IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

No. 84345

Electronically Filed
Aug 22 2022 11:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

JOINT APPENDIX, VOLUME NO. 17

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
Nevada Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq.
Nevada Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq.
Nevada Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq.
Nevada Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877

Attorneys for 180 Land Co., LLC and Fore Stars, Ltd.

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, Esq.
Nevada Bar No. 4381
bscott@lasvegasnevada.gov
Philip R. Byrnes, Esq.
pbyrnes@lasvegasnevada.gov
Nevada Bar No. 166
Rebecca Wolfson, Esq.
rwolfson@lasvegasnevada.gov
Nevada Bar No. 14132
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM
Micah S. Echols, Esq.
Nevada Bar No. 8437
micah@claggettlaw.com
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone

Attorneys for 180 Land Co., LLC and Fore Stars, Ltd.

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Nevada Bar No. 3552
gogilvie@mcdonaldcarano.com
Amanda C. Yen, Esq.
ayen@mcdonaldcarano.com
Nevada Bar No. 9726
Christopher Molina, Esq.
cmolina@mcdonaldcarano.com
Nevada Bar No. 14092
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Telephone: (702)873-4100

LEONARD LAW, PC
Debbie Leonard, Esq.
debbie@leonardlawpc.com
Nevada Bar No. 8260
955 S. Virginia Street Ste. 220
Reno, Nevada 89502
Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
schwartz@smwlaw.com
California Bar No. 87699
(admitted pro hac vice)
Lauren M. Tarpey, Esq.
ltarpey@smwlaw.com
California Bar No. 321775
(admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272

Attorneys for City of Las Vegas

Electronically Filed
8/31/2020 4:14 PM
Steven D. Grierson
CLERK OF THE COURT

ARJT

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X,	)	Case No. A-17-758528-J Dept No. XVI
Plaintiffs,	)	
v.	)	
CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASIGOVERNMENTAL ENTITIES I-X,	)	
Defendants.	)	

HEARING DATE(S) ENTERED IN ODYSSEY

AMENDED ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL/CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to a jury on a **five week stack,** to begin, **May 3, 2021 at 9:30 a.m.**

B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in proper person will be held on **April 22, 2021 at 10:30 a.m.**

C. Parties are to appear on **February 17, 2021 at 9:00a.m.,** for a Status Check re Trial Readiness.

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

D. The Pre-Trial Memorandum must be filed no later than **April 30, 2021**, with a courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the Memorandum an identification of orders on all motions in limine or motions for partial summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

E. All motions in limine to exclude or admit evidence must be in writing and filed no later than **March 15, 2021.** Orders shortening time will not be signed except in **extreme emergencies**.

F. Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

G. Discovery disputes that do not affect the Trial setting will be handled by the Discovery Commissioner. A request for an extension of the discovery deadline, if needed, must be submitted to this department in compliance with EDCR 2.35. Stipulations to continue trial will be allowed ONLY for cases that are less than three years old. All cases three years or older must file a motion and have it set for hearing before the Court.

H. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order and/or any amendments or subsequent orders.

I. All original depositions anticipated to be used in any manner during the trial must be delivered to the clerk prior to the firm trial date given at Calendar Call. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

prior to the firm trial date given at Calendar Call.. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the firm trial date. Counsel shall advise the clerk prior to publication.

J. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk two days prior to the firm trial date given at Calendar Call. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into evidence.

K. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to items to be included in the Jury Notebook.

L. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall provide the Court, two (2) judicial days prior to the firm trial date given at Calendar Call, an agreed set of jury instructions and proposed form of verdict along with any additional proposed jury instructions with an electronic copy in Word format.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they are

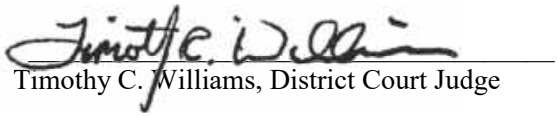
TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

going to require daily copies of the transcripts of this trial or real time court reporting. Failure to do so may result in a delay in the production of the transcripts or the availability of real time court reporting.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED: August 31, 2020



Timothy C. Williams, District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and/or fax for Case No. A758528.

/s/ Lynn Berkheimer

Lynn Berkheimer, Judicial Executive Assistant

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

Electronically Filed
9/9/2020 3:00 PM
Steven D. Grierson
CLERK OF THE COURT

RPLY
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowner

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiff, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **REPLY IN SUPPORT OF PLANTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** Hearing date: September 17, 2020 Hearing time: 9:00 am ***Hearing Requested***

INTRODUCTION

The Landowners motion before this Court requested this Court to confirm two very narrow issues under eminent domain law: 1) that the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2) that this zoning confers the right to use the 35 Acre Property for "single-family and multifamily residential." In response, the City filed a 27-

page opposition, citing irrelevant petition for judicial review standards to obfuscate the issues and distract this Court from the relevant and simple inquiry before it. However, in its response, importantly, the City does not dispute that the property is hard zoned R-PD7. *See* Opp. at 10:17-18 (conceding R-PD7 zoning "is not disputed."). Therefore, the only remaining inquiry before this Court is for the Court to further confirm that the permitted use *by right* under the R-PD7 zoning is "single-family and multi-family residential."

Confirmation of this second issue must be made by this Court[1] and it is absolutely critical that it be made at this time. Just compensation is based on "what the owner has lost"[2] and before what was lost can be determined, the underlying "property interest" must be determined. Then, and only then, can the appraisers value the 35 Acre Property. Furthermore, neither the facts or law in the Landowners motion are in dispute – 1) the City concedes the R-PD7 hard zoning; and, 2) the City Code expressly states those uses that are permitted *by right* under this R-PD7 zoning. Asking the Court to acknowledge and confirm the property interest is necessary at this time to assure the proper appraisal analysis and that there are no further delays in this proceeding.

Because the City cannot refute that the 35 Acre Property is hard zoned R-PD 7 and because R-PD 7 under the City's own code means the Landowner is permitted to build single family and multi-family residential *by right*, the City provides irrelevant arguments that are contrary to the very facts and law it concedes.

---

[1] McCarran Int'l. Airport v. Sisolak, 122 Nev. at 661 (2006) (whether a taking has occurred is a question of law and the court must first determine whether the plaintiff possess a valid interest in the property affected by the governmental action); *see also* County of Clark v. Alper, 100 Nev. 382 (1984) (inverse condemnation proceeding are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles applied to formal condemnation proceedings); ASAP Storage v. City of Sparks, 123 Nev. 639 (2008) (holding the term "private property" in Nevada's Just Compensation Clause requires that an individual have a "property interest" to assert a takings claim and then identifying the property interest).

[2] *See* Del Monte Dunes, 526 U.S. at 711 (In determining just compensation, "the question is what has the owner lost, not what has the taker gained.") (citation omitted).

This Court should grant the Landowners' Motion for Determination of Property Interest because: 1) the City's 27-page Opposition is based almost entirely on Petition for Judicial Review standards, a position this Court has repeatedly rejected; 2) under eminent domain law, a residential use is permitted *by right* on property hard zoned R-PD7; 3) zoning takes precedence over the City's General Plan; and 4) the Peccole Ranch Concept Plan (PRMP) has no effect on the 35 Acre Property.

ARGUMENT

1.

NEARLY ALL OF THE CITY'S 27-PAGE OPPOSITON MUST BE DISREGARDED, BECAUSE IT IS BASED ON PETITION FOR JUDICIAL REVIEW LAW AND STANDARDS

A. The Findings of Fact and Conclusions of Law from the Petition for Judicial Review Must Not Be Considered When Deciding the "Property Interest" Issue

The City's first argument in its 27-page Opposition is that this Court's Findings of Fact and Conclusions of Law entered in the Petition for Judicial Review (hereinafter "the PJR FFCL") require a finding that the Landowners have no "property interest" in the 35 Acre Property and that the Landowners' "failure to cite that [PJR FFCL] in this motion, speaks volumes." Opp. at 3:10-11; 9-10. However, this Court has repeatedly rejected the City's position that the PJR FFCL governs this inverse condemnation case, first, severing the inverse condemnation claims from the PJR claims and, second, holding in three orders that the "facts and law" and the "the evidence and burden of proof" are distinct matters and, for this purpose, the PJR law does not apply in this inverse condemnation case. In fact, this Court has explicitly held that it is "improper" to apply the PJR FFCL and PJR legal standards in this inverse condemnation case:

> January 5, 2019, Order - "[T]his Court ***had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims*** as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018 ("FFCL") [PJR FFCL]. Exhibit 17 to this Reply, Appendix of Exhibits to Reply ("App.") at 0002 (January 5, 2019, Order *Nunc Pro Tunc,* 2:14-17).

May 15, 2019, Order - "[B]oth ***the facts and the law are different*** between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them 'two disparate sets of claims' the City argued that ..." Exhibit 18 to Reply, App. at 0024 (May 15, 2019, Order, 21:15-20).

May 15, 2019, Order - "***The evidence and burden of proof are significantly different*** in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof." Id., App. at 0025 / 22:1-11.

May 15, 2019, Order - "[T]he City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, ***unlike an inverse condemnation***, which is of constitutional magnitude and requires all government actions against the property at issue to be considered." Id., App. at 0011-0012 / 8:25 – 9:2.

May 7, 2019, Order - "[T]he Court concludes that its conclusions of law regarding the petition for judicial review ***do not control its consideration of the Developer's [Landowner's] inverse condemnation claims***." Exhibit 19 to Reply, App. at 0038 (May 7, 2019, Order, 11:20-22)

May 15, 2019, Order - "For these reasons, ***it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims.***" Exhibit 18 to Reply, App. at 0026 / 23:7-8.

And, on the specific pending *property interest* topic, this Court held that under eminent domain law "every landowner in the state of the Nevada has the ***vested right*** to possess, use, and enjoy their property," that this eminent domain law applies to determine the *property interest* in this case, and that the petition for judicial review law (cited in the City's 27-page Opposition) is entirely irrelevant when deciding this issue:

May 15, 2019, Order - "Furthermore, ***the law is also very different in an inverse condemnation case than in a petition for judicial review***. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev. 2007), McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of Monterey v. Del Monte

Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). ***In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid***. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012). ***On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council***. Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004). Exhibit 18 to Reply, App. at 0025 / 22:13-27

May 15, 2019, Order - "Any determination of whether the Landowners have a 'property interest' or the vested right to use the 35 Acre Property ***must be based on eminent domain law, rather than the land use law."*** Exhibit 18 to Reply, App. at 0010 / 7:26-27.

Accordingly, the City's arguments based solely on the PJR FFCL or PJR law must be rejected.

B. Given the Courts Clear Prior Rulings on This Issue, the Landowners Will Not Address the Sections the City Devotes to the PJR FFCL and PJR Law as These Sections are Entirely Irrelevant to the "Property Interest" Inquiry before This Court

The law of this case[3] is that the "property interest . . . must be based on eminent domain law, rather than the land use law [PJR standard]," therefore, the Landowners need not address the following sections of the City's Opposition:[4]

City Sections

II. Arguing that zoning does not create a vested right, Opp. at 10-11 (relying solely on the inapplicable PJR FFCL).

A. Arguing that Nevada law consistently holds that zoning does not create a vested right, Opp. at 11 (relying solely on distortions of inapplicable PJR case law).

---

[3] *See* Hsu v. Clark County, 123 Nev. 625 (2007) (courts generally refuse to reopen what has already been decided).

[4] These sections from the City's Opposition encompass 18 out of the City's 27 pages of argument and are based solely on the following PJR cases: Am. W. Deve., Inc. v. City of Henderson, 111 Nev. 804 (1995); Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523 (2004); City of Reno v. Nev. First Thrift, 100 Nev. 483 (1984); Bd. of Cnty. Comm'rs v. CMC of Nev., Inc., 99 Nev. 739 (1983); Tigh v. von Goerken, 108 Nev. 440 (1992); Nev. Contractors v. Washoe Cnty., 106 Nev. 310 (1990).

B. Arguing that the City's regulations provide the City with discretion to deny development, Opp. at 11-14 (relying solely on distortions of inapplicable PJR case law).

E. Arguing that zoning is irrelevant to defining the Developer's property right or interest or whether the City is liable for a taking, Opp. at 16-19 (relying solely on distortions of inapplicable PJR case law and addressing the taking issue that is not even before the Court).

Before moving on, however, it is worth noting the inescapable fallacies in the City's flawed legal arguments. First, the City asserts that the City has "discretion" to deny <u>any and all</u> development applications under PJR law and, therefore, no landowner in the City of Las Vegas has any *property interest* as long as any development application is subject to consideration by the City Council. This is a wildly unconstitutional position in an eminent domain case as it would allow the City to take property that has not yet received a development application approval ***without paying for the taken land*** as, according to the City, the land has no *property interest* yet. Not only does this defy common sense, it is simply not the law.

Second, the City references the eminent domain cases cited by the Landowners and concludes, "[w]hile these cases show that courts might consider zoning when determining value of a property, they do not support the contention that zoning is relevant to determine a property interest, or that zoning establishes a right to 'use property.'" Opp. at 17, 18-19. This makes no legal or common sense whatsoever. The value of property is inextricably intertwined with the legally permissible use of the property - if there is a right to use property, it has value. Stated another way, if zoning allows the use of a property, it has a value attributed to that use. As a result, by conceding that zoning is relevant to determining the value of property in an eminent domain action, the City admits that zoning establishes the use of the property or the "property interest." *See* f.n. 6, below.

2.

THE ISSUE BEFORE THIS COURT IS WHETHER, UNDER EMINENT DOMAIN LAW, RESIDENTIAL USE IS PERMITED *BY RIGHT* ON PROPERTY HARD ZONED R-PD7

A. Nevada Eminent Domain Law Clearly States that Hard Zoning is Used to Determine the Underlying "Property Interest" in Eminent Domain Actions

The City asserts that zoning "is ***irrelevant*** to determine the 'underlying property interest'" in an inverse condemnation action, but fails to cite to any eminent domain law, or even sound argument, that supports this assertion. Opp. at 16:21-22, 19:17. Emphasis added. If zoning is "irrelevant" to determine a *property interest* in inverse condemnation cases, then what is relevant? According to the City's legal argument (which has already been rejected by this Court in the three orders cited above), no *property interest* exists with respect to zoned property if its General Plan designation is inconsistent with the zoning, meaning all properties in the City of Las Vegas that have inconsistent land use designations are worthless and can be taken without payment of just compensation. Not only is this contrary to the City Code and the law in Nevada, it is contrary to the clear and unwavering position the City has publicly declared at nearly every hearing held before the City.[5]

Eminent domain law unanimously holds that the underlying *property interest* in an eminent domain case is determined ***based on the hard zoning***, unless it can be shown that a higher zoning could be achieved.[6] This is hornbook eminent domain law and has never been challenged in the

---

[5] See argument below in section 2. B. and section 3, setting forth this City position.

[6] City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003) (district court properly considered current zoning and potential for higher zoning); Clark County v. Alper, 100 Nev. 382 (1984) (as a restriction on land use, the existing zoning ordinance is proper matter to consider in an eminent domain action), *citing* U.S. v. Edent Memorial Park Ass'n, 350 F.2d 933 (9th Cir. 1965) (taken land must be valued based on existing zoning ordinance). *See also* Vacation Village, Inc. v. Clark County, 497 F.3d 902 (2007) (citing Bustos, supra, for the proposition that district court should consider zoning ordinance existing at time of taking); Township of Manalapan v. Gentile, 2020 WL 2844223 (N.J. 2020) (highest and best use in eminent domain case is "ordinarily evaluated in accordance with current zoning." Id., at 8.); Berry & Co., Inc. v. County of Hennepin, 2017 WL

State of Nevada. Accordingly, the R-PD7 hard zoning on the 35 Acre Property must be used to determine the *property interest* in this eminent domain case for the 35 Acre Property as of the September 14, 2017, date of valuation.

B. The Nevada Supreme Court Established in the 17 Acre Case that the R-PD7 Zoning Governs Development

The City's assertion that the Nevada Supreme Court's 17 Acre Case opinion "did not find that R-PD7 ***governs*** the property" is without any basis. Opp. at 15:27. The exact same arguments the City is presenting to this Court were presented to the Nevada Supreme Court in the 17 Acre Property appeal, namely, that there is a PR-OS over the property on the Peccole Concept Plan [PRMP] and the City's General Plan, that these "plans" govern development, not hard zoning, and that the PR-OS precludes residential uses, as follows:

- "Thus, in approving the Peccole Ranch Master Plan [PRMP], the City expressly designated the Subject Property [17 Acre Property] as open space/golf course/drainage with zero net density [PR-OS]." Exhibit 41 to Reply, App. at 0169 (Respondent's Answering Brief on appeal in 17 Acre Property Case, p. 9).
- "The City confirmed the Peccole Ranch Master Plan in subsequent amendments and re-adoption of its own General or Master Plan, both in 1992 and again in 1999. [citation omitted] On the maps of the City's Master Plan, the land for the golf course/open space/drainage is expressly designated as Parks/Recreation/Open Space (PR-OS)." Id.
- "Both the City's Master Plan [General Plan] and the City's Code preclude residential units on land designed as PR-OS." Id., at 0170 / 10.

The Nevada Supreme Court flatly rejected the argument that the Peccole Concept Plan and the Las Vegas General Plan govern development, instead, finding that the R-PD7 hard zoning

---

1148781 (2017) (In an eminent domain case, "[g]enerally, legally permissible uses would conform to the land's current zoning classification." Id., at 6). *See also* S. Bernstein, *Zoning as a Factor in Determination of Damages in Eminent Domain*, 9 A.L.R.3d 291 (2005), citing City of Las Vegas v. C. Bustos, supra. (("it is generally held that, as a restriction on land use, an existing zoning ordinance is a proper matter for consideration in a suit for the condemnation of property, for the purpose of determining the actual market value thereof in measuring damages."); 4 Rathkopf's The Law of Zoning and Planning § 75:6, Evidence of Probability of Zoning Change (4th Ed.) (Where property taken by eminent domain is subject to zoning, the permitted use as it affects value is that use ordinarily authorized by the zoning regulations at the time of the taking.).

governs development, holding "the parcel carries a zoning designation of residential planned development district [R-PD7]" and that, with this R-PD7 zoning, all that was needed to actually build on the property was a "site development plan." Mot. Exhibit 4, at 4. The Court expressly rejected any application of the PRMP, stating a major modification of the PRMP was not required to build residential units. Id.

Accordingly, there is a Nevada Supreme Court opinion directly on point, holding: 1) zoning governs development in the City of Las Vegas; 2) R-PD7 zoned property may be used for residential purposes; and, 3) the PRMP and City General Plan do not govern development.

C. For At Least the Past 45 Years the City Has Applied Zoning to Determine Land Uses / Property Interest, Not the City's General Plan

Contrary to its current argument, the City has repeatedly maintained, consistent with the Nevada Supreme Court 17 Acre Property opinion, that: 1) zoning governs the use of property in the City of Las Vegas (property interest); and, 2) the City's General Plan has no legal effect on the presently existing legally permissible use of property and its development in accordance with that use.

In pleadings submitted under Rule 11 to Judge Crockett the City argued that 1) "[i]n the hierarchy, ***the land use designation is subordinate to the zoning designation***;" and, 2) that "***zoning designations specifically define allowable uses*** and contain the design and development guidelines for those intended uses" and then submitted a "land use hierarchy" chart from the City's own 2020 Master Plan that shows zoning at the top of the hierarchy to prove that existing "zoning defines allowable uses" presently permitted on a property in the City of Las Vegas, not the General Plan, which applies to future allowable uses *in the case of a change in zoning only*. *See* Exhibit 20 to Reply, App. at 0042 (Portion of City Brief to Judge Crockett) and Exhibit 21 to Reply, App. at 0044 (City Land Use Hierarchy Chart). And, in pleadings submitted in an inverse condemnation case under Rule 11 to Judge Sturman the City maintained that "a City's Master Plan [General Plan]

is a ***planning document***" and "that a designation on the General Plan "was a routine planning activity that had ***no legal effect on the use and development***" of affected property. Exhibit 22 to Reply, App. at 0046-0047, 0049 (City Opposition filed in Moccasin & 95, LLC v. City of Las Vegas, portions only, pp. 8:22-23; 8:28-9:1-2**;** 11:16-18). Emphasis added. Moreover, two City Attorneys submitted affidavits under oath to Judge Sturman that "the Office of the City Attorney has ***consistently*** advised the City Council and the City staff that the City's Master Plan [General Plan] is a ***planning document only*** and that placement of a roadway [designation] on the Master Plan [General Plan] ***cannot be used to restrict or impair the development of adjoining parcels***."[7] Exhibit 23 to Reply, App. at 0050-0053 (City Attorney Affidavits). Emphasis added.

Counsel for the Landowners has handled 100s of eminent domain cases in the State of Nevada over the past 45 years and, as confirmed by the City Attorneys in this very case, zoning has always been used to determine the property interest in these cases. Counsel has never had to litigate in a Nevada eminent domain case that zoning is "irrelevant" to the property interest determination because it is axiomatic. Further evidencing that the City clearly understands that zoning governs the use of property is the City's official process to determine the use of property within its jurisdiction requires submitting a "Zoning Verification Letter Form" to the City (Mot., Exhibit 2) after which the City provides a "Zoning Verification Letter" (Mot., Exhibit 3). Moreover, when purchasing a property, title insurance companies issue "zoning" endorsements to insure the allowable use for the property, not "general plan designation" endorsements. Title companies rely on Zoning Confirmation Letters from municipalities prior to issuing the ALTA 3-06 endorsement. The endorsement provides coverage regarding: 1) the zoning classification of the property; and, 2) the types of uses allowed under that classification.

D. The 35 Acre "Property Interest" Must Be Decided Based on Those Legally Permitted Uses For R-PD7 Zoning in the City's Code

Because zoning governs the legally permitted use of property, this Court's "property interest" determination must be decided based upon those uses that can be made of the 35 Acre Property under the R-PD7 zoning. In regards this issue, the City asserts that undersigned counsel makes a "blatant misrepresentation." Opp. 14:22-23. Undersigned counsel has never and will never make any sort of misrepresentation to this court. There are two sections of the City Code that undeniably state that residential use is permitted *by right* on R-PD7 zoned property.

First, the R-PD section of the City Code states that "single-family and multi-family residential" are permitted uses *by right* on R-PD7 zoned properties. Under LVMC UDC 19.10.050 (C)(1), the "Permitted Land Uses" in the R-PD District are "single-family and multi-family residential." *See* mot. Exhibit 5. The City Code then defines "Permitted Uses" as "Any use allowed in a zoning district as a matter ***of right***." *See* Mot. Exhibit 8 (LVMC 19.18.020, "permitted uses" defined). Accordingly, since the 35 Acre Property is zoned R-PD7, single-family and multi-family residential are uses permitted "by right" on the property.

Second, the standard residential zoning district section of the City Code also states that residential use is permitted "by right" on R-PD7 zoned properties. R-PD7 zoning is a designation that means up to 7 residential units per acre may be developed.[8] The "standard residential district" that is listed in the City's Land Use Table and which is most compatible to the R-PD7 zoning is used to determine the development densities allowed on the R-PD7 zoned property. *See* Mot. Exhibit 5, LVMC 19.10.050(A) and (C)(3) ("the types of development permitted within the R-PD District can be more consistently achieved ***using the standard residential districts***, which provide

[8] *See* City Opp. Exhibit S, Vol 2, part 2, p. 340 / CLV210178, section (3) (-C-) stating "The number of dwelling units per gross acre shall be placed after the zoning symbol R-PD; for example, a development for 6 units per gross acre shall be designated as R-PD6."

a more predictable form of development" and "***The 'equivalent standard residential district' means a residential district listed in the Land Use Tables*** which, in the Director's judgment, represents the (or a) district which is most comparable to the R-PD District in question, in terms of density and development type."). The "standard residential district" that is most compatible to the 35 Acre Property's R-PD7 zoning is R-2, because R-2 allows 6-12 units per acre and R-PD7 allows up to 7 units per acre. *See* Mot., Exhibit 7 (LVMC 19.01.100). Therefore, under the City Code, the R-2 "standard residential district" is used to determine the development densities on R-PD7 zoned property. The City's Land Use Table then provides the uses and densities for the R-2 district. "Single family residential" is a "permitted use" in the R-2 district and the City Code defines a "permitted use" on its Land Use Table as a use "***by right***." The following demonstrates this analysis on the City's Land Use Table as follows:

[see Land Use Table on following page]

Table 1 - Interpretation of Land Use Tables 19.12.010(B)	
Symbol	Meaning
P	The use is permitted as a principal use in that zoning district by right.
A	The use is permitted as an accessory use to a main use in the district. This does not exclude other land uses which are generally considered accessory to the primary use.
C	The use is permitted, but only in accordance with the conditions specified in LVMC 19.12.070 for conditional uses.
S	The principal use is permitted in that zoning district only after first obtaining a Special Use Permit (SUP) as set forth in LVMC 19.16.110. Base standards may apply to an SUP approval, as specified in LVMC 19.12.070.
H	The use is permitted by means of a Home Occupation Permit.
T	The use is permitted by means of a Temporary Commercial Permit in accordance with LVMC 19.16.160.
	A blank square shall mean that the use is not allowed in that zoning district.

Secondhand Dealer															C	C	S	C	C
Click Title for additional information	U	R-E	R-D	R-1	R-SL	R-CL	R-TH	R 2	R-3	R-4	R-MH	P-O	O	C-D	C-1	C-2	C-PB	C-M	M
Senior Citizen Apartments									P	P					C				
Sex Offender Counseling Facility															S	S		C	C
Sexually Oriented Business *(Ord. 6593 §2, 08/16/17)*																		C	C
Shopping Center															P	P		P	P
Short-Term Residential Rental *(Ord. 6585 §11, 06/21/17)*	C	C	C	C	C	C	C	C	C	C		C	C		C	C	C		
Single Family, Attached							P	P	P	P									
Single Family, Detached	P	P	P	P	P	P	P	P	P	P	P								

See Mot., Exhibit 6 (LVCM 19.12.010).

This means that residential is a use permitted "by right" for property that is hard zoned R-PD.[9] Accordingly, the second request in the Landowners' Motion should be granted, namely, that

[9] The City asserts that residential is not the only use allowed in the R-PD zoning, because the zoning also allows for residential "supporting uses." City Opp. at 14:12-15. Contrary to the City's disingenuous interpretation, "supporting uses" refers to those uses that "support" the residential development, like a carport, not some use independent of the residential development, like open space which is a separate and defined land use.

the permitted use of the 35 Acre Property "by right" under the R-PD7 zoning is "single-family and multi-family residential."[10]

E. The Clark County Tax Assessor Found that the Lawful use of the 35 Acre Property is Residential

An additional reason to find that a residential use is permitted by right is in September, 2017 the Clark County Tax Assessor and the Landowners entered into a "stipulation" pursuant to NRS Chapter 261 that as of December, 2016, the "lawful" use of the 35 Acre Property is single family residential[11] and the 35 Acre Property has been valued at $17,886,751.00 (as of 2017), requiring that the Landowners pay over $200,000 per year based on this single family residential use and value for which the City of Las Vegas receives a portion of those tax proceeds.[12]

3.

REBUTALL OF THE CITY'S GENERAL PLAN AND PRMP PR-OS ARGUMENTS

The City maintains that all of the above Nevada eminent domain law, the Nevada Supreme Court Order right on point, the City's own position for the past 45 years, the City's own Municipal Code, and the County Assessor finding that the lawful use of the 35 Acre Property is "residential" should be disregarded and, instead, this Court should apply two "plans" to determine the "property interest" issue - the City's General Plan and the Peccole Ranch Concept Plan (PRMP), which allegedly designate the 35 Acre Property "PR-OS." As explained above, the Nevada Supreme Court already rejected this City argument, holding that the R-PD7 zoning governs development.

---

[10] Multi-Family is also a permitted use on R-PD7 Property. As explained in the Landowners' Opening Motion, LVMC 19.10.050 (-C) establishes the "**permitted** land use" on R-PD7 zoned property as "[s]ingle-family and multi-family residential." *See* Mot. Exhibit 5.

[11] Exhibit 26 to Reply, App. at 0064 ("Stipulation for the State Board of Equalization," dated September 21, 2017).

[12] Exhibit 24 to Reply, App. at 0054-0055 (Assessor Summary Valuation); Exhibit 25 to Reply, App. at 0056-0061 (Assessor Valuation Analysis); Exhibit 25a to Reply, App. at 0062-0063 (Assessor Summary Page).

See Mot. Exhibit 4, at 4. This means that neither the City's General Plan nor the PRMP apply for purposes of determining a "property interest" in this case. Moreover, the following analysis further rebuts this City argument.

A. Rebuttal of the City's Assertion that the City's General Plan Applies and that the General Plan Designates the 35 Acre Property "PR-OS"

The City's argument that the City's General Plan designates the 35 Acre Property PR-OS (parks, recreation, and open space) and this City General Plan designation must be used to determine the property interest issue in this case is both legally and factually wrong.

1. The City's General Plan Does Not Officially Designate the 35 Acre Property PR-OS

To amend the City's General Plan to provide a "new" land use designation for a property within the City jurisdiction, the City must comply with the NRS Chapter 278 statutory requirements and LVMC 19.16.030, which are extensive. Here, contrary to their position during the Landowners' attempts to develop the 35 Acre Property, the City is asserting that a "PR-OS" designation significantly restricts the use of property to only "open space."

Indeed, the City Planning Department, the City Attorney's Office, and the Landowners have conducted extensive and exhaustive searches to determine whether the 35 Acre Property has ever been legally designated "PR-OS" on the City's General Plan under NRS Chapter 278 and LVMC 19.16.030 since its zoning to R-PD7 under Ordinance 5353 on August 15, 2001. The outcome of the research is that the City has never properly or officially designated the 35 Acre Property PR-OS.

- City Planning Department and City Attorney's Office - "If I can jump in too and just say that everything Tom [Tom Perrigo – Director of Planning] said is absolutely accurate. The R-PD7 preceded the change in the General Plan to PR-OS. **There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS**, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." Exhibit 27 to Reply, App. at 0067 (June 13, 2017 City Planning Commission Meeting Transcript, statement by City Attorney

Brad Jerbic, confirming the research done by Tom Perrigo from the City Planning Department).

- Landowners - "**We've done a lot of research and haven't been able to find any indication of how PR-OS was placed on this property**." Exhibit 28 to Reply, App. at 0074 (June 21, 2017, City Council Transcript, statement by Stephanie Allen, counsel for the Landowners, p. 20:519-520).

Therefore, any map that the City may present to this Court that shows a "green" shade on the 35 Acre Property to be "PR-OS" is meaningless; it is nothing more than a map where a City employee hit a button to color the area over the 35 Acre Property green. It is not a properly adopted NRS Chapter 278 and LVMC 19.16.030 General Plan, instead, it is merely a map that is "for reference only."[13]

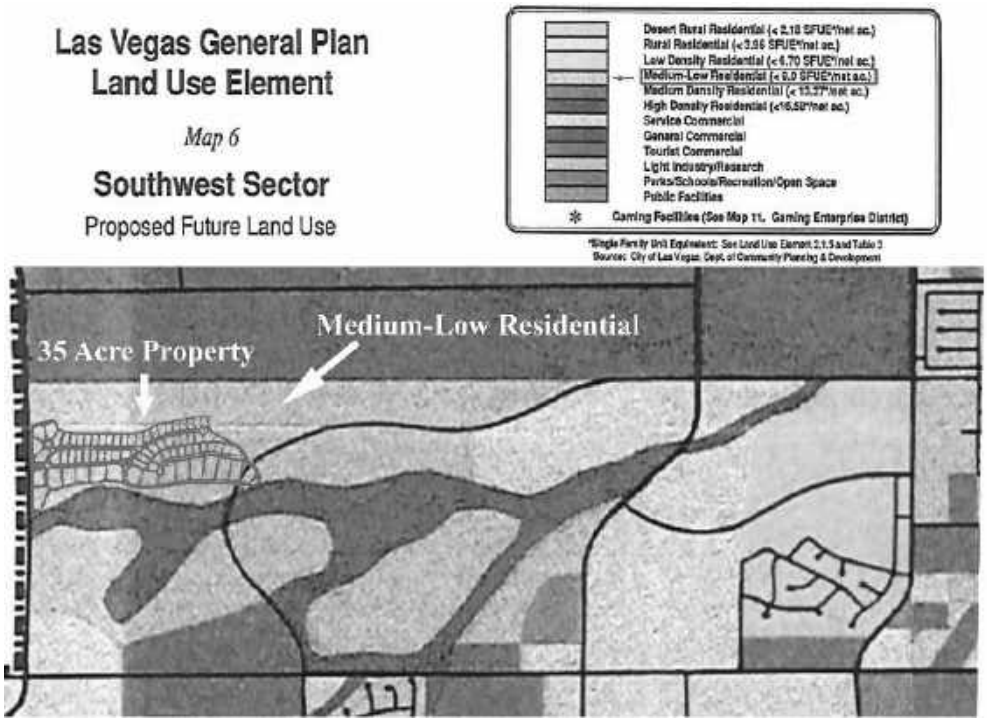
Finally, the City asserts that when the Landowners made their applications to develop the 35 Acre Property in 2016, they filed applications that stated there was a "PR-OS" on the property. City Opp. 8:2-5. The City neglects to inform this Court that it was the City that *required* the landowner to file the applications noting the PR-OS designation. At the time the applications were filed the Landowners vehemently contested the alleged PR-OS designation and the City refused to accept the applications without this PR-OS reference. *See* Exhibit 29 to Reply, App. at 0079-0087 (letter from Landowner attorney to City Attorney Brad Jerbic). At the time of the applications, the Landowner confirmed that the City "told us that you 'could not find' any record of the [PR-OS] designation," confirmed with the City that the PR-OS "is not valid," and demanded that "any such PROS designation must be removed from the Property forthwith." Id. Moreover, the City continually informed the Landowner and the public at the City Council hearings that the PR-OS

[13] The land use maps the City attaches to its Opposition as part of City Exhibits O, P, Q, R, and S, that are dated after 1992 specifically state at the bottom right hand corner that, "GIS maps are normally produced only to meet the needs of the City" and "this map is ***for reference only.***" It appears that a City employee altered the "for reference only" maps to change the 35 Acre Property to a green PR-OS without any NRS Chapter 278 or LVMC 19.16.030 authority, which, as explained above, is not sufficient to legally designate the 35 Acre Property as "PR-OS."

designation was of no consequence and was not even necessary to change if zoning wasn't being changed. *See e.g.* Exhibit 40 to Reply, App. at 0153 (January 1, 2018 City Council transcript).

2. The City's 1992 General Plan Map Designates the 35 Acre Property "Medium – Low Residential" / Up to Nine Residential Units Per Acre

The City's assertion that it has "repeatedly confirmed" the City's 1992 PR-OS designation of the Badlands by duly adopted legislation is also incorrect. City Opp. 21:9-10. First, as explained above, the City fails to provide this Court with the alleged legislation that followed the NRS Chapter 278 and LVMC 19.16.030 requirements, instead, it wants this Court to take its word that this legislation exists. Second, even if the City "confirmed" the 1992 General Plan map, this map identifies the 35 Acre Property shaded in light brown, which is "Medium-Low Residential" or up to nine single family residential units per acre, not PR-OS:



See Opp., Exhibit I, Vol 2, Part 1, p. 256 for full size map.

Finally, the City's 1992 General Plan Amendment was adopted through Ordinance 3636, which states that the Amendment cannot impact already zoned properties: "Section 3: The

adoption of the General Plan referred to in this Ordinance ***shall not be deemed to modify or invalidate any proceeding, zoning designation***, or development approval that occurred before the adoption of the Plan nor shall it be deemed to affect the Zoning Map adopted by and referred to in LVMC 19.02.040." Exhibit 30 to Reply, App. at 0090 (Ordinance 3636, adopted in 1992). Emphasis added. The City has conceded that the entire 250 Acre Residentially Zoned Property has been zoned R-PD7 under a resolution of intent as of 1990. Therefore, even if the green shade (PR-OS) had been on the 35 Acre Property two years later in 1992 (which it is not), it would not impact the use of the property, because it was already zoned R-PD7 under resolution of intent; just as the long time City attorney Brad Jerbic stated, the R-PD7 [zoning] preceded any alleged change in the General Plan of PR-OS. *See* Exhibit 27 to Reply, App. at 0067.

Plainly stated, the City cannot produce to this Court a City Ordinance that: 1) was properly noticed and adopted under NRS Chapter 278 and LVMC 19.16.030; 2) specifically identifies the 35 Acre Property to be changed on the General Plan; and, 3) then changes the designation on the 35 Acre Property from residential to "PR-OS." The reason the City cannot produce this is because its own planning department and City Attorney's office determined it does not exist.

3. A PR-OS Designation on the City's General Plan does not Trump Hard Zoning in an Inverse Condemnation Proceeding

Since there never has been a General Plan "PR-OS" designation on the Landowners' 35 Acre Property, a "PR-OS" could never "trump" the R-PD7 hard zoning on the 35 Acre Property. But, since the City raises this argument completely contrary to the position it has taken until this motion was filed, the Landowners provide the following bullet point summary of facts and law that entirely disprove this City argument in the context of inverse condemnation law:

- The Nevada Supreme Court considered the developability of the adjoining 17 Acre Property and determined that the R-PD7 zoning governs its use; there was no reference whatsoever to a "PR-OS" on the City's General Plan, even though the City's PR-OS argument was presented to the Court. Mot, Exhibit 4 at p. 4.

- Attorney General Opinion 84-6, holding "the Nevada Legislature has always intended local zoning ordinances to control over general statements or provisions of a master plan [General Plan]," citing to NRS 287.349(3)(e) ("if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence."). Exhibit 31 to Reply, App. at 0097 (AGO 84-6, pp. 18-19).

- As referenced above, the City Attorney has contended in pleadings and filings to the Court that, "[i]n the hierarchy, ***the land use designation is subordinate to the zoning designation***" (Exhibit 20 to Reply, App. at 0042) and a designation on the General Plan has "***no legal effect on the use and development***" of affected property (Exhibit 22 to Reply, App. at 0046-0047). Emphasis added.

- City Attorney Brad Jerbic stated that the "rule is hard zoning, in my opinion, does trump the General Plan designation." Mot., Exhibit 13, lines 1788-1789. "The zoning [R-PD7] has been in place here for 27 years. . . . "if you don't even have a general plan amendment that synchronized the General Plan with the zoning, the zoning is in place, and it doesn't change a thing." Exhibit 32 to Reply, App. at 00105 (transcript of August 2, 2017, City Council meeting, p. 95:2648-2654).

- City Planning Director Tom Perrigo stated, "If the land use and the zoning aren't in conformance, then the zoning would be a higher order entitlement." Exhibit 33 to Reply, App. at 0110 (Tom Perrigo Deposition, p. 53:4-6).

Therefore, the City's argument that there is a PR-OS on the City's General Plan that governs the development of the 35 Acre Property is both factually and legally incorrect.

B. Rebuttal of the City's Peccole Ranch Concept Plan (PRMP) Argument

The City's next argument is that a 30 year old concept plan from 1990 that was prepared by William Peccole (PRMP) designates "open space" over the 35 Acre Property and this Court must follow this PRMP. City Opp. at 3-4. As explained above, the Nevada Supreme Court rejected this City argument, holding "the parcel [17 Acre Property] carries a zoning designation of residential planned development district.. . . This process ***does not require Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan*** [PRMP] prior to submitting the at-issue applications." *See* Mot., Exhibit 4 at p. 4. Long time City Attorney, Brad Jerbic, also rejected this City argument, stating, "The Peccole Ranch Phase II plan (PRMP) was a very, very, very general plan. I have read every bit of it. If you look at the original plan and look what's out there today, it's different. . . . So the plan - - the master plan that we talk about, ***the Peccole Phase 2 master***

plan (PRMP) is not a 278A agreement, it never was, never has been, not a word of that language was in it. We never followed it." Exhibit 34 to Reply, App. at 0121 (Badlands Homeowners Meeting Transcript, p. 60, 117). Emphasis added. The City's attempt to get this Court to ignore the Nevada Supreme Court opinion and the City Attorney's analysis should be rejected.

C. The Development of the 35 Acre Property is Not Governed by Any "Plan"

The City's last-ditch effort is to incorrectly assert that the 35 Acre Property is bound by an undefined "cluster zoning" or some undefined "conditions"[14] that are tied to a 2,000 + acre development "plan" for the area. To the contrary, the undisputed facts show that the 35 Acre Property has been zoned R-PD7 since at least 1990 and that Ordinance 5353 passed on August 15, 2001, unconditionally zoned the 35 Acre Property as R-PD7, meaning only the hard R-PD7 zoning governs the development of the 35 Acre Property. *See* Mot. Exhibit 10.

Moreover, the only plan in the area of the 35 Acre Property is the Peccole West/Queensridge development plan[15] and the 35 Acre Property is expressly excluded from this Peccole West/Queensridge plan.[16] As a result, the 35 Acre Property cannot serve as a conditional

---

[14] The City's "condition" argument is without merit. It is well established that "land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." In re Champlain Oil Co. Conditional Use Application, 93 A.3d 139, 141 (Vt. 2014). In this connection, not every item discussed at a hearing becomes a "condition" to development, rather the local land use board has a duty to "clearly state" the conditions within the approval ordinance without reference to the minutes of a proceeding. Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997). Here, the City fails to provide any evidence that an ordinance adopted by the City "clearly states" a "condition" that the 35 Acre Property remain a "golf course" or "open space." And, according to Clyde Spitze, who assisted Mr. Peccole with his plans in the area in the 1990s, the City of Las Vegas has never imposed a condition that the 35 Acre Property remain a golf course or open space. Exhibit 35 to Reply, App. at 0128-0129 / pp. 178-179, 187.

[15] *See* Exhibit 37 to Reply, App. 0137-0140 (Queensridge CC&Rs and Peccole West Final Map); Exhibit 38 to Reply, App. at 0141-0145 (Clark County Assessor summary reports for properties in the area identifying the subdivision as "Peccole West.").

[16] *See* Exhibit 37 to Reply, App. 0139 ("Final Map for Peccole West" and the Queensridge CC&Rs, stating the 250 Acre Residential Zoned Land are "NOT A PART" of the Peccole West / Queensridge Plan) and Exhibit 39 to Reply, App. at 0146, 0147 (Nevada Supreme Court "Order

"open space" / "golf course" for the Queensridge CIC as alleged by the City. In other words, the 35 Acre Property cannot serve as a "condition" for something that it is not a part of.

Finally, the City's contention that 250 Acre Residential Zoned Land is part of some invented "cluster zoning"[17] is unsupported by any ordinance or City of Las Vegas Special Area Plan. It is undisputed that the separate parcels comprising the 250 Acre Residential Zoned Land are private property, are not municipally owned, not zoned 'CV' – Civic zoning district, and "not a part" of the Queensridge common interest community. Simply stated, the 35 Acre Property is an independent, R-PD7 hard zoned property and this hard R-PD7 zoning governs the use of the 35 Acre Property.

CONCLUSION

As explained, it is critical for this Court to make the "property interest" determination at this stage of these proceedings. The City has already conceded the Landowners first request, that the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation, leaving only the Landowners' second request, namely, whether the permitted use *by right* under the R-PD7 zoning is "single-family and multi-family residential." As there is no proper factual or legal dispute that zoning governs the use of property and that single-family and multi-family residential are the permitted uses "by right" under this R-PD7 zoning, this Court should grant this second request to establish the "property interest."

Accordingly, it is respectfully requested that this Court enter an order that: 1) the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2)

---

of Affirmance, Case No. 72455, at p. 2, holding the 250 Acre Residential Zoned Land "was **not part** of the Queensridge community under the original CC&Rs and public maps and records.").

[17] The City has invented its "cluster zoning" argument. The City has no evidence that "cluster zoning" actually occurred in the constructed Peccole West/Queensridge subdivision development nor has the City produced any evidence that Queensridge received any higher density under the R-PD7 zoning due to the alleged dedication of the 250 Acres as open space.

that the permitted use "by right" under the R-PD7 zoning are "single-family and multi-family residential."

Dated this 9th day of September, 2020.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 9th day of September, 2020, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the Reply in Support of Plaintiff Landowners' Motion to Determine "Property Interest" was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

MCDONALD CARANO LLP
George F. Ogilvie III
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGA CITY ATTORNEY'S OFFICE
Bradford Jerbic, City Attorney
Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbynes@lasvegasnevada.gov
Sfloyd@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Evelyn Washington
Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters

Electronically Filed
9/9/2020 3:00 PM
Steven D. Grierson
CLERK OF THE COURT

APEN
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **APPENDIX OF EXHIBITS TO REPLY IN SUPPORT OF PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** **VOLUME 1**

Plaintiffs LANDOWNERS hereby submit their Appendix of Exhibits to Reply in Support of Landowners' Motion to Determine "Property Interest."

//

//

//

//

Exhibit	Exhibit Description	Vol.	Bates No.
17	January 5, 2019, Nunc Pro Tunc Order	1	0001-0003
18	May 15, 2019, Order	1	0004-0027
19	May 7, 2019, Order	1	0028-0040
20	Portion of Brief to Judge Crockett	1	0041-0043
21	Land Use Hierarchy	1	0044
22	City Opposition filed in Moccasin & 95 v. City of Las Vegas	1	0045-0049
23	City Attorney Affidavits	1	0050-0053
24	Assessor Summary Valuation	1	0054-0055
25	Assessor Valuation Analysis	1	0056-0061
25a	Assessor Summary Page	1	0062-0063
26	Assessor Stipulation	1	0064
27	June 13, 2017, PC Transcript (partial)	1	0065-0068
28	June 21, 2017, City Council Transcript	1	0069-0078
29	Dec. 7, 2016, letter from Jimmerson to Jerbic	1	0079-0087
30	Ordinance 3636	1	0088-0096
31	1984 AGO 84-6	1	0097-0103
32	August 2, 2017, Transcript (partial)	1	0104-0106
33	Tom Perrigo Deposition	1	0107-0115
34	Badlands Homeowners Meetion 11.1.16 (partial)	1	0116-0124
35	Clyde Spitze Deposition (partial)	1	0125-0135
36	Actual Land Use V. PRMP	1	0136
37	QR CCRs and Final Map for Peccole West (portions)	1	0137-0140
38	Clark County Assessor Summary Showing Peccole West	1	0141-0145
39	Supreme Court Case No. 72455, Order of Affirmance	1	0146-0150

40	January 1, 2018, City Council Transcript (partial)	1	0151-0153
41	Answering Brief on Appeal (partial)	1	0154-0170
42	Declaration of James J. Leavitt	1	0171-0172

Dated this 9th day of September, 2020.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *Kermitt L. Waters*
KERMITT L. WATERS, ESQ.
Nevada Bar No. 2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 9th day of September, 2020, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the **APPENDIX OF EXHIBITS TO REPLY IN SUPPORT OF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST", VOLUME 1** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

MCDONALD CARANO LLP
George F. Ogilvie III, Esq.
Amanda C. Yen, Esq.
Christopher Molina, Esq.
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford Jerbic, City Attorney
Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbynes@lasvegasnevada.gov
Sfloyd@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Evelyn Washington
Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters

Exhibit 17

Electronically Filed
2/6/2019 9:20 AM
Steven D. Grierson
CLERK OF THE COURT

ONPT
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018** Hearing Date: January 17, 2019 Hearing Time: 9:00 a.m.

01-29-19A10:51 RCVD

ORDER *NUNC PRO TUNC*
Regarding Findings of Fact and Conclusions of Law Entered November 21, 2018

Plaintiff, 180 LAND COMPANY, LLC ("Plaintiff" and/or "Landowner") Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims and the City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time and the Intervenors' Joinder thereto having come for hearing on January 17, 2019 at 9:00 a.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., and Mark Hutchison, Esq., appearing for and on behalf of the Plaintiff, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of Defendant, the City of Las Vegas, and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors. The Court having read all the papers filed by the parties and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims filed on December 11, 2018, is GRANTED, as this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed *nunc pro tunc*.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that Defendant, City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time filed on December 21, 2018, and the Joinder thereto is DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 5th day of ~~January~~ February, 2019.

DISTRICT COURT JUDGE

TCW

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: _____
KERMITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
MICHAEL A. SCHNEIDER, ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101

Attorneys for Plaintiff

Reviewed and Approved By:

McDonald Carano LLP

By: *Declined to Sign*
George F. Ogilvie III, Esq., NBN 3552
Debbie Leonard, Esq., NBN 8260
Amanda C. Yen, Esq., NBN 9726
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102

Attorneys for Defendant, City of Las Vegas

PISANELLI BICE PLLC

By: *None Responsive*
Todd L. Bice, Esq., NBN 4534
Dustun H. Holmes, Esq., NBN 12776
Kirill V. Mikhaylov, Esq., NBN 13538
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Intervenors

Exhibit 18

Electronically Filed
5/15/2019 12:57 PM
Steven D. Grierson
CLERK OF THE COURT

ORD
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims** Hearing Date: March 22, 2019 Hearing Time: 1:30 p.m.

04-24-19P02:49 RCVD

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenors' (from the Petition for Judicial Review[1]) Oppositions and the Landowners Replies[2] to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

I. The Landowners' Countermotion to Supplement/Amend the Pleadings

The Landowners moved this Court to supplement/amend their pleadings. The Landowners attached a copy of their proposed amended/supplemental complaint to their request pursuant to NRCP Rule 15. This matter is in its early stages, as discovery has yet to commence so no prejudice

---

[1] The Intervenors have not moved nor been granted entry into this case dealing with the Landowners' inverse condemnation claims, they have moved and been granted entry into the severed petition for judicial review.

[2] The Landowners withdrew this Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time, accordingly, no arguments were taken nor rulings issued.

or delay will result in allowing the amendment. The City argues that permitting the amendment would result in impermissible claim splitting as the Landowners currently have other litigation pending which also address the City action complained of in the amended/supplemental complaint. However, those other pending cases deal with other property also allegedly affected by the City action and do not seek relief for the property at issue in this case.

Leave to amend should be freely given when justice so requires. NRCP Rule 15(a)(2); Adamson v. Bowker, 85 Nev. 115, 121 (1969). Absent undue delay, bad faith or dilatory motive on the part of the movant, leave to amend should be freely given. Stephens v. Southern Nev. Music Co., 89 Nev. 104 (1973). Justice requires leave to amend under the facts of this case and there has been no showing of bad faith or dilatory motive on the part of the Landowners.

Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion to Supplement/Amend the Pleadings is **GRANTED**. The Landowners may file the amended / supplemental complaint in this matter.

II. The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims

The City moved this Court for judgment on the pleadings on the Landowners' inverse condemnation claims pursuant to NRCP 12(c). Only under rare circumstances is dismissal proper, such as where plaintiff can prove no set of facts entitling him to relief. Williams v. Gerber Prod., 552 F.3d 934, 939 (9th Cir. 2008). The Nevada Supreme Court has held that a motion to dismiss "is subject to a rigorous standard of review on appeal," that it will recognize all factual allegations as true, and draw all inferences in favor of the plaintiff. Buzz Stew, LLC v. City of North Las Vegas, 181 P.3d 670, 672 (2008). The Nevada Supreme Court rejected the reasonable doubt standard and held that a complaint should be dismissed only where it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief. Id., *see also* fn. 6. Additionally, Nevada is a notice pleading state. NRCP Rule 8; Liston v. Las Vegas Metropolitan Police Dep't, 111 Nev. 1575 (1995) (referring to an amended complaint, deposition testimony, interrogatory responses and pretrial demand statement as a basis to provide notice of facts that support a claim). Moreover, the Nevada Supreme Court has adopted the "policy of this state that

cases be heard on the merits, whenever possible." Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

A. The Landowners' Inverse Condemnation Claims

The Landowners have asserted five (5) separate inverse condemnation claims for relief, a Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking and, finally, a Temporary Taking. Each of these claims is a valid claim in the State of Nevada:

Categorical Taking - "Categorical [taking] rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical use of her property." McCarran Intern. Airport v. Sisolak, 122 Nev. 645, 663, 137 P. 3d 1110, 1122 (2006).

Penn Central Regulatory Taking - A Penn Central taking analysis examines three guideposts: the regulations economic impact on the property owner; the regulations interference with investment backed expectations; and, the character of the government action. Sisolak, supra, at 663.

Regulatory Per Se Taking - A Per Se Regulatory Taking occurs where government action "preserves" property for future use by the government. Sisolak, supra, at 731.

Non-regulatory Taking / De Facto Taking - A non-regulatory/de facto taking occurs where the government has "taken steps that directly and substantially interfere with [an] owner's property rights to the extent of rendering the property unusable or valueless to the owner." State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015). "To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights." Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. Ct. App. 1977).

Temporary Taking - "[T]emporary deprivations of use are compensable under the Taking Clause." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1011-12 (1992); Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012).

Here, the Landowners have alleged facts and provided documents sufficient to sustain these inverse condemnation claims as further set forth herein, which is sufficient to defeat the City's motion for judgment on the pleadings.

B. The Landowners' Property Interest

"An individual must have a property interest in order to support a takings claim....The term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110, 1119 (2006). "It is well established that an individual's real property interest in land supports a takings claim." ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639, 645, 173 P.3d 734, 738 (2007) *citing to* Sisolak and Clark County v. Alper, 100 Nev. 382 (1984). Meaning a landowner merely need allege an ownership interest in the land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners have made such an allegation.

The Landowners assert that they have a property interest and vested property rights in the Subject Property for the following reasons:

1) The Landowners assert that they own approximately 250 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005; 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-202-001 ("250 Acre Residential Zoned Land"). This action deals specifically and only with Assessor Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres" and/or "Landowners' Property" or "Property").

2) The Landowners assert that they had a property interest in the 35 Acre Property; that they had the vested right to use and develop the 35 Acre Property; that the hard zoning on the 35 Acre Property has always been for a residential use, including R-PD7 (Residential Planned Development District – 7.49 Units per Acre). The City does not contest that the hard zoning on the Landowners' Property has always been R-PD7.

3) The Landowners assert that they had the vested right to use and develop the 35 Acre Property up to a density of 7.49 residential units per acre as long as the development is comparable and compatible with the existing adjacent and nearby residential development. The Landowners' property interest and vested property rights in the 35 Acre Property are recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

4) The Landowners assert that their property interest and vested right to use and develop the 35 Acre Property is further confirmed by the following:

a) On March 26, 1986, a letter was submitted to the City Planning Commission requesting zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) and the zoning that was sought was R-PD7 as it allows the developer flexibility and shows that developing the 35 Acre Property for a residential use has always been the intent of the City and all prior owners.

b) The City has confirmed the Landowners' property interest and vested right to use and develop the 35 Acre Property residentially in writing and orally in, without limitation, 1996, 2001, 2014, 2016, and 2018.

c) The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which specifically and further demonstrates that the R-PD7 Zoning was codified and incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As part of this action, the City "repealed" any prior City actions that could conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

d) At a November 16, 2016, City Council hearing, Tom Perrigo, the City Planning Director, confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

e) Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

f) The City Planning Staff has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

g) The City's own 2020 master plan confirms the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

h) The City issued two formal Zoning Verification Letters dated December 20, 2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

i) The City confirmed the Landowners' vested right to use and develop the 35 Acres prior to the Landowners' acquisition of the 35 Acres and the Landowners materially relied upon the City's confirmation regarding the Subject Property's vested zoning rights.

j) The City has approved development on approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

k) The City has never denied an application to develop in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

l) There has been a judicial finding that the Landowners have the "right to develop" the 35 Acre Property.

m) The Landowners' property interest and vested right to use and develop the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is so widely accepted that even the Clark County tax Assessor has assessed the property as residential for a value of approximately $88 Million and the current Clark County website identifies the 35 Acre Property "zoned" R-PD7.

n) There have been no other officially and properly adopted plans or maps or other recorded document(s) that nullify, replace, and/or trump the Landowners' property interest and vested right to use and develop the 35 Acre Property.

o) Although certain City of Las Vegas planning documents show a general plan designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre Property, that designation was placed on the Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, any alleged PR-OS on any City planning document is being shown on the 35 Acre Property in error. The City's Attorney confirmed the City cannot determine how the PR-OS designation was placed on the Subject Property.

p) The 35 Acre Property has always been zoned and land use planned for a residential use. The City has argued that the Peccole Concept Plan applies to the Landowners' 35 Acre Property and that plan has always identified the specific 35 Acre Property in this case for a residential use. The land use designation where the 35 Acre Property is located is identified for a residential use under the Peccole Concept Plan and no major modification of Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre Property for a residential use.

Any determination of whether the Landowners have a "property interest" or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law. The Nevada Supreme Court in both the Sisolak and Schwartz v. State, 111 Nev. 998, fn 6 (1995)

decisions held that all property owners in Nevada, including the Landowners in this case, have the vested right to use their property, even if that property is vacant, undeveloped, and without City approvals. The City can apply "valid" zoning regulations to the property to regulate the use of the property, but if those zoning regulations "rise to a taking," Sisolak at fn 25, then the City is liable for the taking and must pay just compensation.

Here, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings.

C. City Actions the Landowners Claim Amount to A Taking

In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).

The City has argued that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of

constitutional magnitude and requires all government actions against the property at issue to be considered.

The Landowners assert that the following City actions individually and/or cumulatively amount to a taking of their Property:

1. City Denial of the 35 Acre Property Applications.

The Landowners submitted complete applications to develop the 35 Acre Property for a residential use consistent with the R-PD7 hard zoning. *Exhibit 22:App LO 00000932-949.* The City Planning Staff determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified Development Code (Title 19), and appropriately recommended approval. *Exhibit 22: 4 App LO 00000932-949 and Exhibit 23: 4 App LO 00000950-976.* Tom Perrigo, the City Planning Director, stated at the hearing on the Landowners' applications that the proposed development met all City requirements and should be approved. *Exhibit 5: 2 App LO 00000376 line 566 - 377 line 587.* The City Council denied the 35 Acre Property applications, stating as the sole basis for denial that the City did not want piecemeal development and instead wanted to see the entire 250 Acre Residential Zoned Land developed under one Master Development Agreement ("MDA").

2. City Action #2: Denial of the Master Development Agreement (MDA).

To comply with the City demand to have one unified development, for over two years (between July, 2015, and August 2, 2017), the Landowners worked with the City on an MDA that would allow development on the 35 Acre Property along with all other parcels that made up the 250 Acre Residential Zoned Land. *Exhibit 25: 5 App LO 00001132-1179.* The Landowners complied with each and every City demand, making more concessions than any developer that has ever appeared before this City Council. A non-exhaustive list of the Landowners' concessions, as part of the MDA, include: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas (*Exhibit 29: 8 App LO 00001836; Exhibit 24: 4 App LO 00000998 lines 599-601; Exhibit 30: 8 App LO 00001837*); 2) building two new parks, one with a vineyard; (Id.) and, 3) reducing the number of units, increasing the minimum acreage lot size, and reducing the number and height of towers. *Exhibit 5: 2 App LO 00000431 lines 2060-2070; Exhibit 29: 8 App LO*

00001836; and Exhibit 30: 8 App LO 00001837. In total, the City required at least 16 new and revised versions of the MDA. *Exhibit 28: 5-7 App LO 00001188-00001835.* The City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement." *Exhibit 24: 4 App LO 00000985 line 236 00000986 line 245; LO 00001071-00001073; and Exhibit 40: 9 App LO 00002047-2072.* And, as will be explained below, the MDA also met and exceeded any and all major modification procedures and standards that are set forth in the City Code.

On August 2, 2017, the MDA was presented to the City Council and the City denied the MDA. *Exhibit 24: 5 App LO 00001128-112.* The City did not ask the Landowners to make more concessions, like increasing the setbacks or reducing the units per acre, it simply and plainly denied the MDA altogether. *Id.* As the 35 Acre Property is vacant, this meant that the property would remain vacant.

3. City Action #3: Adoption of the Yohan Lowie Bills.

After denial of the MDA, the City adopted two Bills that solely target the 250 Acre Residential Zoned Land and preserve the Landowners' Property for public use. City Bill No. 2018-5 and Bill No. 2018-24 (now City Ordinances LVMC 19.16.105) not only target solely the Landowners' Property (no other golf course in the City is privately owned with residential zoning and no deed restrictions); but also requires the Landowners to preserve their Property for public use (LVMC 19.16.105 (E)(1)(d), (G)(1)(d)), provide ongoing public access to their Property (LVMC 19.16.105(G)(1)(d)), and provides that failure to comply with the Ordinances will result in a misdemeanor crime punishable by imprisonment and $1,000 per day fine. (LVMC 19.16.105 (E)(1)(d), (G)(5)(b)&(c)). The Ordinance requires the Landowners to perform an extensive list of requirement, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City. LVMC 19.16.105.

//

//

4. City Action #4: Denial of an Over the Counter, Routine Access Request.

The Landowners have sufficiently alleged that in August of 2017, the Landowners filed with the City a routine over the counter request (specifically excluded from City Council review - LVMC 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii)) for three access points to streets the 250 Acre Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way. *Exhibit 58: 10 App LO 00002359-2364*. The City denied the access applications citing as the sole basis for the denial, "the various public hearings and subsequent debates concerning the development on the subject site." *Exhibit 59: 10 App LO 00002365*. The City required that the matter be presented to the City Council through a "Major Review." The City has required that this extraordinary standard apply only to the Landowners to gain access to their property.

The Nevada Supreme Court has held that a landowner cannot be denied access to abutting roadways, because all property that abuts a public highway has a special right of easement to the public road for access purposes and this is a recognized property right in Nevada. Schwartz v. State, 111 Nev. 998 (1995). The Court held that this right exists "despite the fact that the Landowner had not yet developed access." Id., at 1003.

5. City Action #5: Denial of an Over the Counter, Routine Fence Request.

The Landowners have sufficiently alleged that in August, 2017, the Landowners filed with the City a routine request to install chain link fencing to enclose two water features/ponds that are located on the 250 Acre Residential Zoned Land. *Exhibit 55: 10 App LO 00002345-2352*. The City Code expressly states that this application is similar to a building permit review that is granted over the counter and not subject to City Council review. LVMC 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii). The City denied the application, citing as the sole basis for denial, "the various public hearings and subsequent debates concerning the development on the subject site." *Exhibit 56: 10 App LO 2343*. The City then required that the matter be presented to the City Council through a "Major Review" pursuant to LVMC 19.16.100(G)(1)(b) which states that "the Director determines that the proposed development could significantly impact the land uses on the site or on surrounding properties." *Exhibit 57: 10 App LO 00002354-2358*.

The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to interested City departments for comments/recommendation/requirements, and publicly noticed Planning Commission and City Council hearings. The City has required that this extraordinary standard apply despite the fact that LVMC 19.16.100 F(3) specifically prohibits review by the City Council, "[t]he Provisions of this Paragraph (3) shall not apply to *building permit level reviews* described in Paragraph 2(a) of this Subsection (F). Enumerated in Paragraph 2(a) as only requiring a "building level review" are "onsite signs, walls and fences."

6. City Action #6: Denial of a Drainage Study.

The Landowners have sufficiently alleged that in an attempt to clear the property, replace drainage facilities, etc., the Landowners submitted an application for a technical drainage study, which should have been routine, because the City and the Landowners already executed an On-Site Drainage Improvements Maintenance Agreement that allows the Landowners to remove and replace the flood control facilities on their property. *Exhibit 78: 12 App LO 00002936-2947.* Additionally, the two new City Ordinances referenced in City Action #3 require a technical drainage study. However, the City has refused to accept an application for a technical drainage study from the Landowners claiming the Landowners must first obtain entitlements, however, the new City Ordinances will not provide entitlements until a drainage study is received.

7. City Action #7: The City's Refusal to Even Consider the 133 Acre Property Applications.

The Landowners have sufficiently alleged that as part of the numerous development applications filed by the Landowners over the past three years to develop all or portions of the 250 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed to develop residential units on the 133 Acre Property (part of the 250 Acre Residential Zoned Land) consistent with the R-PD7 hard zoning. *Exhibit 47: 9 App LO 00002119-10 App LO 2256. Exhibit 49: 10 App LO 00002271-2273.* The City Planning Staff determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and recommended approval. *Exhibit 51: 10 App. LO 00002308-2321.* Instead of approving the

development, the City Council delayed the hearing for several months until May 16, 2018 - the same day it was considering the Yohan Lowie Bill (now LVMC 19.16.105), referenced above in City Action #3. *Exhibit 50: 10 App LO 00002285-2287.* The City put the Yohan Lowie Bill on the morning agenda and the 133 Acre Property applications on the afternoon agenda. The City then approved the Yohan Lowie Bill in the morning session. Thereafter, Councilman Seroka asserted that the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike all of the applications for the 133 Acre Property filed by the Landowners. *Exhibit 6: 2 App LO 00000490 lines 206-207.* The City then refused to allow the Landowners to be heard on their applications for the 133 Acre Property and voted to strike the applications. *Exhibit 51: 10 App LO 00002308-2321 and Exhibit 53: 10 App LO 00002327-2336.*

8. City Action #8: The City Announces It Will Never Allow Development on the 35 Acre Property, Because the City Wants the Property for a City Park and Wants to Pay Pennies on the Dollar for it.

The Landowners have sufficiently alleged that in documents obtained from the City it was discovered that the City has already allocated $15 million to acquire the Landowners' private property - "$15 Million-Purchase Badlands and operate." *Exhibit 35: 8 App LO 00001922.* In this same connection, Councilman Seroka issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowners' private property into a "fitness park." *Exhibit 34: 8 App LO 00001915.* In an interview with KNPR Seroka stated that he would "turn [the Landowners' private property] over to the City." *Id. at LO 00001917.* Councilman Coffin agreed, stating his intent referenced in an email as follows: "I think your third way is the only quick solution…Sell off the balance to be a golf course with water rights (key). Keep the bulk of Queensridge green." *Exhibit 54: 10 App LO 00002344.* Councilman Coffin and Seroka also exchanged emails wherein they state they will not compromise one inch and that they "need an approach to accomplish the desired outcome," which, as explained, is to prevent all development on the Landowners' Property so the City can take it for the City's park and only pay $15 Million. *Exhibit 54: 10 App LO 00002340.* In furtherance of the City's preservation for public use, the City has announced that it will never allow any development on the 35 Acre Property or any other part of the 250 Acre Residential Zoned Land.

As it is universally understood that tax assessed value is well below market value, to "Purchase Badlands and operate" for "$15 Million," (which equates to less than 6% of the tax assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this shows that the City's actions are in furtherance of a City scheme to specifically target the Landowners' Property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

9. City Action #9: The City Shows an Unprecedented Level of Aggression To Deny All Use of the 250 Acre Residential Zoned Land.

The Landowners have sufficiently alleged that the City has gone to unprecedented lengths to interfere with the use and enjoyment of the Landowners's Property. Council members sought "intel" against one of the Landowners so that the "intel" could, presumably, be used to deny any development on the 250 Acre Residential Zoned Land (including the 35 Acre Property). In a text message to an unknown recipient, Councilman Coffin stated:

> Any word on your PI enquiry about badlands [250 Acre Residential Zoned Land] guy?
> While you are waiting to hear **is there a fair amount of intel on the scum** behind [sic] the badlands [250 Acre Residential Zoned Land] takeover? **Dirt will be handy if I need to get rough.** *Exhibit 81: 12 App LO 00002969. (emphasis supplied).*

Instructions were then given by Council Members on how to hide communications regarding the 250 Acre Residential Zoned Land from the Courts. Councilman Coffin, after being issued a documents subpoena, wrote:

> "Also, his team has filed an official request for all txt msg, email, anything at all on my personal phone and computer under an erroneous supreme court opinion…So everything is subject to being turned over so, for example, your letter to the c[i]ty email is now public and this response might become public (to Yohan). I am considering only using the phone but awaiting clarity from court. **Please pass word to all your neighbors. In any event tell them to NOT use the city email address but call or write to our personal addresses. For now…PS. Same crap applies to Steve [Seroka]** as he is also being individually sued i[n] Fed Court and also his personal stuff being sought. This is no secret so let all your neighbors know." *Exhibit 54: 10 App LO 00002343. (Emphasis added).*

Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the Nevada Public Records Act *NRS 239.001(4)* by instructing them on how not to trigger any of the search terms being used in the subpoenas. "Also, please pass the word for everyone to not use B…l..nds in title or text of comms. That is how search works." Councilman Seroka testified at the

Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could use their private property for which they have a vested right to develop. *Exhibit 21: 4 App LO 00000930-931.* And, In reference to development on the Landowners' Property, Councilman Coffin stated firmly "I am voting against the whole thing," (*Exhibit 54: 10 App LO 00002341*)

10. City Action #10: the City Reverses the Past Approval on the 17 Acre Property.

The Landowners have sufficiently alleged that in approving the 17 Acre Property applications the City agreed the Landowners had the vested right to develop without a Major Modification, now the City is arguing in other documents that: 1) the Landowners have no property rights; and, 2) the approval on the 17 Acre Property was erroneous, because no major modification was filed:

> "[T]he Developer must still apply for a major modification of the Master Plan before a takings claim can be considered…" *Exhibit 37. 8 App LO 00001943 lines 18-20*;
>
> "Moreover, because the Developer has not sought a major modification of the Master Plan, the Court cannot determine if or to what extent a taking has occurred." *Id. at LO 00001944 lines 4-5*;
>
> "According to the Council's decision, the Developer need only file an application for a major modification to the Peccole Ranch Master Development Plan …to have its Applications considered." *Exhibit 39: 9 App LO 00002028 lines 11-15*;
>
> "Here, the Council's action to strike the Applications as incomplete in the absence of a major modification application does not foreclose development on the Property or preclude the City from ultimately approving the Applications or other development applications that the Developer may subsequently submit. It simply held that the City would not consider the Applications without the Developer first submitting a major modification application." *Id. at LO 00002032 lines 18-22.*

The reason the City changed its position is the City is seeking to deny the Landowners their constitutional property rights so the Landowners' Property will remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

11. City Action #11: The City Retains Private Counsel to Advance an Open Space Designation on the 35 Acre Property.

The Landowners have sufficiently alleged that the City has retained and authorized private counsel to advance an "open space" designation/major modification argument in this case to prevent any and all development on the 35 Acre Property. This is a contrary position from that taken by the

City over the past 32 years on at least 1,067 development units in the Peccole Concept Plan area. *Exhibit 105*. As explained above, over 1,000 units have been developed over the past 32 years in the Peccole Concept Plan area and not once did the City apply the "open space"/major modification argument it is now advancing, even though those +1,000 units were developed contrary to the land use designation on the Peccole Concept Plan. The City has specifically targeted the Landowners and their Property and is treating them differently than it has treated all other properties and owners in the area (+1,000 other units in the area) for the purpose of forcing the Landowners' Property to remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

Here, the Landowners have alleged facts and provided documents sufficient to show their Property has been taken by inverse condemnation, which is sufficient to defeat the City's motion for judgment on the pleadings.

D. The City's Argument that the Landowners have No Vested Property Right

The City contends that the Landowners do not have a vested right to use their property for anything other than open space or a golf course. As set forth above, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings.

E. The City's Argument that the Landowners' Taking Claims are Not Ripe

The City contends that the Landowners's taking claims are not ripe, because they have not filed a major modification application, which the City contends is a precondition to any development on the Landowners' Property. This City argument is closely related to the City's vested rights argument as the City also contends the Landowners have no vested right to use their property for anything other than a golf course until such time as they submit a major modification application. The Landowners have alleged that a ripeness/exhaustion of administrative remedies analysis does not apply to the four inverse condemnation claims for which the Landowners' are requesting a judicial finding of a taking - regulatory per se, non-regulatory/de facto, categorical, or temporary

taking of property[4] and, therefore, the City's ripeness/exhaustion of administrative remedies argument has no application to these four inverse condemnation claims. The Landowners further allege that the ripeness analysis only applies to the Landowners' inverse condemnation Penn Central Regulatory Takings Claim and, if the Court applies the ripeness analysis, all claims are ripe,[5] including the Penn Central claim.

1. The Landowners Allege Facts Sufficient to Show They Made At Least One Meaningful Application and It Would be Futile to Seek Any Further Approvals From the City.

"While a landowner must give a land-use authority an opportunity to exercise its discretion, once [...] the permissible uses of the property are known to a reasonable degree of certainty, a [regulatory] taking claim [Penn Central claim] is likely to have ripened."[6] The purpose of this rule is to understand what the land use authority will and will not allow to be developed on the property at issue. But, "|g|overnment authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision."[7] "|W|hen exhausting available remedies, including the filing of a land-use permit application, is futile, a matter is deemed ripe for review."[8]

---

[4] Hsu v. County of Clark, supra, ("[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Id., at 732); McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (2006) ("Sisolak was not required to exhaust administrative remedies or obtain a final decision from the Clark County Commission by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Id, at 664).

[5] The Nevada Supreme Court has stated regulatory takings claims are generally "not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41 (2015) (*quoting* Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)).

[6] Palazzolo v. Rhode Island, 533 U.S. 606, 620, (2001) ("The central question in resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether petitioner obtained a final decision from the Council determining the permitted use for the land." *Id.*, at 618.).

[7] Palazzolo, at 621. *Citing to* Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

[8] State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,

In City of Monterey v. Del Monte Dunes 526 U.S. 687, 119 S.Ct. 1624 (1999) the United States Supreme Court held that a taking claim was ripe where the City of Monterey required 19 changes to a development application and then asked the landowner to make even more changes. Finally, the landowner filed inverse condemnation claims. Similar to the City argument in this case, the City of Monterey asserted the landowners' inverse condemnation claims were not ripe for review. The City of Monterey asserted that the City's decision was not final and the landowners' claim was not ripe, because, if the landowner had worked longer with the City of Monterey or filed a different type of application with the City of Monterey, the City of Monterey may have approved development on the landowner's property. The United States Supreme Court approved the Ninth Circuit opinion as follows: "to require additional proposals would implicate the concerns about repetitive and unfair procedures" and "the city's decision was sufficiently final to render [the landowner's] claim ripe for review." Del Monte Dunes, at 698. The United States Supreme Court re-affirmed this rule in the Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448 (2001) holding the "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Id at 622.

As set forth above, the Landowners have alleged facts and provided documents sufficient to show they submitted the necessary applications to develop the 35 Acre Property, that the City denied every attempt at development, and that it would be futile to seek any further development

143 L.Ed. 2d 882 (1999) "[a]fter five years, five formal decisions, and 19 different site plans, [internal citation omitted] Del Monte Dunes decided the city would not permit development of the property under any circumstances." Id., at 698. "After reviewing at some length the history of attempts to develop the property, the court found that to require additional proposals would implicate the concerns about repetitive and unfair procedures expressed in MacDonald, Commer & Frates v. Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island, at 622.

applications from the City, which is sufficient to defeat the City's motion for judgment on the pleadings.

2. The Landowners Allege Facts Sufficient to Show That a Major Modification Application Was Not Required To Ripen Their Inverse Condemnation Claims

The Landowners further allege that no major modification of the Peccole Concept Plan was necessary to develop the 35 Acre Property, because the Landowners were seeking to develop the 35 Acre Property residentially and the land use designation on the Peccole Concept Plan for the 35 Acre Property is a residential use. *Exhibit 107.* Therefore, there was no need to "modify" the Peccole Concept Plan to develop the 35 Acre Property residentially.

The Landowners have also alleged that the City has never required a major modification application to develop properties included in the area of the Peccole Concept Plan. The Landowners allege the City has approved development for approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that were developed with a use contrary to the Peccole Concept Plan and not once did the City require a major modification application.

Here, the Landowners have alleged facts and provided documents sufficient to show that a major modification was not required to ripen their inverse condemnation claims, which is sufficient to defeat the City's motion for judgment on the pleadings.

3. The Landowners Allege Facts Sufficient to Show That, Even if a Major Modification Application was Necessary to Ripen Their Inverse Condemnation Claims, They Met this Requirement

Specific to the City's assertion that a major modification application is necessary to ripen the Landowners' inverse condemnation claims, the Landowners allege that even if a major modification application is required, the MDA the Landowners worked on with the City for over two years, referenced above, included and far exceeded all of the requirements of a major modification application. Exhibit 28. Moreover, the Landowners have cited to a statement by the City Attorney wherein he stated on the City Council record as follows: "Let me state something for the record just to make sure we're absolutely accurate on this. There was a request for a major modification that

accompanied the development agreement [MDA], that was voted down by Council. So that the modification, major mod was also voted down." Exhibit 61, City Council Meeting of January 3, 2018 Verbatim Transcript Item 78, Page 80 of 83, lines 2353-2361. Additionally, the Landowners allege that they also submitted an application referred to as a General Plan Amendment (GPA), which includes and far exceeds the requirements of the City's major modification application and the City denied the GPA as part of its denial of any use of the 35 Acre Property. Exhibit 5.

Here, the Landowners have alleged facts and provided documents sufficient to show that, even if a major modification application is required to ripen their inverse condemnation claims, they met these requirements, which is sufficient to defeat the City's motion for judgment on the pleadings.

F. The City's Argument that the Statute of Limitation has Run on the Landowners Inverse Condemnation Claims

The City contends that, if there was a taking, it resulted from the City action related to adoption of the City's Master Plan and the City's Master Plan was adopted more than 15 years ago and, therefore, the statute of limitations has run on the Landowners' inverse condemnation claims. The Landowners contend that a City Plan cannot result in a taking, that the City must take action to implement the Plan on a specific property to make the City liable for a taking.

The statute of limitations for an inverse condemnation action in Nevada is 15 years. White Pine Limber v. City of Reno, 106 Nev. 778 (1990). Nevada law holds that merely writing a land use designation over a parcel of property on a City land use plan is "insufficient to constitute a taking for which an inverse condemnation action will lie." Sproul Homes of Nev. v. State ex rel. Dept of Highways, 96 Nev. 441, 443 (1980) *citing to* Selby Realty Co. v. City of San Buenaventura, 169 Cal.Rptr. 799, 514 P.2d 111, 116 (1973) (Inverse claims could not be maintained from a City's "General Plan" showing public use of private land). *See also* State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015) (City's amendment to its master plan to allow for a road widening project on private land did not amount to a regulatory taking). This rule and its policy are set forth by the Nevada Supreme Court as follows:

> If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential

> public use on one of the several authorized plans, the process of community planning would either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation. Sproul Homes, supra, at 444.

Accordingly, the date that would trigger the statute of limitations would not be the master plan or necessarily the designation of the Property as PR-OS, but it will be the acts of the City of Las Vegas / City Council that would control.

Here, the Landowners have alleged facts and provided documents sufficient to show their property has been taken by inverse condemnation based upon the acts of the City of Las Vegas / City Council that occurred less than 15 years ago. Therefore, the City's statute of limitations argument is denied.

G. The City's Argument that the Court Should Apply Its Holding in the Petition For Judicial Review to the Landowners Inverse Condemnation Claims

The City contends that the Court's holding in the Landowners' petition for judicial review should control in this inverse condemnation action. However, both the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them "two disparate sets of claims" the City argued that:

> "The procedural and structural limitations imposed by petitions for judicial review and complaints, however, are such that they cannot afford either party ample opportunity to litigate, in a single lawsuit, all claims arising from the transaction. For instance, Petitioner's claim for judicial review will be "limited to the record below," and "[t]he central inquiry is whether substantial evidence supports the agency's decision." United Exposition Service Company v. State Industrial Insurance System, 109 Nev. 421,424, 851 P.2d 423,425 (1993). On the other hand, Petitioner's inverse condemnation claims initiate a new a civil action requiring discovery (not limited to the record below), and the central inquiry is whether Petitioner (as plaintiff) can establish its claims by a preponderance of the evidence. Thus, allowing Petitioner's four "alternative" inverse condemnation claims (i.e., the complaint) to remain on the Petition will create an impractical situation for the Court and parties, and may allow Petitioner to confuse the record for judicial review by attempting to augment it with discovery obtained in the inverse condemnation action." (October 30, 2017, City of Las Vegas Motion to Dismiss at 8:2)

The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. This is true, as only City Action #1 above was considered in the petition for judicial review, not City Actions #2-11. And, as stated above, this Court must consider all city actions in the aggregate in this inverse condemnation proceeding.

As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different fact, different legal standards and different burdens of proof.

Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev. 2007), McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of Monterey v. Del Monte Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council. Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).

The Court has previously entered a Nunc Pro Tunc Order in this case recognizing the petition for judicial review matter is different from the inverse condemnation matter:

> "this Court had no intention of making any findings, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as a part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed nunc pro tunc." (Order filed February 6, 2019).

For these reasons, it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims.

II. Conclusion on The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims

The City moved the Court for judgment on the pleadings pursuant to NRCP 12(c). The rule is designed to provide a means of disposing of cases when material facts are not in dispute, and a judgment on the merits can be achieved by focusing on the contents of the pleadings. It has utility only when all material allegations of facts are admitted in the pleadings and only questions of law remain.

This Court reviewed extensive briefings and entertained three and a half to four hours of oral arguments which contained factual disputes and argument throughout the entire hearing. The Court cannot say as a matter of law that the Landowners have no case, there are still factual disputes that must be resolved. Moreover, the court finds that this case can be heard on the merits as that policy is provided in Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

Accordingly, IT IS HEREBY ORDERED that The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims is **DENIED**.

III. The Landowners Rule 56 Motion for Summary Judgment on Liability for the Landowners Inverse Condemnation Claims

The Landowners countermoved this Court for summary judgment on the Landowners' inverse condemnation claims. Discovery has not commenced nor as of the date of the hearing have the parties had a NRCP 16.1 case conference. The Court finds it would be error to consider a Rule 56 motion at this time.

Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims is **DENIED** without prejudice.

IT IS SO ORDERED.

DATED this ~~6th day of April~~ May 14, 2019. CII

DISTRICT COURT JUDGE

Respectfully Submitted By:
LAW OFFICES OF KERMITT L. WATERS

By: _____

Kermitt L. Waters, ESQ., NBN 2571
James Jack Leavitt, ESQ., NBN 6032
Michael A. Schneider. ESQ., NBN 8887
Autumn Waters, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101
Attorneys for Plaintiff Landowners

Exhibit 19

Electronically Filed
5/7/2019 3:50 PM
Steven D. Grierson
CLERK OF THE COURT

FFCO
HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

LAW OFFICES OF KERMITT L. WATERS
Kermit L. Waters (2571)
James J. Leavitt (6032)
Michael Schneider (8887)
Autumn L. Waters (8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for 180 Land Company, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **~~[PROPOSED]~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF'S MOTION FOR A NEW TRIAL, MOTION TO ALTER OR AMEND AND/OR RECONSIDER THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND MOTION TO STAY PENDING NEVADA SUPREME COURT DIRECTIVES**

05-01-19P03:20 RCVD

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Currently before the Court is Plaintiff 180 Land Co, LLC's Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives ("the Motion") filed on December 13, 2018. The alternative relief sought by the Developer is a stay of the proceedings until the Nevada Supreme Court decides an appeal from the judgment entered March 5, 2018 by the Honorable James Crockett in Case No. A-17-752344-J ("Judge Crockett's Order"). The City filed an opposition, to which the Intervenors joined, and the Plaintiff filed a reply. The Court held oral argument on the Motion on January 22, 2019.

Having considered the record on file, the written and oral arguments presented, and being fully informed in the premises, the Court makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

1. Plaintiff 180 Land Co, LLC ("the Developer") filed a Petition for Judicial Review (the "Petition") challenging the Las Vegas City Council's June 21, 2017 decision to deny its four land use applications ("the 35-Acre Applications") to develop its 34.07 acres of R-PD7 zoned property (the "35-Acre Property").

2. On November 21, 2018, this Court entered Findings of Fact and Conclusions of Law on Petition for Judicial Review ("FFCL") that denied the Petition and dismissed the alternative claims for inverse condemnation. The Court concluded that the Las Vegas City Council properly exercised its discretion to deny the 35-Acre Applications and that substantial evidence supported the City Council's June 21, 2017 decision. The Court further concluded that the Developer had no vested rights to have the 35-Acre Applications approved.

3. On February 6, 2019, the Court entered an Order Nunc Pro Tunc that removed those portions of the FFCL that dismissed the inverse condemnation claims. Specifically, the Order *Nunc Pro Tunc* removed FFCL page 23:4-20 and page 24:4-5 but left all findings of fact and all other conclusions of law intact.

4. The Developer seeks a new trial: however, because this matter is a petition for judicial review, no trial occurred.

5. While the Developer has raised new facts, substantially different evidence and new issues of law, none of these new matters warrant rehearing or reconsideration, as discussed infra.

6. The Developer identifies claimed errors in the Court's previous findings of fact in the FFCL and disagrees with the Court's interpretation of law.

7. The Developer has failed to show that the Court's previous findings that the City Council did not abuse its discretion or that sufficient privity exists to bar Plaintiff's Petition under issue preclusion were clearly erroneous.

8. The Developer repeats its arguments that it raised previously in support of its petition for judicial review; namely, that public opposition, the desire for a comprehensive and cohesive development proposal to amend the General Plan's open space designation, and the City

Council's choice not to follow Staff's recommendation purportedly were not ample grounds to affirm the City Council's June 21, 2017 decision.

9. The Developer also reasserts its contentions that: (a) NRS 278.349 gives it vested rights to have the 35-Acre Applications approved; (b) the Queensridge homeowners have no rights in the golf course; (c) no major modification is required; (d) Judge Crockett's Order should be disregarded; and (e) the County Assessor changed the assessed value of the property after the Developer stopped using it as a golf course. The Developer made each of these arguments in the briefs submitted by the Developer in support of the Petition. *See* Pet. Memo. of P&A in support of Second Amended PJR at 5:17-20, 6:3, 7:4-10, 10:4-14:17, 17:8-18:7, 22-42, 26:10-17, 29:10-30:24, n.6, n.37, n.42, n.45, n.79, n.112; Post Hearing Reply Br. at 2:2-4, 2:19-4:3, 7:18-13:14, 13-16, 26:16-29:15, n.79.

10. The Motion also cites to and attaches documents that were not part of the record on review at the time the City Council rendered its June 21, 2017 decision to deny the 35-Acre Applications. *See* Motion at 2:14-3:23, 8:1-21; n.2, n.3, n.18, n.20, n. 21, n.22, citing Exs. 1-6 to the Motion.

11. The transcripts and minutes from the August 2, 2017 and March 21, 2018 City Council meetings on which the Developer relies (Exs. 1 and 6 to the Motion) post-dated the City Council's June 21, 2017 decision to deny the 35-Acre Applications and are, therefore, not part of the record on review.

12. Similarly, the Developer's attacks on Councilmember Seroka are beyond the record on review because he was not on the City Council on June 21, 2017 when the City Council voted to deny the 35-Acre Applications.

13. The Supreme Court's order of affirmance and order denying rehearing related to Judge Smith's orders (Exs. 4 and 5 to the Motion) were entered on October 17, 2018 and November 27, 2018, respectively, after the City Council denied the 35-Acre Applications and, therefore, are not part of the record on review.

14. The Developer previously cited to Judge Smith's underlying orders before the Nevada Supreme Court's actions both before the City Council and before this Court. *See* Pet.'s

P&A at 9:5-10:10, 17:1-2; *see also* 6.29.18 Hrg. Trans. at 109:6-110:13, attached as Exhibit B to City Opp.

15. The Motion relies not only on the aforestated orders, but also the Nevada Supreme Court's decision affirming the orders Judge Smith issued in that case.

16. Judge Smith's orders interpreted the rights of the Queensridge homeowners under the Queensridge CC&Rs, which in the Court's view, have no relevance to the issues in this case or the reasons supporting the Court's denial of the Petition.

17. Judge Smith described the matter before him as the Queensridge homeowners' claims that ***their*** "vested rights" in the CC&Rs were violated. *See* 11.30.16 Smith FFCL at ¶¶2, 7, 29, 108, Ex. 2 to the Motion.

18. Whether the Developer had vested rights to have its development applications approved was not precisely at issue in the matter before Judge Smith. *See id.*

19. Indeed, Judge Smith confirmed that, notwithstanding the zoning designation for the golf course property, the Developer is nonetheless "subject to City of Las Vegas requirements" and that the City is not obligated to make any particular decision on the Developer's applications. 1.31.17 FFCL ¶¶9, 16-17, 71.

20. The Supreme Court's affirmance of Judge Smith's orders has no impact on this Court's denial of the Developer's Petition for Judicial Review.

21. In the Motion, the Developer challenges the Court's application of issue preclusion to Judge Crockett's Order. The Developer reargues its attacks on the substance of Judge Crockett's Order (Motion at 17:21-20:7) and also reargues the application of issue preclusion to Judge Crockett's Order.

22. The Court finds no conflict between Judge Crockett's Order and Judge Smith's orders and therefore rejects the Developer's argument that such orders are "irreconcilable."

23. In its Motion, the Developer argues that this Court's factual findings are incorrect and need amendment. Two findings from the FFCL the Developer argues are incorrect are ¶¶12-13, which the Developer contends are different than Judge Smith's findings. Motion at 20, n.67.

24. As stated supra in finding No. 17, Judge Smith's orders are irrelevant to this Petition for Judicial Review. Thus, the Court finds no cause exists to alter or amend the findings in the FFCL.

II. CONCLUSIONS OF LAW

A. The Court May Not Consider Matters Outside The Record On Review

1. The scope of the Court's review is limited to the record made before the administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982). That scope cannot be expanded with a motion for reconsideration of the Court's denial of a petition for judicial review. *See id.*

2. The Developer's Motion cites to matters that post-dated the City Council's June 21, 2017 Decision and that are otherwise outside the record on review.

3. Because the Court's review is limited to the record before the City Council on June 21, 2017, the Court may not consider the documents that post-date the City Council's June 21, 2017 decision submitted by the Developer. *See Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

B. No "Retrial" Is Appropriate For A Petition For Judicial Review

4. Under NRCP 59(a), the Court may grant a new trial on some or all issues based upon certain grounds specifically enumerated in that rule.

5. Where a petition for judicial review is limited to the record and does not involve the Court's consideration of new evidence, a motion for a new trial is not the appropriate mechanism to seek reconsideration of the denial of a petition for judicial review.

6. "Retrial" presupposes that a trial occurred in the first instance, but no trial occurred here or is allowed for a petition for judicial review because the Court's role is limited to reviewing the record below for substantial evidence to support the City Council's decision. *See City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P. 3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

7. Moreover, a motion for a new trial under NRCP 59(a), which is the authority cited by the Developer (at 16:22-23), may only be granted based upon specific enumerated grounds

cited in the rule, none of which is invoked by the Developer. As a result, no "retrial" may be granted.

C. The Developer's Repetition of its Previous Arguments is Not Grounds for Reconsideration

8. Pursuant to EDCR 2.24(a), no motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court.

9. "Although Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000), quoting 12 Moore's Federal Practice §59.30[4] (3d ed. 2000) (discussing the federal corollary of NRCP 59(e)).

10. A Rule 59(e) motion may not be used "to relitigate old matters." 11 Fed. Prac. & Proc. Civ. §2810.1 (3d ed.); *accord Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008).

11. "Rehearings are not granted as a matter of right and are not allowed for the purpose of re-argument, unless there is a reasonable probability that the court may have arrived at an erroneous conclusion." *Geller v. McCowan*, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947) (citations omitted) (discussing petition for rehearing of appellate decision).

12. Because the Developer has not raised sufficient new facts, substantially different evidence or new issues of law for rehearing or reconsideration showing an erroneous conclusion, the Court rejects the Developer's repetitive arguments.

D. NRCP 52(b) Does Not Apply Where the Developer Does Not Identify Any of the Court's Findings of Fact That Warrant Amendment

13. Although it brings its motion to alter or amend pursuant to NRCP 52(b), that rule is directed only at amendment of factual "findings," not legal conclusions. *See id.* "Rule 52(b) merely provides a method for amplifying and expanding the lower court's findings, and is not intended as a vehicle for securing a re-hearing on the merits." *Matter of Estate of Herrmann*, 100 Nev. 1, 21 n.16, 677 P.2d 594, 607 n.16 (1984).

14. The only findings mentioned in the Motion (at ¶¶12-13) are supported by the portion of the record cited by the Court, namely, the Peccole Ranch Master Development Plan. Judge Smith's findings in support of his interpretation of the Queensridge CC&Rs do not alter the Court's findings.

15. Because the Developer has not identified any findings that should be amended under NRCP 52(b), the Court declines to amend any of its findings.

E. The Developer May Not Present Arguments and Materials it Could Have Presented Earlier But Did Not

16. The Developer's Motion cannot be granted based upon arguments the Developer could have raised earlier but chose not to.

17. "A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters.*, 229 F.3d at 890.

18. "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

19. Contrary to the Developer's assertion (Motion at 16:1-2), the Court considered all of the arguments in its Petition related to Judge Smith's orders. The Court simply rejected them because Judge Smith's interpretation of the Queensridge CC&R's does not affect the City Council's discretion under NRS Chapter 278 and the City's Unified Development Code to deny the 35-Acre Applications.

F. The Supreme Court's Affirmance of Judge Smith's Orders Has No Impact on this Court's Denial of the Developer's Petition for Judicial Review

20. The fact that the Supreme Court affirmed Judge Smith's orders is not grounds for reconsideration because Judge Smith's orders interpreted the Queensridge homeowners' rights under the CC&R's, not the City Council's discretion to deny re-development applications.

21. As a result, the Developer's assertion (at 3:4-5) that Judge Smith's Orders are "irreconcilable" with Judge Crockett's Decision does not accurately reflect the scope of the matter before Judge Smith.

22. This Court correctly concluded that the Developer does not have vested rights to have the 35-Acre Applications approved, and neither Judge Smith's orders, nor the Supreme Court's orders of affirmance, alter that conclusion.

G. The Court Correctly Determined That Judge Crockett's Order Has Preclusive Effect Here

23. The Developer has failed to show that the Court's conclusion that sufficient privity exists to bar the Developer's petition under the doctrine of issue preclusion was clearly erroneous.

24. The Court correctly determined that Judge Crockett's Order has preclusive effect here and, as a result, the Developer must obtain the City Council's approval of a major modification to the Peccole Ranch Master Developer Plan before it may develop the 35-Acre Property.

25. The Court's conclusion that the City Council's decision was supported by substantial evidence was independent of its determination that Judge Crockett's Order has preclusive effect here. Judge Crockett's Order was only a "further" (i.e., not exclusive) reason to deny the Developer's petition for judicial review.

H. The Developer Does Not Identify Any Clear Error That Warrants Reconsideration

26. The sole legal grounds for reconsideration asserted by the Developer is purported "clear error."

27. The only legal conclusions in the FFCL with which the Developer takes issue are the Court's determinations that public opposition constitutes substantial evidence for denial of the 35-Acre Applications and that the City Council properly exercised its discretion to insist on comprehensive and orderly development for the entirety of the property of which the 35-Acre Property was a part. Motion at 20:8-24:7. In making these arguments, however, the Developer never contends that the Court incorrectly interpreted the law cited in the FFCL. *See id.* It therefore

cannot satisfy its burden of showing "clear error." The Developer has failed to show that the Court's previous conclusion that the City Council did not abuse its discretion was clearly erroneous.

28. The Court's analysis of these issues was correct. The *Stratosphere* and *C.A.G.* cases hold that public opposition from neighbors, even if rebutted by a developer, constitutes substantial evidence to support denial of development applications. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 500-01, 654 P.2d at 533. The Developer's Motion is silent as to this point.

29. Citing NRS 278.349(3)(e), the Developer contests the Court's reliance on *Nova Horizon* and *Cold Springs* that zoning must substantially conform to the master plan and that the master plan presumptively governs a municipality's land use decisions. *Nova Horizon*, 105 Nev. at 97, 769 P.2d at 724; *Citizens for Cold Springs*, 126 Nev. at 266, 236 P.3d at 12. The Developer's discussion fails to discredit the *Nova Horizon* decision given NRS 278.349(3)(a) and does not address the *Cold Springs* case.

30. Having failed to demonstrate any clear error in the Court's decision, the Developer fails to satisfy its burden for reconsideration.

31. Nothing presented in the Motion alters the Court's conclusion that the City Council properly exercised its discretion to deny the 35-Acre Applications and the June 21, 2017 decision was supported by substantial evidence. *See City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (*citing Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)); *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by statute on other grounds*; *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

32. As the Court correctly concluded, its job was to evaluate whether substantial evidence supports the City Council's decision, not whether there is substantial evidence to support a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836 n.36, 138 P.3d 486, 497 (2006).

33. This is because the administrative body alone, not a reviewing court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99, 787 P.2d at 784.

I. The Developer Failed to Advance Any Argument to Justify a Stay

34. The Motion lacks any argument or citation whatsoever related to its request for a stay.

35. "A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported." EDCR 2.20(c) (emphasis added).

36. Because the Developer provides no points and authorities in support of its motion for stay, the motion for stay must be denied.

J. Effect On The Developer's Inverse Condemnation Claims

37. The Developer's petition for judicial review and its inverse condemnation claims involve different evidentiary standards.

38. Relative to the petition for judicial review, the Developer had to demonstrate that the City Council abused its discretion in that the June 21, 2017 decision was not supported by substantial evidence; whereas, relative to its inverse condemnation claims, the Developer must prove its claims by a preponderance of the evidence.

39. Because of these different evidentiary standards, the Court concludes that its conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims.

ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives is DENIED.

IT IS FURTHER ORDERED THAT the Court's conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims, which will be subject to further action by the Court.

DATED: May 6th, 2019.

TIMOTHY C. WILLIAMS
District Court Judge

Submitted By:

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

LAW OFFICES OF KERMITT L. WATERS

Kermit L. Waters (2571)
James J. Leavitt (6032)
Michael Schneider (8887)
Autumn L. Waters (8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for 180 Land Company, LLC

Competing Order Submitted By:

MCDONALD CARANO LLP
George F. Ogilvie, III
Debbie Leonard
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

and

Las Vegas City Attorney's Office
Brad Jerbic
Philip R. Byrnes
Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Attorneys for the City of Las Vegas

Exhibit 20

Electronically Filed
10/23/2017 7:15 PM
Steven D. Grierson
CLERK OF THE COURT

RAB
BRADFORD R. JERBIC
City Attorney
Nevada Bar No. 1056
By: PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
By: ELIAS P. GEORGE
Deputy City Attorney
Nevada Bar No. 12379
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
(702) 229-6629 (office)
(702) 386-1749 (fax)
Email: pbyrnes@lasvegasnevada.gov
Email: egeorge@lasvegasnevada.gov
Attorneys for CITY OF LAS VEGAS

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLOR AND SALLY BIGLER, Petitioners, vs. THE CITY OF LAS VEGAS; and SEVENTY ACRES, LLC, a Nevada Limited Liability Company, Respondents.	CASE NO. A-17-752344-J DEPT. NO. XXIV

RESPONDENT CITY OF LAS VEGAS' ANSWERING BRIEF

September 6, 2000.[1] The City of Las Vegas ("City") subsequently adopted the Land Use & Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan on September 2, 2009.[2] Ordinance #6056; revised with Ordinance #6152 on May 8, 2012.

The Land Use & Neighborhoods Preservation Element is significant, *inter alia*, because it plainly establishes the City's land use hierarchy. The land use hierarchy progresses in the following ascending order: 2020 Master Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. (Land Use & Neighborhoods Preservation Element at 19.) In the hierarchy, the land use designation is subordinate to the zoning designation, for example, because land use designations indicate the intended use and development density for a particular area, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

The City's decision to approve Seventy Acres, LLC's applications conformed to the zoning and land use designations of Peccole Ranch, which did not require the approval of a Major Modification, and—thus—warrants deference from the Court. The Nevada Supreme Court has previously noted that

> it is not the business of courts to decide zoning issues. *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 256, 439 P.2d 219, 223 (1968). Because of [a governing body's] particular expertise in zoning, courts must defer to and not interfere with the [governing body's] discretion if this discretion is not abused. *City Council, Reno*, 100 Nev. at 439, 683 P.2d at 962.

Nevada Contractors v. Washoe County, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

The City acted within its discretionary powers and properly approved the three applications without a Major Modification. A Major Modification is similar to a General Plan Amendment. While a General Plan Amendment changes the land use designation within a

---

[1] The City of Las Vegas 2020 Master Plan is available at https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002661.pdf.

[2] The City of Las Vegas Land Use & Neighborhoods Preservation Element is available at https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002656.pdf.

> Simon & Tucker argues that the court was presented with evidence to the contrary, which showed that granting the gaming licenses would in fact be beneficial to the public interest. However, just because there was conflicting evidence does not compel interference with the Board's decision so long as the decision was supported by substantial evidence. *O'Donnell v. Buhl*, 75 Idaho 34, 266 P.2d 668, 669 (1954). It is not the place of the court to substitute its judgment for that of the Board as to the weight of the evidence. *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281, 282, 607 P.2d 581, 582–583 (1980).

As in *Simon & Tucker*, the City Council received conflicting evidence supporting and opposing the applications. Their approval, however, was supported by substantial evidence. The Court may not reweigh the evidence or substitute its judgment for that of the Council's. Instead, it must affirm the decision of the City Council.

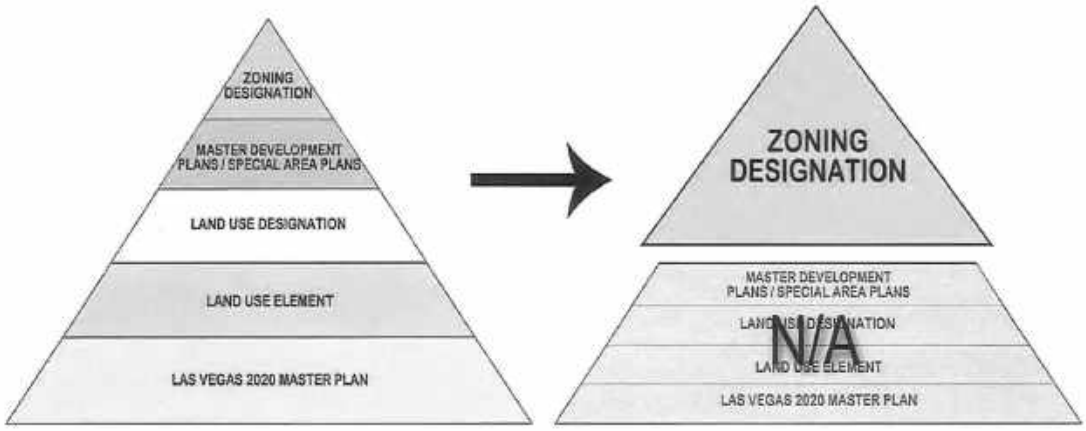
DATED this 23RD day of October, 2017.

BRADFORD R. JERBIC
City Attorney

By: _____
PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
ELIAS P. GEORGE
Deputy City Attorney
Nevada Bar No. 12379
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

Exhibit 21

LAND USE HIERARCHY*



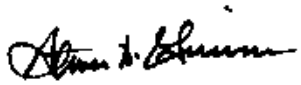
PRE-ZONING POST-ZONING

ACP:ATTORNEY CLIENT PRIVILEGE

*REFER TO PAGE 19 OF LAND USE & RURAL NEIGHBORHOODS PRESERVATION ELEMENT (LAS VEGAS 2020 MASTER PLAN)

Exhibit 22

Electronically Filed
12/13/2011 03:54:33 PM



CLERK OF THE COURT

OPPM
BRADFORD R. JERBIC
City Attorney
Nevada Bar No. 1056
By: PHILIP R. BYRNES
Deputy City Attorney
Nevada Bar No. 166
400 Stewart Avenue, Ninth Floor
Las Vegas, NV 89101
(702) 229-6629
(702) 386-1749 (fax)
Email: pbyrnes@lasvegasnevada.gov
Attorneys for CITY OF LAS VEGAS
and REGIONAL TRANSPORTATION COMMISSION

DISTRICT COURT

CLARK COUNTY, NEVADA

MOCCASIN & 95 LLC, a Nevada Limited Liability Company; DOE INDIVIDUALS I through XXX; DOE CORPORATIONS I through XXX; DOE LIMITED LIABILITY COMPANIES I through XXX, Plaintiffs, vs. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; THE REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA; ROE government entities I through XXX; ROE CORPORATIONS I through XXX; ROE INDIVIDUALS I through XXX; ROE LIMITED LIABILITY COMPANIES I through XXX, ROE quasi-governmental entities I through XXX, Defendants.	CASE NO. A-10-627506-C DEPT. NO. XXVI

OPPOSITION TO PLAINTIFF LANDOWNER'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY FOR A TAKING

Defendants CITY OF LAS VEGAS and REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, though their attorneys BRADFORD R. JERBIC, City Attorney, by PHILIP R. BYRNES, Deputy City Attorney, files the following points and

> approval. If denied, the proposed changes could not be made to the Master Plan of Streets and Highways and the Las Vegas 2020 Master Plan, and the approved Sheep Mountain Parkway and master planned streets would remain in their current alignments.

Id.

III.

THE SUMMARY JUDGMENT STANDARD

In *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 457-58, 168 P.3d 1055, 1061 (2007), the Nevada Supreme Court described the standards for granting a motion for summary judgment:

> This court reviews a summary judgment order de novo. We have previously explained that "[s]ummary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party.

The party requesting summary judgment bears the burden of establishing that no triable issues remain. *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985). All reasonable inferences must be made in favor of the opposing party and the Court may not weigh the credibility of the evidence. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002).

IV.

THE PLACEMENT OF THE NORTH ALIGNMENT ON THE CITY'S MASTER PLAN OF STREETS AND HIGHWAYS DID NOT CONSTITUTE A TAKING OF THE SUBJECT PROPERTY

The City's Master Plan of Streets and Highways is a planning document. Nevada law clearly provides that planning activities do not constitute a taking. In an effort to circumvent this clearly established law, Plaintiff argues that the setback requirements of Las Vegas Municipal Code (LVMC) 13.12.150 preclude all development of the subject property under the unique circumstances of this case. The setback requirements of LVMC 13.12.150 do not even apply to the subject property since the City Council never adopted an ordinance establishing a center line for the North Alignment. The placement of the North Alignment on the City's Master Plan of

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

Streets and Highways was a routine planning activity that had no legal effect on the use and development of the subject property. The amendment did not constitute taking of the subject property.

The Master Plan of Streets and Highways is part of the City's Master Plan. LVMC 13.12.020. NRS 278.230(1)(a) describes the purpose of the Master Plan:

> A pattern and guide for that kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment and will conform to the adopted population plan, where required, and ensure an adequate supply of housing, including affordable housing . . . .

The purpose of the City's Master Plan of Streets and Highways is described in LVMC 13.12.010:

> The Master Plan of Streets and Highways has been prepared by the City Planning Commission to promote the orderly development of land which an increasing population will require, to eliminate existing congestion and facilitate rapid traffic movement, and to make provisions for anticipated future traffic needs.

The Master Plan of Streets and Highways is a planning document and the placement of a potential roadway on the Plan does not constitute a taking of private property.

In *Sproul Homes of Nevada v. State ex rel. Department of Highways*, 96 Nev. 441, 444, 611 P.2d 620, 621 (1980), the Nevada Supreme Court found that inclusion of a street on a master plan does not constitute a taking:

> It is well-established that the mere planning of a project is insufficient to constitute a taking for which an inverse condemnation action will lie.

The Court adopted the reasoning of a California court in *Selby Realty Company v. City of San Buenaventura*, 514 P.2d 111 (Cal. 1973):

> On appeal, the court stated: "In order to state a cause of action for inverse condemnation, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury." *Id.* at 117. The court continued:
>
> If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential public use on one of the several authorized plans, the process of community planning would

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

> either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation.
>
> *Id.* at 117-18 (emphasis added). We agree with this reasoning.

96 Nev. at 444, 514 P.2d at 621-22.

In an effort to avoid the clear reasoning of *Sproul Homes*, Plaintiff argues that the amendment of the Master Plan of Streets and Highways in conjunction with the setback requirements of LVMC 13.12.150 constitutes a taking. LVMC 13.12.150 provides:

> All buildings or structures to be built along any major street or highway embraced by the Master Plan shall be set back from the centerline of any existing or proposed major street or highway a distance equal to one-half the proposed right-of way width, plus the distance required by the particular zone in which the property is located, unless an ordinance is adopted to establish a distance other than one-half the proposed right-of-way width. With respect to any building or structure located at any intersection described in Section 13.12.100, the foregoing setback requirements shall be increased to conform to the property line radius specified in that Section.

A setback requirement is a legitimate exercise of the city's police power and does not amount to a per se taking. *Echevarrieta v. City of Rancho Palos Verdes*, 103 Cal. Rptr. 2d 165, 171 (Cal. App. 2001), the Court stated:

> Here, while the City has imposed limitations on the height of pre-existing foliage, it is a legitimate exercise of police power which does not rise to the level of a taking. **Contrary to "per se" takings, "traditional land-use regulations" such as the imposition of minimal building setbacks, parking and lighting conditions, landscaping requirements, and other design conditions "have long been held to be valid exercises of the city's traditional police power, and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property.** [Citations.]" (*Ehrlich v. City of Culver City, supra*, 12 Cal. 4th at p. 886, 50 Cal. Rptr. 2d 242, 911 P.2d 429; *HFH, Ltd. v. Superior Court* (1975) 15 Cal. 3d 508, 518, 125 Cal. Rptr. 365, 542 P.2d 237 ["[A] zoning action which merely decreases the market value of property does not violate the constitutional provisions forbidding uncompensated taking or damaging. . . ."].) "The denial of the highest and best use does not constitute an unconstitutional

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

> taking of property. [Citation.] 'Even where there is a very substantial diminution in the value of land, there is no taking . . . .' [Emphasis added.]

See also R & Y, Inc. v. Municipality of Anchorage, 34 P.3d 289, 296-97 (Alaska 2001).

In the case of the subject property, the setback requirements of LVMC 13.12.150 are not even applicable since the City Council did not adopt an ordinance establishing a centerline for the North Alignment. LVMC 13.12.130 provides:

> With respect to any major street or highway located on a section line, the section line shall be the centerline unless the Board of Commissioners adopts an ordinance which establishes a different centerline. **With respect to any proposed or existing major street or highway which does not follow a predetermined line, the location of the centerline in each case shall be described by ordinance.** [Emphasis added.]

Since the setback requirements of LVMC 13.12.150 are measured from the centerline of the roadway and the City Council did not establish a centerline by ordinance, the setback requirements of LVMC 13.12.150 could not be enforced in any land use application regarding the subject property.[2] *See* Exhibit A; Affidavit of Bryan K. Scott, attached as Exhibit K; Affidavit of James B. Lewis, attached as Exhibit L.

The placement of the North Alignment on the Master Plan of Streets and Highways was a planning activity that did not legally effect Plaintiff's ability to use or develop the subject property. This amendment did not constitute a taking of the subject property.

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

---

[2] In *Boulder City v. Cinnamon Hills Associates*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994), the Nevada Supreme Court noted that a city's "interpretation of its own land use laws is cloaked with a presumption of validity and will not be disturbed absent a manifest abuse of discretion."

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

Exhibit 23

AFFIDAVIT OF BRYAN K. SCOTT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

BRYAN K. SCOTT, being first duly sworn, deposes and says:

1. I am employed by the City of Las Vegas as an Assistant City Attorney. I have personal knowledge of the matters stated herein; and, if called upon, I am competent to testify thereto.

2. I have been assigned as counsel for the City regarding land use and planning matters for more than eleven years.

3. During my tenure with the City, the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan of Streets and Highways is a planning document only and that the placement of a roadway on the Master Plan cannot be used to restrict or impair the development of adjoining parcels.

4. I am aware of the setback requirements of LVMC 13.12.150. I cannot recall any situation in my tenure when those setback requirements have been enforced against any proposed project on a parcel abutting a roadway placed on the Master Plan.

5. The proposals for the Sheep Mountain Parkway do not follow a predetermined section line. LVMC 13.12.130 requires the City Council to describe the centerline of the roadway by ordinance. The City Council did not adopt an ordinance describing the centerline of the North Alignment of the Sheep Mountain Parkway.

6. The setback requirements of LVMC 13.12.150 are calculated from the centerline of a roadway placed on the Master Plan of Streets and Highways. Since the City Council did not describe the centerline of the North Alignment of the Sheep Mountain Parkway by ordinance, the

. . . .

. . . .

. . . .

. . . .

. . . .

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13th day of December, 2011.

BRYAN K. SCOTT

SUBSCRIBED and SWORN to before me this 13th day of December, 2011.

NOTARY PUBLIC

CINDY KELLY
Notary Public State of Nevada
No. 93-0530-1
My appt. exp. Aug. 4, 2013

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

AFFIDAVIT OF JAMES B. LEWIS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JAMES B. LEWIS, being first duly sworn, deposes and says:

1. I am employed by the City of Las Vegas as a Deputy City Attorney. I have personal knowledge of the matters stated herein; and, if called upon, I am competent to testify thereto.

2. I have been assigned as counsel for the City regarding land use and planning matters for more than six years.

3. During my tenure with the City, the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan of Streets and Highways is a planning document only and that the placement of a roadway on the Master Plan cannot be used to restrict or impair the development of adjoining parcels.

4. I am aware of the setback requirements of LVMC 13.12.150. I cannot recall any situation in my tenure when those setback requirements have been enforced against any proposed project on a parcel abutting a roadway placed on the Master Plan.

5. The proposals for the Sheep Mountain Parkway do not follow a predetermined section line. LVMC 13.12.130 requires the City Council to describe the centerline of the roadway by ordinance. The City Council did not adopt an ordinance describing the centerline of the North Alignment of the Sheep Mountain Parkway.

6. The setback requirements of LVMC 13.12.150 are calculated from the centerline of a roadway placed on the Master Plan of Streets and Highways. Since the City Council did not describe the centerline of the North Alignment of the Sheep Mountain Parkway by ordinance, the

. . . .

. . . .

. . . .

. . . .

. . . .

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13th day of December, 2011.

JAMES B. LEWIS

SUBSCRIBED and SWORN to before me this 13th day of December, 2011.

Cindy Kelly
NOTARY PUBLIC

CINDY KELLY
Notary Public State of Nevada
No. 93-0530-1
My appt. exp. Aug. 4, 2013

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

Exhibit 24

OWNER(S)/MAIL TO	SITUS	138-31-201-005	Printed: 8/15/2017
180 LAND CO L L C %V DEHART 1215 S FORT APACHE RD #120 LAS VEGAS NV, 89117 NV	LAS VEGAS PARCEL STATUS: A Active - Locally Assessed Parcel NEIGHBORHOOD: 1351.73 Summerlin East PRIMARY USE: 12.000 Vacant - Single Family Residential		Page: 1 of 2 **2017/18**

LAND ACRES	34.07	LAND SQUARE FEET	1,484,089

LEGAL DESCRIPTION

PARCEL MAP FILE 121 PAGE 100
LOT 1

SUMMARY OF TAXABLE VALUES

FISCAL YEAR	2013-14	2014-15	2015-16	2016-17	2017-18 (WORKING)
VALUE TYPE					BLCM
LAND					$17,886,750
SUBDIVISION DISCOUNT					
NET LAND					$17,886,750
IMPROVEMENTS					
SUPPLEMENTAL					
COMMON ELEMENT					
TOTAL IMPROVEMENT					
SECURED PERSONAL PROP					
PARCEL TOTAL					$17,886,750
EXEMPTION TOTAL					

SALES HISTORY

TYPE	SALE DATE	SALE PRICE	DEED BOOK	PAGE	GRANTOR	GRANTEE

LAND APPRAISAL

#	CODE	LAND CATEGORY	ZONING	UNIT TYPE	FF	DEPTH	UNITS	UNIT PRICE	TOTAL ADJ	ADJ UNIT PRICE	ADJ VALUE	OVERD VALUE	NOTES
1	1R01	Residential		AC			34.07	$525,000.00	[+] 1.0000	$525,000.00	$17,886,750		

CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE	CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE

LAND - GOLF COURSE/AG/OPEN SPACE

CLASSIFIED AG/GOLF COURSE

#	CODE	LAND CATEGORY	TYPE	UNITS	UNIT PRICE	ADJ	ADJ UNIT PRICE	ADJ VALUE

MARKET AG/GOLF COURSE

#	CODE	LAND CATEGORY	TYPE	UNITS	UNIT PRICE	ADJ	ADJ UNIT PRICE	ADJ VALUE

CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE	CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE

IMPROVEMENTS

PROJECT NAME:

TYPE	BLDG	BUILDING TYPE	CL/Q	RNK	AYB	EYB	STY	HGT	UNITS	BSMT	MEZZ	SPRK	%CMP	SQFT	TOTAL RCNLD

BUILDING COUNT / SECTION COUNT

PERMITS

TYPE	DESCRIPTION	COUNT	STATUS

ACCOUNT FLAGS

CAT	TYPE	VAL
PAR	Parcel Land Use	12.000
CONV	Capacity	0

OWNER(S)/MAIL TO	SITUS	138-31-201-005	Printed: 8/15/2017
180 LAND CO L L C %V DEHART 1215 S FORT APACHE RD #120 LAS VEGAS NV, 89117 NV	LAS VEGAS PARCEL STATUS: A Active - Locally Assessed Parcel NEIGHBORHOOD: 1351.73 Summerlin East PRIMARY USE: 12.000 Vacant - Single Family Residential BUILDING(S): No Buildings		Page: 2 of 2 **2017/18**

BLDG./SECTION							NOTES
PROJECT NAME							
OCCUPANCY							
CLASS / RANK							
YR BLT / EFF YR BLT							
% COMPLETE							
BUILDING SF							
PERIMETER							
WALL HEIGHT							
# STORIES							
# UNITS							
EXT. WALL							
HEATING/COOLING	/						
HEATING/COOLING	/						
HEATING/COOLING	/						
HEATING/COOLING	/						
SPRINKLERS							
ELEVATORS							
BALCONY							
FINISHED BSMT.							
UNIFIN. BSMT.							
SEMI FIN. BSMT.							
BSMT. PARKING							
OFFICE MEZZ							
STORAGE MEZZ							
OPEN MEZZ							
							TOTALS
RCN $ PER SF							RCN
RCN							
DEPR STATUTORY/TOT	/						
BLDG. RCNLD							RCNLD
BLDG. OVERRIDE							
EXTRA FEATURES							Extra Features
TOTAL RCNLD							IMPS VALUE

CODE	DESCRIPTION	BLDG	UNITS	UNIT PRICE	FAC	ADJ UNIT PR	AYB	EYB	RCN	DEPR%	RCNLD	NOTES	PI	PPID

Exhibit 25

STATE
BOARD OF EQUALIZATION

ASSESSOR VALUATION

Cases: 17- 175, 176, 177

0056

3180

CASE #	17-176	SUBJECT PARCEL INFORMATION	FISCAL YEAR	2017/2018

APN	138-31-801-002 et all	Location	Charleston and Rampart	Zoning Designation	R-PD7	Vacant	Yes
Size (acres)	178.27 Gross	178.27 Net	Size (sq ft) 7,765,441	Probable Use	RESIDENTIAL	Offsites	Partial
General Description	This appeal includes the following parcels that are active for the 17-18 tax year: 138-31-801-002, 138-31-201-005, 138-31-601-008, 138-31-702-003, 138-31-702-004. Approx 26.4% of the gross acreage is in wash. Parcels are located within the former Badlands Golf Course ner the corner of Charleston and Rampart					Density	7 DU/AC

COMPARABLE LAND SALES GRID

Sale No.	1	2	3	4	5	6	7	8
Parcel #	137-27-717-001	175-01-510-001	176-06-310-001	176-06-814-001	138-19-419-009	164-02-510-003	163-19-111-002	163-19-402-007
Buyer	RYLAND HOMES NEVADA	Pardee Homes	RICHMOND AMERICAN H	PARDEE HOMES NEVADA	A L F LAND CO L L C	CHARLESTON 215 L L	C R P CALIDA FLAMIN	GRAND CANYON TROPIC
Seller	HUGHES HOWARD COMP	HUGHES HOWARD COMP	HUGHES HOWARD COMP	HUGHES HOWARD COMP	Crossing Business C	S A V W C L III L L	BURBANK L L C	SOROOSH FARHANG REV
Date of Sale	5/20/2016	6/7/2016	9/9/2016	10/7/2016	7/13/2016	2/1/2016	3/25/2016	10/7/2016
Sale Price	$10,115,200	$16,872,000	$15,000,000	$14,855,550	$2,212,500	$16,650,000	$11,690,000	$6,100,000
Cross Streets	Far Hills / Fox Hill	Hualapai / Sunset	Warm Sprin / Ft. Apache	Fort Apach / Warm Sprin	Summerlin / Town Cente	Charleston / Hughes Par	Flamingo / Hualapai	Tropicana / Hualapai
Acres	18.56	33.44	30.86	30.63	3.53	31.46	11.69	9.22
$/Acre	545,000	504,545	486,066	485,000	626,771	529,243	1,000,000	661,605
Time/Market/Other Adj.*								
Adjusted $/Acre	**545,000**	**504,545**	**486,066**	**485,000**	**626,771**	**529,243**	**1,000,000**	**661,605**
Location	Summerlin West	Summerlin South +	Summerlin South +	Summerlin South +	Summerlin East	Summerlin South	Southwest	Southwest
Zoning/Probable Use	P-C	R2/RH	R-E/MDP	R-E/MDP	P-C	R-U/RM	C-2/CG	R-E/ROI R-5
Density (maximum)	5.6-12 du/acre	5.6-12 du/acre	5.6-12 du/acre	5.6-12 du/acre	26 du/acre	25 du/acre	25 du/acre	50 du/acre
Size	18.56 Acres	33.44 Acres	30.86 Acres	30.63 Acres	3.53 Acres	31.46 Acres	11.69 Acres	9.22 Acres
Shape	Regular	Irregular	Regular	Regular	Regular	Irregular	Regular	Regular
Topography	Level -	Undulating -	Level -	Level -	Level -	Undulating -	Level -	Level -
Access	Typical	Typical	Typical	Typical	Typical	Typical	Typical	Typical
Offsites	Full	Partial	Partial	Partial	Partial	Partial	Partial	Partial
Overall Comparison to Subject	SUPERIOR	SIMILAR	SIMILAR	SIMILAR	SUPERIOR	SUPERIOR	SUPERIOR	SUPERIOR

* Analysis of Market Conditions Adjustment attached.

RECONCILIATION

INDICATED VALUE RANGE OF COMPARABLES	485,000	TO	1,000,000	PER ACRE	
CURRENT TAXABLE VALUE OF SUBJECT	386,143	PER ACRE		TOTAL TXBL LAND VALUE	68,837,790
RECOMMEND	386,143	PER ACRE		TOTAL TXBL LAND VALUE	NO CHANGE

RECONCILIATION COMMENTS

This appeal consists of 5 total parcels with gross acreages of: 11.28, 34.07, 22.19, 76.93, 33.80. For a total of 178.27 acres. Approx. 26.4% of these parcels or about 47.15 acres lie in washes and are not valued, approx. 24% of these parcels lie within the FEMA flood zone. Gross acreage value for these parcels is approx. $386,143 per acre. Comps 1 thru 4 have similar zoning to the subject's PD-7 with 1 being most similar in location. Comps 5 thru 8 have higher zoning similar to the R-3 zoning approved by the Las Vegas City Council on parcel 138-32-301-005. Based on the information provided recommend no change in value.

Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

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

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

Legend
Subject
Comparable

Aerial Map (NearMap 08/02/2016)

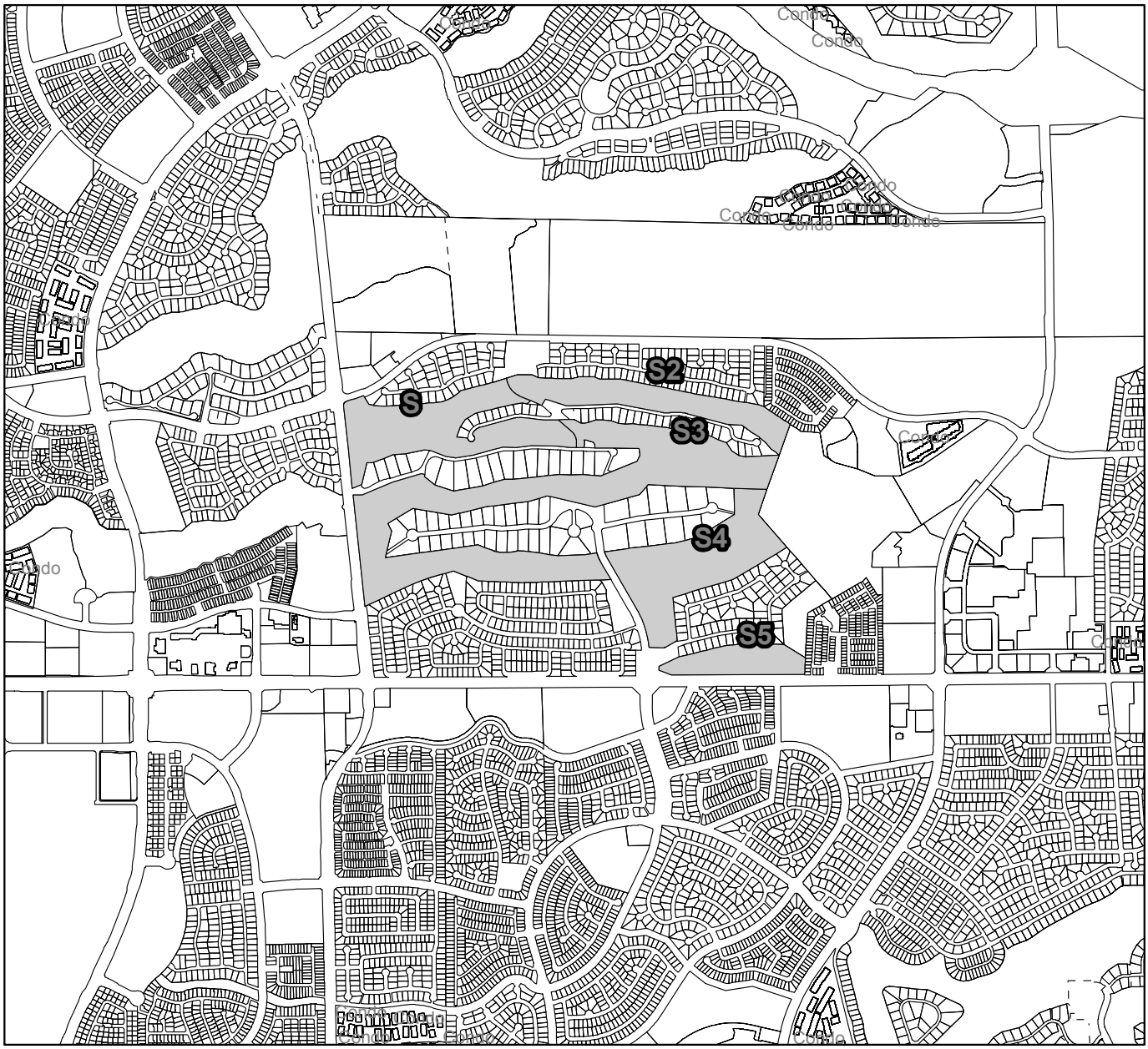
Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

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

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

Legend
Subject
Comparable



Subject Map

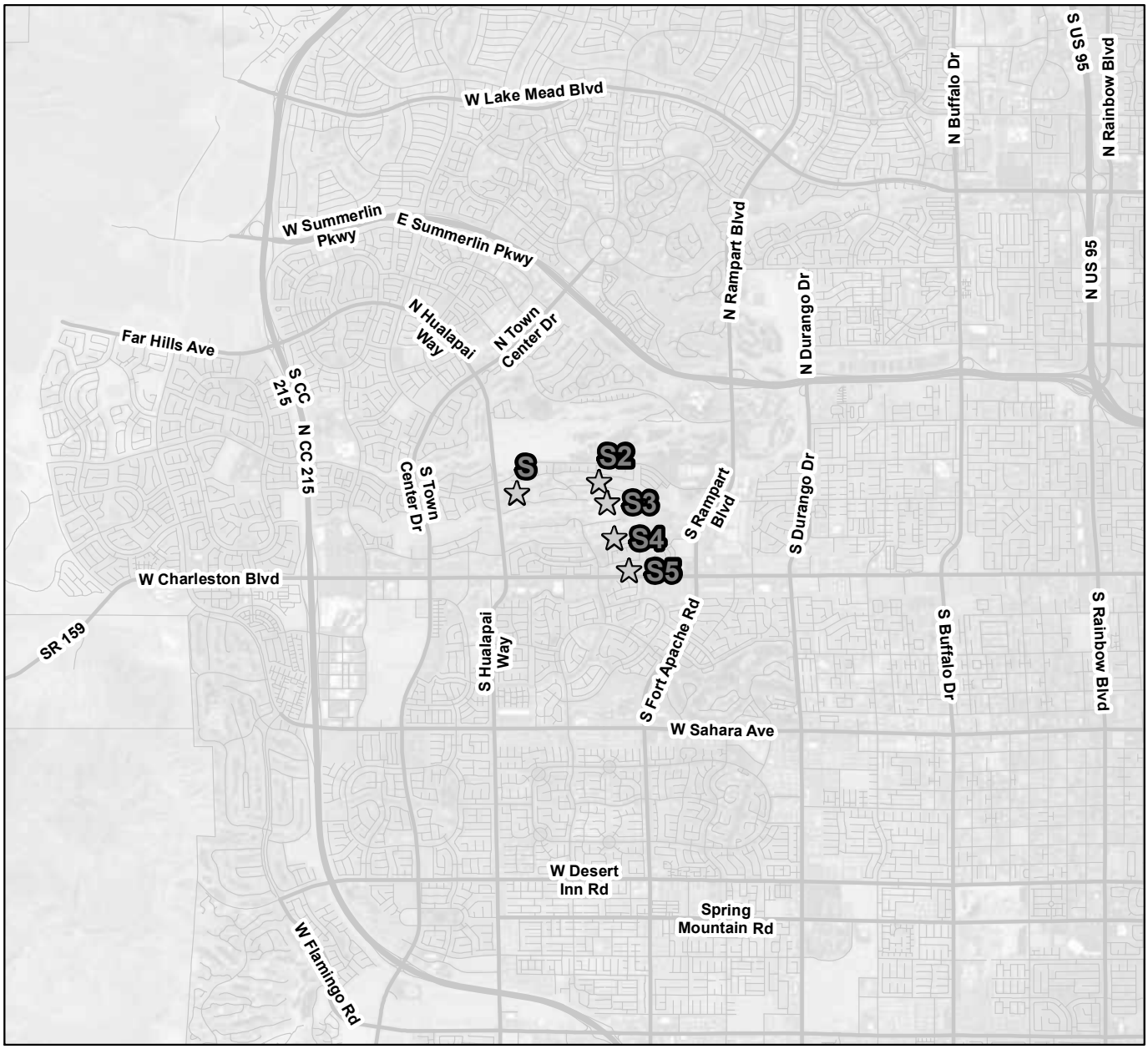
Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

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

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

Legend
☆ Subject
☆ Comparable



Vicinity Map

Clark County Assessor's Office

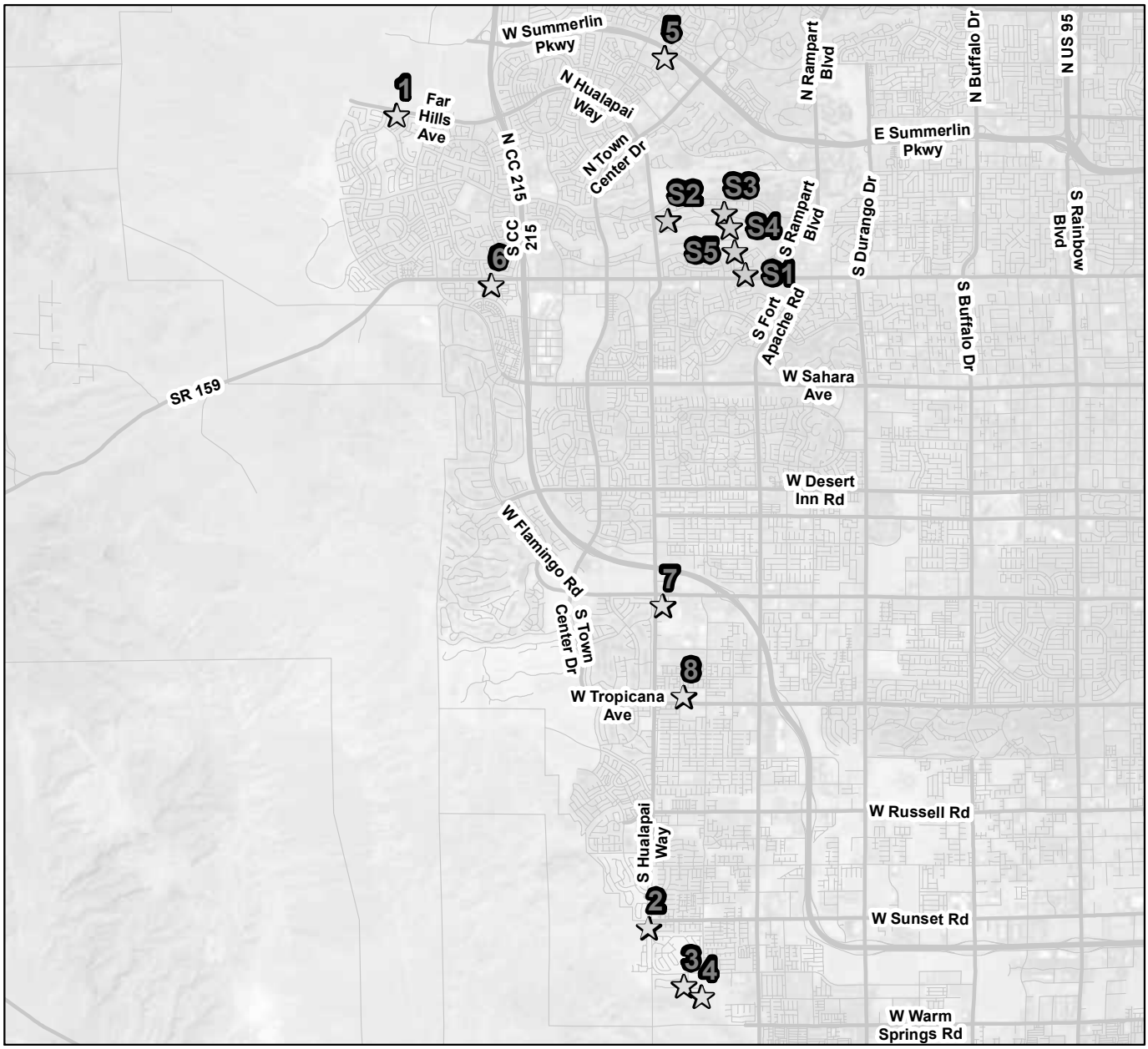
Case #: 17176
180 LAND CO L L C

Subject(s):
S1. 138-31-801-002
S2. 138-31-201-005
S3. 138-31-601-008
S4. 138-31-702-003
S5. 138-31-702-004

Comparable(s):
1. 137-27-717-002
2. 175-01-512-001
3. 176-06-311-001
4. 176-06-312-001
5. 138-19-419-009
6. 164-02-510-007
7. 163-19-111-002
8. 163-19-402-007

1:86,158
Date: 9/5/2017

Legend
Subject
Comparable



Vicinity Map

Exhibit 25a

Property Account Inquiry - Summary Screen

New Search	Recorder	Treasurer	Assessor	Clark County Home

Parcel ID	138-31-201-005	Tax Year	2021	District	200	Rate	3.2782

Situs Address:	UNASSIGNED SITUS LAS VEGAS
Legal Description:	ASSESSOR DESCRIPTION: PARCEL MAP FILE 121 PAGE 100 LOT 1

Status:
Active
Taxable

Property Characteristics	
Tax Cap Increase Pct.	6.7
Tax Cap Limit Amount	218977.44
Tax Cap Reduction	0.00
Land Use	0-00 Vacant - Single Family Re
Cap Type	OTHER
Acreage	34.0700
Exemption Amount	0.00

Property Values	
Land	6260363
Total Assessed Value	6260363
Net Assessed Value	6260363
Exemption Value New Construction	0
New Construction - Supp Value	0

Property Documents	
2015111600238	11/16/2015

Role	Name	Address	Since	To
Owner	180 LAND CO L L C	C/O V DEHART 1215 S FORT APACHE RD #120 , LAS VEGAS, NV 89117 UNITED STATES	6/14/2019	Current

Summary

Item	Amount
Taxes as Assessed	$205,227.22
Less Cap Reduction	$0.00
Net Taxes	$205,227.22

PAST AND CURRENT CHARGES DUE TODAY

Tax Year	Charge Category	Amount Due Today
THERE IS NO PAST OR CURRENT AMOUNT DUE as of 9/2/2020		$0.00

NEXT INSTALLMENT AMOUNTS

Tax Year	Charge Category	Installment Amount Due
2021	Property Tax Principal	$51,306.81
NEXT INSTALLMENT DUE AMOUNT due on 10/5/2020		$51,306.81

TOTAL AMOUNTS DUE FOR ENTIRE TAX YEAR

Tax Year	Charge Category	Remaining Balance Due
2021	Property Tax Principal	$153,920.43
2021	Las Vegas Artesian Basin	$0.00
TAX YEAR TOTAL AMOUNTS DUE as of 9/2/2020		$153,920.43

PAYMENT HISTORY

Last Payment Amount	$51,309.21
Last Payment Date	8/19/2020

Fiscal Tax Year Payments	$51,309.21
Prior Calendar Year Payments	$295,228.96
Current Calendar Year Payments	$153,922.83

Exhibit 26

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

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

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

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

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

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

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17
Jeff Payson
Appraisal Division

DATE: 9/25/17
Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: 180 Land Co LLC.

Exhibit 27

1 **ITEM 82 – DIRECTOR'S BUSINESS – NOTE: NOT TO BE HEARD BEFORE 9:00PM -**
2 **DIR-70539 - DIRECTOR'S BUSINESS - PUBLIC HEARING - APPLICANT/OWNER:**
3 **180 LAND CO, LLC, ET AL - For possible action on a request for a Development**
4 **Agreement between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at**
5 **the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-201-005; 138-31-**
6 **601-008; 138-31-702-003 and 004; 138-31-801-002 and 003; 138-32-202-001; and 138-32-**
7 **301-005 and 007), Ward 2 (Beers) [PRJ-70542]. Staff recommends APPROVAL.**
8
9 **Appearance List:**
10 TRINITY HAVEN SCHLOTTMAN, Planning Commission Chair
11 PETER LOWENSTEIN, Planning Section Manager, City of Las Vegas
12 TODD L. MOODY, Planning Commissioner
13 BRAD JERBIC, City Attorney, City of Las Vegas
14 CHRIS KAEMPFER, Legal Counsel for the Applicant
15 STEPHANIE ALLEN, Legal Counsel for the Applicant
16 SHAUNA HUGHES, Legal Counsel for Queensridge Homeowners Association
17 UNIDENTIFIED SPEAKER
18 TODD BICE, Legal Counsel for the Queensridge Homeowners
19 GEORGE GARCIA, GC Garcia, Inc., 1055 Whitney Ranch Drive, Henderson
20 DOUG RANKIN, GC Garcia, Inc., 1055 Whitney Ranch Drive, Henderson
21 MICHAEL BUCKLEY, Representative for the Frank and Jill Fertitta Family Trust
22 FRANK SCHRECK, Queensridge Resident
23 RON IVERSEN, Board Treasurer, Queensridge Homeowners Association
24 ANNE SMITH, Queensridge Resident
25 EVAN THOMAS, Queensridge Resident

CERTIFIED AS A TRUE COPY
LuAnn D. Holmes, City Clerk
City of Las Vegas 7/19/17
83 pgs.

26 **Appearance List continued:**
27 DEBRA KANER, Queensridge Resident
28 JERRY ENGEL, Queensridge Resident
29 JOHNNY (last name not provided), Queensridge Resident
30 LARRY SADOFF, Queensridge Resident
31 TERRY HOLDEN, Queensridge Resident
32 HERMAN AHLERS, Queensridge Resident
33 FRANK PANKRATZ, Applicant/Owner
34 JAMES JIMMERSON, Legal Counsel for the Applicant
35 VICKI QUINN, Planning Commissioner
36 GLENN TROWBRIDGE, Planning Commissioner
37 SAM CHERRY, Planning Commissioner
38 MARK FAKLER, GCW Inc., 1555 South Rainbow Boulevard
39 YOHAN LOWIE, Applicant/Owner
40 BART ANDERSON, Engineering Project Manager, Public Works, City of Las Vegas
41 DONNA TOUSSAINT, Planning Commissioner
42 CEDRIC CREAR, Planning Commissioner
43 TOM PERRIGO, Director of Planning, City of Las Vegas
44
45
46 (2 hours, 42.5 minutes) [5:06:24 – 7:48:53]
47 Typed by: Speechpad.com
48 Proofed by: Arlene Coleman

TOM PERRIGO

The zoning for this property, R-PD7 was in existence prior to the change in the General Plan. The General Plan was a staff-initiated change that I believe came in about 2005. The applicant has a right to that zoning. And there is a requirement that the land use will be amended at some future date in order to make it consistent. But even if that action didn't come forward, it doesn't take away the rights that the applicant has to the zoning. The previous, the application for the project across the street that requires a GPA, or is it a major mod? I forget now.

COMMISSIONER CREAR

Well, there's a major mod. It was the –

TOM PERRIGO

It's major mod because that did substantially change what was planned for that site. Previously, when this application came forward and it was significantly more units, we did feel that it was significantly outside of the, that original plan. This proposal is within the existing density of the zoning and is not completely outside of the unit count for the plan. So, at this time, we felt that the development agreement could be the mechanism to exercise the R-PD zoning.

BRAD JERBIC

If I can jump in too and just say that everything Tom said is absolutely accurate. The R-PD7 preceded the change in the General Plan to PR-OS. There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know.

But either way, there will be an attempt in the future, because we don't do general plan amendments monthly or weekly. We do them quarterly. And at that appropriate time, you will be able to consider a general plan amendment. If you vote for it, great, they're synchronized. If you don't vote for it, it doesn't change a darn thing. The zoning is still hard and in place.

2215 **PETER LOWENSTEIN**
2216 Mr. Chairman, Item 82 will be heard at City Council on June 21st, 2017.
2217
2218 **STEPHANIE ALLEN**
2219 Thank you very, very much.
2220
2221 **CHRIS KAEMPFER**
2222 Thank you very much.
2223
2224 **STEPHANIE ALLEN**
2225 We appreciate all your time and lots of deliberation.
2226
2227 **CHRIS KAEMPFER**
2228 And a good morning.
2229
2230 **STEPHANIE ALLEN**
2231 And thank you very much. Appreciate it.
2232
2233 **CHRIS KAEMPFER**
2234 Thank you all, and thank the neighbors for coming as well. Thank you.
2235
2236 **(END OF DISCUSSION)**
2237 /ac

Exhibit 28

CITY COUNCIL MEETING

JUNE 21, 2017

COMBINED VERBATIM TRANSCRIPT – AGENDA ITEMS 82, 130-134

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

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

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

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

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

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

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

Appearance List – Items 131-134:

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

Appearance List continued – Items 131-134:

RICK KOSS, St. Michelle resident

HOWARD PEARLMAN

SALLY JOHNSON-BIGLER, Queensridge resident

DAVID MASON, Queensridge resident

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

ELAINE WENGER-ROESSNER

TALI LOWIE, Queensridge resident

JAMES JIMMERSON, Legal Counsel for the Applicant

YOHAN LOWIE, Applicant/Owner

RICKI BARLOW, Councilman

BOB BEERS, Councilman

Appearance List – Item 130:

CAROLYN GOODMAN, Mayor

BRAD JERBIC, City Attorney

LOIS TARKANIAN, Councilman

CHRIS KAEMPFER, Legal Counsel for the Applicant

YOHAN LOWIE, Applicant/Owner

BOB COFFIN, Councilman

JAMES JIMMERSON, Legal Counsel for the Applicant

STEVEN D. ROSS, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

Appearance List – Item 82:

CAROLYN GOODMAN, Mayor

BRAD JERBIC, City Attorney

CHRIS KAEMPFER, Legal Counsel for the Applicant

STEVEN D. ROSS, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

In the order noted above:

Items 131-134

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

Item 130

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

Item 82

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

Typed by: Speechpad.com

Proofed by: Arlene Coleman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAYOR GOODMAN

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

TOM PERRIGO

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

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

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

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

MAYOR GOODMAN

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

GEORGE C. SCOTT WALLACE

Your Honor, Councilwoman –

MAYOR GOODMAN

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

GEORGE C. SCOTT WALLACE

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

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

COUNCILMAN ROSS
Thank you, Mr. Kaempfer.

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

COUNCILMAN ROSS
Thank you.

STEPHANIE ALLEN
We appreciate it.

MAYOR GOODMAN
Thank you.

COUNCILMAN ROSS
Thank you.

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

(END OF DISCUSSION)

/ac

Exhibit 29

THE JIMMERSON LAW FIRM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

James J. Jimmerson*
Michael C. Flaxman
Kristine Brewer

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

December 7, 2016

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

Dear Mr. Jerbic:

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

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

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

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

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

415 SOUTH SIXTH STREET, SUITE 100 • LAS VEGAS, NV 89101 • (702) 388-7171 • FAX: (702) 380-6422 • EMAIL: jjj@jimmersonlawfirm.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

THE JIMMERSON LAW FIRM, P.C.

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

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

Tom,

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

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

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

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

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

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

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

cc Peter Lowenstein
Attachements-2

MAYOR
JAN LAVERTY JONES

COUNCILMEN
ARNIE ADAMSEN
MATTHEW Q CALLISTER
MICHAEL J MCDONALD
GARY REESE

CITY MANAGER
LARRY K BARTON

CITY of LAS VEGAS

PLANNING AND DEVELOPMENT DEPARTMENT

October 8, 1996

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

Re BADLANDS GOLF COURSE, PHASE 2

Dear Mr Spitze

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

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

Very truly yours,

Robert S Genzer, Planning Supervisor
Current Planning Division

RSG erh

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

CLV 7009
2890 018 895

PENTACORE

Civil Engineering
Construction Management
Land Surveying
Planning
ADA Consulting

0171 0030

September 4, 1996

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

RE Badlands Golf Course, Phase 2

Dear Bob

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

Thank you for your consideration in this matter

Sincerely,

Clyde O Spitze
Vice President

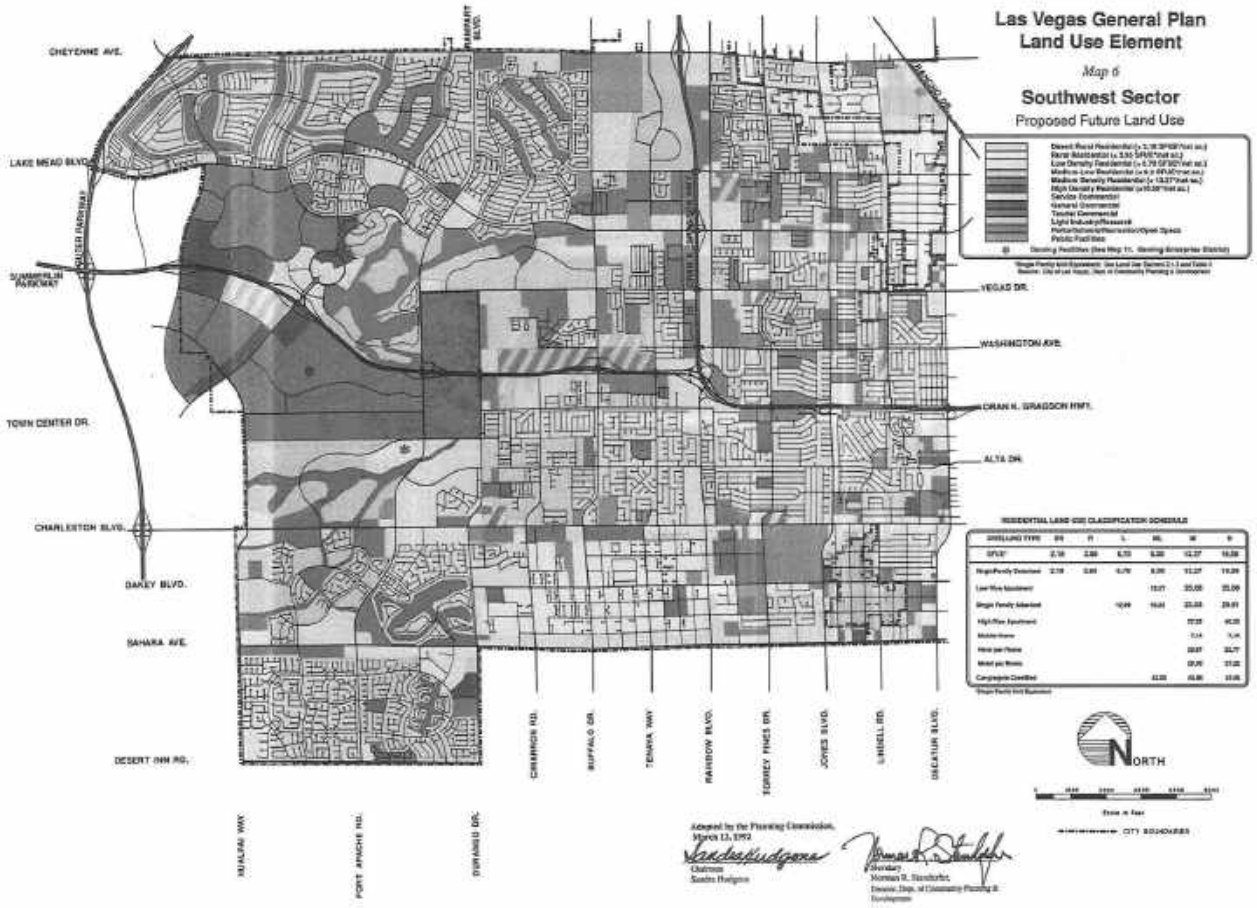
RECEIVED
SEP 4 4 58 PM '96
PLANNING AND DEVELOPMENT

cos bw

7-146-94
2-17-90

6763 West Charleston Boulevard • Las Vegas, Nevada 89102 • (702) 258-0115 • Fax (702) 258-4958

Exhibit 30



LO 00004127

CLV053440
0088

3218

BILL NO. 92-2

ORDINANCE No. 3636

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

Sponsored By:
Councilman Scott Higginson

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

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

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

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

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

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

LO 00004128

CLV053465

0089

3219

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

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

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

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

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

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

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

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

APPROVED:

By _____
JAN GAVERTY JONES, MAYOR

OK
4-4-92

ATTEST:

_____
KATHLEEN M. TIGHE, CITY CLERK

LO 00004130
CLV053497
0091
3221

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

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

VOTING "NAY": NONE

ABSENT: Mayor Jones

APPROVED:

BY JAN LAVERTY JONES, MAYOR

OK
VS
4-6-92

ATTEST:

KATHLEEN M. TIGHE, CITY CLERK

LO 00004131

CLV053408

0092

3222

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Residential" and "Low Density Residential".

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

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

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

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

Jan Laverty Jones, Mayor

OK 8-7-92 RGD

ATTEST:

Kathleen M. Tighe, City Clerk

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

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

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

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

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

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

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

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

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

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

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

SANDRA HODGENS, CHAIRMAN

ATTEST:

Kathleen M. Tighe, City Clerk

Exhibit 31

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

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

Sincerely,

BRIAN MCKAY, *Attorney General*

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

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

LAS VEGAS, April 11, 1984

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

DEAR MR. VAN WAGONER:

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

QUESTION

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Forman, supra, at 539.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 948-949.

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

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

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

Theobald, supra, at 1154.

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

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

. . . .

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

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

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

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

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

CONCLUSION

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

BRIAN MCKAY, *Attorney General*

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

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

CARSON CITY, April 16, 1984

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

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

DEAR MR. MILLER:

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

QUESTION

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

Exhibit 32

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

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

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

<u>Appearance List:</u>

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

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

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

BRAD JERBIC
Yeah.

COUNCILWOMAN TARKANIAN
Okay.

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

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

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

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

COUNCILWOMAN TARKANIAN

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

BRAD JERBIC

R-PD7.

COUNCILWOMAN TARKANIAN

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

BRAD JERBIC

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

Exhibit 33

D R A F T

T R A N S C R I P T

Brian vs. Park Ridge

Jon Perrigo, Volume I

Monday, December 1, 2014

By: Carla Lewis, RN CCR #97, CA CSR 11287

[illegible]@[illegible].com

Universal Legal Solutions

([illegible]) [illegible]-[illegible]

ROUGH DRAFT TRANSCRIPT

REALTIME AND INTERACTIVE REALTIME TRANSCRIPT

ROUGH DRAFT DISCLAIMER

IMPORTANT NOTICE: AGREEMENT OF PARTIES

We, the party working with realtime and rough draft transcripts, understand that if we choose to use the realtime rough draft screen or the printout, that we do so only on the understanding that the rough draft is an unedited copy.

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

REPORTER'S NOTE

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

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

Court Reporter's Name:

Carla Lewis, CSR #97

I N D E X

WITNESS: JON PERRIGO

EXAMINATION PAGE

By Mr. Rice 8

Tom Perrigo

Binion vs. Fore Stars

Monday, December 5, 2016

Carre Lewis, CCR No. 497

E X H I B I T S

NUMBER		PAGE
Exhibit 1	December 30, 2014 Letter from City of Las Vegas to Frank Pankratz at EHB Companies; BINION008326	49
Exhibit 2	Unified Development Code, R-4; BINION008322 and 323	53
Exhibit 3	Map, Southwest Sector; BINION008324	74
Exhibit 4	August 20, 2015, Letter from City of Las Vegas to Lowenstein, Planning Section Manager; BINION008337	118
Exhibit 5	City of Las Vegas Agenda Summary Page, Planning, September 8, 2015; BINION008328 - 337	130
Exhibit 6	Notice of Public Hearing, March 8, 1990; BINION008315 - 316	146
Exhibit 7	Peccole Ranch Master Plan	148
Exhibit 8	Agenda, City Council Minutes Meeting of April 4, 1990; BINION008313 - 314	155
Exhibit 9	Agenda, City Council Minutes Meeting of April 4, 1990 and Zoning Action Letter	179

Exhibit 10	Code Provision	195
Exhibit 11	Title 19 Unified Development Code, Page 13	203
Exhibit 12	November 24, 2015 Letter from Seventy Acres LLC to City of Las Vegas; CLV000247 - 249	205

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

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

The court reporter is Carre Lewis.

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

THE WITNESS: Tom Perrigo.

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

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

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

///

///

///

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

Whereupon --

TOM PERRIGO,

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

EXAMINATION

BY MR. BICE:

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

A. Thomas Andrew Perrigo.

Q. Can you tell me where you currently work?

A. I work for the City of Las Vegas.

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

A. Since August of 1994.

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

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

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

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

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

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

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

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

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

Q. So --

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

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

A. Yes.

Q. Or the master plan?

A. Yes.

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

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

MR. BICE: Let's mark this one.

(Exhibit 2 marked.)

BY MR. BICE:

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

A. It's entitled the Unified Development Code.

Q. What is that?

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

Q. Okay. What is Title 19?

A. Essentially a zoning code.

Q. Zoning code for the City of Las Vegas?

A. That is correct.

Q. Is this something that you were familiar with?

A. Yes.

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

A. Yes.

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

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

Q. Who prepares the Title 19 or Chapter 19?

A. Who prepares?

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

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

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

A. Yes.

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

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

Go ahead and answer.

BY MR. BICE:

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

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

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

A. High density residential district.

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

A. Yes.

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

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

Q. Okay.

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

Q. Okay.

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

Q. A new version, correct?

A. A new version.

Q. Is amended multiple times a year in your

experience?

A. Yes.

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

A. Yes.

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

A. Means multifamily dwellings, attached.

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

A. That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. What does that mean?

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

Q. Who developed that list?

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

Q. When?

A. I don't know.

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

A. No.

Q. So prior to that?

A. Yes.

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

A. Yes.

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

A. Yes.

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

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

Q. So for zoning change that was sought by the William Peccole 1992 trust zoning change was subject to a maximum of 4427 dwelling units be allowed for phase 2, correct?

A. Yes.

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

A. Yes.

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

there, correct?

A. Correct.

Q. Did the Peccole -- did the way the Peccole 1992 Trust have the ability to challenge any of those conditions at the City council if it wanted to?

A. Yes.

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

A. Yes.

Q. Did it do so?

A. I don't know.

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

A. No.

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

A. Yes.

(Exhibit 8 marked.)

BY MR. BICE:

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

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

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

Q. Letter. Okay.

This is what gets sent to the applicant, correct?

A. Yes.

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

A. Yes.

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

A. Yes.

Q. And it was approved, right?

A. Yes.

Q. Unanimously approved, correct?

A. Yes.

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

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

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

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

recite it off the top of my head.

Q. Is this a minor modification a 17-acre application?

A. No.

Q. Why not?

A. Modification is required to certain plans that typically the PCD plans, not that there are a handful of plans like this one that are called out in the master plan to not require a modification.

Q. To not require a major modification or not require any modification?

A. Require any modification. If fact that's why the plan today is completely inconsistent with what's been built out there. The roads aren't in the same place, land use is all changed. It's completely inconsistent with what's built over time.

Q. So of the 1440 multifamily units that the City approved, how many have actually been built, do you know?

A. I don't.

Q. How have you determined that there are 720 available if you don't know how many have been built?

A. Well, staff has looked at that very carefully and did a very careful count of every

single unit that's been built in that area.

Q. Okay.

A. I do not recall the numbers off the top of my head.

Q. So staff has determined that there are 720 of that 1440 still available somehow?

MR. BYRNES: Objection. Asked and answered.

BY MR. BICE:

Q. Is that right?

MR. JIMMERSON: Join. He has never testified to the number 720 was still permitted.

THE WITNESS: I don't recall the number off the top of my head.

BY MR. BICE:

Q. My only question, sir, and I'm not asking you to say the numbers off the top of your head. But it's your understanding that there are 720 of of that 1440 is somehow still available, correct?

A. I don't know that to be true. So going back to your question about whether or not single and multifamily are fungible, I guess the answer is no, in this case. I don't know that it's relevant. We have looked at over all number of units for the area, and I just can't remember. I just can't

remember what those numbers work out to be.

Q. Are you treating them as fungible in this case?

A. I don't know because I don't recall what those numbers are.

Q. Well, when was this project closed out?

A. What project?

Q. The Pascola Ranch master plan.

A. I don't recall any formal action that closed it out.

Q. Has the City ever told anybody that it was closed out?

A. Not that I'm aware of. I don't know.

Q. When were the models released?

A. I don't know.

Q. Were they released sometime in 1996, 1990?

A. I don't know. I do recall reading that the bonds were released.

Q. When does the City consider a development to be closed out?

MR. JIMMERSON: Object to the question.

THE WITNESS: I don't know that there is any official determination of closed out. It likely refers to a public works action regarding the infrastructure.

BY MR. BICE:

Q. And the bonds are what secure the infrastructure, right?

A. Yes.

Q. And so when the bonds are released -- the bonds are only released when the infrastructure is deemed complete, correct?

A. That would be a question for public works.

Q. Is that your understanding?

A. I don't know if there are circumstances where that wouldn't be the case. I don't know. That would have to be a question for public works.

Q. Have you ever heard the term parent final map before?

A. Yes.

Q. What is that?

A. Well, the parent final map is the map that all of the specific various areas final maps relate to in the tentative maps.

MR. JIMMERSON: Mr. Bice -- Todd, can you tell me what's the first word before the words "final map."

MR. BICE: Parent.

MR. JIMMERSON: P-A-R-E-N-T.

MR. BYRNES: Do you want a break?

1 Mr. Perlman, thank you. Can I ask you ten minutes
2 worth of questions?
3 THE WITNESS: Sure.
4 MR. [illegible]: They won't -- I think that
5 would be better if we regroup to do it then.
6 MR. [illegible]: I will do it then. It's
7 regrouping, not regrouping.
8 MR. [illegible]: Thank you. We can go off the
9 record.
10 THE VIDEOGRAPHER: Going off the video record.
11 This includes the videotape deposition of Mr.
12 Perlman taken on December 5, 2016. The time is
13 approximately 1:34 p.m.
14 Off the record.
15
16
17
18
19
20
21
22
23
24
25

Exhibit 34

1
2
3
4

CERTIFIED TRANSCRIPT

BADLANDS HOMEOWNERS MEETING

5

NOVEMBER 1, 2016

6 p.m.

6

7

One Queensridge Place

Retreat Room

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Veritext Legal Solutions
877-955-3855

Submitted at City Council
Date 11-16-16 Item 105-107
By: David Mason

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

Veritext Legal Solutions
877-955-3855

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

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

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

Veritext Legal Solutions
877-955-3855

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

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

Veritext Legal Solutions
877-955-3855

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

Veritext Legal Solutions
877-955-3855

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

Exhibit 35

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION OF CLYDE D. SPITZE

VOLUME I

Taken at:

IRONTOWN INN
1145 Bentley Blvd.
Cedar City, Utah 84721

On Friday, August 16, 2019
At 10:05 a.m.

Reported by: Rachel D. Morgan, CSR

National Court Reporters Inc. 888.800.8656 2

A P P E A R A N C E S

For the Plaintiff:

James J. Leavitt
Autumn Waters (via telephone)
LAW OFFICE OF LEAVITT & WATERS
704 South Ninth Street
Las Vegas, NV 89101
702.732.8877

For Defendant City of Las Vegas:

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

National Court Reporters Inc. 888.800.8656 3

EXAMINATION INDEX

CLYDE D. SPITZE	PAGE NO.
By Mr. Ogilvie	4
By Mr. Leavitt	162

EXHIBIT INDEX

1 Condensed Header	4
2 Peccole Ranch Master Plan, CLV2043719-720	24
3 Peccole Ranch Master Plan, CLV2041756-872	[illegible]
4 Topographic map	57
5 Greenspaces map	57
6 Parameters letter, CLV061618-11	104
7 Las Vegas General Plan Land Use Element, Map 6	110
8 Notice of Public Hearing, CLV218726-760	121
9 General Plan Amendment, CLV061218-254	[illegible]
10 City Council Hearing, CLV061193-191	133
11 Notice of Public Hearing, CLV061207-939	136
12 Notice of Public Hearing, CLV060166-982	139
13 Clark County Assessor map	158

National Court Reporters Inc. 888.800.8656 4

P R O C E E D I N G S

* * *

CLYDE D. SPITZE

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

-oOo-

(Exhibit No. 1 was marked for identification.)

EXAMINATION

BY MR. OGILVIE:

Q. Good morning, Mr. Spitze.

A. Good morning.

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

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

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

A. I reside here.

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

National Court Reporters Inc. 888.800.8656 5

Q All right. Well let's break that in a minute. I just want to make sure that it wasn't privileged or confidential.

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

Q Okay. Sorry. Go ahead.

A I mean, there are remnants of my project. I mean, it's a pretty long lifetime to start looking for something from 1992 up to, and it hasn't really stopped. I still get calls and questions from Pennsylvania Corporation. I am kind of a family friend. Anyway.

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

A Let me -- yeah. I started working for, particularly a little bit with VII where I was the total guy. But as I got into the last several years, particularly with Perkins and Anast, I walked into the door of Perkins. And I knew, I knew the owner of that from the time I came into town. He was in the planning department of Western Engineers. And I had the next chair to him. He and I worked in the same department in 1983.

Q Okay.

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

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

Q Great. All right. And the documents --

A So those documents, everywhere I moved, and when I retired in 2004, on June the 2nd, I cleaned out all my files. I brought them home, put them in my garage. As far as I know, they are still there except for what I have brought back for some research.

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

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

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

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

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

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

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

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

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

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

Q I get it. Okay. But we break it down into phase one and phase two, correct?

A My phase one and phase two, yes.

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

A Yes.

Q Back in 1990, correct?

A Yes.

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

A Yes.

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

A Yes.

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

A That's true.

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

A Yes, yeah.

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

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

Q And then you said you remember it pretty vividly

A Yeah, absolutely.

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

A Well, if you put a channel going down this way, and you are basically going to have to change it to go over here, you've got to cut it out. You have to re-dig something that is not just a little minor ditch. These ditches are 8, 10 feet deep, 30, 40, 50 feet wide. It's a lot of dirt. The other thing is, when you start building in an area that water has consistently gone, you have to make some effort to deviate to change that location. It's, in my mind, it's a most effective thing. And I mean, this isn't the first project I worked on. And that sure not the last one.

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

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

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

area.

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

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

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

A Correct. And I did talk to the guy maybe ten years ago. So, it's been longer than that, probably 15 years ago. And I did talk him. He's retired many years before that. And he's probably not alive anymore.

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

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

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

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

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

Q Are you that segregation of five or six parcels different than what Triple Five had put on the plan?

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

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

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

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

A Basically, we started over.

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

A Yeah.

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

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

MR. [illegible]: Pardon me, Ken.

What page are you looking at, Mr. Spritzer.

THE WITNESS: 062.

MR. [illegible]: Thank you.

BY MR. [illegible]:

Q That's page 062 of Exhibit No. 3, correct?

A Yes.

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

A Yes.

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

A Absolutely.

Q Okay

Q Okay.

A And I didn't want to spend the money. And he didn't want to spend the money.

Q All right. Thousand. Are that project that you worked on in Dunkirk, what project was that, just out of curiosity?

A I don't remember.

Q If you don't remember, that's okay.

A It's 20, 30 years ago.

Q And the purpose of saying that is so more property could be developable, correct?

A Yes. When you get a quarter of a mile of river running off a mountain, it ripped out a huge big piece of your property. So by gathering that water together and getting it in something that would hold it and hold a 100 year storm without damage as we did, I led, we got it done.

Q Now, I am going to ask you similar questions about the golf course generally. I read a statement that you made that you said that, hey, the main reason for leaving the 250 acres open like you did in the Queensridge was because of the drainage, we got to that, right? Then you later stated that the golf course was a plus, right?

MR. CALVERT: Objection. Mischaracterizes witness's testimony.

BY MR. LEAVITT:

Q We'll come back to that.

A The golf course was, if you want to, a golf course is a plus. Because if you left it in its normal state as open space, which is what we did to have for the community, if you had something coming in there that you could use that without a major expenditure and get money out of it, it helps as a plus.

Q Maybe that was a very bad question by me. My point in saying this is, you didn't locate the 250 acres open like you did in the Queensridge development so you could build a golf course? That wasn't the principal reason for it, correct?

A No. It was to take care of water.

Q And, again, I have read through tens of thousands of pages of documents here, and I have not seen anywhere in any of these documents where the City of Las Vegas conditioned the development of the Queensridge property upon the construction of a golf course. Would you agree with that?

A Absolutely, it did not.

Q So was there any point in time when anybody at the City of Las Vegas came to you and stated we will not allow you to build the Queensridge development unless you will build a golf course?

MR. CALVERT: Objection. Lacks foundation. Mischaracterizes the evidence.

A No.

BY MR. LEAVITT:

Q George is starting to object.

A He woke up.

Q He woke up. Are you aware of any condition on any application that you have made for the Queensridge development where the City of Las Vegas conditioned the Queensridge development upon the construction of a golf course?

MR. CALVERT: Objection. Lacks foundation. Calls for a legal conclusion.

A As far as I know, there was nothing outside of the original plan that I inherited that had a golf course in that area. But, at the time that I went to work with Mr. Pecorio, that was not a critical issue. The critical issue was he wanted as many houses in well in a certain price range in certain areas to open this and leave the open space as drainage area. And that's it.

BY MR. LEAVITT:

Q Okay. Now, you also stated that the marketing department and the price for the lots in the Queensridge development?

A When I said marketing department, I mean Mr.

Pecorio, Mr. Pecorio, Tizzy Hilbe and anybody else having to do with the family. I mean, it was his personal property after he acquired it through other means to get the property all in his own name. And he's the one that determined how many houses, how much money he wanted to make.

Q Do you know an individual by the name of Greg Georgion?

A I know Greg.

Q Who is Mr. Georgion?

A Mr. Pecorio had three daughters.

Q Okay.

A Okay? The youngest daughter married a fellow by the name of Gordon who played basketball for the University of Las Vegas. And if you had been around you could have known that.

Q Was that Peter?

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

BY MR. LEAVITT:

Q So what was Old Gordon's play? Was it in the '80s or something?

A Yeah.

Q Anyway, not too important. So go ahead, you were telling me who Greg Georgion is.

A He was connected to Bill Pecorio.

Q Okay. And he also worked for the Pecorios? He

that property which you have identified in red?

A Open space.

MR. OGILVIE: Objection. Lacks foundation.

BY MR. LEAVITT:

Q What do you mean by open space?

A It's a part of the map that's listed as open space.

Q Okay. How does that limit the development?

MR. OGILVIE: Objection. Calls for a legal conclusion.

A I am trying to think of the verbiage that the county, that the city has that does not specify already a developable acreage in open space.

BY MR. LEAVITT:

Q Okay. I want you to open up back to Exhibit Nr. 5 if you don't mind?

A Exhibit Nr. Okay?

Q Sure.

A Okay.

Q If you don't mind looking at the very last page?

A Yeah.

Q And this is a map showing the old plan with your new plan, correct?

A It's the first layout. It's the first new opens area in phase two.

Q Okay. And then flip back to the next page. And you should be on CVW0125?

A Uh-huh.

Q For that page there does not show that area as open space, correct?

A It does not, because it has not, or that area, been developed yet.

Q Okay. What does it designate that area for?

A It says single-family residence, 10 acres or something to that effect.

Q Okay. And is your map here, and this is a map that you worked with preparing, correct?

A Yeah.

Q Okay. Does it designate any area as open space?

A It does not in that one. Because there is more of a development plan and rather than an overall general plan.

Q But the City of Las Vegas never came to you and correct me if I'm wrong, and I think we have established this, we've come to you and said that 250 acres is going to remove open space and you can't build on it?

MR. OGILVIE: Objection as form.

A That's not really the way the action came to play. I think, when that section was put under design, and we got the intent of it that we wanted, that generated additional open space, that's where it went.

BY MR. LEAVITT:

Q Well, but I thought you stated earlier, did you did not do any specific calculations?

A I did not.

Q Okay. And then the City of Las Vegas never specifically required you or made a condition to have open space?

A That's right.

Q Okay. So my question is, are there any limitations on that property in red remaining open space?

MR. OGILVIE: Objection. Lacks foundation. Calls for legal conclusion.

A If you look at the overall plan, you can't deal with a half of a plan when you are dealing with the rest of it. So you look at the overall, and see what areas developed and what left was open space, and that's what we had as open space.

Q Yes, I get that. That's what you and Mr. Petrole and the team put together. What I am trying to get at is are there any legal limitations, legally limiting that property in red to open space that you are aware of?

MR. OGILVIE: Objection. Lacks foundation. Calls for a legal conclusion.

A It doesn't fit into the, it doesn't fit into the plan. It's not a usable portion. And everything that was not a usable portion became part of the open space which corresponds with the drainage area, which is primary. And it just became open space. It was not property that Mr. Petrole wanted to use.

BY MR. LEAVITT:

Q I understand that. But what I am trying to get at is, are you aware of any restrictions or any limitations or any agreement or any contract anywhere limiting the use of that property in red to just open space?

MR. PATRICK: Other than the city's general plan?

A I have seen plans from the city that lists that all as open space.

BY MR. LEAVITT:

Q I am going to ask Mr. Ogilvie to please not direct the witness how to answer questions. I heard what you said.

MR. OGILVIE: I said it under my breath. I don't think the court reporter heard it.

BY MR. LEAVITT:

Q Okay. Okay. So let's get to that. Are you aware of any limitation to keep that property in red as anything other than open space?

A Just the site plan that I also says it's open space.

Q Okay. All right. And what site plan is that? Was it the one that Mr. Ogilvie just showed you?

C E R T I F I C A T E

STATE OF UTAH

COUNTY OF IRON

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

THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOTYPE, AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO TYPEWRITING, AND THAT A TRUE AND ACCURATE TRANSCRIPTION OF SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST OF MY ABILITY IS SET FORTH IN THE FOREGOING PAGES 1 TO 106.

RUSSELL D. MORGAN, CCR
LICENSE: 487 10844-7501

August 24, 2010.

CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

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

Chad O. Smith
Deponent

Subscribed and sworn to before me this ___ day of _____, 2010

Notary Public

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION OF CLYDE O. SPITZE

VOLUME II

Taken at:

HAMPTON INN
1145 Berkley Street
Cedar City, Utah 84721

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

Reported by: Russell D. Keegan, CSR

APPEARANCES

For the Plaintiff:

Jamie S. Leavitt
Pulsar Zakes (via telephone)
LAW OFFICE OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101
702.733.8877

For Defendant Cities of Las Vegas:

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

EXAMINATION INDEX

CLYDE O. SPITZE PAGE NO.

By Mr. Leavitt 203

By Mr. Ogilvie 390

By Mr. Leavitt 444

EXHIBIT INDEX

14 Map 217

15 Map 217

16 History of The Development of Queensridge 245

17 Master Declaration of CC&Rs 257

18 Master Declaration of Covenants, Conditions ...262

19 Master Lots at Queensridge 271

20 Public Offering Statement 276

21 City of Las Vegas Agenda 286

22 Agenda Summary Page 289

23 Letter 12/18/14, Exhibit F 297

24 LU 3943 311

25 File History 335

26 File History 346

27 Agenda Summary Page 357

28 The maps 360

29 City Council Meeting 2.2.1999 369

30 File History GPA-24-90 397

EXHIBITS CONTINUED

31 Sec Articles of Clyde O. Spitze 414

32 Review of the SGW Drainage Study 423

33 Notes for Planning Area 3 & 32 425

34 Planning Commission Agenda for 1/28/91 436

35 Bill No. 93-2 451

A Triple Five. Yes. Mr. Peccole would come to us and talk about our Triple Five we laying out and what they were doing.

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

A The partnership.

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

A That's exactly what I said earlier today.

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

A It was a contributing factor.

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

A Yes. The area north of Charleston.

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

Jerry, since you testified to a lot of --

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

Q Did you control it with your phone?

A Yes.

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

A Yes.

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

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

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

which was done in approximately 1990. So are you saying because that the Peccole phase two plan was revised and refiled in approximately 1994?

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

Q But this is your statement, right?

A Yes.

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

A Yes.

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

A Yes.

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

A That's right.

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

A Absolutely.

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

A Yes.

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

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

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

MR. DETWILER: Object to form.

BY MR. LEAVITT:

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

A Yes.

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

A Yes.

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

A Yes.

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

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

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

been referring to Exhibit No. 1. And the developments you have been identifying here are already -- when, the three, that is Exhibit No. 5, correct?
A Correct.
Q All right. Now, let me make sure I've got this right. What exhibit did we mark that? No. 16. Okay. We are going to skip a lot now because you have actually answered a lot of these questions for us already.
Now, the list of the, and I think that's what you called it, there was a rub of people or a team of people that worked on the development of phase two, that involved Mr. Peccole and, obviously, Mrs. Peccole had gone straight because she traveled to Europe. There was an attorney. There was a project manager. And there was a gentleman, Larry Miller. And I wanted to make sure I got this right. When you say project manager, were you part of the project management team?
A Yes.
Q Okay. And you worked with this company which is called KGCA as the project management team, correct?
A Yes. We actually worked for me in doing this design.
Q All right. And, in reading your deposition, you stated that William Peccole was principally in charge until a legal ruling on his decision making, correct?

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

A Yes. From the configuration of the original plan amendment to the configuration that we were going.

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

MR. OGILVIE: Objection. Form.

A What do you mean voluntary.

BY MR. LEAVITT:

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

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

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

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

Q The drainage area, correct?

A Yes.

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

the request, not stated that the change in alignment of the golf course was the reason for the request. So my question is that change in alignment of the golf course was a decision that was made by you and Mr. Peccole, correct?

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

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

MR. OGILVIE: Calculation to fact.

A That caused our decision to change it.

BY MR. LEAVITT:

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

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

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

A Yeah.

Q And that approval letter lists those conditions, correct?

A Yes.

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

A Yes.

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

MR. OGILVIE: Objection. Calls for legal conclusion.

A Versus what?

BY MR. LEAVITT:

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

A Yeah.

Q Is the answer yes?

A Yes.

MR. OGILVIE: Same objection.

BY MR. LEAVITT:

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

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

MR. OGILVIE: Objection. Document speaks for itself.

A That's what it says.

BY MR. LEAVITT:

Q Okay.

(Off-record discussion took place off the record.)

BY MR. LEAVITT:

Q Okay. I am almost done.

A All right.

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

A All right. Thirty-four.

Q I want to make sure I understand this. So Exhibit No. 34 is the March 8th, 1990, 2-17-90 minutes, correct?

A Yes.

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

A Correct.

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

A Yes.

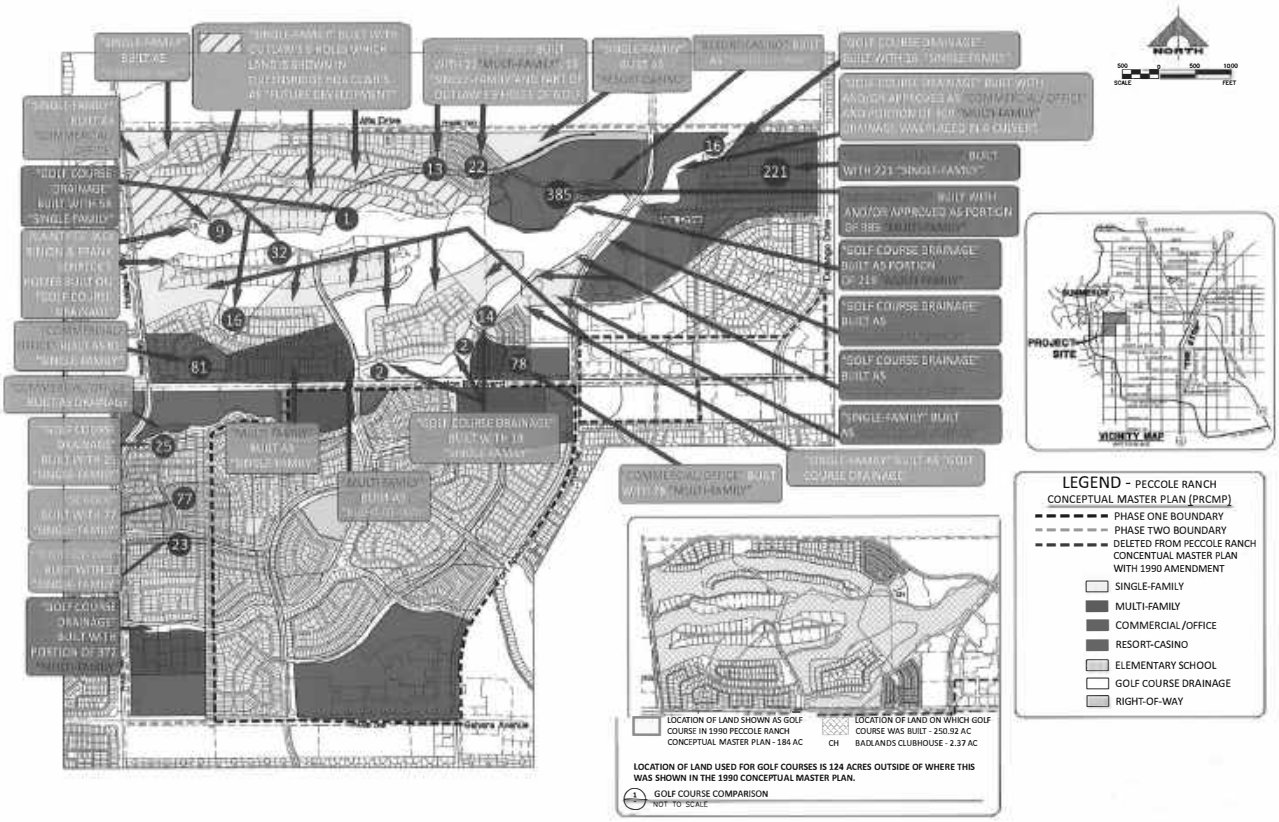
Q All right. But your plan that you worked on with Mr. Peccole after you were retained replaced this Triple

1 Five plan, correct?
2 A Yes. Yes.
3 Q Are do you know whether the drainage improvements
4 that were made as a result of the construction of Tivoli
5 Village received a drainage board or not?
6 A I don't.
7 Q You don't?
8 A I don't know what you mean by board.
9 Q Things in which Mr. [illegible] or so on. Pass the witness.
10 MR. [illegible]: Thank you, Mr. Spitze. I think we
11 are all finished.
12 MR. COURT REPORTER: Do you want a transcript?
13 MR. [illegible]: Absolutely.
14 MR. [illegible]: I would like a transcript. Here on
15 last time, word searchable PDF.
16 Thereupon, the proceedings were concluded at 5:41 p.m.

1 C E R T I F I C A T E
2
3 STATE OF UTAH
4 COUNTY OF IRON
5 THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE
6 TAKEN BEFORE ME, BURNEL R. COBBAN, A CERTIFIED COURT
7 REPORTER IN AND FOR THE STATE OF UTAH, RESIDING AT IRON
8 COUNTY, UTAH:
9 THAT THE DEPOSITION WAS REPORTED BY ME OR UNDER MY
10 ABLE THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO
11 TYPEWRITING, AND THAT A TRUE AND CORRECT TRANSCRIPTION OF
12 SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST OF MY
13 ABILITY IS SET FORTH IN THE FOREGOING PAGES 202 TO 461.
14
15
16 BURNEL R. COBBAN, CCR
17 LICENSE NO.:CSR447-2001
18
19
20 August 20, 2019.
21
22
23
24
25

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
3 _____ _____
4 _____ _____
5 _____ _____
6 _____ _____
7 _____ _____
8 _____ _____
9 _____ _____
10 _____ _____
11 _____ _____
12 _____ _____
13 I, GLYNN R. SPITZE, deponent herein, do hereby
14 certify and declare under penalty of perjury the within and
15 foregoing transcription to be my deposition in said action
16 that I have read, corrected, and do hereby affix my
17 signature to said deposition.
18 GLYNN R. SPITZE
19 Deponent
20 Subscribed and sworn to before me this ____ day of
21 _____, 2019.
22
23 Notary Public
24
25

Exhibit 36



LO 00003939
0136

3272

Exhibit 37

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

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

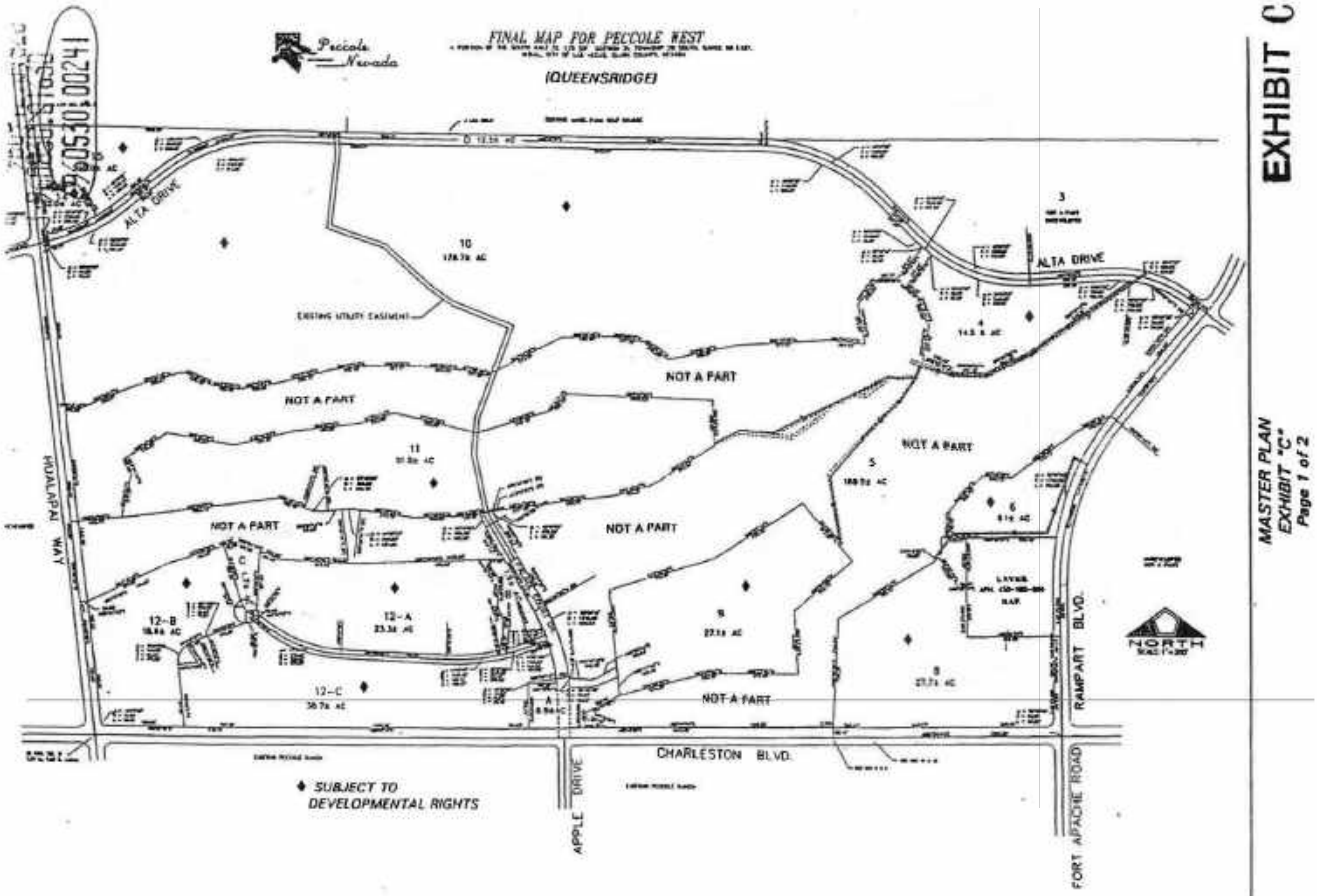
C. The name of the common interest community created by this Master Declaration is Queensridge. This Master Declaration is intended to create equitable servitudes and covenants appurtenant to and for the benefit of all of the Property, and the owners and residents thereof, and to provide for the formation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

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

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

DECLARATION:

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



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

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

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

RECITALS:

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

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

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

0140
LO 00002705
3277

Exhibit 38

Southern Nevada GIS ~ OpenWeb Info Mapper

The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information			
Parcel:	138-31-314-006		
Owner Name(s):	BINION JACK B & PHYLLIS M		
Site Address:	9831 ORIENT EXPRESS CT		
Jurisdiction:	Las Vegas - 89145		
Zoning Classification:	Residential Planned Deveopment District (R-PD7)		
Misc Information			
Subdivision Name:	PECCOLE WEST-PARCEL 20		
Lot Block:	Lot:6 Block:B	Construction Year:	Construction Year: 2001
Sale Date:	02/1999	T-R-S:	20-60-31
Sale Price:	$562,000	Census Tract:	3226
Recorded Doc Number:	19990226 00005210	Estimated Lot Size:	Estimated Lot Size: 1.02
Flight Date:	Aerial Flight Date: Mar.18.2017		
Elected Officials			
Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA
Board of Education:	3 - FELICIA ORTIZ	Minor Civil Division:	Las Vegas

Southern Nevada GIS ~ OpenWeb Info Mapper

The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information			
Parcel:	138-31-314-007		
Owner Name(s):	ABDELAZIZ GAMAL and FELAYA AMAL		
Site Address:	9821 ORIENT EXPRESS CT		
Jurisdiction:	Las Vegas - 89145		
Zoning Classification:	Residential Planned Deveopment District (R-PD7)		
Misc Information			
Subdivision Name:	PECCOLE WEST-PARCEL 20		
Lot Block:	Lot:7 Block:B	Construction Year:	Construction Year: 2003
Sale Date:	09/2011	T-R-S:	20-60-31
Sale Price:	$3,000,000	Census Tract:	3226
Recorded Doc Number:	20110916 00002084	Estimated Lot Size:	Estimated Lot Size: 1.35
Flight Date:	Aerial Flight Date: Mar.18.2017		
Elected Officials			
Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA
Board of Education:	3 - FELICIA ORTIZ	Minor Civil Division:	Las Vegas

Southern Nevada GIS ~ OpenWeb Info Mapper

The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information			
Parcel:	138-31-314-008		
Owner Name(s):	ROESENER & WENGER-ROESENER TRUST and ROESENER DALE W TRS		
Site Address:	9811 ORIENT EXPRESS CT		
Jurisdiction:	Las Vegas - 89145		
Zoning Classification:	Residential Planned Deveopment District (R-PD7)		
Misc Information			
Subdivision Name:	PECCOLE WEST-PARCEL 20		
Lot Block:	Lot:8 Block:B	Construction Year:	Construction Year: 2003
Sale Date:	03/2001	T-R-S:	20-60-31
Sale Price:	$631,000	Census Tract:	3226
Recorded Doc Number:	20010329 00002200	Estimated Lot Size:	Estimated Lot Size: 1.24
Flight Date:	Aerial Flight Date: Mar.18.2017		
Elected Officials			
Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)

Southern Nevada GIS ~ OpenWeb Info Mapper

The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information			
Parcel:	138-31-314-009		
Owner Name(s):	FARIES DURWARD JR & TARRY A		
Site Address:	9801 ORIENT EXPRESS CT		
Jurisdiction:	Las Vegas - 89145		
Zoning Classification:	Residential Planned Deveopment District (R-PD7)		
Misc Information			
Subdivision Name:	PECCOLE WEST-PARCEL 20		
Lot Block:	Lot:9 Block:B	Construction Year:	Construction Year: 2002
Sale Date:	06/2003	T-R-S:	20-60-31
Sale Price:	$4,200,000	Census Tract:	3226
Recorded Doc Number:	20030611 00000220	Estimated Lot Size:	Estimated Lot Size: 1.13
Flight Date:	Aerial Flight Date: Mar.18.2017		
Elected Officials			
Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA
Board of Education:	3 - FELICIA ORTIZ	Minor Civil Division:	Las Vegas

Southern Nevada GIS ~ OpenWeb Info Mapper

The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information			
Parcel:	138-31-311-014		
Owner Name(s):	SCHRECK FRANK A and BAUMAN-FRERES JULIETTA		
Site Address:	9824 WINTER PALACE DR		
Jurisdiction:	Las Vegas - 89145		
Zoning Classification:	Residential Planned Deveopment District (R-PD7)		
Misc Information			
Subdivision Name:	PECCOLE WEST-LOT 11		
Lot Block:	Lot:25 Block:A	Construction Year:	Construction Year: 1998
Sale Date:	04/2014	T-R-S:	20-60-31
Sale Price:	$2,125,000	Census Tract:	3226
Recorded Doc Number:	20150914 00001800	Estimated Lot Size:	Estimated Lot Size: 0.84
Flight Date:	Aerial Flight Date: Mar.18.2017		
Elected Officials			
Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA

Exhibit 39

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT N. PECCOLE; AND NANCY A. PECCOLE,
Appellants,
vs.
FORE STARS, LTD., A NEVADA LIMITED LIABILITY COMPANY; 180 LAND CO., LLC, A NEVADA LIMITED LIABILITY COMPANY; SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY; EHB COMPANIES, LLC, A NEVADA LIMITED LIABILITY COMPANY; YOHAN LOWIE, AN INDIVIDUAL; VICKIE DEHART, AN INDIVIDUAL; AND FRANK PANKRATZ, AN INDIVIDUAL,
Respondents.

No. 72410

FILED

OCT 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ROBERT N. PECCOLE; AND NANCY A. PECCOLE, INDIVIDUALS,
Appellants,
vs.
FORE STARS, LTD., A NEVADA LIMITED LIABILITY COMPANY; 180 LAND CO., LLC, A NEVADA LIMITED LIABILITY COMPANY; SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY; EHB COMPANIES, LLC, A NEVADA LIMITED LIABILITY COMPANY; YOHAN LOWIE, AN INDIVIDUAL; VICKIE DEHART, AN INDIVIDUAL; AND FRANK PANKRATZ, AN INDIVIDUAL,
Respondents.

No. 72455

ORDER OF AFFIRMANCE

These consolidated appeals are from district court orders awarding attorney fees and costs and denying NRCP 60(b) relief from a

dismissal order in a real property dispute.[1] Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

This case arises out of a dispute appellants have with respondents, who are planning to develop property on which a golf course is presently located, and which appellants argue is subject to development restrictions under the Master Declaration of Covenants, Conditions, Restrictions and Easements (CC&Rs) for the Queensridge community in Las Vegas where appellants reside. Appellants sued respondents for injunctive relief and damages based on theories of impaired property rights and fraud. The district court dismissed appellants' complaint and then denied appellants' motion for NRCP 60(b) relief. Additionally, the district court awarded respondents a total of $128,131.22 in attorney fees and costs. These appeals followed.

First, appellants argue that the district court abused its discretion in denying NRCP 60(b) relief by relying on an invalid amendment to the CC&Rs in concluding that the golf course property was not subject to the CC&Rs. Because the record supports the district court's determination that the golf course land was not part of the Queensridge community under the original CC&Rs and public maps and records, regardless of the amendment, we conclude the district court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (providing that the district court has

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion).

Second, appellants contend that the district court violated their procedural due process rights by awarding respondents attorney fees and costs without first holding an evidentiary hearing. We disagree. An evidentiary hearing is not required before an award of attorney fees and costs. *See Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (providing that the requirement of "an opportunity to be heard" before sanctions may issue "does not require [the court to hold] an oral or evidentiary hearing on the issue"). Appellants had notice of respondents' motions for attorney fees and costs and took advantage of the opportunity to respond to those requests in writing and orally. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that due process requires notice and opportunity to be heard). Thus, we conclude the district court did not violate appellants' due process rights by failing to hold an evidentiary hearing before awarding respondents attorney fees and costs.

Lastly, appellants assert that appellant Robert Peccole's preparation, research, and 55-year legal career demonstrate that the attorney fees and costs award as a sanction was improper. NRS 18.010(2)(b) permits the district court to award attorney fees to a prevailing party when the court finds that the claim "was brought or maintained without reasonable ground or to harass the prevailing party." Additionally, EDCR 7.60(b) allows the district court to impose a sanction including attorney fees

and costs when an attorney or party "without just cause. . . [p]resents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted. . . [or] multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

Appellants filed a complaint alleging the golf course land was subject to the CC&Rs when the CC&Rs and public maps of the property demonstrated that the golf course land was not. Further, after the district court denied appellants' first motion for a preliminary injunction and explained its reasoning, appellants filed a second almost identical motion, a motion for rehearing of the denial of one of those motions, and a renewed motion for preliminary injunction, all of which included the same facts or argument. Additionally, the district court repeatedly warned appellants that they were too close to the issue to see it clearly or accept any of the court's decisions and despite this warning, they continued to file repetitive and meritless motions. The district court limited the award to fees and costs incurred in defending the repetitive motions and issued specific findings regarding each of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and the record supports the amount awarded. *See Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (requiring the district court to consider the *Brunzell* factors when awarding attorney fees). Further, Robert's extensive experience as an attorney is not a factor under *Brunzell* and because the district court was within its discretion to award attorney fees and costs for the repetitive and frivolous parts of the litigation, it is unclear how Robert's extensive legal career would make the award improper. Thus, we conclude the district court did not abuse its discretion in awarding respondents attorney fees and costs. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330, 130 P.3d 1280,

1288 (2006) (explaining that this court will not overturn a district court's decision to award attorney fees and costs as a sanction absent a manifest abuse of discretion). Accordingly, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Douglas

_____, J.
Gibbons

_____, J.
Stiglich

cc: Hon. Douglas Smith, District Judge
Ara H. Shirinian, Settlement Judge
Peccole & Peccole, Ltd.
The Jimmerson Law Firm, P.C
Sklar Williams LLP
EHB Companies, LLC
Eighth District Court Clerk

Exhibit 40

Item 78 - DIR-72290 - PUBLIC HEARING - For possible action on an Appeal of Director's decision to not require applications for a General Plan Amendment and Major Modification in conjunction with applications related to three Planning Projects (PRJ-71990, PRJ-71991, and PRJ-71992) generally located on 282.08 acres at the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-601-008; 138-31-702-003; 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka). Staff recommends DENIAL.

Appearance List:

CAROLYN G. GOODMAN, Mayor
FRANK SCHRECK, Appellant, 9824 Winter Palace Drive
BRAD JERBIC, City Attorney
TODD BICE, Legal Counsel for Frank Schreck, 400 South 7th Street
LOIS TARKANIAN, Mayor Pro Tem/Councilwoman
LUANN D. HOLMES, City Clerk
RICKI Y. BARLOW, Councilman
STAVROS S. ANTHONY, Councilman
DOUG RANKIN
PETER LOWENSTEIN, Acting Planning Director
STEVEN G. SEROKA, Councilman
TOM PERRIGO, Executive Director of Community Development
MICHAEL BUCKLEY, 300 South 4th Street
NGAI PINDELL, Boyd School of Law, University of Nevada, Las Vegas
BOB COFFIN, Councilman
UNIDENTIFIED FEMALE
MICHELE FIORE, Councilwoman
YOHAN LOWIE, 215 South Fort Apache Road
CHRIS KAEMPFER, representing EHB Companies
ELIZABETH GHANEM HAM, 1215 South Forst Apache, Four Stars and 180 Land, representing the Applicant

32 STEPHANIE ALLEN, representing EHB Companies

33 BOB PECCOLE, Attorney, 4997 Verlaine, Queensridge Resident

34 GEORGE GARCIA, 1055 Whitney Ranch Drive, Suite 210

35

36 (3 hours, 23 minutes, 48 seconds) [5:57:50 – 8:34:02]

37

38 Typed by: Speechpad.com

39 Proofed by: Ashley Foster

CITY ATTORNEY BRAD JERBIC

I'm not trying to deprive you of making your record, and to be honest with you, I don't really care what the outcome is. So having said that, I think there is a factual predicate here, though, that isn't quite accurate. I don't know — and I'm going to talk to Mr. Lowenstein about this — because if Mr. Lowenstein agrees with you, then you need to make this record that you're about to make.

But it was my understanding that if you come in with a zone change and the zone change is incompatible with the General Plan, you are required by our Code to submit a General Plan Amendment at the same time as the zone change. However, if you have hard zoning, the Code is silent as to whether or not you have to submit a General Plan Amendment. Do I have that right?

PETER LOWENSTEIN

Through you, Madam Mayor, it's not explicit that it requires a General Plan Amendment other than for a rezoning application, as you initially stated.

CITY ATTORNEY BRAD JERBIC

I think this is important, because I don't think the argument, Mr. Bice, is that hard zoning trumps the General Plan. It's that the Code is silent as to whether or not you need a General Plan Amendment when you have hard zoning. And I think that's the question, because I don't think anybody on staff is making the argument that you made.

TODD BICE

I think we disagree with your statement, Mr. Jerbic —

MAYOR GOODMAN

Wait, wait, wait, your mic's not on. We can't hear you.

TODD BICE

Oh sorry. I think the thing where we in part, Brad, disagree, or Mr. Jerbic, that we disagree is the label "hard zoning," because again, this is R-PD. This was not zoned as R-7. This was R-PD7.

Exhibit 41

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75481

Electronically Filed
Feb 07 2019 09:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SEVENTY ACRES, LLC,

Appellant,

v.

JACK B. BINION ET AL,

Respondents,

On Appeal from Eighth Judicial District Court
Honorable Jim Crockett

RESPONDENTS' ANSWERING BRIEF

Todd L. Bice, Esq., Bar No. 4534
tlb@pisanellibice.com
Dustun H. Holmes, Esq., Bar No. 12776
dhh@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100

Attorneys for Respondents

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Turner Investments, LTD is a Nevada Limited Liability Company owned by Clyde Turner. Pyramid Lakes Holding LLC is a Nevada Limited Liability owned by Tim and Kris Ann McGarry. All other Respondents are individuals and/or trustees of the respective trust identified.

Pisanelli Bice represents the Respondents in this Court and similarly represented the Respondents in the District Court.

DATED this 6th day of February, 2018.

PISANELLI BICE PLLC

By: /s/ *Todd L. Bice*

Todd L. Bice, Esq., Bar No. 4534
Dustun H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Respondents

TABLE OF CONTENTS

I. ROUTING STATEMENT 1

II. ISSUES PRESENTED 2

III. STATEMENT OF THE CASE / SUMMARY OF THE ARGUMENT.....2

IV. STATEMENT OF THE FACTS 5

A. The Development of the Peccole Ranch Master Plan Community. 5

B. A Land Speculator Acquires the Property Decades Later, Betting that he can Change the Land Use. 10

C. The Developer Gets the City to Disregard its own Requirements. 12

1. The City admits that the Code mandates a Major Modification to the previously approved Master Plan. 12

2. The Planning Commission Denies the Major Modification Sought by the Developer. 17

3. The City Council now votes 4-to-3 to ignore the Master Plan. 19

D. The District Rules that the City Must Follow its Own Code. 27

V. ARGUMENT 30

A. The Requirements of the City Code do not Change Based upon the Developer's Foot Stomping. 30

1. A Major Modification is a Legal Prerequisite to Change a Master Plan. 32

2. The only interpretation that violates statutory construction is the Developer's newly-adopted approach. 36

3. The District Court properly rejected the City's newly-minted interpretation proffered for litigation. 38

4. A zoning application is not a substitute for a major modification. 40

B. Substantial Evidence Does Not Support the City's Action. 42

C. The District Court Did Not "Exceed the Proper Scope of Judicial Review." 46

D. The Developer's "Judicial Taking" Claim is Unfounded. 48

1. The Court should decline to entertain the Developer's purported judicial taking claim. 49
2. The United States Supreme Court has never established a judicial taking claim.....51
3. There has been no judicial taking. 55
VI. CONCLUSION 59

TABLE OF AUTHORITIES

Cases

Am. W. Dev., Inc. v. City of Henderson, 111 Nev. 804, 898 P.2d 110 (1995) . 32, 44

Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702(Nev. 2017).....55

Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nevada, Inc., 99 Nev. 739 670 P.2d 102 (1983) 39

Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 109 S. Ct. 468 (1988).....42

Bowyer v. Taack, 107 Nev. 625, 817 P.2d 1176 (1991) 40

Brace v. United States, 72 Fed. Cl. 337 (2006), aff'd, 250 F. App'x 359 (Fed. Cir. 2007) 60

Brinkerhoff-Faris Tr. & Sav. Co. v. Hill, 281 U.S. 673, 50 S. Ct. 451 (1930).....60

Chickasaw Nation v. United States, 534 U.S. 84, 122 S. Ct. 528 (2001).....38

Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 132 S. Ct. 2156 (2012).....42

City Council of City of Reno v. Travelers Hotel, Ltd., 100 Nev. 436.....47

City Council of Reno v. Reno Newspapers, 105 Nev. 886, 784 P.2d 974 (1989).....40

City of Boulder v. General Sales Drivers, 101 Nev. 117, 694 P.2d 498 (1985).....40

City of Las Vegas v. Laughlin, 111 Nev. 557 893 P.2d 383 (1995) 50

City of N. Las Vegas v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 122 Nev. 1197, 147 P.3d 1109 (2006) 31

City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 236 P.3d 10 (2010) 32

Defs. of Wildlife v. Norton, 258 F.3d 1136 (9th Cir. 2001) 42

Great N. Ry. Co. v. Sunburst Oil & Ref. Co., 287 U.S. 358, 53 S. Ct. 145 (1932) .60

Hertz v. Woodman, 218 U.S. 205, 30 S.Ct. 621 (1910).....58

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Daniel, 439 U.S. 551, 99 S.Ct. 790 (1979).....42

Jaworski v. Rhode Island Bd. of Regents for Ed., 530 F. Supp. 60 (D.R.I. 1981) ..32

Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 849 P.2d 267 (1993).....33

Neil v. Biggers, 409 U.S. 188, 93 S. Ct. 375 (1972).....58

Nova Horizon, Inc. v. City Council of the City of Reno, 105 Nev. 92, 769 P.2d 721, (1989).....64

Petro-Hunt, L.L.C. v. United States, 126 Fed. Cl. 367 (2016), aff'd, 862 F.3d 1370 (Fed. Cir. 2017) 57

PruneYard Shopping Ctr. v. Robins, 447 U.S. 74, 100 S. Ct. 2035 (1980) 59

Robert E. v. Justice Court, 99 Nev. 443, 664 P.2d 957 (1983) 39

State ex rel. Johns v. Gragson, 89 Nev. 478, 515 P.2d 65 (1973).....46

Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot., 560 U.S. 702, 130 S. Ct. 2592 (2010) ..... passim

Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004)..... 45, 50, 65

Sustainable Growth v. Jumpers, LLC, 122 Nev. 53, 128 P.3d 452 (2006) 64

Tidal Oil Co. v. Flanagan, 263 U.S. 444, 44 S. Ct. 197 (1924).....60

Tighe v. Las Vegas Metro. Police Dep't, 110 Nev. 632, 877 P.2d 1032 (1994) 47

Tupper v. Kroc, 88 Nev. 146, 494 P.2d 1275 (1972) 44

United States v. Orso, 275 F.3d 1190 (9th Cir. 2001).....32

Valdez v. Employers Ins. Co. of Nevada, 123 Nev. 170, 162 P.3d 148 (2007).....33

Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 101 S. Ct. 446 (1980).....59

Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 105 S. Ct. 3108 (1985) 54

Statutes

Nev. R. Stat. § 278.330.....*63*

Nev. R. Stat. § 278.349..... *62, 63, 64*

Rules

NRAP 17(a)(10)-(11) *1*

NRAP 17(b)(10) *1*

Codes

LVMC 19.10.040 ..... *passim*

LVMC 19.10.050 ..... *passim*

I. ROUTING STATEMENT

This matter is presumptively before the Court of Appeals. Namely, a petition from judicial review from the City of Las Vegas' (the "City") approval of developmental applications in contravention of the law. NRAP 17(b)(10). However, Respondents Jack B. Binion, Duncan R. and Irene Lee, individuals and trustees of the Lee Family Trust, Frank A. Schreck, Turner Investments, LTD, Rover P. and Carolyn G. Wagner, individuals and trustees of the Wagner Family Trust, Betty Englestad as trustee of the Betty Englestad Trust, Pyramid Lake Holdings, LLC, Jason and Shereen Awad as trustees of the Awad Asset Protection Trust, Thomas Love as trustee of the Zena Trust, Steve and Karen Thomas as trustees of the Steve and Karen Thomas Trust, Susan Sullivan as trustee of the Kenneth J. Sullivan Family Trust, Dr. Gregory Bigler and Sally Bigler (collectively the "Surrounding Homeowners") do not object to the Court retaining this appeal.

But, the Surrounding Homeowners certainly dispute Appellant Seventy Acres, LLC ("Seventy Acres") naked and unsupported assertion that this appeal presents "issues of error correction," issues of "first impression" concerning the United States or Nevada Constitution, or issues of "first impression" of statewide public importance. NRAP 17(a)(10)-(11).

II. ISSUES PRESENTED

1. Whether the District Court correctly found that the City must follow its own laws – laws that it has long interpreted to preclude altering a master plan residential community without seeking what is known as a Major Modification under the City's Code – and rejecting a one-time interpretation that was meant for litigation purposes?

2. Is the City's land use approval improper – changing the City's General Plan as well as a residential communities' Master Plan –when it rests upon the Developer "promising" to negotiate "in the future" if the City will just give him approvals now?

3. Whether this Court should entertain the Developer's purported judicial taking claim raised for the first time on appeal, even though the developer has already chosen to pursue that issue in a separate district court proceeding, and if so, does a judicial decision which makes no changes to any property rights amount to a taking under the Fifth Amendment?

III. STATEMENT OF THE CASE / SUMMARY OF THE ARGUMENT

This appeal arises from a land speculator's acquisition of approximately 250 acres of land set aside to serve as open space/parks/drainage within the Peccole Ranch Master Plan. Specifically, decades after this planned community's creation

and development, Yohan Lowie ("Lowie")[1], and the entities he controls[2] sought to fundamentally change the Peccole Ranch Master Planned Development by subdividing the property and then developing it for additional housing within the Master Plan community.[3] The Developer's present appeal stems from three applications related to his desire to build a 435 residential housing unit on approximately 17 acres of the land designated as Park/Open Space/Drainage within this Master Plan community.

The Developer's appeal seeks to revise history and the record below. The Developer omits (tellingly) the City's repeated applications of its own Code in explaining that no development may occur on the subject property absent compliance with the City Code's Title 19 provisions governing modifications of a

---

[1] The seated justices of the Nevada Supreme Court have in the past recused themselves from hearing matters pertaining to Mr. Lowie and his companies as the Court's past "business relationship would cause a reasonable person to question the impartiality of all the currently seated justices…" *See RA Southeast Land, LLC v. Eighth Jud. Dist. Ct.*, No. 68778, Order of Recusal, filed June 8, 2016.

[2] The named Appellant in this matter is Seventy Acres. This is one of three single-member limited liability companies that is ultimately owned and controlled by Lowie and his affiliated company, EHB Companies, LLC ("EHB"). The other two entities are 180 Land Co., LLC ("180 Land") and Fore Stars, LTD. ("Fore Stars"). Collectively these entities and individuals are referred to as the "Developer" in this brief.

[3] The manner in which Developer subdivided the property is the subject of a separate lawsuit and related petition for this Court. *See Fore Stars, LTD, et al v. Eighth Jud. Dist. Ct.*, Case No. 73813.

previously approved Master Plan. Indeed, the Developer knew full well of this requirements which is why it submitted an application. It was only when the Developer realized he could not secure the votes – having lost a vote on a Major Modification before the Planning Commission – that he suddenly reversed course and brow beat the City's Planning Director into claiming that the Code meant the opposite of what the City had long insisted.

When confronted by the District Court over this prior and long-standing Interpretation, the City Attorney adopted an utterly new interpretation – solely developed in litigation – and claimed that the City's prior position should be disregarded as a "mistake". But as the District Court recognized, there was no "mistake." Instead, the City has simply manufactured a new interpretation – for the first time in litigation –to rationalize land use approvals that the City knew violated the requirements of its Code, approvals that were given based upon little more than the Developer's "promise" that in the future he could "negotiate". 71 AA 17423.

Contrary to the wants of the Developer, the City is bound to follow the requirements of its own Code, particularly requirements the City has long recognized and which the Developer himself recognized until they became an inconvenient obstacle. Tellingly, the City has accepted the District Court's ruling that it violated its own Code and declined to appeal.

IV. STATEMENT OF THE FACTS

A. The Development of the Peccole Ranch Master Plan Community.

In 1986, the Peccole Family presented their initial Master Development Plan under the name Venetian Foothills to the City. 11 AA 2666-2672. The original Master Plan contemplated two 18-hole golf courses (which would become known as Canyon Gate in Phase I and Badlands in Phase II). *Id*. The golf courses were "the focal point of the development," designed to be in a major flood zone and designated to serve as flood drainage and open space. *Id*. The City mandated these designations to address the natural flood problem and serve as the open space necessary for master plan developments. 11 AA 2628 – 2633.

In 1989, the Peccole Family submitted and the City approved the Peccole Ranch Master Plan that focused upon Phase I in the area from W. Sahara north to W. Charleston Blvd within the boundaries of Hualapai Way on the west and Durango Dr. on the east. In 1990, as development progressed on Phase I, the Peccole Family presented their Phase II portion of the Peccole Ranch Master Plan to the City, focusing upon the land located from west Charleston Boulevard north to Alta Drive west to Hualapai Way and east to Durango Drive ("Phase II Master Plan" or "Peccole Ranch Master Plan"). 15 AA 3452-3473. Queensridge (as it is known today) was included as part of this plan and covered West Charleston Boulevard north to Alta Drive, west to Hualapai Way and east to Rampart Boulevard. 15 AA 3465 ("A 50

acre single-family parcel central to Phase Two offers extensive golf course frontage to future residents in an exclusive environment bounded on all sides by the golf course.").

The Peccole Ranch Master Plan specifically defined what would become known as the Badlands golf course as flood drainage/golf course in addition to satisfying the required open space/parks necessitated by the City for a Master Planned Development. 15 AA 3463-3465. The Phase II Master Plan expressly designated the land as golf course drainage/open space and specifically was presented as zero net density and zero net units. 15 AA 3471. As the Phase II Master Plan makes clear, the Peccole Family knew residential development would not be feasible in the natural flood zone, but a golf course could be used to enhance the value of the surrounding residential lots:

> A focal point of Peccole Ranch Phase Two is the 199.8 acre golf course and open space drainage way system which traverses the site along the natural wash system. All residential parcels within Phase Two, except one, have exposure to the golf course and open space areas . . . . The close proximity to Angel Park along with the extensive ***golf course and open space network were determining factors in the decision not to integrate a public park in the proposed Plan***... The design of the ***golf course has been instrumental in*** preserving the natural character of the land and ***controlling drainage on and through the property***.

15 AA 3463-3465 (emphasis added). The Phase II Master Plan amplifies that it is a planned development, incorporating a multitude of permitted land uses as well as special emphasis on the open space:

> Incorporates office, neighborhood commercial, a nursing home, and a mixed-use village center around a strong residential base in a cohesive manner. A destination resort-casino, commercial/office and commercial center have been proposed in the most northern portion of the project area. Special attention has been given to the compatibility of neighboring uses for smooth transitioning, circulation patterns, convenience and aesthetics. ***An extensive 253 acre golf course and linear open space system winding throughout the community provides a positive focal point while creating a mechanism to handle drainage flows***.

15 AA 3457 (emphasis added). Likewise, the Phase II Master Plan outlines the permissible land use for each portion of the planned development, providing that there would be up to 2,807 single-family residential units on 401 acres, 1,440 multi-family units on 60 acres, and open space/golf course/drainage on approximately 211 acres. 15 AA 3471.

The City's Code in place in 1990 specified a zoning category known as Residential Planned Development districts ("R-PD"). Although the City's Code no longer provides for such zoning districts, this sort of zoning approval was common at the time for comprehensive planned developments. As the City's Code then provided, the purpose of the R-PD was "to allow maximum flexibility for imaginative and innovative residential design and land utilization in accordance with the General Plan. It is intended to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of open space, separation of pedestrian and vehicular traffic and homogeneity of patterns." 29 AA 7087.

The number that follows R-PD reflects the potential average number of

dwelling units allowed *per gross acre*; not the permissible use or density for all land within the Peccole Ranch Master Plan. *Id*. Instead, as shown by the Peccole Ranch Master Plan specific land use designations were provided in the plan. As the Phase II Master Plan provides for the single-family units which would border the proposed golf course/open space, the zoning sought was for a maximum of seven (7) single-family units per gross acre. 15 AA 3471. Yet, for the proposed golf course drainage, zero net density and zero net units were permitted. *Id*.

On April 4, 1990, in Case No. Z-17-90, the City Council approved Phase II of the Peccole Ranch Master Plan. 2 AA 258-266. As part of the approval, the City Council recited the land uses provided in the Peccole Ranch Master Plan. As set forth in the City's minutes of approval, the following table indicates the approved land use as an acreage for Phase II:

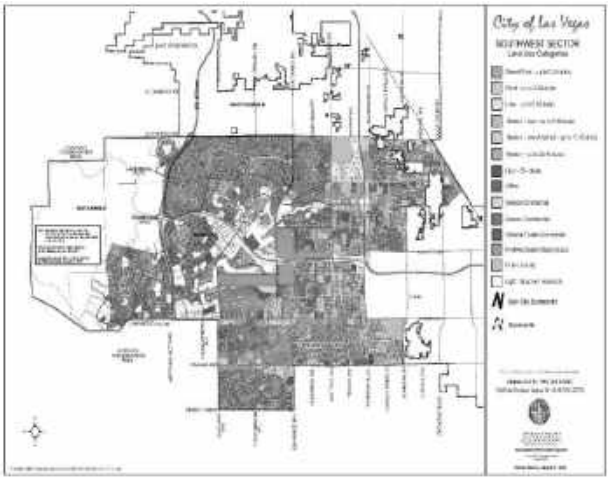
LAND USE	PHASE II ACREAGE	PERCENT OF SITE
Single Family	401	40.30 %
Multi-family	60	6.02 %
Neighborhood Commercial/Office	194.3	19.50 %
Resort/Casino	56.0	5.62 %
Golf Course/Drainage	211.6	21.24 %
School	13.1	1.31 %
Rights-of-Way	60.4	6.07 %

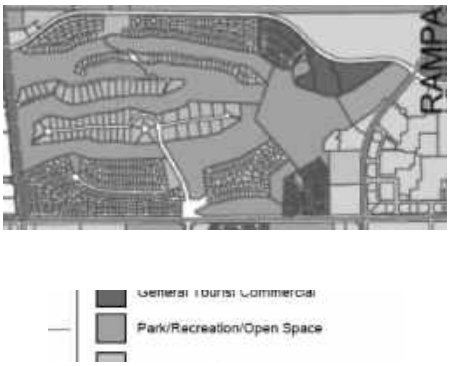
Id.

These specific designations of the Peccole Ranch Master Plan were incorporated as part of the R-PD zoning district and all other zoning was extinguished. Indeed, underscoring the original developer's emphasis on the use of

open space as part of its R-PD zoning approval, the City conditioned the approval with the express notation that the maximum number of dwelling units that would be allowed for Phase II was 4,247 as denoted in the Plan. *Id*. Thus, in approving the Peccole Ranch Master Plan, the City expressly designated the subject property as open space/golf course/drainage with zero net density. As shown by the City's approval of the zoning it is subject to "[c]onformance to the conditions of approval for the Peccole Ranch Master Development Plan, Phase II." *Id*.

The City confirmed the Peccole Ranch Master Plan in subsequent amendments and re-adoption of its own General or Master Plan, both in 1992 and againin 1999. 29 AA 7094-7098. On the maps of the City's Master Plan, the land for the golf course/open space/drainage is expressly designated as Parks/Recreation/Open Space (PR-OS):





29 AA 7066 (the color version is included above and is publically available

in CLV 2020 Master Plan, Land Use & Rural Neighborhoods Preservation Element, Map 3: Southwest Sector Land Use)

Both the City's Master Plan and the City's Code preclude residential units on land designed as PR-OS. As the City's Master Plan specifies: "the parks/recreation/open space category allows large public parks and recreation areas such as public and private golf courses, trails, easements, drainage ways, detention basins and other large areas or ***permanent open land***." 29 AA 6951; CLV 2020 Master Plan, Land Use & Rural Neighborhoods Preservation Element, Description of Master Plan Land Use Categories. Moreover, as the land use designation table in the City's Master Plan indicates residential density is not permitted for land designated PR-OS. *Id*.; CLV 2020 Master Plan, Land Use & Rural Neighborhoods Preservation Element, Table 5, Land Use Designations.

The City memorialized all Master Developments Plans in the 2020 Master Plan. Not coincidentally this portion of the City's Master Plan expressly identifies Peccole Ranch as a *Master Development Plan* in the Southwest Sector. 29 AA 7089-7090.

B. A Land Speculator Acquires the Property Decades Later, Betting that he can Change the Land Use.

After approval by the City, and as the City would later admit, all future development was done in deference to the Peccole Ranch Master Plan. 73 AA 17751("[s]ince adoption of the 1990 Peccole Ranch Master Plan ***the property was***

Exhibit 42

DECL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	)	CASE NO.: A-17-758528-J DEPT. NO.: XVI

DECLARATION OF JAMES J. LEAVITT, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JAMES JACK LEAVITT, first being duly sworn, on oath deposes and states:

1. I am an attorney licensed to practice law in the State of Nevada, and am an attorney at the Law Offices of Kermitt L. Waters, the attorneys of record for 180 LAND COMPANY, LLC, a Nevada Limited Liability Company, and FORE STARS, Ltd. (Landowners) in the above-captioned matter. I make this declaration based on personal knowledge and if called upon to testify to the matters herein I am competent to do so.

2. This Declaration is submitted in support of the Landowners' Reply in Support of Plaintiff Landowners' Motion to Determine Property Interest for purposes of verifying the authenticity of the Exhibits attached to said motion as follows:

   a. Exhibits 17 - 41 are true and correct copies of what they purport to be and, in those instances where a partial of the exhibit is provided, I can, upon the Court's request, provide a full copy of the exhibit.

   b. This Declaration if made in good faith and not for purposes of delay.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 9th day of September, 2020.

SS/ James J. Leavitt
JAMES JACK LEAVITT