

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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JOINT APPENDIX
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(Nos. 15014-15033)**

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1 BY MR. BICE:
2 Q. Right.
3 A. Subsequent action adopting a general plan
4 to the -- as far as my knowledge the map reflects
5 what was approved through the master development
6 plan.
7 MR. JIMMERSON: May I have the last
8 question and answer, please.
9 (Record read back by the reporter)
10 BY MR. BICE:
11 Q. And what you're saying is the map reflects
12 the plan of the general plan reflects what was
13 approved, correct?
14 A. The map of the general plan.
15 Q. Right.
16 A. Reflects what was approved through the
17 master development plan which is known as Peccole
18 Ranch Master Plan Exhibit 8.
19 Q. And Exhibit 7 is a copy of -- if I
20 understand the date is 1999 but that map reflects
21 what was approved as of that date for Peccole Ranch,
22 correct?
23 MR. JIMMERSON: Objection.
24 THE WITNESS: No.
25 MR. JIMMERSON: Misstates the record and

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1 also is confusing as to the date.
2 BY MR. BICE:
3 Q. It shows the open space that was
4 designated by the City -- by the applicant, correct?
5 A. I understand what you're asking but the
6 one that was adopted in '92 does not reflect this
7 configuration.
8 Q. I understand but the one in '99 does
9 reflect the configuration, correct?
10 MR. JIMMERSON: Objection. Misstates the
11 record.
12 THE WITNESS: The one adopted in 1999 is
13 showing the existing configuration of the golf
14 course.
15 BY MR. BICE:
16 Q. The 1992 didn't reflect the nine holes,
17 correct?
18 A. Correct. It reflected the composition
19 shown in the master development plan, not the
20 composition of how it was constructed and exists
21 today.
22 Q. Right. And then how it was constructed
23 and exists today is reflected in the 1999 map?
24 A. In regards to Exhibit 7, yes, it does.
25 Q. Correct? As approved by the City?

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1 A. It says adopted August 18th, 1999, so I
2 imagine that would be the City council action
3 adopting that.
4 Q. And the property owner of the land at that
5 point in time would get notice prior to this
6 adoption, correct?
7 A. I can't speak to how the open meeting law
8 was met on this particular thing. It was prior to my
9 time. But if it is a general plan, we don't send
10 notice to every owner within the City of Las Vegas.
11 Q. Right.
12 A. We do a general posting through the
13 newspaper.
14 Q. Well let's -- can we agree on this? The
15 property owner in that case at the time of the
16 adoption of the general plan map got just as much
17 notice as all the homeowners did in September of 2015
18 about the amendment with the asterisk correct?
19 MR. JIMMERSON: Objection. Misstates the
20 records in light of the witness' earlier testimony
21 about greater radius and greater notice.
22 THE WITNESS: As I stated before, I don't
23 know how they noticed this one but if the minimum
24 open meeting law was being met, then yes.
25 ///

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1 BY MR. BICE:
2 Q. And as your research, did you find any
3 proof that the property owner disputed the
4 designation -- the property owner at the time --
5 disputed the designation as open space as reflected
6 on that 1999 map?
7 A. I personally haven't but I personally
8 haven't researched everything that the City clerk may
9 have regarding to this.
10 Q. Has anyone told you that the property
11 owner at the time disputed that designation?
12 A. Not to my recollection.
13 Q. Does the property owner obtain a
14 significant benefit under that designation, open
15 space?
16 MR. JIMMERSON: Objection. Calls for
17 expert opinion and testimony that this witness has
18 not been retained or compensated.
19 THE WITNESS: I can't speculate as far as
20 who would -- you know, what benefit one would garner
21 for it. Are you asking as an overall community open
22 space is a benefit?
23 BY MR. BICE:
24 Q. No?
25 A. Or is it an individual that owns open

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1 space do they get a benefit?
2 Q. Well the applicant in this particular
3 case, the Peccole's got a benefit did they not by
4 designating all that area as open space?
5 A. I imagine if they were trying to create a
6 community based around golf courses that would be a
7 sales pitch, you know.
8 MR. JIMMERSON: Move to strike the answer
9 as calling for speculation. Mr. Bice, please. When
10 I'm speaking please don't speak and I'll give the
11 same respect.
12 MR. BICE: If you have an actual objection
13 that's fine but if you're going to give more of the
14 lengthy speaking objections I don't think that's
15 appropriate.
16 MR. JIMMERSON: I said move to strike
17 because the answer says I would imagine. I said
18 therefore the answer evidences speculation and I
19 stopped. But you continued talking and that's
20 disrespectful and I just asked you so the court
21 reporter gets it all down. That's all.
22 MR. BICE: I wasn't trying to be
23 disrespectful, Mr. Jimmerson. I thought you had
24 ended your statement, so --
25 MR. JIMMERSON: I have.

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1 MR. BICE: So you were?
2 MR. JIMMERSON: And I move to strike and
3 yes, thank you.
4 MR. BICE: So I'm not sure why you
5 interrupted you.
6 MR. JIMMERSON: Because I was still
7 speaking and you started talking again and then you
8 started asking the next question. That's why I
9 voiced a concern.
10 BY MR. BICE:
11 Q. In addition to trying to create a
12 community around a golf course are you aware whether
13 or not the property owner by designating it as open
14 space gets any tax advantages?
15 MR. JIMMERSON: Calls for speculation.
16 The question is also misstating earlier testimony of
17 the witness.
18 THE WITNESS: I don't know. I would have
19 to defer to counsel.
20 BY MR. BICE:
21 Q. Okay. So back to my earlier question, you
22 said that you thought that there was something around
23 1200 units that hadn't been developed of what had
24 been approved. But those 1200 units had been
25 approved for the Peccole family trust correct?

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1 MR. JIMMERSON: Objection. Calls for
2 speculation.
3 THE WITNESS: That criteria came as a
4 condition of approval on the zoning -- the final
5 action letter for the zoning approval which I believe
6 the applicant at that time was Peccole Trust 1982 or
7 Peccole Trust.
8 BY MR. BICE:
9 Q. And the Peccole Trust has sold a lot of
10 that property to other people, correct?
11 A. I don't know to what extent.
12 Q. Well, do you know that Mr. Schreck owns a
13 piece of the property in Peccole Ranch was created or
14 approved as part of this master plan? Do you know
15 that?
16 A. I do.
17 Q. Does Mr. Schreck have the right to develop
18 additional houses on his property?
19 A. He's held to the confines of the zoning
20 ordinance and the approval of his individual
21 subdivision.
22 Q. What individual subdivision?
23 A. His home is one lot within a
24 subdivision --
25 Q. Okay.

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1 A. -- and to establish the development
2 standards and that configuration of lots it went
3 through a subsequent action which has its own
4 conditions of approval for setbacks and things like
5 that, and he's also held to the Las Vegas Municipal
6 Code and then the zoning code, he would be held to
7 the legacy district. As far as multiple dwelling
8 units with kitchens and things like that, there are a
9 number of things that he would have to deviate from
10 to be able to do so.
11 Q. In order to do so, right? Can he just
12 knock down his house and build multiple units on his
13 lot, his large lot?
14 A. He can demolish his house. He can
15 petition and go through the many applications it
16 would take. He has the right to petition to do so.
17 Q. Well, how many units then are allocated to
18 Mr. Schreck's property of this 1200 that you say were
19 never used up?
20 A. Well he would get all 1200 if he could
21 develop it.
22 Q. What's that?
23 A. If he entitled it, to have 1200 on his
24 lot.
25 Q. On his lot then he could -- the 1200 are

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1 his?

2 A. Well, it's a geographical area and if he's

3 within that area he's held to that condition of

4 approval as well.

5 Q. Here's what I'm confused by, Mr.

6 Lowenstein. How would the 1200 be available to the

7 owner of the golf course property which was

8 designated as open space under the approved plan?

9 How is it that those 1200 are somehow available to

10 somebody who bought property designated as open

11 space?

12 MR. JIMMERSON: Objection. The question

13 is argumentative, assumes facts not in evidence. The

14 property was never designated as open space in 1990.

15 BY MR. BICE:

16 Q. Go ahead.

17 A. As I said you have the act to petition

18 your government. In this case it would be up to the

19 council's discretion to amend it from open space to

20 something else and allot the units.

21 Q. Just so -- so I guess the units are just

22 as much available to everybody else that owns

23 property in this community as they are to the golf

24 courses; is that what you're saying?

25 A. Saying within that geographical area there

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1 is developable land and within that whoever petitions

2 their government is still able to ask for those

3 units.

4 Q. All right. Is this the first come first

5 serve principle?

6 MR. JIMMERSON: Object to the form of the

7 question. Argumentative.

8 MR. BYRNES: Join in that.

9 THE WITNESS: That's one way somebody

10 could put it.

11 BY MR. BICE:

12 Q. Is that codified anywhere in the City

13 code?

14 A. Not --

15 MR. BYRNES: Calls for a legal conclusion.

16 THE WITNESS: Not that I am aware of. If

17 you have a condition that limits the number of units

18 and you still have that available number of units,

19 what curtails someone from applying for it?

20 BY MR. BICE:

21 Q. And I think the difference that you and I

22 are talking about is you say you still have those

23 available number of units. Who has them available?

24 The people got an approval or just somebody who comes

25 along 25 years later and buys open space? That's

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1 what I'm trying to understand.

2 MR. BYRNES: Objection. Asked and

3 answered this is really beating a dead horse. This

4 is about the 15th time you asked the same question.

5 MR. BICE: Phil I'm not trying to be

6 argumentative. I don't think it is. I don't

7 understand how it is that those units are -- and if

8 he has an explanation I'd like to hear it. I don't

9 know how it is some guy comes out of the woodwork 25

10 years later and says 1200 units that were approved

11 for Mr. -- for the particular, 30 plus years ago are

12 somehow his. Can you explain to me?

13 MR. JIMMERSON: Object to the question as

14 calling for -- object to all editorialization and all

15 the argumentative nature of it. Also there's not

16 establishing in effect. { Assuming facts not in

17 evidence that it was open space in 1990.

18 THE WITNESS: So to your question in

19 regard to land use entitlement, it stays with the

20 property. The geographical that was with the initial

21 rezoning stays with the property regardless of

22 property owner other than that I'll defer to counsel

23 for my answer.

24 BY MR. BICE:

25 Q. Is it fair to say Mr. Lowenstein that you

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1 have simply calculated the number of unentitled or

2 unbuilt units and that being around 1200, and you

3 have simply made the assumption that those units are

4 available to that phase two land, regardless of who

5 owns it at any particular moment in time? Is that

6 fair?

7 A. That would be fair.

8 Q. How many -- under the City's current code,

9 how many residential units are permitted to be built

10 within a drainage easement?

11 A. What's the zoning district?

12 Q. Does it depend on the zoning district?

13 A. The general plan and the zoning district

14 determine your allowable densities and the

15 development centers in which you're going to to

16 develop the next question is the drainage easement

17 needed in its current configuration if it is then the

18 Department of Public Works will restrict what can be

19 constructed their own title of municipal code which I

20 can't really speak to.

21 Q. In your research, how many housing units

22 of the 4200 that were approved originally for

23 Peccoles, how many of those housing units were

24 reserved, planned or approved for the open space?

25 MR. JIMMERSON: Objection. Assumes facts

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1 not in evidence that open space was even referenced
2 within that 4247.
3 THE WITNESS: Can you restate the question
4 please.
5 BY MR. BICE:
6 Q. Let me make sure I read it back correctly.
7 In your research, how many housing units of the 4200
8 were approved originally for the Peccoles, or that
9 were approved originally for the Peccoles, how many
10 of those housing units were reserved planned or
11 approved for the open space?
12 MR. JIMMERSON: Same objection.
13 THE WITNESS: So referring to Exhibit 8 --
14 BY MR. BICE:
15 Q. Yes?
16 A. -- in Exhibit 8 there are associated
17 tables with it which delineates acreages, net
18 densities, regarding various different uses of land
19 use.
20 Q. Yes.
21 A. And the golf course drainage does not
22 indicate a net density or net units.
23 Q. Is it accurate to say to my question --
24 would it be an accurate answer to my question to say
25 zero?

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1 MR. JIMMERSON: Objection. Same --
2 objection as I incorporate by reference before the
3 witness has already answered the question.
4 THE WITNESS: Yes.
5 MR. JIMMERSON: Is there an answer to the
6 question?
7 THE COURT REPORTER: Yes.
8 MR. JIMMERSON: So he said yes to the
9 answer zero.
10 MR. BICE: Yes.
11 THE WITNESS: My answer is yes of this
12 Exhibit 8 does not illustrate a number. This has a
13 dash you can refer to a dash technically as a zero.
14 BY MR. BICE:
15 Q. Have you ever socialized with Mr. Lowie or
16 Mr. Pankratz?
17 A. Outside of the regularly scheduled
18 meetings?
19 Q. Yes.
20 A. I've seen Mr. Lowie out in passing and in
21 Tivoli outside of the Cafe Leon.
22 Q. Okay. Any other circumstances?
23 A. Not that I recall.
24 Q. Have you ever been to either of their
25 residences?

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1 A. I have not been to Mr. Pankratz'
2 residence. I have been to Mr. Lowie's residence
3 once.
4 Q. And when was that?
5 A. I don't recall the exact date.
6 Q. Has it been within the last year?
7 A. I don't recall.
8 Q. What was the circumstances you were at Mr.
9 Lowie's residence?
10 A. I had asked him as well as my director,
11 because they were traveling international, to see if
12 they could procure me a bottle of Blanton's bourbon.
13 Q. Okay. Mr. Lowie was traveling
14 internationally; is that what you're saying?
15 A. Yes. Same as my director was.
16 Q. Were they traveling together?
17 A. No. Separate things. I'm just stating
18 because of their travels internationally, I had asked
19 to see if they could procure a bottle of Blantons
20 bourbon in their travels.
21 Q. And Mr. Lowie did?
22 A. He was able to and and I went to his house
23 and refunded his money, \$56 for the bottle.
24 Q. And that was --
25 A. It was just a very cordial conversation,

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1 he he showed me the landscaping and that was the
2 extent of it.
3 Q. Do you know whether or not Mr. Perrigo has
4 ever socialized with Mr. Lowie or Mr. Pankratz?
5 A. Not that I am aware of. I've read the
6 deposition, so the only thing I can say is what was
7 in there.
8 Q. Have you ever been to dinner with Mr.
9 Lowie or Mr. Pankratz?
10 A. Not that I recall.
11 Q. How about lunch?
12 A. No, not that I recall.
13 Q. I'll pass the witness.
14 THE VIDEOGRAPHER: Going off the video
15 record the time is approximately 3:36 p.m.
16 (Exhibit Number Num was marked.) A.
17
18 EXAMINATION
19
20 MR. JIMMERSON: Good afternoon, Mr.
21 Lowenstein. Are we back on the record.
22 THE VIDEOGRAPHER: We're back on the
23 record the time is approximately 3:46 p.m.
24 BY MR. JIMMERSON:
25 Q. Mr. Lowenstein, good afternoon. My watch

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1 tells me it's about five minutes to 4:00, 3:55 is
2 what my phone says. I had the privilege -- and we've
3 just met this morning -- I have the privilege of
4 representing Fore Stars, 180 Land Company and Seventy
5 Acres in this litigation that was brought by
6 Mr. Binion and others against the City of Las Vegas
7 and against my clients. Do you understand that?
8 A. Yes, I do.
9 Q. Before this morning, had you and I ever
10 met?
11 A. Not to my recollection.
12 Q. And had we ever had any conversations
13 before now, I mean in terms other than good morning
14 or hello my name is Jim Jimmerson my name is Peter
15 Lowenstein. Have we had any communication at all?
16 A. Not that I recall.
17 Q. Thank you, sir. Now I've shown you what's
18 been marked as Exhibit A. And this is the first
19 amended complaint that has been filed by the
20 plaintiff through Mr. Bice who was examining you this
21 morning from about 950 this morning to the present.
22 And I want to know, have you ever seen that
23 document before?
24 A. I may have from counsel.
25 Q. And counsel would be Mr. Byrnes or

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1 Mr. Jerbic?
2 A. Correct.
3 Q. There are allegations here that claim that
4 the City of Las Vegas, through its representatives,
5 have colluded ed with Fore Stars, 180 Land Company
6 and Seventy Acres as a group to try to achieve an
7 improper purpose or improper result. Are you aware
8 of any such basis for such a claim like that?
9 MR. BICE: Objection to form.
10 THE WITNESS: No.
11 MR. BICE: Go ahead.
12 THE WITNESS: Sorry. No.
13 BY MR. JIMMERSON:
14 Q. Has the City in any way colluded with the
15 entities that I represent relative to the
16 partialization that was occurred in order to receive
17 zoning change in zoning entitlements?
18 MR. BICE: Objection to form.
19 THE WITNESS: No, not that I am aware of.
20 No.
21 BY MR. JIMMERSON:
22 Q. Has the City of Las Vegas as far as you
23 are personally involved been complicit, as is alleged
24 at page six, line seven, quote, "The City's
25 complicity in deriving surrounding homeowners of

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1 legal notice and an opportunity to be heard." To
2 your knowledge, has the City been complicit to
3 deprive surrounding homeowners of legal notice and an
4 opportunity to be heard?
5 MR. BICE: Objection. Form.
6 THE WITNESS: My understanding is that the
7 City followed the open meeting law requirements.
8 BY MR. JIMMERSON:
9 Q. So the answer's no?
10 A. That would be correct.
11 Q. And what is your understanding that the
12 City follows legal notice requirements if not gone
13 beyond that as you've indicated on your direct
14 examination?
15 A. Can you restate that please?
16 Q. You said no to your knowledge that -- the
17 legal requirements of notice have been satisfied.
18 What's the basis for your answer, sir?
19 A. That a neighborhood meeting was held,
20 depending on which applications we're talking about,
21 public notification cards were mailed out,
22 neighborhood meetings were held and all of that done
23 in a timely manner and in accordance with the open
24 meeting law.
25 Q. You've been asked about meetings that

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1 you've had with any representative of the defendants
2 Fore Stars, 180 Land Company and Seventy Acres by
3 opposing counsel this morning, correct?
4 A. Yes.
5 Q. You were asked about the one occasion when
6 you paid \$56 to procure a bottle of bourbon that had
7 been brought from somewhere outside the United
8 States. You mentioned that, right?
9 A. I did.
10 Q. You mentioned that you have attended
11 meetings where Mr. Lowie and Mr. Pankratz have been
12 present?
13 A. I did.
14 Q. And perhaps a person by the name of Brett
15 whose last name may be Harrison who you met right?
16 A. That is correct.
17 Q. Are those all in accordance with how you
18 deal with every person of property owner who seeks to
19 receive land entitlements or some consideration for
20 land use from your department?
21 MR. BICE: Objection. Form.
22 BY MR. JIMMERSON:
23 Q. You may answer the question.
24 A. Have regular meetings?
25 Q. Yes.

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1 A. Yes.

2 Q. Has there been anything untoward or

3 inappropriate in any communications you've had with

4 anyone that you recognize to be a representative of

5 my clients?

6 MR. BICE: Objection to form.

7 THE WITNESS: Not that I am aware of.

8 BY MR. JIMMERSON:

9 Q. Have you conducted yourself in any manner

10 that you believe to be inappropriate with regard to

11 dealing with this applicant and these applications?

12 A. No. Not to my understanding.

13 Q. Have you observed Mr. Perrigo conduct

14 himself in any manner that would be, in your

15 judgment, inappropriate in dealing with these

16 applications and these applicants?

17 A. No, not to my knowledge.

18 Q. Have you conducted yourself appropriately

19 with regard to these applicants as you have with all

20 applicants that appear before the City of Las Vegas?

21 A. I have.

22 Q. Do you know of any basis upon which the

23 plaintiffs would be able to successfully demonstrate

24 any complicity on the part of the City of Las Vegas

25 and in particular Pete Lowenstein towards my clients?

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1 MR. BICE: Objection to form.

2 MR. JIMMERSON: You may answers the

3 question sir.

4 THE WITNESS: I'm not aware of that.

5 BY MR. JIMMERSON:

6 Q. Any such allegations you believe -- any

7 such allegations to be false?

8 MR. BICE: Objection to form.

9 THE WITNESS: There is no basis for the

10 allegations?

11 Q. And why do you say so?

12 A. To my knowledge and my own actions,

13 there's nothing that would have been construed as

14 being complacent or preferential.

15 Q. All right. Now, following the allegations

16 in the amended complaint, there is some requirement,

17 I believe, for all of us in this room to look back at

18 records that may have existed in the late 1980s and

19 early 1990s since none of us were directly involved

20 with the applications at that time. Fair statement?

21 MR. BICE: Objection to form.

22 THE WITNESS: As part of researching

23 projects, one is called upon to look at entitlements

24 and previous zoning codes, potentially codes or

25 general plans from air as before them.

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1 BY MR. JIMMERSON:

2 Q. And that's what you have done in this

3 case?

4 A. I have, as previously stated, reviewed

5 some documents, land use entitlements on the

6 property. I've looked at the associated document,

7 the Peccole Ranch Master Plan as part of that, and

8 the 1992 at that time what was the general plan, the

9 label, and current versions of the Las Vegas 2020

10 Master Plan Unified Development Code.

11 Q. And Mr. Bice representing the plaintiffs

12 has asked you many many questions with regard to

13 events and documents that predate your involvement

14 with the City of Las Vegas?

15 A. They have asked me regarding materials

16 that predate my employment at the City of Las Vegas.

17 Q. All right. From your observations of

18 documents you reviewed, you observed that there was a

19 conceptual master plan developed by the Peccole

20 family to develop proper that they owned in Northwest

21 Las Vegas?

22 MR. BICE: Objection to form.

23 BY MR. JIMMERSON:

24 Q. You may answer the question, sir?

25 A. In the deposition we were making reference

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1 to the Peccole Ranch Master Plan as it's titled. It

2 was agendad on the City counsel as a master

3 development plan.

4 Q. And, in fact, on the face of the document

5 it was called conceptual, correct?

6 A. In reference to Exhibit 8, I don't see the

7 word conceptual, but --

8 Q. Do you understand that these types of

9 plans are in fact conceptual in nature?

10 MR. BICE: Objection to form.

11 THE WITNESS: Well, reading in the first

12 paragraph on page 1, it calls it a conceptual master

13 plan.

14 BY MR. JIMMERSON:

15 Q. My words exactly. Thank you. And you've

16 dealt with other master plans from other developers,

17 correct?

18 A. I have.

19 Q. And from a judge's perspective, a jury's

20 perspective, a juror's perspective, a lay person's

21 perspective, this is a landowners vision of what they

22 would like to develop, at least at a point in time

23 isn't that what a master plan is?

24 MR. BICE: Objection to form. Calls for

25 speculation and misstates the legal standard.

192

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15019

1 MR. JIMMERSON: I only want to respond by
2 saying these are the very kinds of questions you
3 asked Mr. Lowenstein for five hours and now you're
4 objecting to the same question he's being asked.
5 It's just so unfair.
6 MR. BICE: Actually, I disagree with you
7 Mr. Jimmerson. My questions are quite different and
8 if you can't recognize from the caption on which side
9 of the case you're aligned, that is an issue for you.
10 My objection --
11 MR. JIMMERSON: This is cross examination
12 counsel. This is a party that is separate and apart
13 and distinct from my clients and somebody I may or
14 may not have agreement with, Counsel.
15 MR. BICE: I've noted my objection for the
16 record.
17 MR. JIMMERSON: Thank you.
18 BY MR. JIMMERSON:
19 Q. Now return to the question which was a
20 while ago.
21 MR. BYRNES: Do you recall what the
22 question is?
23 BY MR. JIMMERSON:
24 Q. I'll ask it again. A master plan is a
25 developer vision of what he would like to develop

193

1 conceptually; is that correct?
2 MR. BICE: Objection to the form.
3 Misstates the legal standard.
4 THE WITNESS: Master plans to my
5 understanding and my experience working with them,
6 they are overall layout of how the development is to
7 occur. The specifics on the subdivision are
8 subsequent actions.
9 BY MR. JIMMERSON:
10 Q. And master plans -- is it true that master
11 plans can change over time?
12 A. They can.
13 Q. And what are some of the factors, some of
14 the reasons why a developer's, you know, intent or
15 vision or conceptual plan might change?
16 A. Land use designations within the plan
17 based on their own -- whatever their reasons are,
18 they can petition to amend those to be from a
19 residential to a commercial or vice versa. I don't
20 know what drives the master developer. It could be
21 market driven it could be any other number of reasons
22 I won't speculate why but they would be able to
23 petition the City council to amend that plan to go
24 forward with whatever their vision is on or their
25 amended vision is.

194

1 Q. And in 199 -- 1986 there was this original
2 plan, the Venetian plan I think you referenced
3 correct?
4 A. That is correct. I'm not sure on the date
5 but there was the Venetian foothills.
6 Q. And then you saw the -- your first master
7 plan I think you told opposing counsel was in 1989,
8 with an amended plan in 1990 is that right?
9 A. As far as the Peccole Ranch Master Plan,
10 yes.
11 Q. And as indicated on page 1 of the master
12 plan it was his conceptual plan; is that right?
13 A. In Exhibit A?
14 Q. Yes. Exhibit A.
15 A. On page 1, it reads the proposed
16 569.6-acre Peccole Ranch Master Plan is being
17 submitted to the City of Las Vegas for the approval
18 of and amendment to the over all conceptual master
19 plan along with the rezoning of a 996.4 acres in
20 phase two to R-PD7 and R3 and C1 designations.
21 Q. Okay. Now, what does the word conceptual
22 in the term conceptual master plan mean to you as you
23 have just read it into the court record?
24 MR. BICE: Objection to form.
25 THE WITNESS: That it has, you know,

195

1 flexibility to be further amended.
2 BY MR. JIMMERSON:
3 Q. Are you familiar with Nevada Supreme Court
4 decisions that speak to how to interpret master plans
5 and conceptual master plans?
6 A. No.
7 Q. As part of your working in your own work
8 and perhaps even with, you know, your City attorney's
9 office, have you been advised of Nevada Supreme Court
10 precedent that talks in terms of master plans not
11 being a straight jacket to City councils and county
12 councils?
13 A. I don't recall any direct conversations.
14 I imagine I've talked with counsel but I don't know
15 any court cases that I can reference.
16 Q. If I gave a case, which I do have here
17 that says that conceptual master plans are not a
18 straight jacket to City or county, you know, councils
19 would you have had that kind of conversation or had
20 that kind of knowledge in the course of your work?
21 A. No. Not unless Council brought it to my
22 attention.
23 Q. Fair enough. But as you understand the
24 word conceptual, that you attach it to the term and I
25 agree, the term flexibility, correct?

196

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1 MR. BICE: Objection to form.
2 BY MR. JIMMERSON:
3 Q. Have I characterized or summarized your
4 testimony correctly?
5 A. As I stated, it gives it the ability to
6 amend at a future date and one would ever could apply
7 the word flexible to that.
8 Q. And you in fact did apply the word
9 flexibility?
10 A. I'm not sure. We'll have to ask the
11 stenographer.
12 Q. Now, looking at the map of the proposed
13 master plan would you look please at page -- it's
14 Bates stamped number 297 or 8297 of Exhibit 8. Now,
15 do you see that this plan is a plan from 1989 and is,
16 in fact, not the final plan approved by the City of
17 Las Vegas in 1990?
18 MR. BICE: What's the page number?
19 MR. JIMMERSON: 8297, Counsel.
20 MR. BICE: Thank you.
21 THE WITNESS: I don't see an associated
22 date on the page. It's referenced as Exhibit B
23 within the document, so individual to read the
24 document to say as far as what its full purpose is.
25 ///

197

1 BY MR. JIMMERSON:
2 Q. Well, do you look at this to see, in fact,
3 the top right-hand corner phase one, 1989? Right at
4 the top of the very same page of the map.
5 A. At the top of the page it reads, on the
6 right-hand side it says site data, hyphen, phase one.
7 Q. And isn't it true that Z-17-90 the plan
8 that was approved a year later is very different than
9 the map that's shown here on 8297, Exhibit 8.
10 MR. BICE: Objection to form.
11 BY MR. JIMMERSON:
12 Q. And I can show you the Z-17-90 if you need
13 to. It's a separate document.
14 THE VIDEOGRAPHER: This is the beginning
15 of video recording number seven in the continuing
16 deposition of Peter Lowenstein. We're back on the
17 video record.
18 BY MR. JIMMERSON:
19 Q. Thank you. What I want you to confirm Mr.
20 Lowenstein if you can is to review the phase one map,
21 Bates stamp number 8297 of Exhibit 8, which I believe
22 is the phase one 1989 map with the later approved map
23 of Z-17-90 in 1990 and then satisfy yourself by
24 looking at Exhibit 1 that the map indicates what was
25 actually built in 1999 to confirm that the master

198

1 plan map in Exhibit 8 was not followed by the
2 developer. So I need -- we're still waiting for that
3 one piece of paper, Z-17-90, but that's the task I'm
4 asking you to take a moment and look at. While we're
5 waiting for that document, can you --
6 MR. BICE: Here it is.
7 MR. JIMMERSON: Thank you.
8 MR. BICE: Can I just take one?
9 MR. JIMMERSON: Of course.
10 (Exhibit Number Num was marked.)
11 BY MR. JIMMERSON:
12 Q. Now before you you have three documents,
13 you have Exhibit 8 the 1989 phase one document,
14 document 8297, you have Exhibit B, the Z-17-90
15 approved by the City Council in 1990, April 4th,
16 and you have Exhibit 1, Lowenstein 1, which has
17 the -- what purports -- what you testified purports
18 to be an as-built of the golf course in 1999. So you
19 have those three documents in front of you, right?
20 A. That is correct. I have these documents.
21 Q. Just to make it easier, why don't we stick
22 with the '89 draft of Exhibit 8 and compare it to the
23 1999 golf course of Exhibit 1. And can you tell me
24 the differences that you observe as to the location
25 of holes and other infrastructure between that which

199

1 was conceptual in nature in 1989 compared to what was
2 actually built in 1999 ten years later?
3 A. Just for point of clarification, Exhibit 1
4 is 1996.
5 Q. I thought your testimony -- maybe I was
6 mistaken, was 1999, based upon --
7 A. Are you referring to Exhibit 7, which is
8 the southwest sector land use plan?
9 Q. I may have been. Let me show you another
10 exhibit.
11 (Exhibit Number Num was marked.) C.
12 THE WITNESS: I assume -- I'm assuming the
13 same question regarding all now --
14 BY MR. JIMMERSON:
15 Q. Yes, you have four exhibits. I'm trying
16 to show you what's been built versus what was
17 conceptualized by the Peccole family in 1989 and to
18 point out that the master plan that was conceptual in
19 1989 was changed a decade later.
20 MR. BICE: Objection to form. Go ahead.
21 THE WITNESS: So between -- sorry.
22 Exhibit 8, the master plan from -- as referenced as
23 Binion 008297 in comparison with the other documents,
24 there are differences.
25 ///

200

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004996

15021

1 BY MR. JIMMERSON:
2 Q. What are they that you can easily observe
3 just in the short time you have been given by myself?
4 A. In looking at it I can see the assignment
5 of the Alta Drive. I can see single family has been
6 changed to commercial center. Looking at the
7 composition of the golf course that has also changed.
8 Q. And referring to the composition of the
9 golf course, can you give me a little bit more
10 specifics and details?
11 A. Well, in --
12 Q. The design of the course is significantly
13 different, would you agree?
14 MR. BICE: Objection. Form.
15 A. The original, referring to the Binion
16 00297, shows 18 holes in pretty much a triangular
17 pattern, and when looking at the Peccole West map,
18 there are now fingerlings to it.
19 Q. And you're referring to Exhibit C, the
20 as-built, the thick someone Exhibit C.
21 A. Well I was referring to Peccole West
22 Exhibit 1 and you can also see that it's different
23 from the Binion 008297 in regards to the composition
24 of the golf course. This is Exhibit C, sorry,.
25 Q. You're doing fine.

201

1 A. Which is labeled final map for Peccole
2 West. It also differs in composition.
3 Q. Have you completed your answer?
4 A. In regards to those four exhibits that's
5 what I --
6 Q. And -- all right. And in order to -- well
7 what approvals, if any, would the City make to the
8 changes that the developer has obviously made between
9 1989, Exhibit 8297, and 1999 in the as-built that you
10 have in Exhibit C? In other words, how does the City
11 get involved to approve the developer changes in all
12 the differences you've identified?
13 A. From the Z-17-90, that amended the
14 original Peccole Master Plan and included the
15 rezoning of phase two as part of it. Subsequent
16 actions were done by parentheticals of that zoning
17 action, as well as changing the land use plan were
18 done through general plan amendments, meaning the
19 land use plan of the general plan, the designations
20 that were existing at that time.
21 Q. And how is that accomplished, the change
22 of designations of the general plan?
23 A. Through a general plan amendment
24 application which was then followed by a rezoning
25 application to have a compatible zoning district with

202

1 land use designation amended to.
2 Q. And was that done by the applicant or was
3 that at the City's instruction? In other words, is
4 the City changing what I call the cloud above the
5 zoning or is the applicant seeking the general plan
6 amendment?
7 MR. BICE: Objection to form.
8 BY MR. JIMMERSON:
9 Q. If you know.
10 A. From previous entitlement history for
11 parcels specific like the corners that have changed
12 in some of these maps, they have been applicant
13 driven for their desire to do either multifamily or
14 single family development where some other
15 designation was previously.
16 Q. And would you identify Exhibit--
17 Exhibit B, Z-17-90, I don't know that I asked you to
18 do that yet. So would you identify what Z-17-90 is,
19 please, exhibit B?
20 A. Sorry, I'm on the wrong exhibit.
21 Q. It's this document here.
22 A. Can you repeat the question please?
23 Q. Well can you identify what this document
24 is, please?
25 A. It's Exhibit B -- well, which is dated

203

1 2/22 of 2016, but I believe this is a document that
2 was out of the entitlement folder for Z-17-90.
3 Q. And what is Z-17-90?
4 A. That is a rezoning application that went
5 before the City Council and was related to the
6 development -- master development plan which was the
7 item before it on the agenda.
8 Q. And what zoning was placed on this
9 property by action on April 4th of 1990 as
10 reflected by Z-17-90, Exhibit B to your deposition?
11 A. There were multiple zoning distributions
12 which were applied to the overall geographical error
13 encompassed by that zoning action. I believe it's
14 R-PD7, R-3 and C-1.
15 Q. And as it relates to the property and what
16 I would call phase two or what opposing counsel has
17 called phase two, was the vast majority of that all
18 zoned R-PD7?
19 A. From the document that the surveyor -- the
20 City surveyors put together, the majority of the
21 geographical area was in the R-PD7 designation.
22 Q. Including the golf course where you see it
23 drawn now was all R-PD7, correct.
24 A. Correct.
25 Q. And the golf course then came later? In

204

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15022

1 other words, the property is zoned R-PD7 and then the
 2 golf course is super imposed on that later as we see
 3 in the 1995/96 time period?
 4 MR. BICE: Objection to form.
 5 THE WITNESS: I'm trying to follow the
 6 question. Can you restate that.
 7 BY MR. JIMMERSON:
 8 Q. The majority of the land as you indicated
 9 and the land that is being sought to be developed by
 10 my clients is presently zoned R-PD7; is that correct?
 11 A. That is correct.
 12 Q. And it was zoned R-PD7, as far as you're
 13 looking at the historical documents, on or about
 14 April 4th of 1990, correct?
 15 A. Correct.
 16 Q. Originally through a resolution of intent
 17 correct?
 18 A. I believe that was the zoning practice at
 19 the time, yes.
 20 Q. And then we know formally in October of
 21 2001 a hard ordinance that did confirm R-PD7 for all
 22 that property owned by my clients, correct.
 23 A. I don't recall the exact ordinance that
 24 solidified the zoning out of a resolution of intent
 25 but there is an ordinance that did so.

205

1 Q. The way it was described to me, Mr.
 2 Lowenstein, and correct me if I'm wrong it's an atlas
 3 where all the property where for all the City was
 4 confirmed and it was then through City ordinance
 5 approved and passed as being whatever the particular
 6 property location would be assigned a zoning
 7 entitlement.
 8 A. Through the zoning plan atlas is the term
 9 for the overall zoning of the City. To amend that
 10 they do that by ordinance and they did an ordinance
 11 which included these properties as part of it which
 12 then solidified it as R-PD7.
 13 Q. You have been present at the meeting of
 14 the planning commission before the City Planning
 15 Commission in I think it was October of 2016 where
 16 the seven applications, I believe, were pending.
 17 Were you present for that meeting?
 18 A. That is correct.
 19 Q. And then you recall that four were
 20 withdrawn and three went to full hearing before the
 21 City counsel on November 16th of 2016?
 22 A. I believe all of them were heard at
 23 planning commission. The withdrawal occurred at city
 24 council.
 25 Q. That's what I said if I misstated or if

206

1 you misheard. All seven were heard by City planning
 2 commission?
 3 A. That is correct.
 4 Q. And then three were formally heard to vote
 5 by City Council.
 6 A. Not to be a stickler but City Council,
 7 they heard all the items. They took a vote on the
 8 request for withdrawal, which they did.
 9 Q. And you are right.
 10 A. And then they reviewed the subsequent
 11 three applications.
 12 Q. Good for you. And thank you for the
 13 correction. I mean that. I want you to be careful
 14 for not only my clients protection, the City's
 15 protection and the plaintiff's protection as well.
 16 So the withdrawal occurred without
 17 prejudice at the time of the City Council meeting on
 18 November 16th but you were present for both
 19 meetings?
 20 A. That is correct.
 21 Q. You were present to hear Mr. Jurbic's
 22 response to questions asked by the chairman of the
 23 City Planning Commission with regard to the hard
 24 zoning that existed on my clients.
 25 (Reporter interruption.)

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1 Q. You were present to hear Mr. Jurbic's
 2 words in answering a question by the planning
 3 commission chairman, whose name I don't recall, where
 4 he stated, in response to a question asked, that the
 5 applicants had hard zoning for R-PD for the property
 6 in question, correct?
 7 MR. BICE: Objection to the form.
 8 BY MR. JIMMERSON:
 9 Q. Did you hear those words?
 10 MR. BICE: Objection to form the record
 11 speaks for itself.
 12 MR. JIMMERSON: Thank you counsel.
 13 THE WITNESS: I was present at the
 14 meeting. I don't recall the specific conversation
 15 but it is recorded, so I could refresh my memory to
 16 answer that if you like.
 17 BY MR. JIMMERSON:
 18 Q. When I resume your deposition in the next
 19 day, I might play it for you and you can listen to it
 20 again.
 21 But do you agree that the property owned by
 22 my clients enjoys hard zoning for R-PD7?
 23 MR. BICE: Objection to the form. States
 24 a legal conclusion. Go ahead.
 25 THE WITNESS: I agree that the property is

208

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15023

1 hard zoned R-PD7.
 2 BY MR. JIMMERSON:
 3 Q. And as you answered the questions earlier
 4 to opposing counsel that allows a -- the landowner to
 5 petition to request for a density up to 7.49 units
 6 per acre?
 7 A. The zoning district inherent in an R-PD7
 8 designates the number of dwelling units. The
 9 applicant who has that designation on their property
 10 would have to petition the City Council for approval
 11 of -- of that action, and it is -- in reviewing it,
 12 we would review the proposed development, any other
 13 applications that would be required, and that
 14 includes reviewing the general plan and the zoning
 15 district and the development standards that they're
 16 proposing.
 17 Q. Agreed. And I'm not suggesting otherwise.
 18 What I'm saying is the zoning entitlement the hard
 19 zoning has a, by category, an ability to develop up
 20 to 7.49 units per acre, subject to all the other
 21 considerations you've mentioned correct?
 22 MR. BICE: Objections to the form. Calls
 23 for a legal conclusion and misstates the law.
 24 BY MR. JIMMERSON:
 25 Q. You may answer the question.

209

1 THE WITNESS: My understanding of it is
 2 that the designation of R-PD has associated with it
 3 an unit number -- a density, and that is the maximum
 4 in which can be developed through that zoning
 5 district without requesting something else.
 6 BY MR. JIMMERSON:
 7 Q. And that density limit is 7.49 units per
 8 acre.
 9 A. Yes.
 10 MR. BICE: Same objections as before.
 11 Sorry Mr. Lowenstein.
 12 THE WITNESS: Yes that's how the R-PD7 --
 13 BY MR. JIMMERSON:
 14 Q. Now, you were asked to look at in
 15 Exhibit 8, if you'll turn to Exhibit 8, you were
 16 asked to look at page 18. Withdraw I'm sorry. 1
 17 other question before we get to page 18. Would you
 18 look at page Bates stamped number 8303 within
 19 Exhibit 8.. It looks like this.
 20 A. Yes, sir.
 21 Q. What does this purport to show?
 22 A. The title of it is Peccole Ranch Resort.
 23 It's kind of granular but it shows park and fields,
 24 tennis courts. I can't make out much more. Shows
 25 adjacent to a golf course. And it has a number of

210

1 buildings in the center of it.
 2 Q. Where is it located? What intersection?
 3 A. The roadways are -- it's hard to discern
 4 but it's just south of Angel Park which you can make
 5 out, so that would be Alta on the east west road, and
 6 my assumption is that this is Rampart or at that
 7 point it might have still been Fort Apache.
 8 Q. And is that a golf course that runs --
 9 that crosses the road?
 10 A. I can't really discern that. I see what
 11 looks to be fairways and greens on the west side of
 12 the road.
 13 Q. Crossing the road right?
 14 A. Well crossing the road. I'm not sure if
 15 that's golf course. I don't see any fairway or
 16 greens. I can't discern.
 17 Q. Was any of this built as we now sit here
 18 in 2016?
 19 A. In this composition, no.
 20 BY MR. JIMMERSON:
 21 Q. Can you let me know which page number
 22 you're looking at.
 23 MR. JIMMERSON: I did and I put it in the
 24 record 8303 counsel.
 25 MR. BICE: Thank you.

211

1 BY MR. JIMMERSON:
 2 Q. Now looking at page 18 of the document you
 3 were asked several questions by opposing counsel.
 4 A. Okay.
 5 Q. No problem at all.
 6 Now -- can I see your copy, please? Thank
 7 you. Mr. Bice, will you agree that the handwriting
 8 and the circles and stuff is not Mr. Lowenstein's?
 9 MR. BICE: Yes. I'm not sure who it is it is
 10 in the version we were using was the clean version.
 11 MR. JIMMERSON: Well I don't know. What
 12 I'm looking at doesn't suggest that.
 13 MR. BICE: Yeah, I know I see now what
 14 you're saying Jim but the version we used with Tom
 15 didn't have this on it.
 16 MR. JIMMERSON: But this is what you have
 17 used to and I just want to say the handwritten words
 18 in the circle is not original.
 19 MR. BICE: Those written words are not
 20 from the City. I know that.
 21 MR. JIMMERSON: Fair enough.
 22 BY MR. JIMMERSON:
 23 Q. Now the caption of this Peccole Ranch land
 24 use data phase two, correct?
 25 A. Correct.

212

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15024

1 Q. And for the benefit of the judge who might
2 read this transcript or who might have it read to him
3 or the injury who might listen to this this is
4 relating to phase two and would you agree with me
5 that would be the property north of Charleston?
6 A. Primarily, phase two includes, for lack of
7 better terms, basically a peninsula that runs all the
8 way down to Sahara.
9 Q. Got it. Thank you so much. So the land
10 use is identified in these these seven or eight
11 categories? Would you read those land use categories
12 please?
13 A. Single family, multi family, commercial
14 slash office, resort-casino, golf course drainage,
15 right of way, elementary school.
16 Q. Did you happen to notice whether or not
17 there was a golf course in the 1986 to 1990 time
18 period scheduled for the phase one of the Peccole
19 Ranch Master Plan?
20 A. In relation to this document?
21 Q. No. Phase one south of Charleston.
22 A. I would have to review it. I don't
23 recall. My recollection says there may have been
24 actual golf course holes on the southern portion, but
25 I would have to review that to confirm.

213

1 Q. But in any event it's clear it was
2 eliminated by 1989, correct?
3 MR. BICE: Objection to form.
4 THE WITNESS: Well if it was part of
5 Venetian Foothills and then '89 and then '90, the '90
6 obviously doesn't reflect it.
7 BY MR. JIMMERSON:
8 Q. There is no golf course built there now
9 south of Charleston between Rampart and wall pie or
10 Rampart and -- correct?
11 A. Not as part of the Peccole Ranch Master
12 Development.
13 Q. All right. Now, looking at these land
14 uses, there is proposed acreage to be allocated to
15 these different land uses, correct?
16 A. There are associated acreages in the
17 column to the right of the land uses.
18 Q. But this is conceptual, it can vary,
19 correct?
20 MR. BICE: Objection to the form.
21 BY MR. JIMMERSON:
22 Q. Can it vary? Can 402 acres be used for
23 single family?
24 MR. BICE: Same objection. Go ahead.
25 THE WITNESS: On page 1 of this Exhibit B

214

1 it says it's conceptual. Then as subsequent land use
2 applications have modified land use designations, my
3 answer would be yes.
4 BY MR. JIMMERSON:
5 Q. You said you read Mr. Perrigo's
6 deposition.
7 A. That is correct.
8 Q. Mr. Perrigo was clear to denominate the
9 many departures from this conceptual plan that
10 occurred from 199 to the present, correct?
11 MR. BICE: Objection to the form.
12 Foundation.
13 THE WITNESS: My recollection is that he
14 made mention that there were instances.
15 Q. And he used the word in fact on several
16 occasions inconsistencies. Do you recall?
17 MR. BICE: Objection to the form. Go
18 ahead.
19 THE WITNESS: It was a long deposition and
20 a lot of reading.
21 BY MR. JIMMERSON:
22 Q. Yes, it was?
23 A. So I'm not sure if I'm retaining
24 everything from that.
25 Q. But your own oaks would observe that there

215

1 are wholesale number of inconsistencies between what
2 the conceptually was discussed in 1989 and what was
3 actually constructed in the years that followed to
4 the present date, agreed?
5 MR. BICE: Objection. Sorry are you done?
6 MR. JIMMERSON: Thank you counsel.
7 MR. BICE: Objection to the form. Go
8 ahead.
9 THE WITNESS: There are changes from that
10 original master development plan from '90 going on
11 forward. As far as his deposition, I don't know if
12 he had any examples, but there are, you know -- my
13 only recollection of things that would differ would
14 be northern portion of Boca Park, the Queensridge
15 towers, the southwest corner of wall -- sorry, it
16 would be the northeast corner of Hualapai and
17 Charleston and there's some other examples. Those
18 off the top of my head I know are different from the
19 90 plan.
20 Q. Now does the fact that -- what
21 significance if any do you take from the fact that
22 there is a place holder of a dash next to commercial
23 slash office?
24 MR. BICE: Objection to the form and the
25 representation that a dash is a quote place holder.

216

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15025

1 THE WITNESS: As previously stated, one
2 can infer that it has a zero as I stated. It could
3 be inferred as other things. If, in fact, somebody
4 applies to amend something, then obviously the
5 acreage would change.
6 BY MR. JIMMERSON:
7 Q. Well under this conceptual plan, how
8 much -- how many offices -- how many offices could be
9 placed in the commercial office category? How many
10 could be built under the conceptual master plan?
11 BY MR. BYRNES:
12 Q. Of commercial slash office.
13 MR. BYRNES: Acres.
14 Q. No I want to know how many offices can be
15 built.
16 MR. BICE: Units.
17 BY MR. JIMMERSON:
18 Q. How much square foot can be built. I'll
19 withdraw the objection.
20 BY MR. JIMMERSON:
21 Q. How many units?
22 REPORTER'S NOTE while withdraw?
23 A. This table does not delineate any units.
24 It doesn't speak to that. It just says acreage dash
25 on density dash on units, both of which are met.

217

1 Q. It certainly allows it to be constructed
2 would you agree?
3 A. Yes.
4 Q. Okay. But the amount isn't determined at
5 least at the conceptual time of this in 1989?
6 MR. BICE: Objection to form.
7 BY MR. JIMMERSON:
8 Q. Correct?
9 A. Yes.
10 MR. BICE: I'm sorry object to form and
11 objection to the reference 1989.
12 BY MR. JIMMERSON:
13 Q. Even if this were deemed to be in 1990,
14 there's no limitation on how many units are going to
15 be placed in commercial office at this time, correct?
16 A. Not by this table.
17 Q. And if you will read the next line,
18 resort-casino, supposedly going to be on 56 acres, we
19 don't know how many with -- what the density for that
20 hotel is going to be, correct, how many rooms are
21 going to be built, how many square foot of casino?
22 A. Right. As far as a resort-casino it's not
23 looked at in regards to density. It's just the
24 development. There are hotel rooms associated with
25 it, but they're not looked at in the sense of

218

1 density.
2 Q. So if I understand your testimony, and
3 this is an area where you're teaching me, Mr.
4 Lowenstein, you wouldn't use the hotel/casino as a
5 count against 4742. Is that what you're saying?
6 MR. BICE: Objection. Form. Go ahead.
7 THE WITNESS: That is correct.
8 BY MR. JIMMERSON:
9 Q. Did you understand my question?
10 A. I did.
11 Q. Okay. But nonetheless there is no attempt
12 in 1989 or 1990 when the master plan is being
13 discussed in Exhibit 8 to identify the density or the
14 number of hotel rooms or the like associated with the
15 resort-casino. Agreed?
16 A. I would have to read through the verbiage
17 of the entire document but pursuant to this table it
18 does not address that.
19 Q. All right. And the golf course drainage
20 talks about 211.6 acres if I'm reading that correct.
21 A. I am assuming there should be a decimal
22 point there, yes.
23 Q. If there's not then my mind put it in.
24 Thank you.
25 A. There's not a decimal.

219

1 Q. How many acres are now -- how many acres
2 are presently utilized for the golf course here in
3 2016?
4 A. Going off the public notifications on the
5 applications, I'm basing it on 250.92 acres.
6 Q. And is all of that golf course?
7 A. I believe so. If anything, it may include
8 where the clubhouse is.
9 Q. Okay. And how would it have changed --
10 and how many acres are devoted to drainage in the
11 present development?
12 A. I don't know.
13 Q. Now, drainage is an issue that the
14 developer works with the City, correct?
15 A. They work with the City City yes it would
16 be with the Department of Public Works.
17 Q. And at least from your expertise but also
18 being involved in the City, you saw what Mr. Lowie
19 and others did with the Tivoli development across the
20 street?
21 A. Yes.
22 Q. And what I mean there was a significant
23 issue of dealing with drainage at that location.
24 Would you agree?
25 A. Through conversations and on the existing

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1 projects about the box culverts and things like that.
 2 I have been made aware of the conditions that needed
 3 to be remedied.
 4 Q. You and I could drive right there to Alta
 5 and Rampart we could be on the golf course side on
 6 see where the drainage is, we could then go over to
 7 Tivoli and see how they dealt with the drainage
 8 there, building over it. That's a fair statement,
 9 correct?
 10 A. Yes, that is correct.
 11 Q. All I'm trying to get at is the City can
 12 work with the developer resolve issues involving
 13 drainage, and was, you have indicated, with the
 14 proper permissions you can build over drainage, you
 15 can build around drainage, you can solve the issue as
 16 long as you have both federal and state approval.
 17 Agreed?
 18 A. I agree to that, yes. I previously stated
 19 that drainage easements if they're not needed in
 20 their current configurations or immediate, it's
 21 pretty much up to the Department of Public Works.
 22 Q. Within the City of Las Vegas.
 23 A. If they agreed ever agree it's immediate
 24 they would also be able to tell you if -- whichever
 25 process your meeting, if you can build (CHECK).

221

1 Q. And you work with the City to solve that
 2 issue or at least you agree it can't be solved and it
 3 has to be left to drainage?
 4 MR. BICE: Object to form.
 5 THE WITNESS: The applicant would work
 6 with, yes the Department of Public Works.
 7 Q. And the Department of Public Works is part
 8 of the City of Las Vegas.
 9 A. That is correct.
 10 Q. It's one of your sister departments at the
 11 City.
 12 A. Yes, a fellow department.
 13 Q. Now, looking at the right of way, there
 14 are 60.4 acres that are guesstimated to be right of
 15 way. Do you see that?
 16 A. I do.
 17 Q. And there is, again, no place -- I call it
 18 a dash, not a zero, but a dash, right?
 19 A. That is correct, there's a dash.
 20 Q. And what do you understand is being
 21 communicated by the term right of way?
 22 A. The public roadways.
 23 Q. Could it also include open space, small
 24 parks?
 25 MR. BICE: Objection to the form.

222

1 BY MR. JIMMERSON:
 2 Q. You know roundabouts, things like that?
 3 A. I would have to defer to counsel as far as
 4 the full scope of what right of way could entail.
 5 Q. But at least as you understand it, it's
 6 the roads and the ability to egress and ingress on
 7 the property. Would that be a fair statement?
 8 A. Yes, that would.
 9 Q. And then you have elementary school for
 10 13.1 acres. Do you ever do you know with dash as
 11 density how do you treat density relative to an
 12 elementary school. Does that count against density
 13 is really the question or do you treat it like a
 14 resort-casino, it does not count against density?
 15 MR. BICE: Objection to form.
 16 Q. First of all do you understand my
 17 question.
 18 A. I do understand the question.
 19 Q. Now answer to the best of your ability
 20 please.
 21 A. The type of development would not be
 22 subject to any density. It's not calculated similar
 23 to how I stated on the resort-casino.
 24 Q. Then you have total of 995.4 acres if I'm
 25 inserting the point correctly. Do you see that?

223

1 A. The one I'm looking at 99- -- 99 -- 996
 2 and I'm assuming there is a point and four.
 3 Q. Again, based upon the total acreage of
 4 doing the math at that time, that's roughly 4.5
 5 dwelling units per acre, correct?
 6 A. That is correct.
 7 Q. For a total of net units of 4,247?
 8 A. Correct.
 9 Q. I have read that correctly?
 10 Yes.
 11 Q. Would you read the note right below that
 12 please?
 13 A. Note: Overall density based on all areas
 14 except right of way.
 15 Q. Now, what did that mean to you as you read
 16 those words then as you study this and now?
 17 A. That the right of way acreage was not
 18 included in the acreage to calculate the overall
 19 density.
 20 Q. So excluding 60.4 acres, the density was
 21 computed upon the other categories except for right
 22 of way; is that right?
 23 A. I'm assuming so. I would have to do the
 24 math.
 25 Q. All right. Now, because hard zoning on

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1 this property owned by my clients occurred first in
2 time in 1990 and then as you have noted in 1996 a
3 golf course was constructed that originally as you
4 have seen in the plans was supposed to be 18 holes
5 and turned out to be 27 holes and we can look at it
6 and know it was 27 holes. Is that a reason why the
7 City has -- and your department believes that my
8 client has the right to build on the golf course?
9 MR. BICE: Objection. Were you done?
10 MR. JIMMERSON: I am.
11 MR. BICE: Okay. Countless objections.
12 Objections to form. Calls for a legal conclusion.
13 Calls for speculation by the witness. And misstates
14 the law.
15 BY MR. JIMMERSON:
16 Q. I'm going to revise the question.
17 Is it your understanding based upon your
18 work at the City of Las Vegas and your position there
19 and knowing the hard zoning that exists there, that
20 my clients have the right to build towards 7.49 units
21 on the property that they own, otherwise you and I
22 would call is the golf course?
23 MR. BICE: Objection to form. Calls for a
24 legal conclusion. Misstates the facts and objection
25 that it misstates the law.

225

1 BY MR. JIMMERSON:
2 Q. I must be getting to the heart of the
3 matter.
4 MR. BICE: Go ahead. I just want to
5 preserve my objection?
6 MR. JIMMERSON: Please answer.
7 MR. BICE: I would like to hear the
8 answer.
9 THE WITNESS: The applicant has the right
10 to petition the City Council to develop their
11 property.
12 Q. And does it have the right to develop the
13 property with the zoning that exists, some form of
14 development on the property?
15 MR. BICE: Same objections. Go ahead.
16 MR. BYRNES: I think I would also say
17 legal conclusion there. Go ahead and answer.
18 THE WITNESS: In their petition to develop
19 their property, they're going to have to apply for
20 all required applications and then ultimately the
21 decision by the City Council as to what is --
22 whatever their finding may be compatible harmonious
23 with the surrounding area, but it would be their --
24 their discretion.
25 ///

226

1 BY MR. JIMMERSON:
2 Q. Did you support the project of 770
3 units -- 720 units, excuse me, when it was proposed
4 in August of 2015?
5 MR. BYRNES: Are you asking Mr. Lowenstein
6 personally?
7 MR. JIMMERSON: Yes.
8 MR. BYRNES: Or --
9 BY MR. JIMMERSON:
10 Q. Good distinction. Asking Mr. Lowenstein
11 as part of the planning department.
12 A. As part of the planning department? Our
13 original design review meeting from that as the
14 department, we came out with an understanding that we
15 were getting an overall package, so we did not come
16 out with a recommendation until the overall package
17 was submitted. Subsequently, then we had a
18 recommendation of approval on the application. With
19 the withdrawal of the other items, it went forward
20 with the recommendation of approval and then at the
21 meeting, the director, based upon the discussion,
22 council withheld a recommendation.
23 BY MR. JIMMERSON:
24 Q. Why did you conclude -- why did the
25 department conclude that a major modification was not

227

1 required, initially on the 720 and now here more
2 recently on the 720?
3 MR. BICE: Objection. Objection to form.
4 Go ahead, sir.
5 THE WITNESS: As previously stated, that
6 there was -- within the geographical area of the
7 original zoning that capped the number of units at
8 4,247 if I quoted that right, there were still
9 allowable units within that, and that with that they
10 were petitioning through the general plan amendment
11 rezoning and the site development review and a
12 modification wasn't necessary.
13 Q. When you look at Exhibit 8, page 18 which
14 is what you and I would call is the table of land use
15 data, the one we were looking together, is there any
16 category there under land use called open space? You
17 can answer the question sir?
18 MR. BICE: Is it eight?
19 MR. JIMMERSON: Exhibit 8 Bates stamp
20 number 8310 the one we went through together.
21 Q. Is there any land use here designated open
22 space?
23 A. No.
24 Q. Was there any requirement in the Z-17-90
25 to maintain open space imposed upon the Peccole Trust

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1 when they received the City Council approval on
2 April 4th of 1990?
3 MR. BICE: Objection to the form.
4 THE WITNESS: The conditions of approval
5 for that zoning action, I don't recall having
6 something specific to required amount of even space.
7 BY MR. JIMMERSON:
8 Q. What were, to the best of your
9 recollection, the only condition or conditions placed
10 upon the approval of Z-17-90 and the R-PD7 zoning for
11 this land in April 1990?
12 A. Just to be specific, the rezoning had
13 multiple zoning district. It was applicable to all
14 of those district. They had a maximum number of
15 units as a condition placed on them. As previously
16 discussed, they had a condition to conformance of the
17 conditions of the master development plan, which I
18 have stated I have not been able to find any. And
19 then I imagine there are a number of other conditions
20 from public works and other departments, they're all
21 roped into one letter.
22 MR. JIMMERSON: Thank you. Can we pause
23 just for a minute please.
24 Q. I have never seen on this property a
25 condition that requires the Peccole Trust to comply

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1 with a master plan. I'm trying to square your last
2 answer if you'll be more clear to me with regard to
3 what it is you mean when you say I have never been
4 able to confirm as I stated I have not been able to
5 find any. Would you please help us understand your
6 testimony or at least help me understand your
7 testimony better, please?
8 MR. BICE: Objection to the form and the
9 factual representation.
10 BY MR. JIMMERSON:
11 Q. You can go ahead and answer the question.
12 A. So in doing the research of the land use
13 entitlements and specifically this zoning action and
14 then reviewing that conditions of approval part of
15 it.
16 Q. Referring to April of 1990.
17 A. Correct referring to Z-17-90 as the
18 rezoning application and the condition in there, I
19 don't know if it's condition number 2 or three on
20 that a-- on that final action letter, rereviewing the
21 minutes from -- and the agenda from that same
22 meeting, I have not been able to find any conditions
23 that are specific to that agenda item which is the
24 master development plan, regarding phase two.
25 Q. Meaning there's no minutes or any

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1 requirement you can find to comply with the phase two
2 master plan. Is that what you mean by that last
3 answer?
4 MR. BICE: Objection to form.
5 BY MR. JIMMERSON:
6 Q. You can answer the question sir.
7 A. Meaning there weren't -- as the zoning
8 action Z-17-90 had its own specific condition
9 approval letter.
10 Q. I understand.
11 A. The master development plan did not have
12 have its own specific letter with conditions imposed
13 that I have found at this point.
14 Q. And what is the significance of that?
15 A. The condition that it says to conform to
16 it, if there are no conditions, then it's moot.
17 Q. And you don't find any conditions at least
18 through your research in studying the minutes and the
19 folder that you examined is that right?
20 MR. BICE: Objection to form. Go ahead.
21 THE WITNESS: Based upon the research, I
22 have not found an action letter regarding that
23 development -- master development plan item.
24 BY MR. JIMMERSON:
25 Q. And so I understand -- in my vernacular,

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1 therefore, there is no condition that you have been
2 able to find that requires compliance with the
3 conceptual master plan in the Z-17-90 action by the
4 City Council; is that correct?
5 MR. BICE: Objection to form. Misstates
6 the law. Misstates the facts.
7 Go ahead, sir.
8 THE WITNESS: The items are related. I
9 would have to defer to counsel on their
10 interpretation.
11 BY MR. JIMMERSON:
12 Q. I'm asking what you found. I'm trying to
13 understand wht you're saying. You're saying,
14 Mr. Jimmerson, I don't see any condition that
15 requires compliance with a master plan in my
16 research. Is that what you're telling us?
17 MR. BICE: I apologize, sir. I need to
18 state my objection. Object to form. Misstates the
19 law and misstates the facts. Go ahead, sir.
20 THE WITNESS: The zoning action has a
21 condition that says to conform to the conditions of
22 the master development -- master development plan. I
23 have not been able to locate a separate conditions of
24 approval letter for that master development plan.
25 That is what I'm stating.

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1 BY MR. JIMMERSON:
2 Q. All right. And did you observe that the
3 approval the City Council in April of 1990 had a five
4 year limit after which it expired?
5 A. Without reviewing the condition of
6 approval, if it had resolution of intent it would
7 have been listed as a condition on it. Some actions
8 don't and run indefinitely.
9 Q. What happens if there's a five year limit
10 to the approval?
11 A. That is usually the duration in time which
12 the council has deemed for the entitlement to be
13 exercised.
14 Q. Now, you mentioned something called PR-OS.
15 Right? I heard a question asked of you this morning
16 about that.
17 A. Yes. Throughout the course of this
18 deposition, we have referred to a general land use or
19 in the Las Vegas 2020 Master Plan a designation
20 called PR dash OS which is parks recreation and open
21 space.
22 Q. In 1990 was there any designation for this
23 ground as PR-OS?
24 A. From my research the designation on this
25 property or this general area would have been to

233

1 the -- in the 1985 general plan which did not have
2 specific designations but more of -- and it's I guess
3 they called it the title might be a general land use
4 plan in the sense that it's not a site specific. It
5 had swaths of rural, suburban or urban designations.
6 Q. So PR-OS was not something that was -- was
7 not a designated land use in 1990 when Mr. Pecuniary
8 or the Peccole Trust obtained its entitlements before
9 the City Council?
10 A. Not to my knowledge.
11 Q. Is it your contention today, now in 2016,
12 December, that there is a land use designation for
13 the golf course owned by the companies that I
14 represent that they're subject to PR-OS land use
15 designation?
16 A. As reflected on the current southwest
17 sector land use map, yes.
18 Q. And when was the PR-OS land use
19 designation affixed to the property owned by my
20 clients, to the best of your knowledge?
21 A. I don't know. Research would have to be
22 done. I understand there's a 92 plan and then
23 there's the adoption of the Las Vegas 2020 Master
24 Plan in 2000.
25 Q. Could it have been done as recently as

234

1 February of 2015?
2 A. I don't think so.
3 Q. Have you -- did you have any -- have you
4 heard any claim -- withdrawn.
5 Have you seen any document that lists the
6 property -- withdrawn.
7 The golf course was constructed in the 1996
8 to 2000 time period. Is that your understanding?
9 A. I don't know the exact date when it was
10 constructed.
11 Q. Not the exact four years, but would you
12 agree it was about that time period?
13 A. I don't know if it was '96 or not. I
14 review airline photography to tell you exactly when
15 the construction started.
16 Q. All right. Now the land that's owned by
17 my clients 180 Land Company, Seventy Acres and Fore
18 Stars, they own the golf course as it's built, as
19 built that I was showing you in Exhibit D correct?
20 MR. BICE: Objection to form.
21 THE WITNESS: Is it C?
22 BY MR. JIMMERSON:
23 Q. Thank you Exhibit C.
24 A. If this is the current configuration of
25 the 1827, yes.

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1 Q. And since we know that the location of the
2 golf course has significantly changed from what was
3 conceptually thought about in 1989 or 1990, how does
4 the land use designation change to match the -- you
5 know, the current as built location? How does that
6 work?
7 MR. BICE: Objection to the form. Go
8 ahead.
9 MR. BYRNES: Do you understand the
10 question?
11 THE WITNESS: Are you asking how did the
12 golf course become designated parks recreation open
13 space?
14 Q. The answer is yes, but what I'm trying to
15 understand is you couldn't have the current land use
16 design -- I'm asking. I'm not telling you. I'm
17 asking. You would not have a land use designation of
18 PR-OS on the golf course that's built today until
19 it's built today, until it was built. Agreed?
20 A. I'm not sure.
21 Q. Do you understand the question? You
22 couldn't put a PR-OS land use on another location,
23 that didn't happen in this case right I mean we don't
24 have PR-OS in 1990 when my clients not my clients but
25 the owner, obtains the Z-17-90 right of entitlement

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1 under zoning the golf course as-built in '96 to 1999
2 time period. So the PR-OS designation land use would
3 have had to occur after you know where the location
4 of the golf course is built. Would that be a fair
5 statement?

6 MR. BICE: Objection to form.

7 THE WITNESS: From my recollection in the
8 1992 general plan, there was a comprehensive survey
9 and that is where they designated land use
10 designations.

11 Q. Was PR-OS designated on my clients
12 property in 1992?

13 A. I believe the designation it could have
14 been P, I'm not sure if PR-OS existed, but P existed
15 and it would be in the configuration of I believe the
16 master development plan.

17 Q. And what configuration in 1992 was that?

18 A. That would be the configuration as I'm
19 assuming it's the configuration of the Z-17-90 phase
20 two rezoning and and subsequent amendment of over all
21 Peccole Ranch Master Development.

22 Q. When was PR-OS as a designated land use
23 created by the City of Las Vegas?

24 A. I don't know research would have to be
25 done.

237

1 Q. Was it before or after you became a
2 planner in 2003?

3 A. As a guess I would say before.

4 Q. It existed at the time you came to work
5 there?

6 A. I believe so. I mean I can look at
7 Exhibit 7, which says it's adopted in 1999, which has
8 parks recreation and open space.

9 Q. And how is a PR-OS -- how is a land use
10 designation like PR-OS adopted by the City of Las
11 Vegas? What has to be done to adopt it?

12 A. My limited exposure with the overall
13 process, this is where Mr. Summerfeld would probably
14 be more apt to speak to, but there is a lot of public
15 input, {shurets and public outreach in coming up with
16 the general plan and then there are neighborhood
17 meetings when the plan is towards the final draft and
18 then obviously it goes before the City Council for
19 adoption and ordinance.

20 Q. And is the affected -- are there any
21 notice of the landowner of PR-OS being placed upon
22 their property?

23 A. As I previously stated earlier, I believe
24 as it's a City-wide effect that they don't notice
25 every individual property owner but once again I

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1 wasn't here when they did it, so I can't confirm.

2 Q. What if there is a conflict as we have
3 here with hard zoning of R-D7 since 1990 and possibly
4 working together PR-OS being put on this property in
5 the late 1990s?

6 MR. BICE: Objection to form. Objection
7 to the representation of conflict.

8 Q. First of all would you agree, as Mr.
9 Perrigo, said that's a conflict, R-PD7 zoning and
10 building rights and a land use designation of PR-OS?

11 MR. BICE: Objection to form and objection
12 to the representation that Mr. Perrigo said it's a
13 conflict.

14 BY MR. JIMMERSON:

15 Q. He used the word inconsistency. Would you
16 agree that there is an inconsistency between this
17 property having a hard zoning of 1990 of R-PD7 and
18 sometime thereafter a PR-OS placement of land use
19 designation by the City?

20 MR. BICE: Objection to the form.
21 Objection to the representation he claimed it was a
22 an inconsistency.

23 MR. JIMMERSON: You can answer the
24 question. I'm quite satisfied that's the word Mr.
25 Perrigo used.

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1 Q. I'm asking your opinion, Mr. Lowenstein,
2 your observation. I'll state it quickly is there an
3 inconsistency between the R-PD7 rights to build,
4 zoning rights, entitlements, and placing a land use
5 designation of PR-OS on that very same land?

6 MR. BICE: Objection to form. Objection
7 to the representation that a zoning grants a right to
8 build. Go ahead.

9 Q. The question didn't include that but go
10 ahead.

11 A. If somebody wanted to exercise the R-PD7
12 for single family development, the Unified
13 Development Code and the -- being the zoning code
14 strives to have consistency between the general plan
15 and the associated zoning district. In this instance
16 the zoning district actually has its own dense tee
17 called out appear the parks recreation open space
18 does not. So we would look for that consistency and
19 require it it be amended to have a designation that
20 matches whatever the proposed development's overall
21 density is going to be. In that light there are
22 other situations where there are R-PD zoned
23 properties with parks recreation and open space
24 underneath it.

25 Q. What's underneath the zoning coming first?

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1 MR. BICE: Objection.
2 THE WITNESS: I'm just using -- sorry.
3 MR. BICE: Objection to form. Go ahead.
4 THE WITNESS: I'm using that as far as the
5 hierarchy of land use and general plan, broad stroke
6 and then you go to on finer point and underrring with
7 the general plan and zoning above.
8 Q. But requesting a change in general
9 amendment is because there is an inconsistency in the
10 R-PD7 and the PR-OS?
11 MR. BICE: Objection to form.
12 Q. Otherwise there wouldn't be a need to
13 amend the general plan, correct?
14 A. For the exercising of that residential
15 plan, yes.
16 Q. And as between any conflict between PR-OS
17 and R-PD7, the zoning trumps the land use
18 designation, isn't that true, by statute?
19 MR. BICE: Objection.
20 THE WITNESS: That I would have to defer
21 to counsel.
22 MR. BICE: Object to form. Misstates the
23 law.
24 BY MR. JIMMERSON:
25 Q. Let me ask your opinion. If there is a

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1 conflict between land use designation and zoning what
2 trumps what?
3 MR. BYRNES: Just object calls for a legal
4 conclusion go ahead and answer.
5 THE WITNESS: It's my understanding a zone
6 district gives a property owner property rights.
7 Q. So therefore it trumps the land use
8 designation when they are inconsistent.
9 MR. BICE: Objection to form go ahead.
10 BY MR. JIMMERSON:
11 Q. You can answer the question yes or no sir?
12 MR. BICE: Also can you hold on one
13 second. I need to make this objection. Phil, if you
14 allow him to answer this question, since he says it's
15 his understanding, I'm going to follow up and ask him
16 what's the basis for that understanding if he's
17 giving a representation.
18 MR. JIMMERSON: You don't have to,
19 Counsel, I'll be asking the next question following
20 that.
21 MR. BICE: All I'm saying if he's going to
22 claim it's -- I don't think he's allowed to testify
23 that he has an understanding of X based on something
24 told to him by the City attorney's office but then
25 turn around and say I'm not going to explain X on the

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1 basis of privilege.
2 MR. JIMMERSON: But he's not relied upon
3 the City attorney. He can rely on Tom Perrigo who
4 said the very same thing at page 52 and 53 of his
5 deposition.
6 MR. BICE: Actually, he didn't say that
7 and for you to represent --
8 MR. JIMMERSON: I'll read it to you,
9 Counsel.
10 MR. BICE: There's a lot of things he did.
11 MR. JIMMERSON: I'll read it counsel.
12 MR. BICE: Go ahead, Jim, read whatever
13 you like.
14 MR. JIMMERSON: Can we have the answer to
15 the question?
16 BY MR. JIMMERSON:
17 Q. The property rights trumps the land use
18 designation, correct?
19 MR. BICE: Objection to form. Misstates
20 the law and the City code.
21 MR. BYRNES: And legal conclusion.
22 Q. You may answer the question, sir. Your
23 understanding.
24 A. The zoning district as I said gives the
25 property owner certain rights. For example, if you

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1 had a commercial zoning district in a rural
2 designation underneath it, you would be able to
3 develop and be permitted the land uses under the C-1
4 zoning district. In regards to a R-PD7, the zoning
5 district has an inherent -- the number in that
6 delineates the density of that zoning district, but
7 to exercise it you still have to go through the
8 discretion.
9 Q. I'm not quarreling with that I'm saying to
10 you you still have that zoning trumping the land use,
11 and the difference is because you never get the
12 landowners consent to the land use. You never get a
13 written document by the landowner please approve
14 PR-OS, correct?
15 MR. BICE: Objection to the form.
16 BY MR. JIMMERSON:
17 Q. You can answer the question. You know
18 exactly what I'm asking you.
19 A. Can you just restate it?
20 Q. Do you obtain the written consent of a
21 landowner to the land use designation that the City
22 puts on a piece of property?
23 MR. BYRNES: In the general plan?
24 Q. One by one. Did you get Mr. Peccole's
25 consent to PR-OS if, in fact, he put it on there in

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1 1999?
2 MR. BICE: Objection to the form. Go
3 ahead.
4 THE WITNESS: I have no idea of knowing
5 that.
6 BY MR. JIMMERSON:
7 Q. In your time, have you ever obtained the
8 landowners written consent to a land use designation
9 that the City has imposed upon property?
10 A. To my extent, I don't know of any time
11 that the City has imposed.
12 Q. And are you -- and -- okay. So you don't
13 think it's an imposition upon a person's properties
14 to try to change the land use designation when you
15 have an existing building? Just exactly what you
16 said. Somebody's got C-1 zoning and you've got --
17 you want to put rural as a designation. He still has
18 the right to build a commercial center, correct?
19 MR. BICE: Objection to the form. Go
20 ahead.
21 MR. BYRNES: Do you understand?
22 THE WITNESS: The example I gave was
23 existing designations, not the City changing it by
24 their own, you know --
25 ///

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1 BY MR. JIMMERSON:
2 Q. Well what was the land use designation on
3 this property before PR-OS was placed upon it, if you
4 know?
5 A. As I believe I stated in the 92 plan it
6 was probably parks and either medium low density
7 residential and then prior to that in the '85 plan it
8 was suburban.
9 Q. Is there any requirement for parks within
10 the planned approved Z-17-90 upon the developer, is
11 there any request for parks or recs as part of that
12 zoning approval?
13 A. Not to my knowledge as far as the
14 documents. There's no request for parks.
15 Q. Mr. Perrigo at page 52, line 25 and
16 page 53, lines one through eight stated as follows:
17 My position is that the zoning is -- that's what the
18 proper way to say. What's the proper way to say it?
19 The zoning governs more.
20 Question: So --
21 Answer: If the land use and the zoning
22 aren't in conformance, then the zoning would be a
23 higher order entitlement, I guess.
24 Question: So it's your position that
25 zoning supersedes the general plan?

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1 Answer: Yes.
2 Or the master plan?
3 Answer: Yes.
4 Is that also your understanding Mr.
5 Lowenstein as it is Mr. Perrigo's?
6 A. Similar in nature. The zoning -- zoning
7 is the implementation of the general plan, and it has
8 inalienable rights, it has property rights,
9 associated with certain development standards.
10 MR. BICE: Objection to form.
11 BY MR. JIMMERSON:
12 Q. What does the term inalienable rights mean
13 to you as you use it?
14 A. Meaning it has that entitlement.
15 Q. I would like to take a restroom break and
16 also try to work with you counsel with regard to --
17 it's 5:20. I would like to find another time before
18 Christmas where we can complete both Mr. Perrigo's
19 and Mr. Lowenstein's depo with of course the consent
20 of you Mr. Lowenstein, Mr. Perrigo and Mr. Byrnes.
21 Why don't we go off the record to discuss scheduling.
22 It's 5:20. I have worked long enough today. But I
23 will need additional time.
24 THE VIDEOGRAPHER: Going off the video
25 record. The time is approximately 5:11 p.m.

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