

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent/Cross-Appellant.

No. 84345

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**JOINT APPENDIX,
VOLUME NO. 4**

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

Nevada Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq.

Nevada Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq.

Nevada Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq.

Nevada Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

*Attorneys for 180 Land Co., LLC and
Fore Stars, Ltd.*

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, Esq.

Nevada Bar No. 4381

bscott@lasvegasnevada.gov

Philip R. Byrnes, Esq.

pbyrnes@lasvegasnevada.gov

Nevada Bar No. 166

Rebecca Wolfson, Esq.

rwolfson@lasvegasnevada.gov

Nevada Bar No. 14132

495 S. Main Street, 6th Floor

Las Vegas, Nevada 89101

Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM

Micah S. Echols, Esq.

Nevada Bar No. 8437

micah@claggettlaw.com

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

(702) 655-2346 – Telephone

*Attorneys for 180 Land Co., LLC and
Fore Stars, Ltd.*

McDONALD CARANO LLP

George F. Ogilvie III, Esq.

Nevada Bar No. 3552

gogilvie@mcdonaldcarano.com

Amanda C. Yen, Esq.

ayen@mcdonaldcarano.com

Nevada Bar No. 9726

Christopher Molina, Esq.

cmolina@mcdonaldcarano.com

Nevada Bar No. 14092

2300 W. Sahara Ave., Ste. 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

LEONARD LAW, PC

Debbie Leonard, Esq.

debbie@leonardlawpc.com

Nevada Bar No. 8260

955 S. Virginia Street Ste. 220

Reno, Nevada 89502

Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz, Esq.

schwartz@smwlaw.com

California Bar No. 87699

(admitted pro hac vice)

Lauren M. Tarpey, Esq.

ltarpey@smwlaw.com

California Bar No. 321775

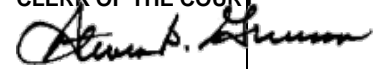
(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

Attorneys for City of Las Vegas



RPLY

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

REPLY RE:

**PLAINTIFF LANDOWNERS'
REQUEST FOR REHEARING /
RECONSIDERATION OF ORDER /
JUDGMENT DISMISSING INVERSE
CONDEMNATION CLAIMS**

Hearing date: January 17, 2019
Hearing time: 9:00 am

COMES NOW Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company, FORE STAR, Ltd, and SEVENTY ACRES, LLC, a Nevada Limited Liability Company (hereinafter the “Landowners”) by and through their attorney of record, the Law Offices of Kermitt L. Waters and Hutchison & Steffen, and hereby file Reply Re: Plaintiff Landowners’ Request for Rehearing / Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims.

This Reply is based upon the Memorandum of Points and Authorities included herein, the exhibits attached hereto, the pleadings and papers on file in this matter, and such oral arguments as may be heard by the Court at the time of the hearing in this matter.

DATED this 14th day of January, 2019.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James J. Leavitt

KERMITT L. WATERS, ESQ.
Nevada Bar # 2571
JAMES JACK LEAVITT, ESQ.
Nevada Bar #6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar #8887
AUTUMN WATERS, ESQ.
Nevada Bar #8917

Attorney for Plaintiff Landowners

MEMORANDUM OF POINTS AND AUTHORITIES

1. THE LANDOWNERS’ PENDING MOTION IS NOT ASKING THIS COURT TO ENTER AN ORDER FINDING A TAKING; IT IS MERELY ASKING FOR DUE PROCESS - AN OPPORTUNITY TO BE HEARD

As this Court will recall, in its January 11, 2018, Hearing and Order, this Court “severed” the Landowners inverse condemnation claims from the Petition for Judicial Review claims under NRCP Rule 42, held the inverse condemnation claims are ripe, and “stayed” the inverse condemnation claims until after the petition for judicial review is heard. Exhibits 1 and 2 to Landowners’ original motion. Despite this clear holding, the City asserts that the Landowners’s due process rights were not violated where these inverse condemnation claims were dismissed *sua sponte* (without notice or a hearing) in the separate and “severed” petition for judicial review case. The City’s main contention for this argument is that the Landowners already made sufficient arguments in the petition for judicial review case. However, as set forth in the Landowners’

1 original motion and this reply (see below), there are very specialized rules and arguments that apply
2 specifically in the context of an inverse condemnation case that do not apply in the context of a
3 petition for judicial review and, therefore, were not made in the petition for judicial review hearing.
4 Simple notions of due process dictate that the Landowners should be given the opportunity to be
5 heard on these specific inverse condemnation arguments.

6 Moreover, there is new controlling law related to the vested property rights issue that arises
7 out of the Nevada Supreme Court affirmance of the Smith Orders. Exhibits 7, 83, 84, and 98, filed
8 with the Motion for Summary Judgment and as a Supplement to the Landowners' original motion,
9 Exhibit 5 to the original motion. This new controlling law unequivocally holds that the Landowners
10 have the "right to develop" the 35 Acre Property pursuant to "public maps and records." Exhibit
11 84, p. 2.¹ Simple notions of due process dictate that the Landowners should be given the
12 opportunity to be heard on how this new and controlling law applies to the Landowners' inverse
13 condemnation claims.

14 Instead, the City wants this Court to ignore the Landowners' due process rights. It wants
15 this Court to uphold a dismissal of the Landowners' inverse condemnation claims without due
16 process. It does not want this Court to even have an opportunity to consider the specific eminent
17 domain and inverse condemnation law that applies in this case. It wants this Court to blindly follow
18 the Crockett Order that has not been affirmed by the Nevada Supreme Court and ignore the Smith
19 Orders that were affirmed by the Nevada Supreme Court. And, it wants this Court to prevent the
20 Landowners from even being heard on the specific facts that support the inverse condemnation
21 claims that are set forth in the Landowners' proposed Summary Judgment pleading. See Exhibit
22 5 to Original Motion.

23 Refusing to even allow the Landowners to be heard on their inverse condemnation claims
24 is a blatant violation of basic constitutional rights - due process and just compensation rights.
25 Again, the Landowners are not asking this Court to enter a finding of a taking at this time; they are
26 merely asking for an opportunity to be heard before their important constitutionally based claims
27 are summarily dismissed without so much as a hearing.

28 ¹This Exhibit is attached to Exhibit 5 which is part of the Landowners' original motion.

1 **2. THE CITY’S DUE PROCESS ARGUMENT IS WITHOUT MERIT**

2 The City tries to torture the record to assert that the Landowners had notice that their inverse
3 condemnation claims would be dismissed and, therefore, they should have made all of their
4 arguments regarding the inverse condemnation claims to the Court in the “severed” petition for
5 judicial review case. City Opp. Pp. 9-10. The City even disrespectfully asserts that the Landowners
6 are trying to “regurgitate” arguments already made. City Opp. P. 20. As explained, the City’s
7 request to “sever” the inverse condemnation claims from the petition for judicial review was
8 granted, the inverse condemnation claims were “stayed” and the Court held the inverse
9 condemnation claims were “ripe.” Exhibits 1 and 2 to original motion. No reasonable person could
10 possibly know, let alone even suspect, that, based on these facts, this Court would *sua sponte*
11 dismiss the inverse condemnation claims in the “severed” petition for judicial review without
12 notice, without briefing on the claims, and without a hearing. Moreover, Landowners eminent
13 domain / inverse condemnation counsel sat through the entire petition for judicial review hearing
14 just in case any of the inverse condemnation issues came up and was prepared to address them if
15 needed. However, neither this Court, the City, nor Landowners’ petition for judicial review counsel
16 raised the inverse condemnation issues. None of these issues were raised, because they had been
17 “severed” and “stayed.” Accordingly, the City’s attempt to torture the record to assert the
18 Landowners should have known the *sua sponte* dismissal was coming is entirely baseless. And,
19 the City’s assertion that arguments are merely being “regurgitated” is without basis as the
20 Landowners never had an opportunity to make arguments in the first instance.

21 Due process is not a difficult concept - the Due Process Clause of the Fifth Amendment
22 guarantees that “[n]o person shall ... be deprived of life, liberty, or property, without due process
23 of law.” United States Supreme Court precedence “establish the general rule that individuals must
24 receive notice and an opportunity to be heard before the Government deprives them of property.”
25 U.S. v. James Daniel Good Real Property, 510 U.S. 43, 48 (1993). Here, there was no notice, no
26 briefing, and no hearing before the Landowners’ inverse condemnation claims were dismissed.
27 Again, the pending motion is not asking for a ruling on the merits (even though the City is trying
28 to argue the merits), but rather a more narrow request - that the Landowners be given an opportunity

1 to brief their inverse condemnation arguments and have them decided on the merits. Despite the
2 City's attempt to ignore the Constitution, the Due Process Clause requires the requested notice and
3 a hearing and it is reversible error to deny the request.

4 **3. THIS COURT CAN CONSIDER THE ARGUMENTS, FACTS, AND LAW IN THE**
5 **PROPOSED SUMMARY JUDGMENT**

6 In a further attempt to ignore the Constitution and the Due Process Clause, the City claims
7 that this Court cannot even consider the facts and law the Landowners would have argued had they
8 been given notice - as set forth in the proposed summary judgment pleading, which is attached as
9 Exhibit 5 to the original motion. Exhibit 5 includes a detailed analysis of the vested property rights
10 issue, the ripeness issue, the futility issues, the interplay between the Crockett Order and the Smith
11 Order that was affirmed by the Nevada Supreme Court, the City action that amounts to a taking, and
12 the relevant inverse condemnation law that should be considered by this Court when deciding
13 whether a taking has occurred. This is provided to this Court to show the arguments that the
14 Landowners would have made if given notice of and a proper hearing. It also shows the arguments
15 the Landowners will make if this Court allows the Landowners a hearing. There is absolutely no
16 reason, in law or in equity, that this Court is required to ignore these arguments, facts, and law as
17 requested by the City.

18 And, the City's argument that the Court cannot consider a motion for summary judgment
19 once it dismisses a claim is misplaced in this case. The Landowners have attached the Motion for
20 Summary Judgment and attendant Exhibits as Exhibit 5 to their original motion for a hearing. The
21 Landowners are not asking this Court to consider the Motion for Summary Judgment prior to the
22 motion for a hearing. Instead, as explained, the Landowners are presenting these arguments, facts,
23 and law to the Court to show this Court the arguments that would have been presented and should
24 have been considered by the Court had a proper hearing been conducted. And, the Landowners have
25 stipulated with the City that, if this Court grants the motion for a hearing, the motion for summary
26 judgment will be continued and a briefing schedule entered so that the matter may be heard in the
27 proper course.

28 It is unconscionable that the City, after including the dismissal of the Landowners' inverse
condemnation claims at the end of its FFCL to this Court in the petition for judicial review case,

1 now also wants this Court to entirely ignore relevant facts, law, and argument related to the inverse
2 condemnation claims, which would have been presented to the Court had the inverse condemnation
3 claims not been improperly and subversively dismissed.

4 **4. THE CITY IS ARGUING FACTUAL ISSUES THAT REQUIRE A “COMPLEX**
5 **FACTUAL ASSESSMENT”**

6 The underlying premise for the City’s opposition to the Landowners’ request for a hearing
7 is that the Landowners should not even be permitted notice of or a hearing on the vested property
8 rights, ripeness, futility, and taking issues, because, according to the City, the Landowners could
9 not prevail on these issues anyway. This is not the way the United States Supreme Court requires
10 these claims to be considered. Instead, The United States Supreme Court has held that these taking
11 claims are “ad hoc” proceedings that require a “complex factual assessment.” City of Monterey v.
12 Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 720 (1999). The very nature of vested property
13 rights, ripeness, futility, and taking issues dictates that these are factual based inquiries in the
14 context of an inverse condemnation proceeding. Accordingly, they are not subject to dismissal
15 without notice of and a hearing and a proper consideration of the “complex” facts. And, asking for
16 these issues to be decided in an opposition to a motion for a hearing, where a hearing has not yet
17 occurred on the issues, is outrageous. Therefore, this Court should at least grant the Landowners
18 an opportunity to be heard on these “complex factual issues” before the Court takes the draconian
19 step of summarily dismissing the inverse condemnation claims.

20 **5. THE LAW THIS COURT CONSIDERED IN THE LAND USE / ZONING PART OF**
21 **THIS CASE DOES NOT APPLY IN THE INVERSE CONDEMNATION PART OF**
22 **THIS CASE - GOVERNMENT DISCRETION IN THE CONTEXT OF A LAND USE**
23 **/ ZONING DENIAL DOES NOT SHIELD THE GOVERNMENT FROM LIABILITY**
24 **FOR A TAKING**

25 The Government’s main contention for why the Landowners should not even be given a
26 hearing on their takings claims is - “where the council properly exercised its discretion to deny the
27 applications, there can be no taking as a matter of law.” City Opp., 2:10-12; pp. 10-11, 15-16. This
28 is a baseless argument that has never been the law and has, in fact, been expressly rejected
numerous times by the Courts. What the Government is trying to do is confuse this Court into
thinking that as long as the City has “discretion” or a legitimate reason to deny a land use
application under land use and zoning law, then there cannot be a taking of property that is impacted

1 by this ‘legitimate’ government action. In other words, the City claims that it has absolute
2 discretion under land use law to deny land use applications and this absolute discretion provides
3 immunity from taking actions.

4 The City’s argument entirely confuses “discretion” as it applies in the context of a land use
5 / zoning case and “discretion” as it applies in an eminent domain / inverse condemnation case.
6 Even if this Court holds that the City has the absolute and unfettered discretion to deny any and all
7 land use applications filed by the Landowners, this does not shield the City from liability for the
8 impact the City action has on the Landowners’ Property in the context of the eminent domain
9 action. The interplay between the government’s discretion to adopt regulatory laws or deny land
10 use applications and liability for a taking can be seen in four cases, cited below. In each one of
11 these cases, the Court found that the government action was discretionary and legitimate, but also
12 found a taking. This is because the action by the government, even though it was discretionary and
13 legitimate, still resulted in a taking of the Landowners’ Property mandating payment of just
14 compensation. In other words, the City’s assertion that “where the council property exercised its
15 discretion to deny the applications, there can be no taking as a matter of law” is an entirely
16 frivolous, baseless argument that has been expressly rejected in the four cases cited below.

17 Also, it should be noted that the four cases below involve both “facial challenges” and “As-
18 applied” taking claims. This shows that the City’s attempt to claim there is a distinction between
19 these two types of inverse condemnation cases, which warrants application of discretionary
20 immunity in “As-applied” taking cases is entirely without merit. City Opp., pp. 18-19. As shown
21 below, there is no such distinction and no such special immunity for the City in “As-applied” taking
22 cases. The four cases are as follows:

23 Nevada Supreme Court Hsu and Sisolak² cases (a facial challenge and As-applied case) -
24 in the Hsu and Sisolak cases, the County of Clark adopted height restrictions around the airport.
25 It was undisputed that the height restrictions were discretionary and adopted for two legitimate
26 reasons: 1) the federal government required the height restrictions as a precondition to receiving
27 federal funds; and, 2) the general safety and welfare of the public, namely, the safe takeoff and
28

² McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006).

1 landing of aircraft. Despite the discretion and legitimacy of adopting these height restrictions, the
2 Nevada Supreme Court still found a taking. And, the Landowners were not required to challenge
3 the legitimacy of the height restrictions as a precondition to the taking. Instead, the Court entered
4 a very clear ruling - the government can exercise discretion to deny land use applications based on
5 “valid zoning and related regulations,” but, if in exercising that discretion the government action
6 rises to the level of a taking, just compensation must be paid.³ In other words, even if the City’s
7 discretionary and legitimate denial is based on valid zoning and related regulations, the denial may
8 still “give rise to a taking claim.”

9 United States Supreme Court Del Monte Dunes case (an As-applied case) - In the Del Monte
10 Dunes case, the landowner brought a taking action, because, like the City of Las Vegas in this case,
11 the City of Monterey denied several attempts to develop the landowner’s property. Monterey v. Del
12 Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999). The City of Monterey exercised its discretion
13 and had a legitimate interest in preventing development on the landowners’ property in that case,
14 including a desire to protect a beach and an alleged habitat for the Smith’s Blue Butterfly. Despite
15 the City discretion and legitimate interest to deny the land use application, the Ninth Circuit Court
16 upheld the taking and the United States Supreme Court found that there could be a regulatory
17 taking. In fact, the United States Supreme Court succinctly rejected the very argument the City is
18 making here, holding “[t]o the extent the city argues that, as a matter of law, its land-use decisions
19 are immune from judicial scrutiny under all circumstances, its position is contrary to settled
20 regulatory taking principles.” Del Monte Dunes, at 707. The Court noted that there was a taking,
21 even though “the jury was instructed, in unmistakable terms, that the various purposes asserted by
22 the city were legitimate public interests.” Id., at 706.

23 United States Supreme Court Lucas case (a facial challenge case) - The Lucas case is
24 applicable here, despite attempts by the City to distinguish it. In Lucas, the United States Supreme
25 Court held there was a categorical taking of Mr. Lucas’s property where the government adopted
26 the Beach Management Act which severely limited the use of Mr. Lucas’s property. Lucas v. South
27 Carolina Coastal Council, 505 U.S. 1003 (1992). The Court further held that Mr. Lucas’s

28 ³ Sisolak, at 660, fn 25.

1 concession that the government’s discretionary act to legitimately adopt the Beach Management Act
2 was not a defense to the taking. In other words, even though it was conceded that the government
3 action (the Beachfront Management Act) was a discretionary and legitimate act by the government,
4 the Act still amounted to a taking for which just compensation was constitutionally mandated.

5 Eighth Judicial District and Richmond Elks Hall cases - In the Eighth Judicial District case
6 the Nevada Supreme Court held that a non-regulatory / de facto taking occurs where the government
7 has “taken steps that directly and substantially interfere with [an] owner’s property rights to the
8 extent of rendering the property unusable or valueless to the owner.”⁴ The Court did not list
9 exceptions to this rule, meaning even if the government action is discretionary or legitimate, it can
10 still amount to a taking. To support this rule, the Court cited to the Ninth Circuit Richmond Elks
11 Hall case that holds “[t]o constitute a taking under the Fifth Amendment it is not necessary that
12 property be absolutely ‘taken’ in the narrow sense of that word to come within the protection of this
13 constitutional provision; it is sufficient if the action by the government involves a direct interference
14 with or disturbance of property rights.”⁵ In Richmond Elks Hall, the government was engaging in
15 action to remedy “blight” in the area which clearly is a legitimate discretionary government action.
16 The action, however, caused several of the landowner’s tenants to vacate, leaving less than one-
17 third of the property occupied. Id., at 1329-30. The Ninth Circuit held that this rendered the
18 landowner’s property “unuseable in the open market” and “severely limited” the property’s use for
19 its intended purposes, resulting in a de facto taking. Id., at 1330-31. Therefore, despite the
20 discretionary, legitimate act of remedying blight, the Ninth Circuit still found a taking.

21 The public policy for this rule is elementary and has never been in dispute since the adoption
22 of the United States Constitution. This can be seen in two examples. The government has the
23 discretion to build a highway and this is legitimate government action, however, there is still a
24 taking if that highway is built through private property. The government has the discretion to deny
25 certain land use applications and this may be legitimate government action, however, there is still

27 ⁴ State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015).

28 ⁵ Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir.
Ct. App. 1977).

1 a taking if there is a denial of all economically viable use of private property. If the rule were
2 otherwise, the government could take any property it wanted and be immune from payment merely
3 by arguing it engaged in discretionary action that is legitimate.

4 Therefore, the City's contention, and this Court's holding, that the City cannot be liable for
5 a taking because the City properly exercised its discretion to further a legitimate act is gross error.
6 It is directly contrary to the above cited, well established United States and Nevada Supreme Court
7 and Ninth Circuit precedent. And, the City's attempt to intentionally mislead this Court into
8 adopting this rule by citing to inapplicable land use and zoning cases, instead of applicable inverse
9 condemnation case law, is inappropriate.

10 **6. THE CITY INCORRECTLY APPLIES "VESTED RIGHTS" LAW FROM LAND**
11 **USE / ZONING CASES TO THIS INVERSE CONDEMNATION CASE**

12 Similar to the preceding argument, the City is attempting to improperly apply the "vested
13 rights" case law from land use / zoning cases to this inverse condemnation case. City Opp., 2:10-
14 12; pp. 10-11, 15-16. The City cites to several land use / zoning cases where the Court held that
15 a landowner does not have a vested right to have all land use applications approved on her property.
16 The City then asserts that these land use / zoning cases apply in this eminent domain case to mean
17 no landowner in the State of Nevada has "any" vested property rights until such time as the local
18 entity approves a use on their property. City Opp. 11:8-17. This is not the first time a governmental
19 entity has tried this frivolous argument - to extend this land use / zoning law into an eminent
20 domain case - and not once has it succeeded. The public policy for not applying these land use /
21 zoning cases in the context of an eminent domain case is it would entirely eliminate all property
22 rights in the State of Nevada. No landowner could ever bring an inverse condemnation action,
23 because the government could simply cite to land use / zoning cases and claim there was no vested
24 right to begin with, because the government had the absolute discretion to deny the use of property
25 anyway.

26 This same argument was made by the County of Clark in the Sisolak case and rejected by
27 the Nevada Supreme Court. In Sisolak, the County argued that "the district court erred by finding
28 that Sisolak has a vested property interest in the airspace above his property up to 500 feet."
Sisolak, at 658. Mr. Sisolak had never been granted permission by the County to use his airspace.

1 The Court defined the issue as “[w]e must determine whether Sisolak had a valid property interest
2 in the airspace over his property.” Sisolak, at 658. The Court explained that “the first right
3 established in the Nevada Constitution’s declaration of rights is the protection of a landowner’s
4 inalienable rights to acquire, possess and protect private property” and Nevada “enjoys a rich history
5 of protecting private property owners against government takings.” Sisolak, at 669. The Court
6 further explained that “[t]he term ‘property’ includes all rights inherent in ownership, including the
7 right to possess, use, and enjoy the property.” Id., at 658. The Court held that the underlying right
8 to “possess, use, and enjoy” property included Mr. Sisolak’s vested right to use his airspace - even
9 if the County never granted him the right to use that airspace. Id., at 659-660.

10 The Sisolak Court did, however, strike a balance between Nevada land use / zoning law and
11 eminent domain law. The Court held that local entities do have discretion to deny land use
12 applications based on “valid zoning and related regulations.”⁶ But, in the exercise of that
13 discretion, if the local entity takes property, it must pay just compensation. Id.

14 Applying the Sisolak case to this case, means that the Landowners have the constitutionally
15 based “inalienable right to acquire, possess and protect” the 35 Acre Property, which includes the
16 vested right to “possess, use, and enjoy” the 35 Acre Property. If the City denies this vested right
17 to possess, use, and enjoy the 35 Acre Property, there has been a taking for which just compensation
18 must be paid. And, land use and zoning law which allows the City “discretion” to deny land use
19 applications is not a defense to the taking.⁷

20 The rejection of this rule is also seen in the other four above cited cases - Hsu, Lucas, Del
21 Monte Dunes, and Richmond Elks Hall. As explained above, in these four cases, like in the Sisolak
22 case, the Courts uniformly found there was a vested property right and the landowners were entitled
23 to compensation for the taking of that property right. For example, in the Del Monte Dunes case,
24 the City of Monterey repeatedly denied the landowners request to develop (just as the City has done
25

26 ⁶ Sisolak, at 660, fn 25.

27 ⁷ It has long been established that when Government regulation “goes too far” that a
28 taking has occurred and just compensation is owed. Penn Coal Co. v. Mahon, 260 U.S. 393
(1922) (“The general rule at least is that while property may be regulated to a certain extent, if
regulation goes too far it will be recognized as a taking.” at 415).

1 in this case), the landowner sued in inverse condemnation (just as the Landowner has done in this
2 case), and the Ninth Circuit and United States Supreme Court held there was a taking. The Courts
3 applied eminent domain law to find the taking. The Courts did not apply land use / zoning law (like
4 the City is doing in this case) to find the government has “discretion” to deny land use applications
5 and, therefore, there was no vested property right to begin with.

6 **7. THE CITY MISAPPLIES THE SMITH ORDERS, FURTHER SHOWING THE**
7 **NECESSITY OF A HEARING**

8 The City also tries to impute land use / zoning law into this inverse condemnation case to
9 claim the Smith Orders don’t apply here. The City claims that “[t]he [Landowners] leap from that
10 language [in the Smith Orders] to the assertion that these decisions affirmatively state, as a matter
11 of law, that the [Landowner] has ‘vested rights’ **to have the 35-Acre Applications granted.**” City
12 Opp. 14:1-3. (emphasis supplied).

13 The Landowners are simply stating that: they have the vested right to “possess, use, and
14 enjoy” their property as stated in the inverse condemnation case of Sisolak; the City has denied any
15 and all use and enjoyment of the 35 Acre Property; and, the City has expressly stated that it has
16 denied any and all use and enjoyment of the 35 Acre Property in furtherance of a City scheme to
17 specifically target the Landowners’ Property to have it remain in a vacant condition to be “turned
18 over to the City” for a “fitness park” for \$15 Million which is 1% of its fair market value. This is
19 a prima facie taking case - it meets the elements of a taking under the United States and Nevada
20 Supreme Court law set forth above.

21 The Smith Orders, affirmed by the Nevada Supreme Court, merely follow this well settled
22 eminent domain law. As explained in the Landowners’ moving papers, pursuant to the Smith
23 Orders, affirmed by the Nevada Supreme Court, it is settled law that the Landowners have the
24 vested right to develop the 250 Acre Residential Zoned Land (which includes the 35 Acre Property)
25 with a residential use, because: 1) the Property has always been hard zoned residential; 2) the intent
26 was always to develop the Property residentially; and 3) hard zoning trumps any other conflicting
27 land use plan designation. The Smith Orders even hold that the initial steps to develop the property
28 residentially, parceling the 250 Acre Residential Zoned Land, had proceeded properly: “The
Developer Defendants [Landowners] properly followed procedures for approval of a parcel map

1 over Defendants' property [250 Acre Residential Zoned Land] pursuant to NRS 278.461(1)(a)
2 because the division involved four or fewer lots. The Developer Defendants [Landowners] parcel
3 map is a legal merger and re-subdividing of land within their own boundaries." See Exhibit 83, p.
4 10, finding #41, attached to Exhibit 5 to the Landowners original motion.

5 This means that the City can exercise its "discretion" and apply valid zoning laws to deny
6 any and all use and enjoyment of the 35 Acre Property, but, once it does this (as it has done in this
7 case), it is required to pay just compensation. This is very basic hornbook inverse condemnation
8 law and the City's attempt to rewrite it by introducing the City's discretion in the context of land
9 use / zoning law is misplaced and simply frivolous.

10 **8. THE CITY'S "PRIVATE CONTRACT" ARGUMENT IS WITHOUT MERIT**

11 The City further argues that the Supreme Court's affirmance of the Smith Order only applies
12 to a private- party contract and is not applicable to the land use laws that govern the City. City
13 Opp., pp13-15. This argument ignores the plan language of the Supreme Court affirmance wherein
14 the Supreme Court stated that "[b]ecause the record supports the district court's determination that
15 the golf course [250 Acre Residential Zoned Land] was not part of the Queensridge community
16 under the original CC&Rs *and public map and records*, regardless of the amendment, we conclude
17 the district court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief."
18 (Emphasis added). Exhibit 84, 13 App., LO 00003003; see also Exhibit 98: 16 App., LO 3830-
19 3832, Supreme Court Order Denying Rehearing. The Court continued, "[a]ppellants filed a
20 complaint alleging the golf course land [250 Acre Residential Zoned Land] was subject to the
21 CC&Rs when the CC&Rs and *public maps of the property* demonstrated that the golf course land
22 [250 Acre Residential Zoned Land] was not." (Emphasis added). Id., p. 4. The Supreme Court also
23 upheld the award of attorney fees, confirming it is frivolous to challenge the Landowners' vested
24 right to develop. *Id.* Accordingly, the City's private party argument is without merit and
25 furthermore the City was a party to that action. Exhibit 83, 13 App., LO 00002977.

26 **9. THE CITY'S ARGUMENT THAT THE LANDOWNERS DO NOT HAVE A RIGHT**
27 **TO REDEVELOP OPEN SPACE INTO A RESIDENTIAL USE IS MISPLACED**

28 The City asserts that the Landowners do not have a vested right to "redevelop open space
into residential use." Govt. Opp. 12:9-10. This argument is misleading, because the Landowners

are not trying to “redevelop open space into residential use,” the Landowners are trying to develop a currently hard zoned residential property into a conforming residential use. As explained above, Judge Smith (affirmed by the Nevada Supreme Court) already held that the Landowners have the vested right to develop the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) with a residential use, because: 1) the Property has always been hard zoned residential; 2) the intent was always to develop the Property residentially; and 3) hard zoning trumps any other conflicting land use plan designation.

10. THE SMITH AND CROCKETT ORDER ARE IRRECONCILABLE AND THIS COURT SHOULD FOLLOW THE SMITH ORDER AS IT HAS BEEN AFFIRMED BY THE NEVADA SUPREME COURT⁸

The City has relied heavily on the Crockett Order in these proceedings to assert the Landowners have no property rights and the Landowners need to submit a “major modification” to ripen their taking claims. First, as explained, land use / zoning cases do not apply in this inverse condemnation proceeding and it is beyond dispute that the Crockett Order was entered in a land use / zoning case that involved the separate and distinct 17 Acre Property. Therefore, the Crockett Order should not even be applied in this inverse condemnation case. Second, the Nevada Supreme Court affirmance of the Judge Smith Orders entirely nullifies the Crockett Order rendering it meaningless in this case.

A. What the Crockett Order Holds

To understand how the Nevada Supreme Court nullified the Crockett Order, it is first important to analyze what the Crockett Order holds. According to the City, the Crockett Order holds that a “major modification” application is necessary to develop and the Landowners never submitted this application to the City. This City argument (applying the Crockett Order) is that an individual named William Peccole drafted a “conceptual” plan showing certain land use designations in 1986 and that this “conceptual” plan shows an open space / golf course designation on the 250 Acre Residential Zoned Land, which includes the 35 Acre Property. The City then asserts (applying the Crockett Order) that, if the Landowners want to use the 250 Acre Residential

⁸ The Exhibits referred to in this section are included and attached to Exhibit 5, which is part of the Landowners’ original motion.

1 Zoned Land for a residential use, the Landowners need to request a “major modification” to change
2 the designation from open space / golf course to a residential use on Mr. Peccole’s conceptual plan.
3 And, since the Landowners never filed for a “major modification” their claims are not ripe. This
4 City argument (applying the Crockett Order) focuses entirely and solely on Mr. Peccole’s
5 “conceptual” plan and entirely ignores the hard R-PD7 zoning that has existed on the property since
6 1986. In other words, the Crockett Order holds that Mr. Peccole’s “conceptual” plan on how he
7 envisioned the area to develop trumps the R-PD7 hard zoning that was adopted by City ordinance.

8 **B. How The Nevada Supreme Court Nullifies the Crockett Order**

9 This City argument, adopted in the Crockett Order, however, has been rejected in the two
10 Judge Smith Orders, which were affirmed by the Nevada Supreme Court. The Judge Smith Orders
11 rely entirely on the hard R-PD7 residential zoning that was on the 250 Acre Residential Zoned Land
12 since 1986 instead of the “conceptual” land use plan drafted by Mr. Peccole. As detailed in the
13 Landowners’ opening motion, according to the Judge Smith Orders and the Supreme Court
14 affirmance, it is settled law that: 1) the Landowners property has always been hard zoned R-PD7
15 (residential); 2) the intent was to always develop the property residentially; 3) the Landowners have
16 the vested “right to develop” the 250 Acre Residential Zoned Land (which includes the 35 Acre
17 Property) with a residential use; 4) the 250 Acre Residential Zoned Land was never part of the
18 Queensridge Community or subject to any Queensridge CC&Rs; 5) the Queensridge homeowners
19 have no rights whatsoever to the 250 Acre Residential Zoned Land; 6) no Queensridge CC&Rs or
20 other City plan may be invoked to prevent this development; and, 7) the Landowners properly
21 proceeded with the residential development by filing the appropriate parcel maps. Exhibits 7, 83,
22 84, 85, 89. Accordingly, per Nevada law no “major modification” application is necessary - the
23 property is already and has always been zoned residential, its intended use, the Landowners’ have
24 the “right to develop” the property for this use, and they proceeded appropriately with a residential
25 development.

26 Moreover, it is important to understand the sole process for how Mr. Peccole’s “concept”
27 plan can even be applied to the 35 Acre Property to fully grasp how the Supreme Court Affirmance
28 of the Judge Smith Orders entirely nullifies the Crockett Order. Mr. Peccole’s conceptual plan itself

1 states unequivocally that: 1) the plan is only Mr. Peccole's "concept"⁹ - it is not a City master land
2 use plan; and, 2) the sole and only way the "concept" plan can even be applied to any properties is
3 through the adoption of Covenants Conditions and Restrictions ("CC&Rs"). *Exhibit 60: App LO*
4 *00002369 and 2383*. The Queensridge CCR's unequivocally state that the "'Badlands Golf Course'
5 (which includes the 35 Acre Property) **is not a part**" of the Queensridge development under the
6 Peccole 1990 Conceptual Plan. *Exhibit 66: 11 App LO 00002572*. The "Master Plan" for the
7 Queensridge development that was recorded with the County Recorder, entitled the "Final Map For
8 Peccole West," unequivocally shows the 35 Acre Property was "NOT A PART" of the Queensridge
9 development, meaning it could not be reserved for open space use for the Queensridge
10 development. *Exhibit 66: 11 App LO 00002685-90*. Additionally, the 35 Acre Property has always
11 remained private land and there was not any condition by the City in 1990 as part of the approval
12 of the Queensridge development that the 35 Acre Property be dedicated for public use, such as a
13 park. The Nevada Supreme Court understood this well, specifically holding that the 35 Acre
14 Property is not a part of any CC&Rs and, therefore, the CC&Rs "cannot be enforced against the [35
15 Acre Property]." ¹⁰

16 Therefore, Mr. Peccole's concept plan does not even apply to the 35 Acre Property. If Mr.
17 Peccole's concept plan does not apply to the 35 Acre Property, then it goes without saying that Mr.
18 Peccole's open space designation does not apply and there is no need to "modify" Mr. Peccole's
19 concept plan to develop the 35 Acre Property. Furthermore, the Landowners' predecessor
20 ALWAYS insisted on maintaining residential "fallback" for the 250 Acres Residential Zoned Land
21 for future development potential. In fact, the deposition of Mr. Greg Goorjian, who was the former
22

23 ⁹ The Peccole 1990 Conceptual Plan was designed to be flexible: "as the City of Las
24 Vegas General Plan is designed as a set of guidelines to help direct future growth of the City, so
25 is the proposed Peccole Ranch Master Plan designed with an inherent flexibility to meet
changing market demands at the time of actual development." *Exhibit 60: 10 App LO 00002384*.

26 ¹⁰ See page 4, above. The CC&Rs for the Queensridge Community plainly state "[t]he
27 existing 18-hole golf course commonly known as the 'Badlands Golf Course' [250 acre property]
28 **is not a part** of the Property or Annexable Property" governed by the Queensridge CC&R's.
Exhibit 66: 11 App LO 00002552-2704. Also, the "Master Plan" for the Queensridge CC&Rs
shows that the 250 acre property is "NOT A PART" of the Queensridge Community. *Id.*

1 VP of Marketing for Queensridge and had worked with William Peccole since 1983, testified that
2 Mr. Peccole made sure that there was always a “fallback” position of residential for the 250 Acre
3 former golf course property; that “Mr. Peccole had tremendous foresight, and always, believe it or
4 not, planned for the worst,” “[t]hat there might be circumstances that it would no longer be able to
5 be a golf course, whether it was financially, water. He always brought up issues like war. He
6 always was very cautious, conservative person.” (*Exhibit 99, LO 00003838, Goorjian Depo*
7 *Transcr. p. 17-18*). Accordingly, despite the City’s unsupported representations, Mr. Peccole would
8 not have sought any designation on his then 250 acres which would have prevented future
9 development. Mr. Goorjian further confirmed that the 250 Acre Residential Zone Land was never
10 part of Queensridge or the Peccole Master Plan. Accordingly, as held by the Nevada Supreme
11 Court, the Landowners’ 250 Acres Residential Zoned Land was always protected and intended for
12 future residential development.

13 It is impossible to reconcile the Crockett Order with the Judge Smith Orders and Supreme
14 Court Affirmance. The Judge Smith Orders focus on the R-PD7 hard zoning (approved by the City)
15 and affirm the “right to develop” the property residentially.¹¹ The Crockett Order, on the other
16 hand, ignores the R-PD7 zoning and, instead, focuses on Mr. Peccole’s “concept” plan designation
17 of open space and holds no residential units are allowed in the open space.¹²

18 This Court should follow the Judge Smith Orders as they have been affirmed by the Nevada
19 Supreme Court. *Exhibits 7 84, 89 and 98*. Moreover, Nevada’s executive,¹³ legislative,¹⁴ and
20 judicial branches¹⁵ have all determined Judge Smith is correct - hard zoning trumps the land use
21 plan,¹⁶ especially a “concept” plan by Mr. Peccole that is not even a city master land use plan.

22
23 ¹¹ *Exhibits 7, 83, 84, 85, 89 and 98*.

24 ¹² *Exhibit 72, 12 App., LO 00002821, see specifically LO 00002825, finding #13*.

25 ¹³ 1984 Nev. Op. Atty. Gen. No. 6 at 3 (“Nevada legislature has always intended local
zoning ordinances to control over general statements or provisions of a master plan.”)

26 ¹⁴ See NRS 278.349(3)(e).

27 ¹⁵ *See Exhibits 7, 84, 89 and 98*.

28 ¹⁶ The City, itself, has admitted that zoning trumps the General Plan. The City filed a
pleading in the petition for judicial review related to the 17 Acre Property arguing: “[i]n the
hierarchy, **the land use designation is subordinate to the zoning designation**, for example,
because land use designations indicate the intended use and development density for a particular

1 **C. Public Policy for the Nevada Supreme Court Affirmance of the Judge Smith**
2 **Orders**

3 The Nevada Supreme Court Affirmance of the Judge Smith Orders is well reasoned and
4 based on strong public policy.

5 **Reason / Public Policy #1** - First, as cited above the 35 Acre Property has always been
6 zoned residential, the intent was always to develop the property residentially, the City itself
7 repeatedly affirmed this hard residential zoning, and hard zoning trumps any other conflicting land
8 use plan designation.¹⁷ In fact, any challenge to this vested “right to develop” is, as stated by Judge
9 Smith, “frivolous.”¹⁸ This residential zoning is so widely accepted that the Clark County Tax
10 Assessor has assessed the property as residential for a value of approximately \$88 Million. *Exhibit*
11 *36: 8 App LO 00001923-1938*. Moreover, the ruling is consistent with the Nevada Supreme Court
12 *Sisolak* and *Schwartz* cases, which hold that Nevada landowners have the vested right to develop
13 their properties even if they have not put it to a beneficial use¹⁹ and the government may only
14 regulate that use with “valid zoning and related regulations” that do not “give rise to a taking

15
16 area, while zoning designations specifically define allowable uses and contain the design and
17 development guidelines for those intended uses.” *Jack B. Binion, et al. v. City of Las Vegas, et*
18 *al.*, Case No. A-17-752344-J, Respondent City of Las Vegas Answering Brief, 2:8-12. (emphasis
19 supplied). The City’s own attorney, Brad Jerbic, represented in a public hearing that “[i]f you do
20 not grant the general plan amend[ment] tonight, you will leave in place a general plan that’s
21 inconsistent with the zoning, **and the zoning trumps it, in my opinion.**” *Exhibit 71, 11-12 App.,*
22 *Transcript of Planning Commission meeting, Feb. 14, 2017, page 64 lines 1795-1797.*
23 (emphasis supplied). Mr. Jerbic further stated, [b]ut the fact is, if you didn’t even have a general
24 plan amendment that synchronized the General Plan with the zoning, the zoning is still in place,
25 and it doesn’t change a thing.” *Exhibit 21, Vol 4-5, Transcript of City Council Meeting of*
26 *August, 2, 2017, page 95, lines 2652-2654.* Tom Perrigo, Planning Director for the City of Las
27 Vegas, agreed with Mr. Jerbic and opined that zoning trumps the master plan. *Id.*, pp. 94-95.

28 ¹⁷ See *Exhibit 7, 3 App., 00000557; Exhibit 83: 13 App., LO 00002977; Exhibit 84: 13*
App., LO 00003002; Exhibit 89: 13 App., LO 00003093; Exhibit 98: 16 App., LO 3830-3832,
Supreme Court Order Denying Rehearing.

¹⁸ *Exhibit 7, 3 App. LO 00000584-585, finding #95, p. 27, LO 00000586, finding #102.*

¹⁹ *McCarran Intl. Airport v. Sisolak*, 122 Nev. 645 (2006) (landowner had a vested right
to use the airspace above his property pursuant to NRS 493.040, even though he never used it
and the County never approved the use. *Schwartz v. State*, 111 Nev. 998 (1995) (Nevada
landowners have a vested right to access roadways adjacent to their property, even though the
access has never been built).

1 claim.”²⁰ Otherwise, as explained above, if the City had absolute discretion to grant or deny the use
2 of property, then the Just Compensation Clause would be entirely eliminated. The City could deny
3 all use of all properties in the City (under the City’s alleged discretionary power) and never pay any
4 compensation whatsoever for these denials. This despotic argument is not the law and never will
5 be the law as it would bring all property transactions in the State of Nevada to an immediate and
6 abrupt halt. No entity or person would ever purchase property in this State, because there would
7 be no property rights. The only “thing” that would be purchased in a property transaction is dirt for
8 which there are no rights, because the local entities, like the City, could tell the new owner that he
9 cannot use the property at all under the City’s absolute discretion argument.

10 **Reason / Public Policy #2** - The City’s own persons most knowledgeable have affirmed the
11 vested right to develop and rejected the major modification argument. Brad Jerbic is perhaps the
12 best person at the City who can offer an opinion on the major modification issue as he has been the
13 City Attorney for nearly 30 years, has worked to draft the City Code, interprets the Code, and has
14 advised the City Council on this Code for his entire career. Mr. Jerbic stated in a public hearing that
15 the City’s current “major modification” argument is nothing more than a “red herring.”²¹ Phil
16 Byrnes has been an assistant City Attorney for over 20 years and, therefore, may be the next best
17 person to provide an opinion on the City’s “major modification” argument and he stated that a
18 major modification is not required.²² Tom Perrigo, the City’s highest ranking planner, stated a
19 major modification is not required to develop the 35 Acre Property.²³ Finally, further evidence that
20 any “major modification” argument is a complete farce is the fact that the City has granted
21 permission to develop fifty (50) other properties in the area of the 35 Acre Property that have R-
22 PD7 zoning and were similarly in “open space” labeled areas on the Peccole 1990 Conceptual Plan

24 ²⁰ McCarran Intl. Airport v. Sisolak, 122 Nev. 645, 660, fn. 25 (2006). This also further
25 shows that the City’s reliance on the Stratosphere is misplaced as that case applies to zoning
26 issues, not inverse condemnation issues. And, all it holds is that the City has discretion to grant
or deny certain uses. It does not say that the City has “absolute discretion” to deny all use of
property without payment of just compensation.

27 ²¹ *See Exhibit 24, 5 App LO 00001071-1072.*

28 ²² *See Exhibit 38, 24:13-17; 26-27; 29; 30; 43:2-10, 8 App LO 0001964 - 9 App LO LO - 00002018.*

²³ *See Exhibit 5, 2App LO 0000400:1228-1233.*

1 and not once did the City reference a PR-OS or other “open space” designation or require a “Major
2 Modification” from the Peccole 1990 Conceptual Plan for these 50 applications.²⁴

3 **Reason / Public Policy #3** - Judge Smith held that the 35 Acre Property has been hard
4 zoned R-PD7 since 1986. The City’s development code applicable to “R-PD” hard zoned property,
5 like the Landowners’ property, is LVMC 19.10.050 and this code provision does not require a major
6 modification application as a precondition to develop. By comparison, the City’s code to develop
7 under the “PD” designation, LVMC 19.10.040, does require a major modification application to
8 develop. Therefore, a major modification is not a barrier to exercise the vested right to develop.

9 **Reason / Public Policy #4** - The Peccole 1990 Conceptual Plan was not recorded and did
10 not dedicate anything to the City; it was only a “Conceptual Master Plan” that was the vision of a
11 developer. *Exhibit 60: 10 App LO LO 00002369*. Unrecorded visions of a developer are not notice
12 to or binding upon subsequent purchasers of land sufficient to trump the vested right to develop the
13 Landowners’ R-PD zoned property.

14 **Reason / Public Policy #5** - This Court is required to consider the “practical reality”²⁵ facing
15 landowners in inverse condemnation actions; the Court is not required to abandon all common sense
16 and reason. Any argument that a major modification requirement is a barrier to exercising the
17 vested right in this case requires this Court to do just this. Simply put, the City is representing to
18 this Court that if the Landowners had written the words “major modification” at the top of its
19 applications to the City, then the City would not have engaged in the following acts (these acts will
20

21 ²⁴ The City admitted that there have been six other development/entitlement actions done
22 within the Peccole 1990 Conceptual Plan area, none of which were prohibited from developing
23 due to an open space designation and none required a Major Modification from the open space
24 designation. *Exhibit 5: 2 App LO 00000400:1228-1233 and Exhibit 61: 10 App LO*
25 *00002465:2314-2318*. The City also approved approximately 44 residential developments all
26 zoned with R-PD7 with a similar open space designation on the Peccole 1990 Conceptual Plan
27 without any delay or request for a Major Modification from the Peccole 1990 Conceptual Plan.
28 *Exhibit 62: 10 App LO 00002471-2472*. 50-0 is not a mistake. This proves the 1990 Conceptual
Plan is just that – a “plan” – that is only “conceptual” and what controls is the actual zoning of
the property.

²⁵ *City of Sparks v. Armstrong*, 103 Nev. 619 (1987) (court upheld taking claim,
explaining that the City of Sparks, in arguing that the taking did not occur earlier failed to
recognize “the practical reality” the landowners faced as owner of the property).

1 be explained fully below): 1) the City's councilmen would not have called the Landowners'
2 representative a "motherfucker," would not have stated "over my dead body" will development ever
3 be allowed, and would not have stated he will "vote against the whole thing;" 2) the City would not
4 have adopted the "Yohan Lowie Bills" and would not have strategically adopted the Bills to deny
5 all applications to develop; 3) the City would not have denied the MDA (that included significantly
6 more than any major modification requires); 4) the City would not have made it impossible to get
7 a drainage study; 5) the City would not have denied the fence and access applications; 6) the City
8 would not have denied the applications to develop for this 35 Acre Property and the 133 Acre
9 Property; 7) the City would not have identified \$15 million of City funds to take over the
10 Landowners' property for a City "park;" 8) the City would not be vehemently trying to claw back
11 the 17 Acre Property approvals; and, 9) the Landowners' Property would be fully developed today.
12 No reasonable person, considering the facts of this case, including the City's current position before
13 this Court, could possibly believe this argument or ignore the "practical reality" facing the
14 Landowners.

15 **Reason / Public Policy #6** - If this Court elects to follow the Crockett Order that entirely
16 ignores the Landowners' hard zoning and vested right to develop, instead of the Judge Smith Orders
17 and Nevada Supreme Court Affirmance, this will be a judicial taking of the 35 Acre Property. The
18 United States Supreme Court has held that judicial action that "recharacterizes as public property
19 what was previously private property is a judicial taking."²⁶ The Court explained that this is a
20 proper taking claim, because the Taking Clause is concerned with the "act" that results in the taking
21 and does not focus on the particular "government actor," meaning the judiciary also may engage
22 in taking actions.²⁷ Acceptance of the Crockett Order in this case would amount to a judicial taking,
23 because the order would be applied to recharacterize the Landowners' 35 Acre Property from a hard
24 zoned residential property with the vested "rights to develop," as recognized and established by the
25 Nevada Supreme Court, to a public park / open space with zero developable units.

27 ²⁶ Stop the Beach Renourishment, Inc. v. Florida Dept. of Env. Protec., 130 S.Ct. 2592
28 (2010).

²⁷ Id., at 2601.

Therefore, there is strong public policy supporting the Judge Smith Orders.

11. ANY REFERENCE TO THE FEDERAL COURT ORDER IS MISPLACED

The City attaches an order by Federal District Court Judge Mahan and claims this also denies the landowners have a vested right to develop. City Opp, p. 8:fn 1. First, the Judge Mahan Order was decided in the context of land use / zoning law, not inverse condemnation law and, therefore, as explained above, does not apply here. As explained, simply because the City has discretion in land use cases to deny land use applications does not shield it from inverse condemnation liability and neither does Judge Mahan's order not even remotely indicate this City argued position. Second, the Landowners' could not have originally filed their inverse condemnation claims in federal court. Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 194-195, 105 S. Ct. 3108, 3120-3121(1985). Therefore, the Mahan Order could not have addressed any vested rights in the context of a takings claim and as such issue preclusion could not apply to his order. Third, the Judge Smith Orders finding the Landowners have the "right to develop" (which were affirmed by the Nevada Supreme Court) trump Judge Mahan's order as Federal Courts defer to state law on questions related to property rights and must "accept the determination of the state court" on whether there is a right to develop. Stop the Beach Renourishment, Inc. v. Florida Dept. Of Environ. Protection, 560 U.S. 702, fn 9 (2010). In this connection, the Ninth Circuit has specifically held that "[i]n determining what property rights exist and therefore are subject to taking under the Fifth Amendment, federal courts look to local state law." Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency, 561 F.2d 1327 (9th Cir. 1977). The policy for this rules is: "'[b]ecause the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'" Phillips v. Washington Legal Foundation, 524 U.S. 156, 164 (1988). Accordingly, controlling state law from the Nevada Supreme Court (Judge Smith Orders) recognizes the vested right to develop the Landowners' Property which must be applied here.

12. THE CITY ACTIONS IN THIS CASE WILL ESTABLISH A TAKING

Although not necessary, because the Landowners are merely asking for a right to be heard at this time, in order to show that the Landowners' request for a hearing is not frivolous (as alleged by the City), the Landowners have attached, as Exhibit 5 to their originally filed motion for a hearing, a proposed motion for summary judgment on liability for the taking to show this Court what the Landowners will argue if given due process to argue their inverse condemnation claims before this Court. That Exhibit 5 (proposed motion for summary judgment) lays out, without limitation, 10 actions by the City that, when considered in the aggregate, render the Landowners' Property valueless and useless, thereby amounting to a categorical taking of the Property under Nevada and United States Supreme Court precedent. These 10 City actions are as follows:

City Action #1 - City Denial of the 35 Acre Property Applications

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

City Action #3 - Adoption of the Yohan Lowie Bills

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

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

City Action #6 - Denial of a Drainage Study

City Action #7 - City Refusal to Even Consider the 133 Acre Property Applications

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

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

City Action #10 - the City Reverses the Past Approval on the 17 Acre Property. *See pages 15-27 of the Landowners' proposed motion for summary judgment, Exhibit 5 to original motion.*

There is undisputed evidence that the City has engaged in these 10 actions in furtherance of a City scheme to target the Landowners' property to have it remain in a vacant condition to be

1 “turned over to the City” for a “fitness park” for \$15 Million which is 1% of its fair market value.
2 Id. And, the City has not once denied these 10 actions nor the intent of these actions.²⁸

3 It is important to note that these 10 actions by the City far exceed the government action and
4 interference with the use of property set forth in the five above cited cases where the Courts entered
5 a finding of a taking - Hsu / Sisolak, Del Monte Dunes, Lucas, Eighth Judicial District (citing to
6 Richmond Elks Hall). In the Hsu and Sisolak cases, the government action only deprived the
7 landowners of the use of their airspace - they could still use the underlying land. In Del Monte
8 Dunes the City of Monterey argued that it would allow some development, just not what was
9 proposed. In Lucas, Mr. Lucas could still use his property to picnic, swim, camp in a tent, or live
10 on the property in a moveable trailer, thereby leaving the property with some value. In Richmond
11 Elks Hall, the government action caused several of the landowner’s tenants to vacate, leaving less
12 than one-third of the property occupied, but the property still had that level of use. In this case,
13 however, the 10 City actions cited above deny any and all use of the 35 Acre Property, leaving it
14 with no value - the Landowners cannot even get an access point to or a safety fence on their
15 property. And, as explained, the City has not even denied these actions or that it has engaged in
16 these actions in furtherance of a City scheme to specifically target the Landowners’ property to have
17 it remain in a vacant condition to be “turned over to the City” for a “fitness park” for \$15 Million
18 which is 1% of its fair market value.

19 This means that if this Court upholds its *sua sponte* dismissal of the Landowners’ inverse
20 condemnation claims, it will have entered a ruling directly contrary to these five cases directly on
21 point - three Nevada Supreme Court cases, two United States Supreme Court cases, and one Ninth
22 Circuit Court of Appeals case.

23
24
25
26 ²⁸ And, while not an argument the Landowners would normally make, since the City has
27 moved for the application of EDCR 2.20© (City Opp. p. 5:11) then under the City’s argument,
28 since the City has failed to deny any of these 10 actions and specifically failed to deny that it is
reserving the Landowners’ Property for a City park, then that argument must be deemed
meritorious.

13. **RIPENESS AND FUTILITY DO NOT APPLY TO FOUR OF THE DISMISSED CLAIMS**

The Landowners explained in their moving papers that the Nevada Supreme Court has held that the City's ripeness and futility analysis does **NOT** even apply to four of the inverse condemnation claims this Court dismissed on ripeness grounds - regulatory per se, non-regulatory / de facto, categorical, or temporary taking inverse condemnation claims. The Nevada Supreme Court has made this rule very clear.²⁹ The reason for this rule is that the taking is known in these type of inverse condemnation claims and, once the taking is known, the payment of just compensation is "self-executing," meaning there can be no barriers or preconditions (such as a ripeness / futility analysis) to this constitutional guarantee.³⁰ ***This means that a ripeness analysis (major modification) is not a precondition to bringing these four inverse condemnation claim.***

The Landowners further explained that, despite this clear rule, this Court erroneously held all of the Landowners' inverse condemnation claims, including the regulatory per se, non-regulatory / de facto, categorical, and temporary taking claims, "must be dismissed for lack of ripeness." Had there been a hearing on the inverse condemnation claims before they were dismissed, this law could have been provided to this Court so that a correct ruling could have been entered. Accordingly, this Court should grant a hearing so that this Court can consider applicable Nevada Supreme Court precedent on the ripeness and futility issues before entering an order on these issues.

Finally, it should be noted that the City does not contest this error on the ripeness and futility issue in its Opposition and the reason for its failure to contest is clear - it cannot. Nevada law is unequivocally clear on this issue - ripeness and futility do not apply to these four claims.

²⁹ Hsu v. County of Clark, supra, ("[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Id., at 732); McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (2006) ("Sisolak was not required to exhaust administrative remedies or obtain a final decision from the Clark County Commission by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Id. at 664).

³⁰ Alper v. Clark County, 571 P.2d 810, 811-812 (1977).

1 **14. THE RIPENESS AND FUTILITY DOCTRINE AS APPLIED TO THE**
2 **LANDOWNERS' PENN CENTRAL CLAIM REQUIRES A DETAILED FACTUAL**
3 **ANALYSIS**

4 The Landowners agree that a ripeness and futility analysis does apply to the Landowners'
5 Penn Central inverse condemnation claim. However, whether the Landowners' Penn Central claim
6 is ripe for adjudication or whether it is futile to pursue any further applications with the City
7 requires a detailed factual analysis. The City's argument in its opposition demonstrates this - the
8 City argues that "the [Landowners'] Futility Argument is Speculative." City Opp., 7:11. Whether
9 an argument is "speculative" or not demands a factual inquiry. It is beyond dispute that this Court
10 did not perform this factual inquiry, because the ripeness and futility issues were not briefed, they
11 were not argued, and they were not discussed at the petition for judicial review hearing.

12 Moreover, when this Court considers whether to dismiss important constitutional inverse
13 condemnation claims, it is required to recognize all factual allegations as true, and draw all
14 inferences in favor of the plaintiff.³¹ Therefore, this Court is required in the first instance to allow
15 argument and a hearing on the ripeness and futility issues. The Landowners' proposed arguments
16 on the ripeness issue for this hearing are set forth in Exhibit 5 (pages 47-52) to its moving papers.
17 If the hearing is a motion to dismiss (as was supposed to be the case when this Court dismissed the
18 Landowners' inverse condemnation claims on ripeness grounds), this Court must reject the City's
19 contention that the Landowners futility argument is "speculative," because this Court is required
20 to assume all of these factual allegations in the Landowners' complaint and on pages 47-52 of the
21 Landowners' Exhibit 5 are true. The Court cannot merely dismiss claims on ripeness grounds,
22 because the City asserts they are "speculative."

23 Additionally, the City's ripeness argument is based on the Crockett Order which held that
24 a major modification is a required application to develop the 17 Acre Property. In addition to the
25 above cited reasons the Crockett Order does not apply in this inverse condemnation case, the
26 Landowners will show in their argument to this Court two reasons for why the ripeness / "major
27 modification" argument in the Crockett Order 17 Acre Property case does not apply in this 35 Acre
28 Property case. First, the Landowners will show in this 35 Acre Property case that it filed a Master

³¹ Buzz Stew, LLC v. City of North Las Vegas, 181 P.3d 670, 672 (2008).

1 Development Agreement (MDA) with the City that met and far exceeded any major modification
2 requirements discussed in the Crockett Order and the City still denied the MDA. Second, the
3 Landowners will show that actions by the City subsequent to the Crockett Order (in the 17 Acre
4 Property case) show that it would be entirely futile to submit any application to the City to develop
5 the 35 Acre Property for any reason, because the City has and will continue to deny any and all
6 applications to develop the 35 Acre Property. In fact, the City has never even denied that it will
7 continue to deny any and all use of the 35 Acre Property in furtherance of a City scheme to
8 specifically target the Landowners' property to have it remain in a vacant condition to be "turned
9 over to the City" for a "fitness park" for \$15 Million which is 1% of its fair market value. These
10 arguments are set forth in Exhibit 5 to the Landowners' original motion for a hearing.

11 Finally, the City makes several factual assertions to support its ripeness argument, which,
12 as explained above, are not appropriate in a motion to dismiss and which are not even true. First,
13 the City incorrectly claims that City action which post dates the denial of the 35 Acre Property
14 application cannot be considered in this inverse condemnation case. City Opp., pp. 7-8. There is
15 no law to support this City contention and, in fact, well established eminent domain law provides
16 the exact opposite - the "aggregate" of the City action must be considered when deciding a taking
17 issue, despite when it occurred.³² Second, the City incorrectly asserts that the actions of two high
18 ranking City officials - councilmen Seroka and Coffin - cannot be considered when deciding taking
19 issues. The Nevada Supreme Court, however, thought that the statement of just one County
20 planning staff employee named Bill Keller regarding height restrictions (the taking action in that

21
22 ³² Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State
23 v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (citing to 9th Circuit case law wherein the
24 aggregate of government action was considered to find a taking and Arkansas Game & Fish
25 Comm's v. United States, 568 U.S. --- (2012), holding there is no "magic formula" in every case
26 for determining whether particular government interference constitutes a taking under the U.S.
27 Constitution; there are "nearly infinite variety of ways in which government actions or
28 regulations can effect property interests." *Id.*, at 741); City of Monterey v. Del Monte Dunes at
Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding
that requires "complex factual assessments." *Id.*, at 720.); Lehigh-Northampton Airport Auth. v.
WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to
determine when government action shall be deemed a de facto taking; instead, each case must be
examined and decided on its own facts." *Id.*, at 985-86).

1 case) was relevant enough to include in the Sisolak opinion. Sisolak, at 653-54. Therefore, if a
2 statement by just one planning staff employee is relevant enough to include in a Nevada Supreme
3 Court opinion, then repeated statements by two high ranking Councilmen (that the Landowner is
4 a “motherfucker,” over their dead body will development be allowed, and they will vote against the
5 whole thing - see Exhibit 5, pp. 23-25) are clearly relevant.³³

6 **15. THE CITY ARGUMENT REGARDING THE MDA FURTHER SHOWS THE**
7 **NECESSITY OF A HEARING**

8 The City makes three arguments regarding the Master Development Agreement (MDA) that
9 further show the necessity of a proper hearing. As a preliminary matter, the City improperly
10 conflates the judicial review standard of being limited to the record before the administrative body
11 with the inverse condemnation standard of considering the “aggregate” of all government actions
12 and the ad hoc inquiry required to determine takings liability.

13 Beyond this error, the City first asserts that the Landowners cannot claim the denial of the
14 MDA as a basis for a taking, because they did not appeal the denial of the MDA within 25 days.
15 City Opp. 8:17-18. The United States Supreme Court, however, as explained in the Landowners’

16
17 ³³ The City also cites to the case of State v. Eighth Jud. Dist. Ct. to assert that “futility
18 cannot be established based on the alleged statements of individual council members.” City
19 Opp., p. 8. First, the Landowners are not trying to establish futility based on the statements of
20 individual council members; the statements by councilmen Seroka and Coffin are just one piece
21 of the City’s systematic and aggressive actions to prevent all development of the 35 Acre
22 Property. Second, the statements by Councilman Seroka are important, because the Landowners’
23 Property is located in his district and it is common knowledge that the other councilpersons defer
24 to the councilperson’s opinion regarding applications in their district. Third, the State v. Eighth
25 Jud. Dist. Ct case relied upon by the City is inapplicable. See City Opp., p. 8:7-8. In that case
26 the landowner did not even file an application to develop and he was relying solely upon one
27 general passing statement in a barbershop by one of the councilpersons. Id., at 742 (2015).
28 Here, the statements by Councilmen Seroka and Coffin are more than general passing statements
in a barbershop - the statements are in writing or transcribed, are extremely hostile toward the
Landowners, and directly represent that the councilpersons will vote against all development on
the 35 Acre Property. The councilmen try to hide these actions from the Court - even after being
subpoenaed. *Exhibit 54: 10 App LO 00002343, Appendix of Exhibits to Landowners’ proposed*
Summary Judgment. Moreover, the facts in State v. Eighth Jud. Dist. Ct. are not remotely close
to the facts of this case where the City has engaged in numerous systematic and aggressive
actions to stop all development on the 35 Acre Property and the statements by the two
councilpersons are just one piece of these far-reaching actions.

opening motion, expressly rejected this argument in the Lucas case, holding a landowner is not required to challenge the validity of the underlying government action as a pre-condition to bringing taking claims. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Second, the City asserts denial of the MDA was appropriate, because the MDA would require a major modification anyway and one was not filed with the MDA. City Opp. 8:18-20. The motion for summary judgment attached as Exhibit 5 to the Landowners' moving papers details why a major modification was not required and, even if it was required, the major modification elements were met in the MDA (which the City still denied). Exhibit 5, pp. 47-52. Third, the City asserts that the denial of the MDA does not foreclose "the possibility that other applications would be granted." Govt. Opp. 8:20-23. This very argument, however, was made and rejected under very similar facts in the Del Monte Dunes case. City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999). The Court recognized that, if this blanket statement were accepted as a basis to avoid liability, then every government entity would simply make the argument that there is a "possibility" that other applications would be granted and indefinitely delay and avoid liability for a taking.

As this Court can see, the City is making factually and legally incorrect arguments in regards to the MDA, which further shows the necessity to have these issues properly briefed and presented to the Court; not presented for the first time in an opposition to a motion for a hearing.

16. THE LANDOWNERS HAVE NOT ACQUIESCED TO ISSUE PRECLUSION

City argues that the Landowners did not specifically and fully argue the issue preclusion issue in their request for a hearing and, therefore, they have "acquiesced" that Judge Crockett's decision has preclusive effect and unilaterally applies in this case forever barring the Landowners from raising the argument again. City Opp., pp. 4-5. First, this shows precisely why a hearing is required. Again, the Landowners' pending request is a request to be heard so that all of the Landowners' arguments may be presented to the Court, including the issue preclusion argument as it applies in the context of the inverse condemnation claims. A hearing is required so that all parties may present all issues and arguments to the Court, have those issues heard on the merits as is required, and avoid unfounded and baseless waiver arguments, like that made by the City. Second,

1 attached as Exhibit 5 is the Landowners' proposed summary judgment motion, which opposes the
2 City's issue preclusion argument. *See pages 52-53*. The argument included therein is as follows:

3 **"F. ISSUE PRECLUSION DOES NOT APPLY**

4 The City may also argue that issue preclusion requires application of the Crockett Order to
5 this 35 Acre Property case. As recognized by the City, "the following factors are necessary
6 for application of issue preclusion: '(1) the issue decided in the prior litigation must be
7 identical to the issue presented in the current action; (2) the initial ruling must have been on
8 the merits and have become final; ... (3) the party against whom the judgment is asserted
9 must have been a party or in privity with a party to the prior litigation'; and (4) the issue was
10 actually and necessarily litigated."³⁴

11 These factors are conjunctive and the City cannot establish all four factors to apply the
12 Crockett Order in this case. The issues in the Crockett Order are not identical, because both
13 of those cases involved petitions for judicial review. The issue, therefore, was whether the
14 City's zoning actions were based on substantial evidence. This issue in this case is
15 different; it is whether the City's actions rise to the level of a taking. The ruling in the
16 Crockett Order also was not on the merits relevant to a taking in this case and they have not
17 become final as the Nevada Supreme Court has not addressed either order. Finally, the
18 constitutional taking issues present in this case were not actually nor necessarily litigated
19 in the Crockett Order. Accordingly, issue preclusion does not apply.

20 **Rather the preclusive effect of a prior order is more applicable to the Judge Smith
21 Orders, because both orders directly address the underlying issue of the vested right
22 to develop and they have become final as they have been affirmed by the Nevada
23 Supreme Court. In fact, the Judge Smith orders are more than preclusive; they are
24 the settled law on these issues."** *Exhibit 5, pp. 52-53. (emphasis supplied).*

25 Accordingly, any City argument that the Landowners have acquiesced to or waived the issue
26 preclusion argument is without merit and further shows why a hearing is necessary.

27 **17. CONCLUSION**

28 Due process is not a difficult concept - the Due Process Clause of the Fifth Amendment
guarantees that "[n]o person shall ... be deprived of life, liberty, or property, without due process
of law" and United States Supreme Court precedents "establish the general rule that individuals
must receive notice and an opportunity to be heard before the Government deprives them of
property." *U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). Here, there was no
notice, no briefing, and no hearing before the Landowners' inverse condemnation claims were
dismissed. Therefore, the Landowners respectfully request a hearing on the dismissal of their
inverse condemnation claims so this Court may properly consider relevant and applicable inverse

³⁴ *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 714 (2008).

1 condemnation law and make an informed and legally sound decision based on this applicable law.
2 Despite the City's attempt to ignore the Constitution, the Due Process Clause requires the requested
3 notice and a hearing and it will be reversible error to deny the request.

4 DATED this 14th day of January, 2019.

5 **LAW OFFICES OF KERMIT L. WATERS**

6 By: /s/ James J. Leavitt

7 KERMIT L. WATERS, ESQ.

8 Nevada Bar No. 2571

9 JAMES J. LEAVITT, ESQ.

10 Nevada Bar No. 6032

11 MICHAEL SCHNEIDER, ESQ.

12 Nevada Bar No. 8887

13 AUTUMN WATERS, ESQ.

14 Nevada Bar No. 8917

15 Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 14th day of January, 2019, a true and correct copy of the foregoing **REPLY RE:**
4 **PLAINTIFF LANDOWNERS' REQUEST FOR REHEARING / RECONSIDERATION OF**
5 **ORDER / JUDGMENT DISMISSING OF INVERSE CONDEMNATION CLAIMS** was made
6 by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the
7 Eighth Judicial District Court's electronic filing system, with the date and time of the electronic
8 service substituted for the date and place of deposit in the mail and addressed to each of the
9 following:

10
11 **McDonald Carano LLP**

12 George F. Ogilvie III
13 Debbie Leonard
14 Amanda C. Yen
15 2300 W. Sahara Ave., Suite 1200
16 Las Vegas, Nevada 89102
17 gogilvie@mcdonaldcarano.com
18 dleonard@mcdonaldcarano.com
19 ayen@mcdonaldcarano.com

20 **Las Vegas City Attorney's Office**

21 Bradford Jerbic
22 Philip R. Byrnes
23 Seth T. Floyd
24 495 S. Main Street, 6th Floor
25 Las Vegas, Nevada 89101
26 pbyrnes@lasvegasnevada.gov
27 sfloyd@lasvegasnevada.gov

28 **Pisanelli Bice, PLLC**

Todd L. Bice, Esq.
Dustun H. Holmes, Esq.
400 S. 7th Street
Las Vegas, Nevada 89101
tlb@pisanellibice.com
dhh@pisanellibice.com

/s/ Evelyn Washington
An Employee of the Law Offices of
Kermitt L. Waters

Exhibit 99

**Deposition of Greg Steven Goorjian
LO 00003833-00003884**

Deposition of:

Greg Steven Goorjian

Case:

Fore Stars, Ltd., et al. v. Robert N. and Nancy Peccole
A-17-751960-C

Date:

12/20/2018



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<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3</p> <p>4 FORE STARS, LTD., a Nevada</p> <p>5 limited liability company; 180</p> <p>6 Land Co LLC, a Nevada limited</p> <p>7 liability company; Seventy</p> <p>8 Acres LLC, a Nevada limited</p> <p>9 liability company; EHB</p> <p>10 Companies LLC, a Nevada limited</p> <p>11 liability company,</p> <p>12 Plaintiffs,</p> <p>13 vs. CASE NO. A-17-751960-C</p> <p>14 ROBERT N. and NANCY PECCOLE,</p> <p>15 individuals, and as Trustees of</p> <p>16 the ROBERT N. and NANCY PECCOLE</p> <p>17 TRUST, DOES 1 THROUGH 21,</p> <p>18 Defendants.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 DEPOSITION OF GREG STEVEN GOORJIAN</p> <p>25 Taken on Thursday, December 20, 2018</p> <p>By a Certified Court Reporter</p> <p>9:24 a.m.</p> <p>At 415 South Sixth Street, Suite 100</p> <p>Las Vegas, Nevada</p> <p>Reported by: Judith Payne Kelly, RMR, CCR-539</p> <p>Job No. 30440</p>	<p>1 I N D E X</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 GREG STEVEN GOORJIAN</p> <p>5 Examination by Mr. Jimmerson 7</p> <p>6 Examination by Mr. Peccole 97</p> <p>7 Examination By Mr. Jimmerson 161</p> <p>8 Examination By Mr. Peccole 189</p> <p>9 Examination By Mr. Jimmerson 195</p> <p>10 Examination By Mr. Peccole 196</p> <p>11 Examination By Mr. Jimmerson 197</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiffs:</p> <p>4 JAMES J. JIMMERSON, ESQ.</p> <p>5 The Jimmerson Law Firm, P.C.</p> <p>6 415 South Sixth Street</p> <p>7 Suite 100</p> <p>8 Las Vegas, Nevada 89101</p> <p>9 702.388.7171</p> <p>10 ks@jimmersonlawfirm.com</p> <p>11</p> <p>12 For the Defendants:</p> <p>13 ROBERT N. PECCOLE, ESQ.</p> <p>14 Peccole & Peccole, Ltd.</p> <p>15 8689 West Charleston Boulevard</p> <p>16 Suite 109</p> <p>17 Las Vegas, Nevada 89117</p> <p>18 702.366.9140</p> <p>19 bob@peccole.lvcoxmail.com</p> <p>20</p> <p>21 Also Present:</p> <p>22 SHAHANA M. POLSELLI</p> <p>23 YOHAN LOWIE</p> <p>24</p> <p>25 * * * * *</p>	<p>1 E X H I B I T S</p> <p>2 PLAINTIFFS'</p> <p>3 NUMBER DESCRIPTION MARKED</p> <p>4 Exhibit 1 (Intentionally omitted.)</p> <p>5 Exhibit 2 Master Declaration of Covenants, 30</p> <p>6 Conditions, Restrictions and</p> <p>7 Easements for Queensridge,</p> <p>8 FORE000001 through 150</p> <p>9 Exhibit 3 Amended and Restated Master 32</p> <p>10 Declaration of Covenants,</p> <p>11 Conditions, Restrictions and</p> <p>12 Easements for Queensridge,</p> <p>13 FORE000151 through 280</p> <p>14 Exhibit 4 Custom Lots at Queensridge North, 37</p> <p>15 Purchase Agreement, Earnest Money</p> <p>16 Receipt and Escrow Instructions,</p> <p>17 FORE000281 through 289</p> <p>18 Exhibit 5 Addendum "1" to Purchase Agreement, 39</p> <p>19 Earnest Money Receipt and Escrow</p> <p>20 Instructions, FORE000290 through 298</p> <p>21 Exhibit 6 Attachment "C" Disclosure Statement 67</p> <p>22 Relating to Zoning Classifications</p> <p>23 and Master Plan Designations of</p> <p>24 Adjoining Property</p> <p>25 Exhibit 7 Grant, Bargain and Sale Deed 68</p> <p>(Queensridge North Parcel 19 Custom</p> <p>Lot), FORE000299 through 302</p> <p>Exhibit 8 (Intentionally omitted.)</p> <p>Exhibit 9 (Intentionally omitted.)</p> <p>Exhibit 10 Nevada Title Company report dated 69</p> <p>4-12-2000, FORE000315 through 329</p> <p>Exhibit 11 (Intentionally omitted.)</p> <p>Exhibit 12 Grant, Bargain and Sale Deed, 73</p> <p>FORE000350 through 353</p>

LO 00003834

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1	E X H I B I T S		1	P R O C E E D I N G S	
2	PLAINTIFFS'		2	(Mr. Lowie was not present at the	
3	NUMBER DESCRIPTION MARKED		3	commencement of the deposition.)	
4	Exhibit 13 Map, Queensridge: Annexed Property, 75		4	(Counsel stipulated to waive	
5	FORE000354		5	the reporter requirements	
6	Exhibit 14 Public Offering Statement for 76		6	under Rule 30(b)(4).)	
7	Queensridge North (Custom Lots)		7		
8	Exhibit 15 Declaration of Annexation for 78		8	GREG STEVEN GOORJIAN,	
9	Queensridge Parcel 19 (Queensridge		9	having been first duly sworn, was	
10	North Custom Lots)		10	examined and testified as follows:	
11	Exhibit 16 Complaint, Case No. A287495, Triple 26		11	EXAMINATION	
12	Five v. William Peccole, FORE001774		12	BY MR. JIMMERSON:	
13	through 1868		13	Q. Good morning, Mr. Goorjian. How are you,	
14	Exhibit 17 Complaint, Case No. A546847, BGC 85		14	sir?	
15	Holdings LLC v. Fore Stars, Ltd.,		15	A. Just fine, thank you.	
16	FORE001979 through 1990		16	Q. My name is Jim Jimmerson. I have the	
17	Exhibit 18 Peccole Ranch Certificate of 21		17	privilege of representing Fore Stars, Ltd., in this	
18	Amendment of CC&Rs, FORE001591		18	lawsuit that exists against Mr. and Mrs. Robert	
19	through 1773		19	Peccole.	
20	Exhibit 19 Custom Home Estate Design Guidelines 79		20	Present is myself, of course; our paralegal,	
21	Exhibit 20 Front and back copy of Queensridge 81		21	Shahana Polselli; the court reporter; and Mr. Peccole	
22	Custom Home Estates binder given to		22	is also present.	
23	homeowners		23	MR. JIMMERSON: Bob, would you introduce	
24	Exhibit 21 Restrictive Covenant dated 88		24	yourself?	
25	2-29-2008, FORE000489 and 490		25	Bob, do you want to introduce yourself?	
Page 6			Page 8		
1	E X H I B I T S		1	MR. PECCOLE: Bob Peccole. We know each	
2	PLAINTIFFS'		2	other.	
3	NUMBER DESCRIPTION MARKED		3	THE WITNESS: Pleasure to see you, Bob.	
4	Exhibit 25 A. Wayne Smith & Associates 93		4	MR. PECCOLE: And I'm here representing Nancy	
5	transmittal to City of Las Vegas		5	and myself and our trust.	
6	Planning and Zoning dated 3-27-86		6	Q. (By Mr. Jimmerson) All right. Mr. Goorjian,	
7	Exhibit 26 (Intentionally omitted.)		7	have you ever given a deposition before?	
8	Exhibit 27 (Intentionally omitted.)		8	A. I don't believe I have.	
9	Exhibit 28 Letter dated 5-1-90 from City of Las 96		9	Q. Okay. Let me just go through some of the	
10	Vegas to William Peccole 1982 Trust		10	ground rules just so you have a good understanding.	
11	Exhibit 29 (Intentionally omitted.)		11	A deposition is a formal setting like this,	
12	Exhibit 30 (Intentionally omitted.)		12	although it's in our law firm, not in a courtroom. But	
13	Exhibit 31 (Intentionally omitted.)		13	it places you under oath and obliges you to tell the	
14	Exhibit 32 Exhibit F-1, 2-22-16, FORE003186; 170		14	truth just like you would be obliged if you were in a	
15	1990 Conceptual Plan, "As-Built,"		15	courtroom before a judge. Okay?	
16	Peccole Ranch Land Use Data, Phase		16	A. Yup.	
17	Two		17	Q. And the oath you've taken is similar, if not	
18	DEFENDANTS'		18	identical, to the one you would take before our judge.	
19	NUMBER DESCRIPTION MARKED		19	Do you understand that?	
20	Exhibit A Peccole Ranch Master Plan, A Master 101		20	A. Yes.	
21	Plan Amendment and Phase Two		21	Q. All right. And obligates you to tell the	
22	Rezoning Application, dated 2-6-90		22	truth. Right?	
23			23	A. Yes.	
24			24	Q. Okay. To me the most important instruction	
25			25	is just to make sure you understand my question.	

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<p>1 because if a judge were to -- or a jury -- were to look 2 at your question and answer, they're going to presume 3 you understood my question and then you chose to give 4 the answer that you gave. Okay?</p> <p>5 A. Yes.</p> <p>6 Q. So because that would be the natural 7 assumption or presumption that a judge or jury would 8 have, do make sure that you understand my questions or 9 opposing counsel's questions before you answer; and if 10 you don't or you're not certain, just ask me to 11 rephrase it and I'm happy to do that. This is not a 12 contest of iron will.</p> <p>13 A. Yes.</p> <p>14 Q. It's just a matter of trying to learn about 15 the facts and circumstances that you might bring to 16 this testimony in this case, and I'll explain to you 17 why there are issues here that you would have some 18 answers to. Okay? At least I think they're relevant.</p> <p>19 A. Okay.</p> <p>20 Q. And -- as we go along. And so make sure you 21 understand the question.</p> <p>22 A. Yes.</p> <p>23 Q. Also, you're doing great. Just let me finish 24 my question or opposing counsel finish his question and 25 then answer. Let's don't speak over each other,</p>	<p>1 financial, are not at issue in this case; and this is a 2 dispute between Fore Stars and the other company -- the 3 other plaintiffs, and Mr. Peccole and his wife. Do you 4 understand that?</p> <p>5 A. The other plaintiffs, can you be clear on who 6 they are?</p> <p>7 Q. The land companies of my clients. So 8 Fore Stars, Ltd., 180 Land Co and Seventy Acres LLC.</p> <p>9 A. Okay. And they're all under the --</p> <p>10 Q. They own different aspects -- different 11 property of the overall, formerly known as, Badlands 12 Golf Course.</p> <p>13 A. Got it. Understood.</p> <p>14 Q. The 250 acres are owned by those three 15 companies.</p> <p>16 A. Yes.</p> <p>17 Q. Originally owned by Fore Stars, and then 18 Fore Stars transferred property to the two other 19 properties, kind of matching their names. Transferred 20 about 180 acres to 180 Land Co and about 70 acres to 21 Seventy Acres LLC, retaining to itself the PD-zoned 22 land of the club and the property adjoining the 23 Queensridge Towers, the high towers. That area. 24 Right?</p> <p>25 A. The members in those LLCs, are they</p>
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<p>1 because the court reporter cannot take down -- things 2 down in stereo. Okay?</p> <p>3 A. Yes.</p> <p>4 Q. So just wait, one at a time. This is -- 5 again, this is -- I'm trying to be as easy as I can for 6 you. I think I have about an hour, hour and a half's 7 worth of questions. You can take a break whenever you 8 want. Because you don't have a lawyer representing 9 you, you're your own lawyer, if you will. So if you 10 feel uncomfortable, you want to use the restroom, you 11 want to stretch your legs, just let us know and we'll 12 be happy to accommodate you. Okay?</p> <p>13 A. Thank you.</p> <p>14 Q. All right. And if you have any questions 15 along the way, because you don't have a lawyer 16 representing you today, ask the questions and we're 17 happy to answer them the best that we can. We're 18 officers of the court. We're obliged to be truthful 19 and responsive to your needs and to your questions. So 20 I certainly will do, for my part -- try to treat you 21 with respect and also candor in terms of hopefully 22 answering any questions that you might have along the 23 way.</p> <p>24 You're not a party to this litigation, so 25 your interests, you know, both the personal as well as</p>	<p>1 different?</p> <p>2 Q. They are. I believe individual trusts of the 3 Dehart family and the Lowie family.</p> <p>4 MR. PECCOLE: I'd like just for the record to 5 read into the record who the plaintiffs are. It's 6 Fore Stars, Ltd. --</p> <p>7 MR. JIMMERSON: Absolutely.</p> <p>8 MR. PECCOLE: -- 180 Land Co, LLC, Seventy 9 Acres LLC, and EHB Companies LLC. I believe you know 10 EHB.</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q. (By Mr. Jimmerson) EHB is the manager, the 13 limited liability company manager of the LLCs, or the 14 land owners. Okay. All right.</p> <p>15 And then -- and then the owners of these 16 companies indirectly are the trusts, family trusts or 17 other estate vehicles for these individual families, 18 two families, the Dehart family and the Lowie family. 19 Okay?</p> <p>20 All right. And if there's anything that 21 comes along, just ask, and we're happy to begin.</p> <p>22 And again, I have a series of questions that 23 I want to go through with you and then have you help us 24 respond.</p> <p>25 My understanding is that you have been, both</p>

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<p>1 through a marriage and through employment, connected to</p> <p>2 the Peccole family as they owned property in what I</p> <p>3 call the general area of what -- Rampart or Fort Apache</p> <p>4 and West Charleston. Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So in your own words, would you tell</p> <p>7 us what your historical relationship has been to the</p> <p>8 Peccole family and if you had a job title or duties and</p> <p>9 responsibilities, like, for example, playing a role in</p> <p>10 the sale of estate lots, which I understand you were</p> <p>11 involved with. Just kind of give us an outline,</p> <p>12 overview of that.</p> <p>13 A. Was married to the youngest daughter, and</p> <p>14 entered the family in 1983, '82, '83.</p> <p>15 Q. The daughter's name was what, please?</p> <p>16 A. Leann.</p> <p>17 Q. Okay. Thank you.</p> <p>18 A. Worked directly with the Peccole family from</p> <p>19 about the summer of '83 to -- it must have been right</p> <p>20 around '8 -- '90, '89, '90, planning the property,</p> <p>21 assisting in planning the property, assisting in zoning</p> <p>22 the property. Assisted in some of the start-up</p> <p>23 development as a marketing and sales director, would</p> <p>24 have been my -- my title once we started developing,</p> <p>25 which the first was the corner of Sahara and Durango.</p>	<p>1 Q. All right. And at some point there had been</p> <p>2 a joint venture between Peccole and Triple Five. Is</p> <p>3 that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And in a general term, what property</p> <p>6 did they have during the period of joint ventureship</p> <p>7 before they had litigation and separated their -- their</p> <p>8 own properties? What property did they have a general</p> <p>9 joint ventureship with?</p> <p>10 A. They had -- my understanding would be that</p> <p>11 their partnership was everything but Canyon Gate, what</p> <p>12 was Canyon Gate at the time. So that would have been</p> <p>13 everything that was west of Hualapai -- I mean west of</p> <p>14 Rampart and Fort Apache, same street, and everything</p> <p>15 north from -- north Charleston to south Alta.</p> <p>16 Q. Got it. Okay. Now, following up your</p> <p>17 narrative and your answer, I have some questions. One</p> <p>18 of the tasks that you had, you've indicated, was</p> <p>19 helping the family develop the property; and part of</p> <p>20 that initial work would be obtaining zoning. Is that</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. And there are three classifications of</p> <p>24 zoning, the largest one being R-PD7, but there's some</p> <p>25 other, commercial and others, multifamily.</p>
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<p>1 And then the family divorced and separated in</p> <p>2 late '89 or '89. Left and went to work for another</p> <p>3 company, not in the development business. Came back to</p> <p>4 the Peccole family in -- gosh, I want to say '94, and</p> <p>5 got very much involved in what was then going to be</p> <p>6 Queensridge and then became Queensridge North as</p> <p>7 well -- so the two, Queensridge and Queensridge North</p> <p>8 as well -- as VP of marketing of sales and/or marketing</p> <p>9 director, whatever they felt like calling me that day.</p> <p>10 Q. Okay. And who were the owners or who were</p> <p>11 your employers within the meaning of that last answer?</p> <p>12 A. My employers would have been Peccole-Nevada</p> <p>13 Corporation and the trusts, which was the -- I think it</p> <p>14 was the 1986 Trust and there was a limited liability</p> <p>15 company as well that was involved in that.</p> <p>16 Q. All right.</p> <p>17 A. And Peccole-Nevada Corporation was the</p> <p>18 manager, I believe; and that's who I directly worked</p> <p>19 for.</p> <p>20 Q. There was one entity that I've seen some</p> <p>21 papers and names. I'll refer to it as Legacy. Are you</p> <p>22 familiar with that?</p> <p>23 A. I'd have to be refreshed.</p> <p>24 Q. Okay. Fair enough.</p> <p>25 A. But I am familiar with it.</p>	<p>1 Was that part of the role that you had, was</p> <p>2 working and obtaining the R-PD7 zoning?</p> <p>3 A. It wasn't my direct responsibility. We had</p> <p>4 engineers and planners. They represented us when it</p> <p>5 came time to get zoning. We, as a family, were all</p> <p>6 involved in planning and engineering and reviewing and</p> <p>7 looking at, you know, how it was going to be further</p> <p>8 developed.</p> <p>9 At that point in time, now, was much more</p> <p>10 involved in zoning issues prior to 1990. Okay?</p> <p>11 Q. The zoning that was placed on that</p> <p>12 property -- I call it the golf course -- was in 1990.</p> <p>13 It was the R-PD7, along with the other two types of</p> <p>14 zoning. Do you recall that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. And the -- I thought one of the more</p> <p>17 unique things about this property was it was zoned</p> <p>18 R-PD7 as a basic zoning. Even though in later years it</p> <p>19 was going to be used as a golf course, it still</p> <p>20 retained its zoning classification from 1990 right</p> <p>21 through the present date.</p> <p>22 MR. PECCOLE: I would like to object on the</p> <p>23 form of the question.</p> <p>24 Q. (By Mr. Jimmerson) And he -- just so you</p> <p>25 understand it, Mr. Peccole can object to any question I</p>

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<p>1 have. Then after he does so, you're obliged to still 2 respond, okay, if you could. 3 A. Okay. 4 Q. But he can object to maybe the way I ask a 5 question or the substance, whatever. So appreciate 6 that. Okay. 7 So I'll go back to the question. Was -- what 8 was the purpose for the companies zoning the property 9 R-PD7 or the other two zoning classifications, 10 commercial and multifamily? 11 A. That's a -- the purpose -- okay. Now 12 we're -- I'm semi-speculating and also have some 13 background to it. I would say that it would have 14 been -- it would have been there as a fallback 15 position, call it. 16 Q. And you mean in case they didn't always 17 maintain the property as a golf course, they had the 18 ability to develop it? 19 A. Mr. Peccole had tremendous foresight, and 20 always, believe it or not, planned for the worst. 21 Q. And so in that regard, he planned for the 22 fact that the property may not always be a golf course 23 and it could be developed? Is that right? 24 A. That there might be circumstances that it 25 would no longer be able to be a golf course, whether it</p>	<p>1 before we would have had any golf course deal. 2 We master-planned that property and -- boy, 3 back in the '80s, we master-planned that whole 4 property; and Bill had master-planned or had a plan on 5 it prior to that plan. Okay? 6 So there was always -- that was always 7 residential land. 8 Q. Got it. 9 MR. PECCOLE: I would like to object to the 10 question as being speculative. 11 MR. JIMMERSON: All right. Thank you. 12 Q. (By Mr. Jimmerson) Now, there's two 13 different projects, as this turns out. The way we look 14 at it now, we have the benefit of hindsight. There is 15 the Peccole Ranch plan to the south of Charleston 16 Avenue, West Charleston Avenue. Right? 17 A. Correct. 18 Q. And then there is, as we see, the Queensridge 19 master plan homes that are on the -- I call it the 20 north of West Charleston. Is that true? 21 A. Correct. 22 Q. All right. And there were two different 23 plans and two different projects? Is that right? 24 A. Correct. 25 Q. And separated by years of time?</p>
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<p>1 was financially, water. He always brought up issues 2 like war. He always was very cautious, conservative 3 person. 4 Q. And that's why he laid down the zoning of 5 R-PD7 and the others as the first level before he got 6 into the use of the golf course? 7 MR. PECCOLE: I object to the form of the 8 question. 9 Q. (By Mr. Jimmerson) Is that right? 10 A. I couldn't speak to why he did -- directly 11 why he did it. It was there as a fallback. Because of 12 the timing of everything, I can't recall whether the 13 zoning came before we even had a golf course deal. 14 Okay? So I do recall that there was -- you know, 15 wasn't always going to be a golf course automatically, 16 because you had to find somebody that would do it, 17 somebody who would develop it and be responsible for 18 it, something that the family never really wanted to 19 do. 20 Q. And the zoning predated the finding of the 21 golf course operator? 22 A. See, now this, I can't -- that's -- the two 23 happening, I don't -- can't remember which happened 24 first; but I would, you know, to the best of my 25 knowledge, think that we would have had the zoning</p>	<p>1 A. Correct. 2 Q. With the Peccole plan south of Charleston 3 being the first to be developed in the '80s and early 4 '90s; is that right? 5 A. Yes. 6 Q. Okay. And then the Queensridge master plan 7 was begun in roughly the middle of 1990s, going forward 8 after that? Is that right? 9 A. Yes. 10 Q. Okay. Now, your roles, you wore many hats 11 in -- I guess as needed, as family would need you to do 12 during those different years; is that right? 13 A. Yes. 14 Q. Okay. And did you have any involvement in 15 the creation through Karen Dennison and Lance Earl of 16 the CC&Rs for each of the projects? In other words, 17 for the Queensridge -- I'm sorry -- for the Peccole 18 plan to the south of West Charleston and later the 19 Queensridge CC&Rs to the north of West Charleston? 20 A. Less involvement. Queensridge. Less on the 21 Peccole Ranch side. 22 Q. All right. 23 MR. JIMMERSON: Can I see the Queensridge -- 24 I'm sorry, the Peccole Ranch. I want to do it 25 chronologically.</p>

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<p>1 THE WITNESS: I can't even remember if I was</p> <p>2 involved, to be honest with you, on the Peccole Ranch</p> <p>3 side when we were in partnership with Triple Five.</p> <p>4 Prior to Triple Five, yes. After Triple Five, not as</p> <p>5 much; and then with Queensridge, very much.</p> <p>6 Q. (By Mr. Jimmerson) And to help you, because</p> <p>7 it has been some time, I'm trying to do things in</p> <p>8 chronological order, at least as I understand the</p> <p>9 chronology.</p> <p>10 A. Yes.</p> <p>11 Q. If I get it wrong, you'll let me know. If I</p> <p>12 have something out of sequence and you remember it's</p> <p>13 out of sequence, please tell us, tell us both.</p> <p>14 A. Yeah.</p> <p>15 MR. JIMMERSON: We'll mark this first exhibit</p> <p>16 as -- what did you mark this one?</p> <p>17 MS. POLSELLI: 18.</p> <p>18 MR. JIMMERSON: Number 8?</p> <p>19 MS. POLSELLI: 18.</p> <p>20 MR. JIMMERSON: 18? All right. Thank you.</p> <p>21 (Exhibit 18 marked.)</p> <p>22 Q. (By Mr. Jimmerson) We've marked as</p> <p>23 Exhibit 18 -- we have a list of exhibits. I don't know</p> <p>24 that we'll get to all of them, so the fact that we</p> <p>25 start with 18, it doesn't mean anything. It's just the</p>	<p>1 Q. And assuming that that packet is those CC&Rs,</p> <p>2 the purposes for the developer was to have rules and</p> <p>3 restrictions that would govern that property; is that</p> <p>4 right?</p> <p>5 A. Yes. Yes, sir.</p> <p>6 Q. And it would reserve rights to the developer</p> <p>7 and would also tell the homeowners who eventually</p> <p>8 bought in that area what their rights and</p> <p>9 responsibilities were?</p> <p>10 MR. PECCOLE: I object on the grounds as</p> <p>11 leading the witness and it's form of the question.</p> <p>12 Q. (By Mr. Jimmerson) You may answer the</p> <p>13 question, sir.</p> <p>14 A. Yes. I mean, they're covenants, codes and</p> <p>15 restrictions. They're part of every -- most</p> <p>16 master-planned communities, if not all master-planned</p> <p>17 communities, for the purpose of putting into place</p> <p>18 certain codes and restrictions that make it -- some</p> <p>19 might consider it a developer's preserving value.</p> <p>20 Q. And these on the first -- on the face of</p> <p>21 them, is -- appear to be prepared by the law firm of</p> <p>22 McDonald, Carano, Wilson, McCune, Bergin, Frankovich &</p> <p>23 Hicks.</p> <p>24 Are you generally familiar with that law firm</p> <p>25 in that time period?</p>
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<p>1 way we've marked it before. I'm not certain that we'll</p> <p>2 go 1 through 18.</p> <p>3 A. Okay.</p> <p>4 Q. So don't get frightened about that, but</p> <p>5 that's how I've marked it. And these are also having</p> <p>6 to do with other exhibits in other depositions, so</p> <p>7 trying to mark that the same documents.</p> <p>8 So I'm showing you what's been marked as</p> <p>9 Exhibit 18. This document by its face is the</p> <p>10 Peccole --</p> <p>11 MR. PECCOLE: I'd like to pose an objection</p> <p>12 to this document as being totally irrelevant.</p> <p>13 Q. (By Mr. Jimmerson) -- to the Peccole Ranch</p> <p>14 master declaration. And I believe this applies to the</p> <p>15 property largely to the south of West Charleston.</p> <p>16 A. Uh-huh.</p> <p>17 Q. And have you seen that document before --</p> <p>18 A. I don't believe I have.</p> <p>19 Q. -- today? Okay. Now, you are familiar, of</p> <p>20 course, that the Peccole Ranch property to the south of</p> <p>21 West Charleston was governed by CC&Rs --</p> <p>22 A. Yes.</p> <p>23 Q. -- covenants, conditions and restrictions.</p> <p>24 Is that right?</p> <p>25 A. Yes.</p>	<p>1 A. Generally. Just basically Sean McGowan.</p> <p>2 Q. Got it. Okay.</p> <p>3 A. I didn't hear. Was that part of the</p> <p>4 McDonald, Carano?</p> <p>5 Q. Yes, it was.</p> <p>6 A. Yes, I do recall that.</p> <p>7 Q. And that is the firm, McDonald, Carano.</p> <p>8 A. Yeah.</p> <p>9 Q. And the Peccole Ranch plan to the south of</p> <p>10 West Charleston is a different project than the later</p> <p>11 developed Queensridge master plan; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Both in terms of physical geography as well</p> <p>14 as in time and years?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. I believe they were separated by a lawsuit as</p> <p>18 well.</p> <p>19 Q. Okay. Now, tell us about that lawsuit, what</p> <p>20 you generally recall about it.</p> <p>21 A. There was a partnership that we were involved</p> <p>22 in prior -- it happened prior to my divorce, so it</p> <p>23 would have been in the late '80s -- that we got into</p> <p>24 with Triple Five; and then I left and then that part --</p> <p>25 that partnership had a problem, had issues between the</p>

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<p>1 two partners and ended up in a settlement --</p> <p>2 Q. Okay.</p> <p>3 A. -- to avoid a lawsuit.</p> <p>4 Q. All right.</p> <p>5 A. And the settlement was, I believe -- gave</p> <p>6 Triple Five all the Peccole land, which was the --</p> <p>7 under Peccole -- what was then Peccole Ranch, which was</p> <p>8 Hualapai to -- or not all of Hualapai, actually. We</p> <p>9 retained part of Hualapai. But it was most -- it was</p> <p>10 what at the time was being developed as Peccole Ranch</p> <p>11 south of Charleston.</p> <p>12 Q. Got it.</p> <p>13 A. And then they retained a commercial piece</p> <p>14 that we had that was on the northeast corner of Rampart</p> <p>15 and Charleston.</p> <p>16 Q. Which is now known as Boca Park?</p> <p>17 A. Is now known as Boca Park.</p> <p>18 Q. Got it. Okay. So as part of the resolution</p> <p>19 or settlement in the dispute between Peccole and</p> <p>20 Triple Five, just to summarize, the property south of</p> <p>21 West Charleston became under the ownership of</p> <p>22 Triple Five?</p> <p>23 A. And I have that wrong. I have that wrong.</p> <p>24 Q. Okay.</p> <p>25 A. It was just everything south. Triple Five</p>	<p>1 A. Right.</p> <p>2 Q. Right. So I just want to show you the</p> <p>3 exhibit, number 16, just to help you with the timing.</p> <p>4 MR. PECCOLE: What is this exhibit?</p> <p>5 MR. JIMMERSON: This is 16, number 16.</p> <p>6 MR. PECCOLE: 16.</p> <p>7 MR. JIMMERSON: One six, yes, sir.</p> <p>8 Q. (By Mr. Jimmerson) This is the lawsuit that</p> <p>9 Triple Five Development Group Central --</p> <p>10 MR. PECCOLE: I'd like to pose an objection</p> <p>11 as being totally irrelevant to our case. Our case</p> <p>12 deals with Queensridge. It deals with -- nothing with</p> <p>13 regard to Triple Five.</p> <p>14 MR. JIMMERSON: Your objection has been</p> <p>15 noted. Thank you, sir.</p> <p>16 Q. (By Mr. Jimmerson) And versus William</p> <p>17 Peccole, individually and trustee of the Peccole</p> <p>18 1982 Trust and THE PECCOLE 1982 TRUST. Do you see</p> <p>19 that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And just again for purposes of the date, it's</p> <p>22 August of 2000 -- of 1990. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And as you've indicated, this</p> <p>25 litigation resulted in a settlement and essentially an</p>
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<p>1 ended up with that property -- they backed into that</p> <p>2 property a different way years later.</p> <p>3 Q. The Boca Park?</p> <p>4 A. The Boca Park. They did not get it in the</p> <p>5 settlement.</p> <p>6 Q. Got it. Okay. And Peccole retained the</p> <p>7 property --</p> <p>8 A. Everything north.</p> <p>9 Q. -- north of West Charleston?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. So let me show you what we'll mark as</p> <p>12 Exhibit 16.</p> <p>13 (Exhibit 16 marked.)</p> <p>14 Q. (By Mr. Jimmerson) Again, this is just to</p> <p>15 help define the chronology.</p> <p>16 A. Yeah. And again, to add, it wasn't</p> <p>17 everything, because there were properties that were</p> <p>18 south -- I mean, excuse me, east of --</p> <p>19 Q. Rampart?</p> <p>20 A. -- Fort Apache and south of Charleston that</p> <p>21 the Peccoles did retain.</p> <p>22 Q. Got it.</p> <p>23 A. They were commercial pieces. And -- but that</p> <p>24 goes back to was it east of -- it was east of Rampart.</p> <p>25 Q. Got it. Or Fort Apache?</p>	<p>1 unwinding of the partnership and an allocation of</p> <p>2 properties, or some property under Triple Five's</p> <p>3 control, some property under the Peccole family</p> <p>4 control; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Along the lines generally, geographically, as</p> <p>7 you just now described?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Very good. All right.</p> <p>10 And do you recall when that settlement</p> <p>11 occurred? In other words, the lawsuit begins in August</p> <p>12 of 1990. Is the settlement in '92 or '93 time period,</p> <p>13 or -- if you remember?</p> <p>14 A. I can't recall.</p> <p>15 Q. Okay.</p> <p>16 A. I do know that it was -- had to have been</p> <p>17 settled before I went back to work there.</p> <p>18 Q. Okay.</p> <p>19 A. So --</p> <p>20 Q. And you came back to work in 1994, according</p> <p>21 to your best recollection?</p> <p>22 A. Yes, correct.</p> <p>23 Q. What you earlier said. Okay.</p> <p>24 Now, do you know the defendant Robert</p> <p>25 Peccole, who is here in the deposition room and who is</p>

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<p>1 a named defendant in the litigation?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And how or why do you know Robert</p> <p>4 Peccole?</p> <p>5 A. Family and through -- through -- through</p> <p>6 marriage and family and Nevadan.</p> <p>7 Q. Okay. So when -- if you remember generally,</p> <p>8 when was the first occasion when you met Mr. Peccole?</p> <p>9 A. It would have been around '83.</p> <p>10 Q. And you've known him from then to the present</p> <p>11 date?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Now, how -- what has your relationship</p> <p>14 been with him? I understand family, but are you</p> <p>15 someone who will have Christmas dinner with him next</p> <p>16 week? are you somebody who sees him once or twice a</p> <p>17 year? How would you describe the nature of the</p> <p>18 relationship?</p> <p>19 A. Cordial and treated like family, but we don't</p> <p>20 spend time. We don't socialize together, but very</p> <p>21 warm.</p> <p>22 Q. Okay. And have you had any conversations</p> <p>23 with him with regard to the litigation that you are</p> <p>24 asked to come to the deposition for today of Fore Stars</p> <p>25 and the other companies versus Robert Peccole?</p>	<p>1 MR. JIMMERSON: Two.</p> <p>2 Q. (By Mr. Jimmerson) All right. I'm showing</p> <p>3 you what's No. 2. This document is called Master</p> <p>4 Declaration of Covenants, Conditions, Restrictions and</p> <p>5 Easements for Queensridge. Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. And you can look at the document. It</p> <p>8 looks to me in the next page that it is recorded in</p> <p>9 1996.</p> <p>10 A. Yes.</p> <p>11 Q. Is that generally consistent with your</p> <p>12 recollection, Mr. Goorjian?</p> <p>13 A. Yes, it is.</p> <p>14 Q. All right. Now, we've talked about the</p> <p>15 Peccole master plan development to the south of West</p> <p>16 Charleston in the 1980s. We've talked about the</p> <p>17 litigation. Now we've talked about the Queensridge.</p> <p>18 So tell us what is Queensridge and why it's different</p> <p>19 from the Peccole Ranch.</p> <p>20 A. Okay. Well, it was intended to be completely</p> <p>21 different. It was driven by the Peccole family</p> <p>22 completely, without a partner, so they could do more</p> <p>23 things that they really wanted to do.</p> <p>24 So we had consultants involved. Came up with</p> <p>25 the name, all the way from naming the project to -- to</p>
Page 30	Page 32
<p>1 A. No.</p> <p>2 Q. Okay. Now, if we could take the chronology</p> <p>3 now forward a little bit. We know that there was the</p> <p>4 development of Peccole Ranch to the south of West</p> <p>5 Charleston in the 1980s. We know of the litigation in</p> <p>6 1990 that gets resolved some time after 1990 that we've</p> <p>7 just discussed between Triple Five and Peccole. Is</p> <p>8 that right?</p> <p>9 A. Correct.</p> <p>10 Q. All right. And then something happens after</p> <p>11 that, and that is the development of the Queensridge</p> <p>12 master development. Is that right?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And I have suggested in my earlier</p> <p>15 questioning that that was in the mid-1990s, like 1995</p> <p>16 time period, 1996. Do you have a general recollection</p> <p>17 of that?</p> <p>18 A. Right around that time, a little earlier, I</p> <p>19 believe, because we were up there planning off of</p> <p>20 Charleston.</p> <p>21 Q. Okay. And I'm going to confirm your</p> <p>22 excellent memory by showing you some documents now. So</p> <p>23 if can I show you Exhibit No. 2, please.</p> <p>24 (Exhibit 2 marked.)</p> <p>25 MR. PECCOLE: What number?</p>	<p>1 moving forward in the project. And the family wanted</p> <p>2 to leave a legacy and wanted to do something different,</p> <p>3 so it needed to be and look and feel completely</p> <p>4 different from everything that's in Southern Nevada.</p> <p>5 It was meant to be kept separate -- separated.</p> <p>6 So by -- the ways to do that was basically</p> <p>7 the guidelines and the -- the building guidelines for</p> <p>8 the developers that came in there. So we wanted to</p> <p>9 see -- we had more restrictions in regards to wanting</p> <p>10 to see stone on the front of the homes, didn't want to</p> <p>11 see a lot of clay, barrel-tiled roofs. Wanted to have</p> <p>12 more of a European feel, with pine trees instead of</p> <p>13 palm trees and -- just have the whole development feel</p> <p>14 a little bit different than -- than what we see in all</p> <p>15 of the southwest, which every -- everywhere looks like</p> <p>16 a Taco Bell stand. So we tried to avoid that through</p> <p>17 planning and zoning.</p> <p>18 Q. All right. And there was an amendment, I'm</p> <p>19 advised in the documents, Exhibit 3 to these</p> <p>20 declarations, dated in 2000. I'd like to show you</p> <p>21 that.</p> <p>22 (Exhibit 3 marked.)</p> <p>23 Q. (By Mr. Jimmerson) And are you familiar with</p> <p>24 this document? It's called Amended and Restated Master</p> <p>25 Declaration of Covenants, Conditions, Restrictions and</p>

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<p>1 Easements for Queensridge.</p> <p>2 A. I am. Yeah, I am.</p> <p>3 Q. Okay. Who is Larry Miller? He's shown on</p> <p>4 the front page. Larry Miller, Peccole-Nevada</p> <p>5 Corporation.</p> <p>6 A. Larry Miller is -- we'll start with him as my</p> <p>7 ex-brother-in-law, and then he would have been -- I</p> <p>8 don't know what his name was in title, but he act -- he</p> <p>9 was our guy. He ran -- he was the face of</p> <p>10 Peccole-Nevada.</p> <p>11 Q. Okay.</p> <p>12 A. I believe he managed Peccole-Nevada</p> <p>13 Corporation as well.</p> <p>14 Q. All right. Now, was the declaration, master</p> <p>15 declaration, and later the amended and restated master</p> <p>16 declaration -- were they recorded with the Clark County</p> <p>17 Recorder's office?</p> <p>18 A. To the best of my knowledge.</p> <p>19 Q. And again, they contained the, I call them,</p> <p>20 CC&Rs, covenants, conditions and restrictions --</p> <p>21 A. Yes.</p> <p>22 Q. -- for the development of master -- of the</p> <p>23 Queensridge master plan?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Now, the Queensridge master plan is a smaller</p>	<p>1 a part of -- not a part of -- I can't remember if it</p> <p>2 all fell under that.</p> <p>3 Q. Well, the golf course was not a part of --</p> <p>4 A. That's what I mean.</p> <p>5 Q. -- Queensridge, right?</p> <p>6 A. Correct.</p> <p>7 MR. PECCOLE: I'm going to object to the form</p> <p>8 of the questioning that's going back and forth.</p> <p>9 Q. (By Mr. Jimmerson) Okay.</p> <p>10 A. I'm just trying to clarify that I don't think</p> <p>11 that that -- these covered, blanket, everything.</p> <p>12 Q. Correct.</p> <p>13 A. Okay?</p> <p>14 Q. They covered the --</p> <p>15 A. There were properties that were not a part</p> <p>16 of.</p> <p>17 Q. And indeed, in order to cover it under the</p> <p>18 CC&Rs, they had to be annexed into the master plan;</p> <p>19 isn't that right?</p> <p>20 A. Yes.</p> <p>21 MR. PECCOLE: I object to that question as</p> <p>22 including facts that are not proven or before</p> <p>23 Mr. Goorjian.</p> <p>24 MR. JIMMERSON: Okay. Thank you, sir.</p> <p>25 Q. (By Mr. Jimmerson) And in fact, reading the</p>
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<p>1 area than the Peccole Ranch master plan and it's on the</p> <p>2 north side of West Charleston; is that right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 A. Meant to be separate.</p> <p>6 Q. Got it. And it also had the zoning of R-PD7,</p> <p>7 if you recall, in part? I mean, it had other zonings</p> <p>8 too.</p> <p>9 A. I need to be refreshed, but I assume again it</p> <p>10 fell under the same umbrella of all the properties.</p> <p>11 Q. And it allowed residential development?</p> <p>12 A. Correct.</p> <p>13 Q. And as we look at the property today as we</p> <p>14 drive by, we would see homes and multifamily homes and</p> <p>15 townhouses and different types of homes in that area;</p> <p>16 is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And they were governed by these</p> <p>19 CC&Rs --</p> <p>20 A. Yes.</p> <p>21 Q. -- that we've talked about, Exhibits 2 and 3?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Now --</p> <p>24 A. There were -- well -- well, I don't know. I</p> <p>25 believe there were parts of the property that were not</p>	<p>1 documents would confirm that it started out with a</p> <p>2 small piece of property; and then as they were annexing</p> <p>3 property, it became part of the Queensridge master</p> <p>4 plan?</p> <p>5 A. Yes.</p> <p>6 Q. And the golf course was never annexed into</p> <p>7 the Queensridge master plan?</p> <p>8 A. Yes, correct.</p> <p>9 Q. Okay. And I will just tell you that the</p> <p>10 district court judges and Supreme Court so found that</p> <p>11 to be the case.</p> <p>12 MR. PECCOLE: I object to the form of the</p> <p>13 question --</p> <p>14 MR. JIMMERSON: That's okay.</p> <p>15 MR. PECCOLE: -- and also the answer.</p> <p>16 MR. JIMMERSON: All right.</p> <p>17 Q. (By Mr. Jimmerson) Now, as the property that</p> <p>18 is within the Queensridge master plan which was annexed</p> <p>19 over the years, between 1996 and the years thereafter,</p> <p>20 did -- you had a role with the development of those</p> <p>21 lots --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- and the sale of those lots; is that right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. And let me show you -- there were a</p>

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<p>1 series of documents that the Peccoles put together that 2 were utilized for the development of the property and 3 for the sale of the property. 4 A. Yes. 5 Q. Like purchase agreements and things like 6 that. So I'm going to show those to you now, okay? 7 And just to refresh your recollection. 8 We'll start with Exhibit 4. 9 (Exhibit 4 marked.) 10 Q. (By Mr. Jimmerson) Exhibit 4 is called 11 Custom Lots at Queensridge North, Purchase Agreement 12 and Earnest Money Receipt and Escrow Instructions. 13 A. Yes. 14 Q. Are you familiar with that document? 15 A. Yes, I am. 16 Q. Okay. And what is that -- other than the 17 title, what was the purpose for the use of this Custom 18 Lot at Queensridge North purchase agreement? 19 A. To convey the property to the client. 20 Q. All right. 21 A. Potential buyer. 22 Q. Now, this one in particular because it bears 23 some relationship to Mr. Peccole. Do you see that? 24 A. Yes. 25 Q. All right. And Robert N. and Nancy Peccole.</p>	<p>1 Q. And Peek is Steve Peek? 2 A. Yes. 3 Q. Karen Dennison is Karen Dennison? 4 A. Yes. 5 Q. And as the firm has evolved, it's now known 6 as Holland & Hart, I think. I think. 7 A. That's what I understand. 8 Q. Yeah. 9 A. Where Karen -- 10 Q. Not the same people, you know -- 11 A. Right. 12 Q. Different lawyers, but I think that's where 13 Ms. Dennison is still at, you know. I think so. 14 All right. And we can look just by the basic 15 document. The purchase price for this lot was 16 \$243,000, and the proposed closing date was May 2 of 17 2000. Do you see that? 18 A. Yes. 19 Q. Okay. All right. Now, let me just kind of 20 go through the rest of the document. 21 That was Exhibit No. 4. So Exhibit No. 5 is 22 called Addendum "I" to the Peccole purchase agreement. 23 (Exhibit 5 marked.) 24 Q. (By Mr. Jimmerson) And this document is 25 called Addendum "I" to purchase agreement.</p>
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<p>1 This is the contract that they signed to buy their lot 2 in the Queensridge master plan area; is that right? 3 A. Yes. 4 Q. Okay. And I presume that this would be a 5 standard agreement that all homeowners would generally 6 use if they're going to buy an estate lot in this area. 7 Is that right? 8 A. Yes. 9 Q. Okay. And these documents were prepared by 10 law firms that your family hired to do expressly that? 11 Is that the idea? 12 A. Hale Lane Peek Dennison, I believe. 13 Q. And Karen Dennison in particular? 14 A. Yes. 15 MR. PECCOLE: I'd like to interrupt. I 16 didn't hear your answer. 17 THE WITNESS: Hale Lane Peek Dennison were 18 the law firm that put together all of our regime of 19 documents. 20 MR. PECCOLE: Could you spell that, the name? 21 THE WITNESS: H-a-l-e. 22 MR. PECCOLE: Hale? 23 Q. (By Mr. Jimmerson) And Lane is Steve Lane, 24 L-a-n-e? 25 A. Yeah.</p>	<p>1 A. Yup. 2 Q. And what was the purpose of this document? 3 A. This was a disclosure document, I believe. 4 Q. Okay. 5 A. Let's see. 6 MR. PECCOLE: I object. The document speaks 7 for itself. 8 Q. (By Mr. Jimmerson) I do think Mr. Peccole is 9 right. It does speak for itself. 10 A. Yes. 11 Q. And there are -- 12 A. It's stating that he received all these 13 documents. 14 Q. Okay. And those documents would show what 15 the zoning was, what the use was, the different 16 disclosures; is that right? 17 A. Yes. 18 Q. And in some regards, I think the purpose of 19 these documents would be to protect you or the family 20 in terms of making sure that the buyers know what their 21 rights, responsibilities were? Is that a fair 22 statement? 23 MR. PECCOLE: I object to the form of this 24 question. 25 A. Yes. Not me, but the family and, you know,</p>

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<p>1 the developer and the -- the parties that were owners 2 of the property are liable for the property. 3 Q. (By Mr. Jimmerson) And as an example, to 4 make sure that they knew that there were CC&Rs, to make 5 sure that they knew there were bylaws and that the 6 property was subject to -- going to be subject to a 7 homeowners association? 8 A. Standard procedure in selling property. 9 Q. Right. Okay. And you have the buyers 10 initial each of the disclosures -- 11 A. Yes. 12 Q. -- so that they can never say they didn't get 13 what they received, right? 14 A. Yes, sir. 15 Q. Okay. 16 A. CYA. 17 Q. Okay. Within these documents, there is an 18 Exhibit B, which is called Affirmation Form. Do you 19 see that? Signed by the Peccoles? 20 A. No. I'm look -- Exhibit B? 21 Q. B. It's Bates stamp number 296. It's part 22 of the same exhibit I gave you, Exhibit 5. 23 A. Help me here. 24 Q. Yes. Bates stamp number 296. Just look at 25 the bottom right-hand corner. You'll see it.</p>	<p>1 blank reads -- and I'll read the whole thing so we have 2 a good record -- is "The undersigned, by his or her 3 signature, hereby acknowledges that he or she has made 4 a personal on-the-lot inspection of the" -- "of Lot" 5 blank -- 6 MR. PECCOLE: We don't know. 7 Q. (By Mr. Jimmerson) -- "of Lot" blank "of 8 Peccole West - Parcel" blank "(now known as 9 Queensridge) developed by Nevada Legacy 14, LLC, a 10 Nevada limited liability company, which is the Lot upon 11 which the undersigned plans to erect a" -- "to" -- I 12 can't read -- "execute a contract of sale or lease." 13 Do you remember that? 14 A. Yes. 15 MR. PECCOLE: I object on the grounds that 16 those blanks were not filled in because there was no 17 lot picked yet. 18 MR. JIMMERSON: Okay. 19 Q. (By Mr. Jimmerson) And did the Peccoles pick 20 a lot? 21 A. Yes, they did. 22 Q. And did they buy a lot? 23 A. Yes, they did. 24 Q. Did they close escrow on a lot? 25 A. Yes, they did.</p>
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<p>1 A. Okay. 2 Q. 296. 3 A. I've got it. Seven, six. 4 MR. PECCOLE: I would like to pose an 5 objection on the ground -- 6 THE WITNESS: What's the question? 7 MR. PECCOLE: -- that the document is not 8 filled in. It's all blank. 9 MR. JIMMERSON: I think what -- I think 10 that's a misstatement, and I'm sure it's inadvertent. 11 There are blanks in the printed form, but there is a 12 signature of Mr. and Mrs. Peccole below that. 13 Q. (By Mr. Jimmerson) Do you see that, 14 Mr. Goorjian? 15 A. Yes, I do. 16 Q. And you can read the language. It basically 17 is a -- it is a representation being made by Mr. and 18 Mrs. Peccole that they've been on their property and 19 have literally walked the property. Isn't that right? 20 A. Yes. 21 Q. Now -- 22 MR. PECCOLE: Here again I pose that same 23 objection, that that is blank in the areas where 24 Mr. Jimmerson is referring to. 25 Q. (By Mr. Jimmerson) The language that is not</p>	<p>1 Q. Did they do so in 2000, to the best of your 2 recollection? 3 A. Yes, they did. 4 Q. All right. One of the reasons for having you 5 come down here today is to respond to some testimony 6 that Mr. Peccole has given in his deposition some 7 months ago. All right? 8 He says that he met with you on the property 9 when he was -- prior to purchase in 2000. Do you 10 recall meeting with him on the lot in 2000? 11 A. Never physically on the lot, no, I don't 12 recall. 13 Q. All right. Do you recall having met with him 14 with regard to the lot? 15 A. Yes. 16 Q. Okay. Now, from other testimony, we've -- I 17 had this question to ask you. I'm not going to lead 18 you. I'm going to ask you. But from other testimony, 19 I have reason to ask this question. 20 Did Mr. Peccole ask you for a restrictive 21 deed or some writing that would preclude development of 22 the golf course in future years, or the property behind 23 his property or in front of his lot? 24 A. He asked for written assurance that the golf 25 course would always remain a golf course.</p>

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<p>1 Q. And when did he ask for that assurance?</p> <p>2 A. Prior to purchasing his lot.</p> <p>3 Q. And who was present to hear that</p> <p>4 conversation?</p> <p>5 A. Myself, he and -- I can't remember if Nancy</p> <p>6 was there or not.</p> <p>7 Q. All right. And you know Nancy Peccole?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Is that his wife?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And do you remember where the meeting took</p> <p>12 place?</p> <p>13 A. It was in a trailer that I was occupying.</p> <p>14 Q. Was the trailer somewhere near the property</p> <p>15 being developed?</p> <p>16 A. Yes. Yes, it was.</p> <p>17 Q. Okay. But the conversation itself didn't</p> <p>18 take place right on the lot itself --</p> <p>19 A. No, it did not.</p> <p>20 Q. -- to the best of your recollection?</p> <p>21 A. No, it did not.</p> <p>22 Q. Okay. And so what was said, and by whom,</p> <p>23 between the two of you or three of you?</p> <p>24 A. To the best of my recollection, he wanted</p> <p>25 assurances that it would remain a golf course; and</p>	<p>1 A. Not to my knowledge.</p> <p>2 Q. And in fact, you knew the property could be</p> <p>3 developed in the future; isn't that right?</p> <p>4 A. It's all disclosed.</p> <p>5 Q. The answer is yes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Now, I need to read you some</p> <p>8 testimony. I'm sorry to do this, but . . .</p> <p>9 I need to get my glasses. I'm sorry.</p> <p>10 (Pause in proceedings.)</p> <p>11 Q. (By Mr. Jimmerson) I'm now reading to you</p> <p>12 from the deposition of Nancy Peccole taken on</p> <p>13 August 10th of 2018, this past August. And I'm reading</p> <p>14 from Page 97 of her deposition. Okay?</p> <p>15 A. Yes.</p> <p>16 Q. And this is what the -- I'm asking the</p> <p>17 questions and Nancy Peccole is responding to the</p> <p>18 questions. Her husband is present in the deposition</p> <p>19 room. Actually it was in this room here, so</p> <p>20 Mr. Peccole was here.</p> <p>21 So I'll begin by reading at Page 97, line 4.</p> <p>22 And I'll read a little bit into Page 98. So it's not</p> <p>23 very long.</p> <p>24 Question by Mr. Jimmerson: "Did you ask" --</p> <p>25 and speaking to Nancy Peccole.</p>
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<p>1 that's something that I couldn't give him, which I</p> <p>2 explained to him; and he had mentioned that he would go</p> <p>3 speak to the family about it.</p> <p>4 Q. Okay. And at that time he was a member of</p> <p>5 the family?</p> <p>6 A. He always is, yeah.</p> <p>7 Q. Okay. All right. And so when he said the</p> <p>8 words about go speak to the members of the family, who</p> <p>9 did you understand him meaning to speak to?</p> <p>10 A. I would have thought it would have been Wanda</p> <p>11 and Larry.</p> <p>12 Q. Okay. And Wanda is Wanda Peccole?</p> <p>13 A. Yes.</p> <p>14 Q. And Larry Miller is Wanda's --</p> <p>15 A. Son-in-law.</p> <p>16 Q. Son-in-law of Wanda?</p> <p>17 A. And president of Peccole-Nevada Corporation.</p> <p>18 Q. Very good. Do you know whether or not he</p> <p>19 ever had such a conversation with Wanda or Larry</p> <p>20 Miller?</p> <p>21 A. Don't recall. Don't know.</p> <p>22 Q. Was any written assurance or writing ever</p> <p>23 given to Mr. Peccole to guarantee him that the golf</p> <p>24 course property would not be developed later, in the</p> <p>25 future?</p>	<p>1 "Did you ask anybody whether or not the golf</p> <p>2 course could be built upon, could be developed, when</p> <p>3 you bought the home in 2000?</p> <p>4 "Answer: No.</p> <p>5 "Question: Do you know if your husband asked</p> <p>6 anybody if a golf course could be developed when you</p> <p>7 bought the home in 2000, and prior to buying it?</p> <p>8 "Answer: May I make a statement?</p> <p>9 "The Witness: I didn't ask because I was</p> <p>10 told."</p> <p>11 By Mr. Jimmerson: "Okay."</p> <p>12 MR. PECCOLE: Speak up so I can hear you.</p> <p>13 MR. JIMMERSON: I will, certainly. I think I</p> <p>14 am speaking up loudly, but I will raise my voice even</p> <p>15 louder.</p> <p>16 "I didn't ask because I was told." That was</p> <p>17 Ms. Peccole.</p> <p>18 By Mr. Jimmerson: "Okay. So who told you</p> <p>19 anything about this?</p> <p>20 "Answer: Greg Goorjian.</p> <p>21 "Question: And what did Greg Goorjian tell</p> <p>22 you?</p> <p>23 "Answer: He told me, and my husband, as we</p> <p>24 stood on the lot, 'There will never be anything built</p> <p>25 behind your property. It will always be open space.'</p>

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<p>1 "Question: Okay. And you remember that?</p> <p>2 "Answer: I certainly do.</p> <p>3 "Question: All right. And when did</p> <p>4 Mr. Goorjian purportedly tell you that?</p> <p>5 "Answer: Before --"</p> <p>6 Then there's an objection.</p> <p>7 "The Witness: Before we purchased the</p> <p>8 property.</p> <p>9 "Okay. And who was present, please?</p> <p>10 "Robert Peccole, myself, and Greg Goorjian.</p> <p>11 "All right. And have you had any</p> <p>12 conversations with Greg Goorjian since 2000 --</p> <p>13 "Answer: No.</p> <p>14 "-- since prior to your buying the home,</p> <p>15 about that subject matter?</p> <p>16 "Answer: No.</p> <p>17 "Is there any reason why you chose not to sue</p> <p>18 Greg Goorjian in this lawsuit that you brought two</p> <p>19 years ago?</p> <p>20 "Answer" -- question -- objection.</p> <p>21 I asked the question: "Why didn't you sue</p> <p>22 him if he made that statement?</p> <p>23 "You may answer the question, ma'am.</p> <p>24 "Answer: I don't know.</p> <p>25 "Is there any kind of a writing that you've</p>	<p>1 course" -- "the golf course from being able to be</p> <p>2 developed?</p> <p>3 "Answer: No.</p> <p>4 "Did you ever inquire as to what the golf</p> <p>5 course was zoned?</p> <p>6 "Answer: No.</p> <p>7 "Did you know that your home was zoned</p> <p>8 residential?</p> <p>9 "Yes.</p> <p>10 "You didn't know how the adjoining piece of</p> <p>11 property at the golf course was zoned?</p> <p>12 "Answer: No."</p> <p>13 So I've read now from Page 97, lines 4,</p> <p>14 through 98, through 99, and ending at line 22 of</p> <p>15 Page 100.</p> <p>16 Is Mrs. Peccole's recollection accurate?</p> <p>17 A. It's not for me to say. There are certain</p> <p>18 things that are inaccurate.</p> <p>19 Q. Okay.</p> <p>20 A. But I -- as far as I'm concerned, there are</p> <p>21 certain things that are inaccurate there.</p> <p>22 Q. Well, let's cover it. Number one is that you</p> <p>23 know that Mr. Peccole asked you for a deed</p> <p>24 restriction --</p> <p>25 A. Correct.</p>
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<p>1 seen that would memorialize the statement that you</p> <p>2 claim Mr. Goorjian made to you and your husband?</p> <p>3 "Answer: Not to my knowledge.</p> <p>4 "Did you follow up with an email or a letter?</p> <p>5 "No.</p> <p>6 "Did you attempt to memorialize it in any</p> <p>7 way" -- excuse me -- "any fashion?</p> <p>8 "No.</p> <p>9 "Did you attempt to memorialize it in any</p> <p>10 fashion?</p> <p>11 "No.</p> <p>12 "Did you or your husband ever ask for a deed</p> <p>13 restriction on the house?</p> <p>14 "Not to my knowledge.</p> <p>15 "Did you ever ask of anyone from the family</p> <p>16 that they place any sort of restriction on the deed and</p> <p>17 would assure that there would no" -- "be no development</p> <p>18 of the golf course?</p> <p>19 "Answer: Not to my knowledge.</p> <p>20 "Did you have, or do you have, or your</p> <p>21 husband, as far as you know, have any conversation with</p> <p>22 anyone relative to requesting a deed restriction on</p> <p>23 your lot --</p> <p>24 "Not to my knowledge.</p> <p>25 "-- with the intent of precluding a golf</p>	<p>1 Q. -- or some written assurance that there would</p> <p>2 not be development on the golf course?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And he did not receive that from you; and as</p> <p>5 far as you know, he did not receive that from</p> <p>6 Peccole-Nevada or Legacy 14?</p> <p>7 A. I don't know that, but as far as I'm --</p> <p>8 Q. You know you didn't give it to him?</p> <p>9 A. I know I didn't and couldn't.</p> <p>10 Q. Okay. And why couldn't you?</p> <p>11 A. I'm not -- I don't have that power. I'm just</p> <p>12 a broker.</p> <p>13 Q. And you also knew the property could be</p> <p>14 developed?</p> <p>15 A. Yes. He wouldn't be asking me for the letter</p> <p>16 if he didn't know.</p> <p>17 Q. Okay. That it could be developed?</p> <p>18 A. Yeah.</p> <p>19 Q. All right. And the disclosures, as you</p> <p>20 pointed out, as we've gone over, clearly tell you that</p> <p>21 the adjoining property can be developed?</p> <p>22 A. That's how he would have known, and plus we</p> <p>23 talked -- we discussed it.</p> <p>24 Q. All right. Next. It's inaccurate in quoting</p> <p>25 you as stating that, quote --</p>

Page 53	Page 55
<p>1 MR. PECCOLE: Wait. I'd like to pose an 2 objection to that last question and answer as total 3 speculation. 4 Q. (By Mr. Jimmerson) And you -- and you also 5 find inaccurate Mrs. Peccole's statement, quote -- 6 quoting you -- quote, There will never be anything 7 built behind your property. It will always be open 8 space, end of quote. 9 Is that right? 10 A. Yeah, I can't make that assurance. 11 Q. And you did not make that assurance, right? 12 A. I did not. 13 Q. And indeed, the term "open space," had you 14 ever heard of those words in 2000, in that time period? 15 A. Yes. 16 Q. And what did it mean, open space? 17 A. Open space meant to me that there wasn't 18 something directly in your backyard. 19 Q. But open space, as that word was used within 20 the CC&Rs, would be on your own property, correct? 21 A. Restate that question. 22 Q. The term "open space" could only apply to 23 your own property, correct? In other words, the CC&Rs 24 aren't in a position to guarantee open space to 25 somebody else's property. That's what I'm saying.</p>	<p>1 Q. In your conversation with Mrs. Peccole -- and 2 I know it's been a long time -- do you know whether or 3 not you used the words "open space"? 4 A. Don't recall. 5 Q. Okay. And the master plan that was in play 6 in 2000 was the Queensridge master plan, correct? 7 A. 2000? Yes. It would have been -- yes. 8 Q. Okay. In other words, you weren't talking 9 about the Queensridge -- the Peccole Ranch master plan? 10 A. No. 11 Q. It had been superseded by the Queensridge 12 master plan? 13 A. Correct. Gone, yup. Two different -- 14 Q. Two different things? 15 A. Yes. 16 Q. Okay. Now -- I'm sorry. I need to quote 17 this deposition a little further. 18 Now I'm reading from the deposition of Nancy 19 Peccole at Page 101, line 6, and ending at Page 104, 20 line 22 -- 21. 21 "Question" -- and again I'm asking the 22 questions again. 23 "So Mr. Goorjian used the words 'open space'?" 24 "Answer: Yes, he did. 25 "And so he used the word 'open space' as</p>
Page 54	Page 56
<p>1 MR. PECCOLE: I object to the leading 2 question. He's proposing the answer. 3 MR. JIMMERSON: I'll meet the objection this 4 way. 5 MR. PECCOLE: Form of the question. 6 Q. (By Mr. Jimmerson) If there are words, if 7 there are words "open space" within the CC&Rs of the 8 Queensridge master plan, it would only apply to the 9 property governed by the Queensridge CC&Rs? 10 A. Yes. 11 Q. They couldn't possibly be referring to 12 somebody else's property -- 13 A. Yes, right. 14 Q. -- or property not governed by the 15 Queensridge master CC&Rs? 16 A. Yes. 17 Q. Now -- and the zoning, as you indicated, was 18 disclosed within Exhibits 4 -- 5 and 6; isn't that 19 right? 20 A. Yes. 21 Q. Okay. I think I -- 22 A. I'm not sure which exhibits they were, but 23 there were exhibits disclosing. 24 Q. All right. 25 A. And maps as well.</p>	<p>1 opposed to using the words 'golf course'; is that 2 right? 3 "Answer: Yes. 4 "Okay. And he said that it was always going 5 to be open space? 6 "Answer: Yes. 7 "Do you remember, to the best of your 8 knowledge" -- 9 And there's a bunch of objections, so I'll 10 skip that, resuming at line 7, Page 102. 11 "Question: Now, to the best of your 12 recollection, ma'am, tell me everything that you 13 said" -- "that was said in that conversation between 14 yourself and your husband and Greg Goorjian standing on 15 the lot that you bought prior to your buying it. 16 "Answer: He said, 'This will always be open 17 space.' There will never be anything built behind us. 18 And that is the reason I chose that lot. 19 "Have you now told me all that Mr. Goorjian 20 said? 21 "Did what? 22 "Have you now told me everything that you can 23 remember that Mr. Goorjian said to you and your husband 24 on that occasion? 25 "Answer: Well, he went on and on about how</p>

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<p>1 beautiful the area was and stuff like that, of course.</p> <p>2 "Well, I'm asking you what he said. I'm</p> <p>3 asking you everything the man said --</p> <p>4 "Everything he said?" she asked.</p> <p>5 Answer --</p> <p>6 "-- that you can recall as you sit here,</p> <p>7 ma'am.</p> <p>8 "And he also said --</p> <p>9 "You've had a lot of time to think about</p> <p>10 this, so please tell us now what this man said.</p> <p>11 "Answer: He also said that as a bonus, there</p> <p>12 will never be anything built in front of our home</p> <p>13 either, because it was a golf course and open space.</p> <p>14 "Okay. That" -- "What is the distinction --</p> <p>15 what did you understand Mr. Goorjian to mean when he</p> <p>16 said 'open space' and the words 'golf course' and 'open</p> <p>17 space'? What do you mean" -- "What do the words 'open</p> <p>18 space' mean to you as you understand it?</p> <p>19 "Answer: That there would never be anything</p> <p>20 built on the property.</p> <p>21 "No, no, but what do the words 'open space'</p> <p>22 mean as opposed to 'golf course'?</p> <p>23 "So 'golf course' means golf course; right?</p> <p>24 "Answer" --</p> <p>25 "And it was a golf course at the time?</p>	<p>1 A. My best recollection was that we met a few</p> <p>2 times -- I can't recall if I went to the property with</p> <p>3 them. First was negotiating price, of course, and, you</p> <p>4 know, I couldn't do that; so he worked that out with</p> <p>5 the Peccole family and I was told what to price the lot</p> <p>6 at.</p> <p>7 And then I just -- the other thing I recall</p> <p>8 was -- was him asking, you know -- knowing that there</p> <p>9 potentially could be something else built there and not</p> <p>10 liking it, and asking me if we could make assurances</p> <p>11 that that wouldn't happen. And that's all I recall.</p> <p>12 And I couldn't give him those assurances, so</p> <p>13 I -- can't get it from me. So he said he would talk to</p> <p>14 the family.</p> <p>15 That's about the extent. I don't feel like I</p> <p>16 really had to sell them on the property. They wanted</p> <p>17 the -- they wanted to live in there. They wanted to</p> <p>18 buy the lot.</p> <p>19 Q. And it was being developed by the family?</p> <p>20 A. Yeah. It wasn't like a hard sell.</p> <p>21 Q. All right. Now I'd like to read from you --</p> <p>22 from the deposition of Robert Peccole. Mr. Robert</p> <p>23 Peccole's testimony occurred on August 13, 2018, in</p> <p>24 these offices. And I'd like to read beginning at</p> <p>25 Page 177, line 17 through 178, and ending at Page 180,</p>
Page 58	Page 60
<p>1 "Answer: Yes.</p> <p>2 "So it was sort of a duplicative statement?</p> <p>3 In other words, 'golf course' means about the same</p> <p>4 thing as 'open space'?"</p> <p>5 Then there's objections.</p> <p>6 So I'm asking her what you understand was the</p> <p>7 words "open space" --</p> <p>8 "What did you understand he was communicating</p> <p>9 to you, ma'am?</p> <p>10 "Answer: That there would never be anything</p> <p>11 built behind our home.</p> <p>12 "And do you recall that he used both the</p> <p>13 terms 'golf course' and 'open space'?</p> <p>14 "Answer: Yes.</p> <p>15 "Now, did he use them with regard to the back</p> <p>16 of the property or just the front of the house?</p> <p>17 "Answer: To both.</p> <p>18 "To both. So he said there was going to be a</p> <p>19 golf course, an open space to the property in front of</p> <p>20 your home and to the golf course behind the home?</p> <p>21 "Answer: Yes." End quote.</p> <p>22 Do you recall saying those words to Nancy</p> <p>23 Peccole?</p> <p>24 A. No.</p> <p>25 Q. What is your best recollection, Mr. Goorjian?</p>	<p>1 line 4.</p> <p>2 So this is the testimony:</p> <p>3 "All right. Did" -- speaking now to Robert</p> <p>4 Peccole, and I'm asking the questions. Jim Jimmerson</p> <p>5 is asking the questions.</p> <p>6 "Did you have any conversation with Larry</p> <p>7 Miller with regard to your request that he make a</p> <p>8 writing or a restrictive covenant to preclude the</p> <p>9 property behind you or in front of you from ever being</p> <p>10 developed?</p> <p>11 "Answer: No, because Larry had always told</p> <p>12 me there wouldn't be anything built there."</p> <p>13 Answer --</p> <p>14 "So he told you that, too?</p> <p>15 "Answer: Yes.</p> <p>16 "So Greg Goorjian told you that nothing would</p> <p>17 be developed?</p> <p>18 "That's exactly right.</p> <p>19 "Question: What did Greg Goorjian tell you</p> <p>20 then, in that conversation?</p> <p>21 "Greg Goorjian said to me and my wife, 'There</p> <p>22 will be nothing built behind you or in front of you.'</p> <p>23 That it's open space. That it will always be a golf</p> <p>24 course.</p> <p>25 "And then he says to me, 'Bob,' he says, 'the</p>

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<p>1 Peccole family has a lifetime membership. Any time you 2 want to play, just give me a call.'</p> <p>3 "Question: Have you now told me everything 4 you remember of Mr. Goorjian's conversation with you?</p> <p>5 "Answer: Most of it, but I talked with Greg 6 off and on so I can't remember it all.</p> <p>7 "Anything else on the subject matter about 8 there being" -- "that there will never be anything 9 built behind you or in front of you? Have you now told 10 me all the subject matter that you can recall with 11 Mr. Goorjian?</p> <p>12 "Answer: I think I have. Something more may 13 come to me" -- "mind later.</p> <p>14 "What do you or your wife say in response" -- 15 "What did you or your wife say in response to 16 Mr. Goorjian's words as you allege them to be?</p> <p>17 "We took his word. 18 "So you didn't say anything? 19 "We took his word. 20 "So you don't remember using any words in 21 response to what he said?</p> <p>22 "I didn't have to. I already made the 23 comment" -- "He already made the comment and we said 24 fine, that's what we expect. 25 "Okay.</p>	<p>1 conversation with any of the relatives, any of the 2 Peccole defendants that you have sued, that had you 3 known that the property was going to be sold like it 4 was sold, the membership interest in Fore Stars was 5 sold, that you would have been interested in buying it 6 or words to that effect?</p> <p>7 "That's speculative because I was never told 8 that it was sold."</p> <p>9 So just returning to the part about the 10 conversations with you, Mr. Goorjian, did you tell 11 Robert Peccole in the presence of Nancy Peccole that 12 the golf course would never be developed?</p> <p>13 A. Absolutely not. 14 Q. Did you tell them that the golf course would 15 always remain open space? 16 A. No. 17 Just to add, I couldn't make those -- I 18 couldn't make those -- 19 Q. Statements or representations? 20 A. -- representations. 21 Q. And why is that, sir? 22 A. Because I was no longer a family member. I 23 was just a broker. 24 MR. PECCOLE: I'd like to pose an objection. 25 Mr. Jimmerson is leading the witness and telling him</p>
Page 62	Page 64
<p>1 "You know, that's what we were buying here. 2 "Why didn't you buy the" -- excuse me. 3 "Why didn't you buy the Badlands Golf 4 Course?"</p> <p>5 It really doesn't have anything to do here 6 with the question, but I'll continue to read. 7 "Jeez, I wasn't interested in it. That's 8 why. 9 "Did you ever express any interest to buy the 10 property in the past? 11 "No. And if I had known it was up for sale, 12 maybe I would have gone and found some buyers. 13 "So you never asked anybody about the land or 14 about your buying the land? 15 "As long as we're speculating, no. 16 "Did you" -- "Did you not know it was being 17 sold in March of 2015? 18 "I did not know. 19 "Did you have any conversation with any of 20 the Peccole representatives that you had known" -- 21 "representatives that had you known you would have 22 liked to buy the property? 23 "Answer: I'm not understanding the 24 question." 25 And the question is, "Did you ever have a</p>	<p>1 what to say. 2 MR. JIMMERSON: I have to respond to that. I 3 made no such comments or words. I certainly have no 4 power or ability to tell this witness what to say. 5 So I just want to note my response to that 6 objection as being improper. 7 Q. (By Mr. Jimmerson) Did you have -- excuse 8 me. Did you know that Robert Peccole sued several 9 members of the Peccole family two years ago? 10 A. I was aware, yes. 11 Q. Okay. He sued Larry Miller, he sued the 12 family trust, he sued the individuals, entities. Were 13 you aware of that? 14 A. Yes. 15 Q. Okay. Did you know that he later on 16 dismissed the claims against his relatives? 17 A. Yes. 18 Q. Did you have any involvement in those 19 discussions that led to his dismissing the claims he 20 had against his relatives, family? 21 A. No. 22 MR. PECCOLE: I'd like to take a men's room 23 break. 24 MR. JIMMERSON: Absolutely, sir. No problem. 25 We'll take a five-minute break at</p>

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<p>1 Mr. Peccole's request. No problem at all. 2 (A recess was taken.) 3 Q. (By Mr. Jimmerson) All right. After a 4 comfort break for everyone, I will just resume. I have 5 just another few questions. 6 Mr. Goorjian, you had -- you had a role, 7 maybe as marketing director, the position you had, 8 where you actually was the individual who dealt with 9 the Peccoles and sold them the lot in 2000; is that 10 right? 11 A. Yes. 12 Q. And I think the documents indicate that they 13 bought it in April or May of 2000. Is that right? 14 A. Yes. 15 Q. And they bought -- their home is located at 16 9470 Verlaine Court? Is that -- 17 A. I know where their home is, but I don't know 18 the address. 19 Q. Okay. All right. Do you remember having a 20 conversation with Mr. Peccole where you discussed the 21 fact that the family was developing or investing tens 22 of millions of dollars to construct the golf course and 23 to put in the infrastructure for the residential 24 development? 25 A. Yes.</p>	<p>1 MR. JIMMERSON: Would you mark this 2 Exhibit 6, please. 3 (Exhibit 6 marked.) 4 MR. JIMMERSON: Mr. Peccole, this is 5 Exhibit 6. We had marked it as Exhibit 5 in another 6 depo, so I crossed out the five. You'll see it. It's 7 right here. 8 MR. PECCOLE: This is? 9 MR. JIMMERSON: Six. We had marked it as 10 Exhibit 5 in another, so I just crossed out the five so 11 she can mark it as six. That's all I'm saying. 12 Q. (By Mr. Jimmerson) Can you identify, 13 Mr. Goorjian, what Exhibit 6 is, called Attachment "C," 14 Disclosure Statement Relating to Zoning Classifications 15 and Master Plan Designations of Adjoining Property? 16 A. I can't read it here without my -- 17 But this is a disclosure stating what -- 18 what's in the plan. 19 Q. Okay. All right. 20 A. What he'll be party to. 21 Q. And this was an attachment that every 22 homeowner was given; is that right? 23 A. Yes. 24 Q. And it referenced what the zoning 25 designations were that existed at the time of</p>
Page 66	Page 68
<p>1 Q. Okay. And did you inform him that there were 2 no guarantees that could be made to him that the golf 3 course would not ever not be developed? 4 A. I made no guarantees, so the answer to that 5 is yes, but could you say the question again? 6 Q. Yeah. It had a double negative, so I agree 7 with you. 8 Did you inform him that no guarantees could 9 be made that the golf course would always remain a golf 10 course property? 11 A. No guarantees. 12 Q. And, indeed, the property was zoned -- zoned 13 to be developed residential; isn't that right? 14 MR. PECCOLE: I object to that question on 15 the grounds it's assuming facts that are not in 16 evidence. 17 A. Okay, now, just my response to it is, it's 18 all documented. It's all in the documents. 19 Q. (By Mr. Jimmerson) Okay. All right. 20 A. That's all my answer. 21 Q. Okay. 22 A. Maps and everything. 23 Q. Okay. Now I'd just like to show you a few 24 more exhibits that have to do with the purchase of the 25 property. The next would be Exhibit 6.</p>	<p>1 purchasing the home; isn't that right? 2 A. Yes. 3 Q. And it showed that through Exhibit C-2; is 4 that right? 5 A. Yes. 6 MR. JIMMERSON: All right. The next exhibit 7 is Exhibit 7. 8 (Exhibit 7 marked.) 9 Q. (By Mr. Jimmerson) And 7 is grant, bargain 10 and sale deed, Queensridge North, Parcel 19, custom 11 lot. 12 A. Yes. 13 Q. And do you recognize this document? 14 A. Yes, I do. 15 Q. All right. And is this the deed that was 16 issued by Nevada Legacy to Robert N. and Nancy Peccole? 17 A. Yes, it is. 18 Q. For their purchase of their lot? 19 A. Yes. 20 Q. Okay. And the date is May 1 of 2000? Do you 21 see that? 22 A. Yes. 23 Q. And Larry Miller signed it as CEO of Nevada 24 Legacy 14 LLC? 25 A. Yes.</p>

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<p>1 Q. And the legal description is attached</p> <p>2 thereto?</p> <p>3 A. Yes.</p> <p>4 MR. JIMMERSON: Okay. All right. I'll not</p> <p>5 be referring to Exhibit 8 with this witness, or</p> <p>6 Exhibit 9. The omission is intentional.</p> <p>7 Let me show you Exhibit No. 10, please.</p> <p>8 (Exhibit 10 marked.)</p> <p>9 Q. (By Mr. Jimmerson) Now, Exhibit 10 is not a</p> <p>10 document that you prepared. It is the title insurance</p> <p>11 policy for Mr. Peccole's home for his purchase in 2000.</p> <p>12 And -- but the purpose for my asking you about it is,</p> <p>13 families, purchasers of homes, would typically get</p> <p>14 title insurance for their purchase, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And title insurance, the purpose of title</p> <p>17 insurance, as you well know, is to delineate what</p> <p>18 conditions or restrictions attach to the property; is</p> <p>19 that right?</p> <p>20 A. Yes.</p> <p>21 Q. And whether or not you have clear title or</p> <p>22 not, whether there's a mortgage or not, whether there's</p> <p>23 CC&Rs or not, that kind of thing, right?</p> <p>24 A. Yes.</p> <p>25 Q. And so it gives notice to the property owner</p>	<p>1 irrelevant, immaterial.</p> <p>2 Q. (By Mr. Jimmerson) And why is that --</p> <p>3 MR. PECCOLE: Has nothing to do with</p> <p>4 Queensridge.</p> <p>5 Q. (By Mr. Jimmerson) And why -- and I do agree</p> <p>6 with Mr. Peccole. One, it has nothing to do with</p> <p>7 Queensridge; but why would the Peccole Ranch never be</p> <p>8 reflected upon or have anything to do with the</p> <p>9 Queensridge master plan?</p> <p>10 A. Meant to be completely separate, with family</p> <p>11 only involved in the development, and -- and completely</p> <p>12 different feel and look.</p> <p>13 Q. And by virtue of the litigation that occurred</p> <p>14 between Triple Five and the Peccole family, the</p> <p>15 previously conceptualized master plan of Peccole Ranch</p> <p>16 was abandoned; is that right?</p> <p>17 MR. PECCOLE: I'm going to object to the</p> <p>18 leading question.</p> <p>19 MR. JIMMERSON: I'm asking the question.</p> <p>20 MR. PECCOLE: He's telling him what he wants</p> <p>21 to hear.</p> <p>22 Q. (By Mr. Jimmerson) You may answer the</p> <p>23 question, sir.</p> <p>24 A. Could you re-ask it?</p> <p>25 MR. JIMMERSON: Would you restate the</p>
Page 70	Page 72
<p>1 as to what he takes the property subject to. Is that a</p> <p>2 fair statement?</p> <p>3 A. Yes.</p> <p>4 Q. And is that what you are aware of as you did</p> <p>5 your job for the Peccole family in the 1990s and 2000s?</p> <p>6 A. Yes.</p> <p>7 Q. All right. And so it would not be surprising</p> <p>8 to you to note that the title insurance would reflect</p> <p>9 the CC&Rs of the Queensridge master plan, correct?</p> <p>10 A. They would be recorded against the property,</p> <p>11 yes.</p> <p>12 Q. And the earlier and unrelated Peccole Ranch</p> <p>13 master plan would not be reflected on their deed?</p> <p>14 A. Correct. It's not a part of.</p> <p>15 Q. It's not a part of. And whatever conditions,</p> <p>16 restrictions, like, for example, if there's a mortgage,</p> <p>17 that would be reflected here, correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Thank you.</p> <p>20 Now, the Peccole Ranch master plan was never</p> <p>21 recorded against the real property known as the</p> <p>22 Queensridge master plan; isn't that right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 MR. PECCOLE: I object to that question as</p>	<p>1 question, please.</p> <p>2 (Page 71, Lines 13 through 16 read by</p> <p>3 the reporter.)</p> <p>4 THE WITNESS: This is correct.</p> <p>5 Q. (By Mr. Jimmerson) And why was it abandoned?</p> <p>6 Why was the Peccole Ranch master plan</p> <p>7 abandoned?</p> <p>8 A. There was a settlement with Triple Five where</p> <p>9 they ended up with -- with Peccole Ranch, basically;</p> <p>10 and -- and so the family took the rest and created</p> <p>11 Queensridge.</p> <p>12 Q. A question I may have asked you before. If I</p> <p>13 did, I'm not trying to duplicate it. I apologize.</p> <p>14 In your conversations -- conversation with</p> <p>15 Mr. Peccole and/or Mr. Peccole and Mrs. Peccole, do you</p> <p>16 remember whether or not you used the words "open</p> <p>17 space," as Mrs. Peccole quotes you as using?</p> <p>18 A. Do not recall, but it is a term I use.</p> <p>19 Q. Okay. All right. And what were the</p> <p>20 purpose -- what was the purpose for you, or other men</p> <p>21 or women selling property at Peccole Ranch in the 1990s</p> <p>22 and 2000s, for having purchasers like Mr. and</p> <p>23 Mrs. Peccole sign these special instructions and</p> <p>24 disclosures that I've shown you?</p> <p>25 A. Again, so they could be aware of what they're</p>

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1 purchasing.

2 Q. All right. Do you recall -- and this may not

3 be within your memory because of your employment. My

4 recollection from your earlier testimony was that you

5 ceased working for the Peccole family in about 2004.

6 Is that right? Do you remember?

7 A. No.

8 Q. Okay. Tell me when you left.

9 A. I -- I worked with the family from '82 to

10 '89, '90. Came back to work for them '94, and stayed

11 with them to perpetuity.

12 Q. Okay. So well after 2004, then?

13 A. Correct.

14 Q. All right. Then I can ask you this question.

15 Take a look at Exhibit No. 12, please.

16 (Exhibit 12 marked.)

17 Q. (By Mr. Jimmerson) By our looking at the --

18 you know, the recorder's records, it appears as if the

19 Peccole family transferred the golf course into the

20 company known as Fore Stars, Ltd. --

21 MR. PECCOLE: I object on the grounds the

22 document speaks for itself.

23 MR. JIMMERSON: Okay.

24 Q. (By Mr. Jimmerson) So my question is,

25 showing you Exhibit 12, which is the grant, bargain and

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1 sale deed, which, as Mr. Peccole says, speaks for

2 itself, and says that, "For valuable consideration,

3 receipt of which is hereby acknowledged, the Peccole

4 1982 Trust, dated February 15th, 1982, as to an

5 undivided Forty Five percent interest and William Peter

6 and Wanda Ruth Peccole Family Limited Partnership, as

7 to an undivided Fifty Five percent interest" -- and it

8 goes on... makes this transfer.

9 Do you recall in 2004 these two trusts

10 conveyed over to Fore Stars, Ltd., the golf course

11 property described in Exhibit 12, the grant, bargain

12 and sale deed of two thousand --

13 A. I do recall.

14 Q. -- five? All right. And the signatory of

15 the trust at this time was Larry Miller; is that right?

16 A. Yes.

17 Q. For both trusts; is that right?

18 A. Yes.

19 Q. Do you remember the reason why the company

20 consolidated the golf course property into the entity

21 called Fore Stars, Ltd., and transferred it from the

22 two trusts to Fore Stars, Ltd., in 2005?

23 A. My recollection is I believe it was to -- in

24 concert with the development of the towers, and it had

25 something to do with the towers as well.

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1 Q. Okay.

2 A. Easements that were needed and items like

3 that. And -- but I don't really know if that was the

4 reason why it was consolidated.

5 Q. Okay. And by -- would you look at Exhibit

6 No. 12 to satisfy yourself that as it relates to the

7 golf course property that's shown in, you know, the

8 grant, bargain and sale deed, you'll see that there's

9 no reference to the Queensridge master plan CC&Rs as

10 somehow being subject to this property.

11 A. It wouldn't have been.

12 Q. Okay. And that's because the Queensridge

13 master CC&Rs had nothing to do with the golf course

14 property?

15 A. It had not been annexed, yeah.

16 Q. And so therefore it wasn't something -- the

17 golf course property wasn't subject to the Queensridge

18 CC&Rs?

19 A. Correct.

20 Q. Thank you.

21 (Exhibit 13 marked.)

22 Q. (By Mr. Jimmerson) I'm showing you

23 Exhibit 13. This is a map that I think you may have

24 seen before. I don't know. I'll ask you if you have.

25 As you've testified earlier, the Queensridge

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1 master plan started out with a small piece of property;

2 and then as the Queensridge master plan was developed,

3 they would annex additional property. Is that right?

4 A. Yes.

5 Q. Looking at Exhibit 13, this is what my

6 understanding is: This is a map that references what

7 property was annexed into the Queensridge master plan.

8 Have you seen this map before?

9 A. Yes, I have.

10 Q. And have I accurately represented what it is?

11 A. Yes, you have.

12 Q. Okay. And the golf course property, which

13 was not annexed, is the white --

14 A. Correct.

15 Q. -- in this map. And the property that was

16 part of Queensridge master plan is the brown. Is that

17 right?

18 A. Yes.

19 Q. All right. Thank you.

20 Let me show you Exhibit No. 14. I just have

21 one or two questions about it.

22 (Exhibit 14 marked.)

23 Q. (By Mr. Jimmerson) Just completing these

24 documents, do you recognize Exhibit 14, which is known

25 as a Public Offering Statement for Queensridge North --

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<p>1 A. Yes.</p> <p>2 Q. -- Custom Lots?</p> <p>3 A. Yes.</p> <p>4 Q. And was this yet another document that</p> <p>5 surrounded the -- I call it papering -- the</p> <p>6 documentation relating to the sale of custom lots?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And remember that we looked at --</p> <p>9 earlier at a set of exhibits -- I think it was</p> <p>10 Exhibit 6 -- that had these attachments, B and C?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And Mr. Peccole made an objection</p> <p>13 that there were blanks?</p> <p>14 A. Yes.</p> <p>15 Q. All right. But it had his signature and his</p> <p>16 wife's signature? Do you remember that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. These were exhibits to the public offering</p> <p>19 that's shown here in Exhibit No. 14; isn't that right?</p> <p>20 A. Yes.</p> <p>21 Q. All right. All right. Thank you.</p> <p>22 And just as it relates to the Peccole</p> <p>23 house -- that's the only reason I'm raising it -- is</p> <p>24 the way that the -- the process in which a piece of</p> <p>25 property would be annexed into the Queensridge master</p>	<p>1 annexation of Parcel No. 19; is that right, sir?</p> <p>2 A. Correct.</p> <p>3 Q. And to the extent that Mr. Peccole's home was</p> <p>4 one of several homes that made up Parcel 19, it then</p> <p>5 became, when it was recorded, part of the Queensridge</p> <p>6 master plan?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Thank you. That's all I have on</p> <p>9 that one.</p> <p>10 I'm going to skip for a moment Exhibit 17, go</p> <p>11 to Exhibit No. 19.</p> <p>12 In a further effort to distinguish the</p> <p>13 Queensridge master plan with the additional stone and</p> <p>14 the look and the like, the family developed custom home</p> <p>15 estate design guidelines; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. All right. I'd like to just show those</p> <p>18 briefly to you.</p> <p>19 A. We had consulting. We didn't do it on our</p> <p>20 own.</p> <p>21 Q. Got it.</p> <p>22 (Exhibit 19 marked.)</p> <p>23 Q. (By Mr. Jimmerson) And what you mean within</p> <p>24 your last answer is that you had professionals help you</p> <p>25 in terms of developing these guidelines?</p>
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<p>1 plan would call for a deed or a declaration of</p> <p>2 annexation, and the annexation would be recorded with</p> <p>3 the Clark County Recorder's office, right?</p> <p>4 A. Correct.</p> <p>5 Q. And as annexed properties were added,</p> <p>6 Queensridge would grow in size, right?</p> <p>7 A. Correct.</p> <p>8 Q. And then when the development ended,</p> <p>9 annexation ended, and that became the totality of</p> <p>10 Queensridge master plan? Right?</p> <p>11 A. Correct.</p> <p>12 Q. All right. I just wanted to show you the</p> <p>13 annexation as relates to Mr. Peccole's property, which</p> <p>14 we've marked as Exhibit 15.</p> <p>15 (Exhibit 15 marked.)</p> <p>16 Q. (By Mr. Jimmerson) Exhibit 15 is called,</p> <p>17 quote, Declaration of Annexation for Queensridge</p> <p>18 Parcel 19 (Queensridge North Custom Lots), end of</p> <p>19 quote. Do you see that, sir?</p> <p>20 A. Yes.</p> <p>21 Q. And this, as you see, is a document that's</p> <p>22 prepared for recordation with the Clark County</p> <p>23 Recorder's office, right?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. And so this particular annexation is the</p>	<p>1 A. Yes, sir.</p> <p>2 Q. So that custom homeowners like Mr. Peccole</p> <p>3 and his wife, Nancy, would know what they could build</p> <p>4 and not build, what would be acceptable and not</p> <p>5 acceptable?</p> <p>6 A. Correct. And what their neighbors would be</p> <p>7 doing the same.</p> <p>8 Q. And that there would be some consistency in</p> <p>9 the neighborhood; and obviously the intent is to have</p> <p>10 an upscale neighborhood, right?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recognize these guidelines as</p> <p>13 being those that applied to the Queensridge master</p> <p>14 plan?</p> <p>15 A. Yes.</p> <p>16 Q. As relates to the custom home estate lots?</p> <p>17 A. Yes.</p> <p>18 Q. Thank you. That's all I have on that.</p> <p>19 Because of the massive size, I'm not</p> <p>20 introducing it, but there was a huge blue binder --</p> <p>21 A. Yes.</p> <p>22 Q. -- that three-ring binder that was given to</p> <p>23 every homeowner; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And it was maybe 6 inches thick?</p>

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<p>1 A. Yes.</p> <p>2 Q. By estimate? And it had covers on the front</p> <p>3 and back, right?</p> <p>4 A. Yes.</p> <p>5 Q. I just want to show you Exhibit 20, which is</p> <p>6 the xerox of the front and back of the binder.</p> <p>7 A. It was a gift to the buyer after they</p> <p>8 purchased the home.</p> <p>9 Q. It was a gift to the buyer; is that right?</p> <p>10 A. After they purchased.</p> <p>11 Q. Okay.</p> <p>12 A. All their documents, including their deed.</p> <p>13 (Exhibit 20 marked.)</p> <p>14 Q. (By Mr. Jimmerson) Just showing you</p> <p>15 Exhibit 20, does this refresh your recollection this is</p> <p>16 a xeroxed copy of the binder?</p> <p>17 A. Yes.</p> <p>18 Q. Copy of the binder? Thank you.</p> <p>19 All right. I just have a few more fill-in</p> <p>20 questions on Exhibit No. 5. Can I ask you to find 5 in</p> <p>21 here. I'll show you what it looks like.</p> <p>22 I forgot to ask the questions when I did.</p> <p>23 Right here. It looks like this.</p> <p>24 A. Okay. I've got that one. Here it is. Yup.</p> <p>25 Q. Okay. Now, as you've already told us, this</p>	<p>1 A. Yes.</p> <p>2 Q. "The Lot may have a view or location</p> <p>3 advantage at the present time. The view may at present</p> <p>4 or in the future include, without limitation, adjacent</p> <p>5 or nearby single-family homes, multiple-family</p> <p>6 residential structures, commercial structures, utility</p> <p>7 facilities, landscaping, and other items. The</p> <p>8 Applicable Declarations may or may not regulate future</p> <p>9 construction of improvements and landscaping in the</p> <p>10 Planned Community Declarations" -- I'm sorry --</p> <p>11 "Planned Community that could affect the views or other</p> <p>12 property owners.</p> <p>13 "Moreover, depending on the location of the</p> <p>14 Lot, adjacent or nearby residential dwellings or other</p> <p>15 structures, whether within the Planned Community or</p> <p>16 outside the Planned Community, could potentially be</p> <p>17 constructed or modified in a manner that could block or</p> <p>18 impair all or part of the views from the Lot and/or</p> <p>19 diminish the location advantages of the Lot," if any.</p> <p>20 Have I read that accurately?</p> <p>21 A. Yes, you have.</p> <p>22 Q. What was the purpose of notifying the buyer</p> <p>23 that the adjacent development of the property could</p> <p>24 affect their views or block their views?</p> <p>25 A. Disclosures so I wouldn't be here today.</p>
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<p>1 was an addendum that made certain disclosures and</p> <p>2 committed the buyer to acknowledging the disclosures,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And again, part of it, as you indicated, was</p> <p>6 to make sure that the buyer knew exactly what he was</p> <p>7 getting to, what rights he could count on and what --</p> <p>8 what he couldn't count on as well, right?</p> <p>9 So let me ask you to look at, please,</p> <p>10 Paragraph 4 of Page 2 of Exhibit 5, Exhibit 5 being</p> <p>11 called Addendum "1" to the Purchase Agreement, Earnest</p> <p>12 Money Receipt and Escrow Instructions.</p> <p>13 A. Where?</p> <p>14 Q. Paragraph 4, Page 2. It's called "No Golf</p> <p>15 Course or Membership Privileges." Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. "Purchasers shall not acquire any</p> <p>18 rights, privileges, interest, or membership in the</p> <p>19 Badlands Golf Course or any other golf course, public</p> <p>20 or private, or any country club membership by virtue of</p> <p>21 purchasing the lot." End of quote.</p> <p>22 A. Yes.</p> <p>23 Q. All right. Next, would you look at</p> <p>24 Paragraph 7 in the same document, please, called</p> <p>25 "Views/Location advantages." Do you see that?</p>	<p>1 That's why we did all this.</p> <p>2 Q. You mean here to give a deposition?</p> <p>3 A. Correct.</p> <p>4 Q. All right.</p> <p>5 MR. PECCOLE: What was that exhibit?</p> <p>6 MR. JIMMERSON: That was -- we're talking</p> <p>7 about Exhibit No. 5, Mr. Peccole.</p> <p>8 Q. (By Mr. Jimmerson) All right. Now I want to</p> <p>9 kind of change, paragraph, something a little</p> <p>10 different, a new subject matter.</p> <p>11 The Peccole family knew that the property of</p> <p>12 the golf course -- not Queensridge master plan, but the</p> <p>13 golf course -- could be developed; isn't that right?</p> <p>14 A. Yes.</p> <p>15 Q. And there was a lawsuit between BCG Holdings,</p> <p>16 LLC, and Fore Stars arising from the desire to develop</p> <p>17 the golf course property; is that right?</p> <p>18 A. BCG?</p> <p>19 Q. Yes.</p> <p>20 A. Is?</p> <p>21 Q. BGC. It's a company that Mr. Lowie had an</p> <p>22 interest in.</p> <p>23 A. Okay. Ask me the question again.</p> <p>24 Q. Okay. So just remember that the golf course</p> <p>25 property the Peccoles have transferred into Fore Stars,</p>

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<p>1 Ltd. --</p> <p>2 A. Yes.</p> <p>3 Q. -- I showed you the deed -- in 2005.</p> <p>4 A. Correct.</p> <p>5 Q. Now I'll show you a lawsuit that came two</p> <p>6 years later, in August of 2007, between BGC Holdings,</p> <p>7 LLC, and Fore Stars, Ltd.</p> <p>8 A. Okay.</p> <p>9 Q. Let me just show you that. It's a lot of</p> <p>10 years ago, I know.</p> <p>11 MR. JIMMERSON: I'm marking this as Exhibit</p> <p>12 No. 17.</p> <p>13 (Exhibit 17 marked.)</p> <p>14 Q. (By Mr. Jimmerson) And if I could help you,</p> <p>15 just look at Page 2 and 3. You'll see -- it will</p> <p>16 refresh your recollection about the lawsuit.</p> <p>17 A. I don't know what -- okay. I've read those</p> <p>18 two paragraphs.</p> <p>19 Q. Can you read Paragraph 7 just below.</p> <p>20 A. (Witness examined document.) Okay.</p> <p>21 Q. Okay. Do you recall that the family knew</p> <p>22 that the golf course could be developed and that they</p> <p>23 sold -- they sold BGC Holdings --</p> <p>24 A. Yes.</p> <p>25 Q. -- EHB Associated, a related entity, rights</p>	<p>1 for it to maximize the tower site. And so it was in</p> <p>2 concert. They were partners on the towers, so --</p> <p>3 Q. Okay. And the tower site property is</p> <p>4 adjoining or attaching to the golf course, right?</p> <p>5 A. Correct. Yes, sir.</p> <p>6 Q. Okay. And it's part of -- I would call it</p> <p>7 the country club building is part of that property,</p> <p>8 right?</p> <p>9 A. Yes. Correct.</p> <p>10 Q. Okay. And then it was sold off so that</p> <p>11 there's three tower sites?</p> <p>12 A. Yes.</p> <p>13 Q. Two of which have been developed, one of</p> <p>14 which is not yet developed?</p> <p>15 A. Yes.</p> <p>16 Q. That is owned by a different entity?</p> <p>17 A. Now.</p> <p>18 Q. Now. I guess it's IDB or someone else. Is</p> <p>19 that right?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. But in those years, in the mid-2000s and</p> <p>22 later 2000s, it was all owned by the Peccole family; is</p> <p>23 that right?</p> <p>24 A. Correct.</p> <p>25 Q. Subject to a sale contract with BGC,</p>
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<p>1 to develop that property in the mid-2000s, in this case</p> <p>2 2007?</p> <p>3 A. Okay.</p> <p>4 Q. All right. And then there was a lawsuit,</p> <p>5 which is this Exhibit No. 17, that was brought forward</p> <p>6 for what BGC Holdings believed was a breach of contract</p> <p>7 by the Peccoles --</p> <p>8 A. Okay.</p> <p>9 Q. -- by Fore Stars in not selling it the</p> <p>10 property. Do you recall that?</p> <p>11 A. No.</p> <p>12 Q. Okay. All right. You were, then, not</p> <p>13 directly involved with that litigation?</p> <p>14 A. I was not.</p> <p>15 Q. Okay. Fair enough.</p> <p>16 Do you know whether or not, maybe just to</p> <p>17 refresh your recollection, that a resolution was</p> <p>18 reached which led to a restrictive covenant, being</p> <p>19 limited, having to do with the towers?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What's your recollection about that?</p> <p>22 A. Just the recollection was that there were a</p> <p>23 series of easements that needed to be -- that we needed</p> <p>24 in order to develop the towers and there was some</p> <p>25 rerouting of a couple of holes that needed to be done</p>	<p>1 Mr. Lowie and his interests; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Fair enough. And I would like to show</p> <p>4 you the restrictive covenant, Exhibit 21.</p> <p>5 (Exhibit 21 marked.)</p> <p>6 THE WITNESS: I'm starting to remember some</p> <p>7 of that as well. It had to do with the clubhouse as</p> <p>8 well.</p> <p>9 Q. (By Mr. Jimmerson) That's correct.</p> <p>10 I'm showing you what's been marked as</p> <p>11 Exhibit 21, called Restrictive Covenant, recording on</p> <p>12 or about March 14, 2008. Are you familiar with this</p> <p>13 document?</p> <p>14 A. No.</p> <p>15 Q. Okay. Are you familiar with the idea that</p> <p>16 there was a restrictive covenant that came as a result</p> <p>17 of some negotiations between the parties?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And it had to do in part with the</p> <p>20 existing golf clubhouse; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And the adjoining property?</p> <p>23 A. Yes.</p> <p>24 Q. The document speaks for itself. I just put</p> <p>25 it in sequence. Thank you very much.</p>

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<p>1 Now showing you what's been marked as</p> <p>2 Exhibit 22.</p> <p>3 (Exhibit 22 marked.)</p> <p>4 Q. (By Mr. Jimmerson) Consistent with your</p> <p>5 recollection, Mr. Goorjian, there was a settlement</p> <p>6 reached between BGC Holdings and Fore Stars, Fore Stars</p> <p>7 being the Peccole family's company, in this time period</p> <p>8 of 2007.</p> <p>9 And this document has been disclosed in this</p> <p>10 form to Mr. Peccole. We went to court and there was a</p> <p>11 court order on this, so this was the form in which the</p> <p>12 document was disclosed to Mr. Peccole, so that's why it</p> <p>13 is the way it is.</p> <p>14 A. Okay.</p> <p>15 Q. It has nothing to do with you, but I'm just</p> <p>16 telling you that's why the whole document is not here,</p> <p>17 is what I'm trying to say.</p> <p>18 A. Redacted.</p> <p>19 Q. And it's also only two pages and not the full</p> <p>20 document.</p> <p>21 A. Right.</p> <p>22 Q. All right. My only question to you is, do</p> <p>23 you have a recollection of this document?</p> <p>24 A. I don't.</p> <p>25 Q. Okay. Fair enough. But do you see that this</p>	<p>1 MR. PECCOLE: Can I take another break?</p> <p>2 MR. JIMMERSON: Yes, sir, you certainly can.</p> <p>3 Absolutely.</p> <p>4 (A recess was taken.)</p> <p>5 MR. JIMMERSON: So the next document is</p> <p>6 Exhibit 23.</p> <p>7 (Exhibit 23 marked.)</p> <p>8 Q. (By Mr. Jimmerson) Again, I'm just telling</p> <p>9 you things that are really not serious issues of</p> <p>10 inquiry, but I just want to show you that Fore Stars</p> <p>11 was created by the Peccoles to hold the golf course</p> <p>12 property; and this is the articles of incorporation of</p> <p>13 Fore Stars with the Secretary of State in or about</p> <p>14 December 5, 1995. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recognize the signatures at Page 3</p> <p>17 of this --</p> <p>18 A. Sure do.</p> <p>19 Q. -- articles of organization?</p> <p>20 A. Yes.</p> <p>21 Q. From Wanda Peccole to Lawrence Bayne and Lisa</p> <p>22 Miller?</p> <p>23 A. Yes. That would be Loretta.</p> <p>24 Q. Got it. All right. Thank you.</p> <p>25 No questions on that, to that.</p>
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<p>1 does bear connection between the lawsuit that is</p> <p>2 brought in 2007 and then a settlement between these</p> <p>3 parties?</p> <p>4 A. Yes.</p> <p>5 Q. All right.</p> <p>6 A. And I'm recalling that as we speak more and</p> <p>7 more.</p> <p>8 Q. All right. And would you look at the bottom</p> <p>9 of the page.</p> <p>10 A. Yup.</p> <p>11 Q. The page 1. You'll see, "The foregoing</p> <p>12 notwithstanding, the Restrictive Covenant shall expire</p> <p>13 ten years after its" -- it has a different wording</p> <p>14 there -- "after its delivery."</p> <p>15 Do you see the word "delivery" there</p> <p>16 handwritten in?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And the restrictive covenant is the</p> <p>19 document I just showed you, Exhibit No. 21. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. All right. So that's -- I'm just trying to</p> <p>23 lay it together so you can see they're all tied</p> <p>24 together. That's all.</p> <p>25 That's all I have for that. Appreciate it.</p>	<p>1 I'm showing you what's been marked as</p> <p>2 Exhibit 24.</p> <p>3 (Exhibit 24 marked.)</p> <p>4 Q. (By Mr. Jimmerson) Exhibit 24 is Bill No.</p> <p>5 Z-2001-1, Ordinance No. 5353; but it is, in 2001, the</p> <p>6 City of Las Vegas's ordinance that takes all of the</p> <p>7 property that's shown in the attachments and codifies</p> <p>8 it as R-PD7 zoning.</p> <p>9 And I wanted to just ask you if you've seen</p> <p>10 this city ordinance before today. I'm sure you've</p> <p>11 maybe seen it at the time, but I don't remember if you</p> <p>12 remember it or not.</p> <p>13 A. I do not.</p> <p>14 Q. Okay. You can see, though, that the</p> <p>15 ordinance attaches parcel numbers?</p> <p>16 A. Yes.</p> <p>17 Q. APN --</p> <p>18 MR. PECCOLE: I'm going to object to the</p> <p>19 exhibit. It's irrelevant, immaterial to this case.</p> <p>20 Q. (By Mr. Jimmerson) So anyway, you'll see</p> <p>21 that there are APN numbers attached to this ordinance.</p> <p>22 Is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Fair enough. Thank you, sir.</p> <p>25 Now, the Peccole family retained different</p>

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<p>1 professionals to help them with zoning matters, 2 development matters and the like; is that right? 3 A. Yes. 4 Q. Okay. Do you remember the name A. Wayne 5 Smith & Associates as a planner -- 6 A. Yes. 7 Q. -- in the mid-'80s? 8 A. Yes, I do. 9 Q. Okay. And how do you remember them? 10 A. He was the -- not the original, but he did 11 the master plan for what was at the time about 12 2300 acres of Peccole lands from Durango to Hualapai 13 and Charleston to Alta. 14 Q. All right. I'm showing you number -- I want 15 to show you an exhibit, then, Exhibit No. 25. 16 (Exhibit 25 marked.) 17 Q. (By Mr. Jimmerson) This is a letter that 18 bears the date March 26, 1986. Do you see that? 19 A. Yes. 20 Q. And I just wanted to confirm your own 21 testimony earlier today about, in the third paragraph, 22 the zoning approvals -- 23 MR. PECCOLE: I would interpose an objection 24 on the grounds that anything that has to do with the 25 initial Venetian Foothills has no relevancy with regard</p>	<p>1 MR. PECCOLE: And in response, I just say to 2 Mr. Jimmerson it's irrelevant and immaterial to the 3 lawsuit that he has filed against my wife and I. 4 MR. JIMMERSON: And so that begs the question 5 of why you would make reference to the Peccole Ranch 6 master plan in your motion for summary judgment in this 7 lawsuit, Mr. Peccole. 8 Q. (By Mr. Jimmerson) Would you also look at 9 this exhibit, Mr. Smith's exhibit. I just want to call 10 one document -- one sentence to your attention. 11 Does this letter, who was the representative 12 of the Peccole family, Jackie Guthrie of Wayne Smith & 13 Associates, state in the third paragraph, last 14 sentence, quote, The R-PD category is requested, at the 15 direction of the planning staff, as it allows the 16 developer flexibility and the City design control, end 17 of quote? 18 A. Yes. 19 Q. All right. Let me just show you -- I'm 20 omitting Exhibit 25, and the omission is intentional. 21 MS. POLSELLI: 26. That would be 26. 22 MR. JIMMERSON: I'm sorry. 26. I misspoke. 23 No -- 26, that's right. I'm omitting Exhibit 26, and 24 the omission is intentional. And I'm also omitting 25 Exhibit No. 27 as an intentional omission.</p>
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<p>1 to this lawsuit or Queensridge South -- or North. 2 Excuse me. 3 Q. (By Mr. Jimmerson) All right. And I was 4 interrupted in the middle of my question. Let me 5 finish the question, and then I'd like to respond to 6 the objection. 7 So it refers to zoning C-1 for the commercial 8 sites, P-R for the office sites, C-V for a 5-acre 9 community center parcel, and the R-PD for residential. 10 Do you see that? 11 A. Yes, I do. 12 Q. And these are different zoning designations, 13 depending upon the intended use? 14 A. Correct. 15 Q. All right. Thank you. 16 MR. JIMMERSON: Now just to respond to the 17 objection. Mr. Peccole has raised these issues in a 18 motion for summary judgment; and while I may agree that 19 they have nothing to do with the instant litigation, 20 because he has made these express references to these 21 different -- different plans and the Peccole Ranch 22 master plan to the south of West Charleston, I feel 23 that I'm obliged to at least respond to those in this 24 record. But I do agree that the whole issue of Peccole 25 Ranch is irrelevant to the instant lawsuit.</p>	<p>1 I'll show you Exhibit No. 28. 2 (Exhibit 28 marked.) 3 Q. (By Mr. Jimmerson) Relative to No. 28, this 4 is a letter from the City of Las Vegas, City Clerk, 5 Kathleen Tighe, to the William Peccole 1982 Trust, 6 dated May 1, 1990, with regard to zoning that was 7 approved by the city council, specifically the R-PD7 8 and R -- you know, R-PD7 zoning that's referenced here. 9 My question to you is, do you know whether or 10 not you've seen this letter before, sir? 11 A. I have not. 12 Q. Fair enough. Thank you. 13 And this 1990 time period was before 14 Queensridge was ever created, right? Do you see the 15 letter I showed you? 16 A. Yes, it is. 17 Q. So the Queensridge came to be known six years 18 later, 1996? 19 A. Correct. 20 Q. And then the years thereafter? 21 A. Correct. 22 Q. After which the old plan of Peccole Ranch was 23 abandoned and then you started with Queensridge six 24 years later? 25 A. Correct.</p>

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<p>1 Q. All right.</p> <p>2 MR. JIMMERSON: To my best recollection,</p> <p>3 that's all the questions I have; and I thank you very</p> <p>4 much for your time, sir.</p> <p>5 Mr. Peccole may have some questions, and he</p> <p>6 has the right to ask you that.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. JIMMERSON: So please be responsive to</p> <p>9 his questions. Thank you, sir. Thank you for your</p> <p>10 time.</p> <p>11 MR. PECCOLE: My turn?</p> <p>12 MR. JIMMERSON: No further questions. Thank</p> <p>13 you.</p> <p>14 EXAMINATION</p> <p>15 BY MR. PECCOLE:</p> <p>16 Q. Is it okay if I call you Greg?</p> <p>17 A. Please, Bob.</p> <p>18 Q. When did you last talk to Yohan Lowie?</p> <p>19 A. Oh, it would have been yesterday, maybe, or</p> <p>20 the day before.</p> <p>21 Q. Did you talk about this case?</p> <p>22 A. No, sir.</p> <p>23 Q. Have you talked to him about this case at any</p> <p>24 time?</p> <p>25 A. Yes.</p>	<p>1 A. I'd say I worked from him -- for him, oh,</p> <p>2 maybe three -- two to three years, two-and-a-half to</p> <p>3 three years.</p> <p>4 Q. And that would have been in the --</p> <p>5 A. That would have been to about 2009 or '8.</p> <p>6 '9.</p> <p>7 Q. Now, a little while ago, almost to the end of</p> <p>8 your deposition, Mr. Jimmerson asked you questions</p> <p>9 about experts that were working in --</p> <p>10 A. Correct.</p> <p>11 Q. -- in the field dealing with both the north</p> <p>12 side and the south side.</p> <p>13 MR. JIMMERSON: Let me just object. I never</p> <p>14 used the word "experts." But go ahead.</p> <p>15 A. There were consultants involved in the</p> <p>16 project. We had several that would come and go. So --</p> <p>17 and they were different in Peccole Ranch -- they</p> <p>18 weren't the same consultants in both, although some may</p> <p>19 have overlapped.</p> <p>20 But we had landscape designers, we had</p> <p>21 architects, we had engineers, you know, all the</p> <p>22 disciplines. Attorneys. All the disciplines were</p> <p>23 covered with a consultant.</p> <p>24 Q. (By Mr. Peccole) Does the name Clyde Spitzze</p> <p>25 ring a bell?</p>
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<p>1 Q. How long ago?</p> <p>2 A. Oh, only the fact that -- oh, I'd say off and</p> <p>3 on of while this has been happening. Only -- not about</p> <p>4 the case; just the fact that there is a case.</p> <p>5 Q. Did -- was he your employer at one time?</p> <p>6 A. Yes, he was.</p> <p>7 Q. And tell me a little bit about that.</p> <p>8 A. That was during the high-rises. I worked for</p> <p>9 the company there as -- well, actually, it was</p> <p>10 during -- it would have been 2006, '5 or '6, when we</p> <p>11 were doing the high-rises and preselling the</p> <p>12 high-rises. I worked for him.</p> <p>13 Q. Now, when you worked for him, how were you</p> <p>14 being paid?</p> <p>15 A. I started as an employee with receiving draws</p> <p>16 against my future commissions.</p> <p>17 Q. And when you say you were working for</p> <p>18 Mr. Lowie at that time, was it one of his entities?</p> <p>19 A. I would have been EHB, I believe, employee</p> <p>20 or -- I can't remember if I was an employee of the</p> <p>21 project. I really can't recall who paid me. I know</p> <p>22 that my job was to put the marketing materials together</p> <p>23 and to presell the towers.</p> <p>24 Q. And how long would you say you worked for</p> <p>25 him?</p>	<p>1 A. Yes, it does. Clyde was our engineer.</p> <p>2 Q. He was what?</p> <p>3 A. Our engineer.</p> <p>4 Q. For the overall master plan, entire thing?</p> <p>5 A. Well, we had G.C. Wallace was involved at one</p> <p>6 time. VTN was involved. So there were several</p> <p>7 engineers involved. But I would say the crux of it,</p> <p>8 when it came to Queensridge, we were pretty much using,</p> <p>9 if I recall, Clyde.</p> <p>10 Q. Now, when -- when Bill started the</p> <p>11 development, he started with his original LLC over in</p> <p>12 the south side, which would be Foothills something or</p> <p>13 other at that time?</p> <p>14 A. We never did anything under Venetian</p> <p>15 Foothills. That was the original plan that Bill may</p> <p>16 have done, gosh, sometime maybe in the '70s. We met</p> <p>17 with A. Wayne Smith in the '80s sometime -- I can't</p> <p>18 recall when -- and came up with a Peccole Ranch master</p> <p>19 plan.</p> <p>20 Q. Now, in --</p> <p>21 A. Let me --</p> <p>22 Q. I'm sorry.</p> <p>23 A. Conceptual plan.</p> <p>24 Q. 1986, there was filed an application with a</p> <p>25 master plan map. Is that correct?</p>

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<p>1 A. Yes.</p> <p>2 Q. And that master plan eventually became</p> <p>3 Phase One and Phase Two?</p> <p>4 A. Don't recall. I know that it covered all of</p> <p>5 his property.</p> <p>6 Q. And Phase One started off on the south side</p> <p>7 of Charleston?</p> <p>8 A. We started -- again, I don't know what we</p> <p>9 called -- we started with Canyon Gate.</p> <p>10 Q. Canyon Gate. Yeah.</p> <p>11 A. Which was a development with a partnership</p> <p>12 that went sour as well.</p> <p>13 Q. And after that, you shifted to Phase Two,</p> <p>14 which was --</p> <p>15 A. I don't know if we --</p> <p>16 Q. -- was part of the master plan?</p> <p>17 A. I don't know if we phased it or what we</p> <p>18 called it, but, yeah, we went to -- our partnership</p> <p>19 with Triple Five we got into, and started -- and that's</p> <p>20 when I left the family, when they started that. I</p> <p>21 split off and divorced and went to work for Nevada</p> <p>22 Title.</p> <p>23 MR. PECCOLE: Okay. I'd like to introduce</p> <p>24 this as Exhibit A.</p> <p>25 (Exhibit A marked.)</p>	<p>1 Q. So what this was is an application for</p> <p>2 rezoning, and that would be the Queensridge side. We'd</p> <p>3 be going to the north of Charleston. Correct?</p> <p>4 MR. JIMMERSON: I'm just going to object to</p> <p>5 the question because the witness cannot identify the</p> <p>6 document, as so stated. So asking him questions about</p> <p>7 this now would be speculative on the part of the</p> <p>8 witness and unfair to the witness.</p> <p>9 Q. (By Mr. Peccole) Is that correct? The</p> <p>10 Peccole Ranch overall master plan, Phase Two, which is</p> <p>11 the Queensridge side of Charleston?</p> <p>12 A. I can't answer that question because --</p> <p>13 that's what this -- this document says that this is the</p> <p>14 Peccole Ranch partnership, okay, which I -- I can't</p> <p>15 recall. But I believe this was all the property that</p> <p>16 Triple Five was involved in in our partnership at the</p> <p>17 time. Okay? And that's really what this is</p> <p>18 identifying. But this is -- this was done with the</p> <p>19 Peccoles and Triple Five.</p> <p>20 MR. JIMMERSON: You can see that because the</p> <p>21 front page says it's a partnership. You're a hundred</p> <p>22 percent right, Mr. Goorjian.</p> <p>23 Q. (By Mr. Peccole) On Page 1, does it say</p> <p>24 introduction to the Peccole Ranch overall master plan?</p> <p>25 A. That's what it says, yes.</p>
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<p>1 Q. (By Mr. Peccole) Did you ever talk to Bill</p> <p>2 Peccole about what his intention was as far as the golf</p> <p>3 course remaining a golf course?</p> <p>4 A. Don't recall.</p> <p>5 Q. He never told -- I mean, anybody or any of</p> <p>6 the family discuss it with you? How about Wanda?</p> <p>7 A. Rephrase your question, Bob. I don't know</p> <p>8 what you --</p> <p>9 Q. Did you ever hear either Bill or Wanda say</p> <p>10 that the golf course is subject to going away?</p> <p>11 A. No.</p> <p>12 Q. In fact, Bill himself often said, "It will be</p> <p>13 a golf course and open space, and that's what I'm</p> <p>14 selling."</p> <p>15 A. That I don't recall.</p> <p>16 Q. Take a look at Exhibit A.</p> <p>17 A. Yes.</p> <p>18 Q. And just as kind of a little background, this</p> <p>19 is the Phase Two, as you'll see on the front page, "A</p> <p>20 Master Plan Amendment and Phase Two Rezoning</p> <p>21 Application." Do you see that at the very top?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And that's the Peccole Ranch master plan,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p>1 Q. And it uses the term, "Peccole Ranch Overall</p> <p>2 Conceptual Master Plan." You used that term a little</p> <p>3 while ago.</p> <p>4 A. Conceptual.</p> <p>5 Q. Yes.</p> <p>6 A. Correct.</p> <p>7 Q. If you look at Page -- right after Page 1 --</p> <p>8 A. Yes.</p> <p>9 Q. -- you'll see that the map now shows you --</p> <p>10 A. What the partnership --</p> <p>11 Q. -- where he's going.</p> <p>12 A. Yeah.</p> <p>13 Q. And it shows the whole thing, correct?</p> <p>14 A. It shows all of what is still Mr. Peccole's</p> <p>15 land.</p> <p>16 Q. Yes. And it eliminates Canyon Gate Golf</p> <p>17 Course, as you said earlier?</p> <p>18 A. Yup.</p> <p>19 Q. And it eliminates the McGah-Bailey on the</p> <p>20 south side of Charleston?</p> <p>21 A. There's one mistake here, is that -- this --</p> <p>22 because he didn't own -- there's a piece there that I</p> <p>23 don't think he did own that's shaded here. It belonged</p> <p>24 to your father.</p> <p>25 Q. To who?</p>

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<p>1 A. Your dad, I believe.</p> <p>2 Q. That's correct. So it was -- it's eliminated</p> <p>3 from the map. Correct? You can see it's dark, is</p> <p>4 what --</p> <p>5 A. Everything that's dark is what's represented</p> <p>6 in this partnership, but I believe some of what is dark</p> <p>7 here belonged to Bob and Lena, if I'm correct.</p> <p>8 Q. No. No, that's not correct.</p> <p>9 A. Okay. So where is Charleston? Okay. You're</p> <p>10 right. It's -- here is -- it says Bailey-McGah. And</p> <p>11 that did not belong to Bailey-McGah, right?</p> <p>12 Q. That's correct.</p> <p>13 A. Okay. I got that correct. That's right.</p> <p>14 Q. And I was -- if you go along --</p> <p>15 A. That's correct. I got confused.</p> <p>16 Q. If you go a couple of pages further in, you</p> <p>17 will come to the overall development of the entire</p> <p>18 partnership, correct?</p> <p>19 MR. JIMMERSON: I'm just going to object.</p> <p>20 The document speaks for itself, and --</p> <p>21 A. Yes.</p> <p>22 MR. JIMMERSON: -- as Mr. Peccole's</p> <p>23 indicated, this is all irrelevant to the instant</p> <p>24 dispute.</p> <p>25 THE WITNESS: Yes.</p>	<p>1 A. I don't know what he's asking for. Well,</p> <p>2 this is what the document says, yes. If it's --</p> <p>3 whatever this document is stating, that's what</p> <p>4 Mr. Peccole was attempting to do.</p> <p>5 Q. Now, when you look at the map of the overall</p> <p>6 master plan -- and that shows you the zoning that</p> <p>7 happens to be designated different parcels; is that</p> <p>8 correct?</p> <p>9 A. For those parcels shown in white? Yes.</p> <p>10 Q. So if you're looking at the portion that</p> <p>11 starts with the -- going north from Charleston over</p> <p>12 towards the Angel Park Golf Course --</p> <p>13 A. Correct.</p> <p>14 Q. -- those were the zonings in each of those</p> <p>15 white parcels that he was asking for, is that correct,</p> <p>16 for Phase Two?</p> <p>17 A. For Queensridge master -- or for Queensridge.</p> <p>18 These were the zonings he was asking for.</p> <p>19 Q. And actually Phase One has already been</p> <p>20 almost completed by then, 1990?</p> <p>21 A. Correct. Which was -- which they were no</p> <p>22 longer involved in.</p> <p>23 Q. So he was already moving on the north side of</p> <p>24 Charleston, and that's what this application is about?</p> <p>25 A. Because he was no longer involved in the</p>
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<p>1 Q. (By Mr. Peccole) And it does show from</p> <p>2 Charleston, going north, towards Angel Park -- it shows</p> <p>3 the development that Bill was presenting at that time</p> <p>4 for zoning; is that correct?</p> <p>5 A. I'm not -- I can't answer that.</p> <p>6 Q. Doesn't it say this is a zoning application?</p> <p>7 MR. JIMMERSON: I just object --</p> <p>8 A. I'm not sure if this is what he used.</p> <p>9 Q. (By Mr. Peccole) And Phase Two rezoning</p> <p>10 application?</p> <p>11 MR. JIMMERSON: I'm just going to object.</p> <p>12 The witness has testified that this was abandoned in</p> <p>13 favor of Queensridge years later, and he's not familiar</p> <p>14 with the document.</p> <p>15 I can't instruct the witness not to answer</p> <p>16 the question, but it's unfair to the witness. So</p> <p>17 that's my objection.</p> <p>18 THE WITNESS: Ask the question again, Bob.</p> <p>19 Q. (By Mr. Peccole) Is this an application, for</p> <p>20 Phase Two rezoning application? Directing your</p> <p>21 attention to the first page.</p> <p>22 A. That's what it -- that's what it states,</p> <p>23 correct.</p> <p>24 Q. And so in this application he's -- Bill was</p> <p>25 asking for rezoning? Is that correct?</p>	<p>1 south side.</p> <p>2 Q. Okay.</p> <p>3 A. If my mind -- if my brain here serves me</p> <p>4 correctly, he was already -- I can't recall if he was</p> <p>5 already in -- 1990, if he was already in litigation</p> <p>6 with Triple Five, but I can't recall.</p> <p>7 Q. If you look at Page 8 of this application,</p> <p>8 Exhibit A.</p> <p>9 A. Yup.</p> <p>10 Q. Beginning -- it talks about Phase Two?</p> <p>11 A. Where does it say anything about Phase Two?</p> <p>12 Q. Could you see what it says? It's saying --</p> <p>13 A. Am I looking at this?</p> <p>14 Q. No. You should be at Page 8.</p> <p>15 A. Eight. Mine are not paginated, so let me see</p> <p>16 here. Okay. There we go. Eight. I'm there.</p> <p>17 Q. It's saying Phase Two, Peccole Ranch</p> <p>18 comprises approximately 996.4-acre.</p> <p>19 A. Okay.</p> <p>20 MR. JIMMERSON: I'm just going to object to</p> <p>21 the question. The document speaks for itself.</p> <p>22 Q. (By Mr. Peccole) And that's bounded by Angel</p> <p>23 Park Golf Course on the north, Durango on the east,</p> <p>24 small sections of Sahara Avenue, Charleston Boulevard</p> <p>25 and Alta Road on the south and Hualapai on the west.</p>

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<p>1 Now, that's Phase Two. Right? And that's</p> <p>2 what this application is about?</p> <p>3 MR. JIMMERSON: Would you just mark this, by</p> <p>4 the way, so I can find it later.</p> <p>5 A. Okay.</p> <p>6 Q. (By Mr. Peccole) Was that part of -- in</p> <p>7 other words, this application is about Phase Two; and</p> <p>8 it's saying exactly what land it covers and how much</p> <p>9 land there is?</p> <p>10 MR. JIMMERSON: I'm just going to object to</p> <p>11 the question because this predates the lawsuit between</p> <p>12 Triple Five and Peccole.</p> <p>13 THE WITNESS: And it also predates me coming</p> <p>14 back to work for them.</p> <p>15 So I didn't come back till '94. I don't --</p> <p>16 this stuff is all foreign to me.</p> <p>17 Q. (By Mr. Peccole) Well, this application was</p> <p>18 submitted February 6, 1990, and it definitely was</p> <p>19 Phase Two.</p> <p>20 A. I was working for --</p> <p>21 Q. So you weren't --</p> <p>22 A. I'm not part of the family. I'm not -- I</p> <p>23 don't -- I'm not familiar with this document. I'm</p> <p>24 sorry.</p> <p>25 Q. So you were gone?</p>	<p>1 A. No.</p> <p>2 Q. Well, let's take a look at Page 10.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see the designation "Open Space and</p> <p>5 Drainage"?</p> <p>6 A. Yes.</p> <p>7 Q. You knew that existed, correct, as a</p> <p>8 salesman?</p> <p>9 A. No.</p> <p>10 MR. JIMMERSON: Objection. It's two</p> <p>11 different plans.</p> <p>12 THE WITNESS: I'm going to answer his</p> <p>13 question, is no, I'm not.</p> <p>14 Q. (By Mr. Peccole) You weren't aware of it?</p> <p>15 A. Not when I was selling in -- not in 1990. I</p> <p>16 wasn't selling anything, so --</p> <p>17 Q. How about after 1990?</p> <p>18 A. There was a different plan. That wasn't the</p> <p>19 same plan.</p> <p>20 Q. Well, we'll have to talk about that.</p> <p>21 A. All right.</p> <p>22 Q. But this does say "Open Space and Drainage,"</p> <p>23 correct?</p> <p>24 MR. JIMMERSON: I'm just going to object.</p> <p>25 The document speaks for itself and has nothing to do</p>
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<p>1 A. Yeah.</p> <p>2 Q. This is -- if you do look at eight and that</p> <p>3 first paragraph, it says "Phase Two are R-PD7, R-3 and</p> <p>4 C-1, as described in the following land use</p> <p>5 descriptions. Overall density of Phase Two is 4.5</p> <p>6 DU/AC."</p> <p>7 Now, if you go back to the first map we</p> <p>8 looked at after Phase Two --</p> <p>9 A. Yup.</p> <p>10 Q. -- those zonings are all set out in those</p> <p>11 white areas that are north of West Charleston.</p> <p>12 A. Okay.</p> <p>13 Q. And so they total exactly what he was</p> <p>14 requesting, and the exact zoning he was asking for.</p> <p>15 A. For all of the properties that were a part of</p> <p>16 this site.</p> <p>17 Q. Well, for the Phase Two.</p> <p>18 A. For all the properties that were a part of</p> <p>19 Phase Two.</p> <p>20 Q. Yes.</p> <p>21 A. That were -- again, yeah, I know where you're</p> <p>22 going. Okay.</p> <p>23 Q. Now, you became a salesman in the Queensridge</p> <p>24 area, so you were selling properties subject to this</p> <p>25 document?</p>	<p>1 with Queensridge.</p> <p>2 A. Yeah. Okay. That's what it says. It says</p> <p>3 "Open Space and Drainage," yes, it does.</p> <p>4 Q. (By Mr. Peccole) And this is Queensridge.</p> <p>5 MR. JIMMERSON: Absolutely it does not say</p> <p>6 the word "Queensridge" on this document.</p> <p>7 THE WITNESS: It says Peccole Ranch.</p> <p>8 MR. PECCOLE: Okay. Let's read this, then.</p> <p>9 MR. JIMMERSON: Let's agree not to step on</p> <p>10 each other's words. Allow me to make an objection,</p> <p>11 Mr. Peccole, and then you can certainly respond.</p> <p>12 Q. (By Mr. Peccole) "A focal point of Peccole</p> <p>13 Ranch Phase Two is the 199.8-acre golf course and open</p> <p>14 space drainageway system which traverses the site along</p> <p>15 the natural wash system. All residential parcels</p> <p>16 within Phase Two, except one, have exposure to the golf</p> <p>17 course and open space areas.</p> <p>18 "The single family parcel which is not</p> <p>19 adjacent to the open space system borders Angel Park</p> <p>20 Golf Course on its northern boundary. Passive and</p> <p>21 active recreational areas will be provided, and</p> <p>22 residents will have an opportunity to utilize</p> <p>23 alternative modes of transportation throughout with the</p> <p>24 bike paths and pedestrian" -- and it shows another map</p> <p>25 that they were showing -- "walkways (see Exhibits E and</p>

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<p>1 F on pages 13 and 14). The surrounding community as 2 well as project residents may use the open space system 3 to travel to neighboring areas including Angel Park." 4 In other words, it was offered to the city at 5 that time by Bill Peccole that there was going to be 6 all this open space -- 7 MR. JIMMERSON: Objection. 8 Q. (By Mr. Peccole) -- and I would assume that 9 a salesperson would be aware of that. 10 MR. JIMMERSON: I'm just going to object on 11 the grounds -- there are several objections. Number 12 one is the witness is not familiar with this document, 13 and was not an employee of the Peccole family when this 14 document was being prepared, number one. 15 Number two, this document reflects a plan 16 that was later abandoned by the family in favor of a 17 new plan and a different area called Queensridge. And 18 number three, the document speaks for itself. 19 THE WITNESS: And I'd like to comment that 20 that's -- that's kind of how I see it. This document 21 is superseded by another document, another plan, 22 so . . . 23 Q. (By Mr. Peccole) Well, let me just put it 24 this way: This was the initial adopted plan. And just 25 to, you know, make a point, take a look at Exhibit 28</p>	<p>1 and R-PD18, R-MHP, P-R, C-1, C-2 to R-PD3 (residential 2 planned development), R-PD7 (residential planned 3 development) and C1, (limited commercial). Okay. 4 Q. Okay. 5 A. But I'm not aware if there's something that 6 came after this. 7 MR. JIMMERSON: Also object there's no 8 question pending. 9 Q. (By Mr. Peccole) When you were involved in 10 the actual -- the south side -- 11 A. Yes. 12 Q. -- Phase One, there was -- this full map was 13 in effect of the overall master plan. How did they 14 carry that? Were those carried as resolutions of 15 intent? 16 MR. JIMMERSON: Object to the form of the 17 question. 18 A. Don't know. Don't have that answer to that. 19 Bob, I wasn't -- I was not around, again, 20 from 1989 till 1994. 21 Q. (By Mr. Peccole) I'm talking about 1986 to 22 1990. 23 A. Okay. We -- and all we did was focus on -- 24 we had a lot of things that -- we did an overall 25 conceptual plan for the property. Okay?</p>
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<p>1 that Mr. Jimmerson just offered. 2 A. Which -- 3 Q. He's got 28 over there somewhere. 4 A. Okay. Again, I'm not around, so I don't -- 5 I'm not familiar with this. 6 Q. Okay. But this is a response to this 7 application that you say was somehow changed later, 8 which we'll have to see about that. 9 A. Well, I don't know, yeah. I know that the 10 name changed. 11 Q. Yeah. Now we're looking at what the city 12 finally said. Take a look at that letter. 13 MR. JIMMERSON: I'm just going to object. 14 When I asked the question, "Have you ever seen this 15 document before?" Mr. Goorjian answered no. That ended 16 my examination of the document. 17 It's unfair to ask the witness something he 18 does not know or recognize. 19 Q. (By Mr. Peccole) That first paragraph, can 20 you read that. 21 A. "The City Council at a regular meeting held 22 April 4th, 1990 approved the request for 23 reclassification of property located on the east side 24 of Angel Park and Sahara Avenue for N-U." 25 Resolution of intent, R-1, R-2, R-3, R-PD7</p>	<p>1 Q. I agreed with you. 2 A. All right. Which, you know, we had several. 3 We had Venetian Foothills, we had Peccole Ranch and 4 then we had Queensridge. Okay? So there's three 5 different -- there's been three different plans for 6 that property. 7 Q. And the overall map is the one that's in -- 8 you've just been looking at. 9 A. I don't -- 10 MR. JIMMERSON: Objection. 11 A. I don't know. 12 Q. (By Mr. Peccole) That's Phase One and Two. 13 MR. JIMMERSON: Objection. That misstates 14 his testimony. 15 Q. (By Mr. Peccole) Well, it says that. 16 A. Okay. Well, there's a lot of things that are 17 said. 18 Q. Okay. But I thought that you didn't know 19 much about it. 20 A. I did not. I just told you. 21 Q. Okay. So -- 22 A. 1990 -- from 1989 till 1994, I didn't know 23 much about it. That happened in 1990. So I was 24 involved in planning, but I was not involved in any 25 submittals or anything.</p>

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<p>1 Q. This map is the overall map that was 2 presented in 1986. 3 A. To who? 4 Q. To you. 5 A. Presented to who, though? 6 Q. It was the design. It was -- 7 A. Concept, yes. I've seen that concept. 8 Q. Okay. That's what I'm trying to say. 9 A. Of course, I've seen this concept, yes. 10 Q. Okay. Now, the only question I've got -- 11 A. I don't know -- 12 Q. -- is you had started on the Phase One, which 13 was south of Charleston. 14 A. I did not. 15 Q. Well, you were there. 16 A. No. 17 Q. During later on? What time did you -- 18 A. I left -- we did Canyon Gate. We started 19 that in 1986. 20 Q. Okay. 21 A. Okay? I left in '89. 22 Q. This parcel map was available at that time. 23 MR. JIMMERSON: I'm going to object. The 24 witness is testifying to something that isn't borne out 25 by the document.</p>	<p>1 the -- when you looked at this map, this conceptual 2 drawing, and it's got the zonings, and you -- 3 I'm asking you, when we talk about the north 4 side of West Charleston, since it wasn't there yet, 5 were those carried as ROIs, resolution of intent? 6 A. Don't know. Don't even -- don't know. 7 Q. You wouldn't know. Okay. 8 Because the only reason, taking you back to 9 28, which is Mr. Jimmerson's exhibit, at the time those 10 zonings were granted, if you look at Page 2, No. 8 and 11 No. 7, especially 7, "The existing Resolution of Intent 12 on this property is expunged upon approval of this 13 application." 14 So it would have eliminated everything else 15 but what was granted, correct? 16 A. I don't know. 17 MR. JIMMERSON: I'm just going to object, out 18 of fairness to this witness, who has answered that he 19 does not know the document, does not recognize the 20 document, wasn't employed by the family at the time. 21 A. But I will say, just looking at the document, 22 and looking -- it didn't get built this way. 23 Q. (By Mr. Peccole) Well, all I can say is they 24 expunged everything else in the ROIs, and that -- 25 that's the city council.</p>
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<p>1 I'm sorry. Not the witness. The questioner, 2 the lawyer, is testifying about something that's not 3 borne out by the document. 4 Q. (By Mr. Peccole) This is the overall 5 master -- 6 A. This overall master plan was -- was -- this 7 is 1990. I'm gone. 8 Q. This is -- this overall -- 9 A. This concept was drawn. 10 Q. That's the concept. 11 A. Okay. This -- I've -- then let's -- show me 12 the A. Wayne Smith conceptual. That's what -- 13 Q. This was part of the entire -- 14 A. Okay. 15 Q. -- operation, Phase One and Phase Two. 16 A. That's what you say. 17 Q. Well, it says it right on it. 18 A. No. It says it's an application. 19 Q. All I'm asking -- 20 MR. JIMMERSON: Just note my objection that 21 the lawyer is testifying. He's not asking the witness 22 questions. He's badgering the witness. 23 Please. 24 Q. (By Mr. Peccole) Anyway, the only question I 25 was trying to ask you is if you had any idea were</p>	<p>1 I ask you to take a look at Page 18 of this 2 application. Are you there? 3 A. Yeah. 4 Q. Do you see Golf Course Drainage, 211.6 acres? 5 A. I do. 6 Q. Do you see any net density there? 7 A. I do not. 8 Q. That's the golf course and the drainage 9 system. 10 MR. JIMMERSON: I'm going to object. The 11 witness -- 12 Q. (By Mr. Peccole) Do you see any net units 13 there? 14 MR. JIMMERSON: Excuse me. When I make an 15 objection, can everyone agree to allow me to make an 16 objection and then you can continue, and don't just 17 keep talking. 18 My objection is the document speaks for 19 itself, number one. Number two, the document shows 20 hyphens; it doesn't show a number. 21 Number three, the -- there's no -- the 22 examiner, Mr. Peccole, is testifying. He's not asking 23 questions. 24 MR. PECCOLE: I'm asking him to read the 25 document.</p>

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<p>1 Q. (By Mr. Peccole) Does it say Golf Course 2 Drainage? Then it drops over to net density, zero? 3 A. No, it does not say zero. Again, it says a 4 dash. 5 Q. Well, it's zero. 6 A. It's a dash. 7 Q. And the other applications have numbers in 8 them. 9 MR. JIMMERSON: I'm just going to object to 10 the question. The witness is being asked -- he's not 11 being asked a question. The questioner, the lawyer, 12 Mr. Peccole, is testifying that dash equals zero or it 13 says zero; and it doesn't say that. It says dash. 14 MR. PECCOLE: Okay. 15 Q. (By Mr. Peccole) And then if you take a look 16 at net units for Golf Course Drainage, that also is a 17 dash. Right? 18 A. Yes. 19 Q. All right. If you add up the net units, they 20 add up to 4,247, and that covers single family and 21 multifamily. So aren't those dashes zero? 22 MR. JIMMERSON: Object that the document 23 speaks for itself. It's a document that the witness 24 had not seen, and was not employed by the family at the 25 time. Completely unfair to this witness.</p>	<p>1 A. Yes. 2 Q. Yes. 3 A. Yup. 4 Q. So you would be subject to both the requested 5 approvals and the actual approvals if you're the 6 salesperson? 7 A. I'm not subject to -- 8 MR. JIMMERSON: I'm just going to object. 9 We're talking a decade later, guys. 10 THE WITNESS: Okay. But wait a second. I'm 11 not subject to them. 12 Q. (By Mr. Peccole) Why not? Explain that to 13 me. 14 A. The owner of the property is subject to them. 15 Q. Oh. 16 A. Okay? And I'm the representative, and I just 17 represent what I'm -- what I'm given and what I know. 18 Okay? 19 Q. And whatever -- and whatever you want. 20 A. No, not whatever I want. That would be -- 21 MR. JIMMERSON: I just object to the nature 22 of the question as being terribly argumentative and 23 offensive to the witness. 24 MR. PECCOLE: Are you the attorney for him? 25 I'm sorry. Were you instructing him?</p>
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<p>1 Q. (By Mr. Peccole) The same thing -- 2 A. But I can add, and it adds to that. This 3 document adds to four -- those two numbers equal 4,247. 4 Q. And your -- 5 A. I can do the math. 6 Q. And you do realize that the dashes are zeros? 7 A. They're uncounted. 8 Q. Oh, okay. I'll just -- how do you count a 9 dash? 10 A. Huh? Because it's a dash. It's not a 11 number. 12 Q. Okay. 13 A. They didn't know the number. 14 Q. Now, we do know that Bill got what he asked 15 for in this letter that has been marked as 16 Mr. Jimmerson's 28. And you, as a salesman -- I don't 17 remember if you came over and sold in Queensridge, but 18 I know you did, because you sold to me. 19 A. Pardon me? 20 Q. You were selling homes in Phase Two, correct? 21 A. 1998. '6. 22 Q. You were selling homes in Queensridge South, 23 correct -- or North? Excuse me. 24 A. Lots. Estate lots. 25 Q. Lots?</p>	<p>1 MR. JIMMERSON: No. No. I made an objection 2 as to the offensive nature of the question, but I'm not 3 his lawyer. Of course not. 4 MR. PECCOLE: Okay. 5 MR. JIMMERSON: That's very clear on the 6 record, Mr. Peccole. 7 MR. PECCOLE: All right. 8 MR. JIMMERSON: Why would you ask that 9 question? 10 Q. (By Mr. Peccole) Would you take a look at 11 Exhibit 2. I direct your attention to Page 1. 12 A. Okay. 13 Q. Mr. Jimmerson focused your attention on what 14 he called annexed property. Correct? 15 A. Correct. 16 Q. And your interpretation of annexed property 17 was what? 18 A. Annexed properties were properties that were 19 part of the plan. 20 Q. Okay. And if you -- 21 A. Queensridge. 22 Q. Oh, I'm sorry. 23 A. Were part of the Queensridge plan. Whether 24 they were builder parcels or they were custom lots. 25 Q. Now, if you'd look at Paragraph A under</p>

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<p>1 Recitals, it says the "Declarant is the owner of 2 certain real property in the City of Las Vegas, County 3 of Clark, State of Nevada, more particularly described 4 in Exhibit 'A' attached hereto and incorporated herein. 5 Declarant and Persons affiliated with Declarant are the 6 owners of additional land more particularly described 7 in Exhibit 'B' attached hereto," in parentheses, 8 "Annexable Property." 9 Does that make sense? 10 A. Yes. 11 Q. Talking about the land, aren't they? 12 A. Yes. 13 Q. Now, let's take a look at B, about midway 14 down, where it says "Chapter 116." 15 A. Uh-huh. 16 Q. Do you see "The Property may, but is not 17 required to, include single-family residential 18 subdivisions, attached multi-family dwellings," 19 et cetera, et cetera, and then it says "golf course," 20 "open spaces"? 21 The point I'm making here is you have another 22 type of property. It's called a use, and use of the 23 land. 24 MR. JIMMERSON: I'm going to object. That 25 completely misstates the words of Paragraph B.</p>	<p>1 MR. JIMMERSON: I'm going to object. That 2 completely misstates the words of Paragraph B. 3 Q. (By Mr. Peccole) How are you going to have a 4 use if it's not completed? 5 MR. JIMMERSON: The property has to be 6 annexed, Mr. Peccole, by the very terms of the 7 recitals. 8 Q. (By Mr. Peccole) I'm asking you that as a 9 question. 10 A. I can't answer that. Is there -- is there a 11 question? 12 Q. Now, you were a salesman in Queensridge, 13 right? And these CC&Rs apply to Queensridge? 14 A. Correct. 15 Q. And you hand them out to everybody, and me 16 and my wife. 17 A. Absolutely. 18 Q. Have you ever read them? 19 A. Yes. 20 Q. Well -- and you don't know what -- the 21 property may be a use and it doesn't have to be land? 22 MR. JIMMERSON: I'm going to object to the 23 argumentative nature of the question. 24 A. It is land. It's all land. I don't get 25 where you're going, Bob.</p>
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<p>1 Q. (By Mr. Peccole) Is that correct? 2 A. I don't know where -- I don't -- 3 Q. You can't see that, can you? And you were 4 selling land under -- handing these documents to 5 people. This is the CC&Rs. 6 A. When you say "use of the land" -- 7 MR. JIMMERSON: I'm just going to object to 8 the question. 9 A. -- I don't -- ask your -- 10 MR. JIMMERSON: There's no question being 11 asked. 12 A. Ask your question again. You didn't ask me a 13 question. 14 Q. (By Mr. Peccole) I did. 15 A. Okay. Ask it, please. 16 Q. Okay. Do you see the term "The Property," 17 with a capital P, right after -- 18 A. Yes. Okay. Yes. 19 Q. -- "may" -- 20 A. Okay. 21 Q. -- "but is not required to include," and then 22 it comes down to "golf course," "open spaces." 23 A. So is it saying that it may or may not 24 include those? 25 Q. Yes. And if they're built, it includes them.</p>	<p>1 Q. (By Mr. Peccole) It says it's a use. The 2 property may be. 3 A. May be. It could have various uses. 4 Q. That's what I'm saying. It's a golf course 5 that's got drainage as a use. 6 A. Yes. 7 Q. It's got a golf course as a use. 8 A. Yes. 9 Q. And it's got open space as a use. 10 A. And it has underlying zoning of R-PD7. 11 Q. We don't know that because the application 12 said it was zero -- oh, excuse me. Dash. 13 A. No, but my disclosures that I had you sign 14 and the maps that I showed you -- 15 Q. Yes. 16 A. -- stated that it could be. Okay? And in 17 these CC&Rs, it states what it could be some day. 18 Okay? I believe -- if I read them correctly. 19 Q. Wouldn't you be saying to me, "Well, Bob, 20 I've read the CC&Rs and property could be a use," which 21 would be the golf course, which would be drainage, and 22 which would be open space? 23 MR. JIMMERSON: I object to the form of the 24 question. 25 A. When did I say that to you? Now?</p>

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<p>1 MR. JIMMERSON: Excuse me. Mr. Goorjian --</p> <p>2 Q. (By Mr. Peccole) When you're selling it to</p> <p>3 me.</p> <p>4 MR. JIMMERSON: -- let me just make my</p> <p>5 objection. Then, please, you can answer.</p> <p>6 Object because it misstates the testimony.</p> <p>7 The property is not the property until it is formally</p> <p>8 annexed and recorded, pursuant to specific terms of the</p> <p>9 provision of the contract.</p> <p>10 It says specifically, quote, Paragraph A, in</p> <p>11 no event shall the property include annexable property</p> <p>12 unless it has been properly recorded.</p> <p>13 So the questions that are being asked by</p> <p>14 opposing counsel are completely misrepresenting the</p> <p>15 words.</p> <p>16 A. Now I'll answer your question, Bob.</p> <p>17 Yes, we discussed this. Yes, I discussed</p> <p>18 this with you. We discussed this document, and you</p> <p>19 wanted to go talk to the family about the property</p> <p>20 because you didn't like what you read.</p> <p>21 Q. (By Mr. Peccole) You used the term "open</p> <p>22 space," and you said a little while ago you didn't.</p> <p>23 A. No, I stated that I have used "open space."</p> <p>24 I don't know if I used it in reference with you. I</p> <p>25 used it all the time. It's right there.</p>	<p>1 A. No, but then again -- but I gave you these</p> <p>2 documents to read or have an attorney present to read</p> <p>3 them. I would not have gone over every single article</p> <p>4 of the CC&Rs unless you had requested me to.</p> <p>5 MR. JIMMERSON: I may also --</p> <p>6 Q. (By Mr. Peccole) Appreciate it. It says,</p> <p>7 "There shall be no violation of the drainage</p> <p>8 requirements of the City, County, U.S. Army Corps of</p> <p>9 Engineers, or State of Nevada Division of Environmental</p> <p>10 Protection, notwithstanding any such approval of</p> <p>11 Declarant or the Design Review Committee."</p> <p>12 MR. JIMMERSON: Again I object to the</p> <p>13 question. There's no question pending, number one; and</p> <p>14 number two --</p> <p>15 Q. (By Mr. Peccole) Was the drainage --</p> <p>16 MR. JIMMERSON: Mr. Peccole, when I make an</p> <p>17 objection, would you be courteous enough to be quiet --</p> <p>18 MR. PECCOLE: Would you let me finish with my</p> <p>19 question, Mr. Jimmerson?</p> <p>20 MR. JIMMERSON: You had finished, sir.</p> <p>21 MR. PECCOLE: I haven't finished it.</p> <p>22 MR. JIMMERSON: Continue --</p> <p>23 MR. PECCOLE: I read that and I was going to</p> <p>24 ask my question.</p> <p>25 MR. JIMMERSON: All right, sir. Why don't</p>
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<p>1 Q. Let's look at Page 38 of Exhibit 2, which is</p> <p>2 Mr. Jimmerson's exhibit.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see Paragraph 5.2.4?</p> <p>5 A. Yes.</p> <p>6 Q. "Drainage: Storm Drainage System"?</p> <p>7 A. Yes.</p> <p>8 Q. So the drainage -- the storm drainage system</p> <p>9 was included in the CC&Rs; is that correct?</p> <p>10 A. It's stated here, yes.</p> <p>11 Q. And you as a salesman, you were fully</p> <p>12 familiar with the CC&Rs?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever tell me the drainage couldn't go</p> <p>15 away?</p> <p>16 MR. JIMMERSON: I would object to the form of</p> <p>17 the question.</p> <p>18 A. Excuse me. Did I ever tell you if the</p> <p>19 drainage could go away?</p> <p>20 That's assuming that the golf course is all</p> <p>21 drainage.</p> <p>22 Q. (By Mr. Peccole) Okay. Let's assume that.</p> <p>23 How about an 84 --</p> <p>24 A. No, I never told you that it could go away.</p> <p>25 Q. No, you didn't.</p>	<p>1 you restate it so you have a better record, sir.</p> <p>2 MR. PECCOLE: Is it okay if I continue,</p> <p>3 Mr. Jimmerson?</p> <p>4 MR. JIMMERSON: I said why don't you restate</p> <p>5 the question so we have a better record. Yes, sir.</p> <p>6 And then after you've finished, I'd like to interpose</p> <p>7 an objection.</p> <p>8 Q. (By Mr. Peccole) To your knowledge, was the</p> <p>9 golf course drainage, flood drainage system, engineered</p> <p>10 and adopted by these agencies?</p> <p>11 MR. JIMMERSON: Let me object. Note my</p> <p>12 objection.</p> <p>13 5.2.4 of Exhibit 2 is called "Drainage:</p> <p>14 Storm Drain System," and speaks to what drainage there</p> <p>15 may be on the, quote, capital P, Property, a defined</p> <p>16 term.</p> <p>17 This provision has no application to the golf</p> <p>18 course, which is not a part of the property, capital P,</p> <p>19 nor was the golf course annexed, as determined by Judge</p> <p>20 Smith and affirmed by the Nevada Supreme Court on</p> <p>21 multiple occasions --</p> <p>22 MR. PECCOLE: Judge Smith isn't in this</p> <p>23 litigation.</p> <p>24 MR. JIMMERSON: -- and the question,</p> <p>25 therefore, is improper.</p>

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<p>1 The provisions of 5.2.4 have to do only with</p> <p>2 the, capital P, property, not with property that is not</p> <p>3 defined within this agreement. That's my objection.</p> <p>4 Therefore, it is an intentional misstatement</p> <p>5 by the questioner, and it's unfair to this witness in</p> <p>6 light of that fact.</p> <p>7 You may answer the question, Mr. Goorjian,</p> <p>8 after I've made my objection.</p> <p>9 Q. (By Mr. Peccole) Was the -- in your</p> <p>10 knowledge, was the golf course, both the 18-hole and</p> <p>11 the 9-hole courses -- were they part of the flood</p> <p>12 drainage system?</p> <p>13 A. Portions of, not all of. And if I -- this</p> <p>14 is -- I'm just recalling to the best of my</p> <p>15 recollection.</p> <p>16 That most of the -- you know, portions of the</p> <p>17 golf course was in Barranca area, which was natural</p> <p>18 drainage, okay. So there is some of it that was and</p> <p>19 then there was some that was not. So it's not all.</p> <p>20 And there's other forms of drainage other</p> <p>21 than just that piece of property as well. So</p> <p>22 drainage -- drainage and storms and these things cover</p> <p>23 the whole property, and there's -- there's portions</p> <p>24 that, yes; and there's portions, no.</p> <p>25 MR. JIMMERSON: Let me also note my objection</p>	<p>1 engage in insults, you would have difficulty speaking</p> <p>2 the English language.</p> <p>3 Q. (By Mr. Peccole) I'll ask you this question.</p> <p>4 A. Okay.</p> <p>5 Q. If I tell you there is an 80-foot-wide</p> <p>6 easement that goes all the way through the 18 holes,</p> <p>7 what would your answer be under this paragraph, 5.2.4?</p> <p>8 A. An 80-foot easement that goes through the</p> <p>9 whole property?</p> <p>10 Q. Through the whole 18 holes.</p> <p>11 A. I don't know what it is. I may have at one</p> <p>12 time, but I don't recall it now. I know that -- I do</p> <p>13 know that we -- I do recall helping water get to</p> <p>14 Summerlin somehow, but I don't know if that's the</p> <p>15 80-foot easement. It wouldn't be that wide, so . . .</p> <p>16 Q. How about -- how about the nine holes being</p> <p>17 entirely dedicated flood drainage easement?</p> <p>18 A. Are we talking about the last nine holes?</p> <p>19 Q. Yes.</p> <p>20 A. Absolutely not.</p> <p>21 Q. You're saying it's not -- I'm just saying to</p> <p>22 you --</p> <p>23 A. I'm saying it's not all drainage, no.</p> <p>24 There's a good portion of that property that's not</p> <p>25 drainage.</p>
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<p>1 that the last sentence of Paragraph B of Page 1 and 2</p> <p>2 of the recital states, quote, The existing 18-hole golf</p> <p>3 course, commonly known as the Badlands Golf Course, is</p> <p>4 not a part of the, capital P, property or a part of,</p> <p>5 quote, annexable property, end of quote.</p> <p>6 THE WITNESS: And then became 27 holes.</p> <p>7 Q. See, he's trying to, you know, give you a</p> <p>8 hint here.</p> <p>9 (Mr. Lowie joined the deposition.)</p> <p>10 MR. JIMMERSON: Object.</p> <p>11 Q. (By Mr. Peccole) But it doesn't work that</p> <p>12 way.</p> <p>13 A. No, that's fine. Go ahead.</p> <p>14 MR. JIMMERSON: Let me just object -- let me</p> <p>15 just --</p> <p>16 Q. (By Mr. Peccole) The language --</p> <p>17 MR. JIMMERSON: -- object to the improper</p> <p>18 assertion by Mr. Peccole about, quote, giving a hint,</p> <p>19 end of quote.</p> <p>20 I'm suggesting that Mr. Peccole is either</p> <p>21 negligently or intentionally misrepresenting the words</p> <p>22 of this document, Exhibit 2, as part of his questions.</p> <p>23 MR. PECCOLE: I do not misrepresent like some</p> <p>24 people, like you do.</p> <p>25 MR. JIMMERSON: Mr. Peccole, if you couldn't</p>	<p>1 Q. I'm just saying, too, you never said anything</p> <p>2 about drainage that -- to prospective buyers of the</p> <p>3 lots?</p> <p>4 MR. JIMMERSON: I'm going to object to the</p> <p>5 question --</p> <p>6 A. No.</p> <p>7 MR. JIMMERSON: -- as it misstates -- there's</p> <p>8 no question pending, and it misstates the facts.</p> <p>9 A. I don't know why I would talk about drainage,</p> <p>10 no. I mean, it's in the document that's supposed to be</p> <p>11 reviewed and read by the buyer.</p> <p>12 I don't go over -- I go over the purchase of</p> <p>13 contracts, but you don't go over the CC&Rs, each</p> <p>14 sentence, with a buyer. They take these documents and</p> <p>15 have -- I believe it's five days or so to review them,</p> <p>16 to take them to their attorneys and review them.</p> <p>17 Q. (By Mr. Peccole) Will you take a look at</p> <p>18 Page 103.</p> <p>19 A. Okay.</p> <p>20 Q. Down in the very bottom, Paragraph 13.2.4.</p> <p>21 A. Okay.</p> <p>22 Q. "Form of Amendments."</p> <p>23 A. Uh-huh.</p> <p>24 Q. It reads, "All amendments to this Master</p> <p>25 Declaration or any Declaration of Annexation or</p>

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<p>1 Supplemental Declaration must be" -- and then you carry</p> <p>2 over to the next page -- "in writing, and executed,</p> <p>3 Recorded and" -- "and certified on behalf of the</p> <p>4 Association by the President and the Secretary of the</p> <p>5 Association."</p> <p>6 Now, having that in mind, would you take a</p> <p>7 look at Mr. Jimmerson's Exhibit 3.</p> <p>8 MR. JIMMERSON: I just object to the</p> <p>9 characterization of Mr. Jimmerson's Exhibit 3. It's</p> <p>10 Exhibit 3 to Mr. Goorjian's deposition. It is a</p> <p>11 recorded document with the Clark County Recorder's</p> <p>12 office.</p> <p>13 MR. PECCOLE: I'll refer to them as that.</p> <p>14 Q. (By Mr. Peccole) But have you got it?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay.</p> <p>17 A. What page?</p> <p>18 Q. Can you look at the signature page at the</p> <p>19 end?</p> <p>20 A. What page? Oh, at the very end?</p> <p>21 Q. Yes.</p> <p>22 A. Okay.</p> <p>23 Q. Do you see Larry Miller's signature?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Do you see any signature of a homeowners</p>	<p>1 the -- where we bought our lot?</p> <p>2 A. I remember meeting with you guys. I don't</p> <p>3 remember exactly where we met. My recollection always</p> <p>4 with you guys was in the trailer, but we may -- very</p> <p>5 may well have been on the property. I don't recall.</p> <p>6 Q. Is it -- so you can't say that -- what Nancy</p> <p>7 testified to, that you met with us on the property?</p> <p>8 A. I cannot with certainty --</p> <p>9 Q. You can't say that?</p> <p>10 A. Not with certainty, I cannot.</p> <p>11 Q. You just don't remember?</p> <p>12 A. I don't remember that. I do remember in the</p> <p>13 trailer and I do remember questions you've asked me, so</p> <p>14 I'm surprised that I don't remember being on the</p> <p>15 property. So that must mean that I wasn't, but --</p> <p>16 Q. I'm not surprised you remember what you want.</p> <p>17 A. Right.</p> <p>18 MR. JIMMERSON: Gentlemen, please.</p> <p>19 Mr. Peccole, you should -- please, keep the</p> <p>20 decorum of counsel, and not engage in these kinds of</p> <p>21 personal attacks.</p> <p>22 MR. PECCOLE: Are you finished?</p> <p>23 MR. JIMMERSON: I am, sir.</p> <p>24 Q. (By Mr. Peccole) Do you recall a discussion</p> <p>25 that we had that involved Larry Miller?</p>
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<p>1 association president or a homeowner association</p> <p>2 secretary?</p> <p>3 A. I do not see it here, no.</p> <p>4 Q. So it doesn't meet the requirements of the</p> <p>5 amendment, does it?</p> <p>6 MR. JIMMERSON: I'm going to object.</p> <p>7 A. I don't know. That's not my -- I don't -- I</p> <p>8 don't determine what meets the requirements of an</p> <p>9 amendment, and I don't know if there's another document</p> <p>10 that might have taken care of that.</p> <p>11 MR. JIMMERSON: Let me also note that these</p> <p>12 arguments Mr. Peccole has asked you about --</p> <p>13 Q. (By Mr. Peccole) In other words, you have no</p> <p>14 knowledge?</p> <p>15 MR. JIMMERSON: -- Mr. Goorjian, was made by</p> <p>16 Mr. Peccole and rejected by the trial court and the</p> <p>17 Nevada Supreme Court.</p> <p>18 So just note my continuing objection.</p> <p>19 THE WITNESS: I can see why.</p> <p>20 Q. (By Mr. Peccole) Let's take you back to when</p> <p>21 my wife and I were in the market for buying a lot in</p> <p>22 Queensridge. Do you remember how it came about that</p> <p>23 you met with Nancy and I?</p> <p>24 A. No.</p> <p>25 Q. Do you recall meeting with us in that area of</p>	<p>1 A. Not with me present, no.</p> <p>2 Q. Do you recall me telling you what Larry had</p> <p>3 told me?</p> <p>4 A. I do not. I just recall that you wanted to</p> <p>5 go meet with the family and then you came back and</p> <p>6 bought the lot. That's all that I recall.</p> <p>7 Q. Would it refresh your memory if I were to say</p> <p>8 that I told you that Larry Miller had met with my son</p> <p>9 Rob and I on your ex-wife's lot, one of the huge ones,</p> <p>10 Leann's lot; and Larry said, "You should be interested</p> <p>11 in buying this"? Do you remember me telling you that?</p> <p>12 A. No. No. Absolutely not.</p> <p>13 Q. And do you remember me telling you that Larry</p> <p>14 said, "Well, if you don't want this, take a look at the</p> <p>15 Verlaine, because he says that's just coming up"?</p> <p>16 A. No. All I recall is you being interested in</p> <p>17 Verlaine. I don't recall anything else.</p> <p>18 Q. Do you recall that Larry brought us to you?</p> <p>19 When I say "us," my wife and I.</p> <p>20 A. You mean physically?</p> <p>21 Q. He brought us physically.</p> <p>22 A. No, I don't recall that. It wouldn't have</p> <p>23 mattered, because we were family. So I don't know why</p> <p>24 Larry would have delivered you.</p> <p>25 But yes, if he would have brought me -- I</p>

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<p>1 don't recall that he brought you in. I recall me and 2 you only and some Nancy. I don't recall Larry ever 3 being involved other than the fact that you didn't like 4 what I had to say, so you -- you wanted to go get it -- 5 get it from Larry. You wanted something from Larry 6 that I could not give you. 7 Q. If you'll recall, did you and I, with Nancy 8 standing there, have the conversation, "Is there any 9 chance of getting a break on the price?" 10 A. Absolutely. 11 Q. And then did you -- 12 A. I don't know if Nancy was there, but I do 13 recall you and I having that. 14 Q. And you did say you've got to talk to Larry? 15 A. Yes, I do. 16 Q. And then after that, we called Larry on the 17 phone, you and I and Nancy? 18 A. Don't recall that. 19 Q. And Larry says, "I'll give you a break." 20 A. I know that we wanted to give you -- we 21 wanted to make you happy. I do know that. I know that 22 we wanted to sell you the home at a price that was 23 happy for everybody. I do recall that, and I do recall 24 that you wanted to negotiate it, and I know that I 25 can't negotiate it.</p>	<p>1 Q. Isn't it -- 2 A. I do recall that we would have liked to have 3 had you play some golf, if you chose to play; and if we 4 could help you get on there for free, we would have 5 loved to have done so. 6 I can't make those guarantees, so . . . 7 I didn't lease the golf course; I didn't 8 operate the club. 9 Q. Okay. So do you -- do you recall using the 10 words that "This open space will be here forever"? 11 A. Never. 12 Q. Did you ever use the words "open space" to 13 Nancy and I? 14 A. I may have used that term. I've used "open 15 space." I may have used it. Okay? But I remember you 16 wanting assurances -- after you had seen the documents, 17 you came back. You wanted assurances that it could 18 remain a golf course forever, and I could not give you 19 that. And you said you would go talk to the family, 20 and that's -- and then you came back and bought the 21 lot. So I don't know what happened. 22 Q. So you don't know what happened? 23 A. Right. 24 Q. You know, when Mr. Jimmerson was talking to 25 you about the Boca Park, and you started to say it was</p>
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<p>1 Q. Yes. 2 A. But I don't recall it taking place on the 3 phone, no. And I don't recall me picking up the phone 4 and calling. 5 Q. And do you recall Larry being there with all 6 of us -- 7 A. No, I do not. 8 Q. -- you, me and Nancy, and trying to talk me 9 into taking the end piece of land because they were 10 just now vacating the perimeter of that lot, which 11 would give it an extra 10, 15 feet? 12 A. I don't -- no. 13 Q. You don't remember any of that? 14 A. That wasn't -- no, I don't. That was -- to 15 me that sounds like you had a conversation with Larry 16 that I was not involved in. That's what that sounds 17 like. 18 Q. Do you recall saying to me, "Bob, you know, 19 we've got a lifetime membership here and you can play 20 this course any time. Just call me"? 21 A. Might have been something said like that, 22 that the family had privileges to use senior tour 23 players golf course whenever we wanted, and that if you 24 would like to golf, we could probably get you on the 25 course to play. Yes.</p>	<p>1 part of a settlement with Triple Five -- 2 A. I was incorrect. 3 MR. JIMMERSON: He corrected himself, 4 Counsel. 5 Q. (By Mr. Peccole) -- and you said you were 6 incorrect? 7 MR. JIMMERSON: Counsel, he corrected 8 himself. 9 MR. PECCOLE: Right. 10 Q. (By Mr. Peccole) And then you made the 11 comment about Triple Five backing into it. 12 A. Yes. 13 Q. Tell me that -- tell me about that. 14 A. Well, there were plans for the Peccoles to 15 develop that property. We had a partner that we were 16 working with, Donahue Schriber, to do a -- we wanted to 17 do a regional mall. We wanted to do a shop -- a mall 18 there. 19 We were for years trying to get three 20 tenants, secure three tenants to do the deal. And then 21 I cannot -- because I left and was not there for all of 22 it, but I know that there was somehow -- there was -- I 23 believe we had agreed, because we couldn't get the 24 tenants, if I recall correctly -- that we agreed to 25 sell the property maybe to Donahue Schriber and --</p>

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<p>1 And I just can't recall how it happened, but</p> <p>2 somehow Donahue Schriber brought -- somehow Triple Five</p> <p>3 came in there after Donahue Schriber and they ended up</p> <p>4 with the property.</p> <p>5 Q. It was a subterfuge, wasn't it?</p> <p>6 A. Yes. I can't remember how it all happened,</p> <p>7 but I do remember we weren't too happy that they ended</p> <p>8 up with the property.</p> <p>9 Q. Well, the intent was that you were going</p> <p>10 around Wanda so she wouldn't find out that you were</p> <p>11 selling to Triple Five.</p> <p>12 A. No.</p> <p>13 MR. JIMMERSON: I'm going to object to that</p> <p>14 question.</p> <p>15 A. Absolutely not.</p> <p>16 Q. (By Mr. Peccole) Have you ever heard Larry</p> <p>17 say that?</p> <p>18 A. No. No. I remember it as a bank note that</p> <p>19 was going bad, and Triple Five came in and saved the</p> <p>20 day for the other party or something. I can't recall</p> <p>21 how it did, but I know that the Peccole family, Larry</p> <p>22 included, would not have sold that property to</p> <p>23 Triple Five.</p> <p>24 Q. Do you, or have you ever heard that in the</p> <p>25 public meetings before the city council, there have</p>	<p>1 Larry Miller were in a lawsuit, and Bruce was claiming</p> <p>2 the rights to the golf course because he obtained them</p> <p>3 from the senior citizen tour company?</p> <p>4 A. On his own? No, I'm not aware of any of</p> <p>5 that.</p> <p>6 Q. Oh, okay. Just wondering.</p> <p>7 A. Bob, did you just -- I'm just curious. Did</p> <p>8 you say Bruce sued the Peccoles? Bruce Bayne? Is that</p> <p>9 what you just said?</p> <p>10 Q. What I said to you was that Bruce sued Larry.</p> <p>11 A. I never -- no, not aware of that.</p> <p>12 Q. Would you take a look at Plaintiffs' 14.</p> <p>13 A. I don't think I've got that one.</p> <p>14 MR. JIMMERSON: I can help you. That's the</p> <p>15 public offering. Public offering statement.</p> <p>16 THE WITNESS: Okay. Yeah. Here it is.</p> <p>17 Q. (By Mr. Peccole) Got it?</p> <p>18 A. Not yet. Hold on. I've got it.</p> <p>19 Q. Page 5.</p> <p>20 A. Okay.</p> <p>21 Q. Now, you said that you were familiar with</p> <p>22 this document, public offering statement for</p> <p>23 Queensridge North.</p> <p>24 A. Okay.</p> <p>25 Q. Page 5.</p>
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<p>1 been people that got up and said that "Greg Goorjian</p> <p>2 told me that the golf course wasn't going to go away</p> <p>3 and it's open space"?</p> <p>4 MR. JIMMERSON: Objection. Assumes facts not</p> <p>5 in evidence.</p> <p>6 A. I have never heard that. I have not been to</p> <p>7 city council meetings to hear such, and shame on them.</p> <p>8 Tell those people to read their documents. I think</p> <p>9 Page 1 says don't believe a word I say. I'm joking.</p> <p>10 Q. (By Mr. Peccole) You were asked about BGC.</p> <p>11 A. Yes.</p> <p>12 Q. And you didn't know who that is?</p> <p>13 A. Don't know who that was. Don't remember that</p> <p>14 entity.</p> <p>15 Q. Do you know Bruce Bayne?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Who's Bruce?</p> <p>18 A. My ex-brother-in-law.</p> <p>19 Q. And who is he married to?</p> <p>20 A. Loretta Bayne. Loretta Peccole.</p> <p>21 Q. Would you surprise -- be surprised if BGC was</p> <p>22 Bruce Bayne?</p> <p>23 A. Yeah, I would be. Very surprised. It only</p> <p>24 has one initial in it that's his.</p> <p>25 Q. Would you be surprised if Bruce Bayne and</p>	<p>1 A. I'm here.</p> <p>2 Q. No. 12.</p> <p>3 A. Okay.</p> <p>4 Q. Maximum number of units.</p> <p>5 A. Yeah, mine's highlighted. I can't read it.</p> <p>6 Is there a number there?</p> <p>7 Q. Can you read the writing?</p> <p>8 A. Yes. "Including both residential and</p> <p>9 commercial units."</p> <p>10 Q. Can you read the 3,000?</p> <p>11 A. No.</p> <p>12 Q. It says 3,000.</p> <p>13 A. Okay.</p> <p>14 Q. In writing. In writing.</p> <p>15 A. Where?</p> <p>16 Q. Right before the --</p> <p>17 A. Oh. Yes, I do. I do. I've got it, Bob.</p> <p>18 Q. Was that your understanding?</p> <p>19 A. The developer has reserved the right in the</p> <p>20 master plan to create up to 3,000 units.</p> <p>21 Yeah. I can't recall, though, because I</p> <p>22 believe there was a time it either grew or shrank. I</p> <p>23 can't remember.</p> <p>24 Q. But these are representations you were making</p> <p>25 to the buyers.</p>

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<p>1 A. No, these are representations that the owner 2 was making to the buyer. 3 Q. Well, you were a salesman. 4 A. I'm a salesman. 5 Q. You were the conduit. 6 A. Pardon me? 7 Q. You're the conduit. You're representing the 8 owner. 9 A. Correct. 10 Q. And so you were handing these to the buyers. 11 A. Correct. 12 Q. And you were making a representation they 13 could only build 3,000 units. 14 A. Again, I'm not. I'm giving them a document 15 that makes the representation that only 3,000 -- 16 Q. So if I say to you -- 17 A. I didn't create the document. 18 Q. -- well, Greg Goorjian never told me that 19 they could only build three units, but he handed me a 20 piece of paper that said that -- 21 MR. JIMMERSON: Just misstates the record. 22 Object to the form of the question. 23 A. I guess -- I guess what you're saying is that 24 I was supposed to read every word of this document to 25 you before you bought it?</p>	<p>1 A. On Verlaine Court, yes, I did. 2 Q. How about over in the -- the southern part of 3 Queensridge? 4 A. No, I did not. 5 Q. And you have knowledge that he built big 6 homes over there? 7 A. Oh, yes. 8 Q. For substantial money? 9 A. Yes. 10 Q. And that they were located on the golf 11 course? 12 A. Yes. 13 Q. Did you sell any of those homes for him? 14 A. No. I sold him the lot. 15 Q. Did you sell any of the lots to Mr. Lowie on 16 Verlaine? 17 A. Yes, I did. 18 Q. Was that the lower Verlaine? 19 A. Yes. 20 Q. And were you -- you owned a lot on -- you 21 actually owned a home on Verlaine? 22 A. Yes, I did. 23 Q. And what was the address of that? 24 A. I don't recall. 25 MR. JIMMERSON: Just note my continuing</p>
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<p>1 Q. (By Mr. Peccole) No. You gave it to me as a 2 representation. 3 A. Correct. Got it. Yeah. And agree with you 4 there. 5 MR. JIMMERSON: Just note my objection to the 6 entire line of questioning as misstating the record. 7 Q. (By Mr. Peccole) How many residents -- 8 residents did you sell -- how many lots did you sell in 9 Queensridge North? 10 A. I don't -- I don't recall. 11 MR. JIMMERSON: I'm going to object to the 12 line of questioning as completely outside the scope of 13 this litigation. 14 Q. (By Mr. Peccole) Did you ever -- 15 MR. JIMMERSON: Also outside the scope of 16 direct examination. 17 Q. (By Mr. Peccole) Did you ever make a 18 representation you probably sold 80 homes? 19 MR. JIMMERSON: Object to the line of 20 questioning. 21 A. Did I ever make that representation? 22 Q. (By Mr. Peccole) Yeah. 23 A. No. 24 Q. Did you ever sell any of the homes that 25 Mr. Lowie developed on those lots?</p>	<p>1 objection as outside the scope of direct. 2 Q. (By Mr. Peccole) You didn't get it from -- 3 MR. JIMMERSON: Mr. Peccole, please let me 4 finish my objection. I don't know why you continually 5 interrupt. 6 Just note my objection to this line of 7 questioning as outside the scope of direct, also 8 irrelevant to the litigation, is badgering the witness, 9 and there is also a complete wholesale failure on the 10 part of the lawyer to make any kind of correct 11 denomination. Mr. Lowie didn't own any of these 12 properties. Entities that he had may have purchased 13 some lots. 14 Mr. Lowie, other than his own personal 15 residence, would never have bought that piece of 16 property in his own name. So the questions are just 17 wrong to begin with. 18 You may answer the question, Mr. -- 19 MR. PECCOLE: I would like to reply to you, 20 Mr. Jimmerson. You had the gall in the deposition of 21 my wife to present a federal law that deals with 22 telephonic money laundering, and I found that very 23 offensive. And if you think I'm offensive, you'd 24 better take a look in the mirror. 25 MR. JIMMERSON: I don't know what the heck</p>

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<p>1 you're referring to, Mr. Peccole. I'm just making an 2 objection to the line of questioning here. 3 MR. PECCOLE: Don't worry. It's going to 4 come up. 5 MR. JIMMERSON: Again, you just threaten and 6 threaten, Mr. Peccole. Please try to stay on focus. 7 Q. (By Mr. Peccole) I was on the luxury loan -- 8 luxury lots on Verlaine. You say you sold some of 9 those to Mr. Lowie? 10 A. No. 11 MR. JIMMERSON: Objection. Misstates the 12 testimony. 13 Q. (By Mr. Peccole) You didn't? 14 A. No. Companies -- companies that he may 15 have -- or limited liability companies that he may have 16 been a partner to, yes. Not him personally, no. 17 Q. No? But you knew that he was building the 18 homes? 19 A. Yes. 20 Q. Actually, he was buying or one of his 21 entities was buying the lots on Verlaine? 22 A. Yes, sir. 23 Q. From who? 24 A. From the Peccole family. 25 Q. Would that have been Legacy 14?</p>	<p>1 A. Yes, I did, sir. 2 Q. Were the values on those lots enhanced by the 3 golf course and open space? 4 MR. JIMMERSON: I'm going to object to the 5 term "open space." It can only apply to the property 6 owned by Queensridge master plan. It's a defined term. 7 Q. (By Mr. Peccole) You can answer that. 8 A. If you can ask me it again, please. 9 Q. Were the values of the lots on Orient Express 10 enhanced by the golf course and open space? 11 A. Enhanced. I don't know. I don't know how to 12 answer that question, enhanced by. 13 Q. Made -- made more expensive? 14 MR. JIMMERSON: I object to the form of the 15 question as outside the scope of direct. It has no 16 bearing upon the litigation and it's harassing this 17 witness. 18 A. Yes. 19 Q. (By Mr. Peccole) Were you at the dedication 20 of the new Queensridge, in the beginning, when they 21 came over in 1990, 1996? 22 MR. JIMMERSON: Same objection. Outside the 23 scope of direct. Completely -- 24 A. I don't know what you're asking. 25 MR. JIMMERSON: -- irrelevant to this.</p>
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<p>1 A. I don't know who was the -- I'd have to be 2 referenced or referred back to who actually was -- what 3 entity was conveying the property. 4 Q. Do you know what the prices were? 5 A. I did. Do I know now? No. 6 Q. Were they over a million dollars? 7 A. For what? 8 Q. Well, actually let's go back -- 9 A. For a lot, the answer is no. 10 Q. It probably would have been somewhere in the 11 vicinity of 200,000? 12 A. Somewhere in there. 13 Q. And the homes, when you sold them, were over 14 a million? 15 A. Somewhere in there, right around a million 16 dollar homes. 17 Q. Now, your home was located right along the 18 same lots, right? 19 A. Correct. 20 Q. And who did you buy your home from? 21 A. I bought my lots from the Peccole family. 22 Q. And that's Legacy 14? 23 A. I can't recall. 24 Q. Did you sell any luxury lots on Orient 25 Express?</p>	<p>1 A. Was I at the grand opening? 2 Q. (By Mr. Peccole) Yes. 3 A. Would that have been the one that would later 4 be the Badlands clubhouse? 5 Q. No. 6 A. Okay. Then I wasn't at it. It was at -- it 7 was at Sir Williams Court, where Sir Williams Court was 8 to be some day. 9 Q. Let me just ask you, do you recall -- 10 MR. JIMMERSON: Objection. No foundation. 11 Q. (By Mr. Peccole) Do you recall going to a 12 dedication -- it would be on West Charleston, going 13 north, as you come in the entranceway that's there now, 14 but it was all dirt and Bill had big tents set up all 15 over? Did you ever go to that? 16 A. Was that the one where the lipi- -- the 17 stallions were there and -- yes, I was there. 18 Q. Now, after that occurred -- do you recall 19 approximately what that -- what date that was, what 20 year? 21 A. I don't, but I do -- I don't believe that it 22 had anything to do with what ended up being the north 23 portion of Queensridge developed. It was only in 24 regards to our first builders. That was Christopher 25 Homes and --</p>

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<p>1 It was a grand opening for the overall, the</p> <p>2 whole development. So we had -- it would have been</p> <p>3 Christopher Homes, it would have been Capital Pacific</p> <p>4 Homes, it would have been Pulte Homes and it would have</p> <p>5 been Trophy Homes.</p> <p>6 MR. JIMMERSON: Note my continuing objection.</p> <p>7 This is outside the scope of direct, irrelevant to the</p> <p>8 case.</p> <p>9 A. I recall that.</p> <p>10 MR. JIMMERSON: Harassing to the witness.</p> <p>11 Q. (By Mr. Peccole) After that, the question I</p> <p>12 would ask is, did you ever walk any part of the</p> <p>13 property with Bill?</p> <p>14 A. Yes.</p> <p>15 Q. So that was a common thing for him to do,</p> <p>16 wasn't it?</p> <p>17 MR. JIMMERSON: Object. Same objection,</p> <p>18 incorporated by reference.</p> <p>19 A. Not at that time. Prior -- years prior.</p> <p>20 He's not doing too well at this time we're talking</p> <p>21 about.</p> <p>22 Q. (By Mr. Peccole) Well, when he had the</p> <p>23 dedication.</p> <p>24 A. Yeah. Yeah. No, he wasn't doing a lot of</p> <p>25 walking around the properties.</p>	<p>1 Q. (By Mr. Peccole) After the dedication --</p> <p>2 MR. JIMMERSON: -- to consider sanctions</p> <p>3 against you for asking the line of questions that has</p> <p>4 nothing to do with this case and refusing to provide</p> <p>5 any foundation with regard to the line of questioning.</p> <p>6 It's completely irrelevant.</p> <p>7 Q. (By Mr. Peccole) After the dedication, did</p> <p>8 you have any conversations with Bill Peccole as to what</p> <p>9 he was going to do with the ravines?</p> <p>10 A. Do not recall, no.</p> <p>11 Q. Did you already know what he was going to do</p> <p>12 with the ravines?</p> <p>13 A. Yes.</p> <p>14 MR. JIMMERSON: Same objections, same line of</p> <p>15 objections. Incorporate my objections by reference.</p> <p>16 Q. (By Mr. Peccole) And what was that?</p> <p>17 A. We were going to develop a golf course. Not</p> <p>18 us, but we have someone else that was going to do it.</p> <p>19 Q. Did he ever say to you that "I will be</p> <p>20 selling lots along there and I'm going to make it a</p> <p>21 golf course, open space and drainage and I'm going to</p> <p>22 get more money for those lots"?</p> <p>23 A. No.</p> <p>24 MR. JIMMERSON: Same objection. Incorporate</p> <p>25 by reference.</p>
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<p>1 MR. JIMMERSON: I'm also going to object --</p> <p>2 Q. (By Mr. Peccole) Would it --</p> <p>3 MR. JIMMERSON: Excuse me, Counsel.</p> <p>4 I have no date. There's been no foundation,</p> <p>5 no year. None of this has been established.</p> <p>6 Q. (By Mr. Peccole) Would it surprise you if I</p> <p>7 walked portions of the property with him after the</p> <p>8 major dedication?</p> <p>9 MR. JIMMERSON: Object to the form.</p> <p>10 A. Would it surprise me?</p> <p>11 MR. JIMMERSON: Object to the question.</p> <p>12 A. I don't know. I can't answer that.</p> <p>13 That's . . .</p> <p>14 Q. (By Mr. Peccole) You didn't walk the</p> <p>15 property with him after the dedication?</p> <p>16 A. No. No.</p> <p>17 Q. Did Bill ever say to you --</p> <p>18 MR. JIMMERSON: Mr. Peccole, can you give</p> <p>19 us -- can you give us, and the court reporter, any</p> <p>20 suggestion as to what year you're referring to? The</p> <p>21 witness doesn't know it. You said you don't know.</p> <p>22 MR. PECCOLE: What was that?</p> <p>23 MR. JIMMERSON: I want to have some</p> <p>24 foundation for this line of questioning so I can ask</p> <p>25 Judge Bulla --</p>	<p>1 A. Just know that the plan was already in place,</p> <p>2 so when -- when those -- when those tents were there,</p> <p>3 we already knew what was going to go there. So did all</p> <p>4 the builders, and so did -- so did everybody. So I</p> <p>5 don't get where you --</p> <p>6 Q. (By Mr. Peccole) Well, those -- I'm not</p> <p>7 going to argue with you.</p> <p>8 A. No.</p> <p>9 Q. Did you have an actual price list at that</p> <p>10 time?</p> <p>11 MR. JIMMERSON: Same objection. Incorporate</p> <p>12 by reference.</p> <p>13 A. No. Not on the estate lots. No. I don't</p> <p>14 recall. Might have. I don't recall, Bob.</p> <p>15 Q. (By Mr. Peccole) When you were selling the</p> <p>16 lots in the Queensridge North, did you always follow</p> <p>17 the same procedure in your representations?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did Larry Miller ever say to you that there</p> <p>20 was a 50-year lease on the golf course, with four</p> <p>21 ten-year options?</p> <p>22 A. Did not know the terms of the lease, no.</p> <p>23 Q. He never mentioned that?</p> <p>24 A. No.</p> <p>25 MR. PECCOLE: I have no further questions.</p>

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<p>1 MR. JIMMERSON: I'd like to take a comfort 2 break. We've been going for about an hour and 3 twenty-five minutes, hour and twenty minutes. 4 THE WITNESS: Are we done? 5 MR. JIMMERSON: No. I just want to take a 6 break. 7 (A recess was taken.) 8 MR. JIMMERSON: Back on the record. All 9 right. We're back on the record after taking a comfort 10 break. 11 FURTHER EXAMINATION 12 BY MR. JIMMERSON: 13 Q. Mr. Goorjian, opposing counsel, Mr. Peccole, 14 asked you a long series of questions for an hour 15 twenty-five minutes, something like that, but I 16 thought -- I thought you had misstated something in the 17 record. I'll ask you about it. 18 And so I want to have the court reporter read 19 the questions and the answers that Mr. Peccole was 20 asking you -- 21 A. Okay. 22 Q. -- and your answer. I think you may have 23 misstated. If not, you'll tell me, but -- 24 A. Yup. 25 Q. -- I do want to give you a chance to make</p>	<p>1 "Answer: For those parcels shown in white? 2 Yes. 3 "Question: So if you're looking at the 4 portion that starts with the -- going north from 5 Charleston over towards the Angel Park Golf Course -- 6 "Answer: Correct. 7 "Question: -- those were the zonings in each 8 of those white parcels that he was asking for, is that 9 correct, for Phase Two? 10 "Answer: For Queensridge master -- or for 11 Queensridge. These were the zonings he was asking 12 for.") 13 Q. (By Mr. Jimmerson) I believe you were 14 referring to the Queensridge master plan, not 15 Queensridge, because you were shown a document, which 16 is Exhibit A, which is a 1990 document, not a 1996 17 event. Right? 18 A. Correct. 19 Q. So the Peccole master plan was abandoned, as 20 you said, in favor of the Queensridge master plan six 21 years later. Is that right? 22 A. Yes. 23 Q. Okay. And so to the extent you referred to 24 Queensridge, that was a misstatement by you? 25 A. Yes.</p>
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<p>1 that correction if I am understanding that you did make 2 that error. 3 MR. JIMMERSON: So would you just read those 4 questions and answers, Madam Court Reporter. 5 Q. (By Mr. Jimmerson) He's asking you questions 6 about the Peccole master plan document -- 7 A. Correct. I remember. 8 Q. -- from 1989-1990 time period, a document you 9 had not been familiar with because you were not 10 currently employed. That didn't stop him from asking 11 many, many more questions about that. So just listen 12 to the questions and answers and see if there was not a 13 mistake being made by you. 14 MR. JIMMERSON: Go ahead. 15 (Record read by the reporter as follows: 16 "Question: And so in this application 17 he's -- Bill was asking for rezoning? Is that correct? 18 "Answer: I don't know what he's asking for. 19 Well, this is what the document says, yes. If it's -- 20 whatever this document is stating, that's what 21 Mr. Peccole was attempting to do. 22 "Question: Now, when you look at the map of 23 the overall master plan -- and that shows you the 24 zoning that happens to be designated different parcels. 25 Is that correct?</p>	<p>1 Q. Okay. Now, do you remember, when looking at 2 Exhibit A that Mr. Peccole asked you -- which again, 3 I'm not certain why it's relevant, but you were asked 4 several questions about this document, right? 5 A. Yes. 6 Q. And this had to do with a conceptual plan 7 that existed in 1989 or 1990 time period. 8 A. Yes. 9 Q. A time when you were not employed by the 10 company. Right? 11 A. Yes, sir. 12 Q. Okay. All right. But later on, we know that 13 the Queensridge master plan was developed by the 14 Peccole family in 1996 through the master declaration 15 we recorded -- discussed in Exhibits 2 and 3, right? 16 A. Yes, sir. 17 Q. All right. Now, going back to this Peccole 18 master plan, again, Mr. Peccole kept trying to say that 19 zeros were here and you said, no, they're dashes. 20 Right? 21 A. Yes. 22 Q. Okay. So here's my point: This has actually 23 been developed with the Queensridge master plan, but 24 the Peccole Ranch having been abandoned and the 25 Queensridge being developed. There has been, in</p>

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<p>1 effect, commercial and office developed in the years</p> <p>2 later, hasn't there?</p> <p>3 A. Yes, there has, sir.</p> <p>4 Q. So whether there's dashes here, we know</p> <p>5 there's physical construction of commercial locations</p> <p>6 there, right?</p> <p>7 A. Correct.</p> <p>8 Q. We also know there's something called the</p> <p>9 Suncoast Resort, resort-casino, that's developed now</p> <p>10 that was a dash then, right?</p> <p>11 A. Yes.</p> <p>12 Q. So we know that this plan was abandoned in</p> <p>13 favor of other development and other plans; is that</p> <p>14 right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Including the Queensridge master plan we've</p> <p>17 already discussed?</p> <p>18 A. Yes.</p> <p>19 Q. All right.</p> <p>20 Now, taking a look, if you would, at</p> <p>21 Exhibit 1. That was the original Peccole master plan.</p> <p>22 I just want to spend --</p> <p>23 Two. Excuse me. Exhibit 2.</p> <p>24 I just ask the following question: When you</p> <p>25 talk about commercial, office and there's a dash, it</p>	<p>1 MS. POLSELLI: I'll get it right. I'll get</p> <p>2 it right.</p> <p>3 THE WITNESS: Page what?</p> <p>4 Q. (By Mr. Jimmerson) It's Paragraph 7. I'll</p> <p>5 get to the page in one second. I think it's Page --</p> <p>6 it's Page 7. I believe it to be Page 7.</p> <p>7 Yeah. It's the definition under 1.1 -- 1.16,</p> <p>8 Common Area and Common Areas.</p> <p>9 A. Okay.</p> <p>10 Q. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Does that language state as</p> <p>13 follows: "Common Area and Common Areas' shall mean</p> <p>14 (a) all Association Land and the improvements thereon;</p> <p>15 (b) all land within Peccole Ranch which the Declarant,</p> <p>16 or its successors or assigns, by this Declaration or</p> <p>17 other recorded instrument, makes available for use by</p> <p>18 Members of the Association and evidences its intent to</p> <p>19 convey to the Association at a later date;</p> <p>20 "(c) all land within Peccole Ranch which the</p> <p>21 Declarant, or its successors or assigns, indicates on a</p> <p>22 recorded subdivision plat or Tract Declaration is to be</p> <p>23 used for landscaping, water retainage, drainage and/or</p> <p>24 flood control for the benefit of Peccole Ranch and/or</p> <p>25 the general public;</p>
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<p>1 doesn't tell you how many units of commercial can be</p> <p>2 developed, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Under the Peccole conceptual master plan of</p> <p>5 1990?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. But we know many units, many square</p> <p>8 foot was developed in the years that followed; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And so this plan obviously went away</p> <p>12 and new plans were developed; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. All right.</p> <p>15 Now, I just want to show you some provisions</p> <p>16 in this Peccole Ranch plan that related largely to the</p> <p>17 south of West Charleston, but I just want to show you</p> <p>18 some language.</p> <p>19 Would you look at Page 7 of Exhibit 2.</p> <p>20 (Discussion off the record.)</p> <p>21 Q. (By Mr. Jimmerson) It's 16.</p> <p>22 A. 16?</p> <p>23 Q. Yeah. Sorry.</p> <p>24 MS. POLSELLI: 16 or 18?</p> <p>25 MR. JIMMERSON: 18.</p>	<p>1 "(d) areas on a Lot, Parcel or golf course</p> <p>2 within easements granted to the Association or its</p> <p>3 Members for location, construction, maintenance, repair</p> <p>4 and replacement of a well, fence, sidewalk,</p> <p>5 landscaping, utility, utility easement and access, and</p> <p>6 general access or other uses, which easements may be</p> <p>7 granted or created on a recorded subdivision plat or</p> <p>8 Tract Declaration or by a Deed or other conveyance</p> <p>9 accepted by the association;</p> <p>10 "Or (e)" -- "and (e) all land within Peccole</p> <p>11 Ranch which is owned privately or by a governmental</p> <p>12 agency for which the Association has accepted</p> <p>13 responsibility for maintenance, and/or for which the</p> <p>14 Association benefits by limited use, full use, or</p> <p>15 aesthetic consistency for the benefit of the</p> <p>16 numbers" -- "of the members." End of quote.</p> <p>17 Have I read that accurately?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So it is -- common area is the land</p> <p>20 that the declarant dedicates, through annexation, land</p> <p>21 that will be so used for the commonality of its</p> <p>22 membership; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. And therefore, if there's going to be a</p> <p>25 common area, it has to be land that has been dedicated</p>

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<p>1 for that purpose by the declarant; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, would you look at the</p> <p>4 provision -- Page -- Page 11, four pages later,</p> <p>5 Paragraph 1.31. And master plan, which is for the</p> <p>6 Peccole Ranch master plan, is defined as, quote, shall</p> <p>7 mean the Peccole Ranch Master Plan approved by the City</p> <p>8 of Las Vegas, and described on Exhibit "A", as the same</p> <p>9 may be from time to time amended in Declarant's sole</p> <p>10 discretion, a copy of which shall be on file at all</p> <p>11 times in the office of the Association. End of quote.</p> <p>12 Have I accurately read that?</p> <p>13 A. Yes.</p> <p>14 Q. And so the declarant, the Peccole family,</p> <p>15 reserved to itself the right to amend from time to time</p> <p>16 its -- in its sole discretion, the design of the plan;</p> <p>17 is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And indeed, as we know, it was amended</p> <p>20 by essentially abandonment, in favor six years later of</p> <p>21 the Queensridge master plan to the north of West</p> <p>22 Charleston?</p> <p>23 A. Yes.</p> <p>24 Q. And this is land that applied largely to the</p> <p>25 south of West Charleston; is that right? Exhibit 18?</p>	<p>1 the actual dimensions of what was actually built there.</p> <p>2 A. Okay.</p> <p>3 Q. Now, you're familiar by virtue of your</p> <p>4 lengthy work there of what was actually constructed</p> <p>5 over the years?</p> <p>6 A. Yes.</p> <p>7 Q. And we see that, in terms of acreage, there</p> <p>8 was 430 acres of single family; 47 acres of</p> <p>9 multifamily; there's 138 acres of commercial/office;</p> <p>10 there's 52 acres for resort-casino, which is the</p> <p>11 Suncoast Hotel; you see the golf course property,</p> <p>12 265 acres.</p> <p>13 A. Yes.</p> <p>14 Q. Right-of-way of 61 acres. And I guess no</p> <p>15 elementary school was ever developed there?</p> <p>16 A. Correct.</p> <p>17 Q. So you can see what was actually developed</p> <p>18 under the Queensridge master plan in the years that</p> <p>19 followed; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So does that provide additional proof</p> <p>22 to you that the Peccole Ranch master plan of 1990 was</p> <p>23 abandoned in favor of later plans by the family?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Thank you.</p>
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<p>1 A. Yes.</p> <p>2 Q. All right. Thank you.</p> <p>3 A. Not a hundred percent sure, but I believe</p> <p>4 Triple Five is part of the declarancy [sic].</p> <p>5 Q. Correct. I think that's right. At least --</p> <p>6 that's exactly right.</p> <p>7 A. Yeah.</p> <p>8 Q. All right.</p> <p>9 MR. JIMMERSON: Now, do you have the map of</p> <p>10 how it was actually built?</p> <p>11 (Discussion off the record.)</p> <p>12 MR. JIMMERSON: Let me mark this as</p> <p>13 Exhibit 30 -- mark it as Exhibit 32. Next in order.</p> <p>14 Mark it as 32, two pages.</p> <p>15 (Exhibit 32 marked.)</p> <p>16 Q. (By Mr. Jimmerson) Mr. Goorjian, if you look</p> <p>17 at Exhibit 32 --</p> <p>18 A. Yes.</p> <p>19 Q. -- there is what I -- you and I would call an</p> <p>20 as-built; in other words, as history has combined, now</p> <p>21 sitting here in 2018, we see what's actually built to</p> <p>22 the north of West Charleston. Do you see that under</p> <p>23 Queensridge?</p> <p>24 A. Yes.</p> <p>25 Q. All right. And the sheet behind it gives you</p>	<p>1 A. Can I add something?</p> <p>2 Q. Please.</p> <p>3 A. That they were -- you know, there's clear</p> <p>4 definition based on how things were maintained as well</p> <p>5 and how things were -- you know, what associations were</p> <p>6 building and -- you know. I mean, the way that</p> <p>7 Charleston was treated was it had to be split. The</p> <p>8 medians had to be split between who maintained what</p> <p>9 medians, based on Peccole Ranch had responsibility to</p> <p>10 every other median --</p> <p>11 Q. Well, that's interesting.</p> <p>12 A. -- and Queensridge had responsibility to</p> <p>13 every other median.</p> <p>14 Q. I see.</p> <p>15 A. Okay? I lived in Queensridge. I never paid</p> <p>16 a fee to Peccole Ranch ever.</p> <p>17 Q. Got it.</p> <p>18 A. I never had a document that referred to</p> <p>19 Peccole Ranch.</p> <p>20 Q. And, of course, you never paid a fee to</p> <p>21 maintain a golf course either, did you?</p> <p>22 A. No.</p> <p>23 Q. And indeed, I think, if my memory serves me,</p> <p>24 that there had been a golf course intended on the south</p> <p>25 side --</p>

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<p>1 A. Yes, there was.</p> <p>2 Q. -- of Charleston, later vacated or</p> <p>3 abandoned --</p> <p>4 A. Correct.</p> <p>5 Q. -- in favor of some arroyo system or</p> <p>6 something.</p> <p>7 A. Correct. Yeah, walkways, open space.</p> <p>8 Q. All right. Now I'd like to have you look at</p> <p>9 the Queensridge master plan, which is Exhibits 2 and 3.</p> <p>10 Two is the original declaration. Three is the</p> <p>11 amendment.</p> <p>12 A. Exhibit 3 I'm looking at?</p> <p>13 Q. Two right now.</p> <p>14 A. Okay.</p> <p>15 Q. Two is the original declarations.</p> <p>16 A. Got it.</p> <p>17 Q. Now, opposing counsel asked you some</p> <p>18 questions about the recitals, which I think was at</p> <p>19 Page 1.</p> <p>20 A. Yup.</p> <p>21 Q. Now, Paragraph A defines the term "property."</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And "property" in 1996 was one piece</p> <p>25 of property. Isn't that right?</p>	<p>1 this morning --</p> <p>2 A. No.</p> <p>3 Q. -- to go over your testimony?</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 A. You know, there's strategies why you do the</p> <p>7 annexations too.</p> <p>8 Q. And what is that?</p> <p>9 A. Taxes and values. Once you annex them in.</p> <p>10 Q. You have to pay?</p> <p>11 A. There's -- things go up, costs go up.</p> <p>12 Q. So the idea --</p> <p>13 A. The idea is not to annex them until you need</p> <p>14 them.</p> <p>15 Q. Right. Got it.</p> <p>16 And so -- and then you were asked by opposing</p> <p>17 counsel about Paragraph B. Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And the Paragraph B gave the land</p> <p>20 owner, the declarant, if you will, a great deal of</p> <p>21 discretion, correct?</p> <p>22 A. Correct.</p> <p>23 Q. So that for the "property," which is the</p> <p>24 capital P, which is both the original starting</p> <p>25 property, together with whatever's annexed over the</p>
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<p>1 A. Yes.</p> <p>2 Q. And then it would be added to -- in other</p> <p>3 words, property would be expanded as property was</p> <p>4 annexed? Isn't that right?</p> <p>5 Is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And as we went through earlier -- and</p> <p>8 I'm not going to repeat this -- annexations occurred</p> <p>9 multiple times over the years as the Queensridge</p> <p>10 property was added to. Correct?</p> <p>11 A. Correct.</p> <p>12 Q. And once it was annexed and recorded, then it</p> <p>13 became part of Queensridge?</p> <p>14 A. Correct.</p> <p>15 MR. PECCOLE: I'm going to pose an objection</p> <p>16 here as asked and answered and leading and just</p> <p>17 actually putting words in the witness's mouth.</p> <p>18 MR. JIMMERSON: Thank you very -- I'm not</p> <p>19 putting any words in his mouth.</p> <p>20 By the way, I just meet that objection</p> <p>21 directly.</p> <p>22 Q. (By Mr. Jimmerson) Have I put any words in</p> <p>23 your mouth?</p> <p>24 A. No.</p> <p>25 Q. Did I meet with you before this deposition</p>	<p>1 years, can -- and there's "may," but is not required to</p> <p>2 be any number of different things. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So it could or not could. Shopping</p> <p>5 centers or time-share developments or commercial and</p> <p>6 the like, right?</p> <p>7 A. Yes.</p> <p>8 Q. But it's not mandated. It's just discretion</p> <p>9 left to the developer. Is that right?</p> <p>10 A. Flexibility, yes.</p> <p>11 Q. All right. Now, do you know how many -- when</p> <p>12 I talk about as-builts, do you know how many homes were</p> <p>13 actually built in Queensridge?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. If I suggested about a thousand, would</p> <p>16 that be consistent with your recollection?</p> <p>17 MR. PECCOLE: Asked and answered.</p> <p>18 Not putting words in his mouth, are you?</p> <p>19 A. No, but I can do the calculation in my head</p> <p>20 because I know how many homes. Christopher Homes built</p> <p>21 around 80; Pulte built about 120; Capital Pacific built</p> <p>22 about another hundred; Trophy Homes built close to 150.</p> <p>23 Yeah. We're -- we're getting there. About a</p> <p>24 thousand -- a little over a thousand. There would be</p> <p>25 over a thousand homes.</p>

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<p>1 Q. (By Mr. Jimmerson) It's certainly a heck of 2 a lot less than the 4,247 that were shown in that plan 3 from 1990?</p> <p>4 A. Yes. Correct.</p> <p>5 Q. So there would still be about 3,000 to be 6 left to be built?</p> <p>7 A. Correct.</p> <p>8 Q. And would you look at the bottom of Paragraph 9 B, where it says, the last line -- opposing counsel 10 asked you this question.</p> <p>11 "The Maximum Number of Units (defined in 12 Section 1.57 herein) which Declarant reserves the right 13 to create within the," capital P, "Property and the," 14 capital A, "Annexable," capital P, "Property is three 15 thousand."</p> <p>16 Do you remember opposing counsel asked that 17 question?</p> <p>18 A. Yes.</p> <p>19 MR. PECCOLE: Objection. Asked and answered.</p> <p>20 Q. (By Mr. Jimmerson) All right. And so if a 21 thousand has been built through 2018, there's at least 22 2,000 to be built presently; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Thank you. And also the next 25 sentence indicates that the golf course was not a part</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And such other projects as may be 3 designated.</p> <p>4 Is there any reference in those categories to 5 the term "open space"?</p> <p>6 A. No.</p> <p>7 Q. Is there any reference to the term 8 "drainage"?</p> <p>9 A. No.</p> <p>10 Q. Is there any reference to the term "golf 11 course"?</p> <p>12 A. No.</p> <p>13 Q. All right. And is it clear that in each of 14 those categories, about such other, that there has to 15 be a declaration of annexation?</p> <p>16 A. Yes.</p> <p>17 Q. And the use of the land is anything that's 18 consistent with the zoning, right?</p> <p>19 A. Yes.</p> <p>20 Q. And that's what it says there? All right. 21 Page 18. All right. Thank you.</p> <p>22 Now, opposing counsel asked you a line of 23 questioning on cross-examination along the lines that 24 made reference, for example, to drainage. Do you 25 remember that?</p>
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<p>1 of the Badlands -- was not part of the, capital P, 2 property or the, capital A, annexable property, 3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Would you turn to Article II, please, which 6 is at Page 17. And this is called "General Intent," 7 2.1.</p> <p>8 Would you just read that quietly to yourself, 9 please.</p> <p>10 A. (Witness examined document.) Okay.</p> <p>11 Q. Now, this is the general intent without being 12 too specific? Agreed?</p> <p>13 A. Yes.</p> <p>14 Q. Now, the project types are then defined 15 immediately below. Correct? 2.2?</p> <p>16 A. Yes.</p> <p>17 Q. And you see custom lots, luxury lots, 18 executive lots, upgraded lots, such other residential 19 products that may be designated, multiple-dwelling 20 projects, residential condominiums, executive 21 condominiums, upgrade condominiums, move-up 22 condominiums, such other residential products that may 23 be designated. Then commercial/office projects, 24 shopping center projects, and hotel time-share.</p> <p>25 Do you see that?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And the -- and to the term "open 3 space." Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. But the drainage or the open space is that 6 which is on the, capital P, property or the, capital, 7 annexation property, right?</p> <p>8 A. Yes.</p> <p>9 Q. He's not referring to property -- or drainage 10 or golf courses on somebody else's property? Correct?</p> <p>11 A. I don't know what he was referring to, to be 12 honest with you.</p> <p>13 Q. Okay. But the document --</p> <p>14 A. Right.</p> <p>15 Q. -- only speaks to the property as defined 16 within the agreement? Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. It's not controlling or attempting to 19 control somebody else's property?</p> <p>20 A. No.</p> <p>21 Q. Okay. And the -- there's no way that the 22 Queensridge master plan could control, for example, the 23 city's definition of drainage or the city's regulation 24 over drainage?</p> <p>25 A. No.</p>

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<p>1 Q. Or the federal government's, FEMA's, control 2 over drainage, correct? 3 A. Correct. 4 Q. And there was no effort by the Peccole family 5 in Queensridge to do -- to control those areas; isn't 6 that right? 7 A. No effort. 8 Q. And no effort to control the property not 9 governed by this CC&R, correct? 10 A. Correct. 11 Q. Now, the lawyers who prepared the Peccole 12 Ranch master plan to the south of West Charleston and 13 the lawyers who prepared the Queensridge master plan to 14 the north of Charleston was essentially the same firm, 15 correct? Was it Karen Dennison in each case? 16 A. No. 17 Q. Was it -- 18 A. Okay. Now I'm a little foggy here, but I 19 thought -- wait a second. 20 Let's restate it. Everything south of 21 Charleston, I thought there was somebody else did the 22 documents. 23 Q. No. I think you're right. 24 A. I think it was McGladrey -- McGladrey -- 25 Q. No. It was Sean McGowan of McDonald Carano.</p>	<p>1 Q. Okay. And was it able to be developed? 2 A. No. 3 Q. Okay. And tell us why. 4 A. It has a water line running through it. 5 Q. Okay. And what did that -- what did that -- 6 so that caused a practical limitation on the ability to 7 develop that property? 8 A. Correct. 9 Q. And was that lot part of the golf course? 10 A. I don't recall. 11 Q. Okay. In other words, as distinguished from 12 being -- 13 A. It was not -- let's put it this way: It 14 was -- 15 Q. It was not part of Queensridge? 16 A. -- not part of the Orient Express lots at the 17 time. 18 Q. Got it. 19 A. So I . . . 20 Q. Was it -- that's what I'm asking. My 21 client's whispering to me. 22 Was it a part of the golf course because it 23 wasn't part of Orient Express -- 24 MR. PECCOLE: Asked and answered. 25 Q. (By Mr. Jimmerson) -- Street, Orient</p>
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<p>1 A. Carano, correct. 2 Q. Exactly right. 3 And then you think it was Karen Dennison to 4 the north? 5 A. Positive, because I worked with her daily. 6 Q. Got it. Okay. All right. That's my error. 7 Thank you for the correction. 8 A. And it was. It was McDonald Carano, Sean 9 McGowan. 10 Q. Do you recall there was an issue -- when I 11 say "issue," I don't want to be too vague -- that there 12 became some -- some issues of concern regarding the 13 development of Michael McDonald's lot? 14 A. Is that what we want to refer to it as, his 15 lot? 16 Q. I don't know. 17 A. He never owned it, but yeah. 18 Q. Okay. 19 A. Something that he was -- some day would 20 potentially want to purchase and develop, yes. 21 Q. Okay. And who was looking to develop that 22 lot? 23 A. Michael McDonald. 24 Q. Okay. And where was that lot located? 25 A. That was on Orient Express.</p>	<p>1 Express? 2 A. My answer to that is yes, by deduction. 3 Q. What do you mean, "by deduction"? 4 A. If it wasn't part of Queensridge and we 5 didn't make it a lot and it wasn't on Orient Express -- 6 and I believe now that we were storing things there for 7 the golf course, some trees and plants and things 8 there. 9 I know that it wasn't at the time in 10 Queensridge, or we would have been selling it as a lot. 11 Q. Got it. And if your conclusion by deduction 12 is correct, then that is further evidence of the 13 Peccoles' knowledge that the golf course could be 14 developed, correct? 15 A. Yes. 16 Q. All right. Did they get into a fight with 17 anybody over that lot? Do you remember that? 18 Specifically with Mr. Lowie or the EHB company? 19 A. Gosh, I don't recall. I know that a lot of 20 people did not want to see it happen. 21 Q. See what happen? The development? 22 A. See that turn into a lot. 23 Q. On the golf course? 24 A. On the golf course. And the thing was, too, 25 that it was all for naught because it couldn't be.</p>

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<p>1 Q. Got it. Because of the pipe?</p> <p>2 A. Because there's a pipe underground.</p> <p>3 Q. All right.</p> <p>4 Do you recall that Peccole -- before the</p> <p>5 effort ended, there had been a grading of the property</p> <p>6 and building it up?</p> <p>7 A. Yes.</p> <p>8 Q. And then it was discovered?</p> <p>9 A. And then discovered that, hey, guys,</p> <p>10 there's --</p> <p>11 Q. So there was an effort by the Peccole --</p> <p>12 MR. PECCOLE: I'm going to object on the</p> <p>13 grounds irrelevant, immaterial.</p> <p>14 Q. (By Mr. Jimmerson) So was there an effort by</p> <p>15 the Peccole family to develop that lot until the</p> <p>16 impossibility was discovered by virtue of the</p> <p>17 underlying pipe?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember that I asked you about an</p> <p>20 entity called BGC?</p> <p>21 A. Yes.</p> <p>22 Q. And a lawsuit between BGC and Fore Stars?</p> <p>23 A. Yes.</p> <p>24 Q. And I showed you the complaint?</p> <p>25 A. Yes.</p>	<p>1 Bruce's company.</p> <p>2 Q. (By Mr. Jimmerson) That's what Mr. Peccole</p> <p>3 suggested in his line of questioning.</p> <p>4 A. Okay. So I thought the B stand for Bayne.</p> <p>5 Okay.</p> <p>6 Q. And do you recall that the breach of contract</p> <p>7 lawsuit that I showed you, the BGC versus Fore Stars</p> <p>8 litigation, arose because the Peccole family was</p> <p>9 attempting to develop the golf course in this 2006-2007</p> <p>10 time period?</p> <p>11 MR. PECCOLE: I can't hear you.</p> <p>12 Q. (By Mr. Jimmerson) After having agreed to</p> <p>13 sell the land to Mr. Lowie?</p> <p>14 A. Can you say that all over again so I get it</p> <p>15 all at once?</p> <p>16 MR. PECCOLE: And speak up, would you,</p> <p>17 please.</p> <p>18 MR. JIMMERSON: Go ahead. Keep your voice</p> <p>19 up.</p> <p>20 (Page 187, Lines 6 through 13, read</p> <p>21 by the reporter.)</p> <p>22 THE WITNESS: What land to Mr. Lowie?</p> <p>23 Q. (By Mr. Jimmerson) The golf course.</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. All right. But do you recall that the</p>
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<p>1 Q. Okay. Opposing counsel, Mr. Peccole, on</p> <p>2 cross-examination, asked you a series of questions</p> <p>3 suggesting that BGC was Bruce Bayne. Do you recall</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. He asked you a line of questions about that.</p> <p>7 As far as you know, and as I pointed out to you, BGC</p> <p>8 was an entity that Mr. Lowie was involved with; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And there was a lawsuit for breach of</p> <p>12 contract that we talked about; and then I showed you</p> <p>13 the settlement agreement, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. As far as you know, Bruce Bayne did</p> <p>16 not have any involvement with that, with the company</p> <p>17 BGC, at least as I showed you litigation?</p> <p>18 A. Correct. I still don't know what BGC is.</p> <p>19 Q. I'm going to suggest that BGC might stand for</p> <p>20 Badlands Golf Course.</p> <p>21 A. Okay.</p> <p>22 Q. All right.</p> <p>23 MR. LOWIE: Quite simple.</p> <p>24 THE WITNESS: Thank you. Because I</p> <p>25 thought -- I'm sorry, but I thought Bob said it was</p>	<p>1 Peccole family in 2006 and 2007 was attempting to</p> <p>2 develop some portion of the golf course in that time</p> <p>3 period?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And what is it -- what is there about</p> <p>6 that that you recall?</p> <p>7 A. We were doing the high-rise.</p> <p>8 Q. And that was located on property --</p> <p>9 A. Alta and Rampart.</p> <p>10 Q. Got it.</p> <p>11 A. So now this is coming back. Yes. Okay. So</p> <p>12 there were easements that were needed for that -- for</p> <p>13 that property.</p> <p>14 MR. PECCOLE: I'd like to pose an objection</p> <p>15 as this is all irrelevant and immaterial.</p> <p>16 Q. (By Mr. Jimmerson) Do you remember the</p> <p>17 Peccole family was attempting to introduce a new</p> <p>18 product line called "time-share"?</p> <p>19 A. Yes.</p> <p>20 Q. Maybe 500 rooms?</p> <p>21 A. Yes.</p> <p>22 Q. Is that the project we're talking about?</p> <p>23 A. Yes.</p> <p>24 Q. And was that in this 2006, 2007?</p> <p>25 A. Yes.</p>

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<p>1 MR. JIMMERSON: Nothing further. Thank you.</p> <p>2 I have no further questions, and I want to</p> <p>3 thank you for your time, sir.</p> <p>4 MR. PECCOLE: Just a couple of cleanups.</p> <p>5 THE WITNESS: Sure.</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. PECCOLE:</p> <p>8 Q. When you, in your head, figured out these</p> <p>9 number of homes that were built according to what</p> <p>10 Mr. Jimmerson asked you, did you consider the homes</p> <p>11 were built on lots?</p> <p>12 A. Was -- I hadn't counted those yet, but I</p> <p>13 would. Yeah, those would be part of them, to get to a</p> <p>14 thousand.</p> <p>15 Q. So another couple thousand, maybe, or a</p> <p>16 thousand?</p> <p>17 A. A thousand.</p> <p>18 Q. The -- Mr. Jimmerson just went through the</p> <p>19 Exhibit 2 --</p> <p>20 A. Yes.</p> <p>21 Q. -- and he asked you a bunch of questions, but</p> <p>22 I would just draw your attention back to Page 1.</p> <p>23 A. Okay. Okay.</p> <p>24 Q. Paragraph B.</p> <p>25 A. Yup.</p>	<p>1 Q. It could be Page 2. Yes.</p> <p>2 A. Okay. And C, or am I on B?</p> <p>3 Q. A and B -- take a look at the very top of the</p> <p>4 page.</p> <p>5 A. Okay. So where it says "Property and the</p> <p>6 Annexable Property is three thousand. The existing</p> <p>7 18-hole golf course commonly known as the 'Badlands' --</p> <p>8 Q. Yes.</p> <p>9 A. -- "is not a part of the Property or the</p> <p>10 Annexable Property"?</p> <p>11 Q. That's the point I was trying to make. Bill</p> <p>12 excluded the 18 holes by saying it's not a part of the</p> <p>13 property or the annexable property. Doesn't it say</p> <p>14 that?</p> <p>15 MR. JIMMERSON: I object. The document</p> <p>16 speaks for itself.</p> <p>17 A. It states, "The existing 18-hole golf course</p> <p>18 commonly known as the 'Badlands Golf Course' is not</p> <p>19 part of the Property or the Annexable Property."</p> <p>20 Q. (By Mr. Peccole) That's --</p> <p>21 A. Not -- but not a part of what property?</p> <p>22 Q. Now, if you look back at 1, and we decided</p> <p>23 that property, with a capital P, could be a use, it</p> <p>24 lists golf course; and Bill removed it from the</p> <p>25 property that was recognized by the CC&Rs by saying</p>
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<p>1 Q. Down in the bottom where it says Property,</p> <p>2 with capital P, can be the following uses, does it list</p> <p>3 golf course and open space?</p> <p>4 MR. JIMMERSON: You mean the "may"?</p> <p>5 A. Yes, it says it.</p> <p>6 Q. (By Mr. Peccole) It says "may"? And</p> <p>7 actually, did the golf course get built?</p> <p>8 A. Yes, it did.</p> <p>9 Q. And did Bill have some concern about whether</p> <p>10 or not it would be included in the CC&Rs, and therefore</p> <p>11 he specifically excluded the 18 holes by saying "not a</p> <p>12 part of"?</p> <p>13 MR. JIMMERSON: Objection, and also lack of</p> <p>14 foundation.</p> <p>15 Q. (By Mr. Peccole) Do you remember that?</p> <p>16 A. I don't.</p> <p>17 Q. Take a look at Page 3.</p> <p>18 A. Okay.</p> <p>19 Q. Very top.</p> <p>20 A. (Witness examined document.)</p> <p>21 Q. Does it say right at the very, very top of</p> <p>22 the page, Badlands -- 18 holes, known as Badlands, is</p> <p>23 not a part of?</p> <p>24 A. Before Article I, right, on Page -- I'm</p> <p>25 reading Page 3. I'm supposed to be Page 2?</p>	<p>1 "not a part of."</p> <p>2 MR. JIMMERSON: I'm going to object. There's</p> <p>3 no question pending, and the document speaks for</p> <p>4 itself.</p> <p>5 Q. (By Mr. Peccole) Isn't what that it says?</p> <p>6 MR. JIMMERSON: It has to be annexed in order</p> <p>7 to be part of the property.</p> <p>8 Q. (By Mr. Peccole) Isn't that what it says?</p> <p>9 It doesn't say anything about annexation, does it?</p> <p>10 A. I don't know. You're asking me to interpret</p> <p>11 something. It says what it says.</p> <p>12 Q. Well, you interpreted it for Mr. Jimmerson.</p> <p>13 MR. JIMMERSON: Objection.</p> <p>14 A. I did not. What did I interpret for him?</p> <p>15 Q. (By Mr. Peccole) You were interpreting the</p> <p>16 sections that he's -- he's been reading to you, and you</p> <p>17 agreed with him.</p> <p>18 A. I did?</p> <p>19 Q. Yes.</p> <p>20 MR. JIMMERSON: Objection. I asked a</p> <p>21 question, though, after reading a section, unlike this</p> <p>22 examiner.</p> <p>23 A. I don't know what you're asking me. It says</p> <p>24 what it says.</p> <p>25 Q. (By Mr. Peccole) Look, just admit you're not</p>

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<p>1 an expert, okay?</p> <p>2 A. Right. Okay. How about that?</p> <p>3 Q. Now, with regard to the golf course --</p> <p>4 A. Okay.</p> <p>5 Q. -- all 27 holes --</p> <p>6 A. Yeah.</p> <p>7 Q. -- are you familiar with the city master</p> <p>8 plan?</p> <p>9 A. No.</p> <p>10 Q. City master plan lists it as PROS.</p> <p>11 MR. JIMMERSON: I just object to the question</p> <p>12 to be outside the scope of direct, cross --</p> <p>13 Q. (By Mr. Peccole) Do you know what PROS --</p> <p>14 A. I don't.</p> <p>15 MR. JIMMERSON: -- and redirect.</p> <p>16 Q. (By Mr. Peccole) How about parks,</p> <p>17 recreation --</p> <p>18 A. Okay.</p> <p>19 Q. -- and open space?</p> <p>20 A. Okay.</p> <p>21 Q. And wasn't it designated that by the fact</p> <p>22 that Larry Miller and Billy Bayne went in and had it</p> <p>23 changed so they wouldn't have to pay taxes on the golf</p> <p>24 courses?</p> <p>25 MR. JIMMERSON: I object to the question --</p>	<p>1 FURTHER EXAMINATION</p> <p>2 BY MR. JIMMERSON:</p> <p>3 Q. Would Mr. Peccole, as an owner of property, a</p> <p>4 residence, in Queensridge, have any rights if against</p> <p>5 property that is not, capital P, property and not</p> <p>6 annexed into the Queensridge master plan?</p> <p>7 In other words, does he have any rights</p> <p>8 against property that is not included within the</p> <p>9 Queensridge master plan?</p> <p>10 A. No.</p> <p>11 Q. And why is that?</p> <p>12 A. Because it's not -- it's not part of these</p> <p>13 documents. It's not a part of.</p> <p>14 Q. And what is included, what is property,</p> <p>15 annexed property, is clearly defined within the</p> <p>16 document, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Anybody who reads this contract, the master</p> <p>19 CC&Rs, would know what's included and what's not</p> <p>20 included, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Just by definition, as well as the maps?</p> <p>23 A. Yes.</p> <p>24 MR. JIMMERSON: Nothing further. Thank you.</p> <p>25 MR. PECCOLE: I would like to clear this one</p>
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<p>1 A. I don't know.</p> <p>2 MR. JIMMERSON: -- as being outside the scope</p> <p>3 of direct, cross, redirect, and assumes facts not in</p> <p>4 evidence.</p> <p>5 Q. (By Mr. Peccole) And the flood drainage,</p> <p>6 which is not a common use in the sense that those --</p> <p>7 that Mr. Jimmerson has read those paragraphs back to</p> <p>8 you dealing with that and you were agreeing, I would</p> <p>9 ask you the question, is the drainage -- the flood</p> <p>10 drainage system specifically included in the CC&Rs?</p> <p>11 A. I don't know.</p> <p>12 Q. We read it once before.</p> <p>13 A. Let's read it again.</p> <p>14 Q. You don't remember because it was too long</p> <p>15 ago?</p> <p>16 A. Yes. I remember things that are long ago.</p> <p>17 Q. Dementia.</p> <p>18 A. Yes.</p> <p>19 MR. PECCOLE: No further questions.</p> <p>20 THE WITNESS: I'm getting there, Bob. I'm</p> <p>21 almost 60.</p> <p>22 MR. JIMMERSON: Are you finished,</p> <p>23 Mr. Peccole?</p> <p>24 MR. PECCOLE: Too many basketballs.</p> <p>25 MR. JIMMERSON: I have just one question.</p>	<p>1 more time.</p> <p>2 THE WITNESS: Okay.</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MR. PECCOLE:</p> <p>5 Q. There is the real property, which is real</p> <p>6 estate, land, that was defined in Paragraph A.</p> <p>7 A. Okay.</p> <p>8 Q. And that can be annexed. We agree with that?</p> <p>9 A. Okay.</p> <p>10 Q. You go over to Paragraph B, and the use can</p> <p>11 become property -- and it says right there, capital P,</p> <p>12 property -- without being annexed. There's nothing to</p> <p>13 do with annexation.</p> <p>14 MR. JIMMERSON: I object to the question.</p> <p>15 There's no question pending.</p> <p>16 Q. (By Mr. Peccole) So you've got two parts;</p> <p>17 and every time the question is posed to you, it's posed</p> <p>18 to you only as property. You don't hear one is land,</p> <p>19 one is use.</p> <p>20 MR. JIMMERSON: I object to the question.</p> <p>21 There's no question pending. It's just a lecture by</p> <p>22 opposing counsel.</p> <p>23 MR. PECCOLE: I'm not finished yet.</p> <p>24 Q. (By Mr. Peccole) So having that in mind, do</p> <p>25 you distinguish between land and use when you talk</p>

<p style="text-align: right;">Page 197</p> <p>1 about property?</p> <p>2 A. Boy. I don't know how to answer that. I</p> <p>3 don't -- I don't -- I don't know how to answer that. I</p> <p>4 don't talk about property unless it has a use or I have</p> <p>5 some sort of thought of what it's going to be used for</p> <p>6 in my mind.</p> <p>7 When I look at raw land or I discuss raw</p> <p>8 land, there's a use in my head, or a potential use for</p> <p>9 that property that is the highest and best use for that</p> <p>10 piece of property. That's real estate.</p> <p>11 I don't know if that -- I don't know if that</p> <p>12 answers your question. I don't look at property as</p> <p>13 just property. Property doesn't have any use --</p> <p>14 property doesn't have any value unless it has a use.</p> <p>15 Okay? So I look to the property's use to define it as</p> <p>16 property. Other than that, to me it's dirt.</p> <p>17 Q. Would you ever define property as being a</p> <p>18 golf course?</p> <p>19 A. Yes. Golf course would go on dirt. Yeah.</p> <p>20 MR. PECCOLE: No further questions.</p> <p>21 FURTHER EXAMINATION</p> <p>22 BY MR. JIMMERSON:</p> <p>23 Q. And the use would be as defined by zoning,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 199</p> <p>CERTIFICATE OF WITNESS</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 * * * * *</p> <p>20 I, GREG STEVEN GOORJIAN, witness herein,</p> <p>21 do hereby certify and declare under penalty of perjury</p> <p>22 the within and foregoing transcription to be my</p> <p>23 deposition in said action; that I have read,</p> <p>24 corrected and do hereby affix my signature to said</p> <p>25 deposition.</p> <p>_____ GREG STEVEN GOORJIAN Witness Date</p>
<p style="text-align: right;">Page 198</p> <p>1 Q. Of course.</p> <p>2 MR. JIMMERSON: Thank you. Nothing further.</p> <p>3 Mr. Goorjian, I appreciate your time, and</p> <p>4 apologize for the inconvenience that both sides have</p> <p>5 placed upon you, sir.</p> <p>6 (Deposition recessed at 1:46 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 200</p> <p>REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA)</p> <p>3) ss COUNTY OF CLARK)</p> <p>4</p> <p>5 I, Judith Payne Kelly, a duly certified court</p> <p>6 reporter licensed in and for the State of Nevada, do</p> <p>7 hereby certify:</p> <p>8 That I reported the taking of the deposition</p> <p>9 of the witness, GREG STEVEN GOORJIAN, at the time and</p> <p>10 place aforesaid;</p> <p>11 That prior to being examined, the witness was</p> <p>12 by me duly sworn to testify to the truth, the whole</p> <p>13 truth, and nothing but the truth;</p> <p>14 That I thereafter transcribed my shorthand</p> <p>15 notes into typewriting and that the typewritten</p> <p>16 transcript of said deposition is a complete, true</p> <p>17 and accurate record of testimony provided by the</p> <p>18 witness at said time to the best of my ability.</p> <p>19 I further certify (1) that I am not a</p> <p>20 relative, employee or independent contractor of</p> <p>21 counsel of any of the parties; nor a relative,</p> <p>22 employee or independent contractor of the parties</p> <p>23 involved in said action; nor a person financially</p> <p>24 interested in the action; nor do I have any other</p> <p>25 relationship with any of the parties or with counsel</p> <p>of any of the parties involved in the action that</p> <p>may reasonably cause my impartiality to be</p> <p>questioned; and (2) that transcript review pursuant</p> <p>to NRCP 30(e) was not requested.</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand in the County of Clark, State of Nevada, this</p> <p>31st day of December, 2018.</p> <p>_____ Judith Payne Kelly, CCR No. 539, RMR</p>

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss
3 COUNTY OF CLARK)

4

5 I, Judith Payne Kelly, a duly certified court
reporter licensed in and for the State of Nevada, do
6 hereby certify:

7 That I reported the taking of the deposition
of the witness, GREG STEVEN GOORJIAN, at the time and
8 place aforesaid;

9 That prior to being examined, the witness was
by me duly sworn to testify to the truth, the whole
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand
notes into typewriting and that the typewritten
12 transcript of said deposition is a complete, true
and accurate record of testimony provided by the
13 witness at said time to the best of my ability.

14 I further certify (1) that I am not a
relative, employee or independent contractor of
15 counsel of any of the parties; nor a relative,
employee or independent contractor of the parties
16 involved in said action; nor a person financially
interested in the action; nor do I have any other
17 relationship with any of the parties or with counsel
of any of the parties involved in the action that
18 may reasonably cause my impartiality to be
questioned; and (2) that transcript review pursuant
19 to NRC 30(e) was not requested.

20 IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this
21 31st day of December, 2018.

22

23

24

25

Judith P. Kelly
Judith Payne Kelly, CCR No. 539, RMR



1 CASE NO. A-17-758528-J

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 180 LAND COMPANY LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS CITY OF,)

13 Defendant.)

14

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REPORTER'S TRANSCRIPT
OF
MOTIONS

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

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DATED TUESDAY, JANUARY 22, 2019

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23

24

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

25

1 APPEARANCES:

2

3 FOR 180 LAND COMPANY:

4

5 HUTCHISON & STEFFEN, LLC

6 BY: MARK HUTCHISON, ESQ.

7 10080 ALTA DRIVE

8 SUITE 200

9 LAS VEGAS, NV 89145

10 (702) 385-2500

11 (702) 385-2086 Fax

12 JKISTLER@HUTCHLEGAL.COM

13

AND

14

15 DAVID BRETT HARRISON

16 BY: BRETT HARRISON, ESQ.

17 800 N. RAINBOW BLVD.

18 SUITE 208-14

19 LAS VEGAS, NV 89107

20 (702) 801-376-0051

21 BRETTLV@DBRETTTHARRISON.COM

22

23

24

25

1 APPEARANCES CONTINUED:

2

FOR THE CITY OF LAS VEGAS:

3

4

MCDONALD CARANO WILSON, LLP

5

BY: GEORGE F. OGILVIE, III, ESQ.

6

BY: DEBBIE LEONARD, ESQ.

7

2300 WEST SAHARA AVENUE

8

SUITE 1000

9

LAS VEGAS, NV 89102

10

(702) 873-4100

11

(702) 873-9966 Fax

12

GOGILVIE@MCDONALDCARANO.COM

13

14

FOR THE INTERVENORS:

15

16

PISANELLI BICE PLLC

17

BY: DUSTUN HOLMES, ESQ.

18

BY: TODD BICE, ESQ.

19

400 SOUTH SEVENTH STREET

20

SUITE 300

21

LAS VEGAS, NV 89101

22

(702) 214-2100

23

(702) 214-2101 Fax

24

DHH@PISANELLIBICE.COM

25

1 APPEARANCES CONTINUED:

2

3 FOR EHB COMPANIES:

4

EHB COMPANIES LLC

5

BY: ELIZABETH HAM, ESQ.

6

1215 SOUTH FORT APACHE

7

SUITE 120

8

LAS VEGAS, NV 89117

9

(702) 940-6930

10

(702) 940-6938 Fax

11

EHAM@EHBCOMPANIES.COM

12

13

14

15

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1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 22, 2019

2 9:37 A.M.

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

4 * * * * *

5
6 THE COURT: We're going to move on. Next up,
7 page 9, 180 Land Company LLC versus City of Las Vegas.

8 THE COURT REPORTER: Does either side want
9 this reported?

10 MR. BICE: Yes, please. I hope I wasn't the
11 cause of any delay, your Honor. I was stuck in
12 Judge Denton's courtroom.

13 THE COURT: You're on time, sir.

14 (A discussion was held off record.)

15 THE COURT: All right. Once again, good
16 morning. Let's go ahead and place our appearances on
17 the record.

18 MR. HUTCHISON: Good morning, your Honor.
19 Mark Hutchinson on behalf of the 180 Land Company.

20 MS. HAM: Elizabeth Ham, 180 Land Company
21 in-house counsel.

22 MR. HARRISON: Good morning, your Honor.
23 Brett Harrison, corporate representative for 180 Land.

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

1 MS. LEONARD: Good morning. Debbie Leonard on
2 behalf of the City of Las Vegas.

3 MR. HOLMES: Good morning, your Honor. Dustun
4 Holmes on behalf of the intervenors.

5 MR. BICE: Good morning, your Honor. Todd
6 Bice, also on behalf of the intervenors. Thank you,
7 again.

8 THE COURT: All right. Once again, good
9 morning.

10 (Pause in proceedings while unrelated
11 matters were heard.)

12 THE COURT: All right. We can continue on. I
13 apologize for that.

14 Anyway, I guess, we have -- let me see here.
15 Motion for new trial and/or amend or alter the
16 judgment. I got it.

17 All right, sir. You have the floor.

18 MR. HUTCHISON: Your Honor, thank you very
19 much for taking the time to consider this matter.

20 This is, as you mentioned, our motion to alter
21 or amend the order that the Court entered into
22 November. There are several arenas I've set forth for
23 the Court in the briefing, and I'm just going to touch
24 on some of those, your Honor. But really the genesis
25 and one of the major thrusts to our motion, your Honor,

1 is a -- is a Nevada Supreme Court affirmance of
2 Judge Smith's orders.

3 Just by way of timing in terms of where we
4 are. Judge Smith's order No. 1 was entered way back in
5 November of 2016. And then his second order, which
6 we've attached as exhibit -- the first order is
7 Exhibit 2; the second order is Exhibit 3. That second
8 order was entered in January of 2015.

9 We then filed a petition for judicial review
10 in this matter on what we call the 35 acres'
11 proceedings and the four applications related to the
12 35 acres. That was done in July of 2017, about 6
13 months after Judge Smith's decision.

14 Then Judge Crockett's order came out in March
15 of 2018. And Brad Jerbic, during a city council
16 meeting, opined and stated to the city council that,
17 Judge Crockett's order was, quote/unquote, legally
18 improper.

19 We then, your Honor, submitted our points and
20 authorities in support of our petition for judicial
21 review in -- after Mr. Jerbic's comments about a couple
22 weeks later on April -- April of 2018. At that time,
23 your Honor, it's important to note that the only
24 defendant or respondent in that case at the time was
25 the City. And our briefing at that time made no

1 mention of a major modification argument because the
2 City had never made the argument at that time.

3 Later, the Court received a motion to
4 intervene by the intervenors. And later in June that
5 intervenor motion was granted. Then we held the
6 hearing that was most of the day, as the Court may
7 recall, in June of 2018. And the Court then entered
8 its findings of fact after that June hearing in
9 November.

10 What interceded between that June hearing and
11 the findings of fact and conclusions of law which the
12 Court entered in November was in October. October 17
13 the Nevada Supreme Court then affirmed the Smith order,
14 and then subsequently affirmed it again on a denial of
15 a motion for rehearing one day after the Court entered
16 its findings of fact, conclusions of law.

17 So that kind of puts in perspective in terms
18 of why we're here, what the timeline is, what was
19 argued, what was before the Court during the hearing,
20 what was not before the Court during the hearing, what
21 arguments were made, what arguments were not made in
22 the legal briefing and the reasons for those arguments.

23 And so, Judge, one of the very first points
24 that we make and we would like to make is this major
25 modification point. It is -- it is the absolute crux

1 of Judge Crockett's decision. Judge Crockett said that
2 there can be no development of the 17-acre parcel that
3 he was concerned with, without a major modification.
4 And because there was no major modification that
5 accompanied the applications, Judge Crockett denied the
6 order, determined that there was -- and made
7 approximate specific findings that there was open
8 space, designations on the master plan. And as a
9 result you had to have a major modification application
10 to change that open space designation.

11 I'll get to Judge Smith's order and the
12 affirmance of the Supreme Court and why that completely
13 contradicts Judge Crockett's order here in just a
14 moment. But just as a general matter, Judge, again, we
15 didn't make these points in much of our briefing.

16 When I asked the Court if the Court wanted to
17 have our arguments at the hearing about the major
18 modification, you declined and said that it wasn't
19 necessary. So for purposes of educating the Court and
20 putting it on the record, we both briefed it and I
21 would like to just be able to make the major points in
22 terms of why Judge Crockett was wrong, why the Court
23 should not accept in any way that there's a major
24 modification requirement.

25 First, just a matter --

1 THE COURT: And you know I'm going to let you
2 do that, right?

3 MR. HUTCHISON: I'm sorry?

4 THE COURT: You know I'm going to permit you
5 to do what you have to do to protect --

6 MR. HUTCHISON: Thank you very much.

7 THE COURT: You're welcome, sir.

8 MR. HUTCHISON: I know the Court is patient.
9 I knows that the Seventh Amendment and due process are
10 core values that the Court has.

11 THE COURT: Absolutely.

12 MR. HUTCHISON: And you're always going to let
13 us present our case. I appreciate that.

14 THE COURT: Sometimes I wonder if I let it go
15 on too long.

16 MR. HUTCHISON: Well, as a litigator, I
17 appreciate courts allowing us to go on longer rather
18 than short.

19 THE COURT: And you know why? There's two
20 components to that. Number one, I think it's the
21 party's right to make sure they place a thorough
22 record. But I do listen, and I've been convinced
23 otherwise from -- it doesn't happen a lot, but all my
24 law clerks will tell you -- I think I have 12, 13 of
25 them out there now -- that I go in and I have a way I

1 think I want to go, but my mind is never completely
2 made up. And I listen and sometimes things are pointed
3 out to me that I didn't think about.

4 And just as important too, all the moving
5 papers don't explain the nuances.

6 MR. HUTCHISON: Yeah.

7 THE COURT: The lawyers do a much better job
8 of that. And you just can't read it, and then you
9 listen and you say, Wow, I didn't think of that.

10 MR. HUTCHISON: Yeah. And, your Honor, that
11 was one of the reasons we wanted to bring this motion.
12 One of the reasons was that this major modification
13 point had not been fully briefed previously, because as
14 I mentioned, at the time we filed our petition for
15 judicial review, even with the points and authorities,
16 the City was the only respondent at the time. The City
17 had never made an argument ever that a major
18 modification was required in court.

19 In fact, before Judge Crockett, the Court --
20 the City said just the opposite. There's been now a
21 change in counsel and now they are arguing that they
22 agree to abuse their own discretion in some way by not
23 requiring a major modification. So that was never
24 really, really fleshed out. And as I mentioned when I
25 asked the Court during oral argument during our hearing

1 in June, the Court said you didn't need that argument.
2 So let me just make a couple of points about that major
3 modification argument, your Honor.

4 First, if you look at the City ordinances,
5 major modifications are required. If you look and see
6 where the reference start, they speak of, and the
7 ordinances refer to, it was rezoning. And they are in
8 connection with rezoning. Well, the 35-acre
9 applications did not request rezoning. Contrary to
10 Judge Crockett's application before him, there was
11 rezoning requested. So these applications were
12 fundamentally different in that regard with just simply
13 no rezoning.

14 The property is not part of the Queensridge.
15 The Queensridge CIC. We make that point in
16 Judge Smith -- the affirmed Judge Smith's orders. Make
17 those specific findings. The property was never
18 annexed into the Peccole Ranch master-planned
19 community.

20 One of the reasons that we cite the Court to
21 the affirmed Smith orders is that one of the
22 foundational points that the Supreme Court affirmed was
23 Judge Smith finding that, in fact, there was no
24 evidence in the record. In fact, it was contrary to
25 the record, that the golf course. We call it the

1 residential zoned property before this Court -- before
2 Judge Smith it was called the golf course property
3 was -- was never part of the Queensridge CIC, and was
4 not so incorporated by any of the public maps or
5 records.

6 Likewise, Judge, the property before the
7 Court, whether you call it the golf course property or
8 the residential zoned property, was never -- there's no
9 record to show that that property was ever annexed into
10 the Peccole Ranch master-planned community.

11 As a matter of fact, we attached as Exhibit 2
12 to our moving papers the Peccole Ranch Phase Two master
13 planned and the CC&Rs accompanying that, as well as the
14 maps and documents, and there was no record, your
15 Honor, of Phase Two of the Peccole Ranch master planned
16 being annexed north of Charleston.

17 The golf course is north of Charleston, and
18 there is nothing in the record to demonstrate that that
19 property, the residential zoned property, the gold
20 course, was ever annexed into that Phase Two.

21 As a result, your Honor, there could be no
22 need then for a major modification of the Peccole Ranch
23 master-planned community because it was never annexed
24 in -- the golf course was never annexed into that
25 community. There's no record, your Honor, that anybody

1 was paying dues or fees to Peccole Ranch master
2 planned-community, as you would if you had been annexed
3 in or part of that community. There simply is nothing
4 to suggest that that golf course was ever officially or
5 legally annexed. And, in fact, the time for doing so
6 long, long expired.

7 The property also, Judge, is -- does not
8 require a major modification under the City's -- what's
9 call the 2020 master plan. We attach as Exhibit 8 the
10 actual City's designation of special area plans in the
11 City that actually require a major modification.

12 And the actual director of the planning
13 department made this point repeatedly during the city
14 council meeting that one of the reasons why there is no
15 major modification required for this property is that
16 it is not a special area plan, which has been
17 highlighted and designated in our exhibit -- in our
18 Exhibit 8.

19 There's no doubt that there are -- there are
20 many, many master-planned communities across the Las
21 Vegas Valley and Peccole Ranch master plan may be a
22 major -- a master-planned community, but it is not a
23 master-planned community that requires major
24 modification changes because that's been designated
25 already by the City and the -- the communities where

1 that designation falls require major modification. And
2 Peccole Ranch master plan is not -- is not one of them.

3 Moreover, Judge, we also underscore the
4 legal -- the legal point that NRS 278.349(3)(3) makes
5 it very clear that even if you have a zoning that is
6 different than a land use designation on a master plan,
7 the zoning trumps that master plan. That was not the
8 case. There would be massive takings all over this
9 county whenever the City or the County changed a
10 decision on a master plan that was not in conformity
11 with the zoning.

12 The legislature has been very clear. The
13 Attorney General has looked at this, and said very
14 clearly that the legislature has always intended that
15 zoning would trump any sort of master plan designation
16 such as open space or golf course or any other such
17 designation.

18 We provided the Court with materials and
19 evidence that the County assessor does not tax the
20 residential property. That's at issue here. Or the
21 golf course property. That's at issue here, as open
22 space but, in fact, taxes it as residential use. And
23 that determination was made by the County assessor and
24 affirmed by the State Board of Equalization.

25 During the city council meeting at issue here

1 on June 21, 2017, as I mentioned, the City director of
2 development advised the city council that the
3 development complied in every way with the City
4 standards and no major modification was needed, and the
5 staff and planning committee had -- commission, excuse
6 me, had recommended approval.

7 We then, your Honor, came before the Court in
8 June and had an extensive hearing. One of the things
9 that I appreciated about the Court, statements during
10 that hearing was that you could not rewrite the
11 statute. And yet, your Honor, with respect in terms of
12 what you've done with your findings of fact,
13 conclusions of law, you have rewritten the law and have
14 adopted essentially the idea that land use designations
15 on a master plan will trump zoning. And that
16 respectfully, your Honor, is a direct contravention of
17 NRS 278.349, which I referenced previously.

18 As I noted in my timeline, your Honor, the --
19 the Judge Smith orders were then affirmed.

20 THE COURT: And say that again for me.
21 Because I just want to make sure I understand
22 specifically what your position is.

23 You're saying, Look, Judge, your determination
24 is in error as a matter of law --

25 MR. HUTCHISON: Yes.

1 THE COURT: -- as a result of a determination
2 that land use trumps the master plan.

3 MR. HUTCHISON: Right. And so, your Honor,
4 our -- our legal position is based on
5 NRS 278.349(3)(e). NRS 278.349(3)(e). And it deals
6 with the situation that we have here.

7 And that is what happens in the land use
8 planning environment and in a zoning environment when a
9 piece of property is zoned in one way and the master
10 plan designates that same property in another way.

11 In this case the property is zoned RPD7, 7
12 units per acre residential.

13 And the City claims that, Well, on the City
14 master plan, the 2020 plan, that same property is
15 designated open space recreation.

16 And there's also a subsidiary argument that
17 within Peccole Ranch master plan, if it applies, which
18 the City and intervenors contend it does, and which we
19 contend does not, but if that applies, then they also
20 say, Well, in that master plan, it says open space golf
21 course.

22 And so they say, In order to make a change,
23 you've got to come in then and have some sort of a
24 change in the master plan, either through a general
25 plan amendment or through a major modification.

1 The statute seems to suggest otherwise, your
2 Honor. And we would respectfully point the Court to
3 our prior briefing on this where we make very clear
4 that if there's a conflict, zoning trumps.

5 And -- and that just makes sense, your Honor.
6 If the City and the County were able to just simply
7 change the color code on a map with their master plan,
8 and that eviscerates zoning -- again, there would be
9 massive, massive takings by government and it would
10 throw the development community in complete disarray.

11 You go get your zoning. You're going to plan
12 for a zoning for that designation. And then the City
13 at some point subsequently or at any time after you
14 coin that property makes a change.

15 So, your Honor, that's what we think. Just
16 fundamentally there's a legal error in the Court's
17 analysis. And I think that you can refer not only to
18 our briefing here, your Honor, but we briefed this
19 extensively for the Court in our petition for judicial
20 review points and authorities.

21 As I mentioned, the attorney general of the
22 State of Nevada already looked at this issue and came
23 to the same conclusion that 180 Land has come to, and
24 that is it's very clear: When there's a master plan,
25 and that designation on the master plan conflicts with

1 zoning, you've got to go with zoning. If that's the
2 case here, then the open space designation, golf course
3 designation, drainage designation or anything else
4 simply does not stop development. The zoning is what
5 would dictate its uses.

6 And that's something specific, your Honor,
7 that the affirmed Judge Smith decisions state. And I'm
8 just referring now to Exhibit 3, which is the first
9 Judge Smith decision. And this was affirmed, this
10 finding.

11 The zoning of the GC land dictates its use and
12 the defendant's right to develop their land. So that's
13 a fundamental question I think that the Court ought to
14 reconsider and evaluate in terms of signing an order
15 and siding with the city council, which has decided
16 that this land is not developable, primarily based on
17 the idea that this is open space or it's a golf course,
18 it's got to remain that way because the master plan so
19 designates it.

20 Your Honor, the -- the affirmed Judge Smith
21 orders are completely at odds with the Court's findings
22 of fact, conclusions of law. They are completely at
23 odds with Judge Smith's findings of fact conclusions of
24 law -- excuse me, Judge Crockett findings of fact,
25 conclusions of law. Because what the affirmed

1 Judge Smith order says is that the landowners have a
2 vested right to develop the entire golf course. That's
3 what had -- that's what the question is. The very same
4 kind of arguments that are being made before this Court
5 were made before Judge Smith, and that is that the
6 landowners have no vested rights to develop the
7 property and CC&Rs or other maps or plans prevent the
8 development of the golf course.

9 The affirmed Judge Smith orders say the
10 opposite and answer those questions. The property is,
11 in fact, developable. The property owners have a
12 vested right to develop the property. The Queensridge
13 residents have no rights to the golf course or
14 residential zoned property. And they can do, and they
15 cannot point to maps or public documents that would
16 stop the development. That's essentially the
17 Judge Smith orders that have been affirmed by the
18 Nevada Supreme Court.

19 Your Honor, in your findings of fact and
20 conclusions of law, as I mentioned, you repeatedly
21 reference and heavily rely on the Crockett decision.
22 With respect -- the affirmed Smith orders predate the
23 Crockett decision. Now that that decision has been
24 affirmed by the Nevada Supreme Court, with all due
25 respect, we suggest and ask the Court apply that

1 decision as opposed to the Crockett decision in the
2 case because they're just simply -- those affirmed
3 Smith orders are simply irreconcilable with this
4 Court's decision and with the Crockett decision.

5 As most fundamental this Court and
6 Judge Crockett had concluded that the landowners do not
7 have a right to develop the property, that the
8 Queensridge residents can stop the development of the
9 property, either through maps that they can point to
10 suggesting this is open space or other reasons. And
11 the Supreme Court has affirmed a decision by
12 Judge Smith that says that is not the case. In fact,
13 it is just the opposite case.

14 Your Honor, the -- the Judge Crockett
15 decision, as I mentioned, changes Nevada law by finding
16 that land use governs and trumps zoning.

17 The Judge Crockett decision also improperly
18 held that a nonrecorded conceptual plan is an
19 encumbrance of the property. To this day I've looked
20 for and have asked openly where in the world is the
21 recorded plan that encumbers my client's property.
22 This is Real Estate Law 101. There is no recorded plan
23 that can be an encumbrance on my client's property
24 because it has not been produced, and I'm sure if there
25 was one we would have already heard about it, your

1 Honor.

2 And let me now just move to the public
3 opposition prong of our briefing and the Court's
4 findings of fact, conclusions of law. With respect to
5 your Honor, the public opposition reliance by this
6 Court is erroneous. We noted in our briefing that the
7 public opposition is an insufficient basis for striking
8 or denying applications when, in fact, those
9 applications are consistent with current zoning, as the
10 applications are here.

11 They're in compliance with the land use laws
12 and ordinances, which is consistent with what the staff
13 determined in its report, that they were -- that
14 these -- that these applications were in compliance
15 with the land use laws and ordinances and that, in
16 fact, they are compatible with surrounding properties.

17 When that's the case, now there is no doubt
18 that the city council has discretion to determine what
19 land use ought to occur and not occur, and either
20 approve or not approve applications. They certainly do
21 have discretion to do that. But when you have all
22 three of these factors that are present that, in fact,
23 the applications are consistent with the current
24 zonings, in compliance with the land use, laws and
25 ordinances and compatible surrounding property, that

1 discretion is very, very narrow. Otherwise, you would
2 never be able to develop property in this county.

3 If it's just any whimsical decision, after you
4 have those three factors met, zoning would be a cold
5 comfort to be sure.

6 And if you look at the record, your Honor, in
7 fact, your findings of fact, conclusions of law No. 55
8 makes very clear that the opposition is really based on
9 this open space concept.

10 This idea that this is a golf course. It
11 should stay a golf course. It should remain a golf
12 course. And it's going to have an impact on our
13 community because it's going to change the nature of
14 our community. And we bought the property, relying on
15 the idea that this was open space.

16 All of that, your Honor, has been rejected by
17 the affirmed Judge Smith orders which said
18 notwithstanding any open space designation. Zoning is
19 going to trump that designation. So that opposition
20 and that reason for the opposition falls by the way,
21 your Honor. We cite the City of Henderson versus
22 Henderson Auto Wrecking case for the proposition that
23 the discretion is considerably narrowed by the city
24 council when those three factors are met.

25 Your Honor, then we spent some time on this at

1 the hearing, but the public opposition really rings
2 hallow when, in fact, the Queensridge residents all
3 have CC&Rs which bind them and sign purchase documents
4 which make very clear that the golf course could, in
5 fact, be zoned. It could be zoned commercial. It
6 could be developed commercial. It could be developed
7 residential. Everything that they signed with their
8 purchase agreements and the reported CC&Rs underscores
9 that, in fact, those homeowners knew that the golf
10 course was subject to development.

11 And finally, your Honor, at the Court's
12 decision regarding piecemeal development, likewise we
13 would respectfully suggest is erroneous. Piecemeal
14 development is a standard and criteria found nowhere in
15 Title 19, nowhere in the NRS 278. The 35 acres at
16 issue here is zoned for residential use. And Brad
17 Jerbic made very clear on the record, which we cited in
18 our briefing, your Honor, that the four applications
19 regarding the 35 acres was independent of any master
20 development agreement requirement or discussion with
21 the city council.

22 Not only that, it's highly, highly unusual for
23 a city council or a County commission or another
24 government body to require a developer to come in and
25 develop all the property at once. They are routinely

1 developed in a phased and market-driven manner.

2 Your Honor, so those are the points that we
3 would ask the Court to consider. We'd ask the Court to
4 reconsider its findings of fact and conclusions of law
5 in light of the arguments presented in not only in the
6 opposition on the piecemeal, but also, your Honor, with
7 the findings of fact and conclusions of law of
8 Judge Smith who spent a substantial amount of time
9 evaluating and determining whether or not the golf
10 course community -- excuse me, the golf course property
11 was developable, determined that it was; determined
12 that, in fact, it was zoned RPD7; determined that, in
13 fact, the Queensridge residents could not stop it by
14 pointing to some public map or record; and determining
15 that NRS 278.349(3)(e) trumps -- the zoning trumps the
16 land use subdivision.

17 For those reasons, your Honor, we'd ask that
18 the Court reconsider. Thank you.

19 THE COURT: Thank you, sir.

20 All right, Mr. Ogilvie.

21 MR. OGILVIE: Thank you, your Honor.

22 Your Honor, the only thing that I heard this
23 morning that wasn't briefed and argued at length prior
24 to, during and subsequent to the June 29th hearing
25 before -- June 29th, 2018, hearing before this Court is

1 that Judge Smith's orders is -- is the fact that
2 Judge Smith's orders have been affirmed by the Nevada
3 Supreme Court. Every other argument that was made by
4 counsel today was entertained by this Court and
5 rejected. And specifically and expressly rejected in a
6 detailed findings of fact and conclusions of law that
7 was entered on November 21st, 2018.

8 Again, as was the cause before the Court on
9 June 29th, 2018, the matter before the Court is whether
10 or not substantial evidence supported the city
11 council's decision. That's it. The Court expressly
12 found in 30 pages -- 24 pages through the expressed
13 findings of fact and conclusions of law that, in fact,
14 there was substantial evidence before the Court or
15 before the city council at the time that it denied
16 these applications. And the Court also expressly found
17 that the developer in this case had no vested right to
18 redevelop the golf course.

19 Essentially, your Honor, in 2015 the developer
20 bought a golf course. Yes, it wished to develop the
21 golf course into residential properties, but simply
22 because it wanted to do so gave it no vested right. It
23 bought a golf course; it has a golf course.

24 The city council reviewed the applications,
25 made a determination that there were various bases

1 brought before the city council that were argued at
2 length on June 29th that allow -- that provided for the
3 denial of these applications.

4 The city council denied the applications, and
5 this Court made the proper determination that
6 substantial evidence was before the city council to
7 make that determination of the denial of the
8 applications.

9 The developer doesn't claim today that there
10 was any erroneous findings of fact that need to be
11 amended. Indeed, the only two findings from the
12 findings of fact and conclusions of law entered by this
13 Court that the developer even mentions are
14 paragraphs 12 and 13.

15 Well, if we look at paragraphs 12 and 13 of
16 this Court's determination of the findings of fact,
17 conclusions of law, the Court finds at paragraph 12:

18 "Approximately 212 acres of land in
19 Phase Two was set aside for a golf course with
20 the overall Peccole Ranch master plan, having
21 253.07 net acres for golf course open space and
22 drainage."

23 Well, that was amply supported by the record
24 that was cited by the Court at the end of paragraph 12.

25 And in paragraph 13, the Court found:

1 "Like its predecessor, the master
2 development plan identified the golf course
3 area as being for flood drainage and golf
4 course purposes, which satisfied the City's
5 open space requirement."

6 And again, the Court cites to the record
7 before the city council that supported that finding.

8 So clearly, the Court had the basis, proper
9 basis to make those two findings. Nothing else in the
10 Court's finding of fact or challenged by the developer
11 in the matter before the Court today. Therefore, we
12 submit that the findings were proper, should not be
13 amended, and the motion for new trial or motion for
14 amendment of the findings of fact should be denied.

15 What I heard that was new today was the -- the
16 Nevada Supreme Court's affirmance of Judge Smith's
17 orders, which are attached as Exhibits 2 and 3 to the
18 motion for any trial. Because of that affirmance, this
19 Court is precluded from finding that the applications
20 were properly denied.

21 Well, and I -- I hear over and over again, and
22 not just before your Honor. It's in other briefs filed
23 in other -- in other courtrooms and arguments before
24 other judges, that, in fact, Judge Smith and the Nevada
25 Supreme Court found that the developer has a vested

1 right to develop this property.

2 Well, I challenge the developer to show this
3 Court, show me, in either one of the Judge Smith's
4 orders or in the Nevada Supreme Court affirmance that
5 either Judge Smith or the Nevada Supreme Court
6 determined that there was a vested -- that the
7 developer had a vested right.

8 Now, Judge Smith's orders are a bit lengthy to
9 go through and point out every paragraph and
10 demonstrate -- essentially prove a negative that, in
11 fact, Judge Smith didn't find that the developer had a
12 vested right. The only vested right before Judge Smith
13 was the homeowner, the Queensridge homeowner's claim,
14 that they had a vested right to prevent the development
15 of the golf course in a residential property.

16 That is the only vested right that was
17 discussed before -- or in Judge Crockett -- or
18 Judge Smith's orders. And Judge Smith found that, in
19 fact, because the golf course was not a part of the
20 CC&Rs of the Queensridge CIC that, in fact, the
21 homeowners do not have a vested right to prevent the
22 redevelopment of the golf course.

23 And as you said, accident going through, and
24 if the Court cares -- actually knowing the Court, I
25 suspect the Court has already reviewed it exhaustively.

1 THE COURT: I have it right in front of me.

2 MR. OGILVIE: Judge Smith's orders?

3 THE COURT: Yes, I do.

4 MR. OGILVIE: So again, there's nowhere,
5 nowhere in those orders that there is a discussion of
6 the developer's vested right. There is one sentence in
7 there where Judge Smith addresses the developer's right
8 to develop the property, but there's no discussion
9 whatsoever of a vested right.

10 And so without having to go through there line
11 by line to prove the negative, I'm going to refer the
12 Court to a much easier determination, and that is the
13 Nevada Supreme Court's affirmance of Judge Smith's
14 orders at page 2 of the October 17, 2018, order of
15 affirmance issued in the Robert M. Peccole and Nancy M.
16 Peccole versus Fore Stars matter.

17 The Court states:

18 "This case arises out of a dispute
19 appellants have with the respondents who are
20 planning to develop property on which a golf
21 course is presently located, and which
22 appellants argue is subject to development
23 restrictions under the master declaration of
24 convenience, conditions, restrictions and
25 easements for the Queensridge community in

1 Las Vegas where appellants reside."

2 That is the narrow issue that was before the
3 Court, in addition to the affirmance of the order
4 granting the developer fees against the Peccoles.

5 This was the only, the only issue before the
6 Court is whether or not Judge Smith abused his
7 discretion in determining that the golf course was not
8 subject to the CC&Rs for the Queensridge community.

9 And I would cite to the Court the specific
10 language. And there's only one sentence in here that
11 addresses the merits, the underlying merits of the
12 issue.

13 It's the introductory sentence:

14 "First appellants argue that the district
15 court abused its discretion in denying
16 NRCP 60(b) relief for relying on an invalid
17 amendment to the CC&Rs, and concluding that the
18 golf course community -- or the golf course
19 property was not subject to the CC&Rs."

20 Again, the Court identifies the issue. It's a
21 very limited issue: Whether or not the golf course was
22 subject to the CC&Rs.

23 And the one sentence that addresses the merits
24 in this order of affirmance, the Supreme Court states:

25 "Because the record supports the District

1 Court's determination that the golf course land
2 was not part of the Queensridge community under
3 the original CC&Rs and public maps and records,
4 regardless of amendment, we conclude the
5 District Court did not abuse its discretion in
6 denying the appellants' motion for NRCP 60(b)
7 relief."

8 That's it. That is the sum and substance of
9 the Supreme Court's decision. There is no precedential
10 value as it relates to what is before the Court today,
11 or was before the Court on June 29, and is, again,
12 before the Court today.

13 Again, nothing from Judge Smith nor the order
14 of affirmance from the Nevada Supreme Court addressed
15 any vested right belonging to the developer. Simply
16 whether or not the CC&Rs were included -- or whether or
17 not the CC&Rs included the golf course, which there was
18 determination that it doesn't -- it didn't.

19 That has no bearing on any land use
20 application before the city council.

21 Neither Judge Smith's orders nor the
22 affirmance by the Supreme Court address the City's
23 review of these particular applications. They have no
24 bearing on these, the varied applications, because a
25 determination relating to the CC&Rs have no bearing on

1 a land use application determined or considered by a
2 municipality.

3 Neither Judge Smith's orders nor the order of
4 affirmance addressed the Court's finding of substantial
5 evidence. The fact that substantial evidence was
6 before the city council to deny the land use
7 applications.

8 And neither Judge Smith's orders, nor the
9 order of affirmance, address this Court's specific
10 finding of no vested rights belonging -- that the
11 developer had no vested rights to have the applications
12 granted.

13 And I refer the Court to paragraphs 34 through
14 40 of its findings of fact, conclusions of law
15 beginning at page 17 through page 18, which went
16 through this very analysis to determine whether or not
17 there was substantial evidence before the city council
18 deny the land use applications.

19 THE COURT: Mr. Ogilvie, and I do understand
20 your position. I really and truly do.

21 Here's my question: Are there any issues as a
22 matter of law I should be concerned about as a trial
23 court in this matter as it relates to the application
24 of NRS 78.349 and the provision, and I think that would
25 be (3)(e).

1 MR. OGILVIE: Absolutely. And the Court --

2 THE COURT: And I'm teeing it up for you so
3 you can tell me why I shouldn't worry about that or
4 whether I should worry about that. I mean, I'm going
5 to be really specific there.

6 But go ahead. Tell me what your impression
7 is.

8 MR. OGILVIE: Well, first of all, we argued
9 this for probably two hours on June 29. It was briefed
10 extensively prehearing and post hearing. I mean, this
11 was -- I mean, the developer attempted to beat the
12 Court over the head with this issue. The Court
13 specifically considered it and specifically declined to
14 agree at paragraphs 49 through 54 of its findings of
15 fact and conclusions of law.

16 The Court's specifically found at paragraph 51
17 that NRS 278.349(3)(e) relate to only tentative map
18 applications. That's not all -- that's what is before
19 this Court.

20 So it doesn't even have any application to --
21 it only has application to one of the applications that
22 was denied by the city council. And the Court further
23 made a determination that NRS 278.349 does not confer
24 any vested rights.

25 And we cited to Judge Mahan's determination

1 that came down -- it was issued on December 21st, 2018,
2 asked the Court to take judicial notice. Judge Mahan
3 made the exact same determination as this Court did in
4 its findings of fact and conclusions of law; that, in
5 fact, the developer does not have any vested right to
6 redevelop this property. What Judge Mahan described it
7 as whether or not the developer had a constitutionally
8 protected property interest. Same thing as a vested
9 right.

10 And, in fact, as the Court will read, the --
11 Judge Mahan found expressly that after reviewing the
12 Las Vegas Unified Development Code and NRS 278, that,
13 in fact, the pertinent provisions, and I quote: "Do
14 not contain language that specifically -- or
15 significantly limits the city council's discretion,"
16 and specifically cites to NRS 278.349.

17 And in so doing, Judge Mahan, similar to this
18 Court, found that the discretion that is left to the
19 city council in considering these land use applications
20 provide it with the ability to grant or deny the
21 applications. If it has the -- it the city council has
22 the ability to grant or deny the application, there is
23 no vested right.

24 Counsel argued today that Judge Smith and
25 Judge Crockett's orders are irreconcilable. Clearly

1 that's not the case. Judge Crockett's order dealt with
2 land use applications and a determination that a major
3 modification must be submitted and approved by the city
4 council before it can approve any applications for the
5 redevelopment of this property.

6 Judge Smith's orders have nothing to do with
7 the land use applications. The developer argued in its
8 briefs and today that the City's denial of these
9 applications means that the City's position is the land
10 is not developable. Well, that's not at all the case.

11 City simple said -- pursuant to the -- well,
12 the City didn't say this. But pursuant for
13 Judge Crockett's order, all that the developer has to
14 do is submit a major modification. There's nothing
15 that has prevented the developer from submitting a
16 major modification application. There's nothing
17 preventing it from doing so today.

18 If the major modification application is
19 submitted and approved, then we don't have piecemeal
20 development, which is one of the bases on which --
21 expressed bases on which the City denied these land use
22 applications. And it is one of the bits of substantial
23 evidence that this Court found supported the city
24 council's determination that, in fact, the City wants
25 to avoid piecemeal development; and, therefore, is

1 entitled to require a major modification application.

2 And, in fact, is required under the Las Vegas
3 Unified Development Code to require a major
4 modification application and approve it before it
5 allows redevelopment of the property.

6 Now, the developer argues that there's no law,
7 in fact, it is contrary to development law that a
8 developer must develop a large parcel, a large piece of
9 paper at the same time. That's not what a major
10 modification application would require.

11 The developer can redevelop the golf course
12 property pursuant to the major modification over the
13 next 10 to 15 years if that's what it wants.

14 It's -- the only requirement is that that
15 development, that redevelopment of the golf course, be
16 consistent with that major modification that the City
17 is now requiring. So to say that the developer is
18 being required to develop all the property at a single
19 time is absolute nonsense.

20 The other arguments made in the briefs and
21 today, public-filed opposition is not a sufficient
22 basis for denial. That's expressly contrary to the
23 Stratosphere Gaming case that the Court relied on in
24 its findings of fact and conclusions of law.

25 Again, the only -- the only determination for

1 this Court was whether or not there was substantial
2 basis for the city council to deny these land use
3 applications.

4 Clearly there was. There was public
5 opposition. There was the need -- the need by the city
6 council for an exhaustive, well-planned, development
7 plan for the entire 250 acres. And without that, there
8 should be no granting of the applications.

9 That is substantial evidence. The Court
10 properly determined that it was substantial evidence.
11 There wasn't any abuse of discretion by the city
12 council in denying these.

13 There is nothing in -- new in this motion for
14 new trial or motion to amend, other than the
15 Judge Smith orders that the Nevada Supreme Court
16 affirmance, and I've just -- I believe disabused the
17 Court of any notion that, in fact, there is some
18 preclusive effect by any of those orders.

19 So we -- the City submits that the motion
20 should be denied, and -- save and except for the
21 paragraph 61 through 64 that were the subject of the
22 hearing last Thursday. The findings of fact and
23 conclusions of law that was filed entered on
24 November 21, 2018, should not be amended.

25 THE COURT: Thank you, sir.

1 MR. BICE: Good morning, your Honor. Thank
2 you, again.

3 I'm not going to repeat, obviously, what
4 Mr. Ogilvie said on behalf of the City. There's just
5 some additional points I would like to make on behalf
6 of the intervenors, your Honor.

7 Let's -- let me echo what Mr. Ogilvie pointed
8 out, though. The supposed grounds for being here is
9 the Nevada Supreme Court's -- they use this word very
10 loosely, I would submit, "affirmance" of the decision
11 of Judge Smith.

12 If you look actually at what the Nevada
13 Supreme Court said, the only issues that were on appeal
14 to the Nevada Supreme Court was a Rule 60 motion and
15 attorney's fees award. That was it.

16 And they have an order of affirmance, these
17 consolidated appeals are from the District Court's
18 order awarding attorney's fees and costs and denying
19 Rule 60 relief from a dismissal order in a real
20 property dispute. A dismissal order, your Honor.

21 So Judge Smith's order that they have now
22 trumpeted as the end-all, be-all of which, by the way,
23 the City wasn't a party to that case, nor were any of
24 my clients.

25 And let me almost also disabuse the Court from

1 this word "homeowners." The litigants in the case
2 involving Judge Smith were a husband and wife who are
3 residents at Queensridge but they are not part of the
4 homeowner's group that is involved in this litigation.

5 In fact, your Honor, just so that you know
6 this and it's actually verifiable from the record, they
7 previously were joined with my clients in litigation,
8 but were not because they wanted to go and pursue a
9 legal theory about the CC&Rs that was incompatible,
10 incompatible with what my client's position is. So
11 they are off on their own asserting a legal theory
12 about the CC&Rs only. My clients have never asserted
13 that, nor have the CC&Rs ever been the subject of any
14 litigation in which my clients are involved in.

15 So then look at what the Nevada Supreme Court
16 goes on to say, what they are supposedly affirming.
17 They say we're affirming the District Court's findings
18 of fact and conclusions of law? And we're adopting
19 those? No.

20 All they said is, is that the CC&Rs, they are
21 affirming the District Court's assessments that the
22 CC&Rs do not apply to the property. That is it -- and
23 attorney's fees. That is it.

24 Now, because I have a little bit of an
25 advantage by being involved in so many other cases with

1 this property developer, I know also an inconsistency
2 by the property developer, and they're coming to you
3 and telling you that Judge Smith's order is somehow the
4 end-all, be-all analysis. Because they are currently
5 appealing Judge Crockett's adverse ruling to them, one
6 would think, your Honor, they'd be telling the Nevada
7 Supreme Court, Hey, Judge Crockett's decision is
8 completely incompatible with Judge Smith, just like
9 they're telling you.

10 Are they telling the Nevada Supreme Court
11 that? No.

12 They, in fact, submitted an opening brief in
13 the Judge Crockett's decision challenging it, and at no
14 point in time have they contended, Oh, this affirmance
15 of Judge Smith's ruling is the end of Judge Crockett's
16 decision. They haven't done that, and they won't do
17 that.

18 And you know why they won't do that? Because
19 the Nevada Supreme Court knows full well that those
20 issues that are in Judge Smith's case were
21 fundamentally different than the decision that was in
22 front of Judge Crockett. The issue in front of
23 Judge Smith was CC&Rs, which are private property
24 agreements, which the City will always tell you they do
25 not consider as part of a zoning application, whether

1 for approval or denial. Because it's a private
2 agreement amongst private parties.

3 The issue in front of Judge Crockett, on the
4 other hand, was what other processes, but for the City
5 code in terms of assessing whether or not a party can
6 move forward with the land use application. When you
7 have land that is being sought to be redeveloped right
8 smack-dab in the middle of a master planned-community.

9 What does the City provide for under those
10 circumstances? Two fundamentally different
11 questions --

12 And in that case --

13 THE COURT: And, Mr. Bice.

14 MR. BICE: Yes.

15 THE COURT: -- I don't mind telling you this,
16 I'm not really that much concerned about Judge Mahan's
17 order, to be candid with everyone.

18 MR. BICE: Very good.

19 THE COURT: Because I look at it from this
20 perspective, he had -- he was charged with a very
21 limited decision.

22 MR. BICE: Yes.

23 THE COURT: As it relates to the application
24 of CC&Rs to the issue, which was presented in front of
25 him.

1 MR. BICE: And that's it.

2 THE COURT: I get that. But here's my big
3 issue. And it's not really a big issue. You
4 understand this -- look at it from my lens.

5 MR. BICE: Um-hum.

6 THE COURT: I just want to make sure I get
7 that right.

8 MR. BICE: Absolutely.

9 THE COURT: So anyway, is there anything I
10 should be concerned about based upon my decision in
11 this case as it relates to the application of
12 NRS 278.349(3)(e)?

13 MR. BICE: Yeah.

14 THE COURT: And the reason why I am bringing
15 that up is this: I understand what my charge was. I
16 want to make sure everybody gets that. I had to make a
17 determination as to whether or not there was
18 substantial evidence in the records for decision of the
19 city council. That's it, right?

20 But I want to make sure that when I come to
21 that conclusion, I didn't commit any errors along the
22 way.

23 MR. BICE: Right.

24 THE COURT: And I don't mind saying that
25 because I like talking. I listen. I just want to get

1 it right. That's -- at the end of the day, that's all
2 I want to do is get it right.

3 MR. BICE: And I want you to get it right.

4 THE COURT: Right.

5 MR. BICE: Obviously.

6 THE COURT: And it saves everyone time, money
7 and those types of things.

8 MR. BICE: Absolutely, your Honor.

9 THE COURT: It really does. Because I like --
10 when I look back, I don't remember any -- it's funny.
11 You don't know what the Nevada Supreme Court does, will
12 do with a specific issue. Sometimes they'll go right
13 or left.

14 I had a decision came back and where they took
15 the position. I guess, you could say they took a
16 position that wasn't being advanced by any party to the
17 case. And they came out of nowhere with this kind of,
18 like, remedy.

19 And so, you know, what is a trial judge to do
20 when the remedy they tee up wasn't even --

21 MR. BICE: Right.

22 THE COURT: -- requested by the parties? But
23 at the end of the day that's kind of how I'm looking at
24 this. I just want to make sure I get it right.

25 MR. BICE: Absolutely. So let me address that

1 twofold, your Honor.

2 THE COURT: Yes.

3 MR. BICE: 728.349.

4 THE COURT: Right.

5 MR. BICE: All right. That is a tentative map
6 provision under state law that creates a default rule
7 when you have a conflict in zoning and a conflict in
8 the general plan. All right. A conflict.

9 But let me set that --

10 THE COURT: And, I guess -- and for the
11 record -- if you look at the title action on tentative
12 map by governing body, consideration and determining an
13 action on tentative map final disposition.

14 MR. BICE: Correct.

15 THE COURT: Right.

16 MR. BICE: It's a consideration for the City.
17 And this is where I'm going to go. I got two points to
18 make on this.

19 THE COURT: Okay. Yes.

20 MR. BICE: One, on the face of the statute it
21 just doesn't even apply here, okay. Because they're
22 seeking to modify this land -- they're trying to claim
23 some sort of this grants them vested rights, because
24 the way you get vested rights is the City has no
25 choice. The City is basically bound to give you

1 approval. That's what they're arguing.

2 That's the same argument they made in front of
3 Judge Mahan which Judge Mahan just recently rejected.
4 They made the exact same argument under the exact same
5 statute, mind you. You made this exact same pitch,
6 that the City is bound because we have zoning on the
7 land.

8 And let me tell you why that is not the law,
9 your Honor.

10 Number one, just look at the statute. Talks
11 about tentative map and it talks about it being a
12 consideration. Well, what the City's point here is
13 very simple. Number one, there is no conflict between
14 the zoning and the land use of general plan. You know
15 how we know that, your Honor? We know that because who
16 was it that designated this as open space? Was it the
17 City? No. It was the developer's predecessor from
18 whom they bought the land subject to those
19 restrictions.

20 The developer went into the City and said,
21 Here's what we would like you to approve. Look at this
22 nice golf course. We don't need any public parks
23 because we're going to have all this open space and
24 golf course area. We want you to approve that, City.

25 And that's what happened.

1 So, your Honor, the City has designated
2 that -- and, by the way, the City saw all this evidence
3 in the city council meeting as well. Every one of the
4 master planned-community in this community. Take
5 Canyon Date as an example, or the other one was The
6 Lakes were examples that were in front of city council.
7 As just examples, all of that property is also zoned
8 for residential. But they're zoned for residential
9 because the entire area is zoned. And then you, as the
10 developer, are representing, This is what I want you to
11 approve.

12 So the open space decision that's on this
13 land, the parks, recreation, PROS as it's otherwise
14 known as, was specifically because the developer of the
15 land sought it and used it as a justification for we
16 didn't need to develop -- we don't need to set aside
17 land for public parks, because we're going to have
18 plenty of this property as parks, recreational open
19 space. That's what's in the record. And that's what
20 the City approved.

21 What has happened now is that a land purchaser
22 bought land subject to those restrictions and wants to
23 remove them. And there's a process of the City code
24 for doing that. And that's what Judge Crockett's
25 ruling was. There's a process you have to follow if

1 you want to do that.

2 You didn't follow that process for whatever
3 reason, but you chose not to follow it. So you can't
4 come in and say, Well, we want to now eliminate the
5 parks, recreation, open space over this property when
6 you bought it, it was subject to it. And you knew it.

7 And that was Judge Crockett's point. You knew
8 exactly what you were buying. You bought land and you
9 thought that you could politically, as the developer,
10 you thought you had the political muscle to get it
11 changed. And you didn't want to comply with the code.
12 Because there's various requirements that you have to
13 comply with under the code, and the developer doesn't
14 want to comply with them.

15 So where this comes down to, your Honor, is
16 278.349 isn't even implicated here because there is no
17 conflict. This property is zoned, your Honor, RPD7.
18 "RPD" means "residential planned development."

19 That doesn't mean you have a right to develop
20 property. That means that you have the right to apply
21 to the City. There is no conflict under this statute
22 in what the zoning is on the property and what the
23 general plan is on the property. In fact, the general
24 plan decision is exactly what the develop at the time
25 sought.

1 And it is exactly as set forth in the master
2 plan that they lodged with the City. When they
3 submitted this application, your Honor, the developer,
4 they showed the City a bunch of plans, including how
5 all this land was going to be designated as recreation
6 open space golf course and drainage.

7 This was the developer that sought those
8 designations. We just now have a different developer
9 who bought the property and now wishes to change it.
10 So the only question in this case in front of His Honor
11 is does the City have the discretion under the law to
12 tell a developer, No, you have to comply with certain
13 requirements when you're going to try and come into an
14 existing community and tear up all the land and say,
15 Well, I now want to develop it for some -- a different
16 use than what the City previously approved.

17 And the -- and the fact is under the law,
18 absolutely the City has that discretion. The City has
19 the discretion, and under the law to make them do
20 certain things. And that Mr. Ogilvie has addressed
21 that in detail, and I don't need to go over it. He can
22 speak better on behalf of the City than I ever could.

23 But this is in conformity with the zoning.
24 There's no conflict between the zoning in this case and
25 the general plan.

1 If -- by the way, your Honor, if you were to
2 buy this argument, then every golf course in this
3 community, every one of them, Queensridge -- or not
4 only Queensridge, Canyon Gate, The Lakes, where The
5 Lakes are at there at Sahara and Fort Apache area. All
6 of that property underneath the water is also zoned.
7 That property, I believe, it was zoned RPD3, I think is
8 what the record is. I can't remember exactly.

9 But if you were to accept this argument, then
10 all of those communities are just subject -- the
11 property just could be completely wiped out under their
12 theory because they now have vested rights.

13 Interestingly, Judge Mahan rejected that
14 argument. This Court previously rejected this
15 argument. And it's completely inconsistent with
16 Judge Crockett's decision. And Judge Smith's decision
17 doesn't even address it.

18 So our point here, your Honor, is very simple.
19 The record amply supports what the City did. And on
20 the claim of issue preclusion, your Honor, they are
21 absolutely bound. They litigated this exact question
22 in front of Judge Crocket, involving the exact same
23 parties. Unlike in Judge Smith's case where my client
24 wasn't there, and the issue wasn't even litigated,
25 here, the issue of do you have to do a major

1 modification in order to change that PROS decision on
2 the land was actually litigated by the exact same
3 plaintiff that is in this courtroom.

4 And that being the case, they are bound by
5 issue preclusion. They have to take that decision up
6 to the Nevada Supreme Court, which they have done, and
7 they can litigate it up there. They cannot come in and
8 say, Well, let's just see if we can go find any
9 District Court judge who will just give us a contrary
10 ruling.

11 We've litigated --

12 THE COURT: And I think specifically you're
13 relying upon Alcantara.

14 MR. BICE: I'm sorry?

15 THE COURT: Alcantara case.

16 MR. BICE: Your Honor?

17 THE COURT: That deals with the issue of issue
18 preclusion.

19 MR. BICE: Yes.

20 THE COURT: Yes.

21 MR. BICE: But I don't remember exactly, your
22 Honor, because we briefed this issue to you
23 extensively.

24 THE COURT: I understand. But I went back and
25 read it just to refresh your recollection as far as the

1 application of the case in this matter.

2 MR. BICE: But they have litigated this
3 better -- this is the exact question that was in front
4 of Judge Crockett. And the attempted distinction that
5 you heard today from counsel that, Well,
6 Judge Crockett's case involved the zone change and this
7 one doesn't change that one iota. They were seeking a
8 major modification because it's a plan, your Honor.
9 It's a plan that the developer at the time sought
10 approval from the City on and the City approved it.
11 What the code provides is you can't change that plan
12 without seeking a modification of it by the City,
13 whether it's a rezoning or a change in zoning or not.

14 I thank the Court for its time.

15 THE COURT: Thank you, sir.

16 MR. OGILVIE: Your Honor, if I could.

17 THE COURT: Yes.

18 MR. OGILVIE: In answer to your specific
19 question, I referenced the Court vaguely to the Court's
20 findings of fact and conclusions of law. I want to
21 address -- advise the Court of the specific two
22 paragraphs that I was referring to.

23 Paragraph 53 in which the Court cited the
24 American West Development case that:

25 "Municipal entities must adopt zoning

1 regulations that are in substantial agreement
2 with the master plan."

3 And that's also quoting the NOVA Horizon case.

4 And then the Court also, in paragraph 54,
5 cited two provisions of the City's Unified Development
6 Code, Section 19.16.010a, which states:

7 "Except as otherwise authorized by this
8 title, approval of all maps, vacations,
9 rezonings, cite development reviews, special
10 use permits, variances, waivers, exceptions,
11 deviations and development agreements shall be
12 consistent with the spirit and intent of the
13 general plan."

14 And then UDC 19.00.040 states:

15 "It is the intent of the city council that
16 all regulatory decisions made pursuant to this
17 title be consistent with the general plan."

18 THE COURT: Thank you, sir.

19 All right.

20 MR. HUTCHISON: Thank you, your Honor.

21 Your Honor, just to note a couple things.

22 One in this case itself, for the Court to
23 revisit a finding of fact or conclusion of law that was
24 prepared for the Court's consideration by parties in
25 this case, would it not be unusual? The Court already

1 had to do that in regard to the inverse condemnation
2 matter.

3 What we're asking the Court to do now is take
4 a second look at and reconsider the NRS 278.349(3)(e)
5 determination, as well as the other points that I made
6 previously, your Honor.

7 But my point is there would be nothing that
8 would suggest that the Court could not go back and take
9 a look at and see, like you said, are you getting it
10 right or not. Are you really getting it right.

11 Let me just start off, then, Judge, and go
12 right to NRS 278 --

13 THE COURT: And so -- all right. And I get
14 that because I -- you want to get it right as a trial
15 judge.

16 MR. HUTCHISON: You do, yeah.

17 THE COURT: Here's my next question.

18 Why doesn't the city council, based upon the
19 totality of the petitions and the entire project,
20 specifically have discretion based upon a determination
21 of the evidence to reject the application? I mean
22 that's, really and truly, what it comes down to.

23 Because I -- at the end of the day, I made a
24 determination that there was substantial evidence in
25 the record to support the findings of the -- or the

1 decision-making of the Las Vegas city council. And
2 that's kind -- that's where the rubber meets the road.

3 And I was thinking about it because when you
4 talk about a vested right, if that was the case, then
5 we wouldn't have zoning. I mean, we would have zoning,
6 but we wouldn't have applications for permits and the
7 like as we go step by step and we develop properties;
8 right?

9 I mean, you know, because I was thinking just
10 because you have -- like, for example, RPD7 and then I
11 think we had a long discussion in the prior hearings
12 about what specifically that meant. And it's a zoning
13 classification and I understand that.

14 But I'm looking at it from, you know, did the
15 city council, under the facts of this case -- and I do
16 understand what Judge Crockett and his decision, and we
17 have Smith and we have Mahan. There's a lot of moving
18 parts here.

19 But as a trial judge, and I think it's
20 important for everybody to understand this, when I look
21 at designations, for example, I'm not really concerned
22 about what other trial judges do. My only concern
23 regarding whether other trial judges do, could that
24 have a potential legal impact on my decision-making,
25 you know, for example, from an issue preclusion or

1 claim preclusion perspective.

2 But I've had a lot of cases where judges were
3 going all different ways. Like, in the William's case
4 it dealt with medical causation. That case went up on
5 appeal, and we had two trial judges -- I was one of
6 them -- that my decision was diametrically different
7 than on the other trial judge, and both cases went up.
8 And to me it was an easy call dealing with medical
9 causation. And the Supreme Court agreed with me on
10 that specific issue.

11 So I'm never worried about what other
12 people -- I mean, other judges are doing. My biggest
13 concern is making sure that when it's done, that I got
14 it right. That's all I'm really concerned about.
15 Right.

16 I really -- I don't mind being out there as an
17 outlier. Doesn't bother me if I think I'm right.
18 That's all I can say, you know.

19 MR. HUTCHISON: Yes.

20 THE COURT: And I put forth the efforts to
21 come to that conclusion.

22 So here I'm looking at it, and I understand
23 both sides. I know we have Smith. And we have all
24 these cases out here. But ultimately why is this any
25 different than any petition for judicial review?

1 MR. HUTCHISON: Yeah.

2 THE COURT: Right?

3 MR. HUTCHISON: It's -- it is a petition for
4 judicial review. You have to look at substantial
5 evidence in the record.

6 THE COURT: Right.

7 MR. HUTCHISON: Let me tell you, Judge. Let
8 me address the record why it is.

9 First off, I think everybody in this courtroom
10 agrees that the city council doesn't have unfettered
11 discretion to either deny or grant an application. If
12 that's the case, why even have an application process?

13 THE COURT: I agree 100 percent --

14 MR. HUTCHISON: Right --

15 THE COURT: -- on that proposition. I think
16 every lawyer here agrees with that.

17 MR. HUTCHISON: Right. So there's -- there
18 isn't this unfettered discretion. Otherwise, what's
19 the purpose of a petition for judicial review?

20 So, Judge, here is what makes this case
21 different and what makes this case right for your
22 determination that the city council abused its
23 discretion. And this is this: One -- and this is in
24 the record. It's before the Court. We had -- I know,
25 I don't want to repeat. We had a long hearing on this,

1 but it's in the record with all the petition for
2 judicial review briefing on this.

3 But, Judge, what we have in this case is we
4 have four applications that were: One, consistent with
5 current zoning. No question about that. They weren't
6 coming in looking for a zone change. They weren't
7 coming in looking for some different use permit that's
8 going to be different than what the actual zoning
9 requires and permits. They were coming in saying, I
10 want to develop 35 acres for residential use, with --
11 squarely within the zoning.

12 Next, they were in compliance with the laws
13 and the ordinance governing land use applications and
14 the land use on that previously zoned property. How do
15 we know that? Because in the record the City staff
16 made an extensive determination about that. That's
17 their job, is to go out and say, We're the staff.
18 We're the professionals. We know this stuff.

19 Does all -- do all these applications line up
20 and comply? And if they don't, then frankly the
21 developer gets with the staff and they do it -- they do
22 whatever they're required until it complies. But the
23 staff is very clear in their reports before the Court
24 that all of the laws in terms of NRS 278 and Title 19,
25 as far as the ordinances, were implied with and

1 consistent with what this application set forth.

2 And then the final point is, as the staff
3 further found, that these applications were compatible
4 with surrounding property. So it's not like they're
5 coming in looking for a zone change. They're not
6 coming in with something that's completely incompatible
7 with the joint properties. They're not coming in with
8 something that's a violation 278 -- NRS 278 or
9 Title 19. The staff went through all of that and
10 answered every single one of those questions, said,
11 They're in compliance. They're compatible. Consistent
12 with zoning.

13 Now, that's a different situation than a lot
14 of these other cases that have been cited to show that,
15 Hey, the city council has got a lot of discretion.
16 Well, sure you've got discretion if it's not compatible
17 with the adjoining property, if it's in violation of
18 278 or a Title 19. If, in fact, it's not consistent
19 with zoning.

20 But, Judge, if you go out or I go out or
21 anyone in this courtroom goes out and buys a piece of
22 paper and says, I'm going to buy a piece of property
23 that's consistent with what I want to build in terms of
24 zoning. I'm going to comply with all the laws. I'm
25 going to be compatible with the joint property owners.

1 If that doesn't give me some -- some, you know, some
2 rights to develop, what does?

3 THE COURT: Well, here's my next question.
4 And it's coming back to me now because this is one of
5 the issues I was considering.

6 Understand, that -- and I forget the exact
7 acreage. I just don't remember specifics. I think
8 this involves 33 parcels. But what happened here
9 factually is somewhat of a different scenario. And
10 what I mean by that is the developer came in and
11 purchased -- how many acres was it?

12 MR. HUTCHISON: 250.

13 THE COURT: 250 acres.

14 MR. HUTCHISON: Total, with the golf course.

15 THE COURT: Yeah. Total. And then it's my --
16 and tell me if I'm wrong or not.

17 MR. HUTCHISON: Yeah.

18 THE COURT: But it's my recollection that it
19 was at that -- and once they purchased the 250-plus
20 acres, they were all subject to the master plan. They
21 all had zoning and the like, right?

22 MR. HUTCHISON: Well --

23 THE COURT: Am I missing something?

24 MR. HUTCHISON: So what happened was the
25 purchase of the 250 acres, yes. Before purchasing the

1 250 acres, they are going to the City and say, Do --
2 what -- what is this 250 acres zoned for?

3 They get a letter, a zoning letter from the
4 City saying, It's zoned for residential.

5 Thank you very much. Now I'm going to come
6 and tell you what my plans are. On this 17 acres, I
7 want to develop multi-family and I want to have some
8 commercial. On these different pieces of property, I'm
9 going to develop residential. Start it off with very
10 large estate properties and then change because the
11 City and the -- and the property owners had
12 negotiations, discussions.

13 And the City said, How about we -- how
14 about -- how about we have this entire 250 acres
15 subject to be a master development agreement?

16 And my client said, If that's what the City
17 wants, then we're willing to go along.

18 And so -- and so there was a master
19 development agreement developed or discussed, never was
20 finalized because there was always the neighbors who
21 came in and said, We're going to oppose any
22 development.

23 That's on the record. That's public
24 statements that the neighbors have said repeatedly.
25 Not one house will ever be built here.

1 So as a result of that, my client said, Well,
2 we can't go with the entire 250-acre master development
3 agreement here, let's just go with the individual
4 parcels and let's just go with the existing zoning.

5 THE COURT: So here's my question. In making
6 its decisions, doesn't the city council have a right to
7 look at the history of the development? And the reason
8 why I feel that's important, as we all know, this
9 was -- this wasn't a scenario where you had 250 acres
10 of raw land without any development around it.

11 MR. HUTCHISON: Sure. Sure.

12 THE COURT: This was a scenario that was
13 fairly well developed. I mean, it had been there for
14 years, and you had the Queensridge and you had all
15 these --

16 MR. HUTCHISON: The towers.

17 THE COURT: The towers.

18 MR. HUTCHISON: Tivoli across the street.

19 THE COURT: Right.

20 MR. HUTCHISON: Right. And that is exactly
21 what the director of planning addressed with the city
22 council. When the city council said -- and Brad Jerbic
23 said to them in the June 17th hearing, your Honor, Is
24 there a requirement for a major modification on this
25 property?

1 And the planning director went through the
2 history of this property. Said, There have been six
3 different changes, applications, developments on this
4 property, and not one -- including Tivoli across the
5 street, which is all commercial, including the towers,
6 which is heavy density residential living and complete
7 changes to the residential nature.

8 And the director of the planning department
9 said, Let me go through the history of the property
10 with you. We've never required a major modification
11 ever. Ever.

12 And Brad Jerbic said to him, who's been city
13 council for decades, Well, I want that put on the
14 record.

15 So he put that on the record and said, Given
16 the history of this property, I'm telling you we did --
17 we never required a major modification.

18 Now Judge Crockett says, You got to have a
19 major modification.

20 And it's inconsistent, Judge. I know you
21 don't care necessarily what Judge Crockett says --

22 THE COURT: Yeah.

23 MR. HUTCHISON: -- specifically, but all I'm
24 saying is, is that a consideration? The answer is yes.
25 And it cuts it completely in favor of my clients.

1 You should not have to use a major
2 modification vehicle, which is completely inapplicable
3 to what he's doing on 35 acres of residential property
4 in order to develop the property. That is an error
5 that the city council made. That's abuse of their
6 discretion as demonstrated by their own lawyer, their
7 own planning director. You know, talking about
8 political muscle, this is really what it got down to.
9 You got people that's became political.

10 People didn't like the fact that my client
11 wanted to develop the property. I understand that. We
12 deal with politics all the time.

13 So the city council completely changed their
14 position, which was we don't require major
15 modification. Now somebody else gets elected and says,
16 We're not going to develop that property, and now
17 suddenly a major modification is required.

18 And they argued that in front of
19 Judge Crockett when they had not -- when they had not
20 argued -- they argued the opposite in front of
21 Judge Crockett, and now argued that in front of you as
22 well as their Courts.

23 So, yes, Judge, the history can be an
24 important factor and, in fact, it cuts in favor of the
25 developer.

1 But again, Judge, I keep getting back to this
2 point. It's consistent with zoning. It's consistent
3 with zoning. It's in compliance with state law and
4 local ordinances. It's compatible with the adjoining
5 property.

6 Your -- your discretion is narrow now. It's
7 very, very narrow. And what they really rely on --

8 THE COURT: So does -- so does -- so is this
9 true? And this is where the rubber meets the road, I
10 don't mind telling you.

11 Here we have a scenario where now you're
12 saying that the discretion of the city council is
13 limited based upon an assertion of a vested property
14 right. I assume that -- at the end of the day that's
15 what the issue is.

16 But I'm looking at it from this perspective,
17 and because understand this, my decision-making is very
18 limited, right?

19 MR. HUTCHISON: True.

20 THE COURT: As far as the trial judge under
21 the facts and circumstances of this case. I just have
22 one marching order based upon the existing case law.
23 And that's make a determination as to whether or not
24 there's substantial evidence in the record to support
25 their -- the findings of the city council.

1 I could disagree with their ultimate
2 determination. Everybody can agree with that, right?
3 But that's not my role to disagree. I'm just looking
4 at it through one lens. Was there enough?

5 And I remember reviewing some of the
6 transcripts before the city council meetings regarding
7 this issues, and it appeared to me that my impression
8 was there was an overwhelming concern by certain
9 members, specifically the mayor of Las Vegas, regarding
10 this property. Because at one point it was 250-plus
11 acres of golf course and park-like areas, open areas.
12 And just as important, part of it had been designated
13 as a -- designed or whatever.

14 And understand, I wasn't a "real property land
15 use lawyer," you know, so I might not get all the terms
16 of art, but it was a big concern of theirs.

17 And so it appeared to me, and this was my
18 impression when reviewing all the transcripts, that
19 they said, Look, we want to do this together. Because
20 when this property was bought, it was all together.

21 And consequently, we just want to make sure
22 that when we develop it, we want to make sure that we
23 have some sort of cohesive plan as it relates to the
24 development.

25 For example, hypothetically in this case, this

1 is what 33 acres? Is it 33 acres?

2 MR. HUTCHISON: 35.

3 THE COURT: 35 acres. They want to make sure,
4 Okay, we do 35 now. What about the next 17? What
5 about down the road? Does that -- and they didn't want
6 to have a "moving target." I guess, maybe that is a
7 good way to look at it. They just wanted to make sure
8 that, you know what, let's attack this in one respect
9 and let's do it right.

10 But just as important too, it was my
11 recollection, and it's been a while since I've read
12 this, that the parties were in the stage of
13 negotiations at the time when this happened; right?

14 And the city council just wanted to -- I
15 guess, they were trying to get it right, you know. And
16 I understand there might be disagreements on that. But
17 that's not my -- I'm not here to decide that.

18 MR. HUTCHISON: Yeah.

19 THE COURT: I'm not.

20 But go ahead, sir.

21 MR. HUTCHISON: Your Honor, a couple of points
22 to follow.

23 THE COURT: And that was just my impression.

24 MR. HUTCHISON: Yeah.

25 THE COURT: If I'm wrong in my impression,

1 someone can point that out for me. It's been a while
2 since I read that.

3 MR. HUTCHISON: Well, I want to address
4 directly why it is that -- why can't the city council
5 just simply exercise its discretion and move out of
6 here, because they can do whatever they want. And of
7 course they can't do whatever they want.

8 THE COURT: No, they can't.

9 MR. HUTCHISON: Right. They can't do whatever
10 they want.

11 And so the other thing is what the limitations
12 are on them? Well, the limitations on them are the
13 law. There are development standards and requirements
14 under both Nevada statutory law as well as the City
15 ordinance law.

16 So this -- for example, Judge, this idea that
17 having a master development agreement. Where is that
18 as a requirement, or where is that that you have to
19 develop all 250 acres and you can't just develop 35 of
20 your acres, that you have to come in a master
21 development agreement? It's not under State law. It's
22 not under Title 19. In fact, it's not the way that
23 most properties develop in this county, as I had
24 mentioned earlier.

25 So, your Honor, what limits their discretion

1 is State law. What limits their discretion is City
2 ordinance. And I've just described to you, as I said,
3 all these applications were consistent with current
4 zoning, compliance with land use, laws and ordinances
5 and compatible surrounding property.

6 So then you say, Okay. What else did they
7 rely on? Well, they also relied largely on opposition.
8 And you've got a lot of homeowners coming in there and
9 they're opposing it. And the Court, in fact, said in
10 its Findings of Fact No. 55 that a large part of that
11 opposition was based on this open-space concept.

12 How else can -- how else can the city council
13 abuse their discretion? By making decisions not based
14 on law.

15 That's where we get back to NRS 278.349, your
16 Honor. The city council, this Court, can't misapply
17 that law and say, Well, the fact that this is open
18 space, the fact that this is a golf course designation
19 on some master plan, whether it's the City's master
20 plan or whether it's the Peccole Ranch master plan,
21 which we don't think even applies.

22 But regardless you then say, All right. Is
23 there law on this? Yes, there's law on this.

24 And the idea that these are not incompatible
25 is simply not accurate, your Honor. You've got zoning

1 that says it's residential. You've got a Las Vegas
2 master plan that says it's PROS. It's park, recreation
3 and open space. If that's not inconsistent, I don't
4 know what it. PROS, park, recreation and open space,
5 versus residential.

6 Now, counsel says, Well, wait a minute. It's
7 not incompatible because, you know, it was really the
8 developer's idea to put that designation on the master
9 plan. Zero evidence in the record on that. I mean
10 zero.

11 And as a matter of fact we all know, in fact,
12 to do that they would have to pass an ordinance in
13 order to designate a part -- a portion of a master plan
14 as a PROS. Just show us the ordinance. Just show us
15 the ordinance. Where is that ever passed?

16 Brad Jerbic said in an open city council
17 meeting, We can't show it to you. We're not even sure
18 it was placed on here legally.

19 But then he said this, Judge. It doesn't
20 matter. Zoning trumps master plan designations.
21 Zoning trumps master plan designations.

22 Before this case, I thought that that was well
23 settled. We briefed this extensively, your Honor. To
24 the extent you want to make sure you get it right, I
25 would just invite the Court and your clerk to go back

1 and look at how we briefed this. Your Honor,
2 previously in the petition for judicial review points
3 and authorities we pointed out the legislative history
4 of this.

5 We pointed out the Attorney General's opinion
6 on this. We pointed out judicial decisions on this,
7 your Honor. And we would ask the Court to go back and
8 look at that.

9 You can't as a city council --

10 THE COURT: Okay. But assuming I even accept
11 that that argument --

12 MR. HUTCHISON: Yes.

13 THE COURT: -- right, notwithstanding that,
14 that doesn't take away the discretion of the city
15 council to ultimately make a determination as to a land
16 use application; right?

17 MR. HUTCHISON: It takes away their discretion
18 to make a land use application determination on the
19 basis that they can't -- they can't change the
20 character of the golf course because it's designated
21 open space. And that is the thrust of the entire
22 opposition. And it's the thrust of the entire
23 political environment surrounding this. And it's the
24 thrust of the city council's decision. They don't want
25 this thing developed because there are powerful people

1 in Queensridge that say, I want a gold course.

2 And it says open space. A golf course on a
3 map somewhere and you can't change without a major
4 modification.

5 And let me just address this point here, your
6 Honor. Why don't we go back for a major modification?
7 Because the Queensridge residents have already said on
8 the record, Make them go back in for a major
9 modification. Make them go back in for an application
10 on a major modification, because then we'll take away
11 their zoning. And they won't even have zoning rights,
12 because they're going to come up with some, you know,
13 argument about the land use and the counts.

14 And then -- and then -- and then the city
15 council is going to say, you know, We know we gave the
16 residential. Now we're changing it.

17 This is a complete trap for the developer to
18 get them back in to do a major modification to open up
19 zoning. They know darn well we got residential zoning.
20 They don't like that. They want to then have the city
21 council go in and say, Oh, you got a major
22 modification. Now we're going to zone it differently.

23 That's why we're not going to go back in,
24 Judge. That's why we're fighting so hard on the major
25 modification. And that's exactly why the other side is

1 fighting so hard to get the major modification, even
2 though, as their own planning director said, the City
3 has never required this within the area including
4 Tivoli, which is a major commercial development,
5 including the towers at Queensridge, another major high
6 density residential development. Never has there been
7 a major modification required.

8 Why? Because historically this has not been
9 something that has fallen within the major modification
10 criteria. One, it's never -- it's not designated by
11 the City as a master-planned community. It has to be a
12 major modification.

13 Two, it's not a planned development district.
14 It's a residentially planned development. Completely
15 different. Completely different sections of the code.

16 Peccole Ranch master planned-community has
17 never adopted or annexed in the golf course. No one is
18 paying fees. No one -- no one is paying dues. There's
19 no record that shows the annexation.

20 So for all these reasons, Judge, there has
21 never been a major modification required. That's what
22 Judge Crockett required. That's what the city council
23 is requiring now. They're also basing -- and they're
24 basing all this on that PROS designation, which the law
25 says doesn't matter.

1 Why? Because you have -- you have -- you have
2 property rights under your existing zoning. We go in
3 for an existing zone and a compatible compliant
4 application, Judge, that -- those applications should
5 have been granted because the opposition is based on
6 the PROS, the decision is based on the PROS, and all of
7 those factors that the -- that the city council said
8 cuts against the applications, flow from PROS,
9 including the master plan, the master development
10 agreement, which is nowhere to be found in the law.

11 And, in fact, which Brad Jerbic, their own
12 city council, long time city council, said it was
13 completely independent consideration than the four
14 applications before the Court.

15 Your Honor, I don't want to go -- the only
16 other thing that I would just do, Judge, just -- just
17 for purposes of the record and just for your benefit, I
18 want to just reference the Judge Smith's findings and
19 conclusions on pages 14 through 16 of our -- of our --
20 of our brief, your Honor.

21 And unless the Court has other questions --
22 I -- I just got to get to this too, Judge.

23 Counsel argued that, you know, every golf
24 course in the community, every golf course in the -- in
25 the valley is going to be affected by this. That --

1 it's just not the case. This is a unique property.
2 It's not governed by the CC&Rs for the adjoining
3 property around it.

4 All the other -- virtually every other golf
5 course community with those adjoining properties, the
6 golf course and the property have been annexed in part
7 of the CC&Rs. This is different than that. Completely
8 different than that. And the -- and/or the HOA
9 actually owned the golf course.

10 So the idea that this would somehow -- your --
11 your -- your decision to reconsider would somehow
12 affect all these golf courses across the county is
13 simply not supported factually by the record.

14 And I'll just make the final point here,
15 Judge. Even if counsel is right that there was somehow
16 some sort of designation of open space by the City, in
17 2001 the City -- we briefed this. As a matter of fact,
18 we gave this as a handout to your Honor at the hearing.
19 The City passed Ordinance 5353 which undid everything
20 and said anything inconsistent with RPD7 zoning is
21 hereby repealed. RPD7 is on this property. That was
22 an actual ordinance.

23 As opposed to counsel's arguments saying that,
24 in fact, this was something that was designated by --
25 by the developer and the City did it at their request.

1 There was no subsequent ordinance. They can point to
2 no ordinance showing PROS on the master plan, your
3 Honor.

4 Thank you very much. Unless your Court has
5 further questions for me.

6 THE COURT: I don't. I don't have anything.

7 MR. HUTCHISON: Thank you, your Honor.

8 THE COURT: Anything further you want to add?

9 MR. OGILVIE: No, your Honor.

10 THE COURT: All right. I just want to make
11 sure. What I'm going to do is I am going to take one
12 just quick look at the application of the statute I've
13 talked about. I'm not -- I'm going to take one last
14 look at it, and I'll get you -- it's not going to be a
15 very long minute order, as far as what my decision is.

16 Does everybody understand that?

17 MR. OGILVIE: Your Honor, in doing so, the
18 only thing that I would also direct the Court to is
19 NRS 278.250(2).

20 THE COURT: Let me write down, Mr. Ogilvie.

21 278?

22 MR. OGILVIE: 250(2).

23 THE COURT: I understand.

24 All right. Everyone, enjoy your day.

25 IN UNISON: Thank you, your Honor.

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(Proceedings were concluded.)

* * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

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

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

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

IN UNISON: [1] 76/25 MR. BICE: [26] 5/10 6/5 39/1 42/14 42/18 42/22 43/1 43/5 43/8 43/13 43/23 44/3 44/5 44/8 44/21 44/25 45/3 45/5 45/14 45/16 45/20 51/14 51/16 51/19 51/21 52/2 MR. HARRISON: [1] 5/22 MR. HOLMES: [1] 6/3 MR. HUTCHISON: [39] 5/18 6/18 10/3 10/6 10/8 10/12 10/16 11/6 11/10 16/25 17/3 53/20 54/16 56/19 57/1 57/3 57/7 57/14 57/17 60/12 60/14 60/17 60/22 60/24 62/11 62/16 62/18 62/20 63/23 65/19 67/2 67/18 67/21 67/24 68/3 68/9 71/12 71/17 76/7 MR. OGILVIE: [11] 5/24 25/21 30/2 30/4 34/1 34/8 52/16 52/18 76/9 76/17 76/22 MS. HAM: [1] 5/20 MS. LEONARD: [1] 6/1 THE COURT REPORTER: [1] 5/8 THE COURT: [77] 5/6 5/13 5/15 6/8 6/12 10/1 10/4 10/7 10/11 10/14 10/19 11/7 16/20 17/1 25/19 30/1 30/3 33/19 34/2 38/25 42/13 42/15 42/19 42/23 43/2 43/6 43/9 43/14 43/24 44/4 44/6 44/9 44/22 45/2 45/4 45/10 45/15 45/19 51/12 51/15 51/17 51/20 51/24 52/15	52/17 53/18 54/13 54/17 56/20 57/2 57/6 57/13 57/15 60/3 60/13 60/15 60/18 60/23 62/5 62/12 62/17 62/19 63/22 65/8 65/20 67/3 67/19 67/23 67/25 68/8 71/10 71/13 76/6 76/8 76/10 76/20 76/23 / /s [1] 78/19 0 0051 [1] 2/20 1 10 [1] 37/13 100 percent [1] 57/13 1000 [1] 3/8 10080 [1] 2/7 101 [1] 21/22 12 [5] 10/24 27/14 27/15 27/17 27/24 120 [1] 4/7 1215 [1] 4/6 13 [4] 10/24 27/14 27/15 27/25 14 [2] 2/18 74/19 15 [1] 37/13 16 [1] 74/19 17 [4] 8/12 30/14 33/15 67/4 17 acres [1] 61/6 17-acre [1] 9/2 17th [1] 62/23 18 [1] 33/15 180 [7] 1/9 2/3 5/7 5/19 5/20 5/23 18/23 19 [5] 24/15 58/24 59/9 59/18 68/22 19.00.040 [1] 53/14 19.16.010a [1] 53/6 2 200 [1] 2/8 2001 [1] 75/17 2015 [2] 7/8 26/19 2016 [1] 7/5 2017 [2] 7/12 16/1 2018 [9] 7/15 7/22 8/7 25/25 26/7 26/9 30/14 35/1 38/24	2019 [2] 1/21 5/1 2020 [2] 14/9 17/14 208-14 [1] 2/18 2086 [1] 2/11 21 [2] 16/1 38/24 2100 [1] 3/22 2101 [1] 3/23 212 [1] 27/18 214-2100 [1] 3/22 214-2101 [1] 3/23 21st [2] 26/7 35/1 22 [2] 1/21 5/1 2300 [1] 3/7 24 [1] 26/12 250 [6] 38/7 60/12 60/13 60/25 68/19 76/22 250 acres [4] 61/1 61/2 61/14 62/9 250-acre [1] 62/2 250-plus [2] 60/19 66/10 2500 [1] 2/10 253.07 [1] 27/21 278 [8] 24/15 35/12 54/12 58/24 59/8 59/8 59/18 76/21 278.250 [1] 76/19 278.349 [12] 15/4 16/17 17/5 17/5 25/15 34/17 34/23 35/16 43/12 48/16 54/4 69/15 29 [2] 32/11 34/9 29th [4] 25/24 25/25 26/9 27/2 3 30 [1] 26/12 300 [1] 3/20 33 [1] 60/8 33 acres [2] 67/1 67/1 34 [1] 33/13 35 [5] 24/19 58/10 67/2 67/4 68/19 35 acres [4] 7/12 24/15 64/3 67/3 35 acres' [1] 7/10 35-acre [1] 12/8 385-2086 [1] 2/11 385-2500 [1] 2/10 4 40 [1] 33/14 400 [1] 3/19 4100 [1] 3/10	49 [1] 34/14 5 51 [1] 34/16 53 [1] 52/23 5353 [1] 75/19 54 [2] 34/14 53/4 541 [2] 1/24 78/19 55 [2] 23/7 69/10 6 60 [4] 31/16 32/6 39/14 39/19 61 [1] 38/21 64 [1] 38/21 6930 [1] 4/9 6938 [1] 4/10 7 702 [9] 2/10 2/11 2/20 3/10 3/11 3/22 3/23 4/9 4/10 728.349 [1] 45/3 78.349 [1] 33/24 8 800 [1] 2/17 801-376-0051 [1] 2/20 873-4100 [1] 3/10 873-9966 [1] 3/11 89101 [1] 3/21 89102 [1] 3/9 89107 [1] 2/19 89117 [1] 4/8 89145 [1] 2/9 9 940-6930 [1] 4/9 940-6938 [1] 4/10 9966 [1] 3/11 9:37 [1] 5/2 : :SS [1] 78/2 A A.M [1] 5/2 ability [3] 35/20 35/22 78/11 able [3] 9/21 18/6 23/2 about [32] 7/12 7/21 9/17 11/3 12/2 16/9 21/25 33/22 34/3 34/4 40/9 40/12 42/16 43/10 46/11 46/11 55/3 55/4 55/12 55/22	56/11 56/14 58/5 58/16 61/13 61/14 61/14 64/7 67/4 67/5 72/13 76/13 absolute [2] 8/25 37/19 absolutely [7] 10/11 34/1 43/8 44/8 44/25 49/18 50/21 abuse [5] 11/22 32/5 38/11 64/5 69/13 abused [3] 31/6 31/15 57/22 accept [3] 9/23 50/9 71/10 accident [1] 29/23 accompanied [1] 9/5 accompanying [1] 13/13 accurate [2] 69/25 78/11 acre [4] 9/2 12/8 17/12 62/2 acreage [1] 60/7 acres [23] 7/12 24/15 24/19 27/18 27/21 38/7 58/10 60/11 60/13 60/20 60/25 61/1 61/2 61/6 61/14 62/9 64/3 66/11 67/1 67/1 67/3 68/19 68/20 acres' [1] 7/10 across [4] 14/20 62/18 63/4 75/12 action [2] 45/11 45/13 actual [4] 14/10 14/12 58/8 75/22 actually [6] 14/11 29/24 39/12 40/6 51/2 75/9 add [1] 76/8 addition [1] 31/3 additional [1] 39/5 address [8] 32/22 33/9 44/25 50/17 52/21 57/8 68/3 72/5 addressed [4] 32/14 33/4 49/20 62/21 addresses [3] 30/7 31/11 31/23
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37/23	50/19	42/5 58/24 59/23	40/15 47/9 50/2	they'd [1] 41/6
street [3] 3/19	supposed [1] 39/8	66/15	50/9 53/4 53/14	they'll [1] 44/12
62/18 63/5	supposedly [1]	than [13] 10/18	54/11 55/4 55/10	they're [18] 21/2
striking [1] 22/7	40/16	15/6 38/14 41/21	58/20 59/2 60/15	22/11 41/2 41/9
stuck [1] 5/11	Supreme [28] 7/1	49/16 49/22 56/7	61/10 61/17 69/6	45/21 45/22 46/1
stuff [1] 58/18	8/13 9/12 12/22	56/25 58/8 59/13	69/22 70/19 72/10	47/8 58/22 59/4
subdivision [1]	20/18 20/24 21/11	74/13 75/7 75/8	72/14 72/14 72/14	59/5 59/7 59/11
25/16	26/3 28/16 28/25	thank [16] 6/6	72/20	59/11 69/9 72/12
subject [13] 24/10	29/4 29/5 30/13	6/18 10/6 25/18	theory [3] 40/9	73/23 73/23
30/22 31/8 31/19	31/24 32/9 32/14	25/19 25/21 38/25	40/11 50/12	thing [6] 25/22
31/22 38/21 40/13	32/22 38/15 39/9	39/1 52/14 52/15	there [70] 6/22 9/2	35/8 68/11 71/25
46/18 47/22 48/6	39/13 39/14 40/15	53/18 53/20 61/5	9/4 9/6 9/7 10/25	74/16 76/18
50/10 60/20 61/15	41/7 41/10 41/19	76/4 76/7 76/25	12/10 12/23 13/14	things [5] 11/2
submit [3] 28/12	44/11 51/6 56/9	that [437]	13/18 13/21 14/3	16/8 44/7 49/20

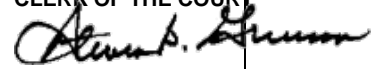
(14) specifically... - things

T	58/24 59/9 59/18 68/22 Title 19 [3] 59/9 59/18 68/22 Tivoli [3] 62/18 63/4 73/4 today [11] 26/4 27/9 28/11 28/15 32/10 32/12 35/24 36/8 36/17 37/21 52/5 TODD [2] 3/18 6/5 together [2] 66/19 66/20 too [4] 10/15 11/4 67/10 74/22 took [3] 44/14 44/15 78/5 Total [2] 60/14 60/15 totality [1] 54/19 touch [1] 6/23 towers [4] 62/16 62/17 63/5 73/5 TRANSCRIBED [1] 78/8 TRANSCRIPT [2] 1/15 78/10 transcripts [2] 66/6 66/18 trap [1] 72/17 trial [13] 6/15 28/13 28/18 33/22 38/14 44/19 54/14 55/19 55/22 55/23 56/5 56/7 65/20 true [3] 65/9 65/19 78/10 truly [2] 33/20 54/22 trump [3] 15/15 16/15 23/19 trumpeted [1] 39/22 trumps [8] 15/7 17/2 18/4 21/16 25/15 25/15 70/20 70/21 try [1] 49/13 trying [2] 45/22 67/15 TUESDAY [2] 1/21 5/1 two [14] 10/19 13/12 13/15 13/20 27/11 27/19 28/9 34/9 42/10 45/17 52/21 53/5 56/5	73/13 twofold [1] 45/1 types [1] 44/7 TYPEWRITING [1] 78/8 U UDC [1] 53/14 ultimate [1] 66/1 ultimately [2] 56/24 71/15 Um [1] 43/5 Um-hum [1] 43/5 under [20] 14/8 30/23 32/2 37/2 42/9 45/6 46/4 48/13 48/21 49/11 49/17 49/19 50/11 55/15 65/20 68/14 68/21 68/22 74/2 78/9 underlying [1] 31/11 underneath [1] 50/6 underscore [1] 15/3 underscores [1] 24/8 understand [16] 16/21 33/19 43/4 43/15 51/24 55/13 55/16 55/20 56/22 60/6 64/11 65/17 66/14 67/16 76/16 76/23 undid [1] 75/19 unfettered [2] 57/10 57/18 Unified [3] 35/12 37/3 53/5 unique [1] 75/1 units [1] 17/12 unless [2] 74/21 76/4 Unlike [1] 50/23 unquote [1] 7/17 unrelated [1] 6/10 until [1] 58/22 unusual [2] 24/22 53/25 up [13] 5/6 11/2 34/2 43/15 44/20 49/14 51/5 51/7 56/4 56/7 58/19 72/12 72/18 upon [6] 43/10 51/13 54/18 54/20 65/13 65/22	us [5] 10/13 10/17 51/9 70/14 70/14 use [37] 15/6 15/22 16/14 17/2 17/7 19/11 21/16 22/11 22/15 22/19 22/24 24/16 25/16 32/19 33/1 33/6 33/18 35/19 36/2 36/7 36/21 38/2 39/9 42/6 46/14 49/16 53/10 58/7 58/10 58/13 58/14 64/1 66/15 69/4 71/16 71/18 72/13 used [1] 47/15 uses [1] 19/5 V vacations [1] 53/8 vaguely [1] 52/19 valley [2] 14/21 74/25 value [1] 32/10 values [1] 10/10 variances [1] 53/10 varied [1] 32/24 various [2] 26/25 48/12 VEGAS [18] 1/12 2/9 2/19 3/2 3/9 3/21 4/8 5/1 5/7 5/25 6/2 14/21 31/1 35/12 37/2 55/1 66/9 70/1 vehicle [1] 64/2 verifiable [1] 40/6 versus [4] 5/7 23/21 30/16 70/5 very [29] 6/18 8/23 10/6 15/5 15/12 15/13 18/3 18/24 20/3 23/1 23/1 23/8 24/4 24/17 31/21 33/16 39/9 42/18 42/20 46/13 50/18 58/23 61/5 61/9 65/7 65/7 65/17 76/4 76/15 vested [27] 20/2 20/6 20/12 26/17 26/22 28/25 29/6 29/7 29/12 29/12 29/14 29/16 29/21 30/6 30/9 32/15 33/10 33/11 34/24 35/5 35/8 35/23 45/23 45/24 50/12	55/4 65/13 violation [2] 59/8 59/17 virtually [1] 75/4 W wait [1] 70/6 waivers [1] 53/10 want [42] 5/8 11/1 16/21 43/6 43/16 43/20 43/25 44/2 44/3 44/24 46/24 47/10 48/1 48/4 48/11 48/14 49/15 52/20 54/14 57/25 58/10 59/23 61/7 61/7 63/13 66/19 66/21 66/22 67/3 67/5 68/3 68/6 68/7 68/10 70/24 71/24 72/1 72/20 74/15 74/18 76/8 76/10 wanted [7] 9/16 11/11 26/22 40/8 64/11 67/7 67/14 wants [4] 36/24 37/13 47/22 61/17 was [154] wasn't [11] 5/10 9/18 25/23 38/11 39/23 44/16 44/20 50/24 50/24 62/9 66/14 water [1] 50/6 way [18] 7/3 7/4 9/23 10/25 11/22 16/3 17/9 17/10 19/18 23/20 39/22 43/22 45/24 47/2 50/1 67/7 68/22 72/10 ways [1] 56/3 we [104] we'd [2] 25/3 25/17 we'll [1] 72/10 we're [17] 5/6 8/18 40/17 40/18 46/23 47/17 54/3 58/17 58/18 61/17 61/21 64/16 70/17 72/16 72/22 72/23 72/24 we've [3] 7/6 51/11 63/10 weeks [1] 7/22 welcome [1] 10/7 well [36] 10/16 12/8 13/13 17/13
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(15) things... - well

W	50/4 50/23 55/2 56/2 62/9 65/9 65/11 68/17 68/18 69/15 70/15 WHEREOF [1] 78/13 whether [19] 13/7 25/9 26/9 31/6 31/21 32/16 32/16 33/16 34/4 35/7 38/1 41/25 42/5 43/17 52/13 55/23 65/23 69/19 69/20 which [41] 7/5 8/11 14/16 16/17 17/17 17/18 19/8 19/15 22/12 23/17 24/3 24/4 24/17 28/4 28/17 30/20 30/21 32/17 33/15 36/20 36/20 36/21 39/22 40/14 41/23 41/24 42/24 46/3 51/6 52/23 53/6 63/5 63/6 64/2 64/14 69/21 73/4 73/24 74/10 74/11 75/19 while [3] 6/10 67/11 68/1 whimsical [1] 23/3 who [7] 25/8 30/19 40/2 46/15 49/9 51/9 61/20 who's [1] 63/12 whom [1] 46/18 why [23] 8/18 9/12 9/22 9/22 10/19 14/14 34/3 41/18 43/14 46/8 54/18 56/24 57/8 57/12 62/8 68/4 68/4 72/6 72/23 72/24 72/25 73/8 74/1 wife [1] 40/2 will [7] 10/24 16/15 35/10 41/24 44/11 51/9 61/25 William's [1] 56/3 WILLIAMS [1] 1/18 willing [1] 61/17 WILSON [1] 3/4 wiped [1] 50/11 wished [1] 26/20 wishes [1] 49/9 within [4] 17/17 58/11 73/3 73/9	without [6] 9/3 30/10 38/7 52/12 62/10 72/3 WITNESS [1] 78/13 won't [3] 41/16 41/18 72/11 wonder [1] 10/14 word [2] 39/9 40/1 world [1] 21/20 worried [1] 56/11 worry [2] 34/3 34/4 would [33] 8/24 9/21 14/2 15/8 15/15 18/2 18/8 18/9 19/5 20/15 21/25 23/1 23/4 24/13 25/3 31/9 33/24 37/10 39/5 39/10 41/6 46/21 53/25 54/7 54/8 55/5 70/12 70/25 71/7 74/16 75/10 75/11 76/18 wouldn't [2] 55/5 55/6 Wow [1] 11/9 Wrecking [1] 23/22 write [1] 76/20 wrong [3] 9/22 60/16 67/25	69/8 69/25 70/1 your [106] Z zero [2] 70/9 70/10 zone [5] 52/6 58/6 59/5 72/22 74/3 zoned [19] 13/1 13/8 13/19 17/9 17/11 20/14 24/5 24/5 24/16 25/12 47/7 47/8 47/9 48/17 50/6 50/7 58/14 61/2 61/4 zoning [52] 15/5 15/7 15/11 15/15 16/15 17/8 18/4 18/8 18/11 18/12 19/1 19/1 19/4 19/11 21/16 22/9 23/4 23/18 25/15 41/25 45/7 46/6 46/14 48/22 49/23 49/24 52/13 52/25 55/5 55/5 55/12 58/5 58/8 58/11 59/12 59/19 59/24 60/21 61/3 62/4 65/2 65/3 69/4 69/25 70/20 70/21 72/11 72/11 72/19 72/19 74/2 75/20 zonings [1] 22/24
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(16) well... - zonings



**NEOJ
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**NOTICE OF ENTRY OF ORDER
NUNC PRO TUNC Regarding Findings of
Fact and Conclusion of Law Entered
November 21, 2019**

1 **PLEASE TAKE NOTICE** that on the 6th day of February, 2019, an Order *Nunc Pro Tunc*
2 Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018, was entered in the
3 above-captioned case, a copy of which is attached hereto.

4 Dated this 6th day of February, 2019.

5 **LAW OFFICES OF KERMITT L. WATERS**

6 By: /s/ Kermitt L. Waters
7 KERMITT L. WATERS, ESQ., NBN 2571
8 JAMES JACK LEAVITT, ESQ., NBN 6032
9 MICHAEL A. SCHNEIDER, ESQ., NBN 8887
10 AUTUMN WATERS, ESQ., NBN 8917
11 704 S. 9th Street
12 Las Vegas, NV 89101

13 *Attorneys for Plaintiff*
14
15
16
17
18
19
20
21
22
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24
25
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 6th day of February, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY**
4 **OF ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered**
5 **November 21, 2019**, was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be
6 electronically served through the Eighth Judicial District Court's electronic filing system, with the
7 date and time of the electronic service substituted for the date and place of deposit in the mail and
8 addressed to each of the following:

9 **McDonald Carano LLP**

10 George F. Ogilvie III
11 Debbie Leonard
12 Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
13 Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

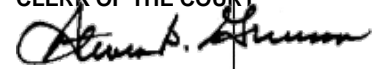
14 **Las Vegas City Attorney's Office**

15 Bradford Jerbic
16 Philip R. Byrnes
17 Seth T. Floyd
495 S. Main Street, 6th Floor
18 Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

19 **Pisanelli Bice, PLLC**

20 Todd L. Bice, Esq.
21 Dustun H. Holmes, Esq.
400 S. 7th Street
22 Las Vegas, Nevada 89101
tlb@pisanellibice.com
dhh@pisanellibice.com

23
24
25 /s/ Evelyn Washington
An Employee of the Law Offices of Kermitt L. Waters
26
27
28



**ONPT
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**ORDER NUNC PRO TUNC
Regarding Findings of Fact and
Conclusion of Law Entered
November 21, 2018**

Hearing Date: January 17, 2019
Hearing Time: 9:00 a.m.

01-29-19A10:51 RQVD

ORDER NUNC PRO TUNC
Regarding Findings of Fact and Conclusions of Law Entered November 21, 2018

Plaintiff, 180 LAND COMPANY, LLC ("Plaintiff" and/or "Landowner") Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims and the City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time and the Intervenor's Joinder thereto having come for hearing on January 17, 2019 at 9:00 a.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., and Mark Hutchison, Esq., appearing for and on behalf of the Plaintiff, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of Defendant, the City of Las Vegas, and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenor. The Court having read all the papers filed by the parties and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims filed on December 11, 2018, is GRANTED, as this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed *nunc pro tunc*.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that Defendant, City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time filed on December 21, 2018, and the Joinder thereto is DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 5th day of January, 2019.


DISTRICT COURT JUDGE


Respectfully Submitted By:

LAW OFFICES OF KERRITT L. WATERS

By: 

KERRITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
MICHAEL A. SCHNEIDER, ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101

Attorneys for Plaintiff

Reviewed and Approved By:

McDonald Carano LLP

By: Declined to Sign

George F. Ogilvie III, Esq., NBN 3552
Debbie Leonard, Esq., NBN 8260
Amanda C. Yen, Esq., NBN 9726
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102

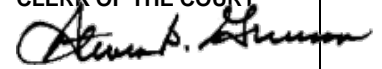
Attorneys for Defendant, City of Las Vegas

PISANELLI BICE PLLC

By: None Responsive

Todd L. Bice, Esq., NBN 4534
Dustun H. Holmes, Esq., NBN 12776
Kirill V. Mikhaylov, Esq., NBN 13538
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Intervenor



MJUD

George F. Ogilvie III (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
Amanda C. Yen (NV Bar #9726)
McDONALD CARANO LLP
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102
Telephone: 702.873.4100
Facsimile: 702.873.9966
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 S. Main Street, 6th Floor
Las Vegas, NV 89101
Telephone: 702.229.6629
Facsimile: 702.386.1749
bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS' MOTION FOR
JUDGMENT ON THE PLEADINGS
ON DEVELOPER'S INVERSE
CONDEMNATION CLAIMS**

Hearing Date:
Hearing Time:

Pursuant to Rule 12(c) of the Nevada Rules of Civil Procedure, Defendant City of Las Vegas (the “City”), through its counsel, McDonald Carano LLP, moves for judgment on the pleadings on the First Amended Complaint Pursuant To Court Order Entered On February 1, 2018 For Severed Alternative Verified Claims In Inverse Condemnation (“First Amended Complaint”) filed on behalf of Plaintiff 180 Land Company, LLC (the “Developer”).

As a matter of law, the Court must dismiss the Developer’s inverse condemnation claims on three independent legal grounds. First, the Court already properly determined that the Developer has no vested rights to have its development applications approved. Accordingly, there can be no taking as a matter of law. Therefore, the Developer’s constitutional claims be dismissed with prejudice.

Second, the Developer’s inverse condemnation claims are time barred because its predecessor-in-interest sought and obtained the PR-OS designation in 1990 in order to have the Peccole Ranch Phase II development approved. As a result, the statute of limitations has run on the Developer’s inverse condemnation claims.

Third, because Judge Crockett’s Decision held that the Developer must apply for a major modification of the Peccole Ranch Master Development Plan in order to redevelop the golf course property, and this Court determined that Judge Crockett’s Decision has preclusive effect here, the inverse condemnation claims are not ripe for review. Ripeness is a jurisdictional prerequisite. Until the Developer gives the Las Vegas City Council the opportunity to hear and decide a major modification application, the Developer has no justiciable inverse condemnation claims.

As demonstrated in detail below, the aforementioned grounds mandate dismissal of the Developer’s inverse condemnation claims as a matter of law. Respectfully, therefore, the City requests this Court enter an Order granting the instant motion and dismissing with prejudice all claims in the Developer’s First Amended Complaint.

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...

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1 This motion is made and based upon on the pleadings on file, the following points and
2 authorities and any oral argument the Court may entertain on this matter.

3 DATED this 13th day of February, 2019.

4 McDONALD CARANO LLP

5 By: /s/ George F. Ogilvie III
6 George F. Ogilvie III, Esq. (NV Bar #3552)
7 Debbie Leonard (NV Bar #8260)
8 Amanda C. Yen (NV Bar #9726)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

9 LAS VEGAS CITY ATTORNEY'S OFFICE
10 Bradford R. Jerbic (NV Bar #1056)
11 Philip R. Byrnes (NV Bar #166)
12 Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

13 *Attorneys for City of Las Vegas*
14
15
16
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NOTICE OF MOTION

TO: ALL PARTIES AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the City of Las Vegas will bring its **CITY OF LAS VEGAS' MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** for hearing before Department XVI of the above-entitled Court on the ____ day of March 19, 2019, at the hour of 9:00 am ____m. or as soon thereafter as counsel may be heard.

DATED this 13th day of February, 2019.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
George F. Ogilvie III, Esq. (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
Amanda C. Yen (NV Bar #9726)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

Attorneys for City of Las Vegas

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Standard for Motion for Judgment on the Pleadings

A motion for judgment on the pleadings is appropriate to obtain dismissal of claims after the pleadings have closed. NRCP 12(c). Just as a motion to dismiss brought under NRCP 12(b) does, a Rule 12(c) motion challenges the sufficiency of the pleadings. The two motions are "functionally identical." *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). As such, in deciding a motion for judgment on the pleadings, the court "is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements

1 of a right to relief.” *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792, 858 P.2d 380, 381
2 (1993).

3 While the court must accept all factual allegations in the complaint as true, only “fair”
4 inferences must be accepted. *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967
5 (1997). Bald contentions, unsupported characterizations, and legal conclusions are not well-
6 pleaded allegations, and will not defeat a motion to dismiss or, by analogy, a motion for
7 judgment on the pleadings. See *G.K. Las Vegas, Ltd. P’ship v. Simon Prop. Grp., Inc.*, 460 F.
8 Supp. 2d 1246, 1261 (D. Nev. 2006). In addition to the allegations in the complaint, “the court
9 may take into account matters of public record, orders, items present in the record of the case,
10 and any exhibits attached to the complaint...” *Breliant v. Preferred Equities Corp.*, 109 Nev.
11 842, 847, 858 P.2d 1258, 1261 (1993).

12 As with a Rule 12(b) motion, a motion for judgment on the pleadings can be used to
13 challenge subject matter jurisdiction. Ripeness pertains to the Court’s subject matter
14 jurisdiction and, therefore, is properly raised in a Rule 12 motion. *Chandler v. State Farm Mut.*
15 *Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). “Nevada has a long history of requiring an
16 actual justiciable controversy as a predicate to judicial relief.” *Resnick v. Nev. Gaming Comm’n*,
17 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988), quoting *Doe v. Bryan*, 102 Nev. 523, 525, 728
18 P.2d 443, 444 (1986).

19 **B. This Court Correctly Concluded That the Developer Lacks Vested Rights to**
20 **Redevelop the Property**

21 **1. Absent Vested Rights, There Can Be No Taking As a Matter of Law**

22 This Court has already determined that the Developer has no vested rights to have its
23 redevelopment applications approved. See Findings of Fact and Conclusions of Law entered on
24 November 21, 2018 (the “FFCL”) at Conclusions of Law ¶¶35-38, 52. That conclusion
25 requires that the Developer’s inverse condemnation claims be dismissed. “The Fifth
26 Amendment’s Takings Clause prevents the Legislature (and other government actors) from
27 depriving private persons *of vested property rights....*” *Landgraf v. USI Film Prod.*, 511 U.S.
28 244, 266 (1994) (emphasis added).

[Property interests are] of course ... not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law rules or understanding that secure certain benefits and that support claims of entitlement to those benefits. [To have such a property interest], a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

Board of Regents v. Roth, 408 U.S. 564, 577 (1972). In other words, constitutional guarantees are only triggered by a vested right. See *Landgraf*, 511 U.S. at 266; *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Because the Court already correctly concluded that the Developer has no vested right to redevelop the golf course, the Developer cannot state a legally cognizable constitutional claim.

2. Denial of the Redevelopment Applications Leaves the Developer With All the Same Rights it Held Previously

The Developer's purchase of the golf course on speculation that the City Council *might* exercise its discretion to allow for redevelopment of the open space/drainage easement into some other use does not alter the conclusion that it has no vested rights that confer a constitutional claim. When evaluating a takings claim, "the question is, [w]hat has the owner lost?" *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195 (1910). If the landowner retains the same interests it had previously, there is no taking. See *Murr v. Wisconsin*, 137 S. Ct. 1933, 1937 (2017). Under Nevada law, a vested property right is something that is "fixed and established." *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949); see also *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property right must be "established" for a taking to occur). Redevelopment applications do not meet this standard because "[i]n order for rights in a proposed development project to vest, zoning or use approvals ***must not be subject to further governmental discretionary action affecting project commencement***, and the developer must prove considerable reliance on the approvals granted."¹ *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110,

¹ This is not just the law in Nevada, but nationwide. See, e.g., *Daytona Grand, Inc. v. City of Daytona Beach, Fla.*, 490 F.3d 860, 872 (11th Cir. 2007) (interpreting Florida law);

1 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at
2 759–60 (holding that, because City’s site development review process under Title 19.18.050
3 involved discretionary action by City Council, the project proponent had no vested right to
4 construct).

5 Here, the Developer’s predecessor sought and obtained the open space designation for
6 the golf course as an amenity to its planned development and to add value to the properties
7 surrounding the gold course. *See* FFCL at Findings of Fact ¶¶13-16, *citing* ROR 10, 32-33;
8 2658-60; 24073-75; 25968. At the urging of the Developer’s predecessor, the City incorporated
9 the open space designation into its master plan. *Id.* Nearly 20 years later, the Developer bought
10 the golf course on speculation that the City might allow another use. The City’s denial of the
11 35-Acre Applications leaves the Developer in the exact position it held when it purchased the
12 property with the ability to continue to use the land in the same manner for which its
13 predecessor-in-interest sought and obtained entitlements.

14 In other words, the Developer does not identify anything in its First Amended
15 Complaint that has been *taken*. The Developer’s unilateral decision to abandon the golf course
16 use does not create a taking. Rather, where the developer still has the same “bundle of sticks” it
17 had previously, there is no taking, as a matter of law, and dismissal of the inverse condemnation
18 claims is proper. *See Murr*, 137 S. Ct. at 1937; *Application of Filippini*, 66 Nev. at 22, 202 P.2d
19 at 537.

20 **C. The Developer’s Claims Are Time Barred Because the Parks, Recreation and**
21 **Open Space Designation Has Existed Since at Least 1990, When it Was Sought**
22 **and Obtained by the Developer’s Predecessor**

23 The statute of limitations has run on the Developer’s challenge to the Parks, Recreation
24 and Open Space designation for the Property because that designation has existed since as least
25 1990 in the Peccole Ranch Master Development Plan, Phase II, and was sought and obtained by
26 the Developer’s predecessor. Takings claims are subject to a 15-year statute of limitations.
27 *White Pine Lumber v. City of Reno*, 106 Nev. 778, 779, 801 P.2d 1370, 1371 (1990). A

28 *Ellentuck v. Klein*, 570 F.2d 414, 429 (2d Cir. 1978) (interpreting New York law); *Aquino v.*
Tobriner, 298 F.2d 674, 677 (D.C. Cir. 1961) (interpreting D.C. law); *City of Ann Arbor, Mich.*
v. Nw. Park Const. Corp., 280 F.2d 212, 221 (6th Cir. 1960) (interpreting Michigan law).

development restriction created by a predecessor landowner binds successors. *See* NRS 278.0205; *Tompkins v. Buttrum Const. Co. of Nev.*, 99 Nev. 142, 146, 659 P.2d 865, 868 (1983) (noting that successor landowner steps into shoes of predecessor, and “one who creates a restriction is not permitted to violate it”); *Gladstone v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979) (holding that successor owner could not violate height restriction recorded by predecessor).

For the purpose of a statute of limitations, a landowner claiming inverse condemnation is bound by its predecessor’s acceptance of regulatory conditions imposed on the land and from which the predecessor benefitted. *Wilson v. Bd. of Cty. Comm’rs of Cty. of Teton*, 153 P.3d 917, 925 (Wyo. 2007); *Serra Canyon Co. v. California Coastal Comm.*, 16 Cal. Rptr. 3d 110, 113 (Cal. Ct. App. 2004). The limitation period commenced when the regulatory action occurred, even if the predecessor chose not to challenge it. *Serra Canyon*, 16 Cal. Rptr. 3d at 113.

There must be a limit on when a landowner can bring a takings action, especially when, as here, the landowners did not object to the conditions at the time of approval and actually took advantage of the benefit of increased density offered by the regulations. Without a restriction on the time for contesting property development conditions, the government would be perpetually exposed to unlimited takings challenges.

Wilson, 153 P.3d at 925; *see also Trimmen Dev. Co. v. King Cty.*, P.2d 226, 231 (Wash. 1992) (dismissing as time barred developer’s challenge to regulation that conditioned development approval on open space dedication or payment of fee in lieu of such dedication).

Here, the Developer’s Amended Complaint challenges the General Plan’s Parks, Recreation and Open Space designation on the Property and contends it need not seek to change that designation for its proposed residential developments of the golf course property. *See* Am. Compl. ¶¶14-16. However, the open space designation was sought and obtained by the Developer’s predecessor in the 1989 Peccole Ranch Master Development Plan, as amended in 1990. *See* FFCL at Findings of Fact ¶¶11-16, *citing* 10, ROR 32, 2658-2660, 2666, 24073-75, 25821, 25968. The Developer’s predecessor indicated that the Master Plan “provide[d] for the continuing development of a diverse system of open space.” *See* ROR 2665. And the Developer’s predecessor assumed responsibility for “open space development and

landscaping.” *See* ROR 2664. As a result of this action sought by the Developer’s predecessor, the City then incorporated that open space designation into its General Plan. *See* FFCL at Finding of Fact ¶7, *citing* ROR 25546; *see also* ROR 2823-2831, 2854-2863.

The master plan area is subject to the terms, requirements and commitments made by the Developer’s predecessor in the Master Development Plan so that the predecessor could develop the master planned area in the manner it sought. *See* Unified Development Code 19.10.040(F)-(G). In 1990, the Developer’s predecessor received approval to develop 4,247 residential units within the master planned area of Peccole Ranch Master Development Plan conditioned upon setting aside 253 acres for golf course, open space and drainage. *See* FFCL at Findings of Fact ¶¶11-16, *citing* 10, ROR 32, 2658-2660, 2666, 24073-75, 25821, 25968. Through the open space designation, the Developer’s predecessor was able to satisfy the City’s parks set-aside requirement and develop non-open space areas at greater densities and for greater economic benefit. *See* ROR 2660-2667. The Developer’s predecessor chose the location of the open space and developed the golf course in furtherance of the development plan it submitted, deriving economic benefit from being able to sell houses that abutted or were in close proximity to an open space amenity. *See* ROR 2658-2667.

Because the Developer’s claims are premised on the General Plan’s Parks, Recreation and Open Space designation and the 1990 Peccole Ranch Master Development Plan’s set aside of the property for open space and drainage (which were invited and accepted by the Developer’s predecessor in 1990), they are time barred. *See White Pine Lumber*, 106 Nev. at 779, 801 P.2d at 1371; *Wilson*, 153 P.3d at 925.

D. The Court Lacks Subject Matter Jurisdiction Because the Developer’s Claims Are Not Ripe

This Court has determined as a matter of law that Judge Crockett’s Decision has preclusive effect. *See* FFCL at Conclusions of Law ¶¶57-62. Pursuant to Judge Crockett’s Decision, because the Developer has not provided the City Council with an opportunity to consider and decide an application for a major modification to the Peccole Ranch Master Development Plan, the ripeness doctrine bars the Court from exercising jurisdiction over the

inverse condemnation claims. If a party's claims are not ripe for review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988). And where the Court lacks subject matter jurisdiction, dismissal is required. Nev. Const. art. 6, § 6; *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

The Nevada Supreme Court has adopted a two-part test for ripeness established by the U.S. Supreme Court, which requires courts to evaluate: "(1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review." *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003), citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967).

1. The Issues Are Not Fit for Review

Because the Developer has yet to submit a major modification application as required by Judge Crockett's Decision, the issues presented in this case lack the fitness of review needed to satisfy the ripeness doctrine. "In gauging the fitness of the issues in a case for judicial resolution, courts are centrally concerned with whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Resnick*, 104 Nev. at 66, 752 P.2d at 233, quoting L. Tribe, *American Constitutional Law* 78 (2nd ed. 1988). "Alleged harm that is speculative or hypothetical is insufficient: an existing controversy must be present." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). Here, the Court has concluded that approval of a major modification is a prerequisite to the City granting the 35-Acre Applications. See FFCL at Conclusions of Law ¶¶56-62. Therefore, even if the Developer possessed vested rights to redevelop the golf course (it does not), the Court nevertheless cannot consider whether the Council's denial of those applications constituted a taking.

2. Dismissal Will Not Impose Any Hardship on the Developer

Because the Developer may apply for a major modification to the Master Development Plan at any time (or could have at any time since the City Council's denial of the applications at

1 issue), dismissal of the First Amended Complaint for lack of ripeness will impose no hardship.
2 The ripeness doctrine “focuses on the timing of the action rather than on the party bringing the
3 action.” *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003). Dismissal for lack of
4 ripeness until all contingencies and conditions precedent are satisfied does not constitute a
5 hardship. Indeed, the Developer controls whether and when to file a major modification
6 application but has simply chosen not to. No hardship exists here.

7 **3. The Developer Cannot Satisfy the Additional Ripeness Requirements for**
8 **Inverse Condemnation Claims**

9 Because the Developer has not sought a major modification of the Master Development
10 Plan, it also has not satisfied additional ripeness requirements to assert takings claims. A taking
11 claim is not ripe unless “the government entity charged with implementing the regulations has
12 reached a final decision regarding the application of the regulations to the property at issue.”
13 *Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172,
14 186 (1985). “A final decision by the responsible state agency informs the constitutional
15 determination whether a regulation has deprived a landowner of all economically beneficial use
16 of the property ... or defeated the reasonable investment-backed expectations of the landowner
17 to the extent that a taking has occurred.” *Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001)
18 (internal citations and quotations omitted).

19 To resolve a takings claim, a court must know “the extent of permitted development on
20 the land in question.” *Id.*, quoting *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340,
21 351 (1986)). The decisions of the U.S. Supreme Court regarding ripeness of inverse
22 condemnation claims “uniformly reflect an insistence on knowing the nature and extent of
23 permitted development before adjudicating the constitutionality of the regulations that purport
24 to limit it.” *MacDonald, Sommer*, 477 U.S. at 351. If a developer withdraws an application,
25 “the application was not meaningful.” *Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1199
26 (N.D. Cal. 1988); *see also Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1455 (9th Cir. 1987),
27 amended, 830 F.2d 968 (9th Cir. 1987) (holding that trial court erred by reaching merits of
28

unripe takings claims because “[t]he application made by the developer was not meaningful since it was abandoned at an early stage in the application process.”

Here, a major modification application is precisely the type of procedure the Supreme Court recognizes as a threshold requirement before a landowner can assert a takings claim:

[A] landowner may not establish a taking before a land-use authority has the opportunity, *using its own reasonable procedures*, to decide and explain the reach of a challenged regulation. Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon *the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property*, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established.

Palazzolo, 533 U.S. at 620-21.

Judge Crockett has already deemed the City’s procedures for a major modification to be reasonable and necessary, and this Court already deemed the major modification requirement to have preclusive effect here. *See* FFCL at Conclusions of Law ¶¶56-62. As the Court already found, the Developer submitted *and then withdrew* a major modification application, preventing the City Council from considering it. *Id.* at Finding of Fact 33, *citing* ROR 1; 5; 6262. This is precisely the type of action that precludes the Developer from demonstrating that its inverse condemnation claims are ripe. *See Zilber*, 692 F. Supp. at 1199; *Kinzli*, 818 F.2d at 1455. Absent compliance with the major modification requirement, there has been no final determination of the Developer’s rights to develop the Property, and the inverse condemnation claims must be dismissed on jurisdictional grounds. *See Palazzolo*, 533 U.S. at 618; *Kinzli*, 818 F.2d at 1455; *Zilber*, 692 F. Supp. at 1199.

II. CONCLUSION

Because the Court correctly concluded that the Developer lacks vested rights to have redevelopment applications approved, there can be no taking as a matter of law, and the inverse condemnation claims must be dismissed. Moreover, the statute of limitations has run on the Developer’s inverse condemnation claims. Finally, as the Court has determined that Judge Crockett’s Decision has preclusive effect on this case, the Court lacks subject matter

jurisdiction to hear the inverse condemnation claims because they are not ripe. For these reasons, the Developer's First Amended Complaint must be dismissed with prejudice.

Respectfully submitted this 13th day of February, 2019.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
George F. Ogilvie III, Esq. (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
Amanda C. Yen (NV Bar #9726)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

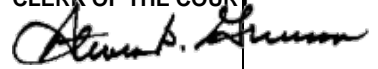
Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 13th day of February, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/Jelena Jovanovic

An employee of McDonald Carano LLP



**EPAP
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited
liability company, FORE STARS, Ltd., SEVENTY
ACRES, LLC, DOE INDIVIDUALS I through X,
DOE CORPORATIONS I through X, DOE LIMITED
LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-758528-J

Dept. No.: XVI

**EX PARTE APPLICATION TO
FILE MOTION FOR JUDICIAL
DETERMINATION OF
LIABILITY THAT EXCEEDS
THE EDCR 2.20(a) PAGE LIMIT**

**(PROPOSED ORDER
ATTACHED HERETO AS
EXHIBIT 1)**

1 Plaintiffs, 180 LAND COMPANY, LLC, FORE STARS, LTD and SEVENTY ACRES,
2 LLC (collectively the "Landowners") respectfully submit this Ex Parte Application to File Motion
3 for Judicial Determination of Liability that Exceeds the EDCR 2.20(a) Page Limit. This Ex Parte
4 Application is made for the following reasons:

5 1. On July 18, 2017, Landowners filed its Petition for Judicial Review ("Complaint")
6 against the City of Las Vegas (the "City").

7 2. On September 7, 2017, Landowners filed its First Amended Petition for Review and
8 Alternative Verified Claims in Inverse Condemnation ("Complaint").

9 3. On October 30, 2018, the City filed the City of Las Vegas' Motion to Dismiss
10 ("Motion") seeking to dismiss the entirety of the Landowners' Complaint with prejudice.

11 4. On January 11, 2017, this Court held a hearing regarding the City's Motion to
12 Dismiss and held that: 1) the Landowners' properly pled their inverse condemnation claims; 2) the
13 claims were ripe for review; and, 3) the claims were severed and stayed until **after** this Court enters
14 a decision on the petition for judicial review. (See February 2, 2018 Order)

15 5. On June 29, 2018, this Court held a full day hearing to address only the petition for
16 judicial review issues.

17 6. This Court denied the petition for judicial review. However, this Court held:

18 "[w]here Petitioner [Landowners] has no vested right to have its development
19 applications approved, and the Council properly exercised its discretion to deny the
20 applications, there can be no taking as a matter of law such that Petitioner's
21 [Landowner's] alternative claims for inverse condemnation must be dismissed."

22 "Further, Petitioner's alternative claims for inverse condemnation must be dismissed
23 for lack of ripeness."

24 "Here, Petitioner failed to apply for a major modification, a prerequisite to any
25 development of the Badlands Property. ... Having failed to comply with this
26 necessary prerequisite, Petitioner's alternative claims for inverse condemnation are
27 not ripe and must be dismissed."

28 This Court concluded" IT IS HEREBY ORDERED, ADJUDGED and DECREED
that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.
*Findings of Fact and Conclusions of Law on Petition for Judicial Review, November
26, 2018, pp. 23-24 ("FFCL").*

1 7. On December 12, 2018, after this Court entered the FFCL on the petition for judicial
2 review, the Landowners' filed Plaintiff Landowners' Motion for Summary Judgment on Liability
3 for the Landowners' Inverse Condemnation Claims.
4

5 8. Recognizing that the Court in no way intended to address or dismiss the Landowner's
6 inverse condemnation claims in the FFCL and that the provisions referencing the Landowners
7 inverse condemnation claims were improperly inserted into the FFCL, on February 6, 2019, this
8 Court entered a *nunc pro tunc order* granting Plaintiff Landowners' Request For Rehearing /
9 Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims and removing these
10 provisions from the FFCL acknowledging, "this Court had no intention of making any findings of
11 fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims."
12

13 9. On January 9, 2019, the Court ordered that "[i]n the event that this Court grants
14 Plaintiff Landowners' Request For Rehearing / Reconsideration of Order / Judgment Dismissing
15 Inverse Condemnation Claims and denies the City's Motion to Strike, the Court shall continue the
16 February 6, 2019 hearing on Plaintiff Landowners' Motion for Summary Judgment on Liability for
17 the Landowners' Inverse Condemnation ("Motion for Summary Judgment") and set a briefing
18 schedule and a new hearing date for the Motion for Summary Judgment." Meaning the Court clearly
19 intended to proceed with the Summary Judgment upon denial of the City's Motion to Strike.
20

21 10. On February 6, 2019, this Court held a hearing regarding the status of the Motion for
22 Summary Judgment and offered to set a hearing date. At the hearing, Landowners' counsel
23 requested a full day hearing, which the Court agreed to accommodate, if possible, and counsel for
24 the parties agreed to confer to set a briefing schedule and hearing date for the Motion for Summary
25 Judgment.
26
27
28

1 11. On February 11, 2019, after contacting this Court's chambers for potential hearing
2 dates for the Motion for Summary Judgment, Landowners' counsel sent an email to the City's
3 counsel proposing a briefing schedule with a proposed hearing date of April 25, 2019.

4
5 12. The City's counsel did not immediately respond to the proposed briefing schedule
6 and instead filed the pending City of Las Vegas' Motion for Judgment on the Pleadings on
7 Developer's Inverse Condemnation Claims" set to be heard March 19, 2018. This is the City's third
8 attempt to dismiss the Landowners' constitutional inverse condemnation claims in this case.

9
10 13. In an effort to have this matter heard on the merits and avoid the procedural
11 gamesmanship underway by the City, along with its Opposition to the City's motion for judgment
12 on the pleadings, the Landowners have filed a Countermotion For Judicial Determination of Liability
13 On the Landowners' Inverse Condemnation Claims. Given the detailed factual nature of the City's
14 actions in this case, despite reasonable efforts, this Opposition and Countermotion exceed the
15 allowable page limit for motions.

16
17 14. The issues of whether there has been a taking involve a complex factual assessment.
18 The United States Supreme Court has held that there is no "magic formula" in every case for
19 determining whether particular government interference constitutes a taking under the U.S.
20 Constitution; there are "nearly infinite variety of ways in which government actions or regulations
21 can effect property interests."¹ In this connection, the United States Supreme Court has held that
22
23
24
25
26

27 ¹State v. Eighth Jud. Dist. Ct., 351 P.3d 736, 741 (Nev. 2015) (citing Arkansas Game &
28 Fish Comm's v. United States, 568 U.S. --- (2012)).

1 these inverse condemnation cases are "ad hoc" proceedings that require "complex factual
2 assessments."²

3
4 15. It is impossible to fully address these complex factual issues in this particular case
5 in just 30 pages. First, liability in this inverse condemnation action is based on the "aggregate" of
6 City actions impacting the Landowners' property, therefore, these City actions must be set forth in
7 detail.³ Second, this is an immensely important case for the Landowners which are active developers,
8 as the City has entirely prevented them from using their 35 Acre Property. Finally, this case involves
9 the Landowners' important constitutional right to payment of just compensation under the United
10 States and Nevada Constitutions and, therefore, should be fully and fairly presented to the Court.⁴

11
12 16. These detailed facts show that the City has rendered the Landowners' property useless
13 and valueless, which meets the standard for an inverse condemnation claim and that it is entirely
14

15
16
17 ²City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 720 (1999).

18 ³State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish
19 Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for
20 determining whether particular government interference constitutes a taking under the U.S.
21 Constitution; there are "nearly infinite variety of ways in which government actions or
22 regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at
23 Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding
24 that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v.
WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to
determine when government action shall be deemed a de facto taking; instead, each case must be
examined and decided on its own facts." Id., at 985-86).

25 ⁴McCarran Int'l Airport v. Sisolak, 137 P.3d 1110 (Nev. 2006) ("The first right
26 established in the Nevada Constitution's declaration of rights is the protection of a landowner's
inalienable rights to acquire, possess and protect private property. . . . The drafters of our
27 Constitution imposed a requirement that just compensation be secured prior to a taking, and our
28 State enjoys a rich history of protecting private property owners against Government takings. Id.,
at 1126-27. (emphasis supplied)).

1 futile to submit any further applications with the City, meaning the Landowners' claims are ripe for
2 adjudication.

3
4 17. The facts in this matter go back to the 1980's and there have been numerous
5 applications, hearings and interactions by the parties since that time which require a detailed
6 presentation as they relate to the legal requirements to establish a taking.

7
8 18. Without this detailed analysis, it will be impossible for the Court to fully understand
9 and address the taking issues.

10 19. This "complex factual assessment" and the highly complex and technical legal
11 arguments require detailed factual and legal analysis and briefing to address.

12
13 20. Accordingly, the Landowners respectfully request leave to file its Motion in excess
14 of thirty (30) pages.

15 21. The undersigned counsel has worked diligently to limit the number of pages, but
16 given the detailed and complex factual nature of this matter and complexity of the legal issues it is
17 anticipated that the memorandum of points and authorities in the Motion will total approximately
18 75 pages.

19
20 22. The Landowners' Motion will include a table of contents and table of authorities per
21 EDCR 2.20(a) and an exhibit list.

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1 23. The Landowners' Opposition and Countermotion are being filed concurrently
2 herewith.

3
4 DATED 4th this day of March, 2019.

5
6 LAW OFFICES OF KERMIT L. WATERS

7 BY: /s/ James J. Leavitt

8 KERMIT L. WATERS, ESQ.

9 Nevada Bar. No.2571

10 JAMES J. LEAVITT, ESQ.

11 Nevada Bar No. 6032

12 MICHAEL SCHNEIDER, ESQ.

13 Nevada Bar No. 8887

14 AUTUMN WATERS, ESQ.

15 Nevada Bar No. 8917

16 *Attorneys for the Landowners*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 4th day of March, 2019, a true and correct copy of the foregoing **EX PARTE**
4 **APPLICATION TO FILE MOTION FOR JUDICIAL DETERMINATION OF LIABILITY**
5 **THAT EXCEEDS THE EDCR 2.20(a) PAGE LIMIT** was made by electronic means pursuant
6 to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's
7 electronic filing system, with the date and time of the electronic service substituted for the date and
8 place of deposit in the mail and addressed to each of the following:

9
10 **McDonald Carano LLP**

11 George F. Ogilvie III
12 Debbie Leonard
13 Amanda C. Yen
14 2300 W. Sahara Ave., Suite 1200
15 Las Vegas, Nevada 89102
16 gogilvie@mcdonaldcarano.com
17 dleonard@mcdonaldcarano.com
18 ayen@mcdonaldcarano.com

19 **Las Vegas City Attorney's Office**

20 Bradford Jerbic
21 Philip R. Byrnes
22 Seth T. Floyd
23 495 S. Main Street, 6th Floor
24 Las Vegas, Nevada 89101
25 pbyrnes@lasvegasnevada.gov
26 sfloyd@lasvegasnevada.gov

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28
/s/ *Evelyn Washington*
An employee of the Law Offices of
Kermitt L. Waters

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EXHIBIT 1

1 **EPAP**
2 **LAW OFFICES OF KERMITT L. WATERS**

3 Kermit L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
4 James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
5 Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
6 Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
7 704 South Ninth Street
Las Vegas, Nevada 89101
8 Telephone: (702) 733-8877
Facsimile: (702) 731-1964

9 **HUTCHISON & STEFFEN, PLLC**

10 Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
11 Matthew K. Schriever (10745)
Peccole Professional Park
12 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
13 mhutchison@hutchlegal.com
jkistler@hutchlegal.com
14 mschriever@hutchlegal.com

15 *Attorneys for Plaintiff Landowners*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 180 LAND COMPANY, LLC, a Nevada limited
liability company, FORE STARS, Ltd., SEVENTY
19 ACRES, LLC, DOE INDIVIDUALS I through X,
DOE CORPORATIONS I through X, DOE LIMITED
20 LIABILITY COMPANIES I through X,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27

Case No.: A-17-758528-J

Dept. No.: XVI

**(PROPOSED) ORDER
GRANTING EX PARTE
APPLICATION TO FILE
MOTION FOR JUDICIAL
DETERMINATION OF
LIABILITY IN EXCESS OF
30 PAGES**

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ORDER

It is hereby ordered that Plaintiffs, 180 LAND COMPANY, LLC, FORE STARS, LTD., and SEVENTY ACRES, LLC, may file their Opposition To City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowner's Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings that is in excess of thirty (30) pages.

DATED this _____ day of February, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James J. Leavitt
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

Attorneys for the Landowners