

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**AMENDED
JOINT APPENDIX
VOLUME 128, PART 14**

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landowner was authorized by the minutes granting tentative approval to file for final approval, or 30 days from the date he or she receives notice of such refusal, whichever is the later.

3. Any such public hearing shall be held within 30 days after request for the hearing is made by the landowner, and notice thereof shall be given and hearings shall be conducted in the manner prescribed in NRS 278A.480.

4. Within 20 days after the conclusion of the hearing, the city or county shall, by minute action, either grant final approval to the plan or deny final approval to the plan. The grant or denial of final approval of the plan shall, in cases arising under this section, contain the matters required with respect to an application for tentative approval by NRS 278A.500.

(Added to NRS by 1973, 575) — (Substituted in revision for NRS 280A.540)

NRS 278A.560 Action brought upon failure of city or county to grant or deny final approval. If the city or county fails to act either by grant or denial of final approval of the plan within the time prescribed, the landowner may, after 30 days' written notice to the city or county, file a complaint in the district court in and for the appropriate county.

(Added to NRS by 1973, 576) — (Substituted in revision for NRS 280A.550)

NRS 278A.570 Certification and recordation of plan; effect of recordation; modification of approved plan; fees of county recorder.

1. A plan which has been given final approval by the city or county, must be certified without delay by the city or county and filed of record in the office of the appropriate county recorder before any development occurs in accordance with that plan. A county recorder shall not file for record any final plan unless it includes:

(a) A final map of the entire final plan or an identifiable phase of the final plan if required by the provisions of NRS 278.010 to 278.630, inclusive;

(b) The certifications required pursuant to NRS 116.2109; and

(c) The same certificates of approval as are required under NRS 278.377 or evidence that:

(1) The approvals were requested more than 30 days before the date on which the request for filing is made; and

(2) The agency has not refused its approval.

2. Except as otherwise provided in this subsection, after the plan is recorded, the zoning and subdivision regulations otherwise applicable to the land included in the plan cease to apply. If the development is completed in identifiable phases, then each phase can be recorded. The zoning and subdivision regulations cease to apply after the recordation of each phase to the extent necessary to allow development of that phase.

3. Pending completion of the planned unit development, or of the part that has been finally approved, no modification of the provisions of the plan, or any part finally approved, may be made, nor may it be impaired by any act of the city or county except with the consent of the landowner.

4. For the recording or filing of any final map, plat or plan, the county recorder shall collect a fee of \$50 for the first sheet of the map, plat or plan plus \$10 for each additional sheet. The fee must be deposited in the general fund of the county where it is collected.

(Added to NRS by 1973, 576; A 1975, 1425; 1977, 1525; 1981, 1318; 1989, 934; 1991, 48, 586; 2001, 3220)

NRS 278A.580 Rezoning and resubdivision required for further development upon abandonment of or failure to carry out approved plan. No further development may take place on the property included in the plan until the property is resubdivided and is reclassified by an enactment of an amendment to the zoning ordinance if:

1. The plan, or a section thereof, is given approval and, thereafter, the landowner abandons the plan or the section thereof as finally approved and gives written notification thereof to the city or county; or

2. The landowner fails to carry out the planned unit development within the specified period of time after the final approval has been granted.

(Added to NRS by 1973, 576; A 1977, 1526; 1981, 140)

Judicial Review

NRS 278A.590 Decisions subject to review; limitation on time for commencement of action or proceeding.

1. Any decision of the city or county under this chapter granting or denying tentative or final approval of the plan or authorizing or refusing to authorize a modification in a plan is a final administrative decision and is subject to judicial review in properly presented cases.

2. No action or proceeding may be commenced for the purpose of seeking judicial relief or review from or with respect to any final action, decision or order of any city, county or other governing body authorized by this chapter unless the action or proceeding is commenced within 25 days after the date of filing of notice of the final action, decision or order with the clerk or secretary of the governing body.

(Added to NRS by 1973, 576; A 1991, 49)

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8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

11 STUCK IN THE ROUGH, LLC,
12 a California limited liability company,

13 Petitioner/Plaintiff,

14 v.

15 CITY OF ESCONDIDO; CITY COUNCIL OF
16 THE CITY OF ESCONDIDO; and DOES 1
through 100, inclusive,

17 Respondents/Defendants.

Case No. 37-2013-00074375-CU-WM-NC

Hon. Earl H. Maas III (Dept. N-28)

[IMAGED FILE]

Date: February 26, 2015

Time: 1:45 p.m.

Dept: N-28

Complaint Filed: November 6, 2013

Trial Date: None

21 NOTICE OF RULING AND NOTICE OF ENTRY OF ORDER
22 AND WRIT OF MANDATE
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MANATT, PHELPS &
PHILLIPS, LLP
ATTORNEYS AT LAW
LOS ANGELES

Notice of Ruling and Notice of Entry of Order and Writ of Mandate

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NOTICE OF RULING AND NOTICE OF ENTRY OF ORDER
AND WRIT OF MANDATE

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that, on March 13, 2015, the Court issued and filed (1) its Order granting the petition for writ of mandate filed by petitioner/plaintiff Stuck in the Rough, LLC in this action; and (2) its Writ of Mandate directed to respondents City of Escondido and the City Council of the City of Escondido. A copy of the Order is attached hereto as Exhibit 1. A copy of the Writ of Mandate is attached hereto as Exhibit 2.

Dated: March 13, 2015

MANATT, PHELPS & PHILLIPS, LLP

By: Edward G. Burg
Edward G. Burg
Attorneys for Petitioner/Plaintiff
STUCK IN THE ROUGH, LLC

EXHIBIT I

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FILED
Clerk of the Superior Court

MAR 13 2015

BY Noreen McKinley, Deputy

Superior Court of the State of California
County of San Diego, North County Division

STUCK IN THE ROUGH, LLC;)	CASE NO. 37-2013-00074375-CU-WM-NC
Petitioner/Plaintiff,)	
v.)	ORDER
CITY OF ESCONDIDO; CITY COUNCIL OF)	
THE CITY OF ESCONDIDO; and DOES 1))	
through 100, inclusive;)	
Respondents/Defendants.)	

Petitioner Stuck in the Rough, LLC ("SITR") challenges the adoption of a general plan amendment ("GPA") by the City of Escondido ("City"). By stipulation and order filed September 10, 2014, the hearing on SITR's petition for writ of mandate came on for hearing on February 26, 2015. Edward G. Burg of Manatt, Phelps & Phillips appeared on behalf of SITR. Robert S. Bower of Rutan & Tucker and Jeffrey R. Epp, City Attorney, appeared on behalf of the City. Based on the Administrative Record lodged by the City on September 12, 2014, on all briefs filed by SITR and the City, and on the arguments of counsel at the hearing, and good cause appearing, the Court hereby

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1 GRANTS the petition for writ of mandate on the grounds set forth
2 below and ORDERS that the writ of mandate shall be issued in the form
3 accompanying this Order.

4 Summary of the Facts

5 This action concerns 110 acres of property ("the Property") in
6 northwestern Escondido on which for many years the Escondido Country
7 Club was operated.

8 The City adopted a new General Plan on May 23, 2012. Pursuant
9 to Government Code §65302(a), Figure II-1 of the Land Use Element of
10 the City's 2012 General Plan designated the Property as "Urban I: Up
11 to 5.5 du/acre." (AR9514) Figure II-6 of the Land Use Element
12 provided that the "Urban I" land use category consists of single
13 family homes. (AR9531) The Property had likewise been designated
14 for single-family residential use in the City's previous general plan
15 adopted in 1990 (AR5308, 5321, 5684) and in the City's first general
16 plan adopted in 1971 (AR1951-1955, 3313-14, 3384-85, 4348- 4349).
17 The Property has also been zoned for single-family residential use
18 since the early 1960s, and continues to be zoned R-1-7 presently, as
19 the City concedes in its brief. (City Opp. Brief, 11:12-13.)

20 The Escondido Country Club was developed on the Property
21 pursuant to a Special Use Permit issued by the City on May 12, 1964.
22 (AR917-920) As the name suggests, the Special Use Permit allowed,
23 but did require, that the Property be used as a golf course. The
24 1964 Special Use Permit replaced an earlier Special Use Permit that
25 had been issued by the City in 1963 by Planning Commission Resolution
26 389. (AR733-747 [Res 389]; AR878-879 [application by owner to
27 rescind the 1963 Permit]; AR915 [1963 Permit rescinded and replaced
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1 by 1964 Permit)). While the 1963 Permit had required the golf course
2 to be permanently reserved for recreation and open space (and had
3 required that the owners of adjacent residential lots would acquire
4 an ownership interest in and an obligation to pay to maintain the
5 golf course), the 1964 Permit contained no such restrictions on use
6 and no such obligations on the adjacent homeowners.

7 Sitr acquired the Property through foreclosure on December 6,
8 2012. (AR10647-10656) By that time, the Escondido Country Club was
9 in serious financial distress, having lost 2/3 of its members and
10 having overlooked basic maintenance and repairs; its prior owner was
11 even sued by the City for failure to pay its water bills. (AR11101-
12 11103, 10661-10699)

13 In early 2013, Sitr announced its intention to close the golf
14 course and redevelop the Property with single-family residences,
15 consistent with the long-time general planning and zoning. Sitr
16 closed the golf course on April 1, 2013. (AR10700) Almost
17 immediately, a group of neighbors formed an organization called
18 ECCCHO, which notified the City that the neighbors claimed property
19 rights under Resolution 389, even though that Resolution had been
20 rescinded in 1964. (AR10700-10701, 915) Certain neighbors filed a
21 Notice of Intent to circulate an initiative petition on April 17,
22 2013. (AR1-5) Signatures were filed with the City on July 10, 2013.
23 (AR11015) Rather than putting the initiative to a vote, the City
24 Council, acting pursuant to Elections Code §9215(a), adopted the
25 initiative as Ordinance No. 2013-10 ("the Ordinance") on August 14,
26 2013. (AR6-13) The title of the Ordinance states that it is "An
27 Ordinance of the City of Escondido, California, Adopting a Proposed
28

1 Initiative Measure Amending the Escondido General Plan to Preserve
2 the Escondido Country Club and Golf Course as an Ordinance of the
3 City Pursuant to California Elections Code Section 9215." (AR6)

4 The Ordinance quotes and refers to Resolution 389 in various
5 provisions of Section 1, "Findings and Declaration of Purpose." The
6 Ordinance provides that its purpose is "assuring that the green space
7 and recreation facilities provided by the Escondido Country Club golf
8 course are preserved and maintained for the betterment of the
9 community." (Section 1H, at AR8) Toward that end, the Ordinance
10 amends the General Plan "to designate that property commonly referred
11 to as the Escondido Country Club and golf course . . . as Open Space-
12 Park (OS-P), which designation shall permit the improvement,
13 operation and maintenance of a golf course, club house and
14 recreational facilities, along with uses appurtenant thereto."
15 (Section 2A, at AR9) The Ordinance applies only to SITR's Property,
16 and to no other property in the City. (AR13 [list of parcel numbers
17 attached to Ordinance]; cf. AR10647 [trustee's deed to SITR, listing
18 the same parcel numbers]).

19 Section 2B of the Ordinance makes the following additional
20 changes to the City's General Plan:

21 1. In Figure II-6 of the Land Use Element, under the column
22 headed "Required Standards" in the row under the "Parks and Open
23 Space" heading, the language before the GPA read: "Parks and open
24 space design details shall be provided during application processing.
25 Zoning: Open Space-Park (OS-P)." (AR9540) The Ordinance amended
26 this language to read: "Parks and open space design details shall be
27 provided during application processing. Zoning: Open Space-Public
28

1 (OS-P) and Open Space-Private (OS)." (AR10)

2 2. In Figure II-6 of the Land Use Element, under the column
3 headed "General Description of Uses" in the row under the "Parks and
4 Open Space" heading, the language before the GPA read: "Accommodates
5 land for public recreational activity and habitat preservation.
6 Permitted uses include active and passive parks as well as land to
7 protect, maintain, and enhance the community's natural resources and
8 include detention basins and creek corridors." (AR9540) The
9 Ordinance amended this language to read: "Accommodates land for
10 public and large private recreational activities and habitat
11 preservation. Permitted public uses include active and passive parks
12 as well as land to protect, maintain, and enhance the community's
13 natural resources and include detention basins and creek corridors.
14 Permitted private uses include, but are not limited to, golf courses,
15 tennis court and related appurtenant active recreational use
16 facilities." (AR9-10)

17 3. In Figure II-6 of the Land Use Element, under the column
18 headed "Recommended Urban Form Characteristics" in the row under the
19 "Parks and Open Space" heading, the language in the first bullet
20 point before the GPA read: "Buildings with public parks designed to
21 promote pedestrian interest through architectural articulation,
22 attractive landscaping, and similar techniques." (AR9540) The
23 Ordinance amended this language to read: "Buildings designed to
24 promote pedestrian interest through architectural articulation,
25 attractive landscaping, and similar techniques." (AR10)

26 4. In Figure II-32 of the Land Use Element, in the "Open
27 Space/Parks" row the zoning category before the GPA read: "Public
28

1 (P)." (AR9607) The Ordinance amended this language to read "Open
2 Space-Public (OS-P) and Open Space-Private (OS)." (AR10)

3 5. In the Land Use Element, the language of Open Space Policy
4 12.1 before the GPA read: "Establish the Open Space/Park land use
5 designation to identify city and county properties reserved for
6 active and passive parks, habitat preservation, and public safety
7 purposes as described in Figure II-6." (AR9623) The Ordinance
8 amended this language to read: "Establish the Open Space/Park
9 designation to identify city and county properties reserved for
10 active and passive parks, habitat preservation, and public safety
11 purposes, and to identify certain private properties reserved for
12 active recreational uses as described in Figure II-6." (AR10)

13 The Ordinance made no changes to the Parks Element (Chapter V of
14 the City's General Plan [AR9804-9831]) or to the Open Space Element
15 (Chapter VII of the City's General Plan [AR9870-9899]).

16 SITR's Petition and Complaint

17 SITR filed its combined petition for writ of mandate and
18 complaint for damages in this action on November 6, 2013. The
19 operative pleading is SITR's first amended petition for writ of
20 mandate and complaint for damages, filed on December 2, 2013. The
21 Third Cause of Action seeks a writ of mandate to invalidate the
22 Ordinance. On November 14, 2014, the Court granted in part the
23 City's motion for judgment on the pleadings. The motion was granted
24 as Causes of Action 1, 2, and 4, as conceded by SITR, and denied as
25 causes of action 5-9. This Order resolves SITR's Third Cause of
26 Action; the latter causes of action remain to be resolved.

27 ///

1 Applicable Legal Standards

2 Every city is required by Government Code §65300 to adopt a
3 "comprehensive, long-term general plan for the physical development"
4 of the city. A general plan consists of a statement of development
5 policies. (Government Code §65302.) Under Government Code §65300.5,
6 "the Legislature intends that the general plan and elements and parts
7 thereof comprise an integrated, internally consistent and compatible
8 statement of policies for the adopting agency." A general plan that
9 "displays substantial contradictions and inconsistencies cannot serve
10 as an effective plan" and violates the statutory requirement.

11 *Concerned Citizens of Calaveras County v. Board of Supervisors*, 166
12 Cal.App.3d 90, 97 (1985).

13 An action to challenge a general plan must be brought as a
14 petition for writ of mandate under Code Civ. Proc. §1085.
15 (Government Code §65751.) The inquiry is "whether the decision is
16 arbitrary, capricious, entirely lacking in evidentiary support,
17 unlawful, or procedurally unfair." *Endangered Habitats League, Inc.*
18 *v. County of Orange*, 131 Cal.App.4th 777, 782 (2005). SITR bears the
19 burden to demonstrate that the general plan, as amended, is
20 inadequate. The Court does not review the merits of the City's
21 general plan and defers to the City's policy decisions reflected in
22 the plan. *Buena Vista Gardens Apartments Association v. City of San*
23 *Diego Planning Department*, 175 Cal.App.3d 289, 298 (1985). However,
24 as the Supreme Court has noted, "judicial deference is not judicial
25 abdication." *Associated Home Builders of the Greater Eastbay, Inc.*
26 *v. City of Livermore*, 18 Cal.3d 582, 609 (1976).

27 ///
28

1 The issue is whether the City's General Plan, as amended by the
2 GPA, "substantially complies" with Article 5 (Government Code §§65300
3 et seq.) of the Planning and Zoning Law. (Government Code §65751;
4 *Twain Harte Homeowners Ass'n, Inc. v. County of Tuolumne*, 138
5 Cal.App.3d 644, 674 [1982].) "Substantial compliance" means "actual
6 compliance with respect to the substance essential to every
7 reasonable objective of the statute, as distinguished from simple
8 technical imperfections of form." *Hoffmaster v. City of San Diego*,
9 55 Cal.App.4th 1098, 1105-1106 (1997). General plan amendments
10 adopted by initiative must comply with the same standard. *DeVita v.*
11 *County of Napa*, 9 Cal.4th 763, 796 n. 12 (1995).

12
13 Building Intensity Standards

14 Petitioner asserts the Initiative does not comply with
15 Government Code section 65302(a) because it created a new General
16 Plan land use designation—"Open Space-Park"—but did not include
17 building intensity standards for that use. This claim fails for
18 three reasons.

19 First, the Initiative did not create a new land use designation.
20 The General Plan designation remains "Parks and Open Space." The
21 Initiative simply provided that zoning under that designation would
22 change from "Open Space-Park (OS-P)" to "Open Space-Public (OS-P)"
23 and "Open Space-Private (OS)." (Compare AR 9540 with AR 4.)

24 Second, Petitioner failed to show the required nexus between the
25 Initiative and building intensity standards for open space uses.
26 (Garat, 2 Cal.App.4th at 289-290 [only those portions of the general
27 plan which are impacted by the amendment can properly be challenged—
28

1 i.e., there must be a nexus of relevancy between the amendment and
2 those portions of general plan being amended].) The Initiative
3 amended the Site's land use designation from "Urban I" to "Open
4 Space-Park." It did not change the building intensity standards for
5 the "Parks and Open Space" area covered in the General Plan, which
6 includes the Site. Building intensity standards are included in
7 Figure II-6, and the building intensity standards for "Parks and Open
8 Space" are the same both pre-Initiative and post-Initiative: "Parks
9 and open space design details shall be provided during application
10 processing." (AR 9540.)

11 Petitioner claims it had no standing to challenge the "Parks and
12 Open Space" building intensity standards when they were first adopted
13 because they applied exclusively to public open space. The Court
14 agrees that a challenge prior to Respondent's adoption of the GPA
15 would have been meaningless.

16 However, the Court finds the building intensity standards set
17 forth in the General Plan for parks and open space uses are generally
18 adequate. Typically, there is little building construction in open
19 space zones. The uses that are permitted require formal approval
20 prior to development. (Escondido Municipal Code §§ 33-40 - 33-44.)
21 As the General Plan provides, design details in these circumstances
22 are to be provided during the application process. In this respect,
23 "[t]he General Plan establishes the policy framework, while the
24 zoning ordinance, building codes, and subdivision regulations
25 prescribe standards, rules, and procedures for development." (AR
26 9932.) The General Plan also requires under Open Space Policy 12.2
27 that any proposed changes in areas designated "open space" must
28

1 conform in type and intensity with surrounding land uses. (AR 9623)
2 These procedures substantially comply with Government Code section
3 65302(a). (See *San Francisco Tomorrow v. City and County of San*
4 *Francisco* (2014) 229 Cal.App.4th 498, 511-512, [challenge to general
5 plan based on lack of building intensity standards rejected where
6 building intensity was regulated through Special Use District zoning
7 on land]).

8 Internal Inconsistencies In The Land Use Element

9 Petitioner alleges the Initiative resulted in four internal
10 inconsistencies within the General Plan's Land Use Element.

11 (i) Figures II-1 and II-9

12 Petitioner first points to Figures II-1 and II-9, which show the
13 Site as "Urban I," whereas the Initiative changed the designation of
14 the Site to "Open Space-Park." The Court finds there is no
15 inconsistency because the Figures can be updated, and the City's
16 procedures allow up to 24 months for implementing legislation to
17 occur. The City was reluctant to formally undertake the changes
18 mandated by the Initiative while this lawsuit and a subsequent
19 initiative campaign by Petitioner relating to the Site, were pending.
20 Moreover, Petitioner's remedy is to require the City to make those
21 updates, rather than to invalidate the Initiative.

22 (ii) Residential Clustering Policy 5.7

23 Petitioner claims the Initiative is inconsistent with
24 Residential Clustering Policy 5.7, which states "[1] lands devoted to
25 permanent open space should not be developed with structural usage
26 other than agricultural accessory buildings." The Court finds there
27 is no inconsistency.
28

1 Policy 5.7 does not set forth a mandate or prohibition; rather,
2 it states what "should" be done. The City is free to balance this
3 policy against other policies in the General Plan without causing
4 inconsistency. In any event, Policy 5.7 is inapplicable because it
5 applies only within "planning development" zones and "specific plan"
6 areas. (AR 9613 [Policy 5.8]) The Site is not in either of those
7 zones.

8 (iii) Smart Growth Principles

9 Petitioner claims the Initiative is inconsistent with the
10 General Plan's Smart Growth Principles because it eliminates single
11 family development in outlying areas where the General Plan requires
12 the City to preserve and enhance single family development patterns
13 in established neighborhoods. However, there is no suggestion the
14 City ever contemplated accommodating residential development on the
15 Site different than its historical use as a golf course and country
16 club. The Site is not shown in the City's Housing Element inventory
17 as available for residential usage.

18 Preserving single family development patterns in established
19 neighborhoods could well include preserving the Site as it has been
20 for the past half century. The City has pointed out the Initiative
21 promotes other General Plan Policies such as preserving recreational
22 amenities and maintaining neighborhoods as livable and aesthetically
23 pleasing. The legislative process at the City is the more
24 appropriate forum for resolving these issues.

25 (iv) General Plan Amendment Policy 17.5

26 Petitioner claims the Initiative is inconsistency with General
27 Plan Amendment Policy 17.5, which states applicants for General Plan
28

1 amendments shall provide substantial documentation that certain
2 specified factors or changes have made the original General Plan
3 designation inappropriate. This claim fails because documentation
4 requirements do not apply in the Initiative context, as they would
5 unduly burden the people's right to legislate by initiative.
6 (*Associated Home Builders of Greater East Bay, Inc. v. City of*
7 *Livermore* (1976) 18 Cal.3d 582, 596 [procedural requirements that
8 apply to land use decisions of a City Council do not apply to voter-
9 sponsored initiatives because they interfere with the right to
10 initiative]).

11 Even if Policy 17.5 applied, its requirements have been met.
12 The Initiative includes a variety of reasons justifying why it should
13 be adopted. To the extent documentation is required, those reasons
14 satisfy Policy 17.5.

15
16 Land Use Element Inconsistency With The Parks Element

17 (i) Figures V-3 and V-6 of the Parks Element

18 Petitioner claims the Initiative created an inconsistency
19 between the Land Use Element and the Parks Element (actually entitled
20 the "Community Health and Services Element" in the General Plan). It
21 is true that although the Land Use Element designates the Site as
22 "Open Space-Park," Figures V-3 and V-6 of the Parks Element do not
23 show the Site as a park or recreational facility or as being on the
24 roster of the City's Park/Open Space Areas. That does not require
25 invalidation of the Initiative on the basis of inconsistency because
26 the cited Figures concern *publically-owned* open space properties and
27 parks for purposes of calculating the residents' "quality of life"
28

1 under park system standards and City-wide parkland/open space
2 standards. It does not appear privately-owned open space properties
3 throughout the City should be included.

4 In any event, the proper remedy would be to mandate the
5 amendment of the Figures to include the Site, not to invalidate the
6 Initiative.

7 (ii) Parks and Recreation Policy 2.10

8 Petitioner claims the Initiative is inconsistent with Parks and
9 Recreation Policy 2.10, which states new parks should be provided in
10 less affluent areas, such as in the urban core. Policy 2.10 is not a
11 mandate; it is an expression of preference, and is intended for
12 guidance in the legislative planning process. It is not a subject
13 for judicial inquiry.

14 (iii) Regional Parks

15 Petitioner claims the Initiative is inconsistent with the "parks
16 classifications" of the Parks Element, which provide that parks over
17 75 acres should be developed as "regional parks," and regional parks
18 should (i) provide a wide variety of activities, and (ii) be located
19 next to public schools. The Site is 110 acres, but its use will not
20 meet either of those "requirements."

21 These guidelines are inapplicable because they concern public
22 parks, not private open space such as the Site.

23 Even if the guidelines were applicable to the Site, the ultimate
24 uses of the Site are not yet known, and any determination as to
25 whether a wide variety of activities would be provided on the Site
26 would be based on pure speculation. As reflected in the operative
27 provisions of the Initiative, the Site could be used for public and
28

1 large private recreational activities and habitat preservation, and
2 permitted "private uses include, *but are not limited to*, golf
3 courses, tennis courts, and related appurtenant active recreational
4 use facilities." (AR 3-4) The Initiative leaves it to the City,
5 after appropriate public hearings, to establish the uses that will be
6 allowed on the Site. (AR 4) Because the City has not yet rezoned
7 the Site, it is unknown what those uses would have been.

8 Finally, the Parks Element, itself, states the classifications
9 "are intended to guide decision makers in the placement and
10 development of parks in the community." (AR 9809) The
11 classifications are not mandates, but guidelines, which set forth
12 "typical features" associated with various parks. (AR 9811) The
13 City is allowed to balance such policies without judicial
14 interference.

15 (iv) Parks and Recreation Policy 2.26

16 Petitioner claims the Initiative is inconsistent with Parks and
17 Recreation Policy 2.26, which requires the City to "[c]onsider
18 alternative uses of public and private golf courses." The claim is
19 unpersuasive. First, the Policy is inapplicable in the Initiative
20 context in that it would burden the right to exercise the Initiative
21 power.

22 Moreover, the Policy appears to dictate only that the City
23 should be looking at the feasibility of providing public and private
24 golf courses as part of any new private project.

25 The Policy requires "consideration" of alternatives; it does not
26 mandate implementation of such alternatives. Thus, even if the
27 policy applied as Petitioner suggests, the Initiative was not
28

1 inconsistent with a mandatory, fundamental, and specific General Plan
2 policy.

3 (v) Private Parks

4 Finally, Petitioner claims the Initiative is inconsistent with
5 the Parks Element because whereas the Land Use Element recognizes
6 private parks, the Parks Element does not. This argument is
7 inaccurate. Although the City's Parks Element is intended to
8 primarily address public parkland so as to provide the public with
9 park and recreational facilities that meet certain "quality of life"
10 thresholds (AR 9807, 9810), Parks and Recreation Policy 2.25
11 specifically recognizes private parks. (AR 9825 ["Require park or
12 recreation facilities constructed as part of a private development
13 and intended solely for use by its residents to be considered a
14 private park."])).

15 Moreover, the Initiative expressly amended Open Space Land Use
16 Policy 12.1 to read: "Establish the Open Space/Park land use
17 designation to identify city and county properties reserved for
18 active and passive parks, habitat preservation, and public safety
19 purposes and to identify certain private properties reserved for
20 active recreational uses as described in Figure II-6. (AR 10, 9623)

21 The provision of a private open space/park land use in the Land
22 Use Element does not impede or frustrate the Parks Element, and is
23 not otherwise inconsistent with a fundamental, mandatory, and
24 specific mandate or prohibition in the General Plan. Thus, no
25 inconsistency is shown.
26

27 Land Use Element Inconsistency With The Open Space Element

28 (i) Figure VII-2

1 Petitioner next asserts the Initiative is inconsistent with the
2 Open Space Element because the Initiative changed the Site's land use
3 designation to "Open Space-Park," but Figure VII-2 of the Open Space
4 Element lists the Site as "urban/developed." There is no
5 inconsistency simply because the Figure has not yet been updated. As
6 stated, the General Plan allows the City a reasonable time to
7 establish consistency after an amendment, and the appropriate remedy
8 would be to require the City to make the update, rather than to
9 invalidate the Initiative as inconsistent with the General Plan.

10 (ii) Public Land and Resource Conservation Overlays

11 Petitioner also asserts the Initiative is inconsistent with the
12 Open Space Element because the Open Space Element mandates that open
13 space land include only public land that is deemed worthy of
14 protection under certain Resource Conservation Overlays. The Court
15 finds no inconsistency.

16 Government Code section 65302(e) provides that agencies must
17 include an Open Space Element within their general plans as provided
18 in sections 65560 et seq. Section 65560, in turn, defines open space
19 land as any parcel or area of land that is devoted to certain open
20 space uses, including outdoor recreation. Nothing in these statutes
21 limit open space land to publicly-owned land. Nor does the City's
22 Open Space Element mandate that any land designated in the Land Use
23 Element as open space be publicly-owned or fall within any of the
24 Resource Conservation Overlays, which are intended to guide the
25 establishment of a comprehensive public open space system. (AR 9872)

26 The Open Space Element expressly recognizes that private lands
27 can serve the purpose of conserving important open space features.
28

1 (AR 9878 ["While many of the surrounding areas are privately owned
2 there are opportunities to conserve important features while still
3 allowing property owners the ability to responsibly develop their
4 land."]). Moreover, the Initiative amended the General Plan to
5 expressly provide that the City's Open Space land use designation
6 identify certain private properties reserved for active recreational
7 uses as described in Figure II-6. (AR 10, 9623)

8 The Resource Conservation Overlays guide the City's choices with
9 regard to publicly owned open space, and have nothing to do with
10 privately-owned land that has been developed, and which provides open
11 space benefits to the community. It is not a conflict with open
12 space policies to designate land as open space when such land has
13 already been developed with active recreational uses. Thus, no
14 inconsistency has been shown.
15

16 Land Use Element Inconsistency With The Economic Prosperity
17 Element

18 Petitioner asserts the Initiative is inconsistent with the
19 Economic Prosperity Element because one goal of that Element is to
20 have viable tourist, recreation, and arts/cultural-based businesses
21 (AR 9922), and Golf Course uses are not viable. The Court finds this
22 argument unpersuasive because this is a policy statement, not a
23 mandate or a basis to invalidate the Initiative as inconsistent with
24 the General Plan.

25 Moreover, the Initiative does not require that Petitioner
26 continue to operate the Site as a Golf Course. The operative
27 provisions of the Initiative provide that the Site may be used for
28

1 public and large private recreational activities and habitat
2 preservation, and permitted "private uses include, but are not
3 limited to, golf courses, tennis courts, and related appurtenant
4 active recreational use facilities." (AR 3-4) The Initiative leaves
5 it up to the City, after appropriate public hearings, to establish
6 the uses that would be allowed on the Site. (AR 4)

7 The GPA Unfairly Discriminates Against SITER's Property

8 As the Supreme Court has instructed, an initiative ordinance
9 "cannot unfairly discriminate against a particular parcel of
10 property." *Building Industry Association of Southern California v.*
11 *City of Camarillo*, 41 Cal.3d 810, 824 (1986). The hallmark of such
12 unfair discrimination is when the legislative processes of planning
13 or zoning are used as a mechanism to defeat a project that complies
14 with the existing municipal vision by the artifice of changing the
15 vision. *G&D Holland Construction Co. v. City of Marysville*, 12
16 Cal.App.3d 989 (1970) (city rezoned property from R-4 to R-3 when
17 neighbors objected to proposal that complied with the R-4 zoning);
18 *Arnel Development Co. v. City of Costa Mesa*, 126 Cal.App.3d 330
19 (1981) (Fourth District, Division 3, invalidating voter initiative
20 that rezoned property from medium density residential to single
21 family residential to defeat project).

22 In Arnel, the City Council had adopted a specific plan in
23 November 1976 that rezoned the bulk of Arnel's property to Planned
24 Development-Medium Density Residential. Sixteen months later, the
25 voters adopted an initiative that rezoned Arnel's property, and two
26 adjacent properties, to R-1, Single Family Residential. "The
27 initiative ordinance was adopted 16 months later without evidence of
28

1 any significant change in conditions or circumstances and for the
2 sole and specific purpose of defeating the Arnel development."
3 Arnel, 126 Cal.App.3d at 335. The trial court upheld the initiative,
4 but the Court of Appeal reversed. The voters could no more unfairly
5 discriminate against the Arnel property than could the city council:
6 "[H]ad the city council later attempted, without any significant
7 change in circumstances and without considering appropriate planning
8 criteria, to rezone the property for the sole purpose of defeating
9 the development, the subsequent rezoning ordinance would undoubtedly
10 be held invalid as arbitrary and discriminatory." Arnel, 126
11 Cal.App.3d at 337.

12 Here, the Ordinance likewise unfairly discriminates against
13 SITR's Property. It was adopted just 15 months after the City
14 adopted its General Plan on May 23, 2012, designating SITR's Property
15 for single-family residential development as "Urban I: Up to 5.5
16 du/acre." (AR9514) The record shows that the process of adopting
17 the General Plan was thorough and meticulous; it took the City over 3
18 1/2 years, with 58 public outreach meetings, committee meetings,
19 public hearings and public workshops. (AR10512-10514; AR6628-6653
20 [December 17, 2008 workshop re updating the general plan]) The City
21 prepared and approved an environmental impact report for the general
22 plan update that was over 2,000 pages long. (AR7223-9397, 10265-
23 10267)

24 The Ordinance undid the Urban I land use designation that the
25 2012 General Plan had applied to SITR's Property just 15 months
26 earlier. The Ordinance on its face applies only to SITR's Property,
27 and to no other properties in the City. The Ordinance recites that
28


1 the owner was proposing to replace the golf course with a housing
2 project. (Section 1E, at AR7) And Sitr did submit its application
3 and project plans to the City before the Ordinance was adopted.
4 (AR11130, 11142-11151) Clearly, the purpose of the Ordinance was to
5 defeat any housing project for the golf course, by amending the
6 general plan to designate Sitr's Property as "Open Space-Park." The
7 Ordinance unfairly discriminates against Sitr's Property, and is
8 therefore invalid.

9 Sitr seeks a writ of mandate invalidating the Ordinance on
10 numerous grounds. Most are rejected by this Court. However,
11 Invalidation of the Ordinance is the proper remedy for Sitr's claims
12 that the Ordinance unfairly discriminates against Sitr's Property.
13 See *Arnel*, 126 Cal.App.3d at 340.

14 Therefore, this Court grants the requested Writ of Mandate and
15 orders that Respondent vacate and set aside your actions approving
16 and adopting Ordinance No. 2013-10.

17 Respondent shall take no actions in furtherance of Ordinance No.
18 2013-10 and to cease enforcing Ordinance No. 2013-10.
19

20
21 DATED: 3-13-15

22
23 
24 EARL H. MAAS, III
25 JUDGE OF THE SUPERIOR COURT
26
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO North County 325 S. Melrose Vista, CA 92081	
SHORT TITLE: Stuck in the Rough LLC vs. City of Escondido [IMAGED]	
CLERK'S CERTIFICATE OF SERVICE BY ^{e-mail} MAIL	CASE NUMBER: 37-2013-00074375-CU-WM-NC

I certify that I am not a party to this cause. I certify that a true copy of the COURT'S ORDER AND WRIT OF MANDATE was mailed following ^estandard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Vista, California, on 03/13/2015.

Clerk of the Court, by: N. McKinley, Deputy

EDWARD G BURG
 MANATT PHELPS & PHILLIPS LLP
 11355 W OLYMPIC BOULEVARD
 LOS ANGELES, CA 90064
 eburg@manatt.com

JEFFREY REPP
 CITY ATTORNEY - CITY OF ESCONDIDO
 201 NORTH BROADWAY
 ESCONDIDO, CA 92025
 jeppo@escondido.org

Robert Bower
 rbower@rutan.com

☐ Additional names and address attached.

CLERK'S CERTIFICATE OF SERVICE BY MAIL

Page: 1

ROR023261

24670

EXHIBIT 2

ROR023262

24671

FILED
Clerk of the Superior Court

MAR 13 2015

BY Noreen McKinley, Deputy

Superior Court of the State of California
County of San Diego, North County Division

STUCK IN THE ROUGH, LLC;)	CASE NO. 37-2013-00074375-CU-WM-NC
Petitioners/Plaintiffs,)	WRIT OF MANDATE
v.)	
CITY OF ESCONDIDO; CITY COUNCIL OF)	
THE CITY OF ESCONDIDO; and DOES 1))	
THROUGH 100, INCLUSIVE.)	
Respondents/Defendants.)	


TO RESPONDENTS CITY OF ESCONDIDO AND THE CITY COUNCIL OF THE CITY OF
ESCONDIDO:

Pursuant to the Order Granting Writ of Mandate in this action
determining that City of Escondido Ordinance No. 2013-10, adopted by
the City Council on August 14, 2013, is invalid, YOU ARE HEREBY
ORDERED to vacate and set aside your actions approving and adopting
Ordinance No. 2013-10.

YOU ARE FURTHER HEREBY ORDERED to take no actions in furtherance
of Ordinance No. 2013-10 and to cease enforcing Ordinance No. 2013-
10.

1 YOU ARE FURTHER HEREBY ORDERED to file a return to this writ
2 within 30 days of the date it is served on you setting forth what you
3 have done to comply with this writ.

4
5
6 Dated: 3/13, 2015


CLERK OF THE COURT
NOREEN B. MCKINLEY

1 PROOF OF SERVICE

2 I, Soran Kim, declare as follows:

3 I am employed in Los Angeles County, Los Angeles, California. I am over the age
4 of eighteen years and not a party to this action. My business address is MANATT,
5 PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California
90064-1614. On March 13, 2015, I served the within:

6 NOTICE OF RULING AND NOTICE OF ENTRY OF ORDER
7 AND WRIT OF MANDATE

8 on the interested parties in this action addressed as follows:

9 Robert S. Bower, Esq.
10 John A. Ramirez, Esq.
11 Douglas J. Dennington, Esq.
12 RUTAN & TUCKER, LLP
13 611 Anton Boulevard, Suite 1400
14 Costa Mesa, CA 92626-1931
15 Telephone: (714) 641-5100
16 Facsimile: (714) 546-9035
17 Attorneys for Respondents/Defendants
18 City of Escondido, City Council of the
19 City of Escondido

20 

(BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope, for collection and overnight mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of overnight service mailing, said practice being that in the ordinary course of business, correspondence is deposited with the overnight messenger service, Federal Express, for delivery as addressed.

21 I declare under penalty of perjury under the laws of the State of California that
22 the foregoing is true and correct and that this declaration was executed on March 13,
23 2015, at Los Angeles, California.

24 
Soran Kim

25 314227379.1

26
27
28
MANATT, PHELPS &
PHILLIPS, LLP
ATTORNEYS AT LAW
LOS ANGELES

Notice of Ruling and Notice of Entry of Order and Writ of Mandate

ROR023265

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NRS 278A.080 Exercise of powers by city or county. The powers granted under the provisions of this chapter may be exercised by any city or county which enacts an ordinance conforming to the provisions of this chapter.

(Added to NRS by 1973, 566; A 1977, 1518) — (Substituted in revision for NRS 280A.080)

NRS 116.1201 Applicability; regulations.

4. The provisions of [chapters 117](#) and [278A](#) of NRS do not apply to common-interest communities.

ROR023267

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**NRS 116.1201 Applicability;
regulations.**

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

WHEN RECORDED, MAIL TO:

Larry Miller
Peccole Nevada Corporation
851 South Rampart, Suite 220
Las Vegas, Nevada 89145

AMENDED AND RESTATED
MASTER DECLARATION OF
COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
QUEENSRIDGE

ROR023269

24678

**AMENDED AND RESTATED
MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
QUEENSRIDGE**

THIS AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Master Declaration") is made effective as of October 1, 2000 by Nevada Legacy 14, LLC, a Nevada limited liability company, ("Declarant"), with reference to the following Recitals and is as follows:

RECITALS:

A. Declarant is the master developer of certain real property in the City of Las Vegas, County of Clark, State of Nevada, more particularly described in **Exhibit "A"** attached hereto and incorporated herein. Declarant and Persons affiliated with Declarant, are the owners of additional land more particularly described in **Exhibit "B"** attached hereto ("Annexable Property"). The Annexable Property, or portions thereof, may be or has been made subject to ("annexed to") the provisions of this Master Declaration by the Recordation of a Declaration of Annexation pursuant to the provisions of Section 2.3, below. Reference to "Property" herein shall mean and include both of the real property described in **Exhibit "A"** hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below. In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded or which has been deannexed by the recordation of a Declaration of Deannexation pursuant to the provisions of Section 2.4, below.

B. Declarant intends, without obligation, to develop the Property and the Annexable Property in one or more phases as a planned mixed-use common interest community pursuant to Chapter 116 of the Nevada Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas, which may, but is not required to, include "planned communities" and "condominiums," as such quoted terms are used and defined in NRS Chapter 116. The Property may, but is not required to, include single-family residential subdivisions, attached multi-family dwellings, condominiums, hotels, time share developments, shopping centers, commercial and office developments, a golf course, parks, recreational areas, open spaces, walkways, paths, roadways, drives and related facilities, and any other uses now or hereafter permitted by the Land Use Ordinances which are applicable to the Property. The Maximum Number of Units (defined in Section 1.57, herein) which Declarant reserves the right to create within the Property and the Annexable Property is three thousand (3,000). The existing 27-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property.

C. The Property is subject to that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge recorded on May 30, 1996, in the

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960530.00241

**MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
QUEENSRIDGE**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Master Declaration") is made as of May 10, 1996, by Nevada Legacy 14; LLC, a Nevada limited liability company, ("Declarant"), with reference to the following Recitals and is as follows:

RECITALS:

A. Declarant is the 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 ("Annexable Property"). The Annexable Property, or portions thereof, may be made subject to ("annexed to") the provisions of this Master Declaration by the Recordation of a Declaration of Annexation pursuant to the provisions of Section 2.3, below. Reference to "Property" herein shall mean and include both of the real property described in **Exhibit "A"** hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below. In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded or which has been deannexed by the recordation of a Declaration of Deannexation pursuant to the provisions of Section 2.4, below.

B. Declarant intends, without obligation, to develop the Property and the Annexable Property in one or more phases as a planned mixed-use common interest community pursuant to Chapter 116 of the Nevada Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas, which may, but is not required to, include "planned communities" and "condominiums," as such quoted terms are used and defined in NRS Chapter 116. The Property may, but is not required to, include single-family residential subdivisions, attached multi-family dwellings, condominiums, hotels, time share developments, shopping centers, commercial and office developments, a golf course, parks, recreational areas, open spaces, walkways, paths, roadways, drives and related facilities, and any other uses now or hereafter permitted by the Land Use Ordinances which are applicable to the Property. The Maximum Number of Units (defined in Section 1.57, herein) which Declarant reserves the right to create within the

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960530.00241

Property and the Annexable Property is three thousand (3,000). The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property.

C. The name of the common-interest community created by this Master Declaration is Queensridge. This Master Declaration is intended to create equitable servitudes and covenants appurtenant to and for the benefit of all of the Property, and the owners and residents thereof, and to provide for the formation of a master association (the "Association") to administer and enforce the provisions of this Master Declaration as set forth herein and in the Articles and the Bylaws.

D. Declarant may, in Declarant's sole discretion, execute, acknowledge and Record, as to all or any portion of the Annexable Property, a Declaration of Annexation. The Declaration of Annexation may include, or Declarant may Record as a separate declaration, a Supplemental Declaration (as hereinafter defined) which imposes further covenants, conditions, restrictions and equitable servitudes for the operation, protection and maintenance of the Annexed Property, taking into account the unique aspects of such Annexed Property, which are not in conflict with this Master Declaration. Such Supplemental Declaration may, but need not, provide for a Project Association to govern one or more Projects of the same Project Type within the Annexed Property, with rights and powers reasonably necessary therefor, including, without limitation, the right of the Project Association to assess its members.

E. As part of the various phases of development of the Property, Declarant intends, without obligation, to dedicate or transfer portions of the Property to public entities and utility companies for purposes such as streets, roadways, drainage, flood control, water storage, utility service and such other purposes which may enhance the Property as a whole or which are required pursuant to any Land Use Ordinance or other applicable law.

D E C L A R A T I O N:

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, transferred, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Master Declaration, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale, lease, care, use and management of the Property, or any portion thereof. The


CLERK OF THE COURT

NOEJ

James J. Jimmerson, Esq.
Nevada State Bar No. 00264
Email: ks@jimmersonlawfirm.com
JIMMERSON LAW FIRM, P.C.
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6422
*Attorneys for Defendants Fore Stars, Ltd.,
180 Land Co., LLC., Seventy Acres, LLC;
Yohan Lowie, Vickie DeHart
and Frank Pankratz*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ROBERT N. PECCOLE and NANCY A.
PECCOLE, individuals, and Trustees of the
ROBERT N. and NANCY A. PECCOLE
FAMILY TRUST,

Plaintiffs,

vs.

PECCOLE NEVADA, CORPORATION, a
Nevada Corporation; WILLIAM PECCOLE
1982 TRUST; WILLIAM PETER and
WANDA PECCOLE FAMILY LIMITED
PARTNERSHIP, a Nevada Limited
Partnership; WILLIAM PECCOLE and
WANDA PECCOLE 1971 TRUST; LISA P.
MILLER 1976 TRUST; LAURETTA P.
BAYNE 1976 TRUST; LEANN P.
GOORJIAN 1976 TRUST; WILLIAM
PECCOLE and WANDA PECCOLE 1991
TRUST; 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; THE
CITY OF LAS VEGAS; LARRY MILLER, an
individual; LISA MILLER, an individual;
BRUCE BAYNE, an individual; LAURETTA
P. BAYNE, an individual; YOHAN LOWIE,
an individual; VICKIE DEHART, an
individual; FRANK PANKRATZ, an
individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, FINAL
ORDER AND JUDGMENT**

Date: January 10, 2017
Courtroom 11B

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1157

1 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, Final Order
2 and Judgment was entered in the above-entitled action on the 31st day of January, 2017,
3 a copy of which is attached hereto.

4 Dated: January 31st, 2017.

5 THE JIMMERSON LAW FIRM, P.C.

6
7
8 By:  8387 for

9 James J. Jimmerson, Esq.
10 Nevada State Bar No. 000264
11 415 South 6th Street, Suite 100
12 Las Vegas, Nevada 89101
13 Attorneys for Defendants Fore Stars, Ltd.,
14 180 Land Co., LLC., Seventy Acres, LLC;
15 Yohan Lowie, Vickie DeHart
16 and Frank Pankratz
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THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 • Facsimile (702) 387-1187

CERTIFICATE OF SERVICE


Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 31st day of January, 2017, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT** as indicated below:

X by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

X by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8689 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxxmail.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
Lewis J. Gazda, Esq. GAZDA & TADAYON 2600 S. Rainbow Blvd., #200 Las Vegas, NV 89146 efile@gazdatadayon.com abeltran@gazdatadayon.com kgerwick@gazdatadayon.com lewisjgazda@gmail.com mbdeptula@gazdatadayon.com	Stephen R. Hackett, Esq. SKLAR WILLIAMS, PLLC 410 S. Rampart Blvd., #350 Las Vegas, NV 89145 ekapolnai@klar-law.com shackett@sklar-law.com


An employee of The Jimmerson Law Firm, P.C.



CLERK OF THE COURT

1 FFCL

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 ROBERT N. PECCOLE and NANCY A.
5 PECCOLE, individuals, and Trustees of the
6 ROBERT N. AND NANCY A. PECCOLE
FAMILY TRUST,

7 Plaintiffs,

8 v.

9 PECCOLE NEVADA, CORPORATION, a
10 Nevada Corporation; WILLIAM PECCOLE
11 1982 TRUST; WILLIAM PETER and
12 WANDA PECCOLE FAMILY LIMITED
13 PARTNERSHIP, a Nevada Limited
14 Partnership; WILLIAM PECCOLE and
15 WANDA PECCOLE 1971 TRUST; LISA P.
16 MILLER 1976 TRUST; LAURETTA P.
17 BAYNE 1976 TRUST; LEANN P.
18 GOORJIAN 1976 TRUST; WILLIAM
19 PECCOLE and WANDA PECCOLE 1991
20 TRUST; FORE STARS, LTD., a Nevada
21 Limited Liability Company; 180 LAND CO,
22 LLC, a Nevada Limited Liability Company;
23 SEVENTY ACRES, LLC, a Nevada Limited
24 Liability Company; EHB COMPANIES,
25 LLC, a Nevada Limited Liability Company;
26 THE CITY OF LAS VEGAS; LARRY
27 MILLER, an individual; LISA MILLER, an
28 individual; BRUCE BAYNE, an individual;
LAURETTA P. BAYNE, an individual;
YOHAN LOWIE, an individual; VICKIE
DEHART, an individual; and FRANK
PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, FINAL ORDER AND
JUDGMENT**

**Hearing Date: January 10, 2017
Hearing Time: 8:00 a.m.**

Courtroom 11B

23 This matter coming on for Hearing on the 10th day of January, 2017 on Plaintiffs'
24 *Renewed Motion For Preliminary Injunction, Plaintiffs' Motion For Leave To Amend Amended*
25 *Complaint, Plaintiffs' Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees*
26 *And Costs, Plaintiffs' Motion For Court To Reconsider Order Of Dismissal, and Defendants*
27 *Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,*
28

1 Vickie Dehart and Frank Pankratz's *Oppositions* thereto and *Counter motions for Attorneys'*
2 *Fees and Costs*, and upon *Plaintiffs' Opposition to Counter motion for Attorney's Fees and*
3 *Costs* and Defendants' *Counter motion to Strike Plaintiffs' Rogue and Untimely Opposition filed*
4 *January 5, 2017 and Attorneys' Fees and Costs*, and upon Defendants Fore Stars, Ltd., 180
5 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and
6 Frank Pankratz's *Memorandum of Costs and Disbursements*, and no objection or Motion to
7 Retax having been filed by Plaintiffs in response thereto, ROBERT N. PECCOLE, ESQ. of
8 PECCOLE & PECCOLE, LTD. and LEWIS J. GAZDA, ESQ. of GAZDA & TADAYON
9 appearing on behalf of Plaintiffs, and Plaintiff, ROBERT N. PECCOLE being present, and
10 JAMES J. JIMMERSON, ESQ. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of
11 Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie
12 DeHart and Frank Pankratz, and Defendants Yohan Lowie and Vickie DeHart being present,
13 and STEPHEN R. HACKETT, ESQ. of SKLAR WILLIAMS, PLLC and TODD DAVIS, ESQ.
14 of EHB COMPANIES, LLC appearing on behalf of Defendants EHB Companies, LLC and the
15 Court having reviewed and fully considered the papers and pleadings on file herein, and having
16 heard the lengthy arguments of counsel, and having allowed Plaintiffs, over Defendants'
17 objection, to enter Exhibits 1-13 at the hearing, and having reviewed the record, good cause
18 appearing, issues the following Findings of Fact, Conclusions of Law, Final Orders and
19 Judgment:
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23 FINDINGS OF FACT AND CONCLUSIONS OF LAW

24 Preliminary Findings

25 1. The Court hearing on November 1, 2016 was extensive and lengthy, and this
26 Court does not need a re-argument of those points. At that time, the Court granted both parties
27 great leeway to argue their case and, thereafter, to file any and all additional documents and/or
28

1 exhibits that they wished to file, so long as they did so on or before November 15, 2016. Each
2 party took advantage of said opportunity by submitting additional documents for the Court's
3 review and consideration. The Court has reviewed all submissions by each party. Further, at the
4 Court's extended hearing on January 10, 2017, upon Plaintiffs' and Defendants' post-judgment
5 motions and oppositions, the Court further allowed the parties to make whatever arguments
6 necessary to supplement their respective filings and in support of their respective requests;
7

8 2. On November 30, 2016, this Court, after a full review of the pleadings, exhibits,
9 affidavits, declarations, and record, entered extensive *Findings of Fact, Conclusions of Law,*
10 *Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres*
11 *LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5)*
12 *Motion to Dismiss Plaintiffs' Amended Complaint.* On January 20, 2017, the Court also entered
13 its *Findings Of Fact, Conclusions Of Law, and Judgment Granting Defendants Fore Stars, Ltd.,*
14 *180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart And*
15 *Frank Pankratz's Motion For Attorneys' Fees And Costs* (the "Fee Order"). Both of these
16 Findings of Fact, Conclusions of Law and Orders are hereby incorporated herein by reference, as
17 if set forth in full, and shall become a part of these Final Orders and Judgment;
18

19 3. Following the Notice of Entry of the Court's extensive *Findings of Fact,*
20 *Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co*
21 *LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank*
22 *Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint,* Plaintiffs filed
23 four (4) Motions and one (1) Opposition, on an Order Shortening Time set for hearing on this
24 date, Defendants filed their Oppositions and Countermotions for Attorneys' Fees and Costs,
25 Defendants timely filed their *Memorandum of Costs and Disbursements,* and Plaintiffs chose not
26 to file any Motion to Retax. After this briefing, Plaintiffs, at the January 10, 2017 Court hearing,
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1 presented in excess of an hour and a half of oral argument. The Court allowed the new exhibits
2 to be admitted over the objection of Defendants;

3 4. Following the hearing, the Court has reviewed the papers and pleadings filed by
4 both Plaintiffs and Defendants, along with Exhibits, and the oral argument of Plaintiffs and
5 Defendants, and relevant statutes and caselaw, and based upon the totality of the record, makes
6 the following Findings:
7

8 **Plaintiffs' Renewed Motion for Preliminary Injunction**

9 5. As a preliminary matter, based on the record and the evidence presented to date
10 by both sides, the Court does not believe the golf course land ("GC Land") is subject to the terms
11 and restrictions of the Master Declaration of Covenants, Conditions, Restrictions and Easements
12 of Queensridge ("Master Declaration" or "CC&Rs"), because it was not annexed into, or made
13 part of, the Queensridge Common Interest Community ("Queensridge CIC") which the Master
14 Declaration governs. The Court has repeatedly made, and stands by, this Finding:
15

16 6. The Court does not believe that William and Wanda Peccole, or their entities
17 (Nevada Legacy 14, LLC, the William Peter and Wanda Ruth Peccole Family Limited
18 Partnership, and/or the William Peccole 1982 Trust) intended the GC Land to be a part of the
19 Queensridge CIC, as evidenced by the fact that if that land had been included within that
20 community, then every person in Queensridge would be paying money to be a member of the
21 Badlands Golf Course and paying to maintain it. They were not, and have not. In fact, the
22 Master Declaration at Recital B states that the CIC "may, but is not required to include...a golf
23 course" and Plaintiffs' Purchase documents make clear that residents of Queensridge acquire no
24 golf course rights or membership privileges by their purchase of a house within the Queensridge
25 CIC. *Exhibit C to Defendants' Opposition filed September 2, 2016 at page 1, Recital B, and*
26 *Exhibit L to Defendants' Opposition filed September 2, 2016 at paragraph 4 of Addendum 1;*
27
28

1 7. By Plaintiffs' own exhibit, the enlargement of the Exhibit C Map to the Master
2 Declaration, it shows that the GC Land is not a part of the CC&Rs. The Exhibit C map showed
3 the initial Property *and* the Annexable Property, as confirmed by Section 1.55 of the Master
4 Declaration;

5 8. Therefore, the argument about whether or not the Master Declaration applies to
6 the GC Land does not need to be rehashed, despite Plaintiffs' insistence that it do so. The Court
7 has repeatedly found that it does not. That is the Court's prior ruling, and nothing Plaintiffs
8 have brought forward reasonably convinces the Court otherwise. *See* the Court's November 20,
9 2016 Order, Findings 51-76;

10 9. Regarding the Renewed Motion for Preliminary Injunction, Plaintiffs' Renewed
11 Motion and Exhibits are not persuasive, and the Court has made clear that it will not stop a
12 governmental agency from doing its job. The Court does not believe that intervention is "clearly
13 necessary" or appropriate for this Court. As the Court understands it, if the owner of the GC
14 Land has made an application, the governmental agency would be derelict in their duty if it did
15 not review it, consider it and do all of its necessary work to follow the legal process and make its
16 recommendations and/or decision. The Court will not stop that process;

17 10. Based upon the papers, there is no basis to grant Plaintiffs' Renewed Motion for
18 Preliminary Injunction;

19 11. Plaintiffs' argument that there is a "conspiracy" with the City of Las Vegas
20 "behind closed doors" to get certain things done is inappropriate and without merit;

21 12. It is entirely proper for Defendants to follow the City rules that require the filing
22 of applications if they want to develop their property, or to discuss a development agreement
23 with the City Attorney, or present a plan to the City of Las Vegas Planning Commission or the
24 Las Vegas City Council. That is what they are supposed to do;

1 13. Plaintiffs submitted four (4) photos to demonstrate that the proposed new
2 development under the current application would "ruin his views." However, Plaintiffs'
3 purchase documents make clear that no such "views" or location advantages were guaranteed to
4 Plaintiffs, and that Plaintiffs were on notice through their own exhibit that their existing views
5 could be blocked or impaired by development of adjoining property "whether within the Planned
6 Community or outside of the Planned Community" *Exhibit 1 to Plaintiffs' Reply to Defendants'*
7 *Motion to Dismiss, filed September 9, 2016.*

9 14. In response to the Court's inquiry regarding what Plaintiffs are trying to enjoin,
10 Plaintiffs indicate they desire to enjoin Defendants from resubmitting the four (4) applications
11 that have been withdrawn, without prejudice, but which can be refiled. The Court finds that
12 refiling is exactly what Defendants are supposed to do if they want those applications
13 considered;

15 15. Plaintiffs' argument that Defendants cannot file Applications with the City,
16 because it is a violation of the Master Declaration is without merit. That might be true if the GC
17 Land was part of the CC&R's. As repeatedly stated, this Court does not believe, and the
18 evidence does not suggest, that the GC Land is subject to the CC&Rs, period;

19 16. Defendants' applications were legal and the proper thing to do, and the Court will
20 not stop such filings. Plaintiffs' position is the filing was not allowed under the Master
21 Declaration, and Plaintiffs will not listen to the Court's Findings that the GC Land was not added
22 to the Queensridge CIC by William Peccole or his entities. Plaintiffs' position is vexatious and
23 harassing to the Defendants under the facts of this case;

25 17. Plaintiffs argue that the new applications that were filed were negotiated and
26 discussed with the City Attorneys' Office without the knowledge of the City Council. But,
27 again, that is not improper. The City Council does not get involved until the applications are
28

1 submitted and reviewed by the Planning Staff and City Planning Commission. The Court finds
2 that there is no "conspiracy" there. People are supposed to follow the rules, and the rules say
3 that if you are going to seek a zone change or a variance, you may submit a pre-application for
4 review, have appropriate discussions and negotiations, and then have a public review by the
5 Planning Commission and ultimately the City Council;
6

7 18. The fact that a new application was submitted proposing 61 homes, which is
8 different from the original applications submitted for "The Preserve" which were withdrawn
9 without prejudice, is irrelevant;

10 19. Plaintiffs' argument that Defendants submitted a new application on December
11 30, 2016 to allegedly defeat Plaintiffs' Renewed Motion for Preliminary Injunction, to bring the
12 case back into the administrative process, is not reasonable, nor accurate. There were already
13 three (3) applications which were pending and which had been held in abeyance, and thus were
14 still within the administrative process. The new application changes nothing as far as Plaintiffs'
15 requests for a preliminary injunction;
16

17 20. Plaintiffs' Exhibit 5 demonstrates that notice was provided to the homeowners,
18 which is what Defendants were supposed to do. There was nothing improper in this;
19

20 21. Even if *all* the applications had been withdrawn, Plaintiffs could not "directly
21 interfere with, or in advance restrain, the discretion of an administrative body's exercise of
22 legislative power." *Eagle Thrifty Drugs & Markets, Inc. v. Hunter Lake Parent Teachers Assn. et*
23 *al*, 85 Nev. 162, 451 P.2d 713 (1969) at 165, 451 P.2d at 714. Additionally, "This established
24 principle **may not be avoided by the expedient of directing the injunction to the applicant**
25 **instead of the City Council.**" *Id.* This holding still applies to these facts;
26

27 22. Regardless, the possible submission of zoning and land use applications will not
28 violate any rights or restrictions Plaintiffs claim in their Master Declaration, as "A zoning

1 ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to
2 invalidate restrictive covenants merely because of a zoning change.” *W. Land Co. v.*
3 *Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972). Additionally, UDC 19.00.0809(j)
4 provides: “No provision of this Title is intended to interfere with or abrogate or annul any
5 easement, private covenants, deed restriction or other agreement between private parties....
6 Private covenants or deed restrictions which impose restrictions not covered by this Title, are not
7 implemented nor superseded by this Title.”

9 23. Plaintiffs’ argument that Defendants needed permission to file the applications for
10 the 61 homes is, again, without merit, because Plaintiffs incorrectly assume that the CC&Rs
11 apply to the GC Land, when the Court has already found they do not. Plaintiffs unreasonably
12 refuse to accept this ruling;

14 24. Plaintiffs have no standing under *Gladstone v. Gregory*, 95 Nev. 474, 596 P.2d
15 491 (1979) to enforce the restrictive covenants of the Master Declaration against Defendants on
16 the GC Land. The Court has already, repeatedly, found that the Master Declaration does not
17 apply to the GC Land, and thus Plaintiffs have no standing to enforce it against the Defendants.
18 Defendants did not, and cannot, violate a rule that does not govern the GC Land. The Plaintiffs
19 refuse to hear or accept these findings of the Court;

21 25. Contrary to Plaintiffs’ statement, the Court is not making an “argument” that
22 Plaintiffs’ are required to exhaust their administrative remedies; that is a “decision” on the part
23 of the Court. As the Court stated at the November 1, 2016 hearing, Plaintiffs believe that CC&Rs
24 of the Queensridge CIC cover the GC Land, and Mr. Peccole is so closely involved in it, he
25 refuses to see the Court’s decision coming in as fair or following the law. No matter what
26 decisions are made, Mr. Peccole is so closely involved with the issues, he would never accept
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1 any Court's decision, because if it does not follow his interpretation, in Plaintiffs' mind, the
2 Court is wrong. *November 1, 2016 Hearing Transcript, P. 3, L. 13-2;*

3 26. Defendants have the right to close the golf course and not water it. This action
4 does not impact Plaintiffs' "rights;"

5 27. A preliminary injunction is available when the moving party can demonstrate that
6 the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which
7 compensatory relief is inadequate and that the moving party has a reasonable likelihood of
8 success on the merits. *Boulder Oaks Cmty. Ass'n v. B & J Andrew Enters., LLC*, 125 Nev. 397,
9 403, 215 P.3d 27, 31 (2009); citing NRS 33.010, *University Sys. v. Nevadans for Sound Gov't*,
10 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas Co.*, 115 Nev.
11 129, 142, 978 P.2d 311, 319 (1999). A district court has discretion in deciding whether to grant a
12 preliminary injunction. *Id.* The Plaintiffs have failed to make the requisite showing;
13

14 28. On September 27, 2016, the parties were before the Court on Plaintiffs' first
15 Motion for Preliminary Injunction and, after reading all papers and pleadings on file, the Court
16 heard extensive oral argument lasting nearly two (2) hours from all parties. The Court ultimately
17 concluded that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to
18 demonstrate irreparable injury by the City's consideration of the Applications, and failed to
19 demonstrate a likelihood of success on the merits, amongst other failings;
20

21 29. On September 28, 2016—the day after their Motion for Preliminary Injunction
22 directed at the City of Las Vegas was heard—Plaintiffs ignored the Court's words and filed
23 another Motion for Preliminary Injunction which, substantively, made arguments identical to
24 those made in the original Motion which had just been heard the day before, except that
25 Plaintiffs focused more on the "vested rights" claim, namely, that the applications themselves
26 could not have been filed because they are allegedly prohibited by the Master Declaration. On
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1 October 31, 2016, the Court entered an Order denying that Motion, finding that Plaintiffs failed
2 to meet their burden of proof that they have suffered irreparable harm for which compensatory
3 damages are an inadequate remedy and failed to show a reasonable likelihood of success on the
4 merits, since the Master Declaration of the Queensridge CIC did not apply to land which was not
5 annexed into, nor a part of, the Property (as defined in the Master Declaration). The Court also
6 based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the
7 Applicant as a means of avoiding well-established prohibitions and/or limitations against
8 interfering with or seeking advanced restraint against an administrative body's exercise of
9 legislative power. See *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers*
10 *Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969);

12 30. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first
13 Motion for Preliminary Injunction, without seeking leave from the Court. The Court denied the
14 Motion on October 19, 2016, finding Plaintiffs could not show irreparable harm, because they
15 possess administrative remedies before the City Planning Commission and City Council pursuant
16 to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, which they had failed to exhaust, and
17 because Plaintiffs failed to show a reasonable likelihood of success on the merits at the
18 September 27, 2016 hearing and failed to allege any change of circumstances since that time that
19 would show a reasonable likelihood of success as of October 17, 2016;
20

21 31. At the October 11, 2016 hearing on Defendants City of Las Vegas' Motion to
22 Dismiss Amended Complaint, which was ultimately was granted by Order filed October 19,
23 2016, the Court advised Mr. Peccole, as an individual Plaintiff and counsel for Plaintiffs, that it
24 believed that he was too close to this" and was missing that the Master Declaration would not
25 apply to land which is not part of the Queensridge CIC. *October 11, 2016 Hearing Transcript at*
26 *13:11-13;*
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1 32. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in
2 relation to the Order Denying their first Motion for Preliminary Injunction against the City of
3 Las Vegas, which sought, again, an injunction. That Motion was denied on October 19, 2016,
4 finding that Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c), Plaintiffs
5 failed to show that the object of their potential writ petition will be defeated if their stay is
6 denied, Plaintiffs failed to show that they would suffer irreparable harm or serious injury if the
7 stay is not issued, and Plaintiffs failed to show a likelihood of success on the merits;

9 33. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying
10 their Motion for Preliminary Injunction against the City of Las Vegas, and on October 24, 2016,
11 Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada
12 Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as
13 moot;

14 34. Plaintiffs can assert no harm, let alone "irreparable" harm from the three
15 remaining pending applications, which deal with development of 720 condominiums located a
16 mile from Plaintiffs' home on the Northeast corner of the GC Land;

17 35. Plaintiffs cannot demonstrate a likelihood of success on the merits. Plaintiffs
18 have argued the "merits" of their claims *ad nauseum* and they have not had established any
19 possibility of success;

20 36. The Court has repeatedly found that the claim that Defendants' applications were
21 "illegal" or "violations of the Master Declaration" is without merit, and such claim is being
22 maintained without reasonable grounds;

23 37. Plaintiffs' argument within his Renewed Motion is just a rehash of his prior
24 arguments that Lot 10 was "part of" the "Property," (as defined in the Master Declaration) that
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1 the flood drainage easements along the golf course are not included in the "not a part" language,
2 and that he has "vested rights." These arguments have already been addressed repeatedly;

3 38. In its *Findings of Fact, Conclusions of Law and Order Granting Defendants*
4 *Motion to Dismiss*, filed November 30, 2016, the Court detailed its analysis of the Master
5 Declaration, the Declarations of Annexation, Lot 10, and the other documents of public record,
6 and made its Findings that the Plaintiffs were not guaranteed any golf course views or access,
7 and that the adjoining GC Land was not governed by the Master Declaration. Those Findings
8 are incorporated herein by reference, as if set forth in full. Specifically Findings No. 51-76 make
9 clear that the GC Land is not a part of and not subject to the Master Declaration of the NRS 116
10 Queensridge CIC;
11

12 39. There is no "new evidence" that changes this basic finding of fact, and Plaintiffs
13 cannot "stop renewal of the 4 applications" or "stop the application" allegedly contemplated for
14 property merely adjacent to Plaintiffs' Lot and which is not within the Queensridge CIC;
15

16 40. Since Plaintiffs were on notice of this undeniable fact on September 2, 2016, yet
17 persisted in filing Motion after Motion to try and "enjoin" Defendants, that is exactly why this
18 Court awarded Defendants \$82,718.50 relating to the second Motion for Preliminary Injunction,
19 the Motion for Rehearing and the Motion for Stay (Injunction), and why this Court awards
20 additional attorneys' fees and costs for being forced to oppose a Renewed Motion for
21 Preliminary Injunction and these other Motions now;
22

23 41. The alleged "new" information cited by Plaintiffs--the withdrawal of four
24 applications without prejudice at the November 16, 2016 City Council meeting--is irrelevant
25 because this Court cannot and will not, in advance, restrain Defendants from submitting
26 applications. Further, the three (3) remaining applications are pending and still in the
27 administrative process;
28

1 42. Zoning is a matter properly within the province of the legislature and that the
2 judiciary should not interfere with zoning decisions, especially before they are even final. *See,*
3 *e.g., McKenzie v. Shelly*, 77 Nev. 237, 362 P.2d 268 (1961) (judiciary must not interfere with
4 board's determination to recognize desirability of commercial growth within a zoning district);
5 *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not
6 interfere with the zoning power unless clearly necessary); *Forman v. Eagle Thrifty Drugs and*
7 *Markets*, 89 Nev. 533, 516 P.2d 1234 (1973) (statutes guide the zoning process and the means of
8 implementation until amended, repealed, referred or changed through initiative). Court
9 intervention is not "clearly necessary" in this instance;

11 43. Plaintiffs have admitted to the Supreme Court that their duplicative Motion for
12 Preliminary Injunction filed on September 28, 2016 was without merit and unsupported by the
13 law. In their *Response to Motion to Amend Caption and Joinder and Response to the Motion to*
14 *Dismiss Appeal of Order Granting the City of Las Vegas Motion to Dismiss Amended Complaint*,
15 filed November 10, 2016, Plaintiff's state: "[T]he case of *Eagle Thrifty Drugs & Market, Inc. v.*
16 *Hunter Lake Parent Teachers Association*, 85 Nev. 162 (1969) **would not allow directing of a**
17 **Preliminary Injunction against any party but the City Council.** *Fore Stars, Ltd.*, 180 Land
18 Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB
19 Companies, LLC **could not be made parties to the Preliminary Injunction because only the**
20 **City was appropriate under *Eagle Thrifty*.**" (Emphasis added.) Yet Plaintiffs have now filed a
21 "Renewed" Motion for Preliminary Injunction;

24 44. Procedurally, Plaintiffs' Renewed Motion is improper because "No motions once
25 heard and disposed of may be *renewed* in the same cause, nor may the same matters therein
26 embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of
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1 such motion to the adverse parties.” EDCR 2.24 (*Emphasis added.*) This is the second time the
2 Plaintiffs have failed to seek leave of Court before filing such a Motion;

3 45. After hearing all of the arguments of Plaintiffs and Defendants, Plaintiffs have
4 failed to meet their burden for a preliminary injunction against Defendants, and Plaintiffs have
5 no standing to do so;
6

7 **Plaintiffs’ Motion for Leave to Amend Amended Complaint**

8 46. Plaintiffs have already been permitted to amend their Complaint, and did so on
9 August 4, 2016;

10 47. Plaintiffs deleted the Declaratory Relief cause of action, but maintained a cause of
11 action for injunctive relief even after Plaintiffs were advised that the same could not be
12 sustained, Plaintiffs withdrew the Breach of Contract cause of action and replaced it with a cause
13 of action entitled “Violations of Plaintiffs’ Vested Rights,” and Plaintiffs’ Fraud cause of action
14 remained, for all intents and purposes, unchanged;
15

16 48. Plaintiffs were given the opportunity to present a proposed Amended Complaint
17 and failed to do so. There is no Amended Complaint which supports the new alter ego theory
18 Plaintiffs suggest;
19

20 49. After the November 1, 2016 hearing on the Motion to Dismiss, the Court
21 provided an opportunity for Plaintiffs (or Defendants) to file any additional documents or
22 requests, including a request to Amend the Complaint, with a deadline of November 15, 2016.
23 Plaintiffs’ Motion to Amend Amended Complaint was not filed within that deadline;

24 50. EDCR 2.30 requires a copy of a proposed amended pleading to be attached to any
25 motion to amend the pleading. Plaintiffs never attached a proposed amended pleading, in
26 violation of this Rule. This makes it impossible for the Court to measure what claims Plaintiffs
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1 propose, other than those outlined in their briefs, all of which are based on a failed and untrue
2 argument;

3 51. Plaintiffs continue to attempt to enjoin the City from completing its legislative
4 function, or to in advance, restrain Defendants from submitting applications for consideration.
5 This Court has repeatedly Ordered that it will not do that;
6

7 52. The Court considered Plaintiffs' oral request from November 1, 2016 to amend
8 the Amended Complaint, and made a Finding in its November 30, 2016 Order of Dismissal, at
9 paragraph 90, "Although ordinarily leave to amend the Complaint should be freely given when
10 justice requires, Plaintiffs have already amended their Complaint once and have failed to state a
11 claim against the Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be
12 permitted to amend their Complaint a second time in relation to their claims against Defendants
13 as the attempt to amend the Complaint would be futile;"
14

15 53. Further amending the Complaint, under the theories proposed by Plaintiffs,
16 remains futile. The Fraud cause of action does not state a claim upon which relief can be
17 granted, as the alleged "fraud" lay in the premise that there was a representation that the golf
18 course would remain a golf course in perpetuity. Again, Plaintiffs' own purchase documents
19 evidence that no such guarantee was made and that Plaintiffs were advised that future
20 development to the adjoining property could occur, and could impair their views or lot
21 advantages. The alleged representation is incompetent (*See NRCP 56(e)*), fails woefully for lack
22 of particularity as required by NRCP 9(b), and appears disingenuous under the facts and law of
23 this case;
24

25 54. The Fraud claim also fails because Plaintiffs voluntarily dismissed the
26 Defendants—all his relatives or their entities--who allegedly made the fraudulent representations
27 that the golf course would remain in perpetuity;
28

1 55. While it is true that Defendants argued that Plaintiffs did not plead their Fraud
2 allegations with particularity as required by NRCP 9(b), Defendants also vociferously argued in
3 their Motion to Dismiss that Plaintiffs failed to state a Fraud claim upon which relief could be
4 granted because their allegations failed to meet the basic and fundamental elements of Fraud: (1)
5 a false representation of fact; (2) made to the plaintiff; (3) with knowledge or belief that the
6 representation was false or without a sufficient basis; (4) intending to induce reliance; (5)
7 creating justifiable reliance by the plaintiff; (6) resulting in damages. *Blanchard v. Blanchard*,
8 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992). The Court concurred;
9

10 56. To this day, Plaintiffs failed to identify any actual false or misleading statements
11 made by Defendants to them, and that alone is fatal to their claim. Defendants' zoning and land
12 use applications to the City to proceed with residential development upon the GC Land does not
13 constitute fraudulent conduct by Defendants because third-parties allegedly represented at some
14 (unknown) time roughly 16 years earlier that the golf course would never be replaced with
15 residential development;
16

17 57. Plaintiffs do not and cannot claim that they justifiably relied on any supposed
18 misrepresentation by any of the Defendants or that they suffered damages as a result of the
19 Defendants' conduct because such justifiable reliance requires a causal connection between the
20 inducement and the plaintiff's act or failure to act resulting in the plaintiff's detriment;
21

22 58. Plaintiffs have not, and cannot claim that any representations on the part of
23 Defendants lead them to enter into their "Purchase Agreement" in April 2000, over 14 years
24 prior to any alleged representations or conduct by any of the Defendants. The Court was left to
25 wonder if any of these failings could be corrected in a second amended complaint, as Plaintiffs
26 failed to proffer a proposed second amended complaint as is required under EDCR 2.30. As
27 such, Plaintiffs' Motion to Amend Complaint was doomed from the outset;
28

1 59. All of Plaintiffs' claims are based on the theory that Plaintiffs have "vested
2 rights" over the Defendants and the GC Land. The request for injunctive relief is based on the
3 assertion of alleged "rights" under the Master Declaration;

4 60. The Court has already found, both of Plaintiffs' legal theories (1) the zoning
5 aspect and exhaustion of administrative remedies, and (2) the alleged breach of the restrictive
6 covenants under a Master Declaration "contract," are maintained without reasonable ground.
7 Defendants are not parties to the "contract" alleged to have been breached, and Court
8 intervention is not "clearly necessary" as an exception to the bar to interfere in an administrative
9 process;
10

11 61. The zoning on the GC Land dictates its use and Defendants rights to develop their
12 land;
13

14 62. Plaintiffs' reargument of the "Lot 10" claim, which Plaintiffs have argued before,
15 which this Court asked Plaintiffs not to rehash, is without merit. Drainage easements upon the
16 GC Land in favor of the City of Las Vegas do not make the GC Land a part of the Queensridge
17 CIC. The Queensridge CIC would have to be a party to the drainage easements in order to have
18 rights in the easements. Plaintiffs presented no evidence to establish that the Queensridge CIC is
19 a party to any drainage easements upon the GC Land;
20

21 63. Plaintiffs do not represent FEMA or the government, who are the authorities
22 having jurisdiction to set the regulations regarding "flood drainage." Plaintiffs do not have any
23 agreements with Defendants regarding flood drainage and nor any jurisdiction nor standing to
24 claim or assert "drainage" rights. Any claims under flood zones or drainage easements would be
25 asserted by the governmental authority having jurisdiction;

26 64. Notwithstanding any alleged "open space" land use designation, the zoning on the
27 GC Land, as supported by the evidence, is R-PD7. Plaintiffs latest argument suggests the land is
28

1 "zoned" as "open space" and that they have some right to prevent any modification of that
2 alleged designation under NRS 278A. But the Master Declaration indicates that Queensridge is a
3 NRS Chapter 116 community, and NRS 116.1201(4) specifically and unambiguously provides,
4 "The provisions of chapters 117 and 278A of NRS do not apply to common-interest
5 communities." The Plaintiffs do not have standing to even make any claim under NRS 278A;
6

7 65. There is no evidence of any recordation of any of the GC Land, by deed, lien, or
8 by any other exception to title, that would remotely suggest that the GC Land is within a planned
9 unit development, or is subject to NRS 278A, or that Queensridge is governed by NRS 278A.
10 Rather, Queensridge is governed by NRS 116;

11 66. NRS 278.349(3)(e) states "The governing body, or planning commission if it is
12 authorized to take final action on a tentative map, shall consider: Conformity with the zoning
13 ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the
14 master plan, the zoning ordinance takes precedence;"
15

16 67. The Plaintiffs do not own the land which allegedly contains the drainage pointed
17 out in Exhibits 11 and 12. It is Defendants' responsibility to deal with it with the government.
18 Tivoli Village is an example of where drainage means were changed and drainage challenges
19 were addressed by the developer. Plaintiffs have no standing to enforce the maintenance of a
20 drainage easement to which they are not a party;
21

22 68. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration
23 does not apply to the land proposed to be developed by the Defendants, as it states on page 2,
24 paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by
25 including a Restrictive Covenant that Badlands must remain a golf course as he and other agents
26 of the developer had represented to homeowners." The Amended Complaint reiterated at page
27 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out any
28

1 restrictions that the golf course must remain a golf course.” *Id.* Thus, Plaintiffs proceeded in
2 prosecuting this case and attempting to enjoin development with full knowledge that there were
3 no applicable restrictions, conditions and covenants from the Master Declaration which applied
4 to the GC Land, and there were no restrictive covenants in place relating to the sale which
5 prevented Defendants from doing so;
6

7 69. Plaintiffs improperly assert that the Motion to Dismiss relied primarily upon the
8 “ripeness” doctrine and the allegation that the Fraud Cause of Action was not pled with
9 particularity. But this is not true. The Motion to Dismiss was granted because Plaintiffs do not
10 possess the “vested rights” they assert because the GC Land is not part of Queensridge CIC and
11 not subject to its CC&Rs. The Fraud claim failed because Plaintiffs could not state the elements
12 of a Fraud Cause of Action. They never had any conversations with any of the Defendants prior
13 to purchasing their Lot and therefore, no fraud could have been committed by Defendants against
14 Plaintiffs in relation to their home/lot purchase because Defendants never made any knowingly
15 false representations to Plaintiffs upon which Plaintiffs relied to their detriment, nor as stated by
16 Plaintiff to the Court did Defendants ever make any representations to Plaintiffs at all. Plaintiffs’
17 were denied an opportunity to amend their Complaint a second time because doing so would be
18 futile given the fact that they have failed to state claims and cannot state claims for “vested
19 rights” or Fraud;
20

21 70. None of Plaintiffs’ alleged “changed circumstances”—neither the withdrawal of
22 applications, the abatement of others, or the introduction of new ones, changes the fundamental
23 fact that Plaintiffs have no standing to enforce the Master Declaration against the GC Land, or
24 any other land which was not annexed into the Queensridge CIC. It really is that simple;
25

26 71. Likewise, the claim that because applications were withdrawn by Defendants at
27 the City Council Meeting and the rest were held in abeyance, that the *Eagle Thrifty* case no
28

1 longer applies and no longer prevents a preliminary injunction to enjoin Defendants from
2 submitting future Applications, fails as a matter of law. Plaintiffs' Motion to Amend remains
3 improper under *Eagle Thrifty* because Plaintiffs are effectively seeking to restrain the City of Las
4 Vegas by requesting an injunction against the Applicant, and they are improperly seeking to
5 restrain the City from hearing future zoning and development applications from Defendants.
6 *Eagle Thrifty* neither allows such advance restraint, nor does it condone such advance restraint
7 by directing a preliminary injunction against the Applicant;

9 72. Amending the Complaint based on the theories argued by Plaintiffs would be
10 futile, and Plaintiffs continue to fail to state a claim upon which relief can be granted;

11 73. Leave to amend should be freely granted "when justice so requires," but in this
12 case, justice requires the Motion for Leave to Amend be denied. It would be futile. Additionally,
13 Plaintiffs have noticeably failed to submit any proposed second amended Complaint at any time.
14 See EDCR 2.30. The Court is compelled to deny Plaintiffs' Motion to Amend;

16 ///

17 ///

18 **Plaintiffs' Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and**
19 **Costs**

20 74. Plaintiffs are not entitled to an Evidentiary Hearing on the Motion for Attorneys'
21 Fees and Costs. NRS 18.010(3) states "in awarding attorney's fees, the court may pronounce its
22 decision on the fees at the conclusion of the trial or special proceeding without written motion
23 and with or without presentation of additional evidence."

24 75. Plaintiffs' seek an Evidentiary Hearing on the "Order for Rule 11 Fees and
25 Costs," but the request for sanctions and additional attorneys' fees pursuant to NRCP 11 was
26 denied by this Court. Plaintiffs do not seek reconsideration of that denial, and no Evidentiary
27 Hearing is warranted;
28

1 76. The Motion itself is procedurally defective. It contains only bare citations to
2 statutes and rules, and it contains no Affidavit as required by EDCR 2.21 and NRCP 56(e);

3 77. NRCP 60(b) does not allow for Evidentiary Hearing to give Plaintiffs
4 "opportunity to present evidence as to why they filed a Motion for Preliminary Injunction against
5 Fore Stars and why that was appropriate." It allows the setting aside of a default judgment due to
6 mistakes, inadvertence, excusable neglect, newly discovered evidence or fraud. With respect to
7 the Motion for Attorneys' Fees and Costs and Order granting the same, this is not even alleged;

8 78. Plaintiffs must establish "adequate cause" for an Evidentiary Hearing. *Rooney v.*
9 *Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993). Adequate cause "requires
10 something more than allegations which, if proven, might permit inferences sufficient to establish
11 grounds....." "The moving party must present a prima facie case...showing that (1) the facts
12 alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not
13 merely cumulative or impeaching." *Id.*

14 79. Plaintiffs have failed to establish adequate cause for an Evidentiary Hearing.
15 Plaintiffs have not even submitted a supporting Affidavit alleging any facts whatsoever;

16 80. "Only in very rare instances in which new issues of fact or law are raised
17 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
18 granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76). "Rehearings are
19 not granted as a matter of right, and are not allowed for the purpose of reargument." *Geller v.*
20 *McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947) (citation omitted). Points or contentions
21 available before but not raised in the original hearing cannot be maintained or considered on
22 rehearing. See *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450
23 (1996);
24
25
26
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1 81. There is no basis for an Evidentiary Hearing under NRCP 59(a). There were no
2 irregularities in the proceedings of the court, or any order of the court, or abuse of discretion
3 whereby either party was prevented from having a fair trial. There was no misconduct of the
4 court or of the prevailing party. There was no accident or surprise which ordinary prudence
5 could not have guarded against. There was no newly discovered evidence material for the party
6 making the motion which the party could not, with reasonable diligence, have discovered or
7 produced at trial. There were no excessive damages being given under the influence of passion
8 of prejudice, and there were no errors in law occurring at the trial and objected to by the party
9 making the motion. If anything, the fact that Defendants were awarded 56% of their incurred
10 attorneys' fees and costs relating to the preliminary injunction issues, and denied additional
11 sanctions pursuant to NRCP 11, demonstrates this Court's evenhandedness and fairness to the
12 Plaintiffs;
13

14 82. Plaintiffs are not automatically entitled to an Evidentiary Hearing on the issue of
15 attorneys' fees and costs, and the decision to forego an evidentiary hearing does not deprive a
16 party of due process rights if the party has notice and an opportunity to be heard. *Lim v. Willick*
17 *Law Grp.*, No. 61253, 2014 WL 1006728, at *1 (Nev. Mar. 13, 2014). *See, also, Jones v. Jones*,
18 *22016 WL 3856487, Case No. 66632 (2016)*;
19

20 83. In this case, Plaintiffs had notice and the opportunity to be heard, and already
21 presented to the Court the evidence they would seek to present about why they filed a Motion for
22 a Preliminary Injunction against these Defendants, having argued at the September 27, 2016
23 Hearing, the October 11, 2016 Hearing, the November 1, 2016 Hearing and the January 10, 2017
24 hearing that they had "vested rights to enforce "restrictive covenants" against Defendants under
25 the *Gladstone v. Gregory* case. Those arguments fail;
26
27
28

1 84. The Court also gave Plaintiffs the opportunity to submit any further evidence they
2 wanted, with a deadline of November 15, 2016. The Court considered all evidence timely
3 submitted;

4 85. Plaintiffs filed on November 8, 2016 Supplemental Exhibits with their argument
5 regarding the "Amended Master Declaration" and on November 18, 2016 "Additional
6 Information" including description of the City Council Meeting. Plaintiffs also filed on
7 November 17, 2016, their Response to the Motion for Attorneys' Fees and Costs;

8 86. On its face, the facts claimed in Plaintiffs' Motion, unsupported by Affidavit,
9 regarding why he had to file the first Motion for Preliminary Injunction, second Motion for
10 Preliminary Injunction on September 28, 2016, the Motion for Stay Pending Appeal and the
11 Motion for Rehearing, which Motions were the basis of the award of attorneys' fees and costs,
12 are unbelievable. Plaintiffs claim that the City was dismissed as a Defendant and the "only
13 remedy" was to file directly against the Defendants. But Plaintiffs filed their Motion for
14 Preliminary Injunction against Fore Stars the day after the hearing on their first Motion for
15 Preliminary Injunction—against Fore Stars the day after the hearing on their first Motion for
16 Preliminary Injunction—even before the decision on their first Motion was issued detailing the
17 denial of the Motion and the analysis of the *Eagle Thrifty* case. The Court had not even *heard*,
18 let alone granted, City's Motion to Dismiss at that time;

19 87. Plaintiffs' justification that the administrative process came to an end when four
20 applications were withdrawn without prejudice, three were held in abeyance, and "a
21 contemplated additional violation of the CC&R's appeared on the record" is also without merit.
22 Aside from the fact that Plaintiffs are not permitted to restrain, in advance, the filing of
23 applications or the City's consideration of them, factually, as of September 28, 2016, the
24 Planning Commission Meeting had not even occurred yet (let alone the City Council Meeting).
25 The administrative process was still ongoing;

1 88. The claim that the *Gladstone* case was applicable directly against restrictive
2 covenant violators after the administrative process ended and Defendants were “no longer
3 protected by Eagle Thrifty” is, again, belied by the fact that the CC&R’s do not apply to, and
4 cannot be enforced against, land that was not annexed into the Queensridge CIC. *Gladstone*
5 does not apply. Plaintiffs’ argument is not convincing;
6

7 89. Plaintiffs’ arguments regarding how “frivolous” is defined by NRCP 11 is
8 irrelevant because those additional sanctions against Plaintiffs’ counsel were denied as moot, in
9 light of the Court awarding Defendants attorneys’ fees and costs under NRS 18.010(2)(b) and
10 EDCR 7.60;

11 90. Defendants’ Motion sought an award of \$147,216.85 in attorneys’ fees and costs,
12 dollar for dollar, incurred in having to defeat Plaintiffs’ repeated efforts to obtain a preliminary
13 injunction against Defendants, which multiplied the proceedings unnecessarily. After
14 considering Defendants’ Motion and Supplement and Plaintiffs’ Response, the Court awarded
15 Defendants \$82,718.50. The attorneys’ fees and costs awarded related only to those efforts to
16 obtain a preliminary injunction through the end of October, 2016, and did not include or consider
17 the additional attorneys’ fees, or the additional costs, which were incurred by Defendants relating
18 to the Motions to Dismiss, or the new filings after October, 2016;
19

20 91. NRS 18.010, EDCR 7.60 and NRCP 11 are distinct rules and statutes, and the
21 Court can apply any of the rules and statutes which are applicable;
22

23 92. NRS § 18.010 makes allowance for attorney’s fees when the Court finds that the
24 claim of the opposing party was brought without reasonable ground or to harass the prevailing
25 party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, “both baseless and
26 made without a reasonable competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d
27 560 (1993). Sanctions or attorneys’ fees may be awarded where the pleading fails to be well
28

1 grounded in fact and warranted by existing law and where the attorney fails to make a reasonable
2 competent inquiry. *Id.* The decision to award attorney fees against a party for pursuing a claim
3 without reasonable ground is within the district court's sound discretion and will not be
4 overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 130
5 P.3d 1280 (Nev. 2006).
6

7 93. NRS 18.010 (2) provides that: "The court shall liberally construe the provisions
8 of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent
9 of the Legislature that the court award attorney's fees pursuant to this paragraph and impose
10 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
11 situations to punish for and deter frivolous or vexatious claims and defenses because such claims
12 and defenses overburden limited judicial resources, hinder the timely resolution of meritorious
13 claims and increase the costs of engaging in business and providing professional services to the
14 public."
15

16 94. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party
17 without just cause: (1) Presents to the court a motion or an opposition to a motion which is
18 obviously frivolous, unnecessary or unwarranted, (3) So multiplies the proceedings in a case as
19 to increase costs unreasonably and vexatiously, and (4) Fails or refuses to comply with these
20 rules;
21

22 95. An award of attorney's fees and costs in this case was appropriate, as Plaintiffs'
23 claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry
24 before proceeding with their first Motion for Preliminary Injunction after receipt of the
25 Opposition, and in filing their second Preliminary Injunction Motion, their Motion for Rehearing
26 or their Motion for Stay Pending Appeal, particularly in light of the hearing the day prior.
27
28

1 Plaintiffs' Motions were the epitome of a pleading that "fails to be well grounded in fact and
2 warranted by existing law and where the attorney fails to make a reasonable competent inquiry;"

3 96. There was absolutely no competent evidence to support the contentions in
4 Plaintiffs' Motions--neither the purported "facts" they asserted, nor the "irreparable harm" that
5 they alleged would occur if their Motions were denied. There was no Affidavit or Declaration
6 filed supporting those alleged facts, and Plaintiffs even changed the facts of this case to suit their
7 needs by transferring title to their property mid-litigation after the Opposition to Motion for
8 Preliminary Injunction had been filed by Defendants. Plaintiffs were blindly asserting "vested
9 rights" which they had no right to assert against Defendants;
10

11 97. Plaintiffs certainly did not, and cannot present any set of circumstances under
12 which they would have had a good faith basis in law or fact to assert their Motion for
13 Preliminary Injunction against the non-Applicant Defendants whose names do not appear on the
14 Applications. The non-Applicant Defendants had nothing to do with the Applications, and
15 Plaintiffs maintenance of the Motion against the non-Applicant Defendants, named personally,
16 served no purpose but to harass and annoy and cause them to incur unnecessary fees and costs;
17

18 98. On October 21, 2016, Defendants filed their Motion for Attorneys' Fees and
19 Costs, seeking an award of attorneys' fees and costs pursuant to EDCR 7.60 and NRS 18.070,
20 which was set to be heard in Chambers on November 21, 2016. Plaintiffs filed a response on
21 November 17, 2016, which was considered by the Court;
22

23 99. Defendants have been forced to incur significant attorneys' fees and costs to
24 respond to the repetitive filings of Plaintiffs. Plaintiffs' Motions are without merit and
25 unnecessarily duplicative, and made a repetitive advancement of arguments that were without
26 merit, even after the Court expressly warned Plaintiffs that they were "too close" to the dispute;
27
28

1 100. Plaintiff, Robert N. Peccole, Esq., by being so personally close to the case, is so
2 blinded by his personal feelings that he is ignoring the key issues central to the causes of action
3 and failing to recognize that continuing to pursue flawed claims for relief, and rehashing the
4 arguments again and again, following the date of the Defendants' September 2, 2016 Opposition,
5 is improper and unnecessarily harms Defendants;
6

7 101. In making an award of attorneys' fees and costs, the Court shall consider the
8 quality of the advocate, the character of the work to be done, the work actually performed, and
9 the result. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Defendants
10 submitted, pursuant to the *Brunzell* case, affidavits regarding attorney's fees and costs they
11 requested. The Court, in its separate Order of January 20, 2017, has analyzed and found, and
12 now reaffirms, that counsel meets the *Brunzell* factors, that the costs incurred were reasonable
13 and actually incurred pursuant to *Cadle Co. v. Woods & Erickson LLP*, 131 Nev. Adv. Op. 15
14 (Mar. 26, 2015), and outlined the reasonableness and necessity of the attorneys' fees and costs
15 incurred, to which there has been no challenge by Plaintiffs;
16

17 102. Plaintiffs were on notice that their position was maintained without reasonable
18 ground after the September 2, 2016 filing of Defendants' Opposition to the first Motion for
19 Preliminary Injunction. The voluminous documentation attached thereto made clear that the
20 Master Declaration does not apply to Defendants' land which was not annexed into the
21 Queensridge CIC. Thus, relating to the preliminary injunction issues, the sums incurred after
22 September 2, 2016 were reasonable and necessary, as Plaintiffs continued to maintain their
23 frivolous position and filed multiple, repetitive documents which required response;
24

25 103. Defendants are the prevailing party when it comes to Defendants' Motions for
26 Preliminary Injunction, Motion for Stay Pending Appeal and Motion for Rehearing filed in
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1 September and October, and Plaintiffs' position was maintained without reasonable ground or to
2 harass the prevailing party. *NRS 18.010*;

3 104. Plaintiffs presented to the court motions which were, or became, frivolous,
4 unnecessary or unwarranted, in bad faith, and which so multiplied the proceedings in a case as to
5 increase costs unreasonably and vexatiously, and failed to follow the rules of the Court. *EDCR*
6 *7.60*;

7
8 105. Given these facts, there is no basis to hold an Evidentiary Hearing with respect to
9 the Order granting Defendants' attorneys' fees and costs, and the Order should stand;

10 **Plaintiffs' Opposition to Countermotion for Fees and Costs**

11 106. This Opposition to "Countermotion," substantively, does not address the pending
12 Countermotions for attorneys' fees and costs, but rather the Motion for Attorneys' Fees and
13 Costs which was filed October 21, 2016 and granted November 21, 2016;

14 107. The Opposition to that Motion was required to be filed on or before November
15 10, 2016. It was not filed until January 7, 2017;

16 108. Separately, Plaintiffs filed a "response" to the Motion for Attorneys' Fees and
17 Costs, and Supplement thereto, on November 17, 2016. As indicated in the Court's November
18 21, 2016 Minute Order, as confirmed by and incorporated into the Fee Order filed January 20,
19 2017, that Response was reviewed and considered;

20 109. Plaintiffs did not attach any Affidavit as required by *EDCR 2.21* to attack the
21 reasonableness or the attorneys' fees and costs incurred, the necessity of the attorneys' fees and
22 costs, or the accuracy of the attorneys' fees and costs incurred;

23 110. There is sufficient basis to strike this untimely Opposition pursuant to *EDCR 2.21*
24 and *NRCP 56(e)* and the same can be construed as an admission that the Motion was meritorious
25 and should be granted;
26
27
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1 111. On the merits, Plaintiffs' "assumptions" that "attorneys' fees and costs are being
2 requested based upon the Motion to Dismiss" and that "sanctions under Rule 11 for filing a
3 Motion for Preliminary Injunction against Fore Stars Defendants" is incorrect. As made clear by
4 the itemized billing statements submitted by Defendants, none of the attorneys' fees and costs
5 requested within that Motion related to the Motion to Dismiss. Further, this is also clear because
6 at the time the Motion for Attorneys' Fees and Costs was filed, the hearings on the City's Motion
7 to Dismiss, or the remaining Defendants' Motion to Dismiss, had not even occurred;

9 112. Plaintiffs erroneously claim that Defendants cited "no statutes or written contracts
10 that would allow for attorneys' fees and costs." Defendants clearly cited to NRS 18.010 and
11 EDCR 7.60;

12 113. The argument that if this Court declines to sanction Plaintiffs' counsel pursuant to
13 NRCP 11, they cannot grant attorneys' fees and costs pursuant to NRS 18.010 and EDCR 7.60 is
14 nonsensical. These are district statutes with distinct bases for awarding fees;

15 114. This Court was gracious to Plaintiffs' counsel in exercising its sound discretion in
16 denying the Rule 11 request, and had solid ground for awarding EDCR 7.60 sanctions and
17 attorneys' fees under NRS 18.010 under the facts;

18 115. Since Motion for Attorneys' Fees and Costs, and Supplement, was not relating to
19 the Motion to Dismiss, the arguments regarding the frivolousness of the Amended Complaint
20 need not be addressed within this section;

21 116. The argument that Plaintiffs are entitled to fees because they "are the prevailing
22 party under the Rule 11 Motion" fails. Defendants prevailed on every Motion. That the Court
23 declined to impose additional sanctions against Plaintiffs' counsel does not make Plaintiffs the
24 "prevailing party," as the Motion for Attorneys' Fees and Costs was granted. Moreover,
25 Plaintiffs have not properly sought Rule 11 sanctions against Defendants;
26
27
28

1 117. There is no statute or rule that allows for the filing of an Opposition after a
2 Motion has been granted. The Opposition was improper and should not have been belatedly
3 filed. It compelled Defendants to further respond, causing Defendants to incur further
4 unnecessary attorneys' fees and costs;

5 **Plaintiffs' Motion for Court to Reconsider Order of Dismissal**

6
7 118. Plaintiffs seek reconsideration pursuant to NRCP 60(b) based on the alleged
8 "misrepresentation" of the Defendants regarding the Amended Master Declaration at the
9 November 1, 2016 Hearing;

10 119. No such "misrepresentation" occurred. The record reflects that Mr. Jimmerson
11 was reading correctly from the first page of the Amended Master Declaration, which states it was
12 "effective October, 2000." The Court understood that to be the effective date and not necessarily
13 the date it was signed or recorded. Defendants also provided the Supplemental Exhibit R which
14 evidenced that the Amended Master Declaration was recorded on August 16, 2002, and
15 reiterated it was "effective October, 2000," as Defendants' counsel accurately stated. This
16 exhibit also negated Plaintiffs' earlier contention that the Amended Master Declaration had not
17 been recorded at all. Therefore, not only was there no misrepresentation, there was transparency
18 by the Defendants in open Court;

19
20 120. The Amended Master Declaration did not "take out" the 27-hole golf course from
21 the definition of "Property," as Plaintiffs erroneously now allege. More accurately, it excluded
22 the entire 27-hole golf course from the possible Annexable Property. This means that not only
23 was it never annexed, and therefore never made part of the Queensridge CIC, but it was no
24 longer even *eligible* to be annexed in the future, and thus could never become part of the
25 Queensridge CIC;
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1 121. It is significant, however, that there are two (2) recorded documents, the Master
2 Declaration and the Amended Master Declaration, which both make clear in Recital A that the
3 GC Land, since it was not annexed, is not a part of the Queensridge CIC;

4 122. Whether the Amended Master Declaration, effective October, 2000, was recorded
5 in October, 2000, March, 2001 or August, 2002, does not matter, because, as Defendants pointed
6 out at the hearing, Mr. Peccole's July 2000 Deed indicated it was "subject to the CC&Rs that
7 were recorded at the time and as may be amended in the future" and that the "CC&Rs which he
8 knew were going to be amended and subject to being amended, were amended;"

9 123. The only effect of the Amended Master Declaration's language that the "entire
10 27-hole golf course is not a part of the Property or the Annexable Property" instead of just the
11 "18 holes," is that the 9 holes which were never annexed were no longer even annexable.
12 Effectively, William and Wanda Peccole and their entities took that lot off the table and made
13 clear that this lot would not and could not later become part of the Queensridge CIC;

14 124. None of that means that the 9-holes was a part of the "Property" before—as this
15 Court clearly found, it was not. The 1996 Master Declaration makes clear that the 9-holes was
16 only Annexable Property, and it could only become "Property" by recording a Declaration of
17 Annexation. This never occurred;

18 125. The real relevance of the fact that the Amended Master Declaration was recorded,
19 in the context of the Motion to Dismiss, is that, pursuant to *Brelint v. Preferred Equities*, 109
20 Nev. 842, the Court is permitted to take judicial notice of, and take into consideration, recorded
21 documents in granting or denying a motion to dismiss;

22 126. Plaintiffs ignore the fact that notwithstanding the fact that the Amended Master
23 Declaration, effective October, 2000, was not recorded until August, 2002, Plaintiffs transferred
24 Deed to their lot twice, once in 2013 into their Trust, and again in September, 2016, both times
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1 after the Amended Master Declaration (which they were, under their Deeds, subject to) was
2 recorded and both times with notice of the development rights and zoning rights associated with
3 the adjacent GC Land;

4 127. Plaintiffs' argument that the Amended Master Declaration is "invalid" because it
5 "did not contain the certification and signatures of the Association President and Secretary" is
6 irrelevant, since the frivolousness of Plaintiffs' position is based on the original Master
7 Declaration and not the amendment. But this Court notes that the Declarations of Annexation
8 which are recorded do not contain such signatures of the Association President and Secretary
9 either. Hypothetically, if that renders such Declarations of Annexation "invalid," then Parcel 19,
10 where Plaintiffs' home sits, was never properly "annexed" into the Queensridge CIC, and thus
11 Plaintiffs would have no standing to assert the terms of the Master Declaration against anyone,
12 even other members of the Queensridge CIC. This last minute argument is without basis in fact
13 or law;

14 128. A Motion for reconsideration under EDCR 2.24 is only appropriate when
15 "substantially different evidence is subsequently introduced or the decision is clearly erroneous."
16 *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741,
17 941 P.2d 486, 489 (1997). And so motions for reconsideration that present no new evidence or
18 intervening case law are "superfluous," and it is an "abuse of discretion" for a trial court to
19 consider such motions. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76).

20 129. Plaintiffs' request that the Order be reconsidered because it does not consider
21 issues subsequent to the City Council Meeting of November 16, 2016 is also without merit. The
22 Motion to Dismiss was heard on November 1, 2016 and the Court allowed the parties until
23 November 15, 2016 to supplement their filings. Although late filed, Plaintiffs did file
24 "Additional Information to Brief," and their "Renewed Motion for Preliminary Injunction," on
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1 November 18, 2016—before issuance of the *Findings of Fact, Conclusions of Law, Order and*
2 *Judgment* on November 30th --putting the Court on notice of what occurred at the City Council
3 Meeting. However, as found hereinabove, the withdrawal and abeyance of City Council
4 Applications does not matter in relation to the Motion to Dismiss. Plaintiffs did not possess
5 “vested rights” over Defendants’ GC Land before the meeting and they do not possess “vested
6 rights” over it now;
7

8 130. Plaintiffs’ objection to the Findings relating NRS 116, NRS 278, NRS 278A and
9 R-PD7 zoning is also without merit, because those Findings are supported by the Supplements
10 timely filed by Defendants, and those statutes and the zoning issue are all relevant to this case
11 with respect to Defendants’ right to develop their land. This was raised and discussed in the
12 Motion to Dismiss and Opposition to the first Motion for Preliminary Injunction, and properly
13 and timely supplemented. Defendants did specifically and timely submit multiple documents,
14 including the Declaration of City Clerk Luann Holmes to attest to the fact that NRS 278A does
15 not apply to this controversy, and thus it is clear that the GC Land is not part of or within a
16 planned unit development. Plaintiffs do not even possess standing to assert a claim under NRS
17 278A, as they are governed by NRS 116. Further, Defendants’ deeds contain no title exception or
18 reference to NRS 278A, as would be required were NRS 278A to apply, which it does not;
19

20 21. Recital B of the Master Declaration states that Queensridge is a “common interest
22 community pursuant to Chapter 116 of the Nevada Revised Statutes.” Plaintiffs raised issues
23 concerning NRS 278A. While Plaintiffs may not have specifically cited NRS 278A in their
24 Amended Complaint, in paragraph 67, they did claim that “The City of Las Vegas with respect to
25 the Queensridge Master Planned Development required ‘open space’ and ‘flood drainage’ upon
26 the acreage designated as golf course (The Badlands Golf Course).” NRS 278A, entitled
27 “Planned Unit Development,” contains a framework of law on Planned Unit Developments, as
28

1 defined therein, and their 'common open space.' NRS 116.1201(4) states that the provisions of
2 NRS 278A do not apply to NRS 116 common-interest communities like Queensridge. Thus,
3 while Plaintiffs may not have directly mentioned NRS 278A, they did make an allegation
4 invoking its applicability;

5
6 132. Zoning on the subject GC Land is appropriately referenced in the November 30,
7 2016 *Findings of Fact, Conclusions of Law, Order and Judgment*, because Plaintiffs contended
8 that the Badlands Golf Course was open space and drainage, but the Court rejected that
9 argument, finding that the subject GC Land was zoned R-PD7;

10
11 133. Plaintiffs now allege that alter-ego claims against the individual Defendants
12 (Lowie, DeHart and Pankratz) should not have been dismissed without giving them a chance to
13 investigate and flush out their allegations through discovery. But no alter ego claims were made,
14 and alter ego is a remedy, not a cause of action. The only Cause of Action in the Amended
15 Complaint that could possibly support individual liability by piercing the corporate veil is the
16 Fraud Cause of Action. The Court has rejected Plaintiffs' Fraud Cause of Action, not solely on
17 the basis that it was not plead with particularity, but, more importantly, on the basis that
18 Plaintiffs failed to state a claim for Fraud because Plaintiffs have never alleged that Lowie,
19 DeHart or Pankratz made any false representations to them prior to their purchase of their lot.
20 The Court further notes that in Plaintiffs' lengthy oral argument before the Court, the Plaintiffs
21 did not even mention its claim for, or a basis for, its fraud claim. The Plaintiffs have offered
22 insufficient basis for the allegations of fraud in the first place, and any attempt to re-plead the
23 same, on this record, is futile;

24
25 134. Fraud requires a false representation, or, alternatively an intentional omission
26 when an affirmative duty to represent exists. See *Lubbe v. Barba*, 91 Nev. 596, 541 P.2d 115
27 (1975). Plaintiffs alleged Fraud against Lowie, DeHart and Pankratz, while admitting they never
28

1 spoke with any of the prior to the purchase of their lot and have never spoken to them prior to
2 this litigation. Plaintiffs' Fraud Cause of Action was dismissed because they cannot state facts
3 that would support the elements of Fraud. No amount of additional time will cure this
4 fundamental defect of their Fraud claim;

5
6 135. Plaintiffs claim that the GC Land that later became the additional nine holes was
7 "Property" subject to the CC&Rs of the Master Declaration at the time they purchased their lot,
8 because Plaintiffs purchased their lot between execution of the Master Declaration (which
9 contains an exclusion that "The existing 18-hole golf course commonly known as the 'Badlands
10 Golf Course' is not a part of the Property or the Annexable Property") and the Amended and
11 Restated Master Declaration (which provides that "The existing 27-hole golf course commonly
12 known as the 'Badlands Golf Course' is not a part of the Property or the Annexable Property"),
13 is meritless, since it ignores the clear and unequivocal language of Recital A (of both documents)
14 that "In no event shall the term "Property" include any portion of the Annexable Property for
15 which a Declaration of Annexation has not been Recorded..."

16
17 136. All three of Plaintiffs' claims for relief in the Amended Complaint are based on
18 the concept of Plaintiffs' alleged vested rights, which do not exist against Defendants;

19
20 137. There was no "misrepresentation," and there is no basis to set aside the Order of
21 Dismissal;

22
23 138. In order for a complaint to be dismissed for failure to state a claim, it must appear
24 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact,
25 would entitle him or her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev.
26 1213, 1217, 14 P.3d 1275, 1278 (2000) (emphasis added);

27
28 139. It must draw every fair inference in favor of the non-moving party. *Id.* (emphasis
added);

1 140. Generally, the Court is to accept the factual allegations of a Complaint as true on
2 a Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of
3 the claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010);

4 141. Plaintiffs have failed to state a claim upon which relief can be granted, even with
5 every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no
6 set of facts which would entitle them to relief. The Court has grave concerns about Plaintiffs'
7 motives in suing these Defendants for fraud in the first instance;

8
9 **Defendants' Memorandum of Costs and Disbursements**

10 142. Defendants' Memorandum of Costs and Disbursements was timely filed and
11 served on December 7, 2016;

12 143. Pursuant to NRS 18.110, Plaintiffs were entitled to file, within three (3) days of
13 service of the Memorandum of Costs, a Motion to Retax Costs. Such a Motion should have been
14 filed on or before December 15, 2016

15 144. Plaintiffs failed to file any Motion to Retax Costs, or any objection to the costs
16 whatsoever. Plaintiffs have therefore waived any objection to the Memorandum of Costs, and
17 the same is now final;

18 145. Defendants have provided evidence to the Court along with their Verified
19 Memorandum of Costs and Disbursements, demonstrating that the costs incurred were
20 reasonable, necessary and actually incurred. *Cadle Co. v. Woods & Erickson LLP*, 131 Nev.
21 Adv. Op. 15 (Mar. 26, 2015);

22
23 **Defendants' Countermotions for Attorneys' Fees and Costs**

24 146. The Court has allowed Plaintiffs to enter thirteen (13) exhibits, only three (3) of
25 which had been previously produced to opposing counsel, by attaching them to Plaintiffs'
26 "Additional Information to Renewed Motion for Preliminary Injunction," filed November 28,
27
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1 2016. The Exhibits should have been submitted and filed on or before November 15, 2016, in
2 advance of the hearing, and shown to counsel before being marked. The Court has allowed
3 Plaintiffs to make a record and to enter never before disclosed Exhibits at this post-judgment
4 hearing, including one document dated January 6, 2017, over Defendants' objection that there
5 has been no Affidavit or competent evidence to support the genuineness and authenticity of these
6 documents, as well as because of their untimely disclosure. The Court notes that Plaintiffs
7 should have been prepared for their presentation and these Exhibits should have been prepared,
8 marked and disclosed in advance, but Plaintiffs failed to do so. *EDCR 7.60(b)(2)*;

10 147. The efforts of Plaintiffs throughout these proceedings to repeatedly, vexatiously
11 attempt to obtain a Preliminary Injunction against Defendants has indeed resulted in prejudice
12 and substantial harm to Defendants. That harm is not only due to being forced to incur
13 attorneys' fees, but harm to their reputation and to their ability to obtain financing or refinancing,
14 just by the pendency of this litigation;

16 148. Plaintiffs are so close to this matter that even with counsel's experience, he fails
17 to follow the rules in this litigation. Plaintiffs' accusation that the Court was "sleeping" during
18 his oral argument, when the Court was listening intently to all of Plaintiffs' arguments, is
19 objectionable and insulting to the Court. It was extremely unprofessional conduct by Plaintiff;

21 149. Plaintiffs' claim of an alleged representation that the golf course would never be
22 changed, if true, was alleged to have occurred sixteen (16) years prior to Defendants acquiring
23 the membership interests in Fore Stars, Ltd. Of the nineteen (19) Defendants, twelve (12) were
24 relatives of Plaintiffs or entities of relatives, all of whom were voluntarily dismissed by
25 Plaintiffs. The original Complaint faulted the Peccole Defendants for not "insisting on a
26 restrictive covenant" on the golf course limiting its use, which would not have been necessary if
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1 the Master Declaration applied. This was a confession of the frivolousness of Plaintiffs' position.
2 *NRS 18.010(2)(b); EDCR 7.60(b)(1);*

3 150. Between September 1, 2016 and the date of this hearing, there were
4 approximately ninety (90) filings. This multiplication of the proceedings vexatiously is in
5 violation of EDCR 7.60. *EDCR 7.60(b)(3);*

6 151. Three (3) Defendants, Lowie, DeHart and Pankratz, were sued individually for
7 fraud, without one sentence alleging any fraud with particularity against these individuals. The
8 maintenance of this action against these individuals is a violation itself of NRS 18.010, as bad
9 faith and without reasonable ground, based on personal animus;
10

11 152. Additionally, EDCR 2.30 requires that any Motion to amend a complaint be
12 accompanied by a proposed amended Complaint. Plaintiffs' failure to do so is a violation of
13 EDCR 2.30. *EDCR 7.60(b)(4);*

14 153. Plaintiffs violated EDCR 2.20 and EDCR 2.21 by failing to submit their Motions
15 upon sworn Affidavits or Declarations under penalty of perjury, which cannot be cured at the
16 hearing absent a stipulation. *Id.*;

17 154. Plaintiffs did not file any post-judgment Motions under NRCP 52 or 59, and two
18 of their Motions, namely the *Motion to Reconsider Order of Dismissal* and the *Motion for*
19 *Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs*, were untimely filed after the
20 10 day time limit contained within those rules, or within EDCR 2.24.
21

22 155. Plaintiffs also failed to seek leave of the Court prior to filing its Renewed Motion
23 for Preliminary Injunction or its Motion to Reconsider Order of Dismissal. *Id.*;

24 156. Plaintiffs' Opposition to Countermotion for Attorneys' Fees and Costs, filed
25 January 5, 2017, was an extremely untimely Opposition to the October 21, 2016 Motion for
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1 Attorneys' Fees and Costs, which was due on or before November 10, 2016. All of these are
2 failures or refusals to comply with the Rules. *EDCR 7.60(b)(4)*;

3 157. While it does not believe Plaintiffs are intentionally doing anything nefarious,
4 they are too close to this matter and they have refused to heed the Court's Orders, Findings and
5 rules and their actions have severely harmed the Defendants;
6

7 158. While Plaintiffs claim to have researched the *Eagle Thrifty* case prior to filing the
8 initial Complaint, admitting they were familiar with the requirement to exhaust the
9 administrative remedies, they filed the first Motion for Preliminary Injunction anyway, in which
10 they failed to even cite to the *Eagle Thrifty* case, let alone attempt to exhaust their administrative
11 remedies;
12

13 159. Plaintiffs' motivation in filing these baseless "preliminary injunction" motions
14 was to interfere with, and delay, Defendants' development of their land, particularly the land
15 adjoining Plaintiffs' lot. But while the facts, law and evidence are overwhelming that Plaintiffs
16 ultimately could not deny Defendants' development of their land, Plaintiffs have continued to
17 maintain this action and forced Defendants to incur substantial attorneys' fees to respond to the
18 unsupported positions taken by Plaintiffs, and their frivolous attempt to bypass City Ordinances
19 and circumvent the legislative process. These actions continue with the current four (4) Motions
20 and the Opposition;
21

22 160. Plaintiffs' Renewed Motion for Preliminary Injunction (a sixth attempt),
23 Plaintiffs' untimely Motion to Amend Amended Complaint (with no proposed amendment
24 attached), Plaintiffs' untimely Motion to Reconsider Order of Dismissal, Plaintiffs' Motion for
25 Evidentiary Hearing and Stay of Rule 11 Fees and Costs (which had been denied) and Plaintiffs'
26 untimely Opposition were patently frivolous, unnecessary, and unsupported, and so multiplied
27 the proceedings in this case so as to increase costs unreasonably and vexatiously;
28

1 161. Plaintiffs proceed in making “scurrilous allegations” which have no merit, and to
2 asset “vested rights” which they do not possess against Defendants;

3 162. Considering the length of time that the Plaintiffs have maintained their action, and
4 the fact that they filed four (4) new Motions after dismissal of this action, and ignored the prior
5 rulings of the Court in doing so, and ignored the rules, and continued to name individual
6 Defendants personally with no basis whatsoever, the Court finds that Plaintiffs are seeking to
7 harm the Defendants, their project and their land, improperly and without justification.
8 Plaintiffs’ emotional approach and lack of clear analysis or care in the drafting and submission of
9 their pleadings and Motions warrant the award of reasonable attorney’s fees and costs in favor of
10 the Defendants and against the Plaintiffs. *See EDCR 7.60 and NRS 18.010(b)(2)*;

11 163. Pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31
12 (1969), Defendants have submitted affidavits regarding attorney’s fees and costs they requested,
13 in the sum of \$7,500 per Motion. Considering the number of Motions filed by Plaintiffs on an
14 Order Shortening Time, including two not filed or served until December 22, 2016, and an
15 Opposition and Replies to two Motions filed by Plaintiffs on January 5, 2017, which required
16 response in two (2) business days, the requested sum of \$7,500 in attorneys’ fees per each of the
17 four (4) motions is most reasonable and necessarily incurred. Given the detail within the filings
18 and the timeframe in which they were prepared, the Court finds these sums , totaling \$30,000
19 (\$7,500 x 4) to have been reasonably and necessarily incurred;

20
21
22 **Plaintiffs’ Oral Motion for Stay Pending Appeal.**

23 164. Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs
24 failed to show that the object of their potential appeal will be defeated if their stay is denied, they
25 failed to show that they would suffer irreparable harm or serious injury if the stay is not issued,
26 and they failed to show a likelihood of success on the merits.
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ORDER AND JUDGMENT

NOW, THEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Renewed Motion for Preliminary Injunction* is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Leave To Amend Amended Complaint*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Court To Reconsider Order Of Dismissal*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Defendants' Countermotion to Strike Plaintiffs' Rogue and Untimely Opposition Filed 1/5/17 (titled Opposition to "Countermotion" but substantively an Opposition to the 10/21/16 Motion for Attorney's Fees And Costs, granted November 21, 2016)*, is hereby granted, and such Opposition is hereby stricken;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Defendants' request for \$20,818.72 in costs, including the \$5,406 already awarded on November 21, 2016, and the balance of \$15,412.72 in costs through October 20, 2016, pursuant to their timely Memorandum of Costs and Disbursements*, is hereby granted and confirmed to Defendants, no Motion to Retax having been filed by Plaintiffs. Said costs are hereby reduced to Judgment, collectible by any lawful means;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judgment entered in favor of Defendants and against Plaintiffs in the sum of \$82,718.50, comprised of \$77,312.50

1 in attorneys' fees and \$5,406 in costs relating only to the preliminary injunction issues after the
2 September 2, 2016 filing of Defendants' first Opposition through the end of the October, 2016
3 billing cycle, is hereby confirmed and collectible by any lawful means;


4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants
5 Counter-motion for Attorneys' Fees relating to their responses to Plaintiffs four (4) motions and
6 one (1) opposition, and the time for appearance at this hearing, is hereby GRANTED.
7 Defendants are hereby awarded additional attorneys' fees in the sum of \$30,000 relating to those
8 matters pending for this hearing;

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, therefore,
10 Defendants are awarded a total sum of \$128,131.22 (\$20,818.72 in attorneys' fees and costs,
11 including the \$5,406 in the November 21, 2016 Minute Order and confirmed by the Fee Order
12 filed January 20, 2017, \$77,312.50 in attorneys' fees pursuant to the November 21, 2016 Minute
13 Order, as incorporated within and confirmed by Fee Order filed January 20, 2017, and \$30,000
14 in additional attorneys' fees relating to the instant Motions, Oppositions and Counter-motions
15 addressed in this Order), which is reduced to judgment in favor of Defendants and against
16 Plaintiffs, collectible by any lawful means, plus legal interest;

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' oral Motion
18 for Stay pending appeal is hereby denied;

19 DATED this 31 day of January, 2017.

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DISTRICT COURT JUDGE
A-16-739654-C
BA

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by [City of Reno v. Lars Andersen and Associates, Inc.](#), Nev., April 27, 1995

105 Nev. 92
Supreme Court of Nevada.

NOVA HORIZON, INC., a Nevada corporation,
and Nova Invest, a Nevada corporation,
Appellants,

v.



The CITY COUNCIL OF THE CITY OF RENO and
the members thereof, consisting of Pete Sferrazza,
Richard Scott, Janice Pine, Florence Lehnert,
James Thornton, Dave Howard and Gus Nunez,
Respondents.

No. 16555.
|
Feb. 28, 1989.

Developers appealed order of the Second Judicial District Court, Washoe County, Robert L. Schouweiler, J., denying developers' petition for writ of mandamus compelling city to grant applications for zone change, special use permit, and tentative approval of subdivision map. The Supreme Court held that there was no evidentiary basis for city's denial of zone change request.

Reversed in part and remanded.

West Headnotes (4)

- [1] **Zoning and Planning**
 Presumptions and Burdens
Zoning and Planning
 Substantial evidence in general

Actions of zoning authority are presumed valid, and are reviewed only for support by substantial evidence.

1 Cases that cite this headnote

 **Conformity of regulations to comprehensive or general plan**

Zoning authority must adopt zoning regulations that are in substantial agreement with the master plan, including any land use guide. **N.R.S. 278.010 et seq., 278.250**, subd. 2.

5 Cases that cite this headnote

- [3] **Zoning and Planning**
 Particular Uses or Restrictions

City council's denial of requested zone change to accommodate hotel and casino, when surrounding properties enjoyed the same zoning sought, was without substantial evidentiary basis, and, in rejecting application on ground that new casino would be located outside "downtown area," council failed to accord any deference to its master plan. **N.R.S. 278.250**, subd. 2.

5 Cases that cite this headnote

- [4] **Mandamus**
 Nature and grounds

While peremptory writ of mandamus requiring city council to grant application for zone change was appropriate, court refrained from granting similar relief with respect to request for special use permit and tentative approval of subdivision map, as it would have been inappropriate for court to authorize the project.

1 Cases that cite this headnote

Attorneys and Law Firms

**721 *92 James W. Hardesty, Reno, for appellants.

- [2] **Zoning and Planning**

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24727

Robert L. Van Wagoner, City Atty., John R. McGlamery,
Asst. City Atty., Reno, for respondents.

*93 OPINION

PER CURIAM:¹

Appellants are developers who planned to build a hotel/convention center (the Project) on land next to the Bally Grand in Reno. Prior to submitting an application for necessary approvals, appellants purchased the land in question. The plot consists of 2.9 acres, bordered on three sides by the Bally Grand. On August 29, 1984, appellants submitted to the Reno Planning Commission an application requesting:

1. a change of zoning, M-1 to C-3;
2. a Special Use Permit; and
3. acceptance of a tentative subdivision map,

to construct a twenty-eight story, 804-room hotel and casino. At that time, the property owned by appellants was zoned M-1 as defined and limited in Section 18.06.270 of the Reno Municipal Code. M-1 zoning allows commercial development but imposes height restrictions of sixty-five feet, which would not accommodate appellants' project as planned. Additionally, M-1 does not allow any residential use and the proposed project was planned to include the sale of 312 units on a time-share basis.

On November 7, 1984, the Reno Planning Commission, by a vote of four to three, recommended to the City Council that it approve the three separate requests. Appellants' **722 application came before respondents on December 10, 1984. At that time, a public hearing was held wherein appellants presented their case and the community was given the opportunity to respond. After the conclusion of testimony, the City Council unanimously voted to deny all of appellants' requests.

On December 24, 1984, the Reno City Attorney presented to *94 respondents a document entitled "Findings and Conclusions." This document consisted of a list of post-hearing considerations developed by the City Attorney and presented to respondents. This document was read into the minutes of the Reno City Council, which approved and adopted it. Thereafter, appellants filed a petition for a writ of mandamus with the district

court. An order for issuance of an alternative writ was issued on January 2, 1985. Appellants also filed a motion in limine in an attempt to preclude the use of the document entitled "Findings and Conclusions."

After a hearing on appellants' petition, the district court denied both appellants' motion in limine and their petition for writ of mandamus. In its decision, the court concluded as a matter of law that there was substantial evidence supporting respondents' denial of the zone change, the special use permit, and acceptance of the subdivision map. The district court also held that the City's land use/transportation guide was nothing more than a guide and could not be construed to compel a change in the zoning of property.

¹¹ We note, preliminarily, that the district court properly subjected the City's action to a substantial evidence standard of review. This court, in addressing the propriety of a district court ruling reversing a zone change approval by the appropriate governmental body, declared:

Respondents recognize the general rule that a court is not empowered to substitute its judgment for that of a zoning board, in this case the board of county commissioners, when the board's action is supported by substantial evidence.

The lower court had before it the same evidence as the board. Its function was not to conduct a trial de novo, but only to ascertain as a matter of law if there was any substantial evidence before the board which would sustain the board's action. The function of this court at this time is the same as that of the lower court. [Citation omitted.]

Under the police power, zoning is a matter within sound legislative action and such legislative action must be upheld if the facts do not show that the bounds of that discretion have been exceeded.

McKenzie v. Shelly, 77 Nev. 237, 240-242, 362 P.2d 268, 269-70 (1961). In *Shelly*, we reversed the district court since the presumptive validity of the board's action was supported by substantial evidence and there was no showing that the board abused its discretion.

*95 Numerous cases support the premise that zoning boards may not unreasonably or arbitrarily deprive property owners of legitimate, advantageous land uses. For example, the Supreme Court of Virginia affirmed a trial court decision holding an unduly restrictive zoning classification void. *Town of Vienna Council v. Kohler*, 218 Va. 966, 244 S.E.2d 542 (1978). The *Kohler* court concluded that "a denial of a rezoning request will not be sustained if under all the facts of the particular case, the denial is unreasonable, or is discriminatory, or is without substantial relationship to the public health, safety, morals and general welfare." *Id.* 244 S.E.2d at 548. See also, e.g., *Raabe v. City of Walker*, 383 Mich. 165, 174 N.W.2d 789 (1970) (invalidating rezoning of small enclave in midst of residential area to accommodate an industrial park); *City of Conway v. Housing Authority*, 266 Ark. 404, 584 S.W.2d 10 (1979) (City of Conway directed to rezone property, as the denial of the rezoning request was arbitrary and inconsistent with surrounding zoning); *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974) (restrictive zoning impressed on landowner's property was so lacking in fact information as to constitute an abuse of **723 discretion; rezoning held to be invalid). In the latter case, the Montana Supreme Court, quoting from an earlier case, stated:

Under the guise of protecting the public or advancing its interest, the state may not unduly interfere with private business or prohibit lawful occupations, or impose unreasonable or unnecessary restrictions upon them. Any law or regulation which imposes unjust limitations upon the full use and enjoyment of property, or destroys property value or use, deprives the owner of property rights.

In the instant case, the requested change in zoning was in conformity with the long-range development plans adopted by the City of Reno. The zone change was requested at the suggestion of the Reno City Planning staff and is consistent with the zoning of the surrounding property. Moreover, it appears that appellants may have invested substantial sums of money (allegedly over \$1,200,000.00) in land acquisition and project development costs in anticipation of the City's approval of their application.

At the public hearing in which appellants' application was considered, only one person presented opposition to the project and his objections were basically rebuffed by

members of the Reno City Council. Nevertheless, the Council unanimously denied approval to what was described as an architecturally "superior" project on the specified grounds that approval would violate a campaign promise against locating new casinos outside the "downtown area" and a similar pledge to diversification that would pay higher employee wages.

In determining whether the action of the Council concerning *96 the zone change was without substantial evidentiary support and, consequently, an abuse of discretion, it is essential to first consider the effect of the City's master plan, as amended, and land use/transportation guide on the Council's latitude in zoning matters.

[2] Chapter 278 of the Nevada Revised Statutes governs many aspects of planning and zoning. It not only provides for the formation and compensation of planning commissions and the adoption of master plans, it also provides for zoning in accordance with an adopted master plan. NRS 278.250(2) provides, in pertinent part: "2. The zoning regulations shall be adopted in accordance with the master plan for land use...." (Emphasis supplied.) This suggests that municipal entities must adopt zoning regulations that are in substantial agreement with the master plan, including a land-use guide if one is also adopted by the city council. Other jurisdictions have construed their statutes as requiring strict conformity between master plans and zoning ordinances, even to the point of requiring changes in zoning after a modification in a master plan. See *Baker v. City of Mihvaukie*, 271 Or. 500, 533 P.2d 772 (1975); *Fasano v. Board of County Comm'rs*, 264 Or. 574, 507 P.2d 23 (1973). While such a strict view of the invariable application of a master plan on zoning matters may lend a high degree of predictability to prospective land uses and facilitate usage planning by land owners, we do not perceive the legislative intent to be so confining and inflexible. We therefore choose to view a master plan as a standard that commands deference and a presumption of applicability, rather than a legislative straitjacket from which no leave may be taken. In pertinent part, the Montana Supreme Court analyzed the issue as follows:

To require strict compliance with the master plan would result in a master plan so unworkable that it would have to be constantly changed to comply with the realities. The master plan is, after all, a plan. On the other hand, to require no compliance at all would defeat the whole idea of planning.

Why have a plan if the local government units are free to ignore it at any time? The statutes are clear enough to send the message that in reaching zoning decisions, the local governmental **724 unit should at least substantially comply with the comprehensive plan (or master plan).

Little v. Board of County Comm'rs, 631 P.2d 1282, 1293 (Mont.1981).

^[3] Having determined that master plans are to be accorded substantial compliance under Nevada's statutory scheme, and recognizing *97 anew the general reluctance to judicially intervene in zoning determinations absent clear necessity, *Board of Comm'rs v. Dayton Dev. Co.*, 91 Nev. 71, 530 P.2d 1187 (1975), we turn now to the issue of respondents' zoning action in the instant case. It is clear on the record that no evidentiary basis exists for the Council's denial of appellants' zone change request. It is equally clear that no deference, let alone a presumptive applicability, was accorded Reno's master plan by the Council. In one instance, an expression of deference to a campaign promise was the stated basis for what was tantamount to a disregard for the master plan. The other expression offered as a specific basis for rejecting appellants' application was a pledge, presumably to constituents, to seek diversification in favor of higher employee wages. The latter point was equally untenable as a basis for zoning denial. Moreover, as noted above, the surrounding properties enjoyed the same zoning sought by appellants and no evidence, let alone reasoning, was presented to justify a denial of appellants' request for rezoning. We therefore are compelled to reverse the district court on this point.

^[4] We are not constrained to grant similar relief concerning appellants' request for a special use permit and acceptance of a tentative subdivision map. While the record provides no existing or prospective basis for denying the zone change, we are loathe to direct authorization for a project that may or may not be deserving of the Council's approval. The Council simply did not effectively address the effect of the impact of such a substantial project on the City of Reno. While it may be argued with considerable cogency from the record that appellants justified an approval of their entire application, and that it is unfair to subject them to further proceedings, we nevertheless conclude that it would be unwise and

inappropriate for this court to accommodate an approval by forfeiture.

If appellants remain interested in the construction of their project, we will assume that, upon rehearing, the Council will exercise its judgment fairly and in accordance with the merits as reflected by the evidence and deliberations of record.

We realize that our ruling may appear to be inconsistent with our opinion in City Council, *Reno v. Travelers Hotel*, 100 Nev. 436, 683 P.2d 960 (1984), where we affirmed the issuance of a peremptory writ of mandamus requiring approval of a special use permit for a hotel-casino. In that case, however, rezoning was not an issue and the Council was able to focus directly on the project itself. Here, the only specified basis for rejecting appellants' application was essentially the project's location outside the downtown area, a reason which, if implemented, would constitute an inappropriate *de facto* amendment to the City's master *98 plan and land use/transportation guide. We are simply unable to discern from the record that the Council adequately focused its attention on the merits of the project and its total impact on the community. Considerations of public health, safety and welfare demand both such a focused attention and the exercise of a fair and enlightened discretion by the Council based upon substantial evidence.

The judgment of the district court is reversed insofar as the zone change is concerned, and remanded with instructions to issue a peremptory writ of mandamus requiring respondents to grant appellants' application for zone change. The district court shall also modify its judgment to the **725 extent of requiring respondents, upon application by appellants, to entertain anew the merits of appellants' application for special use permit and acceptance of tentative subdivision map, all in accordance with this opinion.

STEFFEN, SPRINGER and MOWBRAY, JJ., and MENDOZA, District Judge,² concur.

All Citations

105 Nev. 92, 769 P.2d 721

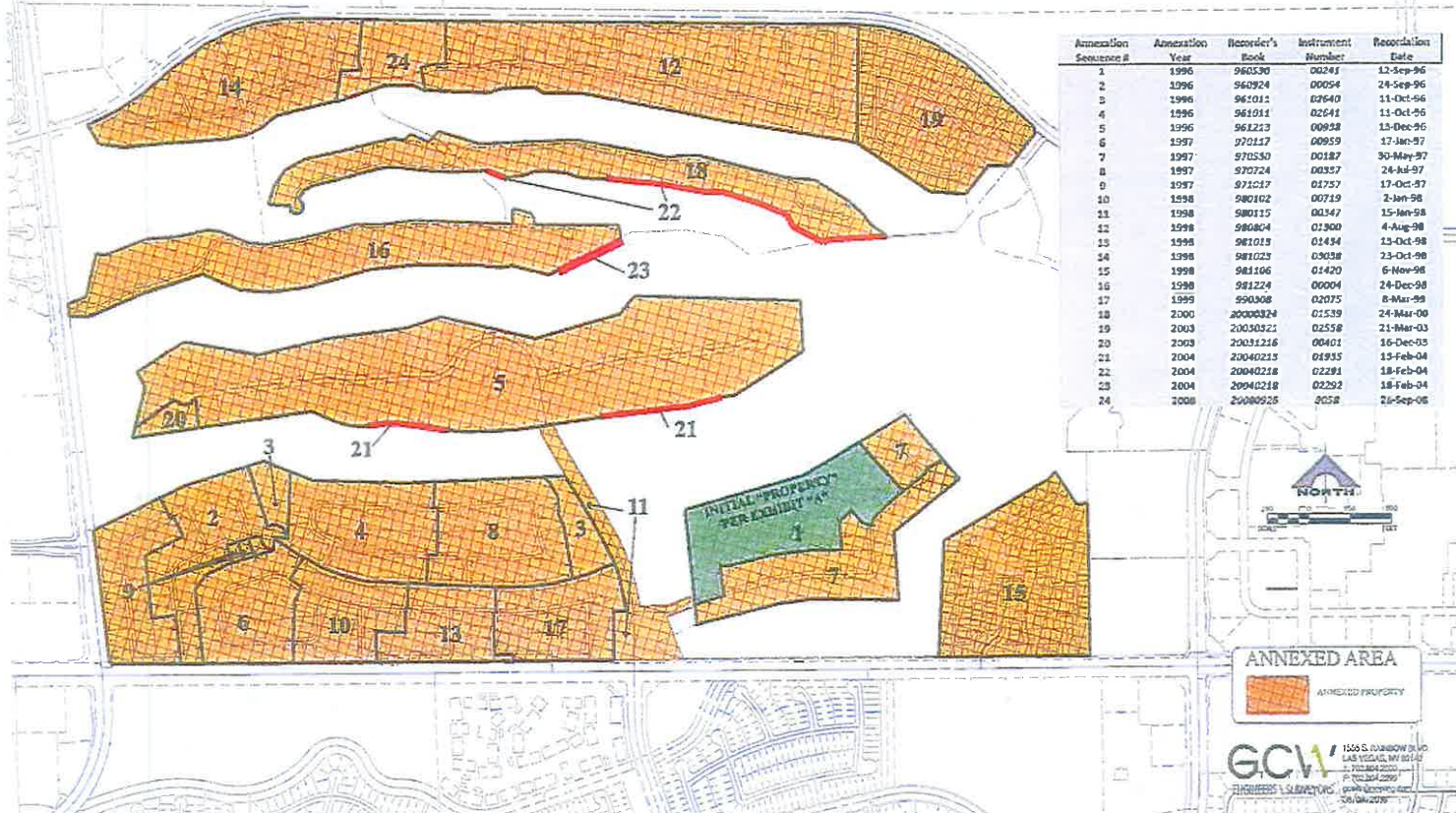
Footnotes

- 1 The Honorable Robert E. Rose, Justice, did not participate in the decision of this appeal.
- 2 The Honorable John F. Mendoza, Judge of the Eighth Judicial District, was designated by the Governor to sit in the place of the Honorable Cliff Young, Chief Justice, who voluntarily recused himself. **Nev. Const., art. 6, § 4.**

ROR023322

24731

QUEENSRIDGE CIC ANNEXATION HISTORY
"PROPERTY" PER MASTER DECLARATION



ROR023323

24732

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID AND TOM CASSINELLI,

No. 35649

Appellants,

vs.

HUMBOLDT COUNTY, A POLITICAL
SUBDIVISION; AND KENT ANDERSON,
PLANNING DIRECTOR,

Respondents.

FILED

JUL 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellants', David and Tom Cassinelli, petition for a writ of mandamus. In the underlying case before the district court, appellants argued that the Humboldt County Planning Board erroneously approved several parcel map applications in Paradise Valley that conflicted with the master plan and statutory provisions without public notice.

Appellants contend on appeal that the district court abused its discretion by failing to issue the writ of mandamus because: (1) the district court erred in finding that they were not aggrieved parties who should have been afforded notice of the parcel map applications under statutory and procedural due process provisions; (2) the approval of the parcel map applications was improper because they conflicted with the master plan; (3) the parcel map applicants intentionally evaded subdivision requirements; and (4) the parcel map applicants' failure to apply for a variance from the master plan rendered their application approvals void. We conclude that none of appellants' assignments of error has merit, and we therefore affirm the district court's order.

Our review of the district court's denial of a petition for a writ of mandamus is limited in scope to

determining whether the district court abused its discretion.¹ In doing so, we afford great deference to local determinations regarding zoning.²

First, appellants contend that the district court erred in concluding that they were not aggrieved parties and that they therefore were not required to have been given notice of the parcel map applications under NRS 278.464(6), procedural due process or the Open Meeting Law.³ NRS 278.464(6) permits an applicant or other person aggrieved by a governing board's decision on parcel map applications to appeal that determination as provided in local ordinances.⁴ However, NRS 278.464, and other statutory provisions governing zoning and land use planning, do not define "aggrieved party."

In the land use context, this court has interpreted an "aggrieved party" to be "one whose 'personal right or right of property is adversely and substantially affected.'"⁵ In City of Reno v. Harris, this court concluded that the City had standing to appeal a local zoning decision because the municipality had "a vested interest in requiring compliance with its land use decisions."⁶ Likewise, in Enterprise Citizens v. Clark County Commissioners, this court implicitly concluded that neighboring landowners had standing to appeal a

¹County of Clark v. Doumani, 114 Nev. 46, 53 n.2, 952 P.2d 13, 17 n.2 (1998).

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

³The Open Meeting Law is codified at NRS 241.020.

⁴Humboldt County Ordinance 16.16.200 permits an applicant to file an appeal within thirty days from the parcel map application decision.

⁵City of Reno v. Harris, 111 Nev. 672, 676, 895 P.2d 663, 666 (1995) (quoting Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)).

⁶Id. at 677, 895 P.2d at 666.

company's request for a zoning variance because substantial evidence indicated that their property rights would be impacted by the residual effects of the company's requested variance, such as increased air and noise pollution.⁷

Appellants assert that they are adjacent landowners to some of the parcel map applicants; however, they do not provide any evidence to support that fact or to indicate that they are adversely impacted by the parcel map applications in any way. Moreover, the record indicates that the parcels complied with the zoning regulations and were not alleged to have any impact outside of the property being parceled. Thus, we conclude that there is no evidence that appellants have shown an adversely or substantially impacted property right that would give them standing to appeal the parcel map application approvals under NRS 278.464(6).

Because appellants lacked standing to appeal the parcel map application approvals, we need not affirmatively address whether NRS 278.464(6) requires public notice of pending parcel map applications. We do note, however, that under traditional statutory interpretation, the absence of any explicit public notice requirement suggests that none is required for those who are not aggrieved.⁸ Moreover, because appellants fail to show a substantially impacted property right for purposes of showing they are "aggrieved parties," we conclude that no procedural due process rights are implicated

⁷112 Nev. 649, 652, 918 P.2d 305, 307 (1996).

⁸See Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 503, 797 P.2d 946, 949 (1990), overruled on other grounds by Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000).

or affected.⁹ Finally, appellants' third argument, that notice was required under the Open Meeting Law, also need not be addressed absent standing to challenge the Planning Board's decisions.

Next, appellants contend that because the parcel map applications did not comply with the Paradise Valley Master Plan, the Planning Board abused its discretion in granting the applications. In County of Clark v. Doumani, we concluded that a master plan is generally afforded a presumption of applicability.¹⁰ But we also stated that master plans "should not be viewed as a 'legislative straightjacket from which no leave can be taken'" - local discretion is permissible.¹¹

The statutory language regarding the relationship of master plans and preexisting zoning regulations is somewhat conflicting. NRS 278.250(2) only requires zoning regulations to conform to a master plan when enacted or adopted after the master plan has been passed. NRS 278.0284 provides that subsequent zoning regulations should be adopted in accordance with the master plan and also requires planning boards in counties with 100,000 to 400,000 people to review preexisting land use ordinances after a master plan is adopted. NRS 278.0284 also states that "[i]f any provision of the master plan is inconsistent with any regulation relating to land development, the provision of the master plan governs any action taken in regard to an application for development." But there is no similar provision for counties, such as

⁹See Burgess v. Storey County, 116 Nev. 121, 124-25, 992 P.2d 856, 858 (2000); see also Bing Construction v. Douglas County, 107 Nev. 262, 266, 810 P.2d 768, 770 (1991).

¹⁰114 Nev. at 53-54, 952 P.2d at 17 (quoting Enterprise Citizens, 112 Nev. at 659, 918 P.2d at 311).

¹¹Id.

Humboldt County, that have less than 100,000 residents. In contrast, NRS 278.349(3)(e) provides that existing zoning ordinances take precedence over more recent master plans for tentative subdivision maps.

Because the zoning ordinance existed before the Paradise Valley Master Plan, and the county did not revise its zoning ordinances after the master plan was adopted, NRS 278.250(2) does not apply. Moreover, the record indicates that the Planning Board considered the effect of the Master Plan acreage requirement as it pertained to the applications affected by it and concluded that the policy of the Master Plan to maintain a certain quality of life was not contravened by approving these parcel map applications.¹² Because we afford deference to local land use decisions, we conclude that there was no error in approving parcel map applications that did not expressly conform to the master plan, and the district court did not abuse its discretion in denying relief to that effect.

¹²The section of the Paradise Valley Master Plan dealing with zoning requirements is not a clear-cut acreage requirement, stating:

This board feels that growth must be carefully planned to maintain the aesthetic quality of our lifestyles. We all choose to live here because of the wide-open spaces and very few neighbors. We are fully aware that often times ranchers and farmers must parcel some of their land in order to maintain their livelihood. We just ask that all of this be well-planned for the health and welfare of our whole community.

This board knows it cannot tell our neighbors how to zone their property. We would highly recommend that all the large property owners re-zone to an agricultural zone of any given size. Agricultural zoning ranges from 2 ½ acres to 80 acres per parcel. We recommend this zoning simply because it will protect the rights

continued on next page . . .

Appellants also contend that the parcel map application approvals are void because the applicants intentionally evaded subdivision requirements under NRS 278.320, which are more stringent than those for parcel maps under NRS 278.461, by filing multiple applications on a single parcel of land. In Groso v. Lyon County, we concluded that the mere filing of multiple, simultaneous applications on a contiguous tract under the same ownership did not automatically constitute evasion of subdivision requirements absent other evidence that subdivision requirements should have been followed.¹³ There is no evidence in this case to suggest that the parcel map applicants filed their applications to purposefully evade subdivision requirements or that other requirements of NRS 278.320 applied. Thus, we conclude that the district court properly denied the petition for a writ of mandamus on those grounds.

Finally, appellants contend that the applicants' failure to apply for a variance from the master plan rendered their applications void. The case law appellants rely on deals only with variances from specific zoning ordinances and not variances from master plans.¹⁴ In fact, we could find no case law or statutes that require deviations from a master plan to be specifically petitioned for.¹⁵ NRS 278.210 and NRS 278.220 provide only for amendments to the master plan itself

. . . continued

to continue raising livestock within the area.

¹³100 Nev. 522, 524, 688 P.2d 302, 303-04 (1984).

¹⁴See Enterprise Citizens, 112 Nev. at 654, 918 P.2d at 308-09.

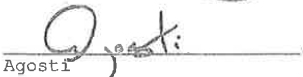
¹⁵See, e.g., Doumani, 114 Nev. at 54, 952 P.2d at 18; City of Reno v. Lars Andersen and Assocs., 111 Nev. 522, 894 P.2d 984 (1995); Nova Horizon v. City Council, 105 Nev. 92, 93, 769 P.2d 721, 721 (1989).

and not for applications for specific parcels and their compliance with the master plan. Finally, NRS 278.315(1) requires local ordinances to set forth procedures for applying for variances. Humboldt County Ordinance 16.16.160 does not require a variance for a deviation from a master plan.

Accordingly, we conclude that none of appellants' contentions has merit, and that the district court did not abuse its discretion in denying the petition for a writ of mandamus. For the aforementioned reasons, we therefore

ORDER the judgment of the district court AFFIRMED.

 J.

 J.

 J.

cc: Hon. Richard Wagner, District Judge
Humboldt County District Attorney
Steven F. Bus
Humboldt County Clerk

1 **BILL NO. Z-2001-1**

2 **ORDINANCE NO. 5353**

3 **AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP ATLAS OF THE CITY OF LAS**
4 **VEGAS BY CHANGING THE ZONING DESIGNATIONS OF CERTAIN PARCELS OF LAND,**
5 **AND TO PROVIDE FOR OTHER RELATED MATTERS.**

6 Proposed by: Robert S. Genzer,
7 Director of Planning and Development

Summary: Amends the Official Zoning Map
Atlas of the City of Las Vegas by changing the
zoning designations of certain parcels of land.

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

10 **SECTION 1:** The Official Zoning Map Atlas of the City of Las Vegas, as adopted in
11 Title 19A, Chapter 2, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983
12 Edition, is hereby amended by changing the zoning designations for the parcels of land listed in the
13 attached document. The parcels of land have been approved for rezoning by vote of the City Council
14 or by means of a resolution of intent to rezone pursuant to applicable zoning regulations. In each case
15 the conditions of rezoning have been fulfilled, and changing the corresponding zoning designations
16 on the Official Zoning Map Atlas is now indicated. On the attached document, the parcels are listed
17 by Assessor's Parcel Number. The attached document shows, for each parcel, the zoning designation
18 currently shown on the Official Zoning Map Atlas (indicated as "Current Zoning") and the new zoning
19 designation to be shown for the parcel (indicated as "New Zoning").

20 **SECTION 2:** Of the parcels referred to in Section 1 of this Ordinance whose rezoning
21 was approved by means of a resolution of intent to rezone, some or all of those resolutions were not
22 reduced to writing—as has been the practice previously. All actions and proceedings by the City
23 concerning the rezoning of those parcels are hereby ratified, approved and confirmed as if the
24 resolutions of intent had been reduced to writing, and the City Council deems that no additional action
25 in that regard is necessary.

26 **SECTION 3:** If any section, subsection, subdivision, paragraph, sentence, clause or
27 phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional, or invalid
28 or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the

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1 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,
2 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
3 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
4 invalid or ineffective.

5 SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases,
6 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,
7 1983 Edition, in conflict herewith are hereby repealed.

8 PASSED, ADOPTED and APPROVED this 15th day of August, 2001.

9 APPROVED:

10 By 
11 OSCAR B. GOODMAN, Mayor

12 ATTEST:

13 
14 BARBARA JO RONEMUS, City Clerk

15 APPROVED AS TO FORM:

16 Valsted 7-6-01
17 Date

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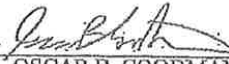
1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 18th day of July, 2001, and referred to the following committee composed of Councilmembers
3 Weekly and L. B. McDonald for recommendation; thereafter the said committee reported
4 favorably on said ordinance on the 15th day of August, 2001, which was a regular meeting of said
5 Council; that at said regular meeting, the proposed ordinance was read by title to the City
6 Council as first introduced and adopted by the following vote:

7 VOTING "AYE": Mayor Goodman and Councilmembers Reese, M. McDonald, Brown, L.B.
8 McDonald, Weekly and Mack

9 VOTING "NAY": None

10 ABSENT: None

11 APPROVED:

12 

13 OSCAR B. GOODMAN, Mayor

14 ATTEST:

15 
16 BARBARA JO RONEMUS, City Clerk

22. *13831713002 (179.2)

TABLE NUMBER	CURRENCY ZONING	NEW ZONING	PARCEL NUMBER	CURRENCY ZONING	NEW ZONING	TABLE NUMBER	CURRENCY ZONING	NEW ZONING	TABLE NUMBER	CURRENCY ZONING	NEW ZONING
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12508415015	R-E	R-PD6	12516616014	U(PCD)	R-PD5	12528712021	R-E	R-PD7	13831614030	U(ML)	R-PD7
12508415016	R-E	R-PD6	12516616015	U(PCD)	R-PD5	12528712022	R-E	R-PD7	13831614031	U(ML)	R-PD7
12508415017	R-E	R-PD6	12516616016	U(PCD)	R-PD5	12528712023	R-E	R-PD7	13831614032	U(ML)	R-PD7
12508415018	R-E	R-PD6	12516616017	U(PCD)	R-PD5	12528712024	R-E	R-PD7	13831614033	U(ML)	R-PD7
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\$ CLV RPD7 Lwr.

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Prepared 7/6/2001

PARCEL NUMBER	CURRENT ZONING	NEW ZONING	PARCEL NUMBER	CURRENT ZONING	NEW ZONING	PARCEL NUMBER	CURRENT ZONING	NEW ZONING	PARCEL NUMBER	CURRENT ZONING	NEW ZONING
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12508320003	R-E	R-PD6	12516613005	R-E	R-PD6	12526597001	R-E	R-PD3	13831420004	U(ML)	R-PD7
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12508320010	R-E	R-PD6	12516613012	R-E	R-PD6	12527312006	U(ML)	R-CL	13831420011	U(ML)	R-PD7
12508320011	R-E	R-PD6	12516613013	R-E	R-PD6	12527312007	U(ML)	R-CL	13831420012	U(ML)	R-PD7
12508320012	R-E	R-PD6	12516613014	R-E	R-PD6	12527312008	U(ML)	R-CL	13831420013	U(ML)	R-PD7
12508320013	R-E	R-PD6	12516613015	R-E	R-PD6	12527312009	U(ML)	R-CL	13831420014	U(ML)	R-PD7
12508320014	R-E	R-PD6	12516613016	R-E	R-PD6	12527312010	U(ML)	R-CL	13831420015	U(ML)	R-PD7
12508320015	R-E	R-PD6	12516613017	R-E	R-PD6	12527312011	U(ML)	R-CL	13831420016	U(ML)	R-PD7
12508320016	R-E	R-PD6	12516613018	R-E	R-PD6	12527312012	U(ML)	R-CL	13831420017	U(ML)	R-PD7
12508320017	R-E	R-PD6	12516613019	R-E	R-PD6	12527312013	U(ML)	R-CL	13831420018	U(ML)	R-PD7
12508320018	R-E	R-PD6	12516613020	R-E	R-PD6	12527312014	U(ML)	R-CL	13831420019	U(ML)	R-PD7
12508320019	R-E	R-PD6	12516613021	R-E	R-PD6	12527312015	U(ML)	R-CL	13831420020	U(ML)	R-PD7
12508320020	R-E	R-PD6	12516613022	R-E	R-PD6	12527312016	U(ML)	R-CL	13831420021	U(ML)	R-PD7
12508320021	R-E	R-PD6	12516613023	R-E	R-PD6	12527312017	U(ML)	R-CL	13831420022	U(ML)	R-PD7
12508320022	R-E	R-PD6	12516613024	R-E	R-PD6	12527312018	U(ML)	R-CL	13831420023	U(ML)	R-PD7
12508320023	R-E	R-PD6	12516613025	R-E	R-PD6	12527312019	U(ML)	R-CL	13831420024	U(ML)	R-PD7
12508320024	R-E	R-PD6	12516613026	R-E	R-PD6	12527312020	U(ML)	R-CL	13831420025	U(ML)	R-PD7
12508320025	R-E	R-PD6	12516613027	R-E	R-PD6	12527312021	U(ML)	R-CL	13831420026	U(ML)	R-PD7
12508320026	R-E	R-PD6	12516613028	R-E	R-PD6	12527312022	U(ML)	R-CL	13831420027	U(ML)	R-PD7
12508320027	R-E	R-PD6	12516613029	R-E	R-PD6	12527312023	U(ML)	R-CL	13831420028	U(ML)	R-PD7
12508320028	R-E	R-PD6	12516613030	R-E	R-PD6	12527312024	U(ML)	R-CL	13831421001	U(ML)	R-PD7
12508320029	R-E	R-PD6	12516613031	R-E	R-PD6	12527312025	U(ML)	R-CL	13831421002	U(ML)	R-PD7
12508321001	R-E	R-PD6	12516613032	R-E	R-PD6	12527312026	U(ML)	R-CL	13831421003	U(ML)	R-PD7
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12508321003	R-E	R-PD6	12516613034	R-E	R-PD6	12527312028	U(ML)	R-CL	13831421005	U(ML)	R-PD7
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Prepared 7/6/2001

PARCEL NUMBER	CURRENT ZONING	NEW ZONING	PARCEL NUMBER	CURRENT ZONING	NEW ZONING	PARCEL NUMBER	CURRENT ZONING	NEW ZONING	PARCEL NUMBER	CURRENT ZONING	NEW ZONING
12508212001	R-E	R-PD6	12516511074	R-E	R-PD6	12525810031	R-E	R-1	13828224075	U(M)	R-PD20
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12508212003	R-E	R-PD6	12516511076	R-E	R-PD6	12525810033	R-E	R-1	13828224077	U(M)	R-PD20
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12508212022	R-E	R-PD3	12516512024	R-E	R-PD6	12525810082	R-E	R-1	13831214002	U(M/L)	R-PD7
12508212023	R-E	R-PD3	12516512025	R-E	R-PD6	12525810083	R-E	R-1	13831214003	U(M/L)	R-PD7
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12508212026	R-E	R-PD6	12516513002	R-E	R-PD6	12525810086	R-E	R-1	13831214006	U(M/L)	R-PD7

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13508217017	R-PD6	12516513071	R-E	R-PD6	12525811062	R-E	R-CL	1383111006	U-MIL	R-PD7
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13508310016	R-PD6	12516513090	R-E	R-PD6	12525811081	R-E	R-CL	1383111025	U-MIL	R-PD7
13508310017	R-PD6	12516513091	R-E	R-PD6	12525811082	R-E	R-CL	1383111026	U-MIL	R-PD7
13508310018	R-PD6	12516513092	R-E	R-PD6	12525811083	R-E	R-CL	1383111027	U-MIL	R-PD7
13508310019	R-PD6	12516513093	R-E	R-PD6	12525811084	R-E	R-CL	1383111028	U-MIL	R-PD7
13508310020	R-PD6	12516513094	R-E	R-PD6	12525811085	R-E	R-CL	1383111029	U-MIL	R-PD7
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13508310023	R-PD6	12516513097	R-E	R-PD6	12525811088	R-E	R-CL	1383111032	U-MIL	R-PD7
13508310024	R-PD6	12516513098	R-E	R-PD6	12525811089	R-E	R-CL	1383111033	U-MIL	R-PD7
13508310025	R-PD6	12516513099	R-E	R-PD6	12525811090	R-E	R-CL	1383111034	U-MIL	R-PD7
13508310026	R-PD6	12516513100	R-E	R-PD6	12525811091	R-E	R-CL	1383111035	U-MIL	R-PD7
13508310027	R-PD6	12516513101	R-E	R-PD6	12525811092	R-E	R-CL	1383111036	U-MIL	R-PD7
13508310028	R-PD6	12516513102	R-E	R-PD6	12525811093	R-E	R-CL	1383111037	U-MIL	R-PD7
13508310029	R-PD6	12516513103	R-E	R-PD6	12525811094	R-E	R-CL	1383111038	U-MIL	R-PD7
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13508310089	R-PD6	12516513163	R-E	R-PD6	12525811154	R-E	R-CL	1383111098	U	



THE JIMMERSON LAW FIRM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

James J. Jimmerson
Michael C. Flaxman
Kristine Brewer

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

December 7, 2016

By Email and U.S. Mail

Brad Jerbic, Esq.
Las Vegas City Attorney
Las Vegas City Hall
495 S. Main Street
Las Vegas, NV 89101

Dear Mr. Jerbic:

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

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

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

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

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

Tom Perrigo
Brad Jerbic, Esq.
Fore Stars, Ltd., et al
December 7, 2016
Page 2

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

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

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

"Tom,

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

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

Secondly, and more important fundamentally, we can find absolutely no evidence that the PROS general plan designation was placed on the Property through a formal, publicly noticed hearing process. Unless The City can direct us to the date and time that this formal, public hearing process took place, we must assume that the general plan designation of PROS, if designated at all, was placed on the Property through an administrative process or action of some kind. It is our understanding that a general plan designation on property cannot be added or changed except through a formal, public hearing process with all affected property

ROR023339

24748

Tom Perrigo
Brad Jerbic, Esq.
Fore Stars, Ltd., et al
December 7, 2016
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owners having reasonable notice and an opportunity to be heard. So if, in fact, no such public hearing process took place, the general plan designation of PROS, if it exists, was placed on the Property inappropriately and improperly and is not valid. We must therefore insist that any such PROS designation be removed from the Property forthwith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Tom Perrigo
Brad Jerbic, Esq.
Fore Stars, Ltd., et al
December 7, 2016
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If, in fact, the City of Las Vegas is attempting to improperly add conditions and/or restrictions to the use of our clients' Property, such actions clearly expose the City of Las Vegas to liability and substantial money damages together with our clients' rights to receive equitable and injunctive relief. The same could constitute a taking. Regardless, any attempts to impose a PR-OS land designation upon our clients' property is illegal, invalid and unenforceable, and the same should be struck down. Such actions by the City constitute irreparable injury to our clients, harm the enjoyment and use of their Property, and about which our clients can establish a likelihood of success on the merits.

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

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

Sincerely,

THE JIMMERSON LAW FIRM, P.C.


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

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

ROR023342

24751

Tom,

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

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

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

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

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

ROR023343

24752

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

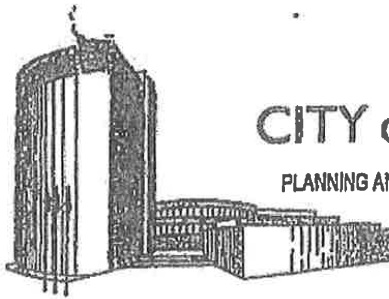
By: _____
Name: Frank Pankratz
Its: Manager
Date: _____

cc Peter Lowenstein
Attachments-2

ROR023344

24753

7 9
MAYOR
JAN LAVERTY JONES
COUNCILMEN
ARNIE ADAMSEN
MATTHEW Q. CALLISTER
MICHAEL J. McDONALD
GARY REESE
CITY MANAGER
LARRY K. BARTON



CITY of LAS VEGAS

PLANNING AND DEVELOPMENT DEPARTMENT

October 8, 1996

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

Re: BADLANDS GOLF COURSE, PHASE 2

Dear Mr. Spitze:

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

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

Very truly yours,

Robert S. Genzer, Planning Supervisor
Current Planning Division

RSG:erh



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

CLV 7009
2810 016 025

ROR023345

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PENTACORE

Civil Engineering
Construction Management
Land Surveying
Planning
ADA Consulting

0171 0030

September 4, 1996

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

RE Badlands Golf Course, Phase 2

Dear Bob

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

Thank you for your consideration in this matter

Sincerely,


Clyde O. Spitzer
Vice President

PLANNING AND
DEVELOPMENT

SEP 4 4 58 PM '96

RECEIVED

7-146-94
2-17-90

6763 West Charleston Boulevard • Las Vegas, Nevada 89102 • (702) 258-0116 • Fax (702) 258-4958

ROR023346

24755

ADDENDUM "1" TO
PURCHASE AGREEMENT, EARNEST MONEY
RECEIPT AND ESCROW INSTRUCTIONS

CUSTOM LOTS AT QUEENSRIDGE DOCUMENTS AND DISCLOSURES

ALL OF THE DOCUMENTS LISTED BELOW ARE IMPORTANT TO THE PURCHASE OF THE LOT, SHOULD BE READ BY PURCHASER AND, AT THE CLOSE OF ESCROW, SHALL BE DEEMED TO HAVE BEEN READ AND APPROVED BY PURCHASER. PURCHASER IS ADVISED TO RETAIN ALL DOCUMENTS FOR FUTURE REFERENCE. COPIES OF THESE DOCUMENTS SHOULD BE GIVEN TO ANY PERSON(S) WHO MAY IN THE FUTURE PURCHASE THE LOT FROM PURCHASER. BY EXECUTING THIS AGREEMENT AND INITIALING BESIDE THE DESCRIPTION OF EACH DOCUMENT, PURCHASER(S) HEREBY ACKNOWLEDGES RECEIPT OF COPIES OF THE FOLLOWING:

Initials:

- REP (A) Affirmation Form Purchaser On-The-Lot Inspection (Custom Lots) (Attachment "B" to this Agreement).
- REP (B) Public Offering Statement for Queensridge (Custom Lots), and the attachments thereto, which are:
- REP (a) Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge and the first amendment thereto.
- REP (b) Supplemental Declaration for Queensridge North Special Benefits Area.
- REP (c) Declaration of Annexation for Queensridge Parcel 20 (Queensridge North Custom Lots).
- REP (d) Restated Articles of Incorporation of Queensridge Owners Association.
- REP (e) Bylaws of Queensridge Owners Association.
- REP (f) Queensridge Owners Association Budget.
- REP (g) Queensridge North Special Benefits Area Budget.
- REP (h) Orient Express Special Benefits Area Budget Projections.
- REP (C) Supplemental Declaration for the Adoption of Section C of the Master Planned Community Standards (Custom Lot Design Guidelines).
- REP D. Preliminary Report No. _____ dated as of _____ issued by Nevada Title Company ("Title Report").
- REP (E) Notice of Zoning Designation of Adjoining Lot (Attachment "C" to this Agreement).
- REP (F) Real Estate Agency Disclosure Form.
- REP (G) Purchase Agreement, Earnest Money Receipt and Escrow Instructions.
- REP (H) Good Faith Estimate of Private Roadway Maintenance Costs (Attachment "D" to this Agreement).
- REP (I) Form of Grant, Bargain and Sale Deed (Attachment "A" to this Agreement).

ADDITIONAL DISCLOSURES

1. **Overhead Power Lines.** At present, there exists along Charleston Boulevard 138kv overhead power lines and a substation near the Southwest corner of Hualapai Way and West Charleston Boulevard. There is a possibility that similar power lines may be constructed along Hualapai Way. There is currently some controversy with respect to the long term health effects of living in the immediate vicinity of such power lines. For further information with respect to the location of power lines in Queensridge, please contact Nevada Power Company at (702) 367-5555.

2. **Gas Transmission Line.** In 1985, the Kern River Gas Transmission Company filed an application with the Federal Energy Regulatory Commission (FERC) seeking authorization to construct and operate a 36" underground natural gas ("natural gas") consists primarily of methane gas) pipeline from southwestern Wyoming, across the states of Utah and Nevada, to Kern County, California. During the ensuing four years, FERC, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and several other federal and state authorities reviewed Kern River's application. In January 1990, FERC authorized Kern River to construct the pipeline. This authorization also gave Kern

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River the right of eminent domain to condemn any property necessary for the pipeline. The pipeline is estimated to transmit between 7 hundred million and 1.2 billion cubic feet of gas per day under a pressure of approximately 750 to 1200 pounds per square inch. The location of the pipeline in the vicinity of Queensridge is within the right-of-way of Hualapai Way on the west. Because of the hazards posed by interstate natural gas pipelines, some aspects of pipeline activity are regulated by the federal government. The Kern River pipeline is subject to such federal regulations. Despite such regulations, accidents do sometimes occur. Pipeline incidents that result in more than \$50,000 in property damage, or involve fatalities or injuries causing hospitalization must be reported by the utility company operating the pipeline to the Office of Pipeline Safety. The most recent data from the Office of Pipeline Safety indicate that between 1985 and 1995 there were approximately 83 reportable incidents per year in the United States. Federal Law does not establish a minimum distance between a pipeline and a home. If you have any further questions concerning the Kern River pipeline, it is recommended that you call Richard Hurlaux, Director of the Office of Technology & Regulations, Office of Pipeline Safety at (202) 366-4595.

3. **Private Streets.** Purchaser acknowledges that the streets within the Planned Community are private and that the Queensridge Owners Association shall be obligated to maintain such streets. A Good Faith Estimate of Private Roadway/Maintenance Costs is attached to this Agreement as Attachment "D", and Purchaser acknowledges that Purchaser has reviewed such Good Faith Estimate prior to the execution of this Agreement.

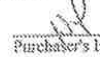
4. **No Golf Course or Membership Privileges.** Purchaser shall not acquire any rights, privileges, interest, or membership in the Badlands Golf Course or any other golf course, public or private, or any country club membership by virtue of its purchase of the Lot.

5. **Configuration and Dimensions of the Lot.** Purchaser acknowledges that it understands that the slopes and general configuration, dimensions and boundaries of the Lot may vary from those shown on topographical exhibits in the sales office or on plat plans. Without limiting the generality of this Section 6 of this Addendum, Purchaser acknowledges that Purchaser has been given an adequate opportunity to inspect all such items and that Purchaser has approved all slopes, fences and walls, including, without limitation, the location thereof, and the general configuration, dimensions and boundaries of the Lot.

6. **Varying Prices, Concessions and Incentives.** Purchaser understands and acknowledges that depending on market and other conditions and circumstances, Seller may, prior to or after the Close of Escrow, raise or lower the price of lots inside or outside the Planned Community, some of which lots may be similar to the Lot; and that Seller has made no price protection or similar commitment regarding the Lot, the Planned Community or any other property located therein, and shall not have any obligation or liability to Purchaser in the event any such post-closing conditions, circumstances or price changes directly or indirectly result in a perceived or actual diminution in the value of the Lot. Purchaser further understands and acknowledges: (i) that Seller considers this Agreement to be separate from and in no way connected with any other agreements Seller may have entered into for the sale of lots within the Planned Community to third persons, including, without limitation, any lots sold to a Builder, (as that term is defined in the Master Declaration); (ii) that Seller may offer prices, concessions and incentives that vary in amount or type to different buyers; (iii) that Seller is not obligated to provide to Purchaser, and has not represented that it has provided to Purchaser, the same price, concessions or incentives that Seller may offer to another buyer; and (iv) that Seller may have accepted lot reservations from buyers other than Purchaser, and that any such acceptance of a lot reservation by Seller shall have no effect on this Agreement.

7. **Views/Location Advantages.** The Lot may have a view or location advantage at the present time. This 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 that could affect the views of 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 view from the Lot and/or diminish the location advantages of the Lot, if any. Purchaser acknowledges that Seller has not made any representations, warranties, covenants, or agreements to or with Purchaser concerning the preservation or permanence of any view or location advantage for the Lot, and Purchaser hereby agrees that Seller shall not be responsible for any impairment of such view or location advantage, or for any perceived or actual loss of value of the Lot resulting from any such impairment. Purchaser is and shall be solely responsible for analyzing and determining the current and future value and permanence of any such view from or location advantage of the Lot.


Purchaser's Initials


Purchaser's Initials

8. **Golf Course Hazards.**

8.1 **Master Declaration Provisions.** Purchaser acknowledges that Purchaser has read and understands Section 3.4 of the Master Declaration which provides as follows:

3.4 Golf Course Liabilities. By accepting the deed or other instrument of conveyance to a Unit, each Owner, for himself and his invitees, personal representatives, assigns, and heirs (collectively, the "Owner's Related Parties") hereby (i) acknowledges the potential effect on his property of stray golf balls and other events inherent to the activities of a golf course near the Property (the "Golf Course Hazards"), (ii) assumes the risk of any property damage, personal injury, creation or maintenance of a trespass or nuisance created by or arising in connection with the Golf Course Hazards (collectively, the "Assumed Risks"), and (iii) releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless Declarant, the Association, the Board, the other Members, the owners and lessees of the golf course, all golf course managers and operators, all Builders and each of their respective officers, directors, shareholders, affiliates, employees, agents, representatives, successors and assigns (collectively, the "Released Parties"), and each of them, from any and all liability to the Owner or Owner's Related Parties for any losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments or other obligations arising out of or connected with any of the Assumed Risks, whether caused by the negligence of the Released Parties or otherwise. Notwithstanding the foregoing, however, in no event shall this Section 3.4 relieve any golfer from any claims or liability for any Golf Course Hazard caused by such golfer.

RLP
Purchaser's Initials

ML
Purchaser's Initials

8.2. Declaration of Annexation Provisions. Purchaser acknowledges that Purchaser has read and understood Section 8 of the Declaration of Annexation for Queensridge Parcel 20 (Queensridge North Custom Lots), the text of which is set forth below:

Waiver of Liability. The Declarant, Queensridge Owners Association and its members (in their capacity as members), Pore Stars, Ltd., the ground lessor of the Golf Course and any successor in title to the golf course, and any agents, servants, employees, directors, officers, members, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such party shall not in any way be responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever, including, without limitation, actions based on (a) any invasion of the Lot owner's use or enjoyment of the Lot, (b) improper design of the golf course, (c) the level of skill of any golfer (regardless of whether such golfer has the permission of the management to use the golf course), or (d) trespass by any golfer on the Lot, that may result from property damage or personal injury from golf balls (regardless of number) hit on the Lot, or from the exercise by any golfer of the easements granted hereby.

RLP
Purchaser's Initials

ML
Purchaser's Initials

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Attachment "A"

WHEN RECORDED RETURN TO:

NEVADA TITLE COMPANY
9500 Hillwood Drive, Suite 110
Las Vegas, Nevada 89128
Attention: Mary Rathbun

(Space above line for Recorder's use)

GRANT, BARGAIN AND SALE DEED

Nevada Legacy 14, LLC, a Nevada limited liability company, as "Grantor," does hereby grant, bargain, sell and convey to _____ as "Grantee," the real property in the City of Las Vegas, County of Clark, State of Nevada (hereinafter referred to as the "Property") described in Exhibit "A" attached hereto and incorporated herein by this reference;

RESERVING UNTO GRANTOR, its successors and assigns, together with the right to grant and transfer all or a portion of the same, the following:

(A) Any and all oil, oil rights, minerals, mineral rights, natural gas rights, and other hydrocarbons by whatsoever name known, geothermal steam, and all products derived from any of the foregoing, that may be within or under the Property, but without, however, any right to enter upon or in any way disturb the surface of the Property or any area within five hundred feet (500') from the surface of the Property in the exercise of such rights;

(B) Any and all water, rights or interests therein, no matter how acquired by Grantor, and owned or used by Grantor in connection with or with respect to the Property, or within or under the Property, together with the right and power to explore, drill, redrill, remove and store the same from the Property or to divert or otherwise utilize such water, rights or interests on any other property owned or leased by Grantor, whether such water rights shall be riparian, overlying, appropriative, percolating, littoral, prescriptive, adjudicated, statutory or contractual, but without, however, any right to enter upon or in any way disturb the surface of the Property or any area within five hundred feet (500') from the surface of the Property in the exercise of such rights;

(C) Non-exclusive easements in gross on, over, under or across the Property for the purposes of installation, emplacement and maintenance of electric, telephone, cable television, security system, water, gas, sanitary sewer lines, drainage facilities or any other utilities, together with the right to enter upon the Property (without unreasonably interfering with Grantee's and its successor's and assign's reasonable use and enjoyment thereof) in order to service, maintain, repair, reconstruct, relocate or replace any of such lines or facilities;

SUBJECT, HOWEVER, TO:

(1) The Master Declaration of Covenants, Conditions, Restrictions and Easements For Queenstidge, dated as of May 10, 1996, recorded on May 30, 1996, in the office of the County Recorder of Clark County, Nevada in Book 950539 of Official Records, as instrument no. 60241, re-recorded on August 30, 1996, in Book 960830 of said Official Records, as instrument no. 01630, and re-recorded on September

04/29/04/02015
0001A7C1D0C5H1RND0C5H1520749

Attachment "A" - Page 1

January 6, 1999

ROR023350

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12, 1996, in Book 960912 of said official records, as instrument no. 01520, and which was amended by document recorded on April 21, 1998, in Book 980421 of said official records, as instrument no. 00085, and all applicable supplements and amendments thereto.

(2) Supplemental Declaration for the Adoption of Section C of the Queensridge Master Planned Community Standards recorded on January 17, 1997 in Book 970117 of said Official Records, as instrument no. 01434;

(3) Supplemental Declaration for Queensridge North Special Benefits Area recorded on August 4, 1998, in Book 980804 of said official records, as instrument no. 1298;

(4) Declaration of Annexation for Queensridge Parcel 20 (Queensridge North Custom Lots), recorded on December 24, 1998, in Book 981224 of said Official Records, as instrument no. 00004; and

(5) All other covenants, conditions, restrictions, reservations, rights, rights-of-way and easements recorded against the Property prior to or concurrently with this Deed, and all other matters of record or apparent.

IN WITNESS WHEREOF, Grantor has caused its name to be affixed hereto and this instrument to be duly executed.

Dated as of _____

"GRANTOR"

NEVADA LEGACY I4, LLC, a Nevada limited liability company

By: PECCOLE NEVADA CORPORATION, a Nevada corporation, its manager

By: _____
LARRY MILLER, its C.E.O.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

This instrument was acknowledged before me on _____, by LARRY MILLER, as C.E.O. of Peccole Nevada Corporation, a Nevada corporation, the manager of Nevada Legacy I4, LLC, a Nevada limited liability company.

Signature of Notary
My Commission Expires: _____

04698463015
::ODM6AFCGOCSEILRNOBDCSU5297944

Attachment "A" - Page 2

January 6, 1999

ROR023351

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EXHIBIT "A" TO
Grant, Bargain and Sale Deed
Queensridge Parcel _____ (Queensridge North Custom Lots)

LEGAL DESCRIPTION

All that certain real property situate in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

PARCEL ONE (1):

LOT _____ OF BLOCK _____ OF PECCOLE WEST - PARCEL _____ AS SHOWN BY MAP THEREOF ON FILE
IN BOOK _____ OF PLATS, PAGE _____ IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITY PURPOSES ON, OVER
AND ACROSS ALL THOSE AREAS LABELED PRIVATE STREETS ON THE MAP REFERENCED
HEREINABOVE.

Assessor's Parcel No. _____

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Attachment "B"

AFFIRMATION FORM
PURCHASER ON-THE-LOT INSPECTION
(QUEENSRIDGE NORTH CUSTOM LOTS)

This undersigned, by his/her signature, hereby acknowledges that he or she has made a personal on-the-lot inspection of Lot _____ of Block _____ of Peccole West - Parcel _____ (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 execute a contract of sale or lease.

Lot _____ of Block _____ of Peccole West - Parcel _____

R. E. T. N. Peccole
Print Name of Purchaser

Nancy Peccole
Print Name of Purchaser

R. E. T. N. Peccole
Signature of Purchaser

Nancy Peccole
Signature of Purchaser

4/11/00
Date

4-11-00
Date

Attachment "D"

GOOD FAITH ESTIMATE OF
PRIVATE ROADWAY MAINTENANCE COSTS

The undersigned hereby acknowledge that prior to the execution of this Agreement, Purchaser has received The Ten Year Budget for Street Maintenance attached hereto as Exhibit "D-1." Such amount is included within the projected Budget for 1999.

Lot _____ of Block _____ of Peccole West - Parcel _____

Robert N Peccole
Print Name of Purchaser

NANCY A Peccole
Print Name of Purchaser

Robert N Peccole
Signature of Purchaser

Nancy A Peccole
Signature of Purchaser

4/11/00
Date

4-11-00
Date

Note to Sales Representatives: Obtain signature(s) of Purchaser(s) BEFORE he or she executes the Purchase Agreement, Earnest Money Receipt and Escrow Instructions.

04022462013
:ODMAVPCDGC5HJRNODDC5320744

January 6, 1999

ROR023354

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Attachment "D"

GOOD FAITH ESTIMATE OF
PRIVATE ROADWAY MAINTENANCE COSTS

The undersigned hereby acknowledge that prior to the execution of this Agreement, Purchaser has received The Ten Year Budget for Street Maintenance attached hereto as Exhibit "D-1." Such amount is included within the projected Budget for 1999.

Lot _____ of Block _____ of Peccole West - Parcel _____

Robert N Peccole
Print Name of Purchaser

NANCY A PECCOLE
Print Name of Purchaser

Robert N Peccole
Signature of Purchaser

Nancy A Peccole
Signature of Purchaser

4/11/00
Date

4-11-00
Date

Note to Sales Representatives: Obtain signature(s) of Purchaser(s) BEFORE he or she examines the Purchase Agreement, Earnest Money Receipt and Escrow Instructions.

0609846015
::DDMAFCDGCS@LENDGCRJ320744

January 6, 1999

ROR023355

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39
RPTT: Exempt 8
APN: 138-31-212-002
138-31-312-001
138-31-312-002
138-31-418-001
138-31-610-002

20050414-0002951

Fee: \$18.00 RPTT: EX#009
N/C Fee: \$25.00

04/14/2005 13:59:00

T20050068007

Requestor:

STEWART TITLE OF NEVADA

Frances Deane JSB
Clark County Recorder Pgs: 5

RECORDING REQUESTED BY STEWART TITLE
AND WHEN RECORDED MAIL TO:

Fore Stars, Ltd.
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145
Attention: Larry A. Miller

MAIL TAX STATEMENTS TO:

Same as above.

GRANT, BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the PECCOLE 1982 TRUST, DATED FEBRUARY 15, 1982, as to an undivided Forty Five percent (45%) interest and WILLIAM PETER AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP, as to an undivided Fifty Five percent (55%) interest, whose addresses are 851 S Rampart Blvd., Las Vegas, Nevada 89145, does hereby grant, bargain, sell and convey to FORE STARS, LTD., a Nevada limited liability company, whose address is 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145, that certain real property in the County of Clark, State of Nevada, more particularly described in Exhibit "1" attached hereto and incorporated herein by this reference.

SUBJECT TO (a) non-delinquent taxes for the fiscal year 2004 - 2005, (b) encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and easements that are validly of record and (c) all matters that would be revealed by an accurate ALTA Survey or physical inspection of the real property.

TOGETHER WITH all and singular the tencments, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Dated as of: April 11, 2005

PECCOLE 1982 TRUST, DATED
FEBRUARY 15, 1982

By: Peccole-Nevada Corporation, Trustee

By: Larry A. Miller
Larry A. Miller, Chief Executive Officer

P
3

WILLIAM PETER AND WANDA RUTH
PECCOLE FAMILY LIMITED PARTNERSHIP

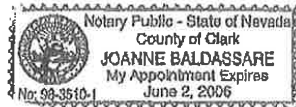
By: Peccole-Nevada Corporation, General Partner

By: Larry A. Miller
Larry A. Miller, Chief Executive Officer

P
7
C

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on April 11, 2005, by Larry A. Miller Chief Executive Officer of Peccole-Nevada Corporation, the Trustee of the Peccole 1982 Trust, dated February 15, 1982 and the General Partner of the William Peter and Wanda Ruth Peccole Family Limited Partnership.



Joanne Baldassare
NOTARY PUBLIC
My commission expires: June 2, 2006

29
**STATE OF NEVADA
 DECLARATION OF VALUE**

1. Assessor Parcel Number(s):
 - a) 138-31-212-002
 - b) 138-31-312-001
 - c) 138-31-312-002
 - d) 138-31-418-001
 - e) 138-31-610-002
2. Type of Property

a) <input type="checkbox"/> Vacant Land	b) <input type="checkbox"/> Single Fam. Res.
c) <input type="checkbox"/> Condo/Twnhse	d) <input type="checkbox"/> 2 - 4 Plex
e) <input type="checkbox"/> Apartment Bldg.	f) <input checked="" type="checkbox"/> Comm'l / Ind'l
g) <input type="checkbox"/> Agricultural	h) <input type="checkbox"/> Mobile Home
i) <input type="checkbox"/> Other:	
3. Total Value / Sales Price of Property
 Deed in Lieu of Foreclosure Only (value of property))
 Transfer Tax Value: \$ _____
 Real Property Transfer Tax Due: \$ Exempt

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument No.: _____
 Book: _____ Page: _____
 Date of Recording: _____
 Notes: _____

4. If Exemption Claimed:
 - a. Transfer Tax Exemption, per NRS 375.090, Section 18
 - b. Explained Reason for Exemption: transfer to a business entity of which grantor is the 100% owner
5. Partial Interests: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 1/2% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: see A attached
 Signature: see B attached

Capacity: see A attached
 Capacity: see B Attached

**SELLER (GRANTOR) INFORMATION
 (REQUIRED)**

Print Name: see C attached
 Address: _____
 City: _____
 State: _____

**BUYER (GRANTEE) INFORMATION
 (REQUIRED)**

Print Name: Fore Stars, Ltd.
 Address: 851 S. Rampart Blvd. #220
 City: Las Vegas
 State: Nevada Zip: 89146

COMPANY REQUESTING RECORDING (required if not seller or buyer)

Print Name: Stewart Title of Nevada
 Address: 3773 Howard Hughes Parkway
 City: Las Vegas

Escrow #: 405137-LJJ
 State: NV Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)

PRJ-63491
 02/25/16

ROR023358

24767

STATE OF NEVADA DECLARATION OF VALUE SIGNATURE PAGE

Accessor Parcel Number(s):

- a) 138-31-212-002
- b) 138-31-312-001
- c) 138-31-312-002
- d) 138-31-418-001
- e) 138-31-610-002

A. Signature: *Larry A. Miller* Capacity: Chief Executive Officer of
Larry A. Miller Peccole-Nevada Corporation,
Trustee of the Peccole 1982
Trust dated February 15, 1982
and General Partner of the
William Peter and Wanda Ruth
Family Limited Partnership

B. Signature: *Larry A. Miller* Capacity: Chief Executive Officer of
Larry A. Miller Peccole-Nevada Corporation,
Manager of Fore Stars, Ltd.

C. Peccole 1982 Trust dated February 15, 1982
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

William Peter and Wanda Ruth Peccole Family Limited Partnership
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

9951
RRJ-63491
02/25/16

ROR023359

24768

APN: 138-32-301-004

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Alan C. Sklar, Esq.
Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145

**NOTICES OF TAXES SHOULD BE
SENT TO:**

Seventy Acres LLC
1215 South Fort Apache Road, Suite 120
Las Vegas, Nevada 89117
Attention: Vickie DeHart

RPTT: \$-0- (exempt) 1

Inst #: 20151116-0000239

Fees: \$19.00 N/C Fee: \$25.00

RPTT: \$0.00 Ex: #001

11/16/2015 08:01:44 AM

Receipt #: 2607151

Requestor:

TICOR TITLE LAS VEGAS

Recorded By: RNS Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

15540174 SGS

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That ~~180~~ LAND CO LLC, a Nevada limited-liability company ("Grantor"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby quitclaim and convey to **SEVENTY ACRES LLC**, a Nevada limited-liability company whose mailing address is 1215 South Fort Apache Road, Suite 120, Las Vegas, Nevada 89117, all right, title and interest of Grantor in and to that real property situated in the County of Clark, State of Nevada, bounded and described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, together with all right, title and interest of Grantor in and to all tenements, hereditaments and appurtenances to such real property, including, without limitation, all right, title and interest of Grantor in and to all streets and other public ways adjacent to such real property, and all water and development rights related to such real property.

[SIGNATURE PAGE FOLLOWS]

PRJ-63491
02/25/16

ROR023360

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IN WITNESS WHEREOF, this instrument has been executed this 10 day of November, 2015.

180 LAND CO LLC, a Nevada
limited-liability company

By: EHB Companies LLC, a
Nevada limited-liability
company and its Manager

By: [Signature]
Name: U. DEHART
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

This instrument was acknowledged before me on November 10, 2015 by Dickie Dehart as a Manager of EHB Companies LLC, a Nevada limited-liability company and the Manager of 180 Land Co LLC, a Nevada limited-liability company.

[Signature]
NOTARY PUBLIC



State of Nevada
Appointment No. 07-4284-1
Expires Jul 26, 2019

PRJ-63491
02/25/16

ROR023361

24770

**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL I

LOT 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 120 OF PARCEL MAPS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND THEREAFTER AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JULY 2, 2015 IN BOOK 20150702 AS INSTRUMENT NO. 01264 OF OFFICIAL RECORDS.

PARCEL II

AN EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED FEBRUARY 9, 1996 IN BOOK 960209 AS INSTRUMENT NO. 00567, OFFICIAL RECORDS

PRJ-63491
02/25/16

ROR023362

24771

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 138-32-301-004
b. _____
c. _____
d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☐ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☒ Other Golf course land

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 0
b. Deed in Lieu of Foreclosure Only (value of property) ()
c. Transfer Tax Value: \$ 0
d. Real Property Transfer Tax Due \$ 0

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 1
b. Explain Reason for Exemption: Transfer of ownership to an affiliated entity with identical common ownership.

5. Partial Interest: Percentage being transferred: _____ %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor
Signature [Signature] Capacity: Grantee

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: 180 Land Co LLC
Address: 1215 S. Fort Apache Ste 120
City: Las Vegas
State: NV Zip: 89117

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Seventy Acres LLC
Address: 1215 S. Fort Apache Ste 120
City: Las Vegas
State: NV Zip: 89117

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Ticor Title of Nevada, Inc.
Address: 8379 W. Sunset Road #220
City: Las Vegas

Escrow # 15540174SGS
State: NV Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PRJ-63491
02/25/16

ROR023363

24772

APN: 138-31-702-002
138-31-712-004
138-31-801-002
138-32-301-004

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Alan C. Sklar, Esq.
Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145

**NOTICES OF TAXES SHOULD BE
SENT TO:**

180 Land Co LLC
1215 South Fort Apache Road, Suite 120
Las Vegas, Nevada 89117
Attention: Vickie DeHart

RPTT: \$-0- (exempt) section 1

15340174 565

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That **FORE STARS, LTD.**, a Nevada limited-liability company ("**Grantor**"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby quitclaim and convey to **180 LAND CO LLC**, a Nevada limited-liability company whose mailing address is 1215 South Fort Apache Road, Suite 120, Las Vegas, Nevada 89117, all right, title and interest of Grantor in and to that real property situated in the County of Clark, State of Nevada, bounded and described as set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all right, title and interest of Grantor in and to all tenements, hereditaments and appurtenances to such real property, including, without limitation, all right, title and interest of Grantor in and to all streets and other public ways adjacent to such real property, and all water and development rights related to such real property.

[SIGNATURE PAGE FOLLOWS]

Inst #: 20151116-0000238
Fees: \$19.00 N/C Fee: \$25.00
RPTT: \$0.00 Ex: #001
11/16/2015 08:01:44 AM
Receipt #: 2607161
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

PRJ-63491
02/25/16

ROR023364

24773

IN WITNESS WHEREOF, this instrument has been executed this 10 day of November, 2015.

FORE STARS, LTD., a Nevada limited-liability company

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By: [Signature]
Name: V DeHart
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

This instrument was acknowledged before me on November 10, 2015 by Vickie DeHart as a Manager of EHB Companies LLC, a Nevada limited-liability company and the Manager of Fore Stars, Ltd., a Nevada limited-liability company.

[Signature]
NOTARY PUBLIC



PRJ-63491
02/25/16

ROR023365

24774

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

LOT 2, LOT 3 AND LOT 4 AS SHOWN BY MAP THEREOF ON FILE IN FILE 120 OF PARCEL MAPS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND THEREAFTER AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JULY 2, 2015 IN BOOK 20150702 AS INSTRUMENT NO. 01264 OF OFFICIAL RECORDS.

APNs: 138-32-301-004 (Lot 2)
138-31-702-002 (Lot 3)
138-31-801-002 (Lot 4)

PARCEL II:

PECCOLE WEST PARCEL, 20 LOT G (COMMON AREA), LYING WITHIN TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., AND SHOWN BY MAP THEREOF ON FILE IN BOOK 87, PAGE 54, CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

APN: 138-31-712-004 (Lot G)

PARCEL III:

AN EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED FEBRUARY 9, 1996 IN BOOK 960209 AS INSTRUMENT NO. 00567, OFFICIAL RECORDS

PRJ-63491
02/25/16

ROR023366

24775

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 138-31-702-002
b. 138-31-712-004
c. 138-31-801-002
d. 138-32-301-004

2. Type of Property:

- a. ☐ Vacant Land b. ☐ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☒ Other Golf course land

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property

\$ 0

b. Deed in Lieu of Foreclosure Only (value of property (_____))

\$ 0

c. Transfer Tax Value:

\$ 0

d. Real Property Transfer Tax Due

\$ 0

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 1

b. Explain Reason for Exemption: Transfer of ownership to an affiliated entity with identical common ownership.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor

Signature [Signature] Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Fore Stars LTD
Address: 1215 S. Fort Apache Ste 120
City: Las Vegas
State: NV Zip: 89117

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 180 Land Co LLC
Address: 1215 S. Fort Apache Ste 120
City: Las Vegas
State: NV Zip: 89117

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Ticor Title of Nevada, Inc.
Address: 8379 W. Sunset Road #220
City: Las Vegas

Escrow # 15540174SGS
State: NV Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PRJ-63491
02/25/16

ROR023367

24776

MAYOR RON LURIE

COUNCILMEN
BOB NOLEN
STEVE MILLER
ARNIE ADAMSEN
SCOTT HIGGINSON

CITY MANAGER
ASHLEY HALL



CITY of LAS VEGAS

May 1, 1990

William Peccole 1982 Trust
2760 Tioga Pines Circle
Las Vegas, Nevada 89117

RE: Z-17-90 - ZONE CHANGE

Gentlemen.

The City Council at a regular meeting held April 4, 1990 APPROVED the request for reclassification of property located on the east side of Hualpai Way, west of Durango Drive, between the south boundary of Angel Park and Sahara Avenue, From: N-U (Non-Urban)(under Resolution of Intent to R-1, R-2, R-3, R-PD7, R-PD8, R-MHP, P-R, C-1, C-2 and C-V), To: R-PD3 (Residential Planned Development), R-PD7 (Residential Planned Development) and C-1 (Limited Commercial), Proposed Use Single Family Dwellings, Multi-Family Dwellings, Commercial, Office and Resort/Casino, subject to:

1. A maximum of 4,247 dwelling units be allowed for Phase II
2. Conformance to the conditions of approval for the Peccole Ranch Master Development Plan, Phase II.
3. Approval of plot plans and building elevations by the Planning Commission for each parcel prior to development.
4. At the time development is proposed on each parcel appropriate right-of-way dedication, street improvements, drainage plan/study submittal, drainageway improvements, sanitary sewer collection system extensions and traffic signal system participation shall be provided as required by the Department of Public Works.

CLV7009

400 E STEWART AVENUE • LAS VEGAS NEVADA 89101 • (702) 386-6011




ROR023368

24777

William Peccole 1982 Trust
May 1, 1990
RE Z-17-90 - ZONE CHANGE
Page 2.

5. Signs shall be posted on the resort/casino and commercial center sites to indicate the proposed uses.
6. The surrounding property owners shall be notified when the development plans for the resort/casino and commercial center sites are submitted for review.
7. The existing Resolution of Intent on this property is expunged upon approval of this application.
8. Resolution of Intent with a five year time limit.
9. Satisfaction of City Code requirements and design standards of all City departments
10. Approval of the parking and driveway plans by the Traffic Engineer
11. Repair any damage to the existing street improvements resulting from this development as required by the Department of Public Works
12. Provision of fire hydrants and water flow as required by the Department of Fire Services.

Sincerely,


KATHLEEN M. TIGHE
City Clerk

KMT cmp

cc: Dept. of Community Planning & Development
Dept. of Public Works
Dept. of Fire Services
Dept. of Building & Safety
Land Development Services

1515 Mr. A. Wayne Smith
A. Wayne Smith & Associates
1414 E. Missouri, Suite 100
Phoenix, Arizona 85014

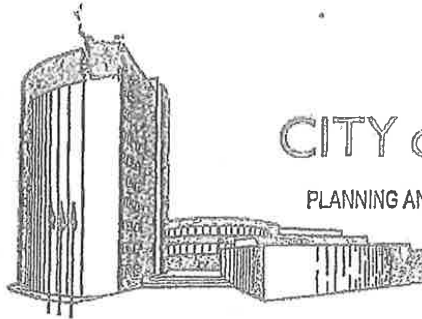
VTN Nevada
2300 Paseo Del Prado, A-100
Las Vegas, Nevada 89102

Sean McGowan
2300 W. Sahara, Box 10
Las Vegas, Nevada 89102

ROR023369

24778

26
MAYOR
JAN LAVERTY JONES
COUNCILMEN
ARNE ADAMSEN
MATTHEW Q. CALLISTER
MICHAEL J. McDONALD
GARY REESE
CITY MANAGER
LARRY K. BARTON



CITY of LAS VEGAS

PLANNING AND DEVELOPMENT DEPARTMENT

October 8, 1996

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

Re: BADLANDS GOLF COURSE, PHASE 2

Dear Mr. Spitze:

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

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

Very truly yours,

Robert S. Genzer, Planning Supervisor
Current Planning Division

1994 Zoning Confirmation Letter
from Bob Genzer to Clyde Spitze

RSG:erh



400 E STEWART AVENUE • LAS VEGAS, NEVADA 89101-2936
(702) 229-6011 (VOICE) • (702) 386-9108 (TDD)

CLV 7009
3/91 013 2/35

ROR023370

24779



Civil Engineering
Construction
Management
Land Surveying
Planning
ADA Consulting

PENTACORE

1994 Zoning Preservation Letter from Clyde Spitze to Bob Genzer

0171 0030

September 4, 1996

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

RE Badlands Golf Course, Phase 2

Dear Bob

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

Thank you for your consideration in this matter.

Sincerely,


Clyde O Spitze
Vice President

RECEIVED
SEP 4 4 58 PM '96
PLANNING AND
DEVELOPMENT

CCS: bcz

7-146-94
2-17-90

6763 West Charleston Boulevard • Las Vegas, Nevada 89102 • (702) 258-0116 • Fax (702) 258-4856

ROR023371

24780

CUSTOM LOTS AT QUEENSRIDGE NORTH

**PURCHASE AGREEMENT, EARNEST MONEY
RECEIPT AND ESCROW INSTRUCTIONS**

THIS IS MORE THAN A RECEIPT FOR MONEY. IT IS INTENDED TO BE A LEGALLY BINDING CONTRACT. READ IT CAREFULLY. PURCHASER IS ENCOURAGED TO SEEK THE ADVICE OF LEGAL COUNSEL BEFORE SIGNING THIS AGREEMENT. EACH PARTY SIGNING THIS AGREEMENT HAS READ ITS TERMS AND CONDITIONS AND ACCEPTS AND AGREES TO BE BOUND BY SUCH TERMS AND CONDITIONS.

THE UNDERSIGNED,

Robert N. + Nancy A. Peccole
("Purchaser"), hereby agree(s) to purchase from NEVADA LEGACY 14, LLC, a Nevada limited liability company ("Seller"), and Seller agrees to sell to Purchaser that certain real property described below, upon the terms and conditions contained in this Purchase Agreement, Earnest Money Receipt and Escrow Instructions ("Agreement"). The real property which is the subject of this Agreement shall hereinafter be referred to as the "Lot", and is legally described as follows (provided, however, that Seller reserves any and all water, water rights and ditch rights appurtenant to the Lot except those reasonably necessary to construct Purchaser's single-family residence thereon):

PARCEL ONE (1): LOT 2 OF BLOCK _____ OF PECCOLE WEST - PARCEL _____
as shown on the map thereof on file in Book _____ of Plats, Page _____, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2): a non-exclusive easement for ingress, egress and public utility purposes on, over and across all those areas labeled private streets on the map referenced herein above.

Assessors Parcel No. _____

1. Definitions. The following terms, as used in this Agreement, shall have the meaning set forth in this Section 1:

- a. "Purchase Price" is \$ 243,000
- b. "Scheduled Closing Date" is May 2, 00
- c. "Close of Escrow" means the time when the Escrow Agent (as defined in Section 4) records all of the instruments which are required to be recorded under this Agreement.
- d. "Planned Community" means the property subject to the Master Declaration (defined below) including the property now subject thereto and additional property, if any, hereafter annexed to the Planned Community in accordance with the terms of the Master Declaration.
- e. "Earnest Money Deposit" means the sum of the Initial Earnest Money Deposit and any Additional Earnest Money Deposit.
- f. "Master Declaration" means Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge recorded in the Official Records of the County Recorder of Clark County on May 30, 1996, in Book 960530, as instrument no. 00241, re-recorded on August 30, 1996, in Book 960830, as instrument no. 01630, and re-recorded on September 12, 1996, in Book 960912, as instrument no. 01520, and any amendments thereto.
- g. "Applicable Declarations" means collectively the Master Declaration, the Declaration of Annexation for Queensridge Parcel 20 (Queensridge North Custom Lots) and all Recorded Supplemental Declarations which affect the Lot.
- h. "Association" means Queensridge Owners Association, a Nevada non-profit corporation, formed pursuant to the provisions of the Master Declaration.

ROR023372

24781

2. **Payment.** Purchaser agrees to pay the Purchase Price for the Lot as follows:

Initial Earnest Money Deposit	\$ 40,000
Additional Earnest Money Deposit (if any)	\$
Proceeds from new loan ("New Loan") or cash paid by Purchaser	\$
Additional cash due at Close of Escrow:	\$203,000
TOTAL PURCHASE PRICE	\$243,000

- a. **Initial Earnest Money Deposit.** The Initial Earnest Money Deposit (i) shall be deposited with Seller upon Buyer's execution of Buyer's offer to purchase the Lot, (ii) shall be non-refundable, and (iii) shall be credited to the Purchase Price at close of Escrow.
- b. **Additional Earnest Money Deposit.** The Additional Earnest Money Deposit (if any) shall be paid into Escrow on or before _____ and shall be credited to the Purchase Price at close of Escrow.
- c. **Balance of Purchase Price.** The Purchase Price, less the Earnest Money Deposit, shall be payable in cash at close of Escrow. If a portion of the balance of the Purchase Price shall consist of proceeds from a New Loan, promptly after Seller's acceptance of Purchaser's offer, Purchaser shall submit Purchaser's loan application to a lender or lenders of Purchaser's choice ("Lender"). In such instance, this Agreement is conditioned upon, as a condition precedent, Purchaser's ability to obtain written approval or a written commitment for a New Loan on the terms set forth in the next sentence. Within thirty (30) days after Seller's acceptance of Purchaser's offer, Purchaser (i) shall use Purchaser's best efforts to qualify for and obtain a New Loan at prevailing rates for similar loans in the Las Vegas area subject only to normal loan closing conditions, and (ii) shall deliver into Escrow an executed copy of such approval or commitment. In the event Purchaser fails to satisfy such condition precedent within the time periods specified herein, then, unless such periods are extended by Seller in writing, Seller shall refund promptly to Buyer the Initial Earnest Money Deposit and Seller and Buyer shall have no further obligations hereunder.

3. **Closing Costs and Prorations.** Except as otherwise provided in this Agreement, Purchaser and Seller agree to pay, and Escrow Agent is authorized to pay, the following sums, and to charge the accounts of Purchaser and Seller respectively, as follows: (a) charge Purchaser for (i) all fees, costs and charges connected with any New Loan obtained by Purchaser, including but not limited to loan document preparation and recording fees, (ii) the escrow fee normally charged by Escrow Agent to buyers, and (iii) other fees, costs, expenses and charges according to the customary practices of Escrow Agent; and (b) charge Seller for (i) real property transfer taxes, (ii) the escrow fee normally charged by Escrow Agent to sellers (which Purchaser acknowledges may be at a reduced, "bulk" rate), (iii) the premium for the Title Policy described in Section 5, (iv) the cost of preparation and recording of the Deed, and (v) other fees, costs, expenses and charges according to the customary practices of Escrow Agent. Escrow Agent shall prorate between the parties, to the date of Close of Escrow, general and special city and county taxes. All assessments attributable to the Lot and any obligations imposed by the Desert Tortoise Conservation Habitat Plan shall be payable by Seller at Close of Escrow. All proration and adjustments shall be made on the basis of a thirty (30) day month.

4. **Escrow.** Purchaser and Seller agree that the transaction contemplated in this Agreement shall be consummated through an escrow (the "Escrow") to be established with Nevada Title Company, 3300 Hillwood Drive, Suite 110, Las Vegas, Nevada 89134, Attention: Mary Rathbun ("Escrow Agent"). Upon Seller's acceptance and delivery of this Agreement to Escrow Agent together with the Earnest Money Deposit, Escrow shall be deemed open. This Agreement shall constitute irrevocable escrow instructions to Escrow Agent. Escrow will close on or before the Scheduled Closing Date described in Section 1 above. If Escrow cannot close on the Scheduled Closing Date due to the failure of the Purchaser to timely perform its obligations hereunder, Purchaser will be deemed to be in default under this Agreement, and Seller will be entitled to the remedies set forth in Section 7 hereof.

5. **Title and Title Policy.** At the Close of Escrow, Seller will convey good and marketable title to the Lot by a grant, bargain and sale deed (the "Deed"), in the form of the Deed attached hereto as Attachment "A" hereto, free and clear of any monetary encumbrances other than the Permitted Exceptions. As used herein "Permitted Exceptions" means (a) any encumbrance recorded against the Lot made by or on behalf of Purchaser at the Close of Escrow; (b) the following described impositions which may constitute a lien but which are not then due and payable: (i) property taxes, (ii) the lien of any supplemental taxes, (iii) other governmental impositions now levied, or which may be levied in the future, with respect to the Lot, and (iv) liens of governmental and non-governmental entities providing services to the Lot; (c) the Applicable Declarations (which include those listed on Addendum "1" hereto), (d) the reservations in favor of Seller which are set forth in the Deed; and (e) all other restrictions, conditions, reservations, rights, rights of way and easements of record, and other exceptions to title shown on the Title Report other than Blanket Encumbrances. Seller

will deliver title to the Lot free of Blanket Encumbrances. For purposes of this Agreement, a "Blanket Encumbrance" is defined as a financial or monetary encumbrance consisting of a deed of trust, mortgage, judgment (including an option or contract to sell or a trust agreement) affecting more than one lot within the Planned Community. The term "Blanket Encumbrance" specifically excludes, however, liens and encumbrances (x) arising as a result of the imposition of any tax or assessment by and public authority, and (y) imposed by the Applicable Declarations. At the Close of Escrow, Seller will cause a CLTA Owner's standard coverage policy of title insurance (the "Title Policy") to be issued by Nevada Title Company ("Title Company") in the face amount of the Purchase Price insuring title to the Lot in Purchaser subject only to the Permitted Exceptions.

6. **Seller's Improvements.** Seller has installed or will install prior to the issuance of a building permit for a single family residence on the Lot (the "Building Permit") the following described improvements ("Finished Lot Improvements"): roads providing access to the Lot, together with underground improvements for sanitary sewer, potable water, natural gas and conduit and any and all other improvements required by the City of Las Vegas as conditions to final subdivision map approval. All such utility improvements are or will be stubbed out to the boundary line of the Lot prior to the issuance of the Building Permit. Purchaser is responsible for utility connections to Purchaser's residence and for making necessary arrangements with each of the public utilities for service. Purchaser acknowledges that Seller is not improving the Lot and has not agreed to improve the Lot for Purchaser, except as provided in this Section 6. Purchaser will be responsible for finish grading and preparation of the building pad and acknowledges that Seller has not agreed to provide any grading of the Lot beyond its present condition. The exact location of electrical transformers, fire hydrants, irrigation valves and other utility vaults may not be known at the time this Agreement is signed. Seller will exercise judgment in placing these items, but will not be responsible if the appearance or location thereof is objectionable to Purchaser. Purchaser acknowledges and agrees that except as may otherwise be provided in the Applicable Declarations, Purchaser shall be responsible for the repair or replacement, as necessary, any sidewalks, landscaping and trees installed by Seller which are damaged or destroyed as a result of construction performed by Purchaser. The City of Las Vegas, the Las Vegas Valley Water District, and Nevada Power Company will charge fees for sewer, water and electrical systems and other municipal improvements as a condition to providing services or issuance of a Building Permit for the Lot. These charges, and any similar charges levied by the City, the Water District or the Power Company, are the responsibility of Purchaser, not Seller, including the capacity connection charge payable to the Las Vegas Valley Water District. Any other such fees which are required to be paid at or prior to the Close of Escrow will be collected by Escrow Agent from Purchaser.

7. **Default by Purchaser.** By placing their initials here, Seller *[Signature]* and Purchaser *[Signature]* agree that it would be impractical or extremely difficult to fix actual damages likely to be suffered by Seller in case of Purchaser's failure to complete the purchase of the Lot due to Purchaser's default. Purchaser and Seller further agree that the Earnest Money Deposit is a reasonable estimate of the damages Seller is likely to suffer in the event of Purchaser's default. In the event of a default by Purchaser, Seller shall be entitled to the entire Earnest Money Deposit as liquidated damages and Escrow Agent shall deliver such funds to Seller upon written notice to Escrow Agent from Seller specifying the nature of Purchaser's default. Such disbursement by Escrow Agent to Seller of the Earnest Money Deposit shall constitute Seller's exclusive remedy hereunder for a default of Purchaser.

8. **Warranties.** Purchaser hereby acknowledges and represents and warrants to Seller that Purchaser is not relying upon any warranties, promises, guarantees, advertisements or representations made by Seller or anyone acting or claiming to act on behalf of Seller. Except as expressly provided in Section 6 of this Agreement, Purchaser agrees that the Lot shall be conveyed to Purchaser in its "as is" condition and Seller makes no representations or warranties of any kind whatsoever as to the Lot, its condition or any other aspect thereof, including, without limitation, any patent or latent physical condition or aspect of the Lot or the presence of hazardous or regulated materials on the Lot or any other environmental condition relating to the Lot. Except as otherwise expressly provided in Section 6 hereof, Purchaser hereby waives any and all claims against Seller regarding the condition of the Lot. Purchaser hereby acknowledges and agrees that by accepting the Deed to the Lot: (a) Purchaser or its agents have examined and are satisfied with the Lot, the boundaries of the Lot, the soil condition of the Lot, any existing easements affecting the Lot, utility availability, and all laws, ordinances, regulations, permitted uses and other matters relating to the Lot; (b) Purchaser is accepting the Lot in its "as is" condition and confirming that the same is satisfactory for the uses and purposes intended by Purchaser; (c) Purchaser is acknowledging that Seller has not made, does not make, and has not authorized anyone else to make any representation or warranty as to the past, present or future condition or use of the Lot; (d) Purchaser is assuming all risks regarding the Lot. Seller and Purchaser acknowledge and agree that the terms and conditions of this Section 8 concerning the condition of the Lot shall survive and remain in effect after the Close of Escrow.

9. **Security Services.** Purchaser understands that Seller makes no representations or warranties of any kind, except for those expressly set forth in writing herein, as to whether or not any security personnel or services will be provided or retained for the Lot. Seller agrees to provide a limited access entry gate at the Alta Boulevard entrance to the Planned Community. Purchaser understands that the decision of whether to provide security services and the level of such security services to be provided is the responsibility of the Association.

10. **Soil Condition.** Soils and geotechnical conditions vary throughout Southern Nevada. Soils are often expansive or composed of large amounts of rock and may react in differing manners to various structural loads. Although all lots in the Planned Community have been rough graded and compacted, Seller makes no representation or warranty as to the adequacy of the soil condition for improvements other than those constructed (or caused to be constructed) by Seller. Purchaser shall engage the services of a qualified contractor and geotechnical engineer for the installation of any improvements (including, without limitation, swimming pools), to ensure appropriate design and construction methods, including proper drainage and stabilization measures. Due to differing geologic conditions, design methods may vary from location to location. Seller and Purchaser acknowledge and agree that the terms and conditions of this Section 10 concerning the soil condition shall survive and remain in effect after the Close of Escrow.

11. **Association Fees.** Purchaser acknowledges and understands that the Lot being purchased is located in the Planned Community known as "Queensridge" and is subject to the Applicable Declarations. As owner of the Lot, Purchaser shall be a member of the Association. Purchaser understands and agrees that Purchaser shall be responsible for payment to the Association of all Assessments imposed by the Applicable Declarations, which include the Annual Assessments, if any, Assessments for the Queensridge North Special Benefits Area, Special Benefits Area Assessments for the Orient Express Special Benefits Area, and any other Assessments imposed by the Applicable Declarations (collectively "Assessments"). The combined total amount of the Assessments applicable to the Lot on the date of execution of this Agreement is Three Hundred Twenty-Four 200 Dollars (\$324) per month. Purchaser agrees to pay at Close of Escrow the first three monthly installments of the Assessments. The amount of Purchaser's Assessments may increase in subsequent years as provided in the Applicable Declarations and any amendments thereto.

12. **Inspection.** Purchaser acknowledges that, prior to signing this Agreement, Purchaser conducted a personal, on-the-lot inspection of the Lot. Following such inspection, Purchaser executed the Affirmation Form attached hereto as Attachment "B". Purchaser represents and warrants that it has been given an adequate opportunity to investigate, inspect and become familiar with all aspects and components of the Lot and the Planned Community, and the surrounding and nearby areas, neighborhoods, services and facilities. Purchaser further represents that it is relying solely on such investigation and inspection, and that it is not relying on any warranties, promises, guarantees or representations by Seller or anyone acting or claiming to act on behalf of Seller (including, without limitation, Seller's sales agents and representatives). Purchaser represents that it has neither received nor relied on advice of any nature from Seller, Seller's sales representatives or Escrow Agent, and that Purchaser has been advised to retain legal counsel.

13. **Future Development.** Purchaser acknowledges that except for the information contained in Zoning Information Disclosure ("Zoning Disclosure") required by Nevada Revised Statutes ("NRS") Chapter 113 and attached hereto as Attachment "C" or the Public Offering Statement for Queensridge (Custom Lots) (the "Public Offering Statement") required by NRS Chapter 116, Seller has made no representations or warranties concerning zoning or the future development of phases of the Planned Community or the surrounding area or nearby property.

14. **Completion of Finished Lot Improvements.** Pursuant to the Interstate Land Sales Full Disclosure Act, 42 U.S.C.S. §§ 1701 - 1702, and the regulations promulgated thereunder, Seller covenants to Purchaser that the Finished Lot Improvements (defined in Section 6 of this Agreement) shall be completed prior to the issuance of a Building Permit for the Lot; provided, however, that the covenants of Seller to complete the Finished Lot Improvements within such period of time (i) may be deferred or delayed as a result of conditions beyond the control of Seller, including, without limitation, Acts of God, strikes, or material shortages; and (ii) are conditioned upon grounds sufficient to establish impossibility of performance under Nevada law.

15. **Purchaser's Construction of Residence.** Purchaser acknowledges that the construction of Improvements (as defined in the Master Declaration) on the Lot are governed by the Master Planned Community Standards applicable to the Custom Lots and any other provisions of the Applicable Declarations governing the construction of Improvements to the Custom Lots. Purchaser acknowledges that the Master Planned Community Standards require, among other things, the following:

- a. The submittal of preliminary plans and drawings for the residential dwelling unit and other out buildings (collectively the "Residence Plans"), and plans for recreational amenities, such as swimming pools and tennis courts, and landscaping (collectively "Landscaping and Recreational Amenities Plans") no later than 2 1/2 years after close of Escrow;
- b. The commencement of construction of the Residence (which means the commencement of visible work on the Lot) within 3 years after close of Escrow;
- c. For Lots 1 through 5, inclusive, in Block A, and Lots 6 through 21, inclusive, in Block B, of Parcel 20, the issuance of a Certificate of Occupancy for the Residence within 4 1/2 years after Close of Escrow, and

- d. The commencement of work for recreational amenities and landscaping on or before 6 months after the issuance of the Certificate of Occupancy and the completion thereof within 6 months after the commencement of such work.

The Purchaser is also aware that the Master Planned Community Standards provide that a fine of \$50 per day will be imposed by the Association for failure to comply with any above-described time periods. The above described time periods will not be extended by reason of Purchaser's sale of the Lot or by the failure of Purchaser to meet any previous time period.

16. **Purchaser's Right to Cancel.** Unless the Purchaser has personally inspected the Lot, the Purchaser may cancel, by written notice, this Agreement until midnight of the fifth (5th) calendar day following its execution by both Purchaser and Seller.

17. **Purchaser Not To Assign.** In view of the credit qualifications, processing and other personal matters considered by Seller in accepting this Agreement, prior to the Close of Escrow the rights of Purchaser hereunder may not be assigned, sold, transferred or hypothecated by Purchaser voluntarily, involuntarily, or by operation of law without first obtaining Seller's written consent, which consent may be withheld in Seller's sole absolute discretion.

18. **Purchaser's Interest.** By this Agreement, Purchaser acquires no right, title or interest of any kind whatsoever in or to the Lot, or any part thereof until and unless the Escrow herein provided for shall successfully close. It is agreed that except as otherwise provided in Section 14 hereof (Completion of Finished Lot Improvements), Purchaser's sole remedy for any breach hereof by Seller shall be an action at law for monetary damages and that Purchaser shall have no right to specific performance of this Agreement. In no event and at no time prior to the Close of Escrow shall Purchaser have any right to enter upon the Lot for any reason without being accompanied by an employee or agent of the Seller unless Seller and Purchaser have executed a separate license agreement for access. Subject to the foregoing, Seller shall at Purchaser's request, allow reasonable access to the Lot for Purchaser's inspection of the Lot during normal business hours and subject to such reasonable conditions as Seller may require.

19. **Entire Understanding.** This Agreement constitutes the entire Agreement and understanding between Purchaser and Seller with respect to the purchase of the Lot and may not be amended, changed, modified or supplemented except by an instrument in writing signed by both parties. This Agreement supersedes and revokes all prior written and oral understandings between Purchaser and Seller with respect to the Lot, including, but not limited to, any Custom Home Lot Reservation.

20. **Effective Date.** Execution of this Agreement by Purchaser and by Seller's sales representative shall constitute only an offer by Purchaser to purchase which will not be binding unless accepted by Seller by execution of this Agreement by an authorized member of Seller or Seller's attorney-in-fact and delivered to Purchaser or Purchaser's agent within one (1) day after Seller's acceptance within three (3) business days after the date such offer is executed by Purchaser. Failure of Seller to so accept shall automatically revoke Purchaser's offer and all funds deposited by Purchaser with Seller or Seller's Broker, or Escrow Agent shall be promptly refunded to Purchaser. Seller's sales representatives are not authorized to accept this offer unless so empowered by a recorded power-of-attorney. Receipt and deposit of Purchaser's funds by Seller's sales representative shall not constitute an acceptance of this offer by Seller.

21. **Provisions Severable.** Each of the provisions of this Agreement is independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

22. **Attorneys' Fees and Costs.** In any action, proceeding or arbitration between the parties, whether or not arising out of this Agreement and whether prior to or after the Close of Escrow, the parties shall pay their own attorneys' fees and arbitration and court costs, except as otherwise expressly provided in this Agreement.

23. **Miscellaneous.** Time is of the essence of this Agreement. In the event of any conflict between the provisions of this Agreement as amended from time to time, and the provisions of any separate or supplementary escrow instructions, the provisions of this Agreement shall control. This Agreement shall be construed, interpreted and governed by the laws of the State of Nevada.

24. **Modification and Waivers.** No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the parties. The waiver by Seller of any term or obligation under this Agreement shall not be construed as a waiver of any other or subsequent term or obligation under this Agreement.

25. **Notices.** Any notices, demands or other communications given hereunder shall be in writing and shall be deemed delivered upon personal delivery or two (2) business days after they are mailed with postage prepaid, by registered or certified mail, return receipt requested, to the party receiving such notice. Purchaser's address for notice

purpose is set forth beneath Purchaser's signature to this Agreement. Seller's address for notice purposes is 851 South Rampart, Las Vegas, Nevada 89128.

26. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which independently shall have the same effect as if it were the original and all of which taken together shall constitute one and the same Agreement.

27. **Further Assurances.** From time to time, upon reasonable request from the other party, each of the parties agree to execute any and all additional documents or to take such additional action as shall be reasonably necessary or appropriate to carry out the transaction contemplated by this Agreement.

28. **Binding Effect; Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, executors, administrators and assigns. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective heirs, successors, executors, administrators and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

29. **Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

30. **Drafting.** Each party to this Agreement represents that he has read and understood each provision of this Agreement and has discussed this Agreement with legal counsel or has been advised to and has been provided the opportunity to discuss this Agreement with legal counsel. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor any party against another.

31. **Use of Gender and Number.** As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be considered to include the others whenever the context so indicates.

32. **Arbitration.** Any dispute or claim arising under this Agreement which cannot be resolved to the mutual satisfaction of the parties hereto shall be determined by arbitration, pursuant to the provisions of Chapter 38 of the Nevada Revised Statutes. Each party shall select one arbitrator within fifteen (15) days after demand for arbitration, and the two arbitrators so selected shall select a third arbitrator within fifteen (15) days of their initial selection. Any decision by two or three arbitrators shall be binding. The costs of arbitration shall be paid equally by the parties. The arbitration shall be conducted in Clark County, Nevada.

33. **Exclusive Jurisdiction.** It is agreed that the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, shall be the sole and exclusive forum for the resolution of any disputes arising among any of the parties to this Agreement that are not settled by arbitration in accordance with Section 32 hereof or are appealed following an arbitration proceeding. The parties to this Agreement expressly and unconditionally confer jurisdiction for the resolution of any and all disputes upon the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark. In the event that any litigation commenced in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, is properly removable to a Federal Court under the laws of the United States of America, such removal shall take place if the legal basis for removal exists; provided, however, that the parties to this Agreement agree that the exclusive venue of the Federal forum for the resolution of any disputes shall be the United States District Court for the District of Nevada, Southern Nevada Division, located in Las Vegas, Nevada.

34. **Broker's Commission.** By separate agreement, Seller has agreed to pay to Greg Gogorian dba Hilltop Properties, Inc., a Nevada corporation, at Close of Escrow, a real estate broker's commission in connection with the sale of the Lot.

35. **Escrow Instructions.** The following shall constitute the parties' mutual instructions to Escrow Agent:

- a. Seller authorizes Escrow Agent to deliver the Deed to Purchaser and record the same upon payment to Escrow Agent for Seller's account of the full Purchase Price and other fees, costs and charges which Purchaser is required to pay hereunder, and upon condition that Title Company issues the Title Policy described in Section 5 hereof.
- b. Escrow Agent has no responsibility for investigating or guaranteeing the status of any garbage fee, power, water, telephone, gas and/or other utility or use bill.
- c. Installments maturing on existing encumbrances, if any, during the period of this Escrow shall be paid by the Seller, unless otherwise specifically required herein. All prorations shall be computed on the basis of a thirty (30) day month and shall be made as of Close of Escrow.

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- d. Escrow Agent assumes no liability for, and is hereby relieved of any liability in connection with any personal property which may be a part of this Escrow.
- e. All disbursements made through Escrow shall be made in the form of a check drawn on Escrow Agent's bank.
- f. Escrow Agent shall furnish a copy of this Agreement, amendments thereto, closing statements and any other documents deposited in this Escrow to the Lender, the real estate brokers and attorneys involved in this transaction upon the request of the Lender, such brokers or such attorneys.
- g. Any check presented for deposit into this Escrow by either party shall be subject to clearance thereof and Escrow Agent shall not be obligated to act upon nor disburse against any such funds until notified by the bank upon which the check is drawn that said check has cleared its account.
- h. In the event of litigation, regardless of the claims being litigated or the parties involved, the parties hereto agree to indemnify Escrow Agent and to hold Escrow Agent harmless and to pay reasonable attorneys' fees and costs incurred by Escrow Agent, except in those instances where Escrow Agent is being sued for negligence or because it has failed to comply with the provisions of this Agreement. In the event a suit is brought by any party(ies) to this Escrow to which the Escrow Agent is named as a party and which results in a judgement in favor of the Escrow Agent and/or against a party or principal of any party hereunder, the principal or principal's agent(s) agree to pay Escrow Agent all costs, expenses and reasonable attorneys' fees which it may expand or incur in said suit, the amount thereof to be fixed and judgement to be rendered by the court in said suit.
- i. If there is no action on this Escrow within 180 days after Seller's acceptance of Purchaser's offer, Escrow Agent's agency obligations shall terminate in Escrow Agent's sole discretion and any and all documents, monies, or other items held by Escrow Agent shall be returned to the parties depositing the same. In the event of cancellation of this Escrow, whether it be at the request of the parties or otherwise, the fees and charges due Escrow Agent, including expenditures incurred and/or authorized, shall be borne equally by the parties hereto.
- j. Should Escrow Agent, before or after the Close of Escrow, receive or become aware of conflicting demands or claims with respect to this Escrow or the rights of any of the parties hereto, or any money or property deposited herein or affected hereby, Escrow Agent shall have the right to discontinue any or all further acts on Escrow Agent's part until such conflict is resolved to Escrow Agent's satisfaction, and Escrow Agent has the right to commence or defend any action or proceedings for the determination of such conflict as provided in subsections i. and j. hereof.
- k. Time is of the essence in this Agreement and each party hereto requires that the other party comply with all requirements necessary to place this Escrow in a condition to close as provided in said Agreement; provided, however, that if the Scheduled Closing Date, or any other compliance date specified herein, falls on a Saturday, Sunday or legal holiday, the time limit set forth herein is extended through the next full business day. In the absence of written direction to the contrary, Escrow Agent is authorized to take any administrative steps necessary to effect the closing of this Escrow subsequent to the date set forth herein.
- l. Either party hereunder claiming right of cancellation of this Escrow shall file written notice and demand for cancellation in the office of Escrow Agent in writing and in duplicate. Escrow Agent shall, within three (3) business days following receipt of such written notice, notify the party against whom said cancellation is filed by depositing a copy of said notice in the United States Mail, addressed to such other party at the last address filed with Escrow Agent. In such event, Escrow Agent is authorized and directed to hold all money and instruments in this Escrow pending mutual written instructions by the parties hereto, or a final order by a court of competent jurisdiction. The parties are aware, however, and expressly agree and consent, that Escrow Agent shall have the absolute right at its sole discretion, to file a suit or counter claim in interpleader and to obtain an order from the court requiring the claimants to interplead and litigate in such court their several claims and rights amongst themselves. In the event such suit or claim is brought, the parties hereto jointly and severally agree to pay Escrow Agent all costs, expenses and reasonable attorneys' fees which may expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court in

such suit. Upon the filing of such suit or counterclaim said Escrow Agent shall thereupon be fully released and discharged from all obligations to further perform any duties or obligations otherwise imposed by the terms of this Escrow.

35. Documents and Disclosures Addendum. The information included in Addendum 1 to this Agreement is hereby incorporated by this reference.

PURCHASER:

Signature: Robert N. Passole

Printed Name: Robert N. Passole

Date: 4/11/00

Signature: Nancy A. Passole

Printed Name: NANCY PASSOLE

Date: 4-11-00

Address: _____

Phone (Res.): _____

Phone (Bus.): _____

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ACKNOWLEDGMENT OF RECEIPT OF PURCHASER'S EARNEST MONEY DEPOSIT:

Day Arjiv Date: 4/11 00
(Sales Representative)

THE FOREGOING ACKNOWLEDGMENT BY THE SALES REPRESENTATIVE DOES NOT CONSTITUTE SELLER'S ACCEPTANCE OF THIS OFFER.

SELLER'S ACCEPTANCE

Accepted by Seller on _____

NEVADA LEGACY 14, LLC, a Nevada
limited liability company

By: PECCOLE NEVADA CORPORATION, a
Nevada corporation, its Manager

By: Larry Miller
LARRY MILLER its C.E.O.

CONSENT OF ESCROW AGENT:

The undersigned hereby agree to accept this Agreement, act as Escrow Agent under this Agreement and be bound by this Agreement in the performance of its duties as Escrow Agent; provided, however, that the undersigned shall have no obligation, liability or responsibility under any supplement or amendment to this Agreement, unless and until the same shall be accepted in writing or prepared by the undersigned.

Escrow Agent:

Nevada Title Company, a Nevada corporation

By: _____

Its: _____

Date: _____

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PECCOLE RANCH

MASTER PLAN

A Master Plan Amendment and Phase Two Rezoning Application

PREPARED FOR:

The Peccole Ranch Partnership:

Peccole Trust
2300 West Sahara Avenue
Box 17, Suite 870
Las Vegas, Nevada 89102
(702) 871-2700

Triple Five Development Group Central, Ltd.

Suite 900, Capital Place
9707 - 110 Street
Edmonton, Alberta
Canada T5K 2L9
(403) 482-7800

PREPARED BY:

A. Wayne Smith & Associates
1515 East Missouri Avenue
Suite 100
Phoenix, Arizona 85014
(602) 234-3474

February 6, 1990

Exhibit 7
Date 12-5-110
Witness DEPARD
C. Lewis #497 VOLUME I

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EXHIBITS

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PECCOLE RANCH

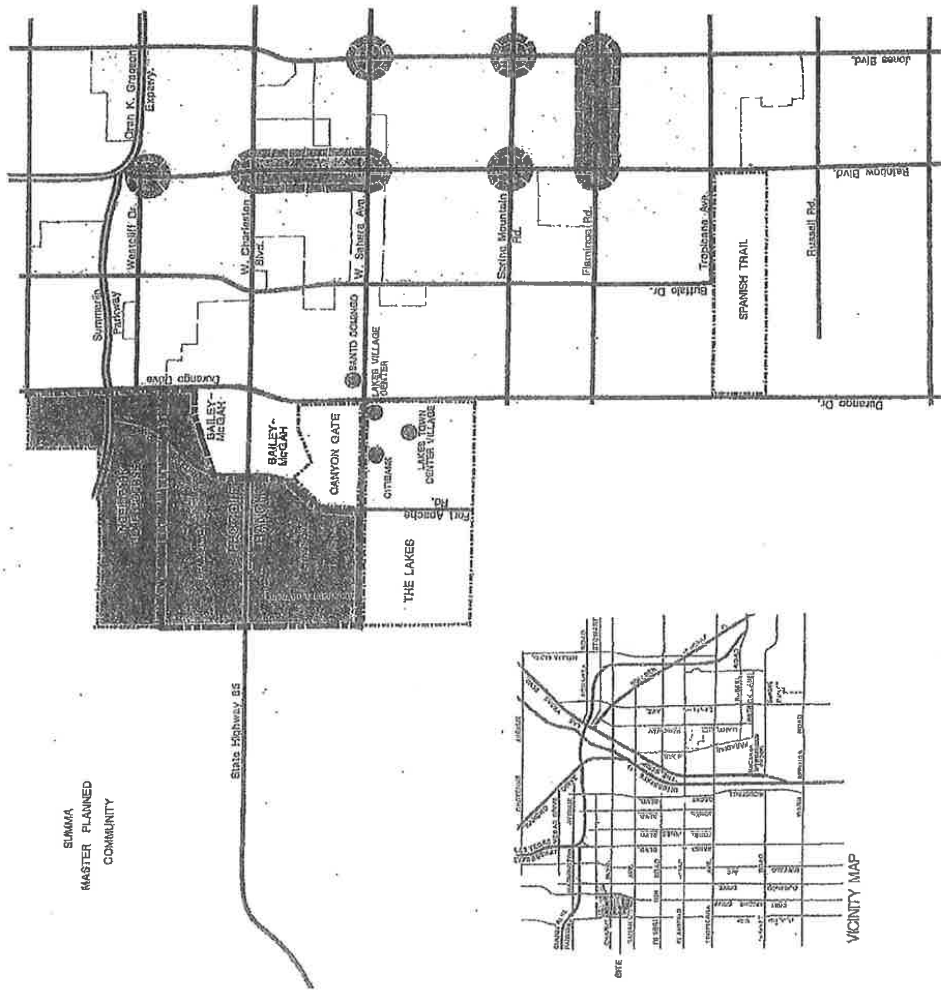
The proposed 1,569.6 acre Peccole Ranch Master Plan is being submitted to the City of Las Vegas for the approval of an Amendment to the overall Conceptual Master Plan, along with the rezoning of the 996.4 acres in Phase Two to R-PD7, R-3, and C-1 designations. The following narrative describes the intent of the proposed overall Master Plan, compares the Plan with the previously approved overall Peccole Ranch Master Plan, and discusses in detail those land uses proposed in the Phase Two development of Peccole Ranch.

INTRODUCTION - PECCOLE RANCH OVERALL MASTER PLAN

The Peccole Ranch overall Conceptual Master Plan which was approved on February 15, 1989 consisted of 1,716.3 acres. The present overall Plan illustrates a reduction in the 1,716.3 acreage due to the elimination of a previously zoned multi-family parcel and several neighborhood commercial/office parcels totaling 83.9 acres. The existing 10.9 acre water storage parcel owned and managed by the Las Vegas Valley Water District was also removed. The proposed overall Master Plan now consists of 1,569.6 acres

Peccole Ranch is located within the northwest and southwest growth areas of the Las Vegas Metropolitan Area (Exhibit C, page 2), and has an excellent time-distance relationship to surrounding support services, employment centers, and transportation network including McCarran International Airport. This particular area of the Valley has been experiencing a rapid growth rate as demonstrated by those developments occurring in the Peccole Ranch vicinity such as Canyon Gate, Summerlin, and The Lakes. Planning efforts for these planned communities promote viable growth, compatibility with adjacent uses, and a commitment to quality. It is this trend that became the basis of a Plan that would maintain flexibility to accommodate future market changes. The proposed Plan is conceptual in nature to allow detailed planning at the time of development. In this way the lifestyles of the anticipated population can be met. The physical character of Peccole Ranch is enhanced by its higher elevation than the rest of the City. Views of the surrounding mountains provide a visually pleasant backdrop and the evening lights of downtown Las Vegas are in the distant view.

SUMMA
MASTER PLANNED
COMMUNITY



AREA PLAN Peccole Ranch Partnership

Prepared By:
A. Wayne Smith & Associates
1615 East Missouri, Suite 100
Phoenix, Arizona 85014 (602) 234-3474

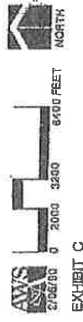


EXHIBIT C

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The proposed Peccole Ranch overall Master Plan (Exhibit A, page 4) incorporates office, neighborhood commercial, a nursing home, and a mixed use village center around a strong residential base in a cohesive manner. A destination resort-casino, commercial/office and commercial center have been proposed in the most northern portion of the project area. Special attention has been given to the compatibility of

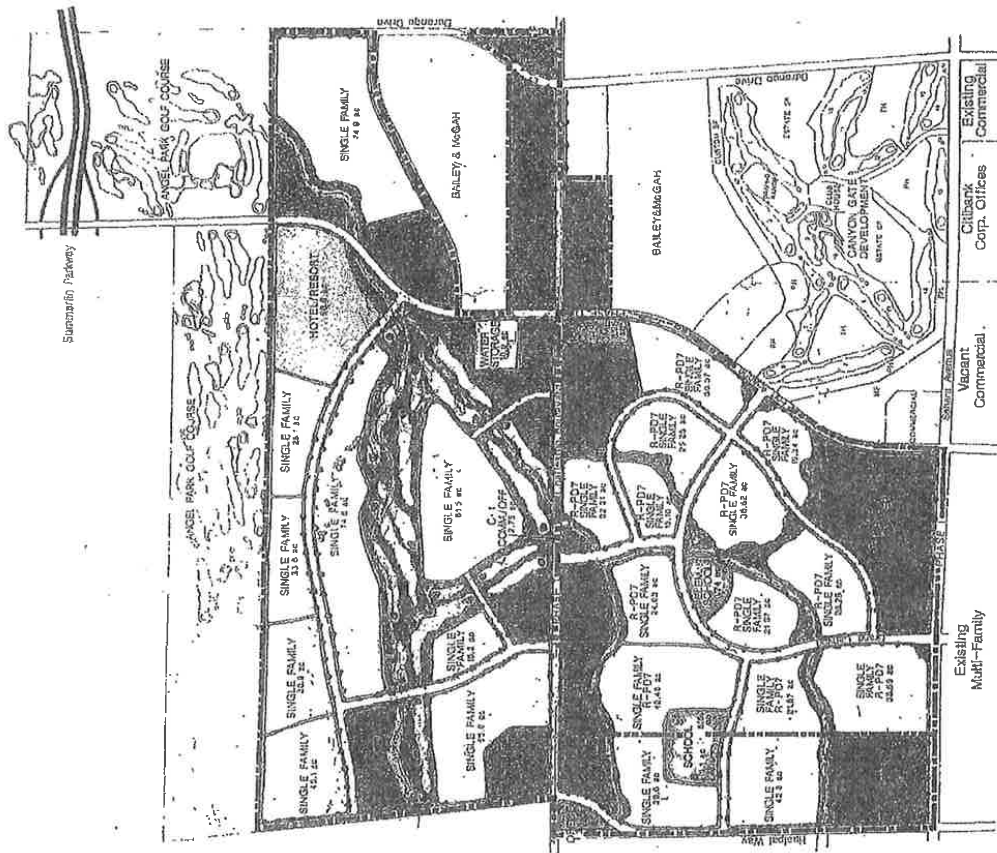
neighboring uses for smooth transitioning, circulation patterns, convenience and aesthetics. An extensive 253 acre golf course and linear open space system winding throughout the community provides a positive focal point while creating a mechanism to handle drainage flows.

Also of importance to Peccole Ranch is the alignment of the Summerlin Parkway under construction north of the Project. The Summerlin Parkway is an east/west expressway which will be approximately three to three and one-half miles long originating at the curve of the Oran A. Gragson Expressway (Westcliff Drive and Rainbow Boulevard) with a terminus at the corner of the two initial Summerlin Villages. Adjacent to the northern boundary of the Peccole Ranch property is the 640 acre Angel Park. When complete, this regional park will include two world class golf courses designed by Arnold Palmer.

The development plan for Peccole Ranch is designed to benefit the current and long range needs of the Las Vegas Metropolitan Area as the population expansion is realized. Overall project character and identity will reflect the high standards of quality envisioned by the developer and a consistency with the pattern of regional community development.

**OVERALL MASTER PLAN COMPARISON:
PROPOSED PECCOLE RANCH MASTER PLAN VS.
APPROVED PECCOLE RANCH MASTER PLAN**

The proposed Peccole Ranch Master Plan is an amendment to the Peccole Ranch Master Plan which was approved by the City of Las Vegas on February 15, 1989 (Exhibit B, page 5). The main difference between the Plans is the redesignation of 100.1 acres located at the northeast corner of the property to a commercial land use more properly reflecting its location near the Summerlin Parkway and the destination



SITE DATA - PHASE 1

LAND USE	NET ACRES	NET DENSITY	UNITS
Nursing Home	8.25	7.0	2299
Single Family	398.49	24.0	1088
Multi-Family	45.39	24.0	1088
Mixed Use Village Center	46.00		
Commercial/Office	38.55		
Multi-Family	34.0		1209
Commercial Office	2.75		
Drainage/Open Space	41.43		
R.O.W.	33.97		
Elementary School	17.24		
PHASE 1 TOTAL	575.19	8.8	4596

SITE DATA - FUTURE PHASES

LAND USE	ACRES
Single Family	487.9
Multi-Family	193.9
Neighborhood Office	137.7
Office	5.4
Hotel/Resort	55.6
Water Storage	10.8
Golf Course/Drainage	207.1
R.O.W.	50.3
School	12.1
FUTURE PHASES TOTAL	1145.1
GRAND TOTAL	1719.3

MASTER PLAN **Peccole Ranch Partnership**

Suite 903, Capital Place
 9707-110 Street
 Edmonton, Alberta T5K2L9 403-482-7600

Prepared by
 A. Wayne Smith & Associates
 1515 East Missouri Suite 103
 Phoenix, Arizona 85016 (602) 234-3474

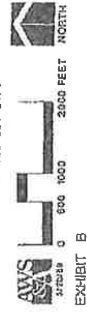


EXHIBIT B

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resort-casino. The golf course and drainageways have been refined and roadways were realigned to provide primary visibility and access to all parcels. In addition, the internal collector system will ultimately promote a reduction of traffic along the principle arterials.

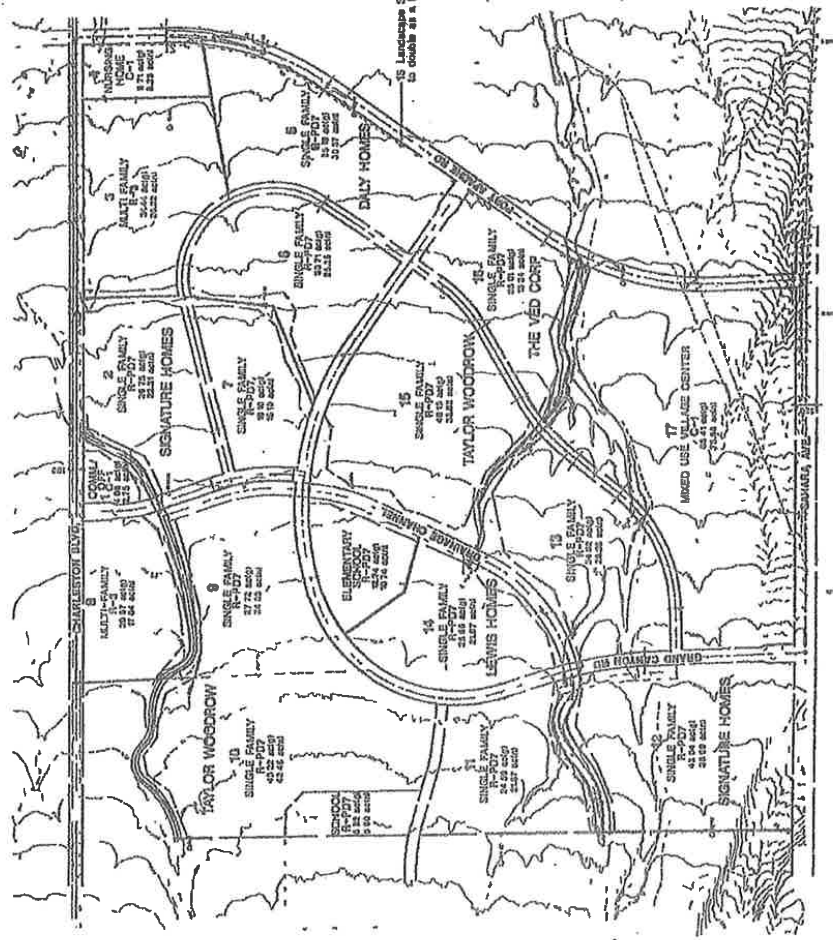
The proposed Peccole Ranch Master Plan realigns the major internal collector roadways through the residential and golf course area in Phase Two. The locations for both major entries to the Project were changed. The Charleston Boulevard entry now aligns with Apple Road in Phase One, and the Rampart Boulevard entry was moved to the northern boundary of the Project to avoid the need for an arroyo crossing and to provide a better relationship between the destination resort-casino and the golf course. An additional collector intersecting with Rampart Boulevard provides a second point of ingress/egress and also forms a buffer between a single family neighborhood, and the higher intensity uses along Charleston Boulevard. Alta Road, an east/west arterial, forms the boundary between the proposed Phase Two commercial center and the Bailey-McGah parcel. All arterial roadway names have remained consistent with the exception of Fort Apache Road which becomes Rampart Boulevard north of Charleston Boulevard.

Phase One is currently under development and is anticipated for completion during the early 1990's. Four single family subdivision plats have been recorded the City and several others are in process. Infrastructure for Phase One is anticipated for completion by Spring 1990. Phase One is progressing as planned and is anticipated to continue development to meet the demand for housing alternatives with supporting commercial areas. Exhibit G on page 7 identifies those home builders currently active in Phase One.

Overall, the addition of the commercial center, the refinement of the golf course and drainageways, and the shifting of parcels and parcel boundaries to better use open space areas, creates the difference between the approved Peccole Ranch Master Plan and the proposed Peccole Ranch Master Plan. The proposed Phase Two has become more clearly defined in response to current market trends and remains consistent with the goals and the integrity of the approved Peccole Ranch Master Plan.

ZONING	LAND USE	GROSS ACRES	NET ACRES	NET DENSITY DUE/AC	UNITS
R-PD7	SINGLE FAMILY	383.78	328.48	7.0	2299
R-3	MULTI-FAMILY	52.01	45.26	24.0	1082
C-1	NURSING HOME	9.71	8.25		
C-1	COMMERCIAL/OFFICE	4.88	2.75		
C-1	VILLAGE CENTER	89.41			
	COMMERCIAL		40.00		
D-PD7	SCHOOL	19.66	17.34	34.6	1206
R-PD7	DRAINAGE CHANNEL	13.78	13.66		
R-PD7	STREET R.O.W.		52.87		
R-PD7	OPEN SPACE		27.81		
	TOTAL	573.18	573.78		4598

NOTE:
GROSS ACREAGE (49) REPRESENTS PARCELS R.O.W. AND OPEN SPACE
NET ACREAGE (40) REPRESENTS PARCEL ONLY



PHASE 1 - HOME BUILDERS **Peccole Ranch Partnership**

A. Wayne Smith & Associates
 1818 East Main Street Suite 100
 Phoenix, Arizona 85014 (602) 241-3474



EXHIBIT G

PHASE TWO - PECCOLE RANCH

Phase Two of Peccole Ranch comprises approximately 996.4 acres bounded by Angel Park Golf Course on the north, Durango Drive on the east, small sections of Sahara Avenue, Charleston Boulevard, and Alta Road on the south, and the alignment of Hualapai Way on the west. Phase Two encompasses all of the remaining acreage within Peccole Ranch. The zoning designations proposed in 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.

Single Family Residential

The demand for housing remains strong in the Peccole Ranch vicinity, reflecting the continued growth of immigration to the area. The delineation of residential uses (single family and multi-family totalling 461.0 acres) proposed for Peccole Ranch Phase Two is based upon market study documentation of historical and projected single family housing subdivision and multi-family absorption patterns. Approximately 401.0 acres or 40.2 percent of Phase Two is devoted to quality golf course oriented single-family and custom lot developments, reflecting the fact that there is a demand for higher priced single family housing in the strong northwest/southwest markets. This fact is evident particularly at the Project location which is positioned as a natural northerly growth extension to the successful Lakes community, and which will benefit greatly from the surrounding golf environment and the Summerlin Parkway. Recent market data obtained evidences that there is now a growing preference for detached single family homes over apartment and condominiums, reflecting a stabilization of the Las Vegas Metropolitan economy. The significance of this growth is the expanding opportunity to provide single family housing alternatives to an increasingly diverse income base - particularly in association with a golf course community.

There is potential for gated entries to several of the single family parcels. Gated entries into Phase Two residential parcels will not only provide residents with a sense of security, but will promote the construction of quality housing products, and form an enclave within Pecole Ranch. A 50 acre single-family parcel central to Phase Two offers extensive golf course frontage to future residents in an exclusive environment bounded on all sides by the golf course. Depending upon market demand, additional gated neighborhoods can be provided in proximity to the clubhouse and adjacent to the golf course.

Multiple-Family Residential

The historical strong consumer demand for apartments has not yet reached a saturation point, however, existing inventory will most likely adequately meet current requirements. Therefore, Phase Two reflects a larger single family environment while still maintaining a small inventory of multi-family land areas which will be geared toward those future residents who prefer a more urban oriented lifestyle.

Two multi-family parcels are planned along Charleston Boulevard, and one 20 acre parcel is planned adjacent to Hualpai Way north of the commercial center on Sahara. Multi-family parcels are located adjacent to principal arterials to maximize exposure and to provide buffering to the internal single family neighborhoods from arterial traffic. Approximately 60 acres, or 60 percent of Phase Two is devoted to multi-family use.

Commercial

High intensity uses such as commercial, office, and employment opportunities are incorporated in the commercial/office, neighborhood commercial, and commercial center areas in Phase Two of Pecole Ranch. The largest commercial parcel (100.1 acres), the commercial center, is located adjacent to Angel Park Golf Course on the north, Durango Drive on the east, Alta Road on the south and Rampart Boulevard on the west to provide prime exposure and access. This commercial center is physically well sited in relationship to surrounding high volume major arterials and the future Summerlin Parkway interchange only one-half mile to the north. The site offers an excellent opportunity for internal circulation with arterials on two sides. This may be

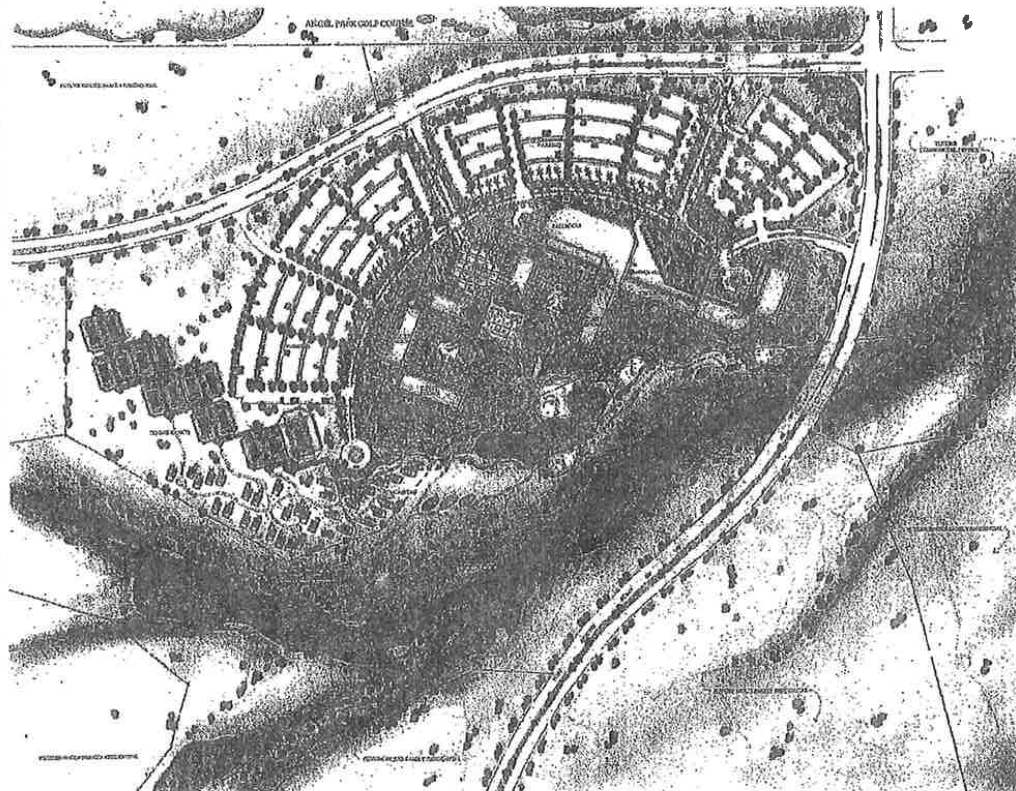
evidenced from a review of the Area Plan (Exhibit C, page 2) which depicts the current lack of commercial centers, and the potential urbanization of the vacant residential lands from Jones Boulevard west to Hualapai Way.

Additional neighborhood commercial/office areas are located at intersection nodes to provide easy access and buffer less intense land uses. These parcels will accommodate basic support facilities and services required by the residential community. Commercial and office areas comprise a total of 83.5 acres in Phase Two.

A 56.0 acre destination resort-casino site is located at the intersection of an internal collector and Rampart Boulevard. The boundary of this parcel was altered from the previously approved overall Master Plan to accommodate the boundary changes of the refined golf course and road system. The golf course along the southern border of the parcel provides an aesthetic quality to the destination resort-casino. The resort-casino is planned as a destination golf resort and casino, and will provide the transition from a commercial center to single family residential. The resort will be comprised of approximately 300 to 500 guest rooms, and other elements which may include meeting, conference and ballroom facilities, restaurants, bars, and a casino including its own specialty restaurant and bar areas. Guest amenities may include use of the adjacent golf course, tennis facilities, fitness center, beauty salon, game rooms, a nursery and swimming pool. Exhibit D on page 11 illustrates the anticipated site layout and character for the resort-casino. The Peccole Ranch Resort will be designed to maximize the beauty of the desert surroundings, maintaining sensitivity to scale, character, landscape, and topography, and represents the true centerpiece of the Peccole Ranch Community.

Open Space and Drainage

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



RESORT SITE PLAN

PROJECT DATA

OWNER	PECCOLE RANCH PARTNERSHIP
DESIGNER	C. H. ASHICK, L.A.T.P.
GENERAL CONTRACTOR	PECCOLE RANCH PARTNERSHIP
DATE	10/1/81
PROJECT NO.	100001
PROJECT NAME	PECCOLE RANCH RESORT
PROJECT LOCATION	PECCOLE RANCH TRAIL, LAS VEGAS, NEVADA
PROJECT AREA	100001
PROJECT TYPE	RESORT
PROJECT SIZE	100001
PROJECT COST	100001
PROJECT STATUS	100001
PROJECT NOTES	100001

Peccole Ranch Resort LAS VEGAS, NEVADA

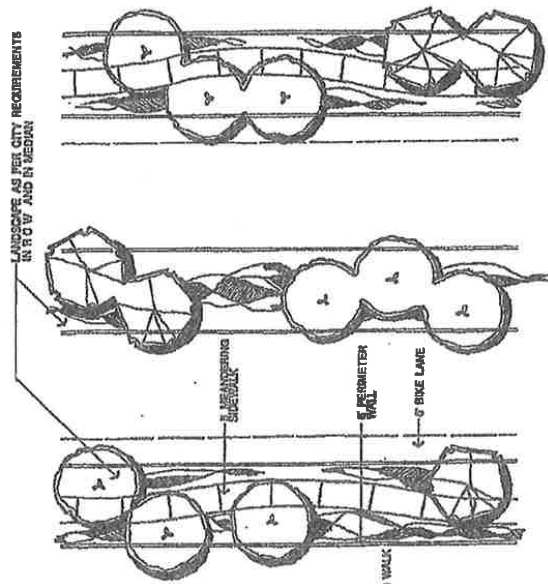
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walkways (see Exhibits E and F on pages 13 and 14). The surrounding community as well as project residents may use the open space system to travel to neighboring areas including Angel Park. In addition, recreational improvements such as picnic tables, ramadas and pleasing water features will be located in passive gathering areas located throughout the open space.

The close proximity to Angel Park along with the extensive golf course and open space network were determining factors in the decision not to integrate a public park in the proposed Plan. According to the Parks, Recreation and Senior Citizen Activities Division a need for a dedicated public facility within Pecole Ranch is not indicated nor anticipated in the future.

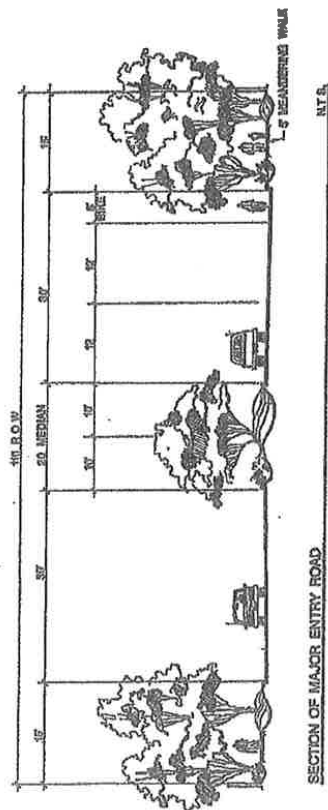
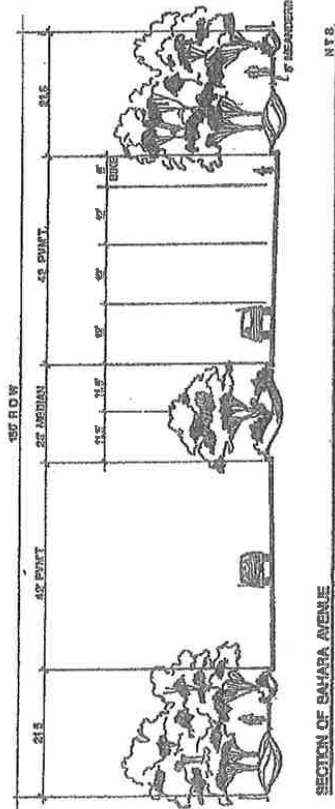
South of Charleston Boulevard, drainage flows through the washes initially enter the site in two locations along the western boundary at a peak rate of 800 cubic feet per second (cfs), and move in a east/northeast direction. Two wash flows are then directed into the main drainage wash which flows northeasterly towards the large Angel Park reservoir at a rate of approximately 1,600 cfs North of Charleston Boulevard an off-site flow of 2,000 cfs enters the Project. This storm water will be contained within the golf course until it reaches Rampart Boulevard, and will then flow through a channel adjacent to the commercial center to the Angel Park Basin. Based on the golf course routing plan by Mr. Ted Robinson, renowned golf course architect, the golf course has been designed in conjunction with existing drainage features on the site. The design of the golf course has been instrumental in preserving the natural character of the land and controlling drainage on and through the property.

Phase Two of the proposed Pecole Ranch Master Plan has approximately 33.1 additional acres allotted for golf course and drainageways. The additional acreage accommodates a clubhouse and driving range centrally located within the golf course and surrounding residential community. These features are also accessible to visitors staying at the adjacent destination resort-casino.



ROADWAY PLAN AND CROSS SECTIONS
Peccole Ranch Partnership
 EXHIBIT E
 2-16-90

A. WAYNE SMITH
 & ASSOCIATES
 A Subsidiary of Computer-Vision



ROR023395

**A WAYNE SMITH
& ASSOCIATES**
A Subsidiary of Carrington Hedrick

SECTION OF ARTERIAL ROADWAY RAMPART ROAD

SECTION OF INTERIOR COLLECTOR ROADWAY

Schools

A 19.7 acre school site is designated in Phase Two of Peccole Ranch. The level of education served by the site, such as elementary or middle school status, will not be determined until development occurs and the student population becomes more clearly defined. A 10.1 acre elementary school site is reserved in Phase One, and according to the Clark County School District the site has been approved and will be purchased based upon acceptable appraisals. The sites will be developed to meet the requirements of the Clark County School District. According to Clark County School District standards, a typical elementary school requires a student body of approximately 600 to support the facility, whereas a junior high school requires 1,250 students. Student population projections for Phase One and Two are attached.

DEVELOPMENT PLAN - PHASE TWO

The Peccole Ranch Partnership is the land developer for Peccole Ranch and will assume the responsibility of the following:

- * Full street improvements for internal collector streets and partial improvements for other public streets adjacent to the development, or as agreed upon with the City of Las Vegas. See roadway Exhibits E and F on the following pages
- * Delivery of water, sewer, telephone, and power to all parcels.
- * Rough grade of all parcels
- * Open Space development and landscaping.
- * Entry treatments, including landscaping, water features, special pavement, and project signs.
- * All landscaping along arterial roads (Charleston Boulevard, Sahara Avenue, and Fort Apache Road) and within internal boulevards.
- * An information center.

Street and utilities are currently under construction in Phase One.

QUALITY OF DEVELOPMENT

Design, Architecture, and Landscape standards will be established for the development. A Design Review Committee will review and approve all plans for parcel development in Peccole Ranch. Covenants, Conditions and Restrictions will be established to guarantee the continued quality of development, and a Master Homeowner's Association will be established for the maintenance of common landscaping and open space. Separate subsidiary associations will be created within individual development parcels to maintain the common area within these areas.

GENERAL PLAN CONFORMANCE

As the City of Las Vegas General Plan is designed as a set of guidelines to help direct the 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. Specifically, the proposed Plan is in conformance with the following Las Vegas General Plan Planning Guidelines:

- * Provide for an efficient, orderly and complementary variety of land uses.
- * Provide for "activity centers" as a logical concentration of development in each community area of the City to encourage economic, social and physical vitality, and expand the level of services.
- * Encourage the master planning of large parcels under single ownership in the growth areas of the City to ensure a desirable living environment and maximum efficiency and savings in the provision of new public facilities and services.
- * Provide for the continuing development of a diverse system of open space.

PECCOLE RANCH

LAND USE DATA

PHASE TWO

<u>LAND USE</u>	<u>ACRES</u>	<u>NET DENSITY</u>	<u>NET UNITS</u>
Single-Family	401.0	7.0 du/ac	2,807
Multi-Family	60.0	24.0 du/ac	1,440
Commercial/Office	194.3	-	-
Resort-Casino	56.0	-	-
Golf Course Drainage	211.6	-	-
Right-of-Way	60.4	-	-
Elementary School	13.1	-	-
TOTAL	996.4	4.5 du/ac	4,247

Note Overall density based upon all areas except R.O.W

PECCOLE RANCH

LAND USE DATA

OVERALL MASTER PLAN

<u>LAND USE</u>	<u>NET ACRES</u>	<u>DENSITY RANGES</u>
Single Family	729.49	4.0 - 8.0 du/ac
Multi-Family	105.36	8.0 - 24.0 du/ac
Mixed Use Village Center	75.56	20.0 - 35.0 du/ac
(Commercial, Office, Multi-Family)		
Neighborhood Commercial/Office	197.05	
Resort-Casino	56.0	
Nursing Home	8.25	
Golf Course/Open Space/Drainage	253.07	
Right-of-Way	114.37	
Schools	30.44	
TOTAL	1,569.6	

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PECCOLE RANCH
STUDENT POPULATION PROJECTIONS

<u>GRADE</u>	<u>PHASE ONE</u>	<u>PHASE TWO</u>	<u>MASTER PLAN</u>
K thru 6	902	765	1,667
7 thru 9	347	294	641
10 thru 12	343	291	634
TOTAL	1,592	1,350	2,942

OFFICE OF THE CITY ATTORNEY

BRADFORD R. JERBIC
CITY ATTORNEY



LAS VEGAS, NEVADA

April 12, 2016

Todd L. Moody
Hutchison & Steffen
10080 W. Alta Drive #200
Las Vegas, Nevada 89145

ATTORNEY-CLIENT PRIVILEGED

Dear Todd:

I have reviewed your email of March 29, 2016, wherein you seek legal review of a potential conflict involving applications on the agenda of the Planning Commission to rezone property and modify the development agreement for Queensridge and Badlands golf course. The following advice is limited to the facts contained herein.

You indicate that you are personal friends with Billy Bayne, CEO for Peccole, the original developer of Queensridge. I spoke with Mr. Bayne who indicated that Peccole no longer has any development interests in Queensridge and therefor is not a party in interest in any land use application relating to Queensridge appearing before the Planning Commission for your consideration. You are also a financial partner in the law firm Hutchinson and Steffen, whose law firm is located in offices directly to the north of Queensridge and Badlands golf course. Further, you have indicated that Peccole is a joint owner of your law office, but you personally have no ownership in the law office since you are a financial partner, not an equity partner. You indicate that Peccole may "gain by development" if the current applications are approved, however, no evidence is provided that would support that conclusion.

NRS 281A. 420(1)(b)(c) in relevant part, prohibits a public officer from voting on a matter "in which the public officer . . . has a pecuniary interest" or "which would reasonably be affected by the public officer's . . . commitment in a private capacity to the interest of others."

NRS 281A.420(4)(2) goes on to state that "[i]t must be presumed that the independence of judgement of a reasonable person in the public officer's situation would not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter."

Submitted at Planning Commission

Commissioner Todd Moody

Date *2/14/17* Item *21-24*

CITY OF LAS VEGAS, 495 S. MAIN STREET, LAS VEGAS, NEVADA 89101 • (702) 229-6590 • FAX(702) 386-1749

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Todd L. Moody
Hutchison & Steffen
April 12, 2016
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Applying the law to the facts, it is clear that you do not have a pecuniary interest in any matter relating to Queensridge or Badlands golf club. Therefore, no conflict exists under NRS 281A(1)(b).

I next address whether you have a commitment in your private capacity to the interests of others, specifically members of your law firm who may have a financial interest in the building housing your law offices or Mr. Bayne. It seems clear that you have a professional commitment to your law firm and all who serve it. I believe that it is unclear whether the proposed development agreement will have a positive, negative or neutral effect on surrounding land uses. However, any effect on the value of the land and building housing the law firm would not be more or less than for any other business or group in the area. Therefore, no conflict exists under NRS.281A(1)(c) and NRS 281A(4)(2).

Finally, I examine your friendship with Mr. Bayne. As with the building housing your law office, I believe it is unclear what effect the proposed application would have on land values, including future development by Peccole. More importantly, you have no commitment in your private capacity to Mr. Bayne and therefore there is no conflict under NRS 281A(1)(c).

I advise full disclosure of this matter on the record each time these applications appear. You may also disclose this opinion at your discretion. Abstention is not required.

Sincerely,



Bradford R. Jerbic
City Attorney

BRJ/cg

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City of Las Vegas
Office Of The City Clerk
495 South Main Street, 2nd Floor
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐

I SUPPORT
this Request

☒

I OPPOSE
this Request

Please use available blank space on card for your comments.

GPA-68385

City Council Meeting of March 15, 2017

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TUCSON AZ 85718



Submitted after final agenda

Date 3/7/17 Item 45

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