

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 question. He's relied upon you to provide this
2 information, okay. Has there been any new
3 calculation since May of 2016 with regard to the
4 developable units available to my clients?

5 A. Yes.

6 Q. When was the last time any such
7 developable calculation was performed?

8 A. I don't know an exact date, but probably
9 in the last couple of months.

10 Q. And who would have performed that,
11 Mr. Mateo -- Morteo?

12 A. Yes.

13 Q. Pursuant to your direction?

14 A. Yes.

15 Q. Are you his boss?

16 A. Yes.

17 Q. Are you his direct report?

18 A. No. I believe Steve Gebeke is his direct
19 supervisor.

20 Q. And then you above Mr. Gebeke?

21 A. That's correct.

22 MR. JIMMERSON: We can break now for
23 lunch. See you back in about 70 minutes, and I thank
24 you for your time.

25 THE VIDEOGRAPHER: We are off the video

1 record at 12:54 p.m.

2 (Lunch break.)

3 We are back on the video record. The time
4 is 2:18 p.m.

5 MR. JIMMERSON: I would like to mark this
6 as Exhibit E to today's deposition.

7 (Exhibit Number E was marked.)

8 BY MR. JIMMERSON:

9 Q. Mr. Lowenstein, after our lunch break,
10 good afternoon and thank you for your appearance.
11 Showing you what's been marked as Exhibit E, it's a
12 letter from an attorney named Stan Parry to Robert
13 Genzer, chief of planning, dated June 21 of 1984.
14 Have you seen this document before?

15 A. Possibly, if it was part of the file for
16 Z-17-90, I more than likely have seen it, yes.

17 Q. And you will see where somebody wrote in
18 parenthesis, Z 1790. Do you see that?

19 A. Yes.

20 Q. Again, perhaps just like you to help
21 identify to what the letter appertained. Do you see
22 that?

23 MR. BICE: Objection to form.

24 BY MR. JIMMERSON:

25 Q. So now this letter memorializes a

1 conversation that Mr. Parry states that he had with
2 Mr. Genzer on or about June 20th, 1994. Do you see
3 that?

4 MR. BICE: Objection as to the form.
5 Foundation.

6 BY MR. JIMMERSON:

7 Q. You may answer the question.

8 A. Sorry. That's it's just right after
9 lunch.

10 Q. Relax. Let's kind of make it easy. Have
11 you seen the letter before?

12 A. As stated, if this was in the file, then
13 yes.

14 Q. Okay. But as you sit here today, do you
15 have a recollection of whether or not you've seen it
16 before?

17 A. I don't recall exactly, but --

18 Q. Have you had any conversations with
19 anybody within planning about this letter?

20 A. Not to my recollection.

21 Q. We're going to move it along. Was -- what
22 was this action, I think that you referenced,
23 regarding an action that took place in 1992 enacting
24 some sort of a southwest sector plan I think you
25 mentioned? Can you refresh my recollection of what

1 you were referring to when you said there was an
2 action in 1992?

3 A. The adoption of the city of Las Vegas'
4 general plan.

5 Q. And in what form was that adoption?

6 A. Physical form, it's a written document
7 composed of elements, one of which is a land use
8 element which would then have a map of the, at that
9 time, three sectors, which illustrates land use
10 designations in those sectors.

11 Q. Thank you. And how was the general plan
12 adopted in 1992?

13 A. Well, I'd have to review specifics, but I
14 believe it's reviewed by City Council and then
15 adopted by ordinance.

16 Q. And do you know when it was adopted? Feel
17 free to look at LLL if it would help you, if in fact
18 it's referenced within LLL.

19 A. I don't believe it's in LLL.

20 Q. Okay.

21 A. But to answer your original question, I
22 don't know the exact date. It would be within the
23 document itself. I usually annotate the date of
24 adoption.

25 Q. Have you seen that document?

1 A. Yes.

2 Q. The 1992 document you're referring to?
3 And you call it an ordinance for the City of Las
4 Vegas?

5 A. General plans -- the general plan itself,
6 the document, and any amendments to those elements, I
7 believe, are done through an approval by City Council
8 and then an adoption by ordinance.

9 Q. Do you know whether or not that was done
10 in this case in 1992?

11 A. I believe it has an associated ordinance
12 number. The exact number, I don't recall. I believe
13 it's in the 3,000 range.

14 Q. And looking at -- I've not seen it. I'm
15 not familiar with it. Did it have, within that
16 ordinance, any attached APN numbers?

17 A. I don't recall if it had a list of APN
18 numbers.

19 Q. So how do you know what property was
20 affected by the ordinance if there were no attached
21 APN numbers?

22 A. The general plans are applicable to the
23 jurisdiction in its entirety.

24 Q. I'm sorry, what?

25 A. They're applicable to the jurisdiction in

1 its entirety, within its boundaries.

2 Q. So the city can take action on 600 acres
3 of phase 2, Peccole trust property, by an ordinance
4 without reference to an APN number. Is that what
5 your testimony is?

6 A. Stating that they were adopting a general
7 plan for the entire city which would include that
8 600 acres or the entire city within its boundaries
9 through an ordinance, yes.

10 Q. So it's a general plan that affects all
11 the property within the city boundaries of Las Vegas;
12 is that what you're saying?

13 A. That's correct.

14 Q. But there's no reference to any particular
15 APN number; is that right?

16 A. Not that I recall.

17 Q. And the ordinance is not recorded,
18 correct?

19 A. The ordinance?

20 Q. Is not recorded with the Clark County
21 Recorder's office, is it?

22 A. I don't know.

23 Q. So when you run a title property search,
24 would you pick up any cloud or any restriction or any
25 notation that the property with APN number blank,

1 whatever it might be, is subject to an ordinance from
2 1992?

3 MR. BICE: Objection to the form.
4 Misstates the law.

5 BY MR. JIMMERSON:

6 Q. You can answer the question.

7 A. I don't believe it would show up in the
8 title report.

9 Q. All right. Was there any -- withdraw.
10 What notice was given to any landowner about the
11 ordinance?

12 A. During that time, they were to follow
13 whatever the open meeting law requirements were.

14 Q. I appreciate that. Did you know -- do you
15 know as you sit here today what those requirements
16 were in 1992?

17 A. I would have to refer to counsel as far as
18 if there's been any amendments from what today's is
19 from what was then.

20 Q. Okay. Fair statement. What is today's
21 notice requirements?

22 A. To my knowledge, there is the public
23 notification of the item that is done through a
24 general notice through the newspaper, because it
25 affects all properties within the jurisdiction of the

1 city. Then there would be a neighborhood meeting
2 which would also be noticed through the newspaper,
3 noticed a minimum of 10 days prior to that
4 neighborhood meeting. Then it would be placed on an
5 agenda for both the Planning Commission and then the
6 City Council, both of which the agendas are published
7 and made public.

8 Q. Following up in that last answer relative
9 to what you understand, the notice requirements for
10 passing an ordinances today in 2016, do you know what
11 the particulars are with regard to what neighborhood
12 meeting, who gets notice of the neighborhood meeting
13 and how? For example, is it like a zoning where you
14 send individual cards to owners within a number of
15 feet from the location or is it also notice of a
16 public meeting through a newspaper?

17 A. If I understand the question correctly, if
18 it's a city initiated citywide effect, then it would
19 be the latter, through general notification through
20 the newspaper.

21 Q. So there would be an invitation for a
22 neighborhood meeting in the form of a newspaper
23 article or newspaper ad, that type of thing; is that
24 what you're saying?

25 A. Yes.

1 Q. Individual landowners like the Peccole
2 trust wouldn't have been sent a mailer with regard to
3 holding a neighborhood meeting if today's 2016 open
4 meeting law requirements and notice requirements were
5 followed for an ordinance?

6 A. No.

7 Q. And from your records that you've looked
8 at, you have not seen any notification to the Peccole
9 Trust in 1992 about the proposed adoption of a
10 general plan?

11 THE COURT REPORTER: The proposed adoption
12 of what?

13 MR. JIMMERSON: A general plan.

14 THE WITNESS: Not that I am aware of.

15 BY MR. JIMMERSON:

16 Q. Thank you. Now let's look at a map, and I
17 think this is a map you said you looked at since your
18 last deposition to today, if I understood your
19 testimony right. I think it might have been
20 discussed in yesterday's conversation with
21 Mr. Perrigo.

22 MR. JIMMERSON: Todd, do you remember what
23 exhibit number that was?

24 MR. BICE: Of which one, Jim? My
25 apologies.

1 MR. JIMMERSON: The 1992 purple and
2 colored.

3 MR. BICE: I think it was 13 to
4 Mr. Perrigo's deposition yesterday.

5 MR. JIMMERSON: Chris, could you look at
6 13? Thank you. You are correct.

7 (Discussion off the record.)

8 BY MR. JIMMERSON:

9 Q. I want to show you what we'll mark as
10 Perrigo 13.

11 (Exhibit Number 13 was marked.)

12 BY MR. JIMMERSON:

13 Q. What is Exhibit Perrigo 13, please?

14 A. This is the Las Vegas general plan land
15 use element for the southwest sector plan. This
16 looks to be -- well, there's a red box around it, but
17 it looks to be from the 1992.

18 Q. Do you recall your testimony at the start
19 of today's deposition where I asked you had you
20 looked at any documents since your last deposition,
21 and you said, yes, I looked at a plan from 1992 or
22 words of similar effect, is my recollection of your
23 words. Is this the document that you looked at since
24 your last deposition to the present date?

25 A. This would be the map, yes, from that

1 document.

2 Q. What relationship, if any, is there
3 between Perrigo 13, this map, and what you say was an
4 ordinance passed in 1992, if any?

5 A. Can you restate the question, please?

6 Q. What is the relationship between this map,
7 Exhibit Perrigo 13, and the ordinance that you say
8 was passed in 1992 that adopted for the first time a
9 general plan for the City of Las Vegas?

10 A. This would be the map associated within
11 that general plan when adopted.

12 Q. Okay. And because it references southwest
13 sector, may we all here conclude that there might
14 have been four similar types of maps or other maps
15 that take into consideration would be all of the City
16 of Las Vegas' boundaries?

17 A. Yes, there's three in total. You can
18 assume that.

19 Q. Three. Okay, so this is 1 of 3?

20 A. Yes, the southeast, southwest and
21 northwest which the naming has changed.

22 Q. All right. So at the time, it was
23 southeast, southwest and northwest?

24 A. Either northwest or Centennial Hills.

25 Q. And today, what are those names of those

1 three sectors?

2 A. I believe they're the northwest, the
3 southwest and the southeast.

4 Q. Okay. Thank you. Now, who placed the red
5 box that I see on this document, Exhibit Perrigo 13,
6 if you know?

7 A. I don't know.

8 Q. It would not have been on the original map
9 of 1992; is that a fair statement?

10 A. That is correct.

11 MR. BICE: Jim, would you like my
12 representation?

13 MR. JIMMERSON: That would be fine,
14 please.

15 MR. BICE: I put it on there just to draw
16 the attention to the witness when I was asking him
17 yesterday.

18 MR. JIMMERSON: So, you, Mr. Bice, for the
19 plaintiffs, put this red box on when examining
20 Mr. Perrigo yesterday?

21 MR. BICE: Yes, I had it put on there so
22 that when I examined Mr. Perrigo, I could focus his
23 attention on the portion that I intended to ask him
24 about.

25 ///

1 BY MR. JIMMERSON:

2 Q. Okay. And looking at the box, the red
3 box, do you note that -- my clients' 250 acres owned
4 by the three entities that own that property is
5 referenced within that box?

6 A. I do.

7 Q. Where is it located?

8 A. The area -- the property is located within
9 the prescribed red box. Within that red box, it's
10 towards the north -- northern portion of that,
11 northern half portion. There are street names, so
12 it's north of Charleston, west of Fort Apache Road at
13 that point, or it would have been Rampart Boulevard.

14 Q. Is it a fair statement that you can show
15 us the vicinity of where the property's located but
16 you cannot give us the legal boundaries based upon
17 this map?

18 A. Yes.

19 Q. Okay. And following that question and
20 that last answer, may we all conclude, then, that it
21 is far more likely than not that the ordinance passed
22 in 1992 did not include any reference to any APN
23 numbers?

24 A. I don't -- I don't believe there's any APN
25 numbers in the general plan, because as previously

1 stated, it's city wide affected.

2 Q. Thank you. And did the plan and
3 development property change from 1992 to the present?
4 In other words, what you see here changed in the
5 years that followed from 1992 to the present?

6 A. Right. The current configuration of a
7 land use designation is different from the 1992 plan.

8 Q. The location of the golf course is
9 different?

10 A. Yes.

11 Q. The location of where the golf course is
12 actually located is different?

13 A. Yes.

14 Q. It doesn't cross Rampart, for example?
15 Its location has physically changed?

16 A. Well, looking at -- it's not dedicating --
17 it's not denoting it as golf course. It's denoting
18 it as parks, schools, recreation, open space so.

19 Q. Now, this property was zoned R-PD7 as we
20 know two years earlier in 1990; is that right?

21 A. That's correct.

22 Q. And then the city has enacted a general
23 plan land use element in 1992; is that right?

24 A. Correct.

25 Q. And do you agree that it was actually

1 built in 1995 and 1996, is different than what is
2 depicted here in Exhibit Perrigo 13 inside the red
3 box?

4 A. Yes.

5 Q. All right. Now, let's follow from that.
6 Let me turn now to Exhibit E if I can just for a
7 minute. E was the letter from Stan Parry to Bob
8 Genzer that we just talked about a minute ago. And I
9 understand that you may have seen it, you're not
10 certain, but the third paragraph states that "You
11 have informed me that due to the approval process of
12 the city with respect to the Peccole Ranch master
13 plan, it will not be necessary for the developer of
14 the golf course to obtain a site plan approval. You
15 have indicated that the city will be able to issue a
16 grading permit for the construction of the golf
17 course without site plan approval because the site
18 plan has already been approved as part of the master
19 plan," end of quote. Do you see that?

20 A. Yes.

21 Q. So based upon this paragraph and based
22 upon your development of Exhibit LLL which lists the
23 actions affecting this property, is it your best
24 understanding that there was not in effect any plot
25 plan or any site development review for the golf

1 course?

2 MR. BICE: Objection as to form.

3 Misstates the record.

4 BY MR. JIMMERSON:

5 Q. You may answer the question, sir.

6 A. In reference to Exhibit LLL, there is no
7 plot plan for additional 9 holes of golf course.

8 Q. Now, this letter has nothing to do with
9 the additional 9 holes. This letter has to do with
10 the original 18 holes. Because as you see, it's
11 1994?

12 A. My apologies. There is no plot plan
13 review for the original 18 hole golf course beyond
14 that of the exhibits that were a part of Z 1790.

15 Q. Thank you, sir. Now, it's my
16 understanding that there was an ordinance passed in
17 2001 that affected this property regarding zoning.
18 Do you recall that?

19 A. It's possible. I believe there was, at
20 some point, an ordinance to update the zoning map
21 atlas.

22 Q. Okay.

23 A. I'm not sure if that's the specific one
24 you're referring to?

25 Q. It is, sir. Thank you for that.

1 MR. JIMMERSON: Would you pull out
2 Exhibit H, Todd, please. Now, before we go to this
3 ordinance which is marked as Exhibit H, returning to
4 Exhibit E just for a minute.

5 MR. BICE: Do you have a copy of this?

6 MR. JIMMERSON: Which one? I haven't got
7 to it, I haven't started, but you certainly can. I
8 just had a few more questions about E, but let me
9 hand out Exhibit H. It's not a problem.

10 (Exhibit Number H was marked.)

11 BY MR. JIMMERSON:

12 Q. Now just put aside Exhibit H for a minute.
13 I had just a couple more questions regarding
14 Exhibit E. Looking at Exhibit Perrigo 13, which is
15 the map that is a general depiction, as I understand
16 it, of the southwest sector of the Las Vegas general
17 plan land use element that you indicated was approved
18 city wide by city ordinance in 1992. And looking at
19 the third paragraph of 1994, would there have been a
20 necessity, had a site plan development been
21 submitted, to amend the general plan in order to
22 build the original 18-hole golf course?

23 MR. BICE: Objection to form. Calls for
24 speculation.

25 ///

1 BY MR. JIMMERSON:

2 Q. Let me ask a different question. Would
3 there be a necessity to amend the zoning to civic if
4 it was to comply with the Las Vegas general plan land
5 use element southwest sector of 1992?

6 MR. BICE: Same objection.

7 THE WITNESS: Depending on the use of the
8 property, in this case, as golf course, it's a
9 recreation and it was designated as parks in the --
10 parks, school, recreation, open space on this
11 Exhibit 13, if this is speculation on what the
12 Planning Department was thinking at that point. The
13 R-PD7 included that --

14 THE COURT REPORTER: The R-57?

15 THE WITNESS: The R-PD7, included it as
16 part of their overall development, then they would
17 not have asked them to rezone it. As far as the land
18 use designation underneath, if the current code says
19 it shall, as far as what the code stated at that
20 point, if it hadn't changed, they should have
21 required a general plan to conform with the -- the
22 general plan to conform with the zoning district. If
23 their determination at that time that the R-PD7 was
24 compatible or the golf course was compatible using
25 that R-PD7 then they probably would not have asked

1 for it at that point.

2 BY MR. JIMMERSON:

3 Q. Following up on the last answer, we know
4 the R-PD7 zoning came first in time and applied to
5 all that property, all 700 acres, agreed?

6 MR. BICE: Objection to the form.

7 BY MR. JIMMERSON:

8 Q. Except in the C-1 and the R-3?

9 MR. BICE: Objection to form and contrary
10 to facts.

11 BY MR. JIMMERSON:

12 Q. You may answer the question.

13 A. The remaining portion of that rezoning
14 application, yes, was R-PD7.

15 Q. Z-17-90?

16 A. That's correct. That application.

17 Q. And it's my understanding -- and certainly
18 building residential units is inconsistent with a
19 PR-OS general plan --

20 THE COURT REPORTER: Is inconsistent?

21 BY MR. JIMMERSON:

22 Q. Is inconsistent with a PR-OS land use
23 designation, correct?

24 MR. BICE: Objection to the form.

25 Contrary to the testimony yesterday.

1 MR. JIMMERSON: He didn't testify
2 yesterday, Counsel, so that objection makes no sense
3 at all.

4 MR. BICE: My apologies. Contrary to the
5 testimony of his supervisor yesterday.

6 MR. JIMMERSON: Well, your question is
7 improper. It's an attempt to influence the question.
8 Mr. Byrnes, I appreciate your help on this matter
9 since it's clearly an attempt to influence the
10 witness' testimony.

11 BY MR. JIMMERSON:

12 Q. I'll put the question back to you. Is
13 building residential units within R-PD7 inconsistent
14 with a PR-OS land use element?

15 A. Yes.

16 Q. And why is it inconsistent?

17 A. Because the general plan denotes a
18 density. The nuance of this is that the zoning
19 district also has a density associated with it.

20 Q. And here, what you have is you have the
21 promise of the zoning from 1990 and then you have a
22 land use element of 1992 that suggests P for parks.
23 Am I right? Am I reading that correctly?

24 A. From the -- from Exhibit 13, yes, it reads
25 parks, schools, recreation, open space but.

1 Q. And isn't it true that the master -- isn't
2 it true that the general plan for the southwest
3 sector placed upon the R-PD7 prior zoning is improper
4 or illegal designation by the city?

5 MR. BYRNES: Objection. Calls for a legal
6 conclusion.

7 BY MR. JIMMERSON:

8 Q. Because the golf course isn't even built
9 in 1992, couldn't possibly be a placement upon my
10 clients' property for something that is a proposed
11 use that hasn't even been constructed?

12 MR. BICE: Objection to the -- sounds like
13 a statement, not a question. And it calls --

14 MR. JIMMERSON: That is definitely a
15 question.

16 MR. BICE: And it calls for a legal
17 conclusion and is actually contrary to what the law
18 actually is.

19 BY MR. JIMMERSON:

20 Q. Let me revise the question to meet the
21 objection. Isn't it true that the city's action,
22 placing a parks recreation, open space, element upon
23 previously zoned R-PD7 is an illegal act, considering
24 fact that there is no golf course even begun to be
25 constructed, let alone existing at the time of this

1 designation?

2 MR. BYRNES: Objection. Calls for a legal
3 conclusion.

4 MR. BICE: Objection. Calls for a legal
5 conclusion. It misstates the actual facts and the
6 current applicant has no standing to raise it.

7 BY MR. JIMMERSON:

8 Q. You may answer the question, sir.

9 A. I would have to defer to counsel on that.
10 My understanding of the 1992 plan, there is actual
11 verbiage in there how the city came to place the
12 designations of where they placed it.

13 Q. And what was that verbiage?

14 A. I cannot recall it verbatim. In
15 paraphrasing, they did an inventory of all the
16 existing and entitled land uses and then placed a --
17 placed corresponding land use designations.

18 Q. How could they place -- how could they
19 possibly do that for a golf course that hadn't yet
20 been constructed?

21 MR. BICE: Objection as to the form and
22 assumes facts not in evidence.

23 BY MR. JIMMERSON:

24 Q. You have a R-PD7 zoning, correct, in 1992?

25 A. I can't say how the Planning Department

1 did it, but if they were taking existing entitlements
2 at that time and there was an action in 1990 that had
3 a master development plan that called for, or even
4 prior to 1989, that called for land use, use of land
5 in a prescribed layout in that area.

6 Q. I understand. But there's zoning change
7 that we saw on February -- April 4th of 1990. We
8 have a letter that memorializes what took place both
9 on May 1 of 1990 and January 29th of 1991. You and
10 I have both discussed at some length that there is no
11 suggestion and no condition and no reference and no
12 designation -- no parks, recreation or open space or
13 civic on the property. And the golf course at this
14 time is also not discussed, it's not required,
15 nothing, it's just shown as a proposed possible use.
16 Now two years later, the city passes a general plan
17 that purports to call some portion of my clients'
18 present property and Peccole's Trust property at the
19 time --

20 THE COURT REPORTER: Of my clients'
21 property what?

22 BY MR. JIMMERSON:

23 Q. Now and Peccole's Trust property in 1992
24 as PR-OS for a golf course that didn't even exist.
25 How is that possible?

1 MR. BICE: Objection to the form. There
2 are about 10 different statements by counsel in there
3 that assume facts that are not in evidence.

4 MR. BYRNES: Do you understand the
5 question?

6 THE WITNESS: My understanding of the
7 question is that there's a differentiation between a
8 general plan land use designation and a zoning
9 district, and prior to '92 there were no specific
10 designated land use designations in the general plan,
11 besides the three categories: The suburban, urban
12 and rural. So when the city created specific land
13 use designations, as I'm paraphrasing the '92 plan,
14 they did an inventory of existing land uses and
15 entitled land uses and the configuration that you see
16 there has more than likely what I'm pointing to as
17 Exhibit 13 would be the -- at the time entitled,
18 Peccole master development plan.

19 BY MR. JIMMERSON:

20 Q. And the existing uses was R-PD7, correct?

21 MR. BICE: Objection. Asked and answered
22 about 10 times.

23 BY MR. JIMMERSON:

24 Q. You may answer. That that's the first
25 time I've asked the question. Response to that, you

1 can answer.

2 MR. BICE: The record will reflect itself
3 on that.

4 MR. JIMMERSON: Thank you, Counsel.

5 THE WITNESS: R-PD7 is a zoning district.

6 BY MR. JIMMERSON:

7 Q. Right. And as you have indicated, that
8 was the existing entitlement as evidenced by these
9 two letters that we've gone over extensively,
10 correct?

11 A. It was one of the zoning districts that
12 were -- that the property was changed to, yes,
13 through that action.

14 Q. Referring to the May 1, 1990 and to the
15 January 29th, 1991 letters, correct?

16 A. The original and then the corrected, yes.

17 Q. And neither one of those letters speak in
18 terms of requiring a golf course, do they?

19 MR. BICE: Objection as to the form. The
20 record speaks for itself.

21 THE WITNESS: There is no condition that
22 speaks to a golf course.

23 BY MR. JIMMERSON:

24 Q. Even the possibility of a golf course is
25 not addressed within either letter?

1 MR. BICE: Same objection and the record
2 speaks for itself.

3 BY MR. JIMMERSON:

4 Q. Correct?

5 A. There is no -- there's no verbiage
6 concerning a golf course in the conditions of --

7 THE COURT REPORTER: Wait. There's no
8 verbiage in concerning what?

9 THE WITNESS: A golf course and the
10 conditions of approval.

11 BY MR. JIMMERSON:

12 Q. Then tell me how a city planner could
13 place a PR-OS land use designation upon my clients'
14 property zoned R-PD7 without any reference to a golf
15 course by action in 1992 and do so legally?

16 MR. BICE: Objection to the form. Calls
17 for a legal conclusion.

18 MR. BYRNES: Calls for speculation.

19 BY MR. JIMMERSON:

20 Q. You may answer the question, sir.

21 A. I'm going to defer to counsel on the legal
22 portion of that. In regards to as previously stated,
23 that section of the '92 plan is -- they indicated how
24 they went about dedicating or designating the land
25 use designations on there.

1 Q. I'm asking you, how could they possibly do
2 so knowing the history of this property as you do?

3 MR. BICE: Objection to the form.

4 BY MR. JIMMERSON:

5 Q. How could they properly do that? Make it
6 easy. Wouldn't you agree that that was an improper
7 action for the Planning Department --

8 MR. BICE: Objection.

9 MR. JIMMERSON: Let me finish the
10 question.

11 MR. BICE: Sorry, Jim.

12 BY MR. JIMMERSON:

13 Q. Wouldn't you agree that the designation of
14 a PR-OS upon some portion of my clients' property in
15 1992, in light of the facts of this matter and the
16 prior designation without any conditions of the
17 property being R-PD7, was improper?

18 MR. BICE: Objection to the form.
19 Misstates the actual record. Calls for a legal
20 conclusion.

21 MR. BYRNES: Join as to legal conclusion.

22 BY MR. JIMMERSON:

23 Q. Now you may answer, sir.

24 A. I don't know if it would be improper or
25 not. At this point in time, I don't know what the

1 ordinances were. I wasn't even out of high school.

2 Q. But you do know in 19 -- in 2016, when
3 you're out of high school, whether or not this would
4 be improper, and it certainly would be improper;
5 isn't that true?

6 MR. BICE: Objection -- I'm sorry.
7 Objection to the form. Argumentative. Misstates the
8 actual record.

9 MR. BYRNES: Asked and answered also.

10 THE WITNESS: In my experience, I have not
11 worked on creating a general plan where there was
12 one -- where there was not one beforehand, so I don't
13 have the experience to answer that.

14 BY MR. JIMMERSON:

15 Q. So your answer as you sit here today as
16 you indicated that you don't know whether it was
17 improper or not?

18 A. Correct.

19 Q. Okay. Thank you. Looking at the
20 ordinance and the designation on this map of
21 Exhibit Perrigo 13, what are the boundaries of the
22 PR-OS?

23 A. Excuse me, you're -- just for
24 clarification, were you referring to two different
25 exhibits or just 13?

1 Q. My question references either the
2 ordinance, which I don't have in front of me, and the
3 map that is, I believe, what you told me was
4 illustrative of the action of the ordinance. My
5 question is: Where are the boundaries of a PR-OS
6 designation in the red box?

7 A. I don't see any necessarily legal parcel
8 boundaries or, at this point, maybe they were large
9 parcels.

10 Q. So where does the PR-OS begin?

11 A. To delineate --

12 Q. Where does the PR-OS begin? Can you tell
13 me where the PR-OS begins?

14 A. You could start from the western boundary
15 of Hualapai and it travels through to the -- to
16 Rampart.

17 Q. Is it -- is it defined or tied to a legal
18 description of a piece of property?

19 A. I don't believe so, no.

20 Q. So it doesn't affect my clients' property
21 rights, agreed?

22 MR. BICE: Objection to the form. Calls
23 for a legal conclusion. Misstates the law.

24 BY MR. JIMMERSON:

25 Q. You may answer the question, sir.

1 A. The general plan is applicable to all
2 properties within the City of Las Vegas. So this
3 land use map -- the southwest sector, it's applicable
4 to all of the properties that are displayed.

5 Q. My question to you is, is there any
6 specific way for my clients to know, knowing the, you
7 know, the boundaries of their land, where their land
8 is located, the 250 acres that they own, to know
9 where the PR-OS exists and where it doesn't exist?

10 MR. BICE: Objection to the form. The
11 document speaks for itself.

12 BY MR. JIMMERSON:

13 Q. You may answer the question, sir. It's a
14 very simple question.

15 A. Well, this is not the current map either.
16 So in '92 whenever the parcel configuration is, it
17 could have matched up to the existing property lines,
18 but there is no legal description associated with
19 this, so you can't survey in the exact benchmarks of
20 where one would start and one would stop.

21 Q. So it could have matched up and it could
22 not have matched up because you don't have any parcel
23 references?

24 MR. BICE: Object. Objection as to form.

25 ///

1 BY MR. JIMMERSON:

2 Q. I mean, you're speculating when you say it
3 could match up, correct?

4 MR. BICE: Is that a question?

5 BY MR. JIMMERSON:

6 Q. It is absolutely.

7 MR. BICE: Objection --

8 BY MR. JIMMERSON:

9 Q. Aren't you -- don't you agree that you are
10 speculating when you answer it could match up or it
11 couldn't match up?

12 MR. BICE: Objection as to the form. The
13 record will speak for itself.

14 BY MR. JIMMERSON:

15 Q. You may answer, sir.

16 A. In regards to where property lines are in
17 relation to the land use designations, yes. The
18 configure --

19 Q. Yes what?

20 A. Yes, as far as it's -- I have to speculate
21 that it's matching -- could or could not be matching
22 onto property lines as you stated.

23 Q. All right. Now, we note that for purposes
24 of the original 18 hole golf course, there was not
25 submitted a site development plan or plot plan as

1 evidenced by Exhibit E, agreed?

2 MR. BICE: Object. Objection. Form.
3 Assumes facts not in evidence. And contrary to the
4 record.

5 THE WITNESS: Not in relation to Exhibit E
6 but in Exhibit LLL, I'm not aware of any plot plan
7 review for the golf course.

8 BY MR. JIMMERSON:

9 Q. All right. And LLL is the index or
10 summary of actions, and we don't see any plot plan or
11 site development review for the property in the 1994
12 time period for the original 18 hole golf course,
13 correct?

14 A. Correct.

15 Q. Okay. Now, we also know that there was no
16 site development plan for the new 9-hole golf course
17 addition in 1996. We've covered that, correct?

18 A. Correct.

19 Q. I'm just trying to get us to another
20 point. Now we know of an ordinance that is
21 confirming the R-PD7 zoning entitlement to my
22 clients' property in 2001. You're familiar with
23 that, correct?

24 A. That would be Exhibit H?

25 Q. That's correct. Now we've got it. So now

1 turning to Exhibit H, do you recognize Exhibit H?
2 It's called "Bill Number Z 2001-1 Ordinance
3 Number 5353."

4 A. Yes.

5 Q. And what is that document?

6 A. It's an ordinance to amend the official
7 zoning map atlas of the City of Las Vegas by changing
8 zoning designations of certain parcels of land --

9 THE COURT REPORTER: By changing? Sorry.

10 THE WITNESS: The zoning designations of
11 certain parcels of land and to provide for other
12 related matters.

13 BY MR. JIMMERSON:

14 Q. To give us all an understanding and the
15 court an understanding and jury, what is a zoning map
16 atlas within the meaning of your last answer?

17 A. It is the official map where all zoning
18 designations are denoted for specific properties.

19 Q. And do I gather that that atlas would
20 cover all land within the boundaries of City of Las
21 Vegas?

22 A. Yes.

23 Q. And so now there's an amendment to that
24 atlas coming into place in 2001; is that right?

25 A. Correct.

1 Q. To your best knowledge, looking at the
2 historical records, when was the last previous atlas
3 updated prior to 2001?

4 A. I don't recall. I would have to have it
5 researched on.

6 Q. Several years?

7 A. I don't know.

8 Q. 1980s?

9 A. I don't know.

10 MR. BICE: Objection. Asked and answered.

11 BY MR. JIMMERSON:

12 Q. You didn't run into it in your work from
13 1990 to 2001, though, did you?

14 A. Not that I recall.

15 Q. Now essentially what's happening is the
16 city and your Planning Department, your predecessor
17 Planning Department gets around to saying, listen,
18 it's time that we update the map atlas, zoning map
19 atlas, and they do so in 2001 in the form of
20 Exhibit H; is that right?

21 A. In general terms, yes.

22 Q. All right. And unlike the ordinance you
23 talked about in 1992, here APN numbers were
24 specifically attached to the ordinance; is that
25 right?

1 A. Correct. They're associated here to
2 reflect previous actions by the City Council.

3 Q. And did you note that the property owned
4 by my clients, 180 Land Company, 70 Acres and Fore
5 Stars, LLC, their lands are referenced within the APN
6 numbers attached to Exhibit H?

7 A. I don't have their APNs memorized, but I'm
8 assuming yes.

9 Q. All right. And so the City Council for
10 the City of Las Vegas in Section 1 states that: The
11 municipal code from 1983 edition is hereby amended by
12 changing the zoning designations for the parcels of
13 land listed in the attached document. The parcels of
14 land have been approved for rezoning by vote of the
15 City Council or by means of a resolution of intent to
16 rezone pursuant to applicable zoning regulations. In
17 each case, the conditions of rezoning have been
18 fulfilled and changing the corresponding zoning
19 designations on the official zoning map atlas is now
20 indicated. On the attached document, the parcels are
21 listed by assessor parcel number. The attached
22 document shows for each parcel, the zoning
23 designation currently shown on the official zoning
24 map atlas indicated as, quote, current zoning, end of
25 quote; and the new zoning designation to be shown for

1 the parcel, parenthesis, indicating there's new
2 zoning, closed parenthesis, period.

3 Have I read that accurately?

4 A. Yes.

5 Q. What does it mean when it says that in
6 each case of conditions of rezoning -- excuse me,
7 when it says, quote, in each case, the conditions of
8 rezoning have been fulfilled?

9 MR. BICE: Objection to form. Calls for
10 speculation from this witness.

11 BY MR. JIMMERSON:

12 Q. You may answer the question, sir.

13 A. It would be the application. My
14 interpretation of the conditions of rezoning have
15 been fulfilled is that the rezoning references the
16 application type, meaning that it went -- the
17 application went before City Council and was acted
18 upon.

19 Q. And you recall that there were 12
20 conditions to the change of zoning to my clients'
21 property -- the predecessor clients, Peccole Trust
22 property in April 4th of 1990. Do you recall that?

23 A. Yes.

24 Q. Okay. And by this resolution in 2001, is
25 the City Council deeming those 12 conditions fully

1 satisfied, or to use their words, have been
2 fulfilled?

3 MR. BICE: Objection to the form. Lacks
4 foundation. Calls for speculation from this witness.

5 THE WITNESS: One could interpret that
6 that's what that means, yes.

7 BY MR. JIMMERSON:

8 Q. In fact, you interpreted it that way in
9 communications you've had with my client; isn't that
10 true?

11 A. I don't recall.

12 Q. Do you recall specifically telling Mr.
13 Kaempfer and Mr. Pankratz that the 12 conditions are
14 fulfilled by virtue of the action of the City Council
15 through this ordinance, Exhibit H, or words of like
16 effect?

17 A. I don't recall that conversation.

18 Q. Are you denying that conversation took
19 place?

20 MR. BICE: Objection. Asked and answered.

21 THE WITNESS: I don't recall if there was
22 conversation in the first place.

23 BY MR. JIMMERSON:

24 Q. And why is it that the words can be
25 interpreted, as I have suggested, that the 12

1 conditions to my clients zone change in 1990 have
2 been fulfilled as evidenced by this ordinance? Why
3 is that a reasonable conclusion?

4 MR. BICE: Objection to the form.

5 THE WITNESS: As far as looking at the
6 sentence in each case, the conditions of rezoning
7 have been filled. Now the conditions of rezoning, is
8 that the conditions of the application type, meaning
9 it's a rezoning, therefore, it needed to be publicly
10 heard now before council, approved, and then
11 exercised.

12 BY MR. JIMMERSON:

13 Q. Got it. And so in the time period April
14 4th of 1990 to roughly I think this is the fall of
15 2001, the City Council by this ordinance in 2001
16 deems those conditions to rezoning to be fulfilled.
17 Fair statement?

18 MR. BICE: Objection to the form. Calls
19 for speculation. And lack of foundation from this
20 witness.

21 BY MR. JIMMERSON:

22 Q. You may answer the question, sir.

23 A. I'm not sure if they would -- the council
24 would necessarily say that they were fulfilled in the
25 sense that some conditions are always ongoing that

1 they must continuously meet them.

2 Q. That is why you say -- I'm going to ask
3 you, why do you believe, why did you say that, yes, a
4 person can interpret the interpretation that the
5 conditions to rezoning, in this case the 12
6 conditions for rezoning, have been fulfilled is a
7 reasonable interpretation?

8 MR. BICE: Objection to the form. Lacks
9 foundation. Calls for this witness to speculate.

10 BY MR. JIMMERSON:

11 Q. You may answer the question.

12 A. Based upon at this point in time, the
13 rezoning of that property, if they exercised it by
14 commencing development, and therefore, establishing
15 the zoning districts that they were rezoned to.

16 Q. Thank you. And staff, planning staff is
17 the author of this paragraph, correct? They're the
18 ones who developed the atlas. That's three
19 questions, I'll withdraw.

20 Who is responsible for developing the
21 amendment to the ordinance to allow for this zoning
22 to occur? Isn't that within the City Planning
23 Department's bailiwick?

24 A. The Planning Department may have initiated
25 the update. The ordinance drafting is done by the

1 City Attorney's office.

2 Q. Understood. But to know which properties
3 have been rezoned, to know whether or not conditions
4 to rezoning have been fulfilled, that would be within
5 the purview of City Planning; isn't that right?

6 MR. BICE: Objection to the form. Lacks
7 foundation.

8 THE WITNESS: I would assume so, yes.

9 BY MR. JIMMERSON:

10 Q. Okay. Thank you. Now, with the passage
11 of this ordinance and having read the ordinance, is
12 it a fair statement that there's no reference within
13 this ordinance as it relates to my clients' property
14 that speaks to any land use designations or
15 restrictions like PR-OS or anything like that?

16 MR. BICE: Objection to the form. The
17 document speaks for itself.

18 THE WITNESS: Sorry, it's pixellated, but
19 no, it basically states a current zoning to a new
20 zoning.

21 BY MR. JIMMERSON:

22 Q. Thank you. At least as it relates to my
23 clients' property and your own knowledge of this,
24 that would be a confirmation of the earlier 1990
25 zoning of R-PD7; is that right?

1 A. Without going through each one of them,
2 but I would assume so, yes.

3 Q. And this confirmation of zoning is done by
4 the City Council by ordinance without any conditions
5 placed upon my clients' property; isn't that right?

6 MR. BICE: Objection to the form. Lacks
7 foundation. Contrary to the documents in evidence.

8 BY MR. JIMMERSON:

9 Q. You can read the document.

10 A. The adoption -- the ordinance that changes
11 the map atlas does not eliminate any conditions of
12 approval that would have been placed upon by the
13 original zoning action that changed the zoning
14 district.

15 Q. No, but it deems those conditions
16 fulfilled, correct?

17 MR. BICE: Objection to the form.
18 Misstates the law.

19 BY MR. JIMMERSON:

20 Q. You may answer the question.

21 A. It deems -- one can determine that they
22 are fulfilled --

23 THE COURT REPORTER: I'm sorry, deems
24 what?

25 THE WITNESS: That one can interpret that

1 they would be fulfilled.

2 BY MR. JIMMERSON:

3 Q. And what I'm saying to you is -- all I'm
4 asking is a simple question. This document, the
5 ordinance Exhibit H, does not impose any conditions
6 upon the zoning that is now being confirmed here as
7 R-PD7; isn't that correct?

8 MR. BICE: Objection.

9 BY MR. JIMMERSON:

10 Q. Yes or no?

11 MR. BICE: Objection to the form. Calls
12 for a legal conclusion.

13 BY MR. JIMMERSON:

14 Q. You may answer.

15 A. It's my honest -- this doesn't impose any
16 additional conditions.

17 Q. Referring to Exhibit H?

18 A. That is correct.

19 Q. And it doesn't refer to any conditions at
20 all, whether they be inclusive or additional,
21 correct?

22 A. It doesn't refer to any conditions.

23 Q. All right. Thank you, sir.

24 Now, have you looked at the maps of the
25 as-built product at the Peccole plan as amended --

1 the as-built construction of the plans today versus
2 the Z-17-90 plan of 1990?

3 A. I have looked at those. Those were
4 actually provided by the applicant.

5 Q. And we have marked those as exhibits which
6 I would like to review with you now.

7 MR. JIMMERSON: Do you have those, Todd?

8 MR. BICE: I'm sorry. What was that, Jim?

9 MR. JIMMERSON: I'm sorry, I meant Todd
10 Davis. I'm just looking for the maps that we went
11 through yesterday. I think it was triple.

12 MR. BICE: OOO.

13 MR. JIMMERSON: That's right.

14 MR. BICE: I've got them here somewhere.

15 MR. JIMMERSON: O, P, Q and R.

16 MR. BICE: That's right. I think the
17 first one was M, Jim, then, N, O, P, and Q.

18 MR. JIMMERSON: Mark this as MMM, please.

19 (Exhibit Number MMM was marked.)

20 BY MR. JIMMERSON:

21 Q. Showing you Exhibit MMM, do you recognize
22 this as the Venetian Foothills map from 1986?

23 A. I see it as Venetian Foothills as
24 indicated on it, yes.

25 Q. All right. And do you recognize at the

1 time there was a suggestion of two golf courses, one
2 south of Charleston, one north of Charleston?

3 A. Yes.

4 Q. And do you remember in terms of the
5 Peccole master plan in 1996, how many acres were
6 dedicated to parks, open space and recreation under
7 this plan?

8 A. I would have to review the documents to
9 give you that number.

10 Q. Compared to -- I'm just going to suggest
11 there was more than a hundred for phase 1 south of
12 Charleston. Do you know how many acres are dedicated
13 to any type of open space, parks or recreation today
14 south of Charleston on phase 1?

15 A. I would -- can you restate the question?

16 Q. Do you know how many acres today are
17 reserved for parks or open space, recreation or civic
18 south of Charleston, what we might call phase 1?

19 A. I don't know the number off the top of my
20 head.

21 Q. Is it substantially less than what had
22 originally been projected or proposed?

23 A. In relation to the Venetian Foothills or
24 the subsequent action that established the Peccole
25 Ranch Master Development Plan?

1 Q. No, the Venetian Foothills, referring to
2 MMM?

3 A. Based upon what's visually here and what
4 exists, I imagine that what existed today is less
5 than that.

6 Q. You know it to be less, correct?

7 A. Yes, there's no golf courses.

8 Q. So how did it happen that there's proposed
9 in 1986 a golf course south of Charleston within the
10 Peccole master plan phase 1 and then there being no
11 golf course south of Charleston in Peccole Ranch
12 phase 1?

13 A. Well, this is the Venetian Foothills was
14 pre-Peccole phase 1.

15 Q. Okay. Good point. How does it happen
16 that the Venetian Foothills proposal is changed to
17 much less in terms of parks, recreation, open space?

18 A. I believe one of the conditions was for
19 them to come in with development plans, subsequent
20 development plans, when they wanted to develop them.

21 Q. And was the -- was the Venetian Foothills
22 master plan changed?

23 A. From this plan to what they came in to
24 with the Peccole Ranch Master Development Plan, yes.

25 Q. And for this plan, so that the judge

1 understands from MMM --

2 A. Correct.

3 Q. -- to a later plan. Very good. That's
4 all I need. And looking north of Charleston to the
5 second golf course, was that golf course developed as
6 is designed here?

7 A. No.

8 Q. And for purposes of you and I being on the
9 same wavelength, I look at this and I see it sort of
10 as a triangle in the center. Would you agree?

11 A. It's triangular in shape, yes.

12 Q. As opposed to what was ultimately
13 constructed. It doesn't look like a triangular
14 piece. Would you agree?

15 A. The current configuration, no.

16 Q. Is not a triangular?

17 A. Correct.

18 Q. Okay. Thank you. So then the next map I
19 want to show you is Exhibit NNN as in Nancy.

20 (Exhibit Number NNN was marked.)

21 BY MR. JIMMERSON:

22 Q. Can you tell us what Exhibit NNN is?

23 A. The title says "Peccole Ranch
24 Partnership," but then there's additional title and
25 it says "1989 Approved Peccole Ranch Master Plan."

1 Q. All right. So this was the master plan as
2 the -- the Peccole master plan as it existed in 1989
3 as far as you know; is that right?

4 A. Yes.

5 Q. And you and I have gone over this, but I
6 wanted to spend three minutes on this. The Peccole
7 master plan was a conceptual plan, correct?

8 A. As stated in the document.

9 Q. And that's in fact the term that was used
10 within the first two sentences of the document, that
11 it was a conceptual plan, correct?

12 MR. BICE: Objection to the form.

13 BY MR. JIMMERSON:

14 Q. You may answer the question.

15 A. It did state that, yes.

16 Q. It wasn't -- it wasn't to be something
17 that could be -- withdrawn. It could be changed,
18 correct?

19 A. Inherent with conceptual, I would say yes.

20 Q. All right. And you have seen other master
21 plans brought before the city, correct?

22 A. I have.

23 Q. And it's -- master plans are frequently
24 changed by the developer; is that correct?

25 A. They have been modified, yes.

1 Q. And in fact developers oftentimes reserve
2 their right to make changes going forward, and as you
3 have indicated in other answers, based upon --

4 THE COURT REPORTER: I'm sorry. As you've
5 indicated in other?

6 BY MR. JIMMERSON:

7 Q. In other testimony based upon economic
8 conditions and other -- because of other causes,
9 correct?

10 A. Usually associated with master development
11 plans are development agreements where those -- the
12 ability to modify the plans are negotiated.

13 Q. And then let's look now at Exhibit
14 Number-- triple O, OOO, which is the Z-17-90 plan
15 approved in 1990.

16 (Exhibit Number OOO was marked.)

17 MR. JIMMERSON: I think I've given all
18 mine away. I knew that .

19 BY MR. JIMMERSON:

20 Q. And you recognize -- we've talked about
21 this before, OOO this is the Z-17-90 map of the
22 approval of April 4th of 1990?

23 A. Looks to be, yes.

24 Q. All right. Thank you. And you'll note if
25 you were to compare the 1989 plan to the 1990 plan,

1 there were substantial changes between the two,
2 agreed?

3 A. Yes.

4 Q. The golf course proposal is very
5 different? The location of multifamily is very
6 different?

7 MR. BICE: Objection to the form.

8 BY MR. JIMMERSON:

9 Q. Correct?

10 A. Configuration of the golf course is
11 different.

12 Q. There's also withdrawal of a hundred acres
13 at the corner of Charleston and Rampart, correct?

14 MR. BICE: Objection to form.

15 THE WITNESS: I would have to refer to the
16 document which there's verbiage in there that talks
17 about what were the amendments.

18 BY MR. JIMMERSON:

19 Q. Do you see that there were withdrawal of a
20 hundred acres for Boca Park changed, taken out of the
21 plan?

22 A. There is a portion of property at the
23 northern alignment of Charleston that's been moved,
24 whatever the acreage may be.

25 Q. All right. And you and I could drive

1 there and see it's the corner of Charleston and
2 Rampart and it's the northeast corner where Boca Park
3 is located, correct?

4 A. That's correct.

5 Q. So in the short time period of 1989, 1990,
6 there are substantial changes to the master plan,
7 agreed?

8 A. Yes.

9 Q. Then let's go on if we can to -- and those
10 changes to the master plan are accomplished by the
11 developer asking for approval by the City Council,
12 correct?

13 A. That is correct.

14 Q. And that's what occurred on April 4th of
15 1990, correct?

16 A. Correct.

17 Q. Is there any -- is there any mixed use
18 zoning that is present here in the Z-17-90?

19 A. Mixed use is not a zoning designation.

20 Q. How do you --

21 A. It is a permissible use category in which
22 you would have to apply for.

23 Q. Is it -- is there any PD shown on this
24 exhibit?

25 A. PD is also a zoning district. These are

1 delineation of -- special land use --

2 THE COURT REPORTER: These are delineation
3 of what?

4 THE WITNESS: Special land use
5 designations within a master development plan.

6 BY MR. JIMMERSON:

7 Q. My question to you is: Is there any PD
8 zoning shown on Exhibit Z-17-90?

9 A. I don't see any.

10 Q. Is there PD use today, 2016, on any of
11 this property?

12 A. Yes.

13 Q. Where is it located?

14 A. In two locations. The Queensridge -- one
15 Queensridge Towers and the northern portion of Boca
16 Park.

17 Q. And how -- what had to happen for that to
18 occur?

19 A. They were rezoned through a City Council
20 action.

21 Q. And was a master plan amended?

22 A. In both instances, no. I believe the
23 determination was that the current general land use
24 designation was compatible with the planned
25 development zoning district.

1 Q. And who made the determination that there
2 was not a need for a general plan amendment, that the
3 current plan was compatible within the meaning of
4 your last answer?

5 A. I believe Flynn Fagg worked on the Towers
6 and he also may have worked on Boca Park.

7 Q. And Mr. Fagg was what position, please?

8 A. At that point in time, I don't know where
9 he was in the org chart. He started as an Urban
10 Design Coordinator and moved up through Deputy
11 Director to Director.

12 Q. Of planning?

13 A. Of the Planning Department. If he was
14 writing the staff report, he was not the Director at
15 that point. He was probably the Urban Design
16 Coordinator.

17 Q. And then we have two more maps we're going
18 to mark as P and Q.

19 (Exhibit Number PPP was marked.)

20 (Exhibit Number QQQ was marked.)

21 BY MR. JIMMERSON:

22 Q. Let's go back on the record. Earlier you
23 said you had indicated that you have seen maps to
24 show comparison to Z-17-90 what was built, the
25 as-built, and I want to show that to you and we're

1 going to take a break.

2 First, for purposes of the record, these
3 exhibits we've gone over on these maps are triple
4 letters. So we're talking MMM, NNN, OOO, PPP and
5 QQQ.

6 And if you were to superimpose Z-17-90,
7 which is OOO, upon the as-built, which is QQQ, you're
8 going to get PPP. So look at PPP and satisfy
9 yourself that this is our best ability -- best effort
10 to date, at least, to superimpose the as-built of
11 what we can see today in 2016, compared to what was
12 approved with regard to the master plan, and then the
13 zoning change on April 4th of 1990, all right.

14 MR. BICE: Objection to the form.

15 BY MR. JIMMERSON:

16 Q. And you have said you have seen this map
17 before, correct?

18 A. I have. I believe this was part of a
19 submittal package for the major modification to the
20 Peccole Ranch plan.

21 Q. And you can see that the golf course
22 location changed from 1990 to its actual construction
23 in 1995 through '9?

24 THE COURT REPORTER: I'm sorry. Can you
25 redo that question, please.

1 BY MR. JIMMERSON:

2 Q. You can see -- you can observe that the
3 location of the golf course changed from that which
4 is set forth in Z-17-90 to where it was actually
5 built?

6 A. Yes.

7 Q. Homes that were shown in 1990 would have
8 been in the middle of a golf course based upon
9 as-built, correct?

10 A. Yes.

11 Q. So there were substantial changes made
12 between 1990 and the completion of the project; is
13 that right?

14 A. Yes.

15 Q. Are there any actions, any amendment to
16 the general plan that approves any of the changes
17 that we see, for example, on location of the golf
18 course, location of the houses, and whatnot?

19 A. Just to clarify your question, is it
20 specifically golf courses and houses or Peccole Ranch
21 Phase 2?

22 Q. No, to the golf course and houses.

23 A. Not to my knowledge. I know there have
24 been specific general plan amendments.

25 Q. There were two. Yes, that's true.

1 MR. BICE: Object. Objection to the form.

2 THE WITNESS: I'll refer to Exhibit L.

3 MR. JIMMERSON: LLL.

4 THE WITNESS: LLL. Sorry.

5 BY MR. JIMMERSON:

6 Q. Those are reflected on LLL.

7 A. We will work under the assumption that
8 there's two.

9 Q. Satisfy yourself, sir. This is 1994 and
10 1995.

11 A. I concur.

12 Q. And neither one of those refer to the golf
13 course, correct?

14 A. Well, I would have to rereview the staff
15 reports, but I don't -- I don't recall if they did or
16 not.

17 Q. Neither one of them refer to location of
18 houses, correct?

19 A. I believe those actions weren't -- those
20 weren't specific to subdivisions on the golf course,
21 on the original configuration of the golf course.

22 Q. If the golf course was a requirement to be
23 placed on this property, wouldn't you have to modify
24 the master plan?

25 MR. BICE: Objection to form. Calls for a

1 legal conclusion.

2 BY MR. JIMMERSON:

3 Q. You may answer the question, sir.

4 A. Your condition is, if a condition of
5 approval for a rezoning application says that you
6 need to have a golf course, you then would have to
7 amend the general plan.

8 Q. Yes.

9 A. That's your question. Well, at the time
10 they made the application for the rezoning where that
11 condition would be placed on would be at the time in
12 which they would have required the general plan.

13 Q. But there was no general plan in 1990
14 because we've already established that there was no
15 requirement to put a golf course on the property in
16 1990. We've already established that through your
17 testimony here.

18 A. Correct.

19 MR. BICE: Objection.

20 MR. JIMMERSON: So all I'm saying --

21 MR. BICE: Wait. Wait. I'm sorry.

22 MR. JIMMERSON: All I'm trying to drive
23 home -- go ahead.

24 MR. BICE: Objection to form. Inaccurate
25 representation.

1 BY MR. JIMMERSON:

2 Q. The point I'm trying to drive home here,
3 for purposes of yourself, as well as the court and
4 counsel, is that had a golf course been required,
5 which we've established that it hasn't. But had a
6 golf course been required, a change in the general
7 plan would have been required also; isn't that right?

8 A. That's under the assumption -- today, yes,
9 they would have to do it. Then, as we've already
10 ascertained there was -- prior to the specific land
11 use designations and the general plan amendment
12 process.

13 Q. Yeah, even after 1992, there was no
14 general plan amendment that affected the golf course,
15 correct, because it was built in 1998?

16 A. Well, I have not at any point
17 substantiated when the current configuration in the
18 general plan land use designation versus what's in
19 the '92 plan and by what actions.

20 Q. Mr. Lowenstein, you have in some
21 regards -- you know by the letters we've gone over --
22 that the work wasn't done until '94, '95, '96. The
23 additional 9 holes wasn't even agreed to until 1996.
24 So would you just work with me to indicate that,
25 assuming it took place between 1996 and 2002, there

1 was no plan -- general plan amendment?

2 MR. BICE: Objection to the form.

3 BY MR. JIMMERSON:

4 Q. Affecting the golf courses.

5 MR. BICE: Objection to the form and all
6 of the various representations that predicate that.

7 BY MR. JIMMERSON:

8 Q. You may answer the question, sir.

9 A. I don't know. Honestly, there have been
10 other amendments to the general plan. It may have
11 been a citywide action that affected the property, I
12 don't know.

13 Q. You don't know of any though, as you sit
14 here today?

15 A. That's the representation I'm making. I
16 have research being done.

17 Q. So tell me how you would place a PR-OS on
18 property that hadn't even been developed as a golf
19 course?

20 MR. BICE: Same objection as earlier
21 raised.

22 BY MR. JIMMERSON:

23 Q. You may answer the question, sir. He
24 doesn't like my question.

25 A. As it's previously stated, the '92 plan

1 did their inventory of existing and entitled uses,
2 and that's how they, at that point, is my
3 understanding is that they used that tried
4 methodology under the '92 plan to assess the
5 designations.

6 Q. At a time when there was no requirement to
7 build any golf course. Fair statement?

8 MR. BICE: Objection as to the form.

9 BY MR. JIMMERSON:

10 Q. Fair statement?

11 MR. BICE: Assumes facts not in evidence.

12 BY MR. JIMMERSON:

13 Q. At the time the City Planning Department
14 put the PR-OS on this property in 1992, there was
15 no -- for a PR-OS, there was no golf course required.
16 Is that a fair statement? Would you at least work
17 with me and concede that point?

18 MR. BICE: Same objection as before.
19 Argumentative and asking the witness to please work
20 with you. The facts don't change based on counsel's
21 desire for a particular --

22 BY MR. JIMMERSON:

23 Q. You're right. That question was very
24 poor. You're absolutely right.

25 Was there any requirement for a golf

1 course to be constructed in 1992 when City Planning
2 made a PR-OS designation?

3 MR. BICE: Same objections as before.
4 Assumes facts not in evidence.

5 BY MR. JIMMERSON:

6 Q. You may answer the question, sir.

7 A. As we stated earlier in this deposition,
8 there are no conditions requiring the golf course,
9 although the City Council approved a development
10 plan, and that development plan, that entitlement is
11 what -- my assumption is that based on what it states
12 in the '92 plan, is how they came to place the
13 designations on the property.

14 Q. But you don't know?

15 A. I was not working with the City of Las
16 Vegas in 1992.

17 Q. Is there a PR-OS on my clients' property
18 now, 2016?

19 A. Yes, there is a general plan designation.

20 Q. How did that happen since the golf course
21 wasn't constructed until after 1995 or '96?

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

24 THE WITNESS: Well, I don't know, and as
25 stated before, that research is being done.

1 BY MR. JIMMERSON:

2 Q. Have you seen in Exhibit LLL any
3 reference to changing PR-OS locations to match the
4 as-built construction of the property as shown by
5 Exhibit RRR -- I mean QQQ?

6 A. No.

7 Q. Have you seen any action on this property
8 allowing for a change of location of the PR-OS
9 between 20 -- excuse me, between 1996 and 2016?

10 A. Other than the land use element was
11 adopted in 2005 and then amended subsequent to that,
12 if the southwest sector land use map was adopted as
13 part of that, then that also would have placed the
14 PR-OS on it.

15 Q. That's a lot of ifs. Have you seen any
16 action that would change locations of the PR-OS
17 affecting my client's property to match where the
18 actual golf course was actually constructed?

19 MR. BICE: Objection to the form of the
20 question and representations about a lot of ifs.

21 BY MR. JIMMERSON:

22 Q. You may answer the question. No ifs in my
23 questions.

24 A. I'll limit my ifs.

25 Q. Yes or no, sir?

1 A. The research has not been completed as of
2 yet. I don't know.

3 Q. As of this moment in time, looking at
4 Exhibit LLL that you spearheaded, is there any
5 reference within Exhibit LLL to any actions being
6 taken to change locations of the PR-OS designation
7 for land use on my clients' property?

8 A. As previously answered, no.

9 Q. May we conclude that any designation by
10 PR-OS was done, therefore, administratively by City
11 Planning?

12 MR. BICE: Objection to form and misstates
13 the prior testimony.

14 BY MR. JIMMERSON:

15 Q. You may answer the question, sir.

16 A. I don't know. The southwest sector plans
17 that are adopted, they go through City Council, so
18 there is a --

19 Q. Start with that. I'm with you on that.
20 So 1992, somebody has adopted -- the City Council
21 adopts a general plan for the first time that seems
22 to indicate the PR-OS in the vicinity, without
23 defining it, of an area that we've gone through.
24 Fair statement?

25 MR. BICE: Objection.

1 BY MR. JIMMERSON:

2 Q. My question is since we know the golf
3 course location changed, and you've so testified,
4 what action -- what was the action to change the
5 location of PR-OS to match the present location of
6 the golf course holes done administratively?

7 MR. BICE: Objection to the form of the
8 question.

9 BY MR. JIMMERSON:

10 Q. You may answer the question, sir.

11 A. I don't believe it to be done
12 administratively because those maps have to be
13 approved by City Council.

14 Q. What maps have to be approved by City
15 Council?

16 A. The sector land use maps.

17 Q. And the actions that you say were approved
18 by the city, are they reflected in Exhibit LLL?

19 A. No.

20 Q. So what is it that you have charged your
21 staff to now try to find so I can have a clear
22 understanding?

23 A. To research the general plan as relates to
24 the subject site and to basically find all ordinances
25 and City Council actions.

1 Q. And to change the general plan requires a
2 fair amount of due process notice; isn't that right?

3 A. As I highlighted before, if it's citywide,
4 and then it's the general notification in the
5 newspaper, a neighborhood meeting, which is also
6 noticed in the newspaper and then held at Planning
7 Commission, City Council, and a number of times at
8 City Council because it's an ordinance at the end.

9 Q. All right. And is there any amendment to
10 the general plan that is done less than citywide or
11 is every amendment to the general plan citywide?

12 A. There are site specific, which an
13 applicant can apply for, where they can request a
14 change in the general plan designation.

15 Q. And I'm familiar with that, but my
16 question to you is, for purposes of following a land
17 use designation change by the city of PR-OS or any
18 other designation where there hasn't been an
19 application filed by an owner or a developer, does
20 the city do so citywide or does the city do so
21 perhaps either by sector or by site specific nature?

22 MR. BICE: Objection. Form. Foundation.

23 THE WITNESS: I would have to review the
24 code. I don't recall off the top of my head.

25 ///

1 BY MR. JIMMERSON:

2 Q. So --

3 THE VIDEOGRAPHER: Mr. Jimmerson, I'm
4 sorry, just a quick pause so I can change the disk.

5 MR. JIMMERSON: We can take a break.

6 THE VIDEOGRAPHER: We are off the video
7 record. And this ends disk number 2 at 3:36 p.m.

8 (Off the record.)

9 THE VIDEOGRAPHER: We are back on the
10 video record. The time is 3:56 p.m. and this begins
11 media number 3.

12 BY MR. JIMMERSON:

13 Q. Thank you. After taking an afternoon
14 break, we're focusing upon Perrigo 13, and we're also
15 focused upon 30, which was the approved Z-17-90.
16 Based upon your research of the City of Las Vegas
17 Planning Department records, the 1992 approval by the
18 City Council of an ordinance that approved the land
19 use elements for the southwest sector has a general
20 depiction of a PR-OS location within the red box.
21 Fair statement?

22 A. Yes.

23 Q. And the general depiction where there's
24 some green, I guess, is a general illustration of
25 where a proposed golf course might be in the future.

1 Is that a fair statement?

2 MR. BICE: Objection to form.

3 THE WITNESS: Yes.

4 BY MR. JIMMERSON:

5 Q. And because in 1992 there was no golf
6 course existing anywhere near that location, correct?

7 MR. BICE: Objection to the form.

8 THE WITNESS: Not to my knowledge.

9 BY MR. JIMMERSON:

10 Q. And all that property there was hard zoned
11 R-PD7, R-3 or C-1, correct?

12 A. For -- in relation to Z-17-90.

13 Q. And in 1992 that was still the case,
14 correct, two years later?

15 A. Correct.

16 Q. So I just want to establish, and I think
17 we have, the later conceived nine holes of 1996 did
18 not have a PR-OS designation by virtue of the City
19 Council's action in 1992, correct, as shown by
20 Perrigo 13?

21 A. In relation to 13, it does not show a
22 designation of where the existing additional nine
23 holes are today.

24 Q. So is there today a PR-OS designation for
25 the newly constructed new nine holes that was

1 constructed sometime after 1996?

2 MR. BICE: Objection. Asked and answered.

3 BY MR. JIMMERSON:

4 Q. I did not hear the answer. If he did, I
5 did not hear the answer.

6 A. The currently adopted southwest sector
7 plan shows PR-OS in the current golf course
8 configuration.

9 Q. Thank you. So how did that happen that a
10 PR-OS designation was affixed after the new nine
11 holes was constructed, how did that happen? By what
12 action?

13 A. That, as I stated before, is currently
14 being researched to establish that action?

15 Q. Are you aware of that action, as you sit
16 here today, any such action that would have, you
17 know, designated the new nine holes as PR-OS
18 following its construction in 1996 and later?

19 A. Not to my knowledge. I've seen this
20 exhibit. There was another exhibit in the previous
21 deposition from -- I don't know if it had a '99 date
22 on it. So that other land use -- that other
23 southwest sector land use plan and then obviously the
24 one that is currently adopted today.

25 Q. And are you aware -- so the answer is you

1 don't know of any such action that caused the PR-OS
2 to be placed on the new nine holes that came in the
3 late 1990s?

4 A. At this time, no.

5 Q. And do you know of any action that was
6 taken by -- of any action that affects this property
7 that changed the location of the PR-OS from that
8 which is shown in 1992 to that which is shown
9 presently?

10 A. At this point, no.

11 Q. Do you believe that the change in location
12 of the PR-OS for either the golf course as it was
13 ultimately constructed, 18 holes or the change -- or
14 the placement of PR-OS on the new nine holes, was
15 that accomplished administratively as opposed to by
16 City Council vote?

17 MR. BICE: Objection as to the form.

18 BY MR. JIMMERSON:

19 Q. If you know.

20 A. I don't know. I cannot answer that.

21 Q. Okay. Thank you.

22 Now, let me show you one other map here.

23 MR. JIMMERSON: Would you look at
24 Exhibit RRR. I don't have a lot of copies of this.

25 (Exhibit Number RRR was marked.)

1 (Exhibit Number ZZZ was marked.)

2 BY MR. JIMMERSON:

3 Q. Now, let me show you what we have marked
4 as Exhibit ZZZ. It's a city staff report. Do you
5 have that in front of you?

6 A. Yes.

7 Q. What is Exhibit ZZZ?

8 A. Exhibit ZZZ is the staff report associated
9 with modification MOD-63600, general plan amendment
10 63599, and rezoning ZON-63601.

11 Q. In it bears a date November 16 of 2016; is
12 that right?

13 A. At the top it refers to the City Council
14 meeting dates of November 16th, 2016.

15 Q. And was this document prepared by your
16 office, your department?

17 A. Yes.

18 Q. And who within your department
19 specifically prepared 3C, the agenda memo planning
20 item?

21 A. Senior planner Steve Swanton.

22 Q. When did Mr. Swanton prepare this
23 document?

24 A. Specific dates, I don't know. Obviously
25 it's prior to our internal deadlines for this to be

1 published to the Internet as part of the agenda.

2 More than likely it was prior to the publication of
3 the city -- the Planning Commission meeting.

4 Q. Now based upon my working with the city in
5 the past, would an estimate within 30 days of the
6 meeting date be a fair range of time to both meet the
7 10 day, you know, placement requirement on the
8 Internet vis-a-vis preparation of the memo by your
9 staff?

10 A. 30 days from the Planning Commission
11 meeting, yes.

12 Q. Well the Planning Commission meeting on
13 this was, I believe, in July. So I don't think that
14 would be accurate.

15 A. Well, we would have? Not to say there
16 wouldn't be something prepared before July but I'm
17 saying this is to be submitted to the county
18 commission, assuming the city commission on
19 November 16th.

20 In relation to the deadlines associated
21 with City Council if any amendments were made to the
22 staff report, 30 days would be an accurate statement.

23 Q. Thank you very much. Okay. Now, is this
24 document a document that is relied upon by City
25 Council? I mean is it intended to be relied upon by

1 the City Council members?

2 A. Yes, this is staff's recommendation on the
3 proposed project and both an appointed elected body
4 would have it at their -- have the ability to review
5 it to make up -- make their decision.

6 Q. Okay. And the purpose for your staff
7 preparing this is to aid the City Council with regard
8 to the items that were before it on
9 November 16th of 2016; is that right?

10 A. The staff reviews the merits of the
11 project in relation to the Las Vegas Municipal Code,
12 specifically the zoning ordinance, and then makes a
13 recommendation based on that, in addition to planning
14 principles.

15 Q. And the intent is to provide accurate
16 information to the City Council; is that right?

17 A. Correct.

18 Q. The intent is to provide complete
19 information to the City Council; is that right?

20 A. Yes, to the best of our ability, yes.

21 Q. The point being you know that the City
22 Council will rely upon the document being provided to
23 them, and the information contained therein, as part
24 of their decision making process. Fair statement?

25 A. Yes.

1 Q. And they can also rely upon other
2 things -- the applicant's representations and the
3 City Attorney's recommendations -- but this is
4 certainly a document that is relied upon by City
5 Council meeting in, meeting out; is that right?

6 A. Yes.

7 Q. So let's look now at what was submitted by
8 your staff, by the Planning Department, headed by
9 Mr. Swanton, for purposes of preparation to the City
10 Council for the November 16th, 2016 meeting.
11 Number 1, because I don't know all of the internal
12 workings of your department, would that have been a
13 document that you would have read and reviewed before
14 its submission to the city council?

15 A. I would have read it, yes.

16 Q. And I don't know your process but is it
17 something, Mr. Lowenstein, because of your elevated
18 position within the department, that you would have
19 to approve?

20 A. That falls to the supervisor. He's the
21 direct of Mr. Swanton who would be reviewing it for
22 content.

23 Q. And who is that?

24 A. That is Steve Gebeke.

25 Q. And did you approve this staff report

1 before it was submitted to the City Council?

2 A. Having read it and having no objection to
3 it, that is approving it.

4 Q. You read it, you had no objection to it,
5 so it has the effect of approval of it, correct?

6 MR. BICE: Objection to form.

7 BY MR. JIMMERSON:

8 Q. You may answer.

9 A. Yes.

10 Q. And that's certainly considering your
11 elevated status within the department and your duties
12 and responsibilities associated with this type of an
13 item, correct?

14 A. Correct, as I am his report of sorts.

15 Q. Mr. Gebeke's report?

16 A. Yes.

17 Q. And indirectly you're Mr. Swanton's
18 report?

19 A. Yes.

20 Q. Then so we can complete the chain,
21 Swanton, Gebeke, Lowenstein and then Perrigo; is that
22 right? Or Duddleston and Perrigo, maybe?

23 A. In this particular case, it would be
24 Perrigo.

25 Q. Duddleston would not have been involved?

1 A. Correct.

2 Q. Why is that? What is the nature of her
3 work that would not have her directly involved in
4 this?

5 A. Her primary focus in our department has
6 been over licensing and code enforcement.

7 Q. That's my understanding. Thank you, sir.
8 All right. One of the documents -- one of the pieces
9 of information that I found interesting was that
10 which is found at page 7 of Exhibit 3Z, ZZZ, and that
11 is a document called "background information," and
12 then in the box it says "related relevant city
13 actions by P&D, fire, building, et cetera." So just
14 for clarification, what does P&D mean?

15 A. Planning and development.

16 Q. Is that your department?

17 A. That was a previous title of our
18 department.

19 Q. And what is its present name now?

20 A. Department of Planning.

21 Q. So P&D changed in the last few months to D
22 of P?

23 A. No.

24 Q. This is just a month ago,
25 November 16th they're using P&D. So when did the

1 change go from planning and development to
2 development of planning -- Department of Planning?

3 A. I don't recall the exact date when they
4 made that change.

5 Q. Anyway, whether it had changed or not, it
6 says P&D and it says fire. And that's who, fire
7 safety? What department is that?

8 A. Yes, you're accurate, fire.

9 Q. Is that building, meaning Building
10 Department?

11 A. Yes.

12 Q. Okay. Thank you. First you say, "In
13 December 17th of 1980 the board of city
14 commissioners approved the annexation of 2,243 acres
15 bounded by Sahara Avenue on the south, Hualapai on
16 the west, Ducharme Avenue on the north and Durango
17 Avenue on the east. The annexation became effective
18 12-26 of '80." Do you see that?

19 A. Yes, the first entry.

20 Q. So my reading of this and being a native,
21 this is when the city annexed to the property to
22 become part of the city, and before that it had been
23 part of the county --

24 (Reporter interruption.)

25 ///

1 BY MR. JIMMERSON:

2 Q. My reading of this and having grown up in
3 the community, this is my -- my interpretation of
4 this entry is that this is when the city annexes this
5 property -- and this property becomes part of the
6 City of Las Vegas, correct?

7 A. It's the point where it becomes part of
8 the City of Las Vegas. As far as if it was city
9 initiated or applicant initiated, I'd have to review
10 the original annexation.

11 Q. Now, going to the entry here, do you see
12 any actions that's called "related relevant city
13 actions" that would reflect the placement of a PR-OS
14 land use designation upon this property? And when I
15 look in the 1992 time period, Mr. Lowenstein, I'm
16 asking you, is there any reflection here because it's
17 related relevant city actions, any suggestion here
18 that PR-OS has been placed upon the property in 1992?

19 A. I don't see in this table, between that
20 timeframe, any applications.

21 Q. Now, on April 4th of 1990, just there
22 you'll see in the middle of page 8, are you with me?

23 A. Yes.

24 Q. It says, "the City Council approved an
25 amendment to the Peccole Ranch Master Development

1 Plan to make changes related to phase 2 of the plan
2 and to reduce the overall acreage to 1569.6 acres.
3 Approximately 212 acres of land in phase 2 was
4 planned for a golf course and the Planning Commission
5 and staff recommended approval."

6 My question to you is -- my question to
7 you is, is that an accurate statement? Now that you
8 have the benefit of your deposition and your
9 preparation for this deposition and the documents
10 that we've all gone over together with you?

11 MR. BICE: Jim, where were you reading
12 from?

13 MR. JIMMERSON: I'm reading page 8,
14 Counsel, 44 of 90, the first box beginning with "The
15 City Council" and ending with the word "Peccole Ranch
16 Master Development Plan." I read that into the
17 record.

18 MR. BICE: All right. Thank you, sir.

19 MR. JIMMERSON: No problem at all.

20 THE WITNESS: The action was the amendment
21 of the master development plan and the rezoning of
22 phase 2 portions. The amendment was not specifically
23 to phase 2 but Peccole -- was to the Peccole Ranch
24 Master Development Plan.

25 ///

1 BY MR. JIMMERSON:

2 Q. What amendment are you talking about?

3 A. I'm looking at the April 4th, 1990,
4 first cell.

5 Q. And we've gone over that. We went over
6 the minutes. We went over the letter, right? I
7 don't see any reference in the documents that you and
8 I have gone over to 212 acres of land in phase 2 was
9 found to be planned for a golf course.

10 MR. BICE: Objection to the form.

11 BY MR. JIMMERSON:

12 Q. That sentence is not accurate based upon
13 everything you and I have worked together here in the
14 last few hours. Isn't that true? 212 is not the
15 right number is all I'm trying to suggest to you,
16 sir.

17 A. If the planner placed in here information,
18 regarding information from that action or from the
19 document of the master development plan, I don't know
20 if that acreage is accurate or not.

21 Q. And when you reviewed it, you didn't catch
22 on to the fact that 212 was the wrong number, did
23 you?

24 A. I was reviewing this for --

25 Q. Is the answer no, you didn't catch on it?

1 A. No. My reviewing of materials is not to
2 get into the micro details.

3 Q. I'm with you. But now we've spent some
4 hours together and we've done that, we can look at
5 the city action on April 4th, we can look at the
6 minutes as we have and know that 212 was not the
7 number of acres that was speaking to a golf course.
8 In fact, the golf course wasn't even referenced
9 within the City Council minutes of April 4th of
10 1990, correct?

11 MR. BICE: I'm sorry. Objection to the
12 form. Misstates the record.

13 BY MR. JIMMERSON:

14 Q. The question simply is, do the actions of
15 City Council on April 4th of 1990 make any
16 reference to 212 acres being planned for a public
17 golf course -- excuse me, for a golf course?

18 A. In Exhibit 9, Perrigo zone change on the
19 City Council minutes meeting of April 4th, 1990 and
20 G3 and the land use table, it makes reference to golf
21 course, slash, drainage at 211.6. So I would infer
22 he rounded up to 212.

23 Q. I understand. But that was golf course
24 and drainage, right? I mean, let's be accurate.

25 A. Right.

1 Q. So how much of the 212 was drainage in
2 1990?

3 A. I don't know.

4 Q. How much drainage was there in phase 2?

5 A. I don't know. 60 acres or more.

6 MR. BICE: Objection to the form. Lack of
7 foundation.

8 BY MR. JIMMERSON:

9 Q. You can look at Z-17-90 and give me an
10 estimate of drainage.

11 MR. BICE: Lack of foundation.

12 THE WITNESS: I don't know. I can't make
13 out any discerning acreage.

14 BY MR. JIMMERSON:

15 Q. Looking at Z-17-90, do you observe any
16 drainage in phase 2?

17 A. On the 90 plan, referring to triple O, I
18 ascertain that west -- excuse me, east of Rampart
19 Boulevard would be drainage.

20 Q. If you look to the map, looking south of
21 Charleston, on the -- what I call it the west side,
22 it's the left of the side, this part here, right
23 here. Do you know how much drainage was set aside
24 for that parcel -- I mean for that project? I'm
25 suggesting 36 acres of drainage in just that section

1 south of Charleston. All of this, all the white.

2 A. Well, one of the things you indicated was
3 the public right of way of Hualapai.

4 Q. I'm not asking about public right of way.
5 We see that --

6 A. That was also in white. I'm just
7 clarifying.

8 Q. Understood.

9 A. I don't know what that acreage is.

10 Q. And you have acreage over by what is now
11 Tivoli to the northwest of the map?

12 A. Correct.

13 Q. I misspoke, northeast of the map.

14 A. So the east side of Rampart.

15 Q. So if I suggested there was roughly
16 60 acres of drainage in 1990 that was guesstimated by
17 Z-17-90, would you have any serious disagreement with
18 that estimate?

19 MR. BICE: Objection. Calls for
20 speculation.

21 THE WITNESS: We could superimpose it on a
22 plan and quantify it, but I don't know what that
23 number would be. If it's roughly that, then it could
24 be, yes.

25 ///

1 BY MR. JIMMERSON:

2 Q. So then the 212 acres we talked about is
3 for drainage and golf course, not just for golf
4 course. Would that be a fair statement?

5 A. Yes.

6 Q. Okay. Thank you.

7 Continuing on that, was the number of
8 available units something that the staff discussed
9 preparatory to the November 16th, 2016 City Council
10 meeting?

11 A. In preparation for it.

12 Q. Not talking about this document. I'm
13 saying were the number of units something that was
14 discussed within city staff for purposes of preparing
15 the City Council?

16 A. For City Council? I don't recall. For
17 specifically November 16th's meeting, I know that
18 staff has discussed units and as far as what's
19 existing and what's entitled.

20 Q. Specifically, did city staff make, as part
21 of their report, a recommendation as to -- a finding
22 as to what they believed were the available units to
23 be developed by the applicants --

24 A. I don't recall.

25 Q. -- Fore Stars, 180 and 70 Acres?

1 MR. BICE: Objection. Form.

2 BY MR. JIMMERSON:

3 Q. You can answer the question, sir.

4 A. I don't recall. I would have to reread
5 through this document.

6 Q. Besides what the document says, do you
7 recall that in preparing -- preparing for your
8 meeting on November 16th, the issue of what was my
9 clients rights to develop, the number of units
10 remaining that they would have the right to develop,
11 was that something that was discussed by your staff?

12 A. I don't recall if we had a meeting
13 specific on that. If anything, it may be -- might
14 have been part of an overall meeting.

15 Q. So it was -- the answer is yes, there was
16 some discussion about it. Whether it was a formal
17 meeting or not, it certainly would have been a topic?

18 A. It's possible, yes.

19 Q. And looking at the actions -- in looking
20 further at this report, would you look, please, at
21 page 15, the bottom, please, where the -- under
22 residential units, under 1990 Peccole Ranch Master
23 Plan remaining allowable units, 1831, does this
24 refresh your recollection that your department and
25 your staff provided to the City Council, upon which

1 they could rely, that my clients had available to
2 them 1831 units allowable to be developed?

3 MR. BICE: Objection to the form. Assumes
4 facts not in evidence.

5 MR. JIMMERSON: I'm going to revise the
6 question, Counsel.

7 MR. BICE: Misstates the law.

8 BY MR. JIMMERSON:

9 Q. Does this refresh your recollection that
10 the city staff, your department, advised the City
11 Council members that the remaining allowable units of
12 1831 and you also advised my client of the same?

13 MR. BICE: Same objections.

14 THE WITNESS: Well, as far as it's part of
15 the staff report, then it would be something the
16 council would rely upon.

17 BY MR. JIMMERSON:

18 Q. And you saw that here?

19 A. I see it on page 15, yes.

20 Q. And the number is 1831, remaining
21 allowable units.

22 A. I see remaining allowable units, yes.

23 Q. 1831; is that right?

24 A. Yes.

25 Q. Okay. Thank you.

1 I have a couple more questions on this
2 document and then I'll be done. Would you just look
3 at the entry page 8, last item, 77 of 04. Take a
4 moment to read it. It says, "the City Council
5 approved a rezoning from R-PD7, seven units per acre;
6 and U, undeveloped, M, median density residential;
7 general plan designation to PD, plan development, on
8 20.10 acres on the south side of Alta Drive,
9 approximately 450 feet west of Rampart Boulevard.
10 The request included the Queensridge Towers master
11 development plan and design standards. The planning
12 commission and staff recommended approval." Have I
13 read that accurately?

14 A. Yes.

15 Q. Do you recall, based upon your research --
16 and I guess you were employed by the city at this
17 time, 2004, that there was 5.66 acres that were
18 removed from the golf course to allow this to occur,
19 this action to occur as referenced on July 7th of
20 2004?

21 A. I didn't work on this project in 2004.

22 Q. Are you aware that 5.66 acres was removed
23 from the golf courses and added to the Tower, to
24 allow the entire project where the Tower is built now
25 to be constructed?

1 A. I would have to review the documents but
2 I'll assume yes.

3 Q. And that 5.66 would have been part of the
4 rezoning from R-PD7 to PD?

5 A. That's what the request is for, yes.

6 Q. All right. Thank you.

7 All right. Now let's turn to the Amended
8 Complaint, Exhibit A. We spent a few minutes at your
9 first deposition on that, and I'm not going to repeat
10 those questions but I did want you to review that
11 please.

12 You're familiar with this document?

13 A. Yes, but it's been some time since you've
14 read it.

15 Q. Understood. And I know you don't have it
16 committed to memory, but I asked you several
17 questions at our last deposition where you disagreed
18 with the allegations that were being made by these
19 few homeowners against the City of Las Vegas and
20 against my clients. Do you recall that line of
21 questioning?

22 A. Yes.

23 THE VIDEOGRAPHER: Counsel, your mike,
24 please.

25 ///

1 BY MR. JIMMERSON:

2 Q. And that included, for example, any --
3 your debunking any suggestion that the City of Las
4 Vegas or your department had complied or had been
5 complicit with my clients to do something improper at
6 the City of Las Vegas City Council meetings and City
7 Planning Commission meetings, correct?

8 MR. BICE: Objection to form of the
9 question. That a denial is a debunking.

10 MR. JIMMERSON: I will revise the question
11 to meet the objection.

12 BY MR. JIMMERSON:

13 Q. Do you recall denying any complicity on
14 the part of yourself individually, as well as on
15 behalf of the City of Las Vegas?

16 MR. BICE: Objection to the form. The
17 witness cannot speak on behalf of the city.

18 BY MR. JIMMERSON:

19 Q. You're right. Do you recall denying any
20 complicity on the part of Mr. Lowenstein and your
21 department, as far as you know?

22 A. Yes.

23 Q. By complicity, I'm saying there's
24 allegations that the city was complicit in depriving
25 surrounding homeowners of legal notice and an

1 opportunity to be heard, and you have denied that
2 saying you fully complied with notice requirements
3 and state law, correct?

4 MR. BICE: I also object to this line of
5 questioning because this is exactly what was covered
6 for an hour at the first installment of his
7 deposition.

8 BY MR. JIMMERSON:

9 Q. I'm not repeating it, Counsel. There is a
10 question pending.

11 A. Yes.

12 Q. Now, you were asked questions on direct
13 examination at your last deposition, about an
14 allegation that somehow the city had allowed
15 parceling of my clients property improperly. Do you
16 recall that?

17 MR. BICE: Objection to the form.

18 BY MR. JIMMERSON:

19 Q. You may answer the question.

20 MR. BICE: Misstates the prior testimony
21 and questions.

22 THE WITNESS: I recall questions about
23 mapping.

24 BY MR. JIMMERSON:

25 Q. And you denied being part of any improper

1 actions in terms of my clients reparable, correct?

2 A. Yes.

3 Q. I just want to you ask a question. A
4 client, my client, any client, owns a large piece of
5 property, let's just say 50 acres for the
6 conversation, and he wants to develop five acres of
7 the 50 acres. Tell the court and the ladies and
8 gentlemen what would you -- what does the City
9 Planning Department require for my client to develop
10 those five acres out of the 50 that he owns or she
11 owns?

12 MR. BICE: Objection as to the form and
13 foundation.

14 BY MR. JIMMERSON:

15 Q. You can answer the question, sir.

16 A. Well, there's a number of different
17 variables that I would have to take into account to
18 give a precise course of action. If we're working
19 under the fact that what they want to do with the
20 property meets the current -- the current zoning and
21 the current general plan designation, they would need
22 to entitle the property through -- depending on what
23 type of development it is. If we're talking
24 residential, they may have to do a tentative map.
25 They may have to do a parcel map to create a separate

1 parcel before they do a tentative map. They may --

2 Q. Let's break it down. Let's mark this as
3 Exhibit AAAA. It probably will be the key exhibit in
4 the entire case.

5 (Exhibit Number AAAA was marked.)

6 BY MR. JIMMERSON:

7 Q. Now, I want you to assume that the larger
8 parcel is R-2. Write down on the document R-2.

9 A. I don't have a pen.

10 Q. I do. I'm going to take away all the
11 excuses. And the five acres you want to make
12 multifamily. Using -- achieving a hundred units on
13 the five acres. Okay?

14 A. So you want me to place a zoning district
15 that would allow this, or call this R-2, and using
16 something different?

17 Q. I want R-2 and a different zoning.

18 MR. BYRNES: Are you saying the big parcel
19 is all R-2 and you want to change five acres?

20 BY MR. JIMMERSON:

21 Q. That's right, to multifamily, MF. Is that
22 the proper designation on an R-3?

23 A. R-3, R4, anything else.

24 Q. All right. Let's put it R-3 then. So
25 what other steps are you going to require for that

1 zone change and to meet the owner's request?

2 A. We would look for what the overall land
3 use designation is underneath it. Then as saying if
4 they were all -- if the zoning districts were
5 compatible with the general plan district -- sorry,
6 the general plan land use designation, then we would
7 ask that that be -- that portion be parceled off so
8 as not to create a split designated parcel.

9 Q. So a parcel map would be required?

10 A. A mapping action, parcel map is the most
11 common.

12 Q. Okay. What else would be required?

13 A. The -- after if it was parcelled off and
14 saying that the land use designation matched the
15 proposed rezoning -- zoning category -- then an
16 applicant would file a rezoning application which
17 would then go before the Planning Commission, City
18 Council.

19 Q. You mentioned something that I thought was
20 important. The city has a policy it doesn't allow
21 one parcel to enjoy two pieces of zoning or two types
22 of zoning. Would you explain that, please?

23 A. Split designated parcels becomes
24 problematic in developing a site, especially when --
25 in relation to development standards and building

1 locations and things of that nature. The city then
2 requests that it be its own distinct parcel with its
3 own designation.

4 Q. And then after the zoning action, let's
5 assume approval of the rezoning, then what is
6 required?

7 A. Depending on what is being proposed, if
8 you stated that they want to do a multifamily
9 development, for multifamily development, if they had
10 the required zoning or if they're running these
11 concurrently, there would be associated site
12 development plan review.

13 Q. SDR?

14 A. Yes, known as SDR. Any associated
15 variances that may be requested. We hope that they
16 conform to code and we don't have any of those. And
17 then, if it's staying multifamily, not to be sold,
18 that would then necessarily go to, I guess, a
19 business licensing after construction and permitting
20 and construction, it would be licensed as apartments
21 for multifamily. But if it was for resale as
22 individual units, then they would be require a
23 tentative map for condominiums.

24 Q. Okay. So now focusing upon this simple
25 question, what is required for site development

1 review?

2 A. The application submittal materials.

3 Q. You're going to have to have a parcel and
4 a parcel map, correct?

5 A. In regards to this scenario?

6 Q. Yes.

7 A. For that multifamily development with a
8 separate zoning district, then you would have a
9 separate parcel.

10 Q. So you'd have a parcel map created and a
11 separate parcel so that you can have no split zoning
12 and you can develop the property separately. Agreed?

13 A. Agreed.

14 Q. Then after you have the parcel map
15 provided to you after the property has been
16 parcelized, subdivided to create the separate
17 five acre parcel, then what happens for site
18 development? What do you need?

19 A. Well, the applicant would go through the
20 process of reapplication conference. Then a formal
21 submittal. That formal submittal would include all
22 the submittal materials. Those usually entail site
23 plans, landscape plans, building elevations, cross
24 sections, streetscape sections, everything that would
25 be relevant to the proposed development.

1 A standard submittal materials application
2 forms, statement of financial interest, the deed and
3 legal description of the property.

4 Q. But you wouldn't be required to show water
5 or power at that point, would you, as opposed to on a
6 final map?

7 A. The amount of engineering required at a
8 site development review is minimal. The engineering
9 in question would be probably the streets, your edge
10 conditions. Going from there, if you were doing
11 condominiums as the multifamily, your tentative map
12 would have a little bit more engineering as far as
13 planning profiles and cross sections and your
14 finished floors, the real point where all the
15 engineering of utilities, wet or dry, that come to a
16 site or civil improvement plan review.

17 Q. And you don't need to do your drainage or
18 the utilities at that level, you would do it later in
19 the final map process; is that right?

20 A. The majority of applications are usually
21 conditioned to do drainage studies or traffic studies
22 to see if it warrants any mediation, and that's all
23 kind of through the department of public works.

24 Q. But that's not something you would submit
25 as part of the SDR as a condition you would place

1 upon final approval, as I understand your testimony?

2 A. The Department of Public Works would place
3 the conditions for -- if there was existing studies
4 for those to be updated or if there were any new
5 studies for studies to be submitted.

6 Q. And that would be submitted as part of the
7 final map; is that right?

8 A. Those conditions would have various
9 triggers. It could be time of building permit, it
10 could be before the final map recording or at the
11 time of submittal of the final.

12 Q. But it's not part of the SDR process?

13 A. No, it's not a submittal requirement of
14 the SDR process.

15 Q. Does a master plan allow a split parcel
16 designation?

17 A. I don't know if it speaks to split
18 designations in the master plan at this point. It
19 would fall back to the same planning principal of not
20 having split designated zoning district or land use
21 designations.

22 Q. Is that a city policy or is that a city
23 ordinance, the policy of not having a split
24 designation?

25 A. I would have to review the general plan.

1 It's possible that it's in there. If it's not, then
2 it would be policy.

3 Q. My next question is that, Mr. Lowenstein,
4 does the general plan allow for a split parcel
5 designation?

6 A. As I said, I would have to review the
7 document. If it did exist, it would be in the land
8 use element. If it doesn't exist, it would be the
9 planning process or policy that's been part of it
10 since Direct -- since Director Wheeler.

11 Q. In the history of this property, in the
12 history of the Peccole Trust property now owned by
13 various companies represented by my client whom I
14 represent, the zoning came first and the land use
15 designation came second; is that right?

16 MR. BICE: Objection to form. Contrary to
17 the facts.

18 BY MR. JIMMERSON:

19 Q. You may answer the question.

20 MR. BICE: I should say on the record. My
21 apologies.

22 THE WITNESS: The zoning district from the
23 Z-17-90 existed. Prior to that it was out of the
24 1985 short range plan, which did not have specific
25 land use designations associated to properties.

1 BY MR. JIMMERSON:

2 Q. So under the unique facts of this case,
3 the zoning came first and the land use designation
4 came second; is that correct?

5 MR. BICE: Objection as to the form.

6 BY MR. JIMMERSON:

7 Q. You may answer the questions in light of
8 your last answer.

9 A. As prescribed in the '92 plan, yes.

10 Q. Thank you very much. I'm going to take
11 one break. I think I might be done.

12 THE VIDEOGRAPHER: We are off the video
13 record at 4:40 p.m.

14 (Recess was had.)

15 MR. JIMMERSON: Back on the record when
16 you are.

17 THE VIDEOGRAPHER: We are back on the
18 video record at 4:50 p.m.

19 BY MR. JIMMERSON:

20 Q. I want to change subjects just for a
21 minute with you. You've told us, as you have
22 indicated, that the designation of R-PD7 is
23 inconsistent with a land use designation of PR-OS in
24 your testimony today. You've told us why it's
25 inconsistent.

1 MR. BICE: Objection to the form.

2 Misstates the law. Go ahead.

3 BY MR. JIMMERSON:

4 Q. Everything I just said was exactly
5 accurate. Did I ask you whether or not R-PD7 was
6 inconsistent with PR-OS as it relates to building
7 residences?

8 A. For building single-family residences,
9 yes.

10 Q. And did you say it was inconsistent?

11 A. Yes.

12 Q. And did I ask you why it was inconsistent
13 and did you give me your answer?

14 A. I believe so, yes.

15 Q. All right. Now, building upon that, are
16 you familiar with the statute that speaks to what
17 happens when you have an inconsistent land use
18 designation with an existing zoning entitlement?

19 THE VIDEOGRAPHER: Mr. Jimmerson, your
20 mike, please.

21 MR. JIMMERSON: It's EEE in bold.

22 BY MR. JIMMERSON:

23 Q. It was Exhibit KK to yesterday's
24 deposition. It was marked as KK for this deposition
25 today, Lowenstein KK, two K.

1 (Exhibit Number KK was marked.)

2 BY MR. JIMMERSON:

3 Q. Many of your actions and yours, city
4 department planning actions, are guided by NRS 278
5 would you agree?

6 A. Yes.

7 Q. I'm showing you an excerpt of one of those
8 statutes NRS 278.349 sub 3(e) and I've highlighted it
9 for you in this Exhibit KK. Do you have that
10 document in front of you?

11 A. I do.

12 Q. And do you have the statute that I've
13 highlighted in front of you?

14 A. I do.

15 Q. Would you read paragraph 3 and EEE for the
16 court reporter, for the judge, and possibly the judge
17 and jury?

18 A. Do you want me to read 3 and then
19 subsection E?

20 Q. If you would, please, yes, sir.

21 A. "Three, the governing body or Planning
22 Commission, if it is authorized to take final action
23 on a tentative map, shall consider, subsection E,
24 conformity with the zoning ordinance and master plan,
25 except that if an existing zoning ordinance is

1 inconsistent with the master plan, the zoning
2 ordinance takes precedence."

3 Q. Are you familiar with this statute?

4 A. No, I don't -- I don't refer to it often.
5 So I'm not as familiar as I should be, I guess.

6 Q. Fair enough. But now, having the benefit
7 of reading it, is that statute consistent with your
8 understanding and how you apply your understanding to
9 your day-to-day activities at the city Planning
10 Department?

11 MR. BICE: Objection to the form.
12 Misstates the law.

13 BY MR. JIMMERSON:

14 Q. You may answer the question.

15 A. The Planning Department has, at this
16 point, asked for conformity between the zoning
17 ordinance and the master plan pursuant to the Unified
18 Development Code.

19 Q. Right. And when they don't conform, or
20 when they aren't consistent as indicated in EEE, it
21 tells you that the zoning ordinance takes precedence
22 over the master plan. Agreed?

23 A. The zoning ordinance takes precedence is
24 what it reads, yes.

25 Q. As have you testified in your earlier

1 deposition in response to opposing counsel questions
2 and mine, that's also your interpretation when you
3 have those inconsistent positions, correct?

4 A. That zoning still -- the zoning on the
5 property still gives rights to the property owner,
6 yes.

7 Q. All right. Thank you.

8 Let's mark this as Exhibit BBBB as in boy.
9 BBBB. This will be our last exhibit.

10 (Exhibit Number BBBB was marked.)

11 BY MR. JIMMERSON:

12 Q. During the break, Mr. Lowenstein was able
13 to obtain the 1992 ordinance, which I hadn't seen.
14 Do you all have copies of that? And I would like to
15 show it to you now. Is this the ordinance that you
16 and I have been talking about from 1992 where the
17 initial general plan was adopted by the City of Las
18 Vegas, ordinance number 3636?

19 A. Ordinance number 3636 is an ordinance to
20 adopt a new general plan for the City of Las Vegas,
21 Nevada, including mandatory and optional elements
22 thereof, as required by Chapter 278 of Nevada Revised
23 Statutes, amending Title 19, Chapter 2, Section 20 of
24 the municipal code of the City of Las Vegas, Nevada,
25 1983 edition, to reflect the adoption of said plan

1 providing for other matters properly relating thereto
2 and repealing all ordinances and parts of ordinances
3 in conflict herewith."

4 Q. Thank you. Now, would you look at the
5 last two or three pages. And I found this helpful,
6 and I'm sure you will too. This tells you the
7 approximate time period when it was adopted, roughly
8 April 4th of 1992, as you can see by the multiple
9 affidavits of publication that are filed with the
10 city clerk on April 9th of 1992.

11 A. I see the pages in question. The first
12 page of the document says "approved for adoption by
13 the council on the first."

14 Q. Right. And then if you look at the second
15 page, it also reiterates the April 1, 1992 date. Do
16 you see that?

17 A. That is correct.

18 Q. So this is action that's being published
19 in March and April of 1992 and it's approved
20 effective April 1 of 1992. Do you see that?

21 A. Yes.

22 Q. Is this the ordinance that you were
23 talking about with regard to the adoption of the
24 initial general plan for the City of Las Vegas?

25 A. This is in relation to the general -- the

1 1992 general plan.

2 Q. And that's what you and I spent some time
3 talking about this afternoon?

4 A. That's correct.

5 Q. And this will also confirm, as you had
6 assumed or surmised, there were no APNs attached and
7 no APN letters attached to this ordinance. Would you
8 agree?

9 A. Yes.

10 Q. Now, would you read, please, Section 3,
11 page 2, lines 18 through 23 into the record, please,
12 and keep your voice up so the judge and jury can
13 listen to you.

14 A. "Section 3: The adoption of the general
15 plan referred to in this ordinance shall not be
16 deemed to modify or invalidate any proceeding zoning
17 designation or development approval that occurred
18 before the adoption of the plan, nor shall it be
19 deemed to affect the zoning map adopted by and
20 referred to in Las Vegas Municipal Code 19.02.040."

21 Q. What does that provision mean to you,
22 Mr. Lowenstein?

23 MR. BICE: Objection as to the form.
24 Foundation.

25 ///

1 BY MR. JIMMERSON:

2 Q. What do you understand that to mean, sir?

3 A. That it's saying the adoption of the
4 general plan referred to in this ordinance is not
5 deemed to modify or invalidate the previous zoning
6 designations or development approvals, meaning land
7 use entitlements that occurred before the adoption of
8 the plan.

9 Q. And as it relates to the Peccole Trust
10 property owned in 1990, would the land use
11 entitlements that the Peccoles had existing in 1992,
12 just prior to April 1 of 1992 when this general plan
13 was passed, remain intact as you understand Section 3
14 of the ordinance?

15 MR. BICE: Objection as to the form.
16 Calls for a legal conclusion.

17 BY MR. JIMMERSON:

18 Q. Is that your understanding, sir?

19 A. My understanding is the land use
20 entitlements would still be valid.

21 Q. Thank you. Now if you would read the next
22 section, Section 4?

23 A. "Section 4: The general plan adopted by
24 this ordinance and any of its constituent elements
25 may be amended by resolution of the City Council

1 subject to applicable procedures and requirements set
2 forth in Nevada Revised Statutes provided, however,
3 that any repeal or replacement or comprehensive
4 amendment of or to the general plan shall be by means
5 of ordinance."

6 Q. Thank you. Does this provision --
7 withdraw.

8 What is your understanding of this
9 provision?

10 MR. BICE: Same objection as before.
11 Foundation.

12 BY MR. JIMMERSON:

13 Q. You may answer the question, sir.

14 MR. BYRNES: I would object. Legal
15 conclusion also.

16 THE WITNESS: That the Nevada Revised
17 Statutes has prescribed procedure or -- for amending
18 the general plan or what components the general plan
19 should have.

20 BY MR. JIMMERSON:

21 Q. Would you agree, that based upon your
22 understanding, as well as the words of Section 4 of
23 this ordinance, that the general plan shall not be
24 amended -- cannot be amended administratively?

25 MR. BICE: Objection as to the form.

1 Calls for a legal conclusion.

2 MR. BYRNES: Calls for a legal conclusion.

3 BY MR. JIMMERSON:

4 Q. You may answer the question, sir.

5 A. By the last part of the sentence, it says,
6 "General plan shall be by means of ordinance."

7 Q. And not by administration action of the
8 City Planning Department, correct?

9 MR. BICE: Objection. Asked and answered.

10 BY MR. JIMMERSON:

11 Q. That's the first time I've asked this
12 question.

13 A. It says "by ordinance," which is not an
14 administrative action.

15 MR. JIMMERSON: Thank you, sir. I pass
16 the witness.

17 THE VIDEOGRAPHER: Shall we go off the
18 record for a moment?

19 MR. JIMMERSON: Why don't we do that?

20 THE VIDEOGRAPHER: Off the record at
21 5:04 p.m.

22 (Off the record.)

23 THE VIDEOGRAPHER: We are back on the
24 video record at 5:05 p.m.

25

EXAMINATION

BY MR. BICE:

Q. Let's deal with this issue first, all right? We're going to look at Exhibit Number 6. And this is a letter that was sent to the current applicant, correct?

A. This is the zoning verification letter that was sent to Mr. Pankratz, incorrectly ENB but EHB.

Q. Now, EHB Companies, does it have any affiliation with Peccole development?

A. Not to my knowledge.

Q. And EHB Companies is not the developer for the approved plans for the Peccole phase 2, correct?

A. Correct.

Q. In this letter, R-PD district is intended -- the letters says it's intended to provide flexibility and innovation in residential development with emphasis on enhanced residential amenities, efficient utilization of open space. Do you see that?

A. I do.

Q. Open space is actually one of the -- to have open space is one of the reasons you actually use R-PD as a developer, correct?

1 A. As a component of the residential plan
2 development depending on when the entitlement was.
3 Since adoption was 1996 or '97, there was actually a
4 requirement based upon a ratio formula.

5 Q. In this particular timeframe, open space
6 wasn't a requirement, but it was one of the things
7 that you, as the developer, would show the Planning
8 Commission and the City Council in order to get them
9 to approve your plans, correct?

10 A. It would be part of your submittal.

11 Q. Right. So open space is not incompatible
12 with R-PD7, is it?

13 MR. JIMMERSON: Objection. Misstates the
14 witness' earlier testimony.

15 THE WITNESS: Well, open space as a use
16 versus a land use designation is not.

17 BY MR. BICE:

18 Q. Right. And, in fact, a land use
19 designation of open space is not inconsistent with
20 R-PD7 but building on open space is inconsistent with
21 open space, isn't it?

22 A. As previously stated for residential
23 development, if we're talking PR-OS in conjunction
24 with the R-PD7.

25 Q. Okay. You're not allowed to build on the

1 open space, correct, under your R-PD7?

2 A. The entitlement is for the open space. If
3 you were to reduce that, you could if you went
4 through further application.

5 Q. But you'd have to get approvals and those
6 sorts of things?

7 A. Right. And also the City Council would
8 make that determination.

9 Q. Great. So let's have the book back. Now,
10 let's go to Exhibit 9. Did he have 9 from
11 Mr. Perrigo's?

12 THE COURT REPORTER: Yes.

13 BY MR. BICE:

14 Q. It's different than your Exhibit 9. We'll
15 go to the Perrigo Exhibit 9. I will tell you what it
16 is. It's that --

17 A. This one?

18 Q. Yes, that's Perrigo Exhibit 9.

19 A. Is that the one in question?

20 Q. I believe it is. If you look at the
21 bottom, it should be stamped 9. Is that right?
22 Okay. So let's go, we're on Perrigo 9. Let's go to
23 the third -- you know what, my apologies. First, go
24 to Exhibit UUU, triple U, from Perrigo. I'll look
25 here to save us some time, okay? It's that document

1 that was faxed to us yesterday. There it is. So
2 we're going to use these two documents for a moment.
3 So triple U is for the master plan amendment,
4 correct?

5 A. Triple U is in regards to the master
6 development plan amendment.

7 Q. And so this is a request for approval to
8 amend the master plan development for property
9 located and then it goes on to recite where, correct?

10 A. That's correct.

11 Q. And you understand that to be the phase 2
12 Peccole Ranch, right?

13 A. Correct.

14 Q. Okay. And so this request to amend the
15 master plan development was approved, right?

16 A. To clarify, this geographical area
17 described in here is the entirety.

18 Q. Right, for the master plan. And then
19 there's an amendment for phase 2, correct?

20 A. Right. It's the amendment of the master
21 development plan -- for the Peccole Master
22 Development Plan, which this amendment includes
23 changes to the phase 2 area, and I would have to
24 further research to see if so if it amended anything
25 in phase 1 as well.

1 Q. I understand. But this amendment was
2 approved, correct?

3 A. Yes.

4 Q. And if you see over there on the right,
5 action, it says, "Approved as recommended subject to
6 the conditions." Do you see that?

7 A. I do.

8 Q. All right. So where would I go in the
9 city's records to find what -- so there's an approval
10 and then there's conditions imposed on top of the
11 approval, right?

12 A. As part of the approval.

13 Q. Where would I go in the city's records to
14 find what was approved?

15 A. The city records, now in regards to the
16 zoning action, there is usually a file, a copy of the
17 approval letter goes into the file. The master
18 development plan amendment in 1990, I don't know what
19 application folder that would have been, but the City
20 Clerk being the keeper of all records would be the
21 source in which to get a copy of.

22 Q. As part of your research, have you asked
23 to see that folder?

24 A. The original rezoning folder was scanned.
25 We looked at the electronic version. I believe we

1 requested the physical version.

2 Q. Okay. And is Exhibit 8 to your
3 deposition, is that what was approved?

4 MR. JIMMERSON: Objection to the form.

5 THE WITNESS: Exhibit 8?

6 BY MR. BICE:

7 Q. To your deposition.

8 A. Exhibit 8 was part of the actions for the
9 master development planned amendment related to the
10 rezoning of Z-17-90.

11 Q. Okay. We're looking at Exhibit UUU here
12 and it talks about the request to amend the master
13 plan development. That request is Exhibit 8,
14 correct?

15 A. Yes. That's part of it, yes.

16 Q. And this was approved with additional
17 conditions imposed, correct?

18 A. I imagine that's what they reviewed as
19 part of their approval and these are the conditions
20 that were put on the application.

21 MR. JIMMERSON: Objection. Move to strike
22 the answer. Calls for speculation with regard to the
23 answer, I would imagine.

24 BY MR. BICE:

25 Q. Let's go to Exhibit 9, Perrigo Exhibit 9,

1 and let's go to UU in front of you, and then let's go
2 to the third page of Exhibit 9, which is Bates
3 stamped 649 at the top. Do you see that?

4 A. Yes.

5 Q. And if you look at Exhibit UU, it's Bates
6 stamped 648 at the top, correct?

7 A. Yes.

8 Q. And these are the minutes, is that what
9 you testified to -- these are the minutes of the
10 approval of the amended master plan, correct?

11 A. This is -- that is what the title at the
12 top of the page states. That's what I read into the
13 record.

14 Q. Okay. So these are the minutes that
15 reflect what in the city's parlance?

16 A. This is what the director at that time,
17 Harold Foster, signed off -- it actually kind of
18 looks like a staff report, but it's the minutes, it's
19 the master development plan minutes, so it would be
20 related to that.

21 Q. Gotcha. Right. This reflects various --
22 where do these land uses come from, do you know, that
23 are reflected in this report?

24 A. I would state that they would come from
25 the associated documents submitted as part of the

1 application.

2 Q. That would be Exhibit 8, correct?

3 A. Yes.

4 Q. Okay. That would be the Peccole Ranch
5 Master Plan as amended, correct?

6 A. Right. As titled.

7 Q. Right. Okay. So these land uses come
8 from the developer themselves, right, they propose
9 these land uses, correct?

10 A. Yes.

11 Q. And they seek approval of these land uses
12 from the City Council, correct?

13 A. Correct.

14 Q. And in these particular land uses, they
15 listed 401 acres for single family development,
16 correct?

17 A. Correct.

18 Q. And they listed multifamily of 60 acres,
19 correct?

20 A. Correct.

21 Q. And they listed a number of other topics
22 but they also listed golf course slash drainage of
23 211.6 acres, correct?

24 A. Correct.

25 Q. And these are the approvals that they

1 asked to obtain from the City Council and they did
2 obtain them, correct?

3 MR. JIMMERSON: Objection. Misstates the
4 record and certainly misstates the action of City
5 Council, which makes no reference to any of these
6 items that are being talked about now.

7 BY MR. BICE:

8 Q. This is what was sought -- I'll rephrase.
9 That is what was sought and this is what was
10 approved, correct?

11 MR. JIMMERSON: Objection. Same
12 objections, please.

13 THE WITNESS: This is a summary of what
14 was submitted and reviewed by City Council?

15 BY MR. BICE:

16 Q. In granting their approval, correct?

17 A. As part of their review and ultimate
18 decision on the application for approval.

19 Q. And again, these figures in these minutes
20 come directly out of Exhibit 8, don't they?

21 MR. JIMMERSON: Objection. Calls for
22 speculation.

23 BY MR. BICE:

24 Q. Precisely. They come out of exactly page
25 18 of the application submitted by the developer,

1 correct?

2 MR. JIMMERSON: Same objection. Calls for
3 speculation.

4 BY MR. BICE:

5 Q. Sure. Go ahead and double-check the math.

6 A. Yes. The numbers match up. The
7 designations, they changed elementary school just to
8 school.

9 Q. Do you think that's a material difference
10 between what the minutes reflect and what the
11 applicant proposed?

12 MR. JIMMERSON: Objection. It's
13 argumentative. Misstates the witness' prior question
14 and answer.

15 THE WITNESS: No. Just noticing the
16 discrepancy between the two.

17 BY MR. BICE:

18 Q. Okay. And then as we've already talked
19 about before, we don't need to go over it again, it
20 then lists the density on the 401 acres, correct, in
21 the application?

22 A. As far as if you're --

23 Q. Exhibit 8?

24 A. Exhibit 8 has a density associated?

25 Q. And then it has a maximum number at the

1 end, correct?

2 A. It has a total.

3 Q. It has a total. Okay. Now, in
4 conjunction with that, after these land use
5 designations were submitted by the applicant, the
6 next item on the agenda was zoning for this
7 amendment, right?

8 A. Z-17-90 was related to this item.

9 Q. Right. But it was the next item on the
10 agenda for zoning?

11 A. Correct.

12 Q. Okay. And so in Z-17-90, zoning gets
13 sought for R-PD7 for the single family development
14 and the golf course drainage, right?

15 A. The R-PD7 zoning covered the area which --
16 which was shown on the master development plan as
17 being single family.

18 Q. All right. So then that zoning gets
19 approved, right?

20 A. Correct. It got approved.

21 Q. And a plan gets created, correct, which is
22 triple 0, do you see that, which is Z-17-90?

23 MR. JIMMERSON: It's not triple zero,
24 Counsel. It's O.

25 ///

1 BY MR. BICE:

2 Q. OOO.

3 A. Okay.

4 Q. Is that correct?

5 A. This was either a submittal as part of the
6 Z-17-90.

7 Q. Right. And at the same time, this would
8 have been submitted when they amended the master
9 plan, correct?

10 A. The --

11 MR. JIMMERSON: Let me just object to the
12 form of the question in terms of the sequence in
13 which the map was created.

14 BY MR. BICE:

15 Q. Go ahead.

16 A. I'm not particularly sure on the process
17 in 1990 what they required for the submittal
18 requirement on this, but if it was submitted as part
19 of the rezoning application, it would have been
20 submitted at the same time as they submitted for the
21 master development plan amendment.

22 Q. So who designated the area as green on
23 this map? Was it the city or was it the developer?

24 MR. JIMMERSON: Objection. Object to the
25 form of the question as calling for some sort of

1 claim of mutual exclusivity.

2 THE WITNESS: Not to be argumentative, I
3 don't know who created this map in general. So I
4 can't tell you if staff created this map or the
5 applicant did.

6 BY MR. BICE:

7 Q. Okay. The green is the area referenced in
8 the minutes as golf course drainage 211.6 acres, is
9 it not?

10 A. This map correlates to the exhibit in the
11 development -- the master development plan amendment,
12 so I would infer yes.

13 Q. So when we're talking about page 3 of
14 Perrigo Exhibit 9 being those land use designations
15 which sets out the acreage, this map, Exhibit 000,
16 corresponds to those land uses that are approved by
17 the city, correct?

18 A. I'm assuming so, yes.

19 Q. And that golf course/drainage is the green
20 area as depicted on the map, correct?

21 MR. JIMMERSON: Object. The original
22 Z-17-90, Mr. Bice, was colorless, was black and
23 white. It was not with colors.

24 BY MR. BICE:

25 Q. We will see it's the green areas depicted

1 on this map, isn't it?

2 A. The area denoted by the green --

3 Q. Yes.

4 A. -- is in the composition as what was in
5 the master development plan.

6 Q. So after that happens, that's in 1990, the
7 city adopts its general land use plan, correct, in
8 1992?

9 A. That's correct.

10 Q. And people on staff did research as to the
11 land use designations and the land use entitlements
12 at the time that they were creating that map,
13 correct?

14 MR. JIMMERSON: Objection. Calls for
15 speculation. This witness has testified he was not
16 an employee of the city until 2003. He wouldn't know
17 what staff did of his own personal knowledge.

18 BY MR. BICE:

19 Q. Is that the process, is that they would
20 research the land use entitlements and the land
21 designations and then reflect that on the map?

22 MR. JIMMERSON: Objection. Calls for
23 speculation.

24 THE WITNESS: As previously stated, from
25 looking in the land use element of the 1992 plan,

1 they included a paragraph which states how they came
2 about to assigning special land use designations or
3 the general plan designations to specific properties.

4 BY MR. BICE:

5 Q. And that was based on that -- that recital
6 states that they did it based on their research of
7 the city's land use approvals, correct?

8 MR. JIMMERSON: Objection. The document
9 speaks for itself. And also misstates what the
10 document says.

11 THE WITNESS: I would have to rereview it,
12 but they did a cataloging of existing land use, and I
13 believe it refers to land use entitlement.

14 BY MR. BICE:

15 Q. And land use approvals, correct?

16 A. That would be the same.

17 Q. Okay. So they then create the map which
18 we have seen as Exhibit 13, I believe, is that right,
19 Perrigo 13?

20 A. That's correct.

21 Q. Okay. And that shows the green area
22 consistent with the green area on Exhibit 000 or
23 Triple O, correct?

24 MR. JIMMERSON: Objection. That misstates
25 the facts. Misstates the record.

1 THE WITNESS: They are consistent, yes.

2 BY MR. BICE:

3 Q. And this was adopted by ordinance,
4 correct?

5 MR. JIMMERSON: Are you talking about
6 ordinance?

7 BY MR. BICE:

8 Q. Exhibit Number 13 was adopted by
9 ordinance, right?

10 MR. JIMMERSON: We introduced the
11 ordinance as Exhibit 4B.

12 THE WITNESS: So it would be part of
13 adoption of the general plan.

14 BY MR. BICE:

15 Q. Got it. Now let's go to Exhibit RRR, RRR,
16 if we can, please. I believe it's right here in
17 front of you, sir. Do you see this document?

18 A. I do.

19 Q. Let's go to the end map on this. And this
20 is GPA, general plan amendment 5494, correct?

21 A. That's what it states, yes.

22 Q. All right. And so then the highlighted
23 parcels are the parcels that are being modified
24 pursuant to this general plan amendment, correct?

25 A. I would assume so, yes.

1 Q. And the other areas are what the current
2 designation is under the general plan, correct?

3 MR. JIMMERSON: Objection. Lack of
4 foundation.

5 BY MR. BICE:

6 Q. Does that appear to be consistent?

7 A. Yes.

8 Q. All right. And what is P?

9 A. Parks.

10 Q. Okay. And what does the P area on this
11 map show -- so that the video can show, I'm going to
12 point here. Have you got that?

13 THE VIDEOGRAPHER: Just one moment,
14 please. Yes.

15 BY MR. BICE:

16 Q. In 1994, what was this P area going to be?

17 MR. JIMMERSON: Objection. Calls for
18 speculation. Well, based on previous land use
19 entitlement, it would be whatever -- whatever was
20 previously entitled.

21 BY MR. BICE:

22 Q. It was the park -- it was the designated
23 golf course area of the Peccole Master Plan, correct?

24 MR. JIMMERSON: Objection. Misstates the
25 testimony of the witness on multiple occasions. And

1 if you listen to the last answer, he contradicts
2 that.

3 MR. BICE: Would you like to testify
4 instead of the witness, Mr. Jimmerson?

5 MR. JIMMERSON: I don't know why you would
6 intentionally -- I hope it's not intentionally -- why
7 you would misrepresent the record.

8 MR. BICE: You don't know what I'm even
9 pointing at, so maybe you should stand up and come
10 over here and look before you make false statements.

11 BY MR. BICE:

12 Q. The P right here is where the golf course
13 was proposed to be.

14 A. Where the amendment to the master
15 development plan stated golf course, slash, drainage.

16 Q. And that's what the P is on this map,
17 correct?

18 MR. JIMMERSON: Objection. Calls for
19 speculation.

20 THE WITNESS: That's the general plan
21 designation associated to that area.

22 BY MR. BICE:

23 Q. Did the Peccoles ever object to any of
24 these designations for the golf course, to your
25 knowledge?

1 A. Not to my knowledge.

2 Q. You've never seen any evidence that they
3 objected to anything, correct?

4 A. That's correct.

5 Q. So then in -- let's get a new document
6 marked.

7 (Exhibit Number 10 was marked.)

8 BY MR. BICE:

9 Q. I'll represent that the red is something I
10 have added to the map to highlight something for your
11 attention. But can you tell me whether you have seen
12 Exhibit 10 before?

13 A. I believe you actually have this as a
14 previous exhibit in multiple pages. This is page 4
15 of that previous exhibit.

16 Q. I think it's one but we'll come back and
17 see.

18 A. There's a sheet, 4 of 4, of a book 83,
19 page 61, recorded final map, for the Peccole west lot
20 10, unless we just looked at Peccole west.

21 Q. We'll come back to that in a minute but
22 this is -- can you tell me what this is, what this
23 reflects, the red area, the red highlighted area?

24 MR. JIMMERSON: Objection. Calls for
25 speculation. He didn't draw the red area.

1 THE WITNESS: This looks to be what would
2 be lot 21.

3 BY MR. BICE:

4 Q. Yep.

5 A. And it's indicated it's 71.68 acres.

6 Q. Do you know what that property was going
7 to be used for?

8 MR. JIMMERSON: Objection. Foundation.
9 Time.

10 THE WITNESS: At the time of this map, I'm
11 not aware. Is this -- let me just ask a question.
12 Is this the configuration of the new -- of the
13 additional nine holes.

14 BY MR. BICE:

15 Q. We'll see if we can figure that out.
16 Let's get this one marked.

17 (Exhibit Number 11 was marked.)

18 BY MR. BICE:

19 Q. Showing you what's been marked now as
20 Exhibit Number 11, can you tell me whether -- there
21 is really two documents attached to this in the one
22 exhibit. Can you tell me whether you've seen these
23 before?

24 A. It's possible, but I don't recall.

25 Q. Do you know whether or not there was the

1 creation of the additional nine holes on or around
2 1996, November of 1996?

3 A. I don't know the exact time when they were
4 created.

5 Q. But they were created sometime in 1996?

6 MR. JIMMERSON: Objection. Asked and
7 answered. He's not certain.

8 THE WITNESS: Assuming that you are
9 providing me the date in which -- I don't know what
10 the exact date is, but it's not out of the realm of
11 possibility it was in '96.

12 BY MR. BICE:

13 Q. Well, but you would agree that at some
14 point the applicant sought an amendment to create
15 nine additional holes at the golf course, correct?

16 A. Through the previous exhibits, there's
17 evidence of the applicant pursuing the additional
18 nine holes, yes.

19 Q. And was a -- if you look at Exhibit 11, it
20 says, staff recommendation approval, item number 2,
21 it says, "The Peccole West Final Map, FM-896, shall
22 record prior to the recordation of the final map for
23 this site as required by the Department of Public
24 Works." Do you see that?

25 MR. JIMMERSON: Where are you reading

1 from, Counsel?

2 MR. BICE: Item number 2 on Exhibit 11.

3 THE WITNESS: So first page under staff
4 recommendations, second --

5 BY MR. BICE:

6 Q. Item.

7 A. Approval subject to the following and
8 second condition?

9 Q. Correct, sir.

10 A. Yes. That's what it reads.

11 Q. And in your staff -- not yours, the city
12 staff reported, which was entitled Exhibit SS that
13 you looked at today, if you would go to, I think it
14 is page -- I don't have page numbers on this.

15 A. I think it's Z, ZZZ, the exhibit.

16 Q. Is it Z? This one says SS, but okay.
17 Never mind.

18 A. Well, that's just the initials on the
19 bottom.

20 Q. That's the pages -- there's a related
21 relevant city action PD that starts here, right where
22 Mr. Jimmerson was asking you questions about 44 of
23 90. Do you see that?

24 A. Yes, I'm where you are.

25 Q. Right below that the next entry is 12/5 of

1 '96. It says "apparent final map for a 16 lot
2 subdivision on 570.47 acres." And that was recorded,
3 correct?

4 MR. JIMMERSON: I'm going to object. Are
5 you asking what the document says, Counsel, or are
6 you asking of his own knowledge it was recorded?

7 BY MR. BICE:

8 Q. Your research showed that the final map
9 had been recorded, correct?

10 A. The planner that prepared -- the staff
11 report indicated book and page number of the recorded
12 document, and I believe 12/05/96 was the date it was
13 recorded.

14 MR. JIMMERSON: Can you pause while I get
15 the document, please. Thank you.

16 BY MR. BICE:

17 Q. All right. So as referenced here that
18 final map was recorded and that final map showed the
19 original 18 holes of the golf course, didn't it?

20 MR. JIMMERSON: I object. Calls for
21 speculation.

22 BY MR. BICE:

23 Q. Go ahead and look at Exhibit number 1 to
24 your deposition.

25 A. Thank you.

1 Yes.

2 Q. And that map was recorded, correct?

3 A. Yes.

4 Q. And a final map -- once the final map was
5 recorded, you will later have additional maps
6 recorded against each parcel, correct, if further
7 development is going to take place on the parcels?

8 A. You could have subsequent mapping actions,
9 yes.

10 Q. Correct. There wouldn't be any subsequent
11 mapping action, though, on lot 5, which was the golf
12 course, correct?

13 MR. JIMMERSON: Objection.

14 Mischaracterizes the events that have actually
15 occurred.

16 THE WITNESS: I don't see why any other
17 mapping action wouldn't occur.

18 BY MR. BICE:

19 Q. Did further mapping action occur with
20 respect to lot 5?

21 A. Yes.

22 Q. And that was the amendment that changed --
23 that added to it lot 21, correct, to the golf course?

24 A. The amendment I'm referring to, this is in
25 addition -- I believe Peccole West lot 10 was a

1 separate lot, not amending lot 5, the original one.
2 To your question, it would have been subsequent
3 mapping action.

4 Q. So there's been subsequent mapping,
5 including an additional nine holes to the
6 development, correct?

7 A. Since the adoption of --

8 Q. The parent.

9 A. -- of the parent, of that parent, then
10 there was, yes, they amended the Peccole West and --
11 well, I guess it's lot 21.

12 Q. And this map Exhibit Number 1, the first
13 18 holes was recorded --

14 A. 12/5/96?

15 Q. Right. And to change that would require
16 future mapping, correct?

17 A. A future mapping action, yes.

18 Q. Yes. If you're going to change the layout
19 of the golf course?

20 MR. JIMMERSON: Object to the form of the
21 question. Misstates his earlier testimony.

22 THE WITNESS: The configuration of the
23 golf course, that's not dependent on the boundaries
24 of a parcel. If you can change the configuration
25 inside the boundaries of the parcel as part of how

1 you're developing the site. If you want to change a
2 property line, that would be through the mapping
3 action.

4 BY MR. BICE:

5 Q. Okay. This particular parcel, lot 5, was
6 also not just designated as the golf course. It was
7 also designated as drainage, correct, with a public
8 easement on the entire parcel, correct?

9 A. Once again, I'll refer --

10 Q. Go ahead.

11 MR. JIMMERSON: I'm going to object that
12 that misstates the document, just on the face of the
13 document and the footnote. Parcel 5 is private
14 drainage, Counsel.

15 THE WITNESS: Not in its entirety, no.
16 There's the parcel itself is labeled as Badlands Golf
17 Course. There are some notes associated with the
18 map. One is an 80-foot wide City of Las Vegas
19 drainage easement, one is an onsite drainage
20 improvement agreement, public with private
21 maintenance per agreement, but it's not all
22 encompassing.

23 BY MR. BICE:

24 Q. Got it. Okay. So this gets recorded
25 publicly, correct?

1 A. It gets recorded at the city -- by the
2 county recorder's office.

3 Q. Recorder's office, right. And it's
4 recorded against the land, that's Exhibit Number 1,
5 right?

6 A. Yes.

7 Q. And future subdivisions of it of the
8 development would occur with additional mapping
9 action?

10 MR. JIMMERSON: Objection. Sorry,
11 Counsel. The plaintiffs lack standing to raise this
12 type of a claim. They made no timely objection.

13 BY MR. BICE:

14 Q. Am I right?

15 A. Future subdividing of the property would
16 require additional mapping action.

17 Q. So staying with this exhibit, again, I
18 think it is Z or which --

19 A. ZZZ.

20 Q. ZZZ. The next item on your list here is
21 330 of 98, a final map. So this is a new final map
22 for a four-lot subdivision, correct?

23 A. That's what it reads.

24 Q. So it was four lots or less went through a
25 mapping action, correct?

1 MR. JIMMERSON: Object. Calls for
2 speculation. The witness was clear when I asked
3 these questions that he did not prepare this
4 document.

5 BY MR. BICE:

6 Q. Am I right on that?

7 A. I would have to review it. Public
8 notifications don't usually disclose common lots.
9 Common lot would be counted towards 1 of the 4, and
10 if it did, then it's possible it was more than four
11 lots, but without reviewing in its entirety, I can't
12 say.

13 Q. This just says four lots, correct?

14 A. Yes.

15 Q. Then the next mapping action is another
16 amendment to the final map, which goes through the
17 mapping process again, just to amend portions of lots
18 5 and 10, correct?

19 A. That's what it states, yes.

20 Q. So how many lots were created through that
21 mapping action? Less than 4?

22 MR. JIMMERSON: Objection. Calls for
23 speculation. It's unfair to the witness to ask these
24 kinds of questions when he was not the author of the
25 document.

1 THE WITNESS: I don't know, I would have
2 to review the final map.

3 BY MR. BICE:

4 Q. But at least on its face, you're having
5 mapping actions that are occurring at Peccole Ranch
6 after the final map is recorded that involve -- that
7 involved less than four lots, correct?

8 MR. JIMMERSON: Objection. Calls for
9 speculation of the prior testimony by the witness.

10 THE WITNESS: I'm not sure if there's any
11 with less than four lots.

12 BY MR. BICE:

13 Q. I'm asking you what the document says,
14 sir.

15 MR. JIMMERSON: Object. The document
16 speaks for itself. Also asked and answered.

17 MR. BYRNES: You're asking what the
18 summary says?

19 BY MR. BICE:

20 Q. Yeah, the summary. I didn't create this,
21 correct?

22 MR. JIMMERSON: Nor did we.

23 THE WITNESS: Not to my knowledge.

24 BY MR. BICE:

25 Q. Okay. Thank you. This is what your staff

1 reported to you, that mapping actions had occurred
2 after the creation of the five -- the parent final
3 map that involved the creation of less than four
4 lots, correct?

5 MR. JIMMERSON: Objection. Misstates the
6 witness' testimony. Also calls for speculation.

7 THE WITNESS: The entry from March 30th,
8 1998, says for a four lot subdivision, entry from
9 March 30, 1998 says to amend portions of Lot 5 and 10
10 of the Peccole West subdivision map.

11 BY MR. BICE:

12 Q. And how many other mapping actions have
13 there been that went through the mapping process for
14 Peccole Ranch that involved less than four lots, do
15 you know?

16 A. Not off the top of my head, no.

17 Q. You haven't researched that; is that fair?

18 A. I haven't gone through that process to get
19 you an exact number.

20 Q. Do you have any reason to dispute that the
21 city did employ the subdivision mapping process after
22 the final -- the parent final map was recorded in
23 December of 1996 to create less than four lots at
24 Peccole Ranch?

25 MR. JIMMERSON: Objection. Calls for

1 speculation. Also irrelevant.

2 THE WITNESS: Once again, I don't know if
3 any of these were less than four lots.

4 BY MR. BICE:

5 Q. Do you have any basis -- do you have any
6 basis to know one way or another, I guess is a better
7 way to phrase it?

8 A. No. I would have to go and do the
9 research.

10 Q. And we would have to ask the mapping
11 personnel; is that correct?

12 A. From 1996 and '98? Yeah, I don't think
13 those people exist at the city any longer. As far as
14 appropriateness for mapping actions, that would be in
15 the realm of the city surveyor.

16 Q. And Mr. Byrnes is going to arrange his
17 deposition, or somebody from his office, so we don't
18 need to spend any more time with that with you.

19 So after these -- the final map is
20 recorded and then the additional nine holes get
21 approved, the city adopts or updates its general plan
22 by way of an amendment in 1999, correct?

23 A. That research still is going on. I
24 believe there was an exhibit that had an adoption
25 date of 1999.

1 Q. And if you look at Exhibit 7, I believe
2 that it is, is that what we were talking about at the
3 last installment of your deposition?

4 A. That's right.

5 Q. And when you say there is research going
6 on, at the time that the city adopted its general
7 plan amendment in 1999, did the staff do similar
8 research to determine what were the approved land
9 uses?

10 MR. JIMMERSON: Objection. Calls for
11 speculation in light of the witness' earlier
12 testimony and the time of his hire with the city.

13 MR. BYRNES: Similar to what?

14 BY MR. BICE:

15 Q. Similar to what was done in -- he
16 testified the recital was done in 1992. Fair
17 question.

18 MR. JIMMERSON: Objection. Calls for
19 speculation.

20 THE WITNESS: I wasn't here at that time,
21 but based on the 1992 document, they would follow the
22 same prescribed method. But that's an assumption
23 based on what's in that document versus what could
24 have actually --

25 ///

1 BY MR. BICE:

2 Q. And past practice, correct?

3 MR. JIMMERSON: Move to strike the answer
4 as calling for speculation.

5 BY MR. BICE:

6 Q. Let me phrase it this way. Do you have
7 any reason or any basis to claim that the reflection
8 of the Peccole Ranch Golf Course on the general plan
9 of 1999, when it was adopted in 1999, was in any way
10 inaccurate?

11 A. I don't have any -- I don't know.

12 Q. Do you have any reason to believe that
13 what the staff did, and what was adopted in 1999, was
14 in any way inaccurate?

15 MR. JIMMERSON: Objection. Because it's
16 trying to prove the negative. Object to the form of
17 the question as argumentative.

18 THE WITNESS: Once again, I wasn't here,
19 so I can't state as far as what process they followed
20 and if it was appropriate or not.

21 BY MR. BICE:

22 Q. All right. But as part of your research
23 on this particular case, have you seen any evidence
24 that what was done in 1999 was somehow inappropriate?

25 MR. JIMMERSON: Objection. The question

1 is unfair to the witness. Inappropriate about
2 what -- what subject matter when, what foundation.

3 BY MR. BICE:

4 Q. You can answer the question.

5 A. Not to my knowledge.

6 Q. And that's based on all the research
7 you've done up to this point on this case, correct?

8 MR. JIMMERSON: Same objections. So
9 unfair to this witness. The question doesn't relate
10 even to the litigation.

11 MR. BICE: It absolutely does. You can
12 tell that Mr. Jimmerson would like you not to answer
13 the question, but I'm going to ask you to go ahead
14 and answer it.

15 MR. JIMMERSON: Why do you engage in such
16 editorialization?

17 MR. BICE: Because that's exactly what
18 you're doing.

19 MR. JIMMERSON: It's your choice.

20 MR. BICE: Jim, keep it up.

21 MR. JIMMERSON: Every case is to
22 personally ad hominem attacks.

23 MR. BICE: Keep it up, Jim.

24 MR. JIMMERSON: It's not appropriate,
25 Counsel. The record is very clear.

1 MR. BICE: I agree. It's crystal.

2 MR. JIMMERSON: Good. So I ask you not to
3 do it.

4 MR. BICE: Sure.

5 THE WITNESS: Can you restate the
6 question, please?

7 BY MR. BICE:

8 Q. Absolutely. Based on all the research you
9 have done on this file to this date, do you have any
10 reason to contend that the general plan amendment
11 reflected in Exhibit Number 7, that the designations
12 on it were in any way improper?

13 MR. JIMMERSON: Objection. The question
14 has been asked and answered. He answered he didn't
15 know.

16 THE WITNESS: Not to my knowledge.

17 BY MR. BICE:

18 Q. Okay. These designations, when they are
19 made on these general planning maps or the general
20 plan amendments, are people allowed to lobby to
21 modify them?

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

24 BY MR. BICE:

25 Q. To your knowledge?

1 A. In relation to a site specific request.

2 Q. Yeah. In other words, when this map is
3 adopted in 1999 or even in 1992, are people allowed
4 to come in and lobby to have it changed?

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

7 MR. BYRNES: I think that calls for a
8 legal conclusion.

9 BY MR. BICE:

10 Q. To your knowledge?

11 A. Not to my knowledge. As far as the
12 Planning Department, individuals can always talk to
13 their council persons, but even then their discretion
14 is on what's presented to them.

15 Q. But it's your understanding and your
16 experience that this process where the designations
17 are reflected on the city's general map is done
18 neutral and fairly, correct?

19 A. Yes.

20 Q. And in your past experience or your
21 awareness, as far as you know, it isn't influenced by
22 people lobbying or people attempting to persuade
23 staff to change a designation, correct?

24 MR. JIMMERSON: Object to the form of the
25 question. Misstates the witness' prior testimony.

1 THE WITNESS: Not to my knowledge.

2 BY MR. BICE:

3 Q. So when these things get adopted, the maps
4 on the general plan amendment and the general plan,
5 they're fairly reflective of the truth, aren't they?

6 MR. JIMMERSON: Objection as to what is
7 the truth. Object to the form of the question. It's
8 argumentative.

9 BY MR. BICE:

10 Q. Free of lobbying by people, correct?

11 MR. JIMMERSON: Object to the
12 conclusionary type of questions. Sweeping and
13 overbroad.

14 THE WITNESS: They would be reflective of
15 the existing land use based upon, you know, either --
16 as prescribed in the '92 plan from a survey of
17 existing land use or entitlement.

18 THE COURT REPORTER: I'm sorry. As
19 prescribed in the 1992?

20 THE WITNESS: General plan.

21 BY MR. BICE:

22 Q. And your understanding is based on staff's
23 research uninfluenced by other people, correct?

24 MR. JIMMERSON: Object to the form of the
25 question. Calls for speculation in light of the

1 witness' prior testimony.

2 THE WITNESS: Yes.

3 BY MR. BICE:

4 Q. Based on your research, it was the
5 developer that designated this property, being the
6 golf course, as open space as part of the amendment
7 to the general -- to the master plan in 1990,
8 correct?

9 MR. JIMMERSON: Objection. Misstates the
10 record. There's no open space by the developer.

11 BY MR. BICE:

12 Q. Correct?

13 A. Can you restate that, please?

14 Q. Based on your research, it was the
15 developer that designated this golf course property
16 as being part of its open space pursuant to the R-PD7
17 designation, wasn't it?

18 MR. JIMMERSON: Objection. Misstates the
19 prior testimony and the exhibit.

20 THE WITNESS: As part of their application
21 to amend the master development plan, they proposed
22 that configuration that is found within the proposed
23 master plan amendment, and then the associated zoning
24 application was heard subsequent to that, which
25 placed R-PD7 on the property.

1 BY MR. BICE:

2 Q. And they are the ones that designated the
3 golf course as part of their open space pursuant to
4 the R-PD7 designations, correct?

5 MR. JIMMERSON: Objection. Misstates the
6 record.

7 THE WITNESS: They are proposing a golf
8 course drainage as part of the master development
9 plan and the associated zoning district that was
10 applied to it was an R-PD7.

11 BY MR. BICE:

12 Q. For purposes of R-PD7, open golf course
13 qualifies as effective use of recreation and open
14 space, isn't it?

15 MR. JIMMERSON: Objection. Misstates the
16 witness' prior testimony and what R-PD7 is about.

17 THE WITNESS: Golf course can be utilized
18 as open space, yes.

19 BY MR. BICE:

20 Q. And in this plan, the golf course is
21 identified as open space, isn't it?

22 MR. JIMMERSON: Objection. It doesn't
23 show that at all.

24 MR. BICE: It actually does.

25 MR. JIMMERSON: It does not.

1 MR. BICE: So Mr. Jimmerson --

2 MR. JIMMERSON: That's my objection,
3 Counsel. You have misrepresented the record.

4 MR. BICE: You're misrepresenting the
5 record.

6 MR. JIMMERSON: You misrepresented the
7 exhibit. That's my objection. You cannot
8 misrepresent the exhibit, please.

9 MR. BICE: If that were the standard --

10 MR. JIMMERSON: You can't. I object to
11 your doing so --

12 MR. BICE: I'm not. But if that were the
13 standard, you wouldn't be able to ask many questions.

14 MR. JIMMERSON: Once again, you are going
15 to the ad hominem attacks. You don't have any
16 ability to stay on focus, on point.

17 MR. BICE: Thank you, Jim, for the help.
18 Go ahead. You have an objection, Phil?

19 MR. BYRNES: Could you repeat the
20 question?

21 BY MR. BICE:

22 Q. Sure. For purposes of their -- let's go
23 to Exhibit 7 since Mr. Jimmerson wants us to, we'll
24 pull it out. It's Exhibit 8.

25 MR. JIMMERSON: Object to the

1 inappropriate characterization of what Mr. Jimmerson
2 wants. Continual ad hominem attack. Why don't you
3 put a question to the witness.

4 MR. BICE: I must be accomplishing
5 something.

6 BY MR. BICE:

7 Q. Open space and drainage, page 10 of the
8 master plan, can you tell us all for the record what
9 it says?

10 MR. JIMMERSON: What are you asking him to
11 look at, Counsel, please?

12 MR. BICE: I'm asking him page 10 of the
13 master plan that the actual developer got approved.

14 MR. JIMMERSON: Objection. That's a
15 misstatement of what actually occurred. He got use
16 approved without conditions and without having a
17 follow-up master plan.

18 MR. BICE: Again, is that more
19 inappropriate speaking objections? The record will
20 reflect that.

21 BY MR. BICE:

22 Q. Go ahead, sir.

23 A. It reads, "A focal point of the Peccole
24 Ranch Phase 2 is the 199" -- imagine there is a
25 decimal point there, ".8-acre golf course and open

1 space drainage waste system which reverses the site
2 along the natural wash system." Do you want me to
3 continue reading?

4 Q. No. So when we were talking about open
5 space, they were counting the golf course as their
6 open space, correct?

7 A. At the time of entitlement, there wasn't a
8 requirement, but as their part of the proposal, were
9 offering a golf course.

10 Q. Right. When you say at the time of their
11 entitlement, there wasn't a requirement, but
12 developers offer all sorts of amenities that aren't
13 necessarily required to get approval from the city?

14 MR. JIMMERSON: Object to him testifying.
15 Object to the form of the question.

16 THE WITNESS: That would be their
17 prerogative.

18 BY MR. BICE:

19 Q. That happened in this case, did it not?

20 MR. JIMMERSON: Objection. Misstates the
21 record. The City Council minutes speaks for
22 themselves.

23 THE WITNESS: No, I don't know if the golf
24 course is what made them approve it.

25 ///

1 BY MR. BICE:

2 Q. It is what was approved as open space,
3 correct?

4 MR. JIMMERSON: Objection. The golf
5 course was not approved as part of the city action.

6 THE WITNESS: The master plan -- the
7 master development plan included golf course, slash,
8 drainage as part of its approval.

9 BY MR. BICE:

10 Q. You were earlier asked a bunch of
11 questions about Mr. Jerbic making a bunch of
12 representations either at City Council meetings or
13 private meetings. Do you understand that?

14 A. I don't recall asking questions.

15 Q. You were asked questions by Mr. Jimmerson
16 about Mr. Jerbic making representations at meetings,
17 either public meetings or private meetings. Did I
18 misunderstand?

19 A. No, I just heard the question differently.

20 Q. You recall Mr. Jimmerson asking you those
21 questions?

22 A. Yes.

23 Q. Were there any lawyers present for any of
24 the homeowners at any of those private meetings that
25 Mr. Jimmerson's referencing?

1 MR. JIMMERSON: Objection to what
2 Mr. Jimmerson is representing. There's no
3 foundation.

4 THE WITNESS: As far as what I recall from
5 the deposition, it was reference to the City Council
6 meeting, potentially a Planning Commission meeting
7 and one meeting at the development service center.

8 BY MR. BICE:

9 Q. At the meeting at the development services
10 center, were there any lawyers there on behalf of
11 anybody other than the developer that were able to
12 challenge any of the statements that were being made?

13 A. The reoccurring meetings were based on a
14 development agreement negotiation, which is between
15 two parties.

16 Q. Okay. So no one else was allowed to be
17 there to challenge or question any of the discussions
18 that were being had, correct?

19 MR. JIMMERSON: Objection to the use of
20 the term "allowed." There was no exclusion of
21 anyone. No request made to attend. The question is
22 loaded and is unfair.

23 BY MR. BICE:

24 Q. Am I correct on that?

25 MR. BYRNES: Could you rephrase to say no

1 one was invited?

2 BY MR. BICE:

3 Q. No one was invited, correct? No one other
4 than the developer was invited to question or
5 challenge any of the statements that were being made,
6 either by the city staff or the developer, correct?

7 MR. JIMMERSON: Objection to the form of
8 the question. It's compound and/or ambiguous.

9 THE WITNESS: In the development agreement
10 negotiation, no, there is no other invitees.

11 BY MR. BICE:

12 Q. So these numbers that were being thrown
13 around in this meeting, they weren't subject to any
14 form of cross-examination by anyone, were they?

15 A. Can you clarify who is anyone? Any
16 homeowners? Yourself? Just anyone other than the
17 developer?

18 MR. JIMMERSON: Objection. Presupposes to
19 have a right of standing or to be present.

20 THE WITNESS: Just the people that were in
21 attendance at the meeting.

22 BY MR. BICE:

23 Q. Is it your position -- I don't think it
24 is, but if it is, I need to know it -- is it your
25 position that the discussions you were having with

1 the developer are somehow binding on other parties?

2 MR. BYRNES: Objection. Calls for a legal
3 conclusion.

4 MR. JIMMERSON: I'm just going to object
5 to the question. It presupposes that there is any
6 standing to raise an objection.

7 BY MR. BICE:

8 Q. Go ahead.

9 A. The meetings in question were a
10 negotiation on a development agreement between two
11 parties, so other than that, I defer to counsel.

12 Q. Okay. I guess what I'm trying to
13 understand is, there were different numbers of units
14 talked about, correct?

15 A. Yes. There was a review of as-builts,
16 entitlement.

17 Q. And no one other than staff and the
18 developer were there to debate the validity of any of
19 those numbers, correct?

20 MR. JIMMERSON: I object. This is a
21 landowner discussing the rights of his own property.
22 The question presupposes.

23 MR. BICE: Jim, could you just stop and
24 let him answer the question as opposed to your
25 interjecting, trying to inappropriately influence the

1 testimony? If you would just be quiet and follow the
2 rules, we would get through this so much faster but
3 you just can't stop yourself.

4 MR. JIMMERSON: I don't step on your
5 question but your question is so preposterous as to
6 suggest there is a third party right to be present
7 when a landowner discusses his own property and what
8 rights he has attendant to it.

9 MR. BICE: I'll respond to that nonsense.
10 Actually, what's absurd about this is you trying to
11 claim what you discussed with the staff is somehow
12 binding on other parties, which is what you were
13 doing earlier, and I'm going to show that that's not
14 true.

15 MR. JIMMERSON: I'm not suggesting what --

16 MR. BICE: If you want to just --

17 MR. JIMMERSON: I'm not suggesting binding
18 or not binding. I'm asking what was said to my
19 clients upon which my clients relied.

20 MR. BICE: Why don't you let me finish my
21 questions and stop interfering? And your client
22 couldn't have plausibly relied, because he had
23 already purchased the property.

24 MR. JIMMERSON: Who makes you tell some
25 other people to stop in this? You are not the judge

1 and jury, Counsel.

2 MR. BICE: You're free to conduct the
3 deposition.

4 MR. JIMMERSON: It is so personal, your
5 attack. Please stay on focus.

6 MR. BICE: I am the one who's on focus.
7 You're off in the weeds.

8 MR. JIMMERSON: Take some Adderall,
9 please.

10 MR. BICE: Take a Valium, Jim. Calm it.
11 Maybe we need to take a break for Mr. Jimmerson. Let
12 me know when you've calmed down.

13 MR. JIMMERSON: Why do you lie like this?
14 My voice is calm. I am observing your jumping up in
15 your chair. Come on.

16 MR. BICE: Let me know when you're done,
17 when. When the meltdown is over, then we'll resume.

18 MR. JIMMERSON: What I don't appreciate is
19 that you are imposing upon this witness, which you
20 could care less about I know.

21 MR. BICE: We'll give him a few minutes to
22 take a breather and then we'll start back up.

23 THE VIDEOGRAPHER: Would you like to go
24 off the record?

25 MR. BICE: No, we'll just wait.

1 MR. JIMMERSON: So I understand, Mr. Bice,
2 what are we asking for? What are we waiting for?

3 MR. BICE: I'm waiting to see if you're
4 going to stop interfering, so we can get done with
5 this and we can let the witness go. But if you are
6 just going to keep it up, then maybe we'll have to
7 suspend until you can stop doing that.

8 MR. JIMMERSON: I'm not going to stop
9 protecting the record and making appropriate
10 objections, as I have throughout the course of your
11 incredibly personal inappropriate cross
12 examination -- redirect examination.

13 (Record read back by the reporter.)

14 MR. JIMMERSON: Note my prior objection
15 and incorporated by reference as if fully stated now.

16 THE WITNESS: Only the people that were
17 invited and attended that meeting would be able to do
18 so.

19 BY MR. BICE:

20 Q. Okay. So at the public meetings that
21 Mr. Jerbic allegedly made all these statements, was
22 Mr. Jerbic shown any documents, to your knowledge?

23 MR. JIMMERSON: Objection. Calls for
24 speculation in light of the witnesses prior
25 testimony.

1 THE WITNESS: Can you clarify as to his
2 statements specific to what so that I can see what
3 documents you may be referring to?

4 BY MR. BICE:

5 Q. Well, that's a fair question, but you
6 didn't ask for that clarification when Mr. Jimmerson
7 was making statements about statements he made at a
8 Planning Commission meeting.

9 MR. JIMMERSON: Objection. You have again
10 mischaracterized the witness' testimony when he said
11 he didn't remember Mr. Jerbic's words.

12 BY MR. BICE:

13 Q. At a Planning Commission meeting. Can you
14 agree with me, Mr. Jerbic isn't subject to any
15 cross-examination. Can you agree with me on that?

16 A. I don't understand what you mean by the
17 cross-examination.

18 Q. He isn't questioned like you're being
19 questioned right now under oath and being challenged
20 about statements he makes. Can we agree on that?

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

23 MR. BYRNES: Are you saying by parties?

24 MR. BICE: Yes, by parties.

25 MR. BYRNES: Not by commissioners?

1 BY MR. BICE:

2 Q. Not by commissioner. Absolutely. He can
3 be questioned by the Council members or the Planning
4 Commissioners, correct?

5 A. That is correct.

6 Q. He isn't questioned by the parties unless
7 the Planning Commissioners say so, correct?

8 A. I guess they could direct him to answer
9 the questions, yes.

10 Q. Okay. So do you know what documents
11 Mr. Jerbic had looked at when he made statements at
12 the Planning Commission meeting?

13 A. I'm not aware of what documents he would
14 have looked at.

15 Q. And you don't know what he was purportedly
16 relying upon in making any such statements, correct?

17 A. I'm not aware.

18 Q. Could you look back at Exhibit Number 9
19 real quick, Perrigo Exhibit Number 9? You would
20 agree with me that one of the conditions is the plot
21 land be recorded for each parcel, correct?

22 THE WITNESS: Condition number 3 in
23 Exhibit 9 reads, "Approval of plot plans and building
24 elevations by the Planning Commission for each parcel
25 prior to development."

1 BY MR. BICE:

2 Q. Right. And that was done, correct?

3 MR. JIMMERSON: Objection. Calls for
4 speculation.

5 BY MR. BICE:

6 Q. As far as you know.

7 MR. JIMMERSON: It's also inconsistent
8 with prior testimony.

9 THE WITNESS: Subsequent actions, they're
10 usually referred to as parentheticals of the original
11 zoning action, but there are some that differ, would
12 be the plot plans and building elevation reviews by
13 Planning Commission.

14 BY MR. BICE:

15 Q. And then those are recorded, correct?

16 A. I'm not aware if they recorded at those
17 times against the property.

18 Q. Okay. The only plot for parcel number 5
19 is the mast -- parent final map, correct?

20 MR. JIMMERSON: Calls for speculation.
21 Objection.

22 THE WITNESS: If I'm recalling, that's in
23 Exhibit 7 or 8, is that the one you're referring to?

24 BY MR. BICE:

25 Q. I believe it was Exhibit Number 1.

1 A. Sorry.

2 Q. Go ahead. Whatever you would like to look
3 at.

4 A. Can you restate the question, please?

5 Q. Sure. The only plot that was recorded
6 concerning parcel number 5, being the golf course,
7 was the parent final map, right?

8 MR. JIMMERSON: Objection with regard to
9 what 5 contains. Misstates the record.

10 THE WITNESS: Condition 3 is plot plans.
11 It's not referring to a mapping action.

12 BY MR. BICE:

13 Q. My question was, is the only plot that was
14 recorded against the golf course was the parent final
15 map, correct?

16 MR. JIMMERSON: Object to the form of the
17 question, quote, against the golf course. Objection
18 to the parent plan or parent map.

19 THE WITNESS: I'm not sure I understand
20 what you mean by plot.

21 BY MR. BICE:

22 Q. Is it a plot map?

23 A. There's plot plans. A lot is usually
24 associated in a mapping action.

25 Q. And when a --

1 A. You are platting a map.

2 Q. By lots?

3 A. You plat, P-L-A-T, the map and it can have
4 however many number of lots, yes.

5 Q. Okay. And the only plot of lot 5 is in
6 the parent final map; is that correct?

7 MR. JIMMERSON: Objection. There's no
8 such thing. The question is vague and ambiguous.

9 THE WITNESS: I don't think I'm still
10 understanding where you're going.

11 BY MR. BICE:

12 Q. You know what, then I must not be
13 articulating the question. Fair enough. The
14 recording of a plot is a recording of the lot; is
15 that right?

16 MR. JIMMERSON: Same objections as before,
17 please.

18 THE WITNESS: I think we're getting
19 terminology mixed up here. The reporting of a lot is
20 done through the mapping action. You plot a building
21 on a lot, and that's where the plot plan comes into
22 play.

23 BY MR. BICE:

24 Q. If you're not going to put a building on a
25 lot, is there a plot other than the lot map?

1 A. If you're going to develop the land,
2 regardless of a building, you would still go through
3 a plot plan.

4 MR. BICE: I have no further questions.
5 Thank you.

6 MR. JIMMERSON: I do, and I ask of you,
7 Mr. Lowenstein --

8 MR. BICE: How much time do you have left?

9 THE VIDEOGRAPHER: Three minutes.

10 MR. BICE: She only has three minutes left
11 on tape.

12 MR. JIMMERSON: We can come back tomorrow
13 morning. I'm not here to delay. I'm not looking for
14 some advantage a week from now. I'm just taking into
15 consideration, God forbid, the witness' own view, as
16 well as the time I'm going to take and the hour of
17 the time.

18 MR. BYRNES: Mr. Lowenstein says he'd like
19 to get it over with. That's fine with me.

20 MR. BICE: Want to take a break?

21 MR. JIMMERSON: Take a break.

22 THE VIDEOGRAPHER: The time is 6:08 p.m.
23 and this ends media number 3. We're off the video
24 record.

25 (Off the record.)

1 THE VIDEOGRAPHER: We are back on the
2 video record at 6:19 p.m.

3

4 EXAMINATION

5 BY MR. JIMMERSON:

6 Q. We've assumed our spaces or places in the
7 conference room. Mr. Lowenstein, I would like to
8 conduct a brief examination based upon opposing
9 counsel's second examination of you here today this
10 afternoon.

11 Is there such a thing as a parent final
12 plan, if you know? I'm sorry -- parent final map?

13 A. The terminology does exist. The
14 application is a final map.

15 Q. But you're not familiar with the concept
16 of a parent final map?

17 MR. BICE: Objection to form.

18 THE WITNESS: I have, in my time at the
19 Planning Department, dealt with parent final maps.

20 BY MR. JIMMERSON:

21 Q. Can you tell me, as opposed to a final
22 map, what a parent final map is?

23 A. Parent final maps, in my experience, had
24 been to create large developable parcels. Those
25 developable parcels would then be subject to

1 subsequent either site reviews or mapping actions for
2 future development.

3 Q. Just like we've asked for on the 17 acres
4 on the 720 units, correct?

5 A. The creation of the 17.49 acres, I
6 believe, was done through a parcel map.

7 Q. And was the 24 acres created out of Boca
8 Park also done by parcel map?

9 A. I don't know. I would have to research
10 that.

11 Q. You don't remember?

12 A. It's not been in my focus to know.

13 Q. Was the property at the towers,
14 Queensridge Towers, done by parcel map?

15 A. I would have to research the mapping
16 actions to give you an answer as far as what -- what
17 mapping actions were used.

18 Q. Now, you were shown -- withdraw.

19 Would you tell me what exhibit -- and
20 we're going to mark this as I think Exhibit CCCC and
21 DDDD. And do you have copies of those? I don't know
22 which order they belong.

23 A. No.

24 Q. What are the two maps -- two documents
25 that you sent to my firm that we've now produced and

1 provided to everyone?

2 A. Those are working maps to illustrate the
3 number of constructed residential units and
4 multifamily units within Peccole Ranch Phase 2 area.

5 MR. BYRNES: Have these been marked yet?

6 MR. JIMMERSON: No, not yet.

7 THE WITNESS: These indicate zoning,
8 general plan designation, acreage, units, density and
9 the associated land use entitlement for a plot plan
10 review.

11 BY MR. JIMMERSON:

12 Q. So let's take a moment and mark off those
13 as Exhibits CCCC and DDDD.

14 A. That's CCCC and DDDD. It goes further to
15 compare the numbers put forward by GCW.

16 Q. And GCW is an engineering firm?

17 A. Correct.

18 Q. And as long as we're marking, would you
19 also mark off these as EEEE and FFFF.

20 (Exhibit Number CCCC was marked.)

21 (Exhibit Number DDDD was marked.)

22 (Exhibit Number EEEE was marked.)

23 (Exhibit Number FFFF was marked.)

24 MR. BICE: What are these?

25 MR. JIMMERSON: EEEE and FFFF.

1 MR. BICE: Are these from the city?

2 MR. JIMMERSON: I don't believe so. I
3 believe they're from my client.

4 MR. BICE: Which is?

5 MR. BYRNES: Are these documents the same?

6 MR. JIMMERSON: No, they're not. EEEE and
7 FFFF are not the same. EEEE I marked as Exhibit Q,
8 land use data, and FFFF I've marked as Exhibit R,
9 Peccole Ranch Master Plan.

10 MR. BYRNES: It looks like the exhibits
11 are marked correctly but I had two Exhibit Qs. So
12 let's break these down. EEEE and FFFF are documents
13 that you caused to be sent to my law firm; is that
14 right?

15 THE WITNESS: That is correct.

16 BY MR. JIMMERSON:

17 Q. And you've told us what they are. With
18 EEEE being certain calculations and FFFF being
19 further studies; is that what you told me? Not those
20 two, 4E and 4F.

21 MR. BYRNES: These are C and D.

22 BY MR. JIMMERSON:

23 Q. 4C and 4D are the two maps you caused to
24 be sent to my law firm. And would you quickly
25 restate the difference between C and D, CCCC and

1 DDDD?

2 A. CCCC is the existing residential units in
3 phase 2, and then Peccole Ranch Phase 2 -- sorry,
4 DDDD is the entitled units.

5 Q. Okay. Let's stay with CCCC. Did you do
6 this work yourself?

7 A. No. This was done by the senior GIS
8 analyst?

9 Q. Is that Mr. Matt?

10 A. Mr. Matt.

11 Q. Matt. And he did both BBBB -- CCCC and
12 DDDD?

13 A. To my knowledge, yes.

14 Q. And, again, the reason I'm asking you
15 this, I immediately note -- I believe a discrepancy,
16 Mr. Lowenstein, if you look at CCCC right in the
17 center, the description about Queensridge Towers,
18 "zone PDGTC acres 17.12, units 385." Do you see
19 that?

20 A. We're on DDDD?

21 Q. CCCC, Queensridge Towers.

22 A. There's two parcels.

23 Q. Right.

24 A. Two flag boxes off of -- one for each
25 parcel.

1 Q. Agreed. And my question to you is, do you
2 know, in fact, there are 385 units in the Queensridge
3 Towers as they exist today?

4 A. There is 219 built.

5 Q. So what I'm suggesting is there is an
6 error right on the first page of this document. And
7 what I'm trying to say is, I think you'll find 385,
8 Mr. Lowenstein, would be a combination of the
9 as-built and what was suggested might be built
10 sometime in the future, the two towers.

11 A. The delta of 166 is stated as approved.

12 Q. I understand. But as part of the 385 and
13 not in addition thereto. That's the reason I'm
14 pointing it out to you.

15 A. It is part of the total number of units
16 that are either existing or entitled.

17 Q. Okay. There's no 551 units at the towers?

18 A. There's really 385.

19 Q. Right.

20 A. 166 to 219.

21 Q. My point is, the 385 that he has on that
22 line is an error?

23 MR. BICE: Objection as to the form.

24 THE WITNESS: Are we on triple 4 or --

25 ///

1 BY MR. JIMMERSON:

2 Q. CCCC.

3 A. DDDD?

4 Q. CCCC.

5 MR. BYRNES: I think you have your --
6 which one is CCCC?

7 MR. JIMMERSON: CCCC is the one that I
8 have is called City of Las Vegas Peccole Ranch, Phase
9 2, entitled units.

10 THE WITNESS: They're done backwards on
11 here. That's why I'm confused.

12 MR. JIMMERSON: What do you have,
13 Mr. Bice?

14 (Discussion off the record.)

15 BY MR. JIMMERSON:

16 Q. So to correct the audio and video record,
17 CCCC is the document called Peccole Ranch Phase 2,
18 existing residential units; and DDDD is the document
19 called Peccole Ranch Phase 2 entitled units. Now
20 we're working on the same document. I'm focusing
21 upon the existing residential units. It has 219 at
22 Queensridge Towers, correct?

23 A. Built, yes, 219.

24 Q. And approved for 166 in the event that a
25 further tower is ever built; is that right?

1 A. Yes.

2 Q. And so the number at -- on DDDD, that
3 total is 3,044 total entitled units is an erroneous
4 number; isn't that right?

5 A. I would have to add them up. It's a
6 possibility.

7 Q. Have you seen this document before I
8 showed it to you today? You must have because you
9 knew it existed.

10 A. Yes.

11 Q. In fairness to you, but also in fairness
12 to all of us in trying to not waste time, have you
13 checked the accuracy of these two documents?

14 A. I stated this is a working document, so
15 it's --

16 Q. All right. And if you were to do the
17 math, just for purposes of understanding the delta,
18 and you took 4247 and you subtracted 2424 as shown by
19 Exhibit CCCC, would you get 1800 plus units?

20 A. I have to borrow your pen again to do the
21 math.

22 MR. BICE: Do you need a calculator?

23 THE WITNESS: It would probably be
24 quicker.

25 MR. BICE: Here's a calculator.

1 BY MR. JIMMERSON:

2 Q. I get 1823.

3 A. Yes, 1823.

4 Q. 1823?

5 A. That is the number.

6 Q. All right. Thank you. And that was the
7 number that was in Exhibit ZZZ, the report that you
8 provided to the city commission on November 16th of
9 2016, right?

10 A. What was the number again, 18 --

11 Q. The number that you calculated with me was
12 1823, Mr. Lowenstein.

13 A. The number in the staff report is 1831.

14 Q. Nine more. Thank you.

15 Now, I would like to show you Exhibit EEEE
16 and FFFF. I will represent to you that these
17 calculations were done by my clients, particularly
18 70 Acres, LLC and its representatives. Exhibit EEEE
19 follows the phase 2 1990 amended acreage and dwelling
20 unit data for the City of Las Vegas. Do you see
21 that? Do you recognize it?

22 MR. BICE: Objection as to the form.
23 Foundation.

24 BY MR. JIMMERSON:

25 Q. Would you look at the center of EEEE and

1 just see if those numbers look familiar to you?

2 A. Is there a calculation?

3 Q. The 401 acres I think was something you
4 saw --

5 A. I believe that was reflected in the table,
6 in the master development plan.

7 Q. All right. And FFFF was what was actually
8 built, according to the work of our -- my clients.

9 MR. BICE: Objection. Foundation.

10 MR. JIMMERSON: I agree, Counsel.

11 BY MR. JIMMERSON:

12 Q. And as you have indicated, the master plan
13 was not followed by several actions during the course
14 of the 1990s. And as one example, it shows 401 acres
15 as the proposed acreage for homes, single-family
16 homes, and there were 430 acres, .66 actually
17 utilized. But that number, 430 acres was actually
18 utilized. Are there any actions reflected on
19 Exhibit LLL by the City of Las Vegas that improved
20 the increase of 29 acres plus to be used for single
21 residential development?

22 MR. BICE: Objection. Foundation.
23 Several representations in the question.

24 THE WITNESS: I believe there are
25 subsequent general plan amendments which changed

1 things from commercial to residential, and thereby,
2 affecting the acreages in those tables.

3 BY MR. JIMMERSON:

4 Q. Do you know the acreage changes, in other
5 words, the conversion to single family in those two
6 general plan amendments?

7 A. I have to review LLL to see if the summary
8 note on it indicates acreage, but off the top of my
9 head, I do not know.

10 Q. And so the number of 401 acres that was
11 suggested by the developer within its amended master
12 plan of 1990 was subject to the developer making
13 changes to the amount of acreage to be used to be
14 developed as single family, so long as it didn't
15 exceed the 4247 total, correct?

16 MR. BICE: Objection. Foundation.

17 Go ahead.

18 THE WITNESS: The applicants at the time
19 petitioned the City Council to change the general
20 plan designations to allow for residential in that
21 area. So by de facto, they amended the plan.

22 BY MR. JIMMERSON:

23 Q. And the plan was, as you've noted, not
24 amended despite making changes to the plan during the
25 1990s; is that right?

1 A. Can you restate that?

2 Q. And the actual buildings that were built,
3 the single family units that were constructed, were
4 done without amendments to the general plan, correct?

5 MR. BICE: Objection.

6 MR. JIMMERSON: I'm sorry. I misspoke.
7 Without amendments to the master plan throughout the
8 1990s and 2000s; is that right?

9 MR. BICE: Objection to form.

10 MR. BYRNES: By "master plan," you mean
11 Peccole Ranch?

12 BY MR. JIMMERSON:

13 Q. Peccole Ranch Master Plan as amended.

14 A. The actions that are in LLL are referring
15 to the plan designations of the City of Las Vegas. I
16 don't have any knowledge of any entitlement actions
17 that were specific to amending the Peccole Ranch
18 Master Development Plan.

19 Q. And yet what was -- what we see on
20 Exhibit LLL were different entitlements that were
21 placed upon the property and different projects that
22 were built on the property, correct?

23 MR. BICE: Objection to the form.
24 Misstates the record. Go ahead.

25 THE WITNESS: As previously stated, it is

1 a list of previous land use entitlements that have
2 occurred in the geographical area of Peccole Ranch
3 Phase 2.

4 BY MR. JIMMERSON:

5 Q. Without accompanying changes in the
6 Peccole Master Plan as amended, correct?

7 MR. BICE: Sorry, are you done, Jim? Jim,
8 are you done with your question?

9 MR. JIMMERSON: Sorry?

10 MR. BICE: Were you done with your
11 question?

12 MR. JIMMERSON: I am.

13 MR. BICE: And the question was so -- my
14 apologies, could you read that back?

15 MR. JIMMERSON: Go ahead, Monice.

16 (The record was read back.)

17 MR. BICE: That's his question. So my
18 objection is foundation. Presupposes that an
19 amendment was required for these changes. Go ahead.
20 My apologies.

21 THE WITNESS: I'm not aware of any other
22 applications that accompanied these entitlements that
23 would amend the master plan -- sorry, the Peccole
24 Ranch Master Development Plan.

25 ///

1 BY MR. JIMMERSON:

2 Q. And nonetheless, the entitlements were
3 placed upon the various parcels as you noted and then
4 constructed in accordance with what the city
5 approved; is that right?

6 A. To my knowledge, yes.

7 Q. Just for some edification, would you look
8 at your Exhibit DDDD. I'm going to pause for a
9 minute. I'm going to suspend that question for a
10 minute. On comparing EEEE, the proposed conceptual
11 master plan of Peccole for multifamily showed
12 60 acres. Do you recall that?

13 A. I'm sorry, you said which exhibit?

14 Q. EEEE.

15 A. Okay. If you could repeat this.

16 Q. I'm happy to. On the second line,
17 multifamily, the phase 2 conceptual master plan of
18 Peccole as amended on 1990 called for 60 acres of
19 multifamily. Do you see that?

20 A. On this table, yes.

21 Q. Okay. And comparing that to Exhibit FFFF,
22 did you note that there was a reduction in that and
23 it was actually built was 47 acres of multifamily,
24 approximately?

25 MR. BICE: Objection to the form to the

1 representation reduced.

2 BY MR. JIMMERSON:

3 Q. Well, 47 is less than 60. Let's start
4 with that. Correct?

5 A. Pursuant to the table, it indicates 47.36.

6 Q. And 47.36 is a reduced number, smaller
7 number than 60 acres, correct?

8 A. It is a smaller number, yes.

9 Q. The master plan was not amended to
10 formally acknowledge there was a reduction in
11 multifamily development from 60 acres to 47 acres,
12 was it?

13 MR. BICE: Objection. Foundation.
14 Presupposes that there is a reduction.

15 THE WITNESS: Clarification, when you're
16 saying the master plan, you're saying the Peccole
17 Ranch?

18 BY MR. JIMMERSON:

19 Q. Phase 2 Peccole plan as amended, it called
20 for 60 acres. And my client represents it was
21 actually constructed with 47 acres. And what I'm
22 saying, in the event there is, in fact, a 12 and a
23 half acre reduction of multifamily, there was no
24 amendment to the Peccole Master Plan to reflect that
25 reduction; isn't that right?

1 MR. BICE: Objection. Foundation.
2 Objection to the representation. And objection that
3 a plan amendment would be required to build less.

4 THE WITNESS: To my knowledge, there's no
5 accompanying applications.

6 BY MR. JIMMERSON:

7 Q. Would a plan amendment be required to
8 build more? In other words, to raise the 401 acres
9 as indicated to what did occur, 430 acres?

10 A. Can you repeat the question?

11 Q. Would an amendment to the Peccole Master
12 Plan be needed if you wanted to increase the number
13 of acres you devoted to residential?

14 A. As indicated in the land use elements, no
15 major modifications to the plan as prescribed for the
16 Peccole Ranch Master Development plan.

17 Q. So, in fact, there was an increase in
18 acreage for residential without accompanying change
19 in the Peccole Master Plan as amended, correct?
20 Again, I'm asking him to assume these numbers to be
21 accurate.

22 MR. BICE: Objection to foundation. Go
23 ahead.

24 MR. BYRNES: Are you saying an increase in
25 single family?

1 MR. JIMMERSON: Uh-hmm.

2 THE WITNESS: As I previously stated, I
3 don't see any accompanying applications that would
4 amend the Peccole Ranch Master Development Plan.

5 BY MR. JIMMERSON:

6 Q. Looking at the number of acres that are
7 devoted to north of Charleston, on your Exhibit
8 Number DDDD, this blue, so you can look at it, the
9 document, this blue area here, this blue area here,
10 have you done a calculation to calculate how many
11 acres are devoted to this residential area?

12 A. That wasn't part of this mapping exercise.

13 Q. And under -- I'm sorry, I misspoke.

14 Do you know how many total acres are
15 devoted to residential for phase 2 of the Peccole
16 plan which would include north of Charleston and that
17 small section south of Charleston on the left?

18 A. Not from this document. And off the top
19 of my head, I don't know.

20 Q. Well, there's 401 that is proposed in the
21 master plan. Would it surprise you to note they
22 actually built out 506 acres of residential?

23 A. As previously stated, there was general
24 plan amendments that changed commercial designated
25 property to residential, specifically at the

1 northeast corner of Charleston and Hualapai. So it
2 does not surprise me that there are additional
3 residential acreage.

4 Q. But do you know whether or not those two
5 general plan amendments increased the acreage by 100
6 plus acres?

7 A. I would have to rereview the document to
8 ascertain how much that acreage was.

9 Q. But as you've indicated in earlier
10 testimony today, the developer was left to the choice
11 of how to allocate his 4247 total aggregate dwelling
12 units, correct?

13 A. Yeah, the developer had discretion to come
14 in with subsequent plot plan reviews on how he was
15 going to develop the Peccole Ranch Master Development
16 Plan.

17 Q. So, yes or no, he did have that
18 discretion?

19 A. Yes.

20 MR. BICE: Objection to the form. Go
21 ahead.

22 BY MR. JIMMERSON:

23 Q. And looking at the -- now that you pointed
24 it out, the northwest corner -- I'm sorry, the
25 northeast corner of Hualapai and West Charleston,

1 that corner section was initially proposed to be
2 commercial, as you've pointed out, as I pointed out,
3 and was later developed commercial. Do you see that?
4 And that totaled 28.73 acres according to your map,
5 Exhibit DDDD; is that right?

6 A. Right. And just cross-referencing 000 in
7 that plan for commercial and where multifamily
8 exists, single family at this point in time.

9 Q. And would you look at your top right-hand
10 portion where it says "zoned" where Tivoli is located
11 now?

12 A. Okay.

13 Q. And where I believe it's located now would
14 be right here?

15 A. Yes.

16 Q. So Ladies and Gentlemen, judge and jury,
17 this piece right here is Tivoli development right
18 here, the corner of Alta and Rampart. The zoning is
19 C2.

20 A. Yes.

21 Q. Is there mixed units there, though, mixed
22 use there, though?

23 A. I believe it was entitled through a
24 special permit for mixed use.

25 Q. What is the mixed use? Commercial?

1 Residential? Professional?

2 A. Mixed use is a combination of residential
3 component and commercial component. Commercial can
4 vary in what particular commercial use.

5 Q. And this change is accomplished without
6 amendment to the master plan, the Peccole Master Plan
7 as amended; is that right?

8 A. As far as I'm aware, there was no
9 amendment.

10 Q. And this change was also accomplished
11 without general plan amendment; is that right?

12 A. That I would have to research if there was
13 a general plan.

14 Q. And the Queensridge Towers, does the
15 Queensridge Towers also have mixed use?

16 A. I don't believe so. It's actually under a
17 plan development. It's under the PD zoning district.

18 Q. Agree. Do you know whether or not there
19 is mixed uses at that location?

20 A. I believe it is -- I would have to look at
21 the entitlement. One moment. Entitled as a 385
22 condominium complex consisting of 216 story and 218
23 story towers with ancillary uses, clubhouse, and 1740
24 square foot single story office building on
25 20.1 acres.

1 Q. I think you misspoke yourself. 17,400
2 square foot office building?

3 A. That's correct. My apologies, 17,400.

4 Q. So does that refresh your recollection
5 that there is mixed use, at least permitted by the
6 City of Las Vegas, at that location?

7 A. As a planned development, that planned
8 development called for having both an office use and
9 a residential use on the property.

10 Q. And is there mixed use across the street
11 at the Boca Park renaissance site, which would be
12 just to the north of Boca Park between Alta and
13 Cheesecake Factory?

14 A. Currently I believe there is no land use
15 entitlement for mixed use.

16 Q. Was there any before -- before the present
17 date?

18 A. I believe so, yes, but under the planned
19 development, which planned development zoning
20 district, you are basically creating your overall
21 development. It is separate from a -- it's a
22 flexible zoning district different than if you were
23 at Tivoli, which is a general commercial zoning
24 district and which the zoning code requires if you
25 want to do a residential use, that you go through the

1 mixed use discretionary review by City Council.

2 Q. Now, I think you were asked this question
3 by opposing counsel, I'm quite certain, the
4 inconsistency that exists between a property zoned
5 R-PD7 and a land use of PR-OS, is that while there
6 can be a PR-OS within the breadth of definition of
7 R-PD7, there cannot be any construction of
8 single-family homes within the PR-OS land use without
9 amending the city. I believe that's your testimony.
10 Is that accurate?

11 A. Without amending the City of Las Vegas
12 general plan --

13 Q. General plan.

14 A. -- to have a consistent density
15 requirement from its associated designation.

16 Q. So you understand that the conditions of
17 approval by the City Council on April 4th of 1990
18 for this property did not reference any PR-OS,
19 correct?

20 MR. BICE: Objection as to form. The
21 documents speak for themselves. Go ahead.

22 THE WITNESS: As previously stated, there
23 are no reasons relative to PR-OS on that entitlement.

24 BY MR. JIMMERSON:

25 Q. And no conditions to impose -- and no

1 requirement to impose those conditions?

2 MR. BICE: Same objection. Presupposes
3 that the plan is not binding. Go ahead.

4 BY MR. JIMMERSON:

5 Q. You may answer.

6 A. Just for clarification, are you saying
7 requirements, not conditions? You mean what was in
8 the code statute at that point in time?

9 Q. Thank you. It's a poor question. I'm
10 saying there was no requirement to have a golf course
11 or open space in the approval by the City Council on
12 April 4th of 1990?

13 MR. BICE: Same objections. Go ahead.

14 THE WITNESS: As far as -- in relation to
15 the R-PD7 and the requirements of that zoning
16 district, I don't believe that there is a requirement
17 that specifically states a ratio over what
18 percentage. Other documents, such as 1985 plan, has,
19 in their short range plan, what they like to see as
20 percent, a number of populous, how much open space,
21 and all of that more than likely was taken into
22 consideration at the time of this entitlement
23 request.

24 BY MR. JIMMERSON:

25 Q. And the reason that the R-PD7 was selected

1 by city staff and by the developer was because of its
2 flexibility, correct?

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

4 THE WITNESS: I would assume so, yes.

5 BY MR. JIMMERSON:

6 Q. And the narrative that you were asked
7 about on redirect relative to what was in Exhibit 7
8 of your testimony, which was the proposed --
9 amendment to the Peccole Master Plan, was not
10 something that was made a condition of -- by any
11 action by the City Council on April 4th, 1990,
12 correct?

13 MR. BICE: Objection to the form.
14 Misstates the document.

15 You can answer the question.

16 THE WITNESS: I got the second part -- I
17 understood the second part of the question. Can you
18 restate the first part of the question?

19 BY MR. JIMMERSON:

20 Q. Yes. The narrative, the vision, the
21 developer has a dream or hope that there might be
22 open space, there might be a golf course, that was
23 never part of the entitlement that were placed upon
24 the property on April 4th of 1990, correct?

25 MR. BICE: Objection to the form. The

1 record and the documents speak for themselves.

2 THE WITNESS: As far as the conditions of
3 approval, it does not exist in that.

4 BY MR. JIMMERSON:

5 Q. My point is this: And I think you
6 gathered this by virtue of your position and your
7 observation and by the questions that have been asked
8 of you by opposing counsel and myself. Is the
9 position being advocated by the plaintiffs that the
10 master plan is a straight jacket and can never be
11 amended and my clients position that the master plan
12 is conceptual and can be amended on many occasions in
13 the future? What is your view?

14 MR. BICE: Objections. I'm sorry. I know
15 he was done. Objection to the representation and
16 characterization about straight jacket and to the
17 form of the question.

18 BY MR. JIMMERSON:

19 Q. You may answer the question, sir.

20 MR. BICE: Go ahead.

21 THE WITNESS: My understanding is that 1
22 has the right to petition the government to --
23 regarding land use entitlements or applications and
24 ultimately the City Council will make their decision.

25 ///

1 BY MR. JIMMERSON:

2 Q. And the property -- excuse me, and the
3 Peccole Master Plan of 198 -- of February 6, 1990 is,
4 I believe, Exhibit Perrigo 7. Do you have that
5 before you?

6 MR. BICE: It's Exhibit to his own
7 deposition.

8 MS. POLSELLI: It's Lowenstein 8.

9 MR. JIMMERSON: Lowenstein 8. Thank you,
10 Counsel.

11 THE WITNESS: I'm sorry. Can you restate
12 that?

13 BY MR. JIMMERSON:

14 Q. As you have indicated, the document itself
15 is conceptual in nature and talks in terms of overall
16 conceptual master plan on the first line, but I want
17 you to focus on the third paragraph of page 1, the
18 very first page?

19 MR. BICE: Objection to the prefatory
20 comments.

21 BY MR. JIMMERSON:

22 Q. I'll begin the question now. Reading
23 paragraph 3, as Exhibit-- Lowenstein 8, Perrigo
24 Exhibit 7, which is the Peccole Ranch overall master
25 plan, conceptual master plan. "Peccole Ranch is

1 located within the northeast and southeast growth
 2 areas of Las Vegas metropolitan area, Exhibit C,
 3 page 2, and has an excellent time distance
 4 relationship to surrounding support services
 5 employment centers and transportation network,
 6 including McCarran International Airport. This
 7 particular area of the valley has been experiencing a
 8 rapid growth rate as demonstrated by those
 9 developments occurring in the Peccole Ranch vicinity
 10 such as Canyon Gate, Summerlin and The Lakes.

11 Planning efforts for these planned
 12 communities promote viable growth, compatibility with
 13 adjacent uses and a commitment to quality. It is
 14 this trend that became the basis of a plan that would
 15 maintain flexibility to accommodate future market
 16 changes. The proposed plan is conceptual in nature
 17 to allow detailed planning at the time of
 18 development. In this way, the lifestyles of the
 19 anticipated population can be met. The physical
 20 character of Peccole Ranch is enhanced by its higher
 21 elevation than the rest of the city, views of the
 22 surrounding mountains providing visually pleasant
 23 backdrop, and the evening lights of downtown Las
 24 Vegas are in the distant view." Have I read that
 25 accurately?

1 A. You have.

2 Q. What does it mean to you when you were
3 told by this developer in 1990 that it is this trend
4 that became the basis of a plan that would maintain
5 flexibility to accommodate future market changes, the
6 proposed plan is conceptual in nature to allow
7 detailed planning at the time of development?

8 A. Well, not being employed at the city at
9 that point, but my take on it is that future -- the
10 development of this plan would be through subsequent
11 reviews, which is inherent in the condition that they
12 placed upon approval of the rezoning.

13 Q. Was there any condition in the rezoning
14 1990, April 4th, that required surrounding mountain
15 views be maintained?

16 A. No.

17 Q. That the evening lights of downtown Las
18 Vegas in the distance -- remain in the distant view?

19 A. No.

20 Q. That a golf course be developed sometime
21 in the future?

22 MR. BYRNES: Objection. Asked and
23 answered.

24 MR. BICE: About 20 times. Go ahead.

25 MR. JIMMERSON: By you alone.

1 MR. BICE: Probably.

2 BY MR. JIMMERSON:

3 Q. Would you answer it a 21st time, please?

4 A. No, there is no condition.

5 Q. Thank you. Now, you were asked some
6 questions about Lowenstein 1. Do you have that, this
7 document here?

8 A. Yes.

9 Q. What is Lowenstein 1?

10 A. It is a copy of the recorded final map for
11 Peccole West.

12 Q. Okay. And does it depict a golf course?

13 A. It depicts lot 5, which is labeled as
14 Badlands Golf Course.

15 Q. Where do you see that? Sorry, I don't see
16 it.

17 A. That is on page 3 of 5, 4 of 5, and on 5
18 of 5.

19 Q. And is the drainage defined?

20 A. There are two notes that correspond to the
21 legend in the bottom right corner, indicating note 56
22 and 52. As previously read, 56 is an 80-foot wide
23 City of Las Vegas drainage easement, and note
24 number 52 is an on-site drainage improvement
25 agreement, public -- with private maintenance per

1 agreement.

2 Q. What does that mean to you, as you have
3 accurately read that into the record, Mr. Lowenstein?

4 A. Well, note 56 says there is an 80-foot
5 wide drainage easement. 52 is in reference to the
6 agreement, I believe, on how to maintain it. Someone
7 from public works would be better able to speak to
8 that.

9 Q. And in the development of Tivoli across
10 the street, was there addressing of the drainage
11 issue there?

12 A. Based on standard practice of land use
13 entitlement, the Department of Public Works would
14 have addressed any drainage concerns and put their
15 requirements through their conditions of approval.

16 Q. Are there any requirements or any
17 conditions to the use of this property, as approved
18 by the City Council on April 4th, 1990, that
19 requires drainage to be maintained exactly as shown
20 on Exhibit Lowenstein 1?

21 MR. BYRNES: Object. That calls for a
22 legal conclusion.

23 MR. BICE: Join.

24 MR. JIMMERSON: I'm asking his
25 understanding of what the companies were.

1 MR. BICE: I join in the objection and
2 join -- sorry. I join in that objection. I also
3 object to the form of the question. Presupposes
4 conditions are the only restrictions.

5 THE WITNESS: Can you repeat that?

6 BY MR. JIMMERSON:

7 Q. Yes. Are there any requirements for
8 conditions to approval that require that drainage be
9 maintained precisely as shown on Lowenstein 1?

10 A. There is a condition, but if you allow me
11 to read it, and I'll read it out loud, if you like?

12 Q. Please.

13 A. "At the time development is proposed on
14 each parcel, appropriate right of way dedication,
15 street improvements, drainage plans/study submittals,
16 drainage way improvements, sanitary sewer collection
17 system extensions, and traffic signal system
18 participation shall be provided as required by the
19 Department of Public Works." That's general and not
20 specific to Peccole West.

21 Q. And isn't it true, working with the city
22 staff, that the developer will work with city staff
23 to resolve drainage issues unique to a particular
24 site?

25 MR. BICE: Objection to the form.

1 THE WITNESS: It is common practice that
2 when somebody is applying to develop a site, that is
3 either an update to an existing study or that a study
4 would be required, but that's at the determination of
5 the Department of Public Works.

6 BY MR. JIMMERSON:

7 Q. Fair enough. And at the time of the
8 recording of this map, there had been a public
9 private agreement reached with the developer; isn't
10 that right?

11 A. I don't --

12 Q. Well, you read the note.

13 A. I read the note. When it records, I'm not
14 sure if the agreement was actually recorded with this
15 or not.

16 Q. Was there an agreement in 1996 between the
17 property owner and the city to mitigate drainage in
18 1996?

19 MR. BICE: Objection. Foundation.

20 THE WITNESS: I would defer to the
21 Department of Public Works. Planning doesn't keep a
22 record on that.

23 BY MR. JIMMERSON:

24 Q. Showing you Exhibit 1 -- and I'm looking
25 at this document which I believe is the third page.

1 It's the first map of the 18 hole golf course.

2 A. Bottom right-hand corner, it says "Sheet 3
3 of 5?"

4 Q. Right. Thank you. Can you confirm for me
5 that there's no reference to the additional nine hole
6 golf course on this map?

7 A. Yes.

8 Q. Now, you were asked --

9 MR. BYRNES: Do you know how much longer
10 you're going to go?

11 MR. JIMMERSON: 10 more minutes.

12 MR. BYRNES: Okay. 7:15.

13 MR. JIMMERSON: Mr. Bice, what number did
14 you give this document?

15 MR. BICE: I don't remember off the top of
16 my head.

17 THE WITNESS: This was 10.

18 BY MR. JIMMERSON:

19 Q. Lowenstein 10. And you were told that
20 this is not how the document would reflect if you
21 look at the recorded records, but that there had been
22 red marks added to it by counsel for the plaintiffs.
23 Do you remember that?

24 A. Yes.

25 Q. Okay. And what is this document, Peccole

1 West lot 10?

2 A. This is sheet 4 of 4 of Peccole West lot
3 10. Furthermore, the header of this says, "Being lot
4 10 of amended Peccole West as shown as book 83 of
5 plat and page 57."

6 Q. Thank you. Now, opposing counsel, I
7 listened to his questions carefully, he said that
8 this represents a golf course, that his red
9 represents a golf course. Do you see anything on
10 this document, Peccole West Lot 10, Lowenstein 10,
11 that shows this area in red is a golf course?

12 MR. BICE: Objection to the representation
13 as to the prior question. Go ahead.

14 THE WITNESS: I do not see a reference to
15 golf course.

16 BY MR. JIMMERSON:

17 Q. Would you be kind enough to help us all
18 and next time we'll have to have a magnifying
19 glass -- would you read the note that I believe is
20 note 2, this one in the center?

21 A. Okay. That's indicated in the box?

22 Q. In the box, yes.

23 A. Okay. "Note 2. Lot 21 is a public
24 drainage easement hereby granted to be privately
25 maintained."

1 Q. And that note doesn't reference a golf
2 course either, does it?

3 A. No.

4 Q. You were asked a series of questions with
5 regard to a meeting at a development center office by
6 opposing counsel on redirect. Do you recall that?

7 A. A development service center.

8 Q. Development service center. And where is
9 that located?

10 A. 333 North Rancho Drive, Third Floor,
11 Conference Room 3C.

12 Q. Okay. And when a developer meets with the
13 city staff, planning staff, to discuss his or her
14 property, that is, generally speaking, a private
15 affair, correct?

16 A. In this particular instance it was a
17 negotiation of a development agreement between two
18 parties.

19 Q. Okay. And it is a developer, you know,
20 arguing or fighting for his land rights and it's the
21 city trying to respond responsibly; is that right?

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

23 THE WITNESS: My experience with
24 development agreement negotiations is you have the
25 developer party, the city representatives from

1 multiple departments, as well as potentially outside
2 agencies who have a voice in the development
3 agreement.

4 BY MR. JIMMERSON:

5 Q. And the concept is to find a way to
6 develop the property in a mutually agreeable fashion
7 that would be cost effective, right?

8 A. Yes. In the most general sense, yes.

9 Q. Have you been to many of those? Have you
10 attended many of those?

11 A. Attend many negotiations?

12 Q. Yes.

13 A. I've been -- I've led negotiation on at
14 least three.

15 Q. Is there any requirement, that you're
16 aware of, to invite neighbors?

17 A. Not that I am aware of.

18 Q. Is there any requirement to invite
19 adjoining landowners?

20 A. Not that I am aware of.

21 Q. Is there a requirement to
22 cross-examination as opposing counsel suggests?

23 A. Not that I am aware of.

24 Q. With regard to property zoned R-PD7 for a
25 person who wants to develop that property, what, if

1 any, requirements are there with regard to open space
2 for R-PD7 zoning?

3 A. At the time of -- say if somebody was to
4 develop it today?

5 Q. Okay. How about in 1990?

6 A. I would have to refer to the 1990 zoning
7 ordinance to give you the specifics on what that
8 section states.

9 Q. Do you recall what it's dated without
10 referring to it?

11 A. No. I would have to refresh my memory.

12 Q. What is the requirement, if any, with
13 regard to open space for R-PD7 zoning today?

14 A. The unified development code would defer
15 to the previous zoning ordinance that was in effect
16 when -- prior to the adoption of the Unified
17 Development Code. In that section, it has criteria
18 for submittal, including open space. It has a ratio
19 based on dwelling units per acre times 1.65 that
20 would yield what would be required for open space for
21 the development. It also has qualifiers as to what
22 constitutes open space.

23 Q. So it helps define what kinds of things
24 might qualify as open space?

25 A. Correct. As previously stated, it calls

1 out that one can't use slivers of landscape buffer as
2 being usable open space for a community.

3 Q. Got it. Now, is it possible -- withdraw.

4 Is it possible to satisfy an open space
5 requirement, if any exists, by calling upon the use
6 of adjoining landowners real estate? And I'm
7 assuming they're not the same owner and they're not
8 connected, not related.

9 A. Not to my knowledge. The only -- the only
10 thing that exists in another -- in a special area
11 plan in Lone Mountain, is they had, in lieu of open
12 space, a monetary amount was given to an off-site
13 development of a regional park.

14 Q. But otherwise, you don't know of any
15 situation where a landowner in one case, one
16 property, parcel 1, can claim that he can satisfy any
17 open space requirements, if any, he may have by
18 asking an adjoining landowner to keep his property
19 undeveloped?

20 A. Not that I am aware of.

21 Q. As we saw, there is no requirement to
22 maintain a 166-acre golf course as open space as part
23 of the City Council's action on April 4th of 1990
24 as relates to my clients' property. Fair statement?

25 MR. BICE: Objection. Misstates the

1 record. Misstates the documents.

2 BY MR. JIMMERSON:

3 Q. You may answer the question.

4 A. I stated there are no conditions that
5 require that open space.

6 Q. Would you agree that the opposing
7 counsel's suggestion that this developer being
8 granted R-PD7 zoning, without any requirement to
9 maintain even a proposed golf course, must now at
10 this point require the maintenance of it as a golf
11 course?

12 MR. BICE: Objection to the form of the
13 question. Misstates the documents and misstates --

14 BY MR. JIMMERSON:

15 Q. I'll meet the objection. I'll state
16 another question.

17 Have you expressed any opinion to
18 Mr. Pankratz or to Mr. Kaempfer with regard to the
19 Plaintiffs Binion, Schreck and some other landowners'
20 attempt to maintain the property owned by my clients
21 as open space golf course?

22 MR. BICE: Objection to the form.
23 Compound.

24 THE WITNESS: I didn't catch the very
25 first part of that.

1 BY MR. JIMMERSON:

2 Q. Have you had any conversations to
3 Mr. Pankratz, to Mr. Kaempfer, or to any other person
4 you know as a representative of my clients, relative
5 to Schreck and Binion's and other landowners' efforts
6 to maintain this property owned by my clients only as
7 a golf course into the future?

8 A. Not to my recollection. We've -- as I
9 previously stated on the record, I believe that a
10 property owner has the ability to petition their
11 government, and as such, in this case, file land use
12 applications to entitle their property.

13 Q. And specifically, did you tell Mr.
14 Kaempfer that, at the very least, this developer
15 would receive 3.5 dwelling units per acre at a
16 minimum?

17 A. Not to my knowledge.

18 Q. Do you recall advising Mr. Kaempfer of a
19 specific number of dwelling units per acre that you
20 believed the client -- this client was entitled to
21 going forward under his existing zoning?

22 A. Not to my knowledge.

23 Q. Are you denying that you made such a
24 comment or you just don't remember it?

25 MR. BICE: Objection. Objection. Asked

1 and answered.

2 BY MR. JIMMERSON:

3 Q. I've never asked that question before
4 today, before this moment.

5 A. I don't recall.

6 Q. Would you agree that the zoning district
7 R-PD7 as it existed has -- had, as a component, a
8 very minimum -- very minimal open space requirement?

9 MR. BYRNES: Objection. Asked and
10 answered.

11 MR. JIMMERSON: As it existed in 1990.

12 MR. BICE: Objection. Asked and answered.

13 MR. JIMMERSON: I never asked that
14 question before.

15 MR. BICE: Misstates the document.

16 THE WITNESS: As I stated, during the time
17 that -- my assumption is during the time they
18 reviewed this application, they looked at the current
19 zoning -- sorry, the 19 of whatever at the time
20 zoning code in relation to the 1985 short range plan
21 of the Las Vegas general plan in their analysis of
22 the proposed development.

23 BY MR. JIMMERSON:

24 Q. Showing you what's been marked as -- I
25 guess it's Lowenstein's Exhibit 7. I'm sorry,

1 Perrigo Exhibit 7.

2 MR. BICE: Lowenstein 8 is the same
3 document.

4 BY MR. JIMMERSON:

5 Q. Thank you. Lowenstein 8, page 18. You
6 were asked this question by opposing counsel on
7 redirect about the effect, if any, of the dashes, and
8 also asked on direct. Do you recall that?

9 A. Yes.

10 MR. BICE: I object to that because I
11 didn't ask anything about that on my redirect and
12 this is beyond the scope of redirect.

13 BY MR. JIMMERSON:

14 Q. And the redirect spoke to this Exhibit
15 extensively, Counsel, and the counts of 4247.

16 Would you just read the bottom line on
17 that page?

18 A. On page 18?

19 Q. Yes.

20 A. "Note: Overall density based upon all
21 areas except right of way."

22 Q. What does that mean to you? What does
23 "all areas" mean to you?

24 A. Excluding the right of way from the
25 density calculation.

1 Q. So it would be excluding 60.4 acres but
2 including all other land use designations?

3 A. Yes.

4 Q. So the commercial office, for example, is
5 not zero, it's just not allocated; isn't that right?

6 MR. BICE: Objection to form. Misstates
7 the document.

8 MR. JIMMERSON: I'm looking right at the
9 document. If I've misstated, I want you to tell me
10 so.

11 BY MR. JIMMERSON:

12 Q. Because overall density is based upon all
13 areas except ROW, starting with commercial office,
14 the dash doesn't mean zero, the dash means it's just
15 not allocated; isn't that right?

16 MR. BICE: Objection to form. Misstates
17 the document. Anybody can read it.

18 BY MR. JIMMERSON:

19 Q. You may answer.

20 A. The previous line of questioning on it was
21 about how many office units can I place on there, and
22 having nothing designated there, does that mean I
23 can't build any office units. And the answer to that
24 was, it's not indicative of allowing no units.

25 Q. So it wouldn't be zero; zero wouldn't be

1 appropriate for commercial office? In other words,
2 the dash -- interpreting the dash as a zero would not
3 be --

4 MR. BICE: Go ahead, I'm sorry.

5 MR. BYRNES: For the record, you said you
6 would be done 10 minutes ago. 10 minutes, 5 minutes
7 ago. We're leaving at 7:30.

8 MR. JIMMERSON: Thank you, Counsel.

9 BY MR. JIMMERSON:

10 Q. My question is, it would not be fair to
11 interpret your last questions and answers to have
12 commercial office, the dash to be a zero, that's all
13 I'm trying to say. The dash doesn't mean zero,
14 consistent with your last few answers, correct?

15 A. Correct.

16 Q. All right. Thank you. Thank you very
17 much.

18

19 EXAMINATION

20 BY MR. BICE:

21 Q. Mr. Lowenstein, how many residential units
22 were approved in the commercial zone listed on
23 Exhibit 8 in front of you?

24 A. There are no residential units indicated.

25 Q. Okay. How many were approved on the golf

1 course?

2 A. There are no units indicated.

3 Q. How many were approved for -- let me look
4 over your shoulder and look at this document -- how
5 many were approved for the casino resort where
6 there's a dash?

7 A. There are no units indicated.

8 Q. How many were approved for the elementary
9 school where there's a dash?

10 A. There are no units indicated.

11 MR. JIMMERSON: Objection --

12 BY MR. BICE:

13 Q. How many were approved --

14 THE COURT REPORTER: Wait, wait, wait.

15 BY MR. BICE:

16 Q. -- right of way where there's a dash?

17 MR. JIMMERSON: I'm going to object and
18 then we'll stop the deposition if you're not going to
19 let me put in an objection in the file, Counsel. And
20 get out of camera way, please.

21 MR. BICE: I'm just trying to look over
22 it, so as to get through this.

23 MR. JIMMERSON: We can switch. We can do
24 whatever you want. Just stay off the camera.

25 MR. BICE: My apologies. Did I bother

1 you, Mr. Lowenstein?

2 THE WITNESS: I'm not bothered.

3 MR. BICE: All right. Thank you.

4 MR. JIMMERSON: Objection to the question
5 as misstating the document where a dash does not mean
6 zero.

7 BY MR. BICE:

8 Q. Mr. Lowenstein, again, there are zero
9 residential units approved for any of those areas
10 according to that document, correct?

11 MR. JIMMERSON: Objection. Misstates the
12 document.

13 THE WITNESS: There are no units indicated
14 on that table.

15 MR. BICE: Thank you.

16

17

18 EXAMINATION

19 BY MR. JIMMERSON:

20 Q. What is indicated on that table? A dash,
21 right?

22 A. There is a --

23 MR. BICE: Objection. The document speaks
24 for itself.

25 ///