

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.

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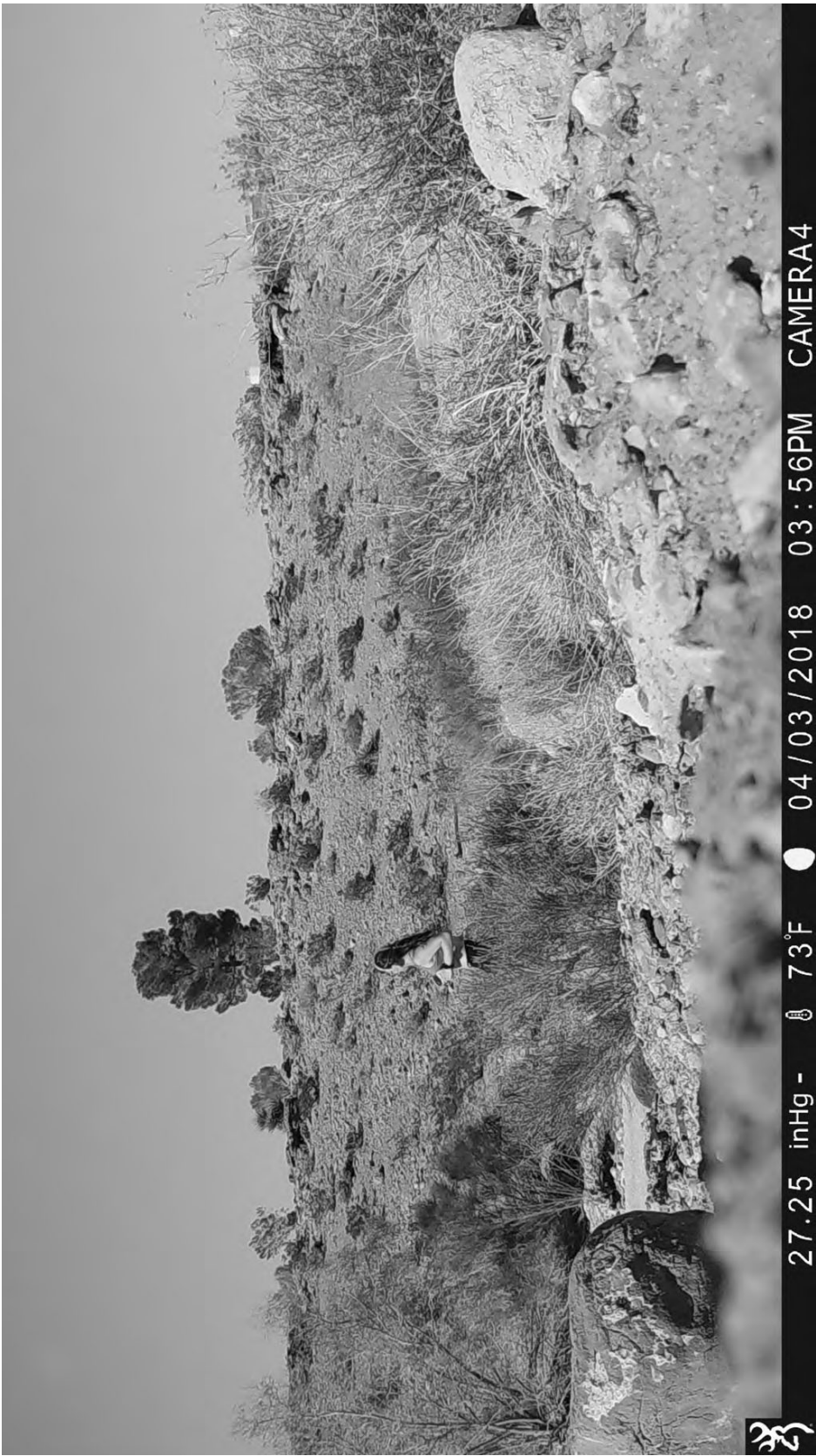
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Exhibit 137



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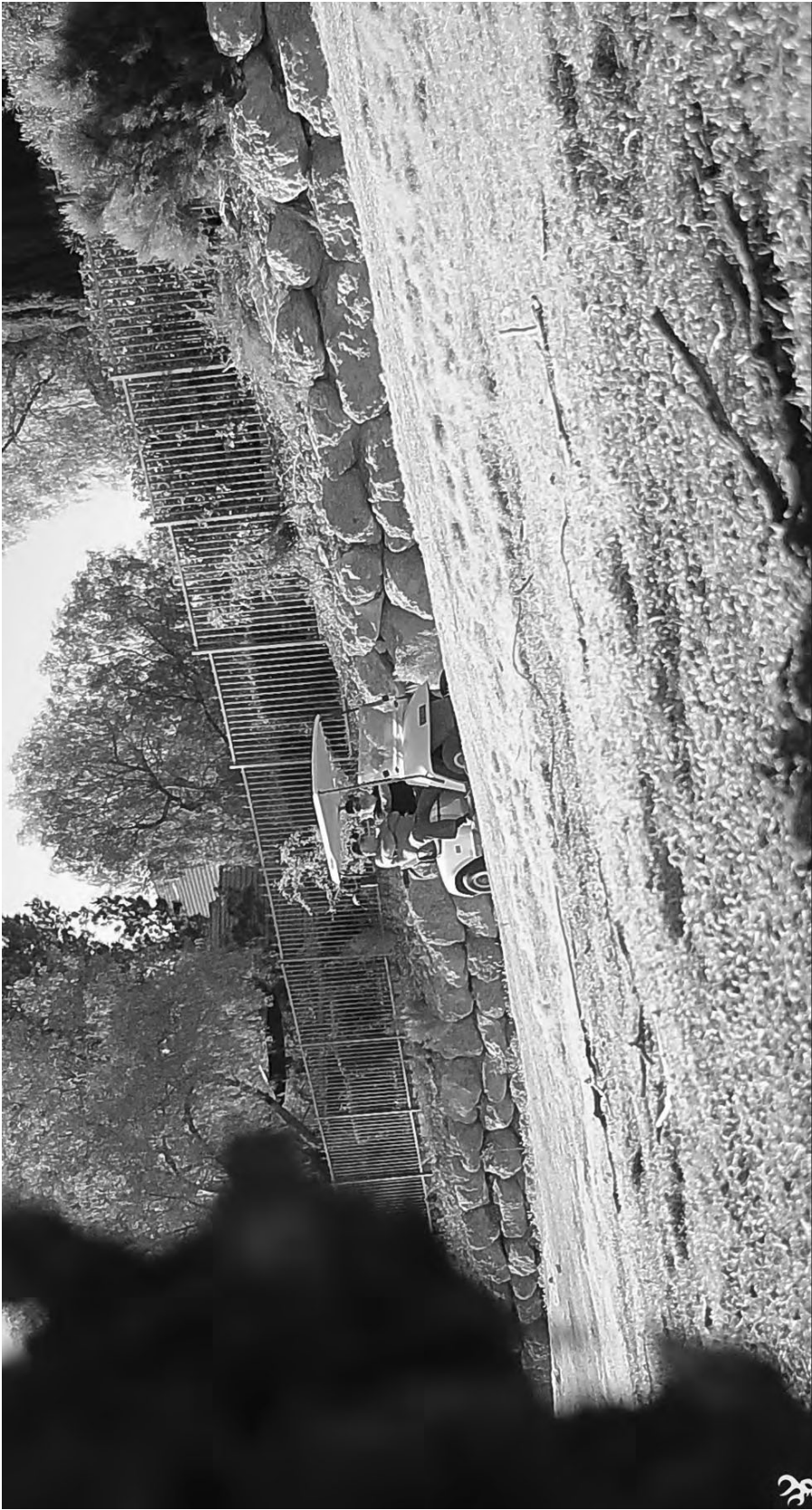
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Exhibit 138

1995 WL 17070330 (C.A.9) (Appellate Brief)
United States Court of Appeals,
Ninth Circuit.

DEL MONTE DUNES AT MONTEREY, LTD., and MONTEREY-DEL
MONTE DUNES CORPORATION, Plaintiffs-Appellees/Cross-Appellants,
v.
CITY OF MONTEREY, Defendant-Appellant/Cross-Appellee.

Nos. 94-16248 and 94-16313.
April 21, 1995.

On Appeal From The United States District Court For The Northern District of California No. 86-05042 The Honorable Charles
A. Legge.

Appellees' Opposition Brief and Cross-Brief

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Dunes Corporation.

***i CORPORATE DISCLOSURE STATEMENT**

Appellee/cross-appellant Del Monte Dunes at Monterey, Ltd. and Monterey Del Monterey Dunes Corporation are affiliated
with Borg Warner, a Chicago Illinois company that has issued shares to the public.

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*4 I. SUMMARY OF ARGUMENT

The judgment in this action arose from a jury trial mandated by this Court's previous opinion in *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496 (9th Cir. 1990). As this Court found, the allegations of the complaint "are adequate to state a claim if proved at trial." *Id.* at 1508. Thus this Court concluded that the civil rights issues raised in the complaint "must await determination after a trial on the merits." *Id.*

At the trial, plaintiff Del Monte Dunes proved every allegation in the complaint through a wealth of percipient witness testimony, expert witness testimony, and documentary evidence. The jury concluded that the City had taken the subject property without just compensation and denied Del Monte Dunes equal protection of the laws.

It is important to note that the City makes no complaint concerning the legal instructions given to the jury. The City could not so complain, because every jury instruction it requested was given by the District Court. The jury instructions requested by the City and given to the jury incorporated every legal standard which the City now asserts in arguing for reversal of the verdict, including the deference which must be given to local governments in ruling upon subdivision applications and various factors which the City now argues supported the rationality of their subdivision denial. Every jury instruction proffered by Del Monte Dunes to which the City objected was not given to the jury.

The jury, based upon those uncontested jury instructions, weighed the evidence and found against the City.

The evidence demonstrated that the City engaged in a series of actions which *5 effectively devoted the entire subject property to public use.

Every "fact" which the City now argues in support of reversal was considered by the jury and rejected as a basis for upholding the rationality of the City's actions.

As this Court observed in requiring a trial on the merits, "[t]he importance of the specific facts and circumstances relating to the property and the facts and circumstances relating to the governmental action militate against summary resolution in most cases." *Id.* The function of the jury was to consider all of those facts and circumstances occurring over a five year period culminating in the denial of Del Monte Dunes' subdivision application. The City's selective invocation of particular facts which suit its purpose ignores the totality of the evidence which the jury weighed. Because there was an evidentiary basis upon which to base the verdict, reversal is inappropriate in this case.

II. STATEMENT OF FACTS

The subject property in this action is a 37 acre parcel of land located within the city limits of the City of Monterey. It is located between Highway 1 and the Pacific Ocean at the north end of the City. [R.T. 85]

The subject property is the site of an abandoned Phillips Petroleum tank farm. Several decades ago the subject property was graded by Phillips, and numerous oil tanks (approximately fifty feet in diameter) were constructed on the site. A railroad spur was extended to the subject, and a facilities yard (including pumping station and distribution pipelines) was constructed on the subject property. Pipelines criss-crossed the subject property. The subject property was used for several decades as a major terminus for crude *6 and refined oil distribution: oil tanker ships would anchor off the subject property to transmit or receive oil from the tanks on site, and oil was similarly transhipped by rail from the subject property. The oil tank farm use was abandoned sometime before the owners of the subject property initiated efforts to develop a residential use in the early 1980's. [R.T. 88]

In constructing and operating the oil tank farm, the subject property's natural condition was totally degraded by grading, importation of non-native plants (mainly iceplant), and routine maintenance of the oil tanks and supporting facilities. [R.T. 152-154, 335-338] At all times pertinent in this action, the subject remained an abandoned industrial site.

By the early 1980's, the subject property in its abandoned industrial state was surrounded by an apartment complex to the south, Highway 1 and Del Monte Avenue to the east, and a hotel to the north of the State of California land on the north end of the property.

In 1981, Del Monte Dunes' predecessor in interest (Ponderosa Homes) optioned the subject property from Phillips Petroleum and began what became a multi-year effort to develop residential uses on the property. [R.T. 91]

Ponderosa Homes originally applied for 344 residential units in 1981. [Trial Exhibit 3] The City's zoning actually allowed for over 900 units. [R.T. 91] In fact, this application and every application that followed were consistent with the residential zoning then adopted by the City. No rezoning of the subject property was ever required.

The 344 unit application took several years to process. Numerous studies were required by the City, including study of traffic, geology, soils, sand transport along the *7 beach, and visual impact. [R.T. 96-97] These studies were prepared by expert consultants at the applicant's expense (hundreds of thousands of dollars). [R.T. 99] Preparation of an Environmental Impact Report ("EIR") was required under the California Environmental Quality Act. The EIR was required to identify all substantial environmental impacts caused by the proposed development, and methods to mitigate any such impacts. [R.T. 100, 105]

These consultant studies and the EIR were circulated to numerous public agencies for review and comment. Dozens of public hearings were conducted to advise the public of the studies and gather any further comment. [R.T. 103, 150]

The original 344 unit application was considered by both the City Planning Commission and the City Council. The City Council requested that the development proposal be reduced to 264 units and modified in other ways to change the siting of the units. Ultimately (as described below), three more modified applications for residential development were filed with the City. Three critical features characterize the processing of all of these applications:

(1) Each application was fully in conformity with the maximum density allowed under the City's General Plan and zoning. Indeed, the applications were all below the permitted density. [R.T. 211-212]

(2) The modifications made in each succeeding application were undertaken in response to specific directives from the City Council concerning the desired density and siting of the units. The modifications to 264 units, 234 units, and finally 190 units were not randomly selected by the applicant, but were specifically given by the Council to the applicant at public hearings after application of the City's land use policies by the Council to *8 those development proposals. [R.T. 93, 106, 120, 130, 139-140]

(3) Most important, the 190 unit project ultimately denied by the City in 1986 was designed by the City itself. *Id.*

This last point merits amplification. As noted above, the subject property consists of approximately 37 acres. The shape of the property is essentially a square. The western boundary of the subject property borders the shoreline. Immediately to the north is property owned by the State of California for park purposes, beyond which is a hotel. To the east is Highway 1. A large apartment complex borders the subject property on the south.

During the processing of the four applications culminating in the 190 unit application, the City did more than merely reduce density from 344 units to 264 to 234 to 190. The City also required the applicant to locate that decreasing density in a continually decreasing buildable portion of the property.

In the first few applications, the City concluded that residential units could not be built on the western one-third of the subject property because that area (fronting the ocean) should be dedicated for public use. In furtherance of that public use dedication, the City required the applicant not only to avoid building in that western one-third, but to construct and maintain a parking lot for the public with access through the proposed development. The applicant agreed to comply with this dedication requirement. [R.T. 97, 125]

Later, the City required the applicant to move development southward away from the State park land to the north to provide a buffer between the development and the State land. The applicant agreed to comply with this City requirement. [R.T. 145-146]

On its east side the subject property rises to a ridge of dunes. After tentative *9 approval of the 190 unit application, the City required the applicant to engage in extensive and detailed analysis of visual impact of residential units located on or near those dunes. "Visual impact" studies vary from jurisdiction to jurisdiction; thus this Court should understand that the visual impact studies required by the City of Monterey mandated that an architect prepare detailed drawings of every residential unit showing square footage of each unit, the elevation of each unit, a cross-section of each unit, and erection of "story poles" for the units to evaluate whether any unit could be seen by passing motorists on Highway 1. [R.T. 151-152]

The upshot of this analysis was a City requirement that no residential unit could be seen from Highway 1 by a passing motorist. As a result, development of the residential units was squeezed westward away from Highway 1 views. That viewshed restriction rendered roughly the eastern one-third of the subject property undevelopable. The applicant paid for these architectural studies, and did not object to the City policy precluding development in this portion of the subject property. *Id.*

After the City prohibited development on the western beach one-third of the subject property, and the eastern one-third viewshed-dunes of the subject property, and the buffer area on the north between the State park land and any development, the only area of the subject property that could be developed was the area described by owner and City witnesses as the "bowl" area. This "bowl" area was the portion of the subject property formerly occupied by the oil tanks, lowest in elevation, with dunes obstructing views from Highway 1 and the beach. [R.T. 152-153]

The City ultimately concluded that this "bowl" area could not be developed because it *10 contained habitat for an endangered species of butterfly. However the City would not allow the beach or dunes areas to be substituted for the habitat area. Thus the subject property was left undevelopable. On September 13, 1984, the City granted preliminary approval of a 190 unit subdivision of the subject property, subject to a number of conditions. [Trial Exhibits 76, 77, 78] This approved plan of development incorporated numerous requirements that the City imposed, including location of access to the subject property, location of the dwelling units, setbacks from the State park land and the beach.

As note previously, the 190 units approved had evolved in direct response to City Council directives. This number of units was selected by the City Council. [R.T. 139-140]

Moreover, when the City preliminarily approved the 190 unit plan of development it was known that the location for the dwelling required by the City contained butterfly habitat. For that reason, the City imposed a condition of approval that a habitat restoration plan be prepared. [R.T. 181-185, 367, 463-464]

The City's brief on appeal ignores this critical fact altogether. At the time of preliminary approval of the 190 units and their siting, the City engaged in a legitimate policy decision. The City determined that preservation of the western one-third of the property for public beach use was a priority. Indeed the 190 unit plan approved required Del Monte Dunes not only to dedicate that acreage to the public, but to construct and maintain a parking lot for the public, as well as provide road access through the subdivision to that public parking lot.

The City also determined in its 1984 approval that viewshed from Highway 1 was also a priority. Hence the City imposed a condition of approval that Del Monte Dunes *11 submit architectural materials to the City Architectural Review Committee. [R.T. 158-159] This process alone consumed almost over year, and involved submission of detailed architectural renderings of dwelling profiles, square footage of units, and elevations of units. Thus the City precluded development of the eastern one-third of the subject property for the public's aesthetic benefit. [R.T. 159-168]

Given these restraints, the only developable portion of the subject property was the "bowl" area where some butterfly habitat existed. The City knew however at the time of its 1984 approval that this habitat would be destroyed to comply with the City's mandate that the public be benefitted by dedication of the beach area and by imposition of viewshed setbacks. [R.T. 181-182, 184-188, 463-464, Trial Exhibit 71]

After the 1984 conditional approval, Del Monte Dunes spent the next two years satisfying the conditions of approval.

Many months were spent before the Architectural Review Committee presenting detailed floorplan and elevation drawings for the Committee's scrutiny. The Committee approved the design of the townhomes. [R.T. 168-170]

Dr. Donald Bright, a nationally respected biologist, prepared a habitat restoration plan. [R.T. 308-312] That plan was circulated among numerous public agencies and modified to reflect any expressed concerns. [R.T. 332-333] The evolution of the habitat restoration plan consumed months. The United States Department of Fish and Wildlife concluded that "*the project as proposed is not likely to jeopardize the continued existence of the endangered Smith's blue butterfly.*" [April 2, 1986 letter from USFW to City, Trial Exhibit 135, emphasis added] In an April 18, 1986 letter from the California Department of *12 Fish and Game to the City, that department concurred in the federal agency's finding that the butterflies' continued existence would not be jeopardized. [Trial Exhibit 136]

A civil engineer prepared detailed grading calculations to demonstrate that fill would not have to be imported to or exported from the site. The City's Department of Public Works approved the grading calculations. [R.T. 171-173, 457-464]

As early as August, 1985, the planning department concluded that Del Monte Dunes had substantially satisfied all of the conditions of approval. [Trial Exhibit 98, p. 8] Concerning the habitat restoration plan, the planning staff concluded that U.S. Fish and Wildlife and California Fish and Game had approved the draft habitat plan. [Trial Exhibit 100]. In a January, 1986 staff report to the Planning Commission, the planning department concluded that Dr. Bright's restoration plan satisfied the conditions of approval. [Trial Exhibit 111, p. 12]

Nonetheless, the City Council denied the subdivision application on June 17, 1986. In its resolution justifying its denial [Trial Exhibit 151], the Council listed six grounds for denial, all of which were shown to be arbitrary and irrational:

Grounds for denial numbers 1, 2, 4, and 5 all found the site not physically suitable for development due to grading, sand relocation, and destruction of habitat. This basis for denial was groundless. As noted above, the City's own Department of Public Works approved the grading calculations required to be submitted. [R.T. 204, 458-460] Furthermore, the grading and

sand relocation which the City now found objectionable were mandated by the City's insistence that the project be built in the "bowl" area. [R.T. 460-462] The only way to mitigate that impact was to construct the townhomes on the dune *13 ridge or near the ocean, which the City would not allow. The City was well aware that the destruction of habitat would occur when it tentatively approved the project in September, 1984. Indeed, the City had required Dr. Bright to prepare a detailed preliminary restoration plan in July, 1984, *before the approval of the project*. [Trial Exhibits 50, 51, 52]

Most significantly, all of the supposed environmental impacts used by the City to deny the subdivision had been previously identified in the massive environmental review that had occurred in the preceding five years and found either not to be significant or mitigated by dedication of public open space and the like. [R.T. 211-214] The City arbitrarily ignored these numerous studies and environmental impacts in order to force the entire property into public use.

Ground for denial number 4 found that the design of the subdivision did not provide adequate access. This was baseless because the access submitted in 1986 was the same access that had been approved by the City in September, 1984. The City's resolution noted that the emergency access was proposed over lands not owned by Del Monte Dunes. The City was not only aware of that in September, 1984, but insisted that emergency access be located there. [R.T. 472-478] There were alternative ways of providing emergency access over land owned by Del Monte Dunes [R.T. 209, 479], but the City preferred (indeed required) that such access be located at the western edge of the subject property where the City had historically drawn a "plan line" providing for extension of a City street across the land not owned by Del Monte Dunes to tie in with the subject property. [R.T. 106-108, 110-111, 126, 135, 142-143, 209-210, 481-482]

Ground for denial number 6 was a catch-all that gave no grounds for denial.

*14 The project architect, engineer, and trial appraisers established that the subject property could not be developed residentially given the grounds of the City's denial and previous restrictions on dune and beach development. [R.T. 214, 486-488, 559-560, 760-763] As a result of the City's action, the entire subject property was burdened by a public use for beach dedication, dune viewshed, and habitat preservation.

The City's mayor admitted that the City would prefer that the subject property be acquired for public use. In a June 13, 1984 letter to the California Coastal Commission [Trial Exhibit 47, p. 2], the mayor sought public acquisition of the subject property if the Coastal Commission would not approve the local coastal plan:

"Second, if you choose not to do this [approve the coastal plan], then we request that you direct your staff to work conscientiously with the State Department of Parks and Recreation and the California Coastal Conservancy to the end that these properties [including the subject property] be purchased by appropriate State agencies, as the only way to achieve significant State objectives and to treat the property owners in a fair way. This is by no means a new idea, as it was the earlier plan of the State to do this, *a plan endorsed by the City of Monterey*." (emphasis added) [R.T. 215-217]

Although funding for acquisition did not materialize in 1984, the State of California did manage to find funding after the 1986 denial of the project. Just as the mayor had hoped, the California Coastal Conservancy acquired the property in 1991 for \$4.5 million. *15 That amount was only half of the 9 million dollars that the property would have been worth had the City not denied the project. [R.T. 709]

By the time the City finished with the property, Del Monte Dunes had an unmarketable property that could only be sold for a public park at a loss of \$4.5 million dollars.

III. ALL CLAIMS FOR RELIEF IN THIS ACTION WERE BROUGHT UNDER THE FEDERAL CIVIL RIGHTS ACT. FEDERAL CIVIL RIGHTS ACT CLAIMS ARE JURY QUESTIONS.

The claims for relief that were tried in this action (inverse condemnation, substantive due process, and equal protection) were brought under the federal civil rights act (42 U.S.C. Section 1983). This Court recognized the viability of those claims in its previous opinion. 920 F.2d 1496, 1500.

The City contends that Section 1983 should not empower the jury in this action to decide whether the City violated the constitutional rights of the property owners.

This is a peculiar argument, given that it flies in the face of well established Section 1983 jurisprudence that juries generally decide questions of violations of constitutional rights.

Section 1983 of course does not create substantive liability, but merely provides a remedy for violations of constitutional rights.

The City mistakenly relies upon Federal Rule of Civil Procedure 71A(h) and California state law. This action, however, is a federal civil rights action. The City ignores this fact and fails to address the law that mandates jury trials in federal civil rights actions.

***16** Plaintiffs in civil rights actions have a right to jury on the issue of whether their constitutional rights have been violated by municipal officials. In *Jett v. Dallas Independent School District*, 491 U.S. 701 (1989), the Supreme Court confronted the issue of which issues the jury is empowered to decide. The Supreme Court held that the issue of which municipal officials had final decision-making authority under *St. Louis v. Praprotnik*, 485 U.S. 112 (1988) was a legal issue for the court to decide. The Supreme Court then held as follows:

“Once those officials who have the power to make official policy on a particular issue have been identified [by the district court] it is for the jury to determine whether their decisions have caused the deprivation of rights at issue by policies which affirmatively command that it occur ...”. *Id.*, at 737 (emphasis added).

In this case, of course, there is no dispute about final decision-making authority because the Monterey city council (and not an inferior body) made the decision which plaintiffs claim to have violated their constitutional rights.

The Supreme Court's decision in *Williamson County Regional Planning Commn. v. Hamilton Bank*, 473 U.S. 172 (1985) is also instructive. In *Williamson County*, the Supreme Court was considering the jurisdictional issue of ripeness in an inverse condemnation action brought under the Federal Civil Rights Act (42 USC §1983). *Id.*, at 182.

The *Williamson County* case came before the Supreme Court after a three week jury ***17** trial holding the governmental defendant liable under §1983 and awarding damages. *Id.*, at 175, 182.

By implication, the Supreme Court acknowledged that such an action brought under §1983 was properly decided by a jury. In holding that the case was not ripe for adjudication because the property owner had failed to pursue a variance, the Supreme Court acknowledged the jury's role in a §1983 action such as the case at bar:

“Accordingly, until the Commission determines that no variances will be granted, it is impossible for the jury to find, on this record, whether respondent will be able to derive economic benefit from the land.” *Id.*, at 172.

The City's reliance on judicial authority and civil procedure rules governing direct condemnation actions is misplaced.

The City is correct that there is no constitutional right to jury trial in a direct condemnation action brought by the United States. The reason for that is rooted in English common law wherein Parliament was supreme and could take property without affording the owner a jury trial. Because condemnation suits were not entitled to a jury at common law, the Seventh Amendment to the U.

S. Constitution insuring jury trials guaranteed at common law did not apply to direct condemnation actions. For an exegesis of jury trials in federal condemnation actions, see *Moore's Federal Practice*, Second Edition, Volume 5, ¶ 38.32, pp. 38-266 et seq.

This action is not an eminent domain action brought by the United States. It is a civil rights action brought by property owners. Thus Rule 71A, the Seventh Amendment, and historical English common law have no application here. Plaintiffs' right to jury trial herein *18 derives from the Federal Civil Rights Act. *Jett, supra*.

The City also relies on California law concerning inverse condemnation cases. It is true that in the State of California, the trial court decides liability in an inverse condemnation action, and a jury decides just compensation.

Whether liability in inverse condemnation is determined by the trial court or a jury varies state to state throughout the nation. The point is that state law does not govern the right to jury trial in a federal civil rights action.

In fact, as federal district courts have learned to their chagrin, reliance on California state law in federal civil rights action leads to reversible error. A perfect example of this is the fact that for many years California state law did not allow a damages remedy in an inverse condemnation case. During that same period, it was typical for counsel representing governments in civil rights inverse condemnation actions to urge the same standard on federal courts. As it turned out, state law was in error. See *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987) [wherein the U. S. Supreme Court categorically held that California state law had been ignoring federal constitutional principles for over 15 years].

IV. THE CITY WOULD HAVE THIS COURT CREATE AN UNTENABLE AND UNCONSTITUTIONAL HIERARCHY AMONG CIVIL RIGHTS LITIGANTS.

The City does not appear to dispute that plaintiffs in civil rights actions have a right to jury trial on issues of both liability and damages. Nonetheless, the City takes the position that the District Court should decide the liability question of whether plaintiff property owners' constitutional rights have been violated. This is erroneous under *Jett, supra*, which *19 gives plaintiffs in federal civil rights actions a right to jury on liability.

Moreover, the City's position is contrary to Supreme Court precedent governing §1983 claims on a purported distinction between personal rights and property rights.

During the 1960's, it was common for defendants in §1983 actions based upon deprivation of property rights to argue a distinction in civil rights jurisprudence between "personal" liberty interests and "mere" property rights. In *Lynch v. Household Finance Corporation*, 405 U.S. 538 (1972), the Supreme Court categorically dispensed with any such distinction. *Id.*, at 542. The Supreme Court ruled as follows:

"... [T]he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental inter-dependence exists between the personal right to liberty and the personal right to property. Neither could have meaning without the other." *Id.*, at 552.

The Federal Civil Rights Act is intended to give a remedy to a property owner whose property rights have been deprived by unconstitutional government action. As the Supreme Court has made clear, these property rights are indistinguishable from individual liberty interests. The plaintiff in a §1983 action seeking to recover compensation for deprivation of a liberty interest (e.g., excessive force employed by police) is entitled to a jury trial. Likewise, plaintiff owners herein are entitled under the federal civil rights action to a jury *20 trial on whether the City of Monterey has unconstitutionally deprived them of a property interest (whether that deprivation occurs by violating the taking clause, the due process clause, or the equal protection clause of federal constitutional law).

V. EQUAL PROTECTION CASES UNDER THE FEDERAL CIVIL RIGHTS ACT ARE ENTITLED TO A JURY TRIAL

The City argues that this Court, sitting without a jury, should decide liability on plaintiffs' equal protection claim because the equal protection claim implicates questions of disparate treatment and rationality behind such disparate treatment.

What the City ignores is the fact that disparate treatment and rationality are typically issues implicated in moot equal protection claims brought under the Federal Civil Rights Act.

There is no dispute that plaintiffs alleging violations of equal protection under the Federal Civil Rights Act are entitled to a jury trial on liability and damages. *See, e.g., Kitchen v. Chippewa Valley Schools*, 825 F.2d 1004 (6th Cir. 1987). The *Kitchen* case is instructive. In *Kitchen* the plaintiffs brought equal protection actions alleging discrimination under both §1983 and Title VII. The district court, sitting without a jury under Title VII, ruled against the plaintiffs. However, the Court of Appeals affirmed the district court's submission of the discrimination claims to the jury under §1983.

The City argues that because various statutes and land use regulations are an issue, the jury should be precluded from deciding liability. However, the City ignores abundant case law under §1983 jurisprudence in which liability is commonly intertwined with interpretation of or application of various statutes and regulations. For example, in *21 *Casias v. City of Raton*, 738 F.2d 392 (10th Cir. 1984), the plaintiff in a §1983 action alleged a violation of due process arising from termination of employment. The 10th Circuit ruled that liability under the due process claim was to be evaluated by a jury. *Id.*, at 395. Moreover, the 10th Circuit held that a personnel ordinance and its application to the civil rights plaintiff was a jury question of fact. *Id.*, at 395.

The United States Supreme Court has ruled again and again that takings cases such as this action are inherently factual, and involve the weighing of such factors as the economic impact of the regulation and interference with reasonable investment-backed expectations. *See, e.g., Hodel v. Virginia Surface Mining & Reclamation Association, Inc.*, 452 U.S. 264 (1981). This Court for that reason has ruled that property owners must file a meaningful application for development to ensure that the weighing of these factors is performed by the trier of fact in the concrete and not in the abstract. *Kinzli v. City of Santa Cruz*, 818 F.2d 1449 (9th Cir.), *modified on other grounds*, 830 F.2d 968 (9th Cir. 1987), *cert. denied*, 484 U.S. 1043 (1988).

If this Court were to accept the City of Monterey's formulation, then very few plaintiffs under the Federal Civil Rights Act would be entitled to juries because the governmental defendant could typically claim that an ordinance, regulation, issue of rationality, or issue of disparate treatment, were involved in the action. According to the City of Monterey, any such defense claim would immediately deprive a §1983 plaintiff of the right to jury on the issue of liability.

However, that is not the law under §1983. Under §1983 jurisprudence, plaintiff property owners in this action have a right to jury trial on the liability issues presented.

*22 VI. THERE WAS AMPLE EVIDENCE TO SUSTAIN THE EQUAL PROTECTION CLAIM

The starting point for reviewing the jury's verdict against the City on equal protection grounds is this Court's previous opinion. That opinion correctly analyzed *Nollan v. California Coastal Commission*, 483 U.S. 825, 835 (1987) as follows: "The [*Nollan*] Court noted that, even assuming the legitimacy of the purpose for the requirement, the action might violate the equal protection clause if the property owner were singled out to bear the burden of remedying the problems that California sought to correct." *Del Monte Dunes, supra* at 1509. Moreover, this Court framed the very issue which this jury decided: "Although the objective of preserving a habitat for the Smith's Blue Butterfly is rational, it may not be rational to single out this parcel to provide it." *Id.*

Del Monte Dunes's expert biologist (Dr. Bright) established that the habitat restoration plan would succeed. The City's brief ignores the fact that this site was highly degraded due to the operation of the oil tank farm. According to Dr. Bright, the non-native iceplant would have eradicated the habitat flora if the site were left alone. [R.T. 337-338] The federal and state agencies that reviewed the final restoration plan did not suggest any further changes in the plan. Indeed the final restoration plan incorporated any suggested modifications made by these agencies during the draft stages. [R.T. 339-341, 345-347, 370-376, 423, 427-429]

The City's treatment of the federal and state agency responses is misleading. These agencies did *not* conclude that a better restoration plan could be developed. The agencies also concluded that the subdivision would *not* jeopardize the continued existence of the *23 butterfly. [R.T. 368-370] However, the agencies did state their preference that development not occur in the "bowl area" in which the butterfly habitat was located. [R.T. 381-382] That preference of course conflicted with the City's desire to locate the development exclusively in the "bowl area." When the City approved the 190 units in 1984, that approval was conditioned on the preparation of a habitat restoration plan, and *not* on relocating the development to the beach or the dunes in order to avoid destruction of the habitat. The City and the property owner knew in 1984 that the result of the City's policies in prohibiting development near the beach and on the dunes would result in the destruction of the butterfly habitat. Hence the requirement for a habitat restoration plan.

The jury was justified in concluding that the City's refusal to allow development in the habitat area, when combined with prohibitions of development on the remainder of the site, was irrational.

The evidence was undisputed that, to whatever extent habitat preservation was necessary on the subject property, it was only so because historical habitat surrounding the subject property had been destroyed by the construction of a massive apartment complex to the south, the Naval Post Graduate School to the south, Highway 1 and intense industrial development to the east, a hotel to the north, and a major sewer line through the habitat area of the subject property. [R.T. 89, 217-219, 321-323]

The City argues that this, development was approved before habitat preservation became a planning issue. That argument begs the question. In *Nollan*, the problem sought to be remedied by California was restricted beach access and viewshed caused by development approved before enactment of the California Coastal Act. *Nollan* nevertheless *24 held that equal protection (as well as inverse condemnation) liability could be based upon being "singled out" to bear the burden for a public benefit. The concept of being "singled out" contemplates that a different set of regulations are applied to the property in question compared with previously approved development surrounding it. Obviously, if all the property in a region is subject to the same regulations, and thus is burdened only with a proportionate share of the burden in remedying the problem, no singling out could occur.

The critical factual inquiry is whether the burden imposed is so intrusive as to be disproportionate to the contribution to the problem made by the property in question. A good illustration of this proportionality of burden is the City's requirement that fifteen percent of Del Monte Dune's development be devoted to affordable housing. Unquestionably the provision of affordable housing is a legitimate and important police power goal. Requiring all developers in the City to devote fifteen percent of their units for affordable housing places that burden proportionally, and constitutionally, on each landowner. Del Monte Dunes complied without objection to this affordable housing requirement. [R.T. 122, 178-179]

The City could have rationally imposed a City-wide fee on developers, or a regional assessment district, for the establishment of a butterfly habitat restoration fund or to acquire habitat-laden properties. The City did not attempt to proportionately impose the burden of habitat preservation in this rational manner. Instead, the City effectively required Del Monte Dunes to maintain a butterfly zoo for the benefit of the public at large.

Further, the jury could also reasonably conclude that the City's refusal to allow development outside the "bowl area" was an irrational method of achieving the stated goal of *25 habitat preservation. Prohibiting development in the "bowl area" for alleged protection of habitat, while simultaneously prohibiting development on the remainder of the subject property to achieve public benefits of unobstructed viewshed and beach access/use, was clearly irrational. If the City wished to rank preservation of

habitat above viewshed and public beach use, then the City could have rationally achieved that goal by moving the developable area outside of the habitat area. It was irrational, however, to impose a public servitude on the entire property.

In denying the City's motion for new trial, the District Court found that substantial evidence supported the jury's verdict in favor of Del Monte Dunes on the equal protection claim for relief. The City now reargues that same evidence on this appeal. That evidence substantially supported the verdict, and merits affirmance of the verdict on equal protection grounds.

VII. SUBSTANTIAL EVIDENCE SUPPORTED THE JURY'S FINDING OF LIABILITY FOR A TAKING

The “singling out” theory addressed above applies equally to takings claims under the Fifth Amendment. *Nollan, supra*, 483 U.S. 825, 835, n. 4. Thus the same evidence described above demonstrating that the entire burden of habitat preservation was being visited on this property owner, although need for preservation was created by many other surrounding owners' developments, supports the jury's finding of liability under a takings claim for relief.

The jury was entitled to conclude that the City's course of conduct did not *26 substantially advance a legitimate public purpose. The City urges this Court to view the City's denial of the subdivision through a distorted lens. The City's brief ignores completely the totality of City regulations and their effect of the use of the subject property. Instead the City improperly addresses only its selective view of evidence which it claims provided a legitimate environmental basis (preservation of habitat on a portion of the property) for the denial.

In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), the Supreme Court held that the effect of government restrictions on the entire property is the proper framework for takings analysis.

If the City had prohibited development in the bowl area, but allowed development elsewhere on the subject property, the City might then be correct that a legitimate basis existed for precluding development on that portion of the property. Of course those are not the facts herein. The question of whether the City's denial substantially advanced a legitimate public interest must be examined given the effect of the City's treatment of the entire subject property.

The jury was justified in concluding that the City's actions did not bear a reasonable relationship to habitat protection. The reasonable way to protect habitat was simply to move the development to other areas of the subject property. Prohibiting all residential use was unreasonable.

The City relies on its zoning regulations to argue that residential use was not in fact prohibited. However, as this Court recognized in its previous opinion concerning ripeness of the claims for relief herein, the critical inquiry is how those regulations are *applied* to a *27 particular property. *Del Monte Dunes, supra*, 920 F.2d at 1500-1506. This is why plaintiffs such as Del Monte Dunes are required to file and pursue to final decision at least one application for development. Only then can a trier of fact analyze the effect of the regulations on the books on the subject property as applied to that property.

In this action, Del Monte Dunes modified its development application four times (making numerous adjustments to the development in addition to the reduction of density) to respond to the City Council's interpretation of its ordinances and regulations. The net result of that application process was tentative approval of the 190 units located in the bowl area of the property. Del Monte Dunes' architect, engineer, and appraisers testified at trial that a residential use could not be developed on the property after the City in 1986 prohibited development in the bowl area by finding that area “physically unsuitable” for development. [R.T. 214-215, 486-488, 559-560, 760-763]

Del Monte Dunes made efforts to market the subject property after the 1984 denial. Interested buyers all abandoned any attempt to purchase the property after reviewing the City's course of conduct and speaking with City planning representatives concerning future City policy. [R.T. 219-220, 514-517]

The City argues that Del Monte Dunes did not file additional applications after 1986. That of course is true. As Del Monte Dunes' project architect explained, however, it was futile to file further applications given the effect of the City's restrictions on development over the five years of processing the development. It was impossible for the architect to design a residential development which would satisfy the public beach use, dunes viewshed, and habitat area prohibition. [R.T. 203] In the five years preceding the 1986 denial, the *28 City Council was not reticent about instructing Del Monte Dunes to modify its development proposal in very specific ways to bring the development in line with City policy preferences. In each of the instances when the City specified how the development proposal had to be changed, it invited Del Monte Dunes to return with a modified proposal.

In 1986, however, the City left no room for further modifications. It categorically declared the subject property "not physically suitable" for development, and denied it. When the State of California was negotiating for acquisition of the subject property for a public park, the Del Monte Dunes representative (Mr. Considine) was telephoned by the deputy City Attorney of Monterey. Mr. Considine's trial testimony concerning this conversation was undisputed. The deputy City Attorney advised Mr. Considine that the City was planning to participate financially in the public acquisition by the State. The deputy City Attorney did not advise Mr. Considine that sale to the State was not necessary because the City would be willing to consider an alternative scheme of development.

The jury was entitled to conclude that the history of City restrictions on use, its categorical rejection of development as "physically unsuitable" on the property in 1986, and its proposed participation in public acquisition was not a reasonable way to pursue public purposes.

The City's claim that the subject property retained a viable economic use ignores recent Supreme Court precedent. In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886 (1992), the Supreme Court refined its previous holdings on viable economic use in takings cases. The Supreme Court held that a taking may occur where regulations "leave the owner without economically beneficial or productive options for *29 its use -- typically, as here, by requiring land to be left in its natural state --" because such regulations "carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm." *Id.* at 2894-2895. The Supreme Court addressed the issue of residual value remaining in the property thus:

"[Dissenting Justice Stevens'] analysis errs in its assumption that the landowner whose deprivation is one step short of complete is not entitled to compensation. Such an owner might not be able to claim the benefit of our categorical formulation, but, as we have time and again, 'the economic impact of the regulation on the claimant and ... the extent to which the regulation has interfered with distinct investment-backed expectations' are keenly relevant to takings analysis generally. [citation omitted]" *Id.* at 2895, n. 8.

In the case at bench, the evidence demonstrated that the effect of the City's course of conduct was to require that the subject property be left in its natural state. Moreover, this imposition of a public servitude on the property was not due to safety considerations such as flood plain or fire risk. Instead, the public servitude provides the public with aesthetic and recreational benefits such as viewsheds, use of the beach, and a butterfly zoo.

As Mr. Considine testified, the \$3.7 million dollar purchase of the property was transacted only *after* the September, 1984 tentative approval. Del Monte Dunes would not have purchased the property had it known that no portion of the property would be allowed a residential use. [R.T. 511-513] Thus a jury could easily conclude that the City's actions interfered with reasonable investment backed expectations.

Let us hasten to add that this is not a case where, after a tentative approval such as here, a local government cannot respond to newly discovered environmental impacts or toxic *30 by requiring that a project be modified. In this respect, this case is somewhat unique. An affirmance of the jury verdict would simply say that a local government cannot zone a property for residential use, require five years of expensive and comprehensive environmental and design review, approve a reduced density-

with findings that such use is physically suitable and consistent with the City's zoning, and then later deny the project because public benefit would be served if none of the property were developed.

The City's reliance on *Haas v. City and County of San Francisco*, 605 F.2d 1117 (9th Cir. 1979), *cert. denied*, 445 U.S. 928 (1980) and other *pre-Lucas* cases is misplaced. In all of those cases, the property owner was allowed some use of the property. In *Haas* the height of residential use was lowered, but residential use was still allowed. The *Haas* property was not required to be left in its natural state, which *Lucas* would find to be a taking. Likewise in the case at bench, Del Monte Dunes did not sue and seek compensation when density was reduced from 344 units to 190 units. If it had, *Haas* might be applicable.

No real property in California, or any other state for that matter, has zero value. Every property will always have, at a minimum, a speculative value even if denied any use. If, as the City would have it, denial of viable economic use meant zero value, the takings clause would effectively be written out of the constitution. For that reason the *Lucas* decision required an ad hoc analysis of the *use* remaining for a property, and refused to apply any categorical formula in defining the viability of such use.

Both of Del Monte Dunes' appraisers concluded that the highest and best use of the subject property after denial of the subdivision was speculative open space. [R.T. 549-555, 671] The property was unmarketable. [R.T. 219-220, 514-517]. Imposing a public *31 servitude that results in a speculative use is not the type of beneficial use which the *Lucas* decision requires in order to avoid a taking.

VIII. SUBSTANTIAL EVIDENCE SUPPORTED THE JURY'S AWARD OF DAMAGES

Two MAI appraisers with combined experience of over fifty years testified for Del Monte Dunes at trial. The appraisers engaged in the necessary investigation of highest and best use and comparable sales. The appraisers employed the damages measure suggested by this Court in *Herrington v. County of Sonoma*, 834 F.2d 1488, 1506, n. 23 (9th Cir. 1987), *modified* 857 F.2d 567 (1988), *cert. denied* 489 U.S. 1090 (1989).

That damages measure requires the appraiser to analyze the highest and best use of the property just before the unconstitutional denial and just after the unconstitutional denial. That before and after analysis results in a differential, or loss of value. A loss of return is applied to the loss of value for the period during which the owner suffered delay.

In addition the owner can recover any permanent loss of value suffered in addition to the lost return due to the delay. *Id.* In this action, however, the District Court precluded Del Monte Dunes from recovering permanent loss of value, and allowed recovery only for loss of return. [R.T. 435-436]

Given this limitation, one Del Monte Dunes appraiser concluded that the loss of return was \$1,654,000 [R.T. 565] based on a differential of \$2,675,000 [\$5.6 million before value less \$2.925 million after value]. [Trial Exhibit 157] The other appraiser concluded a loss of return of \$1,730,000 based on a differential of \$2,914,000 [\$6 million before value *32 less \$3.086 million after value]. [Trial Exhibit 154A-D]

Pursuant to the requirements of *Herrington*, the appraisers appraised the property on an acreage basis, and did not assume any given number of approved units.

The City complains that the appraisers delay period (from time of denial to time of trial) was too long. Relying on the District Court's damages opinion in the *Herrington* retrial, 790 F.Supp. 909 (N.D. Cal. 1991), the City argues that the delay period should be restricted to eighteen months [the Honorable Charles A. Legge decided the *Herrington* retrial pursuant to a jury waiver and also presided over the Del Monte Dunes trial].

The District Court ruled against the City, properly holding that the delay period is a question of fact for the trier of fact. [R.T. 435] In *Herrington*, sitting as the trier of fact pursuant to a jury waiver, the District Court concluded that eighteen months was

a reasonable delay period based on the facts of that case. In *Del Monte Dunes*, the District Court properly left the question of the length of the delay period to the jury.

The City fails to appreciate a fundamental difference between *Herrington* and *Del Monte Dunes* that requires a different delay period. In *Herrington* the County of Sonoma denied the subdivision at the outset of its submission on grounds of inconsistency with the County's General Plan. No environmental review of the project had occurred at the time of denial. Numerous steps had to be completed before ultimate approval even had the denial on consistency grounds not occurred. Thus the District Court concluded that the *Herringtons* suffered delay only in the prompt consideration of their subdivision application. Hence the eighteen month delay period.

Del Monte Dunes, however, was denied after five years of processing numerous *33 modifications of its development proposal. Comprehensive environmental review and studies of items such as traffic and soils had been reviewed and completed. *Del Monte Dunes* spent two years complying with the conditions of approval imposed in September, 1984. Thus there was no further processing to complete when the City arbitrarily reversed itself in 1986 and denied the subdivision. The City in 1986 arbitrarily found the subject property to be "physically unsuitable" for residential development. It did not deny the subdivision for failure to complete a pending study of some sort.

Had the City acted constitutionally in 1986, it would have approved the subdivision. It instead illegally denied the development. *Del Monte Dunes*' was thus denied the benefit of the value of that approval from the time of denial to the time of trial. The jury's verdict of \$1,450,000 was well within a reasonable range of the expert testimony, and should not be disturbed on appeal.

The City also claims that damages are excessive because the California Coastal Commission might not have approved the development. The appraisers considered the Coastal Commission's role in the approval process in arriving at their conclusions. The City ignores the fact that *Del Monte Dunes* architect and Dr. Bright worked closely with the Coastal Commission throughout the five years of processing the application. Dr. Bright in fact was a former member of the Coastal Commission. [R.T. 313]

There was no purpose to designing a subdivision that would not pass muster with the Coastal Commission. For that reason, the project architect and Dr. Bright had numerous meetings with Coastal Commission officials (often attended by City planning representatives) over the five years of processing the application to present the current project design and *34 solicit input from the Coastal Commission. Coastal Commission suggestions were incorporated into the project design. Based on these discussions and project modifications to satisfy Coastal Commission concerns, both the architect and Dr. Bright concluded that there was a reasonable probability of Commission approval. [R.T. 135-140, 345-359] That probability was sufficient to support the jury's damages award.

IX. THE DISTRICT COURT ERRONEOUSLY PRECLUDED DEL MONTE DUNES FROM RECOVERING PERMANENT LOSS OF VALUE

As noted above, the loss of return damages are based on the differential between before and after values. *Del Monte Dunes* sought compensation for both loss of return and loss of value (the differential). The District Court sustained the City's objection to recovery of the differential value. [R.T. 435-436] *Del Monte Dunes* timely filed notice of a cross appeal of that decision. [C.R. 169]

The appropriate measure of damages is a matter of law to be decided by the District Court. *Herrington*, *supra*, 834 F.2d at 1506, n. 23.

The District Court reasoned that *Del Monte Dunes* was limited to a temporary measure of damages (loss of return only) because a finding of liability would invalidate the City's denial. In *Herrington*, this Court upheld that approach but only because the County of Sonoma in *Herrington* agreed by stipulation to invalidate its subdivision denial in the event it was found liable to the

Herringtons. Moreover, the Herringtons continued to own their property after the County's denial was invalidated. Thus they could proceed with processing of their development application.

***35** The District Court erred when it assumed that a finding of liability would automatically invalidate the City's denial of Del Monte's subdivision. Only the City, and not the District Court or the jury, has the power to elect whether it will invalidate an offending regulation (and pay temporary damages) or leave the regulation in place and pay permanent damages (loss of return and loss of value).

The power of the local government -- and not the judiciary -- to make this election was recognized in *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621 (1981). *San Diego Gas & Electric* did not reach the merits of that takings claim on ripeness grounds. In dissent, Justice Brennan addressed the merits of the takings claim. Justice Brennan concluded that local governments are liable for monetary damages in takings cases. His dissent was later adopted by the Supreme Court in *First Lutheran*, *supra*. Justice Brennan stated as follows

"The constitutional rule I propose requires that, once a court finds that a police power regulation has effected a 'taking,' the government entity must pay just compensation for the period commencing on the date the regulation first effected the 'taking,' and ending on the date *the government chooses* to rescind or otherwise amend the regulation. Ordinary principles determining the proper measure of just compensation, regularly applied in cases of permanent and temporary 'takings' ... should provide guidance." *Id.* at 658-659 (emphasis added)

"Alternatively, the government may choose to formally condemn the property, or otherwise to continue the offending regulation: in either case the action must be sustained by proper measures of just compensation." *Id.* at 659-660

In the case at bench, denial of recovery of Del Monte Dunes' permanent loss of value violates this fundamental precept of just compensation. At any time before the sale of the ***36** subject property to the State of California, the City (and only the City) could have made the election that Justice Brennan contemplates if the City wished to convert this action into a temporary damages measure. Indeed Justice Brennan assumed that governmental defendants would be required to do so:

"The government must inform the court of its intentions vis-a-vis the regulation with sufficient clarity to guarantee a correct assessment of the just compensation." *Id.* at 659

The City knew that the State intended to acquire the subject property for public park use. The City at one point planned to participate in funding that acquisition. [R.T. 521-524] The City could easily have notified the court of its election to invalidate the denial. Instead, the City allowed the State to acquire the wounded property at half its fair market value given the City's unconstitutional denial.

The City thus avoided its obligation to pay just compensation. Had the City elected to invalidate, Del Monte Dunes could have retained the property and would now have a development approval and a restoration of the lost value. Through its failure to elect, the City has ensured that full just compensation will never be paid to Del Monte Dunes if the District Court's ruling is allowed to stand.

Del Monte Dunes requests this Court to reverse the District Court's ruling precluding recovery of permanent loss of value (before and after value differential).

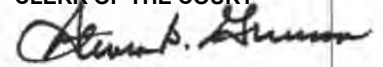
***37 X. CONCLUSION**

For the reasons given above, Del Monte Dunes requests this Court to affirm the jury's verdict and reverse the District Court's damages preclusion ruling and remand for further proceedings to determine the just compensation to be paid for permanent loss of value.

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Exhibit 139



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DISTRICT COURT

CLARK COUNTY, NEVADA

12 JACK B. BINION, an individual; DUNCAN R.
13 and IRENE LEE, individuals and Trustees of the
14 LEE FAMILY TRUST; FRANK A SCHRECK,
15 an individual; TURNER INVESTMENTS, LTD.,
16 a Nevada Limited Liability Company; ROGER P.
17 and CAROLYN G. WAGNER, individuals and
18 Trustees of the WAGNER FAMILY TRUST;
19 BETTY ENGLESTAD AS TRUSTEE OF THE
20 BETTY ENGLESTAD TRUST; PYRAMID
21 LAKE HOLDINGS, LLC.; JASON AND
SHEREEN AWAD AS TRUSTEES OF THE
AWAD ASSET PROTECTION TRUST;
THOMAS LOVE AS TRUSTEE OF THE ZENA
TRUST; STEVE AND KAREN THOMAS AS
TRUSTEES OF THE STEVE AND KAREN
THOMAS TRUST; SUSAN SULLIVAN AS
TRUSTEE OF THE KENNETH J. SULLIVAN
FAMILY TRUST, AND DR. GREGORY
BIGLOR AND SALLY BIGLER,

Petitioners,

vs.

24 THE CITY OF LAS VEGAS; and SEVENTY
25 ACRES, LLC, a Nevada Limited Liability
Company,

Respondents.

CASE NO. A-17-752344-J
DEPT. NO. XXIV

RESPONDENT CITY OF LAS VEGAS' ANSWERING BRIEF

1 September 6, 2000.¹ The City of Las Vegas (“City”) subsequently adopted the Land Use &
2 Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan on September 2, 2009.²
3 Ordinance #6056; revised with Ordinance #6152 on May 8, 2012.

4 The Land Use & Neighborhoods Preservation Element is significant, *inter alia*, because it
5 plainly establishes the City’s land use hierarchy. The land use hierarchy progresses in the
6 following ascending order: 2020 Master Plan; Land Use Element; Master Plan Land Use
7 Designation; Master Development Plan Areas; and Zoning Designation. (Land Use &
8 Neighborhoods Preservation Element at 19.) In the hierarchy, the land use designation is
9 subordinate to the zoning designation, for example, because land use designations indicate the
10 intended use and development density for a particular area, while zoning designations
11 specifically define allowable uses and contain the design and development guidelines for those
12 intended uses.

13 The City’s decision to approve Seventy Acres, LLC’s applications conformed to the
14 zoning and land use designations of Peccole Ranch, which did not require the approval of a
15 Major Modification, and—thus—warrants deference from the Court. The Nevada Supreme
16 Court has previously noted that

17 it is not the business of courts to decide zoning issues. *Coronet*
18 *Homes, Inc. v. McKenzie*, 84 Nev. 250, 256, 439 P.2d 219, 223
19 (1968). Because of [a governing body’s] particular expertise in
20 zoning, courts must defer to and not interfere with the [governing
body’s] discretion if this discretion is not abused. *City Council,*
Reno, 100 Nev. at 439, 683 P.2d at 962.

21 *Nevada Contractors v. Washoe County*, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

22 The City acted within its discretionary powers and properly approved the three
23 applications without a Major Modification. A Major Modification is similar to a General Plan
24 Amendment. While a General Plan Amendment changes the land use designation within a

25 ¹ The City of Las Vegas 2020 Master Plan is available at
26 [https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst00](https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002661.pdf)
27 [2661.pdf](https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002661.pdf).

28 ² The City of Las Vegas Land Use & Neighborhoods Preservation Element is available at
[https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst00](https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002656.pdf)
[2656.pdf](https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002656.pdf).

1 Simon & Tucker argues that the court was presented with
2 evidence to the contrary, which showed that granting the gaming
3 licenses would in fact be beneficial to the public interest. However,
4 just because there was conflicting evidence does not compel
5 interference with the Board's decision so long as the decision was
6 supported by substantial evidence. *O'Donnell v. Buhl*, 75 Idaho 34,
7 266 P.2d 668, 669 (1954). It is not the place of the court to
8 substitute its judgment for that of the Board as to the weight of the
9 evidence. *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281,
10 282, 607 P.2d 581, 582-583 (1980).

11 As in *Simon & Tucker*, the City Council received conflicting evidence supporting and
12 opposing the applications. Their approval, however, was supported by substantial evidence. The
13 Court may not reweigh the evidence or substitute its judgment for that of the Council's. Instead,
14 it must affirm the decision of the City Council.

15 DATED this 23RD day of October, 2017.

16 BRADFORD R. JERBIC
17 City Attorney

18 By:

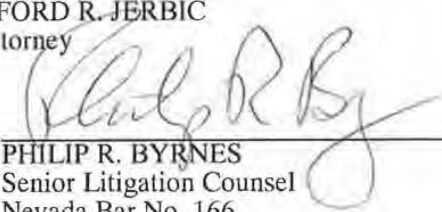
19 
20 PHILIP R. BYRNES
21 Senior Litigation Counsel
22 Nevada Bar No. 166
23 ELIAS P. GEORGE
24 Deputy City Attorney
25 Nevada Bar No. 12379
26 495 South Main Street, Sixth Floor
27 Las Vegas, NV 89101
28 Attorneys for CITY OF LAS VEGAS

Exhibit 140

20050414-0002951

39
RPTT: Exempt 8
APN: 138-31-212-002
138-31-312-001
138-31-312-002
138-31-418-001
138-31-610-002

Fee: \$18.00 RPTT: EX#008
N/C Fee: \$25.00

04/14/2005 13:59:00
T20050068007

Requestor:
STEWART TITLE OF NEVADA

RECORDING REQUESTED BY STEWART TITLE
AND WHEN RECORDED MAIL TO:

Frances Deane JSB
Clark County Recorder Pgs: 5

Fore Stars, Ltd.
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145
Attention: Larry A. Miller



MAIL TAX STATEMENTS TO:

Same as above.

GRANT, BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **PECCOLE 1982 TRUST, DATED FEBRUARY 15, 1982**, as to an undivided Forty Five percent (45%) interest and **WILLIAM PETER AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP**, as to an undivided Fifty Five percent (55%) interest, whose addresses are 851 S Rampart Blvd., Las Vegas, Nevada 89145, does hereby grant, bargain, sell and convey to **FORE STARS, LTD.**, a Nevada limited liability company, whose address is 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145, that certain real property in the County of Clark, State of Nevada, more particularly described in Exhibit "1" attached hereto and incorporated herein by this reference.

SUBJECT TO (a) non-delinquent taxes for the fiscal year 2004 - 2005, (b) encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and easements that are validly of record and (c) all matters that would be revealed by an accurate ALTA Survey or physical inspection of the real property.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Dated as of: April 11, 2005

PECCOLE 1982 TRUST, DATED
FEBRUARY 15, 1982

By: Peccole-Nevada Corporation, Trustee

By: Larry A. Miller
Larry A. Miller, Chief Executive Officer

WILLIAM PETER AND WANDA RUTH
PECCOLE FAMILY LIMITED PARTNERSHIP

By: Peccole-Nevada Corporation, General Partner

By: Larry A. Miller
Larry A. Miller, Chief Executive Officer

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on April 11, 2005, by Larry A. Miller Chief Executive Officer of Peccole-Nevada Corporation, the Trustee of the Peccole 1982 Trust, dated February 15, 1982 and the General Partner of the William Peter and Wanda Ruth Peccole Family Limited Partnership.



Joanne Baldassare
NOTARY PUBLIC
My commission expires: June 2, 2006

EXHIBIT "1"
TO
GRANT BARGAIN SALE DEED
Legal Description

PARCEL 1:

Lot FIVE (5) of AMENDED PECCOLE WEST, as shown by map thereof on file in Book 83 of Plats, Page 57, in the Office of the County Recorder of Clark County, Nevada.

AND

Lot TWENTY-ONE (21) of PECCOLE WEST LOT 10, as shown by map thereof on file in Book 83 of Plats, Page 61, in the Office of the County Recorder of Clark County, Nevada.

004581

8866

29
**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s):

- a) 138-31-212-002
b) 138-31-312-001
c) 138-31-312-002
d) 138-31-418-001
e) 138-31-610-002

2. Type of Property

- a) ☐ Vacant Land b) ☐ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2 - 4 Plex
e) ☐ Apartment Bldg. f) ☒ Comm'l / Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other: _____

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument No.: _____
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value / Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property)

Transfer Tax Value:

Real Property Transfer Tax Due:

\$ _____
(_____)
\$ _____
\$ Exempt

4. **If Exemption Claimed:**

- a. Transfer Tax Exemption, per NRS 375.090, Section 8
b. Explained Reason for Exemption: transfer to a business entity of which grantor is the 100% owner

5. Partial Interests: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 ½% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: see A attached

Capacity: see A attached

Signature: see B attached

Capacity: see B Attached

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name see C attached
Address _____
City : _____
State: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Fore Stars, Ltd.
Address: 851 S. Rampart Blvd. #220
City : Las Vegas
State: Nevada Zip 89145

COMPANY REQUESTING RECORDING (required if not seller or buyer)

Print Name: Stewart Title of Nevada
Address: 3773 Howard Hughes Parkway
City: Las Vegas

Escrow # 405137-LJJ
State: NV Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)


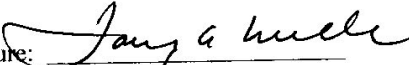
295
004582

8867

STATE OF NEVADA DECLARATION OF VALUE SIGNATURE PAGE

Accessor Parcel Number(s):

- a) 138-31-212-002
- b) 138-31-312-001
- c) 138-31-312-002
- d) 138-31-418-001
- e) 138-31-610-002

- A: Signature:  Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Trustee of the Peccole 1982 Trust dated February 15, 1982 and General Partner of the William Peter and Wanda Ruth Family Limited Partnership
Larry A. Miller
- B. Signature:  Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Manager of Fore Stars, Ltd.
Larry A. Miller
- C. Peccole 1982 Trust dated February 15, 1982
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

William Peter and Wanda Ruth Peccole Family Limited Partnership
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

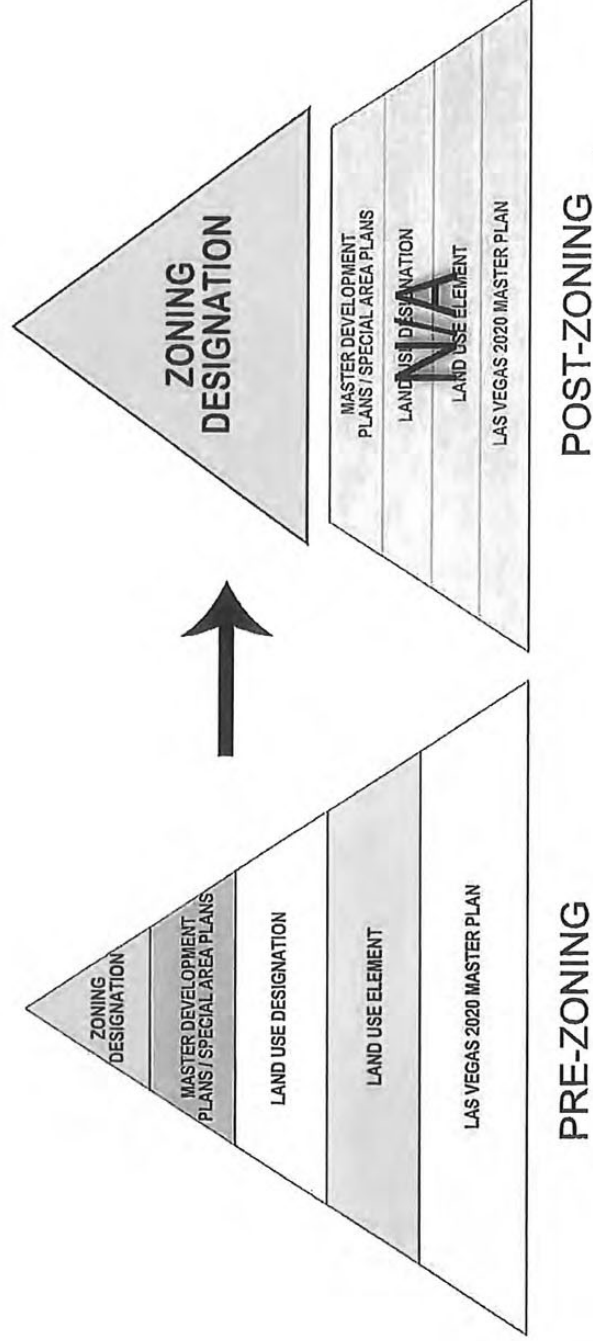
9951

004583

8868

Exhibit 141

LAND USE HIERARCHY*



ACP-ATTORNEY CLIENT PRIVILEGE

*REFER TO PAGE 19 OF LAND USE & RURAL NEIGHBORHOODS PRESERVATION ELEMENT (LAS VEGAS 2020 MASTER PLAN)

004584
LO 00002740

Exhibit 142

In the Matter Of:

Binion vs

Fore Stars

BOB BEERS

August 03, 2017



702-805-4800
scheduling@envision.legal

004585

| | |
|--|---|
| <p style="text-align: right;">Page 30</p> <p>1 to something a little bit smaller than what they were</p> <p>2 adjacent to before, and the next ground is a little</p> <p>3 smaller than what was adjacent to it before. So</p> <p>4 there's an existing entitlement, yes.</p> <p>5 Q. And that's what -- you got that</p> <p>6 understanding you got from staff?</p> <p>7 A. Yes.</p> <p>8 Q. And who -- who at staff gave you that</p> <p>9 understanding?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me who at staff?</p> <p>12 A. I cannot.</p> <p>13 Q. Okay. Did you deal with Peter Lowenstein?</p> <p>14 A. Yes.</p> <p>15 Q. Did you deal with Mr. Perrigo?</p> <p>16 A. Yes.</p> <p>17 Q. Did you deal with Doug Rankin?</p> <p>18 A. Yes.</p> <p>19 MR. BYRNES: Are you asking on this matter</p> <p>20 or on any matter?</p> <p>21 MR. BICE: I should -- I should specify.</p> <p>22 BY MR. BICE:</p> <p>23 Q. On this matter, did you deal with Mr.</p> <p>24 Lowenstein?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 32</p> <p>1 that he was going to prevail?</p> <p>2 A. No.</p> <p>3 Q. Did you discuss anything other than that?</p> <p>4 A. Sure. We had lunch.</p> <p>5 Q. Okay. What did you discuss?</p> <p>6 A. Skiing, City stuff.</p> <p>7 Q. Anything else?</p> <p>8 A. We had lunch, yeah, you discuss many</p> <p>9 things in a business lunch.</p> <p>10 Q. Did you discuss anything else about</p> <p>11 Queensridge or Badlands?</p> <p>12 A. That was the point of the lunch.</p> <p>13 Q. Okay.</p> <p>14 A. That was his opposition.</p> <p>15 Q. Can you tell me what else the two of you</p> <p>16 discussed other than his opposition?</p> <p>17 A. Not in specific detail.</p> <p>18 Q. Okay. Well, can you tell me even</p> <p>19 generally anything else?</p> <p>20 A. I -- well, I can respond to specific</p> <p>21 questions.</p> <p>22 Q. Well, what you're telling me is you</p> <p>23 specifically recall him saying that he -- they were</p> <p>24 suing to slow it down, correct?</p> <p>25 A. Oh, he -- he was -- he was very clear.</p> |
| <p style="text-align: right;">Page 31</p> <p>1 Q. Did you deal with Mr. Rankin?</p> <p>2 A. Yes.</p> <p>3 Q. Did you deal with Mr. Perrigo?</p> <p>4 A. I'm sorry, not Mr. Rankin.</p> <p>5 Q. Not Mr. Rankin. Fair enough. How about</p> <p>6 Mr. Perrigo?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Now, you also said that the</p> <p>9 homeowners were -- let me try to go back and read</p> <p>10 your testimony correctly.</p> <p>11 You also indicated that the homeowners</p> <p>12 were suing to slow it down so that there wouldn't be</p> <p>13 any development in their lifetime?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And where did you get that understanding?</p> <p>16 A. Mr. Binion told me that.</p> <p>17 Q. Okay. And when did he tell you that?</p> <p>18 A. At lunch.</p> <p>19 Q. And when was that, do you know?</p> <p>20 A. I couldn't -- I don't know the dates. We</p> <p>21 had lunch three times, I think.</p> <p>22 Q. Okay. Did Mr. Binion say that he did not</p> <p>23 believe that they had valid claims?</p> <p>24 A. No.</p> <p>25 Q. Did he indicate to you that he did believe</p> | <p style="text-align: right;">Page 33</p> <p>1 Q. Okay. So they were suing to slow it down.</p> <p>2 A. There would be no construction during his</p> <p>3 lifetime.</p> <p>4 Q. Okay. And -- but that's the only thing</p> <p>5 you can recall about the meeting?</p> <p>6 A. We had a delightful lunch three times and</p> <p>7 chatted and talked.</p> <p>8 Q. Okay. But those are the only -- the only</p> <p>9 thing that you can recall him saying during that</p> <p>10 meeting is suing to slow down --</p> <p>11 A. No, no. We -- I mean, we talked about the</p> <p>12 issues and the status of the land and he's a</p> <p>13 developer and --</p> <p>14 Q. Then tell me what else was said.</p> <p>15 A. That was what was said.</p> <p>16 Q. Nothing else?</p> <p>17 A. I can respond to specific questions if</p> <p>18 you'd liked. I -- I don't believe I have the ability</p> <p>19 to go back and describe a dialogue word for word.</p> <p>20 Q. I'm not asking word --</p> <p>21 A. Okay. Good.</p> <p>22 Q. I'm not asking word for word. I'm asking</p> <p>23 you to tell me what else was discussed. So far</p> <p>24 you've told me --</p> <p>25 A. The point of the -- the point of the</p> |

| | |
|---|--|
| <p style="text-align: right;">Page 34</p> <p>1 meetings were his home and the land adjacent to it. 2 Q. And what did you tell him? 3 A. That I -- a function of law. 4 Q. What does that mean? 5 A. That means I can't break the law for his 6 convenience. 7 Q. He was asking you to break the law? 8 A. He was asking to have the City get in the 9 way of the landowner's rights, yes. 10 Q. And -- and so tell me exactly how he did 11 that. 12 A. I just did. 13 Q. And how's that? 14 A. I'm sorry? 15 Q. How is that, Mr. Beers? 16 A. The law prescribes land use, 17 methodologies, procedures and we follow them, and the 18 City has for more than a hundred years. 19 Q. And what procedures -- what procedures and 20 methodologies was he asking you not to follow? 21 A. Zoning. 22 Q. Okay. And tell me exactly how he asked 23 you not to follow zoning. 24 A. I pretty much did. I can't tell you 25 exactly. I don't have that recollection. But it was</p> | <p style="text-align: right;">Page 36</p> <p>1 A. He asked for catfish and grits. 2 Q. Okay. Anything else, Mr. Beers? 3 A. I'm sure he did. 4 Q. But you can't recall? 5 A. I'm doing the best I can. 6 Q. Okay. I'm just -- 7 A. If you ask me specific questions, that 8 helps. 9 Q. Well, I -- I wasn't there so I just need 10 to hear from you what you claim he said so that I 11 don't hear a new -- a different story later on. 12 A. Got it. 13 Q. Okay. So if you can tell me that you 14 can't remember anything other than that, then that's 15 fine. 16 A. That was the point of the meeting. I 17 remember I had catfish and grits, too. Actually, no, 18 I had crab cakes that day. 19 Q. Okay. 20 A. But -- so I remember things about the 21 meeting, but I need to know what you're asking about. 22 Q. I'm asking you what he said and what you 23 said in response, and if you can't recall anything 24 beyond what you've told me, so be it. 25 A. I attempted to kindly reject his offer.</p> |
| <p style="text-align: right;">Page 35</p> <p>1 because he didn't want construction over the next ten 2 years near his house. 3 Q. Okay. 4 A. That was the goal. 5 Q. That was the goal. 6 A. That was the point. 7 Q. Okay. 8 A. And I said, I can't help you there, 9 because that land has rights. It has a land use 10 granted to it by the City Council years and years 11 ago, and I can't go against that because it will cost 12 the City money or the court will just do it anyway, 13 essentially overruling the City Council. 14 Q. And that's what you told Mr. Binion; is 15 that right? 16 A. I don't know if I used exactly those 17 words, but we had a long discussion about the status 18 of the land, and he was seeking help from the City 19 and the City Council in causing delay for the land 20 owner. 21 Q. And that's what he was asking you to do 22 was to cause delay? 23 A. Yes. 24 Q. Okay. So did he ask for anything other 25 than to cause delay as you say?</p> | <p style="text-align: right;">Page 37</p> <p>1 Q. Okay. 2 A. I think he probably made an allusion to 3 decisions and consequences to which I wholeheartedly 4 agreed. 5 Q. What were the decisions and consequences? 6 A. I don't think he was specific. I think he 7 was being symbolic. 8 Q. What do you mean by "symbolic"? 9 A. I think he was -- he was discussing the 10 potential for -- for a political campaign against me. 11 Q. Okay. And did have you a reaction to 12 that? 13 A. I did. 14 Q. And what was that? 15 A. I have marketable skills. 16 Q. Okay. And that's what you told him? 17 A. That is probably what I told him. 18 Q. All right. Well, are you saying you 19 probably told him or that's what you told him or you 20 just don't remember? 21 A. That -- that is something I told a number 22 of people who threatened my position. 23 Q. Okay. Well, I want to deal with Mr. 24 Binion right now. We'll come back to other people in 25 a moment.</p> |

Exhibit 143

position that we are all very comfortable with regarding the litigation as well as the general argument that QR Master Planned Community has been completed for more than 10 years, there is no existing Declarant and the approvals from the City since 1990 all required conformance with the original Plan approved in 1990 which was done. If you had any interest in the wellbeing of our community, you would be cheering us on not continuing to argue on behalf of the developer against the interests of your neighbors.

We knew from the beginning that the Mayor, Beers and Perrigo had the deck stacked against us. That is why we have always said we would win this in court. However, we have done a pretty good job of prolonging the developer's agony from Sept 2015 to now. We now look forward to the depositions of Perrigo and Lowenstein which have been noticed for this month.

Frank A. Schreck
Brownstein Hyatt Farber Schreck, LLP
FSchreck@bhfs.com
T:702.382.2101

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From: George West III [<mailto:gowesg@cox.net>]
Sent: Wednesday, November 02, 2016 11:38 AM
To: Schreck, Frank A.
Cc: Julietta Bauman-Freres; Elise Connico; Elaine Wenger-Roesener; Lawrence Weisman
Subject: Re: Great job

Frank, you are truly a three year old, but not surprising, because all you do when you can't argue the facts is go back to your ad hominem attacks, just like you wife has a propensity to do as well. Birds of a feather.

That said, perhaps Frank you may be right, not my wheelhouse, *but it isn't yours either*, but even a blind squirrel can find an acorn every so often, and I know you have been storing A LOT of them for the upcoming winter, *which is going to very very harsh on your North "A" section buddies and Elise's TP*. Great job Frank.

On Nov 2, 2016, at 10:49 AM, Schreck, Frank A. <FSchreck@BHFS.com> wrote:

It's over the head of an "Auto Fraud Atty".

Frank A. Schreck
Brownstein Hyatt Farber Schreck, LLP
FSchreck@bhfs.com
T:702.382.2101

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Exhibit 144

To: Joseph Volmar[jvolmar@LasVegasNevada.GOV]; Marc Newman[mnewman@LasVegasNevada.Gov]
From: Steven Seroka
Sent: Tue 1/9/2018 7:42:53 PM
Subject: Opiod suit discussion--please review and comment
2017-12-15 Eglet-Prince Opioid Law Suit Version 2.docx

Hey Marc and Joe

Please review the attached document. I would like you comments. Please use "Word" to make comments.

Respectfully,
Steve

Steven Seroka
Cell: [REDACTED]
Email: StevenSeroka@Live.com
<https://www.facebook.com/Steve-Seroka-1808280539414177/>
<https://www.twitter.com/SteveSeroka>
<https://steveseroka.com/>

CLV006481 004589

8878

2017-12-15
Thoughts on:
Eglet-Prince Opioid Proposed Law Suit

+++++

Understanding of Eglet-Prince Proposal

Purpose:

Sue Opioid Pharma for damages due to prior knowledge of harmful effects

Goal:

Use suit funds to fight and rehabilitate Opioid addiction

Targeted groups to benefit: Homeless, Veterans, enforcement, rehab, mental health

No cost to city unless a financial win

Then:

25% to Eglet-Prince

Plus Eglet-Prince Expenses paid:

Not to Exceed \$15 million (to be divided proportionately by each)

Otherwise:

\$0

+++++

Expectation:

Out of Court Settlement:

\$4-6 Billion

Or if settled in court:

Court Damages: Win actual expenses for previous 15-20 year

Most of expenses go here: Requires most research

Estimate approximately \$1-\$2 Billion

Court Punitive Damages:

Up to 10-15 times Actual Damages

Estimate \$5-\$30 Billion

Potential Suit Funds Distribution based on \$4 Billion settlement:

\$4 Billion Settlement at 25% Fee

Eglet-Prince: \$1 Billion

Clark County: \$1 Billion

Las Vegas \$.5 Billion

Henderson \$.15 Billion

North Las Vegas \$.15 Billion

Reno \$.15 Billion

Lincoln County\$.025 Billion

Nye County \$.025 Billion

\$4 Billion Settlement at 15% Fee
 Eglet-Prince: \$.6 Billion
 Clark County: \$1.12 Billion
 Las Vegas \$.566 Billion
 Henderson \$.17 Billion
 North Las Vegas \$.17 Billion
 Reno \$.17 Billion
 Lincoln County\$.028 Billion
 Nye County \$.028 Billion

+++++

Considerations if City:

Why Take This On: Impact to Veterans, Community and Govt resources
 Out for bid: Nevada based legal team, History to Big Suit Victory
 Which pharma and why? All of them...they changed to chronic pain and lied!
 Distribution/Use of settlement funds coming to city.

+++++

Out for Bid:

Rationale for Suit
 Nevada based company
 Licensed, Based and Operating in NV for previous 4 consecutive years
 History of Large Settlements
 Percentage fee 25% or less
 Expenses included in fee or additional cost to city
 Time Table for filing, final settlement and payout to city
 Which Pharma sued and why

+++++

What City of Las Vegas will use its funds for:

(Using most conservative values (Eglet-Prince fee is 25%)

City of Las Vegas will allocate:

50% (\$250M) toward public safety:
 75% (\$187.5M) Enforcement:
 20% (\$37.5) Metro
 15% (\$28.125M) Fire
 20% (\$37.5M) Marshalls
 20% (\$7.5M) Animal Control

- 40% (\$15M) Detention
- 40% (\$15M) Marshalls
- 20% (\$37.5M) Veterans Facility
- 25% (\$46.875M) Mental Health facility
- 25% (\$62.5 M) Rehabilitation all the way to self-sufficiency (12 months)
 - 50% (\$31.25M) Programs for Mental Health (new for city)
 - 50% (\$31.25M) Programs for Veterans
- Funds to be used for:
 - Additional personnel
 - Associated additional personal equipment
 - Training for additional personnel
 - New Patriot Veterans Center
 - New combined "station" in Corridor or Hope
 - Public Safety-Public Health-Mental Health
- 10% (\$50 Million) toward paying down Public Debt
 - RDA bonds
 - TID bonds
 - Etc:
- 25% (\$125 Million) toward Corridor of hope facilities
- 15% (\$75 million) Misc:
 - \$15 Million- Purchase Badlands and operate
 - \$50 Million- New RJC
 - \$9 Million- Parks
 - \$1 Million-Animal Control/Animal Foundation

Exhibit 145

To: Steven Seroka[sseroka@lasvegasnevada.gov]
Cc: Marc Newman[mnewman@LasVegasNevada.Gov]
From: Forrest Richardson
Sent: Wed 5/2/2018 5:12:37 PM
Subject: Las Vegas - BADLANDS CONSULTING
Las Vegas BADLANDS-Proposal 5-2-18.pdf

Steve,

Attached is a proposal in simple format. As you can see, I am planning to progress over a few months. Of course this is depending on your needs and how fast I can get to see the land, get data from the City, etc.

Please call me with any questions. At present I am working with your staff to get the mapping and other site info.

+++



Forrest Richardson, ASGCA
Golf Course Architect

602-906-1818, x202 | 602-509-4655 (cell)

Forrest Richardson & Associates
2337 East Oranewood Avenue | Phoenix, Arizona 85020 USA

www.golfgroupltd.com PHOENIX | LOS ANGELES

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CLV006188

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May 2, 2018

Proposal for Consulting On Open Space Areas of Golf Course Parcels

- I. Forrest Richardson & Associates ("Consultant") will provide consulting services relative to existing areas of the Badlands Golf Course for the purpose of developing a reconfiguration approach that can be studied by the City for the purpose of understanding best-practices for golf course re-use(s), repurposing and conceptual land use(s).
- II. Consultant's work shall be limited to conceptual planning with all technical aspects (such as engineering, environmental, soils, drainage, etc.) to be provided by the City in direct or indirect form. Consultant shall rely on the City's provision of all data with respect to the site, conditions, constraints and other technical aspects to be considered.
- III. Schedule for Consultant's work shall be determined by progress by the City to deliver data to Consultant, and will be affected by certain aspects such as access to the site, meetings and feedback from the City to Consultant. In general terms, Consultant represents that work will be completed within a proposed timeframe of 10 to 16 weeks, but may be adjusted dependant on the noted aspects of progress and by mutual consent.
- IV. Deliverables from Consultant shall include one or more reconfiguration schematic plans that will be conceptual in nature to provide clarity in graphic form as to land uses, reconfiguration scope and the resulting land use concepts. The scale and format of such conceptual schematic plans is to be determined. Acceptable formats are digital PDF, MS Power Point or other similar formats. Printed formats are to be determined.
- V. Consultant shall provide services to include (a) meetings estimated at 2-3; (b) telephone conferences as needed; (c) site evaluation estimated at 1-2 days; (d) review of data provided by the City; (e) conceptual planning work to develop the deliverables; and (f) a presentation meeting (one day). All work is on a NTE basis.

| | |
|---|-----------|
| Total Fees for Above Services: | \$ 22,400 |
| Reimbursable Expenses (estimate) for Above Base Work: | 1,800 |
| | <hr/> |
| | \$ 24,200 |

2337 EAST ORANGEWOOD AVENUE
THE MOUNTAIN HOUSE
PHOENIX, ARIZONA 85020 USA
tele 602-906-1818
web golfgroup1td.com

Members American Society of Golf Course Architects



004594

CLV006189

8884

Exhibit 146

Re: Second Draft of Queensridge Briefing

Steven Seroka

Thu 11/16/2017 10:35 PM

To: Schreck, Frank A. <FSchreck@BHFS.com>;

Thanks Frank. I have learned that simple is definitely more effective.

Also. Heads up. The tentative maps proposed by the developer may meet dec 6 planning commission. Will know more later. There may be some delays...

Respectfully
Steve

Sent from my iPhone

On Nov 16, 2017, at 10:30 PM, Schreck, Frank A. <FSchreck@BHFS.com> wrote:

See comments

Sent from my iPhone

Begin forwarded message:

From: "Schreck, Frank A." <FSchreck@BHFS.com>
Date: November 16, 2017 at 1:34:38 PM PST
To: 'Kenneth Thompson' <kenneth.thompson@swgas.com>
Subject: RE: Second Draft of Queensridge Briefing

Chip

Thanks for the second draft. Most of the points we want to make are found within it. However, it suffers from the same level of complexity that Steve wanted us to dumb down. I think we should meet again to narrow our focus on the

zoning issues and make the presentation meet a 6th grade level. For example, I envision the first slide Showing what an R-PD District is and allows for. This would entail a brief reference slide to the City's Master Plan that existed and its description of what an R-PD District is and allows for (Multi-family, single family, open space, golf course etc). The a brief slide to show that definition in the City's ordinances existing in 1990 which define a R-PD District. Then a further explanation of the use of the number attached to the R-PD by the developer which is used to determine the number of dwelling units the developer is seeking approval to build, once again showing the ordinance slide that states just that. Then a slide with the 12/2014 letter from the city Planner used by EHB to support his claim to 7.49 units per acre and highlight that part of the letter that restates the ordinance we previously exhibited.

Now that the foundation is laid, we show the land use slide from the original PRMP to show what the developer was asking the city to approve under the R-PD7 zoning district. These are all uses allowed under the R-PD District. We then show the slide from the City Council minutes of 4/1990 with the same land uses which then City then approved. The emphasis is on these uses are permitted uses under a R-PD District.

How were these uses implemented?

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In order to determine the number of dwelling units, Peccole, consistent with the ordinance, multiplied the GROSS ACRE in the R-PD District (Show a slide of the entire District which was 936 acres (996.4 acres – 60 acres of right-of-way) which acreage included the 211 acres of golf course/drainage, resulting in Peccole having the right to build 6,552. Slide showing the math. He then voluntarily gave up 2200 units at the Planning Commission hearing in 3/1990 (show slide of minutes). He then further reduce the number of units he wanted to 4247 which the City approved as the MAXIMUM number of dwelling units that could be built in the R-PD DISTRICT-show slide of City's final approval letter.

Next, he asked the City to change the current N-U zoning on the properties to match the uses he requested. Show the uses slides again. Then show the City approval of the reclassification from N-U to R-PD7 on ONLY 401 acres to get the 2807 single family units, R-3 on 60 acres to get the 1440 multi-family units which totaled the 4247 MAXIMUM residential units that could be built within the R-PD District. Slides showing actual City zoning approval minutes and final approval. What did the City approve relative to the Badlands Golf course.

211 acres of drainage /golf course with no residential units allowed on the golf course (show land use slides again) which designation also satisfied the City requirements for open space in a R-PD District. (Slide showing 20% requirement and golf course being 21%)

Slide showing that in 1992, after a thorough study of land uses within the City of LV, the City adopted a new GP which aligned the GP to the actual existing land uses. The land use requested by Peccole and approved by the City in 1990. The badlands golf course as well as the other 7-8 master planned communities were designated PR-OS with no residential density allowed to consistent to their current uses.(slide). The city reaffirmed the PR-OS in its subsequent GPs in ____ and 2005 _Show slides.

Have to stop now but you can get a feel for what I think we need to do.

Frank A. Schreck

Brownstein Hyatt Farber Schreck, LLP

100 North City Parkway, Suite 1600

Las Vegas, NV 89106

702.464.7058 tel

FSchreck@BHFS.com

From: Kenneth Thompson [<mailto:kenneth.thompson@swgas.com>]

Sent: Thursday, November 16, 2017 11:14 AM

To: Schreck, Frank A.; stevenseroka@live.com

Subject: Second Draft of Queensridge Briefing

Frank,

Please disregard the first two emails with the PDF files and look at this draft when you get a chance.

Again, please let me know if I am on the right path with anything important that I have missed, additions, deletions, mistakes, etc.

Strokeman,

Is this what you are looking for? Don't quote anything in it until Frank removes the "untruths."

Chio

The information in this electronic mail communication (e-mail) contains confidential information which is the property of the sender and may be protected

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6/26/2018

Mail - stevenseroka@live.com

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<https://outlook.live.com/owa/?path=/mail/search/rp>

3/3

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Exhibit 147



THE JIMMERSON LAW FIRM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

James J. Jimmerson-
Kristine Brewer
Craig G. Bourke

*ALSO ADMITTED IN CALIFORNIA
**MEMBER, NATIONAL TRIAL LAWYERS
TOP 100 LAWYERS
**MARTINDALE-HUBBELL "AV" PREEMINENT
**SUPER LAWYERS BUSINESS LITIGATION
**STEPHEN NAIFEH "BEST LAWYERS"
**RECIPIENT OF THE PRESTIGIOUS ELLIS ISLAND
MEDAL OF HONOR, 2012
**FELLOW, AMERICAN ACADEMY
OF MATRIMONIAL LAWYERS
**DIPLOMAT, AMERICAN COLLEGE
OF FAMILY TRIAL LAWYERS
**FAMILY LAW SPECIALIST, NEVADA STATE BAR

June 20, 2017

By Email and U.S. Mail

Councilman Bob Coffin
Las Vegas City Hall
495 S. Main Street
Las Vegas, NV 89101

Dear Councilman Coffin:

This office has the privilege of representing 180 Land Co., LLC, Seventy Acres, LLC and Fore Stars, Ltd. (collectively "Property Owners").

Our clients have submitted an application, at the City's request, that, through negotiations between the City of Las Vegas and the Applicants, provides for the development of these separate and distinct companies' property in a comprehensive manner, in accordance with their plans and in accordance with the terms of the Development Agreement.

These plans are scheduled for discussion and for vote by the City Council on Wednesday, June 21, 2017 at the hour of 3:00 p.m.

The purpose of this letter is to respectfully recommend your recusal from voting and discussion on these plans, as facts which have been recently brought to our attention make clear your inability to act impartially in this matter as a result of your incompatible private interests and public duties.

We are advised that in early 2016, a time Mr. Binion and Mr. Schreck maintained that they want to take the golf course, and all the water rights, for nothing, Mr. Lowie received a call from you on his cell phone. Mr. Lowie advised that you warned him to leave the 18-hole golf course alone and he could do anything he wanted with the other 9 holes. When Mr. Lowie attempted to speak, you told him to "shut up and listen," that Mr. Lowie would do what "Binion tells you to" because that was your friend from 6th grade. That conversation, along with Mr. Schreck's motives, was reported to the FBI.

In April, 2016, a representative of the Property Owners met with Mr. Binion, who again articulated he wanted them to "hand over" 183 acres and certain water rights in perpetuity. You were at that meeting and claimed that was a "fair deal" and encouraged my clients to take it.

At the City Council meeting of February 15, 2017, regarding Agenda Item 100 "GPA-62387, Seventy Acres, LLC, Ward 2," you stated to the Council and to the audience that you "repeated and tried to emphasize that you have rights, but you've got to stop treating these people like a bunch of unruly Palestinians getting thrown...you know, getting a concrete block settlement being thrown into their land right there..."

On March 27, 2017, in a letter to Jewish Nevada, you described what you believed to be "[Mr. Lowie's] opportunistic handling of the Badlands purchase and his arrogant disregard of the Queensridge neighborhood" which "reminded me of Bibi Netanyahu's Insertion of the concreted settlements in the West Bank neighborhoods," and you accused my client of "look[ing] upon them as a band of unruly Palestinians."

Finally, at a meeting on April 17, 2017 with the Property Owner regarding the application for the 61-Lot Subdivision that was to be heard later in the month, you stopped Mr. Spiegel before he could finish discussing the project details. You indicated that the only issue that mattered to you were the accusations of anti-Semitism and a letter from Todd Polikoff, and went on to deny the claims and effectively ask for a retraction and an apology. When Mr. Spiegel told you he was aware of the general issue, but was in no position to provide a response, you indicated that until this issue was "remedied," you "could not be impartial to any application" that [EHB Cos.] present before the City Council.

Your inability to separate your personal feelings regarding this developer, and the self-interests of your high-powered, childhood friend(s) who stand to gain a special advantage through their relationship with you, from your public duties to objectively evaluate the merits of the proposed project on its face and in accordance with the law, makes it clear that you do not have the ability to vote impartially on this project.

I have attached the Ethics in Government Manual for Nevada Public Officers and Public Employees: NRS 281A, prepared by the Nevada Commission on Ethic. After your review and consultation with counsel, I believe you will come to the same conclusion, that your recusal from participation in tomorrow's discussion and vote is in order.

///

///

///

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Councilman Bob Coffin
Fore Stars, Ltd., et al
June 20, 2017
Page 3

Please include this letter and the Ethics in Government Manual in the record for tomorrow's City Council meeting.

Sincerely,

THE JIMMERSON LAW FIRM, P.C.



James J. Jimmerson, Esq.

JJJ/sp

cc: Yohan Lowie
Vickie DeHart
Frank Pankratz
Todd Davis, Esq.
Chris Kaempfer, Esq.
Brad Jerbic, Esq.

CLV002172

004600

8892

Exhibit 148

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

1 **Item 26 - R-44-2017 - Discussion for possible action to approve a Resolution enacting a six-**
2 **month moratorium on the acceptance and processing of any Title 19 Land Development**
3 **Application concerning golf course or common open space redevelopment - All Wards**
4

5 **Appearance List:**

6 CAROLYN G. GOODMAN, Mayor
7 ROBERT SUMMERFIELD, Acting Planning Director
8 UNIDENTIFIED MALE
9 MICHELE FIORE, Councilwoman
10 LISA MAYO-DERISO, President and CEO of Mayo & Associates
11 FRANK SCHRECK, Queensridge Resident
12 RON IVERSEN, Board Treasurer, Queensridge Homeowners Association
13 ELAINE WENGER-ROESENER, Queensridge Resident
14 TOM LETIZIA, Queensridge Resident
15 DALE ROESENER, Queensridge Resident
16 PAT SPILATRO, Silverstone Ranch Resident
17 CASEY MOSEMAN, Silverstone Ranch Resident
18 SIGAL CHATTAH, Legal Counsel for JS Real Estate Holdings, 9504 Kings Gate Court and
19 JOHN STALUPPI, JR.
20 RENA KANTOR, Queensridge Resident
21 GORDON CULP, Queensridge Resident
22 FRANK PANKRATZ, Four Stars Ltd., Seventy Acres LLC and 180 Land Co, LLC
23 STEPHANIE ALLEN, Legal Counsel for Four Stars Ltd., Seventy Acres LLC and 180 Land Co,
24 LLC
25 JAMES (JIM) JIMMERSON, Legal Counsel for Four Stars Ltd., Seventy Acres LLC and 180
26 Land Co, LLC
27 STEVE CARIA, Queensridge Resident
28 ANNE SMITH, Queensridge Resident
29 CHRIS KAEMPFER, Queensridge Resident and Legal Counsel for Four Stars Ltd., Seventy
30 Acres LLC and 180 Land Co, LLC
31 YOHAN LOWIE, Four Stars Ltd.; Seventy Acres LLC; 180 Land Co, LLC

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

32 **Appearance List (continued):**

33 BOB COFFIN, Councilman

34 BRADFORD JERBIC, City Attorney

35 STAVROS S. ANTHONY, Councilman

36 RICKI Y. BARLOW, Councilman

37 LOIS TARKANIAN, Councilwoman

38 STEVEN G. SEROKA, Councilman

39

40 1:44:30 – 3:53:50 (2 hours, 9 minutes, 20 seconds)

41

42 Typed: Speechpad

43 Proofed: Arlene Coleman

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

44 **MAYOR GOODMAN**

45 Okay. Agenda Item 26, R-44-2017, discussion for possible action to approve a Resolution
46 enacting a six-month moratorium (sic), moratorium, pardon me, on the acceptance and processing
47 of any Title 19 Land Development Application concerning golf course or common open space
48 redevelopment. This is in reference to all wards. And Mr. Summerfield, you are still there.

49

50 **ROBERT SUMMERFIELD**

51 I am still here, Ma'am. Thank you, Madame Mayor. So staff brings before you today a resolution
52 at the request of members of the City Council. This is a resolution with an associated moratorium
53 pertaining to the redevelopment of golf courses and common open spaces within the City's
54 Master Development Area Plans and Special Area Plans. This resolution stems in part from a
55 national trend where golf courses and common open spaces are being proposed for
56 redevelopment, and these conversions are not just a national issue. They've become a Las Vegas
57 Valley issue.

58 It's the intent with this resolution and the associated moratorium to allow staff to examine best
59 practices and to look at ways that we can preserve existing lifestyles while allowing for
60 compatible and innovative uses of private property that will offer opportunities for new or
61 different amenities for what may be going away, while at the same time allowing developers the
62 opportunity to see new development on the land that they've acquired.

63 The City of Las Vegas does include 23 Master Development Plan Areas or Special Area Plans,
64 and of those 23, approximately 10 include golf courses. Meanwhile, all of them, that is all of
65 them include common open space that may include land that's available, that has some
66 development right potentially associated with its zoning.

67 The amendments to Title 19 of the Las Vegas Municipal Code are needed to address the scope,
68 the scale, potential impacts on associated, on neighboring properties that would be associated
69 with the redevelopment of existing golf courses and common open spaces. This type of infill
70 development is not contemplated under our current Title 19 standards, and so it is felt that those
71 standards are inadequate to address some of the unique considerations when you do this type of
72 redevelopment.

73 So the resolution would enact an up to six-month moratorium on the submittal of applications to
74 the City for Title 19 land use applications. It would be over that six-month time period, and

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

75 hopefully we can do it sooner, but for a maximum of six months that would give staff an
76 opportunity to work with the City Council, to work with interested stakeholders, the community,
77 the development community and various property owners who have an interest in this concern on
78 what are the appropriate development standards.

79 Some of the things that we would be – real quick, just a map, because this is not limited to any
80 particular ward. We find these open spaces and the existing golf courses, they exist throughout
81 the City. So it is not a ward-specific issue at this time. So this is a map of the northwest, the
82 southwest, and the southeast sectors.

83 In each of these maps – and I apologize, the colors didn't quite differentiate – you will see that
84 there are golf courses in each of these sectors, but there are also lots of open spaces that would
85 qualify under this moratorium, where we want to just make sure that if a future application
86 comes forward, there is clarity for both the City Council as well as the developer as to what the
87 expectations are for those redevelopment plans. So, again, this is a larger issue than any
88 particular ward. It affects all areas of the city, potentially.

89 There are six categories of interest that we would be exploring during the time of this
90 moratorium. We would be looking at general requirements for an application to redevelop one of
91 these sites. We would be looking at a public engagement requirement. So prior to the submission
92 of an application, prior to the arduous public hearing process, we would be looking at ways that
93 the public in the affected areas could be engaged around the development plans and potentially
94 have input into those development plans so they feel connected to the project.

95 We would also be examining best practices. Again, this is a national issue. This is not just
96 localized to Southern Nevada, although we recognize that we have some unique characteristics
97 here that we would need to address. But we want to look at what are those best practices that are
98 occurring elsewhere in the country where other places have actually been hit by this previously,
99 and they've actually come up with some wins and some losses. And so what can we learn from
100 what other areas have done?

101 We also want to address some very practical things, like how any public facilities might be
102 impacted by these redevelopment, infrastructure requirements. We want to look, of course, at
103 development standards that would apply. And then are there any fire or code enforcement issues
104 in the interim between when a, the current use as a park or as a golf course ends and the future

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

105 redevelopment actually occurs? Are there things that we need to address in the interim that the
106 updated policy guidance and standards could address?
107 So again, the moratorium is for up to six months. It is staff's position a – in fact, we've already
108 got a team working in the Planning Department on the research to begin looking at these best
109 practices. It is our hope and expectation to actually have standards before this Council in advance
110 of that six-month deadline.

111 We will need to take those changes to Planning Commission before we bring them to City
112 Council, but staff's commitment to this Council is that we will have those in advance of the six-
113 month deadline on the moratorium, that we will engage the community, the public and the
114 development community on those proposed standards so that where we can get consensus, we
115 will get consensus, and where we can provide options to this Council in, as the final decision
116 makers, that we can provide options to this Council.

117 One of the concerns that we have heard since we began briefing on this, again, six months is how
118 long, at the most, that we expect this to take. This is not expected that we would do the
119 moratorium for six months and then ask for any extensions. The commitment that staff has made
120 is that it, we will be done in six months, with something to put before this Council for action.

121 Additionally, we believe that because we have nothing in the pipeline right now, there are no
122 submitted applications, that now is the window to do this so that, again, we can create
123 transparency and clarity for the Council, for the public, and for the development community as
124 future proposals may come forward.

125 And with that, we'll take any questions. Mr. Lowenstein is here with me. He's been an integral
126 part of preparing for this resolution and doing a lot of the research on what we do next and has
127 been leading the staff team that we have that's preparing to really engage on this going forward.
128

129 **MAYOR GOODMAN**

130 Thank you, Mr. Summerfield. Did you have anything, Mr. Lowenstein, you wanted to add?
131 Okay. Now, I think before we take comment, is counsel down there?

132

133 **UNIDENTIFIED MALE**

134 He just stepped away, Your Honor.

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

135 **MAYOR GOODMAN**

136 Okay. So I did say that I would take public comment during this time on this issue. So we'll go
137 ahead and do that. We'll hear from our Council.

138

139 **COUNCILWOMAN FIORE**

140 So are we hearing from Council first or public comment?

141

142 **MAYOR GOODMAN**

143 No. I was just asking our attorney if, in fact, we would hear public comment at the initial stage of
144 the Council meeting on this item or have public comment now. So I think we can go ahead and
145 open it up for public comment, if you would keep your motion, your moments brief. I would ask
146 City Clerk please, let's make it a three-minute time frame if you would, please.

147

148 **LISA MAYO-DERISO**

149 Good afternoon, Madame Chair, City Council. My name is Lisa Mayo-DeRiso, 10300 West
150 Charleston Boulevard.

151 As most of you know, I wear a lot of hats in this community. I'm here before you today as the
152 President and CEO of Mayo & Associates. We are a business development company, PR
153 company, and as you know, we were instrumental in bringing the World Market Center to Las
154 Vegas many years ago. And I was also the founder of Tule Springs, with Rob Morocco, years
155 ago to save Tule Springs. And now all – I find it ironic, there's a presentation on future
156 development, and the Mayor said how exciting to be developers and the following item, you
157 have an item that will absolutely squelch any developer wanting to come to participate in the
158 City of Las Vegas.

159 I'm here today a – I actually have an item that I have actually presented to Mr. Perrigo and
160 Mr. Tom Hicks, just a few weeks ago, on a 24-acre soccer complex in Ward 6 and Ward 4,
161 investors coming in to really make our soccer community just amazing and create a lot of
162 money. After this item appeared yesterday and I sent them to my investors in New York and
163 Florida, I've been instructed that if this is what the City of Las Vegas does is put a moratorium
164 on development in a time of recovery, let's look at North Las Vegas and Clark County also for
165 sites, because I have to tell you, in all honesty, between voting against property rights on this

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

166 issue with Badlands and voting against property rights and now a moratorium on development
167 just sends a really bad message to everybody. And I can't believe that in this day and age, we
168 would use the terms "moratorium" and "development" in the same sentence when we're talking
169 about the City of Las Vegas and bringing people here to develop.
170 The Mayor knows I spent the summer bringing delegations here from China, Beijing, South
171 Korea, Russia, and guess what I showed them and spent hours on the bus with interpreters? The
172 2020 Master Vision of this community. Look at what this community is doing. Look at the
173 Medical District. Look at Downtown. Look at us.
174 I am a mockery. I mean, who looks at these types of items being brought forward to put a
175 moratorium – people do moratoriums when you have 30 people lined up to take all 11 of these
176 golf courses and turn them into something else. You don't have that. You have the Frank Schreck
177 demolition team that's over here trying to make a mockery of what is property rights, and I don't
178 understand how you're being, you know, brought into this.
179 I have stayed out of this because I know you know I've been on different sides of this. But now
180 this is about development. Now this is about a 24-acre soccer complex I want to bring to this
181 community that's in jeopardy.
182 I will also say this – and please, make this decision very carefully – I will give you this card so
183 you know I am for real. Those of you that know this community, I am for real. This is the new
184 3 billion, 10 million dollar, soccer, I mean, project going into the county, that we will be
185 announcing soon, 3 billion dollar private, 10 million, facility that's being developed, and I have
186 to tell I love the City of Las Vegas. I love you because this is where all of my favorite thing –

187

188 **MAYOR GOODMAN**

189 Thank you.

190

191 **LISA MAYO-DERISO**

192 – in the world, soccer, takes place.

193

194 **MAYOR GOODMAN**

195 Thank you.

**CITY COUNCIL MEETING OF
SEPTEMBER 6, 2017
VERBATIM TRANSCRIPT – ITEM 26**

196 **LISA MAYO-DERISO**

197 But no, Frank Schreck always stands up here for 20 minutes.

198

199 **MAYOR GOODMAN**

200 No, no, I'm giving everybody –

201

202 **LISA MAYO-DERISO**

203 Just give me one more second.

204

205 **MAYOR GOODMAN**

206 – one more second, you have five.

207

208 **LISA MAYO-DERISO**

209 Okay, but you didn't do that before. So let me just finish this.

210

211 **MAYOR GOODMAN**

212 Okay.

213

214 **LISA MAYO-DERISO**

215 I want to say that the Clark County is kicking our butts here in the City. They have a T-Mobile

216 Arena. They have a stadium. And when you put moratoriums on things for no reason, and you

217 say we're not going to be friendly to builders for no reason, it sends a very negative message.

218 And I just think you need to just let this go.

219

220 **MAYOR GOODMAN**

221 Thank you.

222

223 **LISA MAYO-DERISO**

224 You can take care of this golf thing very easily without a moratorium. And, so, I please ask you

225 to vote this down and not do this to the City of Las Vegas.

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226 **MAYOR GOODMAN**

227 Thank you. Thank you. Next, please.

228

229 **FRANK SCHRECK**

230 Mayor, members of the City Council, Frank Schreck, part of the destroyer group, 9824 Winter
231 Palace. I'm here in support, obviously, of the moratorium. The moratorium only applies as been
232 described, to Master Plan and Special Area communities. It doesn't apply to everything else that's
233 being developed within the City of Las Vegas.

234 I think one of the most important aspects of the, that the proposed moratorium will, I think,
235 develop and that will be a requirement that a developer that wants to go into a Master Plan
236 community has to have a completed application before it goes on to an agenda. Now you've seen
237 us here ad nauseum, since January 1 of 2016 to the current time. And the reason you've seen us
238 here is there's been 15 abeyances in our process. Of those abeyances, eight were requested by the
239 applicant, five were requested by staff, and two were requested by the City Council. We've never
240 requested one that was granted.

241 And those, that torture, stress, cost and expense was caused by the fact that almost every one of
242 those abeyances was requested because the applications weren't completed and, therefore, the
243 deciding body, whether it's the Planning Commission or the City Council or whether it was the
244 residents, had no clue as what the actual application would be when it was presented to either of
245 those bodies.

246 And so, up until the night before on many occasions, the applications were being changed and
247 amended. And in their wisdom, both the Planning Commission and this City Council held those
248 in abeyance at the request of the City Council, at the request of your staff, and the request of the
249 applicant. So we've been here for 16 months, not because lawyers dragged this out. The 16, the
250 15 abeyances that have caused us to be here, from January 1 of 2016, are all because there wasn't
251 a completed application.

252 And that's what hopefully this resolution will help when developers and City and residents get
253 together, that one of the things will be when you're going to file an application, it's a completed
254 application so no other community has to suffer the same that Queensridge has had to suffer for a
255 year and a half and having to come back and back and then have them held in abeyance, not at

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256 our request, but at the applicant's and the City's because the applications weren't complete. Thank
257 you.

258

259 **MAYOR GOODMAN**

260 Thank you. Next, please.

261

262 **RON IVERSEN**

263 Good morning. My name is Ron Iversen, 9324 Verlaine. I'm a member of the Queensridge
264 community. I am in favor of this moratorium. For all my business life, I've been a process guy,
265 and I believe in process. And I believe one of the problems that we've had with the Badlands
266 community development and with this Council is lack of process and adherence to process and
267 being able to process these things in an efficient way.

268 Since the beginning of the Badlands Golf Course, we've been plagued by multiple abeyances
269 coupled with last-minute development submittals without adequate time for public analysis and
270 response to all of those. It's been kind of a last-minute thing. And I think a lot of that has been
271 because we haven't had a good process in place and haven't followed a good process.

272 What we need is to have a process in place with enforced timelines and development agreement
273 requirements, which allow for appropriate public response. And I believe that the public
274 participation plan that is mentioned in this moratorium gives us an opportunity to put those
275 requirements in place and reinforce a process that gives everybody a chance to participate, which
276 I think delivers to the best end of the community.

277 We have maintained in Queensridge from the beginning that we're not against development, just
278 the process that we've been used and the level of development that that process has allowed us.

279 So we believe that it's time to step back, adopt a moratorium, and then approach this issue in the
280 right way. If we do that, this delay or this moratorium allows us to actually create a process
281 which will allow us to speed up in the future, and that's a process that we don't currently have in
282 place. And we would urge this Council to please adopt this moratorium so that we have adequate
283 time to do that. Thank you.

284

285 **MAYOR GOODMAN**

286 Thank you. It's still morning.

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287 **ELAINE WENGER-ROESENER**

288 Hello. Good morning, again, Mayor Goodman and members of City Council. I just wanted to say
289 initially – oh, my name is Elaine Wenger-Roesener. I reside at 9811 Orient Express Court.

290 And I wanted to say a thank you to Mr., I think, it's Summerfield and Mr. Lowenstein. I am so
291 excited to think that the Las Vegas City Planning Department is so supportive of adopting a
292 public policy statement on the redevelopment of golf courses and/or open space. And I do think
293 that as Las Vegas moves forward and we look at developing Las Vegas and growing Las Vegas,
294 I actually think this would be, send a very positive message to our community and actually to
295 other cities also in addressing what we do as we move forward and look at development,
296 redevelopment.

297 I ask the City Council to please approve this moratorium resolution in an effort to allow the City
298 the time to develop this best practice or establish public policy that will address not only
299 development standards, but also respect community input when considering the approval of
300 redevelopment of golf courses and/or open space. Compatible use and associated impacts in
301 established neighborhoods must be respected.

302 Please make the moratorium apply to any Badlands redevelopment applications. Do not allow
303 any of these applications to be grandfathered in. Thank you.

304

305 **MAYOR GOODMAN**

306 Next, please.

307

308 **TOM LETIZIA**

309 Madame Mayor and members of the Council, my name is Tom Letizia. I live at 9332 Queen
310 Charlotte Court inside Queensridge.

311 For the last nearly two years now, you've been hearing from probably 15 homeowners, maybe
312 20, that live in Queensridge. They have been the voices that you've been listening to. There is
313 another 985 homeowners, close to 1,000 homeowners that live in Queensridge that have watched
314 the values of their homes disintegrate over the last two years. Right now, we have home values at
315 1998 levels, and we've held up this project for 15 to 20 residents.

316 I cannot believe we're here talking today about a moratorium. I cannot believe that in all the
317 years I've lived in Las Vegas, we're talking about a moratorium in Las Vegas, the fastest growing

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318 city in the country for years. We just came out of the worst recession in our history. Now, we are
319 telling builders that you cannot build for six months in Las Vegas?
320 You know, the Frank Schreck company talks about how Yohan Lowie, the developer, was able
321 to put together a development agreement overnight on a holiday weekend. Do you know what
322 just happened this weekend? The same thing. Thursday night, the Review Journal published a
323 story about a moratorium in Las Vegas, going into a Friday when no one was around. And now
324 here we are Tuesday, Wednesday, and you're going to vote on a moratorium.
325 Allow the developer to engage during these six months, dialogue with members of the Council,
326 with residents. Don't cut this off; let this process continue. A moratorium is not going to solve
327 this. Please, members of the Council and Mayor, don't send the wrong message out that Las
328 Vegas is closed. Turn down this moratorium, please. Thank you.

329

330 **MAYOR GOODMAN**

331 Thank you. Next, please. And your name?

332

333 **DALE ROESENER**

334 Hello, Madame Mayor and members of the Council. Dale Roesener, 9811 Orient Express.
335 I have a few comments about the moratorium, and I reviewed it a little bit. I think the term
336 "moratorium" is, probably understates the significance of what I read. The process that we've
337 gone through over the last couple of years has been, you know, painful, to say the least. It's been,
338 you know, tantamount to a root canal with no anesthesia, you know, I think for everybody
339 involved. And from my standpoint, we never really knew as a resident exactly what to expect,
340 because the applications were light on details and the overwhelming documents that I read didn't
341 have specific requirements and the expectations that one would hope coming out of an approval.
342 You know, they were like devoid of detail, if you will.
343 And so I looked at this as more of an opportunity to create a structure that everybody could
344 operate from, that the residents could engage with so that the expectations would be a little bit
345 more predictable, if you will. And, you know, I think if you would approve this, and what was in
346 the moratorium, the substance of it, if you execute on those objective scenarios, then I honestly
347 think it will speed up development, and it would also protect a lot of the other people that might
348 go through and yourselves going through this same process in other neighborhoods.

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349 So, for those reasons, I would appreciate it if you would adopt the moratorium.

350

351 **MAYOR GOODMAN**

352 Thank you. Next, please.

353

354 **PAT SPILATRO**

355 A handout for everybody. Hi, Pat Spilatro, 8177 Bay Colony, Las Vegas 89131.

356 I'm from Silverstone Ranch. I'm not from Badlands, and I understand that this moratorium
357 affects primarily Badlands. Nothing's happening at Silverstone in the next six months. Nothing's
358 happening at Legacy in the next six months; that's the other golf course that went up for sale in
359 this Valley. Legacy got sold for \$1.5 million dollars. Silverstone Ranch got sold for 3.65. I've
360 heard reports that Badlands got sold for \$7.5 million dollars for 250 acres.

361 This is not buildable, vacant land. You can't approach this like you can approach any other piece
362 of property out there that's up for development. It's not an empty lot for infill project in the
363 middle of the city. These are golf courses. They need specific procedures to deal with them.
364 When you're looking at D.R. Horton, and you're looking Pulte, who bought 20 acres next to
365 Silverstone Ranch, they paid \$340,000 an acre. The guy that bought our golf course paid \$13,000
366 an acre.

367 How do you justify handing somebody a hundred million dollars worth of profit project by
368 simply rezoning it? You're going to have to get that equity from somewhere. That's called
369 equitable servitude. It comes from the homeowners. The smart thing to do would have been
370 already to have this policy and procedure in place before this happened.

371 Now that it's already happened, take a break, as Councilman Anthony said, get a mulligan; take a
372 break. This way Councilman (sic) Tarkanian, Councilwoman Tarkanian, Councilman Coffin
373 have all spoken out on this. This doesn't feel right. It's like you're hammering this giant square
374 peg into this tiny, little round hole. And what you're doing is you're shaving off the rest of it,
375 which is the homeowners' equity, and you're handing it to one person.

376 So, it doesn't matter if somebody takes 200 acres from you and gives you back 150 like they
377 offered to do with us. It's fine. You're taking 200 million from us, you're giving us back 150, but
378 the original 200 was all ours. How does somebody walk in with a couple million dollars and

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379 walk away with hundreds of million dollars project profit? That doesn't make sense. Those
380 inconsistencies exist because golf courses are not vacant, buildable land.
381 When you guys okayed the parcel at Tenaya and Elkhorn for D.R. Horton, they paid
382 \$8.6 million. You mean to tell me somebody bought 250 acres over at Badlands, paid barely
383 double that amount, and they have buildable land? Seriously? That equity has to come from
384 somebody, and it's coming from all those people at Badlands. And it's not the 20 that are
385 complaining; it's the other 2,000 that are sitting at home that don't know what's going on because
386 they don't have notice.
387 You guys don't communicate, and you don't have clear policy for everybody. You're going to run
388 rampant over the homeowners. You're going to destroy their equity. You're going to steal their
389 third-party non-possessory interest rights, and what you're going to do is you're going to hand it
390 over to a corporation that's going to build homes.
391 What's going to happen is you'll end up in court. In every single court decision – and I would
392 suggest Brad Jerbic check these out – the homeowners always win. They have an equitable
393 servitude ruling, and they stop these golf courses from being developed, even if they don't have a
394 deed restriction, even if they don't have a specific covenant like we have. It's an implied
395 easement. It exists when you take two pieces of property and you split it up. You take value from
396 one, you put it in the other.
397 You people are stealing the value from one and giving it to one person. How do you do that? I
398 want you to please reconsider and actually accept this moratorium. We need a policy to deal with
399 this and we need it fast. Thank you.

400

401 **MAYOR GOODMAN**

402 Thank you.

403

404 **CASEY MOSEMAN**

405 Hi, my name is Casey Moseman, and I'm from Silverstone Ranch also. I'm at 8337 Normandy
406 Shore Street. And I want to say thank you, Steve, for putting this on, Councilman Seroka, for
407 putting this on. Thank you.

408 In addition to what Mr. Spilatro addressed, he's also identified several court cases throughout the
409 U.S. and in Washington state, Texas, Florida, Nebraska, Arizona, and now I'm being told this

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410 morning a Nevada court case he uncovered, called *Boyd vs. McDonald*, that discusses implied
411 easements. Also in our own Silverstone Golf Course case, held before Judge Beasley in U.S.
412 Bankruptcy Court, he acknowledged from the bench that he, himself, will not rule on the
413 defendant's request to change the purpose of the golf course land.
414 That law pertaining to this shared space or broken up space predates the contractual law that the
415 defendant was trying to use. It also predates the contractual law that the defense is trying to use
416 at the Badlands case. Mr. Spilatro stood before Judge Beasley and explained equitable servitude
417 and how it applies in our cases. The judge was surprised to hear this and commented that no one
418 else, including our own HOA attorney, had thought to bring this forward.
419 Both equitable servitude and implied easements apply to our cases. It applies to the Legacy Golf
420 Course case, and it applies to the Badlands case. The amount of homeowners and taxpayers
421 negatively affected around the entire Valley outweigh the amount of a developer, specifically in
422 regard to golf course cases. Extra care and extra research should be done by the Council and the
423 Council's attorney before truth and justice could be served.
424 I also wanted to comment too on the categories that staff had presented. There should be an
425 additional category added to the staff's best practices, and that's flood zone concerns, because
426 that's something that specifically affects Silverstone Ranch and Badlands, major flood zone
427 concerns. And that's it. Thank you.

428

429 **MAYOR GOODMAN**

430 Thank you very much. Next, please.

431

432 **SIGAL CHATTAH**

433 Good morning, Mayor, City Council. Sigal Chattah, Chattah Law Group, 5875 South Rainbow,
434 Suite 204, Las Vegas, Nevada 89118.

435 Madame Mayor, I am here representing JS Real Estate Holdings and 9504 Kings Gate Court,
436 along with Mr. Staluppi. Mr. Staluppi is currently an owner of two properties inside
437 Queensridge. The first property he is currently residing in is a three and a half million dollar
438 home. He is also building a \$12 million home on Kings Gate Court.

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439 Back in July, on July 25th, 2017, Mr. Staluppi sent the Council a letter notifying the Council that
440 he was building a 22,000 square-foot home. He requested that this Council approve the
441 development agreement, which was never approved.

442 What I would like to explain to the City Council today is that Mr. Staluppi's home will be done
443 within the next 90 days. He will need to refinance this home, and because he won't be able to get
444 an accurate appraisal of the home, he won't be able to refinance this home.

445 In addition to the \$12 million project that he is currently building, he also has expressed interest
446 to purchase 5 acres behind this \$12 million project, and also he cannot purchase this property
447 without the knowledge of what is going to be put in the neighborhood.

448 One of the things that I wanted to explain is that it is third-party innocent people that are caught
449 in the crossfire between the City Council and the developer. As an innocent bystander, who is
450 currently living in Queensridge, enjoys living in Queensridge and has invested over \$20 million
451 in Queensridge, he stands to incur damages in excess of \$20 million if this moratorium goes
452 through.

453 Aside from that, I'm going to defer the legalities of the moratorium to the developer's counsel.
454 However, in knowing that the moratorium and the resolution that was placed on calendar today, I
455 believe it is arbitrary. It's capricious, and it is bold-face unlawful. It is third parties, like
456 Mr. Staluppi, that will be affected by this moratorium. They will have damages in excess of
457 \$20 million, as I said, and most important is that if a City Council acts unlawfully, it can no
458 longer hide behind governmental immunity when there is such a serious price to pay here.
459 And with that, I'll submit. Thank you.

460

461 **MAYOR GOODMAN**

462 Thank you very much. Next, please.

463

464 **RENA KANTOR**

465 Good morning. My name is Rena Kantor. I live at 9408 Provence Garden Lane. I have owned
466 that home since 1998. I do not have any prepared statements, because I was not sure how this
467 Council meeting goes forward. So I can only respond to what I've heard here.

468 I will start by giving you some facts. The fact is that I bought this home in 1998. I had it
469 reappraised recently. I waited for two or three weeks for the appraisal to come back. I heard

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470 nothing. I called the appraiser. They said, oh, we can't appraise it because we don't know what to
471 do about the golf course. We'll have to send out somebody else.

472 They sent out somebody else. Within two weeks, I got back the appraisal. My house is now
473 worth exactly what I paid for it in 1998. I am livid. And with all due respect to the Councilman, I
474 believe if you pass this moratorium, it will be nails in the coffin for Queensridge. Okay. I live on
475 the golf course. When I bought my home, it was made extremely clear to me that that golf course
476 is not owned by Queensridge.

477 I have watched for the past two years, because I believed that everything would be done fairly.
478 Fair does count in this country. I have sacrific, I work full-time. I did not have time to be engaged
479 in this. But a few weeks ago, I said enough is enough. And now when I heard about this
480 moratorium, really, ladies and gentlemen, I understand – my background, by the way, if you
481 didn't notice the accent, is from New York. I was in the real estate and banking business. I
482 understand that there are negotiations. I understand that nobody ever goes home happy. I also
483 understand that we have to move on.

484 I also sat, stood here, or sat here and listened to Frank talk about his problem is with abeyance.
485 The first homeowner's association meeting I went to a few weeks ago, I heard him stand up and
486 say to the homeowners: This is what we did. This is what we did. That's why we're in such a
487 good position.

488 Where's our good position, ladies and gentlemen? I look out on a brown golf course. I look out
489 on a golf course where the trees will soon die, so that now when we drive into Queensridge,
490 instead of seeing beautiful trees somewhat hiding the completely brown grass, we will now look
491 at nothing because those trees will die with no water in six months.

492 I understand that things have to move forward. I understand that, you know, that things change.
493 The City now has golf courses that are going to go away. I understand that, moving forward, you
494 have to deal with that. But after two years, now you want to say, oh, wait, let's rethink this.

495 And according to the notes on this moratorium, it was because we want to make sure that the
496 following six things are addressed. So then I went to the development plan on the City Council,
497 on the City's website. And guess what? All those six things are addressed.

498 Mayor Goodman, I appreciate that my time is up. Please appreciate how livid I am that at this
499 stage of the game, two years after you started the whole thing, somebody's gonna say, you know
500 what, maybe let's rethink this. It's not fair, and fair does count.

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501 I beg of you, you want to be considerate, you want to talk about things, do not pass this
502 moratorium. Thank you.

503

504 **MAYOR GOODMAN**

505 Thank you. Next, please. Be sure to state your name for us.

506

507 **GORDON CULP**

508 Gordon Culp, 653 Ravel Court, and a resident of Queensridge for 19 years. And you know,
509 you've heard today, and it's no surprise to any of us, that Las Vegas is not the only jurisdiction
510 facing the issues of golf course redevelopment. And we can look around, as Mr. Summerfield
511 said, we can look around the country and learn from what others have done.

512 The idea of a moratorium for a time out to figure out what to do, not, a new concept; Titus built,
513 Florida did that exact thing in 2015. Collier County, Florida did it in 2016. And they both use
514 that as an opportunity to develop a process and procedure for redevelopment of golf courses. So,
515 this is not some bizarre proposal in front of you; it's one that has worked for others.

516 During those processes, they developed a framework for significant community involvement and
517 consensus building; that has been something that has been totally lacking in the process here.

518 Being involved in the Queensridge Badlands situation for the last two years, there's not been the
519 opportunity for meaningful interaction-type community involvement that has occurred under
520 these new development standards adopted by other jurisdictions. And the fact that it occurs prior
521 to the submittal of the development application would have saved us a lot of pain and anguish in
522 the last two years, our specific project.

523 And from our experience, we've been faced with a developer who won't do meaningful public
524 participation unless he's forced to do so by a revised City code. So we ask you to take the time
525 out, a moratorium to develop those code requirements. Thank you.

526

527 **MAYOR GOODMAN**

528 Thank you. Next, please.

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529 **FRANK PANKRATZ**

530 Good morning, Mayor, Councilpersons. My name is Frank Pankratz, 9103 Alta Drive, Las
531 Vegas, Nevada.

532 It has been an arduous and tough last three years, no doubt about it. Change is tough. And we
533 have all heard in individual meetings and in group meetings and work sessions and multiple of
534 work sessions the concerns and the frustrations and not in my backyard feedback.

535 I just want to address a couple of things. We keep hearing a lot of untruths and a lot of rhetoric.
536 Mr. Schreck talks about applications incomplete. We met as developers with staff, weekly
537 meetings and quite frequently in between those weekly meetings. Those meetings with the City
538 staff included all the various departments – Public Works, Fire, Legal, Planning – and they were
539 arduous meetings.

540 They were meetings where staff demanded lots of things, and those things were incorporated into
541 the development agreement. The staff approved the development agreement as a result of their
542 year and a half of participation in those weekly meetings. We, in terms of that application, it was
543 complete. So to hear today that the application was incomplete is just incorrect.

544 The abeyances – there was 20-some abeyances in 17 different public meetings, Planning
545 Commission and City Council. The abeyances were largely as a result of the Planning
546 Commissioners or the City Council or in a number of cases the staff asking us to give more time
547 for staff, who worked diligently, Mr. Jerbic and Mr. Perrigo and others, worked diligently with
548 neighbors, individual meetings, group meetings. And they came back with the neighbors would
549 like X, would like Y. We incorporated multitudes of those things into the agreement, and those
550 changes that resulted into the agreements were as a result of requests from the neighbors. And
551 then we become the bad guys as blamed for continuing to make changes.

552 So just – a couple other things that we kept hearing. Traffic was gonna be a problem and is a
553 problem. Well, that's not what the expert traffic engineers, who prepared the traffic studies, said.

554 It's not what the City staff and traffic engineer experts, who reviewed those traffic studies, said.

555 The City staff had those traffic studies reviewed by a (sic) alternative, outside traffic engineering
556 company, and they approved the traffic studies.

557 Just 30 seconds –

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558 **MAYOR GOODMAN**

559 Okay.

560

561 **FRANK PANKRATZ**

562 – and I'll wrap it up if I may. And women and child, you heard, women and children are going to
563 die because this property is in a flood plain. A small portion of the property is in a flood plain.

564 We developed Tivoli Village downstream. The engineers figured out how to deal with the
565 drainage downstream. So surely to goodness they could figure out and they have figured out how
566 to deal with it upstream. And the list goes on and on.

567 Lastly, we have continued to process on the 435 that the Planning Commission and City Council
568 approved, the 17.49 acres, we've continued to submit pre-application process on different pieces
569 of property on the 61 lots.

570

571 **MAYOR GOODMAN**

572 Okay.

573

574 **FRANK PANKRATZ**

575 We continue to be involved.

576 Here's a letter I'd like to submit, the GCW engineers continue to work with the City on drainage
577 through, with respect to the 435. And I could go on and on, but –

578

579 **MAYOR GOODMAN**

580 Your time is up.

581

582 **FRANK PANKRATZ**

583 – we please ask that this moratorium not be – pursued. Thank you.

584

585 **MAYOR GOODMAN**

586 Thank you. Good afternoon.

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587 **STEPHANIE ALLEN**

588 Good afternoon, Mayor, Council, Stephanie Allen, 1980 Festival Plaza. We represent Four Stars
589 LTD, Seventy Acres, LLC, and 180 Land Company, LLC, the owners of the land upon which the
590 Badlands Golf Course was operated, and those operations ceased in December 2016.

591 To say that we're surprised and disappointed that this is on the agenda over a holiday weekend,
592 without any notice or discussions with us, after the years of discussions and negotiations in good
593 faith that have gone on with the City, is an understatement. We are surprised that this is on an
594 agenda.

595 We've had basically two days business notice to prepare for this. So, on very short notice, we've
596 got a list of bullet points that I'll read into the record with some of our concerns. Frankly, this
597 smells and looks like you're trying to push something through without having any dialogue from
598 the property owners, neighbors that are very significantly impacted by this.

599 As far as we know, no written notice or postcard was provided to any landowners about this
600 resolution, despite the land rights that could be adversely affected if this resolution is passed.

601 The proposed moratorium of six months is unprecedented. It not only denies the rights of
602 property owners, but baselessly extends the cloud of uncertainty, which you've heard from some
603 of the homeowners today, over the homes adjacent to any failing golf course, not just Badlands,
604 and the financial harm that it will cause to the Badlands Golf Course as well as other golf course
605 communities.

606 Each property upon which an existing golf course is operated has a unique and distinct set of
607 restrictions, which govern its relationships in the adjacent properties. The rights of the adjacent
608 homeowners are governed by mechanisms, such as purchase agreements and CC&Rs. The City
609 has a longstanding policy to not intervene in contractual relationships and rights between
610 adjacent property owners.

611 The constitutionality of this is in question, and we haven't had time to analyze what impacts that
612 it may have on property, but the constitutionality of this proposed resolution appears to be poorly
613 conceived, vague, ambiguous and inapplicable, if not impossible to implement. These defects
614 render it unconstitutional in its wording, its application, and an abridgement of constitutional
615 land rights for all land owners, homeowners and owners of golf course operations alike, who
616 could be adversely impacted by this resolution, especially with virtually no notice.

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617 Legally, it can't be applied retroactively. The legislation seems to be crafted as a special interest
618 legislation aimed to benefit a certain group and discriminate against another group, which is
619 unconstitutional. And we believe it's just an attempt to frustrate the private use of land and to act
620 as ex post facto lawmaking.

621 We'd ask that you deny the moratorium today. We've gone through the process that's discussed
622 for years now. To ask that we start over would be unfair and unreasonable.

623

624 **MAYOR GOODMAN**

625 Thank you.

626

627 **STEPHANIE ALLEN**

628 Thanks.

629

630 **MAYOR GOODMAN**

631 Thank you. Next, please.

632

633 **JIM JIMMERSON**

634 Good morning, Madame Mayor, Jim Jimmerson, 9101 Alta Drive, Las Vegas, Nevada 89145.

635 Members of the Council, I have the privilege of representing Seventy Acres, LLC, 180 Land

636 Company, LLC and Four Stars Limited as their litigation counsel. But as remarks speak to the

637 moratorium, I have very brief remarks I'd like to offer to each and every one of you. And it's

638 always good to appear in front of you and a pleasure to do so.

639 In more than 40 years of practice, I have only seen moratoriums before a governmental agency,

640 including the City of Las Vegas, on three or four occasions, and the reason for that is clear.

641 Moratoriums are disfavored under the law, because they inherently are anti-business, anti-

642 competition and in many times, and most times I would argue, unnecessary. They should be used

643 only as a last resort.

644 And there are generally requirements that are required to be present if they are to be used. One is

645 you have an emergency situation, which does not exist here; or when there has been adequate

646 notice and fair hearing to be heard, then perhaps they can be discussed, which of course has not

647 has (sic) here. There's been two business days, if you count Friday and Tuesday, with Monday

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648 being a holiday. And they cannot be applied prospectively, I mean, they cannot be applied
649 retroactively, only prospectively, because if they attempt to be applied retroactively, they usually
650 represent a taking or represent constitutional infirmities that are present then.

651 The City is, by this moratorium, if it were to be passed, is impermissibly projecting itself, I
652 submit, into the contractual relationships of homeowners and land owners. For example, in the
653 Silverstone Golf Course, the moratorium may not have the intended effect. By reading its
654 language, which I think is unconstitutionally vague and/or unclear, but you could read that as
655 giving the present owner of Silverstone Golf Course rights that it doesn't presently exist and
656 interfering between the rights that it claims it has and the homeowners of Silverstone.

657 Likewise, if this moratorium were to apply to the Badlands Golf Course, the same type of
658 interference with contractual rights would exist, and irreparable injury would follow, not to
659 mention substantial money damages for the kind of drastic nature, draconian nature of this
660 moratorium.

661 I'm reminded that two years ago today, September 8th of 2015, before the Planning Commission,
662 many of the people who spoke in favor of the passage of this moratorium spoke against the
663 Planning Commission's hearing and voting on a density cap removal that then would have, if it
664 had been passed, been passed on to you. The claim was the Labor Day weekend interfered with
665 any notice. There was only a two-day time period, and it should not be heard. And their protest
666 won the day that day, and the density cap item was continued for 60 days thereafter.

667

668 **MAYOR GOODMAN**

669 And if you're please conclude, Mr. Jimmerson.

670

671 **JIM JIMMERSON**

672 I'll do that. Thank you, Madame Mayor. The same type I think of respect and care should be
673 provided here. An earlier spokesperson independently said that the concept of fairness applies
674 here, and we certainly believe that it does.

675 This will not have the in intended effect. It will cause the parties to be further apart rather than
676 bringing them closer together. The solution is not the courts.

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677 **MAYOR GOODMAN**

678 Thank you.

679

680 **JIM JIMMERSON**

681 The solution is resolution between conversations of the homeowners and the developers of the
682 land for which this moratorium may or may not apply.

683

684 **MAYOR GOODMAN**

685 Thank you.

686

687 **JIM JIMMERSON**

688 Thank you. I appreciate working in front of you. Thank you.

689

690 **MAYOR GOODMAN**

691 Thank you.

692

693 **STEVE CARIA**

694 Steve Caria, 9101 Alta Drive. Mayor, Council members, first I think that, you know, one of the
695 major things is we've seen a number of heroic events and people recognized earlier today. The
696 Badlands development is not one of them.

697 One of the things that we heard from the gentleman earlier is that there are only 15 or 20
698 residents that are opposed to Badlands. This is simply not true. I personally had a petition with
699 over 100 names at One Queensridge Place, that I presented to the Planning Commission and also
700 to this Council, opposed to this project. Now, I can tell you, 100 names at One Queensridge
701 Place is the majority of the people, because no one is never there.

702 The second thing is, is that there were two surveys, one by One Queensridge Place. Seventy-five
703 percent of those that responded, 75 percent of those that responded at One Queensridge Place
704 opposed the project. Eighty percent at the Queensridge residences opposed the project of those
705 that responded.

706 Councilman Seroka won the election. His election was against an incumbent. The number one
707 issue of that election was the Badlands development. The people are opposed to it. You talk as if,

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708 you know, you hear people saying that the people are in favor of it. Yes, some are, a few, and
709 they're the distant few, not the majority.

710 To carry on, just a couple of other things. Councilman Seroka on August 2nd provided a factual
711 and in-depth and a knowledgeable overview of this development. I really ask for you Council
712 members to support the Ward Council member and his position, because he's put in hundreds of
713 hours to study this.

714 You also heard today that there are other projects throughout the nation that have put on
715 moratorium successfully to study these kinds of cases and these kinds of circumstances. I believe
716 that Mr. (sic) Seroka is in favor of a moratorium, because it makes sense. We need to reset.
717 Everybody is burnt out. There's (sic) been multiple changes, multiple factors that have taken
718 place. We all know that, and it has been stated before, a lot of the items that have upset the
719 community. I'm not going to relist them. You know what they are. You've heard them.

720 Let me see here. One council member, I do want to bring this up. One council member, who's
721 really been falsely accused of being anti-Semitic, that just isn't true. Members and residents of
722 the Jewish community at One Queensridge Place have come up to me and said this. They don't
723 believe that to be the case whatsoever. And I want to say then we give our approval to Mr. (sic)
724 Coffin.

725 The developer is responsible for this development. He's in a position to make tens, if not
726 hundreds of millions of dollars flipping the land. He's not going to build out these projects. And
727 as a result of that, I think that it's his responsibility. He should carry the load, and we shouldn't be
728 responsible for him having to wait six months.

729 Last comment and that's this. If any one of you, your family, your circumstances, or your
730 community was going to have two 150-foot buildings built in your backyard, a 130-unit hotel
731 built in your backyard, in the middle of a planned community, I don't believe any one of you
732 would vote in favor of that.

733 Please support Ward 2, our representative, Mr. (sic) Sheroka (sic) in terms of the views that he's
734 already suggested. Thank you.

735

736 **MAYOR GOODMAN**

737 Thank you. Next.

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738 **ANNE SMITH**

739 Thank you. I'm Anne Smith, and I live on Badlands Golf Course. We've been here before. But
740 I'm here to urge you to vote for the moratorium, 'cause this is really the most positive, the most
741 proactive step that's been proposed over the last two years in this messy process that we've had,
742 to take that time out to develop something that's really going to work for everybody, and it's just
743 unfair for all. And even the Reverend, who did the prayer earlier, said, he was, asked for
744 guidance for justice and fairness for all in all of your workings. So, that's what we're asking for.
745 Yes, we're affected by this issue, but we've shown all along that we're pragmatic about this and
746 willing to look at things. And we just want to see an established, inclusive, and especially, a
747 transparent process that we can be part of.
748 And yes, I've heard all these things about, you know, we've got a brown golf course now. You
749 know, it's worse than what it would have been if we'd gone along with everything that was
750 proposed in the beginning. But this new process is going to address that situation, especially with
751 the watering and the fire protection. And it won't be at the whim of a developer who could water
752 but doesn't.
753 So, this whole process not only will help everybody who's involved in the process, but I feel that
754 it's going to help you, because you're going to get to avoid repeating this two-year process that
755 you've gone through already on Badlands, on future – golf courses that come before you and
756 moving forward on Badlands. And we've heard from the Planning staff, it will give them better
757 tools and regulations to guide and review all future development applications.
758 So, I'm asking for two things: One is, please vote for the moratorium today and, two, apply it to
759 all Badlands applications, no grandfathering. I mean, the reason the moratorium is here in the
760 first place is because of the nature of the Badlands applications. Thank you.

761

762 **MAYOR GOODMAN**

763 Anyone else?

764

765 **CHRIS KAEMPFER**

766 Yes. Good morning, Your Honor, members of the Council, Chris Kaempfer. I apologize for
767 speaking late. I've been bouncing back and forth between the County and the City on hearings.

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768 I really would like to just take a minute, if I could, and speak more as a resident of Queensridge.
769 What we had when I moved in there eight, nine years ago is not what we have now by any
770 stretch of the imagination.
771 This moratorium, contrary to what may be the very good intentions of the Colonel, is not going
772 to make this process work. It's gonna to harden positions. It's going to make people think they
773 have rights where really they don't. And it's going to take – and I don't know if these points were
774 made before – it creates for a developer perhaps in the Silverstone situation more rights than they
775 have because of the CC&Rs that protect them.
776 We have to remember. It's hard for me, because I would love to be able to say that this
777 moratorium is gonna fix – this issue and everybody's going to say, oh, the moratorium is in
778 effect. Now we have to sit down and talk and do this. That's not what's gonna to happen.
779 What was happening, because of the efforts of Mr. Jerbic, what was happening is we came this
780 close, and we had really three sections, which was Ravel Court issue, the Tudor Park issue to a
781 degree, and then the amount of the density essentially that was to go into the area near the
782 Towers. Those were – the three issues.
783 If anybody came up here and said they didn't want development of two-acre lots next to their
784 quarter-acre lot or their half-acre lot, then I can't believe that they knew what they were talking
785 about. So, for the vast, vast majority of people, we were almost there.
786 This is not gonna put us there. It's not gonna make us closer. It's gonna keep us apart. What
787 needs to happen, what needs to happen is for the developer and the neighbors to sit down and
788 say: How can we finish what Mr. Jerbic and others worked so hard to get going?
789 We have, I can tell you right now, what we have is a golf course that, as people have said, is
790 brown and browning more every day. And the one thing that sticks with me through this whole
791 process is a comment made by an attorney on the other side, who I respect, who said to me: I
792 would rather have this a desert than a single home developed on this property. Well, you know
793 what? He's getting his wish. And nine months is not gonna help the situation at all, it's gonna
794 make, or six months, it's gonna make the situation worse. We need to start talking, and we need
795 to start talking now.
796 We were under the impression that – not all of you, but that a denial was the best thing to do
797 when that development took place. The reality is – I will wrap this up in five seconds, 10 seconds
798 – a denial of that development was an exercise of power. An approvment (sic), an approval of

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799 that development agreement with conditions, like maintaining the golf course and doing this and
800 doing that and doing that, that is the retention of power, and that's what should have been
801 utilized. That's where we need to go from now on, not this moratorium.

802

803 **MAYOR GOODMAN**

804 Thank you very much. Anyone else, or I will, okay.

805

806 **YOHAN LOWIE**

807 Yohan Lowie.

808

809 **MAYOR GOODMAN**

810 Hi, good morning.

811

812 **YOHAN LOWIE**

813 Good morning, Madame Mayor, Council. I think this session here maybe sum up the last two
814 years for us trying to develop a piece of property that is developable, and now clearly you can
815 see who's really the obstructionist, that they are trying to prevent this property from being built,
816 and not one house can be built, and who is the one that's been always on target, generous,
817 coming in, negotiating, saying I'll do, I'll sit at any time with anybody that wants to sit with me
818 and get a resolution.

819 We know now who sponsored this bill. It's not Councilman Seroka. It's the opposition group
820 leader here, because some of it would have to be divine to know the language, exact language he
821 used in every one of the arguments he made with us. And the first time he met with Vicky and
822 Frank and told them all the things that are problematic with our development that came into this
823 proposed ordinance with a six-month moratorium. I'll leave this alone.

824 I wonder if this City knows what a moratorium means for so many people outside the Badlands.
825 It's clear as daylight that this moratorium is singling one single property, the Badlands, and not
826 others. Nobody's done the studies how many contracts are you going to violate? Nobody have
827 done the study, how many loans will be in default because of an action like that that you take
828 today? You have no idea of the processes that people have to file continuously to stay within
829 lending practices and whichever business deals they have to continue or conduct on a property.

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830 And a six-month moratorium, in four days, one-and-a-half business days when everybody's out,
831 out of town, we've been accused two years to the day to that very weekend holiday that we
832 colluded with staff, and we tried to pass something through it when the City filed the application.
833 The City asked for it. They asked us to file the application to put the asterisk in. You remember
834 the big, you know, hoo-la-hoo over that. And that's what happened this weekend.
835 And we know there is a collusion now with staff, because Elaine knew about filing the
836 application we filed on Thursday. No grandfathering those applications. How would the
837 homeowner would know that we filed applications? We were ready to file them anyway. Once
838 you denied the development agreement, I told you it's a piecemeal. We're going to submit. We
839 prepared everything. We heard from the paper about moratorium. We just submitted an
840 application.
841 So this moratorium on Badlands will make no difference, because it superseded the moratorium.
842 The language in the moratorium is very clear.
843 So you do nothing for Badlands except of continuing the agony. This opposition group here,
844 those people that speak here, everyone gets a script. And continuously, you can tell by today,
845 every single one of them has a script to read, you know, to defeat our plans.
846 But they keep on losing in court. They lost the first lawsuit. They lost the second lawsuit. Twenty
847 minutes ago, the judge just basically put a stay on everything until the Supreme Court decides
848 what it wants to do. They can't win a case in court, and they will not win a case in court. They're
849 going to lose everything.
850 So they come in here to ask to circumvent their land rights they agreed in contract to give away
851 to this developer to develop this land. I purchased the companies, not the Badlands Golf Course.
852 You heard people here saying what I purchased the golf course for. They have no idea.
853 At any rate, to make a long story short and to close this, do not take rights that are given by a
854 third-party contract to other people, to circumvent the rights and give up your right to decide
855 what happens to the property, to homeowners. That would end up in massive litigation for years
856 and years and prolong the agony.
857 We're willing to stay as long as it takes. They are not going to default us on financing. We've had
858 to pay it. We're going to do whatever we have to, but we're going to fight this.
859 And Councilman Seroka, you ran on a platform to condemn my property. I can read all your
860 statements, including this –

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861 **MAYOR GOODMAN**

862 Thank you.

863

864 **YOHAN LOWIE**

865 – the City should own this golf course, that you're going to do a swap. Not one time you consider
866 developer rights. You only say that you're working for homeowners' rights.

867

868 **MAYOR GOODMAN**

869 Thank you. Thank you.

870

871 **YOHAN LOWIE**

872 We can litigate that. I want to put it to the record.

873

874 **MAYOR GOODMAN**

875 Okay.

876

877 **YOHAN LOWIE**

878 And I'm asking you to recuse yourself from any further doing with the Badlands Golf Course.

879

880 **MAYOR GOODMAN**

881 Okay. What I'd like to do is if there's anybody else that would like to make comment, otherwise
882 I'm going to close public hearing. I would like to make a clarification from the Clerk's Office that
883 I have a note here, just for clarification, that the agenda notice was posted August 29th at
884 4:00 p.m., four full business days prior to this meeting. Is that correct? Correct. So just that you
885 would have that information.

886 And, are you up here to make comment, or are you here to get all the questions?

887

888 **ROBERT SUMMERFIELD**

889 We are just here in case you or the rest of the Council have any questions for staff.

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890 **MAYOR GOODMAN**

891 Thank you. I mean, there was nothing, wrapping up from this, that you wanted to do?

892

893 **ROBERT SUMMERFIELD**

894 No, Ma'am.

895

896 **MAYOR GOODMAN**

897 So, at this point then, what I'm going to do is close the public hearing, and every Council person
898 that wishes to speak, we're going to hear from the Council. And then I gather, because it's been
899 mentioned, that Councilman Seroka then will be able to make his motion. And so we'll start with,
900 we'll start down at the end with Councilwoman –

901

902 **COUNCILMAN COFFIN**

903 I just wanted to ask for legal counsel to talk.

904

905 **MAYOR GOODMAN**

906 Oh yes, you wanted to ask, Councilman Coffin wanted –

907

908 **COUNCILMAN COFFIN**

909 What I'm hoping for, Your Honor, and I'm sorry if it's going to step on your toes, because you're
910 going to get plenty of time, is this. A lot of legal assertions have been made to us – I'm a layman
911 – on various things, from implying that there wasn't sufficient notice to talking about things like
912 equitable servitude, terms I had not heard before in this particular case.

913 Also, I was led to believe that this was drafted with blinders on. This had nothing to do with any
914 one particular place. All these things have been legal assertions on both sides. And I know
915 you've been listening to this in the other room when you weren't out here. So, can you address
916 these things so we can have a clear conscience about what we are voting on?

917

918 **BRAD JERBIC**

919 Perhaps I could take a stab at addressing the relevant things, because I think, in large part, a lot
920 of the stuff that was said on both sides was, in my opinion, irrelevant. We're not here to discuss

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921 equitable servitude or a possible lawsuit that the neighbors may have against the developer.
922 That's not what this is today. We're agendaed for one thing and one thing only, and that's a
923 moratorium.
924 And the law, as it applies to moratoriums, is that you need to identify specific problems that are
925 not currently addressed in our Code or in our policies, and your staff has done that. And then you
926 have to decide if you want to impose a moratorium for a fixed period of time, because you have a
927 specific solution you want to achieve. That's the only thing we're here to discuss. The rest of it, to
928 me, is interesting, but it's not relevant to the moratorium one way or the other.
929 As opposed, when it comes to notice, that is certainly a judgment call on your part. I think it is
930 important when anybody is affected by something of this magnitude that they have adequate
931 notice. You've heard an individual who's affected by this explain that they have not, in their
932 opinion, had adequate notice. You can cure that today if you wanted to hold this in abeyance for
933 a period of time, or you can vote on it too, because it's absolutely legally noticed and posted.
934 So, as far as all the arguments that are made are concerned, the only one I think that you really
935 need to decide today is whether or not you think there is a, for want of a better term, crisis that
936 could be averted with a moratorium of a fixed period of time.

937

938 **MAYOR GOODMAN**

939 Thank you very much. Does that answer your question?

940

941 **COUNCILMAN COFFIN**

942 We've had previous moratoriums. They were referenced, Mayor. One was called I think on
943 water hookups by the Water Authority, Water District maybe 25 years ago. So there have been
944 moratoria determined to be useful in slowing down local governments from doing what they
945 have done over the years, building too fast too much. So the thing is this, it's not aimed at one
946 particular development, because I know that's what the assertion is there. I thought it would be
947 neutral.

948 If all applications that are in are still in process, that's avoiding an ex post facto situation, and
949 then my understanding was the only thing that could not be accepted was applications, new
950 applications, but also that all pre-app work, which is the lion's share of the stuff, is still able to

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951 continue. You can come in tomorrow, next week and you can start working with a pre-
952 application on a project anywhere in the area.

953

954 **BRAD JERBIC**

955 If I could, I wanted to actually hit that point specifically, because there's been representations by
956 neighbors they want this to apply to any existing applications. Are there any existing
957 applications?

958

959 **ROBERT SUMMERFIELD**

960 Your Honor, through you, at this time, we have no applications submitted that have been
961 accepted by the Planning Department that would be affected by this moratorium. We do have a
962 submission for a request for a pre-application conference, but a pre-application conference is not
963 a submitted land use application. So, at this time, as I stated earlier, we're in a window where we
964 have no submitted applications, so there's no grandfathered or anything. There's no application
965 that is currently in the pipeline that would be heard contrary to this moratorium.

966

967 **COUNCILMAN COFFIN**

968 Your Honor, I would like –

969

970 **ROBERT SUMMERFIELD**

971 We do have pre-application requests in right now that our staff is working with the applicant to
972 resolve the submittal requirements for that pre-app.

973

974 **MAYOR GOODMAN**

975 If I may, Mr. Summerfield, I think there's been a suggestion that something is in the pipeline, and
976 I think there needs to be clarification. But I'm going to call on Brad Jerbic, from the comment,
977 one representative from the developer what is, in your opinion, has been submitted. There was
978 some reference to something was already submitted.

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979 **FRANK PANKRATZ**

980 The 17.49 acres, 435 that was approved previously by the City Council, we have continued to
981 work diligently with our consultants to make and prepare the submittals pursuant to the SDR and
982 the other approvals related to that. With respect to the 61, I know there's litigation on that, but it
983 was something that we had in the pipeline. We've made some pre-apps.

984

985 **MAYOR GOODMAN**

986 So is there, beyond the 350 or whatever the number is on the Alta-Rampart corner, is there
987 anything else in the pipeline to specifically address the issue and the comment from
988 Mr. Summerfield that Planning has nothing there? Is there something else there, there?

989

990 **CHRIS KAEMPFER**

991 Again, Chris Kaempfer here, now on behalf of the applicant. We have filed for the pre-submittal.
992 We filed those documents. Those documents have been accepted. I appreciate what Mr.
993 Summerfield is saying. We disagree with his assertion that when you have filed an application, a
994 pre-submittal application, that that's not part of the application process. Secondly, no one is
995 gonna, no one is gonna suggest that the application that was filed for the 61 homes on the 35
996 acres is in any way subject to this moratorium, nor is the 435 that were already approved.

997

998 **MAYOR GOODMAN**

999 Okay. There's the point of clarification we need to hear from Mr. Jerbic.

1000

1001 **BRAD JERBIC**

1002 Let me jump in, and I think I can cut to the chase here real quick. Under no circumstances would
1003 this moratorium affect the already approved 435. I think everybody knows that. Second, the
1004 application for the 61 that was denied, it does not affect that. That's going to go through the court
1005 system. They'll either agree with the Council, or they'll agree with the applicant. But either way,
1006 that's not affected by this.

1007 But there is a policy decision to be made here when it comes to applications in the system. And
1008 we don't need to debate whether or not what you have in is really an application or not. I think
1009 that the Council can make a moratorium retroactive to a certain date for pending applications,

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1010 because there's no right to a pending application. And so I think that and you need to decide
1011 amongst yourselves, through a debate here today, whether or not you really want to do that. But
1012 that is something that you can do.

1013 Because we see constantly if you have a moratorium and you give a lot of notice, let's say two or
1014 three months' notice, everybody comes flooding in with applications, so your moratorium is
1015 worthless. So you do have the ability if you want to go back and say it goes back to June 1st or
1016 July 1st or August 1st, but you need to make that decision today. It's not written that way now.

1017

1018 **MAYOR GOODMAN**

1019 And there doesn't have to be re-notification on what you've just specified to allow us to vote in
1020 that manner should the Council decide to?

1021

1022 **BRAD JERBIC**

1023 No. I do not believe it needs to be re-noticed.

1024

1025 **MAYOR GOODMAN**

1026 Okay. I would question that. So I think that –

1027

1028 **COUNCILMAN COFFIN**

1029 Your Honor, there's one last point. I'm sorry.

1030

1031 **MAYOR GOODMAN**

1032 Okay. Please.

1033

1034 **COUNCILMAN COFFIN**

1035 Robert was taking a long time to getting around to answering my question, so maybe we'll just
1036 put it on Brad. Brad, again, I was trying to get an answer to the question: Does this affect at all
1037 any of the normal pre-application effort that goes on, sometimes for months and years, in order
1038 to get ready for the application? To kind of know –

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1039 **BRAD JERBIC**

1040 The answer, Mr. Summerfield, is to say no, it does not affect that. They would accept pre-apps.

1041 The other thing I want to put on the record is it does not affect the ability for private parties to

1042 negotiate a development agreement. So, at any point in time during this six-month period,

1043 without application to the City, HOAs, neighbors, the developer can sit down and negotiate

1044 whatever they want.

1045 And if there were a resolution by some miracle – I say that tongue in cheek – if there was some

1046 resolution in less than six months, you could always rescind the resolution and bring it back or

1047 make an exception for a development agreement. So there's nothing to prevent dialogue. There's

1048 nothing to prevent a pre-app process.

1049 And I want to put one more thing on the record too, because I know that there have been security

1050 issues that have been brought to my attention, and I've shared it with everybody else.

1051 Unfortunately, not only is the golf course dead, but people have ended up using it for recreational

1052 things that are totally inappropriate. Mr. Lowie sent me a picture of an individual on a dirt bike

1053 using the golf course as their private motocross track. At some point in time, this is a security

1054 issue not just for the property owner and the liability they may have, but for the City as well.

1055 And so there's nothing in this moratorium, and I need Mr. Summerfield and Mr. Lowenstein to

1056 opine on this, I don't believe there's anything in this agreement that would prevent somebody

1057 from asking for a security fence or other things to abate the nuisance that's occurring out there

1058 right now.

1059

1060 **MAYOR GOODMAN**

1061 But if in fact that Council should vote against the moratorium, that does not preclude the parties

1062 from continuing to talk or anything else, correct?

1063

1064 **CHRIS KAEMPFER**

1065 No. It does not. No.

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1066 **BRAD JERBIC**

1067 I would like to have Planning on the record talking about that, because I think that's a significant
1068 issue, and I don't think it's anybody's intention to prevent anybody from providing security for a
1069 site like this or any other site so burdened.

1070

1071 **MAYOR GOODMAN**

1072 But that has to do with whether or not this Council votes in favor of the moratorium or against it.
1073 You're making a point about the security of the property. So whether there's a moratorium agreed
1074 to by this Council or not, the request is out there about the security.

1075

1076 **CHRIS KAEMPFER**

1077 Your Honor, if I could address the security issue, maybe we could get an answer here. We
1078 applied to put a fence up to prevent some of the things we were talking about. We were told we
1079 had to go through this process.

1080

1081 **MAYOR GOODMAN**

1082 Well, let's not do this now. Let's have a conversation. You can meet with Mr. Jerbic. I think we
1083 have an issue right here on this resolution, and that's what we're supposed to be about.

1084

1085 **CHRIS KAEMPFER**

1086 Okay. All right.

1087

1088 **MAYOR GOODMAN**

1089 So my only concern was listening to Councilman Coffin. From the vantage point of our
1090 Planning, is there anything in the pipeline, so to speak, and the continuation of what you're doing
1091 on the corner property at Alta and Rampart continues to move forward, that the other piece was
1092 denied according to, the 61 units was denied, so that's off the page.

1093 So the only thing is continuing but, and that's what Brad Jerbic had just said, that the 61 acres,
1094 the 61 pieces in the northwest corner, that was denied by Council?

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1095 **BRAD JERBIC**

1096 That's correct.

1097

1098 **MAYOR GOODMAN**

1099 Correct. And so what's in the, the only thing that's in that they're working on right now is Alta
1100 and Rampart.

1101

1102 **CHRIS KAEMPFER**

1103 Just so the record is clear, we appealed that denial to court. We filed a complaint.

1104

1105 **MAYOR GOODMAN**

1106 Okay. No. I think you have that on record.

1107

1108 **BRAD JERBIC**

1109 Let me put a fine point on it, Chris.

1110

1111 **CHRIS KAEMPFER**

1112 Depending on what the court does, we'll decide whether we put the 61 there or not. It's out of the
1113 hands of the –

1114

1115 **MAYOR GOODMAN**

1116 Okay. That's legal. It's not our decision.

1117

1118 **BRAD JERBIC**

1119 What I was gonna say is, if the court were to overrule the Council, this moratorium would not
1120 prohibit the 61 from being developed.

1121

1122 **MAYOR GOODMAN**

1123 Correct.

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1124 **BRAD JERBIC**

1125 The court will control.

1126

1127 **MAYOR GOODMAN**

1128 Okay. Thank you very much. All right, now we're going to go ahead. Councilwoman Fiore?

1129

1130 **COUNCILWOMAN FIORE**

1131 Thank you. Wow. Okay. So I have a lot of notes, and I'm going to try to really refrain for making
1132 sure I use the right vernacular here because, and I want to make sure that I address my peers
1133 sitting up here on this Council first, and it is very, very important that you folks understand that
1134 this moratorium affects Ward 6 greatly, 10 times more than Ward 2. So I feel very personal
1135 about this moratorium.

1136 We are talking about Badlands Golf Course versus Ward 6 that has Silverstone Golf Course,
1137 parks. We just got done before this talking about our vision that includes open spaces. I am
1138 literally going back and forth from Washington, D.C., working with our congressional delegate
1139 on BLM matters. I'm working with our Commissioners Kirkpatrick and Brown on land that we're
1140 looking at building together, equestrian parks.

1141 Okay. So this moratorium affects Badlands, but it affects all of Ward 6, and I am adamantly
1142 opposed to this. When you start putting in a brush, a brush stroke for the City of Las Vegas that
1143 affects my ward more than the own council member's ward. I'm sorry, but this particular
1144 language, when it looks like a duck and smells like a duck and walks like a duck, it's a duck. This
1145 ain't got nothing to do with moratorium for the better of the City of Las Vegas.

1146 And I've got to tell you, as a City Councilwoman from Ward 6, we just got done spending \$1,300
1147 mailing out over 1,700 invites, because I'm having a Silverstone community meeting tonight in
1148 my community. Last night, I spent the night with my police officers and my community
1149 members remembering 9/11. I'm very active with my community.

1150 My Silverstone folks do not have the problems of Ward 2. My Silverstone folks are very
1151 protective with their CC&Rs. So my fellow council members, I am going to just say a few more
1152 words here, but I urge you that a vote on this is a vote against Ward 6, and that is not okay with
1153 me.

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1154 So, first off, this moratorium attempts to correct a legal problem that is existing on only one
1155 development in the City. Las Vegas has two golf course communities that are currently what
1156 many consider a blight. Both of these communities have had the water turned off of their golf
1157 courses, and they are both suffering decreased property values.

1158 Now, when I met with some of Badlands folks, their biggest concern was property values, and
1159 we have done nothing on this Council to help them with property values. As a matter of fact,
1160 we've done just the opposite, and we've hurt them. Okay. And most of the folks yelling and
1161 screaming up here, that claim to live on Badlands, they're moving. Okay. That's, I'm trying to be
1162 calm, but this is very upsetting.

1163 One of these communities has the necessary legal protections to keep developers from
1164 developing on open space land. The other does not. My community has the legal protections.
1165 This moratorium would treat both these developments the same. Silverstone is one of these
1166 developments, and that's my ward. And according to the recorded CC&Rs in Silverstone, a
1167 developer needs 75 percent of the homeowners before they can change the use of any existing
1168 golf course. A moratorium does not help the residents of my Silverstone. I believe it's in the best
1169 interest of the residents of Silverstone to decide what happens in Silverstone, not this
1170 moratorium.

1171 So, we're having a meeting tonight, tonight, and I'm going to have about over a hundred of my
1172 residents tonight. I have two of my residents here, and there's always factions in Silverstone, and
1173 I love them all. And we have worked so hard with the Silverstone residents. I spent an evening at
1174 Pat Spilatro's house 8 o'clock at night calling Vicky, our code enforcer, making her go up there,
1175 stopping tractors, recording 1.8 million dollar liens against the developers because he's against
1176 my people in Ward 6.

1177 This moratorium affects Ward 6 much more than Ward 2, and I take high offense to it. And to
1178 my fellow Council members, I urge you not to vote against me and my ward for one legal
1179 problem in Ward 2. I'll end with that.

1180

1181 **MAYOR GOODMAN**

1182 Thank you. Okay. Councilman Anthony?

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1183 **COUNCILMAN ANTHONY**

1184 Thank you, Mayor. As has been mentioned, we've been doing this for two years now. And I'll
1185 just briefly touch on Badlands and really get to this resolution.

1186 So, I think I've been pretty clear the last two years that Queensridge is a master plan community.
1187 It was finished. The people that moved in there felt like it was finished. The Badlands Golf
1188 Course was purchased, and they do have a right to develop it.

1189 I've been just paying attention to how it's been, how it wants to be developed, and I've been very
1190 critical in the development plans, because I don't think at this point they have been really
1191 compatible to what really should be built in the Queensridge community.

1192 So that's something in the future. We'll probably be talking about this forever. But really, what
1193 we're talking about today is, technically, we're not talking about Badlands, Queensridge. We're
1194 talking about this particular resolution.

1195 And I actually like the resolution. It really, it's the first time we have talked about principles that
1196 should be incorporated into, and I'll just read from the resolution, but it talks about 23 master
1197 planned developments. It talks about specifically 11 Master Plan Areas, Special Area Plans,
1198 common open spaces.

1199 So, I guess this is kind of the first time that we've actually started a discussion about principles
1200 and things that we should engage in when we talk about developing these golf course
1201 communities, these master plan communities, these open spaces. And the principles that they put
1202 in here, I mean, I agree with them. We should be talking about – I mean, it's on this PowerPoint
1203 presentation, but it's in the resolution. It talks about some general requirements that we should
1204 consider. It talks about public engagement requirements we should consider when we develop
1205 these specific communities. It talks about best practices, environmental assessment worksheets.
1206 I mean, this is all, I think this is all great stuff. It talks about traffic studies and master drainage
1207 and master sewer systems and engaging with the school district and police department and talks
1208 about public facilities, infrastructure requirements, development standards. Development
1209 standards go on for a couple of pages and fire code enforcement.

1210 So, I think this is really a great discussion that we should start, and you guys should lead it, and
1211 we should be talking about changing Title 19 to incorporate some of these – issues for future
1212 discussion when it comes to these master plan/golf course communities that want to be, want to
1213 change and are going to maybe have to change because of the property, private property rights.

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1214 I guess the part that bothers me is this moratorium 'cause it's a six-month moratorium, but it's for
1215 the entire City of Las Vegas. And a couple of the terms that have been thrown up, Mr.
1216 Jimmerson mentioned emergency; even our counsel mentioned it's a crisis. There's some kind of
1217 crisis. There's some kind of emergency that's occurring in the City of Las Vegas that causes us to
1218 put everything to a stop, to basically tie our hands for six months.
1219 We can't do anything when it comes to these particular decisions. We just have to sit up here and
1220 kind of do nothing, because we're going to implement that moratorium, and, you know, that kind
1221 of bothers me a little bit. I don't want to all of a sudden say I can't make a decision about
1222 anything that affects my ward or somebody else's ward, and you know, that really, I mean, we
1223 don't do that very often, where we just say there's an emergency and everything has to come to a
1224 halt. I mean, that's kind of tough.
1225 So, you know, if the motion or the final outcome today was, hey, we need to implement these
1226 general principles moving forward, develop, direct our staff to implement these when it comes to
1227 future master plan community developments that are going to come up in the future, we want
1228 you to do that and bring some product back to us for us to decide on and approve and do those
1229 sorts of things, I think that would be excellent. I think that would be very productive.
1230 But today, I mean I can't, I have to support Councilwoman Fiore (sic) when she says that this
1231 moratorium is going to really kill her when it comes to dealing with the Silverstone Golf Course.
1232 I mean, that's a big deal for me when she says that. And she has her issues with Silverstone.
1233 Obviously, Councilman Seroka has his issues in his ward, and I have to vote on all this stuff, and
1234 I have no problem voting on it. But when she says this moratorium is gonna hurt her dealing with
1235 the issues at that golf course, I have to listen to that.
1236 And so today, if the word is "moratorium" that we're voting on specifically, I can't support it. If
1237 the concept is these are great principles that we want our staff to implement in Title 19 to deal
1238 with future issues concerning master plan communities, whether it's Badlands or Silverstone or
1239 whatever comes up, I'll support that. So, I'm just going to have to wait and kind of see what the
1240 motion looks like, and I'll kind of go from there. But that's really my thoughts at this point.
1241 I'm going to continue to be, as I said at the beginning, when it comes to Badlands, be very
1242 critical and take a very close look at what's gonna be developed in there, because I have to listen
1243 to the residents. That's always been my focus from the beginning. I have to listen to the residents,
1244 and hopefully, we can come to some conclusion in the future.

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1245 But this is not about Badlands today. This is about doing something that affects the entire City of
1246 Las Vegas, and I don't know what the next six months holds. I don't know what's, if a soccer
1247 complex is going to come and want to build here and all of a sudden sorry, you can't do that
1248 because we have this moratorium. I mean, I worry about those sorts of things. I want to make
1249 those decisions myself when it comes to a vote. So that's kind of where I'm at today.
1250 I mean, the public comments have really helped me, because I didn't know where I was when I
1251 first came into this today, because I saw this at the last minute myself. That was, but you all have
1252 helped me from both sides get to something that I think is kind of a compromise for both of you.
1253 So thank you very much.

1254

1255 **MAYOR GOODMAN**

1256 Thank you. Councilman Coffin wanted to speak?

1257

1258 **COUNCILMAN COFFIN**

1259 Okay. Thank you, Ma'am. I want to say this. This is not the death of development as we know it,
1260 not the death of Las Vegas as we know it. As I see, this resolution, in many ways, it's
1261 implementing what we have been wanting to do, but don't put in language. And maybe the word
1262 "moratorium" is probably, you know, a bad use of language, because it implies there's a very
1263 pejorative definition in this community about the word "moratorium."

1264 But we are, we don't use that here. What we use is that we are a smart city. So we call ourselves
1265 one. We've been recognized as a smart city, and it has to do with more than technology. It has to
1266 do with what I see is already a more common sense approach to development. This town, this
1267 county has tax problems because so much development was allowed everywhere and anywhere
1268 somebody wanted to do it. And it became unpatriotic in this state to say: Let's slow things down
1269 a little bit.

1270 You don't need all the perspective I have to give, so I'll just give you a little bit of it. It is that 25
1271 years ago, Congresswoman, now Congresswoman Titus, when she was a Senator, proposed a
1272 ring around the Valley to try to put some limitations, very limitations out there. We're still not
1273 out to where her ring was in any event. She took a horsewhipping on that one, and the developers
1274 came up and killed it and said it's the end of life as we know it and end of development, end of
1275 Las Vegas.

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1276 So, you know, it's this hyperbole that kind of gets to us and why we have to overcome that
1277 hyperbole. I'm glad the home builders are here to monitor this, but I haven't seen them come up
1278 with a bunch of hyperbole because they know better. They know this doesn't affect all of Las
1279 Vegas.

1280 From what I see, it only affects places that are either golf courses, that have enough land in there
1281 to maybe be converted into something like houses and common, common open spaces, common.
1282 Not every subdivision in town, actually very few really have so-called common open spaces. But
1283 where they are, they're so small that, you know, I mean who's going to buy them and then try to
1284 put a development in the middle of – besides the usual opposition. So I don't think that this
1285 affects at all the entire city of Las Vegas, not one whit. Okay.

1286 Now then, as far as what we've been doing here, the Councilman from Ward 4 has said we
1287 should be looking at the principles aspect of this, and maybe the moratorium is heartburn, and he
1288 wouldn't support it if there was moratorium language. But really, when you think about it, this
1289 council two hours ago, two hours ago just voted unanimously to approve a vision plan for a big,
1290 big chunk of Ward 6 – more housing. And it's pretty and it'll be very, very nice, but it's more
1291 housing.

1292 And yet, I don't know if Councilwoman from Ward 2 still has to realize that what we realized
1293 when we voted to approve and endorse the monument out there, that we put a choke point on not
1294 only Ward 6 but the entire city, because all that can happen now in the future is a very narrow
1295 neck of development past the Paiutes and past other federal lands, and maybe we'll get to expand
1296 out somewhere close to Indian Springs.

1297 So it is really, really important for us to start thinking smart now about every acre we entitle.
1298 And this is harmless. This is truly harmless, but it does set forth the principles that we want
1299 without any damage to any property rights. This is what we should have been doing a long time
1300 ago. We fought this battle in Carson City for so many years, because there wasn't enough money
1301 for local government to service all the people they provided permits for.

1302 That's the damndest thing here. Councils and Commissions all over the place said yes, yes, yes to
1303 every developer. And yet, in the end, they didn't have the tax money, the taxability, the tax base
1304 to service the needs of all those people. And we're facing that right now. You know, we're
1305 underfunded for a lot of stuff.

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1306 So I'll end by saying I support this. And it is not anti-development. It is not the end of life as we
1307 know it.

1308

1309 **MAYOR GOODMAN**

1310 Thank you. Councilman Barlow?

1311

1312 **COUNCILMAN BARLOW**

1313 Thank you, Mayor. And I appreciate all the hard work that staff has done in relation to this
1314 ordinance and also my colleague for bringing this item forward.

1315 After reviewing it all last night and into this morning and listening to those that are for and
1316 against the proposal before us here today on our agenda, I have to look at this as being very
1317 broad in scope. I believe that we have the ability as Council members to in fact direct staff
1318 without enforcing a moratorium to get the work done that you're proposing to get done.
1319 I don't believe we need to do that in such a formal way of an ordinance. I believe it sends the
1320 wrong message to the entire development community in the City of Las Vegas and throughout
1321 the City of Las Vegas.

1322 And so, for that, what I would like to do is direct you all to continue to move forward in the
1323 capacity in which you're looking to bring a proposal back to this Council and do just that within
1324 the six-month time span that you brought before us.

1325 But I don't believe we need to do it in the form of an official moratorium, because it sends the
1326 wrong message, at least from my perspective, to the entire business community as it relates to the
1327 City of Las Vegas is pausing on future developments. There can be a lot of great ideas,
1328 suggestions, proposals submitted within a six-month period. The Mayor mentioned earlier to me
1329 that look what happened in one day in Houston. One day changed the entire trajectory of an
1330 entire city.

1331 And so, for that, Las Vegas and specifically downtown, there's a lot of synergy that's taking place
1332 out in the far northwest to include here in the downtown community with developments that are
1333 coming on board. And so, for that, I can't support the moratorium, but I do support you all
1334 moving forward with your proposal as to looking at all of the land, the various zonings and the
1335 developments of open spaces and parks as you all have briefed us on yesterday. And so, for that,
1336 I can't support the ordinance as it stands today. Thank you.

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1337 **MAYOR GOODMAN**

1338 Thank you. Councilwoman, do you want to speak, or shall I go first? What is your wish?

1339

1340 **COUNCILWOMAN TARKANIAN**

1341 You can go first.

1342

1343 **MAYOR GOODMAN**

1344 Okay. Well, first of all, I want to thank you. And I know we've been hearing for two years about

1345 Badlands. And I think the suggestion that's here, and it doesn't come without a great deal of

1346 thought and heart and efforts by so many people, first of all, I thought what we were doing in our

1347 master planning of the City of Las Vegas that we've all been working on over the past years, and

1348 in fact I think Mr. Summerfield, you were very much participatory in leading it as we went

1349 through a master plan development with the business community, with all different meetings

1350 pulling people in from the county, actually from everywhere to be looking at how do we make

1351 Las Vegas a better place. And I think that's what we drive for all the time is how do we do this.

1352 I don't remember who mentioned this in our speaking, people who've addressed us and I do hear

1353 both sides of every issue, and I like to wait for this time, because it's the only time we can all sit

1354 together and participate in the whole conversation. But I do look at this, and it may have come

1355 from counsel, that we have just come out from a singularly difficult recession where everything

1356 went on pause, people were laid off. It's simply terrible.

1357 Now is the time, we are about development and redevelopment and expansion. We have, we do

1358 have the Golden Knights and we do have the USL coming in, and we do have the Raiders. And

1359 thank heavens, we have the medical school.

1360 So, for us, I had always assumed that our City staff was always out there. I don't care which

1361 department it is, whether it's in parking or whether it's in recreation, that we have been this city

1362 out in the front, whether it's homelessness and housing veterans, that we're always looking to

1363 best practices everywhere. We are unique here.

1364 And so, the fact that it's almost like this is brand new, to me, we've always been doing this. We

1365 look for it. We hunger for where other cities and communities thrive. So listening and I was

1366 really, I like the way Councilman Anthony addressed the issues that happened to be in this

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1367 resolution, and I thought we were doing all those things all the time. And maybe after 18 years of
1368 Goodman's understanding what our staff was doing, maybe I was off the page a little bit.
1369 But I know how hard everybody works, loves this city, loves the community, and we are trying
1370 to make Las Vegas the very best it can be for every resident and continue developing and being
1371 attractive for developers to bring money in here, take – we've got open land space. We've got
1372 Downtown Symphony Park. That was something that was owned by the Union Pacific years ago.
1373 And we needed land to develop in the core of the City.
1374 So all of these pieces and speaking of putting a moratorium on, I hear that. And even if it were a
1375 moratorium that allowed developers and we could persuade developers coming into our
1376 community that it doesn't mean you and you can't plan or invest, the reality of the word suggests
1377 the wrong thing to me.
1378 And so, I really and I do recall our last vote, which was four to three. It was voted down to allow
1379 any further development out at the Badlands. And this seems today, again, to be about the
1380 Badlands, where the resolution really is more comprehensive, more broad-based. And our City
1381 Counsel, “sel”, has brought us back again to the focus this is about this particular resolution, and
1382 it does entail a moratorium.
1383 I think at a critical time in the development of our community, redevelopment, expansion,
1384 Badlands issue is a piece. I just really feel that our Master Plan that we've been working on for
1385 the City, for the whole City, with meetings and involving business people and nonprofits and
1386 taking a big scope, we want to continue to do that. We want to continue on the specifics with law
1387 enforcement and fire, which we have always done.
1388 And so, my sense, it's not, and as I recall too in that vote, prior to the 4-3 vote, we had asked for
1389 an extension of 30 days, as I recall, with legal stepping back, so specific to Badlands,
1390 conversation could continue. We talked specifically to Badlands, even going further than a 30
1391 days, except there were legal issues that were involved.
1392 So, my sense is from all of this, this is a town that needs to keep growing and attracting at this
1393 particular time really working very hard to make up for what's happened in the recession. I think
1394 planning and development over the years has been phenomenal. We weathered a very, very
1395 tough time. I just, I can't support any moratorium at all. And I think, and I would hope the three
1396 of us who voted against that last issuance that because we got so close to making things work,

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1397 we would continue, the discussions would continue, but that was voted down. And so that's off
1398 the table, in my opinion, at this time.

1399 But we don't want to slow up development, whether it's in Wards one, two, three, four, five or
1400 six. We want to continue, but we always have to rely on Planning and our DSC to bring us the
1401 right information, always continuing to look at places like Orlando or big metropolitan areas and
1402 what are we doing in transportation. It was all part of the Master Plan we were already involved
1403 in.

1404 So, I think the direction, and I think Councilman Anthony really hit it by going over the specifics
1405 in the resolution. We would want staff to continue on this, which I had assumed we were already
1406 doing over these 18 years that staff was going and learning from other cities. Six months isn't
1407 going to make a bit of difference. It could hurt us in the redevelopment process, all told. So I
1408 cannot stand behind any moratorium.

1409 We need to keep moving ahead and have the faith that this is a community that wants to build,
1410 develop, and become a world-class city, where those who live anywhere in the world can look at
1411 us and see. But we do need to make sure that we have all the pieces in place so that the planning
1412 process – and I heard the word "process" – the planning process is one that we really have
1413 crossed the T's and dotted the I's.

1414 So, with that, I think I've said just about enough, and I don't know if Councilman,
1415 Councilwoman, Mayor Pro Tem, would like to say anything, but I'm gonna go then to
1416 Councilman Seroka for his motion.

1417

1418 **COUNCILWOMAN TARKANIAN**

1419 First, I want to compliment staff that put this together and presented it to us and to Councilman
1420 Seroka for thinking that the problem is not just going to be in this one area. It's going to be in
1421 other areas coming up. But it will vary, I think, according to what specific golf course, what's the
1422 place that it exists, and such and such as was mentioned by the Councilwoman for Ward 6.

1423 From the very beginning, I have stated that I thought we were a little shaky. We were shaky on
1424 how we did this. And you know what? I think that might be forgiven, because we've never done
1425 this before. Nobody in the City has done this before with a big developer coming in and using
1426 the golf course and so forth and so on. So I have felt what is it that we did and that we didn't do

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1427 as far as developing a plan, and people would say: Well, this happened. No that didn't happen.
1428 And so it was very confusing.
1429 And, as Councilman Anthony has spoken out about already, as I went through these things, I
1430 said: Gee, a lot of this should have been done, but perhaps wasn't done. For example, we have
1431 the environmental assessment workshop. And you've mentioned so many others – the sewer
1432 study, the master drainage study, the flood study. Some of those we did, some of them we didn't
1433 do. And the master developer responsible for coordinating with the Clark County Regional Flood
1434 Control. A specific description of the plan area proposed to be retained including the acreage,
1435 number of holes, and any operational agreements – a lot of that we have, but a lot we didn't have
1436 that came in there.
1437 However, and when I spoke with Mr. Seroka, I told him that when he mentioned the resolution,
1438 that I felt I could support this. However, I'm worried now, because as I go through this more, as I
1439 have more time to go through it, I find things that concern me that I think maybe reach too far.
1440 And one of this is, for example, on page three, number c, if the plan area is governed by
1441 covenants, conditions and restrictions, the master developer shall address the issue of majority
1442 member acceptance prior to submittal of any formal application to the City.
1443 Well, okay, here you come and people obviously are looking out for their homes and their rights
1444 and things like that, and they're thinking of that first. How are you going to make sure you're
1445 going to be able to, at any time, get a majority member acceptance, or if they aren't going for it,
1446 are they right or is somebody else right? I'm just saying that's a difficult burden I feel to fall on a
1447 developer.
1448 However, I think that that PPP, the Public Participation Program, coordinating and deducting that
1449 public outreach, I think that helping that through our Planning Department, and I think that's
1450 good too.
1451 I have backed, in all the 12 years I've been here, I have backed residents probably as strong as
1452 anybody has ever. And I feel that they should be heard, and I feel that their needs should be
1453 addressed. But I don't think this is going to do it in the way it needs to be done.
1454 I'm concerned about having a moratorium. I'm not a business person, but I'm concerned about a
1455 moratorium and what it would do to us. And because if you look at page two in the first
1456 sentence, the redevelopment of a portion of or total of a golf course or common open space;

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1457 believe it or not, we have common open spaces in Ward 1, some of which are being utilized by
1458 the people, the neighbors around it and some by a private person.
1459 And so again, it seems to me to reach broadly past where we are. And I would like to also say
1460 that please don't tell me only 20 people weren't in favor of this. I'm getting more than 20 calls all
1461 the time. Every time this comes up, I get far more than 20 calls. So I know it's not just 20 people
1462 holding it up.

1463 So what I'm saying is this. I think we need what he's got in here. I think we need to cover these
1464 things specifically. I think they have to be tied up better. I think we have to tweak them so that
1465 they're not overbroad, but we need this. And I think if we had had this type of thing from the
1466 beginning, we wouldn't be in the mess we're in now, not knowing: Is this person telling the truth?
1467 Is that person telling? It's been like a ping-pong game for us here trying to understand who's
1468 giving us accurate information.

1469 Oh my God, he's got religious already. So what I'm saying is this. Why can't we do the things
1470 that are mentioned today to do without calling a moratorium? Why can't we pick up where we
1471 were, get together? I still feel we should have a couple of Council members on it so they can
1472 understand where we are and how we make decisions. But why couldn't we do this? We can do
1473 all of these things if they have not been done. Why couldn't we do this in not a whole lot of time,
1474 because my gosh, I think by now, we're pretty well knowledgeable about all this stuff. It's been
1475 over two years.

1476 But why couldn't we do this without having a moratorium? Because you know what, if someone
1477 wants to come up and they say, hey, I want to (inaudible) the moratorium, we have the right to
1478 say no. We want to complete what we're doing before we make a vote. We have a right to say if
1479 you want to put it on the agenda, okay, but we need to abey it until we've got all this going right.
1480 So I don't think we need the moratorium, and that would be my very big concern about this
1481 today. Thank you.

1482

1483 **MAYOR GOODMAN**

1484 Okay. Thank you. At this time then, I'm going to turn this over to Councilman Seroka to make
1485 his motion, and we'll go from there.

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1486 **COUNCILMAN SEROKA**

1487 Thank you, Mayor. Before I make my motion, I just want to share a few thoughts. I really
1488 appreciate the work of the staff. You worked a concept and you ran it to ground quickly, and you
1489 covered a lot of ground. A lot of research was required, and I appreciate the support of the legal
1490 staff in also putting this together.

1491 And this discussion today has been very valuable. That's the purpose of what we do here today.

1492 And I just wanted to assure everyone here, as I've heard your comments about the concerns about
1493 the moratorium, I agree with all of them. And at the same time, most of the concerns would not
1494 have been affected by the moratorium.

1495 But let me just share a little bit more. I think it's been established that we have a policy and a
1496 procedure for most everything in the City except for this specifically. And the primary reason I
1497 even put this forward for this great discussion that we had, and that's what it was, was a
1498 consideration and a discussion, was because I've watched for two years what has been a pretty
1499 challenging and frankly an embarrassing period for our City. We even pitted neighbor against
1500 neighbor and friend against friend, and it has been a high cost to both developers and residents
1501 alike.

1502 I know we're all ready to move past this. And I know it may be difficult for some to understand,
1503 but my concern is for everyone. My concern is for the developers, and my concern is for the
1504 homeowners. But what I think we've had here unfortunately is we've had a failure in policy, and I
1505 think we've talked about that today. And that's why we've had so much back and forth discussion
1506 because we didn't have a policy.

1507 We tried to inappropriately apply policies that were developed for open space, never before
1508 developed land and trying to apply that to previously developed land, where it wasn't compatible
1509 and didn't fit. And we also have a perceived failure of leadership. We were in it. We've been
1510 unable to lead our community through a challenging time.

1511 So, what we have here is an opportunity, and it sounds like there is great support for this is to be
1512 able to eliminate these false perceptions and replace it with an equitable, transparent and fair
1513 process. And I think we just need to allow our amazing staff here the opportunity to do what it
1514 does best, establish a solid process that respects the developer, gives the people a voice from the
1515 beginning, and protects the City from unintended budget consequences and even us
1516 unintentionally stepping on people's rights.

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1517 And I do want to share that I think the City must bear some responsibility for these failures in the
1518 past, including the most recent denial of the Badlands 250 development agreement as we had no
1519 guidelines for the developer to even follow. So it made it challenging for him to even put forth a
1520 solid product for us. However, we now have a window of time to affect that, and I appreciate the
1521 conversation up here about saying, yes, there sounds like there is a need to refine our policy a
1522 little bit, and we can move forward with that.

1523 With that, I've heard and respectfully appreciate the discussion up here. So I'm thinking while the
1524 moratorium is not a popular idea, which the whole idea behind the moratorium was just to give
1525 people time and opportunity to flesh out these ideas that we've talked about. And that was the
1526 whole idea. That was an outline of concepts to consider and just put some meat on those so we
1527 could respect the developer and the homeowners and even the City so that we know what to
1528 expect ahead of time, and we don't have to argue about it here in Council chambers. We know
1529 what to expect.

1530 And that's the whole point of it was to have a transparent, equitable and fair process, because we
1531 do need development in our community. And I've often said I am not anti-development. I'm pro
1532 smart development. And I know we can get there, as long as we're working toward that equitable
1533 goal. That's it. That's really the bottom line.

1534 And we also have an opportunity to establish leadership in Southern Nevada by coming up and
1535 meeting this challenge, because yes, we happened to have this first and, as our staff knows,
1536 there's communities around the country that are decades ahead of this, on this that we can learn
1537 from.

1538 So I'm thinking that I would like to –

1539

1540 **MAYOR GOODMAN**

1541 Just go ahead and move your motion.

1542

1543 **COUNCILMAN SEROKA**

1544 Okay.

1545

1546 **MAYOR GOODMAN**

1547 And then if it goes, it passes, and if it fails, the subject is closed.

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1548 **COUNCILMAN SEROKA**

1549 Right.

1550

1551 **MAYOR GOODMAN**

1552 That's it. Up or down.

1553

1554 **BRAD JERBIC**

1555 If the motion is to approve the resolution, that is, that's one motion that could be made. Another

1556 motion would be to approve the content of the resolution without approving the resolution,

1557 without the six-month moratorium. So it would be to give staff direction to put together, as soon

1558 as possible, six months or less, the kind of policies and procedures that are referred to in the

1559 moratorium without the six-month moratorium being put in place.

1560

1561 **COUNCILWOMAN FIORE**

1562 Your Honor?

1563

1564 **MAYOR GOODMAN**

1565 Yes, please.

1566

1567 **COUNCILWOMAN FIORE**

1568 Your Honor?

1569

1570 **MAYOR GOODMAN**

1571 Please.

1572

1573 **COUNCILWOMAN FIORE**

1574 I just want to make sure that we get this vote. If we want to do something different than what we

1575 just discussed for a few hours, then we start at a clean slate. This motion affects my ward the

1576 most, and I want this motion denied.

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1577 **MAYOR GOODMAN**

1578 And I would tend to agree with Councilwoman, because I think what this motion says, it's a
1579 motion to approve a resolution with a six-month and blah, blah, blah. And so the motion should
1580 be and then he can make another motion to instruct staff. And that's the way I would like to see it
1581 done, because it's clean. The motion's on the table; vote it up, vote it down. Then make a second
1582 motion, per Councilman Anthony's recommendation. That's the way I'd like to have it done.
1583

1584 **BRAD JERBIC**

1585 The rule of parliamentary order here. If the Councilman wanted to amend the resolution that he's
1586 sponsoring –

1587

1588 **MAYOR GOODMAN**

1589 Yeah, he could.

1590

1591 **BRAD JERBIC**

1592 – this would be the time to do it. If he were to make a motion and the motion were to be denied,
1593 he would not be the next in line to make an alternative motion. It would be somebody else.

1594

1595 **MAYOR GOODMAN**

1596 Correct.

1597

1598 **BRAD JERBIC**

1599 And so that's why I think –

1600

1601 **MAYOR GOODMAN**

1602 Okay.

1603

1604 **BRAD JERBIC**

1605 You could do it either way, but I think he does have the option of amending his resolution if he
1606 wants to.

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1607 **MAYOR GOODMAN**

1608 Can he amend his motion to take off the six-month moratorium?

1609

1610 **BRAD JERBIC**

1611 Absolutely.

1612

1613 **MAYOR GOODMAN**

1614 He said he can.

1615

1616 **COUNCILMAN ANTHONY**

1617 He hasn't made a motion.

1618

1619 **MAYOR GOODMAN**

1620 No, I'm saying could he? No, he has not. But could he amend his motion to delete the six-month
1621 moratorium, change that motion that's here and then add in the specifics of what you said?

1622

1623 **BRAD JERBIC**

1624 Let me say this so it can just be agreed to if this is what the intention is. You can move to
1625 approve direction to staff. That would be the concepts that are included in the moratorium, to
1626 come back within six months or less with the types of policies and procedures detailed in this
1627 very lengthy moratorium, this resolution, without a six-month moratorium, and you don't even
1628 need to adopt the resolution. It would just be to develop those policies and procedures.

1629

1630 **COUNCILWOMAN FIORE**

1631 Your Honor? So, that kind of scares me as a new person. I would prefer this to be voted denied,
1632 'cause it affects my ward the most. Then if he can't change it, have Stavros (sic) change it. But
1633 because now I want to go back and literally with a bigger fine-tooth comb, make sure nothing is
1634 in there that's hurting me, that's why I'm very reluctant to go your direction. I just think we need
1635 a clean slate and redo, do over.

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1636 **MAYOR GOODMAN**

1637 And I have to, Mr. Counsel, say to you that so often you have said to us vote the motion up or
1638 down as printed. Then there can be an instruction without a vote, just an instruction to staff to
1639 please do A, B, C, D. To me, what you have always said is when you have something agendized-
1640 specific, which we do, you vote it up or down. You can put amendment to it, but we have to vote
1641 on a six-month moratorium and the rest of this as is.
1642 So, you know, I just tend to agree with Councilwoman because of that specific. And I don't want
1643 to find out that now we have voted on something if, in fact, he withdraws the six-month
1644 moratorium, but instructs staff, then why is there a resolution in front of us? Don't we have to
1645 address that issue first?

1646

1647 **COUNCILWOMAN TARKANIAN**

1648 Mayor, I'd like to ask a question if I could. Oh, sorry.

1649

1650 **COUNCILMAN SEROKA**

1651 Madame Mayor, I would like to amend my motion and have the vote on my amended motion.

1652

1653 **MAYOR GOODMAN**

1654 Okay, which would be – what?

1655

1656 **COUNCILMAN SEROKA**

1657 It would allow all those considerations to be accommodated. So, as the City Attorney stated, I
1658 would like to amend the motion to direct the staff to review the policy and procedures as outlined
1659 here without the six-month moratorium and come back within the six-month window for a
1660 decision by the Council, and in that time, of course, work with Council to review the policies and
1661 procedures that you have uncovered through the national search, which would give everybody an
1662 opportunity to work with you.

1663 **And I move that we approve the motion to do so, to direct the staff to do the homework,**
1664 **come back and put it before us for a vote within a six month period, most likely sooner, as**
1665 **they have stated, and allow the staff in the meantime to work with them and the Council**
1666 **members on the details, because really this was all just an opportunity to review these**

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1667 **concepts. And that's all it was. And so there would be nothing in stone today until they**
1668 **come back.**

1669

1670 **COUNCILWOMAN FIORE**

1671 Your Honor? I'm sorry to be such a pest. I'm not liking it. I ain't feeling it. I ain't liking it. I
1672 motion to deny this, period. This is not cool with me. This affects my ward the most. Just deny
1673 this. I request my peers to deny this and come back with a clean slate and Steve (sic), I'll work
1674 with you on something better and bigger, but not affecting Ward 6.

1675

1676 **COUNCILMAN COFFIN**

1677 Your Honor, if I could, please, just one thing. The motion now stands. The maker has taken out
1678 the objectionable language. And I think that there's just –

1679

1680 **COUNCILWOMAN FIORE**

1681 Bob (sic), we're not sure of that. I need to go back through it with a fine-tooth comb. Just one
1682 sentence is not enough.

1683

1684 **COUNCILMAN COFFIN**

1685 You know, it's amazing how we do things around here. You'd be surprised what one word can
1686 do, much less one sentence. So this is a one-word change of great, momentous importance. So I
1687 am going to support his motion as amended, even though I would have preferred the original
1688 motion.

1689

1690 **MAYOR GOODMAN**

1691 Okay. And I have to stand with Councilwoman on this, because I know for the past six years, the
1692 motion as it written and agendized, you vote on the motion as it stands. If in fact there's an
1693 instruction to the staff, staff follows instructions. So the instruction then would be please do
1694 everything that is listed in the resolution, go ahead and follow the particulars. We are asking you,
1695 staff, follow the particulars in the body of the resolution.

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1696 But this resolution, as sent out, says clearly discussion for possible action to approve a resolution
1697 enacting a six-month moratorium on the acceptance and processing of any Title 19 land
1698 development application concerning golf course or common open space redevelopment.

1699 And I think that has always been voted as it is. So I am going to stand with Councilwoman Fiore
1700 and vote against this. Sorry.

1701 And so your motion is on the floor to approve whatever you said.

1702

1703 **COUNCILMAN SEROKA**

1704 And I'd just like to clarify from counsel, is that a legal motion to amend the motion and bring it
1705 forward?

1706

1707 **BRAD JERBIC**

1708 It is. It is, and I think to just restate it one last time for the record so it's clear, it's the direction to
1709 staff to develop policies and procedures and during that process have communication with
1710 Council members as you do it and bring it back at some point in time to the Council for
1711 consideration. That's all the motion is.

1712

1713 **MAYOR GOODMAN**

1714 Okay. So there's a motion. Please vote. We need our little voting things, please. And please post.
1715 And the motion carries as read by or stated by Councilman Seroka with the input from our legal
1716 counsel (**Motion to direct the staff to do the homework, come back and put it before us for a**
1717 **vote within a six month period, most likely sooner, as they have stated, and allow the staff**
1718 **in the meantime to work with them and the Council members on the details passed with**
1719 **Fiore and Goodman voting NO).**

1720

1721 **CHRIS KAEMPFER**

1722 Point of clarification, if I can, please.

1723

1724 **COUNCILWOMAN TARKANIAN**

1725 Before you speak, I would just like the Mayor to let me say something on this motion. I think it's
1726 very important that we have these specific guidelines when this comes up. We did not do as well

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1727 as we could have done, because this was a new thing for us. But these will help us, and I think
1728 that's why it's important, and I think that's why people voted for it.

1729

1730 **CHRIS KAEMPFER**

1731 But for clarification if I might, please, on the motion. There is no moratorium. There are
1732 instructions to staff to work – and I would assume that would also include the industry as
1733 opposed to staff just working by itself – but it would include the industry and working with
1734 establishing some guidelines, but until that point in time, nothing gets in the way of the
1735 application process. We're not slowing people down. We're not saying you can't –

1736

1737 **MAYOR GOODMAN**

1738 There is no moratorium.

1739

1740 **CHRIS KAEMPFER**

1741 This is not a moratorium in disguise, in other words.

1742

1743 **MAYOR GOODMAN**

1744 There is no moratorium based on his motion that was passed.

1745

1746 **YOHAN LOWIE**

1747 It's very important to us you clarify it.

1748

1749 **MAYOR GOODMAN**

1750 All right. There's no moratorium, and Councilwoman and I were voting on the specific,
1751 registered number 26, R-44-2017 as printed. We were not opposed to the instruction to staff.

1752

1753 **YOHAN LOWIE**

1754 Okay. So when we filed the application that we have filed or application that we are filing are
1755 not going to be held here until the end of the study, six months. That's called –

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1756 **MAYOR GOODMAN**

1757 No, no, no. There's no moratorium. It is only on the instruction to staff to go ahead and develop
1758 what's in that resolution.

1759

1760 **YOHAN LOWIE**

1761 Thank you very much.

1762

1763 **COUNCILWOMAN TARKANIAN**

1764 However, Mayor, to tell you honestly, something can come up that the board may feel that we
1765 shouldn't vote on this now and we need to delay it for a certain reason, just to let you know that
1766 that doesn't mean something might go –

1767

1768 **MAYOR GOODMAN**

1769 Same old process.

1770

1771 **COUNCILWOMAN TARKANIAN**

1772 Same old process for everything, yes.

1773

1774 **YOHAN LOWIE**

1775 That's a moratorium in disguise. So that's the intention.

1776

1777 **COUNCILWOMAN TARKANIAN**

1778 Well, no, that's not a moratorium in disguise. We do that for everything, and we don't have
1779 moratoriums on things. We do that lots of times.

1780

1781 **CHRIS KAEMPFER**

1782 No, but the point being made is that if in fact if you say we're not going to let you move forward
1783 with your application because we're doing something else, that's a moratorium that works like a
1784 moratorium.

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1785 **MAYOR GOODMAN**

1786 Correct. Correct.

1787

1788 **CHRIS KAEMPFER**

1789 I just, and I understand very much where Councilwoman Fiore is coming from, because I think a
1790 developer of Silverstone would love to have these particular guidelines set out and then be able
1791 to say this is how why, how I'm going to be governed now instead of by CC&Rs.

1792

1793 **MAYOR GOODMAN**

1794 Thank you. Okay. We will move on. Thank you. That motion carries.

1795

1796 **BRAD JERBIC**

1797 I'm sorry. I need to state this on the record, because it protects this Council in the future. There is
1798 no hold on applications, because the moratorium was not adopted. Staff has been directed to
1799 develop policies and procedures affecting golf courses and open space, and I'm sure staff will
1800 include the industry, yourselves obviously, as well as Council members and neighbors and the
1801 like in the formulation of that.

1802 When that policy comes back to the Council, the decision will not be made today, but there may
1803 be a decision made in the future that those policies apply retroactive to your application. And so I
1804 just want to make that part of the record. So if it's determined in the future, it won't stop your
1805 application, but those policies may well determine, may not be determined today to be
1806 retroactive –

1807

1808 **YOHAN LOWIE**

1809 So that's exactly what we're worried about. And we thought it would be a violation of our land
1810 rights. It's a convention of the motion that was on the table here. But this is a moratorium in
1811 disguise that only singles out one single property; the Badlands is the property that we own,
1812 okay, and it's hurting only us. This discussion today was not for any other property in town.
1813 Everybody jumped here and say we don't want to apply to all properties. It was only for
1814 Badlands, and it's a land restriction on Badlands only. With that, we're going to run to court right
1815 now to get protection from this Council affecting further our land.

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1816 **BRAD JERBIC**

1817 What I'm saying, that's just not a –, in my opinion, that's not an issue on the table today.

1818

1819 **CHRIS KAEMPFER**

1820 No, no, what I – understand that Mr. Jerbic is saying, and I agree with what he is saying is this.

1821 Nothing, you cannot, they cannot say we can't proceed with your pre-application; we cannot

1822 proceed with your application. You can file it. Now if something comes in front of this Council

1823 and this Council says, you know, we'd like to see the school impact, or we'd like to see this

1824 impact, or whatever it might be, that's something you can do on any application.

1825

1826 **MAYOR GOODMAN**

1827 Correct.

1828

1829 **CHRIS KAEMPFER**

1830 But you are not singling out this property and saying, and I want that clear we're not singling out

1831 this property and saying you have to comply with all of these standards right now when they're

1832 not in effect right now.

1833

1834 **BRAD JERBIC**

1835 We don't even have them.

1836

1837 **CHRIS KAEMPFER**

1838 Yeah, that's why I'm – all right.

1839

1840 **COUNCILWOMAN TARKANIAN**

1841 We don't have them, but, you know, some of what they're requiring you've done already too.

1842

1843 **CHRIS KAEMPFER**

1844 We have done more than 90 percent of them.

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1845 **COUNCILWOMAN TARKANIAN**

1846 I know.

1847

1848 **YOHAN LOWIE**

1849 They are in the development agreement. Which one is not in the development agreement? If you
1850 read the development agreement, which one of all these standards proposed today are not in
1851 there?

1852

1853 **CHRIS KAEMPFER**

1854 She's saying the same thing. She's agreeing with you.

1855

1856 **YOHAN LOWIE**

1857 They're all in there. Why do we have to have staff, you know, make a study for this, which you
1858 already studied for two years?

1859

1860 **COUNCILWOMAN TARKANIAN**

1861 I think we're on a different page here.

1862

1863 **MAYOR GOODMAN**

1864 Okay.

1865 (END OF DISCUSSION)

1866 /ac

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1845 **COUNCILWOMAN TARKANIAN**

1846 I know.

1847

1848 **YOHAN LOWIE**

1849 They are in the development agreement. Which one is not in the development agreement? If you
1850 read the development agreement, which one of all these standards proposed today are not in
1851 there?

1852

1853 **CHRIS KAEMPFER**

1854 She's saying the same thing. She's agreeing with you.

1855

1856 **YOHAN LOWIE**

1857 They're all in there. Why do we have to have staff, you know, make a study for this, which you
1858 already studied for two years?

1859

1860 **COUNCILWOMAN TARKANIAN**

1861 I think we're on a different page here.

1862

1863 **MAYOR GOODMAN**

1864 Okay.

1865 (END OF DISCUSSION)

1866 /ac

Exhibit 149

Group that includes rich and famous files suit over condo plans



Jeff Ludvik golfs at Badlands Golf Course, 9119 Alta Drive, on Thursday, Sept. 10, 2015. EHB Companies, the developers behind high-end retail center Tivoli Village, confirmed it had bought the cash-strapped west Las Vegas Valley course from Par 4 Golf Management Inc. JEFF SCHEID/LAS VEGAS REVIEW-JOURNAL Follow him @JLSCHIED

By Carri Geer Thevenot Las Vegas Review-Journal



December 17, 2015 - 7:55 pm

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A group of Queensridge homeowners with some well-known names has filed a lawsuit over plans to build thousands of condominiums and apartments where the neighboring Badlands Golf Club now sits.

The group, which includes businessman Jack Binion and gaming lawyer Frank Schreck, filed the complaint Tuesday in District Court in Clark County against Las Vegas and several companies associated with the golf course.

According to the lawsuit, the defendants “have openly sought to circumvent the requirements of state law as well as the city code” to deprive interested parties of notice and an opportunity to be heard.

“This conduct is just part of an overarching campaign to interfere with the legal rights of the homeowners — adjoining property owners in the master-planned development commonly known as Queensridge,” the document alleges.

Las Vegas City Attorney Brad Jerbic could not be reached for comment Thursday.

EHB Cos., which developed high-end retail center Tivoli Village, confirmed in September that it had purchased the Badlands Golf Course in the west Las Vegas Valley. The course is managed by Par 4 Golf Management Inc., the company that closed the controversial sale of Silverstone Golf Club around that time.

Yohan Lowie, CEO of EHB, wants to put up 3,000 multifamily housing units along Rampart Boulevard, near Badlands’ eastern edge.

Named as defendants in the Queensridge homeowners’ lawsuit are three limited liability companies that are “ultimately owned and controlled” by Lowie through EHB: Fore Stars Ltd., 180 Land Co. and Seventy Acres.

Lowie could not be reached Thursday. Todd Davis, general counsel of EHB, said through a spokesman that they do not comment on pending litigation.

According to the lawsuit, the William Peccole family developed Queensridge, and the master plan “specifically defined the Badlands 18-hole golf course as flood drainage in addition to satisfying the required open space necessitated by the city for master-planned development.”

“The William Peccole family knew that residential development would not be feasible in the flood zone, but as a golf course could be used to enhance the value of the surrounding residential lots.”

A nine-hole golf course was added in the flood zone in 1996.

Around March, according to the lawsuit, the then-principals of Fore Stars sold their ownership interest in Badlands to Lowie and his affiliates.

“Upon information and belief, the purpose of this acquisition was to acquire the golf course property for the purpose of converting it to residential development, including high density uses,” the document states.

The lawsuit claims Lowie and his companies “have sought to camouflage their plans so as to circumvent the legal rights of abutting homeowners.”

Part of their scheme involved having the Las Vegas Planning Department propose an amendment to the city’s master plan, according to the lawsuit. The proposal, which sought to eliminate the density cap on master-planned communities throughout the city, was placed on the Sept. 8 Planning Commission agenda.

“The involvement of Lowie’s companies and agents for them was intended to be kept secret and never disclosed as part of that proposed amendment,” the lawsuit alleges.

In late August, according to the complaint, Fore Stars filed an application with the city seeking to alter the golf course’s designation from park recreation open space to planned community development.

“The defendants’ scheme unraveled at the September 8, 2015 Planning Commission hearing when members of the Queensridge Homeowners Association became aware of Fore Stars’ activities and staff’s complicity in it,” the lawsuit alleges.

The proposed amendment was not approved, and Fore Stars withdrew its August application.

“But, as the plaintiffs would learn, that was not the first or the last time that the city would cooperate with these developers to circumvent public disclosure requirements,” the lawsuit alleges.

On June 18, according to the document, Fore Stars recorded a parcel map with only the certification of Thomas Perrigo, the city’s planning director, and without the public notification and process mandated by state law or the city’s code.

After the parcel map’s unlawful recording, the lawsuit alleges, Fore Stars used the property division outlined in the map to transfer property interests to 180 Land Co. and from 180 Land Co. to Seventy Acres.

On Nov. 30, according to the lawsuit, Seventy Acres filed an application with the city Planning Department for a project named Orchestra Village. Its first phase consists of 17.5 acres on the corner of Alta Drive and Rampart and will include up to 720 condominiums that will be rented as apartments for at least six years.

Attorney Todd Bice, who represents the plaintiffs, said the city “seems to be looking for pathways to get around the homeowners,” and he hopes the litigation will uncover its reasons for doing so.

“This is the first lawsuit to bring an end to that process,” he said. “I don’t know whether it will be the last one.”

Binion, one of the plaintiffs, is the son of the late casino magnate Benny Binion. Plaintiffs also include Robert and Nancy Peccole.

Silverstone Ranch homeowners also have been involved in litigation over plans for the golf course in their community, near Floyd Lamb Park at Tule

Springs in the northwest valley.

Homeowners filed a lawsuit after the course's new owner, Desert Lifestyles, shut down the golf club and turned off the water in early September. On Wednesday, the company notified the plaintiffs that it had sold the golf course the previous day to Stoneridge Parkway LLC.

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