

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**JOINT APPENDIX,  
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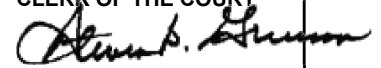
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**In the Matter Of:**  
**180 LAND vs CITY OF LAS VEGAS**

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*September 24, 2021*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

180 LAND CO., LLC, ET AL.,

Plaintiffs,

vs.

Case No. A-17-758528-J  
Dept. No. 16

CITY OF LAS VEGAS, ET AL.,

Defendants.

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CONTINUED MOTIONS  
BEFORE THE HONORABLE TIMOTHY C. WILLIAMS

On September 24, 2021

9:33 a.m. to 4:38 p.m.

For the Plaintiff: James J. Leavitt, Esq.  
Autumn Waters, Esq.  
Elizabeth Ghanem Ham, Esq.

For the Defendant: Christopher Molina, Esq.  
Andrew Schwartz, Esq.  
Philip R. Byrnes, Esq.  
Rebecca Wolfson, Esq.

Reported by: Kimberly A. Farkas, RPR, CCR #741

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P R O C E E D I N G S

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THE MARSHAL: All rise. Department 16 now in session. The Honorable Timothy Williams presiding.

THE COURT: All right. You may be seated. And let's go ahead and set forth our appearances on the record. We'll start first with plaintiff and move to the defense.

MR. LEAVITT: Good morning, Your Honor, James J. Leavitt on behalf of the plaintiff landowner 180 Land.

MS. WATERS: Good morning, Your Honor. Autumn Waters on behalf of the landowners as well. And Elizabeth Ghanem Ham and Jennifer Knight are just running a few minutes late, but we're ready to go.

THE COURT: I understand.

MR. MOLINA: Chris Molina on behalf of the City.

MR. SCHWARTZ: Andrew Schwartz on behalf of the City, Your Honor.

MR. BYRNES: Phil Byrnes on behalf of the City.

THE COURT: Okay. Once again, good morning. So, sir, do we have something we need to address before we get started?

1 MR. LEAVITT: One thing, Your Honor. I just  
2 wanted to make sure that I was clear on this yesterday.  
3 I'll just be very quickly with one matter.

4 We raised an objection yesterday. I just  
5 wanted to make clear what our objection was. I heard a  
6 little bit of conversation yesterday about the R-PD7  
7 zoning on the property. In this very case, the  
8 landowners requested all of the historical records for  
9 the R-PD7 zoning from 1983 forward in requests for  
10 production of documents, including applications,  
11 minutes, drafts, memos, letters, correspondence,  
12 everything the City had in regards to the R-PD7 zoning.  
13 The City's response: "Such records are not  
14 proportionate to the needs of this case as the City  
15 does not dispute the R-PD7 zoning."

16 So we've had no discovery on the R-PD7 zoning  
17 because the City did not dispute --

18 THE COURT: Sir, I mean, if that's the  
19 response to the request --

20 MR. LEAVITT: It is, Your Honor.

21 THE COURT: -- that becomes part of the case.  
22 And, ultimately -- I thought about this yesterday. I  
23 thought about it this morning. And I have no -- I  
24 think you've done a really good job of giving me a  
25 historical oversight on land development in Las Vegas.

1 But at the end of the day, when this 35-acre parcel was  
2 purchased, how was it zoned?

3 MR. MOLINA: R-PD7.

4 THE COURT: Okay then. None of this other  
5 stuff matters, does it?

6 MR. MOLINA: Well, absolutely it does.

7 THE COURT: Tell me how. Here's another  
8 question I have for you.

9 MR. MOLINA: Sure.

10 THE COURT: Why wouldn't R-PD7 zoning be part  
11 of the bundle of rights that have been accessed or that  
12 are owned by 180 Land Company in this case?

13 MR. MOLINA: Well, because it's not an actual  
14 entitlement in this case. With respect to the specific  
15 R-PD7 zoning on the Badlands golf course was not an  
16 entitlement to build. In any event --

17 THE COURT: Well, but, I mean, isn't it --  
18 here's the thing about it. I mean, if it's not an  
19 entitlement to build, there's going to have to be a  
20 pretty good reason as to why he couldn't have his  
21 expectations met. And I'm talking about 180 Land. I  
22 don't mind telling you that.

23 Because you've got to give me some reasons.  
24 Because, at the end of the day, and I understand this,  
25 well, we have to do the whole parcel, this or that,

1 but, you know what, this 35 acres was zoned; right?  
2 It's uncontroverted. So we're going through this  
3 history. How is that relevant? It's zoned R-PD7.

4 MR. MOLINA: Can I approach?

5 THE COURT: I mean, you can, but is it zoned  
6 R-PD7?

7 MR. MOLINA: There's no doubt about that.

8 THE COURT: Okay. Well, move on. Tell me  
9 why Mr. Leavitt is wrong. That's what I want to know.

10 Sir, you can step up and do it. He went  
11 through a pretty comprehensive factual rendition as to  
12 the basis for their motion for summary judgment; right.  
13 He said, Judge, these are uncontroverted issues of  
14 material fact in this case. I get that. And that's  
15 what Rule 56 mandates. Show me why he's wrong.

16 MR. SCHWARTZ: Your Honor, could I address  
17 that?

18 THE COURT: I never cut anybody off, but at  
19 the end of the day, I want to know why this is  
20 relevant.

21 MR. SCHWARTZ: Can I address that,  
22 Your Honor?

23 THE COURT: Absolutely.

24 MR. SCHWARTZ: We haven't even gotten to the  
25 facts.



1 THE COURT: We haven't what?

2 MR. SCHWARTZ: We haven't gotten to the facts  
3 from 1990 forward.

4 THE COURT: Okay. But my question is this.  
5 When 180 Land Company purchased the 35 acres at issue,  
6 what was the zoning?

7 MR. MOLINA: The zoning was R-PD7. And  
8 that's why I'm trying to walk you through this, to  
9 explain what that means.

10 THE COURT: You can say what it means. We've  
11 had -- this isn't the first rodeo as far as the  
12 hearings are concerned in this case. It was explained  
13 to me over a year ago what that means. So if you want  
14 to go over that again, that's okay.

15 MR. MOLINA: Okay. And I need to make a  
16 record.

17 THE COURT: I don't mind telling you this. I  
18 sat down and I thought about this. We spent an hour  
19 and a half yesterday, and none of the issues that are  
20 important to this case have been addressed from the  
21 defense perspective.

22 MR. MOLINA: I'm sorry, but I disagree.

23 THE COURT: Well, sir, I'm making the  
24 decision. I was a trial lawyer. You've got to know  
25 your audience. That's why I'm telling you what I'm

1 looking for.

2 MR. SCHWARTZ: Your Honor, that's a legal  
3 issue, and I fully intend to address that issue.

4 THE COURT: So, sir, it's a legal issue.  
5 When it comes to assessing the legal issues in this  
6 case, if the property, the 35 acres at issue, has been  
7 zoned R-PD7, yesterday, the facts that we went over  
8 yesterday, how is that relevant to the issues at hand  
9 right now?

10 MR. SCHWARTZ: It explains how R-PD7 zoning  
11 works. It explains the legal --

12 THE COURT: We never talked about how R-PD7  
13 worked yesterday.

14 MR. SCHWARTZ: I know. Because we're just  
15 going through the facts --

16 THE COURT: I know how it works. If you want  
17 to spend 30 seconds saying, Judge, this is what R-PD7  
18 zoning is, I'll listen to that. But I'm talking about  
19 the issues involved in this case involve a taking and  
20 whether there was a taking or not; right. And I asked,  
21 I think it was a pretty good question, and I understand  
22 bundle of rights. I get that when it comes to real  
23 property ownership. And is R-PD7 part of that.

24 MR. MOLINA: No.

25 THE COURT: Tell me why.

1 MR. LEAVITT: Your Honor, if I can --

2 THE COURT: I'm going to give you a chance,  
3 Mr. Leavitt.

4 MR. SCHWARTZ: Your Honor, Mr. Molina is  
5 going to explain what R-PD7 zoning is --

6 THE COURT: Tell me now. You know, I'm going  
7 to tell you this. I did not -- I listened to it. I  
8 thought it was enjoyable to listen to the lecture  
9 yesterday on the history of Las Vega city planning and  
10 zoning and what's happened west of Rainbow and the  
11 Peccole Family and all the wonderful things they've  
12 done. But that has no bearing on the decision I have  
13 to make today. I just want to tell you that.

14 MR. SCHWARTZ: Your Honor, Mr. Molina is  
15 ready to proceed to explain what R-PD7 zoning is all  
16 about, what it means, how it was used in this case.  
17 This is directly relevant to the issues and he's about  
18 ready to do that.

19 THE COURT: Okay. We're going to back to  
20 1800 or whatever.

21 MR. MOLINA: We're going to pick up right  
22 where we left off yesterday, which is 1988.

23 MR. LEAVITT: Your Honor, if I could just say  
24 one last thing because I just want to make my record  
25 clear, with the Court's indulgence.

1 THE COURT: Yes.

2 MR. LEAVITT: The question is what does R-PD7  
3 mean. We had extensive briefing on that.

4 THE COURT: Absolutely.

5 MR. LEAVITT: This Court entered an order and  
6 said, you have defined what R-PD7 is in your 10/12/2020  
7 order. That's the law of the case. Your Honor, I had  
8 no idea this was going to happen today. I asked for  
9 their PowerPoint yesterday. I still don't have it.

10 THE COURT: But you know what, that's not how  
11 we do things. We just don't do things the morning of a  
12 hearing; right. And my question is this. What was  
13 that discovery response that you had, sir?

14 MR. LEAVITT: The discovery response was the  
15 records that we asked for are not proportionate to the  
16 needs of the case as the City does not dispute that the  
17 subject property is zoned R-PD7. So what we did is at  
18 the hearing we had, you defined R-PD7. We heard all  
19 these arguments. And we now have an order that defines  
20 that the R-PD7 says the landowners have the legal right  
21 to develop residentially on their property. And the  
22 Nevada Supreme Court in the Alcantara v. Walmart said,  
23 once that order is entered, the party is not permitted  
24 to ambush another party at a hearing where it's not an  
25 issue and reargue it because that would be -- this is

1 the Court's statement -- harassment and oppressive.

2 So I have significant issues with being  
3 handed documents that I should have gotten during  
4 discovery --

5 THE COURT: Mr. Leavitt, I don't want to cut  
6 you off, but we do have Rule 16.1; right. We have a  
7 duty and responsibility to seasonably supplement all  
8 discovery and all documents in our possession. Because  
9 understand, this is a trial court. This isn't the  
10 city council. I just want to tell you that. It's a  
11 trial court.

12 So if there's -- and right now -- let me see,  
13 when was the discovery cutoff in this case?

14 MR. LEAVITT: Discovery cutoff occurred in --

15 MR. MOLINA: Your Honor, everything has been  
16 produced. Everything has been produced.

17 THE COURT: Wait. I just asked a question.  
18 I asked a question, sir. When was the discovery  
19 cutoff?

20 MR. LEAVITT: I believe, Your Honor, it was  
21 July 22nd, 2021, discovery was cut off.

22 THE COURT: And my point is this. Remember  
23 this, under Rule 56, you're dealing specifically with  
24 admissible evidence at the time of trial. So my  
25 question is this. Has all this stuff that's being

1 utilized been admitted -- I mean, been produced? If it  
2 has, you can deal with it. If it hasn't, I'm not going  
3 to consider it.

4 MR. MOLINA: Okay. That's fine.

5 THE COURT: It's not fine. That's the rule.

6 MR. MOLINA: Yeah. Can I ask a clarification  
7 on that because --

8 THE COURT: Oh, I'll clarify it for you.

9 MR. MOLINA: -- ordinances are laws; right.

10 THE COURT: But I didn't ask ordinances;  
11 right.

12 MR. MOLINA: I know. But that's --

13 THE COURT: No. I'm asking --

14 MR. MOLINA: I just want to make sure I can  
15 present ordinances.

16 THE COURT: Sir, I'm not going to -- I don't  
17 think there's any limitation under Rule 16.1 as it  
18 deals with the law.

19 MR. MOLINA: Okay. That's all I want to make  
20 clear.

21 THE COURT: Right. I mean, I thought that  
22 was pretty basic. There's nothing in Rule 16 that  
23 deals with the law; right. It deals with evidence.

24 MR. MOLINA: We're not using any other  
25 evidence that hasn't been produced. We've produced

1 everything.

2 THE COURT: So go ahead and tell me why. I'm  
3 listening.

4 MR. MOLINA: Okay. Thank you. And I just  
5 want to -- since you want to understand why I'm going  
6 through all of this. If you look at this, this is a  
7 mathematical explanation of why the master plan matters  
8 and the City's general plan matters with respect to  
9 R-PD7 zoning.

10 THE COURT: When it comes to R-PD7 zoning,  
11 the zoning in place, that wasn't in violation of the  
12 master plan, was it?

13 MR. MOLINA: It was the master plan.

14 THE COURT: Okay. All right. I get that.

15 MR. MOLINA: Right. So but here's what I'm  
16 saying. And this will make a lot of sense. And we'll  
17 go just through the documents that actually zoned the  
18 property R-PD7. And I want to explain why it matters  
19 that the open space is defined in the initial master  
20 plan. Because if you take 100 acres and you zone them  
21 R-PD7, you can build 700 units on 10 acres of that and  
22 you have 90 acres of open space; okay. It's 7 units  
23 per acre.

24 Now, if the first developer who got the  
25 entitlements for that went and he sold the rest of the

1 acres of open space to somebody else --

2 THE COURT: When you say, "the entitlements  
3 for that," what do you mean?

4 MR. MOLINA: The entitlements for the R-PD7  
5 on the initial 100 acres.

6 THE COURT: So here's my question when it  
7 comes to that issue. What does that mean,  
8 entitlements? Is that part of the bundle of rights?

9 MR. MOLINA: So there's this concept of  
10 vested rights. And you don't have vested rights until  
11 you've actually gotten your building permit and you've  
12 started to build. That's just the -- the basic idea is  
13 that -- it's like grandfathered rights. You can't stop  
14 somebody once they've already started use of a  
15 property. That doesn't necessarily mean that you have  
16 to let them start a new use of property.

17 So here we have historic use of the property  
18 is golf course. There's no grandfathered rights under  
19 R-PD7 zoning to build houses.

20 THE COURT: Okay. But here's my point.  
21 We're talking about the 35 acres. I want to be really  
22 specific. Because it's my recollection the 35 acres  
23 was zoned R-PD7.

24 MR. MOLINA: Yes. And I will walk you  
25 through that. But what I'm trying to illustrate here



1 is why, when you're talking about plan development  
2 zoning, that if you don't do it in accordance with the  
3 plan, an overall plan, and you ignore that plan later  
4 on, what could potentially be here is that you can  
5 build -- let's say you build 700 units on the first  
6 10 acres. You have 90 acres of open space. It's  
7 7 units per acre. So if you sold those 90 acres of  
8 open space to somebody else, they could build 630 units  
9 on 10 acres. It would be 7 units per acre.

10 And then if that person sold the remaining  
11 70 acres of open space to somebody else, they could  
12 build 560 units on 10 acres --

13 THE COURT: I understand hypotheticals. What  
14 are the facts of this case and what was proposed?  
15 That's what I want to know.

16 MR. MOLINA: Let's go into the -- let's go  
17 into the -- back into the evidence that's attached to  
18 our motion that's been produced in discovery. And what  
19 I'm going to put up here is the 1986 master plan. And  
20 we'll actually just skip forward. Let's go to  
21 Exhibit E.

22 THE COURT: Let me follow you, sir. And I  
23 have it up here.

24 MR. MOLINA: It's in our appendix of  
25 exhibits. And I apologize. We have 20 volumes of

1 exhibits. I didn't think it was practical to try to  
2 bring all of that into the court.

3 THE COURT: Go ahead, sir.

4 MR. MOLINA: So this is the Peccole Ranch  
5 master plan that was submitted to the City in 1988. It  
6 was prepared by Wayne Smith. It's by the Peccole Ranch  
7 Partnership, Triple 5 Corporation, and the Peccole  
8 Trust. Triple 5 Corporation is the company that built  
9 Mall of America. There's a lot of litigation and  
10 history between these two parties. They had a big  
11 falling out.

12 This is what they submitted to the City in  
13 1988. If you go to page 6 of our Exhibit E, it  
14 describes the Peccole Ranch master plan.

15 "The proposed overall 1716.3-acre Peccole  
16 Ranch master plan is being submitted to Las Vegas" --

17 THE COURT REPORTER: I'm sorry, sir, could  
18 you please read a little slower for me.

19 MR. MOLINA: -- "along with a rezoning  
20 application on 448 acres on phase one."

21 And I have that right here. This is the  
22 1716 acres. There's the boundary right there. Doesn't  
23 include Canyon Gate. Doesn't include the parcels that  
24 have been sold off and developed by other builders.

25 Now, we go to page 7 of Exhibit E. Shows you

1 the boundaries that I just outlined on this board. And  
2 if you go to page 8 of Exhibit E, it will show you  
3 that's the Peccole Ranch master plan submitted in 1988,  
4 and there's no golf courses on this.

5 And where did the golf course come from;  
6 right? And if you skip to page 18, just included this  
7 to show that they've got the planned unit development  
8 concept in mind. They're doing open space. They're  
9 clustering houses.

10 And I'll show you on page 24 of Exhibit E, we  
11 have the phase one land use data. Phase one was  
12 actually just from south of Charleston Boulevard west  
13 of Fort Apache, north of Sahara Avenue, and cuts off  
14 right through here on this street that kind of curves  
15 around. So that's phase one. It's just 400 acres.

16 So what you'll see here is this phase one  
17 land use data. You've got R-PD7 zoning on the single  
18 family, and you also have R-PD7 zoning on the open  
19 space and drainage. Even the elementary school was  
20 zoned RPD-7.

21 So you've got a lot of different uses that  
22 you can put in an R-PD7 zone. Doesn't necessarily mean  
23 that you have entitlements to build houses. It's a  
24 planned development. How are they going to include all  
25 of these uses? You've got to have a plan. And this is

1 the plan.

2 If you go onto page 25 --

3 THE COURT: So here's my question as far as  
4 whatever plan was submitted by 180 Land Company as it  
5 relates to the 35-acre parcel that is at issue in this  
6 case. Would there have been a necessity for a variance  
7 of any sort?

8 MR. MOLINA: Not a variance. And I'll walk  
9 you through the specific entitlements that are  
10 required.

11 But the process has changed, and that's why I  
12 want to show, sort of, all this background so you  
13 understand that people were acting in good faith here.  
14 There's a legitimate debate. Reasonable people could  
15 disagree.

16 THE COURT: But here's my question. And I  
17 actually thought about this, too, good faith, intent  
18 and the like. At the end of the day, if you take  
19 somebody's property, you take somebody's property. You  
20 can say, you know what, we want to make this for the  
21 public good; right. And you can have good faith. And  
22 if you do that, of course, the private property owner  
23 has some rights, too.

24 MR. MOLINA: Right.

25 THE COURT: And so if you say, this is what

1 we want to do, we want to use it for this purpose, and  
2 it could be a great reason, for the best parks and  
3 recreation in Clark County, but you've got to pay the  
4 property owner.

5 MR. MOLINA: Absolutely. You're totally  
6 correct. But there's --

7 THE COURT: I'm going to tell everybody this.  
8 I'm not necessarily focusing -- you can address this if  
9 you want to. I'm not as concerned as much as the  
10 intent. I'm concerned about paying back the property  
11 owner. I understand there's a lot of arguments there.  
12 I'm going to listen to the evidence. But at the end of  
13 the day, what impact does this have on the rights, the  
14 entitlements, the bundle of rights, that were owned by  
15 the 180 Land Company vis-a-vis or is relating to the 35  
16 acres. So they can have all the goodwill and want to  
17 do the right thing, but the bottom line is, there's  
18 property rights here.

19 MR. MOLINA: And you're so dead on. The  
20 problem is, is that the developers argue that you have  
21 to look at the aggregate of the City's actions. And  
22 you have to look at all this different evidence. And  
23 he's trying to vilify everybody that's involved in this  
24 thing.

25 THE COURT: Well, I'm not looking at it from

1 vilified. I'm looking at the impact on his property  
2 rights.

3 MR. MOLINA: Okay. And that's great. And  
4 we'll talk about that. But what I really want to lay  
5 the foundation for is the process of obtaining  
6 entitlements. Because until you have an entitlement  
7 and until you start to build in reliance on that  
8 entitlement, you don't have vested rights. And the  
9 case law is super clear on this.

10 Stratosphere says, zoning does not confer  
11 vested rights. So that's the distinction here, is that  
12 you have to have a vested right in order to base a  
13 taking claim on that right. And you don't have a  
14 vested right just in the mere fact that the property is  
15 zoned. You have to go through the process --

16 THE COURT: They have a vested right based  
17 upon the ownership of a property; right? They have a  
18 vested right based upon real property ownership; right?

19 MR. MOLINA: They don't have a vested right  
20 to build whatever they want.

21 THE COURT: But here's the thing. You say  
22 they don't have a vested right to build whatever they  
23 want. And that's why I asked the one question as it  
24 pertained to whether a variance would be necessary as  
25 it relates to their project.

1 MR. MOLINA: It's not a variance. There's  
2 other entitlements that you would need to get, but it's  
3 not a variance.

4 THE COURT: But you're not answering my  
5 question. In essence, this was not a nonconforming  
6 use.

7 MR. MOLINA: It wasn't a use. It didn't  
8 exist.

9 THE COURT: Wait. Their application was not  
10 a nonconforming use. They didn't need to get a  
11 variance; right?

12 MR. MOLINA: A nonconforming use is a  
13 specialized term that means that a use that has been  
14 allowed, but then it's no longer allowed under a  
15 subsequent version of the code.

16 THE COURT: No. No. No. Answer my  
17 question.

18 Would they have to get any variance based  
19 upon their application?

20 MR. MOLINA: So our position is that --

21 THE COURT: Wait. Wait. That's a yes or no.  
22 That's a fact. It's not your position. Would they  
23 have had to get a variance?

24 MR. MOLINA: I'm trying to explain it's  
25 not --

1 THE COURT: Wait.

2 MR. MOLINA: No. The answer is no.

3 THE COURT: Okay. Here's the thing. You've  
4 got to understand this. I'm going to make the  
5 decision.

6 MR. MOLINA: Yeah.

7 THE COURT: So if you can't answer my  
8 questions and you're going to beat around the bush,  
9 that's going to impact my decision. I don't mind  
10 telling you that.

11 MR. MOLINA: I want to answer all of your  
12 questions, but what I'm trying to say -- I'm not trying  
13 to beat around the bush. I'm trying to explain that  
14 you have to have a general plan amendment at a minimum  
15 because the general plan is parks, recreation, and open  
16 space, which is consistent with the master plan that  
17 the City approved. You have to have a site development  
18 review application, which is, essentially, you're  
19 showing the City the plans, you're showing them the  
20 layout, you're showing them where you're going to put  
21 the landscaping, you know, what kind of units you're  
22 going to have. Then you have to have a tentative map.  
23 You have to have a subdivision approval.

24 So in this case, they filed a general plan  
25 amendment, but it wasn't specific to the 35-acre



1 property. It was on 166 acres. And that's the issue,  
2 is that they were asking for density of up to 5 units  
3 per acre, while at the same time, they were negotiating  
4 their development agreement that was saying that we're  
5 going to build 1 acre per lot. So if you're going to  
6 ask for 5 units per acre under the general plan  
7 designation, why are you telling us that you're going  
8 to build one acre per lot? If you go through the  
9 application history, what happened is they came in --

10 THE COURT: I want to make sure I'm clear.  
11 If it was 1 acre per lot, would that have been in  
12 conformance with R-PD7?

13 You know what, sir, I don't know if you  
14 litigate a lot, but most litigators don't do that.  
15 They answer the judge's questions; right. So my  
16 question is this. And I don't want any benign or  
17 whatever. Answer my question, please. Because that  
18 doesn't happen very often. I don't mind telling you I  
19 handle very complex cases.

20 MR. MOLINA: I know. I know you do. And  
21 what I'm trying to explain here is that unless there's  
22 a plan that contemplates housing in that area that's  
23 been designated for it -- actually, let me back up.

24 No, it doesn't comply with R-PD7 zoning. And  
25 the reason why is R-PD7 zoning only allows the amount

1 of housing that's allowed under the general plan  
2 designation. And the City's code is clear on that.  
3 The general plan controls the density limitations. The  
4 ROS has zero residential density.

5 THE COURT: Continue on, sir.

6 MR. MOLINA: Okay. Just going back -- we're  
7 going to get to all this. I promise you. I'm going to  
8 get to all of your questions. My thought here is that  
9 we put it all in order so it makes sense in a logical  
10 fashion.

11 And this is the overall master plan land use  
12 data. Like I was saying on the previous page, it  
13 showed that there was open space, schools, other uses  
14 that are zoned R-PD7. This also shows you've got open  
15 space and drainage, but there's no residential density.

16 That's the golf course. It's zoned -- the  
17 open space is zoned R-PD7, but it's no density. And  
18 that's what I'm saying is that you have to look at the  
19 plan. The plan says zero density on the golf course.  
20 Of course you can't build houses on a golf course.

21 And I'll just --

22 THE COURT: But this wasn't part of the  
23 golf course, the 35 acres; right?

24 MR. MOLINA: It's part of a 9-acre  
25 golf course.

1 THE COURT: I thought the 35 acres was  
2 separate from the rest of the golf course.

3 MR. MOLINA: This is the 35 acres right here.  
4 It's a golf course.

5 THE COURT: Is that true?

6 MR. MOLINA: Yes.

7 MR. LEAVITT: Your Honor, the answer is this:  
8 Under the Peccole Ranch concept plan, absolutely not  
9 part of the golf course. Number two, the Peccole Ranch  
10 concept plan that counsel is going through with you was  
11 abandoned.

12 It's disturbing what's happening here, Judge.  
13 This plan was abandoned. And he's taking you through  
14 an abandoned plan.

15 We went through all this, Judge, at the  
16 motion to determine property interest hearing. And  
17 that's why the Court didn't follow this plan, because  
18 it was abandoned. Disturbing what's happening. For  
19 counsel to testify to this plan is not evidence.

20 MR. MOLINA: I'm not -- I'm showing you the  
21 evidence. This is a golf course. This is an aerial  
22 map showing a golf course. How can we deny this is a  
23 golf course?

24 MR. LEAVITT: Your Honor, the 35-acre  
25 property was part of the interim golf course that was

1 used in the past. But under this plan that counsel is  
2 showing you, this property was not part of this  
3 golf course in this plan, number one. Number two, this  
4 plan was abandoned. We have the documentation showing  
5 this plan was abandoned.

6 THE COURT: Was the plan abandoned or not?

7 MR. MOLINA: No.

8 MR. LEAVITT: We'll show that to you, Your  
9 Honor.

10 MR. MOLINA: Can I just give my presentation?

11 MR. SCHWARTZ: Your Honor, we've ought to be  
12 allowed --

13 THE COURT: Sir, you can go ahead and say  
14 what you want to say. I'm listening.

15 MR. SCHWARTZ: I think we should be allowed  
16 to present our case without --

17 THE COURT: Well, you know what, I'm going to  
18 push back on that, sir, respectfully. I've never not  
19 permitted someone to present their case. However, when  
20 I ask questions, I don't expect rolling of the eyes  
21 and/or facial expressions that I can see from the  
22 lecturn, and putting the hands up in the air. I don't  
23 expect that either. I've had some fantastic lawyers  
24 appear in front of me, and I've asked them some really  
25 tough questions. And you know what they would do, they

1 would answer the question.

2 MR. SCHWARTZ: Apologies, Your Honor. We  
3 would just like to go through the facts of the general  
4 plan and the zoning of this property. This factual  
5 recitation is an answer to the Judge's question. We  
6 just need to be allowed to go through it.

7 THE COURT: I mean, go through it. And I  
8 will make a determination as to whether my question is  
9 asked or not. At the end of the day, I keep coming  
10 back to I wanted to know what the zoning was as it  
11 relates to the 35 acres at issue. And I guess the  
12 answer would be it was R-PD7; right?

13 MR. MOLINA: That's correct. Okay.  
14 Thank you. So I'm going to go to page 31 on Exhibit E.  
15 This is planning commission minutes for the master  
16 development plan that we just went through. What I was  
17 explaining yesterday is the City always followed the  
18 same process. You approve a plan, and then you rezone  
19 the property in accordance with the plan.

20 So on January 12th, 1989, the City planning  
21 commission approved the master development plan. And  
22 subject to a maximum of 3,150 dwelling units be allowed  
23 for phase one. And the plan director says in that  
24 first paragraph on the right-hand margin, he says, "The  
25 application involves a large parcel that's had several

1 master plans in the past. There are some major  
2 drainage channels going through the area. The exterior  
3 treatment will be similar to Canyon Gate."

4 And so then you go onto page 33 of  
5 Exhibit E., and there's a rezoning application. They  
6 approved a plan. Then they approved a rezoning  
7 application. And it says Z139-88. And it's subject to  
8 a resolution of intent with 12-month time limit. And  
9 this is just the phase one property.

10 If you go on to page 34 of Exhibit E,  
11 paragraph 10 down at the bottom says, "The existing  
12 resolution of intent is expunged under approval of this  
13 application."

14 The reason why I keep pointing that out,  
15 because the property is not officially zoned R-PD7  
16 until the development is done in 2000. And we'll get  
17 to that.

18 So that was the planning commission.

19 THE COURT: I get that. But, once again, I  
20 think -- and I keep coming back to this. And correct  
21 me if I'm wrong if I'm missing a point, but when the  
22 applications were made in this case, the 35 acres at  
23 issue was zoned R-PD7; right?

24 MR. MOLINA: Yes.

25 THE COURT: I'm trying to figure out why does

1 all this other stuff matter?

2 MR. MOLINA: Because you're in an existing  
3 planned development.

4 THE COURT: I mean, I get that. I do. Tell  
5 me that, hey, Judge, this is why that doesn't matter.  
6 Go ahead.

7 MR. MOLINA: Thank you.

8 THE COURT: Tee that up for me.

9 MR. MOLINA: I'm going to show you some other  
10 communities in town. There's five or six other  
11 communities, big, large, master planned communities  
12 with golf courses, man-made lakes, big open water  
13 features that are zoned R-PD7. And they're designated  
14 PR-OS in the City's general plan.

15 So what I'm trying to explain here is that in  
16 the '90s, they used this R-PD7 as flexible zoning.  
17 They're looking at the number of units. They're  
18 looking at the density. They're giving the developer  
19 flexibility to basically put things, you know,  
20 different uses in different places, depending on how  
21 they want to do it subject to the City's discretionary  
22 control.

23 And every time they approve one of these  
24 zoning applications, the developer still doesn't have  
25 an entitlement to build. They have to come back to the

1 City later on and get an entitlement on each individual  
2 parcel. And back then they called it a plot plan  
3 review. I'm not going to go through a plot plan review  
4 for every single one of these because it's voluminous.

5 But my point is that the zoning establishes  
6 an R-PD7 district on the entire property. And then the  
7 landowner has to come back and apply for plot plan  
8 review. Goes through planning commission. Sometimes  
9 it goes through city council on the individual parcels  
10 for them to say, okay, we like the layout. We like the  
11 way you put this together. We like the way that the  
12 houses look. There's aesthetic review as part of this.

13 And that's the second step before you can  
14 start applying for permits. That's how they did this,  
15 you know, in the '90s. The application procedures  
16 changed, you know, over time, but in the '90s, that's  
17 how this worked. And that's how this development  
18 specifically was built out.

19 So let's go to E36, page 36 of Exhibit E.  
20 And this is the city council minutes for that master  
21 development plan. And first paragraph explains what  
22 this says. "This item was held in abeyance at the  
23 request of the applicant --

24 THE COURT REPORTER: I'm sorry, sir. You  
25 have to read a little slower for me.



1 MR. MOLINA: Sorry. I've got so much to get  
2 through that I'm trying to --

3 THE COURT REPORTER: It doesn't help if I  
4 can't keep up with you.

5 MR. MOLINA: "This item was held in abeyance  
6 at the request of the applicant and as a revised master  
7 development plan for the Peccole property that is to be  
8 a planned community and named Peccole Ranch. There is  
9 a related rezoning application involving 444 --  
10 448.8 acres, gross acres, of the 1716 acres involved in  
11 this development plan."

12 Then on the third paragraph, it says, "The  
13 phase one portion of this property is located west of  
14 Fort Apache between Charleston Boulevard and  
15 Sahara Avenue. It's predominantly single-family use.  
16 There's a mixed-use village in the center on the  
17 settling portion of Sahara."

18 Which is what I showed you that nice, green,  
19 open space area with clustered apartments and, you  
20 know, other housing.

21 And then it says, "West of phase one similar  
22 type of development."

23 Talking about compatibility.

24 "The entire development will be a walled-in  
25 community with landscaping, a school site is proposed.

1 The overall density is 6.7 units per gross acre that is  
2 compatible with the general plan, which recommends an  
3 average density of 7 units per acre. Uses and the  
4 amount of acreage are as follows."

5 And you remember that I showed you that plan  
6 earlier. It didn't have a golf course. Well, it came  
7 back because they asked him to reduce the density and  
8 he brought the golf course back. So you've got  
9 207.1 acres of golf course.

10 And then if we go to page 38 of Exhibit E,  
11 this is the master plan that the City approved, the  
12 phase one master plan that the City approved. Shows  
13 the golf course has been added back to the north  
14 portion, the phase two portion, of the master plan.

15 And then if we go to page 41 of Exhibit E,  
16 they have a rezoning application. And the rezoning  
17 application is in accordance with the master plan. And  
18 you'll see here that there's conditions of approval on  
19 the bottom. And no. 3 says, "Approval of plot plans  
20 and elevation by the planning commission for each  
21 parcel prior to development."

22 So just because you get the zoning doesn't  
23 necessarily mean that they have to approve your  
24 development on a particular parcel. You still have to  
25 come back to the City and show them -- you have to

1 apply for approval on each parcel.

2 Now, I'm going to flip to page 43 of  
3 Exhibit E. And the third paragraph on that page says,  
4 "Initially, this phase had an overall density of 8.6  
5 dwelling units per acre, which exceeds the 7 units per  
6 gross acre density recommended in the general plan.  
7 The applicant has agreed to limit the maximum number of  
8 dwelling units to 3,150 that will reduce the density in  
9 accordance with the general plan. There are no  
10 development plans submitted at this time due to this  
11 being a large-scale development. And these will be  
12 required to be approved by the planning commission  
13 prior to development."

14 Going to page 44 of Exhibit E. This just  
15 shows the phase one area that was rezoned. Actually, I  
16 want to zoom in on just the top portion of that bold  
17 area. You see how the City has designated the parcels  
18 north of Charleston Boulevard with ROI? It's a  
19 resolution of intent. So those properties have  
20 resolution of intent zoning.

21 And I'll just point out one other thing here.  
22 Because we don't have GIS mapping at this point in  
23 time. We're keeping track of all this stuff by hand;  
24 right. So it's pretty burdensome for the City to try  
25 to keep track of this kind of stuff.

1           Now we're going to get to the master plan  
2           that actually led to the zoning of the phase two  
3           property where the 35-acre property is located. And  
4           that's in Exhibit F2. And this is a letter from  
5           Wayne Smith, the planner that basically did all the  
6           planning for the Peccole Ranch master plan for the  
7           Peccole Family.

8           He says, "Enclosed per your requirements are  
9           an application for rezoning and 8 blue lines of the  
10          master plan for the overall 1716.3 acres."

11          And that is this one. And, actually, I  
12          apologize. Go to page 3 of Exhibit F. This was the  
13          application where they added some property to  
14          phase one. It's basically overlooked, but it's, you  
15          know, they added property to the phase one area. This  
16          piece right here that goes down the middle was added to  
17          this part of phase one.

18          Now, something important happened in 1989  
19          that makes a big difference here.

20          Go to the next exhibit. Okay. This is  
21          Ordinance 3455. And what this did is this established  
22          a procedure for rezoning applications that deviate from  
23          the general plan. And what happened in 1989? The  
24          Nevada Supreme Court decided Nova Horizon v.  
25          City of Reno. The Nevada Supreme Court basically

1 reversed a denial of an application because the City  
2 didn't accord deferens to their master plan.

3 And so after that decision, the City amends  
4 its laws and says, okay, we've got to actually start  
5 making sure that we insist on this master plan being  
6 followed. And that's what this does. So this  
7 establishes a procedure. And all it said is if you're  
8 going to submit an application for development that's  
9 not consistent with the master plan, you've got to have  
10 a good justification for it.

11 THE COURT: And I think, for the record,  
12 that's why I asked the question as it relates to the  
13 35 acres at issue in this matter. Because it's my  
14 understanding, and we can make sure the record is clear  
15 on this, but the 180 Land didn't seek some sort of  
16 variance or deviation from the existing zoning as it  
17 pertained to the 35-acre property; is that correct?

18 MR. MOLINA: It's a general plan amendment,  
19 not a variance.

20 THE COURT: Okay. All right.

21 MR. MOLINA: So Exhibit G is another  
22 ordinance, 1989 ordinance. And this established a  
23 gaming enterprise district in the City of Las Vegas.  
24 And right there in the summary it says, "Establishes a  
25 gaming enterprise district as of 1990 for nonrestricted

1 gaming."

2 So if you want a casino, you have to be in  
3 the gaming enterprise district.

4 And then if we go to page 10 of Exhibit G.  
5 This is a memo from one of the planning staff to the  
6 department of planning. The memo just explains what  
7 the next documents are. Let's go to page 11.

8 This is the attachment A. And what they  
9 determined -- and I'll show you some additional  
10 evidence on this point. But what they determined was  
11 if we're going to have a gaming enterprise district,  
12 we're going to have nonrestricted gaming all the way  
13 out on the west side of Las Vegas, we need to make sure  
14 that it's not just a standalone casino. We're going to  
15 make sure that you're a destination resort.

16 And this is what defines a destination  
17 resort. A destination resort is designed as a hotel  
18 with a minimum of 200 guest rooms and an 18-hole  
19 golf course and the rest of these amenities. So if  
20 Peccole wanted to get into this, he needed an 18-hole  
21 golf course.

22 And then go to the next page, page 12 of  
23 Exhibit G. This is the gaming enterprise district map.  
24 And zoom in a little bit to the bottom left-hand corner  
25 there. You can see that's the gaming enterprise

1 district, the star. "Each planned community is limited  
2 to one destination resort as defined on attachment A."

3 You have to have a golf course.

4 Go up a little bit. There it is.

5 Peccole Ranch, limited to one destination resort.

6 Go to page 15 of Exhibit G. This is the  
7 background behind the ordinance that established the  
8 gaming enterprise district. Just tells you what the  
9 law was, the state law, that says, "During its recently  
10 enacted session, the Nevada legislature enacted Chapter  
11 616 statutes in 1989. The legislation provides that  
12 beginning January 1, 1990, no state license for  
13 nonrestricted gaming may be issued in such county  
14 unless the property being licensed is located in an  
15 area that has been designated as a gaming enterprise  
16 district."

17 So on page 17, you've got minutes of  
18 city council regarding the Las Vegas gaming enterprise  
19 district. This is actually a special meeting of the  
20 city council. And it talks about areas recommended for  
21 inclusion down in paragraph 4. Says, "Peccole Ranch in  
22 Summerlin Village 3 as outlined in the respective maps  
23 with the qualification that each of those two  
24 developments be limited to one destination resort as  
25 defined in the attachment."

1           And then we've got, on page 18 of Exhibit G,  
2 we have the memo where they're talking about what's a  
3 destination resort. They're saying, "Certain parties  
4 that are developing large master planned communities in  
5 the City of Las Vegas have requested Las Vegas Gaming  
6 Enterprise District Committee recommend that a portion  
7 of their master planned community be designated a  
8 gaming enterprise district."

9           If you were to go back to that map, you'd see  
10 it's just the phase two property north of Charleston  
11 Boulevard that says it is part gaming and part  
12 district.

13           So on page 23 of Exhibit G, we actually have  
14 a transcript of this. They talk about the Summerlin  
15 and Peccole properties were discussed next. Pointed  
16 out the people were upset about this. The two  
17 properties that are being discussed are open space that  
18 has been master planned and there were previous  
19 designations of what would be a resort hotel. And they  
20 just make a motion for approval.

21           And page 24 of Exhibit B is just sort of  
22 ironic that the person who seconded that person was  
23 Chris Kaempfer, the developer's attorney in the land  
24 use. So, you know, it's kind of a bait and switch.  
25 You're telling the City that you're going to build an



1 18-hole golf course so you can be included in a gaming  
2 enterprise district. And if they hadn't built that  
3 golf course, there wouldn't be a Sun Coast Hotel.

4 So, you know, what happens if the golf course  
5 closes. They're not going to close the Sun Coast now.  
6 But it's a bait and switch.

7 So now I'm going to go to Exhibit H. And  
8 this is what I thought the previous one was. But this  
9 is the submittal for the 1990 Peccole Ranch master  
10 plan. This is reduced acreage to 1569.6 acres. And  
11 we're going to get into this a little bit, into the  
12 nitty gritty on this one, if you'll indulge me.

13 On page 4 of Exhibit H, this is again just  
14 the booklet that was submitted with this application.  
15 It's prepared by Peccole Ranch Partnership. As I  
16 mentioned before, there's a falling out with the Triple  
17 5 group. They go their separate ways, but it is what  
18 it is.

19 Page 7 of Exhibit H is the explanation. It  
20 says, "The proposed 1569.6-acre Peccole Ranch master  
21 plan is being submitted to the City of Las Vegas for  
22 the approval of an amendment to the overall conceptual  
23 master plan, along with the rezoning of the 996.4 acres  
24 in phase two to R-PD7, R3 and C1 designations."

25 So you finally get to R-PD7 on the 35-acre

1 property. And I apologize for how long it took me to  
2 get to this.

3           Going on to page 9. Explains the proposed  
4 master plan incorporates office, neighborhood,  
5 commercial, nursing home, a bunch of other uses. Then  
6 it says, "An extensive 253-acre golf course and linear  
7 open space system winding throughout the community  
8 provides positive focal point while creating a  
9 mechanism to handle drainage flows."

10           So this was really smart for Peccole to use  
11 the golf course as the drainage. It's a win-win. You  
12 can knock out two birds with one stone.

13           Going on to page 11. And down at the bottom,  
14 the last paragraph talks about the differences between  
15 these two master plans, the one that was approved in  
16 1988 --

17           THE COURT: I have a question as far as  
18 draining. There's no question Mr. Peccole, based upon  
19 his actions in southern Nevada, was a forward-thinking  
20 man. But as far as the golf course is concerned, if  
21 the City wants that to remain drainage, wouldn't the  
22 City have to pay for that?

23           MR. MOLINA: I believe what you're asking is  
24 whether or not that would be an exaction. And I would  
25 defer to Mr. Schwartz to answer that question. That's

1 just a little bit --

2 THE COURT: But you understand what I mean?  
3 I mean, from a common good perspective, I get it, you  
4 know. And I think that's one of the issues that the  
5 county and the City and so on have been very proactive  
6 from a historical perspective. Because I've been here  
7 since the mid-'80s. And I remember when -- it was  
8 actually before I got here, but I still remember when  
9 Caesars Palace flooded. Everybody kind of knows that.

10 And Las Vegas, the community leaders and, I  
11 guess, also the engineers and planning, I think they  
12 were forward thinking. And I don't understand this  
13 because I'm not an engineer, but they put in all the  
14 different flood channels and all those things; right.

15 But my point is this. If there's a concern  
16 as to the use of the golf course and they had a  
17 secondary value as a flood channel, you know, for the  
18 public good, and there was going to be a potential  
19 change, and the City says, no, it should stay for this  
20 purpose, shouldn't the City pay for that?

21 MR. SCHWARTZ: Your Honor, the answer is no.  
22 And I can explain.

23 THE COURT: And make a note on it, sir.  
24 Write it down and tell me why the City would not pay  
25 for that.

1 MR. MOLINA: I mean, this is pretty common;  
2 right. Any development they have to address drainage.  
3 You just can't let properties get flooded. That's not  
4 good for anybody.

5 So page 4 of Exhibit H -- I'm sorry. I lost  
6 my place. I'm sorry. We are on page 11.

7 And I was saying it explains the difference  
8 is that there's been a refinement of the golf course  
9 and drainage-ways, shifting of parcels and parcel  
10 boundaries, to better use open space areas.

11 Going on to page 15 of Exhibit H, it talks  
12 about this drainage issue a little bit more where it  
13 says, "The focal point of Peccole Ranch phase two is  
14 the 199.8-acre golf course and open space drainage  
15 waste system, which traverses the site along with the  
16 national wash system."

17 It's a good thing to do drainage in a wash  
18 for a lot of different reasons. But it says, "All  
19 residential parcels within phase two except for one  
20 have exposure to the golf course and open space areas.  
21 The single-family parcel, which is not adjacent to the  
22 open space system borders Angel Park Golf Course."

23 This was a big deal. Open space was a big  
24 deal.

25 Page 17 of Exhibit H talks about the drainage

1 even more. The third paragraph from the top, it  
2 explains the pathway of the drainage flows.

3 So south of Charleston Boulevard the drainage  
4 flow through the washes initially enters the site in  
5 two locations along the western boundary at a peak rate  
6 of 800 cubic feet per second. Two wash flows are then  
7 directed into the main drainage wash, which flows  
8 northeasterly towards the large Angel Park.

9 And then the last paragraph on page 17 says,  
10 "Phase two. Proposed Peccole Ranch master plan has  
11 approximately 33.1 additional acres allotted for golf  
12 course and drainage-ways. The additional acreage  
13 accommodates a clubhouse, driving range, centrally  
14 located within the golf course and surrounding  
15 residential community. These features are also  
16 accessible to visitors staying at the adjacent  
17 destination resort casino."

18 So this was all part of a big plan. Page 23  
19 of Exhibit H. We'll go to the land use data. And,  
20 again, we've got 211.6 acres of golf course. It's  
21 going to be zoned R-PD7, but there's zero residential  
22 density. There's zero units.

23 Page 24. Same thing. This is the land use  
24 data for the overall master plan. Got 253 acres of  
25 golf course, open space, drainage, zero density.

1 All right. Page 27 is the legal description  
2 for the parcel that included the 35-acre property. And  
3 it's Lot 31 on the master plan map. And we'll show  
4 that in a second.

5 But if you go to the next page, page 3 -- I'm  
6 sorry -- page 29 shows the acreage. 519.87 acres for  
7 R-PD7 zoning. This Lot 31 has R-PD7 zoning.

8 The City asked the developer to submit these  
9 legal descriptions so they could say which part is  
10 going to be R-PD7, which part is going to be C1. This  
11 didn't subdivide the property. It just gave the City  
12 the legal description to know where the proposed uses  
13 were going to go.

14 And the thing that I'll point out about this  
15 it that says 519.87 acres for R-PD7. But if you went  
16 back to the phase two land data, there's only 401 acres  
17 of single-family residential. So you've got  
18 519.87 acres zoned R-PD7, but you only have 401 acres  
19 planned for single-family residential. The difference  
20 is the golf course is part of that R-PD7 zone.

21 So now I'm going to go on to page 47 of  
22 Exhibit H. And this is when they present the master  
23 plan to the planning commission; right. You've got to  
24 go to planning commission and then you go to  
25 city council. And they always do this in the same

1 order. They approve the master plan and then rezone  
2 the property.

3 You've got item 24 on planning commission.  
4 This is March 8th, 1990. And it says, "A maximum of  
5 4,247 dwelling units be allowed for phase two."

6 And then the director of planning also  
7 explains this request. Says, "Phase two contains  
8 996.4 acres predominantly single-family dwellings;  
9 however, there will be a multi-family resort,  
10 golf course, commercial office, school, rights-of-way.  
11 The significant change is the addition of the  
12 golf course and a larger resort casino site and a  
13 100-acre shopping center."

14 And then the second to the last sentence of  
15 that paragraph says, "The gaming enterprise district  
16 indicates this area could contain one destination  
17 resort/casino, but the applicant would have to have a  
18 major recreational facility and a minimum of 200 rooms,  
19 which is the golf course."

20 Going onto page 49. So after they approve  
21 the master plan, they go in and rezone the property.  
22 It's the 17th zoning application submitted in 1990.  
23 And the staff recommendation of approval. Mostly same  
24 conditions, 4,247 dwelling units per acre; conformance  
25 to the conditions of approval for the

1 Peccole Ranch Master Development Plan, phase two;  
2 approval of plot lands for each parcel.

3 At the time it was developed you have to  
4 dedicate the right-of-ways, streets, improvements,  
5 drainage plan, drainage waste system extension, all  
6 that stuff. And on the right side, you'll see there's  
7 William Peccole. He's there. He's testifying in  
8 support of this application.

9 And one of his, you know, people in the  
10 neighborhood complained about the casino. He says,  
11 it's going to be buffered by his golf course on the  
12 south and Angel Park Golf Course on the north.

13 And then his planner below also explains. He  
14 says, "We've reduced the density by about 2,200 units."

15 So where did number come from? We've reduced  
16 the density by 2,200 units. And the way to come up  
17 with that number is you look at the 4,247 units. Well,  
18 what would be 2,200 plus that? That gets you to about  
19 6,600.

20 And what he's doing, apparently, is he's  
21 multiplying the 996.4 acres times 7 to come up with a  
22 total allowable units of 7 units per acre on the entire  
23 master planned area, including the commercial,  
24 including, you know, all of these other uses,  
25 including, you know, the R3 zoned areas, the high



1 density apartments. He's looking at the entire master  
2 plan through the lens of the general plan, which is 7  
3 units per acre at this point in time.

4 And so he's saying, we reduced this by  
5 2200 acres [sic] because, theoretically, under the  
6 general plan that existed at that time, we could do 7  
7 units per acre on all 996.4 acres.

8 But they reduced it. They went down by 2,200  
9 units because the traffic issues just didn't make  
10 sense.

11 So going onto page 50 of Exhibit H, this is  
12 the city council minutes. Planning commission approved  
13 it. Now it goes to city council. City council  
14 approves it subject to all the conditions recommended  
15 by the planning commission, including --

16 THE COURT: Tell me this. Why didn't the  
17 city council approve the recommendations of the  
18 planning commission as it relates to the 35 acres in  
19 this case?

20 MR. MOLINA: Why did or didn't they?

21 THE COURT: Didn't they?

22 MR. MOLINA: Well, like I was saying before,  
23 the issue was that they were negotiating this  
24 development agreement that was saying that they're  
25 going to do 1 unit per acre or even less than that, I

1 think. And then they're coming in at the same time  
2 applying for a general plan amendment that would allow  
3 up to 5 units per acre on 166 acres, not just 35 acres.  
4 It didn't have any applications in the pipeline at that  
5 time for the other 130 acres.

6 And so -- and I'll walk you through that.  
7 I've got exhibits. I've got another binder for that.  
8 And we'll talk about that. Because I'll show you the  
9 evidence on that that explains why.

10 On page 51 of Exhibit H, this is the staff  
11 report that's included in that application. It just  
12 notes the land uses. And then on page 53 of Exhibit H,  
13 you've got a rezoning application. And they approve  
14 the rezoning application.

15 And I'm just going to go -- page 55 of  
16 Exhibit H, it's the last thing I'll say on this  
17 exhibit, is that on this fourth paragraph from the top,  
18 just says, "Phase two proposed development will contain  
19 4,247 dwelling units per acre, overall gross density of  
20 4.3 units."

21 Then at the bottom it says, "Conforms to  
22 general plan, the density recommendations, the general  
23 plan."

24 So they're below the 7 units per acre allowed  
25 on the general plan on the entire property and all

1 996.4 acres. And they're now at 4.3 units, if you look  
2 at the gross acreage of the entire development, of  
3 phase two.

4 So now I want to go to Exhibit QQQQ page 7.  
5 This is that master development plan that they approved  
6 on April 4th of 1990. As I was saying before, you have  
7 that Lot No. 31 is the one that is zoned R-PD7, that  
8 big, 600-acre piece. And if we could just zoom in to  
9 this top part that's up here north of Charleston  
10 Boulevard. The boundary lines for that Lot 31 include  
11 the golf course. And we can walk through the meets and  
12 bounds on the legal description, but I'm pretty sure  
13 you don't want to do that.

14 So what happened next? They approved the  
15 master development plan. They approved the rezoning  
16 application.

17 And then in 1992, they adopt a new general  
18 plan. And this changes a lot. This changes the way  
19 that the City handles, you know, general plan  
20 applications, how they actually handle their rezoning  
21 applications.

22 You remember that ordinance that I was saying  
23 before where they have to submit a justification  
24 statement? Now they actually have to apply. This  
25 formal application for a general plan amendment to

1 obtain development that's inconsistent with the general  
2 plan.

3 But I'm going to go through the process  
4 really quickly because there's been an argument that  
5 this general plan is somehow invalid. And that's just  
6 false. They worked on this general plan for two years.  
7 I won't go through all of that, but I'll just show you  
8 the documents and what they are just so you know what  
9 the evidence shows.

10 On Exhibit QQQQ8, this is attached to the  
11 declaration of the community development director.  
12 This is the general plan map that existed in 1992  
13 before the City adopted their new comprehensive master  
14 plan. And it's exactly what the City approved in 1990  
15 when Peccole applied for an amended master plan. The  
16 City just took that and they put it in their master  
17 plan.

18 And if you zoom in on the top portion north  
19 of Charleston Boulevard, you'll see the golf course.  
20 It's "P" for parks.

21 Now I'm going to go to RRRR2, the  
22 supplemental declaration of Seth Floyd, community  
23 planning director. These are minutes of the citizen  
24 advisory committee that put all this stuff together.

25 And there's a lot of big names on here.

1 You've got, all the way at the bottom, Brad Nelson,  
2 American Nevada Corporation. He did the Green Valley  
3 master plan. And then on page 15 -- I'm sorry --  
4 page 5 of that exhibit, these are minutes of that  
5 meeting. And it says, "Discussion ensued concerning  
6 the time between the committee meetings due to the  
7 desire of members to review land uses in the field, as  
8 well as staff preparation time, it was determined that  
9 there should be three weeks between meetings. The  
10 staff also instructed to mail out copies of the  
11 community profile maps being reviewed to aid in their  
12 field work."

13 And this is February 13th, 1991. If you go  
14 to page 7 of that exhibit, it's the same map. This is  
15 what was mailed out to the citizens advisory committee  
16 saying, hey, go look at what's existing out in the  
17 field, but this is what we've already approved. This  
18 is our approved general plan area.

19 And I talked about this yesterday. These  
20 community profile maps were part of that 1986 -- or  
21 1985 general plan, this whole community profile system.  
22 And back in 1985, the general plan looked like the  
23 Peccole land use plan that was approved in 1981. Well,  
24 they just replaced it with what they approved in 1990.

25 And then I'm just going to go through this

1 very, very quickly so we make a record that the 1992  
2 general plan was validly adopted. I'm going to go to  
3 RRRR2. This is the planning commission minutes from  
4 October 10th, 1991. And I'll just -- let me just  
5 explain the procedure very quickly here. Under NRS  
6 278.250, or maybe 210 or something like that, the  
7 planning commission has to adopt the master plan first.

8 Then the planning commission sends that  
9 master plan to the city council. And then if the  
10 city council approves the master plan, it's done. But  
11 if they make changes, it's got to go back to the  
12 planning commission. So that's why I want to walk  
13 through this a little bit, but I also just want to show  
14 the extent of all of the public meetings that were held  
15 on this general plan.

16 So the first one is October 10th, 1991. At  
17 this point in time, the citizens advisory committee has  
18 been working on this for over a year. And then we'll  
19 go to page -- just that second paragraph says, "The  
20 citizen advisory committee is 41 members. They met for  
21 approximately a year and a half to put this document  
22 together."

23 Going to the next exhibit, RRRR3. This is  
24 the October 22nd, 1991 planning commission meeting  
25 minutes. Remember, they only have to hold one meeting

1 on this plan before they adopt it and send it out to  
2 the city council, but they hold a lot.

3 We'll go to RRRR4. November 14th, 1991.

4 Let's go to RRRR5. November 26th, 1991.

5 And this is where they actually adopt it. So  
6 if we go to RRRR7, this is the resolution. And that's  
7 what the statute requires to adopt the general plan by  
8 resolution. And then you forward it to the  
9 city council.

10 So then let's go to RRRR8. City proposes an  
11 ordinance to adopt the general plan that was adopted by  
12 the planning commission. And under the City's  
13 procedural rules, you have to just read a bill before  
14 you can adopt it. So that's all they did. There's no  
15 discussion on it at this meeting.

16 And then what the City normally does is then  
17 they send a proposed ordinance to a recommending  
18 committee. And RRRR9 is the minutes of the  
19 recommending committee. And in this instance, the  
20 recommending committee was the entire city council.  
21 The entire city council reviewed this general plan.

22 If you go to page 4 of RRRR9, they talk  
23 about, it says, "Based on Nevada state case law, the  
24 courts upheld the master plan as a standard that  
25 demands deference and production-backed applicability.

1 The Nevada Supreme Court has held the master plans in  
2 Nevada must be accorded substantial compliance, while  
3 Nevada statutes require that zoning authority must  
4 adopt zoning regulations that are in substantial  
5 agreement with the master plan."

6 So that's the intent. That was the framework  
7 they were working with.

8 If you go to page 5, they talk about  
9 specifically they're making changes to the procedures  
10 of how they're going to enforce their general plan  
11 based on Nova Horizon. "No application for subdivision  
12 or land or change in zoning district classification  
13 which would have the effect of permitting use of land  
14 or structures in a manner inconsistent with the land  
15 use plan and/or the land use classification system may  
16 be approved without a plot without filing a  
17 simultaneous request to the city council to consider a  
18 formal planned amendment. In order for such zoning  
19 change to be approved the city council must hold a  
20 public hearing to consider planning commission  
21 recommendations and formally amend -- to formally amend  
22 the land use map and/or land use classification."

23 Finally, "No land use variance which would  
24 have the effect of permitting use density or intensity  
25 of land or structures in a manner inconsistent with the



1 land use and/or land use classification system shall be  
2 approved."

3 And that's the language that they're saying  
4 you need to insert into our general plan. And I'll  
5 show you where it is. And they -- on page 9 of RRRR,  
6 you have Councilman Adamsen specifically talking about  
7 the Peccole property.

8 And he's saying that, "There was also a  
9 question of west Charleston at Fort Apache/Rampart  
10 where they intersect. We currently have an ongoing  
11 application there. With that application forthcoming  
12 would we want to be proactive and take a look at that  
13 corner as it relates to commercial and eliminating  
14 residential, low residential, just immediately north."

15 And then down below that, the other council  
16 members say, we don't know what they're actually going  
17 to do at this point. We should probably go out and  
18 contact them.

19 If you go onto the next page, page 10.  
20 They're still talking about it. They say, well, what  
21 I've seen from the developer is commercial and with the  
22 first step we've taken reverting it to acreage. While  
23 we're in the process of doing this master plan update,  
24 thought it should be incorporated. And then down below  
25 he says, well, let's see if we can get in contact with

1     them to incorporate their changes into our map.

2             City just incorporated what Peccole asked  
3     for.

4             If you go to page 22. I'm sorry. Yeah,  
5     page 22. Is this a different exhibit? There it is.  
6     These are the land use categories that they are going  
7     to incorporate into their general plan. Remember, now  
8     they're going to insist that you formally amend the  
9     general plan in order to change something. And this is  
10    where the parks, recreation, open space comes from.  
11    Down at the bottom it just says "P." That's all they  
12    used at the time, just "P."

13            All right. Going on to RRRR10. Remember,  
14    they want to make changes to this. And under the state  
15    statute, if the city council is going to make changes,  
16    they have to refer it back to the planning commission.  
17    That's what they do on February 19th, 1992.

18            On RRRR11, is the planning commission meeting  
19    where they consider the city council's revisions. And  
20    on page 3 of that, they talk about the southwest sector  
21    map. And that's where the golf course gets designated  
22    P, PR-OS, in 1992.

23            And they say on paragraph 3, "Parcel in the  
24    vicinity of Rampart/Durango and Charleston/Alta revised  
25    to conform to revised Peccole Ranch master plan."

1           The City just adopted Peccole Ranch master  
2     plan as its general plan in 1992.

3           And this is a recommending committee meeting.  
4     Actually, RRRR12 this is minutes from a recommending  
5     committee meeting where they sent -- the planning  
6     commission adopted all the changes proposed by the  
7     city council. They sent it back to the city council.  
8     And the city council holds another meeting on this.

9           He says, "If someone applies for zoning  
10    that's not consisted with the plan, it's automatically  
11    taken in as a plan amendment and a hearing will be held  
12    on a plan amendment at the same time."

13          And then he says again later on down in that  
14    same minutes, he says, "In processing a plan amendment,  
15    the council will get staff background and analysis of  
16    what is going on so it would not be a spot plan  
17    amendment. Staff would recommend changing whatever is  
18    logical in the area, not just one piece at a time if  
19    it's time to do that. That way the plan will not get  
20    out of date."

21          So you've got an administrative benefit to  
22    requiring a general plan amendment in addition to a  
23    overall land use sort of principle here of making sure  
24    that you're not doing spot zoning.

25          RRRR13 is the city council minutes where they

1 adopt the new general plan. So we've had, I think,  
2 four or five different planning commission meetings  
3 before the planning commission adopts the 1992 general  
4 plan. Then it goes to the city council. The  
5 city council makes changes. Then it goes back to the  
6 planning commission, just like you're supposed to do  
7 under the statute.

8 Planning commission approves all of the  
9 changes recommended by the city council. And then the  
10 city council sends it back -- then the city council  
11 adopts an ordinance. And that's final. It's the law  
12 now.

13 RRRR13 -- actually, the next page. This just  
14 is a memo that is showing what changes were approved by  
15 the planning commission. It says it right there in  
16 that first paragraph. "The planning commission at  
17 their March 12, 1992, reviewed the revisions proposed  
18 by the city council recommending committee. They  
19 concurred with our revisions and unanimously adopted  
20 the general plan with these revisions."

21 So, in some of these other cases, the  
22 developers argued that this was -- you know, because  
23 the Peccole property wasn't listed on these changes or  
24 because the golf course wasn't listed on these changes,  
25 that somehow it wasn't part of the 1992 general plan.

1 And that's just false. What this is just showing is  
2 what was changed by the city council, sent back to the  
3 planning commission, and then approved by the  
4 city council again on April 1st. That's all that this  
5 is showing. And, in fact, they do show a change to  
6 part of the Peccole Ranch master plan. They said,  
7 we're going to revise this to conform to the Peccole  
8 Ranch master plan.

9 So now I'm going to go to QQQQ9. And this is  
10 what they adopted. That's the cover page. This  
11 gigantic binder, 400 and something pages. Then if you  
12 go to page 12 of QQQQ9. And we've given you all 400  
13 pages, by the way, in QQQQ9.

14 But on page 12, in the middle, it explains  
15 where did these maps come from? Where did the map that  
16 made the golf course PR-OS come from? Well, the City  
17 just combined all the smaller maps into one big map.

18 It's all this says. Aggregation of the 16  
19 individual community profile area maps into a northwest  
20 sector map, a southwest sector map, and a southeast  
21 sector map.

22 Developers are going to get up, and they're  
23 going to say, Brad Jerbic said the City studied this  
24 and they couldn't find out where it came from. This is  
25 where it came from. It was already in the master plan

1 before 1992.

2 Go to page 17 --

3 THE COURT: So, I mean, are we testifying or  
4 is that -- I just want to make sure I understand that.  
5 Because if Mr. Jerbic testified a specific way, I mean,  
6 the evidence would be limited to his testimony unless  
7 you were placed under oath and we took testimony from  
8 you, sir. And that's my point.

9 But go ahead on, sir, because I am going to  
10 have some questions. I'm going to think about this  
11 case.

12 MR. MOLINA: I thought the documents speak  
13 for themselves on that point.

14 THE COURT: There you go.

15 MR. LEAVITT: Your Honor, if I may lodge one  
16 objection. Counsel is testifying.

17 THE COURT: Sir, your position is the  
18 document speaks for itself.

19 MR. MOLINA: Yeah. I thought I walked  
20 through that.

21 THE COURT: I understand. Continue on.

22 MR. MOLINA: Thank you. On page 17 of the  
23 1992 master plan explains what is zoning. Zoning is  
24 the major implementation tool of the general plan.

25 And then on the right column it explains,

1 based on case law, Nevada case law in Nova Horizon, the  
2 courts upheld that master plan is the standard that  
3 commands deference and a presumption of applicability.  
4 Nevada Supreme Court has held that master plans in  
5 Nevada must be accorded substantial compliance while  
6 Nevada statutes require that zoning authority must  
7 adopt zoning regulations that are in substantial  
8 agreement with the master plan.

9 We have to follow the master plan.

10 And then on page 25 of Exhibit 9, they  
11 explain what does PR-OS mean, parks, recreation, open  
12 space. This category allows large open spaces and  
13 recreation areas, such as public and private golf  
14 courses, trails, and easements, drainage-ways, and  
15 retention basins, and any other large areas of  
16 permanent open land.

17 And further down on that page they're talking  
18 about legal significance of general master plans.  
19 People call it general plan, people call it master  
20 plan. But it says, "With the adoption of this general  
21 plan." And, actually, before that, they reference that  
22 ordinance that I showed you that they adopted after  
23 Nova Horizon in 1989, where they say that you have to  
24 have a justification statement for a deviation from a  
25 general plan. Now they're saying, with this general

1 plain in 1992, all future deviation requests shall be  
2 supported by a formal request to amend the land use  
3 map, classification schedule, or text as the case may  
4 require.

5           Getting back to your question about a  
6 variance. I wasn't trying to dodge the question. What  
7 I was trying to explain is that it's not a variance.  
8 Because a variance is -- involves actual development  
9 standards. Whereas, the general plan is talking about  
10 permitted land uses. So what I was saying is that you  
11 have to apply for a general plan amendment, not a  
12 variance.

13           THE COURT: Okay. In this case, as it  
14 relates to the 35 acres, would there be a requirement  
15 to obtain a variance as to the general plan amendment?  
16 Because it was already -- I keep coming back to this,  
17 but it was already zoned R-PD7.

18           MR. MOLINA: Those are two different types of  
19 applications in the City code. And they designate this  
20 by, when you look at the applications, they put a stamp  
21 on it, like, with a number. And a variance has a "VAR"  
22 and then there's a Bates or a Hansen number. And a  
23 general plan amendment is a "GPA" and then there's a  
24 different Hansen number. So they're two separate  
25 applications.



1 But you're correct, yeah, they have to --  
2 they have to apply for some kind of approval to deviate  
3 or to make the development consistent with the general  
4 plan. It's to bring it into conformance as opposed to  
5 asking for permission to deviate.

6 THE COURT: So here there would be no  
7 necessity to request conformance to the general plan as  
8 it relates to the 35 acres at issue based upon the fact  
9 that it had been already zoned at R-PD7.

10 MR. MOLINA: That's not the position that  
11 we've taken. We've stated --

12 THE COURT: No, no, no. I just asked the  
13 question, that's all. Is that true or not true?  
14 That's more of a factual issue.

15 MR. MOLINA: And we claim yes.

16 THE COURT: And why? It's already -- it's  
17 already zoned R-PD7. Why would they have to do that?

18 MR. MOLINA: Because the City designated it  
19 PR-OS in the general plan, which is zero density. No  
20 housing can be development in the general plan. Which  
21 is what Peccole asked for; right, and that's the master  
22 plan be approved zero density on the golf course. And  
23 the City said, okay, we're adopting this as our --

24 THE COURT: So are you saying there's a  
25 conflict? Because I'm trying to figure out if that is

1 the case, why would the 35 acres, and it appears to me  
2 there's no issue of fact here, why was it zoned R-PD7?

3 MR. MOLINA: Because the zoning was the  
4 entire parcel. And there's many uses that were allowed  
5 in that zoning, the drainage, the golf course.

6 THE COURT: I understand all that. But I  
7 keep coming back to the fact that it was zoned a  
8 specific way. And it appears to me there's not a issue  
9 of fact as it relates to how the 35 acres were zoned.

10 MR. SCHWARTZ: Your Honor, if I may, I will  
11 be addressing that in my comments. You've got zoning  
12 and master plan. They're two different things.

13 THE COURT: I understand the difference. I  
14 do. I get it.

15 MR. SCHWARTZ: So I will be addressing all of  
16 these questions in my remarks.

17 THE COURT: Okay.

18 MR. SCHWARTZ: Thank you.

19 MR. MOLINA: Let's just go through some maps  
20 to kind of explain the distinction between the general  
21 plan and zoning as it relates to --

22 THE COURT: We can all agree the general plan  
23 comes first, and then later comes the zoning; is that  
24 correct?

25 MR. MOLINA: That's our position. They don't

1 agree with that.

2 THE COURT: You know, I mean, and here's my  
3 point. Regardless of when that occurred, the property  
4 was zoned R-PD7.

5 MR. MOLINA: Right. We're just arguing about  
6 what that means. So QQQQ10 is the southwest sector map  
7 that was adopted with the 1992 general plan. And you  
8 have there the golf course in green with the  
9 surrounding area. So let's just kind of establish --  
10 and this is what I was saying by the documents speak  
11 for themselves. And we'll actually put them up and  
12 compare them. But I want to show you -- compare the  
13 1990 master plan with the community profile map the  
14 City had, you know, put in place before the 1992  
15 general plan.

16 You see the golf course is the same shape.  
17 All of the land uses are the same. On the left side  
18 you have the master plan is approved in 1990 by the  
19 city council. And on the right you have the community  
20 profile map, which was part of that general plan that  
21 was in place before the 1992 general plan. So the City  
22 just took what Peccole adopted and they put it into  
23 their general plan.

24 And then if you go on, what they just did  
25 with the existing general plan is then they just took

1 this smaller map and they merged them together and they  
2 created a bigger map. So that's all this is. They  
3 didn't change anything with the 1992 other than that  
4 one piece of commercial at Fort Apache and Charleston.

5 But the golf course was there. It was  
6 already planned to be part of that community.

7 Now, I'm going to show you some other  
8 communities in Las Vegas that have basically the same  
9 exact characteristics in terms of zoning and general  
10 plan designations. And the first one is Canyon Gate,  
11 which was originally property that Peccole owned as  
12 well. And Canyon Gate is zoned R-PD4. On the left  
13 side you have the zoning map. And you see how it's all  
14 consistent? The entire development is R-PD4, including  
15 the golf course.

16 And on the right side, you have the general  
17 plan map, which is green on the golf course. And the  
18 surrounding is low density residential.

19 So they're not in conflict because the open  
20 space golf course was part of the R-PD7 zoning. The  
21 general plan just called it out in detail. So we'll go  
22 to another example.

23 Desert Shores. This is another planned  
24 community. And you've got man made lakes that are  
25 zoned RPD, I think it's 5, R-PD5. The lakes are zoned

1 R-PD5. And in the City's general plan they're  
2 designated PR-OS. There's no inconsistency. The lakes  
3 were part of the planned community. When the City  
4 approved the rezoning application for that entire  
5 parcel that's encompassed in that blue boundary, the  
6 lakes were already part of the development. They  
7 didn't require additional, you know, zoning or  
8 entitlements. And they're designated PR-OS in the  
9 general plan.

10 THE COURT: When you say entitlements, what  
11 do you mean by that again? I just want to make sure  
12 the record is clear.

13 MR. MOLINA: An approved application for  
14 development.

15 This is The Lakes at Sahara, which is just  
16 south of Canyon Gate. We've got actually phase one and  
17 phase two of Lakes at Sahara. There's not so many  
18 lakes on the western portion, but there is open space.  
19 And if you look at it on the City's general plan map,  
20 the lake is designated PR-OS. It's open space. And  
21 there's also, you know, a nice little greenbelts on  
22 what they call the section 7 side of the property that  
23 are also designated PR-OS in the City's general plan.  
24 You go and drive out there, there's nice, little water  
25 features, big park areas. Sit down and have a picnic.

1 They're part of the community. They are all zoned RPD.

2 Next one is Los Prados. This is, I want to  
3 say, R-PD6. It's RPD something. The entire community,  
4 including the golf course, zoned residential planned  
5 development. Golf course is designated parks,  
6 recreation, open space in the City's general plan. No  
7 inconsistency.

8 Just got one more example to drive the point  
9 home. You got Painted Desert, another master planned  
10 community. This one actually really shows, you know,  
11 the concept of a planned development really well. You  
12 can see the area more clearly.

13 There's all types of density to this.  
14 There's condos, there's townhouses, there's  
15 single-family residences, there's apartments. There's  
16 all different types of housing. They're all zoned RPD,  
17 I want to say, 4.

18 And in the general plan, the golf course is  
19 designated PR-OS. There's no inconsistency. That's  
20 just how it was planned. The City approved these plans  
21 and the open space that was approved by the City was  
22 designated PR-OS in the general plan.

23 So, now, remember that the phase two master  
24 plan that the City approved in 1990 had 18 holes; okay.  
25 And the 35 acres is not part of those original

1 18 holes. There was an additional 9-hole course that  
2 was added subsequently. And if we go to Exhibit J,  
3 we'll see some letters about this, Clyde Spitz to  
4 Robert Genser, the planning director in 1996.

5 And he's asking for conversation that they  
6 can expand the golf course in the R-PD7 zone. And he  
7 says, "As you know, the Badlands Golf Course at Peccole  
8 Ranch is proposing to develop an additional 9-hole  
9 course between the existing golf course and Alta Drive.  
10 The existing master plan zoning of this area is R-PD7,  
11 and the golf course would be developed within this  
12 zoned parcel. I would like a letter from the City  
13 stating that a golf course would be compatible within  
14 the zoning. I need the letter for the bank."

15 And we deposed Clyde Spitz, and he confirmed  
16 that Peccole intended this golf course to be open  
17 space.

18 MR. SCHWARTZ: I have to -- Your Honor.

19 THE COURT: Number one, why does what Peccole  
20 intended matter? I mean, we're going back -- you know,  
21 sir, I mean, I think I've been very patient, for the  
22 record. I've been letting you go on now for an hour  
23 and 35 minutes. I mean, I don't mind saying that. You  
24 had about an hour plus yesterday. And we still haven't  
25 even gotten to the legal issues in this case.

1 MR. MOLINA: We're getting very close.

2 THE COURT: I mean, we've had this whole  
3 historical rendition. And a lot of my important, I  
4 think are important, issues have yet to be addressed as  
5 far as this case is concerned. Remember, at the end of  
6 the day, there's three claims the plaintiff is moving  
7 for summary judgment on. And that's what this case is  
8 all about. It's not a historical rendition of the  
9 planning by Clark County and the City of Las Vegas over  
10 the last 20 years. It's not. You know, I think I  
11 asked some pretty good questions.

12 For example, I remember reading the Sisolak  
13 case. And I remember reading the dissent. And Justice  
14 Maupin offered the dissent. He varied from the  
15 majority because he thought a Penn Central analysis  
16 should have been conducted. And the majority rejected  
17 it; right. Just as important, too, I don't know if  
18 this has been discussed, these are things I'm thinking  
19 about. So why would I conduct a Penn Central analysis  
20 right now when, of course, in Sisolak, the Nevada  
21 majority on the Supreme Court rejected that? And they  
22 didn't follow the lead of Justice Maupin. And I  
23 understand this. I really liked Justice Maupin.

24 But the things I always liked about  
25 Justice Maupin, he'd give good reasons when he did



1 dissents. Just as important, too, when he authored  
2 opinions, I thought they were so well written, I used  
3 to enjoy reading his decisions. I don't mind saying  
4 this. He's one of my favorite Supreme Court justices  
5 over the last 20 years here in the state of Nevada.  
6 But my point is this. The Nevada Supreme Court has  
7 ruled.

8 Just as important, too, I was wondering about  
9 it, and, for example, he discussed the futility  
10 analysis; right. He did. And he goes to exhaustion of  
11 administrative remedies. And I thought about that.

12 For example, futility is not limited to this  
13 area of the law. I'm a business court judge. I deal  
14 with futility from time to time as it relates to  
15 shareholder derivative litigation cases, and the demand  
16 requirement under NRCP 23.1. And that's what I love  
17 about the law because a lot of the concepts come into  
18 play again. Even when it comes to a simple motion to  
19 amend the complaint; right. I have to conduct a  
20 futility analysis from time to time as to whether or  
21 not to grant the motion.

22 So, for example, I was saying to myself, I  
23 kind of get this, there's this whole big picture issue  
24 as to what the developer should or shouldn't have done;  
25 right. But maybe, based upon the entire way you can

1 look at it, no matter what he intended to do, maybe a  
2 futility analysis is appropriate. I don't know. But  
3 as a trial judge, I will always tell you what I'm  
4 thinking.

5 MR. MOLINA: Thank you.

6 THE COURT: I think that's fair so you can  
7 address it; right.

8 MR. MOLINA: Thank you.

9 THE COURT: And that's my point. And I  
10 think, Kim, you need a break.

11 Madam reporter, you need a break?

12 THE COURT REPORTER: Sure.

13 THE COURT: Okay. We'll give you 15 right  
14 now. We'll break and we'll continue on.

15 (Whereupon, a recess was taken.)

16 THE MARSHAL: Department 16 come to order.  
17 Back on the record.

18 THE COURT: All right. We may continue on.  
19 Everybody may be seated.

20 MR. MOLINA: Thank you, Your Honor. I'm  
21 going to spend about 10 to 15 more minutes total before  
22 I give the floor to Mr. Schwartz.

23 THE COURT: Okay.

24 MR. MOLINA: Just got a few more exhibits to  
25 run through. I want to point out that Exhibit L is the

1 Ordinance 5250. This is adopting the 2020 master plan.  
2 The 2020 master plan is what was in effect when the  
3 developer was applying for development approvals.

4 And one thing to note is that the 2020 master  
5 plan did not have a new land use element so the 1992  
6 master plan, that first master plan where you see the  
7 golf course designated in green, that one still applies  
8 as of 2000.

9 Exhibit N is Ordinance 5787. This is adopted  
10 in 2005. And this adopts a new land use element. And  
11 this replaces of the land use element from 1992. The  
12 reason why this is relevant is because there's been an  
13 argument that the PR-OS designation on the Badlands is  
14 somehow invalid even though we walked through all the  
15 planning commission hearings and all of the, you know,  
16 city council meetings, the citizen advisory committee  
17 meetings, I showed you all of that showing that the  
18 1992 general plan was valid. But if there is any real  
19 question about the designation of the PR-OS on the  
20 35-acre property at issue, this resolves all that.

21 This is 2005, Ordinance 5787. And if you go  
22 to page 14 of that exhibit, it explains the PR-OS  
23 designation. It says, parks, recreation, open space.  
24 Allows large public parks and recreation areas, such as  
25 public and private golf courses. Only thing that

1 changes it goes from being just a P designation to  
2 being a PR-OS. That's the only thing that they change.

3 And then page 15 of Exhibit N is the  
4 southwest sector map. And let's pull that up. That's  
5 fine because it gets adopted again. Let's go to the  
6 next ordinance.

7 Exhibit O is Ordinance 6056. And this was  
8 adopted in 2009. And what this did is, you may recall,  
9 rural neighborhood preservation is required in Nevada  
10 or was required for some point in time under NRS. So  
11 the City amended its land use element to include rural  
12 preservation neighborhoods, but they left everything  
13 else in the general plan the same.

14 And if we go to Exhibit page 11 of Exhibit O.  
15 There we go. You'll see that Peccole Ranch or  
16 Queensridge, the golf course, including all 27 holes.  
17 We'll zoom in on the middle there. Zoom in even more.  
18 There we go.

19 That's all 27 holes. That includes the  
20 35-acre property. It's PR-OS. Doesn't allow housing.  
21 It's the law.

22 Exhibit P is the 2011 update to the land use  
23 element. It's page 17 of Exhibit 7, same map. No  
24 changes to the Badlands. No change to the 35-acre  
25 property. It's still designated PR-OS.

1 THE COURT: Why would they zone it R-PD7?

2 MR. MOLINA: Because the zoning included open  
3 space use. Open space was a permissible use in R-PD7  
4 zoning.

5 THE COURT: I understand that. So  
6 residential construction of homes was a permissible use  
7 too; right?

8 MR. MOLINA: Right. But -- and this is a  
9 key, you know, fundamental part of our defense here, is  
10 that the City has discretion to change the general  
11 plan. And if you want to change the general plan, you  
12 can. You just have to apply. And that's what that  
13 1992 ordinance says, is that -- or the 1992 master plan  
14 said, is that every application after that master plan  
15 has to be in conformance with the master plan.

16 THE COURT: I want to understand this. I  
17 thought about this. I'm glad you're talking about  
18 this. I don't know. I never practiced in real  
19 property law or anything like that. And so when a  
20 specific piece of property is already zoned from a  
21 procedural perspective, and someone comes in for an  
22 application or for permits and the like specifically  
23 related to the property, typically, what would the City  
24 do? Would they check and confirm what the zoning is as  
25 part of the process? Or did they always go back and

1 say, look, let's see if this is conflicting with the  
2 master plan? Because that's what I want to know.

3 MR. MOLINA: So I'll walk you through this  
4 because, as you probably picked up on, I'm not a  
5 litigator.

6 THE COURT: That's okay, sir. You're doing a  
7 good job.

8 MR. MOLINA: I want to explain how I would  
9 approach this. Because I have handled these  
10 applications before, and I can give you a detailed  
11 overview of what that looks like.

12 So a client comes to me and they say, I want  
13 to build a condominium on this property.

14 THE COURT: I didn't ask you when a client  
15 comes to you. My question is this. What happens with  
16 the process vis-a-vis City building department?

17 MR. SCHWARTZ: Your Honor, it has to comply  
18 with both.

19 THE COURT: I mean, I understand we're making  
20 that statement, but what do they do? Because it seems  
21 to me that, you know, if I wanted to -- example. I  
22 bought a lot and it's in MacDonald Highlands, and  
23 that's already zoned. And I go in and I say, look, I  
24 want to put a single-story residential 2500 square foot  
25 home. I would anticipate the City of Henderson would

1 look at that and say, okay, this is in conformance with  
2 the zoning; right.

3 MR. MOLINA: Yeah, they would look at all of  
4 that. They would look at the zoning and the general  
5 plan. And MacDonald Highland and the City of Henderson  
6 is a little bit different in how they handle things.

7 In the City of Las Vegas, if you want to have  
8 a new development, you would at a minimum have to have  
9 a site development review application that's done. For  
10 a single house, you know, it would be a little bit  
11 different. But we're not talking about a single house.  
12 We're talking about a subdivision. So you've got to  
13 have at least a site plan for the subdivision. And you  
14 would submit that to --

15 THE COURT: And I want to make sure I  
16 understand the processes. So if you wanted to have a  
17 site plan for the subdivision, in this case, the  
18 subdivision, would that be the 35 acres?

19 MR. MOLINA: It's up to the developer, how  
20 they want to define subdivision.

21 So this would get submitted to the planning  
22 department. As a developer submitting it, they would  
23 submit what they think is the right application. And  
24 then there would be a conference with the planning  
25 department, planning staff. And they would, basically,

1 you know, comment on whether or not that application  
2 needed other applications, other requests.

3 So, for example, if I took plans down to the  
4 City that showed a neighborhood with only 10 feet of  
5 streets, the City would say, well, you need a waiver in  
6 order to get approval to do only 10-foot-wide streets.  
7 And that's actually what happened in the 35-acre case,  
8 not 10 feet wide, but reduced-sized streets, no  
9 sidewalk on one side, you've got to have a waiver  
10 application.

11 So there's multiple applications that you  
12 would file with one development request for each  
13 project. And the City would assign a project number  
14 for all those applications. Each of those applications  
15 would have a separate designation. And, I mean, I can  
16 show you what these actually look like.

17 THE COURT: And in following that, what did  
18 the City do in this case initially from the building  
19 department's perspective?

20 MR. MOLINA: So can I --

21 THE COURT: You can. Absolutely, sir. What  
22 did the City do? That's what I want to know. What did  
23 the City do prior to the involvement of the  
24 city council? What did the City do?

25 MR. MOLINA: So there's only 10 things in



1 here so we can cycle through this pretty quickly. When  
2 he acquired the property, it was -- you know, if you  
3 look at tab 1, this is the parcels that were -- that  
4 existed when he acquired the property, when the  
5 developer acquired the property.

6 Tab 2 explains, sort of, the mapping history  
7 here. There was a whole lawsuit over the mapping that  
8 was done here, but that was, sort of, an initial thing  
9 that they did when they -- when they got the property  
10 is they subdivided it.

11 This is a declaration of Frank Pankratz.  
12 That's one of the developer's principals. And he  
13 explains that on, page 2 in paragraph 5, he says, "I  
14 can further attest that the purpose of the parcel map  
15 was to carve out an approximately 70-acre parcel that  
16 was required by our bank to be pledged as collateral  
17 for refinancing."

18 So that's one, sort of, step in this  
19 development process is subdividing the property into  
20 the parcels that would then be the subject of different  
21 applications that were submitted to the City.

22 And I won't go through the rest of this,  
23 but -- actually, on page 4 of that affidavit, at  
24 paragraph 15, he explains what the 17-acre applications  
25 were. And this was the first set of applications that

1 the developer filed with the City was for the  
2 17.49-acre parcel over here. And the City approved 435  
3 units over there.

4 And he explains what the applications are.  
5 He says, there was a GPA 62387, a general plan  
6 amendment. They applied to amend the PR-OS designation  
7 from -- to a PR-OS -- to a general plan designation  
8 that allowed housing.

9 They applied for a rezoning application that  
10 was ZON 62392. And that was to change the zoning from  
11 R-PD7 to, I believe it was initially R4, and then they  
12 reduced the density to R3. Originally, they had  
13 applied for 720 units, and then they reduced that  
14 application down to 435, and the City approved it.

15 So there's three applications on that. There  
16 was the general plan amendment, the zone, the rezoning  
17 application, and the SDR, the site development review  
18 application.

19 And I think I have those in here if you go to  
20 tab 6, which is our Exhibit Z.

21 And when you submit any of these  
22 applications, there's a checklist of things that you  
23 submit. And one of those things is a justification  
24 letter. And it kind of harkens back to that  
25 requirement that they enacted in 1989 where they said,

1 you've got to submit a justification.

2 So this is kind of the practice here, is that  
3 you submit a justification letter explaining the nature  
4 of the request. And this explains that they want  
5 approval for 720 units on the 17-acre property. And  
6 then if you flip to page, I think, the fourth or fifth  
7 page of that exhibit, then you have the actual  
8 applications that get submitted.

9 And the first one there is a general plan.  
10 And the property owner is 70 Acres, LLC. When they  
11 subdivided that 70 acres off, they put it all under one  
12 entity. And as Frank Pankratz explained in the  
13 affidavit, they did that for financing purposes. This  
14 is GPA 62387.

15 Then if you flip to the page after the  
16 application, there's the map. Every time that these  
17 applications get put up in a public meeting, the City  
18 creates a little map, and that gets part of the agenda.  
19 That's what this is, this map right here. It shows you  
20 the area that's subject to the designation.

21 And, actually, this map shows it's PR-OS;  
22 right. They changed it from PR-OS -- the initial  
23 application was to high, high density residential.

24 And then if you flip the page again, you get  
25 the zoning application. It's the same form, just

1 slightly -- you just have to submit a separate  
2 application. That's what the City requires.

3 Then there's a zoning map. If you flip the  
4 page again at 452, the zoning map. I don't know if  
5 you're looking at the exhibits.

6 THE COURT: I have it right here.

7 MR. MOLINA: Okay. There's three  
8 applications that get filed on that first piece. And  
9 then, you know, the thing about this is that's sort of  
10 interesting if you want to understand how the -- how  
11 the homeowners kind of got sideways with the developer,  
12 I put it in tab 4. This was a -- this is the agenda  
13 for general plan amendment 60759. And what this was is  
14 a staff-initiated amendment. And staff does this from  
15 time to time where they will, you know, apply  
16 themselves for a change to the general plan to change  
17 the text. And that's what this did, is that it was a  
18 proposed change to the text of the land use designation  
19 table that would have given the City discretion to  
20 increase density in certain instances.

21 And in tab 5, we've got the actual transcript  
22 of this. And the thing about this is that this was on  
23 September 8th, 2015, so that was after --

24 THE COURT: And, for the record, I want to  
25 make sure I'm clear on this. Like, for example, when

1 you're looking at tab 4, we're talking about a agenda  
2 summary page. And this is from the planning  
3 commission; is that correct?

4 MR. MOLINA: Correct. Correct. And  
5 generally all matters that affect planning or  
6 development go to the planning commission first.  
7 There's a few things that go to the city council  
8 directly. But to amend the general plan, you obviously  
9 have to go to planning commission first.

10 And the thing about this is that when the  
11 City publishes its agenda for these meetings, they  
12 usually publish them the week before. And the agenda  
13 here got published on a Thursday before Labor Day. So  
14 there was really no time for the public to contact the  
15 City to ask questions about this because the City is  
16 closed on Fridays. So it was published on Thursday.  
17 The meeting is on Tuesday, following Labor Day. This  
18 kind of got jammed through without a lot of notice.

19 And, honestly, this is really the source of  
20 the distrust between the homeowners and the developer,  
21 is the fact that, you know, there's a bunch of  
22 people -- if you go to tab 5, this is the transcript of  
23 that meeting. And all of this is on -- I thought about  
24 just putting the video up, but I don't think it's going  
25 to work out with the technical stuff that we have here.

1 But you can see the appearance list of people  
2 that are there. You've got Doug Rankin, Frank Schreck,  
3 Clyde Turner, Jack Binion, Greg Borgel,  
4 Jennifer Lazovich. Those are attorneys and land use  
5 planners for the developer.

6 And, you know, the first person who gets up  
7 and talks is Frank Schreck on page 4. And he says,  
8 "It's always been my understanding in this community  
9 that the Las Vegas 2020 master plan provides homeowners  
10 with their greatest security in terms of their values  
11 in their homes against inappropriate zoning. The  
12 proposed amendment to the master plan will possibly  
13 cause a significant and very possibly an adverse impact  
14 on planned community development throughout Las Vegas,  
15 not just Queensridge, by eliminating the specific  
16 density limitation that protects the communities over  
17 400 -- or over 40 acres."

18 THE COURT: I mean, that might sound good, I  
19 mean, but when it comes to golf courses, that's a  
20 national problem right now.

21 MR. MOLINA: Well --

22 THE COURT: And I understand, I really do. I  
23 understand that. That's a national problem. Because,  
24 let's face it, there's been a change in demographics;  
25 right. There has. Baby Boomers love golf.

1 Millennials, not quite as much. Gen-Xers, not as much;  
2 right.

3 For example -- this is kind of how I see  
4 this, I really do. Here we have a scenario where the,  
5 quote, master planned community with a golf course is  
6 not really a viable economic model anymore. I mean,  
7 golf courses are closing down.

8 And at the end of the day, notwithstanding  
9 any argument that's made by real property owners,  
10 homeowners, I get that, I do. But at some point, in  
11 the general sense, city government has to make tough  
12 decisions; right.

13 MR. MOLINA: Yeah.

14 THE COURT: They just do. And my point is  
15 this. You don't just kick the ball -- kick the can  
16 down the road and hope that the trial judge makes the  
17 decision; right. These are decisions that should be  
18 made by the city council. There's no question about  
19 that.

20 I mean, as a trial judge, I don't mind saying  
21 this, I've made some really tough decisions, I have.  
22 And I realize it's going to upset somebody. But at the  
23 end of the day, I have to do what I think is right  
24 under the law. That's all you can do.

25 I mean, I realize there's a political aspect,

1 and being a county commissioner or city council member  
2 and they've got to deal with that. But sometimes  
3 you've got to make decisions, you just do, and they're  
4 not popular. And sometimes you'll make a decision and  
5 you might not be there in four years, but you've got to  
6 make decisions.

7 But go ahead, sir. I'm following you.  
8 You're helping me out.

9 MR. MOLINA: So, I guess, what I'm just  
10 trying to explain here is that the homeowners in  
11 Queensridge felt like there was a conspiracy between  
12 the developer and the City to jam this through because  
13 staff sponsored the amendment. And then they got up  
14 there and they started complaining about it. And then  
15 on page 10 of this transcript, you have the developer's  
16 attorney, and also his expert land use planner,  
17 Greg Borgel, that get up and stand. And she says, on  
18 line 263, the reason why that is important --

19 THE COURT: What page are you on, sir?

20 MR. MOLINA: I'm on page 10 of tab 5.

21 THE COURT: I'm following you. I just want  
22 to make sure. Okay.

23 MR. MOLINA: It starts on line 262.  
24 Jennifer Lazovich says, "We are representing the  
25 developer that has, in fact, timed applications to



1 follow behind this application moving forward. The  
2 reason why that is important is because you've heard  
3 them slightly reference a project that deals with  
4 Queensridge, that deals with Badlands. They have been  
5 in initial neighborhood meetings talking about a  
6 proposed project which will be before the planning  
7 commission and then, of course, move on to the  
8 city council."

9 So, you know, all these homeowners from  
10 Queensridge show up to this public hearing and they  
11 start complaining about this amendment that got put on  
12 the agenda without really any notice to the public.  
13 And then, all of a sudden, the developer's attorneys  
14 stand up and say, hey, we need you to approve this  
15 because we've got applications in the pipeline that are  
16 dependent on this. So that's all I wanted to point out  
17 about that.

18 THE COURT: And what happens at the meeting?

19 MR. MOLINA: So, actually, the planning  
20 commissioners -- I mean, we have the transcript in here  
21 so I'm not going to paraphrase it. But, you know, the  
22 planning commissioners are looking at this kind of  
23 sceptically. And let's go to page 17. And at the  
24 bottom, Commissioner Trowbridge, and he's saying, "I'm  
25 going to take a different swat at this. We're dealing

1 with a master plan land use designation change. And I  
2 think that because the city and the county, the cities,  
3 in plural, this is an incredibly important decision  
4 that we're making. I say that because it ranges all  
5 the way from the pieces of property that were sold and  
6 with the understanding that they would be golf course  
7 lots and people pay a lot premium. Are they going to  
8 be reimbursed if their property value goes down?"

9 You know, and so there's mixed opinions.

10 THE COURT: I mean, I get the concern. I  
11 don't mind saying that. I do. But what happens when  
12 that golf course model is no longer viable?

13 MR. MOLINA: I think that we agree that it  
14 would be very difficult to run a golf course profitably  
15 here, but here's the solution. You just have to follow  
16 the right procedures to change the land use.

17 MR. SCHWARTZ: Your Honor, I can address the  
18 legal issues.

19 THE COURT: I know. He's doing a -- he's  
20 pointing out what happened factually. And I'm  
21 following up. And I have no problem with his response.

22 MR. MOLINA: And, you know, if you go to  
23 page 20 of that transcript, you've got Peter  
24 Lowenstein. He kind of talks about that process of how  
25 you do it. And he says to the chairman of the planning

1 commission, "When the RPD was an existing zoning  
2 district." In context, the RPD zoning district was  
3 eliminated from the code in 2011.

4 But he says, "When the RPD was an existing  
5 zoning district, it would be affected by the zoning  
6 ordinance currently. It had the ability to develop  
7 your own development standards as part of the  
8 application process."

9 I think I was mentioning that before. After  
10 you get the rezoning approval, then you have to get a  
11 plot plan approval on the individual parcels. And  
12 that's what he's talking about, is that process of  
13 doing the plot plan application is how the development  
14 standards were created.

15 I'm actually going to touch on that a little  
16 bit because I want to address your questions from  
17 yesterday about the access of fencing. But he's  
18 explaining that.

19 And so, ultimately, this went nowhere. The  
20 planning commissioners, I think -- let's go to the end  
21 of that transcript. They held it in abeyance for  
22 60 days. So then there was subsequent -- I think,  
23 actually, the planning staff just took it off, out of  
24 the cycle. So there may not have been any subsequent  
25 hearings on this, but I'm not a hundred percent sure

1 about that.

2 So the 17-acre property was submitted on  
3 first. And if you go to tab 3 of this binder, it will  
4 show you why. They've already got a deal to sell that  
5 property for \$25 million. And the City approved that  
6 development. And, ultimately, this deal fell through  
7 because of the litigation with the homeowners. And,  
8 you know, that's unfortunate, but there was a deal  
9 lined up with The Calida Group who is a pretty good  
10 developer in town. They have all kinds of really nice  
11 apartments. And they participated in the design of  
12 this.

13 But that was part of the reason why they  
14 wanted to get that 17-acre piece approved first. They  
15 had a deal lined up to do this condo development. But  
16 that entitlement still exists. And that's pretty  
17 critical in this case because, you know, the homeowners  
18 challenged this approval of the 17-acre property.  
19 Judge Crockett said it was void because there was no  
20 major modification. That was the whole legal issue  
21 that went up to the Nevada Supreme Court.

22 The City said, well, this doesn't actually  
23 technically have the zoning that's required for --  
24 that, you know, requires major modification. It's an  
25 RPD zoning. And the code, at least, doesn't say you

1 need a major modification.

2 And so the Nevada Supreme Court reversed  
3 Judge Crockett, and reinstated the approvals of the  
4 17-acre property. And, you know, after the Supreme  
5 Court issued remittitur, the City sent the developer a  
6 letter stating that, you can come in and apply for  
7 permits. You know, you've got an existing entitlement,  
8 and we'll extend it for two years from the date of  
9 remittitur.

10 And that was late 2020. The reversal of  
11 Crockett's order was March, I want to say, 5th, 2020.  
12 The City waited until remittitur issued, and then sent  
13 them a letter and said, we'll extend your approval for  
14 two years after this.

15 And that approval, the two-year extension,  
16 really actually only applies to the site development  
17 review application. The zoning has been changed on  
18 that 17-acre parcel. I skipped over some of this other  
19 stuff about how resolution of intent zoning worked.  
20 But they got rid of that, you know, process where  
21 you're just tentatively zoning things. That 17-acre  
22 property is currently zoned R3. And the general plan  
23 has permanently changed. I want to say it's "M" for  
24 medium.

25 So they've got an entitlement, what I would

1 call an entitlement. But they've got the general plan  
2 is consistent with the zoning. And then they've got a  
3 site development review application approved, which  
4 spells out literally what they can do with the  
5 property, 425 units, the actual layout of what that  
6 looks like. And so, you know, they've got an approval.

7 And so it's not futile to, you know, suggest  
8 that they should come back and continue to apply for  
9 other developments. But things got a little bit  
10 problematic because of Crockett's order. And then  
11 there was this development agreement.

12 I'll just go to the last tab in this binder,  
13 which is the general plan amendment application, the  
14 agenda for the general plan amendment application that  
15 included the 35-acre property. And I want to go to  
16 Bates No. 675, which is the fourth page of that  
17 exhibit. And you'll see on that page 675 --

18 THE COURT: Which tab is that again, sir?

19 MR. MOLINA: Tab 10.

20 So you see that area right there is  
21 approximately 166 acres. Now, they filed individual  
22 development applications for the 35-acre property, but  
23 this GPA was intended to apply to this entire area, and  
24 they submitted it before those other applications for  
25 the rest of that property came through.

1           And it's changing the PR-OS. In fairness to  
2 the developer, you know, they did not want to submit  
3 this application. They protested submitting this.  
4 They didn't feel like they needed to submit a general  
5 plan amendment application.

6           The City code pretty clearly says that they  
7 do. You know, when the initial applications came in,  
8 the City planning department did what they basically  
9 always do, and required a general plan amendment.  
10 Later on they kind of got convinced that they didn't  
11 need a general plan amendment. You know, there's --

12           THE COURT: When you say, they got convinced,  
13 who are you talking about?

14           MR. MOLINA: So if you look at -- let's see.  
15 So I don't have it in this binder here, but if you look  
16 at the first page of that exhibit, tab 10, Exhibit II,  
17 and you look, kind of, closely at the first paragraph  
18 under the subject line, it explains what the request  
19 is. And then it says, "Staff has no recommendation.  
20 Planning commission failed to obtain a super majority  
21 vote, which is tantamount to denial."

22           So, in this instance, staff didn't make a  
23 recommendation on whether to approve this general plan  
24 amendment because, you know, technically, you need to  
25 have the planning commission approving changes to the

1 general plan.

2 So there was this big debate about whether  
3 you need to actually apply for a general plan amendment  
4 when you want to go in and apply for site development  
5 that doesn't actually change the zoning. Because on  
6 the 35-acre property, they -- you know, they kind of  
7 shifted gears and decided that they were just going to  
8 apply for, you know, applications that were based on  
9 the R-PD7 zoning. And so they submitted a site  
10 development review application, a tentative map  
11 application, and a general plan amendment application.  
12 And this is that general plan amendment application  
13 that extended to a much broader area.

14 And at the same time, you know, they are  
15 negotiating this development agreement. And if you  
16 turn to the last page of this exhibit, last page of the  
17 binder, this is the June 21, 2017, this is an excerpt  
18 of the transcript from the June 21, 2017 city council  
19 meeting where they denied the applications for the  
20 35-acre property. And Brad Jerbic says, you know, "The  
21 61 units in this application is a very limited corner.  
22 It's much denser than what would be. In fact, it's as  
23 dense as what would be on the entire golf course  
24 virtually if we had a development agreement. So it is  
25 inconsistent, absolutely inconsistent, with that



1 development agreement that's still not finished.

2 "And if that development agreement does get  
3 finished and it gets up before the council, one of the  
4 things that they will have to do, and they're telling  
5 you now, they will have to agree is give up the 61 if  
6 they win today; is that right?"

7 So the problem that the city council was  
8 confronted with is that they've got this development  
9 agreement that they've been negotiating with the  
10 developer for a long time. And, you know, it's got a  
11 lower density than what he's proposing with these  
12 applications. And if they approve these applications,  
13 then they're, essentially, you know, they're changing  
14 the negotiation of the development agreement.

15 And so if you go down to that last paragraph,  
16 and Brad Jerbic says, "Well, we believe, in my  
17 negotiations with the neighbors that have participated  
18 in negotiations, they have told me they requested  
19 2-acre parcels, which would be one unit per two acres.  
20 And that was a concession that we won during that  
21 negotiation. So the entire golf course, the 183 acres  
22 except for one small piece" --

23 THE COURT: Tell me this. Why would the  
24 city council or Mr. Jerbic negotiate with the  
25 neighbors?

1 MR. MOLINA: So, you know, this is a pretty  
2 long, drawn-out conflict where he kind of got involved  
3 personally.

4 THE COURT: I mean, I do understand that, but  
5 I'm trying to figure out why they would go outside the  
6 processes. Because this is not typical, is it?

7 MR. MOLINA: I can't say that. I don't know.  
8 But I have --

9 THE COURT: But you see what I mean? It's  
10 kind like, you know, you go in front of the county  
11 planning department. Staff has a recommendation. They  
12 do what they do, send it off maybe to the city council  
13 or reject it. But my question is this. Why would  
14 Mr. Jerbic be in negotiations with neighbors of the  
15 adjoining properties? That doesn't seem normal to me,  
16 you know. Because I would think if they had complaints  
17 or any problems like that, they would come to the  
18 meeting and lodge it publicly.

19 MR. MOLINA: And they did.

20 THE COURT: I know they did. I'm not  
21 questioning that. I'm talking about the negotiation  
22 part.

23 MR. MOLINA: So at this point in time, when  
24 this is in front of the council, there's litigation  
25 going on. And it's wildfire. And so, you know,

1     there's talks --

2                 THE COURT: The reason why I say that, I  
3     mean, hypothetically, if we had neighbors show up today  
4     and want to voice their opinions, I would say, well,  
5     you can listen, and that's about it; right. And that's  
6     my whole point because we have processes in place.

7                 MR. MOLINA: Well, this is a public process,  
8     and you have to give somebody at least --

9                 THE COURT: I'm not saying you don't have to.  
10    I'm just wondering why it didn't happen under the  
11    auspices of a city planning commission meeting and/or a  
12    city council meeting. No question you have a public  
13    comment --

14                MR. MOLINA: If I remember correctly, I  
15    believe the city council asked the developer to meet  
16    with the homeowners to address their concerns. And,  
17    you're right, it is a little rare. But this is also a  
18    unique situation where we're dealing with a golf course  
19    inside a master planned community. And there's  
20    litigation that's going on. It got very complicated.  
21    And it's, you know, there was a hope, I think, amongst  
22    certain city council members, at least, that there  
23    would be some kind of global resolution through this  
24    development agreement.

25                But there's a lot of different people that

1 are involved in all of this. And so, anyways, so  
2 that's -- that's the background there. That,  
3 ultimately, is why they denied those 35-acre  
4 applications because there was a development agreement  
5 in the pipeline that they thought was going to produce  
6 a better development than what those applications were  
7 going to provide.

8 And then after those were denied, he never  
9 applied again for another type of development approval  
10 on that. So that is, essentially, the last thing I'm  
11 going to say about that. And I do want to just very  
12 quickly address your questions yesterday about the  
13 access and fencing.

14 THE COURT: Yes, sir.

15 MR. MOLINA: And what this is, this is part  
16 of our exhibits to our opposition and our counter-motion  
17 for summary judgment. And this is the Exhibit DDDD.  
18 And it's the declaration of Peter Lowenstein. And  
19 there are sub-Exhibits DDDD1 through 10. And I think  
20 the easiest way to do this, actually, because the  
21 declaration --

22 THE COURT: I do have it right here. Tell  
23 me --

24 MR. MOLINA: I'll read the declaration and  
25 then it will go through these exhibits. But at

1 paragraph 28 of the declaration, Mr. Lowenstein  
2 explains that, "In order for a developer to build  
3 access or fencing on their property, either, A, the  
4 City must approve a site development plan review, SDR  
5 application for the development, and that must address  
6 access or fencing. Or, B, the developer must apply for  
7 an SDR specifically to build access and/or fencing."

8           So either you've got a site development plan  
9 that applies to the entire project, and within that  
10 project there's standards for fencing or access, then  
11 you don't need to file a separate application for  
12 access or fencing.

13           And, you know, in this case, what we're  
14 showing on tab 2, that little map there, is the yellow  
15 highlighted areas show the existing access to the  
16 Badlands property. And the green highlighted areas  
17 show the proposed access points. And then if you look  
18 down at, sort of, the entrance to Queensridge off  
19 Charleston Boulevard, it's highlighted blue. Those are  
20 the ponds that the developer wanted to add a fencing  
21 for.

22           So Mr. Lowenstein explains the process for,  
23 you know, getting a building permit for access and  
24 fencing. He explains both processes slightly  
25 different, but the basic idea here is that either

1 you've got a site development plan approval that  
2 already addresses it or you have to come in, you have  
3 to apply for -- you have to specifically apply for site  
4 development plan review for the access for the fencing.

5 And in this case, because this was part of an  
6 old subdivision that got approved in 1990, there's no  
7 site development review plan that, at least for these  
8 proposed access points on Hualapai, there's no existing  
9 site development that addresses the access to those  
10 points so you have to go into the City and you have to  
11 apply for a site development review.

12 Now, if you're still looking at the diagram  
13 on tab 2, the 17-acre property, that's on the far right  
14 of the diagram, the third proposed access point. There  
15 was an entitlement for that development, and it did  
16 address access; however, as these exhibits basically  
17 explain, you had to do a traffic study before they were  
18 going to let you put that in there.

19 So there's a process for all of this. But  
20 getting back to Mr. Lowenstein's declaration. He  
21 explains that there is a minor review application.  
22 This gets a little technical, but, you know, since you  
23 asked, we'll kind of walk through it. There's a minor  
24 review process that can be administratively approved by  
25 the director of planning. Administrative approval

1 means no public hearing.

2 THE COURT: Well, you know, to be candid with  
3 you, I'm glad you're going through this because I was  
4 saying to myself, we're not talking about a traditional  
5 process where you're seeking to obtain building  
6 permits. We're talking about access so you can put  
7 fencing up to make the property owners' property safer.  
8 That's all.

9 And I was just wondering, you know -- he has  
10 this hyper-technical thing here, but the bottom line is  
11 they just want to put some fencing up so kids and young  
12 people don't fall into the lake and drown. That's kind  
13 of what it's all about. That's how I see it.

14 Now you're telling me they do have an  
15 administrative process that would potentially apply to  
16 that. So I'm looking at Lowenstein. Is it Lowenstein?

17 MR. MOLINA: Peter Lowenstein.

18 THE COURT: I mean, the real issue is the  
19 administrative process.

20 MR. MOLINA: Right. Right. Well, okay. So  
21 you can have an administrative review without a public  
22 hearing or there's -- and he explains this. And I  
23 don't want to paraphrase this. But he says, "The  
24 director of planning has the discretion to determine  
25 whether an SDR, site development review, to build

1 access and fencing requires a major or minor review."

2 So there's two processes depending on the  
3 nature of the request and potential impacts on the  
4 surrounding areas.

5 So a site development plan requires a minor  
6 review maybe administratively approved by the director  
7 of planning. The minor review process is started by  
8 submitting a pre-application conference request or  
9 ability permit application. And a minor site  
10 development plans for certain construction types,  
11 including onsite walls and fences, are to be submitted  
12 and reviewed as part of the building permit  
13 application.

14 So what the developer explained yesterday is  
15 that this is, you know, a, sort of, over-the-counter  
16 type approval. And you should just be able to walk  
17 into the building department, submit your plans, get a  
18 building permit for this. And what Mr. Lowenstein is  
19 explaining is that that's partially true, but you  
20 actually have to -- you know, they have to look at the  
21 nature of the request. It's just not that simple.

22 If you're putting an access into a major --  
23 if I wanted to build a ramp up to the freeway,  
24 obviously, that's not going to work. You've got to go  
25 through the processes, and there's got to be engineers



1 that look at this kind of stuff.

2 So the planning director has, you know,  
3 discretion to require a major review. And he explains  
4 that in paragraph 7. The site development plan  
5 requires a major review and a public hearing if it does  
6 not qualify for a minor review or for what doesn't  
7 qualify for a minor review.

8 And it says, you know, that "The improvements  
9 shall be processed as a major review or if the director  
10 of planning determines that it is necessary based on  
11 the proposed development's impact on the land uses on  
12 the site or on surrounding properties."

13 So it's in the City's code that you can --  
14 that the plan director has discretion to look at the  
15 impact on the surrounding properties. And, I mean,  
16 that's really the fundamental principle of zoning is  
17 compatibility with surrounding uses. You want  
18 compatible land uses next to each other.

19 THE COURT: But isn't health and safety  
20 another factor?

21 MR. MOLINA: That's the underlying power.

22 THE COURT: Health and safety.

23 MR. MOLINA: That's the police power that the  
24 statute -- Nevada legislature delegates that police  
25 power to local governments to carry out zoning for the

1 health, safety, and welfare of their citizens.

2 So then he says, "An SDR to build access and  
3 fencing will require major review" --

4 THE COURT REPORTER: I'm sorry, sir, I can't  
5 even understand what you're saying.

6 THE COURT: And which paragraph is that, sir?

7 MR. MOLINA: Paragraph 8 on page 3. "An SDR  
8 to build access and fencing will require a major review  
9 if the director of planning determines that the  
10 construction of access or fencing would significantly  
11 impact the land uses on the site or on surrounding  
12 properties."

13 And then the citation to the unified  
14 development code is right there.

15 And then he goes through the facts of what  
16 was actually submitted and what the actions that were  
17 taken. And he explains that on February 15th, 2017,  
18 the City approved the construction of 435 units and  
19 other contiguous property. And then he says, "The  
20 City's 17-acre approval required a traffic impact  
21 analysis prior to the issuance of any building or  
22 grading permits, including permits to construct  
23 additional access or fencing."

24 And then he says, on June 28th, 2017, which  
25 is just three months, you know, three, four months

1 later, he says, "The developer applied to build three  
2 additional access points to the Badlands, only one of  
3 which was on the 17-acre property."

4 So what he's explaining here is that there's  
5 a request for access to the 35-acre property that's at  
6 issue in this case, but there's no existing site  
7 development review application that addresses access or  
8 fencing. And so he's got discretion to require an SDR,  
9 a site development review application. And he's got  
10 discretion to determine whether to put that through the  
11 minor or the major review process.

12 THE COURT: But why would this be considered  
13 a major review process?

14 MR. MOLINA: So he explains --

15 THE COURT: Especially -- I'm just talking  
16 about the fencing itself. Because we're not talking  
17 about -- I don't think that would involve any grading;  
18 right?

19 MR. MOLINA: Oh, it would.

20 THE COURT: Would it?

21 MR. MOLINA: Yeah. Absolutely.

22 THE COURT: I don't know about that. So  
23 you're telling me we're going to have -- to put a chain  
24 link fence up there, they'd have to conduct grading?

25 MR. MOLINA: I was just talking about the

1 access.

2 THE COURT: I'm just talking about the  
3 fencing. But go ahead.

4 MR. MOLINA: We'll get to the fencing. Just  
5 a second.

6 So if you go to tab 3. This is a --

7 THE COURT: I don't know this. These are  
8 factual questions I'm asking you. Was part of the  
9 request to put in permanent access roadways and that  
10 type of stuff?

11 MR. MOLINA: I'll show you the plans.

12 THE COURT: You can answer that. Was it  
13 putting in asphalt or concrete?

14 MR. MOLINA: I'm not a hundred percent sure  
15 what the nature of that road was going to look like,  
16 but we can take a look at the plans if you want to go  
17 to tab 5. It doesn't really say. I can tell you, at  
18 least with respect to the 17-acre property, there was a  
19 grade change there. On the 35-acre property, not so  
20 much, but, you know, there's still -- there's still  
21 some construction to do. And really it's not just  
22 about the grading. It's also about the traffic impact,  
23 too.

24 So what Peter Lowenstein is saying in his  
25 declaration is that you've got to go through the

1 process. And originally their engineer, the  
2 developer's engineer, submits the SDR, the site  
3 development review application, the approval. This is  
4 the approval letter for the 17-acre property. And he  
5 says that this entitles them to develop access at three  
6 different points, including on the 35-acre property,  
7 which it just can't. It's only limited to the 17-acre  
8 property.

9 And it specifically says, if you go to tab --  
10 let's see, this is page 3 of tab 3 -- page 4 of tab 3,  
11 item 19. One of the conditions of approval was a  
12 traffic impact analysis must be submitted to and  
13 approved by the department of public works prior to the  
14 issuance of any building or grading permits, submittal  
15 of construction drawings, all that good stuff.

16 MR. LEAVITT: I'm sorry, where was that at,  
17 counsel?

18 MR. MOLINA: That's on, I believe it's page 3  
19 of the approval letter for SDR 62393 in paragraph 19.

20 MR. LEAVITT: That's for the 17-acre parcel?

21 MR. MOLINA: That's correct. And if you go  
22 back to the first page on tab 3, the developer's  
23 engineer is submitting the approval for the 17-acre  
24 parcel and requesting access on the 35-acre parcel.

25 So, clearly, the approval on the 17-acre

1 parcel doesn't necessarily mean you can just go and get  
2 a building permit for access on the 35-acre parcel.  
3 And even in this approval, it's got conditions that  
4 says, you can't get a building permit until you do the  
5 traffic study.

6 So that's what we're talking about here.  
7 We're talking about technical processes that, you know,  
8 you have detailed code requirements on this stuff. And  
9 that's really where this stuff kind of breaks down.

10 So, you know, going back to Mr. Lowenstein's  
11 declaration. There was request for an access that was  
12 submitted on June 28th, 2017. And that was what --  
13 Exhibit 3 was the email letter and exhibit -- or tab 4,  
14 which is also Exhibit 4 to this declaration, is the  
15 actual permit application.

16 And it's pretty basic. There's really not a  
17 lot there. Mr. Lowenstein goes on to explain that on  
18 August 24, 2017, the acting director of the department  
19 of planning informed the developer that the proposed  
20 construction of additional access could significantly  
21 impact the land uses on the site or the surrounding  
22 properties and a major development review would be  
23 required. And that was Exhibit 5. It's actually  
24 tab 6.

25 THE COURT: How does it impact land uses on

1 the site?

2 MR. MOLINA: He says it in his letter at  
3 tab 6. He says, "I have determined that proximity to  
4 adjacent properties has the potential to have  
5 significant impact on surrounding properties. As  
6 such" --

7 THE COURT: I asked a specific question.  
8 Because I see here he says two things. He said, impact  
9 land use on the site or surrounding areas. I didn't  
10 ask about surrounding areas. I asked specifically as  
11 it relates to the site.

12 MR. MOLINA: As it relates to the site?

13 THE COURT: Yes.

14 MR. MOLINA: So I think if we go back --

15 THE COURT: If he doesn't address it, that's  
16 okay, but he has this. If you take a look at  
17 Exhibit 3, I guess in Exhibit 1, his affidavit and/or  
18 declaration, and I'm just looking at page 4 starting at  
19 line 5, paragraph 16.

20 MR. MOLINA: So I think if you hold your  
21 finger on that and flip to tab 5, it's the last page of  
22 tab 5., there's a letter that explains a request for  
23 it, and the nature of the request. And it says, "The  
24 access points on Hualapai are necessary for the service  
25 operations and ingress and egress, but not limited to

1 the trucks and equipment required for tree and plant  
2 cutting, removal of related debris, and soil testing  
3 equipment."

4 And that's, essentially, what he's saying.  
5 He's saying we need to bring heavy equipment onto the  
6 property. And then down in the last paragraph, he  
7 explains that the bridge from the clubhouse to -- you  
8 know, they could theoretically drive all the way across  
9 the golf course. What he's saying is that there's a  
10 little wash right next to the golf course that has a  
11 little bridge. It's next to the clubhouse. And what  
12 he's suggesting here is that to bring trucks across  
13 that bridge would not support the weight of the trucks.

14 Now, there's actually a different way to get  
15 across there. You don't have to cross the bridge. As  
16 I showed on tab 2, there is another access point that's  
17 over by the Las Vegas Valley Water District reservoir.  
18 So you didn't technically need to go across the bridge  
19 there.

20 THE COURT: But isn't he saying that they  
21 can't use the bridge because of weight limits?

22 MR. MOLINA: Right. And what I was just  
23 trying to say is there's another way.

24 So that's the story with the access points.  
25 You know, that's the planning director's determination.



1 I don't know everything that went into that. And I'm  
2 not going to testify on his behalf right here.

3 THE COURT: No, I understand. And the only  
4 reason I thought about that because, in a general  
5 sense, this property, for all practical purposes from a  
6 maintenance perspective, had been abandoned for how  
7 long?

8 MR. MOLINA: At this point, this is  
9 February -- no, June or July of 2017. The golf course  
10 closed in late 2016. So we're talking, like, six  
11 months.

12 THE COURT: What do we know about the  
13 maintenance of the golf course prior to closing?

14 MR. MOLINA: Well, there was a golf course  
15 operator.

16 THE COURT: I mean, that can mean a lot of  
17 things. Do we know when they pulled out? Did they  
18 operate as a golf course up until the very last day?  
19 Because I don't know this. I don't.

20 MR. MOLINA: They -- towards the end of 2016,  
21 I think was December 1st, 2016, is when the golf course  
22 closed. And there was a lot of back and forth between  
23 the developer trying to renegotiate the management  
24 agreement. They were basically trying to keep it  
25 alive, it looks like, for a while. But the golf course

1 operator ultimately said, you know, we can't do this  
2 anymore. And then that's when they closed the course.  
3 And that was, I want to say, late 2016.

4 THE COURT: Because I'm sitting here, I'm  
5 anticipating, I'm looking at, you said the access  
6 point, Rampart Boulevard is necessary for service  
7 operations and ingress/egress of, but not limited to,  
8 the trucks and equipment required for tree and plant  
9 cutting, removal of related debris, and soil testing.

10 So it appears to me there might be two things  
11 going on there. That they needed to know, number one,  
12 I would anticipate from a maintenance perspective  
13 there's trees and debris, they wanted to remove that  
14 from the property. And I see nothing wrong with that.  
15 Then, secondly, this might be a future issue, I would  
16 anticipate part of it he talks about -- let me see  
17 here. Soils testing, I think that would go to  
18 potential issues regarding future use of the property  
19 because, you know, you have to go out and test for  
20 expansive soils and the like; right? And that's kind  
21 of what they did.

22 MR. MOLINA: So --

23 THE COURT: So there's two things going on.

24 MR. MOLINA: What's interesting is that the  
25 access was not -- access request was not granted, but

1 the trees have been removed. And if you look at their  
2 expert reports, there was soil testing done. So they  
3 found a way to get it done without that access.

4 THE COURT: Do we know how they did that?

5 MR. MOLINA: Not sure.

6 So with respect to the fencing, on page 3 of  
7 Mr. Lowenstein's declaration, he says that in June and  
8 July of 2017, which is really around the same time,  
9 "the developer discussed with the City planning  
10 department its intent to build fencing around the  
11 entire perimeter of the Badlands" -- around the entire  
12 perimeter, not just the ponds -- "without filing a  
13 request for an SDR."

14 What he's saying is that there was  
15 discussions, but there hadn't been an application yet.  
16 And he goes to what's tabbed 7. It's Exhibit 6 to his  
17 declaration. And there's an email there from  
18 Peter Lowenstein to Robert Summerfield. I believe at  
19 this time, Robert Summerfield was still in the planning  
20 department. And he explains, sort of, what happened  
21 there. And he says, "EHB Companies has indicated that  
22 they intend to submit a building permit request for use  
23 of a chain link fence along the perimeter of the  
24 golf course adjacent to the Queensridge north and south  
25 subdivisions. On Monday of this week, EHB Companies

1 provided an update via email to the planning commission  
2 stating, we are still working on the fence exhibits and  
3 looking to submit to the planning development  
4 department -- department of building and safety  
5 sometime tomorrow. We will provide you an emailed copy  
6 at the same time. You will note that the areas along  
7 Regent Park Road and Palace Court in lieu of a chain  
8 link fence we are requesting a masonry fence along the  
9 property line."

10 So chain link fence for almost all of the  
11 Badlands, and a masonry fence for these parts by Regent  
12 Park Road and Palace Court.

13 THE COURT: Explain that. So they had  
14 approved the utilization of a chain link fence for most  
15 of it. What does that mean?

16 MR. MOLINA: That was the initial -- it  
17 wasn't even a request. It was just a discussion. And  
18 they said, submit the plans for this. And it was  
19 mostly a chain link fence around the entire  
20 golf course. We're not talking about the ponds yet.  
21 And part of it was going to be a masonry fence. That's  
22 at least what the discussion said.

23 Then he goes on to explain that, "Since that  
24 communication, staff has had verbal communications with  
25 EHB Companies to get further clarification pertaining

1 to the masonry fence. In that discussion EHB Companies  
2 indicated that they intend to match the existing walls  
3 within the Queensridge north and south communities.  
4 Staff had requested an architectural exhibit of the  
5 proposed wall to review." Which is very typical.

6 "It was known to EHB Companies that perimeter  
7 walls are governed by a Title 19.06, and that they are  
8 to be decorative walls with contrasting materials."

9 The code says that.

10 "An argument could be made that the zoning  
11 district governing the perimeter walls is not called  
12 out within Title 19.06, as the subject site district is  
13 R-PD7, and, therefore, the standard is what they  
14 proposed."

15 And, remember, with R-PD7 zoning, the process  
16 was that the development standards it created through  
17 the plot plan review process.

18 THE COURT: I mean, I clearly get that. But  
19 my question is this. This wasn't meant to be permanent  
20 fencing.

21 MR. MOLINA: Well, a masonry wall.

22 THE COURT: I mean, as far as a chain link.  
23 You see that a lot in Las Vegas; right. You go by  
24 any -- up and down Las Vegas Boulevard, they have a lot  
25 of chain link fencing up, and it's there temporarily.

1 That's not part of the overall permanent plan. It's  
2 there many times for safety reasons, and we all  
3 understand that.

4 So I'm trying to figure out if you're asking  
5 for chain link fencing and it's more temporary in  
6 nature, until this issue can be resolved, why are they  
7 treating it like permanent fencing?

8 MR. MOLINA: There's also a rule for  
9 temporary fencing.

10 THE COURT: Okay. What's that rule?

11 MR. MOLINA: It has to be for construction  
12 activities. And I think there's maybe one other  
13 situation where it's allowed. But, for the most part,  
14 it's allowed when you have construction activities,  
15 which haven't been approved in this case yet, at least  
16 not for the majority of the Badlands.

17 THE COURT: Is there a catchall for that? I  
18 mean, I don't know. But it seems to me, and I guess  
19 you can look at it this way, there's anticipating  
20 construction activities. But I don't see how you can,  
21 especially for a homeowner -- I mean, I'm sorry, for a  
22 property owner. And there are some public safety and  
23 welfare issues out there.

24 And I don't mind saying I was a tort lawyer.  
25 And I understand doctrines like attractive nuisance and

1 those things. Just as important, too, you have  
2 potential hazards on the property. And at the end of  
3 the day, if the property is not made safe and this is a  
4 non-delegable duty; right, you can't delegate that as a  
5 property owner, why wouldn't the City say, look, yeah,  
6 we get it, no permanent fencing or anything like that,  
7 but if you want to make the property safer for the time  
8 being until we work this out. There has to be a  
9 mechanism in place like that, I would think.

10 MR. MOLINA: So what he says at the bottom of  
11 that email is that there was a permit file. When they  
12 came in and they originally submitted something, the  
13 City assigns a permit file on June 29th, 2017, for a  
14 chain link/concrete fence. And the applicant left with  
15 the plans. There was no recent activity. And then  
16 there was a --

17 THE COURT: I mean, really, I'm just going  
18 through it in my mind. I mean, in a way, I understand  
19 discretionary function of the City.

20 MR. MOLINA: This isn't even that. This is  
21 they just didn't follow through --

22 THE COURT: Okay. Go ahead.

23 MR. MOLINA: -- is the problem.

24 THE COURT: Where are you at? I want to make  
25 sure I'm following you.

1 MR. MOLINA: I'm at tab 7. It's at the  
2 bottom of just right before the last sentence in there,  
3 the permit numbers.

4 THE COURT: Is that permit no. C1700371?

5 MR. MOLINA: Right. So they created a permit  
6 file when they came in and initially submitted the  
7 application form, but they left with the plans and  
8 there wasn't any subsequent activity as of July 26th,  
9 which is basically a month later. And so there's these  
10 two fencing requests, once for chain link and I think  
11 ones for concrete. And if you go to tab 8, DDDD7,  
12 there's that application form, but we don't have the  
13 plans. I have never seen the plans for these fences.  
14 I have no idea what they look like.

15 And then he explains that -- Peter Lowenstein  
16 explains in, let's see, paragraph 16 on August 24th,  
17 "The director of development informed the developer  
18 that the proposed fencing around the ponds could  
19 significantly impact the land use on the site."

20 So they just sent them the same letter about  
21 the access at the same time, even though there weren't  
22 any plans on file yet. They just said, if you're going  
23 to do this, then bring it through the major review  
24 process, apply for a site development review  
25 application, and let us know what you're doing.



1           And then he goes on to explain in paragraph  
2   18, "The developer never filed an application for major  
3   review to construct access or fencing. The City has  
4   not denied any developer request to construct  
5   additional access to the Badlands or to install  
6   fencing."

7           So, I mean, that's just the whole thing in a  
8   nutshell, is that they didn't follow through with the  
9   procedures that the City requested them to follow. And  
10   that's kind of the story of the entire development here  
11   is that the City said, you should follow the process.  
12   Developer said, nope, I don't think I have to.

13           And that's where really everything breaks  
14   down and, pretty much, the situation with almost all of  
15   these parcels of land. There was a fight about what  
16   the process was.

17           THE COURT: So I have a question for you. I  
18   was looking at the exhibit you pointed out. And I  
19   think this would be Exhibit 8, and that's part of the  
20   DDDD-7, there's photographs -- do you have any idea --  
21   this is maybe three or four pages in, that are circled.  
22   Appears to be water. Do we know what that represents?

23           MR. MOLINA: Those are ponds. Those were  
24   ponds that were on the golf course.

25           THE COURT: And as far as the red line that

1 surrounds the pond, what would that be?

2 MR. MOLINA: That's just the proposed fencing  
3 line, I guess.

4 And we actually toured those ponds or toured  
5 the Badlands. We did a site inspection. And, for the  
6 most part, they're drained. So talk about attractive  
7 nuisance issue. You can drain these ponds. They have  
8 drainage. And they're going to say, yeah, okay, you  
9 have to maintain the pipes. Sure. But you're right,  
10 it's non-delegable duty.

11 THE COURT: But you can't do it if you can't  
12 access it.

13 MR. MOLINA: You can access this.

14 THE COURT: Well, apparently, they weren't  
15 given access for the fencing.

16 MR. MOLINA: The access and the fencing have  
17 no relationship whatsoever, two separate requests.

18 THE COURT: I mean, I'm looking here. This  
19 is the August 24th, 2017, letter by Robert Summerfield,  
20 department of planning. And he says, "After reviewing  
21 the permit submitted C17-01047, for chain link fencing  
22 to enclose the two water features/ponds on the subject  
23 site, I determined that the proximity to adjacent  
24 properties has the potential to have a significant  
25 impact on the surrounding properties."

1 So that's their decision; right?

2 MR. MOLINA: I'm not going to try to read his  
3 mind, but what I would assume is that he's got a  
4 tremendous amount of political pressure on him at this  
5 point in time and he wants to punt this to the  
6 city council.

7 THE COURT: That's kind of -- I mean, I get  
8 that. I'm not throwing anybody under the bus for that.  
9 But if you make decisions, sometimes they have an  
10 impact.

11 MR. MOLINA: Right.

12 THE COURT: I'm sure there was a lot of  
13 political pressure on him. I'm not denying that at  
14 all. I would imagine there's a lot.

15 MR. MOLINA: And the way that I read this is  
16 this is above my pay grade at this point.

17 THE COURT: I understand.

18 MR. MOLINA: So, you know, ultimately, all  
19 these exhibits, when you just kind of -- he also talks  
20 about the whole open space bill. There's additional  
21 stuff. I don't need to get into that.

22 I think I've spent enough time up here. I'd  
23 like to turn the floor over to Mr. Schwartz so he can  
24 address the summary judgment arguments.

25 THE COURT: What we're going to do, and I'll

1 be candid with you, in the last hour, sir, you answered  
2 a lot of questions I had and specifically focused on  
3 what we needed to make a decision so thank you.

4 I think it's time for a break for lunch.  
5 Does everyone agree to that?

6 MR. LEAVITT: Yes, Your Honor. I just wanted  
7 to get timing issue because today --

8 THE COURT: I don't mind telling everybody my  
9 concern. I set aside a day and a half for this; right.  
10 I mean, I should have pulled a Judge Gonzalez and said,  
11 you got 15 minutes per side and I'm done. A day and a  
12 half is a lot of time.

13 MR. LEAVITT: Right, Your Honor.

14 THE COURT: We're going to take an hour. And  
15 you've got to convince me why I shouldn't say we're  
16 limited at this point on two hours per side, and we can  
17 go home and make a decision. You've got to convince me  
18 why that would be improper.

19 Anyway, right now it's 12:20. We'll be ready  
20 to go at 1:45. That would be an hour and five minutes.

21 (Whereupon, a recess was taken.)

22 THE MARSHAL: Department 16 come to order.  
23 We're back on the record.

24 THE COURT: Everyone may be seated. All  
25 right. Before we get started, I just have a quick

1 question. How much more time do we need?

2 MR. SCHWARTZ: Your Honor, I'm going to need  
3 at least three hours to address the legal issues that  
4 are raised in this motion for a taking, this summary  
5 judgment motion. We also have the City's countermotion  
6 for summary judgment, where we address three causes of  
7 action that weren't addressed in the developer's  
8 motion.

9 THE COURT: So how are we supposed to  
10 accomplish all of this today?

11 MR. SCHWARTZ: Your Honor, I do not think we  
12 can, and if I could explain. The developer has asked  
13 for \$54 million in damages in this case alone.

14 THE COURT: But here's my point. And we  
15 spent time on issues that I don't think were very  
16 important to my decision-making process. So we have to  
17 be efficient. Now, if you say you need three hours,  
18 I'm not going to sit back and say, well, you can't have  
19 it, but I need efficiency. I just want to say that.

20 I'll just tell you right now, I looked at  
21 this as far as when we're coming back, and it has to be  
22 Monday or Tuesday. If it's Monday, it will be for half  
23 a day, that's it. 1:00 o'clock this courtroom goes  
24 back to Judge Krall. This is her courtroom. If we  
25 can't do it then, then there will be no live

1 appearances. It will be done by video, BlueJeans.

2 MR. SCHWARTZ: Your Honor, I am not available  
3 on Monday.

4 THE COURT: Well, then it will be done by  
5 video.

6 MR. SCHWARTZ: If necessary, Your Honor.

7 Your Honor, I think it's important not to  
8 lose sight of how important this case is. The  
9 developer is asking this Court to do nothing less than  
10 turn the whole land use regulatory system in this state  
11 upside down.

12 THE COURT: I understand the importance of  
13 the case, but I do understand the importance of  
14 efficiency. I don't need to know land use in the state  
15 of Nevada going back to 1950; right. I don't need  
16 that.

17 MR. SCHWARTZ: I think that's what the  
18 developer is asking the Court to do.

19 THE COURT: I'm just telling you what I need.  
20 And there are certain things I didn't need from a  
21 factual perspective. I think your co-counsel did a  
22 good job after he got beyond that answering my  
23 questions, but a lot of it would have been, I don't  
24 think, necessarily germane to my decision making.

25 So, anyway, whatever we do now is going to be

1 done by BlueJeans. I want everyone to understand that.

2 MR. SCHWARTZ: I promise to be efficient,  
3 Your Honor, but there are many legal issues here that  
4 are very important to this case.

5 MR. LEAVITT: If I could be heard,  
6 Your Honor?

7 THE COURT: Yes.

8 MR. LEAVITT: We presented our entire case in  
9 two hours. And it's two narrow issues, what's the  
10 Nevada law for taking, and did the government engage in  
11 taking actions. The government decided not to address  
12 even one of those issues for five hours now. They've  
13 been up here for five hours.

14 And so, Your Honor, my point is counsel can  
15 take an hour and a half. That would give them six and  
16 a half hours. We can take an hour and a half. That  
17 would give us three and a half hours. And I will  
18 respond to him, and we can be done. Or if we are going  
19 to go Monday, Your Honor --

20 THE COURT: We're not going Monday.

21 MR. LEAVITT: I get it. So if we each do an  
22 hour and a half, that would give them six and a half  
23 hours and the landowner only three and a half hours,  
24 and we would agree to that. If we could get that done  
25 and we should be able to resolve this and get it done

1 today.

2 Counsel can be very pointed. Here's Nevada  
3 law on the take. Here's the taking acts. He can try  
4 and justify the City's taking acts. That's only why  
5 we're here today.

6 THE COURT: I don't mind saying we're not  
7 going to get done today.

8 MR. LEAVITT: Then if we go Monday,  
9 Your Honor, it would be impossible for us to respond to  
10 this by BlueJeans. We can be here live, and counsel  
11 can appear by BlueJeans. We've done that, actually, in  
12 some of these other cases. Because we have specific  
13 documents that are necessary to rebut what the  
14 government has stated here today, hard copies of those  
15 documents.

16 THE COURT: We can handle it this way, too.  
17 If we do it in my courtroom, which I'll only be there  
18 for another month, they tell me, because I will happily  
19 be moving to the 16th Floor again, if we do it live, it  
20 will be one counsel per side.

21 MR. LEAVITT: Well, Your Honor, if we can do  
22 it live here on Monday, that's one thing.

23 THE COURT: See, Monday I have limitations.  
24 This is Judge Krall's courtroom.

25 MR. LEAVITT: If counsel needs three hours,



1 he'll be done today. I can tell you I'll be done in  
2 one morning, on Monday.

3 MR. SCHWARTZ: I need at least three hours,  
4 and I can explain why.

5 THE COURT: I don't need explanations. I've  
6 going to give you three hours.

7 MR. LEAVITT: One last -- I'll put on the  
8 record one last thing. And I've told you this numerous  
9 times in the past, Your Honor, that we tried to get  
10 this on in March, and we're finally here. And this  
11 happens in every case, the City delays everything.

12 THE COURT: It will be done next week. I'm  
13 going to tell you this right now. I can do this.  
14 Either we're done Monday or Tuesday or everything is  
15 going to be submitted on submission on the points and  
16 authorities.

17 On an appellate review perspective, and I  
18 think we probably have timers; is that correct, madam  
19 court reporter, as to how much time each side has been  
20 given for their argument? Do we have that?

21 THE COURT REPORTER: Do you mean can I tell  
22 you how much time we've taken?

23 THE COURT: Yes.

24 THE COURT REPORTER: Yes.

25 THE COURT: Yeah. And so we'll have a

1 record. So if there's any question as to whether or  
2 not, well, judge is being unfair as far as time  
3 allocation -- like I indicated before, Judge Gonzalez,  
4 what was it, 15 minutes per side, and that's it, you  
5 know. I don't believe in that. I don't believe in  
6 artificial limitations as far as arguments are  
7 concerned, but I do have another thousand cases. I  
8 have other cases I have to deal with so I thought I was  
9 being very gracious in giving a day and a half for  
10 this, which is a long time; right.

11 MR. LEAVITT: I agree it should have been  
12 done in a day and a half.

13 MR. SCHWARTZ: Your Honor, I am not available  
14 Monday afternoon, but if --

15 THE COURT: It would be Monday morning.

16 MR. SCHWARTZ: Okay.

17 THE COURT: It would be Monday morning  
18 because this courtroom is not available Monday  
19 afternoon.

20 MR. SCHWARTZ: Am I to understand that I have  
21 three hours for my opposition to the motions filed by  
22 the developer, and then I will get --

23 THE COURT: Actually, you've had more than  
24 three hours. We've given you how much time already,  
25 your side, sir?

1 MR. SCHWARTZ: That was just on the facts.

2 THE COURT: I'm being very gracious in that  
3 regard, too. Because, normally, I don't permit sides  
4 to split it up like that. Just one lawyer per side.  
5 We don't do Ping-Ponging.

6 I know it's an important issue, but you say  
7 you need another -- and here's another issue. I just  
8 want to raise it. I want you to raise every issue,  
9 both factually and also issues of law as to why I  
10 shouldn't grant the summary judgment motion. I  
11 understand you filed a countermotion or whatever. I  
12 would anticipate that can be covered in that time  
13 period, too. At the end of the day, we're talking  
14 about issues of law; right. And I'm going to look  
15 at -- it seems to me, the controlling case I have to  
16 deal with as far as this case is concerned would be  
17 Sisolak in many respects; right. And we can all agree  
18 to that?

19 MR. SCHWARTZ: I agree with that, Your Honor.  
20 And the developer has so tortured that case, I'm going  
21 to need some time to take the Court through that to  
22 explain why that case is a physical takings case and  
23 doesn't apply to the first and second cause of action.  
24 That is going to take time.

25 THE COURT: See, here's the thing. I'm not

1 going to have any -- okay. How do we handle this from  
2 a procedural perspective. Normally, what happens when  
3 I have a motion in front of me, I ultimately decide  
4 that before I move on to the next motion; right.  
5 That's how we do that. My question is this. We have a  
6 counter-motion for summary judgment. It's on the same  
7 issues; right, basically?

8 MR. SCHWARTZ: Well, yes and no. We've got  
9 this Penn Central claim that the developer didn't move  
10 for summary judgment on. I'll explain why. I think  
11 that's significant. We need to argue on that.

12 THE COURT: Why is that relevant? The reason  
13 why I bring that up is this. If you look, I think it  
14 was the first claim for relief, the third claim for  
15 relief, and the fourth claim for relief. And these all  
16 are issues that relate to taking. And if there's a  
17 taking, does that other claim for relief even matter.

18 MR. SCHWARTZ: It's a Penn Central taking  
19 claim, Your Honor. They pled it, and we are entitled  
20 to summary judgment on it. And I'm going to explain  
21 why.

22 THE COURT: Here's the difference. So what  
23 you're saying is, Judge, you can decide their first,  
24 third, and fourth claim for relief. We have a pending  
25 motion for summary judgment as to the Penn Central

1 claim. You should decide that. We can do that.

2 MR. SCHWARTZ: And their temporary taking  
3 claim. And on those issues, we should be able to argue  
4 first and last.

5 THE COURT: Okay. I get that. So why do we  
6 need three hours for the legal issues right now when  
7 I've already given you more than that?

8 MR. SCHWARTZ: Well, we have some very  
9 significant issues about what zoning means, about  
10 whether zoning confers rights. There's a lot of law on  
11 that issue. It all says, no. And what's the  
12 relationship between zoning and the general plan  
13 designation.

14 And there's been a big disconnect in this  
15 case between this claim that all property owners have a  
16 constitutional right to build whatever they want as  
17 long as it's a permitted use under the zoning  
18 ordinance. There's a big disconnect between that and  
19 the tests for liability for a regulatory taking. I  
20 need to explain to the Court what -- why they're making  
21 that claim and how it has nothing to do with a  
22 regulatory taking. So I need to explain the origins of  
23 the regulatory taking doctrine and what the rules are.  
24 Then I need to fit the facts of this case within those  
25 rules.

1 THE COURT: But we've had facts.

2 MR. SCHWARTZ: I need to fit those facts  
3 within the law.

4 THE COURT: Here's my question. Why did we  
5 spend three hours on -- if you're going to do that, why  
6 did we spend three hours this morning? You should have  
7 stepped up -- going back to yesterday, we should have  
8 just dove into this head first. I mean, I don't mind  
9 saying this because I think counsel did his best and he  
10 did an admirable job, but the first hour and a half or  
11 two hours of this discussion was almost like watching  
12 something on Channel 10 regarding the history of  
13 planning and zoning in Clark County.

14 MR. SCHWARTZ: Well, I think the point was  
15 that the history of land use planning in Nevada is that  
16 the state has found the general plan to be more and  
17 more important, and that zoning has to be consistent  
18 with the plan. And in this case --

19 THE COURT: And you can make that argument,  
20 sir, but my point is this. I mean, when I deal with a  
21 products liability case, I don't have to go back to the  
22 origin of products liability. I'm just saying that. I  
23 don't. What is the law.

24 MR. SCHWARTZ: I will be very brief on those  
25 facts and how they fit into the law. But I will

1 explain how those facts fit into the law, Your Honor.

2 THE COURT: All right. I think this is the  
3 only fair way to do it today. I'm going to allocate,  
4 and this is fair, I'm going to allocate one hour per  
5 side. And you don't have to use it all today. As far  
6 as Monday is concerned, is Monday going to be a go?

7 MR. LEAVITT: Are you talking to me?

8 THE COURT: I'm talking to everybody. I'm  
9 talking to the plaintiff and the defense as far as  
10 Monday is concerned.

11 MR. SCHWARTZ: I'm available Monday morning  
12 by BlueJeans.

13 MR. LEAVITT: Your Honor, we will appear here  
14 in person.

15 THE COURT: I have to be done by noon.

16 MR. LEAVITT: What time will we start,  
17 Your Honor?

18 THE COURT: Start at 9:15.

19 MR. LEAVITT: And did you say you're going to  
20 give each party an hour today?

21 THE COURT: I'm looking at the totality of  
22 time because we do have the pending motions. But what  
23 I'm thinking, maybe can the City be done today because  
24 I plan on getting out of here by 4:50?

25 MR. SCHWARTZ: I will do my best.

1 THE COURT: This is Friday; right. We  
2 started at 9:15 in the morning.

3 MR. SCHWARTZ: I will do my best, Your Honor.

4 THE COURT: Okay. And then on Monday, I'll  
5 hand the floor back over to the plaintiff. And then  
6 you can go for an hour, sir. And then he'll get the  
7 last word, something like that, regarding his  
8 counterclaim. This case has to come to an end.

9 MR. LEAVITT: I agree, Your Honor.

10 MR. SCHWARTZ: Thank you, Your Honor.

11 THE COURT: So, sir, you have the floor.

12 MR. SCHWARTZ: Thank you, Your Honor.

13 Your Honor, I have delivered to you two  
14 binders of exhibits that I'll be referring to, Volumes  
15 I and II.

16 THE COURT: Yes, sir. I've got them.

17 MR. SCHWARTZ: They each have tabbed numbers.  
18 I want to refer the Court to the first three exhibits,  
19 which, in a sense, tells the Court everything you need  
20 to know to grant summary judgment for the City in this  
21 case.

22 THE COURT: Okay.

23 MR. SCHWARTZ: Tab 1 are the approvals of 435  
24 units on the 17-acre property. Now, takings, in  
25 takings, Your Honor, the parcel as a whole is a very



1 important concept. The Court doesn't look at the  
2 property and the effect of the regulation on a part of  
3 the property. It looks at the whole property. And  
4 there are rules to decide what is the whole property.

5 In this case, the PRMP, the 1500-acre Peccole  
6 Ranch master plan, is the parcel as a whole. And in  
7 taking jurisprudence, the Court should look at the  
8 effect of the City's regulation on the parcel as a  
9 whole. If the PRMP is not the parcel as a whole, at  
10 minimum, the 250-acre Badlands is the parcel as a whole  
11 for purposes of takings.

12 And that's why the first three tabs are so  
13 important, Your Honor. If the parcel as a whole is the  
14 PRMP, the City will have allowed 84 percent of it to be  
15 developed so there can't be a taking if the City  
16 doesn't allow the other 16 percent to be developed.  
17 The developer has got substantial value.

18 If the parcel as a whole is the Badlands, the  
19 City has approved 435 luxury units in the Badlands. So  
20 it's allowed substantial development of the parcel as a  
21 whole. So the developer can't carve up the property  
22 into different segments and apply for development on  
23 each segment. And if the City says no on a particular  
24 segment, okay, now, you've wiped me out; you have to  
25 pay me for a taking.

1           The courts are onto that. The U.S. Supreme  
2 Court and the Nevada Supreme Court have said, you can't  
3 do that.

4           THE COURT: Okay, but tell me this. And  
5 these are my thoughts. What about this current case?  
6 And the reason why I say that is this. There's no  
7 question there was a development as a whole when the  
8 entire parcel was developed, including the golf course,  
9 single-family residential homes, condos, and the like.  
10 But at some point, the golf course failed; right.  
11 That's an important point to bring up. And the  
12 golf course has failed.

13           And so it seems to me, you have, what is it,  
14 approximately 150 acres, give or take, and this case  
15 happens to be about 35 acres. And so once the  
16 golf course fails, are you saying that there can never  
17 be the right to develop the golf course because the  
18 surrounding properties were developed? That's what  
19 that bottom line would be under that scenario.

20           MR. SCHWARTZ: I am saying that only in part,  
21 Your Honor. It's a bit more complicated than that.  
22 Because you can't exclude the history of this property.

23           THE COURT: I get that, but you can't exclude  
24 the fact that we had a failure of the golf course. How  
25 many acres is it total, once again?

1 MR. SCHWARTZ: The R-PD7 zoned area was  
2 614 acres. Then the golf course is 250 of those. So  
3 the City designated the residential in the general  
4 plan. The general plan is the highest law. It  
5 designated the housing portion of that 614-acre R-PD7  
6 zoned area housing or medium density housing. And it  
7 designated the golf course PR-OS; okay. That means  
8 that you can't use the golf course for residential.  
9 That's the law. And the City has discretion as to  
10 whether to change that.

11 Now, the developer came along, bought the  
12 property in 2015 for \$4.5 million. The City -- the  
13 developer claims that they're an experienced developer.  
14 They did their due diligence. They claim they did  
15 their due diligence as to the law. Although, they  
16 failed to find all of the state statutes and the case  
17 law that prevented development of the golf course area  
18 because it was designated PR-OS, unless the City  
19 exercises discretion to change it.

20 So the developer knew, Exhibit Y -- Exhibit Y  
21 is tab 56, Your Honor, in the second binder. That  
22 shows the developer knew that the Badlands, the  
23 golf course, was designated PR-OS when they bought the  
24 property. And if they didn't know, they should have  
25 known because it's right there in the general plan and

1 all the ordinances that approved the PR-OS designation.

2 So if the developer did their due diligence,  
3 they bought a golf course. They still have a  
4 golf course today. And that's why there can't be a  
5 taking.

6 Now, the Court asked a very good question.  
7 What if the golf course is not an economic use. They  
8 either should not have bought the golf course or they  
9 should have paid a nominal amount for it if it wasn't  
10 an economic use. They bought a golf course that, by  
11 law, could not be developed with residential unless the  
12 City exercised its discretion to change that. That's  
13 state law, state statutory law and state case law.  
14 They knew it. If they didn't know it, it's the law.  
15 They bought a golf course, and the City didn't make  
16 them buy the golf course. They didn't have to buy it.

17 So they can't buy something that they now say  
18 they can't use, it's got no economic use. And say to  
19 the City, oh, you have to change the law to allow me to  
20 make money on this. That's not the City's job.

21 THE COURT: Now, when you say they have to  
22 change the law, what does that mean? Because at the  
23 end of the day, understand we're talking about the  
24 35 acres at issue. And I know we know the answer to  
25 that, but it was zoned; right?

1 MR. SCHWARTZ: Your Honor, there's zoning and  
2 there's a general plan.

3 THE COURT: I understand that. But my  
4 question was, it was zoned R-PD7; correct?

5 MR. SCHWARTZ: Yes, Your Honor. And that  
6 zoning, that zoning requires -- that's for a planned  
7 development area. That's for large acreage. I can  
8 take that Court through that zoning statute and tell  
9 you exactly what that does. That's tab 27.  
10 Your Honor, let's go through the R-PD7 zoning  
11 ordinance.

12 And, Your Honor we've highlighted the key  
13 points of this zoning ordinance. This says in the  
14 first part that, yeah, PD means planned development.  
15 Your Honor, I think it's crucial to distinguish between  
16 PD zoning and regular R, which stands for residential,  
17 zoning. This is not an R1 district. R1 are  
18 single-family lots.

19 And if the City were to say, you can't build  
20 a house on that lot, regardless of what the general  
21 plan said, that might be a taking because you wouldn't  
22 have an economic use of the property.

23 But this is very different. This is a large  
24 acreage, over 600 acres. And it's a planned  
25 development district. So that means the City has to

1 use flexibility and innovation in residential  
2 development. And in the first sentence, that says it  
3 all, Your Honor. That's what this case is about.  
4 "With emphasis on enhanced residential amenities,  
5 efficient utilization of open space."

6 So open space is encouraged in an RPD  
7 district, and it is a permissible use.

8 THE COURT: But if the City wants to maintain  
9 open space, you're going to pay for it.

10 MR. SCHWARTZ: No. Of course, not.

11 THE COURT: Why shouldn't they?

12 MR. SCHWARTZ: Because the City has its  
13 police power. And in a planned development district,  
14 it has the power to tell developers how high the  
15 buildings can go, where the buildings can go, how the  
16 buildings should look, how the traffic circulation  
17 should look, where the open space is supposed to look.  
18 I'll refer you to Nevada Revised Statutes.

19 THE COURT: The reason why I'm bringing that  
20 up, I mean, I've lived in Las Vegas a long time, and I  
21 don't remember golf courses being in everybody's  
22 neighborhood. I don't mind saying that because it's  
23 true. So I get parks and open spaces, but it seems to  
24 me when it comes to some of this property, I still  
25 haven't been given an adequate explanation as to why

1 the 35 acres shouldn't have been allowed to be  
2 developed for residential purposes. And, yeah, maybe  
3 some of the others, but I haven't heard that.

4 MR. SCHWARTZ: Well, Your Honor, if you could  
5 turn to tab 19, please. I want to take you through  
6 Nevada law.

7 THE COURT: Make sure you explain to me  
8 because I want to make sure I don't miss what your  
9 point as far as tab 27. It appears to be --

10 MR. SCHWARTZ: I'm at tab 19.

11 THE COURT: So you've moved on from tab 27?

12 MR. SCHWARTZ: Yeah. I'm going to start from  
13 the -- I'm going to answer the Court's question by  
14 explaining to you why Nevada law absolutely allows  
15 local agencies in a planned development to designate  
16 certain parts for housing, certain parts for open  
17 space, certain parts for roads, certain parts for  
18 perhaps a fire station or a school or drainage or any  
19 of those things. And it's not a taking to require that  
20 the developer provide amenities for their development.  
21 The powers of the City are so broad --

22 THE COURT: But is a golf course really -- in  
23 essence, what a golf course was was a business that  
24 failed; right? I mean, it was. It was a golf course.  
25 It was there for economic purposes, to make money. And