



27.43 inHg ↑



59°F



11/20/2020

12:18PM

CAMERA6

004810



27.37 inHg ↓



62°F



11/21/2020

03:20PM

CAMERA6

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RA 03554



27.25 inHg ↓



57°F



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RA 03555



27.31 inHg - 27°F 11/25/2020 09:11AM CAMERA6



27.34 inHg ↑ 37°F 11/26/2020 09:59AM CAMERA6



27.52 inHg ↑



32°F



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10:46AM

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004815

RA 03558



27.46 inHg - 50°F 11/29/2020 12:52PM CAMERA6



27.46 inHg ↓



53°F



11/30/2020

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004817

RA 03560



26.99 inHg ↓



66°F



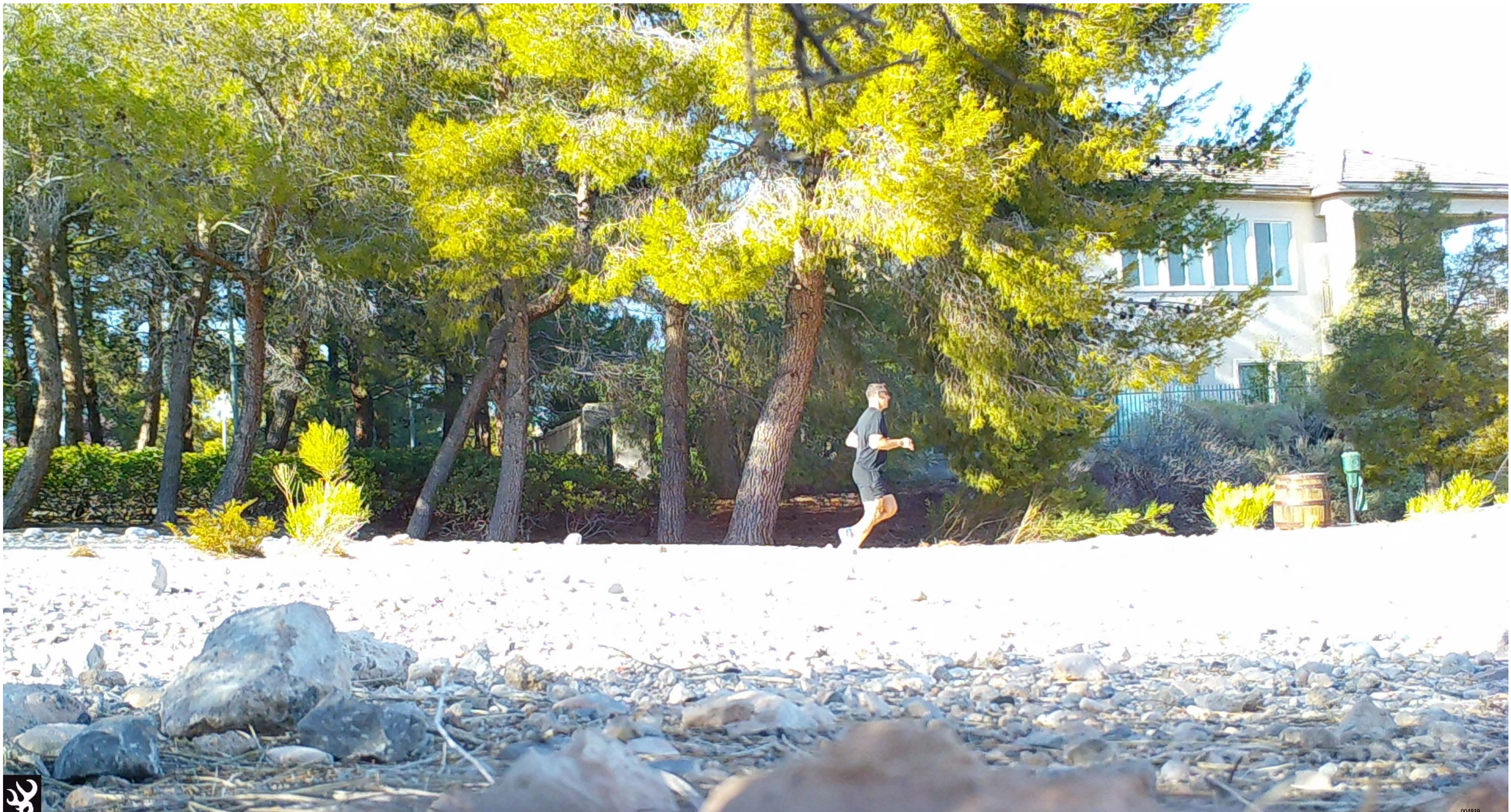
04/14/2018

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004818

RA 03561



27.20 inHg - 60°F (04/15/2018 04:12PM CAMERA8

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RA 03562



27.20 inHg - 59°F (04/15/2018 04:46PM CAMERA8

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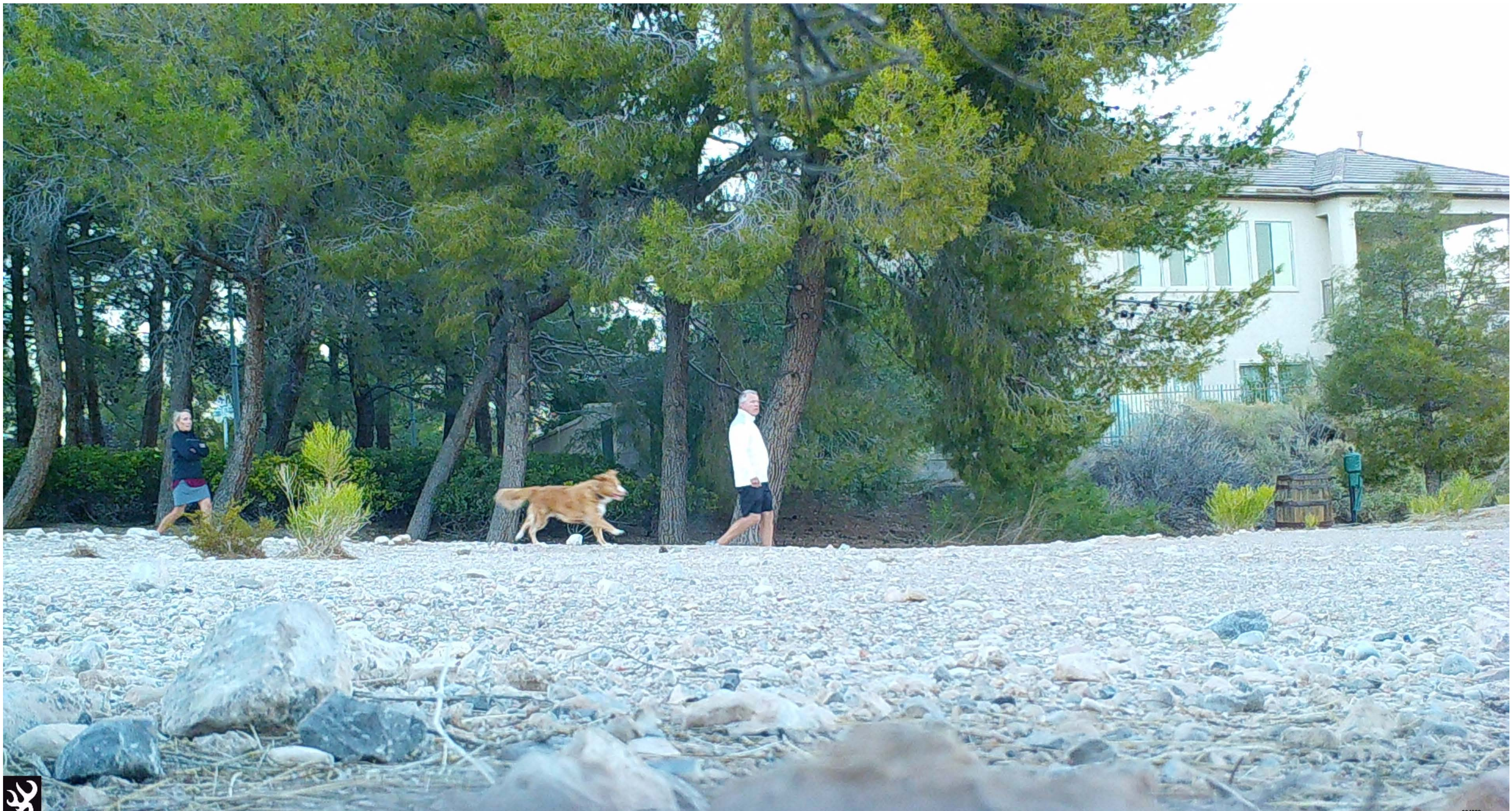
RA 03563



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

004821

RA 03564



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

004822

RA 03565



27.25 inHg ↓



68°F



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06:06PM

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RA 03566



27.02 inHg - 53°F (10/27/2019 05:04PM CAMERA6

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RA 03567



004825



27.01 inHg ↓ 93°F 09/11/2018 06:46PM CAMERA3

RA 03568



004826



27.01 inHg ↓ 93°F 09/11/2018 07:07PM CAMERA3



27.34 inHg ↑ 105°F 09/02/2019 04:57PM CAMERA 3

004827

RA 03570



27.28 inHg -



96°F



09/21/2019

03:47PM

CAMERA8

004828

RA 03571



27.20 inHg - 107°F 09/01/2019 01:03PM CAMERA8



27.37 inHg ↓

102°F



09/11/2020

03:29PM

CAMERA8

004830

RA 03573

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 from 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*

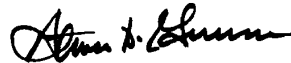
DEAR MR. MILLER:

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



CLERK OF THE COURT

1 OPPM
2 BRADFORD R. JERBIC
3 City Attorney
4 Nevada Bar No. 1056
5 By: PHILIP R. BYRNES
6 Deputy City Attorney
7 Nevada Bar No. 166
8 400 Stewart Avenue, Ninth Floor
9 Las Vegas, NV 89101
10 (702) 229-6629
11 (702) 386-1749 (fax)
12 Email: pbyrnes@lasvegasnevada.gov
13 Attorneys for CITY OF LAS VEGAS
14 and REGIONAL TRANSPORTATION COMMISSION
15

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

18 CITY OF LAS VEGAS, a political
19 subdivision of the State of Nevada; THE
20 REGIONAL TRANSPORTATION
21 COMMISSION OF SOUTHERN
22 NEVADA; ROE government entities I
23 through XXX; ROE CORPORATIONS I
24 through XXX; ROE INDIVIDUALS I
25 through XXX; ROE LIMITED LIABILITY
26 COMPANIES I through XXX, ROE quasi-
27 governmental entities I through XXX,

28 Defendants.

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

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

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

1 approval. If denied, the proposed changes could not be made to
2 the Master Plan of Streets and Highways and the Las Vegas
3 2020 Master Plan, and the approved Sheep Mountain Parkway
and master planned streets would remain in their current
alignments.

4 *Id.*

5 **III.**

6 **THE SUMMARY JUDGMENT STANDARD**

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

9 This court reviews a summary judgment order de novo.
10 We have previously explained that “[s]ummary judgment is
11 appropriate when the pleadings, depositions, answers to
12 interrogatories, admissions, and affidavits on file show that there
13 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.

14 The party requesting summary judgment bears the burden of establishing that no triable issues
15 remain. *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985). All reasonable
16 inferences must be made in favor of the opposing party and the Court may not weigh the
17 credibility of the evidence. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82,
18 87 (2002).

19 **IV.**

20 **THE PLACEMENT OF THE NORTH ALIGNMENT ON**
21 **THE CITY’S MASTER PLAN OF STREETS AND HIGHWAYS**
22 **DID NOT CONSTITUTE A TAKING OF THE SUBJECT PROPERTY**

23 The City’s Master Plan of Streets and Highways is a planning document. Nevada law
24 clearly provides that planning activities do not constitute a taking. In an effort to circumvent this
25 clearly established law, Plaintiff argues that the setback requirements of Las Vegas Municipal
26 Code (LVMC) 13.12.150 preclude all development of the subject property under the unique
27 circumstances of this case. The setback requirements of LVMC 13.12.150 do not even apply to
28 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

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

4 The Master Plan of Streets and Highways is part of the City's Master Plan. LVMC
5 13.12.020. NRS 278.230(1)(a) describes the purpose of the Master Plan:

6 A pattern and guide for that kind of orderly physical growth
7 and development of the city or county which will cause the least
8 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

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

10 The Master Plan of Streets and Highways has been
11 prepared by the City Planning Commission to promote the orderly
12 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.

13
14 The Master Plan of Streets and Highways is a planning document and the placement of a
15 potential roadway on the Plan does not constitute a taking of private property.

16 In *Sproul Homes of Nevada v. State ex rel. Department of Highways*, 96 Nev. 441, 444,
17 611 P.2d 620, 621 (1980), the Nevada Supreme Court found that inclusion of a street on a master
18 plan does not constitute a taking:

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

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

23 On appeal, the court stated: "In order to state a cause of action for
24 inverse condemnation, there must be an invasion or an
appropriation of some valuable property right which the landowner
25 possesses and the invasion or appropriation must directly and
specially affect the landowner to his injury." *Id.* at 117. The court
continued:

26 If a governmental entity and its responsible officials were
27 held subject to a claim for inverse condemnation merely because a
28 parcel of land was designated for potential public use on one of the
several authorized plans, the process of community planning would

1 either grind to a halt, or deteriorate to publication of vacuous
2 generalizations regarding the future use of land. We indulge in no
3 hyperbole to suggest that if every landowner whose property might
4 be affected at some vague and distant future time by any of these
5 legislatively permissible plans was entitled to bring an action in
6 declaratory relief to obtain a judicial declaration as to the validity
7 and potential effect of the plan upon his land, the courts of this
8 state would be inundated with futile litigation.

9 *Id.* at 117-18 (emphasis added). We agree with this reasoning.

10 96 Nev. at 444, 514 P.2d at 621-22.

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

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

25 A setback requirement is a legitimate exercise of the city's police power and does not
26 amount to a per se taking. *Echevarrieta v. City of Rancho Palos Verdes*, 103 Cal. Rptr. 2d 165,
27 171 (Cal. App. 2001), the Court stated:

28 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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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.”

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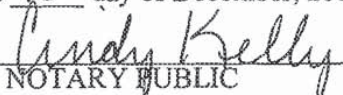
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setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13th day of December, 2011.


BRYAN K. SCOTT

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


NOTARY PUBLIC

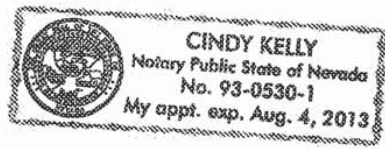


Exhibit 158

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

3 DATED this 13th day of December, 2011.

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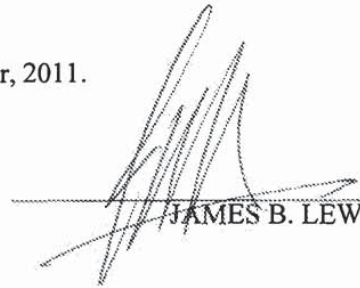
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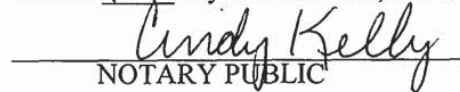
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JAMES B. LEWIS

SUBSCRIBED and SWORN to before

me this 13th day of December, 2011.


NOTARY PUBLIC

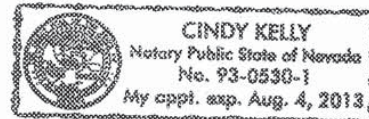


Exhibit 159

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4 D R A F T
5 T R A N S C R I P T
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9 Binion vs. Fore Stars
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12 Tom Perrigo, Volume I
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14
15 Monday, December 5, 2016
16
17
18 By: Carre Lewis, NV CCR 497, CA CSR 13337
19 carre@envision.legal
20
21
22 Envision Legal Solutions
23 1-702-781-DEPO
24
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1 ROUGH DRAFT TRANSCRIPT
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4 REALTIME AND INTERACTIVE REALTIME TRANSCRIPT
5 ROUGH DRAFT DISCLAIMER
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8 IMPORTANT NOTICE: AGREEMENT OF PARTIES
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11 We, the party working with realtime and rough draft
12 transcripts, understand that if we choose to use the
13 realtime rough draft screen or the printout, that we
14 are doing so with the understanding that the rough
15 draft is an uncertified copy.
16
17 We further agree not to share, give, copy, scan, fax
18 or in any way distribute this realtime rough draft
19 in any form (written or computerized) to any party.
20 However, our own experts, co-counsel, and staff may
21 have limited internal use of same with the
22 understanding that we agree to destroy our realtime
23 rough draft and/or any computerized form, if any,
24 and replace it with the final transcript upon its
25 completion.

2

1 REPORTER'S NOTE:
2 Since this deposition has been provided in real time
3 and is in rough draft form, please be aware that
4 there may be a discrepancy regarding page and line
5 number when comparing the realtime screen, the rough
6 draft, rough draft disk, and the final transcript.
7
8 Also please be aware that the realtime screen and
9 the uncertified rough draft transcript may contain
10 untranslated steno, reporter's notes, asterisks,
11 misspelled proper names, incorrect or missing Q/A
12 symbols or punctuation, and/or nonsensical English
13 word combinations. All such entries will be
14 corrected on the final, certified transcript.
15
16 Court Reporter's Name:
17 Carre Lewis, CCR 497
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1 I N D E X
2 WITNESS: TOM PERRIGO
3 EXAMINATION PAGE
4 By Mr. Rice 8
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RA 03595

1	Tom Perrigo		
2	Binion vs. Fore Stars		
3	Monday, December 5, 2016		
4	Carre Lewis, CCR No. 497		
5	E X H I B I T S		
6	NUMBER		PAGE
7	Exhibit 1	December 30, 2014 Letter From City of Las Vegas to Frank Pankratz at EHB Companies; BINION008326	49
8	Exhibit 2	Unified Development Code, R-4; BINION008322 and 323	53
9	Exhibit 3	Map, Southwest Sector; BINION008324	74
10	Exhibit 4	August 20, 2015, Letter from City of Las Vegas to Lowenstein, Planning Section Manager; BINION008337	118
11	Exhibit 5	City of Las Vegas Agenda Summary Page, Planning, September 8, 2015; BINION008328 - 337	130
12	Exhibit 6	Notice of Public Hearing, March 8, 1990; BINION008315 - 316	146
13	Exhibit 7	Peccole Ranch Master Plan	148
14	Exhibit 8	Agenda, City Council Minutes Meeting of April 4, 1990; BINION008313 - 314	155
15	Exhibit 9	Agenda, City Council Minutes Meeting of April 4, 1990 and Zoning Action Letter	179
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1	Exhibit 10	Code Provision	195
2	Exhibit 11	Title 19 Unified Development Code, Page 13	203
3	Exhibit 12	November 24, 2015 Letter From Seventy Acres LLC to City of Las Vegas; CLV000247 - 249	205
4			
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1 THE VIDEOGRAPHER: This is the beginning of
2 video record the No. 1 in the deposition of Tom
3 Perrigo, taken in the case of Binion, et al., versus
4 Fore Stars, et al., held at Pisanelli Bice, 400
5 South 7th Street, Suite 300, in Las Vegas, Nevada
6 89101.
7 The date is December 5, 2016. My name is
8 Hunter Blackburn, the videographer, working on
9 behalf of Envision Legal Services.
10 The court reporter is Carre Lewis.
11 Will all present please identify
12 themselves, beginning with the witness.
13 THE WITNESS: Tom Perrigo.
14 MR. BYRNES: Phil Byrnes representing City
15 of Las Vegas and the deponent.
16 MR. JIMMERSON: Good morning. Jim
17 Jimmerson I'm privileged to representing the
18 defendants in this matter, Fore Stars, LTD, 180 Land
19 Company, LLC, and Seventy Acres, LLC. Good morning
20 to you all.
21 MR. BICE: Todd Bice on behalf of the
22 plaintiffs.
23 ///
24 ///
25 ///

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1 THE VIDEOGRAPHER: Would the court reporter
2 please swear in the witness.
3 Whereupon --
4 TOM PERRIGO,
5 having been first duly sworn to testify to the
6 truth, was examined and testified as follows:
7 EXAMINATION
8 BY MR. BICE:
9 Q. Good morning, Mr. Perrigo. Can you state
10 your full name for the record.
11 A. Thomas Andrew Perrigo.
12 Q. Can you tell me where you currently work?
13 A. I work for the City of Las Vegas.
14 Q. How long have you worked for the City of
15 Las Vegas?
16 A. Since August of 1994.
17 Q. What is your current position with City of
18 Las Vegas?
19 A. Current position is planning director and
20 chief sustainability officer.
21 Q. All right. Can you tell me what it means
22 to be the planning director and the chief
23 sustainability officer?
24 A. The planning director is responsible for
25 the function and operation of the planning

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

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

5 A. Yes.

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

8 A. Yes.

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

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

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

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

22 MR. JIMMERSON: Thank you.
23 (Exhibit 1 marked.)

24 BY MR. BICE:

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

49

1 Exhibit No. 1. Do you need your glasses?

2 A. I do.

3 Q. Understood.

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

7 A. Yes, I have seen it.

8 Q. Did you see it before it was sent?

9 A. No.

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

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

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

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

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

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

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1 quite a few.

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

6 A. Yes.

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

8 A. No.

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

11 What's the purpose of a letter like this?

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

16 Q. This information is all publicly available
17 correct?

18 A. Yes.

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

21 A. Yes.

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

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

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

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1 limited to zoning?

2 A. Yes.

3 Q. Why is it limited to zoning?

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

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

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

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

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

24 Q. Okay.

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

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RA 03597

1 what's the proper way to say it? The zoning governs
2 more -- I guess zoning first, land use second.
3 Q. So --
4 A. If the land use and the zoning aren't in
5 conformance, then the zoning would be a higher order
6 entitlement, I guess.
7 Q. So it's your position that zoning
8 supercedes the general plan --
9 A. Yes.
10 Q. Or the master plan?
11 A. Yes.
12 Q. Is that spelled out anywhere in the city's
13 code?
14 A. I don't -- I don't -- I don't know.
15 MR. BICE: Let's mark this one.
16 (Exhibit 2 marked.)
17 BY MR. BICE:
18 Q. Can you tell me what Exhibit No. 2 is.
19 A. It's entitled the Unified Development Code.
20 Q. What is that?
21 A. The -- used to be -- it's Title 19.
22 Q. Okay. What is Title 19?
23 A. Essentially a zoning code.
24 Q. Zoning code for the City of Las Vegas?
25 A. That is correct.

53

1 Q. Is this something that you were familiar
2 with?
3 A. Yes.
4 Q. Is this something that governs developments
5 in the City of Las Vegas?
6 A. Yes.
7 Q. And this is something I assume that your
8 department is responsible for adhering to?
9 A. The planning department among other
10 departments, yes, building and safety, public works.
11 Q. Who prepares the Title 19 or Chapter 19?
12 A. Who prepares?
13 Q. Yes. In other words, who drafted it? Do
14 you know?
15 A. Well, a number of people have been involved
16 in drafting it over the years. Ultimately the final
17 drafting comes out of the City attorney's office.
18 Q. Then it gets adopted by the City council,
19 correct?
20 A. Yes.
21 Q. Do you consider the City ordinance here
22 Title 19 to be binding?
23 MR. BYRNES: I'm going to object. Calls
24 for legal conclusion.
25 Go ahead and answer.

54

1 BY MR. BICE:
2 Q. Just asking you for you as the planning
3 director do you consider it to be binding?
4 A. I consider it to be binding. Again, the
5 council has discretion.
6 Q. If you -- I'm just using this one as an
7 example. This is R-4, can you tell me what R-4 is
8 presently?
9 A. High density residential district.
10 Q. If you look at the bottom left-hand corner
11 of this document, this is dated as of March 16 of
12 2011, do you see that?
13 A. Yes.
14 Q. Due know whether or not that's the current
15 version of the City code of Title 19?
16 A. Title 19 -- well, this would not be.
17 Q. Okay.
18 A. It's -- Title 19 is amended quite
19 frequently.
20 Q. Okay.
21 A. And every time it amended then it becomes
22 the new.
23 Q. A new version, correct?
24 A. A new version.
25 Q. Is amended multiple times a year in your

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1 experience?
2 A. Yes.
3 Q. So dealing with this version that existed
4 at least as of March 11 of 2011, R-4 district is for
5 high density you said?
6 A. Yes.
7 Q. Can you -- in layman's terms can you tell
8 me what that means? Does that mean like apartments?
9 A. Means multifamily dwellings, attached.
10 Q. Condos, apartments, things like that; is
11 that correct?
12 A. That's correct.
13 Q. It says here: "The R-4 District is intend
14 to allow for the development of high density
15 multifamily units within the downtown urban core and
16 in other high intensity areas suitable for high
17 density residential projects."
18 How would I figure out what are the other
19 high intensity areas suitable for high density
20 residential development; where would I look to
21 figure out those areas?
22 A. I don't know that those are specifically
23 spelled out.
24 Q. Okay. Are those -- are areas appropriately
25 designated for high density residential development,

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RA 03598

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

145

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

146

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

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1 Q. Would that eliminate, then, the prior
2 zoning classifications on the property?
3 A. If approved, yes.
4 Q. Was this approved?
5 A. Yes.
6 Q. With conditions, correct?
7 A. Yes.
8 Q. Who was the applicant?
9 A. Peccole -- William Peccole trust.
10 Q. 1982 trust?
11 A. 1982 trust.
12 Q. Was that the developer?
13 A. I don't know.
14 Q. Do you know who the developer was, if not
15 the trust?
16 A. I don't know.
17 Q. Have you ever investigated who the
18 developer was?
19 A. I have not.
20 MR. BICE: Have this marked.
21 (Exhibit 7 marked.)
22 BY MR. BICE:
23 Q. Showing you what's been marked as Exhibit
24 No. 7, have you seen this document before?
25 A. I have.

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RA 03599

1 Q. Can you tell me what it is?
2 A. The Peccole Ranch master plan.
3 Q. When did you first see this Peccole Ranch
4 master plan?
5 A. I don't know, early on when the proposal
6 was first made and Mr. Lowenstein started his
7 research into the property.
8 Q. Did you ever show a copy -- do you know,
9 did anybody at the City ever give a copy of this to
10 the applicant EHB companies?
11 A. I don't know.
12 Q. Did it ever come up at any of the
13 preapplication meetings?
14 A. Yes.
15 Q. Where you were present?
16 A. Yes.
17 Q. Tell me what came up about it, about the
18 master plan.
19 A. At some point, I don't remember exactly
20 when, based on the plan, staff had requested that
21 the applicant also file for a major modification to
22 this plan.
23 Q. Okay.
24 A. And I don't know in what other context, but
25 that's really the key.

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1 Q. Did the applicant do so?
2 A. Yes.
3 Q. Why was it that staff determined that they
4 needed to submit a major modification to this plan,
5 Exhibit 7?
6 A. Staff determination was based on the fact
7 that it was a rather large change to the existing
8 plan out there, and given the number of units that
9 were being requested and given the question as to
10 whether or not this plan existed or had any standing
11 and what that meant, staff requested a major
12 modification so that council could understand and
13 decide whether or not what was being proposed was
14 appropriate in the context of this earlier plan.
15 Q. All right. At the time that you were
16 alerted to this plan, you reviewed it, correct?
17 A. Yes.
18 Q. Did you believe that it was binding?
19 A. I did not.
20 Q. Did you tell anyone that?
21 A. I believe so.
22 Q. Who did you tell that you didn't think it
23 was binding?
24 A. I don't recall. I --
25 Q. When did you make that determination?

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

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

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RA 03600

1 2-17-90 and I believe the majority don't. And the
2 plan was never modified as it sits. I remember the
3 final thing was the land use element to the general
4 plan speaks of all master plans in the City but
5 describes those that require major modification to
6 change, and this is not one of those.

7 Q. What does that mean?

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

17 Q. Who developed that list?

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

20 Q. When?

21 A. I don't know.

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

24 A. No.

25 Q. So prior to that?

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1 A. Yes.

2 Q. So on the planning commission agenda going
3 back to item No. Of or Exhibit 6 we will come back
4 to 7 in a moment, second page, so the zoning change
5 was 2-17-90 was approved, correct?

6 A. Yes.

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

9 A. Yes.

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

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

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

18 A. Yes.

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

22 A. Yes.

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

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1 there, correct?

2 A. Correct.

3 Q. Did the Peccole -- did the way the Peccole
4 1982 Trust have the ability to challenge any of
5 those conditions at the City council if it wanted
6 to?

7 A. Yes.

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

10 A. Yes.

11 Q. Did it do so?

12 A. I don't know.

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

15 A. No.

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

18 A. Yes.

19 (Exhibit 8 marked.)

20 BY MR. BICE:

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

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

155

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

3 Q. Letter. Okay.

4 This is what gets sent to the applicant,
5 correct?

6 A. Yes.

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

10 A. Yes.

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

13 A. Yes.

14 Q. And it was approved, right?

15 A. Yes.

16 Q. Unanimously approved, correct?

17 A. Yes.

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

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

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

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

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RA 03601

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

245

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

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1 remember what those numbers work out to be.
2 Q. Are you treating them as fungible in this
3 case?
4 A. I don't know because I don't recall what
5 those numbers are.
6 Q. Well, when was this project closed out?
7 A. What project?
8 Q. The Peccole Ranch master plan.
9 A. I don't recall any formal action that
10 closed it out.
11 Q. Has the City ever told anybody that it was
12 closed out?
13 A. Not that I'm aware of. I don't know.
14 Q. When were the models released?
15 A. I don't know.
16 Q. Were they released sometime in 1996, 1990?
17 A. I don't know. I do recall reading that the
18 bonds were released.
19 Q. When does the City consider a development
20 to be closed out?
21 MR. JIMMERSON: Object to the question.
22 THE WITNESS: I don't know that there is
23 any official determination of closed out. It likely
24 refers to a public works action regarding the
25 infrastructure.

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1 BY MR. BICE:
2 Q. And the bonds are what secure the
3 infrastructure, right?
4 A. Yes.
5 Q. And so when the bonds are released -- the
6 bonds are only released when the infrastructure is
7 deemed complete, correct?
8 A. That would be a question for public works.
9 Q. Is that your understanding?
10 A. I don't know if there are circumstances
11 where that wouldn't be the case. I don't know.
12 That would have to be a question for public works.
13 Q. Have you ever heard the term parent final
14 map before?
15 A. Yes.
16 Q. What is that?
17 A. Well, the parent final map is the map that
18 all of the specific various areas final maps relate
19 to in the tentative maps.
20 MR. JIMMERSON: Mr. Bice -- Todd, can you
21 tell me what's the first word before the words
22 "final map."
23 MR. BICE: Parent.
24 MR. JIMMERSON: P-A-R-E-N-T.
25 MR. BYRNES: Do you want a break?

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RA 03602

1 Mr. Perrigo, thank you. Can I ask you ten minutes
2 worth of questions?
3 THE WITNESS: Sure.
4 MR. BYRNES: Why don't -- I think this
5 would be better if we regroup to do it then.
6 MR. JIMMERSON: I will do it then. I'm
7 grouping, not regrouping.
8 MR. BICE: Thank you. We can go off the
9 record.
10 THE WITNESS: Going off the video record.
11 This includes the videotape deposition of Tom
12 Perrigo taken on December 5, 2016. The time is
13 approximately 4:34 p.m.
14 (Off the record.)
15
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RA 03603

Exhibit 160

1 THE VIDEOGRAPHER: This is the beginning
2 of video recording number 1 in the deposition of
3 Peter Lowenstein taken in the matter of Binion versus
4 Fore Stars, et al. held at Pisanelli Bice, 400 south
5 seven street, suite 300 in Las Vegas, Nevada on
6 December, 2016. The time is approximately 9:40 a.m.
7 The court reporter is Monice Campbell. My name is
8 Hunter Blackburn, the videographer representing
9 Envision Legal Solutions. Will the -- will everybody
10 identify themselves, please beginning, with the
11 witness.
12 THE WITNESS: Sure. Peter David
13 Lowenstein.
14 MR. BYRNES: Phil Byrnes representing the
15 deponent and City of Las Vegas Inc.
16 MR. JIMMERSON: Good morning. My name is
17 Jim Jimmerson. I have the privilege of representing
18 the defendant Fore Star entities. Good morning
19 everyone here.
20 MR. BICE: Todd Bice on behalf of the
21 plaintiffs and Frank Schreck will be joining us. So
22 when he steps in, that's who else may be in the room.
23 MR. JIMMERSON: Mr. Lowie may or may not
24 be here today.
25 THE VIDEOGRAPHER: Will the court reporter

1

1 please swear in the witness.
2 PROCEEDINGS
3 Deponent
4 called as a witness herein,
5 being first duly sworn,
6 was examined and testified as follows:
7
8 EXAMINATION
9 BY MR. BICE:
10 Q. Good morning, sir. Can you state your
11 full name for the record, please.
12 A. Peter David Lowenstein.
13 Q. Mr. Lowenstein, can you tell me where you
14 currently work?
15 A. I work for the City of Las Vegas in the
16 department of planning.
17 Q. All right. Do you have a title in your --
18 A. My current title is the planning section
19 manager.
20 Q. Can you tell me what it means to be the
21 planning section manager?
22 A. As a planning section manager, I am
23 responsible for the current planning division of the
24 planning department.
25 Q. Okay. What does the planning -- I think I

2

1 got it right. The planning section, what is that?
2 A. Our department is composed much a number
3 of different divisions and in the current planning
4 division is composed of -- what is known is case
5 planning which is land use entitlements and the front
6 or public planning which is our front counter
7 customer direction.
8 Q. Because you're using using terminology I
9 can follow along here so I can make I use the
10 right -- the same words you're using. I just want to
11 make sure. My apologies.
12 A. If there is any clarification let me know?
13 Q. I'm sure I will need some as we progress
14 today.
15 So when you say -- let's sort of break that
16 down. You've got under the branch of current
17 planning and I guess really is it a division?
18 A. Yes.
19 Q. Division?
20 A. Section division would be synonymous.
21 Q. Got it then there are two sort of subparts
22 under that. You said land use.
23 A. It's referred to as case planning.
24 Q. Case planning. Okay.
25 And then you've got the front counter you

3

1 said.
2 A. Which is the public planning portion of
3 that division.
4 Q. Got it. Okay. And both of those
5 divisions report to you.
6 A. That's correct.
7 Q. And who is -- who is in charge -- who is
8 the person that reports to you on case planning?
9 A. That would be my planning supervisor,
10 Steve go Becky.
11 Q. Any chance you could spell the last name.
12 A. GEBEKE.
13 MR. JIMMERSON: Can you help me with that
14 again please Mr. Lowenstein?
15 THE WITNESS: What was that?
16 MR. JIMMERSON: The spelling again.
17 THE WITNESS: Sure. GEBEKE.
18 MR. JIMMERSON: The first name is Steven
19 did you say.
20 THE WITNESS: Steve.
21 MR. JIMMERSON: Steve thank you so much.
22 BY MR. BICE:
23 Q. How long has Mr. Gebeke been supervisor
24 over the case planning?
25 A. He's been the supervisor on and off

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RA 03605

1 throughout the last -- I'm approximating but probably
 2 six years he's been the supervisor at the front as
 3 well as on case, yes.
 4 Q. But he's been involved in the current
 5 planning department for a number of years, at least
 6 six years?
 7 A. That's correct.
 8 Q. All right. And who is the supervisor that
 9 reports to you in public planning?
 10 A. There is no immediate supervisor in the
 11 public planning?
 12 Q. When you mean there is no immediate
 13 supervisor does that mean you just don't -- the
 14 position is vacant right now or --
 15 A. Historically the department had a
 16 supervisor over each.
 17 Q. Uh-huh.
 18 A. With the loss of one of our supervisors,
 19 the remaining supervisor took the lead on case and we
 20 have a senior planner who's now taking the lead at
 21 the front counter. As far as is there a vacant
 22 position? I believe it's been filled with a senior
 23 administrative assistant of some sort.
 24 Q. So then who is the person that reports to
 25 you concerning the public planning division?

5

1 A. Both the senior planner and Mr. Gebeke are
 2 still reporting to me on issues for the front
 3 counter.
 4 Q. Who is the senior planner?
 5 A. That would be Jim Marshall currently.
 6 Q. And how long has Mr. Marshall been serving
 7 in that role?
 8 A. I don't know the exact date. He's been
 9 there at least a year.
 10 Q. Okay. Do you know how long Mr. Marshall
 11 has been working for current planning, regardless of
 12 the title or capacity?
 13 A. Our department planners tend to circulate
 14 through the different divisions, so on and off, I
 15 can't tell you exactly how much time he's been in
 16 either one or the other. He's currently been in the
 17 current planning division, as I stated previously, I
 18 don't know exact amount of time but I estimate a year
 19 at least --
 20 Q. Okay.
 21 A. -- if not longer.
 22 Q. So what does the case planning division
 23 do?
 24 A. The case planning is responsible for the
 25 processing and preparing of staff reports for land

6

1 use entitlements that the -- either the appointed
 2 body or elected body at the City of Las Vegas will
 3 review and make their determinations on. They also
 4 can handle administrative amendments to other land
 5 use entitlements as well.
 6 Q. All right. And what does the public
 7 planning division do?
 8 A. That is the front line, so to speak,
 9 customer interaction. So anybody who comes in with a
 10 question or even process the building permits or
 11 license applications, can get information from the
 12 city planning department at the front counter as well
 13 as have initial reviews by the planning department
 14 on, say, that perspective, a specific portion of
 15 their building permit or licensing application.
 16 Q. So public planning doesn't -- doesn't
 17 handle any sort of zoning issues or land use, or do
 18 they?
 19 A. They -- unless we're short staffed, we're
 20 not called upon to write detailed staff reports on a
 21 regular basis.
 22 Q. Okay.
 23 A. If they are also asked to facilitate
 24 research, anything from code enforcement actions to
 25 zoning history.

7

1 Q. So is there anyone other than those two
 2 positions, case planning and public planning, that
 3 report directly to you?
 4 A. The only other individual that reports to
 5 me currently is our senior technical assistant who
 6 does computer software, things of that nature.
 7 Q. And how long have you been in the
 8 planning -- in the current planning department?
 9 A. Well, I've only done one period of time
 10 where I was in the long-range division, so
 11 subtracting that, about 12 years.
 12 Q. Okay. When you say the long range
 13 division, what do you mean by that?
 14 A. As previously stated, the planning
 15 department has multiple divisions, and the current
 16 planning covers the case and the front counter. The
 17 long range division or comprehensive planning, as
 18 some people may refer to it, is where individuals
 19 work on special area plans, master plan, corridor
 20 plans, things of a more macro scale.
 21 Q. Okay. So to whom do you directly report?
 22 A. I currently directly report to Tom
 23 Perrigo, the acting -- the director as well as Karen
 24 Duddelstein the deputy director.
 25 Q. Mr. Perrigo is the director of planning?

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 RA 03606

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

9

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

10

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

11

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

12

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RA 03607

1 recall approximately what years that you held that
2 position?
3 A. Well, I was promoted to section manager in
4 April of '15, so either -- go back seven years, seven
5 or eight years from there is the stint of as being a
6 supervisor.
7 Q. Got it. So the next position is your
8 current position being section manager is that right?
9 A. That is correct.
10 Q. All right.
11 And so you were in that position as
12 planning supervisor for seven years or so. Is that
13 about right?
14 A. I'd have to check my resume' but I believe
15 it's seven to eight.
16 Q. Seems like?
17 A. Yes.
18 Q. So who would have -- to whom would you
19 have reported in your position as planning
20 supervisor?
21 A. To the planning manager, and most of it
22 was Doug rank in for almost the entirety.
23 Q. And what was Mr. Rankin's role?
24 A. He was the planning manager and as
25 planning manager, he was over case planning and

13

1 current planning.
2 Q. So in your capacity today as section
3 manager, how many people do you have working under
4 you?
5 A. I have to count it on my fingers, but.
6 Q. Understood.
7 MR. JIMMERSON: He has a lot of fingers.
8 THE WITNESS: As of right now -- give me a
9 moment. I can read through all the name.
10 Q. You know what -- is it more than a dozen
11 people?
12 A. It's probably right about there.
13 Q. Fair enough.
14 So when you joined -- prior to joining the
15 City of Las Vegas, were you employed else where?
16 A. I had Graduated from east Carolina
17 university and there was a period of six months that
18 I was doing a job search. So it was graduate school
19 to this employment.
20 Q. Got it. So do you have a graduate degree?
21 A. That I do.
22 Q. In what can you tell me?
23 A. I have a graduate degree in geography with
24 a concentration in urban development.
25 Q. And when did you receive that degree?

14

1 A. In 2002.
2 Q. And so you moved here from North Carolina?
3 A. From graduating I moved back to Long
4 Island, New York and then from there to here.
5 Q. So you're originally from Long Island?
6 A. That's correct.
7 Q. So it sounds like, and tell me if I'm
8 wrong, that your introduction to Las Vegas was
9 employment related?
10 A. Yes. Safe to say.
11 Q. All right. Did you look at any documents
12 to prepare for your deposition today?
13 A. I refreshed my memory on the master plan.
14 I conferred with my counsel.
15 Q. Okay. Which master plan did you look at?
16 A. I looked at the Las Vegas 2020 master
17 plan.
18 Q. And how long did you look at the Las Vegas
19 2020 master plan?
20 A. As an estimate of time, maybe 30 minutes.
21 Q. And what were you looking for in the Las
22 Vegas master plan?
23 A. I was looking at the land use element.
24 Q. You were looking at the land use element.
25 A. Mm-hmm.

15

1 Q. And what about the land use element were
2 you looking at?
3 A. In its entirety.
4 Q. And why were you looking at the land use
5 element?
6 A. To refresh my memory.
7 Q. And what memory were you trying to
8 refresh?
9 A. My general knowledge.
10 Q. All right. Did you look at any particular
11 land use elements for any particular property?
12 A. There's only one land use element as part
13 of the Las Vegas 2020 master plan.
14 Q. And what is that land use -- how would you
15 describe it for a layman like myself?
16 A. As part of the -- of the general plan
17 prescribed by Nevada Revised Statutes, they require
18 certain elements to be part of the general plan. 1
19 of those elements is the land use element.
20 Q. Okay.
21 A. And reviewing that portion of the Las
22 Vegas master plan, I know the names start changing,
23 but as far as the general plan is what the state
24 statute calls it. When they adopt it in 2000 they
25 called it the Las Vegas 2020 master plan. So they're

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1 kind of synonymous.
2 Q. Okay. So you -- do you use the term
3 master plan or do you use the term general plan?
4 A. They're kind of interchangeable.
5 Q. Interchangeable. Okay. Did you look at
6 any land use elements for any particular property as
7 part of your review?
8 A. No. There's no such thing.
9 Q. All right. Did you look at any particular
10 property for your review?
11 A. No.
12 Q. Other than looking at the master plan, did
13 you review any other documents?
14 A. I think I looked at potentially emails.
15 Q. Okay. And how long did you spend looking
16 at emails?
17 A. Probably about 20 minutes.
18 Q. I'm sorry.
19 A. Probably about 20 minutes each time.
20 Q. And what emails were you looking at?
21 A. I was just refreshing my memory as far as
22 chronology.
23 Q. And whose emails were you looking at?
24 Your own. All the emails that I may have.
25 Okay. And did you look at those -- were

17

1 they printed off or did you look at them on your
2 computer?
3 A. On the computer.
4 Q. And what was the -- what is your email
5 address?
6 A. It's PLOWENSTEIN@ Las Vegas, Nevada.gov
7 GOV.
8 Q. And about how many emails did you look at?
9 A. I don't know.
10 Q. Do you have those emails saved in a
11 folder.
12 A. Yes.
13 Q. Did you search the email in any fashion?
14 A. No.
15 Q. You just looked at them in a chronological
16 fashion?
17 A. Correct.
18 Q. Did those emails refresh your recollection
19 of events?
20 MR. JIMMERSON: Mr. Bice, forgive me, I
21 did want to note the appearance of Mr. Lowie on the
22 deposition and Mr. Schreck joined us about 10 minutes
23 earlier. Thank you sir.
24 THE WITNESS: To a limited extent.
25 ///

18

1 BY MR. BICE:
2 Q. But they did refresh your recollection of
3 some events.
4 A. Yes.
5 Q. Is that the only email address that you
6 use in your role at the city?
7 A. Yes.
8 Q. Do you ever use your personal email
9 address?
10 A. No.
11 Q. And what did those emails -- what was
12 itself information that you gleaned from the emails
13 that you reviewed?
14 A. Approximate date of when dialogue started.
15 Q. Okay. And do you recall when that was?
16 A. July 2015.
17 Q. And was there a particular email that
18 reminded you of the dialogue that started in July of
19 2015?
20 A. No.
21 Q. How do you save your emails? Is there a
22 folder that's designated for a particular project?
23 A. On projects? Yes. On large projects such
24 as things that involve development agreements, yes I
25 create a folder for it.

19

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

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1 place into that folder.
2 Q. But is it just the emails that you place
3 into that folder that are in there?
4 A. Correct. I would be the one that would be
5 able to move it into that folder.
6 Q. Other people -- because it sounds like
7 this is a local folder for your computer as opposed
8 to to a network folder.
9 A. I can't speak to what our IT department
10 could do but I don't think anybody else has access
11 unless they logged in as me.
12 Q. As you?
13 A. Or administrator.
14 Q. Okay. And that bad lands folder, in
15 addition to emails what else would you have in there?
16 A. That's all it contains.
17 Q. That's all it contains. Okay.
18 All right. Any other documents -- other
19 than the master plan and reviewing your emails, any
20 other documents you looked at?
21 A. Just previous staff research.
22 Q. Okay?
23 A. In the sense of maps.
24 Q. Maps. Okay. Anything else other than the
25 maps?

21

1 A. Not that I recall, no.
2 Q. And what about -- what maps did you look
3 at?
4 A. The maps were unit counts. Basically
5 geographic areas with dots identifying constructed
6 units versus nonconstructed units.
7 Q. And this is an internal map?
8 A. This was an internal exhibit, map, yes,
9 that was created by the department.
10 Q. And when was that map created, do you
11 know?
12 A. I don't know.
13 Q. Did you create it?
14 A. I requested it to be created by our GIS
15 analyst.
16 Q. And who was the GIS analyst that you asked
17 to create the map?
18 A. Jorge Mateo.
19 Q. And do you recall approximately when you
20 requested Mr. Mateo to prepare that map?
21 A. That type of request has actually been
22 done more than once.
23 Q. Okay. When was the first time you
24 requested it?
25 A. I don't recall exactly. But some time

22

1 ago.
2 Q. How many times have you requested such a
3 map be prepared?
4 A. Possibly three times.
5 Q. All right. And what does the map show?
6 It shows the units.
7 A. It shows existing unit counts.
8 Q. Okay.
9 A. It shows units not constructed.
10 Q. Does that mean units that are approved but
11 not constructed?
12 A. Yes. It could be -- referred to -- it
13 shows -- it identifies entitled units but not
14 constructed units.
15 Q. So does it show anything other than
16 existing units and entitled units that are not
17 constructed?
18 A. It may refer to the land use case, which
19 entitled the subdivision or the multifamily
20 development.
21 Q. Anything else it would show?
22 A. Not that I recall. I would have to look
23 at it again to make sure.
24 Q. What's the purpose of creating such a map?
25 A. Information.

23

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

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1 it all better way to phrase it is or had now that did
2 it each time you asked?
3 A. I believe so.
4 Q. And how big is this map?
5 A. 11 by 17 inches.
6 Q. And how many -- have you saved all
7 versions of it that have been created?
8 A. I'm sure that he must have. I don't know
9 if I have every version.
10 Q. Understood.
11 And so when you looked at the map for --
12 prior to today for your deposition, what were you
13 looking at it for?
14 A. Once again, to assess unit counts.
15 Q. Unit counts. What were the unit counts
16 that are contained on this map?
17 A. They're individual to each subdivision.
18 So I can't recall off the top of my head what the
19 numbers are on each one.
20 Q. Okay?
21 A. And then there's a total.
22 Q. Do you recall what the totals are?
23 A. No, I can't give you an exact number right
24 now. I would have to refer to -- the map.
25 Q. Look at the map right but you have that

25

1 map or the City has that map right.
2 A. Correct.
3 Q. Now, is the purpose of that map to
4 determine whether or not there are any units
5 available for further entitlement?
6 A. No. It's just to see where the -- where
7 the overall development is as far as what the unit
8 counts are.
9 Q. Based on what had previously been approved
10 by the City?
11 A. Mm-hmm.
12 Q. Is that right?
13 A. I've looked at the previous land use
14 entitlements, and based on that map, it includes not
15 only -- it includes the Peccole Ranch master plan as
16 it's labeled when it was first adopted and then
17 amended subsequently. It includes both the phases of
18 the plan.
19 Q. Phase one and phase two?
20 A. Mm-hmm. Because it's just one plan.
21 Q. Got it. So here I just need a quick
22 clarification with you. When I ask you a question,
23 because I do this all the time too that you just need
24 to answer yes or no not an uh-huh or shaking of your
25 head because she doesn't --

26

1 A. Okay. I apologize.
2 Q. That's quite all right. We all do that.
3 I just want -- wanted to remind you of that so she
4 can make a clear record.
5 So you looked at the previous land use
6 approvals for phase I and phases two?
7 A. At one point or another, yes.
8 Q. And is that -- did you then provide that
9 information on the approved unit counts to Mr. Mat?
10 A. No, he did his own research.
11 Q. So on the research that you did, did you
12 create any internal documents concerning your own
13 research on the unit counts?
14 A. I have working documents. I'm not sure if
15 that's part of one or not. I'm sure I looked at unit
16 counts based on the research I requested from my GIS
17 analyst.
18 Q. And what sort of internal dock -- internal
19 working documents would you have?
20 A. They could be anything from hypothetical
21 scenarios to this is a prescribed procedure. This is
22 the process by which to achieve something. It could
23 be reference to looking at entitlements for specific
24 information. It could range. I mean on a large
25 project you look at a number of different things.

27

1 Q. Okay. And have you assembled all those
2 documents in this case?
3 A. I just had them saved on my computer.
4 Q. Okay. But you haven't provided copies of
5 those to the city attorney's office?
6 A. Not to my recollection.
7 Q. And approximately -- what's the volume of
8 documents that we're talking about?
9 A. Well, there's meeting notes, there's
10 development agreement comments, there's other working
11 documents. So in total, maybe there's 25, somewhere
12 in there.
13 Q. Okay. And so meeting notes, what sort of
14 meeting notes would you have?
15 A. Meeting notes are just taking down
16 outstanding issues or issues that have been brought
17 up in our meetings that we had as far as reoccurring
18 meetings with -- in regards to the development
19 agreement or major project.
20 Q. Would those be meeting notes from meetings
21 with the developer?
22 A. Yes. They would include notes from issues
23 on the developer's side or issue's on the City side.
24 It could be flood related, fire related. It could be
25 a planning issue, it could be a developing concern.

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

29

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

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1 talked about your reviewing the master slash general
2 plan, your emails and the unit count map. Are there
3 any other documents that you reviewed for purposes of
4 your deposition?
5 A. Not that I recall. I mean I work on
6 various other projects during this time so I'm
7 looking at other documents, such as the Unified
8 Development Code every day.
9 Q. Sure.
10 A. Not specifically for this.
11 MR. JIMMERSON: Madam court reporter,
12 would you please read the last question and last
13 answer..
14
15 Thank you very much.
16 MR. BYRNES: I would like to speak to
17 Mr. Lowenstein for a second.
18 MR. BICE: Absolutely. Let's go off the
19 record.
20 THE VIDEOGRAPHER: Going off the record.
21 The time is approximately 10:21 a.m.
22
23 THE VIDEOGRAPHER: This is the beginning
24 of video recording number 2 in the continuing
25 deposition of Peter Lowenstein. We're back on the

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

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

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1 A. I don't know an exact date but I would say
2 July of 2015.
3 Q. And how did you learn about it?
4 A. Through my director.
5 Q. Would that be Mr. Perrigo?
6 A. That is correct.
7 Q. And what did Mr. Perrigo tell you?
8 A. I don't know the exact details of the
9 conversation but in general, that the development --
10 a redevelopment of the golf courses, you know,
11 project of that nature, and starting discussions on
12 that project.
13 Q. Was this -- who all was present for this
14 discussion that you had with Mr. Perrigo in or around
15 July 2015?
16 A. I don't recall. I'm assuming that we had
17 a verbal conversation about it. I don't recall any
18 specifics.
19 Q. Well, had an application been submitted?
20 A. No.
21 Q. Did he tell you how he knew about it?
22 A. No. Not that I am aware of or that I
23 recall. I don't know if he had a phone call, a
24 meeting or anything.
25 Q. All right. Well, what was your

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1 understanding of what that development was going to
2 be?
3 A. The redevelopment of a portion of the golf
4 course to -- either a portion or in the entirety to
5 redevelop it for a combination of multifamily and
6 single family development.
7 Q. It was going to be a residential
8 development.
9 A. Both multifamily and single family
10 residential development.
11 Q. So had you in your prior experience worked
12 on the Peccole Ranch phase two master plan?
13 A. Not to my recollection.
14 Q. Okay. Had you had any relation -- or any
15 work on any aspects of the Peccole Ranch master plan?
16 A. Of the master plan?
17 Q. Yes.
18 A. It was approved by city council prior to
19 my employment at the City of Las Vegas.
20 Q. How about any work subsequent on the
21 property within the master plan, after you joined the
22 City of Las Vegas?
23 A. Potentially. I would have to go back
24 through every case to see if I was a case planner,
25 supervisor or any of those. Land use entitlements

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

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1 development agreement, we have numerous meetings and
 2 then that qualifies as the preapplication conference.
 3 Q. So you believe you set up a meeting with
 4 the developer?
 5 A. With members of the City and the
 6 developer.
 7 Q. All right. And who did you consider the
 8 developer to be?
 9 A. More than likely it was the point of
 10 contact is Frank Pankratz.
 11 Q. And would you communicate with him via
 12 email?
 13 A. I've communicated with Mr. Pankratz
 14 through email, over the phone.
 15 Q. Any other means of communication with Mr.
 16 Pankratz other than via email or over the phone?
 17 A. In person.
 18 Q. Understood. Any other meetings?
 19 A. Potentially a text message.
 20 Q. What would you text message Mr. Pankratz
 21 about?
 22 A. I don't text him -- it would be in
 23 response if he texted me.
 24 Q. Okay.
 25 Is the cell phone that you use for the text

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1 messaging, is that your personal cell phone. Yes.
 2 What is the -- who is the carrier, the
 3 service provider?
 4 A. It's AT&T.
 5 Q. AT&T. And how long have you had this cell
 6 phone?
 7 A. This particular model, maybe a year, maybe
 8 a little bit over a year.
 9 Q. Do you text anyone at the City concerning
 10 your work?
 11 A. The only other person that would be texted
 12 would be my director who has my number, but various
 13 people have my phone number. I've had office
 14 assistants communicate with me.
 15 Q. Sure.
 16 A. Licensing officers communicate with me.
 17 Q. Has anyone else on behalf of the applicant
 18 regarding Badlands texted with you?
 19 MR. JIMMERSON: Object to the form of the
 20 question.
 21 THE WITNESS: I've had a text message from
 22 Mr. Lowie.
 23 BY MR. BICE:
 24 Q. Mr. Lowie, how many text messages has Mr.
 25 Lowie sent you?

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1 A. Maybe three.
 2 Q. Okay. Do you recall what those were
 3 about?
 4 A. Bourbon.
 5 Q. What's that?
 6 A. Bourbon.
 7 Q. Bourbon. Okay. Anything else?
 8 A. No. Not that I recall.
 9 Q. And what is -- and we'll agree for
 10 purposes of the record to keep it confidential, but
 11 what is the cell phone number or the number that Mr.
 12 Lowie would text you at?
 13 A. 702-810-1088.
 14 Q. And how long have you had that number?
 15 A. Since I've had a cell phone.
 16 Q. So a long time.
 17 Have you deleted any text messages from
 18 anyone concerning the Badlands golf course?
 19 A. Not to my recollection.
 20 Q. Have you deleted any emails from anyone
 21 concerning the Badlands golf course?
 22 A. If there are emails that say thanks,
 23 things like that, potentially. So it's a possibility
 24 that there are some pertinent ones I retained in a
 25 folder.

39

1 Q. So when you set up that first -- let me
 2 put it this way. So you're informed about this
 3 planned redevelopment. Is someone in the City
 4 assigned to be the supervisor over it?
 5 A. Can you restate the question?
 6 Q. Sure. When you're informed by Mr. Perrigo
 7 about this planned redevelopment of the Badlands golf
 8 course, is someone in the City assigned to I guess
 9 supervise or shepherd it through the process?
 10 A. With his conversation to me, I'm assuming
 11 that he basically assigned to me.
 12 Q. To you?
 13 A. As I have been on other projects, the lead
 14 on development agreements on larger projects of that
 15 nature and I've had that experience.
 16 Q. Okay. So you were essentially assigned to
 17 handle this project; is that accurate?
 18 A. On the macro side of things, yes. In
 19 regards to facilitating the meetings, pertaining to
 20 the issues making sure it stays on point that people
 21 from throughout the entire City are participating in
 22 it when they're needing to be and to make sure that
 23 it's basically an ongoing negotiation and to shepherd
 24 to the point where it would be something that would
 25 be able to be submitted to the City.

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