

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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Aug 25 2022 03:11 p.m.
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**JOINT APPENDIX,
VOLUME NO. 88**

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

Nevada Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq.

Nevada Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq.

Nevada Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq.

Nevada Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

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

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, Esq.

Nevada Bar No. 4381

bscott@lasvegasnevada.gov

Philip R. Byrnes, Esq.

pbyrnes@lasvegasnevada.gov

Nevada Bar No. 166

Rebecca Wolfson, Esq.

rwolfson@lasvegasnevada.gov

Nevada Bar No. 14132

495 S. Main Street, 6th Floor

Las Vegas, Nevada 89101

Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM

Micah S. Echols, Esq.

Nevada Bar No. 8437

micah@claggettlaw.com

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

(702) 655-2346 – Telephone

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

McDONALD CARANO LLP

George F. Ogilvie III, Esq.

Nevada Bar No. 3552

gogilvie@mcdonaldcarano.com

Amanda C. Yen, Esq.

ayen@mcdonaldcarano.com

Nevada Bar No. 9726

Christopher Molina, Esq.

cmolina@mcdonaldcarano.com

Nevada Bar No. 14092

2300 W. Sahara Ave., Ste. 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

LEONARD LAW, PC

Debbie Leonard, Esq.

debbie@leonardlawpc.com

Nevada Bar No. 8260

955 S. Virginia Street Ste. 220

Reno, Nevada 89502

Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz, Esq.

schwartz@smwlaw.com

California Bar No. 87699

(admitted pro hac vice)

Lauren M. Tarpey, Esq.

ltarpey@smwlaw.com

California Bar No. 321775

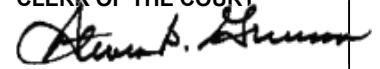
(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

Attorneys for City of Las Vegas



APPN
LAW OFFICES OF KERMITT L. WATERS

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

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability
company, FORE STARS Ltd., DOE
INDIVIDUALS I through X, 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,

Defendant.

Case No.: A-17-758528-J
Dept. No.: XVI

**APPENDIX OF EXHIBITS IN SUPPORT
OF PLAINTIFFS LANDOWNERS'
REPLY IN SUPPORT OF MOTION TO
DETERMINE TAKE AND MOTION FOR
SUMMARY JUDGMENT ON THE FIRST,
THIRD AND FOURTH CLAIMS FOR
RELIEF AND OPPOSITION TO THE
CITY'S COUNTER-MOTION FOR
SUMMARY JUDGMENT**

VOLUME 21

Hearing Date: September 23, 2021

Hearing Time: 1:30 p.m.

The Plaintiffs, 180 Land Co LLC and Fore Stars, Ltd. (hereinafter referred to as
“Landowners”) hereby submit this Appendix of Exhibits in Support of their Reply in Support of
their Motion to Determine Take and Motion for Summary Judgment on the First, Third and Fourth
Claims for Relief which also Opposes the City’s Counter-Motion for Summary Judgment as
follows:

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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

1	15	Motion to Dismiss Complaint for Declaratory and Injunctive Relief and in Inverse Condemnation, <i>Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.</i> , Case No. A-18-773268-C	2	000289-000308
2	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, <i>Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.</i> , Case No. A-18-773268-C	2	000309-000319
3	17	City's Proposed Findings of Fact and Conclusion of Law Granting City's Motion to Dismiss Complaint, <i>Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.</i> , Case No. A-18-773268-C	2	000320-000340
4	18	Order Denying City of Las Vegas' Motion to Dismiss, <i>Fore Stars, Ltd. Seventy Acres, LLC v. City of Las Vegas, et al.</i> , Case No. A-18-773268-C	2	000341-000350
5	19	City of Las Vegas' Motion to Dismiss, <i>180 Land Co., LLC v. City of Las Vegas, et al.</i> , Case No. A-18-775804-J	2	000351-000378
6	20	2.15.19 Minute Order re City's Motion to Dismiss	2	000379
7	21	Respondents' Answer Brief, Supreme Court Case No. 75481	2	000380-000449
8	22	Order Granting Plaintiffs' Petition for Judicial Review, <i>Jack B. Binion, et al vs. The City of Las Vegas</i> , Case No. A-17-752344-J	2	000450-000463
9	23	Supreme Court Order of Reversal	2	000464-000470
10	24	Supreme Court Order Denying Rehearing	2	000471-000472
11	25	Supreme Court Order Denying En Banc Reconsideration	2	000473-000475
12	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
13	27	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order of Judgment, <i>Robert Peccole, et al v. Peccole Nevada Corporation, et al.</i> , Case No. A-16-739654-C	2	000501-000545

1	28	Supreme Court Order of Affirmance	2	000546-000550
2	29	Supreme Court Order Denying Rehearing	2	000551-000553
3	30	November 1, 2016 Badlands Homeowners Meeting Transcript	2	000554-000562
4	31	June 13, 2017 Planning Commission Meeting Verbatim Transcript	2	000563-000566
5	32	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment, <i>180 Land Co. LLC, et al v. City of Las Vegas</i> , Case No. A-18-780184-C	3	000567-000604
6				
7				
8	33	June 21, 2017 City Council Meeting Combined Verbatim Transcript	3	000605-000732
9	34	Declaration of Yohan Lowie	3	000733-000739
10	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
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14	36	Master Declaration of Covenants, Conditions Restrictions and Easements for Queensridge	3	000742-000894
15	37	Queensridge Master Planned Community Standards - Section C (Custom Lot Design Guidelines)	3	000895-000896
16	38	Custom Lots at Queensridge Purchase Agreement, Earnest Money Receipt and Escrow Instructions	3	000897-000907
17				
18	39	Public Offering Statement for Queensridge North (Custom Lots)	4	000908-000915
19	40	Deposition of Yohan Lowie, <i>In the Matter of Binion v. Fore Stars</i>	4	000916-000970
20	41	The City of Las Vegas' Response to Requests for Production of Documents, Set One	4	000971-000987
21				
22	42	Respondent City of Las Vegas' Answering Brief, <i>Jack B. Binion, et al v. The City of Las Vegas, et al.</i> , Case No. 17-752344-J	4	000988-001018
23	43	Ordinance No. 5353	4	001019-001100
24	44	Original Grant, Bargain and Sale Deed	4	001101-001105

1	45	May 23, 2016 Par 4 Golf Management, Inc.'s letter to Fore Stars, Ltd. re Termination of Lease	4	001106-001107
2	46	December 1, 2016 Elite Golf Management letter to Mr. Yohan Lowie re: Badlands Golf Club	4	001108
3	47	October 30, 2018 Deposition of Keith Flatt, <i>Fore Stars, Ltd. v. Allen G. Nel</i> , Case No. A-16-748359-C	4	001109-001159
4	48	Declaration of Christopher L. Kaempfer	4	001160-001163
5	49	Clark County Real Property Tax Values	4	001164-001179
6	50	Clark County Tax Assessor's Property Account Inquiry - Summary Screen	4	001180-001181
7	51	Assessor's Summary of Taxable Values	5	001182-001183
8	52	State Board of Equalization Assessor Valuation	5	001184-001189
9	53	June 21, 2017 City Council Meeting Combined Verbatim Transcript	5	001190-001317
10	54	August 2, 2017 City Council Meeting Combined Verbatim Transcript	5	001318-001472
11	55	City Required Concessions signed by Yohan Lowie	5	001473
12	56	Badlands Development Agreement CLV Comments	5	001474-001521
13	57	Development Agreement for the Two Fifty, Section Four, Maintenance of the Community	5	001522-001529
14	58	Development Agreement for the Two Fifty	5	001530-001584
15	59	The Two Fifty Design Guidelines, Development Standards and Uses	5	001585-001597
16	60	The Two Fifty Development Agreement's Executive Summary	5	001598
17	61	Development Agreement for the Forest at Queensridge and Orchestra Village at Queensridge	5	001599-002246
18	62	Department of Planning Statement of Financial Interest	6	002247-002267
19	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
20	64	Department of Planning Statement of Financial Interest	6	002271-002273

1	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
2				
3	66	Department of Planning Statement of Financial Interest	6	002276-002279
4	67	Department of Planning Statement of Financial Interest	6	002280-002290
5				
6	68	Site Plan for Site Development Review, Parcel 1 @ the 180, a portion of APN 138-31-702-002	6	002291-002306
7	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
8				
9	70	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	7	002309-002501
10				
11	71	Location and Aerial Maps	7	002502-002503
12	72	City Photos of Southeast Corner of Alta Drive and Hualapai Way	7	002504-002512
13	73	February 14, 2017 Planning Commission Staff Recommendations	7	002513-002538
14	74	June 21, 2017 Planning Commission Staff Recommendations	7	002539-002565
15				
16	75	February 14, 2017 Planning Commission Meeting Verbatim Transcript	7	002566-002645
17	76	June 21, 2017 Minute re: City Council Meeting	7	002646-002651
18	77	June 21, 2017 City Council Staff Recommendations	7	002652-002677
19	78	August 2, 2017 City Council Agenda Summary Page	7	002678-002680
20				
21	79	Department of Planning Statement of Financial Interest	7	002681-002703
22	80	Bill No. 2017-22	7	002704-002706
23	81	Development Agreement for the Two Fifty	7	002707-002755
24	82	Addendum to the Development Agreement for the Two Fifty	8	002756

1	83	The Two Fifty Design Guidelines, Development Standards and Permitted Uses	8	002757-002772
2	84	May 22, 2017 Justification letter for Development Agreement of The Two Fifty, from Yohan Lowie to Tom Perrigo	8	002773-002774
3	85	Aerial Map of Subject Property	8	002775-002776
4	86	June 21, 2017 emails between LuAnn D. Holmes and City Clerk Deputies	8	002777-002782
5	87	Flood Damage Control	8	002783-002809
6	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
7	89	August 24, 2017 Access Denial letter from City of Las Vegas to Vickie Dehart	8	002816
8	90	19.16.100 Site Development Plan Review	8	002817-002821
9	91	8.10.17 Application for Walls, Fences, or Retaining Walls	8	002822-002829
10	92	August 24, 2017 City of Las Vegas Building Permit Fence Denial letter	8	002830
11	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
12	94	Declaration of Vickie Dehart, <i>Jack B. Binion, et al. v. Fore Stars, Ltd.</i> , Case No. A-15-729053-B	8	002835-002837
13	95	Supreme Court Order of Affirmance, <i>David Johnson, et al. v. McCarran International Airport, et al.</i> , Case No. 53677	8	002838-002845
14	96	De Facto Taking Case Law From State and Federal Jurisdictions	8	002846-002848
15	97	Department of Planning Application/Petition Form	8	002849-002986
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1	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
2	99	January 9, 2018 City Council Staff Recommendations	8	002990-003001
3	100	Item #44 - Staff Report for SDR-72005 [PRJ-71990] - amended condition #6 (renumbered to #7 with added condition)	8	003002
4	101	January 9, 2018 WVR-72007 Staff Recommendations	8	003003-003027
5	102	January 9, 2018 WVR-72004, SDR-72005 Staff Recommendations	8	003028-003051
6	103	January 9, 2018 WVR-72010 Staff Recommendations	8	003052-003074
7	104	February 21, 2018 City Council Meeting Verbatim Transcript	8	003075-003108
8	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
9	106	May 16, 2018 Council Meeting Verbatim Transcript	9	003119-003192
10	107	Bill No. 2018-5, Ordinance 6617	9	003193-003201
11	108	Bill No. 2018-24, Ordinance 6650	9	003202-003217
12	109	November 7, 2018 City Council Meeting Verbatim Transcript	9	003218-003363
13	110	October 15, 2018 Recommending Committee Meeting Verbatim Transcript	9	003364-003392
14	111	October 15, 2018 Kaempfer Crowell Letter re: Proposed Bill No. 2018-24 (part 1 of 2)	10	003393-003590
15	112	October 15, 2018 Kaempfer Crowell Letter re: Proposed Bill No. 2018-24 (part 2 of 2)	11	003591-003843

1	113	July 17, 2018 Hutchison & Steffen letter re Agenda Item Number 86 to Las Vegas City Attorney	11	003844-003846
2				
3	114	5.16.18 City Council Meeting Verbatim Transcript	11	003847-003867
4	115	5.14.18 Bill No. 2018-5, Councilwoman Fiore Opening Statement	11	003868-003873
5	116	May 14, 2018 Recommending Committee Meeting Verbatim Transcript	11	003874-003913
6	117	August 13, 2018 Meeting Minutes	11	003914-003919
7	118	November 7, 2018 transcript In the Matter of Las Vegas City Council Meeting, Agenda Item 50, Bill No. 2018-24	12	003920-004153
8				
9	119	September 4, 2018 Recommending Committee Meeting Verbatim Transcript	12	004154-004219
10	120	State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i>	12	004220-004224
11				
12	121	August 29, 2018 Bob Coffin email re Recommend and Vote for Ordinance Bill 2108-24	12	004225
13	122	April 6, 2017 Email between Terry Murphy and Bob Coffin	12	004226-004233
14	123	March 27, 2017 letter from City of Las Vegas to Todd S. Polikoff	12	004234-004235
15				
16	124	February 14, 2017 Planning Commission Meeting Verbatim Transcript	12	004236-004237
17	125	Steve Seroka Campaign letter	12	004238-004243
18	126	Coffin Facebook Posts	12	004244-004245
19	127	September 17, 2018 Coffin text messages	12	004246-004257
20	128	September 26, 2018 email to Steve Seroka re: meeting with Craig Billings	12	004258
21	129	Letter to Mr. Peter Lowenstein re: City's Justification	12	004259-004261
22	130	August 30, 2018 email between City Employees	12	004262-004270
23	131	February 15, 2017 City Council Meeting Verbatim Transcript	12	004271-004398
24	132	May 14, 2018 Councilman Fiore Opening Statement	12	004399-004404

1	133	Map of Peccole Ranch Conceptual Master Plan (PRCMP)	12	004405
2	134	December 30, 2014 letter to Frank Pankratz re: zoning verification	12	004406
3	135	May 16, 2018 City Council Meeting Verbatim Transcript	13	004407-004480
4	136	June 21, 2018 Transcription of Recorded Homeowners Association Meeting	13	004481-004554
5	137	Pictures of recreational use by the public of the Subject Property	13	004555-004559
6	138	Appellees' Opposition Brief and Cross-Brief, <i>Del Monte Dunes at Monterey, Ltd., et al. v. City of Monterey</i>	13	004560-004575
7	139	Respondent City of Las Vegas' Answering Brief, <i>Binion, et al. v. City of Las Vegas, et al.</i>	13	004576-004578
8	140	Grant, Bargain and Sale Deed	13	004579-004583
9	141	City's Land Use Hierarchy Chart	13	004584
10	142	August 3, 2017 deposition of Bob Beers, pgs. 31-36 - <i>The Matter of Binion v. Fore Stars</i>	13	004585-004587
11	143	November 2, 2016 email between Frank A. Schreck and George West III	13	004588
12	144	January 9, 2018 email between Steven Seroka and Joseph Volmar re: Opioid suit	13	004589-004592
13	145	May 2, 2018 email between Forrest Richardson and Steven Seroka re Las Vegas Badlands Consulting/Proposal	13	004593-004594
14	146	November 16, 2017 email between Steven Seroka and Frank Schreck	13	004595-004597
15	147	June 20, 2017 representation letter to Councilman Bob Coffin from Jimmerson Law Firm	13	004598-004600
16	148	September 6, 2017, City Council Verbatim Transcript	13	004601-004663
17	149	December 17, 2015 LVRJ Article, Group that includes rich and famous files suit over condo plans	13	004664-04668

1	150	Affidavit of Donald Richards with referenced pictures attached	14, 15, 16	004669-004830
2	151	65 Acres Combined Clark County Tax Assessor Summary of Taxable Values	17	004831-004836
3	152	Clark County Assessor Valuation (includes 65 Acre Parcel)	17	004837-004861
4	153	Taxes Assessed on 65 Acre Property	17	004862-004864
5	154	(1990) Zoning Ordinance Z-17-90 including the Peccole Ranch Plan (1990)	17	004865-004921
6	155	04.11.84 Attorney General Opinion No. 84-6	17	004922-004928
7	156	<u>Moccasin & 95, LLC v. City of Las Vegas</u>, Eighth Judicial Dist. Crt. Case no. A-10-627506, 12.13.11 City of Las Vegas' Opposition to Plaintiff Landowner's Motion for Partial Summary Judgment on Liability for a Taking (partial)	17	004929-004933
8	157	Affidavit of Bryan K. Scott	17	004934-004935
9	158	Affidavit of James B. Lewis	17	004936-004937
10	159	12.05.16 Deposition Transcript of Tom Perrigo in case <u>Binion v. Fore Stars</u>	18	004938-004946
11	160	December 2016 Deposition Transcript of Peter Lowenstein in case Binion v. Fore Stars	18	004947-005008
12	161	2050 City of Las Vegas Master Plan (Excerpts)	19	005009-005011
13	162	City of Las Vegas Ordinance No. 3636	19	005012-005020
14	163	10.18.16 Special Planning Commission Meeting Transcript (partial)	19	005021-005026
15	164	05.16.18 City Council Meeting Partial Transcript	19	005027
16	165	04.15.81 City of Las Vegas Commission Minutes re Zone Change Z-34-81	19	005028-005065
17	166	Fore Stars Membership Interest Purchase and Sale Agreement, dated Dec. 1, 2014	19	005066-005082
18	167	LVMC 19.16.090	19	005083-005088
19	168	LVMC 19.10.050 R-PD Residential Planned Development District	19	005089

1	169	LVMC 19.18.020	19	005090
2	170	LVMC 19.12010 CLV Land Use Tables	19	005091-005092
3	171	LVMC 19.06.100 R-2 Medium-Low Density Residential District Designation	19	005093-005097
4	172	11.30.16 Findings of Fact, Conclusions of Law, and Judgment Granting Defendants' NRC	19	005098-005122
5		12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, <u>Robert N. Peccole v. Peccole Nevada Corp. et al.</u> , Case No. A-16-739654-C		
6				
7	173	01.31.17 Notice of Entry of Findings of Fact, Conclusions of Law, Final Order, and Judgment, <u>Robert N. Peccole v. Peccole Nevada Corp. et al.</u> , Case No. A-16-739654-C	19	005123-005167
8				
9				
10	174	11.27.18 NV Supreme Court Order Denying Rehearing, <u>Robert N. Peccole v. Fore Stars, Ltd. et al.</u> , Case No. 72410	19	005168-005170
11				
12	175	10.17.18 NV Supreme Court Order of Affirmance, <u>Robert N. Peccole v. Fore Stars, Ltd. et al.</u> , Case No. 72455	19	005171-005175
13				
14	176	09.21.17 Clark County Assessor Appraisal Division Stipulation for the State Board of Equalization	19	005176-005178
15				
16	177	Chapter 278 applicable as of 1992	20	005179 – 005190
17				
18	178	10.16.030 General Plan Amendment	20	005191-005195
19				
20	179	City Master Plan Land Use Designations, showing the C-V zoning and PR-OS as consistent uses	20	005196-005198
21				
22	180	Letter from Landowners' attorney James Jimmerson to City Attorney Brad Jerbic dated December 7, 2016.	20	005199-005207
23				
24	181	Email from Peter Lowenstein to Landowners re submission of General Plan Amendment application filed under protest, dated November 13, 2017	20	005208
	182	Letter from Landowners to Peter Lowenstein re GPA Justification dated November 30, 2017	20	005209-005211
	183	The DiFederico Group Expert Report	20	005212-005347

1	184	Appraisal Report by Lubawy & Associates	20	005348-005350
2	185	Declaration of Tio DiFederico	20	005351-005352
3	186	November 1, 2016 Transcript of Badlands Homeowners Meeting	20	00535- 005361
4	187	August 16, 2019 Deposition Transcript of Clyde O. Spitze (In the matter of 180 Land Co. LLC vs City of Las Vegas, et al., A-17-758528-J)	20	005362-005376
5	188	Clark County Ordinance 728	20	005377-005390
6	189	January 7, 2019 Email from Robert Summerfield to Frank Pankratz	20	005391
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DATED this 15th day of September, 2021.

LAW OFFICES OF KERMIT L. WATERS

/s/ Autumn Waters

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

- 1
- 2
- 3
- 4
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- 11
- 12
- 13
- 14
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- 24

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

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

15508

Exhibit 191

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 JACK B. BINION, an individual;)
DUNCAN R. and IRENE LEE,)
4 individuals and Trustees of the)
LEE FAMILY TRUST; FRANK A. SCHRECK,)
5 an individual; TURNER INVESTMENTS,)
LTD., a Nevada Limited Liability)
6 Company; ROGER P. and CAROLYN G.)
WAGNER, individuals and Trustees)
7 of the WAGNER FAMILY TRUST;)
BETTY ENGLESTAD AS TRUSTEE OF THE) CASE NO.:
8 BETTY ENGLESTAD TRUST; PYRAMID)
LAKE HOLDINGS, LLC.; JASON AND) A-15-729053-B
9 SHEREEN AWAD AS TRUSTEES OF THE)
AWAD ASSET PROTECTION TRUST;) DEPT NO: XXVII
10 THOMAS LOVE AS TRUSTEE OF THE)
ZENA TRUST; STEVE AND KAREN THOMAS)
11 AS TRUSTEES OF THE STEVE AND KAREN)
THOMAS TRUST; SUSAN SULLIVAN AS)
12 TRUSTEE OF THE KENNETH J.)
SULLIVAN FAMILY TRUST, AND)
13 DR. GREGORY BIGLER AND SALLY)
BIGLER,)
14)
Plaintiffs,)
15)
vs.)
16)
FORE STARS, LTD., a Nevada Limited)
17 Liability Company; 180 LAND CO.,)
LLC, a Nevada Limited Liability)
18 Company; SEVENTY ACRES, LLC, a)
Nevada Limited Liability Company;)
19 and THE CITY OF LAS VEGAS,)
20)
Defendants.)
21)
22 VIDEOTAPED DEPOSITION OF PETER LOWENSTEIN
LAS VEGAS, NEVADA
23 THURSDAY, DECEMBER 8, 2016
24
25 Reported by: Monice K. Campbell, NV CCR No. 312

1 VIDEOTAPED DEPOSITION OF PETER LOWENSTEIN,
2 held at Pisanelli Bice, located at 300 South Fourth
3 Street, Third Floor, Las Vegas, Nevada, on Thursday,
4 December 8, 2016, at 9:40 a.m., before Monice K.
5 Campbell, Certified Court Reporter, in and for the
6 State of Nevada.

7
8 APPEARANCES:

9 For the Plaintiffs:

10 PISANELLI BICE PLLC
11 BY: TODD L. BICE, ESQ.
12 400 South Fourth Street
13 Suite 300
Las Vegas, Nevada 89101
(702) 214-2100
tlb@pisanellibice.com

14 For Fore Stars, Limited, 180 Land Co., LLC, and
15 Seventy Acres, LLC:

16 THE JIMMERSON LAW FIRM, P.C.
17 BY: JAMES J. JIMMERSON, ESQ.
18 415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
(702) 388-7171
jjj@jimmersonlawfirm.com

19 For the City of Las Vegas:

20 THE CITY OF LAS VEGAS
21 BY: PHILIP R. BYRNES, ESQ.
22 495 South Main Street, Sixth Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov

23 Also Present:

24 Frank A. Schreck, Esq.
25 Hunter Blackburn, The Videographer

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2		
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1 LAS VEGAS, NEVADA; THURSDAY, DECEMBER 8, 2016

2 9:49 A.M.

3 * * * * *

4 Whereupon,

5 (In an off-the-record discussion held
6 prior to the commencement of the
7 proceedings, counsel agreed to waive the
8 court reporter's requirements under Rule
9 30(b) (4) of the Nevada Rules of Civil
10 Procedure.)

11 THE VIDEOGRAPHER: This is the beginning
12 of video recording Number 1 in the deposition of
13 Peter Lowenstein taken in the matter of Binion versus
14 Fore Stars, et al., held at Pisanelli Bice, 400 South
15 7th Street, Suite 300 in Las Vegas, Nevada on
16 December 8, 2016. The time is approximately
17 9:40 a.m. The court reporter is Monice Campbell. My
18 name is Hunter Blackburn, the videographer,
19 representing Envision Legal Solutions.

20 Will the -- will everybody identify
21 themselves, please, beginning with the witness.

22 THE WITNESS: Sure.

23 Peter David Lowenstein.

24 MR. BYRNES: Phil Byrnes representing the
25 deponent and the city of Las Vegas.

1 MR. JIMMERSON: Good morning. My name is
2 Jim Jimmerson. I have the privilege of representing
3 the defendant, Fore Star entities.

4 Good morning everyone here.

5 MR. BICE: Good morning. Todd Bice on
6 behalf of the plaintiffs, and Frank Schreck will be
7 joining us. So when he steps in, that's who else may
8 be in the room.

9 MR. JIMMERSON: And may I say, Mr. Lowie
10 may or may not be here today.

11 MR. BICE: Okay.

12 MR. JIMMERSON: I mean, we will identify
13 it on the record later if --

14 MR. BICE: Right.

15 THE VIDEOGRAPHER: And will the court
16 reporter please swear in the witness.

17 PETER LOWENSTEIN,
18 having been sworn to testify to the truth, the whole
19 truth, and nothing but the truth, was examined and
20 testified under oath as follows:

21

22

23 EXAMINATION

24 BY MR. BICE:

25 Q. Good morning, sir. Can you state your

1 full name for the record, please.

2 A. Peter David Lowenstein.

3 Q. And, Mr. Lowenstein, can you tell me where
4 you currently work?

5 A. I work for the city of Las Vegas In the
6 Department of Planning.

7 Q. All right. And do you have a title in
8 your --

9 A. My current title is the planning section
10 manager.

11 Q. Can you tell me what it means to be the
12 planning section manager?

13 A. As a planning section manager, I am
14 responsible for the current planning division of the
15 planning department.

16 Q. Okay. What does the planning -- I think I
17 got it right. The planning section, what is that?

18 A. Our department is composed of a number of
19 different divisions and in the current planning
20 division is composed of -- what is known as case
21 planning which is land use entitlements and the front
22 or public planning which is our front counter
23 customer direction.

24 Q. Because you're using terminology I can
25 follow along here so I can make sure I use the

1 right -- the same words you're using. I just want to
2 make sure. My apologies.

3 A. Well, if there is any clarification, let
4 me know.

5 Q. I'm sure I will need some as we progress
6 today.

7 So when you say -- so let's just sort of
8 break that down.

9 You've got under the branch of current
10 planning and I guess really, is it a division?

11 A. Yes.

12 Q. Division?

13 A. Section, division would be synonymous.

14 Q. Sections. Got it.

15 Then there are two sort of subparts under
16 that. You said land use?

17 A. It's referred to as case planning.

18 Q. Case planning. Right. Okay.

19 And then you've got the front counter you
20 said?

21 A. Which is the public planning portion of
22 that division.

23 Q. Got it.

24 Okay. And both of those divisions report
25 to you?

1 A. That's correct.

2 Q. And who is -- who is in charge -- who is
3 the person that reports to you on case planning?

4 A. That would be my planning supervisor,
5 Steve Gebeke.

6 Q. Any chance you could spell that last name?

7 A. G-e-b-e-k-e.

8 MR. JIMMERSON: Can you help me with that
9 again, please, Mr. Lowenstein.

10 THE WITNESS: What was that?

11 MR. JIMMERSON: The spelling again.

12 THE WITNESS: Sure. G-e-b-e-k-e.

13 MR. JIMMERSON: The first name is Steven
14 did you say?

15 THE WITNESS: Steve.

16 MR. JIMMERSON: Steve. Thank you so much.

17 BY MR. BICE:

18 Q. And how long has Mr. Gebeke been
19 supervisor over the case planning?

20 A. He's been the supervisor on and off
21 throughout the last -- I'm approximating, but
22 probably six years. He's been the supervisor at the
23 front as well as on case, yes.

24 Q. But he's been involved in the current
25 planning department for a number of years, at least,

1 six years?

2 A. That's correct.

3 Q. All right. And who is the supervisor that
4 reports to you in public planning?

5 A. There is no immediate supervisor in the
6 public planning.

7 Q. When you mean there is no immediate
8 supervisor, does that mean you just don't -- the
9 position is vacant right now or --

10 A. Historically, the department has a
11 supervisor over each.

12 Q. Uh-huh.

13 A. With the loss of one of our supervisors,
14 the remaining supervisor took the lead on case and we
15 have a senior planner who's now taking the lead at
16 the front counter.

17 As far as, is there a vacant position, I
18 believe it's been filled with a senior administrative
19 assistant of some sort.

20 Q. And so then who is the person that reports
21 to you concerning the public planning division?

22 A. Both the senior planner and Mr. Gebeke are
23 still reporting to me on issues for the front
24 counter.

25 Q. Okay. And who is the senior planner?

1 A. That would be Jim Marshall currently.

2 Q. Okay. And how long has Mr. Marshall been
3 serving in that role?

4 A. I don't know the exact date. He's been
5 there at least a year.

6 Q. Okay. Do you know how long Mr. Marshall
7 has been working for current planning, regardless of
8 the title or capacity?

9 A. Our department planners tend to circulate
10 through the different divisions, so on and off, I
11 can't tell you exactly how much time he's been in
12 either one or the other. He's currently been in the
13 current planning division. As I stated previously, I
14 don't know the exact amount of time, but I estimate a
15 year at least --

16 Q. Okay.

17 A. -- if not longer.

18 Q. So what -- what does the case planning
19 division do?

20 A. The case planning is responsible for the
21 processing and preparing of staff reports for land
22 use entitlements that the -- either the appointed
23 body or elected body at the City of Las Vegas will
24 review and make their determinations on. They also
25 can handle administrative amendments to other land

1 use entitlements as well.

2 Q. All right. And what does the public
3 planning division do?

4 A. That is the front line, so to speak, a
5 customer interaction. So anybody who comes in with a
6 question or even process the building permits or
7 license applications, can get information from the
8 city planning department at the front counter as well
9 as have initial reviews by the planning department
10 on, say, that perspective, a specific portion of
11 their building permit or licensing application.

12 Q. Okay. So public planning doesn't --
13 doesn't handle any sort of zoning issues or land use,
14 or do they?

15 A. They -- unless we're short staffed, we're
16 not called upon to write detailed staff reports on a
17 regular basis.

18 Q. Okay.

19 A. If -- they are also asked to facilitate
20 research for anything from code enforcement actions
21 to zoning history.

22 Q. Okay. So is there anyone other than those
23 two positions, case planning and public planning,
24 that report directly to you?

25 A. The only other individual that reports to

1 me currently is our senior technical assistant who
2 does computer software, things of that nature.

3 Q. Okay. And how long have you been in the
4 planning -- in the current planning department?

5 A. Well, I've only done one period of time
6 where I was in the long-range division, so
7 subtracting that, about 12 years.

8 Q. Okay. When you say the long-range
9 division, what do you mean by that?

10 A. As previously stated, the planning
11 department has multiple divisions and the current
12 planning covers the case and the front counter. The
13 long-range division or comprehensive planning, as
14 some people may refer to it, is where individuals
15 work on special area plans, master plan, corridor
16 plans, things of a more macro scale.

17 Q. Okay. So to whom do you directly report?

18 A. I currently directly report to Tom
19 Perrigo, the acting -- the director as well as Karen
20 Duddleston, the deputy director.

21 Q. Okay. And so Mr. Perrigo is the director
22 of planning?

23 A. That is correct.

24 Q. And Ms. Duddleston is the deputy director
25 of planning?

1 A. That's correct.

2 Q. Are there any other positions to whom you
3 report?

4 A. No.

5 Q. Now, if I understand this correctly, and
6 I'm just trying to make sure I get the timeline
7 straight, you've been involved -- you've worked at
8 the city for more than 12 years?

9 A. In January, it will 14 years.

10 Q. In January, it will be 14. Okay.

11 So let's just sort of start
12 chronologically. You joined the city in what
13 position originally?

14 A. As an entry level planner, which is a
15 planner one position.

16 Q. Okay. And how long were you a planner
17 one?

18 A. I don't know. I would have to look it up,
19 but probably two years --

20 Q. Okay.

21 A. -- a year and a half, two years.

22 Q. I understand you can't be precise, but
23 we're just trying to get sort of a general
24 understanding of the timeline. That's all.

25 And so then your next position after you

1 moved from planner one after a couple of years was
2 what?

3 A. A planner two position.

4 Q. Got it.

5 And how long would you have been a
6 planner two?

7 A. Probably for a similar amount of time. I
8 don't know specifically.

9 Q. Got it.

10 And so when you were a planner one and
11 planner two, what would be your job duties in those
12 positions?

13 A. I started at the front counter, so as part
14 of the current planning department division --

15 Q. Okay.

16 A. -- which was customer interaction,
17 answering zoning questions, processing building
18 permits and licensing reviews --

19 Q. Got it.

20 A. -- doing research of that nature.

21 At some point, either as a planner one or
22 two, would have transitioned into the case planning
23 role where I would have prepared staff reports and
24 gone through doing reapplication conferences, bearing
25 the information and, ultimately, giving a

1 recommendation to our management team.

2 Q. And so then after you -- well, let me
3 phrase it this way.

4 What was your position -- what was the
5 next position after planner two?

6 A. I was promoted to a senior planner.

7 Q. Senior planner.

8 And what does that entail?

9 A. Basically, similar -- similar job
10 responsibility, just more responsibility, more
11 complex projects to review and to manage as far as,
12 you know, being the case planner assigned to it. I
13 also was facilitating assistance at the front
14 counter, basically making sure those operations ran
15 smoothly.

16 Q. Okay. So as a senior planner, were you --
17 was your primary responsibility in the case division?

18 A. I have to refer to the dates to -- so I
19 don't -- I don't recall off the top of my head. I
20 know as a senior planner, I was basically running the
21 front counter portion and reporting to a supervisor.

22 Q. Okay. And who was that supervisor you
23 would have been reporting to?

24 A. Well, there -- I don't know exactly.
25 There's been a couple supervisors through that course

1 of the time.

2 Q. Okay.

3 A. The majority of it going from maybe 2005
4 to 2008, more than likely, was Doug Rankin.

5 Q. Okay. And then the next position after
6 senior planner?

7 A. I became a planning supervisor.

8 Q. And what does it mean to be a planning
9 supervisor?

10 A. Well, your responsibility -- you're
11 responsible for the quality of the work, supervision
12 of performance, the overall processes of either --
13 whichever section you're over, making sure if you're
14 at the front counter, that those operations are
15 moving smoothly, you handle more difficult questions,
16 you have interaction with customers and if they want
17 to speak to somebody else other than the planner
18 they're originally speaking with.

19 Q. Okay.

20 A. On the case side of things, you would be
21 reviewing staff reports, ensuring quality of work
22 once again, ensuring basically that all the reports
23 are done in a timely manner, that things are being
24 processed in accordance with the policies and
25 procedures of the department and ultimately you're

1 writing performance evaluations for the employees
2 underneath you.

3 Q. Okay. As the planning supervisor, were
4 you in current planning or were you in the long-range
5 planning?

6 A. As a supervisor, I have been in both
7 divisions.

8 Q. Okay.

9 A. Primarily in the current planning
10 division.

11 Q. And as a planning supervisor, do you
12 recall approximately what years that you held that
13 position?

14 A. Well, I was promoted to section manager in
15 April of '15, so either -- go back seven years, seven
16 or eight years from there is the stint of as being a
17 supervisor.

18 Q. Got it.

19 So the next position is your current
20 position being section manager; is that right?

21 A. That is correct.

22 Q. All right. And so you were in that
23 position as planning supervisor for seven years or
24 so; is that about right?

25 A. I'd have to check my resume' but I believe

1 it's seven to eight.

2 Q. Seems like that? Okay.

3 A. Yes.

4 Q. So who would have -- to whom would you
5 have reported in your position as planning
6 supervisor?

7 A. To the planning manager, and most of it
8 was Doug Rankin for almost the entirety.

9 Q. Okay. And what was Mr. Rankin's role?

10 A. He was the planning manager. And as the
11 planning manager, he was over case planning and
12 current planning.

13 Q. Okay. So in your capacity today as
14 section manager, how many people do you have working
15 under you?

16 A. I have to count it on my fingers, but --

17 Q. Understood.

18 MR. JIMMERSON: He has a lot of fingers.

19 MR. BICE: Got it.

20 THE WITNESS: As of right now -- give me a
21 moment. I can read through all the name.

22 BY MR. BICE:

23 Q. You know what -- is it more than a dozen
24 people?

25 A. It's probably right about there.

1 Q. Fair enough.

2 So when you joined -- prior to joining
3 the City of Las Vegas, were you employed elsewhere?

4 A. I had graduated from East Carolina
5 University.

6 Q. Okay.

7 A. And there was a period of six months that
8 I was doing a job search.

9 Q. Got it.

10 A. So it was graduate school to this
11 employment.

12 Q. Okay. So do you have a graduate degree?

13 A. That I do.

14 Q. In what? Can you tell me?

15 A. I have a graduate degree in geography with
16 a concentration in urban development.

17 Q. Okay. And when did you receive that
18 degree?

19 A. In 2002.

20 Q. And so you moved here from North Carolina?

21 A. From graduating, I moved back to Long
22 Island, New York.

23 Q. Okay.

24 A. And then from there to here.

25 Q. So you're originally from Long Island?

1 A. That's correct.

2 Q. So it sounds like, and tell me if I'm
3 wrong, that your introduction to Las Vegas was
4 employment related?

5 A. Yes.

6 Q. Okay.

7 A. Safe to say.

8 Q. All right. Did you look at any documents
9 to prepare for your deposition today?

10 A. I refreshed my memory on the master plan.
11 I conferred with my counsel.

12 Q. Okay. Which master plan did you look at?

13 A. I looked at the Las Vegas 2020 Master
14 Plan.

15 Q. Okay. And how long did you look at the
16 Las Vegas 2020 Master Plan?

17 A. As an estimate of time, maybe 30 minutes.

18 Q. And what were you looking for in the Las
19 Vegas Master Plan?

20 A. I was looking at the land use element.

21 Q. You were looking at the land use element?

22 A. Mm-hmm.

23 Q. And what about the land use element were
24 you looking at?

25 A. In its entirety.

1 Q. And why were you looking at the land use
2 element?

3 A. To refresh my memory.

4 Q. And what memory were you trying to
5 refresh?

6 A. My general knowledge.

7 Q. All right. Did you look at any particular
8 land use elements for any particular property?

9 A. There's only one land use element as part
10 of the Las Vegas 2020 Master Plan.

11 Q. Okay. And what is that land use, what
12 would you -- how would you describe it for a layman
13 like myself?

14 A. As part of the -- of the general plan
15 prescribed by Nevada Revised Statutes, they require
16 certain elements to be part of the general plan. One
17 of those elements is the land use element.

18 Q. Okay.

19 A. And reviewing that portion of the Las
20 Vegas Master Plan, I know the names start changing,
21 but as far as -- the general plan is what the state
22 statute said, calls it. When they adopted it in
23 2000, they called it the Las Vegas 2020 Master Plan,
24 so they're kind of synonymous.

25 Q. Okay. So you -- do you use the term

1 "master plan" or do you use the term "general plan"?

2 A. They're kind of interchangeable.

3 Q. Interchangeable.

4 Okay. Did you look at any land use
5 elements for any particular property as part of your
6 review?

7 A. No. There's no such thing.

8 Q. All right. Did you look at any particular
9 property for your review?

10 A. No.

11 Q. Other than looking at the master plan, did
12 you review any other documents?

13 A. I think I looked at potentially emails.

14 Q. Okay. And how long did you spend looking
15 at emails?

16 A. Probably about 20 minutes.

17 Q. I'm sorry?

18 A. Probably about 20 minutes each time.

19 Q. Okay. And what emails were you looking
20 at?

21 A. I was just refreshing my memory as far as
22 chronology.

23 Q. And whose emails were you looking at?
24 Your own?

25 A. All the emails that I may have.

1 Q. Okay. And did you look at those -- were
2 they printed off or did you look at them on your
3 computer?

4 A. On the computer.

5 Q. And what was the -- what is your e-mail
6 address?

7 A. It's plowenstein@lasvegasnevada.gov.

8 Q. And about how many emails did you look at?

9 A. I don't know.

10 Q. Do you have those emails saved in a
11 folder?

12 A. Yes.

13 Q. Did you search the emails in any fashion?

14 A. No.

15 Q. You just looked at them in a chronological
16 fashion?

17 A. Correct.

18 Q. Did those emails refresh your recollection
19 of events?

20 MR. JIMMERSON: Mr. Bice, forgive me, I
21 did want to note the appearance of Mr. Lowie on the
22 deposition --

23 MR. BICE: Okay.

24 MR. JIMMERSON: -- and Mr. Schreck joined
25 us about 10 minutes earlier. Thank you, sir.

1 THE WITNESS: To a limited extent.

2 BY MR. BICE:

3 Q. Okay. But they did refresh your
4 recollection of some events?

5 A. Yes.

6 Q. Is that the only email address that you
7 use in your role at the city?

8 A. Yes.

9 Q. Do you ever use your personal email
10 address?

11 A. No.

12 Q. And what did those emails -- what was the
13 information that you gleaned from the emails that you
14 reviewed?

15 A. Approximate date of when dialogue started.

16 Q. Okay. And do you recall when that was?

17 A. July of 2015.

18 Q. And was there a particular email that
19 reminded you of the dialogue that started in July of
20 2015?

21 A. No.

22 Q. How do you save your emails? Is there a
23 folder that's designated for a particular project?

24 A. On projects? Yes. On large projects such
25 as things that involve development agreements, yes.

1 Q. Okay.

2 A. I create a folder for it.

3 Q. What is the name of the folder that you
4 have for this matter -- well, strike that. Let me
5 phrase it this way.

6 What's the name of your folder that you
7 looked at through?

8 A. It's called Badlands.

9 Q. Called Badlands.

10 And do you recall when you set up that
11 folder?

12 A. No, I don't recall.

13 Q. Are you responsible for setting it up or
14 is there someone else in the city that's responsible
15 for setting up the folder?

16 A. It would be my responsibility.

17 Q. Is there anything in that folder other
18 than your own emails?

19 A. It would be any emails that are relevant
20 to the project.

21 Q. Including -- here's what I'm trying to
22 understand so you can explain this to me a little
23 bit.

24 This folder, is that a city -- in other
25 words, a planning department wide folder where

1 numerous people emails get put into it or is it just
2 yours?

3 A. It is a folder within Microsoft Outlook
4 which from -- I can move any one of the emails that
5 were -- either I was sent or copied on, I can place
6 into that folder.

7 Q. Okay. But is it just the emails that you
8 place into that folder that are in there?

9 A. Correct. I would be the one that would be
10 able to move it into that folder.

11 Q. Okay. Other people -- because it sounds
12 like this is a local folder for your computer as
13 opposed to a network folder.

14 A. I can't speak to what our IT department
15 could do.

16 Q. Okay.

17 A. But I don't think anybody else has access
18 unless they logged in as me.

19 Q. As you?

20 A. Or administrator.

21 Q. Okay. And that Badlands folder, in
22 addition to emails, what else would you have in
23 there?

24 A. That's all it contains.

25 Q. That's all it contains. Okay.

1 All right. Any other documents -- other
2 than the master plan and reviewing your emails, any
3 other documents you looked at?

4 A. Just previous staff research --

5 Q. Okay.

6 A. -- in the sense of maps.

7 Q. Maps.

8 Okay. Anything else other than the maps?

9 A. Not that I recall, no.

10 Q. And what about -- what maps did you look
11 at?

12 A. The maps were unit counts. Basically,
13 geographic areas with dots identifying constructed
14 units versus nonconstructed units.

15 Q. And this is an internal map?

16 A. This was an internal exhibit map, yes,
17 that was created by the department.

18 Q. And when was that map created, do you
19 know?

20 A. I don't know.

21 Q. Did you create it?

22 A. I requested it to be created by our GIS
23 analyst.

24 Q. Okay. And who was the GIS analyst that
25 you asked to create the map?

1 A. Jorge Mortego.

2 Q. And do you recall approximately when you
3 requested Mr. Mortego to prepare that map?

4 A. That type of request has actually been
5 done more than once.

6 Q. Okay. When was the first time you
7 requested it?

8 A. I don't recall exactly, but some time ago.

9 Q. How many times have you requested such a
10 map be prepared?

11 A. Possibly three times.

12 Q. All right. And what does the map show?
13 It shows the units?

14 A. It shows existing unit counts.

15 Q. Okay.

16 A. It shows units not constructed.

17 Q. Does that mean units that are approved,
18 but not constructed?

19 A. Yes. It could be -- referred to as -- it
20 shows -- it identifies entitled units, but not
21 constructed units.

22 Q. So does it show anything other than
23 existing units and entitled units that are not
24 constructed?

25 A. It may refer to the land use case, which

1 entitled the subdivision or the multi-family
2 development.

3 Q. Okay. Anything else it would show?

4 A. Not that I recall. I would have to look
5 at it again to make sure.

6 Q. What's the purpose of creating such a map?

7 A. Information.

8 Q. Well, what was -- it was just for
9 information that you had it created?

10 A. Well, in reference to the project, we look
11 at the unit counts.

12 Q. Well, what are you -- what are -- strike
13 that. Let me put it this way.

14 Why are you looking at the unit counts?
15 What are you trying to determine?

16 A. When looking at the property, we look at
17 the previous land use entitlement history. And as
18 part of the previous land use entitlement history as
19 part of this project, there is a zoning case which
20 has a maximum number of units associated as a
21 condition of approval --

22 Q. Okay.

23 A. -- that was placed upon it by the city
24 council at the time. So to assess the total number
25 of units in that development area for conformance,

1 either above, below, where we stand, basically,
2 status.

3 Q. Okay. And so you've had that done -- why
4 would that need to be done more than once?

5 A. To make sure that it's been done accurate
6 and to make sure that if something wasn't looked at
7 the first time, that it was caught the second time.

8 Q. Were you asked by someone to do it more
9 than once?

10 A. No.

11 Q. And did Mr. Mortego, is he the one that
12 did it all -- better way to phrase it is, is it Jorge
13 Mortego who did it each time you asked?

14 A. I believe so.

15 Q. And how big is this map?

16 A. 11-by-17 inches.

17 Q. And how many -- have you saved all
18 versions of it that have been created?

19 A. I'm sure that he must have. I don't know
20 if I have every version.

21 Q. Understood.

22 And so when you looked at the map for --
23 prior to today for your deposition, what were you
24 looking at it for?

25 A. Once again, to assess unit counts.

1 Q. Unit counts.

2 What were the unit counts that are
3 contained on this map?

4 A. They're individual to each subdivision, so
5 I can't recall off the top of my head what the
6 numbers are on each one.

7 Q. Okay.

8 A. And then there's a total.

9 Q. Do you recall what the totals are?

10 A. No, I can't give you an exact number right
11 now. I would have to refer to the map.

12 Q. Look at the map, right, but you have that
13 map or the city has that map, right?

14 A. Correct.

15 Q. Okay. Now, where -- is the purpose of
16 that map to determine whether or not there are any
17 units available for further entitlement?

18 A. No. It's just to see where the -- where
19 the overall development is as far as what the unit
20 counts are.

21 Q. Based on what had previously been approved
22 by the city?

23 A. Mm-hmm.

24 Q. Is that right?

25 A. I've looked at the previous land use

1 entitlements --

2 Q. Okay.

3 A. -- and based on that map, it includes not
4 only -- it includes the Peccole Ranch Master Plan as
5 it's labeled when it was first adopted and then
6 amended subsequently. It includes both the phases of
7 the plan.

8 Q. Phase 1 and phase 2?

9 A. Mm-hmm. Because it's just one plan.

10 Q. Got it.

11 So here, I just need a quick
12 clarification with you. When I ask you a question,
13 because I do this all the time, too, that you just
14 need to answer "yes" or "no," not an "uh-huh" or
15 shaking of your head because she doesn't --

16 A. Okay. I apologize.

17 Q. That's quite all right. We all do that,
18 so -- I just want -- wanted to remind you of that so
19 she can make a clear record.

20 So you looked at the previous land use
21 approvals for phases one and phases two?

22 A. At one point or another, yes.

23 Q. All right. And is that the -- did you
24 then provide that information on the approved unit
25 counts to Mr. Mortego?

1 A. No. He did his own research.

2 Q. Okay. So on the research that you did,
3 did you create any internal documents concerning your
4 own research on the unit counts?

5 A. I have working documents. I'm not sure if
6 that's part of one or not. I'm sure I looked at unit
7 counts based on the research I requested from my GIS
8 analyst.

9 Q. And what sort of internal doc -- internal
10 working documents would you have?

11 A. They could be anything from hypothetical
12 scenarios to this is a prescribed procedure. This is
13 the process by which to achieve something. It could
14 be reference to looking at entitlements for specific
15 information. It could range. I mean, on a large
16 project, you look at a number of different things.

17 Q. Okay. And have you assembled all those
18 documents in this case?

19 A. I just had them saved on my computer.

20 Q. Okay. But you haven't provided copies of
21 those to the city attorney's Office?

22 A. Not to my recollection.

23 Q. And approximately -- what's the volume of
24 documents that we're talking about?

25 A. Well, there's meeting notes, there's

1 development agreement comments, there's other working
2 documents. So in total, maybe there's 25, somewhere
3 in there.

4 Q. Okay. And so meeting notes, what sort of
5 meeting notes would you have?

6 A. Meeting notes are just taking down
7 outstanding issues or issues that have been brought
8 up in our meetings that we had as far as reoccurring
9 meetings with -- in regards to the development
10 agreement or major project.

11 Q. Okay. Would those be meeting notes from
12 meetings with the developer?

13 A. Yes. They would include notes from issues
14 on the developer's side or issues on the city side.
15 It could be flood related, fire related. It could be
16 a planning issue. It could be a developer concern.

17 Q. Okay. Then you just -- are these
18 handwritten notes or are these typed up notes?

19 A. They're typed. Usually work off of a
20 surface tablet --

21 Q. Yeah. Okay.

22 A. -- which is -- that connects to the
23 network so they're all saved in the same place.

24 Q. Sure.

25 And those are saved on your device,

1 correct?

2 A. I guess they're in a document drive.

3 Q. Got it. Okay.

4 A. I don't know the architecture of the
5 computer system.

6 Q. Does it synch to the network?

7 A. I'm not sure if it's on the local drive or
8 it's on a network drive. I believe it's more of a
9 local drive, but the tablet's able to access the
10 local drive, so there is some kind of network
11 activity going on.

12 Q. Got it.

13 All right. Did you look at any of those
14 documents for your deposition?

15 A. No.

16 Q. And do you -- have you had -- other than
17 the unit count map we just talked about, have you had
18 any other maps created for the Badlands project?

19 A. There was the legal descriptions from a
20 zoning case, Z-17-90, that we had the city surveyor
21 plot out the areas in reference to legal descriptions
22 provided in that zoning case.

23 Q. And why did you have that done?

24 A. It illustrated the areas that were rezoned
25 by that zoning application.

1 Q. Weren't those legal descriptions already
2 in the map?

3 A. There -- they're written legal
4 descriptions. They're not illustrative.

5 Q. I see.

6 So you had the surveyor plot that on a
7 map for you?

8 A. Right. Based on the boundaries that are
9 called out in the legal description defining the
10 geographical area.

11 Q. And do you still have this map that the
12 surveyor created?

13 A. I do. I have a hard copy and it was
14 electronically uploaded to an FTP that was shared
15 with anybody that wanted it.

16 Q. Okay. Any other maps that you have had
17 created for the Badlands project?

18 A. Off the top of my head, I don't recall any
19 other ones, not to say that there wasn't other
20 research done.

21 Q. Sure.

22 So just to sort of summarize, we talked
23 about your reviewing the master/general plan, your
24 emails and the unit count map. Are there any other
25 documents that you reviewed for purposes of your

1 deposition?

2 A. Not that I recall. I mean, I worked on
3 various other projects during this time, so I'm
4 looking at other documents, such as the Unified
5 Development Code, every day.

6 Q. Sure. Yeah.

7 A. So not specifically for this.

8 Q. Okay.

9 MR. JIMMERSON: Madam Court Reporter,
10 would you please read the last question and last
11 answer?

12 (Record read as requested.)

13 MR. JIMMERSON: Thank you very much.

14 MR. BYRNES: Okay. I would like to just
15 speak to Mr. Lowenstein for a second.

16 MR. BICE: Absolutely.

17 Let's go off the record.

18 MR. BYRNES: Okay.

19 THE VIDEOGRAPHER: Going off the record.
20 The time is approximately 10:21 a.m.

21 (Recess was had.)

22 THE VIDEOGRAPHER: This is the beginning
23 of video recording number 2 in the continuing
24 deposition of Peter Lowenstein. We're back on the
25 record. The time is 10:26 a.m.

1 BY MR. BICE:

2 Q. Okay. Are there any other documents than
3 what we've gone over that you looked at to prepare
4 for your deposition?

5 A. I looked at the transcript for the
6 deposition of Tom Perrigo.

7 Q. Okay. And how long did you review that?

8 A. I don't recall how long it took me to read
9 it.

10 Q. Did you read the entirety of it?

11 A. Almost the entirety.

12 Q. Okay. Anything in there that you
13 disagreed with?

14 MR. JIMMERSON: Objection to the form of
15 the question. It calls for a narrative and attempts
16 to summarize a 300-page or 200-page document. It's
17 unfair to the witness.

18 MR. BYRNES: I join with that.

19 Go ahead and answer.

20 THE WITNESS: No.

21 BY MR. BICE:

22 Q. Okay. What was the purpose in reviewing
23 Mr. Perrigo's depo transcript?

24 A. I was provided it by counsel, so I read
25 it.

1 Q. Okay. Any other documents?

2 A. Not to my recollection.

3 Q. Understood.

4 Other than legal counsel, did you speak
5 with anyone about your deposition?

6 A. When Mr. Perrigo returned on Monday, we
7 had a scheduled meeting and he just made reference
8 that it went long and they talked about a number of
9 different things. That's the extent of our
10 conversation.

11 Q. Okay. Have you spoken to anyone else?

12 A. Just counsel.

13 Q. All right. So backing up a little bit,
14 you indicated that your email -- your folder, the
15 Badlands folder, indicated that April 2015 is when
16 you first learned about the Badlands Golf Course
17 development?

18 A. No.

19 Q. No?

20 A. I never stated that.

21 Q. My apologies. I must have misunderstood
22 then.

23 What did you first learn about then when
24 you were indicating April of 2015?

25 A. That's when I became the section manager.

1 Q. That's when you became a section manager?

2 A. That's correct.

3 Q. All right. When did you first learn about
4 development plans for the Badlands Golf Course?

5 A. I don't know an exact date, but I would
6 say July of 2015.

7 Q. Okay. And how did you learn about it?

8 A. Through my director.

9 Q. Would that be Mr. Perrigo?

10 A. That is correct.

11 Q. And what did Mr. Perrigo tell you?

12 A. I don't know the exact details of the
13 conversation, but in general, that the development of
14 the -- a redevelopment of the golf courses, you know,
15 project of that nature, and starting discussions on
16 that project.

17 Q. Was this -- who all was present for this
18 discussion that you had with Mr. Perrigo in or around
19 July 2015?

20 A. I don't recall. I'm assuming that we had
21 a verbal conversation about it. I don't recall any
22 specifics.

23 Q. Well, had an application been submitted?

24 A. No.

25 Q. Did he tell you how he knew about it?

1 A. No. Not that I am aware of or that I
2 recall. I don't know if he had a phone call, a
3 meeting or anything.

4 Q. All right. Well, what was your
5 understanding of what that development was going to
6 be?

7 A. The redevelopment of a portion of the golf
8 course to -- either a portion or in the entirety to
9 redevelop it for a combination of multi-family and
10 single family development.

11 Q. Okay. It was going to be a residential
12 development?

13 A. Both multi-family and single family
14 residential development.

15 Q. Okay. So had you, in your prior
16 experience, worked on the Peccole Ranch Phase 2
17 Master Plan?

18 A. Not to my recollection.

19 Q. Okay. Had you had any relation -- or any
20 work on any aspects of the Peccole Ranch Master Plan?

21 A. Of the master plan?

22 Q. Yes.

23 A. It was approved by city council prior to
24 my employment at the City of Las Vegas.

25 Q. How about any work subsequent on the

1 property within the master plan, after you joined the
2 City of Las Vegas?

3 A. Potentially. I would have to go back
4 through every case to see if I was a case planner,
5 supervisor or any of those, land use entitlements
6 spanning the 20-some odd years.

7 Q. Got it.

8 Okay. So when you first spoke to
9 Mr. Perrigo, I understand -- you had an understanding
10 that they were going to put a residential development
11 on the existing golf course; is that what you
12 understood?

13 A. On the property which is composed of the
14 golf course, yes.

15 Q. Okay. Did you have any understanding of
16 what -- what this residential development was going
17 to look like in terms of the number of units, et
18 cetera?

19 A. From -- I don't recall. I think I had an
20 initial conversation that I had. I don't think there
21 was any specifics.

22 Q. All right. So once you were told this by
23 Mr. Perrigo, what did you do next relative to the
24 Badlands project?

25 A. I don't recall specifically, but I believe

1 I created a meeting, potentially, to bring the
2 developer and to start going towards specifics.

3 Q. Okay. Was this -- would you characterize
4 this as a pre-application meeting?

5 A. It's ongoing dialogue. Usually on very
6 large projects, in the case of, say, the Sky Canyon
7 development agreement, we have numerous meetings and
8 then that qualifies as the pre-application
9 conference.

10 Q. Okay. So you believe you set up a meeting
11 with the developer?

12 A. With members of the city and the
13 developer.

14 Q. All right. And who did you consider the
15 developer to be?

16 A. More than likely, it was -- the point of
17 contact is Frank Pankratz.

18 Q. Okay. And would you communicate with him
19 via email?

20 A. I've communicated with Mr. Pankratz
21 through email, over the phone.

22 Q. Any other means of communication with
23 Mr. Pankratz other than via email or over the phone?

24 A. In person.

25 Q. Understood.

1 Any other meetings?

2 A. Potentially a text message.

3 Q. Okay. Do you -- what would you text
4 message Mr. Pankratz about?

5 A. I don't text him -- it would be in
6 response if he texted me.

7 Q. Okay. Is the cell phone that you use for
8 the text messaging, is that your personal cell phone?

9 A. Yes.

10 Q. What is the -- who is the carrier, the
11 service provider?

12 A. It's AT&T.

13 Q. AT&T.

14 And how long have you had this cell
15 phone?

16 A. This particular model, maybe a year, maybe
17 a little bit over a year.

18 Q. Do you text anyone at the city concerning
19 your work?

20 A. The only other person that would be texted
21 would be my director who has my number, but various
22 people have my phone number. I've had office
23 assistants communicate with me.

24 Q. Sure.

25 A. Licensing officers communicate with me.

1 Q. Has anyone else on behalf of the applicant
2 regarding Badlands texted with you?

3 MR. JIMMERSON: Object to the form of the
4 question.

5 THE WITNESS: I've had a text message from
6 Mr. Lowie.

7 BY MR. BICE:

8 Q. Mr. Lowie? How many text messages has
9 Mr. Lowie sent you?

10 A. Maybe three.

11 Q. Okay. Do you recall what those were
12 about?

13 A. Bourbon.

14 Q. What's that?

15 A. Bourbon.

16 Q. Bourbon.

17 Okay. Anything else?

18 A. No, not that I recall.

19 Q. And what is -- and we'll agree, for
20 purposes of the record, to keep it confidential, but
21 what is the cell phone number or the number that
22 Mr. Lowie would text you at?

23 A. 702-810-1088.

24 Q. And how long have you had that number?

25 A. Since I've had a cell phone.

1 Q. So a long time.

2 Have you deleted any text messages from
3 anyone concerning the Badlands Golf Course?

4 A. Not to my recollection.

5 Q. Have you deleted any emails from anyone
6 concerning the Badlands Golf Course?

7 A. If there are emails that say thanks,
8 things like that, potentially. So it's a possibility
9 that there are some pertinent ones I retained in a
10 folder.

11 Q. Got it.

12 Okay. So when you set up that first --
13 well, strike that. Let me put it this way.

14 So you're informed about this planned
15 redevelopment. Is someone in the city assigned to be
16 the supervisor over it?

17 A. Can you restate the question?

18 Q. Sure.

19 When you're informed by Mr. Perrigo about
20 this planned redevelopment of the Badlands Golf
21 Course, is someone in the city assigned to, I guess,
22 supervise or shepherd it through the process?

23 A. With his conversation to me, I'm assuming
24 that he basically assigned it to me --

25 Q. To you.

1 A. -- as I have been on other projects, the
2 lead on development agreements on larger projects of
3 that nature, and I've had that experience.

4 Q. Okay. So you were essentially assigned to
5 handle this project; is that accurate?

6 A. On the macro side of things, yes.

7 Q. Okay.

8 A. In regards to facilitating the meetings,
9 pertaining to the issues, making sure that it stays
10 on point, that people from throughout the entire city
11 are participating in it when they're needing to be
12 and to make sure that it's basically an ongoing
13 negotiation and to shepherd to the point where it
14 would be something that would be able to be submitted
15 to the city.

16 Q. Okay. And so who all was on your team to
17 work on this?

18 A. As part of the team, we -- our division
19 basically works as a team.

20 Q. Okay.

21 A. I have -- during this process, I have
22 conversations with Doug Rankin. I've had
23 conversations with the planning supervisor at the
24 time.

25 Q. Who would that be?

1 A. It could have been Andy Reed. He left the
2 city, I believe -- I don't know if it was early 2016
3 or late part of 2015.

4 Q. Do you know where he went?

5 A. He's at Nellis. I think he's the
6 planning -- community planner for Nellis Air Force
7 Base.

8 Q. Okay.

9 A. And then Steve Gebeke, Steve Swanton and
10 then when -- eventually, the items go before our
11 design review team for recommendations. That's the
12 entire case planning division.

13 Q. Did you say Steve Swan?

14 A. Swanton.

15 Q. Swanton.

16 A. He's a senior planner in the case planning
17 division.

18 Q. Okay. And you say "when items go to our
19 design review team for recommendation," that's the
20 entire case planning division?

21 A. Our current policy is that when we -- when
22 we have all the applications submitted for a certain
23 planning commission meeting, all those items are then
24 vetted and the design review team, which is composed
25 of all of the members of the case planning division,

1 as far as the case planners, not any administrative
2 assistants or anything like that.

3 Q. So how many people would that be?

4 A. Again, I'm going to go to the fingers.

5 It's approximately six, not including the
6 supervisor and a manager, so potentially eight.

7 Q. Okay. And what would these eight people
8 provide?

9 A. Their own input into the -- whichever
10 issues is being discussed and their own
11 recommendation on it and coming to a consensus at the
12 end.

13 Q. Okay. Would Mr. Summerfield be one of
14 those people?

15 A. A member of long range planning is
16 requested to be as part of the design review team to
17 get their perspective on its implications on the
18 general plan or master plan. I don't recall if he
19 was directly in there or it was some other
20 representative, or if any representative was in from
21 long range.

22 Q. So what's Mr. Summerfield's role at the
23 city?

24 A. He is the planning section manager over
25 the long range division.

1 Q. Okay. And to whom does he report?

2 A. He reports to Tom Perrigo as the director
3 and Karen Duddleston as the deputy director.

4 Q. Okay. So of these other people, the eight
5 other people that you said were in your design review
6 team, was there anyone of those eight people that was
7 principally responsible for this matter?

8 A. At the time when an application is
9 submitted, then it would be assigned to a case
10 planner to review, prepare, and write a staff report.
11 I believe -- depending on which applications you are
12 speaking to, Steve Swanton was responsible, was the
13 assigned case planner.

14 Q. Were there any others other than
15 Mr. Swanton assigned, designated as the assigned case
16 planner for the Badlands Golf Course applications?

17 A. No.

18 Q. All right. You indicated that one of the
19 first things you did after you spoke with
20 Mr. Perrigo, was you set up a meeting with the
21 developer?

22 A. I don't know what the overall timeline
23 from his initial letting me know that this project
24 had come about to when I set the meeting, but it was
25 organizing the city side and the community to the

1 developer side to coordinate that meeting or those
2 meetings from thereon.

3 Q. Okay. Where was the first meeting held?

4 A. I imagine it would be in the Charleston
5 conference room on the third floor at the Development
6 Service Center at 333 North Rancho Drive.

7 Q. All right. And do you recall -- do you
8 keep a log of who attends those meetings?

9 A. No.

10 Q. Do you recall who was in attendance?

11 A. Not with specificity -- not specifically.

12 I imagine from our side, we had public
13 works, which would be either Lucien Piet or Bart
14 Anderson. We would have fire. At that time, it
15 could have been either Chief Nolan, Chief Robert
16 Bash, who's no longer with the city or David Klein,
17 which I don't think it was him.

18 Traffic, which would have been Victor
19 Bolanos. I don't know if we had building and safety
20 in the room. If they were, it was Michael Cunningham
21 or Mike Bouse.

22 And then on the developer side, more than
23 likely, it was at a minimum, Frank Pankratz,
24 Mr. Lowie, and probably -- I don't know who else was
25 probably there, but over the course of different

1 meetings, there was different people that were in the
2 meeting.

3 Q. Okay. Who was -- who would be in
4 attendance at that first meeting from your
5 department?

6 A. It would be Mr. Perrigo, myself. I
7 believe, at that point, that might have been the only
8 two.

9 Q. And what was the purpose of that first
10 meeting?

11 A. I guess it's tantamount to like a kickoff
12 meeting, have everybody in the room to discuss scope
13 of the project, and then to go from there to see what
14 issues or concerns on both sides.

15 Q. All right. Were -- did the developer show
16 plans?

17 A. Not that I recall. It's a possibility.

18 Q. Did the developer -- what was your
19 impression from that first meeting of what the
20 developer was planning to do or going to propose to
21 do?

22 A. As I stated before, to propose a
23 redevelopment of that property into both multi-family
24 and single family development.

25 Q. This property was already within the

1 Peccole Ranch residential development, correct?
2 A. The Peccole Ranch Master Development Plan?
3 Q. Yes.
4 A. Yes. The subject property is --
5 Q. Is within?
6 A. -- is encompassed by that, yes.
7 Q. Okay. Is it already -- is this property
8 within the Queensridge residential area?
9 A. The Queensridge is a marketing name.
10 Q. Okay.
11 A. So is it -- can you be specific in the
12 question?
13 Q. Well, let me rephrase it this way then.
14 Is this property located within a
15 residential development, the golf course?
16 Is it located within a residential
17 development?
18 MR. JIMMERSON: Object to the form of the
19 question.
20 MR. BYRNES: Are you asking him what the
21 surrounding uses are or are you asking him --
22 BY MR. BICE:
23 Q. Did he consider the golf course to be
24 located within a residential development?
25 A. It was within Peccole Ranch Master

1 Development.

2 Q. Is Peccole Ranch Master Development, is it
3 a residential development?

4 A. It is a combination of uses which
5 encompass commercial, multi-family and single family
6 development.

7 Q. What about phase 2, is phase 2 of the
8 Peccole Ranch Master Plan development a residential
9 development?

10 A. Phase 2 is also composed of those various
11 components.

12 Q. Do you consider it to be a residential
13 development?

14 MR. JIMMERSON: Object to the form of the
15 question.

16 MR. BYRNES: Object. Vague and ambiguous.

17 BY MR. BICE:

18 Q. Have you ever -- I'll rephrase.

19 Have you ever told anyone that it is a
20 residential development, Peccole Ranch phase 2

21 A. Not to my recollection.

22 Q. Have you ever discussed it inside the city
23 that it is a residential development?

24 A. Not to my recollection.

25 Q. So do you consider it to be a residential

1 development, the Peccole Ranch phase 2?

2 A. I consider it to be a master development
3 plan as it was approved.

4 Q. Okay. What do you mean by master
5 development plan?

6 A. That is what it was approved as through
7 the city council. A master development plan is an
8 overall development plan for an area, which in this
9 particular case was composed of, at a minimum, three
10 different categories of commercial, multi-family,
11 residential, public facilities, open space, drainage,
12 all those numbers -- those components.

13 Q. Okay. So this master plan had multiple
14 components that were approved?

15 A. The development plan, yes.

16 Q. So was the -- when you met with
17 Mr. Pankratz and company, the applicant, were they
18 planning on changing those components in any fashion?

19 A. The subject property, its current use to
20 another use, so yes.

21 Q. Okay. And what was the current use of the
22 property that they were going to change?

23 A. It is known as the Badlands Golf Course.

24 Q. Okay. What is its current use?

25 A. As recreation. It's a golf course.

1 Q. And what were they going to change it --
2 what were they wanting to change it to?

3 MR. JIMMERSON: Object to the question as
4 being asked and answered.

5 THE WITNESS: To be a multi-family and
6 single family development.

7 BY MR. BICE:

8 Q. And did they -- when you first met with
9 them, did they talk about how many units that they
10 wanted to develop?

11 A. When we had our ongoing meetings, then the
12 unit count was made known.

13 Q. Okay.

14 A. And so I don't know which particular
15 meeting it was that we got the exact unit counts that
16 were being asked for originally.

17 Q. Okay. What were the original unit counts?

18 A. I'm going to try and recall, but I think
19 it was 3,020 or 3,060, somewhere in there. So I
20 don't know exactly, but I think it's one of those two
21 numbers.

22 Q. Okay. And was that broken up into single
23 family and multi-family resident?

24 A. If I recall, there was one portion of it
25 being single family. Those units were called out and

1 then the other side was multi-family units.

2 Q. Okay. So is it fair to say that from the
3 time in which you knew their plans, Mr. Pankratz and
4 company's plans, you knew that they intended to
5 develop this for multiple residences?

6 A. Meaning, more than one single-family
7 residence? Yes.

8 Q. Yes. You knew that they intended to have
9 several hundred residences, correct?

10 A. To develop it with multiple units as you
11 originally stated, that being, whatever the unit
12 count was, yes.

13 Q. Okay. So would it be accurate to say that
14 you knew that that was the intended use as of
15 August's of 2015?

16 MR. JIMMERSON: Object. That misstates
17 the witness' testimony.

18 BY MR. BICE:

19 Q. Are you saying you didn't know that as of
20 August 2015?

21 A. I don't recall. But I would assume that
22 if I started to learn about the project in July, by
23 August, it would be some understanding.

24 Q. Okay. So how many meetings or discussions
25 did you have with Mr. Perrigo about this project?

1 MR. JIMMERSON: Object to the question as
2 being vague as to time period. No foundation.

3 THE WITNESS: I don't recall.

4 BY MR. BICE:

5 Q. Would it literally be in the hundreds?

6 A. It could be.

7 Q. Okay.

8 A. I don't know a number.

9 Q. How about with Mr. Gebeke, would it again
10 similarly be in the hundreds?

11 A. Probably less than that.

12 Q. Probably less than that.

13 How about with Mr. Rankin?

14 A. Since he hasn't been employed with the
15 city for some time, so it would be less than that as
16 well.

17 Q. Okay. When did Mr. Rankin leave the city?

18 A. Not 100 percent sure. I think it was in
19 this past calendar year.

20 Q. Okay. And what was his role -- well,
21 strike that.

22 What was Mr. Gebeke's role in this
23 project?

24 A. As the planning supervisor, he would have
25 reviewed the staff report and made sure that it was

1 finished in time for the -- our regular deadlines,
2 internal.

3 Q. Okay. And what would Mr. Rankin's role
4 have been when he was there?

5 A. When he was there, as the planning
6 manager, you know, he still would have been a point
7 of -- basically, a person in which I could go to or
8 any other staff member could go to and discuss the
9 project with. I don't exactly recall what his role
10 at that moment.

11 Q. Well, when you -- when he was planning
12 manager, did you report to him?

13 A. Yes.

14 Q. And were you then reporting to him
15 concerning this project or this redevelopment plan
16 when he was there?

17 A. I don't recall if it was in August then
18 when I became section manager and I was reporting to
19 Mr. Perrigo, then we were in transition, and there
20 was a number of -- you know, if he was still working
21 on projects or whatever his assignment changes may
22 have been pursuant to whatever Mr. Perrigo assigned
23 him, there's a possibility that there was overlap.

24 But in regards to the functions of case
25 planning, he was still part of it in regards to

1 annexations and some other things, but once again,
2 those assignments and roles and responsibilities,
3 that wasn't something that I was necessarily privy
4 to. That would be the director's decision.

5 Q. All right. So I just need a little bit of
6 clarification. My apologies if this is backtracking
7 a little bit.

8 Well, you said that when you became
9 section manager --

10 A. Planning section manager to clarify.

11 Q. Planning section manager.

12 So what was your role then relative to
13 Mr. Rankin at that point?

14 A. I was a planning section manager. I was
15 over case and public. He was also over some
16 functions that were both in case and public. So
17 there was no clear demarcation where it was a split.
18 There was overlap in responsibilities that he would
19 still have to do as the planning manager.

20 Q. Was -- was your -- the position that you
21 assumed, section manager, was that a new position
22 for -- was that a newly created position at the city?

23 A. No. The former planning director, Flint
24 Fagg, actually created it.

25 Q. Okay.

1 A. And I believe it was first instituted in
2 business licensing division, and then subsequently,
3 it was filled in the planning divisions, meaning,
4 long range and current planning.

5 Q. So if you -- so when Mr. Fagg was there,
6 who would be the people that would have reported
7 directly to him?

8 A. As far as -- everybody reports to him.
9 He's the director.

10 Q. Mr. Lowenstein, I understand. That's not
11 a very good -- not a well phrased question.

12 Here's what I'm trying to have you sort of
13 conceptually draw for me, the hierarchy chart. You
14 would have Mr. Fagg who would have been the planning
15 director?

16 A. Mm-hmm.

17 Q. And then directly below Mr. Fagg would
18 have been whom?

19 A. For a period when there was no deputy
20 director, it was just the planning manager.

21 Q. And that would have been Mr. Rankin at
22 that time?

23 A. That is correct.

24 Q. Okay. And then -- but at some point, did
25 Mr. Fagg have a deputy director?

1 A. I believe that's when Karen Duddleston
2 became deputy.

3 MR. JIMMERSON: Mr. Bice, could you just
4 help with a time? In other words, when was the time
5 Mr. Fagg had a deputy manager.

6 BY MR. BICE:

7 Q. I'm just talking about when Mr. Fagg was
8 there. Mr. Fagg was the planning director for two
9 years, or was it longer than that?

10 A. I don't recall exactly whenever the former
11 director, Margo Wheeler, left --

12 Q. Right.

13 A. -- he assumed that role. I don't know the
14 exact dates.

15 Q. Okay.

16 A. So it could have been two plus.

17 Q. All right. So the hierarchy while at
18 least towards the end of Mr. Fagg's tenure, let's
19 deal with this towards the end of his tenure would
20 have been, he was obviously the director, the deputy
21 director would have been Karen Duddleston, and then
22 below her would have been the planning manager, which
23 would have been Mr. Rankin; is that correct?

24 A. That is correct.

25 Q. And so then where -- who would have been

1 below Mr. Rankin?

2 A. It would have been the supervisors.

3 Q. The supervisors.

4 And were you one of those supervisors?

5 A. That is correct.

6 Q. Okay. So it's sort of below Mr. Rankin,
7 it sounds like the chart would spread out then; is
8 that fair?

9 A. Is your question in regards to the
10 creation of the section manager?

11 Q. Yes, sir.

12 A. I can't really attest to what the thinking
13 of the director was in regards to why they created
14 that position.

15 Q. Okay. So were those -- the creation of
16 the section managers, was that sort of someone to be
17 on par with Mr. Rankin as the planning director?

18 A. Mr. Rankin as the planning manager?

19 Q. Planning manager. My apologies. You're
20 right.

21 A. And to my recollection from our
22 discussions when we were hired, meaning,
23 Mr. Summerfield and I were in a meeting with the
24 director and the managers, that it would alleviate
25 some of the daily grind stuff and the manager would

1 allow them to focus on our strategic initiatives,
2 some of the larger initiatives within the department
3 and the goals within the city of Las Vegas.

4 Q. Got it.

5 So when you became section manager, did
6 you really sort of have two reporting lines at that
7 point, one to the planning manager and one to the
8 planning director/deputy director?

9 A. There was, as I said, a period of overlap
10 where there was transition, so I would say, yes, for
11 a period of time.

12 Q. Okay.

13 A. I don't know exactly how long that was.

14 Q. When Mr. Rankin left, is there still the
15 position of planning manager?

16 A. There's a manager position, I believe,
17 that was filled in the business licensing side of the
18 planning department.

19 Q. Okay. But was his position, the position
20 that he was fulfilling at the planning department,
21 was it essentially subsumed by the people in your
22 position, the section managers?

23 A. As of this point, there is no planning
24 manager. As far as if it's still a vacant position
25 that could be filled, I don't know.

1 Q. Okay. But is it fair to say that, now,
2 the role of planning manager has really been
3 allocated to the section managers for the respective
4 sections?

5 A. That could be a fair statement.

6 Q. All right. Okay. So let's back up
7 then -- or actually, not back up. Jump forward now
8 since I got a little clarification on the hierarchy,
9 which I appreciate.

10 So you understand, as of this first
11 meeting that you had with them, that they were
12 proposing a residential development for the golf
13 course. And do you think that that's sometime as of
14 August of 2015?

15 A. As I stated, I think it was somewhere in
16 July and then we started having meetings going
17 towards August forward.

18 Q. Got it.

19 Okay. So would have that first meeting
20 that you think you had would have been sometime in
21 August probably?

22 MR. BYRNES: Objection. Asked and
23 answered.

24 MR. BICE: My apologies, Phil. If it
25 was -- I'm not saying it wasn't. I'm just a little

1 fuzzy on, I guess, the difference between meetings
2 where he was meeting with the developer as opposed to
3 meetings with Mr. Perrigo, which I understood that
4 first one happened in July.

5 So if I'm retracing some ground, my
6 apologies. I just want to make sure that -- for my
7 own self, it's clear.

8 THE WITNESS: As far as meetings,
9 coordinating city meetings with the developer, it
10 could have been the end of July and then into August.

11 BY MR. BICE:

12 Q. Okay. Got it.

13 Now, would you take notes of these
14 meetings?

15 A. As I stated, I would take meeting notes on
16 outstanding issues.

17 Q. And in your experience, do the other
18 participants at these meetings on behalf of the city,
19 do they take their own notes relative to their
20 involvement?

21 A. I can't say definitively, but I would
22 assume that they take some of their own notes.

23 Q. Okay.

24 MR. BICE: Can we stake a short restroom
25 break?

1 MR. BYRNES: Sounds okay to me.

2 MR. BICE: Let's go off the record.

3 THE VIDEOGRAPHER: Going off the video
4 record. The time is approximately 11:02 a.m.

5 (Break taken.)

6 THE VIDEOGRAPHER: This is the beginning
7 of video recording Number 3 in the continuing
8 deposition of Peter Lowenstein. The time is
9 approximately 11:09 a.m. We're back on the video
10 record.

11 BY MR. BICE:

12 Q. All right. So before we took the break,
13 Mr. Lowenstein, we were talking about these meetings
14 that you were setting up or the first meeting you had
15 set up with the developer and who had attended. So
16 let's go to the next meeting that you can recall.

17 Did you set up another meeting after the
18 first one?

19 A. I assume so. My recollection, I don't
20 know if there was immediately, but eventually, there
21 was a reoccurring standing meeting on Thursdays,
22 starting at, I believe, 2:00 o'clock that could go
23 until 4:30 was the regular schedule.

24 Q. All right. Were these meetings -- do you
25 maintain any form of a calendar?

1 A. Through Microsoft Outlook. I just add
2 those things to the calendar and add the invitees.

3 Q. Would those -- and this is on your city
4 computer, correct?

5 A. Yes.

6 Q. All right. Would the original meeting
7 that you had with the developers be reflected on your
8 calendar?

9 A. It should be, yes.

10 Q. And would it reflect who the attendees
11 were or the invitees, I guess?

12 A. It would be the invitees.

13 Q. Okay. And would each subsequent meeting
14 that you had with the developer be reflected on that
15 calendar?

16 A. It should be, yes.

17 Q. Okay. Who is responsible for maintaining
18 your calendar? Do you personally do it or do you
19 have an assistant?

20 A. Primarily myself, but I do have meetings
21 that come up on there that are from other people
22 requesting or from the executive assistant.

23 Q. Okay. And who is the executive assistant
24 that assists you?

25 A. Currently -- sorry. I don't know her full

1 name is. Miles is her abbreviated name.

2 Q. Okay. And how long has she been the
3 executive assistant assisting you?

4 A. She's not my direct executive assistant.
5 She's the executive assistant to the administrative
6 side of things, primarily, the director and the
7 deputy director.

8 Q. Okay. Do you have a direct administrative
9 assistant?

10 A. No. We have office assistants that we can
11 call upon, and as I inferred, we can call upon the
12 executive assistant as well.

13 Q. So I'll refer to her as Miles.

14 Is she the person though that would -- to
15 the extent you're not handling your meetings or
16 calendaring, would she be the one that would do that?

17 A. It's a possibility, yes. There really has
18 been no need on my side for --

19 Q. Okay.

20 A. I mean, I essentially get double booked.
21 I don't get quadruple booked.

22 Q. Okay. Would it be accurate to say that
23 she is principally the administrative assistant for
24 Mr. Perrigo and Mrs. Duddleston?

25 A. Yes.

1 Q. Okay.

2 A. That's fair to say.

3 Q. So let's keep marching along.

4 You said, at some point, there would be a
5 weekly meeting set for Thursdays at 2:00 o'clock?

6 A. Mm-hmm.

7 MR. BYRNES: Is that a "yes"?

8 THE WITNESS: Yes. Sorry. I apologize.

9 BY MR. BICE:

10 Q. And how many people would attend those
11 meetings, generally?

12 A. It depends on the scope of outstanding
13 issues. It depended on other people's schedules. It
14 could range, but to put an average, maybe three on
15 the developer side and five to six on the city side.

16 Q. Who would generally be the attendees on
17 behalf of the developer?

18 A. Most predominantly, it would have been
19 Mr. Pankratz, Mr. Lowie, and -- I'm forgetting --
20 well, they also had their technical side. So there
21 could have been somebody from GCW Engineering there
22 or from any other company.

23 Q. Okay.

24 A. The other individual would be Brent and
25 I'm forgetting his last name at the moment. I'm

1 sorry.

2 Q. Brett?

3 A. I think it's -- I think it's Brett.
4 Instead of Brent, I think it's Brett.

5 Q. Brett.

6 Okay. Now, were these meetings -- can you
7 tell me when these weekly meetings started relative
8 to when they first submitted an application?

9 A. I don't recall exactly, but if they
10 started at the end of July or into August, then the
11 application, the formal applications for the
12 Badlands, 17 was scheduled for January of '16, so it
13 would have been either the month before, at a
14 minimum.

15 Q. Month before they submitted any
16 applications?

17 A. No. Before they -- something is scheduled
18 at the planning commission meeting. I'm just working
19 in my head backwards from the meeting it was
20 scheduled from -- to potentially when they could have
21 submitted their applications, because I don't know
22 the exact dates.

23 There is -- just to clarify, there is a
24 lag because when you formally go through the process,
25 there are internal deadlines that need to be met and

1 state statutes --

2 Q. Right.

3 A. -- that need to be met before the item can
4 be heard. So our processes are built backwards from
5 that meeting date for when somebody's able to submit.
6 There's an application closing deadline and it's
7 usually -- approximately, a month back from the
8 actual meeting dates.

9 Q. Okay. So just so I'm a little clear on
10 this, were these weekly meetings started before an
11 application is submitted or after?

12 A. Before.

13 Q. Before.

14 Okay. Do you recall -- do you recall an
15 application that was proposed by city staff to add an
16 asterisk to certain density limitations in the
17 general plan --

18 A. I do.

19 Q. -- in 2015?

20 A. I do.

21 Q. Okay. What was your involvement in that?

22 A. As the section manager, I was asked in
23 regards to the planning community development
24 designation within the general plan or master plan,
25 to look at that as ability to be used as a tool which

1 would give the city council the discretion to grant
2 additional density for certain development that met
3 criteria. And in that process, reviewed that with
4 the other section manager and the planning manager,
5 and a consensus came up with those as potential -- as
6 a potential zoning tool.

7 Q. Well, who was the other section manager?

8 A. There was only one other, and that's
9 Robert Summerfield.

10 Q. Okay. And the planning manager that you
11 were referencing would have been Mr. Rankin; is that
12 correct?

13 A. That is correct.

14 Q. So the three of you discussed adding this
15 asterisk to the density criteria?

16 A. It would be to one of the tables within
17 the land use element of the Las Vegas 2020 Master
18 Plan. That asterisk, as I said, would provide the
19 city council the discretion to grant additional
20 density if it met the criteria of that, but in
21 reviewing that as a tool, we, as in that group,
22 discussed its feasibility for use in the city as a
23 whole.

24 Q. How did it first come up, this tool, what
25 you're calling the tool?

1 A. In reviewing the -- in reviewing the
2 development and utilization of the planned community
3 development and planned development zoning district,
4 that was looked at having the most flexibility and
5 the most security as a tool for dynamic projects.

6 (Mr. Harrison entered the proceedings.)

7 BY MR. BICE:

8 Q. You say in reviewing the development and
9 utilization of the planned community development.

10 What development are you talking about?

11 A. So in reviewing -- in light of the
12 Badlands project, brought focus to the potential need
13 for a tool that would help development in infill
14 projects. Now, as a citywide effect, because this is
15 not development specific, this is city specific. I
16 mean, it impacts the entire city.

17 Q. You say infill projects. What do you mean
18 by that?

19 A. Well, there is infill where you have --
20 such as undeveloped land or even developed land, such
21 as Cashman Center. You have a large property if it's
22 going to be redevelopment or infill development, then
23 you can use that interchangeably.

24 Q. So in other words, when you say infill
25 development, you mean, property that is otherwise

1 surrounded by existing development; is that correct?

2 A. In infill, it could have adjacent to it,
3 the -- someone development can be -- there is
4 different circumstances but, yes, that's one
5 scenario.

6 Q. Okay. So in this particular case, this
7 idea about an asterisk to grant the city discretion
8 to increase the density beyond eight was developed in
9 conjunction with the Badlands -- the plans for the
10 Badlands Golf Course, correct?

11 MR. JIMMERSON: Object to the form of the
12 question. Misstates the witnesses testimony.

13 THE WITNESS: No.

14 BY MR. BICE:

15 Q. It's not correct because -- so this was --
16 let me rephrase.

17 So is it your testimony that this was
18 developed prior to the Badlands project being
19 proposed?

20 A. No.

21 Q. Do you dispute that Mr. Perrigo told you
22 to come up with some tool to accommodate the Badlands
23 plans proposed?

24 MR. JIMMERSON: Objection. Misstates
25 Mr. Perrigo's testimony. You can read his deposition

1 as to that.

2 THE WITNESS: Yes.

3 BY MR. BICE:

4 Q. Okay. He did tell that you, didn't he?

5 A. That wasn't your question.

6 Q. Did he tell you that?

7 A. No.

8 Q. Okay. So he never suggested to you that
9 you needed to find a tool to accommodate the
10 developer here; is that right?

11 A. That's correct, he did not tell me.

12 Q. Did you ever tell that to Mr. Rankin?

13 A. Not to my recollection.

14 Q. So this tool that you're referencing,
15 according to you, is unrelated to the Badlands Golf
16 Course; is that right?

17 MR. BYRNES: Objection. Vague and
18 ambiguous based on unrelated.

19 Go ahead and answer.

20 THE WITNESS: In my mindset is that it
21 brought light to a need for the city.

22 BY MR. BICE:

23 Q. What brought light to a need?

24 A. In reference to your question, the
25 Badlands development brought into focus the potential

1 need for a tool for development.

2 Q. Well, what -- how is it that the Badlands
3 development brought into focus the potential need for
4 a tool for development? How did it do that?

5 A. Well, based on the complexity of such a
6 project, the planned community development and the
7 associated planning -- the planned development zoning
8 district, that -- that zoning district allows for the
9 ability to create something that would be more
10 compatible and harmonious with the adjacent uses in
11 the sense that it has flexibility. It also has
12 assurances. And in addition to that, its most
13 usually asked for a development agreement in addition
14 to that.

15 Q. You say the complexity of such a project,
16 the planned community development and the associated
17 planning.

18 What do you mean by "planned community
19 development"?

20 A. Can you repeat that?

21 Q. Sure. I'm just reading your answer, sir.
22 You said, based on the complexity of such
23 a project, the planned community development and the
24 associated planning.

25 So what do you mean by "planned community

1 development"?

2 A. Planned community development, land use
3 designation with the associated planned development
4 zoning district is what I was referring to.

5 Q. Okay. But what do you mean by "planned
6 community development"?

7 A. As a master plan land use designation.
8 Because to -- we tried to have compatibility between
9 the general plan and the zoning district, and as
10 such, the equivalent general plan designation
11 associated with the planned development zoning
12 district is planned community development land use
13 designation within the general plan.

14 Q. Planned community development meaning a
15 planned development; is that right?

16 MR. JIMMERSON: Object to the form of the
17 question.

18 THE WITNESS: The planned community
19 development is found all throughout the northwest on
20 undeveloped land. It has been used for master plan
21 communities. It has -- in my recollection of when it
22 was adopted out there was for almost a place holder
23 because they didn't know how it was going to develop.

24 BY MR. BICE:

25 Q. You said master planned communities. Tell

1 me what you consider to be a master planned
2 community.

3 A. Cliff's Edge, also known as Providence.
4 Lone Mountain.

5 Q. Any others?

6 A. Lone Mountain West.

7 MR. JIMMERSON: I'm sorry, something west?

8 THE WITNESS: Just to reiterate, Lone
9 Mountain and Lone Mountain West are both special area
10 plans and master planned communities.

11 BY MR. BICE:

12 Q. Does the city maintain a map of what it
13 calls planned communities?

14 A. If it does, it would be in the land use
15 element.

16 Q. Okay. Canyon Gate would be one, would it?

17 A. Potentially, yes.

18 Q. How about Desert Shores?

19 A. Potentially, yes.

20 Q. Los Prados?

21 A. Possibly.

22 Q. Painted Desert?

23 A. Possibly.

24 Q. Peccole Ranch?

25 A. As a --

1 Q. Planned communities.

2 A. As a planned community?

3 Q. Uh-huh.

4 A. Possibly, yes.

5 Q. When you say "possibly," are they, in
6 fact, designated as planned communities by the city,
7 the ones I've just listed?

8 A. Well, the planned community PC zoning
9 district is associated with Summerlin. The other
10 ones are other designations. They could be planned
11 PD, planned development. They could be a RPD,
12 residential planned development zoning district.

13 Q. Are they designated as master plan -- a
14 master development plan areas?

15 Canyon Gate?

16 A. It's possible.

17 Q. How about the lakes?

18 A. I don't know off the top of my head.

19 Q. Okay. How about South Shores, is that
20 designated as a master plan -- master development
21 plan area?

22 A. I'm not familiar with South Shores.

23 Q. How about Peccole Ranch?

24 A. It's possible.

25 Q. Sun City?

1 A. Sun City is a part of Summerlin.

2 Q. Well, would it be fair to say that you
3 researched all of this as part of working on the
4 redevelopment for Badlands Golf Course?

5 MR. BYRNES: Objection. Vague and
6 ambiguous.

7 What do you mean "all of this"?

8 BY MR. BICE:

9 Q. Did you research the planned community
10 designations in the city's code and the city's maps?

11 A. Well, as far as the procedures in which to
12 address a special area plan, yes, we looked at the
13 land use element, which denotes which ones require
14 major modifications and the other ones that don't.
15 Other ones that don't would go through a general plan
16 amendment, similar to what has occurred in Peccole
17 Ranch.

18 Q. Have you ever heard of the term -- have
19 you ever heard of the term "parent final map" before?

20 A. Yes.

21 Q. What does that mean?

22 A. It is indicative of a final map that
23 denotes large developer parcels that would be
24 developed in the future --

25 Q. What do you mean --

1 A. -- with subsequent mapping actions.

2 Q. What do you mean it's indicative of a
3 final map? Is there a difference between a final map
4 and a parent final map?

5 A. No.

6 Q. Okay. So a parent final map is just a
7 final map?

8 A. That is correct.

9 Q. Okay. What is the reference to the word
10 "parent," do you know?

11 A. It's -- as I stated, it would show large
12 developer parcels which would then be subsequently
13 developed with future mapping actions, other final
14 maps.

15 Q. Okay. Was there a final map recorded on
16 the Peccole Ranch phase 2?

17 A. I don't know off the top of my head, but I
18 would assume so.

19 MR. JIMMERSON: Objection. Move to strike
20 the answer as calling for an assumption.
21 Speculation.

22 BY MR. BICE:

23 Q. As part of your research, did you locate
24 the final map regarding Peccole Ranch Phase 2?

25 A. I don't recall. I may have.

1 Q. Was the golf course designated as a
2 particular parcel under -- strike that.

3 Was it designated as a particular parcel;
4 do you recall?

5 A. It currently is. I can't speak to what
6 was on the map without reviewing it.

7 Q. Okay. Well, let me show you this.

8 Have you ever heard of something called
9 FM-896

10 A. Not that I recall.

11 Q. Is FM in reference to final map typically
12 on the city's designations for maps?

13 A. For application numbers, it's usually
14 either FM, FMP dash, then a series of numbers, then
15 dash, for indicating the year --

16 Q. Okay.

17 A. -- or it's FMP dash and a series of
18 numbers in the newer system.

19 Q. What does FMP mean?

20 A. Final map.

21 Q. Is there a difference between FM and FMP?

22 A. It is just the cataloging that was used by
23 the city as far as application types --

24 Q. All right.

25 A. -- and databases.

1 Q. I'll show you this one and see if we're
2 talking about the same thing and you can explain it
3 to me.

4 MR. BICE: Mark this as 1, please.

5 (Exhibit Number 1 was marked.)
6

7 BY MR. BICE:

8 Q. Showing you what's Exhibit Number 1, do
9 you think you've seen this document before?

10 A. It's possible.

11 Q. Can you tell me what it looks like to you?

12 A. This looks to me to be the recorded final
13 map of Peccole West as titled book 77, page 23.

14 Q. And do you know what Peccole West is?

15 A. It is a title.

16 Q. Have you ever seen that description
17 anywhere else before?

18 A. I've seen the reference of the Peccole
19 name in numerous places.

20 Q. Okay. Does this show what you understand
21 to be Peccole phase 2?

22 MR. JIMMERSON: Object to the question.
23 He's not been able to demonstrate he has the ability
24 he know. He said he doesn't know and his answer --

25 MR. BICE: That's an inappropriate

1 speaking objection, Mr. Jimmerson.

2 MR. JIMMERSON: Objection. Calling for
3 speculation in light of the answer that you and I
4 both listened to, Counsel.

5 MR. BICE: Then if you want to list your
6 objection about it calls for speculation, fine, but
7 stop trying to coach the witness.

8 MR. JIMMERSON: And I have stopped --
9 coaching the witness? I have never met the man
10 before. Stop this coaching the witness --

11 MR. BICE: If you don't like --

12 MR. JIMMERSON: That's an unfair
13 characterization and that's the second time you have
14 made that.

15 MR. BICE: That's right. And I'm going to
16 continue to do it every time you do it.

17 MR. JIMMERSON: It's false. Don't lie.

18 MR. BICE: Stop doing it.

19 MR. JIMMERSON: Don't misrepresent on this
20 record, Counsel.

21 MR. BICE: Then you stop making those
22 inappropriate statements.

23 MR. JIMMERSON: I said I object on the
24 grounds it calls for speculation.

25 MR. BICE: And then you continue -- no,

1 you did not.

2 Read the transcript. Nice try.

3 MR. JIMMERSON: I'm happy to do that.

4 MR. BICE: Nice try at saving yourself.

5 MR. JIMMERSON: I didn't suggest any
6 answer in any comment that I made, Counsel.

7 MR. BICE: Yes, you did.

8 MR. JIMMERSON: What did I say that
9 suggested --

10 MR. BICE: Read the transcript. Let's see
11 if it says what you just represented.

12 MR. JIMMERSON: You can't even answer a
13 simple question.

14 MR. BICE: Let's move on.

15 MR. BYRNES: Could you repeat your
16 question?

17 MR. BICE: I can.

18 BY MR. BICE:

19 Q. Does this map show what you understand to
20 be Peccole Phase 2?

21 A. No.

22 Q. What does it represent relative to
23 Peccole, do you know?

24 A. A portion thereof.

25 Q. A portion thereof.

1 Do you know which portion?

2 A. From the geographical boundaries shown on
3 here, it shows east of the Hualapai Way.

4 Q. Okay.

5 A. A portion south and a portion north of
6 Alta Drive, north of Charleston and to the west of
7 Rampart Boulevard.

8 Q. Okay. Do you know what that shows in
9 laymen's terms? Is that the golf course?

10 A. It shows the geographical area and that
11 shows the number of lots to be recorded.

12 Q. Is one of those lot 5?

13 A. There's 11 lots on here, so I believe 5
14 would be one of them.

15 Q. All right. Do you know -- is there a
16 parcel 5?

17 A. Referred to as lots.

18 Q. Okay. I think I'm missing the second page
19 of this, but I'll see what I can do to find it.

20 MR. BICE: Mark this 2, please.

21 (Exhibit Number 2 was marked.)

22 BY MR. BICE:

23 Q. I believe there's a second page of this
24 letter that I'm missing, Mr. Lowenstein, but for
25 right now, have you seen this letter before?

1 A. Not that I recall --

2 Q. Okay.

3 A. -- but it's possible.

4 Q. All right.

5 MR. JIMMERSON: Mr. Bice, before you go
6 forward today, would you explain to us what is the --
7 and who is the author of the box at paragraph 2?

8 MR. BICE: I am. It's my intention to ask
9 the witness.

10 MR. JIMMERSON: Are you the one who drew
11 the box?

12 MR. BICE: No, but my team did.

13 MR. JIMMERSON: But the point is --

14 MR. BICE: It was not on the original.

15 MR. JIMMERSON: -- it was not there --

16 MR. BICE: That is correct.

17 MR. JIMMERSON: -- when it was originally
18 produced?

19 MR. BICE: That is correct. That is
20 absolutely correct.

21 BY MR. BICE:

22 Q. Looking at paragraph number 2, the one
23 that we have placed in a box, it says, "Parcel 5 must
24 be shown on this final map as public drainage
25 easement with private maintenance as per the approved

1 master drainage plan."

2 Do you see that?

3 A. I see that.

4 Q. Do you know that that -- do you know
5 whether that is in reference to the golf course, the
6 Badlands Golf Course or not?

7 A. Well, if this is the -- once again, we
8 don't have the complete document.

9 Q. Right.

10 A. And these are the conditions of approval
11 by the planning commission on the approval of a final
12 map. And that corresponding final map number shows
13 itself, or does it?

14 MR. JIMMERSON: Mr. Bice, can you make a
15 representation as to who is the author of the letter
16 since we don't have page 2 or 3, however many it is.

17 MR. BICE: I can't right now.

18 THE WITNESS: I don't -- unless you can
19 point it out to me, I don't see the final map number
20 represented on Exhibit 1.

21 BY MR. BICE:

22 Q. Okay. So you don't know whether Exhibit 1
23 is the final map or not; is that correct?

24 A. Repeat the question.

25 Q. So you don't know whether Exhibit 1 is the

1 final map that is being referenced in Exhibit
2 Number 2; is that correct?

3 A. There's -- common practice is to have the
4 final map number on the actual recorded final map
5 above the right -- bottom right-hand corner. I don't
6 see that, but on the assumption that it is.

7 MR. BYRNES: Again, the question is: Do
8 you know if it is?

9 BY MR. BICE:

10 Q. I'll rephrase. Do you believe that it is?

11 MR. JIMMERSON: Move to strike the answer
12 as being irrelevant. Calling for assumption.

13 THE WITNESS: Yes, it is.

14 BY MR. BICE:

15 Q. Okay.

16 A. Yes, based on similar titles.

17 Q. All right. So would you agree that this
18 is the final map for what is known as the Peccole --
19 what is identified as the Peccole West Subdivision?

20 MR. JIMMERSON: Object to the form of the
21 question in light of the prior answer. Calling for
22 speculation.

23 THE WITNESS: Exhibit 1?

24 BY MR. BICE:

25 Q. Yes, sir.

1 A. Yes.

2 Q. Okay. How do you -- how does one go about
3 amending a subdivision map and approved -- strike
4 that.

5 How does one go about amending a final map
6 of a subdivision?

7 A. Well, mapping is -- tends to be fairly
8 complicated and we usually rely on the city surveyor.
9 There are different processes to accomplish different
10 outcomes. So if you could be more specific, I might
11 be able to give you one of the mechanisms, but
12 ultimately, it's the city surveyor that makes the
13 determination on what is the best mapping action.

14 Q. Well, didn't you -- strike that. Maybe I
15 don't know this. I'll phrase it this way.

16 Did you previously work in mapping as part
17 of your responsibilities?

18 A. There was something called a maps team.
19 Maps teams reviewed building permits. Some of them
20 reviewed civil improvement plans and some reviewed
21 final maps.

22 Q. Okay. Have you ever told anyone that
23 adding additional lots to a final map of a
24 subdivision requires a new tentative map process?

25 MR. JIMMERSON: Object to the question as

1 to lack of foundation. Form. It's unfair to the
2 witness.

3 THE WITNESS: It's possible.

4 BY MR. BICE:

5 Q. Did you, in fact, tell the applicant here
6 that it required a new tentative map process?

7 A. It's possible.

8 Q. Okay. Did someone ask you to allow the
9 developer to subdivide the property without going
10 through the tentative map process --

11 MR. JIMMERSON: Object to the question.
12 Lack of foundation.

13 MR. BICE: Strike that. I'll rephrase.

14 BY MR. BICE:

15 Q. To further subdivide the property without
16 going through the tentative map process?

17 MR. JIMMERSON: Same objection. Lack of
18 foundation. When and where and between whom.

19 THE WITNESS: I don't recall. As I said,
20 the mapping actions, we usually defer to our city
21 surveyor.

22 BY MR. BICE:

23 Q. Well, did you talk to anyone in the city
24 about the mapping process for subdividing the golf
25 course?

1 A. Not that I recall, but it's not out of the
2 realm of possibility.

3 Q. So to find out -- is it your position to
4 find out about mapping, the person that you would --
5 or that I would need to consult is the city surveyor?

6 A. Yes.

7 Q. Okay. But you have been involved in
8 mapping before, have you not?

9 A. Through my tenure at the city, yes.

10 Q. Okay. Have you -- are you aware of any
11 circumstance where the city has allowed further
12 subdividing of a subdivision without going through
13 the tentative map process?

14 MR. BYRNES: Objection. That's an
15 incomplete hypothetical.

16 MR. JIMMERSON: Join.

17 THE WITNESS: Quite possibly in the Sky
18 Canyon and one of their developer parcels.

19 BY MR. BICE:

20 Q. When would the City have allowed that?

21 A. In maybe 2016. Other examples, I would
22 have to do research to see.

23 Q. Did you ever discuss the applicant wanting
24 to subdivide the golf course property without going
25 through the tentative map process with anyone in the

1 city?

2 A. Not that I recall. I recall having
3 conversations about mapping in general, but as -- not
4 in light of your question.

5 Q. Who did you discuss mapping in general
6 with about this applicant?

7 A. Well, in regards to applications being
8 submitted, we wanted separate parcels for -- so we
9 didn't create any kind of split designated parcel.

10 Q. What do you mean you wanted separate
11 parcels?

12 A. A portion of a larger parcel so that as
13 not to create a split designated, either zoning
14 district and/or land use designation.

15 Q. Okay. So you wanted the developer here to
16 subdivide the property further, correct?

17 A. As part of the submittal, we were looking
18 for that to be accomplished prior to notification,
19 yes.

20 Q. Okay. All right. So -- and did the
21 applicant then further subdivide the property?

22 A. I think they had -- to my recollection, it
23 was a subdivision prior to that and then subsequent
24 to that.

25 Q. All right. So prior to your request, you

1 say that they had already subdivided it once?

2 A. Possibly. I would have to go and look at
3 all the mapping actions to be clear on what dates.

4 Q. Okay. I'm going to have you mark this
5 white piece of paper as an exhibit.

6 (Exhibit Number 3 was marked.)

7 BY MR. BICE:

8 Q. I'm going to show you a blank piece of
9 paper, okay, as Exhibit Number 3.

10 A. I see it.

11 Q. All right. So would you slide that over
12 to me.

13 I want to understand your understanding of
14 what the city has done in the past. So if this is --
15 if this is the parcel, let's say that this is parcel
16 number 5, it's the golf course, I understand this is
17 a rectangle, but let's assume that it is. If I want
18 to subdivide that into two lots, do I have to go
19 through the tentative map process?

20 A. To my understanding, no. The tentative
21 map process would be used to establish an actual
22 subdivision of -- as a subdivision -- as a
23 residential subdivision.

24 Q. Okay. But if I'm -- if I'm going to come
25 to you -- so if I want to divide it into four lots,

1 do I have to go through the tentative map process?

2 A. To my understanding, if there are still
3 builder parcels and they're not actual imminent
4 development, no.

5 Q. Okay. All right. Even though you know
6 that I'm going to subdivide it further, is that
7 right, for residential development?

8 MR. JIMMERSON: Objection. Calls for
9 speculation.

10 THE WITNESS: That's calling for me to
11 assume that they're going to divide it into a
12 subdivision.

13 BY MR. BICE:

14 Q. Yeah. In other words, someone comes to
15 you and you know that they're going to subdivide it
16 further and further and further. But your position
17 is, as long as they just do four lots, they don't
18 have to go through the tentative map process; is that
19 correct?

20 A. Four lots or less.

21 Q. Four lots or less.

22 Okay. So they can do this and then they
23 can do this, correct, because now you've got a new
24 lot over here and now we can subdivide that down into
25 four more lots, is that right, without going through

1 the tentative map process?

2 A. Yes. And that has occurred in the
3 northwest, yes.

4 Q. Okay. And then they can do this?

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

6 Q. Right.

7 A. At a certain point, for improvements and
8 things like that, the Department of Public Works
9 would step in.

10 Q. Well, what do you mean "at a certain
11 point"? Who determines that certain point?

12 A. That's something that either -- public
13 works would be able to answer.

14 Q. Well, what's public work's involvement in
15 mapping?

16 A. They include the city surveyor under its
17 umbrella.

18 Q. Okay. So at what -- do you know what
19 point it is where you're not going to allow them just
20 to subdivide it under a parcel map amendment?

21 A. Well, from my own opinion, would be where
22 it shows that it's imminently turning into a
23 residential subdivision. It's not a parcel -- it's
24 actual development versus laying for future
25 development.

1 Q. Well, how many -- how many parcels does
2 that require?

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

4 Q. Well, where would I find the scale in the
5 city code so that I would know when I need to go
6 through the tentative map process as opposed to using
7 parcel maps to simply break it up?

8 A. I'm not aware if there is a scale in the
9 code. It would be -- probably go to the point where
10 the city has the ability to interpret its code.

11 Q. Are you aware that at Peccole Ranch, that
12 the city required the Peccoles to go through the
13 tentative map process to just create two parcels?

14 MR. JIMMERSON: Objection. Assumes facts
15 not in evidence.

16 THE WITNESS: I'm not aware. It's
17 possible.

18 BY MR. BICE:

19 Q. Well, have you investigated that?

20 A. I don't believe I investigated every
21 mapping action in the Peccole Master Plan.

22 Q. Well, did you investigate any mapping
23 actions at all concerning the Peccole Master Plan?

24 A. I would assume, at some point, I have
25 looked at the entitlements that lead themselves to

1 mapping.

2 Q. Have you specifically looked at any
3 mapping action concerning the Peccole Master Plan?

4 A. Yes. I just looked at Exhibit 1.

5 Q. Okay. Any others? Prior to the
6 deposition, have you looked at any mapping actions?

7 A. It is quite possible that I have.

8 Q. But you don't recall any of them?

9 A. There are at least one, two, three, four,
10 five potential subdivisions or less, more or less, in
11 there.

12 Q. Did you investigate any of those?

13 A. I may have looked at the recorded final
14 maps, yes.

15 Q. Did you -- did you look into the mapping
16 action -- or did you look into any of the mapping
17 actions in response to this lawsuit?

18 A. No.

19 Q. Did you ever tell anyone in the city that
20 you're not allowed to amend an existing subdivision
21 map by way of a parcel map?

22 A. I don't recall.

23 Q. Is that your -- is that how -- is it your
24 understanding that you can't amend an existing
25 parcel -- an existing subdivision map by way of a

1 parcel map?

2 A. So if you have a subdivision of a hundred
3 lots and you want to add two more lots to it?

4 Q. Yes.

5 A. The approved tentative map for -- and
6 we're talking lots for development of another
7 residential home on it, so that's what a
8 subdivision -- residential subdivision is for
9 individual homes, then that approval that you
10 received on the tentative map was less intense. The
11 intensification requires the new tentative map.

12 Q. So if you're going to increase the
13 intensity of an existing subdivision, you have to
14 file for a new tentative map, correct?

15 A. Correct.

16 Q. Even if you're just going to create two
17 lots?

18 A. Correct.

19 Q. And, in fact, the city has uniformly
20 applied that to everyone, has it not, to your
21 knowledge?

22 A. To my knowledge, yes.

23 Q. Bear with me one second.

24 And it was your understanding, is it not,
25 that since day one, the intent of the developer here

1 was to create a residential planned development?

2 A. Was to create a -- redevelop the site to
3 have multi-family and single family development.

4 Q. Do you know what a residential planned
5 development is?

6 A. In reference to the legacy zoning
7 district, R-PD?

8 Q. Sure.

9 A. That is what the residential -- to my
10 recollection, what a residential planned development
11 is.

12 Q. All right. So this -- this property
13 already was a residential planned development,
14 correct?

15 A. It is zoned residential planned
16 development, seven dwelling units per acre. Seven is
17 indicative of the density.

18 Q. Can you mark this provision -- first
19 provision of the city code, please.

20 (Exhibit Number 4 was marked.)

21

22 MR. JIMMERSON: Counsel, may I have copies
23 of your white piece of paper and have it marked,
24 please.

25 MR. BICE: We'll set it here and we'll get

1 a copy made.

2 MR. JIMMERSON: And did you mark it as an
3 exhibit?

4 MR. BICE: It has been marked as Exhibit
5 Number 3.

6 MR. JIMMERSON: So this will be 4 then?

7 MR. BICE: This will be 4.

8 BY MR. BICE:

9 Q. Showing you what's been marked as Exhibit
10 Number 4, have you seen this provision of the city
11 code before?

12 MR. BYRNES: Can you identify which
13 version of the code this is?

14 MR. BICE: I think this is from 2011.

15 BY MR. BICE:

16 Q. Do you know whether it still exists in the
17 city code, this requirement?

18 A. One moment. You want me to review what's
19 in the box?

20 Q. In the box, yes. And the red -- and your
21 copy is in red mark written in the box, yes. That's
22 my highlighting to bring it to your attention.

23 MR. JIMMERSON: Counsel, what is your
24 citation to this code? What is this code section?

25 MR. BICE: 19.06.

1 MR. JIMMERSON: Point what?

2 MR. BICE: .040, sub H, I believe.

3 MR. JIMMERSON: That's what I understand
4 because it's not apparent on the document, at least,
5 in my review of it. I see the H, but I don't see the
6 040.

7 MR. BYRNES: For the record, has your
8 office added the box to this page?

9 MR. BICE: Yes. But my apologies, Phil.
10 I thought I made that clear. We added the box to
11 bring -- to focus the witness' attention.

12 MR. BYRNES: Oh, thank you.

13 THE WITNESS: I have reviewed the box.

14 BY MR. BICE:

15 Q. Yes. Are you familiar with that
16 provision?

17 A. After reading it -- after reading it,
18 yeah. It hasn't been utilized since the adoption of
19 the Unified Development Code, and prior to that, we
20 were in a recession, so there really wasn't much
21 development, so it's been quite some time.

22 Q. Okay. But this code provision says that a
23 residential planned development shall follow the
24 standard subdivision procedure, correct?

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

1 Q. And from day one, you knew that this
2 developer was planning to create a residential
3 subdivision, correct?

4 A. They were planning on doing a multi-family
5 and single family development. Multi-family does not
6 necessarily include a mapping action.

7 Q. Okay. Did the -- does the single family
8 residential include a mapping action?

9 A. It would.

10 Q. Including a requirement that they submit a
11 tentative map, correct?

12 MR. JIMMERSON: Objection. Misstates the
13 witness' testimony.

14 THE WITNESS: It says "follow standard
15 subdivision procedure."

16 BY MR. BICE:

17 Q. All right. Let's then walk through what
18 you understand the standard subdivision procedure to
19 be.

20 MR. BYRNES: Are you saying now or in
21 2011?

22 MR. BICE: I'm going to say -- I'll
23 actually ask him now and then I'll ask him if it's
24 changed.

25 ///

1 BY MR. BICE:

2 Q. What is it now?

3 A. Depending on the type of development. So
4 do you have a specific type of development you would
5 like me to speak to?

6 Q. Sure.

7 Let's talk -- let's talk about the plans
8 for the Badlands Golf Course that you knew what they
9 were planning since July of '15, at least, you
10 personally did, correct?

11 A. That's when the initial conversation was
12 that development was being looked at on there. But
13 as far as the full plans, I can't tell you exactly
14 which date that was.

15 Q. All right. So what sort of mapping action
16 would be required if I came to you telling you that
17 I'm going to put more than 50 residential units on
18 the golf course? What's the mapping action that you
19 would require of me?

20 MR. BYRNES: Can you answer that
21 hypothetical?

22 I'm going to object as incomplete
23 hypothetical.

24 Are you saying single family?

25 Multi-family? Break it down.

1 BY MR. BICE:

2 Q. Let's do single family residential. I'm
3 going to put more than 50 units on this piece of
4 property. What's the mapping action that you
5 require, that the city requires?

6 A. Besides all the other land use
7 entitlements --

8 Q. Yeah.

9 A. -- specifically to the mapping action --

10 Q. Yeah.

11 A. -- you would do a tentative map and then a
12 final map.

13 Q. Okay. You would have to submit a
14 tentative map. And tell me, how does the tentative
15 map process work?

16 A. The tentative process, you would start
17 with a pre-application conference. You would then
18 receive a pre-application checklist, including a
19 tentative map checklist, from the Department of
20 Public Works. If both of those were signed off and
21 agreed that it can move forward for submittal, then
22 it would submit, then it would be scheduled for the
23 planning commission meeting, which it would then be
24 heard on the consent agenda.

25 Q. Okay. On the planned commission agenda,

1 it gets noticed to the public, correct?

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

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

4 A. If anything, it's the agenda --

5 Q. Go ahead.

6 A. If anything, the agenda is published and
7 the public has the ability to view the agenda.

8 Q. So in other words, it's a public hearing,
9 correct?

10 A. I would have to defer to the city attorney
11 as far as the open meeting law and what a public
12 hearing constitutes in regards to the consent agenda
13 versus the regular public hearing portion of the
14 agenda.

15 Q. Can you subdivide -- can you subdivide
16 property for purposes of creating a residential plan
17 development by way of administrative action without
18 the tentative map?

19 A. I don't believe so.

20 Q. Has the city ever allowed anyone to
21 subdivide property of an existing subdivision to
22 create greater density without going through the
23 tentative map process?

24 MR. JIMMERSON: Object to the question.

25 Assumes facts not in evidence. Incomplete

1 hypothetical.

2 MR. BYRNES: Join in that.

3 THE WITNESS: Well, going back to your
4 previous time, you asked that. In asking for
5 examples, I would say, yes, because if it was a
6 developer parcel not imminent to a residential
7 subdivision, there has been points where they have
8 allowed additional subdivision into, say, smaller
9 development parcels which would then have future
10 residential subdivisions to create the actual lots
11 for building and constructing homes on.

12 BY MR. BICE:

13 Q. And the one you can think of was Sky
14 Canyon, right?

15 A. At this point in time. I'm sure there's
16 other examples.

17 Q. Well, tell me what they are, if you say
18 you're sure of it.

19 A. Well, I can't recall the entire mapping
20 history of the City of Las Vegas.

21 Q. I don't think I was asking you for the
22 entire mapping history. I think I was asking you,
23 since you said you're sure of something, tell me what
24 you're talking about.

25 A. I apologize.

1 MR. JIMMERSON: Object to the question as
2 argumentative.

3 THE WITNESS: It's quite -- sorry. It's
4 quite possible that it happens in the Summerlin
5 Villages. It is quite possible that it has happened
6 in Cliff's Edge. It is quite possible that large
7 parcels have been subdivided in the Northwest, five
8 acre parcels that are chopped into two-and-a-half
9 acres and then are chopped into basically half acres.

10 BY MR. BICE:

11 Q. But you don't know? You're saying it's
12 possible.

13 A. I'm saying it's more than likely. I would
14 have to go and research it to give you exact
15 examples.

16 Q. So you would be able to research those and
17 find those for us or someone could, right?

18 A. Yes.

19 Q. Okay.

20 MR. BYRNES: For the record, I don't know
21 of any provision of Rule 30 that allows the
22 assignment of homework.

23 MR. BICE: I'm' not saying it does, but
24 Rule 33 does. No, no, no. I have no intention of
25 assigning him that as part of the deposition, Phil.

1 All right. Why don't we -- it's 12:10.
2 Why don't we take our quick lunch break and we'll see
3 you back here whenever you can come back, Phil.

4 A little after 1:00?

5 MR. JIMMERSON: 1:15. Okay.

6 THE VIDEOGRAPHER: Going off the video
7 record. The time is 12:04 p.m.

8 (Lunch Recess.)

9 THE VIDEOGRAPHER: This is the beginning
10 of video recording number 4 in the continuing
11 deposition -- sorry, I forgot your name.

12 BY MR. BICE:

13 Q. Mr. Lowenstein, you understand you're
14 still under oath, correct?

15 A. I do.

16 Q. All right. Let's go back to your proposed
17 general plan amendment that the staff had proposed
18 concerning the asterisks that we talked about.

19 Do you recall that?

20 A. I do.

21 Q. Do you recall when that item was put on
22 the planning commission agenda?

23 A. I believe it was the September planning
24 commission in 2015.

25 Q. Did you have any meetings with

1 Mr. Perrigo -- strike that.

2 Did you have any meetings internally in
3 the planning department concerning that submittal for
4 the planning commission meeting?

5 A. The submittal was -- or city initiated?

6 Q. The city initiated submittal.

7 A. There was a conversation with Robert
8 Summerfield and Doug Rankin regarding the creation of
9 the tool itself, and then from there on, those
10 recommendations were given to the director. And when
11 he said it was to move forward, we placed it on the
12 agenda and prepared the public notification, the
13 neighborhood meeting, in compliance with the meeting
14 law.

15 Q. What neighborhood meeting was held?

16 A. There was one neighborhood meeting. It
17 was advertised and held at the development service
18 center, I believe.

19 Q. Did anybody show up at it?

20 A. I don't recall the attendance.

21 Q. I'm sorry, were you in attendance?

22 A. I don't recall the attendance. I don't
23 know if I was in attendance either.

24 Q. When did the notice go out for that
25 neighborhood meeting, do you know?

1 A. It would have to have been probably ten
2 days or greater from the date of the meeting.

3 Q. And you're sure that it went out before
4 the meeting date was set?

5 A. I would have to double-check, but I'm
6 pretty sure, yes.

7 Q. Did you give any notice to the impacted
8 homeowners in the areas where you knew this tool was
9 being made available for?

10 A. We met the intent of the open meeting law
11 and that discretion was up to the director.

12 Q. But did you internally discuss whether or
13 not you should give notice to homeowners that you
14 knew were going to be impacted?

15 A. I gave a statement to the director as far
16 as we met the open meeting law and any other meetings
17 would be at his discretion.

18 Q. Did you and Mr. Rankin -- strike that.
19 Did you discuss with anyone whether or not
20 additional people should be notified?

21 A. I don't recall.

22 Q. Do you dispute that you did?

23 A. If I don't recall, how can I dispute it?

24 Q. Okay. Do you recall whether you discussed
25 that specific fact with Mr. Rankin?

1 A. I'm not sure. I don't recall.

2 Q. Well, did you and Mr. Perrigo have any
3 discussions -- were you at the planning commission
4 meeting when this item was heard?

5 A. I believe I was.

6 Q. Did you have any discussions with
7 Mr. Rankin in advance of the planning commission
8 meeting about making sure that the matter wasn't held
9 in abeyance?

10 A. That's not in my purview.

11 Q. That's --

12 A. That's not on my scope. I don't have any
13 conversation like that.

14 Q. I'm sorry?

15 A. I did not have any conversation like that.

16 Q. Did you overhear any conversations like
17 that?

18 A. No.

19 Q. Did you ever discuss that fact with the
20 deputy director?

21 MR. JIMMERSON: Objection. Assumes facts
22 not in evidence.

23 THE WITNESS: No.

24 BY MR. JIMMERSON:

25 Q. The question is failed because it claims

1 it to be a fact when there is no facts to demonstrate
2 yet.

3 Did you discuss the issue of abeyance with
4 Mr. Rankin?

5 A. No, not that I did.

6 Q. What happened to that agenda item?

7 A. That agenda item, if I recall, the meeting
8 was held in abeyance.

9 Q. Was there any controversy about holding it
10 in abeyance?

11 A. There was public input on it, and
12 regarding that public input, the item was held in
13 abeyance.

14 Q. Did you provide any input to the planning
15 commission concerning that item?

16 A. The only time I would have had the ability
17 to do so would be at the PC -- the planning
18 commission chair briefing, which is usually attended
19 by the director and planning manager.

20 Q. Were you in attendance at that?

21 A. I'm not sure. I would have to check the
22 calendar and make sure that I was there or not, but I
23 don't recall off the top of my head.

24 Q. Well, was the chairman of the planning
25 commission informed that this tool was being -- that

1 this tool was being put on the agenda now because of
2 the forthcoming plans on the Badlands Golf Course?

3 A. Well, I don't recall if I was at the
4 meeting first. If I was at the meeting, I don't
5 recall that conversation.

6 Q. Is that something that would customarily
7 be disclosed to the chairman of the planning
8 commission?

9 A. The item would be discussed as far as its
10 impact on the city.

11 Q. Would the item be -- would the impact on
12 specific neighborhoods be discussed or disclosed to
13 the planning commission?

14 MR. BYRNES: Are you asking a hypothetical
15 as to a conversation?

16 MR. BICE: I'm asking his general
17 practice.

18 MR. BYRNES: Just any planning commission?

19 MR. BICE: The chairman's meeting.

20 MR. BYRNES: But as to any planning
21 commission item?

22 BY MR. BICE:

23 Q. As to a planning commission item, if it
24 was going to impact a specific neighborhood, would
25 you discuss that with the planning commission

1 chairman?

2 MR. JIMMERSON: Objection to form.

3 Incomplete hypothetical.

4 THE WITNESS: In regards to planning
5 commission items, they are discussed, as far as site
6 specific, and then you have the secondary impact of
7 the applications.

8 BY MR. BICE:

9 Q. Well, did you disclose or would you
10 disclose to the chairman or any other planning
11 commissioners that an application had been already
12 filed in anticipation of this -- of this change to
13 the general plan?

14 MR. JIMMERSON: Objection. Assumes facts
15 not in evidence.

16 MR. BYRNES: Also incomplete hypothetical.

17 THE WITNESS: I don't recall.

18 BY MR. BICE:

19 Q. Well, did you not know that the applicant
20 had already filed an application on August 26th to
21 try and take advantage of this anticipated change?

22 A. Yes.

23 Q. Did you disclose that to any of the
24 planning commissioners?

25 A. It is possible, yes.

1 Q. Well, I didn't ask -- let's break it down.
2 Did you actually do so or are you saying
3 maybe you did?

4 A. I don't know if you're asking
5 Mr. Lowenstein personally.

6 Q. Yes, I am.

7 A. I personally don't recall.

8 Q. Did you disclose it to anyone in the city
9 council?

10 A. I personally don't recall.

11 Q. Was that application filed before you held
12 what you characterize as the neighborhood meeting?

13 A. I would have to know the dates to be able
14 to answer that question.

15 Q. Well, if the neighborhood meeting was
16 going to be held after that application would be
17 filed, wouldn't you want to alert the specific
18 neighborhood where the application was pending?

19 A. Would I?

20 Q. Yes.

21 A. As a matter of preference is what you're
22 asking?

23 Q. Yes.

24 A. I was following the standard policies of
25 our department. And to initiate additional

1 notification is something that would have to be the
2 call of the director.

3 Q. But did you make any recommendations for
4 the director about issuing additional notifications?

5 A. As I previously stated, I made a statement
6 to him saying that any other notifications would be
7 at his discretion.

8 Q. Did you make a recommendation to him as to
9 whether he should exercise his discretion in any
10 particular fashion?

11 A. Not that I recall.

12 Q. Did anyone else, to your knowledge?

13 A. Not that I recall.

14 Q. When the item was held in abeyance, did
15 you get a phone call from anyone?

16 A. No.

17 MR. BYRNES: Regarding the item?

18 MR. BICE: Regarding that item, yes.

19 MR. BYRNES: I'm sure he's received phone
20 calls.

21 MR. BICE: I'm sure he has, too.

22 BY MR. BICE:

23 Q. Did you talk to anyone about the item
24 being held in abeyance?

25 A. Not that I recall, no.

1 Q. Did you ever subsequently talk to
2 Mr. Perrigo about the item?

3 A. As he's the director of the department,
4 I'm sure I spoke to him.

5 Q. Okay. What about?

6 A. About the -- what he wanted to do with the
7 item.

8 Q. And what was done with it?

9 A. I think, ultimately, his recommendations
10 was to table it for further consideration.

11 Q. And was that done?

12 A. I believe the planning commission accepted
13 that recommendation and approved the tabling of the
14 item.

15 Q. Have you taken any further action on the
16 item?

17 A. To my knowledge, no.

18 Q. Did you -- were you involved in the
19 preparation of the staff report for that item?

20 A. The senior planner, James Marshall, also
21 known as Jim Marshall, prepared that staff report.

22 Q. I understand, but were you also involved
23 in its preparation?

24 A. Not to my recollection, no.

25 Q. You didn't provide any input into it?

1 A. He was given direction as far as what the
2 zoning tool was supposed to be. That direction was
3 given to him both by Robert Summerfield, myself and
4 the planning manager he got his input from.

5 Q. Did you review the report?

6 A. The planning supervisor reviewed the
7 report and I may have reviewed the report as well.

8 Q. Did you make any changes to the report?

9 A. I don't recall.

10 Q. Do you know whether or not the report was
11 prepared after the application was filed, the
12 application from Mr. Lowie's company to take
13 advantage of the change, assuming it passed?

14 MR. JIMMERSON: Objection to the form of
15 the question. Assumes facts not in evidence, and,
16 quote, "to take advantage of the change," end quote.

17 THE WITNESS: I'm not aware of which date
18 the report was completed. One would have to look in
19 the system to see the last date it was modified,
20 which even then, the agenda technicians tend to
21 format after certain dates getting it ready for
22 agendas, so it's hard to say. I don't have an exact
23 answer or knowledge of what that date would be.

24 BY MR. BICE:

25 Q. Well, tell me -- you had indicated that

1 it's within the planning director's discretion as to
2 whether to call for more notice than the statutory
3 minimum. Tell me, in your experience, how is that
4 discretion exercised or when is it exercised?

5 A. Currently, our notification radiuses
6 exceed the state statute requirements. So in all
7 items, our notification radius exceeds state statute.
8 Items of larger significance may be requested to have
9 meetings by the planning commission, to have
10 additional neighborhood meetings or even at -- if
11 it's reached city council level, they can request
12 additional neighborhood meetings.

13 Q. My question though was, in your
14 experience, what guides the planning director's
15 discretion as to whether to have additional notice
16 beyond the minimum required?

17 A. I can't begin to think what the director
18 would be thinking.

19 Q. Have you not been involved in
20 circumstances where additional notice was given?

21 A. I'm sure there might be an example of
22 that, but then again, I still don't know what the
23 director was thinking when asking for it.

24 Q. So you and the director have never
25 discussed when additional notice should be given; is

1 that correct?

2 A. To my knowledge, I don't recall.

3 Q. Did you and Mr. Summerfield discuss the
4 impact that this change would have on the Queensridge
5 community?

6 MR. JIMMERSON: Object to the form of the
7 question. Vague and/or ambiguous.

8 THE WITNESS: No. The scope of the
9 conversation that we had with Mr. Rankin in the room
10 as the planning manager was in regards to the city
11 wide.

12 BY MR. BICE:

13 Q. So you never discussed with
14 Mr. Summerfield or with Mr. Rankin the impact of this
15 change for the Queensridge community; is that
16 correct?

17 A. Not that I recall.

18 Q. How -- was it you that came up with this
19 idea?

20 A. I don't --

21 MR. BYRNES: Could you clarify what idea?

22 BY MR. BICE:

23 Q. Sure.

24 The idea for the change, the asterisk is
25 what we're calling it.

1 A. Not that I recall. My recollection is
2 being directed to look at the PCD by the director and
3 having that discussion with the group, and out of
4 that group coming the option for the city council to
5 have the discretion to grant additional density for
6 developments that met certain criteria.

7 Q. And how did you determine what that
8 criteria would be?

9 A. Once again, I don't recall the specifics.
10 It was coming out of that meeting.

11 Q. Well, you said that you were directed to
12 look at the PCD by the director. What do you mean by
13 that?

14 A. The planning community development and the
15 associated plan development zoning district is, as I
16 previously stated, something that allows for
17 flexibility for complex projects as well as a level
18 of assurance with it, usually associated development
19 agreement, as a potential tool for large
20 redevelopment projects.

21 Q. And so the -- when did the director tell
22 you to look at that?

23 A. I don't recall a specific date.

24 Q. Well, when you were directed to look at
25 it, were you aware of the current applicant's plans

1 to submit an application?

2 A. Yes.

3 Q. And were you aware of the current
4 applicant's plans to submit an application to take
5 advantage of that change assuming that it passed?

6 MR. JIMMERSON: Object as to the form of
7 the question. Assumes facts not in evidence and that
8 such an intent was possessed by the applicant.

9 THE WITNESS: I was aware if the city
10 council deemed it a tool that they wanted to utilize,
11 then the applicant would be requesting to ask the
12 Council for discretion to see if they would be able
13 to use that.

14 BY MR. BICE:

15 Q. And you knew that at the time that you
16 were directed to prepare -- well, strike that.

17 You knew that at the time that the agenda
18 was being prepared, correct?

19 MR. BYRNES: Agenda for what?

20 MR. BICE: I'm sorry?

21 MR. BYRNES: What agenda?

22 MR. BICE: The agenda for the amendment to
23 add the asterisk.

24 THE WITNESS: Could you restate the
25 question?

1 BY MR. BICE:

2 Q. Sure.

3 You've already testified -- let me go back
4 and make sure I read it correctly.

5 You already testified that you knew the
6 applicant was going to submit an application if it
7 passed, correct?

8 A. That's correct.

9 Q. And you knew that the applicant had
10 already submitted the application even before it
11 was -- went before the planning commission, correct?

12 A. I don't know the exact dates, but if
13 you're referring to when we had the meeting with the
14 planning manager and Robert Summerfield, if one was
15 before the other or after the other, I don't recall.

16 Q. So at the time that the agenda for that
17 item was prepared to be before the planning
18 commission, you knew that the applicant had already
19 submitted an application, correct?

20 A. Can you restate that, please?

21 Q. At the time that the agenda for that item
22 was prepared to go before the planning commission,
23 you knew that the applicant had already submitted
24 their application to the city, correct?

25 MR. JIMMERSON: I'm just going to object.

1 I don't know that this witness has identified that
2 date, Mr. Bice. I'm concerned by your question.

3 MR. BYRNES: I also object. It's asked
4 and answered.

5 THE WITNESS: The agenda prepared? I'm
6 not sure what you're referring to. When it was post,
7 meaning when it was completed and posted to the
8 public or prior to it when it was being -- from the
9 date of application closing?

10 BY MR. BICE:

11 Q. Was when? October what?

12 A. The date for the October planning
13 commission?

14 Q. Yes.

15 A. What is the closing date for that?

16 Q. Yes.

17 A. It would -- I don't have the specific
18 date, but it would be about a month before.

19 Q. When was the application submitted, do you
20 know? Was it August 26th?

21 MR. JIMMERSON: That's the date you're
22 suggesting, Mr. Bice?

23 BY MR. BICE:

24 Q. I'm asking him if it was that day.

25 A. I don't recall. I would have to refer to

1 our internal database system to get you a specific
2 date.

3 MR. BICE: Mark that, please.

4 (Exhibit Number 5 was marked.)

5 BY MR. BICE:

6 Q. Showing you what's been marked as Exhibit
7 Number 5, have you seen this before?

8 A. I don't recall. It's a possibility, yes.

9 Q. Can you tell me what it is?

10 A. These are submittal materials.

11 Q. Submittals for what?

12 A. These are a statement of financial
13 interests, which is a standard form in the City of
14 Las Vegas. There is an application petition form,
15 which is another standard form to be filled out for
16 an application submittal.

17 Q. An application for what?

18 A. Land use entitlement. The next part of
19 this is a Grant Bargain Sale Deed with associated
20 legal description to it, declaration of value,
21 justification letter dated August 28th, and a
22 neighborhood meeting notice, then a city prepared
23 radius map.

24 Q. Okay. What does the justification letter
25 say that is being sought?

1 A. It reads, "Fore Stars, Limited is
2 requesting approval of a general plan amendment for
3 the 250.92 acres represented by APNs, also known as
4 assessor's parcel numbers, 138-31-702002,
5 138-21-801002, 138-32-202001 and APN 138-32-301004.
6 The amendment request for these APNs changed in their
7 designation from parks/recreation/open space (PR-OS),
8 to planned community development, (PCD). A
9 subsequent rezoning and site development review will
10 be submitted and be heard this GPA period. Thank you
11 for your consideration."

12 Q. What was the -- and what was your
13 understanding of the change to the planned community
14 development that was being sought?

15 A. It is a change of the general plan land
16 use designation on the subject sites from PR-OS to
17 planned community development.

18 Q. And if the agenda item with the asterisks
19 to change the general plan had been approved, this
20 application would have sought to take advantage of
21 that. That was your understanding, correct?

22 A. Correct.

23 MR. JIMMERSON: Objection. Assumes facts
24 not in evidence.

25 MR. BYRNES: Also calls for speculation.

1 THE WITNESS: But -- yes. They would --
2 at the time this application would be heard, if it
3 was approved, they would have the ability to request
4 for subsequent applications, meaning, through a site
5 development review, additional density at the
6 discretion of the city council.

7 BY MR. BICE:

8 Q. And this additional discretion that was
9 going to be given to the city council was done in
10 anticipation of this application, wasn't it?

11 Are you denying that?

12 MR. JIMMERSON: Objection. Compound.

13 THE WITNESS: As I previously stated, this
14 development was -- basically put a focus on the need
15 for such a tool.

16 BY MR. BICE:

17 Q. Okay. So the tool was going to be
18 created?

19 A. Mm-hmm, yes.

20 Q. And it would be applied in this
21 circumstance and potentially others down the road,
22 correct?

23 A. It could be.

24 Q. It could be. But the only circumstance
25 that was presently -- that you were aware of where it

1 would be applied to was Exhibit Number 5?

2 MR. JIMMERSON: Objection. Assumes facts
3 not in evidence.

4 BY MR. BICE:

5 Q. Correct?

6 MR. JIMMERSON: Objection. Assumes facts
7 not in evidence.

8 THE WITNESS: Potentially, yes.

9 BY MR. BICE:

10 Q. Did you ever meet with Mr. Borgel about
11 Exhibit Number 5?

12 A. With reoccurring meetings, it is a
13 possibility, but I don't recall.

14 Q. Did Mr. Borgel ever attend any of these
15 pre-application meetings that you've described?

16 A. I'm not sure of who the attendees were at
17 these early onset meetings. He's been in meetings
18 about the development agreement and other things at
19 these regularly scheduled Thursday meetings.

20 Q. Do you recall being -- you said you were
21 at this planning commission meeting, correct, for the
22 agenda, right?

23 A. To my recollection, I was in attendance.

24 Q. Do you recall any of the planning
25 commissioners asking out loud who was the real

1 applicant behind that amendment?

2 A. I don't recall.

3 Q. Did any -- did anyone, any of the planning
4 commissioners want to know whether there was a
5 particular applicant that wanted this amendment?

6 MR. JIMMERSON: Objection. Assumes facts
7 not in evidence. The amendment according to the
8 witness was sponsored by the city.

9 THE WITNESS: I don't recall, but it is
10 recorded, so one can review that tape and assess.

11 BY MR. BICE:

12 Q. Did you volunteer that information to any
13 of the planning commissioners?

14 A. I did not present the item.

15 Q. Okay. Whose responsibility would it have
16 been to answer that question if it was asked?

17 A. That would be Mr. Doug Rankin because I
18 believe he presented the item.

19 Q. Okay. So you don't recall whether you
20 ultimately answered that question when it was
21 repeated or not; is that fair?

22 MR. BYRNES: Objection. Asked and
23 answered.

24 THE WITNESS: I don't recall if that was
25 the specific question asked of me.

1 BY MR. BICE:

2 Q. What was the question that you believe you
3 answered then?

4 MR. JIMMERSON: Objection.

5 THE WITNESS: I don't --

6 BY MR. BICE:

7 Q. Wait. Wait. Wait.

8 MR. JIMMERSON: Excuse me, Counsel.

9 Object that there has no been no
10 foundation on the circumstances that even such a
11 question was asked, Mr. Bice. I object on that
12 basis.

13 THE WITNESS: I don't recall the
14 specifics. I would have to rewatch the video to see
15 where the -- if there was any question and where it
16 came from.

17 BY MR. BICE:

18 Q. Do you recall speaking at all on this
19 agenda item?

20 A. I may have.

21 Q. Why would you speak on it?

22 A. If Mr. Rankin did not have information and
23 was looking for something, I would assist him.

24 Q. Well, did Mr. Rankin know about the plans
25 for the Badlands Golf Course at this point in time?

1 A. Yes.

2 Q. So to your knowledge, no further action
3 had been taken relative to that asterisk amendment,
4 correct?

5 MR. BYRNES: Objection. Asked and
6 answered.

7 BY MR. BICE:

8 Q. Is that correct?

9 A. I don't -- to my recollection, I don't
10 believe so.

11 Q. And Exhibit Number 5 was -- the
12 application was withdrawn, correct?

13 A. This application, if I recall, was
14 withdrawn before it was publicly noticed.

15 Q. It was withdrawn after the planning
16 commission tabled the amendment, correct?

17 A. I don't know the exact dates.

18 Q. I understand you don't know the exact
19 dates, but it was sometime after September the 8th,
20 correct?

21 A. Well, the item --

22 MR. JIMMERSON: Object to form of the
23 question. Two years, year and a half later.

24 THE WITNESS: If you recall the September
25 planning commission meeting was the meeting in which

1 it was held in abeyance.

2 BY MR. BICE:

3 Q. Right.

4 A. And then it was not tabled until the
5 subsequent planning commission meeting which would
6 have been in October.

7 Q. Okay. So it was held in abeyance, and
8 after it was held in abeyance by the planning
9 commission, the application in Exhibit Number 5 was
10 withdrawn, correct?

11 A. I would have to research the date of the
12 request for withdrawal.

13 Q. Well, do you believe it was withdrawn
14 prior to the planning commission meeting on September
15 the 8th, sir?

16 A. I don't recall. I don't think so.

17 Q. So you believe that it was withdrawn
18 sometime after the September 8th planning
19 commission meeting, correct?

20 A. It's possible.

21 Q. Is it likely?

22 MR. JIMMERSON: Objection. Calls for
23 speculation in light of the last three answers.

24 THE WITNESS: What's the difference?

25 ///

1 BY MR. BICE:

2 Q. I don't -- you know, that's a fair
3 question, but you're the one using this language, so
4 I guess I need to really drill down. So you say it's
5 possible. I think we both know that it was, so I
6 don't know why you're trying to qualify the answer,
7 but I'm going to press you to give me an actual
8 answer.

9 MR. BYRNES: Do you have a document --

10 MR. JIMMERSON: Objection. Move to strike
11 the question as being argumentative and
12 editorializing the question is improper.

13 MR. BYRNES: Do you have a document that
14 establishes the date you can show the witness?

15 MR. BICE: I do, Phil, but I think that
16 this witness knows it. And I don't think I need to
17 waste my time pulling out documents on things that he
18 absolutely knows the answer to. So if he wants to
19 play this game, I'll just keep it up all day long.

20 MR. JIMMERSON: Objection. The only game
21 being played is guessing what the witness knows and
22 doesn't know.

23 BY MR. BICE:

24 Q. Do you want to tell me -- do you want to
25 tell me that you know it was withdrawn sometime after

1 the planning commission meeting on September the
2 8th, Mr. Lowenstein?

3 A. Sure.

4 Q. What's that?

5 A. I will, but I don't know the exact date.

6 Q. I didn't know -- I told you I didn't care
7 whether you knew the exact date. I asked you whether
8 it was withdrawn after that meeting.

9 MR. JIMMERSON: Object to the question.

10 BY MR. BICE:

11 Q. And you knew that it was.

12 A. Well, I'm assuming it was.

13 MR. JIMMERSON: Excuse me, guys, if you
14 don't mind, I would like to make an objection before
15 the two of you continue the repartee.

16 Object to the question as calling for
17 speculation, arguing with the witness and
18 editorializing improperly.

19 BY MR. BICE:

20 Q. Why do you assume that it was?

21 A. For the simple fact that if an application
22 was still looming forward, one would be able to still
23 entertain the possibility of using planned community
24 development, but it's all in light of what would be
25 the subsequent applications. If it conformed to the

1 density requirements of the current planned community
2 development, it still would have been a viable
3 application.

4 Q. You knew that it was not in conformity
5 with the current density requirements, didn't you?

6 A. From previous understanding of the unit
7 counts, it did not seem that it was going to be in
8 conformance, but one can always amend their
9 applications at any point.

10 Q. Do you believe that this application was
11 amended?

12 A. I would have to speculate as far as what
13 they would want to do with their own property.

14 Q. My question, sir, is do you believe that
15 this application was amended?

16 A. They had not submitted any amendments to
17 us or subsequent applications to show that it would
18 be amended, so at that point, I don't have an idea if
19 they were going to amend it or not.

20 Q. What was a master development plan in
21 1990? Do you know what the city considered that to
22 be?

23 A. Not having worked here then, the
24 terminology and the institutional knowledge is no
25 longer available in our department for me to

1 accurately answer that.

2 Q. Can you apply for one today?

3 A. For a?

4 Q. Master development plan.

5 A. We would call it a plan development under
6 the PD, a special area plan. Master plan community.

7 Q. Okay. And what is a planned development?

8 A. It's a zoning district which has criteria
9 if you apply for it, minimum size requirement, a
10 number of different things being required as far as
11 development standards, infrastructure, things of that
12 nature.

13 Q. Okay. Is it different than a residential
14 plan development?

15 A. Yes. They were -- residential plan
16 development is a legacy zoning district currently.

17 Q. Okay. What's the difference?

18 A. Well, there's two distinct zoning
19 districts that have been both in existence at the
20 same time. One has a zoning district which
21 delineates the density in its title with R-PD and
22 then an associated number with it. The other one is
23 a planned development, which is a comprehensive
24 development plan for more of a community approach
25 where you have multiple developer parcels.

1 Q. And what is -- what did an R-PD consist
2 of?

3 A. Residential plan developments, in my
4 tenure at the city, have consisted of single family
5 residential subdivisions.

6 Q. Single family residential subdivisions?

7 A. Correct.

8 Q. Anything beyond that?

9 A. Not while I've been at the city that I'm
10 aware of.

11 Q. Okay. Multi-family, do they include
12 multi-family in your experience?

13 A. It's my recollection, it's possible that
14 they could use an R-PD for a multi-family, usually
15 associated with condominium maps, but I don't see why
16 they couldn't use it for multi-family apartments.

17 Q. And you say that that designation doesn't
18 exist any longer?

19 A. Since the adoption of the Unified
20 Development Code, it has become a legacy zoning
21 district, so it does not -- no longer exists in a --
22 as of -- in the zoning ordinance as a zoning district
23 in which someone who doesn't already have it can
24 apply for.

25 Q. Understood. But it still exists, correct?

1 A. Still exists as a legacy district. So
2 does our commercial design district, so does our
3 neighborhood services district, are other examples of
4 legacy district.

5 Q. And what's the most analogous to it today?

6 A. Today we go with -- and the terminology
7 starts -- we have the straight zoning. Basically,
8 there are associated zoning districts. You have that
9 zoning district. You comply with those minimum lot
10 sizes and you go forward with tentative maps.

11 Q. What do you mean by "straight zoning"?

12 A. The existing zoning districts and the
13 Unified Development Code, they all have minimum
14 development standards. You would then, if you
15 currently have the one that meets your needs, you
16 utilize that and follow those development standards
17 and create the tentative map.

18 Q. Okay.

19 A. If we're talking about a residential
20 subdivision.

21 Q. All right. But what if you were doing it
22 as a planned development, then you would follow PD?

23 A. The planned development has its own
24 prescribed application requirements.

25 Q. If you were going to do a Peccole Ranch

1 Master Plan development today, what would be the
2 zoning classification that you would look to?

3 MR. JIMMERSON: Object to the form of the
4 question as vague and ambiguous.

5 THE WITNESS: I would look towards it as a
6 PD.

7 (Exhibit Number 6 was marked.)

8 BY MR. BICE:

9 Q. Okay. And when you say that you will look
10 towards a PD, that's even though it would be
11 residential, correct?

12 A. Sorry?

13 Q. You said that you would look towards a PD
14 today under today's code.

15 A. Do you have to -- to accomplish something
16 similar to the Peccole Ranch Master Development Plan?

17 Q. Yes.

18 A. Yes. I would look towards something as a
19 planned development, planned development zoning
20 district.

21 Q. The R in the former R-PD designation stood
22 for residential, correct?

23 A. Yes.

24 Q. So it stood for residential planned
25 development, right?

1 A. Correct.

2 Q. Okay. I'm showing you now what's been
3 marked as Exhibit Number 6, I believe. Have you seen
4 this before?

5 A. It's possible. I probably have.

6 Q. If you look at the second paragraph, is
7 that an accurate description of what you understand
8 R-PD to mean?

9 A. It's more than likely verbatim out of the
10 zoning code.

11 Q. Okay. So is it accurate to say that the
12 R-PD district was intended to provide flexibility and
13 innovation in residential development? Is that your
14 understanding of what it was designed to do?

15 A. Correct.

16 Q. And with the emphasis on enhanced
17 residential amenities, what sort of amenities?

18 A. During my tenure, there was a requirement
19 for it to have a provision of open space based on
20 our -- a calculation of dwelling units per acre
21 times, I believe, it's 1.65 and then you would have
22 how much open space was required for a residential
23 planned development.

24 Q. Okay. And so is that open space
25 considered to be one of the amenities under the

1 zoning clarification?

2 A. I would assume so, yes.

3 Q. Okay. And then it goes on to recite
4 efficient utilization of open space. Do you see
5 that?

6 A. I see that.

7 Q. And what is the purpose of efficient
8 utilization of open space in the R-PD designation?

9 A. My understanding of it is that it's not to
10 be little fringe slivers of common elements that act
11 as landscape buffers or things of that nature. It
12 has to be utilized or to be able to be utilized or
13 enjoyed by the development.

14 Q. Would golf courses fall within that
15 definition of efficient utilization of open space?

16 A. I see no reason why not.

17 Q. Well, in your experience, would that be
18 something that the city would consider to be an
19 efficient utilization of open space?

20 MR. JIMMERSON: Objection. Calls for
21 speculation and/or expert witness testimony to which
22 this witness has not yet been designated. Calls for
23 opinion.

24 THE WITNESS: In my tenure, I haven't had
25 a development with a golf course as part of it, but

1 in light of as recreation and open space is part of
2 it, it could be considered that, yes.

3 BY MR. BICE:

4 Q. Okay. And you have reviewed the Peccole
5 Master Plan, have you not?

6 A. Yes, I have.

7 Q. Okay. And was there a representation
8 about open space as part of that master plan?

9 MR. JIMMERSON: Objection. Vague and
10 ambiguous as to what's being referred to, what part
11 of the plan, what time.

12 THE WITNESS: There are segments in that
13 plan that speak to open space. There's tables that
14 reflect acreage. There's -- even going back to the
15 Venetian Foothills and speculative where they were
16 going to place certain things, ultimate design, you
17 know, is what we have today.

18 BY MR. BICE:

19 Q. Okay. And when you say "ultimate design
20 of what we have today," let me show you -- bear with
21 me one second.

22 (Exhibit Number 7 was marked.)

23 BY MR. BICE:

24 Q. Showing you what's been marked as Exhibit
25 Number 7. And again, just for the record, Phil and

1 Counsel, the red -- the two red blocks, the one on
2 the map and the one on the description on the right,
3 under the land use categories, those are mine so as
4 to draw attention to the questions I want the witness
5 to answer.

6 Have you seen Exhibit Number 7 before?

7 A. It's possible. This is the southwest
8 sector land use categories of the Las Vegas 2020
9 Master Plan.

10 Q. Well, let's --

11 A. I'm just saying because there are
12 different additions.

13 Q. Right. So I want to bring to your
14 attention, if you look down the right-hand corner,
15 there are some dates.

16 A. Okay.

17 Q. So I'll --

18 A. Yes.

19 Q. I just -- before you committed to a
20 particular timeframe on this, I wanted you to be
21 aware that I'm not representing to you that this is
22 the current map.

23 A. Okay.

24 Q. Okay. But does it look like to you,
25 knowing with your experience, that this is the map

1 that, at least, existed as of August 18 of 1999?

2 A. Yes.

3 MR. JIMMERSON: Object to the question
4 with regard to this document not bearing that date.
5 Calls for speculation.

6 BY MR. BICE:

7 Q. Okay. So what is the Peccole -- I'm
8 sorry.

9 What is the Badlands Golf Course
10 designated under this map as of August 18 of 1999?

11 A. It is designated as green which
12 corresponds to the legend of park/recreation/open
13 space.

14 Q. Now, you said that you had looked at the
15 master plan, the Peccole Ranch Master Plan, and you
16 had indicated that there were various areas that were
17 designated as -- or there were various descriptions
18 about open space as part of the R-PD zoning; is that
19 correct?

20 A. As part of the development -- master
21 development plan --

22 Q. Okay.

23 A. -- there was a booklet, the plan or
24 brochure, whichever you want to call it, which had
25 called for -- in this particular case we're talking

1 about -- this is the amendment and phase 2 rezoning,
2 that booklet --

3 Q. Yes.

4 A. -- which has tables which showed what was
5 the -- what was amended or had the verbiage as far as
6 what's being amended, tables of what's in phase 2 and
7 as total data for the entire Peccole Ranch Master
8 Development.

9 Q. Okay. Just so we make sure we're talking
10 about the same document, let me get that marked.

11 (Exhibit Number 8 was marked.)

12 BY MR. BICE:

13 Q. Is this the Peccole Ranch Master Plan
14 amendment and phase 2 rezoning application that you
15 just previously referenced?

16 A. Yes.

17 Q. And this is in the city's files?

18 A. Yes.

19 Q. And as part of your research into the
20 current application, is this one of the documents
21 that you researched and found?

22 A. Yes. As part of looking at previous land
23 use entitlements, this is one of the documents that's
24 part of that.

25 Q. Okay. Is this one of the documents that

1 the city has relied upon in evaluating the
2 application?

3 A. This document was given consideration. It
4 was one of the reasons that the department requested
5 that a major modification to this document be filed.

6 Q. Okay. When you looked at the document and
7 you were talking about unit counts, is this the
8 document that you were looking at in evaluating unit
9 counts?

10 A. No.

11 Q. You were looking at planning commission or
12 city council approval letters on the unit counts?

13 A. May I ask you a question?

14 Q. Absolutely.

15 A. When you say "researching unit counts," do
16 you mean as far as what's existing out there, as far
17 as what was proposed originally, what they're held to
18 as far as the overall community?

19 Q. Yes.

20 A. Which specific one?

21 Q. Fair enough. Let's break it down.

22 What are they allowed to build?

23 A. The overall unit count comes from the
24 conditions of approval out of an action letter for
25 the associated zoning action, which is the Z-17-90,

1 if I recall correctly.

2 Q. All right. And is that the 14 -- or 4,247
3 units?

4 A. I believe that's correct.

5 Q. 2807 of single family and 1440 of
6 multi-family, correct?

7 A. The condition doesn't state that.

8 Q. What's that?

9 A. The condition doesn't state that. The
10 condition just says that there's a maximum of 4247.

11 Q. Of units?

12 A. Mm-hmm.

13 Q. And where did those --

14 MR. BYRNES: Is that a "yes"?

15 THE WITNESS: Yes. Sorry.

16 BY MR. BICE:

17 Q. And where did those numbers come from?

18 A. Where did the number and the condition of
19 approval come from?

20 Q. Yes. Or do you believe that it was
21 plucked out of thin air by someone?

22 MR. JIMMERSON: Object to the form of the
23 question. Argumentative.

24 THE WITNESS: At the point when this was
25 done, I wasn't working at the City of Las Vegas, but

1 on an assumption, I would have based it on their
2 related document that they submitted.

3 BY MR. BICE:

4 Q. Would that be Exhibit 8?

5 A. Exhibit 8 would be part of the
6 development -- the master development plan that was
7 heard either -- was related to the zoning action.

8 Q. And when you did your research in
9 determining the number of units, the number of actual
10 units are set forth in this master plan amendment and
11 phase 2 rezoning application, correct?

12 A. I'm sorry, can you repeat that?

13 Q. Sure.

14 And when you did your research to
15 determine the number of units, the number of actual
16 units are set forth in Exhibit 7, the master plan
17 amendment and phase 2 rezoning application, correct?

18 A. Well, if you're referring to Exhibit 8 --

19 Q. Oh, Exhibit 8, you're right. My
20 apologies.

21 A. In reviewing it, we looked at the maximum
22 unit count from the action letter. We've also looked
23 at these tables.

24 Q. And as part of your research, did you
25 determine where those unit counts had come from that

1 were contained in the action letter?

2 A. As I just stated, we looked at that
3 condition of the approval letter in addition to this
4 document on the table.

5 Q. That meaning Exhibit 8?

6 A. Exhibit 8, yes.

7 Q. Okay.

8 A. Sorry.

9 Q. And did that approval letter also state
10 that in addition to the maximum -- a maximum of 4247
11 dwelling units be allowed for phase 2, that it was in
12 -- another condition was conformance to the
13 conditions of approval for the Peccole Ranch Master
14 Development Plan phase 2?

15 A. I believe so, if you're reading it right
16 from the document. I imagine there would be a second
17 condition. In my research, I have never found any
18 conditions for the development of the master
19 development plan.

20 Q. Just the plan itself?

21 A. In reference to the condition you just
22 read.

23 Q. Okay.

24 MR. JIMMERSON: Please stop now.

25 Will you please read the last two

1 questions and answers, please.

2 (Record read as requested.)

3 MR. JIMMERSON: Move to strike the
4 question and answer. Calls for speculation and
5 assuming facts not in evidence.

6 I was trying to make my objection between
7 the question and answer, but it happened so quick.

8 BY MR. BICE:

9 Q. When was the Peccole Ranch Master Plan
10 closed out?

11 A. That's under the assumption that it is
12 closed out. There are undeveloped parcels within the
13 Peccole Ranch Master Plan that have yet to be
14 developed.

15 Q. So that means it's not closed out? Is
16 that your position?

17 A. What is the definition of "closed out"?

18 Q. What's the city's definition of closed out
19 in every other project except for this one?

20 MR. JIMMERSON: Object to the question as
21 being irrelevant. Calling for something that's not
22 relevant to the case.

23 THE WITNESS: I'm not aware of we have a
24 definition of something is closed out.

25 ///

1 BY MR. BICE:

2 Q. Okay. So you don't know or you're just
3 saying that the city doesn't have one?

4 MR. JIMMERSON: Object to the question as
5 being ambiguous. Compound.

6 THE WITNESS: There's nothing in the
7 Unified Development Code that says "closed out" as
8 being defined.

9 And to your second point, I don't know.

10 BY MR. BICE:

11 Q. So is it your -- let's just deal with your
12 position -- is it your position that as long as
13 there's an empty lot in any planned development, it's
14 not completed?

15 A. The subdivision or commercial property, if
16 it's not completely built out is not -- just that.
17 It's not closed out and there's still ability to
18 construct in it, develop in it.

19 Q. How many bonds are left on the Peccole
20 Ranch Phase 2?

21 A. I don't know.

22 Q. Did you do any research into that?

23 A. Not that I am aware of, no.

24 Q. Did you ask anyone on the staff to do any
25 research on that?

1 A. Those matters usually fall to land
2 development, which is either part of building and
3 safety or, if need be, from the Department of Public
4 Works to review those matters.

5 Q. But my question was: Did you ask anyone
6 to do it?

7 A. Not that I recall.

8 Q. Have you since learned about whether there
9 are any bonds left on the project?

10 A. Only by reading through the deposition of
11 Mr. Perrigo.

12 Q. Who was the -- who was the developer of
13 the Peccole Ranch Master Plan?

14 A. The initial developer?

15 Q. Is there more than one?

16 A. Through the land use entitlement history,
17 there have been other applicants, but is your
18 question specific to Exhibit 8, who?

19 Q. We're now talking about the Peccole Ranch
20 Master Plan.

21 A. Yeah.

22 Q. Who was the developer?

23 A. I believe it was Peccole, the Peccole
24 Trust.

25 Q. The Trust?

1 A. It could be the Trust.

2 Q. Okay.

3 A. I've seen it stated Peccole Trust. I've
4 seen a Peccole Trust 1982. I've seen it just as
5 Peccole.

6 Q. Got it.

7 And what is the status of -- well, strike
8 that.

9 Who is the declarant on the development?

10 MR. JIMMERSON: Object to the extent that
11 it calls for a legal conclusion or attempting to use
12 this witness as an expert witness improperly.

13 BY MR. BICE:

14 Q. Do you know?

15 A. Are you referring to CC&Rs?

16 Q. No, I'm not referring to CC&Rs. I'm
17 referring to who is the declarant, the development
18 declarant, do you know?

19 And if you don't, just -- I understand.

20 MR. JIMMERSON: Object. Assumes facts not
21 in evidence that there exists such a thing as a
22 development declarant.

23 THE WITNESS: There is an applicant and
24 that's what I'm aware of.

25 ///

1 BY MR. BICE:

2 Q. Okay. And that applicant is the Peccole
3 Trust 1982 as far as you know, correct?

4 A. Correct.

5 MR. JIMMERSON: Objection. He had
6 indicated that there were three different applicants,
7 if you recall.

8 BY MR. BICE:

9 Q. And what -- what is the status of that
10 applicant today, do you know?

11 A. I don't know.

12 (Exhibit Number 9 was marked.)
13

14 BY MR. BICE:

15 Q. Showing you what's been marked as
16 Exhibit 9, Mr. Lowenstein, have you seen this exhibit
17 before?

18 A. Possibly.

19 Q. Well --

20 A. And more than likely -- it looks like the
21 justification letter for one of the applications, so
22 yes.

23 Q. It's addressed to you. Do you see that?

24 A. I do.

25 Q. Okay. So you don't have any reason to

1 believe that you didn't receive it?

2 A. That is correct.

3 Q. All right. By this point in time, this is
4 November 24, 2015, would you be considered the lead
5 on this plan?

6 A. This is the formal application submittal,
7 so at this time it would have been assigned to the
8 case planner.

9 Q. And that would have been?

10 A. That would have been Steve Swanton.

11 Q. Okay. And would you oversee his work on
12 this case?

13 A. His supervisor would review his staff
14 report and if he had any questions, he's more than
15 able to ask his supervisor, his section manager. We
16 all have open door policies.

17 Q. And who would be his supervisor?

18 A. At this time, I believe it was -- it could
19 have either been Andy Reed or Steve Gebeke. I would
20 have to double-check when Andy had left the city.

21 Q. All right. You'll see near the second
22 sentence of the first paragraph, it says the land
23 zoning designation is R-PD7 and under the general
24 plan is PR-OS, correct?

25 A. Second sentence, yes, I see.

1 Q. Right.

2 A. Yes.

3 Q. Okay. And then it goes on to say, it
4 says, "The 17 acres is in the process of being
5 subdivided into a separate parcel and will have its
6 own APN number." Do you see that?

7 A. I do.

8 Q. And what was the plan that was being
9 submitted as this land was going to be subdivided?

10 A. This -- in relation to this letter, this
11 is an application for 720 multi-family units on the
12 17.49 acres.

13 Q. If you go to below the first bullet point,
14 there is a sentence there that starts "the land is"
15 and then in all caps, it says "not a part," end all
16 caps, "of any common interest community, CC&Rs, nor
17 is it permitted as annexable property with the CC&Rs
18 of adjacent properties, nor is it in any way under
19 the control of the HOAs and the adjacent properties."

20 Do you see that?

21 A. I see that.

22 Q. And does that have any significance to
23 you?

24 A. No.

25 Q. Do you know why the applicant was

1 emphasizing that point?

2 A. I don't.

3 Q. Is that a consideration that the city
4 would give under its -- as it was considering this
5 application?

6 A. Can you restate the question, please.

7 Q. Sure.

8 Is that a consideration for the city in
9 deciding what to do with this application?

10 A. No.

11 Q. Why not?

12 A. The city does not take into account CC&Rs.

13 Q. Because those are just private contracts?

14 A. I believe they're -- yes. They're civil
15 contracts between two private parties.

16 Q. Right. So you'd leave it up to them to
17 work out what those provisions are, correct?

18 A. If there was anything to be worked out,
19 yes.

20 Q. Okay. Have you ever heard of Nevada
21 Revised Statutes Chapter 116?

22 A. In regards to HOAs? Because I do sit on
23 an HOA board.

24 Q. Yes.

25 A. Yes.

1 Q. Okay. And you understand that property
2 that is subject to a homeowner's association or CC&Rs
3 is governed by Chapter 116, correct?

4 MR. BYRNES: Objection. Calls for a legal
5 conclusion.

6 THE WITNESS: I'm assuming, yes.

7 BY MR. BICE:

8 Q. All right. And the homeowner here is an
9 affirmative -- I'm sorry.

10 The property owner here is affirmatively
11 representing that this property isn't subject to
12 Chapter 116. Would you agree?

13 MR. JIMMERSON: Object. That
14 mischaracterizes the letter.

15 THE WITNESS: All I can do is read the
16 statement that's here. It doesn't state NRS 116.

17 BY MR. BICE:

18 Q. So you, in interpreting this, don't
19 believe that this is a disclaimer that Chapter 116
20 doesn't apply to this property?

21 MR. BYRNES: Objection. Calls for
22 speculation.

23 THE WITNESS: It is not part of my
24 consideration of the justification letter.

25 ///

1 BY MR. BICE:

2 Q. Okay. Are there any code -- any other
3 statutes that you are aware of concerning homeowner's
4 associations outside of Chapter 116?

5 MR. BYRNES: Objection. Calls for a legal
6 conclusion.

7 MR. JIMMERSON: Join.

8 MR. BYRNES: Also mischaracterizes the
9 letter, Exhibit 9.

10 THE WITNESS: Actually, until very
11 recently, no.

12 BY MR. BICE:

13 Q. Okay. And did you very recently determine
14 something else?

15 A. No. I didn't determine anything. It was
16 just made aware that the 116 is also in 278A, I
17 believe --

18 Q. Oh.

19 A. -- unless I'm incorrect.

20 Q. Who brought that to your attention?

21 A. I believe that was in talk with counsel.

22 Q. Oh, well, then, don't tell me what you
23 learned from legal counsel.

24 A. Okay.

25 MR. BYRNES: Stop there.

1 BY MR. BICE:

2 Q. I'll rephrase it next time.

3 You didn't learn that from anyone outside
4 of your discussions with the city attorney; is that
5 fair?

6 A. Yes, that's fair.

7 Q. Okay. And when was that, that you became
8 aware?

9 A. I'm thinking in the last three weeks.

10 Q. Okay.

11 MR. JIMMERSON: Could I just ask, aware of
12 what?

13 MR. BICE: I'm sorry?

14 MR. JIMMERSON: Aware of what?

15 BY MR. BICE:

16 Q. Aware of his testimony that he referenced
17 Chapter 116's reference in 278A.

18 Is it your view, Mr. Lowenstein, that
19 there's a difference between a planned unit
20 development and a plan development?

21 A. I've never worked with a planned unit
22 development pursuant to the 278A.

23 Q. Does the city have code provisions that
24 deal with planned unit developments?

25 A. To my knowledge.

1 MR. BYRNES: Objection. Calls for a legal
2 conclusion.

3 THE WITNESS: To my knowledge, in
4 reference to that section of NRS, no.

5 BY MR. BICE:

6 Q. Have you ever looked at old versions of
7 the municipal code about whether it contained terms
8 about planned unit developments?

9 A. No.

10 Q. So tell me what you believe the difference
11 is between a residential planned development and a
12 planned unit development, if you think that there is
13 one?

14 MR. BYRNES: Objection. Calls for a legal
15 conclusion.

16 MR. JIMMERSON: Objection. Calls for
17 speculation on the last two answers.

18 THE WITNESS: Yeah. I would have to defer
19 to the city attorney as far as what that difference
20 of state statute would be.

21 BY MR. BICE:

22 Q. I understand. But as you're sitting here,
23 at least, working in the planning department, you
24 can't identify any differences that you are aware of?

25 MR. JIMMERSON: Objection. That

1 mischaracterizes his testimony. He said he
2 considered them to be distinct.

3 MR. BYRNES: Calls for a legal conclusion.

4 THE WITNESS: Without further review and
5 consultation with the city attorney, I can't give you
6 an answer.

7 BY MR. BICE:

8 Q. Can you identify any distinctions
9 yourself?

10 A. One is a residential plan development and
11 one's -- it's a residential plan -- planned unit
12 development.

13 Q. Okay. Other than the name, can you
14 identify any distinctions for us?

15 A. Two sections of NRS.

16 Q. Okay. Other than two sections of NRS and
17 the name, can you identify any other distinctions for
18 us?

19 MR. BYRNES: Objection. Calls for a legal
20 conclusion.

21 THE WITNESS: As I said, without further
22 review of both of them, I can't give you an answer on
23 the difference between the two.

24 BY MR. BICE:

25 Q. Well, did you review them for your work on

1 this case?

2 A. I did not review planned unit developments
3 as part of this case.

4 Q. As part of the application, did you review
5 any of the provisions of the Nevada Revised Statutes?

6 MR. JIMMERSON: Object to the question as
7 vague and ambiguous and/or irrelevant.

8 THE WITNESS: As part of these
9 applications for development agreements, they are
10 covered in NRS 278 and, therefore, I didn't review
11 Nevada statutes in regards to the development
12 agreement.

13 BY MR. BICE:

14 Q. Okay. Which provisions did you review?

15 A. I don't recall exactly which one. It
16 would just be me spouting off some of the familiar
17 ones without being accurate, so I don't recall the
18 exact reference.

19 Q. Anything other than pertaining to the
20 development agreement? Did you review any other
21 provisions?

22 A. Not to my knowledge, no.

23 Q. Are there any planning books that you
24 consult other than the city code and the Nevada
25 Revised Statutes?

1 A. Are you referring to any adopted books
2 from the city or any literature in general?

3 Q. Well, let's break it down.

4 Is there anything that the city council
5 has adopted that you would consult other than the
6 planning code -- the city's municipal codes or the
7 Nevada Revised Statutes?

8 A. The Las Vegas 2020 Master Plan, its
9 associated elements.

10 Q. All right. Anything else?

11 A. As part of some of the submittals, there's
12 documentation from ULI, which is the Urban Land
13 Institute.

14 Q. Anything -- is that adopted by the city?

15 A. No, that is not.

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

17 A. That is an accredited, I guess,
18 disciplined journal, I guess, for lack of a better
19 terminology.

20 Q. Any others that you would consult? Any
21 other sort of planning journals or anything like
22 that?

23 A. I'm not sure if I did or did not, but if I
24 was to use -- I would use the American Planning
25 Association's website. It has a searchable database

1 for journal articles or just articles in general.

2 Q. Did you ever consult the Urban Land
3 Institute residential land development handbook?

4 A. Not on a very frequent basis.

5 Q. Okay. How about the International City
6 Manager's Associations, the practice of local
7 government planning?

8 A. I don't believe so.

9 Q. Okay. How about the American Planning
10 Association's Growth Smart Legislative Guidebook?

11 A. I'm not particularly sure if I reviewed
12 that or not.

13 Q. Would you agree that a planned development
14 means an area of land controlled by a landowner,
15 which is to be developed as a single entity for one
16 or more planned unit residential developments, one or
17 more public, quasi public, commercial or industrial
18 areas or both?

19 MR. JIMMERSON: Objection. Calls for an
20 expert opinion to which this witness has not been
21 retained.

22 MR. BYRNES: Are you asking for a
23 statutory definition or --

24 MR. BICE: I'm asking him if he -- if he
25 disputes that that's what a planned development is.

1 MR. JIMMERSON: Objection. Assumes facts
2 not in evidence.

3 THE WITNESS: That definition is stating
4 that it's solely one person. My experience had been
5 that there is one entity that creates such a thing
6 and it is then sold off and other people then develop
7 within the confines of that development plan.

8 BY MR. BICE:

9 Q. Sure.

10 So they develop parts of it, right?

11 A. Correct. Or the majority. It depends on
12 what sales go through.

13 Q. But that doesn't mean that it's not a
14 planned development, correct, or do you maintain that
15 it does?

16 A. Are you asking if that definition -- I'm
17 kind of losing your questioning, your train of
18 questioning. Can you --

19 Q. Sure.

20 You had indicated that a single owner will
21 develop the plan and then will maybe sell off certain
22 segments of it for, I guess, development by an
23 individual, like a home builder or something like
24 that. Is that what you meant?

25 A. Correct.

1 Q. All right. Even though that may happen,
2 you're not disputing that that is still a planned
3 development, are you?

4 MR. JIMMERSON: Objection.
5 Mischaracterizes the witness' testimony.

6 THE WITNESS: An individual, depending on
7 how much property they own, they could -- they could
8 go the route of a planned development or they could
9 do it through a piecemeal approach as well.

10 BY MR. BICE:

11 Q. So is it your position that a planned
12 development has to be that the developer has to
13 individually develop each segment in order to be a
14 planned development? If he sells part of it after
15 getting the plan approved, it's no longer a planned
16 development?

17 A. No, that's not what I was saying. I was
18 stating that you could establish a planned
19 development --

20 Q. Got it.

21 A. -- as one mode of development.

22 Q. Right.

23 A. As a separate mode of development, you
24 could not do a planned development and piecemeal
25 develop a site, is what I was stating.

1 Q. Okay. All right. And do you dispute that
2 the Peccole Ranch is a planned development?

3 A. It is, as it states, a master planned --
4 master plan development.

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

6 A. That is what the city council approved as
7 a master plan development.

8 Q. All right. I just want to -- you're not
9 contending that it's not a master plan development,
10 are you?

11 A. No. That's -- the city council action
12 they took was for a master plan development.

13 Q. And as part of your processing of
14 applications for the current applicant, you treat the
15 Peccole Ranch Master Plan as a master plan
16 development, correct?

17 MR. JIMMERSON: Objection. Misstates the
18 testimony in evidence.

19 THE WITNESS: In light of the development,
20 it was determined that a major modification would be
21 requested in light of the land use element is not
22 denoted as one of the special area plans that require
23 a major modification. So out of the concern of the
24 scope of the proposed changes, that determination was
25 made.

1 BY MR. BICE:

2 Q. The scope of the proposed changes were so
3 significant that you all determined that a major
4 modification to the 1990 plan was required; is that
5 correct?

6 MR. JIMMERSON: Objection. Lack of
7 foundation as to when, where and what project was
8 being discussed.

9 THE WITNESS: In regards to the
10 development of the property, the major modification
11 was -- was required by staff based on the scope of
12 the project.

13 BY MR. BICE:

14 Q. When you say "development of the
15 property," what do you mean? Development of the golf
16 course?

17 A. Development of the 250.92 acres.

18 Q. Okay. What about -- did you originally
19 require a major modification for the development of
20 the seven acres after it was subdivided?

21 MR. JIMMERSON: Objection. The question
22 makes no sense under the facts of this case.

23 BY MR. BICE:

24 Q. Or 17.

25 A. That's what I understood, but I meant --

1 Q. My apologies. If I misspoke, my
2 apologies.

3 A. In reference to the 17.49 acres, those
4 applications were held in abeyance in an effort to
5 having a comprehensive package being submitted which
6 subsequently were, and we were requesting major
7 modification as part of that for that overall.

8 Q. Was that subsequently changed?

9 A. The requirement for a major modification;
10 is that your question?

11 Q. Yes.

12 A. Yes.

13 Q. Why? Well, strike that.

14 First, let me ask you, who made that
15 decision that it would be changed?

16 A. The decision that a major modification
17 would be required after the withdrawal of the overall
18 plan?

19 Q. Yes.

20 A. That decision would have had to have been
21 made by the director.

22 Q. Did the director have meetings with the
23 applicant about that change?

24 A. Not that I recall. I imagine the director
25 had meetings with counsel.

1 Q. Meaning legal counsel?

2 A. (Witness nodded head.)

3 Q. I need you to answer yes or no.

4 A. Yes. Sorry.

5 Q. No problem.

6 A. Constant reminders help.

7 Q. Don't worry about it. We all do it.

8 A. Okay.

9 MR. JIMMERSON: Can I clarify? You mean
10 city attorney counsel, Mr. Perrigo -- Mr. Lowenstein?

11 THE WITNESS: That is correct.

12 MR. JIMMERSON: Thank you.

13 MR. BICE: Let's take a short break.

14 THE VIDEOGRAPHER: Going off the video
15 record. The time is approximately 2:52 p.m.

16 (Recess was had.)

17 THE VIDEOGRAPHER: This is the beginning
18 of video recording number 5 in the continuing
19 deposition of Mr. Lowenstein. We're back on the
20 video record. The time is approximately 3:05 p.m.

21 BY MR. BICE:

22 Q. Mr. Lowenstein, have you discussed this
23 application -- or strike that.

24 Have you discussed the redevelopment of
25 the Badlands Golf Course with Councilman Beers?

1 A. Not to my recollection. Direct access to
2 the council persons are usually held by the director,
3 so I have very limited exposure.

4 Q. Have you discussed it with the mayor?

5 A. No, not to my recollection.

6 Q. All right. Have you discussed it -- have
7 you personally discussed it with any of the planning
8 commissioners?

9 A. The planning commissioners had briefings,
10 so in that regard, they had scheduled meetings with
11 the planning department, and I was part of those
12 briefings, so that would -- I assume that's yes.

13 Q. Did each of the planning commissioners
14 have such a meeting?

15 A. They were held in groups and all were
16 invited if they -- I'm not particularly recalling
17 which ones did not appear, but they were in groups of
18 either two, potentially three.

19 Q. Okay. Did you tell -- did you tell any of
20 the planning commissioners of any particular number
21 of units that were purportedly available for
22 development on the golf course?

23 MR. BYRNES: You're asking him personally
24 or --

25 MR. BICE: Yes.

1 MR. BYRNES: -- or the department?

2 BY MR. BICE:

3 Q. Yes, him.

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

5 Q. Did you -- I know you talked about some
6 maps earlier, but I believe Mr. Perrigo said you were
7 the one that was looking into the unit allocation?

8 A. Or my direct staff.

9 Q. Or your direct staff.

10 Did you ever make a determination of what
11 you contend are the number of allowed units on the
12 golf course?

13 A. The number of allowed units on -- within
14 the phase 2 area is called out by the condition of
15 approval.

16 Q. Okay.

17 A. As far as units on the golf course, one
18 has the right to petition their government for an
19 amendment and that is what was applied for.

20 Q. Because under the current -- under what
21 was approved, there are no allowed units on the golf
22 course, correct?

23 MR. JIMMERSON: Objection.

24 Mischaracterizes the testimony. Mischaracterizes
25 Exhibit 8.

1 MR. BYRNES: Calls for a legal conclusion.

2 BY MR. BICE:

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

4 MR. JIMMERSON: Same objection.

5 THE WITNESS: In regards to what this plan
6 called out and as far as on the table, as far as
7 allocation of the units, it does not state units -- a
8 density associated with parks, recreation and open
9 space. However, it shows an area where additional
10 golf course was built on top of where single family
11 was in addition to that.

12 BY MR. BICE:

13 Q. That's the nine holes that were later
14 added, correct?

15 A. Additional nine holes, correct.

16 Q. All right. But under -- under your code,
17 when you say that they have the right to petition the
18 government to change, to change what, the general
19 plan?

20 A. One has a -- I believe it's a
21 constitutional right.

22 Q. To petition the government?

23 A. To petition the government.

24 Q. Okay. But when you're saying to seek a
25 change, the change in the general plan?

1 A. It could be any land use entitlement is
2 that petition.

3 Q. But in this particular case, you
4 understood that they would need to petition to change
5 the general plan because the property has all been
6 designated as open space; is that correct?

7 MR. JIMMERSON: Objection. Calls for a
8 legal conclusion, also absence of foundation.

9 THE WITNESS: One of the submitted
10 applications are for amendments to the general plan
11 amendments, so yes.

12 BY MR. BICE:

13 Q. To change the open space designation to
14 allow residential housing on the open space -- what
15 is currently designated as open space?

16 A. The applications that were submitted were
17 from parks/recreation/open space designation --

18 Q. Okay.

19 A. -- to either H, high density residential,
20 or -- it's either desert, rural or rural -- I
21 apologize. I don't recall exactly what the other
22 designation was. It may be in one of these other
23 exhibits if you want me to look.

24 Q. When you met with Mr. Lowie and his team,
25 did they ever -- did they ever deny that they knew

1 that the property was designated as open space at the
2 time that they purchased?

3 A. I don't recall that specifically.

4 Q. Did they ever suggest to you that they
5 didn't know that it was open space at the time that
6 they purchased it?

7 MR. JIMMERSON: Objection. Assumes facts
8 not in evidence that it even existed as open space at
9 the time.

10 THE WITNESS: I don't recall conversations
11 like that.

12 BY MR. BICE:

13 Q. Did you ever hear them, Mr. Lowie or any
14 of his representatives, claim that they didn't know
15 it was open space at the time that they purchased it?

16 MR. BYRNES: Objection. Asked and
17 answered.

18 MR. JIMMERSON: Same objection.

19 THE WITNESS: I don't recall that
20 conversation.

21 BY MR. BICE:

22 Q. At the time that they submitted -- when I
23 say "they," Mr. Lowie's company submitted the
24 application for the 720 multi-family units, were they
25 told that they wouldn't have to do a major plan

1 modification?

2 A. I don't recall the moment in which they
3 were required to submit a major modification. I
4 previously stated on the record that it was in light
5 of an overall plan being submitted that the major
6 modification was being required of them.

7 Q. Well, did the staff originally say that --
8 do you recall them -- do you recall there being a
9 staff report that they would need to do a major
10 modification even on the 17 acres?

11 A. I don't recall. I believe it was in light
12 of an overall package coming in that the major
13 modification was requested.

14 Q. And how was it determined that they would
15 not need to do a major modification on -- if they
16 just applied on the 17 acres?

17 A. The overall number of units would still be
18 in line with the 4247, and in the mode of development
19 of phase 1 and subsequently phase 2, it still met
20 that -- it still met the overall number of units
21 within phase 2, that 4247.

22 Q. Well, how many units are you saying were
23 left of the 4247 that hadn't already been built or
24 hadn't already been entitled?

25 A. Exact number, I'm not aware, but I believe

1 it's about 1200 plus or minus.

2 Q. Okay. And how many of those unentitled or
3 unbuilt units were of the 1440 multi-family that had
4 been approved?

5 A. Based on the previous development of phase
6 1 and 2, it doesn't differentiate between them.

7 Q. What doesn't differentiate between them?

8 A. The total number unit count. For phase 1,
9 it exceeds the multi-family that's called out in this
10 plan. In phase 2 there were still a lot of units,
11 both multi-family and single family.

12 Q. Well, so are you -- so when you claim that
13 there are multiple units available, you said about
14 1200?

15 A. Well, if you look at all the entitled and
16 existing or even nonconstructed, there is still a
17 delta of approximately 1200 units.

18 Q. Of -- for phase 2; is that correct?

19 A. I believe so, yes.

20 Q. And so those are -- they weren't
21 constructed where, within phase 2 or are you also --
22 here's what I'm trying to clarify. Are you reaching
23 into areas of phase 1 as well or are you just saying
24 in phase 2 alone?

25 A. In phase 2 alone.

1 Q. And what is your basis for contending that
2 the current purchaser of the golf course has an
3 entitlement to claim those units?

4 A. Can you restate the question?

5 Q. Sure. You're saying that those units are
6 somehow available, it sounds like, is that correct,
7 but there are 1200 units available for someone to
8 develop, is what it sounds like you're saying?

9 A. I'm saying that the condition of approval
10 from the city council action allotted a specific
11 number of units, and those number of units are still
12 available --

13 Q. A lot of those -- my apologies.

14 A. -- unless they did a review of condition
15 of that zoning action to either delete, amend, what
16 have you, to increase or eliminate any kind of
17 density unit cap.

18 Q. All right. The condition of approval for
19 whom? Who were those units allotted to?

20 A. Well, referring back to -- I don't know if
21 it is one of the exhibits you gave me.

22 Q. Yep.

23 A. No, I don't think we have that.

24 I'm sorry, I got distracted. Can you
25 repeat the question?

1 Q. Sure.

2 You just said -- I'm reading what you
3 said. You said, "I'm saying the conditions of
4 approval from the city council action allocated a
5 specific number of units, and those units are still
6 available."

7 Okay. They allocated a specific number of
8 units to whom?

9 A. At the time of entitlement, it would have
10 been the applicant.

11 Q. Okay. The applicant got an approval for a
12 certain number of units, correct?

13 A. Within a geographical area.

14 Q. Within a geographical area. And the
15 applicant also designated, within that geographical
16 area, a certain amount of that was open space,
17 correct?

18 A. On the plan as was adopted, yes.

19 Q. And that's what the city ultimately
20 recorded as part of its master plan, correct?

21 MR. JIMMERSON: Objection. I think that
22 misstates the record. It's not accurate.

23 THE WITNESS: The zoning action and the
24 master development plan did not amend the master plan
25 or the general plan at that point.

1 BY MR. BICE:

2 Q. Right.

3 A. Subsequent action adopting a general plan
4 to the -- as far as my knowledge, the map reflects
5 what was approved through the master development
6 plan.

7 MR. JIMMERSON: May I have the last
8 question and answer, please? I'm sorry.

9 (Record read as requested.)

10 BY MR. BICE:

11 Q. And what you're saying is the map
12 reflects -- the map of the general plan reflects what
13 was approved, correct?

14 A. The map of the general plan --

15 Q. Right.

16 A. -- reflects what was approved through the
17 master development plan which is known as Peccole
18 Ranch Master Plan Exhibit 8.

19 Q. Exhibit 8. And Exhibit 7 is a copy of --
20 if I understand, the date is 1999, but that map
21 reflects what was approved as of that date for
22 Peccole Ranch, correct?

23 MR. JIMMERSON: Objection.

24 THE WITNESS: No.

25 MR. JIMMERSON: Misstates the record and

1 also is confusing as to the date.

2 BY MR. BICE:

3 Q. It shows the open space that was
4 designated by the city -- by the applicant, correct?

5 A. I understand what you're asking, but the
6 one that was adopted in '92 does not reflect this
7 configuration.

8 Q. I understand, but the one in '99 does
9 reflect the configuration, correct?

10 MR. JIMMERSON: Objection. Misstates the
11 record.

12 THE WITNESS: The one adopted in 1999 is
13 showing the existing configuration of the golf
14 course.

15 BY MR. BICE:

16 Q. The 1992 didn't reflect the nine holes,
17 correct?

18 A. Correct. It reflected the composition
19 shown in the master development plan, not the
20 composition of how it was constructed and exists
21 today.

22 Q. Right. And then how it was constructed
23 and exists today is reflected in the 1999 map?

24 A. In regards to Exhibit 7, yes, it does.

25 Q. Correct? As approved by the city?

1 A. It says "adopted August 18th, 1999."

2 Q. Right.

3 A. So I imagine that would be the city
4 council action adopting that.

5 Q. And the property owner of the land at that
6 point in time would get notice prior to this
7 adoption, correct?

8 A. I can't speak to how the open meeting law
9 was met on this particular thing. It was prior to my
10 time --

11 Q. Well --

12 A. -- but if it is a general plan, we don't
13 send notice to every owner within the City of Las
14 Vegas.

15 Q. Right.

16 A. We do a general posting through the
17 newspaper.

18 Q. Well, let's -- can we agree on this? The
19 property owner in that case at the time of the
20 adoption of the general plan map got just as much
21 notice as all the homeowners did in September of 2015
22 about the amendment with the asterisk, correct?

23 MR. JIMMERSON: Objection. Misstates the
24 records in light of the witness' earlier testimony
25 about greater radius and greater notice.

1 THE WITNESS: As I stated before, I don't
2 know how they noticed this one, but if the minimum
3 open meeting law was being met, then yes.

4 BY MR. BICE:

5 Q. Okay. And as your research, did you find
6 any proof that the property owner disputed the
7 designation -- the property owner at the time --
8 disputed the designation as open space as reflected
9 on that 1999 map?

10 A. I personally haven't, but I personally
11 haven't researched everything that the city clerk may
12 have regarding to this.

13 Q. Has anyone told you that the property
14 owner at the time disputed that designation?

15 A. Not to my recollection.

16 Q. Does the property owner obtain a
17 significant benefit under that designation, open
18 space?

19 MR. JIMMERSON: Objection. Calls for
20 expert opinion and the testimony that this witness
21 has not been retained or compensated.

22 THE WITNESS: I can't speculate as far as
23 who would -- you know, what benefit one would garner
24 for it.

25 ///

1 BY MR. BICE:

2 Q. Well --

3 A. Is it -- are you asking as an overall
4 community open space is a benefit?

5 Q. No.

6 A. Or is it an individual that owns open
7 space, do they get a benefit?

8 Q. Well, the applicant in this particular
9 case, the Peccoles, got a benefit, did they not, by
10 designating all that area as open space?

11 A. I imagine, if they were trying to create a
12 community based around golf courses, that would be a
13 sales pitch, you know.

14 MR. JIMMERSON: Move to strike the answer
15 as calling for speculation, Mr. Bice.

16 BY MR. BICE:

17 Q. Do you know -- do you know what the --

18 MR. JIMMERSON: Mr. Bice, please. When
19 I'm speaking, don't speak, please, and I'll give you
20 the same respect.

21 MR. BICE: If you have an actual
22 objection, that's fine, but if you're going to give
23 more of the lengthy speaking objections, I don't
24 think that's appropriate.

25 MR. JIMMERSON: I said move to strike

1 because the answer says "I would imagine." I said,
2 therefore, the answer evidences speculation and I
3 stopped. But you continued talking, and that's
4 disrespectful. And I just asked you so the court
5 reporter gets it all down. That's all.

6 MR. BICE: I wasn't trying to be
7 disrespectful, Mr. Jimmerson. I thought you had
8 ended your statement, so --

9 MR. JIMMERSON: I have.

10 MR. BICE: So you were?

11 MR. JIMMERSON: And I move to strike. And
12 yes, thank you.

13 MR. BICE: So I'm not sure why you
14 interrupted me, but --

15 MR. JIMMERSON: Because I was still
16 speaking and then you started talking again and then
17 you started asking the next question. That's why I
18 voiced a concern.

19 BY MR. BICE:

20 Q. Let me go back. Let me see.

21 Okay. In addition to trying to create a
22 community around a golf course, are you aware of
23 whether or not the property owner, by designating it
24 as open space, gets any tax advantages?

25 MR. JIMMERSON: Calls for speculation.

1 The question is also misstating earlier testimony of
2 the witness.

3 THE WITNESS: I don't know. I would have
4 to defer to counsel.

5 BY MR. BICE:

6 Q. Okay. So back to my earlier question, you
7 said that you thought that there was something around
8 1200 units that hadn't been developed of what had
9 been approved. But those 1200 units had been
10 approved for the Peccole Family Trust, correct?

11 MR. JIMMERSON: Objection. Calls for
12 speculation.

13 THE WITNESS: That criteria came as a
14 condition of approval on the zoning -- the final
15 action letter for the zoning approval, which I
16 believe the applicant at that time was Peccole Trust
17 1982 or the Peccole Trust.

18 BY MR. BICE:

19 Q. And the Peccole Trust has sold a lot of
20 that property to other people, correct?

21 A. I don't know to what extent.

22 Q. Well, do you know that Mr. Schreck owns a
23 piece of the property in Peccole Ranch that was
24 created or approved as part of this master plan? Do
25 you know that?

1 A. I do.

2 Q. Okay. Does Mr. Schreck have the right to
3 develop additional houses on his property?

4 A. He's held to the confines of the zoning
5 ordinance and the approval of his individual
6 subdivision.

7 Q. What individual subdivision?

8 A. His home is one lot within a
9 subdivision --

10 Q. Okay.

11 A. -- and to establish the development
12 standards and that configuration of lots, it went
13 through a subsequent action, which has its own
14 conditions of approval for setbacks and things like
15 that. And he's also held to the Las Vegas Municipal
16 Code and then the zoning code. He would be held to
17 the legacy district. As far as multiple dwelling
18 units with kitchens and things like that, there are a
19 number of things that he would have to deviate from
20 to be able to do so.

21 Q. In order to do so, right? Can he just
22 knock down his house and build multiple units on his
23 lot, his large lot?

24 A. He can demolish his house. He can
25 petition and go through the many applications it