

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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**AMENDED
JOINT APPENDIX
VOLUME 71**

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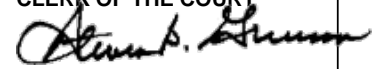
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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 180 LAND CO LLC, a Nevada limited liability
18 company, FORE STARS, LTD., a Nevada
19 limited liability company and SEVENTY
20 ACRES, LLC, a Nevada limited liability
21 company, DOE INDIVIDUALS I-X, DOE
22 CORPORATIONS I-X, and DOE LIMITED
23 LIABILITY COMPANIES I-X,

24 Plaintiffs,

25 v.

26 CITY OF LAS VEGAS, a political subdivision of
27 the State of Nevada; ROE GOVERNMENT
28 ENTITIES I-X; ROE CORPORATIONS I-X;
29 ROE INDIVIDUALS I-X; ROE LIMITED-
30 LIABILITY COMPANIES I-X; ROE QUASI-
31 GOVERNMENTAL ENTITIES I-X,

32 Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**APPENDIX OF EXHIBITS IN
SUPPORT OF CITY'S OPPOSITION
TO PLAINTIFF'S MOTION TO
DETERMINE TAKE AND FOR
SUMMARY JUDGMENT ON THE
FIRST, THIRD, AND FOURTH
CLAIMS FOR RELIEF AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

VOLUME 12

33 The City of Las Vegas ("City") submits this Appendix of Exhibits in Support of the City's
34 Opposition to Plaintiff's Motion to Determine Take and For Summary Judgment on the First, Third,
35 and Fourth Claims for Relief and its Countermotion for Summary Judgment.

Exhibit	Exhibit Description	Vol.	Bates No.
A	City records regarding Ordinance No. 2136 (Annexing 2,246 acres to the City of Las Vegas)	1	0001-0011
B	City records regarding Peccole Land Use Plan and Z-34-81 rezoning application	1	0012-0030

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Exhibit	Exhibit Description	Vol.	Bates No.
C	City records regarding Venetian Foothills Master Plan and Z-30-86 rezoning application	1	0031-0050
D	Excerpts of the 1985 City of Las Vegas General Plan	1	0051-0061
E	City records regarding Peccole Ranch Master Plan and Z-139-88 phase I rezoning application	1	0062-0106
F	City records regarding Z-40-89 rezoning application	1	0107-0113
G	Ordinance No. 3472 and related records	1	0114-0137
H	City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application	1	0138-0194
I	Excerpts of 1992 City of Las Vegas General Plan	2	0195-0248
J	City records related to Badlands Golf Course expansion	2	0249-0254
K	Excerpt of land use case files for GPA-24-98 and GPA-6199	2	0255-0257
L	Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan	2	0258-0273
M	Miscellaneous Southwest Sector Land Use Maps from 2002-2005	2	0274-0277
N	Ordinance No. 5787 and Excerpts of 2005 Land Use Element	2	0278-0291
O	Ordinance No. 6056 and Excerpts of 2009 Land Use & Rural Neighborhoods Preservation Element	2	0292-0301
P	Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element	2	0302-0317
Q	Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element	2	0318-0332
R	Ordinance No. 1582	2	0333-0339
S	Ordinance No. 4073 and Excerpt of the 1997 City of Las Vegas Zoning Code	2	0340-0341
T	Ordinance No. 5353	2	0342-0361
U	Ordinance No. 6135 and Excerpts of City of Las Vegas Unified Development Code adopted March 16, 2011	2	0362-0364
V	Deeds transferring ownership of the Badlands Golf Course	2	0365-0377
W	Third Revised Justification Letter regarding the Major Modification to the 1990 Conceptual Peccole Ranch Master Plan	2	0378-0381
X	Parcel maps recorded by the Developer subdividing the Badlands Golf Course	3	0382-0410
Y	EHB Companies promotional materials	3	0411-0445
Z	General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications	3	0446-0466
AA	Staff Report regarding 17-Acre Applications	3	0467-0482

Exhibit	Exhibit Description	Vol.	Bates No.
BB	Major Modification (MOD-63600), Rezoning (ZON-63601), General Plan Amendment (GPA-63599), and Development Agreement (DIR-63602) applications	3	0483-0582
CC	Letter requesting withdrawal of MOD-63600, GPA-63599, ZON-63601, DIR-63602 applications	4	0583
DD	Transcript of February 15, 2017 City Council meeting	4	0584-0597
EE	Judge Crockett's March 5, 2018 order granting Queensridge homeowners' petition for judicial review, Case No. A-17-752344-J	4	0598-0611
FF	Docket for NSC Case No. 75481	4	0612-0623
GG	Complaint filed by Fore Stars Ltd. and Seventy Acres LLC, Case No. A-18-773268-C	4	0624-0643
HH	General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications	4	0644-0671
II	June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480.	4	0672-0679
JJ	Docket for Case No. A-17-758528-J	4	0680-0768
KK	Judge Williams' Findings of Fact and Conclusions of Law, Case No. A-17-758528-J	5	0769-0793
LL	Development Agreement (DIR-70539) application	5	0794-0879
MM	August 2, 2017 City Council minutes regarding DIR-70539	5	0880-0882
NN	Judge Sturman's February 15, 2019 minute order granting City's motion to dismiss, Case No. A-18-775804-J	5	0883
OO	Excerpts of August 2, 2017 City Council meeting transcript	5	0884-0932
PP	Final maps for Amended Peccole West and Peccole West Lot 10	5	0933-0941
QQ	Excerpt of the 1983 Edition of the Las Vegas Municipal Code	5	0942-0951
RR	Ordinance No. 2185	5	0952-0956
SS	1990 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0957
TT	1996 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0958
UU	1998 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0959

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Exhibit	Exhibit Description	Vol.	Bates No.
VV	2015 aerial photograph identifying Phase I and Phase II boundaries, retail development, hotel/casino, and Developer projects, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0960
WW	2015 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0961
XX	2019 aerial photograph identifying Phase I and Phase II boundaries, and current assessor parcel numbers for the Badlands property, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0962
YY	2019 aerial photograph identifying Phase I and Phase II boundaries, and areas subject to inverse condemnation litigation, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0963
ZZ	2019 aerial photograph identifying areas subject to proposed development agreement (DIR-70539), produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0964
AAA	Membership Interest Purchase and Sale Agreement	6	0965-0981
BBB	Transcript of May 16, 2018 City Council meeting	6	0982-0998
CCC	City of Las Vegas' Amicus Curiae Brief, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481	6	0999-1009
DDD	Nevada Supreme Court March 5, 2020 Order of Reversal, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481	6	1010-1016
EEE	Nevada Supreme Court August 24, 2020 Remittitur, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481	6	1017-1018
FFF	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlements on 17 Acres	6	1019-1020
GGG	September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435-Unit Housing Development Project in Badlands	6	1021-1026
HHH	Complaint Pursuant to 42 U.S.C. § 1983, <i>180 Land Co. LLC et al. v. City of Las Vegas, et al.</i> , 18-cv-00547 (2018)	6	1027-1122
III	9th Circuit Order in <i>180 Land Co. LLC; et al v. City of Las Vegas, et al.</i> , 18-cv-0547 (Oct. 19, 2020)	6	1123-1127
JJJ	Plaintiff Landowners' Second Supplement to Initial Disclosures Pursuant to NRCP 16.1 in 65-Acre case	6	1128-1137
LLL	Bill No. 2019-48: Ordinance No. 6720	7	1138-1142

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Exhibit	Exhibit Description	Vol.	Bates No.
MMM	Bill No. 2019-51: Ordinance No. 6722	7	1143-1150
NNN	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 65 Acres	7	1151-1152
OOO	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres	7	1153-1155
PPP	April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres	7	1156-1157
QQQ	Valbridge Property Advisors, Lubawy & Associates Inc., Appraisal Report (Aug. 26, 2015)	7	1158-1247
RRR	Notice of Entry of Order Adopting the Order of the Nevada Supreme Court and Denying Petition for Judicial Review	7	1248-1281
SSS	Letters from City of Las Vegas Approval Letters for 17-Acre Property (Feb. 16, 2017)	8	1282-1287
TTT	Reply Brief of Appellants 180 Land Co. LLC, Fore Stars, LTD, Seventy Acres LLC, and Yohan Lowie in <i>180 Land Co LLC et al v. City of Las Vegas</i> , Court of Appeals for the Ninth Circuit Case No. 19-16114 (June 23, 2020)	8	1288-1294
UUU	Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020)	8	1295-1306
VVV	Plaintiff Landowners' Sixteenth Supplement to Initial Disclosures in <i>180 Land Co., LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 10, 2020)	8	1307-1321
WWW	Excerpt of Transcript of Las Vegas City Council Meeting (Aug. 2, 2017)	8	1322-1371
XXX	Notice of Entry of Findings of Facts and Conclusions of Law on Petition for Judicial Review in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 26, 2018)	8	1372-1399
YYY	Notice of Entry of Order <i>Nunc Pro Tunc</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019 in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528 (Feb. 6, 2019)	8	1400-1405
ZZZ	City of Las Vegas Agenda Memo – Planning, for City Council Meeting June 21, 2017, Re: GPA-68385, WVR-68480, SDR-68481, and TMP-68482 [PRJ-67184]	8	1406-1432

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Exhibit	Exhibit Description	Vol.	Bates No.
AAAA	Excerpts from the Land Use and Rural Neighborhoods Preservation Element of the City's 2020 Master Plan adopted by the City Council of the City on September 2, 2009	8	1433-1439
BBBB	Summons and Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-18-780184-C	8	1440-1477
CCCC	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020)	8	1478-1515
DDDD	Peter Lowenstein Declaration	9	1516-1522
DDDD-1	Exhibit 1 to Peter Lowenstein Declaration: Diagram of Existing Access Points	9	1523-1526
DDDD-2	Exhibit 2 to Peter Lowenstein Declaration: July 5, 2017 Email from Mark Colloton	9	1527-1531
DDDD-3	Exhibit 3 to Peter Lowenstein Declaration: June 28, 2017 Permit application	9	1532-1533
DDDD-4	Exhibit 4 to Peter Lowenstein Declaration: June 29, 2017 Email from Mark Colloton re Rampart and Hualapai	9	1534-1536
DDDD-5	Exhibit 5 to Peter Lowenstein Declaration: August 24, 2017 Letter from City Department of Planning	9	1537
DDDD-6	Exhibit 6 to Peter Lowenstein Declaration: July 26, 2017 Email from Peter Lowenstein re Wall Fence	9	1538
DDDD-7	Exhibit 7 to Peter Lowenstein Declaration: August 10, 2017 Application for Walls, Fences, or Retaining Walls; related materials	9	1539-1546
DDDD-8	Exhibit 8 to Peter Lowenstein Declaration: August 24, 2017 Email from Steve Gebeke	9	1547-1553
DDDD-9	Exhibit 9 to Peter Lowenstein Declaration: Bill No. 2018-24	9	1554-1569
DDDD-10	Exhibit 10 to Peter Lowenstein Declaration: Las Vegas City Council Ordinance No. 6056 and excerpts from Land Use & Rural Neighborhoods Preservation Element	9	1570-1577
DDDD-11	Exhibit 11 to Peter Lowenstein Declaration: documents submitted to Las Vegas Planning Commission by Jim Jimmerson at February 14, 2017 Planning Commission meeting	9	1578-1587
EEEE	GPA-72220 application form	9	1588-1590
FFFF	Chris Molina Declaration	9	1591-1605
FFFF-1	Fully Executed Copy of Membership Interest Purchase and Sale Agreement for Fore Stars Ltd.	9	1606-1622

Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-2	Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property	9	1623-1629
FFFF-3	Reference map of properties involved in transactions between Developer and Peccole family	9	1630
FFFF-4	Excerpt of appraisal for One Queensridge place dated October 13, 2005	9	1631-1632
FFFF-5	Site Plan Approval for One Queensridge Place (SDR-4206)	9	1633-1636
FFFF-6	Securities Redemption Agreement dated September 14, 2005	9	1637-1654
FFFF-7	Securities Purchase Agreement dated September 14, 2005	9	1655-1692
FFFF-8	Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005	9	1693-1730
FFFF-9	Settlement Agreement and Mutual Release dated June 28, 2013	10	1731-1782
FFFF-10	June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course	10	1783-1786
FFFF-11	July 25, 2014 email and initial draft of Golf Course Purchase Agreement	10	1787-1813
FFFF-12	August 26, 2014 email from Todd Davis and revised purchase agreement	10	1814-1843
FFFF-13	August 27, 2014 email from Billy Bayne regarding purchase agreement	10	1844-1846
FFFF-14	September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal	10	1847-1848
FFFF-15	November 3, 2014 email regarding BGC Holdings LLC	10	1849-1851
FFFF-16	November 26, 2014 email and initial draft of stock purchase and sale agreement	10	1852-1870
FFFF-17	December 1, 2015 emails regarding stock purchase agreement	10	1871-1872
FFFF-18	December 1, 2015 email and fully executed signature page for stock purchase agreement	10	1873-1874
FFFF-19	December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements	10	1875-1876
FFFF-20	February 19, 2015 emails regarding notes and clarifications to purchase agreement	10	1877-1879
FFFF-21	February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1880
FFFF-22	February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1881-1882
FFFF-23	Fully executed Membership Interest Purchase Agreement for WRL LLC	10	1883-1890

Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-24	June 12, 2015 email regarding clubhouse parcel and recorded parcel map	10	1891-1895
FFFF-25	Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.	10	1896-1900
FFFF-26	Record of Survey for Hualapai Commons Ltd.	10	1901
FFFF-27	Deed from Hualapai Commons Ltd. to EHC Hualapai LLC	10	1902-1914
FFFF-28	Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC	10	1915-1931
FFFF-29	City of Las Vegas' First Set of Interrogatories to Plaintiff	10	1932-1945
FFFF-30	Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3 rd Supplement	10	1946-1973
FFFF-31	City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1974-1981
FFFF-32	Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1982-1989
FFFF-33	September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents	11	1990-1994
FFFF-34	First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1995-2002
FFFF-35	Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2003-2032
FFFF-36	Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2033-2109
FFFF-37	February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2110-2118
FFFF-38	April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order	11	2119-2120
FFFF-39	April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021	11	2121-2123
FFFF-40	Hydrologic Criteria and Drainage Design Manual, Section 200	11	2124-2142
FFFF-41	Hydrologic Criteria and Drainage Design Manual, Standard Form 1	11	2143
FFFF-42	Hydrologic Criteria and Drainage Design Manual, Standard Form 2	11	2144-2148
FFFF-43	Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study	11	2149-2152

Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-44	Excerpts from Peccole Ranch Master Plan Phase II regarding drainage and open space	11	2153-2159
FFFF-45	Aerial photos and demonstrative aids showing Badlands open space and drainage system	11	2160-2163
FFFF-46	August 16, 2016 letter from City Streets & Sanitation Manager regarding Badlands Golf Course Drainage Maintenance	11	2164-2166
FFFF-47	Excerpt from EHB Companies promotional materials regarding security concerns and drainage culverts	11	2167
GGGG	Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims Etc. in <i>180 Land Co., LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (March 21, 2019)	11	2168-2178
HHHH	State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i> (Nov. 30, 2017)	11	2179-2183
IIII	Clark County Real Property Tax Values	11	2184-2199
JJJJ	Clark County Tax Assessor's Property Account Inquiry - Summary Screen	11	2200-2201
KKKK	February 22, 2017 Clark County Assessor Letter to 180 Land Co. LLC, re Assessor's Golf Course Assessment	11	2202
LLLL	Petitioner's Opening Brief, <i>In the matter of 180 Land Co. LLC</i> (Aug. 29, 2017), State Board of Equalization	12	2203-2240
MMMM	September 21, 2017 Clark County Assessor Stipulation for the State Board of Equalization	12	2241
NNNN	Excerpt of Reporter's Transcript of Hearing in <i>180 Land Co. v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Feb. 16, 2021)	12	2242-2293
OOOO	June 28, 2016 Letter from Mark Colloton re: Reasons for Access Points Off Hualapai Way and Rampart Blvd.	12	2294-2299
PPPP	Transcript of City Council Meeting (May 16, 2018)	12	2300-2375
QQQQ	Supplemental Declaration of Seth T. Floyd	13	2376-2379
QQQQ-1	1981 Peccole Property Land Use Plan	13	2380
QQQQ-2	1985 Las Vegas General Plan	13	2381-2462
QQQQ-3	1975 General Plan	13	2463-2558
QQQQ-4	Planning Commission meeting records regarding 1985 General Plan	14	2559-2786
QQQQ-5	1986 Venetian Foothills Master Plan	14	2787
QQQQ-6	1989 Peccole Ranch Master Plan	14	2788
QQQQ-7	1990 Master Development Plan Amendment	14	2789
QQQQ-8	Citizen's Advisory Committee records regarding 1992 General Plan	14	2790-2807

Exhibit	Exhibit Description	Vol.	Bates No.
QQQQ-9	1992 Las Vegas General Plan	15-16	2808-3257
QQQQ-10	1992 Southwest Sector Map	17	3258
QQQQ-11	Ordinance No. 5250 (Adopting 2020 Master Plan)	17	3259-3266
QQQQ-12	Las Vegas 2020 Master Plan	17	3267-3349
QQQQ-13	Ordinance No. 5787 (Adopting 2005 Land Use Element)	17	3350-3416
QQQQ-14	2005 Land Use Element	17	3417-3474
QQQQ-15	Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)	17	3475-3479
QQQQ-16	2009 Land Use and Rural Neighborhoods Preservation Element	18	3480-3579
QQQQ-17	Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element)	18	3580-3589
QQQQ-18	Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)	18	3590-3600
QQQQ-19	2018 Land Use & Rural Neighborhoods Preservation Element	18	3601-3700

DATED this 25th day of August 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 25th day of August, 2020, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF CITY’S OPPOSITION TO PLAINTIFF’S MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF AND COUNTERMOTION FOR SUMMARY JUDGMENT – VOLUME 12** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “LLLL”

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Attorneys for Petitioner

6
7 **BEFORE THE**
8 **STATE BOARD OF EQUALIZATION**

9 In the matter of 180 Land Co LLC,
10
Petitioner.

Case No.:
Date of Hearing: September 18, 2017
Time of Hearing: 9:00 a.m.

11 **PETITIONER'S OPENING BRIEF**

12 Petitioner, 180 Land Co LLC ("Petitioner" or "Taxpayer"), by and through its
13 undersigned counsel, hereby submits its Opening Brief in connection with Taxpayer's Petition for
14 Direct Appeal filed July 17, 2017 (the "Appeal"). This Appeal is (i) an appeal of the determination
15 by the Clark County Assessor (the "Assessor") that the golf course property owned by Petitioner
16 has been converted to a higher use and of the resulting assessment of deferred taxes based on such
17 determination, and (ii) an appeal of the Assessor's determination that the golf course property
18 owned by Petitioner no longer qualifies for "open-space" (golf course) use assessment (to the
19 extent that such determination is separate and distinct from that identified in subsection (i)).

20 This Opening Brief (and Petitioner's Appeal) is made and based upon the Points and
21 Authorities set forth below, the Declaration of Todd Davis, Esq. submitted herewith (the "Davis
22 Dec."), the pleadings and papers on file herein (including, without limitation, Form 5102SBE
23 (Taxpayer Petition for Direct Appeal) previously filed by Petitioner), the witness and
24 documentary evidence to be submitted by Petitioner,¹ and any argument of counsel that the State
25

26 ¹ Pursuant to NAC 361.737(10), on or before September 8, 2017, Petitioner will be providing (a)
27 the names of all witnesses expected to offer testimony at the hearing, together with a summary of
28 (and/or declaration setting forth) the anticipated testimony of such witnesses, and (b) a copy of
each exhibit and other documentary evidence that Petitioner expects to introduce at the hearing.
This Appeal and Opening Brief is also made and based on such evidence.

Board of Equalization (the “SBE”) may permit at the time of the hearing on the Appeal.

POINTS AND AUTHORITIES

I. INTRODUCTION.

Petitioner owns several parcels of real property located in Clark County, Nevada, that (collectively with certain other property owned by other entities) comprise real property that was leased to a third-party golf-operator for the operating of the Badlands Golf Course. Through no fault of Petitioner, and as a result of adverse financial conditions, the operator of the Badlands Golf Course terminated its lease for the golf course on or about December 1, 2016 (as will be demonstrated, Petitioner used its commercially reasonable and substantial efforts to prevent the closure of the golf course, including, without limitation, by offering to reduce rent to Zero dollars and by attempting to negotiate the reduction of the cost of water leased from a third party, for the benefit of the golf operator, albeit to no avail). Thereafter, the Assessor determined, based solely on the fact that “the Badlands Golf Course has been closed for play,” that: (i) Petitioner would be obligated to pay deferred tax liability as a result of the cessation of use of the property as a golf course for the current fiscal year and the previous 6 years, and (ii) Petitioner’s property no longer qualified for open-space golf-course assessment for the upcoming 2017-2018 tax year.²

As will be demonstrated herein, and by the testimony and documentary evidence to be submitted by Petitioner, mere cessation of operation of property for golfing does not trigger an obligation to pay deferred tax liability. Rather, either (1) a physical alteration of the property, (2) the mapping of the property for “non-golfing use” or (3) a re-zoning of the property is required before any assessment of deferred tax liability can properly be made. Here, there is (and has not been) any such activity with respect to the property – there has been no physical alteration of the property, no mapping of the property for “non-golfing use” and no re-zoning of the property; rather, the real property remains ready, albeit dormant, for the operation of a golf course. As such, any assessment of deferred tax liability is in error.

In addition, as will be demonstrated herein, and by the testimony and documentary evidence to be submitted by Petitioner, the Assessor’s determination that Petitioner’s property

² See Exhibit 1.

1 ceased to qualify for open-space use assessment based on the closure of the Badlands Golf
2 Course is in error.³ As such, the Property should continue to be assessed pursuant to NRS
3 361A.220 and 361A.225.

4 **II. PRELIMINARY MOTION.⁴**

5 Petitioner hereby requests an order from the SBE that Petitioner's Appeal be bifurcated,
6 such that the issues of conversion to a higher use/disqualification from open-space assessment be
7 heard first, at the scheduled September 18, 2017 hearing, and thereafter, in the event the SBE
8 determines that the use of the property at issue has either been converted to a higher use or no
9 longer is classified for golf course use assessment, then the issue of valuation for the subject
10 property be heard at the next SBE hearing. The issues of valuation are moot if the SBE agrees
11 with Petitioner that assessment of deferred tax liability is erroneous and that the determination
12 that the property at issue ceased to qualify for open-space use assessment is in error.

13 Petition would be unduly burdened in the event it were required to produce competent
14 valuation evidence for each of the six (6) parcels of real property owned by Petitioner for, not
15 only the upcoming 2017-18 tax year, but also the current fiscal year and prior 6-years, as asserted
16 by the Assessor. As set forth in more detail below, the Notice of Conversion indicating the
17 valuation for these periods as determined by the Clark County Assessor was dated May 31, 2017
18 and was not received by Taxpayer until June 6, 2017.⁵ It is unduly burdensome, due to the
19 limited time between receipt of the Notice of Conversion, the time for filing the Appeal and the
20 scheduling of the hearing on such Appeal, for Taxpayer to analyze and obtain evidence with
21 respect to multiple parcels of real property for what amounts to 8 separate tax years, especially in
22 the event the need for such evidence of valuation may, in fact, be moot. In addition, to date,
23 Petitioner has never received formal notice of the upcoming hearing from the SBE.⁶

24
25 ³ This aspect of the Appeal is being advanced to the extent that the determination of open-space
26 use assessment for the 2017-2018 tax year is separate and distinct from any determination
27 regarding assessment of deferred tax liability based on conversion of the property to higher use.

28 ⁴ This preliminary motion is being filed pursuant to NAC 361.705(3)

⁵ See Davis Dec. ¶ 5.

⁶ Pursuant to NAC 361.7014(4)(c), the SBE is required to "notify the petitioner and respondent

As such, Petitioner has good cause for this request that the Appeal and the pending hearing be bifurcated so as to address solely the issue of the validity of the determination by the Assessor that the classification of the use of the property at issue has been converted to a higher use and/or that the property at issue has been disqualified from open-space assessment. Thus, Petitioner respectfully requests its motion to bifurcate the Appeal and hearing be granted.

III. SUMMARY OF FACTS AND PROCEDURAL HISTORY.

a) Petitioner is the owner of certain parcels of real property located within Clark County, Nevada, that are commonly identified as APNs: 138-31-801-002, 138-31-201-005, 138-31-601-008, 138-31-702-003, 138-31-702-004 and 138-31-712-004 (the "Property").

b) The Property comprises a portion of the real property generally known as the Badlands Golf Course (the "Golf Course").

c) The Property has been used as a part of the Golf Course since 2010 (i.e., during all relevant tax years at issue in this matter, including from and after the 2010-2011 tax year) until closure of the Golf Course on December 1, 2016 by the then lessee of the Property.

d) On or about February 22, 2017, Petitioner received notice from the Clark County Assessor regarding Assessor's Golf Course Assessment – which notice indicated that "the Badlands Golf Course has been closed for play and is therefore disqualified for open-space

_____ (continued)
that the case has been docketed for a hearing." Petitioner first heard of this scheduled hearing on August 10, 2017, by virtue of a phone call from the Assessor's attorney to discuss a briefing schedule. The Assessor also has failed to timely comply with the applicable statutory requirements. For example, pursuant to NRS 361A.271, within 30 days after determining that property has been converted to a higher use, notice must be given, which notice must contain taxable and assessed values for current and recapture periods. The Assessor's determination in this case appears to have been made on February 22, 2017 (the date of its first correspondence indicating deferred tax liability will be assessed, which as noted in Fn. 7 *infra*, was also not in compliance with the statutory requirements), but notice of revaluation was not given within the requisite 30-day period – it was not given until May 31, 2017 (which has resulted in prejudice to Petitioner as it relates to issues of valuation). These failures to comply with statutory requirements by the SBE and Assessor are separate and distinct grounds (which grounds are hereby invoked by Petitioner) for a finding that the determination by the Assessor is in error and should not be sustained (as a result of a lack of due notice to Petitioner). In addition, these failures further justify Petitioner's reasonable request for bifurcation of its Appeal (which request was also made in Petitioner's July 15, 2017 Petition Form 5102SBE (Taxpayer Petition for Direct Appeal), but to date no formal determination has been made on such request).

1 assessment based on NRS 361A.230.” A true and correct copy of this letter is attached hereto as
2 **Exhibit 1.**⁷

3 f) On or about May 31, 2017, Petition received a “Notice of Conversion” from the
4 Clark County Assessor, which referenced the February 22, 2017 letter and the “disqualification
5 [of the Property] for open space assessment under NRS 361A.230.” The May 31, 2017 notice
6 assessed values for Property for the upcoming 2017-2018 tax year, the current tax year and for
7 the preceding 6 tax years (i.e., dating back to the 2010-2011 tax years). A true and correct copy
8 of this letter is attached hereto as **Exhibit 2.**⁸

9 g) On July 17, 2017, Petitioner timely filed Form 5102SBE (Taxpayer Petition for
10 Direct Appeal) with the Nevada State Board of Equalization (the “SBE”), appealing the
11 determination of the Assessor set forth in its February 22, 2017 and May 31, 2017
12 correspondence.

13 **IV. LEGAL ANALYSIS.**

14 **A. The Property has not been converted to a higher use.**

15 The obligation of a taxpayer that previously received an open-space/golf-course use
16 assessment (as Petitioner had received with respect to the Property) to pay deferred taxes is only
17 triggered upon *conversion* of the property to a higher use.⁹ In this matter, no conversion of the
18 Property to a higher use has occurred. As such, any assessment of deferred taxes is improper.

19
20 ⁷ See also Davis Dec. at ¶ 4. Pursuant to NRS 361A.230(3), “[w]henver open-space real
21 property becomes disqualified..., the county assessor shall send a written notice of
22 disqualification by certified mail with return receipt requested to each owner of record. **The**
23 **notice must contain the assessed value for the ensuing fiscal year.**” (emphasis added). In this
matter, the February 22, 2017 did not contain the assessed value for the ensuing fiscal year and,
as such, was defective.

24 ⁸ See *Id.* at ¶ 5. As set forth above, pursuant to NRS 361A.271, within 30 days after determining
25 that property has been converted to a higher use, notice must be given, which notice must contain
taxable and assessed values for current and recapture periods. This May 31, 2017 notice was not
timely made.

26 ⁹ NRS 361A.265(1). It is only in the event that a parcel or any portion of a parcel of real
27 property which has received open-space use assessment has been converted to a higher use that
28 the county assessor may add to the tax extended against *that portion of the property* on the next
property tax statement the deferred tax. NRS 361A.280. A finding of “conversion to higher
use” does not apply to any portion of the parcel that continues to qualify as open-space real

1 A property is “converted to a higher use” for property tax purposes only if:¹⁰

2 (a) a physical alteration¹¹ of the surface of the property occurs enabling it to
3 be used for a higher use;

4 (b) a final map¹² or parcel map¹³ is recorded which creates one or more
5 parcels not intended for open-space use;¹⁴

6 (c) a final map or parcel map exists which creates one or more parcels not
7 intended for open-space use; or

8 (d) a change in zoning to a higher use is made at the request of the owner.

9 In *Convention Properties v. Washoe County Assessor*, 106 Nev. 400 (1990), the Nevada
10 Supreme Court considered the issue of whether property was converted to a higher use within the
11 meaning of NRS 361A.031. In *Convention Properties*, a parcel map which created a non-
12 agricultural use, namely various residential and commercial uses, was approved and accepted by
13 the City of Reno. *Id.* at 402. In addition, the taxpayer in *Convention Properties* also applied for

14 _____ (continued)
15 property. NRS 361A.031(2). As such, the Property must be analyzed on a parcel-by-parcel
16 basis, with respect to the question of whether any portion thereof has been converted to a higher
17 use (and, pursuant to statute, conversion of a parcel or portion of a parcel does not indicate that
18 any other parcel of a taxpayer has been converted).

19 ¹⁰ NRS 361A.031

20 ¹¹ A physical alteration for this purpose is “the application of man-made changes, including,
21 without limitation, changes in the contour of the land, removal of native plant life, diversion of
22 water channels and building site improvements intended to enable the land to be used for
23 purposes other than agricultural uses.” NAC 361A.210. In this matter, no physical alteration to
24 the Property has been made that would enable it to be used for a higher use.

25 ¹² Within the meaning of NRS 278.0145.

26 ¹³ Within the meaning of NRS 278.017.

27 ¹⁴ To support any finding that such a map creates one or more parcels not intended for
28 agricultural use, the County Assessor must consider: (a) the size of the parcel or parcels being
created; (b) the capacity of the property, including, without limitation, suitability, terrain,
availability of water, soil capabilities, type of vegetation grown, growing season, animal unit
months and animal units; (c) the viability of the property, including, without limitation, cost and
availability of water, soil capacities, market proximity, fencing and suitability of the property for
other uses; and (d) any other factors or criteria that the assessing authority deems appropriate
under the circumstances. NAC 361A.220. In this matter, and based upon a review of the
appraisal records for the Property, no such considerations were evaluated or noted. *See also*
Exhibit 3 and Davis Dec. ¶ 6.

1 and was granted changes in the master plan, tentative map, and zoning. *Id.* These activities were
2 determined to constitute a conversion to higher use under NRS 361A.031. *Id.*¹⁵ As such, the
3 Nevada authority on conversion requires factual findings akin to a taxpayer's recording of a
4 parcel map creating various residential and commercial uses and changes in the master plan,
5 tentative map, and zoning at the request of taxpayer to support the assessment of deferred tax
6 liability.

7 In this matter, there has been no physical alteration of the Property. In addition, other
8 than the recording of parcel maps, none of which create parcels for non-golf use within the
9 meaning of *Convention Properties*, there has been no final map or parcel map recorded and the
10 zoning of the Property has not changed. The only finding of the Assessor was that the Property
11 "has been closed for play" which determination is insufficient for assessment of deferred tax
12 liability.¹⁶ In fact, Petitioner actively sought to keep the golf course open through various lease
13 amendments reducing the rent, and by allowing a replacement operator to take over the lease at a
14 reduced rate. As such, the Property has not been converted to a higher use within the meaning of
15 NRS 361A.031(1) and *Convention Properties* which is required for the Assessor to properly
16 impose deferred tax liability.

17 **B. The Property should continue to be assessed for open-space/golf-course use.**

18 The Assessor in this matter removed the Property from the reduced value open-space golf
19 course assessment for the upcoming 2017-2018 tax year, and assessed deferred tax liability. *See*
20 **Exhibit 1.** The removal of the Property from open-space assessment, if determined separate and
21 distinct from the assessment of deferred tax liability, is in error.

22 ¹⁵ In interpreting NRS 361A.031(1)(b), the Court also indicated the language should be read as
23 follows: "The recording of a final map or parcel map which creates one or more parcels for non-
24 agricultural use." *Id.* at 404.

25 ¹⁶ *See Jackson Township v. Paolin*, 437 A.2d 344, 352, 3 N.J. Tax 39, 53 (1981) (in construing
26 an agricultural-use assessment provision, the Court held that the failure of a taxpayer to devote
27 his property actively to agriculture was not a "change in use" so as to trigger imposition of
28 rollback taxes upon the property). The *Jackson Township* noted that "[i]t is difficult to imagine
that the intent of any rollback provision was to impose an extra tax burden on a landowner who
simply ... no longer could actively devote his property to agriculture." *See also* Minutes of the
Nevada State Legislature, Assembly Committee on Growth and Infrastructure, May 10, 2005,
stating that that "[w]hen it is sold for a higher use, you have to pay 7 years back taxes."

1 **1. The Property may still be used for golfing.**

2 Property used as a golf course is designated and classified for property tax assessments as
3 open-space real property and must be assessed as an open-space use.¹⁷ A “golf course” for this
4 purpose means either: (a) “real property that *may be used* for golfing or golfing practice by the
5 public or by the members and guests of a private club” or (b) improvements to that real property,
6 including, without limitation, turf, bunkers, trees, irrigation, lakes, lake liners, bridges, practice
7 ranges, golf greens, golf tees, paths and trails.¹⁸ The relevant statutes allow seasonal closures,
8 temporary closures for maintenance and longer temporary closures necessary for the
9 continuation of golf-course use to occur, without any disqualification of the property from open-
10 space assessments. NRS 361A.230(1)(c).¹⁹

11 There is no dispute in this matter that, prior to the departure of the two (2) golf course
12 operators/lessees, the Property was used as a golf course within the meaning of the relevant
13 statutes. The Property, however, may still be used for golfing or golfing practice within the
14 meaning of NRS 361A.0315(a). The relevant statutes do not require property to be maintained
15 as a championship golf course, do not require a taxpayer to maintain any minimum number of
16 holes on such property, and do not require such property to be maintained in any specific
17 condition; rather, property is a golf course if it *may be used* for golfing or golfing practice by the
18 public or by the members and guests of a private club. NRS 361A.0315(a).²⁰ In this matter, the
19 Property can and could be used for golf or golfing practice, as there has been no physical

20 _____
21 ¹⁷ NRS 361A.170(1).

22 ¹⁸ NRS 361A.0315(a) (emphasis added). Certain property (a commercial driving range, for
23 example, not operated in conjunction with a golf course, and certain other buildings associated
24 with a golf course) are specifically excepted out of the definition of “golf course”. NRS
25 361A.0315(b).

26 ¹⁹ Petitioner hereby notifies the Assessor pursuant to NRS 361A.230(1)(c) of the temporary
27 closure of the Property as a result of the termination by the golf course operator of its lease for
28 the Property, as set forth above.

29 ²⁰ See also Minutes of the Nevada State Legislature, Assembly Committee on Growth and
Infrastructure, May 10, 2005, discussing the relatively low standard of qualifying for a golf-
course, and indicating the 7-years deferred taxes would be the guaranty that a taxpayer would not
put “a few cups and flags in the ground, [call] something a tee box and a green, and [qualify to
reduce] their tax liability ...?”.

1 alteration, mapping activity or zoning change that would prevent golf use of the Property. As
2 such, any determination that the closure of the Badlands Golf Course less than 1-year ago is
3 sufficient to effect a non-open-space assessment for the upcoming 2017-2018 tax year is in error.

4 **2. Statutory Authority requires Conversion of Use.**

5 The relevant authority combines a finding of cessation of use with a finding of
6 conversion of use as it relates to a determination of disqualification from open-space use
7 assessment, as opposed to allowing disqualification from open-space use assessment solely based
8 on a finding of cessation of operations (without a corresponding finding of conversion to higher
9 use). Pursuant to well-settled authority, any conflict/ambiguity as to whether mere cessation of
10 use alone (let-alone, cessation of "operations" as is present in this matter) is sufficient to
11 disqualify the Property from open-space assessment must be resolved in favor of Petitioner.²¹

12 The Assessor's determination as set forth in its February 22, 2017 correspondence is
13 based on NRS 361A.230(c), which the Assessor seems to rely on as support for its determination
14 that property becomes disqualified by the cessation of operations of the property for golfing or
15 golfing practice by virtue of the departure of the lessee(s)/operator(s).²² However, a more
16 detailed review of the statutes at issue and legislative history require that any determination of
17 cessation of use be combined with a finding of conversion to a higher use, such that re-
18 assessment of the Property based solely on a finding of cessation of operations is inappropriate.

19 NRS 361A.271, for example, provides that "[w]ithin 30 days after determining that
20 property has been converted to a higher use, the county assessor shall send a written notice of

21 ²¹ Tax statutes are to be construed in favor of the taxpayer. *State, Dep't of Taxation v. Visual*
22 *Commc'ns, Inc.*, 108 Nev. 721, 725, 836 P.2d 1245, 1247 (1992). In *Visual Commc'ns*, the Court
23 held that the taxing statutes and regulations at issue were conflicting and inconsistent (because
24 the statutes and regulations cited by the Department of Taxation appeared to subject a
25 photographer's labor to the sales tax, whereas the regulation cited by the taxpayer appear to
26 exempt the labor from the tax) and resolved such conflict in favor of the taxpayer. *Id.* at 1247
(citing *Cashman Photo v. Nevada Gaming Comm'n*, 91 Nev. 424, 538 P.2d 158 (1975), which
27 held that "Taxing statutes when of doubtful validity or effect must be construed in favor of the
28 taxpayers. A tax statute particularly must say what it means. We will not extend a tax statute by
implication.").

²² As asserted in Section IV(A) above, a finding of cessation of use, even if sustained by the
SBE, does not trigger the assessment of deferred tax liability; rather, NRS 361A.265, et seq.
governs deferred tax liability, and requires a finding of conversion of property to higher use.

1 that determination by certified mail, return receipt requested, to each owner of record. The
2 notice must contain the taxable and assessed values *for the next tax roll* and all prior years for
3 which a deferred tax or penalty is owed pursuant to NRS 361A.280 or 361A.283.” (emphasis
4 added). In this matter, the May 31, 2017 “Notice of Conversion” presumably was the notice
5 contemplated by NRS 361A.271. Thus, the Assessor itself in this matter combines cessation of
6 operations (which it determined occurred in its February 22, 2017 correspondence) with a
7 finding of conversion to higher use – as, the May 31, 2017 was, itself, labeled a “Notice of
8 Conversion.”²³ In addition, pursuant to NRS 361A.280, the procedure for assessing deferred
9 taxes based upon a finding of conversion is set forth. However, such provision further provides
10 that “[t]he county assessor shall assess the property pursuant to NRS 361.227 *for the next fiscal*
11 *year following the date of conversion to a higher use.*” NRS 361A.280 (emphasis added).
12 Again, these statutes confirm that disqualification from open-space assessment is triggered upon
13 a finding of conversion, not solely based on cessation of operations.

14 In *Convention Properties*, wherein the Nevada Supreme Court undertook a fairly detailed
15 analysis of the relevant statutory provisions, the Court noted that “... because of appellants’
16 actions towards selling the property for commercial and residential development. ... the assessor
17 applied a higher tax rate and also sought payment of deferred taxes as required by statute.”
18 *Convention Properties*, 106 Nev. at 401. There was no independent determination of cessation
19 of use in *Convention Properties*; rather, that Court’s finding of conversion to higher use
20 triggered both disqualification from open-space assessment for the succeeding tax year (i.e., the
21 application of a higher tax rate), plus the obligation for payment of deferred taxes.

22 Petitioner’s investigation into this matter has not revealed any authority, other than a
23 reference to cessation of use in NRS 361A.230(c) (versus a mere cessation of “operations” as
24 occurred in this matter) which appears to be contradicted by other references within NRS
25 Chapter 361A, that would justify the exclusion of the Property from continued open-space use
26 assessment without also a determination that the Property has been converted to a higher use.

27
28 ²³ NRS 361A.273(2), providing authority for the instant Appeal, similarly refers to an appeal of a
determination that “the property has been converted to a higher use.”

1 This correlates with the definition of golf course analyzed above (i.e., NRS 361A.0315(a)),
2 which defines a golf-course as any property that may be used for golf or golfing practice. In the
3 present case, while “operations” may have stopped due to the departure of two (2) golf lessee
4 operators, the Property may still be used for golf or golfing practice. As noted above, any
5 conflict or ambiguity must be resolved in favor of Petitioner and, as such, the Assessor’s
6 disqualification of the Property from open-space assessment for the 2017-2018 tax year is in
7 error.

8 **V. CONCLUSION.**

9 Based on the foregoing, the SBE should determine the Assessor’s assessment of deferred
10 tax liability against Petitioner and the Property was in error because the Property has not been
11 converted to a higher use and should require the Assessor to continue to assess the Property as
12 “open-space” use for the 2017-2018 tax year. In addition, Petitioner should be afforded the right to
13 appeal the determination of value made by the Assessor in a subsequent hearing, in the event the
14 SBE sustains the determinations of the Assessor.

15 Dated this 29th day of August, 2017.

16 **SANTORO WHITMIRE**

17 /s/ Andrew J. Glendon
18 ANDREW J. GLENDON, ESQ.
19 Nevada Bar No. 7351
10100 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89135

20 *Attorneys for Petitioner*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 29th day of August, 2017, a true and correct copy of the **PETITIONER'S OPENING BRIEF** was served by e-mail and by depositing for mailing in the U.S. Mail, postage prepaid and addressed to:

Anita Moore
Nevada State Board of Equalization
1550 College Parkway
Carson City, Nevada 89706
Facsimile: (775) 684-2020
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Attorney for Respondent

/s/ Kristen Capella
An employee of SANTORO WHITMIRE

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5 *Attorneys for Petitioner*

6
7 **BEFORE THE**
8 **STATE BOARD OF EQUALIZATION**

9 In the matter of 180 Land Co LLC,
10
11 Petitioner.

Case No.:
Date of Hearing: September 18, 2017
Time of Hearing: 9:00 a.m.

12
13 **DECLARATION OF TODD DAVIS, ESQ.**

14 I, Todd Davis, Esq., pursuant to NRS 53.045 and under penalty of perjury of the State of
15 Nevada, hereby declare the following are true and correct to the best of my knowledge:

16 1. I am General Counsel of EHB Companies, LLC, the Manager of 180 Land Co
17 LLC, the Petitioner in the above-captioned matter, and I am familiar with the facts and
18 circumstances of such matter.

19 2. I am competent to testify to the matters set forth herein, of which I have personal
20 knowledge. If called as a witness to testify, I could and would truthfully testify to the matters set
21 forth herein.

22 3. I make this declaration in support of Petitioner's Opening Brief.

23 4. Attached as **Exhibit 1** to the Opening Brief is a true and correct copy of
24 correspondence dated February 22, 2017, from the Clark County Assessor to Petitioner.

25 5. Attached as **Exhibit 2** to the Opening Brief is a true and correct copy of
26 correspondence dated May 31, 2017, from the Clark County Assessor to Petitioner. This notice
27 was received by Petitioner on June 6, 2017.

28 6. Attached as **Exhibit 3** to the Opening Brief is a true and correct copy of most
recent appraisal records of the Assessor for the Property.

SANTORO WHITMIRE
10100 W. Charleston Blvd., Suite 250, Las Vegas, Nevada 89135
(702) 948-8771 - fax (702) 948-8773

1 Pursuant to NRS 53.045, I declare under penalty of perjury of the laws of the State of
2 Nevada that the foregoing is true and correct to the best of my knowledge.

3 Dated this 29 day of August, 2017.

4
5 

6 TODD DAVIS, ESQ.
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EXHIBIT “1”

2217
LO 00009259

12414



Michele W. Shafe

Clark County Assessor
APPRAISAL DIVISION

500 S. Grand Central Pkwy, PO Box 551401, Las Vegas NV 89155-1401
702-455-4997 • Fax: 702-455-0191
www.ClarkCountyNV.gov/assessor



February 22, 2017

180 LAND CO LLC
SEVENTY ACRES LLC
1215 S FORT APACHE RD #120
LAS VEGAS, NV 89117

RE: Assessor's Golf Course Assessment

To Whom It May Concern:

It has come to our attention that the Badlands Golf Course has been closed for play and is therefore disqualified for open-space assessment based on NRS 361A.230. We have removed the following list of parcels from the reduced value open-space golf course assessment and will value them at current market value for the upcoming 2017-2018 tax year. Parcels listed below.

Parcel Number
138-31-201-005 ✓
138-31-601-008 ✓
138-31-702-003 ✓
138-31-702-004 ✓
138-31-801-002 ✓
138-31-801-003 ✓
138-32-202-001 ✓
138-32-210-008 ✓
138-32-301-005 ✓
138-32-301-007 ✓

In addition, our office is required by statute to assess the deferred taxes for the current year and the previous 6 years. We are in the process of computing your deferred taxes and will forward the information as soon as we have completed our computations.

Please give me a call at 702-455-5582 if you have any questions regarding this matter.

Sincerely,

David Bichsel
Sr. Property Appraiser

Enc.

Certified Mail

9171 9690 0935 0138 1750 73

2218
LO 00009260

12415

EXHIBIT “2”

2219
LO 00009261

12416



Michele W. Shafe

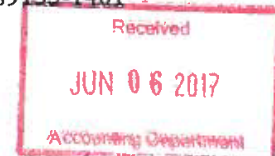
Clark County Assessor

APPRAISAL DIVISION

500 S. Grand Central Pkwy, PO Box 551401, Las Vegas NV 89155-1401

702-455-4997 • Fax: 702-455-0191

www.ClarkCountyNV.gov/assessor



May 31, 2017

FORE STARS LTD
180 LAND CO LLC
SEVENTY ACRES LLC
1215 S FORT APACHE RD #120
LAS VEGAS, NV 89117

RE: Notice of Conversion

To Whom It May Concern:

In accordance with our letter dated 2/22/2017, which notified you that your property was disqualified for open space assessment under NRS 361A.230, we are notifying you of the upcoming 2017-18 Taxable and Assessed values, and the current fiscal year and prior 6 years for which the deferred taxes are owed, under NRS 361A.280 – 361A.283.

Parcel Number	Taxable Value (2017-18)	Assessed Value (2017-18)	Taxable Value (2016-17)	Assessed Value (2016-17)	Taxable Value (2015-16)	Assessed Value (2015-16)	Taxable Value (2014-15)	Assessed Value (2014-15)
138-31-212-002							\$186,700	\$65,345
138-31-610-002							\$530,200	\$185,570
138-31-713-002							\$5,687,097	\$1,990,484
138-32-210-005							\$2,769,137	\$969,198
138-31-702-002			\$1,669,900	\$584,465	\$1,669,900	\$584,465		
138-31-801-002	\$4,974,480	\$1,741,068	\$112,800	\$39,480	\$112,800	\$39,480		
138-32-202-001	\$1,118,250	\$391,388	\$21,300	\$7,455	\$21,300	\$7,455		
138-32-210-008	\$15,396,303	\$5,388,706	\$17,652,177	\$6,178,262	\$4,797,540	\$1,679,139		
138-32-301-004					\$705,200	\$246,820		
138-31-801-003	\$2,056,320	\$719,712	\$54,400	\$19,040				
138-32-301-005	\$4,591,125	\$1,606,894	\$174,900	\$61,215				
138-32-301-007	\$13,241,918	\$4,634,671	\$475,900	\$166,565				
138-31-201-005	\$17,886,750	\$6,260,362						
138-31-601-008	\$10,484,775	\$3,669,671						
138-31-702-003	\$23,425,185	\$8,198,815						
138-31-702-004	\$12,066,600	\$4,223,310						

2220
LO 00009262

12417



Michele W. Shafe

Clark County Assessor

APPRAISAL DIVISION

500 S. Grand Central Pkwy, PO Box 551401, Las Vegas NV 89155-1401

702-455-4997 • Fax: 702-455-0191

www.ClarkCountyNV.gov/assessor

Parcel Number	Taxable Value (2013-14)	Assessed Value (2013-14)	Taxable Value (2012-13)	Assessed Value (2012-13)	Taxable Value (2011-12)	Assessed Value (2011-12)	Taxable Value (2010-11)	Assessed Value (2010-11)
138-31-212-002	\$186,700	\$65,345	\$186,700	\$65,345	\$224,040	\$78,414	\$373,400	\$130,690
138-31-610-002	\$530,200	\$185,570	\$530,200	\$185,570	\$636,240	\$222,684	\$1,060,400	\$371,140
138-31-713-002	\$5,370,609	\$1,879,713	\$4,931,177	\$1,725,912	\$5,305,062	\$1,856,773	\$8,342,431	\$2,919,851
138-32-210-005	\$2,769,137	\$969,198	\$2,769,137	\$969,198	\$2,774,457	\$971,060	\$4,167,003	\$1,458,451

Please give me a call at 702-455-5582 if you have any questions regarding this matter.

Sincerely,

David Bichsel
Sr. Property Appraisal

Enc.

Certified 9171 9690 0935 0138 1753 49

2221
LO 00009263

12418

EXHIBIT “3”

2222
LO 00009264

12419

From: Jeff Payson <jdp@ClarkCountyNV.gov>
Sent: Tuesday, August 15, 2017 5:19 PM
To: Andy Glendon
Cc: Lisa Logsdon; David Bichsel; Jim Jacobs; Jeffrey Bonesteel
Subject: record Request
Attachments: 13831201005.pdf; 13831702004.pdf; 13831801002.pdf; 13831801003.pdf; 13832210008.pdf; 13832301005.pdf; 13832301007.pdf; 13831201005.pdf; 13831601008.pdf; 13831702003.pdf; 13832202001.pdf; sketch1383221000802.pdf; sketch1383221000803.pdf; sketch 138-32-210-008.pdf; GISplot_SubjectX2_08-36-39.pdf; GISplot_SubjectX2_09-18-39.pdf; GISplot_Vicinity_08-28-40.pdf; GISplot_Vicinity_08-36-39.pdf; GISplot_Vicinity_09-18-39.pdf; GISplot_Aerial_NearMap_08-28-40.pdf; GISplot_Aerial_NearMap_08-36-39.pdf; GISplot_Aerial_NearMap_09-18-39.pdf; GISplot_SubjectX2_08-28-40.pdf; Golf Tables FY16-17.pdf

Mr. Glendon,

I have attached the most recent appraisal records for the properties under appeal with the State Board of Equalization, cases; 17-175, 17-176 and 17-177. This includes the most recent (2017-2018) property record cards and the sketch of the improvements that are all found on parcel 138-32-210-008, these records are what are considered our appraisals. Also included are the parcel and aerial maps of the subjects, and finally the Golf Tables that are the basis for the valuation of the golf course as open space. These tables are developed and provided to us by the Nevada Department of Taxation.

Information specific to the appeal of the properties will be provided as we work the cases, and based on your briefing, but no later than 10 days prior to the hearing.

Regards,
Jeff Payson
Manager of Property Appraisal
Clark County Assessor's Office

2229
LO 00009271
12426

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LO 00009272
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LO 00009273
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LO 00009274
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[illegible]

2233
LO 00009275

Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

Subject(s):
S. 138-31-201-005
S2. 138-31-601-008
S3. 138-31-702-003
S4. 138-31-702-004
S5. 138-31-801-002

1:10,000
Date: 8/1/2017

Legend

Subject

Comparable



Aerial Map (NearMap 08/02/2016)

2236
LO 00009278

12433

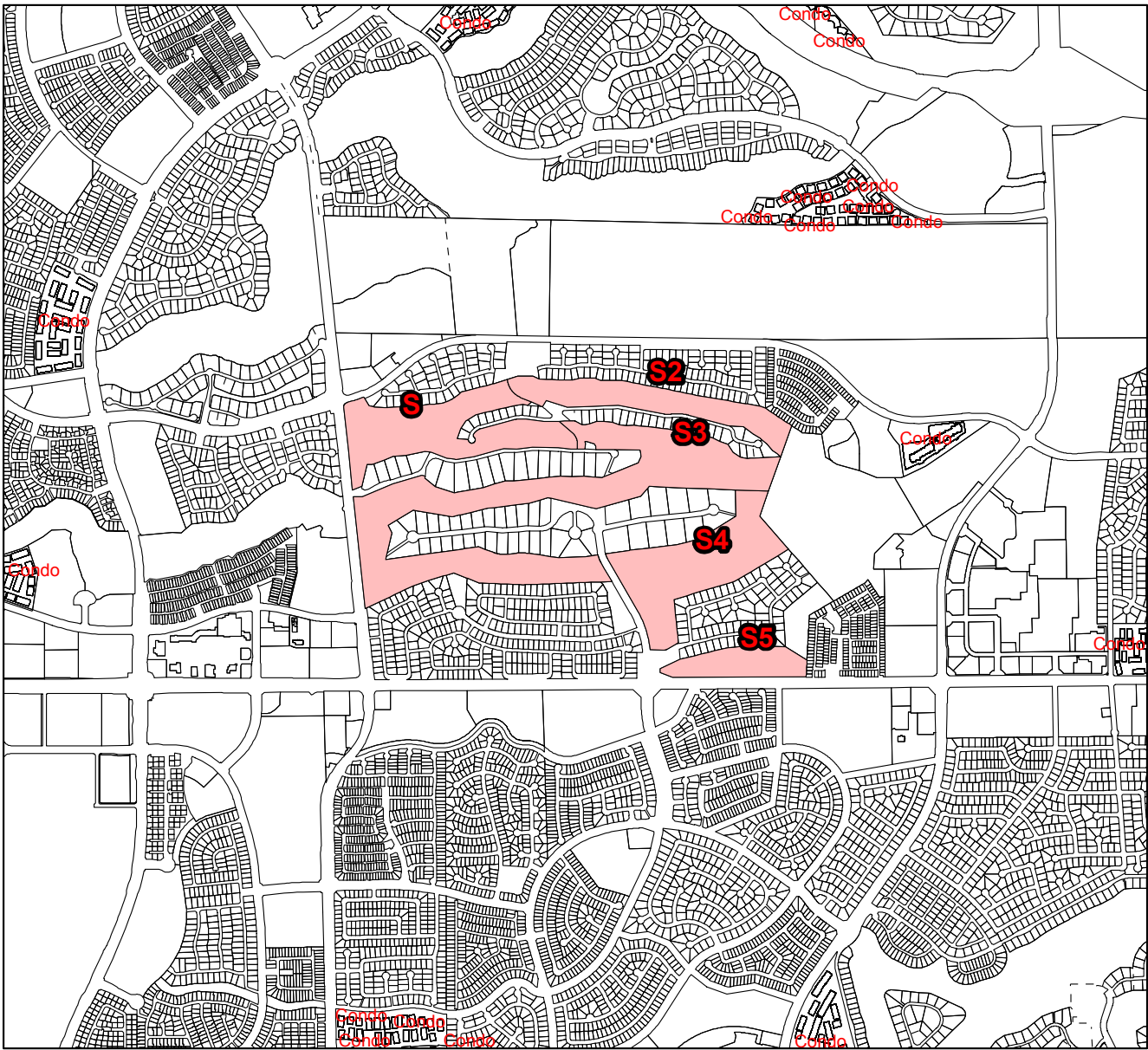
Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

Subject(s):
S. 138-31-201-005
S2. 138-31-601-008
S3. 138-31-702-003
S4. 138-31-702-004
S5. 138-31-801-002

1:20,000
Date: 8/1/2017

Legend
Subject
Comparable



Subject Map

2237
LO 00009279

12434

Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

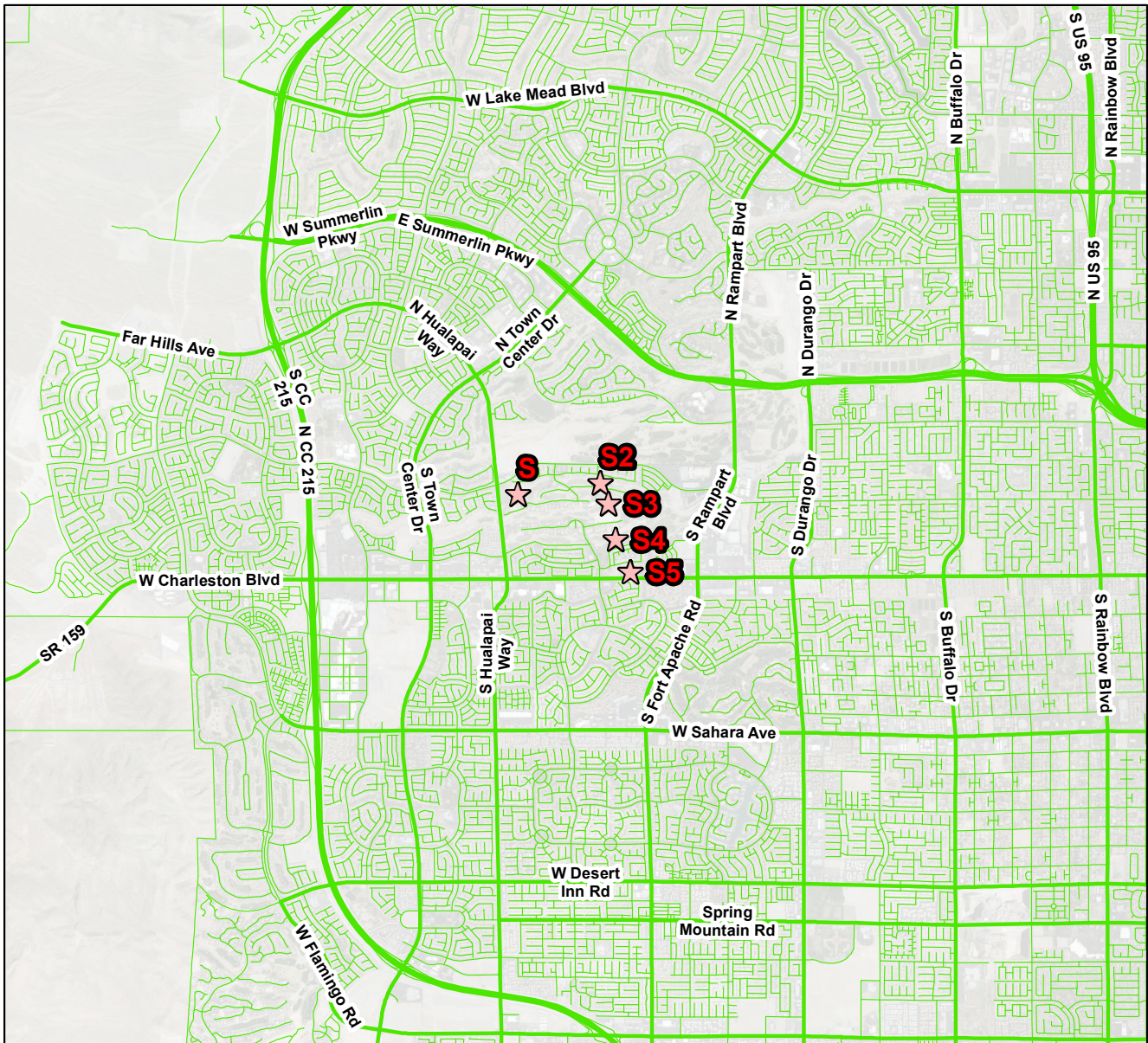
Subject(s):
S. 138-31-201-005
S2. 138-31-601-008
S3. 138-31-702-003
S4. 138-31-702-004
S5. 138-31-801-002

1:60,000
Date: 8/1/2017

Legend

★ Subject

★ Comparable



Vicinity Map

2238
LO 00009280

12435

Nevada Department of Taxation
Golf Course Cost Tables
2016-2017
Addendum to 2016-2017 Agricultural Bulletin

GOLF COURSE OPEN-SPACE LAND VALUE			07/2015
OPEN SPACE DISCOUNT FACTOR = 0.74			
Series Id: CUUR0400SA0,CUUS0400SA0			
Not Seasonally Adjusted			
Area: West urban			
Item: All items			
Base Period: 1982-84=100 Bureau of Labor Statistics			
YEAR	JULY CPI	FACTOR	TAXABLE \$ / ACRE
2015	245.040	1.19	\$ 3,641
2014	241.850	1.22	\$ 3,594
2013	236.341	1.23	\$ 3,518
2012	231.893	1.20	\$ 3,432
2011	227.805	1.18	\$ 3,375
2010	221.331	1.15	\$ 3,289
2009	219.484	1.14	\$ 3,260
2008	223.867	1.16	\$ 3,318
2007	212.542	1.10	\$ 3,146
2006	206.700		\$ 3,060

M&S LOCAL COST MULTIPLIER--S	
SECTION 99 PAGE 8	01/2015
NEVADA	1.09
CARSON CITY	1.09
CHURCHILL	1.00
CLARK	1.12
DOUGLAS	1.09
ELKO	1.08
ESMERALDA	0.93
EUREKA	1.08
HUMBOLDT	1.08
LANDER	1.08
LINCOLN	1.01
LYON	0.93
MINERAL	1.00
NYE	0.93
PERSHING	1.00
STOREY	1.08
TAHOE	1.21
WASHOE	1.08
WHITE PINE	1.01

COURSE RATINGS	
PAR	POINTS
0	20
60	30
70	40
71	60
72	80

**Nevada Department of Taxation
Golf Course Cost Tables
2016-2017**

Addendum to 2016-2017 Agricultural Bulletin

COST RANGE PER HOLE		M&S CURRENT GCM* = 1.02		
01/2015		QUALITY		
POINTS	CLASS	L	M	H
0	I	71,660	84,920	98,180
301	II	102,000	123,930	145,860
451	III	147,900	183,090	218,280
541	IVS	223,380	290,190	357,000
611	IVG	320,280	407,490	494,700
651	IVE	626,280	803,760	981,240

*GOLF COURSE MULTIPLIER--M&S SECTION 99 PAGE 3

COST RANGE PER HOLE		M&S SECTION 67 PAGE 1 12/2013		
		QUALITY		
POINTS	CLASS	L	M	H
0	I	70,250	83,250	96,250
301	II	100,000	121,500	143,000
451	III	145,000	179,500	214,000
541	IVS	219,000	284,500	350,000
611	IVG	314,000	399,500	485,000
651	IVE	614,000	788,000	962,000

COMPONENT COSTS PER HOLE		LOW COST		MEDIUM		HIGH COST	
01/2015	WITH M&S GCM = 1.02	I	II	III	IVS	IVG	IVE
STORM DRAINS		4,540	13,160	19,685	41,410	57,630	91,290
BRIDGES, RAILINGS, TUNNELS		1,650	5,765	8,260	12,955	14,180	23,155
WATER FEATURES		5,765	15,710	29,070	44,575	57,630	146,880

COMPONENT COSTS PER HOLE		LOW COST		MEDIUM		HIGH COST	
12/2013	M&S SEC 67 PG 1	I	II	III	IVS	IVG	IVE
STORM DRAINS		4,450	12,900	19,300	40,600	56,500	89,500
BRIDGES, RAILINGS, TUNNELS		1,620	5,650	8,100	12,700	13,900	22,700
WATER FEATURES		5,650	15,400	28,500	43,700	56,500	144,000

EXHIBIT “MMMM”



MICHELE W. SHAFE

Clark County Assessor
APPRAISAL DIVISION

500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401

Telephone 702-455-4997

www.ClarkCountyNV.gov/assessor



Stipulation for the State Board of Equalization

September 21, 2017

180 Land Co LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-176
Parcel No(s). 138-31-801-002; 138-31-201-005; 138-31-601-008;
138-31-702-003; 138-31-702-004; 138-31-712-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

- (1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.
- (2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.
- (3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Petitioner reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17

Jeff Payson
Appraisal Division

DATE: 9/25/17

Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: 180 Land Co LLC.

EXHIBIT “NNNN”

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

180 LAND COMPANY LLC,

)

10

Plaintiff,

)

11

vs.

)

12

LAS VEGAS CITY OF,

)

13

Defendant.

)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

HEARING

(TELEPHONIC HEARING)

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED TUESDAY, FEBRUARY 16, 2021

23

24

25

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

Peggy Isom, CCR 541, RMR

(702)671-4402 - DEPT16REPORTER@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.²²⁴²

12441

1 APPEARANCES:

2 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN
3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
4 APPEARANCE)

5 FOR THE PLAINTIFF:

6
7 KERMITT L. WATERS

8 BY: JAMES J. LEAVITT, ESQ.

9 704 SOUTH NINTH STREET

10 LAS VEGAS, NV 89101

11 (702) 733-8877

12 (702) 731-1964

13 JIM@KERMITTWATERS.COM

14

15 AND

16

17 EHB COMPANIES LLC

18 BY: ELIZABETH HAM, ESQ.

19 1215 SOUTH FORT APACHE

20 SUITE 120

21 LAS VEGAS, NV 89117

22 (702) 940-6930

23 (702) 940-6938 Fax

24 EHAM@EHBCOMPANIES.COM

25

Peggy Isom, CCR 541, RMR
(702) 671-4402 - DEPT16REPORTER@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.²²⁴³

12442

1 APPEARANCES CONTINUED:

2

3 FOR THE DEFENDANT:

4

MCDONALD CARANO WILSON, LLP

5

BY: GEORGE F. OGILVIE, III, ESQ.

6

2300 WEST SAHARA AVENUE

7

SUITE 1000

8

LAS VEGAS, NV 89102

9

(702) 873-4100

10

(702) 873-9966 Fax

11

GOGILVIE@MCDONALDCARANO.COM

12

13

AND

14

15

SHUTE, MIHALY & WEINBERGER LLP

16

BY: ANDREW W. SCHWARTZ, ESQ.

17

396 HAYES STREET

18

SAN FRANCISCO, CA 94102

19

(415) 552-7272

20

(415) 552-5816

21

ANDREW W. SCHWARTZ

22

23

24

25

* * * * *

Peggy Isom, CCR 541, RMR

(702) 671-4402 - DEPT16REPORTER@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.²²⁴⁴

1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 16, 2021

2 11:12 A.M.

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

4 * * * * *

5
6 THE COURT: We're going to move on. I think
7 next up happens to be, what, page 9. 180 Land Company
8 versus the City of Las Vegas. Let's go ahead and place
9 our appearances on the record.

11:12:10 10 MR. LEAVITT: Good morning, your Honor. It's
11 James J. Leavitt on behalf of 180 Land, the plaintiff
12 landowner.

13 MS. GHANEM HAM: Elizabeth Ghanem Ham also on
14 behalf of the plaintiff landowner.

11:12:17 15 MR. OGILVIE: Good morning, your Honor.
16 George Ogilvie on behalf of the City of Las Vegas.

17 MR. SCHWARTZ: Good morning. This is Andrew
18 Schwartz on behalf of the City.

19 THE COURT: All right. Does that cover all
11:12:28 20 appearances?

21 MR. LEAVITT: James Leavitt on behalf of the
22 landowner. I believe so. And we ask that this matter
23 be reported.

24 THE COURT: For the record, Peggy, did you get
11:12:44 25 all appearances?

Peggy Isom, CCR 541, RMR
(702)671-4402 - DEPT16REPORTER@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.²²⁴⁵

12444

11:12:46 1 THE COURT REPORTER: I did, thank you.

2 THE COURT: All right. And, I guess, what we
3 have here right now is plaintiff landowner's motion to
4 compel answers to interrogatories from the City. Is
11:13:00 5 that correct, Mr. Leavitt?

6 MR. LEAVITT: That's correct, your Honor.

7 THE COURT: Sir, you have the floor.

8 MR. LEAVITT: Thank you, your Honor. And I
9 know it's been a long morning for your Honor, so I'll
11:13:09 10 be brief.

11 The motion to compel is very straightforward,
12 your Honor. There were -- it's asking that three
13 interrogatories -- in the first part of it there's
14 three interrogatories that are related to statements
11:13:18 15 made by one of the city councilman. And, your Honor,
16 these statements are pretty critical as far as the time
17 is concerned because they were made during a June 21st,
18 2018, meeting at or about the time many of the actions
19 that we allege resulted in a taking of the 35 acres
11:13:34 20 were actually occurring.

21 And each of these statements were made by this
22 councilman related to one of the City's primary
23 defenses in this case. And the City's primary defense
24 has always been that the property is an open space
11:13:48 25 property. Because it's an open space property, the

11:13:50 1 City can do whatever it wants to the property
2 essentially. And the City claims that the property had
3 been designated or dedicated, even though there's no
4 deed, no document, no written instrument identifying
11:14:00 5 the property as being dedicated as open space. The
6 City alleges that the property was dedicated as open
7 space sometime in the back, in the history. And this
8 councilperson's statements that he made during this
9 June 21st, 2018, homeowners association meeting apply
11:14:22 10 or relate directly to that open space defense that the
11 City is making.

12 First, the councilman stated that he's -- he's
13 spoken to several experts, and the experts explained to
14 him that this open space requirement was, indeed,
11:14:37 15 designated on the landowner's property. So we simply
16 want to know who those experts are. We're not asking
17 for his mental impression. We're not asking for
18 anything other than what the names, phone numbers, and
19 addresses of the experts the individuals spoke with.

11:14:50 20 And the City counters and says that these
21 experts might have been retained in anticipation of
22 litigation. Well if, indeed, that's the case, then,
23 your Honor, we'd ask that they submit the names of the
24 individuals, their addresses, and their phone numbers
11:15:01 25 to you in camera. You can review it. And you can make

11:15:03 1 the determination if, indeed, they were retained in
2 anticipation of litigation.

3 So, again, we don't want Mr.-- the
4 councilman's mental impressions. Again, we just want
11:15:13 5 to know who those experts were.

6 The second information that we requested and
7 in the Interrogatory No. 2 was that the councilman
8 stated that there is this 20 percent standard that
9 applies to all developments in the City of Las Vegas.

11:15:28 10 And so we simply stated, Okay, well, what's
11 the basis for that standard? Is there a code? Is
12 there a regulation? Is there something that supports
13 that standard? So we simply asked the City of Las
14 Vegas to provide us that information.

11:15:40 15 Again, we're not asking for the councilman
16 for -- the councilman's mental impression. We want to
17 know what that standard is. What's the basis for that
18 statement?

19 And then the final information that we wanted
11:15:54 20 in regards to this open space argument was whether
21 there were any other properties in the City of Las
22 Vegas that this 20 percent standard was imposed upon.

23 In other words give us a list of where this
24 happened. If, indeed, it happened, we want to know it.
11:16:09 25 We want a history of what occurred. Again, not looking

11:16:12 1 at mental impressions. We're not asking for the Court
2 or anybody else to go into the mind of the councilman.
3 We want the facts that were the basis for these
4 statements.

11:16:21 5 And, your Honor, if, indeed, there were no
6 facts to support the basis of this statement then that
7 would create a problem for the City of Las Vegas
8 because in these inverse condemnation cases, if the
9 government engages in bad faith actions in relation to
11:16:34 10 or in regards to the denials on a property and in
11 inverse condemnation action, the case law is pretty
12 clear that that makes the inverse condemnation claim
13 much more formidable.

14 So if there was no basis for these statements,
11:16:51 15 that causes a great concern for the landowner. It
16 would be more evidence to show that the City engaged in
17 a conduct to deny the landowner all use of their
18 property because these statements were made to the
19 homeowners who were the adjoining landowner to the
11:17:06 20 landowner's property. And if there was no basis for
21 these statements, and they were not true statements,
22 then we would have a councilman going to the adjoining
23 landowner trying to rouse them up to oppose the
24 landowner development on the property.

11:17:19 25 So, your Honor, that's the basis for our

11:17:21 1 request on Interrogatory No. 1, 2, and 3. And I just
2 briefly want to address the City's final argument in
3 opposing those interrogatories is they state that
4 statements by individual council members is not
11:17:35 5 relevant to any taking action.

6 Well, your Honor, the Nevada Supreme Court
7 disagrees with that. And, in fact, in the Sisolak case
8 when the -- when the Court was deciding the taking
9 actions in that case, they specifically referred to
11:17:49 10 statements that were made by Bill Keller who was a
11 principal planner with the Clark County Department of
12 Aviation. That's to very briefly quote one statement
13 from the Court from the Sisolak Court. Keller told
14 Mr. Sisolak not to bother asking for a variance to
11:18:02 15 build for more than 75 feet because the county would
16 not approve it.

17 So the court looked at that statement. There
18 were other statements. But they looked at the specific
19 statements of a Department of Aviation planner to
11:18:12 20 assist with the taking determination.

21 Certainly, if those statements by an
22 individual Department of Aviation planner were relevant
23 to a taking then certainly statements by the high
24 ranking councilperson directly related to the property
11:18:25 25 at issue on a defense that the City is making in this

11:18:29 1 case are relevant.

2 Your Honor, we'd like to -- we -- there is one
3 of two things that the City could do is just provide us
4 the facts that we're asking for in

11:18:38 5 Interrogatories No. 1, 2, or 3, or simply abandon that
6 defense. The City is going to make a defense. We're
7 entitled to find out all of the basis for that defense.

8 And then Interrogatory No. 6, your Honor,
9 requests the source of funds to buy properties for open
11:18:53 10 space or park as of the relevant dates that these
11 actions were occurring. Your Honor, there's two
12 reasons that that's relevant.

13 First is the City continually makes what is
14 clearly an improper argument in an inverse condemnation
11:19:06 15 case. The City in all of their briefs says, taxpayers
16 should not be required to pay a verdict in this case.

17 Taxpayers shouldn't have to bear the burden of
18 what's going to be paid here. That's similar to
19 yelling an insurance company's name in a personal
11:19:21 20 injury case. The insurance company is going to end up
21 paying this verdict. Clearly inappropriate. And there
22 is Nevada -- or there is significant case law stating
23 that the government is not entitled to come into an
24 inverse condemnation case at any stage of the
11:19:33 25 proceeding and say that the taxpayers are required to

11:19:36 1 pay the verdict here.

2 So we want to know what funds and the source
3 of those funds that are available to purchase property
4 for open space and parks. And one of those funds that
11:19:46 5 is available to the City of Las Vegas are the SNPLMA
6 funds, the Southern Nevada Public Lands Management Act
7 funds. And that becomes relevant for two reasons.

8 Number one, that is not Nevada taxpayers.
9 Those are federal funds.

11:19:58 10 And number two, under -- when a governmental
11 entity gets SNPLMA funds, your Honor, they're required
12 to negotiate with the landowner. They can only use
13 those properties in a willing-buyer, willing-seller
14 context.

11:20:10 15 So it would be very relevant to find out if
16 those funds were obtained. We can then make further
17 research and see if those funds were obtained for this
18 specific property. And that would, again, elevate the
19 taking issue in this case if the City had, indeed,
11:20:24 20 acquired funds to purchase this property.

21 That would show that the City -- for the
22 purposes for which the City was denying the landowner's
23 application was so that it could later purchase the
24 property for a lesser value.

11:20:35 25 And finally, your Honor, that taxpayer

11:20:37 1 argument was made several times in the Sisolak case.
2 And the Nevada Supreme Court at Footnote 88, we cited
3 this in our reply, stated several reasons why that
4 argument was entirely irrelevant. And one of them was
11:20:50 5 that one of the McCarran Airport representatives
6 acknowledged that the -- that ultimately the airlines
7 would pay a judgment on the eminent domain proceedings
8 and not taxpayers.

9 So in the Sisolak case that source of funds
11:21:03 10 was available. It was found out through discovery.
11 And the Nevada Supreme Court actually cited to it in
12 rebutting the government's argument that taxpayers
13 would be on the hook for the verdict.

14 So your Honor, we -- these are straightforward
11:21:16 15 requests. I don't believe they're outside the bounds.
16 We're not making a fishing expedition. We are simply
17 inquiring about a defense the City is making and
18 statements made by one of the high ranking city
19 officials.

11:21:27 20 And we believe that these interrogatories are
21 appropriate, your Honor. That the City should be
22 compelled to respond. They just haven't responded yet,
23 your Honor. They just objected and said here's our
24 objections. We'd like a response on each of these
11:21:38 25 interrogatories, your Honor.

11:21:38 1 And with that, your Honor, I'll submit.

2 THE COURT: Thank you, sir.

3 Mr. Ogilvie.

4 MR. OGILVIE: Thank you, your Honor. Your

11:21:46 5 Honor, I've long wondered the reasoning for any of the

6 assertions made by the developer in this case. The

7 City has acted so egregiously, so systematically, and

8 intentionally to deprive the developer of the right to

9 develop this property.

11:22:03 10 As I said in the hearing on the petition for

11 judicial review that was conducted a year and a half

12 ago, the City is in the middle of a battle between two

13 competing property owners. The development on the one

14 side and Queensridge homeowners on the other side. And

11:22:18 15 the City, as I indicated, is in a position of being

16 damned if it does and damned if it doesn't.

17 As the Court's aware, the developer purchased

18 the 250 acre Badlands property and divided it into four

19 parcels and brought development applications before the

11:22:37 20 City council for three of the four parcels.

21 The City approved the developer's first

22 development applications. Approving a development of

23 435 luxury units on the 17-acre parcel that's adjacent

24 to the 35 acre parcel that's before this Court.

11:22:59 25 The City was then sued twice for that action.

11:23:02 1 First, it was sued by the -- by the homeowners, the
2 Queensridge homeowners. That's the case that was
3 before Judge Crockett. Then went to the Supreme Court.
4 And then second, the developer sued both Judge Crockett
11:23:16 5 and the City notwithstanding the fact that the City
6 granted the developer's applications. And that case is
7 currently pending before Senior Judge Jim Bixler.

8 Then the City subsequently denied the
9 developer's applications for this 35 acre parcel and
11:23:38 10 has been sued by the developer. So, so I often
11 wondered why the developer is asserting such personal
12 intentions in this matter.

13 And in reading the motion to compel it
14 revealed to me what's -- what's behind these statements
11:24:03 15 and what's behind the motivation to seek the discovery
16 at issue, which is clearly impermissible.

17 And the motivation is that this whole dispute
18 is personal for Mr. Lowie, the principal of the
19 developer. There were certain remarks that were
11:24:30 20 apparently made by former City Councilman Seroka and
21 former City Councilman Coffin that were disparaging of
22 Mr. Lowie that prompted Mr. Lowie to bring a federal
23 lawsuit against Mr. Seroka and Mr. Coffin.

24 That lawsuit was dismissed. It went up to the
11:24:51 25 Supreme Court, or not the Supreme Court. It went up to

11:24:53 1 the Ninth Circuit. And the Ninth Circuit upheld the
2 dismissal of the complaint against the City and
3 Mr. Seroka and Mr. Coffin based on the remarks and the
4 denial of the -- of these applications relative to the
11:25:11 5 personal views that these city councilpersons, city
6 councilmen had, or apparently had or the remarks that
7 they made.

8 And, in fact, the Ninth Circuit indicated that
9 the district court properly dismissed Mr. Lowie's
11:25:30 10 procedural due process claim because he failed to
11 allege facts sufficient to show that they were -- that
12 he was deprived -- or the developer was deprived of a
13 constitutionally protected property issue.

14 In other words, your Honor, it doesn't matter
11:25:45 15 what animus may exist between Mr. Seroka, who's -- who
16 is the target for the first three discovery requests
17 that are at issue before the Court, and Mr. Lowie. The
18 animus, the personal animus is not at issue.

19 What is at issue is the merits of a claim that
11:26:10 20 the City has taken the developers' property. And we
21 know what the -- what the test is for making that
22 determination.

23 The test is whether or not the City's denial
24 of the applications to develop the 35-acre property had
11:26:30 25 an extreme economic effect on the developer, i.e.,

11:26:36 1 whether the City's actions wiped out or virtually wiped
2 out the entire value of that property.

3 It isn't -- nowhere in that test is what a
4 former councilman's mental impressions or motivations
11:26:56 5 were. So let's look at the first request that is at
6 issue before the Court today.

7 And that is for every expert the Councilman
8 Seroka "Learned as much as he could from" as referenced
9 in the following statement "so I went to school, and I
11:27:21 10 studied and studied the rules, and I learned as much as
11 I could from the experts, and I did study, and I
12 learned a lot".

13 So as we -- as we sit here today, I have no
14 knowledge or understanding of what rules or experts
11:27:37 15 Mr. Seroka was referring to. He could have -- he very
16 well could have, as he said, studied for months and
17 months and spoken to many, many experts. But, again,
18 what relevance does that have? The only relevant issue
19 is the city councils' actions as a city council.

11:28:03 20 In fact, whether or not the denial of the
21 developer's applications relative to the 35 acre case
22 or 35 acre parcel deprived the developer of all use or
23 virtually all use of the property. Not what Mr. Seroka
24 had done leading up to that. How could it possibly be
11:28:32 25 useful in this litigation? I mean, he -- Mr. --

11:28:37 1 councilman -- former Councilman Seroka very well could
2 have done all that he said that he did, studied for
3 months and talked to experts.

4 But the City isn't going to be able to cite
11:28:50 5 any of this studying or Mr. Seroka's -- particularly
6 Mr. Seroka's conversations with the experts to defend
7 the City's actions. The City's actions were what the
8 City did on the record at the time these applications
9 were denied.

11:29:08 10 On the other hand, let's just imagine that
11 Mr. Seroka completely fabricated what he said to those
12 homeowners. What value is there to that? Is that
13 going to be admissible in this action? Certainly not.
14 There's absolutely no value. And it was purely a
11:29:32 15 fishing expedition for the developer to be allowed to
16 obtain the discovery that it's seeking by that
17 discovery request.

18 With respect to Interrogatory No. 2 and No. 3,
19 I will lump them together because there is -- this is
11:29:56 20 somewhat of a strawman argument that because -- the
21 argument goes that because the City relied on this
22 20 percent open space dedication, as referenced by
23 Mr. Seroka, that the City denied the applications.

24 And if the City denied the applications based
11:30:32 25 on this 20 percent designation, what other properties

11:30:39 1 did the City use as justification to deny the land use
2 application? Well, first of all, it's a strawman
3 argument because the City didn't base its denial of
4 these land use applications relative to 35 acres on
11:30:59 5 this purported 20 percent idea promoted by the
6 developer as a result of communications purportedly
7 attributed to Mr. Seroka outside of the city council
8 meetings.

9 What is at -- what is at issue is the City's
11:31:30 10 actions and relative to the developer's applications.
11 That 20 percent has nothing to do with the City's
12 actions.

13 In other words, your Honor, either the 35 acre
14 property is designated as parks, recreation, and open
11:31:46 15 space or it isn't. So whether or not there's this
16 20 percent idea is completely irrelevant.

17 And the Court has already found that the
18 35 acres is subject to the parks, recreation, and open
19 space designation. And I cite the Court, as we did in
11:32:10 20 our brief, to the Court's findings of fact and
21 conclusions of law and the petition for judicial
22 review. Specifically paragraph 7, the Court found:
23 The City's general plan identifies the Badlands
24 property as parks, recreation, and open space. Period.
11:32:28 25 That's the end of the determination. That's the end of

11:32:29 1 the inquiry.

2 So whether or not Councilman Seroka made some
3 statements about some 20 percent dedication is
4 completely irrelevant.

11:32:42 5 The fact is that the 35-acre property is
6 subject to the parks, recreation and open space
7 designation. So, and, additionally, whether the
8 original developer of Queensridge, Mr. Peccole, imposed
9 that designation on the City is wholly unrelated and
11:33:07 10 irrelevant to the actual designation.

11 Again, the point is the designation exists.
12 It's in the record. And the Court has already
13 determined that these 35 acres is subject to that open
14 space designation.

11:33:24 15 And so clearly the developer isn't simply
16 seeking, as it argues, purely factual matters, but is
17 seeking discovery for the mental impressions and
18 motives underlying Councilman Seroka's statements and
19 vote. Those mental impressions and motives are
11:33:46 20 inappropriate discovery because the City acts through
21 the formal act of the city council, and they're
22 entirely irrelevant.

23 So former Councilman Seroka's statements or
24 actions inside -- or outside the public hearing, the
11:34:05 25 statements and actions of other persons don't

11:34:08 1 constitute the actions of the City as a whole and have
2 no effect whatsoever on the value of the developer's
3 property or its ability to use the property. And,
4 thus, can't be challenged as or evidence of a taking.

11:34:24 5 And now moving on. So I've discussed their --
6 the Interrogatories No. 1, 2, and 3. The last one at
7 issue is Interrogatory No. 6.

8 What funds were available to purportedly
9 convert the Badlands property into a city park in 2017
11:34:44 10 is entirely irrelevant. And I just want to quote what
11 exactly Interrogatory No. 6 states. It says:

12 "Please provide the amount of funds
13 available as of July 18, 2017, and September 7,
14 2017, from all sources which could be used for
11:35:07 15 acquisition of private land for parks and open
16 space."

17 And it goes on to reference SNPLMA as
18 Mr. Leavitt cited.

19 And specifically let me just finish off with
11:35:25 20 the interrogatory.

21 "This interrogatory specifically includes,
22 but is not limited to all funds available
23 through the Southern Nevada Public Lands
24 Management Act, SNPLMA, state of Nevada, and/or
11:35:39 25 City of Las Vegas for purposes of acquiring

11:35:41 1 private property for parks and open space."

2 That has absolutely nothing to do with the two

3 inquiries relative to an inverse condemnation action.

4 Whether there was a taking, and if there was, what are

11:35:56 5 the damages for that taking? We all know that if the

6 Court determines that there was a taking and there

7 were -- that the developer incurred damages as a result

8 of that taking, we know where the damages are going to

9 come from. They're going to come from City coffers.

11:36:15 10 City coffers come from taxpayers. It's that simple.

11 We don't have to make the personal or

12 emotional argument that, Oh, Judge, you can't find the

13 City liable because you're -- what you're doing is

14 impacting the poor taxpayer, taxpayers. It's not a for

11:36:37 15 profit operation that the City runs. It operates

16 solely on the backs of the taxpayers. That argument

17 isn't being made. We all know where the damages would

18 be paid from if the -- if the Court finds against the

19 City.

11:36:55 20 So the inquiry as to what sources or what

21 funds existed in 2017 for the acquisition of private

22 land for parks and open space, I don't even understand

23 how that -- the argument submitted by the developer

24 today passes the smell test on justifying that inquiry.

11:37:24 25 So, and citing the Sisolak, again, it's -- it

11:37:31 1 is a strawman argument that the developer is making.
2 The comments by someone in Sisolak that -- again, I
3 believe we've made this argument again and again and
4 again. Sisolak was a physical takings case.

11:37:53 5 What's before the Court is a regulatory
6 takings case. There is a dramatic difference between
7 the two. Nonetheless, in Sisolak, I'll indicate what
8 the Court or what the Sisolak court said:

9 "In a scenario where a public agency has
11:38:18 10 physically taken part of the property"...

11 Again, distinguishing it from a regulatory
12 taking:

13 "...the Court noted that the agency's
14 ability to pay for that property is not
11:38:29 15 relevant to whether there was a physical
16 taking."

17 So even in the case that the developer cites
18 again and again and again to support its positions
19 relative to this case, which is not a physical takings
11:38:48 20 case, even in that -- in that Sisolak case, the court
21 recognized that the agency's ability to pay for the
22 property is not relevant to whether there was a
23 physical taking.

24 The discovery sought by the developer will not
11:39:06 25 support any claim for and it won't defeat any

11:39:12 1 affirmative defense. The City's defenses will be based
2 on the developer's actions, the City's actions, the
3 record of the proceedings before the city council, the
4 state of the property, and the law. Not the

11:39:24 5 information requested by the four discovery requests.

6 The personal issues between the developer and
7 the homeowners and between Mr. Lowie and former
8 Councilman Seroka have no bearing on the merits of this
9 case so the requested discovery should be denied.

11:39:44 10 THE COURT: Thank you, sir. We'll go back to
11 Mr. Leavitt.

12 MR. LEAVITT: Thank you, your Honor. I'll
13 start out by saying these have nothing to do with any
14 personal issues between any individuals in this case.

11:39:54 15 Your Honor, I can tell you that we drafted these
16 interrogatories in an effort to obtain further
17 information about a defense which is continually made
18 by the City of Las Vegas despite that PROS issue having
19 been fully resolved.

11:40:10 20 And Mr. Ogilvie is absolutely correct. That
21 PROS issue has been fully resolved. But he got it
22 wrong. It's been fully resolved in favor of the
23 landowner with this Court finding no PROS existed on
24 the property.

11:40:25 25 What Mr. Ogilvie cited to you, that order he

11:40:27 1 cited to you, your Honor, was from the petition for
2 judicial review cited in this case. And you know that,
3 your Honor. We've had three different hearings where
4 you've explained in detail in subsequent orders after
11:40:37 5 those hearings that the petition for judicial review
6 orders are entirely irrelevant in these proceedings.
7 They're irrelevant because there is a different
8 standard. They're irrelevant because no discovery is
9 allowed in those proceedings.

11:40:48 10 And in this proceeding, your Honor, where
11 there has been significant discovery, in this
12 proceeding where we have had all of the documents
13 presented to you, and in this proceeding where you've
14 actually had a hearing on that pointed issue of whether
11:41:03 15 there is, indeed, a PROS on the property, you rejected
16 the City's argument. And so I want to start there,
17 your Honor.

18 You rejected the argument that there is an
19 open space issue -- or an open space or PROS on this
11:41:16 20 property. And I -- this, obviously, isn't entirely --
21 it's collaterally relevant to the interrogatories.
22 But, your Honor, I need to address that issue and
23 resolve it where -- because you stated, your Honor, we
24 have that hearing. We have briefs on it. We have long
11:41:32 25 hearings. The hearing went on for, I think, two or

11:41:34 1 three hours.

2 And, your Honor, on September -- on September
3 17, 2020, you heard the arguments. And on October 12,
4 2020, you signed an order findings of fact and
11:41:44 5 conclusions of law regarding plaintiff landowner's
6 motion to determine property interest.

7 And you'll remember, your Honor, that's the
8 first sub inquiry in all of these inverse condemnation
9 cases. Brought the motion for that first sub inquiry
11:41:53 10 to be resolved, and you resolved it.

11 And you said the Court -- I'm just -- I'm
12 going to paraphrase your holding. You said, the Court
13 bases its property interest decision on eminent domain
14 law not petition for judicial review law because it's
11:42:06 15 got a different standard, got a different burden.

16 Why would we, your Honor, if we're in an
17 eminent domain and inverse condemnation case go to the
18 land use and petition for judicial review law to make
19 these decisions? It makes absolutely no sense.

11:42:19 20 Okay. We have eminent domain law right on
21 point. You said -- you said I'm going to really on
22 eminent domain law. Then you said Nevada eminent
23 domain law provides that zoning must be relied upon to
24 determine a landowner's property interest in these
11:42:31 25 cases.

11:42:31 1 Then you concluded, the Court concludes that
2 the 35 acres has been R-PD7 since at least 1990. And
3 then you concluded, the second finding, the permitted
4 uses by right of the 35 acre property are single family
11:42:43 5 and multi family residential.

6 So we agree that the open space issue has been
7 resolved. We agree that the PROS issue has been
8 resolved. We agree that that issue should be put to
9 the back burner because you decided that issue already,
11:42:56 10 your Honor, in your motion to determine property
11 interest issue.

12 And, in fact, your Honor, you're not alone in
13 this. There's been ten orders that have been entered,
14 but eight Supreme Court justices and two other district
11:43:08 15 court judges where they've either entirely rejected the
16 City's open space and PROS argument, or they've just
17 flat-out get -- lent it no credence whatsoever.

18 Now there was an outlier by Judge Herndon in
19 some dicta that he put in a recent order which is not
11:43:23 20 applicable to this case because Judge Herndon even
21 wrote at the end of that decision that his decision was
22 not issue preclusion. It shouldn't be used in the
23 other cases because it was unique to the 65-acre case.

24 But as far as this case is concerned, you've
11:43:36 25 already resolved this issue. You've already resolved

11:43:38 1 the PROS and open space issue. And, your Honor, you're
2 probably thinking, well, Mr. Leavitt, why do you want
3 the discovery on this issue?

4 Because despite having resolved it, no matter
11:43:48 5 how many orders there are, your Honor, if we had 20
6 orders -- we have ten -- but if we had 20 orders, the
7 City continually brings up this open space PROS
8 argument. You just heard it today. And not only are
9 they bringing it up, but they're going to an irrelevant
11:44:01 10 order, a PJR order to try and say that this Court held
11 that there's an open space or PROS in this case, your
12 Honor.

13 That's why we want to make sure that we fully
14 vetted this issue. We want to make sure that we've --
11:44:14 15 we've got the issue entirely resolved. We want -- we
16 just want names, addresses, and phone numbers of these
17 experts.

18 We just want the facts that support a 20
19 percent. If there is not a 20 percent, then all
11:44:28 20 Mr. Ogilvie has to say is there's not a 20 percent.
21 There is no code. There's no regulation that requires
22 it. But he hasn't done that.

23 The City says it's irrelevant, and we're
24 getting into mental impression. All they have to do is
11:44:34 25 go to the City and say is there a 20 percent? The City

11:44:36 1 says "no". They write back and say, Listen, we're not
2 aware of the 20 percent.

3 (Reporter clarification)

4 MR. LEAVITT: I apologize. My last sentence
11:44:51 5 was that all that the City's attorney needs to do is go
6 to the individuals in the city department and ask them
7 if there is this 20 percent requirement for open space.
8 And they're going to say, "no". We believe they're
9 going to say "no". But we want that issue resolved.

11:45:06 10 And he can simply answer the interrogatory and say it
11 doesn't exist. So that's what we want.

12 And then, of course, Interrogatory No. 3, if
13 it doesn't exist then there wouldn't be any requirement
14 or any other properties where this 20 percent was
11:45:21 15 imposed.

16 The other issue that that Mr. Ogilvie brings
17 up is that, Judge, you need to have a total wipeout of
18 all value of the property in order to find a taking.

19 Your Honor, that's never been the law in the
11:45:32 20 state of Nevada. You've already entered an order on
21 that issue.

22 In your May 15, 2019, order denying the City's
23 motion for judgment on the pleadings, you laid out the
24 landowner's inverse condemnation claim. We don't just
11:45:46 25 have a physical takings claim, and we don't just have a

11:45:50 1 regulatory takings claim. We have five claims.

2 One of those claims is a non-regulatory de
3 facto taking claim. And you put right in your order
4 citing to Nevada law and citing to law that Nevada has
11:46:01 5 relied upon that if the government takes steps that
6 directly and substantially interfere with an owner's
7 property, with their property rights to the extent of
8 rendering that property useless or valueless to the
9 owner, then that's a taking. Those are direct quotes
11:46:17 10 from case law.

11 Here's another direct quote. Remember,
12 counsel keeps telling you, Judge, you need to have a
13 total wipeout of all value to find a taking.

14 This is the next quote from a case relied upon
11:46:29 15 by the Nevada Supreme Court. To constitute a taking
16 under the Fifth Amendment, it is not necessary that the
17 property be absolutely taken in the narrow sense of
18 that word to come within the protection of the
19 constitutional provision.

11:46:41 20 It is sufficient if the action by the
21 government involved a direct interference with or
22 disturbance of property rights. It doesn't say there
23 has to be a total wipeout. In fact, it says the exact
24 opposite. That you don't need a total wipeout. That
11:46:54 25 you need a direct interference with or disturbance of

11:46:58 1 property rights. And that's what's happened here.

2 And so we're arguing that there has been a
3 direct interference or disturbance with the property
4 right. And the City's defense is you didn't have that
11:47:10 5 property right because we, "we" the City, say it was
6 open space.

7 We're entitled to discovery on that. We're
8 entitled to know whether this 20 percent exists. We're
9 entitled to know if there are experts out there that
11:47:23 10 the City's council people relied upon to make this
11 argument to deny these applications.

12 So, your Honor, we respectfully request that
13 you allow us to get discovery on these issues. They're
14 not far-fetched issues that require significant
11:47:41 15 research. They can be readily resolved.

16 And I heard that there were several arguments
17 that this evidence isn't admissible. Well, your Honor,
18 admissibility, we all know, is not the standard in
19 discovery. We get pretty wide latitude in discovery so
11:47:56 20 that we can find out whether the defenses that the
21 government has are adequate, whether they're reasonably
22 grounded or not.

23 And so, your Honor, we respectfully request
24 that we get that information on the -- on the open
11:48:10 25 space issue.

11:48:13 1 Last thing I'll say, your Honor, on the
2 Sisolak case -- and I know you've had a long morning,
3 so I'm going to end it here. On the Sisolak case, I
4 keep hearing this time and time again that you can't
11:48:23 5 consider Sisolak because it's a physical takings case.

6 Your Honor, Sisolak stated -- in both the
7 Sisolak case and the subsequent Tien Fu Hsu vs.
8 McCarran International Airport case that there's a
9 taking when the government authorizes a physical
11:48:38 10 invasion of a property.

11 And we have that here. We have a bill from
12 the City adopted a bill stating that the landowner had
13 to allow ongoing public access to his property for the
14 adjoining landowner. We have that here with the City
11:48:51 15 stating that they're denying our applications based
16 upon arguments by the surrounding property owners that
17 they want to preserve for their use, that they weren't
18 going to allow -- they didn't want to see one home
19 built on our client's property. Which again, relates
11:49:04 20 that that open space statements that -- that Councilman
21 Seroka stated to these homeowners.

22 And finally, your Honor, the Sisolak case
23 relied upon non-physical taking cases to define a
24 taking. And in a subsequent case the Nevada Supreme
11:49:18 25 Court clarified very clearly that the physical use of

11:49:22 1 Sisolak's air space was actually, quote,
2 "inconsequential" end quote. It was the act of
3 authorizing the public to use that property.

4 So Sisolak is right on point. And we've
11:49:32 5 alleged the per se regulatory taking case. The facts
6 set forth in Sisolak are right on point. The fact that
7 the Nevada Supreme Court relied on statements by a
8 planner to assist with finding the taking is very
9 pointed and very relevant to this matter where the
11:49:50 10 statements are made, not only by a planner, but by the
11 highest ranking city official in regards to a specific
12 defense being made by the government.

13 So, your Honor, we request that the government
14 answer these interrogatories, after they answer them --
11:50:02 15 and that's all we're asking for is an answer. After
16 they answer them, we can review that. See if those are
17 adequate or not. We may be able to just move on. But
18 we're entitled to have at least an answer on issues
19 very pertinent and relevant to their defenses, your
11:50:16 20 Honor.

21 And with that, your Honor, I'll submit my
22 reply.

23 THE COURT: Yeah. And first going to
24 Interrogatory No. 6.

11:50:24 25 MR. LEAVITT: Yes.

11:50:25 1 THE COURT: Where landowner requests the
2 amount or sources of funds which could be used by the
3 City to acquire properties for parks and/or open
4 spaces. Why would that be relevant and/or permissible
11:50:39 5 for the purposes of this case, the sources of funding?

6 MR. LEAVITT: Your Honor, I tend to agree with
7 Mr. Ogilvie, your Honor. I tend to agree that that's
8 an irrelevant inquiry.

9 The problem is is like in many of these other
11:50:51 10 cases, the government continually argues. They argue
11 to you. They've put it in pleadings. They're
12 certainly not going to argue it to the jury because
13 we're going to have a jury instruction on this I
14 believe. But they keep saying that taxpayers are going
11:51:03 15 to have to pay for this property.

16 And the Sisolak case discovery was allowed.
17 And it was found that that was an incorrect statement.
18 Instead the airlines were going to pay the taking in
19 that case through airline fees.

11:51:16 20 So the landowner in that case was allowed to
21 inquire to determine whether that repeated statement by
22 the government was a true statement or not. So that is
23 the first thing.

24 The second thing, your Honor, when you're
11:51:26 25 talking about Southern Nevada Land Management Act

11:51:30 1 funds, the SNPLMA funds, under that standard, if those
2 funds do exist, the government is required to make that
3 willing-buyer, willing-seller negotiation. And if
4 they, indeed, did identify a specific fund to purchase
11:51:48 5 this property, that entirely negates the government's
6 argument that they were denying these applications for
7 some altruistic purpose.

8 There is certain case law. There is a case --
9 I can't remember the state, your Honor, but there's a
11:52:02 10 case where the government denied a landowner his liquor
11 application. And it was later discovered that the
12 government denied that liquor application because they
13 had targeted the property for condemnation, and they
14 didn't want to pay the value of the property with the
11:52:14 15 higher value.

16 So that's what that -- those funds would show.
17 Would show if they've, number one, identified funds for
18 purchase of parks and open space property. Then we
19 would want to take the next step and find out whether
11:52:25 20 that was specifically -- funds were specifically
21 identified for the taking of the property in this case.

22 THE COURT: So I want to make sure I
23 understand that. And, I mean, when I first looked at
24 the interrogatory, I was thinking of other types of
11:52:43 25 cases where potentially if the government is required

11:52:47 1 to pay, for example, in a 1983 action in a violation of
2 someone's civil rights, or actions by a police officer
3 and the like, as a trial judge I would never let into
4 evidence in front of a jury or an argument that would
11:53:05 5 say, ultimately this is going to -- this 1983
6 violation, the taxpayers are going to be on the hook
7 for this, and as a result we shouldn't award monies for
8 the civil rights violation.

9 And that's how I was looking at it. But if
11:53:21 10 there's something more than that, I need to know.
11 Because it's not clear to me --

12 MR. LEAVITT: Well --

13 THE COURT: Because I was thinking --

14 MR. LEAVITT: Sorry.

11:53:29 15 THE COURT: Go ahead, sir. No, no, go ahead.

16 MR. LEAVITT: James Leavitt again. You're
17 totally on track, your Honor. You're totally correct.
18 In fact there is case law that says source of funds is
19 irrelevant. Is irrelevant for -- in a jury verdict.

11:53:41 20 But we're not at the jury yet. We're still at
21 the liability phase. And if, again, if through
22 discovery we find that there were funds that were
23 identified for the purchase of this property, which --
24 and to tell you this, your Honor. We have already,
11:53:57 25 through a FOIA request, we obtained a document through

11:54:01 1 a FOIA request where the government was listing what
2 they were going to do with certain funds. And one of
3 those line items said: \$15 million, purchase the
4 Badlands property.

11:54:11 5 So that indicates that the City wanted to
6 purchase the property. And \$15 million isn't even
7 anywhere close to the true value of the property
8 according to the landowner.

9 And so that shows an intent of the City to
11:54:24 10 deny applications so that it could acquire the property
11 for significantly less than the true value of the
12 property.

13 So that --

14 THE COURT: Well --

11:54:31 15 MR. LEAVITT: That is what -- go ahead, your
16 Honor.

17 THE COURT: And I get that. For example, for
18 Interrogatory No. 6, the landowner's requested the
19 amount and/or sources of funds which would be used by
11:54:43 20 the City to acquire property for parks and open space.
21 It seems to me that potentially, a more pointed
22 interrogatory might be appropriate as to whether or not
23 there were funds set aside by the City. Something like
24 that. I mean, I don't know. But just asking the
11:55:03 25 source in and of itself would be irrelevant.

11:55:08 1 If there's a set at issue or a budget issue,
2 that's another issue I think. Am I --

3 MR. LEAVITT: Solid point. Oh, sorry, your
4 Honor.

11:55:18 5 THE COURT: No, no. But that's just an
6 observation of mine. That's all.

7 MR. LEAVITT: And that's a valid point. And,
8 your Honor, I mean, we'd be willing to narrow that to
9 any source of funds from any -- or any funds from any
11:55:31 10 source that were identified for the purchase of the
11 property.

12 THE COURT: That's a different -- that's a
13 slightly different -- let me see here.

14 MR. LEAVITT: And that's what it was getting
11:55:44 15 at, your Honor, obviously, was private land for parks
16 and open space.

17 THE COURT: Yes.

18 MR. LEAVITT: And then, of course, once we
19 obtain that, and then the SNPLMA funds would identify
11:55:55 20 what the -- the SNPLMA funds typically identify, in
21 fact, I think they -- I'm also positive they do. They
22 identify the specific properties which have been
23 identified for purchase with those SNPLMA funds.

24 THE COURT: Okay. I understand. I'm just
11:56:11 25 looking at it one more time before I rule.

11:56:14 1 MR. LEAVITT: Sure.

2 THE COURT: All right. This is what I'm going
3 to do. Regarding the motion to compel at this time I'm
4 going to grant it in part; deny in part.

11:56:27 5 And understand this, and I think it's
6 important to point out, I realize the comments
7 potentially of a -- no. I'll say it differently.

8 Clearly the City cannot act just based upon
9 the comments of a city councilman. I get that.

11:56:47 10 Notwithstanding that, he did make some public
11 statements. And I would anticipate in all
12 probability -- and I don't know if it was puffery. I
13 don't know if it was based upon true investigation.
14 But I can see potentially where at least for the

11:57:04 15 purposes of discovery, the statements of the City
16 councilman would be discoverable. I'm not saying
17 they're admissible for the purposes of trial.

18 And so regarding Interrogatory 1, 2, and 3,
19 I'm going to grant the motion to compel.

11:57:18 20 Regarding Interrogatory No. 6, I'm going to
21 deny. And for the reasons set forth in our prior
22 discussion. The amount and/or sources of funds which
23 would be used by the City to acquire property for the
24 parks and open spaces, I just don't see where that
11:57:34 25 would be relevant in and of itself based upon the call

11:57:37 1 of the question.

2 And so that will be my decision.

3 Mr. Leavitt, what you can do, sir, is you can
4 prepare an order. Make sure you run it by Mr. Ogilvie.

11:57:45 5 I don't think this has been a problem in this case. In
6 fact, it's been my impression that based upon the last
7 few status checks that -- the rolling status checks
8 have had -- have served a purpose and the case has been
9 moving along much more expeditiously I think. Probably
11:58:03 10 the best way to say it. But that's what we'll do. And
11 that will be my decision on that issue.

12 And so --

13 MR. LEAVITT: I appreciate that.

14 THE COURT: All right. We'll go ahead, and
11:58:16 15 we'll just go ahead, and I don't think there's any
16 other issue is there? Let me look at the calendar
17 here.

18 We don't have any pending status checks coming
19 up, do we?

11:58:34 20 MR. LEAVITT: I don't think so.

21 George, do you know? I think we're -- I think
22 we're caught up.

23 MR. OGILVIE: That's correct, your Honor.

24 There are no --

11:58:43 25 THE COURT: All right. I was just checking to

11:58:45 1 see if there's anything there.

2 Anyway, that will be my decision. Counsel,
3 enjoy your day.

4 MR. LEAVITT: Thank you, your Honor. I'll
11:58:53 5 take care of that. And be safe and enjoy your day,
6 also.

7 THE COURT: Okay. All right.

8 MS. GHANEM HAM: Sorry. I apologize. This is
9 Elizabeth Ghanem Ham. I didn't realize I was on mute.

11:59:04 10 We did say at the last hearing that we would
11 set a status check. I don't know if we want to do that
12 at this point or just we've kind of been having them
13 consistently to deal with some discovery issues. Do we
14 want to do that now? Or are we comfortable with just
11:59:21 15 whatever is to be filed next?

16 THE COURT: My -- if there's nothing really
17 outstanding, because I think the meet and confer
18 process has worked very well in this case.

19 MR. LEAVITT: Yeah. The status checks have
11:59:34 20 helped. The status checks have helped quite a bit.
21 And the meet and confers have been successful recently.

22 THE COURT: Right.

23 Mr. Ogilvie, is there any need for any
24 additional status checks?

11:59:46 25 MR. OGILVIE: Your Honor, I think it's

11:59:48 1 advisable. Three to four weeks out I would propose.

2 THE COURT: Okay. I guess everyone's
3 agreeable then. We'll just have -- we'll set a status
4 check in 30 days re discovery, discovery issues, and
12:00:00 5 the like. See where we're at.

6 CJ.

7 THE COURT CLERK: Yes, sir. 30 days I'm
8 checking now.

9 And so that brings us to March 18 at 9:00 a.m.

12:00:19 10 THE COURT: All right.

11 MR. LEAVITT: Thank you, your Honor.

12 MS. GHANEM HAM: Thank you, your Honor.

13 THE COURT: Okay. Everyone, enjoy your day.

14 MR. OGILVIE: Thank you.

12:00:26 15 MR. LEAVITT: All right. Thank you, your
16 Honor have a good day.

17

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20 (Proceedings were concluded.)

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:SS

COUNTY OF CLARK)

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EXHIBIT “0000”

June 28, 2016

Mr. Victor Bolanos
Sr. Engineering Associate – Transportation Planning
City of Las Vegas Public Works Department
333 North Rancho Drive
Las Vegas, Nevada 89106

Reasons for Access Points off Hualapai Way and Rampart Blvd.

Dear Mr. Bolanos,

We are requesting approval for access points at Hualapai Way (parcel #138-31-201-005 and 138-31-702-003) and Rampart Blvd. (parcel # 138-32-301-005).

The access points for Hualapai Way are necessary for the service operations and ingress/egress of, but not limited to, the trucks and equipment required for the tree and plant cutting, removal of related debris and soil testing equipment.

The access point for Rampart Blvd. is necessary for the service operations and ingress/egress of, but not limited to, the trucks and equipment required for the tree and plant cutting, removal of related debris and soil testing equipment. Additionally, the bridge from the clubhouse access will not support the weight of the trucks and equipment required. We have an entitlement for this related parcel which will provide us service access for that property.

Please see the attached exhibit for the location of these access points.

Thank you for your consideration.

Sincerely yours,



Mark Colloton, Architect,
180 Land Co LLC and Seventy Acres LLC

SERVICE ACCESS PLAN

PARCEL NO.: 138-32-301-005 (17.49 AC)
 OWNER NAME: SEVENTY ACRES LLC

PARCEL NO.: 138-32-301-007 (47.59 AC)
 OWNER NAME: SEVENTY ACRES LLC

PARCEL NO.: 138-31-801-003 (5.44 AC)
 OWNER NAME: SEVENTY ACRES LLC

PARCEL NO.: 138-31-801-002 (11.28 AC)
 OWNER NAME: 180 LAND CO. LLC

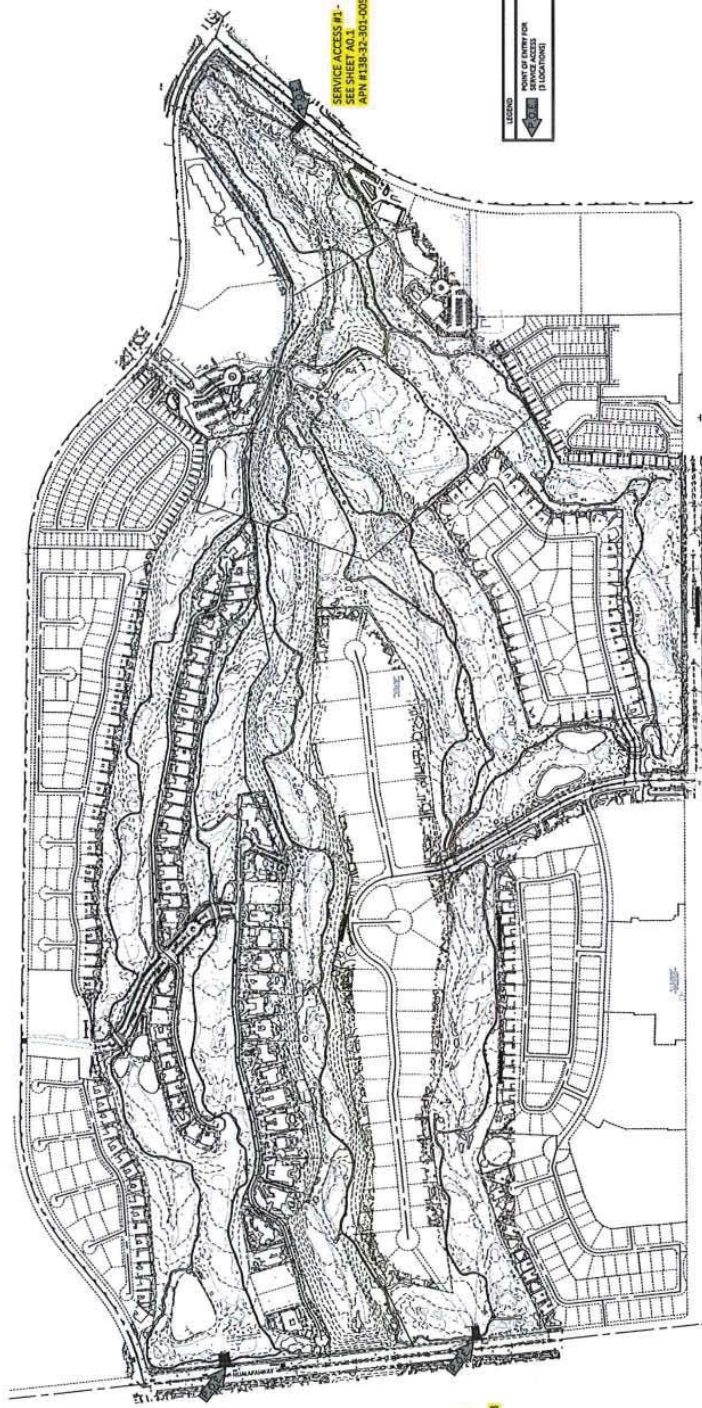
PARCEL NO.: 138-31-702-004 (33.8 AC)
 OWNER NAME: 180 LAND CO. LLC

PARCEL NO.: 138-31-702-003 (76.93 AC)
 OWNER NAME: 180 LAND CO. LLC

PARCEL NO.: 138-31-601-008 (22.19 AC)
 OWNER NAME: 180 LAND CO. LLC

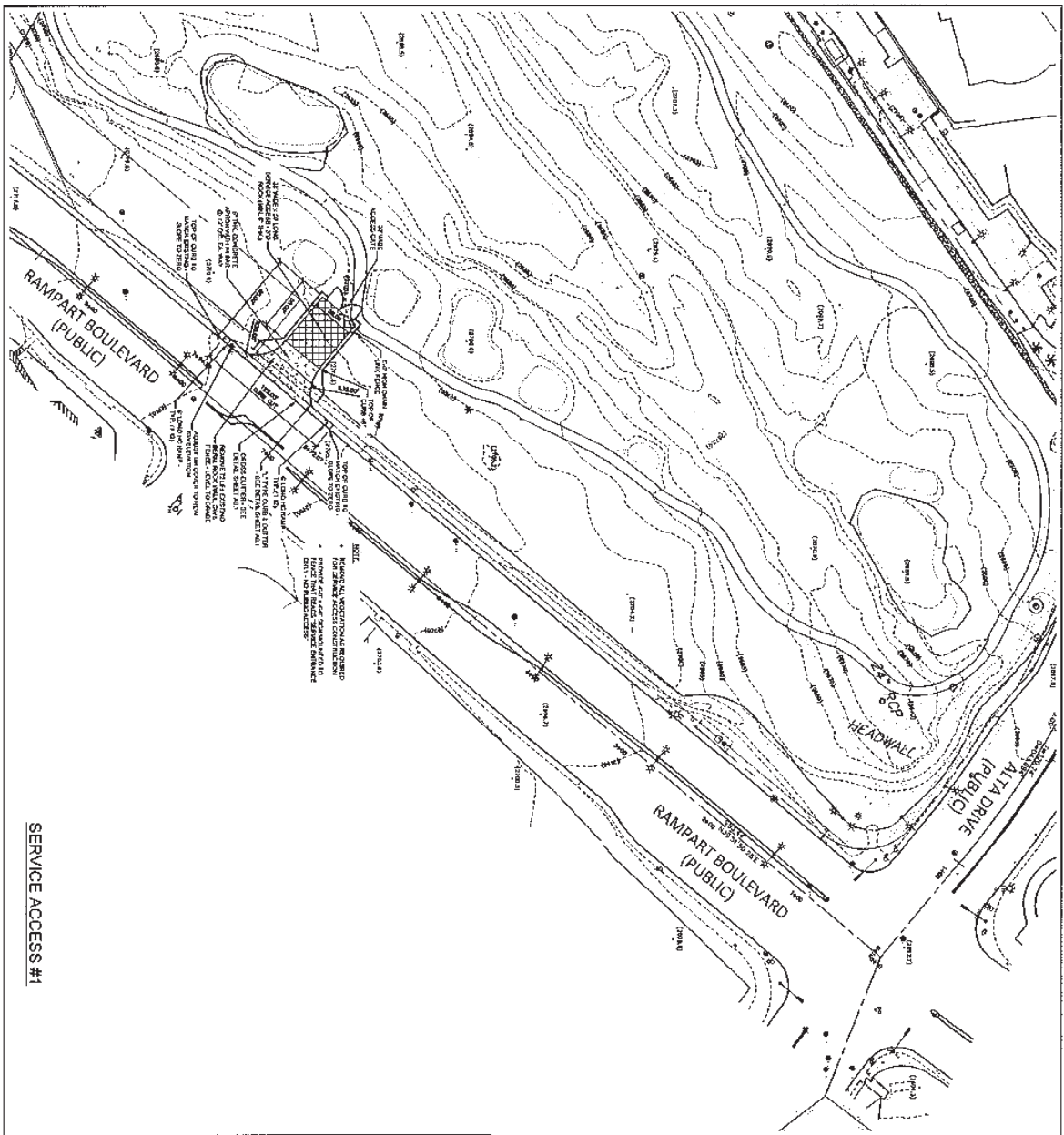
PARCEL NO.: 138-31-201-005 (34.07 AC)
 OWNER NAME: 180 LAND CO. LLC

PARCEL NO.: 138-31-712-004 (0.22 AC)
 OWNER NAME: 180 LAND CO. LLC

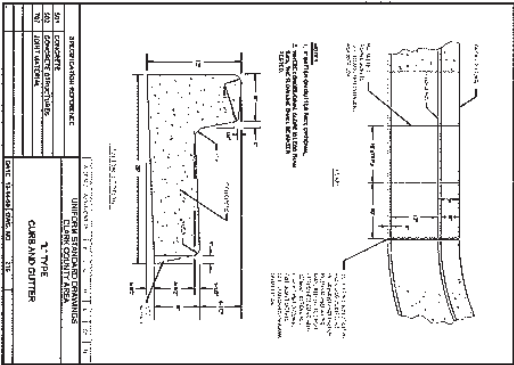
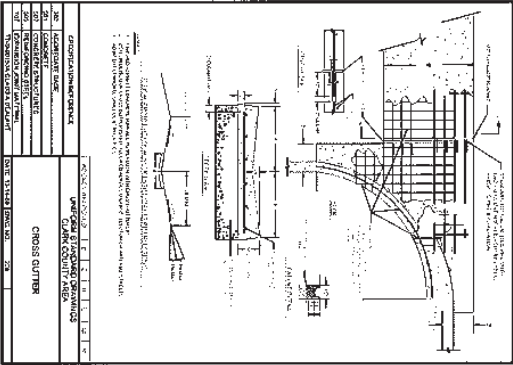


OVERALL PLAN SERVICE ACCESS

CONTRACTOR LEVEL CM	1315 S. FORT AVENUE SUITE #120 LAS VEGAS, NV 89117 PH: 702-940-6930
SEVENTY ACRES LLC and 180 LAND CO. LLC	
No.	Description
Date	
PROJECT NAME SERVICE ACCESS PLAN	
PROJECT NO.	
ISSUE DATE	2017-06-28
A0.0	
SCALE	1"=300'-0"



SERVICE ACCESS #1



PROJECT NAME SERVICE ACCESS PLAN		PROJECT NO. 201706-20		ISSUE DATE 201706-20		SCALE 1" = 40'-0"	
CONTRACTOR SEVENTY ACRES LLC and 180 LAND CO. LLC		CONTRACTOR LEVEL CM		1215 S. FORT APACHE RD SUITE #120 LAS VEGAS, NV 89117 PH: 702-948-8530		2296 002812	

LO 00002361
12496



LO 00002363

12498

EXHIBIT “PPPP”

Patricia M. Cabrera

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: MAY 16, 2018

DEPARTMENT: CITY CLERK

DIRECTOR: LUANN D. HOLMES

☐ Consent ☒ Discussion

SUBJECT:

For Possible Action - Any items from the afternoon session that the Council, staff and /or the applicant wish to be stricken, tabled, withdrawn or held in abeyance to a future meeting may be brought forward and acted upon at this time

BACKUP DOCUMENTATION:

Combined Verbatim Transcript for Items 71 and 74-83

Motion made by CAROLYN G. GOODMAN to Hold in abeyance Items 86-91, 98 and 99 to 6/20/2018 and Items 110 and 111 to 7/18/2018

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0
CEDRIC CREAR, MICHELE FIORE, BOB COFFIN, CAROLYN G. GOODMAN, LOIS TARKANIAN, STAVROS S. ANTHONY, STEVEN G. SEROKA; (Against-None); (Abstain-None); (Did Not Vote-None); (Excused-None)

Motion made by STEVEN G. SEROKA to Strike Items 74-83

Passed For: 5; Against: 2; Abstain: 0; Did Not Vote: 0; Excused: 0
CEDRIC CREAR, BOB COFFIN, LOIS TARKANIAN, STAVROS S. ANTHONY, STEVEN G. SEROKA; (Against-MICHELE FIORE, CAROLYN G. GOODMAN); (Abstain-None); (Did Not Vote-None); (Excused-None)

NOTE: Due to technical difficulties, Councilwoman Fiore orally voted No for Items 74-83. Additionally, the video does not reflect the vote accurately, in that subsequent to the vote, Councilman Crear requested that his vote be reflected in the affirmative.

Attorney Mark Hutchison submitted as backup a Notice of Decision by the State of Nevada State Board of Equalization and Signed Stipulations by the Clark County Assessor's Office for Items 74-83; the documentation was attached as backup under Items 74, 75, 78, 81 and 83.

Minutes:

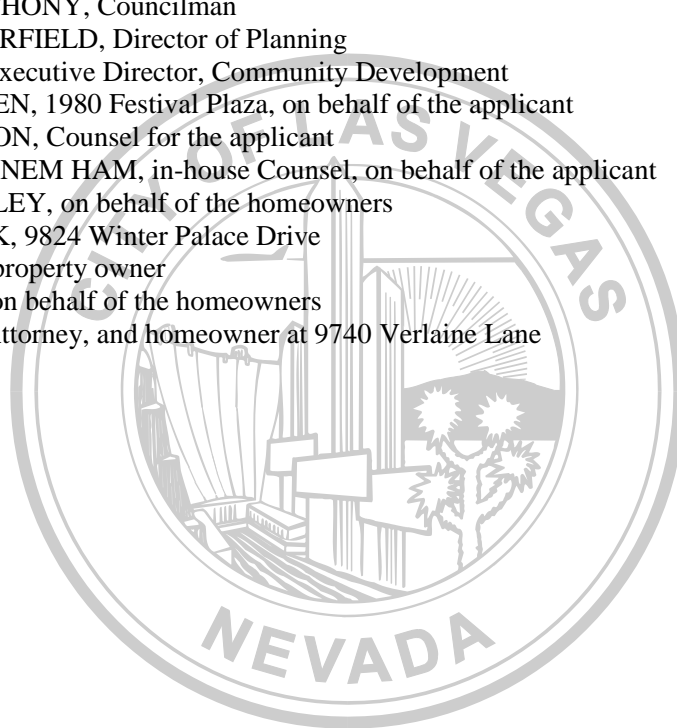
MAYOR GOODMAN read the items listed for action for which the requests had been submitted prior to the meeting. COUNCILMAN SEROKA indicated he had additional items to consider; the Mayor suggested voting on the items as read, and she motioned to do so. Subsequently, COUNCILMAN SEROKA made remarks for the record and motioned to strike Items 74-83. Much discussion ensued regarding that motion which is reflected in the verbatim transcript that is made a part of the final minutes for this item and Items 74-83.

A Combined Verbatim Transcript for Items 71 and 74-83 is made part of the Final Minutes.

CITY COUNCIL MEETING OF: MAY 16, 2018

Appearance List

CAROLYN G. GOODMAN, Mayor
STEVEN G. SEROKA, Councilman
CEDRIC CREAM, Councilman
MICHELE FIORE, Councilwoman
LUANN D. HOLMES, City Clerk
LOIS TARKANIAN, Councilwoman
BRAD JERBIC, City Attorney
BOB COFFIN, Councilman
SCOTT ADAMS, City Manager
STAVROS S. ANTHONY, Councilman
ROBERT SUMMERFIELD, Director of Planning
TOM PERRIGO, Executive Director, Community Development
STEPHANIE ALLEN, 1980 Festival Plaza, on behalf of the applicant
MARK HUTCHISON, Counsel for the applicant
ELIZABETH GHANEM HAM, in-house Counsel, on behalf of the applicant
MICHAEL BUCKLEY, on behalf of the homeowners
FRANK SCHRECK, 9824 Winter Palace Drive
YOHAN LOWIE, property owner
DOUG RANKIN, on behalf of the homeowners
BOB PECCOLE, Attorney, and homeowner at 9740 Verlaine Lane



**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

1 **ITEM 71 - For Possible Action - Any items from the afternoon session that the Council,**
2 **staff and /or the applicant wish to be stricken, tabled, withdrawn or held in abeyance to a**
3 **future meeting may be brought forward and acted upon at this time**
4 **Agenda Item 71, for possible action, any items Council, Staff and/or applicant wish to be**
5 **stricken, tabled, withdrawn, held in abeyance to a future meeting may be brought forward**
6 **and acted upon at this time.**

7
8 **ITEM 74 - GPA-72220 - ABEYANCE ITEM - GENERAL PLAN AMENDMENT -**
9 **PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action**
10 **on a request for a General Plan Amendment FROM: PR-OS**
11 **(PARKS/RECREATION/OPEN SPACE) TO: ML (MEDIUM LOW DENSITY**
12 **RESIDENTIAL) on 132.92 acres on the east side of Hualapai Way, approximately 830 feet**
13 **north of Charleston Boulevard (APNs 138-31-601-008; and 138-31-702-003 and 004), Ward**
14 **2 (Seroka) [PRJ-72218]. The Planning Commission vote resulted in a tie, which is**
15 **tantamount to a recommendation of DENIAL. Staff recommends APPROVAL.**

16
17 **ITEM 75 - WVR-72004 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING -**
18 **APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for**
19 **a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE**
20 **47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES**
21 **ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on**
22 **a portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road**
23 **(APN 138-31-601-008; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7**
24 **(Residential Planned Development - 7 Units per Acre) and PD (Planned Development)**
25 **Zones, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff**
26 **recommend APPROVAL.**

27
28 **ITEM 76 - SDR-72005 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW**
29 **RELATED TO WVR-72004 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND**

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 75-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road (APNs 138-31-601-008; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 77 - TMP-72006 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-72004 AND SDR-72005 - PARCEL 2 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 75-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 22.19 acres on the north side of Verlaine Court, east of Regents Park Road (APN 138-31-601-008), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 78 - WVR-72007 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED on a portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APN 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 79 - SDR-72008 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-72007 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 106-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APNs 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 80 - TMP-72009 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-72007 AND SDR-72008 - PARCEL 3 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 106-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 76.93 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APN 138-31-702-003), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 81 - WVR-72010 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on a portion of 83.52 acres on the east side of Palace Court, approximately 330 feet north of Charleston Boulevard (APN 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

86 **ITEM 82 - SDR-72011 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW**
87 **RELATED TO WVR-72010 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND**
88 **CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review**
89 **FOR A PROPOSED 53-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a**
90 **portion of 83.52 acres on the east side of Palace Court, approximately 330 feet north of**
91 **Charleston Boulevard (APNs 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-**
92 **301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned**
93 **Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1**
94 **vote) and Staff recommend APPROVAL.**

95

96 **ITEM 83 - TMP-72012 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-**
97 **72010 AND SDR-72011 - PARCEL 4 @ THE 180 - PUBLIC HEARING -**
98 **APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a**
99 **Tentative Map FOR A 53-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on**
100 **33.80 acres on the east side of Palace Court, approximately 330 feet north of Charleston**
101 **Boulevard (APN 138-31-702-004), R-PD7 (Residential Planned Development - 7 Units per**
102 **Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning**
103 **Commission (4-2-1 vote) and Staff recommend APPROVAL.**

104

105 **Appearance List**

106 CAROLYN G. GOODMAN, Mayor
107 STEVEN G. SEROKA, Councilman
108 CEDRIC CREAR, Councilman
109 MICHELE FIORE, Councilwoman
110 LUANN D. HOLMES, City Clerk
111 LOIS TARKANIAN, Councilwoman
112 BRAD JERBIC, City Attorney
113 BOB COFFIN, Councilman
114 SCOTT ADAMS, City Manager

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

115 STAVROS S. ANTHONY, Councilman
116 ROBERT SUMMERFIELD, Director of Planning
117 TOM PERRIGO, Executive Director, Community Development
118 STEPHANIE ALLEN, 1980 Festival Plaza, on behalf of the applicant
119 MARK HUTCHISON, Counsel for the applicant
120 ELIZABETH GHANEM HAM, in-house Counsel, on behalf of the applicant
121 MICHAEL BUCKLEY, on behalf of the homeowners
122 FRANK SCHRECK, 9824 Winter Palace Drive
123 YOHAN LOWIE, property owner
124 DOUG RANKIN, on behalf of the homeowners
125 BOB PECCOLE, Attorney, and homeowner at 9740 Verlaine Lane

126

127 (1 hour, 54 minutes) [3:25 – 5:19]

128

129 Typed by: Speechpad.com

130 Proofed by: Jacquie Miller

131

132 **MAYOR GOODMAN**

133 Okay. I will start reading.

134

135 **END RELATED DISCUSSION**

136 **RESUME RELATED DISCUSSION**

137

138 **COUNCILMAN SEROKA**

139 Mayor, I'd like to make a motion also. I have some items to discuss.

140

141 **MAYOR GOODMAN**

142 Okay. I think that-

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

143 **COUNCILMAN SEROKA**

144 I would like to-

145

146 **MAYOR GOODMAN**

147 -get through these and then you'll make yours. Or do you want one of those to be discussed?

148

149 **COUNCILMAN SEROKA**

150 No. No, we can do that if you allow me the floor. Thank you.

151

152 **MAYOR GOODMAN**

153 Okay. So please vote on Agenda Items 68 through 91, 98, 99, 110, and 111 for those abeyances,

154 assuming technology is, there we go. Please vote and please post. Councilman?

155

156 **COUNCILMAN SEROKA**

157 Mayor, I have a purely procedural motion. I move to strike-

158

159 **MAYOR GOODMAN**

160 Oh-

161

162 **COUNCILMAN SEROKA**

163 Item 74.

164

165 **MAYOR GOODMAN**

166 -wait, we're not done.

167

168 **COUNCILMAN SEROKA**

169 What?

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

170 **MAYOR GOODMAN**

171 Hold one sec, sorry. Councilwoman Fiore and Councilman Crear, please vote on those items.

172

173 **COUNCILMAN CREAR**

174 I apologize (inaudible). Can you restate whatever the motion on the table is?

175

176 **MAYOR GOODMAN**

177 And Councilwoman Fiore. Councilwoman Fiore?

178

179 **COUNCILWOMAN FIORE**

180 I did it.

181

182 **MAYOR GOODMAN**

183 Do it again. Push, push, push.

184

185 **COUNCILWOMAN FIORE**

186 There's no button. There's no button.

187

188 **LUANN D. HOLMES**

189 How would you like to vote?

190

191 **COUNCILWOMAN FIORE**

192 Yea. There's no, there's no vote

193

194 **COUNCILWOMAN TARKANIAN**

195 There's no vote brackets.

196

197 **MAYOR GOODMAN**

198 Okay. Here we go. Now we're posting it. It carries. Now, Councilman-

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

199 **COUNCILMAN SEROKA**

200 -Thank you Ma'am.

201

202 **MAYOR GOODMAN**

203 -Seroka, please.

204

205 **COUNCILMAN SEROKA**

206 I have purely a procedural motion. Based on procedure, I move to strike Agenda Items 74
207 through 83 on the grounds that I will go through here. It is an incomplete application. There is a
208 violation of our 12-month cooling off period, and it is a violation of the law as it stands today,
209 and I will go through those items to demonstrate that we have an incomplete application.
210 According to our Code, Code 90.10.040, modification of a master development plan and
211 development standards, such as Peccole Ranch Master Development Plan Phase 2, requires a
212 Major Modification because it is increasing the density of the development from which was -
213 previously approved. It is also requires a Major Modification, cause it's a change in location of
214 density, and according to our Code, it says that a Major Modification shall be processed in
215 accordance with the procedures and standards applicable to zoning.
216 Further, we have an incomplete application that says due to Nevada Administrative Code
217 278.260 for review of a Tentative Map, which we have here today, it says, A developer shall
218 submit all of the following items of information for its review of a Tentative Map. If a system for
219 a disposal or sewage is to be used or considered, a report on the soil including the types of soil, a
220 table showing seasonal high water levels and the rate of percolation at depth of any proposed
221 system of absorption for soil is required. A smaller item is that a map of the 100-year floodplain
222 for the applicable area must be included. A larger item, and a very significant item in this case, is
223 that also is required a master plan showing the future development and intended use of all land
224 under the ownership or control of the developer in the vicinity of the proposed subdivision. In
225 other words, all 250-acre plan must be submitted with the Tentative Maps. And that is also in
226 accordance with the staff's preferred process as - discussed in their staff analysis, and this is all
227 right out of the Nevada Code. Further, it says that we have violated our, the 12-month cooling off

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

228 period for successive applications of a General Plan Amendment.
229 So, I wanted to go through the requirements for a General Plan Amendment to show that a
230 General Plan Amendment is required in this case, and that since it, has been submitted, the
231 manner in which it's submitted violates the - Code that we have in place for a 12-month cooling
232 off period, and it was, that period would end in June.
233 Under our State laws, we have a law that's called NRS 278.230, governing body must put
234 adopted master plan into effect, and it says except as otherwise provided, whenever a governing
235 body or a city or county has adopted a master plan thereof, for the county or any major section
236 thereof, the governing body shall, upon recommendation of the, of, and I'll skip through some of
237 the language, and if practical needs of putting into effect a master plan, it must be in
238 conformance. The governing body must make sure it's in conformance.
239 Going, and there is some concern about that being whether our State law applies. Well, I'm –
240 gonna describe to you a couple of Supreme Court cases that say that you must amend and require
241 your master plan to be adopted when you change other things.
242 It's, the first case is the (sic) Nova Horizon case, and it is documented in the City documents
243 here that says the City, the courts have held that the master plan is a standard that commands
244 deference and presumption of applicability. The Nevada Supreme Court has held that master
245 plans in Nevada must be accorded substantial compliance, while Nevada statutes require the
246 zoning authority, must adopt zoning regulations that are in agreement with the master plan.
247 Further, there is the second case that says essentially the same thing, in that the master plan of a
248 community is a standard that commands deference and presumption and applicability.
249 So we have established that both at the State that a master plan must be in conformance with the
250 decisions you make on the day. So a General, GPA would be required if we're going to change
251 these items.
252 Further, in our own Title Code, Title 19, Paragraph 19.00.040, it is the intent of the City Council
253 that all regulatory decisions made pursuant to this Title be consistent with the General Plan. For
254 the purpose of this, of this section, consistency with the General Plans means, and it says what it
255 means, both the land use and the density and also all policies, programs of the General Plan
256 include those that promote compatibility of the uses and orderly development.

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

257 So we have a State law and City law that says your General Plan must be in conformance with
258 whatever you're doing. So if you change something, you have to change your General Plan. So it
259 is required that we change our General Plan.

260 Further, in 19.16.010, it's titled Compliance with the General Plan. It says, Except as otherwise
261 authorized in this Title, which means it would have to state below that a General Plan
262 Amendment is not required. Otherwise, it is required. So it says except as otherwise authorized,
263 approval of all Maps, which we have today, Site Development Plan Reviews, which we have
264 today, Waivers which we have today, and Deviations and Development Agreements shall be
265 consistent with the spirit and intent of the General Plan.

266 Further, it says Site Development Reviews will be in conformance with the General Plan. In
267 subsequent paragraphs, it says Waivers shall be, granting a Waiver will not be inconsistent with
268 the spirit of the General Plan; and Tentative Maps, it says no application for a Tentative Map is
269 eligible for approval unless it is determined that the proposed, proposal will be in conformance
270 with all applicable zoning regulations, including all applicable provisions of this Title. The
271 zoning classification of the site and all zoning master plan or site plan approvals for the site,
272 including all applicable conditions.

273 So, in order to make the zoning in conformance, you need a Major Modification, as described
274 earlier. But what I have just demonstrated is that a General Plan Amendment is required, and we
275 have a provision in our Code that says if you have successive applications of a similar category,
276 the same category, and it goes on to describe many things that apply here today, and there is a,
277 that have been previously denied, that is a lesser intensity and you come now with a greater
278 intensity, you have to wait a year. Now, let's explain that. I asked for clarification from the
279 attorneys on that issue, and they said they really didn't know the spirit and intent behind that rule,
280 so we'll just clarify that here, since this is a policy making body and that the staff is a policy
281 implementing body, that, in this case, what it's saying is if you had a General Plan Amendment
282 for say, let's say 10 units and it was denied, you can come back with a General Plan Amendment
283 saying, Yeah, we'll - lower that to one, that's less - intense use. And that makes sense. So you
284 could go to a lower intensity or less demand when you come forward. But let's say you were
285 previously denied for 10. It wouldn't make any sense to then come back for, let's exaggerate a

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

286 little bit, for 100. So if you got denied for 10, don't come forward with 100 because that's a
287 successive application, and the waiting period for that is a period of 12 months. The 12-month
288 delay, and that would not expire until June, so we should not have accepted this application
289 based of the General Plan Amendment because it's still within the window. And therefore,
290 without the General Plan Amendment and without the Major Mod, we can't do the Tentative
291 Maps, and the Tentative Maps have to be in conformance with the General Plan as the, our own
292 Code says.

293 Further, in the court case that Judge Crockett ruled, a very respected, highly regarded, very
294 thorough judge, he said that in, he - followed our own rules. He followed our staff
295 recommendations. And these are facts that the Peccole Ranch Master Plan must be modified to
296 change the land use designations from Golf Course Drainage to Multi-family, prior to approval
297 of the General Plan Amendment. That would be a Major Mod.

298 In order to develop, and these are written by our own staff, by the way. In order to redevelop the
299 property as anything other than Golf Course or Open Space, the applicant has proposed a Major
300 Modification of the master plan. So the applicant actually knows a Major Mod is required.

301 The judge further ruled the City's failure to require or - approve a Major Modification without
302 getting is legally fatal to the City's approval. So we knowingly would be operating outside the
303 law. And further, it says the City is not permitted to change the rules or follow something other
304 than the law in place. The staff made it clear the Major Mod was mandatory. Its record shows the
305 City Council chose to ignore that and move past it.

306 So we have this decision by a judge that says a Major Modification is required, amongst other
307 things, in order to move forward on the Peccole Ranch Master Plan Phase 2, of which the entire
308 250 acres is considered Parcel 5 of the Peccole Ranch Master Plan Phase 2. So it doesn't matter if
309 you're talking about one part of the golf course or another, it's all designated Drainage Golf
310 Course. So if you're going to change anything on the 250 acres, you need to have a Major
311 Modification first, a required General Plan Amendment, and then you can do your other steps.

312 So I have demonstrated we have an incomplete application, we're not in conformance with State
313 law, State code, City code, City law, and we have absent the Major Modification that both our
314 own Code requires, and at the current state of things, since we did not appeal the judge's decision

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315 and we did not ask for a stay, what we have said is we are compelled to abide by the Court's
316 ruling. And the Court ruling says that we are required a Major Modification.
317 Therefore, my motion is to Strike Items 74 through 83. However, I will allow the Applicant the
318 opportunity to withdraw them at this time if they would like to do that. Otherwise, that is my
319 motion.

320

321 **MAYOR GOODMAN**

322 Okay, I'd like some clarification-

323

324 **COUNCILWOMAN FIORE**

325 Could I ask-

326

327 **MAYOR GOODMAN**

328 -If I may, I'm gonna ask for Brad Jerbic, first of all, and then I wanna hear if there was briefing
329 by our City Manager on - these issues. Did you brief the Council? Are they fully knowledgeable
330 that this motion was gonna come? But let's go to Brad Jerbic first, please.

331

332 **BRAD JERBIC**

333 Procedurally, will you please read 74 through 83 into the record?

334

335 **MAYOR GOODMAN**

336 Okay, 74, GPA-72220, on a request for a General Plan Amendment from PR-OS
337 (Parks/Recreation/Open Space) to ML (Medium Low Density Residential) on 132.92 acres on
338 the east side Hualapai Way, approximately 830 feet north of Charleston Boulevard.
339 Number 75, WVR-72004, on a request for a Waiver to allow 40-foot private streets with no
340 sidewalks where 47-foot private streets with 5-foot sidewalks on both sides are required within a
341 proposed gated residential development on a portion of 71.91 acres on the north side of Verlaine
342 Court, east of Regents Park Road, R-PD7 (Residential Planned Development - 7 Units per Acre)
343 and PD (Planned Development) zones.

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344 Number 76, SDR-72005, on a request for Site Development Plan Review for a proposed 75-lot
345 Single Family Residential development on a portion of 71.91 acres on the north side of Verlaine
346 Court, east of Regents Park Road, R-PD7 (Residential Planned Development - 7 Units per Acre)
347 and PD (Planned Development) zones.

348 Number 77, TMP-72006, on a request for a Tentative Map for a 75-lot Single Family Residential
349 subdivision on 22.19 acres on the north side of Verlaine Court, east of Regents Park Road, R-
350 PD7 (Residential Planned Development - 7 Units per Acre) zone.

351 Number 78, WVR-72007, on a request for a Waiver to allow 40-foot private streets with no
352 sidewalks where 47-foot private streets with 5-foot sidewalks on both sides are required on a
353 portion of 126.65 acres on the east side Hualapai Way, approximately 830 feet north of
354 Charleston Boulevard, R-PD7 (Residential Planned Development - 7 Units per Acre) and PD
355 (Planned Development) zones.

356 Number 79, SDR-72008, on a request for a Site Development Plan Review for a proposed 106-
357 lot Single Family Residential development on a portion of 126.65 acres on the east side Hualapai
358 Way, approximately 830 feet north of Charleston Boulevard, R-RPD7 (sic) (Residential Planned
359 Development - 7 Units per Acre) and PD (Planned Development) zones.

360 Number 80, abeyance on a residence for a, on a request for a Tentative Map for a 106-lot single-
361 family residential subdivision on 76.93 acres east side Hualapai, approximately 830 feet north of
362 Charleston Boulevard, R-PD7 (Residential Planned Development - 7 Units per Acre) zone.

363 Number 81, WVR-72010 on a request for a Waiver to allow 40-foot private streets with no
364 sidewalks where 70, 47-foot (sic) private streets with 5-foot sidewalks on both sides are required
365 within a proposed gated community development on a portion of 83.52 acres on the east side of
366 Palace Court, approximately 330 feet north of Charleston Boulevard, R-PD7 (Residential
367 Planned Development - 7 Units Per Acre) and PD (Planned Development) zones.

368 Number 82, SDR-72011, on a request for a Site Development Plan Review for a proposed 53-lot
369 Single Family Residential development on a portion of 83.52 acres on the east side of Palace
370 Court, approximately 330 feet north of Charleston Boulevard, R-PD7 (Residential Planned
371 Development - 7 Units per Acre) and PD (Planned Development) zones.

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372 And number 83, TMP-72012, on a request for a Tentative Map for a 53-lot Single Family
373 Residential subdivision on 33.8 acres on the east side of Palace Court, approximately (sic she
374 said 350), 330 feet north of Charleston Boulevard, R-PD7 (Residential Planned Development - 7
375 Units per Acre) and PD (Planned Development) zones.

376 The Applicant/Owner of these parcels is the 180 Land Company LLC, at (sic), 180 Land
377 Company LLC, et al.

378 On Item 74, the Planning Commission vote resulted in a tie, which is tantamount to a
379 recommendation of denial, and staff recommends approval. The Planning Commission and staff
380 recommend approval of Items 75 through 83. These are in Ward 2 with Councilman Seroka, are
381 Public Hearings which I declare open.

382 Is the Applicant present? And Mr. Summerfield, are you here, wherever you are?

383

384 **COUNCILMAN COFFIN**

385 Your Honor, Your Honor, before we-

386

387 **MAYOR GOODMAN**

388 -Yes, well, I wanna hear back-

389

390 **COUNCILMAN COFFIN**

391 -there is a motion-

392

393 **MAYOR GOODMAN**

394 -no, no, no, no-

395

396 **COUNCILMAN COFFIN**

397 -there's a motion.

398

399 **MAYOR GOODMAN**

400 Let's wait.

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401 **COUNCILWOMAN FIORE**

402 No.

403

404 **MAYOR GOODMAN**

405 No. No. We're-

406

407 **COUNCILMAN COFFIN**

408 But, Your Honor-

409

410 **MAYOR GOODMAN**

411 -we're hearing from our attorney, please, Councilman.

412

413 **COUNCILMAN COFFIN**

414 Oh, from our attorneys, right, because I see a lot of people approaching, and I wanted to make
415 sure we keep it here in the family.

416

417 **MAYOR GOODMAN**

418 They're fine. Please, please just let's hear from-

419

420 **BRAD JERBIC**

421 I'm gonna make a recommendation, because the Councilman has raised a, an issue, and based a
422 motion on a procedural issue. Staff hasn't read the report yet. There's been no testimony yet. I
423 would suggest, Your Honor, that you open up the hearing just for discussion on the procedural
424 issue. If the procedural issue results in the motion passing, then we don't get to the merits of it. If
425 the procedural issue fails, then you have the staff presentation, and we can do it. That's my
426 recommendation.

427

428 **MAYOR GOODMAN**

429 Okay. May I ask the question, which I was going to before you told me to read them, which was

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430 correct. I didn't know and I wanted to ask our City Manager, has Council been briefed on these,
431 on these items?

432

433 **SCOTT ADAMS**

434 Scott Adams, City Manager. We did brief our Council last week on all three of these, well,
435 actually, there's 10 total items, three individual actions per each of the three parcels, plus the
436 overall GPA. We did a briefing last week, and then we had a Council briefing yesterday through
437 the agenda where this item came up as well. So we - really covered it over two weeks.

438

439 **COUNCILWOMAN FIORE**

440 Mayor?

441

442 **SCOTT ADAMS**

443 I - would say we're not aware of the action-

444

445 **COUNCILWOMAN FIORE**

446 Right.

447

448 **SCOTT ADAMS**

449 -or the proposed motion. So we're not really in a position to respond technically on the merits of
450 the motion, cause it, it's something that I was not aware of.

451

452 **COUNCILWOMAN FIORE**

453 Right. So Mayor understand, that what just occurred, we were not briefed on what just occurred.
454 We were briefed on what was coming before Council. But what just occurred, none of us had a
455 briefing on of what just occurred. And - I think, I think it's - quite shady, and I don't, I don't see
456 how we can even proceed with the motion that Councilmember from Ward 2 has made.

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457 **MAYOR GOODMAN**

458 Okay. Councilman Crear, I see your light's on.

459

460 **COUNCILMAN CREAR**

461 Thank you, Mayor, I just have a point of clarification. Since the Councilman has brought issues
462 forward to the Council, and how do we make a determination on if those issues are valid or are
463 they not valid? And do we need to make that clarification happen prior to us moving forward so
464 that we could make a determination or not on how we move forward? It seems as though, and
465 I'm not casting one side or the other, that I - don't feel comfortable moving forward since now
466 that I'm aware of some information that I was not aware of prior. And so how do I make a
467 determination on if what the Councilman is saying is, has basis? If it does have basis, then that
468 information seems to be very pertinent into us moving forward, whatever comes on the outcome.

469 Can you answer that for me, Mr. Jerbic?

470

471 **BRAD JERBIC**

472 I can. I think that this would be a really good time to hear from both sides as to the procedural
473 issues only, not opening up a hearing on the applications themselves, but there's been a motion
474 made to strike everything based on the procedural grounds articulated by the Councilman. I think
475 that Mr. Bice will have an opinion, and I know that Lieutenant Governor Hutchison will have an
476 opinion, and I know that Ms. Allen will have an opinion.-

477

478 **COUNCILMAN COFFIN**

479 Your Honor?

480

481 **BRAD JERBIC**

482 So what I would urge you to do, Your Honor, is ask them to limit their comments, at this point in
483 time, just to the procedural issues raised by the Councilman in this motion.

484

485 **MAYOR GOODMAN**

486 Okay.

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487 **COUNCILMAN CREAR**

488 Madam Mayor?

489

490 **COUNCILMAN COFFIN**

491 Your Honor?

492

493 **COUNCILMAN CREAR**

494 Madam?

495

496 **MAYOR GOODMAN**

497 Excuse me, please-

498

499 **COUNCILMAN CREAR**

500 -Okay.

501

502 **MAYOR GOODMAN**

503 - everybody, please.

504

505 **COUNCILMAN COFFIN**

506 Yeah.

507

508 **MAYOR GOODMAN**

509 I wanna hear from the Council first, their questions to you on this procedural item. So, first,
510 we're gonna go to Councilman Coffin, then we're gonna go to Mayor Pro Tem, then we're gonna
511 go to Councilman Anthony. These are times for you to address questions to our legal staff first.
512 So if you want to sit and rest for a few moments, you may. Please, Councilman Coffin.

513

514 **COUNCILMAN COFFIN**

515 Thank you, Your Honor. Okay, first of all, a motion-

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516 **MAYOR GOODMAN**

517 This is to here. This is to Brad Jerbic.

518

519 **COUNCILMAN COFFIN**

520 -Right, thank you, and/or whoever can hear. The motion is made under the correct order of
521 business, motion accepted. Discussion on the motion is occurring. No advance notice has to be
522 given to anybody, for, no one in this body or any legislative body that I know of needs to give
523 notice of a procedural motion in advance or in essence, seek permission. That's not required. And
524 we've got a master of the gavel out there in the audience, the Lieutenant Governor. He - knows
525 this. You don't, never know when a motion's gonna come in.

526 So, it's hard to say we haven't been briefed, when in reality, what a briefing would do would be
527 to give an indication that this motion was coming. And so it's - his business. I mean, it is his, it's
528 his properly recognized motion. I - don't think that, frankly, I don't think we need to go even into
529 public discussion, because I - don't even know if you've made a ruling or you're just suggesting,
530 Brad, because procedural, we do not allow the public to tell us how to run our dais. Who is, if I
531 could have your attention, Brad, who is the Parliamentarian, the Clerk or Council?

532

533 **BRAD JERBIC**

534 It's me.

535

536 **COUNCILMAN COFFIN**

537 Okay.

538

539 **COUNCILWOMAN TARKANIAN**

540 It's you.

541 **COUNCILMAN COFFIN**

542 That's good, because I wasn't sure. I thought the City Clerk might be the Parliamentarian.

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543 **BRAD JERBIC**

544 We work together very closely.

545

546 **COUNCILMAN COFFIN**

547 Okay.

548

549 **BRAD JERBIC**

550 I don't think we're gonna work closely on this issue cause I don't think anybody wants to get near
551 it, but go ahead.

552

553 **COUNCILMAN COFFIN**

554 It's hard to hear you. But anyway, the idea is that you'd have to say, well, if you're the
555 Parliamentarian, would you agree that the motion is properly made under the order of business?

556

557 **BRAD JERBIC**

558 Yes. There, there's no obligation for any member of the Council to share their motion in advance
559 with any other member of the Council. So when it comes to, if - the question is staff did not brief
560 me, it's because staff isn't making the motion and staff didn't craft the motion. We didn't research
561 these issues. The Councilman is entitled on his own to do his own research, craft his own motion
562 and present it, and he's done that. So the motion is proper.

563

564 **COUNCILMAN COFFIN**

565 I think that's a good establishment there, Your Honor.

566

567 **MAYOR GOODMAN**

568 Thank you. Okay, MAYOR PRO TEM? And Mr. Jerbic, can you pull your mic closer to you as
569 you respond, please? Thank you. Go ahead.

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570 **COUNCILWOMAN TARKANIAN**

571 Mr. Jerbic, is there validity to the rules and regulations of the State and of our own City that
572 Mr. Seroka has brought forth? Are, if they exist, do they then affect what we're doing today or
573 would be doing today?

574

575 **BRAD JERBIC**

576 Let - me state a couple of things and you're going to have to make the judgment on this.

577

578 **COUNCILWOMAN TARKANIAN**

579 It sounds as if they are, but I don't know.

580

581 **BRAD JERBIC**

582 Let - me state a couple things that are just fact, but you're going to have to make a judgment call
583 on the policy end of it. It is a fact that we believe, as staff, a General Plan Amendment should be
584 required for this. The applicant submitted one under protest, so there is a General Plan
585 Amendment. The question the Councilman has raised is, do you believe it is so duplicitous with
586 the General Plan Amendment that was denied that he's in the one-year timeout box? Under our
587 Code, you can't bring back an application that's the same or similar, if you've been denied, for a
588 period of one year.

589 But the Councilman has argued, if I heard it correctly, and Councilman, stop me if you, if I get it
590 wrong, what he's argued is that this application, submitted under protest or not, is necessary but
591 it's untimely because he hasn't waited the full year yet because it's too similar to the GPA that
592 was denied last year. And without that, the rest of the project can't go forward. That, that's one
593 argument.

594 The next argument I heard, and I'm - getting a nod from Councilman Seroka, so he agrees with
595 the way I - summarized that. You're going to have to decide if you think staff did not think it was
596 duplicitous. But you can overrule staff and you can say, I think it was. You can say, I think this
597 GPA was filed too soon, he should have waited another month.

598 Having said that, the next issue is whether or not a Major Modification is required. There is not a

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599 Major Modification that goes with this application. Staff did not believe a Major Modification
600 was necessary. There was a lawsuit in front of Judge Crockett, and Judge Crockett ruled on an
601 application that was before this Council last year for 435 condominiums on the northeast
602 quadrant of what we call Queensridge or Badlands Country Club. The applicant came in with a
603 request for 720 units. He needed a, we believed he needed a zone change, he needed a General
604 Plan Amendment. He filed for both.

605 The Council granted a General Plan Amendment and gave him medium density under the
606 General Plan. He filed for a zone change. He got R-3 as a zone change, and then he got his site
607 development plan approved for 435 units. There was a challenge to that, to that action, by the
608 City Council, that went to Judge Crockett. The argument that was made and, again, anybody out
609 there can correct me, I'll try and get this as just straight down the line as I can - tell it. The
610 argument, I believe, was that there was a General Plan, a Master Plan for Queensridge, called
611 Peccole Ranch Phase 2, and it didn't have units in it that could be built on the golf course. It had
612 (sic) a number of single-family units that could be built, a number of multi-family units, but
613 when it got to golf course, open space or drainage, it had a dash. There were no units there.

614 So I believe the argument was before the Council approved the 435, they should have required a
615 Major Modification of that plan, because it didn't have a unit count for the open space, and that
616 was where the 435 was going to be built was on the open space. Judge Crockett agreed with that
617 argument, and he issued a written opinion. And everybody's got it, we've talked about.

618 The written opinion is on appeal. The Council decided not to join in that appeal, but the
619 applicant, 180 Acre LLC at like, and the like, appealed that to the Nevada Supreme Court, where
620 it's pending. The Council was asked to make a policy call. To end the argument completely, you
621 could make a decision to change your Code or just make a policy call as to whether or not you
622 wanted a Major Modification to accompany these applications. The Council, on a 4-2 vote said,
623 No, we don't, and it was before Judge Crockett's decision.

624 So a 4-2 vote, no Major Modification, Judge Crockett says, Yes, you need a Major Modification.
625 Then a reconsideration of the 4-2 vote occurred, and there were not enough votes to reconsider it.
626 So that's the only statement you've made on this so far, a 4-2 vote before Judge Crockett,
627 Judge Crockett, and then you didn't take back your 4-2 vote because there weren't enough votes

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628 for it. So-

629 I'm just, I'm just going through, that, that's what I've heard so far. So without going further into
630 it, those are two policy calls that you can make right now, and they can be directly addressed by
631 the applicant and anybody else as to whether or not, just break down into pieces. Do you think
632 the GPA is duplicitous with the previous one that was denied? And if you think that's true, then
633 there's a timeout period for the GPA, and without the GPA, the rest of the applications really
634 couldn't be heard. They - need the GPA to go with it, that's what staff believes. So that's number
635 one.

636 Number two, if after you know about Judge Crockett's decision and everything I've just said, you
637 think there should be a Major Modification, say that, and if you think there should be a Major
638 Modification, then that also would be something that would, is missing from this current
639 application that would cause it to be incomplete.

640 If you decide, on the other hand, the GPA is not duplicitous and a General Plan, and a Major
641 Modification is not required, then you go forward with the other procedural arguments one by
642 one. If they are exhausted, then you hear the application. If you hit a stumbling block at any one
643 that you believe is the policy of this Council, you have every right to interpret your own law and
644 - enforce it your own way. But of you believe procedurally at any point you've reached a dead
645 end, then the applications could be, you would vote on the motion to strike. That's my
646 recommendation.

647

648 **MAYOR GOODMAN**

649 If I might add, Mr. Jerbic, one last thing. If in fact, the applicant has made appeal to the Supreme
650 Court of the State of Nevada, is that a fact?

651

652 **BRAD JERBIC**

653 In my opinion, no.

654

655 **MAYOR GOODMAN**

656 They have not?

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657 **BRAD JERBIC**

658 These are separate applications that have nothing to do with that particular appeal.

659

660 **MAYOR GOODMAN**

661 Then it is not-

662

663 **BRAD JERBIC**

664 I - think ultimately - here's - how it works. When a judge rules, it's not insignificant, but the
665 ultimate law of the land is made by the Nevada Supreme Court. The Nevada Supreme Court will
666 be the ultimate determiner as to whether or not a Major Modification is necessary. And if they
667 agree with Judge Crockett, it will be my advice, if that happens, that Major Modification is
668 required for everything that comes before this Council. If they disagree with Judge Crockett, then
669 we're back to where we were before. You don't require a Major Modification, but you do require
670 a GPA.

671

672 **COUNCILMAN SEROKA**

673 Mayor, if, Mayor if - I may on that point-

674

675 **MAYOR GOODMAN**

676 Yes.

677

678 **COUNCILMAN SEROKA**

679 -It's my understanding that Nevada Civil Practice Manual addresses this a bit as well, that when a
680 judge makes a ruling, you have an opportunity to appeal it, you have an opportunity to stay it. If
681 you don't do that, that's the law of the land at the time. And right now, this is the law of the land
682 that we have right now guiding us in our decision for this process. It doesn't mean it'll be the law
683 of the land later. It could change, as you said, through a Supreme Court change. But at the time
684 that we are hearing this, this is the law of the land, and that is the decision we have made to abide
685 by it.

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686 **COUNCILWOMAN FIORE**

687 So Mayor-

688

689 **MAYOR GOODMAN**

690 Well, let me, let's hear from Councilman Anthony.

691

692 **COUNCILMAN ANTHONY**

693 Thank you, Mayor. So - Brad, explain the - motion is to strike. So explain what that means
694 exactly to strike.

695

696 **BRAD JERBIC**

697 Quite often before the Planning session begins, you make motions to strike things that aren't
698 ready, that you're not ready to hear for, or you make motions to hold things in abeyance.

699

700 **COUNCILWOMAN FIORE**

701 Can he talk into the mic? I can't hear him.

702

703 **MAYOR GOODMAN**

704 Pull your mic closer, can't hear what you're saying down here.

705

706 **BRAD JERBIC**

707 I'm sorry. Part - of it is just my allergies, so forgive me. My voice is just-

708

709 **MAYOR GOODMAN**

710 Okay, but turn it more towards your mouth, if you would.

711

712 **BRAD JERBIC**

713 Okay.

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714 **MAYOR GOODMAN**

715 Good.

716

717 **BRAD JERBIC**

718 Quite often you do procedural things all the time. So forget about Badlands for a moment. You
719 take motions to strike at the beginning of every planning session. You do motions to abey at the
720 beginning of every planning session. Those motions are because an applicant has requested it or
721 because something isn't right or somebody changed their mind and doesn't want a project. That
722 happens all the time. That is almost always with the applicant's consent, all, more than often than
723 not at their request. This one's different. There's a procedural motion, which is properly made,
724 but I'm don't have a doubt that the applicant is not good with it. And so I think, in this particular
725 case, the motion to strike, if you believe there is a procedural defect, Councilman, after hearing
726 the testimony, if you believe there's a missing piece of this application or you believe the GPA
727 should not have been accepted because it's duplicitous with the one that was denied last year and
728 he hasn't waited a year yet to file the new one-

729

730 **COUNCILMAN ANTHONY**

731 Right, I understand that, but-

732

733 **BRAD JERBIC**

734 If you believe either one of those, then you vote on the motion.

735

736 **COUNCILMAN ANTHONY**

737 What - happens to the agenda items if - a strike motion passes?

738

739 **BRAD JERBIC**

740 Applicant will have to start over.

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741 **COUNCILMAN ANTHONY**

742 What does that mean start over?

743

744 **BRAD JERBIC**

745 That means he'll have to refile.

746

747 **COUNCILMAN ANTHONY**

748 The whole project would start all over again.

749

750 **BRAD JERBIC**

751 That's right.

752

753 **COUNCILMAN ANTHONY**

754 Okay. So-

755

756 **MAYOR GOODMAN**

757 And with a time limit, if I might question on top of that?

758

759 **BRAD JERBIC**

760 On the strike? Well strike is, since it's not on the merits, there's no one-year time limit that goes
761 with it, but I can assure you, without even speaking to the applicant or to their counsel, they'll be
762 in court tomorrow.

763

764 **COUNCILMAN SEROKA**

765 Mayor, if I may, I did let, offer-

766

767 **MAYOR GOODMAN**

768 -Well hold on if you would, let's hear from

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769 **COUNCILMAN SEROKA**

770 -offer to withdraw without prejudice.

771

772 **MAYOR GOODMAN**

773 Wait, wait, wait, wait, let -

774

775 **COUNCILMAN ANTHONY**

776 -I just wanna ask - my questions.

777

778 **MAYOR GOODMAN**

779 -Let Councilman Anthony finish his questions, please.

780

781 **COUNCILMAN ANTHONY**

782 Thank you. Okay. So a motion to strike, if it passes, means the whole thing starts from square

783 one, is that correct?

784

785 **BRAD JERBIC**

786 Correct, they have to resubmit.

787

788 **COUNCILMAN ANTHONY**

789 Okay. So-

790

791 **MAYOR GOODMAN**

792 -And could you ask, wait one second, Councilman, and there is no, you have said there is no time

793 limit. If the motion to strike is agreed to, they can come back and file-

794

795 **COUNCILMAN ANTHONY**

796 Next week.

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797 **MAYOR GOODMAN**

798 -tomorrow.

799

800 **BRAD JERBIC**

801 Tomorrow. They could, they could do both. They could go to court and file tomorrow.

802

803 **MAYOR GOODMAN**

804 But they have to do it according to the new parameters. Okay.

805

806 **BRAD JERBIC**

807 Correct.

808

809 **COUNCILMAN ANTHONY**

810 My - next kind of question or comment is 95 percent of what Councilman Seroka said was, I
811 heard it for the first time. So I - don't know what it means. I don't understand it. I, there's no way
812 I can vote on the 95 percent because I need time to digest all that and I'm not gonna do it up here.
813 The one thing that - we have been briefed on though, which Councilman Seroka brought up, is
814 this, and you brought up, is the Major Modification that was required by this judge. So, in my, in
815 my 30 years in law enforcement world, if a judge ruled a certain way, then you followed the
816 judge's ruling. I mean, that's just the way it is. If - the police conduct a search and the judge rules
817 it's an unconstitutional search, well, it's an unconstitutional search until somebody says different,
818 and you have to follow the judge's ruling. I mean, that's - normally how you do it. Okay. There,
819 you can have a stay, you can, there's appeals and all that stuff, but in the general sense, the judge
820 rules it that way, you gotta kind of, if we, I mean, either that or we just ignore judges' rulings and
821 there's chaos. So there may be some ways to do that, and one of them is there is an appeal to the
822 Nevada Supreme Court on whether the judge's ruling was correct or not. So my question I guess,
823 for Mr. Perrigo or from Brad, is if - I or we or whoever decides that a Major Modification is
824 needed, is required, then what happens to the applications before us today? How would you,
825 what would be the process for going through that today?

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826 **MAYOR GOODMAN**

827 They would have to be refiled all over again.

828

829 **BRAD JERBIC**

830 Right. Well, there's a number of ways. First of all, there's a motion on the floor, and the motion is
831 to strike. If that motion passes, then what would happen when the applicant, and if you decide-

832

833 **COUNCILMAN ANTHONY**

834 -No, I'm just, I'm just talking strictly about the Major Modification.

835

836 **BRAD JERBIC**

837 Right.

838

839 **COUNCILMAN ANTHONY**

840 It -, just deal with that particular item. If a Major Modification is required, if I believe that-

841

842 **BRAD JERBIC**

843 -Right.

844

845 **COUNCILMAN ANTHONY**

846 -then that will help me decide how I'm gonna vote, but what happens to the stuff that's before us
847 today, if that is a requirement today?

848

849 **BRAD JERBIC**

850 I got it. I understand the question. The, if you require a Major Modification, you – could, I'm
851 sorry. If you require a Major Modification, I don't know why, normally I'm so loud, it's just very
852 quiet today, so I apologize. If you require a Major Modification, you can do it one of two ways.
853 One is you don't hear anything until the applicant submits one. It goes through the process, and I
854 think it has a Title 19 provision it has to go the Planning Commission, but that's something that

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855 you can waive if you want to accelerate it. But he - would have to file a Major Modification, and
856 then all pieces of this would come to the Council together. So instead of 11 or 10 pieces you
857 have now, you would have an 11th that would be the Major Modification. That's what would
858 happen. The other way to do it, and it's - possible, but I don't recommend it, and that is vote on
859 the 10 that you have now, contingent upon a Major Modification coming in within 60 days or
860 whatever. You could do that too. But-

861

862 **COUNCILMAN ANTHONY**

863 -Well, I - don't, I mean, I don't know if that's a way I would go. I mean, if a Major Modification
864 is required and I believe that, then we should start, that, that's kind of the, a first step, right?

865

866 **BRAD JERBIC**

867 I - make no policy recommendation here, I just give you the legal options.

868

869 **COUNCILMAN ANTHONY**

870 Right, but - on an application like this, if a Major Modification is required, that would have to be
871 submitted before these agenda items, is that correct, Tom? Is that how-

872

873 **BRAD JERBIC**

874 If - you had, if you had decided months ago that a Major Modification required, these
875 applications wouldn't be on the agenda unless there was a Major Modification with them.

876

877 **COUNCILMAN ANTHONY**

878 Correct. Okay. All right. So, all right, so if I believed that, then I would support the motion to
879 strike. I guess another way to look at it is if it is being appealed to the Supreme Court, I guess
880 another way to deal with this would be since the Major Modification is the first step and a key
881 element, is to abey all this stuff until the Nevada Supreme Court decides, cause you said rightly
882 they have final say. So any idea when the Nevada Supreme Court would hear the (sic) and make
883 a final ruling on the Major Modification? Any idea?

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884 **BRAD JERBIC**

885 I'm looking at a very amused Lieutenant Governor right now who knows how this works. There's
886 no predicting-

887

888 **COUNCILMAN ANTHONY**

889 There isn't.

890

891 **BRAD JERBIC**

892 -when the Nevada Supreme Court's gonna hear this or - rule on it. Even if they set a briefing
893 schedule and all the briefs were turned in by a certain date, let's make up a date, October 1st,
894 they gotta have a hearing and they could sit on it for months or years. You never know.

895

896 **MAYOR GOODMAN**

897 If I may interject here-

898

899 **COUNCILMAN ANTHONY**

900 -Okay, okay, I'm good.

901

902 **MAYOR GOODMAN**

903 -I mean, I - thank you very much, Councilman. It seems to me we did vote 4-2, I understand that,
904 against Major Modification. A single judge made a decision to overrule that vote and change it.
905 We know it is gonna end up in the courts. I don't know why we would be messing with this. I've
906 been saying this same thing for over six, eight months. I don't understand why we are to vote on
907 this. I understand the legal ramification when a judge makes a decision, that decision holds.
908 That's the issue. But I have said again and again this is gonna end up there. Why are we ruling on
909 anything? Let the, this is in the courts, let them decide en banc and tell us what we should, we
910 already voted 4-2 against Major Modification. So why would we go against what we believed in
911 originally? And you told me you can't abey unless you don't have information, and I would add
912 that this information to strike is this total thing, and with all the information, and due respect to

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913 Councilman Seroka, who obviously has done a great deal of homework on it, I - don't have the
914 information. So in that sense, from my vantage point, the answer is either no or abstain. And you
915 said I can't abstain.

916 I want the courts to tell us. They rule. One judge doesn't make it go. And so where do we go,
917 where would I go with my vote? Am I allowed to abstain cause I don't have the information?
918

919 **COUNCILMAN SEROKA**

920 Can withdraw.
921

922 **BRAD JERBIC**

923 We - we've unfortunately set this precedent before. Several of you have come to me on very rare
924 occasion and said, I'm not informed enough to vote. And then you go for an abeyance, not a
925 strike. You go for abeyance to get up to speed. That's happened once or twice, that happened
926 with Councilwoman Tarkanian when we had the argument regarding the Major Modification.
927 She said pretty plainly on the record, I don't have enough information about this to vote right
928 now, and so she abstained. The, when you do that, you don't get to un-abstain later on, on - a, on
929 the procedural motion. So when the, when the motion to require a Major, not require a Major
930 Modification passed on a 4-2 vote, later on one of the members in the majority wanted to bring it
931 back to rescind that vote. Councilwoman was not allowed to un-abstain-
932

933 **MAYOR GOODMAN**

934 Correct.
935

936 **BRAD JERBIC**

937 -for that because she didn't vote on the first vote.
938

939 **MAYOR GOODMAN**

940 Correct.

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941 **BRAD JERBIC**

942 But if it had been reversed, she would have been able to join back in on the conversation. So if
943 you abstain now for more information, you could, when you get up to speed, vote. But I will
944 state on the record, the question that you asked that's a fundamental question, Why do you have
945 to vote right now?

946

947 **MAYOR GOODMAN**

948 Right.

949

950 **BRAD JERBIC**

951 The Applicant is entitled, because he owns property, to seek permission from his government to
952 use that property in the way he wants to seek it. It doesn't mean you have to give it. It doesn't
953 mean he's right. But he has every right to ask. He has every right to due process. And at some
954 point in time, to link your obligation as an elected body to give him that due process to a whole
955 other system of justice that is out of our control, doesn't give him due process, in my opinion, on
956 this matter. Does he get due process if you strike based on a procedural thing? Sure, because
957 you've had a discussion on it, and then you can make your policy call there. But having a right,
958 he has a right to have you vote and not wait for the Nevada Supreme Court a year or two from
959 now.

960

961 **MAYOR GOODMAN**

962 But-

963

964 **BRAD JERBIC**

965 He also, the flip side of this is this, and I think the applicant knows this. If the applicant believes
966 he doesn't wanna submit a Major Modification, we're not requiring him to submit a Major
967 Modification, and later the Supreme Court rules not only is a Major Modification required on the
968 435, but on everything out at - Queensridge, well, that's the risk he's taking, and he understands
969 that. And so, and it would be reversed.

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970 **MAYOR GOODMAN**

971 And conversely, if I might, if the Supreme Court says he does not-

972

973 **BRAD JERBIC**

974 Right.

975

976 **MAYOR GOODMAN**

977 -votes over and reverses the District Court decision, then he just proceeds on, correct?

978

979 **BRAD JERBIC**

980 If - the Supreme Court reverses the District Court, the 435 is his again. It gets restored. If the

981 Supreme Court says Major Modification required for everything at Queensridge, any victory he

982 gets without a Major Modification goes away.

983

984 **MAYOR GOODMAN**

985 So why aren't we waiting for the Supreme Court? I don't get it.

986

987 **BRAD JERBIC**

988 The applicant wants you to hear it now knowing that.

989

990 **MAYOR GOODMAN**

991 All right.

992

993 **BRAD JERBIC**

994 They know that.

995

996 **MAYOR GOODMAN**

997 So you did instruct us as well, if I may. You said this is procedural only.

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998 **BRAD JERBIC**

999 I think the discussion right now should be on the procedure only. No point in getting into the
1000 merits of it since we have two arguments that the Councilman has made, well more than two, but
1001 two that I identified, the GPA argument and the other. I would just break these down very
1002 simply. Let's talk about the GPA, do you think it's duplicitous? If it is, you vote and you decide
1003 whether or not, and if you decide it is, then there's - another month left on the timeout window
1004 from the denial of the GPA last year.

1005

1006 **MAYOR GOODMAN**

1007 Okay. You're not through. Don't go away yet, please. There is a motion on the floor, I believe
1008 that Councilman Seroka, that was a motion, correct?

1009

1010 **COUNCILMAN SEROKA**

1011 Yes, Mayor.

1012

1013 **MAYOR GOODMAN**

1014 Okay. It was a, do we go ahead and vote the motion and then go into procedural comments from
1015 both sides, or do we go ahead and vote and see how it flies and then go into the procedural
1016 discussion?

1017

1018 **COUNCILWOMAN FIORE**

1019 I just have a question, Mayor.

1020

1021 **MAYOR GOODMAN**

1022 One more question.

1023

1024 **COUNCILWOMAN FIORE**

1025 Yeah, so, okay, so it's to our staff, it's to Peter and Robert. Do you guys believe the GPA was the
1026 same or similar? The GPA that - we want to discuss, do you believe this GPA on these items that

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1027 Councilman Seroka wants to strike, do you believe the GPA was the same or similar?

1028

1029 **ROBERT SUMMERFIELD**

1030 Madam Mayor, through you, the - GPA that was submitted was at the request of staff, and
1031 therefore, we have not treated it as a successive application. Therefore, we have not run the test
1032 of is it a more restrictive or less restrictive request. So, again, the GPA was requested by staff, it
1033 was submitted under protest by the applicant, and therefore, again, it was a request of staff to
1034 submit the application. And so the - language about a less restrictive application was - not a part
1035 of the test that we did. We requested the application.

1036

1037 **COUNCILWOMAN FIORE**

1038 Okay.

1039

1040 **COUNCILMAN CREAR**

1041 What does that mean?

1042

1043 **COUNCILWOMAN FIORE**

1044 Okay. Through your request, though, are - you saying that you're, it's different, or is it similar?

1045

1046 **ROBERT SUMMERFIELD**

1047 It's a request to change from PR-OS to a residential zoning district in that, or residential
1048 designation. In that regard, it's similar. They're different requests. It's a different area that's being
1049 requested for than the original GPA, and it is a different designation that's being requested.

1050

1051 **COUNCILWOMAN FIORE**

1052 So then if it's different, then we should hear it.

1053

1054 **ROBERT SUMMERFIELD**

1055 That I would refer to your legal counsel.

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1056 **COUNCILWOMAN FIORE**

1057 That's what I'm saying. If it's different, then all the legal mumbo jumbo, cause this is more of a
1058 legal argument that Councilman Seroka had just talked about, goes out the door. If it's different,
1059 then we can hear these items.

1060 And this is very shocking, I have to tell you. First time we're hearing it, we're supposed to digest
1061 this information in a minute up here. I - just don't, I, this is the first for me and - I cannot support
1062 this.

1063

1064 **MAYOR GOODMAN**

1065 Okay. Councilman Crear?

1066

1067 **COUNCILMAN CREAR**

1068 Thank you, Madam Mayor. I - concur with Regent, excuse, wow, Regent Anthony, my former
1069 colleague on the Board of Regents, Councilman Anthony that we did just hear this, and I think
1070 it's a lot of information to take in, in a very short period of time. But I am very, very, very
1071 perplexed at how we cannot get definitive answers on some of the questions that we're asking. I
1072 don't understand how legal counsel cannot tell us if there are merits that are, that are based upon
1073 the - comments that Councilman Seroka has made.

1074 Our - Planning Director is sort of hedging on if we have, if there's any continuity between the
1075 previous application and the application now. Those are very pertinent answers that we need in
1076 order to make a - determination on if we're gonna vote on the motion on the floor. And because,
1077 I'm not saying that Councilman Seroka is not correct, I think the way he presented it seems very,
1078 very, very accurate. And I'm not here to say if - it is or isn't. But we do have highly intelligent
1079 people, who have a long history in the law, that seem to also be hedging on this issue.

1080 Is what he says, he - quoted statute, he quoted ordinances that were there. It seems pretty - legit
1081 to me. But then you're saying that we can make the determination, which we don't have all the
1082 information on. So if we don't have all the information, then I don't even know how we can vote
1083 on the item to strike it, one way or the other. Right? And then, even if moving forward, how can
1084 we vote on this issue if we don't have the proper information, which Councilman Seroka has

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1085 raised questions to? And I do believe that if the law, Crockett, Judge Crockett has made a
1086 determination, like it or not, a judge has made a determination, and for us to just discard it as if it
1087 does not exist is basically impossible for us to do. We have to take it for what it's worth.
1088 Now, will that change? Possibly. But as of now, it seems as though that is what a judge decided
1089 on. The judge tells me I got, I go to jail, I don't have the luxury to say, well, that's just your
1090 opinion, Judge. I'm going to the joint. And it's not until I appeal it or whatever I do to try to get
1091 out, then I have to do it. But I have to go serve time. And it seems as though this is the same
1092 situation. I just don't understand how we can just discard it and to be sort of laissez-faire about it.
1093 That's all. Thank you.

1094

1095 **MAYOR GOODMAN**

1096 Okay. Back to you, Mr. Jerbic. What are we doing on the motion? Do we vote it, or do we hear
1097 on procedure?

1098

1099 **BRAD JERBIC**

1100 Let me, let me break it down. Councilman Crear asked a good question. So let me just play it
1101 straight down the line as your lawyer.

1102

1103 **MAYOR GOODMAN**

1104 And mic, microphone right to your mouth.

1105

1106 **BRAD JERBIC**

1107 Okay. Let me play it straight down the line as your lawyer. There is a disagreement as to what
1108 the law means. I will tell you that what I think it means, and there's, there are people that
1109 disagree, and the Councilman disagrees. And there are areas where we totally agree. So let me
1110 tell you where we, what I think the law says and why I think the GPA has been requested and not
1111 required.

1112 I don't have a doubt that the law says if you come in with a new request for zoning that's
1113 inconsistent with a General Plan, you have to mandatorily require a GPA. Correct, staff? They're

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1114 nodding yes. The law does not require a General Plan Amendment when the zoning is already in
1115 place and you're not requesting a change in the zoning.

1116

1117 **MAYOR GOODMAN**

1118 Correct.

1119

1120 **BRAD JERBIC**

1121 In this case, this is where we go down the rabbit hole a little bit. But this is legally the facts. The
1122 applicant believes R-PD means, R-PD7 means one thing, the Councilman believes it means
1123 another thing. The people in the litigation believe it means another thing. The only thing we have
1124 ever said is that it means zero to 7.49 units per acre, and he's got a right to ask for things on it.
1125 That could be zero. That could be 7.49 or something in between. But because the zoning is in
1126 place, whatever it means, and the zoning occurred before the PR-OS applied to the property,
1127 there's not a provision or a code that makes it mandatory he file for a GPA. But staff has
1128 requested it because we always want our General Plan to be synchronized with the zoning.
1129 Now, that may sound like a bunch of mumbo jumbo, but I think that's accurate. Staff, is that your
1130 position?

1131

1132 **ROBERT SUMMERFIELD**

1133 Madam Mayor, through you, yes, that is staff's position with regard to the General Plan
1134 Amendment, right.

1135

1136 **BRAD JERBIC**

1137 So there is, there's a disagreement with staff over that. That's up to you to decide. You're always
1138 allowed to disagree with your staff. You do all the time. It doesn't matter if it's Badlands. How
1139 many people come in here for a Variance? Staff recommends denial, you give approval. So this
1140 is nothing personal. This is a policy call where you can inject your personal belief as to what our
1141 policy should be in spite of what we tell you the written letter of the law is.
1142 If you decide that this General Plan Amendment is required, and you're entitled to say that, and

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1143 you can say it because you believe the law reads differently than I read it or you can say it's
1144 required just cause it's good policy to require it.

1145

1146 **COUNCILMAN SEROKA**

1147 Could I say something on regard to that? And - you'll agree in our meeting last Tuesday, what we
1148 did agree on was that this was R-PD7 with, and you refer to the plan when you have an R,
1149 Residential Planned Development District is what that word is per our Code, is that in that
1150 particular case of the Parcel 5, the Badlands drainage golf course area, was that there are zero
1151 entitlements currently. So way it sounds currently is there are zero, so you have to change that if
1152 you want to do any development on that golf course as it's designated. Further, I have the chart
1153 here that says master plan land use designations, and when it's PR-OS, you have no entitlements
1154 as well. So you do have to change, you don't have the zoning as it stands. You can get it, but you
1155 don't have it as it stands. There's zero.

1156

1157 **BRAD JERBIC**

1158 I'll address that too. I am not a planner. I don't have access to the Panning computers. But the
1159 applicant came to the Planning Department years ago and said, What is the zoning for this
1160 property that we call the Badlands Country Club? And they gave him a letter saying it's R-PD7. I
1161 have seen no evidence that they are wrong in what they gave him. And - staff, have you looked
1162 at that again to see if the letter that you gave is incorrect?

1163

1164 **ROBERT SUMMERFIELD**

1165 Madam Mayor, through you, again, in all of our review of the zoning atlas, the zoning for the
1166 subject sites that are on the agenda today is R-PD7.

1167

1168 **MAYOR GOODMAN**

1169 Thank you.

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1170 **BRAD JERBIC**

1171 As a lawyer, I'm limited to the facts my client gives me. I can't make up the facts, I can't change
1172 the facts. The fact that they've given me, from then until now, says it's R-PD7, which is zero to
1173 7.49. What the Councilman just said is correct. It was treated as zero.
1174 The - General Plan, which was changed after the zoning was in place, said zero. PR-OS is zero.
1175 So staff - believes that you should, for good policy reasons, require a General Plan Amendment,
1176 and you should synchronize the General Plan with the zoning if that's what you want. So that's
1177 why it's on the agenda. Now, if – you, if you want to know the next part of it, is it redundant or
1178 overly, it overlaps too much with the previous application; staff doesn't believe it does. You can
1179 disagree with staff. You could ask them, What did the previous application have in it, and then
1180 what does the current application have in it? And then look for yourself like it's a Venn diagram.
1181 Are they, are they too much overlap there? And if you think there is, disagree with staff.

1182

1183 **COUNCILMAN SEROKA**

1184 What I heard staff say in that case is they believe, since it was requested and not required, the
1185 General Plan Amendment, that this didn't apply. However, I believe we've shown that the
1186 General Plan Amendment is required to move forward per Nevada State law and our City law.
1187 So that's where the City planners seem to disagree.

1188

1189 **TOM PERRIGO**

1190 Your - Honor, if I might, Tom Perrigo-

1191

1192 **MAYOR GOODMAN**

1193 Okay.

1194

1195 **TOM PERRIGO**

1196 -for the record. Yeah. So let - me try to see if I can hopefully clarify just a little bit. In, on June
1197 21st, 2017, Council denied an application for a General Plan Amendment for property that, for
1198 an area that covered the exact same area you're considering today, so the GPA areas are

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1199 consistent. That application was to go from PR-OS to L, Low Density Residential. That was
1200 denied.
1201 So the question of whether or not they're similar areas, within a year, it's clear that they are. The
1202 question, and I'll let Mr. Summerfield correct me if I'm not saying this accurately, the question is
1203 whether or not that GPA would be a required application with the Waiver, the Site Plan, and the
1204 Tentative Map. Staff's opinion is that, per statute and our Code, a GPA is not required with a Site
1205 Plan. It is clear in the Code that the desire is for the zoning to be consistent and the Site Plan and
1206 Tentative Map and the zoning to be consistent with the General Plan, but, in this case, is not
1207 required. Since it's not required, the applicant did not submit it. Staff requested it be submitted,
1208 but because it's not required, as Mr. Summerfield has said, they didn't apply the test as to
1209 whether or not it was a similar GPA for similar property within a year. It clearly is. The only
1210 question, I think, is whether or not you feel it should be required rather than requested.

1211

1212 **COUNCILMAN SEROKA**

1213 If I could mention, I will quote right out of our Code, These - items shall be consistent with the
1214 spirit and intent of the General Plan, 19.16.10. And before that, it says the City Council will, it is
1215 the intent of City Council that all decisions made pursuant to this Title be consistent with the
1216 General Plan. So the General Plan has to be consistent with what you're asking, it's not an option,
1217 it's not a request, it's a requirement. And that is our own City Code, Title 19, our own law. And
1218 that's not even specifying further the State law that says the (sic), essentially the same thing. So it
1219 appears that a General Plan is required-

1220

1221 **MAYOR GOODMAN**

1222 Can you read that again, if you would, because it doesn't say, I think you read it said is the intent,
1223 not it is required. So could you read that a little slower for me please?

1224

1225 **COUNCILMAN SEROKA**

1226 The intent of the City Council-

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1227 **MAYOR GOODMAN**

1228 Yes.

1229

1230 **COUNCILMAN SEROKA**

1231 -so what the City, in this law it says what we're trying to do here is that all decisions this body
1232 make be consistent with the General Plan. So it's our intent to be consistent. And then after that,
1233 it says it shall be, not could be, may be, would be, we'd like it to be; it says it shall be consistent
1234 with the spirit and intent of the General Plan. And the items that we're considering here are listed
1235 by Title, unless specified otherwise, which means it would have to say it doesn't apply here. So
1236 even if it doesn't say it further down in the document, which it does anyway, it says it shall be
1237 consistent with the General Plan. So if it's not consistent, you must amend the General Plan. You
1238 must have a GPA. It's not a request, it's a requirement to adjust the General Plan.
1239 Same with our State law. So we - have multiple cases and Supreme Court cases that say that. So
1240 it is a requirement that we have a General Plan Amendment. It is the case, as we've stated, with
1241 our City Manager for Planning, Deputy City Manager for Planning saying it's the same parcel
1242 and it is a greater use, more intense use from a previously denied application. I think we covered
1243 all the tests.

1244

1245 **MAYOR GOODMAN**

1246 Okay, back to you, Mr. Jerbic. At this point, there's a motion on the floor. Do we vote for the
1247 (sic) or vote for or against the motion and then go to the procedural commentary from applicant
1248 and/or others? Or do we hear first on the procedures?

1249

1250 **BRAD JERBIC**

1251 Again -, it's my recommendation that you limit this part of the discussion to procedure only, but
1252 you give the applicant and anybody else who wants to speak on the procedural issues only an
1253 opportunity to talk.

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1254 **MAYOR GOODMAN**

1255 And therefore, I'm going to ask you when it gets sliding off the procedural piece to make
1256 comment.

1257

1258 **BRAD JERBIC**

1259 We'll stop anybody who goes off the procedural piece of this discussion.

1260

1261 **MAYOR GOODMAN**

1262 Okay.

1263

1264 **STEPHANIE ALLEN** Good afternoon, Your Honor, members of the Council, Stephanie Allen,
1265 1980 Festival Plaza, here on behalf of the applicant. We appreciate the opportunity to at least
1266 address the procedural issues.

1267 From our perspective, the City creates the rules. You have your Code, you have your rules.

1268 We're trying to play within those rules, and I feel like it's been years of us trying to play within
1269 those rules, and the rules keep changing. The goal line keeps moving.

1270 We've had multiple applications, and they've changed throughout the course of the last three

1271 years, mostly at the direction of City staff or - this Council. So we've made adjustments and

1272 changes, but those have all been at the request of City, which we've been trying to play within
1273 the rules.

1274 In this particular instance, it's again the same thing. The development agreement was a few years
1275 ago. There was huge outcry over the development agreement, and that was denied. So we had to
1276 start over with the, with the applications that are before you today. We had those applications.

1277 We've had them in the system. Until today, we haven't heard that this was an issue or that you
1278 wanted to strike them from the agenda. You abeyed them three months ago, specifically because
1279 you said this was such an important vote that you wanted Councilman Crear to be here.

1280 I met with Councilman Seroka and counsel a couple days ago and all of you, actually. Never

1281 once was there a request that we, or even a mention that these issues needed to be addressed

1282 today. So this is a surprise to us, and I feel like the rules (sic) continue to change. The procedural

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1283 rules continue to change, and we're constantly trying to come up with our arguments at the dais
1284 just so that we can have some due process and have a public hearing.
1285 So to address the two points that he has raised today, that I was unaware of, the GPA, State law
1286 is very clear in 278A that zoning takes precedent over a General Plan. It's in 278A in the
1287 Tentative Maps - statute-

1288

1289 **COUNCILMAN COFFIN**

1290 Your Honor, I, I've got to-

1291

1292 **MAYOR GOODMAN**

1293 No, no, no, let - her finish, please.

1294

1295 **STEPHANIE ALLEN**

1296 -and state law-

1297

1298 **COUNCILMAN COFFIN**

1299 Well, I, she can finish. I'm just trying to be polite here. What I'm saying is though we have to be
1300 careful not to move into the issue. The question should be, Has the attorney made the right
1301 interpretation in your opinion, or is the Councilman's motion out of order, in your opinion? That,
1302 that's got to be pretty much what I think we have agreed to, or we will fight the whole battle for
1303 another six or eight hours.

1304

1305 **MAYOR GOODMAN**

1306 Please continue.

1307

1308 **STEPHANIE ALLEN**

1309 Through you, Your Honor, procedurally, the issues that he's brought up, I have to start with the
1310 statute cause that's the way that law works, and I know the Councilman's quoting all kinds of
1311 statutes and - case law that I'm not aware of and haven't had an opportunity to look at. But I'm

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1312 happy to look at those cases. But I can tell you zoning law, under 278A.349 says that zoning
1313 takes precedent over a General Plan. And this particular property has R-PD zoning. Before this
1314 applicant bought the property, we came to the City and asked for a zoning opinion letter, and that
1315 zoning opinion letter says we're allowed up to 7.49 units to the acre. That's where we started.
1316 That was the first rule of the game. Do we have zoning, and if so, what can we do under that
1317 zoning? Up to 7.49. So that was the first play we made before he even closed on this land. Then
1318 we start submitting applications, and they have changed significantly over the course of the last
1319 three years. And the opposition has done a great job of playing within those rules and
1320 maneuvering and having procedural games, if you will. Sorry for lack of a - better word, but they
1321 seem like games to us from our perspective.

1322 The GPA is in your Staff Report right now and says that that is not required, and your Code says
1323 that it is not required. It is, it is, it shall be considered to be in the spirit, and the reason that
1324 language is in there, when you come in with a zone change, your staff requires us to submit a
1325 GPA because, of course, you cannot come in with a zone change until you have a General Plan
1326 that matches that. In this case, the zoning's in place, and the General Plan is not consistent. So
1327 your staff has said time and time again, your City Attorney has said time and time again, it's not
1328 required because the reality is if you deny the GPA, we still have zoning on the property. We
1329 have R-PD7 zoning.

1330 So, today, to strike it from the agenda is just another delay tactic to put us back to the beginning,
1331 to probably put us under the ordinance that passed just a few hours ago, and to create this
1332 additional bureaucratic layer of things that we have to comply with, rules that continue to
1333 change, that are trying to prohibit the development of this property. At least that's the way it
1334 feels from our perspective, from our procedural perspective.

1335 Every property owner in the City has a right to due process. Whether you like the applications or
1336 not, they have a right to bring applications forward. Your staff accepted those applications, and
1337 by the way, it's a fine staff, they know what they're doing. They've done this for years and years
1338 and years. They have Staff Reports that are consistent with exactly this type of situation, where
1339 they have made these type of recommendations. They accepted it back in 2007. They asked us to
1340 file a GPA amendment. So, again, a rule they're asking us to comply with. We said we don't

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1341 think we need a GPA. They said file it even if it's under protest. So, again, trying to play within
1342 the rules, we file the GPA request under protest for a different designation; the first one was
1343 Low, this is Medium Low. On a different portion of the property. There's been a GPA on the
1344 corner, there's been a GPA on a portion of this property, and this is the first one that's been
1345 submitted under Medium Low.

1346 We complied. We did as your staff asked. And in fact, even though it was under protest, we said
1347 okay, we held the application. We took more delay, more time just so that we could comply with
1348 your staff's request. We'd like a hearing on that.

1349 As far as the Major Modification, which is the second point. Judge Crockett's ruling is one -
1350 judge, and I'd argue that this Council, and there's State law to support this, has the authority to
1351 interpret your own laws, and you cannot, your judgment cannot be superseded or substituted by
1352 any judge, not the Supreme Court, not Judge Crockett. No judge can step in your shoes and make
1353 a judgment call that supersedes your decision. It's against the law. It would eliminate the reason
1354 for you all to be up here, to even have your leadership in the spots you're in if any judge could
1355 come in and say, I think that they did that wrong, and they should, we should substitute this and
1356 do it differently.

1357 So Judge Crockett's ruling, at that hearing, your attorney, again these are the rules we're playing
1358 by, your attorney argued that there is no Major Modification required. I have the transcript, and
1359 I'm happy to submit it for the record. But this is Mr. Burns, who did a nice job at the hearing,
1360 said the Court's entire finding is based upon the premise that the Major Mod, under 19.10.040,
1361 applies to this property, and it doesn't. He says that in the hearing. And then this Council decides
1362 to not appeal that determination. So he argues no Major Mod is required. We argue no Major
1363 Mod is required. We come to you and say, Can you, this is the only application you've approved,
1364 by the way, it's the corner, the 435 units at the corner, the only application that this Council has
1365 approved. We go to court on the hearing. Your attorney does a fine job of arguing it. We argue it.
1366 The judge rules differently, and then we come to you to ask that it be appealed, and you all say,
1367 No, we're not gonna appeal that decision. And then you turn around and you're gonna say we
1368 need to do a Major Mod. I mean, it's - amazing. We either, we've gotta decide which direction
1369 we're going. We'd ask for this Council's leadership to please give us the rules, we'll play by the

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1370 rules, and - let us move forward and give us a hearing under those rules, rather than continuing to
1371 change things and put blockades in front of this particular applicant.
1372 All he wants to do is develop. If you wanna say no, you have that discretion. Give us a public
1373 hearing and allow us the opportunity to make our case and have the due process, and then the
1374 courts will weigh in. But you all have the authority and the discretion to interpret your Code and
1375 to use your judgment as to whether this development is appropriate or not. So we would very
1376 much appreciate a hearing today.

1377

1378 **MAYOR GOODMAN**

1379 Thank you, thank you.

1380

1381 **MARK HUTCHISON**

1382 Mayor, thank you. City Council members, thank you for the opportunity to appear before you.
1383 I'm Mark Hutchison, appearing in my private capacity as counsel for the applicant. Just wanted
1384 to just make one clarification with Ms. Allen's point on the GPA. The - statute is NRS 278.349. I
1385 just want to make sure that was - clear on the record.
1386 On the Major Modification point raised by Councilman Seroka, you've heard repeatedly and, in
1387 fact, there's been findings judicially that the property that's the subject of these tentative maps is
1388 zoned R-PD7. It was established back in 2001, by Ordinance 5353, which was unconditional and
1389 all prior ordinances in conflict with the zoning were - repealed. Under those terms, the Peccole
1390 Ranch Master Plan, adopted in 1990, has no application to the property or to the tentative map.
1391 Initially, it was repealed by the 2001 Ordinance No. 5353, which I'm happy, again, to - submit
1392 for purpose of the record.
1393 But let me turn now to what was discussed extensively about Judge Crockett. First off, you're
1394 wading into an area of law that is - not simple. You want to say Judge Crockett's decision applies
1395 to every single parcel that's out there with the Badlands Golf Course or every application from
1396 my, from my client. That is vehemently opposed legally by my client as a matter of law. You
1397 need to understand that Judge Crockett's decision did not involve this applicant, did not involve
1398 this applicant. It did not involve this application, did not involve the property subject to this

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1399 application. It involved the 535 units, as you've already heard and as your staff has already
1400 indicated to you. And so the idea that Judge Crockett's opinion applies across all the properties is
1401 hotly disputed and is a legal question not for this Council.

1402 Secondly, I'm a little concerned that if you were briefed extensively on the Judge Crockett
1403 decision, why you were not equally briefed on the Judge Smith decision. Maybe you were. If you
1404 weren't, I'd like to submit this for the record. Judge Smith held a extensive evidentiary hearing,
1405 multiple days, involving the actual applicant of 180 Land. And he ruled just the opposite of
1406 Judge Crockett and said the golf course land and the land was developable. And so I would like
1407 to have the City Council briefed on this case. And I'm not sure why you weren't briefed on this
1408 case. Two different opinions, two different conclusions, but this Council ought to make its own
1409 decision, ought to make its own (sic) conclusion.

1410 And Mayor, you asked a fair question in terms of why not let the Supreme Court sort all this out.
1411 And - Brad, you can, you can back me up and Todd or whoever else is here as - counsel. You're
1412 not talking months for the, for the Nevada Supreme Court, you're talking years.

1413 And - your City Attorney is absolutely right. My client is entitled to due process. Two and a half
1414 years has already passed. Another three years or two years for the State of Nevada, the - Nevada
1415 Supreme Court to rule, that's not due process. That's not equal protection under the law. You
1416 might as well just concede the inverse condemnation. There's been so much delay, so much
1417 delay. And I know you cringe about that a little bit up there. I would too if I were in your
1418 position, but that's what happens. You can't keep kicking the can down the road. Eventually, the
1419 courts say it's futile to - be before this body. You're just gonna keep continuing it. You're just
1420 gonna keep delaying it. And that's what we saw, I think, with this motion now. We were here in
1421 February, and it was very clear, come back in May. We want to make sure we've got a full City
1422 Council, super important issues being decided. The first thing out of, out of anybody's mouth is
1423 let's delay this more. This is, we're – if we're not already there, we're quickly approaching the
1424 point where it's just futile to be before the City Council. If you don't want this property
1425 developed, condemn it and pay for it, because that's where it's headed, and it seems like the
1426 continued delay takes us in that direction.

1427 So I'll just ask the Council to consider both opinions, because you've got two different judges.

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1428 One of them actually had this applicant before him in making the decision. Judge Crockett didn't.
1429 And this property wasn't before Judge Crockett either and neither was this, neither was this
1430 application. So I would just ask, if you would, please to let us proceed with this application. If
1431 you're gonna deny it, you're gonna deny it. If you're gonna grant it, you're gonna grant it. But
1432 don't abate [sic] it. Don't dismiss it. Don't strike it. My client's entitled to a decision from this
1433 body.

1434 Thank you very much, Your Honor. Thank you very much to the City Council.

1435

1436 **MAYOR GOODMAN**

1437 Thank you.

1438

1439 **ELIZABETH GHANEM HAM**

1440 Good afternoon. Elizabeth Ghanem Ham, on behalf of the applicant. I just wanna clarify one
1441 other thing because I have been involved with the hearing since I've joined this applicant as in-
1442 house counsel. And having heard your decision on the appeal was - a few things, and that is that
1443 staff and Mr. Jerbic aptly reported to this Council that Judge Crockett's decision was legally
1444 improper. Told you all that, and - that's on the record. In doing so, you decided that the reason
1445 you wouldn't appeal it, the sole reason you wouldn't appeal it, at least it was Mr. Seroka,
1446 Councilman Seroka's position, excuse me, that the basis was that you didn't want to spend the
1447 resources on it, although we believe you have proper City attorneys that could have and should
1448 have been appealing it. So I just want to make clear that your own staff and your own counsel
1449 told you at the time it was a legally improper decision. And that's all I wanted to add to it. Thank
1450 you.

1451

1452 **MAYOR GOODMAN**

1453 Thank you.

1454

1455 **MICHAEL BUCKLEY**

1456 Madam, Mayor, members of the Council, Michael Buckley, on behalf of the homeowners. I -

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1457 think there's really a couple of things that are very simple here that - get obfuscated in - the
1458 process. This property has a GPA designation of PR-OS. That's a fact, that's - a fact. It's been
1459 there.

1460 The applicant filed last year to a, for a General Plan Amendment to Low. That was denied on
1461 June 21st. They have now filed a GPA for Medium Low. That is a less intense use. Under the
1462 Code, an application for a General Plan Amendment for a parcel in which all or any part was the
1463 subject of a previous General Plan Amendment application for the same land use category or a
1464 less restrictive land use category shall not be accepted until the year has passed. So it is PR-OS.
1465 Whatever the City staff has determined, that is a fact, it's PR-OS and this is a GPA to a less
1466 intense use, or excuse me, a more intense use. That's as far as the GPA. So this GPA should not
1467 have been accepted until after June 21st.

1468 With regard to the Major Modification and Judge Crockett's ruling, there's the statement that the
1469 rules have changed. Well, the applicant has known since Judge Crockett made his ruling that a
1470 Major Modification is required. A Major Modification could have been filed along with the
1471 GPA. There's - no reason why that couldn't have been filed.

1472 But the - City and - regarding Judge Smith's lawsuit, the City is a party. The City is bound, I
1473 think Councilman Seroka, Councilman Crear, Councilman Anthony recognize the Judge ruled.
1474 The - order is not stayed. The City is bound by that order. If the, if the City processes this
1475 without a Major Modification, the City is opening itself up to some kind of a motion by the other
1476 side for contempt of the, of the order. I mean the - City is bound by the order.

1477 So I think it's really pretty simple. And I think one thing I think it's - important to remember too,
1478 Judge Crockett didn't invent the Major Modification. He went back and he said this is what your
1479 staff, when you first filed this application, back in the end of 2015, the staff said this is part of
1480 Peccole Ranch Phase 2 Master Plan, you need a Major Modification. That - that's what Judge
1481 Crockett ruled, that was what the staff ruled, the, so the judge didn't invent this. The judge came
1482 and -supported what your staff had originally stated was the case. So, and - as far as whether the
1483 435 is bound by this or not, the Judge ruling applies to Peccole Ranch Phase 2, it applies to all of
1484 it. So two things, this is PR-OS. It needs a GPA before you can build residential on it, and the
1485 City is bound by the Major Modification according to Judge Crockett. Thank you.

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1486 **MAYOR GOODMAN**

1487 Thank you.

1488

1489 **FRANK SCHRECK**

1490 Madam Mayor, members of the City Council, Frank Schreck, 9824 Winter Palace Drive. Just a
1491 couple things I want to touch on and they're purely procedural. We've gone over this a lot of
1492 times, so I'm just gonna touch the highlights.

1493 Mr. Jerbic for two and a half years has now said that there's hard-zoned R-PD7 on the golf
1494 course. There isn't. Have him show you where it is actually zoned. The letter from December of
1495 2014 was from a level one staffer that said exactly what it was, that Peccole Ranch was an
1496 R-PD7, and then it explained what an R-PD was. It's a development that you could have mixed
1497 residential uses, open space, golf courses, recreational things. It's not a zoning letter. It was never
1498 intended to be a zoning letter.

1499 The City did issue a zoning letter in 1990 after it had its hearings on the zoning. And that zoning
1500 letter said under the R-PD7 district. Now that's what that letter says. It talks about a district, and
1501 the district was 996 acres of Peccole Ranch Phase 2. That's what it was. There's not each acre
1502 zoned seven. Mr. Jerbic would like you to believe that it's R-7. It's not. It's R-PD7. The seven
1503 was picked by the developer as a number, because he wanted to multiple the seven times 996
1504 acres because that's what the ordinance says. It says you take your entire district, you select a
1505 number. Canyon Gate was four, I think Painted Desert is nine, I think Silverton is three. They
1506 pick whatever number they want, and they multiply it times the gross acres in that district to
1507 come out with the maximum number of residential units you can have within that whole district.
1508 That's exactly the process that was filed. They got a number. The developer gave up in front of
1509 the City Council, when he got his approval of the master plan and specific zoning, he gave up
1510 2,200 of them and asked for 4,247, and that's been the number of residential units for the last 25
1511 plus years.

1512 Okay. So it is, that is in the zoning letter. The only zoning, final zoning letter that's came out was
1513 the letter that came out in 1990 from the City, because what the City said in - your minutes, that's
1514 all you have to look at, the City said with the applications for the developer that here's what the

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1515 developer wants, and they're listed there. Here are the uses. They listed 401 acres of single-
1516 family, 60 acres of multi-family, 211 acres of drainage.
1517 Then they go to what the zoning is gonna be. The 401 will be 401 acres of R-PD7 hard zone.
1518 That's the hard zone, 401 acres. It's off the golf course. If the whole thing was R-PD7 hard
1519 zoned, why would you have to come in and ask for 401 acres to be hard-zoned R-PD7? You
1520 don't. So they did 401 acres of R-PD7. They multiplied seven times the 401. They took 60 acres
1521 of R-3, which is 24 to an acre. They multiplied that. They got the total of 4,247 and that's what
1522 they asked for and that's what they received and that's what the letter says. The only specific
1523 residential zoning ever until you zoned the 435 in 2016-

1524

1525 **COUNCILWOMAN FIORE**

1526 So, Mr. Schreck, since I'm new-

1527

1528 **FRANK SCHRECK**

1529 -but can - I just finish?

1530

1531 **COUNCILWOMAN FIORE**

1532 Yeah, I just wanna be crystal clear I heard you right.

1533

1534 **FRANK SCHRECK**

1535 Sure. Okay.

1536

1537 **COUNCILWOMAN FIORE**

1538 You're basically telling us and the Council that our legal counsel is wrong. Is that-

1539

1540 **FRANK SCHRECK**

1541 Absolutely, 100 percent, and we've said that for two and a half years.

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1542 **COUNCILWOMAN FIORE**

1543 I just had to clarify that you are basically saying our legal counsel is wrong. Okay, thank you.

1544

1545 **FRANK SCHRECK**

1546 I've said that for two and a half years.

1547

1548 **COUNCILWOMAN FIORE**

1549 Thank you, Mr. Schreck.

1550

1551 **FRANK SCHRECK**

1552 And we've submitted briefs on it. We've submitted a professor from the University that said the
1553 same thing. We're not just making this up. We've submitted the documents. If you've ever had
1554 the interest in looking at what your zoning was in 1990, you'll see what the City zoned in 1990. It
1555 didn't zone R-PD7 on the whole golf course. The golf course was - drainage and golf course, no
1556 residential on it. And in 1992, the City picked that up when they did their - General Plan in 1992,
1557 and by ordinance, they adopted PR-OS over every master plan community, including the one in
1558 your district or the ones in your district. That PR-OS was done on all of these, not just
1559 Queensridge. And it's been that way since 1992, recognizing what had already been zoned in all
1560 these master plan communities. So it isn't 7.49 per acre or zero to 7.49 per acre. And that's the
1561 key to Judge Crockett's decision. As was mentioned, Judge Crockett took your own Staff
1562 Reports. Ms. Allen says, Your staff is great, look at those reports. Well, you look at those reports
1563 with his first application. Three that he won at 740, and then those were kind of substituted with
1564 four applications after that, which was for 250 acres. And those seven went along together,
1565 which they shouldn't have, but we argued that the four superseded the three, but they kept going
1566 forward.

1567 And within those four applications, the developer recognized he needed a Major Modification.
1568 He had a Major Modification, and we're hearing now that somehow the - GPAs, General Plan
1569 Amendments are somehow, well, you don't need them, maybe you don't. They filed for how
1570 many GPAs over the last two and a half years? If they weren't necessary, why were they filed?

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1571 It's the same thing the court said. Why did all of a sudden the requirement for Major
1572 Modifications just kind of disappear?

1573 And now, according to your staff, the requirement for GPAs suddenly just disappears. There's
1574 never been any zoning, you know, entitlements on that golf course. What your staff said, and it
1575 says really clearly and we provide you all the transcripts, your staff said if you want to put
1576 residential on the golf course, you have to follow two steps. The first step is you have to amend
1577 the Peccole Ranch Master Plan by a Major Modification, according to your ordinance and
1578 according to your staff. And once you do that, then you have to amend your General Plan,
1579 because the General Plan is PR-OS, no residential. So you have to amend that too.

1580 You have to take step one, step two. That's what your staff says over and over again in those
1581 Staff Reports of 2016. Interesting that staffer that wrote those reports, which were actually, you
1582 know, real, we've never seen them again. Somehow the - guy that wrote those is now no longer
1583 writing your reports.

1584 But here is a key that you better take into consideration, and that is the basis of the inverse
1585 condemnation lawsuit against you is that the developer has rights to build on that golf course,
1586 that he has a right to build from zero to 7.49, that Mr. Jerbic has been arguing over and over and
1587 over again. The prophylactic defense you have in inverse condemnation is Judge Crockett's
1588 decision, that thank God you didn't appeal, because Judge Crockett's decision says you need to
1589 have a Major Modification. Which what does that mean? It means you don't have any
1590 entitlements on that golf course. You have no residential on the golf course. So you have to get a
1591 Major Modification to come in and put it on. So you can't take away a right from this developer
1592 that he has never had. And if you look at those inverse condemnation lawsuits, the only people
1593 quoted and the only positions taken are by your staff. And we've said that all along. And Mr.
1594 Jerbic has been wrong for two and a half years and going onto this, and we've showed you not
1595 our opinions, we've showed you, we brought in expert testimony, we brought in all the
1596 documents, we brought in everything to show you just exactly what it was. And if you want to
1597 know, Councilman Fiore, just go look at the 1990 approvals from the City Council. You'll see
1598 what it was zoned.

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1599 **COUNCILWOMAN FIORE**

1600 Thank you, Mr. Schreck. Can I ask my staff if what he is saying is correct?

1601

1602 **ROBERT SUMMERFIELD**

1603 Madam Mayor, through you, he said a lot of things. So I would need to know specifically what
1604 you would like us to verify.

1605

1606 **COUNCILWOMAN FIORE**

1607 Thank you, Robert. So yes, what I'd like to know is as we've been going along this and staff has
1608 been advising Council on the zoning issues on all of this, what Mr. Schreck is saying is that
1609 you've been wrong all along all this time. Can you tell me if you're, is this correct? Do you feel
1610 you're wrong?

1611

1612 **ROBERT SUMMERFIELD**

1613 Again, through you, Madam Mayor, staff's position has been consistent throughout this process.
1614 The development has changed based on the - nature of the discussions that have occurred and the
1615 changes that the applicant has made to their requests. Therefore, our analysis has changed based
1616 on those different circumstances, depending on the size of the project, the nature of the
1617 applications that were requested. But the overall analysis has stayed consistent, in my opinion, as
1618 the current Director of Planning, and I do not believe that we are incorrect.

1619

1620 **COUNCILWOMAN FIORE**

1621 Thank you. And Mr. Jerbic?

1622

1623 **BRAD JERBIC**

1624 I - will say one thing. One, I'm not gonna get involved in the politics of this. I'm just trying to
1625 give you the law. But if the law were as simple as Mr. Schreck says it is, he would have done us
1626 a big favor and won this in court three years ago. Because if - we were wrong and I was wrong
1627 and I've been wrong before and I'll be wrong again, but if I'm wrong on this issue, then I really,

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1628 really wish the opposition had gone to court and won a victory and spared us the agony of this
1629 hearing right now. That did not happen.

1630

1631 **FRANK SCHRECK**

1632 Yeah, it did-

1633

1634 **BRAD JERBIC**

1635 That did not happen.

1636

1637 **FRANK SCHRECK**

1638 The first-

1639

1640 **BRAD JERBIC**

1641 And - in spite of what, you know, here's the other thing. We have a saying in my office
1642 sometimes when we get into this kind of a discussion and it's too much college, not enough high
1643 school. Everybody's up here trying to turn this into a legal argument and trying to make an
1644 attorney say something or - do something that isn't the appropriate role for the attorney. My role,
1645 whether you like it or not or Mr. Schreck likes it or not, is to tell you what I think the law is as I
1646 read it. I don't really care one way or the other about the application, or I should put my name on
1647 a ballot and run for City Council.

1648 I'm not the eighth member of this Council. I'm just here to give you legal advice, and sometimes
1649 it's a little murky. Sometimes it's not exactly what you want to hear. But at the end of the day,
1650 this is a little more high school, not so much college, cause all of these legal arguments, as -
1651 stimulating as this debate is, really mean nothing until a court rules on it. If I am wrong, then
1652 Mr. Schreck should take me court and say there's no R-PD7, and therefore, you are, the
1653 developer doesn't have a right to develop. That would make this so much cleaner. That has not
1654 happened. Okay?

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1655 **FRANK SCHRECK**

1656 It has happened. That's the Crockett decision. The first time there was any residential zoned onto
1657 our golf course, we went to court, we had it reviewed, and the gravamen of Judge Crockett's
1658 decision is you need to have a Major Modification. You wouldn't have to have a Major
1659 Modification if there was already entitlements for residential on the golf course. That's what his
1660 decision says.

1661

1662 **BRAD JERBIC**

1663 Let me-

1664

1665 **FRANK SCHRECK**

1666 That's what your Staff Report says, Mr. Jerbic, which you never refer to anymore. Your Staff
1667 Reports make it clear, in – 19 (sic) 2016, that you have to have a Major Modification cause
1668 there's no residential on the golf course. And that's, we waited until we got some ruling against
1669 us, and we did go to court as soon as we could, Mr. Jerbic, and we did get a decision saying and
1670 confirming what we've been saying all along. You just haven't wanted to accept it.

1671

1672 **BRAD JERBIC**

1673 Mr. Schreck, we're not gonna debate, and you are wrong. That is just a flat-out truth. You are
1674 wrong. The Judge said there's a Major Modification. If you get a judge to say there's no R-PD7
1675 out there, I will follow that decision right now, and these applications will be gone.

1676

1677 **FRANK SCHRECK**

1678 It's an R-PD7 district. It's not hard-zoned R-PD7 residential on a golf course.

1679

1680 **BRAD JERBIC**

1681 Well, and I - can also produce a transcript of a Planning Commission meeting from October of
1682 2016, when then Commissioner Crear, when he was Planning Commissioner, asked me on the
1683 record what the R-PD7 meant, and I don't have it with me today, because I didn't anticipate this

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1684 discussion, but I said flat-out it gives the applicant the right to ask. That's it. And I don't want
1685 anybody saying anything more. And he is here asking. That's all this is.
1686 So trying to boil this down to something simple that you can get your arms around before we get
1687 into some massive legal debate here, that means nothing until a court rules. My recommendation
1688 is apply the high school part of our brain, not the college part and ask yourself do you believe
1689 there's substantial overlap between the GPA today and the old one. And if you do, then it's
1690 untimely and he's got to wait another month. If you don't believe there's substantial overlap
1691 between the two of them, then go ahead and move past that procedural issue on to the next one.
1692 The next one is Judge Crockett's decision. If you believe that you should follow that as the law of
1693 the land until the Supreme Court intervenes, that's fine with me. I don't think that's the way
1694 individual judge's decisions are interpreted, but if you want to make it into that, that's fine and
1695 say you require a Major Modification. If you think it is a judge and you wanna wait until the
1696 Supreme Court and you wanna disagree with that judge with all due respect, you can do that too.
1697 That's playing the law right down the line and not playing the politics of it. I know it's not a black
1698 and white answer that makes you happy, but that's the law.

1699

1700 **FRANK SCHRECK**

1701 That - isn't the law. Let - me just finish and I'll sit down.

1702

1703 **COUNCILWOMAN FIORE**

1704 Yeah.

1705

1706 **FRANK SCHRECK**

1707 The law is what Judge Crockett said it is. He interpreted your ordinance differently than
1708 Mr. Jerbic did. You didn't appeal it, so that's the City basically accepting it, and then you didn't
1709 ask for a stay, so it's applicable right now, tonight, as Mr. Buckley said. It applies to you now.

1710

1711 **MAYOR GOODMAN**

1712 Thank you.

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1713 **YOHAN LOWIE**

1714 Okay. Yohan Lowie, property owner for the record. Judge Crockett's order is faulty, because he
1715 bought into the lie and deception and corruption that Frank Schreck had raised in the beginning
1716 with his Peccole Ranch Master Plan. We are simply not a part of Peccole Ranch Master Plan.
1717 Judge Crockett asked your City Attorney in court, are we, if this is a part of Peccole Ranch
1718 Master Plan. And his answer was, it's very complicated, because God forbid the City will take
1719 the position that right now, after all this mess, it's not a part of Peccole Ranch, it is not a part of
1720 Peccole Ranch Master Plan.
1721 So let me just clue you in on this. Peccole Ranch Master Plan was two pieces of paper. One
1722 action was 17 pages conceptual Peccole Ranch Master Plan. The next page was a drawing that
1723 shows requested zoning. The Peccole Ranch Master Plan has zoning only categories for R-PD7,
1724 R-3 and C-1. And he talks about is a conceptual master plan that it, it's a trend. And it is these
1725 trends that becomes the basis of the plan that will be maintain - flexibility to accommodate future
1726 market changes, which mean they can change zoning and densities any way they want to.
1727 Furthermore, this Peccole Ranch Master Plan is governed, has to be governed under this
1728 document by CC&R they're applying to the property. So we, when we purchase a property, we
1729 research it with this body here, with your staff for six months about all the history of this piece of
1730 property. Not one time anybody mention Peccole Ranch, because it's not recorded on the
1731 property because it's expired. By its own term here, the second action, the zoning action was
1732 under resolution of intent and expired in 1995. Peccole - Ranch Master Plan does not apply.
1733 And then - I went, we went when - they raised it in litigation. A few months after we purchased
1734 the property, they raise, oh, Peccole Ranch Phase 2 applies to the property. When you look at the
1735 documents for Peccole Ranch Master Plan, which is out of [inaudible], it says specifically within
1736 the documents that if Phase 2 is not annexed into Phase 1, the public area and all public spaces
1737 annexed into Phase 1, including a future maybe golf course annexed into Phase 1, is not a part of
1738 Peccole Ranch.
1739 Peccoles had a lawsuit with Triple Five and had stopped the – partner, partnership with Triple
1740 Five in late '95 and in '96 have created a new master plan called Queensridge. The master plan
1741 community of Queensridge does not include any portion of the golf course, except the nine

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1742 holes, almost 100 acres that in this bogus Peccole Ranch Master Plan that somehow we're trying
1743 to apply to this piece of property show the property as R-PD7. So there is large area of the golf
1744 course today, of the old golf course that is developable property today, is developable under the
1745 original Peccole Ranch if it was to apply.

1746 Judge Crockett, it was never in front of Judge Crockett if the master plan applies to this piece of
1747 property. He would have to find out that it's not. It could not. It possibly cannot, because
1748 somebody has to get a notice. And to sit here and discuss here and in court Peccole Ranch
1749 Master Plan, we have to put an end to this, and we're going with another inverse condemnation
1750 based on that. So there'll be new lawsuits filed, you know, after the ordinance that just passed,
1751 and some more lawsuits will be filed after these applications will be heard if they don't pass. We
1752 are not a part of Peccole Ranch Master Plan, so, therefore, Major Mod cannot be required.

1753 Now, let's talk about this PR-OS. The old PR-OS that is installed on this piece of property took
1754 all the units off from 7.5 units per acre to zero. It's an illegal action, admitted by City Attorney
1755 and staff. You don't have one document to show how you had a notice to the public. Few days
1756 after legal notice meeting, some staffer runs in and changed the designation, changed the color of
1757 the golf course in 2005 into green.

1758 What you heard today that, in 1992, this piece of property was PR-OS, it's an absolute lie. It
1759 could not be because the property was not identified. So I saw something from the staff now,
1760 changing the position and saying, oh, in '92, we did the blob. Maybe your house was in the
1761 PR-OS, maybe somebody else. We gonna go on every blob and every piece of property going to
1762 come from development, we're gonna file a suit under your ordinance that it is within this blob of
1763 this PR-OS. It should be. It's not, but it should be.

1764 So the ordinance that you just passed is - so cumbersome and involves so many properties. I
1765 know you tried to target, and it's only targeting my property, the Badlands. But you know, for
1766 Councilman Seroke, all you've done here and all this dishonesty, when we accept this dishonesty,
1767 it leads to criminality. Sometimes it's in the form of corruption, and sometimes is in the form of
1768 government abuse, and in this case, it's both. Thank you.

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1769 **MARK HUTCHISON**

1770 Your Honor, I'm - sorry to come up a second time. I neglected to just ask that these documents
1771 be submitted for the record. I'm - sorry when I was up here.

1772

1773 **MAYOR GOODMAN**

1774 Please.

1775

1776 **MARK HUTCHISON**

1777 And what they are, Your Honor, they just go to, again, the procedural issue and what Mr. Jerbic
1778 was - addressing. It's the Notice of Decision of the State Board of Equalization as well as three
1779 different determinations by the Clark County Assessor's Office. They determined that, in fact,
1780 the land that we're talking about ceased to be used by a golf course on December 1, 2016. It no
1781 longer falls within the definition of open space real property and is no longer deemed to be used
1782 as open space for tax purposes. Further, the land has been converted to a higher use.

1783 The Nevada State Board of Equalization approved that, Your Honor, and as a result, my clients
1784 have paid over \$1.2 million in taxes, not based on PR-OS, but based on 233 acres vacant multi-
1785 family residential, excuse me, vacant single-family residential. Another 17 acres vacant multi-
1786 family residential. General Commercial on 2.37. My client is paying taxes not on PR-OS, but on
1787 residential and commercial designations, Your Honor. That's according to the State of Nevada
1788 and Clark County. Thank you.

1789

1790 **BRAD JERBIC**

1791 I -, I'm gonna jump in here.

1792

1793 **MAYOR GOODMAN**

1794 Is that submitted?

1795

1796 **BRAD JERBIC**

1797 The - two arguments that were on the floor right now, and I asked everybody to contain

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1798 themselves to, are the argument about the GPA, whether or not it's duplicitous, and that's a
1799 procedural part of the Councilman's motion, and whether or not a Major Modification should be
1800 required. The, it's beginning to squirt now into PR-OS and all this other stuff. If - the people at
1801 the podium can contain themselves just to the procedural argument right now, there will be
1802 plenty of time later, if we get past it, to talk if the motion doesn't pass. All right.

1803

1804 **DOUG RANKIN**

1805 Doug Rankin, on behalf of the homeowners in the area. I - will save my part regarding the
1806 zoning ordinance of 2001, if - it does move forward, to discuss what that ordinance did as the
1807 final act of ordinancing all of the properties in Peccole Ranch.

1808

1809 **BRAD JERBIC**

1810 Right. If it does move forward, we'll, you'll absolutely have an opportunity to make that record.

1811

1812 **DOUG RANKIN**

1813 Thank you.

1814

1815 **BOB PECCOLE**

1816 Bob Peccole. I'm a homeowner. I live at 9740 Verlaine Lane. I am an attorney. I've been a
1817 practicing attorney in this state for over 55 years. A couple things I'd like to address.
1818 First of all, Mr. Hutchins (sic) stood up here with the Judge Smith decision and flashed it. I
1819 happen to be the attorney that has appealed that decision to the Nevada Supreme Court. It is now
1820 in a position to be set for hearing. And just like Mr. Jerbic, I feel that I'm correct and it - will be
1821 reversed. It will be set aside. And I challenge Mr. Hutchins (sic) who says that Judge Smith ruled
1822 one way and Judge Crockett ruled the other way. I don't see anything in Judge Smith's decision
1823 talks about Major Modification. And I ask him to present that part of the case to you, instead of
1824 just standing up here and flashing that decision. I've lived with it for almost a year and a half, so
1825 I know what's in that decision.

1826 Another part, I've been a Chief Deputy Attorney General for the State of Nevada. Among my

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1827 clients as a Chief Deputy were some of the top agencies in the State of Nevada that I legally
1828 advised. How about the Athletic Commission, which is the Boxing Commission? How about the
1829 Architectural Board? How about the Racing Commission and many others, including this entire
1830 office of the Attorney General down here in Clark County?
1831 I would be appalled to tell any of my agencies when there is a decision of a court judge telling
1832 me I must recognize a certain point and I must abide by that. That ruling becomes one that is the
1833 law. And if I were to tell my client, oh well, but as a matter of policy, you can ignore it, I would
1834 have the same concerns that Councilman Crear has. Am I going to jail? Yes, you are. I don't
1835 know if any of these attorneys sitting in the public here have ever been involved in those types of
1836 hearings when you're held in contempt.
1837 I've been involved in those, and I know how they work. And it wouldn't take anything if you
1838 were to take Mr. Jerbic's advice and say, well, we can ignore that decision because this is the
1839 way I think it works. Well, you could all end up in jail. And it, and it does happen. And it just
1840 depends on who - pushes that contempt. So you got to keep that in mind. You can't just ignore it
1841 because that isn't the way it works.
1842 Now, that judgment stands solid until it's either stayed by the court or it's reversed by the court.
1843 But until those two things happen, that judgment is solid. Now I, and that's an argument they've
1844 used against me in the Smith case. They've said because you don't have a stay, that judgment is
1845 valid. So what do they do? They take Smith's judgment, sues me and my wife for \$30 million.
1846 That's Mr. Yohan. He's quite the guy.
1847 But in any event, I would just like to say do not ignore the Crockett decision, because you're
1848 going to put yourself in trouble. The other part of it is you might have to take Mr. Jerbic's advice,
1849 you know, like maybe a grain of salt.

1850

1851 **COUNCILMAN SEROKA**

1852 Mayor, I'd like to call the question at this time. I believe we have established that the GPA is
1853 duplicitous and the GPA should not have been accepted, and that I also believe we've established
1854 that the law of the land, as it stands today, is Judge Crockett's decision, which requires a GPA
1855 and a Major, or correction, Judge Crockett's decision requires a Major Modification. And my

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1856 bottom line here is that I expect everyone to follow the Code and the law. If we're following the
1857 Code and the law, we all move forward. If we don't follow the - Code and the law, we have
1858 challenges.

1859 **So I move to strike the 74 through 83 from today's agenda, cause they should not have been**
1860 **accepted in the first place.** I did offer, and a head nod would work just fine, the offer to
1861 withdraw without prejudice your applications if you would like to do that, or not.

1862

1863 **STEPHANIE ALLEN**

1864 Through you, Madam Mayor. No, we would not like to withdraw those. We'd like to have those-
1865

1866 **COUNCILMAN SEROKA**

1867 **Okay. Then my motion stands, Mayor, and I call the question. I call for the vote.**

1868

1869 **MAYOR GOODMAN**

1870 Okay. There's a motion made by Councilman Seroka. And again, I'm gonna ask you, Mr. Jerbic,
1871 if in fact Council members feel that they don't have enough information and clarity on this, they
1872 have the permission to abstain.

1873

1874 **BRAD JERBIC**

1875 They do. I, I've never told anyone up here to vote when you don't feel you have enough
1876 information.

1877

1878 **MAYOR GOODMAN**

1879 But again, you have to reiterate they can't-

1880

1881 **BRAD JERBIC**

1882 I will, I will say this. It's gonna take four votes for the motion to strike to pass. If it doesn't pass
1883 and you've abstained and now we're onto the merits of the application-

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1884 **MAYOR GOODMAN**

1885 You can't come back in.

1886

1887 **BRAD JERBIC**

1888 You're still abstained.

1889

1890 **MAYOR GOODMAN**

1891 Right.

1892

1893 **BRAD JERBIC**

1894 And so it creates a - really, this is a law school question, to be honest with you.

1895

1896 **MAYOR GOODMAN**

1897 Right, and we're not lawyers.

1898

1899 **BRAD JERBIC**

1900 It's just bizarre.

1901

1902 **MAYOR GOODMAN**

1903 But my question is if, let's assume four members or five members abstain because they don't feel

1904 they have enough information and clarity, that's left with two people voting for it.

1905

1906 **BRAD JERBIC**

1907 It takes four people under any circumstances to pass, no matter who abstains.

1908

1909 **MAYOR GOODMAN**

1910 So then the motion dies. The motion at this point would die if in fact if people felt they are, have

1911 not enough clarity, enough information to make a sound judgment.

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1912 **BRAD JERBIC**

1913 That's correct. And by extrapolation, if it died and you went on to the merits, that same
1914 abstention would carry over to that as well.

1915

1916 **MAYOR GOODMAN**

1917 And so as these issues, should it die, and as these issues are discussed item by item, because
1918 someone has abstained, they may not comment on those items as they come back?

1919

1920 **BRAD JERBIC**

1921 It -, It's hard to make an argument that you're not informed enough to vote on a motion for, to
1922 strike, but you are informed enough to vote on the merits of the case. Again, I - think this has
1923 been way overly complicated. They've tried, on both sides, have tried to turn this Council into a
1924 courtroom and -, by doing so, have - tried to make this decision a lot sloppier than it is. Which is-

1925

1926 **MAYOR GOODMAN**

1927 Which is why I said from the beginning let the courts decide. I don't understand why we're put in
1928 this position. There's not a lawyer-

1929

1930 **COUNCILMAN SEROKA**

1931 I believe I called the question to a vote.

1932

1933 **MAYOR GOODMAN**

1934 Excuse me, Councilman. Excuse me. This is something that is a legal issue. I don't know maybe,
1935 you have, and all deference, have done a lot of research in a legal manner. I don't feel confident
1936 in a, in a legal educational background to do other than rely on our staff, to, who are supposed to
1937 not be judgmental and advise us according to how they interpret the law.

1938 Now, the fact that the law has been set down by the District Court, are they and is Judge Crockett
1939 saying you must now address this and do this and change that and ask for a Major Mod on
1940 everything, or is it just a status quo, he's made his ruling and if there are further applications, new

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1941 applications coming in because of his decision, the applicant would have to do it?

1942

1943 **BRAD JERBIC**

1944 Well, the - legal answer is his decision is limited to that set of facts. By extrapolation, if
1945 somebody went there with more lawsuits and said, hey, even though this is a different project, it's
1946 the same argument, you need a Major Modification, I have no doubt that Judge Crockett would
1947 say the same thing about every one of these applications. You don't know if you're gonna get
1948 Judge Crockett, and you don't know what the Supreme Court's gonna do.

1949 So let me just maybe suggest a different approach. There's kind of a cart before the horse thing
1950 here. The applicant gets a decision and then you go to court. You don't go to court and then get
1951 an application. Then we have zoning by judge. The applicant's entitled to a vote, up or down,
1952 and unless you think for procedural reasons he's incomplete in his application and then you make
1953 that record and that's what the Councilman has tried to with his motion on the procedural
1954 grounds, but if you think the procedural grounds are valid, then vote, you know in favor. If you
1955 don't, then move on to the next part of the application, and then let the courts decide.

1956 If - we do it the other around, the courts don't have facts to decide in this case. How does the
1957 applicant get to court on these three applications without you making a decision? You have to
1958 make the decision, or there's nothing, no record for the court to vote on, whether you go for or
1959 against it.

1960 So that's what I'm saying in the procedural motion, I wouldn't overly complicate it and think it's a
1961 big legal decision. I think it's your call to look at your ordinance and say do you think this GPA
1962 is duplicitous and, therefore, you're subject to the one-year timeout, and he's a month too early.
1963 Or two, you think Judge Crockett's decision or your own policy or both require a Major
1964 Modification and he doesn't have one, so he's incomplete. I think it's a pretty simple call.

1965

1966 **MAYOR GOODMAN**

1967 Okay. There's a motion then. Please vote and please post. Councilwoman, Councilwoman your
1968 vote?

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1969 **COUNCILWOMAN FIORE**
1970 It's, look.
1971
1972 **MAYOR GOODMAN**
1973 Oh.
1974
1975 **COUNCILWOMAN FIORE**
1976 My - computer is broken.
1977
1978 **COUNCILMAN CREAR**
1979 Should we withdraw the vote?
1980
1981 **COUNCILWOMAN FIORE**
1982 Should we withdraw the vote?
1983
1984 **COUNCILWOMAN TARKANIAN**
1985 Well, tell her.
1986
1987 **COUNCILMAN COFFIN**
1988 It didn't register the vote.
1989
1990 **COUNCILWOMAN FIORE**
1991 Here. Now it's just left.
1992
1993 **COUNCILMAN COFFIN**
1994 Now it's, now it's voted.
1995
1996 **COUNCILWOMAN FIORE**
1997 No, I didn't (inaudible)

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1998 **MAYOR GOODMAN**

1999 Give her an oral.

2000

2001 **COUNCILWOMAN TARKANIAN**

2002 You can give her your vote orally.

2003

2004 **MAYOR GOODMAN**

2005 I - voted. Give your vote orally.

2006

2007 **COUNCILWOMAN FIORE**

2008 Are you getting it? Nay.

2009

2010 **LUANN D. HOLMES**

2011 Nay?

2012

2013 **COUNCILWOMAN FIORE**

2014 Nay.

2015

2016 **MAYOR GOODMAN**

2017 Okay. The motion passes.

2018

2019 **COUNCILMAN COFFIN**

2020 Post? You gotta post it.

2021

2022 **MAYOR GOODMAN**

2023 And it's posted.

2024

2025 **COUNCILMAN CREAR**

2026 No, hold on. Hold on. It's got the wrong vote for me. It says I hit, I voted nay. I voted yes.

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2027 **LUANN D. HOLMES**

2028 It says you voted nay.

2029

2030 **COUNCILMAN CREAR**

2031 No.

2032

2033 **MAYOR GOODMAN**

2034 Right, he says he votes yes. So he needs the change. It passes anyway.

2035

2036 **COUNCILMAN COFFIN**

2037 It passed.

2038

2039 **COUNCILMAN CREAR**

2040 Then let's record it right. Accurate.

2041

2042 **COUNCILMAN COFFIN**

2043 Wanna revote?

2044

2045 **COUNCILWOMAN TARKANIAN**

2046 He wants a green check.

2047

2048 **COUNCILMAN CREAR**

2049 Where do you do that?

2050

2051 **LUANN D. HOLMES**

2052 So Councilman Crear? For the record, if you'd like us to reflect your vote voted in favor of the

2053 strike, we'll do that for the record.

**CITY COUNCIL MEETING OF
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2054 **COUNCILMAN CREAR**

2055 Great. How does, what's that procedure that, does that happen now? You – show it again, or-
2056

2057 **LUANN D. HOLMES**

2058 No, for the minute record we'll change it to show that orally you want us to reflect that you voted
2059 in favor to strike it.

2060

2061 **COUNCILMAN CREAR**

2062 Yes, I voted in favor to strike it.

2063

2064 **BRAD JERBIC**

2065 For the record, it's a 4-3 vote to strike the item from the agenda, so the item is stricken, and it's
2066 on to the next order of business.

2067

2068 **MAYOR GOODMAN**

2069 Okay.

2070

2071 **COUNCILMAN CREAR**

2072 No, no, no. Hold on, hold on, hold on, hold on, hold on. Point of clarification. It's not a-
2073

2074 **BRAD JERBIC**

2075 5-2, I'm sorry. It's 5-2.

2076

2077 **COUNCILMAN CREAR**

2078 It's not a 4-3 vote.

2079

2080 **BRAD JERBIC**

2081 Yeah, 5-2, I'm sorry. My mistake.

**CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

2082 **MAYOR GOODMAN**

2083 It's 5-2 vote. (The motion to Strike passed with Mayor Goodman and Councilwoman Fiore
2084 **voting No).**

2085

2086 **COUNCILMAN CREAR**

2087 Thank you.