \$150 million, announced that he sold the partially built, mothballed hotel tower on the north Strip to real estate investment firms Witkoff and New Valley. In a news release, New York-based Witkoff, led by founder Steven Witkoff, called the never-finished project "significantly undervalued" and said the new ownership paid a "substantial discount" to the cost of building it from scratch. The release said that they had "identified numerous ways to unlock the significant underlying value of the property," only referring to the property by its address and calling it "formerly known as the Fontainebleau." Miami-based New Valley is a subsidiary of the Vector Group. John Knott, global head of gaming for brokerage CBRE Group, and a former listing broker for the Fontainebleau, said it would cost \$900 million to \$1.6 billion to complete, depending on the vision for the property. The hotel had been slated to open in 2009. But the project went bankrupt in 2009, and Icahn acquired it in 2010.
- MGM Resorts International and AEG's 20,000-seat arena on the Las Vegas Strip between New York-New York and Monte Carlo resorts opened April 2016. The \$375 million, privately financed arena is poised to host Las Vegas' first major league franchise. On June 22, 2016, Gary Bettman, commissioner of the NHL, announced that Las Vegas would be home to the NHL's 31<sup>st</sup> team. The NHL's executive committee recommended expanding the league to Las Vegas, with all owners approving the move. The Golden Knights begin playing in the 2017-2018 season. Following this announcement, Bill Foley, the owner of the Las Vegas expansion team, broke ground on a \$24 million, 120,000 square foot practice facility in Downtown Summerlin. This facility, which was recently named the City National Arena, was completed in August of 2017, with the team's inaugural training camp starting in September of 2017.
- The Las Vegas Convention and Visitors Authority plans for the Las Vegas Global Business District, an overarching vision for the Las Vegas Convention Center and the surrounding area. The preliminary cost for the project is \$2.5 billion and will be completed in phases. This will be the first major expansion of the 54-year-old Las Vegas Convention Center in more than a decade. As part of that development, they acquired the 60-year-old Riviera for \$182.5 million on May 4, 2015. This is to be a phased development to accommodate current customer needs and capture future tradeshow opportunities. Phase One consists of the acquisition of the 26-acre Riviera Hotel property, demolition of the existing Riviera structures and construction of outdoor exhibit space. The acquisition and demolition are complete. Phase Two will include the development of a new exhibit hall and its ancillary spaces on the existing LVCC Gold Lot and the Riviera Hotel property. Phase Three will be the renovation and alteration of the existing Convention Center.



- The Malaysia-based Genting Group announced a multi-billion dollar Asian-themed resort complex, Resorts World Las Vegas. Resorts World Las Vegas will include 3,500 rooms, luxury dining and shopping and a half million square feet of convention space on the 87-acre site. A replica of the Great Wall of China and more than 300,000 feet of pool and water features are also planned. The company held a groundbreaking ceremony on May 5, 2015 with an anticipated 2019 opening. On October 23, 2017, Genting announced its appointment of W.A. Richardson Builders as the construction manager. The estimated completion time on the project is late 2020. In a press release, Edward Farrell, president of Resorts World Las Vegas, said that more than \$400 million in contracts had been awarded to vendors.
- The University of Nevada, Las Vegas has completed overhauling the Thomas & Mack Center, the on-campus facility that hosts events from the UNLV Rebels basketball to the National Finals Rodeo. The university spent \$72.5 million on mechanical upgrades, a new electrical system, 8,000 new seats and major upgrades to the concourse with rebranded signs and new equipment for concession stands. This included a 36,000 square foot addition with an observation deck overlooking the Strip.
- Another project that's been in the works for several years is ex-NBA player Jackie Robinson's arena on the site of the former Wet 'n Wild water park, just south of the SLS Las Vegas. Excavation began around March of 2017, but nothing vertical has been built on the 27-acre site. The development is to include a 22,000-seat arena with a retractable roof, a hotel, a conference center and other offerings. The arena project, which was being called the All Net Arena and Resort, was announced at the end of 2013. Its estimated cost was \$1.3 billion. On Oct. 18, 2017, Mr. Robinson gained approval from the Clark County Commission on expanded plans for the site that equate to \$2.7 billion, more than double the original. Some of the expanded plans include a 63-story, 2,000-room hotel, a 240,000-square-foot conference center and other amenities. On the day of the county meeting, Oct. 18, 2017, the Las Vegas Review-Journal quoted Mr. Robinson as saying that the financing is "signed, done, sealed, delivered." He also stated that he expects the project to be completed by spring 2020.

- On October 24, 2017, Caesars Entertainment announced plans to build a new convention center behind the Flamingo and Harrah's. "The convention center is going to be 300,000 square feet," said Caesars Entertainment President and Chief Executive Officer Mark Frissora. They stated that the center would cost \$300 million-\$350 million and should be built in two years, depending on permitting and coordination with Caesars' new board of directors.
- The Strip property that had previously been known as the Frontier Hotel Casino, which was demolished to make room for a new development to be called Alon, was listed for sale in 2017 at \$400 million. In August 2014, Australian casino mogul James Packer acquired the Frontier site. Packer teamed with former Wynn Resorts Ltd. executive Andrew Pascal and investment giant Oaktree Capital Management to acquire 18.39 acres in fee of the 34.6-acre vacant property, just north of Fashion Show mall. The remaining 16.17 acres of this site is owned by the Elardi family and leased to the Packer group. This is a long-term ground lease that expires on July 31, 2097. Plans filed with the county showed a two-tower, 1,100-room project that was expected to employ 4,500 workers. However, in late 2016 Packer pulled out and put the site up for sale in 2017 at \$400 million. It has been reported that Steve Wynn is buying the site for \$336 million.
- The MGM company is in the middle of a \$450 million make-over of the 3,000-room Monte Carlo. It will create a new luxury brand for MGM Resorts International and bring the NoMad Hotel concept to the Strip. The property will be transformed into two resorts within one property: the NoMad and Park MGM. The Park MGM will be 2,700 of those rooms and part of MGM's holdings while the NoMad will be an independently operated hotel, with a dedicated drop-off lobby and swimming pools, gaming, drinking and dining.
- Other gaming companies are also upgrading facilities. The two-tower, high-rise casino and hotel, The Cosmopolitan of Las Vegas is undergoing \$100 million in renovations. That translates into more than \$34,500 per room. The Cosmopolitan launched the upgrade of the Boulevard Tower in June 2017 and aims to complete it before the year end. It will start on the Chelsey Tower next year and finish by December 2018. In addition to new furniture and fixtures, the hotel will add 64-inch TVs as well as iPads to every room.
- And local's gaming giant Station Casinos plans a \$337 million investment in the Palace Station and Palms. The Palace Station investment totals \$76 million, and includes restaurants, casino bar, race and sports book and poker room. The new investment is in addition to a completed \$115 million renovation and expansion that includes a new low-rise exterior façade, two restaurants, porte-cochere, casino valet, bingo room and parking. In the Palms, Stations is investing \$146 million into two restaurants, movie theaters, meeting and convention space, rooftop ultra-lounge, high-limit area, hotel registration and VIP check-in.
- In March 2016, Caesars Entertainment announced they would upgrade more than 4,800 hotel rooms. That came after the November 2015 announcement that they would renovate rooms at five of their properties. Last year, Planet Hollywood started transforming 150 rooms, followed by 1,294 rooms and suites this year. After renovating the suites at Paris Las Vegas, they plan on renovating 1,320 rooms. All of the rooms in the 948-room Augustus Tower at Caesars Palace will be renovated and 672 rooms at Harrah's will also be refurbished. Caesars Entertainment announced in August 2017 a \$90 million upgrade to its Flamingo Hotel Casino; Caesars also plans to upgrade Bally's. These upgrades include modern room designs,

enhanced in-room electronics, new furnishings and bedding. Upon completion, Caesars will have renovated more than 10,000 hotel rooms in the last three years.

- In May 2016, Madison Square Garden executives announced a partnership with the Las Vegas Sands Corp. to build a music venue, taking aim at competitors including MGM Resorts. The companies said the venue will be a 17,500-seat arena just east of the Las Vegas Strip, behind the Sands-owned Venetian and Palazzo hotel casinos. The facility, as yet unnamed, will compete with the 20,000-capacity T-Mobile Arena and the 16,800-seat MGM Grand Garden Arena. The new venue is a partnership among Madison Square Garden Co., Sands Corp., Azoff MSG Entertainment, concert promoter Live Nation and Oak View Group, an entertainment advisory firm. The room will be designed for music, rather than the multipurpose model used in most sports arenas. Pre-application project documents were submitted to Clark County on October 20, 2017, showing a 585,000 square foot music venue. The next step is for the developers to submit a formal application, which may occur in December, thus beginning the entitlement process.
- Nearly two decades in the making, Project Neon is the largest public works project in Nevada history. Project Neon will widen 3.7 miles of Interstate 15 between Sahara Avenue and the “Spaghetti Bowl” interchange in downtown Las Vegas. It is currently the busiest stretch of highway in Nevada with 300,000 vehicles daily, or one-tenth of the state population, seeing 25,000 lane changes an hour. Traffic through this corridor is expected to double by 2035. The \$1 billion project is nearly 40% complete and divided into three phases. An HOV flyover bridge is being added and will create 22 consecutive miles of carpool lanes from I-15 to US 95. The project is in the middle of the second phase, with the third phase beginning in spring 2018. Completion is scheduled for 2019.
- During an October 26, 2017 conference call to investors, Steve Wynn announced that construction on Paradise Park, the lagoon development with a new hotel planned for behind the Wynn and Encore, will begin January 3, 2018. The Wynn Golf Club will close December 22, 2017 to make way for the project. “We’re in the very final stages of getting building permits, and hard construction should start by March and April,” he said. The carnival-themed new development will have a 103-foot diameter carousel rotating over the man-made lagoon, electric bumper cars that light up when bumped and a nighttime parade with 10-12 floats that guests can pay to join. The development will also have a new 47-story, 1,500-room hotel with its own convention space, casino and restaurants. It will sit roughly between the Encore and the Wynn Las Vegas. In addition, he said, there will be regular fireworks, zip lines and other attractions on the boardwalk that surrounds the lagoon.
- The biggest announcement involves the Oakland Raiders move to Las Vegas. On October 17, 2016 Nevada Governor Brian Sandoval signed a bill into law that cleared the way for a Las Vegas stadium that will be home to both UNLV and the NFL’s Oakland Raiders. The signed bill provides \$750 million in tax money towards a 65,000-seat domed stadium, with an estimated total cost of \$1.7 to \$1.9 billion. The last two obstacles for the Raider’s owner was to get 24 of the NFL’s 31 other owners to agree to the move and then approve their stadium lease. The first vote was held in Phoenix, Arizona on March 27, 2017 with 30 of the 31 owners approving the move. The second, for the lease, was approved at the owner’s May of 2017 meeting. A 62-acre site on Russell, west of the I-15 basically behind the Mandalay Bay Hotel Casino was purchased in May 2017 for this stadium. Groundbreaking for the new stadium was held November 13, 2017, with Nevada Governor Brian Sandoval, Oakland Raiders owner

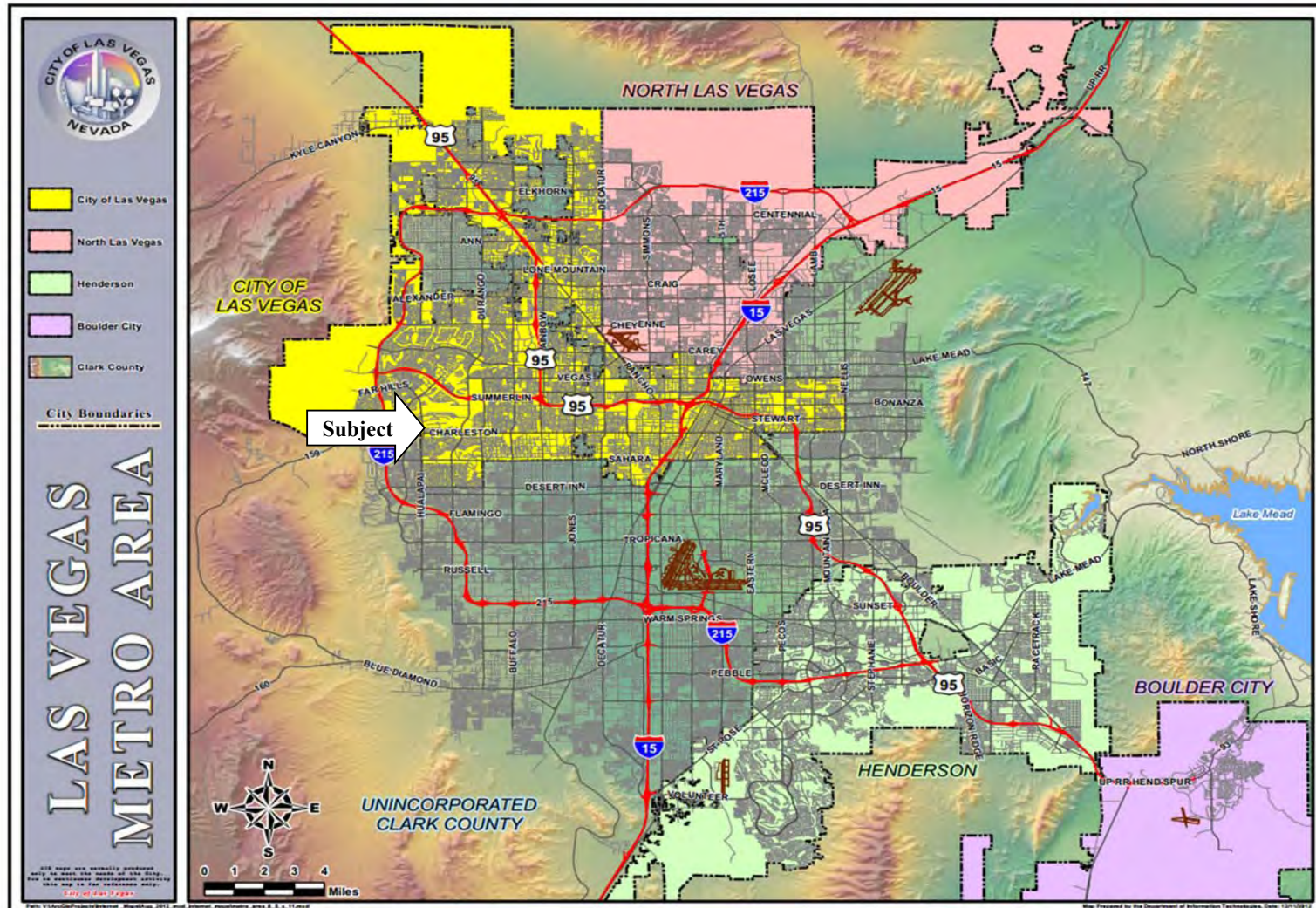
Mark Davis and NFL Commissioner Roger Goodell turning the first earth at the ceremony. The stadium is expected to be ready for the 2020 NFL season. This project is expected to generate approximately 19,000 construction jobs for the next three years.



In summary, the Las Vegas MSA economy has been showing steady signs of recovery. The state is seeing increased population growth, increased tourism spending and increased jobs in growing industries. And, Southern Nevada is on the cusp of reaching peak employment levels with 50,000 fewer construction jobs. The population of Las Vegas grew by 2.21% in 2015, leading the U.S. Census Bureau to rank Las Vegas as the fifth-fastest growing of 382 metropolitan areas in the country. Population growth creates new demand and signals a healthy economy. Forecasters were projecting 1.5% to 2.0% population growth in 2016, which it exceeded. Average household income is also up.

A record number of tourists visited Southern Nevada in 2016, and at the current pace, 2017 will break that record. Some 42.9 million people visited Southern Nevada in 2016, spending \$35.5 billion, 16.3% more than in 2015. Per person, Las Vegas visitors spent an average of \$827, up from \$721 in 2015. And convention attendees made up 14.7% of all visitors to Southern Nevada last year, up 7.1% from 2015. Based on the past and current indicators, we anticipated continued improvement in Southern Nevada's economy through 2017, which was still one of the premier tourist destinations in the world that had added the NHL and NFL.

## AREA MAP



**LEGEND OF PHOTOGRAPHS – (PHOTOS TAKEN DURING AUGUST 12, 2020 SITE INSPECTION)**

SUBJECT PHOTOGRAPHS



*View 1*  
*(Photo taken on August 12, 2020)*



*View 2*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 3*  
*(Photo taken on August 12, 2020)*



*View 4*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 5*  
*(Photo taken on August 12, 2020)*



*View 6*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 7*  
*(Photo taken on August 12, 2020)*



*View 8*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 9*  
*(Photo taken on August 12, 2020)*



*View 10*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 11*  
*(Photo taken on August 12, 2020)*

## PROPERTY ANALYSIS – IN THE BEFORE CONDITION

### PHYSICAL DESCRIPTION AND ANALYSIS OF THE SITE

#### LOCATION

The subject of this analysis is located at the southeast corner of Alta Drive and Hualapai Way, Las Vegas, Clark County, Nevada. The site also has frontage along Verlaine Court, Regents Park Road, and Orient Express Court.

#### SIZE

The subject site consists of one (1) assessor parcel number (APN), 138-31-201-005. The following is a summary of that parcel's size.

Land Area		
APN	Acres	Sq. Ft.
138-31-201-005	34.07	1,484,089
<b>Total</b>	<b>34.07</b>	<b>1,484,089</b>

#### CONFIGURATION

The subject site was irregular. The reader is referred to the following Parcel Map and aerial photograph for a visual illustration of the subject site's shape.

#### TOPOGRAPHY

The subject site's topography is undulating and slopes from its high point at its western boundary, to the east as it follows the natural terrain in the area. The property was historically part of a golf course with home sites bordering the course. My inspection indicated that the subject property was left in its original ungraded state for use as a portion of the golf course.

#### GROUND STABILITY

The subject site has single family residences to its north and south, with a row of houses and a road running down the middle of its eastern section. I was also provided a soils report prepared by Construction Testing Services, LLC (CTS). CTS concluded that the subject site was suited for development provided they follow the recommendations in their soils report. Gia D. Nguyen, P. E., Senior VP for GCW Engineers\Surveyors, reviewed the CTS report and also concluded that the subject site was suitable for development. Based on the CTS report and GCW review, and considering the surrounding development, I used the general assumption that the subject's soil bearing capacity was sufficient to support development of this site to its highest and best use.

#### DRAINAGE/FLOOD PLAIN

No drainage problems were apparent during the property inspection. I reviewed Flood Insurance Rate Map. According to Community Panels #2145 and #2150 of 4090, this site is located within an area designated as a Zone X. Flood insurance is not typically required within Zone X. I have included a copy of flood insurance maps #2145 and #2150 in the Addendum.

I was also provided information about drainage prepared by GCW. Their report stated that due to the existing FEMA designated Special Flood Hazard Area present downstream, the subject must match existing drainage patterns or provide mitigation. The report states that they assume the downstream impacts are insignificant; however, a technical drainage study will be required to demonstrate the insignificance with downstream analysis.

### HAZARDOUS CONDITIONS

An environmental assessment report was not provided for review and environmental issues are beyond my scope of expertise. The inspection of the subject did not reveal any obvious signs that there are contaminants on or near the property. Therefore, I used the general assumption that the site is not adversely affected by environmental hazards.

### UTILITIES

Utilities in this portion of the metropolitan area are provided by the following agencies.

Utility	Provider
Sewer:	City of Las Vegas
Water:	Las Vegas Valley Water District
Solid Waste:	Republic Services of Southern Nevada
Electricity:	NV Energy
Telephone:	Century Link
Gas:	Southwest Gas Corporation

### STREET FRONTAGE & ACCESS,

The site has frontage along the south side of Alta Drive and Verlaine Court, the eastern side of Hualapai Way, the western side of Regents Park Road, and the northern side of Orient Express Court. According to the City of Las Vegas Interrogatory Response No. 8 the Subject Property has general legal access to public roadway along Hualapai Way and Alta Drive. More specific data regarding the subject's street frontage and access is in the following table.

Street	Alta Drive	Hualapai Way
Frontage Feet	+/- 250 Linear Feet	+/- 995 Linear Feet
Surface	Asphalt paving	Asphalt paving
On-Site Improvements	Concrete curb, gutter, sidewalk & Landscape buffer	Concrete curb, gutter, sidewalk & Landscape buffer
Direction of Traffic	East / West	North / South
Ingress/Egress	Yes	Yes
Visibility	Good	Good
Street	Verlaine Court	Regents Park Road
Frontage Feet	+/- 1,150 Linear Feet	+/- 825 Linear Feet*
Surface	Asphalt paving	Asphalt paving
On-Site Improvements	Concrete curb, gutter & Landscape Buffer	Concrete curb, gutter, sidewalk & Landscape buffer
Direction of Traffic	East / West	North / South
Ingress/Egress	No Access	No Access
Visibility	Good	Good
<i>*Interrupted mid-way by Verlaine Court and a residence.</i>		
Street	Orient Express Court	
Frontage Feet	+/- 1,600 Linear Feet	
Surface	Asphalt paving	
On-Site Improvements	Concrete curb, gutter & Landscape Buffer	
Direction of Traffic	East / West	
Ingress/Egress	No Access	
Visibility	Good	

**LEGAL INFORMATION (ZONING)**

The subject property's zoning was recently addressed in a hearing before District Court Judge Timothy C. Williams. In the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners Motion to Determine "Property Interest," Judge Williams stated;

"the Court bases its property interest decision on eminent domain law. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties. Therefore, the Landowners' Motion to Determine Property Interest is Granted in its entirety and it is hereby Ordered that:

- 1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and
- 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential."

The purpose and development standards for the City's Residential Planned Development District are summarized below.

Designation:	Residential Planned Development District (R-PD7)
Purpose:	The R-PD District has been to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. Historically, the R-PD District has represented an exercise of the City Council's general zoning power as set forth in NRS Chapter 278. The density allowed in the R-PD District has been reflected by a numerical designation for that district. (Example: R-PD4 allows up to four units per gross acre.) However, the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts, which provide a more predictable form of development while remaining sufficiently flexible to accommodate innovative residential development. Therefore, new development under the R-PD District is not favored and will not be available under this Code.
<b>Development Standards</b>	The development standards for a project, including minimum yard setbacks, grade changes, building and fence heights and fence design, parking standards, standards for any guest houses/casitas and other design and development criteria, shall be as established by the approved Site Development Plan Review for the development. With regard to any issue of development standards that may arise in connection with a Residential Planned Development District and that is not addressed or provided for specifically in Section 19.10.050 or in the approved Site Development Plan Review for that District, the Director may apply by analogy the general definitions, principles, standards and procedures set forth in Title 19, taking into consideration the intent of the approved Site Development Plan Review.
Zoning Jurisdiction:	City of Las Vegas

The following aerial reflects the zoning in the immediate area of the subject property.



### **SURROUNDING USES**

The subject site is largely bordered by custom and semi-custom homes within the guard gated Queensridge development. Queensridge is bound by Alta Drive to the north, Charleston Boulevard to the south, Rampart Boulevard to the east and Hualapai Way to the west. Custom homes in the Summerlin master planned community are located at the northwest and southwest corners of Alta and Hualapai, while the northeast corner is developed with an office building, Merryhill Preschool and the Mountain Course of Angel Park Golf Course. It is my understanding that the site immediately east of the Merryhill Preschool is being rezoned from Civic District (C-V) to Limited Commercial (C-1), and is proposed to be developed with a 70,000 square foot medial facility.

The intersection of Alta Drive and Rampart Boulevard includes the Suncoast Hotel Casino at the northwest corner, Tivoli Village at the northeast corner and Boca Park's Fashion Village just south of the southeast corner. The 7.66-acre vacant site at the southeast corner of Alta Drive and Rampart was sold in 2019 to a medical user for \$18,980,000 or \$56.88 per square foot (\$2,477,693/Acre). Summerlin Parkway is located just north of this intersection. The reader is referred to the following aerial photograph for a visual of the surrounding uses.

### **OTHER LEGAL AND REGULATORY CONSTRAINTS**

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#### **Easements, Encumbrances, and Restrictions**

Based on my review of the title report and public records, I am not aware of any easements, encumbrances, or restrictions that would have adversely affect the highest and best use of the subject site. Therefore, this valuation is based on the general assumption that there were no adverse easements, encumbrances or restrictions and that the subject site had a clear and marketable title.

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#### **Encroachments**

My inspection of the site revealed no apparent encroachments. It is assumed that the site was free and clear of encroachments.

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#### **Other Land Use Regulations; Development Moratoriums**

I am not aware of any land use regulations other than zoning that would affect this property, nor am I aware of any moratoriums on development in this area in the before condition.

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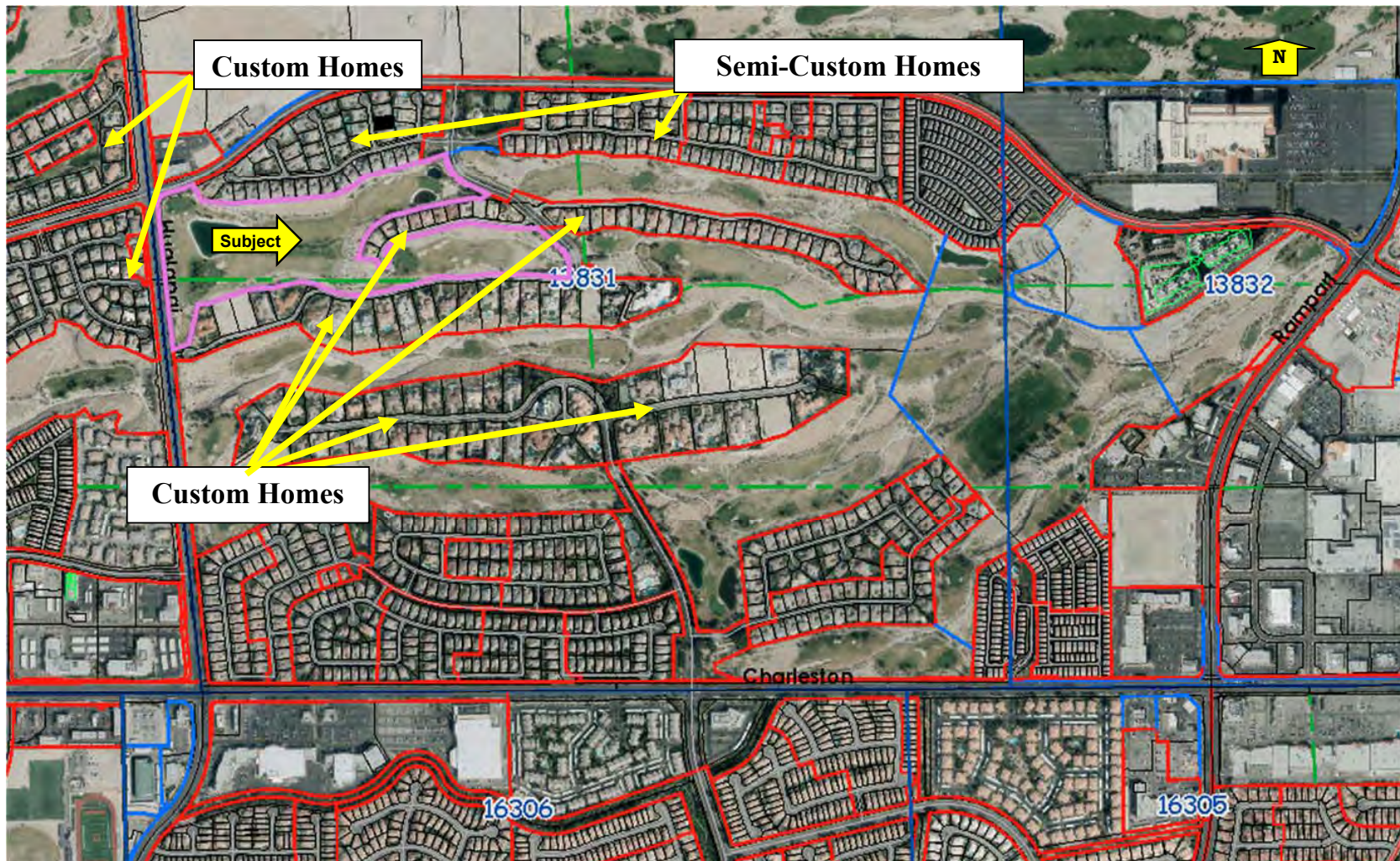
**CONCLUSION OF LAND ANALYSIS IN THE BEFORE CONDITION**

The subject of this analysis is a vacant parcel of land located at the southeast corner of Alta Drive and Hualapai Way. This site is bordered by custom homes in the guard gated Queensridge development.

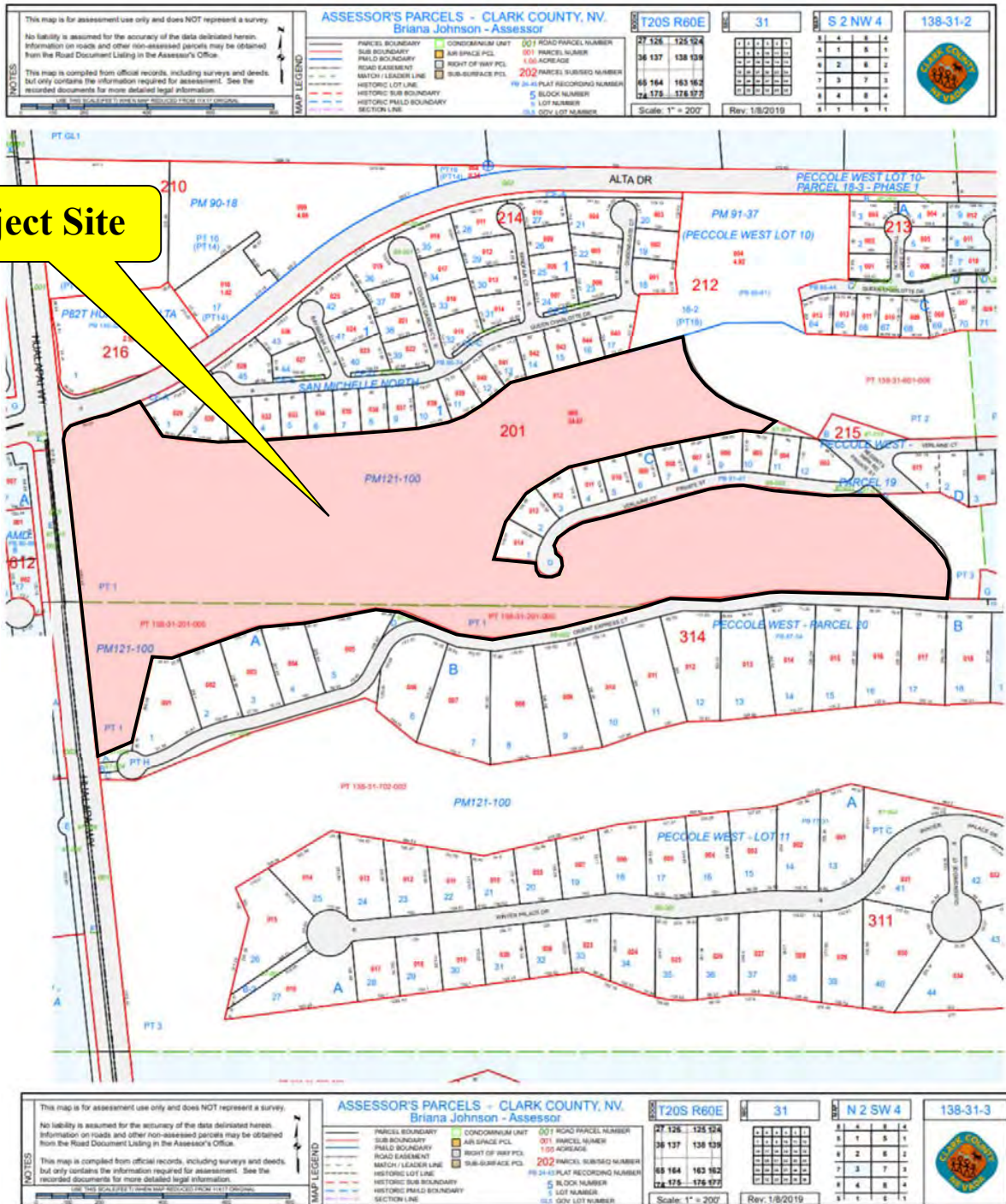
In the before situation, this site was zoned for residential development with a maximum of 7.49 dwelling units per gross acre. In the before condition, the site had access to Hualapai Way and Alta Drive, and public utilities were located in Hualapai and Alta. And while the topography was undulating, it would be a positive attribute for large custom home sites, as it would provide the future residences additional privacy from abutting properties.

Overall, the site's R-PD7 zoning and physical characteristics were suitable for residential development that was prevalent in this area and bordered the subject site. On the following pages, I have included copies of an aerial photograph of the site, the Assessor's Parcel Maps and copies of site plans under three (3) scenarios; 61-lots, 16-lots, and 7 lots.

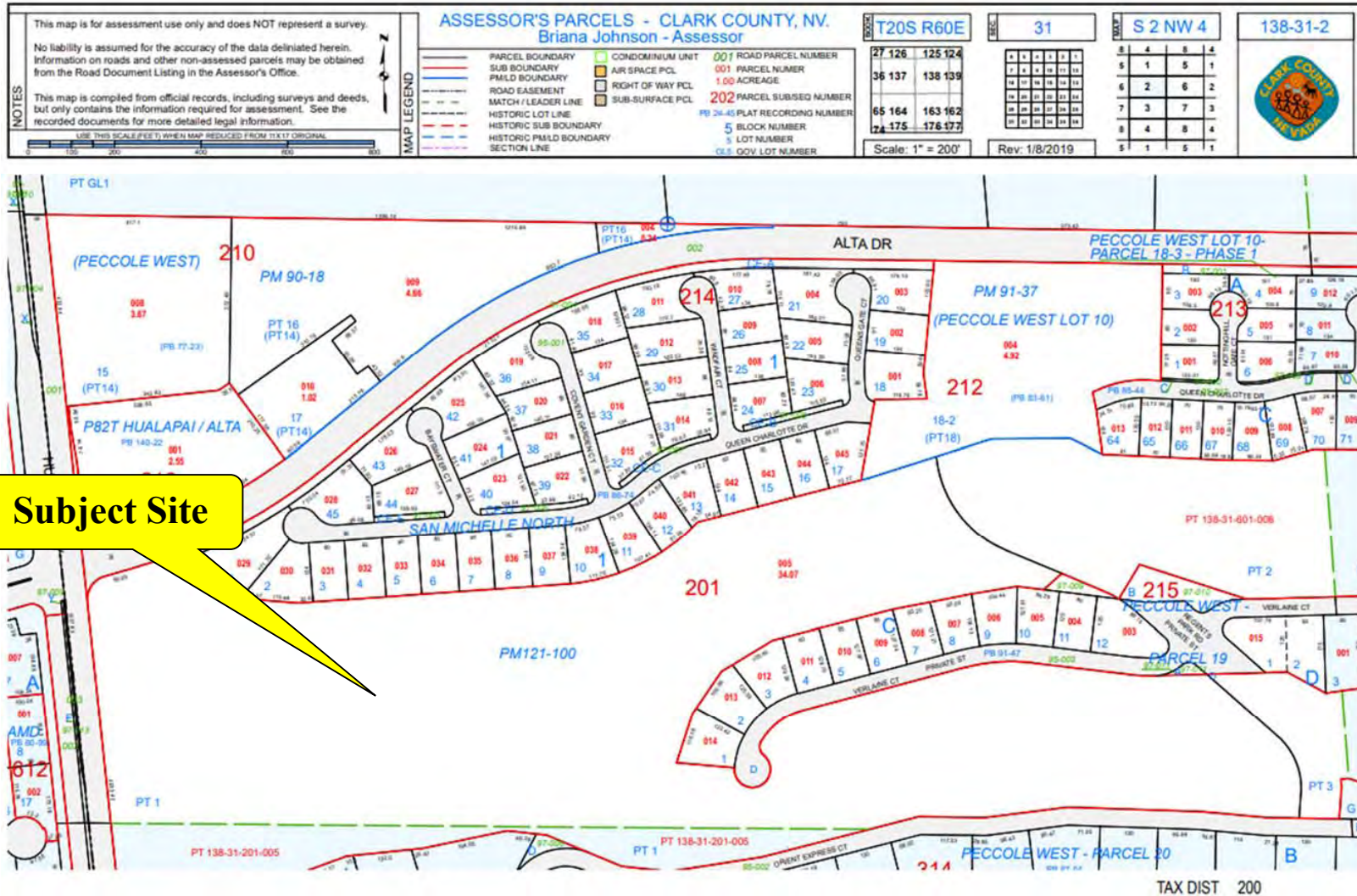
## CLARK COUNTY ASSESSOR'S AERIAL PHOTOGRAPH (PHOTO REPORTED TO HAVE BEEN TAKEN SPRING OF 2017)



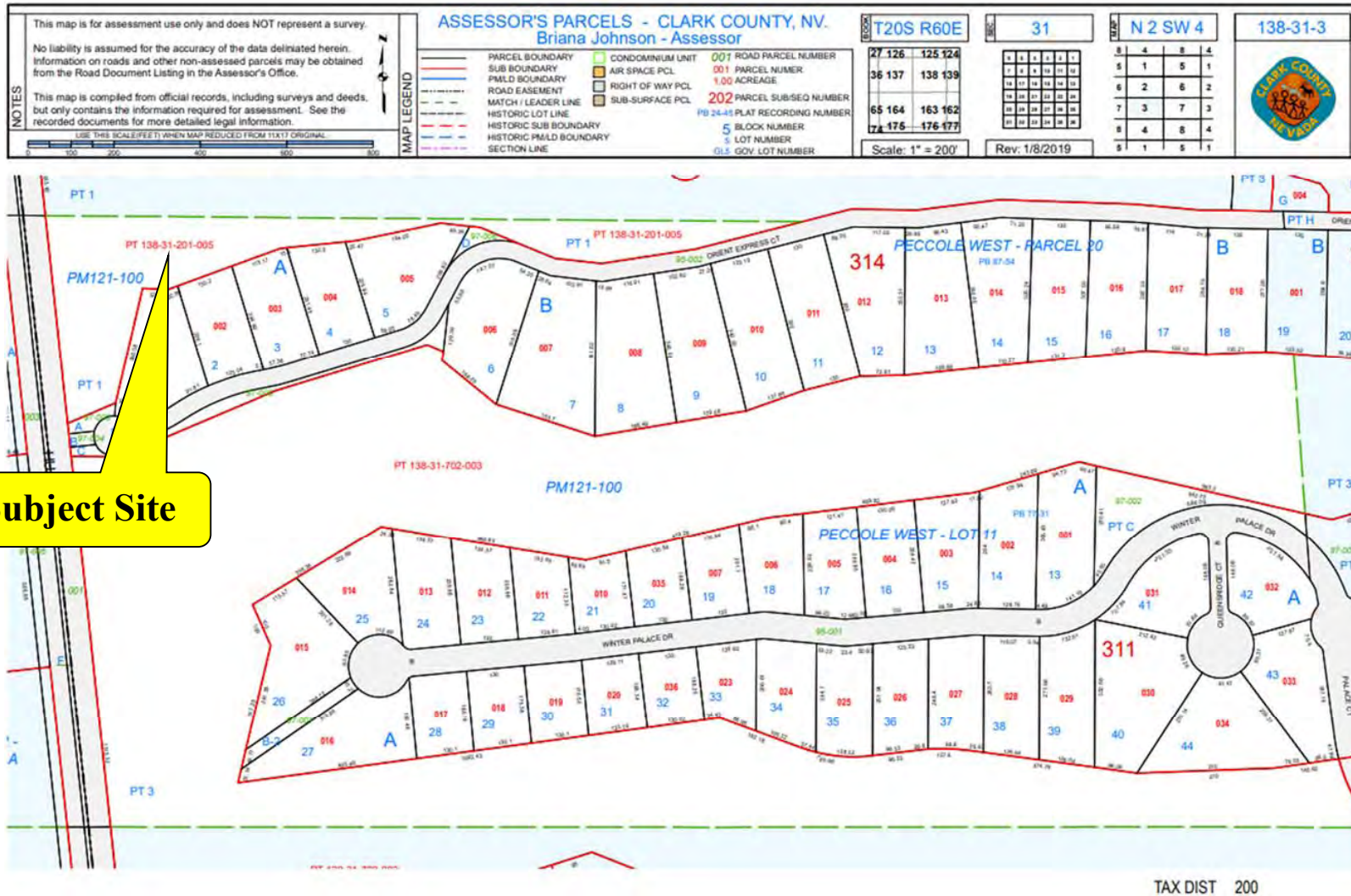
## ASSESSOR'S PARCEL MAPS 138-31-2 &amp; 138-31-3



## ASSESSOR'S PARCEL MAP 138-31-2



## ASSESSOR'S PARCEL MAP 138-31-3



NOT A PART

NOT A PART

NOT A PART

FEMA FLOOD PLAIN

MATCHLINE - SEE SHEET SDR-2

PRJ-67184  
01/25/17

NOTE:  
ALL IMPROVED, INTERIOR STREET AND PRIVATE DRIVE  
FILES WITH PUBLIC UTILITY EXISTENTS

NORTH  
SCALE: 1" = 80'  
SCALE: 1" = 80'  
FEET

PROJECT NO.  
SDR-2  
DATE  
1/25/17  
DRAWN BY  
CHECKED BY  
APPROVED BY  
PROJECT NO.  
SDR-2  
DATE  
1/25/17  
DRAWN BY  
CHECKED BY  
APPROVED BY

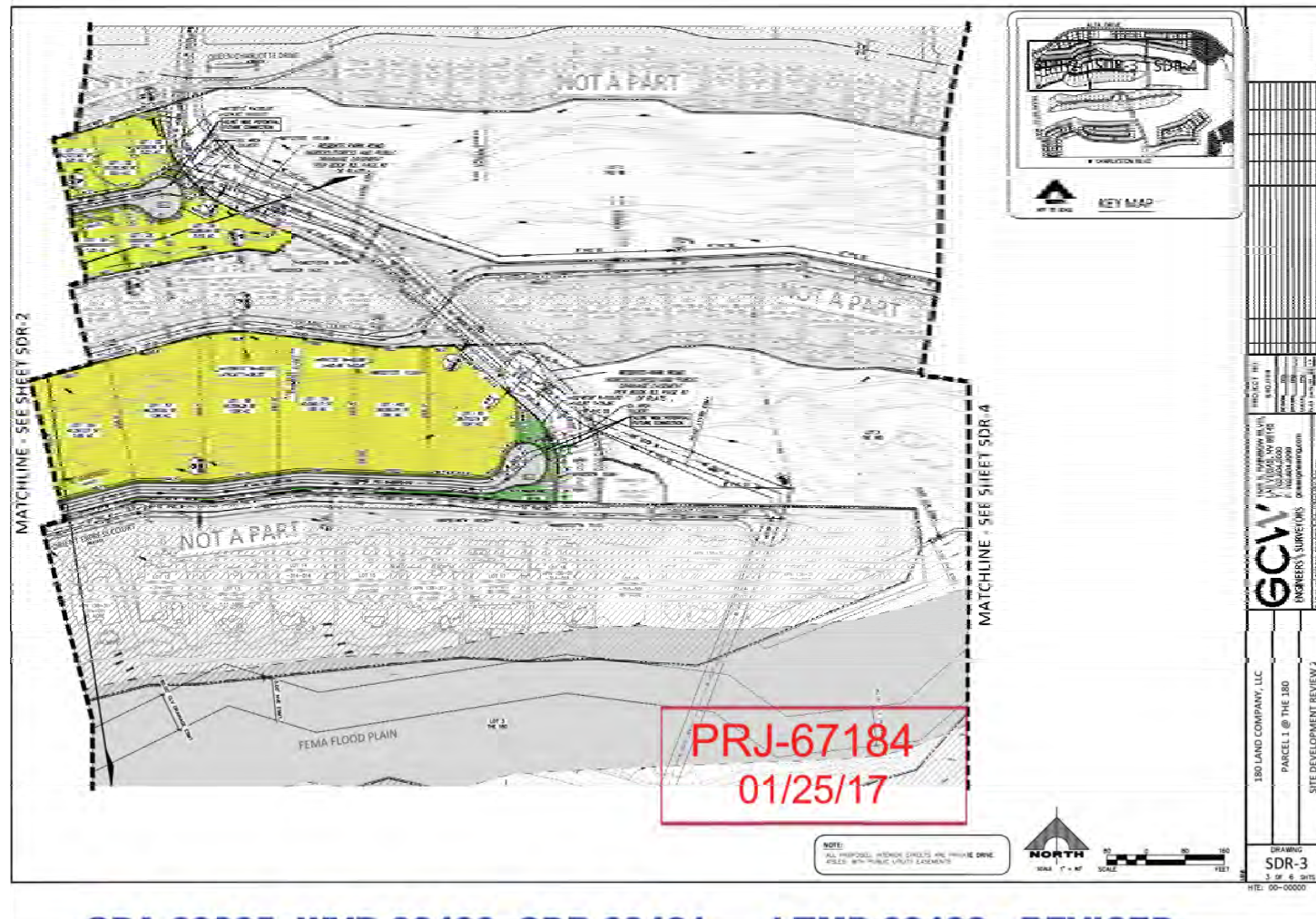
ECW  
ENGINEERS, SURVEYORS  
ARCHITECTS

380 LAUREL CIRCLE, N.E.  
PARCEL 1 OF THE 180  
SITE DEVELOPMENT REVISION 1

SDR-2  
2 OF 8 SHEETS  
HTE: 00-00000

**GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED**

## SITE PLAN FOR 61 CUSTOM HOME LOTS CONTINUED (PREPARED BY GCW 10/24/2017)



**GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED**

The site plan illustrates the layout of 16 lots within Parcel 1 @ The 180. The lots are numbered 1 through 16, with their respective areas in square feet (SF) provided. The plan also shows the surrounding streets: ALTA DRIVE, QUEEN CHARLOTTE DRIVE, VERLANE COURT, ORIENT EXPRESS COURT, and WINTER PALACE DRIVE. A north arrow and a scale of 1" = 100' are included in the top right corner. The plan is dated 10/1/2020 and is the work of GCW ENGINEERS & SURVEYORS.

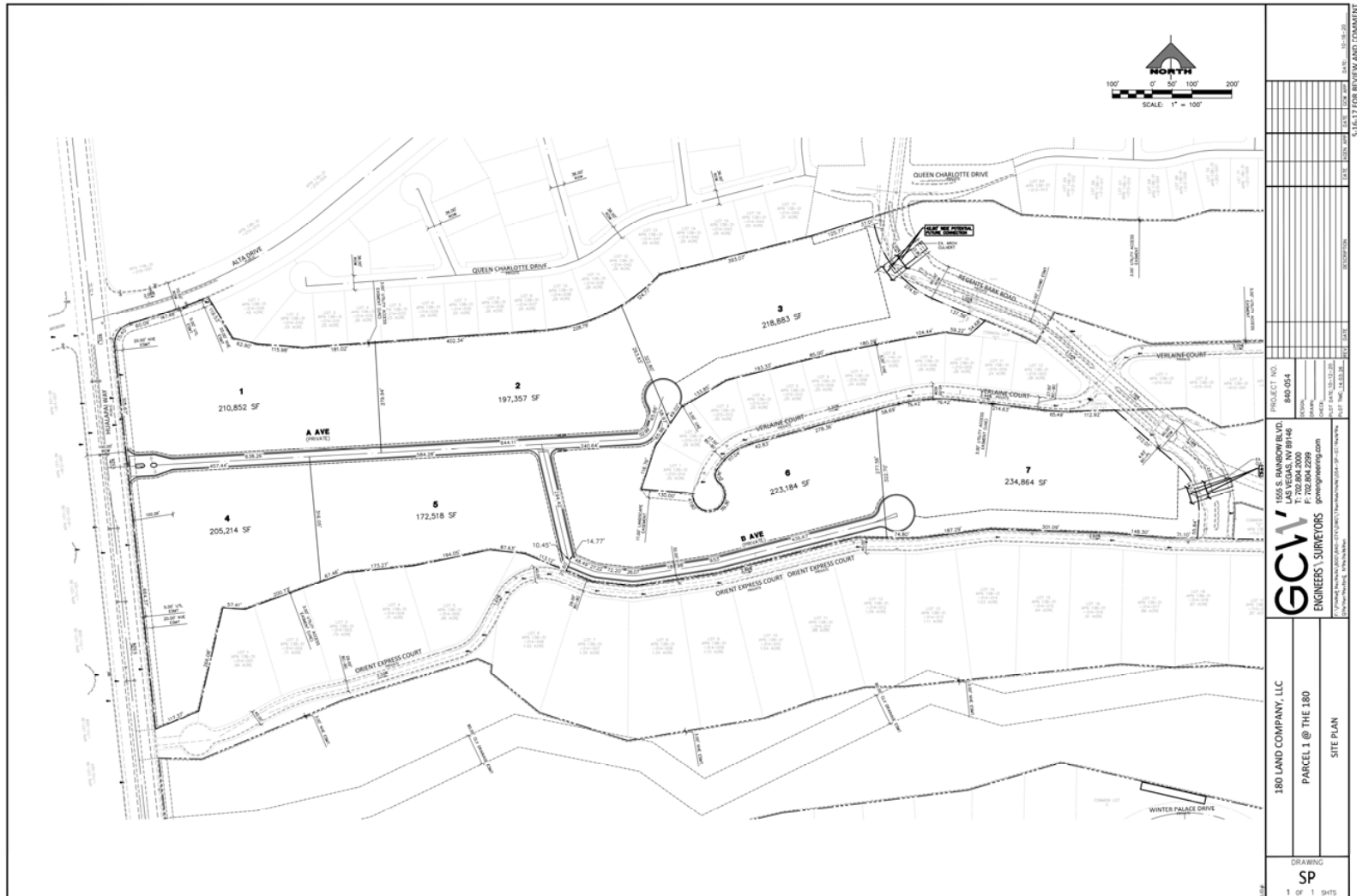
Lot Number	Area (SF)
1	111,407 SF
2	76,439 SF
3	77,458 SF
4	69,442 SF
5	75,903 SF
6	68,721 SF
7	80,664 SF
8	126,465 SF
9	94,049 SF
10	86,082 SF
11	94,518 SF
12	122,445 SF
13	77,205 SF
14	77,487 SF
15	84,031 SF
16	79,442 SF

GCW ENGINEERS & SURVEYORS  
1555 S. RAINBOW BLVD.  
SUITE 100  
DALLAS, TEXAS 75241  
P: 752.84.2000  
F: 752.84.2999  
gcwengineering.com

PROJECT NO. 840-054  
DATE: 10/1/2020  
DRAWN BY: J. L. LEE  
CHECKED BY: J. L. LEE  
SCALE: 1" = 100'

180 LAND COMPANY, LLC  
PARCEL 1 @ THE 180  
SITE PLAN  
DRAWING  
1 OF 1 SHEET  
SP

## SITE PLAN FOR 7 CUSTOM HOME LOTS (PREPARED BY GCW 10/12/2020)



**REAL ESTATE TAX ANALYSIS**

Real estate tax assessments are administered by Clark County and are estimated by jurisdiction on a county basis for the subject. In Nevada, the appropriate method under current law is that of using the replacement cost. Using this method, the Assessor must calculate the amount and cost of materials and labor it would take to replace the subject improvements. A depreciation factor of 1½% per year is applied to the effective age of the property, up to a maximum of 50 years. Land values are derived from market sales and are added to improvement values. The Assessor updates the property value each year.

Real estate taxes in this state and this jurisdiction represent ad valorem taxes, meaning a tax applied in proportion to value. The real estate taxes for an individual property may be determined by dividing the assessed value for a property by 100, then multiplying the estimate by the composite rate. The composite rate is based on a consistent state tax rate throughout this state, in addition to one or more local taxing district rates. The assessed values are based upon the current conversion assessment rate of 35.00% of Assessor's market value.

The subject property was previously operated as a portion of a 27-hole golf course known as the Badlands. The course stopped operating on December 1, 2016. On September 21, 2017, the Clark County Assessor sent the landowner a letter that stated the since the property ceased being used as a golf course on December 1, 2016, the land no longer met the definition of open space and was "disqualified for open-space assessment." The Assessor recognized the property as a higher use and the deferred taxes were owed as provided in NRS 361A.280.

I contacted the Clark County Treasurer's Office regarding the property's tax liability as of September 14, 2017. The following reflects the subject's real estate taxes for the 2018 fiscal year, which runs July 1, 2017 through June 30, 2018.

<b>AD VALOREM TAX INFORMATION</b>			
<b>Assessor's 2018 Fiscal Year Assessed Property Values</b>			
<b>APN</b>	<b>Land Value</b>	<b>Improvements</b>	<b>Total</b>
138-31-201-005	\$ 17,886,751	\$ -	\$17,886,751
Subtotal			\$17,886,751
Assessed Value @			35%
Taxable Value			\$ 6,260,363
Tax Rate/\$100 AV			3.2782
Taxes as Assessed			\$ 205,227
Less Cap Reduction			\$ -
2018 Fiscal Year Taxes			\$ 205,227
<i>Source: Clark County Treasurer's Office</i>			

The assessed value was based on the Assessor's estimated market value of \$17,886,751, which is equal to a value of \$525,000 per acre or \$12.05 per square foot for the subject property. Based on the concluded market value of the subject, the assessed value is low. However, this is typical as the assessor's office has historically been on the conservative side of value. Therefore, in the before condition the subject's assessed value and real estate taxes should not have negatively affected its value.

## HIGHEST AND BEST USE ANALYSIS – IN THE BEFORE CONDITION

The purpose of the highest and best use analysis is to determine the optimal use of the subject property. The purpose of the "as vacant" analysis is to determine if the property should be developed, and if so, what use the property should be developed with.

Highest and best use is often looked upon as a sifting out process. Many uses can be eliminated from reasonably probable consideration by investigating legal permissibility, physical possibility, financial feasibility, and maximum profitability of a site. Typically one is left with one or several reasonably probable uses for a site before determination of which use may be maximally productive.

### PROCESS

Before a property can be valued, an opinion of highest and best use must be developed for the subject site, both as if vacant, and as improved or proposed. By definition, the highest and best use must be:

- Legally permissible under the zoning regulations and other restrictions that apply to the site.
- Physically possible.
- Financially feasible.
- Maximally productive, i.e., capable of producing the highest value from among the permissible, possible, and financially feasible uses.

### HIGHEST AND BEST USE AS IF VACANT IN THE BEFORE CONDITION

The following analysis presents my analysis of the legally permissible, physically possible, financially feasible, and maximally productive use of the subject property as if vacant.

### LEGALLY PERMISSIBLE

In the before condition, the subject site consisted of an irregular-shaped 34.07-acre site located at the southeast corner of Hualapai Way and Alta Drive. The site is bordered by custom and semi-custom homes which are in the guard gated Queensridge development. The northwest and southwest corners of Alta and Hualapai are improved with similar custom homes in the Summerlin master planned community.

The property's zoning was addressed in a hearing before District Court Judge Timothy C. Williams. The Court concluded that the subject property had been hard zoned R-PD7 since at least 1990 and the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties. The Court Ordered that:

- 1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and
- 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential."

This is consistent with my investigation as well.

The density allowed in the R-PD District is reflected by a numerical designation for that district. (Example: R-PD7 allows up to 7.49 dwelling units per gross acre.) However, the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts, which provide a more predictable form of development while remaining sufficiently flexible to accommodate innovative residential development. New development under the R-PD District is not favored and will not be available under this Code. The R-PD7 zoning standards would be analogous to the LVMC 19.06.100 for the R-2 District, which allows 6-to-12 dwelling units per gross.

Given that the subject was zoned residential and bordered by custom homes within the Queensridge community, and that the northwest and southwest corners of Hualapai and Alta were improved with custom homes, both industrial and commercial uses have been ruled out from further consideration. I am also aware that the subject property was historically used as part of a golf course. However, a golf course is not a permitted use in the R-2 zoning district.

After considering the site's R-PD7 zoning designation, the allowable uses, and recognizing the principle of conformity, only public park or playground use, and residential use should be given further consideration in determining this site's highest and best use in the before condition. However, since the site was historically used as part of a golf course, I will also analyze a golf course use of the subject property.

### **Physically Possible**

What uses were physically possible in the site's before condition? In the previous section of this report, I discussed the physical characteristics of the subject site. Physically, the site consisted of a 34.07 acre or 1,484,089 square foot irregularly-shaped site that enjoyed approximately 995-feet of frontage along Hualapai Way, the site's western boundary, and 248 feet of frontage along Alta Drive, the site's northern boundary.

The property's Hualapai and Alta frontages were fully improved with concrete curbs, gutters, and sidewalks, as well as landscape buffers. The site's topography is undulating and slopes from its high point at its western boundary, Hualapai Way, to the east as it follows the natural terrain in the area. My inspection indicated that the property had been left in its original ungraded state for use as a portion of the golf course. As for ground stability, the subject site has single family residences to its north and south, with a row of homes and a road running down the middle of its eastern section. I was also provided a soils report prepared by Construction Testing Services, LLC (CTS). CTS concluded that the subject site was suited for development provided they follow the recommendations in their soils report. Gia D. Nguyen, P. E., Senior VP for GCW Engineers\Surveyors, reviewed the CTS report and also concluded that the subject site was suitable for development.

As for drainage, no problems were apparent during the property inspection. According to the Flood Insurance Rate Map, Community Panels #2145 and #2150 of 4090, this site is located within an area designated as a Zone X. Flood insurance is not typically required within Zone X. Copies of flood insurance maps #2145 and #2150 are located within the Addendum. I was also provided information about drainage prepared by GCW. Their report stated that due to the existing FEMA designated Special Flood Hazard Area present downstream, the subject must match existing drainage patterns or

provide mitigation. The report states that they assume the downstream impacts are insignificant; however, a technical drainage study will be required to demonstrate the insignificance with downstream analysis. There were no environmental hazards known on the site that I am aware of and all necessary utilities were available.

The location of the property, which is bordered by multi-million dollar homes, provides support for a residential development. However, community recreational uses and public parks were also legally permissible and physically possible uses of this site in September 2017. Therefore, while the legally permissible and physically possible attributes of the site suggest the most likely use of the property would be a residential development, community recreational uses or public park use, and golf course uses will still be considered.

### **Financially Feasible**

As for feasible uses, I looked at the residential market, and community recreational or public park uses that have emerged as legally permissible and physically possible uses of this site. I also considered the financial feasibility of a golf course use as the property had historically been used as a portion of a golf course.

I first looked at the residential market. In reviewing historical data, I found that the high-end or luxury housing market in Las Vegas 2017 reported its strongest year since the Great Recession approximately ten (10) years prior and was showing no signs of slowing down. Whether it was the new-home market or the resale market, sales were strong for homes priced at \$1 million and above. Home Builders Research reported that even homes priced around \$750,000 were having strong sales.

Applied Analysis reported 376 home sales priced at \$1 million and above in the existing single-family home market in 2017. That was 39% higher than the 270 home sales in 2016. Sales had been as low as 152 in 2012. Applied Analysis reported that in the new single-family home market, there were 129 closings in 2017, which was a 34% increase over the 96 sales in 2016. That market appeared to have recovered from the three (3) closings of \$1 million and above in 2013. Home Builders Research, in tracking closings of luxury condos and homes, reported 470 existing home sales in 2017 of \$1 million and above, a gain of 44% from 326 in 2016. There were such 875 closings of \$750,000 and above, a gain of 55% from 566 in 2016. In the new-home market, Home Builders Research reported 141 sales of \$1 million or more, a gain of 45% from 97 in 2016. There were 374 sales of \$750,000 and above, a gain of 37% from 274 in 2016.

In the custom home market, there were 198 custom home permits issued in Clark County in 2017, that was an increase of over 21% percent over the 163 issued in 2016.

These sentiments were stated in the following article in the Las Vegas Business Press, August 21, 2017.

## LAS VEGAS LUXURY MARKET ON THE RISE

By Buck Wargo Real Estate Millions  
August 21, 2017



The luxury home market in Las Vegas is on track to have its best year since the onset of the Great Recession.

Whether it's new home sales or sales of existing homes, there's a market for properties of \$1 million and above as well for those priced between \$750,000 and \$1 million.

During the first six months of 2017, there was a total of 184 existing homes that sold for more than \$1 million, according to SalesTraq, the residential research firm of Applied Analysis. During the same six-month period in 2016, there was a total of 139 homes sold, meaning an increase of 45 units or a 32.4 percent increase in the number of high-end home sales. Assuming the current pace holds, the market could have more than 360 high-end home sales for the year — by far the highest since the economic downturn, according to SalesTraq.

Luxury home resales have fallen between a range of 243 and 281 since a post-recession low of 152 in 2011 and 2012. There were 270 such sales in 2016, SalesTraq reported.

When factoring in existing home sales of \$750,000 and above, Home Builders Research said the 363 sales between January and June are 82 percent higher than the 199 closings through the same period in 2016.

The luxury new-home market has seen its share of increased sales as well. Home Builders Research reported 130 sales of \$750,000 and above through the first six months of 2017, 33 percent higher than the 98 sales through the same period in 2016. For homes priced \$1 million and above, the firm said there were 51 sales during the first six months of this year, a gain of 46 percent over the 35 sales through June 2016, the firm's president, Dennis Smith.

None of those figures include custom-built luxury homes, which can't be readily tracked, according to Smith. There were 113 custom-home permits issued through June, up from 105 for the first six months of 2016, he said.

SalesTraq figures show the 51 new-home closings of \$1 million or more during the first six months of 2017 are the most since the housing downturn.

There were 10 such luxury homes built in 2010, and that number fell to three in 2013. It grew to 33 in 2014, 50 in 2015 and 96 in 2016, according to SalesTraq. The totals, however, are still below the 141 sales of new homes of \$1 million for all of 2007.

The increased activity at the high-end of the market is a function of an improving economy as well as broader increases in overall home values, said Applied Analysis Principal Brian Gordon. In addition, for existing homes, the appreciating home market has resulted in more homes reaching the \$1 million threshold, he said.

“We have more residents than ever, job counts at an all-time high and incomes continuing to rise,” Gordon said. “The overall fundamentals of the economy are in a better position than they were previously. All of that has resulted in continued demand in the housing market, including the higher-end spectrum.”

Southern Nevadans are selling their existing homes and moving up and the influx of Californians to the state looking for second homes is creating opportunities for builders as well, according to Realtors and analysts. Some out-of-staters are moving to start a business or relocate their business here.

Smith added that the gains in the stock market have boosted confidence and sales are up because baby boomers are retiring and moving to Las Vegas.

“I think we’re seeing a good cross-section of buyers in the higher-end of the market,” Gordon said. “We have some folks who are moving up and at the same time, people migrating in from other parts of the country, including California. On a relative basis, Southern Nevada remains affordable for many of those transplants acquiring homes.”

Smith said the demand for the higher-priced homes is a boon for builders who can make more money for them rather than lower-priced ones. They’re also located on higher-priced lots with better views on hillsides or abutting Red Rock.

“You have the move-up buyer who already owns a house here and is looking to buy something new because technology has increased in recent years,” Smith said. “You might see people downsize and still buy a more expensive house.”

Most of the luxury home construction is taking place in Summerlin, Southern Highlands and Henderson gated communities such as MacDonald Highlands, Smith said. William Lyon Homes has been one of the builders benefiting from that demand in its Sterling Ridge and Silver Ridge subdivisions in The Ridges in Summerlin. Sterling Ridge sells homes for just under \$1 million and Silver Ridge homes sell for between \$1.3 and 1.5 million. More than one-third of the 82-lot Silver Ridge has been sold out and about 30 of 199 lots remain at Sterling Ridge.

“There has been an uptick in the luxury market with a lot of local move-up buyers and people coming from (out of state),” said William Lyon Homes sales agent Julia Giordani. “They are moving from other luxury communities in Las Vegas to get a modern contemporary style (as opposed to Mediterranean and Tuscan).”

The next big development in Las Vegas will be at The Summit Club in Summerlin where the majority of 146 lots have been sold with an average price exceeding \$3 million. When custom homes are built on the new exclusive golf course development for the uber-wealthy, some homes will cost more than \$10 million to build.

The project is a joint-venture between the Howard Hughes Corp. and Discovery Land Co. Membership in the club costs \$150,000 and its dues are \$27,000 a year.

Damien Bauman, area residential mortgage production manager with Nevada State Bank, said he’s “seeing a lot more activity in the luxury housing market as a testament to how healthy it is.” The “sweet spot” for new home construction is projects between \$2.5 million to \$3 million and borrowers can qualify for a little as 10 percent down for interest rates of 3.5 to 4 percent.

Many of those are business owners and executives who have a favorable outlook on the economy. Their businesses are improving, and they have more liquidity to upgrade their homes, Bauman said.

“It seems like a lot of people were sitting on the sidelines because the time wasn’t right to build, but they’re changing their mind and jumping in the market,” Bauman said. “There’s a buzz in new construction. They see the possibility with labor shortages and commodity prices going up. They want to jump in to build now and beat the prices increase coming down in the future.”

Forrest Barbee, a corporate broker with Berkshire Hathaway HomeServices Nevada Properties, said he was worried about the luxury market in early 2017 but it has taken off since then. He said the resale market is benefiting from problems with construction that doubled the time to build a home in some cases.

“Construction workers are in short supply and the length of time to buy land and build a new home may be pushing some people back into the resale market a little bit,” Barbee said.

Barbee credits the Golden Knights NHL franchise starting play this fall and planned relocation of the Oakland Raiders in 2020 as contributing to the luxury housing market gains.

“It gives us diversification from the other industries, but sports reinforces the existing industries,” Barbee said. “It reinforces gaming. It reinforces conventions. It reinforces hotel rooms. I think the luxury housing market may have benefited more than anybody from the sports side with people moving here.”

Kenneth Lowman, broker and owner of Luxury Homes of Las Vegas, said he’s seeing “some of the sales numbers they haven’t seen since the glory days of 2007.” He said he counted 39 closed sales of \$1 million or more on the Multiple Listing Service in July after there were 48 sales in May and 38 in June. Buyers are even gravitating to newer homes built in the last two to three years and willing to pay a premium for a more modern-style home that’s more energy-efficient.

“Those are months we have not seen for 10 years, and they are almost double what we used to four to five years ago,” Lowman said of recent sales. “Vegas is back in so far as gaming is doing well, visitor volume is back, people are retiring here, and we have these two professional sports teams coming here. The stock market has done well, and we have a lot of wealthy people here that if the stock market does well the more likely they are to put some of their money in real estate. I think it’s going to continue for another one to three years. The economy is healthy. Interest rates are down, and these houses are very affordable to people moving here.”

The Summit Club in Summerlin entered the market 2016. This is one of the more recent developments to enter the market selling finished custom home sites. Of the 130 custom home lots in this development, 60 sold between its opening in May of 2016 and the effective date of value in this analysis. The unit prices ranged from a low of \$31.82 per square foot (psf) for a 4.689 acre lot (\$6,500,000 total or \$1,386,223 per acre) in August of 2016, to a high of \$158.32 psf for a 0.580 acre lot (\$4,000,000 total or \$6,896,552 per acre) in June of 2016. The average price paid for these custom home lots was \$67.10 psf.

In the Ridges during the same period (May 2016 through September 2017), there were 16 custom home lot sales. The unit prices ranged from a low of \$29.63 psf for a 0.756 acre lot (\$975,000 total or \$1,290,536 per acre) in October of 2016, to a high of \$85.49 psf for a 0.290 acre lot (\$1,080,000 total or \$3,724,138 per acre) in January of 2017. The average price paid for these 16 custom home lots was \$52.72 psf.

The owner of the subject property has three (3) configurations for the subject property; 1) Sixty-one (61) home lots ranging from 0.22 acres to 1.08 acres; 2) Sixteen (16) home lots ranging from 1.58 acres to 2.90 acres, and; 3) Seven (7) home lots ranging from 3.96 acres to 5.39 acres. In a following section of this report, I used the Sales Comparison

Approach to estimate the value of the subject property. Based on my analysis, I concluded a unit value of \$23.00 psf or a total value of \$34,135,000.

As a check to the reasonableness of the value concluded by the Sales Comparison Approach, I completed the Subdivision Development Method, which is an application of the Income Capitalization Approach. The reason that it is categorized as an income approach to value is that it is based on converting the projected cash flow from lot sales, less expenses and profit into an indication of value. The subdivision method is used by developers to determine the price they can afford to pay for a property assuming certain costs, gross sales, and return considerations.

In a following section of this report, I completed a DCF for each of the three (3) lot mix configurations. Based on that analysis, I concluded that the “retrospective” market value of the Fee Simple Estate in the subject property in the before condition, for each lot configuration, as follows:

<b>Subdivision Approach</b>			
	<b>Total Value</b>	<b>Per SF</b>	
61-Lots	\$ 32,820,000	\$22.11	
16-Lots	\$ 35,700,000	\$24.06	
7-Lots	\$ 34,400,000	\$23.18	

My analysis indicates that a residential development was feasible on the effective date of value.

Next, I considered the property’s potential as part of a golf course. For this, I first looked at the overall health of the golf course industry on a national and local basis. I then considered the subject’s historical operations and what would be necessary to start back up the Badlands Golf Course. First, I looked at The National Golf Foundation’s “Golf Facilities in the U.S., 2017 Edition.” The NGF was founded in 1936 to provide golf-business research and consulting services.

According to the National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend being experienced throughout 2016 was referred to as “correction.” This was because at that time golf course closures occurring throughout the U.S. indicated we had an oversupply that required market correction.

The NGF 2017 Facilities Study reported, “The golf course industry continues to go through a period of natural correction, as expected, following a 20-year period of the most dramatic growth in the game’s history. By the end of 2016, there were 15,014 golf courses in the United States. This included a net reduction of 171 courses that year. The NGF reported that from 2006 to 2017, the golf course industry experienced a cumulative decline of 1,045 golf courses, with an average net loss of 87 per year ( $1,045 \div 12 = 87.08$ ). As of March 2017, which is when the report was released, the NGF report stated that the golf course market was still oversupplied, and more course closings were expected. Closings were “projected to fall in the 150 to 175 range as the natural contraction continues gradually, extending incrementally into its second decade following a two-decade run of golf course growth.”

I found this to be a common theme when researching the health of the golf course market in 2017. It was addressed in a Bloomberg Magazine article titled “Dead Golf Courses Are the New NIMBY Battlefield” and again in their March 24, 2021 article titled “Old Golf Courses are being Turned into E-Commerce Warehouses.” The first article began with “Golf is dying, many experts say. According to one study by the golf industry group Pellucid Corp., the number of regular golfers fell from 30 to 20.9 million between 2002 and 2016. Ratings are down, equipment sales are lagging, and the number of rounds played annually has fallen.”

Their March 2021 article begins with “The surge in online shopping has developers looking for acreage, and the links-to-logistics conversion is proving to be a winning move.” The March 2021 article included aials showing these conversions occurring.

I also found this discussed in National Recreation and Park Association (NRPA) monthly magazine. Under the heading “Why Has Golf Declined?” they discussed the decline in play being experienced throughout the U.S. This article referenced a 1987 report by McKinsey & Company consulting firm that had projected substantial increases in the number of golfers and called for “A Course a Day” to be built to accommodate it. This plan was embraced by many in the development community and reinforced the momentum to build new courses. This article stated that McKinsey & Company was still optimistic in their 1999 update to that 1987 report, but their forecast was wrong.

The NRPA report stated that since 2003, there has been a consistent decline in the number of golf players each year. They reported there were 6.8 million fewer golfers in 2018 compared to 2003, which is a loss of over 20%. This led to “a net reduction of 1,243 18-Hole courses between 2005 and 2018.” The NRPA stated that this decline was “a function of the high cost of playing, difficulty of courses, and the game’s incompatibility with contemporary lifestyles.”

I also looked at a report on the Badlands Golf Course that was prepared by Global Golf Advisors (GGA). GGA stated that they reviewed 2017 annual financial reports for the municipalities of Las Vegas, North Las Vegas and Henderson for the profitability reported by their public golf courses.

GGA stated; “While municipal courses often do not serve as an ‘apples-to-apples’ comparison due to the potential for labor unions, it is worth noting that none of the municipal courses observed were profitable during the year of reference.”

These municipalities reported the net operating income for the Durango Hills (City of Las Vegas), Wildhorse (City of Henderson), and Aliante (City of North Las Vegas) public golf courses. Therefore, I looked at their 2017 Financial Reports:

1. The City of Las Vegas 2017 Financial Report – (<https://files.lasvegasnevada.gov/finance/CLV-CAFR-FY2017.pdf>);
2. The City of Henderson 2017 Financial Report - (<https://www.cityofhenderson.com/home/showpublisheddocument?id=1650>); and
3. The City of North Las Vegas Financial Report - ([http://www.cityofnorthlasvegas.com/docs/Finance/CAFR/CAFR\\_FY2017.pdf](http://www.cityofnorthlasvegas.com/docs/Finance/CAFR/CAFR_FY2017.pdf))

According to these 2017 Financial Reports, Durango Hills, Wildhorse and Aliante were losing money. The GGA report also stated that Spanish Trail Country Club, a private club, was losing money.

In addition to looking at the historical operations at the Badlands Golf Course, I looked at the reported operations at other courses in the Las Vegas area that would compete with the subject. Between 2016 and 2017, there were numerous articles about golf courses having problems and potential conversions. It was reported that Dragon Ridge, Black Mountain, Siena, Silverstone, Rhodes Ranch and South Shore were all losing money.

The data shows the Badlands wasn't an outlier that was struggling in a thriving golf course market. Based on what was happening in the local golf course market, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of that "correction."

Next, I analyzed what if any effect the national and local "correction" was having on the subject property. For that, I looked at the historical operations of the Badlands. According to the supplied information, the Badlands had nearly 35,000 rounds played in 2016. The NGF estimated Course Rounds (in-market supply) in 2016 at 35,300 per facility for the 30-minute drive radius from the Badlands. This suggests that the course generated comparable demand.

In looking at the number of visitors to Las Vegas, I found that visitation numbers hit an all-time high in 2016. However, the Badlands Golf Course experienced its lowest level of financial performance in 2016, which indicates that an increase in visitors did not benefit the Badlands Golf Course and growth in tourism would not lead to sustainable financial performance for this course.

Elite Golf Management was operating the course. The use of a management company was discussed in the NGF 2017 Facilities Study. The report stated: *"Driven in part by escalating competition and rising costs, independently-owned courses are increasingly hiring professional management companies to run operations. This trend is part of an ongoing effort to improve customer service levels, enhance course conditions, and add technology and amenities while implementing best practice initiatives."*

This option was also being used in the Las Vegas golf market. The GGA report identified a number of management companies operating in the Las Vegas market in 2017. These were as follows:

- Pacific Links was managing TPC Summerlin, Painted Desert Golf Club, Desert Pines Golf Club, Dragon Ridge Country Club;
- ClubCorp is managing Bear's Best Las Vegas, Canyon Gate Country Club;
- OB Sports is managing Angel Park Golf Club, The Legacy Golf Club (prior to Elite Management taking over), Durango Hills Golf Club; and
- Troon is managing Aliante Golf Club.

The operators leading up to the time of closing the Badlands Golf Course, Elite Golf Management, were also experienced operators in the local market. Elite was managing the following golf courses:

- Primm Valley Golf Course (Two (2) 18-hole golf courses)
- Spanish Trail Country Club (27 holes)

- Legacy Golf Club, Henderson (18 holes)
- Wildhorse Golf Club, Henderson (18 holes)
- Mountain Falls Golf Club, Pahrump (18 holes)

Prior to Elite Golf Management, the Badlands Golf Course was managed by Par 4 Golf Management. Par 4 Golf Management was founded in 2008. Par 4 Golf Management was a partnership between Paul Jaramillo and Keith Flatt. Mr. Jaramillo was the President & Co-founder of Par 3 Landscape & Maintenance. Par 3 Landscape & Maintenance was successful landscape company in the Las Vegas market. Mr. Flatt's experience covered most aspects of the golf industry, including being a professional player, caddy, credentialed instructor, head golf professional and course owner.

Par 4 managed five (5) local courses including the Badlands Golf Course prior to their transition to Elite Golf Management. Prior to Par 4 Golf Management, Badlands was managed by Troon, which was considered to be one of the largest golf management companies in the U.S. and an industry leader.

To analyze the facilities historic operations, I was provided the income and expenses for 2014, 2015 and 2016 up to the facilities December 1, 2016 closing. The supplied historical income and expense statements reflected that revenue declined 11% in 2015. In comparing the 2015 revenues to 2016, an adjustment is required for the eleven (11) months used in 2016 statement versus twelve (12) months used in 2015. Therefore, I annualized the property's 2016 revenues to reflect a similar twelve (12) month period. While the actual 2016 revenues through November reflected a decrease of 31.2% from 2015, annualizing 2016 revenues indicates that the decline in revenues would be 24.9%.

During this period (2014 to 2016), cost of sales percentage was slowly increasing. This expense was 14.1% of revenues in 2014, increased 80 basis points to 14.9% in 2015 and then increased another 100 basis points to 15.9% in 2016. This resulted in the effective gross income (EGI) being \$3,038,330 in 2014, \$2,679,318 in 2015 (down 11.8%), and \$1,819,789 through the first eleven months of 2016 (down another 32.1%). Annualized, the 2016 EGI would be \$1,985,224, which was still down 25.9% from 2015.

Next, I looked at the property's expenses. According to the supplied information, expenses went from 82.7% of EGI in 2014 to 75.4% of EGI in 2015. However, the expenses then increased to 95.0% of the EGI in 2016. And 2016 reflects the expenses without the annual cost of overseeding the facility. The operator estimated that this saved \$60k in hard costs plus the course gained additional revenue from not being closed for overseeding in 2016. It is my understanding that these decisions were made out of necessity to save cash but are not good for the long-term sustainability of the course.

The historical net operating income (NOI) for the subject property is calculated by deducting the operating expenses from the EGI. The reported NOI was \$524,892 in 2014, \$659,516 in 2015 and \$90,368 for the first eleven months of 2016. Annualized, the 2016 NOI is \$98,583. Therefore, the NOI increased 25.6% in 2015 and decreased 86.3% for the first eleven (11) months of 2016. Annualized, the 2016 NOI was down 85.1% from 2015. The following is a summary of the previous data.

## RECONSTRUCTED INCOME &amp; EXPENSE STATEMENTS

YEAR	2014	2015	% Chg.	2016*	% Chg.	2016**	% Chg.
Revenue	\$ 3,535,458	\$ 3,146,915	-11.0%	\$ 2,164,973	-31.2%	\$ 2,361,789	-24.9%
Less Cost of Sales	\$ (497,128)	\$ (467,597)	-5.9%	\$ (345,184)	-26.2%	\$ (376,564)	-19.5%
Gross Profit	\$ 3,038,330	\$ 2,679,318	-11.8%	\$ 1,819,789	-32.1%	\$ 1,985,224	-25.9%
Less Operating Expenses	\$ (2,513,438)	\$ (2,019,802)	-19.6%	\$ (1,729,421)	-14.4%	\$ (1,886,641)	-6.6%
Net Operating Income (NOI)	\$ 524,892	\$ 659,516	25.6%	\$ 90,368	-86.3%	\$ 98,583	-85.1%

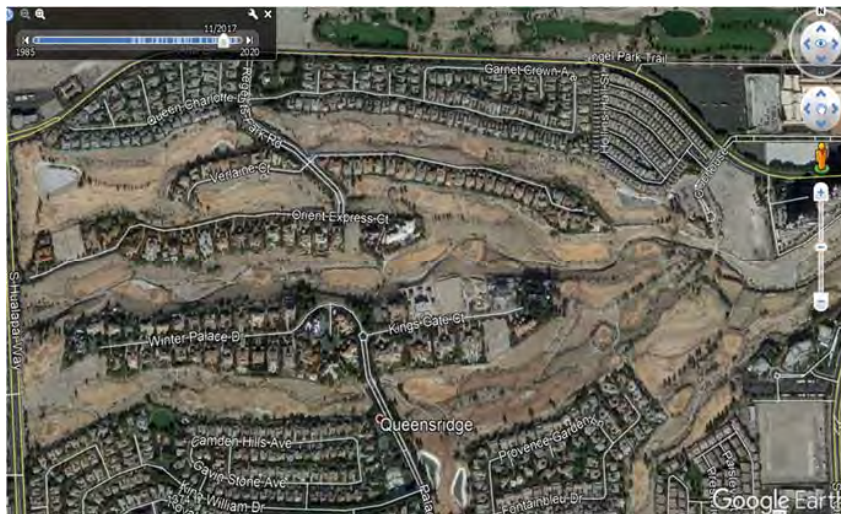
\*Based on the Eleven (11) Months the property was operating.

\*\*Annualized 2016 Data Assuming the average over the Eleven Month Period is Maintained in December of 2016.

For the reader's perspective, I broke out the trends in revenues and NOI in the following charts.



While there was an 81.2% decline in NOI over the prior three (3) years it was operating, the true picture of this property's viability is incomplete without including the deferred maintenance that had been ignored. It is not like the owner could have just decided on September 14, 2017, "let's open the course for play today." For the reader's perspective of the course's overall condition in the later part of 2017, I included the following photograph of the course. This photo was reportedly taken in November of 2017 (Source: Google Earth).



It is obvious that the property was not ready for play in the later part of 2017 as the turf was dead and the ponds were empty and exposed. Therefore, I looked at the cost to cure the property's deferred maintenance to see if it was economically feasible to return to operations on the effective date of value.

According to GGA's report, estimates to cure the deferred maintenance provided by Elite Management, were as follows:

- Clubhouse Renovation/Update - \$1M (to update) to \$8M (full renovation to stay competitive)
- Cart Path Replacement - \$1.7M
- Irrigation System Replacement - \$800k
- Maintenance Equipment - \$800k
- Golf Carts - \$600k
- Pond Liner Replacement - \$350k
- Sod, Seed and Bring Back Turf - \$1.5M

The previous items are a summary of the major capital expenditures required but does not include any unforeseen issues such as problems with the pumps, wells or any other existing infrastructure. For example, if the irrigation system needs to be replaced, the cost adds another \$2+M to the cost to reopen. The previous costs, without the irrigation system, total a minimum of \$6.75M with a refresh for the club house, and a maximum of \$13.75M if the club house is to be completed redone.

The GGA report also referenced additional estimates that indicated the restoration costs for the golf course could be between \$3.65M and \$4.7M as of the effective date of value. In the following table I applied the cost to cure the deferred maintenance to the previous three years of income and expenses to ascertain how the balance sheet would look if the property had been maintained at a minimum level.

<b>Year</b>	<b>NOI</b>
2014	\$ 524,892
2015	\$ 659,516
2016**	\$ 98,583
Total Three (3) Years NOI	\$ 1,282,991
Deferred Maintenance - Minimum	\$ (3,650,000)
<b>Net Income/Loss Over Three (3) Years</b>	<b>\$ (2,367,009)</b>
<b>Net Income/Loss per Year</b>	<b>\$ (789,003)</b>
Total Three (3) Years NOI	\$ 1,282,991
Deferred Maintenance - Maximum	\$ (13,750,000)
<b>Net Income/Loss Over Three (3) Years</b>	<b>\$ (12,467,009)</b>
<b>Net Income/Loss per Year</b>	<b>\$ (4,155,670)</b>

**The above figures are based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The above calculations are based on the extraordinary assumption that the provided costs to cure the deferred maintenance were accurate as of September 14, 2017, the effective date of value for this assignment.

While the previous Reconstructed Income & Expenses Statement reflected a positive NOI for 2014, 2015 and 2016, the NOI did not reflect the true cost of operations as the operator had not addressed the deferred maintenance. The NOI would have been significantly less (and actually reflects a substantial net loss) if the deferred maintenance costs at the time of operation had been addressed.

The GGA report stated that their Director, Tommy Sasser, validated the previous cost estimates provided by Elite Management. They stated that Mr. Sasser has expertise in golf course renovation and construction management with over three decades of experience directing land development activities and has been involved in the design

and/or construction of over 75 golf courses around the globe. The GGA report states that Mr. Sasser solicited a second expert opinion on the restoration costs from Heritage Links (a division of Lexicon Inc.), a Houston based restoration company with knowledge of the golf course. The total estimate provided by Heritage Links projects a cost of more than \$3.74M as of September 2017, not including contingencies.

Even in years prior, operators of the facility expressed the opinion that the operation was no longer profitable. On September 18, 2015, Paul Jaramillo (CEO of Par 4 Golf Management, Inc.) expressed the following sentiment in a ‘Notice of Cancellation’ memo to the owners: *“We have operated the course for a number of years with little or no profit in hopes that the golf industry would recover, and we would be able to recapture our investment. Given the ever increasing water costs, operating costs and a golf market that cannot support increased green fees, we have determined that we are no longer willing [to] assume the risk.”*

On December 1st, 2016, Keith Flatt (CEO of Elite Golf Management), expressed the following opinion in another memo to ownership: *“Unfortunately, it no longer makes sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues to struggle, and Badlands revenues have continued to decrease over the years. This year we will finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate, we cannot continue to sustain the property where it makes financial sense for us to stay. Even with your generosity of the possibility of staying with no rent, we do not see how we can continue forward without losing a substantial sum of money over the next year. The possibility of staying rent free was enticing and we apologize if our email to customers about staying may have caused any issues for you, but after full consideration of our current financial status at Badlands, we came to the conclusion that we just could not afford to stay any longer.”*

In addition to the previously discussed data, the fact that the two prior golf course management companies could not operate the Badlands at a profit sufficient to justify remaining on the Subject Property in the preceding years, even with free rent while ignoring the deferred maintenance, demonstrates operating the Badlands was not financially feasible as of December 2016 when it was closed or September 2017, the effective date of value. Therefore, golf course use is ruled out from further consideration as to being the highest and best use of the subject property.

I also researched the market for sales of public parks. For a public park use, the value of the subject would need to exceed \$23.00 per square foot or \$1,000,000 per acre. I used CoStar to search but did not find any park sales I could compare to the subject. And when considering this park would be subject to annual property taxes of over \$200,000, the possibility of this type of use being more productive than a residential use is not a reasonably probable conclusion. Therefore, golf course and public park uses have been eliminated from consideration as being the highest and best use of this site.

Given the previous information, it is my opinion that the legally permissible, physically possible, and financially feasible use of this site, as of the effective date of value, was a residential use. This type of development would be similar to the surrounding uses in the Queensridge and Summerlin communities and would confirm to the site’s R-PD7 zoning designation.

**Maximally Productive**

Based on the reasonably probable development scenarios and the potential values that could be created, I have concluded that a developing the site with a residential use that conformed with the surrounding residential developments was the maximally productive use of the subject property, as of September 14, 2017.

**CONCLUSION**

Based on my research, I concluded that a residential use best met the four tests of highest and best use of the effective date of value, September 14, 2017.

**MOST PROBABLE BUYER**

Based on the characteristics of the property, the likely buyer is a local or regional developer.

## VALUATION ANALYSIS

### VALUATION METHODOLOGY

Appraisers usually consider three approaches to estimating the market value of real property. These are the cost approach, sales comparison approach and the income capitalization approach.

The **cost approach** assumes that the informed purchaser would pay no more than the cost of producing a substitute property with the same utility. This approach is particularly applicable when the improvements being appraised are relatively new and represent the highest and best use of the land, or when the property has unique or specialized improvements for which there is little or no sales data from comparable properties.

The **sales comparison approach** assumes that an informed purchaser would pay no more for a property than the cost of acquiring another existing property with the same utility. This approach is especially appropriate when an active market provides sufficient reliable data. The sales comparison approach is less reliable in an inactive market, or when estimating the value of properties for which no directly comparable sales data is available. The sales comparison approach is often relied upon for owner-user properties.

The **income capitalization approach** reflects the market's perception of a relationship between a property's potential income and its market value. This approach converts the anticipated net income from ownership of a property into a value indication through capitalization. The primary methods are direct capitalization and discounted cash flow analysis, with one or both methods applied, as appropriate. This approach is widely used in appraising income-producing properties.

The Cost Approach is not considered applicable when appraising land like the subject of this analysis. In this area the Sales Comparison Approach is typically used to estimate the value of vacant land. Therefore, I will first research recent sales of superpads. After applying market supported adjustments, I will conclude a supportable before condition value indication for the property as of the effective date of value.

As a check for reasonableness, I will use what is referred to in the Income Approach as the Discounted Cash Flow Analysis in Subdivision Development Analysis. This involves a discounted cash flow analysis with the value being estimated by researching the market for what the property could sell for on a per custom home lot basis, the indicated absorption rate, the costs related to finishing the custom home lots and the cost of sales (marketing) and entrepreneurial profit. The indicated income from selling the lots, less expenses, will then be discounted to its present value for an indication of value to one buyer as of the effective date of value.

The reconciliation that follows the "before condition" value discusses the relative strengths and weaknesses of each approach and concludes the property's before condition value as of the September 14, 2017 the effective date of value. This will be followed by my analysis of the value of the remainder in the "after condition." I will then conclude the just compensation due to the property owners as of September 14, 2017.

## SALES COMPARISON APPROACH – BEFORE CONDITION

The Sales Comparison Approach is based upon the principle that the value of a property tends to be set by the price at which comparable properties had been sold or the price for which comparable properties could have been acquired. This approach requires analysis of vacant land sales comparable to the subject property. I acquired accurate information regarding price, terms, property description, and use for the comparable sales. This was part of my primary research in the preparation of this report.

For this analysis, I included five (5) vacant land sales that closed escrow between February 2015 and September 2017. The first four (4) are considered to be “superpads” that were sold to home developers for detached single-family residential developments. The Dictionary of Real Estate defines a superpad as “a parcel of land, usually in a planned development, that is undeveloped and planned for subdivision into smaller lots. All off-site infrastructure is in place and connected to the boundary of the parcel. A superpad is typically purchased by a home builder that will install the streets and necessary utility infrastructure to make the lots suitable for home development and sale to individual buyers.” The fifth sale was the sale of 63 finished home lots to a home builder that has since completed the vertical construction and sold those homes.

In analyzing these sales, I selected the price per square foot of land as the operative unit of comparison as of the effective date of value. This is the unit of comparison most commonly quoted by brokers, sellers, and purchasers when discussing these sales transactions and is considered the most relevant for the subject. In the following section of this report, I will compare the attributes of these sales to the subject site in the before condition.

The following Comparable Land Sales table displays the data pertinent to this analysis. A map identifying the location of each sale in respect to the location of the subject property is on the following page. Abstracts with additional information and aerial photographs of each sale taken near its date of sale follow the map.

COMPARABLE LAND SALES						
LOCATION/ # APN	SALE DATE	SALE PRICE	LAND SF/AC	PRICE/ SF	ZONING	
<b>1 Sky Vista Drive &amp; Desert Moon Road</b> 137-33-810-001 (Portion of)	09/15/17	\$ 17,745,080	1,426,154 32.74	\$ 12.44	P-C	
<b>2 Russell Road &amp; Bonitsa Vista Street</b> Five (5) Contiguous Parcels	08/07/17	\$ 12,794,150	938,282 21.54	\$ 13.64	R-2	
<b>3 Sky Vista Drive &amp; Charleston Boulevard</b> 164-03-111-006 (Portion of)	03/14/17	\$ 24,084,350	1,623,046 37.26	\$ 14.84	P-C	
<b>4 Olympia Ridge Drive &amp; Oakland Hills Drive</b> 191-07-501-011	07/07/16	\$ 17,000,000	1,263,240 29.00	\$ 13.46	R-2	
<b>5 Granite Ridge Drive &amp; Grey Feather Drive</b> 63 Separate APN's	02/26/15	\$ 13,650,000	653,400 15.00	\$ 20.89	R-2	
<b>Subject Property</b> 138-31-201-005	N/A	N/A	1,484,089 34.07	N/A	R-PD7	

The map displays the Las Vegas metropolitan area and surrounding regions. Key features include:

- Subject Property:** Located in the central-eastern part of the map, near the intersection of major roads.
- Sale 1:** Located in the western part of the map, near the city of Henderson.
- Sale 2:** Located in the southern part of the map, near the city of Henderson.
- Sale 3:** Located in the central part of the map, near the city of Las Vegas.
- Sale 4:** Located in the southern part of the map, near the city of Henderson.
- Sale 5:** Located in the western part of the map, near the city of Henderson.

The map also shows major highways (Interstates 15, 93, 95, 69, 169, 168, 167, 166, 165, 164, 163, 162, 161, 160, 159, 158, 157, 156, 155, 154, 153, 152, 151, 150, 149, 148, 147, 146, 145, 144, 143, 142, 141, 140, 139, 138, 137, 136, 135, 134, 133, 132, 131, 130, 129, 128, 127, 126, 125, 124, 123, 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107, 106, 105, 104, 103, 102, 101, 100, 99, 98, 97, 96, 95, 94, 93, 92, 91, 90, 89, 88, 87, 86, 85, 84, 83, 82, 81, 80, 79, 78, 77, 76, 75, 74, 73, 72, 71, 70, 69, 68, 67, 66, 65, 64, 63, 62, 61, 60, 59, 58, 57, 56, 55, 54, 53, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32, 31, 30, 29, 28, 27, 26, 25, 24, 23, 22, 21, 20, 19, 18, 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7, 6, 5, 4, 3, 2, 1) and various landmarks such as the Nellis Air Force Base, Lake Mead, and the Las Vegas Strip.

**COMPARABLE LAND SALE 1**

<b>Location</b>	Sky Vista Drive & Desert Moon Road	<b>Close Date</b>	9/15/2017
<b>APN(s)</b>	137-33-810-001 (Portion of)	<b>Sale Price</b>	\$ 17,745,080
<b>Grantor</b>	Howard Hughes Properties, Inc.	<b>Cash Equqlancy</b>	\$ 17,745,080
<b>Grantee</b>	Lennar Homes	<b>Acres</b>	32.74
<b>Confirmed</b>	Broker/Co-Star/County Records/Deed	<b>Price/AC</b>	\$ 542,000
<b>Zoning</b>	P-C, City of Las Vegas	<b>Square Feet</b>	1,426,154
<b>Doc. No.</b>	20170915:00793	<b>Price/SF</b>	\$ 12.44



Photo date: 11/2017



Photo date: 05/2020

## COMPARABLE LAND SALE 2

<b>Location</b>	Russell Road & Bonitsa Vista Street	<b>Close Date</b>	8/7/2017
<b>APN(s)</b>	Five (5) Contiguous Parcels	<b>Sale Price</b>	\$ 12,794,150
<b>Grantor</b>	Clark County	<b>Cash Equqlancy</b>	\$ 12,794,150
<b>Grantee</b>	KB Home LV Amizade, LLC	<b>Acres</b>	21.54
<b>Confirmed</b>	Seller/Co-Star/County Records/Deed	<b>Price/AC</b>	\$ 593,972
<b>Zoning</b>	R-2, Clark County	<b>Square Feet</b>	938,282
<b>Doc. No.</b>	20170807:02243	<b>Price/SF</b>	\$ 13.64

Assessor Parcel Numbers: 163-32-501-010, 163-32-501-011, 163-32-501-017, 163-32-501-018, 163-32-501-020



Photo date: 11/2017



Photo date: 5/2020

## COMPARABLE LAND SALE 3

<b>Location</b>	Sky Vista Drive & Charleston Boulevard	<b>Close Date</b>	3/14/2017
<b>APN(s)</b>	164-03-111-006 (Portion of)	<b>Sale Price</b>	\$ 24,084,350
<b>Grantor</b>	Howard Hughes Properties, Inc.	<b>Cash Equqlancy</b>	\$ 24,084,350
<b>Grantee</b>	KB Home LV Caledonia, LLC	<b>Acres</b>	37.26
<b>Confirmed</b>	Buyer/Co-Star/County Records/Deed	<b>Price/AC</b>	\$ 646,386
<b>Zoning</b>	P-C, City of Las Vegas	<b>Square Feet</b>	1,623,046
<b>Doc. No.</b>	20170314:00291	<b>Price/SF</b>	\$ 14.84

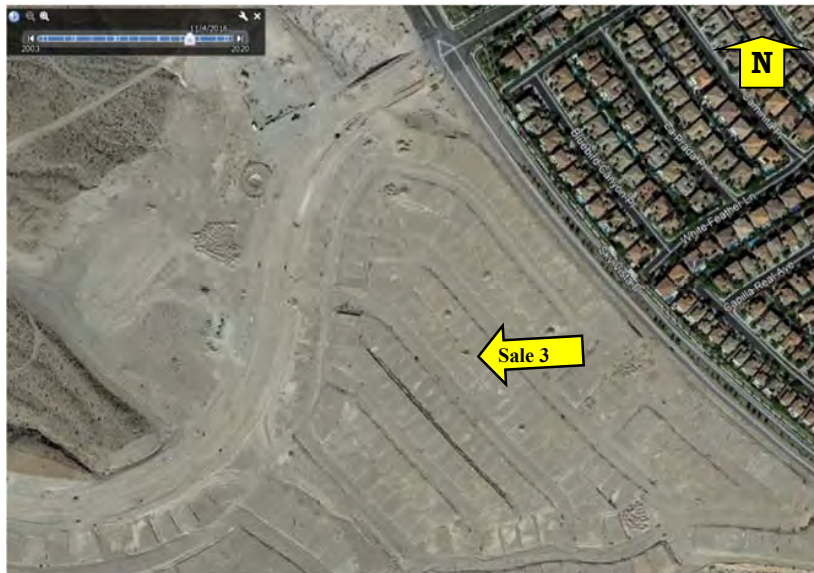


Photo date: 11/2016



Photo date: 5/2020

## COMPARABLE LAND SALE 4

<b>Location</b>	Olympia Ridge Drive & Oakland Hills Drive	<b>Close Date</b>	7/7/2016
<b>APN(s)</b>	191-07-501-011	<b>Sale Price</b>	\$ 17,000,000
<b>Grantor</b>	Southern Highlands Investment Partners, LLC	<b>Cash Equqlancy</b>	\$ 17,000,000
<b>Grantee</b>	Greystone Nevada, LLC	<b>Acres</b>	29.00
<b>Confirmed</b>	Broker/Co-Star/County Records/Deed	<b>Price/AC</b>	\$ 586,207
<b>Zoning</b>	R-2, Clark County	<b>Square Feet</b>	1,263,240
<b>Doc. No.</b>	20160707:01060	<b>Price/SF</b>	\$ 13.46



Photo date: 3/2016



Photo date: 5/2020

## COMPARABLE LAND SALE 5

<b>Location</b>	Granite Ridge Drive & Grey Feather Drive	<b>Close Date</b>	2/26/2015
<b>APN(s)</b>	63 Separate APN's	<b>Sale Price</b>	\$ 13,650,000
<b>Grantor</b>	Howard Hughes Properties, Inc.	<b>Cash Equqlancy</b>	\$ 13,650,000
<b>Grantee</b>	William Lyon Homes	<b>Acres</b>	15.00
<b>Confirmed</b>	Broker/Co-Star/County Records/Deed	<b>Price/AC</b>	\$ 910,000
<b>Zoning</b>	R-2, Clark County	<b>Square Feet</b>	653,400
<b>Doc. No.</b>	20150226:03174	<b>Price/SF</b>	\$ 20.89



Photo date: 3/2015



Photo date: 5/2020

**ANALYSIS AND ADJUSTMENT OF SALES**

The adjustment process is typically applied through either quantitative or qualitative analysis. Quantitative adjustments are often developed as dollar or percentage amounts, while qualitative adjustments are simply expressed through relative comparison (i.e. significantly inferior).

Quantitative adjustments are most applicable when the quality and quantity of data allows paired sales or statistical analysis. Oftentimes, the paired-sale information is widely divergent. Due to the difficulty involved in adequately supporting adjustments for differences, I will use qualitative adjustments for those attributes clearly inferior or superior to the subject. Based on my experience and investigations of the marketplace, this approach reflects local market reality. Market participants can often identify superior or inferior characteristics when comparing properties. However, few buyers or sellers apply specific percentage or dollar-amount adjustments for particular differences. In contrast, they view a property overall and form an opinion as to whether one is worth more or less than another. A similar method of practical adjustment was discussed in an article in The Appraisal Journal, published by the Appraisal Institute.

Adjustments will be based on my rating of each comparable sale in relation to the subject. If the comparable is rated superior to the subject, the unit price of that sale is adjusted downward to reflect the subject's relative inferiority; if the comparable is rated inferior, its unit price is adjusted upward.

**ADJUSTMENTS**

Potential adjustments include the following categories, which typically affect sale prices. If a comparable sale significantly differs from the subject, an adjustment compensates for that difference.

**REAL PROPERTY RIGHTS CONVEYED**

This adjustment is generally applied to reflect the transfer of property rights different from those being appraised. A ground lease is an example of a restriction affecting vacant land. However, since all of the comparable sales analyzed in this report were conveyed in fee simple, no adjustment will be necessary for property rights conveyed in these sales.

**FINANCING TERMS**

This adjustment is generally applied to a property that transfers with atypical financing, such as having assumed an existing mortgage at a favorable interest rate. Conversely, a property may be encumbered with an above-market mortgage, which has no prepayment clause or a very costly prepayment clause. All of the comparable sales were stated to be cash equivalent transactions.

**CONDITIONS OF SALE**

This category reflects extraordinary motivations of the buyer or the seller to complete the sale. Examples can include a purchase for assemblage involving anticipated incremental value, or a quick sale for cash. Sale 2 in this analysis involved a County auction. Therefore, I compared the unit price paid for this site as compared to that commanded by similar sites during this period. My research suggests that there was no discount or premium paid. None of the other sales in this analysis were indicated to be affected by conditions of sale either. Therefore, no adjustments are required for conditions of sale.

**TIME - MARKET CONDITIONS**

Real estate values normally change over time. The rate of this change fluctuates due to investors' perceptions of prevailing market conditions. This adjustment category reflects market differences occurring between the effective date of the appraisal and the sales date of a comparable when values have appreciated or declined. To analyze the market conditions, I looked at a number of sales in the market area over the last several years and the prices per square foot that were being commanded. For this analysis, I researched residential land sales between the first quarter of 2015 and the third quarter of 2017.

I learned that the average price per square foot was \$9.00 in the first quarter of 2015. This increased to \$11.00 per square foot by the first quarter of 2016, \$12.00 by the first quarter of 2017 and \$13.00 by the third quarter of 2017. This reflects that market conditions steadily increased during the 2015-to-2017 time period. The effective date of value for this analysis is September 14, 2017. Sale 1 closed within one (1) day of that date and Sale 2 about one (1) month prior. Therefore, I have not applied a market conditions adjustment to those two (2) sales. As for Sales 3, 4 and 5, these sales closed between February of 2015 and March of 2017. Based on the increased market conditions between then and September 14, 2017, upward adjustments are warranted for Sales 3, 4 and 5.

**LOCATION**

Location has a great impact on property values. In researching these sales, I noted that Sales 1 and 3 are located very near each other within the larger Summerlin master planned community, which abuts the subject property. In analyzing these sales, I noted that they both were purchased for mid-range residential subdivisions with small lot sizes and prices ranging from around \$400,000 to over \$675,000. This is inferior to the larger custom homes on large lots surrounding the subject site.

Sale 2 is not located in a master planned community. This site abuts a concrete flood channel, which forms its western boundary and lower-priced homes and apartments. This site has small lots in the 3,500 to 4,500 square foot range and homes sell for around \$350,000. This location is substantially inferior to that of the subject property.

Sale 4 is located in the Southern Highlands master planned community, approximately ten (10) miles south of Tropicana Avenue. This community offers track home subdivisions, and larger lots with custom homes in the \$1 million to \$10 million range. However, Southern Highlands does not offer the services and amenities similar to Tivoli Village and Downtown Summerlin near the subject site. Therefore, an upward adjustment for this site's inferior location is warranted.

Sale 5 is located in Summerlin adjacent to the Ridges and Summit communities. This area also offers large lots and sell homes in the \$1 million to \$10 million range. This site also enjoys the same access to services and amenities that the subject enjoys. This site is considered to have a similar location to that of the subject with no location adjustment required.

**PHYSICAL CHARACTERISTICS**

This adjustment category generally reflects differences between a comparable and the subject in such areas as size, topography and level of off-site improvements installed at the time of sale.

As for size, the subject contains 34.07 acres, and is bracketed by the sizes of the comparable sales. In analyzing these sales, which range from 15.00 acres to 37.26 acres, I did not find that a size adjustment would be warranted. Sales 1 through 4 range from 22.53 acres to 37.74 acres commanded unit prices ranging from \$12.44 to \$14.84 per square foot, with the high end of the range being commanded by the largest site. Therefore, I have not applied any adjustments for size differences.

Topography differences deal with differences in the surface of the site. Based on the supplied information, the cost to level and grade the subject site, including demolishing the cart paths and ponds, is \$1,167,715. This reflects a cost of \$0.79 per square foot ( $\$1,167,715 \div 34.07 \div 43,560 = \$0.79$ ). In this analysis, Sales 3 and 4 were graded prior to the sale and Sale 5 was the sale of 63 finished lots with streets installed and utilities stubbed to each lot. The remaining sales with were basically raw land like the subject with offsite improvements completed. Therefore, Sales 3 and 4 each require a downward adjustment for being graded and Sale 5 requires a more substantial downward adjustment for being finished lots.

The subject and all but Sale 2 had a similar level of off-site improvements along their respective perimeters. Therefore, no adjustments for off-sites are warranted for those sales. Sale 2 lacked any offsite improvements along Russell Road at the time of sale. Therefore, I applied an upward adjustment to Sale 2 for lack this attribute at the time of sale.

In researching these sales, I also found that the buyers of Sales 1, 3 and 5 had to pay Special Improvements District (SID) costs while the homes on these respective sites were constructed. The SID for Sales 1 and 5 were then passed onto the eventual home buyers on a prorated basis. The buyer of sale 3 paid the entire SID when they closed on the land and did not pass that onto the homeowners. This was an additional cost to the buyer of these sites. Therefore, I applied an upward adjustment for this additional cost to the land buyer for Sales 1, 3 and 5.

I also considered that home developers buying residential land in Summerlin are required to pay the seller an additional fee after selling the completed homes. This is a percentage that is separately negotiated by each home builder before they purchase the land from Howard Hughes Properties, Inc. This is an additional expense for home builders in Summerlin that would not be a cost for a developer of the subject property. Therefore, I applied an upward adjustment for this additional cost to Sales 1, 3 and 5.

#### **ZONING / POTENTIAL USE**

This adjustment category generally reflects differences between a comparable and the subject's zoning designation and potential use. The subject has R-PD7 zoning, which is most similar to the R-2 zoning designations reflected by Sales 2, 4 and 5.

As for Sales 1 and 3, they had the P-C zoning, which is the predominate zoning in Summerlin. Sale 1 was developed at a density of 4.3 dwelling units per acre and Sale 3 is being developed at a density of 6.4 dwelling units per acre. I was unable to find any support for an adjustment between the R-PD7, R-2 and P-C zonings. Therefore, no adjustments for zoning have been applied.

## COMPARABLE SALES DISCUSSION

The following is a discussion of each sale and its comparison to the subject property as of September 14, 2017.



*Photo date: 11/2017*

**Sale 1** consisted of a portion of one (1) parcel (APN 137-33-810-001) located west of the intersection of Sky Vista Drive and Desert Moon Drive in Summerlin. This site, which contained 32.74 acres or 1,426,154 square feet, sold on September 15, 2017 for \$17,745,080 or \$12.44 per square foot. This property, which was later subdivided into 141 detached single-family home lots, included offsites along its boundaries. The zoning was P-C (Planned Community) at the time of sale and the build-out density was 4.3 dwellings per acre.

In comparing Sale 1 to the subject, I first considered that it closed within one (1) day of the effective date of value in this analysis. Therefore, no adjustment for any change in market conditions is warranted. Next, I considered the location differences. Sale 1 was purchased for a mid-range residential subdivision with typical lots being 6,000 square feet and home prices ranging from the low \$500,000's to almost \$700,000. This is inferior to subject's location, which is surrounded by much larger custom homes that have commanded up to \$10,000,000. Therefore, I applied an upward adjustment for the location difference. As for size and topography, these attributes were similar to those of the subject. However, I also learned that the buyer had to pay for the SID expenses during construction of the homes on this site. While this cost was eventually passed on to the home buyers when the homes are sold, this additional cost to the land buyer requires another upward adjustment. The last adjustment was also upward for the additional cost that developers pay Howard Hughes Properties, Inc., for sales in the Summerlin community. In this comparison, the only adjustments are upward for the location difference, SID carry cost and additional price paid to the seller after the homes are sold. This indicates that the unit price of \$12.44 per square foot commanded by this site in September of 2017 would have been substantially below what the subject could have commanded on the effective date of value.



Photo date: 11/2017

**Sale 2** consisted of five (5) contiguous parcels (APN's 163-32-501-010, 011, 017, 018 and 020) located on the south side of Russell Road, between Durango Drive and I-215. This site, which contained 21.54 acres or 938,282 square feet, sold on August 7, 2017 for \$12,794,150 or \$13.64 per square foot. This property, which was later subdivided into 72 detached single-family home lots, did not include offsites along its Russell Road boundary. The zoning was R-2 (Medium Density Residential [8 Units per Acre]) and the build-out density was 7.6 dwellings per acre.

In comparing Sale 2 to the subject, I first considered that it closed within about a month of the effective date of value in this analysis. Therefore, no adjustment for any change in market conditions is warranted. Next, I considered the location differences. Sale 2 was purchased for a lower-end residential subdivision with typical lots being 3,500 square feet and home prices around \$350,000. Its location, between I-215 Beltway, Russell Road and a flood wash is substantially inferior to the subject's location. Therefore, I applied a substantial upward adjustment for the location difference. The topography was raw land, which was similar to that of the subject and no adjustment is required. However, another upward adjustment is required for this site's lack of offsites along Russell Road at the time of sale. Again, all of the adjustments are upward. This indicates that the unit price of \$13.64 per square foot commanded by this site in August of 2017 would be substantially below what the subject could have commanded on the effective date of value.

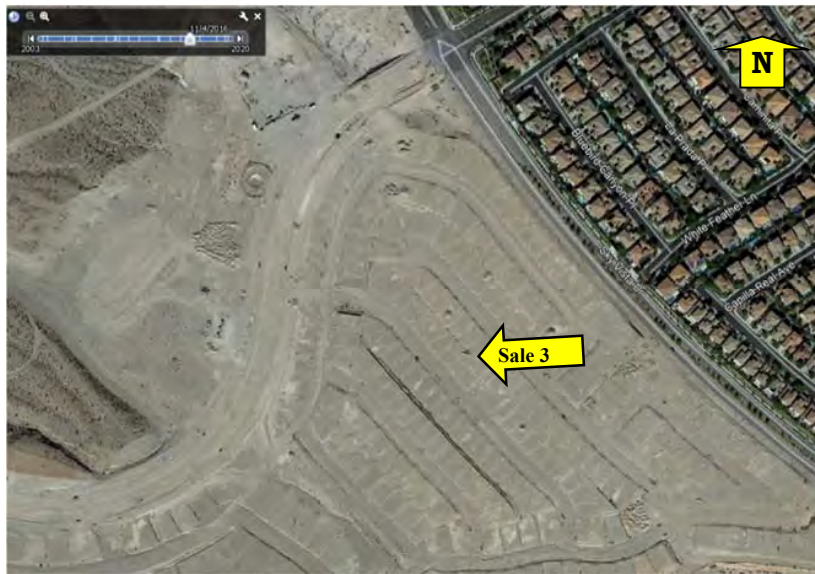


Photo date: 11/2016

**Sale 3** consisted of a parcel located at the northwest corner of Charleston Boulevard and Sky Vista Drive in Summerlin. This site, which contained 37.26 acres or 1,623,046 square feet, sold on March 14, 2017 for \$24,084,350 or \$14.84 per square foot. This property, which was later subdivided into 237 detached single-family home lots, included offsites along its boundaries. The zoning was P-C (Planned Community) at the time of sale and the build-out density was 6.4 dwellings per acre.

In comparing Sale 3 to the subject, I first considered that it closed about six (6) months prior to the effective date of value in this analysis. Therefore, a slight upward adjustment for increased market conditions is warranted. Next, I considered the location differences. Sale 3 was purchased for a mid-range residential subdivision with typical lots being 5,000 square feet and home prices ranging from the upper \$300,000's to \$500,000. This is inferior to subject's location. Therefore, I applied an upward adjustment for the location difference. And while the size is similar, this site had been graded, which requires a downward adjustment when compared to the subject's raw state. The last two (2) adjustment were also upward for the SID cost and the additional cost that developers paid the seller, Howard Hughes Properties, Inc., after the homes were sold. In this comparison, the predominance of the adjustments is upward. This indicates that the unit price of \$14.84 per square foot commanded by this site in March of 2017 would be below what the subject could have commanded on the effective date of value.



Photo date: 3/2016

**Sale 4** consisted of a parcel located at the intersection of Olympia Ridge Drive and Oakland Hills Drive in Southern Highlands. This site, which contained 29.00 acres or 1,263,240 square feet, sold on July 7, 2016 for \$17,000,000 or \$13.46 per square foot. This property, which was later subdivided into 41 detached single-family home lots, included offsites along its boundaries. The zoning was R-2 at the time of sale and the build-out density was 1.4 dwellings per acre. According to the broker, there was no LID or SID.

In comparing Sale 4 to the subject, I first considered that it closed over a year prior to the effective date of value in this analysis. Therefore, an upward adjustment for increased market conditions since this site sold is warranted. Next, I considered the location differences. Sale 4 was purchased for a high-end residential subdivision with typical lots being at least one-half acre and home prices ranging from about \$1,900,000 to over \$2,200,000. However, the outlying Southern Highlands community does not offer the services and amenities available to the subject site. Therefore, an upward adjustment for this site's inferior location is also warranted. And while the size is similar, this site had been graded, which requires a downward adjustment when compared to the subject's raw state. Again, the predominance of the adjustments is upward, which indicates that the unit price of \$13.46 per square foot commanded by this site in July of 2016 would also be below what the subject could have commanded on the effective date of value.



Photo date: 3/2015

**Sale 5** consisted of 63 finished home lots at the intersection of Granite Ridge Drive and Grey Feather Drive in Summerlin. This site, which contained 15.00 acres or 653,400 square feet, sold on February 26, 2015 for \$13,650,000 or \$20.89 per square foot. This property, which abuts the Ridges and is just northwest of the developing Summit community in Summerlin, included offsites along its boundaries and full streets installed. The property's zoning was R-2 at the time of sale and the build-out density was 4.2 dwellings per acre.

In comparing Sale 5 to the subject, I first considered that it closed in early 2015, over two (2) years prior to the effective date of value in this analysis. Therefore, an upward adjustment for increased market conditions is warranted. Next, I considered the location differences. Sale 5 was purchased for a high-end residential subdivision with typical lots being at least 7,500 square feet and home prices ranging from about \$1,000,000 to over \$1,500,000. This location abuts larger lots with higher priced homes, which is similar overall to that of the subject. Therefore, no adjustment for location is warranted. I then considered that these lots were finished with streets installed and utilities stubbed to each lot. This warrants a substantial downward adjustment as compared to the subject. I also learned that the buyer had to pay for the SID expenses during construction of the homes on this site, which requires another upward adjustment. The last adjustment was also upward for the additional cost that developers have to pay Howard Hughes Properties, Inc., for sales in the Summerlin community after the homes are sold. In this comparison, the predominance of the adjustments are slightly upward. This indicates that the unit price of \$20.89 per square foot commanded by this site in February of 2015 would have been slightly below what the subject could have commanded on the effective date of value.

**LAND VALUE CONCLUSION**

I analyzed five (5) land sales that closed escrow between February 2015 and September of 2017. The first four (4) are considered to be superpads that were sold to home developers for detached single-family residential developments. The fifth sale involved a site that had been subdivided into 63 parcels. These finished home lots were then sold to a home builder that has since completed the vertical construction and sold the homes.

The four (4) superpad sales commanded unit prices ranging from \$12.15 to \$14.84 per square foot (psf). After comparing each of these sales to the subject, I have concluded that the subject's unit value, as of September 14, 2017, would have been above that commanded by these four (4) superpad sales. I then compared Sale 5 to the subject. This site also required predominately upward adjustments.

In this analysis, the estimated market value is to be based on the highest price that the property could have commanded on September 14, 2017. After considering all of the previous information, I have estimated the unit value of the subject at \$23.00 per square foot by the Sales Comparison Approach. This value is 10% above the unit price for Sale 5, which was an early 2015 sale with a similar location, finished lots, and had the additional requirement that the buyer carry the SID during construction and pay the required premium to Howard Hughes Properties, Inc., after selling the completed homes. Based on my research and the previous comparison analysis, I have estimated the market value of the subject property in the before condition by the Sales Comparison Approach, as of September 14, 2017, as follows:

<b>Sales Comparison Approach</b>	
Estimated Value per SF	\$ 23.00
Subject's Square Feet Before the Take	1,484,089
Indicated Value	\$ 34,134,052
Rounded to	\$ 34,135,000

**The above value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

## INCOME APPROACH – SUBDIVISION METHOD

As a check to the reasonableness of the value concluded by the Sales Comparison Approach, I completed a discounted cash flow analysis. I completed this analysis for the subject property based on three (3) scenarios; 1) Sixty-one (61) home lots ranging from 0.22 acres to 1.08 acres; 2) Sixteen (16) home lots ranging from 1.58 acres to 2.90 acres, and; 3) Seven (7) home lots ranging from 3.96 acres to 5.39 acres.

The sixty-one (61) lot scenario, which had already been approved by City Staff, was heard by the Planning Commission at their February 14, 2017 Planning Commission Meeting. The following summarizes the results of that meeting where the Planning Commission discussed a Waiver (WVR-68480) to allow 32-foot streets with a sidewalk on one side where 47-foot private streets with sidewalks on both sides are required within a gated residential development, the Site Development Plan Review (SDR-68481) for a proposed 61-lot single family residential development subject to conditions, and the Tentative Map (TMP-68482) for a proposed 61-lot single family residential subdivision. Peter Lowenstein, Planning Section Manager, presented the Staff report at that meeting. Mr. Lowenstein stated:

“Mr. Chairman, the proposed 61-lot residential development would have a net density of 1.79 dwelling units per acre. The proposed Lo general plan designation, which allows up to 5.40 units per acre, allows for less intense development than the surrounding established residential areas, which allow up to 8.49 units per acre. The densities and average lot size of the proposed development are compatible to the adjacent residential lots. Staff therefore recommends approval of the General Plan Amendment to low density residential.

The Applicant is requesting interior streets that do not meet Title 19 standards. However, the proposed private interior streets will provide roadways, sidewalks, and landscaping in a configuration similar and compatible with that of the surrounding development. The 30-foot wide streets will allow for emergency access and limited on street parking, while the adjacent sidewalk and landscaping will provide safe pedestrian movement and enhance aesthetics within the subdivision. Staff therefore recommends approval of the requested waiver. The development standards proposed by the Applicant fall into two categories, those containing 20,000 square feet or less, and those containing greater than 20,000 square feet. Standards for a lot 20,000 square feet or less are generally consistent with the RD zoning properties, and lots greater than 20,000 square feet are generally consistent with RE zoned properties.

If applied, these standards would allow for development that is compatible with that of the surrounding gated neighborhoods. In addition, the proposed plan includes usable open space areas that exceed the requirements of Title 19. Staff therefore recommends approval of the Site Development Plan Review and Tentative Map.”

Motions were then made by Glenn Trowbridge to approve a WVR-68480, SDR-68481, and TMP-68482. All three (3) of those motions passed.

For the purpose of the following discounted cash flow analysis under Scenario 2 and Scenario 3, I used the following hypothetical condition, and its use might have affected the assignment results:

1. The estimated values indicated by the Income Approach for the sixteen (16) lot and seven (7) lot scenarios are based on the hypothetical condition that similar Waiver, SDR and TMP approvals were given to these development plans.

The discussion that follows presents an analysis of the As Is, Bulk Discounted Value of the subject. It is based on the Subdivision Development Method, which is an application of the Income Capitalization Approach. The reason that it is categorized as an income approach to value is that it is based on converting a projected cash flow into an indication of value.

The subdivision method is used by developers to determine the price they can afford to pay for a property assuming certain costs, gross sales, and return considerations. The steps required to complete this analysis are as follows:

- Estimate the retail values (probable selling prices) for the lots to be sold within the project – finished lots;
- Apply appropriate growth rates, if applicable, to concluded values, construction costs and operating expenses;
- Project a reasonable rate of absorption for unit sales, typically based upon an analysis of similar projects or overall market supply and demand;
- Estimate the direct and indirect construction costs for the lots;
- Estimate the appropriate holding and selling costs for the project (site development costs, marketing/commissions, closing costs, real estate taxes on unsold lots during the holding period, and miscellaneous expenses on sold and unsold lots);
- Estimate the appropriate profit rate and discount rate for the type of project under consideration;
- Discount the net cash flows to arrive at a value indication.

The DCF model allows for an analysis of the subject's financial performance throughout the projection period, modeling the anticipated revenues and expenses for the project based on assumptions derived from the market. The first step in the process is to estimate the aggregate retail lot values.

#### RETAIL CUSTOM HOME LOT VALUE ANALYSIS

I researched the market for recent bulk custom home lot sales; however, no comparable bulk custom home lot sales were found. This is not unusual as custom home lots are typically not sold in bulk. Therefore, I researched the market for individual custom home lot sales that could provide an indication of the retail lot value of the subject lots "as if finished."

The subject site is located in an area predominately improved with high-end custom homes. Homes in the developments at the northwest and southwest corners of Hualapai and Alta have sold for more than \$4 million. Within the Queensridge development, there are 106 custom home lots. Of those 106, all were sold and all but nine (9) have since been improved with multi-million dollar homes. Since 2000, I found that 72 of these homes have sold for an average price of \$3.5 million. Over the last five (5) years, the average price paid increased to \$4.0 million. It is my understanding that the owner of the subject property built 40 of those 106 custom homes, along with both of the Queensridge Towers.

To estimate the subject's average "finished" lot value, I researched custom home lot sales in Queensridge, the Ridges, and the Summit. Queensridge began development in 1997 and is almost built-out. I found two lot sales between 2013 and the effective date of value. One (1) sale in 2013 and one (1) sale 2016. The 2013 sale was for \$25.91 per square foot and the 2016 sale was at \$30.02 per square foot. This reflects an increase of 15.9% over 31 months or just over 6.15% per year. I also noted a lot sale in 2018 that resold just over a year later. The resale reflected annualized increase of about 8.4% per year.

In the Ridges, I noted fourteen (14) lot sales in 2016. The unit prices ranged from a low of \$29.63 per square foot, to a high of \$81.62 per square foot. In 2017, there were another fourteen (14) lot sales. The unit prices for these lot sales ranged from a low of \$30.63 per

square foot (+ 3.4%), to a high of \$85.49 per square foot (+ 4.7%). The average unit price in 2016 was \$43.43 per square foot, which increased to \$49.28 per square foot in 2017 (+ 13.5%). One (1) of the 2016 lot sales was resold in 2017. The unit price in November of 2016 was \$29.97 per square foot. This lot resold in October of 2017 for \$35.07 per square foot. This reflects an annualized increase of 17.7%.

I also researched lot sales in the Summit. The Summit closed on 50 sales lot sales in the eight months it operated in 2016. The unit prices ranged from a low of \$31.82 per square foot, to a high of \$158.32 per square foot. In 2017, there were fifteen (15) lot sales. The unit prices for these lot sales ranged from a low of \$40.17 per square foot (+ 26.2%), to a high of \$161.27 per square foot (+ 1.9%). The average unit price in 2016 was \$66.59 per square foot, which increased to \$71.84 per square foot in 2017 (+ 7.9%). One (1) of the 2016 lot sales was resold in 2017. The unit price in September of 2016 was \$53.61 per square foot. This lot resold in June of 2019 for \$90.16 per square foot. This reflects an annualized increase of about 24.8%. The seller stated that he just received an offer one day; the lot had not been listed for sale.

The highest per square foot lot sale in 2017 in the Summit, which was the sale of a 1.21 acre lot for \$8,500,000 or \$161.27 per square foot, was resold in 2020 for \$10,500,000 or \$199.21 per square foot. This reflected an annualized increase of about 9.2%.

To summarize, the most recent custom lot sale in Queensridge, which was about a year and a half before the effective date of value in this analysis commanded over \$30 per square foot, while sales in the Ridges and Summit were averaging \$49.28 per square foot and \$71.84 per square foot, respectively, in 2017.

After considering this information, I have estimated the average lot value of the 61 proposed subject lots at \$40.00 per square foot. Similar to the comparable developments, I am estimating a slightly lower unit value for the larger sixteen (16) and seven (7) lot configurations. Based on the sales occurring during 2017, I am estimating the average lot value at \$35.00 per square foot for the 16 lot configuration, and \$32.00 per square foot for the larger lots in the seven (7) lot configuration.

As for market conditions, or price increases, I found that between 2016 and 2017 unit prices for custom home lots were increasing. The highest increases were being experienced in the Summit development. I noted four sale resales in the Summit that reflected annualized increases ranging from 5.4% to 24.9%. There were also six (6) lots that the developer bought back for what they were sold for and then resold those lots for higher prices.

I also reviewed Sales Traq's historic percent change in home values. Sales Traq has been doing residential real estate research for more than two decades in this area. They research home pricing, sales, appreciation rates and development data. Sales Traq breaks down home price appreciation rates based on zip code.

The subject is located in zip code 89145. Beginning in 2012, which was following the Great Recession, the appreciation rates in this zip code increased each year. These increases ranged from 6.2% in 2015, to 45.9% in 2013. They reported the 2016, 2017, 2018 increases at 11.8%, 10.5% and 21.2%, respectively. From 2012 to 2018, the average increase was 16.9%. Removing the high (+45.9%) and low (6.2%), reflects an average of 13.4%, and looking only at the last three (3) years reflects an average of 14.5%. This area reflects that it experienced a strong and steady recovery following the Great Recession.

Based on the market conditions in the third quarter of 2017, and after considering the increases being experienced in the 2016, 2017 time period, I will apply annual increases of 8% to the estimated retail lot values.

### **ABSORPTION**

For absorption rates I looked at historical sales from Queensridge, the Ridges and the Summit. Unfortunately, the developer of the custom homes lots within Queensridge sold-out many years ago. In researching lot sales at the Ridges, I found that there were 14 lot sales in 2016 and 14 lot sales in 2017. This reflects an average absorption rate of 3.5 lots per quarter. These lots ranged in size from 0.27 acres (11,761 SF) to 0.90 acres (49,204 SF). Of those 28 sales, 18 were less than 18,000 SF.

As for the Summit, there were 50 lot sales in 2016 and 15 lot sales in 2017. This development began selling lots in May of 2016. The sale of 50 lots represented 34% the total lots available. Over 20 months, this reflected an average absorption rate of 9.75 lots per quarter ( $65 \text{ lots} \div 20 \text{ Months} = 3.25/\text{Month} \times 3 \text{ Months} = 9.75/\text{Quarter}$ ). These lots ranged in size from 0.57 acres (24,768 SF) to 4.69 acres (204,253 SF).

Absorption rates for the competitive set reflected lot sales between 3.5 per month for a development that has been selling lots since the early 2000's, to almost 10 sales per month for at the Summit, that opened in 2016. Based on size and value differences of the subject lots under the different scenarios, I estimated different absorption rates for the subject's 61 lots versus the 16 lot scenario versus the 7 lot scenario.

I also must consider that the subject lots need to be graded, and streets and utilities need to be installed. I spoke to Jerry Englehart, Estimating Manager for Aggregate Industries SWR, Inc. Mr. Englehart provided the estimate for grading, demolition of cart paths and ponds. Mr. Englehart told me that he did this type of work for Howard Hughes Properties Summerlin Development, most recently in Summerlin's Village 30, which is near the far western Red Rock area. Mr. Englehart estimated that getting these lots to a finished state would take approximately 13-to-15 months, with the 13-month period related to the seven (7) lot scenario and the 15-month timeline related to the 61 lot scenario.

After considering the market activity for custom home lots in the 2016 and 2017 time frame, and the fact that the developer would have over a year to presell lots, for the 61-lot scenario I estimated 30 presales and then three (3) sales per quarter through the holding period. For Scenario 2 (16 lots), I estimated eight (8) presales and then two (2) sales per quarter through the holding period. As for Scenario 3 (7 lots), which would offer the largest lots, I estimated five (5) presales and then one (1) sale per quarter through the holding period.

### **EXPENSES**

#### **DEVELOPMENT COSTS**

Development costs are the costs the landowner would have had to pay to bring the subject lots to a finished state. This would include all of the grading and site work, installing interior streets, stubbing utilities to each lot, installing landscaping and an entrance off Hualapai, and all other expenses that would have been incurred by the developer to bring these lots to a finished state.

To estimate these costs, the landowner contracted with GCW, previously known as GC Wallace, to prepare the grading plans and quantity take-offs, which were then provided to Aggregate Industries for a cost estimate for the development of the site based on the

previously discussed scenarios; 1) Sixty-one (61) home lots; 2) Sixteen (16) home lots, and; 3) Seven (7) homes lots. This cost breakdown includes the demolition, grading and interior streets. It also includes cost estimates for utilities, landscaping the entryway, bonds, and other fees that would be incurred.

This cost breakdown was prepared in 2020 but adjusted by Aggregate to reflect what the costs would have been in September of 2017. Aggregate did not include contingencies in the estimates. They stated that the contingencies were built into the cost estimates since there were no negotiations to reduce these bids. Typically, they would negotiate on a project such as this and stated that they could have gotten a reduction of around 10% on the bids, which would offset the typical contingencies. The following is the cost estimates provided by Aggregate.

**COST COMPARISON - 61, 16, 7 LOTS**  
**180 LAND COMPANY LLC**

DESCRIPTION OF SCOPE	61	Per Lot	16	Per Lot	7	Per Lot
DEMOLITION, GRADING, CONCRETE & ROADWAY, WET UTILITIES & FEES	\$ 5,016,573	\$ 82,239	\$ 4,057,660	\$ 253,604	\$ 3,984,732	\$ 569,247
TELEPHONE/CABLE, NVE CONDUIT & RELATED FACILITIES	\$ 364,505	\$ 5,975	\$ 248,575	\$ 15,536	\$ 175,348	\$ 25,050
NATURAL GAS	\$ 142,588	\$ 2,338	\$ 142,588	\$ 8,912	\$ 142,588	\$ 20,370
NVE ELECTRICAL	\$ 134,394	\$ 2,203	\$ 134,394	\$ 8,400	\$ 134,394	\$ 19,199
LANDSCAPING & ENTRYWAY	\$ 846,738	\$ 13,881	\$ 751,509	\$ 46,969	\$ 675,786	\$ 96,541
IMPROVEMENT PLANS (ENGINEERING/MAPPING	\$ 132,700	\$ 2,175	\$ 145,925	\$ 9,120	\$ 143,260	\$ 20,466
BOND ESTIMATE: PLAN CHECK & INSPECTION FEE	\$ 85,825	\$ 1,407	\$ 63,251	\$ 3,953	\$ 54,326	\$ 7,761
BOND FEE	\$ 25,528	\$ 418	\$ 18,570	\$ 1,161	\$ 15,785	\$ 2,255
FEES	\$ 1,155,578	\$ 18,944	\$ 455,148	\$ 28,447	\$ 260,314	\$ 37,188
TOTAL COST	\$ 7,904,429	\$ 129,581	\$ 6,017,620	\$ 376,101	\$ 5,586,533	\$ 798,076
TOTAL COST PER SQUARE FOOT	\$ 5.33		\$ 4.05		\$ 3.76	

\* Contingency: No separate contingency amount was added to the cost estimates as it is believed that it is built into the cost estimate amounts, which were not negotiated nor derived from a bidding process, which negotiation and bidding would have resulted in an approximate 10% reduction of the above provided cost estimates.

## OTHER EXPENSES

I estimated sales commission and marketing at 4% of the gross sales. I have found these expenses have historically ranged from 3% to 5%. With all that is involved in the process, it is common for the builder to pay the buyer's agent a percentage of the sales price. Therefore, I applied a 4% figure to the gross sales. Closing costs (per lot) were then included at \$2,500. This expense takes into account any normal escrow fees to be incurred at the time of closing. Real estate taxes for the lots are estimated by dividing the annual tax expense by the number of lots in each scenario. For example, with the real estate tax expense at \$205,227, the expenses for the 61 lot scenario would be \$841.09 per quarter ( $\$205,227 \div 61 \div 4 = \$841.09$ ) This expense is based on the real estate taxes provided by the Clark County Treasurer for the 2018 fiscal year. I also included a miscellaneous expense line item that would include all other additional costs that might be incurred during this period. A figure of \$2,500 per lot per has been used.

## PROFIT & DISCOUNT RATE

For information on expected profit and discount rates, I looked to the National Development Land Market section of the PwC Real Estate Investor Survey. The land analysis was not included in their third quarter 2017 report; however, it was included in their fourth quarter 2017 report. They reported that "discount rates (including developer's profit) for the national development land market range from 10.0% to 20.00% and average 15.40% this quarter – 60 basis points below the average six months ago. Thus, the average rate in second quarter of 2017 was 16.0% ( $15.40\% + 0.60\% = 16.00\%$ ).

In the PwC selected survey responses, there are two (2) residential developer responses. The first, which was stated to be currently active in the Nevada market, stated that the combination of profit and discount rate was in the 18.00% to 20.00% range. The second respondent stated that the combined profit and discount rate were in the 16.00% to 18.00% range. I estimated the profit at 10.00% and the discount rate at 10.00%, for a total of 20.00%, which is at the upper-end of the indicated range for the 16-lot and 7-lot scenarios. These scenarios have sell-out periods of 2.25 years and 1.50 years. For the 61-lot scenario, I added 100 basis points to the discount rate for the increased risk of a development with a longer sell-out period of four (4) years from the effective date of value to the final lot sale.

Using the previous data, I have prepared cash flows for each scenario. The tables on the following pages summarize the present value of the cash flows under each of the three (3) scenarios.

## SCENARIO 1 – 61 CUSTOM HOME LOTS

Total Number of Units	61
# of Presales	30
# Units Sold per Quarter	3
Average Unit Size (SF)	19,773
Initial Selling Price (\$F)	\$ 40.00
Price Increases per Quarter	2.00%
Development Costs per Unit	\$ 122,480
Sales & Marketing (%)	4.00%
Closing Costs/Unit Sold	\$ 2,500
Taxes per Quarter (\$/Unit)	\$ 841.09
Misc. Exp. (\$/Unit)	\$ 2,500.00
Misc. Exp. Unsold (\$/Unit)	\$ 2,500.00
Discount Rate (%)	11.00%
Profit Based on Retail (%)	10.00%

DISCOUNTED CASH FLOW MODEL										
Month	09/14/17	12/14/17	03/14/18	06/14/18	09/14/18	12/14/18	03/14/19	06/14/19	09/14/19	12/14/19
Total Units Sold	0	0	0	0	0	30	33	36	39	42
Units Sold/Quarter	0	0	0	0	0	30	3	3	3	3
Total Units Remaining	61	61	61	61	61	31	28	25	22	19
Price Per Unit	\$ 790,934	\$ 806,753	\$ 822,888	\$ 839,346	\$ 856,132	\$ 873,255	\$ 890,720	\$ 908,535	\$ 926,705	\$ 945,239
Total Sales	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,197,654	\$ 2,672,161	\$ 2,725,604	\$ 2,780,116	\$ 2,835,718
Expenses:										
Development Costs	\$ -	\$ 612,398	\$ 612,398	\$ 612,398	\$ 612,398	\$ 367,439	\$ 367,439	\$ 367,439	\$ 367,439	\$ 367,439
Sales & Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,047,906	\$ 106,886	\$ 109,024	\$ 111,205	\$ 113,429
Closing Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,000	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500
Real Estate Taxes	\$ 51,307	\$ 51,307	\$ 51,307	\$ 51,307	\$ 51,307	\$ 26,074	\$ 23,551	\$ 21,027	\$ 18,504	\$ 15,981
Misc. Expenses Sold Units	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,000	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500
Misc. Expenses Unsold Units	\$ 152,500	\$ 152,500	\$ 152,500	\$ 152,500	\$ 152,500	\$ 77,500	\$ 70,000	\$ 62,500	\$ 55,000	\$ 47,500
Total Expenses	\$ 203,807	\$ 816,204	\$ 816,204	\$ 816,204	\$ 816,204	\$ 1,668,919	\$ 582,876	\$ 574,990	\$ 567,147	\$ 559,348
Net Income Before Profit	\$ (203,807)	\$ (816,204)	\$ (816,204)	\$ (816,204)	\$ (816,204)	\$ 24,528,736	\$ 2,089,285	\$ 2,150,614	\$ 2,212,969	\$ 2,276,370
Less Profit @ 10%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,452,874	\$ 208,929	\$ 215,061	\$ 221,297	\$ 227,637
Net Income After Profit	\$ (203,807)	\$ (816,204)	\$ (816,204)	\$ (816,204)	\$ (816,204)	\$ 22,075,862	\$ 1,880,357	\$ 1,935,552	\$ 1,991,672	\$ 2,048,733
Present Value Factor @ 11%	1.0000	0.9732	0.9472	0.9218	0.8972	0.8732	0.8498	0.8270	0.8049	0.7834
Total Present Value	\$ (203,807)	\$ (794,359)	\$ (773,099)	\$ (752,408)	\$ (732,271)	\$ 19,275,627	\$ 1,597,899	\$ 1,600,782	\$ 1,603,109	\$ 1,604,904
Month	03/14/20	06/14/20	09/14/20	12/14/20	03/14/21	06/14/21	09/14/21			
Total Units Sold	45	48	51	54	57	60	61			
Units Sold/Quarter	3	3	3	3	3	3	1			
Total Units Remaining	16	13	10	7	4	1	0			
Price Per Unit	\$ 964,144	\$ 983,427	\$ 1,003,096	\$ 1,023,158	\$ 1,043,621	\$ 1,064,493	\$ 1,085,783			
Total Sales	\$ 2,892,433	\$ 2,950,281	\$ 3,009,287	\$ 3,069,473	\$ 3,130,862	\$ 3,193,479	\$ 1,085,783			
Expenses:										
Development Costs	\$ 367,439	\$ 367,439	\$ 367,439	\$ 367,439	\$ 367,439	\$ 122,480	\$ -			
Sales & Marketing	\$ 115,697	\$ 118,011	\$ 120,371	\$ 122,779	\$ 125,234	\$ 127,739	\$ 43,431			
Closing Costs	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 2,500			
Real Estate Taxes	\$ 13,458	\$ 10,934	\$ 8,411	\$ 5,888	\$ 3,364	\$ 841	\$ -			
Misc. Expenses Sold Units	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 2,500			
Misc. Expenses Unsold Units	\$ 40,000	\$ 32,500	\$ 25,000	\$ 17,500	\$ 10,000	\$ 2,500	\$ -			
Total Expenses	\$ 551,593	\$ 543,884	\$ 536,221	\$ 528,605	\$ 521,037	\$ 268,560	\$ 48,431			
Net Income Before Profit	\$ 2,340,839	\$ 2,406,397	\$ 2,473,066	\$ 2,540,868	\$ 2,609,825	\$ 2,924,920	\$ 1,037,352			
Less Profit @ 10%	\$ 234,084	\$ 240,640	\$ 247,307	\$ 254,087	\$ 260,982	\$ 292,492	\$ 103,735			
Net Income After Profit	\$ 2,106,755	\$ 2,165,758	\$ 2,225,759	\$ 2,286,781	\$ 2,348,842	\$ 2,632,428	\$ 933,617			
Present Value Factor @ 11%	0.7624	0.7420	0.7221	0.7028	0.6840	0.6657	0.6479			
Total Present Value	\$ 1,606,186	\$ 1,606,977	\$ 1,607,297	\$ 1,607,166	\$ 1,606,602	\$ 1,752,383	\$ 604,866			
Total Present Value	\$ 32,817,854									
Rounded to:	\$ 32,820,000									

## SCENARIO 2 – 16 CUSTOM HOME LOTS

Total Number of Units	16
# of Presales	8
# Units Sold per Quarter	2
Average Unit Size (SF)	87,736
Initial Selling Price (\$/SF)	\$ 35.00
Price Increases per Quarter	2.00%
Development Costs per Unit	\$ 357,727
Sales & Marketing (%)	4.00%
Closing Costs/Unit Sold	\$ 2,500
Taxes per Quarter (\$/Unit)	\$ 3,206.67
Misc. Exp. (\$/Unit)	\$ 2,500.00
Misc. Exp. Unsold (\$/Unit)	\$ 2,500.00
Discount Rate (%)	10.00%
Profit Based on Retail (%)	10.00%

DISCOUNTED CASH FLOW MODEL										
Month	09/14/17	12/14/17	03/14/18	06/14/18	09/14/18	12/14/18	03/14/19	06/14/19	09/14/19	12/14/19
Total Units Sold	0	0	0	0	0	8	10	12	14	16
Units Sold/Quarter	0	0	0	0	0	8	2	2	2	2
Total Units Remaining	16	16	16	16	16	8	6	4	2	0
Price Per Unit	\$ 3,070,743	\$ 3,132,157	\$ 3,194,800	\$ 3,258,697	\$ 3,323,870	\$ 3,390,348	\$ 3,458,155	\$ 3,527,318	\$ 3,597,864	\$ 3,669,822
Total Sales	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 27,122,783	\$ 6,916,310	\$ 7,054,636	\$ 7,195,729	\$ 7,339,643
Expenses:										
Development Costs	\$ -	\$ 715,453	\$ 715,453	\$ 715,453	\$ 715,453	\$ 715,453	\$ 715,453	\$ 715,453	\$ 715,453	\$ -
Sales & Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,084,911	\$ 276,652	\$ 282,185	\$ 287,829	\$ 293,586
Closing Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Real Estate Taxes	\$ 51,307	\$ 51,307	\$ 51,307	\$ 51,307	\$ 51,307	\$ 25,653	\$ 19,240	\$ 12,827	\$ 6,413	\$ -
Misc. Expenses Sold Units	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Misc. Expenses Unsold Units	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 20,000	\$ 15,000	\$ 10,000	\$ 5,000	\$ -
Total Expenses	\$ 91,307	\$ 806,760	\$ 806,760	\$ 806,760	\$ 806,760	\$ 1,886,018	\$ 1,036,346	\$ 1,030,465	\$ 1,024,696	\$ 303,586
Net Income Before Profit	\$ (91,307)	\$ (806,760)	\$ (806,760)	\$ (806,760)	\$ (806,760)	\$ 25,236,765	\$ 5,879,964	\$ 6,024,170	\$ 6,171,033	\$ 7,036,057
Less Profit @ 10%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,523,676	\$ 587,996	\$ 602,417	\$ 617,103	\$ 703,606
Net Income After Profit	\$ (91,307)	\$ (806,760)	\$ (806,760)	\$ (806,760)	\$ (806,760)	\$ 22,713,088	\$ 5,291,968	\$ 5,421,753	\$ 5,553,930	\$ 6,332,452
Present Value Factor @ 10%	1.0000	0.9756	0.9518	0.9286	0.9060	0.8839	0.8623	0.8413	0.8207	0.8007
Total Present Value	\$ (91,307)	\$ (787,083)	\$ (767,886)	\$ (749,157)	\$ (730,885)	\$ 20,075,061	\$ 4,563,247	\$ 4,561,133	\$ 4,558,369	\$ 5,070,574
Total Present Value	\$ 35,702,065									
Rounded to:	\$ 35,700,000									

For the purpose of the above analysis, I used the following hypothetical condition, and its use might have affected the assignment results:

1. The above value for the 16-lot scenario is based on the hypothetical condition that a Waiver, SDR and TMP approvals, similar to those approved for the 61-lot scenario, was given to this development plan of sixteen (16) lots.

**SCENARIO 3 – 7 CUSTOM HOME LOTS**

Total Number of Units	7
# of Presales	5
# Units Sold per Quarter	1
Average Unit Size (SF)	208,982
Initial Selling Price (\$/Unit)	\$ 32.00
Price Increases per Quarter	2.00%
Development Costs per Unit	\$ 763,752
Sales & Marketing (%)	4.00%
Closing Costs/Unit Sold	\$ 2,500
Taxes per Quarter (\$/Unit)	\$ 7,330
Misc. Exp. (\$/Unit)	\$ 2,500
Misc. Exp. Unsold (\$/Unit)	\$ 2,500
Discount Rate (%)	10.00%
Profit Based on Retail (%)	10.00%

DISCOUNTED CASH FLOW MODEL								
Month	09/14/17	12/14/17	03/14/18	06/14/18	09/14/18	12/14/18	03/14/19	
Total Units Sold	0	0	0	0	5	6	7	
Units Sold/Quarter	0	0	0	0	5	1	1	
Total Units Remaining	7	7	7	7	2	1	0	
Price Per Unit	\$ 6,687,415	\$ 6,821,163	\$ 6,957,586	\$ 7,096,738	\$ 7,238,673	\$ 7,383,446	\$ 7,531,115	
Total Sales	\$ -	\$ -	\$ -	\$ -	\$ 36,193,365	\$ 7,383,446	\$ 7,531,115	
Expenses:								
Development Costs	\$ -	\$ 1,272,920	\$ 1,272,920	\$ 1,272,920	\$ 763,752	\$ 763,752	\$ -	
Sales & Marketing	\$ -	\$ -	\$ -	\$ -	\$ 1,447,735	\$ 295,338	\$ 301,245	
Closing Costs	\$ -	\$ -	\$ -	\$ -	\$ 12,500	\$ 2,500	\$ 2,500	
Real Estate Taxes	\$ 51,307	\$ 51,307	\$ 51,307	\$ 51,307	\$ 14,659	\$ 7,330	\$ -	
Misc. Expenses Sold Units	\$ -	\$ -	\$ -	\$ -	\$ 12,500	\$ 2,500	\$ 2,500	
Misc. Expenses Unsold Units	\$ 17,500	\$ 17,500	\$ 17,500	\$ 17,500	\$ 5,000	\$ 2,500	\$ -	
Total Expenses	\$ 68,807	\$ 1,341,727	\$ 1,341,727	\$ 1,341,727	\$ 2,256,145	\$ 1,073,919	\$ 306,245	
Net Income Before Profit	\$ (68,807)	\$ (1,341,727)	\$ (1,341,727)	\$ (1,341,727)	\$ 33,937,219	\$ 6,309,527	\$ 7,224,871	
Less Profit @ 10%	\$ -	\$ -	\$ -	\$ -	\$ 3,393,722	\$ 630,953	\$ 722,487	
Net Income After Profit	\$ (68,807)	\$ (1,341,727)	\$ (1,341,727)	\$ (1,341,727)	\$ 30,543,497	\$ 5,678,574	\$ 6,502,384	
Present Value Factor @ 10%	1.0000	0.9756	0.9518	0.9286	0.9060	0.8839	0.8623	
Total Present Value	\$ (68,807)	\$ (1,309,002)	\$ (1,277,075)	\$ (1,245,927)	\$ 27,670,901	\$ 5,019,032	\$ 5,606,985	
Total Present Value	\$ 34,396,108							
Rounded to:	\$ 34,400,000							

For the purpose of the above analysis, I used the following hypothetical condition, and its use might have affected the assignment results:

1. The above value for the 7-lot scenario is based on the hypothetical condition that a Waiver, SDR and TMP approvals, similar to those approved for the 61-lot scenario, was given to this development plan of seven (7) lots.

**CONCLUSION OF THE INCOME APPROACH – BEFORE CONDITION**

As a check to the reasonableness to the value concluded by the Sales Comparison Approach, I completed a discounted cash flow analysis for the subject property based on three (3) scenarios; 1) Sixty-one (61) homes lots ranging from 0.22 acres to 1.08 acres; 2) Sixteen (16) home lots ranging from 1.58 acres to 2.90 acres, and; 3) Seven (7) homes lots ranging from 3.96 acres to 5.39 acres. The following is a summary of the values indicated for each scenario.

<b>Subdivision Approach</b>			
	<b>Total Value</b>	<b>Per SF</b>	
61-Lots	\$ 32,820,000	\$22.11	
16-Lots	\$ 35,700,000	\$24.06	
7-Lots	\$ 34,400,000	\$23.18	

In this section of the analysis, the values for the three (3) scenarios indicate that a residential development that conforms to the surrounding uses is the highest and best use of the site. Therefore, based on the preceding analysis and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the “retrospective” market value of the Fee Simple Estate in the subject property in the before condition by the Income Approach, as of the effective date of value, September 14, 2017, was:

**THIRTY-FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS  
(\$35,700,000)**

**The above values are based on the following extraordinary assumption and hypothetical conditions, and their use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.
2. The values for the sixteen (16) lot and seven (7) lot scenarios are based on the hypothetical condition that a Waiver, SDR and TMP approval, similar to those approved for the sixty-one (61) lot scenario, were given to the development plans of sixteen (16) lots and seven (7) lots.

**VALUE CONCLUSION – BEFORE CONDITION**

The values indicated by my analyses are as follows:

<b>Reconciliation</b>		<b>Total Value</b>	<b>Per SF</b>
Sales Comparison Approach to Value		\$ 34,135,000	\$ 23.00
Subdivision Approach (DCF) to Value	61-Lot Scenario	\$ 32,820,000	\$ 22.11
	16-Lot Scenario	\$ 35,700,000	\$ 24.06
	7-Lot Scenario	\$ 34,400,000	\$ 23.18
<b>Concluded Value</b>		<b>\$ 34,135,000</b>	<b>\$ 23.00</b>

The subject of this report consists of one (1) parcel of land containing 34.07 acres or 1,484,089 square feet. The property is bordered by custom home lots and multi-million dollar homes in the master planned community of Queensridge. The site also abuts custom home lots and multi-million dollar homes in the masterplan community of Summerlin to the west and northwest. The property is and has been zoned for residential use for over 20 years.

In this analysis, I used the Sales Comparison Approach to estimate the value of this 34.07 acre site. The Sales Comparison Approach concluded a value of \$34,135,000, which is equal to \$23.00 square foot. As a check to reasonableness, I used the Income Approach and concluded that the highest and best use was to develop the site with residential home lots.

Therefore, based on the analyses and conclusions indicated by the Sales Comparison Approach in this report, and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the market value of the fee simple estate in this property in the before condition, as of September 14, 2017, was:

**THIRTY-FOUR MILLION ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS**  
**(\$34,135,000)**

**The above value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

**In addition, the values for the 16-lot and 7-lot scenarios at the top of this page are based on the following hypothetical condition and its use might have affected the assignment results:**

1. The values for the sixteen (16) lot and seven (7) lot scenarios stated at the top of the page are based on the hypothetical condition that a Waiver, SDR and TMP approval, similar to those approved for the 61-lot scenario, were given to the development plans of sixteen (16) lots and seven (7) lots.

## DESCRIPTION OF THE GOVERNMENT ACTIONS

I have been provided with the Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and have reviewed the relevant facts section of that motion and have also reviewed the supporting documents. Based on that motion and other information I have been provided, the City's actions toward the property are set forth in summary format as follows:

The landowner applied to the City of Las Vegas to develop the subject property with a residential use. The landowner looked at developing the property with 61-custom home lots, which would reflect a density of 1.79 dwelling units per acre. This would have been over 75% below the permitted density of 7.49 dwelling units per acre permitted under the R-PD7 zoning. The City Planning Staff reviewed the applications and recommended approval. The City Planning Director, Tom Perrigo, stated at the hearing on the landowner's applications that the proposed development met all City requirements and should be approved. The City Council denied the 35 Acre Property applications, stating as the basis for denial was their desire to see the entire 250 acre residential zoned land developed under one Master Development Agreement (MDA).

Following that denial, the landowner worked with the City on development of the 35 acre subject property along with all other parcels that made up the entire 250 acre residentially zoned land. The landowners complied with the City's demands and made numerous concessions. A partial list of the landowners' concessions, as part of this MDA, included:

- 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas;
- 2) building brand new driveways and security gates and gate houses for the existing security entry ways for the Queensridge development;
- 3) building two new parks, one with a vineyard; and,
- 4) reducing the number of units, increasing the minimum lot size, and reducing the number and height of the towers.

In total, the City required at least 16 new and revised versions of the MDA. When completed, the City's Planning Staff, who participated at in preparing the MDA, recommended approval. In fact, they stated the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan." The following occurred in June through August period of 2017.

On June 27, 2017, Lauren Storia, a Senior Permit Technician in Building and Safety for the City of Las Vegas sent what appears to be an internal email with the subject – Badlands. The email stated: "If anyone sees a permit for grading or clear and grub at the **Badlands** Golf Course, please see Kevin, Rod, or me. Do Not Permit without approval from one of these three."

In August 2017, the Landowners filed with the City a request for three access points to streets the entire 250 acre residential zoned land abuts – one (1) on Rampart Boulevard and two (2) on Hualapai Way. This was a routine request. It is my understanding that the Nevada Supreme Court has held that a landowner cannot be denied access to abutting roadways and that this is a recognized property right in Nevada. The City denied this access application citing as the basis for the denial, “any development on this site has the potential to have significant impact on the surrounding properties....”

Also, in August 2017, the Landowners filed with the City a request to install chain link fencing to enclose two water features/ponds that are located on the 250 acre residential zoned land. City Code states that this application is similar to a building permit review that is granted over the counter and not subject to City Council review. The City denied the application, citing as the basis for denial, “any development on this site has the potential to have significant impact on the surrounding properties....”

The City then required that these matters be presented to the City Council through a “Major Review” pursuant to LVMC 19.16.100(G)(1)(b). The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to interested City departments for comments/recommendation/ requirements, and publicly noticed Planning Commission and City Council hearings. The City required all of that to install a chain link fence to enclose and protect two water features/ponds on the landowners property.

On August 2, 2017, the MDA was presented to the City Council. The City denied the entire MDA. The City did not ask the landowner to make more concessions, like increasing the setbacks or reducing the units per acre, it just denied the MDA altogether.

The City then adopted two Bills that appeared to target the entire 250 acre residential zoned land to create additional barriers to this site’s development. The first was Bill No. 2018-5, which Councilwomen Fiore acknowledged “[t]his bill is for one development and one development only. The bill is only about Badlands Golf Course . . . I call it the Yohan Lowie Bill.”

The second Bill was Bill No. 2018-24. Bill 2018-24 defines the “requirements pertaining to the Development Review and Approval Process, Development Standards, and the Closure Maintenance Plan” for Repurposing Certain Golf Courses and Open Spaces.

This Bill required approval of master drainage, traffic, and sewer studies before any applications are submitted; ecological studies; 3D topographic development models; providing ongoing public access to the private land; and requiring the Landowner to hire security and monitoring details. Additionally, Bill 2018-24 included;

G. Closure Maintenance Plan, 2. Maintenance Plan Requirements . . . the maintenance plan must, at a minimum and with respect to the property; (d) Provide documentation regarding ongoing public access, access to utility easements, and plans to ensure that such access is maintained.

“5. Failure to comply with the provisions of this Subsection (G) or with the terms of an approved maintenance plan: a) Shall be grounds for denial of any development application under this Title that would be required for a repurposing project subject to this Section; b) Is unlawful and may be enforced by means of a misdemeanor prosecution; and c) In addition to and independent of any enforcement authority or remedy described in this Title, may be enforced as in the case of a violation of Title 6 by means of a civil proceeding pursuant to LVMC 6.02.400 and 6.02.460.”

This Bill would make it a misdemeanor subject to a \$1,000 a day fine or “imprisonment for a term of not more than six months” or any combination of the two for an owner of a discontinued golf course who fails to allow ongoing public access to their property.

When asked if this Bill would be retroactive at the September 4, 2018 Recommending Committee Meeting, Planning Director Robert Summerfield stated; “Now, I do want to be clear that there are provisions under the – closure the area that would allow for the City to require some level of maintenance on a closed facility, because the language does say something along the lines of once we've been made aware that – a location has closed or – may close.”

At the October 15, 2018 Recommending Committee Meeting, Stephanie Allen, an attorney representing the landowner stated that at the last meeting that it was asked how many properties would fall under this ordinance. Staff stated there 292 properties that would be subject to this ordinance. Ms. Allen informed the Committee that of those 292 properties, only two (2) properties out of the 292 parcels that the city provided would actually be subject to this Bill and one of those was in the process of trying to get it converted to the HOA's ownership. If that were converted to the HOA, it too, would be exempt under this ordinance. This left only one (1) property that this ordinance would actually apply to with all the exemptions that the City put into the ordinance. She told the Committee that this was a significant concern because “it's unconstitutional to pass laws that are targeted at one particular property owner, and there are serious ramifications for the City if it were to impose such a law.”

The landowner submitted an application for a Technical Drainage Study, which should have been routine, because the City and the Landowners already executed an On-Site Drainage Improvements Maintenance Agreement allowing the Landowners to remove and replace the flood control facilities on the property. In addition, the City's Bill 2018-5, referenced previously, requires a technical drainage study in order to grant entitlements. The City, however, was mandating an impossible scenario - that there can be no drainage study without entitlements while requiring a drainage study to get entitlements. How could that have been accomplished?

As part of the numerous development applications filed by the Landowners over the prior three (3) years to develop all or portions of the 250 acre residential zoned land, in October and November 2017, the necessary applications were filed to develop residential units on the 133 Acre Property consistent with the R-PD7 hard zoning. The City Planning Staff reviewed the applications and determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met requirements in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and recommended approval.

City Council set the hearing for May 16, 2018 – the same day it was to consider Bill 2018-5. Bill 2018-5 was on the morning agenda and the 133 Acre Property applications were on the afternoon agenda. The City approved Bill 2018-5 in the morning session. In the afternoon session, Councilman Seroka stated that Bill 2018 - 5 applied to deny development on the 133 Acre Property and moved to strike all of the applications for the 133 acre property filed by the landowner. This apparently surprised the City Manager and other Council members as the following statements were made after Councilman Seroka's announcement.

Scott Adams (City Manager): "I would say we are not aware of the action. ... So we're not really in a position to respond technically on the merits of the motion, cause it, it's something that I was not aware of."

Councilwoman Fiore: "none of us had any briefing on what just occurred."

Councilman Anthony: 95 percent of what Councilman Seroka said was, I heard it for the first time. So I – don't know what it means. I don't understand it."

The City then voted to strike the applications.

According to documents obtained from the City pursuant to a Nevada Public Records Request, it was discovered that the City had allocated \$15 million to acquire the Landowners' property - "\$15 Million Purchase Badlands and operate." It is also of note that Councilman Seroka issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the landowners' private property into a "fitness park." In an interview with KNPR Seroka stated that he would "turn (the landowners' private property) over to the City." Councilman Coffin apparently agreed, his intent in an email as follows: "I think your third way is the only quick solution...Sell off the balance to be a golf course with water rights (key). Keep the bulk of Queensridge green." Councilmen Coffin and Seroka also exchanged emails wherein they stated they would not compromise one inch and that they "need an approach to accomplish the desired outcome."

Councilman Seroka testified at the Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could use their private property for which they have a right to develop. In reference to development on the landowners' property, Councilman Coffin stated, "I am voting against the whole thing," and called the landowners' representative a vulgar name, and expressed that he will continue voting against any development.

Councilman Seroka, at a public meeting on June 21, 2018, told all of the Landowners' neighbors that the Landowners' Property belonged to the neighbors and the neighbors had the right to use the Landowners' Property as recreation and open space.

"So when they built over there off of Hualapai and Sierra –Sahara –this land [250 Acres] is the open space. Every time that was built along Hualapai and Sahara, this [250 Acres] is the open space. Every community that was built around here, that [250 Acres] is the open space. The development across the street, across Rampart, that [250 Acres] is the open space....it is also documented as part recreation, open space...That is part recreation and open space..." *LO Appx., Ex. 136, 17:23-18:15, HOA meeting page*

“Now that we have the documentation clear, that is open space for this part of our community. It is the recreation space for this part of it. It is not me, it is what the law says. It is what the contracts say between the city and the community, and that is what you all are living on right now.” LO Appx., Ex. 136, 20:23-21:3, HOA meeting.

Donald Richards the Superintendent of the 250 Acre Residentially zoned land has stated that the neighbors are using the Landowners’ Property and that they have told him “it is our open space.”

It is important to again note: 1) the landowners’ own private property; 2) the 35 Acre Property was hard zoned R-PD7 and the permitted uses by right of the 35 Acre Property are single-family and multi-family residential; 3) the landowners’ property was not for sale; and 4) the Clark County Assessor had placed a residential value of almost \$89 million on the property. Based on my 20 + years as a member of the Clark County Board of Equalization, the assessed value is typically well below a property’s market value in this area. Which based on my analysis in this report, is true for the subject property.

Based on these facts, it appears that the City is treating this landowner differently than it has treated all other units in the area and all other landowners in the area for the purpose of denying the landowner’s property rights so the subject property will remain in a vacant condition to be used by the surrounding neighbors as recreation, open space and viewshed.

#### **EFFECT OF THE GOVERNMENT ACTIONS ON THE VALUE OF THE SITE – AFTER CONDITION**

In the before condition, I analyzed the property as if it were available to be developed with a residential use in compliance with its R-PD7 zoning as of September 14, 2017. In the before condition, the legally permissible, physically possible, financially feasible and maximally productive use, (the highest and best use in the before condition) was a residential development.

In the after condition, the City’s actions have taken the landowners property. The City’s actions removed the possibility of residential development; however, the landowner is still required to pay property taxes as if the property could be developed with a residential use. This immediately added an annual expense that was over \$205,000 and that amount would be expected to increase over time.

Due to the effect of the government’s actions, I concluded there is no market to sell this property with these development restrictions along with extraordinarily high annual expenses. You would be paying for a property with no economic benefit that has annual expenses in excess of \$205,000.

#### **VALUE OF THE REMAINDER - AFTER CONDITION**

In the previous section of this report, I researched comparable superpad and custom lot sales to arrive at a supportable opinion of the subject’s value in the before condition. Based on my research, I concluded that the value of the property in the after condition would be nominal at best and possibly negative. In researching “nominal” value, I found no definition that provided an actual dollar amount. Therefore, I researched what is the “nominal” value figure used by the Clark County Assessor as well as nominal values that are used by my peers.

The Assessor's office informed me that Nevada State Law used to have a minimal figure that the Assessor could put on properties with what was concluded to be a nominal value. The Assessor had been subject to a State law that set the minimum or nominal value at \$1.25 per acre. In this case, that would reflect the nominal value at \$42.59 (34.07 Acres x \$1.25/Acre = \$42.59). That law is no longer in effect and the Assessor can now put \$0.00 on a nominal use parcel.

I also learned from the Assessor's office that the Nevada State Board of Equalization had used \$100 for parcels with nominal value. As for my peers, I have seen appraisers use \$100 and \$100 per acre as a nominal value when looking at patent easements. However, even an "after value" of \$100 lacks any market support.

Based on my research, an informed buyer would not be interested in a property under these conditions; no economic benefits but annual an annual expense of over \$200,000 that would be expected to increase. Due to the government actions, it is my opinion that there would have been no interest for the subject property in the after condition.

## CONCLUSION

I previously estimated the value of the subject property in the before condition at \$34,135,000. Based on my analysis of the property in the after condition, the City's actions result in catastrophic damages to this property. This is based on the value of the property in the after condition being zero. The following is a summary of the calculation and the resulting damages due to the City's actions.

## SUMMARY OF JUST COMPENSATION DUE TO THE CITY' ACTIONS

<b>Just Compensation Due to Property Owner Due to City's Actions</b>	
Indicated Value in the Before Condition	\$ 34,135,000
Less: Indicated Value in the After Condition	\$ -
Damages Due to the Government Actions	\$ 34,135,000
Rounded to:	\$ 34,135,000

**SPECIAL BENEFITS**

When part of a landowner's property is condemned, the landowner is entitled to compensation for the part taken, in addition to any damage caused to the remaining property as a result of the taking. These damages are called severance damages. However, the appraiser must also analyze what benefits, if any, are due to the project.

It is my understanding that the government wants the subject property to remain vacant and possibly what they have referred to as a "fitness park." I searched the Unified Development Code Title 19 for a description of what a fitness park would include but I did not find that fitness park was a term used in that document.

In this situation, the government actions do not appear to have had a beneficial effect on the surrounding area, nor can I identify any Special Benefit specifically for the subject property. Therefore, I have concluded that there would be no Special Benefits accruing directly and solely to the advantage of this property in the after condition.

## CONCLUSION TO JUST COMPENSATION

Based on the analyses and conclusions in this report and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the retrospective just compensation due to the landowner for the government's actions, as of September 14, 2017, was:

<b>Estimated Just Compensation Due to Landowner</b>		
1. Value before taking		\$ 34,135,000
2. Less value after the taking	- \$	-
3. Damages to the remainder	=	\$ 34,135,000
4. Less special benefits to remainder	- \$	-
5. Just compensation due to property owner	=	\$ 34,135,000

**The value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

## CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- I have performed no services, as an appraiser or any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding the agreement to perform this assignment.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- Tio S. DiFederico, MAI, made an inspection of the property that is the subject of this report on August 12, 2020. The photographs in the body of this report were taken during that inspection.
- No one provided significant real property appraisal assistance to the person signing this certification.

- As of the date of this report, Tio S. DiFederico, MAI, has completed the continuing education program of the Appraisal Institute.



Tio S. DiFederico, MAI  
Certified General Real Estate Appraiser  
Nevada Certificate # A.0000150-CG

## ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is based on the following assumptions, except as otherwise noted in the report.

1. The title is marketable and free and clear of all liens, encumbrances, encroachments, easements and restrictions. The property is under responsible ownership and competent management and is available for its highest and best use.
2. There are no existing judgments or pending or threatened litigation that could affect the value of the property.
3. There are no hidden or undisclosed conditions of the land that would render the property more or less valuable.
4. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.

This appraisal is subject to the following limiting conditions, except as otherwise noted in the report.

1. An appraisal is inherently subjective and represents our opinion as to the value of the property appraised.
2. The conclusions stated in our appraisal apply only as of the effective date of the appraisal, and no representation is made as to the effect of subsequent events.
3. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated.
4. No environmental impact studies were either requested or made in conjunction with this appraisal, and we reserve the right to revise or rescind any of the value opinions based upon any subsequent environmental impact studies. If any environmental impact statement is required by law, the appraisal assumes that such statement will be favorable and will be approved by the appropriate regulatory bodies.
5. Unless otherwise agreed to in writing, we are not required to give testimony, respond to any subpoena or attend any court, governmental or other hearing with reference to the property without compensation relative to such additional employment.
6. We have made no survey of the property and assume no responsibility in connection with such matters. Any sketch or survey of the property included in this report is for illustrative purposes only and should not be considered to be scaled accurately for size. The appraisal covers the property as described in this report, and the areas and dimensions set forth are assumed to be correct.
7. We accept no responsibility for considerations requiring expertise in other fields; including, but are not limited to, legal descriptions and other legal matters such as legal title, geologic considerations such as soils and seismic stability, and civil, mechanical, electrical, structural and other engineering and environmental matters.
8. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or any reference to the Appraisal Institute) shall be disseminated through advertising media, public relations media, news media or any

- other means of communication (including without limitation prospectuses, private offering memoranda and other offering material provided to prospective investors) without the prior written consent of the person signing the report.
9. Information, estimates and opinions contained in the report, obtained from third-party sources are assumed to be reliable and have not been independently verified.
  10. The current purchasing power of the dollar is the basis for the value stated in our appraisal; we assumed that no extreme fluctuations in economic cycles will occur.
  11. The value found herein is subject to these and to any other assumptions or conditions set forth in the body of this report but which may have been omitted from this list of Assumptions and Limiting Conditions.
  12. The analyses contained in the report necessarily incorporate numerous estimates and assumptions regarding property performance, general and local business and economic conditions, the absence of material changes in the competitive environment and other matters. Some estimates or assumptions, however, inevitably will not materialize, and unanticipated events and circumstances may occur; therefore, actual results achieved during the period covered by our analysis will vary from our estimates, and the variations may be material.
  13. The *Americans with Disabilities Act (ADA)* became effective January 26, 1992. We have not made a specific survey or analysis of any property to determine whether the physical aspects of the improvements meet the *ADA* accessibility guidelines. Given that compliance can change with each owner's financial ability to cure non-accessibility, the value of the subject does not consider possible non-compliance. A specific study of both the owner's financial ability and the cost to cure any deficiencies would be needed for the Department of Justice to determine compliance.
  14. The appraisal report is prepared for the exclusive benefit of the Client, its subsidiaries and/or affiliates. It may not be used or relied upon by any other party. All parties who use or rely upon any information in the report without our written consent do so at their own risk.
  15. No studies have been provided to us indicating the presence or absence of hazardous materials on the subject property, and our valuation is predicated upon the assumption that the subject property is free and clear of any environment hazards. No representations or warranties are made regarding the environmental condition of the subject property and the person signing the report shall not be responsible for any such environmental conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because we are not experts in the field of environmental conditions, the appraisal report cannot be considered as an environmental assessment of the subject property.
  16. The person signing the report may have reviewed available flood maps and may have noted in the appraisal report whether the subject property is located in an identified Special Flood Hazard Area. We are not qualified to detect such areas and therefore do not guarantee such determinations. The presence of flood plain areas and/or wetlands may affect the value of the property, and the value conclusion is predicated on the assumption that wetlands are non-existent or minimal.

17. It is expressly acknowledged that in any action which may be brought against The DiFederico Group, The DiFederico Group, Inc. or their respective officers, owners, managers, directors, agents, subcontractors or employees, arising out of, relating to, or in any way pertaining to this engagement, the appraisal reports, or any estimates or information contained therein, the DiFederico Group Parties shall not be responsible or liable for an incidental or consequential damages or losses, unless the appraisal was fraudulent or prepared with gross negligence. It is further acknowledged that the collective liability of the DiFederico Group Parties in any such action shall not exceed the fees paid for the preparation of the appraisal report unless the appraisal was fraudulent or prepared with gross negligence. Finally, it is acknowledged that the fees charged herein are in reliance upon the foregoing limitations of liability.
18. The DiFederico Group, an independently owned and operated company, has prepared the appraisal for the specific purpose stated elsewhere in the report. The intended use of the appraisal is stated in the General Information section of the report. The use of the appraisal report by anyone other than the Client is prohibited except as otherwise provided. Accordingly, the appraisal report is addressed to and shall be solely for the Client's use and benefit unless we provide our prior written consent. We expressly reserve the unrestricted right to withhold our consent to your disclosure of the appraisal report (or any part thereof including, without limitation, conclusions of value and our identity), to any third parties. Stated again for clarification, unless our prior written consent is obtained, no third party may rely on the appraisal report (even if their reliance was foreseeable).
19. The conclusions of this report are estimates based on known current trends and reasonably foreseeable future occurrences. These estimates are based partly on property information, data obtained in public records, interviews, existing trends, buyer-seller decision criteria in the current market, and research conducted by third parties, and such data are not always completely reliable. The DiFederico Group, Inc. and the undersigned are not responsible for these and other future occurrences that could not have reasonably been foreseen on the effective date of this assignment. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance. While we are of the opinion that our findings are reasonable based on current market conditions, we do not represent that these estimates will actually be achieved, as they are subject to considerable risk and uncertainty. Moreover, we assume competent and effective marketing for the duration of the projected holding period of this property.

**The value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

**The values of the 16-lot and 7-lot scenarios in this report are based on the following hypothetical condition, and its use might have affected the assignment results:**

2. The values for the 16-lot and 7-lot scenarios are based on the hypothetical condition that a Waiver, SDR and TMP approval, similar to those approved for the 61-lot scenario, were given to the development plans of 16-lots and 7-lots.

## JURISDICTIONAL EXCEPTION

This appraisal report has been made with the following jurisdictional exception:

The Uniform Standards of Professional Practice (USPAP) Standards Rule 1-2(c) Comment states:

When reasonable exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion.

The Uniform Standards of Professional Practice (USPAP) Standards Rule 2-2(b)(v) Comment states:

When an opinion of reasonable exposure time has been developed in compliance with Standards Rule 1-2(c), the opinion must be stated in the report.

It is imperative that the appraiser utilize the correct definition of market value. For appraisals prepared for eminent domain proceedings in Nevada, appraisers shall use the following definition of market value:

The highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property. (Added to NRS by 1959, 596; A 1989, 548; 1993, 525; 1995, 501; 2007, 331)

The Nevada Constitution has a similar definition:

In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

Contrary to USPAP Standards Rule 1-2(c), this definition of market value does not call for the estimate of value to be *linked* to a specific *exposure time* estimate, but merely that the property be exposed on the open market for a *reasonable* length of time, given the character of the property and its market. Therefore, the appraiser's estimate of market value shall not be *linked* to a specific exposure time when conducting appraisals for eminent domain acquisition purposes in Nevada under these Standards.

In this report I have not linked the value estimate to a specific exposure time estimate. This is a jurisdictional exception requiring non-compliance of Standards Rule 1-2(c) and 2-2(b)(v).

## **ADDENDUM A**

### **APPRAISER QUALIFICATIONS**

## PROFESSIONAL QUALIFICATIONS OF TIO S. DIFEDERICO, MAI

### EXPERIENCE:

I am a life-long resident of Las Vegas. I graduated from the University of Nevada, Las Vegas (UNLV) with a Bachelor of Science in Business Administration as a Finance Major. I obtained a real estate license in the 1984 and began appraising real estate in 1986 with Shelli L. Lowe & Associates. In 1999 Shelli L. Lowe & Associates joined several other premier appraisal firms across the country to form a network of appraisal expertise to serve national and international clients; Integra Realty Resources (IRR). This national exposure provided me an opportunity to appraise a full range of properties and to interact with leaders in the appraisal and business community. I was typically entrusted with the most complex assignments and became qualified by the courts to testify in litigation as an expert in the appraisal of vacant land, residential, apartment, office, retail, industrial and hotel casino properties. In 2009 I formed The DiFederico Group.

I am a Certified General Appraiser in the State of Nevada (Certificate Number A.0000150-CG) and earned the MAI designation from the Appraisal Institute (MAI No. 12567). I am an appointed member of the Clark County Board of Equalization (BOE) and have served as the President and Vice President for the Las Vegas Chapter of the Appraisal Institute. In 2017 I was selected by the State of Nevada's Real Estate Division to be a member of their Appraisal Advisory Review Committee. My function on this committee is to review appraisal reports that are being considered by the State for disciplinary actions.

I have extensive litigation experience involving fee and partial takings, as well as permanent and temporary construction easements. I have also completed numerous assignments involving air rights takings and ground leases. I completed these assignments for both property-owners and government agencies. In addition, I have completed assignments involving partnership disputes, bankruptcies, estate valuations and partial interests.

I have appraised office buildings, business parks, apartment complexes, shopping malls, taverns, restaurants, night clubs, cell sites, billboard sites, water rights and special use properties. These include the +/- 400 Acre Groom Mine overlooking Area 51, the Las Vegas Motor Speedway, and the Henderson Executive Airport. I have appraised the Summerlin, Kyle Canyon and Tuscany Master-Planned Communities and the site of the proposed Ivanpah Airport.

I have also been hired by both Clark County and lenders to analyze leasehold and sandwich leasehold positions involving Clark County's ground leases in the area referred to as the Co-operative Management Area (CMA). I was also selected by Clark County to analyze the value of modifying the CMA restrictions.

My appraisal experience also includes appraisals of hotel casinos. These include: The Riviera Hotel Casino, The LVH – Las Vegas Hotel & Casino, Horseshoe, Lady Luck, Dukes, Golden Phoenix and Lucky Dragon in Nevada. I have also been hired to analyze the ground leases for the Texas Hotel Casino, Eastside Cannery, Buffalo Bills, Primm Valley and Whiskey Pete's in Nevada. Outside of Nevada, I have appraised the Isle of Capri in Louisiana, the Aztar Casino in Missouri, and the Twin River in Rhode Island, as well as proposed hotel casinos in Macau and Puerto Rico. And, while serving on the BOE, I have analyzed and valued well over a hundred hotel casinos in Clark County.

In October of 2002, I was a guest speaker at the Southern California Chapter of the Appraisal Institute's "Appraising Special Purpose Properties Seminar." My portion of the program addressed "Appraising Casino's." I was also a guest speaker at the December 2017 National Eminent Domain Conference in Las Vegas that was sponsored by CLE International. I was asked to discuss how to appraise casino's in the "Business Valuations: When and How" portion of the conference.

**PROFESSIONAL/COMMUNITY AFFILIATIONS:**

Professional Designation: MAI- Member of the Appraisal Institute (MAI No. 12567)  
 Licensed Appraiser: A.0000150-CG (Certificate Number in Nevada)  
 Member: Clark County Board of Equalization (BOE) (Since 1998)  
 Elected Member: President - Las Vegas Chapter - Appraisal Institute – 2012  
 Elected Member: Vice President - Las Vegas Chapter - Appraisal Institute – 2011  
 Elected Member: 2<sup>nd</sup> Vice President – Las Vegas Chapter – Appraisal Institute - 2010  
 Member: Appraisal Institute - Region VII Nominating Committee – 2013  
 Chair: LV Chapter of the Appraisal Institute Nominating Committee – 2013  
 Member: LV Chapter of the Appraisal Institute Nominating Committee - 1999  
 Member: Appraisal Institute Education Committee - 1991  
 Member: Bishop Gorman High School - Alumni Representative (1977)  
 Elected Member: Summerlin's Willow Creek HOA 2004-2006  
 Elected Member: Summerlin's Willow Creek Design & Review Committee – 2004  
 Board Member (Past Chair): Lance Burton Foundation for Crippled and Burned Children

**EDUCATION:**

Tio S. DiFederico received a Bachelor of Science in Business Administration from the University of Nevada, Las Vegas. The following is a partial list of the appraisal courses sponsored by the Appraisal Institute that he has completed:

550 Advanced Applications	General Comprehensive Exam
540 Report Writing and Valuation Analysis	Forecasting Revenue
530 Advanced Sales Comparison and Cost Approaches	Analyzing Operating Expenses
520 Highest & Best Use and Market Analysis	Nevada Law
510 Advanced Income Capitalization	Nevada Statutes
420 Business Practices and Ethics	Appraising Apartments
310 Basic Income Capitalization	Market Analysis
Standard of Professional Practice, Part A	Accrued Depreciation
Standard of Professional Practice, Part B	Residential Valuation
Standard of Professional Practice, Part C	Supervising Appraisal Trainees
Condemnation Appraising: Principles & Applications	Ethics - USPAP Statements
Litigation Appraisal & Expert Testimony	1A-2 Basic Valuation Procedures
Eminent Domain and Condemnation	1A-1 Basic Appraisal Principles
Litigation Appraising: Specialized Topics and Applications	The Appraiser as an Expert Witness
Appraising the Appraisal: Appraisal Review - General	

In addition to the above, I have successfully completed numerous other real estate related Clinics, Conferences, Courses, and Seminars sponsored by the Appraisal Institute over the last 34 years.

**QUALIFIED BEFORE COURTS AND ADMINISTRATIVE BODIES:**

United States Federal Court  
United States Bankruptcy Court – District of Nevada  
Clark County District Court  
Clark County Board of Equalization  
Various Arbitration Courts

**PROFESSIONAL DEVELOPMENT PROGRAMS:**

Tio S. DiFederico, MAI, has completed the Appraisal Institute's Litigation Professional Development Program curriculum; passed the exams and is listed on the Appraisal Institute's Litigation Professional Registry.

**PUBLICATIONS:**

Tio S. DiFederico, MAI, co-authored the Gaming Overview articles in the IRR-Viewpoint, published by Integra Realty Resources (IRR), from 2003 through 2009.

**APPRAISER CERTIFICATE**

**STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY**

**NOT TRANSFERABLE**      **REAL ESTATE DIVISION**      **NOT TRANSFERABLE**

**This is to Certify That : TIO S DIFEDERICO**      **Certificate Number: A.0000150-CG**


**Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.**

**Issue Date: May 23, 2019**      **Expire Date: May 31, 2021**

**In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.**

**FOR: TIO S DIFEDERICO REAL ESTATE**  
**APPRAISAL INC**  
**3030 S DURANGO DR**  
**LAS VEGAS, NV 89117**

**REAL ESTATE DIVISION**  
**SHARATH CHANDRA**  
*Administrator*



## TESTIMONY AND DEPOSITIONS

### TIO S. DIFEDERICO, MAI

**2020:**

September City of Las Vegas vs. Charleston Land, LLC, – District Court Case – A-19-801822-C – Deposition – September 29, 2020 – (Condemnation)

September Peter Eliades vs. Sterling Entertainment – United States District Court – District of Nevada- Case No. A-17-752951 – Trial – September 16, 2020 (Deficiency Judgment)

February United States of America v. 400 Acres of Land, More or Less Situate in Lincoln County, State of Nevada; and Jessie J. Cox, et al., – United States District Court – District of Nevada- Case No. 215-CV-01743-MMD-NJK – Trial – February 11 & 12, 2020 (Condemnation)

**2019:**

November First Presbyterian Church of Las Vegas Nevada d/b/a Grace Presbyterian v. The State of Nevada – United States District Court – District of Nevada- Case No. A-18-777836-C – Deposition – November 4, 2019 (Inverse Condemnation)

March United States of America v. County of Clark and Nevada Links, Inc., – United States District Court – District of Nevada- Case No. 217-cv-02303-MMD-PAL – Deposition – March 14, 2019 (Breach of Contract)

**2018:**

September United States of America v. 400 Acres of Land, More or Less Situate in Lincoln County, State of Nevada; and Jessie J. Cox, et al., – United States District Court – District of Nevada- Case No. 215-CV-01743-MMD-NJK – Deposition – September 12, 2018 (Condemnation)

May Lucky Dragon Hotel & Casino (Debtor), Lucky Dragon, L.P. (Debtor) – United States Bankruptcy Court - District of Nevada – Lead Case No. 18-10792-leb – May 30, 2018 – Trial (Deficiency Judgment)

May Lucky Dragon Hotel & Casino (Debtor), Lucky Dragon, L.P. (Debtor) – United States Bankruptcy Court - District of Nevada – Lead Case No. 18-10792-leb – May 25, 2018 – Deposition (Deficiency Judgment)

April FP Holdings et. al. v. Nevada Department of Transportation (NDOT) – District Court Case – A-12-666482-C – Deposition - April 26, 2018 – (Condemnation)

March Bishop Gorman Development Corporation vs. J.A. Tiberti Construction, Inc. – United States Bankruptcy Court – District of Nevada- Case No. BK-S-17-11942-abl – Trial – March 20, 2018 (Deficiency Judgment)

March United States of America v. 400 Acres of Land, More or Less Situate in Lincoln County, State of Nevada; and Jessie J. Cox, et al., – United States District Court – District of Nevada- Case No. 215-CV-01743-MMD-NJK – Deposition – March 9, 2018 (Condemnation)

**2017:**

September Bishop Gorman Development Corporation vs. J.A. Tiberti Construction, Inc. – United States Bankruptcy Court – District of Nevada- Case No. BK-S-17-11942-abl – Deposition – September 27, 2017 (Deficiency Judgment)

April State of Nevada vs. Darrell E. Jackson, Thomas M. Strawn, Jr., and Andrew S. Levy, et Al - District Court Case – A-14-707519-C – Deposition - April 11, 2017 – (Condemnation)

**2016:**

April State of Nevada vs. MLK Spur, LLC, et. Al - District Court Case – A-14-707519-C – Deposition - April 18, 2016 – (Condemnation)

April State of Nevada vs. John Sharples, et. Al - District Court Case – A-14-710382-C – Deposition - April 11, 2016 – (Condemnation)

April State of Nevada vs. MLK Spur, LLC, et. Al - District Court Case – A-14-707519-C – Deposition - April 1, 2016 – (Condemnation)

February Village Pub Maule, Inc. vs. LSPG Holdings, LLC, and BB&T - District Court Case – A-14-700706-C – Deposition - February 25, 2016 – (Civil Matter)

**PUBLICATIONS**

I co-authored the Gaming Overview articles in the 2003 through 2009 editions of IRR - Viewpoint, published by Integra Realty Resources (IRR). Provided in this publication are the analyses and opinions derived from the available data of the members of IRR and other reputable services. As of the beginning of 2009, there were 58 Integra Offices located within the United States.

**HOURLY RATE**

Review, trial preparation and conferences (if applicable), are billed at \$500 per hour. Deposition and/or trial testimony (if applicable), is billed at \$750 per hour. Videotaped depositions are billed at \$1,000 per hour.

## **ADDENDUM B**

## **DEFINITIONS**

## ADDITIONAL DEFINITIONS

Unless otherwise noted, the source of the following definitions is as follows: Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 6th ed. (Chicago: Appraisal Institute, 2015).

### Appraisal

(noun) the act or process of developing an opinion of value; an opinion of value. adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services. Comment: An appraisal must be numerically expressed a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value). (USPAP, 2020-2021 ed.)

### Client

The party or parties (i.e., individual, group, or entity) who engage an appraiser by employment or contract in a specific assignment, whether directly or through an agent. (USPAP, 2020-2021 ed.)

### Comparable

A shortened term for similar property sales, rentals, or operating expenses used for comparison in the valuation process. In best usage, the thing being compared should be specified, e.g., comparable sales, comparable properties, comparable rents.

### Effective Date

In a lease document, the date upon which the lease goes into effect.

### Exposure Time

An opinion, based on supporting market data, of the length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at the market value on the effective date of value of the appraisal. (USPAP, 2020-2021 ed.)

### Highest and Best Use

1. The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.
2. [The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions)

### Intended Use

The manner in which the intended users expect to employ the information contained in a report.

**Intended User**

The client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser on the basis of communication with the client at the time of the assignment. (USPAP, 2020-2021 ed.)

**Land-to-Building Ratio.**

The proportion of land area to gross building area; one of the factors determining comparability of properties.

**Legal Description**

A description of land that identifies the real estate according to a system established or approved by law; an exact description that enables the real estate to be located and identified.

**Legally Nonconforming Use**

A use that was lawfully established and maintained, but no longer conforms to the use regulations of its current zoning; also known as a *grandfathered use*.

**Management Fee**

The amount charged by a management firm to manage property for an owner. In income and expense analysis, a management fee is typically treated as a variable operating expense, usually expressed as a percentage of effective gross income.

**Market Participants**

Individuals actively engaged in transactions. In real property markets, *primary market participants* are those who invest equity in real property or use real estate, e.g., buyers, sellers, owners, lenders, tenants. *Secondary market participants* include those who advise primary market participants, e.g., advisors, counselors, underwriters, appraisers.

**Net Net Net Lease (Triple Net Lease)**

An alternative term for a type of net lease. In some markets, a net net net lease is defined as a lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management; also called *NNN lease*, *triple net lease*, or *fully net lease*.

**Net Operating Income (NOI or Io)**

The actual or anticipated net income that remains after all operating expenses are deducted from effective gross income but before mortgage debt service and book depreciation are deducted. Note: This definition mirrors the convention used in corporate finance and business valuation for EBITDA (earnings before interest, taxes, depreciation, and amortization).

**Off-Site Improvements**

Improvements located off the property itself but necessary to facilitate its development, e.g., streets, sidewalks, curbing, traffic signals, water and sewer mains, parking and water retention ponds.

**On-Premise Sign**

A sign that advertises products or services that are sold, produced, manufactured, or furnished on the property where the sign is located. (Outdoor Advertising Association of America)

**On-Site Improvements**

Improvements on a site exclusive of buildings. Examples of on-site improvements include grading, landscaping, fences, gutters, paving, drainage and irrigation systems, walkways, and other physical enhancements to the land.

**Parking Ratio**

A ratio of parking area or parking spaces to an economic or physical unit of comparison. Minimum required parking ratios for parkway various land uses are often stated in zoning ordinances.

**Present Value (PV)**

The value of a future payment or series of future payments discounted to the current date or to time period zero.

**Qualitative Adjustment**

An indication that one property is superior, inferior, or the same as another property. Note that the common usage of the term is a misnomer in that an adjustment to the sale price of a comparable property is not made. Rather, the indication of a property's superiority or inferiority to another is used in relative comparison analysis, bracketing, and other forms of qualitative analysis.

**Qualitative Analysis**

The process of accounting for differences (such as between comparable properties and the subject property) that are not quantified; may be combined with quantitative techniques.

**Quantitative Adjustment**

A numerical (dollar or percentage) adjustment to the indicated value of a comparable property to account for the effect of a difference between two properties on value.

**Quantitative Techniques.**

Techniques used to derive quantitative adjustments to comparable sale prices in the sales comparison approach; also used in the development of adjustments in other valuation approaches and techniques. Quantitative techniques include data analysis techniques (paired data analysis, grouped data analysis, and secondary data analysis), statistical analysis, graphic analysis, trend analysis, cost analysis (cost-to-cure, depreciated cost), and capitalization of rent differences.

**Real Estate Owned (REO)**

In common usage, real property that has been acquired by a lending institution through foreclosure or deed in lieu of mortgage loans, i.e., what is more correctly called *other real estate owned (OREO)*. In best usage, the terms *owned real estate (ORE)* and *real estate owned (REO)* describe bank premises used for banking operations, and the term *other real estate owned (OREO)* describes foreclosed real property held for liquidation.

**Reimbursable Expenses.**

Real estate operating expenses that are subject to recovery from tenants; may include common area maintenance (CAM) charges, real property taxes, and property and casualty insurance.

**Rentable Area**

For office or retail buildings, the tenant's pro rata portion of the entire office floor, excluding elements of the building that penetrate through the floor to the areas below. The rentable area of a floor is computed by measuring to the inside finished surface of the dominant portion of the permanent building walls, excluding any major vertical penetrations of the floor. Alternatively, the amount of space on which the rent is based; calculated according to local practice.

**Rent-Up Period**

A period of time during which a rental property is in the process of initial leasing; may begin before or after construction and lasts until stabilized occupancy is achieved.

**Scope of Work**

The type and extent of research and analyses in an appraisal or appraisal review assignment. (USPAP, 2020- 2021 ed.)

**Setback**

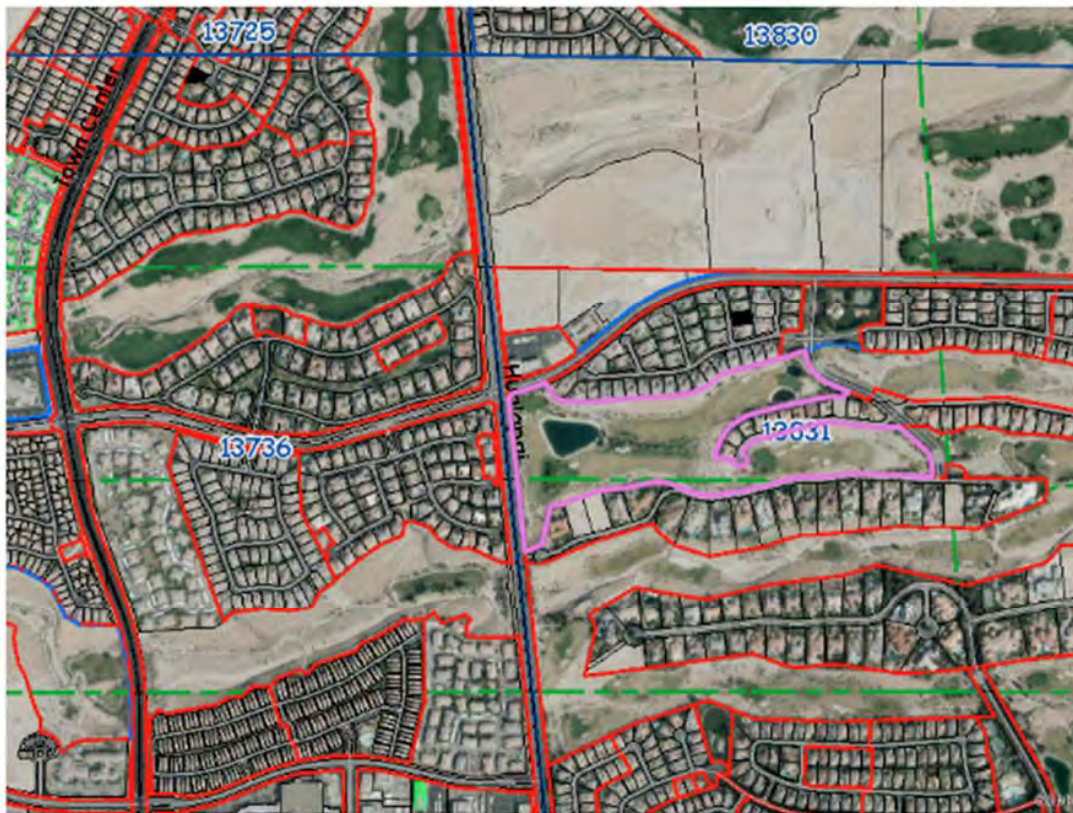
Zoning regulations that designate the distance that improvements must be set back from the front, rear, and sides of the property lines.

**Subject Property**

The property that is appraised in an assignment.

## **ADDENDUM C**

## **PROPERTY INFORMATION**



The MAPS and DATA are provided without warranty of any kind, expressed or implied.  
Date Created: 06/04/2020

#### Property Information

Parcel: 13831201005  
Owner Name(s): 180 LAND COLL C  
Site Address:  
Jurisdiction: Las Vegas - null  
Zoning Classification: Residential Planned Deveopment District (R-PD7)

#### Planned Landuse: Misc Information

Subdivision Name: PARCEL MAP FILE 121 PAGE 100  
Lot Block: Lot:1 Block:  
Sale Date: Not Available  
Sale Price: Not Available

Recorded Doc Number: 20151116 00000238

Flight Date: Mar.16.2019

#### Elected Officials

Commission: C - Larry Brown (D)  
US Senate: Dean Heller, Catherine Cortez-Masto  
State Senate: S - Marilyn Dondero Loop (D)  
School District: E - Lola Brooks  
Board of Education: 3 - Felicia Ortiz

#### Construction Year:

T-R-S: 20-60-31  
Census tract: 3226  
Estimated Lot Size: 34.07

City Ward: 2 - Victoria Seaman(3 Year Unexpired)  
US Congress: 3 - Susie Lee (D)  
State Assembly: 2 - John Hambrick (R)  
University Regent: 7 - Mark Doubrava  
Minor Civil Division: Las Vegas

GENERAL INFORMATION	
PARCEL NO.	138-31-201-005
OWNER AND MAILING ADDRESS	180 LAND CO L L C C/O V DEHART 1215 S FORT APACHE RD # 120 LAS VEGAS NV 89117
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	LAS VEGAS
ASSESSOR DESCRIPTION	PARCEL MAP FILE 121 PAGE 100 LOT 1
RECORDED DOCUMENT NO.	* 20151116:00238
RECORDED DATE	Nov 16 2015
VESTING	NS

\*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND VALUE EXCLUDED FROM PARTIAL ABATEMENT	
TAX DISTRICT	200
APPRAISAL YEAR	2019
FISCAL YEAR	2020-21
SUPPLEMENTAL IMPROVEMENT VALUE	0
INCREMENTAL LAND	0
INCREMENTAL IMPROVEMENTS	0

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2019-20	2020-21
LAND	6260363	6260363
IMPROVEMENTS	0	0
PERSONAL PROPERTY	0	0
EXEMPT	0	0
GROSS ASSESSED (SUBTOTAL)	6260363	6260363
TAXABLE LAND+IMP (SUBTOTAL)	17886751	17886751
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	6260363	6260363
TOTAL TAXABLE VALUE	17886751	17886751

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	34.07 Acres
ORIGINAL CONST. YEAR	0
LAST SALE PRICE MONTH/YEAR SALE TYPE	0
LAND USE	12.000 - Vacant - Single Family Residential
DWELLING UNITS	0

**Briana Johnson, Assessor****PARCEL OWNERSHIP HISTORY**

Assessor Map

Aerial View

Comment Codes

Current Ownership

New Search

**ASSESSOR DESCRIPTION**

PARCEL MAP FILE 121 PAGE 100 LOT 1

CURRENT PARCEL NO.	CURRENT OWNER	%	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DIST	EST SIZE	COMMENTS
138-31-201-005	180 LAND CO L L C		<a href="#">20151116:00238</a>	11/16/2015	NS	200	34.07 AC	

PARCEL NO.	PRIOR OWNER(S)	%	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DIST	EST SIZE	COMMENTS
------------	----------------	---	--------------------------	------------------	---------	-------------	-------------	----------

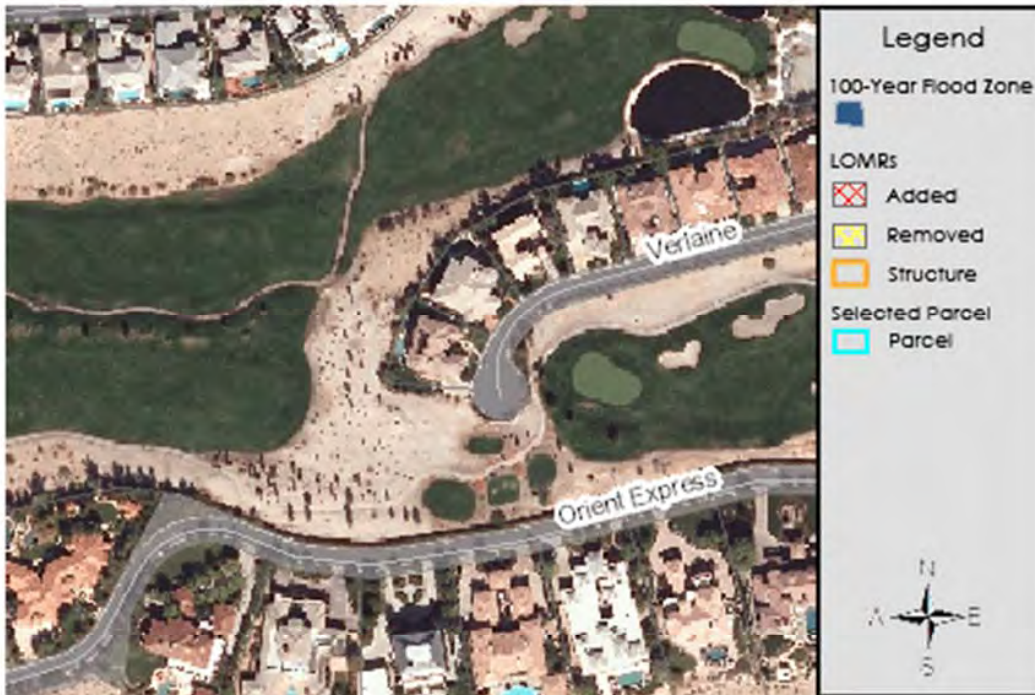
Click the following link to view the parcel genealogy

[Parcel Tree](#)

Note: Only documents from September 15, 1999 through present are available for viewing.

**NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED  
AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.**

Property Account Inquiry - Summary Screen									
New Search		Recorder		Treasurer		Assessor		Clark County Home	
Parcel ID	138-31-201-005			Tax Year	2021	District	200	Rate	3.2782
Situs Address:	UNASSIGNED SITUS LAS VEGAS								
Legal Description:	ASSESSOR DESCRIPTION: PARCEL MAP FILE 121 PAGE 100 LOT 1								
Status:	Property Characteristics			Property Values			Property Documents		
Active	Tax Cap Increase Pct.	6.7		Land	6260363	2015111600238		11/16/2015	
Taxable	Tax Cap Limit Amount	218977.44		Total Assessed Value	6260363				
	Tax Cap Reduction	0.00		Net Assessed Value	6260363				
	Land Use	0-00 Vacant - Single Family Re		Exemption Value New Construction	0				
	Cap Type	OTHER		New Construction - Supp Value	0				
	Acreage	34.0700							
	Exemption Amount	0.00							
Role	Name	Address					Since	To	
Owner	180 LAND CO L C	C/O V DEHART 1215 S FORT APACHE RD #120, LAS VEGAS, NV 89117 UNITED STATES					6/14/2019	Current	
<b>Summary</b>									
Item				Amount					
Taxes as Assessed				\$205,227.22					
Less Cap Reduction				\$0.00					
Net Taxes				\$205,227.22					
<b>PAST AND CURRENT CHARGES DUE TODAY</b>									
Tax Year	Charge Category					Amount Due Today			
THERE IS NO PAST OR CURRENT AMOUNT DUE as of 8/4/2020					\$0.00				
<b>NEXT INSTALLMENT AMOUNTS</b>									
Tax Year	Charge Category					Installment Amount Due			
2021	Property Tax Principal					\$51,308.79			
2021	Las Vegas Artesian Basin					\$2.42			
NEXT INSTALLMENT DUE AMOUNT due on 8/17/2020					\$51,309.21				
<b>TOTAL AMOUNTS DUE FOR ENTIRE TAX YEAR</b>									
Tax Year	Charge Category					Remaining Balance Due			
2021	Property Tax Principal					\$205,227.22			
2021	Las Vegas Artesian Basin					\$2.42			
TAX YEAR TOTAL AMOUNTS DUE as of 8/4/2020					\$205,229.64				
<b>PAYMENT HISTORY</b>									
Last Payment Amount				\$51,308.81					
Last Payment Date				3/16/2020					
Fiscal Tax Year Payments				\$0.00					
Prior Calendar Year Payments				\$205,228.96					
Current Calendar Year Payments				\$102,613.62					



The District makes no warranties concerning the accuracy of this data.

**This parcel IS NOT in a 100-year flood zone.**

Parcel 13831201005

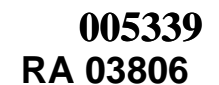
Owner 180 LAND CO L L C

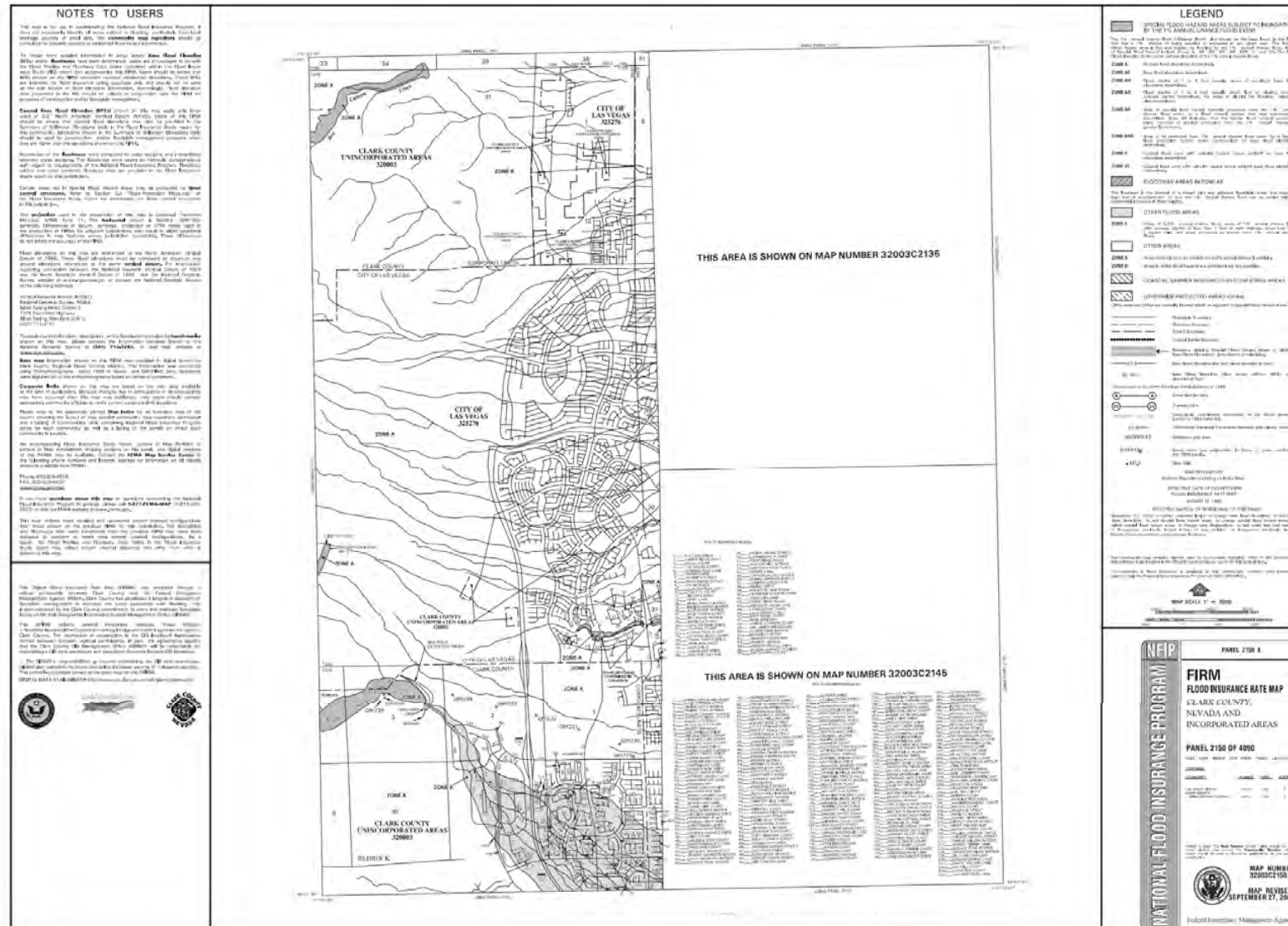
Address

Entity Las Vegas

Contact 702-229-6541

Flood Zone This parcel IS NOT in a 100-year flood zone.





## **ADDENDUM D**

### **GOLF COURSE LEASE CANCELLATION LETTERS**



Your Partner in Golf

#### TERMINATION OF LEASE

May 23, 2016

Fore Stars, Ltd  
c/o Todd Davis  
1215 South Fort Apache Road, Suite 120  
Las Vegas, Nevada 89117

Dear Todd,

We received your letter dated May 16, 2016 in which you referenced and attached the Second Amendment to the Golf Course Ground Lease ("Lease") dated April 28, 2015. Based on the language in the Lease, Fore Stars, Ltd. indicated the final date of the lease should be July 31, 2016 rather than closing date of May 31, 2016 that we previously indicated our Notice of Dissolution dated April 26, 2016.

The discrepancy in the final date of the lease is based on the Notice of Cancellation we provided in September 2015 (attached), in which we indicated we wanted to terminate the lease on December 21, 2015. After we sent the cancellation, we met with representatives from EHB and agreed that we would continue operating the course until May 31, 2016. We recognize that we did not formalize that agreement with a subsequent writing and that the written Notice of Dissolution we provided on April 26 was technically not within the 90 day cancellation period required by the contract for a May 31 closing.

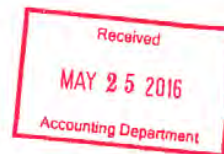
As you aware, by not closing on May 31 we will incur a significant financial loss due to the high cost of operation and low revenue during the summer months. However, based on the facts outlined above, we will agree to operate the course until July 31 as you have requested. In exchange, we request that Fore Stars, Ltd reduce the rent by half for the months of June and July.

Thank you in advance for your consideration. Please don't hesitate to contact me directly if you'd like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Kam Brian".

Kam Brian, Esq.  
General Counsel  
Par 4 Golf Management, Inc.





## NOTICE OF CANCELLATION

September 18, 2015

Fore Stars, Ltd  
c/o Mr. Yohan Lowie  
9755 W. Charleston Blvd.  
Las Vegas, NV 89117

Dear Mr. Lowie,

As you are aware, our lease with Fore Stars, Ltd. to operate the Badlands Golf Club allows us to provide 90 days written notice of termination. We have operated the course for a number of years with little or no profit in hopes that the golf industry would recover and we would be able to recapture our investment. Given the ever increasing water costs, operating costs and a golf market that cannot support increased green fees, we have determined that we are no longer willing assume the risk.

We hereby provide our 90 day notice of cancellation effective December 21, 2015. It has been a pleasure working for you. Please contact me should you wish to discuss any details with respect to the end of our lease.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Jaramillo".

Paul Jaramillo  
CEO  
Par 4 Golf Management, Inc.

cc: Peccole Nevada Corporation, 851 S. Rampart, Las Vegas, NV 89145



## **ADDENDUM E**

## **CITY LETTERS**

**To:** alejandro.garcia@LasVegasNevada.GOV]; Crystal H. Makridis[cmakridis@LasVegasNevada.GOV]; Nashira Ling[nling@LasVegasNevada.GOV]; rafiq.ali@LasVegasNevada.GOV]; Sandy Gravseth[sgravseth@LasVegasNevada.GOV]; Victor Ravelo[vavelo@LasVegasNevada.GOV]  
**From:** Lauren E. Storia  
**Sent:** Tue 6/27/2017 8:47:09 PM  
**Subject:** Badlands

If anyone sees a permit for grading or clear and grub at the **Badlands** Golf Course, please see Kevin, Rod, or me. Do Not Permit without approval from one of these three.



**Lauren Storia** | Senior Permit Technician  
Building & Safety  
333 N. Rancho Drive, Las Vegas, NV 89106  
702-229-5460

lasvegasnevada.gov



[City of Las Vegas Building & Safety](#)

Your opinion is important! Click [here](#) to take a short survey.

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

CLV006185



City of Las Vegas  
City Council  
Carolyn G. Goodman  
Mayor

Lois Tarkanian  
Mayor Pro Tem  
Ricki Y. Barlow  
Stavros S. Anthony  
Bob Coffin  
Steven G. Seroka  
Michele Fiore

City of Las Vegas  
City Manager  
Scott D. Adams  
City Manager

VIA CERTIFIED MAIL

August 24, 2017

Seventy Acres, LLC  
Attn: Ms. Vickie Dehart  
120 S. Fort Apache Rd., Suite 120  
Las Vegas, NV 89117

Re: L17-00198

Dear Ms. Dehart:

Through the various public hearings and subsequent debates concerning development on the subject site I have determined, pursuant to Las Vegas Municipal Code (LVMC) 19.16.100(C)(1)(b), that any development on this site has the potential to have significant impact on the surrounding properties and as such may require a Major Review.

After reviewing the permit submitted (L17-00198) for perimeter wall modifications and controlled access gates on the subject site, I have determined that the proximity to adjacent properties has the potential to have significant impact on the surrounding properties. As such, the Minor Development Review (Building Permit Level Review) is denied and an application for a Major Review will be required pursuant to LVMC 19.16.100(G)(1)(b).

Please coordinate with the Department of Planning for the submittal of a Major Site Review.

Thank you.

Robert Summerfield, AICP  
Acting Director  
Department of Planning

RS:me

COPY

## DEPARTMENT OF PLANNING

1333 N. Rancho Drive | 3rd Floor | Las Vegas, NV 89106 | 702.229.6301 | FAX 702.474.0352 | TTY 711

LO 00002365



Las Vegas  
City Council  
Carolyn G. Goodman  
Mayor  
Lois Tarkanian  
Mayor Pro Tem  
Ricki Y. Barlow  
Stavros S. Anthony  
Bob Coffin  
Steven G. Seroka  
Michele Fiore

Call Center  
Scott D. Adams  
City Manager

VIA CERTIFIED MAIL

August 24, 2017

American Fence Company, Inc.  
Attn: Ms. Laurie Peters  
4230 Losee Rd.  
North Las Vegas, NV 89030

Re: C17-01047

Dear Ms. Peters:

Through the various public hearings and subsequent debates concerning development on the subject site, I have determined, pursuant to Las Vegas Municipal Code (LVMC) 19.16.100(C)(1)(b), that any development on this site has the potential to have significant impact on the surrounding properties and as such may require a Major Review.

After reviewing the permit submitted (C17-01047) for chain link fencing to enclose two water features/ponds on the subject site, I have determined that the proximity to adjacent properties has the potential to have significant impact on the surrounding properties. As such, the Minor Development Review (Building Permit Level Review) is denied and an application for a Major Review will be required pursuant to LVMC 19.16.100(G)(1)(b).

Please coordinate with the Department of Planning for the submittal of a Major Site Review.

Thank you.

A handwritten signature in cursive script, reading "Robert Summerfield".

Robert Summerfield, AICP  
Acting Director  
Department of Planning

RS:ma

cc: 180 Land Co., LLC  
Attn: Vickie Dehart  
1215 S. Fort Apache Rd, Suite 120  
Las Vegas, NV 89117

DEPARTMENT OF PLANNING

1333 N. Rancho Drive | 3rd Floor | Las Vegas, NV 89106 | 702.229.6301 | FAX 702.474.0352 | TTY 711

LO 00002353

# Exhibit 189

**From:** Robert Summerfield <[rsummerfield@LasVegasNevada.GOV](mailto:rsummerfield@LasVegasNevada.GOV)>  
**Date:** January 7, 2019 at 5:49:44 PM PST  
**To:** "Frank Pankratz (EHB Companies)" <[frank@EHBCompanies.com](mailto:frank@EHBCompanies.com)>  
**Subject:** CLV EOT Question

Frank – I wanted to reach out to you about the question you had for Steve G. in the Planning Office last week regarding an EOT related to SDR-62393. As you know, as a result of Judge Crockett’s order in Case No. A-17-752344-J, the approvals of applications GPA-62387, ZON-62392, and SDR-62393 were “vacated, set aside and shall be void.” Because there are no longer any approvals for the aforementioned applications, there is nothing for the City to extend at this time and we cannot process any application for such an extension.

I hope this answer helps as your team moves forward and please let me know if there is anything else I, or the Department, can help with.

Best – Robert

**Robert Summerfield, AICP**

Director  
Department of Planning | Development Services Center  
**702-229-4856 | 702-229-6301**  
333 N. Rancho Dr. | Las Vegas, NV 89101



[lasvegasnevada.gov](http://lasvegasnevada.gov)

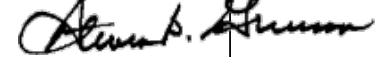


The city of Las Vegas Department of Planning offices are open Monday – Thursday from 7 AM to 5:30 PM. If you need immediate assistance during our office hours, please contact Administrative Secretary Milagros (Miles) Escuin at 702.229.1014 or [mescuin@LasVegasNevada.GOV](mailto:mescuin@LasVegasNevada.GOV).

**005391**

**RA 03816**

# Exhibit 195



1 **DECL**

2 **LAW OFFICES OF KERMITT L. WATERS**

3 Kermitt L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

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15 ***Attorneys for Plaintiff Landowners***

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 180 LAND CO LLC, a Nevada limited liability  
19 company; SEVENTY ACRES LLC, a Nevada  
20 Limited Liability Company; FORE STARS, Ltd;  
21 DOE INDIVIDUALS I through X, DOE  
22 CORPORATIONS I through X, and DOE  
23 LIMITED LIABILITY COMPANIES I through  
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

**DECLARATION OF STEPHANIE  
ALLEN, ESQ., WHICH SUPPORTS  
PLAINTIFF LANDOWNERS' REPLY IN  
SUPPORT OF: PLAINTIFF  
LANDOWNERS' EVIDENTIARY  
HEARING BRIEF #1 MEMORANDUM  
OF POINTS AND AUTHORITIES  
REGARDING THE LANDOWNERS'  
PROPERTY INTEREST AND REPLY IN  
SUPPORT OF PLAINTIFF  
LANDOWNERS' EVIDENTIARY  
HEARING BRIEF #2 MEMORANDUM  
OF POINTS AND AUTHORITIES  
REGARDING THE CITY'S ACTIONS  
WHICH HAVE RESULTED IN A  
TAKING OF THE LANDOWNERS'  
PROPERTY**

Hearing Date: May 27 & 28, 2021

Hearing Time: 9:00 a.m.

**DECLARATION OF STEPHANIE ALLEN, ESQ.**

STATE OF NEVADA       )  
                                      )ss:  
COUNTY OF CLARK       )

1. I, Stephanie Allen, am licensed to practice law in the State of Nevada since 2003.

2. Since 2004, my principal area of my practice has been government affairs with an emphasis on land use and zoning.

3. Over the past 17 years, I have presented thousands of applications to local government agencies for a wide variety of developments, including various hotel/casino, commercial, and single family and multi-family developments.

4. I have also worked on and/or completed approximately ten development agreements for large developments. A Development Agreement is an agreement between a government entity and a person who has a legal or equitable interest in land, and it sets forth the long-range plans for the development of property.

5. I have presented these applications to various municipal agencies, including the City of Las Vegas, City of North Las Vegas, Clark County and Lincoln County.

6. I was retained by and assisted the owners of the 250 acre property located generally between Alta, Charleston, Hualapai, and Rampart in the jurisdiction of the City of Las Vegas – formally known as the Badlands golf course – to develop this property. In this capacity, I attended meetings with the landowners, the City of Las Vegas employees and representatives, including councilpersons, and the surrounding property owners. I estimate I attended more than 25 meetings in my efforts to assist with developing the 250 acre property.

///

///

1           7.     There was when I was assisting with preparing and presenting separate  
2 applications, including but not limited to, an approximately 35 acre portion of the 250 acre  
3 property, an approximately 133 acre portion of the 250 acre property, and a separate Master  
4 Development Agreement (“MDA”) that would govern the development of the entire 250 acre  
5 property.  
6

7           8.     Eventually, it was made clear by City of Las Vegas employees, councilpersons,  
8 and the Mayor that the City would accept only one type of application to develop the 250 acre  
9 property – an MDA. The City was very clear that it would not approve any application that  
10 sought to develop the various parcels that made up the 250 acre property individually.  
11

12           9.     During the June 21, 2017, hearing before the City Council on the applications to  
13 develop the 35 Acre Property several councilpersons and the Mayor stated on the record that  
14 they did not want piecemeal development, meaning they did not want and would not approve  
15 individual application for the 35, 133 or 65 acre properties. This was consistent with what I  
16 was repeatedly told – that the City would accept only one application to develop the 250 acre  
17 property – an MDA.  
18

19           10.    On June 21, 2017, the applications to develop 61 residential units on the 35 Acre  
20 Property were presented to the City Council for approval. The City planning staff confirmed in  
21 a staff report that the applications and the proposed 61 lot residential use on the 35 Acre  
22 Property were in compliance with the R-PD7 zoning on the property, the City’s development  
23 requirements, the City Municipal Code, and the Nevada Revised Statutes and, accordingly,  
24 recommended approval.  
25

26           11.    The City Council denied the 35 Acre Property development applications at the  
27 June 21, 2017, City Council meeting despite the fact that the proposal was allowed within the  
28 existing R-RD7 zoning on the property.

1           12.     I have presented thousands of applications to various local government agencies,  
2 including the City of Las Vegas, in the past, and I cannot recall an application that I have  
3 handled being denied when the development proposal was allowed as a matter of right under  
4 the existing zoning.

5           13.     On August 2, 2017, the MDA was presented to the City Council for approval.  
6 The City planning staff confirmed in a staff report that the MDA met all Nevada Revised  
7 Statute requirements and all City Municipal Code requirements and, accordingly,  
8 recommended approval.  
9

10           14.     The City Council denied the MDA at the August 2, 2017, City Council meeting  
11 despite the fact that the proposed written agreement had been negotiated and agreed upon in  
12 good faith between the parties.  
13

14           15.     I have presented approximately ten development agreements before various  
15 local government agencies, including the City of Las Vegas, in the past, and I cannot recall a  
16 development agreement application being denied when the proposed written agreement had  
17 been negotiated and agreed upon in good faith between the parties.  
18

19     ///

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1           16.     During my 17 years of work in the area of land use, it has always been the  
2 practice that zoning governs the determination of how land may be used. The master plan land  
3 use designation has always been considered a general planning document. I do not recall any  
4 government agency or employee ever making the argument that a master plan land use  
5 designation trumps zoning.  
6

7           I declare under penalty of perjury under the law of the State of Nevada that the  
8 foregoing is true and correct.

9           Dated this 21st day of May, 2021.

10  
11 

12           Stephanie Allen, Esq.  
13  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 24<sup>th</sup> day of May, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing: Declaration Of Stephanie Allen, Esq., Which Supports Plaintiff Landowners' Reply In Support Of: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum Of Points And Authorities Regarding The Landowners' Property Interest And Reply In Support Of Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum Of Points And Authorities Regarding The City's Actions Which Have Resulted In A Taking Of The Landowners' Property was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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*/s/ Sandy Guerra*

Sandy Guerra, an Employee of the  
Law Offices of Kermitt L. Waters

# Exhibit 198

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

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\* \* \* \* \*

9

180 LAND COMPANY LLC,

)

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Plaintiff,

)

)

)

11

vs.

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)

12

LAS VEGAS CITY OF,

)

)

13

Defendant.

)

)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

HEARING

(TELEPHONIC HEARING )

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED THURSDAY, MAY 13, 2021

23

24

25

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

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Pursuant to NRS 239.053, illegal to copy without payment.

006118  
RA 03825

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3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC  
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006120

RA 03827

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006121  
RA 03828

1 LAS VEGAS, NEVADA; THURSDAY, MAY 13, 2021

2 9:51 A.M.

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

4 \* \* \* \* \*

5

6 THE COURT: Okay. Next up, page 12 of the  
7 calendar, contested calendar, is 180 Land Company LLC  
8 versus the City of Las Vegas.

9 Let's go ahead and set forth our appearances  
09:51:26 10 on the record.

11 I assume we want to have this matter reported;  
12 is that correct?

13 MR. LEAVITT: Yes, your Honor.

14 MR. OGILVIE: Yes, your Honor.

09:51:34 15 THE COURT: And who said yes? I know  
16 everybody probably does, but go ahead. We just want to  
17 make sure --

18 MR. SCHWARTZ: This is Andrew Schwartz  
19 representing --

09:51:42 20 THE COURT: Go ahead, sir.

21 MR. SCHWARTZ: Andrew Schwartz representing  
22 the City. We would like the matter to be reported,  
23 please, your Honor.

24 THE COURT: It shall be reported, sir.

09:51:52 25 Okay. Let's go ahead and set our appearances

09:51:52 1 on the record. We'll start first with the plaintiff.

2 MR. LEAVITT: Good morning, your Honor. James  
3 J. Leavitt on behalf of the plaintiff landowner, 180  
4 Land.

09:52:04 5 MS. HAM: Good morning, your Honor. Elizabeth  
6 Ghanem Ham also on behalf of the plaintiffs.

7 MR. OGILVIE: Good morning, your Honor.  
8 George Ogilvie on behalf of the City.

9 MR. SCHWARTZ: Andrew Schwartz, good morning,  
09:52:20 10 your Honor, on behalf of the City.

11 MR. BYRNES: Good morning, your Honor. Phil  
12 Byrnes on behalf of the City.

13 THE COURT: All right. Does that cover all  
14 appearances? Okay.

09:52:37 15 MR. LEAVITT: Yes, your Honor, on behalf of  
16 the plaintiff.

17 THE COURT: All right.

18 And it's my recollection we have the City's  
19 motion for rehearing and reconsideration of the Court's  
09:52:46 20 order granting plaintiff's motion to compel responses  
21 to interrogatories.

22 We'll hear from the City.

23 MR. SCHWARTZ: Thank you, your Honor.

24 So the Court granted the motion to compel the  
09:53:01 25 City to respond to three interrogatories that are

09:53:04 1 asking for the state of mind or the mental processes or  
2 the reasons that a legislator, an elected  
3 representative of the -- to the city council made the  
4 decision or the reasons for his opinions on certain  
09:53:23 5 matters.

6 He's a form -- this is Council Member Seroka,  
7 former member of the city council.

8 So the motion -- the motion first is proper  
9 because it's the -- the Court's decision must be based  
09:53:43 10 on sufficient cause.

11 And if -- we contend that the decision was  
12 clearly erroneous under the law, and we don't need new  
13 facts or law to make that argument.

14 So the motion is procedurally proper, your  
09:54:00 15 Honor.

16 The evidence that -- that the developer seeks  
17 here is a state -- the -- the basis for a statement  
18 that former Council Member Seroka made on June 21st,  
19 2018, at a neighborhood meeting. This was not during a  
09:54:21 20 city council hearing or in any official proceeding. It  
21 was a meeting with a group outside the City.

22 And the statement that Council Member Seroka  
23 purportedly makes, "So I went to school, and I studied  
24 and studied the rules, and I learned as much as I could  
09:54:41 25 from the experts, and I did study, and I learned a

09:54:45 1 lot."

2           The interrogatory asks the City to state the  
3 name, address, and phone number, and a summary of what  
4 Council Member Seroka learned from these experts.

09:55:02 5           Second interrogatory, same meeting, Council  
6 Member Seroka said, "At the time it was generally  
7 accepted accounting principles and generally accepted  
8 percentage of acreage that is open space/recreational.  
9 It is 20 percent. What we have up here is the

09:55:23 10 agreed-upon roughly 20 percent. It's in the ballpark."

11           And the interrogatory says, "State what city  
12 code, ordinance, or regulation, and/or Nevada statute  
13 required a 20 percent open space dedication between  
14 1985 and 2005 as referenced by Councilman Seroka."

09:55:48 15           The third interrogatory is to provide the  
16 location of every development in the City of Las Vegas  
17 that had an approximately 20 percent open space  
18 dedication requirement imposed on it by the City of  
19 Las Vegas between 1985 and 2005 as referenced by  
09:56:05 20 Councilman Seroka in this statement.

21           Now, let me make one thing clear, your Honor.  
22 The City is not concerned about this -- answers to  
23 these interrogatories. The substantive answers to the  
24 interrogatories make absolutely no difference in this  
09:56:25 25 case. The evidence would be totally irrelevant.

09:56:31 1 But there is a significant principle at stake  
2 here, and that's why we picked the extraordinary action  
3 of bringing this motion for reconsideration.

4 THE COURT: And for the record --

09:56:45 5 MR. SCHWARTZ: Because --

6 THE COURT: Wait. Wait. Wait. For the  
7 record, what are those principles?

8 MR. SCHWARTZ: I'm just --

9 THE COURT: Because at the end of the day --

09:56:50 10 MR. SCHWARTZ: I'm just about to tell you.

11 THE COURT: Wait. Wait. Because at the end  
12 of the day, we talk about mental impressions. It  
13 appears to me they're seeking to obtain facts. What  
14 did he know; right? Who did he talk to?

09:57:01 15 MR. SCHWARTZ: That's my point, your Honor.

16 THE COURT: Who did he talk to? What did he  
17 know?

18 MR. SCHWARTZ: This is --

19 THE COURT: And here's my point. I --

09:57:08 20 potentially, yes. And I'm not making that decision  
21 now. But, remember, for the purposes of discovery,  
22 it's broader than relevancy as it pertains to the  
23 admissibility at the time of trial; right?

24 And we can all agree.

09:57:22 25 MR. SCHWARTZ: Your Honor --

09:57:23 1 THE COURT: That's a legal maxim. I mean,  
2 discovery is broad. Just because you conduct discovery  
3 doesn't mean it's going to be admissible. But just  
4 because it's not admissible doesn't mean you can't  
09:57:31 5 conduct discovery. They're different standards.

6 MR. SCHWARTZ: I agree with that.

7 THE COURT: Yeah.

8 MR. SCHWARTZ: I agree with that, your Honor.

9 What's at stake here is extremely important.  
09:57:40 10 These are not facts. This is not percipient witness  
11 testimony. These are the mental impressions, the  
12 opinions of a legislator.

13 And the -- whether the courts can make this  
14 inquiry at all goes right to the heart of our  
09:57:57 15 democratic system of government. This is not  
16 hyperbole. This inquiry undermines the separation of  
17 powers between the courts on the one hand and the  
18 legislative and administrative executive branches of  
19 government on the other.

09:58:16 20 It's that important. And that's why we're  
21 bringing this motion, your Honor.

22 THE COURT: Well, explain to me how it's that  
23 important. Because at the end of the day, if a public  
24 official makes -- makes potential public statements  
09:58:28 25 that, ultimately, become potentially part of

09:58:32 1 litigation, maybe the adverse party has a right to  
2 depose them if it's relevant for the purposes of  
3 discovery, if it can lead to other admissible evidence.  
4           Maybe it doesn't get -- get admitted at trial.

09:58:47 5 That's a totally different issue. But one, we're  
6 not -- we're not -- this isn't a scenario where all of  
7 a sudden 180 Land wants to go ahead and take the  
8 depositions of the independent -- I'm sorry -- of each  
9 individual member of the city council, right?

09:59:03 10           This is just focusing on public statements he  
11 made. And it seems to me if a city councilman is  
12 making public statements like that, maybe he's opened  
13 up the door to some sort of inquiry.

14           But go ahead. I just want -- the reason why

09:59:15 15 I'm saying that is this: It's important for me, too,  
16 as a trial judge, like in all the prior cases, to kind  
17 of give me an indication at least as to what I'm  
18 thinking about. And just as important too, if you  
19 disagree, that's okay. You can just tell me why, and I

09:59:29 20 can consider that also. That's all part of, I guess,  
21 what we do.

22           MR. SCHWARTZ: Well, your Honor, the -- this  
23 type of discovery of the mental processes of a  
24 legislator is, number one, completely irrelevant to the

09:59:46 25 issues in this case. And I will explain.

09:59:49 1 THE COURT: Okay. I'm listening for that. Go  
2 ahead.

3 MR. SCHWARTZ: But it is also -- it is also  
4 absolutely privileged, absolutely privileged. There's  
09:59:56 5 an unqualified privilege that the Courts do not,  
6 cannot -- they have no authority to probe the mental  
7 processes of legislators.

8 THE COURT: And remember this.

9 MR. SCHWARTZ: That is an absolutely --

10:00:09 10 THE COURT: Wait. Wait. I'm not probing  
11 anything. This is -- what's going on here is a party  
12 to an inverse condemnation lawsuit is conducting the  
13 probing. I'm not probing anything. They're trying to  
14 conduct discovery.

10:00:22 15 And so as a trial judge and a gatekeeper, all  
16 I'm saying is whether it's appropriate or not for 180  
17 Land Company to conduct discovery. I'm not probing  
18 anybody because I'm not an advocate to this case.

19 MR. SCHWARTZ: Well, your Honor, when I say  
10:00:34 20 the Court, I mean, in a judicial proceeding. The --  
21 the --

22 THE COURT: It's not the Court. It's the  
23 party to the litigation. If that's the case, in every  
24 lawsuit where a defendant conducts discovery or the  
10:00:47 25 plaintiff conducts discovery, the argument could be

10:00:50 1 made that the Court is doing this. I'm not doing this.  
2 All I'm doing is ruling whether it's appropriate or  
3 not. That's all.

4 MR. SCHWARTZ: The privilege extends to any  
10:01:01 5 kind of probe that is authorized by the Courts. And  
6 under the Rules of Civil Procedure, a party, yes, can  
7 take depositions and ask interrogatories.

8 The point is that the mental processes of a  
9 legislator are absolutely privileged. That's the  
10:01:18 10 point, that the party can't do it because it's  
11 privileged.

12 And I will get to that, your Honor. But I  
13 first think I need to explain why this testimony is not  
14 relevant in this proceeding.

10:01:30 15 This is a takings case. The developer here  
16 brings five takings claims. A categorical taking,  
17 which is --

18 THE COURT: No. I got -- I understand. I  
19 understand the Penn Central. I get it. But go ahead.

10:01:57 20 MR. SCHWARTZ: Categorical. Penn Central, a  
21 physical takings claim that they call a regulatory per  
22 se takings claim and a nonregulatory takings claim and  
23 a temporary takings claim.

24 This evidence is not permitted to be  
10:02:16 25 considered in any of these claims. And I need to

10:02:19 1 explain why, your Honor.

2 THE COURT: I'm listening for the floor. I'm  
3 listening.

4 MR. SCHWARTZ: The -- the takings clause, the  
10:02:29 5 Fifth Amendment of the Constitution and the Nevada  
6 constitution, was originally intended to apply only to  
7 eminent domain.

8 In 1922, in Pennsylvania Coal vs. Mahon, the  
9 United States Supreme Court said: Where a regulation  
10:02:46 10 prevents this coal company from using any of its coal,  
11 it could be the functional equivalent of a direct  
12 condemnation, of an eminent domain. There it's  
13 deprived of the property of any economic use.

14 And the Court said, yes, we recognize the  
10:03:08 15 authority of the state to regulate the use of that coal  
16 so that if you mine the coal, it's not going to allow  
17 the surface of the property to cave in. That's the  
18 police powers of the state.

19 And the Court said, We're mindful of that.  
10:03:23 20 And we show great deference to the police power of the  
21 state to regulate the use of property for the community  
22 good.

23 But in a case where the regulation goes so far  
24 as to wipe out the value, the economic use of the  
10:03:39 25 property, it can be the same as an eminent domain

10:03:43 1 taking, the functional equivalent.

2 Now, that was 1922, first regulatory takings  
3 case.

4 In the meantime, between that -- that date and  
10:03:55 5 1978 in Penn Central, the Court was preoccupied with  
6 the New Deal legislation. And the Court -- and in the  
7 end, the Court developed tests that were highly  
8 deferential to government regulation of land use and  
9 other social and economic activity.

10:04:15 10 In fact, that's when the Court developed the  
11 rational basis test. Under the separation of powers,  
12 the Courts don't make policy. They don't tell  
13 legislatures what policies to make. They defer to  
14 them.

10:04:28 15 In 1978, in the Penn Central case, Courts --  
16 the Court found that the historic preservation  
17 regulation that prevented the development of a 50-story  
18 office building over Grand Central terminal was not a  
19 taking. It didn't wipe out the value of the property.

10:04:49 20 It wasn't equivalent to an eminent domain taking  
21 because the Penn Central still had the terminal, and  
22 they could operate the terminal for its historic use.

23 But there the Court adopted a three-factor  
24 test. The economic impact of the regulation on the  
10:05:08 25 property, whether the regulation interfered with

10:05:13 1 investment-backed expectations, and the character of  
2 the regulation.

3 THE COURT: And, sir, I understand that.

4 MR. SCHWARTZ: Today the same --

10:05:18 5 THE COURT: Wait. Wait.

6 I understand that. That's why I granted  
7 Mr. Ogilvie's motion as it related to the relief to  
8 conduct discovery. Right? I mean, I get that.

9 MR. SCHWARTZ: Yes.

10:05:29 10 THE COURT: So ...

11 MR. SCHWARTZ: Yes. Yes, your Honor. And  
12 that -- the evidence that Mr. Ogilvie sought in that  
13 motion is relevant to a taking, and I'm trying to  
14 explain why, and why the evidence sought here is  
10:05:39 15 completely irrelevant.

16 THE COURT: Okay. Well, you don't have to  
17 worry about the relevancy, because I wouldn't have  
18 granted his 56(d) relief unless I thought it was  
19 relevant; right? I did that.

10:05:51 20 I got it.

21 MR. SCHWARTZ: Yes.

22 THE COURT: I understood that.

23 And I think it's just as important for  
24 everyone to understand, as a trial judge, I believe --  
10:06:00 25 I understand the limitations on discovery. I get it.

10:06:03 1 But just as important too, I don't want to put  
2 impediments in any party's obligation to develop their  
3 theories of liability and/or defenses in a case.  
4 And then I'll hear the dispositive motions.

10:06:18 5 But I'm going to give everyone a chance to do what they  
6 have to do, assuming they're diligent and not dilatory.  
7 And I can't say anyone is dilatory in this case,  
8 because everyone appears to be -- there appears to be a  
9 heightened level of diligence for both parties.

10:06:32 10 So I get that. Just tell me why this isn't  
11 relevant. I understand that.

12 MR. SCHWARTZ: Okay. I'm -- I'm --  
13 unfortunately, the -- the journey that the US Supreme  
14 Court went through to get to where we are today and on  
10:06:48 15 which the Nevada Supreme Court has based its taking  
16 jurisprudence requires just a little bit more history,  
17 if I could, your Honor.

18 THE COURT: And you have the floor, sir. I'm  
19 listening.

10:06:58 20 MR. SCHWARTZ: So Penn Central -- something --  
21 a taking could be something less than a total wipeout  
22 under the three factors.

23 Then in 1980 -- and this is significant. In  
24 1980, the United States Supreme Court decided Agins vs.  
10:07:14 25 Tiburon. And in that case, the Court said that

10:07:20 1 restriction on development of five acres in Tiburon was  
2 not a taking, and it adopted a two-factor test for a  
3 taking.

4           Didn't -- it didn't adopt the Penn Central  
10:07:32 5 test. It said taking is something -- a regulation  
6 that -- that is a wipeout that denies all economically  
7 viable use or does not substantially advance a  
8 legitimate government objective.

9           And this is very important, your Honor,  
10:07:49 10 because that test, the substantially advance test, goes  
11 directly to the issue in this motion.

12           The substantially advance test, that's like a  
13 means/ends test. That's a test, well, is the law a  
14 good law or a bad law? Did it have good reasons to  
10:08:07 15 support it or not?

16           Then the Court decided -- in 1982, it decided  
17 Loretto where the New York -- City of New York required  
18 owners of apartment buildings to allow cable TV  
19 facilities on their property.

10:08:22 20           The Court said that's a physical taking.  
21 Strict liability. If you allow -- if the regulation  
22 allows the government or the public to physically  
23 occupy property, it's -- it's a taking, automatic.

24           Then in 1992 in the Lucas case, the Supreme  
10:08:45 25 Court said, okay, we've got two basic types of takings:

10:08:56 1 Categorical or per se takings, same thing.

2 Categorical, per se, same thing.

3 A categorical or per se taking is a wipeout,

4 like in Pennsylvania Coal, wipes out the value, or a

10:09:12 5 physical taking. And in those cases, you don't need to

6 show anything else. If you've shown a wipeout or

7 you've shown a physical invasion, then compensation is

8 due.

9 In the case of the regulatory wipeout where a

10:09:28 10 regulation of use of property prevents all economic use

11 of the property, that's a categorical taking. The

12 Court said if you don't have a wipeout, the regulation

13 severely restricts use, you might have something less;

14 you might have a Penn Central takings claim.

10:09:48 15 So we've got the categorical regulation of

16 use; wipeout is a taking.

17 Something less, Penn Central.

18 Then --

19 THE COURT: I think --

10:10:05 20 MR. SCHWARTZ: I'm going to go all the way to

21 2005, your Honor, to the Lingle case, Lingle vs.

22 Chevron USA.

23 Now, in that case, the State of Hawaii adopted

24 a law that restricted oil companies that owned the real

10:10:21 25 estate for service stations in Hawaii, restricted their

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10:10:25 1 right to increase rents in order to protect consumers  
2 who the -- the object there was to prevent consumers  
3 from paying inordinately high prices for retail  
4 gasoline. So they restricted the rent that the -- that  
10:10:44 5 the independent dealers could charge when they rent a  
6 gas station from an oil company so that the independent  
7 dealers could sell gas for less. That would benefit  
8 consumers.

9 And the oil company claimed under the Agins  
10:11:03 10 substantially advance test that that law didn't make  
11 any sense. It didn't have good reasons for it. That  
12 it wasn't going to work. That it was a bad law. It  
13 was a stupid law. It was an unwise law.

14 And the Court held a trial with dueling  
10:11:19 15 economists as to whether it was a good law or a bad  
16 law, whether there were good reasons to support it or  
17 not so good reasons, and found that the law was not  
18 going to work and wasn't going to control prices and,  
19 therefore, found it was a taking.

10:11:33 20 And there had been a lot of litigation up to  
21 Lingle where litigants argued that legislation or that  
22 a decision of disapproving a permit to use land was a  
23 taking because it did not substantially advance  
24 government interests, legitimate government interests;  
10:11:54 25 that it was a bad law, bad reasons. The reasons for it