

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

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1 where there was transition, so I would say yes, for a  
2 period of time. I don't know exactly how long that  
3 was.  
4 Q. When Mr. Rankin left, is there still the  
5 position of planning manager?  
6 A. There's a manager position I believe that  
7 was filled in the business licensing side of the  
8 planning department.  
9 Q. Okay. But was his position, the position  
10 that he was fulfilling at the planning department,  
11 was it essentially subsumed by the people in your  
12 position, the section managers?  
13 A. As of this point there is no planning  
14 manager as far as if it's still a vacant position  
15 that could be filled, I don't know.  
16 Q. Okay. But is it fair to say that now the  
17 role of planning manager has really been allocated to  
18 the section managers for the respective sections?  
19 A. That could be a fair statement.  
20 Q. All right. Okay. So let's back up  
21 then -- actually not back up. Jump forward now since  
22 I got a little clarification on the hierarchy, which  
23 I appreciate. So you understand, as of this first  
24 meeting that you had with them, that they were  
25 proposing a residential development for the golf

57

1 course. And do you think that that's sometime as of  
2 August of 2015?  
3 A. As I stated, I think it was somewhere in  
4 July and then we started having meetings going  
5 towards August forward.  
6 Q. Got it. Okay so would have that first  
7 meeting that you think you had would have been  
8 sometime in August probably?  
9 MR. BYRNES: Objection. Asked and  
10 answered.  
11 MR. BICE: My apologies Phil. If it was  
12 I'm not saying it wasn't I'm just a little fuzzy on I  
13 guess the difference between meetings where he was  
14 meeting with the developer as opposed to to meetings  
15 with Mr. Perrigo, which I understood that first one  
16 hand in July. So if I'm retracing some ground my  
17 apologies I just want to make sure for my own self  
18 it's clear.  
19 A. As far as meetings, coordinating City  
20 meetings with the developer, it could have been the  
21 end of July and then into August.  
22 Q. Got it. Now, would you take notes of  
23 these meetings?  
24 A. As I stated, I would take meeting notes on  
25 outstanding issues.

58

1 Q. And in your experience, do the other  
2 participants at these meetings on behalf of the City,  
3 do they take their own notes relative to their  
4 involvement?  
5 A. I can't say definitively, but I would  
6 assume they take some of their own notes.  
7 Q. Okay.  
8 MR. BICE: Can we stake a short restroom  
9 break?  
10 MR. BYRNES: Sounds okay to me.  
11 MR. BICE: Let's go off the record.  
12 THE VIDEOGRAPHER: Going off the video  
13 record. The time is approximately 11:02 a.m.  
14 THE VIDEOGRAPHER: This is the beginning  
15 of video recording number 3 in the continuing  
16 deposition of Peter Lowenstein. The time is  
17 approximately 11:09 a.m. We're back on the video  
18 record.  
19 BY MR. BICE:  
20 Q. All right. So before we took the break,  
21 Mr. Lowenstein, we were talking about these meetings  
22 that you were setting up or the first meeting you had  
23 set up with the developer and who had attended. So  
24 let's go to the next meeting that you can recall.  
25 Did you set up another meeting after the first one?

59

1 A. I assume so. My recollection, I don't  
2 know if there was immediately, but eventually there  
3 was a reoccurring standing meeting on Thursdays,  
4 starting at I believe 2:00 o'clock that could go  
5 until 4:30 was the regular schedule.  
6 Q. All right. Were these meetings -- do you  
7 maintain any form of a calendar.  
8 A. Through Microsoft outlook. I just add  
9 those things to the calendar and add the invitees.  
10 Q. Would those -- and this is on your City  
11 computer, correct?  
12 A. Yes.  
13 Q. All right. Would the original meeting  
14 that you had with the developers be reflected on your  
15 calendar?  
16 A. It should be yes.  
17 Q. And would it reflect who the attendees  
18 were or the invitees I guess?  
19 A. It would be the invitees.  
20 Q. And would each subsequent meeting that you  
21 had with the developer be reflected on that calendar?  
22 A. It should be, yes.  
23 Q. Who is responsible for maintaining your  
24 calendar? Do you personally do it or do you have an  
25 assistant?

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1 A. Primarily myself, but I do have meetings  
2 that come up on there that are from other people  
3 requesting or from the executive assistant.  
4 Q. Okay. And who is the executive assistant  
5 that assists you?  
6 A. Currently -- sorry. I don't know her full  
7 name is. Miles is her abbreviated name.  
8 Q. Okay. And how long has she been the  
9 executive assistant assisting you?  
10 A. She's not my direct executive assistant,  
11 she's the executive assistant to the administrative  
12 side of things, primarily the director appear the  
13 deputy director.  
14 Q. Do you have a direct administrative  
15 assistant?  
16 A. No. We have office assistants that we can  
17 call upon, and as I inferred, we can call upon the  
18 executive assistant as well.  
19 Q. So I'll refer to her as Miles. Is she the  
20 person though that would -- to the extent you're not  
21 handling your meetings or calendaring, would she be  
22 the one that would do that?  
23 A. It's a possibility, yes. There really has  
24 been no need on my side for -- I mean I essentially  
25 get double booked, I don't get quadruple booked.

61

1 Q. Would it be accurate to say she is  
2 principally the assistant for Mr. Perrigo and  
3 Mrs. Duddleston?  
4 A. Yes, that's fair to say.  
5 Q. So let's keep marching along. You said at  
6 point there would be a weekly meeting set for  
7 Thursdays at 2:00 o'clock?  
8 A. Mm-hmm.  
9 MR. BYRNES: Is that a yes?  
10 THE WITNESS: Yes. Sorry I apologize.  
11 BY MR. BICE:  
12 Q. And how many people would attend those  
13 meetings, generally.  
14 A. It depends on the scope of outstanding  
15 issues, it depended on other people's schedules. It  
16 could range, but to put an average, maybe three on  
17 the developer side and five to six on the City side.  
18 Q. Who would generally be the attendees on  
19 behalf of the developer?  
20 A. Most predominantly would have been Mr.  
21 Pankratz, Mr. Lowie, and I'm forgetting -- well, they  
22 also had their technical side. So there could have  
23 been somebody from GCW Engineering there or from any  
24 other company. The other individual would be Brent  
25 and I'm forgetting his last name at the moment. I'm

62

1 sorry.  
2 Q. Brett?  
3 A. I think it's -- I think it's Brett.  
4 Instead of Brent. I think it's Brett.  
5 Q. Now, were these meetings -- can you tell  
6 me when these weekly meetings started relative to  
7 when they first submitted an application?  
8 A. I don't recall exactly, but if they  
9 started at the end of July or into August, then the  
10 application, the formal applications for the Badlands  
11 17 was scheduled for January of '16. So it would  
12 have been either the month before, at a minimum.  
13 Q. Month before they submitted any  
14 applications?  
15 A. No. Before they -- something is scheduled  
16 at the planning commission meeting. I'm working in  
17 my head backwards from the meeting it was scheduled  
18 from to potentially when they could have submitted  
19 their applications, because I don't know the exact  
20 dates. There is -- just to clarify there is a lag  
21 because when you formally go through the process,  
22 there are internal deadlines that need to be met and  
23 state statutes that need to be met before the item  
24 can be heard. So our processes are built backwards  
25 from that meeting date for when somebody's able to

63

1 submit there's an application closing deadline and  
2 it's usually -- approximately a month back from the  
3 actual meeting dates.  
4 So just so I'm a little clear on this,  
5 were these weekly meetings started before an  
6 application is submitted or after?  
7 A. Before.  
8 Q. Before. Okay. Do you recall -- do you  
9 recall an application that was proposed by City staff  
10 to add an asterisk to certain density limitations in  
11 the general plan?  
12 A. I do.  
13 Q. In 2015?  
14 A. I do.  
15 Q. What was your involvement in that?  
16 A. As the section manager, I was asked in  
17 regards to the planning community development  
18 designation within the general plan or plaster plan,  
19 to look at that as ability to be used as a tool which  
20 would give the city council the discretion to grant  
21 additional density for certain development that met  
22 criteria. And in that process, reviewed that with  
23 the other section manager and the planning manager,  
24 and a consensus came up with those as potential -- as  
25 a potential zoning tool.

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1 Q. Well, who was the other section manager?  
2 A. There was only one other, and that's  
3 Robert Summerfield.  
4 Q. Okay. And the planning manager that you  
5 were referencing would be have been Mr. Rankin; is  
6 that correct?  
7 A. That is correct.  
8 Q. So the three of you discussed adding this  
9 asterisk to the density criteria?  
10 A. It would be to one of the tables within  
11 the land use element of the Las Vegas 2020 master  
12 plan. That asterisk, as I said, would provide the  
13 city council the discretion to grant additional  
14 density if it met the criteria of that, but in  
15 reviewing that as a tool, we, as in that group,  
16 discussed its feasibility for use in the City as a  
17 whole.  
18 Q. How did it first come up, this tool, what  
19 you're calling the tool?  
20 A. In reviewing the -- in reviewing the  
21 development and utilization of the planned community  
22 development and planned development zoning district,  
23 that was looked at having the most flexibility and  
24 the most security as a tool for dynamic projects.  
25 (Mr. Harrison entered the proceedings.)

65

1 conjunction with the Badlands -- the plans for the  
2 Badlands Golf Course correct?  
3 MR. JIMMERSON: Object to the form of the  
4 question. Misstates the witnesses testimony.  
5 THE WITNESS: No.  
6 Q. It's not correct because -- let me  
7 rephrase. Is it your testimony this was developed  
8 prior to the Badlands project being proposed?  
9 A. No.  
10 Q. Do you dispute that Mr. Perrigo told you  
11 come up with some tool to accommodate the Badlands  
12 plans proposed?  
13 MR. JIMMERSON: Objection. Misstates Mr.  
14 Perrigo's testimony. You can read his deposition.  
15 THE WITNESS: Yes.  
16 Q. He did tell that you didn't he.  
17 A. That wasn't your question.  
18 Q. Did he tell you that?  
19 A. No.  
20 Q. So he never suggested to you that you  
21 needed to find a tool to accommodate the developer  
22 here; is that right?  
23 A. He did not tell me.  
24 Q. Did you ever tell that to Mr. Rankin?  
25 A. Not to my recollection.

67

1 Q. You say in reviewing the development and  
2 utilization of the planned community development.  
3 What development are you talking about?  
4 A. So in reviewing -- in light of the  
5 Badlands project, brought focus to the potential need  
6 for a tool that would help development in infill  
7 projects. Now, as a City wide effect, because this  
8 is not development specific, this is City specific.  
9 I mean, it impacts the entire City.  
10 Q. You say infill projects. What do you mean  
11 by that?  
12 A. Well, there is infill where you have --  
13 such as undeveloped land or even developed land such  
14 as Cashman center. You have a large property if it's  
15 going to be redevelopment or infill development, then  
16 you can use that interchangeably.  
17 Q. So in other words, when you say infill  
18 development, you mean property that is otherwise  
19 surrounded by existing development; is that correct?  
20 A. Infill it could have adjacent to it some  
21 undevelopment there is different circumstances but  
22 yes, that's one scenario.  
23 Q. So in this particular case, this idea  
24 about an asterisk to grant the City discretion to  
25 increase the density beyond eight was developed in

66

1 Q. So this tool that you're referencing  
2 according to you is unrelated to the Badlands Golf  
3 Course; is that right?  
4 MR. BYRNES: Objection. Vague and  
5 ambiguous based on unrelated. Go ahead and answer.  
6 THE WITNESS: My mindset is it brought  
7 light to a need for the City.  
8 Q. What brought light to a need?  
9 A. In reference to your question, the  
10 Badlands development brought into focus the potential  
11 need for a tool for development.  
12 Q. How is it that the Badlands development  
13 brought into focus the potential need for a tool for  
14 development? How did it do that?  
15 A. Well, based on the complexity of such a  
16 project, the planned community development and the  
17 associated planning -- the planned development zoning  
18 district, that -- that zoning district allows for the  
19 ability to create something that would be more  
20 compatible and harmonious with the adjacent uses in  
21 the sense that it has flexibility, it also has  
22 assurances and in addition to that, its most usually  
23 asked for a development agreement in addition to  
24 that.  
25 Q. You say the complexity of such a project,

68

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1 the planned community development and the associated  
2 planning. What do you mean by planned community  
3 development?  
4 A. Can you repeat that?  
5 Q. Sure. I'm just reading your answer, sir.  
6 You said, based on the complexity of such a project,  
7 the planned community development and the associated  
8 planning. So what do you mean by planned community  
9 development?  
10 A. Planned community development, land use  
11 designation with the associated planned development  
12 zoning district is what I was referring to.  
13 Q. What do you mean by planned community  
14 development?  
15 A. As a master plan land use designation.  
16 Because to -- we have to have compatibility between  
17 the general plan and the zoning district and as such,  
18 the equivalent general plan designation associated  
19 with the planned development zoning district is  
20 planned community development land use within the  
21 general plan.  
22 Q. Planned community development is a planned  
23 development; is that right?  
24 MR. JIMMERSON: Object to the form of the  
25 question.

69

1 element.  
2 Q. Okay. Canyon Gate would be one, would it?  
3 A. Potentially, yes.  
4 Q. How about Desert Shores?  
5 A. Potentially, yes.  
6 Q. Los Prados?  
7 A. Possibly.  
8 Q. Painted Desert?  
9 A. Possibly.  
10 Q. Peccole Ranch?  
11 A. As a --  
12 Q. Planned communities.  
13 A. As a planned community.  
14 Q. Uh-huh?  
15 A. Possibly yes.  
16 Q. When you say possibly are they in fact  
17 designated as planned communities by the City the  
18 ones I've just listed?  
19 A. Well, the planned community PC zoning  
20 district is associated with Summerlin. The other  
21 ones are other designations. They could be planned  
22 PD, planned development. They could be a RPD,  
23 residential planned development zoning district.  
24 Q. Are they designated as master plan --  
25 master development plan areas? Canyon Gate?

71

1 THE WITNESS: The planned community  
2 development is found all throughout the northwest on  
3 undeveloped land. It has been used for master plan  
4 communities.  
5 REPORTER'S NOTE check if he said  
6 undeveloped or developed land.  
7 THE WITNESS: It has -- in my recollection  
8 of when it was adopted out there was for almost a  
9 place holder because they didn't know how it was  
10 going to develop.  
11 BY MR. BICE:  
12 Q. You said master planned communities. Tell  
13 me what you consider to be a plaster planned  
14 community.  
15 A. Cliff's Edge, also known as Providence.  
16 Lone Mountain.  
17 Q. Any others?  
18 A. Lone Mountain West.  
19 MR. JIMMERSON: I'm sorry, something west.  
20 THE WITNESS: Just to reiterate, Lone  
21 Mountain and Lone Mountain West are both special area  
22 plans and master planned communities.  
23 Q. Does the City maintain a map of what it  
24 calls planned communities?  
25 A. If it does it would be in the land use

70

1 A. It's possible.  
2 Q. How about the lakes?  
3 A. I don't know off the top of my head.  
4 Q. Okay. How about South Shores, is that  
5 designated as a master plan -- master development  
6 plan area?  
7 A. I'm not familiar with south shores.  
8 Q. How about Peccole Ranch?  
9 A. It's possible.  
10 Q. Sun City?  
11 A. Sun City is part of Summerlin.  
12 Q. Well would it be fair to say you  
13 researched all this as part of working on the  
14 redevelopment for Badlands golf courses?  
15 MR. BYRNES: Objection vague and  
16 ambiguous. What do you mean all of this?  
17 BY MR. BICE:  
18 Q. Did you research the planned community  
19 designations in the City's code and the City's maps?  
20 A. Well, as far as the procedures in which to  
21 address a special area plan, yes, we looked at the  
22 land use element, which defloats which ones require  
23 major modifications and the other ones that don't.  
24 Other ones that don't would go through a general plan  
25 amendment, similar to what has occurred in Peccole

72

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1 Ranch.  
2 Q. Have you ever heard much the term -- have  
3 you ever heard of the term parent final map before?  
4 A. Yes.  
5 Q. What does that mean?  
6 A. It is indicative of a final map that  
7 denotes large developer parcels that would be  
8 developed in the future.  
9 Q. What do you mean --  
10 A. With subsequent mapping actions.  
11 Q. What do you mean it's indicative of a  
12 final map? Is there a difference between a final map  
13 and a parent final map?  
14 A. No.  
15 Q. So a parent final map is just a final map?  
16 A. That is correct.  
17 Q. What is the reference to the word parent,  
18 do you know?  
19 A. It's as I stated it would show large  
20 developer parcels which would then be subsequently  
21 developed with future mapping actions, other final  
22 maps.  
23 Q. Was there a final map recorded on the  
24 Peccole Ranch phase two?  
25 A. I don't know off the top of my head but I

73

1 would assume so.  
2 MR. JIMMERSON: Objection move to strike  
3 the answer calling for an assumption, speculation.  
4 Q. As part of your research did you locate  
5 the final map regarding Peccole Ranch phase two?  
6 A. I don't recall. I may have.  
7 Q. Was the golf course designated as a  
8 particular parcel under -- strike that. was it  
9 designated as a particular parcel, do you recall?  
10 A. It currently is. I can't speak to what  
11 was on the map without reviewing it.  
12 Q. Well let me show you. Have you ever heard  
13 of something called FM896?  
14 A. Not that I recall.  
15 Q. Is FM in reference to final map typically  
16 on the City's designations for maps?  
17 A. For application numbers it's usually  
18 either FM, FMP dash, then a series of numbers, then  
19 dash, for indicating the year or it's FMP dash and a  
20 series of numbers in the newer system.  
21 Q. What does FMP mean?  
22 A. Final map.  
23 Q. Is there a difference between FM and FMP?  
24 A. It is just the cataloging that was used by  
25 the City as far as application types.

74

1 Q. All right.  
2 A. And databases.  
3 Q. I'll show you this one and see if we're  
4 talking about the same thing and you can explain it  
5 to me. Mark this as one please.  
6 (Exhibit Number Num was marked.)  
7 BY MR. BICE:  
8 Q. Showing you what's Exhibit number 1, do  
9 you think you've seen this document before?  
10 A. It's possible.  
11 Q. Can you tell me what it looks like to you?  
12 A. This looks to me to be the recorded final  
13 map of Peccole west as titled book 77, page 23.  
14 Q. And do you know what Peccole west is?  
15 A. It is a title.  
16 Q. Have you ever seen that description  
17 anywhere else before?  
18 A. I've seen the reference of the Peccole  
19 name in numerous places.  
20 Q. Does this show what you understand to be  
21 Peccole phase two?  
22 MR. JIMMERSON: Object to the question.  
23 He's not been able to demonstrate he has the ability  
24 he know. He said doesn't know and his answer -- {  
25 MR. BICE: That's an inappropriate

75

1 speaking objection, Mr. Jimmerson.  
2 MR. JIMMERSON: Objection. Calling for  
3 speculation in light of the answer that you and I  
4 both listened to, counsel.  
5 MR. BICE: Then if you want to list your  
6 objection it calls for speculation, fine, but stop  
7 trying to coach the witness.  
8 MR. JIMMERSON: And I have stopped --  
9 coaching the witness? I have never met the man  
10 before. Stop this coaching the witness. That's an  
11 unfair characterization and that's the second time  
12 you have made that.  
13 MR. BICE: That's right. And I'm going to  
14 continue to do it every time you do it.  
15 MR. JIMMERSON: It's false. Don't lie.  
16 MR. BICE: Stop doing it.  
17 MR. JIMMERSON: Don't misrepresent on this  
18 record, Counsel.  
19 MR. BICE: Then you stop making those  
20 inappropriate statements.  
21 MR. JIMMERSON: I said I object on the  
22 grounds it calls for speculation.  
23 MR. BICE: No, you did not. Read the  
24 transcript. Nice try.  
25 MR. JIMMERSON: I'm happy to do that.

76

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1 MR. BICE: Nice try at saving yourself.  
2 MR. JIMMERSON: I didn't suggest any  
3 answer in any comment that I made, Counsel.  
4 MR. BICE: Yes, you did.  
5 MR. JIMMERSON: What did I say that  
6 suggested --  
7 MR. BICE: Read the transcript. Let's see  
8 if says what you just represented.  
9 MR. JIMMERSON: You can't even answer a  
10 simple question.  
11 MR. BICE: Let's move on.  
12 MR. BYRNES: Could you repeat your  
13 question.  
14 BY MR. BICE:  
15 Q. I can. Does this map show what you  
16 understand to be Peccole phase two?  
17 A. No.  
18 Q. What does it represent relative to  
19 Peccole, do you know?  
20 A. A portion thereof.  
21 Q. A portion thereof. Do you know which  
22 portion?  
23 A. From the geographical boundaries shown on  
24 here, it shows east of the Hualapai, a portion south  
25 and a portion north of Alta Drive, north of

77

1 Charleston and to the west of Rampart Boulevard.  
2 Q. Do you know what that shows in laymen's  
3 terms? Is that the golf course?  
4 A. It shows the geographical area and that  
5 shows the number of lots to be recorded.  
6 Q. Is one of those lot five?  
7 A. There's 11 lots on here, so I believe five  
8 would be one of them.  
9 Q. All right. Do you know, is there a parcel  
10 five?  
11 A. Referred to as lots.  
12 Q. Okay.  
13 I think I'm missing the second page of this  
14 but I'll see what I can do to find it. Mark this two  
15 please.  
16 (Exhibit Number Num was marked.) two.  
17 BY MR. BICE:  
18 Q. I believe there's a second page of this  
19 letter that I'm missing Mr. Lowenstein, but for right  
20 now have you seen this letter before?  
21 A. Not that I recall. But it's possible.  
22 Q. All right.  
23 MR. JIMMERSON: Mr. Bice before you go  
24 forward today, would you explain to us what is the --  
25 who is the author of the box at paragraph two.

78

1 MR. BICE: I am. It's my intention to ask  
2 the witness.  
3 MR. JIMMERSON: Are you the one who drew  
4 the box.  
5 MR. BICE: No. But my team did.  
6 MR. JIMMERSON: But the point is.  
7 MR. BICE: It was not on the original.  
8 MR. JIMMERSON: Not there when it was  
9 originally produced?  
10 MR. BICE: That is absolutely correct.  
11 BY MR. BICE:  
12 Q. Looking at paragraph number 2 the one that  
13 we have placed in a box, it says parcel five must be  
14 shown on this final map as public drainage easement  
15 with private maintenance as per the approved master  
16 drainage plan. Do you see that?  
17 A. Do you see that?  
18 Q. Do you know whether that is in reference  
19 to the golf course the Badlands Golf Course or not?  
20 A. Well, if this is -- once again we don't  
21 have the complete document.  
22 Q. Right.  
23 A. These are the conditions of approval by  
24 the planning commission on the approval of a final  
25 map. And that corresponding final map number shows

79

1 itself, or does it?  
2 MR. JIMMERSON: Mr. Bice, can you make a  
3 representation as to who is the author of the letter  
4 since we don't have page 2 or 3 three however many it  
5 is.  
6 MR. BICE: I can't right now.  
7 THE WITNESS: I don't -- unless can you  
8 pointed it out to me, I don't see the final map  
9 number recommend ever represented on Exhibit 1.  
10 Q. So you don't know whether exhibited one is  
11 the final map or not; is that correct?  
12 A. Repeat the question.  
13 Q. So you don't know whether Exhibit 1 is the  
14 final map that is being referenced in exhibit  
15 number 2; is that correct?  
16 A. There's -- common practice is to have the  
17 final map number on the actual recorded final map,  
18 above the bottom right-hand corner. I don't see  
19 that, but on the assumption that it is.  
20 MR. BYRNES: The question is do you know  
21 if it is.  
22 Q. I'll rephrase. Do you believe that it is?  
23 MR. JIMMERSON: Move to strike the answer  
24 as being irrelevant. Calling for assumption.  
25 THE WITNESS: Yes, it is. Yes based on

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1 similar titles.  
2 BY MR. BICE:  
3 Q. All right. So would you agree that this  
4 is the final map for what is known as the Pecc --  
5 what is identified as the Peccole west subdivision?  
6 MR. JIMMERSON: Object to form of the  
7 question in light the prior answer. Calling for  
8 speculation.  
9 THE WITNESS: Exhibit 1.  
10 BY MR. BICE:  
11 Q. Yes?  
12 A. Yes.  
13 Q. How does one go about amending a  
14 subdivision map, aapproved -- strike that. How does  
15 one go about amending a final map of a subdivision.  
16 A. Well, mapping is -- tends to be fairly  
17 complicated and we usually rely on the City surveyor.  
18 There are different processes to accomplish different  
19 outcomes. So if you could be more specific, I might  
20 be able to give you one of the mechanisms but  
21 ultimately it's the City surveyor that makes the  
22 determination on what is the best mapping action.  
23 Q. Well, didn't you -- strike that. maybe I  
24 don't know this. I'll phrase it this way. Did you  
25 previously work in mapping as part of your

81

1 responsibilities?  
2 A. There was something called a maps team.  
3 Maps teams reviewed building permits. Some of them  
4 reviewed civil improvement plans and some reviewed  
5 final maps.  
6 Q. Have you ever told anyone that adding  
7 additional lots to a final map of a subdivision  
8 requires a new tentative map process?  
9 MR. JIMMERSON: Object to the question as  
10 to lack of foundation, form. It's unfair to the  
11 witness.  
12 THE WITNESS: It's possible.  
13 BY MR. BICE:  
14 Q. Did you in fact tell the applicant here  
15 that it required a new tentative map process?  
16 A. It's possible.  
17 Q. Did someone ask you to allow the developer  
18 to subdivide the property without going through the  
19 tentative map process?  
20 MR. JIMMERSON: Object to the question  
21 lack of foundation. Move to strike that.  
22 MR. BICE: I'll rephrase.  
23 Q. To further subdivide the property without  
24 going through the tentative map process.  
25 MR. JIMMERSON: Same objection. Lack of

82

1 foundation, when and where and between whom.  
2 THE WITNESS: I don't recall. As I said,  
3 the mapping actions we usually defer to our City  
4 surveyor.  
5 Q. Well did you talk to anyone in the City  
6 about the mapping process for subdividing the golf  
7 course?  
8 A. Not that I recall. But it's not out of  
9 the realm of possibility.  
10 Q. So to find out -- is it your position to  
11 find out about mapping, the person that you would --  
12 or that I would need to consult is the City surveyor?  
13 A. Yes.  
14 Q. Okay. But you have been involved in  
15 mapping before, have you not?  
16 A. Through my tenure at the City, yes.  
17 Q. Okay. Have you -- are you aware of any  
18 circumstance where the City has allowed further  
19 subdividing of a subdivision without going through  
20 the tentative map process?  
21 MR. BYRNES: Objection. That's an  
22 incomplete hypothetical.  
23 MR. JIMMERSON: Join.  
24 THE WITNESS: Quite possibly in the Sky  
25 Canyon and one of their developer parcels.

83

1 BY MR. BICE:  
2 Q. When would the City have allowed that?  
3 A. In maybe 2016. Other examples I would  
4 have to do research to see.  
5 Q. Did you ever discuss the applicant wanting  
6 to subdivide the golf course property without going  
7 through the tentative map process with anyone in the  
8 City?  
9 A. Not that I recall. I recall having  
10 conversations about mapping in general, but as -- not  
11 in light of your question.  
12 Q. Who did you discuss mapping in general  
13 with about this applicant?  
14 A. Well, in regards to applications being  
15 submitted, we wanted separate parcels for -- so we  
16 didn't create any kind of split designated parcel.  
17 Q. What do you mean you want separated  
18 parcels?  
19 A. A portion of a larger parcel so that as  
20 not to create a split designated either zoning  
21 district and/or land use designation.  
22 Q. Okay. So you wanted the developer here to  
23 subdivide the property further, correct?  
24 A. As part of the submittal, we were looking  
25 for that to be accomplished prior to notification,

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1 yes.

2 Q. And so did the applicant then further

3 subdivide the property?

4 A. I think they had -- to my recollection it

5 was a subdivision prior to that and then subsequent

6 to that.

7 Q. So prior to your request, you say that

8 they had already subdivided it once?

9 A. Possibly. I would have to go and look at

10 all the mapping actions to be clear on what dates.

11 Q. Okay. I'm going to have you mark this

12 white piece of paper as an exhibit.

13 (Exhibit Number Num was marked.)

14 BY MR. BICE:

15 Q. I'm going to show you a blank piece of

16 paper as Exhibit Number 3.

17 A. I see it.

18 Q. All right. Would you slide that over to

19 me.

20 I want to understand your understanding of

21 what the City has done in the past. So if this is --

22 if this is the parcel. Let's say this is parcel

23 number 5. It's the golf course. I understand this

24 is rectangle. But let's assume that it is. If I

25 want to subdivide that into two lots, do I have to go

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1 through the tentative map process?

2 A. To my understanding, no, the tentative map

3 process would be used to establish an actual

4 subdivision of as a subdivision -- as a residential

5 subdivision.

6 Q. Okay. But if I'm coming to you -- if I

7 want to divide it into four lots, do I have to go

8 through the tentative map process?

9 A. To my understanding if there are still

10 builder parcels and they're not actual eminent

11 development, no.

12 Q. All right. Even though you know I'm going

13 to subdivide it further, is that right, for

14 residential development?

15 MR. JIMMERSON: Objection. Calls for

16 speculation.

17 THE WITNESS: That's calling for me to

18 assume that they're going to divide it into a

19 subdivision.

20 BY MR. BICE:

21 Q. In other words, someone comes to you and

22 you know they're going to subdivide it further and

23 further and further. But it's your position as long

24 as they just do four lots, they don't have to go

25 through the tentative map process; is that correct?

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1 A. 4 lots or less.

2 Q. 4 lots or less. Okay. So they can do

3 this and then they can do this, correct, because now

4 you've got a new lot over here and we can subdivide

5 that down into four more lots, is that right, without

6 going through the tentative map process?

7 A. Yes. And that has occurred in the

8 northwest yes.

9 Q. And then they can do this.

10 A. There's -- just I see your drawing.

11 Q. Right.

12 A. At a certain point for improvements and

13 things like that, the Department of Public Works

14 would step in.

15 Q. Well, what do you mean at a certain point?

16 Who determines that certain point?

17 A. That's something that either -- public

18 works would be able to answer.

19 Q. Well, what's public work's involvement in

20 mapping?

21 A. They include the City surveyor under its

22 umbrella.

23 Q. Okay. So at what -- do you know what

24 point it is where you're not going to allow them to

25 just subdivide it under a parcel map amendment?

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1 A. Well, from my own opinion, would be where

2 it shows that it's imminently turning into a

3 residential subdivision. It's not a parcel -- it's

4 actual development versus laying for future

5 development.

6 Q. Well how many parcels does that require?

7 A. I imagine it's a matter of scale.

8 Q. Well where would I find the scale in the

9 City code so that I would know when I need to go

10 through the tentative map process as opposed to using

11 parcel maps to simply break it up?

12 A. I'm not aware if there is a scale in the

13 code. It would probably go to the point where the

14 City has the ability to interpret its code.

15 Q. Are you aware that at Peccole Ranch, that

16 the City required the Peccoles to go through the

17 tentative map process to just create two parcels?

18 MR. JIMMERSON: Objection. Assumes facts

19 not in evidence.

20 THE WITNESS: I'm not aware. It's

21 possible.

22 BY MR. BICE:

23 Q. Well, have you investigated that?

24 A. I don't believe I investigated ever

25 mapping action in the Peccole master plan.

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1 Q. Well, did you investigate any mapping  
2 actions at all concerning the Peccole Master Plan?  
3 A. I would assume at some point I have looked  
4 at the entitlements that lead themselves to mapping.  
5 Q. Have you specifically looked at any  
6 mapping action concerning the Peccole Master Plan?  
7 A. Yes, I just looked at Exhibit 1.  
8 Q. Okay. Any others, prior to the deposition  
9 have you looked at any mapping actions?  
10 A. It is quite possible that I have.  
11 Q. But you don't recall any of them?  
12 A. There are at least one, two, three, four,  
13 five potential subdivisions or less, more or less, in  
14 there.  
15 Q. Did you investigate any of those?  
16 A. I may have looked at the recorded final  
17 maps, yes.  
18 Q. Did you -- did you look into the mapping  
19 action -- or did you look into any of the mapping  
20 actions in response to this lawsuit?  
21 A. No.  
22 Q. Did you ever tell anyone in the City that  
23 you're not allowed to amend an existing subdivision  
24 map by way of a parcel map?  
25 A. I don't recall.

89

1 Q. Is that your -- is that how -- is it your  
2 understanding that you can't amend an existing  
3 parcel -- an existing subdivision map by way of a  
4 parcel map?  
5 A. So if you have a subdivision of a hundred  
6 lots and you want to add two more lots to it.  
7 Q. Yes?  
8 A. The approved tentative map for -- and  
9 we're talking lots for development of another  
10 residential home on it, so that's what a sub --  
11 residential subdivision is for individual homes, then  
12 that approval that you received on the tentative map  
13 was less intense. The intensification requires the  
14 new tentative map.  
15 Q. If you're going to increase the intensity  
16 of an existing subdivision, you have to file for a  
17 new tentative map, correct?  
18 A. Correct.  
19 Q. Even if you're just going to create two  
20 lots?  
21 A. Correct.  
22 Q. And, in fact, the City has uniformly  
23 applied that to everyone, has it not, to your  
24 knowledge?  
25 A. To my knowledge, yes.

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1 Q. Bear with me one second and it was your  
2 understanding is it not that since day one, the  
3 intent of the developer here was to create a  
4 residential planned development?  
5 A. Was to create a -- redevelop the site to  
6 have multifamily and single family development.  
7 Q. Do you know what a residential planned  
8 development is?  
9 A. In reference to the legacy zoning  
10 district, R-PD.  
11 Q. Sure?  
12 A. That is what -- to my recollection what a  
13 residential planning development is?  
14 Q. So this property was already a residential  
15 planned development, correct?  
16 A. It is zoned residential plan development,  
17 seven dwelling units per acre. 7 is indicative of  
18 the density.  
19 Q. Can you mark this provision of the City  
20 code please.  
21 (Exhibit Number Num was marked.)  
22 MR. JIMMERSON: Counsel may I have copies  
23 of your white piece of paper and have it marked  
24 please.  
25 Did you mark it as an exhibit?

91

1 MR. BICE: It is marked as Exhibit  
2 Number 3.  
3 MR. JIMMERSON: So this will be four.  
4 MR. BICE: This will be four.  
5 (Exhibit Number Num was marked.)  
6 BY MR. BICE:  
7 Q. Showing you what's been marked as Exhibit  
8 Number 4, have you seen this provision of the City  
9 code before?  
10 MR. BYRNES: Can you identify which  
11 version of the code this is?  
12 MR. BICE: I think this is from 2011.  
13 Q. Do you know whether it still exists in the  
14 City code, this requirement.  
15 A. One moment. You want me to review what's  
16 in the box.  
17 Q. In the box, yes. Your copy is in red.  
18 That's my highlighting to bring it to your attention.  
19 MR. JIMMERSON: Counsel, what is your  
20 citation to this code? What is this code section?  
21 MR. BICE: 19.06.  
22 MR. JIMMERSON: Point what?  
23 MR. BICE: .040, sub H, I believe.  
24 MR. JIMMERSON: That's what I understand  
25 because it's not apparent on the document, at least

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1 in my review of it. I see the H but I don't see the  
2 040.

3 MR. BYRNES: For the record has your  
4 office added the box to this page?

5 MR. BICE: Yes? But my apologies Phil. I  
6 thought I made that clear. We added the box to  
7 bring -- to focus the witness' attention.

8 Thank you.

9 THE WITNESS: I have reviewed the box.

10 BY MR. BICE:

11 Q. Yes. Are you familiar with that  
12 provision?

13 A. After reading it -- after reading it,  
14 yeah, it hasn't been utilized since the adoption of  
15 the Unified Development Code and prior to that we  
16 were in recession, so there really wasn't much  
17 development. So it's been quite some time.

18 Q. Okay. But this code provision says that a  
19 residential planned development shall follow the  
20 standard subdivision procedure, correct?

21 A. Yes, that's what it reads.

22 Q. And from day one you knew that this  
23 developer was planning to create a residential  
24 subdivision, correct?

25 A. They were planning on doing a multifamily

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1 and single family development multifamily does not  
2 necessarily include a mapping action.

3 Q. Did the -- does the single family  
4 residential include a mapping action?

5 A. It would.

6 Q. Including a requirement that they submit a  
7 tentative map, correct?

8 MR. JIMMERSON: Objection. Misstates the  
9 witness' testimony.

10 THE WITNESS: It says follow standard  
11 subdivision procedure.

12 Q. Let's then walk through what you  
13 understand the standard subdivision procedure to be.

14 MR. BYRNES: Are you saying now or in  
15 2011?

16 MR. BICE: I'll actually ask him now and  
17 ask him if it's changed.

18 BY MR. BICE:

19 Q. What is it now?

20 A. Depending on the type of development, so  
21 do you have a specific type of development you would  
22 like me to speak to.

23 Q. Sure let's talk about the plans for the  
24 Badlands Golf Course that you knew what they were  
25 planning since July of '15. At least you personally

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1 did. Correct?

2 A. That's when the initial conversation that  
3 development was being looked at on there. But as far  
4 as the full plans, I can't tell you exactly which  
5 date that was.

6 Q. All right. So what sort of mapping action  
7 would be required if I came to you telling you that  
8 I'm going to put more than 50 residential units on  
9 the golf course? What's the mapping action that you  
10 would require of me?

11 MR. BYRNES: Can you answer that  
12 hypothetical. I object as incomplete hypothetical.

13 Are you saying single family? Multifamily? Break it  
14 down.

15 Q. Let's do single family residential. I'm  
16 going to put more than 50 units on this piece of  
17 property. What's the mapping action that you  
18 require, that the City requires?

19 A. Besides all the other lands use  
20 entitlements, specifically to the mapping action you  
21 would do a tentative map and then a final map.

22 Q. You would have to submit a tentative map.  
23 And tell me how does the 10 map process work?

24 A. You would start with a preapplication  
25 conference. You would then receive a preapplication

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1 check list including a 10 map check list from the  
2 Department of Public Works. If both of those were  
3 signed off and agreed it could move forward for  
4 submittal, then it would submit then it on would be  
5 scheduled for the planning commission meeting and it  
6 would then be heard on the consent agenda.

7 Q. On the planned commission agenda it gets  
8 noticed to the public, correct?

9 A. As a consent item, it does not.

10 Q. It does not. So you're saying --

11 A. If anything the agenda is published and  
12 the public has the ability to view the agenda.

13 Q. So in other words, it's a public hearing,  
14 correct?

15 A. I would have to defer to the city attorney  
16 as far as the open meeting law and what a public  
17 hearing constitutes in regards to the consent agenda  
18 versus the regular public hearing portion of the  
19 agenda.

20 Q. Can you subdivide -- can you subdivide  
21 property for purposes of creating a residential plan  
22 development by way of administrative action without  
23 the tentative map?

24 A. I don't believe so.

25 Q. Has the City ever allowed anyone to

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1 subdivide property of an existing subdivision to  
2 create greater density without going through the  
3 tentative map process?  
4 MR. JIMMERSON: Object to the question  
5 assumes facts not in evidence incomplete  
6 hypothetical.  
7 MR. BYRNES: Join in that.  
8 THE WITNESS: Going back to your previous  
9 time you asked that in asking for examples, I would  
10 say yes, because if it was a developer parcel not  
11 imminent to a residential subdivision, there has been  
12 points where they have allowed additional  
13 subdivisions into say smaller development parcels  
14 which would then have future residential subdivisions  
15 to create the actual lots for building and  
16 constructing homes on.  
17 Q. And the one you can think of was Sky  
18 Canyon, right?  
19 A. At this point in time. I'm sure there's  
20 other examples.  
21 Q. Well tell me what they are, if you say  
22 you're sure of it.  
23 A. Well, I can't recall the entire mapping  
24 history of the City of Las Vegas.  
25 Q. I don't think I was asking you for the

97

1 entire mapping history. I think I was asking you  
2 since you said you're sure of something, tell me what  
3 you're talking about?  
4 A. I apologize.  
5 MR. JIMMERSON: Object to the question as  
6 argumentative.  
7 THE WITNESS: It's quite possible that it  
8 happens in the Summerlin villages. It is quite  
9 possible that it has happened in Cliff's Edge. It is  
10 quite possible that large parcels have done  
11 subdivided in the north west. 5-acre parcels that  
12 are chopped into two and a half acres and then are  
13 chopped into basically half acres.  
14 BY MR. BICE:  
15 Q. But you don't know, you're saying it's  
16 possible.  
17 A. I'm saying it's more than likely I would  
18 have to go and research it to give you exact  
19 examples.  
20 Q. So you would be able to research those and  
21 find those for us or someone could, right?  
22 A. Yes.  
23 MR. BYRNES: For the record, I don't know  
24 of any provision of rule 30 that allows the  
25 assignment of homework.

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1 MR. BICE: I'm not saying it does but  
2 rule 33 does. I have no attention of assigning him  
3 that as part of the deposition, Phil.  
4 BY MR. BICE:  
5 Q. All right. Why don't we -- it's 1210.  
6 Why don't we take our quick lunch break and we'll see  
7 you back here whenever you can come back, Phil a  
8 little after one?  
9 MR. JIMMERSON: 1:15 okay.  
10 THE VIDEOGRAPHER: Going off the video  
11 record. The time is 12:04 p.m.  
12  
13 THE VIDEOGRAPHER: This is the beginning  
14 of video recording number 4 in the continuing  
15 deposition -- sorry, I forgot your name.  
16 Q. Mr. Lowenstein you understand you're still  
17 under oath correct.  
18 A. I do.  
19 Q. All right. Let's go back to your proposed  
20 general plan amendment that the staff had proposed  
21 concerning the asterisks that we talked about. Do  
22 you recall that?  
23 A. I do.  
24 Q. Do you recall when that item was put on  
25 the planning commission agenda?

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1 A. I believe it was the September planning  
2 commission in 2015.  
3 Q. Did you have any meetings with Mr.  
4 Perrigo -- strike that.  
5 Did you have any meetings internally in the  
6 planning department concerning that submittal for the  
7 planning commission meeting?  
8 A. The submittal was or City initiated?  
9 Q. The City initiated submittal.  
10 A. There was a conversation with Robert  
11 Summerfield and Doug Rankin regarding the creation of  
12 the tool itself and then from there on those  
13 recommendations were given to the director and when  
14 he said it was to move forward, we placed it on the  
15 agenda and prepared the public notification, the  
16 neighborhood meeting in compliance with the meeting  
17 law.  
18 Q. What neighborhood meeting was held?  
19 A. There was one neighborhood meeting. It  
20 was advertised and held at the development service  
21 center, I believe.  
22 Q. Did anybody show up at it?  
23 A. I don't recall the attendance.  
24 Q. I'm sorry, were you in attendance?  
25 A. I don't recall the attendance. I don't

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1 know if I was in attendance either.  
2 Q. When did the notice go out for that  
3 neighborhood meeting, do you know?  
4 A. It would have to have been probably 10  
5 days or greater from the date of the meeting.  
6 Q. And you're sure that it went out before  
7 the meeting date was set?  
8 A. I would have to double-check but I'm  
9 pretty sure, yes.  
10 Q. Did you give any notice to the impacted  
11 homeowners in the areas where you knew this tool was  
12 being made available for?  
13 A. We met the intent of the open meeting law  
14 and that discretion was up to the director.  
15 Q. But did you internally discuss whether or  
16 not you should give notice to homeowners that you  
17 knew were going to be impacted?  
18 A. I gave a statement to the director as far  
19 as we met the open meeting law and any other meetings  
20 would be at his discretion.  
21 Q. Did you and Mr. Rankin strike that did you  
22 discuss with anyone whether or not additional people  
23 should be notified?  
24 A. I don't recall.  
25 Q. Do you dispute that you did?

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1 A. If I don't recall how can I dispute it?  
2 Q. Okay. Do you recall whether you discussed  
3 that specific fact with Mr. Rankin?  
4 A. I'm not sure. I don't recall.  
5 Q. Well, did you and Mr. Perrigo have any  
6 discussions -- were you at the planning commission  
7 meeting when this item was heard?  
8 A. I believe I was.  
9 Q. Did you have any discussions with Mr.  
10 Rankin in advance of the planning commission meeting  
11 about making sure that the matter wasn't held in  
12 abeyance?  
13 A. That's not in my purview.  
14 Q. That's --  
15 A. That's not on my scope. I don't have any  
16 conversation like that.  
17 Q. I'm sorry?  
18 A. I did not have any conversation like that.  
19 Q. Did you overhear any conversations like  
20 that?  
21 A. No.  
22 Q. Did you ever discuss that fact with the  
23 deputy director?  
24 MR. JIMMERSON: Objection. Assumes facts  
25 not in evidence.

102

1 THE WITNESS: No.  
2 MR. JIMMERSON: The question is failed  
3 because it claims it to be a fact when there is no  
4 facts to demonstrate yet.  
5 Q. Did you discuss the issue of abeyance with  
6 Mr. Rankin?  
7 A. No. Not that I did.  
8 Q. What happened to that agenda item?  
9 A. That agenda, item if I recall the meeting  
10 was held in abeyance.  
11 Q. Was there any controversy about holding it  
12 in abeyance?  
13 A. There was public input on it and regarding  
14 that public public inputs the item was held in  
15 abeyance.  
16 Q. Did you provide any input to the planning  
17 commission concerning that item?  
18 A. The only time I would have had the ability  
19 to do so would be at the PC -- the planning  
20 commission chair briefing which is usually attended  
21 by the director and planning manager.  
22 Q. Were you in attendance at that?  
23 A. I'm not sure. I would have to check the  
24 calendar and make sure that I was there or not, but I  
25 don't recall off the top of my head.

103

1 Q. Well, was the chairman of the planning  
2 commission informed that this tool was being -- that  
3 this tool was being put on the agenda now because of  
4 the forthcoming plans on the Badlands Golf Course?  
5 A. Well, I don't recall if I was at the  
6 meeting first. If I was at the meeting, I don't  
7 recall that conversation.  
8 Q. Is that something that would customarily  
9 be disclosed to the chairman of the planning  
10 commission?  
11 A. The item would be discussed as far as its  
12 impact on the City.  
13 Q. Would the item be -- would the impact on  
14 specific neighborhoods be discussed or disclosed to  
15 the planning commission?  
16 MR. BYRNES: Are you asking a hypothetical  
17 as to a conversation?  
18 MR. BICE: I'm asking his general  
19 practice.  
20 MR. BYRNES: Just any planning commission.  
21 MR. BICE: The chairman's meeting.  
22 MR. BYRNES: But as to any planning  
23 commission item.  
24 BY MR. BICE:  
25 Q. As to a planning commission item, if it

104

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1 was going to impact a specific neighborhood, would  
2 you discuss that with the planning commission  
3 chairman?  
4 MR. JIMMERSON: Objection to form.  
5 Incomplete hypothetical.  
6 THE WITNESS: In regards to planning  
7 commission items they are discussed. As far as site  
8 specific and then you have the secondary impacts of  
9 the applications.  
10 BY MR. BICE:  
11 Q. Well did you disclose or would you  
12 disclose to the chairman or any other planning  
13 commissioners that an application had been already  
14 filed in anticipation of this -- of this change to  
15 the general plan?  
16 MR. JIMMERSON: Objection. Assumes facts  
17 not in evidence.  
18 MR. BYRNES: Also incomplete hypothetical.  
19 THE WITNESS: I don't recall.  
20 Q. Well, did you not know that the applicant  
21 had already filed an application on August 26<sup>th</sup> to  
22 try and take advantage of this anticipated change?  
23 A. Yes.  
24 Q. Did you disclose that to any of the  
25 planning commissioners?

105

1 A. It is possible, yes.  
2 Q. Well, I didn't ask -- let's break it down.  
3 Did you actually do so or are you saying maybe you  
4 did?  
5 A. I don't recall I you're asking Mr.  
6 Lowenstein personally.  
7 Q. Yes, I am?  
8 A. I personally don't recall.  
9 Q. Did you disclose it to anyone in the city  
10 council?  
11 A. I personally don't recall.  
12 Q. Was that application filed before you held  
13 was you characterize as the neighborhood meeting?  
14 A. I would have to know the dates to be able  
15 to answer that he question.  
16 Q. Well if the neighborhood meeting was going  
17 to be held after that application would be filed,  
18 wouldn't you want to alert the specific neighborhood  
19 where the application was pending?  
20 A. Would I?  
21 Q. Yes.  
22 A. As a matter of preference is what you're  
23 asking?  
24 Q. Yes.  
25 A. I was following the standard policies of

106

1 our department. And to initiate additional  
2 notification is something that would have to be the  
3 call of the director.  
4 Q. But did you make any recommendations for  
5 the director about issuing additional notifications?  
6 A. As I previously stated I made a statement  
7 to him saying that any other notifications would be  
8 at his discretion.  
9 Q. Did you make a recommendation to him as to  
10 whether he should exercise his discretion in any  
11 particular fashion?  
12 A. Not that I recall.  
13 Q. Did anyone else, to your knowledge?  
14 A. Not that I recall.  
15 Q. When the item was held in abeyance did you  
16 get a phone call from anyone?  
17 A. No.  
18 MR. BYRNES: Regarding the item.  
19 BY MR. BICE:  
20 Q. Regarding that item yes.  
21 MR. BYRNES: I'm sure he's received phone  
22 calls.  
23 MR. BICE: I'm sure he has too.  
24 Q. Did you talk to anyone about the item  
25 being held in abeyance?

107

1 A. Not that I recall, no.  
2 Q. Did you ever subsequently talk to Mr.  
3 Perrigo about the item?  
4 A. As he's the director of the department I'm  
5 sure I spoke to him.  
6 Q. Okay what about?  
7 A. About the -- what he wanted to do with the  
8 item?  
9 Q. And what was done with it?  
10 A. I think ultimately his recommendations was  
11 to table it for further consideration.  
12 Q. And was that done?  
13 A. I believe the planning commission accepted  
14 that recommendation and approved the tabling of the  
15 item.  
16 Q. Have you taken any further action on the  
17 item?  
18 A. To my knowledge, no.  
19 Q. Did you -- were you involved in the  
20 preparation of the staff report for that item?  
21 A. The senior planner, James Marshall, also  
22 known as Jim Marshall, prepared that staff report.  
23 Q. I understand. But were you also involved  
24 in its preparation?  
25 A. Not to my recollection, no.

108

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1 Q. You didn't provide any input into it.  
2 A. He was given direction as far as what the  
3 zoning tool was supposed to be. That direction was  
4 given to him both by Robert Summerfield, myself and  
5 the planning manager he got his input from.  
6 Q. Did you review the report?  
7 A. The planning supervisor reviewed the  
8 report and I may have reviewed the report as well.  
9 Q. Did you make any changes to the report?  
10 A. I don't recall.  
11 Q. Do you know whether or not the report was  
12 prepared after the application was filed, the  
13 application from Mr. Lowie's company to take  
14 advantage of the change, assuming it passed?  
15 MR. JIMMERSON: Objection to the form of  
16 the question. Assumes facts not in evidence, and  
17 quote to take advantage of the change, end quote.  
18 THE WITNESS: I'm not aware of which date  
19 the report was completed. I would have to look in  
20 the system to see the last date it was modified which  
21 even then the agenda technicians tend to format after  
22 certain dates getting it ready for agendas. So it's  
23 hard to say. I don't have an exact answer or  
24 knowledge of what that date would be.  
25 ///

109

1 BY MR. BICE:  
2 Q. Well, tell me -- you had indicated that  
3 it's within the planning director's discretion as to  
4 whether to call for more notice than the statutory  
5 minimum. Tell me, in your experience, how is that  
6 discretion exercised or when is it exercised?  
7 A. Currently our notification radiuses exceed  
8 the state statute requirements. So in all items, our  
9 notification radius exceeds state statute. Items of  
10 larger significance maybe request to have meetings by  
11 the planning commission to have additional  
12 neighborhood meetings or even at -- if it's reached  
13 city council level, they can request additional  
14 neighborhood meetings.  
15 Q. My question though was in your experience  
16 what guides the planning director's discretion as to  
17 whether to have additional notice beyond the minimum  
18 required.  
19 A. I can't begin to think what the director  
20 would be thinking.  
21 Q. Have you not been involved in  
22 circumstances where additional notice was given?  
23 A. I'm sure there might be an example of  
24 that, but then again I still don't know what the  
25 director was thinking when asking for it.

110

1 Q. So you and the director have never  
2 discussed when additional notice should be given; is  
3 that correct?  
4 A. To my knowledge, I don't recall.  
5 Q. Did you and Mr. Summerville discuss the  
6 impact that this change would have on Queensridge  
7 community.  
8 MR. JIMMERSON: Object to the form of the  
9 question vague and/or ambiguous.  
10 THE WITNESS: No. The scope of the  
11 conversation that we had with Mr. Rankin in the room  
12 as the planning manager was in regards to the City  
13 wide.  
14 BY MR. BICE:  
15 Q. So you never discussed with  
16 Mr. Summerville or with Mr. Rankin the impact of this  
17 change for the Queensridge community; is that  
18 correct?  
19 A. Not that I recall.  
20 Q. How -- was it you that came up with this  
21 idea?  
22 A. I don't --  
23 MR. BYRNES: Could you clarify what idea?  
24 BY MR. BICE:  
25 Q. Sure. The idea for the change, the

111

1 asterisk is what we're calling it.  
2 A. Not that I recall. My recollection is  
3 being directed to look at the PCD by the director and  
4 having that discussion with the group, and out of  
5 that group coming the option for the City counsel to  
6 have the discretion to grant additional density for  
7 developments that met certain criteria.  
8 Q. And how did you determine what that  
9 criteria would be?  
10 A. Once again, I don't recall the specifics.  
11 It was coming out of that meeting.  
12 Q. Well, you said that you were directed to  
13 look at the PCD by the director. What do you mean by  
14 that?  
15 A. The planning community development and the  
16 associated plan development zoning district is, as I  
17 previously stated, something that allows for  
18 flexibility for complex projects, as well as a level  
19 of assurance with it, usually associated development  
20 agreement, as a potential tool for large  
21 redevelopment projects.  
22 Q. And so the -- when did the director tell  
23 you to look at that?  
24 A. I don't recall a specific date.  
25 Q. Well, when you were directed to look at

112

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1 it, were you aware of the current applicant's plans  
2 to submit an application?  
3 A. Yes.  
4 Q. And were you aware of the current  
5 applicant's plans to submit an application to take  
6 advantage of that change assuming that it passed?  
7 MR. JIMMERSON: Object as to form of the  
8 question assumes facts not in evidence and that such  
9 an intent was possessed by the applicant.  
10 THE WITNESS: I was aware if the City  
11 counsel deemed it a tool that they wanted to utilize,  
12 then the applicant would be requesting to ask the  
13 counsel for discretion to see if they would be able  
14 to use that.  
15 Q. And you knew that at the time that you  
16 were directed to prepare -- well strike that. you  
17 knew that at the time that the agenda was being  
18 prepared, correct?  
19 MR. BYRNES: Agenda for what.  
20 MR. BICE: I'm sorry.  
21 MR. BYRNES: What agenda?  
22 MR. BICE: The agenda for the amendment to  
23 add the asterisk.  
24 THE WITNESS: Could you restate the  
25 question.

113

1 Q. Sure. You've already testified let me go  
2 back and make sure I read it correctly you already  
3 testified that you knew the applicant was going to  
4 submit an application if it passed, correct?  
5 A. That's correct.  
6 Q. And knew that the applicant had already  
7 submitted the application even before it was -- went  
8 before the planning commission, correct?  
9 A. I don't know the exact dates but if you're  
10 referring to when we had the meeting with the  
11 planning manager and Robert Summerfeld, if one was  
12 before the other or after the other, I don't recall.  
13 Q. So at the time that the agenda for that  
14 item was prepared to be before the planning  
15 commission, you knew that the applicant had already  
16 submitted an application, correct?  
17 A. Can you restate that, please?  
18 Q. At the time that the agenda for that item  
19 was prepared to go before the planning commission,  
20 you knew that the applicant had already submitted  
21 their application to the City, correct?  
22 MR. JIMMERSON: I'm just going to object.  
23 I don't know that this witness has identified that  
24 date Mr. Bice. I'm concerned by your question.  
25 MR. BYRNES: Also object it's asked and

114

1 answered.  
2 THE WITNESS: The agenda prepared, I'm not  
3 specifying sure what you're referring to. When it  
4 was post, meaning when it was completed and posted to  
5 the public or prior to it when it was being -- from  
6 the date of application closing.  
7 Q. Was when? October what?  
8 A. The date for the October planning  
9 commission?  
10 Q. Yes?  
11 A. What is the closing date for that?  
12 Q. Yes.  
13 A. It would -- I don't have the specific date  
14 but it would be about a month before.  
15 Q. When was the application submitted do you  
16 know was it August 26<sup>th</sup>?  
17 MR. JIMMERSON: That's the date you're  
18 suggesting Mr. Bice?  
19 MR. BICE: I'm asking him if it was that  
20 day.  
21 THE WITNESS: I don't recall. I would  
22 have to refer to our internal database system to get  
23 you a specific date.  
24 MR. BICE: Mark that please.  
25 (Exhibit Number Num was marked.)

115

1 BY MR. BICE:  
2 Q. Showing you what's been marked as Exhibit  
3 Number 5, have you seen this before?  
4 A. I don't recall it's a possibility yes.  
5 Q. Can you tell me what it is?  
6 A. These are submittal materials.  
7 Q. Submittals for what?  
8 A. These are statement of financial  
9 interests, which is a standard form in the City of  
10 Las Vegas. There is an application petition form,  
11 which is another standard form to be filled out for  
12 an application submittal.  
13 Q. An application for what?  
14 A. Land use entitlement. The next part of  
15 this is a grant bargain sale deed with associated  
16 legal description to it, declaration of value,  
17 justification letter dated August 28<sup>th</sup>, and a  
18 neighborhood meeting notice, then a City prepared  
19 radius map. Okay. What's the justification letter  
20 say that is being sought? It reads Fore Stars,  
21 Limited is requesting approval of a general plan  
22 amendment for the 250.92 acres represented by APNs.  
23 Also known as assessors parcel numbers,  
24 138-31-702002, 138-21-801002, 138-32-202001 and APN  
25 138-32-301004. The amendment request for these APNs

116

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1 changed in their designation from parks recreation  
2 open space (PR-OS), parenthesis to planned community  
3 development, (PCD), a subsequent rezoning and site  
4 development review will be submitted and be heard  
5 this GPA period. Thank you for your consideration.  
6 Q. What was -- and what was your  
7 understanding of the change to the planned community  
8 development that was being sought?  
9 A. It is a change of the general plan land  
10 use designation on the subject sites from PROS to  
11 planned community development.  
12 Q. And that the agenda item with the  
13 asterisks to change the general plan had been  
14 approved, this application would have sought to take  
15 advantage of that, that was your understanding  
16 correct?  
17 A. Correct.  
18 MR. JIMMERSON: Objection. Assumes facts  
19 not in evidence.  
20 MR. BYRNES: Also calls for speculation.  
21 THE WITNESS: But yes. They would -- at  
22 the time this application would be heard, if it was  
23 approved, they would have the ability to request for  
24 subsequent applications, meaning through a site  
25 development review, additional density at the

117

1 discretion of the City counsel counsel.  
2 Q. And this additional discretion that was  
3 going to be given to the City counsel was done in  
4 anticipation of the application, wasn't it? Are you  
5 denying that?  
6 MR. JIMMERSON: Objection. Compound.  
7 THE WITNESS: As I previously stated, this  
8 development was basically put a focus on the need for  
9 such a tool.  
10 Q. Okay. So the tool was going to be  
11 created.  
12 A. Mm-hmm, yes.  
13 Q. And it would be applied in this  
14 circumstance and potentially others down the road,  
15 correct?  
16 A. It could be,.  
17 Q. It could be but the only circumstance that  
18 was presently that you were aware of where it would  
19 be applied to was Exhibit Number 5?  
20 MR. JIMMERSON: Objection. Assumes facts  
21 not in evidence.  
22 MR. BICE: Correct.  
23 MR. JIMMERSON: Objection. Assumes facts  
24 not in evidence.  
25 THE WITNESS: Potentially, yes.

118

1 BY MR. BICE:  
2 Q. Did you ever meet with Mr. Borgel about  
3 Exhibit Number 5?  
4 A. With reoccurring meetings, it is a  
5 possibilities, but I don't recall.  
6 Q. Did Mr. Borgel ever attend any of these  
7 preapplication meetings that you've described?  
8 A. I'm not sure who the attendees were at  
9 these early on set meetings. He's been in meetings  
10 about the development agreement and other things, at  
11 these regularly scheduled Thursday meetings.  
12 Q. Do you recall being -- you said you were  
13 at this planning commission meeting, correct, for the  
14 agenda, right?  
15 A. To my recollection I was in attendance.  
16 Q. Do you recall any of the planning  
17 commissioners asking out loud who was the real  
18 applicant behind that amendment?  
19 A. I don't recall.  
20 Q. Did any -- did anyone, any of the planning  
21 commissioners want to know whether there was a  
22 particular applicant that wanted this amendment?  
23 MR. JIMMERSON: Objection. Assumes facts  
24 not in evidence. The amendment according to the  
25 witness was sponsored by the City.

119

1 THE WITNESS: I don't recall but it is  
2 recorded so one can review that tape and assess.  
3 BY MR. BICE:  
4 Q. Did you volunteer that information to any  
5 of the planning commissioners?  
6 A. I did not present the item.  
7 Q. Whose responsibility would it have been to  
8 answer that question if it was asked?  
9 A. That would be Mr. Doug Rankin because I  
10 believe he presented the item.  
11 Q. So you don't recall whether you ultimately  
12 answered that question when it was repeated or not;  
13 is that fair?  
14 MR. BYRNES: Objection. Asked and  
15 answered.  
16 THE WITNESS: I don't recall if that was  
17 the specific question asked of me.  
18 BY MR. BICE:  
19 Q. What was the question that you believe you  
20 answered then?  
21 MR. JIMMERSON: Objection excuse me.  
22 Object. There has no been no foundation on the  
23 circumstances that even such a question was asked Mr.  
24 Bice. I object on that basis.  
25 THE WITNESS: I don't recall the

120

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1 specifics. I would have to rewatch the video to see  
 2 where the -- if there was any question and where it  
 3 came from.  
 4 Q. Do you recall speaking at all on this  
 5 agenda item?  
 6 A. I may have.  
 7 Q. Why would you speak on it?  
 8 A. If Mr. Rankin did not have information and  
 9 was looking for something, I would assist him.  
 10 Q. Well did Mr. Rankin know about the plans  
 11 for the Badlands Golf Course at this point in time?  
 12 A. Yes.  
 13 Q. So to your knowledge no further action had  
 14 been taken relative to that asterisk amendment  
 15 correct?  
 16 MR. BYRNES: Objection. Asked and  
 17 answered.  
 18 BY MR. BICE:  
 19 Q. Is that correct?  
 20 A. I don't -- to my recollection, I don't  
 21 believe so.  
 22 Q. And Exhibit Number 5 was the application  
 23 was withdrawn, correct?  
 24 A. This application, if I recall, was  
 25 withdrawn before it was publicly noticed.

121

1 Q. It was withdrawn after the planning  
 2 commission tabled the amendment, correct?  
 3 A. I don't know the exact dates.  
 4 Q. I understand you don't know the exact  
 5 dates but it was sometime after September the eighth,  
 6 correct?  
 7 A. Well the item --  
 8 MR. JIMMERSON: Object to form the  
 9 question. 2 years, year and a half later.  
 10 THE WITNESS: If you recall the September  
 11 planning commission meeting was the meeting in which  
 12 it was held in abeyance.  
 13 BY MR. BICE:  
 14 Q. Right.  
 15 A. And then it was not tabled until the  
 16 subsequent planning commission meeting which would  
 17 have been in October.  
 18 Q. Okay. So it was held in abeyance, and  
 19 after it was held in abeyance by the planning  
 20 commission the application in Exhibit Number 5 was  
 21 withdrawn, correct?  
 22 A. I would have to research the date of the  
 23 request for withdrawal.  
 24 Q. Well do you believe it was withdrawn prior  
 25 to the planning commission meeting on September the

122

1 eighth, sir?  
 2 A. I don't recall. I don't think so.  
 3 Q. So you believe that it was withdrawn  
 4 sometime after the September 8<sup>th</sup> planning  
 5 commission meeting correct.  
 6 It's possible.  
 7 Q. Is it likely?  
 8 MR. JIMMERSON: Objection calls for  
 9 speculation in light of the last three answers.  
 10 THE WITNESS: What's the difference?  
 11 BY MR. BICE:  
 12 Q. You know, that's a fair question but  
 13 you're the one using this language so I guess I need  
 14 to really drill down. So you say it's possible. I  
 15 think we both know that it was so I don't know why  
 16 you're trying to qualify the answer but I'm going to  
 17 press you to give me an actual answer?  
 18 MR. BYRNES: Do you have a document?  
 19 MR. JIMMERSON: Objection. Move to strike  
 20 the question as being argumentative and  
 21 editorializing the question is improper.  
 22 MR. BYRNES: Do you have a document that  
 23 establishes the date you can show the witness?  
 24 MR. BICE: I do, Phil, but I think this  
 25 witness knows it and I don't think I need to waste my

123

1 time pulling out documents on things that he  
 2 absolutely knows the answer to. So if he wants to  
 3 play this game, I'll just keep it up all day long.  
 4 MR. JIMMERSON: Objection. The only game  
 5 being played is { guessing what the witness knows and  
 6 doesn't know  
 7 Q. Do you want to tell me that you know it  
 8 was withdrawn sometime after the planning commission  
 9 meeting on September the 8<sup>th</sup>, Mr. Lowenstein?  
 10 A. Sure.  
 11 Q. What's that?  
 12 A. I will but I don't know the exact date.  
 13 Q. I told you I didn't care whether you knew  
 14 the exact date. I asked you whether it was withdrawn  
 15 after that meeting?  
 16 MR. JIMMERSON: Object to the question.  
 17 BY MR. BICE:  
 18 Q. And you knew that it was.  
 19 A. Well, I'm assuming it was.  
 20 MR. JIMMERSON: Excuse me, guys, if you  
 21 don't mind I would like to make an objection before  
 22 the two of you continue the re parte. Object to the  
 23 question as calling for speculation, arguing with the  
 24 witness and editorializing improperly.  
 25 ///

124

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1 BY MR. BICE:  
2 Q. Why do you assume that it was?  
3 A. For the simple fact that if an application  
4 was still looming forward, one would be able to still  
5 entertain the possibility of using planned community  
6 development but it's all in light of what would be  
7 the subsequent applications, if it conformed to the  
8 density requirements of the current planned community  
9 development, it still would have been a viable  
10 application.  
11 Q. You knew that it was not in conformity  
12 with the current density requirements, didn't you?  
13 A. From previous understanding of the unit  
14 counts it did not seem that it was going to be in  
15 conformance but one can always amend their  
16 applications at any point.  
17 Q. Do you believe that this application was  
18 amended?  
19 A. I would have to speculate as far as what  
20 they would want to do with their own property.  
21 Q. My question, sir, is do you believe that  
22 this application was amended?  
23 A. They had not submitted any amendments to  
24 us or subsequent applications to show it would be  
25 amended so at that point I don't have an idea if they

125

1 were going to amend it or not.  
2 Q. What was a master development plan in  
3 1990, do you know what the City considered that to  
4 be?  
5 A. Not having worked here, then the  
6 terminology and the institutional knowledge is no  
7 longer available in our department for me to  
8 accurately answer that.  
9 Q. Can you apply for one today?  
10 A. For a?  
11 Q. Master development plan.  
12 A. We would call it a plan development under  
13 the PD, a special area plan. Master plan community.  
14 Q. What is a planned development?  
15 A. It's a zoning district which has criteria  
16 if you apply for it, minimum size requirement, a  
17 number of different things being required as far as  
18 development standards, infrastructure, things of that  
19 nature.  
20 Q. Okay. Is it different than a residential  
21 plan development.  
22 A. Yes. Residential plan development is a  
23 legacy zoning district currently.  
24 Q. Okay. What's the difference?  
25 A. Well, there's two distinct zoning district

126

1 that have been both in existence at the same time,  
2 one has a zoning district which delineates the  
3 density in its title with R-PD and then associated  
4 number with it. The other is a planned development  
5 which is a comprehensive development plan for more of  
6 a community approach where you have multiple  
7 developer parcels.  
8 Q. And what is -- what did a R-PD consist of?  
9 A. Residential plan developments in my tenure  
10 at the City have consisted of single family  
11 residential subdivisions.  
12 Q. Single family residential decisions?  
13 A. Correct.  
14 Q. Anything beyond that?  
15 A. Not while I've been at the City that I'm  
16 aware of.  
17 Q. Multifamily -- do they include multifamily  
18 in your experience.  
19 A. It's my recollection it's possible that  
20 they could use an R-PD for a multifamily. Usually  
21 associated with condominium maps but I don't see why  
22 they couldn't use it for multifamily apartments.  
23 Q. And you say that that designation doesn't  
24 exist any longer?  
25 A. Since the adoption of the Unified

127

1 Development Code, it has become a legacy zoning  
2 district, so it does not -- no longer exists in a --  
3 as -- in the zoning ordinance as a zoning district in  
4 which someone who doesn't already have it can apply  
5 for.  
6 Q. Understood. But it still exists correct?  
7 A. Still exists as a legacy district. So as  
8 our commercial design district, our neighborhood  
9 services district, our other examples of legacy  
10 district.  
11 Q. And what's the most analogous to it today?  
12 A. Today we go with -- and the terminology  
13 starts -- we have the straight zoning. Basically  
14 there are associated zoning district have you that  
15 zoning district you comply with those minimum lot  
16 sizes and you go forward with tentative maps.  
17 Q. What do you mean by straight zoning?  
18 A. The existing zoning district and the  
19 Unified Development Code, they all have minimum  
20 development standards. You would then, if you  
21 currently have the one that meets your needs, you  
22 utilize that and follow those development standards  
23 and create the tentative map. If we're talking about  
24 a residential subdivision.  
25 Q. What if you were doing it as a planned

128

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1 development, then you would follow PD.  
2 A. The planned development has its own  
3 prescribed application requirements.  
4 Q. If you were going to do a Peccole Ranch  
5 master plan development today, what would be the  
6 zoning clarification that you would look to?  
7 MR. JIMMERSON: Object to the form of the  
8 question as vague and ambiguous.  
9 THE WITNESS: I would look towards it as a  
10 PD.  
11 (Exhibit Number Num was marked.)  
12 BY MR. BICE:  
13 Q. When say that you look towards a PD,  
14 that's even though it would be residential, correct?  
15 A. Sorry?  
16 Q. You said that you would look towards a PD  
17 today, under today's code.  
18 A. Do you have to be to accomplish something  
19 similar to the Peccole Ranch Master Development Plan?  
20 Q. Yes?  
21 A. Yes, I would look towards something as a  
22 planned development, planned development zoning  
23 district.  
24 Q. The R in the former R-PD designation stood  
25 for residential, correct?

129

1 A. Yes.  
2 Q. So it stood for residential planned  
3 development, right?  
4 A. Correct.  
5 Q. Okay. I'm showing you now what's been  
6 marked as Exhibit Number 6, I believe. Have you seen  
7 this before?  
8 A. It's possible. I probably have.  
9 Q. If you look at the second paragraph is  
10 that an accurate description of what you understand  
11 R-PD to mean?  
12 A. It's more than likely verbatim out of the  
13 zoning code.  
14 Q. So is it accurate to say the R-PD district  
15 was to provide flexibility and invasion in  
16 residential development? Is that your understanding  
17 of what it was designed to do?  
18 A. Correct.  
19 Q. And with emphasis on enhanced residential  
20 amenities. What sort of amenities?  
21 A. During my tenure there was a requirement  
22 for it to have a provision of open space based on  
23 our -- a calculation of dwelling units per acre times  
24 I believe it's 1.65 and then you would have how much  
25 open space was required for a residential planned

130

1 development.  
2 Q. Okay. And so is that open space  
3 considered to be one of the amenities under the  
4 zoning clarification?  
5 A. I would assume so, yes.  
6 Q. And then it goes to resite efficient  
7 utilization of open space do you see that.  
8 A. I see that.  
9 Q. And what is the purpose of efficient  
10 utilization of open space in the R-PD designation?  
11 A. My understanding of it is that it's not  
12 to be little fringe slivers of common elements that  
13 act as landscape buffers or things of that nature, it  
14 has to be utilized or to be able to be utilized or  
15 enjoyed by the development.  
16 Q. Would golf courses fall within that  
17 definition of efficient utilization of open space?  
18 A. I see no reason why not.  
19 Q. Well, in your experience would that be  
20 something that the City would consider to be an  
21 efficient utilization of open space?  
22 MR. JIMMERSON: Objection calls for  
23 speculation and/or expert witness testimony to which  
24 this witness has not yet been designated. Calls for  
25 opinion.

131

1 THE WITNESS: In my tenure, I haven't had  
2 a development with a golf course as part of it. But  
3 in light of as recreation and open space is part of  
4 it, it could be considered that, yes.  
5 BY MR. BICE:  
6 Q. And you have reviewed the Peccole Master  
7 Plan, have you not?  
8 A. Yes, I have.  
9 Q. And was there a representation about open  
10 space as part of that master plan?  
11 MR. JIMMERSON: Objection. Vague and  
12 ambiguous as to what's being referred to, what part  
13 of the plan, what time.  
14 THE WITNESS: There are segments in that  
15 plan that speak to open space. There's tables that  
16 reflect acreage. There's -- even going back to the  
17 Venetian foothills and speculative where they were  
18 going to place certain things, ultimate design, you  
19 know is what we have today.  
20 BY MR. BICE:  
21 Q. Okay. And then you say ultimate design of  
22 what we have today. Let me show you -- bear with me  
23 one second.  
24 (Exhibit Number Num was marked.)  
25 ///

132

004974

004979

15004

1 BY MR. BICE:  
2 Q. Showing you what's been marked as Exhibit  
3 Number 7, and again just for the record, Phil and  
4 counsel, the red -- the two red blocks, the one on  
5 the plan and the one on the description on the right,  
6 under the land use categories, those are mine, so as  
7 to draw attention to the questions I want the witness  
8 to answer.  
9 Have you seen Exhibit Number 7 before?  
10 A. It's possible this is the southwest sector  
11 land use categories of the Las Vegas 2020 Master  
12 Plan.  
13 Q. Well let's --  
14 A. I'm just saying because there are  
15 different additions.  
16 Q. Right. So I want to bring to your  
17 attention, if you look down the right-hand corner  
18 there are some dates.  
19 A. Okay.  
20 Q. So --  
21 A. Yes.  
22 Q. I just -- before you committed to a  
23 particular timeframe on this, I wanted you to be  
24 aware that I'm not representing to you that this is  
25 the current map?

133

1 called for in this particular case we're talking  
2 about this is the amendment and phase two rezoning.  
3 That booklet.  
4 Q. Yes?  
5 A. Which has tables which showed what was  
6 the -- what was amended or had the verbiage as far as  
7 what's being amended, tables of what's in phase two  
8 and as total data for the entire Peccole Ranch Master  
9 Development.  
10 Q. Just so we make sure we're talking about  
11 the same document, let me get that marked.  
12 (Exhibit Number Num was marked.)  
13 Q. Is this the Peccole Ranch Master Plan  
14 amendment and phase two rezoning application that you  
15 just previously referenced?  
16 A. Yes.  
17 Q. And this is in the City's files?  
18 A. Yes.  
19 Q. And as part of your research into the  
20 current application, is this one of the documents  
21 that you researched and found?  
22 A. Yes, as part of looking at previous land  
23 use entitlements this is one of the documents that's  
24 part of that.  
25 Q. Is this one of the documents that the City

135

1 A. Okay.  
2 Q. Okay.  
3 But does it look like to you, knowing with  
4 your experience, that this is the map that at least  
5 exist as of August 18 of 1999?  
6 A. Yes.  
7 MR. JIMMERSON: Object to the question  
8 with regard to this document not bearing that date.  
9 Calls for speculation.  
10 BY MR. BICE:  
11 Q. So what is the Pecc -- what is the  
12 Badlands Golf Course designated under this map as of  
13 August 18 of 1999?  
14 A. It is designated as green which  
15 corresponds to the legend of park slash recreation  
16 slash open space.  
17 Q. Now you said that you had looked at the  
18 master plan, the Peccole Ranch Master Plan and you  
19 had indicated there were various areas that were  
20 designated or there were various descriptions about  
21 open space as part of the R-PD zoning; is that  
22 correct?  
23 A. As part of the development, master  
24 development plan, there was a booklet, the plan or  
25 brochure, whichever you want to call it, which had

134

1 has relied upon in evaluating the application?  
2 A. This document was given consideration. It  
3 was one of the reasons that the department requested  
4 that a major modification to this document be filed.  
5 Q. Okay. When you looked at the document and  
6 you were talking about unit counts, is this the  
7 document that you were looking at in evaluating unit  
8 counts?  
9 A. No.  
10 Q. You were looking at planning commission or  
11 city council approval letters on the unit counts?  
12 A. May I ask you a question?  
13 Q. Absolutely.  
14 A. When you say researching unit counts, do  
15 you mean as far as what's existing out there, as far  
16 as what was proposed originally, what they're held to  
17 as far as the overall community?  
18 Q. Yes?  
19 A. Which specific one.  
20 Q. Fair enough. Let's break it down. What  
21 are they allowed to build?  
22 A. The overall unit count comes from the  
23 conditions of approval out of an action letter for  
24 the associated zoning action, which is the Z-17-90 if  
25 I recall correctly.

136

004975

004980

15005



1 Q. And is that the 14 -- 4,247 units?  
2 A. I believe that's correct.  
3 Q. 2807 of single family and 1440 of  
4 multifamily, correct?  
5 A. The condition doesn't state that.  
6 Q. What's that?  
7 A. The condition doesn't state that. The  
8 condition just says that there's a maximum of 4247.  
9 Q. Of units?  
10 A. Mm-hmm.  
11 MR. BYRNES: Is that a yes?  
12 THE WITNESS: Yes. Sorry.  
13 BY MR. BICE:  
14 Q. And where did those numbers come from?  
15 A. Where did the number and condition of  
16 approval come from?  
17 Q. Or do you believe that it was plucked out  
18 of thin air by someone?  
19 MR. JIMMERSON: Object to the form of the  
20 question. Argumentative.  
21 THE WITNESS: At the point when this was  
22 done, I wasn't working at the City of Las Vegas but  
23 on assumption I would have based it on their related  
24 document that they submitted.  
25 ///

137

1 BY MR. BICE:  
2 Q. Would that be Exhibit 8?  
3 A. Exhibit 8 would be part of the  
4 development -- the master development plan that was  
5 heard either -- was related to the zoning action.  
6 Q. And when did you did your research in  
7 determining the number of units, the number of actual  
8 units are set forth in this master plan amendment and  
9 phase two rezoning application, correct?  
10 A. I'm sorry, can you repeat that?  
11 Q. Sure. And when you did your research to  
12 determine the number of units, the number of actual  
13 units are set forth in Exhibit 7, the master plan  
14 amendment and phase two rezoning application,  
15 correct?  
16 A. Well, if you're referring to Exhibit 8 --  
17 Q. Oh, Exhibit 8, you're right. My  
18 apologies.  
19 A. In reviewing it we looked at the maximum  
20 unit count from the action letter. We've also looked  
21 at these tables.  
22 Q. And as part of your research did you  
23 determine where those unit counts had come from that  
24 were contained in the action letter?  
25 A. As I just stated we looked at that

138

1 condition of the approval letter in addition to this  
2 document on the table.  
3 Q. That meaning Exhibit 8.  
4 A. Exhibit 8, yes. Sorry.  
5 Q. And did that approval letter also state  
6 that in addition to the maximum -- a maximum of 4247  
7 dwelling units be allowed for phase two, that it  
8 was -- another condition was conformance to the  
9 conditions of approval for the Peccole Ranch Master  
10 Development Plan, phase two?  
11 A. I believe so if you're reading it right  
12 from the document. I imagine there would be a second  
13 condition. In my research I have never found any  
14 conditions for the development of the master  
15 development plan.  
16 Q. Just the plan itself.  
17 A. In reference to the condition you just  
18 read.  
19 MR. JIMMERSON: Please stop now. Will you  
20 please read the last two questions and answers  
21 please.  
22 (Record read back by the reporter.)  
23 MR. JIMMERSON: Move to strike the  
24 question and answer. Calls for speculation and  
25 assuming facts not in evidence. I was trying to make

139

1 my objection between the question and answer but it  
2 happened so quick.  
3 BY MR. BICE:  
4 Q. When was the Peccole Ranch Master Plan  
5 closed out?  
6 A. That's under the assumption that it is  
7 closed out. There are undeveloped parcels within the  
8 Peccole Ranch Master Plan that have yet to be  
9 developed.  
10 Q. So that means it's not closed out? Is  
11 that your position?  
12 A. What is the definition of closed out?  
13 Q. What's the City's definition of closed out  
14 in every other project except for this one?  
15 MR. JIMMERSON: Object to the question as  
16 being either. Calling something that's not relevant  
17 to the case.  
18 THE WITNESS: I'm not aware of we have a  
19 definition of something is closed out.  
20 BY MR. BICE:  
21 Q. You don't know or you're saying the City  
22 doesn't have one?  
23 MR. JIMMERSON: Object to the question as  
24 it being ambiguous, compound.  
25 THE WITNESS: There's nothing in the

140

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15006

1 Unified Development Code that says closed out as  
2 being defined. And to your second point, I don't  
3 know.  
4 BY MR. BICE:  
5 Q. So is it your -- let's just deal with your  
6 position -- is it your position, as long as there's  
7 an empty lot in any planned development, it's not  
8 completed?  
9 A. The subdivision or or commercial property  
10 if it's not completely built out is not -- just that.  
11 It's not closed out and there's still ability to  
12 construct in it, develop in it.  
13 Q. How many bonds are left on the Peccole  
14 Ranch phase two?  
15 A. I don't know.  
16 Q. Did you do any research into that?  
17 A. Not that I am aware of, no.  
18 Q. Did you ask anyone on the staff to do any  
19 research on that?  
20 A. Those matters usually fall to land  
21 development which is either part of building and  
22 safety or if need be from the Department of Public  
23 Works to review those matters.  
24 Q. But my question was did you ask anyone to  
25 do it.

141

1 A. Not that I recall.  
2 Q. Have you since learned about whether there  
3 are any bonds left on the project?  
4 A. Only by reading through the deposition of  
5 Mr. Perrigo.  
6 Q. Who was the -- who was the developer of  
7 the Peccole Ranch Master Plan?  
8 A. The initial developer?  
9 Q. Is there more than one?  
10 A. Through the land use entitlement history  
11 there have been other applicants but is your question  
12 specific to Exhibit 8 who?  
13 Q. Talking about the Peccole Ranch Master  
14 Plan. Who was the developer?  
15 A. I believe it was Peccole, the Peccole  
16 Trust.  
17 Q. The Trust?  
18 A. I've seen it stated Peccole Trust, I've  
19 seen Peccole Trust 1982. I've seen it just as  
20 Peccole.  
21 Q. Got it. And what is the status of -- who  
22 is the declarant on the development?  
23 MR. JIMMERSON: Object to the extent it  
24 calls for a legal conclusion or attempting to use  
25 this witness as an expert witness improperly.

142

1 Q. Do you know?  
2 A. Are you referring to CC&Rss?  
3 Q. No, I'm not referring to CC&Rs who is the  
4 development declarant do you know if you don't, I  
5 understand?  
6 MR. JIMMERSON: Object. Assumes facts not  
7 in evidence that there exists such a thing as a  
8 development declarant.  
9 THE WITNESS: There is an applicant and  
10 that's what I'm aware of.  
11 Q. And that applicant is the Peccole Trust  
12 1982 as far as you know, correct.  
13 A. Correct.  
14 MR. JIMMERSON: Objection. He indicated  
15 there were three different applicants.  
16 Q. What is the status of that applicant  
17 today, do you know?  
18 A. I don't know.  
19 (Exhibit Number Num was marked.) nine  
20 BY MR. BICE:  
21 Q. Showing you what's been marked as  
22 Exhibit 9, Mr. Lowenstein, have you seen this exhibit  
23 before?  
24 A. Possibly.  
25 Q. Well --

143

1 A. And more than likely -- it looks like the  
2 justification letter for one of the applications, so  
3 yes.  
4 Q. It's addressed to you, do you see that?  
5 A. I do.  
6 Q. So you don't have any reason to believe  
7 that you didn't receive it?  
8 A. That is correct.  
9 Q. All right. By this point in time, this is  
10 November 24, 2015. Would you be considered the lead  
11 on this plan?  
12 A. This is the formal application submittal,  
13 so at this time it would have been assigned to the  
14 case planner.  
15 Q. And that would have been.  
16 A. That would have been Steve Swanton.  
17 Q. And would you oversee his work on this  
18 case?  
19 A. His supervisor would review his staff  
20 report and if he had any questions, he's more than  
21 able to ask his supervisor, his section manager. We  
22 all have open door policies.  
23 Q. And who would be his supervisor?  
24 A. At this time I believe it was -- it could  
25 have either been Andy Reid or Steve Gebeke. I would

144

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15007



1 have to double-check when Andy had left the City.  
2 Q. All right. You'll see near the second  
3 sentence of the first paragraph, the land zoning  
4 designation is R-PD7 and under the general plan is  
5 PR-OS, correct?  
6 A. Second sentence, yes, I see.  
7 Q. Right.  
8 A. Yes.  
9 Q. And then it goes on to say, it says the  
10 17 acres is in the process of being subdivided into a  
11 separate parcel and will have its own APN. Do you  
12 see that?  
13 A. I do.  
14 Q. And what was the plan that was being  
15 submitted as this land was going to be subdivided?  
16 A. This -- in relation to this letter, this  
17 is an application for 720 multifamily units on the  
18 17.49 acres.  
19 Q. If you go to below the first bullet point  
20 there is a sentence there that starts the land is and  
21 all caps says not a part end all caps of any common  
22 interest community, CC&Rs nor is it permitted a  
23 property with the CC&Rs of adjacent properties nor is  
24 it in any way under the control of the HOAs and the  
25 adjacent properties. Do you see that?

145

1 A. I see that.  
2 Q. Does that have any significance to you?  
3 A. No.  
4 REPORTER'S NOTE check reading.  
5 Q. Do you know why the applicant was  
6 emphasizing that point?  
7 A. I don't.  
8 Q. Is that a consideration that the City  
9 would give under its -- as it was considering this  
10 application?  
11 A. Can you restate the question please.  
12 Q. Is that a consideration for the City in  
13 deciding what to do with this application?  
14 A. No.  
15 Q. Why not?  
16 A. The City does not take into account CC&Rs.  
17 Q. Because those are just private contracts?  
18 A. I believe they're -- yes, they're civil  
19 contracts between two private parties.  
20 Q. Right. So you'd leave it up to them to  
21 work out what those provisions are, correct?  
22 A. If there was anything to be worked out,  
23 yes.  
24 Q. Have you ever heard of Nevada Revised  
25 Statutes Chapter 116?

146

1 A. In regards to HOAs? Because I do sit on  
2 an HOA board.  
3 Q. Yes.  
4 A. Yes.  
5 Q. And you understand that property that is  
6 subject to a homeowner's association or CC&Rs is  
7 governed by Chapter 116, correct?  
8 MR. BYRNES: Objection. Calls for a legal  
9 conclusion.  
10 THE WITNESS: I'm assuming yes.  
11 BY MR. BICE:  
12 Q. And the homeowner here is an affirm -- the  
13 property owner here is affirmatively representing  
14 that this property isn't subject to Chapter 116.  
15 Would you agree?  
16 MR. JIMMERSON: Object. That  
17 mischaracterizes the letter.  
18 THE WITNESS: All I can do is read the  
19 statement that's here. It doesn't state NRS 116.  
20 BY MR. BICE:  
21 Q. So you in interpreting this, I don't  
22 believe this is a disclaimer that Chapter 116 doesn't  
23 apply to this property.  
24 MR. BYRNES: Objection. Calls for  
25 speculation.

147

1 THE WITNESS: It is not part of my  
2 consideration of the justification letter.  
3 BY MR. BICE:  
4 Q. Are there any -- any other statutes that  
5 you are aware of concerning homeowner's associations  
6 outside of Chapter 116?  
7 MR. BYRNES: Objection. Calls for a legal  
8 conclusion.  
9 MR. JIMMERSON: Joinjustification. Also  
10 mischaracterizes the letter, Exhibit 9.  
11 THE WITNESS: Actually, until very  
12 recently, no.  
13 BY MR. BICE:  
14 Q. And did you very recently determine  
15 something else?  
16 A. No. I didn't determine anything it was  
17 just made aware that the 116 is also in 278A, I  
18 believe.  
19 Q. Oh.  
20 A. Unless I'm incorrect.  
21 Q. Who brought that to your attention?  
22 A. I believe that was in talk with counsel.  
23 Q. Oh, well then don't tell me what you  
24 learned from legal counsel.  
25 MR. BYRNES: Stop there.

148

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15008

1 BY MR. BICE:  
2 Q. I'll rephrase it next time. You didn't  
3 learn that from anyone outside of your discussions  
4 with the City attorney is that fair?  
5 A. Yes, that's fair.  
6 Q. Okay. And when was that, that you became  
7 aware?  
8 A. I'm thinking in the last three weeks.  
9 Q. Okay.  
10 MR. JIMMERSON: Could I just ask aware of  
11 what?  
12 MR. BICE: I'm sorry?  
13 MR. JIMMERSON: Aware of what?  
14 MR. BICE: Aware of his testimony that he  
15 referenced Chapter 116's reference in 278A.  
16 BY MR. BICE:  
17 Q. Is it your view, Mr. Lowenstein, that  
18 there's a difference between a planned unit  
19 development and a plan development?  
20 A. I've never worked with a planned unit  
21 development pursuant to the 278A.  
22 Q. Does the City have code provisions that  
23 deal with planned use developments?  
24 A. To my knowledge.  
25 MR. BYRNES: Objection. Calls for a legal

149

1 conclusion.  
2 THE WITNESS: To my knowledge in reference  
3 to that section of NRS, no.  
4 BY MR. BICE:  
5 Q. Have you ever looked at old versions of  
6 the municipal code about whether it contained terms  
7 about planned unit developments?  
8 A. No.  
9 Q. So tell me what you believe the difference  
10 is between a residential planned development and a  
11 planned unit development, if you think that there is  
12 one?  
13 MR. BYRNES: Objection. Calls for a legal  
14 conclusion.  
15 MR. JIMMERSON: Objection. Calls for  
16 speculation on the last two answers.  
17 THE WITNESS: I would have to defer to the  
18 City attorney as far as what that difference of state  
19 statute would be.  
20 BY MR. BICE:  
21 Q. I understand. But as you're sitting here  
22 at least working in the planning department, you  
23 can't identify any differences that you are aware?  
24 MR. JIMMERSON: Objection. That  
25 mischaracterizes his testimony. He said he

150

1 considered them to be distinct.  
2 MR. BYRNES: Calls for a legal conclusion.  
3 THE WITNESS: Without further review and  
4 consultation with the City attorney, I can't give you  
5 an answer.  
6 BY MR. BICE:  
7 Q. Can you identify any distinctions  
8 yourself?  
9 A. One is a residential plan development and  
10 one's -- residential plan -- planned unit  
11 development.  
12 Q. Okay. Other than the name, can you  
13 identify any distinctions for us?  
14 A. Two sections of NRS.  
15 Q. Okay. Other than two sections of NRS and  
16 the name, can you identify any other distinctions for  
17 us?  
18 MR. BYRNES: Objection. Calls for a legal  
19 conclusion.  
20 THE WITNESS: As I said without further  
21 review of both of them, I can't give you an answer on  
22 the difference between the two.  
23 BY MR. BICE:  
24 Q. Well did you review them for your work on  
25 this case?

151

1 A. I did not review planned unit developments  
2 as part of this case.  
3 Q. As part of the application, did you review  
4 any of the provisions of the Nevada revised statutes?  
5 MR. JIMMERSON: Object to the question as  
6 vague and ambiguous and/or irrelevant.  
7 THE WITNESS: As part of these  
8 applications for development agreements, they are  
9 covered in NRS 278 and, therefore, I didn't review  
10 Nevada statutes in regards to the development  
11 agreement.  
12 BY MR. BICE:  
13 Q. Okay. Which provisions did you review?  
14 A. I don't recall exactly which one. It  
15 would just be me spouting off some of the familiar  
16 ones without being accurate, so I don't recall the  
17 exact reference.  
18 Q. Anything other than pertaining to the  
19 development agreement? Did you review any other  
20 provisions?  
21 A. Not to my knowledge, no.  
22 Q. Are there any planning books that you  
23 consult other than the City code and the Nevada  
24 Revised Statutes?  
25 A. Are you referring to any adopted books

152

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15009

1 from the City or any literature in general?

2 Q. Let's break it down. Is there anything

3 that the City counsel has adopted that you would

4 consult other than the planning code -- the City's

5 municipal codes or the Nevada Revised Statutes?

6 A. The Las Vegas 2020 Master Plan, its

7 associated elements.

8 Q. All right. Anything else?

9 A. As part of some of the submittals there's

10 documentation from ULI, which is the Urban Land

11 Institute.

12 Q. Is that adopted by the City?

13 A. No, that is not.

14 Q. But that's something you would consult?

15 A. That is an accredited I guess disciplined

16 journal, I guess for lack of better terminology.

17 Q. Any others that you would consult? Any

18 other sort of planning journals or anything like

19 that?

20 A. I'm not sure if I did or did not, but if I

21 was to use -- I would use the American Planning

22 Association's website. It has a searchable database

23 for journal articles or just articles in general.

24 Q. Did you ever consult the Urban Land

25 Institute residential land development handbook?

153

1 A. Not on a very frequent basis.

2 Q. Okay. How about the international City

3 manager's associations, the practice of local

4 government planning?

5 A. I don't believe so.

6 Q. Okay. How about the American Planning

7 Association's Growth Smart Legislative Guidebook?

8 A. I'm not particularly sure if I reviewed

9 that or not.

10 Q. Would you agree that a planned development

11 means an area of land controlled by a landowner,

12 which is to be developed as a single entity for one

13 or more planned unit residential developments, one or

14 more public quasi public commercial or industrial

15 areas or both?

16 MR. JIMMERSON: Objection. Calls for an

17 expert opinion to which this witness has not been

18 retained.

19 MR. BYRNES: Are you asking for a

20 statutory definition or --

21 Q. I'm asking if he disputes that that's what

22 a planned development is.

23 MR. JIMMERSON: Objection. Assumes facts

24 not in evidence.

25 THE WITNESS: That definition is stating

154

1 that it's solely one person. My experience had been

2 that there is one entity that creates such a thing

3 and it is then sold off and and other people then

4 develop within the confines of that development plan.

5 BY MR. BICE:

6 Q. Sure. They develop parts of it, right?

7 A. Correct. Or the majority. It depends on

8 what sales go through.

9 Q. But that doesn't mean it's not a planned

10 development correct, or do you maintain that it does?

11 A. Are you asking if that definition -- I'm

12 kind of losing your questioning: Your train of

13 questioning. Can you --

14 Q. Sure. You had indicated that a single

15 owner will develop the plan and then will maybe sell

16 off certain segments of it for I guess development by

17 an individual, like a home builder or something like

18 that. is that what you meant?

19 A. Correct.

20 Q. All right. Even though that may happen

21 you're not disputing that that is still a planned

22 development are you?

23 MR. JIMMERSON: Objection.

24 Mischaracterizes the witness' testimony.

25 THE WITNESS: An individual, depending on

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1 how much property they own, they could go the route

2 of a planned development or they could do it through

3 a piecemeal approach as well.

4 Q. So is it your position that a planned

5 development has to be that the developer has to

6 individual lie develop each segment in order to be a

7 planned development if he sells part of it after

8 getting the plan approved it's no longer a planned

9 development?

10 A. No, that's not what I was saying. I was

11 stating that you could establish a planned

12 development --

13 Q. Got it.

14 A. -- as one mode of development.

15 Q. Right.

16 A. As a separate mode of development. You

17 could not do a planned development and piecemeal

18 develop a site is what I was stating.

19 Q. And do you dispute that the Peccole Ranch

20 is a planned development?

21 A. It is as it states a master planned --

22 master planned development.

23 Q. And that's what it is, isn't it?

24 A. That is what the city council approved as

25 a master planned development.

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1 Q. You're not contending it's not a master  
2 plan development, are you?  
3 A. No. That's the City counsel action they  
4 took was for a master planned development.  
5 Q. And as part of your processing of  
6 applications for the current applicant, you treat the  
7 Peccole Ranch Master Plan as a master plan  
8 development, correct?  
9 MR. JIMMERSON: Objection. Misstates the  
10 testimony in evidence.  
11 THE WITNESS: In light of the development,  
12 it was determined that a major modification would be  
13 requested in light of the land use element is not  
14 denoted as one of the special area plans that require  
15 a major modification. So out of the concern of the  
16 scope of the proposed changes, that determination was  
17 made.  
18 BY MR. BICE:  
19 Q. The scope of the proposed changes were so  
20 significant that you all determined that a major  
21 modification to the 1990 plan was required; is that  
22 correct?  
23 MR. JIMMERSON: Objection. Lack of  
24 foundation as to when where and what project was  
25 being discussed.

157

1 THE WITNESS: In regards to the  
2 development of the property, the major modification  
3 was -- was required by staff based on the scope of  
4 the project.  
5 BY MR. BICE:  
6 Q. When you say development of the property  
7 what do you mean? Development of the golf course?  
8 A. Development of the 250.92 acres.  
9 Q. Okay. What about -- did you originally  
10 require a major modification for the development of  
11 the seven acres after it was subdivided?  
12 MR. JIMMERSON: Objection. The question  
13 makes no sense under the facts of this case.  
14 BY MR. BICE:  
15 Q. Or 17.  
16 A. I understood.  
17 Q. If I misspoke, my apologies.  
18 A. In reference to the 17.49 acres those  
19 applications were held in abeyance in an effort to  
20 having a comprehensive package being submitted which  
21 subsequently were, and we were requesting major  
22 modification as part of that for that overall.  
23 Q. Was that subsequently changed?  
24 A. The requirement for a major modification;  
25 is that your question?

158

1 Q. Yes.  
2 A. Yes.  
3 Q. Why? Well strike that. First let me ask  
4 you, who made that decision that it would be changed?  
5 A. The decision that a major modification  
6 would be required after the withdrawal of the overall  
7 plan?  
8 Q. Yes.  
9 A. That decision would have had to have been  
10 made by the director.  
11 Q. Did the director have meetings with the  
12 applicant about that change?  
13 A. Not that I recall. I imagine the director  
14 had meetings with counsel.  
15 Q. Meaning legal counsel?  
16 A. (Witness nodded head.)  
17 Q. I need you to answer yes or no.  
18 A. Yes. Sorry.  
19 Q. No problem.  
20 A. Constant reminders help.  
21 Q. Don't worry about it. We all do it.  
22 MR. JIMMERSON: Can I clarify, you mean  
23 city attorney counsel, Mr. Perrigo -- Mr. Lowenstein.  
24 THE WITNESS: That is correct.  
25 MR. JIMMERSON: Thank you.

159

1 MR. BICE: Let's take a short break.  
2 THE VIDEOGRAPHER: Going off the video  
3 record. The time is approximately 2:52 p.m.  
4  
5 THE VIDEOGRAPHER: This is the beginning  
6 of video recording number 5 in the continuing  
7 deposition of Mr. Lowenstein. We're back on the  
8 video record. The time is approximately 3:05 p.m.  
9 BY MR. BICE:  
10 Q. Mr. Lowenstein, have you discussed this  
11 application or strike that.  
12 Have you discussed the redevelopment of the  
13 Badlands Golf Course with councilman beers?  
14 A. Not to my recollection. Direct access to  
15 the counsel persons are usually held by the director,  
16 so I have very limited exposure.  
17 Q. Have you discussed it with the mayor?  
18 A. No. Not to my recollection.  
19 Q. All right. Have you personally discussed  
20 it with any of the planning commissioners?  
21 A. The planning commissioners had briefings,  
22 so in that regard they had scheduled meetings with  
23 the planning department, and I was part of those  
24 briefings, so that would -- I assume that's yes.  
25 Q. Did each of the planning commissioners

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1 have such a meeting?

2 A. They were held in groups and all were

3 invited if they -- I'm not particularly recalling

4 which ones did not appear but they were in groups of

5 either two, potentially three.

6 Q. Did you tell -- did you tell any of the

7 planning commissioners of any particular number of

8 units that were purportedly available for development

9 on the golf course?

10 MR. BYRNES: You're asking him personally

11 or --

12 MR. BICE: Yes.

13 MR. BYRNES: -- or the department?

14 BY MR. BICE:

15 Q. Him?

16 A. I don't know that I recall.

17 Q. I know you talked about some maps earlier

18 but I believe Mr. Perrigo said you were the one that

19 was looking into the unit allocation.

20 A. Or my direct staff.

21 Q. Or your direct staff. Did you ever make a

22 determination of what you contend are the number of

23 allowed units on the golf course?

24 A. The number of allowed units on -- within

25 the phase two area is called out by the condition of

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1 approval. As far as units on the golf course, one

2 has the right to petition their government for an

3 amendment and that is what was applied for.

4 Q. Because under the current -- under what

5 was approved there are no allowed units on the golf

6 course?

7 MR. JIMMERSON: Objection.

8 Mischaracterizes the testimony. Mischaracterizes

9 Exhibit 8.

10 MR. BYRNES: Calls for a legal conclusion.

11 BY MR. BICE:

12 Q. I'm correct, am I not?

13 MR. JIMMERSON: Same objection.

14 THE WITNESS: In regards to what this plan

15 called out and as far as on the table, as far as

16 allocation of the units, it does not state units -- a

17 density associated with parks, recreation and open

18 space. However, it shows an area where additional

19 golf course was built on top of where single family

20 was in addition to that.

21 Q. That's the nine holes that were later

22 added correct.

23 A. Additional nine holes, correct.

24 Q. But under your code, when you say that

25 they have the right to petition the government to

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1 change, to change what the general plan?

2 A. I has -- I believe has a constitutional

3 right.

4 Q. To petition the government?

5 A. To petition the government.

6 Q. But when you're saying it could change,

7 the change in the general plan.

8 A. It could be any land use entitlement is

9 that petition.

10 Q. But in this particular case you understood

11 that they would need to petitions to change the

12 general plan because the property has all been

13 designated as open space correct?

14 MR. JIMMERSON: Objection calls for a

15 legal conclusion also absence of foundation.

16 THE WITNESS: One of the submitted

17 applications are for amendments to the general plan

18 amendments.

19 BY MR. BICE:

20 Q. To change the open space designation to

21 allow residential on the open space, what is

22 currently designated as open space?

23 A. The applications that were submitted were

24 from parks recreation open space designation to

25 either H high density residential or -- it's either

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1 desert rural or rural I apologize I don't recall

2 exactly what the other designation was. It may be in

3 one of these other exhibits if you want me to look.

4 Q. When you met with Mr. Lowie and his team,

5 did they ever -- did they ever deny that they knew

6 that the property was designated as open space at the

7 time that they purchased?

8 A. I don't recall that specifically.

9 Q. Did they ever suggest to you that they

10 didn't know it was open space at the time they

11 purchased it?

12 MR. JIMMERSON: Objection. Assumes facts

13 not in evidence that they even exist as open space at

14 the time.

15 THE WITNESS: I don't recall conversations

16 like that.

17 BY MR. BICE:

18 Q. Did you ever hear them, Mr. Lowie or any

19 of his representatives claim that they didn't know it

20 was open space at the time that they purchased it?

21 MR. BYRNES: Objection. Asked and

22 answered.

23 MR. JIMMERSON: Same objection.

24 THE WITNESS: I don't recall that

25 conversation.

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1 BY MR. BICE:  
2 Q. At the time that they submitted -- when I  
3 say they Mr. Lowie's company submitted the  
4 application for the 720 multifamily units, were they  
5 told that they wouldn't have to do a major plan  
6 modification?  
7 A. I don't recall the moment in which they  
8 were required to submit a major modification. As I  
9 previously stated on the record, it was in light of  
10 an overall plan being submitted that the major  
11 modification was being required of them.  
12 Q. Well, did the staff originally say that --  
13 do you recall them -- do you recall there being a  
14 staff report that they would need to do a major  
15 modification even on the 17 acres?  
16 A. I don't recall. I believe it was in light  
17 of an overall package coming that the major  
18 modification was requested.  
19 Q. And how was it determined that they would  
20 not need to do a major modification on -- if they  
21 just applied on the 17 acres?  
22 A. The overall number of units would still be  
23 in line with the 4247, and in the mode of development  
24 of phase one and subsequently phase two, it still met  
25 that -- it still met the overall number of units

165

1 within phase two, that 4247.  
2 Q. Well, how many units are you saying were  
3 left of the 4247 that hadn't already been built or  
4 hadn't already been entitled?  
5 A. Exact number, I'm not aware, but I believe  
6 it's about 1200 plus or minus.  
7 Q. And how many of those unentitled or  
8 unbuilt units were of the 1440 multifamily that had  
9 been approved?  
10 A. Based on the previous development of phase  
11 I and II, it doesn't differentiate between them.  
12 Q. What doesn't differentiate between them?  
13 A. The total number unit count. For phase  
14 one, it exceeds the multifamily that's called out in  
15 in this plan. In phase two there were still a lot of  
16 units, both multifamily and single family.  
17 Q. Well, so are you -- so when you claim that  
18 there are multiple units available, you said about  
19 1200?  
20 A. Well, if you look at all the entitled and  
21 existing or even nonconstructed, there is a still a  
22 delta of approximately 1200 units.  
23 Q. Of -- for phase two; is that correct?  
24 A. I believe so, yes.  
25 Q. And so those are -- they weren't construct

166

1 where, within phase two or are you also -- here's  
2 what I'm trying to clarify. Are you reaching into  
3 areas of phase one as well or are you just saying in  
4 phase two alone?  
5 A. In phase two alone.  
6 Q. And what is your basis for contending that  
7 the current purchaser of the golf course has an  
8 entitlement to claim those units?  
9 A. Can you restate the question?  
10 Q. Sure. You're saying those units are  
11 somehow available, it sounds like; is that correct,  
12 but there are 1200 units available for someone to to  
13 develop is what it sounds like you're saying?  
14 A. I'm saying the condition of approval from  
15 the City counsel action allotted a specific number of  
16 units and those number of units are still available  
17 unless they did a review of condition of that zoning  
18 action to either delete, amend, what have you, to  
19 increase or eliminate any kind of density unit cap.  
20 Q. The condition of approval for whom? Who  
21 were those units allotted to?  
22 A. Well, referring back to -- I don't know if  
23 it is one of the exhibits you gave me.  
24 Q. Yep.  
25 A. No, I don't think we have that. I'm sorry

167

1 I got distracted can you repeat the question.  
2 Q. Sure you just said -- I'm reading what you  
3 said. You said I'm saying the conditions of approval  
4 from the City council action allocated a specific  
5 number of units, and those units are still available.  
6 Okay? They allocated a specific number of units to  
7 whom?  
8 A. At the time of entitlement it would have  
9 been the applicant.  
10 Q. The applicant got an approval for a  
11 certain number of units correct.  
12 A. Within a geographical area.  
13 Q. Within a geographical area and the  
14 applicant also designated within that geographical  
15 area a certain amount of that was open space,  
16 correct?  
17 A. On the plan as was adopted, yes.  
18 Q. And that's what the City ultimately  
19 recorded as part of its master plan, correct?  
20 MR. JIMMERSON: Objection. I think it  
21 misstates the record. It's not accurate.  
22 THE WITNESS: The zoning action and the  
23 master development plan did not amend the master plan  
24 or the general plan at that point.  
25 ///

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