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.

No. 84345

Electronically Filed
Oct 27 2022 02:26 PM
Elizabeth A. Brown
Clerk of Supreme Court

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. 84640

AMENDED
JOINT APPENDIX
VOLUME 17, PART 3 OF 4
(Nos. 3196–3277)

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Exhibit 28

CITY COUNCIL MEETING

JUNE 21, 2017

COMBINED VERBATIM TRANSCRIPT – AGENDA ITEMS 82, 130-134

NOTE: This combined verbatim transcript includes Items 82 and 130 through 134, which were heard in the following order: Items 131-134; Item 130; Item 82.

ITEM 82 - NOT TO BE HEARD BEFORE 3:00 P.M. - Bill No. 2017-27 - For possible action - Adopts that certain development agreement entitled "Development Agreement For The Two Fifty," entered into between the City and 180 Land Co, LLC, et al., pertaining to property generally located at the southwest corner of Alta Drive and Rampart Boulevard. Sponsored by: Councilman Bob Beers

ITEM 130 - NOT TO BE HEARD BEFORE 3:00 P.M. - DIR-70539 - DIRECTOR'S BUSINESS - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Development Agreement between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-201-005; 138-31-601-008; 138-31-702-003 and 004; 138-31-801-002 and 003; 138-32-202-001; and 138-32-301-005 and 007), Ward 2 (Beers) [PRJ-70542]. Staff recommends APPROVAL.

ITEM 131 - NOT TO BE HEARD BEFORE 3:00 P.M. - GPA-68385 - ABEYANCE ITEM - GENERAL PLAN AMENDMENT - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way (APN 138-31-702-002), Ward 2 (Beers) [PRJ-67184]. Staff has NO RECOMMENDATION. The Planning Commission failed to obtain a supermajority vote which is tantamount to DENIAL.

ITEM 132 - NOT TO BE HEARD BEFORE 3:00 P.M. - WVR-68480 - ABEYANCE ITEM - WAIVER RELATED TO GPA-68385 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Waiver TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

ITEM 133 - NOT TO BE HEARD BEFORE 3:00 P.M. - SDR-68481 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO GPA-68385 AND WVR-68480 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

ITEM 134 - NOT TO BE HEARD BEFORE 3:00 P.M. - TMP-68482 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO GPA-68385, WVR-68480 AND SDR-68481 - PARCEL 1 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Tentative Map FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

Appearance List – Items 131-134:

CAROLYN GOODMAN, Mayor
BRAD JERBIC, City Attorney
BOB COFFIN, Councilman
TODD BICE, Legal Counsel for the Queensridge Homeowners
STEPHANIE ALLEN, Legal Counsel for the Applicant
FRANK SCHRECK, Queensridge resident
CHRIS KAEMPFER, Legal Counsel for the Applicant
TOM PERRIGO, Planning Director
GEORGE C. SCOTT WALLACE
LILIAN MANDEL, Fairway Pointe resident
DAN OMERZA, Queensridge resident
TRESSA STEVENS HADDOCK, Queensridge resident
NGAI PINDELL, William S. Boyd School of Law
DOUG RANKIN, 1055 Whitney Ranch Drive
LOIS TARKANIAN, Councilwoman
GEORGE GARCIA, 1055 Whitney Ranch Drive
MICHAEL BUCKLEY, on behalf of Frank and Jill Fertitta Family Trust
STAVROS ANTHONY, Councilman
SHAUNA HUGHES, on behalf of the Queensridge homeowners
HERMAN AHLERS, Queensridge resident
BOB PECCOLE, on behalf of Appellants in the Nevada Supreme Court
DALE ROESSNER, Queensridge resident
ANNE SMITH, Queensridge resident
KARA KELLEY, Queensridge resident
PAUL LARSEN, Queensridge resident
LARRY SADOFF, Queensridge resident
LUCILLE MONGELLI, Queensridge resident

Appearance List continued – Items 131-134:

RICK KOSS, St. Michelle resident

HOWARD PEARLMAN

SALLY JOHNSON-BIGLER, Queensridge resident

DAVID MASON, Queensridge resident

TERRY MURPHY, on behalf of the Frank and Jill Fertitta Trust

ELAINE WENGER-ROESSNER

TALI LOWIE, Queensridge resident

JAMES JIMMERSON, Legal Counsel for the Applicant

YOHAN LOWIE, Applicant/Owner

RICKI BARLOW, Councilman

BOB BEERS, Councilman

Appearance List – Item 130:

CAROLYN GOODMAN, Mayor

BRAD JERBIC, City Attorney

LOIS TARKANIAN, Councilman

CHRIS KAEMPFER, Legal Counsel for the Applicant

YOHAN LOWIE, Applicant/Owner

BOB COFFIN, Councilman

JAMES JIMMERSON, Legal Counsel for the Applicant

STEVEN D. ROSS, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

<u>Appearance List – Item 82:</u>

CAROLYN GOODMAN, Mayor

BRAD JERBIC, City Attorney

CHRIS KAEMPFER, Legal Counsel for the Applicant

STEVEN D. ROSS, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

In the order noted above:

Items 131-134

(7:29:35 – 10:27:00) [2 hours, 58 minutes, 35 seconds]

Item 130

(10:27:00 – 10:48:47) [21 minutes, 47 seconds]

Item 82

(10:48:47 – 10:51:57) [3 minutes, 10 seconds]

Typed by: Speechpad.com

Proofed by: Arlene Coleman

STEPHANIE ALLEN
Your Honor and members of the Council, Stephanie Allen, 1980 Festival Plaza. All of Agenda Items 131 through Agenda Item 134 are all related items that we would like to be heard together if we could.

MAYOR GOODMAN
Okay. All right. So we'll go from that. Okay.

STEPHANIE ALLEN
Okay. So, with that said, we thank you for your consideration today. I echo Chris' sentiments that we very much appreciate Mr. Jerbic's work as well as all of your staff on this and the neighbors that are here tonight. I know I haven't been in all of those meetings. Mr. Jerbic has been. I was in one last night.
And I will say, for the record, there is a possibility of getting this done, I think, in my opinion. And I think if this, if we can move forward, instead of constantly being delayed, and have something to show to the lenders, to this developer, then we've got some good faith going forward that we'll work on the Development Agreement and the holistic plan. And I think we can get there, so we appreciate you considering this first.
So, with that said, if I could have you look at the overhead. There are four applications before you. One is the GPA amendment, and the GPA amendment goes beyond the 34 acres that are before you today. The GPA amendment covers all of the green area here, except for the piece in Section A. And the request is to go from what the City currently has designated as PR-OS to Low. There's a dispute as to the PR-OS designation.
We've done a lot of research and haven't been able to find any indication of how PR-OS was placed on this property. It looks as though at some point, because it was a golf course, the City made that correction to PR-OS. But it was without any notice or hearing on behalf of the property owner. So PR-OS is in dispute, but the request, needless to say, the request is to go to Low on this portion of the property, which is consistent and actually less than what the

Queensridge property is, which I believe is Medium Low. So it's even lower than what Queensridge is.

There is no zone change before you. The property is zoned R-PD7. So currently, this is the 34 acres we're talking about. Currently, you can develop up to 7.49 units to the acre under the existing zoning on the property. We are not suggesting that and never would, because frankly it's not consistent with the Queensridge homes out there.

What we're proposing, as Chris mentioned, is 1.79 units per acre. And the way this has been laid out is to be compatible and consistent with the homes that are already existing in Queensridge.

Keep in mind, this will have different street networks. So the entrance would be on Hualapai. So this would be a new street network, with a new HOA, and it will be below the existing home elevation. So it would be below grade and more in the goalie, for lack of a better word.

But you'll see here, let me just show you, for example, there are 17 homes along this existing Queensridge property line. We are proposing 15 homes. So you've got less density adjacent to the lots that exist in Queensridge. Similarly, up here, you've got 20, I guess about 21 homes adjacent to just about 20 homes up here to the north. So we've taken the lot sizes that exist in Queensridge and we've put compatible, comparable zoning adjacent to it and come to a density of 1.79 units to the acre.

As Chris mentioned, if this were any other project and we were coming in on a standalone infill project, and you had us come in with a density of 1.79 units to the acre adjacent to higher density or the exact same density, this Council would approve it in a heartbeat.

The other two applications relate to – there's a waiver for the street sections to allow private street improvements. So this is the proposed street section, which would have a 32-foot street with roll curbs and then an easement area on either side for landscaping. In Queensridge, in San Michelle, there's only one sidewalk in the street, so it's got the additional two sidewalks.

So it, I guess, exceeds some of the existing Queensridge neighborhoods in that regard, and it's been approved in other private communities, just like on the D.R. Horton application that was on your agenda not too long ago. So that's the requested waiver application.

And then the tentative map is consistent with the site development plan review to allow these 61 lots on 34 acres with a density of 1.79 units to the acre.

Again, should this Council be willing to approve this, we will give you our word that we'll continue to work with the neighbors, the neighbors that are here, that we met with as late as night, to see if we can get to a development agreement, and should that development agreement be approved for the whole property, it would supersede this. But in the meantime, we'd very much appreciate your approval of this so that we can take it to the lenders and say the two years that have gone by have been worth it. We've got something to show you, and at least we can move forward.

So we appreciate your consideration, and we're happy to answer any questions.

MAYOR GOODMAN

Any questions at this point? Let's see, Mr. Perrigo, you want to make comments?

TOM PERRIGO

Thank you, Madame Mayor. This is the same report that was given to Planning Commission so many months ago. The proposed 61-lot residential development would have a net density of 1.79 dwelling units per acre. The proposed low density general plan designation, which allows up to 5.49 units per acre, allows for less intense development than the surrounding established residential areas, which allows up to 8.49 units per acre. The densities and average lot size of the proposed development are comparable to the adjacent residential lots. Staff, therefore, recommends approval of the General Plan Amendment to low density residential.

The applicant is requesting interior streets that do not meet Title 19 standards. However, the proposed private interior streets will provide roadways, sidewalks, and landscaping in a configuration similar to and compatible with that of the surrounding development. The 32-foot wide streets will allow for emergency access and limited on-street parking, while the adjacent sidewalk and landscaping will provide safe pedestrian movement and enhance the aesthetics within the subdivision. Staff therefore recommends approval of the requested waiver.

The development standards proposed by the applicant fall into two categories – those containing 20,000 square feet or less and those containing greater than 20,000 square feet. Standards for lots 20,000 square feet or less are generally consistent with R-D zoned properties, and lots greater than 20,000 square feet are generally consistent with R-E zoned properties. If applied, these standards would allow for development that is compatible with that of the surrounding gated neighborhoods.

In addition, the proposed plan includes usable open space that, usable open space areas that exceed the requirement of Title 19. Staff, therefore, recommends approval of the site development plan review and tentative map.

MAYOR GOODMAN

Thank you very much. All right. Is there anyone from the public who wishes to be heard on this item? Please come forward. State your name for the record. Yes, please.

GEORGE C. SCOTT WALLACE

Your Honor, Councilwoman –

MAYOR GOODMAN

Oh yes, I see there are enough people. Let's keep each one's comment to a minute, unless it is a representative of a particular group that we've already heard from. So please.

GEORGE C. SCOTT WALLACE

Your Honor, Councilwoman, Councilmen, my name is George C. Scott Wallace. I'm a retired professional engineer. I live at, in Las Vegas since 1960; it's been my home. I reside now at 9005 Greensboro Lane.

I am speaking in favor of the application. My background, very briefly, is I came to Las Vegas in 1960. I started an engineering design company in 1969. Our company, which I sold in the year

COUNCILMAN ROSS
Thank you, Mr. Kaempfer.

STEPHANIE ALLEN
I just wanted to echo that. We'll miss you, and we appreciate all of your hard work and time and dedication. So thank you so much for everything you've done for the City of Las Vegas to make it so great.

COUNCILMAN ROSS
Thank you.

STEPHANIE ALLEN
We appreciate it.

MAYOR GOODMAN
Thank you.

COUNCILMAN ROSS
Thank you.

MAYOR GOODMAN
And I can assure you the Council feels the same way. We're very proud of these gentlemen and everything that they have done as public servants, both with the legislature and City Council. Mayor Pro Tem Ross, for his 12 years here and devotion to the citizens and people and development, just kudos.

(END OF DISCUSSION)

/ac

Exhibit 29

THE JIMMERSON LAW FIRM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

James J. Jimmerson*
Michael C. Flaxman
Kristine Brewer

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

December 7, 2016

By Email and U.S. Mail
Brad Jerbic, Esq.
Las Vegas City Attorney
Las Vegas City Hall
495 S. Main Street
Las Vegas, NV 89101

Dear Mr. Jerbic:

This letter is communicated to you and to your City Manager and the Honorable City Councilpersons to address a serious issue that threatens to deprive our clients' land use and property rights that we would ask you to address and correct immediately.

Our firm has the privilege and pleasure of representing land owners Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, and those companies' manager, EHB Companies, LLC. Our clients have had the privilege of appearing before the City Planning Commission on October 18, 2016, and before the City Council on November 16, 2016.

Following the City Council's meeting, our clients decided that they desire to develop a portion of the land owned by 180 Land Co., LLC, to develop 61 homes on approximately 35 acres of land which is presently zoned R-PD7, and in a manner that is compatible with existing housing, compatible with existing density, lot sizes, and landscape requirements, and otherwise meets the requirements of the City relative to the development of single family residence homes.

In Pre-Application prior meeting(s) with the City of Las Vegas Department of Planning, and others, our clients have been advised that a General Plan Amendment to the General Plan, which is also known as the City Master Plan, was not needed in conjunction with our clients proposed development of 61 houses on approximately 35 acres. It was not needed because at the time of the Property being zoned in 1990, as detailed by Mr. Jerbic in communications at the City Planning Commission and the City Council, as well as in private communications with our clients and others, that hard zoning at R-PD7 had been placed upon this property in 1990 without any type of a conflicting Master Plan. The hard zoning was confirmed by City Ordinance in 2001.

However, our clients have been advised earlier today, Wednesday, December 7, 2016, a day that will forever live in infamy, that a General Plan Amendment is required to be filed

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contemporaneously with the site plan development for 61 lots on the 35 acres, without which, according to Mr. Swanton, the application for approval of the 61 lots on the 35 acres "would not be accepted."

Our clients have been advised exactly the opposite on multiple occasions prior to today, specifically, that a General Plan Amendment was not required, and if it were to be required, it could be done later on in the project and did not have to be filed concurrently with the submission of the tentative map, and certainly was not something that would be required as a condition to the City Planning Department considering the tentative map for 61 homes on the 35 acres. The basis for this, it now appears, comes from a new position of the City of Las Vegas that there exists a General Plan designation of PR-OS upon the land owned by our clients, for which the tentative map applies and that somehow the General Plan or PR-OS must be amended to Medium Residential Development as part of the application as a condition to develop these homes.

Reference is made to the letter of Frank Pankratz to Tom Perrigo of today's date, which is quoted herein verbatim, as follows:

> "Tom,
>
> We wanted to follow-up to the telephone conversation of today with Peter, Chris Kaempfer and I concerning the apparent PROS general plan designation on the property on which The Badlands golf course was operated ("Property"). We have researched extensively the issue of when, or if, the general plan designation of PROS was placed on the Property.
>
> First, we can find absolutely no evidence that the PROS designation was in place on the Property prior to 1997; which means it clearly could not have been in place prior to the time the RPD-7 designation was established for the Property. The 27-golf course was not completed until 1997 to 1999, and as such, the PROS designation could not have been added before that time period. Further your office has advised us that the designation, if it exists occurred much later perhaps 2015, although you told us that you "could not find" any record of the designation. The attached two letters would further confirm that.
>
> Secondly, and more important fundamentally, we can find absolutely no evidence that the PROS general plan designation was placed on the Property through a formal, publicly noticed hearing process. Unless The City can direct us to the date and time that this formal, public hearing process took place, we must assume that the general plan designation of PROS, if designated at all, was placed on the Property through an administrative process or action of some kind. It is our understanding that a general plan designation on property cannot be added or changed except through a formal, public hearing process with all affected property

owners having reasonable notice and an opportunity to be heard. So if, in fact, no such public hearing process took place, the general plan designation of PROS, if it exists, was placed on the Property inappropriately and improperly and is not valid. We must therefore insist that any such PROS designation be removed from the Property forthwith.

In reading NRS 278.349 (3) (e), the PROS designation, even if such a designation exists, does not affect the existing R-PD7 zoning on the Property or the development rights we have under that existing zoning designation. The PROS general plan designation, if it exists at all, is clearly improperly on the Property and must be removed. If The City is taking the positon that the PROS General Plan designation does in fact exist on the Property, than The City has severely damaged the Property for which The City, at the least, would be responsible. Thank you for your immediate attention to this matter.

180 Land Co LLC, Seventy Acres LLC and Fore Stars Ltd.
Nevada limited liability companies

By: EHB Companies LLC
a Nevada limited liability company
Its: Manager

By: _____
Name: Frank Pankratz
Its: Manager
Date: _____"

(A copy of this letter and its two attachments are enclosed herewith).

The City's position, quite candidly, constitutes improper conduct by the City of Las Vegas. Please see Section 3 on Page 2 of the attached Ordinance #3636, which adopted the City of Las Vegas' "General Plan". This is the General Plan that was adopted prior to the 2020 Master Plan in September of 2000. It states, "The adoption of the General Plan referred to in this Ordinance shall not be deemed to modify or invalidate any proceeding, zoning designation, or development approval that occurred before the adoption of the Plan nor shall it be deemed to affect the Zoning Map adopted by and referred to in LVMC 19.02.040."

In this regard, we would like to have the following questions answered by the City of Las Vegas in the next 10 days:

1. If the City's position is that there exists a PROS Master Plan designation on the Property owned by our clients, on what date and by what action was this Master Plan designation imposed upon that Property?

   Please provide copies of all such actions by the City Planning Commission and City Council, as provided by NRS 278.240.

2. What written notice was given to the landowners of the Property with regard to a PROS Master Plan land use designation? And when? In this regard, who was given written notice in conformance with the Nevada Revised Statutes?

   Please provide copies of any and all written document(s) or notice(s) you may claim was given to the landowners, the landowners within 750 feet of the property, and the thirty (30) closest landowners as specified in NRS 278.260.

3. If the City of Las Vegas has placed without notice to the Property Owners a PR-OS land designation upon earlier-zoned R-PD7 Property, what remedies does the Property Owner possess?

This new position by the City of Las Vegas, in our view, appears to be fabricated, and/or fraudulent, a breach of our clients' rights, and completely at odds with all prior representations in writing or otherwise that have been made by the City and its representatives to our clients. Any type of maintenance of such an improper position constitutes an intentional action on the part of the City of Las Vegas which places itself on a collision course with our clients' dedicated rights to development on their Property.

If we are misunderstanding the City's new position, we ask you for an immediate clarification.

We look forward to your response to these questions, and to your explanation as to why the City is now taking this position of requiring a GPA as a condition to submit our clients' tentative map request by our clients to build its property.

If, in fact, the City of Las Vegas is attempting to improperly add conditions and/or restrictions to the use of our clients' Property, such actions clearly expose the City of Las Vegas to liability and substantial money damages together with our clients' rights to receive equitable and injunctive relief. The same could constitute a taking. Regardless, any attempts to impose a PR-OS land designation upon our clients' property is illegal, invalid and unenforceable, and the same should be struck down. Such actions by the City constitute irreparable injury to our clients, harm the enjoyment and use of their Property, and about which our clients can establish a likelihood of success on the merits.

Our clients simply wish to develop their Property based on existing zoning and land use rights and wish to work with the City of Las Vegas in a proper manner. The City's action to attempt to impose a Master Plan (General Plan) Amendment of PR-OS land designation upon our clients' property is improper and should not stand.

Thank you in advance for your anticipated consideration, cooperation, and comprehensive response.

Sincerely,

THE JIMMERSON LAW FIRM, P.C.

James J. Jimmerson, Esq.
JJJ/sp/ks

cc: Carolyn Goodman, Mayor
Steven D. Ross
Lois Tarkanian
Ricki Y. Barlow
Stavros S. Anthony
Bob Coffin
Bob Beers
Betsy Fretwell, City Manager
Tom Perrigo
Yohan Lowie
Vickie DeHart
Frank Pankratz
Todd Davis, Esq.
Chris Kaempfer, Esq.

Tom,

We wanted to follow-up to the telephone conversation of today with Peter, Chris Kaempfer and I concerning the apparent PROS general plan designation on the property on which The Badlands golf course was operated ("Property"). We have researched extensively the issue of when, or if, the general plan designation of PROS was placed on the Property.

First, we can find absolutely no evidence that the PROS designation was in place on the Property prior to 1997; which means it clearly could not have been in place prior to the time the RPD-7 designation was established for the Property. The 27-golf course was not completed until 1997 to 1999, and as such, the PROS designation could not have been added before that time period. Further your office has advised us that the designation, if it exists occurred much later perhaps 2015, although you told us that you "could not find" any record of the designation. The attached two letters would further confirm that.

Secondly, and more important fundamentally, we can find absolutely no evidence that the PROS general plan designation was placed on the Property through a formal, publicly noticed hearing process. Unless The City can direct us to the date and time that this formal, public hearing process took place, we must assume that the general plan designation of PROS, if designated at all, was placed on the Property through an administrative process or action of some kind. It is our understanding that a general plan designation on property cannot be added or changed except through a formal, public hearing process with all affected property owners having reasonable notice and an opportunity to be heard. So if, in fact, no such public hearing process took place, the general plan designation of PROS, if it exists, was placed on the Property inappropriately and improperly and is not valid. We must therefore insist that any such PROS designation be removed from the Property forthwith.

In reading NRS 278.349 (3) (e), the PROS designation, even if such a designation exists, does not affect the existing R-PD7 zoning on the Property or the development rights we have under that existing zoning designation. The PROS general plan designation, if it exists at all, is clearly improperly on the Property and must be removed. If The City is taking the positon that the PROS General Plan designation does in fact exist on the Property, than The City has severely damaged the Property for which The City, at the least, would be responsible. Thank you for your immediate attention to this matter.

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By: _____
Name: Frank Pankratz
Its: Manager
Date: _____

cc Peter Lowenstein
Attachements-2

MAYOR
JAN LAVERTY JONES

COUNCILMEN
ARNIE ADAMSEN
MATTHEW Q CALLISTER
MICHAEL J MCDONALD
GARY REESE

CITY MANAGER
LARRY K BARTON

CITY of LAS VEGAS

PLANNING AND DEVELOPMENT DEPARTMENT

October 8, 1996

Mr Clyde O Spitze, Vice President
Pentacore
6763 West Charleston Boulevard
Las Vegas, Nevada 89102

Re BADLANDS GOLF COURSE, PHASE 2

Dear Mr Spitze

City records indicate that an 18 hole golf course with associated facilities was approved as part of the Peccole Ranch Master Plan in 1990 The property was subsequently zoned R-PD7 (Residential Planned Development - 7 Units Per Acre) Any expansion of the golf course within the R-PD7 area would be allowed subject to the approval of a plot plan by the Planning Commission

If any additional information is needed regarding this property please do not hesitate to contact me

Very truly yours,

Robert S Genzer, Planning Supervisor
Current Planning Division

RSG erh

400 E STEWART AVENUE • LAS VEGAS, NEVADA 89101-2986
(702) 229-6011 (VOICE) • (702) 386-9108 (TDD)

CLV 7009
2810 018 8/15

PENTACORE

Civil Engineering
Construction Management
Land Surveying
Planning
ADA Consulting

0171 0030

September 4, 1996

Mr Robert Genzer
City of Las Vegas
Planning Division
400 E Stewart Avenue
Las Vegas, NV 89101

RE Badlands Golf Course, Phase 2

Dear Bob

As you know the Badlands Golf Course in Peccole Ranch is proposing to develop an additional 9 hole course between the existing golf course and Alta Drive The existing Master Plan zoning of this area is RPD-7, and the golf course would be developed within this zoned parcel I would like a letter from the City stating that a golf course would be compatible within this zoning I need the letter for the bank

Thank you for your consideration in this matter

Sincerely,

Clyde O Spitze
Vice President

RECEIVED
SEP 4 4 58 PM '96
PLANNING AND DEVELOPMENT

cos bw

Z-146-94
Z-17-90

6763 West Charleston Boulevard • Las Vegas, Nevada 89102 • (702) 258-0116 • Fax (702) 258-4958

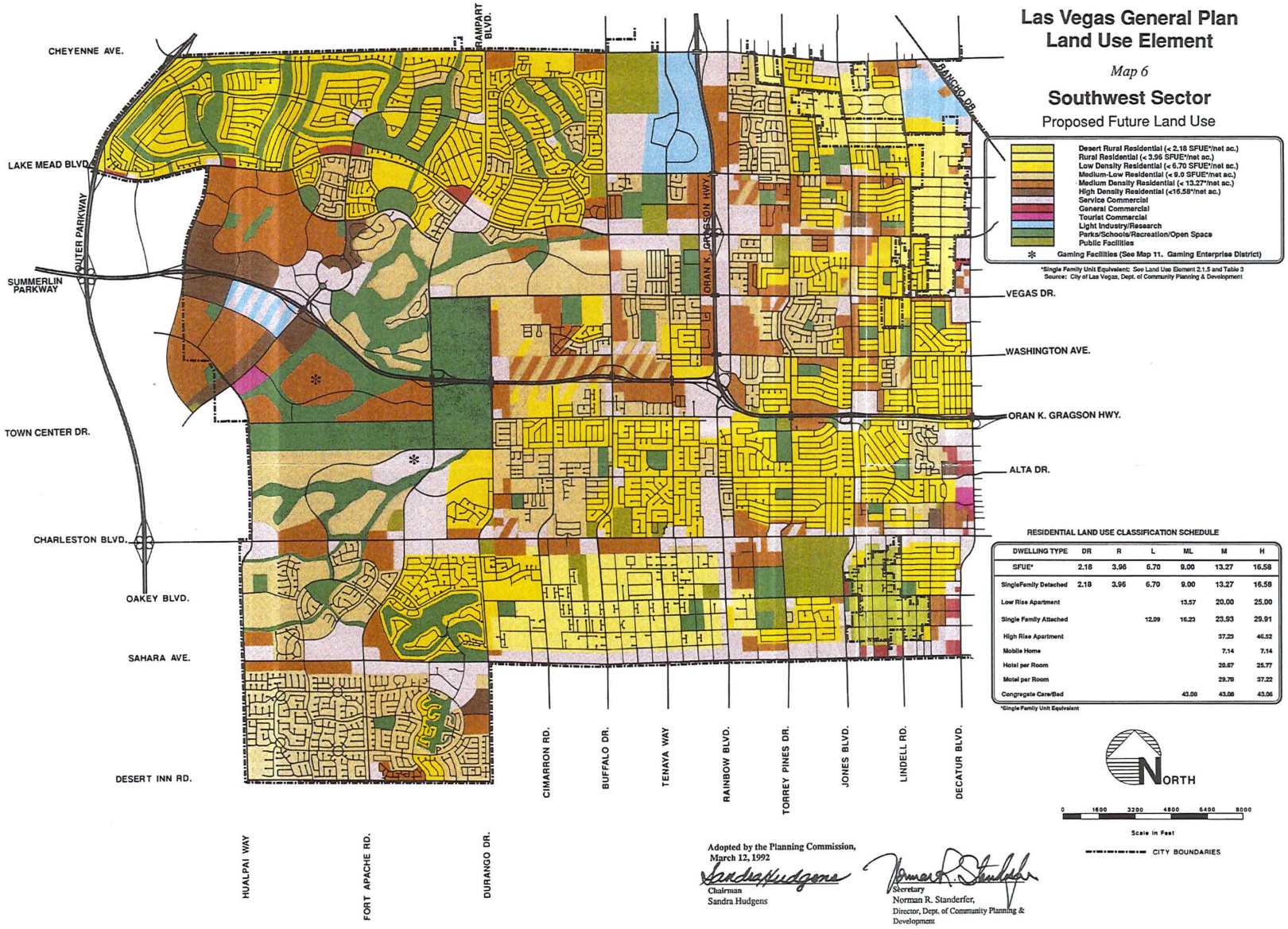
Exhibit 30

Las Vegas General Plan
Land Use Element

Map 6

Southwest Sector

Proposed Future Land Use



RESIDENTIAL LAND USE CLASSIFICATION SCHEDULE

DWELLING TYPE	DR	R	L	ML	M	H
SFUE*	2.18	3.96	6.70	9.00	13.27	16.58
SingleFamily Detached	2.18	3.96	6.70	9.00	13.27	16.58
Low Rise Apartment				13.57	20.00	25.00
Single Family Attached			12.09	16.23	23.93	29.91
High Rise Apartment					37.23	46.52
Mobile Home					7.14	7.14
Hotel per Room					20.67	25.77
Motel per Room					29.78	37.22
Congregate Care/Bed				43.08	43.08	43.06

*Single Family Unit Equivalent

Adopted by the Planning Commission,
March 12, 1992

Chairman
Sandra Hudgens

Secretary
Norman R. Standerfer,
Director, Dept. of Community Planning & Development

LO 00004127

CLV053440
0088

BILL NO. 92-2

ORDINANCE No. 3636

AN ORDINANCE TO ADOPT A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA, INCLUDING MANDATORY AND OPTIONAL ELEMENTS THEREOF AS REQUIRED BY CHAPTER 278 OF NEVADA REVISED STATUTES; AMENDING TITLE 19, CHAPTER 2, SECTION 20, OF THE MUNICIPAL CODE OF THE CITY OF LAS VEGAS, NEVADA, 1983 EDITION, TO REFLECT THE ADOPTION OF SAID PLAN; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.

Sponsored By:
Councilman Scott Higginson

Summary: Adopts a new General Plan for the City of Las Vegas, Nevada.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The General Plan of the City of Las Vegas, Nevada, adopted by the Planning Commission on December 12, 1991, and approved for adoption by the City Council on the 1st day of April, 1992, is hereby adopted as the master plan for the City as required by Chapter 278 of Nevada Revised Statutes (NRS). The General Plan includes mandatory and optional elements described in NRS Chapter 278 and includes text, future land use maps, the Downtown Development Plan, and the Master Plan of Streets and Highways. The General Plan shall be on file in the office of the Department of Community Planning and Development.

SECTION 2: Title 19, Chapter 2, Section 20, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

19.02.020: (A) This Title is adopted in order to conserve and promote the public health, safety, morals and general welfare of the City and the present and future inhabitants of the City.

(B) This Title is adopted in conformity with and in consonance with the Comprehensive General Master [Plans] Plan of the City of Las Vegas [as adopted by the City Council on March 2, 1960, and February 5, 1975.], the initial version of which was

LO 00004128

CLV053405
0089

3219

adopted in 1960 and the most recent version of which was adopted on April 1, 1992. In this regard this Title is designed to improve the safety and convenience and lessen congestion in the public streets, to provide adequate protection against fire, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sanitary sewerage, storm drainage, schools, parks, recreation and other public conveniences and necessities, to maintain the character of land uses in the various property districts, to conserve the value of land and buildings and protect investment in same, and to encourage the [utmost property] most desirable uses of the land.

(C) This Title is adopted to protect the character, social advantages and economic stability of the residential, commercial, industrial and other areas within the City and to assure the orderly, efficient and beneficial development of such areas.

SECTION 3: The adoption of the General Plan referred to in this Ordinance shall not be deemed to modify or invalidate any proceeding, zoning designation, or development approval that occurred before the adoption of the Plan nor shall it be deemed to affect the Zoning Map adopted by and referred to in LVMC 19.02.040.

SECTION 4: The General Plan adopted by this Ordinance and any of its constituent elements may be amended by resolution of the City Council, subject to applicable procedures and requirements set forth in Nevada Revised Statutes; provided, however, that any repealer, replacement, or comprehensive amendment of or to the General Plan shall be by means of ordinance.

SECTION 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or

invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas, Nevada, hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 6: All ordinances or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED AND APPROVED this 1st day of April, 1992.

APPROVED:

By _____
JAN LAVERTY JONES, MAYOR

OK
RS
4-6-92

ATTEST:

_____
KATHLEEN M. TIGHE, CITY CLERK

LO 00004130

CLV053497
0091

3221

The above and foregoing ordinance was first proposed and read by title to the City Council on the 5th day of February, 1992, and referred to the following committee composed of Full Council and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the 1st day of April, 1992, which was a regular meeting of said Council; that at said regular meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": Councilmen Nolen, Adamsen, Higginson and Hawkins Jr.

VOTING "NAY": NONE

ABSENT: Mayor Jones

APPROVED:

BY Jan Laverty Jones
JAN LAVERTY JONES, MAYOR

OK
VS
4-6-92

ATTEST:

Kathleen M. Tighe
KATHLEEN M. TIGHE, CITY CLERK

LO 00004131

CLV053408
0092

3222

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAS VEGAS, NEVADA TO AMEND THE GENERAL PLAN, PURSUANT TO ORDINANCE NO. 3636.

WHEREAS, the City Council of the City of Las Vegas adopted the General Plan of the City of Las Vegas by Ordinance No. 3636, effective April 5, 1992; and

WHEREAS, this Plan was adopted to protect the character, social advantages and economic stability of the residential, commercial, industrial and other areas within the City and to assure the orderly, efficient and beneficial development of such resources; and

WHEREAS, the General Plan adopted by Ordinance may generally be amended by resolution of the Planning Commission and the City Council; and

WHEREAS, the General Plan contains language within the Land Use Element which is contradictory in its application among specified land use designations, and which may cause confusion in the review and implementation of the Plan through the zoning process; and

WHEREAS, staff of the Department of Community Planning and Development recommends that the General Plan be amended as set forth in this Resolution to resolve any inconsistency and avoid confusion; and

WHEREAS, the Planning Commission, at its meeting of July 9, 1992 did approve the staff recommendation to modify the language as specified below.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Las Vegas, Nevada, that:

1. The term "net", whenever used in the maps and text identified in Paragraphs (a) and (b), is deleted and replaced by the term "gross"

a. The adopted Map 5, Northwest Sector, "Proposed Future Land Use" Legend; Map 6, Southwest Sector, "Proposed Future Land Use" Legend; and Map 7, Southeast Sector, "Proposed Future Land Use" Legend; and

b. The text of the General Plan Land Use Element, Section II, page II-5, Table 2, references on the 'D-R', 'R', 'L' categories; pages II - 6, 7, Section 2.1.5 "General Plan Land Use Classification System" for the following classifications "Desert Residential Rural", "Rural Density

Residential" and "Low Density Residential".

2. Page II - 15, Section 2.4.1.A. "Plan Consistency Policies", Subsection 1 is amended to read as follows:

"1. All parcels of land within the City of Las Vegas which are designated in a residential land use category in the Land Use Plan shall be appropriately zoned for a density of dwelling units which is compatible with surrounding residential uses and which does not exceed the maximum gross density set forth in the Land Use Classification System; except in the case of large scale planned development projects, where certain parcels may exceed maximum Land Use Plan densities on a [net] gross acre basis, provide the total gross project density per acre does not exceed that provided under the Land Use Plan."

(NOTE: Bracketed text to be deleted; underlined text is to be added)

PASSED, APPROVED AND ADOPTED this 5th day of August, 1992.

Jan Laverty Jones, Mayor

OK 8-7-92 RAW

ATTEST:

Kathleen M. Tighe, City Clerk

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LAS VEGAS, NEVADA, ADOPTING THE GENERAL (MASTER) PLAN FOR THE CITY OF LAS VEGAS

WHEREAS, the City of Las Vegas has adopted a General Plan to guide the growth and development of the City; and

WHEREAS, the General Plan has been reviewed and amended periodically since its adoption, most recently in 1985; and

WHEREAS, the General Plan includes the mandatory and optional subjects described in the 1989 Nevada Revised Statutes (N.R.S.), Chapter 278; and

WHEREAS, the City desires to maintain its proper role in shaping future development within its existing and potential boundaries; and

WHEREAS, the City of Las Vegas has determined that a comprehensive review and assessment of the General Plan is desirable in light of changing fiscal, social and technical and development conditions; and

WHEREAS, a Citizens General Plan Advisory Committee developed and reviewed the future land use plan maps, the Downtown Development Plan Map, and the revised Master Plan of Streets and Highways; and

WHEREAS, a series of public hearings was held before the Planning Commission during the period of October 10 through December 12, 1991, and at the conclusion of said public hearings the Planning Commission adopted the General Plan with the following elements:

Land Use	Economic Development
Community Facilities	Housing
Infrastructure	Urban Design
Circulation	Environmental Quality
Public Finance	Historic Preservation

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Las Vegas hereby adopts the General (Master) Plan as considered and amended by the Commission in the date set forth below which includes: all text, including the goals, objectives, policies and programs and the evaluation and implementation matrix; future land use maps; the Downtown Development Plan and the Master Plan of Streets and Highways.

PASSED and ADOPTED this 12th day of December, 1991.

SANDRA HUDGENS, CHAIRMAN

ATTEST:

Kathleen M. Tighe, City Clerk

Exhibit 31

district for a specified time would violate NRS 391.350 by executing a contract with another school district without the written consent of the board currently employing him. An employee who merely indicates an intention to accept reemployment with a particular school district is under no contractual obligation to that district and would, therefore, not violate NRS 391.350 by executing an employment contract with another school district.

If we can be of any further assistance in this area, please do not hesitate to contact us.

Sincerely,

BRIAN MCKAY, *Attorney General*

By SCOTT W. DOYLE., *Chief Deputy Attorney General, Civil Division*

OPINION NO. 84-6 Planning and Zoning: Amendment of land use element of master plan does not require immediate amendment of pre-existing zoning ordinances that are not in strict compliance with amended master plan.

LAS VEGAS, April 11, 1984

THE HONORABLE ROBERT L. VAN WAGONER, *City Attorney, City of Reno,* Post Office Box 1900, Reno, Nevada 89505

DEAR MR. VAN WAGONER:

This is in response to your March 12, 1984 request for advice on behalf of your client, the Reno City Council, concerning several provisions of Chapter 278 of the Nevada Revised Statutes. You have asked several questions regarding the same issue, and we believe they may all be answered by a response to the following:

QUESTION

Does an amendment of the Reno City Land-Use Plan map invalidate existing zoning ordinances that are in conflict with the amendment or, alternatively, require the Reno City Council to amend any existing zoning ordinances not in strict conformity with the newly-adopted map?

ANALYSIS

The Nevada Legislature has enacted a comprehensive statutory scheme authorizing cities and counties to plan and zone land use in their respective jurisdictions for the purpose of promoting health, safety, morals and the general welfare of the community. NRS 278.020. As noted by our Supreme Court:

> The State of Nevada has delegated comprehensive powers to cities and towns in the area of zoning regulation. The legislative body of a city or of a county of at least 15,000 people must, under Chapter 278, create a planning commission which in turn must adopt a long-term plan of physical development. NRS 278.030, 278.150. Elements of the plan include community design, conservation, economics, housing, land use, public buildings, public services and facilities, recreation, streets and highways, transit and transportation.

NRS 278.160. The commission may adopt the plan in whole or in part after prescribed notice and public hearing and by a two-thirds vote. NRS 278.170, 278.210. The legislative body may adopt all or any part of this plan after giving prescribed notice and holding a public hearing; any change or addition must be referred to the commission. NRS 278.220.

Pursuant to this legislative directive the City of Reno adopted a comprehensive land-use program embodied in Title 16 of the Reno Municipal Code.

Forman v. Eagle Thrifty Drugs and Markets, 89 Nev. 533, 538, 516 P.2d 1234 (1973).

You have informed us that the Reno City Council is presently considering adoption of an amended map which is to become part of the "land-use plan" element of the Reno City Master Plan. The starting point for an attempt to determine the legal effect of such an amended map must, as always, be with the intent of the legislature in enacting the provisions of Chapter 278. *Acklin v. McCarthy,* 96 Nev. 520, 612 P.2d 219 (1980); *Thomas v. State,* 88 Nev. 382, 498 P.2d 1314 (1972); *Ex parte Iratacable,* 55 Nev. 263, 30 P.2d 284 (1934). Additionally, the Nevada Supreme Court has delineated the guidelines for such an inquiry.

> Our prime concern is to ascertain the intent of the legislature. The court must, if possible, and if consistent with the intention of the legislature, give effect to all the statutory provisions in controversy, and to every part of them. It is our duty, so far as practicable, to reconcile the various provisions so as to make them consistent and harmonious. The court, in interpreting these provisions, must also have in mind the purposes sought to be accomplished and the benefits intended to be attained.

School Trustees v. Bray, 60 Nev. 345, 353-4, 109 P.2d 274 (1941).

With these requirements of statutory construction in mind, we turn now to consider the pertinent provisions of Chapter 278.

As noted above, NRS 278.020 provides a statement of the purpose of the legislature in enacting Chapter 278 and giving authority to regulate land-use control to the local government entities. Under the Nevada statutory scheme, once a "Master Plan" has been adopted by a planning commission and that plan or any part thereof has been adopted by the governing body, there is a duty for the local government entity to determine the means of putting the plan into effect. NRS 278.230 provides:

> 1. Whenever the governing body of any city or county shall have adopted a master plan or part thereof for the city or county, or for any major section or district thereof, the governing body shall, upon recommendation of the planning commission, *determine upon reasonable and practical means for putting into effect the master plan or part thereof, in order that the same will serve as a pattern and guide for the kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment* and will conform to the adopted population plan where required, and as a basis for the efficient expenditure of funds thereof relating to the subjects of the master plan.
>
> 2. The governing body may adopt and use such procedure as may be necessary for this purpose. (Emphasis supplied.)

Aside from this general grant of authority to implement the master plan as a pattern and guide, the legislature has also provided specific power to local government entities to create zoning districts and enact zoning regulations. NRS 278.250 provides, in pertinent part:

> 1. For the purposes of NRS 278.010 to 278.630, inclusive, the governing body

> may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630, inclusive. Within the zoning district it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.
>
> 2. The zoning *regulations shall be adopted in accordance with the master plan for land use* and shall be designed:
>
> . . . .
>
> 3. The zoning regulations shall be adopted with reasonable consideration, among other things, to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city, county or region. (Emphasis supplied.)

In attempting to construe these two statutory provisions (NRS 278.230 and 278.250) with an eye towards harmonizing them, we are also required to give the language used by the legislature a reasonable and common sense construction.

> In construing statutes, the court must consider sections together and place upon language the interpretation which will give to each section of an act its proper effect, and which at least will make it compatible with common sense and plain dictates of justice.

Gruber v. Baker, 20 Nev. 453, 467-8, 23 P. 858 (1890).

It has always been the rule in Nevada that when language is plain and unambiguous in a statute there is no room for construction. *Brown v. Davis,* 1 Nev. 346 (1865); *Lynip v. Buckner,* 22 Nev. 426, 41 P. 762 (1895); *Seaborn v. District Court,* 55 Nev. 206, 29 P.2d 500 (1934).

NRS 278.230 provides that the master plan shall be a "pattern and guide" for the development of cities, counties or regions. "Pattern" is defined by *Webster's New World Dictionary,* p. 1042 (2d ed. 1980), as:

1. a person or thing considered worthy of imitation or copying;
2. a model or plan used as a guide in making things; . . .

"Guide" has been defined, in relation to the question presented here, as "applied to various contrivances intended to direct or keep to a fixed course or motion." *Webster's Encyclopedic Dictionary,* p. 867 (1967).

NRS 278.250 provides that zoning regulations be adopted "in accordance with the master plan for land use." "Accordance" has been defined as "agreement, harmony, conformity." *Webster's New World Dictionary,* p. 9 (2d ed. 1976). We believe the above-cited language is clear and unambiguous and requires a local government entity to adopt zoning regulations that are in substantial agreement or conformity with the principles, directions and general provisions of the adopted master plan for land use. It should be noted, however, that the agreement or conformity is not required to be strict or absolute.

> Moreover, a zoning ordinance must be pursuant to, and in *substantial conformity with, the zoning or enabling act authorizing it.* 8 McQuillan, Municipal Corporations, Sec. 25.58. The legislature has delegated the power to zone to the legislative bodies of cities and towns, *so that the need for a comprehensive plan might be met,* and has provided means for the protection of private property through notice and public hearing. (Emphasis supplied.)

Forman, supra, at 539.

In 1977 the Nevada Legislature expressly declared its intention that zoning ordinances take precedence over provisions contained in a master plan. 1977 Nev. Stat. Ch. 580, §§ 4-10, at 1496-1500. This recent enactment buttresses our conclusion that the Nevada Legislature has

always intended local zoning ordinances to control over general statements or provisions of a master plan. This express declaration is contained in the statutory requirements for approval of a tentative subdivision map contained in chapter 278 of the Nevada Revised Statutes. Pursuant to these provisions any person wishing to subdivide land in Nevada is required to take specified steps and prepare various maps for approval by the local government entities. NRS 278.349 sets out the procedure for action by a local governing body on a tentative map submitted by any person wishing to subdivide. The pertinent language of NRS 278.349 provides:

> 1. Except as provided in subsection 2, the governing body shall, by a majority vote of the members present, approve, conditionally approve, or disapprove a tentative map filed with it pursuant to NRS 278.330 within 30 days after receipt of the planning commission's recommendations.
>
> . . . .
>
> 3. The governing body shall consider:
>
> . . . .
>
> (e) *General conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;*
>
> . . . .
>
> (Emphasis supplied.)

A further rule of statutory construction requires that statutes are to be construed and harmonized so as to avoid absurd results. Thus, the language of this statute must also be given meaning and effect. *School Trustees v. Bray, supra; Lynip v. Buckner,* 22 Nev. 426, 41 P. 762 (1895); *Corbett v. Bradley,* 7 Nev. 106 (1871). We, therefore, view the statutory provision of NRS 278.349(3)(e) as providing that local zoning ordinances enacted pursuant to the "guide" of a master plan take precedence until modified or amended in a particular zoning or rezoning case. To interpret the statutory scheme in any other manner would be to leave this statutory provision devoid of any meaning.

We are aware of the recent Supreme Court decisions of the State of Oregon which judicially construed their statutes as requiring strict compliance of zoning ordinances with a comprehensive plan, even to the extent of requiring amendment of local zoning ordinances in light of the later adoption of a plan or an amendment to a plan *Fasano v. Board of County Commissioners,* 507 P.2d 23 (Ore. 1973); *Baker v. City of Milwaukie,* 533 P.2d 772 (Ore. 1975). We are also aware of a trend amongst a minority of states to legislatively require strict compliance of local zoning regulations with a comprehensive plan. (See generally J. Sullivan and L. Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement,* 9 Urban L. Ann. 33 (1975); D. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation,* 74 Mich.L.Rev. 899 (1976); Note—*Developments in Zoning,* 91 Harv.L.Rev. 1548-1550 (1978). However, in our opinion, the Nevada Supreme Court would not undertake such judicial activism without first recognizing a clear legislative initiative to modify our existing statutory framework.

The Nevada Supreme Court has long recognized that zoning is a matter properly within the province of the legislature and that the judiciary should not interfere unless it is proven to be clearly necessary. *Henderson v. Henderson Auto,* 77 Nev. 118, 359 P.2d 743 (1961), (judicial interference justified to correct a manifest abuse of discretion); *McKenzie v. Shelly,* 77 Nev. 237, 362 P.2d 268 (1961), (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie,* 84 Nev. 250, 439 P.2d 219 (1968), (judiciary must not interfere with the zoning power unless clearly necessary); *Eagle Thrifty v. Hunter Lake P.T.A.,* 85 Nev. 162, 451 P.2d 713 (1969), (it is not the business of the judiciary to write a new city zoning ordinance, overruling the court's opinion in *Eagle Thrifty v. Hunter Lake P.T.A.,* 84 Nev. 466, 443 P.2d 608 (1968)); *Forman v. Eagle Thrifty Drugs and Markets,* 89 Nev. 533, 516 P.2d 1234 (1973), (statutes guide the zoning

process and the means of implementation until amended, repealed, referred or changed through initiative); *State ex rel. Johns v. Gragson,* 89 Nev. 478, 515 P.2d 65 (1973), (court will interfere where administrative decision is arbitrary, oppressive or accompanied by manifest abuse). As stated by the court:

> Zoning is a legislative matter, and the legislature has acted. *Eagle Thrifty v. Hunter Lake P.T.A.,* 85 Nev. 162, 451 P.2d 713 (1969). It has authorized 'the governing body' to provide for zoning districts and to establish the administrative machinery to amend, supplement and change zoning districts. NRS 278.260. *As a general proposition, the zoning powers should not be subjected to judicial interference unless clearly necessary. Coronet Homes, Inc. v. McKenzie,* 84 Nev. 250, 439 P.2d 219 (1968). (Emphasis supplied.)

Board of Commissioners v. Dayton Dev. Co., 91 Nev. 71, 530 P.2d 1187 (1975).

In view of the above-described history of judicial restraint, it is our opinion that the Nevada Supreme Court would more likely adopt the judicial reasoning of the Supreme Courts sitting in the States of Washington, Colorado and Montana which have recently considered this exact question.

> It may be argued that the purpose of the act assuring the highest standards of environment for living—is defeated when the plan is not strictly followed. However, since planning agency reports and recommendations on proposed projects and controls—which must indicate conformity or nonconformity with the comprehensive plan—are 'advisory only' (RCW 36.70.650 and RCW 36.70.540), it is evident the legislature intended that nonconformance with the plan should not necessarily block a project. *South Hills Sewer District v. Pierce Co.,* 22 Wash.App. 738, 745-46, 591 P.2d 877 (1979). *This is confirmed by the admonition that the comprehensive plan shall not be considered other than a guide to development and adoption of official controls.* RCW 36.70.340.
>
> Appellants argue that the court should follow Oregon by holding that the plan should be given preference over conflicting ordinances. But Oregon's statutory scheme substantially differs form Washington's. (Emphasis supplied.)

Barrie v. Kitsap County, 613 P.2d 1148 (Wash. 1980).

At least one of the differences between the Oregon statutory scheme and that of Nevada is the former's requirement that a master plan can only be adopted by a planning commission which then recommends zoning ordinances to be enacted by the governing body of a county to carry out the objectives of the plan. *Fasano, supra,* at 27. In Nevada, however, statutes give the local governing body the discretion to adopt or not adopt all or part of a master plan that has previously been adopted by a planning commission. NRS 278.220. Only after adopting all or part of a master plan is a governing body required to adopt regulations to implement it as a pattern and guide for development. NRS 278.230.

The Colorado Supreme Court addressed the issue of requiring strict compliance of zoning ordinances to the master plan in *Theobald v. Board of County Commissioners*, 644 P.2d 942 (Colo. 1982), and determined:

> The master plan is the planning commission's recommendation of the most desirable use of land (citations omitted). *Conceptually, a master plan is a guide to development rather than an instrument to control land use. R. Anderson, American Law of Zoning,* §§ 21.15, 22.12 (2d ed.); *E. McQuillan, Municipal Corporations, Zoning,* § 25.08 (3d ed., 1976 Repl. Vol.).
>
> The general rule is that zoning should be enacted in conformance with the comprehensive plan for development of an area, *Fasano, supra; Harr, In Accordance*

with the Comprehensive Plan, 68 Harv.L.Rev. 1154 (1955); 1 E. *Yokely, Zoning Law Practice,* § 2-1 (4th ed. 1978). *However, the Master Plan itself is only one source of comprehensive planning and is generally held to be advisory only and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body.* 1 & 2a. *Rathkopf, Law of Zoning and Planning,* § 12.01, *et seq.,* § 30.02 (4th ed.); *State ex rel. Rochester Ass'n of Neighborhoods v. City of Rochester,* 268 N.W.2d 885 (Minn. 1978); *Holmgren v. City of Lincoln,* 199 Neb. 178, 256 N.W.2d 686 (1977); *Todrin v. Board of Supervisors*, 27 Pa.Cmwlth. 583, 367 A.2d 332 (1976); *Coughlin v. City of Topeka,* 206 Kan. 552, 480 P.2d 91 (1971); *Sharninghouse v. City of Bellingham,* 4 Wash.App. 198, 480 P.2d 233 (1971).

This rule is embodied in our statute. While the statute provides for master planning on a county level, the board of county commissioners is specifically empowered, by majority vote, to disregard the recommendations of the planning commission as set forth in the master plan. (Citations omitted.) (Emphasis supplied.)

Id. at 948-949.

It should be noted that a local governing body in Nevada may also disregard the recommendations of a planning commission as set forth in a master plan. NRS 278.220-278.240.

The court went on to consider what standard of review was appropriate when confronted with an amendment to a master plan.

The Barries third argument that the council acted arbitrarily and capriciously presents this question: Does a comprehensive plan amendment require a showing of changed circumstances and, if so, has this showing been made? *A comprehensive plan amendment, the Barries argue, affects landowners' property rights so a showing that conditions have changed is necessary. This court, however, has only required this showing where a municipality rezones property.* (Citations omitted.) (Emphasis supplied.)

Theobald, supra, at 1154.

In reviewing the statutory scheme for planning and zoning in the State of Montana, their Supreme Court determined that substantial conformity to a master plan was required of zoning ordinances but strict compliance was unnecessary and unworkable.

The first phrase of section 76-2-304, sets the tone for all that comes after it. It states that '*the zoning regulations shall be made in accordance with a comprehensive development plan . . .*' (emphasis in original). We assume here that the term 'zoning regulations' is also meant to cover the term 'zoning districts.' We cannot ignore the mandatory language ('shall') of this statute.

. . . .

The vital role given the planning board by these statutes cannot be undercut by giving the governing body the freedom to ignore the product of these boards—the master plan. We hold that the governmental unit, when zoning, must substantially adhere to the master plan.

To require strict compliance with the master plan would result in a master plan so unworkable that it would have to be constantly changed to comply with the realities. The master plan is, after all, a plan. On the other hand, to require no compliance at all would defeat the whole idea of planning. Why have a plan if the local government units are free to ignore it at any time? *The statutes are clear enough to send the message that in reaching zoning decisions, the local governmental unit should at least substantially comply with the comprehensive plan (or master plan).*

> This standard is flexible enough so that the master plan would not have to be undergoing constant change. Yet, this standard is sufficiently definite so that those charged with adhering to it will know when there is an acceptable deviation, and when there is an unacceptable deviation from the master plan.
>
> . . . .
>
> *We are aware that changes in the master plan may well be dictated by changed circumstances occurring after the adoption of the plan. If this is so, the correct procedure is to amend the master plan rather than to erode the master plan by simply refusing to adhere to its guidelines.* If the local governing bodies cannot cooperate to this end, the only alternative is to ask the Legislature to change the statutes governing planning and zoning. (Emphasis supplied.)

Little v. Board of County Commissioners, 631 P.2d 1282 (Mont. 1981).

These courts' opinions have been well reasoned and reflect the majority view. We find no reason to believe that the Nevada courts would take any different position.

CONCLUSION

An amendment of a land-use map, which is part of a Master Plan as that term is defined in NRS 278.150 and NRS 278.160, does not require immediate amendment of all local zoning ordinances which are not in strict conformity with the map as amended. Additionally, all ordinances that exist at the time of a land-use map amendment remain in effect until modified or amended by the local governing body.

BRIAN MCKAY, *Attorney General*

By: MICHAEL D. RUMBOLZ, *Chief Deputy Attorney General*

OPINION NO. 84-7 County Clerks; Elections; Initiative and Referendum; Secretary of State: Nev. Admin. Code § 295.010 is not in conflict with constitutional and statutory provisions relating to the filing of statewide petitions for initiative and referendum. County clerks should not accept submission of any statewide petition for initiative or referendum which is not presented within the time limits established by Nev. Admin. Code § 295.010.

CARSON CITY, April 16, 1984

ROBERT J. MILLER, *Clark County District Attorney,* Clark County Courthouse, Las Vegas, Nevada 89155

ATTENTION: CHARLES K. HAUSER, *Deputy District Attorney*

DEAR MR. MILLER:

You have sought our opinion concerning the validity of Nev. Admin. Code § 295.010.

QUESTION

Does Nev. Admin. Code § 295.010 conflict with Nev. Const. art. 19, § 2, or Nev. Rev. Stat. §§ 295.025(1), 295.035(1), 295.045(2), 295.056, 295.057, 295.058 and 295.059?

Exhibit 32

ITEM 8 - PUBLIC COMMENT DURING THIS PORTION OF THE AGENDA MUST BE LIMITED TO MATTERS ON THE AGENDA FOR ACTION. IF YOU WISH TO BE HEARD, COME TO THE PODIUM AND GIVE YOUR NAME FOR THE RECORD. THE AMOUNT OF DISCUSSION, AS WELL AS THE AMOUNT OF TIME ANY SINGLE SPEAKER IS ALLOWED, MAY BE LIMITED

ITEM 53 - DIR-70539 - ABEYANCE ITEM - DIRECTOR'S BUSINESS - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Development Agreement between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-201-005; 138-31-601-008; 138-31-702-003 and 004; 138-31-801-002 and 003; 138-32-202-001; and 138-32-301-005 and 007), Ward 2 (Seroka) [PRJ-70542].

ITEM 31 - Bill No. 2017-27 - ABEYANCE ITEM - For Possible Action - Adopts that certain development agreement entitled "Development Agreement For The Two Fifty," entered into between the City and 180 Land Co, LLC, et al., pertaining to property generally located at the southwest corner of Alta Drive and Rampart Boulevard.
Sponsored by: Councilman Bob Beers

<u>Appearance List:</u>
CAROLYN G. GOODMAN, Mayor
GINA GREISEN, representing Nevada Voters for Animals
ERIKA GREISEN, representing Nevada Voters for Animals
RICKI Y. BARLOW, Councilman
BRAD JERBIC, City Attorney
ROBERT SUMMERFIELD, Acting Planning Director
CHRIS KAEMPFER, Attorney for the Applicant
STEPHANIE ALLEN, Attorney for the Applicant
UNIDENTIFIED MALE SPEAKER

density, that although, yes, as the Staff Report reflects, a general plan amendment is – something that would be requested and that should come along to make the two consistent, as Mr. Jerbic stated and as has been said repeatedly, the opinion of staff is that the applicant has a right to come forward and request development under – the zoning.

COUNCILWOMAN TARKANIAN
See, the question I have is that I've been hearing this GPA thing for months. For months. If that's, if they brought that up, if this one side brought up the GPA situation early on, why didn't the other side get the GPA thing? And why didn't we say, hey, you've got to get it eventually? So why wouldn't they have gotten it early on? Am I missing something here?

BRAD JERBIC
Yeah.

COUNCILWOMAN TARKANIAN
Okay.

BRAD JERBIC
I will tell you what I think is missing here. There are, obviously, different opinions that you've heard. And – the real question is, I'm going to be really blunt. Do you trust your staff or not? The Staff here has literally read the Code, gone through the Code, has literally interpreted it, I think, right down the line. I think there are areas of the Code that are less than clear sometimes and areas of the Code that I think Tom is exactly right. The zoning had been in place here for 27 years, so the Development Agreement goes forward. It's a desirable thing, a very desirable thing to have the Master Plan, the General Plan, same thing, synchronized with the zoning, and they're not in sync right now. And at some point in time, an application will come forward to synchronize them. And you'll vote for it or you won't. But the fact is, if you didn't even have a general plan amendment that synchronized the General Plan with the zoning, the zoning is still in place, and it doesn't change a thing.

I think, to me, and this is my personal opinion, Councilwoman, this is a red-herring argument. I do not think that this is dispositive of anything that's relevant to this Council, because I think you're being asked, quite honestly, to be lawyers or judges and look at a legal case instead of a development agreement.

And I think the real question before you is: Is this development agreement something you think is compatible with this neighborhood and is it good? And the rest of the stuff, when it comes to the law and when it comes to planning, there, it will either be faith that staff has done their job or not.

But I think the real question for the Council is not to sit here as judges when it comes to the legal issues. I think the real question here is to say: Did we get it right? Are the numbers right? Is the density right? Are the setbacks right? If they're not, then don't vote for it.

COUNCILWOMAN TARKANIAN

And, Mr. Jerbic, I'm not a lawyer, so I didn't take that as a legal issue so much. I'm – involved with GPAs all the time, and we all are on this Council. So, I don't consider that in, necessarily just with legal. I – it might be a legal thing, but it's where we make judgments and we make recommendations. Are you telling me then the zoning for where the golf course is, that PD, what is it?

BRAD JERBIC

R-PD7.

COUNCILWOMAN TARKANIAN

R-PD7, is, it's consistent with the number of units they would be having throughout? And I'm not just talking in the area of the flood plains. I'm talking in the other.

BRAD JERBIC

That's a planning issue, so I'm gonna let Tom answer that.

Exhibit 33

D R A F T

T R A N S C R I P T

Binion vs. Fore Stars

Tom Perrigo, Volume I

Monday, December 5, 2016

By: Carre Lewis, NV CCR 497, CA CSR 13337

carre@envision.legal

Envision Legal Solutions

1-702-781-DEPO

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REALTIME AND INTERACTIVE REALTIME TRANSCRIPT

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We, the party working with realtime and rough draft transcripts, understand that if we choose to use the realtime rough draft screen or the printout, that we are doing so with the understanding that the rough draft is an uncertified copy.

We further agree not to share, give, copy, scan, fax or in any way distribute this realtime rough draft in any form (written or computerized) to any party. However, our own experts, co-counsel, and staff may have limited internal use of same with the understanding that we agree to destroy our realtime rough draft and/or any computerized form, if any, and replace it with the final transcript upon its completion.

REPORTER'S NOTE:

Since this deposition has been provided in real time and is in rough draft form, please be aware that there may be a discrepancy regarding page and line number when comparing the realtime screen, the rough draft, rough draft disk, and the final transcript.

Also please be aware that the realtime screen and the uncertified rough draft transcript may contain untranslated steno, reporter's notes, asterisks, misspelled proper names, incorrect or missing Q/A symbols or punctuation, and/or nonsensical English word combinations. All such entries will be corrected on the final, certified transcript.

Court Reporter's Name:

Carre Lewis, CCR 497

I N D E X

WITNESS: TOM PERRIGO

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By Mr. Bice	8

Tom Perrigo

Binion vs. Fore Stars

Monday, December 5, 2016

Carre Lewis, CCR No. 497

E X H I B I T S

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THE VIDEOGRAPHER: This is the beginning of video record the No. 1 in the deposition of Tom Perrigo, taken in the case of Binion, et al., versus Fore Stars, et al., held at Pisanelli Bice, 400 South 7th Street, Suite 300, in Las Vegas, Nevada 89101.

The date is December 5, 2016. My name is Hunter Blackburn, the videographer, working on behalf of Envision Legal Services.

The court reporter is Carre Lewis.

Will all present please identify themselves, beginning with the witness.

THE WITNESS: Tom Perrigo.

MR. BYRNES: Phil Byrnes representing City of Las Vegas and the deponent.

MR. JIMMERSON: Good morning. Jim Jimmerson I'm privileged to representing the defendants in this matter, Fore Stars, LTD, 180 Land Company, LLC, and Seventy Acres, LLC. Good morning to you all.

MR. BICE: Todd Bice on behalf of the plaintiffs.

///

///

///

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

Whereupon --

TOM PERRIGO,

having been first duly sworn to testify to the truth, was examined and testified as follows:

EXAMINATION

BY MR. BICE:

Q. Good morning, Mr. Perrigo. Can you state your full name for the record.

A. Thomas Andrew Perrigo.

Q. Can you tell me where you currently work?

A. I work for the City of Las Vegas.

Q. How long have you worked for the City of Las Vegas?

A. Since August of 1994.

Q. What is your current position with City of Las Vegas?

A. Current position is planning director and chief sustainability officer.

Q. All right. Can you tell me what it means to be the planning director and the chief sustainability officer?

A. The planning director is responsible for the function and operation of the planning

1 senior planner who has worked in that area will get
2 together and really evaluate the proposal.
3 Q. And then they will do a recommendation to
4 you?
5 A. Yes.
6 Q. And then you will decide whether or not it
7 moves forward before planning commission?
8 A. Yes.
9 MR. JIMMERSON: Mr. Bice, while you are
10 pausing, can you just work with us in terms of what
11 you and anybody else would have plans for in terms
12 of lunch? Is it 12 to 1? 12:30 to 1:30? What did
13 you have in mind?
14 MR. BICE: 12ish is fine. I can have lunch
15 brought in, if you would rather do that or you can
16 go out for lunch. I'm indifferent.
17 MR. JIMMERSON: I would like to walk across
18 the alley.
19 MR. BICE: Understood. We will break
20 around noonish and come back whenever Phil and the
21 witness are ready.
22 MR. JIMMERSON: Thank you.
23 (Exhibit 1 marked.)
24 BY MR. BICE:
25 Q. I'm going to show you what's been marked as

1 Exhibit No. 1. Do you need your glasses?
2 A. I do.
3 Q. Understood.
4 Showing you what's been marked as Exhibit
5 No. 1 Mr. Perrigo, I will let you read it and ask
6 you if you have ever seen this document before.
7 A. Yes, I have seen it.
8 Q. Did you see it before it was sent?
9 A. No.
10 Q. How did you find out about it, "this" being
11 Exhibit 1, this letter?
12 A. I don't recall. It became a question at
13 some point, this letter. And I don't recall when I
14 first heard about it.
15 Q. Can you tell me what is a request for
16 zoning verification?
17 A. It's fairly standard and routine where
18 people when they are wanting to know what the zoning
19 is, they will come in and ask for this letter. And
20 the planner will look it up in our system and verify
21 what is the designated zoning is and issue the
22 letter.
23 Q. So how many of these letters does the City
24 issue in a year?
25 A. I don't know the exact number but it's

1 quite a few.
2 Q. And so any property owner can come in or
3 actually I guess anyone can come in and ask you --
4 ask the City to tell them what the zoning is on a
5 piece of property, correct?
6 A. Yes.
7 Q. Do you even have to be the property owner?
8 A. No.
9 Q. What's the purpose of this letter? Strike
10 that let me rephrase Mr. Perrigo.
11 What's the purpose of a letter like this?
12 A. Typically people want to verify what their
13 zoning is, I guess. I don't know. I suppose
14 everybody who comes and asks maybe has a different
15 reason I can't speculate.
16 Q. This information is all publicly available
17 correct?
18 A. Yes.
19 Q. They can look on the city's map and
20 determine what the zoning is, can they not?
21 A. Yes.
22 Q. Do people seek a similar letter like this
23 concerning the master plan?
24 A. I'm not aware of a similar letter.
25 Q. So when you issue letters like this it's

1 limited to zoning?
2 A. Yes.
3 Q. Why is it limited to zoning?
4 A. Zoning I guess I need to back up on the
5 question of whether or not land use is binding. It
6 is to a certain extent. There are instances where
7 it's not in conformance to the zoning and the zoning
8 is sought to have more veracity, I guess, be more
9 important in terms of what somebody has -- what
10 entitlements they have to the property, then the
11 land use.
12 Q. You say that there are instances where
13 people think that the zoning has more veracity than
14 the land use?
15 A. The -- not instances. Again, my
16 understanding and probably have to defer to the City
17 attorney's office with whom I have had conversations
18 regarding this exact question.
19 Q. Don't tell me exactly what they have told
20 you. I'm trying to understand what your position
21 is?
22 A. I'm not going to tell you what they told
23 me.
24 Q. Okay.
25 A. My position is that the zoning is the --

what's the proper way to say it? The zoning governs more -- I guess zoning first, land use second.

Q. So --

A. If the land use and the zoning aren't in conformance, then the zoning would be a higher order entitlement, I guess.

Q. So it's your position that zoning supercedes the general plan --

A. Yes.

Q. Or the master plan?

A. Yes.

Q. Is that spelled out anywhere in the city's code?

A. I don't -- I don't -- I don't know.

MR. BICE: Let's mark this one.

(Exhibit 2 marked.)

BY MR. BICE:

Q. Can you tell me what Exhibit No. 2 is.

A. It's entitled the Unified Development Code.

Q. What is that?

A. The -- used to be -- it's Title 19.

Q. Okay. What is Title 19?

A. Essentially a zoning code.

Q. Zoning code for the City of Las Vegas?

A. That is correct.

Q. Is this something that you were familiar with?

A. Yes.

Q. Is this something that governs developments in the City of Las Vegas?

A. Yes.

Q. And this is something I assume that your department is responsible for adhering to?

A. The planning department among other departments, yes, building and safety, public works.

Q. Who prepares the Title 19 or Chapter 19?

A. Who prepares?

Q. Yes. In other words, who drafted it? Do you know?

A. Well, a number of people have been involved in drafting it over the years. Ultimately the final drafting comes out of the City attorney's office.

Q. Then it gets adopted by the City council, correct?

A. Yes.

Q. Do you consider the City ordinance here Title 19 to be binding?

MR. BYRNES: I'm going to object. Calls for legal conclusion.

Go ahead and answer.

BY MR. BICE:

Q. Just asking you for you as the planning director do you consider it to be binding?

A. I consider it to be binding. Again, the council has discretion.

Q. If you -- I'm just using this one as an example. This is R-4, can you tell me what R-4 is presently?

A. High density residential district.

Q. If you look at the bottom left-hand corner of this document, this is dated as of March 16 of 2011, do you see that?

A. Yes.

Q. Due know whether or not that's the current version of the City code of Title 19?

A. Title 19 -- well, this would not be.

Q. Okay.

A. It's -- Title 19 is amended quite frequently.

Q. Okay.

A. And every time it amended then it becomes the new.

Q. A new version, correct?

A. A new version.

Q. Is amended multiple times a year in your

experience?

A. Yes.

Q. So dealing with this version that existed at least as of March 11 of 2011, R-4 district is for high density you said?

A. Yes.

Q. Can you -- in layman's terms can you tell me what that means? Does that mean like apartments?

A. Means multifamily dwellings, attached.

Q. Condos, apartments, things like that; is that correct?

A. That's correct.

Q. It says here: "The R-4 District is intend to allow for the development of high density multifamily units within the downtown urban core and in other high intensity areas suitable for high density residential projects."

How would I figure out what are the other high intensity areas suitable for high density residential development; where would I look to figure out those areas?

A. I don't know that those are specifically spelled out.

Q. Okay. Are those -- are areas appropriately designated for high density residential development,

A. Yes.
Q. All right. Now as parts of that process, did you -- and let's just deal with you personally for a minute did you do any research concerning the master plan -- the Peccole master plan concerning this property?
A. I did not. Let me put a finer point on that. I read materials that my staff put together in their research.
Q. Who did the research for you on that?
A. Mr. Lowenstein headed it up and I believe Mr. Swanton assisted and I don't know who else.
Q. Mr. Swanton?
MR. JIMMERSON: Can we get a spelling on that please.
THE WITNESS: S W A N T O N.
MR. JIMMERSON: Thank you very much. Do you have a first name?
THE WITNESS: Steve.
MR. JIMMERSON: Thank you very much.
BY MR. BICE:
Q. Did Mr. Rankin have any involvement in that?
A. I believe so.
Q. Do you recall what his involvement was?

A. I don't.
Q. How about Mr. Summerfield?
A. I don't believe so.
Q. What did they provide you in terms of research, Mr. Lowenstein and company?
A. A copy of the original zoning case, of the -- some of the maps, the master plan, the -- all of the information regarding the zoning to R-PD7, including the backup from the council hearings and what was recorded and that kind of stuff.
Q. So you saw the agenda items from the -- from 1990 concerning the City council?
A. Yes.
Q. And planning commission meetings?
A. Yes.
(Exhibit 6 marked.)
BY MR. BICE:
Q. I want to make sure we are talking about the same documents. This is Exhibit 6. Showing you what's been marked as Exhibit No. 6, Mr. Perrigo, is this some of the information you were provided by your staff?
A. Yes.
Q. Can you tell us what this is?
A. This is the public hearing notice for

Z-17-90.
Q. What is Z-17-90?
A. It would be the zoning case.
Q. Zoning case for what?
A. To rezone property at Peccole Ranch.
Q. Got it. That's the number that gets assigned based on an application; is that right?
A. Yes.
Q. So this is for notice for March 8 of 1990, correct?
A. Yes.
Q. Can you tell me what the next page of of this exhibit is?
A. The annotated agenda with minutes.
Q. What does that mean, annotated agenda minutes?
A. Has the staff recommendation, the conditions of approval, and some of the -- I don't know that this is the entire document, but I don't remember for sure. Some of the comments from some of the planning commissioners.
Q. What was the -- what was the application -- what was the applicant seeking to do?
A. To rezone property from nonurban to R-PD7, R-3 and C 1.

Q. Would that eliminate, then, the prior zoning classifications on the property?
A. If approved, yes.
Q. Was this approved?
A. Yes.
Q. With conditions, correct?
A. Yes.
Q. Who was the applicant?
A. Peccole -- William Peccole trust.
Q. 1982 trust?
A. 1982 trust.
Q. Was that the developer?
A. I don't know.
Q. Do you know who the developer was, if not the trust?
A. I don't know.
Q. Have you ever investigated who the developer was?
A. I have not.
MR. BICE: Have this marked.
(Exhibit 7 marked.)
BY MR. BICE:
Q. Showing you what's been marked as Exhibit No. 7, have you seen this document before?
A. I have.

Q. Can you tell me what it is?
A. The Peccole Ranch master plan.
Q. When did you first see this Peccole Ranch master plan?
A. I don't know, early on when the proposal was first made and Mr. Lowenstein started his research into the property.
Q. Did you ever show a copy -- do you know, did anybody at the City ever give a copy of this to the applicant EHB companies?
A. I don't know.
Q. Did it ever come up at any of the preapplication meetings?
A. Yes.
Q. Where you were present?
A. Yes.
Q. Tell me what came up about it, about the master plan.
A. At some point, I don't remember exactly when, based on the plan, staff had requested that the applicant also file for a major modification to this plan.
Q. Okay.
A. And I don't know in what other context, but that's really the key.

Q. Did the applicant do so?
A. Yes.
Q. Why was it that staff determined that they needed to submit a major modification to this plan, Exhibit 7?
A. Staff determination was based on the fact that it was a rather large change to the existing plan out there, and given the number of units that were being requested and given the question as to whether or not this plan existed or had any standing and what that meant, staff requested a major modification so that council could understand and decide whether or not what was being proposed was appropriate in the context of this earlier plan.
Q. All right. At the time that you were alerted to this plan, you reviewed it, correct?
A. Yes.
Q. Did you believe that it was binding?
A. I did not.
Q. Did you tell anyone that?
A. I believe so.
Q. Who did you tell that you didn't think it was binding?
A. I don't recall. I --
Q. When did you make that determination?

A. After reviewing the materials that Mr. Lowenstein had put together showing that over the course of time that the plan had not been consulted for the majority of changes that occurred out there, that a majority of the rezonings were done consistent with Title 19 and not the plan. The language in the plan that talks about it being conceptual in nature, conversations with the City attorney's office, conversations with former planning directors.
Q. Which former planning directors?
A. Bob Ginzer [phonetic] and Margo Wheeler.
Q. You contacted them about this plan?
A. I did.
Q. When?
A. I don't recall.
Q. Why?
A. Just to see if they remembered or could recall why entitlements that had occurred during their tenure didn't take into consideration the plan.
Q. Did they provide you any information on that?
A. They did not.
Q. You just said that a majority of things

that were done were not in reference to the plan?
A. Yes.
Q. Tell me all the things that weren't done that weren't in reference to this plan?
A. I don't recall. There is a long list of every entitlement that occurred out there.
Q. Who developed that list?
A. Mr. -- I believe Mr. Lowenstein or it was developed at his direction.
Q. Did the applicant develop the list and share it with the City?
A. They may have developed the list and shared it with us. I don't recall for sure but I do know Mr. Lowenstein did.
Q. Mr. Lowenstein did his own research?
A. He did his own research or directed his staff to do the research.
Q. Who was it? Have you seen any written report from Mr. Lowenstein on this?
A. Yes.
Q. How many pages is that?
A. I don't recall. There is a specific table, though, that shows every action that occurred on this property or within the planned area, phase 1 and phase 2, some of which do reference the original

Z-17-90 and I believe the majority don't. And the plan was never modified as it sits. I remember the final thing was the land use element to the general plan speaks of all master plans in the City but describes those that require major modification to change, and this is not one of those.

Q. What does that mean?

A. The master plan -- the land use element to the master plan lists all of the master plans and describes the area and has a map. And it speaks to which of those master plan areas require major modification. And there is five, I believe, in the City that were actually developed as planned developments. And this one, according to that plan land use development did not and did not require major modification.

Q. Who developed that list?

A. That was done by the planning department adopted by City council.

Q. When?

A. I don't know.

Q. Was it -- has it been in the last two years?

A. No.

Q. So prior to that?

A. Yes.

Q. So on the planning commission agenda going back to item No. Of or Exhibit 6 we will come back to 7 in a moment, second page, so the zoning change was Z-17-90 was approved, correct?

A. Yes.

Q. And that was with the following -- do you see where there are staff recommendations?

A. Yes.

Q. Says approval subject to the following. What does that mean?

A. That there are certain conditions placed on the approval of that particular item.

Q. So for zoning change that was sought by the William Peccole 1982 trust zoning change was subject to a maximum of 4427 dwelling units be allowed for phase 2, correct?

A. Yes.

Q. And then conformance to the conditions of approval for the Peccole Ranch master plan -- or master development plan phase 2, correct?

A. Yes.

Q. So those -- that zoning change to R-PD7, R-3, and C-1 were conditioned upon those two requirements as well as the rest that are listed

there, correct?

A. Correct.

Q. Did the Peccole -- did the way the Peccole 1982 Trust have the ability to challenge any of those conditions at the City council if it wanted to?

A. Yes.

Q. It could have appealed those decisions if it was dissatisfied with them to the City council?

A. Yes.

Q. Did it do so?

A. I don't know.

Q. Well, in your research on this, has anyone told you that they did?

A. No.

Q. Then the matter would go forward to the City council, correct?

A. Yes.

(Exhibit 8 marked.)

BY MR. BICE:

Q. This is Exhibit No. 8. Can you tell me what Exhibit No. 8 is?

A. It's the -- well, we would call today an approval letter which lays out the action and conditions of approval. I don't know in 1990

exactly what it was called. Actually we call it a final action letter.

Q. Letter. Okay.

This is what gets sent to the applicant, correct?

A. Yes.

Q. Is this one of the documents that you were shown by your staff who had looked into the status of the Peccole master plan?

A. Yes.

Q. So this matter went to the City council agenda for approval, correct?

A. Yes.

Q. And it was approved, right?

A. Yes.

Q. Unanimously approved, correct?

A. Yes.

Q. All right. And the first two conditions on that approval of that zone change are what?

A. Of course there was one extension, but -- I'm sorry, the what?

Q. What were the first two conditions on that approval?

A. A maximum of 4,247 dwelling units be allowed for phase 2. Number two: Conformance to

recite it off the top of my head.
Q. Is this a minor modification a 17-acre application?
A. No.
Q. Why not?
A. Modification is required to certain plans that typically the PCD plans, not that there are a handful of plans like this one that are called out in the master plan to not require a modification.
Q. To not require a major modification or not require any modification?
A. Require any modification. If fact that's why the plan today is completely inconsistent with what's been built out there. The roads aren't in the same place, land use is all changed. It's completely inconsistent with what's built over time.
Q. So of the 1440 multifamily units that the City approved, how many have actually been built, do you know?
A. I don't.
Q. How have you determined that there are 720 available if you don't know how many have been built?
A. Well, staff has looked at that very carefully and did a very careful count of every

single unit that's been built in that area.
Q. Okay.
A. I do not recall the numbers off the top of my head.
Q. So staff has determined that there are 720 of that 1440 still available somehow?
MR. BYRNES: Objection. Asked and answered.
BY MR. BICE:
Q. Is that right?
MR. JIMMERSON: Join. He has never testified to the number 720 was still permitted.
THE WITNESS: I don't recall the number off the top of my head.
BY MR. BICE:
Q. My only question, sir, and I'm not asking you to say the numbers off the top of your head. But it's your understanding that there are 720 of of that 1440 is somehow still available, correct?
A. I don't know that to be true. So going back to your question about whether or not single and multifamily are fungible, I guess the answer is no, in this case. I don't know that it's relevant. We have looked at over all number of units for the area, and I just can't remember. I just can't

remember what those numbers work out to be.
Q. Are you treating them as fungible in this case?
A. I don't know because I don't recall what those numbers are.
Q. Well, when was this project closed out?
A. What project?
Q. The Peccole Ranch master plan.
A. I don't recall any formal action that closed it out.
Q. Has the City ever told anybody that it was closed out?
A. Not that I'm aware of. I don't know.
Q. When were the models released?
A. I don't know.
Q. Were they released sometime in 1996, 1990?
A. I don't know. I do recall reading that the bonds were released.
Q. When does the City consider a development to be closed out?
MR. JIMMERSON: Object to the question.
THE WITNESS: I don't know that there is any official determination of closed out. It likely refers to a public works action regarding the infrastructure.

BY MR. BICE:
Q. And the bonds are what secure the infrastructure, right?
A. Yes.
Q. And so when the bonds are released -- the bonds are only released when the infrastructure is deemed complete, correct?
A. That would be a question for public works.
Q. Is that your understanding?
A. I don't know if there are circumstances where that wouldn't be the case. I don't know. That would have to be a question for public works.
Q. Have you ever heard the term parent final map before?
A. Yes.
Q. What is that?
A. Well, the parent final map is the map that all of the specific various areas final maps relate to in the tentative maps.
MR. JIMMERSON: Mr. Bice -- Todd, can you tell me what's the first word before the words "final map."
MR. BICE: Parent.
MR. JIMMERSON: P-A-R-E-N-T.
MR. BYRNES: Do you want a break?

1 Mr. Perrigo, thank you. Can I ask you ten minutes
2 worth of questions?
3 THE WITNESS: Sure.
4 MR. BYRNES: Why don't -- I think this
5 would be better if we regroup to do it then.
6 MR. JIMMERSON: I will do it then. I'm
7 grouping, not regrouping.
8 MR. BICE: Thank you. We can go off the
9 record.
10 THE WITNESS: Going off the video record.
11 This includes the videotape deposition of Tom
12 Perrigo taken on December 5, 2016. The time is
13 approximately 4:34 p.m.
14 (Off the record.)
15
16
17
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20
21
22
23
24
25

Exhibit 34

CERTIFIED TRANSCRIPT

BADLANDS HOMEOWNERS MEETING

NOVEMBER 1, 2016

6 p.m.

One Queensridge Place

Retreat Room

Veritext Legal Solutions
877-955-3855

Submitted at City Council

Date 11-16-16 Item 105-107

By: David Mason

1 planning commission; what's scheduled for
2 consideration at the council meeting on
3 November 16th; and then we'll take any
4 questions from you.
5 And if you have any questions as I'm
6 speaking, feel free to interrupt me
7 because sometimes people forget to ask
8 them at the end. So I don't mind it when
9 somebody puts their hand up and says I
10 got a question right now.
11 A couple of years ago, we were
12 approached the EHB Development which is
13 owned by Yohan Lowie who purchased the
14 golf course known as Badlands Country
15 Club with the question of what is the
16 zoning for that property.
17 Almost all the property in the City
18 of Las Vegas has got some sort of zoning
19 or open space zoning, and so that lent --
20 that request went to the planning
21 department.
22 The planning department delivered a
23 letter which is a standard letter, I
24 think, of any developer who asks what's
25 the zoning of this property we're about

1 to buy. And in researching this
2 property, the first thing that we found
3 was that it's zoned P -- R-PD7.
4 R-PD7 is a type of zoning that
5 doesn't exist anymore. It used to exist,
6 because it stands for residential plan
7 development, and what residential plan
8 development does is it gives you the
9 right to ask for -- to ask for, not to
10 get, to ask for up to 7.49 units per
11 acre. So about seven-and-a-half homes
12 per acre. That's when you have the right
13 to ask for it.
14 Does that mean you get it? No. And
15 even EHB knows that; Mr. Lowie knows that
16 as well. What it gives you the right to
17 do -- assuming there aren't other
18 obstacles that would stop you from
19 developing, it gives you the right to
20 come in and say I would like to do
21 something with this land other than a
22 golf course, assuming there aren't other
23 obstacles, and those other things you do
24 have to be harmonious and compatible with
25 surrounding land uses.

1 advice on this and what Mr. Yohan -- what
2 Mr. Lowie is entitled to ask for.
3 The second thing to look at, even if
4 the golf course had zoning, is there
5 something else that prevents it from
6 being converted from a golf course to
7 something else? That would CC&Rs. That
8 would be other deed restrictions. Those
9 would be things that would over
10 (indiscernible).
11 We have looked for a very long time,
12 and we can find no restrictions that
13 require that this stay a golf course.
14 Having said that, I have seen some
15 brochures and people who bought custom
16 lots who are (indiscernible) forgiven who
17 bought a block of lots and it talks about
18 this great golf course community.
19 I have talked to people who have
20 paid a premium for a golf course view.
21 All of those things I recognize are very,
22 very compelling arguments for why this is
23 a golf course, but they're not legal
24 arguments, and they're not binding on the
25 order (indiscernible). So that is, quite

1 harmonious and compatible.
2 Could he come in, though, and say I
3 want to do seven-and-a-half units next to
4 this, we don't (indiscernible) that is
5 the case and we won't (indiscernible).
6 There's also been some argument that
7 if he doesn't get all of this, there's an
8 inverse condemnation case involved. I do
9 not believe that is legally true. I
10 believe that the fact is if he were to
11 come in and ask for what he's asked for
12 right now and (indiscernible) tonight,
13 it's perfectly permissible to deny this
14 project.
15 However, if he came in with another
16 project that were just what I said
17 before, harmonious and compatible in
18 surrounding land uses and have all the
19 impact studies that would be a different
20 story. And to tell him that he couldn't
21 develop anything out there would be to
22 deprive him of his right to develop his
23 property, which he owns, and that could
24 well result in an inverse condemnation
25 case. So I wanted to break that down so

1 MR. PERRIGO: Correct. Right.
2 Okay. So to separate the two, right, the
3 Peccole Ranch plan is not being modified
4 for this project.
5 MALE SPEAKER: In six times the
6 seven units (indiscernible), so by just
7 getting zoning for twenty-four units an
8 acre --
9 MR. PERRIGO: Um-hum.
10 MALE SPEAKER: -- it's just a zone
11 change. So that in itself allows that
12 (indiscernible)?
13 MR. JERBIC: Maybe I need to get a
14 (indiscernible) a little bit, because
15 this isn't by accident.
16 The Peccole Ranch Phase II plan was
17 a very, very, very general plan. I have
18 read every bit of it.
19 If you look at that original plan
20 and look what's out here today, it's
21 different. It's different because it
22 said in very general terms here's what
23 your density will be for your high-
24 density, and here's what your total unit
25 count will be, and here's what your

1 density will be maximum for your -- or
2 your single family, and here's what your
3 total unit cap will be, and it said golf
4 course -- (indiscernible) golf course
5 (indiscernible) was in the original plan.
6 So they did not look at this plan back
7 then as a development agreement would be
8 looked at today under (indiscernible)
9 statutes.
10 We looked at it under our local
11 zoning law -- this preceded me, whoever
12 made those decisions this is the way they
13 did master planning back then.
14 They did a very general plan, and
15 then they came up with zoning and
16 somebody say you know something, Tudor
17 Park; we're going to put that over here
18 because we think that that fits well over
19 here; and over here, we're going to put
20 some low-density because we thing custom
21 estates look pretty good over there; and
22 down here, we're going to hire -- we're
23 going to do a deal with a developer and
24 have him do these homes. That's all --
25 they did it piecemeal. They came in

1 B and adopted in 1973, the City of Las
2 Vegas started doing our own plan
3 development. And we did it with our
4 zoning code. That's where we came up
5 with these zoning categories that
6 resulted in R-PD7 and R-PD this or R-PD
7 that. So we were doing plan development
8 a year before the State of Nevada even
9 thought of plan development.
10 And they said in their law that you
11 could do it if you follow the law, the
12 state law, you have these requirements.
13 But we never followed the state
14 requirements. We always believed the
15 state did not usurp our local authority,
16 and so we do not believe we were
17 preempted, and continued to do it our
18 way. And we have from the beginning of
19 time.
20 So the plan -- the master plan that
21 we talk about, the Peccole phase 2 master
22 plan is not a 278A agreement, it never
23 was, never has been, not a word of that
24 language was in it. We never followed
25 it. And so the argument today that's

1
2 C E R T I F I C A T I O N
3
4 I, Ellen S. Kolman, hereby certify that
5 the foregoing is a true and correct
6 transcription, to the best of my ability, of
7 the sound recorded proceedings submitted for
8 transcription.
9
10 I further certify that I am not employed
11 by nor related to any party to this action.
12
13 In witness whereof, I hereby sign this
14 date:
15 November 9, 2016.
16
17
18 Ellen S. Kolman
19 Ellen S. Kolman
20 AAERT Certified Electronic Transcriber
21 (CET**D-568)
22
23
24
25

Exhibit 35

DISTRICT COURT

Clark COUNTY, NEVADA

180 LAND CO, LLC, et al.	Case No. A-17-758528-J
Plaintiff,	DEPT. NO.: XVI
vs.	
CITY OF LAS VEGAS, a, political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE LIMITED LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X,	
Defendants.	

DEPOSITION OF CLYDE O. SPITZE

VOLUME I

Taken at:

HAMPTON INN
1145 Bentley Blvd.
Cedar City, Utah 84721

On Friday, August 16, 2019
At 10:00 a.m.

Reported by: Russel D. Morgan, CSR

APPEARANCES

For the Plaintiff:

James J. Leavitt
Autumn Waters (via telephone)
LAW OFFICE OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101
702.733.8877

For Defendant City of Las Vegas:

George F. Ogilvie
MCDONALD CARANO LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, NV 89102
702.873.4100

EXAMINATION INDEX

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PROCEEDINGS

* * *

CLYDE O. SPITZE

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

-o0o-

(Exhibit No. 1 was marked for identification.)

EXAMINATION

BY MR. OGILVIE:

Q Good morning, Mr. Spitze.

A Good morning.

Q As I have introduced myself, my name is George Ogilvie. I am counsel for City of Las Vegas in some litigation filed on behalf of 180 Land Company, LLC, which is a property owner of what used to be the former, what used to be the Badlands Golf Course. We are here for your deposition today. And I'll go through some of the formalities of a deposition. But before I start, would you please state your full name and spell your last name?

A Clyde Oliver Spitze. S-p-i-t-z-e.

Q Okay. And, Mr. Spitze, we are in Cedar City, Utah today. Is this where you live?

A I reside here.

Q Okay. How long have you resided in Cedar City?

Q All right. We'll talk about that in a minute. I just want to make sure that it wasn't privileged or confidential.

A I mean, anything that -- anything that you are going to say or see is what came off the files or something.

Q Okay. Sorry. Go ahead.

A I mean, these are mementos of my project. I mean, it's a pretty long lifetime to start working for something from 1972 up to, and it hasn't really stopped. I still get calls and questions from Peccole Nevada Corporation. I am sort of a family friend. Anyway.

Q Understood. Where did you go to pull out your documents? Do you have like just ten banker boxes or five banker boxes of documents?

A Let me -- yeah. I started working for, particularly a little bit with VTN where I was the total guy. But as I got into the last several years, particularly with Pentacore and Amack, I walked into the door of Pentacore. And I knew, I knew the owner of that from the time I came into town. He was in the planning department of Western Engineers. And I had the next chair to him. He and I worked in the same department in 1963.

Q Okay.

A When that office closed or went to close, I went into business with Engineering Service Corporation. He

stayed in that company for a short period of time. He knocked on my door. He said, Clyde, you got any work for me? I said, yeah. So he worked for me for a short period of time. Then he went off to work for GC Wallace. And I went on my merry way. And he stayed with GC Wallace until he opened up Pentacore Engineering when he quit. He opened up the Pentacore Engineering with a couple other friends of his from GC Wallace. And I walked in his office. And I said, hey, Mike, I got about $3 million worth of work I need a little help on. And he said you are a member of the crew. Come on aboard. And I became part owner of Pentacore Engineering.

Q Great. All right. And the document --

A So these documents, everywhere I moved, and when I retired in 2005, on June the 2nd, I cleaned out all my files. I brought them home, put them in my garage. As far as I know, they are still there except for what I have drug up here for some research.

Q Okay. Understood. And so, I'm assuming it's a pretty extensive file?

A At the time, it was just all the paperwork that I had in my own little personal files.

Q So, but I am talking about now, is it an extensive file now? How many banker boxes, I guess, is my question?

A I have no idea. It's in the garage in Las Vegas.

Q I totally understand. All right. And I want to make sure that I understand these phases of Peccole. You lived this, and I am just learning it now from you. So the Peccole phase one, generally, was the property south of Charleston? And I understand that there's some properties out of Charleston which is also included as Peccole phase two, correct?

A Ask me that question again, because I don't think you said it right.

Q So the Peccole phase one plan consisted of property generally south of Charleston, correct?

A Yes. And I was not a part and parcel of that except doing the original boundary and topo and all of that.

Q Okay. And then there was a Peccole phase two plan for the property generally north of Charleston. But I understand it included some of the property south of Charleston?

A Well, the overall parcel that he did included everything that Peccole owned except what had already been sold off.

Q I got it. Okay. But he broke it down into phase one and phase two, correct?

A My phase one and phase two, yes.

Q And on phase two, there were two different plans. There was the Peccole and Triple Five plan?

A Yes.

Q Back in 1990, correct?

A Yes.

Q And then, after Mr. Peccole got in the litigation with Triple Five and broke with Triple Five, then a new plan came in, correct?

A Yes.

Q Okay. That's your plan that you worked on, right?

A Yes.

Q And that would, maybe that would be better to refer to that second plan as phase two as the Queensridge plan, correct?

A That's true.

Q All right. And we are going to talk a little bit more about that. I just want to make sure that I understood that. Okay. Now, you talked just a little bit about the major problem that Mr. Peccole had with Triple Five. And you said that there was a phone call that he received from his attorney while he was at your office. Do you remember testifying to that?

A Oh, yeah.

Q Do you remember who his attorney was that called him on the phone?

A I have no idea who was on the other line.

Q And then you said you remember it pretty vividly

A Yeah, absolutely.

Q Explain this to me. How did they not take that into consideration?

A Well, if you got a channel going down this way, and you are basically going to have to change it to go over here, you've got to cut it off. You have to re-ditch something that is not just a little minor ditch. These ditches are 5, 10 feet deep, 20, 40, 50 feet wide. It's a lot of dirt. The other thing is, when you start building in an area that water has consistently gone, you have to make some effort to deviate to change that location. It's, in my mind, it's a cost effective thing. And I mean, this isn't the first project I worked on, and damn sure not the last one.

And I always looked to my client and said I am going to do the best for you for the amount of money that you are going to spend. And if I can make a difference in that, then I am making my wages. I mean, I don't know. That's my mental process when I sit down and work for a client.

Q And you don't think, and you don't believe that Triple Five took those things into consideration?

A Personally, I don't. I don't know. I mean, I know Smith from years of seeing him around. He's an old time planner in this area. He's done a lot of work in this

area.

Q And when you say Smith, Smith is the planner for Triple Five, correct?

A Yes. But the company that we hired, I don't know, was a little more modern. I liked the way that, and they weren't the first time that we worked, the company has worked with them.

Q And the company that you hired for your plan for phase two was KTGY, correct?

A Correct. And I did talk to the guy maybe ten years ago. No, it's been longer than that, probably 15 years ago. And I did catch him. He's retired many years before that. And he's probably not alive anymore.

Q All right. And, in your plan for phase two, which was different than the Triple Five plan, did you also make a modification of where certain homes would be located?

A Well, when you say that certain homes, what are you talking about?

Q Well, I am just trying to find out every way that your plan is different than the Triple Five plan for phase two.

A We segregated it into five or six parcels that could be sold as parcels to a developer. We weren't going to develop it nor did we want a developer to develop everything. We wanted to be able to have something that

could make it's conclusion in a shorter period of time.

Q And was that segregation of five or six parcels different than what Triple Five had put on its plan?

A I have no idea. All they had was single-family residences or whatever. I really don't, I didn't study their plan enough to know what they were developing versus what we wanted to develop.

Q So would it be fair to say that you just started over and created your own plan totally different from Triple Five?

A Mr. Peccole was not happy with what he had. I don't want that. I want you to do something that is better for me than I've got available there. Can you do that? Can you study that? Can you tell me what is better than what I've got? In my opinion -- in my opinion, and my staff's opinion, we developed something that worked with what he had in mind to do. And that's part of doing something for anybody. If you've got an idea of something, I don't want to do his idea for you.

Q I got it. And so, you did not use Triple Five's plan as a starting point, you started over?

A Basically, we started over.

Q And just to be sure I understand this, Triple Five's plan was the plan which is identified in Exhibit, actually you can pull it out, Exhibit No. 3?

A Yeah.

Q Okay. So, my question is, let me make sure we got it right, because there was a little pause there, is the plan that Triple Five had presented to Mr. Peccole what is shown in Exhibit No. 3, correct?

A That's it. But it doesn't tell me anything of what it's consisting of. There's no street layouts. There is nothing except a pod that's supposed to be single-family residence, multi-family, whatever.

MR. OGILVIE: Pardon me, Jim.

What page are you looking at, Mr. Spitze?

THE WITNESS: 862.

MR. OGILVIE: Thank you.

BY MR. LEAVITT:

Q That's page 862 of Exhibit No. 3, correct?

A Yes.

Q And the cover on that states, Exhibit No. 3, is the Peccole Ranch Master Plan Amendment and Phase Two Rezoning Application?

A Yes.

Q Okay. So would it be fair to say that your new plan, which you came up with, with Mr. Peccole for phase two, replaced the Triple Five plan?

A Absolutely.

Q Okay.

Q Okay.
A And I didn't want to spend the money. And he didn't want to spend the money.
Q All right. Understood. And that project that you worked on in Laughlin, what project was that, just out of curiosity?
A I don't remember.
Q If you don't remember, that's okay.
A It's 20, 30 years ago.
Q And the purpose of doing that is so more property would be developable, correct?
A Yes. When you got a quarter of a mile of stream running off a mountain, it wipes out a huge big piece of your property. So by gathering that water together and getting it in something that would hold it and hold a 100 year storm without spending an arm and a leg, we got it done.
Q Now, I am going to ask you similar questions about just the golf course generally. I read a statement that you made that you said that, hey, the main reason for leaving the 250 acres open like you did on the Queensridge was because of the drainage, we got to that, right? Then you later stated that the golf course was a plus, right?
MR. OGILVIE: Objection. Mischaracterizes witness's testimony.

BY MR. LEAVITT:
Q We'll come back to that.
A The golf course was, if you want to, a golf course is a plus. Because if you left it in its normal state as open space, which is what we had to have for the community, if you had something coming in there that you could use that without a major expenditure and get money out of it, it calls as a plus.
Q Maybe that was a very bad question by me. My point in saying this is, you didn't locate the 250 acres open area like you did in the Queensridge development so you could build a golf course? That wasn't the principal reason for it, correct?
A No. It was to take care of water.
Q And, again, I have read through tens of thousands of pages of documents here, and I have not seen anywhere in any of these documents where the City of Las Vegas conditioned the development of the Queensridge property upon the construction of a golf course. Would you agree with that?
A Absolutely, it did not.
Q So was there any point in time when anybody at the City of Las Vegas came to you and stated we will not allow you to build the Queensridge development unless you will build a golf course?

MR. OGILVIE: Objection. Lacks foundation. Mischaracterizes the evidence.
A No.
BY MR. LEAVITT:
Q George is starting to object.
A He woke up.
Q He woke up. Are you aware of any condition on any application that you have made for the Queensridge development where the City of Las Vegas conditioned the Queensridge development upon the construction of a golf course?
MR. OGILVIE: Objection. Lacks foundation. Calls for a legal conclusion.
A As far as I knew, there was nothing outside of the original plan that I inherited that had a golf course in that area. But, at the time that I went to work with Mr. Peccole, that was not a critical issue. The critical issue was he wanted so many houses to sell in a certain price range in certain areas to open this and leave the open space as drainage area. And that's it.
BY MR. LEAVITT:
Q Okay. Now, you also stated that the marketing department set the price for the lots in the Queensridge development?
A When I said marketing department, I meant Mr.

Peccole, Mrs. Peccole, Larry Miller and anybody else having to do with the family. I mean, it was his personal property after he obtained it through other sales to get the property all in his own name. And he's the one that determined how many houses, how much money he wanted to make.
Q Do you know an individual by the name of Greg Gorgion?
A I know Greg.
Q Who is Mr. Gorgion?
A Mr. Peccole had three daughters.
Q Okay.
A Okay? The youngest daughter married a fellow by the name of Gorgion who played basketball for the University of Las Vegas. And if you had been around you would have known that.
Q Was that Gondo?
(Whereupon, a discussion took place off the record.)
BY MR. LEAVITT:
Q So what year did Gorgion play? Was it in the '80s or something?
A Yeah.
Q Anyway, not too important. So, go ahead, you were telling me who Greg Gorgion is.
A He was son-in-law to Bill Peccole.
Q Okay. And he also worked for the Peccoles? He

that property which you have identified in red?
A Open space.
MR. OGILVIE: Objection. Lacks foundation.
BY MR. LEAVITT:
Q What do you mean by open space?
A It's a part of the map that's listed as open space.
Q Okay. How does that limit its development?
MR. OGILVIE: Objection. Calls for a legal conclusion.
A I am trying to think of the verbiage that the county, that the city has that does not specify acreage, a developable acreage in open space.
BY MR. LEAVITT:
Q Okay. I want you to open up back to Exhibit No. 9 if you don't mind?
A Exhibit No. what?
Q Nine.
A Okay.
Q If you don't mind looking at the very last page?
A Yeah.
Q And this is a map showing the old plan with your new plan, correct?
A It's the first layout. It's the first developable area in phase two.

Q Okay. And then flip back to the next page. And you should be on CLV091253?
A Um-hmm.
Q And that page there does not show that area as open space, correct?
A It does not, because it has not, in that area, been developed yet.
Q Okay. What does it designate that area for?
A It says single-family residence, 173 acres or something to that effect.
Q Okay. And on your map here, and this is a map that you assisted with preparing, correct?
A Yeah.
Q Okay. Does it designate any area as open space?
A It does not in that one. Because this is more of a development phase map rather than an overall general plan.
Q But the City of Las Vegas never came to you, and correct me if I'm wrong, and I think we have established this, never came to you and said that 250 acres is going to remain open space and you can't build in it?
MR. OGILVIE: Objection to form.
A That's not really the way the action came to play. I mean, when that section was put under design, and we got the lots out of it that we wanted, that generated additional open space, that's where it went.

BY MR. LEAVITT:
Q Well, but I thought you stated previously that you did not do any specific calculations?
A I did not.
Q Okay. And then the City of Las Vegas never specifically required you or made a condition to have open space?
A That's right.
Q Okay. So my question is, are there any limitations on that property in red remaining open space?
MR. OGILVIE: Objection. Lacks foundation. Calls for legal conclusion.
A If you look at the overall plan, you can't deal with a half of a plan when you are dealing with the rest of it. So you look at the overall, and see what areas developed and what left was open space, and that's what we had as open space.
Q No, I get that. That's what you and Mr. Peccole and the team put together. What I am trying to get at is are there any legal limitations, legally limiting that property in red to open space that you are aware of?
MR. OGILVIE: Objection. Lacks foundation. Calls for a legal conclusion.
A It doesn't fit into the, it doesn't fit into the plan. It's not a usable portion. And everything that was

not a usable portion became part of the open space which consisted with the drainage area, which is primary. And it just became open space. It was not property that Mr. Peccole wanted to use.
BY MR. LEAVITT:
Q I understand that. But what I am trying to get at is, are you aware of any restrictions or any limitations or any agreement or any contract anywhere limiting the use of that property in red to just open space?
MR. OGILVIE: Other than the city's general plan?
A I have seen plans from the city that lists that all as open space.
BY MR. LEAVITT:
Q I am going to ask Mr. Ogilvie to please not direct the witness how to answer questions. I heard what you said.
MR. OGILVIE: I said it under my breath. I don't think the court reporter heard it.
BY MR. LEAVITT:
Q Okay. Okay, so let's get to that. So are you aware of any limitation to using that property in red as anything other than open space?
A Just the city plan that I saw says it's open space.
Q Okay. All right. And what city plan is that? Was it the one that Mr. Ogilvie just showed you?

C E R T I F I C A T E

STATE OF UTAH

COUNTY OF IRON

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME, RUSSEL D. MORGAN, A CERTIFIED COURT REPORTER IN AND FOR THE STATE OF UTAH, RESIDING AT IRON COUNTY, UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOTYPE, AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO TYPEWRITING, AND THAT A TRUE AND CORRECT TRANSCRIPTION OF SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST OF MY ABILITY IS SET FORTH IN THE FOREGOING PAGES 4 to 196.

RUSSEL D. MORGAN, CCR
LICENSE #87-108442-7801

August 24, 2019.

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

I, CLYDE O. SPITZE, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action that I have read, corrected, and do hereby affix my signature to said deposition.

CLYDE O. SPITZE
Deponent

Subscribed and sworn to before me this ____ day of _____, 2019.

Notary Public

DISTRICT COURT

Clark COUNTY, NEVADA

180 LAND CO, LLC, et al. Plaintiff, vs. CITY OF LAS VEGAS, a, political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE LIMITED LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	Case No. A-17-758528-J DEPT. NO.: XVI

DEPOSITION OF CLYDE O. SPITZE

VOLUME II

Taken at:

HAMPTON INN
1145 Bentley Blvd.
Cedar City, Utah 84721

On Wednesday, August 21, 2019
At 9:00 a.m.

Reported by: Russel D. Morgan, CSR

APPEARANCES

For the Plaintiff:

James J. Leavitt
Autumn Waters (via telephone)
LAW OFFICE OF KERMITT L. WATERS
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MCDONALD CARANO LLP
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702.873.4100

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A Triple Five. Yes. Mr. Peccole would come to me and talk about what Triple Five was laying out and what they were doing.

Q So when you say several renditions of their master plan were generated, what you are referring to there is the master plan that Mr. Peccole and Triple Five were working on?

A The partnership.

Q Okay. The last sentence there says, I did note that it did not conform to what I understood was what Mr. Peccole wanted.

A That's exactly what I said earlier today.

Q And that's why Mr. Peccole split from Triple Five, correct, or one of the reasons?

A It was a contributing factor.

Q Okay. Let's go to the next page. And at the top there, very top, it says, "During several meetings that I had with Mr. Peccole over the next period of time, he explained his disappointment with the plan for that area north of Charleston, and particularly the location of a desired regional center. I want to confirm that what you are referring to there is phase two of the Peccole plan; is that correct?

A Yes. The area north of Charleston.

Q Okay. Then if we go down, we are going to skip

down, since you testified to a lot of --

A Just a minute. My hearing aids have taken the decision that they don't want to be up there where I can hear.

Q Did you control it with your phone?

A Yes.

Q There is a photograph, I am going to reach over, and see where it says it was?

A Yes.

Q "It was also at that time that I joined Pentacore Engineering as the vice-president project manager. Mr. Peccole contacted me for assistance. He wanted to revise and refile the master plan for what he called phase two." Can you explain just a little bit what you meant by revise and refile the master plan for what he called phase two?

A Well, the plan that was approved to that point had things in it, he did not like what he had, what they had put together and got the plan approved. There were things that he wanted to change. And so, he knew that he was going to have to refile and get approval to modify that plan to what he wanted.

Q Okay. And then, if we continue on that line after where it says phase two, it says, "Consisting of most of the area north of Charleston Boulevard and west of Rampart, and the west end of phase one between Sahara and Charleston,

which was done in approximately 1994. So are you saying there that the Peccole phase two plan was revised and refiled in approximately 1994?

A Yeah. And I don't remember. I think what he's talking about there has to do with that strip of property that fronted on Hualapai between Sahara and Charleston, I believe.

Q But this is your statement, right?

A Yes.

Q Oh, I see what you are saying. You are saying what Mr. Peccole was talking about, because you said he wanted to revise and refile the master plan for what he was calling phase two?

A Yes.

Q Okay. And we are going to come back. If you go to the very bottom, there is a paragraph that begins, there was never a required number. Do you see that?

A Yes.

Q "There was never a required number on home sites in any parcel needed to meet the Peccole requirements. The main requirements was always quality, not quantity."

A That's right.

Q That was based upon what Mr. and Mrs. Peccole had told you, correct?

A Absolutely.

Q Okay. Then here's where I got this word, the "plus". You say the golf course was a plus as long as the flood requirements were not impaired, correct?

A Yes.

Q And so, the main issue was the drainage, accommodating the drainage, correct?

A That's what it was for. And that's what he wanted to leave it for.

Q Okay. And, as I stated before, the golf course was just a plus to that drainage, correct?

MR. OGILVIE: Object to form.

BY MR. LEAVITT:

Q Well, actually, let me rephrase that. The golf course was a plus so long as the flood requirements were not impaired?

A Yes.

Q Okay. Then, here we go. Let's go to the next page, page number 3. It says the amended master plan. Do you see that?

A Yes.

Q Okay. It says, "Amended master plan was completed by the planning group and was accepted by the Peccole family." Is the amended master plan that you are referring to there the new plan for phase two?

A Yes.

Q That was to replace the Triple Five, correct?
A Yes.
Q Okay. Then you go on to state, "The residential development was called Queensridge in honor of work done by Mrs. Peccole and family."
A That's right.
Q What does Queensridge represent?
A It represents that area north of Charleston.
Q No. I know where it's at. But why did they use the word Queensridge?
A Because Mrs. Peccole, the queen of Peccole Ranch, was honored by the name of Queensridge.
Q That's what I thought. I wanted to confirm that. It says, "This final plan was submitted to the City of Las Vegas and was approved."
A Yes.
Q What final plan were you referring to there?
A Phase two master plan, the modifications that we have been talking about.
Q Okay. And I am going to make sure I get that right. Because there were a couple of plans for phase two. There was the Triple Five phase plan for phase two?
A Not talking about that.
Q Okay. So what happened is your plan that you worked on with Mr. Peccole and Mrs. Peccole and the other

team members, that was the amended master plan, correct?
A Yes.
Q And that was the amended master plan for phase two?
A Yes.
Q And that was what was going to be used for the Queensridge development?
A Yes.
Q And that final plan was submitted to the City of Las Vegas and was approved, correct?
A Yes.
Q And that final plan which you are referencing there is the new phase two plan that replaced the 1990 Triple Five plan, correct?
A Yes.
Q Okay. Then if we go down here you say, "At this point in time, the master plan was complete and the physical design was beginning with the first phase of each building group was being submitted to the city for approval and construction." I want to make sure I understand that. So you, with the Peccole group, created this new phase two plan that replaced the Triple Five plan, correct?
A Yes.
Q And then what was happening was the development was beginning, and it says that each building group was

being submitted to the city for approval and construction. So is what happened, after you created this plan, that certain portions of Queensridge were sold to individual home builders?
A Not at that point.
Q Okay. So what did you mean by each building group was being submitted to the city for approval and construction?
A Okay. Do you remember in the very beginning we listed out those residential areas that were in the 50 -- the 60, 70, and 80s?
Q Yes. This was Exhibit No. 5, correct?
A Yes. So each one of those, and not on this side, but, at that point, this was the first half that we worked on. And we created a separate set of plans for each one of these developments. And the first thing you do at this point is you now come back with a tentative map.
Q Got it.
A So we created tentative maps on everything. And then we came -- when that was approved, then we took and made phase one, phase two, phase three, phase four, whatever, on each one of these developments so that we had a sellable piece of property to a residential builder that wanted to build that.
Q Got it. So for purposes of the record we have

been referring to Exhibit No. 5. And the developments you have been identifying here are already labeled, one, two three, four on Exhibit No. 5, correct?
A Correct.
Q All right. Now, let me make sure I've got this right. What exhibit did we mark that? No. 16. Okay. We are going to skip a lot now because you have actually answered a lot of these questions for me already.
Now, the hub of the, and I think that's what you called it, there was a hub of people or a team of people that worked on the development of phase two, which involved Mr. Peccole and, obviously, Mrs. Peccole had some insight because she traveled to Europe. There was an attorney. There was a project manager. And there was a son-in-law, Larry Miller. And I wanted to make sure I got this right. When you say project manager, were you part of the project management team?
A Yes.
Q Okay. And you worked with this company which is called KTGY as the project management team, correct?
A Yes. He basically worked for me in doing this design.
Q All right. And, in reading your deposition, you stated that William Peccole was principally in charge until a legal ruling on his decision making, correct?

Q And Mr. Ogilvie read in a letter there was a reference that one of the reasons that this zone change and general plan amendment was being submitted was because you had chosen to realign the golf course, correct?

A Yes, from the configuration of the original plan amendment to the configuration that we were doing.

Q Okay. Was that a voluntary act on your and Mr. Peccole's behalf?

MR. OGILVIE: Objection. Form.

A What do you mean voluntary?

BY MR. LEAVITT:

Q Let me ask it this way. Did the city force you to realign that golf course?

A The city never forced us to do anything. We felt that it was not appropriate.

Q Okay. So, that was a decision made by you to realign the golf course?

A Yes. Well, to realign not just the golf course, but realign all of that area internally within the center of the project.

Q The drainage area, correct?

A Yes.

Q Okay. But what we read in Exhibit No. 25, what Mr. Peccole read is that the letter of justification submitted with the application offered no justification for

the request, but stated that the change in alignment of the golf course was one reason for the request. So my question is that change in alignment of the golf course was a decision that was made by you and Mr. Peccole, correct?

A The determination of golf course is more specific than it actually was. There was a modification of the master plan of that area and how that plan was to be developed and how the drainage was being protected.

Q So it was really a realignment of the drainage area, correct?

MR. OGILVIE: Objection to form.

A That caused our reasoning to change it.

BY MR. LEAVITT:

Q Okay. So, again, Mr. Ogilvie read from a letter and a staff approval where this golf course was mentioned, right, in Exhibit No. 25 and Exhibit No. 26, right?

A Yes. And their terminology of golf course was not necessarily as I understand a golf course, but it was land that was in their plan showing as golf course. And they used that terminology.

Q Okay. But I want to focus here on something which is important because I think you stated that you have done a lot of land use applications, okay, at the end of these applications and approval that was given, correct?

A Yeah.

Q And that approval letter lists those conditions, correct?

A Yes.

Q The approval letter lists the general conditions. Plan amendment and the approval letter lists the conditions of the zoning change, correct?

A Yes.

Q So what do you think from a land use perspective is binding upon you as the applicant, the letter that is given by the city approving your project with the conditions, is that what you believe is binding upon you as an applicant?

MR. OGILVIE: Objection. Calls for legal conclusion.

A Versus what?

BY MR. LEAVITT:

Q Versus a statement made in a letter and a statement made in a staff report?

A Yeah.

Q Is the answer yes?

A Yes.

MR. OGILVIE: Same objection.

BY MR. LEAVITT:

Q And, as you recall, we went through those conditions in Exhibit No. 25 and Exhibit No. 26. And in

those conditions there is no reference to a golf course, open space, or park, recreation, open space, correct?

MR. OGILVIE: Objection. Document speaks for itself.

A That's what it says.

BY MR. LEAVITT:

Q Okay.

(Whereupon, a discussion took place off the record.)

BY MR. LEAVITT:

Q Okay. I am almost done.

A All right.

Q Exhibit No. 34, if you don't mind opening that up.

A All right. Thirty-four.

Q I want to make sure I understand this. So Exhibit No. 34 is the March 8th, 1990, Z-17-90 minutes, correct?

A Yes.

Q All right. And this was for the original phase two plan which was recorded by Triple Five, correct?

A Correct.

Q And the statements in here were made in regards to the original plan that was submitted by Mr. Peccole and Triple Five, correct?

A Yes.

Q All right. But your plan that you worked on with Mr. Peccole after you were retained replaced this Triple

Five plan, correct?

A Yes. Yes.

Q And do you know whether the drainage improvements that were made as a result of the construction of Tivoli Village received a drainage award or not?

A I don't.

Q You don't?

A I don't know what you mean by award.

Q George is making fun of me now. Pass the witness.

MR. OGILVIE: Thank you, Mr. Spitze. I think we are all finished.

MR. COURT REPORTER: Do you want a transcript?

MR. OGILVIE: Absolutely.

MR. LEAVITT: I would like a transcript. Same as last time, word searchable PDF.

(Whereupon, the proceedings were concluded at 5:47 p.m.)

C E R T I F I C A T E

STATE OF UTAH

COUNTY OF IRON

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME, RUSSEL D. MORGAN, A CERTIFIED COURT REPORTER IN AND FOR THE STATE OF UTAH, RESIDING AT IRON COUNTY, UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOTYPE, AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO TYPEWRITING, AND THAT A TRUE AND CORRECT TRANSCRIPTION OF SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST OF MY ABILITY IS SET FORTH IN THE FOREGOING PAGES 202 to 461.

RUSSEL D. MORGAN, CCR
LICENSE #87-108442-7801

August 28, 2019.

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

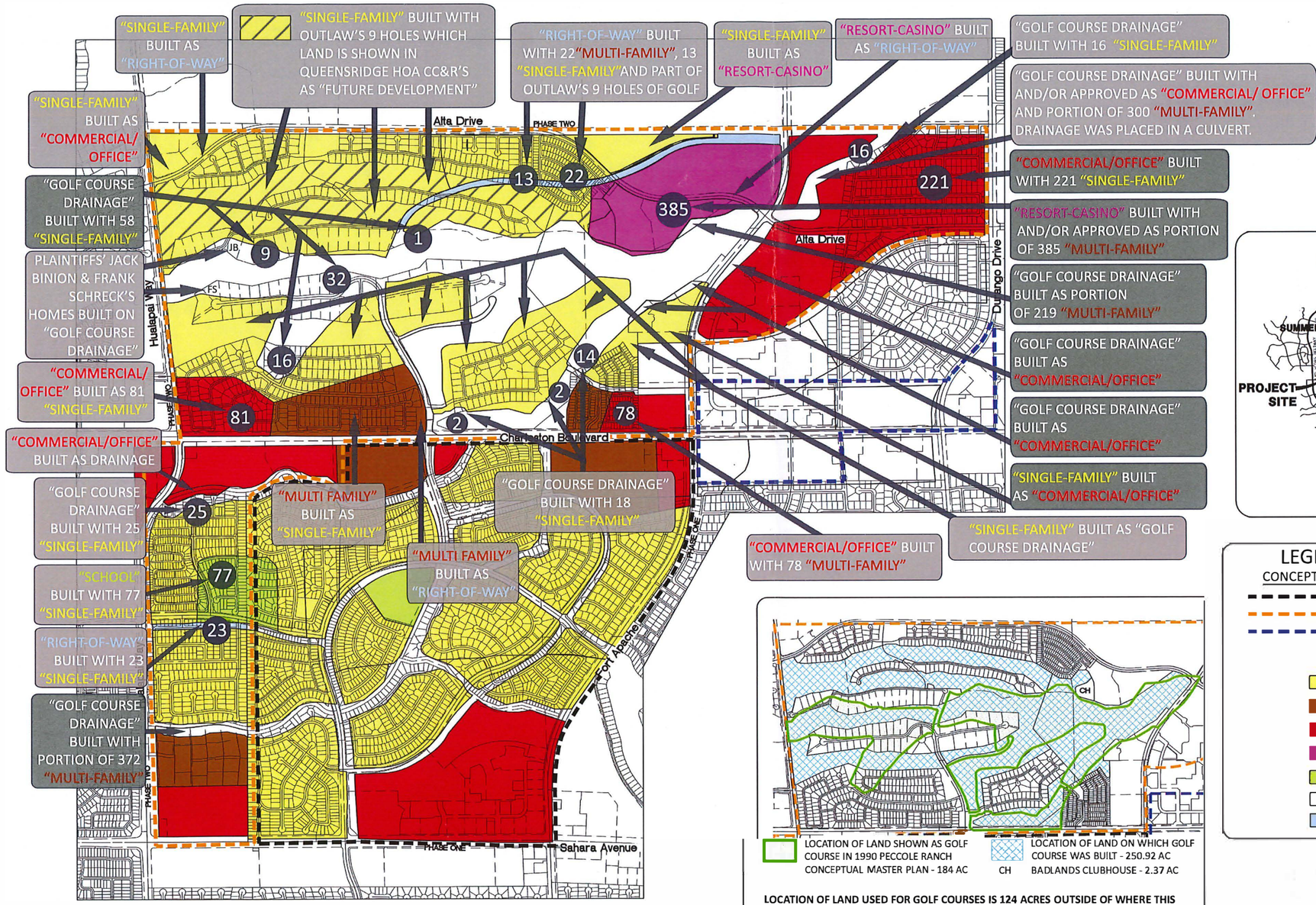
I, CLYDE O. SPITZE, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action that I have read, corrected, and do hereby affix my signature to said deposition.

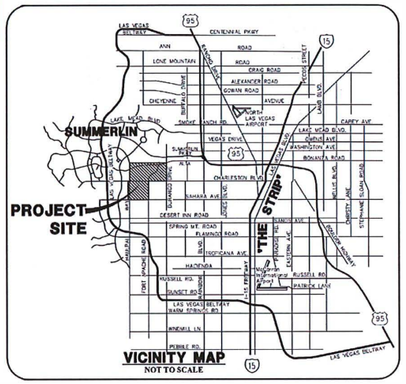
CLYDE O. SPITZE
Deponent

Subscribed and sworn to before me this ____ day of _____, 2019.

Notary Public

Exhibit 36





LEGEND - PECCOLE RANCH CONCEPTUAL MASTER PLAN (PRCMP)

- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY
- DELETED FROM PECCOLE RANCH CONCENTUAL MASTER PLAN WITH 1990 AMENDMENT
- SINGLE-FAMILY
- MULTI-FAMILY
- COMMERCIAL /OFFICE
- RESORT-CASINO
- ELEMENTARY SCHOOL
- GOLF COURSE DRAINAGE
- RIGHT-OF-WAY

LOCATION OF LAND SHOWN AS GOLF COURSE IN 1990 PECCOLE RANCH CONCEPTUAL MASTER PLAN - 184 AC

LOCATION OF LAND ON WHICH GOLF COURSE WAS BUILT - 250.92 AC

CH BADLANDS CLUBHOUSE - 2.37 AC

LOCATION OF LAND USED FOR GOLF COURSES IS 124 ACRES OUTSIDE OF WHERE THIS WAS SHOWN IN THE 1990 CONCEPTUAL MASTER PLAN.

1 GOLF COURSE COMPARISON
NOT TO SCALE

Exhibit 37

Master Declaration Of Covenants, Conditions, Restrictions And Easements For Queensridge.

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3274

Property and the Annexable Property is three thousand (3,000). The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property.

C. The name of the common interest community created by this Master Declaration is Queensridge. This Master Declaration is intended to create equitable servitudes and covenants appurtenant to and for the benefit of all of the Property, and the owners and residents thereof, and to provide for the formation of a master association (the "Association") to administer and enforce the provisions of this Master Declaration as set forth herein and in the Articles and the Bylaws.

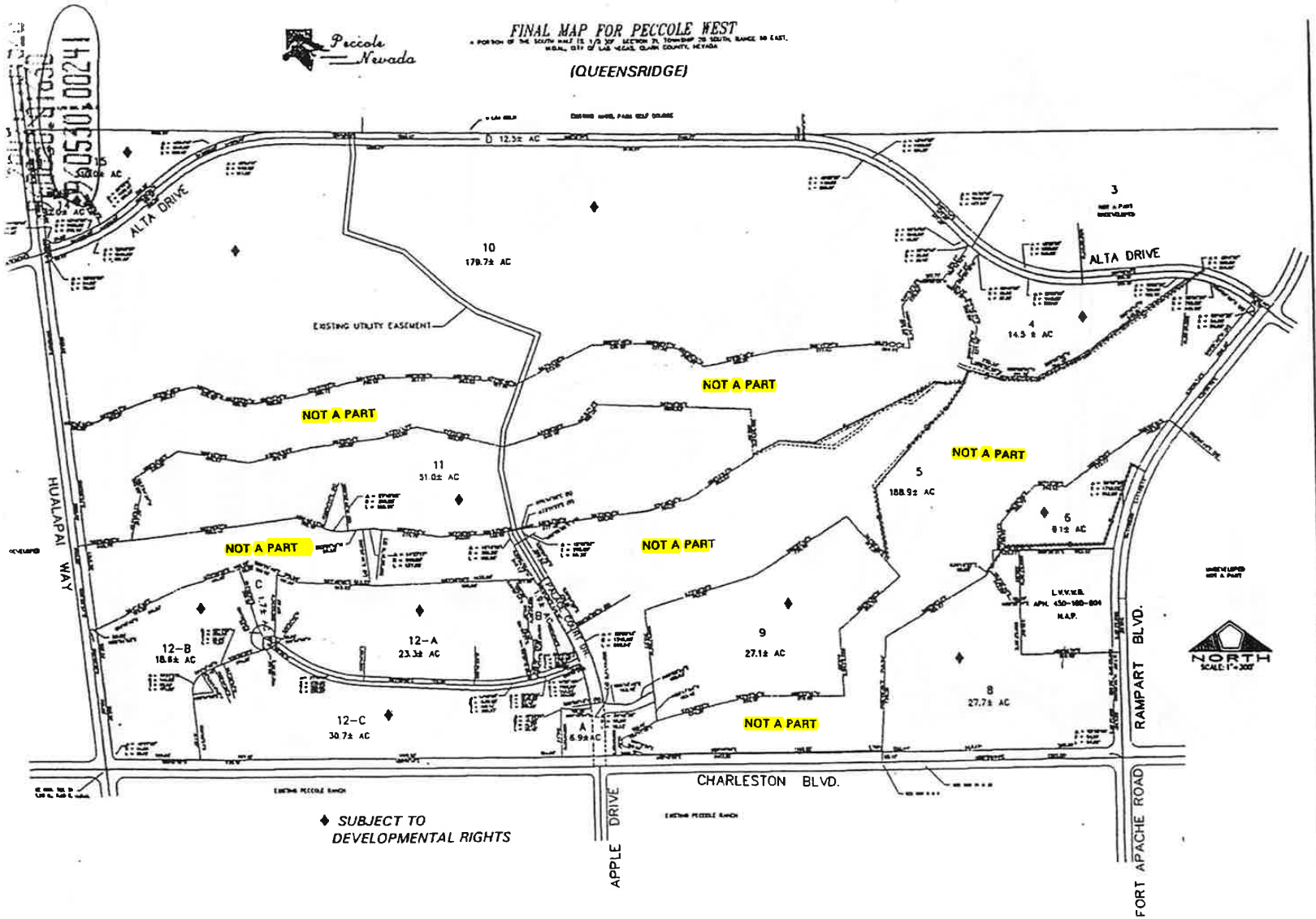
D. Declarant may, in Declarant's sole discretion, execute, acknowledge and Record, as to all or any portion of the Annexable Property, a Declaration of Annexation. The Declaration of Annexation may include, or Declarant may Record as a separate declaration, a Supplemental Declaration (as hereinafter defined) which imposes further covenants, conditions, restrictions and equitable servitudes for the operation, protection and maintenance of the Annexed Property, taking into account the unique aspects of such Annexed Property, which are not in conflict with this Master Declaration. Such Supplemental Declaration may, but need not, provide for a Project Association to govern one or more Projects of the same Project Type within the Annexed Property, with rights and powers reasonably necessary therefor, including, without limitation, the right of the Project Association to assess its members.

E. As part of the various phases of development of the Property, Declarant intends, without obligation, to dedicate or transfer portions of the Property to public entities and utility companies for purposes such as streets, roadways, drainage, flood control, water storage, utility service and such other purposes which may enhance the Property as a whole or which are required pursuant to any Land Use Ordinance or other applicable law.

DECLARATION:

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, transferred, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Master Declaration, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale, lease, care, use and management of the Property, or any portion thereof. The

EXHIBIT C



MASTER PLAN
EXHIBIT "C"
Page 1 of 2

RECORDER'S NOTE: Due to the quality, characteristics or condition of this document, it may be unsuitable for microfilming and reproduction. Under NRS 247.120, the Recorder has requested that a more suitable copy be presented for recordation.

AMENDED AND RESTATED
MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
QUEENSRIDGE

THIS AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Master Declaration") is made effective as of October 1, 2000 by Nevada Legacy 14, LLC, a Nevada limited liability company, ("Declarant"), with reference to the following Recitals and is as follows:

RECITALS:

A. Declarant is the master developer of certain real property in the City of Las Vegas, County of Clark, State of Nevada, more particularly described in **Exhibit "A"** attached hereto and incorporated herein. Declarant and Persons affiliated with Declarant, are the owners of additional land more particularly described in **Exhibit "B"** attached hereto ("Annexable Property"). The Annexable Property, or portions thereof, may be or has been made subject to ("annexed to") the provisions of this Master Declaration by the Recordation of a Declaration of Annexation pursuant to the provisions of Section 2.3, below. Reference to "Property" herein shall mean and include both of the real property described in **Exhibit "A"** hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below. In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded or which has been deannexed by the recordation of a Declaration of Deannexation pursuant to the provisions of Section 2.4, below.

B. Declarant intends, without obligation, to develop the Property and the Annexable Property in one or more phases as a planned mixed-use common interest community pursuant to Chapter 116 of the Nevada Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas, which may, but is not required to, include "planned communities" and "condominiums," as such quoted terms are used and defined in NRS Chapter 116. The Property may, but is not required to, include single-family residential subdivisions, attached multi-family dwellings, condominiums, hotels, time share developments, shopping centers, commercial and office developments, a golf course, parks, recreational areas, open spaces, walkways, paths, roadways, drives and related facilities, and any other uses now or hereafter permitted by the Land Use Ordinances which are applicable to the Property. The Maximum Number of Units (defined in Section 1.57, herein) which Declarant reserves the right to create within the Property and the Annexable Property is three thousand (3,000). The existing 27-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property.

C. The Property is subject to that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge recorded on May 30, 1996, in the

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