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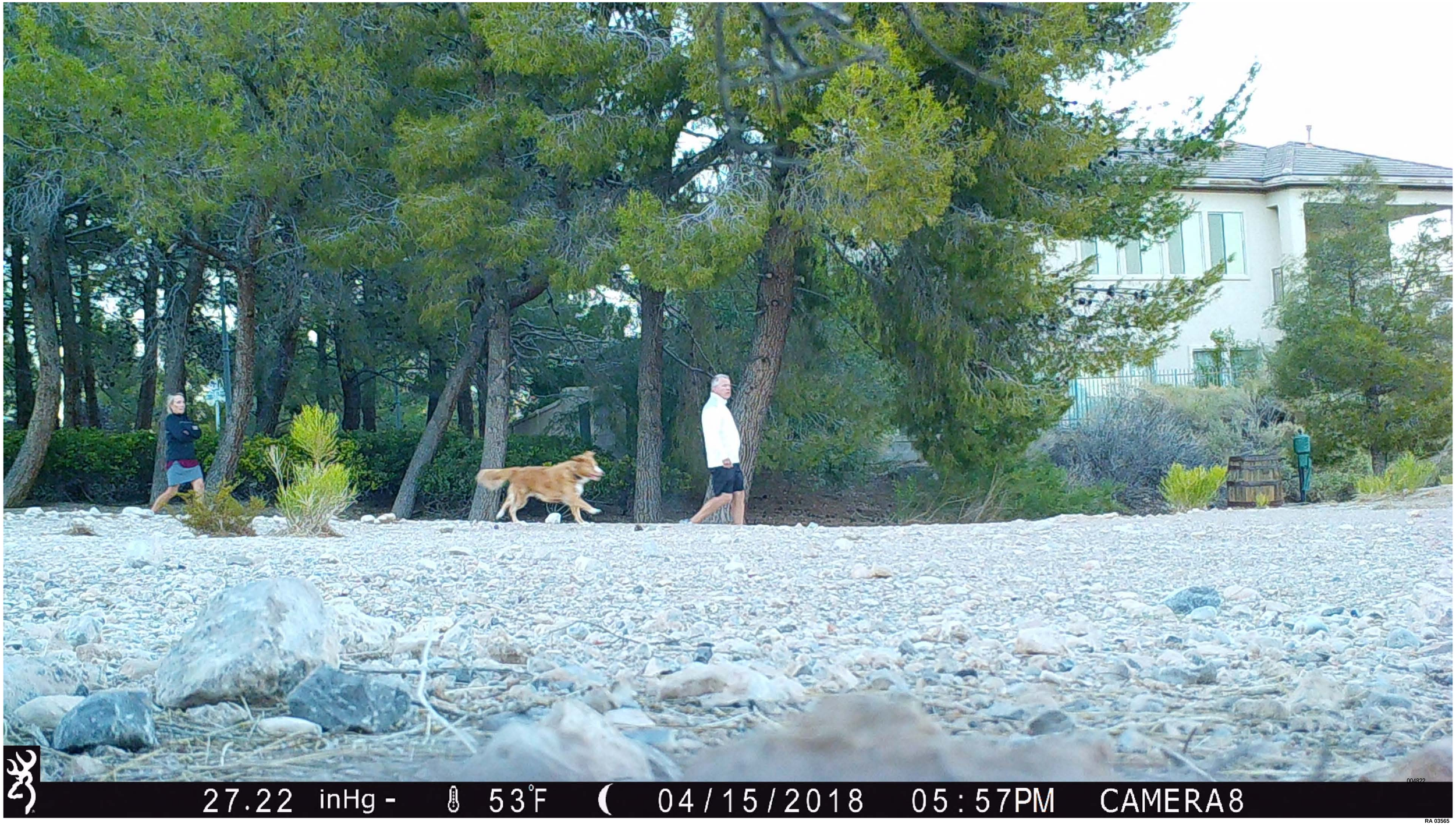
27.22 inHg - 53°F 04/15/2018 05:57PM CAMERA8

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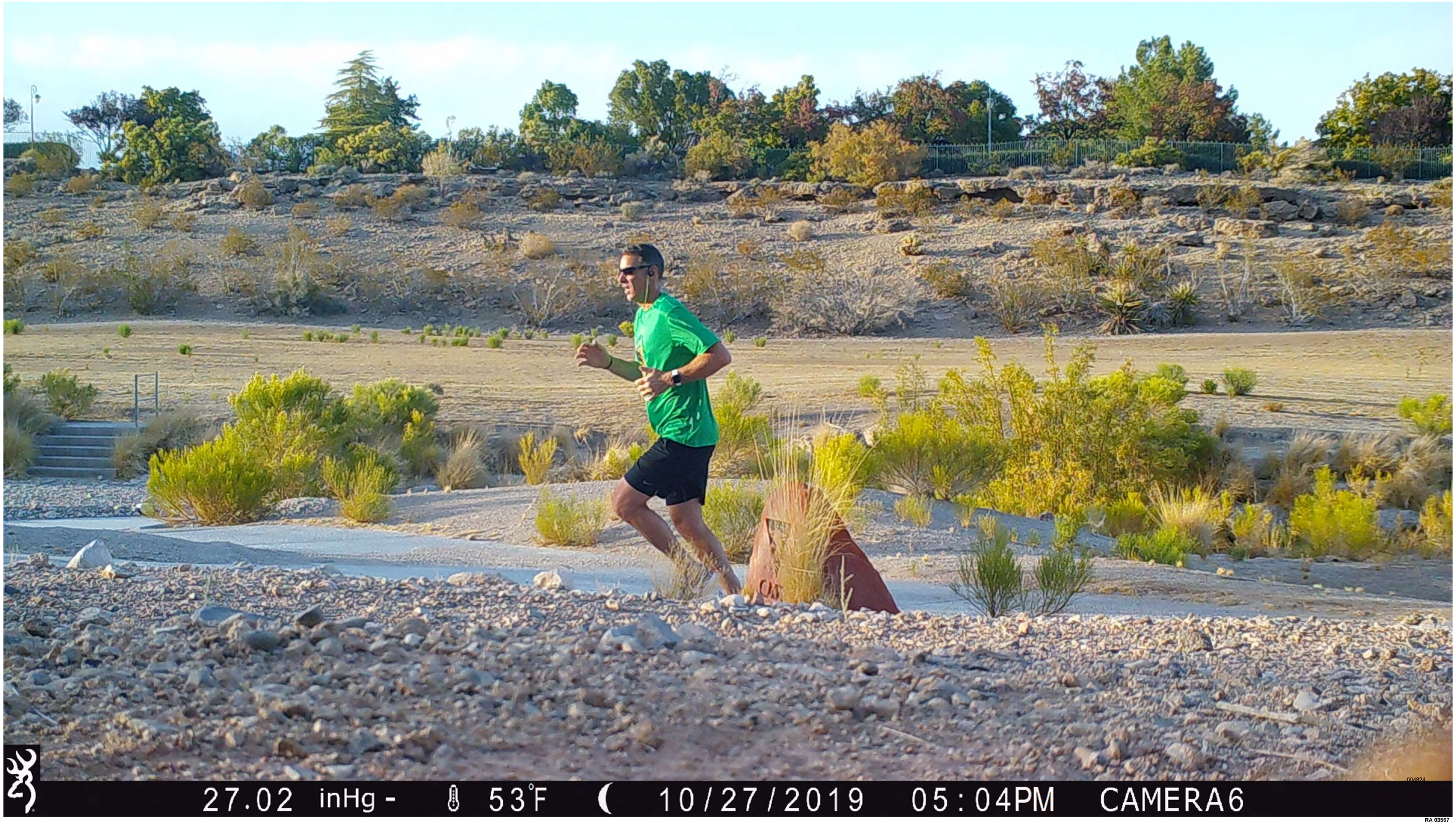

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004827
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105°F
09/02/2019 04:57PM CAMERA3

RA 03571

RA 03572

27.37 inHg
102°F
09/11/2020 03:29PM CAMERA8

Exhibit 155

district for a specified time would violate NRS 391.350 by executing a contract with another school district without the written consent of the board currently employing him. An employee who merely indicates an intention to accept reemployment with a particular school district is under no contractual obligation to that district and would, therefore, not violate NRS 391.350 by executing an employment contract with another school district.

If we can be of any further assistance in this area, please do not hesitate to contact us.

Sincerely,

BRIAN MCKAY, *Attorney General*

By SCOTT W. DOYLE., *Chief Deputy Attorney General, Civil Division*

OPINION NO. 84-6 Planning and Zoning: Amendment of land use element of master plan does not require immediate amendment of pre-existing zoning ordinances that are not in strict compliance with amended master plan.

LAS VEGAS, April 11, 1984

THE HONORABLE ROBERT L. VAN WAGONER, *City Attorney, City of Reno,* Post Office Box 1900, Reno, Nevada 89505

DEAR MR. VAN WAGONER:

This is in response to your March 12, 1984 request for advice on behalf of your client, the Reno City Council, concerning several provisions of Chapter 278 of the Nevada Revised Statutes. You have asked several questions regarding the same issue, and we believe they may all be answered by a response to the following:

QUESTION

Does an amendment of the Reno City Land-Use Plan map invalidate existing zoning ordinances that are in conflict with the amendment or, alternatively, require the Reno City Council to amend any existing zoning ordinances not in strict conformity with the newly-adopted map?

ANALYSIS

The Nevada Legislature has enacted a comprehensive statutory scheme authorizing cities and counties to plan and zone land use in their respective jurisdictions for the purpose of promoting health, safety, morals and the general welfare of the community. NRS 278.020. As noted by our Supreme Court:

> The State of Nevada has delegated comprehensive powers to cities and towns in the area of zoning regulation. The legislative body of a city or of a county of at least 15,000 people must, under Chapter 278, create a planning commission which in turn must adopt a long-term plan of physical development. NRS 278.030, 278.150. Elements of the plan include community design, conservation, economics, housing, land use, public buildings, public services and facilities, recreation, streets and highways, transit and transportation.

NRS 278.160. The commission may adopt the plan in whole or in part after prescribed notice and public hearing and by a two-thirds vote. NRS 278.170, 278.210. The legislative body may adopt all or any part of this plan after giving prescribed notice and holding a public hearing; any change or addition must be referred to the commission. NRS 278.220.

Pursuant to this legislative directive the City of Reno adopted a comprehensive land-use program embodied in Title 16 of the Reno Municipal Code.

Forman v. Eagle Thrifty Drugs and Markets, 89 Nev. 533, 538, 516 P.2d 1234 (1973).

You have informed us that the Reno City Council is presently considering adoption of an amended map which is to become part of the "land-use plan" element of the Reno City Master Plan. The starting point for an attempt to determine the legal effect of such an amended map must, as always, be with the intent of the legislature in enacting the provisions of Chapter 278. *Acklin v. McCarthy*, 96 Nev. 520, 612 P.2d 219 (1980); *Thomas v. State*, 88 Nev. 382, 498 P.2d 1314 (1972); *Ex parte Iratacable*, 55 Nev. 263, 30 P.2d 284 (1934). Additionally, the Nevada Supreme Court has delineated the guidelines for such an inquiry.

> Our prime concern is to ascertain the intent of the legislature. The court must, if possible, and if consistent with the intention of the legislature, give effect to all the statutory provisions in controversy, and to every part of them. It is our duty, so far as practicable, to reconcile the various provisions so as to make them consistent and harmonious. The court, in interpreting these provisions, must also have in mind the purposes sought to be accomplished and the benefits intended to be attained.

School Trustees v. Bray, 60 Nev. 345, 353-4, 109 P.2d 274 (1941).

With these requirements of statutory construction in mind, we turn now to consider the pertinent provisions of Chapter 278.

As noted above, NRS 278.020 provides a statement of the purpose of the legislature in enacting Chapter 278 and giving authority to regulate land-use control to the local government entities. Under the Nevada statutory scheme, once a "Master Plan" has been adopted by a planning commission and that plan or any part thereof has been adopted by the governing body, there is a duty for the local government entity to determine the means of putting the plan into effect. NRS 278.230 provides:

> 1. Whenever the governing body of any city or county shall have adopted a master plan or part thereof for the city or county, or for any major section or district thereof, the governing body shall, upon recommendation of the planning commission, *determine upon reasonable and practical means for putting into effect the master plan or part thereof, in order that the same will serve as a pattern and guide for the kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment* and will conform to the adopted population plan where required, and as a basis for the efficient expenditure of funds thereof relating to the subjects of the master plan.
>
> 2. The governing body may adopt and use such procedure as may be necessary for this purpose. (Emphasis supplied.)

Aside from this general grant of authority to implement the master plan as a pattern and guide, the legislature has also provided specific power to local government entities to create zoning districts and enact zoning regulations. NRS 278.250 provides, in pertinent part:

> 1. For the purposes of NRS 278.010 to 278.630, inclusive, the governing body

> may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630, inclusive. Within the zoning district it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.
>
> 2. The zoning *regulations shall be adopted in accordance with the master plan for land use* and shall be designed:
>
> . . . .
>
> 3. The zoning regulations shall be adopted with reasonable consideration, among other things, to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city, county or region. (Emphasis supplied.)

In attempting to construe these two statutory provisions (NRS 278.230 and 278.250) with an eye towards harmonizing them, we are also required to give the language used by the legislature a reasonable and common sense construction.

> In construing statutes, the court must consider sections together and place upon language the interpretation which will give to each section of an act its proper effect, and which at least will make it compatible with common sense and plain dictates of justice.

Gruber v. Baker, 20 Nev. 453, 467-8, 23 P. 858 (1890).

It has always been the rule in Nevada that when language is plain and unambiguous in a statute there is no room for construction. *Brown v. Davis,* 1 Nev. 346 (1865); *Lynip v. Buckner,* 22 Nev. 426, 41 P. 762 (1895); *Seaborn v. District Court,* 55 Nev. 206, 29 P.2d 500 (1934).

NRS 278.230 provides that the master plan shall be a "pattern and guide" for the development of cities, counties or regions. "Pattern" is defined by *Webster's New World Dictionary,* p. 1042 (2d ed. 1980), as:

1. a person or thing considered worthy of imitation or copying;
2. a model or plan used as a guide in making things; . . .

"Guide" has been defined, in relation to the question presented here, as "applied to various contrivances intended to direct or keep to a fixed course or motion." *Webster's Encyclopedic Dictionary,* p. 867 (1967).

NRS 278.250 provides that zoning regulations be adopted "in accordance with the master plan for land use." "Accordance" has been defined as "agreement, harmony, conformity." *Webster's New World Dictionary,* p. 9 (2d ed. 1976). We believe the above-cited language is clear and unambiguous and requires a local government entity to adopt zoning regulations that are in substantial agreement or conformity with the principles, directions and general provisions of the adopted master plan for land use. It should be noted, however, that the agreement or conformity is not required to be strict or absolute.

> Moreover, a zoning ordinance must be pursuant to, and in *substantial conformity with, the zoning or enabling act authorizing it.* 8 McQuillan, Municipal Corporations, Sec. 25.58. The legislature has delegated the power to zone to the legislative bodies of cities and towns, *so that the need for a comprehensive plan might be met,* and has provided means for the protection of private property through notice and public hearing. (Emphasis supplied.)

Forman, supra, at 539.

In 1977 the Nevada Legislature expressly declared its intention that zoning ordinances take precedence over provisions contained in a master plan. 1977 Nev. Stat. Ch. 580, §§ 4-10, at 1496-1500. This recent enactment buttresses our conclusion that the Nevada Legislature has

always intended local zoning ordinances to control over general statements or provisions of a master plan. This express declaration is contained in the statutory requirements for approval of a tentative subdivision map contained in chapter 278 of the Nevada Revised Statutes. Pursuant to these provisions any person wishing to subdivide land in Nevada is required to take specified steps and prepare various maps for approval by the local government entities. NRS 278.349 sets out the procedure for action by a local governing body on a tentative map submitted by any person wishing to subdivide. The pertinent language of NRS 278.349 provides:

> 1. Except as provided in subsection 2, the governing body shall, by a majority vote of the members present, approve, conditionally approve, or disapprove a tentative map filed with it pursuant to NRS 278.330 within 30 days after receipt of the planning commission's recommendations.
>
> . . . .
>
> 3. The governing body shall consider:
>
> . . . .
>
> (e) *General conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;*
>
> . . . .
>
> (Emphasis supplied.)

A further rule of statutory construction requires that statutes are to be construed and harmonized so as to avoid absurd results. Thus, the language of this statute must also be given meaning and effect. *School Trustees v. Bray, supra; Lynip v. Buckner,* 22 Nev. 426, 41 P. 762 (1895); *Corbett v. Bradley,* 7 Nev. 106 (1871). We, therefore, view the statutory provision of NRS 278.349(3)(e) as providing that local zoning ordinances enacted pursuant to the "guide" of a master plan take precedence until modified or amended in a particular zoning or rezoning case. To interpret the statutory scheme in any other manner would be to leave this statutory provision devoid of any meaning.

We are aware of the recent Supreme Court decisions of the State of Oregon which judicially construed their statutes as requiring strict compliance of zoning ordinances with a comprehensive plan, even to the extent of requiring amendment of local zoning ordinances in light of the later adoption of a plan or an amendment to a plan *Fasano v. Board of County Commissioners,* 507 P.2d 23 (Ore. 1973); *Baker v. City of Milwaukie,* 533 P.2d 772 (Ore. 1975). We are also aware of a trend amongst a minority of states to legislatively require strict compliance of local zoning regulations with a comprehensive plan. (See generally J. Sullivan and L. Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement,* 9 Urban L. Ann. 33 (1975); D. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation,* 74 Mich.L.Rev. 899 (1976); Note—*Developments in Zoning,* 91 Harv.L.Rev. 1548-1550 (1978). However, in our opinion, the Nevada Supreme Court would not undertake such judicial activism without first recognizing a clear legislative initiative to modify our existing statutory framework.

The Nevada Supreme Court has long recognized that zoning is a matter properly within the province of the legislature and that the judiciary should not interfere unless it is proven to be clearly necessary. *Henderson v. Henderson Auto,* 77 Nev. 118, 359 P.2d 743 (1961), (judicial interference justified to correct a manifest abuse of discretion); *McKenzie v. Shelly,* 77 Nev. 237, 362 P.2d 268 (1961), (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie,* 84 Nev. 250, 439 P.2d 219 (1968), (judiciary must not interfere with the zoning power unless clearly necessary); *Eagle Thrifty v. Hunter Lake P.T.A.,* 85 Nev. 162, 451 P.2d 713 (1969), (it is not the business of the judiciary to write a new city zoning ordinance, overruling the court's opinion in *Eagle Thrifty v. Hunter Lake P.T.A.,* 84 Nev. 466, 443 P.2d 608 (1968)); *Forman v. Eagle Thrifty Drugs and Markets,* 89 Nev. 533, 516 P.2d 1234 (1973), (statutes guide the zoning

process and the means of implementation until amended, repealed, referred or changed through initiative); *State ex rel. Johns v. Gragson*, 89 Nev. 478, 515 P.2d 65 (1973), (court will interfere where administrative decision is arbitrary, oppressive or accompanied by manifest abuse). As stated by the court:

> Zoning is a legislative matter, and the legislature has acted. *Eagle Thrifty v. Hunter Lake P.T.A.*, 85 Nev. 162, 451 P.2d 713 (1969). It has authorized 'the governing body' to provide for zoning districts and to establish the administrative machinery to amend, supplement and change zoning districts. NRS 278.260. *As a general proposition, the zoning powers should not be subjected to judicial interference unless clearly necessary. Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968). (Emphasis supplied.)

Board of Commissioners v. Dayton Dev. Co., 91 Nev. 71, 530 P.2d 1187 (1975).

In view of the above-described history of judicial restraint, it is our opinion that the Nevada Supreme Court would more likely adopt the judicial reasoning of the Supreme Courts sitting in the States of Washington, Colorado and Montana which have recently considered this exact question.

> It may be argued that the purpose of the act assuring the highest standards of environment for living—is defeated when the plan is not strictly followed. However, since planning agency reports and recommendations on proposed projects and controls—which must indicate conformity or nonconformity with the comprehensive plan—are 'advisory only' (RCW 36.70.650 and RCW 36.70.540), it is evident the legislature intended that nonconformance with the plan should not necessarily block a project. *South Hills Sewer District v. Pierce Co.*, 22 Wash.App. 738, 745-46, 591 P.2d 877 (1979). *This is confirmed by the admonition that the comprehensive plan shall not be considered other than a guide to development and adoption of official controls.* RCW 36.70.340.
>
> Appellants argue that the court should follow Oregon by holding that the plan should be given preference over conflicting ordinances. But Oregon's statutory scheme substantially differs form Washington's. (Emphasis supplied.)

Barrie v. Kitsap County, 613 P.2d 1148 (Wash. 1980).

At least one of the differences between the Oregon statutory scheme and that of Nevada is the former's requirement that a master plan can only be adopted by a planning commission which then recommends zoning ordinances to be enacted by the governing body of a county to carry out the objectives of the plan. *Fasano, supra*, at 27. In Nevada, however, statutes give the local governing body the discretion to adopt or not adopt all or part of a master plan that has previously been adopted by a planning commission. NRS 278.220. Only after adopting all or part of a master plan is a governing body required to adopt regulations to implement it as a pattern and guide for development. NRS 278.230.

The Colorado Supreme Court addressed the issue of requiring strict compliance of zoning ordinances to the master plan in *Theobald v. Board of County Commissioners*, 644 P.2d 942 (Colo. 1982), and determined:

> The master plan is the planning commission's recommendation of the most desirable use of land (citations omitted). *Conceptually, a master plan is a guide to development rather than an instrument to control land use. R. Anderson, American Law of Zoning*, §§ 21.15, 22.12 (2d ed.); *E. McQuillan, Municipal Corporations, Zoning*, § 25.08 (3d ed., 1976 Repl. Vol.).
>
> The general rule is that zoning should be enacted in conformance with the comprehensive plan for development of an area, *Fasano, supra; Harr, In Accordance*

with the Comprehensive Plan, 68 Harv.L.Rev. 1154 (1955); 1 E. *Yokely, Zoning Law Practice*, § 2-1 (4th ed. 1978). *However, the Master Plan itself is only one source of comprehensive planning and is generally held to be advisory only and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body.* 1 & 2a. *Rathkopf, Law of Zoning and Planning*, § 12.01, *et seq.*, § 30.02 (4th ed.); *State ex rel. Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978); *Holmgren v. City of Lincoln*, 199 Neb. 178, 256 N.W.2d 686 (1977); *Todrin v. Board of Supervisors*, 27 Pa.Cmwlth. 583, 367 A.2d 332 (1976); *Coughlin v. City of Topeka*, 206 Kan. 552, 480 P.2d 91 (1971); *Sharninghouse v. City of Bellingham*, 4 Wash.App. 198, 480 P.2d 233 (1971).

This rule is embodied in our statute. While the statute provides for master planning on a county level, the board of county commissioners is specifically empowered, by majority vote, to disregard the recommendations of the planning commission as set forth in the master plan. (Citations omitted.) (Emphasis supplied.)

Id. at 948-949.

It should be noted that a local governing body in Nevada may also disregard the recommendations of a planning commission as set forth in a master plan. NRS 278.220-278.240.

The court went on to consider what standard of review was appropriate when confronted with an amendment to a master plan.

The Barries third argument that the council acted arbitrarily and capriciously presents this question: Does a comprehensive plan amendment require a showing of changed circumstances and, if so, has this showing been made? *A comprehensive plan amendment, the Barries argue, affects landowners' property rights so a showing that conditions have changed is necessary. This court, however, has only required this showing where a municipality rezones property.* (Citations omitted.) (Emphasis supplied.)

Theobald, supra, at 1154.

In reviewing the statutory scheme for planning and zoning in the State of Montana, their Supreme Court determined that substantial conformity to a master plan was required of zoning ordinances but strict compliance was unnecessary and unworkable.

The first phrase of section 76-2-304, sets the tone for all that comes after it. It states that '*the zoning regulations shall be made in accordance with a comprehensive development plan . . .*' (emphasis in original). We assume here that the term 'zoning regulations' is also meant to cover the term 'zoning districts.' We cannot ignore the mandatory language ('shall') of this statute.

. . . .

The vital role given the planning board by these statutes cannot be undercut by giving the governing body the freedom to ignore the product of these boards—the master plan. We hold that the governmental unit, when zoning, must substantially adhere to the master plan.

To require strict compliance with the master plan would result in a master plan so unworkable that it would have to be constantly changed to comply with the realities. The master plan is, after all, a plan. On the other hand, to require no compliance at all would defeat the whole idea of planning. Why have a plan if the local government units are free to ignore it at any time? *The statutes are clear enough to send the message that in reaching zoning decisions, the local governmental unit should at least substantially comply with the comprehensive plan (or master plan).*

> This standard is flexible enough so that the master plan would not have to be undergoing constant change. Yet, this standard is sufficiently definite so that those charged with adhering to it will know when there is an acceptable deviation, and when there is an unacceptable deviation from the master plan.
>
> . . . .
>
> *We are aware that changes in the master plan may well be dictated by changed circumstances occurring after the adoption of the plan. If this is so, the correct procedure is to amend the master plan rather than to erode the master plan by simply refusing to adhere to its guidelines.* If the local governing bodies cannot cooperate to this end, the only alternative is to ask the Legislature to change the statutes governing planning and zoning. (Emphasis supplied.)

Little v. Board of County Commissioners, 631 P.2d 1282 (Mont. 1981).

These courts' opinions have been well reasoned and reflect the majority view. We find no reason to believe that the Nevada courts would take any different position.

CONCLUSION

An amendment of a land-use map, which is part of a Master Plan as that term is defined in NRS 278.150 and NRS 278.160, does not require immediate amendment of all local zoning ordinances which are not in strict conformity with the map as amended. Additionally, all ordinances that exist at the time of a land-use map amendment remain in effect until modified or amended by the local governing body.

BRIAN MCKAY, *Attorney General*

By: MICHAEL D. RUMBOLZ, *Chief Deputy Attorney General*

OPINION NO. 84-7 County Clerks; Elections; Initiative and Referendum; Secretary of State: Nev. Admin. Code § 295.010 is not in conflict with constitutional and statutory provisions relating to the filing of statewide petitions for initiative and referendum. County clerks should not accept submission of any statewide petition for initiative or referendum which is not presented within the time limits established by Nev. Admin. Code § 295.010.

CARSON CITY, April 16, 1984

ROBERT J. MILLER, *Clark County District Attorney*, Clark County Courthouse, Las Vegas, Nevada 89155

ATTENTION: CHARLES K. HAUSER, *Deputy District Attorney*

DEAR MR. MILLER:

You have sought our opinion concerning the validity of Nev. Admin. Code § 295.010.

QUESTION

Does Nev. Admin. Code § 295.010 conflict with Nev. Const. art. 19, § 2, or Nev. Rev. Stat. §§ 295.025(1), 295.035(1), 295.045(2), 295.056, 295.057, 295.058 and 295.059?

Exhibit 156

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CLERK OF THE COURT

OPPM
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Attorneys for CITY OF LAS VEGAS
and REGIONAL TRANSPORTATION COMMISSION

DISTRICT COURT

CLARK COUNTY, NEVADA

MOCCASIN & 95 LLC, a Nevada Limited Liability Company; DOE INDIVIDUALS I through XXX; DOE CORPORATIONS I through XXX; DOE LIMITED LIABILITY COMPANIES I through XXX,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; THE REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA; ROE government entities I through XXX; ROE CORPORATIONS I through XXX; ROE INDIVIDUALS I through XXX; ROE LIMITED LIABILITY COMPANIES I through XXX, ROE quasi-governmental entities I through XXX,

Defendants.

CASE NO. A-10-627506-C
DEPT. NO. XXVI

OPPOSITION TO PLAINTIFF LANDOWNER'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY FOR A TAKING

Defendants CITY OF LAS VEGAS and REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, though their attorneys BRADFORD R. JERBIC, City Attorney, by PHILIP R. BYRNES, Deputy City Attorney, files the following points and

> approval. If denied, the proposed changes could not be made to the Master Plan of Streets and Highways and the Las Vegas 2020 Master Plan, and the approved Sheep Mountain Parkway and master planned streets would remain in their current alignments.

Id.

III.

THE SUMMARY JUDGMENT STANDARD

In *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 457-58, 168 P.3d 1055, 1061 (2007), the Nevada Supreme Court described the standards for granting a motion for summary judgment:

> This court reviews a summary judgment order de novo. We have previously explained that "[s]ummary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party.

The party requesting summary judgment bears the burden of establishing that no triable issues remain. *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985). All reasonable inferences must be made in favor of the opposing party and the Court may not weigh the credibility of the evidence. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002).

IV.

THE PLACEMENT OF THE NORTH ALIGNMENT ON THE CITY'S MASTER PLAN OF STREETS AND HIGHWAYS DID NOT CONSTITUTE A TAKING OF THE SUBJECT PROPERTY

The City's Master Plan of Streets and Highways is a planning document. Nevada law clearly provides that planning activities do not constitute a taking. In an effort to circumvent this clearly established law, Plaintiff argues that the setback requirements of Las Vegas Municipal Code (LVMC) 13.12.150 preclude all development of the subject property under the unique circumstances of this case. The setback requirements of LVMC 13.12.150 do not even apply to the subject property since the City Council never adopted an ordinance establishing a center line for the North Alignment. The placement of the North Alignment on the City's Master Plan of

Streets and Highways was a routine planning activity that had no legal effect on the use and development of the subject property. The amendment did not constitute taking of the subject property.

The Master Plan of Streets and Highways is part of the City's Master Plan. LVMC 13.12.020. NRS 278.230(1)(a) describes the purpose of the Master Plan:

> A pattern and guide for that kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment and will conform to the adopted population plan, where required, and ensure an adequate supply of housing, including affordable housing . . . .

The purpose of the City's Master Plan of Streets and Highways is described in LVMC 13.12.010:

> The Master Plan of Streets and Highways has been prepared by the City Planning Commission to promote the orderly development of land which an increasing population will require, to eliminate existing congestion and facilitate rapid traffic movement, and to make provisions for anticipated future traffic needs.

The Master Plan of Streets and Highways is a planning document and the placement of a potential roadway on the Plan does not constitute a taking of private property.

In *Sproul Homes of Nevada v. State ex rel. Department of Highways*, 96 Nev. 441, 444, 611 P.2d 620, 621 (1980), the Nevada Supreme Court found that inclusion of a street on a master plan does not constitute a taking:

> It is well-established that the mere planning of a project is insufficient to constitute a taking for which an inverse condemnation action will lie.

The Court adopted the reasoning of a California court in *Selby Realty Company v. City of San Buenaventura*, 514 P.2d 111 (Cal. 1973):

> On appeal, the court stated: "In order to state a cause of action for inverse condemnation, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury." *Id.* at 117. The court continued:
>
> > If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential public use on one of the several authorized plans, the process of community planning would

> either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation.
>
> *Id.* at 117-18 (emphasis added). We agree with this reasoning.

96 Nev. at 444, 514 P.2d at 621-22.

In an effort to avoid the clear reasoning of *Sproul Homes*, Plaintiff argues that the amendment of the Master Plan of Streets and Highways in conjunction with the setback requirements of LVMC 13.12.150 constitutes a taking. LVMC 13.12.150 provides:

> All buildings or structures to be built along any major street or highway embraced by the Master Plan shall be set back from the centerline of any existing or proposed major street or highway a distance equal to one-half the proposed right-of way width, plus the distance required by the particular zone in which the property is located, unless an ordinance is adopted to establish a distance other than one-half the proposed right-of-way width. With respect to any building or structure located at any intersection described in Section 13.12.100, the foregoing setback requirements shall be increased to conform to the property line radius specified in that Section.

A setback requirement is a legitimate exercise of the city's police power and does not amount to a per se taking. *Echevarrieta v. City of Rancho Palos Verdes*, 103 Cal. Rptr. 2d 165, 171 (Cal. App. 2001), the Court stated:

> Here, while the City has imposed limitations on the height of pre-existing foliage, it is a legitimate exercise of police power which does not rise to the level of a taking. **Contrary to "per se" takings, "traditional land-use regulations" such as the imposition of minimal building setbacks, parking and lighting conditions, landscaping requirements, and other design conditions "have long been held to be valid exercises of the city's traditional police power, and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property.** [Citations.]" (*Ehrlich v. City of Culver City, supra*, 12 Cal. 4th at p. 886, 50 Cal. Rptr. 2d 242, 911 P.2d 429; *HFH, Ltd. v. Superior Court* (1975) 15 Cal. 3d 508, 518, 125 Cal. Rptr. 365, 542 P.2d 237 ["[A] zoning action which merely decreases the market value of property does not violate the constitutional provisions forbidding uncompensated taking or damaging. . . ."].) "The denial of the highest and best use does not constitute an unconstitutional

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702-229-6629

> taking of property. [Citation.] 'Even where there is a very substantial diminution in the value of land, there is no taking . . . .' [Emphasis added.]

See also R & Y, Inc. v. Municipality of Anchorage, 34 P.3d 289, 296-97 (Alaska 2001).

In the case of the subject property, the setback requirements of LVMC 13.12.150 are not even applicable since the City Council did not adopt an ordinance establishing a centerline for the North Alignment. LVMC 13.12.130 provides:

> With respect to any major street or highway located on a section line, the section line shall be the centerline unless the Board of Commissioners adopts an ordinance which establishes a different centerline. **With respect to any proposed or existing major street or highway which does not follow a predetermined line, the location of the centerline in each case shall be described by ordinance.** [Emphasis added.]

Since the setback requirements of LVMC 13.12.150 are measured from the centerline of the roadway and the City Council did not establish a centerline by ordinance, the setback requirements of LVMC 13.12.150 could not be enforced in any land use application regarding the subject property.[2] *See* Exhibit A; Affidavit of Bryan K. Scott, attached as Exhibit K; Affidavit of James B. Lewis, attached as Exhibit L.

The placement of the North Alignment on the Master Plan of Streets and Highways was a planning activity that did not legally effect Plaintiff's ability to use or develop the subject property. This amendment did not constitute a taking of the subject property.

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[2] In *Boulder City v. Cinnamon Hills Associates*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994), the Nevada Supreme Court noted that a city's "interpretation of its own land use laws is cloaked with a presumption of validity and will not be disturbed absent a manifest abuse of discretion."

Las Vegas City Attorney
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Exhibit 157

AFFIDAVIT OF BRYAN K. SCOTT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

BRYAN K. SCOTT, being first duly sworn, deposes and says:

1. I am employed by the City of Las Vegas as an Assistant City Attorney. I have personal knowledge of the matters stated herein; and, if called upon, I am competent to testify thereto.

2. I have been assigned as counsel for the City regarding land use and planning matters for more than eleven years.

3. During my tenure with the City, the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan of Streets and Highways is a planning document only and that the placement of a roadway on the Master Plan cannot be used to restrict or impair the development of adjoining parcels.

4. I am aware of the setback requirements of LVMC 13.12.150. I cannot recall any situation in my tenure when those setback requirements have been enforced against any proposed project on a parcel abutting a roadway placed on the Master Plan.

5. The proposals for the Sheep Mountain Parkway do not follow a predetermined section line. LVMC 13.12.130 requires the City Council to describe the centerline of the roadway by ordinance. The City Council did not adopt an ordinance describing the centerline of the North Alignment of the Sheep Mountain Parkway.

6. The setback requirements of LVMC 13.12.150 are calculated from the centerline of a roadway placed on the Master Plan of Streets and Highways. Since the City Council did not describe the centerline of the North Alignment of the Sheep Mountain Parkway by ordinance, the

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Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
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702-229-6629

setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13TH day of December, 2011.

BRYAN K. SCOTT

SUBSCRIBED and SWORN to before me this 13th day of December, 2011.

NOTARY PUBLIC

CINDY KELLY
Notary Public State of Nevada
No. 93-0530-1
My appt. exp. Aug. 4, 2013

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

Exhibit 158

AFFIDAVIT OF JAMES B. LEWIS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JAMES B. LEWIS, being first duly sworn, deposes and says:

1. I am employed by the City of Las Vegas as a Deputy City Attorney. I have personal knowledge of the matters stated herein; and, if called upon, I am competent to testify thereto.

2. I have been assigned as counsel for the City regarding land use and planning matters for more than six years.

3. During my tenure with the City, the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan of Streets and Highways is a planning document only and that the placement of a roadway on the Master Plan cannot be used to restrict or impair the development of adjoining parcels.

4. I am aware of the setback requirements of LVMC 13.12.150. I cannot recall any situation in my tenure when those setback requirements have been enforced against any proposed project on a parcel abutting a roadway placed on the Master Plan.

5. The proposals for the Sheep Mountain Parkway do not follow a predetermined section line. LVMC 13.12.130 requires the City Council to describe the centerline of the roadway by ordinance. The City Council did not adopt an ordinance describing the centerline of the North Alignment of the Sheep Mountain Parkway.

6. The setback requirements of LVMC 13.12.150 are calculated from the centerline of a roadway placed on the Master Plan of Streets and Highways. Since the City Council did not describe the centerline of the North Alignment of the Sheep Mountain Parkway by ordinance, the

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Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13th day of December, 2011.

JAMES B. LEWIS

SUBSCRIBED and SWORN to before me this 13th day of December, 2011.

NOTARY PUBLIC

CINDY KELLY
Notary Public State of Nevada
No. 93-0530-1
My appt. exp. Aug. 4, 2013

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

Exhibit 159

D R A F T

T R A N S C R I P T

Binion vs. Fore Stars

Tom Perrigo, Volume I

Monday, December 5, 2016

By: Carre Lewis, NV CCR 497, CA CSR 13337
carre@envision.legal

Envision Legal Solutions
1-702-781-DEPO

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REALTIME AND INTERACTIVE REALTIME TRANSCRIPT
ROUGH DRAFT DISCLAIMER

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REPORTER'S NOTE:
Since this deposition has been provided in real time and is in rough draft form, please be aware that there may be a discrepancy regarding page and line number when comparing the realtime screen, the rough draft, rough draft disk, and the final transcript.

Also please be aware that the realtime screen and the uncertified rough draft transcript may contain untranslated steno, reporter's notes, asterisks, misspelled proper names, incorrect or missing Q/A symbols or punctuation, and/or nonsensical English word combinations. All such entries will be corrected on the final, certified transcript.

Court Reporter's Name:
Carre Lewis, CCR 497

I N D E X

WITNESS: TOM PERRIGO

EXAMINATION PAGE
By Mr. Bice 8

Tom Perrigo

Binion vs. Fore Stars

Monday, December 5, 2016

Carre Lewis, CCR No. 497

E X H I B I T S

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THE VIDEOGRAPHER: This is the beginning of video record the No. 1 in the deposition of Tom Perrigo, taken in the case of Binion, et al., versus Fore Stars, et al., held at Pisanelli Bice, 400 South 7th Street, Suite 300, in Las Vegas, Nevada 89101.

The date is December 5, 2016. My name is Hunter Blackburn, the videographer, working on behalf of Envision Legal Services.

The court reporter is Carre Lewis.

Will all present please identify themselves, beginning with the witness.

THE WITNESS: Tom Perrigo.

MR. BYRNES: Phil Byrnes representing City of Las Vegas and the deponent.

MR. JIMMERSON: Good morning. Jim Jimmerson I'm privileged to representing the defendants in this matter, Fore Stars, LTD, 180 Land Company, LLC, and Seventy Acres, LLC. Good morning to you all.

MR. BICE: Todd Bice on behalf of the plaintiffs.

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THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

Whereupon --

TOM PERRIGO,

having been first duly sworn to testify to the truth, was examined and testified as follows:

EXAMINATION

BY MR. BICE:

Q. Good morning, Mr. Perrigo. Can you state your full name for the record.

A. Thomas Andrew Perrigo.

Q. Can you tell me where you currently work?

A. I work for the City of Las Vegas.

Q. How long have you worked for the City of Las Vegas?

A. Since August of 1994.

Q. What is your current position with City of Las Vegas?

A. Current position is planning director and chief sustainability officer.

Q. All right. Can you tell me what it means to be the planning director and the chief sustainability officer?

A. The planning director is responsible for the function and operation of the planning

senior planner who has worked in that area will get together and really evaluate the proposal.

Q. And then they will do a recommendation to you?

A. Yes.

Q. And then you will decide whether or not it moves forward before planning commission?

A. Yes.

MR. JIMMERSON: Mr. Bice, while you are pausing, can you just work with us in terms of what you and anybody else would have plans for in terms of lunch? Is it 12 to 1? 12:30 to 1:30? What did you have in mind?

MR. BICE: 12ish is fine. I can have lunch brought in, if you would rather do that or you can go out for lunch. I'm indifferent.

MR. JIMMERSON: I would like to walk across the alley.

MR. BICE: Understood. We will break around noonish and come back whenever Phil and the witness are ready.

MR. JIMMERSON: Thank you.

(Exhibit 1 marked.)

BY MR. BICE:

Q. I'm going to show you what's been marked as

Exhibit No. 1. Do you need your glasses?

A. I do.

Q. Understood.

Showing you what's been marked as Exhibit No. 1 Mr. Perrigo, I will let you read it and ask you if you have ever seen this document before.

A. Yes, I have seen it.

Q. Did you see it before it was sent?

A. No.

Q. How did you find out about it, "this" being Exhibit 1, this letter?

A. I don't recall. It became a question at some point, this letter. And I don't recall when I first heard about it.

Q. Can you tell me what is a request for zoning verification?

A. It's fairly standard and routine where people when they are wanting to know what the zoning is, they will come in and ask for this letter. And the planner will look it up in our system and verify what is the designated zoning is and issue the letter.

Q. So how many of these letters does the City issue in a year?

A. I don't know the exact number but it's

quite a few.

Q. And so any property owner can come in or actually I guess anyone can come in and ask you -- ask the City to tell them what the zoning is on a piece of property, correct?

A. Yes.

Q. Do you even have to be the property owner?

A. No.

Q. What's the purpose of this letter? Strike that let me rephrase Mr. Perrigo.

What's the purpose of a letter like this?

A. Typically people want to verify what their zoning is, I guess. I don't know. I suppose everybody who comes and asks maybe has a different reason I can't speculate.

Q. This information is all publicly available correct?

A. Yes.

Q. They can look on the city's map and determine what the zoning is, can they not?

A. Yes.

Q. Do people seek a similar letter like this concerning the master plan?

A. I'm not aware of a similar letter.

Q. So when you issue letters like this it's

limited to zoning?

A. Yes.

Q. Why is it limited to zoning?

A. Zoning I guess I need to back up on the question of whether or not land use is binding. It is to a certain extent. There are instances where it's not in conformance to the zoning and the zoning is sought to have more veracity, I guess, be more important in terms of what somebody has -- what entitlements they have to the property, then the land use.

Q. You say that there are instances where people think that the zoning has more veracity than the land use?

A. The -- not instances. Again, my understanding and probably have to defer to the City attorney's office with whom I have had conversations regarding this exact question.

Q. Don't tell me exactly what they have told you. I'm trying to understand what your position is?

A. I'm not going to tell you what they told me.

Q. Okay.

A. My position is that the zoning is the --

what's the proper way to say it? The zoning governs more -- I guess zoning first, land use second.

Q. So --

A. If the land use and the zoning aren't in conformance, then the zoning would be a higher order entitlement, I guess.

Q. So it's your position that zoning supercedes the general plan --

A. Yes.

Q. Or the master plan?

A. Yes.

Q. Is that spelled out anywhere in the city's code?

A. I don't -- I don't -- I don't know.

MR. BICE: Let's mark this one.

(Exhibit 2 marked.)

BY MR. BICE:

Q. Can you tell me what Exhibit No. 2 is.

A. It's entitled the Unified Development Code.

Q. What is that?

A. The -- used to be -- it's Title 19.

Q. Okay. What is Title 19?

A. Essentially a zoning code.

Q. Zoning code for the City of Las Vegas?

A. That is correct.

Q. Is this something that you were familiar with?

A. Yes.

Q. Is this something that governs developments in the City of Las Vegas?

A. Yes.

Q. And this is something I assume that your department is responsible for adhering to?

A. The planning department among other departments, yes, building and safety, public works.

Q. Who prepares the Title 19 or Chapter 19?

A. Who prepares?

Q. Yes. In other words, who drafted it? Do you know?

A. Well, a number of people have been involved in drafting it over the years. Ultimately the final drafting comes out of the City attorney's office.

Q. Then it gets adopted by the City council, correct?

A. Yes.

Q. Do you consider the City ordinance here Title 19 to be binding?

MR. BYRNES: I'm going to object. Calls for legal conclusion.

Go ahead and answer.

BY MR. BICE:

Q. Just asking you for you as the planning director do you consider it to be binding?

A. I consider it to be binding. Again, the council has discretion.

Q. If you -- I'm just using this one as an example. This is R-4, can you tell me what R-4 is presently?

A. High density residential district.

Q. If you look at the bottom left-hand corner of this document, this is dated as of March 16 of 2011, do you see that?

A. Yes.

Q. Due know whether or not that's the current version of the City code of Title 19?

A. Title 19 -- well, this would not be.

Q. Okay.

A. It's -- Title 19 is amended quite frequently.

Q. Okay.

A. And every time it amended then it becomes the new.

Q. A new version, correct?

A. A new version.

Q. Is amended multiple times a year in your

experience?

A. Yes.

Q. So dealing with this version that existed at least as of March 11 of 2011, R-4 district is for high density you said?

A. Yes.

Q. Can you -- in layman's terms can you tell me what that means? Does that mean like apartments?

A. Means multifamily dwellings, attached.

Q. Condos, apartments, things like that; is that correct?

A. That's correct.

Q. It says here: "The R-4 District is intend to allow for the development of high density multifamily units within the downtown urban core and in other high intensity areas suitable for high density residential projects."

How would I figure out what are the other high intensity areas suitable for high density residential development; where would I look to figure out those areas?

A. I don't know that those are specifically spelled out.

Q. Okay. Are those -- are areas appropriately designated for high density residential development,

A. Yes.
Q. All right. Now as parts of that process, did you -- and let's just deal with you personally for a minute did you do any research concerning the master plan -- the Peccole master plan concerning this property?
A. I did not. Let me put a finer point on that. I read materials that my staff put together in their research.
Q. Who did the research for you on that?
A. Mr. Lowenstein headed it up and I believe Mr. Swanton assisted and I don't know who else.
Q. Mr. Swanton?
MR. JIMMERSON: Can we get a spelling on that please.
THE WITNESS: S W A N T O N.
MR. JIMMERSON: Thank you very much. Do you have a first name?
THE WITNESS: Steve.
MR. JIMMERSON: Thank you very much.
BY MR. BICE:
Q. Did Mr. Rankin have any involvement in that?
A. I believe so.
Q. Do you recall what his involvement was?

A. I don't.
Q. How about Mr. Summerfield?
A. I don't believe so.
Q. What did they provide you in terms of research, Mr. Lowenstein and company?
A. A copy of the original zoning case, of the -- some of the maps, the master plan, the -- all of the information regarding the zoning to R-PD7, including the backup from the council hearings and what was recorded and that kind of stuff.
Q. So you saw the agenda items from the -- from 1990 concerning the City council?
A. Yes.
Q. And planning commission meetings?
A. Yes.
(Exhibit 6 marked.)
BY MR. BICE:
Q. I want to make sure we are talking about the same documents. This is Exhibit 6. Showing you what's been marked as Exhibit No. 6, Mr. Perrigo, is this some of the information you were provided by your staff?
A. Yes.
Q. Can you tell us what this is?
A. This is the public hearing notice for

Z-17-90.
Q. What is Z-17-90?
A. It would be the zoning case.
Q. Zoning case for what?
A. To rezone property at Peccole Ranch.
Q. Got it. That's the number that gets assigned based on an application; is that right?
A. Yes.
Q. So this is for notice for March 8 of 1990, correct?
A. Yes.
Q. Can you tell me what the next page of of this exhibit is?
A. The annotated agenda with minutes.
Q. What does that mean, annotated agenda minutes?
A. Has the staff recommendation, the conditions of approval, and some of the -- I don't know that this is the entire document, but I don't remember for sure. Some of the comments from some of the planning commissioners.
Q. What was the -- what was the application -- what was the applicant seeking to do?
A. To rezone property from nonurban to R-PD7, R-3 and C 1.

Q. Would that eliminate, then, the prior zoning classifications on the property?
A. If approved, yes.
Q. Was this approved?
A. Yes.
Q. With conditions, correct?
A. Yes.
Q. Who was the applicant?
A. Peccole -- William Peccole trust.
Q. 1982 trust?
A. 1982 trust.
Q. Was that the developer?
A. I don't know.
Q. Do you know who the developer was, if not the trust?
A. I don't know.
Q. Have you ever investigated who the developer was?
A. I have not.
MR. BICE: Have this marked.
(Exhibit 7 marked.)
BY MR. BICE:
Q. Showing you what's been marked as Exhibit No. 7, have you seen this document before?
A. I have.

Q. Can you tell me what it is?
A. The Peccole Ranch master plan.
Q. When did you first see this Peccole Ranch master plan?
A. I don't know, early on when the proposal was first made and Mr. Lowenstein started his research into the property.
Q. Did you ever show a copy -- do you know, did anybody at the City ever give a copy of this to the applicant EHB companies?
A. I don't know.
Q. Did it ever come up at any of the preapplication meetings?
A. Yes.
Q. Where you were present?
A. Yes.
Q. Tell me what came up about it, about the master plan.
A. At some point, I don't remember exactly when, based on the plan, staff had requested that the applicant also file for a major modification to this plan.
Q. Okay.
A. And I don't know in what other context, but that's really the key.

Q. Did the applicant do so?
A. Yes.
Q. Why was it that staff determined that they needed to submit a major modification to this plan, Exhibit 7?
A. Staff determination was based on the fact that it was a rather large change to the existing plan out there, and given the number of units that were being requested and given the question as to whether or not this plan existed or had any standing and what that meant, staff requested a major modification so that council could understand and decide whether or not what was being proposed was appropriate in the context of this earlier plan.
Q. All right. At the time that you were alerted to this plan, you reviewed it, correct?
A. Yes.
Q. Did you believe that it was binding?
A. I did not.
Q. Did you tell anyone that?
A. I believe so.
Q. Who did you tell that you didn't think it was binding?
A. I don't recall. I --
Q. When did you make that determination?

A. After reviewing the materials that Mr. Lowenstein had put together showing that over the course of time that the plan had not been consulted for the majority of changes that occurred out there, that a majority of the rezonings were done consistent with Title 19 and not the plan. The language in the plan that talks about it being conceptual in nature, conversations with the City attorney's office, conversations with former planning directors.
Q. Which former planning directors?
A. Bob Ginzer [phonetic] and Margo Wheeler.
Q. You contacted them about this plan?
A. I did.
Q. When?
A. I don't recall.
Q. Why?
A. Just to see if they remembered or could recall why entitlements that had occurred during their tenure didn't take into consideration the plan.
Q. Did they provide you any information on that?
A. They did not.
Q. You just said that a majority of things

that were done were not in reference to the plan?
A. Yes.
Q. Tell me all the things that weren't done that weren't in reference to this plan?
A. I don't recall. There is a long list of every entitlement that occurred out there.
Q. Who developed that list?
A. Mr. -- I believe Mr. Lowenstein or it was developed at his direction.
Q. Did the applicant develop the list and share it with the City?
A. They may have developed the list and shared it with us. I don't recall for sure but I do know Mr. Lowenstein did.
Q. Mr. Lowenstein did his own research?
A. He did his own research or directed his staff to do the research.
Q. Who was it? Have you seen any written report from Mr. Lowenstein on this?
A. Yes.
Q. How many pages is that?
A. I don't recall. There is a specific table, though, that shows every action that occurred on this property or within the planned area, phase 1 and phase 2, some of which do reference the original

Z-17-90 and I believe the majority don't. And the plan was never modified as it sits. I remember the final thing was the land use element to the general plan speaks of all master plans in the City but describes those that require major modification to change, and this is not one of those.

Q. What does that mean?

A. The master plan -- the land use element to the master plan lists all of the master plans and describes the area and has a map. And it speaks to which of those master plan areas require major modification. And there is five, I believe, in the City that were actually developed as planned developments. And this one, according to that plan land use development did not and did not require major modification.

Q. Who developed that list?

A. That was done by the planning department adopted by City council.

Q. When?

A. I don't know.

Q. Was it -- has it been in the last two years?

A. No.

Q. So prior to that?

A. Yes.

Q. So on the planning commission agenda going back to item No. Of or Exhibit 6 we will come back to 7 in a moment, second page, so the zoning change was Z-17-90 was approved, correct?

A. Yes.

Q. And that was with the following -- do you see where there are staff recommendations?

A. Yes.

Q. Says approval subject to the following. What does that mean?

A. That there are certain conditions placed on the approval of that particular item.

Q. So for zoning change that was sought by the William Peccole 1982 trust zoning change was subject to a maximum of 4427 dwelling units be allowed for phase 2, correct?

A. Yes.

Q. And then conformance to the conditions of approval for the Peccole Ranch master plan -- or master development plan phase 2, correct?

A. Yes.

Q. So those -- that zoning change to R-PD7, R-3, and C-1 were conditioned upon those two requirements as well as the rest that are listed

there, correct?

A. Correct.

Q. Did the Peccole -- did the way the Peccole 1982 Trust have the ability to challenge any of those conditions at the City council if it wanted to?

A. Yes.

Q. It could have appealed those decisions if it was dissatisfied with them to the City council?

A. Yes.

Q. Did it do so?

A. I don't know.

Q. Well, in your research on this, has anyone told you that they did?

A. No.

Q. Then the matter would go forward to the City council, correct?

A. Yes.

(Exhibit 8 marked.)

BY MR. BICE:

Q. This is Exhibit No. 8. Can you tell me what Exhibit No. 8 is?

A. It's the -- well, we would call today an approval letter which lays out the action and conditions of approval. I don't know in 1990

exactly what it was called. Actually we call it a final action letter.

Q. Letter. Okay.

This is what gets sent to the applicant, correct?

A. Yes.

Q. Is this one of the documents that you were shown by your staff who had looked into the status of the Peccole master plan?

A. Yes.

Q. So this matter went to the City council agenda for approval, correct?

A. Yes.

Q. And it was approved, right?

A. Yes.

Q. Unanimously approved, correct?

A. Yes.

Q. All right. And the first two conditions on that approval of that zone change are what?

A. Of course there was one extension, but -- I'm sorry, the what?

Q. What were the first two conditions on that approval?

A. A maximum of 4,247 dwelling units be allowed for phase 2. Number two: Conformance to

recite it off the top of my head.
Q. Is this a minor modification a 17-acre application?
A. No.
Q. Why not?
A. Modification is required to certain plans that typically the PCD plans, not that there are a handful of plans like this one that are called out in the master plan to not require a modification.
Q. To not require a major modification or not require any modification?
A. Require any modification. If fact that's why the plan today is completely inconsistent with what's been built out there. The roads aren't in the same place, land use is all changed. It's completely inconsistent with what's built over time.
Q. So of the 1440 multifamily units that the City approved, how many have actually been built, do you know?
A. I don't.
Q. How have you determined that there are 720 available if you don't know how many have been built?
A. Well, staff has looked at that very carefully and did a very careful count of every

single unit that's been built in that area.
Q. Okay.
A. I do not recall the numbers off the top of my head.
Q. So staff has determined that there are 720 of that 1440 still available somehow?
MR. BYRNES: Objection. Asked and answered.
BY MR. BICE:
Q. Is that right?
MR. JIMMERSON: Join. He has never testified to the number 720 was still permitted.
THE WITNESS: I don't recall the number off the top of my head.
BY MR. BICE:
Q. My only question, sir, and I'm not asking you to say the numbers off the top of your head. But it's your understanding that there are 720 of of that 1440 is somehow still available, correct?
A. I don't know that to be true. So going back to your question about whether or not single and multifamily are fungible, I guess the answer is no, in this case. I don't know that it's relevant. We have looked at over all number of units for the area, and I just can't remember. I just can't

remember what those numbers work out to be.
Q. Are you treating them as fungible in this case?
A. I don't know because I don't recall what those numbers are.
Q. Well, when was this project closed out?
A. What project?
Q. The Peccole Ranch master plan.
A. I don't recall any formal action that closed it out.
Q. Has the City ever told anybody that it was closed out?
A. Not that I'm aware of. I don't know.
Q. When were the models released?
A. I don't know.
Q. Were they released sometime in 1996, 1990?
A. I don't know. I do recall reading that the bonds were released.
Q. When does the City consider a development to be closed out?
MR. JIMMERSON: Object to the question.
THE WITNESS: I don't know that there is any official determination of closed out. It likely refers to a public works action regarding the infrastructure.

BY MR. BICE:
Q. And the bonds are what secure the infrastructure, right?
A. Yes.
Q. And so when the bonds are released -- the bonds are only released when the infrastructure is deemed complete, correct?
A. That would be a question for public works.
Q. Is that your understanding?
A. I don't know if there are circumstances where that wouldn't be the case. I don't know. That would have to be a question for public works.
Q. Have you ever heard the term parent final map before?
A. Yes.
Q. What is that?
A. Well, the parent final map is the map that all of the specific various areas final maps relate to in the tentative maps.
MR. JIMMERSON: Mr. Bice -- Todd, can you tell me what's the first word before the words "final map."
MR. BICE: Parent.
MR. JIMMERSON: P-A-R-E-N-T.
MR. BYRNES: Do you want a break?

Mr. Perrigo, thank you. Can I ask you ten minutes worth of questions?

THE WITNESS: Sure.

MR. BYRNES: Why don't -- I think this would be better if we regroup to do it then.

MR. JIMMERSON: I will do it then. I'm grouping, not regrouping.

MR. BICE: Thank you. We can go off the record.

THE WITNESS: Going off the video record. This includes the videotape deposition of Tom Perrigo taken on December 5, 2016. The time is approximately 4:34 p.m.

(Off the record.)

Exhibit 160

THE VIDEOGRAPHER: This is the beginning of video recording number 1 in the deposition of Peter Lowenstein taken in the matter of Binion versus Fore Stars, et al. held at Pisanelli Bice, 400 south seven street, suite 300 in Las Vegas, Nevada on December, 2016. The time is approximately 9:40 a.m. The court reporter is Monice Campbell. My name is Hunter Blackburn, the videographer representing Envision Legal Solutions. Will the -- will everybody identify themselves, please beginning, with the witness.

THE WITNESS: Sure. Peter David Lowenstein.

MR. BYRNES: Phil Byrnes representing the deponent and City of Las Vegas Inc.

MR. JIMMERSON: Good morning. My name is Jim Jimmerson. I have the privilege of representing the defendant Fore Star entities. Good morning everyone here.

MR. BICE: Todd Bice on behalf of the plaintiffs and Frank Schreck will be joining us. So when he steps in, that's who else may be in the room.

MR. JIMMERSON: Mr. Lowie may or may not be here today.

THE VIDEOGRAPHER: Will the court reporter

please swear in the witness.

P R O C E E D I N G S

Deponent ,

called as a witness herein,

being first duly sworn,

was examined and testified as follows:

EXAMINATION

BY MR. BICE:

Q. Good morning, sir. Can you state your full name for the record, please.

A. Peter David Lowenstein.

Q. Mr. Lowenstein, can you tell me where you currently work?

A. I work for the City of Las Vegas in the department of planning.

Q. All right. Do you have a title in your --

A. My current title is the planning section manager.

Q. Can you tell me what it means to be the planning section manager?

A. As a planning section manager, I am responsible for the current planning division of the planning department.

Q. Okay. What does the planning -- I think I

got it right. The planning section, what is that?

A. Our department is composed much a number of different divisions and in the current planning division is composed of -- what is known is case planning which is land use entitlements and the front or public planning which is our front counter customer direction.

Q. Because you're using using terminology I can follow along here so I can make I use the right -- the same words you're using. I just want to make sure. My apologies.

A. If there is any clarification let me know?

Q. I'm sure I will need some as we progress today.

So when you say -- let's sort of break that down. You've got under the branch of current planning and I guess really is it a division?

A. Yes.

Q. Division?

A. Section division would be synonymous.

Q. Got it then there are two sort of subparts under that. You said land use.

A. It's referred to as case planning.

Q. Case planning. Okay.

And then you've got the front counter you

said.

A. Which is the public planning portion of that division.

Q. Got it. Okay. And both of those divisions report to you.

A. That's correct.

Q. And who is -- who is in charge -- who is the person that reports to you on case planning?

A. That would be my planning supervisor, Steve go Becky.

Q. Any chance you could spell the last name.

A. GEBEKE.

MR. JIMMERSON: Can you help me with that again please Mr. Lowenstein?

THE WITNESS: What was that?

MR. JIMMERSON: The spelling again.

THE WITNESS: Sure. GEBEKE.

MR. JIMMERSON: The first name is Steven did you say.

THE WITNESS: Steve.

MR. JIMMERSON: Steve thank you so much.

BY MR. BICE:

Q. How long has Mr. Gebeke been supervisor over the case planning?

A. He's been the supervisor on and off

throughout the last -- I'm approximating but probably six years he's been the supervisor at the front as well as on case, yes.

Q. But he's been involved in the current planning department for a number of years, at least six years?

A. That's correct.

Q. All right. And who is the supervisor that reports to you in public planning?

A. There is no immediate supervisor in the public planning?

Q. When you mean there is no immediate supervisor does that mean you just don't -- the position is vacant right now or --

A. Historically the department had a supervisor over each.

Q. Uh-huh.

A. With the loss of one of our supervisors, the remaining supervisor took the lead on case and we have a senior planner who's now taking the lead at the front counter. As far as is there a vacant position? I believe it's been filled with a senior administrative assistant of some sort.

Q. So then who is the person that reports to you concerning the public planning division?

A. Both the senior planner and Mr. Gebeke are still reporting to me on issues for the front counter.

Q. Who is the senior planner?

A. That would be Jim Marshall currently.

Q. And how long has Mr. Marshall been serving in that role?

A. I don't know the exact date. He's been there at least a year.

Q. Okay. Do you know how long Mr. Marshall has been working for current planning, regardless of the title or capacity?

A. Our department planners tend to circulate through the different divisions, so on and off, I can't tell you exactly how much time he's been in either one or the other. He's currently been in the current planning division, as I stated previously, I don't know exact amount of time but I estimate a year at least --

Q. Okay.

A. -- if not longer.

Q. So what does the case planning division do?

A. The case planning is responsible for the processing and preparing of staff reports for land

use entitlements that the -- either the appointed body or elected body at the City of Las Vegas will review and make their determinations on. They also can handle administrative amendments to other land use entitlements as well.

Q. All right. And what does the public planning division do?

A. That is the front line, so to speak, customer interaction. So anybody who comes in with a question or even process the building permits or license applications, can get information from the city planning department at the front counter as well as have initial reviews by the planning department on, say, that perspective, a specific portion of their building permit or licensing application.

Q. So public planning doesn't -- doesn't handle any sort of zoning issues or land use, or do they?

A. They -- unless we're short staffed, we're not called upon to write detailed staff reports on a regular basis.

Q. Okay.

A. If they are also asked to facilitate research, anything from code enforcement actions to zoning history.

Q. So is there anyone other than those two positions, case planning and public planning, that report directly to you?

A. The only other individual that reports to me currently is our senior technical assistant who does computer software, things of that nature.

Q. And how long have you been in the planning -- in the current planning department?

A. Well, I've only done one period of time where I was in the long-range division, so subtracting that, about 12 years.

Q. Okay. When you say the long range division, what do you mean by that?

A. As previously stated, the planning department has multiple divisions, and the current planning covers the case and the front counter. The long range division or comprehensive planning, as some people may refer to it, is where individuals work on special area plans, master plan, corridor plans, things of a more macro scale.

Q. Okay. So to whom do you directly report?

A. I currently directly report to Tom Perrigo, the acting -- the director as well as Karen Duddlestein the deputy director.

Q. Mr. Perrigo is the director of planning?

A. That is correct.
Q. And Miss Duddlesten is the deputy director of planning?
A. That's correct.
Q. Are there any other positions to whom you report?
A. No.
Q. Now, if I understand this correctly and I'm just trying to make sure I get the timeline straight, you've been involved -- you've worked at the city for more than 12 years?
A. In January, it will 14 years.
Q. In January it will be 14. Okay.
So let's just sort of start chronologically. You joined the city in what position originally?
A. As an entry level planner, which is a planner one position.
Q. And how long were you a planner one?
A. I don't know. I would have to look it up, but probably two years, a year and a half, two years.
Q. I understand you can't be precise but we're just trying to get sort of a general understanding of the timeline. That's all. And so then your next position after you moved from planner

one after a couple years was what?
A. A planner II position.
Q. Got it. And how long would you have been a planner II?
A. Probably for a similar amount of time. I don't know specifically.
Q. Got it. So when you were a planner one and planner II, what would be your job duties in those positions?
A. I started at the front counter, so as part of the current planning department division, which was customer interaction, answering zoning questions, processing building permits and licensing reviews.
Q. Got it.
A. Doing research of that nature. At some point as either a planner one or two, would have transitioned into the case planning role where I prepared staff reports and gone through doing reapplication conferences, bearing the information and ultimately giving a recommendation to to our management team.
Q. So then after you -- well let me phrase it this way. What was your position -- what was the next position after planner II?
A. I was promoted to a senior planner.

Q. Senior planner. And what does that entail?
A. Basically similar -- similar job responsibility, just more responsibility, more complex projects to review and to manage as far as, you know, being the case planner assigned to it. I also was facilitating assistance at the front counter basically making sure those operations ran smoothly.
Q. So as a senior planner, was your primary responsibility in the case division?
A. I have to refer to the dates to -- I don't recall off the top of my head. I know as a senior planner I was basically running the front counter portion and reporting to a supervisor.
Q. And who was that supervisor you would have been reporting to?
A. Well, there -- I don't know exactly. There's been a couple supervisors that you course of the time. The majority of it going from maybe 2005 to 2008 more than likely was Doug rank in.
Q. Okay. And then the next position after senior planner.
A. I became a planning supervisor.
Q. And what does it mean to be a planning supervisor?

A. Well, your responsibility -- you're responsible for the quality of the work, supervision of performance, the overall processes of either -- whichever section you're over, making sure if you're front counter that those operations are moving smoothly, you handle more difficult questions, you have interaction with customers and if they want to speak to somebody else other than the planner they're originally speaking with. On the case side of things you would be reviewing staff reports, ensuring quality of work once again, ensuring basically that all the reports are done in a timely manner, that things are being processed in accordance with the policies and procedures of the department and ultimately you're writing performance evaluations for the employees underneath you.
Q. Okay. As the planning supervisor, were you in current planning or were you in the long range planning?
A. As a supervisor, I have been in both divisions.
Q. Okay.
A. Primarily in the current planning division.
Q. And as a planning supervisor, do you

recall approximately what years that you held that position?

A. Well, I was promoted to section manager in April of '15, so either -- go back seven years, seven or eight years from there is the stint of as being a supervisor.

Q. Got it. So the next position is your current position being section manager is that right?

A. That is correct.

Q. All right.

And so you were in that position as planning supervisor for seven years or so. Is that about right?

A. I'd have to check my resume' but I believe it's seven to eight.

Q. Seems like?

A. Yes.

Q. So who would have -- to whom would you have reported in your position as planning supervisor?

A. To the planning manager, and most of it was Doug rank in for almost the entirety.

Q. And what was Mr. Rankin's role?

A. He was the planning manager and as planning manager, he was over case planning and

current planning.

Q. So in your capacity today as section manager, how many people do you have working under you?

A. I have to count it on my fingers, but.

Q. Understood.

MR. JIMMERSON: He has a lot of fingers.

THE WITNESS: As of right now -- give me a moment. I can read through all the name.

Q. You know what -- is it more than a dozen people?

A. It's probably right about there.

Q. Fair enough.

So when you joined -- prior to joining the City of Las Vegas, were you employed else where?

A. I had Graduated from east Carolina university and there was a period of six months that I was doing a job search. So it was graduate school to this employment.

Q. Got it. So do you have a graduate degree?

A. That I do.

Q. In what can you tell me?

A. I have a graduate degree in geography with a concentration in urban development.

Q. And when did you receive that degree?

A. In 2002.

Q. And so you moved here from North Carolina?

A. From graduating I moved back to Long Island, New York and then from there to here.

Q. So you're originally from Long Island?

A. That's correct.

Q. So it sounds like, and tell me if I'm wrong, that your introduction to Las Vegas was employment related?

A. Yes. Safe to say.

Q. All right. Did you look at any documents to prepare for your deposition today?

A. I refreshed my memory on the master plan. I conferred with my counsel.

Q. Okay. Which master plan did you look at?

A. I looked at the Las Vegas 2020 master plan.

Q. And how long did you look at the Las Vegas 2020 master plan?

A. As an estimate of time, maybe 30 minutes.

Q. And what were you looking for in the Las Vegas master plan?

A. I was looking at the land use element.

Q. You were looking at the land use element.

A. Mm-hmm.

Q. And what about the land use element were you looking at?

A. In its entirety.

Q. And why were you looking at the land use element?

A. To refresh my memory.

Q. And what memory were you trying to refresh?

A. My general knowledge.

Q. All right. Did you look at any particular land use elements for any particular property?

A. There's only one land use element as part of the Las Vegas 2020 master plan.

Q. And what is that land use -- how would you describe it for a layman like myself?

A. As part of the -- of the general plan prescribed by Nevada Revised Statutes, they require certain elements to be part of the general plan. 1 of those elements is the land use element.

Q. Okay.

A. And reviewing that portion of the Las Vegas master plan, I know the names start changing, but as far as the general plan is what the state statute calls it. When they adopt it in 2000 they called it the Las Vegas 2020 master plan. So they're

kind of synonymous.
Q. Okay. So you -- do you use the term master plan or do you use the term general plan?
A. They're kind of interchangeable.
Q. Interchangeable. Okay. Did you look at any land use elements for any particular property as part of your review?
A. No. There's no such thing.
Q. All right. Did you look at any particular property for your review?
A. No.
Q. Other than looking at the master plan, did you review any other documents?
A. I think I looked at potentially emails.
Q. Okay. And how long did you spend looking at emails?
A. Probably about 20 minutes.
Q. I'm sorry.
A. Probably about 20 minutes each time.
Q. And what emails were you looking at?
A. I was just refreshing my memory as far as chronology.
Q. And whose emails were you looking at? Your own. All the emails that I may have.
Okay. And did you look at those -- were

they printed off or did you look at them on your computer?
A. On the computer.
Q. And what was the -- what is your email address?
A. It's PLOWENSTEIN@ Las Vegas, Nevada.gov GOV.
Q. And about how many emails did you look at?
A. I don't know.
Q. Do you have those emails saved in a folder.
A. Yes.
Q. Did you search the email in any fashion?
A. No.
Q. You just looked at them in a chronological fashion?
A. Correct.
Q. Did those emails refresh your recollection of events?
MR. JIMMERSON: Mr. Bice, forgive me, I did want to note the appearance of Mr. Lowie on the deposition and Mr. Schreck joined us about 10 minutes earlier. Thank you sir.
THE WITNESS: To a limited extent.
///

BY MR. BICE:
Q. But they did refresh your recollection of some events.
A. Yes.
Q. Is that the only email address that you use in your role at the city?
A. Yes.
Q. Do you ever use your personal email address?
A. No.
Q. And what did those emails -- what was itself information that you gleaned from the emails that you reviewed?
A. Approximate date of when dialogue started.
Q. Okay. And do you recall when that was?
A. July 2015.
Q. And was there a particular email that reminded you of the dialogue that started in July of 2015?
A. No.
Q. How do you save your emails? Is there a folder that's designated for a particular project?
A. On projects? Yes. On large projects such as things that involve development agreements, yes I create a folder for it.

Q. What is the name of the folder that you have for this matter well strike that let me phrase it this way. What's the name of your folder that you looked through?
A. It's called Badlands.
Q. Called Badlands.
And do you recall when you set up that folder fortunate?
A. No, I don't recall.
Q. Are you responsible for setting it up or is there someone else in the City that's responsible for setting up the folder?
A. It would be my responsibility.
Q. Is there anything in that folder other than your own emails?
A. It would be any emails that are relevant to the project.
Q. Including -- here's what I'm trying to understand so you can explain this to me a little bit. This folder, is that a City -- in other words a planning department wide folder where numerous people emails get put into it or is it just yours?
A. It is a folder within Microsoft outlook which from -- I can move any one of the emails that were -- either I was sent or copied on I can I can

place into that folder.
Q. But is it just the emails that you place into that folder that are in there?
A. Correct. I would be the one that would be able to move it into that folder.
Q. Other people -- because it sounds like this is a local folder for your computer as opposed to to a network folder.
A. I can't speak to what our IT department could do but I don't think anybody else has access unless they logged in as me.
Q. As you?
A. Or administrator.
Q. Okay. And that bad lands folder, in addition to emails what else would you have in there?
A. That's all it contains.
Q. That's all it contains. Okay.
All right. Any other documents -- other than the master plan and reviewing your emails, any other documents you looked at?
A. Just previous staff research.
Q. Okay?
A. In the sense of maps.
Q. Maps. Okay. Anything else other than the maps?

A. Not that I recall, no.
Q. And what about -- what maps did you look at?
A. The maps were unit counts. Basically geographic areas with dots identifying constructed units versus nonconstructed units.
Q. And this is an internal map?
A. This was an internal exhibit, map, yes, that was created by the department.
Q. And when was that map created, do you know?
A. I don't know.
Q. Did you create it?
A. I requested it to be created by our GIS analyst.
Q. And who was the GIS analyst that you asked to create the map?
A. Jorge Mateo.
Q. And do you recall approximately when you requested Mr. Mateo to prepare that map?
A. That type of request has actually been done more than once.
Q. Okay. When was the first time you requested it?
A. I don't recall exactly. But some time

ago.
Q. How many times have you requested such a map be prepared?
A. Possibly three times.
Q. All right. And what does the map show? It shows the units.
A. It shows existing unit counts.
Q. Okay.
A. It shows units not constructed.
Q. Does that mean units that are approved but not constructed?
A. Yes. It could be -- referred to -- it shows -- it identifies entitled units but not constructed units.
Q. So does it show anything other than existing units and entitled units that are not constructed?
A. It may refer to the land use case, which entitled the subdivision or the multifamily development.
Q. Anything else it would show?
A. Not that I recall. I would have to look at it again to make sure.
Q. What's the purpose of creating such a map?
A. Information.

Q. Well, what was -- it was just for information that you had it created?
A. Well, in reference to the project, we look at the unit counts.
Q. Well, what are -- strike that let me put it this way. Why are you looking at the unit counts? What are you trying to determine?
A. When looking at the property, we look at the previous land use entitlement history and as part of the previous land use entitlement history as part of this project, there is a zoning case which has a maximum number of units associated as a condition of approval that was placed upon it by the city council at the time. So to assess the total number of units in that development area for conformance, either above, below, where we stand, basically, status.
Q. And so you've had that done -- why would that need to be done more than once?
A. To make sure that it's been done accurate and to make sure that if something wasn't looked at the first time that it was caught the second time.
Q. Were you asked by someone to do it more than once?
A. No.
Q. And did Mr. Matreo, is he the one that did

it all better way to phrase it is or had mow that did it each time you asked?

A. I believe so.

Q. And how big is this map?

A. 11 by 17 inches.

Q. And how many -- have you saved all versions of it that have been created?

A. I'm sure that he must have. I don't know if I have every version.

Q. Understood.

And so when you looked at the map for -- prior to today for your deposition, what were you looking at it for?

A. Once again, to assess unit counts.

Q. Unit counts. What were the unit counts that are contained on this map?

A. They're individual to each subdivision. So I can't recall off the top of my head what the numbers are on each one.

Q. Okay?

A. And then there's a total,.

Q. Do you recall what the totals are?

A. No, I can't give you an exact number right now. I would have to refer to -- the map.

Q. Look at the map right but you have that

map or the City has that map right.

A. Correct.

Q. Now, is the purpose of that map to determine whether or not there are any units available for further entitlement?

A. No. It's just to see where the -- where the overall development is as far as what the unit counts are.

Q. Based on what had previously been approved by the City?

A. Mm-hmm.

Q. Is that right?

A. I've looked at the previous land use entitlements, and based on that map, it includes not only -- it includes the Peccole Ranch master plan as it's labeled when it was first adopted and then amended subsequently. It includes both the phases of the plan.

Q. Phase one and phase two?

A. Mm-hmm. Because it's just one plan.

Q. Got it. So here I just need a quick clarification with you. When I ask you a question, because I do this all the time too that you just need to answer yes or no not an uh-huh or shaking of your head because she doesn't --

A. Okay. I apologize.

Q. That's quite all right. We all do that. I just want -- wanted to remind you of that so she can make a clear record.

So you looked at the previous land use approvals for phase I and phases two?

A. At one point or another,yes.

Q. And is that -- did you then provide that information on the approved unit counts to Mr. Mat?

A. No, he did his own research.

Q. So on the research that you did, did you create any internal documents concerning your own research on the unit counts?

A. I have working documents. I'm not sure if that's part of one or not. I'm sure I looked at unit counts based on the research I requested from my GIS analyst.

Q. And what sort of internal dock -- internal working documents would you have?

A. They could be anything from hypothetical scenarios to this is a prescribed procedure. This is the process by which to achieve something. It could be reference to looking at entitlements for specific information. It could range. I mean on a large project you look at a number of different things.

Q. Okay. And have you assembled all those documents in this case?

A. I just had them saved on my computer.

Q. Okay. But you haven't provided copies of those to the city attorney's office?

A. Not to my recollection.

Q. And approximately -- what's the volume of documents that we're talking about?

A. Well, there's meeting notes, there's development agreement comments, there's other working documents. So in total, maybe there's 25, somewhere in there.

Q. Okay. And so meeting notes, what sort of meeting notes would you have?

A. Meeting notes are just taking down outstanding issues or issues that have been brought up in our meetings that we had as far as reoccurring meetings with -- in regards to the development agreement or major project.

Q. Would those be meeting notes from meetings with the developer?

A. Yes. They would include notes from issues on the developer's side or issue's on the City side. It could be flood related, fire related. It could be a planning issue, it could be a developing concern.

Q. And then you just -- are these handwritten notes or are these typed up notes?
A. They're typed. Usually work off of a surface tablet, which is -- that connects to the network so they're all saved in the same place.
Q. Sure. And those are saved on your device, correct?
A. I guess they're in a document drive.
Q. Okay.
A. I don't know the architecture of the computer system.
Q. Does it synch to the network?
A. I'm not sure if it's on the local drive or it's on a network drive. I believe it's more of a local drive. But the tablet's able to access the local drive. So there is some kind of network activity going on.
Q. Got it.
Did you look at any of those documents for your deposition?
A. No.
Q. Have you had -- other than the unit count map we just talked about, have you had any other maps created for the Badlands project?
A. There was the legal descriptions from a

zoning case, Z-17-90, that we had the City surveyor plot out the areas in reference to legal descriptions provided in that zoning case.
Q. And why did you have that done?
A. It illustrated the areas that were rezoned by that zoning application.
Q. Weren't those legal descriptions already in the map?
A. There -- they're written legal descriptions, they're not illustrative.
Q. I see. So you had the surveyor plot that on a map for you.
A. Right. Based on the boundaries that are called out in the legal description die fining the geographical area.
Q. Do you still have this map that the surveyor created. I do. I have hard copy and it was electronically uploaded to a FTP that was shared with anybody that wanted it.
Okay. Any other maps that you have had created for the Badlands project.
A. Off the top of my head, I don't recall any other ones. Not to say there wasn't other research done.
Q. Sure. So just to sort of summarize, we

talked about your reviewing the master slash general plan, your emails and the unit count map. Are there any other documents that you reviewed for purposes of your deposition?
A. Not that I recall. I mean I work on various other projects during this time so I'm looking at other documents, such as the Unified Development Code every day.
Q. Sure.
A. Not specifically for this.
MR. JIMMERSON: Madam court reporter, would you please read the last question and last answer..

Thank you very much.
MR. BYRNES: I would like to speak to Mr. Lowenstein for a second.
MR. BICE: Absolutely. Let's go off the record.
THE VIDEOGRAPHER: Going off the record. The time is approximately 10:21 a.m.

THE VIDEOGRAPHER: This is the beginning of video recording number 2 in the continuing deposition of Peter Lowenstein. We're back on the

record. The time is 10:26 a.m.
BY MR. BICE:
Q. Are there any other documents than what we've gone over that you looked at to prepare for your deposition?
A. I looked at the transcript for the deposition of Tom Perrigo.
Q. Okay. And how long did you review that?
A. I don't recall how long it took me to read it.
Q. Did you read the entirety of it?
A. Almost the entirety.
Q. Okay. Anything in there that you disagreed with.
MR. JIMMERSON: Objection to the form of the question calls for a narrative and attempts to summarize a 300 page or 200 page document. It's unfair to the witness.
MR. BYRNES: I join with that. Go ahead and answer.
THE WITNESS: No.
BY MR. BICE:
Q. What was the purpose in reviewing Mr. Perrigo's depo transcript?
A. I was provided it by counsel so I read it.

Q. Okay. Any other documents?
A. Not to my recollection.
Q. Other than legal counsel did you speak with anyone about your deposition?
A. When Mr. Perrigo returned on Monday we had a scheduled meeting and he just made reference that it went long and they talked about a number of different things. That's the extent of our conversation.
Q. Okay. Have you spoken to anyone else.
A. Just counsel.
Q. All right. So backing up a little bit, you indicated that your email -- your folder, the Badlands folder indicated that April 2015 is when you first learned about the Badlands Golf Course development?
A. No, I never stated that.
Q. My apologies. I must have misunderstood then. What did you first learn about then when you were indicating April of 2015?
A. That's when I became the section manager.
Q. That's when you became a section manager?
A. That's correct.
Q. When did you first learn about development plans for the Badlands Golf Course?

A. I don't know an exact date but I would say July of 2015.
Q. And how did you learn about it?
A. Through my director.
Q. Would that be Mr. Perrigo?
A. That is correct.
Q. And what did Mr. Perrigo tell you?
A. I don't know the exact details of the conversation but in general, that the development -- a redevelopment of the golf courses, you know, project of that nature, and starting discussions on that project.
Q. Was this -- who all was present for this discussion that you had with Mr. Perrigo in or around July 2015?
A. I don't recall. I'm assuming that we had a verbal conversation about it. I don't recall any specifics.
Q. Well, had an application been submitted?
A. No.
Q. Did he tell you how he knew about it?
A. No. Not that I am aware of or that I recall. I don't know if he had a phone call, a meeting or anything.
Q. All right. Well, what was your

understanding of what that development was going to be?
A. The redevelopment of a portion of the golf course to -- either a portion or in the entirety to redevelop it for a combination of multifamily and single family development.
Q. It was going to be a residential development.
A. Both multifamily and single family residential development.
Q. So had you in your prior experience worked on the Peccole Ranch phase two master plan?
A. Not to my recollection.
Q. Okay. Had you had any relation -- or any work on any aspects of the Peccole Ranch master plan?
A. Of the master plan?
Q. Yes.
A. It was approved by city council prior to my employment at the City of Las Vegas.
Q. How about any work subsequent on the property within the master plan, after you joined the City of Las Vegas?
A. Potentially. I would have to go back through every case to see if I was a case planner, supervisor or any of those. Land use entitlements

spanning the 20 some odd years.
Q. Got it. Okay. So when you first spoke to Mr. Perrigo I understand -- you had an understanding they were going to put a residential development on the existing golf course; is that what you understood?
A. On the property which is composed of the golf course, yes.
Q. Okay. Did you have any understanding of what -- what this residential development was going to look like, in terms of the number of units, et cetera?
A. From -- I don't recall. I think I had an initial conversation that I had, I don't think there was any specifics.
Q. All right. So once you were told this by Mr. Perrigo, what did you do next relative to the Badlands project?
A. I don't recall specifically, but I believe I created a meeting, potentially, to bring the developer and to start going towards specific.
Q. Was this -- would you characterize this as a preapplication meeting?
A. It's on going dialogue. Usually on very large projects, in the case of, say, the Sky Canyon

development agreement, we have numerous meetings and then that qualifies as the preapplication conference.

Q. So you believe you set up a meeting with the developer?

A. With members of the City and the developer.

Q. All right. And who did you consider the developer to be?

A. More than likely it was the point of contact is Frank Pankratz.

Q. And would you communicate with him via email?

A. I've communicated with Mr. Pankratz through email, over the phone.

Q. Any other means of communication with Mr. Pankratz other than via email or over the phone?

A. In person.

Q. Understood. Any other meetings?

A. Potentially a text message.

Q. What would you text message Mr. Pankratz about?

A. I don't text him -- it would be in response if he texted me.

Q. Okay.

Is the cell phone that you use for the text

messaging, is that your personal cell phone. Yes.

What is the -- who is the carrier, the service provider?

A. It's AT&T.

Q. AT&T. And how long have you had this cell phone?

A. This particular model, maybe a year, maybe a little bit over a year.

Q. Do you text anyone at the City concerning your work?

A. The only other person that would be texted would be my director who has my number, but various people have my phone number. I've had office assistants communicate with me.

Q. Sure.

A. Licensing officers communicate with me.

Q. Has anyone else on behalf of the applicant regarding Badlands texted with you?

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

THE WITNESS: I've had a text message from Mr. Lowie.

BY MR. BICE:

Q. Mr. Lowie, how many text messages has Mr. Lowie sent you?

A. Maybe three.

Q. Okay. Do you recall what those were about?

A. Bourbon.

Q. What's that?

A. Bourbon.

Q. Bourbon. Okay. Anything else?

A. No. Not that I recall.

Q. And what is -- and we'll agree for purposes of the record to keep it confidential, but what is the cell phone number or the number that Mr. Lowie would text you at?

A. 702-810-1088.

Q. And how long have you had that number?

A. Since I've had a cell phone.

Q. So a long time.

Have you deleted any text messages from anyone concerning the Badlands golf course?

A. Not to my recollection.

Q. Have you deleted any emails from anyone concerning the Badlands golf course?

A. If there are emails that say thanks, things like that, potentially. So it's a possibility that there are some pertinent ones I retained in a folder.

Q. So when you set up that first -- let me put it this way. So you're informed about this planned redevelopment. Is someone in the City assigned to be the supervisor over it?

A. Can you restate the question?

Q. Sure. When you're informed by Mr. Perrigo about this planned redevelopment of the Badlands golf course, is someone in the City assigned to I guess supervise or shepherd it through the process?

A. With his conversation to me, I'm assuming that he basically assigned to me.

Q. To you?

A. As I have been on other projects, the lead on development agreements on larger projects of that nature and I've had that experience.

Q. Okay. So you were essentially assigned to handle this project; is that accurate?

A. On the macro side of things, yes. In regards to facilitating the meetings, pertaining to the issues making sure it stays on point that people from throughout the entire City are participating in it when they're needing to be and to make sure that it's basically an ongoing negotiation and to shepherd to the point where it would be something that would be able to be submitted to the City.