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 25 2022 01:04 p.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. 25

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS, LTD., DOE INDIVIDUALS, ROE CORPORATIONS I through X, and ROE 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 IN SUPPORT OF PLAINTIFF LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF** **VOLUME 3**

Plaintiff Landowners hereby submit this Appendix of Exhibits in Support of Their Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief.

Exhibit No.	Description	Vol. No.	Bates No.
1	Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	1	000001-000005
2	Map 1 of 250 Acre Land	1	000006

3	Map 2 of 250 Acre Land	1	000007
4	Notice of Related Cases	1	000008-000012
5	April 15, 1981 City Commission Minutes	1	000013-000050
6	December 20, 1984 City of Las Vegas Planning Commission hearing on General Plan Update	1	000051-000151
7	Findings of Fact and Conclusions of Law Regarding Plaintiffs' Motion for New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, Motion to Stay Pending Nevada Supreme Court Directives	2	000152-000164
8	ORDER GRANTING the Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims	2	000165-000188
9	City's Opposition to Motion to Determine "Property Interest"	2	000189-000216
10	City of Las Vegas' Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	2	000217-000230
11	Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	2	000231-000282
12	Supreme Court Order Denying Petition for Writ of Mandamus or Prohibition	2	000283-000284
13	Supreme Court Order Denying Rehearing	2	000285-000286
14	Supreme Court Order Denying En Banc Reconsideration	2	000287-000288
15	Motion to Dismiss Complaint for Declaratory and Injunctive Relief and in Inverse Condemnation, *Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.*, Case No. A-18-773268-C	2	000289-000308
16	City's Sur Reply Memorandum of Points and Authorities in Support of Motion to Dismiss Complaint for Declaratory and Injunctive Relief and Inverse Condemnation, *Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.*, Case No. A-18-773268-C	2	000309-000319

17	City's Proposed Findings of Fact and Conclusion of Law Granting City's Motion to Dismiss Complaint, *Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.*, Case No. A-18-773268-C	2	000320-000340
18	Order Denying City of Las Vegas' Motion to Dismiss, *Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.*, Case No. A-18-773268-C	2	000341-000350
19	City of Las Vegas' Motion to Dismiss, *180 Land Co., LLC v. City of Las Vegas, et al.*, Case No. A-18-775804-J	2	000351-000378
20	2.15.19 Minute Order re City's Motion to Dismiss	2	000379
21	Respondents' Answer Brief, Supreme Court Case No. 75481	2	000380-000449
22	Order Granting Plaintiffs' Petition for Judicial Review, *Jack B. Binion, et al vs. The City of Las Vegas,* Case No. A-17-752344-J	2	000450-000463
23	Supreme Court Order of Reversal	2	000464-000470
24	Supreme Court Order Denying Rehearing	2	000471-000472
25	Supreme Court Order Denying En Banc Reconsideration	2	000473-000475
26	Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint	2	000476-000500
27	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order of Judgment, *Robert Peccole, et al v. Peccole Nevada Corporation, et al.,* Case No. A-16-739654-C	2	000501-000545
28	Supreme Court Order of Affirmance	2	000546-000550
29	Supreme Court Order Denying Rehearing	2	000551-000553
30	November 1, 2016 Badlands Homeowners Meeting Transcript	2	000554-000562
31	June 13, 2017 Planning Commission Meeting Verbatim Transcript	2	000563-000566
32	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment, *180 Land Co. LLC, et al v. City of Las Vegas,* Case No. A-18-780184-C	3	000567-000604

33	June 21, 2017 City Council Meeting Combined Verbatim Transcript	3	000605-000732
34	Declaration of Yohan Lowie	3	000733-000739
35	Declaration of Yohan Lowie in Support of Plaintiff Landowners' Motion for New Trial and Amend Related to: Judge Herndon's Findings of Fact and Conclusion of Law Granting City of Las Vegas' Motion for Summary Judgment, Entered on December 30, 2020	3	000740-000741
36	Master Declaration of Covenants, Conditions Restrictions and Easements for Queensridge	3	000742-000894
37	Queensridge Master Planned Community Standards - Section C (Custom Lot Design Guidelines)	3	000895-000896
38	Custom Lots at Queensridge Purchase Agreement, Earnest Money Receipt and Escrow Instructions	3	000897-000907
39	Public Offering Statement for Queensridge North (Custom Lots)	4	000908-000915
40	Deposition of Yohan Lowie, *In the Matter of Binion v. Fore Stars*	4	000916-000970
41	The City of Las Vegas' Response to Requests for Production of Documents, Set One	4	000971-000987
42	Respondent City of Las Vegas' Answering Brief, *Jack B. Binion, et al v. The City of Las Vegas, et al.*, Case No. 17-752344-J	4	000988-001018
43	Ordinance No. 5353	4	001019-001100
44	Original Grant, Bargain and Sale Deed	4	001101-001105
45	May 23, 2016 Par 4 Golf Management, Inc.'s letter to Fore Stars, Ltd. re Termination of Lease	4	001106-001107
46	December 1, 2016 Elite Golf Management letter to Mr. Yohan Lowie re: Badlands Golf Club	4	001108
47	October 30, 2018 Deposition of Keith Flatt, *Fore Stars, Ltd. v. Allen G. Nel*, Case No. A-16-748359-C	4	001109-001159
48	Declaration of Christopher L. Kaempfer	4	001160-001163
49	Clark County Real Property Tax Values	4	001164-001179
50	Clark County Tax Assessor's Property Account Inquiry - Summary Screen	4	001180-001181
51	Assessor's Summary of Taxable Values	5	001182-001183
52	State Board of Equalization Assessor Valuation	5	001184-001189

53	June 21, 2017 City Council Meeting Combined Verbatim Transcript	5	001190-001317
54	August 2, 2017 City Council Meeting Combined Verbatim Transcript	5	001318-001472
55	City Required Concessions signed by Yohan Lowie	5	001473
56	Badlands Development Agreement CLV Comments	5	001474-001521
57	Development Agreement for the Two Fifty, Section Four, Maintenance of the Community	5	001522-001529
58	Development Agreement for the Two Fifty	5	001530-001584
59	The Two Fifty Design Guidelines, Development Standards and Uses	5	001585-001597
60	The Two Fifty Development Agreement's Executive Summary	5	001598
61	Development Agreement for the Forest at Queensridge and Orchestra Village at Queensridge	5	001599-002246
62	Department of Planning Statement of Financial Interest	6	002247-002267
63	December 27, 2016 Justification Letter for General Plan Amendment of Parcel No. 138-31-702-002 from Yohan Lowie to Tom Perrigo	6	002268-002270
64	Department of Planning Statement of Financial Interest	6	002271-002273
65	January 1, 2017 Revised Justification letter for Waiver on 34.07 Acre Portion of Parcel No. 138-31-702-002 to Tom Perrigo from Yohan Lowie	6	002274-002275
66	Department of Planning Statement of Financial Interest	6	002276-002279
67	Department of Planning Statement of Financial Interest	6	002280-002290
68	Site Plan for Site Development Review, Parcel 1 @ the 180, a portion of APN 138-31-702-002	6	002291-002306
69	December 12, 2016 Revised Justification Letter for Tentative Map and Site Development Plan Review on 61 Lot Subdivision to Tom Perrigo from Yohan Lowie	6	002307-002308
70	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	7	002309-002501

71	Location and Aerial Maps	7	002502-002503
72	City Photos of Southeast Corner of Alta Drive and Hualapai Way	7	002504-002512
73	February 14, 2017 Planning Commission Staff Recommendations	7	002513-002538
74	June 21, 2017 Planning Commission Staff Recommendations	7	002539-002565
75	February 14, 2017 Planning Commission Meeting Verbatim Transcript	7	002566-002645
76	June 21, 2017 Minute re: City Council Meeting	7	002646-002651
77	June 21, 2017 City Council Staff Recommendations	7	002652-002677
78	August 2, 2017 City Council Agenda Summary Page	7	002678-002680
79	Department of Planning Statement of Financial Interest	7	002681-002703
80	Bill No. 2017-22	7	002704-002706
81	Development Agreement for the Two Fifty	7	002707-002755
82	Addendum to the Development Agreement for the Two Fifty	8	002756
83	The Two Fifty Design Guidelines, Development Standards and Permitted Uses	8	002757-002772
84	May 22, 2017 Justification letter for Development Agreement of The Two Fifty, from Yohan Lowie to Tom Perrigo	8	002773-002774
85	Aerial Map of Subject Property	8	002775-002776
86	June 21, 2017 emails between LuAnn D. Holmes and City Clerk Deputies	8	002777-002782
87	Flood Damage Control	8	002783-002809
88	June 28, 2016 Reasons for Access Points off Hualapai Way and Rampart Blvd. letter from Mark Colloton, Architect, to Victor Balanos	8	002810-002815
89	August 24, 2017 Access Denial letter from City of Las Vegas to Vickie Dehart	8	002816
90	19.16.100 Site Development Plan Review	8	002817-002821
91	8.10.17 Application for Walls, Fences, or Retaining Walls	8	002822-002829
92	August 24, 2017 City of Las Vegas Building Permit Fence Denial letter	8	002830

93	June 28, 2017 City of Las Vegas letter to Yohan Lowie Re Abeyance Item - TMP-68482 - Tentative Map - Public Hearing City Council Meeting of June 21, 2017	8	002831-002834
94	Declaration of Vickie Dehart, *Jack B. Binion, et al. v. Fore Stars, Ltd.*, Case No. A-15-729053-B	8	002835-002837
95	Supreme Court Order of Affirmance, *David Johnson, et al. v. McCarran International Airport, et al.,* Case No. 53677	8	002838-002845
96	De Facto Taking Case Law From State and Federal Jurisdictions	8	002846-002848
97	Department of Planning Application/Petition Form	8	002849-002986
98	11.30.17 letter to City of Las Vegas Re: 180 Land Co LLC ("Applicant"t - Justification Letter for General Plan Amendment [SUBMITTED UNDER PROTEST] to Assessor's Parcel ("APN(st") 138-31-601-008, 138-31- 702-003, 138-31-702-004 (consisting of 132.92 acres collectively "Property"t - from PR-OS (Park, Recreation and Open Space) to ML (Medium Low Density Residential) as part of applications under PRJ-11990, PRJ-11991, and PRJ-71992	8	002987-002989
99	January 9, 2018 City Council Staff Recommendations	8	002990-003001
100	Item #44 - Staff Report for SDR-72005 [PRJ-71990] - amended condition #6 (renumbered to #7 with added condition)	8	003002
101	January 9, 2018 WVR-72007 Staff Recommendations	8	003003-003027
102	January 9, 2018 WVR-72004, SDR-72005 Staff Recommendations	8	003028-003051
103	January 9, 2018 WVR-72010 Staff Recommendations	8	003052-003074
104	February 21, 2018 City Council Meeting Verbatim Transcript	8	003075-003108
105	May 17, 2018 City of Las Vegas Letter re Abeyance - TMP-72012 [PRJ-71992] - Tentative Map Related to WVR-72010 and SDR-72011	9	003109-003118
106	May 16, 2018 Council Meeting Verbatim Transcript	9	003119-003192
107	Bill No. 2018-5, Ordinance 6617	9	003193-003201

108	Bill No. 2018-24, Ordinance 6650	9	003202-003217
109	November 7, 2018 City Council Meeting Verbatim Transcript	9	003218-003363
110	October 15, 2018 Recommending Committee Meeting Verbatim Transcript	9	003364-003392
111	October 15, 2018 Kaempfer Crowell Letter re: Proposed Bill No. 2018-24 (part 1 of 2)	10	003393-003590
112	October 15, 2018 Kaempfer Crowell Letter re: Proposed Bill No. 2018-24 (part 2 of 2)	11	003591-003843
113	July 17, 2018 Hutchison & Steffen letter re Agenda Item Number 86 to Las Vegas City Attorney	11	003844-003846
114	5.16.18 City Council Meeting Verbatim Transcript	11	003847-003867
115	5.14.18 Bill No. 2018-5, Councilwoman Fiore Opening Statement	11	003868-003873
116	May 14, 2018 Recommending Committee Meeting Verbatim Transcript	11	003874-003913
117	August 13, 2018 Meeting Minutes	11	003914-003919
118	November 7, 2018 transcript In the Matter of Las Vegas City Council Meeting, Agenda Item 50, Bill No. 2018-24	12	003920-004153
119	September 4, 2018 Recommending Committee Meeting Verbatim Transcript	12	004154-004219
120	State of Nevada State Board of Equalization Notice of Decision, *In the Matter of Fore Star Ltd., et al.*	12	004220-004224
121	August 29, 2018 Bob Coffin email re Recommend and Vote for Ordinance Bill 2108-24	12	004225
122	April 6, 2017 Email between Terry Murphy and Bob Coffin	12	004226-004233
123	March 27, 2017 letter from City of Las Vegas to Todd S. Polikoff	12	004234-004235
124	February 14, 2017 Planning Commission Meeting Verbatim Transcript	12	004236-004237
125	Steve Seroka Campaign letter	12	004238-004243
126	Coffin Facebook Posts	12	004244-004245
127	September 17, 2018 Coffin text messages	12	004246-004257
128	September 26, 2018 email to Steve Seroka re: meeting with Craig Billings	12	004258

129	Letter to Mr. Peter Lowenstein re: City's Justification	12	004259-004261
130	August 30, 2018 email between City Employees	12	004262-004270
131	February15, 2017 City Council Meeting Verbatim Transcript	12	004271-004398
132	May 14, 2018 Councilman Fiore Opening Statement	12	004399-004404
133	Map of Peccole Ranch Conceptual Master Plan (PRCMP)	12	004405
134	December 30, 2014 letter to Frank Pankratz re: zoning verification	12	004406
135	May 16, 2018 City Council Meeting Verbatim Transcript	13	004407-004480
136	June 21, 2018 Transcription of Recorded Homeowners Association Meeting	13	004481-004554
137	Pictures of recreational use by the public of the Subject Property	13	004555-004559
138	Appellees' Opposition Brief and Cross-Brief, *Del Monte Dunes at Monterey, Ltd., et al. v. City of Monterey*	13	004560-004575
139	Respondent City of Las Vegas' Answering Brief, *Binion, et al. v. City of Las Vegas, et al.*	13	004576-004578
140	Grant, Bargain and Sale Deed	13	004579-004583
141	City's Land Use Hierarchy Chart	13	004584
142	August 3, 2017 deposition of Bob Beers, pgs. 31-36 - *The Matter of Binion v. Fore Stars*	13	004585-004587
143	November 2, 2016 email between Frank A. Schreck and George West III	13	004588
144	January 9, 2018 email between Steven Seroka and Joseph Volmar re: Opioid suit	13	004589-004592
145	May 2, 2018 email between Forrest Richardson and Steven Seroka re Las Vegas Badlands Consulting/Proposal	13	004593-004594
146	November 16, 2017 email between Steven Seroka and Frank Schreck	13	004595-004597
147	June 20, 2017 representation letter to Councilman Bob Coffin from Jimmerson Law Firm	13	004598-004600

148	September 6, 2017, City Council Verbatim Transcript	13	004601-004663
149	December 17, 2015 LVRJ Article, Group that includes rich and famous files suit over condo plans	13	004664-04668
150	Affidavit of Donald Richards with referenced pictures attached	14, 15, 16	004669-004830

DATED this 26th day of March, 2021.

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I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 26th day of March, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing document(s):**APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF - VOLUME 3** was made by electronic means 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 addressed to each of the following:

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Exhibit 32

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No.: A-18-780184-C Dept. No. III **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment was entered in the above-referenced case on the 30th day of December, a copy of which is attached hereto.

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. . .

DATED this 30th day of December 2020.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 30th day of December, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD, SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No. A-18-780184-C Dept. No. III **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

Departmental History

The instant matter was filed in the Eighth Judicial District Court (hereinafter referred to by "Department" designations) by Plaintiff's 180 Land Company, LLC et al. (hereinafter "Developer") on August 28, 2018, and assigned to Judge Israel in Department 28. Based on a peremptory challenge filed by the Defendant City of Las Vegas (hereinafter "City"), the matter was reassigned on February 5, 2019, to Judge Silva in Department 9. The peremptory challenge was subsequently reversed and the matter was reassigned back to Department 28 on February 22, 2019.

Thereafter, on March 12, 2019, Department 28 recused itself from hearing the matter and it was again reassigned to Department 9. Based on a new peremptory challenge filed by

the Developer, the matter was reassigned on April 26, 2019, to Department 8, which was at that time vacant pending the appointment of a new judge.

Prior to the appointment of the new Department 8 judge, the matter was removed to Federal Court on August 22, 2019. In September, 2019, Judge Atkin was appointed to Department 8. On October 24, 2019, the matter was remanded back to State Court by the Federal Court.

On November 6, 2019, Department 8 recused itself and the matter was then reassigned to Judge T. Jones in Department 10. Department 10 presided over the case until September, 2020. At that time, a caseload reassignment occurred and the matter was reassigned to this court, Department 3.

Procedural History

The instant case centers on disputes between the Developer and the City over property formerly known as the Badlands Golf Course. Based on those disputes, Developer filed a series of inverse condemnation actions in the Eighth Judicial District Court. The actions are each specific to separate parcels of land and are commonly identified by the acreage at issue.

The instant matter is commonly referred to as the "65-Acre Property case" and was filed, as stated above, on August 28, 2018. Pending before Judge Williams in Department 16 is Case A758528, the "35-Acre Property case," which was filed on July 18, 2017. Pending before Senior Judge Bixler is Case A773228, the "17-Acre Property case," which was filed on April 20, 2018. Lastly, pending before Judge Sturman in Department 26 is Case A775804, the "133-Acre Property case," which was filed on June 7, 2018.

Also relevant and of note is the fact that the above four inverse condemnation actions were preceded by Case A752344, the "Crockett case" which was filed on March 10, 2017, and assigned to Judge Crockett in Department 24. That matter also dealt with the "17-Acre Property" and was a Petition for Judicial Review filed by a group of citizens challenging the

decision of the City to grant Developer's application to develop that particular property. Judge Crockett granted the Petition for Judicial Review over the objection of both the Developer and the City. Developer then appealed and the City filed an amicus brief in support of the Developer. The Nevada Supreme Court reversed Judge Crockett's decision by way of an order filed March 5, 2020. By then, however, Developer had filed the "17-Acre Property case" now pending before Senior Judge Bixler.

On November 9, 2020, City filed the instant Motion for Summary Judgment (hereinafter "Motion"). On November 23, 2020, Developer filed their Opposition and a Countermotion to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order (hereinafter "Countermotion"). On December 9, 2020, City filed a Motion to Strike Developer's Countermotion (hereinafter "Motion to Strike"). The pending motions have been fully briefed.

The court held a lengthy hearing on the pending motions on December 16, 2020. Appearing remotely were James J. Leavitt, Elizabeth Ghanem Ham, Autumn Waters and Michael Schneider on behalf of the Developer, and George F. Ogilvie III, Andrew Schwartz and Philip R. Byrnes on behalf of the City. The court made an initial ruling denying the City's Motion to Strike, finding that the relief requested was proper for a countermotion as it simply asked this court to engage in a certain legal analysis format if and when it addressed the merits of the City's summary judgement request, and to make certain findings, if necessary, in favor of Developer based on that legal analysis.

Regarding the Summary Judgment Motion and the Countermotion, the Court having reviewed the pleadings and exhibits in the instant case, and, where relevant and necessary, in the companion cases, and having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

I. The Badlands as open space for Peccole Ranch

1. In 1980, the City approved William Peccole's petition to annex 2,243 acres of undeveloped land to the City. Ex. A at 1-11.[1] Mr. Peccole's intent was to develop the entire parcel as a master planned development. *Id.* at 1. After the annexation, the City approved an integrated plan to develop the land with a variety of uses, called the "Peccole Property Land Use Plan." Ex. B at 12-18. In 1986, Mr. Peccole requested approval of an amended master plan featuring two 18-hole golf courses, one of which was in the general area where the Badlands golf course was later developed. Ex. C at 31-33; Ex. WW.

2. In 1988, the Peccole Ranch Partnership ("Peccole") submitted a revised master plan known as the Peccole Ranch Master Plan ("PRMP") and an application to rezone 448.8 acres for the first phase of development ("Phase I"). Ex. E at 62-93. In 1989, the City approved the PRMP and Phase I rezoning application, after Peccole agreed to limit the overall density in Phase I and reserve 207.1 acres for a golf course and drainage in the second phase of development ("Phase II") of the PRMP. *Id.* at 96-97.

3. In 1989, the City included Peccole Ranch in a Gaming Enterprise District ("GED"), which allowed Peccole to develop a resort hotel in the PRMP so long as Peccole provided a recreational amenity such as an 18-hole golf course. Ex. G at 114-124, 130, 135-37. Peccole reserved 207 acres for a golf course to satisfy this requirement. Ex. E at 96, 98; Ex. G at 123-124.

4. In 1990, Peccole applied to amend the PRMP for Phase II. Ex. H at 138-161. The revised PRMP highlighted an "extensive 253-acre golf course and linear open space system winding throughout the community [that] provides a positive focal point while creating a

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[1] References to lettered Exhibits are to the Exhibits contained in the City's Appendix. References to numbered Exhibits and/or "LO Appx" Exhibits are to the Exhibits contained in the Developer's Appendix.

mechanism to handle drainage flows." *Id.* at 145. The City approved the Phase II rezoning application under a resolution of intent subject to all conditions of approval for the revised PRMP. *Id.* at 183-94.

II. The PR-OS General Plan designation of the Badlands

5. Since 1992, the City's General Plan has designated the Badlands for parks, recreation, and open space, a designation that does not permit residential development. On April 1, 1992, the City Council adopted a new Las Vegas General Plan, including revisions approved by the Planning Commission. Ex. I at 195-204, 212-18. The 1992 General Plan included maps showing the existing land uses and proposed future land uses. *Id.* at 246. The future land use map for the Southwest Sector designated the area set aside by Peccole for an 18-hole golf course as "Parks/Schools/ Recreation/Open Space." *Id.* at 248. That designation allowed "large public parks and recreation areas such as public and private golf courses, trails and easements, drainage ways and detention basins, and any other large areas of permanent open land." *Id.* at 234-35.

6. From 1992 to 1996, Peccole developed the 18-hole golf course in the location depicted in the 1992 General Plan, and a 9-hole course to the north of the 18-hole course. *Compare id.* at 248 *with* Ex. TT; *see also* Ex. J, UU. The 9-hole course was also designated "P" for "Parks" in the City's General Plan as early as 1998. *See* Ex. K. The Badlands 18-hole and 9-hole golf courses, totaling 250 acres, remain in the same configuration today. When the City Council adopted a new General Plan in 2000 to project growth over the following 20 years ("2020 Master Plan"), it retained the "parks, recreation, and open space" [PR-OS] designation. Ex. L at 265; compare *id.* at 269 with Ex. I at 234-35, 248. Beginning in 2002, the City's General Plan maps show the entire Badlands designated as PR-OS. Ex. M at 274-77.

7. In 2005, the City Council incorporated an updated Land Use Element in the 2020 Master Plan. Ex. N at 278-82. This 2005 Land Use Element designated all 27 holes of the

Badlands golf course as PR-OS for "Park/Recreation/Open Space." *Id.* at 291. Each ordinance of the City Council updating the Land Use Element of the General Plan since 2005 has approved the designation of the Badlands as PR-OS, and the description of the PR-OS land use designation has remained unchanged. *See* Ex. O at 292, 300-01 (Ordinance #6056 9/2/2009); Ex. P at 302-04, 316-17 (Ordinance #6152 5/8/2011); Ex. Q at 318, 331-32 (Ordinance #6622 6/26/2018).

III. The R-PD7 zoning of the Badlands

8. In 1972, the City established R-PD7 zoning (Residential-Planned Unit Development, 7 units/acre). Ex. R. "The purpose of a Planned Unit Development [was] to allow a maximum flexibility for imaginative and innovative residential design and land utilization in accordance with the General Plan." *Id.* at 333. The "PD" in R-PD stands for "Planned Development." Planned Development zoning, generally applicable to larger development sites, "permits planned-unit development by allowing a modification in lot size and frontage requirements under the condition that other land in the development be set aside for parks, schools, or other public needs." *Zoning, Black's Law Dictionary* (11th ed. 2019). The R-PD district in the Las Vegas Uniform Development Code was 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 a homogeneity of use patterns." Ex. R at 333. "As a[n R-PD7] Residential Planned Development, density may be concentrated in some areas while other areas remain less dense, as long as the overall density for this site does not exceed 7.49 dwelling units per acre. Therefore, portions of the subject area can be restricted in density by various General Plan designations." Ex. ZZZ at 1414-15.

9. During the 1990's, the City approved rezoning requests by a resolution of intent, meaning that a rezoning was provisional until the rezoned property was developed. Once rezoned property was developed, the City would adopt an ordinance amending the Official

Zoning Map Atlas to make the rezoning permanent. *See, e.g.* Ex. S at 341. In 1990, the City adopted a resolution of intent to rezone the 996.4 acres in Phase II in accordance with the amended PRMP. Ex. H at 189-94. To obtain the City Council's approval of tentative R-PD7 zoning for housing lining the fairways of a golf course, Peccole agreed to set aside 211.6 acres for a golf course and drainage. *Id.* at 159, 163-165, 167-168, 171-172, 187-188.

10. In 2001, the City amended the Zoning Map to rezone to R-PD7 the Phase II property previously approved for R-PD7 zoning under the resolution of intent. Ex. T at 345-61. In 2011, the City discontinued the R-PD zoning district for new developments, replacing the R-PD zoning category with "PD." The City, however, did not alter the R-PD7 zoning of the Badlands and surrounding residential areas of Phase II. Ex. U at 363.

IV. <u>The Developers due diligence in acquiring the Badlands property</u>

11. The principals of the Developer are accomplished and professional developers that have constructed more homes and commercial development in the vicinity of the 65-Acre Property than any other person or entity and, through this work, gained significant information about the entire 250-Acre Residential Zoned Land (which includes the 65-Acre Property).[2] *LO Appx. Ex. 22*, Decl. Lowie. They have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) multiple commercial shopping centers to name a few. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 2. The Developer principles live in the Queensridge common interest community and One Queensridge Place (which is adjacent to the 250 Acre Residential Zoned Land) and are

[2] Yohan Lowie, one of the Landowners' principles, has been described as the best architect in the Las Vegas valley. *LO Appx. Ex 21* at 00418-419.

the single largest owners within both developments having built over 40% of the custom homes within Queensridge. Id.

12. In 1996, the principals of the Developer began working with William Peccole and the Peccole family (referred to as "Peccole") to develop lots adjacent to the 250-Acre Residential Zoned Land within the common interest community commonly known as "Queensridge" (the "Queensridge CIC") and consistently worked together with them in the area on property transactions thereafter. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 3.

13. In or about 2001, the principals of the Developer learned from Peccole that the Badlands Golf Course was zoned R-PD7. *LO Appx. Ex 22*, Decl. Lowie, at 00535, p. 2, para. 4. They further learned that Peccole had never imposed any restrictions on the use of the 250-Acre Property and that the 250-Acre Property would eventually be developed. Id. Peccole further informed the Developer that the 250-Acre Residential Zoned Land is "developable at any time" and "we're never going to put a deed restriction on the property." Id. The Land abuts the Queensridge CIC. Id.

14. In or about 2001, the principals of the Developer retained legal counsel to confirm Peccoles' assertions and counsel advised that the 250-Acre Residential Zoned Land is "Not A Part" of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop the Land, the Land was intended for residential development and that as a homeowner within the Queensridge CIC, according to the Queensridge Covenants, Conditions and Restrictions (the "CC&Rs") they had no right to interfere with the development of the 250-Acre Residential Zoned Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 5.

15. In 2006, Mr. Lowie met with the highest ranking City planning official, Robert Ginzer, and was advised that: 1) the entire 250-Acre Residential Zone Land is zoned R-PD7; and, 2) there is nothing that can stop development of the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

16. With this knowledge and understanding, the principals of the Developer then obtained the right to purchase all five separate parcels that made up the 250-Acre Residential Zoned Land and continued their due diligence and investigation of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

17. In November 2014, the Developer was given six months to exercise their right to purchase the 250-Acre Residential Zoned Land and conducted their final due diligence prior to closing on the acquisition of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2-3, para. 6. The Developer met with the two highest ranking City Planning officials at the time, Tom Perrigo and Peter Lowenstein, and asked them to confirm that the entire 250-Acre Residential Zoned Land is developable and if there was "anything" that would otherwise prevent development and the City Planning Department agreed to do a study that took approximately three weeks. Id.; *LO Appx. Ex. 23* at 00559-560, pp. 66-67; 69:15-16; 70:13-16 (Lowie Depo, Binion v. Fore Star).

18. After three weeks the City Planning Department reported that: 1) the 250-Acre Residential Zoned Land was hard zoned and had vested rights to develop up to 7 units an acre; 2) "the zoning trumps everything;" and, 3) any owner of the 250-Acre Residential Zoned Land can develop the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00536, p. 3, para. 8; *LO Appx. Ex. 23* at 00561, pp. 74-75, specifically, 75:13; 74:22-23; 75:12 (Lowie Depo, Binion v. Fore Star).

19. The Developer requested that the City adopt its three-week study in writing as the City's official position in order to conclusively establish the developability of the entire 250-Acre Residential Zoned Land prior to closing on the acquisition of the property. *LO Appx. Ex 22*, Decl. Lowie, at 00536, p. 3, para. 9. The City agreed and provided the City's official position through a "Zoning Verification Letter" issued by the City Planning & Development Department on December 30, 2014, stating: 1) "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) "The density allowed in the R-PD District shall be reflected by a numerical designation for that

district. (Example, R-PD4 allows up to four units per gross acre.);" and, 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Id.; *LO Appx. Ex. 23* at 00561-562, pp. 77:24-25, 80:20-21.

20. Their due diligence now complete, Developer was ready to complete the acquisition of the subject property.

V. <u>The Developer's acquisition and segmentation of the Badlands property</u>

21. In early 2015, Peccole owned the Badlands through a company known as Fore Stars Ltd ("Fore Stars"). Ex. V at 365-68; Ex. VV. In March 2015, the Developer acquired Fore Stars, thereby acquiring the 250-Acre Badlands. Ex. W at 379; Ex. AAA. At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. Ex. QQQ at 1160; Ex. X at 382-410; Ex. XX. The Developer transferred 178.27 acres to 180 Land Co. LLC ("180 Land") and 70.52 acres to Seventy Acres LLC ("Seventy Acres"), leaving Fore Stars with 2.13 acres. Ex. W at 379; *see also* Ex. V at 370-77. Each of these entities is controlled by the Developer's EHB Companies LLC. *See* Ex. V at 371 and 375 (deeds executed by EHB Companies LLC). The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands. *See* Ex. HH; Ex. BBB; Ex. LL; Ex. Z. At issue in this case is a 65-Acre parcel of the Badlands owned by 180 Land, Fore Stars, and Seventy Acres (the "65-Acre Property"). *See* Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation filed Sept. 5, 2018 ("Compl.") ¶ 7.

VI. The City's approval of 435 luxury housing units on the 17-Acre Property

22. In November 2015, the Developer, acknowledging the need to make application to the City in order to develop a parcel of property, applied for a General Plan Amendment, Re-Zoning, and Site Development Plan Review to redevelop the 17-Acre Property from golf course use to luxury condominiums ("17-Acre Applications"). Ex. Z at 446-66. The 17-Acre Applications sought to change the General Plan designation from PR-OS, which did not permit residential development, to H (High Density Residential) and the zoning from R-PD7 to R-4 (High Density Residential). *Id.* at 449-52. The Planning Staff Report for the 17-Acre Applications noted that the proposed development required a Major Modification Application to amend the PRMP. Ex. AA at 470. In 2016, the Developer submitted a Major Modification Application and related applications, but later that year withdrew the applications. Ex. BB at 483-94; Ex. CC.

23. In February 2017, the City Council approved the 17-Acre Applications for 435 units of luxury housing and approved a rezoning to R-3, along with a General Plan Amendment to change the land use designation from PR-OS to Medium Density Residential. Ex. DD at 586, 587-89, 591-97; Ex. SSS. In approving the 17-Acre Applications, the City did not require the Developer to file a Major Modification Application.

VII. The homeowners' challenge to the City's approval of the 17-Acre Applications

24. After the City approved the 17-Acre Applications, nearby homeowners filed a Petition for Judicial Review of the City's approval, which was assigned to Judge Crockett in Department 24. Ex. EE at 599, 609 (the "Crockett Order"). On March 5, 2018, Judge Crockett granted the homeowners' petition over the objection of both the Developer and the City, vacating the City's approval on the grounds that the City Council was required to approve a Major Modification Application before approving applications to redevelop the Badlands. *Id.* at 598, 610-11. The Developer appealed the Crockett Order. *See* Ex. DDD.

Although the City did not appeal the Crockett Order, it did file an amicus brief in support of the Developer's position that a Major Modification Application was not required. Ex. CCC.

25. Following Judge Crockett's decision invalidating the City's approval, the Developer filed a lawsuit (the 17-Acre case) against the City, the Eighth Judicial District Court, and Judge Crockett. Ex. GG at 631, 632, 639. The City removed that case to federal court. Following a remand order, the 17-Acre case is now pending before Senior Judge James Bixler. On December 9, 2020 Judge Bixler denied the City's motion to dismiss the 17-Acre Complaint.

26. Ultimately, the Nevada Supreme Court reversed Judge Crockett's decision granting the Petition for Judicial Review. In its Order of Reversal filed March 5, 2020, the Nevada Supreme Court found that a Major Modification Application was not required to develop the 17-Acre Property because the City's UDC required Major Modification Applications for property zoned PD, but not property zoned R-PD. Ex. DDD. The Supreme Court subsequently denied rehearing and en banc reconsideration and issued a remittitur, rendering its determination final. Ex. EEE. The Supreme Court's decision was consistent with the City's argument in the District Court in support of it's granting of Developer's application, and in its amicus brief that a Major Modification Application was not required to develop the 17-Acre Property. Ex. CCC at 1003-06. The District Court thereafter, consistent with the Nevada Supreme Court's decision, entered an Order on November 6, 2020, denying the petition for judicial review. *See* Ex. RRR.

27. The Nevada Supreme Court's reversal of the Crockett Order reinstated the City's approval of the Developer's applications to develop the 17-Acre Property. Ex. DDD. The City provided the Developer with notice of that fact by letter on March 26, 2020. Ex. FFF at 1019. The City's letter explained that once remittitur issued in the Nevada Supreme Court's order of reversal, "the discretionary entitlements the City approved for [the Developer's] 435-unit project on February 15, 2017 . . . will be reinstated." *Id.* The City also notified the Developer that the approvals would be valid for two years after the date of the

remittitur. *Id.* On September 1, 2020, the City notified the Developer that the Nevada Supreme Court had issued remittitur, the City's original approval of 435 luxury housing units on the 17-Acre Property had been reinstated, and the Developer is free to proceed with its development project. Ex. GGG at 1021. The City again notified the Developer that the approvals would be extended for two years after the date of the remittitur. *Id.*

VIII. The 35-Acre Applications

28. While the 17-Acre Applications were pending, the Developer filed applications to redevelop the 35-Acre Property ("35-Acre Applications"). Ex. HH; Compl. ¶ 32. On June 21, 2017, the City Council denied the 35-Acre Applications due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area. Ex. 46; *see also* Ex. II at 673-78. Developer did not submit a second application to develop the 35-Acre Property.

The Developer filed a petition for judicial review and complaint for a taking (the 35-Acre Property case), which was assigned to Judge Williams in Department 16. Ex. JJ at 680, 692. Judge Williams concluded that substantial evidence supported the Council's denial of the 35-Acre Applications, that Judge Crockett's Decision had preclusive effect, and the Developer had no vested right under the R-PD7 to approval of its application. Ex. KK at 780-82, 789-92. The Developer filed an amended complaint alleging inverse condemnation claims, which is also currently pending before Judge Williams, following the City's removal to federal court and subsequent remand. *See 180 Land Co. v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J.

IX. The Master Development Application

29. Before the City denied the 35-Acre Applications, the Developer sought a new Master Development Agreement (MDA) for the entire Badlands, including the 35-Acre Property. Ex. LL; Ex. II at 679. On August 2, 2017, the City Council disapproved the MDA by a vote of 4-3. Ex. MM at 880-82; Compl. ¶¶ 39, 42. The Developer did not seek judicial review of the City's decision to deny the development agreement.

X. The 133-Acre Applications

30. In October 2017, the Developer filed applications to redevelop the 133-Acre Property ("133-Acre Applications"). Compl. ¶ 46. On May 16, 2018, after the Crockett Order but before the Nevada Supreme Court's reversal of said order, the City Council voted to strike the 133-Acre Applications as incomplete because they did not include an application for a Major Modification, as the Crockett Order required. Compl. ¶¶68, 77, 85; Ex. BBB at 989-98.

31. The Developer filed a petition for judicial review (the 133-Acre Property case) challenging the City's action to strike the 133-Acre Applications and a complaint for a taking and other related claims. That action was assigned to Judge Sturman in Department 26, who dismissed the petition for judicial review on the grounds that the parties were bound by the Crockett Order and, therefore, the Developer's failure to file a Major Modification Application was valid grounds for the City to strike the application. Judge Sturman allowed the Developer's inverse condemnation claims to proceed. Ex. NN. The City removed the case to federal court, and it has since been remanded back to state court.

XI. The 65-Acre Applications

32. To date, there has been no evidence presented to the court that Developer has submitted any development applications to the City for consideration of a proposed development of the individual 65-Acre parcel. As noted above, there was a Master

Development application, Ex. LL; Ex. II at 679, that was eventually denied by the City but no individual applications for the 65-Acre property.

XII. The increase in value of the Badlands due to the City's approval of 435 units on the 17-Acre Property

33. Under the Membership Purchase and Sale Agreement between the Peccole Family and the Developer, the Developer purchased the 250-Acre Badlands Golf Course for $7,500,000, or $30,000 per acre ($7,500,000/250 acres = $30,000). Ex. AAA at 966. This figure does not represent the total cost to Developer as there were clearly monies spent during its due diligence process (Developer has stated that the total cost for due diligence and purchase was $45 million). $7,500,000 is however the stated figure, per the Purchase and Sale Agreement, that Developer paid for the actual property. Ex. UUU at 1300.

34. The Developer contends in its Initial Disclosures that if the Badlands can be developed with housing, it is worth $1,542,857 per acre. Ex. JJJ at 1135-36.[3] Thus, according to the Developer's own evidence, the City's approval of 435 housing units in the Badlands has increased the value of the 17-Acre Property alone to $26,228,569 (17 x $1,542,857 = $26,228,569), thereby quadrupling the Developer's property purchase investment in the Badlands. Furthermore, the Developer still owns the remaining 233 acres with the potential to continue golf course use or develop the remaining acreage.

35. Even if the Developer paid $45 million for the Badlands as it contends, or $180,000/acre ($45,000,000/250 acres = $180,000/acre), the City's approval of 435 housing units in the Badlands has increased the value of the Badlands by $23,168,569 (the City's approval improved the value of each acre in the 17-Acre Property from $180,000 to

[3] The Developer's Initial Disclosures in the 35-Acre case make the same claim. Ex. VVV at 1319. Both initial disclosures are based in part on the Lubawy appraisal of 70 acres of the Badlands that includes the entire 17-Acre Property and a portion of the 65-Acre Property. Ex. QQQ at 1165. The Lubawy appraisal assumed that the land being appraised could be developed with medium density housing. *Id.* at 1196-97.

$1,542,857, an increase of $1,362,857 per acre ($1,362,857 x 17 = $23,168,569).

CONCLUSIONS OF LAW

The instant motion and countermotion pose three areas of inquiry for the court's consideration. First, a discussion of the legal frame work surrounding the issue of a regulatory taking. Second, a discussion of whether or not the instant claims by the Developer are ripe for court action. And third, if necessary, a discussion of the merits of the Developer's claims under summary judgment standards.

I. The Legal Framework

A. City's liability for a regulatory taking is a question of law

1. Under NRCP 56(a), summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The non-moving party must "'set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" *Id.* (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110 825 P.2d 588, 591 (1992)).

2. Whether the government has inversely condemned private property is a question of law. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).

B. A regulatory taking requires extreme interference with the use or value of property

1. Courts generally defer to the exercise of land use regulatory powers by the legislative and executive branches of government

3. In the United States, planning commissions and city councils have broad authority to limit land uses to protect health, safety, and welfare. Because the right to use land for a

particular purpose is not a fundamental constitutional right, courts generally defer to the decisions of legislatures and administrative agencies charged with regulating land use. The United States Supreme Court declared that the Court does "not sit to determine whether a particular housing project is or is not desirable," since "[t]he concept of the public welfare is broad and inclusive." *Berman v. Parker*, 348 U.S. 26, 33 (1954). Instead, where the legislature and its authorized agencies "have made determinations that take into account a wide variety of uses," it is "not for [the courts] to reappraise them." *Id.*

4. The role of the courts in overseeing land use regulation is limited to cases of the most extreme restrictions on the use of private property under the regulatory takings doctrine. The narrow scope of the doctrine stems from the separation of powers between the legislative and executive branches of government and the judicial branch. *See, e.g., West Coast Hotel Co. v. Parrish,* 300 U.S. 379, 399 (1937) (judicial restraint respects the political questions doctrine and separation of powers because it requires that the courts refrain from replacing the policy judgments of lawmakers and regulators with their own with regard to non-fundamental constitutional rights); *Gorieb v. Fox*, 274 U.S. 603, 608 (1926) ("State Legislatures and city councils, who deal with the situation from a practical standpoint, are better qualified than the courts to determine the necessity, character, and degree of regulation which these new and perplexing conditions . . . require; and their conclusions should not be disturbed by the courts, unless clearly arbitrary and unreasonable.").

5. Nevada's Constitution expressly prohibits any one branch of government from impinging on the functions of another. *Secretary of State v. Nevada State Legislature,* 120 Nev. 456, 466, 93 P.3d 746, 753 (2004). The Nevada State Constitution provides that the state government "shall be divided into three separate departments" and prohibits any person authorized to exercise the powers belonging to one department to "exercise any functions, appertaining to either of the others" except where expressly permitted by the Constitution. Nev. Const. art. 3 § 1.

6. Separation of powers "is probably the most important single principle of government." *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). Within this framework, Nevada has delegated broad authority to cities to regulate land use for the public good. The State has specifically authorized cities to "address matters of local concern for the effective operation of city government" by "[e]xpressly grant[ing] and delegat[ing] to the governing body of an incorporated city all powers necessary or proper to address matters of local concern so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government." NRS 268.001(6), (6)(a).

7. "Matters of local concern" include "[p]lanning, zoning, development and redevelopment in the city." NRS 268.003(2)(b). "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land." NRS 278.020(1); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 254, 439 P.2d 219, 222 (1968) (upholding a county's authority under NRS 278.020 to require an applicant for a special use permit to present evidence that the use is necessary to the public health and welfare of the community).

8. As a charter city, the City has the right to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within those districts" and "[e]stablish and adopt ordinances and regulations which relate to the subdivision of land." Las Vegas City Charter § 2.210(1)(a), (b). Cities in Nevada limit the height of buildings, the uses permitted and the location of uses on property, and many other aspects of land use that could have an impact on the community. *See, e.g., Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 239, 871 P.2d 320, 321 (1994) (upholding City's denial of building permit application); *State ex rel. Davie v. Coleman*, 67 Nev. 636, 641, 224 P.2d 309, 311 (1950) (upholding Reno ordinance establishing land use plan and restricting use of land).

2. To avoid encroaching on the responsibilities and authority of other branches of government, courts intervene in land use regulation only in cases of extreme economic burden on the property

9. In its Third through Seventh Causes of Action, the Developer alleges a variety of types of takings under the Fifth Amendment of the United States Constitution, which provides "nor shall private property be taken for public use, without just compensation," and its counterpart in Article 1, Section 8 of the Nevada Constitution. The Just Compensation Clause of the Fifth Amendment was originally intended to require compensation only for eminent domain – *i.e.*, direct government takings. *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992). In 1922, the Supreme Court held that a regulation that "goes too far," such that it destroys all or nearly all of the value or use of property, equivalent to an eminent domain taking, can require the regulatory agency to compensate the property owner for the value of the property before the regulation was imposed. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 539 (2005). This type of inverse condemnation that does not involve a physical occupation of private property by the government, but rather alleges excessive regulation of the property owner's use of the property, is known as a "regulatory taking."[4] Under separation of powers, however, courts intervene in regulation of land use by the legislative and executive branches of government only in cases of (1) extreme regulation where the economic impact of the regulation is equivalent to an eminent domain taking, wiping out or nearly wiping out the use of value of the property, similar to a physical ouster of the owner by eminent domain, or (2) interference with reasonable investment-backed expectations. *Lingle*, 544 US. at 539 (categorical and *Penn Central* regulatory takings test both "aim[] to identify regulatory actions that are

[4] The Developer conflates eminent domain and inverse condemnation. The two doctrines have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken. In inverse condemnation, by contrast, the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation.

functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain").[5]

10. The Nevada Supreme Court has established an identical test, requiring an extreme economic burden to find liability for a regulatory taking. *State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle*, 544 U.S. at 538); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35 (taking requires agency action that "destroy[s] all viable economic value of the prospective development property").

11. The Developer cites to numerous statements and actions of the City Council, individual Council members, City officials, and City staff that the Developer contends were unfair to the Developer. Because courts defer to the authority of local government to regulate land use for the public good, the regulatory takings doctrine is not concerned with the soundness or fairness of government regulation of land use. Because the regulation is presumed valid in regulatory takings cases, it is inappropriate to delve into the validity of or the motives underlying the regulation:

> The notion that . . . a regulation nevertheless "takes" private property for public use merely by virtue of its ineffectiveness or foolishness is untenable. [The] inquiry [as to a regulation's validity] is logically prior to and distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose. The Clause expressly requires compensation where government takes private property "for public use." It does not bar government from interfering with property rights, but

[5] In settling the test for a regulatory taking, *Lingle* resolved inconsistencies in prior federal and state court decisions. The *Lingle* opinion was unanimous and had no footnotes, indicating that the Supreme Court intended to bring clarity and simplicity to the regulatory takings doctrine.

> rather requires compensation "in the event of otherwise proper interference amounting to a taking.

Lingle, 544 U.S.at 543 (citing *First English Evangelical Lutheran Church v. Cty. of Los Angeles*, 482 U.S. 304, 315 (1987)); *cf. Sproul Homes of Nev. v. State ex rel. Dept. of Highways*, 96 Nev. 441, 445, 611 P.2d 620, 622 (1980) (judicial interference by mandamus, not by inverse condemnation, is appropriate if an agency's action was arbitrary or accompanied by manifest abuse). Assuming the truth of the Developer's allegations regarding the statements and actions of the City Council, individual Council members, City officials, and City staff, they are not relevant unless they can be shown to result in a wipeout or near wipeout of use and value or interfere with the Developer's reasonable investment-backed expectations.

12. A requirement that regulatory agencies pay compensation to property owners for regulation short of a wipeout would encroach on the powers of the legislative and executive branches of government to regulate land use to promote the general health, safety, and welfare. *Lingle*, 544 U.S. at 544 ("[R]equir[ing] courts to scrutinize the efficacy of a vast array of state and federal regulations" to determine whether they substantially advance legitimate state interests is "a task for which courts are not well suited. Moreover, it would empower-and might often require-courts to substitute their predictive judgments for those of elected legislatures and expert agencies."); *id.* at 537 (recognizing compensable regulatory takings only when the effect of government regulation is tantamount to a direct appropriation or ouster). As a result, a regulation is not a taking unless it virtually wipes out all the economic value or use of the property, because only then is it the functional equivalent of eminent domain. *Id.* at 539. Moreover, a standard for public liability for a regulatory taking that merely reduces the use or value of private property without destroying the use or value would lose its connection to the United States and Nevada Constitutions because that regulation would not be the functional equivalent of an eminent domain taking. *Id.* at 539.

13. Complying with government regulation, like the alleged regulation of the redevelopment of the Badlands in this case, is simply a cost of doing business in a complex society. "'[G]overnment regulation—by definition—involves the adjustment of rights for the public good.'" *Id.* at 538 (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)); *see also Mahon*, 260 U.S. at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 133 (1978) ("Legislation designed to promote the general welfare commonly burdens some more than others.").

3. The Developer alleges a categorical and *Penn Central* regulatory taking

14. The Developer has alleged two types of regulatory takings: categorical and *Penn Central*. A categorical taking occurs either when a regulation results in a permanent physical invasion of property, or when a regulation "completely deprive[s] an owner of 'all economically beneficial us[e]' of her property." *Lingle*, 544 U.S. at 538 (quoting *Lucas*, 505 U.S. at 1019). A *Penn Central* taking is determined based on review of several factors; "[p]rimary" among them is "'[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.'" *Id.* at 538-39 (quoting *Penn Central*, 438 U.S. at 124. "[E]conomic impact is determined by comparing the total value of the affected property before and after the government action." *Colony Cove Props. v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). Under both the categorical and the *Penn Central* takings tests, the only regulatory actions that cause takings are those "that are functionally equivalent to the classic taking in

which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539.[6]

15. To be the functional equivalent of eminent domain, the challenged regulatory action must cause a truly "severe economic deprivation" to the plaintiff. *Cienega Gardens v. United States*, 503 F.3d 1266, 1282 (Fed. Cir. 2007); see also *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (81% diminution in value not sufficient to show a taking); *Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993) (citing cases in which diminutions of 75% and 92.5% insufficient to show a taking); *William C. Haas & Co., Inc. v. City and County of San Francisco*, 605 F.2d 1117, 1120 (1979) (95% diminution not a taking); *Pace Res., Inc. v. Shrewsbury Twp.*, 808 F.2d 1023, 1031 (3d Cir. 1987) (89% diminution in property value not a taking); *Brace v. United States*, 72 Fed. Cl. 337, 357 (2006) ("diminutions well in excess of 85 percent" required to show a taking).

16. The Developer cites several federal cases finding a taking even where the diminution in value was less than 100%. *E.g.*, *Formanek v. United States*, 26 Cl.Ct. 332 (Fed. Cl. Ct. 1992) (finding a taking where government action resulted in 88% decline in value). Even though the Developer's cases were decided before *Lingle* clarified the regulatory takings doctrine in 2005 to require that liability for a taking can be found only where government action wipes out or nearly wipes out the economic value of property, the cases cited did require a near wipeout of value before a finding of a taking.

17. The Developer also relies on *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007); *Sisolak*, 137 P.3d 1110; *Arkansas Game & Fish Comm. v. United States*, 568 U.S. 23

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[6] The Developer's "categorical" and "regulatory per se" takings are the same thing. The majority in *Lucas v. S.C. Coastal Council* classified economic wipeouts and physical takings resulting from government regulation as "categorical" takings, while the dissent characterized the same test as a "per se" standard. 505 U.S. at 1015, 1052 (Blackmun, J., dissenting). A unanimous Supreme Court in *Lingle* also uses the terms interchangeably. 544 U.S. at 538. Similarly, the Nevada Supreme Court in *Sisolak* refers to physical takings interchangeably as "categorical" and "per se." 122 Nev. at 662-63, 137 P.3d at 1122-23).

(2012); *ASAP Storage v. City of Sparks*, 123 Nev. 639 (2008); and *Richmond Elks Hall Assoc. v. Richmond Red. Agency*, 561 F.2d 1327 (9th Cir. Ct. App. 1977) for the contention that regulation that "substantially impairs" or "direct[ly] interfere[s] with or disturb[s]" the owner's property can give rise to a regulatory taking. These cases are physical takings cases (*Tien*, *Sisolak*, *Arkansas*, and *ASAP*) or precondemnation cases (*Richmond*) and are inapplicable. The Developer also contends that takings are defined more broadly in Nevada than in federal law, citing *Vacation Village, Inc. v. Clark County*, 497 F.3d 902 (9th Cir. 2007). *Vacation Village*, however, concludes only that physical takings are broader in Nevada, not regulatory takings, citing *Sisolak*. *Id.* at 915-16. The scope of agency liability for regulatory takings in Nevada is identical to the federal standard. *See State*, 131 Nev. at 419, 351 P.3d at 741 (2015); *Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034; *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35.

18. To support its contention that the test for a regulatory taking is less deferential to the agency action than as established in *Lingle*, *Penn Central*, *Concrete Pipe*, *Colony Cove*, *State*, *Kelly*, and *Boulder City*, the Developer cites to a 2008 amendment to Article 1, Section 22 of the Nevada Constitution to allow owners of property taken by eminent domain to recover for damage to their property from the construction of a public improvement. This amendment concerns eminent domain and has no bearing on the test for a regulatory taking claim.

19. The Developer claims that the City has taken the 65-Acre Property because it did not comply with NRS 37.039, which sets out requirements for agencies exercising eminent domain to acquire property for open space. Because the City did not condemn the 65-Acre Property or any other portion of the Badlands, this statute does not apply.

II. <u>The Ripeness Issue</u>

20. A regulatory takings claim is ripe only when the landowner has filed at least one application that is denied and a second application for a reduced density or a variance that is

also denied. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191 (1985), *overruled on other grounds by Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019) ("*Williamson County*"); *see also Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) ("[T]he final decision requirement is not satisfied when a developer submits, and a land-use authority denies, a grandiose development proposal, leaving open the possibility that lesser uses of the property might be permitted."); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351-53 (1986) (at least two applications required to ripen takings claim).

21. The Nevada Supreme Court has fully embraced the final decision requirement:

> Generally, courts only consider ripe regulatory takings claims, and "a claim that the application of government regulations effects a taking of a property interest ***is 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. . . [The] regulatory takings claim is unripe for review for a failure to file any land-use application with the City. And although Ad America contends that exhaustion was futile because there was a de facto moratorium on developing property within Project Neon's path, the record does not support this contention. The opinion of Ad America's political consultant, which was based on alleged statements from only one of seven City Council members, is insufficient to establish the existence of such a moratorium." (emphasis added).

State v. Eighth Jud. Dist. Ct., 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186). Because the Nevada Supreme Court follows *Williamson County*, the courts of this state require that at least two applications be denied before finding that a regulatory takings claim is ripe.

22. A regulatory takings claim is not ripe unless it is "clear, complete, and unambiguous" that the agency has "drawn the line, clearly and emphatically, as to the sole use to which [the property] may ever be put." *Hoehne v. County of San Benito*, 870 F.2d 529, 533 (9th Cir. 1989). The property owner bears a heavy burden to show that a public agency's decision to restrict development of property is final. *Id.*

23. The Developer has failed to meet its burden to show that its regulatory takings claims are ripe. The Nevada Supreme Court requires that a regulatory takings claimant file at least two applications to develop "the property at issue." *State*, 131 Nev. at 419-20, 351 P.3d at 742.

24. The Developer filed this action seeking damages for a taking of the 65-Acre Property only. *See* Compl. ¶7. The Developer has submitted no evidence that it has filed any application, much less two or more, to redevelop the individual 65-Acre Property, and obviously, no subsequent application for a variance, reduced density, or alternate project. As such, Developer has provided City with no individual 65-Acre Property application to consider and the City cannot be said to have reached a "clear, complete, and unambiguous" decision and that the City has "drawn the line, clearly and emphatically, as to the sole use to which [the 65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533.

25. It can certainly be said that Developer may have very well been frustrated with what had occurred. Its first application was approved, only to then find itself being sued by a group of homeowners, thereafter receiving an unfavorable District Court ruling necessitating a Nevada Supreme Court appeal and the perceived need to file multiple lawsuits. That frustration does not, however, excuse the necessity of first making application to develop the 65-Acre Property before filing the instant case against the City alleging a taking of that property. This is especially true where, as here, Developer chose to file four separate court actions specifically directed at each individual parcel of property that Developer alleged was taken.

26. It must also be noted that fifty percent (50%) of Developer's applications directed to the individual properties were approved. Their first application for the 17-Acre Property was approved by the city. The application for the 35-Acre Property was denied. The application for the 133-Acre Property was deemed incomplete because of the then controlling Crockett Order and it was never resubmitted. And, as stated above, no application was ever submitted for the 65-Acre Property at issue in the instant case.

27. This court holds that any argument that proffering a development proposal for the 65-Acre Property would be futile is without merit as the City approved fifty percent (50%) of the individual applications it received, and felt it had legal authority to consider. This court would be engaging in inappropriate speculation were it to try and guess at what type of proposal Developer would have made for the 65-Acre Property and what type of response the City would have provided.

28. The Developer argued that the denial of the Master Development Agreement (MDA) also plays into the futility argument but the court finds that stance to be unpersuasive. To begin, the MDA was made after the individual 17-Acre Property proposal was made (which was approved) and after there was an application pending before the City for the development of the individual 35-Acre Property. Any denial of the MDA proposal while multiple individual proposals were pending and/or already approved cannot be said to be at all unreasonable. Moreover, even if the MDA denial was considered as part of the futility argument, the City would still have granted one-third (1/3) of the Developer's three proposals with the fourth proposal being deemed incomplete. As such, Developer's argument still places this court in the position of having to speculate about a possible 65-Acre Property proposal and the possible response by the City. Lastly, Developer made its 133-Acre Property application after the City denied the MDA. As such, it is clear that Developer did not believe that the MDA denial rendered further individual property development applications futile, rather, Developer chose to only proceed with the application for the 133-Acre Property.

29. The City's actions simply cannot be said to have been so "clear, complete, and unambiguous" as to excuse the need for Developer to propose a development plan for the 65-Acre Property before Developer made the choice to seek court intervention for that specific parcel of property.

30. To the extent Developer argues that the approval of the 17-Acre Property was somehow vacated and therefore no applications could be said to have been granted by the

City, the Court finds this position to also be without merit. There is no evidence that the City has taken any action to limit the Developer's proposed use of the 17-Acre Property for 435 luxury housing units. The Developer's contention that the City "nullified" the 435-unit approval is without any support in the evidence. The Developer's contention that the City's declining to extend the 17-Acre approvals after Judge Crockett invalidated the approvals means that the City "nullified" the approvals is frivolous. The City supported Developer and opposed Judge Crockett's Order at the trial court level and in the Nevada Supreme Court, where the City filed an amicus brief requesting that the Supreme Court reverse the Crockett Order and reinstate the 17-Acre Property approvals. Ex. CCC.

31. Prior to the Supreme Court's Order of Reversal, the 17-Acre Property approvals were legally void and there was nothing to extend. If the City had attempted to extend the approvals, the City could arguably have been in contempt of Judge Crockett's Order. *See* NRS 22.010(3) (disobedience or resistance to any lawful writ or order issued by the court shall be deemed contempt); *see also Edwards v. Ghandour*, 123 Nev. 105, 116, 159 P.3d 1086, 1093 (2007) (a judgment has preclusive effect even when it is on appeal), *abrogated on other grounds by Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1053-54, 194 P.3d 709, 712-13 (2008). After the Supreme Court reinstated the approvals, the City had no power to nullify the approvals even if it had intended to do so. And it evidenced no intent to do so. To the contrary, upon reinstatement, the City twice wrote to the Developer extending the approvals for two years after the date of the remittitur. Ex. FFF at 1019; Ex. GGG at 1021. The Court accordingly rejects the Developer's argument that the City "nullified" the City's approval of 435 luxury housing units on the 17-Acre Property. All evidence establishes the opposite. The 17-Acre approvals are valid, and the Developer may proceed to develop 435 luxury housing units on the 17-Acre Property.

32. The Developer argues that it is not subject to the final decision ripeness rule adopted by the United States and Nevada Supreme Courts because the "taking is known." This argument is circular and is rejected. The Court cannot determine whether the City has

"gone too far" unless the City denies specific applications to develop the property.

33. The Developer also argues that the final decision ripeness requirement adopted in *State* and *Kelly* has been eliminated because takings are "self-executing," citing *Knick* and *Alper v. Clark County*, 93 Nev. 569, 572, 571 P.2d 810, 811-12 (1977). *Knick* had nothing to do with final-decision ripeness, nor would it because the claimant in *Knick* alleged a physical taking. A physical taking is not subject to final-decision ripeness. *Knick*, 139 S.Ct. at 2169 ("the validity of [the] finality requirement . . . is not at issue here." The only issue in *Knick* was whether takings claims could be brought in the first instance in federal court. *Id.* at 2179.

34. In *Alper*, the Nevada Supreme Court stated that, "as prohibitions on the state and federal governments," the taking clauses of the state and federal constitutions are "self-executing," meaning that "they give rise to a cause of action regardless of whether the Legislature has provided any statutory procedure authorizing one." 93 Nev. at 572, 571 P.2d at 811-12. Thus, the "self-executing" nature of the taking clauses means only that the taking clauses do not need to be implemented by statute. Being self-executing does not mean, as the Developer asserts, that payment of just compensation is automatically due without first satisfying the requirement to obtain a final agency decision. The Developer further contends that *Alper* proscribes the ripeness requirement as a "barrier[] or precondition[]" to a taking claim. To the contrary, the Nevada Supreme Court in *Alper* did not address the ripeness requirement of taking claims. Instead, it held that the state's Six Months' Claims Statutes codified in NRS 244.245 and NRS 244.250, which require that a claimant presents his or her claim to a County before suing the County, do not apply to actions in inverse condemnation. *Alper*, 93 Nev. at 570, 572.

35. The Developer asserts that its *Penn Central* regulatory taking claim is ripe because the City disapproved the Developer's MDA for the entire Badlands. The MDA, while it included parts of the 65-Acre Property, covered the entire 250-acre Badlands outside of the 17-Acre Property, development on which the City had already approved. Ex. LL at 801. It did not constitute an application to develop the 65-Acre Property standing alone,

which is "the property at issue." *See State*, 131 Nev. at 419. The City's denial of the MDA, therefore, is not considered an application to develop the 65-Acre Property for purposes of ripeness. Even assuming that it was an application to develop the 65-Acre Property standing alone, the Developer's regulatory takings claim would not be ripe until the Developer files at least one additional application. Again, the Developer has presented no evidence that it has done so.

36. The Court also does not consider the MDA to constitute an initial application to develop the 65-Acre Property for purposes of a final decision because the MDA was not the specific and detailed application required for the City to take final action on a development project. *See* Ex. LL at 810-19 (general outline of proposed development in the Badlands). The MDA divided the Badlands into four "Development Areas" and proposed permitted uses, maximum densities, heights, and setbacks for the four areas. *Id.* at 812, 814. For Development Areas 2 and 3, which contained portions of the 65-Acre Property, the MDA proposed a maximum residential density of 1,669 housing units, and the Developer was to have the right to determine the number of units developed on each Area up to the maximum density. *Id.* at 813-14. The indefinite nature of the MDA is also evident from the uncertainty expressed about various uses. For example: "[t]he Community is planned for a mix of single family residential homes and multi-family residential homes including mid-rise tower residential homes"; "[a]ssisted living facilit(ies) . . . may be developed within Development Area 2 or Development Area 3"; and "additional commercial uses that are ancillary to multifamily residential uses shall be permitted." *Id.* at 812. Finally, the MDA provided that [t]he Property shall be developed as the market demands . . . and at the sole discretion of Master Developer." *Id.* at 814. Accordingly, the MDA was not clear as to how many housing units would eventually be built in the 65-Acre Property. Nor was the City Council apprised by the MDA of the types and locations of uses, the dimensions or design of buildings, or the amount and location of access roads, utilities, or flood control on the 65-Acre Property. *See id.* at 813-16.

37. Given the uncertainty in the MDA as to what might be developed on the 65-Acre Property, the Court cannot determine what action the City Council would take on a proposal to develop only the 65-Acre Property. This once again places the court in the untenable position of having to speculate about what the City might have done, said speculation being improper.

38. The MDA also did not constitute a valid set of land use applications for the 65-Acre Property. A development agreement is not a substitute for the required UDC Applications. The UDC states that "all the procedures and requirements of this Title shall apply to the development of property that is the subject of a development agreement." UDC 19.16.150(D). To develop the 65-Acre Property even after an MDA were approved, the Developer would be required to file a Site Development Review application and seek a General Plan Amendment. *See* Ex. LL at 819 (City would process "all applications, including General Plan Amendments, in connection with the Property"); *id.* at 820 ("Master Developer shall satisfy the requirements of the Las Vegas Municipal Code section 19.16.100 for the filing of an application for a Site Development Plan Review").

39. Developer had applied for the required Site Development Review and General Plan Amendment in applying for the original 17-Acre Property application and was therefore clearly aware of the requirements. The version of the MDA the City Council rejected on August 2, 2017 acknowledged that the Developer must comply with all "Applicable Rules," defined as the provisions of the "Code and all other uniformly-applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date." *Id.* at 804, 810. Similarly, the MDA indicated that the property would be developed "in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law." *Id.* at 802. Because the Developer did not submit any of the site-specific development applications related to the 65-Acre Property, the City Council's denial of the MDA did not constitute a final decision by the City Council regarding what development would be permitted on the 65-Acre Property.

40. The Developer contends that following the City's denial of the MDA, it would have been futile to file the UDC Applications to develop the 65-Acre Property. As with the earlier discussion on futility, the court finds Developer's position here to be unpersuasive. The Developer cites no evidence for its statement that the City insisted that the MDA was the only application it would accept to develop the 65-Acre Property. The Developer previously acknowledged that City Councilmembers expressed a preference for a holistic plan addressing the entire Badlands. Ex. WWW at 1323. Such a preference does not indicate a refusal to consider other options. Indeed, the City did consider—and approve—significant development on the 17-Acre Property within the Badlands, indicating that the City is open to considering development of this area.

41. The Developer contends that *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) supports the claim that it would be futile to file any application to develop the 65-Acre Property. In *Del Monte Dunes*, the City reviewed and denied five separate applications to develop the property, each of which proposed a lower density than the previous application. 526 U.S. at 695-96. The Court affirmed the Ninth Circuit's holding that the plaintiff had satisfied the final decision ripeness requirement. *Id.* at 698-99, 723. Unlike *Del Monte Dunes*, the Developer here has filed no application specific to the 65-Acre Property. Even if the MDA is considered an application, the ripeness rule applied in *Del Monte Dunes* requires at least a second application.

42. The Developer contends that this case is similar to *Del Monte Dunes* because the Developer conducted detailed and lengthy negotiations over the terms of the MDA with City staff and made many concessions and changes to the MDA requested by the staff before the MDA was presented to the City Council with the staff's recommendation of approval. Concessions and changes to the MDA requested by staff and a staff recommendation of approval, however, do not count for ripeness. The City Council, not the staff, is the decision-maker for purposes of a regulatory taking. An application must be made to the City Council, and if denied, at least a second application to the City Council must be made and denied

before a takings claim is ripe.

43. Furthermore, the Developer's reliance on Bills 2018-5 and 2018-24 in support of its claim of futility is misplaced. The bills imposed new requirements that a developer discuss alternatives to the proposed golf course redevelopment project with interested parties and report to the City and other requirements for the application to develop property. They were designed to increase public participation and did not impose substantive requirements for the development project, and did not prevent the Developer from applying to redevelop the 65-Acre Property. Moreover, the second bill was adopted in the Fall of 2018 after the Developer filed this action for a taking. As such, it could not have had any effect on the 65-Acre Property. The bill could not have taken property that was allegedly already taken. Both bills were also repealed in January 2020, and are therefore inapplicable to show futility. *See* Exs. LLL, MMM.

44. At the City Council hearing on the MDA, no Councilmember indicated that he/she would not approve development of the Badlands at a reduced density if the Developer submitted a revised development agreement. *See* Ex. WWW at 1365-70. The vote to deny the MDA was 4-3 (*id.* at 1370). Therefore, had a modified proposal been made regarding the MDA, it was only necessary for one of the four members who voted to deny the application to became satisfied with the proposed changes, for it to be approved. And it must be noted that two of the four City Councilmembers who voted against the MDA are no longer members. Indeed, four of the seven members of the City Council that heard the MDA are no longer on the Council.

45. Much of the commentary about the MDA from Councilmembers at the public hearing indicates that they may approve a lower density development. For example, Councilmember Coffin, who voted against the MDA, stated that he would support "some sort of development agreement" for the Badlands. Ex. WWW at 1327; *see also id.* at 1328 (Badlands "still could be developed if you paid attention to [preserving the desert landscape]"). Similarly, Councilmember Seroka, who voted to deny the MDA, noted that

three different drafts of the development agreement had been circulated in the previous week (*id.* at 1362); he had insufficient time to review and understand the version of the agreement before the City Council (*id.*); the proposed residential development was too dense (*id.* at 1361-62); and the development agreement contained no timeline for development of the Badlands (*id.* at 1363). Seroka explained that "a reasonable and equitable development agreement is possible, but this is not it," and that the Developer could resubmit a development agreement for the Council's consideration. *Id.* at 1365-66. Similarly, the majority of citizens testifying at the City Council hearing on the development agreement indicated not that they were opposed to all development of the Badlands, but rather that the density of residential development proposed in the agreement was excessive. *E.g.*, *id.* at 1339, 1344-45, 1350, 1353-55, 1357-60.

46. The City's disapproval of the MDA falls short of the "clear, complete, and unambiguous" proof that the agency has "drawn the line, clearly and emphatically, as to the sole use to which the [65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533. Even if the MDA were considered to be an initial application, Nevada law requires that the Developer file at least one additional application and have that denied before its regulatory takings claims are ripe for adjudication.

47. In sum, Developer chose to file applications to develop each of the three other individual properties at issue in the aforementioned cases, while also filing a MDA. Developer chose not to file any application for the individual 65-Acre Property at issue in this case before instituting this court action, which is specific to the individual 65-Acre Property. The City indicated a willingness to reasonably consider the applications and has granted one of the two individual applications that were proposed, while denying a third due to the then controlling Crockett Order. The City was not, however, given an opportunity to evaluate an application for the individual 65-Acre Property. The court does not find that filing an application for the 65-Acre Property would have been futile. Accordingly, the Court concludes that the Developer's categorical and *Penn Central* regulatory takings claims are

unripe and the Court has no jurisdiction over the claims. The Court grants summary judgment to the City on that ground.

III. The Remaining Issues

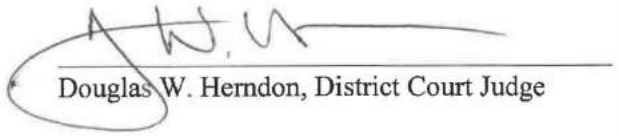
48. Because the court finds that the failure to have made an application to the City in regard to the development of the individual 65-Acre Property renders the Developer's claims in the instant case unripe, that decision is fatal to Developer's case and renders further court inquiry unnecessary.

49. Moreover, the court believes that addressing the merits of any of the remaining issues would be unwise as there are three companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect in the other pending court actions, much like the then controlling Crockett Order was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case.

ORDER

IT IS HEREBY ORDERED THAT the City's Motion for Summary Judgment is **GRANTED** and Developer's Countermotion is **DENIED** as **MOOT.**

Dated this 29 day of December 2020.



Douglas W. Herndon, District Court Judge

Exhibit 33

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

ITEMS 131-134

MAYOR GOODMAN
Alright, we're on to Agenda Item 130.

BRAD JERBIC
Your Honor, if I could interrupt for a moment.

MAYOR GOODMAN
Okay. Hold on one second until I've got everybody here. Okay. We have to have – excuse me.

COUNCILMAN COFFIN
Well, I can hear it.

MAYOR GOODMAN
You can hear it as you walk in back?

COUNCILMAN COFFIN
Yes, I can hear it.

MAYOR GOODMAN
Okay. Wait. They're still talking. Okay, Mr. Jerbic.

BRAD JERBIC
Thank you. As I indicated earlier, I have a recommendation on 130 and Item 82, which are kind of companion items. But I've been in contact with the developer's attorney, and I believe it would be in the interest of the Council to hear four other items before you hear the Development Agreement for Badlands. There happen to be four other items that are not related to the Development Agreement, they are standalone items: Items 131, 132, 133 and 134, that all relate

to a request for 61 individual home sites on the property known as Badlands. I would ask that you at this time call 131 through 134 and hold that hearing before we discuss Item 130.

MAYOR GOODMAN
And when do we get to 82?

BRAD JERBIC
After you vote on 131 through 134 -

MAYOR GOODMAN
Okay.

BRAD JERBIC
We'll hear –

MAYOR GOODMAN
Okay. So 131 through – okay, 131 through 134.

BRAD JERBIC
That's correct.

MAYOR GOODMAN
Then back to 130, then to 82.

BRAD JERBIC
That's correct. Okay. So I will read –

TODD BICE
We'd like to be heard on this abeyance issue.

BRAD JERBIC
We haven't gotten to that yet, Mr. Bice.

MAYOR GOODMAN
What abeyance issue?

TODD BICE
I think the problem with that is, is that -

MAYOR GOODMAN
You want to go to the microphone? Please.

TODD BICE
My apologies.

MAYOR GOODMAN
And then who are you, please, for the record.

TODD BICE
Todd Bice. My address is 400 South 7th Street. We don't believe that it's accurate to say that these items are unrelated to Item 82 and Item 130, which pertain to the Development Agreement. This is all part and parcel of the same development.
I do agree with the City Attorney that the Development Agreement, quite frankly, has to be held. We dispute that it is even properly on this agenda. But nonetheless, with respect to that item,

these other items are – the City is allowing the developer to submit competing items. These are competing with that, and you don't allow any other developer to do that.
So, with all due respect, not only does that Development Agreement need to be held, which applies to this same property, so do these items. Otherwise, you're allowing competing items to be put on the agenda, or you then turn around and you're allowing this sort of piecemeal development, where well, we'll consider this application, we'll consider that application, we won't consider others. That is, again, inconsistent with everything you do for every other developer. It's just simply not consistent with your conduct on everyone else.
So we ask that if you're, that all these items should be considered together and they should all be held. Just because, as I agree with the City Attorney, the Development Agreement has to be held. So that's our position. I thank you.

STEPHANIE ALLEN
Your Honor, members of the Council, Stephanie Allen here on behalf of the applicant for all of the items listed. The reason we prefer to hear the former items rather than the earlier items is to avoid, basically, a multiple-hour discussion on the abeyance issue. We've had 19 abeyances up ‘til today's date. We've been going at this for two years.
So we'd very much appreciate your consideration on the items that have been on the agenda. They were held intentionally so that the holistic project could catch up to them and you'd have them both on your agenda, with the idea that one of them would be withdrawn. To the extent the Development Agreement is going to be held tonight, we'd very much appreciate your consideration on those items that have been held in abeyance.

MAYOR GOODMAN
Okay. So returning back, as stated.

BRAD JERBIC

Again, I believe the request for the applicant is to have 131 through 134 heard first. Mr. Bice, let me ask you a question. I assume you intend to ask for an abeyance on 131 through 134. And my question to you is: Do you want to make that case right now, or do you want to make it after the developer does their presentation?

TODD BICE

No. I think they need to be held in an abeyance just like the – you can't, with all due respect, I don't believe it's appropriate to separate the Development Agreement aspect out of these applications and say, well, let's consider that after the fact. That's an admission by the developer that he's trying to use one as a bargaining chip for the other to try and offer up inconsistent positions. That's not the purpose of a planning meeting for the City Council. We have simply made the point all along. They've brought this Development Agreement forward. The Development Agreement governs the entire project. It has to be held in abeyance.

This attempt to thread – spot zone isn't the right terminology, but it's the equivalent of piecemealing a project by these individual applications, which are then, in fact, in competition and in conflict with the very application for the Development Agreement, that the developer has proposed and sought an approval of from the Planning Commission. It's just simply not the way in which the City has done business for anyone else, and it's inconsistent with the City Code.

So yes, we ask right now all of these items be held in abeyance until the Development Agreement is considered, because that's ultimately what overrides all of this.

I thank you. Go ahead.

FRANK SCHRECK

Frank Schreck, 9824 Winter Palace. This item has been held three times. It's been held at the request of the City. It's been held at the request of the City and then the request of the developer. It was held four months in a row – April, March, April and May. Or no, I guess April, May and June at the request of the City and a request of the developer. We were all here, but those were

held in abeyance. We've asked to have this held in abeyance, because it conflicts, you know, with the Development Agreement which covers the same land.
So now you're piecemealing it and doing this now. What are you going to approve when you approve a development agreement later? They already have this already approved. It's inconsistent. They shouldn't be on the same agenda, as Todd said, and the three continuances were asked by them and the City, not us.

CHRIS KAEMPFER
First of all, Your Honor, may I respond to those comments and actually those of Mr. Bice? It is not fair to say that considerations like this have never been granted to any other developer in the history of the City of Las Vegas. I have been around for a lot of years, and I can tell you considerations are granted when it's fair and when it's right. The application that is before you now, the first is (sic) the applications 131 through 134. Those are the applications that in due course are said here.
Now, were they delayed at the request of the City a couple of times? Yes. And then the other one, the neighbors suggested to us that they should be delayed, and we said okay. So it was our request working with the neighborhood to delay it. But we are entitled to be heard on an application that staff is recommending approval on, that the Planning Commission recommended approval on and that conforms to every standard of zoning practice in the City of Las Vegas.
We're saying if this item is heard and approved, then the holding of the other item and working with that to get that thing resolved would then handle the whole thing. But right now, we would like to proceed with an application that has been noticed properly for this hearing now.

MAYOR GOODMAN
Well, what I'm going to do is I'm going to do as our attorney has suggested. I am going to read Items 131 through 134, because you will understand as we get to the commentary at the end of that, then I will read 130, and then we'll go back to Agenda Item whatever that is, 82.

So 131, GPA-68385, 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 and Hualapai Way.

Agenda Item 132, WVR-68480, 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.

And related Item 133, SDR-68481, on a request for a Site Development Plan Review for a proposed 61-lot single-family residential development.

And related Item 134, TMP-68482, on a request for a tentative map for a 61-lot single-family residential subdivision on 34.07 acres, southeast corner of Alta 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 Planed Development - 7 Units per Acre) Zone.

The Applicant/Owner is 180 Land Company, LLC. Staff has no recommendation on Item 131, and the Planning Commission failed to obtain a supermajority vote on Item 131, which is tantamount to denial. The Planning Commission and Staff recommend approval on Items 132 through 134. These are in Ward 2, with Councilman Beers, and are public hearings which I declare open.

So, at this point, to continue on with that, we will go forward on these, or shall I read in 130 at this point and include that?

BRAD JERBIC

No. I believe that you should hear these at this point. Let me say for the record too that I agree with Mr. Bice that these two things are incompatible. The Development Agreement, as contemplated, does not have 61 custom home sites. It's got 65 total for the whole 183 acres of the golf course. This is simply 61 sites at 34 acres.

I think the answer is pretty clear. If this passes, then there will have to be a reconciliation in the future if there is a development agreement. And I think that Mr. Kaempfer will be the first to stipulate that if the Development Agreement contains 65 custom home sites, then they'll rescind

this request if that agreement is eventually approved. But I think that's the way that this is resolved is you can certainly vote up or down on this. Now, and, of course, if you vote no on this right now, you don't have any issue at all. There's no inconsistence with anything.

MAYOR GOODMAN

I have a question of you, because we have been meeting on this for a long, long time with a lot of issues. And when we approved the development on the, let's see, the south – what is it – the southeast corner for the development under the high rises, I personally, with the support of Council, asked you if you would go in and try to negotiate so we were not in piecemeal development and could come through with an agreement where everybody is, you know, I mean, he's a great developer. I've never seen anything he's built that hasn't been absolutely fabulous. But we were at a point that we made the decision to go ahead with that, that corner that is actually it's the northeast corner, not the southeast. It's the northeast corner at Rampart and Alta for that development.

And so my request to you, specifically with the support of the Council was: Can you get in there so we can approve the whole thing and then move from there? So where are we before I even go into this?

BRAD JERBIC

Yeah. I don't want to say too much right now, because you haven't called 130 forward. But when we get to 130, I'm going to make a record that's exactly what we have been doing since you gave that direction in January of this year. Mr. Perrigo and myself have been meeting with Mr. Lowie and his team on a regular basis. We've been meeting with neighborhood groups, neighborhood attorneys on a regular basis, individual neighborhoods that are uniquely affected.

We, I believe, are very, very, very close in my opinion. There may be some disagreement. But I think we are very, very close to a, an agreement. But last night we had a couple of issues, that I will talk about later when we get to 130, that did not resolve. At the same time, there is not a

development agreement in the backup that reflects any of the changes that were approved by the Planning Commission or by Recommending Committee.
Our plan was to put that all together in one big amendment that we'd be presented today -

MAYOR GOODMAN
Right.

BRAD JERBIC
- without the missing pieces yesterday. I'll go into more detail later as to why I think it's not complete right now and I think it should be held in abeyance.

MAYOR GOODMAN
But in all fairness – and I'm no attorney, thank God – to go through and vote on these items before you can answer the question that I asked about. I mean that's not, to me that's not in good faith. It is where are we with the whole –

BRAD JERBIC
Right now –

MAYOR GOODMAN
What we asked you to do, which I know you've been working 24/7 forever on this and it is absolutely, you know, we see it a working relationship that can be developed where everybody, nobody gets 100 percent, but everybody's got their 85 percent. And so, to me, the whole has to work before you start – unless you're telling me go through each one of these, take the vote, have the public hearing, go through it piecemeal – is that what you're telling us to do?

BRAD JERBIC
I'm telling you that the developer has requested that. He has had this individual, standalone project up before this Council and the Planning Commission for a very long time. And it would have gone away if there had been a development agreement considered today and approved today. But because I am recommending that you don't even consider it today, it clearly won't be approved today. If it's approved in the future, it'll go away. But he wants to get moving on what he has a right to ask for right now in his opinion. He believes he has a right to ask for the standalone, as you call it, piecemeal part of Queensridge.
And that is exactly what it is. I wish I could tell you that we had a development agreement and you didn't have to consider this a piece at a time. But we don't right now, in my opinion, and I believe it should be held in abeyance so we can continue to pursue that. But in the meantime, he wants to go forward with this piece in spite of that.

MAYOR GOODMAN
Okay. I mean, that's the prerogative. My further question to you, because it's got to be very clear to me, maybe they're further ahead and get it, but I don't yet. If in fact we – how close do you feel the parties are to resolving issues that may not be resolved?

BRAD JERBIC
If I could, Your Honor, we really need to call 130 if we're going to go any further on this, because I'm really talking on items that are not right now up for consideration.

MAYOR GOODMAN
Okay. All right. Here we go.

BRAD JERBIC
I will get into that. I will answer that.

MAYOR GOODMAN
Well, let's go do it. Off we go. So the applicant present or representative, we know that. So please go ahead.

CHRIS KAEMPFER
Okay. And Your Honor, let me address why this isn't what it might seem to be.

MAYOR GOODMAN
Okay.

CHRIS KAEMPFER
We have –

MAYOR GOODMAN
I'm going to make sure today – we've had a long meeting with something that was extremely long and involved, and I asked everybody absolutely no applauding, no screaming, no yay, no nothing. And we worked through it, and it was just, it was a wonderful, wonderful work through. We're going to get there. We are going to get there. But please be courteous, everybody to everybody else, and let's not have any comments, no laughter, no applause, no kumbaya. So go ahead, please, Mr. Kaempfer.

CHRIS KAEMPFER
Okay. Let me finish what I, not from you, but from the crowd, what I was about to say.

MAYOR GOODMAN
Okay.

CHRIS KAEMPFER
We have a developer here who has spent literally hundreds of thousands of dollars a month on this project. He has a lender who is saying: You don't have any real entitlements to show me except one 435, out of all this acreage 17 acres. You better start showing me some kind of entitlement, or we're going to have some issues, and you're not going to be able to spend the money you're spending watering the golf course and doing those kinds of things because we have to have something.
This is a plan that will allow us to move forward with the development agreement, give you, give all of us 30, 60 days, whatever it is, to wrap it up. And upon that Development Agreement being finalized, this, this zoning here will be consumed by it and will be superseded by the Development Agreement. But without this, you cannot expect him to continue to pour those kinds of dollars in. He's fighting litigation. He's fighting everything that he has to, and he's putting everything he can, financially and his heart, into trying to make this thing work.
So, this application conforms to everything, in terms of solid zoning practices and principles. But if I could just take – and I know this is more of a general comment and I'm going to let Stephanie get into the particulars. The reason why we're here is not a fault, and the reason why you hear that acrimony and the laugher –

MAYOR GOODMAN
No, no, don't even go there. Just stay on this.

CHRIS KAEMPFER
But it's not their fault.

MAYOR GOODMAN
Okay.

CHRIS KAEMPFER
That's the point I'm making.

MAYOR GOODMAN
Okay.

CHRIS KAEMPFER
Two years ago, the HOA hired an attorney who stood in front of an HOA meeting and said this property could not be developed. And people looked at him and said: Are you saying that if the golf course closes, they can't develop it? And the attorney the HOA hired said, no, they cannot. And when he was walking out, I'll never forget it. It's burned in my mind. Some homeowner said: So they can't develop at all? And he said, quote: Not a single home.
And when I asked him – does the City support that position? I got lawyer speak. And I'm a lawyer, and I know what it is. And he said: I do not believe that the City disagrees with that position.
And from that meeting, that is the foundation upon which this opposition has been based. And again, I don't blame people for thinking about that. But I live there too. And so what I did, I got a hold of the City Attorney, I got a hold of the Planning Director, and I said: Can this be developed? And they both said yes.
And then I looked at the zoning, and it's R-PD7. And I looked at the CC&Rs, and it says the golf course is not a part of Queensridge and is not intended to be part of Queensridge and can never be a part of Queensridge. And then I saw the documents that people signed saying the golf course can be built on and views aren't protected. They could put commercial and residential. All of this was designed with one purpose in mind, and that is to preserve this for development in the eventuality that the golf course were (sic) to go away.
Now, that is the real Queensridge that Mr. Lowie and his group acquired, and that's what we're dealing with. And not only does the City Attorney and the Planning Director, and for what it's

worth, me and others who have looked at it, there's other land use lawyers who have looked at it and come to the same conclusion, but two separate courts have held its developable.
Now, the whole idea of this ultimately is to get something that works for everybody. But without something to show, without something that he can show a lender, his lender, that there's something positive, that this Council believes that this property can and should be developed, he is going to have problems that may not be surmounted. And so, I am, we are respectfully asking that as we go through, you take a look at this plan and ask yourself if this does not – forget about where it is and forget about – if this were coming in as a separate project, ask yourself: Would you not support something at a density of 1.7 units per acre in this particular area?
And so, I'm going to let Stephanie take it from here. But trust me, this is one of those things that when we all sit down, we're all going to hopefully, and thanks very much to Brad Jerbic. He has worked tirelessly and the Planning Director as well, but especially Brad in this case to try to bring people together.

MAYOR GOODMAN
Yes, he has.

CHRIS KAEMPFER
And he's right. Maybe we're there. Maybe we're almost there. But we need what the law allows us to have so we can move forward. Go ahead Stephanie.

MAYOR GOODMAN
And if I may ask on that and this, we'll go through the process, so we'll have comments from the public too and Mr. Perrigo. In speaking to just agenda, number 131, that is – and again, it's GPA-68385, on a request for a General Plan Amendment from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) on the 166.99 acres at the southeast corner of Alta and Hualapai.

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

2000, provided engineering services to many land developers, including Del Webb, where I met Frank Pankratz. And through Frank, I met Yohan Lowie.
In my business, I used to come very frequently before your Council and the Planning Commission to resent, to represent many clients with regard to their request for approvals. By the way, these clients included Bill Peccole, developer of the Badlands Golf Course. In my entire professional career, no one, no one did a better quality project than Yohan.

MAYOR GOODMAN
Okay. I'm going to have to –

GEORGE C. SCOTT WALLACE
The One Queen –

MAYOR GOODMAN
I'm sorry, Mr. Wallace, as much as we have such high regard for you and everything that you have done with your company and everything here, we're going to have to stick on the minutes, because we are going to be here for a long, long time. But I think you got your approval and your appreciation for Mr. Lowie clearly stated.

GEORGE C. SCOTT WALLACE
Quality builder/developer. Thank you.

MAYOR GOODMAN
So if you would. Thank you. Yes, ma'am.

LILIAN MANDEL
Oh, hello. My name is Lillian Mandel, and I've been in Las Vegas 27 years, and 17 years I've been at Fairway Pointe, which is adjacent to the Badlands. And when we bought in that situation, we were told that was Badlands and was open up to the public.
And then when it was sold, I all of a sudden was worried, and then I heard it was Mr. Lowie. And because of all the projects he's done in this city, I was thrilled, because I'm right up against the fifth hole. And mainly, one of the main things was the Tivoli Village. It was sitting on a wash, a big hole that said nobody could build anything. He was capable of doing it.
So I approve his ability of building things that are beautiful. I don't have a problem with it, and I'm glad that it's not a builder who's going to build big homes back there. So I would love for them to deal with logic instead of anger. That's all I have to say.

MAYOR GOODMAN
Thank you. Thank you very much, and thank you for staying on the time.

LILIAN MANDEL
You're welcome.

DAN OMERZA
Mayor Goodman and ladies and gentlemen, my name is Dan Omerza, and I live in Queensridge. I don't live on the golf course. I met with Mr. Lowie's representatives when he first proposed the project. I went to his office, and it was very grand. And since that time, he's changed his position many, many times, which makes everyone in the Queensridge development very nervous. Okay. I think that since we just had a very big election and some folks will no longer be here on this Council in a few short weeks, I think it would be disingenuous to vote on anything right now until the people who have put the people in this, in your Council, are here to vote with our representatives as we picked them. I think it would be very sad if we pushed things forward at this point. Thank you.

MAYOR GOODMAN
Thank you, Mr. Omerza. I appreciate it.

DAN OMERZA
Thank you. Yes, ma'am.

TRESSA STEVENS HADDOCK
Good evening. Tressa Stevens Haddock; I'm the lady that keeps coming back outside the gates where the construction is. And I just want to know on what you're voting on this evening? Where's the construction, because, again, that's my concern. I moved there for health reasons, and I'm the person that there's only one road where construction, and no one said tonight. Did they change the location of where construction is, or is it still going to be Clubhouse, which is right where my house is located? That's my question.

MAYOR GOODMAN
Thank you.

FRANK SCHRECK
Mayor, members of the City Council, Frank Schreck, 9824 Winter Palace. We have a bunch of professionals to address some of the issues that have been raised, so we'd like to have the time to be able to do that. We'll try to make it as brief as possible, but this is obviously a serious matter for our community. We voiced our concern already that this is inconsistent with the general, the Development Agreement and it shouldn't even be heard tonight.
One thing I do want to start off saying, there are not two courts that have said that the developer has a right to develop. They got one decision that had findings of fact and conclusion of law from Doug Smith's court that had nothing at all to do that was of the issues that were in front of him. The other court, that we're involved in, has denied our 278A. We've appealed that. And the

mapping issue, they've upheld that. So that's going forward. So there's only one court, and it didn't even have in front of it really the issues that they're doing there.
But what I want to say is, to ntroduce to you is Ngai Pindell, who is a professor of law at the university, at the Boyd Law School, who is going to speak to several of these issues as a matter of law.

MAYOR GOODMAN
I'm gonna let him have five minutes if he wants it with his presentation. Yeah.

NGAI PINDELL
Thank you very much. I'm Ngai Pindell, Professor of Law at the William S. Boyd School of Law. So I've written a lot about how effective planning produces good land use results, and that was my interest in this issue. It seems to be a case where good planning has occurred, and now we're in this dispute and there's some danger that good planning might be subverted.
I've submitted a report on the Master Development Plan Phase II, which is here, to the homeowners. And I'd like to introduce that into record and then just make three or four highlighted points about the report.
So, first, I think we don't want to lose sight of the fact that there's a Master Development Plan here. So the property, earlier we talked about the property being developable or not. Indeed, the golf course property is developable – I can't say that word – but there's a process that can be followed. When I look at the different Planning staff reports from earlier applications in this process – and there have been many applications – the Planning staff indicated that a major modification of the Master Development Plan, Phase II, was appropriate and then a General Plan Amendment, all of which in conformance with a General Plan.
And so I think that is a sensible approach and a good land use approach to do. It gives all of the stakeholders a chance to be heard, other arguments to be properly considered, and is consistent with good land use practice.

The other part that I wanted to say was that there's an argument about the underlying zoning. And this is where I want to bring you back to the Master Development Plan. Indeed it was a Master Development Plan, where the developer asked for a number of different land uses. There was residential, single-family residential, commercial, open space, golf course and the multi-family. The residential was on 401 acres. The developer asked for those uses. The City approved those uses, and those uses have been reflected in the Master Development Agreement and in the City's General Plan for well over 25 years.

So to change those uses now is possible, but I think it should rightly go through a process of a modification to that Master Development Agreement, followed by the General Plan Amendment, again for conformance with the General Plan.

I know this is a long and contentious case, so I wanted to keep my comments brief, but I hope you'll consider those land use planning principles.

MAYOR GOODMAN

Thank you very much. I appreciate it.

FRANK SCHRECK

As Professor Pindell indicated, there is a tremendous amount of work that was put into the staff's reports for the applications that were submitted early, the 720 and then the 250 acres that had a development agreement. Those had huge staff reports. And in those staff reports, they said over and over and over again what the process is to develop the Queensridge golf course. This is not us speaking. This is your Planning Department speaking. And I can give you tons of quotes from it.

But this is a quote from the July 2016 Staff Report, which is, what, less than ya ear ago? Nothing has changed. The golf course is there. The Master Plan is there. The General Plan is there. Everything is there.

Here's what it says. Is it on there? Can you, do I zoom down, or do you zoom down? This is – from their Staff Report, Planning Commission meeting of July 12th, 2016. The existing

designation to the southwest of the subject property is R-PD7, Residential Planned Development, 7 units per acre. We all agree on that.

However, without prior approval of a modification to the Peccole Ranch Master Plan on this area, residential units would not be allowed. Then the top paragraph says the Peccole Master Ranch Plan must be modified to change the land use designation from golf course drainage to multi-family, and in this case single-family, prior to approval of the proposed General Plan Amendment.

So that as Professor Pindell said, there is a procedure to develop the golf course. The staff has recognized it. They talked about it over and over again. There is no pre-existing right to develop on that golf course.

What the developer has to do and what the developer did in those early applications — applied for a major modification, that was the application they filed in February, a major modification of the Peccole Ranch Master Plan to change the golf course, which was designated for all this time as drainage golf course to multi-family and single-family. And then the next step they said you have to do is the, because there's no residential in the drainage and golf course under the City's approval of that Master Plan.

And then the second step you have to do is you have to change what they've asked for here. You have to change the General Plan, because it's Park/Recreation/Open Space, which has no residential. So to make it consistent with what the Peccole Ranch Master Plan is, once the major modification is done there, you amend the General Plan to provide the density cat, zoning categories that provide the density that's requested.

You have to have both of those steps. Your staff said that over and over and over again. I can read them ad nauseam from those big reports.

When we get to this one, all of a sudden the requirement for a major modification is gone, mysteriously gone. It has to be there. You can't even do the General Plan Amendment, because it's not going to be consistent with the Master Plan of the Peccole Ranch. The Peccole Ranch, that has to be modified first through an amendment, and then you do the General Plan after that. There's (sic) two steps to it.

So it isn't that people have said that it can never be residential on it, but there is a process that has to be followed. It's not being followed here. There's no major modification.

MAYOR GOODMAN
Okay. Thank you. Next please.

DOUG RANKIN
Good evening, Mayor.

MAYOR GOODMAN
Hi.

DOUG RANKIN
Doug Rankin, 1055 Whitney Ranch Court. I'm here to answer the question that appears to be eluding everyone, which is: How did these open space areas on R-PD become green?
Well, there was a process. The City of Las Vegas has had a Master Plan since 1959 and has amended their Master Plan and replaced it multiple times. 1985, the City's Master Plan looked like this. And this is the Peccole Ranch area. It's kind of a blob map. It shows this is suburban with commercial.
This is what is called a small area plan. The small area plans incorporated the large plan, per the 1985 Master Plan. They had small area plans, a concept short range plan, and residential plan districts, R-PDs. And those, that made up the plan. So that plan was replaced in 1990 by the City Council, with the Peccole Ranch Master Plan Phase I and Phase II, '89 in Phase I, 1990 in Phase II.
The Master Plan was agendaed as a Master Plan; the Master Development Plan Amendment related to Z-1790, the zoning case of the R-PD7 and the other zonings, the R-3 and the C-1 approved by Council. As part of that approval, it set the amount of space they were going to do. How many acres of this? How many acres of single-family? How many acres of open space?

Accompanying that was the zoning; the zoning set the total unit cap for this location, which I'll come to in a little bit. It was even conditioned to have a maximum of 4,247 dwelling units. That's the most units you can have by condition of approval by the City Council on the zoning.
So, we have the small area plan from 1990. After that, the City of Las Vegas adopts a new Master Plan in 1992. This is the land use plan from that. Once again, we see for the first time, the green. How did it get there?

COUNCILMAN COFFIN
Are you going fast because you've got a time limit?

DOUG RANKIN
That's why I'm going fast, yeah.

COUNCILWOMAN TARKANIAN
Don't go fast.

DOUG RANKIN
Would you like me to slow down?

MAYOR GOODMAN
Do you have a question, Councilman?

COUNCILMAN COFFIN
Yeah. Well, I was asking you procedurally. He's in a rush, but I don't know if it's because of our time limit. And I'm just wondering –

MAYOR GOODMAN
I had asked general public, I was giving them a minute.

COUNCILMAN COFFIN
Because these are really kind of expert testimonies, and we'll have it from both sides.

DOUG RANKIN
I'll go a little slower.

COUNCILMAN COFFIN
I hate to have it rushed right by me.

MAYOR GOODMAN
But I think – oh, I thought we were keeping up with it pretty well. Maybe have a little more iced tea or something.

DOUG RANKIN
And I'll have a little less caffeine. I'll take a breath.

COUNCILMAN COFFIN
I need something illegal, I think.

MAYOR GOODMAN
He's in 1992, for heaven's sakes.

DOUG RANKIN
Right.

MAYOR GOODMAN
We've been through this before.

DOUG RANKIN
Well, actually, you haven't heard this part before.

MAYOR GOODMAN
So I'd like you to keep going. Okay.

DOUG RANKIN
Mayor, you haven't heard this part before, because in 1992, the City adopts a new Master Plan. Norm Standerfer becomes the Planning Director, and we move away from the blob maps. As part of that, the Master Plan adopted the Land Use Plan, where the green color comes in. It was done with 3,000 Las Vegas residents participating, a committee approved by the Council of 35 people. As part of that process, the existing land use conditions were considered. And I quote: Accurate assessment of existing land use is an essential step in developing the recommended future land use patterns in the General Plan. A major task accomplished in the General Plan update was the documentation of existing land use conditions throughout the City."
Staff went and looked, and they said what was approved everywhere to do this. Before we had a blob map, not by parcel. New plan, by parcel. They went and looked and saw that here it was commercial. So they made it red. Here, they saw they had approved open space on these master plan communities. This is approved open space. The appropriate land use they adopted was Park/Recreation/Open Space. Legally, for a Council, thousands of hours of work went into this new Master Plan. That Master Plan continued.
This is where the first time the City considers general plan amendments with this new Master Plan. Here's an example of one from Peccole Ranch, GPA-54-94, where they moved some of it around, noting here that on this, they have their P for Park/Recreation/Open Space. This is from the Peccoles. They submitted this plan. They were moving some of their densities around.
Staff even notes that Staff has no objection to the required, to the request given the change in alignment of Alta Drive and the golf course. Some changes to the Master Development Plan are

to be expected. Also the changes in the designation does not increase the total number of uses permitted for the project. And they recommended approval of this GPA.

Staff tracked it through something called the Red Book. Most planners in the Planning Department are familiar with the Green Book. Before computers and GIS technology, there was a green book for zonings so they could map them as they changed on parcels, keep track of them, and there was a red book for General Plan.

This is the Red Book page, from 1995, showing that this is Park/Open Space, Medium Low. This is the golf course area, and these are the development areas of Medium Low, Service Commercial, because this changed eventually to R-PD7 zoning, and Low Density Residential at one point. I have another picture of the east end of the golf course, once again, from the Red Book. So they were tracking it all along.

Then as you're about to do, adopt a brand new Master Plan, the 2045 I believe, staff is going to go through this same process: look at the existing conditions, document them, consider them for future uses. In 2001, the City redoes their Master Plan again. They adopt the capstone document, the 2020 Master Plan; it takes them a while to do the land use element, five years, four or five years, 2005, they go through and adopt, with all the general plan amendments and rezonings that were part of the record from 1992 to 2005 that hadn't been fixed on the plan out of the Red Book documented, updated the Plan, brought it to City Council for approval. The green continued from '92 to today.

This is the 2005 Plan. This is the 2015 Plan, just recently updated. Your Land Use Plan was just recently updated by this Council. It was approved. It was heard as a public hearing reaffirming the Park/Recreation/Open Space. It didn't come out of the thin air. Thousands of hours of work went into it.

COUNCILWOMAN TARKANIAN

Excuse me. Can you tell me what year that was again?

DOUG RANKIN
What's that? Sorry, I'm getting a little dry mouth, so I apologize. Okay. As a matter of fact, the Plan even documents that Peccole Ranch is an important master developed community, and it calls it out in the southwest sector. The following Master Development Plan areas are located within the southwest. We have Canyon Gate, The Lakes – I showed you pictures of those – and Peccole Ranch, preserving what was approved in 1990.
I'm running out of time. I had some more things about what they approved, which was the densities at this location. They approved approximately 4,000 units and change. At this time, there are 820, 17 units not developed or entitled. The Master Plan that's being proposed at 5.49 units per acre will exceed that density. I realize the request today is for a tentative map.
Yes?

TOM PERRIGO
Freshen your whistle again.

DOUG RANKIN
Thank you so much, Tom. I appreciate it. Thank you. Currently, if you approve the 5.49 dwelling units per acre — and the applicant says they only want 1.7 units per acre. You could actually approve a lower density general plan here to meet that. You could go all the way down to 2 units to the acre, but they've asked for 5.49 on 166 acres. If you approve all of those, you will exceed your unit cap that was approved by Z-1790 by 99 units. That concludes my presentation. I appreciate your time.

MAYOR GOODMAN
Thank you very much.

DOUG RANKIN
For the Clerk's Office.

MAYOR GOODMAN
Yes.

COUNCILMAN COFFIN
Your Honor?

MAYOR GOODMAN
Yes, please, Councilman?

COUNCILMAN COFFIN
The stakes are too high on this to have people running at full speed trying to show us stuff that some of us might assume that we all know by heart, but maybe we haven't lived it. I know the Councilman for the ward has, the City Attorney has, and maybe you have, Mayor. But it's still as if it's new, because this doesn't come up every day. So I would appreciate if witnesses are given time that they need to present. All the sides should have that courtesy. And I can stay here as long as they do. Thank you.

MAYOR GOODMAN
Thank you.

GEORGE GARCIA
Thank you. Mayor, members of the City Council, George Garcia, 1055 Whitney Ranch Drive, Suite 210. Pleasure to be before you. Continuing on some of the points that the Professor made and that Doug has made, but I also want to go back to the comments that the applicant made. The comments of the applicant were that the neighbors had every reason to be upset because they were essentially confused and had been misled, I guess to put in my own words.
But I think maybe the reverse is really true. You have to ask was the developer or the applicant the one who was really confused and misled? Because at the end of the day, as Doug has said, it

is Parks, Recreation and Open Space. And as he showed you, there's no development density allowed in that golf course open space area. And I'll show you again.

So if you buy the land with no contingency and you thought that that was the correct answer was you have the right to build 7 units per acre – and we've heard that said that there's a right to build based on 7 units per acre – we don't believe that's the case. And we think if anybody's confused, maybe the developer is the one who's confused, and they have every right to be indignant and upset. And I think that's the real source of the confusion.

The other point that was made by the applicant at the outset was we have done everything the right way whenever possible. Well, I'll start with just one example of doing things the wrong thing and doing it the wrong way. One of those, and we could not find anywhere in the documents associated with this particular request, what's called a development impact notice and assessment or DINA, for short.

If we go to the overhead, part of that requirement is it says for a project of significant impact, a project of significant impact is defined as one that's a tentative map, final map, or planned unit development of 500 units or more. Well, we're clearly in a condition with 166 lot, plus acres. Given the density of 5.49 all the way up to 7.49, the density will well exceed the possibility of 500 units. And they can say, well, it's only 61 at this time. Well, that's fine. But if you read the Code, a zoning map or local land use plan that could result in development meeting or exceeding any of the above criteria requires a DINA. We have not seen evidence, and I would ask where that DINA is and if it can be produced.

Absent also in this, you see the General Plan Amendment, the absence of piece that was mentioned before by the professor and indicated by Mr. Schreck in his, in prior staff reports as well. Another thing that we see is missing – and I'd ask where it is – is a major modification.

As you can see on this map here, it shows in the southwest sector map, that Mr. Rankin was referring to the list, this is actually the pictorial representation of those plans, planned areas, the special area plans within the overall City's General Plan. And this one in tan here, sort of brownish color, is the Peccole Ranch Plan, which is identified here as part of the Peccole Ranch, and then, of course, you have many others as well.

988 But the point of that is that you say, okay, then what does that tell you? It says the development
989 of property within a planned development district may proceed only in strict accordance with the
990 approved master development plan and development standards. And if you're going to deviate
991 from that, it goes on to further say that you have required to do a master development plan. And
992 that's found in your – this is straight out of your Uniform Development Code. And this is from
993 your General Plan. So we would ask where's the major mod?
994 This is going back – and I think, again, Mr. Schreck talked about this – this comes out of the staff
995 reports. Basically, it's an excerpt. This one in particular is from July 12th Planning Commission
996 meeting. It says the proposed plan requires a major modification of the Peccole Ranch Master
997 Plan. This was at that time regarding specifically Phase II.
998 Another one over here, major modification of the Peccole Ranch Master Plan, General Plan
999 Amendment and rezoning must be approved in order to allow the types of development
1000 proposed. Again, and there's more, but all of it points to the fact that where is the major
1001 modification that's essential to achieve what the applicant would seek to achieve. So we don't
1002 think it's properly before you.
1003 So let's go back to a point we've talked about just briefly before, but I think it's worth reiterating.
1004 So what would the developer or a resident in, not Queensridge, but within the Peccole Ranch
1005 Master Plan area, because this is not about just Queensridge as we know it, as it was developed,
1006 because the golf course, while it may not be part of Queensridge, is part of the Peccole Ranch
1007 Master Plan. So while it may not be bound by the private sales and deals, it's bound by the
1008 strictures put on it by the City in its approvals, as Mr. Rankin has pointed out and others.
1009 I will go back to that Peccole Ranch Master Plan, because what it says, it starts, it goes back to
1010 golf course drainage area, the acreage, and, of course, Doug was showing where it was amended,
1011 but it shows no density, zero density and no units. That's why this City ultimately defines it to be
1012 PR-OS, no density, no units allowed. So while that potentially could have been more, it was
1013 capped with the number of units, 4,247 maximum density, and it specifies the number of acres.

So that chart pretty much says to anybody who wants to buy in this community, Peccole Ranch Master Plan, what should they reasonably expect. Then they, so they would come to the City to look for those documents, and this is what they would find.

They also then would look at the purchase documents that they have obtained, that were part of a requirement. One of the things that's required if you're going to be doing any of these things is you have to have CC&Rs. Well, we don't see any CC&Rs yet today either, but we'd ask where those are. But for Queensridge, one of the areas – and this is typical of all of them – did contain design guidelines that were very extensive, very complete. But what you'll see again, what would a buyer reasonably expect? No right to the golf course, no control over the golf course, no right to use it.

And state statutes are very clear that it's not about the use. It can also be about the enjoyment. And what is that enjoyment? The enjoyment is of the, what is identified here with the homes that were being built along the golf course had every right to expect golf course open space and very specifically views of that golf course open space. That was the reasonable expectation that they had. We think they had every right to rely on it. And we think state statute, NRS 278A – and I know the City Attorney doesn't think that that applies because they, you didn't adopt it – we think it applies regardless, the State being, and I think as the Mayor knows very well, the superior body. So we think that applies.

And why that's so important is because 278A says that residents in a completed master plan community, which this is, or PUD, as the State refers to it as one of the ways to refer to it, gives great deference and protection to those residents in a completed plan to rely on the types of things the Peccole Ranch Master Plan and these documents entailed.

And absent, basically, the owner's consent in that completed plan, this application that today is before you shouldn't even be before you, because they haven't consented. Hence, I think the mayor's direction for we need an agreement of all the parties before this comes back.

So with that, Mayor, we'd be happy to answer any questions, and it concluded my presentation. Thank you.

BRAD JERBIC
I actually have a question, if I could, Mr. Garcia. Could you go back two foam boards earlier?

GEORGE GARCIA
Which one?

BRAD JERBIC
I believe it's a staff report, and at the beginning it has a GPA and it has some other things at the top. That's the one. Can you read the top of it where it says GPA dash? I'm having a hard time reading that. It's a GPA dash.

GEORGE GARCIA
Yes. It refers to GPA, in this case, 62387.

BRAD JERBIC
62387. And then the SDR says what?

GEORGE GARCIA
The SDR is 62393.

BRAD JERBIC
62393. Are you aware that Item 131 is a completely different GPA? It's Item 68385. That's a staff report on a completely different General Plan Amendment request, and that the SDR in 133 is SDR-48481, and that's a report on a completely different SDR request?

GEORGE GARCIA
Fully aware. And my point isn't that this is specific to this request. This is not saying this is what staff said in this particular case. It's what it said in prior cases. As Mr. Schreck was pointing out,

1069 we have numerous references over the history of all of the last almost two years, where staff has
1070 indicated very clearly you need the general plan and the major mod along with the other
1071 elements of this. So that's the point. This is not to say this is this case. It's to say, using the
1072 references to those other cases, that there should be not only a general plan but a major mod as
1073 well. And again, we see evidence, no evidence of a major mod, no evidence of the DINA, and
1074 would ask where both those are.
1075 And for that, and basically to make it clear, perhaps maybe I would include for the record,
1076 Mayor, that everything basically over the entire history of the Peccole Ranch Master Plan and
1077 most recently over the last approximate two years, every application, that has been, whether it's
1078 been approved, denied, withdrawn, abeyed, all that entire record and history should be included
1079 for the record, so if and when this ever goes before a court, they'll be able to look at all that
1080 information over the entire - history of all of this so they can make a clear decision. Thank you.
1081
1082 **BRAD JERBIC**
1083 Which is why I want to make a couple more observations here. I want to make it abundantly
1084 clear there's no legal issue, in my mind, that would involve the City Attorney Office in this pure
1085 land use request. There are a number of legal issues that are being raised that I may have to argue
1086 in court someday. So whether you vote for this or not is not any of my business. That's a
1087 planning issue entirely.
1088 But I do want to put on the record that I believe that report contained a request for a major mod
1089 and other things, because it was tied to a development agreement. It wasn't tied to this individual
1090 request for 61 individual lots.
1091 We have looked at the Peccole Ranch Master Plan. Page 18 has a number of maximum
1092 residential units, maximum multi-family units, maximum that. If you're going to exceed those
1093 numbers by some exorbitant amount, we get into a discussion about a major modification, which
1094 is why that's in that document. That Development Agreement was withdrawn.
1095 I've been negotiating an updated, better, I hope, Development Agreement. That isn't here yet.
1096 That's why I'm recommending continuance. But I don't want you to think that those requests that

accompany that Development Agreement in 2016 have any bearing, in my opinion, on these four requests today. And I just want to make that part of the record.

MAYOR GOODMAN
Thank you. Thank you, Mr. Jerbic. Okay, next?

MICHAEL BUCKLEY
Good afternoon, Mayor and members of City Council, Michael Buckley representing the Frank and Jill Fertitta Family Trust.
A couple things I want to just point out. First of all, the Planning Commission did not approve this matter. It failed because it required a supermajority. So this was actually a denial by the Planning Commission of the General Plan Amendment.
Secondly, there's been a lot of references to the fact that the golf course is not part of the Queensridge and that there's reference to the CC&Rs, there's reference to Mr. Peccole's plan. And I'd like you to direct you to the overhead where I've blown up some documents. These are design guidelines, and these are actually recorded; this was recorded in 1996, and it governs the custom lots in Queensridge. I don't show you the beginning of it, but this is an 84-page document that at the beginning, it references the fact that it is adopted in accordance with the master CC&Rs. And it is the building design guidelines that any home in Queensridge has to follow.
Just to point out that what is being built, what is this community, I mean I think we gloss over the fact that Queensridge is a golf course community. So the description of the custom lots states that it is an enclave of one-third to one-acre lots completely surrounded by the golf course, and the larger lots, an exclusive enclave offering custom home sites of one and a half plus acres. This enclave is completely surrounded by the golf course.
On page C-2 of this document, this is the exhibit to the design guidelines; it describes the golf course. And again, this is adopted pursuant to the CC&Rs. There's another document. This applies to the custom lots. There's a similar one for luxury lots, move-up lots and executive lots.

Those are part of the record. I submitted those at the Planning Commission on the Development Agreement on this.
But let me just read you what the recorded design guidelines state. The Badlands 18-hole championship golf course with a planned addition of nine holes, which is a daily fee course designed by Johnny Miller, meanders through the arroyos and neighborhoods of the village. Significant view corridors are provided at key locations throughout Queensridge to enhance the open character of the community.
In reference to the parks, and you may remember that in the Peccole Ranch Phase II Master Pla, it specifically states that the golf course open space is in lieu of any public parks in the development. But here there's reference to a view park providing passive open space overlooking the golf course.
And what I think is particularly interesting is that the City participated in this, because the document on page C-4, "Responsibility of Review," basically states that the City will require a review approval letter from the DRC prior to reviewing any documents or issuing any permits for work performed on the custom lots within Queensridge. So the City actually helped create this value that they are now, the City is now planning to take away.
And I think that's what I want to say. Thank you.

MAYOR GOODMAN
Thank you. Yes, please.

COUNCILMAN ANTHONY
Mr. Buckley?

MAYOR GOODMAN
Hold on one second please. Mr. Buckley, come back, please.

COUNCILMAN ANTHONY
What were those documents that you were referring to? I didn't get that part.

MICHAEL BUCKLEY
Yes. One is, and I'll put these to the record, because they were at the Planning Commission on the Development Agreement matter. One is the Supplemental Declaration for the Adoption of Section C of the Queensridge Master Plan Community Standards, recorded in Book 970117, Document 1434 official records.
The other is a Supplemental Declaration for the Adoption of Section B of the Queensridge Master Plan Community Standards, recorded in Book 960924, Document 92 official records.
And I guess I would point out that it's my understanding that this developer has actually developed custom lots in Queensridge. So it has to be fully aware of these building design guidelines.

COUNCILMAN ANTHONY
So those are Queensridge documents?

MICHAEL BUCKLEY
They're Queensridge documents.

COUNCILMAN ANTHONY
They're not City -.

MICHAEL BUCKLEY
They're adopted pursuant to the Master CC&Rs.

COUNCILMAN ANTHONY
Okay. Were they based on City approval? Or it's just –

MICHAEL BUCKLEY
Well, I think, what I have been listening to here is this is a master plan community, and this is part of the master plan is that these would be built according to the Queensridge, the philosophy of Queensridge.

COUNCILMAN ANTHONY
Okay. All right. Thank you.

FRANK SCHRECK
Mayor, just very briefly, I need to correct the record. Mr. Jerbic said that major modifications somehow only applies to development agreements in this matter that we've been discussing. They do. They're mandatory if you have the development agreement. But that's not all they apply to.
The first application for development filed by this developer was for 720 units. That was filed in I think it was November of 2015. And there was a staff report on that request for 720 units on that 17.49 acres. To the staff report, in dealing with that, says without equivocation this site, the site is part of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the Peccole Ranch Master Plan is through the major modification process as outlined in Title 19.10.040. As this request has not been submitted, staff recommends that the General Plan Amendment, rezoning, and site plan development plan review request be held in abeyance and no recommendation on these items at this time.
So what the Planning Department did is said you can't go forward to the Planning Commission with that first application without having a major modification. It had nothing to do with a development agreement.
And here's the second page in that. It is the determination of the Department of Planning that any proposed development not in conformance with the approved Peccole Ranch Master Plan would be required to pursue a major modification of the plan prior to or concurrently with any new entitlements.

1206 So it was required by the staff for the 720 application, which was the first one, and it wasn't
1207 allowed even to go to the Planning Commission without having that application for a major
1208 modification. So it isn't just with general. It's not just with development agreements. It's with any
1209 development within the Peccole Ranch, you have to have a major modification if you can put
1210 any kind of residential, and you have to then have a general plan amendment to be consistent
1211 with that major modification.
1212
1213 **BRAD JERBIC**
1214 If I could, Your Honor, again as we go through this piece by piece, I want to make sure the
1215 record is abundantly clear. I would agree theoretically with Mr. Schreck; there could be
1216 standalone projects that absolutely require a major mod, even if they're not part of a development
1217 agreement. That's true. But let me ask a question of the Planning Director. Do you believe a
1218 major modification is required for this application, and if so, why and if not, why not?
1219
1220 **TOM PERRIGO**
1221 Staff spent quite a bit of time looking at this, and we do not believe a major modification is
1222 required as part of this application.
1223 First and foremost, the Master Plan adopted by City Council specifically calls out those master
1224 plan areas that are required to be changed through a major modification. This Peccole Ranch is
1225 not one of those. Yes, some of the exhibits you've been shown discuss Peccole Ranch and a
1226 whole bunch of other areas as being master plan areas, but it also specifically calls out only those
1227 that require a major modification. So that's first. Peccole Ranch is not one of them.
1228 Second, there have been, and some of the exhibits you've seen have shown where parcels have
1229 been changed from commercial to multi-family, from multi-family to residential and so on. There
1230 have been six actions on this property that were done without a major modification for that very
1231 reason that it's not required. Those actions were done through a general plan amendment and a
1232 rezoning. What's before you now, that you're considering, is a general plan amendment, and just
1233 like those other previous actions, they did not require a major modification.

FRANK SCHRECK
Just briefly in response, the part of the General Plan that he's referring to are special area plans where Peccole Ranch nor The Lakes nor any other master plan communities are listed. The other part of the City General Plan of 2020 has, and you already saw George Garcia listed the master plan communities that have been approved, and your ordinance specifically says, as he showed you, in a master development plan community, if you're going to make a change, you have to have a major modification, no equivocation. That's what your law says, and that's what you should follow.

MAYOR GOODMAN
Please. Let's continue and no more repetitions. I think you've had your time. Thank you.

SHAUNA HUGHES
Mayor, members of the Council, Shauna Hughes, 1210 South Valley View, Suite 208. I'm here representing the Queensridge Homeowners Association. This has all been very interesting so far, but I'd like to say that I think we can cut to the chase and get to the bottom line a lot more quickly.

MAYOR GOODMAN
Thank you.

SHAUNA HUGHES
This application is a sham. Let me explain what I mean. The last time I was here and the Mayor ordered Frank Pankratz and I to meet and negotiate and make some changes so that we could come back with a global settlement and a global development agreement, we started those meetings. After the second or third one, I don't remember which, I'd have to go back to my calendar, which I don't have with me, this application gets filed. I said: What is that? How is that negotiating in good faith?

1262 I was told, and I quote – not by Frank, I'd like to make that clear – I was told by another staff
1263 member that's what's called a shot over the bow. I said: Excuse me? And I was told: We don't
1264 want this either, but we need the neighborhood to know that we will proceed in this direction if
1265 we don't go back to the development that we originally proposed and the one that we originally
1266 wanted.
1267 So this is nothing more than a sham to scare the neighbors into agreeing to something that they
1268 don't want to agree with, which did not happen. I should have stopped the meetings at that point.
1269 I should have recognized this for what it was then, and I actually did, but I never will be the last
1270 person to walk away from a negotiating situation ever, and so we kept meeting.
1271 And I thought, okay, this is threatening, and it's intended to be threatening, but the Mayor and the
1272 Council are not going to let them get away with this. The Mayor and the Council made it very
1273 clear they want a unified agreement, a unified development proposal. They're not going to let
1274 them come in and piecemeal it 20 and 30 acres at a time. And yet, here I find myself in exactly
1275 that situation.
1276 So if you're a neighbor in this neighborhood, this is what you're now looking at. You're gonna
1277 have 20 and 30 acres shoved down your throat of exactly what you've got here now, because if
1278 you approve this, how are you going to say no to the next 20 that's adjacent? You can't. So this is
1279 nothing more than a strategic, deliberately strategic maneuver on their part to crush the
1280 opposition to their original plan, which is what they always wanted to go back to.
1281 And I think it's a really, really big problem, and I want to call this for what it is. There are a lot of
1282 technical things wrong with this application in front of you, but the biggest thing wrong is that
1283 you are being asked to participate in what amounts to, in my opinion, a blackmail effort against
1284 the people who have been living in that neighborhood, negotiating in good faith. Your City
1285 Attorney and Mr. Perrigo have been killing themselves trying to get concessions from this
1286 developer, trying to move something along.
1287 We're close. We're not here, obviously. That's the next item to be continued, because it's not done.
1288 But in the meantime, what do you think the message is to every homeowner who, for the 800th
1289 time, has come out to come to a meeting? The message is it's not really a level playing field,

because we'll get squashed with these 20, 30-acre applications at a time. And that's exactly what is happening here.
And I honestly can't quite figure out and get my head wrapped around how we managed to get into this position, how this was allowed, how you put competing applications on the same agenda. Told one's gonna be continued, but you do the other one. None of this makes a bit of sense. And I just don't want any of you to naively not understand that this is a deliberate, tactical error to scare these neighbors into shutting up and agreeing to something.

MAYOR GOODMAN
Okay. I think, I don't know about everybody that's here, but Mr. Jerbic, how do we move this along? Because I think all of us are in a position to make some decision on something. We've heard these comments. Something new may be coming.
But really, from my perspective as Mayor, I had asked for something. Shauna just alluded to it, and I want to move this along so we can get the decision to work together, which is what I asked you to work and Frank and Shauna, to get together so we can come to some type of reasonable way for this project to move forward, but not on a piecemeal level. I said that from the onset. After we approved that one project that's down there on the northeast corner that we want this moving forward, and there needs to be some type of consensus.
So, at this point, rather than hearing more comments, I mean, we can be here until 2:00 in the morning and everybody wants another say, the bottom line is we need to make decisions on specific instructions as to what we can do so we can vote. And I want to ask you, at this point, were you – and listening to Shauna, you and Tom worked very hard to try to mediate and pull things, not I wouldn't even say that, facilitate, negotiate impartially to try to get the sides to make this something that's doable.
And under what we have understood all along, these are separate pieces, the golf course and public spaces from the residential, and that's what we have been assured is the fact. And so when can we get to resolution on it? How do we proceed with these items? To me, it was in a very

1317 different venue that we're going to hear more and more on the specifics before we get to the
1318 whole.
1319
1320 **BRAD JERBIC**
1321 Let me just jump in real quick.
1322
1323 **MAYOR GOODMAN**
1324 So tell us what to do.
1325
1326 **BRAD JERBIC**
1327 This is a public hearing, and there is a legal requirement that people be heard at the public
1328 hearing. And to cut it off without having people be heard will create a legal issue, and I don't
1329 recommend that. So I recommend that everybody who wants to speak have an opportunity to
1330 speak.
1331
1332 **MAYOR GOODMAN**
1333 With or without a time limit?
1334
1335 **BRAD JERBIC**
1336 That's the second part is you can set any time limit you want. If you want to restrict the time
1337 limit, that's totally within your discretion. But restricting people from talking is not. We need to
1338 let everybody talk.
1339
1340 **MAYOR GOODMAN**
1341 Okay. So I understand that, and that's exactly what we're going to do. We're going to hear from
1342 everybody. And most of you we've heard from before, and maybe there's something new you're
1343 adding, which we would hope that might make some difference, and we will hear from you.

So what I'm going to say and our principals to the issue of any different length, is there any recommended difference for an attorney representing a group or the principal speaking or anything else, in your recommendation, so everybody has a chance to speak?

BRAD JERBIC
It's typically been your tradition that if there's a group spokesman, you've allotted them more time. If it's an individual spokesman, you've allotted them less. That's within your discretion.

MAYOR GOODMAN
Okay. So what we will do is limit everybody, unless you are a principal representing a group and have not appeared and you have something new to add, we will then let you have, we'll give somebody new who's not a principal two minutes. Anybody that's a principal that is representing or responding to gets their five minutes.
How will you know? Pardon, they will tell us who they are and if, in fact, they are a principal, an attorney for a particular group, or if, in fact, whatever their relationship is. And if they've spoken to us before, it would help when they tell you their name.
So please come on up, sir. In fact, I will tell you if I can figure it out.

HERMAN AHLERS
Mayor Goodman and Council people, I'm Herman Ahlers.

MAYOR GOODMAN
We're going to do two minutes and five minutes. But if you don't use your two or your five, that's fine too. But you're two minutes.

HERMAN AHLERS
I'm Herman Ahlers. I live at 9731 Orient Express Court. I've been there for 18 years.

MAYOR GOODMAN
Yeah. And because you're so tall, can you get closer to the mic? I'm sorry. Our microphones are very short. Thank you.

HERMAN AHLERS
I'd just like to make two comments in regard. I guess what we're talking about this 61-lot subdivision. Is that what's on the agenda?

MAYOR GOODMAN
That's part of it, but I would say down here that's Agenda Item 134.

HERMAN AHLERS
Can you put this picture up of the existing-

MAYOR GOODMAN
Yeah, there you have it. It's there.

HERMAN AHLERS
Okay. This is actually where this subdivision is trying to get put in.

MAYOR GOODMAN
Correct. We know that.

HERMAN AHLERS
But I have a subdivision inside a subdivision that borders on all corners is very, very difficult to be attractive. Number one, the elevations in this particular golf course area is somewhere around 14 feet below the elevation of all the rest of the homes. Secondly, the amount of variances that this developer, some of them have already been granted smaller streets, less sidewalk, less

setback, no open space, no hard amenities, or no hard improvements. So it's really a tough situation to have it inside of a tight subdivision.

The other point is the entrance. The entrance on Hualapai is a total disaster. We've had two people that were killed at that corner of Hualapai and Alta. Now, if they want to build an entrance, that entrance should be similar to the entrance that we have coming in to Queensridge North. That is guarded. It is 24/7. It is state of the art. If they're going to put an entrance in, they've got to put an entrance that would secure all of us.

MAYOR GOODMAN

Thank you.

HERMAN AHLERS

Okay?

MAYOR GOODMAN

Thank you. Yes, please. Thank you.

BOB PECCOLE

Bob Peccole, I live at 9740 Verlaine. I am a principal. I represent appellants in the Nevada Supreme Court.

The first thing I'd like to bring to your attention has to do with the Development Agreement. The Development Agreement is wrong right on its face. Now, the reason I say that, and I'm going to try to make it very clear so you'll understand why I'm saying it. First of all, there were two deeds once Fore Stars got the golf course. The first deed was a quitclaim deed from Fore Stars to 180 Land Company, LLC. The second deed was from 180 Land Company to Seventy Acres, LCC. Okay?

1425 Now, when you look at the Property Settlement Agreement or, excuse me, the Development
1426 Agreement, you will see on page 46, which is the signature page, it only allows for the signature
1427 of 180 Land Company, LLC. That's one.
1428 Now, we already know that Seventy has 70 acres. Okay, let's now try to clear that up. What
1429 happened is there was a loan based upon this property, and the first loan had to do with Thomas
1430 Spiegel. He was involved in a lending of $15.8 million that went to Mr. Yohan Lowie.
1431 And what happened then? Well, the legal description of that particular trust deed was lot five,
1432 which was all of the golf course, the 18 holes. Subsequently, that note was transferred over to
1433 Western Alliance Bank. Western Alliance Bank ended up with a new trust deed.
1434 Now, this is important to understand. This trust deed was written and given by Seventy Acres,
1435 LLC, who is not a party to this Development Agreement. And why are they not a party? Because
1436 they own 70 acres of the total of 250.92 that this Property Settlement Agreement covers. You've
1437 got to understand 70 acres is out of this agreement, because of this other company, this Seventy
1438 Acres, LCC. They own it, but it's under trust deed to the bank. Well, what effect does that have?
1439 Well, we'll see right here. It says that this trust deed covers a promissory note for $15.8 million.
1440 That's the promissory note. It was transferred over.
1441 So then what happens? Well, you have to really take a look at the different things in these trust
1442 deeds. This particular trust deed takes away everything that they could actually do anything with.
1443 They gave up all their rights under this trust deed for the $15.8 million loan. So that leaves you
1444 now with a situation where Seventy Acres, LCC could never be a party to this Property
1445 Settlement Agreement because they've already signed away all their rights under the trust deed to
1446 the bank.
1447 I think Mr. Jerbic knows that, and I think that's why when they put in the application for this
1448 Development Agreement, they put it in for the full 290 acres. But that could never be, because
1449 the 70 acres is already removed. So it's a false document. And if you're going to sit here and
1450 listen to everybody throw around these development agreements and their understandings, well,
1451 they're working on a false premise.

And I would just say that if you ever look at the actual Property Development Agreement, you know, Mr. Lowie never intended to build or develop, and he's snowing you guys. He's making fools out of you, because what he has in mind is he needs the entitlements. Those entitlements are worth millions and millions of dollars without him ever turning a shovel of dirt.

MAYOR GOODMAN
Thank you.

BOB PECCOLE
And what's really surprising is – I'd just like you to know this. This is an important part. What has happened is he bought this property in 19, it would have been 1994. In fact, he bought it just – okay, let me just look here for a minute. Okay, he bought it in December of 2015. Actually, there's some discrepancy, because it might have been 2014. But here's what he says in a lawsuit where he filed it against me and my wife for $30 million of damages.
I want you to hear this. On December 1st, 2015, Plaintiff Seventy Acres, LLC entered into an agreement for purchase and sale of property with a luxury apartment builder to acquire 16 to 18 acres of land for $30,240,000. He's already sold it, and this was in '85. He didn't even have it a year and he had no entitlements. He'd already sold it. So that was the 70 acres that was in the Seventy Land, LLC.
This is crazy. It shows you exactly what he's up to. He's not trying to develop anything. He doesn't have to. If you give him the entitlements, like he's asking you to do now, not only are you fools, you're making fools out of all of us.

MAYOR GOODMAN
Next, please.

DALE ROESSNER
Hello, Mayor and members of the Council. My name is Dale Roessner, 9811 Orient Express Court. I have two maps, I don't know if we can put them up on the screen and if you can see them or not. Can you see them okay?

MAYOR GOODMAN
Yeah. Push them up a little bit.

DALE ROESSNER
The 131 represents a General Plan Amendment for the 166 acres. And then we talk about the 61 homes that would really be on lot one, which is this red up in the corner. And Mr. Kaempfer came up and, you know, he's pleading, you know, for another bite of the apple saying, you know, I need to get some zoning. I've got to show something to my lenders. And quite frankly, you gave him a huge bite of the apple a while ago when he got all that zoning for the 435 acres or units. And also, Mayor Goodman, I remember you saying you really didn't want to see this being piecemealed. And what really concerns me about these maps is they're going for an amendment on 166 acres when they really, you know, are kind of dialing it back and in some respects saying, well, we just want this for the 31.
But if this 131 passes, really, you know, Pandora's box has been opened, you know, for the whole 166 acres, and I feel like that's a big, unintended consequence.
And I'm really – we've already had enough unintended consequences with the vagueness of the Peccole documents and what we were represented and where we're at today. And I just please ask you to hold this in abeyance. And I know Brad's been working hard. I've talked to him. I know, I think everybody's working in good faith. And I just wish that you would stick to your original position, which was let's get this whole thing done once and for all and not do a piecemeal, please.

MAYOR GOODMAN
I thank you so much for that comment, and if there weren't 7,000 more people waiting to speak, we could get to a point that we could address what you say. So I appreciate it.

ANNE SMITH
Good evening, Mayor and Council. I'm Anne Smith, and I'm from 653 Ravel Court, and I'm representing all of Ravel Court right now.

MAYOR GOODMAN
And as far as I understand, but I'm not sure, I know there's an issue there, and that's one of the reasons we're hopeful the conversation will continue if tonight ever ends. So I don't think you have to tell us anything. I know that there were issues, there are certain issues to which the full Council is not even privy, doesn't have the information yet, and so yours is there. I don't think you have to say anything. I think the developer is trying to work and figure it out as well. And so we just want to move this all forward. So you can give her her full two minutes, please.

ANNE SMITH
Okay. I'm not going to rehash anything. What we wanted to do was acknowledge you personally for having Brad Jerbic get involved in this to start with, and whether he was organizing or mediating our discussions with the developer over the past month. So he's given us the voice in the process that we've been asking for, for 18 months, and he's gone above and beyond. We have to say that.

MAYOR GOODMAN
And you've moved mountains. I cannot tell you everything and the generosity too of the developer working and bending and the community and the residents working on it. Victory is very close.

ANNE SMITH
So that's what we wanted to say is that we've gone back and forth and we've had some progress. And even last night, we met with Brad and Stephanie, and even though we didn't get an agreement, we feel that compromise is possible. However, we need more time and direction from you to keep going.
But we are concerned. The reason I'm talking is because we're concerned about what's, the sequence of the applications tonight, because it just appears that if those are going to be approved, then the impetus to come to a mutual agreement on the Development Agreement is in jeopardy. So we plead with you not to do that so that a development agreement can be worked out, where we all have protection, whether it's us or whether it's the new Two Fifty or whatever it is. You know, we've always been willing to work this out. And I know you know some of that, but I want it on the record. And we will say the same to our new Councilman as well. So we're willing to work on that. Thank you.

MAYOR GOODMAN
Thank you.

KARA KELLEY
Good evening, Mayor and members of the Council. My name is Kara Kelley. I've been a Queensridge homeowner for almost 17 years, and I live on Camden Hills. I'm here in support of the staff recommendation for the developer. I'm hoping that the Development Agreement will cover, the eventual agreement will cover all of the unresolved issues, but wanted you to know that on behalf of my family, we are in support of their proposal as it stands. Thank you very much.

PAUL LARSEN
Thank you, Mayor, Council members. As you know, I'm a land use attorney. I'm not representing anybody here today.

MAYOR GOODMAN
No. We don't know your name. We know you're a land use attorney.

PAUL LARSEN
My name is Paul Larson. I'm a Queensridge resident. I've only heard three gentlemen speak tonight who I agree with, from a procedural basis, regarding Items 131 through 134, and that would be your City Attorney, your City Planning Manager, and Mr. Kaempfer. Everybody else, I think, is simply creating a record for some kind of litigation down the road without addressing exactly what's before you. What's before you is, if I can point out the concerns that the residents have: the residents want the golf course to not be public; they want to keep undesirable elements out of that space that is now fallow.
So we'd like to see it developed into something. We'd like to see it developed into something green. We'd like to see it developed into something consistent with the density of the surrounding neighborhood, and we'd like to see it designed consistent with the surrounding neighborhood. The application before you hit all four of those major concerns that we have. So that's it.

MAYOR GOODMAN
Thank you. Two.

LARRY SADOFF
Good evening. My name is Larry Sadoff, and I live at 9101 Alta Drive. And I'll try to brief and things that have not been brought up.
Three things very quickly: Number one, I think it's presumptuous of anybody here to say they speak for the residents. The residents are a mosaic of different groups, and no one speaks for the residents here. So when people say we spoke to the residents, that simply is not true, and no one is speaking for me.
Number two, and I think is important. I'm going to talk about the whole plan, Mayor, because you asked to have one concise plan everybody gets together. I sat here in many Planning

Commission meetings and many City Council meetings, and I heard Mr. Kaempfer last time get up here and say, okay, we're going down from 720 units to 435, because we're listening to the residents, and we're going down to a zoning of 24.5. I sat there and, to be very frank, I said to the person next to me that's a bait and switch. Those units will come up someplace else.

Although it's not in this group here, you're seeing a request for 2,000 units in a very small area, low rises and high rises with a density of 35 to 37 units per acre, which is much more than anything else. I've asked the Director a couple of times: Are there any other places outside of Downtown where you have that density? I cannot get an answer to that.

I've listened with respect to you folks today as you went through some of the other permit applications considering the fabric of the community. I'm for responsible development. But when you have these 2,000 units, and then Calida is coming up with another 350 units across the street there, you are changing the fabric of the community. You need to consider the fabric of the community and do what's responsible development. And to me, to put 2,300 units in an infill here, in a suburban area makes it an urban area, and I'm not against urban areas, but this is a suburban area.

And the last point I'd like to make, I sat until 2 o'clock in the morning on a Planning Commission meeting last week. And it was very, very fascinating there, because basically there was point after point after point that came up. Even people who supported the development said: What about this? And the people at the podium said: Oh, we'll get that in there. We'll get that in there.

It's interesting that's the only item on the agenda that's heard at this meeting. Every other item was heard in the 19 July meeting. Why is this being pushed through right now? Why don't we have a comprehensive plan and get together and heard? Thank you very much. I appreciate it.

MAYOR GOODMAN

Thank you very much.

LUCILLE MONGELLI

Hello, I'm speaking for a number of residents at One Queensridge Place. Good evening. My name is Lucille Mongelli, and I live at 9103 Alta Drive, Unit 1202. I'm addressing the City Council today as I'm requesting that any voting for the Badlands development in its current proposal be held off until the next Council meeting in July when the newly elected Council members can have the opportunity to review the Badlands development proposal and consider their vote which will affect the area for the next 30 years.

I live in Las Vegas, and I have attended several of the meetings held in this room where there have been multiple changes to what the builder is proposing. Each proposal has been modified, and the current proposal and what is being proposed this evening is the worst of all. A hotel, assisted living complex, houses, towers, condominiums, rental units – the gamut is being presented and none of it is good for the community, nor for the homeowners of the freestanding homes in Queensridge, on the golf course, nor in the Towers where I reside.

The whole concept has been entertained for over 18 months with no regard for the impact this over-the-top development will have on schools, water consumption, traffic, hospital overload and greenspace. There are miles of desert land in the town that could be developed, and this development does not need to be behind the homes where small children and elderly people reside.

For months, there has (sic) been postponements of meetings due to Council members' schedules as well as the mayor's. And why does a vote need to take place now? Is there something to the rumors of Badlandsgate? This developer has been given extensions and special treatment which no other developer has ever been given. There have been private meetings in homes with the developer where there has been no public record. There have been threats made to homeowners that if they don't agree with the development, there will be consequences.

That in itself speaks volumes as to what is going on here. The developer created a Supreme Court building recently, and could it be that there are special interests involved here to reward him?

MAYOR GOODMAN
Thank you very much. Appreciate it. Thank you.

LUCILLE MONGELLI
Clearly this –

MAYOR GOODMAN
Thank you, ma'am.

LUCILLE MONGELLI
I'm not done.

MAYOR GOODMAN
Well, you're done, because it's two minutes, and that's what we're doing, and we gave the principals more.

LUCILLE MONGELLI
Okay. You have to understand something. I'd like to finish –

MAYOR GOODMAN
No, no, no.

LUCILLE MONGELLI
I'd like to finish.

MAYOR GOODMAN
You made accusations. I'm sorry, ma'am. You've made accusations.

LUCILLE MONGELLI
I'd like to finish. Maybe because you don't like what I have to say, but I'd like to finish.

MAYOR GOODMAN
No, I don't like your rudeness.

LUCILLE MONGELLI
I flew in from New York with a father sick in a hospital.

MAYOR GOODMAN
No, I just – I'm sorry.

LUCILLE MONGELLI
And Mr. Coffin said that we should be allowed to speak.

MAYOR GOODMAN
You are.

LUCILLE MONGELLI
Mr. Jerbic said we are allowed to speak.

MAYOR GOODMAN
You are, and we said two minutes per resident or anyone else.

LUCILLE MONGELLI
Thank you.

MAYOR GOODMAN
And five minutes for the principals. Thank you very much.

RICK KOSS
Hi, my name is Rick Koss and I'm scared. No. I promise to be about a minute and a half.

MAYOR GOODMAN
Thank you.

RICK KOSS
Just a two quick points. Probably the only representation of what the residents think, I hate to say this, is the election, which was probably the only – this was the key issue in Ward 2. If there was any other issue, I'm not sure what it was. So if anything spoke to how the residents think, that would only be the proper representation, nothing else that any one person would say. That was what the best public forum was.
The other is I hear about these meetings. I live in St. Michelle. This specific 61 units, I have yet to sit in a meeting. I have several of my neighbors. I have yet to be in a meeting yet to talk about what's going to be in my backyard. So this particular project I have yet to have a conversation on. So to say I participated is an error, and I have a number of my neighbors there. Thank you.

MAYOR GOODMAN
Thank you. Thank you very much.

HOWARD PEARLMAN
My name is Howard Pearlman, 450 Fremont Street, Las Vegas. How many minutes do architects get? I just came up here to say that very simply, speaking as an architect, probably the best architect in this city is not an architect. The best architect in the city is right here, this guy right here.

MAYOR GOODMAN
He is very good.

HOWARD PEARLMAN
And I say that and I'm an architect. And my mom thinks I'm the best, but I know who the best is. It's this guy right behind me.
Queensridge Towers, Tivoli Village, the Supreme Court building. And I know him personally. And I know the passion that he has not only for every single detail of every stone of every project that he does, but I know him as a passionate and compassionate man. And I've worked on projects with him. And when it comes to how his project affects neighbors, he is extremely diligent in making sure that he doesn't adversely affect anybody. He is a caring, good man.
And if I can give the City Council just one little piece of advice that I've had on my chest for about 40 years, it's this. If you want to have a great city, listen to your planners. You've got an excellent planning staff. If the planning staff is for this, listen to them and let the planners work it out.
I've been to a lot of these meetings, and I've heard a lot of neighbors say that: You know, this is the worst thing that could ever happened to me. And then it's built, and I see them in a grocery store five years later, 10 years later. Thank you, Mr. Pearlman. It was beautiful. I'm so sorry I opposed you.
Listen to your planners. Thank you very much, Mayor. Thank you, Council.

MAYOR GOODMAN
Thank you very much.

SALLY JOHNSON-BIGLER
My name is Sally Johnson-Bigler. I live at 9101 Alta Drive. There's been a lot said about how wonderful all of the work is that Mr. Yohan Lowie has done. I live in the Towers. We have persistent leaks. We have spas that don't work. We have things that need to be torn out constantly.

We are in the middle of a huge lawsuit, a $200 million lawsuit, which we were just given thirty some million dollars, and it's not over yet. So his building is not all that great. You just need to keep in mind that these are the facts that his construction has a lot of problems. I live there. Also, who's going to hold his word to the fire? We asked that Mr. Beers recuse himself. He's not going to be on this Council any longer, so the rest of you will be left with the rest of this. Also, all of these folks that are here, I would wonder how many of them could stand and say that they are his sycophants or shills that are here, possibly family members, employees being paid to be here. Are they homeowners? Are they genuinely affected by this, or are they just here as a favor or on the payroll?

We are taking time out of our lives because this directly affects us. We are not here as favors or being paid. We are here because these are our homes. This is where we live. This is our investment. These are our friends and families that live in these areas. That's all I want to say. Thank you.

MAYOR GOODMAN

Thank you.

DAVID MASON

Hi, I'm David Mason, 1137 South Rancho, Las Vegas 89102. I'm going to give you my personal experience. I've heard numerous times and it finally got to me tonight, similar to her conversation about what a wonderful builder Yohan is. I think he's a wonderful designer. I do not believe he's a wonderful builder.

I was on the first Board that took over from – I've lived in Queensridge since '07 when it opened. I was on the first Board, the President of the Board, and I contended with tremendous problems from the construction. I want to correct a little bit of what she said, and it's not a $200 million lawsuit. It was a $100 million lawsuit based on a bond that was put up by Mr. Yohan Lowie and the contractor. I heard for months and years before I got on the Board that it was the contractor that created these problems, it was the contractor, contractor.

When I got on the Board and I personally went into units, saw the problems, and through my investigation somewhere between 70 and a hundred million worth of that work was done by Yohan. And they just lost. That lawsuit is ended. They just lost a $30 million lawsuit for, give or take a half a million, for construction defects. And that's him and the contractor.

They can say they didn't do the work. But I can tell you personally decks, all kinds of areas that created leaks. I spent $3.5 million of our money for temporary repairs – temporary repairs. Now, this is a personal – I'm just telling you my personal experience. When I moved in there and paid $750 a square foot for my home, the representations to me were the golf course next store, this beautiful Renaissance building that's going to be built across the street. We're going to finish Tivoli, and it will have homes in it. And this is the environment you're moving into.

That environment now is apartments across the street, not a beautiful Renaissance building. The Tivoli, through a negotiation between him and his partner, I don't know the details of it, but the bank that he was partnered with took over that development. Now the golf course is going to be gone if we continue down this path.

So the next time I hear he's a wonderful developer, it's going to even bother me more. He's a great designer, in my opinion. He's not a great developer. And I don't believe personally that he's going to do all of this development. Thank you.

TERRY MURPHY

Good evening. Terry Murphy, 1930 Village Center Circle. I just have one very important point to make. The application before you – well, first I'll answer a question that Councilwoman Tarkanian asked of Mr. Rankin earlier. When was the last master plan approval done? It was in 2015.

And the point I want to make is that you have an application for a general plan amendment on 166 acres for 5.49 units per acre. My math, which isn't great, but I used a calculator, tells me that is 911 homes. So this Council would be approving nearly half of what would have been done in a development agreement with no development agreement, no roads, no flood control, no nothing, just a general plan amendment for 911 homes. And that's the only point I want to make.

Sorry to take your time. I know you guys have had a very long day.

MAYOR GOODMAN
Thank you.

TERRY MURPHY
But that's a very important point to understand.

MAYOR GOODMAN
Thank you.

ELAINE WENGER-ROESSNER
Good evening. My name is Elaine Wenger-Roessner. Just for the record, I would like to report that the Queensridge Owner's Association Board did meet twice in April with the developer and several of his team. At the first meeting, I requested a comprehensive written plan for the redevelopment of the Badlands Golf Course.
And since the Board is not empowered to negotiate and/or agree to a potential proposal on behalf of the entire community, I requested that it be written so the Board could actually function as a conduit for information to the Queensridge residents. The Board could then facilitate or assist in neighborhood feedback. I believed we were really beginning to make progress. I personally was very excited about that.
And Mayor Goodman, I took great comfort in your clearly stated directive that the developer present a comprehensive development plan. I know that a lot of people are working on that. In fact, I think I recall you used the term, the phrase "global plan." And I now respectfully request you to deny the applications before you, because I feel like they would be piecemeal, and I'm really afraid it would undermine all the progress that has been made. Thank you.

MAYOR GOODMAN
Thank you.

TALI LOWIE
Hi. My name is Tali Lowie. I live at 9409 Kings Gate Court. I live with my parents, Merav and Yohan Lowie, obviously. I would like to speak on behalf of the future generation. If you can see all the people who are against this plan, they're all kind of older, and people who are more for it –

MAYOR GOODMAN
Now watch it. We've had no insults except one. And don't go there.

TALI LOWIE
I didn't mean to insult. I was just trying – oh my God, I'm so sorry.

MAYOR GOODMAN
I'm kidding you. No, I'm kidding you. You're fine.

TALI LOWIE
I'm super nervous as you noticed.

MAYOR GOODMAN
No, no, no. You're fine. I got it. It's a joke.

TALI LOWIE
But if you look on our side, or the people that are supporting, they're younger and -

MAYOR GOODMAN
You know, some of you aren't so young over there. So consider yourself lucky.

TALI LOWIE
Yeah. No, of course not. But I mean like there's me, and then there's like someone I know.

MAYOR GOODMAN
I see a couple of young ones.

TALI LOWIE
Sure. And I know that I think there is one woman that said that 30 years into the future, or something like that, it's going to matter, and she's right. It's going to be so important, but it's going to be my generation that carries on that. We're going to be the ones that come and live. And I know for me, like I'm moving to a different country, and I'm drafting into the military.
But when I grow up, I want to come back, and I want to live in the neighborhood that I've lived for the last 17 years. And I want to be able to live in a new home and a new developed home, and I don't see a reason against it. I don't think that there is an issue to building new homes. I think making our community grow larger and to be bigger is such a great idea. Like we're moving on. This is the future. We should accept change. We should be happy that there's going to be more people that want to live in our community.
And there are a few people that said that the development isn't good. And I mean I think you can go look at the Queensridge Towers and at Tivoli and the Supreme Court that just opened up, and you can see that it's not only good, it's amazing. And I'm not speaking because it's my father and because it's his, like company that he works in, but it's truly amazing. Like it's beautiful. And they don't even try a little. They go beyond, like above and beyond. Above and beyond. And so why wouldn't you want people to go above and beyond to keep going above and beyond? That's all I have to say. Thank you.

MAYOR GOODMAN
Thank you. Your dad doesn't have to say a word. Good job. Okay. Anyone else? These are five each. Now, Mr. Jimmerson, as much as I admire you, I'm going to hold you to five.

JAMES JIMMERSON
Okay.

MAYOR GOODMAN
Now that's hard, I know. But you're going to have to do it.

JAMES JIMMERSON
Your Honor, listen, I'm going to shrink my remarks.

MAYOR GOODMAN
Shrink them?

JAMES JIMMERSON
Shrink them. Reduce them.

MAYOR GOODMAN
Thank you.

JAMES JIMMERSON
But I will say that you allowed one of the opposed to speak –

MAYOR GOODMAN
No, no, you're fine with it. But if you need more, you're right.

JAMES JIMMERSON
And they spoke 44 minutes.

MAYOR GOODMAN
Right. But can you keep it –

JAMES JIMMERSON
I will.

MAYOR GOODMAN
Okay. Thank you.

JAMES JIMMERSON
Thank you, Ms. Mayor and members of the Council. My name is James Jimmerson. I live at 9101 Alta Drive. I live in the Queensridge Towers, and I have the privilege of representing these applicants here today.
I'd like to first call your attention to what is being heard presently. What is being heard presently is Items 131, 132, 133, 134, but particularly 2, 3 and 4, which is the 61-lot application, which asks you to remove the –

MAYOR GOODMAN
Can you get closer to the mic?

JAMES JIMMERSON
They ask you to remove a land use designation that was erroneously placed upon this property in 2005, as attested to by Mr. Jerbic in his discussions with you and also in the Planning Commission meeting of last Tuesday, which I think is really more of a formality because it's not properly placed there. A waiver to allow a street to be the same size of a street that is presently existing in the neighbor Queensridge Towers. The Verlaine Street is the same width as we're being asked here, which is pretty simple.

1939 And the 61 lots, which is, as you know, a less density than even what is existed in the building
1940 there next door to it and that will have amenities that are equal to or greater than what is there
1941 presently now and which is within the entitlements that already exist on my clients, which you
1942 know is R-PD7, up to 7.49 dwelling units per acre with a land use designation of ML, Medium
1943 Low, and by agreement to Low as part of this project only, but historically had been Medium
1944 Low.
1945 That's what's before you. There is no – when you listen to all the fine men and women who have
1946 spoken against the project tonight, they are not addressing this project. They are not addressing
1947 the propriety of your approval, your exercise of sound discretion to grant and approve this 61 lots
1948 on 34.7 acres, or 07 acres. They are more talking about the issue that you have announced will be
1949 probably abeyed, by formal action tonight, to a July 19th hearing or perhaps thereafter.
1950 But on the merits of this project, this project has been pending now more for many, many
1951 months. It's been before you. And it doesn't benefit the Commission to have certain of the
1952 homeowners use terms like blackmail and these are a bunch of sycophants. By the way,
1953 regarding sycophants, could I have the ladies and gentlemen who supported the project please
1954 stand up, please. You may be a bunch of sycophants according to one person, but we're
1955 appreciative of the support, and I thank you very much.
1956 It is important, though, for me to correct the record as best I can in the short time period that I'm
1957 allowed. First, in 1990, a conceptual Master Plan was approved by this Council and its
1958 predecessor. But that plan was abandoned by 1996. The abandonment was a result of litigation
1959 that broke out between the original proponents of the plan in 1990, Triple Five and the Peccole
1960 Family. It was replaced by the Queensridge common use community. And that's one of the
1961 corrections we want to make.
1962 When Mr. Schreck speaks and he talks about the Queensridge golf course, I'm not familiar with
1963 that entity, because I know that there was never a golf course that was ever owned by the
1964 Queensridge interest community, nor has one dollar or one penny ever been spent by any
1965 residents living there, including myself, towards the benefit or control or maintenance of that
1966 golf course community.

1967 Furthermore, there's no pending appeal on the court's ruling, finding as the City had found, that
1968 NRS 278A does not apply, contrary to Mr. Schreck's remarks. There is a direct judgment on the
1969 facts of this case that you heard from Judge Smith and from Judge Allf.
1970 If I could just read documents that I will place in the record here today. Finding number 50, it is
1971 you all, the court says. It is you all who this should be applied. You will make the decisions.
1972 Number 50, the plaintiffs are improperly trying to impede upon the City's land use review and
1973 zoning processes. The defendants are permitted to seek approval, referring to ourselves, to seek
1974 approval of their applications or any applications submitted in the future before the City of Las
1975 Vegas, and the City of Las Vegas likewise is entitled to exercise its legislative function without
1976 interference from the plaintiffs, who are some of the homeowners.
1977 Continuing at 51, and I'll conclude with that. Plaintiffs claim that the applications were illegal or
1978 violations of master declarations or without merit. Those arguments are without merit. The filing
1979 of these applications by defendants or any application by defendants is not prohibited by the
1980 terms of the master declaration, because the applications concerned defendants' own land and
1981 their right to build, and such land that is not annexed into the Queensridge common use
1982 community is therefore not subject to the terms of the CC&Rs.
1983 So I would say with regard to gentlemen like Mr. Buckley or Mr. Rankin or Mr. Garcia, simply
1984 read the court decisions, because the points that they try to argue here are re-litigations of that
1985 which has already been argued and which was adjudicated against them and in favor of the
1986 developer. So one of the things that you know is that we do have the development rights before
1987 you. You've been so advised by your City Attorney, who's done a remarkable job in trying to put
1988 the parties and parts together, as well as the court decisions that we've lodged with you in prior
1989 hearings. I would simply say that we all want to work with every homeowner that we can.
1990 I made a pretty significant and some serious talk with regard to the Planning Commission last
1991 week about you need to try to satisfy as many people as you can, but you have to recognize that
1992 when you have this kind of emotion, it's not going to be always possible to satisfy everyone. But
1993 as it relates to the 61 units, which is before you tonight for this discussion, there is no serious
1994 objection to that. There is no argument with regard to the fact that it meets within the density

1995 requirements. It meets within the zoning requirements. It meets within the land use designation
1996 from 1990 and 2001.
1997 I want to also call to your attention – and I know this is a legal point, but you should know this –
1998 you passed a city ordinance in 2001 that confirmed the land rights designation and the zoning to
1999 this property being R-PD7 and ML. And that was without any reference by any of the 20 people
2000 here that mentioned. There's not one reference. All the lawyers stayed away from that. And if you
2001 look at the ordinance, you'll see it is without any conditions whatsoever. So when you start with
2002 that, then the question becomes: What would be appropriate on this location? And you hear these
2003 emotional terms like we don't want piecemeal development.
2004 Well, the answer is that whenever you have a adjoining land property, it is parcel by parcel. It's
2005 not always at one. And these parcels are owned by three different companies. Nonetheless, the
2006 entity here is asking for your discretion and your exercises in voting in favor of approving these
2007 61 lots, and then they will go forward and continue to work on a larger project. But on the merits
2008 of this small project, they certainly are entitled to it, and there's no serious legal or factual
2009 impediment to that. All the comments with regard to the larger project and not to the smaller one
2010 that's been pending now for several months.
2011 And there is a duty, under your Code and under the Nevada Revised Statute 278, that you must
2012 rule on this. You must give our clients the day in court, as you are, as we all are working so hard
2013 and so late into the evening and have done so last week as well. And for that, we are very
2014 appreciative. But when you go through the statues, particularly 278.0233, there's an obligation
2015 for you to rule and to rule this evening, and there's no legal or factual basis to object to that.
2016 And I did want to also make one correction again to Mr. Garcia, who may not have read the
2017 statutes, but under NRS 278.339 sub 3(e), when there is a dispute or conflict between land use
2018 designation and zoning, zoning trumps. And that occurred here, because historically, as you've
2019 been told by both sides, zoning occurred in 1990. And the first effort to have the introduction of a
2020 concept called land use designation came years afterwards, and clearly zoning trumps the
2021 balance.

2022 And let me tell you that when you listen to the essence of many of the speakers here who oppose
2023 this project, you can't help but come away with the feeling that there's nothing that the developer
2024 is going to be able to do to assuage every single one of them. And so what we've tried to do is try
2025 to take each and every one of their thoughts into consideration. We respect them. We live
2026 amongst then. We work with them. We walk our dogs together. We know them and try to work
2027 with them. And this project, this small project of 61 lots on 34 acres, with the entry off of
2028 Hualapai, with a magnificent entry is going to be a credit to this community and is a beginning
2029 for which this developer has both constitutional and statutory rights as well as just a matter of
2030 common sense and good facts.
2031 Why is it that Mr. Perrigo, why is it that Mr. Lowenstein, why is it that your City Attorney all
2032 speak in favor of this project? Because it's meritorious, both looking at the facts of it as well as
2033 the legal precedents that apply. The response to the position by the homeowners have been
2034 argued and have been rejected by the court after a good deal of hard work by everyone
2035 considered and through a fair result.
2036 I'd like to turn the balance of my time over to Mr. Lowie. You might want to speak to what was
2037 developed, Yohan. You may want to speak to this. Go ahead, sir.
2038 Thank you so much. It's always a pleasure to appear in front of you. Thank you for your time,
2039 Madame Mayor.
2040 Just for the record, we've given your City Clerk the case precedents and case orders that I've
2041 referenced in my opening remarks as well as the current proceedings before you and some
2042 remarks by City Attorney Brad Jerbic with regard to the right to develop. So I place that before
2043 the City Clerk. Thank you, Mayor.
2044
2045 **STEPHANIE ALLEN**
2046 Just briefly, Your Honor, members of the Council, I'd just like to address a few comments that
2047 were made. Most of the comments tonight, as Paul Larson said very briefly and succinctly, have
2048 dealt with the overall global project, and really what's before you tonight is not that.

2049 Although with that said, I would like to just show you briefly on the overhead. There's been a lot
2050 of comments about changes that have been made. This has been a long process with this
2051 Development Agreement.
2052 This is a comparison chart of the major changes that have been made. And so I know we're not
2053 on the Development Agreement, but I think it's worth it to take one minute to show you all of the
2054 concessions that this particular developer has done over the last two years.
2055
2056 **YOHAN LOWIE**
2057 We'll go over the changes.
2058
2059 **STEPHANIE ALLEN**
2060 We started at 3,020 units, and we're down to 2,104. We had 250 – these were at the request of the
2061 City or neighbors, not Yohan's request or EHB's request. These were all at the request of the City
2062 or the neighbors.
2063 The development area unit counts, we had assisted living originally proposed at 250, 200.
2064 Development Area 4 we had 60 homes. Then we went to 75 homes. Now we're back to 65
2065 homes, which you'll see on a future agenda should you abey the next item.
2066 Overall, the acreage, minimum acreage size started at a minimum of one acre. Then we went to a
2067 half-acre. We're now at a minimum of two-acre lots. So we've had some huge concessions that
2068 have gone on between now and the last time we saw you.
2069 Number of towers, we had three towers originally. We're down to two towers. Heights of the
2070 towers were reduced from 250 feet to 150 feet.
2071
2072 **BRAD JERBIC**
2073 Stephanie, I'm sorry to interrupt you, but I have to legally. We are not agendaed on 130 right now
2074 to talk about the Development Agreement. And so I think we'll be in violation of the Open
2075 Meeting Law if we continue with that. I hate to interrupt you.

STEPHANIE ALLEN
Okay. No, no. So just real quick, so I'd like to just, I guess, summarize it. Everyone has talked about the Development Agreement tonight. Every single person that testified, their testimony dealt with the Development Agreement, not with this application. The application that's before you is like every other application that was on your zoning agenda today, except the zoning is already in place. The R-PD is in place.
NRS 278.349 right here says that tentative maps must be approved within 45 days. This particular Applicant signed a waiver, when he submitted this application back in December, to allow additional time. So we've had months and months and months of this pending tentative map, trying to work in good faith to come up with an overall global project. We're just not there. We'd ask that you now consider the application that's before you. We're well beyond the 45 days. Also in this statute, it says that you must, you shall consider conformity with the zoning ordinance and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedent. So, right now, the GPA was submitted with this application at the request of your Staff, because they asked that you do that, to match the GPA with the zoning. The zoning is in place. It's R-PD7. So what we have before you, that takes precedent. We're not asking for anything. We're asking for basically a site development plan review and a tentative map that conforms with the zoning and is actually compatible and less dense than the Queensridge homes that are already in there.
So it's a simple application. We'd very much appreciate a vote tonight so that we can move on. We've told you tonight that we will work in good faith. We will continue discussions with the neighborhood, although it's discouraging to have the same people here every time, after all of the concessions we've made, continuing to say the same things and continuing to ask this thing be delayed. So for purposes of this application, we'd like an up or down vote, please, tonight, so that we can move on. Thank you.

2101 **YOHAN LOWIE**
2102 Good evening, Your Honor, Council members. Yohan Lowie, 9409 Kings Gate Court. And I want
2103 to respond the first time all the allegations that were put in here, but I want to talk about this 61
2104 lots in particular.
2105 You remember the beginning. We started about two and a half years ago. We came to the City
2106 saying this piece of property, I'm going to get it. I just want to know if this piece of property is
2107 developable or not, because if it's not developable and the City has any contract for restriction,
2108 I'd like to know it so we can go work with Peccole of how, you know, this, what's going to
2109 happen here. And the conclusion of your Staff, after months of working, is that this piece of
2110 property is zoned R-PD7. They couldn't believe it's zoned R-PD7, and it's compliant with all the
2111 requirements for development.
2112 Never we heard from the City Peccole Ranch Master Plan. We didn't know it's Peccole Ranch
2113 Master Plan. And I will tell you there's no Peccole Ranch Master Plan, but I don't want to take
2114 your time. I'm not representing there's no. I can tell you it's not recorded. It's not recorded on the
2115 piece of property that we purchased, 250 some odd acres. It's simply not recorded.
2116 So we got a letter saying it's R-PD7. We went and paid for the property, closed it. And before we
2117 closed it, we came to you and to some homeowners for that matter, came to homeowners saying:
2118 Guys, here is the situation, including Clyde Turner, sat with them and said: Here's the situation.
2119 Here's what we got. Here's our idea. We're going to put heavy density. Get some money. Sell a
2120 piece of the property, get the money, put it into behind the houses, and turn it into a park with
2121 about 60 homes originally.
2122 I have the plans. I can show you the original plan. Nothing changed except the original five
2123 homes now. Okay.
2124 Then the first meeting we had with the neighbors, they sent me to talk to the neighbors, and I did
2125 so. And it became a mess. Mr. Schreck stepped in. You can't develop anything on this golf
2126 course. This golf course is not going away. And I say, well, it's a done deal. The operator have
2127 (sic) quit. He quit. It's not in my control. They're not continuing to operate this golf course.

2128 Continue from there, the next meeting after we submit an application, you remember Mr. Bice
2129 standing here and pointing and saying I will have an ex-city employee standing here and telling
2130 you there was a collusion between this developer and some of the staff here.
2131 You know, I've attended that the position of this ex-employee, Mr. Doug Rankin, and I can tell
2132 you what he said. Here's what he said. Nineteen times straight Mr. Jimmerson asked him: Did
2133 this person that signed on this parcel map have colluded with Mr. Lowie or with EHB? No, no,
2134 no collusion. Nice guy.
2135 Did he colluded? No collusion.
2136 Is anybody on the Staff of the City colluded, question number 20 or so? Okay. No, no collusion.
2137 So what is it? He said I don't know. They filed application in good faith.
2138 How about City employees? They work in good faith. Yes, these are good people that work in
2139 good faith, zero collusion.
2140 I'll tell you where there is collusion. Collusion there is between the ex-employee and plaintiff
2141 here to try to plant PCD into the preceding, offering PCD so they can bring a 278A claim and go
2142 behind the back and say, oh, it should have been 278A. It looks like it. It works like it. It must be
2143 it.
2144 What they don't tell you, that a master plan, Z-1790, and if you can see the overheads, I will be
2145 able to show it very clearly. Designate the piece of property in front of you today as an R-PD7
2146 with the developer rights, right to it. And I tell you further, after 15 meetings, today 16 meetings,
2147 and 19 abeyances, today if you abey another item, it's 20.
2148 I'll show you what the Bible for this piece of property is. This is record of every single piece of
2149 property in Queensridge. Every homeowner in Queensridge, including me with all the properties
2150 we own in Queensridge, all the properties we bought in Queensridge, all the property we sold in
2151 Queensridge subject to this massive CC&R. I'd like to tell you what the CC&Rs says.
2152 The first chapter of the CC&Rs, right in the recital, it says the following. And that's in relate
2153 directly to this piece of property, this application in front of you today. In the recital, it says that
2154 the declarant without obligation to develop the property and the annexable property in one or
2155 more phases is planned, mixed use common interest community pursuant to Chapter 116. Okay.

2156 And then I will read from the bottom. The property may, but not required, to include single-
2157 family residential subdivision, attached multi-family dwellings, condominiums, hotel, timeshare
2158 development, shopping centers, commercial and office development, a golf course, parks,
2159 recreation area, open space, walkway, pathway, roadways, driveways, and related facilities.
2160 The maximum number of units, which the declarant reserved the rights to create within the
2161 master plan community, is 3,000.
2162 The existing 18-hole golf course, commonly known as Badlands Golf Course, is not a part of the
2163 property or the annexable property.
2164 To prevent the arguments that all these people came in front of you today made, they put it in
2165 there. And they amended this in 2001 to say 27-hole golf course is not a part of the property nor
2166 the annexable property. So nobody can say I've been here and I bought in there, and I thought it
2167 would be a golf course.
2168 But you know, Peccoles are not stupid. Bill Peccole was a genius. You know furthermore what he
2169 did? And you have this on the record. I just want to make sure that you understand that every
2170 single disclosure, not in small print, were given to buyers in Queensridge to know exactly what
2171 they're buying. They're buying within a master plan community called Queensridge, not Peccole
2172 Ranch. How do you know? The Master Plan, under the designation, is a master plan community
2173 of Queensridge, which is under NRS 116, which has Exhibit C. It shows the Master Plan and
2174 what it is.
2175 If you can see the overhead, this is the master plan community of Queensridge is within the
2176 boundaries, Lot 11, Lot number 12B, 12A, 9, 8, number 4, and you can see that number 10, the
2177 entire number 10 or this piece of property in front of you today is within developable property.
2178 The golf course not a part.
2179 What it shows on the other areas is a diamond. On the side you can see it says subject to
2180 development rights.

MAYOR GOODMAN
Okay. Mr. Lowie, I'm going to ask you to condense as much as you can, because otherwise giving you more time would be inequitable to others. So let's go ahead and if you would –.

YOHAN LOWIE
Well, I think, Your Honor –

MAYOR GOODMAN
And I understand. I understand.

YOHAN LOWIE
The key opposition spent here, you know, at least 18 minutes speaking here.

MAYOR GOODMAN
Right.

YOHAN LOWIE
I don't think I got even five. Okay.
In the contract, it states in the contract that there is no views guaranteed, and the future development will include the property, the nearby property. Okay. So, with that, I will tell you this. I feel you that your feeling is to hold this item until Development Agreement will be reached.

MAYOR GOODMAN
Thank you. No more.

YOHAN LOWIE
If –

MAYOR GOODMAN
No, that's it. I just, no, because you've been up, and we've had two or three times with Mr. Schreck. It's not right.

GEORGE GARCIA
If I could Mayor, this is important, because what this –

MAYOR GOODMAN
It's all important.

YOHAN LOWIE
Please, just tell me you can wait, and you can talk, speak afterward. Don't cut my words.

MAYOR GOODMAN
Okay.

YOHAN LOWIE
Please don't cut my words. Let me finish.

MAYOR GOODMAN
Please finish up.

YOHAN LOWIE
If you decide that you want to hold this item for Development Agreement, I would like to consult with my attorneys right now and withdraw the application for Development Agreement. I have no interest anymore to negotiate, to negotiate to no end to no avail. This opposition, this organized opposition here has been told every single one what to say and why they have to say it in order to delay this thing to a new Council. Okay.

2237 I don't mind. There's a new Councilman that ran on a platform of condemning of property. We
2238 are going to resort to our zoning only. And if in the future there will be a development agreement
2239 because an agreement will be reached, that's fine. We have done everything humanly possible to
2240 try to reach an agreement with these homeowners. What they're asking for is a football field of a
2241 park behind every single home, not one but five of them, 580 x 300 feet.
2242 We can't, obviously, lose all our land to parks and recs and somebody else will have to maintain
2243 it. We can't do it. And I think the negotiation have ended in a position that they can't go forward
2244 from that point.
2245 So we're asking to continue with the 61. We have rights only for that. That's half the density that
2246 Queensridge is. Queensridge is 3.48, and this density is 1.78. It's less than half the density. It's
2247 compliant with everything. It's compliant with all the requirements.
2248
2249 **MAYOR GOODMAN**
2250 Thank you.
2251
2252 **YOHAN LOWIE**
2253 You know, I just want to say one thing to you for the Development Agreement. So it's very
2254 important that you hear this, because you've been there. The negotiation with Tivoli was given 20
2255 feet for each home in the back. Okay. We negotiated for months with them, (inaudible) represent
2256 us at the time. They were ecstatic to get from us 20 feet. We landscaped it for them.
2257 You know, those houses, they sit on the same wash, on the same, exact waterway that the
2258 opposition sits on. They've got 20 feet, and they were ecstatic. Why do these people have to be
2259 treated differently? Why do they have to get 300 feet? Why do they have to get 6, 10 times more,
2260 for what reason? How about 15 times more? They think they can get whatever they want to
2261 because we are asking to do one single thing.
2262 The application in front of you today is to develop our property on the current zoning. The
2263 application that you may be denying or abeying for Development Agreement is the mechanism
2264 of which the City, your planners came up with to combine three separate entities that have two

2265 distinct zonings. Two of the entities have an R-PD7. One has a PD zoning, the same as the tower,
2266 the remnants of the tower, and combining them into one single entity as a massive developer in
2267 order to shift densities from one location to the other to build this project.
2268 If you today abey or decide not to approve, to deny this application for Development Agreement,
2269 you're basically telling us you do not want to shift zoning. So the only thing we have left is to use
2270 the zoning that the property is zoned for today. The Development Agreement only allows for
2271 zoning to shift. And with that, we got a boatload of restrictions and conditions for the next 30
2272 years, governed and demanded by the City.
2273 We only want to develop our property. The harm that you're causing us every time that you're
2274 delaying this thing for the last two years for that matter, okay, is hundreds of thousands of dollars
2275 every month. Once we almost lost the property, and we were able to refinance it. The financing
2276 coming up again in a couple months. Okay. We have to move on with this property or else there
2277 will be serious consequences.
2278 Everybody is happy in the back. They want the consequences. But they don't understand they are
2279 the biggest loser at the end of the day. In a word, there will be nothing there other than the desert
2280 and nothing but fights. So, please, just allow this to move forward. I'm giving you my word as I
2281 always do, and I always kept my word when I gave it to you or to anybody else here on this
2282 Council, that when you approve this application in front of you, in the next 60 days that you, we
2283 will agree to the advance, and in the next 60 days we'll sit again with the homeowners and
2284 negotiate to the best of our ability. And if we can come to an agreement, this will supersede this
2285 application.
2286 You heard before from others here they're saying, oh you already gave them the 435. Not a week
2287 that went by, and I get into my office, the City Attorney, which I just cannot believe how he
2288 worked, how hard he worked to try to get the deal between us and the neighbors. He said hold,
2289 do not build this, because I want you to reduce the heights, and I want you to reduce it for One
2290 Queensridge. Make more concessions to Queensridge.
2291 On top of that, I want you to give them parking. So I can't design the project. I can't move
2292 forward with this project waiting for Development Agreement. And we'll hold this project for 60

2293 more days. So that could be included into Development Agreement. But we have to get zoning
2294 on our property and move forward.
2295 It is, has been, this today is 19. If you would delay it, it's 20 abeyances that every single one of
2296 them, except one, that we asked for on favor of Shauna Hughes and the homeowners, were asked
2297 by the City, by saying you have to abey it. We're asking you to abey it. And the costs, they just
2298 keep on piling up. Just can't do it. It's simple.
2299
2300 **MAYOR GOODMAN**
2301 Thank you.
2302
2303 **YOHAN LOWIE**
2304 And by the way, for the shot across the bow that Shauna Hughes have just told you here, that,
2305 you know, this is a shot across the bow, I will challenge you we will submit all the tapes to the
2306 record. And I challenge you to find that statement that anybody made on our team. Not one
2307 person in our team made a comment like that, this is a shot across the bow.
2308 And Frank Pankratz can tell you that, and I can submit the tapes to the record. You won't find
2309 anything. What you will find, come on, Frank, you know we can't negotiate in good faith because
2310 really we have to wait for all the litigation to expire.
2311 You can listen to her. You can see if we are right, or if what she's telling you is right. You'll be the
2312 judge. I'm asking you to approve this application, to move it forward.
2313
2314 **MAYOR GOODMAN**
2315 Thank you.
2316
2317 **YOHAN LOWIE**
2318 Thank you.

MAYOR GOODMAN
You had something you wanted to submit?

GEORGE GARCIA
A very simple procedural matter, just to clarify that what I understood was basically the indication that this item had to move forward because the clock was expiring on the map. There's a mandatory, within the statutes, there's a mandatory time frame for a map to be approved or denied. That was what stated by the Applicant's representatives.
I just wanted to indicate that there's a document that's provided and filed by the Applicant, specifically as part of the Department of Planning's application process. And this is signed by Vickie DeHart. It says: In so doing, the subdivider acknowledges that this election of the City's acceptance of a tentative map application as complete shall be deemed to constitute the mutual consent of the City and the subdivider to extend the time limit set forth in NRS.
So you don't have a binding clock on you. They've already waived that right. I'll submit that to the record.

MAYOR GOODMAN
Okay.

YOHAN LOWIE
If you did finish, put that on the clock. This is what the homeowners are entitled to. This is what's on everybody's deed. I don't have to put it on the magnifier. You can see it. It says "Future Development." The piece of property that we are trying to develop right now shows in everybody's document in this book, on page 1.3, future development, shows the entire golf course's development. This is what's recorded on title, and that's what given to every single homeowner who's buying a house in Queensridge. Thank you.

MAYOR GOODMAN
Thank you.

COUNCILMAN COFFIN
Your Honor?

MAYOR GOODMAN
Councilman?

COUNCILMAN COFFIN
I had a feeling that, because I could not hear Garcia very well, the microphone could not pick you up. Your remarks are not in the record.

GEORGE GARCIA
Let me, then if I can get that document back.

COUNCILMAN COFFIN
And I think you've got to do something.

GEORGE GARCIA
Thank you. The red light's on, but apparently if it wasn't, I'd be happy to repeat that. So the point that I believe was made and I heard the Applicant's representative saying that there was some urgency because the clock had run out or was running out because of the time. There's a statutory time frame for them to approve maps, for tentative maps. I just want to clarify that there is no such time frame in this particular instance. The Applicant has waived that right.
Specifically, there was a document that was signed with the application that says in so doing, the subdivider acknowledges that this election and the city's acceptance of a tentative map

application as complete shall be deemed to constitute mutual consent of the City and the subdivider to extend the time limit set forth in NRS.
So that's signed by Vickie DeHart. They basically signed a waiver saying there is no time frame running. So you have, you are free to take whatever actions as necessary or appropriate.

MAYOR GOODMAN
Thank you. And I'm going to close public comment now and –

STEPHANIE ALLEN
Well, I was just, Your Honor, I was just going to say I had just that we had signed that waiver. So we weren't disputing that.

MAYOR GOODMAN
Okay. Thank you very much. Okay. At this point, shall we move through the agenda one by one? Is that what is appropriate? Or is there comment from Council as we go forward?

BRAD JERBIC
I think it's up to you to take individual comments from Council and then a motion, and go through the motions one by one.

MAYOR GOODMAN
Okay. Any comments that the Council would care to make at this point before I turn it over? I guess I turn, yes, Councilman Barlow?

COUNCILMAN BARLOW
Yes. There was a comment that was brought forward, that I want clarification on and ask a question. And that has to do with the 61 units being proposed. Or is it 65? It's 61?

STEPHANIE ALLEN
Sixty-one.

COUNCILMAN BARLOW
Sixty-one units being proposed. The question that I have is for Tom. Under the GPA, the way I understand it, we can hold the Applicant to the 61 under the GPA, the 61 units, by condition?

TOM PERRIGO
Your Honor, through you, Councilman, you have the discretion, as a Council, to approve or deny an application, or in the case of a general plan amendment approve it for a lesser density or approve it for a smaller area. So I think when you're saying to hold it to the 61, I think you're talking about reducing the acreage to be consistent with the tentative map and the site plan. Is that what you mean by holding?

COUNCILMAN BARLOW
Yes.

TOM PERRIGO
Okay. Yes, you do have that discretion.

COUNCILMAN BARLOW
Okay. Thank you.

MAYOR GOODMAN
Councilman Coffin?

COUNCILMAN COFFIN
Thank you. I just have a question about legal counsel's advice. As I understand it, we have been advised to abey this item. That was a long time ago in this course of events here. But I can understand why, because it's deeper than I thought. It's, to the people who live it every day, it must be frustrating. Also, they feel they're on the threshold of something very bad, because the election was held and seats are going to change. But I'm going to follow the councilman's, I mean the counsel's advice and suggest we abey. But I don't know how long you would choose to do that, Mayor. I have no idea what the appropriate amount of time is.

MAYOR GOODMAN
Okay. Well, let me, I'm glad you asked that question, because –

COUNCILMAN BARLOW
Well, mayor.

MAYOR GOODMAN
Yes?

COUNCILMAN BARLOW
I didn't hear it that way. And so, for a point of clarification, I heard that we can vote this item up or down. It was Item 130 that the legal counsel was requesting that item to be abeyed. And so I don't want to put words in his mouth, but that was the way I interpreted it. So Brad, if you will, please provide that clarification, that would be helpful.

BRAD JERBIC
I don't know why this is (inaudible). That's correct. I did not recommend an abeyance on 131 through 134. In fact, I think I made a pretty clear record. This is a pure planning item, and that's

between you and the Applicant. With respect to 130 and 82, I do have a recommendation that those be held on abeyance, and I'll make the record as to the reasons why when that comes up.

MAYOR GOODMAN
Okay. Councilman Coffin, you want to turn off your microphone with these new, okay.
As we go ahead, first of all, I want to thank everybody that's been involved in the dialogue trying to move this forward. I know it's resolvable, and I know how close we've become. And I am absolutely convinced it can be worked through. There is a timeline. It costs money, and I just – it's beyond anything. I did say at last the meeting that we had passed that corner property.
And I know you understood it, Yohan Lowie. And out of total respect, I did say that I did not want to move forward piecemeal, that I would go ahead with that corner and give full support, even though it was not particularly welcomed at that time, and you did bend so much. And I know you're a developer, and developers are not in it to donate property. And you have been donating and putting back, but it has to pencil out. And it's costing you money every single day it delays.

YOHAN LOWIE
Your Honor?

MAYOR GOODMAN
And so, to be honest to you, I am only talking for me. I certainly agree with the fact that we've been working for two years, because we see the value of what you can do, and we know what's destined for the property. If you had walked away from it, who would come in and develop it?

YOHAN LOWIE
They don't want me as the developer, Your Honor. They want somebody else.

MAYOR GOODMAN
No, no, no. We're not there. I just want you to understand where I'm coming from, because I asked for something. We have had two people so involved, working so many hours with you and with the residents trying to get to a point where you can move the whole property. And what I said at that meeting, which I have to stand by, I have to stand by the Master Development Plan, knowing full well that this is exactly what I was talking about. I think your plan up there in the northwest part of the property seems very fine, but it's exactly that.
And again, on top of it all, I do agree – this is me alone – but I do agree while these two people that are sitting here have been participatory and heard everything every time, that it is only right that we have new Council, and they are not going to even be seated until the 19th, when they're sworn in, because we have no meeting between now and the 19th of July. That's the next Council meeting.
And we cannot have them vote at that meeting, because they will have had no opportunity. They're not sworn in. So they have to have opportunity, hopefully, with our Counsel and with our Planning Director, to be brought up to speed because, at this point, they've only had the public comment.

YOHAN LOWIE
Your Honor, it's a classic case of the surgery is success, has been successful, but the patient died because it's a little too late. So it's a little too late. If you would like me to abey, to withdraw the application for the –

MAYOR GOODMAN
No, I do not. We are so close.

YOHAN LOWIE
We are not close. We are far away because we are going to –

MAYOR GOODMAN
Wait. Wait. Wait.

YOHAN LOWIE
We are not going to be in control of the property, Your Honor.

MAYOR GOODMAN
Okay.

YOHAN LOWIE
For the, 60 days from today, 60 days from today, okay, we may be not in control of the property. So if you want to vote today, I'm asking you – I'm forcing a vote today. I'm asking you to vote today.

MAYOR GOODMAN
Okay. We will.

YOHAN LOWIE
Even if I have to withdraw the application.

MAYOR GOODMAN
Okay.

YOHAN LOWIE
Okay.

MAYOR GOODMAN
We'll move forward with that. I just, I want you to understand I made a comment. I have to, I'm sorry, I have to prerogative of the Chair, Yohan.

YOHAN LOWIE
Yeah.

MAYOR GOODMAN
I've admired your work always. You know that. But I made a comment that I would go for that property on the northeast corner knowing how well you bend on it and how fabulous it was, and I said I cannot move forward. In good conscience, I will not, I will not vote. I am one vote out of this number, and you may have them.

YOHAN LOWIE
Please take your vote. We'll appreciate anything you do right now. I just want to tell you if we have to withdraw the application for the Development Agreement, we will. This is three companies, separate companies that you're trying to force us to bring them together. I have no choice, I have to sell them off in pieces. So you're never going to see development agreement as I told you before. It just took another year, a year.

MAYOR GOODMAN
I know.

YOHAN LOWIE
Because they are not cooperating and not negotiating. They're only delaying.

MAYOR GOODMAN
Okay.

YOHAN LOWIE
And this delay will cause us to bifurcate the property. So the next time we'll come here, we're not going to be controlling 250 acres or 235 acres or whatever it is.

MAYOR GOODMAN
Okay. We are so close. At least that's what I am told by our Counsel.

YOHAN LOWIE
I understand. I have my own problems. Every developer has problems, hundreds of thousands of dollars a month to maintain a piece of property.

MAYOR GOODMAN
Okay. Let me go ahead and move these then.

YOHAN LOWIE
We don't have a problem. We're willing to bifurcate. So we will bifurcate the property.

MAYOR GOODMAN
Okay. We'll go ahead and we'll move on each one. I'm going to read each item. Or do I turn these? Now, wait one second. I did read them into the record. So, at this point, Councilman Beers, we're going to start with you on Agenda Item 131. Do you have a motion?

COUNCILMAN BEERS
Yes, Your Honor, I do. Although, I have to say I think for the first time in five years, it doesn't really matter how I move, nor does it matter how you vote. One of the guys made a comment earlier about the worst thing that could possibly have happened, and this is it, because this is the default existing entitlement.

Our choice all along has been this, represented by the 61 units on the 30x acres, or the alternative scenario, which is non-uniform density, creating additional – well, we all know the plan, creating the additional density down by the existing Queensridge Tower and unprecedented, exceptional low density on two-thirds of the land.

So I think actually the fastest way for the property owner to exercise their property rights would probably be for us to deny this, because then they can go to court and a court will immediately reverse us, because this is so far inside the existing lines. And, you know, consistently all along I've had two priorities. The first is protecting taxpayers, and the second is protecting land values at Queensridge. And unfortunately, we're getting to the worst case scenario.

So I would move to pass. Motion is to pass number 131.

COUNCILMAN COFFIN

If I may comment?

MAYOR GOODMAN

Yes, please.

COUNCILMAN COFFIN

Your Honor, I suppose it's on the motion. Well, for a long time, and I still have not given up my optimism that there could be an agreement on the entire parcel, all 250 acres, whatever it is. They say we're a long way away. Maybe we are.

I met with Mr. Lowie and his management team twice last year, late last year. I think it was December, maybe January, and presented what I thought was a good idea to just, as a concept, consider in order to make the neighbors feel a lot more welcoming to this new thing.

And they chose not to do that. But I feel like, yeah, I still feel like we can do something. They've got some rights, but the neighbors have a lot of rights too. And while they've been conceding, everybody's been conceding. So there's been some, but they're still a long way away, as Mr. Lowie says.

So I can't vote for this. I'm worried about the fact now we've approved one thing on one end, but we approved something on the other end with a positive vote here and then we're stuck with something in the middle.

It looks to me that that's kind of how it goes. It's piecemeal, even though you didn't want to do it. If we approve this, it starts, it's piecemeal. And that then takes away – everybody gives a little more, leverage disappears, and there's less and less chance for negotiation.

So I have to oppose this, because it's a piecemeal approach, and I still hold out hopes for a holistic approach to this whole thing. They know my feelings on this. So, you know, we made that public six months ago. In any event, thank you very much.

COUNCILMAN BARLOW
Mayor?

MAYOR GOODMAN
Yes.

COUNCILMAN BARLOW
Question on the motion.

MAYOR GOODMAN
I'm sorry?

COUNCILMAN BARLOW
I said question on the motion.

MAYOR GOODMAN
Okay.

COUNCILMAN BARLOW
Someone brought forward a suggestion that I thought maybe quite a few of us may have missed. You may have; you may have not. But I caught on to it. And that was by moving forward on this item, that the Development Agreement would supersede anything that we do on this motion. I believe Mr. Yohan, did you state that?

BRAD JERBIC
I can clarify that. I think that there's been an indication by Mr. Lowie and his attorneys, and I have said the same thing, that if this does pass, it is inconsistent with what we have negotiated thus far. In order for it to be consistent, they would have to give this up as part of the Development Agreement negotiation. So the Development Agreement, as currently drafted, again not finished, but currently drafted, allows for 65 custom homes on 183 golf course.

COUNCILMAN BARLOW
Sixty-five or sixty-one?

BRAD JERBIC
Pardon?

COUNCILMAN BARLOW
Sixty-five or sixty-one?

BRAD JERBIC
Sixty-five is what's in the Development Agreement. Sixty-one is what's in this application.

COUNCILMAN BARLOW
Okay.

BRAD JERBIC
The 61 in this application is in a very limited corner. It's much denser than what would be, in fact it's as dense as what would be on the entire course virtually if we had a development agreement. So it is inconsistent, absolutely inconsistent with that Development Agreement that's still not finished. If that Development Agreement does get finished and it gets up before for the Council, one of the things that they will have to do, and they're telling you now they will agree to, is give up the 61 if they win today. Is that right?

COUNCILMAN BARLOW
And so, to my understanding, they're on an acre now, and from what I understand further, is that the Development Agreement could be potentially two-acre parcels instead of one?

BRAD JERBIC
It is a sub potentially. It is absolutely the –

COUNCILMAN BARLOW
So, in essence, the neighbors will be in a better position?

BRAD JERBIC
Well, we believe, in my negotiations with the neighbors that have participated in negotiations, they have told me they requested two-acre parcels, and that was a concession that we won during that negotiation. So the entire golf course, the 183 acres, except for one small piece on the southeast side, which are minimum half-acre parcels and about 15 homes there, the remaining 50 homes of the 65 would be spread out over the rest of the golf course on two-acre minimum parcels.

COUNCILMAN BARLOW
Okay. So, to me, the win/win would be to approve what's before us now. And I believe that's a part of the motion right now, if I heard the Councilman correctly, and for them to come back after the Development Agreement is approved and have the Development Agreement supersede what we have before us here today.

CHRIS KAEMPFER
Your Honor?

COUNCILMAN BARLOW
Mr. Kaempfer.

MAYOR GOODMAN
Your button is off.

CHRIS KAEMPFER
We are stating absolutely on the record that an approval today will be superseded by the Development Agreement. It gets us – I was not making things up. It gets us something today. Now, alternatively, if you want to go to the next item and approve the Development Agreement subject to continuing to work on a couple of things and realizing that those things we're continuing to work on are in an area where a site development review has to come forward anyway, we can do that. We just need some approval today.
Our suggestion was we approved something that is so squarely in accordance with zoning practice and zoning law, that we approved that subject to us continuing to negotiate in good faith, and once that Development Agreement is executed, this zoning is gone.

COUNCILMAN BARLOW
Well, I don't see how we can approve the Development Agreement today when, in fact, there's yet more work to be done. But I do like the idea of the fact that we are working towards that Development Agreement. And from my understanding, it's almost there? So –

CHRIS KAEMPFER
Here's, is where we are. The Development Agreement, and I wish I had something I could show you, but the, and I think this is a very important consideration.

COUNCILMAN BARLOW
Okay.

CHRIS KAEMPFER
Especially for those who happen to be having a home for sale. The thing that is killing –

BRAD JERBIC
Chris, if I can stop you right there. I understand the question. But we are really wandering way into Item 130 and the Development Agreement. I think the Council's question is – I think there's got to be a simpler answer than a big long presentation that wanders way off the topic that we're agendaed for.
I think that if the question is, do you think we're close or not, I think yes or no and I'll explain later when we get to 130.

CHRIS KAEMPFER
Well, can I, all right. That's a very, very fair point. If you could go to the overhead please and I'll just show where the issues are.

COUNCILMAN BARLOW
That will be helpful. Thank you.

CHRIS KAEMPFER
All right. There are no real issues all the way through here. Everybody here gets two acres, a minimum two-acre lots. Everybody, except for my neighbors and me down here, and we get half-acre lots.
Now, the areas that we're still working with are here and here, two areas. And this is what I was trying to point out in the development area that has to be approved with a site development review. But I won't get there. But that is what everybody has.
Now, one of the issues that has been hurting our community is when you try to sell your home, they say: What's going to be on the golf course? Can you imagine, can you imagine if you're selling your home and you say, well, behind me is a two-acre lot, and it's part of Development Agreement that's already approved.
So all of us, in our minds, have to think that that's where we have to be. But it's here and it's here, and you have Yohan Lowie's word and he's worked here. You'll have mind and you'll have Stephanie's that we will continue to work in good faith and get it done. But we need something today. We need something in order to convince our lender that this is real and it's just not another step in losing money and putting money into this project..

COUNCILMAN BARLOW
Okay. I understand. Thank you.
Mayor, my comment on the motion is the fact that I'm going to, if I heard the Councilman correctly, that the motion is for approval on 131, so I'm going to support that. However, I'm going to step out on a limb and also take the recommendation of my City Attorney when we come to 130. So my motion will be for approval on 131. Thank you. I mean my position on 131 for the motion of approval is to follow the Councilman's position.

MAYOR GOODMAN
Okay. There is a motion made to approve Agenda Item 131.

COUNCILWOMAN TARKANIAN
Can I say something, Mayor?

MAYOR GOODMAN
Please.

COUNCILWOMAN TARKANIAN
I would like to say something. And that is yesterday evening, maybe it was 6:30 or so, I spoke with the lawyer, one of your lawyers, for the developers. And at that time I said to him I'm as close as I've ever been to vote for this because I don't like the piecemeal stuff. I don't think it works.
And I want to tell you I don't think Yohan is an ogre. I think he's a brilliant designer. I wish to heck I could have that design of the gate where I live. And he has done a tremendous amount in meeting the requests of people who live in that area. I don't know if I've ever seen anybody who's done as much as far as, you know, filling in gullies and giving you football field lengths behind you and stuff like that.
But there were a couple questions, maybe three or four that I wanted to check out. And so I intended to have my staff do that today. I couldn't, because I was exhausted from the short-term mental preparation and I had no time for it. And so I came today, and I'm told at about 7:45 a.m. today that this item, that we were going to be abeyed. It was going to be abeyed. And so I told my staff. I didn't have them go do, look up this information that I needed, because I don't live in the northwest. They live a different style out there, and I feel I need to study it some.
And so I couldn't tell my staff go out and get it, when I'm being told it's going to be abeyed. I did not know you were really on the agenda for sure until I saw after 5:00 tonight all of the lawyers started coming in and I'm wondering, what the heck? It's being abeyed.

So this bothers me because, and I'm not blaming anybody, but I didn't get my questions answered. I didn't get my question answered. I didn't have time to look into things as much as I would like to look into things.

I don't blame anybody. I don't think Yohan is terrible. I love all you guys. I've worked with you before. You've always been up and honest with me.

But I do want to say this. I have felt, I think the Mayor felt the same way, we should not split this up at the time. We split it up, and I felt we're going to have some problems. I voted against that, and we have had problems.

And the other concern I wanted to check into was I was going to find out information what other new buildings are going in there. You know, people quickly show me on a map, but I don't know that area the way I know my ward. And so they're showing me quickly on the map, oh, they're going to do this here and they're going to do that there. What is that going to do to the whole thing and whole complexion?

So, just to let me finish, I do think the people that live there ought to be grateful for what's been given. I've never seen that much given before. But I can't vote for approval of this because I haven't had time to look into it. Not your fault. I'm not blaming anybody, but doggone it, I need to look into these things because I'm not as familiar with them.

And also, I want to tell you, Doug Rankin did not use the word "collusion." Not one time did he use the word "collusion." I've never heard him use the word "collusion." I've worked with him 10 years. And when Doug comes up here, and he's got all this information. In 10 years that I've worked with him, I've never found him to give me incorrect information. In fact, when he left here, I and my staff were aghast, because he has the historical knowledge that nobody else at that time had.

So I just wanted to tell you how I feel. I'm not knocking anybody with the developer. I just need more time.

CHRIS KAEMPFER

By the way, Your Honor, I think it's important to say Mr. Lowie did not suggest that –

YOHAN LOWIE
Doug Rankin.

CHRIS KAEMPFER
Doug Rankin said that.

YOHAN LOWIE
To the contrary.

CHRIS KAEMPFER
That's not.

YOHAN LOWIE
I apologize. To the contrary, I said the opposite. I said Mr. Bice said that an ex-city employee would come here and testify there was a collusion between this developer and Staff. And in Mr. Rankin's deposition, he said no collusion, absolutely no collusion was done in good faith. Okay. Thank you very much.

COUNCILWOMAN TARKANIAN
I take that back. But I don't take back the praise I gave him, because I've worked with him often. No really, I mean, but I take back that you said that. I just thought you made a mistake, because some of us do.

CHRIS KAEMPFER
These guys are pretty tremendous themselves in their own right.

COUNCILWOMAN TARKANIAN
Yeah, and they are tremendous.

CHRIS KAEMPFER
Yes.

COUNCILWOMAN TARKANIAN
And doggone it, they've worked their heads off over that, and I understand that. It's just that I just feel that responsibility that I need to know this. My goodness, look how important this issue is to everybody that lives up in the northwest. So I just wanted to tell you that.

MAYOR GOODMAN
Okay. All right. There's been a motion and a call for the vote. And we're waiting for Councilman Coffin and then please post it on Agenda Item 131 (Motion passed with Tarkanian, Goodman and Anthony voting No). The motion carries.

COUNCILWOMAN TARKANIAN
Which I thought it would.

COUNCILMAN COFFIN
I'm sorry. I pushed the wrong button. I'm really sorry.

MAYOR GOODMAN
No. No.

BRAD JERBIC
There's been a mistake. If the Clerk could reset the voting machine and recast the votes.

COUNCILWOMAN TARKANIAN
Or if the fact we've no board meeting.

MAYOR GOODMAN
Okay. So we are polling. Just revote.

BRAD JERBIC
We need the Clerk to reset and revote on the motion. **The motion is to approve 131**, and Councilman Coffin indicated he hit a wrong button, and so you need to revote.

MAYOR GOODMAN
And please post **(Motion failed with Coffin, Tarkanian, Goodman and Anthony voting No)**. The motion does not pass.

BRAD JERBIC
The motion fails.

MAYOR GOODMAN
The motion passes. Please, don't do this. I mean this is such a privilege.

BRAD JERBIC
Excuse me, there was a motion to approve that did not pass. There now needs to be a motion to deny. So somebody who voted in the majority needs to make a motion to deny 131.

COUNCILWOMAN TARKANIAN
That's got to be Coffin.

MAYOR GOODMAN
Okay. There needs to be a motion to deny made.

COUNCILMAN COFFIN
Your Honor, I'll make a motion to deny Item 131.

MAYOR GOODMAN
Okay. There's a motion to deny 131. Please vote on Agenda Item 131 to deny on 131 and then please post **(Motion passed with Ross and Beers voting No)**.

BRAD JERBIC
That motion passes. **The motion, the 131 is denied.** We need a motion on 132.

MAYOR GOODMAN
And on 132?

COUNCILMAN BEERS
Why don't we let Councilman Coffin make the motions?

MAYOR GOODMAN
Okay, Councilman Coffin on 132.

COUNCILMAN COFFIN
Your Honor, I move to deny 132.

MAYOR GOODMAN
There's a motion on Agenda Item 132 to deny. Please vote and please post **(Motion passed with Barlow, Ross and Beers voting No)**.

COUNCILWOMAN TARKANIAN
We take that back. Thanks.

MAYOR GOODMAN
This is a motion to deny on Agenda Item 132, and that carries. On Agenda Item Number 133.

COUNCILMAN COFFIN
Your Honor, I move to deny Item 133.

MAYOR GOODMAN
There's a motion on Agenda Item 133 to deny. Please vote and please post **(Motion passed with Barlow, Ross and Beers voting No)**. The motion carries. And Agenda Item 134?

COUNCILMAN COFFIN
Your Honor, **I move to deny Item 134.**

MAYOR GOODMAN
And there's a motion on Agenda Item 134 to deny. Please vote. Please post **(Motion passed with Barlow, Ross and Beers voting No)**. The motion carries.

ITEM 130

MAYOR GOODMAN
Agenda Item 130, not to be heard, oh that's that, 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 Company, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta and Rampart Boulevard. This is a public hearing, I declare it open. Do we, now, Counsel?

BRAD JERBIC

What I'd like to do, and I know there's gonna be some active discussion on this, but if I could begin. As the record has already been made, there has been an awful lot of discussion, and it's really funny every time I talk to the developer, people think that he's pulling my strings; every time I talk to the neighborhood, they think they are pulling my strings. I can tell you right now, the only one pulling my strings, Mayor, is you and your request to bring back a development agreement. And so, I've been working very, very hard to work with neighbors and work with anybody who will talk and what they would like to see in their neighborhood.

I can tell you that Elaine and Dale Weisner have been incredible. Elaine is head of the board, and they've had a very, very difficult decision and a very, very difficult time having to try and gather information only to find out they don't have the authority to negotiate.

Ann Smith and her neighbors on Ravel Court are just wonderful people, who I have tried very, very hard to try and find a solution to what I think is a uniquely burdensome situation into their area.

I'm looking out and I see Eddie and Alise on Tudor, and all of you, there's a special situation out there, that I think we're very, very close to having that resolved.

There's a fourth situation, a fourth situation, that came to my attention through a neighbor that lives in an area that's gonna receive the two-acre lots; and that request was to have some kind of agreement to keep critical, and I'm using that word deliberately, critical parts of the golf course green until development. And the reason was pretty simple: The reason is that if you have a house for sale in Queensride, you're going to enter through the north gate or the south gate. And for any of you who have been out there, you will drive past open parts of the golf course that are normally very green. And the fear that this neighbor expressed to me is if those critical areas, not the whole golf course, but those critical areas, if they were to turn brown and full of weeds, the person who drives in to go look at a home for sale is going to turn right around and leave, because that sets a statement for what the community is and would lower property values.

I thought those were valuable issues. I thought they were righteous issues. I don't think that they were issues that people made up. And I still think to this moment they are solvable issues. I don't think we – there probably are more that people will open up. And I will address everyone individually. So if anybody has a list of things they think should be in this agreement that are not, I say these words, speak now or forever hold your peace, because I will listen to you and we'll talk about it. And if it needs to be in that agreement, we'll do our best to get it in it.

But I do not like the tactics that look like we're working, we're working, we're working and, by the way, here's something you didn't think of I could have been told about six months ago. So I understand Mr. Lowie's frustration. There's some of that going on. There really is. And that's unfortunate. I don't consider that good faith, and I don't consider it productive.

So I say now to the neighbors that are out here, and this is not, that comment was not aimed at you. You've been wonderful in meeting with me and talking with me, and you've been very wonderful in giving the ground that you can give and not giving the ground that you can't give to protect your homes and your property values.

Having said that, we have constantly been accused of changing this Development Agreement. And I hear it every single Development Agreement meeting. Once again, it's changed again. It's changed again. But, you know, it's really funny. This Development Agreement has changed because people have requested changes. And so when you request to get a change request and you incorporate it, you can't get a rock thrown at your head for doing that. And that's not fair.

And I can also say one more thing, because I just want to say it publicly. I have enormous respect for both parties. I also have respect for people in the litigation. And it's a fact that when Mr. Schreck was attacked in the litigation, I defended him. It was a fact that when Shauna was given a subpoena for a deposition, I got her out of it. I'm not trying to hurt anybody in this negotiation. For anybody in this room that thinks otherwise, you're just plain wrong. Okay?

So let me go on to the Development Agreement. We deliberately left it on the website in the form that it was last submitted, without changes. And I did that to avoid one more time having neighbors come here and say it's changed again. The goal was this. Leave that agreement on the website, and then when we had changes from the Planning Commission, changes from the

Recommending Committee, which there was one, and changes that I hoped to negotiate last night and over the weekend; if we got all those, we'd roll them all into just one last change. That's why the agreement that's on the website right now doesn't reflect all those changes that have occurred to date and clearly don't reflect the changes for Ravel, for Tudor Park, for the greening of the golf course, and the other issue I mentioned.

I think that because we are this close, I think that it would be wrong to have the Council consider an agreement that you haven't even seen. We haven't presented you with a final version of it. I don't think it would be right to go forward with open issues that I think could be resolved.

Now, I can be, I'll be proven right or wrong pretty darn quick. There's no doubt about it. If everybody thinks that this can't be resolved, I'm going to look like an idiot in a month, and I deserve it. Okay?

But the fact of the matter is I don't believe that. I do believe that it can be resolved. I do believe there's an awful lot of good faith that's been shown, and I think we are very close. But for that reason, I don't think it's appropriate right now, well I won't say appropriate, I don't think it's ready to be heard by the Council right now. I'm certainly not ready to have an agreement approved with those areas still not completely nailed down.

MAYOR GOODMAN

Well, and we have not, if I might, Mr. Jerbic, we have not been privy to the information regarding those three items and then the fourth one you just brought up, which was brought up tonight. And my biggest concern is going forward with this and having these two wonderful Council persons, who have been through the beginning, two years or a year and a half of this, this is their last Council meeting.

And so to have new members brought on and expect them to be brought up to speed in 24 hours from their swearing in is an impossibility. So that's beyond our control to have any reasonable way of bringing two new people on this board up to speed. And they need to have the information. And the next, unless we call, which I'm going to ask you, instead of, let's say they're

sworn in, the date is the 19th of July, the following, next scheduled Council meeting is the 21st, correct?

BRAD JERBIC
The 2nd of August.

MAYOR GOODMAN
I mean 2nd of August. Sorry. What if? This may be an open-ended question that you can't even possibly answer. But with everything working as best as it can for two new Council members to be brought up to speed on a development agreement, what is reasonable to assume, and can we hold a special meeting so we don't have to wait that long, because every day we wait, Mr. Lowie is having financial pursuit, to put it that way? What is reasonable, and when can we have a special session?

BRAD JERBIC
That's a good question. I can't read anybody's mind. I know Mr. Seroka is here today, and we have not had an opportunity to meet yet. I met Ms. Fiore very briefly, just to shake hands a couple of days ago. And so I haven't had the opportunity to ask them that question – how long will it take you to really get up to speed?
I can say that I am prepared now to get everything to whoever is going to be sitting here on the 19th of July as soon as it's drafted. And, but the real problem is I am not able to have an attorney/client conversation with either of the new members of Council until they are technically sworn in.

MAYOR GOODMAN
I was just going to say they're not sworn in.

BRAD JERBIC
So I can talk with them. I can provide them with the documents. I can answer questions. But if it gets into an attorney/client conversation about litigation or something, I won't be able to do that until the swearing in occurs.
So I'm more than happy to finish this deal. I'm more than happy to accelerate it and get it to the new members as soon as possible so they can ask all the questions that they need to. But I don't know if that right number is two weeks, or four weeks, or one day. I don't know.

MAYOR GOODMAN
Councilwoman?

COUNCILWOMAN TARKANIAN
Mr. Jerbic, we have in the past sworn in new members at a special meeting, not at the Council meeting, not the regular Council meeting. We didn't even do it in Council chambers. In fact, I think I was one of them. We did it in a smaller room someplace in the City. So I think you could call a special meeting. I mean you might want to check that out. But I know that I was, when I was, well maybe it was – I don't know. I could be wrong.

BRAD JERBIC
You may be different. I need to look at this.

COUNCILWOMAN TARKANIAN
I'm very tired. It's been over 12 hours now.

BRAD JERBIC
You won in a recall election, and I think the recall election was a little bit different. But I'll look into it and find out if that's a possibility. Then, of course, we'd want to consult with the new members of Council to see if that's what they would want to do. I don't know.

I do know that right now, if it went on its ordinary trajectory, the swearing in would be July 19th, and the next meeting after that would be August 2nd.

And so I can tell you I personally believe I will know very quickly, in less than a week, I hope, whether or not these issues will be resolved or not. And if they are resolved, that written agreement will be distributed to everybody, including the new members of Council, so that they can look at it and meet with neighbors and see what the support is, if it's there or not.

CHRIS KAEMPFER

Well, Your Honor, if I might chime in here just for a minute. I will not deny the efforts that Brad has put into this. I mean, it's incredible. And he's not helped us. I mean, if he was here to help us, we wouldn't have taken it from 3,000 units down to 2,100 units. Thanks, Brad, very much for knocking 900 units off the project. All right. We wouldn't have two-acre lots everywhere. All of those things are driven by him and agreed to by us.

But as hard as he worked and as good a man as he is, I'm telling you right now and you – if I'm wrong, you can say Chris, you're wrong – I don't care what agreement we reach. I don't care. There will be the same people who come up here and tell you that the Development Agreement is defective, that it doesn't have this. I've never seen any kind of development agreement that is this sloppily done. You can't even approve it because this.

We don't want to go through that. We don't want any of that anymore. We're tired. All of us are tired. All right. Those of us who live in this community are tired.

And what I was hoping the Development Agreement could do was put to rest the uncertainty that has made living there unbearable for a lot of people, especially like I said, when you're selling your home and they say, what's happening with the golf course, and you go, I don't know. It may be developed. It may not be.

There is a mentality on the other side, not the neighbors necessarily, but there's a mentality that they still want to see, if they can, no development. I was told early on by someone I respect very much that he would rather see it a desert than a single home built.

Now, that position may have changed, but that's what I'm dealing with. That's what all of us are dealing with. And I am just so much, I am so afraid that if we don't approve something tonight, that we'll get nothing. And that's what I think is gonna happen.

I think what's gonna happen on August 2nd, and maybe rightfully so, our new people are going to look at you and they're going to say: Mayor, Council people, we've only been here two weeks. We need to hold it another 30 days. And I'm not blaming them. I would probably, you know, think about saying the same thing. So now another $80,000 goes out. We're dying. And maybe that's what they want. Maybe they want this guy to die, so what, you know, I don't know. But I'm just telling you that's what I've been told to say.

I believe it for Mr. Lowie, and I'm very concerned about the fact if we were to say those three issues, Tudor, keep it green, Ravel Court, we resolve those three issues, that's not, I mean, I just don't believe that's going to be it. I think there is going to have the same people come up and say: Don't you realize the Master Plan and the General Plan and the zoning and all. Forget what these people think. We're experts. You guys here, you're just the guys that work for the City of Las Vegas.

To me, I've never seen a situation where you say I disregard completely what these gentlemen, who are as smart as you'll ever find, as thorough as you'll ever find, and would believe somebody else who says they're wrong. So whatever you do, God love you and bless you and keep you, but I'm just saying I can't guarantee what happens with a hold.

I think you ought to approve it, and I think you ought to say I trust you'll work those other issues out, and that will provide those people, most of us who live on that golf course, with two-acre lots guaranteed under a development agreement. Thank you.

YOHAN LOWIE

Mr. Jerbic, I just want to say, add one more thing. Condition number four is unacceptable. The golf course is dead. As of today, we cannot, no longer support irrigating and maintaining green on the golf course. So if you want to continue negotiation, item number four cannot be a part of this, a part of the negotiation.

Mayor, as I told you, you know, elections have consequences and so does continual denial of our application, and the ability of us financing this piece of property has consequences. And we cannot irrigate no longer.

MAYOR GOODMAN

All I can tell you is I said what I said very clearly, and I've said it to Mr. Jerbic. Every time he's gone in to try again with something, and last week he came to me and I said, How are we? And he said we are so close to this.

And I said it at the time that we voted on the corner of Rampart and Alta. I said it clearly. I cannot vote for any other project until we've got this resolved. And I believe this man; I've known him for 35 or 40 years. That puts you older than probably you are. But the reality is he delivers. He tells the truth to me. I'm not saying you have ever, but we don't have that length of the relationship. And because he's an attorney and because he's worked with you and your team and with the residents, and because I made a commitment that I didn't want it piecemeal – I'm not denying that anything that you touch you haven't – everything that I've seen, contrary to comments that aren't true, everything I know you will deliver the finest. You will deliver it.

I want to abey this. I want you to hang in to August 2nd. You can do that.

YOHAN LOWIE

No, I can't and I will not. And I just want to tell you something. I want to ask you a question. Under which legal theory are you forcing me to bring three different companies under one agreement and to give you one holistic project? I've tried it for two years. It doesn't work.

MAYOR GOODMAN

No, no, no. I know –

YOHAN LOWIE
You don't have – under which, on what are you relying? Which law are you relying to, to force me to do it?

MAYOR GOODMAN
No, no, no. I'm not. All I'm relying on the fact is I know the numbers have to pencil out for you. So when you reduce an area, in order to make it work for you as the developer, you've got to put more people in another area. It needs to be compatible with people that are homeowners, with the feeling of beauty – you can do it. You can do it.

YOHAN LOWIE
The 61 lot is compatible. The 61 lot you just denied is compatible.

MAYOR GOODMAN
I'm not saying it isn't.

YOHAN LOWIE
And every application from now on –

MAYOR GOODMAN
I'm not saying it isn't.

YOHAN LOWIE
Let me finish. Any other application we're going to bring from now on will be compatible. We are only going to bring R-PD7. You don't have to worry about development agreement. There is no development agreement, because we're going to bifurcate this property. I can no longer trust this Council to ever give us to develop the property.

MAYOR GOODMAN
Okay. Oh, wait a minute.

YOHAN LOWIE
Wait a minute. To ever allow us to develop the property.

MAYOR GOODMAN
No, no, no.

YOHAN LOWIE
It's a continuous denial.

MAYOR GOODMAN
If you want to divide the property, then we have something.

YOHAN LOWIE
What do you have?

MAYOR GOODMAN
Well, you just said you could bifurcate the property. You're not going to develop –

YOHAN LOWIE
Bifurcate it and sell it off in pieces. But do you think that the next applicant is going to come in and is going to come in here –

MAYOR GOODMAN
No –

YOHAN LOWIE
– and you're going to tell him about development agreement and the dream?

MAYOR GOODMAN
We're saying we are so close to this.

YOHAN LOWIE
Your Honor, we're not so close to it. Now you got further, further than any, because I cannot no longer hold the property. That's all. You made a decision, and I just want you to know that item number four cannot be negotiated, because we don't have the funding to do it.

MAYOR GOODMAN
Okay. All right. So where are we on this, Mr. Jerbic? What do we vote on this? I don't want to go into more public comment. I was hoping that we could just go ahead, abey everything, because we want to get the new Council person seated, have you and Tom Perrigo bring everybody up to speed, and then move this on the 2nd of August or earlier. But I did look at my calendar, and literally from the 19th to the 2nd, it is the proper two weeks.

BRAD JERBIC
Let me say my recommendation is still for abeyance. I will say that a lot of things Mr. Kaempfer said are correct. I think that I really do believe and it's true that there are going to be people that are going to oppose this. No matter what it is, no matter how many people like it, there's going to be a group that will never like it, and that's a given.
There's also this fear that issues will continue to open up, and there will be more and more demands. And that's where I have to use my skills to say enough is enough. And that's why I said tonight, speak now or forever hold your peace.
I think that they have these issues. If somebody comes to me now with an issue they should have come to me with months ago, I'm going to ignore them, because that's just not fair either. You

can't continue to whittle away at this agreement by throwing new things at it all the time. There's been two years for people to make their comments. I think that we are that close.
I know Yohan disagrees with me, but I do believe that – and if at the end of the day, and I'll make you this promise, Yohan, if at the end of the day, we're down to that one issue and that is the greening of the golf course and there's no agreement on that, I'll present it to the Council for their decision.

MAYOR GOODMAN
So is my comment –

BRAD JERBIC
I will not stop it from going to this Council, because we can't get an agreement on the greening of the golf course. I'll let them make the decision.

MAYOR GOODMAN
Okay.

BRAD JERBIC
And if the Council says greening is so important to us, we don't like it, they'll vote you down. And if they say the greening is something that, in the scheme of the entire agreement, isn't a hill to die for, then they'll vote you up. But that's how I plan to handle those issues that we can't negotiate through.

COUNCILMAN COFFIN
Your Honor?

BRAD JERBIC
I don't plan to use that as an excuse in the future to stop this Council from looking at an agreement. You've got my word on that.

COUNCILMAN COFFIN
Your Honor?

MAYOR GOODMAN
Please.

COUNCILMAN COFFIN
I'm afraid we've put our Council in a bad position using him as a negotiator. I think the fact is that he's done all he can, and I think that he should now be our counsel, and that if any negotiating happens, it should be between the members of the Council and the interested parties. He's at a point now where I don't want him to be compromised. Not only is he tired, but he also feels, you know, I'm sure he feels that it's futile.
But I remarked, I earlier remarked that I will still continue to work. And, you know, I may be heard to be just flapping my gums, but I'm still where I was in December that there could be something easy on the eyes, something very nice for these people and that land out there. So now that's my position. I'm still open minded, but I must continue –

MAYOR GOODMAN
Okay. What I'd like to do is move a question, with your permission down there, I am going to move to abey Agenda Item 130 to August 2nd, and then we're going to read into – **I'm going to make that motion to abey this Item 130 to August 2nd.** So that's my motion. Please vote. Where is Mr. Beers?

JAMES JIMMERSON
May we be heard? May the applicant be heard on this motion?

MAYOR GOODMAN
Mr. Beers. There's a motion to abey to August 2nd on Agenda Item 130.

JAMES JIMMERSON
Can we not be heard on that? Can both sides be heard on that matter, just for three minutes?

MAYOR GOODMAN
No, no. No. No. No.

JAMES JIMMERSON
We've not been heard on this matter at all.

YOHAN LOWIE
Your Honor, we're objecting to the abeyance under the law. Under 278A 0233, we're objecting to it. 278, I'm sorry, 0233. We're objecting to it. We're asking you, we're asking for a vote.

MAYOR GOODMAN
Okay. So you've made your record, and that's what's the most important thing. Could we please post the vote on the abeyance?

JAMES JIMMERSON
With our statement of law and rights in our final decision.

MAYOR GOODMAN
Okay. And so that motion carries **(Motion carried with Ross and Beers voting No)**. We are abeyed.

ITEM 82

MAYOR GOODMAN
I'm going to go to Agenda Item 82, Bill number 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 and Rampart. Sponsored by: Councilman Bob Beers.
I am going to make the motion. Oh, do we have to read that in? Yes, we'll read that in, please.

BRAD JERBIC
Your Honor, bill number 2017-27, an ordinance to adopt that certain development agreement, entitled "Development Agreement For The Two Fifty", entered into between the City and 180 Land Co, LLC, et al., and to provide for other related matters.

MAYOR GOODMAN
I'm going to move this be abeyed to August 2nd, with the new Council seated, please. That's my motion. Please vote, and please post. And that motion carries **(Motion carried with Ross voting No)**.
So, at this point –

CHRIS KAEMPFER
Your Honor?

MAYOR GOODMAN
– I'm gonna ask you, Mr. Jerbic –

BRAD JERBIC
Yes.

MAYOR GOODMAN
– as you speak with the developer team that you continue to do your best, depending upon where they come with this, and that you will meet, if, in fact, everything can move forward with the new seated Council, Ms. Fiore and Mr. Siroka, and make appointments for them to get up to speed with all these items so that they are ready to move forward on August 2nd, pending how you work forward and where needed with Mr. Perrigo joining in.

CHRIS KAEMPFER
Your Honor –

BRAD JERBIC
Thank you. We will.

MAYOR GOODMAN
Please. Could you speak –

CHRIS KAEMPFER
May I say a couple of words –

MAYOR GOODMAN
It's up to Councilman –

CHRIS KAEMPFER
– to the Councilman?

MAYOR GOODMAN
– my Council over here. Is that alright, more?

BRAD JERBIC
Oh, yes.

CHRIS KAEMPFER
I just want to say a couple of words to the departing Councilmen, if I might.

MAYOR GOODMAN
Yes, but please get closer 'cause you're so far up.

CHRIS KAEMPFER
Okay. I just wanted to say, Councilman Ross, Councilman Beers, thank you very much for all of the years of working together. The hard work, the compromise, whatever, you are both class gentlemen, and I know wherever, whatever you do, whatever you decide is better than this, you're gonna have a great time.
And I just want to say seriously, thank you for all of your hard work and for being such good people. And although it's not really cool any more to say it, I want to say God bless you and keep you well. Okay. Thank you.

COUNCILMAN ROSS
With your permission, Mayor? Thank you, Mr. Kaempfer.

MAYOR GOODMAN
Yes. Please, wait Mr. Kaempfer, he's responding.

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 34