IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

No. 84345

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

AMENDED JOINT APPENDIX VOLUME 4

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **REPLY RE:** **PLAINTIFF LANDOWNERS' REQUEST FOR REHEARING / RECONSIDERATION OF ORDER / JUDGMENT DISMISSING INVERSE CONDEMNATION CLAIMS** Hearing date: January 17, 2019 Hearing time: 9:00 am

COMES NOW Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company, FORE STAR, Ltd, and SEVENTY ACRES, LLC, a Nevada Limited Liability Company (hereinafter the "Landowners") by and through their attorney of record, the Law Offices of Kermitt L. Waters and Hutchison & Steffen, and hereby file Reply Re: Plaintiff Landowners' Request for Rehearing / Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims.

This Reply is based upon the Memorandum of Points and Authorities included herein, the exhibits attached hereto, the pleadings and papers on file in this matter, and such oral arguments as may be heard by the Court at the time of the hearing in this matter.

DATED this 14th day of January, 2019.

LAW OFFICES OF KERMITT L. WATERS

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MEMORANDUM OF POINTS AND AUTHORITIES

1. THE LANDOWNERS' PENDING MOTION IS NOT ASKING THIS COURT TO ENTER AN ORDER FINDING A TAKING; IT IS MERELY ASKING FOR DUE PROCESS - AN OPPORTUNITY TO BE HEARD

As this Court will recall, in its January 11, 2018, Hearing and Order, this Court "severed" the Landowners inverse condemnation claims from the Petition for Judicial Review claims under NRCP Rule 42, held the inverse condemnation claims are ripe, and "stayed" the inverse condemnation claims until after the petition for judicial review is heard. Exhibits 1 and 2 to Landowners' original motion. Despite this clear holding, the City asserts that the Landowners's due process rights were not violated where these inverse condemnation claims were dismissed *sua sponte* (without notice or a hearing) in the separate and "severed" petition for judicial review case. The City's main contention for this argument is that the Landowners already made sufficient arguments in the petition for judicial review case. However, as set forth in the Landowners'

original motion and this reply (see below), there are very specialized rules and arguments that apply specifically in the context of an inverse condemnation case that do not apply in the context of a petition for judicial review and, therefore, were not made in the petition for judicial review hearing. Simple notions of due process dictate that the Landowners should be given the opportunity to be heard on these specific inverse condemnation arguments.

Moreover, there is new controlling law related to the vested property rights issue that arises out of the Nevada Supreme Court affirmance of the Smith Orders. Exhibits 7, 83, 84, and 98, filed with the Motion for Summary Judgment and as a Supplement to the Landowners' original motion, Exhibit 5 to the original motion. This new controlling law unequivocally holds that the Landowners have the "right to develop" the 35 Acre Property pursuant to "public maps and records." Exhibit 84, p. 2.[1] Simple notions of due process dictate that the Landowners should be given the opportunity to be heard on how this new and controlling law applies to the Landowners' inverse condemnation claims.

Instead, the City wants this Court to ignore the Landowners' due process rights. It wants this Court to uphold a dismissal of the Landowners' inverse condemnation claims without due process. It does not want this Court to even have an opportunity to consider the specific eminent domain and inverse condemnation law that applies in this case. It wants this Court to blindly follow the Crockett Order that has not been affirmed by the Nevada Supreme Court and ignore the Smith Orders that were affirmed by the Nevada Supreme Court. And, it wants this Court to prevent the Landowners from even being heard on the specific facts that support the inverse condemnation claims that are set forth in the Landowners' proposed Summary Judgment pleading. See Exhibit 5 to Original Motion.

Refusing to even allow the Landowners to be heard on their inverse condemnation claims is a blatant violation of basic constitutional rights - due process and just compensation rights. Again, the Landowners are not asking this Court to enter a finding of a taking at this time; they are merely asking for an opportunity to be heard before their important constitutionally based claims are summarily dismissed without so much as a hearing.

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[1]This Exhibit is attached to Exhibit 5 which is part of the Landowners' original motion.

2. THE CITY'S DUE PROCESS ARGUMENT IS WITHOUT MERIT

The City tries to torture the record to assert that the Landowners had notice that their inverse condemnation claims would be dismissed and, therefore, they should have made all of their arguments regarding the inverse condemnation claims to the Court in the "severed" petition for judicial review case. City Opp. Pp. 9-10. The City even disrespectfully asserts that the Landowners are trying to "regurgitate" arguments already made. City Opp. P. 20. As explained, the City's request to "sever" the inverse condemnation claims from the petition for judicial review was granted, the inverse condemnation claims were "stayed" and the Court held the inverse condemnation claims were "ripe." Exhibits 1 and 2 to original motion. No reasonable person could possibly know, let alone even suspect, that, based on these facts, this Court would *sua sponte* dismiss the inverse condemnation claims in the "severed" petition for judicial review without notice, without briefing on the claims, and without a hearing. Moreover, Landowners eminent domain / inverse condemnation counsel sat through the entire petition for judicial review hearing just in case any of the inverse condemnation issues came up and was prepared to address them if needed. However, neither this Court, the City, nor Landowners' petition for judicial review counsel raised the inverse condemnation issues. None of these issues were raised, because they had been "severed" and "stayed." Accordingly, the City's attempt to torture the record to assert the Landowners should have known the *sua sponte* dismissal was coming is entirely baseless. And, the City's assertion that arguments are merely being "regurgitated" is without basis as the Landowners never had an opportunity to make arguments in the first instance.

Due process is not a difficult concept - the Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." United States Supreme Court precedence "establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property." U.S. v. James Daniel Good Real Property, 510 U.S. 43, 48 (1993). Here, there was no notice, no briefing, and no hearing before the Landowners' inverse condemnation claims were dismissed. Again, the pending motion is not asking for a ruling on the merits (even though the City is trying to argue the merits), but rather a more narrow request - that the Landowners be given an opportunity

to brief their inverse condemnation arguments and have them decided on the merits. Despite the City's attempt to ignore the Constitution, the Due Process Clause requires the requested notice and a hearing and it is reversible error to deny the request.

3. THIS COURT CAN CONSIDER THE ARGUMENTS, FACTS, AND LAW IN THE PROPOSED SUMMARY JUDGMENT

In a further attempt to ignore the Constitution and the Due Process Clause, the City claims that this Court cannot even consider the facts and law the Landowners would have argued had they been given notice - as set forth in the proposed summary judgment pleading, which is attached as Exhibit 5 to the original motion. Exhibit 5 includes a detailed analysis of the vested property rights issue, the ripeness issue, the futility issues, the interplay between the Crockett Order and the Smith Order that was affirmed by the Nevada Supreme Court, the City action that amounts to a taking, and the relevant inverse condemnation law that should be considered by this Court when deciding whether a taking has occurred. This is provided to this Court to show the arguments that the Landowners would have made if given notice of and a proper hearing. It also shows the arguments the Landowners will make if this Court allows the Landowners a hearing. There is absolutely no reason, in law or in equity, that this Court is required to ignore these arguments, facts, and law as requested by the City.

And, the City's argument that the Court cannot consider a motion for summary judgment once it dismisses a claim is misplaced in this case. The Landowners have attached the Motion for Summary Judgment and attendant Exhibits as Exhibit 5 to their original motion for a hearing. The Landowners are not asking this Court to consider the Motion for Summary Judgment prior to the motion for a hearing. Instead, as explained, the Landowners are presenting these arguments, facts, and law to the Court to show this Court the arguments that would have been presented and should have been considered by the Court had a proper hearing been conducted. And, the Landowners have stipulated with the City that, if this Court grants the motion for a hearing, the motion for summary judgment will be continued and a briefing schedule entered so that the matter may be heard in the proper course.

It is unconscionable that the City, after including the dismissal of the Landowners' inverse condemnation claims at the end of its FFCL to this Court in the petition for judicial review case,

now also wants this Court to entirely ignore relevant facts, law, and argument related to the inverse condemnation claims, which would have been presented to the Court had the inverse condemnation claims not been improperly and subversively dismissed.

4. THE CITY IS ARGUING FACTUAL ISSUES THAT REQUIRE A "COMPLEX FACTUAL ASSESSMENT"

The underlying premise for the City's opposition to the Landowners' request for a hearing is that the Landowners should not even be permitted notice of or a hearing on the vested property rights, ripeness, futility, and taking issues, because, according to the City, the Landowners could not prevail on these issues anyway. This is not the way the United States Supreme Court requires these claims to be considered. Instead, The United States Supreme Court has held that these taking claims are "ad hoc" proceedings that require a "complex factual assessment." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 720 (1999). The very nature of vested property rights, ripeness, futility, and taking issues dictates that these are factual based inquiries in the context of an inverse condemnation proceeding. Accordingly, they are not subject to dismissal without notice of and a hearing and a proper consideration of the "complex" facts. And, asking for these issues to be decided in an opposition to a motion for a hearing, where a hearing has not yet occurred on the issues, is outrageous. Therefore, this Court should at least grant the Landowners an opportunity to be heard on these "complex factual issues" before the Court takes the draconian step of summarily dismissing the inverse condemnation claims.

5. THE LAW THIS COURT CONSIDERED IN THE LAND USE / ZONING PART OF THIS CASE DOES NOT APPLY IN THE INVERSE CONDEMNATION PART OF THIS CASE - GOVERNMENT DISCRETION IN THE CONTEXT OF A LAND USE / ZONING DENIAL DOES NOT SHIELD THE GOVERNMENT FROM LIABILITY FOR A TAKING

The Government's main contention for why the Landowners should not even be given a hearing on their takings claims is - "where the council properly exercised its discretion to deny the applications, there can be no taking as a matter of law." City Opp., 2:10-12; pp. 10-11, 15-16. This is a baseless argument that has never been the law and has, in fact, been expressly rejected numerous times by the Courts. What the Government is trying to do is confuse this Court into thinking that as long as the City has "discretion" or a legitimate reason to deny a land use application under land use and zoning law, then there cannot be a taking of property that is impacted

by this 'legitimate' government action. In other words, the City claims that it has absolute discretion under land use law to deny land use applications and this absolute discretion provides immunity from taking actions.

The City's argument entirely confuses "discretion" as it applies in the context of a land use / zoning case and "discretion" as it applies in an eminent domain / inverse condemnation case. Even if this Court holds that the City has the absolute and unfettered discretion to deny any and all land use applications filed by the Landowners, this does not shield the City from liability for the impact the City action has on the Landowners' Property in the context of the eminent domain action. The interplay between the government's discretion to adopt regulatory laws or deny land use applications and liability for a taking can be seen in four cases, cited below. In each one of these cases, the Court found that the government action was discretionary and legitimate, but also found a taking. This is because the action by the government, even though it was discretionary and legitimate, still resulted in a taking of the Landowners' Property mandating payment of just compensation. In other words, the City's assertion that "where the council property exercised its discretion to deny the applications, there can be no taking as a matter of law" is an entirely frivolous, baseless argument that has been expressly rejected in the four cases cited below.

Also, it should be noted that the four cases below involve both "facial challenges" and "As-applied" taking claims. This shows that the City's attempt to claim there is a distinction between these two types of inverse condemnation cases, which warrants application of discretionary immunity in "As-applied" taking cases is entirely without merit. City Opp., pp. 18-19. As shown below, there is no such distinction and no such special immunity for the City in "As-applied" taking cases. The four cases are as follows:

Nevada Supreme Court Hsu and Sisolak[2] cases (a facial challenge and As-applied case) - in the Hsu and Sisolak cases, the County of Clark adopted height restrictions around the airport. It was undisputed that the height restrictions were discretionary and adopted for two legitimate reasons: 1) the federal government required the height restrictions as a precondition to receiving federal funds; and, 2) the general safety and welfare of the public, namely, the safe takeoff and

[2] McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006).

landing of aircraft. Despite the discretion and legitimacy of adopting these height restrictions, the Nevada Supreme Court still found a taking. And, the Landowners were not required to challenge the legitimacy of the height restrictions as a precondition to the taking. Instead, the Court entered a very clear ruling - the government can exercise discretion to deny land use applications based on "valid zoning and related regulations," but, if in exercising that discretion the government action rises to the level of a taking, just compensation must be paid.[3] In other words, even if the City's discretionary and legitimate denial is based on valid zoning and related regulations, the denial may still "give rise to a taking claim."

United States Supreme Court Del Monte Dunes case (an As-applied case) - In the Del Monte Dunes case, the landowner brought a taking action, because, like the City of Las Vegas in this case, the City of Monterey denied several attempts to develop the landowner's property. Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999). The City of Monterey exercised its discretion and had a legitimate interest in preventing development on the landowners' property in that case, including a desire to protect a beach and an alleged habitat for the Smith's Blue Butterfly. Despite the City discretion and legitimate interest to deny the land use application, the Ninth Circuit Court upheld the taking and the United States Supreme Court found that there could be a regulatory taking. In fact, the United States Supreme Court succinctly rejected the very argument the City is making here, holding "[t]o the extent the city argues that, as a matter of law, its land-use decisions are immune from judicial scrutiny under all circumstances, its position is contrary to settled regulatory taking principles." Del Monte Dunes, at 707. The Court noted that there was a taking, even though "the jury was instructed, in unmistakable terms, that the various purposes asserted by the city were legitimate public interests." Id., at 706.

United States Supreme Court Lucas case (a facial challenge case) - The Lucas case is applicable here, despite attempts by the City to distinguish it. In Lucas, the United States Supreme Court held there was a categorical taking of Mr. Lucas's property where the government adopted the Beach Management Act which severely limited the use of Mr. Lucas's property. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). The Court further held that Mr. Lucas's

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[3] Sisolak, at 660, fn 25.

concession that the government's discretionary act to legitimately adopt the Beach Management Act was not a defense to the taking. In other words, even though it was conceded that the government action (the Beachfront Management Act) was a discretionary and legitimate act by the government, the Act still amounted to a taking for which just compensation was constitutionally mandated.

Eighth Judicial District and Richmond Elks Hall cases - In the Eighth Judicial District case the Nevada Supreme Court held that a non-regulatory / de facto taking occurs where the government has "taken steps that directly and substantially interfere with [an] owner's property rights to the extent of rendering the property unusable or valueless to the owner."[4] The Court did not list exceptions to this rule, meaning even if the government action is discretionary or legitimate, it can still amount to a taking. To support this rule, the Court cited to the Ninth Circuit Richmond Elks Hall case that holds "[t]o constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights."[5] In Richmond Elks Hall, the government was engaging in action to remedy "blight" in the area which clearly is a legitimate discretionary government action. The action, however, caused several of the landowner's tenants to vacate, leaving less than one-third of the property occupied. Id., at 1329-30. The Ninth Circuit held that this rendered the landowner's property "unuseable in the open market" and "severely limited" the property's use for its intended purposes, resulting in a de facto taking. Id., at 1330-31. Therefore, despite the discretionary, legitimate act of remedying blight, the Ninth Circuit still found a taking.

The public policy for this rule is elementary and has never been in dispute since the adoption of the United States Constitution. This can be seen in two examples. The government has the discretion to build a highway and this is legitimate government action, however, there is still a taking if that highway is built through private property. The government has the discretion to deny certain land use applications and this may be legitimate government action, however, there is still

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[4] State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015).

[5] Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. Ct. App. 1977).

a taking if there is a denial of all economically viable use of private property. If the rule were otherwise, the government could take any property it wanted and be immune from payment merely by arguing it engaged in discretionary action that is legitimate.

Therefore, the City's contention, and this Court's holding, that the City cannot be liable for a taking because the City properly exercised its discretion to further a legitimate act is gross error. It is directly contrary to the above cited, well established United States and Nevada Supreme Court and Ninth Circuit precedent. And, the City's attempt to intentionally mislead this Court into adopting this rule by citing to inapplicable land use and zoning cases, instead of applicable inverse condemnation case law, is inappropriate.

6. THE CITY INCORRECTLY APPLIES "VESTED RIGHTS" LAW FROM LAND USE / ZONING CASES TO THIS INVERSE CONDEMNATION CASE

Similar to the preceding argument, the City is attempting to improperly apply the "vested rights" case law from land use / zoning cases to this inverse condemnation case. City Opp., 2:10-12; pp. 10-11, 15-16. The City cites to several land use / zoning cases where the Court held that a landowner does not have a vested right to have all land use applications approved on her property. The City then asserts that these land use / zoning cases apply in this eminent domain case to mean no landowner in the State of Nevada has "any" vested property rights until such time as the local entity approves a use on their property. City Opp. 11:8-17. This is not the first time a governmental entity has tried this frivolous argument - to extend this land use / zoning law into an eminent domain case - and not once has it succeeded. The public policy for not applying these land use / zoning cases in the context of an eminent domain case is it would entirely eliminate all property rights in the State of Nevada. No landowner could ever bring an inverse condemnation action, because the government could simply cite to land use / zoning cases and claim there was no vested right to begin with, because the government had the absolute discretion to deny the use of property anyway.

This same argument was made by the County of Clark in the Sisolak case and rejected by the Nevada Supreme Court. In Sisolak, the County argued that "the district court erred by finding that Sisolak has a vested property interest in the airspace above his property up to 500 feet." Sisolak, at 658. Mr. Sisolak had never been granted permission by the County to use his airspace.

The Court defined the issue as "[w]e must determine whether Sisolak had a valid property interest in the airspace over his property." Sisolak, at 658. The Court explained that "the first right established in the Nevada Constitution's declaration of rights is the protection of a landowner's inalienable rights to acquire, possess and protect private property" and Nevada "enjoys a rich history of protecting private property owners against government takings." Sisolak, at 669. The Court further explained that "[t]he term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." Id., at 658. The Court held that the underlying right to "possess, use, and enjoy" property included Mr. Sisolak's vested right to use his airspace - even if the County never granted him the right to use that airspace. Id., at 659-660.

The Sisolak Court did, however, strike a balance between Nevada land use / zoning law and eminent domain law. The Court held that local entities do have discretion to deny land use applications based on "valid zoning and related regulations."[6] But, in the exercise of that discretion, if the local entity takes property, it must pay just compensation. Id.

Applying the Sisolak case to this case, means that the Landowners have the constitutionally based "inalienable right to acquire, possess and protect" the 35 Acre Property, which includes the vested right to "possess, use, and enjoy" the 35 Acre Property. If the City denies this vested right to possess, use, and enjoy the 35 Acre Property, there has been a taking for which just compensation must be paid. And, land use and zoning law which allows the City "discretion" to deny land use applications is not a defense to the taking.[7]

The rejection of this rule is also seen in the other four above cited cases - Hsu, Lucas, Del Monte Dunes, and Richmond Elks Hall. As explained above, in these four cases, like in the Sisolak case, the Courts uniformly found there was a vested property right and the landowners were entitled to compensation for the taking of that property right. For example, in the Del Monte Dunes case, the City of Monterey repeatedly denied the landowners request to develop (just as the City has done

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[6] Sisolak, at 660, fn 25.

[7] It has long been established that when Government regulation "goes too far" that a taking has occurred and just compensation is owed. Penn Coal Co. v. Mahon, 260 U.S. 393 (1922) ("The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." at 415).

in this case), the landowner sued in inverse condemnation (just as the Landowner has done in this case), and the Ninth Circuit and United States Supreme Court held there was a taking. The Courts applied eminent domain law to find the taking. The Courts did not apply land use / zoning law (like the City is doing in this case) to find the government has "discretion" to deny land use applications and, therefore, there was no vested property right to begin with.

7. THE CITY MISAPPLIES THE SMITH ORDERS, FURTHER SHOWING THE NECESSITY OF A HEARING

The City also tries to impute land use / zoning law into this inverse condemnation case to claim the Smith Orders don't apply here. The City claims that "[t]he [Landowners] leap from that language [in the Smith Orders] to the assertion that these decisions affirmatively state, as a matter of law, that the [Landowner] has 'vested rights' **to have the 35-Acre Applications granted**." City Opp. 14:1-3. (emphasis supplied).

The Landowners are simply stating that: they have the vested right to "possess, use, and enjoy" their property as stated in the inverse condemnation case of Sisolak; the City has denied any and all use and enjoyment of the 35 Acre Property; and, the City has expressly stated that it has denied any and all use and enjoyment of the 35 Acre Property in furtherance of a City scheme to specifically target the Landowners' Property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for $15 Million which is 1% of its fair market value. This is a prima facie taking case - it meets the elements of a taking under the United States and Nevada Supreme Court law set forth above.

The Smith Orders, affirmed by the Nevada Supreme Court, merely follow this well settled eminent domain law. As explained in the Landowners' moving papers, pursuant to the Smith Orders, affirmed by the Nevada Supreme Court, it is settled law that the Landowners have the vested right to develop the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) with a residential use, because: 1) the Property has always been hard zoned residential; 2) the intent was always to develop the Property residentially; and 3) hard zoning trumps any other conflicting land use plan designation. The Smith Orders even hold that the initial steps to develop the property residentially, parceling the 250 Acre Residential Zoned Land, had proceeded properly: "The Developer Defendants [Landowners] properly followed procedures for approval of a parcel map

over Defendants' property [250 Acre Residential Zoned Land] pursuant to NRS 278.461(1)(a) because the division involved four or fewer lots. The Developer Defendants [Landowners] parcel map is a legal merger and re-subdividing of land within their own boundaries." See Exhibit 83, p. 10, finding #41, attached to Exhibit 5 to the Landowners original motion.

This means that the City can exercise its "discretion" and apply valid zoning laws to deny any and all use and enjoyment of the 35 Acre Property, but, once it does this (as it has done in this case), it is required to pay just compensation. This is very basic hornbook inverse condemnation law and the City's attempt to rewrite it by introducing the City's discretion in the context of land use / zoning law is misplaced and simply frivolous.

8. THE CITY'S "PRIVATE CONTRACT" ARGUMENT IS WITHOUT MERIT

The City further argues that the Supreme Court's affirmance of the Smith Order only applies to a private- party contract and is not applicable to the land use laws that govern the City. City Opp., pp13-15. This argument ignores the plan language of the Supreme Court affirmance wherein the Supreme Court stated that "[b]ecause the record supports the district court's determination that the golf course [250 Acre Residential Zoned Land] was not part of the Queensridge community under the original CC&Rs ***and public map and records***, regardless of the amendment, we conclude the district court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief." (Emphasis added). Exhibit 84, 13 App., LO 00003003; see also Exhibit 98: 16 App., LO 3830-3832, Supreme Court Order Denying Rehearing. The Court continued, "[a]ppellants filed a complaint alleging the golf course land [250 Acre Residential Zoned Land] was subject to the CC&Rs when the CC&Rs and ***public maps of the property*** demonstrated that the golf course land [250 Acre Residential Zoned Land] was not." *(*Emphasis added). Id., p. 4. The Supreme Court also upheld the award of attorney fees, confirming it is frivolous to challenge the Landowners' vested right to develop. *Id.* Accordingly, the City's private party argument is without merit and furthermore the City was a party to that action. Exhibit 83, 13 App., LO 00002977.

9. THE CITY'S ARGUMENT THAT THE LANDOWNERS DO NOT HAVE A RIGHT TO REDEVELOP OPEN SPACE INTO A RESIDENTIAL USE IS MISPLACED

The City asserts that the Landowners do not have a vested right to "redevelop open space into residential use." Govt. Opp. 12:9-10. This argument is misleading, because the Landowners

are not trying to "redevelop open space into residential use," the Landowners are trying to develop a currently hard zoned residential property into a conforming residential use. As explained above, Judge Smith (affirmed by the Nevada Supreme Court) already held that the Landowners have the vested right to develop the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) with a residential use, because: 1) the Property has always been hard zoned residential; 2) the intent was always to develop the Property residentially; and 3) hard zoning trumps any other conflicting land use plan designation.

10. THE SMITH AND CROCKETT ORDER ARE IRRECONCILABLE AND THIS COURT SHOULD FOLLOW THE SMITH ORDER AS IT HAS BEEN AFFIRMED BY THE NEVADA SUPREME COURT[8]

The City has relied heavily on the Crockett Order in these proceedings to assert the Landowners have no property rights and the Landowners need to submit a "major modification" to ripen their taking claims. First, as explained, land use / zoning cases do not apply in this inverse condemnation proceeding and it is beyond dispute that the Crockett Order was entered in a land use / zoning case that involved the separate and distinct 17 Acre Property. Therefore, the Crockett Order should not even be applied in this inverse condemnation case. Second, the Nevada Supreme Court affirmance of the Judge Smith Orders entirely nullifies the Crockett Order rendering it meaningless in this case.

A. What the Crockett Order Holds

To understand how the Nevada Supreme Court nullified the Crockett Order, it is first important to analyze what the Crockett Order holds. According to the City, the Crockett Order holds that a "major modification" application is necessary to develop and the Landowners never submitted this application to the City. This City argument (applying the Crockett Order) is that an individual named William Peccole drafted a "conceptual" plan showing certain land use designations in 1986 and that this "conceptual" plan shows an open space / golf course designation on the 250 Acre Residential Zoned Land, which includes the 35 Acre Property. The City then asserts (applying the Crockett Order) that, if the Landowners want to use the 250 Acre Residential

[8] The Exhibits referred to in this section are included and attached to Exhibit 5,which is part of the Landowners' original motion.

Zoned Land for a residential use, the Landowners need to request a "major modification" to change the designation from open space / golf course to a residential use on Mr. Peccole's conceptual plan. And, since the Landowners never filed for a "major modification" their claims are not ripe. This City argument (applying the Crockett Order) focuses entirely and solely on Mr. Peccole's "conceptual" plan and entirely ignores the hard R-PD7 zoning that has existed on the property since 1986. In other words, the Crockett Order holds that Mr. Peccole's "conceptual" plan on how he envisioned the area to develop trumps the R-PD7 hard zoning that was adopted by City ordinance.

B. How The Nevada Supreme Court Nullifies the Crockett Order

This City argument, adopted in the Crockett Order, however, has been rejected in the two Judge Smith Orders, which were affirmed by the Nevada Supreme Court. The Judge Smith Orders rely entirely on the hard R-PD7 residential zoning that was on the 250 Acre Residential Zoned Land since 1986 instead of the "conceptual" land use plan drafted by Mr. Peccole. As detailed in the Landowners' opening motion, according to the Judge Smith Orders and the Supreme Court affirmance, it is settled law that: 1) the Landowners property has always been hard zoned R-PD7 (residential); 2) the intent was to always develop the property residentially; 3) the Landowners have the vested "right to develop" the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) with a residential use; 4) the 250 Acre Residential Zoned Land was never part of the Queensridge Community or subject to any Queensridge CC&Rs; 5) the Queensridge homeowners have no rights whatsoever to the 250 Acre Residential Zoned Land; 6) no Queensridge CC&Rs or other City plan may be invoked to prevent this development; and, 7) the Landowners properly proceeded with the residential development by filing the appropriate parcel maps. Exhibits 7, 83, 84, 85, 89. Accordingly, per Nevada law no "major modification" application is necessary - the property is already and has always been zoned residential, its intended use, the Landowners' have the "right to develop" the property for this use, and they proceeded appropriately with a residential development.

Moreover, it is important to understand the sole process for how Mr. Peccole's "concept" plan can even be applied to the 35 Acre Property to fully grasp how the Supreme Court Affirmance of the Judge Smith Orders entirely nullifies the Crockett Order. Mr. Peccole's conceptual plan itself

states unequivocally that: 1) the plan is only Mr. Peccole's "concept"[9] - it is not a City master land use plan; and, 2) the sole and only way the "concept" plan can even be applied to any properties is through the adoption of Covenants Conditions and Restrictions ("CC&Rs"). *Exhibit 60: App LO 00002369 and 2383*. The Queensridge CCR's unequivocally state that the "'Badlands Golf Course' (which includes the 35 Acre Property) **is not a part**" of the Queensridge development under the Peccole 1990 Conceptual Plan. *Exhibit 66: 11 App LO 00002572*. The "Master Plan" for the Queensridge development that was recorded with the County Recorder, entitled the "Final Map For Peccole West," unequivocally shows the 35 Acre Property was "NOT A PART" of the Queensridge development, meaning it could not be reserved for open space use for the Queensridge development. *Exhibit 66: 11 App LO 00002685-90*. Additionally, the 35 Acre Property has always remained private land and there was not any condition by the City in 1990 as part of the approval of the Queensridge development that the 35 Acre Property be dedicated for public use, such as a park. The Nevada Supreme Court understood this well, specifically holding that the 35 Acre Property is not a part of any CC&Rs and, therefore, the CC&Rs "cannot be enforced against the [35 Acre Property]."[10]

Therefore, Mr. Peccole's concept plan does not even apply to the 35 Acre Property. If Mr. Peccole's concept plan does not apply to the 35 Acre Property, then it goes without saying that Mr. Peccole's open space designation does not apply and there is no need to "modify" Mr. Peccole's concept plan to develop the 35 Acre Property. Furthermore, the Landowners' predecessor ALWAYS insisted on maintaining residential "fallback" for the 250 Acres Residential Zoned Land for future development potential. In fact, the deposition of Mr. Greg Goorjian, who was the former

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[9] The Peccole1990 Conceptual Plan was designed to be flexible: "as the City of Las Vegas General Plan is designed as a set of guidelines to help direct future growth of the City, so is the proposed Peccole Ranch Master Plan designed with an inherent flexibility to meet changing market demands at the time of actual development." *Exhibit 60: 10 App LO 00002384*.

[10] *See page 4, above.* The CC&Rs for the Queensridge Community plainly state "[t]he existing 18-hole golf course commonly known as the 'Badlands Golf Course' [250 acre property] **is not a part** of the Property or Annexable Property" governed by the Queensridge CC&R's. *Exhibit 66: 11 App LO 00002552-2704.* Also, the "Master Plan" for the Queensridge CC&Rs shows that the 250 acre property is "NOT A PART" of the Queensridge Community. *Id.*

VP of Marketing for Queensridge and had worked with William Peccole since 1983, testified that Mr. Peccole made sure that there was always a "fallback" position of residential for the 250 Acre former golf course property; that "Mr. Peccole had tremendous foresight, and always, believe it or not, planned for the worst," "[t]hat there might be circumstances that it would no longer be able to be a golf course, whether it was financially, water. He always brought up issues like war. He always was very cautious, conservative person." (*Exhibit 99*, *LO 00003838, Goorjian Depo Transcr. p. 17-18*). Accordingly, despite the City's unsupported representations, Mr. Peccole would not have sought any designation on his then 250 acres which would have prevented future development. Mr. Goorjian further confirmed that the 250 Acre Residential Zone Land was never part of Queensridge or the Peccole Master Plan. Accordingly, as held by the Nevada Supreme Court, the Landowners' 250 Acres Residential Zoned Land was always protected and intended for future residential development.

It is impossible to reconcile the Crockett Order with the Judge Smith Orders and Supreme Court Affirmance. The Judge Smith Orders focus on the R-PD7 hard zoning (approved by the City) and affirm the "right to develop" the property residentially.[11] The Crockett Order, on the other hand, ignores the R-PD7 zoning and, instead, focuses on Mr. Peccole's "concept" plan designation of open space and holds no residential units are allowed in the open space.[12]

This Court should follow the Judge Smith Orders as they have been affirmed by the Nevada Supreme Court. *Exhibits 7 84, 89 and 98.* Moreover, Nevada's executive,[13] legislative,[14] and judicial branches[15] have all determined Judge Smith is correct - hard zoning trumps the land use plan,[16] especially a "concept" plan by Mr. Peccole that is not even a city master land use plan.

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[11] *Exhibits 7, 83, 84, 85, 89 and 98*.

[12] *Exhibit 72, 12 App., LO 00002821, see specifically LO 00002825, finding #13.*

[13] 1984 Nev. Op. Atty. Gen. No. 6 at 3 ("Nevada legislature has always intended local zoning ordinances to control over general statements or provisions of a master plan.")

[14] See NRS 278.349(3)(e).

[15] *See Exhibits 7, 84, 89 and 98.*

[16] The City, itself, has admitted that zoning trumps the General Plan. The City filed a pleading in the petition for judicial review related to the 17 Acre Property arguing: "[i]n the hierarchy, **the land use designation is subordinate to the zoning designation**, for example, because land use designations indicate the intended use and development density for a particular

C. Public Policy for the Nevada Supreme Court Affirmance of the Judge Smith Orders

The Nevada Supreme Court Affirmance of the Judge Smith Orders is well reasoned and based on strong public policy.

Reason / Public Policy #1 - First, as cited above the 35 Acre Property has always been zoned residential, the intent was always to develop the property residentially, the City itself repeatedly affirmed this hard residential zoning, and hard zoning trumps any other conflicting land use plan designation.[17] In fact, any challenge to this vested "right to develop" is, as stated by Judge Smith, "frivolous."[18] This residential zoning is so widely accepted that the Clark County Tax Assessor has assessed the property as residential for a value of approximately $88 Million. *Exhibit 36: 8 App LO 00001923-1938.* Moreover, the ruling is consistent with the Nevada Supreme Court Sisolak and Schwartz cases, which hold that Nevada landowners have the vested right to develop their properties even if they have not put it to a beneficial use[19] and the government may only regulate that use with "valid zoning and related regulations" that do not "give rise to a taking

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area, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses." Jack B. Binion, et al. v. City of Las Vegas, et al., Case No. A-17-752344-J, Respondent City of Las Vegas Answering Brief, 2:8-12. (emphasis supplied). The City's own attorney, Brad Jerbic, represented in a public hearing that "[i]f you do not grant the general plan amend[ment] tonight, you will leave in place a general plan that's inconsistent with the zoning, **and the zoning trumps it, in my opinion**." *Exhibit 71, 11-12 App., Transcript of Planning Commission meeting, Feb. 14, 2017, page 64 lines 1795-1797.* (emphasis supplied). Mr. Jerbic further stated, [b]ut the fact is, if you didn't even have a general plan amendment that synchronized the General Plan with the zoning, the zoning is still in place, and it doesn't change a thing." *Exhibit 21, Vol 4-5, Transcript of City Council Meeting of August, 2, 2017, page 95, lines 2652-2654.* Tom Perrigo, Planning Director for the City of Las Vegas, agreed with Mr. Jerbic and opined that zoning trumps the master plan. *Id., pp. 94-95.*

[17] *See Exhibit 7, 3 App., 00000557; Exhibit 83: 13 App., LO 00002977; Exhibit 84: 13 App., LO 00003002; Exhibit 89: 13 App., LO 00003093; Exhibit 98: 16 App., LO 3830-3832, Supreme Court Order Denying Rehearing.*

[18] *Exhibit 7, 3 App. LO 00000584-585, finding #95, p. 27, LO 00000586, finding #102.*

[19] McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006) (landowner had a vested right to use the airspace above his property pursuant to NRS 493.040, even though he never used it and the County never approved the use. Schwartz v. State, 111 Nev. 998 (1995) (Nevada landowners have a vested right to access roadways adjacent to their property, even though the access has never been built).

claim."[20] Otherwise, as explained above, if the City had absolute discretion to grant or deny the use of property, then the Just Compensation Clause would be entirely eliminated. The City could deny all use of all properties in the City (under the City's alleged discretionary power) and never pay any compensation whatsoever for these denials. This despotic argument is not the law and never will be the law as it would bring all property transactions in the State of Nevada to an immediate and abrupt halt. No entity or person would ever purchase property in this State, because there would be no property rights. The only "thing" that would be purchased in a property transaction is dirt for which there are no rights, because the local entities, like the City, could tell the new owner that he cannot use the property at all under the City's absolute discretion argument.

Reason / Public Policy #2 - The City's own persons most knowledgeable have affirmed the vested right to develop and rejected the major modification argument. Brad Jerbic is perhaps the best person at the City who can offer an opinion on the major modification issue as he has been the City Attorney for nearly 30 years, has worked to draft the City Code, interprets the Code, and has advised the City Council on this Code for his entire career. Mr. Jerbic stated in a public hearing that the City's current "major modification" argument is nothing more than a "red herring."[21] Phil Byrnes has been an assistant City Attorney for over 20 years and, therefore, may be the next best person to provide an opinion on the City's "major modification" argument and he stated that a major modification is not required.[22] Tom Perrigo, the City's highest ranking planner, stated a major modification is not required to develop the 35 Acre Property.[23] Finally, further evidence that any "major modification" argument is a complete farce is the fact that the City has granted permission to develop fifty (50) other properties in the area of the 35 Acre Property that have R-PD7 zoning and were similarly in "open space" labeled areas on the Peccole 1990 Conceptual Plan

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[20] McCarran Intl. Ariport v. Sisolak, 122 Nev. 645, 660, fn. 25 (2006). This also further shows that the City's reliance on the Stratosphere is misplaced as that case applies to zoning issues, not inverse condemnation issues. And, all it holds is that the City has discretion to grant or deny certain uses. It does not say that the City has "absolute discretion" to deny all use of property without payment of just compensation.

[21] *See Exhibit 24, 5 App LO 00001071-1072.*

[22] *See Exhibit 38, 24:13-17; 26-27; 29; 30; 43:2-10, 8 App LO 0001964 - 9 App LO LO - 00002018.*

[23] *See Exhibit 5, 2App LO 0000400:1228-1233.*

and not once did the City reference a PR-OS or other "open space" designation or require a "Major Modification" from the Peccole 1990 Conceptual Plan for these 50 applications.[24]

Reason / Public Policy #3 - Judge Smith held that the 35 Acre Property has been hard zoned R-PD7 since 1986. The City's development code applicable to "R-PD" hard zoned property, like the Landowners' property, is LVMC 19.10.050 and this code provision does not require a major modification application as a precondition to develop. By comparison, the City's code to develop under the "PD" designation, LVMC 19.10.040, does require a major modification application to develop. Therefore, a major modification is not a barrier to exercise the vested right to develop.

Reason / Public Policy #4 - The Peccole 1990 Conceptual Plan was not recorded and did not dedicate anything to the City; it was only a "Conceptual Master Plan" that was the vision of a developer. *Exhibit 60: 10 App LO LO 00002369*. Unrecorded visions of a developer are not notice to or binding upon subsequent purchasers of land sufficient to trump the vested right to develop the Landowners' R-PD zoned property.

Reason / Public Policy #5 - This Court is required to consider the "practical reality"[25] facing landowners in inverse condemnation actions; the Court is not required to abandon all common sense and reason. Any argument that a major modification requirement is a barrier to exercising the vested right in this case requires this Court to do just this. Simply put, the City is representing to this Court that if the Landowners had written the words "major modification" at the top of its applications to the City, then the City would not have engaged in the following acts (these acts will

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[24] The City admitted that there have been six other development/entitlement actions done within the Peccole 1990 Conceptual Plan area, none of which were prohibited from developing due to an open space designation and none required a Major Modification from the open space designation. *Exhibit 5: 2 App LO 00000400:1228-1233 and Exhibit 61: 10 App LO 00002465:2314-2318*. The City also approved approximately 44 residential developments all zoned with R-PD7 with a similar open space designation on the Peccole 1990 Conceptual Plan without any delay or request for a Major Modification from the Peccole 1990 Conceptual Plan. *Exhibit 62: 10 App LO 00002471-2472*. 50-0 is not a mistake. This proves the 1990 Conceptual Plan is just that – a "plan" – that is only "conceptual" and what controls is the actual zoning of the property.

[25] City of Sparks v. Armstrong, 103 Nev. 619 (1987) (court upheld taking claim, explaining that the City of Sparks, in arguing that the taking did not occur earlier failed to recognize "the practical reality" the landowners faced as owner of the property).

be explained fully below): 1) the City's councilmen would not have called the Landowners' representative a "motherfucker," would not have stated "over my dead body" will development ever be allowed, and would not have stated he will "vote against the whole thing;" 2) the City would not have adopted the "Yohan Lowie Bills" and would not have strategically adopted the Bills to deny all applications to develop; 3) the City would not have denied the MDA (that included significantly more than any major modification requires); 4) the City would not have made it impossible to get a drainage study; 5) the City would not have denied the fence and access applications; 6) the City would not have denied the applications to develop for this 35 Acre Property and the 133 Acre Property; 7) the City would not have identified $15 million of City funds to take over the Landowners' property for a City "park;" 8) the City would not be vehemently trying to claw back the 17 Acre Property approvals; and, 9) the Landowners' Property would be fully developed today. No reasonable person, considering the facts of this case, including the City's current position before this Court, could possibly believe this argument or ignore the "practical reality" facing the Landowners.

Reason / Public Policy #6 - If this Court elects to follow the Crockett Order that entirely ignores the Landowners' hard zoning and vested right to develop, instead of the Judge Smith Orders and Nevada Supreme Court Affirmance, this will be a judicial taking of the 35 Acre Property. The United States Supreme Court has held that judicial action that "recharacterizes as public property what was previously private property is a judicial taking."[26] The Court explained that this is a proper taking claim, because the Taking Clause is concerned with the "act" that results in the taking and does not focus on the particular "government actor," meaning the judiciary also may engage in taking actions.[27] Acceptance of the Crockett Order in this case would amount to a judicial taking, because the order would be applied to recharacterize the Landowners' 35 Acre Property from a hard zoned residential property with the vested "rights to develop," as recognized and established by the Nevada Supreme Court, to a public park / open space with zero developable units.

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[26] Stop the Beach Renourishment, Inc.v. Florida Dept. of Env. Protec., 130 S.Ct. 2592 (2010).

[27] Id., at 2601.

Therefore, there is strong public policy supporting the Judge Smith Orders.

11. ANY REFERENCE TO THE FEDERAL COURT ORDER IS MISPLACED

The City attaches an order by Federal District Court Judge Mahan and claims this also denies the landowners have a vested right to develop. City Opp, p. 8:fn 1. First, the Judge Mahan Order was decided in the context of land use / zoning law, not inverse condemnation law and, therefore, as explained above, does not apply here. As explained, simply because the City has discretion in land use cases to deny land use applications does not shield it from inverse condemnation liability and neither does Judge Mahan's order not even remotely indicate this City argued position. Second, the Landowners' could not have originally filed their inverse condemnation claims in federal court. Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 194-195, 105 S. Ct. 3108, 3120-3121(1985). Therefore, the Mahan Order could not have addressed any vested rights in the context of a takings claim and as such issue preclusion could not apply to his order. Third, the Judge Smith Orders finding the Landowners have the "right to develop" (which were affirmed by the Nevada Supreme Court) trump Judge Mahan's order as Federal Courts defer to state law on questions related to property rights and must "accept the determination of the state court" on whether there is a right to develop. Stop the Beach Renourishment, Inc. v. Florida Dept. Of Environ. Protection, 560 U.S. 702, fn 9 (2010). In this connection, the Ninth Circuit has specifically held that "[i]n determining what property rights exist and therefore are subject to taking under the Fifth Amendment, federal courts look to local state law." Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency, 561 F.2d 1327 (9th Cir. 1977). The policy for this rules is: ""[b]ecause the Constitution protects rather then creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'" Phillips v. Washington Legal Foundation, 524 U.S. 156, 164 (1988). Accordingly, controlling state law from the Nevada Supreme Court (Judge Smith Orders) recognizes the vested right to develop the Landowners' Property which must be applied here.

12. THE CITY ACTIONS IN THIS CASE WILL ESTABLISH A TAKING

Although not necessary, because the Landowners are merely asking for a right to be heard at this time, in order to show that the Landowners' request for a hearing is not frivolous (as alleged by the City), the Landowners have attached, as Exhibit 5 to their originally filed motion for a hearing, a proposed motion for summary judgment on liability for the taking to show this Court what the Landowners will argue if given due process to argue their inverse condemnation claims before this Court. That Exhibit 5 (proposed motion for summary judgment) lays out, without limitation, 10 actions by the City that, when considered in the aggregate, render the Landowners' Property valueless and useless, thereby amounting to a categorical taking of the Property under Nevada and United States Supreme Court precedent. These 10 City actions are as follows:

City Action #1 - City Denial of the 35 Acre Property Applications

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

City Action #3 - Adoption of the Yohan Lowie Bills

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

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

City Action #6 - Denial of a Drainage Study

City Action #7 - City Refusal to Even Consider the 133 Acre Property Applications

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

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

City Action #10 - the City Reverses the Past Approval on the 17 Acre Property. *See pages 15-27 of the Landowners' proposed motion for summary judgment, Exhibit 5 to original motion*.

There is undisputed evidence that the City has engaged in these 10 actions in furtherance of a City scheme to target the Landowners' property to have it remain in a vacant condition to be

"turned over to the City" for a "fitness park" for $15 Million which is 1% of its fair market value. Id. And, the City has not once denied these 10 actions nor the intent of these actions.[28]

It is important to note that these 10 actions by the City far exceed the government action and interference with the use of property set forth in the five above cited cases where the Courts entered a finding of a taking - Hsu / Sisolak, Del Monte Dunes, Lucas, Eighth Judicial District (citing to Richmond Elks Hall). In the Hsu and Sisolak cases, the government action only deprived the landowners of the use of their airspace - they could still use the underlying land. In Del Monte Dunes the City of Monterey argued that it would allow some development, just not what was proposed. In Lucas, Mr. Lucas could still use his property to picnic, swim, camp in a tent, or live on the property in a moveable trailer, thereby leaving the property with some value. In Richmond Elks Hall, the government action caused several of the landowner's tenants to vacate, leaving less than one-third of the property occupied, but the property still had that level of use. In this case, however, the 10 City actions cited above deny any and all use of the 35 Acre Property, leaving it with no value - the Landowners cannot even get an access point to or a safety fence on their property. And, as explained, the City has not even denied these actions or that it has engaged in these actions in furtherance of a City scheme to specifically target the Landowners' property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for $15 Million which is 1% of its fair market value.

This means that if this Court upholds its *sua sponte* dismissal of the Landowners' inverse condemnation claims, it will have entered a ruling directly contrary to these five cases directly on point - three Nevada Supreme Court cases, two United States Supreme Court cases, and one Ninth Circuit Court of Appeals case.

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[28] And, while not an argument the Landowners would normally make, since the City has moved for the application of EDCR 2.20© (City Opp. p. 5:11) then under the City's argument, since the City has failed to deny any of these 10 actions and specifically failed to deny that it is reserving the Landowners' Property for a City park, then that argument must be deemed meritorious.

13. RIPENESS AND FUTILITY DO NOT APPLY TO FOUR OF THE DISMISSED CLAIMS

The Landowners explained in their moving papers that the Nevada Supreme Court has held that the City's ripeness and futility analysis does **NOT** even apply to four of the inverse condemnation claims this Court dismissed on ripeness grounds - regulatory per se, non-regulatory / de facto, categorical, or temporary taking inverse condemnation claims. The Nevada Supreme Court has made this rule very clear.[29] The reason for this rule is that the taking is known in these type of inverse condemnation claims and, once the taking is known, the payment of just compensation is "self-executing," meaning there can be no barriers or preconditions (such as a ripeness / futility analysis) to this constitutional guarantee.[30] ***This means that a ripeness analysis (major modification) is not a precondition to bringing these four inverse condemnation claim.***

The Landowners further explained that, despite this clear rule, this Court erroneously held all of the Landowners' inverse condemnation claims, including the regulatory per se, non-regulatory / de facto, categorical, and temporary taking claims, "must be dismissed for lack of ripeness." Had there been a hearing on the inverse condemnation claims before they were dismissed, this law could have been provided to this Court so that a correct ruling could have been entered. Accordingly, this Court should grant a hearing so that this Court can consider applicable Nevada Supreme Court precedent on the ripeness and futility issues before entering an order on these issues.

Finally, it should be noted that the City does not contest this error on the ripeness and futility issue in its Opposition and the reason for its failure to contest is clear - it cannot. Nevada law is unequivocally clear on this issue - ripeness and futility do not apply to these four claims.

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

[30] Alper v. Clark County, 571 P.2d 810, 811-812 (1977).

14. THE RIPENESS AND FUTILITY DOCTRINE AS APPLIED TO THE LANDOWNERS' PENN CENTRAL CLAIM REQUIRES A DETAILED FACTUAL ANALYSIS

The Landowners agree that a ripeness and futility analysis does apply to the Landowners' Penn Central inverse condemnation claim. However, whether the Landowners' Penn Central claim is ripe for adjudication or whether it is futile to pursue any further applications with the City requires a detailed factual analysis. The City's argument in its opposition demonstrates this - the City argues that "the [Landowners'] Futility Argument is Speculative." City Opp., 7:11. Whether an argument is "speculative" or not demands a factual inquiry. It is beyond dispute that this Court did not perform this factual inquiry, because the ripeness and futility issues were not briefed, they were not argued, and they were not discussed at the petition for judicial review hearing.

Moreover, when this Court considers whether to dismiss important constitutional inverse condemnation claims, it is required to recognize all factual allegations as true, and draw all inferences in favor of the plaintiff.[31] Therefore, this Court is required in the first instance to allow argument and a hearing on the ripeness and futility issues. The Landowners' proposed arguments on the ripeness issue for this hearing are set forth in Exhibit 5 (pages 47-52) to its moving papers. If the hearing is a motion to dismiss (as was supposed to be the case when this Court dismissed the Landowners' inverse condemnation claims on ripeness grounds), this Court must reject the City's contention that the Landowners futility argument is "speculative," because this Court is required to assume all of these factual allegations in the Landowners' complaint and on pages 47-52 of the Landowners' Exhibit 5 are true. The Court cannot merely dismiss claims on ripeness grounds, because the City asserts they are "speculative."

Additionally, the City's ripeness argument is based on the Crockett Order which held that a major modification is a required application to develop the 17 Acre Property. In addition to the above cited reasons the Crockett Order does not apply in this inverse condemnation case, the Landowners will show in their argument to this Court two reasons for why the ripeness / "major modification" argument in the Crockett Order 17 Acre Property case does not apply in this 35 Acre Property case. First, the Landowners will show in this 35 Acre Property case that it filed a Master

[31] Buzz Stew, LLC v. City of North Las Vegas, 181 P.3d 670, 672 (2008).

Development Agreement (MDA) with the City that met and far exceeded any major modification requirements discussed in the Crockett Order and the City still denied the MDA. Second, the Landowners will show that actions by the City subsequent to the Crockett Order (in the 17 Acre Property case) show that it would be entirely futile to submit any application to the City to develop the 35 Acre Property for any reason, because the City has and will continue to deny any and all applications to develop the 35 Acre Property. In fact, the City has never even denied that it will continue to deny any and all use of the 35 Acre Property in furtherance of a City scheme to specifically target the Landowners' property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for $15 Million which is 1% of its fair market value. These arguments are set forth in Exhibit 5 to the Landowners' original motion for a hearing.

Finally, the City makes several factual assertions to support its ripeness argument, which, as explained above, are not appropriate in a motion to dismiss and which are not even true. First, the City incorrectly claims that City action which post dates the denial of the 35 Acre Property application cannot be considered in this inverse condemnation case. City Opp., pp. 7-8. There is no law to support this City contention and, in fact, well established eminent domain law provides the exact opposite - the "aggregate" of the City action must be considered when deciding a taking issue, despite when it occurred.[32] Second, the City incorrectly asserts that the actions of two high ranking City officials - councilmen Seroka and Coffin - cannot be considered when deciding taking issues. The Nevada Supreme Court, however, thought that the statement of just one County planning staff employee named Bill Keller regarding height restrictions (the taking action in that

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[32] Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (citing to 9th Circuit case law wherein the aggregate of government action was considered to find a taking and Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012), holding there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).

case) was relevant enough to include in the Sisolak opinion. Sisolak, at 653-54. Therefore, if a statement by just one planning staff employee is relevant enough to include in a Nevada Supreme Court opinion, then repeated statements by two high ranking Councilmen (that the Landowner is a "motherfucker," over their dead body will development be allowed, and they will vote against the whole thing - see Exhibit 5, pp. 23-25) are clearly relevant.[33]

15. THE CITY ARGUMENT REGARDING THE MDA FURTHER SHOWS THE NECESSITY OF A HEARING

The City makes three arguments regarding the Master Development Agreement (MDA) that further show the necessity of a proper hearing. As a preliminary matter, the City improperly conflates the judicial review standard of being limited to the record before the administrative body with the inverse condemnation standard of considering the "aggregate" of all government actions and the ad hoc inquiry required to determine takings liability.

Beyond this error, the City first asserts that the Landowners cannot claim the denial of the MDA as a basis for a taking, because they did not appeal the denial of the MDA within 25 days. City Opp. 8:17-18. The United States Supreme Court, however, as explained in the Landowners'

---

[33] The City also cites to the case of State v. Eighth Jud. Dist. Ct. to assert that "futility cannot be established based on the alleged statements of individual council members." City Opp., p. 8. First, the Landowners are not trying to establish futility based on the statements of individual council members; the statements by councilmen Seroka and Coffin are just one piece of the City's systematic and aggressive actions to prevent all development of the 35 Acre Property. Second, the statements by Councilman Seroka are important, because the Landowners' Property is located in his district and it is common knowledge that the other councilpersons defer to the councilperson's opinion regarding applications in their district. Third, the State v. Eighth Jud. Dist. Ct case relied upon by the City is inapplicable. See City Opp., p. 8:7-8. In that case the landowner did not even file an application to develop and he was relying solely upon one general passing statement in a barbershop by one of the councilpersons. Id., at 742 (2015). Here, the statements by Councilmen Seroka and Coffin are more than general passing statements in a barbershop - the statements are in writing or transcribed, are extremely hostile toward the Landowners, and directly represent that the councilpersons will vote against all development on the 35 Acre Property. The councilmen try to hide these actions from the Court - even after being subpoenaed. *Exhibit 54: 10 App LO 00002343, Appendix of Exhibits to Landowners' proposed Summary Judgment.* Moreover, the facts in State v. Eighth Jud. Dist. Ct. are not remotely close to the facts of this case where the City has engaged in numerous systematic and aggressive actions to stop all development on the 35 Acre Property and the statements by the two councilpersons are just one piece of these far-reaching actions.

opening motion, expressly rejected this argument in the Lucas case, holding a landowner is not required to challenge the validity of the underlying government action as a pre-condition to bringing taking claims. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Second, the City asserts denial of the MDA was appropriate, because the MDA would require a major modification anyway and one was not filed with the MDA. City Opp. 8:18-20. The motion for summary judgment attached as Exhibit 5 to the Landowners' moving papers details why a major modification was not required and, even if it was required, the major modification elements were met in the MDA (which the City still denied). Exhibit 5, pp. 47-52. Third, the City asserts that the denial of the MDA does not foreclose "the possibility that other applications would be granted." Govt. Opp. 8:20-23. This very argument, however, was made and rejected under very similar facts in the Del Monte Dunes case. City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999). The Court recognized that, if this blanket statement were accepted as a basis to avoid liability, then every government entity would simply make the argument that there is a "possibility" that other applications would be granted and indefinitely delay and avoid liability for a taking.

As this Court can see, the City is making factually and legally incorrect arguments in regards to the MDA, which further shows the necessity to have these issues properly briefed and presented to the Court; not presented for the first time in an opposition to a motion for a hearing.

16. THE LANDOWNERS HAVE NOT ACQUIESCED TO ISSUE PRECLUSION

City argues that the Landowners did not specifically and fully argue the issue preclusion issue in their request for a hearing and, therefore, they have "acquiesced" that Judge Crockett's decision has preclusive effect and unilaterally applies in this case forever barring the Landowners from raising the argument again. City Opp., pp. 4-5. First, this shows precisely why a hearing is required. Again, the Landowners' pending request is a request to be heard so that all of the Landowners' arguments may be presented to the Court, including the issue preclusion argument as it applies in the context of the inverse condemnation claims. A hearing is required so that all parties may present all issues and arguments to the Court, have those issues heard on the merits as is required, and avoid unfounded and baseless waiver arguments, like that made by the City. Second,

attached as Exhibit 5 is the Landowners' proposed summary judgment motion, which opposes the City's issue preclusion argument. *See pages 52-53*. The argument included therein is as follows:

> **"F. ISSUE PRECLUSION DOES NOT APPLY**
>
> The City may also argue that issue preclusion requires application of the Crockett Order to this 35 Acre Property case. As recognized by the City, "the following factors are necessary for application of issue preclusion: '(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; ... (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation'; and (4) the issue was actually and necessarily litigated."[34]
>
> These factors are conjunctive and the City cannot establish all four factors to apply the Crockett Order in this case. The issues in the Crockett Order are not identical, because both of those cases involved petitions for judicial review. The issue, therefore, was whether the City's zoning actions were based on substantial evidence. This issue in this case is different; it is whether the City's actions rise to the level of a taking. The ruling in the Crockett Order also was not on the merits relevant to a taking in this case and they have not become final as the Nevada Supreme Court has not addressed either order. Finally, the constitutional taking issues present in this case were not actually nor necessarily litigated in the Crockett Order. Accordingly, issue preclusion does not apply.
>
> **Rather the preclusive effect of a prior order is more applicable to the Judge Smith Orders, because both orders directly address the underlying issue of the vested right to develop and they have become final as they have been affirmed by the Nevada Supreme Court. In fact, the Judge Smith orders are more than preclusive; they are the settled law on these issues."** *Exhibit 5, pp. 52-53. (emphasis supplied).*

Accordingly, any City argument that the Landowners have acquiesced to or waived the issue preclusion argument is without merit and further shows why a hearing is necessary.

17. CONCLUSION

Due process is not a difficult concept - the Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law" and United States Supreme Court precedents "establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property." U.S. v. James Daniel Good Real Property, 510 U.S. 43, 48 (1993). Here, there was no notice, no briefing, and no hearing before the Landowners' inverse condemnation claims were dismissed. Therefore, the Landowners respectfully request a hearing on the dismissal of their inverse condemnation claims so this Court may properly consider relevant and applicable inverse

[34] Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709, 714 (2008).

condemnation law and make an informed and legally sound decision based on this applicable law. Despite the City's attempt to ignore the Constitution, the Due Process Clause requires the requested notice and a hearing and it will be reversible error to deny the request.

DATED this 14th day of January, 2019.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 14th day of January, 2019, a true and correct copy of the foregoing **REPLY RE: PLAINTIFF LANDOWNERS' REQUEST FOR REHEARING / RECONSIDERATION OF ORDER / JUDGMENT DISMISSING OF INVERSE CONDEMNATION CLAIMS** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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Exhibit 99

Deposition of Greg Steven Goorjian
LO 00003833-00003884

Deposition of:

Greg Steven Goorjian

Case:

Fore Stars, Ltd., et al. v. Robert N. and Nancy Peccole
A-17-751960-C

Date:

12/20/2018

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 Land Co LLC, a Nevada limited liability company; Seventy Acres LLC, a Nevada limited liability company; EHB Companies LLC, a Nevada limited liability company,

Plaintiffs,

vs. CASE NO. A-17-751960-C

ROBERT N. and NANCY PECCOLE, individuals, and as Trustees of the ROBERT N. and NANCY PECCOLE TRUST, DOES 1 THROUGH 21,

Defendants.

DEPOSITION OF GREG STEVEN GOORJIAN

Taken on Thursday, December 20, 2018

By a Certified Court Reporter

9:24 a.m.

At 415 South Sixth Street, Suite 100

Las Vegas, Nevada

Reported by: Judith Payne Kelly, RMR, CCR-539

Job No. 30440

APPEARANCES:

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SHAHANA M. POLSELLI
YOHAN LOWIE

* * * * *

I N D E X

E X H I B I T S

E X H I B I T S

E X H I B I T S

P R O C E E D I N G S

(Mr. Lowie was not present at the commencement of the deposition.)

(Counsel stipulated to waive the reporter requirements under Rule 30(b)(4).)

GREG STEVEN GOORJIAN,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. JIMMERSON:

Q. Good morning, Mr. Goorjian. How are you, sir?

A. Just fine, thank you.

Q. My name is Jim Jimmerson. I have the privilege of representing Fore Stars, Ltd., in this lawsuit that exists against Mr. and Mrs. Robert Peccole.

Present is myself, of course; our paralegal, Shahana Polselli; the court reporter; and Mr. Peccole is also present.

MR. JIMMERSON: Bob, would you introduce yourself?

Bob, do you want to introduce yourself?

MR. PECCOLE: Bob Peccole. We know each other.

THE WITNESS: Pleasure to see you, Bob.

MR. PECCOLE: And I'm here representing Nancy and myself and our trust.

Q. (By Mr. Jimmerson) All right. Mr. Goorjian, have you ever given a deposition before?

A. I don't believe I have.

Q. Okay. Let me just go through some of the ground rules just so you have a good understanding.

A deposition is a formal setting like this, although it's in our law firm, not in a courtroom. But it places you under oath and obliges you to tell the truth just like you would be obliged if you were in a courtroom before a judge. Okay?

A. Yup.

Q. And the oath you've taken is similar, if not identical, to the one you would take before our judge. Do you understand that?

A. Yes.

Q. All right. And obligates you to tell the truth. Right?

A. Yes.

Q. Okay. To me the most important instruction is just to make sure you understand my question.

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because if a judge were to -- or a jury -- were to look at your question and answer, they're going to presume you understood my question and then you chose to give the answer that you gave. Okay?

A. Yes.

Q. So because that would be the natural assumption or presumption that a judge or jury would have, do make sure that you understand my questions or opposing counsel's questions before you answer; and if you don't or you're not certain, just ask me to rephrase it and I'm happy to do that. This is not a contest of iron wills.

A. Yes.

Q. It's just a matter of trying to learn about the facts and circumstances that you might bring to this testimony in this case, and I'll explain to you why there are issues here that you would have some answers to. Okay? At least I think they're relevant.

A. Okay.

Q. And -- as we go along. And so make sure you understand the question.

A. Yes.

Q. Also, you're doing great. Just let me finish my question or opposing counsel finish his question and then answer. Let's don't speak over each other,

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because the court reporter cannot take down -- things down in stereo. Okay?

A. Yes.

Q. So just wait, one at a time. This is -- again, this is -- I'm trying to be as easy as I can for you. I think I have about an hour, hour and a half's worth of questions. You can take a break whenever you want. Because you don't have a lawyer representing you, you're your own lawyer, if you will. So if you feel uncomfortable, you want to use the restroom, you want to stretch your legs, just let us know and we'll be happy to accommodate you. Okay?

A. Thank you.

Q. All right. And if you have any questions along the way, because you don't have a lawyer representing you today, ask the questions and we're happy to answer them the best that we can. We're officers of the court. We're obliged to be truthful and responsive to your needs and to your questions. So I certainly will do, for my part -- try to treat you with respect and also candor in terms of hopefully answering any questions that you might have along the way.

You're not a party to this litigation, so your interests, you know, both the personal as well as

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financial, are not at issue in this case; and this is a dispute between Fore Stars and the other company -- the other plaintiffs, and Mr. Peccole and his wife. Do you understand that?

A. The other plaintiffs, can you be clear on who they are?

Q. The land companies of my clients. So Fore Stars, Ltd., 180 Land Co and Seventy Acres LLC.

A. Okay. And they're all under the --

Q. They own different aspects -- different property of the overall, formerly known as, Badlands Golf Course.

A. Got it. Understood.

Q. The 250 acres are owned by those three companies.

A. Yes.

Q. Originally owned by Fore Stars, and then Fore Stars transferred property to the two other properties, kind of matching their names. Transferred about 180 acres to 180 Land Co and about 70 acres to Seventy Acres LLC, retaining to itself the PD-zoned land of the club and the property adjoining the Queensridge Towers, the high towers. That area. Right?

A. The members in those LLCs, are they

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different?

Q. They are. I believe individual trusts of the Dehart family and the Lowie family.

MR. PECCOLE: I'd like just for the record to read into the record who the plaintiffs are. It's Fore Stars, Ltd. --

MR. JIMMERSON: Absolutely.

MR. PECCOLE: -- 180 Land Co, LLC, Seventy Acres LLC, and EHB Companies LLC. I believe you know EHB.

THE WITNESS: Yes.

Q. (By Mr. Jimmerson) EHB is the manager, the limited liability company manager of the LLCs, or the land owners. Okay. All right.

And then -- and then the owners of these companies indirectly are the trusts, family trusts or other estate vehicles for these individual families, two families, the Dehart family and the Lowie family. Okay?

All right. And if there's anything that comes along, just ask, and we're happy to begin.

And again, I have a series of questions that I want to go through with you and then have you help us respond.

My understanding is that you have been, both

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through a marriage and through employment, connected to the Peccole family as they owned property in what I call the general area of what -- Rampart or Fort Apache and West Charleston. Is that right?

A. Yes.

Q. Okay. So in your own words, would you tell us what your historical relationship has been to the Peccole family and if you had a job title or duties and responsibilities, like, for example, playing a role in the sale of estate lots, which I understand you were involved with. Just kind of give us an outline, overview of that.

A. Was married to the youngest daughter, and entered the family in 1983, '82, '83.

Q. The daughter's name was what, please?

A. Leann.

Q. Okay. Thank you.

A. Worked directly with the Peccole family from about the summer of '83 to -- it must have been right around '8 -- '90, '89, '90, planning the property, assisting in planning the property, assisting in zoning the property. Assisted in some of the start-up development as a marketing and sales director, would have been my -- my title once we started developing, which the first was the corner of Sahara and Durango.

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And then the family divorced and separated in late '89 or '89. Left and went to work for another company, not in the development business. Came back to the Peccole family in -- gosh, I want to say '94, and got very much involved in what was then going to be Queensridge and then became Queensridge North as well -- so the two, Queensridge and Queensridge North as well -- as VP of marketing of sales and/or marketing director, whatever they felt like calling me that day.

Q. Okay. And who were the owners or who were your employers within the meaning of that last answer?

A. My employers would have been Peccole-Nevada Corporation and the trusts, which was the -- I think it was the 1986 Trust and there was a limited liability company as well that was involved in that.

Q. All right.

A. And Peccole-Nevada Corporation was the manager, I believe; and that's who I directly worked for.

Q. There was one entity that I've seen some papers and names. I'll refer to it as Legacy. Are you familiar with that?

A. I'd have to be refreshed.

Q. Okay. Fair enough.

A. But I am familiar with it.

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Q. All right. And at some point there had been a joint venture between Peccole and Triple Five. Is that right?

A. Yes.

Q. Okay. And in a general term, what property did they have during the period of joint ventureship before they had litigation and separated their -- their own properties? What property did they have a general joint ventureship with?

A. They had -- my understanding would be that their partnership was everything but Canyon Gate, what was Canyon Gate at the time. So that would have been everything that was west of Hualapai -- I mean west of Rampart and Fort Apache, same street, and everything north from -- north Charleston to south Alta.

Q. Got it. Okay. Now, following up your narrative and your answer, I have some questions. One of the tasks that you had, you've indicated, was helping the family develop the property; and part of that initial work would be obtaining zoning. Is that right?

A. Correct.

Q. And there are three classifications of zoning, the largest one being R-PD7, but there's some other, commercial and others, multifamily.

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Was that part of the role that you had, was working and obtaining the R-PD7 zoning?

A. It wasn't my direct responsibility. We had engineers and planners. They represented us when it came time to get zoning. We, as a family, were all involved in planning and engineering and reviewing and looking at, you know, how it was going to be further developed.

At that point in time, now, was much more involved in zoning issues prior to 1990. Okay?

Q. The zoning that was placed on that property -- I call it the golf course -- was in 1990. It was the R-PD7, along with the other two types of zoning. Do you recall that?

A. I do.

Q. Okay. And the -- I thought one of the more unique things about this property was it was zoned R-PD7 as a basic zoning. Even though in later years it was going to be used as a golf course, it still retained its zoning classification from 1990 right through the present date.

MR. PECCOLE: I would like to object on the form of the question.

Q. (By Mr. Jimmerson) And he -- just so you understand it, Mr. Peccole can object to any question I

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have. Then after he does so, you're obliged to still respond, okay, if you could.
A. Okay.
Q. But he can object to maybe the way I ask a question or the substance, whatever. So appreciate that. Okay.
So I'll go back to the question. Was -- what was the purpose for the companies zoning the property R-PD7 or the other two zoning classifications, commercial and multifamily?
A. That's a -- the purpose -- okay. Now we're -- I'm semi-speculating and also have some background to it. I would say that it would have been -- it would have been there as a fallback position, call it.
Q. And you mean in case they didn't always maintain the property as a golf course, they had the ability to develop it?
A. Mr. Peccole had tremendous foresight, and always, believe it or not, planned for the worst.
Q. And so in that regard, he planned for the fact that the property may not always be a golf course and it could be developed? Is that right?
A. That there might be circumstances that it would no longer be able to be a golf course, whether it

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was financially, water. He always brought up issues like war. He always was very cautious, conservative person.
Q. And that's why he laid down the zoning of R-PD7 and the others as the first level before he got into the use of the golf course?
MR. PECCOLE: I object to the form of the question.
Q. (By Mr. Jimmerson) Is that right?
A. I couldn't speak to why he did -- directly why he did it. It was there as a fallback. Because of the timing of everything, I can't recall whether the zoning came before we even had a golf course deal. Okay? So I do recall that there was -- you know, wasn't always going to be a golf course automatically, because you had to find somebody that would do it, somebody who would develop it and be responsible for it, something that the family never really wanted to do.
Q. And the zoning predated the finding of the golf course operator?
A. See, now this, I can't -- that's -- the two happening, I don't -- can't remember which happened first; but I would, you know, to the best of my knowledge, think that we would have had the zoning

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before we would have had any golf course deal.
We master-planned that property and -- boy, back in the '80s, we master-planned that whole property; and Bill had master-planned or had a plan on it prior to that plan. Okay?
So there was always -- that was always residential land.
Q. Got it.
MR. PECCOLE: I would like to object to the question as being speculative.
MR. JIMMERSON: All right. Thank you.
Q. (By Mr. Jimmerson) Now, there's two different projects, as this turns out. The way we look at it now, we have the benefit of hindsight. There is the Peccole Ranch plan to the south of Charleston Avenue, West Charleston Avenue. Right?
A. Correct.
Q. And then there is, as we see, the Queensridge master plan homes that are on the -- I call it the north of West Charleston. Is that true?
A. Correct.
Q. All right. And there were two different plans and two different projects? Is that right?
A. Correct.
Q. And separated by years of time?

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A. Correct.
Q. With the Peccole plan south of Charleston being the first to be developed in the '80s and early '90s; is that right?
A. Yes.
Q. Okay. And then the Queensridge master plan was begun in roughly the middle of 1990s, going forward after that? Is that right?
A. Yes.
Q. Okay. Now, your roles, you wore many hats in -- I guess as needed, as family would need you to do during those different years; is that right?
A. Yes.
Q. Okay. And did you have any involvement in the creation through Karen Dennison and Lance Earl of the CC&Rs for each of the projects? In other words, for the Queensridge -- I'm sorry -- for the Peccole plan to the south of West Charleston and later the Queensridge CC&Rs to the north of West Charleston?
A. Less involvement. Queensridge. Less on the Peccole Ranch side.
Q. All right.
MR. JIMMERSON: Can I see the Queensridge -- I'm sorry, the Peccole Ranch. I want to do it chronological.

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THE WITNESS: I can't even remember if I was involved, to be honest with you, on the Peccole Ranch side when we were in partnership with Triple Five. Prior to Triple Five, yes. After Triple Five, not as much; and then with Queensridge, very much.

Q. (By Mr. Jimmerson) And to help you, because it has been some time, I'm trying to do things in chronological order, at least as I understand the chronology.

A. Yes.

Q. If I get it wrong, you'll let me know. If I have something out of sequence and you remember it's out of sequence, please tell us, tell us both.

A. Yeah.

MR. JIMMERSON: We'll mark this first exhibit as -- what did you mark this one?

MS. POLSELLI: 18.

MR. JIMMERSON: Number 8?

MS. POLSELLI: 18.

MR. JIMMERSON: 18? All right. Thank you.

(Exhibit 18 marked.)

Q. (By Mr. Jimmerson) We've marked as Exhibit 18 -- we have a list of exhibits. I don't know that we'll get to all of them, so the fact that we start with 18, it doesn't mean anything. It's just the

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way we've marked it before. I'm not certain that we'll go 1 through 18.

A. Okay.

Q. So don't get frightened about that, but that's how I've marked it. And these are also having to do with other exhibits in other depositions, so trying to mark that the same documents.

So I'm showing you what's been marked as Exhibit 18. This document by its face is the Peccole --

MR. PECCOLE: I'd like to pose an objection to this document as being totally irrelevant.

Q. (By Mr. Jimmerson) -- to the Peccole Ranch master declaration. And I believe this applies to the property largely to the south of West Charleston.

A. Uh-huh.

Q. And have you seen that document before --

A. I don't believe I have.

Q. -- today? Okay. Now, you are familiar, of course, that the Peccole Ranch property to the south of West Charleston was governed by CC&Rs --

A. Yes.

Q. -- covenants, conditions and restrictions. Is that right?

A. Yes.

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Q. And assuming that that packet is those CC&Rs, the purposes for the developer was to have rules and restrictions that would govern that property; is that right?

A. Yes. Yes, sir.

Q. And it would reserve rights to the developer and would also tell the homeowners who eventually bought in that area what their rights and responsibilities were?

MR. PECCOLE: I object on the grounds as leading the witness and it's form of the question.

Q. (By Mr. Jimmerson) You may answer the question, sir.

A. Yes. I mean, they're covenants, codes and restrictions. They're part of every -- most master-planned communities, if not all master-planned communities, for the purpose of putting into place certain codes and restrictions that make it -- some might consider it a developer's preserving value.

Q. And these on the first -- on the face of them, is -- appear to be prepared by the law firm of McDonald, Carano, Wilson, McCune, Bergin, Frankovich & Hicks.

Are you generally familiar with that law firm in that time period?

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A. Generally. Just basically Sean McGowan.

Q. Got it. Okay.

A. I didn't hear. Was that part of the McDonald, Carano?

Q. Yes, it was.

A. Yes, I do recall that.

Q. And that is the firm, McDonald, Carano.

A. Yeah.

Q. And the Peccole Ranch plan to the south of West Charleston is a different project than the later developed Queensridge master plan; is that right?

A. Yes.

Q. Both in terms of physical geography as well as in time and years?

A. Yes.

Q. Okay.

A. I believe they were separated by a lawsuit as well.

Q. Okay. Now, tell us about that lawsuit, what you generally recall about it.

A. There was a partnership that we were involved in prior -- it happened prior to my divorce, so it would have been in the late '80s -- that we got into with Triple Five; and then I left and then that part -- that partnership had a problem, had issues between the

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two partners and ended up in a settlement --
Q. Okay.
A. -- to avoid a lawsuit.
Q. All right.
A. And the settlement was, I believe -- gave Triple Five all the Peccole land, which was the -- under Peccole -- what was then Peccole Ranch, which was Hualapai to -- or not all of Hualapai, actually. We retained part of Hualapai. But it was most -- it was what at the time was being developed as Peccole Ranch south of Charleston.
Q. Got it.
A. And then they retained a commercial piece that we had that was on the northeast corner of Rampart and Charleston.
Q. Which is now known as Boca Park?
A. Is now known as Boca Park.
Q. Got it. Okay. So as part of the resolution or settlement in the dispute between Peccole and Triple Five, just to summarize, the property south of West Charleston became under the ownership of Triple Five?
A. And I have that wrong. I have that wrong.
Q. Okay.
A. It was just everything south. Triple Five

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ended up with that property -- they backed into that property a different way years later.
Q. The Boca Park?
A. The Boca Park. They did not get it in the settlement.
Q. Got it. Okay. And Peccole retained the property --
A. Everything north.
Q. -- north of West Charleston?
A. Correct.
Q. Okay. So let me show you what we'll mark as Exhibit 16.
(Exhibit 16 marked.)
Q. (By Mr. Jimmerson) Again, this is just to help define the chronology.
A. Yeah. And again, to add, it wasn't everything, because there were properties that were south -- I mean, excuse me, east of --
Q. Rampart?
A. -- Fort Apache and south of Charleston that the Peccoles did retain.
Q. Got it.
A. They were commercial pieces. And -- but that goes back to was it east of -- it was east of Rampart.
Q. Got it. Or Fort Apache?

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A. Right.
Q. Right. So I just want to show you the exhibit, number 16, just to help you with the timing.
MR. PECCOLE: What is this exhibit?
MR. JIMMERSON: This is 16, number 16.
MR. PECCOLE: 16.
MR. JIMMERSON: One six, yes, sir.
Q. (By Mr. Jimmerson) This is the lawsuit that Triple Five Development Group Central --
MR. PECCOLE: I'd like to pose an objection as being totally irrelevant to our case. Our case deals with Queensridge. It deals with -- nothing with regard to Triple Five.
MR. JIMMERSON: Your objection has been noted. Thank you, sir.
Q. (By Mr. Jimmerson) And versus William Peccole, individually and trustee of the Peccole 1982 Trust and THE PECCOLE 1982 TRUST. Do you see that?
A. Yes, I do.
Q. And just again for purposes of the date, it's August of 2000 -- of 1990. Do you see that?
A. Yes.
Q. Okay. And as you've indicated, this litigation resulted in a settlement and essentially an

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unwinding of the partnership and an allocation of properties, or some property under Triple Five's control, some property under the Peccole family control; is that right?
A. Yes.
Q. Along the lines generally, geographically, as you just now described?
A. Yes.
Q. All right. Very good. All right.
And do you recall when that settlement occurred? In other words, the lawsuit begins in August of 1990. Is the settlement in '92 or '93 time period, or -- if you remember?
A. I can't recall.
Q. Okay.
A. I do know that it was -- had to have been settled before I went back to work there.
Q. Okay.
A. So --
Q. And you came back to work in 1994, according to your best recollection?
A. Yes, correct.
Q. What you earlier said. Okay.
Now, do you know the defendant Robert Peccole, who is here in the deposition room and who is

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a named defendant in the litigation?
A. Yes, sir.
Q. Okay. And how or why do you know Robert Peccole?
A. Family and through -- through -- through marriage and family and Nevadan.
Q. Okay. So when -- if you remember generally, when was the first occasion when you met Mr. Peccole?
A. It would have been around '83.
Q. And you've known him from then to the present date?
A. Correct.
Q. Okay. Now, how -- what has your relationship been with him? I understand family, but are you someone who will have Christmas dinner with him next week? are you somebody who sees him once or twice a year? How would you describe the nature of the relationship?
A. Cordial and treated like family, but we don't spend time. We don't socialize together, but very warm.
Q. Okay. And have you had any conversations with him with regard to the litigation that you are asked to come to the deposition for today of Fore Stars and the other companies versus Robert Peccole?

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A. No.
Q. Okay. Now, if we could take the chronology now forward a little bit. We know that there was the development of Peccole Ranch to the south of West Charleston in the 1980s. We know of the litigation in 1990 that gets resolved some time after 1990 that we've just discussed between Triple Five and Peccole. Is that right?
A. Correct.
Q. All right. And then something happens after that, and that is the development of the Queensridge master development. Is that right?
A. Correct.
Q. Okay. And I have suggested in my earlier questioning that that was in the mid-1990s, like 1995 time period, 1996. Do you have a general recollection of that?
A. Right around that time, a little earlier, I believe, because we were up there planning off of Charleston.
Q. Okay. And I'm going to confirm your excellent memory by showing you some documents now. So if can I show you Exhibit No. 2, please.
(Exhibit 2 marked.)
MR. PECCOLE: What number?

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MR. JIMMERSON: Two.
Q. (By Mr. Jimmerson) All right. I'm showing you what's No. 2. This document is called Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge. Do you see that?
A. Yes, I do.
Q. Okay. And you can look at the document. It looks to me in the next page that it is recorded in 1996.
A. Yes.
Q. Is that generally consistent with your recollection, Mr. Goorjian?
A. Yes, it is.
Q. All right. Now, we've talked about the Peccole master plan development to the south of West Charleston in the 1980s. We've talked about the litigation. Now we've talked about the Queensridge. So tell us what is Queensridge and why it's different from the Peccole Ranch.
A. Okay. Well, it was intended to be completely different. It was driven by the Peccole family completely, without a partner, so they could do more things that they really wanted to do.
So we had consultants involved. Came up with the name, all the way from naming the project to -- to

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moving forward in the project. And the family wanted to leave a legacy and wanted to do something different, so it needed to be and look and feel completely different from everything that's in Southern Nevada. It was meant to be kept separate -- separated.
So by -- the ways to do that was basically the guidelines and the -- the building guidelines for the developers that came in there. So we wanted to see -- we had more restrictions in regards to wanting to see stone on the front of the homes, didn't want to see a lot of clay, barrel-tiled roofs. Wanted to have more of a European feel, with pine trees instead of palm trees and -- just have the whole development feel a little bit different than -- than what we see in all of the southwest, which every -- everywhere looks like a Taco Bell stand. So we tried to avoid that through planning and zoning.
Q. All right. And there was an amendment, I'm advised in the documents, Exhibit 3 to these declarations, dated in 2000. I'd like to show you that.
(Exhibit 3 marked.)
Q. (By Mr. Jimmerson) And are you familiar with this document? It's called Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and

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Easements for Queensridge.
A. I am. Yeah, I am.
Q. Okay. Who is Larry Miller? He's shown on the front page. Larry Miller, Peccole-Nevada Corporation.
A. Larry Miller is -- we'll start with him as my ex-brother-in-law, and then he would have been -- I don't know what his name was in title, but he act -- he was our guy. He ran -- he was the face of Peccole-Nevada.
Q. Okay.
A. I believe he managed Peccole-Nevada Corporation as well.
Q. All right. Now, was the declaration, master declaration, and later the amended and restated master declaration -- were they recorded with the Clark County Recorder's office?
A. To the best of my knowledge.
Q. And again, they contained the, I call them, CC&Rs, covenants, conditions and restrictions --
A. Yes.
Q. -- for the development of master -- of the Queensridge master plan?
A. Yes, sir.
Q. Now, the Queensridge master plan is a smaller

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area than the Peccole Ranch master plan and it's on the north side of West Charleston; is that right?
A. Correct.
Q. Okay.
A. Meant to be separate.
Q. Got it. And it also had the zoning of R-PD7, if you recall, in part? I mean, it had other zonings too.
A. I need to be refreshed, but I assume again it fell under the same umbrella of all the properties.
Q. And it allowed residential development?
A. Correct.
Q. And as we look at the property today as we drive by, we would see homes and multifamily homes and townhouses and different types of homes in that area; is that right?
A. Yes.
Q. Okay. And they were governed by these CC&Rs --
A. Yes.
Q. -- that we've talked about, Exhibits 2 and 3?
A. Yes.
Q. All right. Now --
A. There were -- well -- well, I don't know. I believe there were parts of the property that were not

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a part of -- not a part of -- I can't remember if it all fell under that.
Q. Well, the golf course was not a part of --
A. That's what I mean.
Q. -- Queensridge, right?
A. Correct.
MR. PECCOLE: I'm going to object to the form of the questioning that's going back and forth.
Q. (By Mr. Jimmerson) Okay.
A. I'm just trying to clarify that I don't think that that -- these covered, blanket, everything.
Q. Correct.
A. Okay?
Q. They covered the --
A. There were properties that were not a part of.
Q. And indeed, in order to cover it under the CC&Rs, they had to be annexed into the master plan; isn't that right?
A. Yes.
MR. PECCOLE: I object to that question as including facts that are not proven or before Mr. Goorjian.
MR. JIMMERSON: Okay. Thank you, sir.
Q. (By Mr. Jimmerson) And in fact, reading the

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documents would confirm that it started out with a small piece of property; and then as they were annexing property, it became part of the Queensridge master plan?
A. Yes.
Q. And the golf course was never annexed into the Queensridge master plan?
A. Yes, correct.
Q. Okay. And I will just tell you that the district court judges and Supreme Court so found that to be the case.
MR. PECCOLE: I object to the form of the question --
MR. JIMMERSON: That's okay.
MR. PECCOLE: -- and also the answer.
MR. JIMMERSON: All right.
Q. (By Mr. Jimmerson) Now, as the property that is within the Queensridge master plan which was annexed over the years, between 1996 and the years thereafter, did -- you had a role with the development of those lots --
A. Yes, sir.
Q. -- and the sale of those lots; is that right?
A. Yes, sir.
Q. Okay. And let me show you -- there were a

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series of documents that the Peccoles put together that were utilized for the development of the property and for the sale of the property.
A. Yes.
Q. Like purchase agreements and things like that. So I'm going to show those to you now, okay? And just to refresh your recollection.
We'll start with Exhibit 4.
(Exhibit 4 marked.)
Q. (By Mr. Jimmerson) Exhibit 4 is called Custom Lots at Queensridge North, Purchase Agreement and Earnest Money Receipt and Escrow Instructions.
A. Yes.
Q. Are you familiar with that document?
A. Yes, I am.
Q. Okay. And what is that -- other than the title, what was the purpose for the use of this Custom Lot at Queensridge North purchase agreement?
A. To convey the property to the client.
Q. All right.
A. Potential buyer.
Q. Now, this one in particular because it bears some relationship to Mr. Peccole. Do you see that?
A. Yes.
Q. All right. And Robert N. and Nancy Peccole.

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This is the contract that they signed to buy their lot in the Queensridge master plan area; is that right?
A. Yes.
Q. Okay. And I presume that this would be a standard agreement that all homeowners would generally use if they're going to buy an estate lot in this area. Is that right?
A. Yes.
Q. Okay. And these documents were prepared by law firms that your family hired to do expressly that? Is that the idea?
A. Hale Lane Peek Dennison, I believe.
Q. And Karen Dennison in particular?
A. Yes.
MR. PECCOLE: I'd like to interrupt. I didn't hear your answer.
THE WITNESS: Hale Lane Peek Dennison were the law firm that put together all of our regime of documents.
MR. PECCOLE: Could you spell that, the name?
THE WITNESS: H-a-l-e.
MR. PECCOLE: Hale?
Q. (By Mr. Jimmerson) And Lane is Steve Lane, L-a-n-e?
A. Yeah.

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Q. And Peek is Steve Peek?
A. Yes.
Q. Karen Dennison is Karen Dennison?
A. Yes.
Q. And as the firm has evolved, it's now known as Holland & Hart, I think. I think.
A. That's what I understand.
Q. Yeah.
A. Where Karen --
Q. Not the same people, you know --
A. Right.
Q. Different lawyers, but I think that's where Ms. Dennison is still at, you know. I think so.
All right. And we can look just by the basic document. The purchase price for this lot was $243,000, and the proposed closing date was May 2 of 2000. Do you see that?
A. Yes.
Q. Okay. All right. Now, let me just kind of go through the rest of the document.
That was Exhibit No. 4. So Exhibit No. 5 is called Addendum "1" to the Peccole purchase agreement.
(Exhibit 5 marked.)
Q. (By Mr. Jimmerson) And this document is called Addendum "1" to purchase agreement.

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A. Yup.
Q. And what was the purpose of this document?
A. This was a disclosure document, I believe.
Q. Okay.
A. Let's see.
MR. PECCOLE: I object. The document speaks for itself.
Q. (By Mr. Jimmerson) I do think Mr. Peccole is right. It does speak for itself.
A. Yes.
Q. And there are --
A. It's stating that he received all these documents.
Q. Okay. And those documents would show what the zoning was, what the use was, the different disclosures; is that right?
A. Yes.
Q. And in some regards, I think the purpose of these documents would be to protect you or the family in terms of making sure that the buyers know what their rights, responsibilities were? Is that a fair statement?
MR. PECCOLE: I object to the form of this question.
A. Yes. Not me, but the family and, you know,

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the developer and the -- the parties that were owners of the property are liable for the property.
Q. (By Mr. Jimmerson) And as an example, to make sure that they knew that there were CC&Rs, to make sure that they knew there were bylaws and that the property was subject to -- going to be subject to a homeowners association?
A. Standard procedure in selling property.
Q. Right. Okay. And you have the buyers initial each of the disclosures --
A. Yes.
Q. -- so that they can never say they didn't get what they received, right?
A. Yes, sir.
Q. Okay.
A. CYA.
Q. Okay. Within these documents, there is an Exhibit B, which is called Affirmation Form. Do you see that? Signed by the Peccoles?
A. No. I'm look -- Exhibit B?
Q. B. It's Bates stamp number 296. It's part of the same exhibit I gave you, Exhibit 5.
A. Help me here.
Q. Yes. Bates stamp number 296. Just look at the bottom right-hand corner. You'll see it.

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A. Okay.
Q. 296.
A. I've got it. Seven, six.
MR. PECCOLE: I would like to pose an objection on the ground --
THE WITNESS: What's the question?
MR. PECCOLE: -- that the document is not filled in. It's all blank.
MR. JIMMERSON: I think what -- I think that's a misstatement, and I'm sure it's inadvertent. There are blanks in the printed form, but there is a signature of Mr. and Mrs. Peccole below that.
Q. (By Mr. Jimmerson) Do you see that, Mr. Goorjian?
A. Yes, I do.
Q. And you can read the language. It basically is a -- it is a representation being made by Mr. and Mrs. Peccole that they've been on their property and have literally walked the property. Isn't that right?
A. Yes.
Q. Now --
MR. PECCOLE: Here again I pose that same objection, that that is blank in the areas where Mr. Jimmerson is referring to.
Q. (By Mr. Jimmerson) The language that is not

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blank reads -- and I'll read the whole thing so we have a good record -- is "The undersigned, by his or her signature, hereby acknowledges that he or she has made a personal on-the-lot inspection of the" -- "of Lot" blank --
MR. PECCOLE: We don't know.
Q. (By Mr. Jimmerson) -- "of Lot" blank "of Peccole West - Parcel" blank "(now known as Queensridge) developed by Nevada Legacy 14, LLC, a Nevada limited liability company, which is the Lot upon which the undersigned plans to erect a" -- "to" -- I can't read -- "execute a contract of sale or lease."
Do you remember that?
A. Yes.
MR. PECCOLE: I object on the grounds that those blanks were not filled in because there was no lot picked yet.
MR. JIMMERSON: Okay.
Q. (By Mr. Jimmerson) And did the Peccoles pick a lot?
A. Yes, they did.
Q. And did they buy a lot?
A. Yes, they did.
Q. Did they close escrow on a lot?
A. Yes, they did.

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Q. Did they do so in 2000, to the best of your recollection?
A. Yes, they did.
Q. All right. One of the reasons for having you come down here today is to respond to some testimony that Mr. Peccole has given in his deposition some months ago. All right?
He says that he met with you on the property when he was -- prior to purchase in 2000. Do you recall meeting with him on the lot in 2000?
A. Never physically on the lot, no, I don't recall.
Q. All right. Do you recall having met with him with regard to the lot?
A. Yes.
Q. Okay. Now, from other testimony, we've -- I had this question to ask you. I'm not going to lead you. I'm going to ask you. But from other testimony, I have reason to ask this question.
Did Mr. Peccole ask you for a restrictive deed or some writing that would preclude development of the golf course in future years, or the property behind his property or in front of his lot?
A. He asked for written assurance that the golf course would always remain a golf course.

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Q. And when did he ask for that assurance?
A. Prior to purchasing his lot.
Q. And who was present to hear that conversation?
A. Myself, he and -- I can't remember if Nancy was there or not.
Q. All right. And you know Nancy Peccole?
A. Yes, I do.
Q. Is that his wife?
A. Yes, I do.
Q. And do you remember where the meeting took place?
A. It was in a trailer that I was occupying.
Q. Was the trailer somewhere near the property being developed?
A. Yes. Yes, it was.
Q. Okay. But the conversation itself didn't take place right on the lot itself --
A. No, it did not.
Q. -- to the best of your recollection?
A. No, it did not.
Q. Okay. And so what was said, and by whom, between the two of you or three of you?
A. To the best of my recollection, he wanted assurances that it would remain a golf course; and

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that's something that I couldn't give him, which I explained to him; and he had mentioned that he would go speak to the family about it.
Q. Okay. And at that time he was a member of the family?
A. He always is, yeah.
Q. Okay. All right. And so when he said the words about go speak to the members of the family, who did you understand him meaning to speak to?
A. I would have thought it would have been Wanda and Larry.
Q. Okay. And Wanda is Wanda Peccole?
A. Yes.
Q. And Larry Miller is Wanda's --
A. Son-in-law.
Q. Son-in-law of Wanda?
A. And president of Peccole-Nevada Corporation.
Q. Very good. Do you know whether or not he ever had such a conversation with Wanda or Larry Miller?
A. Don't recall. Don't know.
Q. Was any written assurance or writing ever given to Mr. Peccole to guarantee him that the golf course property would not be developed later, in the future?

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A. Not to my knowledge.
Q. And in fact, you knew the property could be developed in the future; isn't that right?
A. It's all disclosed.
Q. The answer is yes?
A. Yes.
Q. Okay. Now, I need to read you some testimony. I'm sorry to do this, but . . .
I need to get my glasses. I'm sorry.
(Pause in proceedings.)
Q. (By Mr. Jimmerson) I'm now reading to you from the deposition of Nancy Peccole taken on August 10th of 2018, this past August. And I'm reading from Page 97 of her deposition. Okay?
A. Yes.
Q. And this is what the -- I'm asking the questions and Nancy Peccole is responding to the questions. Her husband is present in the deposition room. Actually it was in this room here, so Mr. Peccole was here.
So I'll begin by reading at Page 97, line 4. And I'll read a little bit into Page 98. So it's not very long.
Question by Mr. Jimmerson: "Did you ask" -- and speaking to Nancy Peccole.

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"Did you ask anybody whether or not the golf course could be built upon, could be developed, when you bought the home in 2000?
"Answer: No.
"Question: Do you know if your husband asked anybody if a golf course could be developed when you bought the home in 2000, and prior to buying it?
"Answer: May I make a statement?
"The Witness: I didn't ask because I was told."
By Mr. Jimmerson: "Okay."
MR. PECCOLE: Speak up so I can hear you.
MR. JIMMERSON: I will, certainly. I think I am speaking up loudly, but I will raise my voice even louder.
"I didn't ask because I was told." That was Ms. Peccole.
By Mr. Jimmerson: "Okay. So who told you anything about this?
"Answer: Greg Goorjian.
"Question: And what did Greg Goorjian tell you?
"Answer: He told me, and my husband, as we stood on the lot, 'There will never be anything built behind your property. It will always be open space.'

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"Question: Okay. And you remember that?
"Answer: I certainly do.
"Question: All right. And when did Mr. Goorjian purportedly tell you that?
"Answer: Before --"
Then there's an objection.
"The Witness: Before we purchased the property.
"Okay. And who was present, please?
"Robert Peccole, myself, and Greg Goorjian.
"All right. And have you had any conversations with Greg Goorjian since 2000 --
"Answer: No.
"-- since prior to your buying the home, about that subject matter?
"Answer: No.
"Is there any reason why you chose not to sue Greg Goorjian in this lawsuit that you brought two years ago?
"Answer" -- question -- objection.
I asked the question: "Why didn't you sue him if he made that statement?
"You may answer the question, ma'am.
"Answer: I don't know.
"Is there any kind of a writing that you've

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seen that would memorialize the statement that you claim Mr. Goorjian made to you and your husband?
"Answer: Not to my knowledge.
"Did you follow up with an email or a letter?
"No.
"Did you attempt to memorialize it in any way" -- excuse me -- "any fashion?
"No.
"Did you attempt to memorialize it in any fashion?
"No.
"Did you or your husband ever ask for a deed restriction on the house?
"Not to my knowledge.
"Did you ever ask of anyone from the family that they place any sort of restriction on the deed and would assure that there would no" -- "be no development of the golf course?
"Answer: Not to my knowledge.
"Did you have, or do you have, or your husband, as far as you know, have any conversation with anyone relative to requesting a deed restriction on your lot --
"Not to my knowledge.
"-- with the intent of precluding a golf

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course" -- "the golf course from being able to be developed?
"Answer: No.
"Did you ever inquire as to what the golf course was zoned?
"Answer: No.
"Did you know that your home was zoned residential?
"Yes.
"You didn't know how the adjoining piece of property at the golf course was zoned?
"Answer: No."
So I've read now from Page 97, lines 4, through 98, through 99, and ending at line 22 of Page 100.
Is Mrs. Peccole's recollection accurate?
A. It's not for me to say. There are certain things that are inaccurate.
Q. Okay.
A. But I -- as far as I'm concerned, there are certain things that are inaccurate there.
Q. Well, let's cover it. Number one is that you know that Mr. Peccole asked you for a deed restriction --
A. Correct.

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Q. -- or some written assurance that there would not be development on the golf course?
A. Yes, sir.
Q. And he did not receive that from you; and as far as you know, he did not receive that from Peccole-Nevada or Legacy 14?
A. I don't know that, but as far as I'm --
Q. You know you didn't give it to him?
A. I know I didn't and couldn't.
Q. Okay. And why couldn't you?
A. I'm not -- I don't have that power. I'm just a broker.
Q. And you also knew the property could be developed?
A. Yes. He wouldn't be asking me for the letter if he didn't know.
Q. Okay. That it could be developed?
A. Yeah.
Q. All right. And the disclosures, as you pointed out, as we've gone over, clearly tell you that the adjoining property can be developed?
A. That's how he would have known, and plus we talked -- we discussed it.
Q. All right. Next. It's inaccurate in quoting you as stating that, quote --

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MR. PECCOLE: Wait. I'd like to pose an objection to that last question and answer as total speculation.

Q. (By Mr. Jimmerson) And you -- and you also find inaccurate Mrs. Peccole's statement, quote -- quoting you -- quote, There will never be anything built behind your property. It will always be open space, end of quote.

Is that right?

A. Yeah, I can't make that assurance.

Q. And you did not make that assurance, right?

A. I did not.

Q. And indeed, the term "open space," had you ever heard of those words in 2000, in that time period?

A. Yes.

Q. And what did it mean, open space?

A. Open space meant to me that there wasn't something directly in your backyard.

Q. But open space, as that word was used within the CC&Rs, would be on your own property, correct?

A. Restate that question.

Q. The term "open space" could only apply to your own property, correct? In other words, the CC&Rs aren't in a position to guarantee open space to somebody else's property. That's what I'm saying.

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MR. PECCOLE: I object to the leading question. He's proposing the answer.

MR. JIMMERSON: I'll meet the objection this way.

MR. PECCOLE: Form of the question.

Q. (By Mr. Jimmerson) If there are words, if there are words "open space" within the CC&Rs of the Queensridge master plan, it would only apply to the property governed by the Queensridge CC&Rs?

A. Yes.

Q. They couldn't possibly be referring to somebody else's property --

A. Yes, right.

Q. -- or property not governed by the Queensridge master CC&Rs?

A. Yes.

Q. Now -- and the zoning, as you indicated, was disclosed within Exhibits 4 -- 5 and 6; isn't that right?

A. Yes.

Q. Okay. I think I --

A. I'm not sure which exhibits they were, but there were exhibits disclosing.

Q. All right.

A. And maps as well.

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Q. In your conversation with Mrs. Peccole -- and I know it's been a long time -- do you know whether or not you used the words "open space"?

A. Don't recall.

Q. Okay. And the master plan that was in play in 2000 was the Queensridge master plan, correct?

A. 2000? Yes. It would have been -- yes.

Q. Okay. In other words, you weren't talking about the Queensridge -- the Peccole Ranch master plan?

A. No.

Q. It had been superseded by the Queensridge master plan?

A. Correct. Gone, yup. Two different --

Q. Two different things?

A. Yes.

Q. Okay. Now -- I'm sorry. I need to quote this deposition a little further.

Now I'm reading from the deposition of Nancy Peccole at Page 101, line 6, and ending at Page 104, line 22 -- 21.

"Question" -- and again I'm asking the questions again.

"So Mr. Goorjian used the words 'open space'?

"Answer: Yes, he did.

"And so he used the word 'open space' as

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opposed to using the words 'golf course'; is that right?

"Answer: Yes.

"Okay. And he said that it was always going to be open space?

"Answer: Yes.

"Do you remember, to the best of your knowledge" --

And there's a bunch of objections, so I'll skip that, resuming at line 7, Page 102.

"Question: Now, to the best of your recollection, ma'am, tell me everything that you said" -- "that was said in that conversation between yourself and your husband and Greg Goorjian standing on the lot that you bought prior to your buying it.

"Answer: He said, 'This will always be open space.' There will never be anything built behind us. And that is the reason I chose that lot.

"Have you now told me all that Mr. Goorjian said?

"Did what?

"Have you now told me everything that you can remember that Mr. Goorjian said to you and your husband on that occasion?

"Answer: Well, he went on and on about how

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beautiful the area was and stuff like that, of course.
"Well, I'm asking you what he said. I'm asking you everything the man said --
"Everything he said?" she asked.
Answer --
"-- that you can recall as you sit here, ma'am.
"And he also said --
"You've had a lot of time to think about this, so please tell us now what this man said.
"Answer: He also said that as a bonus, there will never be anything built in front of our home either, because it was a golf course and open space.
"Okay. That" -- "What is the distinction -- what did you understand Mr. Goorjian to mean when he said 'open space' and the words 'golf course' and 'open space'? What do you mean" -- "What do the words 'open space' mean to you as you understand it?
"Answer: That there would never be anything built on the property.
"No, no, but what do the words 'open space' mean as opposed to 'golf course'?
"So 'golf course' means golf course; right?
"Answer" --
"And it was a golf course at the time?

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"Answer: Yes.
"So it was sort of a duplicative statement? In other words, 'golf course' means about the same thing as 'open space'?"
Then there's objections.
So I'm asking her what you understand was the words "open space" --
"What did you understand he was communicating to you, ma'am?
"Answer: That there would never be anything built behind our home.
"And do you recall that he used both the terms 'golf course' and 'open space'?
"Answer: Yes.
"Now, did he use them with regard to the back of the property or just the front of the house?
"Answer: To both.
"To both. So he said there was going to be a golf course, an open space to the property in front of your home and to the golf course behind the home?
"Answer: Yes." End quote.
Do you recall saying those words to Nancy Peccole?
A. No.
Q. What is your best recollection, Mr. Goorjian?

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A. My best recollection was that we met a few times -- I can't recall if I went to the property with them. First was negotiating price, of course, and, you know, I couldn't do that; so he worked that out with the Peccole family and I was told what to price the lot at.
And then I just -- the other thing I recall was -- was him asking, you know -- knowing that there potentially could be something else built there and not liking it, and asking me if we could make assurances that that wouldn't happen. And that's all I recall.
And I couldn't give him those assurances, so I -- can't get it from me. So he said he would talk to the family.
That's about the extent. I don't feel like I really had to sell them on the property. They wanted the -- they wanted to live in there. They wanted to buy the lot.
Q. And it was being developed by the family?
A. Yeah. It wasn't like a hard sell.
Q. All right. Now I'd like to read from you -- from the deposition of Robert Peccole. Mr. Robert Peccole's testimony occurred on August 13, 2018, in these offices. And I'd like to read beginning at Page 177, line 17 through 178, and ending at Page 180,

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line 4.
So this is the testimony:
"All right. Did" -- speaking now to Robert Peccole, and I'm asking the questions. Jim Jimmerson is asking the questions.
"Did you have any conversation with Larry Miller with regard to your request that he make a writing or a restrictive covenant to preclude the property behind you or in front of you from ever being developed?
"Answer: No, because Larry had always told me there wouldn't be anything built there."
Answer --
"So he told you that, too?
"Answer: Yes.
"So Greg Goorjian told you that nothing would be developed?
"That's exactly right.
"Question: What did Greg Goorjian tell you then, in that conversation?
"Greg Goorjian said to me and my wife, 'There will be nothing built behind you or in front of you.' That it's open space. That it will always be a golf course.
"And then he says to me, 'Bob,' he says, 'the

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Peccole family has a lifetime membership. Any time you want to play, just give me a call.'

"Question: Have you now told me everything you remember of Mr. Goorjian's conversation with you?

"Answer: Most of it, but I talked with Greg off and on so I can't remember it all.

"Anything else on the subject matter about there being" -- "that there will never be anything built behind you or in front of you? Have you now told me all the subject matter that you can recall with Mr. Goorjian?

"Answer: I think I have. Something more may come to me" -- "mind later.

"What do you or your wife say in response" -- "What did you or your wife say in response to Mr. Goorjian's words as you allege them to be?

"We took his word.

"So you didn't say anything?

"We took his word.

"So you don't remember using any words in response to what he said?

"I didn't have to. I already made the comment" -- "He already made the comment and we said fine, that's what we expect.

"Okay.

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"You know, that's what we were buying here.

"Why didn't you buy the" -- excuse me.

"Why didn't you buy the Badlands Golf Course?"

It really doesn't have anything to do here with the question, but I'll continue to read.

"Jeez, I wasn't interested in it. That's why.

"Did you ever express any interest to buy the property in the past?

"No. And if I had known it was up for sale, maybe I would have gone and found some buyers.

"So you never asked anybody about the land or about your buying the land?

"As long as we're speculating, no.

"Did you" -- "Did you not know it was being sold in March of 2015?

"I did not know.

"Did you have any conversation with any of the Peccole representatives that you had known" -- "representatives that had you known you would have liked to buy the property?

"Answer: I'm not understanding the question."

And the question is, "Did you ever have a

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conversation with any of the relatives, any of the Peccole defendants that you have sued, that had you known that the property was going to be sold like it was sold, the membership interest in Fore Stars was sold, that you would have been interested in buying it or words to that effect?

"That's speculative because I was never told that it was sold."

So just returning to the part about the conversations with you, Mr. Goorjian, did you tell Robert Peccole in the presence of Nancy Peccole that the golf course would never be developed?

A. Absolutely not.

Q. Did you tell them that the golf course would always remain open space?

A. No.

Just to add, I couldn't make those -- I couldn't make those --

Q. Statements or representations?

A. -- representations.

Q. And why is that, sir?

A. Because I was no longer a family member. I was just a broker.

MR. PECCOLE: I'd like to pose an objection. Mr. Jimmerson is leading the witness and telling him

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what to say.

MR. JIMMERSON: I have to respond to that. I made no such comments or words. I certainly have no power or ability to tell this witness what to say.

So I just want to note my response to that objection as being improper.

Q. (By Mr. Jimmerson) Did you have -- excuse me. Did you know that Robert Peccole sued several members of the Peccole family two years ago?

A. I was aware, yes.

Q. Okay. He sued Larry Miller, he sued the family trust, he sued the individuals, entities. Were you aware of that?

A. Yes.

Q. Okay. Did you know that he later on dismissed the claims against his relatives?

A. Yes.

Q. Did you have any involvement in those discussions that led to his dismissing the claims he had against his relatives, family?

A. No.

MR. PECCOLE: I'd like to take a men's room break.

MR. JIMMERSON: Absolutely, sir. No problem. We'll take a five-minute break at

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Mr. Peccole's request. No problem at all.
(A recess was taken.)
Q. (By Mr. Jimmerson) All right. After a comfort break for everyone, I will just resume. I have just another few questions.
Mr. Goorjian, you had -- you had a role, maybe as marketing director, the position you had, where you actually was the individual who dealt with the Peccoles and sold them the lot in 2000; is that right?
A. Yes.
Q. And I think the documents indicate that they bought it in April or May of 2000. Is that right?
A. Yes.
Q. And they bought -- their home is located at 9470 Verlaine Court? Is that --
A. I know where their home is, but I don't know the address.
Q. Okay. All right. Do you remember having a conversation with Mr. Peccole where you discussed the fact that the family was developing or investing tens of millions of dollars to construct the golf course and to put in the infrastructure for the residential development?
A. Yes.

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Q. Okay. And did you inform him that there were no guarantees that could be made to him that the golf course would not ever not be developed?
A. I made no guarantees, so the answer to that is yes, but could you say the question again?
Q. Yeah. It had a double negative, so I agree with you.
Did you inform him that no guarantees could be made that the golf course would always remain a golf course property?
A. No guarantees.
Q. And, indeed, the property was zoned -- zoned to be developed residential; isn't that right?
MR. PECCOLE: I object to that question on the grounds it's assuming facts that are not in evidence.
A. Okay, now, just my response to it is, it's all documented. It's all in the documents.
Q. (By Mr. Jimmerson) Okay. All right.
A. That's all my answer.
Q. Okay.
A. Maps and everything.
Q. Okay. Now I'd just like to show you a few more exhibits that have to do with the purchase of the property. The next would be Exhibit 6.

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MR. JIMMERSON: Would you mark this Exhibit 6, please.
(Exhibit 6 marked.)
MR. JIMMERSON: Mr. Peccole, this is Exhibit 6. We had marked it as Exhibit 5 in another depo, so I crossed out the five. You'll see it. It's right here.
MR. PECCOLE: This is?
MR. JIMMERSON: Six. We had marked it as Exhibit 5 in another, so I just crossed out the five so she can mark it as six. That's all I'm saying.
Q. (By Mr. Jimmerson) Can you identify, Mr. Goorjian, what Exhibit 6 is, called Attachment "C," Disclosure Statement Relating to Zoning Classifications and Master Plan Designations of Adjoining Property?
A. I can't read it here without my --
But this is a disclosure stating what -- what's in the plan.
Q. Okay. All right.
A. What he'll be party to.
Q. And this was an attachment that every homeowner was given; is that right?
A. Yes.
Q. And it referenced what the zoning designations were that existed at the time of

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purchasing the home; isn't that right?
A. Yes.
Q. And it showed that through Exhibit C-2; is that right?
A. Yes.
MR. JIMMERSON: All right. The next exhibit is Exhibit 7.
(Exhibit 7 marked.)
Q. (By Mr. Jimmerson) And 7 is grant, bargain and sale deed, Queensridge North, Parcel 19, custom lot.
A. Yes.
Q. And do you recognize this document?
A. Yes, I do.
Q. All right. And is this the deed that was issued by Nevada Legacy to Robert N. and Nancy Peccole?
A. Yes, it is.
Q. For their purchase of their lot?
A. Yes.
Q. Okay. And the date is May 1 of 2000? Do you see that?
A. Yes.
Q. And Larry Miller signed it as CEO of Nevada Legacy 14 LLC?
A. Yes.

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Q. And the legal description is attached thereto?
A. Yes.
MR. JIMMERSON: Okay. All right. I'll not be referring to Exhibit 8 with this witness, or Exhibit 9. The omission is intentional.
Let me show you Exhibit No. 10, please.
(Exhibit 10 marked.)
Q. (By Mr. Jimmerson) Now, Exhibit 10 is not a document that you prepared. It is the title insurance policy for Mr. Peccole's home for his purchase in 2000. And -- but the purpose for my asking you about it is, families, purchasers of homes, would typically get title insurance for their purchase, correct?
A. Correct.
Q. And title insurance, the purpose of title insurance, as you well know, is to delineate what conditions or restrictions attach to the property; is that right?
A. Yes.
Q. And whether or not you have clear title or not, whether there's a mortgage or not, whether there's CC&Rs or not, that kind of thing, right?
A. Yes.
Q. And so it gives notice to the property owner

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as to what he takes the property subject to. Is that a fair statement?
A. Yes.
Q. And is that what you are aware of as you did your job for the Peccole family in the 1990s and 2000s?
A. Yes.
Q. All right. And so it would not be surprising to you to note that the title insurance would reflect the CC&Rs of the Queensridge master plan, correct?
A. They would be recorded against the property, yes.
Q. And the earlier and unrelated Peccole Ranch master plan would not be reflected on their deed?
A. Correct. It's not a part of.
Q. It's not a part of. And whatever conditions, restrictions, like, for example, if there's a mortgage, that would be reflected here, correct?
A. Yes.
Q. All right. Thank you.
Now, the Peccole Ranch master plan was never recorded against the real property known as the Queensridge master plan; isn't that right?
A. That's correct.
Q. Okay.
MR. PECCOLE: I object to that question as

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irrelevant, immaterial.
Q. (By Mr. Jimmerson) And why is that --
MR. PECCOLE: Has nothing to do with Queensridge.
Q. (By Mr. Jimmerson) And why -- and I do agree with Mr. Peccole. One, it has nothing to do with Queensridge; but why would the Peccole Ranch never be reflected upon or have anything to do with the Queensridge master plan?
A. Meant to be completely separate, with family only involved in the development, and -- and completely different feel and look.
Q. And by virtue of the litigation that occurred between Triple Five and the Peccole family, the previously conceptualized master plan of Peccole Ranch was abandoned; is that right?
MR. PECCOLE: I'm going to object to the leading question.
MR. JIMMERSON: I'm asking the question.
MR. PECCOLE: He's telling him what he wants to hear.
Q. (By Mr. Jimmerson) You may answer the question, sir.
A. Could you re-ask it?
MR. JIMMERSON: Would you restate the

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question, please.
(Page 71, Lines 13 through 16 read by the reporter.)
THE WITNESS: This is correct.
Q. (By Mr. Jimmerson) And why was it abandoned?
Why was the Peccole Ranch master plan abandoned?
A. There was a settlement with Triple Five where they ended up with -- with Peccole Ranch, basically; and -- and so the family took the rest and created Queensridge.
Q. A question I may have asked you before. If I did, I'm not trying to duplicate it. I apologize.
In your conversations -- conversation with Mr. Peccole and/or Mr. Peccole and Mrs. Peccole, do you remember whether or not you used the words "open space," as Mrs. Peccole quotes you as using?
A. Do not recall, but it is a term I use.
Q. Okay. All right. And what were the purpose -- what was the purpose for you, or other men or women selling property at Peccole Ranch in the 1990s and 2000s, for having purchasers like Mr. and Mrs. Peccole sign these special instructions and disclosures that I've shown you?
A. Again, so they could be aware of what they're

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purchasing.
Q. All right. Do you recall -- and this may not be within your memory because of your employment. My recollection from your earlier testimony was that you ceased working for the Peccole family in about 2004. Is that right? Do you remember?
A. No.
Q. Okay. Tell me when you left.
A. I -- I worked with the family from '82 to '89, '90. Came back to work for them '94, and stayed with them to perpetuity.
Q. Okay. So well after 2004, then?
A. Correct.
Q. All right. Then I can ask you this question. Take a look at Exhibit No. 12, please.
(Exhibit 12 marked.)
Q. (By Mr. Jimmerson) By our looking at the -- you know, the recorder's records, it appears as if the Peccole family transferred the golf course into the company known as Fore Stars, Ltd. --
MR. PECCOLE: I object on the grounds the document speaks for itself.
MR. JIMMERSON: Okay.
Q. (By Mr. Jimmerson) So my question is, showing you Exhibit 12, which is the grant, bargain and

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sale deed, which, as Mr. Peccole says, speaks for itself, and says that, "For valuable consideration, receipt of which is hereby acknowledged, the Peccole 1982 Trust, dated February 15th, 1982, as to an undivided Forty Five percent interest and William Peter and Wanda Ruth Peccole Family Limited Partnership, as to an undivided Fifty Five percent interest" -- and it goes on... makes this transfer.
Do you recall in 2004 these two trusts conveyed over to Fore Stars, Ltd., the golf course property described in Exhibit 12, the grant, bargain and sale deed of two thousand --
A. I do recall.
Q. -- five? All right. And the signatory of the trust at this time was Larry Miller; is that right?
A. Yes.
Q. For both trusts; is that right?
A. Yes.
Q. Do you remember the reason why the company consolidated the golf course property into the entity called Fore Stars, Ltd., and transferred it from the two trusts to Fore Stars, Ltd., in 2005?
A. My recollection is I believe it was to -- in concert with the development of the towers, and it had something to do with the towers as well.

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Q. Okay.
A. Easements that were needed and items like that. And -- but I don't really know if that was the reason why it was consolidated.
Q. Okay. And by -- would you look at Exhibit No. 12 to satisfy yourself that as it relates to the golf course property that's shown in, you know, the grant, bargain and sale deed, you'll see that there's no reference to the Queensridge master plan CC&Rs as somehow being subject to this property.
A. It wouldn't have been.
Q. Okay. And that's because the Queensridge master CC&Rs had nothing to do with the golf course property?
A. It had not been annexed, yeah.
Q. And so therefore it wasn't something -- the golf course property wasn't subject to the Queensridge CC&Rs?
A. Correct.
Q. Thank you.
(Exhibit 13 marked.)
Q. (By Mr. Jimmerson) I'm showing you Exhibit 13. This is a map that I think you may have seen before. I don't know. I'll ask you if you have.
As you've testified earlier, the Queensridge

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master plan started out with a small piece of property; and then as the Queensridge master plan was developed, they would annex additional property. Is that right?
A. Yes.
Q. Looking at Exhibit 13, this is what my understanding is: This is a map that references what property was annexed into the Queensridge master plan. Have you seen this map before?
A. Yes, I have.
Q. And have I accurately represented what it is?
A. Yes, you have.
Q. Okay. And the golf course property, which was not annexed, is the white --
A. Correct.
Q. -- in this map. And the property that was part of Queensridge master plan is the brown. Is that right?
A. Yes.
Q. All right. Thank you.
Let me show you Exhibit No. 14. I just have one or two questions about it.
(Exhibit 14 marked.)
Q. (By Mr. Jimmerson) Just completing these documents, do you recognize Exhibit 14, which is known as a Public Offering Statement for Queensridge North --

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A. Yes.
Q. -- Custom Lots?
A. Yes.
Q. And was this yet another document that surrounded the -- I call it papering -- the documentation relating to the sale of custom lots?
A. Yes.
Q. All right. And remember that we looked at -- earlier at a set of exhibits -- I think it was Exhibit 6 -- that had these attachments, B and C?
A. Yes.
Q. All right. And Mr. Peccole made an objection that there were blanks?
A. Yes.
Q. All right. But it had his signature and his wife's signature? Do you remember that?
A. Yes, I do.
Q. These were exhibits to the public offering that's shown here in Exhibit No. 14; isn't that right?
A. Yes.
Q. All right. All right. Thank you.
And just as it relates to the Peccole house -- that's the only reason I'm raising it -- is the way that the -- the process in which a piece of property would be annexed into the Queensridge master

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plan would call for a deed or a declaration of annexation, and the annexation would be recorded with the Clark County Recorder's office, right?
A. Correct.
Q. And as annexed properties were added, Queensridge would grow in size, right?
A. Correct.
Q. And then when the development ended, annexation ended, and that became the totality of Queensridge master plan? Right?
A. Correct.
Q. All right. I just wanted to show you the annexation as relates to Mr. Peccole's property, which we've marked as Exhibit 15.
(Exhibit 15 marked.)
Q. (By Mr. Jimmerson) Exhibit 15 is called, quote, Declaration of Annexation for Queensridge Parcel 19 (Queensridge North Custom Lots), end of quote. Do you see that, sir?
A. Yes.
Q. And this, as you see, is a document that's prepared for recordation with the Clark County Recorder's office, right?
A. Yes. Yes.
Q. And so this particular annexation is the

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annexation of Parcel No. 19; is that right, sir?
A. Correct.
Q. And to the extent that Mr. Peccole's home was one of several homes that made up Parcel 19, it then became, when it was recorded, part of the Queensridge master plan?
A. Yes.
Q. All right. Thank you. That's all I have on that one.
I'm going to skip for a moment Exhibit 17, go to Exhibit No. 19.
In a further effort to distinguish the Queensridge master plan with the additional stone and the look and the like, the family developed custom home estate design guidelines; is that right?
A. Yes.
Q. All right. I'd like to just show those briefly to you.
A. We had consulting. We didn't do it on our own.
Q. Got it.
(Exhibit 19 marked.)
Q. (By Mr. Jimmerson) And what you mean within your last answer is that you had professionals help you in terms of developing these guidelines?

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A. Yes, sir.
Q. So that custom homeowners like Mr. Peccole and his wife, Nancy, would know what they could build and not build, what would be acceptable and not acceptable?
A. Correct. And what their neighbors would be doing the same.
Q. And that there would be some consistency in the neighborhood; and obviously the intent is to have an upscale neighborhood, right?
A. Yes.
Q. And do you recognize these guidelines as being those that applied to the Queensridge master plan?
A. Yes.
Q. As relates to the custom home estate lots?
A. Yes.
Q. Thank you. That's all I have on that.
Because of the massive size, I'm not introducing it, but there was a huge blue binder --
A. Yes.
Q. -- that three-ring binder that was given to every homeowner; is that right?
A. Yes.
Q. And it was maybe 6 inches thick?

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A. Yes.
Q. By estimate? And it had covers on the front and back, right?
A. Yes.
Q. I just want to show you Exhibit 20, which is the xerox of the front and back of the binder.
A. It was a gift to the buyer after they purchased the home.
Q. It was a gift to the buyer; is that right?
A. After they purchased.
Q. Okay.
A. All their documents, including their deed.
(Exhibit 20 marked.)
Q. (By Mr. Jimmerson) Just showing you Exhibit 20, does this refresh your recollection this is a xeroxed copy of the binder?
A. Yes.
Q. Copy of the binder? Thank you.
All right. I just have a few more fill-in questions on Exhibit No. 5. Can I ask you to find 5 in here. I'll show you what it looks like.
I forgot to ask the questions when I did. Right here. It looks like this.
A. Okay. I've got that one. Here it is. Yup.
Q. Okay. Now, as you've already told us, this

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was an addendum that made certain disclosures and committed the buyer to acknowledging the disclosures, correct?
A. Yes.
Q. And again, part of it, as you indicated, was to make sure that the buyer knew exactly what he was getting to, what rights he could count on and what -- what he couldn't count on as well, right?
So let me ask you to look at, please, Paragraph 4 of Page 2 of Exhibit 5, Exhibit 5 being called Addendum "1" to the Purchase Agreement, Earnest Money Receipt and Escrow Instructions.
A. Where?
Q. Paragraph 4, Page 2. It's called "No Golf Course or Membership Privileges." Do you see that?
A. Yes, I do.
Q. Okay. "Purchasers shall not acquire any rights, privileges, interest, or membership in the Badlands Golf Course or any other golf course, public or private, or any country club membership by virtue of purchasing the lot." End of quote.
A. Yes.
Q. All right. Next, would you look at Paragraph 7 in the same document, please, called "Views/Location advantages." Do you see that?

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A. Yes.
Q. "The Lot may have a view or location advantage at the present time. The view may at present or in the future include, without limitation, adjacent or nearby single-family homes, multiple-family residential structures, commercial structures, utility facilities, landscaping, and other items. The Applicable Declarations may or may not regulate future construction of improvements and landscaping in the Planned Community Declarations" -- I'm sorry -- "Planned Community that could affect the views or other property owners.
"Moreover, depending on the location of the Lot, adjacent or nearby residential dwellings or other structures, whether within the Planned Community or outside the Planned Community, could potentially be constructed or modified in a manner that could block or impair all or part of the views from the Lot and/or diminish the location advantages of the Lot," if any.
Have I read that accurately?
A. Yes, you have.
Q. What was the purpose of notifying the buyer that the adjacent development of the property could affect their views or block their views?
A. Disclosures so I wouldn't be here today.

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That's why we did all this.
Q. You mean here to give a deposition?
A. Correct.
Q. All right.
MR. PECCOLE: What was that exhibit?
MR. JIMMERSON: That was -- we're talking about Exhibit No. 5, Mr. Peccole.
Q. (By Mr. Jimmerson) All right. Now I want to kind of change, paragraph, something a little different, a new subject matter.
The Peccole family knew that the property of the golf course -- not Queensridge master plan, but the golf course -- could be developed; isn't that right?
A. Yes.
Q. And there was a lawsuit between BCG Holdings, LLC, and Fore Stars arising from the desire to develop the golf course property; is that right?
A. BCG?
Q. Yes.
A. Is?
Q. BGC. It's a company that Mr. Lowie had an interest in.
A. Okay. Ask me the question again.
Q. Okay. So just remember that the golf course property the Peccoles have transferred into Fore Stars,

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Ltd. --
A. Yes.
Q. -- I showed you the deed -- in 2005.
A. Correct.
Q. Now I'll show you a lawsuit that came two years later, in August of 2007, between BGC Holdings, LLC, and Fore Stars, Ltd.
A. Okay.
Q. Let me just show you that. It's a lot of years ago, I know.
MR. JIMMERSON: I'm marking this as Exhibit No. 17.
(Exhibit 17 marked.)
Q. (By Mr. Jimmerson) And if I could help you, just look at Page 2 and 3. You'll see -- it will refresh your recollection about the lawsuit.
A. I don't know what -- okay. I've read those two paragraphs.
Q. Can you read Paragraph 7 just below.
A. (Witness examined document.) Okay.
Q. Okay. Do you recall that the family knew that the golf course could be developed and that they sold -- they sold BGC Holdings --
A. Yes.
Q. -- EHB Associated, a related entity, rights

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to develop that property in the mid-2000s, in this case 2007?
A. Okay.
Q. All right. And then there was a lawsuit, which is this Exhibit No. 17, that was brought forward for what BGC Holdings believed was a breach of contract by the Peccoles --
A. Okay.
Q. -- by Fore Stars in not selling it the property. Do you recall that?
A. No.
Q. Okay. All right. You were, then, not directly involved with that litigation?
A. I was not.
Q. Okay. Fair enough.
Do you know whether or not, maybe just to refresh your recollection, that a resolution was reached which led to a restrictive covenant, being limited, having to do with the towers?
A. Yes.
Q. Okay. What's your recollection about that?
A. Just the recollection was that there were a series of easements that needed to be -- that we needed in order to develop the towers and there was some rerouting of a couple of holes that needed to be done

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for it to maximize the tower site. And so it was in concert. They were partners on the towers, so --
Q. Okay. And the tower site property is adjoining or attaching to the golf course, right?
A. Correct. Yes, sir.
Q. Okay. And it's part of -- I would call it the country club building is part of that property, right?
A. Yes. Correct.
Q. Okay. And then it was sold off so that there's three tower sites?
A. Yes.
Q. Two of which have been developed, one of which is not yet developed?
A. Yes.
Q. That is owned by a different entity?
A. Now.
Q. Now. I guess it's IDB or someone else. Is that right?
A. Yes. Yes.
Q. But in those years, in the mid-2000s and later 2000s, it was all owned by the Peccole family; is that right?
A. Correct.
Q. Subject to a sale contract with BGC,

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Mr. Lowie and his interests; is that right?
A. Yes.
Q. Okay. Fair enough. And I would like to show you the restrictive covenant, Exhibit 21.
(Exhibit 21 marked.)
THE WITNESS: I'm starting to remember some of that as well. It had to do with the clubhouse as well.
Q. (By Mr. Jimmerson) That's correct.
I'm showing you what's been marked as Exhibit 21, called Restrictive Covenant, recording on or about March 14, 2008. Are you familiar with this document?
A. No.
Q. Okay. Are you familiar with the idea that there was a restrictive covenant that came as a result of some negotiations between the parties?
A. Yes.
Q. Okay. And it had to do in part with the existing golf clubhouse; is that right?
A. Yes.
Q. And the adjoining property?
A. Yes.
Q. The document speaks for itself. I just put it in sequence. Thank you very much.

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Now showing you what's been marked as Exhibit 22.

(Exhibit 22 marked.)

Q. (By Mr. Jimmerson) Consistent with your recollection, Mr. Goorjian, there was a settlement reached between BGC Holdings and Fore Stars, Fore Stars being the Peccole family's company, in this time period of 2007.

And this document has been disclosed in this form to Mr. Peccole. We went to court and there was a court order on this, so this was the form in which the document was disclosed to Mr. Peccole, so that's why it is the way it is.

A. Okay.

Q. It has nothing to do with you, but I'm just telling you that's why the whole document is not here, is what I'm trying to say.

A. Redacted.

Q. And it's also only two pages and not the full document.

A. Right.

Q. All right. My only question to you is, do you have a recollection of this document?

A. I don't.

Q. Okay. Fair enough. But do you see that this

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does bear connection between the lawsuit that is brought in 2007 and then a settlement between these parties?

A. Yes.

Q. All right.

A. And I'm recalling that as we speak more and more.

Q. All right. And would you look at the bottom of the page.

A. Yup.

Q. The page 1. You'll see, "The foregoing notwithstanding, the Restrictive Covenant shall expire ten years after its" -- it has a different wording there -- "after its delivery."

Do you see the word "delivery" there handwritten in?

A. Yes.

Q. Okay. And the restrictive covenant is the document I just showed you, Exhibit No. 21. Do you see that?

A. Yes.

Q. All right. So that's -- I'm just trying to lay it together so you can see they're all tied together. That's all.

That's all I have for that. Appreciate it.

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MR. PECCOLE: Can I take another break?

MR. JIMMERSON: Yes, sir, you certainly can. Absolutely.

(A recess was taken.)

MR. JIMMERSON: So the next document is Exhibit 23.

(Exhibit 23 marked.)

Q. (By Mr. Jimmerson) Again, I'm just telling you things that are really not serious issues of inquiry, but I just want to show you that Fore Stars was created by the Peccoles to hold the golf course property; and this is the articles of incorporation of Fore Stars with the Secretary of State in or about December 5, 1995. Do you see that?

A. Yes.

Q. And do you recognize the signatures at Page 3 of this --

A. Sure do.

Q. -- articles of organization?

A. Yes.

Q. From Wanda Peccole to Lawrence Bayne and Lisa Miller?

A. Yes. That would be Loretta.

Q. Got it. All right. Thank you.

No questions on that, to that.

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I'm showing you what's been marked as Exhibit 24.

(Exhibit 24 marked.)

Q. (By Mr. Jimmerson) Exhibit 24 is Bill No. Z-2001-1, Ordinance No. 5353; but it is, in 2001, the City of Las Vegas's ordinance that takes all of the property that's shown in the attachments and codifies it as R-PD7 zoning.

And I wanted to just ask you if you've seen this city ordinance before today. I'm sure you've maybe seen it at the time, but I don't remember if you remember it or not.

A. I do not.

Q. Okay. You can see, though, that the ordinance attaches parcel numbers?

A. Yes.

Q. APN --

MR. PECCOLE: I'm going to object to the exhibit. It's irrelevant, immaterial to this case.

Q. (By Mr. Jimmerson) So anyway, you'll see that there are APN numbers attached to this ordinance. Is that right?

A. Yes.

Q. Fair enough. Thank you, sir.

Now, the Peccole family retained different

professionals to help them with zoning matters, development matters and the like; is that right?
A. Yes.
Q. Okay. Do you remember the name A. Wayne Smith & Associates as a planner --
A. Yes.
Q. -- in the mid-'80s?
A. Yes, I do.
Q. Okay. And how do you remember them?
A. He was the -- not the original, but he did the master plan for what was at the time about 2300 acres of Peccole lands from Durango to Hualapai and Charleston to Alta.
Q. All right. I'm showing you number -- I want to show you an exhibit, then, Exhibit No. 25.
(Exhibit 25 marked.)
Q. (By Mr. Jimmerson) This is a letter that bears the date March 26, 1986. Do you see that?
A. Yes.
Q. And I just wanted to confirm your own testimony earlier today about, in the third paragraph, the zoning approvals --
MR. PECCOLE: I would interpose an objection on the grounds that anything that has to do with the initial Venetian Foothills has no relevancy with regard

to this lawsuit or Queensridge South -- or North. Excuse me.
Q. (By Mr. Jimmerson) All right. And I was interrupted in the middle of my question. Let me finish the question, and then I'd like to respond to the objection.
So it refers to zoning C-1 for the commercial sites, P-R for the office sites, C-V for a 5-acre community center parcel, and the R-PD for residential. Do you see that?
A. Yes, I do.
Q. And these are different zoning designations, depending upon the intended use?
A. Correct.
Q. All right. Thank you.
MR. JIMMERSON: Now just to respond to the objection. Mr. Peccole has raised these issues in a motion for summary judgment; and while I may agree that they have nothing to do with the instant litigation, because he has made these express references to these different -- different plans and the Peccole Ranch master plan to the south of West Charleston, I feel that I'm obliged to at least respond to those in this record. But I do agree that the whole issue of Peccole Ranch is irrelevant to the instant lawsuit.

MR. PECCOLE: And in response, I just say to Mr. Jimmerson it's irrelevant and immaterial to the lawsuit that he has filed against my wife and I.
MR. JIMMERSON: And so that begs the question of why you would make reference to the Peccole Ranch master plan in your motion for summary judgment in this lawsuit, Mr. Peccole.
Q. (By Mr. Jimmerson) Would you also look at this exhibit, Mr. Smith's exhibit. I just want to call one document -- one sentence to your attention.
Does this letter, who was the representative of the Peccole family, Jackie Guthrie of Wayne Smith & Associates, state in the third paragraph, last sentence, quote, The R-PD category is requested, at the direction of the planning staff, as it allows the developer flexibility and the City design control, end of quote?
A. Yes.
Q. All right. Let me just show you -- I'm omitting Exhibit 25, and the omission is intentional.
MS. POLSELLI: 26. That would be 26.
MR. JIMMERSON: I'm sorry. 26. I misspoke. No -- 26, that's right. I'm omitting Exhibit 26, and the omission is intentional. And I'm also omitting Exhibit No. 27 as an intentional omission.

I'll show you Exhibit No. 28.
(Exhibit 28 marked.)
Q. (By Mr. Jimmerson) Relative to No. 28, this is a letter from the City of Las Vegas, City Clerk, Kathleen Tighe, to the William Peccole 1982 Trust, dated May 1, 1990, with regard to zoning that was approved by the city council, specifically the R-PD7 and R -- you know, R-PD7 zoning that's referenced here.
My question to you is, do you know whether or not you've seen this letter before, sir?
A. I have not.
Q. Fair enough. Thank you.
And this 1990 time period was before Queensridge was ever created, right? Do you see the letter I showed you?
A. Yes, it is.
Q. So the Queensridge came to be known six years later, 1996?
A. Correct.
Q. And then the years thereafter?
A. Correct.
Q. After which the old plan of Peccole Ranch was abandoned and then you started with Queensridge six years later?
A. Correct.

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Q. All right.
MR. JIMMERSON: To my best recollection, that's all the questions I have; and I thank you very much for your time, sir.
Mr. Peccole may have some questions, and he has the right to ask you that.
THE WITNESS: Okay.
MR. JIMMERSON: So please be responsive to his questions. Thank you, sir. Thank you for your time.
MR. PECCOLE: My turn?
MR. JIMMERSON: No further questions. Thank you.
EXAMINATION
BY MR. PECCOLE:
Q. Is it okay if I call you Greg?
A. Please, Bob.
Q. When did you last talk to Yohan Lowie?
A. Oh, it would have been yesterday, maybe, or the day before.
Q. Did you talk about this case?
A. No, sir.
Q. Have you talked to him about this case at any time?
A. Yes.

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Q. How long ago?
A. Oh, only the fact that -- oh, I'd say off and on of while this has been happening. Only -- not about the case; just the fact that there is a case.
Q. Did -- was he your employer at one time?
A. Yes, he was.
Q. And tell me a little bit about that.
A. That was during the high-rises. I worked for the company there as -- well, actually, it was during -- it would have been 2006, '5 or '6, when we were doing the high-rises and preselling the high-rises. I worked for him.
Q. Now, when you worked for him, how were you being paid?
A. I started as an employee with receiving draws against my future commissions.
Q. And when you say you were working for Mr. Lowie at that time, was it one of his entities?
A. I would have been EHB, I believe, employee or -- I can't remember if I was an employee of the project. I really can't recall who paid me. I know that my job was to put the marketing materials together and to presell the towers.
Q. And how long would you say you worked for him?

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A. I'd say I worked from him -- for him, oh, maybe three -- two to three years, two-and-a-half to three years.
Q. And that would have been in the --
A. That would have been to about 2009 or '8. '9.
Q. Now, a little while ago, almost to the end of your deposition, Mr. Jimmerson asked you questions about experts that were working in --
A. Correct.
Q. -- in the field dealing with both the north side and the south side.
MR. JIMMERSON: Let me just object. I never used the word "experts." But go ahead.
A. There were consultants involved in the project. We had several that would come and go. So -- and they were different in Peccole Ranch -- they weren't the same consultants in both, although some may have overlapped.
But we had landscape designers, we had architects, we had engineers, you know, all the disciplines. Attorneys. All the disciplines were covered with a consultant.
Q. (By Mr. Peccole) Does the name Clyde Spitze ring a bell?

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A. Yes, it does. Clyde was our engineer.
Q. He was what?
A. Our engineer.
Q. For the overall master plan, entire thing?
A. Well, we had G.C. Wallace was involved at one time. VTN was involved. So there were several engineers involved. But I would say the crux of it, when it came to Queensridge, we were pretty much using, if I recall, Clyde.
Q. Now, when -- when Bill started the development, he started with his original LLC over in the south side, which would be Foothills something or other at that time?
A. We never did anything under Venetian Foothills. That was the original plan that Bill may have done, gosh, sometime maybe in the '70s. We met with A. Wayne Smith in the '80s sometime -- I can't recall when -- and came up with a Peccole Ranch master plan.
Q. Now, in --
A. Let me --
Q. I'm sorry.
A. Conceptual plan.
Q. 1986, there was filed an application with a master plan map. Is that correct?

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A. Yes.
Q. And that master plan eventually became Phase One and Phase Two?
A. Don't recall. I know that it covered all of his property.
Q. And Phase One started off on the south side of Charleston?
A. We started -- again, I don't know what we called -- we started with Canyon Gate.
Q. Canyon Gate. Yeah.
A. Which was a development with a partnership that went sour as well.
Q. And after that, you shifted to Phase Two, which was --
A. I don't know if we --
Q. -- was part of the master plan?
A. I don't know if we phased it or what we called it, but, yeah, we went to -- our partnership with Triple Five we got into, and started -- and that's when I left the family, when they started that. I split off and divorced and went to work for Nevada Title.
MR. PECCOLE: Okay. I'd like to introduce this as Exhibit A.
(Exhibit A marked.)

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Q. (By Mr. Peccole) Did you ever talk to Bill Peccole about what his intention was as far as the golf course remaining a golf course?
A. Don't recall.
Q. He never told -- I mean, anybody or any of the family discuss it with you? How about Wanda?
A. Rephrase your question, Bob. I don't know what you --
Q. Did you ever hear either Bill or Wanda say that the golf course is subject to going away?
A. No.
Q. In fact, Bill himself often said, "It will be a golf course and open space, and that's what I'm selling."
A. That I don't recall.
Q. Take a look at Exhibit A.
A. Yes.
Q. And just as kind of a little background, this is the Phase Two, as you'll see on the front page, "A Master Plan Amendment and Phase Two Rezoning Application." Do you see that at the very top?
A. Yes, I do.
Q. And that's the Peccole Ranch master plan, correct?
A. Yes.

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Q. So what this was is an application for rezoning, and that would be the Queensridge side. We'd be going to the north of Charleston. Correct?
MR. JIMMERSON: I'm just going to object to the question because the witness cannot identify the document, as so stated. So asking him questions about this now would be speculative on the part of the witness and unfair to the witness.
Q. (By Mr. Peccole) Is that correct? The Peccole Ranch overall master plan, Phase Two, which is the Queensridge side of Charleston?
A. I can't answer that question because -- that's what this -- this document says that this is the Peccole Ranch partnership, okay, which I -- I can't recall. But I believe this was all the property that Triple Five was involved in in our partnership at the time. Okay? And that's really what this is identifying. But this is -- this was done with the Peccoles and Triple Five.
MR. JIMMERSON: You can see that because the front page says it's a partnership. You're a hundred percent right, Mr. Goorjian.
Q. (By Mr. Peccole) On Page 1, does it say introduction to the Peccole Ranch overall master plan?
A. That's what it says, yes.

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Q. And it uses the term, "Peccole Ranch Overall Conceptual Master Plan." You used that term a little while ago.
A. Conceptual.
Q. Yes.
A. Correct.
Q. If you look at Page -- right after Page 1 --
A. Yes.
Q. -- you'll see that the map now shows you --
A. What the partnership --
Q. -- where he's going.
A. Yeah.
Q. And it shows the whole thing, correct?
A. It shows all of what is still Mr. Peccole's land.
Q. Yes. And it eliminates Canyon Gate Golf Course, as you said earlier?
A. Yup.
Q. And it eliminates the McGah-Bailey on the south side of Charleston?
A. There's one mistake here, is that -- this -- because he didn't own -- there's a piece there that I don't think he did own that's shaded here. It belonged to your father.
Q. To who?

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A. Your dad, I believe.
Q. That's correct. So it was -- it's eliminated from the map. Correct? You can see it's dark, is what --
A. Everything that's dark is what's represented in this partnership, but I believe some of what is dark here belonged to Bob and Lena, if I'm correct.
Q. No. No, that's not correct.
A. Okay. So where is Charleston? Okay. You're right. It's -- here is -- it says Bailey-McGah. And that did not belong to Bailey-McGah, right?
Q. That's correct.
A. Okay. I got that correct. That's right.
Q. And I was -- if you go along --
A. That's correct. I got confused.
Q. If you go a couple of pages further in, you will come to the overall development of the entire partnership, correct?
MR. JIMMERSON: I'm just going to object. The document speaks for itself, and --
A. Yes.
MR. JIMMERSON: -- as Mr. Peccole's indicated, this is all irrelevant to the instant dispute.
THE WITNESS: Yes.

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Q. (By Mr. Peccole) And it does show from Charleston, going north, towards Angel Park -- it shows the development that Bill was presenting at that time for zoning; is that correct?
A. I'm not -- I can't answer that.
Q. Doesn't it say this is a zoning application?
MR. JIMMERSON: I just object --
A. I'm not sure if this is what he used.
Q. (By Mr. Peccole) And Phase Two rezoning application?
MR. JIMMERSON: I'm just going to object. The witness has testified that this was abandoned in favor of Queensridge years later, and he's not familiar with the document.
I can't instruct the witness not to answer the question, but it's unfair to the witness. So that's my objection.
THE WITNESS: Ask the question again, Bob.
Q. (By Mr. Peccole) Is this an application, for Phase Two rezoning application? Directing your attention to the first page.
A. That's what it -- that's what it states, correct.
Q. And so in this application he's -- Bill was asking for rezoning? Is that correct?

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A. I don't know what he's asking for. Well, this is what the document says, yes. If it's -- whatever this document is stating, that's what Mr. Peccole was attempting to do.
Q. Now, when you look at the map of the overall master plan -- and that shows you the zoning that happens to be designated different parcels; is that correct?
A. For those parcels shown in white? Yes.
Q. So if you're looking at the portion that starts with the -- going north from Charleston over towards the Angel Park Golf Course --
A. Correct.
Q. -- those were the zonings in each of those white parcels that he was asking for, is that correct, for Phase Two?
A. For Queensridge master -- or for Queensridge. These were the zonings he was asking for.
Q. And actually Phase One has already been almost completed by then, 1990?
A. Correct. Which was -- which they were no longer involved in.
Q. So he was already moving on the north side of Charleston, and that's what this application is about?
A. Because he was no longer involved in the

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south side.
Q. Okay.
A. If my mind -- if my brain here serves me correctly, he was already -- I can't recall if he was already in -- 1990, if he was already in litigation with Triple Five, but I can't recall.
Q. If you look at Page 8 of this application, Exhibit A.
A. Yup.
Q. Beginning -- it talks about Phase Two?
A. Where does it say anything about Phase Two?
Q. Could you see what it says? It's saying --
A. Am I looking at this?
Q. No. You should be at Page 8.
A. Eight. Mine are not paginated, so let me see here. Okay. There we go. Eight. I'm there.
Q. It's saying Phase Two, Peccole Ranch comprises approximately 996.4-acre.
A. Okay.
MR. JIMMERSON: I'm just going to object to the question. The document speaks for itself.
Q. (By Mr. Peccole) And that's bounded by Angel Park Golf Course on the north, Durango on the east, small sections of Sahara Avenue, Charleston Boulevard and Alta Road on the south and Hualapai on the west.

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Now, that's Phase Two. Right? And that's what this application is about?
MR. JIMMERSON: Would you just mark this, by the way, so I can find it later.
A. Okay.
Q. (By Mr. Peccole) Was that part of -- in other words, this application is about Phase Two; and it's saying exactly what land it covers and how much land there is?
MR. JIMMERSON: I'm just going to object to the question because this predates the lawsuit between Triple Five and Peccole.
THE WITNESS: And it also predates me coming back to work for them.
So I didn't come back till '94. I don't -- this stuff is all foreign to me.
Q. (By Mr. Peccole) Well, this application was submitted February 6, 1990, and it definitely was Phase Two.
A. I was working for --
Q. So you weren't --
A. I'm not part of the family. I'm not -- I don't -- I'm not familiar with this document. I'm sorry.
Q. So you were gone?

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A. Yeah.
Q. This is -- if you do look at eight and that first paragraph, it says "Phase Two are R-PD7, R-3 and C-1, as described in the following land use descriptions. Overall density of Phase Two is 4.5 DU/AC."
Now, if you go back to the first map we looked at after Phase Two --
A. Yup.
Q. -- those zonings are all set out in those white areas that are north of West Charleston.
A. Okay.
Q. And so they total exactly what he was requesting, and the exact zoning he was asking for.
A. For all of the properties that were a part of this site.
Q. Well, for the Phase Two.
A. For all the properties that were a part of Phase Two.
Q. Yes.
A. That were -- again, yeah, I know where you're going. Okay.
Q. Now, you became a salesman in the Queensridge area, so you were selling properties subject to this document?

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A. No.
Q. Well, let's take a look at Page 10.
A. Okay.
Q. Do you see the designation "Open Space and Drainage"?
A. Yes.
Q. You knew that existed, correct, as a salesman?
A. No.
MR. JIMMERSON: Objection. It's two different plans.
THE WITNESS: I'm going to answer his question, is no, I'm not.
Q. (By Mr. Peccole) You weren't aware of it?
A. Not when I was selling in -- not in 1990. I wasn't selling anything, so --
Q. How about after 1990?
A. There was a different plan. That wasn't the same plan.
Q. Well, we'll have to talk about that.
A. All right.
Q. But this does say "Open Space and Drainage," correct?
MR. JIMMERSON: I'm just going to object. The document speaks for itself and has nothing to do

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with Queensridge.
A. Yeah. Okay. That's what it says. It says "Open Space and Drainage," yes, it does.
Q. (By Mr. Peccole) And this is Queensridge.
MR. JIMMERSON: Absolutely it does not say the word "Queensridge" on this document.
THE WITNESS: It says Peccole Ranch.
MR. PECCOLE: Okay. Let's read this, then.
MR. JIMMERSON: Let's agree not to step on each other's words. Allow me to make an objection, Mr. Peccole, and then you can certainly respond.
Q. (By Mr. Peccole) "A focal point of Peccole Ranch Phase Two is the 199.8-acre golf course and open space drainageway system which traverses the site along the natural wash system. All residential parcels within Phase Two, except one, have exposure to the golf course and open space areas.
"The single family parcel which is not adjacent to the open space system borders Angel Park Golf Course on its northern boundary. Passive and active recreational areas will be provided, and residents will have an opportunity to utilize alternative modes of transportation throughout with the bike paths and pedestrian" -- and it shows another map that they were showing -- "walkways (see Exhibits E and

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F on pages 13 and 14). The surrounding community as well as project residents may use the open space system to travel to neighboring areas including Angel Park."

In other words, it was offered to the city at that time by Bill Peccole that there was going to be all this open space --

MR. JIMMERSON: Objection.

Q. (By Mr. Peccole) -- and I would assume that a salesperson would be aware of that.

MR. JIMMERSON: I'm just going to object on the grounds -- there are several objections. Number one is the witness is not familiar with this document, and was not an employee of the Peccole family when this document was being prepared, number one.

Number two, this document reflects a plan that was later abandoned by the family in favor of a new plan and a different area called Queensridge. And number three, the document speaks for itself.

THE WITNESS: And I'd like to comment that that's -- that's kind of how I see it. This document is superseded by another document, another plan, so . . .

Q. (By Mr. Peccole) Well, let me just put it this way: This was the initial adopted plan. And just to, you know, make a point, take a look at Exhibit 28

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that Mr. Jimmerson just offered.

A. Which --

Q. He's got 28 over there somewhere.

A. Okay. Again, I'm not around, so I don't -- I'm not familiar with this.

Q. Okay. But this is a response to this application that you say was somehow changed later, which we'll have to see about that.

A. Well, I don't know, yeah. I know that the name changed.

Q. Yeah. Now we're looking at what the city finally said. Take a look at that letter.

MR. JIMMERSON: I'm just going to object. When I asked the question, "Have you ever seen this document before?" Mr. Goorjian answered no. That ended my examination of the document.

It's unfair to ask the witness something he does not know or recognize.

Q. (By Mr. Peccole) That first paragraph, can you read that.

A. "The City Council at a regular meeting held April 4th, 1990 approved the request for reclassification of property located on the east side of Angel Park and Sahara Avenue for N-U."

Resolution of intent, R-1, R-2, R-3, R-PD7

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and R-PD18, R-MHP, P-R, C-1, C-2 to R-PD3 (residential planned development), R-PD7 (residential planned development) and C1, (limited commercial). Okay.

Q. Okay.

A. But I'm not aware if there's something that came after this.

MR. JIMMERSON: Also object there's no question pending.

Q. (By Mr. Peccole) When you were involved in the actual -- the south side --

A. Yes.

Q. -- Phase One, there was -- this full map was in effect of the overall master plan. How did they carry that? Were those carried as resolutions of intent?

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

A. Don't know. Don't have that answer to that.

Bob, I wasn't -- I was not around, again, from 1989 till 1994.

Q. (By Mr. Peccole) I'm talking about 1986 to 1990.

A. Okay. We -- and all we did was focus on -- we had a lot of things that -- we did an overall conceptual plan for the property. Okay?

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Q. I agreed with you.

A. All right. Which, you know, we had several. We had Venetian Foothills, we had Peccole Ranch and then we had Queensridge. Okay? So there's three different -- there's been three different plans for that property.

Q. And the overall map is the one that's in -- you've just been looking at.

A. I don't --

MR. JIMMERSON: Objection.

A. I don't know.

Q. (By Mr. Peccole) That's Phase One and Two.

MR. JIMMERSON: Objection. That misstates his testimony.

Q. (By Mr. Peccole) Well, it says that.

A. Okay. Well, there's a lot of things that are said.

Q. Okay. But I thought that you didn't know much about it.

A. I did not. I just told you.

Q. Okay. So --

A. 1990 -- from 1989 till 1994, I didn't know much about it. That happened in 1990. So I was involved in planning, but I was not involved in any submittals or anything.

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Q. This map is the overall map that was presented in 1986.
A. To who?
Q. To you.
A. Presented to who, though?
Q. It was the design. It was --
A. Concept, yes. I've seen that concept.
Q. Okay. That's what I'm trying to say.
A. Of course, I've seen this concept, yes.
Q. Okay. Now, the only question I've got --
A. I don't know --
Q. -- is you had started on the Phase One, which was south of Charleston.
A. I did not.
Q. Well, you were there.
A. No.
Q. During later on? What time did you --
A. I left -- we did Canyon Gate. We started that in 1986.
Q. Okay.
A. Okay? I left in '89.
Q. This parcel map was available at that time.
MR. JIMMERSON: I'm going to object. The witness is testifying to something that isn't borne out by the document.

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I'm sorry. Not the witness. The questioner, the lawyer, is testifying about something that's not borne out by the document.
Q. (By Mr. Peccole) This is the overall master --
A. This overall master plan was -- was -- this is 1990. I'm gone.
Q. This is -- this overall --
A. This concept was drawn.
Q. That's the concept.
A. Okay. This -- I've -- then let's -- show me the A. Wayne Smith conceptual. That's what --
Q. This was part of the entire --
A. Okay.
Q. -- operation, Phase One and Phase Two.
A. That's what you say.
Q. Well, it says it right on it.
A. No. It says it's an application.
Q. All I'm asking --
MR. JIMMERSON: Just note my objection that the lawyer is testifying. He's not asking the witness questions. He's badgering the witness.
Please.
Q. (By Mr. Peccole) Anyway, the only question I was trying to ask you is if you had any idea were

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the -- when you looked at this map, this conceptual drawing, and it's got the zonings, and you --
I'm asking you, when we talk about the north side of West Charleston, since it wasn't there yet, were those carried as ROIs, resolution of intent?
A. Don't know. Don't even -- don't know.
Q. You wouldn't know. Okay.
Because the only reason, taking you back to 28, which is Mr. Jimmerson's exhibit, at the time those zonings were granted, if you look at Page 2, No. 8 and No. 7, especially 7, "The existing Resolution of Intent on this property is expunged upon approval of this application."
So it would have eliminated everything else but what was granted, correct?
A. I don't know.
MR. JIMMERSON: I'm just going to object, out of fairness to this witness, who has answered that he does not know the document, does not recognize the document, wasn't employed by the family at the time.
A. But I will say, just looking at the document, and looking -- it didn't get built this way.
Q. (By Mr. Peccole) Well, all I can say is they expunged everything else in the ROIs, and that -- that's the city council.

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I ask you to take a look at Page 18 of this application. Are you there?
A. Yeah.
Q. Do you see Golf Course Drainage, 211.6 acres?
A. I do.
Q. Do you see any net density there?
A. I do not.
Q. That's the golf course and the drainage system.
MR. JIMMERSON: I'm going to object. The witness --
Q. (By Mr. Peccole) Do you see any net units there?
MR. JIMMERSON: Excuse me. When I make an objection, can everyone agree to allow me to make an objection and then you can continue, and don't just keep talking.
My objection is the document speaks for itself, number one. Number two, the document shows hyphens; it doesn't show a number.
Number three, the -- there's no -- the examiner, Mr. Peccole, is testifying. He's not asking questions.
MR. PECCOLE: I'm asking him to read the document.

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Q. (By Mr. Peccole) Does it say Golf Course Drainage? Then it drops over to net density, zero?
A. No, it does not say zero. Again, it says a dash.
Q. Well, it's zero.
A. It's a dash.
Q. And the other applications have numbers in them.
MR. JIMMERSON: I'm just going to object to the question. The witness is being asked -- he's not being asked a question. The questioner, the lawyer, Mr. Peccole, is testifying that dash equals zero or it says zero; and it doesn't say that. It says dash.
MR. PECCOLE: Okay.
Q. (By Mr. Peccole) And then if you take a look at net units for Golf Course Drainage, that also is a dash. Right?
A. Yes.
Q. All right. If you add up the net units, they add up to 4,247, and that covers single family and multifamily. So aren't those dashes zero?
MR. JIMMERSON: Object that the document speaks for itself. It's a document that the witness had not seen, and was not employed by the family at the time. Completely unfair to this witness.

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Q. (By Mr. Peccole) The same thing --
A. But I can add, and it adds to that. This document adds to four -- those two numbers equal 4,247.
Q. And your --
A. I can do the math.
Q. And you do realize that the dashes are zeros?
A. They're uncounted.
Q. Oh, okay. I'll just -- how do you count a dash?
A. Huh? Because it's a dash. It's not a number.
Q. Okay.
A. They didn't know the number.
Q. Now, we do know that Bill got what he asked for in this letter that has been marked as Mr. Jimmerson's 28. And you, as a salesman -- I don't remember if you came over and sold in Queensridge, but I know you did, because you sold to me.
A. Pardon me?
Q. You were selling homes in Phase Two, correct?
A. 1998. '6.
Q. You were selling homes in Queensridge South, correct -- or North? Excuse me.
A. Lots. Estate lots.
Q. Lots?

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A. Yes.
Q. Yes.
A. Yup.
Q. So you would be subject to both the requested approvals and the actual approvals if you're the salesperson?
A. I'm not subject to --
MR. JIMMERSON: I'm just going to object. We're talking a decade later, guys.
THE WITNESS: Okay. But wait a second. I'm not subject to them.
Q. (By Mr. Peccole) Why not? Explain that to me.
A. The owner of the property is subject to them.
Q. Oh.
A. Okay? And I'm the representative, and I just represent what I'm -- what I'm given and what I know. Okay?
Q. And whatever -- and whatever you want.
A. No, not whatever I want. That would be --
MR. JIMMERSON: I just object to the nature of the question as being terribly argumentative and offensive to the witness.
MR. PECCOLE: Are you the attorney for him? I'm sorry. Were you instructing him?

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MR. JIMMERSON: No. No. I made an objection as to the offensive nature of the question, but I'm not his lawyer. Of course not.
MR. PECCOLE: Okay.
MR. JIMMERSON: That's very clear on the record, Mr. Peccole.
MR. PECCOLE: All right.
MR. JIMMERSON: Why would you ask that question?
Q. (By Mr. Peccole) Would you take a look at Exhibit 2. I direct your attention to Page 1.
A. Okay.
Q. Mr. Jimmerson focused your attention on what he called annexed property. Correct?
A. Correct.
Q. And your interpretation of annexed property was what?
A. Annexed properties were properties that were part of the plan.
Q. Okay. And if you --
A. Queensridge.
Q. Oh, I'm sorry.
A. Were part of the Queensridge plan. Whether they were builder parcels or they were custom lots.
Q. Now, if you'd look at Paragraph A under

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Recitals, it says the "Declarant is the owner of certain real property in the City of Las Vegas, County of Clark, State of Nevada, more particularly described in Exhibit 'A' attached hereto and incorporated herein. Declarant and Persons affiliated with Declarant are the owners of additional land more particularly described in Exhibit 'B' attached hereto," in parentheses, "Annexable Property."

Does that make sense?

A. Yes.

Q. Talking about the land, aren't they?

A. Yes.

Q. Now, let's take a look at B, about midway down, where it says "Chapter 116."

A. Uh-huh.

Q. Do you see "The Property may, but is not required to, include single-family residential subdivisions, attached multi-family dwellings," et cetera, et cetera, and then it says "golf course," "open spaces"?

The point I'm making here is you have another type of property. It's called a use, and use of the land.

MR. JIMMERSON: I'm going to object. That completely misstates the words of Paragraph B.

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Q. (By Mr. Peccole) Is that correct?

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

Q. You can't see that, can you? And you were selling land under -- handing these documents to people. This is the CC&Rs.

A. When you say "use of the land" --

MR. JIMMERSON: I'm just going to object to the question.

A. -- I don't -- ask your --

MR. JIMMERSON: There's no question being asked.

A. Ask your question again. You didn't ask me a question.

Q. (By Mr. Peccole) I did.

A. Okay. Ask it, please.

Q. Okay. Do you see the term "The Property," with a capital P, right after --

A. Yes. Okay. Yes.

Q. -- "may" --

A. Okay.

Q. -- "but is not required to include," and then it comes down to "golf course," "open spaces."

A. So is it saying that it may or may not include those?

Q. Yes. And if they're built, it includes them.

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MR. JIMMERSON: I'm going to object. That completely misstates the words of Paragraph B.

Q. (By Mr. Peccole) How are you going to have a use if it's not completed?

MR. JIMMERSON: The property has to be annexed, Mr. Peccole, by the very terms of the recitals.

Q. (By Mr. Peccole) I'm asking you that as a question.

A. I can't answer that. Is there -- is there a question?

Q. Now, you were a salesman in Queensridge, right? And these CC&Rs apply to Queensridge?

A. Correct.

Q. And you hand them out to everybody, and me and my wife.

A. Absolutely.

Q. Have you ever read them?

A. Yes.

Q. Well -- and you don't know what -- the property may be a use and it doesn't have to be land?

MR. JIMMERSON: I'm going to object to the argumentative nature of the question.

A. It is land. It's all land. I don't get where you're going, Bob.

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Q. (By Mr. Peccole) It says it's a use. The property may be.

A. May be. It could have various uses.

Q. That's what I'm saying. It's a golf course that's got drainage as a use.

A. Yes.

Q. It's got a golf course as a use.

A. Yes.

Q. And it's got open space as a use.

A. And it has underlying zoning of R-PD7.

Q. We don't know that because the application said it was zero -- oh, excuse me. Dash.

A. No, but my disclosures that I had you sign and the maps that I showed you --

Q. Yes.

A. -- stated that it could be. Okay? And in these CC&Rs, it states what it could be some day. Okay? I believe -- if I read them correctly.

Q. Wouldn't you be saying to me, "Well, Bob, I've read the CC&Rs and property could be a use," which would be the golf course, which would be drainage, and which would be open space?

MR. JIMMERSON: I object to the form of the question.

A. When did I say that to you? Now?

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MR. JIMMERSON: Excuse me. Mr. Goorjian --
Q. (By Mr. Peccole) When you're selling it to me.
MR. JIMMERSON: -- let me just make my objection. Then, please, you can answer.
Object because it misstates the testimony. The property is not the property until it is formally annexed and recorded, pursuant to specific terms of the provision of the contract.
It says specifically, quote, Paragraph A, in no event shall the property include annexable property unless it has been properly recorded.
So the questions that are being asked by opposing counsel are completely misrepresenting the words.
A. Now I'll answer your question, Bob.
Yes, we discussed this. Yes, I discussed this with you. We discussed this document, and you wanted to go talk to the family about the property because you didn't like what you read.
Q. (By Mr. Peccole) You used the term "open space," and you said a little while ago you didn't.
A. No, I stated that I have used "open space." I don't know if I used it in reference with you. I used it all the time. It's right there.

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Q. Let's look at Page 38 of Exhibit 2, which is Mr. Jimmerson's exhibit.
A. Okay.
Q. Do you see Paragraph 5.2.4?
A. Yes.
Q. "Drainage: Storm Drainage System"?
A. Yes.
Q. So the drainage -- the storm drainage system was included in the CC&Rs; is that correct?
A. It's stated here, yes.
Q. And you as a salesman, you were fully familiar with the CC&Rs?
A. Yes.
Q. Did you ever tell me the drainage couldn't go away?
MR. JIMMERSON: I would object to the form of the question.
A. Excuse me. Did I ever tell you if the drainage could go away?
That's assuming that the golf course is all drainage.
Q. (By Mr. Peccole) Okay. Let's assume that. How about an 84 --
A. No, I never told you that it could go away.
Q. No, you didn't.

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A. No, but then again -- but I gave you these documents to read or have an attorney present to read them. I would not have gone over every single article of the CC&Rs unless you had requested me to.
MR. JIMMERSON: I may also --
Q. (By Mr. Peccole) Appreciate it. It says, "There shall be no violation of the drainage requirements of the City, County, U.S. Army Corps of Engineers, or State of Nevada Division of Environmental Protection, notwithstanding any such approval of Declarant or the Design Review Committee."
MR. JIMMERSON: Again I object to the question. There's no question pending, number one; and number two --
Q. (By Mr. Peccole) Was the drainage --
MR. JIMMERSON: Mr. Peccole, when I make an objection, would you be courteous enough to be quiet --
MR. PECCOLE: Would you let me finish with my question, Mr. Jimmerson?
MR. JIMMERSON: You had finished, sir.
MR. PECCOLE: I haven't finished it.
MR. JIMMERSON: Continue --
MR. PECCOLE: I read that and I was going to ask my question.
MR. JIMMERSON: All right, sir. Why don't

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you restate it so you have a better record, sir.
MR. PECCOLE: Is it okay if I continue, Mr. Jimmerson?
MR. JIMMERSON: I said why don't you restate the question so we have a better record. Yes, sir. And then after you've finished, I'd like to interpose an objection.
Q. (By Mr. Peccole) To your knowledge, was the golf course drainage, flood drainage system, engineered and adopted by these agencies?
MR. JIMMERSON: Let me object. Note my objection.
5.2.4 of Exhibit 2 is called "Drainage: Storm Drain System," and speaks to what drainage there may be on the, quote, capital P, Property, a defined term.
This provision has no application to the golf course, which is not a part of the property, capital P, nor was the golf course annexed, as determined by Judge Smith and affirmed by the Nevada Supreme Court on multiple occasions --
MR. PECCOLE: Judge Smith isn't in this litigation.
MR. JIMMERSON: -- and the question, therefore, is improper.

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The provisions of 5.2.4 have to do only with the, capital P, property, not with property that is not defined within this agreement. That's my objection.

Therefore, it is an intentional misstatement by the questioner, and it's unfair to this witness in light of that fact.

You may answer the question, Mr. Goorjian, after I've made my objection.

Q. (By Mr. Peccole) Was the -- in your knowledge, was the golf course, both the 18-hole and the 9-hole courses -- were they part of the flood drainage system?

A. Portions of, not all of. And if I -- this is -- I'm just recalling to the best of my recollection.

That most of the -- you know, portions of the golf course was in Barranca area, which was natural drainage, okay. So there is some of it that was and then there was some that was not. So it's not all.

And there's other forms of drainage other than just that piece of property as well. So drainage -- drainage and storms and these things cover the whole property, and there's -- there's portions that, yes; and there's portions, no.

MR. JIMMERSON: Let me also note my objection

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that the last sentence of Paragraph B of Page 1 and 2 of the recital states, quote, The existing 18-hole golf course, commonly known as the Badlands Golf Course, is not a part of the, capital P, property or a part of, quote, annexable property, end of quote.

THE WITNESS: And then became 27 holes.

Q. See, he's trying to, you know, give you a hint here.

(Mr. Lowie joined the deposition.)

MR. JIMMERSON: Object.

Q. (By Mr. Peccole) But it doesn't work that way.

A. No, that's fine. Go ahead.

MR. JIMMERSON: Let me just object -- let me just --

Q. (By Mr. Peccole) The language --

MR. JIMMERSON: -- object to the improper assertion by Mr. Peccole about, quote, giving a hint, end of quote.

I'm suggesting that Mr. Peccole is either negligently or intentionally misrepresenting the words of this document, Exhibit 2, as part of his questions.

MR. PECCOLE: I do not misrepresent like some people, like you do.

MR. JIMMERSON: Mr. Peccole, if you couldn't

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engage in insults, you would have difficulty speaking the English language.

Q. (By Mr. Peccole) I'll ask you this question.

A. Okay.

Q. If I tell you there is an 80-foot-wide easement that goes all the way through the 18 holes, what would your answer be under this paragraph, 5.2.4?

A. An 80-foot easement that goes through the whole property?

Q. Through the whole 18 holes.

A. I don't know what it is. I may have at one time, but I don't recall it now. I know that -- I do know that we -- I do recall helping water get to Summerlin somehow, but I don't know if that's the 80-foot easement. It wouldn't be that wide, so . . .

Q. How about -- how about the nine holes being entirely dedicated flood drainage easement?

A. Are we talking about the last nine holes?

Q. Yes.

A. Absolutely not.

Q. You're saying it's not -- I'm just saying to you --

A. I'm saying it's not all drainage, no. There's a good portion of that property that's not drainage.

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Q. I'm just saying, too, you never said anything about drainage that -- to prospective buyers of the lots?

MR. JIMMERSON: I'm going to object to the question --

A. No.

MR. JIMMERSON: -- as it misstates -- there's no question pending, and it misstates the facts.

A. I don't know why I would talk about drainage, no. I mean, it's in the document that's supposed to be reviewed and read by the buyer.

I don't go over -- I go over the purchase of contracts, but you don't go over the CC&Rs, each sentence, with a buyer. They take these documents and have -- I believe it's five days or so to review them, to take them to their attorneys and review them.

Q. (By Mr. Peccole) Will you take a look at Page 103.

A. Okay.

Q. Down in the very bottom, Paragraph 13.2.4.

A. Okay.

Q. "Form of Amendments."

A. Uh-huh.

Q. It reads, "All amendments to this Master Declaration or any Declaration of Annexation or

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Supplemental Declaration must be" -- and then you carry over to the next page -- "in writing, and executed, Recorded and" -- "and certified on behalf of the Association by the President and the Secretary of the Association."

Now, having that in mind, would you take a look at Mr. Jimmerson's Exhibit 3.

MR. JIMMERSON: I just object to the characterization of Mr. Jimmerson's Exhibit 3. It's Exhibit 3 to Mr. Goorjian's deposition. It is a recorded document with the Clark County Recorder's office.

MR. PECCOLE: I'll refer to them as that.

Q. (By Mr. Peccole) But have you got it?

A. Yeah.

Q. Okay.

A. What page?

Q. Can you look at the signature page at the end?

A. What page? Oh, at the very end?

Q. Yes.

A. Okay.

Q. Do you see Larry Miller's signature?

A. Yes, I do.

Q. Do you see any signature of a homeowners

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association president or a homeowner association secretary?

A. I do not see it here, no.

Q. So it doesn't meet the requirements of the amendment, does it?

MR. JIMMERSON: I'm going to object.

A. I don't know. That's not my -- I don't -- I don't determine what meets the requirements of an amendment, and I don't know if there's another document that might have taken care of that.

MR. JIMMERSON: Let me also note that these arguments Mr. Peccole has asked you about --

Q. (By Mr. Peccole) In other words, you have no knowledge?

MR. JIMMERSON: -- Mr. Goorjian, was made by Mr. Peccole and rejected by the trial court and the Nevada Supreme Court.

So just note my continuing objection.

THE WITNESS: I can see why.

Q. (By Mr. Peccole) Let's take you back to when my wife and I were in the market for buying a lot in Queensridge. Do you remember how it came about that you met with Nancy and I?

A. No.

Q. Do you recall meeting with us in that area of

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the -- where we bought our lot?

A. I remember meeting with you guys. I don't remember exactly where we met. My recollection always with you guys was in the trailer, but we may -- very may well have been on the property. I don't recall.

Q. Is it -- so you can't say that -- what Nancy testified to, that you met with us on the property?

A. I cannot with certainty --

Q. You can't say that?

A. Not with certainty, I cannot.

Q. You just don't remember?

A. I don't remember that. I do remember in the trailer and I do remember questions you've asked me, so I'm surprised that I don't remember being on the property. So that must mean that I wasn't, but --

Q. I'm not surprised you remember what you want.

A. Right.

MR. JIMMERSON: Gentlemen, please.

Mr. Peccole, you should -- please, keep the decorum of counsel, and not engage in these kinds of personal attacks.

MR. PECCOLE: Are you finished?

MR. JIMMERSON: I am, sir.

Q. (By Mr. Peccole) Do you recall a discussion that we had that involved Larry Miller?

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A. Not with me present, no.

Q. Do you recall me telling you what Larry had told me?

A. I do not. I just recall that you wanted to go meet with the family and then you came back and bought the lot. That's all that I recall.

Q. Would it refresh your memory if I were to say that I told you that Larry Miller had met with my son Rob and I on your ex-wife's lot, one of the huge ones, Leann's lot; and Larry said, "You should be interested in buying this"? Do you remember me telling you that?

A. No. No. Absolutely not.

Q. And do you remember me telling you that Larry said, "Well, if you don't want this, take a look at the Verlaine, because he says that's just coming up"?

A. No. All I recall is you being interested in Verlaine. I don't recall anything else.

Q. Do you recall that Larry brought us to you? When I say "us," my wife and I.

A. You mean physically?

Q. He brought us physically.

A. No, I don't recall that. It wouldn't have mattered, because we were family. So I don't know why Larry would have delivered you.

But yes, if he would have brought me -- I

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don't recall that he brought you in. I recall me and you only and some Nancy. I don't recall Larry ever being involved other than the fact that you didn't like what I had to say, so you -- you wanted to go get it -- get it from Larry. You wanted something from Larry that I could not give you.

Q. If you'll recall, did you and I, with Nancy standing there, have the conversation, "Is there any chance of getting a break on the price?"

A. Absolutely.

Q. And then did you --

A. I don't know if Nancy was there, but I do recall you and I having that.

Q. And you did say you've got to talk to Larry?

A. Yes, I do.

Q. And then after that, we called Larry on the phone, you and I and Nancy?

A. Don't recall that.

Q. And Larry says, "I'll give you a break."

A. I know that we wanted to give you -- we wanted to make you happy. I do know that. I know that we wanted to sell you the home at a price that was happy for everybody. I do recall that, and I do recall that you wanted to negotiate it, and I know that I can't negotiate it.

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Q. Yes.

A. But I don't recall it taking place on the phone, no. And I don't recall me picking up the phone and calling.

Q. And do you recall Larry being there with all of us --

A. No, I do not.

Q. -- you, me and Nancy, and trying to talk me into taking the end piece of land because they were just now vacating the perimeter of that lot, which would give it an extra 10, 15 feet?

A. I don't -- no.

Q. You don't remember any of that?

A. That wasn't -- no, I don't. That was -- to me that sounds like you had a conversation with Larry that I was not involved in. That's what that sounds like.

Q. Do you recall saying to me, "Bob, you know, we've got a lifetime membership here and you can play this course any time. Just call me"?

A. Might have been something said like that, that the family had privileges to use senior tour players golf course whenever we wanted, and that if you would like to golf, we could probably get you on the course to play. Yes.

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Q. Isn't it --

A. I do recall that we would have liked to have had you play some golf, if you chose to play; and if we could help you get on there for free, we would have loved to have done so.

I can't make those guarantees, so . . .

I didn't lease the golf course; I didn't operate the club.

Q. Okay. So do you -- do you recall using the words that "This open space will be here forever"?

A. Never.

Q. Did you ever use the words "open space" to Nancy and I?

A. I may have used that term. I've used "open space." I may have used it. Okay? But I remember you wanting assurances -- after you had seen the documents, you came back. You wanted assurances that it could remain a golf course forever, and I could not give you that. And you said you would go talk to the family, and that's -- and then you came back and bought the lot. So I don't know what happened.

Q. So you don't know what happened?

A. Right.

Q. You know, when Mr. Jimmerson was talking to you about the Boca Park, and you started to say it was

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part of a settlement with Triple Five --

A. I was incorrect.

MR. JIMMERSON: He corrected himself, Counsel.

Q. (By Mr. Peccole) -- and you said you were incorrect?

MR. JIMMERSON: Counsel, he corrected himself.

MR. PECCOLE: Right.

Q. (By Mr. Peccole) And then you made the comment about Triple Five backing into it.

A. Yes.

Q. Tell me that -- tell me about that.

A. Well, there were plans for the Peccoles to develop that property. We had a partner that we were working with, Donahue Schriber, to do a -- we wanted to do a regional mall. We wanted to do a shop -- a mall there.

We were for years trying to get three tenants, secure three tenants to do the deal. And then I cannot -- because I left and was not there for all of it, but I know that there was somehow -- there was -- I believe we had agreed, because we couldn't get the tenants, if I recall correctly -- that we agreed to sell the property maybe to Donahue Schriber and --

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And I just can't recall how it happened, but somehow Donahue Schriber brought -- somehow Triple Five came in there after Donahue Schriber and they ended up with the property.

Q. It was a subterfuge, wasn't it?

A. Yes. I can't remember how it all happened, but I do remember we weren't too happy that they ended up with the property.

Q. Well, the intent was that you were going around Wanda so she wouldn't find out that you were selling to Triple Five.

A. No.

MR. JIMMERSON: I'm going to object to that question.

A. Absolutely not.

Q. (By Mr. Peccole) Have you ever heard Larry say that?

A. No. No. I remember it as a bank note that was going bad, and Triple Five came in and saved the day for the other party or something. I can't recall how it did, but I know that the Peccole family, Larry included, would not have sold that property to Triple Five.

Q. Do you, or have you ever heard that in the public meetings before the city council, there have

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been people that got up and said that "Greg Goorjian told me that the golf course wasn't going to go away and it's open space"?

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

A. I have never heard that. I have not been to city council meetings to hear such, and shame on them. Tell those people to read their documents. I think Page 1 says don't believe a word I say. I'm joking.

Q. (By Mr. Peccole) You were asked about BGC.

A. Yes.

Q. And you didn't know who that is?

A. Don't know who that was. Don't remember that entity.

Q. Do you know Bruce Bayne?

A. Yes, I do.

Q. Who's Bruce?

A. My ex-brother-in-law.

Q. And who is he married to?

A. Loretta Bayne. Loretta Peccole.

Q. Would you surprise -- be surprised if BGC was Bruce Bayne?

A. Yeah, I would be. Very surprised. It only has one initial in it that's his.

Q. Would you be surprised if Bruce Bayne and

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Larry Miller were in a lawsuit, and Bruce was claiming the rights to the golf course because he obtained them from the senior citizen tour company?

A. On his own? No, I'm not aware of any of that.

Q. Oh, okay. Just wondering.

A. Bob, did you just -- I'm just curious. Did you say Bruce sued the Peccoles? Bruce Bayne? Is that what you just said?

Q. What I said to you was that Bruce sued Larry.

A. I never -- no, not aware of that.

Q. Would you take a look at Plaintiffs' 14.

A. I don't think I've got that one.

MR. JIMMERSON: I can help you. That's the public offering. Public offering statement.

THE WITNESS: Okay. Yeah. Here it is.

Q. (By Mr. Peccole) Got it?

A. Not yet. Hold on. I've got it.

Q. Page 5.

A. Okay.

Q. Now, you said that you were familiar with this document, public offering statement for Queensridge North.

A. Okay.

Q. Page 5.

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A. I'm here.

Q. No. 12.

A. Okay.

Q. Maximum number of units.

A. Yeah, mine's highlighted. I can't read it. Is there a number there?

Q. Can you read the writing?

A. Yes. "Including both residential and commercial units."

Q. Can you read the 3,000?

A. No.

Q. It says 3,000.

A. Okay.

Q. In writing. In writing.

A. Where?

Q. Right before the --

A. Oh. Yes, I do. I do. I've got it, Bob.

Q. Was that your understanding?

A. The developer has reserved the right in the master plan to create up to 3,000 units.

Yeah. I can't recall, though, because I believe there was a time it either grew or shrank. I can't remember.

Q. But these are representations you were making to the buyers.

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A. No, these are representations that the owner was making to the buyer.
Q. Well, you were a salesman.
A. I'm a salesman.
Q. You were the conduit.
A. Pardon me?
Q. You're the conduit. You're representing the owner.
A. Correct.
Q. And so you were handing these to the buyers.
A. Correct.
Q. And you were making a representation they could only build 3,000 units.
A. Again, I'm not. I'm giving them a document that makes the representation that only 3,000 --
Q. So if I say to you --
A. I didn't create the document.
Q. -- well, Greg Goorjian never told me that they could only build three units, but he handed me a piece of paper that said that --
MR. JIMMERSON: Just misstates the record. Object to the form of the question.
A. I guess -- I guess what you're saying is that I was supposed to read every word of this document to you before you bought it?

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Q. (By Mr. Peccole) No. You gave it to me as a representation.
A. Correct. Got it. Yeah. And agree with you there.
MR. JIMMERSON: Just note my objection to the entire line of questioning as misstating the record.
Q. (By Mr. Peccole) How many residents -- residents did you sell -- how many lots did you sell in Queensridge North?
A. I don't -- I don't recall.
MR. JIMMERSON: I'm going to object to the line of questioning as completely outside the scope of this litigation.
Q. (By Mr. Peccole) Did you ever --
MR. JIMMERSON: Also outside the scope of direct examination.
Q. (By Mr. Peccole) Did you ever make a representation you probably sold 80 homes?
MR. JIMMERSON: Object to the line of questioning.
A. Did I ever make that representation?
Q. (By Mr. Peccole) Yeah.
A. No.
Q. Did you ever sell any of the homes that Mr. Lowie developed on those lots?

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A. On Verlaine Court, yes, I did.
Q. How about over in the -- the southern part of Queensridge?
A. No, I did not.
Q. And you have knowledge that he built big homes over there?
A. Oh, yes.
Q. For substantial money?
A. Yes.
Q. And that they were located on the golf course?
A. Yes.
Q. Did you sell any of those homes for him?
A. No. I sold him the lot.
Q. Did you sell any of the lots to Mr. Lowie on Verlaine?
A. Yes, I did.
Q. Was that the lower Verlaine?
A. Yes.
Q. And were you -- you owned a lot on -- you actually owned a home on Verlaine?
A. Yes, I did.
Q. And what was the address of that?
A. I don't recall.
MR. JIMMERSON: Just note my continuing

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objection as outside the scope of direct.
Q. (By Mr. Peccole) You didn't get it from --
MR. JIMMERSON: Mr. Peccole, please let me finish my objection. I don't know why you continually interrupt.
Just note my objection to this line of questioning as outside the scope of direct, also irrelevant to the litigation, is badgering the witness, and there is also a complete wholesale failure on the part of the lawyer to make any kind of correct denomination. Mr. Lowie didn't own any of these properties. Entities that he had may have purchased some lots.
Mr. Lowie, other than his own personal residence, would never have bought that piece of property in his own name. So the questions are just wrong to begin with.
You may answer the question, Mr. --
MR. PECCOLE: I would like to reply to you, Mr. Jimmerson. You had the gall in the deposition of my wife to present a federal law that deals with telephonic money laundering, and I found that very offensive. And if you think I'm offensive, you'd better take a look in the mirror.
MR. JIMMERSON: I don't know what the heck

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you're referring to, Mr. Peccole. I'm just making an objection to the line of questioning here.

MR. PECCOLE: Don't worry. It's going to come up.

MR. JIMMERSON: Again, you just threaten and threaten, Mr. Peccole. Please try to stay on focus.

Q. (By Mr. Peccole) I was on the luxury loan -- luxury lots on Verlaine. You say you sold some of those to Mr. Lowie?

A. No.

MR. JIMMERSON: Objection. Misstates the testimony.

Q. (By Mr. Peccole) You didn't?

A. No. Companies -- companies that he may have -- or limited liability companies that he may have been a partner to, yes. Not him personally, no.

Q. No? But you knew that he was building the homes?

A. Yes.

Q. Actually, he was buying or one of his entities was buying the lots on Verlaine?

A. Yes, sir.

Q. From who?

A. From the Peccole family.

Q. Would that have been Legacy 14?

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A. I don't know who was the -- I'd have to be referenced or referred back to who actually was -- what entity was conveying the property.

Q. Do you know what the prices were?

A. I did. Do I know now? No.

Q. Were they over a million dollars?

A. For what?

Q. Well, actually let's go back --

A. For a lot, the answer is no.

Q. It probably would have been somewhere in the vicinity of 200,000?

A. Somewhere in there.

Q. And the homes, when you sold them, were over a million?

A. Somewhere in there, right around a million dollar homes.

Q. Now, your home was located right along the same lots, right?

A. Correct.

Q. And who did you buy your home from?

A. I bought my lots from the Peccole family.

Q. And that's Legacy 14?

A. I can't recall.

Q. Did you sell any luxury lots on Orient Express?

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A. Yes, I did, sir.

Q. Were the values on those lots enhanced by the golf course and open space?

MR. JIMMERSON: I'm going to object to the term "open space." It can only apply to the property owned by Queensridge master plan. It's a defined term.

Q. (By Mr. Peccole) You can answer that.

A. If you can ask me it again, please.

Q. Were the values of the lots on Orient Express enhanced by the golf course and open space?

A. Enhanced. I don't know. I don't know how to answer that question, enhanced by.

Q. Made -- made more expensive?

MR. JIMMERSON: I object to the form of the question as outside the scope of direct. It has no bearing upon the litigation and it's harassing this witness.

A. Yes.

Q. (By Mr. Peccole) Were you at the dedication of the new Queensridge, in the beginning, when they came over in 1990, 1996?

MR. JIMMERSON: Same objection. Outside the scope of direct. Completely --

A. I don't know what you're asking.

MR. JIMMERSON: -- irrelevant to this.

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A. Was I at the grand opening?

Q. (By Mr. Peccole) Yes.

A. Would that have been the one that would later be the Badlands clubhouse?

Q. No.

A. Okay. Then I wasn't at it. It was at -- it was at Sir Williams Court, where Sir Williams Court was to be some day.

Q. Let me just ask you, do you recall --

MR. JIMMERSON: Objection. No foundation.

Q. (By Mr. Peccole) Do you recall going to a dedication -- it would be on West Charleston, going north, as you come in the entranceway that's there now, but it was all dirt and Bill had big tents set up all over? Did you ever go to that?

A. Was that the one where the lipi- -- the stallions were there and -- yes, I was there.

Q. Now, after that occurred -- do you recall approximately what that -- what date that was, what year?

A. I don't, but I do -- I don't believe that it had anything to do with what ended up being the north portion of Queensridge developed. It was only in regards to our first builders. That was Christopher Homes and --

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It was a grand opening for the overall, the whole development. So we had -- it would have been Christopher Homes, it would have been Capital Pacific Homes, it would have been Pulte Homes and it would have been Trophy Homes.

MR. JIMMERSON: Note my continuing objection. This is outside the scope of direct, irrelevant to the case.

A. I recall that.

MR. JIMMERSON: Harassing to the witness.

Q. (By Mr. Peccole) After that, the question I would ask is, did you ever walk any part of the property with Bill?

A. Yes.

Q. So that was a common thing for him to do, wasn't it?

MR. JIMMERSON: Object. Same objection, incorporated by reference.

A. Not at that time. Prior -- years prior. He's not doing too well at this time we're talking about.

Q. (By Mr. Peccole) Well, when he had the dedication.

A. Yeah. Yeah. No, he wasn't doing a lot of walking around the properties.

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MR. JIMMERSON: I'm also going to object --

Q. (By Mr. Peccole) Would it --

MR. JIMMERSON: Excuse me, Counsel.

I have no date. There's been no foundation, no year. None of this has been established.

Q. (By Mr. Peccole) Would it surprise you if I walked portions of the property with him after the major dedication?

MR. JIMMERSON: Object to the form.

A. Would it surprise me?

MR. JIMMERSON: Object to the question.

A. I don't know. I can't answer that. That's . . .

Q. (By Mr. Peccole) You didn't walk the property with him after the dedication?

A. No. No.

Q. Did Bill ever say to you --

MR. JIMMERSON: Mr. Peccole, can you give us -- can you give us, and the court reporter, any suggestion as to what year you're referring to? The witness doesn't know it. You said you don't know.

MR. PECCOLE: What was that?

MR. JIMMERSON: I want to have some foundation for this line of questioning so I can ask Judge Bulla --

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Q. (By Mr. Peccole) After the dedication --

MR. JIMMERSON: -- to consider sanctions against you for asking the line of questions that has nothing to do with this case and refusing to provide any foundation with regard to the line of questioning. It's completely irrelevant.

Q. (By Mr. Peccole) After the dedication, did you have any conversations with Bill Peccole as to what he was going to do with the ravines?

A. Do not recall, no.

Q. Did you already know what he was going to do with the ravines?

A. Yes.

MR. JIMMERSON: Same objections, same line of objections. Incorporate my objections by reference.

Q. (By Mr. Peccole) And what was that?

A. We were going to develop a golf course. Not us, but we have someone else that was going to do it.

Q. Did he ever say to you that "I will be selling lots along there and I'm going to make it a golf course, open space and drainage and I'm going to get more money for those lots"?

A. No.

MR. JIMMERSON: Same objection. Incorporate by reference.

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A. Just know that the plan was already in place, so when -- when those -- when those tents were there, we already knew what was going to go there. So did all the builders, and so did -- so did everybody. So I don't get where you --

Q. (By Mr. Peccole) Well, those -- I'm not going to argue with you.

A. No.

Q. Did you have an actual price list at that time?

MR. JIMMERSON: Same objection. Incorporate by reference.

A. No. Not on the estate lots. No. I don't recall. Might have. I don't recall, Bob.

Q. (By Mr. Peccole) When you were selling the lots in the Queensridge North, did you always follow the same procedure in your representations?

A. I don't recall.

Q. Did Larry Miller ever say to you that there was a 50-year lease on the golf course, with four ten-year options?

A. Did not know the terms of the lease, no.

Q. He never mentioned that?

A. No.

MR. PECCOLE: I have no further questions.

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MR. JIMMERSON: I'd like to take a comfort break. We've been going for about an hour and twenty-five minutes, hour and twenty minutes.
THE WITNESS: Are we done?
MR. JIMMERSON: No. I just want to take a break.
(A recess was taken.)
MR. JIMMERSON: Back on the record. All right. We're back on the record after taking a comfort break.
FURTHER EXAMINATION
BY MR. JIMMERSON:
Q. Mr. Goorjian, opposing counsel, Mr. Peccole, asked you a long series of questions for an hour twenty-five minutes, something like that, but I thought -- I thought you had misstated something in the record. I'll ask you about it.
And so I want to have the court reporter read the questions and the answers that Mr. Peccole was asking you --
A. Okay.
Q. -- and your answer. I think you may have misstated. If not, you'll tell me, but --
A. Yup.
Q. -- I do want to give you a chance to make

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that correction if I am understanding that you did make that error.
MR. JIMMERSON: So would you just read those questions and answers, Madam Court Reporter.
Q. (By Mr. Jimmerson) He's asking you questions about the Peccole master plan document --
A. Correct. I remember.
Q. -- from 1989-1990 time period, a document you had not been familiar with because you were not currently employed. That didn't stop him from asking many, many more questions about that. So just listen to the questions and answers and see if there was not a mistake being made by you.
MR. JIMMERSON: Go ahead.
(Record read by the reporter as follows:
"Question: And so in this application he's -- Bill was asking for rezoning? Is that correct?
"Answer: I don't know what he's asking for. Well, this is what the document says, yes. If it's -- whatever this document is stating, that's what Mr. Peccole was attempting to do.
"Question: Now, when you look at the map of the overall master plan -- and that shows you the zoning that happens to be designated different parcels. Is that correct?

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"Answer: For those parcels shown in white? Yes.
"Question: So if you're looking at the portion that starts with the -- going north from Charleston over towards the Angel Park Golf Course --
"Answer: Correct.
"Question: -- those were the zonings in each of those white parcels that he was asking for, is that correct, for Phase Two?
"Answer: For Queensridge master -- or for Queensridge. These were the zonings he was asking for.")
Q. (By Mr. Jimmerson) I believe you were referring to the Queensridge master plan, not Queensridge, because you were shown a document, which is Exhibit A, which is a 1990 document, not a 1996 event. Right?
A. Correct.
Q. So the Peccole master plan was abandoned, as you said, in favor of the Queensridge master plan six years later. Is that right?
A. Yes.
Q. Okay. And so to the extent you referred to Queensridge, that was a misstatement by you?
A. Yes.

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Q. Okay. Now, do you remember, when looking at Exhibit A that Mr. Peccole asked you -- which again, I'm not certain why it's relevant, but you were asked several questions about this document, right?
A. Yes.
Q. And this had to do with a conceptual plan that existed in 1989 or 1990 time period.
A. Yes.
Q. A time when you were not employed by the company. Right?
A. Yes, sir.
Q. Okay. All right. But later on, we know that the Queensridge master plan was developed by the Peccole family in 1996 through the master declaration we recorded -- discussed in Exhibits 2 and 3, right?
A. Yes, sir.
Q. All right. Now, going back to this Peccole master plan, again, Mr. Peccole kept trying to say that zeros were here and you said, no, they're dashes. Right?
A. Yes.
Q. Okay. So here's my point: This has actually been developed with the Queensridge master plan, but the Peccole Ranch having been abandoned and the Queensridge being developed. There has been, in

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effect, commercial and office developed in the years later, hasn't there?
A. Yes, there has, sir.
Q. So whether there's dashes here, we know there's physical construction of commercial locations there, right?
A. Correct.
Q. We also know there's something called the Suncoast Resort, resort-casino, that's developed now that was a dash then, right?
A. Yes.
Q. So we know that this plan was abandoned in favor of other development and other plans; is that right?
A. Yes, sir.
Q. Including the Queensridge master plan we've already discussed?
A. Yes.
Q. All right.
Now, taking a look, if you would, at Exhibit 1. That was the original Peccole master plan. I just want to spend --
Two. Excuse me. Exhibit 2.
I just ask the following question: When you talk about commercial, office and there's a dash, it

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doesn't tell you how many units of commercial can be developed, correct?
A. Yes.
Q. Under the Peccole conceptual master plan of 1990?
A. Yes.
Q. Okay. But we know many units, many square foot was developed in the years that followed; is that right?
A. Yes.
Q. Okay. And so this plan obviously went away and new plans were developed; is that right?
A. Yes.
Q. All right.
Now, I just want to show you some provisions in this Peccole Ranch plan that related largely to the south of West Charleston, but I just want to show you some language.
Would you look at Page 7 of Exhibit 2.
(Discussion off the record.)
Q. (By Mr. Jimmerson) It's 16.
A. 16?
Q. Yeah. Sorry.
MS. POLSELLI: 16 or 18?
MR. JIMMERSON: 18.

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MS. POLSELLI: I'll get it right. I'll get it right.
THE WITNESS: Page what?
Q. (By Mr. Jimmerson) It's Paragraph 7. I'll get to the page in one second. I think it's Page -- it's Page 7. I believe it to be Page 7.
Yeah. It's the definition under 1.1 -- 1.16, Common Area and Common Areas.
A. Okay.
Q. Do you see that?
A. Yes.
Q. All right. Does that language state as follows: "'Common Area and Common Areas' shall mean (a) all Association Land and the improvements thereon; (b) all land within Peccole Ranch which the Declarant, or its successors or assigns, by this Declaration or other recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date;
"(c) all land within Peccole Ranch which the Declarant, or its successors or assigns, indicates on a recorded subdivision plat or Tract Declaration is to be used for landscaping, water retainage, drainage and/or flood control for the benefit of Peccole Ranch and/or the general public;

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"(d) areas on a Lot, Parcel or golf course within easements granted to the Association or its Members for location, construction, maintenance, repair and replacement of a well, fence, sidewalk, landscaping, utility, utility easement and access, and general access or other uses, which easements may be granted or created on a recorded subdivision plat or Tract Declaration or by a Deed or other conveyance accepted by the association;
"Or (e)" -- "and (e) all land within Peccole Ranch which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and/or for which the Association benefits by limited use, full use, or aesthetic consistency for the benefit of the numbers" -- "of the members." End of quote.
Have I read that accurately?
A. Yes.
Q. Okay. So it is -- common area is the land that the declarant dedicates, through annexation, land that will be so used for the commonality of its membership; is that right?
A. Yes.
Q. And therefore, if there's going to be a common area, it has to be land that has been dedicated

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for that purpose by the declarant; is that right?
A. Yes.
Q. Okay. Now, would you look at the provision -- Page -- Page 11, four pages later, Paragraph 1.31. And master plan, which is for the Peccole Ranch master plan, is defined as, quote, shall mean the Peccole Ranch Master Plan approved by the City of Las Vegas, and described on Exhibit "A", as the same may be from time to time amended in Declarant's sole discretion, a copy of which shall be on file at all times in the office of the Association. End of quote.
Have I accurately read that?
A. Yes.
Q. And so the declarant, the Peccole family, reserved to itself the right to amend from time to time its -- in its sole discretion, the design of the plan; is that right?
A. Yes.
Q. Okay. And indeed, as we know, it was amended by essentially abandonment, in favor six years later of the Queensridge master plan to the north of West Charleston?
A. Yes.
Q. And this is land that applied largely to the south of West Charleston; is that right? Exhibit 18?

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A. Yes.
Q. All right. Thank you.
A. Not a hundred percent sure, but I believe Triple Five is part of the declarancy [sic].
Q. Correct. I think that's right. At least -- that's exactly right.
A. Yeah.
Q. All right.
MR. JIMMERSON: Now, do you have the map of how it was actually built?
(Discussion off the record.)
MR. JIMMERSON: Let me mark this as Exhibit 30 -- mark it as Exhibit 32. Next in order. Mark it as 32, two pages.
(Exhibit 32 marked.)
Q. (By Mr. Jimmerson) Mr. Goorjian, if you look at Exhibit 32 --
A. Yes.
Q. -- there is what I -- you and I would call an as-built; in other words, as history has combined, now sitting here in 2018, we see what's actually built to the north of West Charleston. Do you see that under Queensridge?
A. Yes.
Q. All right. And the sheet behind it gives you

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the actual dimensions of what was actually built there.
A. Okay.
Q. Now, you're familiar by virtue of your lengthy work there of what was actually constructed over the years?
A. Yes.
Q. And we see that, in terms of acreage, there was 430 acres of single family; 47 acres of multifamily; there's 138 acres of commercial/office; there's 52 acres for resort-casino, which is the Suncoast Hotel; you see the golf course property, 265 acres.
A. Yes.
Q. Right-of-way of 61 acres. And I guess no elementary school was ever developed there?
A. Correct.
Q. So you can see what was actually developed under the Queensridge master plan in the years that followed; is that right?
A. Yes.
Q. Okay. So does that provide additional proof to you that the Peccole Ranch master plan of 1990 was abandoned in favor of later plans by the family?
A. Yes.
Q. All right. Thank you.

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A. Can I add something?
Q. Please.
A. That they were -- you know, there's clear definition based on how things were maintained as well and how things were -- you know, what associations were building and -- you know. I mean, the way that Charleston was treated was it had to be split. The medians had to be split between who maintained what medians, based on Peccole Ranch had responsibility to every other median --
Q. Well, that's interesting.
A. -- and Queensridge had responsibility to every other median.
Q. I see.
A. Okay? I lived in Queensridge. I never paid a fee to Peccole Ranch ever.
Q. Got it.
A. I never had a document that referred to Peccole Ranch.
Q. And, of course, you never paid a fee to maintain a golf course either, did you?
A. No.
Q. And indeed, I think, if my memory serves me, that there had been a golf course intended on the south side --

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A. Yes, there was.
Q. -- of Charleston, later vacated or abandoned --
A. Correct.
Q. -- in favor of some arroyo system or something.
A. Correct. Yeah, walkways, open space.
Q. All right. Now I'd like to have you look at the Queensridge master plan, which is Exhibits 2 and 3. Two is the original declaration. Three is the amendment.
A. Exhibit 3 I'm looking at?
Q. Two right now.
A. Okay.
Q. Two is the original declarations.
A. Got it.
Q. Now, opposing counsel asked you some questions about the recitals, which I think was at Page 1.
A. Yup.
Q. Now, Paragraph A defines the term "property." Correct?
A. Yes.
Q. Okay. And "property" in 1996 was one piece of property. Isn't that right?

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A. Yes.
Q. And then it would be added to -- in other words, property would be expanded as property was annexed? Isn't that right?
Is that right?
A. Yes.
Q. Okay. And as we went through earlier -- and I'm not going to repeat this -- annexations occurred multiple times over the years as the Queensridge property was added to. Correct?
A. Correct.
Q. And once it was annexed and recorded, then it became part of Queensridge?
A. Correct.
MR. PECCOLE: I'm going to pose an objection here as asked and answered and leading and just actually putting words in the witness's mouth.
MR. JIMMERSON: Thank you very -- I'm not putting any words in his mouth.
By the way, I just meet that objection directly.
Q. (By Mr. Jimmerson) Have I put any words in your mouth?
A. No.
Q. Did I meet with you before this deposition

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this morning --
A. No.
Q. -- to go over your testimony?
A. No.
Q. Okay.
A. You know, there's strategies why you do the annexations too.
Q. And what is that?
A. Taxes and values. Once you annex them in.
Q. You have to pay?
A. There's -- things go up, costs go up.
Q. So the idea --
A. The idea is not to annex them until you need them.
Q. Right. Got it.
And so -- and then you were asked by opposing counsel about Paragraph B. Do you recall that?
A. Yes.
Q. Okay. And the Paragraph B gave the land owner, the declarant, if you will, a great deal of discretion, correct?
A. Correct.
Q. So that for the "property," which is the capital P, which is both the original starting property, together with whatever's annexed over the

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years, can -- and there's "may," but is not required to be any number of different things. Correct?
A. Yes.
Q. Okay. So it could or not could. Shopping centers or time-share developments or commercial and the like, right?
A. Yes.
Q. But it's not mandated. It's just discretion left to the developer. Is that right?
A. Flexibility, yes.
Q. All right. Now, do you know how many -- when I talk about as-builts, do you know how many homes were actually built in Queensridge?
A. I don't.
Q. Okay. If I suggested about a thousand, would that be consistent with your recollection?
MR. PECCOLE: Asked and answered.
Not putting words in his mouth, are you?
A. No, but I can do the calculation in my head because I know how many homes. Christopher Homes built around 80; Pulte built about 120; Capital Pacific built about another hundred; Trophy Homes built close to 150.
Yeah. We're -- we're getting there. About a thousand -- a little over a thousand. There would be over a thousand homes.

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Q. (By Mr. Jimmerson) It's certainly a heck of a lot less than the 4,247 that were shown in that plan from 1990?
A. Yes. Correct.
Q. So there would still be about 3,000 to be left to be built?
A. Correct.
Q. And would you look at the bottom of Paragraph B, where it says, the last line -- opposing counsel asked you this question.
"The Maximum Number of Units (defined in Section 1.57 herein) which Declarant reserves the right to create within the," capital P, "Property and the," capital A, "Annexable," capital P, "Property is three thousand."
Do you remember opposing counsel asked that question?
A. Yes.
MR. PECCOLE: Objection. Asked and answered.
Q. (By Mr. Jimmerson) All right. And so if a thousand has been built through 2018, there's at least 2,000 to be built presently; is that right?
A. Yes.
Q. All right. Thank you. And also the next sentence indicates that the golf course was not a part

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of the Badlands -- was not part of the, capital P, property or the, capital A, annexable property, correct?
A. Yes.
Q. Would you turn to Article II, please, which is at Page 17. And this is called "General Intent," 2.1.
Would you just read that quietly to yourself, please.
A. (Witness examined document.) Okay.
Q. Now, this is the general intent without being too specific? Agreed?
A. Yes.
Q. Now, the project types are then defined immediately below. Correct? 2.2?
A. Yes.
Q. And you see custom lots, luxury lots, executive lots, upgraded lots, such other residential products that may be designated, multiple-dwelling projects, residential condominiums, executive condominiums, upgrade condominiums, move-up condominiums, such other residential products that may be designated. Then commercial/office projects, shopping center projects, and hotel time-share.
Do you see that?

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A. Yes.
Q. Okay. And such other projects as may be designated.
Is there any reference in those categories to the term "open space"?
A. No.
Q. Is there any reference to the term "drainage"?
A. No.
Q. Is there any reference to the term "golf course"?
A. No.
Q. All right. And is it clear that in each of those categories, about such other, that there has to be a declaration of annexation?
A. Yes.
Q. And the use of the land is anything that's consistent with the zoning, right?
A. Yes.
Q. And that's what it says there? All right. Page 18. All right. Thank you.
Now, opposing counsel asked you a line of questioning on cross-examination along the lines that made reference, for example, to drainage. Do you remember that?

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A. Yes.
Q. Okay. And the -- and to the term "open space." Do you recall that?
A. Yes.
Q. But the drainage or the open space is that which is on the, capital P, property or the, capital, annexation property, right?
A. Yes.
Q. He's not referring to property -- or drainage or golf courses on somebody else's property? Correct?
A. I don't know what he was referring to, to be honest with you.
Q. Okay. But the document --
A. Right.
Q. -- only speaks to the property as defined within the agreement? Correct?
A. Yes.
Q. Okay. It's not controlling or attempting to control somebody else's property?
A. No.
Q. Okay. And the -- there's no way that the Queensridge master plan could control, for example, the city's definition of drainage or the city's regulation over drainage?
A. No.

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Q. Or the federal government's, FEMA's, control over drainage, correct?
A. Correct.
Q. And there was no effort by the Peccole family in Queensridge to do -- to control those areas; isn't that right?
A. No effort.
Q. And no effort to control the property not governed by this CC&R, correct?
A. Correct.
Q. Now, the lawyers who prepared the Peccole Ranch master plan to the south of West Charleston and the lawyers who prepared the Queensridge master plan to the north of Charleston was essentially the same firm, correct? Was it Karen Dennison in each case?
A. No.
Q. Was it --
A. Okay. Now I'm a little foggy here, but I thought -- wait a second.
Let's restate it. Everything south of Charleston, I thought there was somebody else did the documents.
Q. No. I think you're right.
A. I think it was McGladrey -- McGladrey --
Q. No. It was Sean McGowan of McDonald Carano.

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A. Carano, correct.
Q. Exactly right.
And then you think it was Karen Dennison to the north?
A. Positive, because I worked with her daily.
Q. Got it. Okay. All right. That's my error. Thank you for the correction.
A. And it was. It was McDonald Carano, Sean McGowan.
Q. Do you recall there was an issue -- when I say "issue," I don't want to be too vague -- that there became some -- some issues of concern regarding the development of Michael McDonald's lot?
A. Is that what we want to refer to it as, his lot?
Q. I don't know.
A. He never owned it, but yeah.
Q. Okay.
A. Something that he was -- some day would potentially want to purchase and develop, yes.
Q. Okay. And who was looking to develop that lot?
A. Michael McDonald.
Q. Okay. And where was that lot located?
A. That was on Orient Express.

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Q. Okay. And was it able to be developed?
A. No.
Q. Okay. And tell us why.
A. It has a water line running through it.
Q. Okay. And what did that -- what did that -- so that caused a practical limitation on the ability to develop that property?
A. Correct.
Q. And was that lot part of the golf course?
A. I don't recall.
Q. Okay. In other words, as distinguished from being --
A. It was not -- let's put it this way: It was --
Q. It was not part of Queensridge?
A. -- not part of the Orient Express lots at the time.
Q. Got it.
A. So I . . .
Q. Was it -- that's what I'm asking. My client's whispering to me.
Was it a part of the golf course because it wasn't part of Orient Express --
MR. PECCOLE: Asked and answered.
Q. (By Mr. Jimmerson) -- Street, Orient

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Express?
A. My answer to that is yes, by deduction.
Q. What do you mean, "by deduction"?
A. If it wasn't part of Queensridge and we didn't make it a lot and it wasn't on Orient Express -- and I believe now that we were storing things there for the golf course, some trees and plants and things there.
I know that it wasn't at the time in Queensridge, or we would have been selling it as a lot.
Q. Got it. And if your conclusion by deduction is correct, then that is further evidence of the Peccoles' knowledge that the golf course could be developed, correct?
A. Yes.
Q. All right. Did they get into a fight with anybody over that lot? Do you remember that? Specifically with Mr. Lowie or the EHB company?
A. Gosh, I don't recall. I know that a lot of people did not want to see it happen.
Q. See what happen? The development?
A. See that turn into a lot.
Q. On the golf course?
A. On the golf course. And the thing was, too, that it was all for naught because it couldn't be.

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Q. Got it. Because of the pipe?
A. Because there's a pipe underground.
Q. All right.
Do you recall that Peccole -- before the effort ended, there had been a grading of the property and building it up?
A. Yes.
Q. And then it was discovered?
A. And then discovered that, hey, guys, there's --
Q. So there was an effort by the Peccole --
MR. PECCOLE: I'm going to object on the grounds irrelevant, immaterial.
Q. (By Mr. Jimmerson) So was there an effort by the Peccole family to develop that lot until the impossibility was discovered by virtue of the underlying pipe?
A. Yes.
Q. Do you remember that I asked you about an entity called BGC?
A. Yes.
Q. And a lawsuit between BGC and Fore Stars?
A. Yes.
Q. And I showed you the complaint?
A. Yes.

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Q. Okay. Opposing counsel, Mr. Peccole, on cross-examination, asked you a series of questions suggesting that BGC was Bruce Bayne. Do you recall that?
A. Yes.
Q. He asked you a line of questions about that. As far as you know, and as I pointed out to you, BGC was an entity that Mr. Lowie was involved with; is that right?
A. Yes.
Q. Okay. And there was a lawsuit for breach of contract that we talked about; and then I showed you the settlement agreement, right?
A. Yes.
Q. Okay. As far as you know, Bruce Bayne did not have any involvement with that, with the company BGC, at least as I showed you litigation?
A. Correct. I still don't know what BGC is.
Q. I'm going to suggest that BGC might stand for Badlands Golf Course.
A. Okay.
Q. All right.
MR. LOWIE: Quite simple.
THE WITNESS: Thank you. Because I thought -- I'm sorry, but I thought Bob said it was

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Bruce's company.
Q. (By Mr. Jimmerson) That's what Mr. Peccole suggested in his line of questioning.
A. Okay. So I thought the B stand for Bayne. Okay.
Q. And do you recall that the breach of contract lawsuit that I showed you, the BGC versus Fore Stars litigation, arose because the Peccole family was attempting to develop the golf course in this 2006-2007 time period?
MR. PECCOLE: I can't hear you.
Q. (By Mr. Jimmerson) After having agreed to sell the land to Mr. Lowie?
A. Can you say that all over again so I get it all at once?
MR. PECCOLE: And speak up, would you, please.
MR. JIMMERSON: Go ahead. Keep your voice up.
(Page 187, Lines 6 through 13, read by the reporter.)
THE WITNESS: What land to Mr. Lowie?
Q. (By Mr. Jimmerson) The golf course.
A. I don't recall.
Q. Okay. All right. But do you recall that the

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Peccole family in 2006 and 2007 was attempting to develop some portion of the golf course in that time period?
A. Yes.
Q. Okay. And what is it -- what is there about that that you recall?
A. We were doing the high-rise.
Q. And that was located on property --
A. Alta and Rampart.
Q. Got it.
A. So now this is coming back. Yes. Okay. So there were easements that were needed for that -- for that property.
MR. PECCOLE: I'd like to pose an objection as this is all irrelevant and immaterial.
Q. (By Mr. Jimmerson) Do you remember the Peccole family was attempting to introduce a new product line called "time-share"?
A. Yes.
Q. Maybe 500 rooms?
A. Yes.
Q. Is that the project we're talking about?
A. Yes.
Q. And was that in this 2006, 2007?
A. Yes.

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MR. JIMMERSON: Nothing further. Thank you. I have no further questions, and I want to thank you for your time, sir.

MR. PECCOLE: Just a couple of cleanups.

THE WITNESS: Sure.

FURTHER EXAMINATION

BY MR. PECCOLE:

Q. When you, in your head, figured out these number of homes that were built according to what Mr. Jimmerson asked you, did you consider the homes were built on lots?

A. Was -- I hadn't counted those yet, but I would. Yeah, those would be part of them, to get to a thousand.

Q. So another couple thousand, maybe, or a thousand?

A. A thousand.

Q. The -- Mr. Jimmerson just went through the Exhibit 2 --

A. Yes.

Q. -- and he asked you a bunch of questions, but I would just draw your attention back to Page 1.

A. Okay. Okay.

Q. Paragraph B.

A. Yup.

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Q. Down in the bottom where it says Property, with capital P, can be the following uses, does it list golf course and open space?

MR. JIMMERSON: You mean the "may"?

A. Yes, it says it.

Q. (By Mr. Peccole) It says "may"? And actually, did the golf course get built?

A. Yes, it did.

Q. And did Bill have some concern about whether or not it would be included in the CC&Rs, and therefore he specifically excluded the 18 holes by saying "not a part of"?

MR. JIMMERSON: Objection, and also lack of foundation.

Q. (By Mr. Peccole) Do you remember that?

A. I don't.

Q. Take a look at Page 3.

A. Okay.

Q. Very top.

A. (Witness examined document.)

Q. Does it say right at the very, very top of the page, Badlands -- 18 holes, known as Badlands, is not a part of?

A. Before Article I, right, on Page -- I'm reading Page 3. I'm supposed to be Page 2?

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Q. It could be Page 2. Yes.

A. Okay. And C, or am I on B?

Q. A and B -- take a look at the very top of the page.

A. Okay. So where it says "Property and the Annexable Property is three thousand. The existing 18-hole golf course commonly known as the 'Badlands' --

Q. Yes.

A. -- "is not a part of the Property or the Annexable Property"?

Q. That's the point I was trying to make. Bill excluded the 18 holes by saying it's not a part of the property or the annexable property. Doesn't it say that?

MR. JIMMERSON: I object. The document speaks for itself.

A. It states, "The existing 18-hole golf course commonly known as the 'Badlands Golf Course' is not part of the Property or the Annexable Property."

Q. (By Mr. Peccole) That's --

A. Not -- but not a part of what property?

Q. Now, if you look back at 1, and we decided that property, with a capital P, could be a use, it lists golf course; and Bill removed it from the property that was recognized by the CC&Rs by saying

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"not a part of."

MR. JIMMERSON: I'm going to object. There's no question pending, and the document speaks for itself.

Q. (By Mr. Peccole) Isn't what that it says?

MR. JIMMERSON: It has to be annexed in order to be part of the property.

Q. (By Mr. Peccole) Isn't that what it says? It doesn't say anything about annexation, does it?

A. I don't know. You're asking me to interpret something. It says what it says.

Q. Well, you interpreted it for Mr. Jimmerson.

MR. JIMMERSON: Objection.

A. I did not. What did I interpret for him?

Q. (By Mr. Peccole) You were interpreting the sections that he's -- he's been reading to you, and you agreed with him.

A. I did?

Q. Yes.

MR. JIMMERSON: Objection. I asked a question, though, after reading a section, unlike this examiner.

A. I don't know what you're asking me. It says what it says.

Q. (By Mr. Peccole) Look, just admit you're not

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an expert, okay?
A. Right. Okay. How about that?
Q. Now, with regard to the golf course --
A. Okay.
Q. -- all 27 holes --
A. Yeah.
Q. -- are you familiar with the city master plan?
A. No.
Q. City master plan lists it as PROS.
MR. JIMMERSON: I just object to the question to be outside the scope of direct, cross --
Q. (By Mr. Peccole) Do you know what PROS --
A. I don't.
MR. JIMMERSON: -- and redirect.
Q. (By Mr. Peccole) How about parks, recreation --
A. Okay.
Q. -- and open space?
A. Okay.
Q. And wasn't it designated that by the fact that Larry Miller and Billy Bayne went in and had it changed so they wouldn't have to pay taxes on the golf courses?
MR. JIMMERSON: I object to the question --

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A. I don't know.
MR. JIMMERSON: -- as being outside the scope of direct, cross, redirect, and assumes facts not in evidence.
Q. (By Mr. Peccole) And the flood drainage, which is not a common use in the sense that those -- that Mr. Jimmerson has read those paragraphs back to you dealing with that and you were agreeing, I would ask you the question, is the drainage -- the flood drainage system specifically included in the CC&Rs?
A. I don't know.
Q. We read it once before.
A. Let's read it again.
Q. You don't remember because it was too long ago?
A. Yes. I remember things that are long ago.
Q. Dementia.
A. Yes.
MR. PECCOLE: No further questions.
THE WITNESS: I'm getting there, Bob. I'm almost 60.
MR. JIMMERSON: Are you finished, Mr. Peccole?
MR. PECCOLE: Too many basketballs.
MR. JIMMERSON: I have just one question.

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FURTHER EXAMINATION
BY MR. JIMMERSON:
Q. Would Mr. Peccole, as an owner of property, a residence, in Queensridge, have any rights if against property that is not, capital P, property and not annexed into the Queensridge master plan?
In other words, does he have any rights against property that is not included within the Queensridge master plan?
A. No.
Q. And why is that?
A. Because it's not -- it's not part of these documents. It's not a part of.
Q. And what is included, what is property, annexed property, is clearly defined within the document, correct?
A. Yes.
Q. Anybody who reads this contract, the master CC&Rs, would know what's included and what's not included, correct?
A. Yes.
Q. Just by definition, as well as the maps?
A. Yes.
MR. JIMMERSON: Nothing further. Thank you.
MR. PECCOLE: I would like to clear this one

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more time.
THE WITNESS: Okay.
FURTHER EXAMINATION
BY MR. PECCOLE:
Q. There is the real property, which is real estate, land, that was defined in Paragraph A.
A. Okay.
Q. And that can be annexed. We agree with that?
A. Okay.
Q. You go over to Paragraph B, and the use can become property -- and it says right there, capital P, property -- without being annexed. There's nothing to do with annexation.
MR. JIMMERSON: I object to the question. There's no question pending.
Q. (By Mr. Peccole) So you've got two parts; and every time the question is posed to you, it's posed to you only as property. You don't hear one is land, one is use.
MR. JIMMERSON: I object to the question. There's no question pending. It's just a lecture by opposing counsel.
MR. PECCOLE: I'm not finished yet.
Q. (By Mr. Peccole) So having that in mind, do you distinguish between land and use when you talk

about property?
A. Boy. I don't know how to answer that. I don't -- I don't -- I don't know how to answer that. I don't talk about property unless it has a use or I have some sort of thought of what it's going to be used for in my mind.
When I look at raw land or I discuss raw land, there's a use in my head, or a potential use for that property that is the highest and best use for that piece of property. That's real estate.
I don't know if that -- I don't know if that answers your question. I don't look at property as just property. Property doesn't have any use -- property doesn't have any value unless it has a use. Okay? So I look to the property's use to define it as property. Other than that, to me it's dirt.
Q. Would you ever define property as being a golf course?
A. Yes. Golf course would go on dirt. Yeah.
MR. PECCOLE: No further questions.
FURTHER EXAMINATION
BY MR. JIMMERSON:
Q. And the use would be as defined by zoning, correct?
A. Yes.

Q. Of course.
MR. JIMMERSON: Thank you. Nothing further.
Mr. Goorjian, I appreciate your time, and apologize for the inconvenience that both sides have placed upon you, sir.
(Deposition recessed at 1:46 p.m.)

CERTIFICATE OF WITNESS

PAGE	LINE	CHANGE	REASON

* * * * *

I, GREG STEVEN GOORJIAN, witness herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

_____ _____
GREG STEVEN GOORJIAN
Witness Date

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Judith Payne Kelly, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, GREG STEVEN GOORJIAN, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 31st day of December, 2018.

_____
Judith Payne Kelly, CCR No. 539, RMR

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) ss
COUNTY OF CLARK)

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Judith Payne Kelly, CCR No. 539, RMR

CASE NO. A-17-758528-J

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

180 LAND COMPANY LLC,

Plaintiff,

vs.

LAS VEGAS CITY OF,

Defendant.

REPORTER'S TRANSCRIPT
OF
MOTIONS

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED TUESDAY, JANUARY 22, 2019

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

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* * * * *

LAS VEGAS, NEVADA; TUESDAY, JANUARY 22, 2019

9:37 A.M.

P R O C E E D I N G S

* * * * * * *

THE COURT: We're going to move on. Next up, page 9, 180 Land Company LLC versus City of Las Vegas.

THE COURT REPORTER: Does either side want this reported?

MR. BICE: Yes, please. I hope I wasn't the cause of any delay, your Honor. I was stuck in Judge Denton's courtroom.

THE COURT: You're on time, sir.

(A discussion was held off record.)

THE COURT: All right. Once again, good morning. Let's go ahead and place our appearances on the record.

MR. HUTCHISON: Good morning, your Honor. Mark Hutchinson on behalf of the 180 Land Company.

MS. HAM: Elizabeth Ham, 180 Land Company in-house counsel.

MR. HARRISON: Good morning, your Honor. Brett Harrison, corporate representative for 180 Land.

MR. OGILVIE: Good morning, your Honor. George Ogilvie on behalf of the City of Las Vegas.

MS. LEONARD: Good morning. Debbie Leonard on behalf of the City of Las Vegas.

MR. HOLMES: Good morning, your Honor. Dustun Holmes on behalf of the intervenors.

MR. BICE: Good morning, your Honor. Todd Bice, also on behalf of the intervenors. Thank you, again.

THE COURT: All right. Once again, good morning.

(Pause in proceedings while unrelated matters were heard.)

THE COURT: All right. We can continue on. I apologize for that.

Anyway, I guess, we have -- let me see here. Motion for new trial and/or amend or alter the judgment. I got it.

All right, sir. You have the floor.

MR. HUTCHISON: Your Honor, thank you very much for taking the time to consider this matter.

This is, as you mentioned, our motion to alter or amend the order that the Court entered into November. There are several arenas I've set forth for the Court in the briefing, and I'm just going to touch on some of those, your Honor. But really the genesis and one of the major thrusts to our motion, your Honor,

is a -- is a Nevada Supreme Court affirmance of Judge Smith's orders.

Just by way of timing in terms of where we are. Judge Smith's order No. 1 was entered way back in November of 2016. And then his second order, which we've attached as exhibit -- the first order is Exhibit 2; the second order is Exhibit 3. That second order was entered in January of 2015.

We then filed a petition for judicial review in this matter on what we call the 35 acres' proceedings and the four applications related to the 35 acres. That was done in July of 2017, about 6 months after Judge Smith's decision.

Then Judge Crockett's order came out in March of 2018. And Brad Jerbic, during a city council meeting, opined and stated to the city council that, Judge Crockett's order was, quote/unquote, legally improper.

We then, your Honor, submitted our points and authorities in support of our petition for judicial review in -- after Mr. Jerbic's comments about a couple weeks later on April -- April of 2018. At that time, your Honor, it's important to note that the only defendant or respondent in that case at the time was the City. And our briefing at that time made no

mention of a major modification argument because the City had never made the argument at that time.

Later, the Court received a motion to intervene by the intervenors. And later in June that intervenor motion was granted. Then we held the hearing that was most of the day, as the Court may recall, in June of 2018. And the Court then entered its findings of fact after that June hearing in November.

What interceded between that June hearing and the findings of fact and conclusions of law which the Court entered in November was in October. October 17 the Nevada Supreme Court then affirmed the Smith order, and then subsequently affirmed it again on a denial of a motion for rehearing one day after the Court entered its findings of fact, conclusions of law.

So that kind of puts in perspective in terms of why we're here, what the timeline is, what was argued, what was before the Court during the hearing, what was not before the Court during the hearing, what arguments were made, what arguments were not made in the legal briefing and the reasons for those arguments.

And so, Judge, one of the very first points that we make and we would like to make is this major modification point. It is -- it is the absolute crux

of Judge Crockett's decision. Judge Crockett said that there can be no development of the 17-acre parcel that he was concerned with, without a major modification. And because there was no major modification that accompanied the applications, Judge Crockett denied the order, determined that there was -- and made approximate specific findings that there was open space, designations on the master plan. And as a result you had to have a major modification application to change that open space designation.

I'll get to Judge Smith's order and the affirmance of the Supreme Court and why that completely contradicts Judge Crockett's order here in just a moment. But just as a general matter, Judge, again, we didn't make these points in much of our briefing.

When I asked the Court if the Court wanted to have our arguments at the hearing about the major modification, you declined and said that it wasn't necessary. So for purposes of educating the Court and putting it on the record, we both briefed it and I would like to just be able to make the major points in terms of why Judge Crockett was wrong, why the Court should not accept in any way that there's a major modification requirement.

First, just a matter --

THE COURT: And you know I'm going to let you do that; right?

MR. HUTCHISON: I'm sorry?

THE COURT: You know I'm going to permit you to do what you have to do to protect --

MR. HUTCHISON: Thank you very much.

THE COURT: You're welcome, sir.

MR. HUTCHISON: I know the Court is patient. I knows that the Seventh Amendment and due process are core values that the Court has.

THE COURT: Absolutely.

MR. HUTCHISON: And you're always going to let us present our case. I appreciate that.

THE COURT: Sometimes I wonder if I let it go on too long.

MR. HUTCHISON: Well, as a litigator, I appreciate courts allowing us to go on longer rather than short.

THE COURT: And you know why? There's two components to that. Number one, I think it's the party's right to make sure they place a thorough record. But I do listen, and I've been convinced otherwise from -- it doesn't happen a lot, but all my law clerks will tell you -- I think I have 12, 13 of them out there now -- that I go in and I have a way I

think I want to go, but my mind is never completely made up. And I listen and sometimes things are pointed out to me that I didn't think about.

And just as important too, all the moving papers don't explain the nuances.

MR. HUTCHISON: Yeah.

THE COURT: The lawyers do a much better job of that. And you just can't read it, and then you listen and you say, Wow, I didn't think of that.

MR. HUTCHISON: Yeah. And, your Honor, that was one of the reasons we wanted to bring this motion. One of the reasons was that this major modification point had not been fully briefed previously, because as I mentioned, at the time we filed our petition for judicial review, even with the points and authorities, the City was the only respondent at the time. The City had never made an argument ever that a major modification was required in court.

In fact, before Judge Crockett, the Court -- the City said just the opposite. There's been now a change in counsel and now they are arguing that they agree to abuse their own discretion in some way by not requiring a major modification. So that was never really, really fleshed out. And as I mentioned when I asked the Court during oral argument during our hearing

in June, the Court said you didn't need that argument. So let me just make a couple of points about that major modification argument, your Honor.

First, if you look at the City ordinances, major modifications are required. If you look and see where the reference start, they speak of, and the ordinances refer to, it was rezoning. And they are in connection with rezoning. Well, the 35-acre applications did not request rezoning. Contrary to Judge Crockett's application before him, there was rezoning requested. So these applications were fundamentally different in that regard with just simply no rezoning.

The property is not part of the Queensridge. The Queensridge CIC. We make that point in Judge Smith -- the affirmed Judge Smith's orders. Make those specific findings. The property was never annexed into the Peccole Ranch master-planned community.

One of the reasons that we cite the Court to the affirmed Smith orders is that one of the foundational points that the Supreme Court affirmed was Judge Smith finding that, in fact, there was no evidence in the record. In fact, it was contrary to the record, that the golf course. We call it the

residential zoned property before this Court -- before Judge Smith it was called the golf course property was -- was never part of the Queensridge CIC, and was not so incorporated by any of the public maps or records.

Likewise, Judge, the property before the Court, whether you call it the golf course property or the residential zoned property, was never -- there's no record to show that that property was ever annexed into the Peccole Ranch master-planned community.

As a matter of fact, we attached as Exhibit 2 to our moving papers the Peccole Ranch Phase Two master planned and the CC&Rs accompanying that, as well as the maps and documents, and there was no record, your Honor, of Phase Two of the Peccole Ranch master planned being annexed north of Charleston.

The golf course is north of Charleston, and there is nothing in the record to demonstrate that that property, the residential zoned property, the gold course, was ever annexed into that Phase Two.

As a result, your Honor, there could be no need then for a major modification of the Peccole Ranch master-planned community because it was never annexed in -- the golf course was never annexed into that community. There's no record, your Honor, that anybody

was paying dues or fees to Peccole Ranch master planned-community, as you would if you had been annexed in or part of that community. There simply is nothing to suggest that that golf course was ever officially or legally annexed. And, in fact, the time for doing so long, long expired.

The property also, Judge, is -- does not require a major modification under the City's -- what's call the 2020 master plan. We attach as Exhibit 8 the actual City's designation of special area plans in the City that actually require a major modification.

And the actual director of the planning department made this point repeatedly during the city council meeting that one of the reasons why there is no major modification required for this property is that it is not a special area plan, which has been highlighted and designated in our exhibit -- in our Exhibit 8.

There's no doubt that there are -- there are many, many master-planned communities across the Las Vegas Valley and Peccole Ranch master plan may be a major -- a master-planned community, but it is not a master-planned community that requires major modification changes because that's been designated already by the City and the -- the communities where

that designation falls require major modification. And Peccole Ranch master plan is not -- is not one of them.

Moreover, Judge, we also underscore the legal -- the legal point that NRS 278.349(3)(3) makes it very clear that even if you have a zoning that is different than a land use designation on a master plan, the zoning trumps that master plan. That was not the case. There would be massive takings all over this county whenever the City or the County changed a decision on a master plan that was not in conformity with the zoning.

The legislature has been very clear. The Attorney General has looked at this, and said very clearly that the legislature has always intended that zoning would trump any sort of master plan designation such as open space or golf course or any other such designation.

We provided the Court with materials and evidence that the County assessor does not tax the residential property. That's at issue here. Or the golf course property. That's at issue here, as open space but, in fact, taxes it as residential use. And that determination was made by the County assessor and affirmed by the State Board of Equalization.

During the city council meeting at issue here

on June 21, 2017, as I mentioned, the City director of development advised the city council that the development complied in every way with the City standards and no major modification was needed, and the staff and planning committee had -- commission, excuse me, had recommended approval.

We then, your Honor, came before the Court in June and had an extensive hearing. One of the things that I appreciated about the Court, statements during that hearing was that you could not rewrite the statute. And yet, your Honor, with respect in terms of what you've done with your findings of fact, conclusions of law, you have rewritten the law and have adopted essentially the idea that land use designations on a master plan will trump zoning. And that respectfully, your Honor, is a direct contravention of NRS 278.349, which I referenced previously.

As I noted in my timeline, your Honor, the -- the Judge Smith orders were then affirmed.

THE COURT: And say that again for me. Because I just want to make sure I understand specifically what your position is.

You're saying, Look, Judge, your determination is in error as a matter of law --

MR. HUTCHISON: Yes.

THE COURT: -- as a result of a determination that land use trumps the master plan.

MR. HUTCHISON: Right. And so, your Honor, our -- our legal position is based on NRS 278.349(3)(e). NRS 278.349(3)(e). And it deals with the situation that we have here.

And that is what happens in the land use planning environment and in a zoning environment when a piece of property is zoned in one way and the master plan designates that same property in another way.

In this case the property is zoned RPD7, 7 units per acre residential.

And the City claims that, Well, on the City master plan, the 2020 plan, that same property is designated open space recreation.

And there's also a subsidiary argument that within Peccole Ranch master plan, if it applies, which the City and intervenors contend it does, and which we contend does not, but if that applies, then they also say, Well, in that master plan, it says open space golf course.

And so they say, In order to make a change, you've got to come in then and have some sort of a change in the master plan, either through a general plan amendment or through a major modification.

The statute seems to suggest otherwise, your Honor. And we would respectfully point the Court to our prior briefing on this where we make very clear that if there's a conflict, zoning trumps.

And -- and that just makes sense, your Honor. If the City and the County were able to just simply change the color code on a map with their master plan, and that eviscerates zoning -- again, there would be massive, massive takings by government and it would throw the development community in complete disarray.

You go get your zoning. You're going to plan for a zoning for that designation. And then the City at some point subsequently or at any time after you coin that property makes a change.

So, your Honor, that's what we think. Just fundamentally there's a legal error in the Court's analysis. And I think that you can refer not only to our briefing here, your Honor, but we briefed this extensively for the Court in our petition for judicial review points and authorities.

As I mentioned, the attorney general of the State of Nevada already looked at this issue and came to the same conclusion that 180 Land has come to, and that is it's very clear: When there's a master plan, and that designation on the master plan conflicts with

zoning, you've got to go with zoning. If that's the case here, then the open space designation, golf course designation, drainage designation or anything else simply does not stop development. The zoning is what would dictate its uses.

And that's something specific, your Honor, that the affirmed Judge Smith decisions state. And I'm just referring now to Exhibit 3, which is the first Judge Smith decision. And this was affirmed, this finding.

The zoning of the GC land dictates its use and the defendant's right to develop their land. So that's a fundamental question I think that the Court ought to reconsider and evaluate in terms of signing an order and siding with the city council, which has decided that this land is not developable, primarily based on the idea that this is open space or it's a golf course, it's got to remain that way because the master plan so designates it.

Your Honor, the -- the affirmed Judge Smith orders are completely at odds with the Court's findings of fact, conclusions of law. They are completely at odds with Judge Smith's findings of fact conclusions of law -- excuse me, Judge Crockett findings of fact, conclusions of law. Because what the affirmed

Judge Smith order says is that the landowners have a vested right to develop the entire golf course. That's what had -- that's what the question is. The very same kind of arguments that are being made before this Court were made before Judge Smith, and that is that the landowners have no vested rights to develop the property and CC&Rs or other maps or plans prevent the development of the golf course.

The affirmed Judge Smith orders say the opposite and answer those questions. The property is, in fact, developable. The property owners have a vested right to develop the property. The Queensridge residents have no rights to the golf course or residential zoned property. And they can do, and they cannot point to maps or public documents that would stop the development. That's essentially the Judge Smith orders that have been affirmed by the Nevada Supreme Court.

Your Honor, in your findings of fact and conclusions of law, as I mentioned, you repeatedly reference and heavily rely on the Crockett decision. With respect -- the affirmed Smith orders predate the Crockett decision. Now that that decision has been affirmed by the Nevada Supreme Court, with all due respect, we suggest and ask the Court apply that

decision as opposed to the Crockett decision in the case because they're just simply -- those affirmed Smith orders are simply irreconcilable with this Court's decision and with the Crockett decision.

As most fundamental this Court and Judge Crockett had concluded that the landowners do not have a right to develop the property, that the Queensridge residents can stop the development of the property, either through maps that they can point to suggesting this is open space or other reasons. And the Supreme Court has affirmed a decision by Judge Smith that says that is not the case. In fact, it is just the opposite case.

Your Honor, the -- the Judge Crockett decision, as I mentioned, changes Nevada law by finding that land use governs and trumps zoning.

The Judge Crockett decision also improperly held that a nonrecorded conceptual plan is an encumbrance of the property. To this day I've looked for and have asked openly where in the world is the recorded plan that encumbers my client's property. This is Real Estate Law 101. There is no recorded plan that can be an encumbrance on my client's property because it has not been produced, and I'm sure if there was one we would have already heard about it, your

Honor.

And let me now just move to the public opposition prong of our briefing and the Court's findings of fact, conclusions of law. With respect to your Honor, the public opposition reliance by this Court is erroneous. We noted in our briefing that the public opposition is an insufficient basis for striking or denying applications when, in fact, those applications are consistent with current zoning, as the applications are here.

They're in compliance with the land use laws and ordinances, which is consistent with what the staff determined in its report, that they were -- that these -- that these applications were in compliance with the land use laws and ordinances and that, in fact, they are compatible with surrounding properties.

When that's the case, now there is no doubt that the city council has discretion to determine what land use ought to occur and not occur, and either approve or not approve applications. They certainly do have discretion to do that. But when you have all three of these factors that are present that, in fact, the applications are consistent with the current zonings, in compliance with the land use, laws and ordinances and compatible surrounding property, that

discretion is very, very narrow. Otherwise, you would never be able to develop property in this county.

If it's just any whimsical decision, after you have those three factors met, zoning would be a cold comfort to be sure.

And if you look at the record, your Honor, in fact, your findings of fact, conclusions of law No. 55 makes very clear that the opposition is really based on this open space concept.

This idea that this is a golf course. It should stay a golf course. It should remain a golf course. And it's going to have an impact on our community because it's going to change the nature of our community. And we bought the property, relying on the idea that this was open space.

All of that, your Honor, has been rejected by the affirmed Judge Smith orders which said notwithstanding any open space designation. Zoning is going to trump that designation. So that opposition and that reason for the opposition falls by the way, your Honor. We cite the City of Henderson versus Henderson Auto Wrecking case for the proposition that the discretion is considerably narrowed by the city council when those three factors are met.

Your Honor, then we spent some time on this at

the hearing, but the public opposition really rings hallow when, in fact, the Queensridge residents all have CC&Rs which bind them and sign purchase documents which make very clear that the golf course could, in fact, be zoned. It could be zoned commercial. It could be developed commercial. It could be developed residential. Everything that they signed with their purchase agreements and the reported CC&Rs underscores that, in fact, those homeowners knew that the golf course was subject to development.

And finally, your Honor, at the Court's decision regarding piecemeal development, likewise we would respectfully suggest is erroneous. Piecemeal development is a standard and criteria found nowhere in Title 19, nowhere in the NRS 278. The 35 acres at issue here is zoned for residential use. And Brad Jerbic made very clear on the record, which we cited in our briefing, your Honor, that the four applications regarding the 35 acres was independent of any master development agreement requirement or discussion with the city council.

Not only that, it's highly, highly unusual for a city council or a County commission or another government body to require a developer to come in and develop all the property at once. They are routinely

developed in a phased and market-driven manner.

Your Honor, so those are the points that we would ask the Court to consider. We'd ask the Court to reconsider its findings of fact and conclusions of law in light of the arguments presented in not only in the opposition on the piecemeal, but also, your Honor, with the findings of fact and conclusions of law of Judge Smith who spent a substantial amount of time evaluating and determining whether or not the golf course community -- excuse me, the golf course property was developable, determined that it was; determined that, in fact, it was zoned RPD7; determined that, in fact, the Queensridge residents could not stop it by pointing to some public map or record; and determining that NRS 278.349(3)(e) trumps -- the zoning trumps the land use subdivision.

For those reasons, your Honor, we'd ask that the Court reconsider. Thank you.

THE COURT: Thank you, sir.

All right, Mr. Ogilvie.

MR. OGILVIE: Thank you, your Honor.

Your Honor, the only thing that I heard this morning that wasn't briefed and argued at length prior to, during and subsequent to the June 29th hearing before -- June 29th, 2018, hearing before this Court is

that Judge Smith's orders is -- is the fact that Judge Smith's orders have been affirmed by the Nevada Supreme Court. Every other argument that was made by counsel today was entertained by this Court and rejected. And specifically and expressly rejected in a detailed findings of fact and conclusions of law that was entered on November 21st, 2018.

Again, as was the cause before the Court on June 29th, 2018, the matter before the Court is whether or not substantial evidence supported the city council's decision. That's it. The Court expressly found in 30 pages -- 24 pages through the expressed findings of fact and conclusions of law that, in fact, there was substantial evidence before the Court or before the city council at the time that it denied these applications. And the Court also expressly found that the developer in this case had no vested right to redevelop the golf course.

Essentially, your Honor, in 2015 the developer bought a golf course. Yes, it wished to develop the golf course into residential properties, but simply because it wanted to do so gave it no vested right. It bought a golf course; it has a golf course.

The city council reviewed the applications, made a determination that there were various bases

brought before the city council that were argued at length on June 29th that allow -- that provided for the denial of these applications.

The city council denied the applications, and this Court made the proper determination that substantial evidence was before the city council to make that determination of the denial of the applications.

The developer doesn't claim today that there was any erroneous findings of fact that need to be amended. Indeed, the only two findings from the findings of fact and conclusions of law entered by this Court that the developer even mentions are paragraphs 12 and 13.

Well, if we look at paragraphs 12 and 13 of this Court's determination of the findings of fact, conclusions of law, the Court finds at paragraph 12:

> "Approximately 212 acres of land in Phase Two was set aside for a golf course with the overall Peccole Ranch master plan, having 253.07 net acres for golf course open space and drainage."

Well, that was amply supported by the record that was cited by the Court at the end of paragraph 12.

And in paragraph 13, the Court found:

"Like its predecessor, the master development plan identified the golf course area as being for flood drainage and golf course purposes, which satisfied the City's open space requirement."

And again, the Court cites to the record before the city council that supported that finding.

So clearly, the Court had the basis, proper basis to make those two findings. Nothing else in the Court's finding of fact or challenged by the developer in the matter before the Court today. Therefore, we submit that the findings were proper, should not be amended, and the motion for new trial or motion for amendment of the findings of fact should be denied.

What I heard that was new today was the -- the Nevada Supreme Court's affirmance of Judge Smith's orders, which are attached as Exhibits 2 and 3 to the motion for any trial. Because of that affirmance, this Court is precluded from finding that the applications were properly denied.

Well, and I -- I hear over and over again, and not just before your Honor. It's in other briefs filed in other -- in other courtrooms and arguments before other judges, that, in fact, Judge Smith and the Nevada Supreme Court found that the developer has a vested

right to develop this property.

Well, I challenge the developer to show this Court, show me, in either one of the Judge Smith's orders or in the Nevada Supreme Court affirmance that either Judge Smith or the Nevada Supreme Court determined that there was a vested -- that the developer had a vested right.

Now, Judge Smith's orders are a bit lengthy to go through and point out every paragraph and demonstrate -- essentially prove a negative that, in fact, Judge Smith didn't find that the developer had a vested right. The only vested right before Judge Smith was the homeowner, the Queensridge homeowner's claim, that they had a vested right to prevent the development of the golf course in a residential property.

That is the only vested right that was discussed before -- or in Judge Crockett -- or Judge Smith's orders. And Judge Smith found that, in fact, because the golf course was not a part of the CC&Rs of the Queensridge CIC that, in fact, the homeowners do not have a vested right to prevent the redevelopment of the golf course.

And as you said, accident going through, and if the Court cares -- actually knowing the Court, I suspect the Court has already reviewed it exhaustively.

THE COURT: I have it right in front of me.
MR. OGILVIE: Judge Smith's orders?
THE COURT: Yes, I do.
MR. OGILVIE: So again, there's nowhere, nowhere in those orders that there is a discussion of the developer's vested right. There is one sentence in there where Judge Smith addresses the developer's right to develop the property, but there's no discussion whatsoever of a vested right.
And so without having to go through there line by line to prove the negative, I'm going to refer the Court to a much easier determination, and that is the Nevada Supreme Court's affirmance of Judge Smith's orders at page 2 of the October 17, 2018, order of affirmance issued in the Robert M. Peccole and Nancy M. Peccole versus Fore Stars matter.
The Court states:
"This case arises out of a dispute appellants have with the respondents who are planning to develop property on which a golf course is presently located, and which appellants argue is subject to development restrictions under the master declaration of convenance, conditions, restrictions and easements for the Queensridge community in

Las Vegas where appellants reside."

That is the narrow issue that was before the Court, in addition to the affirmance of the order granting the developer fees against the Peccoles.

This was the only, the only issue before the Court is whether or not Judge Smith abused his discretion in determining that the golf course was not subject to the CC&Rs for the Queensridge community.

And I would cite to the Court the specific language. And there's only one sentence in here that addresses the merits, the underlying merits of the issue.

It's the introductory sentence:

"First appellants argue that the district court abused its discretion in denying NRCP 60(b) relief for relying on an invalid amendment to the CC&Rs, and concluding that the golf course community -- or the golf course property was not subject to the CC&Rs."

Again, the Court identifies the issue. It's a very limited issue: Whether or not the golf course was subject to the CC&Rs.

And the one sentence that addresses the merits in this order of affirmance, the Supreme Court states:

"Because the record supports the District

Court's determination that the golf course land was not part of the Queensridge community under the original CC&Rs and public maps and records, regardless of amendment, we conclude the District Court did not abuse its discretion in denying the appellants' motion for NRCP 60(b) relief."

That's it. That is the sum and substance of the Supreme Court's decision. There is no precedential value as it relates to what is before the Court today, or was before the Court on June 29, and is, again, before the Court today.

Again, nothing from Judge Smith nor the order of affirmance from the Nevada Supreme Court addressed any vested right belonging to the developer. Simply whether or not the CC&Rs were included -- or whether or not the CC&Rs included the golf course, which there was determination that it doesn't -- it didn't.

That has no bearing on any land use application before the city council.

Neither Judge Smith's orders nor the affirmance by the Supreme Court address the City's review of these particular applications. They have no bearing on these, the varied applications, because a determination relating to the CC&Rs have no bearing on

a land use application determined or considered by a municipality.

Neither Judge Smith's orders nor the order of affirmance addressed the Court's finding of substantial evidence. The fact that substantial evidence was before the city council to deny the land use applications.

And neither Judge Smith's orders, nor the order of affirmance, address this Court's specific finding of no vested rights belonging -- that the developer had no vested rights to have the applications granted.

And I refer the Court to paragraphs 34 through 40 of its findings of fact, conclusions of law beginning at page 17 through page 18, which went through this very analysis to determine whether or not there was substantial evidence before the city council deny the land use applications.

THE COURT: Mr. Ogilvie, and I do understand your position. I really and truly do.

Here's my question: Are there any issues as a matter of law I should be concerned about as a trial court in this matter as it relates to the application of NRS 78.349 and the provision, and I think that would be (3)(e).

MR. OGILVIE: Absolutely. And the Court --

THE COURT: And I'm teeing it up for you so you can tell me why I shouldn't worry about that or whether I should worry about that. I mean, I'm going to be really specific there.

But go ahead. Tell me what your impression is.

MR. OGILVIE: Well, first of all, we argued this for probably two hours on June 29. It was briefed extensively prehearing and post hearing. I mean, this was -- I mean, the developer attempted to beat the Court over the head with this issue. The Court specifically considered it and specifically declined to agree at paragraphs 49 through 54 of its findings of fact and conclusions of law.

The Court's specifically found at paragraph 51 that NRS 278.349(3)(e) relate to only tentative map applications. That's not all -- that's what is before this Court.

So it doesn't even have any application to -- it only has application to one of the applications that was denied by the city council. And the Court further made a determination that NRS 278.349 does not confer any vested rights.

And we cited to Judge Mahan's determination

that came down -- it was issued on December 21st, 2018, asked the Court to take judicial notice. Judge Mahan made the exact same determination as this Court did in its findings of fact and conclusions of law; that, in fact, the developer does not have any vested right to redevelop this property. What Judge Mahan described it as whether or not the developer had a constitutionally protected property interest. Same thing as a vested right.

And, in fact, as the Court will read, the -- Judge Mahan found expressly that after reviewing the Las Vegas Unified Development Code and NRS 278, that, in fact, the pertinent provisions, and I quote: "Do not contain language that specifically -- or significantly limits the city council's discretion," and specifically cites to NRS 278.349.

And in so doing, Judge Mahan, similar to this Court, found that the discretion that is left to the city council in considering these land use applications provide it with the ability to grant or deny the applications. If it has the -- it the city council has the ability to grant or deny the application, there is no vested right.

Counsel argued today that Judge Smith and Judge Crockett's orders are irreconcilable. Clearly

that's not the case. Judge Crockett's order dealt with land use applications and a determination that a major modification must be submitted and approved by the city council before it can approve any applications for the redevelopment of this property.

Judge Smith's orders have nothing to do with the land use applications. The developer argued in its briefs and today that the City's denial of these applications means that the City's position is the land is not developable. Well, that's not at all the case.

City simple said -- pursuant to the -- well, the City didn't say this. But pursuant for Judge Crockett's order, all that the developer has to do is submit a major modification. There's nothing that has prevented the developer from submitting a major modification application. There's nothing preventing it from doing so today.

If the major modification application is submitted and approved, then we don't have piecemeal development, which is one of the bases on which -- expressed bases on which the City denied these land use applications. And it is one of the bits of substantial evidence that this Court found supported the city council's determination that, in fact, the City wants to avoid piecemeal development; and, therefore, is

entitled to require a major modification application.

And, in fact, is required under the Las Vegas Unified Development Code to require a major modification application and approve it before it allows redevelopment of the property.

Now, the developer argues that there's no law, in fact, it is contrary to development law that a developer must develop a large parcel, a large piece of paper at the same time. That's not what a major modification application would require.

The developer can redevelop the golf course property pursuant to the major modification over the next 10 to 15 years if that's what it wants.

It's -- the only requirement is that that development, that redevelopment of the golf course, be consistent with that major modification that the City is now requiring. So to say that the developer is being required to develop all the property at a single time is absolute nonsense.

The other arguments made in the briefs and today, public-filed opposition is not a sufficient basis for denial. That's expressly contrary to the Stratosphere Gaming case that the Court relied on in its findings of fact and conclusions of law.

Again, the only -- the only determination for

this Court was whether or not there was substantial basis for the city council to deny these land use applications.

Clearly there was. There was public opposition. There was the need -- the need by the city council for an exhaustive, well-planned, development plan for the entire 250 acres. And without that, there should be no granting of the applications.

That is substantial evidence. The Court properly determined that it was substantial evidence. There wasn't any abuse of discretion by the city council in denying these.

There is nothing in -- new in this motion for new trial or motion to amend, other than the Judge Smith orders that the Nevada Supreme Court affirmance, and I've just -- I believe disabused the Court of any notion that, in fact, there is some preclusive effect by any of those orders.

So we -- the City submits that the motion should be denied, and -- save and except for the paragraph 61 through 64 that were the subject of the hearing last Thursday. The findings of fact and conclusions of law that was filed entered on November 21, 2018, should not be amended.

THE COURT: Thank you, sir.

MR. BICE: Good morning, your Honor. Thank you, again.

I'm not going to repeat, obviously, what Mr. Ogilvie said on behalf of the City. There's just some additional points I would like to make on behalf of the intervenors, your Honor.

Let's -- let me echo what Mr. Ogilvie pointed out, though. The supposed grounds for being here is the Nevada Supreme Court's -- they use this word very loosely, I would submit, "affirmance" of the decision of Judge Smith.

If you look actually at what the Nevada Supreme Court said, the only issues that were on appeal to the Nevada Supreme Court was a Rule 60 motion and attorney's fees award. That was it.

And they have an order of affirmance, these consolidated appeals are from the District Court's order awarding attorney's fees and costs and denying Rule 60 relief from a dismissal order in a real property dispute. A dismissal order, your Honor.

So Judge Smith's order that they have now trumpeted as the end-all, be-all of which, by the way, the City wasn't a party to that case, nor were any of my clients.

And let me almost also disabuse the Court from

this word "homeowners." The litigants in the case involving Judge Smith were a husband and wife who are residents at Queensridge but they are not part of the homeowner's group that is involved in this litigation.

In fact, your Honor, just so that you know this and it's actually verifiable from the record, they previously were joined with my clients in litigation, but were not because they wanted to go and pursue a legal theory about the CC&Rs that was incompatible, incompatible with what my client's position is. So they are off on their own asserting a legal theory about the CC&Rs only. My clients have never asserted that, nor have the CC&Rs ever been the subject of any litigation in which my clients are involved in.

So then look at what the Nevada Supreme Court goes on to say, what they are supposedly affirming. They say we're affirming the District Court's findings of fact and conclusions of law? And we're adopting those? No.

All they said is, is that the CC&Rs, they are affirming the District Court's assessments that the CC&Rs do not apply to the property. That is it -- and attorney's fees. That is it.

Now, because I have a little bit of an advantage by being involved in so many other cases with

this property developer, I know also an inconsistency by the property developer, and they're coming to you and telling you that Judge Smith's order is somehow the end-all, be-all analysis. Because they are currently appealing Judge Crockett's adverse ruling to them, one would think, your Honor, they'd be telling the Nevada Supreme Court, Hey, Judge Crockett's decision is completely incompatible with Judge Smith, just like they're telling you.

Are they telling the Nevada Supreme Court that? No.

They, in fact, submitted an opening brief in the Judge Crockett's decision challenging it, and at no point in time have they contended, Oh, this affirmance of Judge Smith's ruling is the end of Judge Crockett's decision. They haven't done that, and they won't do that.

And you know why they won't do that? Because the Nevada Supreme Court knows full well that those issues that are in Judge Smith's case were fundamentally different than the decision that was in front of Judge Crockett. The issue in front of Judge Smith was CC&Rs, which are private property agreements, which the City will always tell you they do not consider as part of a zoning application, whether

for approval or denial. Because it's a private agreement amongst private parties.

The issue in front of Judge Crockett, on the other hand, was what other processes, but for the City code in terms of assessing whether or not a party can move forward with the land use application. When you have land that is being sought to be redeveloped right smack-dab in the middle of a master planned-community.

What does the City provide for under those circumstances? Two fundamentally different questions --

And in that case --

THE COURT: And, Mr. Bice.

MR. BICE: Yes.

THE COURT: -- I don't mind telling you this, I'm not really that much concerned about Judge Mahan's order, to be candid with everyone.

MR. BICE: Very good.

THE COURT: Because I look at it from this perspective, he had -- he was charged with a very limited decision.

MR. BICE: Yes.

THE COURT: As it relates to the application of CC&Rs to the issue, which was presented in front of him.

MR. BICE: And that's it.

THE COURT: I get that. But here's my big issue. And it's not really a big issue. You understand this -- look at it from my lens.

MR. BICE: Um-hum.

THE COURT: I just want to make sure I get that right.

MR. BICE: Absolutely.

THE COURT: So anyway, is there anything I should be concerned about based upon my decision in this case as it relates to the application of NRS 278.349(3)(e)?

MR. BICE: Yeah.

THE COURT: And the reason why I am bringing that up is this: I understand what my charge was. I want to make sure everybody gets that. I had to make a determination as to whether or not there was substantial evidence in the records for decision of the city council. That's it; right?

But I want to make sure that when I come to that conclusion, I didn't commit any errors along the way.

MR. BICE: Right.

THE COURT: And I don't mind saying that because I like talking. I listen. I just want to get

it right. That's -- at the end of the day, that's all I want to do is get it right.

MR. BICE: And I want you to get it right.

THE COURT: Right.

MR. BICE: Obviously.

THE COURT: And it saves everyone time, money and those types of things.

MR. BICE: Absolutely, your Honor.

THE COURT: It really does. Because I like -- when I look back, I don't remember any -- it's funny. You don't know what the Nevada Supreme Court does, will do with a specific issue. Sometimes they'll go right or left.

I had a decision came back and where they took the position. I guess, you could say they took a position that wasn't being advanced by any party to the case. And they came out of nowhere with this kind of, like, remedy.

And so, you know, what is a trial judge to do when the remedy they tee up wasn't even --

MR. BICE: Right.

THE COURT: -- requested by the parties? But at the end of the day that's kind of how I'm looking at this. I just want to make sure I get it right.

MR. BICE: Absolutely. So let me address that

twofold, your Honor.

THE COURT: Yes.

MR. BICE: 728.349.

THE COURT: Right.

MR. BICE: All right. That is a tentative map provision under state law that creates a default rule when you have a conflict in zoning and a conflict in the general plan. All right. A conflict.

But let me set that --

THE COURT: And, I guess -- and for the record -- if you look at the title action on tentative map by governing body, consideration and determining an action on tentative map final disposition.

MR. BICE: Correct.

THE COURT: Right.

MR. BICE: It's a consideration for the City. And this is where I'm going to go. I got two points to make on this.

THE COURT: Okay. Yes.

MR. BICE: One, on the face of the statute it just doesn't even apply here, okay. Because they're seeking to modify this land -- they're trying to claim some sort of this grants them vested rights, because the way you get vested rights is the City has no choice. The City is basically bound to give you

approval. That's what they're arguing.

That's the same argument they made in front of Judge Mahan which Judge Mahan just recently rejected. They made the exact same argument under the exact same statute, mind you. You made this exact same pitch, that the City is bound because we have zoning on the land.

And let me tell you why that is not the law, your Honor.

Number one, just look at the statute. Talks about tentative map and it talks about it being a consideration. Well, what the City's point here is very simple. Number one, there is no conflict between the zoning and the land use of general plan. You know how we know that, your Honor? We know that because who was it that designated this as open space? Was it the City? No. It was the developer's predecessor from whom they bought the land subject to those restrictions.

The developer went into the City and said, Here's what we would like you to approve. Look at this nice golf course. We don't need any public parks because we're going to have all this open space and golf course area. We want you to approve that, City.

And that's what happened.

So, your Honor, the City has designated that -- and, by the way, the City saw all this evidence in the city council meeting as well. Every one of the master planned-community in this community. Take Canyon Date as an example, or the other one was The Lakes were examples that were in front of city council. As just examples, all of that property is also zoned for residential. But they're zoned for residential because the entire area is zoned. And then you, as the developer, are representing, This is what I want you to approve.

So the open space decision that's on this land, the parks, recreation, PROS as it's otherwise known as, was specifically because the developer of the land sought it and used it as a justification for we didn't need to develop -- we don't need to set aside land for public parks, because we're going to have plenty of this property as parks, recreational open space. That's what's in the record. And that's what the City approved.

What has happened now is that a land purchaser bought land subject to those restrictions and wants to remove them. And there's a process of the City code for doing that. And that's what Judge Crockett's ruling was. There's a process you have to follow if

you want to do that.

You didn't follow that process for whatever reason, but you chose not to follow it. So you can't come in and say, Well, we want to now eliminate the parks, recreation, open space over this property when you bought it, it was subject to it. And you knew it.

And that was Judge Crockett's point. You knew exactly what you were buying. You bought land and you thought that you could politically, as the developer, you thought you had the political muscle to get it changed. And you didn't want to comply with the code. Because there's various requirements that you have to comply with under the code, and the developer doesn't want to comply with them.

So where this comes down to, your Honor, is 278.349 isn't even implicated here because there is no conflict. This property is zoned, your Honor, RPD7. "RPD" means "residential planned development."

That doesn't mean you have a right to develop property. That means that you have the right to apply to the City. There is no conflict under this statute in what the zoning is on the property and what the general plan is on the property. In fact, the general plan decision is exactly what the develop at the time sought.

And it is exactly as set forth in the master plan that they lodged with the City. When they submitted this application, your Honor, the developer, they showed the City a bunch of plans, including how all this land was going to be designated as recreation open space golf course and drainage.

This was the developer that sought those designations. We just now have a different developer who bought the property and now wishes to change it. So the only question in this case in front of His Honor is does the City have the discretion under the law to tell a developer, No, you have to comply with certain requirements when you're going to try and come into an existing community and tear up all the land and say, Well, I now want to develop it for some -- a different use than what the City previously approved.

And the -- and the fact is under the law, absolutely the City has that discretion. The City has the discretion, and under the law to make them do certain things. And that Mr. Ogilvie has addressed that in detail, and I don't need to go over it. He can speak better on behalf of the City than I ever could.

But this is in conformity with the zoning. There's no conflict between the zoning in this case and the general plan.

If -- by the way, your Honor, if you were to buy this argument, then every golf course in this community, every one of them, Queensridge -- or not only Queensridge, Canyon Gate, The Lakes, where The Lakes are at there at Sahara and Fort Apache area. All of that property underneath the water is also zoned. That property, I believe, it was zoned RPD3, I think is what the record is. I can't remember exactly.

But if you were to accept this argument, then all of those communities are just subject -- the property just could be completely wiped out under their theory because they now have vested rights.

Interestingly, Judge Mahan rejected that argument. This Court previously rejected this argument. And it's completely inconsistent with Judge Crockett's decision. And Judge Smith's decision doesn't even address it.

So our point here, your Honor, is very simple. The record amply supports what the City did. And on the claim of issue preclusion, your Honor, they are absolutely bound. They litigated this exact question in front of Judge Crocket, involving the exact same parties. Unlike in Judge Smith's case where my client wasn't there, and the issue wasn't even litigated, here, the issue of do you have to do a major

modification in order to change that PROS decision on the land was actually litigated by the exact same plaintiff that is in this courtroom.

And that being the case, they are bound by issue preclusion. They have to take that decision up to the Nevada Supreme Court, which they have done, and they can litigate it up there. They cannot come in and say, Well, let's just see if we can go find any District Court judge who will just give us a contrary ruling.

We've litigated --

THE COURT: And I think specifically you're relying upon Alcantara.

MR. BICE: I'm sorry?

THE COURT: Alcantara case.

MR. BICE: Your Honor?

THE COURT: That deals with the issue of issue preclusion.

MR. BICE: Yes.

THE COURT: Yes.

MR. BICE: But I don't remember exactly, your Honor, because we briefed this issue to you extensively.

THE COURT: I understand. But I went back and read it just to refresh your recollection as far as the

application of the case in this matter.

MR. BICE: But they have litigated this better -- this is the exact question that was in front of Judge Crockett. And the attempted distinction that you heard today from counsel that, Well, Judge Crockett's case involved the zone change and this one doesn't change that one iota. They were seeking a major modification because it's a plan, your Honor. It's a plan that the developer at the time sought approval from the City on and the City approved it. What the code provides is you can't change that plan without seeking a modification of it by the City, whether it's a rezoning or a change in zoning or not.

I thank the Court for its time.

THE COURT: Thank you, sir.

MR. OGILVIE: Your Honor, if I could.

THE COURT: Yes.

MR. OGILVIE: In answer to your specific question, I referenced the Court vaguely to the Court's findings of fact and conclusions of law. I want to address -- advise the Court of the specific two paragraphs that I was referring to.

Paragraph 53 in which the Court cited the American West Development case that:

"Municipal entities must adopt zoning

regulations that are in substantial agreement with the master plan."

And that's also quoting the NOVA Horizon case.

And then the Court also, in paragraph 54, cited two provisions of the City's Unified Development Code, Section 19.16.010a, which states:

"Except as otherwise authorized by this title, approval of all maps, vacations, rezonings, cite development reviews, special use permits, variances, waivers, exceptions, deviations and development agreements shall be consistent with the spirit and intent of the general plan."

And then UDC 19.00.040 states:

"It is the intent of the city council that all regulatory decisions made pursuant to this title be consistent with the general plan."

THE COURT: Thank you, sir.

All right.

MR. HUTCHISON: Thank you, your Honor.

Your Honor, just to note a couple things.

One in this case itself, for the Court to revisit a finding of fact or conclusion of law that was prepared for the Court's consideration by parties in this case, would it not be unusual? The Court already

had to do that in regard to the inverse condemnation matter.

What we're asking the Court to do now is take a second look at and reconsider the NRS 278.349(3)(e) determination, as well as the other points that I made previously, your Honor.

But my point is there would be nothing that would suggest that the Court could not go back and take a look at and see, like you said, are you getting it right or not. Are you really getting it right.

Let me just start off, then, Judge, and go right to NRS 278 --

THE COURT: And so -- all right. And I get that because I -- you want to get it right as a trial judge.

MR. HUTCHISON: You do, yeah.

THE COURT: Here's my next question.

Why doesn't the city council, based upon the totality of the petitions and the entire project, specifically have discretion based upon a determination of the evidence to reject the application? I mean that's, really and truly, what it comes down to.

Because I -- at the end of the day, I made a determination that there was substantial evidence in the record to support the findings of the -- or the

decision-making of the Las Vegas city council. And that's kind -- that's where the rubber meets the road.

And I was thinking about it because when you talk about a vested right, if that was the case, then we wouldn't have zoning. I mean, we would have zoning, but we wouldn't have applications for permits and the like as we go step by step and we develop properties; right?

I mean, you know, because I was thinking just because you have -- like, for example, RPD7 and then I think we had a long discussion in the prior hearings about what specifically that meant. And it's a zoning classification and I understand that.

But I'm looking at it from, you know, did the city council, under the facts of this case -- and I do understand what Judge Crockett and his decision, and we have Smith and we have Mahan. There's a lot of moving parts here.

But as a trial judge, and I think it's important for everybody to understand this, when I look at designations, for example, I'm not really concerned about what other trial judges do. My only concern regarding whether other trial judges do, could that have a potential legal impact on my decision-making, you know, for example, from an issue preclusion or

claim preclusion perspective.

But I've had a lot of cases where judges were going all different ways. Like, in the William's case it dealt with medical causation. That case went up on appeal, and we had two trial judges -- I was one of them -- that my decision was diametrically different than on the other trial judge, and both cases went up. And to me it was an easy call dealing with medical causation. And the Supreme Court agreed with me on that specific issue.

So I'm never worried about what other people -- I mean, other judges are doing. My biggest concern is making sure that when it's done, that I got it right. That's all I'm really concerned about. Right.

I really -- I don't mind being out there as an outlier. Doesn't bother me if I think I'm right. That's all I can say, you know.

MR. HUTCHISON: Yes.

THE COURT: And I put forth the efforts to come to that conclusion.

So here I'm looking at it, and I understand both sides. I know we have Smith. And we have all these cases out here. But ultimately why is this any different than any petition for judicial review?

MR. HUTCHISON: Yeah.
THE COURT: Right?
MR. HUTCHISON: It's -- it is a petition for judicial review. You have to look at substantial evidence in the record.
THE COURT: Right.
MR. HUTCHISON: Let me tell you, Judge. Let me address the record why it is.
First off, I think everybody in this courtroom agrees that the city council doesn't have unfettered discretion to either deny or grant an application. If that's the case, why even have an application process?
THE COURT: I agree 100 percent --
MR. HUTCHISON: Right --
THE COURT: -- on that proposition. I think every lawyer here agrees with that.
MR. HUTCHISON: Right. So there's -- there isn't this unfettered discretion. Otherwise, what's the purpose of a petition for judicial review?
So, Judge, here is what makes this case different and what makes this case right for your determination that the city council abused its discretion. And this is this: One -- and this is in the record. It's before the Court. We had -- I know, I don't want to repeat. We had a long hearing on this,

but it's in the record with all the petition for judicial review briefing on this.

But, Judge, what we have in this case is we have four applications that were: One, consistent with current zoning. No question about that. They weren't coming in looking for a zone change. They weren't coming in looking for some different use permit that's going to be different than what the actual zoning requires and permits. They were coming in saying, I want to develop 35 acres for residential use, with -- squarely within the zoning.

Next, they were in compliance with the laws and the ordinance governing land use applications and the land use on that previously zoned property. How do we know that? Because in the record the City staff made an extensive determination about that. That's their job, is to go out and say, We're the staff. We're the professionals. We know this stuff.

Does all -- do all these applications line up and comply? And if they don't, then frankly the developer gets with the staff and they do it -- they do whatever they're required until it complies. But the staff is very clear in their reports before the Court that all of the laws in terms of NRS 278 and Title 19, as far as the ordinances, were implied with and

consistent with what this application set forth.

And then the final point is, as the staff further found, that these applications were compatible with surrounding property. So it's not like they're coming in looking for a zone change. They're not coming in with something that's completely incompatible with the joint properties. They're not coming in with something that's a violation 278 -- NRS 278 or Title 19. The staff went through all of that and answered every single one of those questions, said, They're in compliance. They're compatible. Consistent with zoning.

Now, that's a different situation than a lot of these other cases that have been cited to show that, Hey, the city council has got a lot of discretion. Well, sure you've got discretion if it's not compatible with the adjoining property, if it's in violation of 278 or a Title 19. If, in fact, it's not consistent with zoning.

But, Judge, if you go out or I go out or anyone in this courtroom goes out and buys a piece of paper and says, I'm going to buy a piece of property that's consistent with what I want to build in terms of zoning. I'm going to comply with all the laws. I'm going to be compatible with the joint property owners.

If that doesn't give me some -- some, you know, some rights to develop, what does?

THE COURT: Well, here's my next question. And it's coming back to me now because this is one of the issues I was considering.

Understand, that -- and I forget the exact acreage. I just don't remember specifics. I think this involves 33 parcels. But what happened here factually is somewhat of a different scenario. And what I mean by that is the developer came in and purchased -- how many acres was it?

MR. HUTCHISON: 250.

THE COURT: 250 acres.

MR. HUTCHISON: Total, with the golf course.

THE COURT: Yeah. Total. And then it's my -- and tell me if I'm wrong or not.

MR. HUTCHISON: Yeah.

THE COURT: But it's my recollection that it was at that -- and once they purchased the 250-plus acres, they were all subject to the master plan. They all had zoning and the like; right?

MR. HUTCHISON: Well --

THE COURT: Am I missing something?

MR. HUTCHISON: So what happened was the purchase of the 250 acres, yes. Before purchasing the

250 acres, they are going to the City and say, Do -- what -- what is this 250 acres zoned for?

They get a letter, a zoning letter from the City saying, It's zoned for residential.

Thank you very much. Now I'm going to come and tell you what my plans are. On this 17 acres, I want to develop multi-family and I want to have some commercial. On these different pieces of property, I'm going to develop residential. Start it off with very large estate properties and then change because the City and the -- and the property owners had negotiations, discussions.

And the City said, How about we -- how about -- how about we have this entire 250 acres subject to be a master development agreement?

And my client said, If that's what the City wants, then we're willing to go along.

And so -- and so there was a master development agreement developed or discussed, never was finalized because there was always the neighbors who came in and said, We're going to oppose any development.

That's on the record. That's public statements that the neighbors have said repeatedly. Not one house will ever be built here.

So as a result of that, my client said, Well, we can't go with the entire 250-acre master development agreement here, let's just go with the individual parcels and let's just go with the existing zoning.

THE COURT: So here's my question. In making its decisions, doesn't the city council have a right to look at the history of the development? And the reason why I feel that's important, as we all know, this was -- this wasn't a scenario where you had 250 acres of raw land without any development around it.

MR. HUTCHISON: Sure. Sure.

THE COURT: This was a scenario that was fairly well developed. I mean, it had been there for years, and you had the Queensridge and you had all these --

MR. HUTCHISON: The towers.

THE COURT: The towers.

MR. HUTCHISON: Tivoli across the street.

THE COURT: Right.

MR. HUTCHISON: Right. And that is exactly what the director of planning addressed with the city council. When the city council said -- and Brad Jerbic said to them in the June 17th hearing, your Honor, Is there a requirement for a major modification on this property?

And the planning director went through the history of this property. Said, There have been six different changes, applications, developments on this property, and not one -- including Tivoli across the street, which is all commercial, including the towers, which is heavy density residential living and complete changes to the residential nature.

And the director of the planning department said, Let me go through the history of the property with you. We've never required a major modification ever. Ever.

And Brad Jerbic said to him, who's been city council for decades, Well, I want that put on the record.

So he put that on the record and said, Given the history of this property, I'm telling you we did -- we never required a major modification.

Now Judge Crockett says, You got to have a major modification.

And it's inconsistent, Judge. I know you don't care necessarily what Judge Crockett says --

THE COURT: Yeah.

MR. HUTCHISON: -- specifically, but all I'm saying is, is that a consideration? The answer is yes. And it cuts it completely in favor of my clients.

You should not have to use a major modification vehicle, which is completely inapplicable to what he's doing on 35 acres of residential property in order to develop the property. That is an error that the city council made. That's abuse of their discretion as demonstrated by their own lawyer, their own planning director. You know, talking about political muscle, this is really what it got down to. You got people that's became political.

People didn't like the fact that my client wanted to develop the property. I understand that. We deal with politics all the time.

So the city council completely changed their position, which was we don't require major modification. Now somebody else gets elected and says, We're not going to develop that property, and now suddenly a major modification is required.

And they argued that in front of Judge Crockett when they had not -- when they had not argued -- they argued the opposite in front of Judge Crockett, and now argued that in front of you as well as their Courts.

So, yes, Judge, the history can be an important factor and, in fact, it cuts in favor of the developer.

But again, Judge, I keep getting back to this point. It's consistent with zoning. It's consistent with zoning. It's in compliance with state law and local ordinances. It's compatible with the adjoining property.

Your -- your discretion is narrow now. It's very, very narrow. And what they really rely on --

THE COURT: So does -- so does -- so is this true? And this is where the rubber meets the road, I don't mind telling you.

Here we have a scenario where now you're saying that the discretion of the city council is limited based upon an assertion of a vested property right. I assume that -- at the end of the day that's what the issue is.

But I'm looking at it from this perspective, and because understand this, my decision-making is very limited; right?

MR. HUTCHISON: True.

THE COURT: As far as the trial judge under the facts and circumstances of this case. I just have one marching order based upon the existing case law. And that's make a determination as to whether or not there's substantial evidence in the record to support their -- the findings of the city council.

I could disagree with their ultimate determination. Everybody can agree with that; right? But that's not my role to disagree. I'm just looking at it through one lens. Was there enough?

And I remember reviewing some of the transcripts before the city council meetings regarding this issues, and it appeared to me that my impression was there was an overwhelming concern by certain members, specifically the mayor of Las Vegas, regarding this property. Because at one point it was 250-plus acres of golf course and park-like areas, open areas. And just as important, part of it had been designated as a -- designed or whatever.

And understand, I wasn't a "real property land use lawyer," you know, so I might not get all the terms of art, but it was a big concern of theirs.

And so it appeared to me, and this was my impression when reviewing all the transcripts, that they said, Look, we want to do this together. Because when this property was bought, it was all together.

And consequently, we just want to make sure that when we develop it, we want to make sure that we have some sort of cohesive plan as it relates to the development.

For example, hypothetically in this case, this

is what 33 acres? Is it 33 acres?

MR. HUTCHISON: 35.

THE COURT: 35 acres. They want to make sure, Okay, we do 35 now. What about the next 17? What about down the road? Does that -- and they didn't want to have a "moving target." I guess, maybe that is a good way to look at it. They just wanted to make sure that, you know what, let's attack this in one respect and let's do it right.

But just as important too, it was my recollection, and it's been a while since I've read this, that the parties were in the stage of negotiations at the time when this happened; right?

And the city council just wanted to -- I guess, they were trying to get it right, you know. And I understand there might be disagreements on that. But that's not my -- I'm not here to decide that.

MR. HUTCHISON: Yeah.

THE COURT: I'm not.

But go ahead, sir.

MR. HUTCHISON: Your Honor, a couple of points to follow.

THE COURT: And that was just my impression.

MR. HUTCHISON: Yeah.

THE COURT: If I'm wrong in my impression,

someone can point that out for me. It's been a while since I read that.

MR. HUTCHISON: Well, I want to address directly why it is that -- why can't the city council just simply exercise its discretion and move out of here, because they can do whatever they want. And of course they can't do whatever they want.

THE COURT: No, they can't.

MR. HUTCHISON: Right. They can't do whatever they want.

And so the other thing is what the limitations are on them? Well, the limitations on them are the law. There are development standards and requirements under both Nevada statutory law as well as the City ordinance law.

So this -- for example, Judge, this idea that having a master development agreement. Where is that as a requirement, or where is that that you have to develop all 250 acres and you can't just develop 35 of your acres, that you have to come in a master development agreement? It's not under State law. It's not under Title 19. In fact, it's not the way that most properties develop in this county, as I had mentioned earlier.

So, your Honor, what limits their discretion

is State law. What limits their discretion is City ordinance. And I've just described to you, as I said, all these applications were consistent with current zoning, compliance with land use, laws and ordinances and compatible surrounding property.

So then you say, Okay. What else did they rely on? Well, they also relied largely on opposition. And you've got a lot of homeowners coming in there and they're opposing it. And the Court, in fact, said in its Findings of Fact No. 55 that a large part of that opposition was based on this open-space concept.

How else can -- how else can the city council abuse their discretion? By making decisions not based on law.

That's where we get back to NRS 278.349, your Honor. The city council, this Court, can't misapply that law and say, Well, the fact that this is open space, the fact that this is a golf course designation on some master plan, whether it's the City's master plan or whether it's the Peccole Ranch master plan, which we don't think even applies.

But regardless you then say, All right. Is there law on this? Yes, there's law on this.

And the idea that these are not incompatible is simply not accurate, your Honor. You've got zoning

that says it's residential. You've got a Las Vegas master plan that says it's PROS. It's park, recreation and open space. If that's not inconsistent, I don't know what it. PROS, park, recreation and open space, versus residential.

Now, counsel says, Well, wait a minute. It's not incompatible because, you know, it was really the developer's idea to put that designation on the master plan. Zero evidence in the record on that. I mean zero.

And as a matter of fact we all know, in fact, to do that they would have to pass an ordinance in order to designate a part -- a portion of a master plan as a PROS. Just show us the ordinance. Just show us the ordinance. Where is that ever passed?

Brad Jerbic said in an open city council meeting, We can't show it to you. We're not even sure it was placed on here legally.

But then he said this, Judge. It doesn't matter. Zoning trumps master plan designations. Zoning trumps master plan designations.

Before this case, I thought that that was well settled. We briefed this extensively, your Honor. To the extent you want to make sure you get it right, I would just invite the Court and your clerk to go back

and look at how we briefed this. Your Honor, previously in the petition for judicial review points and authorities we pointed out the legislative history of this.

We pointed out the Attorney General's opinion on this. We pointed out judicial decisions on this, your Honor. And we would ask the Court to go back and look at that.

You can't as a city council --

THE COURT: Okay. But assuming I even accept that that argument --

MR. HUTCHISON: Yes.

THE COURT: -- right, notwithstanding that, that doesn't take away the discretion of the city council to ultimately make a determination as to a land use application; right?

MR. HUTCHISON: It takes away their discretion to make a land use application determination on the basis that they can't -- they can't change the character of the golf course because it's designated open space. And that is the thrust of the entire opposition. And it's the thrust of the entire political environment surrounding this. And it's the thrust of the city council's decision. They don't want this thing developed because there are powerful people

in Queensridge that say, I want a gold course.

And it says open space. A golf course on a map somewhere and you can't change without a major modification.

And let me just address this point here, your Honor. Why don't we go back for a major modification? Because the Queensridge residents have already said on the record, Make them go back in for a major modification. Make them go back in for an application on a major modification, because then we'll take way their zoning. And they won't even have zoning rights, because they're going to come up with some, you know, argument about the land use and the counts.

And then -- and then -- and then the city council is going to say, you know, We know we gave the residential. Now we're changing it.

This is a complete trap for the developer to get them back in to do a major modification to open up zoning. They know darn well we got residential zoning. They don't like that. They want to then have the city council go in and say, Oh, you got a major modification. Now we're going to zone it differently.

That's why we're not going to go back in, Judge. That's why we're fighting so hard on the major modification. And that's exactly why the other side is

fighting so hard to get the major modification, even though, as their own planning director said, the City has never required this within the area including Tivoli, which is a major commercial development, including the towers at Queensridge, another major high density residential development. Never has there been a major modification required.

Why? Because historically this has not been something that has fallen within the major modification criteria. One, it's never -- it's not designated by the City as a master-planned community. It has to be a major modification.

Two, it's not a planned development district. It's a residentially planned development. Completely different. Completely different sections of the code.

Peccole Ranch master planned-community has never adopted or annexed in the golf course. No one is paying fees. No one -- no one is paying dues. There's no record that shows the annexation.

So for all these reasons, Judge, there has never been a major modification required. That's what Judge Crockett required. That's what the city council is requiring now. They're also basing -- and they're basing all this on that PROS designation, which the law says doesn't matter.

Why? Because you have -- you have -- you have property rights under your existing zoning. We go in for an existing zone and a compatible compliant application, Judge, that -- those applications should have been granted because the opposition is based on the PROS, the decision is based on the PROS, and all of those factors that the -- that the city council said cuts against the applications, flow from PROS, including the master plan, the master development agreement, which is nowhere to be found in the law.

And, in fact, which Brad Jerbic, their own city council, long time city council, said it was completely independent consideration than the four applications before the Court.

Your Honor, I don't want to go -- the only other thing that I would just do, Judge, just -- just for purposes of the record and just for your benefit, I want to just reference the Judge Smith's findings and conclusions on pages 14 through 16 of our -- of our -- of our brief, your Honor.

And unless the Court has other questions -- I -- I just got to get to this too, Judge.

Counsel argued that, you know, every golf course in the community, every golf course in the -- in the valley is going to be affected by this. That --

it's just not the case. This is a unique property. It's not governed by the CC&Rs for the adjoining property around it.

All the other -- virtually every other golf course community with those adjoining properties, the golf course and the property have been annexed in part of the CC&Rs. This is different than that. Completely different than that. And the -- and/or the HOA actually owned the golf course.

So the idea that this would somehow -- your -- your -- your decision to reconsider would somehow affect all these golf courses across the county is simply not supported factually by the record.

And I'll just make the final point here, Judge. Even if counsel is right that there was somehow some sort of designation of open space by the City, in 2001 the City -- we briefed this. As a matter of fact, we gave this as a handout to your Honor at the hearing. The City passed Ordinance 5353 which undid everything and said anything inconsistent with RPD7 zoning is hereby repealed. RPD7 is on this property. That was an actual ordinance.

As opposed to counsel's arguments saying that, in fact, this was something that was designated by -- by the developer and the City did it at their request.

There was no subsequent ordinance. They can point to no ordinance showing PROS on the master plan, your Honor.

Thank you very much. Unless your Court has further questions for me.

THE COURT: I don't. I don't have anything.

MR. HUTCHISON: Thank you, your Honor.

THE COURT: Anything further you want to add?

MR. OGILVIE: No, your Honor.

THE COURT: All right. I just want to make sure. What I'm going to do is I am going to take one just quick look at the application of the statute I've talked about. I'm not -- I'm going to take one last look at it, and I'll get you -- it's not going to be a very long minute order, as far as what my decision is.

Does everybody understand that?

MR. OGILVIE: Your Honor, in doing so, the only thing that I would also direct the Court to is NRS 278.250(2).

THE COURT: Let me write down, Mr. Ogilvie.

278?

MR. OGILVIE: 250(2).

THE COURT: I understand.

All right. Everyone, enjoy your day.

IN UNISON: Thank you, your Honor.

(Proceedings were concluded.)

* * * * * * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF NEVADA.

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

(4) challenged - Court's

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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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PLEASE TAKE NOTICE that on the 6th day of February, 2019, an Order *Nunc Pro Tunc* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018, was entered in the above-captioned case, a copy of which is attached hereto.

Dated this 6th day of February, 2019.

LAW OFFICES OF KERMITT L. WATERS

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805

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 6th day of February, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019,** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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

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

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

IT IS SO ORDERED.

DATED this 5th day of February, 2019.

DISTRICT COURT JUDGE

TCW

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Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: _____

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** Hearing Date: Hearing Time:

Pursuant to Rule 12(c) of the Nevada Rules of Civil Procedure, Defendant City of Las Vegas (the "City"), through its counsel, McDonald Carano LLP, moves for judgment on the pleadings on the First Amended Complaint Pursuant To Court Order Entered On February 1, 2018 For Severed Alternative Verified Claims In Inverse Condemnation ("First Amended Complaint") filed on behalf of Plaintiff 180 Land Company, LLC (the "Developer").

As a matter of law, the Court must dismiss the Developer's inverse condemnation claims on three independent legal grounds. First, the Court already properly determined that the Developer has no vested rights to have its development applications approved. Accordingly, there can be no taking as a matter of law. Therefore, the Developer's constitutional claims be dismissed with prejudice.

Second, the Developer's inverse condemnation claims are time barred because its predecessor-in-interest sought and obtained the PR-OS designation in 1990 in order to have the Peccole Ranch Phase II development approved. As a result, the statute of limitations has run on the Developer's inverse condemnation claims.

Third, because Judge Crockett's Decision held that the Developer must apply for a major modification of the Peccole Ranch Master Development Plan in order to redevelop the golf course property, and this Court determined that Judge Crockett's Decision has preclusive effect here, the inverse condemnation clams are not ripe for review. Ripeness is a jurisdictional prerequisite. Until the Developer gives the Las Vegas City Council the opportunity to hear and decide a major modification application, the Developer has no justiciable inverse condemnation claims.

As demonstrated in detail below, the aforementioned grounds mandate dismissal of the Developer's inverse condemnation claims as a matter of law. Respectfully, therefore, the City requests this Court enter an Order granting the instant motion and dismissing with prejudice all claims in the Developer's First Amended Complaint.

. . .

. . .

. . .

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This motion is made and based upon on the pleadings on file, the following points and authorities and any oral argument the Court may entertain on this matter.

DATED this 13th day of February, 2019.

McDONALD CARANO LLP

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NOTICE OF MOTION

TO: ALL PARTIES AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the City of Las Vegas will bring its **CITY OF LAS VEGAS' MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** for hearing before Department XVI of the above-entitled Court on the ___ day of March 19, 2019, at the hour of 9:00 am __.m. or as soon thereafter as counsel may be heard.

DATED this 13th day of February, 2019.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Standard for Motion for Judgment on the Pleadings

A motion for judgment on the pleadings is appropriate to obtain dismissal of claims after the pleadings have closed. NRCP 12(c). Just as a motion to dismiss brought under NRCP 12(b) does, a Rule 12(c) motion challenges the sufficiency of the pleadings. The two motions are "functionally identical." *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). As such, in deciding a motion for judgment on the pleadings, the court "is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements

of a right to relief." *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792, 858 P.2d 380, 381 (1993).

While the court must accept all factual allegations in the complaint as true, only "fair" inferences must be accepted. *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). Bald contentions, unsupported characterizations, and legal conclusions are not well-pleaded allegations, and will not defeat a motion to dismiss or, by analogy, a motion for judgment on the pleadings. *See G.K. Las Vegas, Ltd. P'ship v. Simon Prop. Grp., Inc.,* 460 F. Supp. 2d 1246, 1261 (D. Nev. 2006). In addition to the allegations in the complaint, "the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint...." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

As with a Rule 12(b) motion, a motion for judgment on the pleadings can be used to challenge subject matter jurisdiction. Ripeness pertains to the Court's subject matter jurisdiction and, therefore, is properly raised in a Rule 12 motion. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988), *quoting Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

B. This Court Correctly Concluded That the Developer Lacks Vested Rights to Redevelop the Property

1. Absent Vested Rights, There Can Be No Taking As a Matter of Law

This Court has already determined that the Developer has no vested rights to have its redevelopment applications approved. *See* Findings of Fact and Conclusions of Law entered on November 21, 2018 (the "FFCL") at Conclusions of Law ¶¶35-38, 52. That conclusion requires that the Developer's inverse condemnation claims be dismissed. "The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons ***of vested property rights***…." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) (emphasis added).

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> [Property interests are] of course ... not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law rules or understanding that secure certain benefits and that support claims of entitlement to those benefits. [To have such a property interest], a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

Board of Regents v. Roth, 408 U.S. 564, 577 (1972). In other words, constitutional guarantees are only triggered by a vested right. *See Landgraf*, 511 U.S. at 266; *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Because the Court already correctly concluded that the Developer has no vested right to redevelop the golf course, the Developer cannot state a legally cognizable constitutional claim.

2. Denial of the Redevelopment Applications Leaves the Developer With All the Same Rights it Held Previously

The Developer's purchase of the golf course on speculation that the City Council *might* exercise its discretion to allow for redevelopment of the open space/drainage easement into some other use does not alter the conclusion that it has no vested rights that confer a constitutional claim. When evaluating a takings claim, "the question is, [w]hat has the owner lost?" *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195 (1910). If the landowner retains the same interests it had previously, there is no taking. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1937 (2017). Under Nevada law, a vested property right is something that is "fixed and established." *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949); *see also Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property right must be "established" for a taking to occur). Redevelopment applications do not meet this standard because "[i]n order for rights in a proposed development project to vest, zoning or use approvals ***must not be subject to further governmental discretionary action affecting project commencement***, and the developer must prove considerable reliance on the approvals granted."[1] *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110,

[1] This is not just the law in Nevada, but nationwide. *See*, *e.g.*, *Daytona Grand, Inc. v. City of Daytona Beach, Fla.*, 490 F.3d 860, 872 (11th Cir. 2007) (interpreting Florida law);

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112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that, because City's site development review process under Title 19.18.050 involved discretionary action by City Council, the project proponent had no vested right to construct).

Here, the Developer's predecessor sought and obtained the open space designation for the golf course as an amenity to its planned development and to add value to the properties surrounding the gold course. *See* FFCL at Findings of Fact ¶¶13-16, *citing* ROR 10, 32-33; 2658-60; 24073-75; 25968. At the urging of the Developer's predecessor, the City incorporated the open space designation into its master plan. *Id.* Nearly 20 years later, the Developer bought the golf course on speculation that the City might allow another use. The City's denial of the 35-Acre Applications leaves the Developer in the exact position it held when it purchased the property with the ability to continue to use the land in the same manner for which its predecessor-in-interest sought and obtained entitlements.

In other words, the Developer does not identify anything in its First Amended Complaint that has been *taken*. The Developer's unilateral decision to abandon the golf course use does not create a taking. Rather, where the developer still has the same "bundle of sticks" it had previously, there is no taking, as a matter of law, and dismissal of the inverse condemnation claims is proper. *See Murr*, 137 S. Ct. at 1937; *Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537.

C. The Developer's Claims Are Time Barred Because the Parks, Recreation and Open Space Designation Has Existed Since at Least 1990, When it Was Sought and Obtained by the Developer's Predecessor

The statute of limitations has run on the Developer's challenge to the Parks, Recreation and Open Space designation for the Property because that designation has existed since as least 1990 in the Peccole Ranch Master Development Plan, Phase II, and was sought and obtained by the Developer's predecessor. Takings claims are subject to a 15-year statute of limitations. *White Pine Lumber v. City of Reno*, 106 Nev. 778, 779, 801 P.2d 1370, 1371 (1990). A

Ellentuck v. Klein, 570 F.2d 414, 429 (2d Cir. 1978) (interpreting New York law); *Aquino v. Tobriner*, 298 F.2d 674, 677 (D.C. Cir. 1961) (interpreting D.C. law); *City of Ann Arbor, Mich. v. Nw. Park Const. Corp.*, 280 F.2d 212, 221 (6th Cir. 1960) (interpreting Michigan law).

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development restriction created by a predecessor landowner binds successors. *See* NRS 278.0205; *Tompkins v. Buttrum Const. Co. of Nev.*, 99 Nev. 142, 146, 659 P.2d 865, 868 (1983) (noting that successor landowner steps into shoes of predecessor, and "one who creates a restriction is not permitted to violate it"); *Gladstone v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979) (holding that successor owner could not violate height restriction recorded by predecessor).

For the purpose of a statute of limitations, a landowner claiming inverse condemnation is bound by its predecessor's acceptance of regulatory conditions imposed on the land and from which the predecessor benefitted. *Wilson v. Bd. of Cty. Comm'rs of Cty. of Teton*, 153 P.3d 917, 925 (Wyo. 2007); *Serra Canyon Co. v. California Coastal Comm.*, 16 Cal. Rptr. 3d 110, 113 (Cal. Ct. App. 2004). The limitation period commenced when the regulatory action occurred, even if the predecessor chose not to challenge it. *Serra Canyon*, 16 Cal. Rptr. 3d at 113.

> There must be a limit on when a landowner can bring a takings action, especially when, as here, the landowners did not object to the conditions at the time of approval and actually took advantage of the benefit of increased density offered by the regulations. Without a restriction on the time for contesting property development conditions, the government would be perpetually exposed to unlimited takings challenges.

Wilson, 153 P.3d at 925; *see also Trimen Dev. Co. v. King Cty.*, P.2d 226, 231 (Wash. 1992) (dismissing as time barred developer's challenge to regulation that conditioned development approval on open space dedication or payment of fee in lieu of such dedication).

Here, the Developer's Amended Complaint challenges the General Plan's Parks, Recreation and Open Space designation on the Property and contends it need not seek to change that designation for its proposed residential developments of the golf course property. *See* Am. Compl. ¶¶14-16. However, the open space designation was sought and obtained by the Developer's predecessor in the 1989 Peccole Ranch Master Development Plan, as amended in 1990. *See* FFCL at Findings of Fact ¶¶11-16, *citing* 10, ROR 32, 2658-2660, 2666, 24073-75, 25821, 25968. The Developer's predecessor indicated that the Master Plan "provide[d] for the continuing development of a diverse system of open space." *See* ROR 2665. And the Developer's predecessor assumed responsibility for "open space development and

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landscaping." *See* ROR 2664. As a result of this action sought by the Developer's predecessor, the City then incorporated that open space designation into its General Plan. *See* FFCL at Finding of Fact ¶7, *citing* ROR 25546; *see also* ROR 2823-2831, 2854-2863.

The master plan area is subject to the terms, requirements and commitments made by the Developer's predecessor in the Master Development Plan so that the predecessor could develop the master planned area in the manner it sought. *See* Unified Development Code 19.10.040(F)-(G). In 1990, the Developer's predecessor received approval to develop 4,247 residential units within the master planned area of Peccole Ranch Master Development Plan conditioned upon setting aside 253 acres for golf course, open space and drainage. *See* FFCL at Findings of Fact ¶¶11-16, *citing* 10, ROR 32, 2658-2660, 2666, 24073-75, 25821, 25968. Through the open space designation, the Developer's predecessor was able to satisfy the City's parks set-aside requirement and develop non-open space areas at greater densities and for greater economic benefit. *See* ROR 2660-2667. The Developer's predecessor chose the location of the open space and developed the golf course in furtherance of the development plan it submitted, deriving economic benefit from being able to sell houses that abutted or were in close proximity to an open space amenity. *See* ROR 2658-2667.

Because the Developer's claims are premised on the General Plan's Parks, Recreation and Open Space designation and the 1990 Peccole Ranch Master Development Plan's set aside of the property for open space and drainage (which were invited and accepted by the Developer's predecessor in 1990), they are time barred. *See White Pine Lumber*, 106 Nev. at 779, 801 P.2d at 1371; *Wilson*, 153 P.3d at 925.

D. The Court Lacks Subject Matter Jurisdiction Because the Developer's Claims Are Not Ripe

This Court has determined as a matter of law that Judge Crockett's Decision has preclusive effect. *See* FFCL at Conclusions of Law ¶¶57-62. Pursuant to Judge Crockett's Decision, because the Developer has not provided the City Council with an opportunity to consider and decide an application for a major modification to the Peccole Ranch Master Development Plan, the ripeness doctrine bars the Court from exercising jurisdiction over the

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inverse condemnation claims. If a party's claims are not ripe for review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988). And where the Court lacks subject matter jurisdiction, dismissal is required. Nev. Const. art. 6, § 6; *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

The Nevada Supreme Court has adopted a two-part test for ripeness established by the U.S. Supreme Court, which requires courts to evaluate: "(1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review." *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003), *citing Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967).

1. The Issues Are Not Fit for Review

Because the Developer has yet to submit a major modification application as required by Judge Crockett's Decision, the issues presented in this case lack the fitness of review needed to satisfy the ripeness doctrine. "In gauging the fitness of the issues in a case for judicial resolution, courts are centrally concerned with whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Resnick*, 104 Nev. at 66, 752 P.2d at 233, *quoting* L. Tribe, *American Constitutional Law* 78 (2nd ed. 1988). "Alleged harm that is speculative or hypothetical is insufficient: an existing controversy must be present." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). Here, the Court has concluded that approval of a major modification is a prerequisite to the City granting the 35-Acre Applications. *See* FFCL at Conclusions of Law ¶¶56-62. Therefore, even if the Developer possessed vested rights to redevelop the golf course (it does not), the Court nevertheless cannot consider whether the Council's denial of those applications constituted a taking.

2. Dismissal Will Not Impose Any Hardship on the Developer

Because the Developer may apply for a major modification to the Master Development Plan at any time (or could have at any time since the City Council's denial of the applications at

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issue), dismissal of the First Amended Complaint for lack of ripeness will impose no hardship. The ripeness doctrine "focuses on the timing of the action rather than on the party bringing the action." *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003). Dismissal for lack of ripeness until all contingencies and conditions precedent are satisfied does not constitute a hardship. Indeed, the Developer controls whether and when to file a major modification application but has simply chosen not to. No hardship exists here.

3. The Developer Cannot Satisfy the Additional Ripeness Requirements for Inverse Condemnation Claims

Because the Developer has not sought a major modification of the Master Development Plan, it also has not satisfied additional ripeness requirements to assert takings claims. A taking claim is not ripe unless "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). "A final decision by the responsible state agency informs the constitutional determination whether a regulation has deprived a landowner of all economically beneficial use of the property … or defeated the reasonable investment-backed expectations of the landowner to the extent that a taking has occurred." *Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) (internal citations and quotations omitted).

To resolve a takings claim, a court must know "the extent of permitted development on the land in question." *Id.*, *quoting MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351 (1986)). The decisions of the U.S. Supreme Court regarding ripeness of inverse condemnation claims "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." *MacDonald, Sommer*, 477 U.S. at 351. If a developer withdraws an application, "the application was not meaningful." *Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1199 (N.D. Cal. 1988); *see also Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1455 (9th Cir. 1987), amended, 830 F.2d 968 (9th Cir. 1987) (holding that trial court erred by reaching merits of

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unripe takings claims because "[t]he application made by the developer was not meaningful since it was abandoned at an early stage in the application process."

Here, a major modification application is precisely the type of procedure the Supreme Court recognizes as a threshold requirement before a landowner can assert a takings claim:

> [A] landowner may not establish a taking before a land-use authority has the opportunity, ***using its own reasonable procedures***, to decide and explain the reach of a challenged regulation. Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon ***the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property***, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established.

Palazzolo, 533 U.S. at 620-21.

Judge Crockett has already deemed the City's procedures for a major modification to be reasonable and necessary, and this Court already deemed the major modification requirement to have preclusive effect here. *See* FFCL at Conclusions of Law ¶¶56-62. As the Court already found, the Developer submitted ***and then withdrew*** a major modification application, preventing the City Council from considering it. *Id*. at Finding of Fact 33, *citing* ROR 1; 5; 6262. This is precisely the type of action that precludes the Developer from demonstrating that its inverse condemnation claims are ripe. *See Zilber*, 692 F. Supp. at 1199; *Kinzli*, 818 F.2d at 1455. Absent compliance with the major modification requirement, there has been no final determination of the Developer's rights to develop the Property, and the inverse condemnation claims must be dismissed on jurisdictional grounds. *See Palazzolo*, 533 U.S. at 618; *Kinzli*, 818 F.2d at 1455; *Zilber*, 692 F. Supp. at 1199.

II. CONCLUSION

Because the Court correctly concluded that the Developer lacks vested rights to have redevelopment applications approved, there can be no taking as a matter of law, and the inverse condemnation claims must be dismissed. Moreover, the statute of limitations has run on the Developer's inverse condemnation claims. Finally, as the Court has determined that Judge Crockett's Decision has preclusive effect on this case, the Court lacks subject matter

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jurisdiction to hear the inverse condemnation claims because they are not ripe. For these reasons, the Developer's First Amended Complaint must be dismissed with prejudice.

Respectfully submitted this 13th day of February, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 13th day of February, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	Case No.: A-17-758528-J Dept. No.: XVI **EX PARTE APPLICATION TO FILE MOTION FOR JUDICIAL DETERMINATION OF LIABILITY THAT EXCEEDS THE EDCR 2.20(a) PAGE LIMIT** **(PROPOSED ORDER ATTACHED HERETO AS EXHIBIT 1)**

Plaintiffs, 180 LAND COMPANY, LLC, FORE STARS, LTD and SEVENTY ACRES, LLC (collectively the "Landowners") respectfully submit this Ex Parte Application to File Motion for Judicial Determination of Liability that Exceeds the EDCR 2.20(a) Page Limit. This Ex Parte Application is made for the following reasons:

1. On July 18, 2017, Landowners filed its Petition for Judicial Review ("Complaint") against the City of Las Vegas (the "City").

2. On September 7, 2017, Landowners filed its First Amended Petition for Review and Alternative Verified Claims in Inverse Condemnation("Complaint").

3. On October 30, 2018, the City filed the City of Las Vegas' Motion to Dismiss ("Motion") seeking to dismiss the entirety of the Landowners' Complaint with prejudice.

4. On January 11, 2017, this Court held a hearing regarding the City's Motion to Dismiss and held that: 1) the Landowners' properly pled their inverse condemnation claims; 2) the claims were ripe for review; and, 3) the claims were severed and stayed until **after** this Court enters a decision on the petition for judicial review. (*See* February 2, 2018 Order)

5. On June 29, 2018, this Court held a full day hearing to address only the petition for judicial review issues.

6. This Court denied the petition for judicial review. However, this Court held:

> "[w]here Petitioner [Landowners] has no vested right to have its development applications approved, and the Council properly exercised its discretion to deny the applications, there can be no taking as a matter of law such that Petitioner's [Landowner's] alternative claims for inverse condemnation must be dismissed."
>
> "Further, Petitioner's alternative claims for inverse condemnation must be dismissed for lack of ripeness."
>
> "Here, Petitioner failed to apply for a major modification, a prerequisite to any development of the Badlands Property. ... Having failed to comply with this necessary prerequisite, Petitioner's alternative claims for inverse condemnation are not ripe and must be dismissed."
>
> This Court concluded" IT IS HEREBY ORDERED, ADJUDGED and DECREED that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED. *Findings of Fact and Conclusions of Law on Petition for Judicial Review, November 26, 2018, pp. 23-24 ("FFCL").*

7. On December 12, 2018, after this Court entered the FFCL on the petition for judicial review, the Landowners' filed Plaintiff Landowners' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims.

8. Recognizing that the Court in no way intended to address or dismiss the Landowner's inverse condemnation claims in the FFCL and that the provisions referencing the Landowners inverse condemnation claims were improperly inserted into the FFCL, on February 6, 2019, this Court entered a *nunc pro tunc order* granting Plaintiff Landowners' Request For Rehearing / Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims and removing these provisions from the FFCL acknowledging, "this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims."

9. On January 9, 2019, the Court ordered that "[i]n the event that this Court grants Plaintiff Landowners' Request For Rehearing / Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims and denies the City's Motion to Strike, the Court shall continue the February 6, 2019 hearing on Plaintiff Landowners' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation ("Motion for Summary Judgment") and set a briefing schedule and a new hearing date for the Motion for Summary Judgment." Meaning the Court clearly intended to proceed with the Summary Judgment upon denial of the City's Motion to Strike.

10. On February 6, 2019, this Court held a hearing regarding the status of the Motion for Summary Judgment and offered to set a hearing date. At the hearing, Landowners' counsel requested a full day hearing, which the Court agreed to accommodate, if possible, and counsel for the parties agreed to confer to set a briefing schedule and hearing date for the Motion for Summary Judgment.

11. On February 11, 2019, after contacting this Court's chambers for potential hearing dates for the Motion for Summary Judgment, Landowners' counsel sent an email to the City's counsel proposing a briefing schedule with a proposed hearing date of April 25, 2019.

12. The City's counsel did not immediately respond to the proposed briefing schedule and instead filed the pending City of Las Vegas' Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims" set to be heard March 19, 2018. This is the City's third attempt to dismiss the Landowners' constitutional inverse condemnation claims in this case.

13. In an effort to have this matter heard on the merits and avoid the procedural gamesmanship underway by the City, along with its Opposition to the City's motion for judgment on the pleadings, the Landowners have filed a Countermotion For Judicial Determination of Liability On the Landowners' Inverse Condemnation Claims. Given the detailed factual nature of the City's actions in this case, despite reasonable efforts, this Opposition and Countermotion exceed the allowable page limit for motions.

14. The issues of whether there has been a taking involve a complex factual assessment. The United States Supreme Court has held that there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests."[1] In this connection, the United States Supreme Court has held that

[1] State v. Eighth Jud. Dist. Ct., 351 P.3d 736, 741 (Nev. 2015) (citing Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)).

these inverse condemnation cases are "ad hoc" proceedings that require "complex factual assessments."[2]

15. It is impossible to fully address these complex factual issues in this particular case in just 30 pages. First, liability in this inverse condemnation action is based on the "aggregate" of City actions impacting the Landowners' property, therefore, these City actions must be set forth in detail.[3] Second, this is an immensely important case for the Landowners which are active developers, as the City has entirely prevented them from using their 35 Acre Property. Finally, this case involves the Landowners' important constitutional right to payment of just compensation under the United States and Nevada Constitutions and, therefore, should be fully and fairly presented to the Court.[4]

16. These detailed facts show that the City has rendered the Landowners' property useless and valueless, which meets the standard for an inverse condemnation claim and that it is entirely

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[2]City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 720 (1999).

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

[4]McCarran Int'l Airport v. Sisolak, 137 P.3d 1110 (Nev. 2006) ("The first right established in the Nevada Constitution's declaration of rights is the protection of a landowner's inalienable rights to acquire, possess and protect private property. . . . The drafters of our Constitution imposed a requirement that just compensation be secured prior to a taking, and our State enjoys a rich history of protecting private property owners against Government takings. Id., at 1126-27. (emphasis supplied)).

futile to submit any further applications with the City, meaning the Landowners' claims are ripe for adjudication.

17. The facts in this matter go back to the 1980's and there have been numerous applications, hearings and interactions by the parties since that time which require a detailed presentation as they relate to the legal requirements to establish a taking.

18. Without this detailed analysis, it will be impossible for the Court to fully understand and address the taking issues.

19. This "complex factual assessment" and the highly complex and technical legal arguments require detailed factual and legal analysis and briefing to address.

20. Accordingly, the Landowners respectfully request leave to file its Motion in excess of thirty (30) pages.

21. The undersigned counsel has worked diligently to limit the number of pages, but given the detailed and complex factual nature of this matter and complexity of the legal issues it is anticipated that the memorandum of points and authorities in the Motion will total approximately 75 pages.

22. The Landowners' Motion will include a table of contents and table of authorities per EDCR 2.20(a) and an exhibit list.

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23. The Landowners' Opposition and Countermotion are being filed concurrently herewith.

DATED 4th this day of March, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 4th day of March, 2019, a true and correct copy of the foregoing **EX PARTE APPLICATION TO FILE MOTION FOR JUDICIAL DETERMINATION OF LIABILITY THAT EXCEEDS THE EDCR 2.20(a) PAGE LIMIT** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	Case No.: A-17-758528-J Dept. No.: XVI **(PROPOSED) ORDER GRANTING EX PARTE APPLICATION TO FILE MOTION FOR JUDICIAL DETERMINATION OF LIABILITY IN EXCESS OF 30 PAGES**

ORDER

It is hereby ordered that Plaintiffs, 180 LAND COMPANY, LLC, FORE STARS, LTD., and SEVENTY ACRES, LLC, may file their Opposition To City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowner's Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings that is in excess of thirty (30) pages.

DATED this _____ day of February, 2019.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:

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