

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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1 would take. He has the right to petition to do so.

2 Q. Well, how many units, then, are allocated  
3 to Mr. Schreck's property of this 1200 that you say  
4 were never used up?

5 A. Well, he would get all 1200 if he could  
6 develop it.

7 Q. What's that?

8 A. If he entitled it, to have 1200 on his  
9 lot.

10 Q. On his lot, then he could -- then the 1200  
11 are his?

12 A. Well, it's a geographical area, and if  
13 he's within that area, he's held out to that  
14 condition of approval as well.

15 Q. Well, where -- here's what I'm confused  
16 by, Mr. Lowenstein.

17 How would the 1200 be available to the  
18 owner of the golf course property which was  
19 designated as open space under the approved plan?  
20 How is it that those 1200 are somehow available to  
21 somebody who bought property designated as open  
22 space?

23 MR. JIMMERSON: Objection. The question  
24 is argumentative. Assumes facts not in evidence.  
25 The property was never designated as open space in

1 1990.

2 BY MR. BICE:

3 Q. Go ahead.

4 A. So as I said, you have the ability to  
5 petition your government. In this case, it would be  
6 up to the council's discretion to amend it from open  
7 space to something else and allot the units.

8 Q. Just so -- so I guess the units are just  
9 as much available to everybody else that owns  
10 property in this community as they are to the golf  
11 courses; is that what you're saying?

12 A. I'm saying within that geographical area,  
13 there is developable land. And within that, whoever  
14 petitions their government, is still able to ask for  
15 those units.

16 Q. All right. Is this the first come first  
17 serve principle?

18 MR. JIMMERSON: Object to the form of the  
19 question. Argumentative.

20 MR. BYRNES: Join in that.

21 THE WITNESS: That's one way somebody  
22 could put it, yes.

23 BY MR. BICE:

24 Q. Is that codified anywhere in the city  
25 code?

1 A. Not --

2 MR. BYRNES: Calls for a legal conclusion.

3 THE WITNESS: Not that I am aware of. If  
4 you have a condition that limits the number of units  
5 and you still have that available number of units,  
6 what curtails someone from applying for it?

7 BY MR. BICE:

8 Q. And I think the difference that you and I  
9 are talking about is you say you still have those  
10 available number of units. Who has them available,  
11 the people that got an approval or just somebody who  
12 comes along 25 years later and buys open space?  
13 That's what I'm trying to understand.

14 MR. BYRNES: Objection. Asked and  
15 answered. I mean, this is really beating a dead  
16 horse. This is about the 15th time you've asked  
17 the same question.

18 MR. BICE: Phil, I'm not trying to be  
19 argumentative. I don't think it is. I don't  
20 understand how it is that those units are -- and if  
21 he has an explanation, I'd like to hear it -- I don't  
22 know how it is that some guy comes out of the  
23 woodwork 25 years later and says 1200 units that were  
24 approved for Mr. -- for the Peccole Family Trust 30  
25 plus years ago are somehow his? Can you explain that

1 to me?

2 MR. JIMMERSON: Object to the question as  
3 calling for -- I object to all the editorialization  
4 and all the argumentative nature of it. Also,  
5 there's not an establishing effect. Assuming facts  
6 not in evidence that it existed as an open space in  
7 1990.

8 THE WITNESS: All right. So to your  
9 question -- thank you -- and in regard to land use  
10 entitlement, it stays with the property. The  
11 geographical area that was entitled by the initial  
12 rezoning stays with the property regardless of  
13 property owner. Other than that, I'll defer to  
14 counsel for my answer.

15 BY MR. BICE:

16 Q. Okay. Is it fair to say, Mr. Lowenstein,  
17 that you have simply calculated the number of  
18 unentitled or unbuilt units, that being around 1200,  
19 and you have simply made the assumption that those  
20 units are available to that phase 2 land, regardless  
21 of who owns it at any particular moment in time; is  
22 that fair?

23 A. That would be fair.

24 Q. Okay. How many -- under the city's  
25 current code, how many residential units are

1 permitted to be built within a drainage easement?

2 A. What's the zoning district?

3 Q. Does it depend on the zoning district?

4 A. The general plan and the zoning district  
5 determine your allowable densities --

6 Q. Okay.

7 A. -- and the development centers in which  
8 you're going to develop.

9 The next question is, is the drainage  
10 easement needed in its current configuration? If it  
11 is, then the Department of Public Works will restrict  
12 what can be constructed via their own title of  
13 municipal code, which I can't really speak to.

14 Q. How many -- in your research, how many  
15 housing units of the 4200 that were approved  
16 originally for Peccoles, how many of those housing  
17 units were reserved, planned or approved for the open  
18 space?

19 MR. JIMMERSON: Objection. Assumes facts  
20 not in evidence that open space was even referenced  
21 within that 4247.

22 THE WITNESS: Can you restate the  
23 question, please?

24 BY MR. BICE:

25 Q. Of course. Let me make sure I read it

1 back correctly.

2 In your research, how many housing units  
3 of the 4200 were approved originally for the  
4 Peccoles, or that were approved originally for the  
5 Peccoles, how many of those housing units were  
6 reserved, planned or approved for the open space?

7 MR. JIMMERSON: Same objection.

8 THE WITNESS: So referring to Exhibit 8?

9 BY MR. BICE:

10 Q. Yes.

11 A. In Exhibit 8, there are associated tables  
12 with it which delineates acreages, net densities,  
13 regarding various different uses of land use.

14 Q. Yes.

15 A. And the golf course drainage does not  
16 indicate a net density or net units.

17 Q. Is it accurate to say to my question --  
18 would it be an accurate answer to my question to say  
19 zero?

20 MR. JIMMERSON: Objection. Same --  
21 objection as I incorporated by reference before. The  
22 witness has already answered the question.

23 THE WITNESS: Yes.

24 MR. JIMMERSON: Is there an answer to the  
25 question?



1 THE COURT REPORTER: Yes.

2 MR. JIMMERSON: So he said yes to the  
3 answer zero?

4 MR. BICE: Yes.

5 MR. JIMMERSON: Okay.

6 THE WITNESS: My answer is yes of this  
7 Exhibit 8, does not illustrate a number. This has a  
8 dash. You can refer to a dash technically as a zero.

9 BY MR. BICE:

10 Q. Have you ever socialized with Mr. Lowie or  
11 Mr. Pankratz?

12 A. Outside of the regularly scheduled  
13 meetings?

14 Q. Yes.

15 A. I've seen Mr. Lowie out in passing and in  
16 Tivoli outside of the Cafe Leon.

17 Q. Okay. Any other circumstances?

18 A. Not that I recall.

19 Q. Have you ever been to either of their  
20 residences?

21 A. I have not been to Mr. Pankratz'  
22 residence. I have been to Mr. Lowie's residence  
23 once.

24 Q. And when was that?

25 A. I don't recall the exact date.

1 Q. Has it been within the last year?

2 A. I don't recall.

3 Q. What was the circumstances you were at  
4 Mr. Lowie's residence?

5 A. I had asked him as well as my director  
6 because they were traveling international to see if  
7 they could procure me a bottle of Blanton's Bourbon.

8 Q. Okay. Mr. Lowie was traveling  
9 internationally; is that what you're saying?

10 A. Yes. Same as my director was.

11 Q. Were they traveling together?

12 A. No. They had separate things. I'm just  
13 stating that because of their travels  
14 internationally --

15 Q. Yes.

16 A. -- I had asked to see if they could  
17 procure a bottle of Blanton's Bourbon in their  
18 travels.

19 Q. Got it.

20 And Mr. Lowie did?

21 A. He was able to and I went to his house and  
22 refunded his money.

23 Q. Okay.

24 A. \$56 for the bottle.

25 Q. Okay.

1           A.    And that was -- it was just a very cordial  
2 conversation.  He showed me the landscaping.

3           Q.    Okay.

4           A.    And that was the extent of it.

5           Q.    Do you know whether or not Mr. Perrigo has  
6 ever socialized with Mr. Lowie or Mr. Pankratz?

7           A.    Not that I am aware of.  I've read the  
8 deposition, so the only thing I can say is what was  
9 in there.

10          Q.    Have you ever been to dinner with  
11 Mr. Lowie or Mr. Pankratz?

12          A.    Not that I recall.

13          Q.    How about lunch?

14          A.    No, not that I recall.

15               MR. BICE:  I'll pass the witness.

16               THE VIDEOGRAPHER:  Going off the video  
17 record.  The time is approximately 3:36 p.m.

18               (Exhibit Number A was marked.)

19

20

21                               EXAMINATION

22 BY MR. JIMMERSON:

23          Q.    Good afternoon, Mr. Lowenstein.

24               Are we back on the record?

25               THE VIDEOGRAPHER:  We're back on the

1 record. The time is approximately 3:46 p.m.

2 BY MR. JIMMERSON:

3 Q. Mr. Lowenstein, good afternoon.

4 My watch tells me it's about five minutes  
5 to 4:00. 3:55 is what my phone says.

6 I had the privilege -- and we've just met  
7 this morning -- I have the privilege of representing  
8 Fore Stars, 180 Land Company and Seventy Acres in  
9 this litigation that was brought by Mr. Binion and  
10 others against the City of Las Vegas and against my  
11 clients. Do you understand that?

12 A. Yes, I do.

13 Q. And before this morning, had you and I  
14 ever met?

15 A. Not to my recollection.

16 Q. And had we ever had any conversations  
17 before now? I mean, in terms of other than good  
18 morning or hello, my name is Jim Jimmerson, your name  
19 is Peter Lowenstein. Have we had any communication  
20 at all?

21 A. Not that I recall.

22 Q. Thank you, sir.

23 Now, I've shown you what's been marked as  
24 Exhibit A. And this is the First Amended Complaint  
25 that has been filed by the plaintiff through Mr. Bice

1 who was examining you this morning, from about 9:50  
2 this morning to the present.

3 And I want to know, have you ever seen  
4 that document before?

5 A. I may have from counsel.

6 Q. Okay. And counsel would be Mr. Byrnes or  
7 Mr. Jerbic?

8 A. Correct.

9 Q. There are allegations here that claim that  
10 the City of Las Vegas, through its representatives,  
11 has colluded with Fore Stars, 180 Land Company and  
12 Seventy Acres as a group to try to achieve an  
13 improper purpose or improper result.

14 Are you aware of any such basis for such  
15 a claim like that?

16 MR. BICE: Objection to form.

17 THE WITNESS: No.

18 MR. BICE: Go ahead.

19 THE WITNESS: Sorry. No.

20 BY MR. JIMMERSON:

21 Q. All right. Has the city in any way  
22 colluded with the entities that I represent relative  
23 to the partialization that has occurred in order to  
24 receive zoning change in zoning entitlements?

25 MR. BICE: Objection to form.

1 THE WITNESS: No, not that I am aware of.  
2 No.

3 BY MR. JIMMERSON:

4 Q. Has the City of Las Vegas, as far as you  
5 are personally involved, been complicit, as is  
6 alleged at page 6, line 7, quote, "the city's  
7 complicity in deriving surrounding homeowners of  
8 legal notice and an opportunity to be heard."

9 To your knowledge, has the city been  
10 complicit to deprive surrounding homeowners of legal  
11 notice and an opportunity to be heard?

12 MR. BICE: Objection. Form.

13 THE WITNESS: My understanding is that the  
14 city followed the open meeting law requirements.

15 BY MR. JIMMERSON:

16 Q. So the answer's no?

17 A. That would be correct.

18 Q. And what is your understanding that the  
19 city follows legal notice requirements, if not gone  
20 beyond that, as you've indicated on your direct  
21 examination?

22 A. Can you restate that, please?

23 Q. You said no, to your knowledge that the  
24 legal requirements of notice have been satisfied.  
25 What's the basis for your answer, sir?

1           A.    That a neighborhood meeting was held,  
2   depending on which applications we're talking about.  
3   Public notification cards were mailed out.  
4   Neighborhood meetings were held and all of that done  
5   in a timely manner and in accordance with the open  
6   meeting law.

7           Q.    You've been asked about meetings that  
8   you've had with any representative of the defendants,  
9   Fore Stars, 180 Land Company and Seventy Acres, by  
10   opposing counsel this morning, correct?

11          A.    Yes.

12          Q.    You were asked about the one occasion when  
13   you paid \$56 to procure a bottle of Bourbon that had  
14   been brought from somewhere outside the United  
15   States. You mentioned that, right?

16          A.    I did.

17          Q.    You mentioned that you have attended  
18   meetings where Mr. Lowie and Mr. Pankratz have been  
19   present?

20          A.    I did.

21          Q.    And perhaps a person by the name of Brett  
22   whose last name may be Harrison who you met, right?

23          A.    That is correct.

24          Q.    Are those all in accordance with how you  
25   deal with every person or property owner who seeks to

1 receive land entitlements or some consideration for  
2 land use from your department?

3 MR. BICE: Objection. Form.

4 BY MR. JIMMERSON:

5 Q. You may answer the question.

6 A. Have regular meetings?

7 Q. Yes.

8 A. Yes.

9 Q. Has there been anything untoward or  
10 inappropriate in any communications you've had with  
11 anyone that you recognize to be a representative of  
12 my clients?

13 MR. BICE: Objection to form.

14 THE WITNESS: Not that I am aware of.

15 BY MR. JIMMERSON:

16 Q. Have you conducted yourself in any manner  
17 that you believe to be inappropriate with regard to  
18 dealing with this applicant and these applications?

19 A. No, not to my understanding.

20 Q. Have you observed Mr. Perrigo, your  
21 director, conduct himself in any manner that would  
22 be, in your judgment, inappropriate in dealing with  
23 these applications and these applicants?

24 A. No, not to my knowledge.

25 Q. Have you conducted yourself appropriately



1 with regard to these applicants as you have with all  
2 other applicants that appear before the City of Las  
3 Vegas?

4 A. I have.

5 Q. Do you know of any basis upon which the  
6 plaintiffs would be able to successfully demonstrate  
7 any complicity on the part of the City of Las Vegas  
8 and, in particular, Pete Lowenstein towards my  
9 clients?

10 MR. BICE: Objection to form.

11 BY MR. JIMMERSON:

12 Q. You may answer the question, sir.

13 A. I'm not aware of that.

14 Q. Any such allegations you believe -- any  
15 such allegations to be false?

16 MR. BICE: Objection to form.

17 THE WITNESS: There is no basis for the  
18 allegations.

19 BY MR. JIMMERSON:

20 Q. And why do you say so?

21 A. To my knowledge and my own actions,  
22 there's nothing that would have been construed as  
23 being complacent or preferential.

24 Q. All right. Now, following the allegations  
25 in the amended complaint, there is some requirement,

1 I believe, for all of us in this room to look back at  
2 records that may have existed in the late 1980s and  
3 early 1990s since none of us were directly involved  
4 with the applications at that time. Fair statement?

5 MR. BICE: Objection to form.

6 THE WITNESS: As part of researching  
7 projects, one is called upon to look at entitlements  
8 and previous zoning codes, potentially codes or  
9 general plans from eras before them.

10 BY MR. JIMMERSON:

11 Q. And that's what you have done in this  
12 case?

13 A. I have, as previously stated, reviewed  
14 some documents, land use entitlements on the  
15 property. I've looked at the associated document,  
16 the Peccole Ranch Master Plan as part of that, and  
17 the 1992, at that time, what was the general plan,  
18 the label, and current versions of the Las Vegas 2020  
19 Master Plan Unified Development Code.

20 Q. And Mr. Bice representing the plaintiffs  
21 has asked you many, many questions with regard to  
22 events and documents that predate your involvement  
23 with the City of Las Vegas?

24 A. They have asked me regarding materials  
25 that predate my employment at the City of Las Vegas.

1 Q. All right. From your observations of  
2 documents you reviewed, you observed that there was a  
3 conceptual master plan developed by the Peccole  
4 family to develop property that they owned in  
5 Northwest Las Vegas?

6 MR. BICE: Objection to form.

7 BY MR. JIMMERSON:

8 Q. You may answer the question, sir.

9 A. In the deposition we were making reference  
10 to the Peccole Ranch Master Plan as it's titled. It  
11 was agendad on the city council as a master  
12 development plan.

13 Q. And, in fact, on the face of the document,  
14 it was called conceptual, correct?

15 A. In reference to Exhibit 8, I don't see the  
16 word "conceptual," but --

17 Q. Do you understand that these types of  
18 plans are, in fact, conceptual in nature?

19 MR. BICE: Objection to form.

20 THE WITNESS: Well, reading in the first  
21 paragraph on page 1, it calls it a conceptual master  
22 plan.

23 BY MR. JIMMERSON:

24 Q. My words exactly. Thank you.

25 And you've dealt with other master plans

1 from other developers, correct?

2 A. I have.

3 Q. And from a judge's perspective, a jury's  
4 perspective, a juror's perspective, a lay person's  
5 perspective, this is a landowners' vision of what  
6 they would like to develop, at least at a point in  
7 time. Isn't that what a master plan is?

8 MR. BICE: Objection to form. Calls for  
9 speculation and misstates the legal standard.

10 MR. JIMMERSON: I only want to respond by  
11 saying these are the very kinds of questions you  
12 asked Mr. Lowenstein for five hours and now you're  
13 objecting to the same question he's being asked and  
14 it's just so unfair.

15 MR. BICE: Actually, I disagree with you,  
16 Mr. Jimmerson. My questions are quite different, and  
17 if you can't recognize from the caption on which side  
18 of the case you're aligned, that is an issue for you.  
19 My objection --

20 MR. JIMMERSON: This is cross examination,  
21 Counsel. This is a party that is separate and apart  
22 and distinct from my clients and somebody I may or  
23 may not have agreement with, Counsel.

24 MR. BICE: I've noted my objection for the  
25 record.

1 MR. JIMMERSON: Thank you.

2 BY MR. JIMMERSON:

3 Q. Now, return to the question which was a  
4 while ago.

5 MR. BYRNES: Do you remember what the  
6 question is?

7 BY MR. JIMMERSON:

8 Q. I'll ask it again. A master plan is a  
9 developer's vision of what he would like to develop  
10 conceptually; is that correct?

11 MR. BICE: Objection to the form.  
12 Misstates the legal standard.

13 THE WITNESS: Master plans, to my  
14 understanding and my experience working with them,  
15 they are overall layout of how the development is to  
16 occur. The specifics on the subdivision are  
17 subsequent actions.

18 BY MR. JIMMERSON:

19 Q. And master plans -- is it true that master  
20 plans can change over time?

21 A. They can.

22 Q. And what are some of the factors, some of  
23 the reasons why a developer's, you know, intent or  
24 vision or conceptual plan might change?

25 A. Land use designations within the plan

1 based on their own -- whatever their reasons are,  
2 they can petition to amend those to be from a  
3 residential to a commercial or vice versa. I don't  
4 know what drives the master developer. Obviously it  
5 could be market driven. It could be any other number  
6 of reasons. I won't speculate why, but they would be  
7 able to petition the city council to amend that plan  
8 to go forward with whatever their vision is or their  
9 amended vision is.

10 Q. And in 199 -- 1986 there was this original  
11 plan, the Venetian plan, I think you referenced,  
12 correct?

13 A. That is correct. I'm not sure on the  
14 date, but there was the Venetian Foothills.

15 Q. And then you saw the -- your first master  
16 plan, I think you told opposing counsel was in 1989,  
17 with an amended plan in 1990; is that right?

18 A. As far as the Peccole Ranch Master Plan,  
19 yes.

20 Q. And as indicated on page 1 of the master  
21 plan, it was his conceptual plan; is that right?

22 A. In Exhibit A?

23 Q. Yes, Exhibit A.

24 A. On page 1, it reads, "The proposed  
25 1569.6-acre Peccole Ranch Master Plan is being

1 submitted to the City of Las Vegas for the approval  
2 of and amendment to the overall conceptual master  
3 plan along with the rezoning of a 996.4 acres in  
4 phase 2 to R-PD7 and R3 and C1 designations."

5 Q. Okay. Now, what does the word  
6 "conceptual" in the term conceptual master plan mean  
7 to you as you have just read it into the court  
8 record?

9 MR. BICE: Objection to form.

10 THE WITNESS: That it has, you know,  
11 flexibility to be further amended.

12 BY MR. JIMMERSON:

13 Q. Are you familiar with Nevada Supreme Court  
14 decisions that speak to how to interpret master plans  
15 and conceptual master plans?

16 A. No.

17 Q. As part of your working in your own work  
18 and perhaps even with, you know, your City Attorney's  
19 Office, have you been advised of Nevada Supreme Court  
20 precedent that talks in terms of master plans not  
21 being a straightjacket to city councils and county  
22 councils?

23 A. I don't recall any direct conversations.  
24 I imagine I've talked with counsel, but I don't know  
25 any court cases that I can reference.

1 Q. Okay. If I gave you a case, which I do  
2 have here, that says that conceptual master plans are  
3 not a straightjacket to city or county, you know,  
4 councils, would you have had that kind of  
5 conversation or had that kind of knowledge in the  
6 course of your work?

7 A. No, not unless council brought it to my  
8 attention.

9 Q. Fair enough.

10 But as you understand the word  
11 "conceptual," that you attach it to the term, and I  
12 agree, the term "flexibility," correct?

13 MR. BICE: Objection to form.

14 BY MR. JIMMERSON:

15 Q. Have I characterized or summarized your  
16 testimony correctly?

17 A. As I stated, it gives it the ability to  
18 amend at a future date and one could apply the word  
19 "flexible" to that.

20 Q. And you, in fact, did apply the word  
21 "flexibility," correct?

22 A. I'm not sure. We'll have to ask the  
23 stenographer.

24 Q. Now, looking at the map of the proposed  
25 master plan, would you look, please, at page -- it's



1 Bates stamped number 297 or 8297 of Exhibit 8.

2 Now, do you see that this plan is a plan  
3 from 1989 and is, in fact, not the final plan  
4 approved by the City of Las Vegas in 1990?

5 MR. BICE: What's the page number?

6 MR. JIMMERSON: 8297, Counsel.

7 MR. BICE: Thank you.

8 THE WITNESS: I don't see an associated  
9 date on the page. It's referenced as Exhibit B  
10 within the document, so I have to read the document  
11 to say as far as what its full purpose is.

12 BY MR. JIMMERSON:

13 Q. Well, do you look at this to see that this  
14 is, in fact, the top right-hand corner phase 1, 1989?  
15 It's right at the top of the very same page of the  
16 map.

17 A. At the top of the page, it reads -- on the  
18 right-hand side, it says "site data, hyphen, phase  
19 1."

20 Q. And isn't it true that Z-17-90, the plan  
21 that was approved a year later, is very different  
22 than the map that's shown here on 8297, Exhibit 8?

23 MR. BICE: Objection to form.

24 BY MR. JIMMERSON:

25 Q. And I can show you the Z-17-90 if you need

1 to. It's a separate document.

2 (Off the record.)

3 THE VIDEOGRAPHER: This is the beginning  
4 of video recording Number 7 in the continuing  
5 deposition of Peter Lowenstein. We're back on the  
6 video record.

7 BY MR. JIMMERSON:

8 Q. Thank you.

9 What I want you to confirm,  
10 Mr. Lowenstein, if you can, is to review the phase 1  
11 map, Bates stamp Number 8297 of Exhibit 8, which, I  
12 believe, is the phase 11989 map with the later  
13 approved map of Z-17-90 in 1990, and then satisfy  
14 yourself by looking at Exhibit 1 that the map there  
15 indicates what was actually built in 1999 to confirm  
16 that the master plan map in Exhibit 8 was not  
17 followed by the developer.

18 So I need -- we're still waiting for that  
19 one piece of paper, Z-17-90, but that's the task I'm  
20 asking you to take a moment and look at.

21 While we're waiting for that document, can  
22 you --

23 MR. BICE: Here it is.

24 MR. JIMMERSON: Okay. Thank you.

25 MR. BICE: Can I just take one?

1 MR. JIMMERSON: Of course.

2 (Exhibit Number B was marked.)

3

4 BY MR. JIMMERSON:

5 Q. Now, before you you have three documents.

6 You have Exhibit 8, the 1989 phase 1 map document,

7 8297. You have Exhibit B, the Z-17-90 approved by

8 the city council in 1990, April 4th. And you have

9 Exhibit 1, Lowenstein 1, which has the -- what

10 purports -- what you testified purports to be an

11 as-built of the golf course in 1999. So you have

12 those three documents in front of you, right?

13 A. That is correct, I have these documents.

14 Q. Just to make it easier, why don't we stick

15 with the '89 draft of Exhibit 8 and compare it to the

16 1999 golf course of Exhibit 1. And can you tell me

17 the differences that you observe as to the location

18 of holes and other infrastructure between -- that

19 which was conceptual in nature in 1989 compared to

20 what was actually built in 1999, ten years later?

21 A. Just for point of clarification, Exhibit 1

22 is from 1996.

23 Q. I thought your testimony, maybe I was

24 mistaken, was 1999, based upon --

25 A. Are you referring to Exhibit 7, which is

1 the southwest sector land use plan?

2 Q. Yeah. I may have been. But let me show  
3 you another exhibit.

4 (Exhibit Number C was marked.)

5 THE WITNESS: I assume -- I'm assuming the  
6 same question concerning all. Now --

7 BY MR. JIMMERSON:

8 Q. Yes, you have four exhibits.

9 I'm trying to show you what's been built  
10 versus what was conceptualized by the Peccole family  
11 in 1989, and to point out that the master plan that  
12 was conceptual in 1989 was changed a decade later.

13 MR. BICE: Objection to form.

14 Go ahead.

15 THE WITNESS: Okay. So between -- sorry.

16 Exhibit 8, the master plan from -- as  
17 referenced as Binion 008297 in comparison with the  
18 other documents, there are differences.

19 BY MR. JIMMERSON:

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

22 A. In looking at it, I can see the alignment  
23 of Alta Drive. I can see single family has been  
24 changed to commercial center; looking at the  
25 composition of the golf course that has also changed.

1 Q. And referring to the composition of the  
2 golf course, can you give me a little bit more  
3 specifics and details?

4 A. Well, in --

5 Q. The design of the course is significantly  
6 different, would you agree?

7 MR. BICE: Objection. Form.

8 THE WITNESS: The original, referring to  
9 the Binion 008297, shows 18 holes in pretty much a  
10 triangular pattern. And when looking at the Peccole  
11 West map, there are now fingerlings to it and --

12 BY MR. JIMMERSON:

13 Q. And you're referring to Exhibit C, the  
14 as-built?

15 A. Sorry, that was --

16 Q. The thick one is Exhibit C.

17 A. Well, I was referring to the Peccole West  
18 Exhibit 1.

19 Q. Okay.

20 A. And you can also see that it's different  
21 from the Binion 008297 in regards to the composition  
22 of the golf course.

23 This is Exhibit C -- sorry.

24 Q. You're doing fine.

25 A. -- which is labeled in it, "Final map for

1 Peccole West." It also differs in composition.

2 And --

3 Q. Have you completed your answer?

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

6 Q. And -- all right. And in order to --  
7 well, what approvals, if any, would the city make to  
8 the changes that the developer has obviously made  
9 between 1989, Exhibit 8297, and 1999 in the as-built  
10 that you have in Exhibit C?

11 In other words, how does the city get  
12 involved to approve the developer changes in all the  
13 differences you've identified?

14 A. From the Z-17-90, that amended the  
15 original Peccole Master Plan and included the  
16 rezoning of phase 2 as part of it. Subsequent  
17 actions were done by parentheticals of that zoning  
18 action, as well as changing the land use plan were  
19 done through general plan amendments, meaning the  
20 land use plan of the general plan, the designations  
21 that were existing at that time.

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

24 A. Through a general plan amendment  
25 application, which was then followed by a rezoning

1 application to have a compatible zoning district with  
2 land use designation amended to.

3 Q. And was that done by the applicant or was  
4 that at the city's instruction?

5 In other words, is the city changing what  
6 I call the cloud above the zoning or is the applicant  
7 seeking the general plan amendment?

8 MR. BICE: Objection to form.

9 BY MR. JIMMERSON:

10 Q. If you know.

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

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

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

22 Q. It's this document here.

23 A. Can you repeat the question, please?

24 Q. Okay. Well, can you refer -- can you  
25 identify what this document is, please.

1           A.    It's Exhibit B -- well, which is dated  
2                2/22 of 2016, but I believe this is a document that  
3                was out of the entitlement folder for Z-17-90.

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

5           A.    That is a rezoning application that went  
6                before the city council and was related to the  
7                development -- master development plan, which was the  
8                item before it on the agenda.

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

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

16           Q.    And as it relates to the property and what  
17                I would call phase 2 or what opposing counsel has  
18                called phase 2, was the vast majority of that all  
19                zoned R-PD7?

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

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

25           A.    Correct.



1 Q. And the golf course then came later? In  
2 other words, the property is zoned R-PD7 and then the  
3 golf course is superimposed on that later as we see  
4 in the 1995/96 time period?

5 MR. BICE: Objection to form.

6 THE WITNESS: I'm trying to follow the  
7 question.

8 Can you restate that better?

9 BY MR. JIMMERSON:

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

14 A. That is correct.

15 Q. And it was zoned R-PD7, as far as you're  
16 looking at the historical documents, on or about  
17 April 4th of 1990, correct?

18 A. Correct.

19 Q. Originally through a resolution of intent,  
20 correct?

21 A. I believe that was the zoning practice at  
22 the time, yes.

23 Q. And then we know formally, in October of  
24 2001, a hard ordinance that did confirm the R-PD7 for  
25 all of that property owned by my clients, correct?

1           A.    I don't recall the exact ordinance that  
2   solidified the zoning out of a resolution of intent,  
3   but there is an ordinance that did so.

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

11          A.    Through the zoning map atlas is the term  
12   for the overall zoning of the city. To amend that,  
13   they do that by ordinance and they did an ordinance  
14   which included these properties as part of it, which  
15   then solidified it as R-PD7.

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

21          A.    That is correct.

22          Q.    Okay. And then you recall that four were  
23   withdrawn and three went to full hearing before the  
24   city council on November 16th of 2016?

25          A.    I believe all of them were heard at

1 planning commission. The withdrawal occurred at city  
2 council.

3 Q. That's what I said. If I misstated or if  
4 you misheard, all seven were heard by city planning  
5 commission --

6 A. That is correct.

7 Q. -- and then three were formally heard to  
8 vote by city council?

9 A. Not to be a stickler, but city council,  
10 they heard all the items. They took a vote on the  
11 request for withdrawal, which they did.

12 Q. And you are right.

13 A. And then they reviewed the subsequent  
14 three applications.

15 Q. Good for you. And thank you for the  
16 correction. I mean that. I want you to be careful  
17 for -- not only on my clients' protection, but the  
18 city's protection and the plaintiffs' protection as  
19 well.

20 So the withdrawal occurred without  
21 prejudice at the time of the city council meeting on  
22 November 16th, but you were present for both  
23 meetings, correct?

24 A. That is correct.

25 Q. You were present to hear Mr. Jerbic's

1 response to questions asked by the chairman of the  
2 City Planning Commission with regard to the hard  
3 zoning that existed on my clients.

4 (Reporter interruption.)

5 BY MR. JIMMERSON:

6 Q. You were present to hear Mr. Jerbic's  
7 words in answering a question by the planning  
8 commission chairman, whose name I don't recall, where  
9 he stated, in response to a question asked, that the  
10 applicants had hard zoning for R-PD7 for the property  
11 in question, correct?

12 MR. BICE: Objection to the form.

13 BY MR. JIMMERSON:

14 Q. Did you hear those words?

15 MR. BICE: Objection to the form. The  
16 record speaks for itself.

17 Go ahead.

18 MR. JIMMERSON: Thank you, Counsel.

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

23 BY MR. JIMMERSON:

24 Q. All right. When I resume your deposition  
25 in the next day, I might play it for you and you can

1 listen to it again.

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

4 MR. BICE: Objection to the form. States  
5 a legal conclusion.

6 Go ahead.

7 THE WITNESS: I agree that the property is  
8 hard zoned R-PD7.

9 BY MR. JIMMERSON:

10 Q. And as you answered the questions earlier  
11 to opposing counsel, that allows a -- the landowner  
12 to petition to request for a density up to 7.49 units  
13 per acre?

14 A. The zoning district inherent in an R-PD7  
15 designates the number of dwelling units. The  
16 applicant who has that designation on their property  
17 would have to petition the city council for approval  
18 of -- of that action, and it is -- in reviewing it,  
19 we would review the proposed development, any other  
20 applications that would be required, and that  
21 includes reviewing the general plan and the zoning  
22 district and the development standards that they're  
23 proposing.

24 Q. Agreed. And I'm not suggesting otherwise.

25 What I'm saying is, the zoning entitlement

1 the hard zoning has a -- by category, an ability to  
2 develop up to 7.49 units per acre, subject to all the  
3 other considerations you've mentioned, correct?

4 MR. BICE: Objection to form. Calls for a  
5 legal conclusion and misstates the law.

6 BY MR. JIMMERSON:

7 Q. You may answer the question.

8 A. My understanding of it is that the  
9 designation of R-PD has associated with it a unit  
10 number -- a density, and that is the maximum in which  
11 it can be developed through that zoning district  
12 without requesting something else.

13 Q. And that density limit is 7.49 units per  
14 acre?

15 A. Yes.

16 MR. BICE: Same objections as before.

17 THE WITNESS: Sorry.

18 MR. BICE: You can restart,  
19 Mr. Lowenstein.

20 THE WITNESS: Yes, that's how the  
21 R-PD7 are.

22 BY MR. JIMMERSON:

23 Q. Now, you were asked to look at, in  
24 Exhibit 8, if you'll turn to Exhibit 8, you were  
25 asked to look at page 18 -- or withdraw. I'm sorry.

1 Just one other question before we get to  
2 page 18.

3 Would you look at page Bates stamped  
4 Number 8303 within Exhibit 8. It looks like this.

5 A. Yes, sir.

6 Q. What does this purport to show?

7 A. The title of it is Peccole Ranch Resort.  
8 It's kind of granular, but it shows park and fields,  
9 tennis courts. I can't make out much more.

10 It shows adjacent to a golf course and it  
11 has a number of buildings in the center of it.

12 Q. Where is it located? What intersection?

13 A. The roadways are -- it's hard to discern,  
14 but it's just south of Angel Park, which you can make  
15 out, so that would be Alta on the east/west road.  
16 And my assumption is that this is Rampart, or at that  
17 point it might have still been Fort Apache.

18 Q. And is that a golf course that runs --  
19 that crosses the road?

20 A. I can't really discern that. I see what  
21 looks to be fairways and greens on the west side of  
22 the road.

23 Q. Crossing the road, right?

24 A. Well, crossing the road, I'm not sure if  
25 that's golf course. I don't see any fairway or

1 greens. I can't discern.

2 Q. Was any of this built as we now sit here  
3 in 2016?

4 A. In this composition, no.

5 MR. BICE: Can you let me know which page  
6 number you're looking at?

7 MR. JIMMERSON: I did and I put it in the  
8 record. 8303, Counsel.

9 MR. BICE: Thank you.

10 BY MR. JIMMERSON:

11 Q. Now, looking at page 18 of the document,  
12 you were asked several questions by opposing counsel.

13 A. Okay.

14 Q. No problem at all.

15 Now, there's a -- can I see your copy,  
16 please. Thank you.

17 MR. JIMMERSON: Mr. Bice, will you agree  
18 that the handwriting and the circles and stuff is not  
19 Mr. Lowenstein's?

20 MR. BICE: Yes, it's not. I'm not  
21 sure whose it is.

22 MR. JIMMERSON: It does not -- huh?

23 MR. BICE: I'm not sure whose it is. And  
24 the version that we were using was the clean version.

25 MR. JIMMERSON: Well, I don't know. What



1 I'm looking at doesn't suggest that, so --

2 MR. BICE: Yeah, I know. I see -- I see  
3 now what you're saying, Jim, but the version that we  
4 used with Tom didn't have this on it.

5 MR. JIMMERSON: But this is what you've  
6 used today --

7 MR. BICE: Yes, I knew that.

8 MR. JIMMERSON: -- and I just want to say  
9 that the handwritten documents -- the handwritten  
10 words in the circle is not original.

11 MR. BICE: This is not -- those written  
12 words are not from the city.

13 MR. JIMMERSON: Fair enough.

14 MR. BICE: I know that.

15 BY MR. JIMMERSON:

16 Q. Okay. Now, would you agree the caption of  
17 this is "Peccole Ranch Land Use Data phase 2,"  
18 correct?

19 A. Correct.

20 Q. And for the benefit of the judge who might  
21 read this transcript or who might have it read to him  
22 or the jury who might listen to this, this is  
23 relating to phase 2 and would you agree with me that  
24 that would be the property north of Charleston?

25 A. Primarily phase 2 includes, for lack of

1 better terms, basically a peninsula that runs all the  
2 way down to Sahara.

3 Q. Got it. Thank you so much.

4 So the land use is identified in these  
5 seven or eight categories, correct?

6 Would you read those land use categories,  
7 please.

8 A. Single family, multi-family,  
9 commercial/office, resort-casino, golf course,  
10 drainage, right of way, elementary school.

11 Q. Did you happen to notice whether or not  
12 there was a golf course in the 1986 to 1990 time  
13 period scheduled for phase 1 of the Peccole Ranch  
14 Master Plan?

15 A. In relation to this document?

16 Q. No. Phase 1 south of Charleston.

17 A. I would have to review it. I don't  
18 recall. My recollection says that there may have  
19 been actual golf course holes on the southern  
20 portion, but I would have to review that to confirm.

21 Q. But in any event, it's clear it was  
22 eliminated by 1989, correct?

23 MR. BICE: Objection to form.

24 THE WITNESS: Well, if it was part of  
25 Venetian Foothills and then '89 and then '90, the '90

1 obviously doesn't reflect it.

2 BY MR. JIMMERSON:

3 Q. There is no golf course built there now,  
4 south of Charleston between Rampart and -- Hualapai  
5 or Rampart, correct?

6 A. Not as part of the Peccole Ranch Master  
7 Development.

8 Q. All right. Now, looking at these land  
9 uses, there is a proposed acreage to be allocated to  
10 these different land uses, correct?

11 A. There are associated acreages in the  
12 column to the right of the land uses.

13 Q. But this is conceptual, it can vary,  
14 correct?

15 MR. BICE: Objection to the form.

16 BY MR. JIMMERSON:

17 Q. Can it vary? Can acreage -- can  
18 different -- can 402 acres be used for single family?

19 MR. BICE: Same objection.

20 Go ahead.

21 THE WITNESS: On page 1 of this Exhibit B,  
22 it says it's conceptual. Then as subsequent land use  
23 applications have modified land use designations, my  
24 answer would be yes.

25 ///

1 BY MR. JIMMERSON:

2 Q. Okay. And you said you read Mr. Perrigo's  
3 deposition?

4 A. That is correct.

5 Q. Mr. Perrigo was clear to denominate the  
6 many departures from this conceptual plan that  
7 occurred from 1989 to the present, correct?

8 MR. BICE: Objection to the form.  
9 Foundation.

10 THE WITNESS: My recollection is that he  
11 made mention that there were instances.

12 BY MR. JIMMERSON:

13 Q. And he used the word, in fact, on several  
14 occasions "inconsistencies." Do you recall?

15 A. I -- sorry.

16 MR. BICE: Objection to form.

17 Go ahead.

18 THE WITNESS: It was a long deposition and  
19 a lot of readings --

20 BY MR. JIMMERSON:

21 Q. Yes, it was.

22 A. -- so I'm not sure if I'm retaining  
23 everything from that.

24 Q. Okay. But your own observation would be  
25 that there are a wholesale number of inconsistencies

1 between what conceptually was discussed in 1989 and  
2 what was actually constructed in the years that  
3 followed to the present date, agreed?

4 MR. BICE: Objection.

5 Sorry, are you done?

6 MR. JIMMERSON: Thank you, Counsel.

7 MR. BICE: Objection to the form.

8 Go ahead.

9 THE WITNESS: There are changes from that  
10 original master development plan from '90 going on  
11 forward. As far as his deposition, I don't know if  
12 he had any examples, but there are, you know -- my  
13 only recollection of things that would differ would  
14 be the northern portion of Boca Park, the Queensridge  
15 Towers, the southwest corner of Hual -- sorry, it  
16 would be the northeast corner of Hualapai and  
17 Charleston and there's some other examples. Those,  
18 off the top of my head, I know are different from the  
19 '90 plan.

20 BY MR. JIMMERSON:

21 Q. Now, does the fact that -- what  
22 significance, if any, do you take from the fact that  
23 there is a place holder of a dash next to  
24 commercial/office?

25 MR. BICE: Objection to the form and the

1 representation that a dash is a, quote, "place  
2 holder."

3 THE WITNESS: As previously stated, one  
4 can infer that it has a zero as I stated. It could  
5 be inferred as other things. If, in fact, somebody  
6 applies to amend something, then obviously the  
7 acreage would change.

8 BY MR. JIMMERSON:

9 Q. Well, under this conceptual plan, how  
10 much -- how many offices -- how many offices can be  
11 placed in the commercial office category? How many  
12 could be built under the conceptual master plan --

13 MR. BYRNES: Like offices --

14 BY MR. JIMMERSON:

15 Q. -- of commercial/office?

16 MR. BYRNES: Acres?

17 MR. JIMMERSON: No. I want to know how  
18 many offices can be built.

19 MR. BICE: Units?

20 BY MR. JIMMERSON:

21 Q. How much square foot can be built?

22 MR. BYRNES: How many units?

23 MR. BICE: I'll withdraw the objection.

24 BY MR. JIMMERSON:

25 Q. How many units?

1           A.    This table does not delineate any units.  
2    It doesn't speak to that.  It just says "acreage,"  
3    dash, "on density," dash, "on units," both of which  
4    are met.

5           Q.    It certainly allows it to be constructed,  
6    would you agree?

7           A.    Yes.

8           Q.    Okay.  But the amount isn't determined, at  
9    least, at the conceptual time of this in 1989?

10           MR. BICE:  Objection to form.

11 BY MR. JIMMERSON:

12           Q.    Correct?

13           A.    Yes.

14           MR. BICE:  I'm sorry.  Object to the form  
15    and objection to the reference 1989.

16 BY MR. JIMMERSON:

17           Q.    Okay.  Well, even if this were deemed to  
18    be in 1990, there's no limitation on how many units  
19    are going to be placed in a commercial office at this  
20    time, correct?

21           A.    Not by this table.

22           Q.    And if you will read the next line,  
23    resort-casino, supposedly going to be on 56 acres, we  
24    don't know how many with -- what the density for that  
25    hotel is going to be, correct, how many rooms are

1 going to be built, how many square foot of casino?

2 A. Right. As far as a resort-casino, it's  
3 not looked at in regards to density. It's just the  
4 development. There are hotel rooms associated with  
5 it, but they're not looked at in the sense of  
6 density.

7 Q. Okay. So if I understand your testimony,  
8 and this is an area where you're teaching me,  
9 Mr. Lowenstein, you wouldn't use the hotel/casino as  
10 a count against 4742. Is that what you're saying?

11 MR. BICE: Objection. Form.

12 Go ahead.

13 THE WITNESS: That is correct.

14 BY MR. JIMMERSON:

15 Q. Did you understand my question?

16 A. I did.

17 Q. Okay. But nonetheless, there is no  
18 attempt in 1989 or 1990, when the master plan is  
19 being discussed in Exhibit 8, to identify the density  
20 or the number of hotel rooms or the like associated  
21 with the resort-casino. Agreed?

22 A. I would have to read through the verbiage  
23 of the entire document, but pursuant to this table,  
24 it does not address that.

25 Q. All right. And the golf course drainage



1 talks about 211.6 acres, if I'm reading that correct.

2 A. I am assuming that there should be a  
3 decimal point there, yes.

4 Q. If there's not, then I just -- my mind put  
5 it in. Thank you.

6 A. There's not a decimal.

7 Q. How many acres are now -- how many acres  
8 are presently utilized for the golf course here in  
9 2016?

10 A. Going off the public notifications on the  
11 applications, I'm basing it on 250.92 acres.

12 Q. Okay. And is all of that golf course?

13 A. I believe so. If anything, it may include  
14 where the clubhouse is.

15 Q. Okay. And how would it have  
16 changed the -- and how many acres are devoted to  
17 drainage in the present development?

18 A. I don't know.

19 Q. Now, drainage is an issue that the  
20 developer works with the city, correct?

21 A. They work with the city, yes. It would be  
22 with the Department of Public Works.

23 Q. And at least from, you know, your  
24 expertise, but also being involved in the city, you  
25 saw what Mr. Lowie and others did with the Tivoli

1 development across the street?

2 A. Yes.

3 Q. And what I mean -- there was a significant  
4 issue of dealing with drainage at that location.

5 Would you agree?

6 A. Through conversations and on the existing  
7 projects about the box culverts and things like that,  
8 I have been made aware of the conditions that needed  
9 to be remedied.

10 Q. You and I could drive right there to Alta  
11 and Rampart. We could be on the golf course side to  
12 see where the -- you know, drainage is. We could  
13 then go over to Tivoli and see how they dealt with  
14 the drainage there, building over it.

15 That's a fair statement, correct?

16 A. Yes, that is correct.

17 Q. Okay. So all I'm trying to get at is that  
18 the city can work with the developer to resolve  
19 issues involving drainage. And as you have  
20 indicated, with the proper permissions, you can build  
21 over drainage, you can build around drainage, you can  
22 solve the issue as long as you have both federal and  
23 state approval. Agreed?

24 A. I agree to that, yes. I previously stated  
25 that -- that drainage easements, if they're not

1 needed in their current configurations or they're  
2 remediated, it's pretty much up to the Department of  
3 Public Works.

4 Q. Within the City of Las Vegas?

5 A. And if they agreed to that as remediated,  
6 then they would also be able to tell you if you're --  
7 whichever process you're meeting, if you can build.

8 Q. All right. And you work with the city to  
9 solve that issue or, at least, you agree that it  
10 can't be solved and it has to be left to drainage.  
11 Okay.

12 MR. BICE: Object to form.

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

15 BY MR. JIMMERSON:

16 Q. And the Department of Public Works is part  
17 of the City of Las Vegas?

18 A. That is correct, yes.

19 Q. It's one of your sister departments; is  
20 that right, at the city?

21 A. Yes, a fellow department.

22 Q. Okay. Now, looking at the right of way,  
23 there are 60.4 acres that are guesstimated to be  
24 right of way. Do you see that?

25 A. I do.

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

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

4 Q. And what do you understand is being  
5 communicated by the term "right of way"?

6 A. The public roadways.

7 Q. Could it also include open space, small  
8 parks?

9 MR. BICE: Objection to the form.

10 BY MR. JIMMERSON:

11 Q. You know, roundabouts, things like that?

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

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

17 A. Yes, that would.

18 Q. Okay. And then you would have an  
19 elementary school for 13.1 acres. Do you know with a  
20 dash as a density -- how do you treat density  
21 relative to an elementary school? Does that count  
22 against density, is really the question I'm asking  
23 you, or do you treat it like a resort-casino, it does  
24 not count against density?

25 MR. BICE: Objection to form.

1 BY MR. JIMMERSON:

2 Q. First of all, do you understand my  
3 question?

4 A. I do understand the question.

5 Q. Now, answer to the best of your ability,  
6 please.

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

10 Q. Okay. And then you have a total of  
11 995.4 acres, if I'm inserting the point correctly.  
12 Do you see that?

13 A. The one I'm looking at is 99- -- 99 --  
14 996, and I'm assuming there is a point and 4.

15 Q. Okay. And, again, based upon the total  
16 acreage of doing the math at that time, that's  
17 roughly 4.5 dwelling units per acre, correct?

18 A. That is correct.

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

20 A. Correct.

21 Q. I have read that correctly?

22 A. Yes.

23 Q. Would you read the next -- the note right  
24 below that, please.

25 A. "Note: Overall density based upon all

1 areas except right of way."

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

4 A. That the right of way acreage was not  
5 included in the acreage to calculate the overall  
6 density.

7 Q. So excluding 60.4 acres, the density was  
8 computed upon the other categories except for right  
9 of way; is that right?

10 A. I'm assuming so. I would have to do the  
11 math.

12 Q. All right. Now, because hard zoning on  
13 this property owned by my clients occurred first in  
14 time in 1990, and then as you have noted in 1996, a  
15 golf course was constructed, that originally, as you  
16 have seen in the plans, was supposed to be 18 holes  
17 and turned out to be 27 holes, and we can look at it  
18 and know it was 27 holes.

19 Is that the reason why the city has -- and  
20 your department believes that my client has the right  
21 to build on the golf course?

22 MR. BICE: Objection.

23 Were you done?

24 MR. JIMMERSON: I am.

25 MR. BICE: Okay. Countless objections.

1 Objection to form. Calls for a legal conclusion.

2 Calls for speculation by the witness. And misstates  
3 the law.

4 BY MR. JIMMERSON:

5 Q. I'm going to revise the question.

6 Is it your understanding, based upon your  
7 work at the City of Las Vegas and your position there  
8 and knowing the hard zoning that exists there, that  
9 my clients have the right to build towards 7.49 units  
10 on the property that they own; otherwise, what you  
11 and I would call is the golf course?

12 MR. BICE: Objection to form. Calls for a  
13 legal conclusion. Misstates the facts and objection  
14 that it misstates the law.

15 BY MR. JIMMERSON:

16 Q. I must be getting to the heart of the  
17 matter.

18 MR. BICE: Go ahead. I just want to  
19 preserve my objection.

20 Go ahead.

21 BY MR. JIMMERSON:

22 Q. Please answer.

23 MR. BICE: I would like to hear the  
24 answer.

25 THE WITNESS: The applicant has the right

1 to petition the city council to develop their  
2 property.

3 BY MR. JIMMERSON:

4 Q. And does it have the right to develop the  
5 property with the zoning that exists, some form of  
6 development on the property?

7 MR. BICE: Same objections.

8 Go ahead.

9 MR. BYRNES: I think I would also say  
10 legal conclusion there.

11 Go ahead and answer.

12 THE WITNESS: In their petition to develop  
13 their property, they're going to have to apply for  
14 all required applications and then, ultimately, the  
15 decision by the city council as to what is --  
16 whatever their finding may be, compatible,  
17 harmonious, with the surrounding area, but it would  
18 be their -- their discretion.

19 BY MR. JIMMERSON:

20 Q. Did you support the project of 770  
21 units -- 720 units, excuse me, when it was proposed  
22 in August of 2015?

23 MR. BYRNES: Are you asking Mr. Lowenstein  
24 personally --

25 MR. JIMMERSON: Yes.



1 MR. BYRNES: -- or the planning  
2 department?

3 BY MR. JIMMERSON:

4 Q. Good distinction. I'm asking  
5 Mr. Lowenstein as part of the planning department.

6 A. As part of the planning department, our  
7 original design review meeting from that as the  
8 department, we came out with an understanding that we  
9 were getting an overall package, so we did not come  
10 out with a recommendation until the overall package  
11 was submitted.

12 Subsequently, then we had a recommendation  
13 of approval on the application. With the withdrawal  
14 of the other items, it went forward with the  
15 recommendation of approval, and then at the meeting,  
16 the director, based upon the discussion, council  
17 withheld a recommendation.

18 Q. All right. Why did you conclude -- why  
19 did the department conclude that a major modification  
20 was not required, initially, on the 720 and now here  
21 more recently on the 720?

22 MR. BICE: Objection. Objection to form.  
23 Go ahead, sir.

24 THE WITNESS: Sorry.

25 As previously stated, that there was --

1 within the geographical area of the original zoning  
2 that capped the number of units at 4,247, if I quoted  
3 that right, there were still allowable units within  
4 that, and that with that they were petitioning  
5 through the general plan amendment rezoning and the  
6 site development review and a modification wasn't  
7 necessary .

8 BY MR. JIMMERSON:

9 Q. When you look at Exhibit 8, page 18, which  
10 is what you and I would call is the table of land use  
11 data, the one we were looking at together, is there  
12 any category there under land use called open space?

13 You can answer the question, sir.

14 MR. BICE: Is it 8?

15 MR. JIMMERSON: Exhibit 8, yes. Bates  
16 stamp Number 8310, the one we went through together.

17 MR. BICE: Oh, yeah. Okay. Fair enough.

18 BY MR. JIMMERSON:

19 Q. Is there any land use here designated open  
20 space?

21 A. No.

22 Q. Was there any requirement in the Z-17-90  
23 to maintain open space imposed upon the Peccole Trust  
24 when they received the city council approval on  
25 April 4th of 1990?

1 MR. BICE: Objection to the form.

2 THE WITNESS: The conditions of approval  
3 for that zoning action, I don't recall having  
4 something specific to required amount of even space.

5 BY MR. JIMMERSON:

6 Q. What were, to the best of your  
7 recollection, the only condition or conditions placed  
8 upon the approval of Z-17-90 and the R-PD7 zoning for  
9 this land in April 1990?

10 A. Just to be specific, the rezoning had  
11 multiple zoning districts. It was applicable to all  
12 of those districts. They had a maximum number of  
13 units as a condition placed on them.

14 As previously discussed, they had a  
15 condition to conformance of the conditions of the  
16 master development plan, which I have stated I have  
17 not been able to find any.

18 And then I imagine there are a number of  
19 other conditions from public works and other  
20 departments. They're all roped into one letter.

21 MR. JIMMERSON: Thank you.

22 Can we pause just for a minute, please.

23 (Discussion off the record.)

24 BY MR. JIMMERSON:

25 Q. I have never seen, on this property, a

1 condition that requires the Peccole Trust to comply  
2 with a master plan. I'm trying to square your last  
3 answer. If you'll be more clear to me with regard to  
4 what it is you mean when you say, I have never been  
5 able to confirm. I have not -- as I stated, I have  
6 not been able to find any.

7 Would you please help us understand your  
8 testimony or, at least, help me understand your  
9 testimony better, please.

10 MR. BICE: Objection to the form and the  
11 factual representation.

12 BY MR. JIMMERSON:

13 Q. You can go ahead and answer the question.

14 A. Okay. So in doing the research of the  
15 land use entitlements and, specifically, this zoning  
16 action and then reviewing the conditions of approval  
17 part of it.

18 Q. Referring to April of 1990?

19 A. Correct. Referring to Z-17-90 as the  
20 rezoning application. And that the condition in  
21 there, I don't know if it's condition number 2 or 3  
22 on that approval -- on that final action letter.

23 Rereviewing the minutes from -- and the  
24 agenda from that same meeting, I have not been able  
25 to find any conditions that are specific to that

1 agenda item, which is the master development plan  
2 regarding phase 2.

3 Q. Meaning there's no minutes or any  
4 requirement you can find to comply with the phase 2  
5 master plan. Is that what you mean by that last  
6 answer?

7 MR. BICE: Objection to form.

8 BY MR. JIMMERSON:

9 Q. You can answer the question, sir.

10 A. Meaning there weren't -- as the zoning  
11 action Z-17-90 had its own specific condition  
12 approval letter --

13 Q. I understand.

14 A. -- the master development plan did not  
15 have its own specific letter with conditions imposed  
16 that I have found at this point.

17 Q. And what is the significance of that?

18 A. The condition that it says to conform to  
19 it, if there are no conditions, then it's moot.

20 Q. And you don't find any conditions, at  
21 least, through your research in studying the minutes  
22 and the folder that you examined; is that right?

23 MR. BICE: Objection to form.

24 Go ahead.

25 THE WITNESS: Based upon the research, I

1 have not found an action letter regarding that  
2 development -- master development plan item.

3 BY MR. JIMMERSON:

4 Q. And so I understand -- in my vernacular,  
5 therefore, there is no condition that you have been  
6 able to find that requires compliance with the  
7 conceptual master plan in the Z-17-90 action by the  
8 city council; is that correct?

9 MR. BICE: Objection to form. Misstates  
10 the law. Misstates the facts.

11 Go ahead, sir.

12 THE WITNESS: The items are related. I  
13 would have to defer to counsel on their  
14 interpretation.

15 BY MR. JIMMERSON:

16 Q. Okay. But I'm asking what you found. I'm  
17 trying to understand what you're saying.

18 You're saying, Mr. Jimmerson, I don't see  
19 any condition that requires compliance with a master  
20 plan in my research. Is that what you're telling us?

21 MR. BICE: I apologize, sir. I need to  
22 state my objection.

23 Objection to form. Misstates the law and  
24 misstates the facts.

25 Go ahead, sir.

1 THE WITNESS: The zoning action has a  
2 condition that says to conform to the conditions of  
3 the master development -- master development plan. I  
4 have not been able to locate the separate conditions  
5 of approval letter for that master development plan.  
6 That is what I'm stating.

7 BY MR. JIMMERSON:

8 Q. All right. And did you observe that the  
9 approval of the city council in April of 1990 had a  
10 five-year limit after which it expired?

11 A. Without reviewing the condition of  
12 approval, if it had a resolution of intent, it would  
13 have been listed as a condition on it. Some -- some  
14 actions don't and run indefinitely.

15 Q. And what happens if there's a five-year  
16 limit to the approval?

17 A. That is usually the duration in time which  
18 the council has deemed for the entitlement to be  
19 exercised.

20 Q. Now, you mentioned something called PR-OS,  
21 right? I heard a question asked of you this morning  
22 about that.

23 A. Yes. Throughout the course of this  
24 deposition, we have referred to a general land use,  
25 or in the Las Vegas 2020 Master Plan, a designation

1 called PR-OS, which is parks, recreation and open  
2 space.

3 Q. All right. In 1990, was there any  
4 designation for this ground as PR-OS?

5 A. From my research, the designation on this  
6 property or this general area would have been to  
7 the -- in the 1985 general plan, which did not have  
8 specific designations, but more of -- and it's -- I  
9 guess, they called it -- the title might be a general  
10 land use plan in the sense that it's not site  
11 specific. It had swaths of rural, suburban or urban  
12 designations.

13 Q. So PR-OS was not something that was -- was  
14 not a designated land use in 1990 when Mr. Peccole or  
15 the Peccole Trust obtained its entitlements before  
16 the city council?

17 A. Not to my knowledge.

18 Q. Okay. Is it your contention today, now in  
19 2016, December, that there is a land use designation  
20 for the golf course owned by the companies that I  
21 represent that they're subject to a PR-OS land use  
22 designation?

23 A. As reflected on the current southwest  
24 sector land use map, yes.

25 Q. Okay. And when was the PR-OS land use



1 designation affixed to the property owned by my  
2 clients, to the best of your knowledge?

3 A. I don't know. That research would have to  
4 be done. I understand there's a '92 plan and then  
5 there's the adoption of the Las Vegas 2020 Master  
6 Plan in 2000.

7 Q. And could it have been done as recently as  
8 February of 2015?

9 A. I don't think so.

10 Q. Have you -- did you have any -- have you  
11 heard any claim -- withdrawn.

12 Have you seen any document that lists the  
13 property -- withdrawn.

14 The golf course was constructed in the  
15 1996 to 2000 time period. Is that your  
16 understanding?

17 A. I don't know the exact date when it was  
18 constructed.

19 Q. Not the exact fours years, but would you  
20 agree it was about that time period?

21 A. I don't know if it was '96 or not. I  
22 could review aerial photography to tell you exactly  
23 when the construction started.

24 Q. All right. Now, the land that's owned by  
25 my clients, 180 Land Company, Seventy Acres and Fore

1 Stars, they own the golf course as it's built, the  
2 as-built that I was showing you in Exhibit D,  
3 correct?

4 MR. BICE: Objection to form.

5 THE WITNESS: Is it C?

6 BY MR. JIMMERSON:

7 Q. C. I'm sorry. Thank you. Exhibit C.

8 A. If this is the current configuration of  
9 the 1827, yes.

10 Q. And since we know that the location of the  
11 golf course has significantly changed from what was  
12 conceptually thought about in 1989 or 1990, how does  
13 the land use designation change to match the -- you  
14 know, the current as-built location? How does that  
15 work?

16 MR. BICE: Objection to the form.

17 Go ahead.

18 MR. BYRNES: Do you understand the  
19 question?

20 THE WITNESS: Are you asking, how did the  
21 golf course become designated parks/recreation/open  
22 space?

23 BY MR. JIMMERSON:

24 Q. The answer is yes, but what I'm trying to  
25 understand is, you couldn't have the current land use

1    desig -- I'm asking, I'm not telling you, I'm  
2    asking -- you would not have a land use designation  
3    of PR-OS on the golf course that's built today until  
4    it's built today, until it was built, agreed?

5           A.    I'm not sure.

6           Q.    Do you understand the question?

7                    You couldn't put a PR-OS land use on  
8    another location. That didn't happen in this case,  
9    right? I mean, we don't have PR-OS in 1990 when my  
10   clients -- not my clients, but the owner -- obtains  
11   the Z-17-90 right of entitlement under zoning, the  
12   golf course as it's built in '96 to 1999 time period.  
13   So the PR-OS designation land use would have had to  
14   occur after you know where the location of the golf  
15   course is built. Would that be a fair statement?

16                  MR. BICE:  Objection to form.

17                  THE WITNESS:  From my recollection in the  
18   1992 general plan, there was a comprehensive survey  
19   and that is where they designated land use  
20   designations.

21  BY MR. JIMMERSON:

22           Q.    Okay. Was PR-OS designated on my clients'  
23   property in 1992?

24           A.    I believe the designation, it could have  
25   been P. I'm not sure if PR-OS existed, but P

1 existed, and it would be in the configuration of, I  
2 believe, the master development plan.

3 Q. And what configuration in 1992 was that?

4 A. That would be the configuration as -- I'm  
5 assuming it's the configuration of the Z-17-90 phase  
6 2 rezoning and subsequent amendment of the overall  
7 Peccole Ranch Master Development.

8 Q. When was PR-OS as a designated land use  
9 created by the city of Las Vegas?

10 A. I don't know. The research would have to  
11 be done.

12 Q. Was it before or after you became a  
13 planner in 2003?

14 A. As a guess, I would say before.

15 Q. It existed at the time you came to work  
16 there?

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

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

23 A. My limited exposure with the overall  
24 process, this is where Mr. Summerfield would probably  
25 be more apt to speak to, but there is a lot of public

1 input, charrettes and public outreach in coming up  
2 with the general plan and then there are neighborhood  
3 meetings when the plan is towards the final draft and  
4 then, obviously, it goes before the city council for  
5 adoption and ordinance.

6 Q. And is the affected -- are there any  
7 notice of the landowner of PR-OS being placed upon  
8 their property?

9 A. As I previously stated earlier, I believe,  
10 as it's a citywide effect that they don't notice  
11 every individual property owner. But once again, I  
12 wasn't here when they did it, so I can't confirm.

13 Q. What if there is a conflict as we have  
14 here with hard zoning of R-PD7 since 1990 and  
15 possibly working together for a PR-OS being put on  
16 this property in the late 1990s?

17 MR. BICE: Objection to form. Objection  
18 to the representation of conflict.

19 BY MR. JIMMERSON:

20 Q. Well, first of all, would you agree, as  
21 Mr. Perrigo said that's a conflict, R-PD7 zoning and  
22 building rights and a land use designation of PR-OS?

23 MR. BICE: Objection to form and objection  
24 to the representation that Mr. Perrigo said it's a  
25 conflict.

1 BY MR. JIMMERSON:

2 Q. He used the word "inconsistency."

3 Would you agree that there is an  
4 inconsistency between this property having a hard  
5 zoning of 1990 of R-PD7, and sometime thereafter, a  
6 PR-OS placement of land use designation by the city?

7 MR. BICE: Objection to the form.  
8 Objection to the representation he claimed it was an  
9 inconsistency.

10 BY MR. JIMMERSON:

11 Q. You can answer the question.

12 MR. BICE: You represent that --

13 BY MR. JIMMERSON:

14 Q. I'm quite satisfied that's the word  
15 Mr. Perrigo used. I'm asking your opinion,  
16 Mr. Lowenstein, your observation.

17 I'll state it quickly: Is there an  
18 inconsistency between the R-PD7 rights to build,  
19 zoning rights, entitlements, and placing a land use  
20 designation of PR-OS on that very same land?

21 MR. BICE: Objection to form. Objection  
22 to the representation that zoning grants a right to  
23 build.

24 Go ahead.

25 ///

1 BY MR. JIMMERSON:

2 Q. The question didn't include that, but go  
3 ahead.

4 A. If somebody wanted to exercise the R-PD7  
5 for single family development, the Unified  
6 Development Code and the zoning code -- being the  
7 zoning code strives to have consistency between the  
8 general plan and the associated zoning district, in  
9 this instance, the zoning district actually has its  
10 own density called out and the parks/recreation/open  
11 space does not. So we would look for that  
12 consistency and require that it be amended to have a  
13 designation that matches whatever the proposed  
14 development's overall density is going to be.

15 In that light, there are other situations  
16 where there are R-PD zoned properties with parks,  
17 recreation and open space underneath it.

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

19 MR. BICE: Objection.

20 THE WITNESS: I'm just using -- I'm sorry.

21 MR. BICE: Objection to form.

22 Go ahead.

23 THE WITNESS: I'm just using that as far  
24 as the hierarchy of land use and general plan, broad  
25 stroke, and then you go to a finer point and under

1 being the general plan and the zoning above.

2 BY MR. JIMMERSON:

3 Q. But requesting a change in the general  
4 amendment is because there is an inconsistency in the  
5 R-PD7 and the PR-OS?

6 MR. BICE: Objection to form.

7 BY MR. JIMMERSON:

8 Q. Otherwise, there wouldn't be a need to  
9 amend the general plan, correct?

10 A. For the exercising of that residential  
11 plan, yes.

12 Q. And as between any conflict between PR-OS  
13 and R-PD7, the zoning trumps the land use  
14 designation, isn't that true, by statute?

15 MR. BICE: Objection.

16 THE WITNESS: That I would have to defer  
17 to counsel.

18 MR. BICE: Object to the form. Misstates  
19 the law.

20 BY MR. JIMMERSON:

21 Q. Let me ask your opinion. If there is a  
22 conflict between land use designation and zoning,  
23 what trumps what?

24 MR. BYRNES: I just object. Calls for a  
25 legal conclusion.



1 Go ahead and answer.

2 THE WITNESS: It's my understanding that a  
3 zoning district gives a property owner property  
4 rights.

5 BY MR. JIMMERSON:

6 Q. So, therefore, it trumps the land use  
7 designation when they are inconsistent?

8 MR. BICE: Objection to form.

9 Go ahead.

10 BY MR. JIMMERSON:

11 Q. You can answer the question yes or no,  
12 sir.

13 MR. BICE: Also, can you hold on one  
14 second. I need to make this objection.

15 Phil, if you allow him to answer this  
16 question, since he says it's his understanding, I'm  
17 going to follow up and ask him what's the basis for  
18 that understanding if he's giving a representation,  
19 so --

20 MR. JIMMERSON: You don't have to,  
21 Counsel. I'll be asking the next question following  
22 that.

23 MR. BICE: Okay. All I'm saying is that,  
24 if he's going to claim it's -- I don't think he's  
25 allowed to testify that he has an understanding of X

1 based on something told to him by the city attorney's  
2 office but then turn around and say I'm not going to  
3 explain X on the basis of privilege. That's all I'm  
4 getting at.

5 MR. JIMMERSON: All right. But he's not  
6 relied upon the city attorney. He can rely on Tom  
7 Perrigo who said the very same thing at page 52 and  
8 53 of his deposition --

9 MR. BICE: Actually --

10 MR. JIMMERSON: -- that zoning trumps.

11 MR. BICE: -- he didn't say that and for  
12 you to represent --

13 MR. JIMMERSON: I'll read it to you,  
14 Counsel.

15 MR. BICE: Yeah. There's a lot of things  
16 you said.

17 MR. JIMMERSON: I'll read it, Counsel, if  
18 you don't believe --

19 MR. BICE: Go ahead, Jim. Read whatever  
20 you like.

21 MR. JIMMERSON: Can we have the answer to  
22 the question?

23 MR. BICE: I'll --

24 BY MR. JIMMERSON:

25 Q. The property rights trumps the land use

1 designation, correct?

2 MR. BICE: Objection to form. Misstates  
3 the law and the city code.

4 MR. BYRNES: And legal conclusion.

5 BY MR. JIMMERSON:

6 Q. You may answer the question, sir. Your  
7 understanding.

8 A. The zoning district, as I said, gives the  
9 property owner certain rights. For example, if you  
10 had a commercial zoning district and a rural  
11 designation underneath it, you would be able to  
12 develop and be permitted the land uses under the C-1  
13 zoning district.

14 In regards to an R-PD7, the zoning  
15 district has an inherent -- the number in that  
16 delineates the density of that zoning district, but  
17 to exercise it, you still have to go through the  
18 discretion.

19 Q. I'm not quarreling with that. I'm saying  
20 to you, you still have that zoning trumping the land  
21 use, and the difference is because you never get the  
22 landowner's consent to the land use. You never get a  
23 written document by the landowner, please approve  
24 PR-OS, correct?

25 MR. BICE: Objection to the form.

1 BY MR. JIMMERSON:

2 Q. You can answer the question. You know  
3 exactly what I'm asking you.

4 A. Can you just restate it?

5 Q. Do you obtain the written consent of a  
6 landowner to the land use designation that the city  
7 puts on a piece of property?

8 MR. BYRNES: In the general plan?

9 BY MR. JIMMERSON:

10 Q. One by one.

11 Did you get Mr. Peccole's consent to PR-OS  
12 if, in fact, he put it on there in 1999?

13 MR. BICE: Objection to the form.

14 Go ahead.

15 THE WITNESS: I have no idea of knowing  
16 that.

17 BY MR. JIMMERSON:

18 Q. In your time, have you ever obtained the  
19 landowner's written consent to a land use designation  
20 that the city has imposed upon property?

21 A. To my extent, I don't know of any time  
22 that the city has imposed.

23 Q. And are you -- and then you -- okay.

24 So you don't think it's an imposition upon  
25 a person's properties to try to change the land use

1 designation when you have an existing building,  
2 right?

3 A. Just exactly what you said.

4 Q. Somebody's got C-1 zoning and you've  
5 got -- you want to put rural as a designation. He  
6 still has the right to build a commercial center,  
7 correct?

8 MR. BICE: Objection to the form.

9 Go ahead.

10 MR. BYRNES: Do you understand?

11 THE WITNESS: The example I gave him was  
12 existing designations, not the city changing it by  
13 their own, you know --

14 BY MR. JIMMERSON:

15 Q. Well, what was the land use designation on  
16 this property before PR-OS was placed upon it, if you  
17 know?

18 A. As I believe I stated in the '92 plan, it  
19 was probably parks and either medium, low density  
20 residential. And then prior to that in the '85 plan,  
21 it was suburban.

22 Q. Is there any requirement for parks within  
23 the planned approved Z-17-90 upon the developer? Is  
24 there any request for parks or recs as part of that  
25 zoning approval?

1           A.    Not to my knowledge as far as the  
2 documents.  There's no request for parks.

3           Q.    Mr. Perrigo, at page 52, line 25 and  
4 page 53, lines 1 through 8 stated as follows:  "My  
5 position is that zoning is -- that's what the proper  
6 way to say.

7                    "But what's the proper way to say it?

8                    "The zoning governs more.

9                    "QUESTION:  So --

10                   "ANSWER:  If the land use and the zoning  
11 aren't in conformance, then the zoning would be a  
12 higher order entitlement, I guess.

13                   "QUESTION:  So it's your position that  
14 zoning supersedes the general plan?

15                   "ANSWER:  Yes.

16                   "Or the master plan?

17                   "ANSWER:  Yes."

18                   Is that also your understanding,  
19 Mr. Lowenstein, as it is Mr. Perrigo's?"

20           A.    Similar in nature.  The zoning -- zoning  
21 is the implementation of the general plan, and it has  
22 inalienable rights.  It has property rights  
23 associated with certain development standards, those  
24 kinds of things.

25    ///

1 MR. BICE: Objection to the form.

2 BY MR. JIMMERSON:

3 Q. What does the term "inalienable rights"  
4 mean to you as you use it?

5 A. Meaning it has that entitlement.

6 MR. JIMMERSON: I would like to take a  
7 restroom break.

8 THE WITNESS: Sure.

9 MR. JIMMERSON: And also try to work with  
10 you, Counsel, with regard to -- it's 5:20. I would  
11 like to find another time before Christmas where we  
12 can complete both Mr. Perrigo's and Mr. Lowenstein's  
13 depo with, of course, the consent of you,  
14 Mr. Lowenstein, Mr. Perrigo and Mr. Byrnes.

15 So why don't we go off the record to  
16 discuss scheduling. It's 5:20. I have worked long  
17 enough today, but I will need some additional time.

18 THE VIDEOGRAPHER: Going off the video  
19 record. The time is approximately 5:11 p.m.

20 (Whereupon, the deposition adjourned at  
21 5:11 .m. this date.)

22 \* \* \* \* \*

23

24

25

CERTIFICATE OF REPORTER

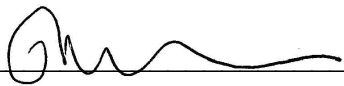
STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

I, Monice K. Campbell, a Certified Court Reporter  
licensed by the State of Nevada, do hereby certify:  
That I reported the examination under oath of Peter  
Lowenstein, on Thursday, December 8, 2016, at  
9:40 a.m.

That prior to being deposed, the witness was  
duly sworn by me to testify to the truth. That I  
thereafter transcribed my said stenographic notes via  
computer-aided transcription into written form, and  
that the typewritten transcript is a complete, true  
and accurate transcription of my said stenographic  
notes; that review of the transcript was requested.

I further certify that I am not a relative,  
employee or independent contractor of counsel or of  
any of the parties involved in the proceeding; nor a  
person financially interested in the proceeding.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
19th day of December, 2016.

  
\_\_\_\_\_  
MONICE K. CAMPBELL, CCR NO. 312



I, Peter Lowenstein, deponent herein, do hereby declare under penalty of perjury that I have read the within and foregoing transcription of my examination under oath taken on Thursday, December 8, 2016, at Las Vegas, Nevada, and that the same is a true record of the testimony given by me at the time and place hereinabove set forth, with the following exceptions:

PAGE	LINE	SHOULD READ:	REASON FOR CHANGE:
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24			PETER LOWENSTEIN	
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BY MR. BICE: [129] 6/23 9/16 19/21 25/1 38/25 39/20 46/6 54/21 55/16 57/6 58/17 59/3 63/5 67/10 68/10 71/8 75/6 76/13 77/2 77/21 79/23 80/10 82/7 83/21 85/5 87/17 88/21 89/20 90/20 91/8 91/13 91/23 93/3 93/13 93/21 94/18 96/6 97/12 99/17 103/7 103/14 104/13 105/15 105/24 106/25 109/11 110/9 111/11 116/21 117/7 117/17 119/21 121/23 123/11 123/21 125/13 125/25 127/9 127/22 128/4 130/6 130/15 131/3 131/8 132/10 132/25 133/5 133/16 134/6 135/1 135/24 136/22 137/9 137/18 142/7 145/2 145/17 145/22 147/5 148/11 150/15 151/2 153/7 153/24 154/9 156/12 156/24 157/7 157/12 161/6 161/16 161/24 162/11 162/25 163/14 164/4 164/20 165/6 165/23 166/12 169/7 170/9 171/25 172/12 172/22 174/20 176/1 177/1 177/11 178/11 179/11 179/20 183/25 184/9 185/1 185/14 187/3 187/24 188/15 189/18 190/4 190/17 193/1 193/22 194/6 195/14 196/23 197/8 198/8 BY MR. 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1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 JACK B. BINION, an individual; )  
4 DUNCAN R. and IRENE LEE, )  
5 individuals and Trustees of the )  
6 LEE FAMILY TRUST; FRANK A. SCHRECK, )  
7 an individual; TURNER INVESTMENTS, )  
8 LTD., a Nevada Limited Liability )  
9 Company; ROGER P. and CAROLYN G. )  
10 WAGNER, individuals and Trustees )  
11 of the WAGNER FAMILY TRUST; )  
12 BETTY ENGLESTAD AS TRUSTEE OF THE )  
13 BETTY ENGLESTAD TRUST; PYRAMID )  
14 LAKE HOLDINGS, LLC.; JASON AND ) CASE NO  
15 SHEREEN AWAD AS TRUSTEES OF THE ) A-15-729053-B  
16 AWAD ASSET PROTECTION TRUST; )  
17 THOMAS LOVE AS TRUSTEE OF THE ) DEPT NO: XXVII  
18 ZENA TRUST; STEVE AND KAREN THOMAS )  
19 AS TRUSTEES OF THE STEVE AND KAREN )  
20 THOMAS TRUST; SUSAN SULLIVAN AS )  
21 TRUSTEE OF THE KENNETH J. )  
22 SULLIVAN FAMILY TRUST, AND )  
23 DR. GREGORY BIGLER AND SALLY )  
24 BIGLER, )  
25 Plaintiffs, )  
vs. )  
FORE STARS, LTD., a Nevada Limited )  
Liability Company; 180 LAND CO., )  
LLC, a Nevada Limited Liability )  
Company; SEVENTY ACRES, LLC, a )  
Nevada Limited Liability Company. )  
and THE CITY OF LAS VEGAS, )  
Defendants. )

22 VIDEOTAPED DEPOSITION OF PETER LOWENSTEIN  
23 LAS VEGAS, NEVADA  
24 TUESDAY, DECEMBER 20, 2016  
25 Reported by: Monice K. Campbell, NV CCR No. 312  
Job No.: 1068

1 VIDEOTAPED DEPOSITION OF PETER LOWENSTEIN,  
2 VOLUME II, held at The Jimmerson Law Firm, located at  
3 415 South Sixth Street, Suite 100, Las Vegas, Nevada,  
4 on Tuesday, December 20, 2016, at 10:46 a.m., before  
5 Monice K. Campbell, Certified Court Reporter, in and  
6 for the State of Nevada.

7  
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1	The Videographer:	
2	Becky Ulrey	
3	Also Present:	
4	Frank A. Schreck, Esq.	
5	Yohan Lowie	
6	Todd Davis	
7	Chris Kaempfer	
8	Shahana Polselli	
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\* \* \* \* \*

1 LAS VEGAS, NEVADA; TUESDAY, DECEMBER 20, 2016

2 10:46 A.M.

3 \* \* \* \* \*

4 THE VIDEOGRAPHER: This begins the video  
5 recorded deposition of Peter Lowenstein, volume 2.  
6 Today's date is December 20th, 2016 and the time is  
7 10:46 a.m. We are at 415 South 6th Street, Suite  
8 100, in Las Vegas, Nevada for the matter entitled  
9 Jack V. Binion, et al. versus Fore Stars, Limited, et  
10 al., in the District Court, Clark County, Nevada,  
11 Case Number A-15-729053-B. I'm the videographer,  
12 Becky Ulrey, and the court reporter is Monice  
13 Campbell with Envision Legal Solutions.

14 Will counsel please identify yourselves  
15 and then the reporter will administer the oath.

16 MR. JIMMERSON: Good morning. My name is  
17 Jim Jimmerson. I have the privilege of representing  
18 the defendants, Fore Stars, 180 Land Company and  
19 70 Acres, LLC. With me is one of our principals,  
20 Yohan Lowie to my right and from time to time we will  
21 have a paralegal come in and out to help us with the  
22 many exhibits that we're working with.

23 Good morning to you and happy holidays.

24 THE WITNESS: Peter Lowenstein, I'm being  
25 deposed.

1 MR. BYRNES: Phil Byrnes and Jeff Dorocak  
2 representing the City of Las Vegas and deponent.

3 MR. BICE: Todd Bice on behalf of the  
4 plaintiffs and with me this morning is Mr. Schreck.

5 MR. KAEMPFER: Chris Kaempfer.

6 MR. LOWIE: Yohan Lowie.

7 (Discussion off the record.)  
8

9 EXAMINATION

10 BY MR. JIMMERSON:

11 Q. Mr. Lowenstein, we, both sides, took your  
12 deposition, I would say, day one of your deposition  
13 about 10 days ago. Do you recall that?

14 A. Yes, I do.

15 Q. And opposing counsel had --

16 THE VIDEOGRAPHER: Your mike, Counsel,  
17 please.

18 BY MR. JIMMERSON:

19 Q. -- opposing counsel had several hours with  
20 you and then I had at least an hour, hour and a half  
21 with you as well. Do you recall?

22 A. I do.

23 Q. So I'm continuing with my examination this  
24 morning, and then there may be one additional time  
25 for opposing counsel and myself to ask you further

1 questions through the course of the day. Do you  
2 understand that?

3 A. I do.

4 Q. So to input from all counsel, we'll look  
5 at taking our lunch break around 12:30, 12:45, for an  
6 hour, an hour and ten minutes as we did yesterday.

7 BY MR. JIMMERSON:

8 Q. All right. Since -- and I remind you you  
9 are under oath as you were in your first day of  
10 deposition. Do you understand that?

11 A. I do.

12 Q. All right. Mr. Lowenstein, following your  
13 deposition through the present date, about 10 days  
14 have passed give or take. Have you reviewed any  
15 documents from the time that you left the deposition  
16 room at Pisanelli Bice's office through today in  
17 preparation for today's deposition?

18 A. Yesterday I reread my deposition.

19 Q. Did you review any other documents besides  
20 reviewing your deposition from day one?

21 A. I met with counsel and in those sessions I  
22 have looked at --

23 Q. Without telling me what you talked to with  
24 your counsel, did he or you show each other any  
25 documents?

1           A.    Just the minutes from the -- I think it's  
2 the April 4th, 1990 City Council meeting.

3           Q.    Besides those minutes, did you review any  
4 other documents?

5           A.    I've looked at the 1992 general plan,  
6 southwest sector land use map.

7           Q.    Anything else?

8           A.    Not that I recall.

9           Q.    Okay. So let's pick it up from there.  
10 Let's look at Exhibit 9. Do you have -- let me look  
11 at this.

12                   (Discussion off the record.)

13           MR. JIMMERSON: You marked them  
14 differently than the Perrigo deposition so we'll go  
15 back to that.

16           MR. BICE: Okay, you're right.

17           MR. JIMMERSON: Your Exhibit 9 to the  
18 Lowenstein deposition is not Exhibit 9 to the Perrigo  
19 deposition. That's what I'm saying. And I was  
20 referring to that or the Perrigo deposition --

21           MR. BICE: I see what you're saying. I  
22 don't have any problems. Just show him the Perrigo  
23 Exhibit 9. I don't have any issue with that. We  
24 both know what we're referencing.

25           MR. JIMMERSON: Let's go off the record so

1 I can get these other documents from the Perrigo  
2 deposition.

3 THE VIDEOGRAPHER: We are off the video  
4 record at 10:51 a.m.

5 (Discussion off the record.)

6 MR. JIMMERSON: We can go back on the  
7 record now.

8 THE VIDEOGRAPHER: We are back on the  
9 video record at 10:55 a.m.

10 BY MR. JIMMERSON:

11 Q. Thank you. With that short delay, we can  
12 save some time later today. So one set of documents,  
13 or a document that you said you have looked at since  
14 your last deposition, were minutes from April 4th  
15 of 1990, if I understood your testimony correctly; is  
16 that right?

17 A. That's correct.

18 Q. All right. Let's mark -- I believe there  
19 might be two sets of minutes, so we're going to mark  
20 them first as UUU and then we'll mark the others as,  
21 I think, Exhibit 9. We'll work first on this. And I  
22 have copies here.

23 (Discussion off the record.)

24 (Exhibit Number UUU was marked.)

25 ///



1 BY MR. JIMMERSON:

2 Q. Presenting to you Exhibit UUU, this is a  
3 two-page document. One is the fax cover sheet that I  
4 believe came from you to me yesterday during the  
5 course of Mr. Perrigo's deposition and attached to  
6 that was a one page set of minutes from April 4th  
7 of 1990 that bears the Bates stamp number of 648, if  
8 I'm reading it correctly. Are you familiar with this  
9 document?

10 A. I am.

11 Q. What is this document?

12 A. This is a page from the city of Las Vegas,  
13 City Council minutes. It references the 648 page --  
14 I guess we're at page 48 and it's in relation to the  
15 master development plan amendment that was related to  
16 the zoning action known as Z-17-90, and it says the  
17 Planning Commission has unanimously recommended  
18 approval subject to five conditions.

19 Q. Now as we discussed in your prior  
20 deposition, that one of the tasks that Mr. Perrigo  
21 placed upon you in the recent months was to go back  
22 and look at whatever City Council Planning Commission  
23 other actions may have taken place affecting the  
24 property that my clients are seeking to develop. Is  
25 that a fair statement?

1           A.    I don't recall how far back he asked me to  
2 look at it, but there was a request for staff to  
3 review the land use entitlements.

4           MR. JIMMERSON: Chris, could I have  
5 Exhibit LLL, please.

6           Would you mark this as Exhibit LLL,  
7 please.

8           (Exhibit Number LLL was marked.)

9           (Discussion off the record.)

10 BY MR. JIMMERSON:

11           Q.    Focusing your attention now on  
12 Exhibit LLL, which by my review and by my discussion  
13 with Mr. Perrigo yesterday is a summary or table of  
14 contents of actions that were affecting my clients'  
15 property from as far back as could be found to the  
16 present date. Do you recognize this document?

17           A.    This is a print of an Excel spreadsheet  
18 which contains land use applications associated with  
19 Peccole Ranch Phase 2.

20           Q.    And to quickly go through the document,  
21 the Z notations would be zoning action?

22           A.    Yes.

23           Q.    The GPA would be a general plan amendment?

24           A.    Yes.

25           Q.    A VAR is a variance?

1 A. Correct.

2 Q. And MOD is a major modification?

3 A. It is a modification. And there are major  
4 and minors, but more likely these are major.

5 Q. But MOD would mean modification, neither  
6 saying major or minor?

7 A. Correct.

8 Q. All right. Thanks for the clarification.  
9 And SDR is site development review?

10 A. Site development plan review.

11 Q. Thank you. Do you believe this document  
12 LLL, what we call 3L but because at some point when  
13 you get into five or six Qs, it will be a lot easier  
14 to use it in this fashion. Do you believe that LLL  
15 is accurate and complete to the best of your  
16 knowledge?

17 A. It is accurate, I believe so. The actions  
18 are references from the database system, and as far  
19 as completeness, if there is other applications that  
20 weren't showing up in two of the databases then there  
21 may be additional applications --

22 Q. Well, based upon --

23 A. -- but for the most part, yes.

24 Q. Based on what you know, this is complete?

25 A. As far as I know, yes.

1 Q. And what sources did you go to to make  
2 this complete and accurate document, LLL, the summary  
3 of actions?

4 A. The available databases our Hansen system,  
5 our geographic information system, which has a zoning  
6 theme or coverage, which has associated information.

7 Q. Geographic what, please?

8 A. Information system.

9 Q. Thank you.

10 A. GIS. And we have some -- I guess they  
11 were land -- land use survey books that were  
12 handwritten on back from the '70s, '80s and into  
13 early '90s that were cross-referenced.

14 Q. It's my understanding that you were the  
15 individual who led the charge, the task of preparing  
16 Exhibit LLL; is that right?

17 A. I initiated, and then other staff could  
18 have added to it as time went on.

19 Q. But you were in charge of this project; is  
20 that right?

21 A. I was the lead negotiator on the project.

22 Q. Okay. And did you present this document  
23 to Mr. Perrigo at some time in the past?

24 A. It is quite possible. This information  
25 was also placed on a FTP site and was made available

1 to anybody.

2 Q. What is a FTP site for the judge or jury  
3 if they don't know?

4 A. I believe FTP stands for file transfer  
5 protocol. It's basically a viewable web page in  
6 which somebody can review documents. Now, this was  
7 one document of many that was on that site.

8 Q. And this document was prepared by you and  
9 others under your direction, pursuant to a request by  
10 Mr. Perrigo; is that right?

11 A. I am assuming so.

12 Q. When did you prepare Exhibit LLL?

13 A. I don't recall an exact date. It must  
14 have been somewhere earlier on.

15 Q. What year did you prepare it? And just to  
16 help you, the last date that I see on the document is  
17 a 2014 date, Mr. Lowenstein?

18 A. To encapture those land use entitlements,  
19 obviously, it would have been after that date. It  
20 could have been 2015 or 2016.

21 Q. Mr. Perrigo's best recollection yesterday  
22 was the summer of 2015. Would that be consistent  
23 with your thinking?

24 A. I'm not particularly sure, so I don't have  
25 a clear answer, but if we went into the actual

1 database, you can see the date of creation and that  
2 would give you an accurate date.

3 Q. And there have been actions on this  
4 property since 2014; isn't that right?

5 A. Yes.

6 Q. So those aren't reflected on this  
7 document, correct?

8 A. As you earlier stated, the last actions on  
9 here reflect 2014.

10 Q. So would that be supportive of  
11 Mr. Perrigo's testimony that probably around 2015,  
12 summertime, would be about the time that you prepared  
13 this work?

14 A. It's possible, but I would have to refer  
15 to the system to tell you when the date was.

16 Q. The reason I'm saying it wouldn't be in  
17 2016, because you would have actions on the property  
18 that occurred on September 8th, 2015, for example,  
19 and then thereafter?

20 MR. BICE: Objection. Form.

21 Go ahead.

22 BY MR. JIMMERSON:

23 Q. You can answer.

24 A. It's a possibility, yes.

25 Q. Is that your best thinking as you sit here

1 today?

2 A. Yes. I imagine it would be towards the  
3 onset of the project.

4 Q. Very good. Now, if you look on page 1,  
5 there is a zoning action affecting the property  
6 Z-17-90 April 4th of 1990, Peccole phase 2 overall  
7 development plan. Do you see that?

8 A. I do.

9 Q. Let's now take a look at Exhibit UUU and  
10 tell me what relationship, if any, does this agenda  
11 item and minutes have to the noted entry on LLL of  
12 April 4th, 1990, Z-17-90?

13 A. The master development plan amendment  
14 which would be relating to the overall Peccole master  
15 development plan and related to the zoning action for  
16 the rezoning of what is known as Peccole Ranch Phase  
17 2, the item XG3 was placed on the agenda. I guess  
18 it's the item right before the zoning action.

19 Q. And so, in understanding the sequence, it  
20 looks like there were two actions back to back that  
21 affected this land that was before the City Council  
22 on April 4th of 1990; is that correct?

23 A. Yes.

24 Q. One was approval of the amended master  
25 plan that was called the Peccole amended -- Peccole

1 master plan phase 2, and the second would be the  
2 zoning change?

3 A. Well, as far as the titles, it says master  
4 development plan amendment related to it. The master  
5 plan amendment as far as the associated document, I  
6 believe, is an amendment to the overall plan and  
7 then -- which incorporates the phase 2 as part of  
8 that.

9 Q. Okay. So what was before the city  
10 counsel, at least by title under G3 is master  
11 development plan amendment related to Z-17-90; is  
12 that right?

13 A. Yes.

14 Q. And the City Council approved this action?

15 A. The action column states that it was  
16 approved as recommended subject to conditions.

17 Q. And the conditions that are itemized, are  
18 those 1 through 5?

19 A. Those conditions, it says the planning  
20 commission unanimously recommended approval subject  
21 to 1 through 5 .

22 Q. Tell me, were there any conditions imposed  
23 by the city council in passing the master development  
24 plan amendment related to Z-17-90 and April 4th,  
25 1990?



1           A.    Based on the action in the first set, yes,  
2           there are conditions. I had previously stated I have  
3           not seen an action letter on it. These minutes show  
4           1 through 5 of what the Planning Commission approved.  
5           One would assume that those would be the five  
6           conditions that the council also approved.

7           Q.    But that's your assumption, you don't know  
8           of your own personal knowledge?

9           A.    Correct.

10          Q.    And there's no document that you can find  
11          historically that would tell us what the conditions,  
12          if any, existed imposed by the city council?

13               MR. BICE: Objection to the form.

14 BY MR. JIMMERSON:

15          Q.    You may answer, sir.

16          A.    One would have to verify through the city  
17          Clerk's office that no final action or zoning action  
18          letter exists for this particular item.

19          Q.    And since this is an internal, you know,  
20          sister department to yours, have you made that  
21          inquiry of the City Clerk to see if there is was an  
22          action to the City Council's action on April 4th?

23          A.    That request was delegated to one of my  
24          staff, so that should be in process.

25          Q.    And who did you delegate that to?

1           A.     Steve Swanton, who has been doing a lot of  
2 the research.

3           Q.     At least in the work that you have been  
4 asked to do in 2015, which led to the compilation of  
5 Exhibit LLL, you were not able to find any letter  
6 that imposed conditions upon the developer from the  
7 City Council's action on April 4th for item GGG; is  
8 that correct?

9           A.     Through the documents that I reviewed  
10 through our retention system that was available to  
11 me, I did not find an action letter for GGG.

12          Q.     Okay. And so to be fair in terms of the  
13 record, the Planning Commission recommended approval,  
14 subject to five conditions that are stated here  
15 within Exhibit UUU; is that right?

16          A.     That is what's reflected in that exhibit,  
17 yes.

18          Q.     But whether or not the City Council, you  
19 know, followed those and imposed the same conditions  
20 or not, is something we don't know because we haven't  
21 seen any letter that would confirm that; is that  
22 right?

23          A.     At this point in time, I have not seen a  
24 letter confirming those conditions.

25          Q.     And we haven't seen any minutes from the

1 City Council that says the City Council now imposes  
2 the following conditions, whatever they may be?

3 MR. BICE: Objection to the form. Assumes  
4 facts not in evidence and misstates the facts that  
5 are in evidence.

6 BY MR. JIMMERSON:

7 Q. You may answer the question, sir. This is  
8 discovery. I'm trying to understand exactly what  
9 occurred.

10 A. To my knowledge, based on the minutes from  
11 the April 4th, 1990 City Council, is that they --  
12 they approved as recommended subject to the  
13 conditions. And as stated, I have not seen a final  
14 action or zoning action letter with those conditions.

15 Q. All right. Thank you. Now, let's go  
16 forward, and let's assume for purposes of this  
17 discussion this morning that the City Council  
18 approved the City Planning Commission's recommended  
19 conditions that are itemized here as 1 through 5,  
20 okay? For the next few questions, we'll assume that  
21 to be the case. All right, sir?

22 A. Yes.

23 Q. Number 1 is a maximum of 4,247 dwelling  
24 units to be allowed for phase 2; is that right?

25 A. That's correct.

1 Q. And the second is that Hualapai was to be  
2 expanded as indicated there?

3 A. That's correct.

4 Q. Number 3 is that Apple Lane would be  
5 extended along the north side of the project; is that  
6 right? All the way down to Durango; is that right?

7 A. Right. It reads: Extend Apple Lane along  
8 the north side of the site and adjacent to Angel  
9 Park, east of Rampart Boulevard to Durango Drive, as  
10 required by the Department of Public Works.

11 Q. All right. In fact, you know that that  
12 was never done, correct? That condition was never  
13 fulfilled; isn't that true?

14 A. I don't know. I would have to research  
15 the current configuration to see where Apple Lane is.

16 Q. You haven't driven Apple Lane to know that  
17 it doesn't go to Rampart?

18 A. No, I have not driven Apple Lane.

19 Q. Fair enough. It doesn't go to Angel Park?

20 A. I believe there is no roads north of Alta  
21 that directly go into Angel Park.

22 Q. Okay. And assuming that, you know, all of  
23 us in this room understand that site is accurate and  
24 that Apple doesn't go to the indications that are  
25 conditioned here, how does it happen -- how does it

1 happen that a condition, assuming that it was tagged  
2 on to this approval, isn't followed, isn't complied  
3 with?

4 A. There's a number of different scenarios  
5 that there could be subsequent actions allowing it  
6 not to do so. There could have been a master streets  
7 and highways amendment that could also have been by  
8 Council action that supersedes this condition.

9 Q. In looking at Exhibit LLL, are there any  
10 actions affecting this property that waive or  
11 otherwise modify condition 3 that you are aware of,  
12 subsequent to April 4th of 1990?

13 A. Can you restate that, please?

14 Q. Sure. You've told us possible scenarios  
15 that could allow for the noncompliance with this  
16 condition in subsequent actions. My question to you  
17 is, having been the lead person for developing what  
18 actions were taken by this property, can you identify  
19 any actions that are shown in Exhibit LLL, the  
20 summary of actions, that would have caused the  
21 elimination or waiver of this requirement?

22 MR. BICE: Objection. Assumes facts not  
23 in evidence.

24 THE WITNESS: As part of this exhibit, no.  
25 But I believe there is a master streets and highways

1 that amended Alta's assignment. If this is part of  
2 that or not, I would have to review the document.

3 BY MR. JIMMERSON:

4 Q. So the answer is no, there is nothing on  
5 Exhibit LLL that would evidence a change to waive  
6 condition 3, but it may be waived in a form of action  
7 under master streets and highways; is that what  
8 you're saying?

9 A. Yes.

10 Q. Thanks very much. Number 4 is signs shall  
11 be posted as a condition number 4?

12 A. Yes.

13 Q. Number 5 is the surrounding property  
14 owners shall be notified when the development  
15 along -- my eyes are so bad -- along the -- maybe you  
16 can read it.

17 A. Sure. "When the development plans for the  
18 resort/casino and commercial center sites are  
19 submitted for review."

20 Q. That would be notifications to the owners,  
21 land owners; is that right?

22 A. Yes.

23 Q. Now, within this document, is there any  
24 requirement that the land maintain a P designation as  
25 a land use designation on this property?

1 MR. BICE: Objection to the -- Jim, my  
2 apologies. Objection to the form. Incomplete  
3 hypothetical and assumes facts not in evidence.

4 BY MR. JIMMERSON:

5 Q. You can answer now.

6 A. There's no reference to that in this  
7 document.

8 Q. Is there any reason imposed upon this  
9 property that it be maintained as a P, as a park?

10 A. Same question, I just modified the words  
11 to include the word "condition."

12 MR. BICE: Same objection.

13 THE WITNESS: The five referenced  
14 conditions in this document do not reference a P  
15 designation.

16 BY MR. JIMMERSON:

17 Q. As far as you know these -- assuming that  
18 these five conditions were then accepted by the City  
19 Council, and I think your assumption is probably  
20 sound, you're not aware of any other conditions that  
21 were imposed by the City Council, are you?

22 A. Not that I am aware of.

23 Q. Okay. So then continuing, was there any  
24 condition imposed by the City Council that any  
25 portion of this property be maintained as open space?

1 MR. BICE: Objection to the form.

2 Incomplete hypothetical. Incomplete document.

3 BY MR. JIMMERSON:

4 Q. You may answer the question, sir.

5 A. With a qualifying question, we are still  
6 under the assumption these were the adopted  
7 conditions?

8 Q. We are.

9 A. Then no. No, I don't see any reference.

10 Q. Is there a reference to the condition that  
11 any of this property be maintained as R or  
12 recreation?

13 A. I don't see a reference to that.

14 Q. Is there any condition set upon this  
15 property that would require any use of the property  
16 as CV or civic?

17 A. I don't see a reference to that.

18 Q. Now, is there any condition that you see  
19 placed upon this property that would require any  
20 portion to be maintained as open space?

21 MR. BICE: Objection as to the form and  
22 incomplete documentation. Go ahead.

23 THE WITNESS: In regards to the -- this  
24 exhibit, no, I don't see any reference to open space.

25 ///



1 BY MR. JIMMERSON:

2 Q. And if there was a requirement to maintain  
3 any portion of this property as parks, open space,  
4 recreation, civic and the like, you would expect it  
5 to be within these minutes, wouldn't you?

6 MR. BICE: Objection to the form. Calls  
7 for speculation. Misstates the law.

8 BY MR. JIMMERSON:

9 Q. You may answer the question, sir.

10 A. Well, for conditions of approval of City  
11 Council at their discretion. They can place anything  
12 on it. They could put a condition on there that it  
13 specifically calls out that it be maintained.

14 Q. Did they do that?

15 MR. BICE: Same objections. Go ahead.

16 BY MR. JIMMERSON:

17 Q. You can answer the question yes or no,  
18 Mr. Lowenstein. Did they impose any conditions upon  
19 this property to keep it recreation, parks, open  
20 space, civic?

21 A. Under the assumption that these --

22 MR. BICE: I need to note my objection.  
23 My apologies My objection is, incomplete  
24 hypothetical, incomplete documentation, assumes facts  
25 not in evidence and misstates the law. Go ahead.

1 BY MR. JIMMERSON:

2 Q. Must be touching a nerve.

3 MR. BYRNES: Can I ask for a point of  
4 clarification?

5 MR. JIMMERSON: He threw in the kitchen  
6 sink. Go ahead.

7 MR. BYRNES: Your question is directed at  
8 the action on?

9 MR. JIMMERSON: April 4th, 1990  
10 Exhibit UUU.

11 THE WITNESS: With the assumption that  
12 these were the adopted conditions?

13 BY MR. JIMMERSON:

14 Q. Yes, sir.

15 A. Then no, there is no reference to any of  
16 the classifications you stated.

17 Q. Are you aware of any documents that  
18 existed on April 4th of 1990, irrespective of  
19 whether -- it's certainly not part of these  
20 minutes -- are you aware of any document that imposes  
21 upon this property a parks, recreation, open space or  
22 civic requirement as of April 4th, 1990?

23 A. I'm not aware of any conditions that  
24 imposes any of that.

25 Q. And you are not aware of any document that

1 imposes any such condition?

2 MR. BICE: Same -- let me restate my  
3 objections. Form. Incomplete hypothetical.

4 THE WITNESS: As part of, you know, these  
5 approvals, the documents included a master  
6 development plan. As far as any of the zoning  
7 actions requiring open space, I have not seen any.

8 BY MR. JIMMERSON:

9 Q. And that would be something that, by  
10 virtue of this controversy and the directions that  
11 you have been given, Mr. Perrigo, that you would be  
12 alert to and looking for; isn't that right?

13 MR. BICE: Objection to form. Go ahead.

14 THE WITNESS: Yes.

15 BY MR. JIMMERSON:

16 Q. You understand that the right of my client  
17 to develop this property is a central issue in this  
18 case, would you agree?

19 A. Yes.

20 Q. It's a central issue before the City  
21 Planning Commission and the City Council, agreed?

22 A. Yes.

23 Q. It's something that you and Mr. Perrigo  
24 and others within your planning department have been  
25 asked to examine; isn't that right?

1           A.    As part of reviewing any applications we  
2   examine, we on an annual basis we clear about a  
3   thousand land use applications.

4           Q.    I'm not suggesting that this is the only  
5   game in town. But as relates to this application or  
6   these applications and this property, that's  
7   something you have been looking at, correct, the  
8   right of my client to develop this property?

9           A.    We reviewed the proposed development and  
10   reviewed the previous land use entitlements for any  
11   conditions of approval and ultimately prepare the  
12   applicant with a packet of what submittal  
13   requirements they would need. And once it's  
14   processed, they ultimately -- the council will make  
15   the discretion as far as the request.

16          Q.    And have you, Mr. Lowenstein, made a  
17   determination as to my clients' ability to develop  
18   this property?

19                  MR. BICE:  Objection to the form.  Calls  
20   for a legal conclusion.  Go ahead.

21 BY MR. JIMMERSON:

22          Q.    Calls for your understanding, not for a  
23   legal conclusion.  You can answer.

24                  MR. BICE:  The response -- let me restate  
25   the objection -- does call for a legal conclusion.

1 The witness isn't the decision maker. Go ahead.

2 THE WITNESS: We reviewed the project on  
3 its own merits, made our recommendations and  
4 processed it -- processed the materials so that the  
5 Planning Commission and City Council could make their  
6 decision.

7 BY MR. JIMMERSON:

8 Q. What is your understanding of my  
9 clients -- withdraw. Isn't it true that you have  
10 stated personally you believe this property is  
11 capable of being developed by my clients for  
12 residential use, subject of course to City Council  
13 ultimate approval?

14 MR. BICE: Objection to the form. Calls  
15 for a legal conclusion. And Jim, could I ask you to  
16 speak up?

17 MR. JIMMERSON: Yes.

18 MR. BICE: Thanks.

19 THE WITNESS: I believe I previously  
20 stated that the property has a zoning district on it.  
21 There's discretionary reviews and they have their  
22 right to apply to develop the property, yes.

23 BY MR. JIMMERSON:

24 Q. And what is that -- respectfully, I move  
25 to strike the answer as being nonresponsive.

1           Isn't it true that you specifically have  
2       stated to my clients that you believe they have the  
3       right to develop their property under the RPD7 zoning  
4       subject, of course, to City Council approval?

5           MR. BICE: Restate my objection and add on  
6       to that calls for speculation.

7           MR. JIMMERSON: I'm asking about a  
8       conversation he had with my clients.

9 BY MR. JIMMERSON:

10          Q.    You may answer, Mr. Lowenstein.

11          A.    Well, I don't recall exact conversation.  
12       But with the right applications, yes, they have the  
13       right to develop the property.

14          Q.    And what is it that they have the right to  
15       develop when you use the term "with the right  
16       applications"?

17          MR. BICE: Objection. Again, calls for a  
18       legal conclusion. And calls for expert opinion as  
19       he's not the decision maker. Go ahead.

20 BY MR. JIMMERSON:

21          Q.    You may answer the question, sir.

22          A.    So depending on what they're proposing.  
23       So if they want to request to amend something to a  
24       commercial portion, they can make application for  
25       that. If they want to do a subdivision, they can

1 make application for that. If they wanted to do a  
2 comprehensive plan through the plan development, they  
3 can make application for that.

4 Q. Specifically, what have you told them they  
5 have the right to develop, Mr. Lowenstein? Don't  
6 fence with me. What conversations have you had with  
7 my clients where you have stated what rights my  
8 clients have to develop this property?

9 A. The position of the planning department is  
10 always reactive to what an applicant's requesting.

11 Q. I'm asking what your words were to my  
12 client, Mr. Lowenstein? What have you told Frank  
13 Pankratz with regard to the right of my clients to  
14 develop this property, if anything?

15 A. Well, as previously stated, with filing  
16 the applications, there is an R-PD7 zoning district.  
17 They have the right to apply and try to exercise it  
18 through a site development review and associated  
19 general plan amendment, and then it ultimately, as  
20 you say, it would be up to the discretion of the  
21 counsel.

22 Q. What is the rights that are granted to my  
23 clients under the R-PD7 zoning?

24 MR. BICE: Objection as to the form.  
25 Calls for a legal conclusion.

1 MR. BYRNES: I'll join. Legal conclusion.

2 THE WITNESS: So the zoning district  
3 itself has an inherent density associated with it.  
4 That's what the 7 stands for, 7.49 dwelling units per  
5 acre. The applicant would have the ability to  
6 request up to that density and, obviously, we would  
7 review the project for compatibility, harmonious with  
8 the surrounding area, may it ultimately be that  
9 density or something far less, but that's all  
10 ultimately the applicant's ability to submit to us  
11 and then we review and then obviously make  
12 recommendations and council would take their action  
13 on.

14 BY MR. JIMMERSON:

15 Q. Have you -- yes or no, Mr. Lowenstein,  
16 told Mr. Pankratz of the Executive Home Builders that  
17 you believe that our clients have the ability to  
18 develop this property consistent with this R-PD7  
19 zoning?

20 MR. BICE: Objection as to form and calls  
21 for a legal conclusion.

22 BY MR. JIMMERSON:

23 Q. Yes or no, sir?

24 A. I don't recall exact conversation, but  
25 it's possible.



1 Q. And why would it be possible that you had  
2 those conversations that said those words?

3 A. Because there's a existing zoning district  
4 on the property.

5 Q. And when do you recall telling Mr Pankratz  
6 that in your judgment the client has the right to  
7 develop this property consistent with it's R-PD7  
8 zoning entitlement?

9 MR. BICE: Object to the form of the  
10 question. Misstates what he just testified to.

11 BY MR. JIMMERSON:

12 Q. You may answer the question, sir.

13 A. I don't recall the conversation, so I  
14 can't recall a date.

15 Q. Did Mr. Jerbic, your city attorney,  
16 specifically ask you to review the file with regard  
17 to our clients' hard zoning and right to develop?

18 A. I don't recall.

19 MR. BYRNES: I believe you're getting into  
20 the attorney-client privilege now. Could you lay  
21 some foundation?

22 BY MR. JIMMERSON:

23 Q. That's a fair point.

24 In a public setting where others were  
25 present besides just yourself and your City Council,

1 in other words, people other than city  
2 representatives, did Mr. Jerbic ask you to review  
3 this file to confirm my clients' right to develop the  
4 property?

5 A. I don't recall. I think the legal  
6 conclusion would have been done by the City Attorney.  
7 If it was to prepare the documents for him for his  
8 review, then I'm sure he would ask me to do that.

9 Q. Were you present at a City Planning  
10 Commission meeting here in 2016 where you heard  
11 Mr. Jerbic say to or in response to a question by the  
12 planning department chairman, that he believed that  
13 the -- my clients had hard zoning and the right to  
14 develop the property consistent with that zoning?

15 MR. BICE: Objection.

16 MR. JIMMERSON: In a public meeting.

17 MR. BICE: Objection as to the form. Go  
18 ahead.

19 BY MR. JIMMERSON:

20 Q. You may answer the question, sir.

21 A. I was in attendance at the meeting.

22 Q. Do you recall when he used the words they  
23 have hard zoning and the right to develop their  
24 property consistent with that zoning entitlement?

25 MR. BICE: Same objection. Also calls for

1 a legal conclusion.

2 BY MR. JIMMERSON:

3 Q. You may answer the question. The question  
4 was whether or not you heard him say those words.

5 A. I recall the City Attorney speaking at the  
6 meeting. I would have to review the video. He made  
7 comments around -- regarding spot zoning.

8 Q. Do you recall him using the words "hard  
9 zoning," Mr. Lowenstein? It's very simple. You  
10 either you do or you don't recall it. It's just a  
11 couple months ago.

12 MR. BICE: Objection as to the form Go  
13 ahead.

14 THE WITNESS: I don't recall.

15 BY MR. JIMMERSON:

16 Q. You don't remember?

17 MR. BICE: Objection. Asked and answered.  
18 The transcript will speak for itself.

19 THE WITNESS: I don't recall it. No, I  
20 don't remember.

21 THE COURT REPORTER: Wait. Wait. Wait.

22 BY MR. JIMMERSON:

23 Q. You recall a comment by Mr. Jerbic about  
24 spot zoning?

25 A. Yes.

1 Q. Do you recall that he said that this was  
2 not spot zoning?

3 A. Yes.

4 Q. What did he say with regard to saying it  
5 was not spot zoning?

6 MR. BICE: Objection. Transcript will  
7 speak for itself.

8 BY MR. JIMMERSON:

9 Q. That's true. I'm asking your best  
10 recollection, sir.

11 A. I don't recall the whole -- his whole  
12 statement.

13 Q. But he responded to the question that this  
14 was not spot zoning, that this was an entitlement  
15 that existed for 26 years, correct?

16 A. He responded to spot zoning. I don't know  
17 if he made reference to the entitlement portion.

18 Q. What did he say in responding to spot  
19 zoning; your best recollection, Mr. Lowenstein?

20 A. That the applications filing to change the  
21 existing zoning districts did not meet the criteria  
22 of spot zoning.

23 Q. Thank you. Now, following the action of  
24 the City Council on April 4th with regard to item  
25 GGG which was the master development plan amendment,

1 was there then an action taken by the city council on  
2 the same day with regard to a zoning change?

3 A. Yes.

4 MR. JIMMERSON: I need that document.

5 (Discussion off the record.)

6 BY MR. JIMMERSON:

7 Q. Mr. Lowenstein, have you had any  
8 conversations with anyone where you have stated that  
9 you believe that my clients have the right to develop  
10 their property consistent with their R-PD7 zoning or  
11 words of like effect?

12 A. It's possible.

13 Q. Why would it be possible?

14 A. Because this project's been a point of  
15 conversations for a considerable time.

16 Q. Yes or no? Did you tell anyone that you  
17 believed that this property could be developed  
18 consistent with a zoning entitlement or not?

19 A. I don't recall. As I said, it was a  
20 possibility.

21 Q. Have you ever told anybody that you don't  
22 believe the property can be developed?

23 A. Not that I recall.

24 Q. Do you understand that the City of Las  
25 Vegas is being sued by some property owners?

1 A. I do.

2 Q. Do you understand that the City of Las  
3 Vegas is a defendant in that litigation?

4 A. I do.

5 Q. Do you understand this deposition is being  
6 taken under that litigation's caption?

7 A. I do.

8 Q. And have you read the Amended Complaint  
9 filed by the few homeowners against the City of Las  
10 Vegas and my clients?

11 MR. BICE: Sorry. Objection. Asked and  
12 answered at the first installment of his deposition  
13 by you.

14 MR. JIMMERSON: If I did, then I certainly  
15 don't have a recollection of that. So the answer  
16 is --

17 THE WITNESS: I believe I have.

18 MR. JIMMERSON: I did ask some questions  
19 about the Amended Complaint, Counsel. I remember  
20 asking that question.

21 BY MR. JIMMERSON:

22 Q. All right. Let me show you then what's  
23 been marked as Exhibit 9.

24 (Exhibit Number 9 was marked.)

25 MR. JIMMERSON: This is Perrigo 9.

1 (Discussion off the record.)

2 BY MR. JIMMERSON:

3 Q. I'm showing you a document that we've  
4 marked as Perrigo 9 only because there was another 9  
5 for your deposition that opposing counsel introduced  
6 during your deposition on the first day. And these  
7 are minutes that are Bates stamped 651 through 652,  
8 649, and I don't see one on the last page. But if I  
9 had to guess, and I shouldn't do this, probably 650.  
10 But in any event, I show you this document. Have you  
11 seen this document, Perrigo 9, before?

12 A. Yes.

13 Q. What is Perrigo 9?

14 A. This is the City Council minutes for the  
15 meeting of April 4th, 1990.

16 Q. And it relates to Item 10G or is that --  
17 I'm sorry, G4?

18 A. That's correct.

19 Q. So is there a relationship that you  
20 observed between UUU, Exhibit UUU that we've just  
21 discussed and Perrigo 9?

22 A. Yes. This is the --

23 Q. What is the relationship, sir?

24 A. Sorry. This is the related zoning action  
25 to the master development plan amendment.

1 Q. And based upon your review of the  
2 historical documents maintained by the City of Las  
3 Vegas, this would have occurred next in time from the  
4 action that we've just observed on -- under G3; is  
5 that right, the master development plan amendment?

6 A. Yes.

7 Q. And what occurred then on the same date,  
8 April 4th, 1990, minutes after the approval of Item  
9 GGG, Exhibit UUU, what occurred then with regard to  
10 the zone change, Perrigo 9?

11 A. Councilperson Nolan approved a motion  
12 for -- be approved as recommended subject to  
13 conditions and that motion carried with an  
14 abstention.

15 THE COURT REPORTER: With a what?

16 THE WITNESS: Abstention.

17 THE COURT REPORTER: Thank you.

18 BY MR. JIMMERSON:

19 Q. All right. This was a request for  
20 reclassification of the property; is that right?

21 A. That was correct.

22 Q. And the "from," that is to say what it had  
23 been, is listed under the phrase from NU-2 and then  
24 there's three different categories of zoning  
25 entitlements that's set forth; is that right?



1           A.     Correct. It states "from NU," nonurban  
2 under resolution of intent, to a number of zoning  
3 district to three zoning classifications.

4           Q.     And those three zoning classifications,  
5 R-PD3, R-PD7 and C-1; is that right?

6           A.     That's how it's written, yes.

7           Q.     And below that is a reference to the  
8 Planning Commission unanimously recommending approval  
9 subject to four conditions, if I'm reading that  
10 correctly; is that accurate?

11          A.     Sorry, it continues on to the following  
12 page --

13          Q.     Thank you.

14          A.     -- and there are nine conditions.

15          Q.     Subject to nine conditions. Thank you  
16 very much.

17                 Again, have you seen the narrative letter  
18 for this action? You have, haven't you?

19          A.     That being the third page of it?

20          Q.     No, the letter. A letter from the City  
21 Clerk.

22          A.     The zoning action letter?

23          Q.     Right.

24          A.     Yes, sir.

25          Q.     And that's a document that you haven't

1 been able to find with regard to UUU?

2 A. As of now, yes.

3 Q. All right. This is Defendants' Exhibit D.  
4 We used it in Mr. Perrigo's deposition and we'll use  
5 it here in yours.

6 (Exhibit Number D was marked.)

7 (Discussion off the record.)

8 BY MR. JIMMERSON:

9 Q. Continuing where we were in your  
10 deposition, is this the letter that you were  
11 referring to in your last answer relative to City  
12 Council advising the client or advising the land  
13 developer that of the action of the City Council on  
14 April 4th of 1990?

15 A. It looks to be. My only point of  
16 clarification on this would be they may have issued a  
17 corrective letter which corrected the typo which they  
18 referred to in the minutes, but it would be the  
19 action letter, at least one of the action letters  
20 they issued.

21 Q. All right. And since you've told us what  
22 may have happened and since you've been in charge of  
23 finding out what did happen, have you found an  
24 amended letter correcting the typo in the May 1, 1990  
25 letter about which you referenced?

1           A.    I would have to refer to my working  
2 documents to ascertain that.

3           Q.    And where are your working documents in  
4 which you just now referenced, you're going to go  
5 back to your working documents?

6           A.    At the City of Las Vegas Planning  
7 Department.

8           Q.    And how do you maintain those?

9           MR. BICE:  Jim, can we go off the record  
10 for just a second?  I think you and the witness are  
11 talking about something different.

12          MR. JIMMERSON:  Maybe.  I don't know.

13          MR. BICE:  Let's go off the record for  
14 just one second.

15          MR. JIMMERSON:  Fine.

16          THE VIDEOGRAPHER:  Off the video record at  
17 11:40 a.m.

18          (Discussion off the record.)

19          THE VIDEOGRAPHER:  We are back on the  
20 video record at 11:42 a.m.

21 BY MR. JIMMERSON:

22          Q.    When opposing counsel asked to go off the  
23 record, we were talking about a set of documents that  
24 you had called my work documents or work papers.  Do  
25 you recall that?

1 A. I do.

2 Q. Would you describe what it is you are  
3 referring to so that I can request the same be  
4 produced in a reasonable time in accordance with the  
5 rules?

6 A. They would be printed copies of action  
7 letters from previous land use entitlements.

8 Q. Is that all that's in there are action  
9 letters from the City Clerk or City Council?

10 A. There could be associated documents from  
11 those land use entitlement files, such as the master  
12 development plan, which the one I'm referring to is  
13 the amendment to the Peccole Ranch master plan and  
14 rezoning -- phase 2 rezoning document. It could be  
15 other correspondence, whatever was in the actual  
16 file, which is available.

17 Q. And how many, you know, by estimation, how  
18 many documents are we talking about? A hundred?  
19 150?

20 A. In relation to reviewing what I was  
21 stating about the corrected letter, no, there's not  
22 many at all.

23 Q. But when you're talking about, I'll go  
24 back to look at my work documents, I'm asking how  
25 many documents compose that? If I asked you for

1    them, am I asking you for 10,000 documents?  Am I  
2    asking you for 50 documents?  I'm trying to  
3    understand because it affects, you know, your  
4    requirement to produce documents and I don't want to  
5    burden you with something that would be unfair to  
6    you.

7           A.    Between paper documents and electronic  
8    documents, regardless of the repetition of land use  
9    entitlements that are out there and already  
10   accessible, there's probably in the ballpark of about  
11   50 maybe.

12          Q.    Okay.  Thank you.  Back to this matter,  
13   you indicated that there was a typo in the letter of  
14   Exhibit D.  What is that typo, please?

15          A.    In reference to the zoning districts in  
16   which the property would have been approved to the  
17   RPD3, residential plan development should have  
18   reflected an R-3 limited multiple residence as it was  
19   called at that time.

20          Q.    All right.

21               MR. JIMMERSON:  Would you mark this,  
22   please, as exhibit?

23               MR. BICE:  Hey, Jim, we need copies.  My  
24   apologies.  That's the only one that I have with me.  
25   Is that what you were looking for, Jim?

1 MR. JIMMERSON: No I wasn't looking for it  
2 but it's fine. Thank you.

3 MR. BICE: I didn't mean to interrupt. I  
4 just thought I was trying to save time.

5 MR. JIMMERSON: Not a problem and I  
6 appreciate the effort. Thank you.

7 BY MR. JIMMERSON:

8 Q. So the correction is that the action on  
9 the City Council historically as we look back -- as  
10 you look back -- was that the letter of May 1, 1990  
11 references two R-PD3 and that was incorrect and that  
12 should have said R-3; is that right?

13 A. That is.

14 Q. And there may be a letter that followed  
15 that that confirmed that the acts of the City Council  
16 as reflected in the minutes were from R-3 and not  
17 R-PD3?

18 A. Correct.

19 Q. Now, returning to the action of the City  
20 Council on April 4th of 1990, with regard to the zone  
21 change, what occurred on that day in terms of those  
22 three areas? There were three areas of entitlements,  
23 zoning entitlements that we have referenced R-3,  
24 R-PD7 and C-1; is that correct?

25 (Reporter clarification.)

1 THE WITNESS: Those were the three zoning  
2 districts in which the property at that time was NU,  
3 nonurban, under resolution of intent to a number of  
4 different zoning district, was amended to.

5 BY MR. JIMMERSON:

6 Q. And there was a map that was issued by the  
7 city called Z-17-90; is that right?

8 A. In -- in zoning files, there's usually an  
9 associated internal staff map that reflects the  
10 changes.

11 MR. JIMMERSON: OOO, okay. Since it's  
12 been just shown, let's mark this as Exhibit XXX.

13 (Exhibit Number XXX was marked.)

14 BY MR. JIMMERSON:

15 Q. On the record. With the assistance of  
16 opposing counsel and the reference to a letter of  
17 January 29th, 1991 which we have now marked as XXX  
18 or 3X, are you familiar with this document?

19 A. Yes.

20 Q. And this is a document called "corrected  
21 letter?"

22 A. Yes.

23 Q. And what is XXX as you understand it? A  
24 letter dated January 29th, 1991; what is its effect  
25 or purpose?

1           A.    It is the zoning action letter or final  
2           action letter for -- associated with Z-17-90 zone  
3           change, and included 12 conditions of approval.

4           Q.    And it corrected the typographical error  
5           that was in the May 1, 1991 letter; is that right?

6           A.    That is correct.

7           Q.    And Mr. Perrigo yesterday testified that  
8           this letter granted to this property hard zoning of  
9           R-PD7 for the residential areas that were in yellow.  
10          Do you agree?

11               MR. BICE:  Objection to the form of the  
12          question.

13               THE WITNESS:  I apologize, you're  
14          referring to a map?

15          BY MR. JIMMERSON:

16           Q.    I was.

17           A.    Of some sort.

18           Q.    It's not a problem.  OOO, Exhibit OOO.

19               MR. JIMMERSON:  Do we have five copies of  
20          that?  OOO?  Here you go.  You want to mark these  
21          again?

22               (Discussion off the record.)

23          BY MR. JIMMERSON:

24           Q.    Do you recognize Exhibit 30 or OOO?

25           A.    Yes.



1 Q. What is it?

2 A. It is a map that's -- seems to be used by  
3 staff as part of the zoning action Z-17-90.

4 Q. And when you look at the map, all of it in  
5 yellow and green at the top is zoned R-PD7, correct?  
6 In other words, when we look at it, we can see that  
7 the darker red or deeper red is commercial. Would  
8 you agree?

9 A. The darker red is commercial.

10 Q. I call it brown. It's next to a -- you  
11 know, next to the red on the corner of Hualapai and  
12 West Charleston is red, commercial. Right to its  
13 right, I guess, is a brown color that would be  
14 multifamily. Do you see that?

15 A. I do.

16 Q. And that was zoned -- what was that zoned,  
17 please, that parcel? Would that be the R-3?

18 A. If it was multifamily, yes, it would be,  
19 the R-3 would be the corresponding designation.

20 Q. All right. And all of the yellow and  
21 green directly to the north of that, all the way over  
22 to the end line, which would be on the other side of  
23 Alta, was R-PD7, correct?

24 A. To my understanding, yes.

25 Q. And then if you continue looking to the

1 right, there's a pink that would be for a proposed  
2 resort hotel?

3 A. Yes.

4 Q. And then commercial on the right, to the  
5 right side of Rampart?

6 A. Yes.

7 Q. To the right side or to the east side of  
8 Rampart?

9 A. Correct.

10 Q. And then if you looked along West  
11 Charleston, you see R-PD7 for the yellow and green,  
12 and then just moving along towards Rampart you have  
13 some multifamily in brown, and then commercial on the  
14 corner of West Charleston and Rampart. Do you see  
15 that?

16 A. Yes.

17 Q. Have I read the entitlements correctly as  
18 you look at the action of the City Council on  
19 April 4th, 1990 as reflected by Z-17-90, Exhibit  
20 000?

21 A. Yes.

22 Q. Thank you. Now, looking at the  
23 conditions, when you look at the letter of May 1,  
24 1990 and compare to the letter of January 29th,  
25 1991, the conditions are the same, are they not?

1 A. Yes.

2 Q. Are there any conditions imposed by the  
3 City Council on May 1 -- on April 4th, 1990,  
4 that -- regarding the zoning change that require any  
5 portion of the property to be maintained as park,  
6 recreation, open space or civic?

7 MR. BICE: Objection. The document and  
8 the application speak for themselves.

9 BY MR. JIMMERSON:

10 Q. You may answer the question, sir.

11 A. No.

12 Q. Is the only restriction as relates to  
13 density, that number or number 1 a maximum of 4,247  
14 dwelling units for the -- allowed for phase 2?

15 A. Yes.

16 Q. Is there any condition within the action  
17 of the City Council on April 4th, 1990 with regard  
18 to the zoning change that requires X number of units  
19 for single family, X number of units for multifamily,  
20 X number of units for commercial or the like?

21 A. No.

22 Q. Was it left to the developer in his  
23 discretion what mix of dwelling units would total  
24 4,247?

25 MR. BICE: Objection to the form.

1 Misstates the documents.

2 MR. JIMMERSON: You may answer the  
3 question.

4 MR. BICE: The witness lacks personal  
5 knowledge.

6 MR. JIMMERSON: You can answer the  
7 question.

8 MR. BICE: Go ahead.

9 BY MR. JIMMERSON:

10 Q. The question is: Was it left to the  
11 developer to allocate his use or his mix of  
12 multifamily and single-family residence to compose  
13 the aggregate of 4,247 dwelling units?

14 MR. BICE: Same objection. Calls for the  
15 witness to speculate.

16 BY MR. JIMMERSON:

17 Q. You may answer, sir.

18 A. My understanding is yes.

19 Q. Now, you learned in the summer of 1990 --  
20 withdraw. You learned in the summer of 2015 of my  
21 clients' desire to develop the golf course property,  
22 of which the golf course sits on part of the  
23 250 acres; is that right?

24 A. Okay.

25 Q. And in the first part of the deposition

1 you were asked by opposing counsel how you learned  
2 that. My understanding is that Mr. Perrigo advised  
3 you of a meeting that he had with representatives of  
4 the applicants; is that correct?

5 A. Yes.

6 Q. And then from that, he told you about the  
7 meeting about the project, the request to develop 720  
8 units on 17 acres of land; is that right?

9 A. Yes.

10 Q. Thereafter, the city required or requested  
11 the developer to come forward -- withdrawn.  
12 Thereafter, the city requested the developer to come  
13 forward with a complete plan for what it might  
14 impose -- might place upon all 250 acres as opposed  
15 to just the 17 acres that had been applied for by the  
16 applicant; is that right?

17 A. I believe staff requested that an overall  
18 plan be moved forward after our continuous  
19 conversations and be enlightened that there actually  
20 is an overall plan for development of the 250 acres.

21 Q. Do you understand that the owners of the  
22 property, the 250 acres, are different? There are  
23 multiple owners of the property that total 250 acres?

24 A. I believe it's a corporation or a limited  
25 liability, yes.

1 Q. And so the entity that applied for the  
2 17-acre development and 720 dwelling units on that is  
3 a different owner than who owns the largest portion  
4 of the property, agreed?

5 A. Yes.

6 Q. So when the city was requesting that there  
7 be a disclosure of thinking, of a conceptual plan for  
8 the overall use of 250 acres, it was asking different  
9 entities to provide this information with regard to  
10 the overall composition of the 250 acres; is that  
11 right?

12 A. Different corporations or entities, yes.

13 Q. And today, the application that pends  
14 before the city council to be heard on  
15 January 18th of 2017 is an application that's being  
16 requested by 70 Acres, LLC; isn't that right?

17 A. I would have to review the documents, but  
18 I believe so yes.

19 Q. And not by 180 Land Company, and not by  
20 Fore Stars, Limited, correct?

21 MR. BICE: Objection to the form.

22 THE WITNESS: Once again, I would have to  
23 review the public header, but I believe that's  
24 correct.

25 THE COURT REPORTER: You'd have to review

1 what?

2 THE WITNESS: Public header, public  
3 notification.

4 MR. JIMMERSON: All right. Thank you.

5 MR. BICE: Jim, can we take a break.

6 BY MR. JIMMERSON:

7 Q. There has to be some trust between us. As  
8 long as I'm not going to intentionally misstate  
9 something, I hope that you wouldn't either. So we  
10 can rely upon each other's efforts to be accurate.  
11 Sometimes we're not, but we're certainly making an  
12 effort to be accurate. Wouldn't you agree?

13 A. Agree.

14 MR. JIMMERSON: All right. We'll take a  
15 break at the request of counsel.

16 THE VIDEOGRAPHER: We are off the record  
17 11:57 a.m.

18 (Break in proceedings.)

19 THE VIDEOGRAPHER: We are back on the  
20 video record at 12:11 p.m.

21 BY MR. JIMMERSON:

22 Q. Mr. Lowenstein, after the break, let me  
23 just continue where we were. We had gone over the  
24 amendments to the master plan of Peccole phase 2 and  
25 the zoning change that occurred on April 4th of

1 1990, correct?

2 A. Correct.

3 Q. And with that, my clients' now property,  
4 the Peccoles at the time, were granted zoning  
5 entitlements of R-3, R-PD7 and C-1; is that right?

6 MR. BICE: Objection to the form.  
7 Misstates the facts as to the parties.

8 BY MR. JIMMERSON:

9 Q. Let me repeat the question. The Peccole  
10 family trust received entitlements to their property  
11 as I have mentioned and as referenced in the letters;  
12 is that right?

13 A. Correct.

14 Q. And those zoning entitlements, at least as  
15 it relates to R-PD7 remain present to the occurring  
16 date; isn't that right?

17 MR. BICE: Objection.

18 THE WITNESS: Yes.

19 MR. BICE: Objection to the form.

20 BY MR. JIMMERSON:

21 Q. And the location of the R-PD7 remains the  
22 same; isn't that right?

23 MR. BICE: Objection to form. Go ahead.

24 THE WITNESS: To my knowledge, yes, there  
25 were subsequent actions after the original rezoning,



1 but the R-PD7 is for the most part --

2 THE COURT REPORTER: Wait. It's what?

3 THE WITNESS: In its approved condition.

4 BY MR. JIMMERSON:

5 Q. When you use the term "approved condition"  
6 meaning the R-PD7 zoning entitlement?

7 A. Meaning when it was removed by council,  
8 the area which was approved for R-PD7 is currently  
9 still zoned R-PD7.

10 Q. And that applies to all 250 acres,  
11 correct?

12 A. I believe so, yes.

13 Q. All right. Now I wanted to make an  
14 important distinction. When we talk in terms of a  
15 proposed golf course in the 1990s, they were talking  
16 about an 18-hole golf course, correct?

17 A. To my understanding from the document from  
18 that zoning action, yes.

19 Q. All right. Now, do you have Z-17-90 in  
20 front of you, Exhibit 000, 000, the map?

21 A. Yes.

22 Q. Looking at that map, it was all R-PD7 as  
23 you have indicated and then there was a suggestion of  
24 a proposed golf course that would be built later on.

25 Fair statement?

1           A.    As part of the master development plan,  
2   they -- they -- meaning the applicant at that time --  
3   put forward an 18-hole golf course to be constructed  
4   and that I don't know what their timetable.

5           Q.    And that was reflected as of April 4th,  
6   1990?

7           A.    Yes.

8           Q.    So what we have is all the property zoned  
9   R-PD7, correct?

10          A.    Yes.

11          Q.    And then on top of that or thereafter in  
12   the future was a thought of an 18-hole golf course,  
13   correct?

14               MR. BICE:  Objection to the form.  
15   Misstates the record.

16   BY MR. JIMMERSON:

17          Q.    Misstates the record accurately.

18               You may answer the question, sir.

19          A.    The rezoning, the property that was  
20   rezoned is the same area that was displayed in the  
21   master development plan where they showed a proposed  
22   golf course.

23          Q.    My point was the proposed golf course was  
24   zoned R-PD7, correct?

25          A.    That is correct.

1 Q. The residential areas surrounding the  
2 proposed golf course was zoned R-PD7?

3 A. That's correct.

4 Q. So all areas that are not red or brown  
5 were zoned R-PD7, whether it be yellow or green,  
6 correct?

7 A. With the exception of the casino, yes.

8 Q. Thank you. I didn't ask you that. So  
9 meaning that with the exception of commercial, with  
10 the exception of multifamily, with the exception of  
11 the casino, all of the other ground whether it be  
12 yellow or green was zoned R-PD7; is that right?

13 A. Correct.

14 Q. All right. Now I just want to continue.  
15 In the mid 1990s, you have learned that there was a  
16 request for another 9 holes of golf to be added to  
17 the proposed 18 holes of golf; is that right?

18 A. Yes.

19 Q. And by looking at the map, do you recall  
20 that that was at the northern part of the property,  
21 what I call the yellow -- north of the proposed  
22 existing 18 holes?

23 A. From its current configuration, yes.

24 Q. And it got up somewhere close to the Alta  
25 Street; is that right?

1 A. Yes.

2 Q. And it was within the yellow that we look  
3 at when we look at the Z-17-90, Exhibit 000; is that  
4 right?

5 A. Yes.

6 Q. And do you recall the documents were  
7 submitted to the City of Las Vegas where the  
8 developer requested permission to develop an  
9 additional 9 holes of golf upon the R-PD7 zoned  
10 property?

11 A. Yes.

12 Q. Let me show you those documents if I can.  
13 So it's clear, there was not any discussion about an  
14 extra 9 holes in 1990; is that right?

15 A. Not that I am aware of, no.

16 Q. Good. Thank you.

17 MR. JIMMERSON: Mr. Kemper, can I have  
18 Exhibit F, please?

19 (Exhibit Number F was marked.)

20 (Exhibit Number G was marked.)

21 BY MR. JIMMERSON:

22 Q. Let me show you then a document we have  
23 next marked as Exhibit F. So approximately six years  
24 have passed and now we have a letter from an engineer  
25 for the developer, Peccole Trust 2, writing to the

1 city, Robert Genzer, on September 4th of 1996,  
2 Exhibit F, and then there's a response from  
3 Mr. Genzer to Pentacore dated October 6, 1996. So  
4 we're going to first talk about Exhibit F and then  
5 we'll go to Exhibit G. Are you familiar with both  
6 letters?

7 A. I've seen both letters.

8 Q. All right. And would you tell us, please,  
9 what is Exhibit F, a letter of September 4, 1996 from  
10 Clyde Spitze of Pentacore Engineering to Robert  
11 Genzer, City of Las Vegas Planning Division?

12 A. The vice president of Pentacore is  
13 requesting from Mr. Genzer a letter to substantiate  
14 to the bank that the proposed additional 9 holes of  
15 course between the existing course and Alta Drive  
16 would be developed within the zoned parcel.

17 Q. Specifically, it says, "Dear Bob, as you  
18 know, the Badlands golf course and Peccole Ranch is  
19 proposing to develop an additional 9 hole golf course  
20 between the existing golf course and Alta Drive. The  
21 existing master plan zoning of this area is R-PD7 and  
22 the golf course would be developed within this zoned  
23 parcel. I would like a letter from the city stating  
24 that a golf course would be compatible within this  
25 zoning. I need the letter for the bank. Thank you

1 for your consideration in this matter. Sincerely,  
2 Clyde Spitze, Vice President of Pentacore. Have I  
3 read that document accurately?

4 A. You have.

5 Q. Who is Bob Genzer in September of 1996?

6 A. He's an employee of the City of Las Vegas  
7 Planning Department.

8 Q. Is he more than an employee? What  
9 relationship did he have to the Planning Department?  
10 He's the Director, isn't he?

11 A. He became the Director of the Planning  
12 Department eventually. At this point in time, and  
13 I'm referring to Exhibit G, he was a planning  
14 supervisor.

15 Q. Would that also apply to Exhibit F, the  
16 letter of a month earlier?

17 A. I would assume so.

18 Q. Okay. But he's a senior representative of  
19 the Planning Department within the City of Las Vegas;  
20 is that right?

21 A. Yes.

22 Q. Whether he be exactly Director then or  
23 not, he's somebody of responsibility within the City  
24 of Las Vegas Planning Department?

25 A. That is correct.

1 Q. And as the letters indicated, this was an  
2 additional 9 holes. Now, at the time of this letter  
3 being written in September of 1996, the proposed  
4 18-hole golf course had been constructed or been  
5 underway to be constructed; is that correct?

6 A. I'm assuming so.

7 Q. All right. At least by the first  
8 sentence, it seems to suggest that the first 18 holes  
9 have been developed or near development or near  
10 completion. Would you agree?

11 A. Yes.

12 Q. And now there's a request to develop an  
13 additional 9 holes of golf within the zoned R-PD7  
14 property to the north of the -- to the north of the  
15 property; is that right?

16 A. North of the property being the golf  
17 course -- between the golf course and Alta Drive,  
18 yes.

19 Q. All right. And that's what I meant.  
20 Thank you very much. Then the -- Mr. Genzer writes  
21 back in the form of Exhibit G; is that right?

22 A. I believe so, yes.

23 Q. And Exhibit G is a letter dated one month  
24 and two days later, October 6th, of 1996 to  
25 Mr. Clyde Spitze, Vice President of Pentacore, "Re:

1 Badlands Golf Course phase 2 to Mr. Spitze. The city  
2 records indicate that an 18-hole golf course with  
3 associated facilities was approved as part of the  
4 Peccole Ranch master plan in 1990. This property was  
5 subsequently zoned R-PD7 residential plan development  
6 - 7 units per acre. Any expansion of the golf course  
7 within the R-PD7 area would be allowed subject to the  
8 approval of a plot plan by the Planning Commission.  
9 If any additional information is needed regarding the  
10 property, please do not hesitate to contact me.

11 Signed Bob Genzer, Robert S. Genzer." Have I read  
12 the document accurately?

13 A. You have.

14 Q. And based upon this approval, then, the  
15 developer then added an additional 9 holes in the  
16 months and years that followed from October of 1996;  
17 is that right?

18 A. Yes.

19 Q. Okay. And the additional 9 holes was not  
20 part of the original proposed 18 holes, it was a new  
21 addition that occurred in the mid 1990s; is that  
22 correct?

23 A. Yes.

24 Q. All right. Now, would you tell me what is  
25 a plot plan?



1           A.    The terminology "plot plan" can also be  
2 referred to as a site development plan review, is  
3 what the contemporary terminology is.

4           Q.    All right. And so if I understand your  
5 last answer, in the 1990s, they might have used the  
6 term "plot plan" more so than what the city is now  
7 using is site development review?

8           A.    That's correct.

9           Q.    But they mean the same exercise; is that  
10 right?

11          A.    I believe so, yes.

12          Q.    Was there any plot plan for this property  
13 in the mid 1990s?

14          A.    Not that I am aware of.

15          Q.    Was there any site development review of  
16 this property in the mid 1990s?

17          A.    Not that I am aware of.

18          Q.    Now, in 1990, April 4th of 1990 when my  
19 clients' property, the property that was owned by  
20 Peccole trust at the time, received its zoning  
21 entitlement and approval of its master plan  
22 amendment, was there any land use designation on that  
23 property as distinguished from the zoning of R-PD7,  
24 R-3 and C-1?

25               MR. BICE: Objection. Foundation.

1 BY MR. JIMMERSON:

2 Q. You may answer the question, sir.

3 A. Referring back to Exhibit 9, Perrigo  
4 Exhibit 9, it denotes that it was nonurban under a  
5 resolution of intent to R-1, R-2, R-3, R-PD7, R-PD8,  
6 R-MHP, PRC-1, C-2 and C-V. Now as far as what was  
7 on -- what became phase 2 at that particular point, I  
8 would have to refer to if there was any working map  
9 in the land use entitlement file, but all said and  
10 done, it would be nonurban being the designation.

11 Q. And is nonurban a zoning classification  
12 zoning district?

13 A. I believe at that time it was.

14 Q. Okay. So today, in 2016, I understand  
15 that there's a distinction -- I have learned against  
16 my will -- that there's a distinction between a  
17 zoning district on the one hand and a land use  
18 designation on the other. Fair statement?

19 A. Yes.

20 Q. But in 1990, was there that distinction?

21 MR. BICE: Objection to form. Foundation.

22 BY MR. JIMMERSON:

23 Q. You may answer the question.

24 A. I believe, as I previously may have  
25 stated, that in '92 they established specific general

1 plan land use designations.

2 Q. So the answer to my question, then -- did  
3 you have any trouble understanding my question? In  
4 1990, was there the same distinction between zoning  
5 and a land use designation?

6 MR. BICE: Objection as to the form.

7 BY MR. JIMMERSON:

8 Q. As there is now?

9 A. I'm not sure I do understand the question.

10 Q. Fair enough. The NU was a zoning district  
11 and it was reclassified from NU to R-3, R-PD7 and  
12 C-1, correct?

13 A. That's correct.

14 Q. Was there any type of a land use  
15 designation besides NU on this property in the form  
16 that we now see in 2016? The city says there's a  
17 general plan of certain designations?

18 MR. BICE: Objection as to the form.

19 THE WITNESS: At the time that this  
20 rezoning application went through, it would have been  
21 held to the 1985 general plan, and within that  
22 general plan there's a short range plan which has a  
23 method -- has three classifications, urban, suburban  
24 and rural. And if I recall that plan, I believe  
25 this -- this would have been either suburban or rural

1 designated. It wasn't parcel specific. It was kind  
2 of, for lack of a better terminology, a blob kind of  
3 map that they had as part of that plan.

4 BY MR. JIMMERSON:

5 Q. So there really wasn't a lot of attention  
6 to the blob, would you agree, in 1990, as might have  
7 occurred compared to 1992 and thereafter?

8 (Reporter clarification.)

9 MR. BICE: Objection to the form.  
10 Foundation.

11 THE WITNESS: I'm not particularly sure of  
12 the practice of the Planning Department at that point  
13 in time, but I imagine they would have reviewed the  
14 short range plan in relation to the proposed master  
15 development plan.

16 BY MR. JIMMERSON:

17 Q. But there was no requirement, at least as  
18 we see here, for a general plan amendment in 1990,  
19 agreed?

20 A. Agreed.

21 Q. There was no PR-OS land use designation  
22 upon this property in 1990, agreed?

23 (Reporter clarification.)

24 MR. BICE: Can you repeat the question,  
25 please? My realtime is not working so I can't

1 follow.  
2 MR. JIMMERSON: Well, this is the time to  
3 ask the question.  
4 (The record was read back.)  
5 MR. BICE: As of what date?  
6 MR. JIMMERSON: 1990.  
7 MR. BICE: Objection. Foundation.  
8 BY MR. JIMMERSON:  
9 Q. You may answer the question. You did  
10 answer the question. The answer is no, right?  
11 A. There was no designation during that time.  
12 Q. By that, you understand I do mean to  
13 include civic, parks, recreation, open space, civic.  
14 There was nothing on the property at that time; is  
15 that correct?  
16 A. There were no general plan designations as  
17 you have called out on the property.  
18 Q. And so the only conditions on the property  
19 as you look at it were the 12 that were itemized in  
20 the letter of May 1, 1990 and as confirmed within the  
21 letter of January 29, 1991; is that right?  
22 MR. BICE: Objection. Misstates the  
23 documents.  
24 MR. BYRNES: As of April 4th, 1990.  
25 ///

1 BY MR. JIMMERSON:

2 Q. That's correct. For point of  
3 clarification, the only conditions of approval that  
4 that property is held to would be the Z-17-90. Is  
5 that what you're asking?

6 Yes?

7 A. They would be held to Z-17-90 and  
8 obviously any conditions approved as part of the  
9 master development plan amendment.

10 Q. Right. And those are five that are  
11 referenced within the G3 action; is that right?

12 MR. BICE: Objection. Misstates the  
13 record.

14 BY MR. JIMMERSON:

15 Q. You may answer the question, sir.

16 A. Yes. Assuming that those five were the  
17 conditions.

18 Q. And we've covered that.

19 A. Again, my exhibit is mixed up now.

20 Q. And that exhibit is 3 -- what is that  
21 exhibit of the GGG?

22 A. UUU?

23 Q. Thank you. UUU. So comparing UUU with  
24 the letter of May 1 and the letter of  
25 January 29th of 1991, those would be the only

1 conditions of the general plan 1 through 5, and on  
2 the zoning 1 through 12, that you are aware of; is  
3 that right?

4 MR. BICE: I'm sorry. Objection to the  
5 form. Misstates the documents. Go ahead.

6 THE WITNESS: Yes.

7 BY MR. JIMMERSON:

8 Q. And even then we're assuming that the  
9 conditions 1 through 5 of the Planning Commission  
10 were attached by the City Council on April 4th of  
11 1990 as relates to the master plan amendment; is that  
12 right?

13 A. Yes.

14 Q. Now -- so now advancing ourselves to 2015,  
15 2016, my clients seek city approval to develop their  
16 property and with an initial application for 720  
17 units on 17 acres owned by 70 Acres, LLC; is that  
18 right?

19 A. Yes.

20 Q. And as part of that process, all of you on  
21 behalf of the city go back and look at the documents  
22 that we're spending so much time today examining,  
23 agreed?

24 A. We reviewed previous land use  
25 entitlements, yes.

1 Q. And you report back to my clients and to  
2 Mr. Jerbic and your boss Mr. Perrigo, in other words,  
3 the people around here, to report what you found from  
4 the records of 1990, agreed?

5 A. Yes.

6 Q. One of the things that you report is that  
7 the master plan as amended had a maximum of 4,247  
8 dwelling units to be allowed on that phase 2; is that  
9 right?

10 A. Yes.

11 Q. Okay. Then there is an effort on the part  
12 of the city, at the request of my client, to know how  
13 much had been developed within the phase 2 amendment,  
14 to know how much would be remaining to be developed;  
15 isn't that right?

16 MR. BICE: Objection to the form of the  
17 question. Presupposes that your client has such a  
18 right. Go ahead.

19 MR. JIMMERSON: I don't understand that  
20 objection, but you can answer the question.

21 MR. BICE: Well, it presupposes -- I will  
22 rephrase for you, Jim.

23 MR. JIMMERSON: That's okay. You made  
24 your objection, Counsel.

25 MR. BICE: Presupposes --



1 MR. JIMMERSON: Stay off the record so we  
2 can get an answer to the question.

3 MR. BICE: It presupposes the existence of  
4 a fact which isn't truthful. That's all.

5 MR. JIMMERSON: Go ahead. Well, that's  
6 your allegation, sir.

7 THE WITNESS: There's multiple exercises  
8 of calculating the available -- or the remaining  
9 units.

10 BY MR. JIMMERSON:

11 Q. Why were they undertaken? Why were those  
12 multiple exercises undertaken, so that we can put to  
13 bed this allegation or this objection by opposing  
14 counsel?

15 A. To assess what's currently entitled, built  
16 and to see how many units would be allowed out of  
17 that 4247.

18 Q. Okay. And what was done by the City of  
19 Las Vegas, and particularly the Planning Department,  
20 to perform that exercise and to come up with an  
21 answer?

22 A. Looked at the existing condition of the  
23 geographic area through our GIS coupled with looking  
24 at land use entitlements for both the Queensridge  
25 Towers and any other developments within Peccole

1 Ranch Phase 2. Looked at subdivisions, seeing how  
2 many they were entitled for, how many were built, if  
3 any of the lots were merged together.

4 Q. All right. And through that exercise, you  
5 were able to provide the developer with an estimate  
6 of what you understood still he was allowed to  
7 develop based upon this 4247 maximum; is that right?

8 MR. BICE: Objection. Assumes facts not  
9 in evidence.

10 THE WITNESS: There was discussions  
11 related to how many units.

12 BY MR. JIMMERSON:

13 Q. And what do you recall the city -- and  
14 specifically within the City Planning Department, who  
15 was responsible for advising my clients, the  
16 developer, of how many units they were still entitled  
17 to develop going forward?

18 A. I don't recall if there was a specific  
19 person delegated to provide a specific answer.

20 Q. But you recall it was you who gave that  
21 answer?

22 A. I delegated the responsibilities to others  
23 to give me numbers and I just reported numbers  
24 through.

25 Q. Fair enough. So to the listener, to

1 Mr.Kemper, to Mr. Harrison or to others who were  
2 present at meetings with you, they would listen to  
3 you, Peter Lowenstein, saying based upon my research,  
4 based upon my staffs' research, my belief is that you  
5 have 1665 developable units still to be developed and  
6 you have the right to develop it. That would be the  
7 type of report you gave to my clients; is that right?

8 MR. BICE: Objection to the form.

9 THE WITNESS: It would be --

10 THE COURT REPORTER: It would be what?

11 THE WITNESS: As far as sentence  
12 structure, that would be typical of it. As far as  
13 the exact number, my estimates as far as what's  
14 existing out there and the delta from the condition  
15 of the entitlement is somewhere around 1200 units.

16 BY MR. JIMMERSON:

17 Q. Now, all right. Do you recall telling my  
18 clients that you believed the number to be 1665  
19 units?

20 A. I don't necessarily recall that.

21 Q. Do you recall Brad Jerbic saying that my  
22 clients were entitled to develop 1665 units?

23 A. I don't recall it.

24 Q. Showing you what's been marked as  
25 Exhibit VVV -- I'm sorry, I misspoke. Exhibit 3Z.

1 MR. BYRNES: YYY.

2 MR. JIMMERSON: YYY. It's a new exhibit.

3 (Exhibit Number VVV was marked.)

4 (Exhibit Number YYY was marked.)

5 (Discussion off the record.)

6 BY MR. JIMMERSON:

7 Q. Looking at Exhibit YYY, do you recognize  
8 this board?

9 A. This is the dry erase board in conference  
10 Room 3C at the development service center of the City  
11 of Las Vegas.

12 Q. Were you present at that meeting?

13 A. Potentially.

14 Q. When was that --

15 A. I don't recall.

16 Q. When was that meeting?

17 A. I have no idea what the date would be.

18 Q. Were you present at any meetings where the  
19 remaining developable units available to my clients  
20 were discussed?

21 A. More than likely, yes.

22 Q. Well, you either were or you weren't.  
23 What's your present recollection, Mr. Lowenstein?

24 A. I've been part of ongoing reoccurring  
25 meetings on Thursdays, and I'm sure in one of those

1 meetings, unit counts were discussed.

2 Q. And in how many meetings were unit counts  
3 discussed?

4 A. I don't know how many meetings we  
5 discussed unit counts.

6 Q. More than one?

7 A. More than likely, yes.

8 Q. More than five?

9 A. It's possible.

10 Q. All right. On May 16th of 2016, do you  
11 recall being present with Mr. Jerbic and Mr. Harrison  
12 and Mr. Kaempfer and Mr. Pankratz and others,  
13 including other city staff, where this discussion was  
14 held and where this board was developed?

15 A. I don't recall, but it's likely.

16 Q. Do you recall whose handwriting is shown  
17 on Exhibit YYY on the white board?

18 A. No.

19 Q. Do you recall it was Brad Jerbic's  
20 handwriting of 1665 developable units to my clients?  
21 I misspoke. All of the red was the handwriting of  
22 Brad Jerbic?

23 A. Not that I recall.

24 Q. Do you recall who wrote the red?

25 A. No.

1 Q. But you were present at the meeting?

2 A. Probably.

3 Q. Is it your handwriting?

4 A. I'm not that tall, so no.

5 Q. And do you know whose handwriting was the  
6 green, 1665 developable units?

7 A. No.

8 Q. What occurred in that meeting, to the best  
9 of your present recollection?

10 A. Well, if this was discussed at the  
11 meeting, then they were discussing dwelling units per  
12 acre --

13 THE COURT REPORTER: What units per acre?

14 THE WITNESS: Dwelling units per acre.

15 And units as resulting from that.

16 BY MR. JIMMERSON:

17 Q. And did you ever use words, speak to  
18 Mr. Pankratz, Mr. Kaempfer or others as to what you  
19 believed was the remaining developable units that my  
20 client was entitled to develop?

21 A. Not that I recall.

22 Q. You never gave any numbers?

23 A. I'm sure we discussed numbers but I don't  
24 have an accurate recollection of what those numbers  
25 would be.

1 Q. Do you have any recollection of discussing  
2 numbers where you gave either accurate or inaccurate  
3 information?

4 A. If the meeting was circling around  
5 specifically unit counts and I had spoke at the  
6 meeting, I'm sure I spoke to unit counts.

7 Q. And did you send Mr. Pankratz emails with  
8 regard to developable units available to my client?

9 A. It's possible.

10 Q. Did you or did you not, sir?

11 MR. BICE: I'm going to object to the form  
12 of the question. Assumes facts not in evidence. And  
13 one would assume that those have been produced to me  
14 since it's being represented that they may have  
15 existed and under Rule 16.1, those were due to me  
16 before these depositions.

17 BY MR. JIMMERSON:

18 Q. Very good. You may answer the question.  
19 Did you send such emails to Mr. Pankratz?

20 A. I don't recall. I would have to review  
21 the mails?

22 Q. Do you recall sending any emails to  
23 Mr. Pankratz regarding the subject matter --

24 THE COURT REPORTER: I'm sorry, do you  
25 recall?

1 MR. JIMMERSON: Sending any emails to  
2 Mr. Pankratz on the subject matter of my clients  
3 developing their property?

4 MR. BICE: I'm going to note my same  
5 objection to this line of questioning.

6 MR. JIMMERSON: I'm trying to establish  
7 whether there were or there weren't, Counsel.

8 MR. BICE: I'm going to reserve my right  
9 to recall this witness if I find out that the  
10 applicant is holding onto emails that haven't been  
11 produced.

12 MR. JIMMERSON: There's no holding on  
13 anything. It's a matter of trying to produce  
14 documents in an intelligent and appropriate manner as  
15 opposed to document dumps that you have engaged in  
16 where you have four copies of the same document on  
17 multiple occasions of which I have made a subject  
18 matter correspondence to you.

19 MR. BICE: Well, Jim, I'm sure that since  
20 you know the rule, you were obligated to have had  
21 your client search his emails on this issue long ago.  
22 So if the representation now is you don't know  
23 whether your client was communicating via email on  
24 this subject matter.

25 MR. JIMMERSON: I'm trying to find out



1 what this witness knows, okay. That's what I'm  
2 trying to understand. We certainly have the right,  
3 Mr. Bice, to investigate from the witness what  
4 documents may or may not exist and then request the  
5 same, and trust me we have. I sent preservation  
6 letters to the City of Las Vegas and I've requested  
7 that they produce those documents at the appropriate  
8 time. This is early on in litigation. These are the  
9 first two depositions being taken.

10 MR. BICE: My note -- the notation to my  
11 objection is, for the record to be clear, is that  
12 you're asking this witness whether he's communicated  
13 with your client via email and your clients would  
14 certainly know that fact. And so to the extent those  
15 emails exist and haven't been produced, Rule 16.1  
16 required that to have been done before now. By your  
17 client --

18 MR. JIMMERSON: Thank you, Counsel.

19 MR. BICE: -- not by the city.

20 MR. JIMMERSON: Thank you, Counsel. I got  
21 your document dump on a Friday night after hours  
22 before a Monday morning deposition, so don't talk to  
23 me about the rules, Counsel.

24 MR. BICE: At least I'm providing  
25 documents. You haven't done a single production.

1 MR. JIMMERSON: I haven't used a document  
2 to my knowledge that you haven't seen. But there may  
3 have been a couple. I'll get it to you as soon as  
4 possible.

5 MR. BICE: The last 1, 2, 3, 4 that you  
6 have used today, I haven't seen.

7 MR. JIMMERSON: Really? The letters you  
8 haven't seen?

9 MR. BICE: The letters from Pentacore?

10 MR. JIMMERSON: Yes.

11 MR. BICE: No.

12 MR. JIMMERSON: Okay. All right. Let's  
13 get back to the subject matter. Are you done,  
14 Mr Bice?

15 MR. BICE: Yes, I am. I am. My  
16 apologies.

17 MR. BYRNES: Could you repeat your  
18 question?

19 MR. JIMMERSON: I'm happy to do that.  
20 You don't remember?

21 BY MR. JIMMERSON:

22 Q. Did you resend any emails --

23 THE COURT REPORTER: Resend or send?

24 BY MR. JIMMERSON:

25 Q. Send. Did you send any emails to my

1 client regarding the subject matter of my clients'  
2 development of their property?

3 A. Yes.

4 Q. And how many emails have you sent to my  
5 client?

6 A. I don't recall.

7 Q. And I'm not talking about have a nice  
8 holiday. I'm talking about the matters of substance,  
9 Mr. Lowenstein. I understand that there are  
10 cordialities and friendships. I'm not speaking to  
11 that. I'm talking about matters of materiality. How  
12 many -- how many emails have you sent?

13 A. I don't know an exact number, but if  
14 you're asking about an estimate of numbers, a dozen  
15 maybe.

16 Q. Now, do you recall sending an email to  
17 anyone who you understood was representing my client  
18 with regard to the remaining developable units that  
19 my clients could develop?

20 A. Not that I recall.

21 Q. Now, do you recall Mr. Kaempfer, on  
22 May 16th at Exhibit YYY writing the number 1665?

23 A. I do not recall.

24 Q. Do you recall Mr. Jerbic writing  
25 everything in red on May 16 of 2016?

1 A. I don't recall who the author was.

2 Q. You now in today's testimony say that you  
3 believe that my clients have the right to develop  
4 1200 units. Do you recall that testimony a few  
5 minutes ago?

6 A. I do.

7 Q. Okay. What is the basis for that answer  
8 and that number?

9 A. As I previously stated, we looked at our  
10 GIS existing units, previous entitlements, and our  
11 land use -- in relation to the condition of approval  
12 from the original rezoning.

13 Q. So tell me the math, please. How did you  
14 arrive at the last number that my clients have the  
15 right to develop 1200 units approximately? Am I  
16 testifying -- reciting your testimony correctly that  
17 you're estimating approximately 1200 units that my  
18 clients have the right to develop?

19 MR. BICE: Objection to form.

20 THE WITNESS: I'm saying that there is  
21 approximately 1200 units would be the delta of what's  
22 been constructed in Peccole Ranch Phase 2 in relation  
23 to the condition of approval that says there's a  
24 maximum of 4247.

25 ///

1 BY MR. JIMMERSON:

2 Q. And that my clients have the right to  
3 develop that delta?

4 MR. BICE: Objection to the form. Calls  
5 for a legal conclusion. Misstates the document.

6 THE WITNESS: If they made applications  
7 for the development of it, then at council's  
8 discretion there is a possibility.

9 BY MR. JIMMERSON:

10 Q. You would tell the council that there is  
11 the right to develop 1200 units subject to council's  
12 approval; is that right?

13 MR. BICE: Objection to the form. Calls  
14 for a legal conclusion and assumes facts not in  
15 evidence.

16 BY MR. JIMMERSON:

17 Q. I must be getting it right with those  
18 objections. You can answer.

19 A. The Planning Department would put forward  
20 that it would not be in violation of the condition of  
21 approval and that those units would be allowable.

22 Q. For development?

23 A. That number -- additional units are  
24 allowed in that geographical area as approved by the  
25 original rezoning.

1 Q. For development, right?

2 A. Yes.

3 Q. Now tell me the math, please. And if  
4 you're not able to, where would we go to find the  
5 math? I understand you say, I've looked at GIS. I  
6 took a number, I subtracted 4247 and I came up with  
7 approximately 1200. This is what I understand you  
8 are telling all of us here in the deposition room.  
9 Please tell me how you got that calculation?

10 A. Well, my senior GIS specialist created  
11 maps of the Peccole Ranch Phase 2 area, identified  
12 all existing structures for single family  
13 development, reviewed the land use entitlements for  
14 all the multifamily development for what the approved  
15 number of units were, then did a review of how many  
16 lots were actually constructed out of the  
17 subdivisions to make sure that it's accurate as far  
18 as what was entitled, as well as -- we  
19 cross-referenced what was put forward by the  
20 developer to make sure that both numbers, if there  
21 were any discrepancies, to get an understanding of  
22 what that may have stemmed from.

23 Q. Now, that being said, is there a piece of  
24 paper that summarizes the math that says, number of  
25 units developed in this location, 327; number of

1 units developed in this location, 426; and all the  
2 math gets -- you get whatever it is, 2,900 subtracted  
3 it from 4,247 equals 1236, is there a document that  
4 would have with summary like that?

5 A. We created, through the GIS system, a map  
6 of that.

7 Q. And where is that map located?

8 A. At the City of Las Vegas. It exists  
9 electronically.

10 Q. Is it a public record?

11 A. Once requested, yes.

12 Q. Well, you mentioned this website, for  
13 example, FTD or something like that is my  
14 recollection. Is it part of that FTD?

15 A. I don't believe that was part of the FTP  
16 site at that -- at that time.

17 Q. FTP. Thank you. How would opposing  
18 counsel or I obtain a copy of that mathematical  
19 estimation or calculation?

20 A. Just ask.

21 Q. I'm asking for it.

22 A. All right.

23 Q. So that we have no misunderstanding, what  
24 would I be asking for? How would you describe it,  
25 sir?

1 A. For lack of a better title, unit count  
2 map.

3 Q. Unit cap map.

4 A. Unit count, sorry, would be.

5 Q. Unit count. Thank you. And who is the  
6 author of this calculation?

7 A. The junior -- sorry, GIS, our senior GIS  
8 analyst is Jorge Morteo, M-O-R-T-E-O.

9 Q. M-O-R-T-E-O, Morteo?

10 A. Mm-hmm.

11 Q. Jorge Morteo. And so you tasked him with  
12 this responsibility; is that right?

13 A. That's correct.

14 Q. And you had mentioned I think before in  
15 the first deposition, I think you mentioned his name,  
16 I thought it was Matteo as I was listening way far  
17 away from you, but Morteo. And then he came back to  
18 you with his calculations; is that right?

19 A. That's correct.

20 Q. Was he responsible for any calculations in  
21 May of 19 -- excuse me May of 2016?

22 A. Not that I am aware of.

23 Q. When did he do his calculations? When did  
24 you task him to do that?

25 A. Regarding the exhibit that you're holding.



1 Q. Forget the exhibit.

2 A. Okay.

3 Q. When did you task Mr. Morteo to provide a  
4 unit count map?

5 A. He's actually done the exercise more than  
6 once.

7 Q. Had he done the exercise for the benefit  
8 of Mr. Jerbic in May of 2016 as shown by Exhibit YYY?

9 A. I don't recall. He could have. If he was  
10 tasked for such a thing. If those numbers could have  
11 been utilized.

12 Q. Do you know where Mr. Jerbic got the  
13 numbers that Mr. Jerbic wrote in hand? And I'm  
14 representing to you that he was the person who wrote  
15 the red numbers, where he obtained that information?

16 A. It's possible from a previous exercises by  
17 either Morteo or somebody else from our department,  
18 from counting the land use entitlements that were  
19 approved.

20 Q. As far as you know, that is where  
21 Mr. Jerbic obtained that information?

22 A. It's speculation on my part as far as if  
23 that's exactly where he got it from, but his reliance  
24 would be on the Planning Department.

25 Q. Okay. So it's -- you've answered my