

BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE
STATE OF NEVADA

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS AND
INDUSTRY, STATE OF NEVADA,

Petitioner,

vs.

CRAIG JIU
(License No. A.0002330-CG),

Respondent.

CASE NO.: 2016-415 & AP 17.021S

RESPONDENT CRAIG JIU'S PETITION
FOR REHEARING PURSUANT TO NAC
645C.505.

FILED

FEB 27 2019

NEVADA COMMISSION OF APPRAISERS

Respondent Craig Jiu ("Jiu"), by and through his attorneys at LIPSON NEILSON P.C., hereby submits this Petition for Rehearing Pursuant to NAC 645C.505 ("Petition"). The Petition is made and based upon the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, and any oral argument that this Commission may entertain at a hearing on the Petition. The Petition is timely and is being filed "within 15 calendar days *after receipt* of the decision..." (Emphasis added), which was served on Jiu on February 14, 2019.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises from allegations raised against Jiu by the State of Nevada, Department of Business and Industry, Real Estate Division ("the Division") with respect to expert reports prepared for a litigation concerning a property located at 590 Lairmont Place, Henderson, NV 89012 (APN 178-27-218-003). Brunson-Jiu, LLC (the "Firm") was retained by the Frederic and Barbara Rosenberg Living Trust ("Rosenberg") by and through their retained counsel, Howard Kim, to perform a real estate damages analysis for the purpose of calculating damages suffered by Rosenberg as a result of a Seller's failure to disclose known conditions which would result in a diminished view and/or privacy of the property.

A real estate damages analysis report ("Litigation Report") was prepared by the Firm for the purpose of evaluating the legal damages for the retrospective diminution in value of the

1 property as a result of both the loss in view and privacy due to a known, but non-disclosed,
2 change in the buildable area and related set-backs of the adjacent site at 594 Lairmont Place.
3 See Exhibit 1. More specifically, the Litigation Report was to determine what, if any, impact not
4 disclosing the known information would have on a typical buyer's decision to purchase.
5 Therefore, the litigation report was based on several case studies (including a literature review,
6 a local golf course considering similar lot extensions, and a Type II survey of qualified
7 professionals. The survey was conducted pursuant to published standards for litigation.¹ The
8 Litigation Report was prepared with an effective date of May 15, 2013. The Restricted Appraisal
9 of lots 594 & 598 Lairmont Place was prepared with an effective date of October 20, 2014.

10 Michael L. Brunson ("Brunson"), who helped compile information and analysis utilized in
11 the Litigation Report and served as a rebuttal expert to Lubawy's Initial Report, and Jiu, the
12 signor of the Litigation Report and testifying expert, were subsequently prosecuted by the
13 Division, who claimed the Litigation Report violated numerous Uniform Standards of
14 Professional Appraisal Practice ("USPAP") codified in the Nevada Administrative Code ("NAC").
15 In doing so, the Division failed to recognize or acknowledge the intended use of the Litigation
16 Report, and instead measured the credibility of the findings in the context of traditional
17 appraisals and diminution of value assignments related to the purchase or sale of property
18 involving regulated mortgage finance. The Commission blindly relied on the opinion of Mat
19 Lubawy ("Lubawy"), an initial and rebuttal expert in the same litigation for which the Litigation
20 Report was intended, and completely ignored Brunson and Jiu's compelling defenses to the
21 Division's claims. In doing so, the Commission effectively meddled into the court system and
22 created a dangerous precedent which could threaten the sanctity of expert testimony and the
23 provenience of Judges and juries to weigh their testimony and effectuate justice. In fact, even
24 before the Commission finished the hearing, the dangerous repercussions had begun and will
25 only be magnified unless the Commission rectifies their erroneous decision.

26 **II. RELEVANT PROCEDURAL HISTORY**

27
28 ¹ Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions* – 2nd Edition (Chicago Appraisal Institute 2008)

1 On December 8, 2016, Jiu received a letter of investigation from the Division regarding
2 an "anonymous" complaint (believed to have been authored by a competitor expert of Brunson
3 and Jiu) concerning the Litigation Report. See Exhibit 2. Jiu assisted with the preparation of a
4 response letter dated January 9, 2017. See Exhibit 3. The response noted that the lack of
5 documentation made it difficult to respond, but Jiu provided the best responses possible and
6 submitted copies of the requested reports and job file.

7 More than a year and a half later, the Division filed a Complaint and Notice of Hearing
8 dated September 6, 2018. See Exhibit 4. The Complaint alleged multiple violations of the
9 Litigation Report's failure to comply with USPAP. Jiu filed a response to the September 6, 2018
10 Complaint on October 4, 2018 refuting the charges as alleged. See Exhibit 5.

11 A hearing was held over a period of five days before the Nevada Commission of
12 Appraisers of Real Estate ("Commission"), during which, Brunson and Jiu were provided a
13 disproportionately limited amount of time to present a defense to the allegations, were rushed to
14 complete their defense, and were continually interrupted with conclusionary questions.

15 Following the conclusion of the hearing, on February 14, 2019, Jiu received a Notice
16 dated February 11, 2019, enclosing a copy of Findings of Fact and Conclusions of Law and
17 Order dated February 8, 2019 ("Findings"). See Exhibit 6. The Order set forth that a
18 suspension for a period of one year would begin on February 8, 2019, an error which has been
19 addressed in a companion Motion.

20 **III. LEGAL ARGUMENT**

21 **A. NAC 645C.505(7) Permits a Rehearing to Be Granted Based on Irregularity in** 22 **the Proceedings and Error in the Law.**

23 NRS 645C.505(7) (Hearings; Procedures for rehearings) states as follows:

24 A rehearing may be granted by the Commission for any of the following
25 causes or grounds:

26 (a) Irregularity in the proceedings in the original hearing.

27 ...
28 (d) Error in law occurring at the hearing and objected to by the applicant during the
earlier hearing.

1 In this case, a Petition for Rehearing is essential to address both irregularities in
2 the proceedings and multiple errors in the law. The failure to grant the Request for Rehearing
3 and remedy these mistakes will have further catastrophic results to Jiu's already damaged
4 business and reputation and continue a chain of events that will upset the delicate balance of
5 the legal system.

6
7 **B. The Commission's Failure to Allow Jiu Sufficient Time and Attention to**
8 **Present his Defenses to the Claims Represents an Irregularity in the**
9 **Proceeding.**

10 The record of the proceedings demonstrate that the Division was provided ample time
11 to present their case-in-chief without significant interruption by the Commission. When
12 Brunson and Jiu began their rebuttal case, they were encouraged to hurry it along because
13 members of the Commission had planes to catch. See Exhibit 7, Hearing Transcript, Volume
14 IV, page 7, lines 3-7. Although Jiu and Brunson were provided additional time on January 29,
15 2019, their efforts to present their case continued to be interrupted and disrupted by
16 Commission members, who by the nature and tone of their questions, had already decided to
17 accept a predetermined outcome based on the testimony of Lubawy.

18 **C. The Findings and Conclusions of Law Contain No Reasoned Analysis or**
19 **Application of Specific Facts to Support the Violations Found.**

20 The Findings are nothing more than a cut-and-paste from the Division's Complaint, as if
21 the five-day hearing didn't happen, and Conclusions of Law that offer no citations to the
22 record, exhibits submitted by the parties, acknowledgement of defenses raised by Jiu or
23 specific explanations or fact examples to support the conclusionary statements littered
24 throughout the document. The following examples illustrate these glaring deficiencies and
25 justify rehearing.

26 **Conclusion 1** "By failing to (1) identify the problem to be solved; (2) determine and
27 perform the scope of work necessary to develop credible assignment results; and (3)
28 fully disclose the scope of work in the report, the Respondent violated the USPAP..."
See Findings, page 3, lines 23-25.

1 This Conclusion has no support and contains allegations not proven at trial. For example,
2 the Litigation Report, at page 17, has an entire page entitled "Scope of Work". Conclusion 1
3 fails to acknowledge this fact or explain what about the full page in the report was not
4 sufficient. The "facts" cited in the Findings related to this Conclusion is Fact 8, which is merely
5 another conclusionary statement based on the opinion of Lubawy. Conclusion 1 also ignores
6 the plain fact the purpose of the Litigation Report was not an appraisal for the purpose of a
7 sale of a home, but an expert opinion regarding the potential impact (if any) of the lack of
8 disclosure at the prior sale. Finally, as part of a litigation case, the Litigation Report was part
9 of a large work-file which was subject to review and deposition of the author. Conclusion 1
10 ignores the full degree of disclosure of all expert opinions through the discovery process.

11 **Conclusion 2** "By engaging in the Real Estate Damage Analysis of 590 Lairmont
12 Place and failing to perform the assignment with impartiality, objectivity, independence,
13 and without accommodation personal interests, Respondent demonstrated bias and
14 appeared to advocate for the interest of the clients. Furthermore, Respondent failed to
promote and protect the public trust inherent in appraisal practice..." See Findings,
page 4, lines 1-5.

15 This is another conclusionary statement which relies completely upon the opinion
16 testimony offered by Lubawy, and language contained in Scott Dugan's Rebuttal from the
17 underlying litigation. The Findings completely ignore the careful three-prong investigation
18 conducted by Jiu. The Findings also omit any mention of the existence of the five-page
19 declaration from Orell C. Anderson ("Anderson"), a contributing author of the book of Real
20 Estate Damages (1st & 2nd Eds.) and one of the leading peers in the field, stating
21 unequivocally that the survey utilized as one of the three prongs of assessing the damages
22 was neutral and conducted appropriately. See Exhibit 8. The Conclusion also fails to
23 acknowledge and distinguish the companion Declaration submitted by Robert Potts ("Potts"),
24 who also opined that the survey was neutral. See Exhibit 9. Conclusion 2 utterly ignores two
25 neutral credentialed peers in the field, and instead, blindly relies on the unsupported opinion of
26 a lesser credentialed "expert" with a clear self interest in the outcome about what he would
27 have done.
28

1 **Conclusion 3** "By failing to conduct a thorough analysis of comparable sales or
2 use other methods to evaluate transactional level data in support of the survey results,
3 the and techniques that are necessary to produce a credible market value appraisal, or
4 retrospective Damages Analysis...." See Findings, page 4, lines 9-13.

5 This Conclusion relies entirely on the opinion testimony of Lubawy. This is his opinion of
6 what should have been done. The Findings do not reference in any way, shape or form, the
7 comprehensive three-step analysis outlined at pages 42-45 of the Litigation Report, which
8 included a review of published articles on views and privacy, an analysis of Red Rock Country
9 Club, which presented the only opportunity to study such a unique issue, and the survey
10 approved and declared neutral by Anderson and Potts. In fact, Jiu, at page 45 of the Litigation
11 Report, did analyze the transactional data, and determined that because (by definition) those
12 transactions included full disclosure, they did not relate to the determination of damages
13 related to a lack of disclosure. This is in no way acknowledged or evaluated in the Findings.
14 Additionally, no explanation was given as to why those three steps were inadequate other
15 than Lubawy's biased opinion. Lubawy, in all his criticism, never said specifically what else
16 could be done to replicate the Rosenberger's situation, just that the Litigation Report did not
17 do things his way. Additionally, Lubawy's own rebuttal report utilized in the same underlying
18 litigation was never subjected to the crucible and scrutinized in a manner done with the
19 Litigation Report. The Commission just assumed he was right and Jiu was wrong.

20 **Conclusion 4** "By failing to support the value conclusion, which was based upon a
21 survey of realtors, with available market or sales comparison data, the Respondent
22 failed to reconcile the applicability or suitability of the approaches used to arrive at the
23 value conclusions...." See Findings, pages 4, lines 17-19.

24 The Findings completely ignored Jiu's Declarations from more learned experts in the field
25 (Anderson and Potts), who both unequivocally stated that the survey was conducted
26 appropriately and properly utilized for the intended scope. There is no acknowledgement that
27 this evidence was presented, and consequently no analysis or explanation of why these
28 experts are wrong and Lubawy and Dugan, adversaries with a stake in the outcome, are right.
Furthermore, although there are multiple definitions of "Market Value" and "Fair Market Value"
in USPAP and generally accepted treatises, all of those definitions include the concept of full

1 disclosure of relevant facts. One of the clear objectives of the Litigation Report was to assign
2 the value of a cause of action in a legal setting to support an award of damages. Lubawy
3 ignores this, so the Findings ignore this key distinction.

4 **Conclusion 5** "By failing to clearly and adequately disclose and explain the
5 application of a hypothetical condition to the Damages Analysis, the Respondent failed
6 to communicate the analysis, opinion, and conclusion in a manner that was not
7 misleading..." See Findings, page 4, lines 24-26.

8 This is a baseless conclusionary statement with no factual support. The Findings in no
9 way acknowledge the Litigation Report, at pages 58-59, where it states unequivocally the facts
10 to be considered. The Findings do not address how the language of pages 58-59 is not
11 "clear" or "adequate" other than to cite to the "opinion" of Lubawy. The Conclusion also fails to
12 acknowledge that the "hypothetical condition" was an actual reality based as demonstrated in
13 the timeline of the Litigation Report.

14 **D. The Findings of Fact and Conclusions of Law Demonstrate a Bias Against Jiu**
15 **in Favor of Lubawy By Utterly Failing to Acknowledge and Evaluate Any of the**
16 **Reasonable and Compelling Defenses.**

17 Jiu and Brunson, at multiple times during the proceeding, attempted to bring to the
18 Commission's attention that the only testifying expert for the Division was an expert in the
19 same litigation for which the Litigation Report, and subsequent documents and testimony were
20 offered. Lubawy was in effect Jiu's opponent in a match of wits. It's analogous to asking the
21 Las Vegas Raiders to give their opinion of whether the Denver Bronco's wide receiver crossed
22 the goal line or went out of bounds at the one-yard line. The Raiders want to win so they will
23 see the play with a bias towards a call that would win them the game. Instead of seeing the
24 issues with weighing into an expert battle, the Commission instead appears to have accepted
25 the "opinion" of Lubawy lock, stock and barrel with no critical analysis of the evidence
26 contradicting those opinions or the bias behind them.

27 In *State v. Wold*, 278 P.3d 266 (AK 2012), the Alaska Supreme Court reversed
28 findings of the Alaska Board of Certified Real Estate Appraisers ("Board") against an
Appraiser for USPAP violations in part because "Though the Board offers no further
explanation of its conclusions, nor citations to the record, the Board's conclusions echo those

1 of Alfred Ferrara, the State's hired reviewer and principal expert witness." See *Id.*, at 272. The
2 Court went on to further criticize that "the Board's violation finding lacked an adequate
3 analytical basis in the USPAP and failed to adequately address the explanations that Wold did
4 provide." See *Id.*, at 273. The Court ultimately concluded that "we will not uphold the
5 imposition of reputationally and economically damaging professional sanctions based on
6 evidence that would not permit a reasonable mind to reach the conclusion in question." See
7 *Id.*, at 273. This case exactly mirrors what this Commission has done to Jiu and we believe
8 that absent a rehearing, the Nevada Courts will come to the same conclusions.

9 **E. The Commission has Committed an Error of Law by Taking Over a Function of**
10 **the Judiciary and Opening a Pandora's Box that Will Result in Matters Being**
11 **Litigated in Front of the Commission Instead of in a Court of Law in an**
12 **Underhanded Attempt by Opposing Experts to Discredit Each Other.**

13 The utter lack of objectivity in the Findings is blatant and obvious. The Findings, in a
14 nutshell, rely on mere opinion testified to by an opposing expert in the underlying litigation.
15 The Commission butted into a litigation battle of the experts and chose a side, usurping the
16 role of the Judiciary.

17 The Courts have long held that that Judges are the "gatekeepers" of determining whether
18 experts in a litigation should be allowed to express their opinions to a jury and what portion of
19 those opinions are reliable. See *United States v. Ozuna*, 561 F.3d 728, 737 (7th Cir. 2009); *In re*
20 *Salem*, 465 F.3d 767, 777 (7th Cir. 2006). Additionally, with respect to experts being able to
21 conduct their investigations and express opinions, "[t]he immunity of parties and witnesses from
22 subsequent damages liability for their testimony in judicial proceedings was well established."
23 **1141 Briscoe*, 460 U.S. at 330-31, 103 S.Ct. 1108⁴ (footnote omitted) (citing *Cutler v. Dixon*
24 (1585) 76 Eng. Rep. 886; 4 Co. Rep. 14 b.; *Anfield v. Feverhill* (1614) 2 Bulst. 269; 1 Ro Rep.
25 61; *Henderson v. Broomhead* (1859) 157 Eng. Rep. 964, 968; 4 H & N. 569). Quoting a 19th
26 century court, the United States Supreme Court reasoned that "the claims of the individual must
27 yield to the dictates of public policy, which requires that the paths which lead to the
28 ascertainment of truth should be left as free and unobstructed as possible." *Id.* at 332-33, 103
S.Ct. 1108 (quoting *Calkins v. Sumner*, 13 Wis. 193, 197 (1860)). The Court further explained

1 that "[a] witness's apprehension of subsequent damages liability might induce two forms of self-
2 censorship." *Id.* at 333, 103 S.Ct. 1108. First, a witness may be reluctant to present testimony
3 due to fear of subsequent damages liability. *Id.* Second, even if a witness makes it to the stand,
4 he may color his testimony as a consequence of the same fear. *Id.* In particular, "[a] witness
5 who knows that he might be forced to defend a subsequent lawsuit, and perhaps to pay
6 damages, might be inclined to shade his testimony in favor of the potential plaintiff, to magnify
7 uncertainties, and thus to deprive the finder of fact of candid, objective, and undistorted
8 evidence." *Id.* Rather than subject witnesses to potential liability for their statements, "the truth-
9 finding process is better served if the witness's testimony is submitted to the crucible of the
10 judicial process so that the factfinder may consider it, after cross-examination, together with the
11 other evidence in the case to determine where the truth lies." *Id.* at 333-34, 103 S.Ct. 1108
12 (internal quotation omitted); see also *Imbler v. Pachtman*, 424 U.S. 409, 439, 96 S.Ct. 984, 47
13 *L.Ed.2d 128* (1976) (White, J., concurring) (stating that to find where the truth lies, a witness
14 "must be permitted to testify without fear of being sued if his testimony is disbelieved"). The
15 common law's protection for witnesses is therefore "a tradition ... well-grounded in history and
16 reason." *Briscoe*, 460 U.S. at 334, 103 S.Ct. 1108.

17 If there was any doubt that Lubawy and the filer of the original Complaint, who we
18 believe to be opposing expert Scot Dugan, had a personal agenda and long-term plan, the
19 resulting actions taken in other cases should put that to rest. On January 30, 2019, at 10:11
20 a.m., the Honorable Jerry A. Wiese, II held an evidentiary hearing in the case of *Las Vegas*
21 *Rental and Repair LLC Series 74 v. Arlene Angeles*. See Exhibit 10, *Transcript of the*
22 *Proceedings*. Brunson is a retained expert in that case. This matter was not yet decided and
23 the Findings were not published, yet an attorney representing the opposing party to that of
24 Brunson's client argued to the court that "Mr. Brunson was before the Nevada Attorney
25 General yesterday on a complaint by the AG's office as to his professional conduct because
26 they found in other appraisal reports that he did not conduct appraisals pursuant to the
27 USPAP standards." See Exhibit 10, page 40, lines 3-7. This was part of her arguments to
28 exclude his testimony at trial. The hearing hadn't even finished and opposing experts,

1 including Lubawy and Dugan were using the Committee's actions to manipulate their other
2 litigation cases to prevent Brunson from testifying before he was even suspended and
3 therefore interfering with the Judge's role as the gatekeeper of such testimony.

4 The Committee's actions have started a flood-gate which will undoubtedly result in
5 dueling complaints by opposing experts, each hoping they will be believed over the other one,
6 and get the Commission to knock out their competition before the race actually starts. This
7 type of interference in the judiciary was never contemplated by the legislature and has opened
8 a Pandora's box that the Commission should take the opportunity to close.

9 **IV. CONCLUSION**

10 Jiu respectfully requests that the Committee grant a Rehearing of this matter. We
11 understand that the Committee serves an important function by protecting the general public
12 from the abuses seen during the last housing crisis, and respect the work done in that function.
13 But this case does not fall under that purview, and has resulted in the Commission second
14 guessing judicial wisdom and rulings and taking sides in a fight between litigants. We ask that
15 the Committee reconsider their conclusions and undo a wrong that has been done to Jiu.

16 Dated this 26st day of February, 2019.

17
18 By:

LIPSON NEILSON P.C.

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Attorneys for Respondent

EXHIBIT 1

BRUNSONJIU LLC

Valuation, Consulting & Real Estate Damage Analytics

REAL ESTATE DAMAGES ANALYSIS

Frederic and Barbara Rosenberg Living Trust v Bank of America et al
Case No. A-13-689113-C

Effective Date of Analysis:

May 15, 2013

Date of Transmittal:

November 25, 2014

Prepared For:

Plaintiffs

Represented by Diana S. Cline & Jacqueline A. Gilbert
Law Offices of Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
702-485-3300

Prepared By:

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November 25, 2014

Mses. Diana S. Cline, Esq. & Jacqueline A. Gilbert, Esq.
Law Offices of Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014

Re: Frederic and Barbara Rosenberg Living Trust v Bank of America et al
Case No. A-13-689113-C

Dear Mses. Cline & Gilbert:

Pursuant to our discussions, I have prepared this expert report on my analysis of the real estate damages related to the subject property located at 590 Lairmont Place, Henderson NV 89012 (APN 178-27-218-003). The subject is a custom single family residence located within the guard gated MacDonald Highlands community. The subject street is located behind an interior security gate and the subject lot is located with a rear view of the ninth green of the semi-private DragonRidge golf course.

My analysis focuses on the lack of disclosure regarding imminent and known changes to the adjacent lot that impacted the subject views and privacy as of the retrospective effective date.

Intended Users of this assignment include only the Client and Client's legal counsel as defined in the following report. The Intended Use of the assignment is for litigation related to the case referenced above. Use of this report by any other person, or for any other purpose, case or effective date is not intended. However, it is understood that parties to the litigation, other than the Client, may be granted access to the report and related workfile.

In the following report I offer a professional opinion regarding the impact that a detrimental condition has on a specific house. This assignment falls under the category of Appraisal as defined by the Uniform Standards of Professional Appraisal Practice (USPAP), and has been developed in compliance with the current edition of that document.

All analyses, opinions and conclusions have been developed and communicated without advocacy or bias and are intended to be meaningful and not misleading within the context of the intended use, intended user, and scope of work for this assignment. The purpose of this assignment is to develop and communicate a credible and reliable opinion about real estate damages related to the above referenced case. Neither I nor Brunson-Jiu, LLC is responsible for unauthorized use of this report.

This assignment includes necessary and reasonable assumptions as noted below:

- The Unimpaired Condition assumes that the residence is marketable and free of any and all detrimental conditions.
- It is assumed that the recorded sale price of \$2,302,000 represents a reasonable estimate of the Disposition Value as of May 15, 2013.
- I am accepting the "As Is" (unimpaired value) expressed in the expert appraisal report completed by Valbridge Property Advisors with an effective date of May 15, 2013 and a cited value opinion of \$2,500,000 under an Extraordinary Assumption. This assumption does not include acceptance of the "Hypothetical" (impaired value) expressed in the Valbridge report.

While reasonable in the context of the Intended Use, the use of these assumptions may have affected the assignment results.

As explained in the body of the report, this real estate damages analysis is in the Assessment Stage. By definition, future stages of the assignment include research and investigation that is yet to be conducted. I reserve the right to supplement and/or amend my findings and conclusions, if necessary, as additional analysis is completed or additional facts are discovered.

Conclusions – Cost, Use, and Risk Damages

The Principal of Substitution states that knowledgeable buyers/investors will pay no more for a specific property than they could pay for a comparably equivalent substitute in an open market. The application of this principal in the analysis of real estate damages is that knowledgeable buyers/investors will not purchase a property impaired by a Detrimental Condition when an unimpaired equivalent substitute is available in an open market.

The noted exception to the principal is when a specific buyer/investor acquires a property with a known detrimental condition due to some specific motivation. In these cases the specific purchase cannot be considered a Market Value transaction (as defined) because it fails to meet the criteria for typical motivation.

The following facts must be considered when considering Rosenberg's decision to purchase:

- Rosenberg believed they were purchasing *Property A* including certain view corridors and privacy. In reality they were receiving *Property B* with different (potentially obstructed) view corridors and lesser privacy due to an approved and imminent change in the adjacent property boundaries and building envelope.
- Because of the approved and imminent change in the adjacent property boundaries and building envelope *Property A* (as represented to Rosenberg) did not exist.
- The defendants were involved with the change in the adjacent property boundaries and building envelope and/or aware of the fact that *Property A* (as represented to Rosenberg) did not exist and yet did not disclose this fact to Rosenberg.
- The lack of disclosure precluded Rosenberg from making an informed decision and considering:
 - a. Whether or not they wanted to purchase *Property B*?
 - b. What incentive (discount) would be required in order for Rosenberg to acquire *Property B*?
- Because *Property B* is an inferior alternative (as demonstrated by the analysis and conclusions within my report), the lack of disclosure by the defendants results in damages to Rosenberg that can be expressed as economic opportunity loss (cost of lost opportunity).

Under general appraisal theory, external conditions are considered incurable because they exist outside of the subject property. However, in this case, the DC could be mitigated through the use of a deed restriction limiting the use of the additional land on the adjacent parcel.

FINAL CONCLUSIONS AND OPINION OF IMPAIRED VALUE

The research and analysis summarized in the report that follows has led me to the following conclusions:

- Published research shows that view amenities, sight lines and privacy are beneficial characteristics that are valuable and considered “sacrosanct” and “holy” by property owners.
- Developers are aware that altering site lines and/or privacy for homes at this level of the market is not well received.
- The additional land in both the undeveloped and developed scenarios adversely impacts the subject property in several ways. It diminishes the value and diminishes the marketability (reduces the pool of potential buyers and increases the likely days on market).
- Under market conditions “current” as of the date they took the survey, respondents indicate the diminution of value in the vacant condition would range from 1% to 50% and the increase in marketing time would be from 1 to 365 days.
- Under market conditions “current” as of the date they took the survey, respondents indicate the diminution of value in the developed condition would range from 1% to 20% and the increase in marketing time would be from 1 to 180 days.

It is generally accepted practice in real estate damage analytics to assume the most injurious scenario to the damaged party. However, because the range of impairment expressed by survey respondents is broad, I am hesitant to express an opinion at the top of the range. Factors considered in my reconciliation of damages include:

- “Current” market conditions considered by the survey respondents are superior to market conditions as of the retrospective effective date.
- The range of diminution as vacant was given most consideration because this represents the conditions in place as of the retrospective effective date.¹
- The DC could have been avoided through a disclosure of imminent and known facts.
- The DC adversely affects both value and marketability.

¹ Moreover, the survey analog utilized a graphic based on a set of plans that was revised subsequent to the survey. The revised plans change both the orientation and the location of the proposed house on the site. The result is a greater encroachment beyond the original buildable envelope. This fact would have likely changed the survey results.

Therefore, a final conclusion of diminution toward the upper end of the range is warranted.

Based on the analysis summarized above, I conclude that as of May 15, 2013, the Class V: External Detrimental Condition diminishes the value of the property by 30%-40%. When applied to the retrospective market value of the subject property expressed in the Valbridge report, this translates to monetary damages of:

\$750,000 - \$1,000,000

Seven Hundred and Fifty Thousand to One Million Dollars


Please refer to the report following this letter for additional information and support regarding my conclusions. It has been a pleasure to work with you thus far, and I look forward to the opportunity to assist you with similar matters in the future. If you have any questions regarding my conclusions, or require further information or clarification regarding the ensuing report, please contact my office.

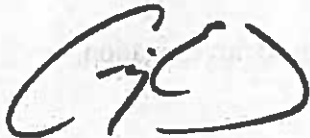
Respectfully submitted,



Craig E. Jiu, MAA
Brunson-Jiu, LLC
Nevada Certified General Appraiser #A.0002330-CG

CERTIFICATION: I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct;
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions; and, my personal, impartial, and unbiased professional analyses, opinions and conclusions;
- I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved;
- I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment;
- My engagement in this assignment was not contingent upon developing or reporting predetermined results;
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal assignment;
- My analyses, opinions, and conclusions were developed and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*;
- I made a personal inspection of the property that is the subject of this report on July 17, 2014;
- Michael L. Brunson, Nevada Certified Residential Appraiser #A.0002794-CR, provided significant professional appraisal assistance at the inspection of the subject property, in the development of the Realtor survey, research of case studies and review of this report. 
- I have not performed any prior services related to the subject property within the prior 36 months of the effective date of this assignment;



Craig E. Jiu, MAA
November 25, 2014

Brunson-Jiu, LLC

Nevada Certified General Appraiser #A.0002330-CG

ASSUMPTIONS AND LIMITING CONDITIONS

No responsibility is assumed for the legal description or matters including legal or title considerations. Unless otherwise stated, the property is appraised as though free of all encumbrances, and the title is assumed to be good and marketable.

No survey of the boundaries of the property was undertaken. All area dimensions furnished are presumed to be correct.

Information contained in this appraisal report has been gathered from sources that are believed to be reliable. No responsibility is assumed for the accuracy of information supplied by others.

I/we assume no responsibility for economic or physical factors that may affect the opinions herein stated which might occur at some date after the date of value. Forecasts of future events, that influence the valuation process, are predicated on the continuation of historic and current trends in the market.

If applicable, the subject is appraised assuming it to be under responsible ownership and competent management, and available for its highest and best use.

No engineering survey has been made. Except as specifically stated, data relative to size and area was taken from sources considered reliable. No encroachment of real property improvements is considered to exist.

I/we express no opinion on matters which require legal expertise, specialized investigation, or knowledge beyond that customarily employed by real estate appraisers.

Unless otherwise stated in this report, the existence of hazardous substances may or may not be present on or in the subject property including without limitation: toxic mold, asbestos, polychlorinated bi-phenyls, petroleum leakage, or agricultural chemicals. The appraiser has no knowledge of the existence of other such materials on or in the property unless otherwise stated. The appraiser is not qualified to test such substances or conditions. The presence of such substances such as asbestos, urea-formaldehyde, foam insulation or other hazardous substances, or environmental conditions may affect the value of the property. The value estimated is predicated on the assumption that there is no such condition on or in the property or in such proximity, as to cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in the field of environmental impacts upon real estate if so desired.

I/we have inspected, as far as possible, the land and improvements thereon; however, it is impossible to personally inspect the conditions beneath the soil or structural components of the

improvements; therefore, no representation is made as to these matters unless specifically considered in the report.

Maps, plats, and exhibits included herein are for illustration purposes only, as an aid, in visualizing matters discussed within the appraisal report. They should not be considered surveys nor relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

I/we assume there is full compliance with all applicable federal/state/local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.

The Americans with Disabilities Act (ADA) became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more ADA requirement(s). If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in estimating the value of the property or completing this appraisal report.

I/we assume all applicable zoning and use regulations/restrictions have been complied with, unless non-conformity has been stated, defined, and considered in the appraisal report.

I/we assume that all required licenses, certificates of occupancy, consents or other legislative or administrative authority, from any local/state/national government or private entity or organization, have been, or can be, obtained or renewed for any use on which the value estimate contained in this report is based.

The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal or appraisal report and are invalid if so used.

Any dispute or claim made with respect to this report shall be submitted to and resolved in accordance with the rules of the American Arbitration Association, for arbitration, and the decision of the Association shall be binding. All valuation services, pursuant to this report, shall be deemed to be contracted for and rendered in Clark County, Nevada, and any arbitration or judicial proceedings shall take place in Clark County, Nevada.

Any value estimates provided in the report apply to the specified subject property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.

This report may contain prospective financial information, estimates or opinions that represent the appraiser's view of expectations at a particular point in time. Such information, estimates or opinions are not offered as predictions, or as assurances, that a particular level of income or profit will be achieved, events will occur, or a particular price will be offered or accepted. This appraisal report is based on market conditions existing as of the effective date of the appraisal and/or the effective date of the appraisal(s) under review.

I/we shall not be required, by reason of this report, to give testimony or to be in attendance in court or any governmental or other hearing with reference to the property without prior arrangements having first been made with us relative to such additional employment.

Neither all nor part of this appraisal report shall be disseminated to the general public by the use of advertising media, public relations media, news media, sales media or other media for public communication without the prior written consent of the signatories of this appraisal report.

The use of all or any part of this report in connection with real estate tax shelters, syndications of interests in real estate, the offering of securities, shares or partnership interests in real estate, or any other public or private offering without my/our specific written consent is not authorized. Neither the whole nor any part of this report, nor any reference thereto, may be included in any document, statement, appraisal, or circular without my/our prior written approval of the form and context in which it is to appear.

My/our report is based on estimates, assumptions, and other information developed from research of the market, knowledge of the industry, and meetings during which you or your representatives provided us with certain information. This data is assumed to be reliable; but, no responsibility, whether legal or otherwise, is assumed for its accuracy.

Under the terms of the engagement, I/we will have no obligation to revise this report to reflect events or conditions that occur subsequent the date of the appraisal report. However, I/we will be available to discuss the necessity for revision(s) resulting from changes in economic or market factors affecting the subject.

DEFINITIONS

For the purpose of this Appraisal Report, the following definitions apply:

Appraisal²

(noun) The act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

Assumption³

That which is taken to be true.

Conformity⁴

The appraisal principle that real property value is created and sustained when the characteristics of a property conform to the demands of its market.

Cost Approach⁵

A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive, deducting depreciation from the total cost, and adding the estimated land value. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised.

Detrimental Condition⁶

Any issue or condition that may cause a diminution in value to real estate.

² *Uniform Standards of Professional Appraisal Practice*, The Appraisal Foundation, 2014-2015 Edition

³ *Ibid*

⁴ *The Dictionary of Real Estate Appraisal*, 5th Edition, (Chicago: Appraisal Institute, 2010)

⁵ *Ibid*

⁶ Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions* – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 374.

Disposition Value⁷

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Extraordinary Assumption⁸

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Fee Simple Estate⁹

The real estate interest appraised is the fee simple estate as of the effective date of the appraisal. *The Dictionary of Real Estate Appraisal*, 5th Edition, 2010, defines fee simple estate as follows:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Highest and Best Use¹⁰

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

⁷ *The Dictionary of Real Estate Appraisal*, 5th Edition, (Chicago: Appraisal Institute, 2010)

⁸ *Uniform Standards of Professional Appraisal Practice*, The Appraisal Foundation, 2014-2015 Edition

⁹ *The Dictionary of Real Estate Appraisal*, 5th Edition, (Chicago: Appraisal Institute, 2010)

¹⁰ *Ibid*

Hypothetical Condition¹¹

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Impaired Value¹²

The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.

Market Area¹³

The area associated with a subject property that contains its direct competition.

Market Value¹⁴

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. Buyer and seller are typically motivated;
- b. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
- c. A reasonable time is allowed for exposure in the open market;
- d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Neighborhood¹⁵

A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.

Progression¹⁶

In appraisal, the concept that the value of an inferior property is enhanced by its association with better properties of the same type.

¹¹ *Uniform Standards of Professional Appraisal Practice*, The Appraisal Foundation, 2014-2015 Edition

¹² Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions* – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 378.

¹³ *The Dictionary of Real Estate Appraisal*, 5th Edition, (Chicago: Appraisal Institute, 2010)

¹⁴ Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), [Pub. L. No. 101-73 103 Stat. 183 (1989)], 12 U.S.C. 3310, 3331-3351, and Section 5 (b) of the Bank Holding Company Act, 12 U.S.C. 1844 (b); Part 225, Subpart G: Appraisals; Paragraph 225.62(f).

¹⁵ *The Dictionary of Real Estate Appraisal*, 5th Edition, (Chicago: Appraisal Institute, 2010)

¹⁶ *Ibid*

Sales Comparison Approach¹⁷

The process of deriving a value indication for the subject property by comparing market information for similar properties with the property being appraised, identifying appropriate units of comparison and making qualitative comparisons with or quantitative adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.

Unimpaired Value¹⁸

The value as if no detrimental condition exists.

¹⁷ *The Dictionary of Real Estate Appraisal*, 5th Edition, (Chicago: Appraisal Institute, 2010)

¹⁸ Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition* (Chicago: Appraisal Institute, 2008), p. 385.

SUMMARY OF SALIENT FACTS

Purpose of the Assignment: To provide a reliable and credible opinion of real estate damages related to the facts of the case.

Clients: I was engaged by attorney Diana S. Cline, Esq. on behalf of Frederic and Barbara Rosenberg Living Trust.

Appraiser/Consultant:

Craig E. Jiu, MAA

Nevada Certified General Appraiser #A.0002330-CG

Intended User(s): Clients Only. Use of this report by others is not intended. It is understood that parties to this litigation other than the Client may be granted access to the report and related workfile.

Intended Use: Litigation in Frederic and Barbara Rosenberg Living Trust v Bank of America et al (Case No. A-13-689113-C). This report is not intended for any other use.

Identification of Subject Property:

Address: 590 Lairmont Place, Henderson, Clark County, NV 89012

Assessor's Parcel Number: 178-27-218-003

Location: Lairmont @ MacDonald Highlands

Legal Description: Lot Three (3) in Block One (1) of "MACDONALD HIGHLANDS, PLANNING AREA 10 A.K.A. THE FOOTHILLS AT MACDONALD RANCH, LOT 10, PLANNING AREA 10", as shown by map thereof on file in Book 115 of Plats, Page 76, in the Office of the County Recorder of Clark County, Nevada.

Zoning: RS-2 / Low-Density Single-Family Residential 2
(2 dwelling units per acre)

Site Size: 0.66 Acres / 28,750 Square Feet

Highest and Best Use:

As Vacant: Hold for construction of a single-family residence

As Improved: Use as a single family residence

Flood Zone: According to the Federal Emergency Management Act's (FEMA) flood map, the subject site is situated in Map Number 32003C2595F, with Panel Number 2595, and map date of November 16, 2011. According to FEMA, this is designated Zone X (not in a 100-year flood zone).

Sales History: Acquired via an open market (GLVAR #1328416) non-traditional REO/bank owned sale for \$2,302,000 on May 15, 2013 following 13 days on market via "all cash" with no known credits/concessions.

Prior transfer at \$1,601,600 on November 2, 2011 via a Trustee's Deed due to a foreclosure proceeding.

No other sales history was noted within the past three (3) years.

Interest Appraised: Fee Simple Estate

Prior Services: No prior services were provided for this subject property within the 36 months prior to the acceptance date of the assignment.

Effective Date: May 15, 2013

Date of Inspection: July 17, 2014

Date of Report: November 25, 2014

Type of Report: This is a Real Estate Damages Analysis which includes an Appraisal as defined by USPAP, intended to comply with the General Rules and Standards Rules 1 and 2 of the USPAP.

Professional Assistance:

Michael L. Brunson, Nevada Certified Residential Appraiser #A.0002794-CR, provided significant professional appraisal assistance at the inspection of the subject property, in the development of the Realtor survey, research of case studies and review of this report.

Assumptions: This assignment will be based on several Assumptions.

- The Unimpaired Condition assumes that the residence is marketable and free of any and all detrimental conditions.
- It is assumed that the recorded sale price of \$2,302,000 represents a reasonable estimate of the Disposition Value as of May 15, 2013.¹⁹
- I am accepting the "As Is" (unimpaired value) expressed in the expert appraisal report completed by Valbridge Property Advisors with an effective date of May 15, 2013 and a cited value opinion of \$2,500,000 under an Extraordinary Assumption. This assumption does not include acceptance of the "Hypothetical" (impaired value) expressed in the Valbridge report.

While these assumptions are reasonable in the context of the intended use of the assignment, it is possible that their use may have affected the assignment results. As the assignment progresses, additional assumptions may become necessary and will be disclosed as appropriate in the body of the report.

¹⁹ My independent analysis of neighborhood and market area trends indicates that as of the retrospective effective date REO properties were selling for ~9.6% below traditional properties in the subject market area.

SCOPE OF WORK

"The Scope of Work refers to the type and extent of research and analyses in an assignment."

(Source: The Appraisal of Real Estate, 14th Edition, Appraisal Institute 2013, Page 87)

The following scope of work was developed in accordance with the client's specific needs, and in compliance with the USPAP.

- Collected and verified subject property data.
- Inspected the subject property.
- Examined various documents provided and requested by the client.
- Gathered data on current and historical economic conditions.
- Gathered and analyzed data on the subject subdivision.
- Completed research of public and private databases for case study data related to similar detrimental conditions.
- Verified relevant data with the cited source when available or other reliable source(s) as applicable.
- Created and distributed a proximity survey to Southern Nevada brokers and agents.
- Defined the components necessary for an opinion of the impaired value of the subject properties.
- Formulated opinions regarding Cost, Use, and Risk damages.
- Created a report summarizing the findings and conclusions of this stage of the Real Estate Damages Analysis.

The above list is not exhaustive. Additional Scope of Work disclosures will be found throughout this report in the sections relevant to the work being summarized.

A physical inspection of the subject property was conducted on July 17, 2014.

This Real Estate Damages Analysis states or summarizes my analysis, opinions and conclusions. Supporting documentation is retained in the workfile.

This Real Estate Damages Analysis report is intended to be an "appraisal assignment". That is, the intention was that the appraisal service was performed in such a manner that the results of the analysis, opinion, or conclusion be that of a disinterested third party.

At this stage of the assignment, it is not within the scope of work to provide an independent opinion of value. Future stages of the assignment may include additional valuation services, including, but not limited to, an independent retrospective appraisal.

USPAP Competency Provision

The signer of this report has the knowledge and experience to complete this assignment. I have completed numerous assignments involving high-end custom single-family residences and real estate damages analytics. Included in the Addenda are my qualifications and the reader is referred to that section for additional information.

The report has been prepared with the intent to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

USPAP Background

The Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Foundation, are the recognized measure of professional due diligence for all licensed or certified appraisers. The preamble of the USPAP provides a brief overview as to the purpose and intent of the Uniform Standards, stating in part:

The purpose of the Uniform Standards of Professional Appraisal Practice (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to **intended users** of their services in a manner that is **meaningful and not misleading...**

(Bold added for emphasis)

Development and Reporting Procedures:

The Uniform Standards of Professional Appraisal Practice (USPAP) requires that appraisers develop and communicate their analyses, opinions, and conclusions, to the intended user(s) of their services, in a manner that is meaningful and not misleading. Therefore, a clear distinction must be made between the “Development Process” and the “Report”, or communication process.

Development Process

This concept addresses the appraiser’s depth of analyses and investigations while performing an appraisal, appraisal review, or a valuation consulting assignment.

Reporting Process

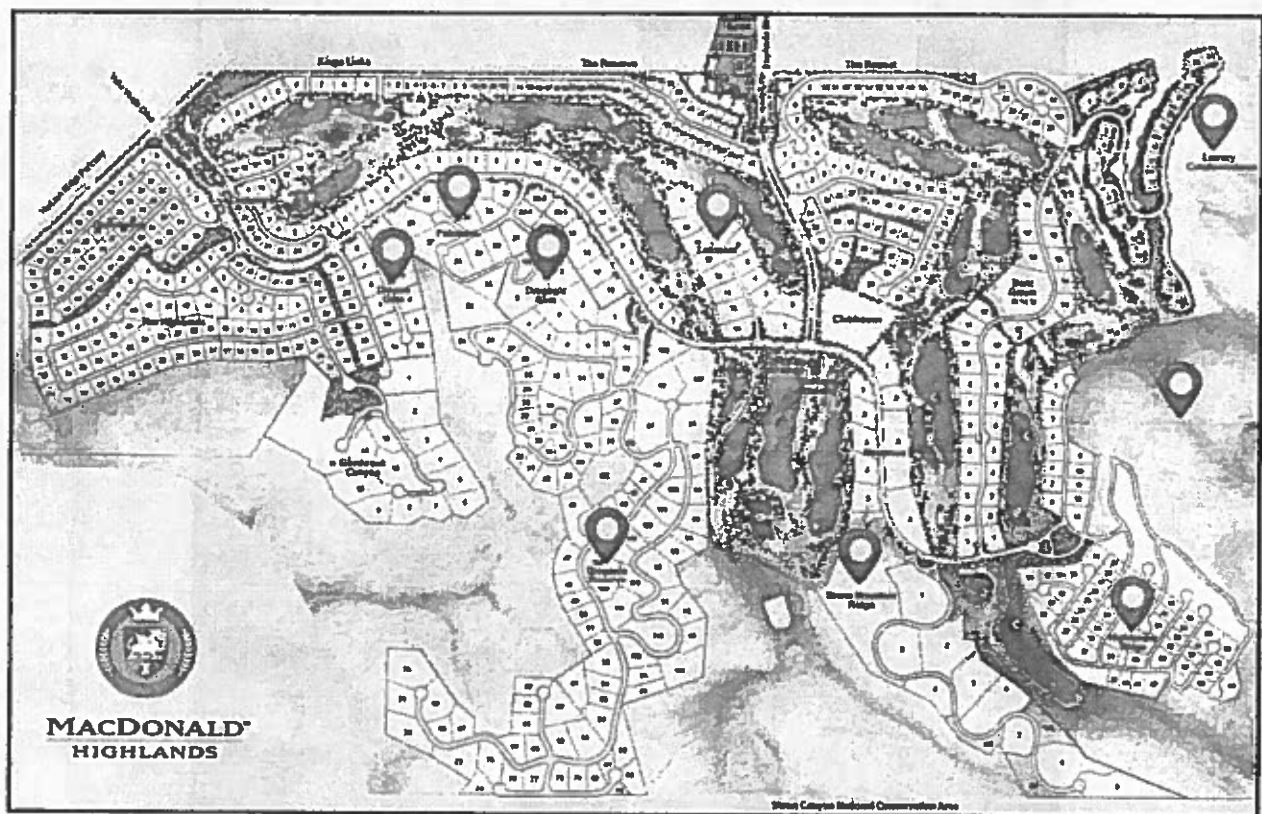
As noted above, I am not developing individual market value appraisals on each subject property. However, any determination of damages will be a professional opinion of the impaired value (a direction in value) that is considered an appraisal in the context of the Uniform Standards of Professional Appraisal Practice (USPAP). As such, this report is developed in compliance with USPAP Standards Rule (SR) 1 and reported in compliance with USPAP SR-2. Additional and supporting information, regarding the opinions and conclusions set forth in the appraisal report, are maintained in the associated workfile.

SUBJECT SUBDIVISION AND RELEVANT DETAILS

Situated within the MacDonald Highlands master-planned community, the 1,200 acre community is found in the foothills of the McCullough Mountains offering a myriad of view amenities (e.g. golf, city, Las Vegas Strip, mountains, etc.) with a 18-hole championship golf course (DragonRidge Country Club) that is interspersed throughout the community. The guard gated golf course community is currently comprised of semi-custom production homes, luxury custom homes and 10 acres of parks, sports courts, walking and hiking paths.

MacDonald Highlands hosted the 2002 and 2004 *Street of Dreams, Inc.* home show events, showcasing new custom high-end luxury homes that exhibit cutting edge technology for residential construction; where the homes are professionally designed, decorated and furnished.

Public records indicates that houses within began construction in 2002, where construction continues to-date. Custom lots range from $\frac{1}{4}$ acre to 2.5 acres, where prices for those sites are noted to currently range from \$460,000 to \$6,000,000.

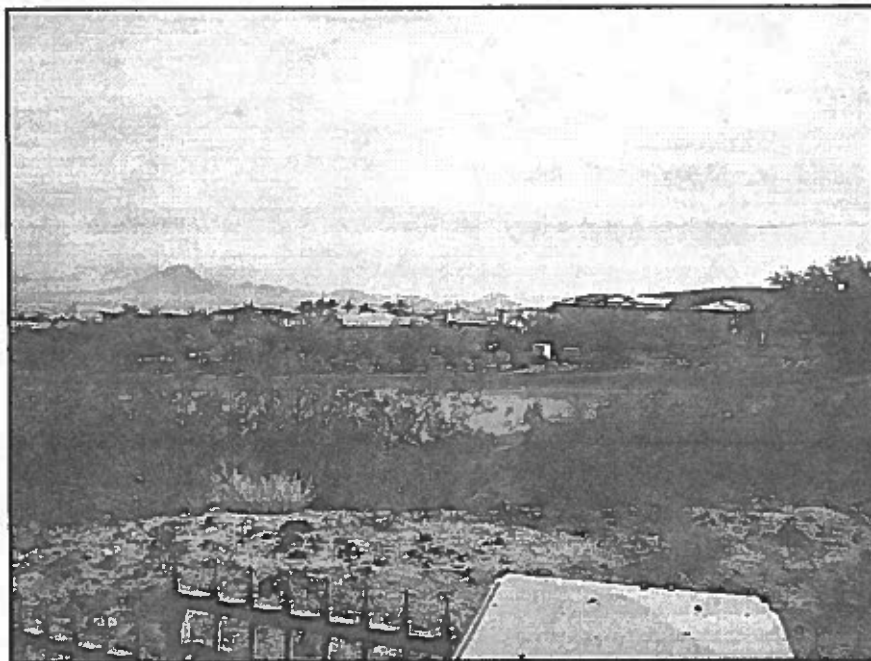
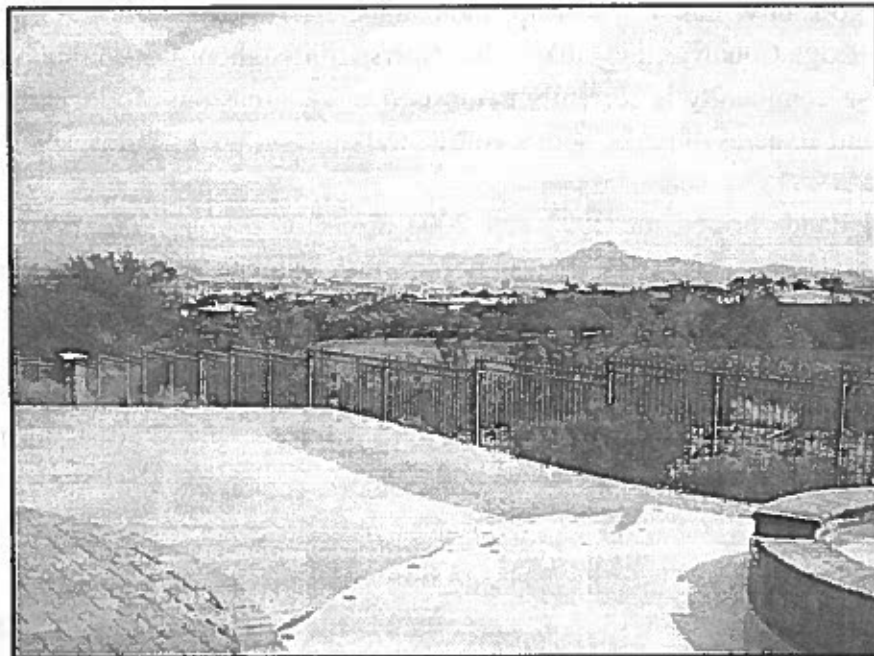


Community Map (www.macdonaldhighlands.com)

The recorded plat map for the subject property indicates that that parcels located on *Lairmont Place* are part of a common interest community, also known as a "MacDonald Highlands, Planning Area 10 AKA The Foothills at MacDonald Ranch, Lot 10, Planning Area 10".

The subject property benefits from the following view amenities:

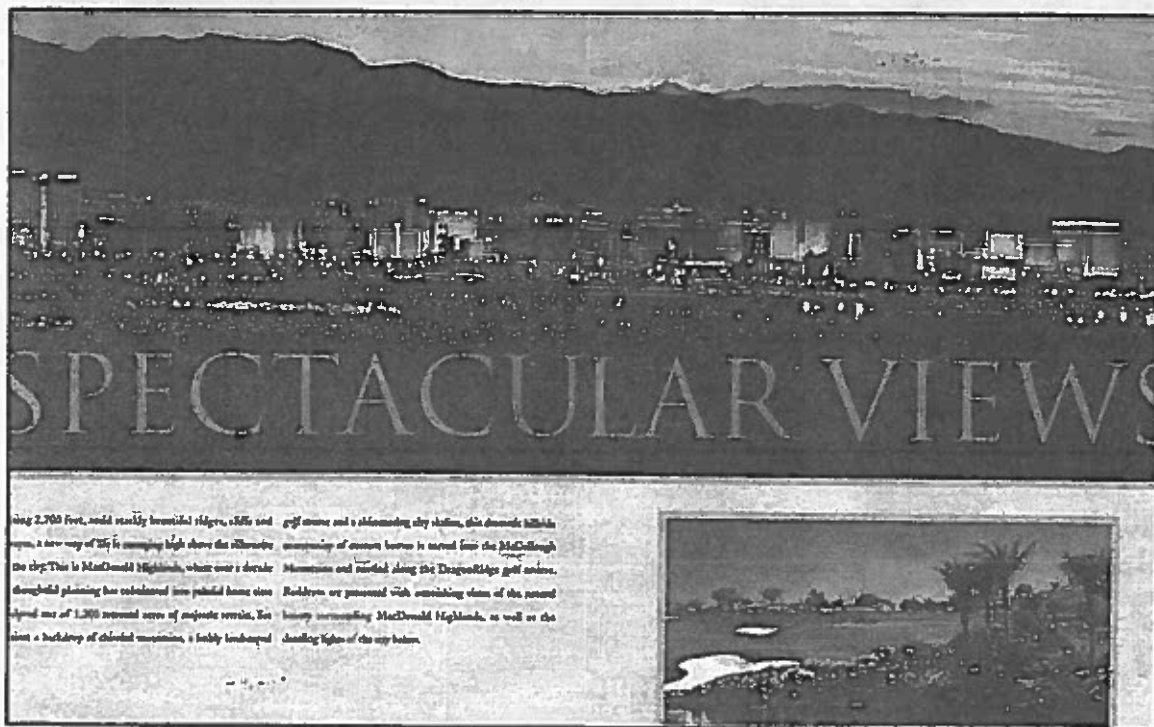
NORTH
Valley, golf course (green & fairway), city and mountains




EAST Mountains and open space




The following exhibits are taken from the MacDonald Highlands marketing brochure and demonstrate the “emphasis” that was placed on view amenities by the developer in marketing their project.





...with its rugged desert cliffs, cacti, and vast open spaces, offer MacDonald Highlands a natural escape from the rush of everyday life. An advocate for preservation, Richard MacDonald has long been involved in the land-use planning of the master-planned 3,270-acre MacDonald Ranch, resulting in desert communities that harmoniously unite man and nature. From the moment you enter MacDonald Highlands, the natural rock formations tell you the land is beautiful and offering opportunities to create an environment that not only preserves the existing landscape, but enhances it for future generations with pathways for exploration, recreation and enjoyment.



NATURAL BEAUTY

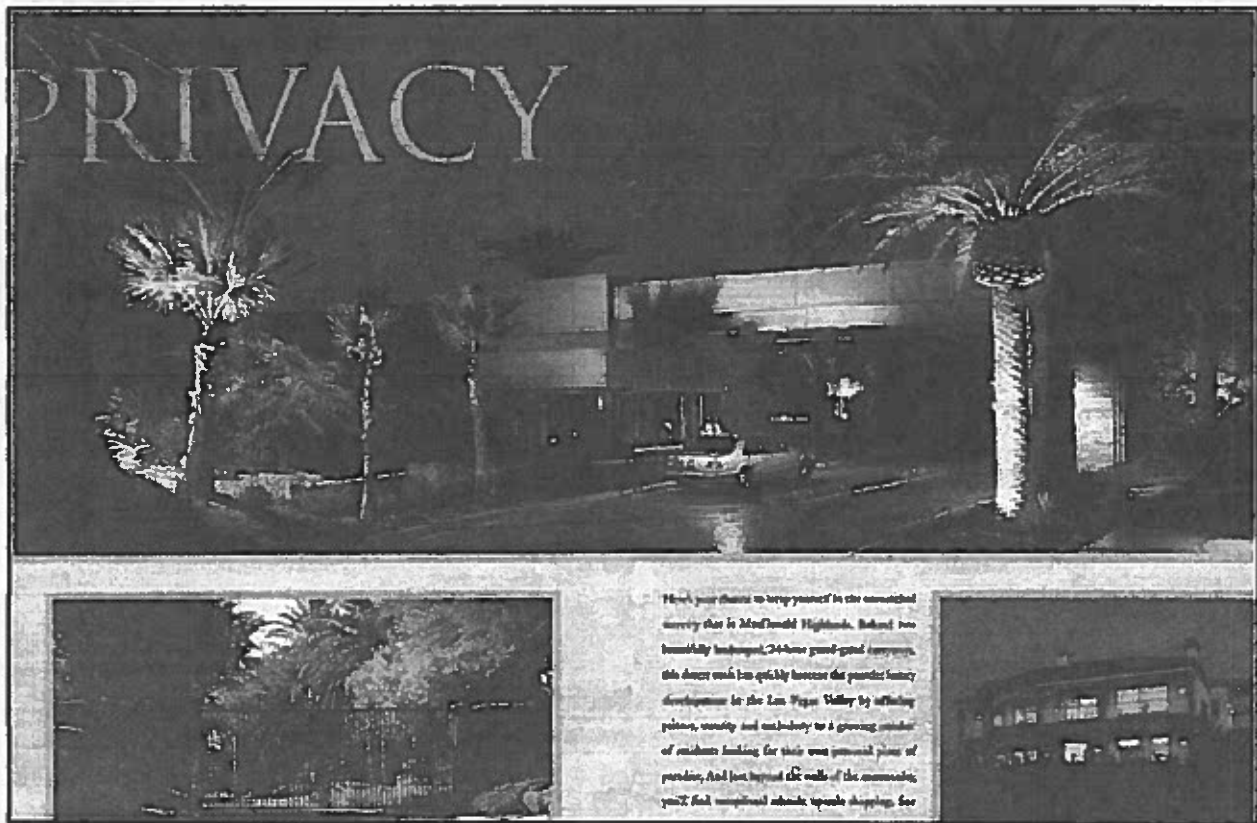


OPEN SPACES




Children and adults will find their outdoor active lifestyle adventures await them inside MacDonald Highlands' master-planned neighborhood parks, where rolling meadows give way to picnic tables and children's swing sets, where kids of all ages can safely explore the desert in their own backyards. Three neighborhood parks encompass 30 acres of pristine land which will feature tennis, basketball and volleyball courts, play areas and picnic facilities. For miles of scenic and hiking pathways crisscross throughout the community and provide access to the desert trails that go deep into the McDougall Mountains.





Clearly view amenities, natural features, open space, and privacy are beneficial factors recognized by the developer.

DETRIMENTAL CONDITION ANALYSIS**Classification:**

In the study of Real Estate Damages, specific circumstances, known as Detrimental Conditions (DC), are classified into ten classes. This assignment deals with the expansion of an adjacent lot and the impact (if any) that the expanded site size and building envelope has on the marketability and value of the subject property.

Class V Detrimental Condition – External Conditions: *addresses the external conditions of airport noise, transmission lines, view and privacy issues.*²⁰

The DC as it relates to the subject property is more specifically that of a view diminution and/or privacy issues.

Views of golf courses, city lights, open space and other amenities are generally considered desirable features, particularly for residential properties. These views typically relate to higher values and decreased marketing times. Any imminent and known alteration to an associated view or that would change the privacy associated with a property (including alteration of sight lines or pending construction) would be significant information that a typical buyer (in making a decision to purchase) and a professional appraiser (in conducting a valuation) would research and consider. To quote one of the articles cited in our subsequent Case Study, *"it is evident that property owners regard their views as holy and are willing to use any means possible to protect such views."*²¹

There are two (2) concepts that relate to views that must be considered as it relates to the subject property:

1. "Borrowed" views – That a subject property may enjoy a view(s) either in portion or its entirety only because of the existence of a vacant parcel between the subject and the view amenity, with a realistic expectation that the view corridor might be obstructed in some manner once that adjacent parcel is improved.

The subject property rears the ninth green with no development located on the opposite side of the fairway/green and a landscaping buffer between the green and the rear property line. The primary view of the green is to the northeast and the primary view of the fairway is to the north. Secondary views of the mountains and clubhouse exist to the east and southeast. The north view is unaffected and the northeast view is only slightly affected by the new property boundaries and future construction.

²⁰ Randall Bell; with Orell C. Anderson, Michael V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions*, 2nd ed. (Chicago: Appraisal Institute, 2008), Preface

²¹ The Impact of a View on the Value of Vacant Residential Lots, R.M. Potgieter and C. E. Cloete, *The Appraisal Journal*, Fall 2010

The secondary views would be considered “borrowed” in that future development could impact the view and the sight lines. The relevant question is to what degree will the secondary views be impacted? In this case, the answer to that question depends greatly on which buildable envelope is considered – the original or the amended.

2. In contrast to view, visibility relates to how a property is seen by others; where visibility for residential properties can be a positive, neutral or negative feature. Visibility in this context is related to the concept of privacy which is typically a beneficial characteristic for both vacant residential land and completed houses. When another lot or house is situated so that the improvement will or does look into the adjacent property this condition is often referred to as the “fishbowl effect”.

The fishbowl effect occurs in varying degrees and has varying impact on value. In high end golf course communities, lots along the course are developed with the intent of maximizing both site lines and privacy. Locations along a fairway or green require some sacrifice of privacy from golfers that utilize the course. Any adjacent property can impact the privacy of a given site by completing a living area or recreational addition (e.g. a pool or a sport court) to an adjacent property that allows a neighbor to look into the rear yard and/or into the living area of the house.

In this case, the question is, how will future development of the adjacent lot with the additional land impact the privacy of the subject property?

Analysis of Detrimental Condition(s) typically requires analysis of the overall market conditions and several appraisals of the affected property. The analysis of market trends provides a broad overview and allows preliminary qualification of the detrimental condition. As previously noted, the expert report completed by Tammy O'Rourke and Matthew Lubawy with a cited value opinion of \$2,500,000 was determined to be reliable estimate of the Unimpaired Market Value as of May 15, 2013 (the date the subject property was acquired by the client).

The initial stage of this assignment is:

- to qualify the DC (does the expanded property boundary have any positive or negative impact on the value or marketability of the subject); and
- (if the DC is not benign) to quantify the DC (determine a reasonable estimate of damages attributable to the DC).

Additional stages of the assignment may include additional valuation services including but not limited to: additional DC analysis in the Repair and Ongoing stages of the DC life cycle; Appraisal Review of opposing expert reports; and independent Appraisal(s).

The Detrimental Condition Matrix:

Real property affected by a detrimental condition will typically have a life cycle of three stages: Assessment; Repair; and, Ongoing. During each stage, a property may be affected by three related issues: Cost; Use; and, Risk. The Detrimental Condition Matrix reproduced from Randall Bell's book, *Real Estate Damages: Applied Economics and Detrimental Conditions, Second Edition*, appears below.

Detrimental Condition Matrix			
	Assessment	Repair	Ongoing
Cost	Assessment Costs & Responsibility	Repair Costs & Responsibility	Ongoing Costs & Responsibility
Use	Use Impacts While Assessed	Use Impacts While Repaired	Impact on Highest & Best Use
Risk	Uncertainty Factor	Project Incentive	Market Resistance

Source: Property Owner's Manual

Because the house proposed for 594 Lairmont Place / APN 178-27-226-003 (Malek / Lot 55-2) has yet to be finalized and/or built, the DC must be analyzed from the perspective of the Assessment stage.

Cost Damages

This issue is related to the physical costs to repair the patent and latent defects related to the detrimental condition. In some cases Cost Damages may also include economic opportunity cost related to lost opportunity when a participant in a transaction is precluded the opportunity to negotiate with a full understanding of the facts.

Use Damages

This issue is related to the loss of use to the owner of the property. Loss of use is typically measured by determining an amount necessary to rent or purchase a similar house and the amount necessary to rent or replace items of personal property (furniture, clothing, equipment, tools, rugs, decorations, etc.).

Risk Damages (Sometimes referred to as "Stigma")

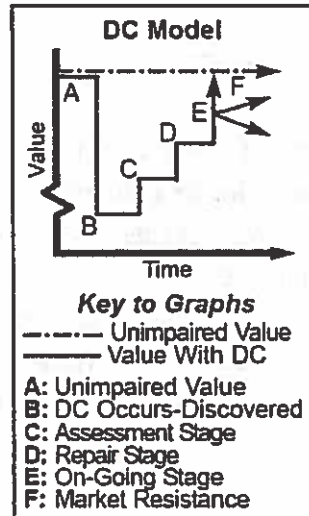
This issue is related to the ongoing nature of some Detrimental Conditions. In the Assessment stage, Risk can be expressed as *uncertainty* prior to a situation being fully assessed. In the Repair stage, risk can be expressed as *project incentive* related to the estimate of the costs and effort to repair, which would include entrepreneurial profit. In the Ongoing stage, risk can be expressed as *market resistance*, or ongoing reluctance, by the market participants to purchase a property with a history of being damaged. The resistance is due to a known history of a detrimental condition that causes a property to suffer a reduction in value, an increase in marketing time, or some combination of both.

Ongoing risk (market resistance) is generally a combination of science and the perception of that science by market participants that is sometimes referred to as *stigma*. For example, a property that has been vacant for a period of time, and is in below average condition for the market may be perfectly habitable after only cosmetic repairs and cleaning; however, if knowledge of the period of vacancy or the below average condition causes the market to demand a discount or if the property takes longer to sell than competing unaffected property, then ongoing risk damages would be warranted.

Additional analysis and conclusions relating to the Cost, Use and Risk damages follow in the analysis of Impaired Value section of this report.

Detrimental Condition (DC) Model:

Also important in the analysis of real estate damages, is the Detrimental Condition Model. The exhibit below is an illustration of the Full DC Model found in Randall Bell's book, *Real Estate Damages: Applied Economics and Detrimental Conditions, Second Edition*:



Source: Property Owner's Manual

- (A) The concept underlying the model is that until a DC is discovered or known, a property will perform with its market reflecting an Unimpaired Value.
- (B) Once a DC occurs, or is discovered, the value of the property separates from the normal market and becomes Impaired. As every condition is unique, the actual amount of separation is unknown. However, the largest separation from the normal market occurs at this stage of a DC life-cycle because the typical buyer is most concerned about, and wary of, that which they do not fully know and understand.
- (C) As the detrimental condition is assessed and defined, the separation from the normal market decreases. Again, the specific decrease will vary from condition to condition based on specific circumstances. Nonetheless, the typical buyer is generally less wary of conditions which have been, or are being, quantified.
- (D) As repairs begin, the separation decreases yet again (still to a varying degree based on circumstances). The typical buyer is even less wary of a condition that is defined, they understand, and is being corrected.
- (E) As repairs continue, the separation from the normal market will continue to shrink until the point at which repairs are complete and the DC has been remediated.
- (F) The final stage of the DC Model is Risk or Market Resistance. At this stage, the model recognizes that while some conditions return to the normal unimpaired market upon repair and remediation, not all conditions are physically possible or financially feasible to remediate. In some circumstances, such as the scene of a heinous crime scene or catastrophic disaster, the knowledge or memory of the event can cause market resistance even after the condition has been repaired and remediated.

There are many variations of the DC Model depending on the type and nature of the DC and the specific details of the case.

ANALYSIS OF THE UNIMPAIRED VALUE

A foundational step in a real estate damages analysis is to establish the value of the affected property in its unimpaired condition. This is typically accomplished by examining the events and circumstances of the case, determining a date at which the detrimental condition either did not exist or was not known, and determining a reliable estimate of the Unimpaired Market Value as of that date.

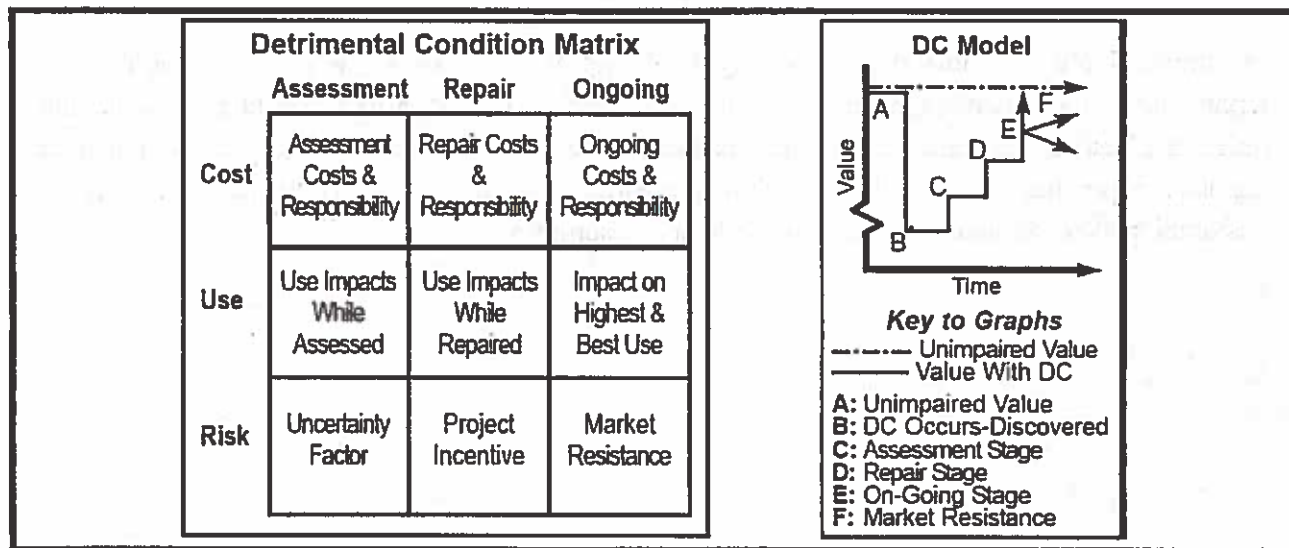
The subject property was acquired by the client via an open market (GLVAR #1328416) non-traditional REO/bank owned sale for \$2,302,000 on May 15, 2013 following 13 days on market (DOM) and a multiple offer situation, where the transaction was facilitated by "all cash" with no known credits/concessions.

The transaction noted above does not satisfy the definition of Market Value as defined earlier in the report due to the seller not being "typically motivated". The price paid would more accurately reflect the Disposition Value (as defined) as the seller was under compulsion to sell. As noted, the opposing expert has indicated the "As Is" (Unimpaired) value to be \$2,500,000 and I have accepted this opinion as reasonable under an Extraordinary Assumption.

ANALYSIS OF IMPAIRED VALUE

In order to determine an estimate of the Impaired Value of the subject, the Unimpaired Value must be reduced by the amount of the reasonable Cost, Use, and Risk damages attributable to the DC(s) impacting a subject property.

Therefore, it is necessary to qualify and quantify the damages, if any, associated with Cost, Use, and Risk. The DC Matrix and the DC Model, presented earlier in this report, are reproduced below to refresh the reader's memory regarding the life cycle of a DC and the impact of a DC on value and marketability. As no repairs have been made, the subject properties remain in the Assessment stage of the DC Life Cycle shown in the left column of the DC Matrix.



Source: Property Owners Manual

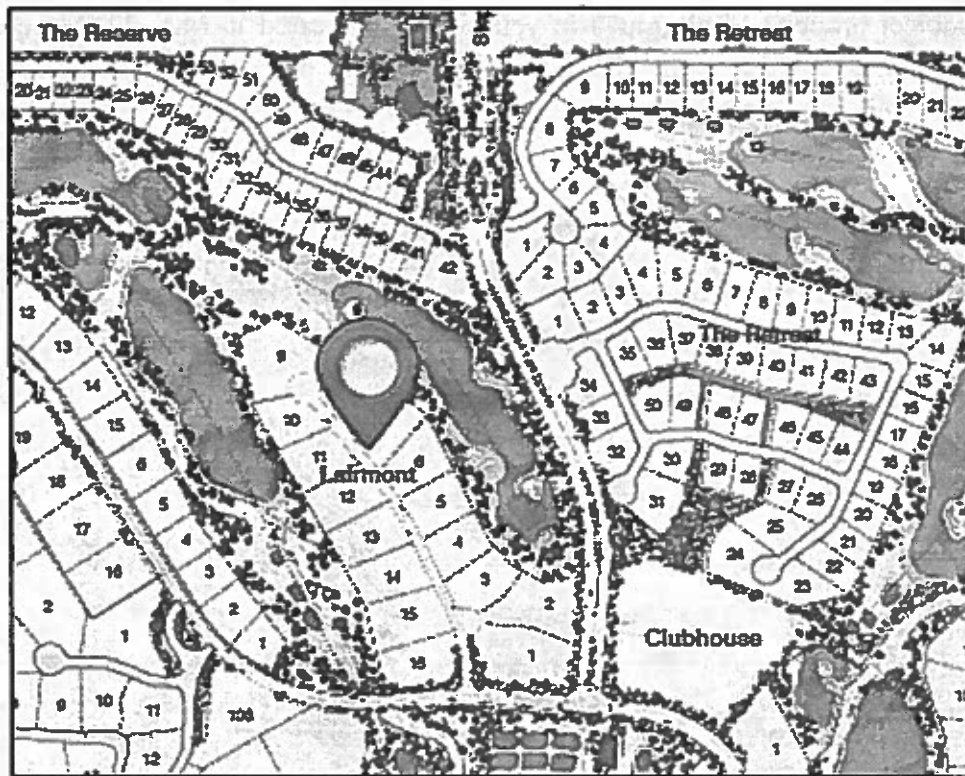
When the subject property (highlighted in yellow) was acquired in May 2013, the contiguous property to the east (594 Lairmont Place) was a ~0.96 acre parcel as illustrated below. In the first image note the rough grading that, still to this day, generally defines the original property boundary of the adjacent Malek property. This boundary is highlighted in red on the second image:



Aerial Image as of Spring 2013



Current Aerial Image Showing Property Lines as of May 15, 2013
(Original property boundaries are highlighted for illustration purposes)



Brochure / Community Site Map



Diorama in MacDonald Highlands Sales Office
(Picture taken July 17, 2014)

It was subsequently discovered that the owner of 594 Lairmont Place had acquired an additional 0.34 acre of land from the builder/developer resulting in a (new) total site area of 1.31 acres (highlighted in green):



Current Aerial Image
(Boundaries are estimated for illustration purposes)

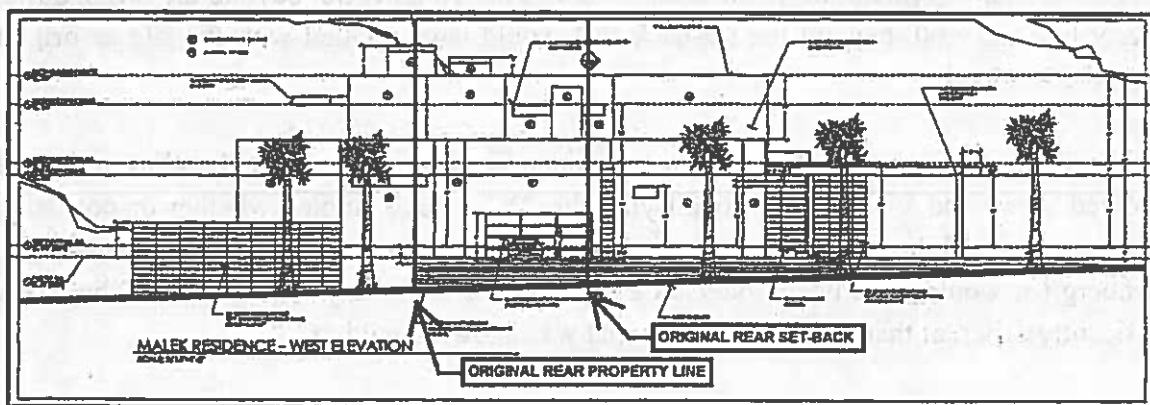
The timeline of the known events related to the acquisition of the additional land is shown on the following page. It is true that the deed for the additional land was recorded on 06/26/2013, subsequent to the purchase of the subject by Rosenberg. However, case documents clearly indicate that the defendants were involved with and/or aware of the acquisition of the additional land prior to 03/13/2013, which is the date that Rosenberg initially offered to purchase the subject property.

Date	Event	Reference
8/8/2012	Malek purchased 594 Lairmont - Malek Lot 2	Public Record
8/10/2012	Malek Records Title to 594 Lairmont - Malek Lot 2	PLTF192-194
8/12/2012	Malek entered into Vacant Land Purchase Agreement regarding the Golf Course Parcel	
8/17/2012	Association Records Notice of Sale on 598 Lairmont - Malek Lot 1	PLTF416-417
9/10/2012	Comprehensive Plan Amendment Application Form Submitted by R. MacDonald, Zone Change Application Form Submitted by R. MacDonald, Tentative Map Application Form Submitted by R. MacDonald	PLTF118-120
9/17/2012	Tentative Map Application Form Submitted by Malek	PLTF121
9/25/2012	Letter to G. Toth of the Community Development Department of the City of Henderson Regarding the Applications for Comprehensive Plan Amendment, Zone Change, and Tentative Map from Barbara Baird	PLTF122-123
10/1/2012	Notice of Claim of Lien for Solid Waste Service Recorded	PLTF415
10/10/2012	Letter to A. Michals of the Community Development Department of the City of Henderson Regarding the Applications from Barbara Baird	PLTF151-152
10/16/2012	Amendment to Master Declaration of Covenants, Conditions and Restrictions for The Foothills at MacDonald Ranch Executed by Richard MacDonald	PLTF3
10/19/2012	Foreclosure Sale Held Regarding 598 Lairmont - Malek Lot 1, Malek Purchased for \$18,850.00	PLTF189-191
10/22/2012	Informational Meeting for City of Henderson Applications Held Regarding Boundary Modification	PLTF125
10/23/2012	Affidavit of Compliance Neighborhood Meeting Notification (Notifications mailed out 10/13/2012)	PLTF 124
10/24/2012	Amendment to Master Declaration of Covenants, Conditions and Restrictions for The Foothills at MacDonald Ranch Recorded	PLTF1-3
10/24/2012	Foreclosure Deed in Favor of Malek Recorded (598 Lairmont - Malek Lot 1)	PLTF189-191
10/30/2012	Dragonridge Properties, LLC was the owner of the Golf Course Parcel	Public Record
10/30/2012	Vacation Application Form Executed by R. MacDonald	PLTF445
10/30/2012	Letter to Stephanie Garcia-Vause, Director of Community Development from Mary E. Baer, SR/WA, Real Property Agent re Petition to Vacate Existing Blanket Easement on Golf Course Parcel	PLTF446
10/30/2012	Letter to Mary Baer, SR/WA Public Works Right of Way City of Henderson from B. Baird re Review and Approval of Vacation Application	
11/15/2012	Meeting Held Where Commission Voted to Approve the Land Use Amendment and Rezoning Request for the Golf Course Parcel	PLTF105-106
12/3/2012	Notice of the Public Hearing Regarding the Vacation Application was Published	
12/3/2012	Notice of the Public Hearing Regarding the Vacation Application was Mailed to the Owners of the Property Adjacent to the Golf Course Parcel and to Real Properties Management Group, Inc.	
1/8/2013	Meeting Held Where S. Bateman Moved to Approve the Petition to Vacate Existing Blanket Easements Subject to a Few Conditions, Motion Carried	PLTF160-162
3/6/2013	REO Management Services, Inc., agent for BANA contacted Doiron regarding listing Rosenberg Property	
3/8/2013	BANA, through Doiron of MacDonald Highlands Realty, LLC listed the Rosenberg Property for sale in the Multiple Listing Service	GLVAR MLS
3/12/2013	Seller's Real Estate Property Disclosure Form Executed (590 Lairmont - Rosenberg Property)	PLTF433-436
3/13/2013	Plaintiff Offered to Purchase the Rosenberg Property for \$2,160,000.00	
3/14/2013	Plaintiff executed Addendum No. 1 to the Purchase Agreement Whereby Plaintiff Acknowledged and Agreed to Enter into a Side Agreement with the Master Developer for an Extension of the Construction Clock to Complete Requirements of the Exterior of the Property	
3/19/2013	Plaintiff executed Addendum No. 2 to the Purchase Agreement Amending the Purchase Price to \$2,302,000.00, an increase of \$142,000.00 from the Original Agreed Upon Price	
3/21/2013	BANA executed Addendum No. 1 and 2 to the Purchase Agreement	
3/21/2013	BANA agreed to sell the Rosenberg Property to the Plaintiff	
4/8/2013	Grant Bargain Sale Deed of Golf Course Parcel to Malek Executed by Richard MacDonald	PLTF219
5/15/2013	Escrow Closed and Title to the Rosenberg Property transferred from BANA to Plaintiff	
5/15/2013	Plaintiff Records Title to the Rosenberg Property	PLTF163-164
6/26/2013	Malek Records Title to Golf Course Parcel, Purchased for \$200,000.00	PLTF218-222
6/26/2013	According to Doiron & MacDonald Highlands Realty, closing date on sale of Golf Course Parcel to Malek	

The acquisition of this additional site area creates the opportunity for an entirely different building envelope than what was represented to and considered by Rosenberg. Several sets of plans for the building of a custom residence on the adjacent lot have been considered in my analysis. The image below illustrates the original rear property line in blue, the original (30') rear yard set-back as the site was originally developed in green and the new set-back created by the acquisition of the additional site area in red.

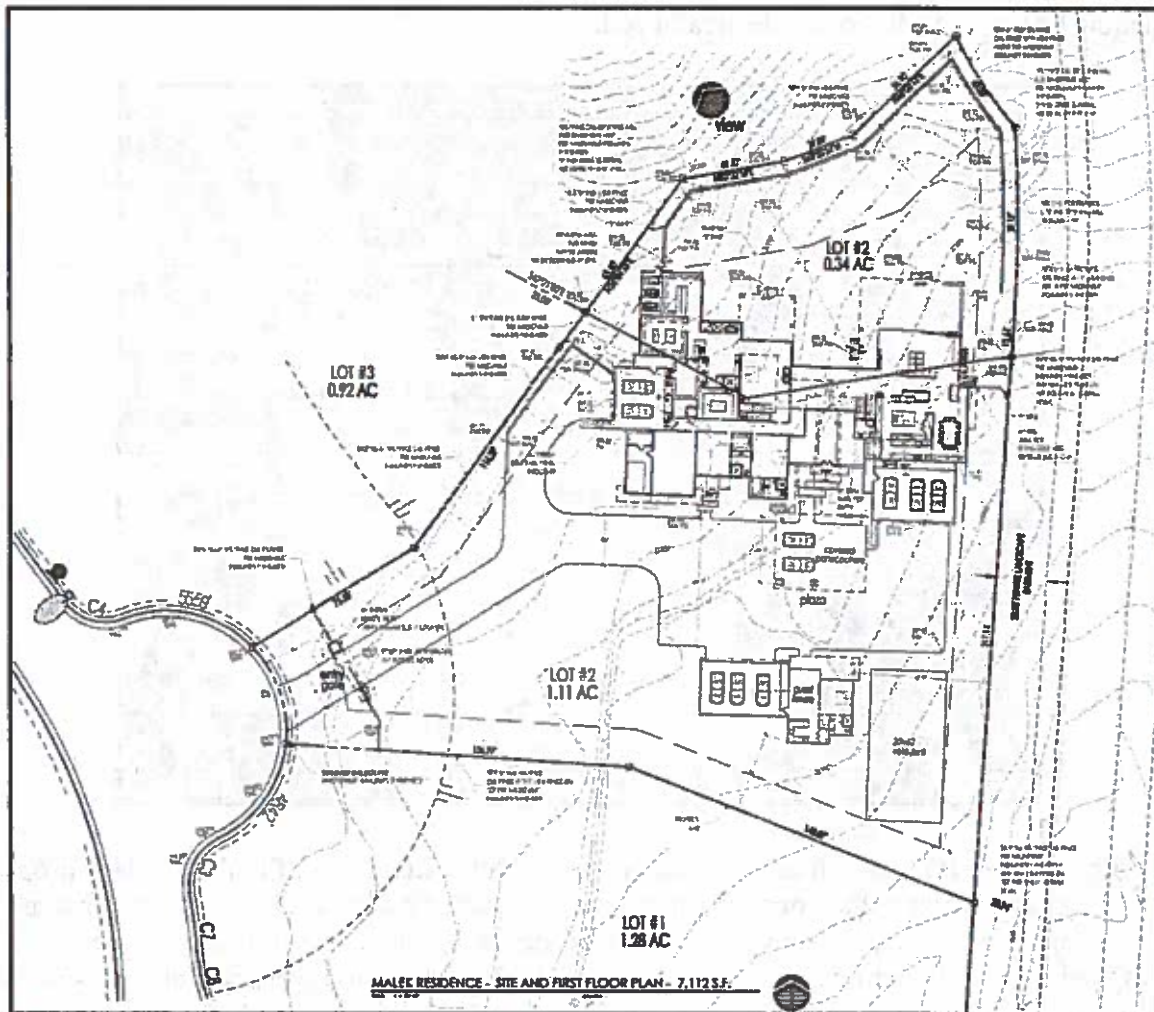


Utilizing the *West Elevation* from the most recent (October 2014) set of building plans proposed for 594 Lairmont Place, the corresponding colored lines show how the proposed construction takes advantage of the new building envelope below. The colored lines on the elevation correspond to the colored lines on the aerial photo above. If a house were completed using these plans, the resulting structure would sit approximately 60 feet beyond the building envelope that was represented to Rosenberg. This drawing does not depict or consider any potential obstruction caused by landscaping or CMU walls along the new property line.



(The indicated "Original Property Line" and "Original Set-Back" are estimated for illustration purposes)

Clearly the opportunity exists and the intent is to exceed the original building envelope which Rosenberg considered when making a decision to purchase. The aerial image (Site Plan) below from the same set of building plans proposed for 594 Lairmont Place illustrates how the improvement will exceed both the original set-back and north property line:



(RED LINE illustrates the location of the original (rear) north property line for 594 Lairmont Place)

The proposed improvement, as illustrated above, extends roughly 30' beyond the original (north) property line and ~60' beyond the set-back that would have applied with the site as originally designed/developed.

When qualifying a Class V – DC one must consider the two concepts noted earlier in the report: Borrowed views and Visibility. In qualifying this DC, I have studied whether or not the view corridors and visibility (privacy) characteristics that were understood and considered by Rosenberg (or would have been understood and considered by any other “typical” buyer) were significantly different than what existed or what was known would exist.

When considering the "borrowed" view corridor to the east the subject property is currently afforded, there would be little-to-no change should the adjacent site have been improved as originally designed/developed as the required set-back would have kept any proposed improvement at a distance not to affect that existing view corridor that is illustrated below:

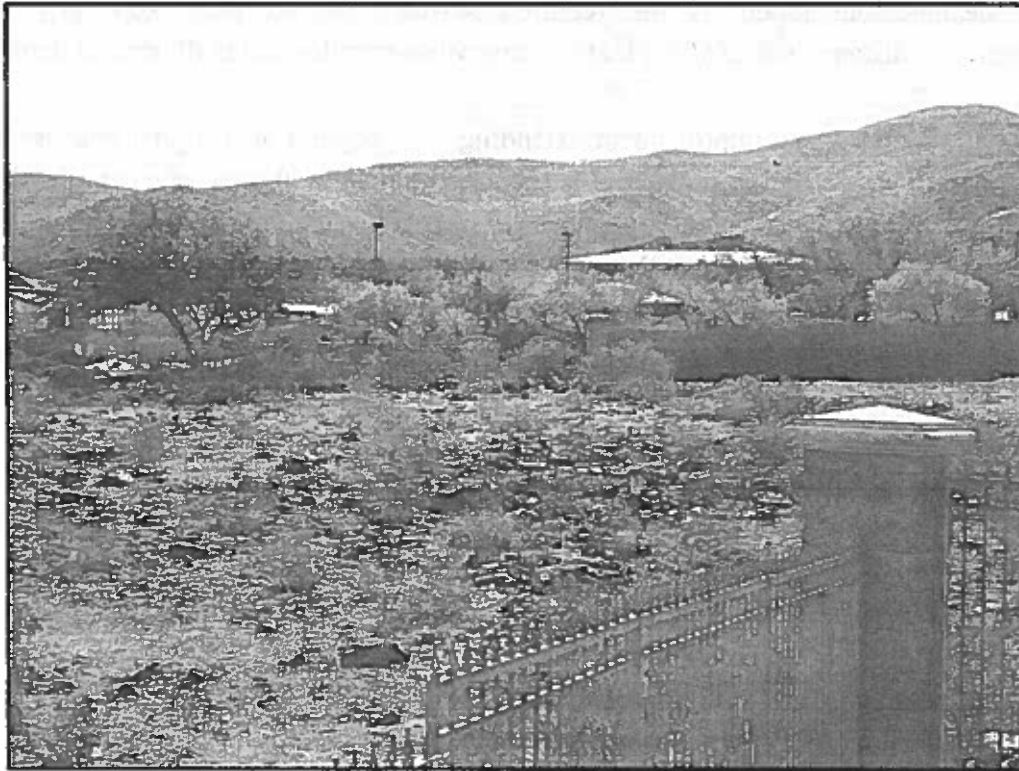
However, with the proposed improvement extending ~30' beyond the original rear property line (which is roughly where the gray material is seen in the images above), one can clearly see the impact that the proposed 2-story improvement will have when extended ~60' to the north (or left in the below pictures) beyond the original set-back as the site was originally developed. Where occupants and guests of the proposed residence at 594 Lairmont Place will not only be able to see into the subject's rear yard, but also the rear living area of both levels of the subject's residence; thus, affecting the subject's privacy.

The following photographs show the view of the adjacent lot and the mountains and clubhouse beyond from various locations and angles on/in the subject property as of the date the photographs were taken. Today's view is reasonably similar to what was present as of the retrospective effective date.

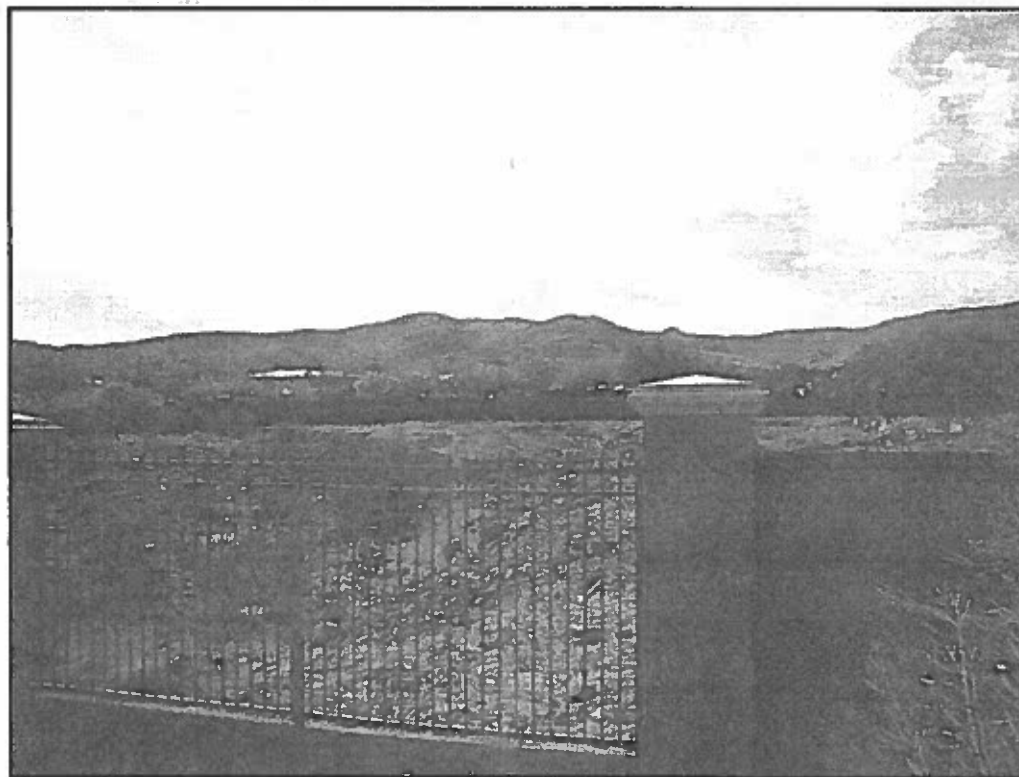
When looking at the photographs, one should pay attention to the visible boundary created by the grey fill material and remember that the original buildable envelope would have been 30 feet to the right from the edge of the grey material and that the new buildable envelope extends approximately 30 feet to the left of that same visible boundary in each of the photographs.



SUBJECT PROPERTY PHOTO ADDENDUM
(Pictures taken July 17, 2014)

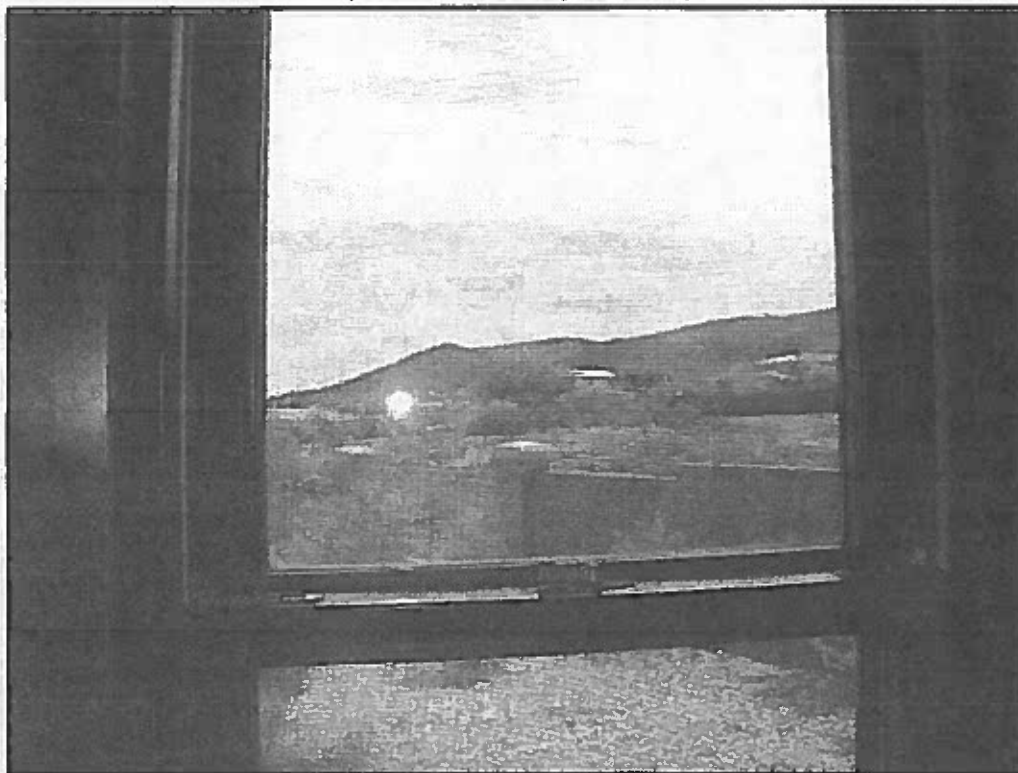


LOOKING EAST – FROM NORTHEAST CORNER OF SUBJECT'S SITE

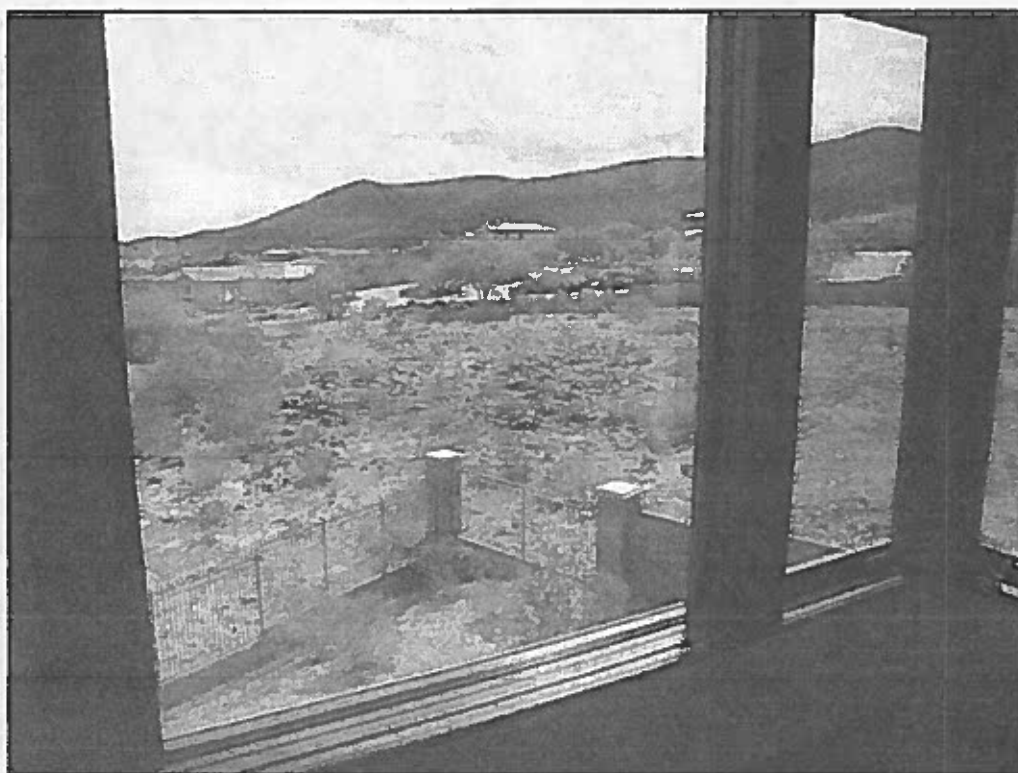


LOOKING EAST – FROM SUBJECT'S POOL DECK

SUBJECT PROPERTY PHOTO ADDENDUM
(Pictures taken July 17, 2014)

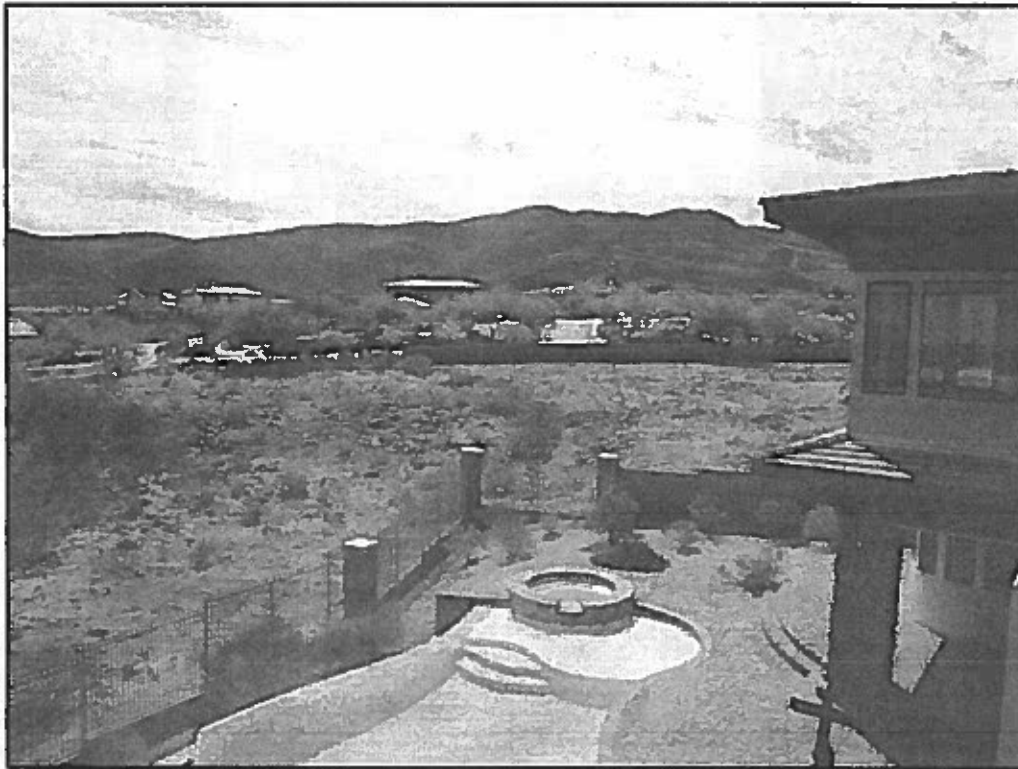


LOOKING NORTHEAST – FROM KITCHEN BREAKFAST NOOK

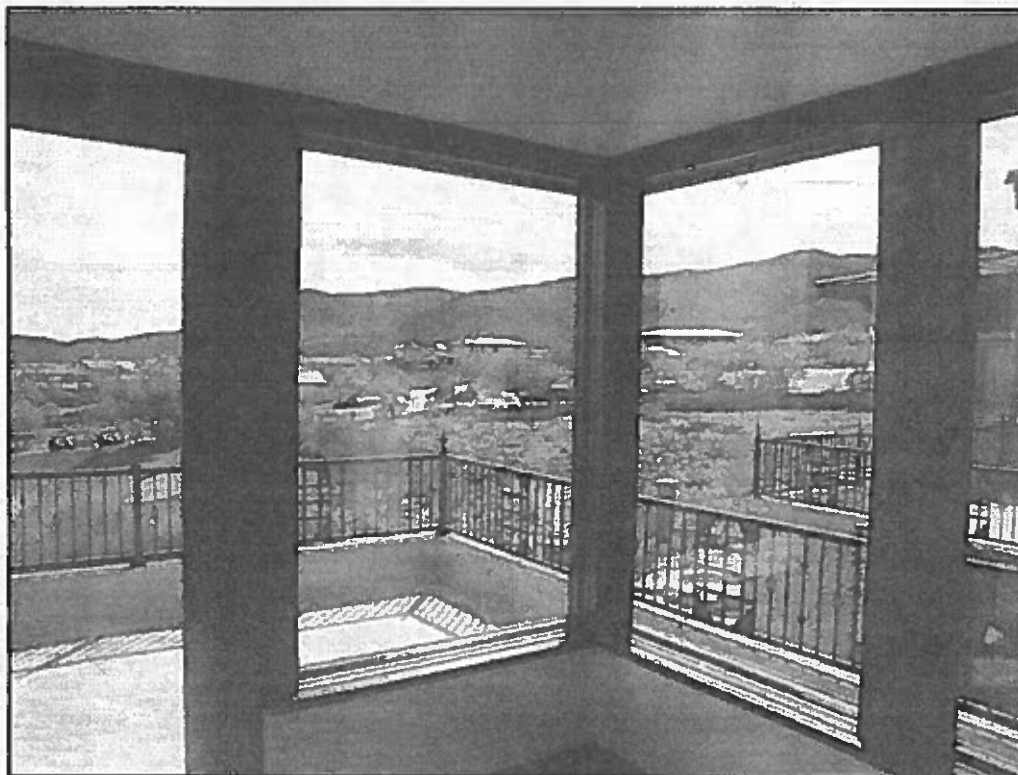


LOOKING NORTHEAST – FROM MASTER BEDROOM SUITE

SUBJECT PROPERTY PHOTO ADDENDUM
(Pictures taken July 17, 2014)



LOOKING EAST – FROM UPPER LEVEL CENTER BALCONY



LOOKING NORTHEAST – FROM NORTHWEST BEDROOM SUITE

At this point, we have identified the issues. The case studies and survey data that follow will allow us to qualify and quantify the Detrimental Condition(s) and any subsequent damages.

CASE STUDY #1: Summary of Published Articles on the Topics of Views and Privacy

Introduction

This case study presents an overview of obstructions of golf views in comparison to obstructions of scenic views. Simply stated, this study will introduce the impact on market value of real property when surrounding properties interfere or obstruct residential site lines that were anticipated upon acquisition. This impact is not dependent upon what is developed in neighboring properties.

This study, will discuss the impact on a residential property when a neighboring property develops their own property in such a manner to interfere with aforementioned property owner's line of sight. Taking into effect that that original planned development did not plan on any neighbor hindering any other neighbors' site lines.

Background Research

In their article *Adjusting the Value of Houses Located on a Golf Course*, Grudnitski and Quang determine that a highest actual value is gained when a property is located directly adjacent to a golf course. They go on to explain that, owners of property adjacent to a golf course have the benefit of expecting higher fair market value, whether the owner is a golfer or non-golfer, because of the view that golf properties afford. When considering views or in this case, sight lines that are both natural and unobstructed, one of the highest valued property types is property on a golf course.²²

In summary, Grudnitski and Quang agree that residential properties that abut golf courses are expected to bring higher market value because of the fact that site lines associated with these properties are associated with privacy and the desirable feature of low population density related to site lines.

In their article *The Impact of a View on the Value of Vacant Residential Lots*, Potgieter and Cloete state that the implied views or sight lines that prestigious properties inherently bring include unobstructed sight lines as part of property ownership. More importantly, Potgieter and Cloete use the example of any new construction that abounds any existing housing deprives the established property owner of the enjoyment of unobstructed views that come from being the owner of original site lines. More importantly, Potgieter and Cloete conclude that any view impediment is detrimental to the value of previously established property ownership.

They go on to use the example of South African higher courts having heard arguments that property ownership is not restricted to land ownership only. South African lawyers

²² *Adjusting the Value of Houses Located on Golf Course*, A.Quang Do and Gary Grudnitski, The Appraisal Journal, July 1997

argue that the ownership of real property must include site lines as part of any land ownership. Potgieter and Cloete state that it is evident that property owners regard site lines as valuable as their *terra firma* and should be willing to protect all site lines associated with their property ownership by any method afforded by law.²³

In Gary Grudnitski's subsequent article titled *Golf Course Communities: the Effect of Course Type on Housing Prices*, Dr. Grudnitski writes that residential properties that are considered high-end properties demand higher market values because of assumed prestigious views associated with this type of real property.

Gary Grudnitski further writes that America's passion for the game of golf has led to upwards of eighty (80) percent golf course residential development increase dating back as far back as 1991.

This being said, Grudnitski states that an appraiser should take into account when determining fair market value the type of golf course a subject property is located on.

According to Mr. Grudnitski's article titled *The Effect of Course Type on Housing Prices*, there are three general golf course types; private, semiprivate, and public. Private golf courses being restricted to members and their guests that include private club amenities that can include private upscale dining facilities, member exclusive swimming pools, and member services paid by membership dues.

Semiprivate or hybrid golf courses that have come about due to the increased popularity of golf also afford exclusive amenities. However, the semiprivate type of golf course offers a membership where a member has the benefits and/or amenities of a private golf course without the burden of high membership dues that go directly to paying off constructions of golf course buildings that house private club amenities. In addition, it should be noted that hybrid or semiprivate courses can offer the same private course amenities at lower monthly dues.

Dr. Grudnitski further supports his claims through his regression analysis indicating that the type of golf course has a direct impact on selling prices of residential property located on golf courses.

In the end, the effect of a golf course type and location directly affect the selling prices of golf course residential property. In conclusion, Mr. Grudnitski's analysis reports that higher valuation results are attributed to the "prestige and recognition that directly correlates with membership to private golf clubs that specialized buyers are willing to pay premium prices for exclusive private golf club properties."²⁴

²³ *The Impact of a View on the Value of Vacant Residential Lots*, R.M. Potgieter and C. E. Cloete, The Appraisal Journal, Fall 2010

²⁴ *Golf Course communities: The Effect of Course Type on Housing Prices*, Gary Grudnitski PHD, The Appraisal Journal, April 2003

In their article titled *A Study of Golf Course, Mountain, and Lake Lots*, David Wyman and Stephen Sperry convincingly argue that considerable value can be attributed to properties with golf, water, or mountain views. Wyman and Sperry prove their position utilizing a spatial hedonic research model that assesses the hierarchy of premium values associated with golf course, water or mountain views.²⁵ Wyman and Sperry point out that premium values for golf course properties is related to more than just playing golf, instead premium values could be related to the views afforded on golf course developments.

It is important to note that Wyman and Sperry point out that their research was undertaken during a period when real estate prices were experiencing substantial change. Nevertheless, they stand firm on the position that the appraisal of golf, water of mountain properties with premium views should be address by appraisers with enough effective spatial tools and research points to justify valuations in their own markets.

My review of published articles affirms the value of views and privacy, especially in the context of high end land and custom houses located in private golf course communities. The published research allows for preliminary qualification of the DC; however, the published research is not market specific and does not allow me to quantify the DC in the subject market.

CASE STUDY #2: Red Rock Country Club

Between 2Q and 3Q 2013 Red Rock Country Club was notifying homeowners with golf course "frontage" that they had the opportunity to acquire excess land that was buffering their respective parcel and the privately owned golf course(s).

According to Thom Blinkinsop, Red Rock Country Club General Manager, the initial proposal presented the opportunity for a homeowner to have/create an additional (private) site "buffer" and increase their overall site size. This initial offering had some inherent obstruction and privacy issues that had to be resolved in addition to more "details" being worked out for with the Clark County Building Department, where although there were interested parties, no "transactions" were finalized. Roughly, 1-year later all issues were deemed to be resolved and the opportunity was again presented to those same homeowners, whereas of the date of this report 29 of 810 owner are in contract to acquire some additional site area to their respective parcels.

The fees, terms and/or requirements associated with this opportunity (as reported by Mr. Blinkinsop) include but are not limited to:

1. FEES: \$6,500 for administrative, title and recording fees to transfer the specific site area contiguous to the respective site;
2. COST: \$22.00 per square foot for the excess land;

²⁵ *A Study of Golf Course, Mountain, and Lake Lots*, David Wyman and Stephen Sperry, The Appraisal Journal, Spring 2010
Rosenberg Living Trust v Bank of America et al

3. **HOA & DEED RESTRICTIONS:** It was represented to me by Mr. Blinkinsop that among other restrictions, the building envelope could not change and on-site improvements are limited to “flatscape” (e.g. pool, spa, fire pit, etc.) with a maximum height restriction (excluding wrought iron fencing on the (new) property lines).

A discussion with Mr. Blinkinsop revealed that both the golf course owner and the HOA made certain they avoided any view diminution or increased the lack of privacy for any contiguous and/or proximate homeowners to those that opted-in to acquire additional site area.

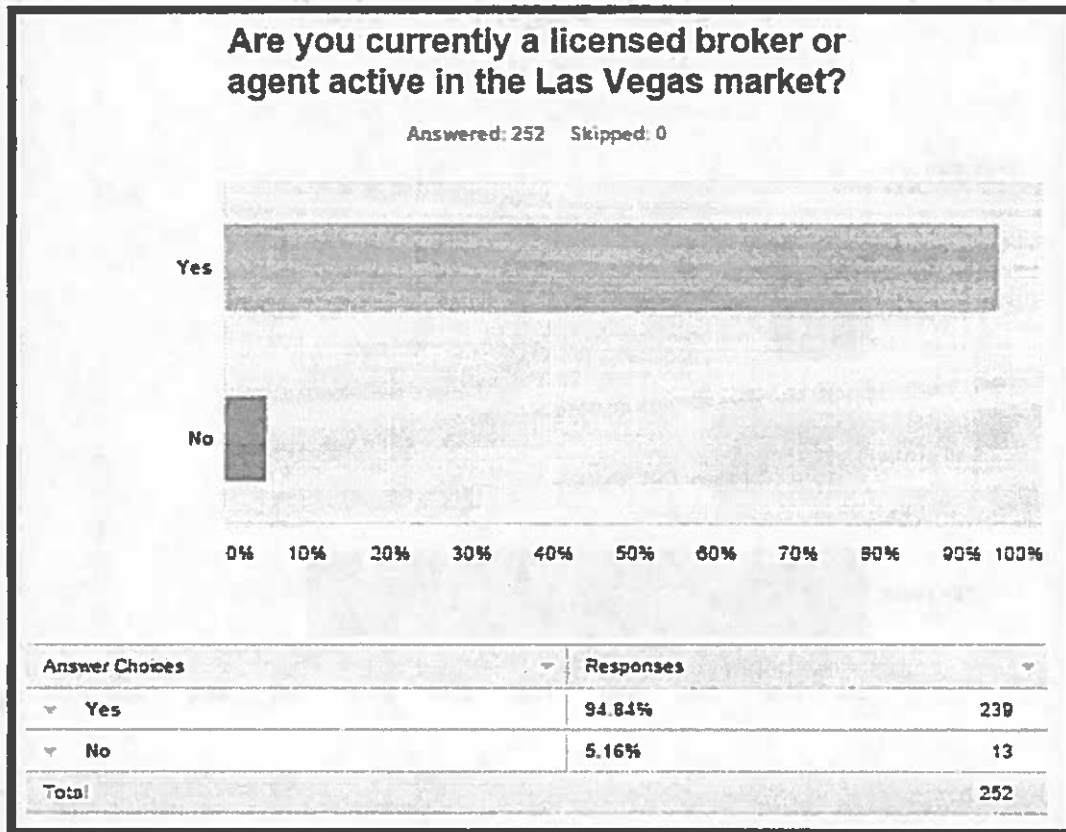
“Motivation” on the part of the course owner was two-fold: 1) reduce (maintenance) responsibility; and 2) generate income.

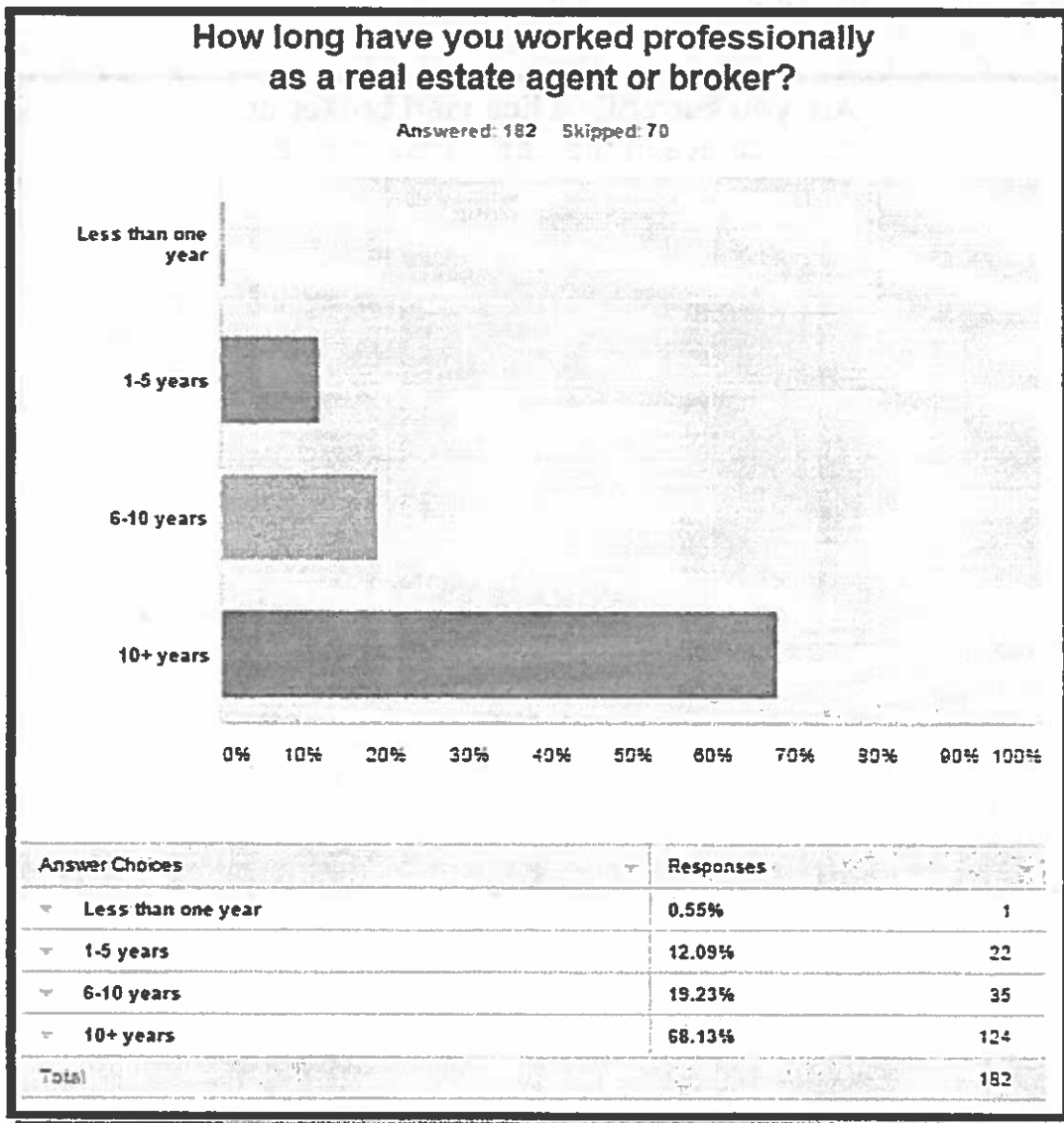
CASE STUDY #3: Survey of Real Estate Professionals

In a perfect scenario, I would provide several examples of improved golf course property with adjacent vacant land that acquired additional land from the abutting golf course with altered sight lines and privacy in the before and after conditions. Because comparable data of sales and resales on such similar sales could not be located, I conducted primary research on the specific issue utilizing a survey of real estate professionals.

The survey was created with specific care given to providing an accurate, consistent, and neutral presentation of the facts and circumstances of this case. The target population of the survey was real estate brokers and agents active in the Southern Nevada market. A database of 7,329 email addresses for real estate licensees was utilized. Survey invitations were sent via email. 252 total responses were received and analyzed (59 complete responses; 180 partial responses; and 13 disqualified responses). The following is a summary of the survey instrument and the results.

The first questions qualified the experience of the survey participants:





IMPACT ON VALUE AND MARKETABILITY - VACANT

Subsequent questions asked respondents to assume they represented a potential buyer for the green property and presented the before and after condition of the adjacent lots. The analogs below were used to demonstrate the before and after conditions of the vacant land and should be referenced when reviewing the responses that follow.

Before - Vacant

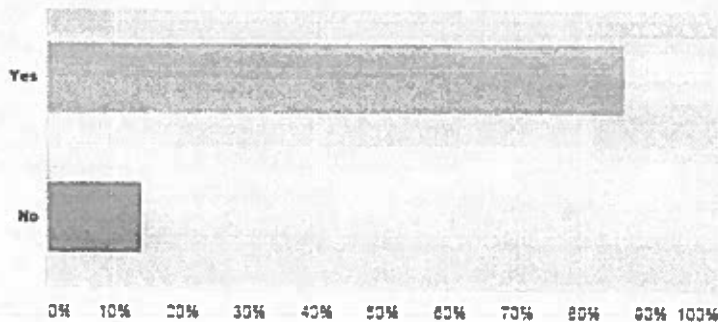


After - Vacant

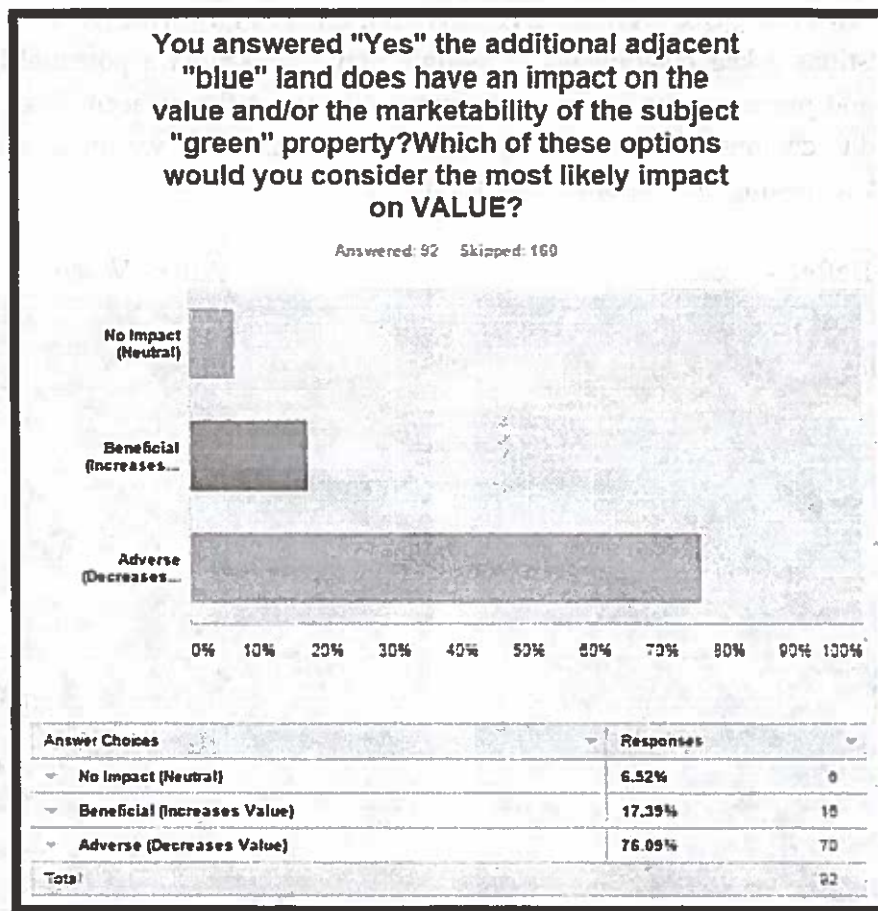


Does the additional adjacent 14,000 square feet of "blue" land have an impact on the value and/or the marketability of the subject "green" property?

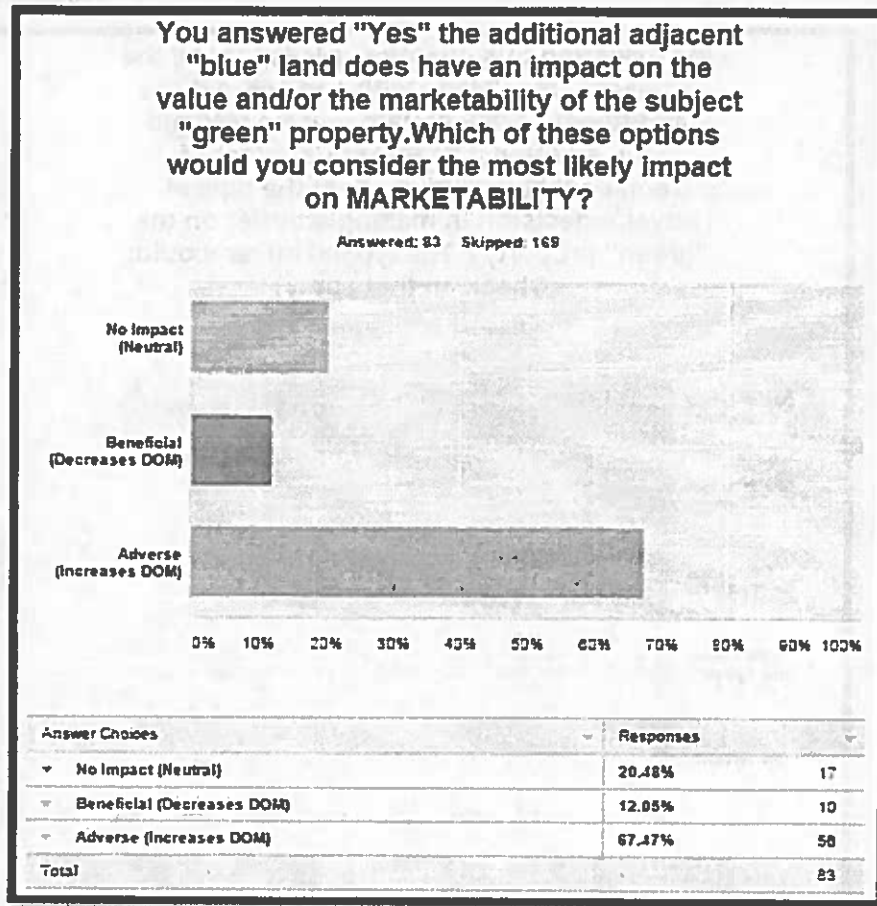
Answered: 107 Skipped: 145



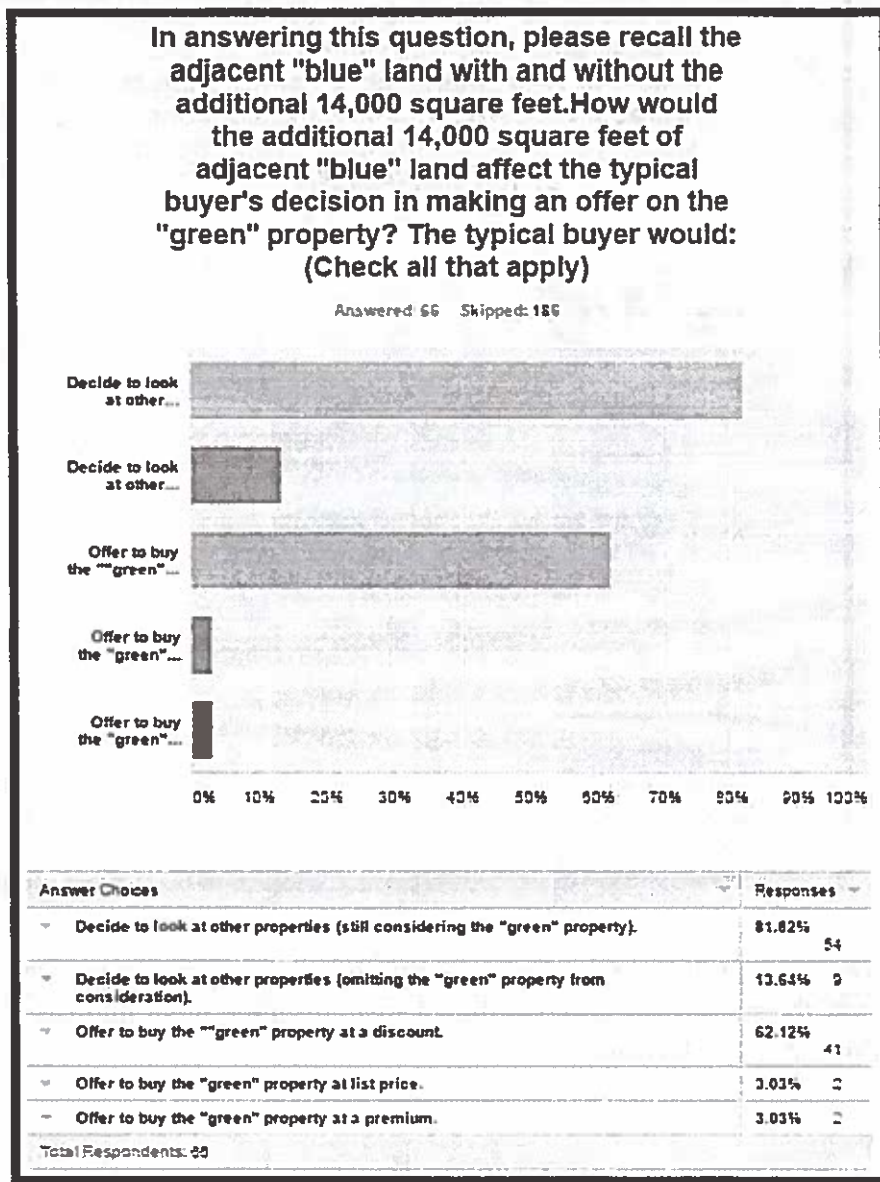
Answer Choices	Responses
Yes	85.98% 92
No	14.02% 15
Total	107



Result - ADVERSE Impact on Value: 76.9% (a super-majority) of the respondents indicated the value of the subject parcel would decrease, the indicated ranged of diminution was from 1% to 50%.



Result - ADVERSE Impact on Marketability: 67.47% of the respondents indicated the marketability of the subject parcel would be adverse, resulting in an increase in days on market (DOM) ranging from 1 to 360 days.



Finding: The clear majority of respondents find that the additional land diminishes the value of the subject and increases the likely marketing time. Moreover, the question above indicates that 81.8% of respondents would look at other properties still considering the subject while only 61.1% would offer to purchase the property at a discount. The difference represents the segment of the market that would no longer consider the subject to be a viable market alternative.

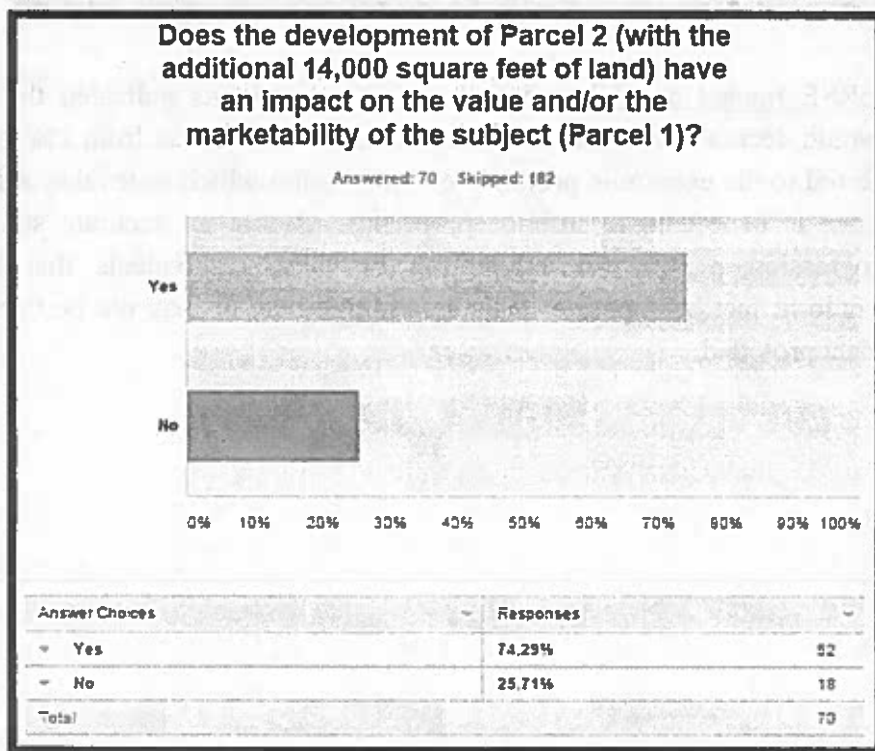
IMPACT ON VALUE AND MARKETABILITY – IMPROVED

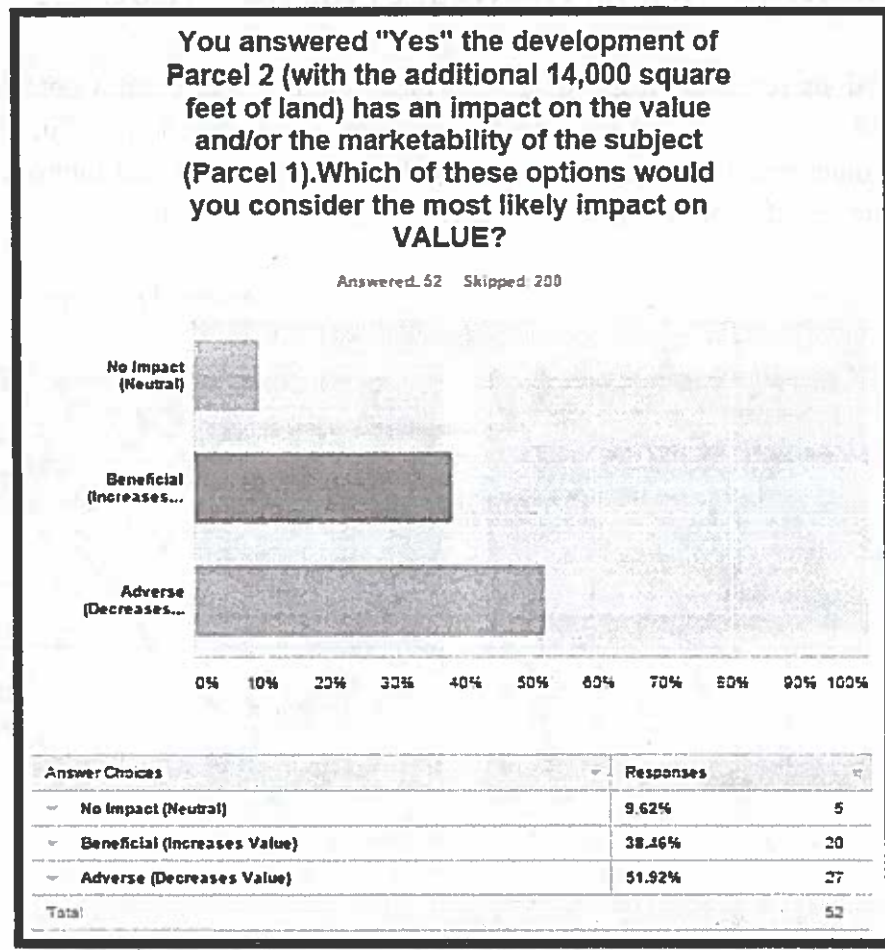
Subsequent questions reminded respondents that their role is to represent a potential buyer for the Property 1 and presented the before and after condition of the adjacent lot. The analogs below were used to demonstrate the before and after conditions of the proposed improvements in the survey and should be referenced when reviewing the responses that follow.

Before – Developed

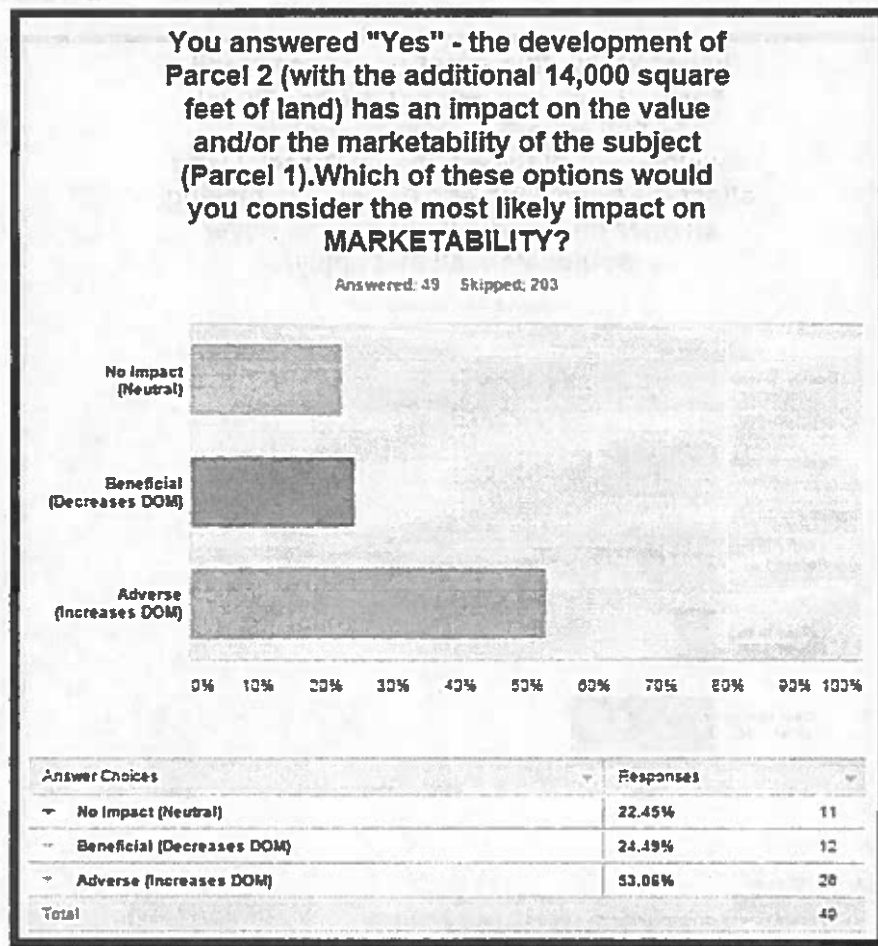


After – Developed

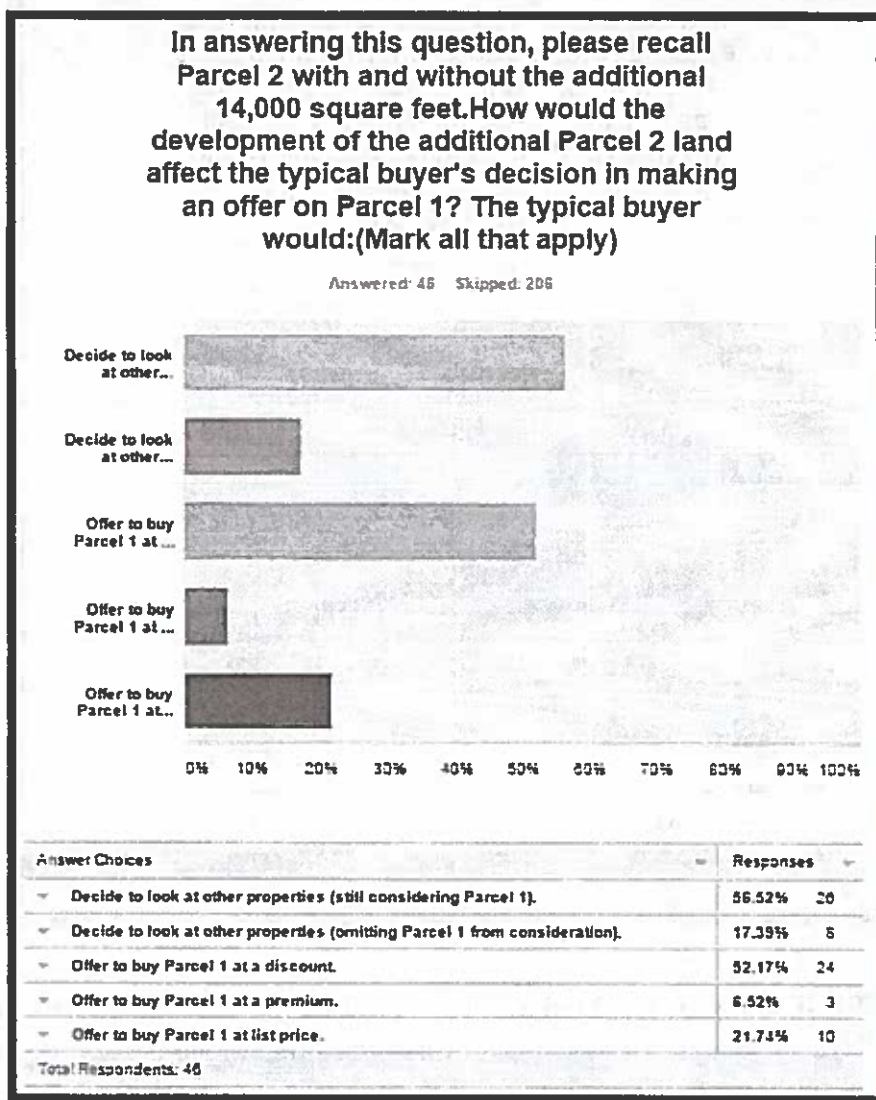




Result - ADVERSE Impact on Value: 51.9% of the respondents indicated the value of the subject parcel would decrease, the indicated ranged of diminution was from 1% to 20%. Some respondents referred to the economic principle of Progression which states that association with superior properties is beneficial to inferior properties. While an accurate statement of the concept of Progression, it was an assumption by these respondents that the proposed improvement would in fact be superior. This assumption may or may not be true and was not implied by the data provided.



Result - ADVERSE Impact on Marketability: 53.06% of the respondents indicated the marketability of the subject parcel would be adverse, resulting in an increase in days on market (DOM) ranging from 1 to 180 days. Once again the respondents comments indicate assumptions regarding the details of the improvement that may or may not be true and that were not implied by the data provided.



Finding: The clear majority of respondents find that the additional land diminishes the value of the subject and increases the likely marketing time. Further, the question above indicates that 56.5% of respondents would look at other properties still considering the subject while only 52.2% would offer to purchase the property at a discount. The difference represents the segment of the market that would no longer consider the subject to be a viable market alternative.

NOTE: The survey analog utilized a graphic based on a set of plans that was revised subsequent to the survey. The revised plans change both the orientation and the location of the proposed house on the site. The result is a greater encroachment beyond the original buildable envelope. This fact would have likely changed the survey results.

Assessment Stage Cost Damages:

In this case, the analysis of Cost Damages must consider any economic opportunity loss suffered by Rosenberg. The lack of disclosure of the known, imminent issues related to the adjacent lot precluded them the opportunity of considering other properties or deciding what incentive was necessary to acquire the subject property with the new extended property lines and building envelope.

Assessment Stage Use Damages:

This stage of the assignment does not include analysis or calculation of Use Damages. A complete analysis of Use Damages would consider any loss of use or utility caused by the DC and would also consider whether or not the DC had an impact on the Highest and Best Use of the affected properties.

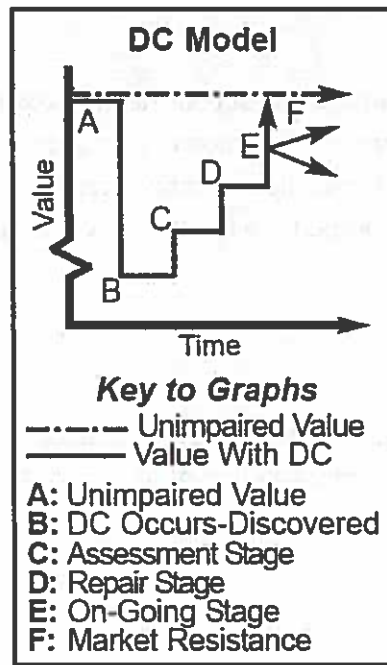
Assessment Stage Risk Damages:

It is important that the reader understand this concept as Risk Damages can be significant in the Assessment stage of a DC life cycle.

In the Assessment stage of a DC, Risk Damages can be best understood as uncertainty. It is important to keep in mind that Market Value, in the context of mortgage financing, includes a set of assumptions based on the most likely behavior of the typical buyer. The first two assumptions in the Market Value definition are most relevant to the discussion of Risk damages. Those assumptions are:

- a. Buyer and seller are typically motivated; and
- b. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;

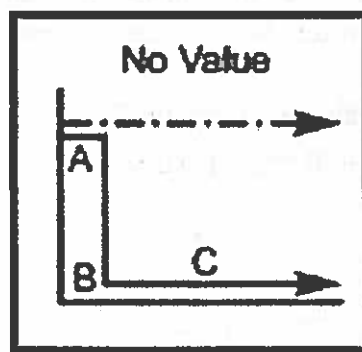
The typical buyer that meets the above conditions will require an additional discount and/or additional time as an incentive to purchase property with an uncertainty factor.



Source: Property Owners Manual

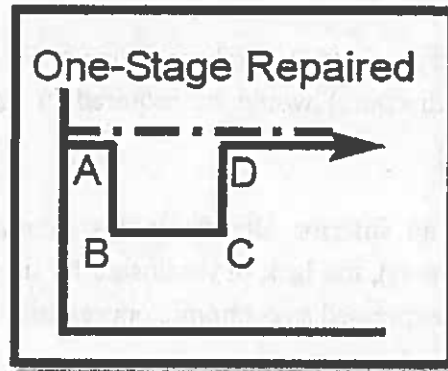
As of the signing date of this report, no construction has begun on 594 Lairmont Place; therefore, the subject property would be graphed at point "C" on the full DC Model above.

However, if the uncertainty caused by the DC is significant enough, it can result in the typical buyer deciding that the Risk is too great - causing them to either: not to buy at all; buy at a discount; or purchase an alternative unimpaired property. When the majority of buyers in a specific market determine that the Risk related to a specific property or group of properties is too great, then the market is effectively shut-down and the property or properties become unmarketable and by definition would have a Market Value of \$0.00. In such a scenario, the Assessment Stage DC Model would look like this:



The survey demonstrates that the pool of buyers that would still consider the subject in the after condition is smaller than the pool of potential buyers in the before condition. Therefore, even though the value of the subject in the impaired condition is not zero, points B and C on the DC model are most reasonably considered to be equal. This represents the point of greatest uncertainty and the point that has the greatest separation from the normal market. Under general

appraisal theory, external conditions are considered incurable because they exist outside of the subject property. However, in this case, the DC could be mitigated through the use of a deed restriction limiting the use of the additional land on the adjacent parcel. In such a scenario, the Assessment Stage DC Model would look like this:



If a deed restriction on the use of the additional land were to be put in place, the damages would consist of legal fees; title and recording fees; commissions/fees; and any other costs related to the acquisition of the subject property.

Conclusions – Cost, Use, and Risk Damages

The Principal of Substitution states that knowledgeable buyers/investors will pay no more for a specific property than they could pay for a comparably equivalent substitute in an open market. The application of this principal in the analysis of real estate damages is that knowledgeable buyers/investors will not purchase a property impaired by a Detrimental Condition when an unimpaired equivalent substitute is available in an open market.

The noted exception to the principal is when a specific buyer/investor acquires a property with a known detrimental condition due to some specific motivation. In these cases the specific purchase cannot be considered a Market Value transaction (as defined) because it fails to meet the criteria for typical motivation.

The following facts must be considered when considering Rosenberg's decision to purchase:

- Rosenberg believed they were purchasing *Property A* including certain view corridors and privacy. In reality they were receiving *Property B* with different (potentially obstructed) view corridors and lesser privacy due to an approved and imminent change in the adjacent property boundaries and building envelope.
- Because of the approved and imminent change in the adjacent property boundaries and building envelope *Property A* (as represented to Rosenberg) did not exist.

- The defendants were involved with the change in the adjacent property boundaries and building envelope and/or aware of the fact that *Property A* (as represented to Rosenberg) did not exist and yet did not disclose this fact to Rosenberg.
- The lack of disclosure precluded Rosenberg from making an informed decision and considering:
 - Whether or not they wanted to purchase *Property B*?
 - What incentive (discount) would be required in order for Rosenberg to acquire *Property B*?
- Because *Property B* is an inferior alternative (as demonstrated by the analysis and conclusions within my report), the lack of disclosure by the defendants results in damages to Rosenberg that can be expressed as economic opportunity loss (cost of lost opportunity).

FINAL CONCLUSIONS AND OPINION OF IMPAIRED VALUE

All of the above research and analysis has brought me to the following conclusions:

- Published research shows that view amenities, sight lines and privacy are beneficial characteristics that are valuable and considered “sacrosanct” and “holy” by property owners.
- Developers are aware that altering site lines and/or privacy for homes at this level of the market is not well received.
- The additional land in both the undeveloped and developed scenarios adversely impacts the subject property in several ways. It diminishes the value and diminishes the marketability (reduces the pool of potential buyers and increases the likely days on market).
- Survey respondents indicate the diminution of value would range from 1% to 50% and the increase in marketing time would be from 1 to 365 days.
- Under market conditions “current” as of the date they took the survey, respondents indicate the diminution of value in the vacant condition would range from 1% to 50% and the increase in marketing time would be from 1 to 365 days.
- Under market conditions “current” as of the date they took the survey, respondents indicate the diminution of value in the developed condition would range from 1% to 20% and the increase in marketing time would be from 1 to 180 days.

It is generally accepted practice in real estate damage analytics to assume the most injurious scenario to the damaged party. However, because the range of impairment expressed by survey respondents is broad, I am hesitant to express an opinion at the top of the range. Factors considered in my reconciliation of damages include:

- “Current” market conditions considered by the survey respondents are superior to market conditions as of the retrospective effective date.
- The range of diminution as vacant was given most consideration because this represents the conditions in place as of the retrospective effective date.²⁶
- The DC could have been avoided through a disclosure of imminent and known facts.
- The DC adversely affects both value and marketability.

²⁶ Moreover, the survey analog utilized a graphic based on a set of plans that was revised subsequent to the survey. The revised plans change both the orientation and the location of the proposed house on the site. The result is a greater encroachment beyond the original buildable envelope. This fact would have likely changed the survey results.

Therefore, a final conclusion of diminution toward the upper end of the range is warranted.

Based on all of the above analysis, I conclude that as of May 15, 2013, the Class V: External Detrimental Condition diminishes the value of the property by 30%-40%. When applied to the retrospective market value of the subject property as expressed in the Valbridge report, this translates to monetary damages of:

\$750,000 - \$1,000,000

Seven Hundred and Fifty Thousand to One Million Dollars

Because this analysis is in the Assessment stage, damages will continue to accrue until the DC is resolved. Additionally, any calculation of damages should also include consideration of: legal fees; title and recording fees; commissions/fees; and any other costs related to the acquisition of the subject property.

Please note: Further analysis will be necessary as the life cycle of the Detrimental Condition progresses. The DC is still in the Assessment Stage and final Cost, Use and Risk damages are highly likely to change as the DC is further assessed. I reserve the right to supplement any and all conclusions based on the results of future analysis or new information.

END OF REPORT

- A. Qualifications of Craig E. Jiu
B. Expert Disclosure for Craig E. Jiu

Addenda A: Qualifications of Craig E. Jiu

CRAIG E. JIU, MAA
Nevada Certified General Appraiser #A.0002330-CG

VALUATION EXPERIENCE

BRUNSON-JIU, LLC (Partner, 2011 – Present) Founding partner of a firm providing valuations and consulting/expert witness services for valuation issues and Real Estate Damages analytics; specializing in residential, commercial, vacant land, multi-family properties and business valuations. Qualified expert witness in Clark County (NV) District and Family Courts.

CJ & ASSOCIATES (Principal/Primary Appraiser, 1989 – 2011) Principal of a firm providing valuation and consulting services, specializing in residential (1-4 units), commercial, vacant land, multi-family properties, and business valuations. Qualified expert witness in Alameda County (CA) Superior and District Courts.

[Las Vegas office opened in 1995 / California office sold in 1998]

COAST FEDERAL BANK (Senior Appraiser, 1988 - 1989) Conducted appraisals of residential (1-4 units), commercial and multi-family uses throughout California. Assignments included single family dwellings, condominiums/PUD units, small income producing properties, light industrial, commercial uses and multi-family units.

HOME SAVINGS OF AMERICA (Senior Staff Appraiser, 1986 – 1988) Responsible for the valuation and reviewing of residential property appraisals within Alameda, Contra Costa and Santa Clara counties (CA). Typical properties appraised and/or reviewed included: land appraisals, estate properties, historical properties and Real Estate Owned (REO) properties. Completed Home Savings' formal appraisal training program.

EXPERT WITNESS / CONSULTING

Brunson-Jiu, LLC has had the opportunity to provide consulting services for a wide range of clients which have varied from: attorneys, property owners, builders/developers, banks/financial institutions, applicants with tax appeals, and individual(s) dissolving partnerships.

Brunson-Jiu, LLC has provided litigation support in a number of cases, with consultation and/or support in manners that vary from: expert reports, forensic appraisal reviews, highest and best use reports, and feasibility studies.

Associated assignments related to litigation matters have been completed for real estate damages, construction effect, civil, probate, bankruptcy and divorce cases.

CASES WITH COURT TESTIMONY

Ophthalmic Associates, LLP et al. v Triple Net Properties, LLC et al.

Case No. A-489766

CASES WITH DEPOSITION

Shulman v Bendavid et al.
Case No. A-13-682679-C
Sun State Components of Nevada, Inc. et al. v The Tommy J. and Barbara A. Terry Family Trust et al.
Case No. A-10-629810-C
Ophthalmic Associates, LLP et al. v Triple Net Properties, LLC et al.
Case No. A-489766

MEMBERSHIPS & DESIGNATIONS

National Association of Appraisers (NAA): MAA designation held - Founding Member
Coalition of Appraisers in Nevada (CAN): 2014 & 2013 President; 2012 Member-At-Large - Founding Member
Greater Las Vegas Association of Realtors (GLVAR): Broker Member / National Association of Realtors
Association of Certified Fraud Examiners (ACFE): Associate Member

EDUCATION

SAMPLE OF PROFESSIONAL EDUCATION

Real Estate Appraisal Principles	Investors Taxation
Principles of Real Estate	State of Nevada Appraisal Statutes
Real Estate Law	Subdivision Analysis
Real Estate Finance	Appraising Apartments
Basic Valuation Procedures	Skills of Expert Testimony
Standards of Professional Practice, Part A	Appraising Factory Built Housing
Standards of Professional Practice, Part B	Appraisal Review Seminar
Standards of Professional Practice, Part C	Appraising Business Enterprises
Residential Case Studies	The Income Approach Revisited
California Federal & State Laws and Regulations	FHA Today
The Cost Approach	Disclosures & Disclaimers
Small Income Producing Properties (2-4 units)	Private Appraisal Assignments
Capitalization Theory and Techniques I	The Evolution of Finance & The Mortgage Market
Capitalization Theory and Techniques II	Principles of Real Estate Acquisition: Law
The Impact of Real Estate Financing on Appraisal	Mortgage Fraud: Protect Yourself

A list of current continuing education is available upon request.

FORMAL EDUCATION

California State University, East Bay, Hayward, CA – 1986
B.S. in Biology – Minor in Business Administration (emphasis on Real Estate)

Addenda B: Expert Disclosure Requirements

Compensation for Study and Testimony:

Craig E. Jiu charged an hourly rate of \$300 per hour for the review of case documents and a Review & Real Estate Damages Analysis.

Craig's hourly rate is \$300 for non-testimony time and \$350 for testimony time. Non-testimony time is billed for research, consultation, meetings, field inspections, travel, analysis, deposition preparation and court preparation.

Publications:

None

Summary of Recent Testimony:

Court testimony: Ophthalmic Associates, LLP et al. v Triple Net Properties, LLC et al., Case #A-489766

Deposition Testimony: Shulman v Bendavid et al., Case #A-13-682679-C

Sun State Components of Nevada, Inc. et al. v The Tommy J. and Barbara A. Terry Family Trust et al., Case #A-10-629810-C

Ophthalmic Associates, LLP et al. v Triple Net Properties, LLC et al., Case #A-489766

EXHIBIT 2

BRIAN SANDOVAL
Governor

STATE OF NEVADA



BRUCE H. BRESLOW
Director

SHARATH CHANDRA
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

www.red.nv.gov

December 8, 2016

Craig Jiu
Michael Brunson
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

RE: Appraisal Complaint: 590, 594 and 598 Lairmont Place, Henderson, NV

Dear Mr. Jiu and Mr. Brunson:

The Nevada Real Estate Division has received a complaint regarding the appraisals you performed on the referenced properties on or about October/November 2014.

A copy of the complaint is enclosed.

Please provide a written response and a hard copy of the appraisal report including the entire **workfile**, and any supporting documentation on or before 5:00 PM December 22, 2016. Should you be in possession of any other items you feel are relevant to this investigation, please provide those as well. Do not send CD or flash drives, all documents should be printed preferably on 8 ½ x 11 paper. Please **do not staple or spiral bind** any of the documents. Please send to the undersigned at the Carson City address.

Upon review of the requested documents, the undersigned may be contacting you for an interview.

Thank you in advance for your anticipated cooperation. Should you have any questions, please feel free to contact me at bkindred@red.nv.gov

Sincerely,

A handwritten signature in cursive script that reads "Brenda Kindred-Kipling".
Brenda Kindred-Kipling
Appraisal Officer

CERTIFIED MAIL: 7013 1710 0001 6896 8785

BRIAN SANDOVAL
Governor

STATE OF NEVADA



BRUCE H. BRESLOW
Director

SHARATH CHANDRA
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

www.red.nv.gov

CERTIFICATION

I, _____ hereby certify that this is a true, correct
and complete copy of the appraisal and workfile for:

CLIENT NAME AND ADDRESS OF APPRAISAL

requested by the Real Estate Division.

NAME

DATE

The main view (and house orientation) is to the golf course and to the northeast. The Brunson Jui report indicates the loss in value is \$750,000 to \$1,000,000 due to the potential loss of a "secondary angled partial view" towards the clubhouse, across the adjacent lot to the southeast, to a berm 15 to 20 in height above the subjects graded site which then abuts Stephanie Street then the club house parking lot. This is projected if a home is developed on it as planned, however no structures only landscaping allowed.

At the time of the assignment, similar golf course lots had values in the \$500,000 plus range. Even if the adjacent lot is developed as planned, the subject property will still have the golf course and distant city view to the northeast which is the direction that the home is facing.

If the subject lot retains the primary value attribute (golf course and distant city view), how can the partial loss of an angled secondary view across the adjacent lot be more valuable than the sites total value? Also there are restrictions on this area in which no structures can be built on this area. Only on-site improvements such as open patio areas, swim features, etc.

The report's conclusions are based on a survey which as you can see by both review appraisers on the other side believe is incorrect and makes absolutely no sense.

It's interesting that Mr. Jui completes an appraisal on a property located at 513 Regents gate several years later when the market is improving and indicates the golf course view (total contribution) adjustment at \$250,000 which is contrary to his determination that the loss in view to the property on Lairmont is three to four times significantly higher.

The property located at 594 Lairmont valued by Mr. Brunson land appraisal indicates that the HOA sold property is worth with the assumption a fair market valuation as stated in the report but is subject to a first deed of trust which, at the time of this assignment, no one would have known whether the lien would be wiped out or not.

One additional thought is that the survey was sent to many realtors and not specific enough to the type of professionals that handle luxury residential custom homes. Also, the user cannot rely on the survey because appropriate academic survey methods were not followed or reported. The examples of how the survey fails to be credible are numerous and include; 1) it is common methodology to test pilot a

survey prior, in order to identify whether respondents understand the questions and instructions; 2) there was no explanation as to the appropriateness of the sample or potential bias analysis; 3) Realtors were surveyed without being identified as having appropriate knowledge of luxury homes, which is required reporting in order for the user to understand whether the survey context answers the research question. 4) The discussion is inadequate because it fails to interpret and discuss findings without simply reiterating the results. For example, the author fails to provide critical reflection of both the results and the process of data collection. The discussion fails to address how well the research meets the research question, fails to describe problems encountered, and does not honestly judge the limitations of the work.

I think that these reports should be reviewed for accuracy as well as credibility. Furthermore, it appears that the Jui-Brunson report is very biased in regard to their client's specific needs for litigation (which they lost in court).

3823

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
1818 E. College Parkway, Suite 110
Carson City, Nevada 89706-7986

Return Service Requested

CERTIFIED MAIL



7013 1710 0001 6896 8785

Hasler FIRST-CLASS MAIL

12/08/2016

US POSTAGE \$006.67



ZIP 89701
011E12650766

Craig Jiu
Michael Brunson
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

8914538872 0072

011E12650766 209

EXHIBIT 3

January 9, 2017

Ms. Kindred-Kipling, Appraisal Officer
Department of Business & Industry – Real Estate Division
1818 E. College Parkway, Suite 110
Carson City, NV 89706-7986

RE: Notice of Complaint / 590, 594 & 598 Lairmont Place, Henderson, NV

Dear Ms. Kindred-Kipling,

I/we have received and reviewed your letter, as well as the Appraisal Complaint dated December 8, 2016, notifying me/us of a complaint filed in relation to expert reports we prepared for a real estate damages (litigation) case related to the subject property located at 590 Lairmont Place, Henderson, NV 89012 (APN 178-27-218-003).

The real estate damages analysis report was prepared with an effective date of May 15, 2013 and the Restricted Appraisal of lots 594 & 598 Lairmont Place with an effective date of October 20, 2014.

As I/we make our responses, please remember that this assignment was completed for a real estate damages analysis (with respective assumptions) as it relates to a Class V Detrimental Condition (External Condition). Specifically, this case involves a dispute involving a building envelope and set-backs of an adjacent parcel, and the diminished view and/or privacy of the subject parcel.

The complaint is difficult to read and understand. I/we have addressed the allegations or questions that in our opinion warrant clarification. The allegation/question will be bulleted in bold text with my/our response/clarification following.

- **“... how can the partial loss of an angled secondary view across the adjacent lot be more valuable than the site's total value?”**

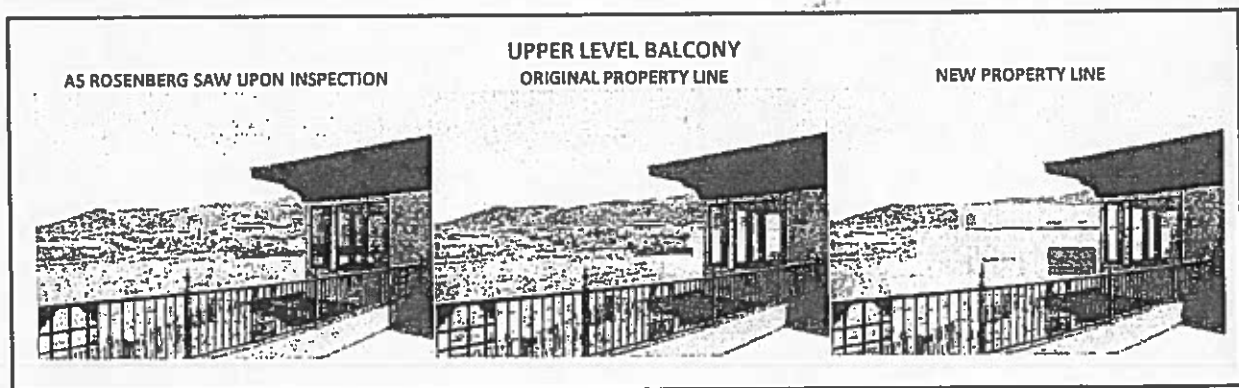
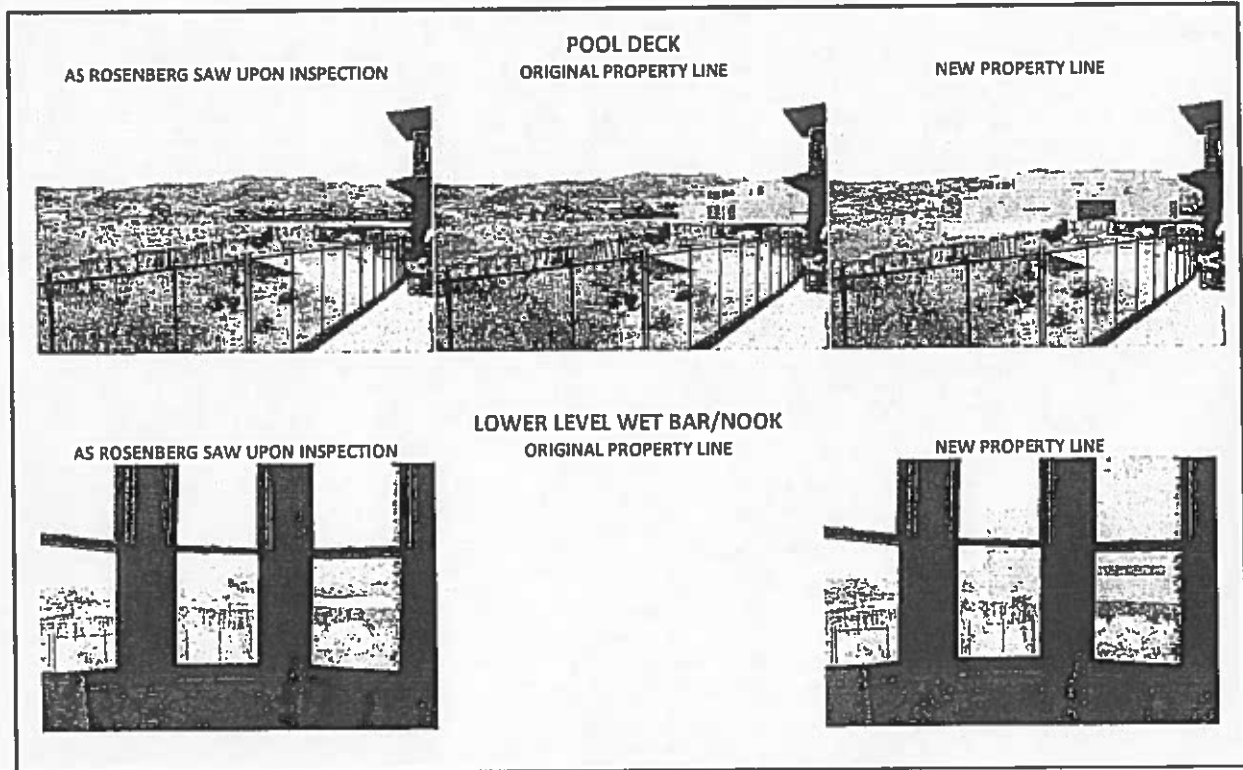
This question misstates the conclusions within the damages analysis. As cited throughout the real estate damages analysis report, the diminution in value is a combination of both a loss in view(s) and privacy due to a non-disclosed change in the buildable area and related set-backs of the adjacent site at 594 Lairmont Place.

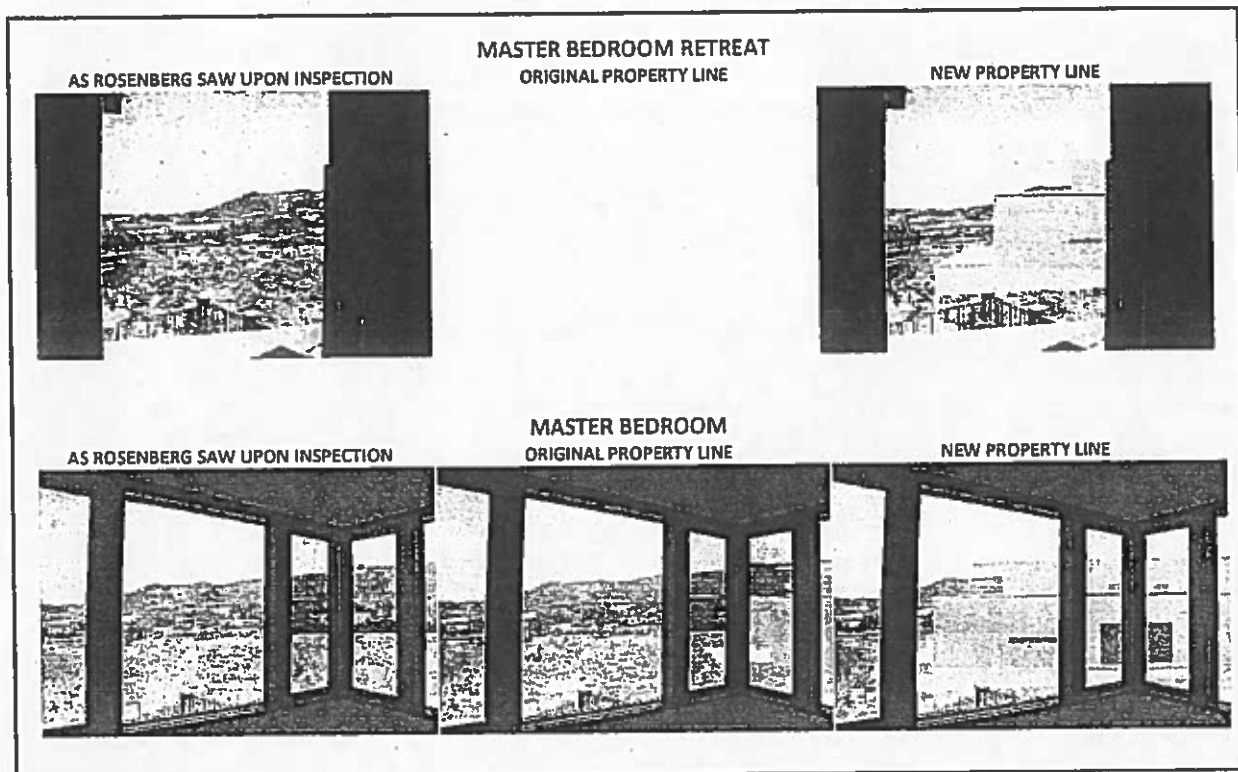
The complainant's statement (that) “... *there are restrictions on this area in which no structures can be built on this area.*” is false. As illustrated and discussed in the damages report (pp 36-38), the additional land causes the rear setback to adjust at the rear of the adjacent assembled site. This information was confirmed via multiple conversations and interviews with the City of Henderson's Planning & Building Departments (confirming what is/was the “rear” and “side” property lines, and what the respective setbacks were/would be). A deposition of the developer, and the owner's (Malek) most current building plans confirm that the buildable envelope changed and that the change would alter the subject's views and privacy.

Response of C. Jiu & M. Brunson
January 9, 2017

Additional analogs completed for this case (after the delivery of the report but in anticipation of deposition and/or trial testimony) are shown below. Compare these trial exhibits with the information found on the damages report pages 39-41. They show the impact of the proposed improvements as designed/illustrated in the Malek's building plans for 594 Lairmont Place.

Trial Exhibits Prepared Subsequent to Report Delivery





- “It’s interesting that Mr. Jui completes an appraisal on a property located at 513 Regents Gate several years later when the market is improving and indicates the golf course view (total contribution) adjustment at \$250,000 which is contrary to his determination that the loss in view to the property on Lairmont is three to four times significantly higher.”

Whereas the valuation analyses might be similar, they do NOT have the same application and/or context. Thus, this allegation simply fails because the complainant is talking about two different time frames, two different contexts, two different Intended Uses, etc.

- “The report’s conclusions are based on a survey which as you can see by both review appraisers on the other side believe is incorrect and makes absolutely no sense.”

Actually, the report’s conclusions are based on both a survey and Case Studies #1 and #2. The use of a survey is discussed in *Real Estate Damages: Applied Economics and Detrimental Conditions*¹ as an option and/or accepted methodology to get objective opinions from market participants/professionals when a search for relevant transactional data or other alternatives is inadequate to answer the question. The survey was written by Brunson-Jiu, LLC, with consultation and/or expert advice provided by an experienced research analyst to ensure the survey “was created with specific care given to providing an accurate, consistent, and neutral presentation of the facts and circumstances of the case.”

Point statistics of the survey invitees, participants and/or results were discussed in the report and excerpts of the survey provided within (pp 45-55). “Natural” stop gaps and/or quotas within the survey

¹ Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions* – 2nd Edition (Chicago: Appraisal Institute, 2008).

confirming the participants experience, market knowledge, skillset with high-end golf course communities, etc. were present in the survey to preclude brokers/agents from being able to complete the survey if they were not qualified. Whereas only a portion of the survey and/or results were provided within my expert report, a full copy of the survey flowchart, questions and results can be found in my/our workfile. Additional survey questions were asked and answered in Craig E. Jiu's February 2015 deposition, which can be found in our workfile.

- **"The property located at 594 Lairmont valued by Mr. Brunson land appraisal indicates that the HOA sold property is worth with the assumption a fair market valuation as stated in the report but is subject to a first deed of trust which, at the time of this assignment, no one would have known whether the lien would be wiped out or not."**

The land appraisal was completed for the client's internal negotiation purposes. The report clearly states the intended use and the intended users. The HOA acquisition alluded to in the complaint was addressed in the Restricted Appraisal report. An assumption regarding the HOA acquisition is clearly and conspicuously disclosed along with the comment required by USPAP that the use of the assumption may have affected the assignment results.

- **"... the survey was sent to many realtors and not specific enough to the type of professionals that handle luxury residential custom homes. Also, the user cannot rely on the survey because appropriate academic survey methods were not followed or reported. ..."**

Again, as cited in the response to the second allegation/bullet point above, the report is a summary of the analysis completed and it appears the complainant may not have had the complete damages report or the associated workfile. The allegations about the completed survey are simply false. The survey was not presented as an academic survey, it was primary research used to qualify and then quantify the impact of the undisclosed land acquisition and boundary adjustment. The first questions in the survey qualified the participants. The survey itself was based on skip-logic that only asked questions relevant to the participant's response. The survey presented the facts in a non-biased, non-leading manner.

The case studies and the survey qualify the detrimental condition. The case studies indicate that conditions affecting view and/or privacy tend to have an adverse impact on value and/or marketability. The survey confirms that conclusion. The survey quantifies the detrimental condition in a manner and to a degree that is reasonable in the context of the assignment. The results are valid in the context of a real estate damages analysis. A copy of the survey as presented to respondents is provided to illustrate the validity of the results. As stated in the damages analysis report, the common practice in damage analytics is to assume the most injurious scenario to the injured party. This is demonstrated in the analysis of damages for eminent domain. In eminent domain, the damages are calculated not on the *most probable* price but rather the *highest* price. Moreover, if the condemnation is for a profit-making purpose, the property must be valued at the use that results in the greatest damages to the injured party.

Response of C. Jiu & M. Brunson
January 9, 2017

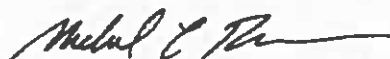
It appears that the complaint is based on an incomplete understanding of the facts. Moreover, in a litigation assignment, both parties have opportunity to clarify and ask questions as the case progresses. Craig was deposed and ultimately the case settled prior to additional depositions or court testimony. The damages analysis and the Restricted (land) Appraisal fully comply with the USPAP and generally recognized appraisal methodologies. Therefore, we look forward to a swift dismissal of this complaint.

Please feel free to contact me/us directly with any additional questions.

Best Regards,



Craig E. Jiu, MNAA
Partner || Brunson-Jiu, LLC
NV Certified General Appraiser
#A.0002330-CG



Michael L. Brunson, SRA, MNAA
Partner || Brunson-Jiu, LLC
AQB Certified USPAP Instructor
NV Certified General Appraiser
#A.0002794-CR

EXHIBIT 4

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 SHARATH CHANDRA , Administrator,)
4 REAL ESTATE DIVISION,)
5 DEPARTMENT OF BUSINESS AND)
6 INDUSTRY,)
7 STATE OF NEVADA,)

8 Petitioner,)

9 vs.)

10 CRAIG E. JIU)
11 (License No. A.0002330-CG),)
12 Respondent.)

Case No. 2016-4145 & AP 17.021.S

COMPLAINT AND NOTICE OF
HEARING

FILED

SEP - 6 2018

NEVADA COMMISSION OF APPRAISERS

13 State of Nevada, Department of Business and Industry, Real Estate Division ("the
14 Division"), by and through counsel, Attorney General ADAM PAUL LAXALT and Deputy
15 Attorney General PETER K. KEEGAN, hereby notifies CRAIG E. JIU ("Respondent") of
16 an administrative hearing which is to be held pursuant to Chapter 233B and Chapter
17 645C of the Nevada Revised Statutes ("NRS") and Chapter 645C of the Nevada
18 Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations
19 stated below and to determine if the Respondent should be subject to a disciplinary
20 penalty as set forth in NRS 645C and or NAC 645C, if the stated allegations are proven at
21 the hearing by the evidence presented.

22 **JURISDICTION**

23 The Respondent is a Certified General Appraiser licensed by the Division, and
24 therefore, is subject to the Jurisdiction of the Division and the provisions of NRS and
25 NAC Chapter 645C. By availing himself of the benefits and protections of the laws of the
26 State of Nevada, the Respondent has submitted to the jurisdiction of the Division.

27 ///

28 ///

FACTUAL ALLEGATIONS

1. The Respondent is currently licensed by the Division as a Certified General Appraiser, License No. A.0002330-CG. Respondent was first issued a license on June 11, 1996 and reinstated on July 1, 2008.

2. On or about December 8, 2016, the Division received a complaint/statement of fact asserting that the Respondent had completed an appraisal in violation of several provisions of the Uniform Standards of Professional Appraisal Practice ("USPAP").

3. Respondent was engaged to conduct a of a Real Estate Damages Analysis ("Damages Analysis") for the property located at 590 Lairmont Place, Henderson, Nevada 89012, APN 178-27-218-003 ("590 Lairmont") by analyzing the nature, quality, value, or use of the property, and offered an opinion as to the nature, quality, value or use of the property for or with the expectation of compensation.

4. The opinion contained in the Damages Analysis concerned the impact of a detrimental condition, further identified as a Class V: Detrimental Condition.

5. The effective date of the Damages Analysis was May 15, 2013.

6. The date of transmittal on the Damages Analysis was November 25, 2014.

7. The intended use of the Damages Analysis was litigation.

8. Respondent's work file did not contain an engagement letter for the Damages Analysis, thereby precluding a full scope of work analysis by the Division.

9. The Scope of Work identified in the Respondent's Damages Analysis fails to (1) identify the problem to be solved; (2) determine and perform the scope of work necessary to develop credible assignment results based upon the problem identified; and (3) fully disclose the scope of work in the report.

10. 590 Lairmont was originally listed on March 13, 2013, for \$2,160,000, but closed with an "all cash" sale price of \$2,303,000 on May 15, 2013, after 13 days on the market.

11. The Respondent failed to identify or analyze the ownership history or recent sales of 590 Lairmont as of the effective date of the appraisal.

12. The Damages Analysis accepted the "As Is" (unimpaired value) expressed in the expert appraisal report completed by Valbridge Property Advisors with an effective date of May 15, 2013, and a cited value opinion of \$2,500,000.00 under an Extraordinary Assumption.

13. The real property, commonly known as 594 & 598 Lairmont Place, to the east of 590 Lairmont were vacant at the time of sale.

14. The Damages Analysis failed to clearly disclose the application of the hypothetical condition that the vacant real property to the east had been expanded by the acquisition of an additional 14,858 sq. ft. of land with accompanying plans to develop a larger custom home.

15. As of the effective date, the purchase of additional parcel had not closed and the owners of the real property adjacent to the east of 590 Lairmont had not completed their plans to develop.

16. The Damages Analysis failed to recognize that borrowed views across adjacent properties are not guaranteed in perpetuity by laws or any agreement in this case.

17. The Damages Analysis failed to identify permissible landscaping as a possible obstruction of the borrowed views.

18. Respondent is not trained in statistical analysis or experienced in generating surveys.

19. The Damages Analysis used the wrong borrowed view corridor and applied the same incorrect view corridor to the survey.

20. The Damages Analysis failed to include paired sales or any sales data analysis to support a 30 to 40% value loss.

21. The Damages Analysis presupposed loss in value to 590 Lairmont and applies bias to the survey results.

22. The Damages Analysis survey results are not supported by transactional data.

23. The Damages Analysis survey results are skewed toward negative value
2 impact responses.

24. The Damages Analysis fails to account for existing topographic, physical,
4 and developed features of the surrounding land that create fishbowl conditions that
5 diminish the privacy of 590 Lairmont.

25. The Damages Analysis reflects the Respondent assessing the timeframe of
7 disclosure of the acquisition of the additional parcel by "defendants" as part of the
8 damages analysis, which has nothing to do with an unbiased assessment of the loss of
9 value itself.

26. The Case Studies included in the Damages Analysis, independent of
11 transactional data, do not provide reliable support for the value conclusion.

12 VIOLATIONS OF LAW

13 The Respondent failed to prepare the appraisal report for the Property in
14 Compliance with the Standards of the Appraisal Foundation. These Standards are
15 published in the Uniform Standards of Professional Appraisal Practice ("USPAP")
16 adopted by the Appraisal Standards Board of the Appraisal Foundation, as authorized by
17 Congress and adopted in Nevada by NAC 645C.400.¹

18 First Violation

19 By failing to (1) identify the problem to be solved; (2) determine and perform the
20 scope of work necessary to develop credible assignment results; and (3) fully disclose the
21 scope of work in the report, the Respondent violated the USPAP Scope of Work Rule, as
22 codified in NAC 645C.405(1). The Respondent's actions constitute unprofessional conduct,
23 pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS
24 645C.460(1)(a) and/or (b).

25 ///

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27 ¹ The 2014-2015 edition of USPAP, effective January 1, 2014 through December 31, 2015, is
28 applicable to and utilized for this Complaint.

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1 Fifth Violation

2 By focusing on the lack of disclosure regarding imminent and known changes to the
3 adjacent lot that impacted the subject views and privacy of 590 Lairmont as of the
4 retrospective effective date, the Respondent approach to valuation presupposed damages
5 and reflected bias, thereby leading to errors which significantly affected the appraisal. As
6 a result, the Respondent violated USPAP Standards Rule 1-1(b), as codified in NAC
7 645C.405(1). This is unprofessional conduct pursuant to NRS 645C.470(2) and grounds
8 for disciplinary action, pursuant to Nevada Revised Statutes ("NRS") 645C.460(1)(a)
9 and/or (b).

10 Sixth Violation

11 By conducting and evaluating a survey of real estate professionals without
12 adequate training, Respondent acted in a careless or negligent manner, causing the
13 Damages Analysis to contain a series of errors that, although individually might not have
14 significantly affected the results of the appraisal, in the aggregate did affect the
15 credibility of the appraisal, and therefore Respondent violated USPAP Standards Rule 1-
16 1(c), as codified in NAC 645C.405(1). The Respondent's actions constitute professional
17 incompetence pursuant to NRS 645C.470(3) and grounds for disciplinary action pursuant
18 to NRS 645C.460(1)(a) and/or (b).

19 Seventh Violation

20 In developing the Damages Analysis, the Respondent failed to clearly disclosed the
21 application of hypothetical conditions necessary in the assignment and thereby violated
22 USPAP Standards Rule 1-2(g), as codified in NAC 645C.405(1). The Respondent's actions
23 constitute professional incompetence pursuant to NRS 645C.470(3) and grounds for
24 disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

25 Eighth Violation

26 The Respondent committed a violation of NRS 645C.480(1)(a) and NAC 645C.440
27 by failing to produce, upon demand, any document, book, or record in his or her
28 possession or under his or her control after being requesting to do so by the Division as

1 part of its investigation of a complaint. Specifically, the Respondent failed to provide a
2 copy of the engagement letter in this matter. Respondent's actions constitute
3 unprofessional conduct pursuant to NRS 645C.470(2) and grounds for disciplinary action
4 pursuant to NRS 645C.460(1)(a) and/or (b).

5 Ninth Violation

6 By failing to support the value conclusion, which was based upon a survey of
7 realtors, with available market or sales comparison data, the Respondent failed to
8 reconcile the applicability or suitability of the approaches used to arrive at the value
9 conclusions. As a result, the Respondent violated USPAP Standards Rule 1-6(a) and 1-
10 6(b), as codified in NAC 645C.405(1). The Respondent's actions constitute professional
11 incompetence pursuant to NRS 645C.470(3) and grounds for disciplinary action pursuant
12 to NRS 645C.460(1)(a) and/or (b).

13 Tenth Violation

14 By failing to clearly and adequately disclose and explain the application of a
15 hypothetical condition to the Damages Analysis, the Respondent failed to communicate
16 the analysis, opinion, and conclusion in a manner that was not misleading. As a result,
17 the Respondent violated USPAP Standards Rule 2-1(a) and Rule 2-1(c), as codified in
18 NAC 645C.405(1). The Respondent's actions constitute unprofessional conduct pursuant
19 to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
20 and/or (b).

21 DISCIPLINE AUTHORIZED

22 1. Pursuant to NRS 645C.460(2), if grounds for disciplinary action against an
23 appraiser are found to exist for unprofessional conduct, the Commission may revoke or
24 suspend the certificate, place conditions upon the certificate, deny the renewal of his or
25 her certificate, and/or impose a fine up to \$10,000.00 per violation. NRS 645C.480(1)(a) is
26 identified as an additional act of unprofessional conduct.

27 2. Additionally, under NRS Chapter 622.400, the Commission is authorized to
28 impose the costs of the proceeding upon the Respondent, including investigative costs and

1 attorney's fees, if the Commission otherwise imposes discipline on the Respondent.

2 3. Therefore, the Division requests the Commission to impose such discipline as
3 it determines is appropriate under the circumstances and to award the Division its costs
4 and attorney's fees for this proceeding.

5 PLEASE TAKE NOTICE that a disciplinary hearing has been set to consider this
6 Administrative Complaint against the above-named Respondent in accordance with
7 Chapter 233B and Chapter 645C of the Nevada Revised Statutes and Chapter 645C of the
8 Nevada Administrative Code.

9 THE HEARING WILL TAKE PLACE at the Commission meeting scheduled
10 for October 9, 10, and 11, 2018, beginning at approximately 9:00 a.m. each day, or
11 until such time as the Commission concludes its business. The Commission
12 meeting will be held at the Nevada State Business Center, 3300 W. Sahara
13 Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102, with
14 videoconferencing to the State of Nevada, Department of Business and
15 Industry, Division of Insurance, 1818 East College Parkway, 1st floor Hearing
16 Room, Carson City, Nevada 89706.

17 STACKED CALENDAR: Your hearing is one of several hearings that may
18 be scheduled at the same time as part of a regular meeting of the Commission
19 that is expected to take place on October 9-11, 2018. Thus, your hearing may be
20 continued until later in the day or from day to day. It is your responsibility to
21 be present when your case is called. If you are not present when your case is
22 called, a default may be entered against you, and the Commission may decide
23 the case as if all allegations in the complaint were true. If you need to negotiate
24 a more specific time for your hearing in advance, because of coordination with
25 out of state witnesses or the like, please call Samiel Williams, Commission
26 Coordinator, at (702) 486-4606.

27 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an
28 open meeting under Nevada's open meeting law and may be attended by the public. After

1 the evidence and arguments, the Commission may conduct a closed meeting to discuss
2 your alleged misconduct or professional competence. A verbatim record will be made by a
3 certified court reporter. You are entitled to a copy of the transcript of the open and closed
4 portions of the meeting, although you must pay for the transcription.

5 As the Respondent, you are specifically informed that you have the right to appear
6 and be heard in your defense, either personally or through your counsel of choice. At the
7 hearing, the Division has the burden of proving the allegations in the complaint and will
8 call witnesses and present evidence against you. You have the right to respond and to
9 present relevant evidence and argument on all issues involved. You have the right to call
10 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any
11 matter relevant to the issues involved.

12 You have the right to request that the Commission issue subpoenas to compel
13 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
14 you may be required to demonstrate the relevance of the witnesses' testimony and/or
15 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS
16 Chapter 233B, and NAC Chapter 645C.

17 DATED the 6 day of September 2018.

DATED the 6th day of September 2018.

18 NEVADA REAL ESTATE DIVISION

ADAM PAUL LAXALT
Attorney General

19
20
21 By: 

SHARATH CHANDRA, Administrator
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

By: 

PETER K. KEEGAN, ESQ.
Deputy Attorney General
Nevada Bar No. 12237
100 North Carson Street
Carson City, Nevada 89701-4717
Telephone: (775) 684-1153
Attorneys for Real Estate Division

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**

2 **STATE OF NEVADA**

3 SHARATH CHANDRA , Administrator,)
4 REAL ESTATE DIVISION,)
5 DEPARTMENT OF BUSINESS AND)
6 INDUSTRY,)
7 STATE OF NEVADA,)

8 Petitioner,)

9 vs.)

10 CRAIG E. JIU)
11 (License No. A.0002330-CG),)

12 Respondent.)

Case No. 2016-4145 & AP 17.021.S

NOTICE OF COMPLAINT AND
OBLIGATION TO RESPOND

FILED

SEP - 6 2018

NEVADA COMMISSION OF APPRAISERS

13 **TO: CRAIG E. JIU**
14 **10161 Park Run Drive, #150**
15 **Las Vegas, Nevada 89145**

16 **PLEASE TAKE NOTICE THAT A COMPLAINT HAS BEEN FILED**
17 **AGAINST YOU** before the State of Nevada, Commission of Appraisers of Real Estate
18 **("the Commission")** by the State of Nevada, Department of Business and Industry, Real
19 **Estate Division ("the Division"). This is a formal proceeding that may result in a**
20 **fine and/or the revocation, suspension, or placement of conditions on your**
21 **certificate or license. Enclosed with this Notice is a copy of the Complaint, together**
22 **with a copy of all non-privileged communications, reports, affidavits, or depositions in**
23 **possession of the Division that may be relevant to the Complaint and that may be used as**
24 **evidence against you.**

25 **YOU MUST ANSWER THE COMPLAINT** within thirty (30) days after it was
26 **served on you (if sent to you by mail, the time period starts from the date of**
27 **mailing). Your answer must contain an admission or denial on each allegation in the**
28 **Complaint and any defenses upon which you will rely, and must be mailed or delivered to:**

///

1 SAMUEL WILLIAMS
2 Commission Coordinator
3 Nevada Real Estate Division
4 3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

A copy also must be sent to:
PETER K. KEEGAN
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

5 Your answer must be filed with the Division no later than thirty (30) days
6 after it was served on you. If you do not answer on time, the Division may ask the
7 Commission to enter a default against you and decide the case based solely on the
8 Complaint.

9 Other important rights you have are listed in the Nevada Revised Statutes
10 ("NRS") 645C.500 through 645C.520, NRS Chapter 233B, and Nevada Administrative
11 Code ("NAC") 645C.500 through 645C.510.

12 By separate Notice, you will receive a Notice of Hearing before the Commission on
13 the enclosed Complaint.

14 DATED this 5th day of September 2018.

15 ADAM PAUL LAXALT
16 Attorney General

17
18 By: 

19 PETER K. KEEGAN
20 Deputy Attorney General
21 Nevada Bar No. 12237
22 100 North Carson Street
23 Carson City, Nevada 89701-4717
24 Telephone (775) 684-1153
25 *Attorneys for Real Estate Division*
26
27
28

EXHIBIT 5



10161 Park Run Drive, Suite 150,
Las Vegas, NV 89145
702-214-5990
855-336-4837
www.ValPro-Group.com

October 4, 2018

Mr. Samiel Williams
Nevada Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

Mr. Peter K. Keegan
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Case No. 2016-4145 & AP 17.021.S

Messrs. Williams and Keegan,

I am in receipt of the documents mailed September 7, 2018 and filed September 6, 2018 regarding the case noted above. I plan on attending the commission hearing scheduled for October 9-11, 2018. Michael Brunson and I request that our related cases be heard concurrently. Please provide any specific information regarding the actual time that I/we will be called if and when such information is available. In accordance with the Notice of Complaint and Obligation to Respond filed on September 6, 2018, please find my responses below. My defense will be based on the damage analysis/appraisal report, the associated workfile, the 2014-2015 USPAP, related appraisal texts, journal articles, declarations from several consultants, and possible testimony from Orell Anderson, MAI.

Please be advised that the appeal before the Nevada Supreme Court related to this matter was decided on September 13, 2018 (Case 69399, Document 18-35743). It was affirmed in part, reversed in part, and remanded. The reversed and remanded aspect of the case involves the issue of disclosure and may open the door to damage claims. If so, this case is likely to be heard again in District Court.

Response to factual allegations:

The workfile was provided to the NRED on a zip drive (BRUNJIU000001-BRUNJIU004007). An email from Brenda Kindred-Kipling acknowledges that this was acceptable. It was the workfile produced for the litigation and was bates stamped by the attorney for our client.

1. Admit.
2. Admit.
3. (BRUNSON #B-1) Admit.
4. (BRUNSON #B-2) Admit.
5. (BRUNSON #B-3) Admit.
6. (BRUNSON #B-4) Admit.



7. (BRUNSON #B-5) Admit.
8. (BRUNSON #A-13) Deny. - First, the USPAP does not now nor has it ever required an appraiser to use an engagement letter. Second, the engagement letter was included with my/our initial response (BRUNJIU000551- BRUNJIU000556).
9. (BRUNSON #A-14) Deny. - Problem identification in USPAP includes identification of the *client* and other *intended users*, the *intended use*, the *type and definition of value*, the *effective date*, *relevant property characteristics*, *whether the property is a fractional interest, physical segment, or partial holding*, and *any necessary assumptions*. All of the components are identified and reported. Based on the proper identification, the scope of work was determined and appropriately disclosed based on the intended use.
10. (BRUNSON #B-6) Admit.
11. (BRUNSON #B-7) Deny. - This information is identified and analyzed in multiple places (BRUNJIU000019, p 15), (BRUNJIU000034, p 30), and (BRUNJIU000039, p 35).
12. (BRUNSON #B-8) Admit.
13. (BRUNSON #B-9) Admit.
14. (BRUNSON #B-10) Deny. - The facts regarding the expansion of the adjacent Malek Lot 2 are noted on (BRUNJIU000039, p 35) and analyzed throughout the report. Malek entered in to a land purchase agreement for the "expansion" on 08/12/2012 (two days after the purchase of Lot 2 was recorded). The informational meeting regarding the boundary modification was held with the City of Henderson on 10/22/2012. The application to vacate was executed, reviewed, and approved by the City of Henderson 10/30/2012. After proper notice, the petition to vacate, land use amendment, and rezoning request – were approved by the City of Henderson on 01/08/2013. This information is not hypothetical it is fact. The sale of the "expanded" land recorded 06/26/2013. This is also fact. The purpose of the damage analysis was to determine what if any impact not disclosing the known information would have on a typical buyer's decision to purchase.
15. (BRUNSON #B-11) Admit in part. Deny in part. This is related to the prior allegation. I/we admit that the recording date was subsequent to the effective date and that plans for development were not complete. However, as noted above, the approval was in process nine months prior and approved four months prior to the effective date. The issue at play is whether the imminent and known extension of the rear lot line and buildable envelope would have impacted a typical buyer's decision to purchase.
16. (BRUNSON #B-12) No response. - Outside the scope of our expertise. Calls for a legal conclusion.
17. (BRUNSON #B-13) Deny. - The issue of landscaping was considered. My/our review of MacDonald Highlands Design Guidelines revealed a concept known as the developers "Cone of Vision." Guideline 2.10.4 indicates, that "*careful attention to open space is important*" and that side walls for golf lots must end 15' from the property corner with a pilaster. Moreover, "*lots that require preservation of view corridors will not be permitted to install improvements, plant trees or other plant material that are taller than 4 feet within a distance of 15 feet from the rear yard property corner.*" The issue at play is that a buyer lacking disclosure of the imminent and known extension of the rear lot line would have assumed that the existing pilaster would be the boundary for any landscaping taller than 4'.

18. (BRUNSON #B-14) Deny. - In regard to statistics, both Jiu and Brunson have taken and passed courses in statistics for our bachelor's degrees. Both have taken and/or taught appraisal CE classes in statistics. Brunson was approved by this commission to teach a 16-hour course titled Interactive Valuation Modeling & Case Studies (CE.0008489-A). Brunson was approved for and taught this same course in multiple states. In regard to surveys, Brunson holds a BA degree in psychology from UNLV. Part of that course of study involved psychometric survey techniques. Jiu testified in a prior case where Type-1 surveys were the primary basis for the opposing expert's opinion. Brunson prepared a similar Type-2 survey for a case involving a different example of a Class-V DC. Jiu assisted on that case. Brunson has worked with the firm Bell, Anderson, and Sanders on one large local case involving surveys. Mr. Anderson (a co-author of Real Estate Damages) has provided a declaration regarding his being consulted regarding the survey at issue in this case. Mr. Bob Potts (the Assistant Director for the UNLV Center for Business and Economic Research) has provided a declaration regarding his being consulted regarding the survey at issue in this case.
19. (BRUNSON #B-15) Deny. - The issue of view corridors is clearly disclosed and consistently applied in the report on pages 25-26 (BRUNJIU000029-BRUNJIU000030) and pages 31-41 (BRUNJIU000035- BRUNJIU000045). The survey itself clearly defines the view corridor at issue. The survey results are summarized in the report on pages 45-55 (BRUNJIU000049-BRUNJIU000059). A copy of the full survey with responses was submitted (BRUNJIU002431-BRUNJIU002471). A copy of the full survey without responses was submitted (BRUNJIU0002472-BRUNJIU002512).
20. (BRUNSON #B-16) Admit in part. Deny in part. - I/we admit that there are no paired sales or sales data presented in support of the conclusions. The false inference is that lacking paired sales or sales data, no damages can exist. Real Estate Damages (Bell) recognizes the use of surveys and states,

In some rare circumstances, the detrimental condition may be so unique that finding situations in which it has affected other properties is very difficult or even impossible... In these types of unusual situations, a market survey might be a valid means to query property owners and brokers and determine their perspectives and perceptions relative to the effect on value, if any (pp. 52-53).

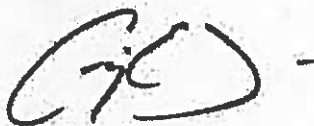
The Journal of Real Estate Literature, Volume 19, Number 2 (2011) describes the Contingent Valuation Method (CVM) in an article titled Contingent Valuation and Real Estate Damage Estimation. The CVM is a survey technique used to measure willingness-to-pay (WTP) in scenarios where transactional data is lacking. On page 45 (BRUNJIU000049) the report states:

In a perfect scenario, I would provide several examples of improved golf course property with adjacent vacant land that acquired additional land from the abutting golf course with altered sight lines and privacy in the before and after conditions. Because comparable data of sales and resales on such similar sales could not be located, I conducted primary research on the specific issue utilizing a survey of real estate professionals.

21. (BRUNSON #B-17) Deny. - Beginning on page 26 of the report (BRUNJIU000030), it indicates that the DC could be benign and that the DC must be qualified before it can be quantified. This idea is carried through the report and the survey. Much consideration was given to making sure the survey was neutral.
22. (BRUNSON #B-18) Admit in part. Deny in part. - This is a restatement of allegation 16. Please refer to that answer.
23. (BRUNSON #B-19) Deny. - Please refer to the survey with responses and without. A copy of the full survey with responses was submitted (BRUNJIU002431-BRUNJIU002471). A copy of the full survey without responses was submitted (BRUNJIU0002472-BRUNJIU002512).
24. (BRUNSON #B-20) Deny. - This allegation ignores the potential impact of extending the adjacent property line and buildable envelope. The survey measures the impact in both the unimproved and the improved conditions. Respondents in both conditions find the impact to be negative.
25. (BRUNSON #B-21) Admit in part. Deny in part. - I/we admit that we assess the *nondisclosure* of relevant information regarding an adjacent parcel. I/We deny that this information has nothing to do with an unbiased assessment of damages. Refer to our response in allegation 17.
26. (BRUNSON #B-22) Deny. - This is a restatement of allegations 16 and 18. Please refer to our response to allegation 16.

In closing, Respondent denies all stated VIOLATIONS OF LAW. Respondent is not claiming that the relevant reports are perfect and free of any errors. However, the USPAP is clear that *perfection is impossible to attain* (line 510) and that *the credibility of assignment results is always measured in the context of the intended use* (lines 402-403). Respondent denies any significant violations of the USPAP, as codified in NAC 645C.405(1). Respondent further denies that any of his actions constitute unprofessional conduct pursuant to NRS 645C.470(2) or that any of his actions provide grounds for disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

Best Regards,



Craig E. Jiu, MNAA
Partner | ValPro Group
NV Certified General Appraiser #A.0002330-CG

EXHIBIT 6

STEVE SISOLAK
Governor

STATE OF NEVADA



MICHAEL J. BROWN
Director

SEARATH CHANDRA
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.nv.gov

February 11, 2019

Certified No. 7018 1830 0000 8417 6354

Craig Jiu
10161 Park Run Drive #150
Las Vegas, Nevada 89145

Re: NRED v. CRAIG JIU
Case No.: 2016-4145, AP 17.021.S

Dear Mr. Jiu:

Enclosed herewith you will find the Findings of Fact and Conclusions of Law entered by the Nevada Commission for Appraisers of Real Estate at the meeting held January 30, 2019 in Las Vegas, Nevada. The Commission has ordered the following:

- 5 Violations x \$500 per =	\$2,500.00
- 50% of investigation =	\$3,578.29

1. The Respondent must pay a fine of six thousand, seventy-eight dollars and twenty-nine cents (~~\$6,078.29~~) to the Division within ninety (90) days of the effective date of this Order.
2. The Respondent's Certified General Appraiser license is hereby suspended for a period of one (1) year from the effective date of this order and the Respondent must appear before the Commission to apply for his Certified General Appraiser license to be reactivated.
3. The Respondent must complete thirty (30) hours of live course Appraisal Practices within one (1) year of the effective date of this order.
4. The Respondent must complete fifteen (15) hours of live course Uniform Standards of Professional Appraisal Practices within one (1) year of the effective date of this order.
5. The Respondent must complete thirty (30) hours of live course Appraisal Procedures within one (1) year of the effective date of this order.
6. No continuing education credits will be given for the courses taken in the stipulation.

EFFECTIVE DATE OF THIS ORDER: MARCH 11, 2019

FINE DUE DATE: JUNE 9, 2019

EDUCATION DUE DATE: MARCH 10, 2020

Please note that Division staff does not have the authority to extend the due date for your fine or education requirements that have been ordered by the Commission. If you find that you are unable to meet the required due date, you will need to request in writing that you be placed on the agenda for a Commission hearing in which the respondent will be allowed to request an extension from the Commission. This request should be made several months prior to the due date.

Please contact me if you have questions regarding this matter.

Sincerely,



Samuel Williams

Commission Coordinator

cc: Sharath Chandra, Administrator

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 **SHARATH CHANDRA , Administrator,**
4 **REAL ESTATE DIVISION,**
5 **DEPARTMENT OF BUSINESS AND**
6 **INDUSTRY,**
7 **STATE OF NEVADA,**

8 **Petitioner,**

9 **vs.**

10 **CRAIG E. JIU**
11 **(License No. A.0002390-CG),**

12 **Respondent.**

Case No. 2016-4145 & AP 17.021.S

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FILED

FEB 08 2019

NEVADA COMMISSION OF APPRAISERS

13 This matter came for a hearing before the Nevada Commission of Appraisers of Real
14 Estate, State of Nevada ("Commission") on Wednesday, October 9-11, 2018 and again on
15 January 29-30, 2019, at the Nevada State Business Center, 3300 W. Sahara Avenue, Las
16 Vegas, Nevada 89102. Respondent Craig E. Jiu ("Respondent") appeared without counsel.
17 Peter K. Keegan, Deputy Attorney General, appeared and prosecuted the Complaint on
18 behalf of petitioner Sharath Chandra, Administrator of the Real Estate Division,
19 Department of Business & Industry, State of Nevada ("Division"). This matter was
20 consolidated with Case No. 2016-4146 due to the overlapping facts and both matters were
21 heard jointly by the Commission.

22 **I. JURISDICTION**

23 The Respondent is a Certified General Appraiser licensed by the Division, and
24 therefore, is subject to the Jurisdiction of the Division and Commission pursuant to the
25 provisions of NRS and NAC Chapter 645C.

26 **II. FINDINGS OF FACT**

27 The matter having been submitted for decision based upon the allegations of the
28 Complaint, the Commission now, based upon the evidence presented during the hearing,
finds that there is substantial evidence in the record to establish each of the following:

1 1. The Respondent is currently licensed by the Division as a Certified General
2 Appraiser, License No. A.0002330-CG. Respondent was first issued a license on June 11,
3 1996 and reinstated on July 1, 2008.

4 2. On or about December 8, 2016, the Division received a complaint/statement
5 of fact asserting that the Respondent had completed an appraisal in violation of several
6 provision of the Uniform Standards of Professional Appraisal Practice ("USPAP").

7 3. Respondent was engaged to conduct a Real Estate Damages Analysis
8 ("Damages Analysis") for the property located at 590 Lairmont Place, Henderson, Nevada
9 89012, APN 178-27-218-003 ("590 Lairmont") by analyzing the nature, quality, value, or
10 use of the property, and offered an opinion as to the nature, quality, value or use of the
11 property for or with the expectation of compensation.

12 4. The opinion contained in the Damages Analysis concerned the impact of a
13 detrimental condition, further identified as a Class V: Detrimental Condition.

14 5. The effective date of the Damages Analysis was May 15, 2013.

15 6. The date of transmittal on the Damages Analysis was November 25, 2014.

16 7. The intended use of the Damages Analysis was litigation.

17 8. The Scope of Work identified in the Respondent's Damages Analysis fails to
18 determine and perform the scope of work necessary to develop credible assignment results
19 based upon the problem identified.

20 9. 590 Lairmont was originally listed on March 13, 2013, for \$2,160,000, but
21 closed with an "all cash" sale price of \$2,303,000 on May 15, 2013, after 13 days on the
22 market.

23 10. The Damages Analysis accepted the "As Is" (unimpaired value) expressed in
24 the expert appraisal report completed by Valbridge Property Advisors with an effective
25 date of May 15, 2013, and a cited value opinion of \$2,500,000.00 under an Extraordinary
26 Assumption.

27 11. The real property, commonly known as 594 & 598 Lairmont Place, to the east
28 of 590 Lairmont were vacant at the time of sale.

1 12. As of the effective date, the purchase of additional parcel had not closed and
2 the owners of the real property adjacent to the east of 590 Lairmont had not completed
3 their plans to develop.

4
5 13. The Damages Analysis failed to recognize that borrowed views across adjacent
6 properties are not guaranteed in perpetuity by laws or any agreement in this case.

7 14. The Damages Analysis failed to identify permissible landscaping as a possible
8 obstruction of the borrowed views.

9 15. Respondent is not trained in statistical analysis or experienced in generating
10 surveys.

11 16. The Damages Analysis failed to include paired sales or any sales data analysis
12 to support a 30 to 40% value loss.

13 17. The Damages Analysis applies bias to the survey results.

14 18. The Damages Analysis survey results are not supported by transactional data.

15 19. The Damages Analysis fails to account for existing topographic, physical, and
16 developed features of the surrounding land that create fishbowl conditions that diminish
17 the privacy of 590 Lairmont.

18 20. The Case Studies included in the Damages Analysis, independent of
19 transactional data, do not provide reliable support for the value conclusion.

20 **III. CONCLUSIONS OF LAW**

21 The Commission, based upon the preponderance of the evidence, makes the
22 following legal conclusions:

23 1. By failing to (1) identify the problem to be solved; (2) determine and perform
24 the scope of work necessary to develop credible assignment results; and (3) fully disclose
25 the scope of work in the report, the Respondent violated the USPAP Scope of Work Rule,
26 as codified in NAC 645C.405(1). The Respondent's actions constitute unprofessional
27 conduct, pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS
28 645C.460(I)(a) and/or (b).

1 2. By engaging in the Real Estate Damage Analysis of 590 Lairmont Place and
2 failing to perform the assignment with impartiality, objectivity, independence, and without
3 accommodation of personal interests, Respondent demonstrated bias and appeared to
4 advocate for the interest of his clients. Furthermore, Respondent failed to promote and
5 protect the public trust inherent in appraisal practice. Respondent thereby violated the
6 USPAP Ethics Rule, as codified in NAC 645C.405(1). The Respondent's actions constitute
7 unprofessional conduct, pursuant to NRS 645C.470(2) and grounds for disciplinary action
8 pursuant to NRS 645C.460(1)(a) and/or (b).

9 3. By failing to conduct a thorough analysis of comparable sales or use other
10 methods to evaluate transactional level data in support of the survey results, the
11 Respondent failed to be aware of, understand, and correctly employ the recognized methods
12 and techniques that are necessary to produce a credible market value appraisal, or
13 retrospective Damages Analysis. As a result, the Respondent violated USPAP Rule 1-1(a),
14 as codified in NAC 645C.405(1). The Respondent's actions constitute unprofessional
15 conduct, pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS
16 645C.460(1)(a) and/or (b).

17 4. By failing to support the value conclusion, which was based upon a survey of
18 realtors, with available market or sales comparison data, the Respondent failed to reconcile
19 the applicability or suitability of the approaches used to arrive at the value conclusions. As
20 a result, the Respondent violated USPAP Standards Rule 1-6(a) and 1-6(b), as codified in
21 NAC 645C.405(1). The Respondent's actions constitute professional incompetence
22 pursuant to NRS 645C.470(3) and grounds for disciplinary action pursuant to NRS
23 645C.460(1)(a) and/or (b).

24 5. By failing to clearly and adequately disclose and explain the application of a
25 hypothetical condition to the Damages Analysis, the Respondent failed to communicate the
26 analysis, opinion, and conclusion in a manner that was not misleading.

27 ///

28 ///

1 As a result, the Respondent violated USPAP Standards Rule 2-1(a) and Rule 2-1(c), as
2 codified in NAC 645C.405(1). The Respondent's actions constitute unprofessional conduct
3 pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS
4 645C.460(1)(a) and/or (b).

ORDER

IT IS HEREBY ORDERED that Respondent shall pay to the Division a total fine of \$6,078.29. The total fine reflects a fine of \$2,500.00 for committing each of the above five violations of law, plus \$3,578.29 for hearing and investigative costs. Respondent shall pay the total fine to the Division within ninety (90) days of the effective date of this Order.

IT IS FURTHER ORDERED that Respondent's Certified General Appraiser license is hereby suspended for a period of one (1) year from the effective date of this order and Respondent must appear before the Commission to apply for his Certified General Appraiser license to be reactivated.

IT IS FURTHER ORDERED that Respondent must complete thirty (30) hours of appraisal practice, thirty (30) hours of appraisal procedures, and fifteen (15) hours of USPAP live course continuing education credits within one (1) year of the effective date of the Commission's order. The total seventy-five (75) hours of continuing education course work shall not count towards the required continuing education requirements and must be completed before Respondent can reapply for reinstatement of this Certified General Appraiser's license.

If the payment or proof of completion of the continuing education is not actually received by the Division on or before its due date, it shall be construed as an event of default by Respondent. In the event of default, Respondent's licenses and permit shall be immediately suspended, and the unpaid balance of the administrative fine and costs, together with any attorney's fees and costs that may have been assessed, shall be due in full to the Division within ten calendar days of the date of default. The Division may institute debt collection proceedings for failure to timely pay the total fine.

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1 The Commission retains jurisdiction for correcting any errors that may have
2 occurred in the drafting and issuance of this Decision.

3 This Order shall become effective on the 8th day of February, 2019.

4 DATED this 8 day of February 2019.

5 COMMISSION OF APPRAISERS OF REAL ESTATE
6 STATE OF NEVADA

7 By: Chin C. Sanchez
8 President, Commission of Appraisers of Real Estate
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Craig Jlu

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Las Vegas, Nevada 89145

EXHIBIT 7



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NEVADA COMMISSION OF APPRAISERS
OF REAL ESTATE HEARING

TUESDAY, JANUARY 29, 2019

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DISCIPLINARY ACTION:

HEARINGS AND POSSIBLE ACTION BY THE COMMISSION:

NRED v. MICHAEL BRUNSON, for possible action
Case No. 2016-4146 AP17.020.S
License No. A.0207222-CG (Active)

NRED v. CRAIG JIU, for possible action
Case No. 2016-4145 AP17.021.S
License No. A.0002330-CG (Active)

24 Reported by: Teri Ward, CCR #839

25 Job Number.: 511303

1 CHAIRMAN LAUGER: Good morning. This is
2 the January 29th meeting on the matter of Commission
3 of Appraisers of Real Estate. Can I ask the court
4 reporter to state her name, please.

5 THE COURT REPORTER: Teri Ward.

6 (Swearing in the court
7 reporter.)

8 CHAIRMAN LAUGER: Okay. So we were in
9 the middle in our last meeting of the hearing of
10 NRED versus Michael Brunson and Craig Jui. Do
11 respondents want to come up? Okay.

12 First thing I need to swear both of you
13 back in.

14 MICHAEL BRUNSON and CRAIG JUI,
15 having been called as witnesses and having been
16 first duly sworn, was examined and testified as
17 follows:

18 CHAIRMAN LAUGER: So we were in the
19 middle of this hearing when we recessed back in
20 October, and I'd like to make sure that we're all on
21 the same page as to where we were at.

22 Mr. Keegan, I was questioning
23 Mr. Brunson, and my recollection is that we were
24 just -- that Mr. Brunson had already put his case
25 on.

1 Is that everyone else's recollection?

2 MR. KEEGAN: Just to set -- Peter
3 Keegan, for the record on behalf of the Nevada
4 Division of Real Estate.

5 Just wanted to, before we jump into this
6 matter, set a couple of things straight as far as my
7 request for the order of these cases to proceed.

8 We do have a matter that there is a
9 settlement agreement that is the Nevada Real Estate
10 Division v. Spillers. The individual is an
11 out-of-state respondent, and his counsel is from
12 Chicago. He's located in Florida.

13 I've instructed them, because the
14 commission does not have a telephone conference
15 line, to call in at 9:30. That settlement
16 agreement, I believe, copies of it have been
17 provided to the commissioners.

18 But I just wanted to identify that as an
19 existing appointment, as it were. And, you know, I
20 don't know what Mr. Brunson and Mr. Jui want to do,
21 if they want to start their case now and go for 20
22 minutes and then stop and then resume.

23 There are a few other matters that are
24 relatively quick. I believe, there's two other
25 matters, NRED v. Lach or Lach, and then NRED v. St.

1 George. I believe both of those matters would take
2 no longer five to ten minutes each, and then would
3 allow the Spiller matter to be completed, and at
4 that point, we could resume Mr. Brunson and
5 Mr. Jui's cases. I think that might be the most
6 optimal use of the commission.

7 CHAIRMAN LAUGER: It does seem to make
8 more sense. You guys okay with that?

9 MR. BRUNSON: Sure.

10 CHAIRMAN LAUGER: Sorry about that. So
11 go ahead and sit back in the gallery. Sorry.

12 MR. KEEGAN: My apologies.

13 CHAIRMAN LAUGER: No, that's fine.

14 MR. KEEGAN: I should have identified
15 that to you earlier.

16 CHAIRMAN LAUGER: That's fine.

17 MR. KEEGAN: And my apologies to
18 Mr. Brunson and Jui as well.

19 MR. BRUNSON: It's all good.

20 (A discussion was held off the
21 record.)

22 CHAIRMAN LAUGER: So let's go back to
23 Mr. Brunson and Mr. Jui. Come on back up to the
24 chairs, please.

25 MR. BRUNSON: Can I get just a minute to

1 get situated and plugged in?

2 CHAIRMAN LAUGER: Okay. And while
3 you're doing that, Mr. Brunson, for the reporter,
4 this to your immediate right is Mr. Brunson and
5 that's Mr. Jiu, to make it easier for you. And
6 that's J-i-u. I don't know if anybody's provided
7 you the spelling.

8 MR. BRUNSON: We gave her a card.

9 CHAIRMAN LAUGER: Okay. My recollection
10 was that we were just about to wrap this up,
11 Mr. Bhalla is telling me that you have not put on
12 your case yet, that we were still in the State's.
13 And I --

14 COUNSEL BHALLA: Well --

15 CHAIRMAN LAUGER: Go ahead.

16 COUNSEL BHALLA: Excuse, Mr. Chairman.
17 That you had not completed putting on your case, and
18 I wanted to make sure that you have opportune time
19 to present any more argument or evidence that you so
20 choose to before the commission moves.

21 CHAIRMAN LAUGER: And the reason I need
22 to make sure that this is cleared up is if the
23 commissioners were granted the minutes for the last
24 -- we went into three days, and if you look on page
25 10, it says, "Mr. Brunson presented his case."

1 So I want to make sure we're all on the
2 same page as to where we're at because that wasn't
3 my recollection, but --

4 COMMISSIONER STEFAN: I recall that they
5 were either starting or had just started because I
6 think it was the State's -- one of the State's
7 points that they would not be allowed to enter any
8 more evidence --

9 CHAIRMAN LAUGER: Evidence.

10 COMMISSIONER STEFAN: -- when they came
11 back to present the case.

12 CHAIRMAN LAUGER: And I was asking
13 questions of Mr. Brunson when we actually stopped.
14 I recall that vividly.

15 MR. BRUNSON: So here's -- my
16 recollection is -- and it was three long days, and
17 we were exhausted, and everybody was looking at
18 their watch. And after a day and a half of
19 Mr. Keegan's case -- yeah, earlier we did, sir.
20 Mike Brunson, for the record, by the way.

21 I feel like we've had a three-month
22 break, and there were questions from you. There was
23 a question, I believe, from Commissioner Cronin that
24 was still unanswered, and there were several
25 comments that the commissioners made that I think in

1 answering those questions would refresh everybody's
2 memory.

3 I think a little bit of leeway regarding
4 evidence or anything like that, but a little bit of
5 leeway considering the State had a day and a half
6 and at 15 minutes we were asked to hurry everything
7 up because everybody had planes to catch.

8 If you would allow us a little leeway in
9 our answers to refresh everybody's memory to make
10 sure that there's still an understanding of the
11 facts because there were some statements and
12 questions that were made that seemed to indicate
13 there was a lack of understanding.

14 So feel free to give us guidance in that
15 regard, but --

16 CHAIRMAN LAUGER: Okay.

17 MR. BRUNSON: -- it's still my
18 understanding that Mr. Jui and I are here
19 representing ourselves pro se.

20 Is it still the position of the Attorney
21 General's Office that acting as pro se, that we are
22 precluded from expressing legal opinions?

23 MR. KEEGAN: I don't recall specifically
24 any argument that you weren't allowed to express a
25 legal opinion.

1 You know, I might make an objection
2 that, you know, that does constitute a legal opinion
3 and that the commission should give that the
4 appropriate weight, but I don't -- I don't recall
5 that you were precluded from that last time, but
6 again --

7 CHAIRMAN LAUGER: My recollection was
8 that you were acting as an attorney on Mr. Jui's
9 behalf at a point where Mr. Keegan raised an
10 objection, as I recall.

11 MR. BRUNSON: Well --

12 MR. KEEGAN: I do recall that as well.

13 MR. BRUNSON: -- my recollection there
14 is that you agreed that Mr. Jui and I would present
15 our cases simultaneously.

16 CHAIRMAN LAUGER: Yeah. No, I agree.
17 But at one point you had raised a question that
18 Mr. Keegan said it moved from anything as far as a
19 defense as to a --

20 MR. BRUNSON: Right. So my
21 understanding of pro se is that I have every right
22 that an attorney has, and that I can't be barred
23 from providing a full defense and expressing legal
24 opinions, regardless of my position of not being a
25 member of the bar. If I'm wrong on that, then I'm

1 wrong on that.

2 MR. BHALLA: Mr. Brunson, I think the
3 line is that you can't object to questions that
4 Mr. Keegan would have to Mr. Jui on behalf of
5 Mr. Jui.

6 You can state legal opinions that you
7 have, you can make your own defense, and Mr. Jui can
8 make his own defense, but if Mr. Jui is objecting to
9 a question from Mr. Keegan, he'll have to raise that
10 himself. You are not able to do that on his behalf.

11 MR. BRUNSON: So even though in this
12 circumstance --

13 MR. BHALLA: You can represent yourself,
14 you cannot represent somebody else, regardless of
15 the fact that you're presenting the facts.

16 MR. BRUNSON: That's clarifies for me.
17 So I'm more than welcome to bring up those points
18 that were precluded last time barring --

19 MR. BHALLA: I don't think any points
20 were precluded last time, as I recall. So please
21 just proceed, you know.

22 MR. BRUNSON: Okay.

23 MR. KEEGAN: If I may. My recollection
24 is that case No. 2016-4145 has been completed. That
25 is the case against Mr. Jui. That case has been

1 submitted.

2 The deliberation component has not been
3 completed. But both parties have rested their
4 cases, if I recall, in Mr. Jui's case of 2016-4145.

5 CHAIRMAN LAUGER: I wasn't done
6 questioning.

7 MR. KEEGAN: Okay. You have not -- my
8 understanding is that --

9 CHAIRMAN LAUGER: When we finished, I
10 was in the middle of a question. I can recall it
11 vividly. I asked Mr. Brunson if damages could
12 exceed market value of something, and he went on to
13 a 9/11, the field, the land, and the field in was it
14 Pennsylvania? I apologize, but then we were cut
15 off.

16 MR. KEEGAN: Right. I'm just stating
17 that my recollection is that both parties have
18 completed their cases.

19 CHAIRMAN LAUGER: Presentation of their
20 --

21 MR. KEEGAN: There's not been
22 deliberation, and I believe the commission, and
23 commissioner counsel can correct me, is still
24 entitled before entering into deliberations to
25 question Mr. Jui and Mr. Brunson.

1 Case No. 2016-4145 and Case No.
2 2016-4146 were presented together. Both cases
3 contained overlapping allegations of fact and
4 violations concerning the property located at 590
5 Lairmont.

6 My recollection is that Case No.
7 2016-4146 has not been completed with respect to
8 part A, 594 and 598 Lairmont, and those allegations
9 are unique against Mr. Brunson. They are not
10 overlapping in --

11 CHAIRMAN LAUGER: And we haven't got to
12 that case at all, is my understanding.

13 MR. KEEGAN: We have, but there are --
14 many of the facts have already been admitted in the
15 answer, and I'm happy to take the commission back
16 through that.

17 There are five remaining factual
18 allegations, based on my tabulation, that remain to
19 be addressed or that I intend to present evidence
20 on, and then Mr. Brunson will have an opportunity to
21 put on the remainder of his case.

22 Unfortunately, I haven't had the
23 opportunity to review the entire hearing --

24 CHAIRMAN LAUGER: And neither have we.

25 MR. KEEGAN: -- audio or transcript.

1 CHAIRMAN LAUGER: All we've got is
2 minutes, so --

3 MR. KEEGAN: So --

4 CHAIRMAN LAUGER: Mr. Brunson, had we
5 gotten into 594 and not 598 at all?

6 MR. BRUNSON: So they're related. The
7 short answer would be a little bit because they're
8 related, but we have directly addressed the question
9 specific.

10 CHAIRMAN LAUGER: And this was one of my
11 questions to Mr. Bhalla was me going back and
12 looking through some of this stuff. We hadn't got
13 to that, so I didn't want to contaminate whatever
14 the term is.

15 But my recollection was that we had not
16 gotten to that point to where we were really
17 discussing any of that appraisal because I hadn't
18 finished my questioning on the combined matter.

19 MR. KEEGAN: And I believe it's
20 completely within the discretion of the Chair and
21 the commission to focus on 590 because that is a --
22 it's a completely unique case regarding the
23 allegations against Mr. Jui.

24 There are overlapping allegations which
25 I believe I did my best to identify the identical

1 allegations in the 2016-4146 case against
2 Mr. Brunson.

3 CHAIRMAN LAUGER: Okay. But -- so as we
4 go through this to finish this up, when we go to
5 make any motions on these two cases, your case for
6 594 and 598 will be a separate motion, will it not?

7 MR. KEEGAN: Yes.

8 CHAIRMAN LAUGER: Okay. So I don't want
9 to --

10 MR. KEEGAN: Okay.

11 CHAIRMAN LAUGER: And, like I said,
12 you'll both have time for closing arguments. We've
13 had plenty of time on this case, I believe. It is a
14 very involving case, but I'd like to continue with
15 my questioning, and then I think we should be able
16 to go to closing arguments.

17 MR. KEEGAN: On the 590 Lairmont case?

18 CHAIRMAN LAUGER: Yes.

19 MR. KEEGAN: Okay.

20 CHAIRMAN LAUGER: Is that --

21 MR. BRUNSON: That sounds fair.

22 CHAIRMAN LAUGER: Okay. So when I go
23 back through my notes, I had a few scratches of
24 stuff that I got to, so I may have asked some of
25 this.

1 Mr. Brunson, when you -- when I look
2 through all this data, you spoke and talk about
3 working with Orell Anderson quite a bit.

4 MR. BRUNSON: Yes, sir.

5 CHAIRMAN LAUGER: And when I look at the
6 -- and I won't be able to find it, but when I look
7 through what he provided in 2018, a signature saying
8 he just now looked at the results, my question and
9 concern is why would you, if you have led us to
10 believe you have a very close working relationship
11 with Mr. Anderson, why would you have waited until
12 the time that there was a complaint on this file to
13 have shown it to him?

14 MR. BRUNSON: Because it wasn't relative
15 -- relevant prior to that. His role was to make
16 sure, as an expert in questionnaires or survey
17 techniques, to make sure that the questionnaire
18 survey that I was designing was within the realm of
19 standards of practice that he teaches for both the
20 IRWA and the AI, once he assured me that we had
21 developed an instrument that was repeatable, that
22 was neutral, that didn't lead to a specific path,
23 but rather allowed the respondents to form their own
24 opinions and express those, his -- you know, this
25 was years ago, but basically his final response to

1 me was just, remember, in cases where you can't by
2 definition find transactional data and you're using
3 a survey, and in cases where the very definition of
4 market value is the highest, not the most probable,
5 just remember you don't go for the absolute highest,
6 you go for the highest reasonable.

7 And that was the last time we spoke
8 until there was a complaint. He knew about the
9 complaint. He was prepared to come and testify. As
10 a matter of fact, I had booked airfare and a hotel
11 for him to come and testify, but he was unable to at
12 the last minute, and that's when he decided to
13 provide the declaration.

14 CHAIRMAN LAUGER: Okay. Exhibit E, is
15 that something you provided just to the commission
16 or was that part of -- any part of this survey.

17 MR. BRUNSON: Exhibit E is a trial
18 exhibit that -- and I'm assuming that Mr. Jui can
19 jump in if he knows something differently, but
20 Exhibit E is a trial exhibit prepared.

21 You'll remember that the Supreme Court
22 of the State of Nevada has remanded this case --

23 CHAIRMAN LAUGER: Yeah, I --

24 MR. BRUNSON: -- not on the issue of
25 views, but on the issue of disclosure.

1 That is part of a exhibit for a case
2 that has yet to be heard in district court. As a
3 matter of fact, Mr. Jui and I have had conversations
4 with Rosenberg's attorneys about supplementing our
5 expert reports to clarify certain matters brought up
6 here.

7 CHAIRMAN LAUGER: Okay. Do you have a
8 copy of Exhibit E in front of you?

9 MR. BRUNSON: I have it, I believe so,
10 yes. Mine isn't marked.

11 CHAIRMAN LAUGER: If you look at the
12 second page.

13 MR. BRUNSON: Sorry?

14 CHAIRMAN LAUGER: Look at the second
15 page.

16 MR. BRUNSON: Yes.

17 CHAIRMAN LAUGER: Bottom picture row,
18 you have master bedroom, and you have the middle
19 line says, original property line.

20 MR. BRUNSON: Yes, sir.

21 CHAIRMAN LAUGER: And then to the right
22 you have new property line.

23 MR. BRUNSON: Yes.

24 CHAIRMAN LAUGER: I have two questions.
25 One, these say property line, and I want to know are

1 are you suggesting you pushed the building to the
2 property line or to the building envelope?

3 MR. BRUNSON: Building envelope.

4 CHAIRMAN LAUGER: Okay. Then if I look
5 at the middle picture, and I look through the corner
6 -- actual corner of that window, do you see how the
7 foundation of that house is let's say a foot up?
8 I'll just estimate, a foot up on the window. Do you
9 see that in the middle picture?

10 MR. BRUNSON: Are you referring to the
11 white concrete area?

12 CHAIRMAN LAUGER: Yeah.

13 MR. BRUNSON: Yes.

14 CHAIRMAN LAUGER: Now, if I look at the
15 one to the right, if I go a foot up, I'm in the
16 middle of a window on the building.

17 MR. BRUNSON: Well --

18 CHAIRMAN LAUGER: Why would that be
19 closer to the property line?

20 MR. BRUNSON: There's two things there.
21 We hired a 3D rendering firm to create these, and
22 remember there's a slope to this building. So as
23 the building envelope moves left, a retaining wall
24 has to be built where flat work would exist
25 otherwise.

1 CHAIRMAN LAUGER: But it looks to me
2 like you've got -- you're suggesting that the
3 building is moved closer to that house.

4 MR. BRUNSON: It's not moved any closer.
5 It's simply moved forward within the same building
6 envelope as -- well, not the same.

7 So the picture on the left you can see a
8 distinction, some Gray Type 2 fill.

9 CHAIRMAN LAUGER: Right.

10 MR. BRUNSON: That is the rear property
11 line represented to the Rosenbergs as presented on
12 the aerial map, as presented in the diorama in the
13 sales office, and as presented in the documents from
14 the sales contract to the Rosenbergs.

15 If you look at the center picture, this
16 is what we, in the survey -- in the survey, you may
17 or may not recall -- and I did want to clarify, this
18 brings up another point, when I say the word survey,
19 I'm talking about a questionnaire.

20 Commissioner Cronin had made a comment
21 about us pounding stakes in the ground or something
22 like that. We didn't perform that type of a survey.
23 We --

24 CHAIRMAN LAUGER: No, I understand that.

25 MR. BRUNSON: Well, I just wanted to

1 make sure because the comment was made that we
2 exceeded the scope of our expertise by pounding
3 stakes in the ground. That's not the kind of survey
4 we did.

5 We conducted a survey that's in the
6 literature Real Estate Damages about how to measure
7 damages when transactional data doesn't exist as
8 taught by the AI and the IRWA. So I just want to
9 clarify that.

10 CHAIRMAN LAUGER: Okay.

11 MR. BRUNSON: The before condition for
12 us is what was represented to the Rosenbergs that
13 the building envelope would be 30 feet back from
14 that Type 2 Gray fill in the picture on the left.

15 The after condition is -- and this is a
16 representation of what might be built. Information
17 that we obtained. You know, litigation takes time.
18 This was almost a year later we obtained plans
19 through discovery from Malick indicating that this
20 was his intent or at least one intent. It was
21 approved by the City of Henderson.

22 We hired a 3D rendering company to take
23 the plans and to take the satellite imagery, the
24 site plan, and to render the --

25 CHAIRMAN LAUGER: Okay. But -- so

1 you're saying that I'm not reading this right?

2 You're saying that's a wall and not the house?

3 Because --

4 MR. JUI: That's the house on the bottom
5 right image.

6 CHAIRMAN LAUGER: But you're in
7 disagreement with me that that does not look closer
8 to their property?

9 MR. JUI: Well, I think it's a depth
10 issue, and you have a copy of the report itself,
11 correct?

12 CHAIRMAN LAUGER: Yeah.

13 MR. JUI: I think it would be good to
14 reference the site map with the different boundary
15 lines that created a new building envelope, and you
16 will see how that permitted the building to move
17 what looks -- appears to be closer to the window,
18 and I could reference. It's on page 37 of the
19 report. I apologize, I don't have the Bates stamp.

20 MR. BRUNSON: I can get that. Are you
21 guys electronic over there now?

22 COMMISSIONER STEFAN: A little. 50/50.
23 37 of the report?

24 MR. JUI: Page 37.

25 MR. BRUNSON: While you're doing that,

1 this might be resolved by looking at the front page
2 where it says, pool deck. You can see there what
3 the Rosenbergs saw upon inspection.

4 CHAIRMAN LAUGER: Yeah, but I'm not -- I
5 understand that it's going back, but that second
6 page looks to me like you're showing it as coming
7 closer to their house.

8 MR. BRUNSON: I don't know if that's an
9 optical illusion, but all I can tell you is that we
10 didn't prepare this. We paid a fairly substantial
11 amount of money to a 3D rendering company to render
12 this based on plans.

13 And I would remind you, Commissioner
14 Lauger, that this case isn't about view diminution,
15 it's about the damages due to lack of disclosure.
16 That's why the Supreme Court remanded the case.

17 CHAIRMAN LAUGER: And my questioning is
18 strictly about -- I don't -- I'm in question and in
19 disagreement as to whether or not this was a leading
20 survey. So that's the reason for that question.

21 MR. BRUNSON: I don't understand leading
22 survey, sir.

23 CHAIRMAN LAUGER: As though you were
24 leading the respondents to the survey.

25 MR. BRUNSON: So these are trial

1 exhibits. The survey, if you look at the survey --

2 CHAIRMAN BRUNSON: And that was why I
3 questioned as to whether or not it was a legal
4 exhibit?

5 MR. BRUNSON: Understood. If you'd like
6 to look at the survey --

7 CHAIRMAN LAUGER: Well, I would. I'd
8 like to go to, I'm going to call it Brun-Jui 51.

9 MR. BRUNSON: I need to find it in my
10 stack.

11 CHAIRMAN LAUGER: That's your stamp,
12 your stamp 51.

13 MR. BRUNSON: You can probably ask your
14 question, and we may be able to answer from memory.

15 CHAIRMAN LAUGER: Okay. So on that
16 survey, the question being asked to them is how long
17 have you been working as a real estate agent --
18 professionally as a real estate agent or broker?

19 MR. BRUNSON: Okay.

20 CHAIRMAN LAUGER: And you've got 124
21 respondents that say that they have ten plus years,
22 you've got 35 that say they're six to ten years.

23 MR. BRUNSON: Okay.

24 CHAIRMAN LAUGER: Okay. And I know
25 you're doing the skipping here where you're kicking

1 people out, and skipping may be the wrong term, but

2 -- so now what I --

3 MR. BRUNSON: It's actually the right
4 term.

5 CHAIRMAN LAUGER: Okay. So when I go to
6 the next page, and we are now getting into you're
7 asking the respondents about the impact on value,
8 you only have 107 answers here.

9 Explain to me what -- on the 51, what of
10 those people were allowed to go through to the next
11 question? Was it anybody with more than five years
12 experience?

13 MR. BRUNSON: It was anybody with more
14 than five years and -- is my recollection, and
15 there's always the possibility that somebody gets
16 through this next question, and they just don't
17 answer it.

18 CHAIRMAN LAUGER: Right. It's taking
19 too long or whatever the --

20 MR. BRUNSON: So -- or they get a phone
21 call and they stop or it times out.

22 CHAIRMAN LAUGER: So you had -- on the
23 first question you had, I guess, at six to ten years
24 is what you were asking for. So anybody with over
25 six years experience, you had over 150 respondents?

1 MR. BRUNSON: Yes.

2 CHAIRMAN LAUGER: Then we get to the
3 next page, you're down to 107. And of those 107,
4 you had 15 that said, no value impact.

5 MR. BRUNSON: On which question?

6 CHAIRMAN LAUGER: On 52, Bates stamp 52.

7 MR. BRUNSON: It's 2452?

8 CHAIRMAN LAUGER: I've got it as 0052.

9 MR. BRUNSON: Okay. So I'm looking at
10 the wrong exhibit.

11 CHAIRMAN LAUGER: 48 of the report. 48
12 of the report.

13 MR. BRUNSON: Here, let me just open it
14 here. I wish mine was Bates stamped. Okay. So
15 this is paginated page 47, Bates stamped 52?

16 CHAIRMAN LAUGER: I've got number 48 and
17 52, but --

18 MR. JUI: 48 is 52.

19 MR. BRUNSON: Okay. So is this the
20 page?

21 MR. JUI: Yes.

22 MR. BRUNSON: Okay. And what was your
23 question, sir?

24 CHAIRMAN LAUGER: So between the prior
25 page at 159 people that qualified, you are now down

1 to 107.

2 MR. BRUNSON: Yes.

3 CHAIRMAN LAUGER: And 15 of those or, as
4 you put it, 14 percent, I mean, is your -- says it
5 does have an impact on value. Okay?

6 MR. BRUNSON: Actually, 85.98 says it
7 does.

8 CHAIRMAN LAUGER: I'm sorry, 14 percent
9 --

10 MR. BRUNSON: 14 percent says it does
11 not.

12 CHAIRMAN LAUGER: -- says it does not.
13 I apologize. You're right.

14 So then I jump to the next page, and
15 you've got, consider the most likely impact on
16 value, and here you get six that say there's no
17 impact which is 7 percent, then you get, I think,
18 that's 16 that say it's beneficial to them, so
19 that's 17 percent, but then you choose to result
20 adverse impact on value, you put 76.9 as
21 supermajority.

22 Now, I get what you're saying
23 technically, but if you look at how many you lost
24 and how many on the page before got kicked out who
25 said, no, there's no impact, it appears to me that

1 you're leading down a road that you want to go.

2 MR. BRUNSON: Well, that's -- that
3 couldn't be further from the truth. The simple
4 response is the fact that there's less people
5 answering those questions, I can't control.

6 When we're reading survey results or
7 questionnaire results at this level, it's simply
8 reporting the facts. We have --

9 CHAIRMAN LAUGER: But what I'm saying is
10 you're say --

11 MR. BRUNSON: -- 76 percent, 70 out of
12 92 people saying adverse --

13 CHAIRMAN LAUGER: I agree on that page.
14 But if we go back to the page before, you had
15 already kicked out 16. And I've -- now I will --
16 I've done the math, it only takes it down to 65
17 percent --

18 MR. BRUNSON: Right.

19 CHAIRMAN LAUGER: -- but I have
20 questioned that you mentioned earlier, which is all
21 the basis of appraisal is the repeatability and
22 credibility.

23 Now, if you're going to say 76 percent
24 here, you just lost 15 on the page before.

25 MR. BRUNSON: I'm sorry, but they're

1 different questions. The first question is saying
2 is it positive, negative or neutral? The second
3 question is saying -- it's asking the same question
4 again to test, and this is a standard practice where
5 you ask the same question a different way.

6 And while the number does go down, we
7 still have the majority of respondents saying that
8 it's adverse. So what this does to us is it answers
9 the first question, are there damages? Because it's
10 possible for a detrimental condition to be neutral,
11 for it to be benign.

12 But when the majority of respondents
13 with the question asked two ways still say it's
14 adverse, it's adverse.

15 CHAIRMAN LAUGER: Okay. So now I go --
16 so here -- my next question to you then is the final
17 part of that sentence you say, the indicated range
18 of diminution was from one to 50 percent. Where do
19 I see that in this result?

20 MR. BRUNSON: You don't see it in this
21 report. You see it in the actual survey that was
22 provided to the commission, and that's available to
23 opposing the parties via discovery.

24 And that brings up an interesting point.
25 This is litigation, and I think this is where I was

1 cautioned last time by the commissioner counsel, I
2 brought up the concept of hearsay.

3 I believe I'm allowed to discuss this,
4 but in Nevada, the hearsay rule says that appraisal
5 reports are hearsay, they're not admissible as
6 evidence.

7 In this case, which has yet to be heard
8 in district court, which has been remanded by the
9 Nevada Supreme Court on the issue of disclosure, no
10 real -- no real evidence has been provided.

11 Mr. Jui is the testifying expert. He
12 hasn't testified. I am a consulting expert on this
13 case. And as I've pointed out to the commission, I
14 didn't even sign the certification of this report,
15 so under uniform standards, I have no responsibility
16 related to the report.

17 CHAIRMAN LAUGER: I would beg to differ
18 on that just based on -- but before I get to that,
19 I'll get to that point, I'd like to know -- I don't
20 know that I've been provided a copy of this survey
21 that shows those one to 50 percent that you're
22 talking about.

23 MR. BRUNSON: Well, we can clarify. I
24 can't remember if it was Mr. Cronin or Mr. Walsh,
25 and it's weird that he's not able to participate,

1 but one of the two commissioners had asked, couldn't
2 we have run some sort of an analysis to figure out
3 which of those responses was most prominent.

4 And it's part of the software. We did.
5 The most prominent was 10 to 15 percent. But the
6 definition of value in the State of Nevada for
7 damages is the highest probable, not the most
8 probable, which is why when you read the
9 reconciliation of Mr. Jui's report, you'll see his
10 logic.

11 We've talked a lot about this. You can
12 express it yourself, if you'd like.

13 MR. JUI: Absolutely. I think the thing
14 to remember, too, is these expert reports are the
15 framework from which you can testify to.

16 And, again, because I have not gotten to
17 that point or the case has not gotten to that point,
18 this the beginning. And so to be here in the middle
19 of something with allegations I think is a little
20 putting the cart before the horse, too.

21 So -- but that's -- I just -- you know,
22 so this is a snapshot of everything that was
23 researched, and, of course, with you not having
24 maybe the full copy of the full survey, but I think
25 that was submitted.

1 MR. BRUNSON: Let me see if I can find
2 it. I know it was submitted.

3 MR. JUI: Because you had our entire
4 work file.

5 CHAIRMAN LAUGER: But you're saying
6 majority of those respondents said 10 to 15 percent?

7 MR. BRUNSON: The highest response was
8 10 to 15 percent. Mr. Jui and I went over his
9 thoughts and reconciliation, and, remember, we're
10 measuring the impact of nondisclosure to the
11 Rosenbergs in the far left condition, if you're
12 looking at Exhibit E.

13 And at that point in time, I was going
14 to bring back the big board and show it to you guys,
15 but the theory is the less information that's known,
16 the greater the damage is. Early on in an
17 assignment that's where you expect the greatest
18 separation from the normal market.

19 Our survey results prove that out in
20 the, what we call the before condition, the left
21 side of Exhibit E, the range was from zero to 50
22 percent. In the right side, the range goes from
23 zero to 20 percent. The differential is 30 percent.

24 And so if we're measuring the left side,
25 that's one of the reasons that Mr. Jui expressed to

1 me that he started at 30 percent.

2 MR. JUI: Not the highest.

3 MR. BRUNSON: Not the highest, but the
4 highest reasonable or the highest --

5 MR. JUI: Possible.

6 MR. BRUNSON: -- probable. And this
7 sort of leads into your question about damages, and
8 I don't know if you want to get into that yet or
9 not, about whether damages can exceed a certain
10 figure.

11 CHAIRMAN LAUGER: I'll withdraw that
12 question. That --

13 MR. BRUNSON: Well, I think it's very
14 relevant.

15 CHAIRMAN LAUGER: Well, I think in the
16 example that you gave, the reason I'm ready to
17 abandon that question is you went to this what I
18 believe is truly a highest and best use, which in
19 litigation always happens.

20 MR. BRUNSON: Well, you asked me to
21 bring additional examples. So the case just before
22 this that Mr. Jui and I worked on was a Nevada case,
23 Ophthalmic Associates v. Triple Net. It's actually
24 right down the street.

25 We lovingly refer to it as the

1 two-and-a-half-million-dollar driveway. This is all
2 on the record. Feel free to look it up. Two very
3 prestigious local MAIs.

4 CHAIRMAN LAUGER: Well, I think that's
5 getting us off course.

6 My point of the question was to ask you
7 if you believe -- and it was getting into a
8 hypothetical, so that's why I abandoned it. But --
9 so -- and we got into the other part, so just it
10 took us sideways, and I don't want to go sideways.

11 MR. BRUNSON: Well, the short answer to
12 your question, though, is that damages by definition
13 exceed cost to cure. If you look up the Nevada
14 statutory for damages in the hearing instructions --

15 CHAIRMAN LAUGER: Yeah, but I --

16 MR. BRUNSON: -- it costs you --

17 CHAIRMAN LAUGER: -- understand -- I
18 understand all that, but when I was trying to keep
19 you on the case, and to say in this instance would
20 you suggest that there could be more than 100
21 percent damages for someone who lost their view off
22 the side of a house --

23 MR. BRUNSON: Again, we're not measuring
24 the loss of view. If this were a view case, it
25 would be easy. It would measure the contributory

1 value of the view, calculate the percentage lost,
2 express that as damages.

3 This a lack of disclosure case, which is
4 why we had to do a survey.

5 CHAIRMAN LAUGER: Okay.

6 MR. BRUNSON: The foundation and value
7 is disclosure, and so the comps --

8 MR. KEEGAN: Chairman, I would object.
9 I just want to state that that misstates testimony
10 from the previous hearing. And, in fact, it
11 misstates the nature of the Real Estate Damages
12 Analysis, which clearly goes into the fishbowl
13 effect, and goes into at length the effect on loss
14 of view and, in fact --

15 CHAIRMAN LAUGER: And I don't -- I
16 didn't want that question. I don't --

17 MR. BRUNSON: May I respond?

18 MR. KEEGAN: In fact, the Supreme Court
19 had to address the fact that the implied restricted
20 easement for view is not recognized in Nevada
21 because, in fact, that's what the basis of the
22 plaintiffs in that case were arguing was part of
23 their damage analysis, not just the failure to
24 disclose. That wouldn't be part of this case as to
25 what --

1 CHAIRMAN LAUGER: And the failure to
2 disclose was the only thing that was allowed to
3 continue, right? Is that correct?

4 MR. KEEGAN: That's what's been
5 remanded, whether or not there is, in fact, any
6 damages associated with the failure to disclose.

7 The component of the loss of view, which
8 is, in fact, the entire presentation of their Real
9 Estate Damages Analysis, what would they have these
10 3D renderings for if there was a pure failure to
11 disclose analysis?

12 CHAIRMAN LAUGER: That's why I don't
13 want to get into this. But here's what I'd like to
14 --

15 MR. BRUNSON: Do we get to respond to
16 the objection?

17 MR. KEEGAN: So I just to --

18 CHAIRMAN LAUGER: If you make it brief.
19 I don't want to get off sideways on another case.

20 MR. BRUNSON: So it doesn't misstate
21 testimony. I don't think it's intentional, but you
22 almost have to intentionally misread the survey to
23 say that view is the primary issue.

24 The issue has been if you learned that
25 the lot adjacent was extended, and you hadn't been

1 told that previously, how would you respond?

2 There were other questions in the
3 survey. One of the questions was, would you still
4 consider purchasing this property, would you look at
5 other properties, would you consider purchasing this
6 property at a discount, right?

7 And the vast majority of people said
8 they would either not consider the property --

9 CHAIRMAN LAUGER: Okay. So let me read
10 the question back to you. I'm on Bates stamp 56.
11 Does the development of parcel 2 with the additional
12 14,000 square feet of land have an impact on the
13 value and/or the marketability of the subject?

14 Where's disclosure there?

15 MR. BRUNSON: Okay. Which page are you
16 on again?

17 CHAIRMAN LAUGER: 52 of your report, 56
18 of the Brun-Jui Bates stamp.

19 MR. BRUNSON: Okay. We're in the second
20 half of the survey.

21 CHAIRMAN LAUGER: Okay. But if that
22 first --

23 MR. BRUNSON: The first half of the
24 survey is measuring disclosure.

25 CHAIRMAN LAUGER: Okay. So here's --

1 MR. BRUNSON: The second half of the
2 survey is measuring whether or not the damages are
3 diminished with increased knowledge.

4 CHAIRMAN LAUGER: Okay. But if I'm a
5 typical person taking the survey, going back to
6 repeatability and credibility, you don't mention any
7 of that on this page.

8 But I'm going to skip that. Let's go to
9 page 57 on the stamp. Now, you guys -- so the --
10 you know, the statement is 51.9 percent of the
11 respondents indicate the value of the subject
12 property decrease, range of diminution was from one
13 to 20 percent.

14 Some respondents referred to the
15 economic principle progression, which states that
16 the association with superior properties is
17 beneficial to inferior properties. While an
18 accurate statement of the concept of progression, it
19 was an assumption by these respondents that the
20 proposed improvements would, in fact, be superior.

21 Then you state, this assumption may or
22 not be true and was not implied by the data
23 provided.

24 It, in fact, was implied by the data
25 provide because you signed off on Mr. -- on the

1 Valbridge report, \$2.5 million, right, the value?
2 That was the basis for your whole analysis, but then
3 when you open up your survey, what was your value
4 that you put on the survey?

5 MR. BRUNSON: It was whatever the mean
6 of properties over a million dollars for the --

7 CHAIRMAN LAUGER: \$5 million.

8 MR. BRUNSON: Okay. But I understand
9 why that would be concerning to you if the survey
10 respondents were aware at all of the \$2.5 million
11 number, they weren't.

12 There was no implication in the survey
13 that there was an existing appraisal of 2.5 million.
14 It was Bob Potts, the -- I can't remember if he was
15 then with the governor's office or still with
16 Sebrew, but he was the one that suggested we use the
17 mean for properties over a million dollars as a
18 neutral number.

19 We had originally written the assignment
20 or the survey to include the \$2.5 million, and he
21 suggested be more neutral by using the mean of a
22 million dollar plus properties for the prior 24
23 months.

24 The survey respondents had no knowledge
25 of that \$2.5 million, so they wouldn't have known

1 whether it was up or down. And the fact that
2 Mr. Jui even brought up this fact demonstrates his
3 attempt to be neutral.

4 CHAIRMAN LAUGER: I don't think it does.

5 MR. BRUNSON: It's not leading in any
6 way, shape, or form. It's simply saying --

7 CHAIRMAN LAUGER: Okay. We can agree to
8 disagree on that. The assumption may or not be true
9 was not implied by the data provided.

10 Okay. So now we talked before about you
11 did not state anything hypothetical or extraordinary
12 assumption about borrowed views being compensable or
13 not.

14 Do you recall that.

15 MR. BRUNSON: I recall telling -- saying
16 over and over again that the views were a component
17 of the damages due to the lack of disclosure.

18 But we have no -- it doesn't matter
19 whether they're guaranteed, the Supreme Court opined
20 they're not, the damages have been issued in
21 multiple cases that we've worked on for obstructions
22 of view.

23 CHAIRMAN LAUGER: But you stated, as I
24 recall, that lawyer told you to go this route, and
25 you felt there was no need to put an extraordinary

1 assumption.

2 MR. BRUNSON: It's because it was an
3 unknown. There's no --

4 CHAIRMAN LAUGER: Why would -- if
5 something's unknown, doesn't that actually call for
6 an extra assumption? Why wouldn't you do dual
7 premise appraisal?

8 MR. BRUNSON: It's not a dual premise.
9 That -- so we're testing whether or not it's there.
10 If we had said there's no guarantee of views, then
11 we're leading them towards --

12 CHAIRMAN LAUGER: Oh, I'm not --

13 MR. BRUNSON: -- you know, damages.

14 CHAIRMAN LAUGER: I'm not saying in the
15 survey. I'm saying in the appraisal.

16 MR. BRUNSON: I guess I don't understand
17 your question.

18 CHAIRMAN LAUGER: Why would you create
19 this appraisal and not put an extraordinary
20 assumption that views are protected? That's why I'm
21 suggesting a dual premise. You come up with a value
22 that says they are protected, they are not
23 protected.

24 MR. BRUNSON: That's a legal opinion,
25 and so whether or not the views are protected -- if

1 I go back to our notes with the client, which we
2 provided to you, as appraisers, we're not to
3 determine whether or not views are or are not
4 protected. That their job to argue that and a
5 judge's job to determine.

6 CHAIRMAN LAUGER: I would still tell you
7 that you're -- I -- would you not put an
8 extraordinary assumption in? That does not change
9 your --

10 MR. BRUNSON: And respectfully, I would
11 disagree with you. That's not an assumption, that's
12 a legal component of the argument that the attorneys
13 are going to argue.

14 CHAIRMAN LAUGER: Okay. So like I've
15 done appraisals where there's a question as to legal
16 access. I wouldn't just perform the appraisal and
17 say, well, I assumed it was.

18 I certainly would label it either way,
19 but I would do a dual premise and say my value based
20 on legal access, believing it is, because I can't
21 prove that it is.

22 I just -- I think that you've really
23 given up -- what you're saying is you gave up your
24 scope of work to whatever the lawyer told you to do.
25 That's what I read out of this.

1 MR. BRUNSON: No, I'm sorry, that's a
2 gross mischaracterization.

3 CHAIRMAN LAUGER: Then why wouldn't you
4 state it?

5 MR. BRUNSON: Why would we need to? In
6 the questionnaire the point is to determine --

7 CHAIRMAN LAUGER: I'm not asking you
8 about the survey. I'm saying in the appraisal
9 itself.

10 MR. BRUNSON: The point of the
11 appraisal, though, is to determine and define that
12 first are there damages, and second, if so, can they
13 be quantified? When -- when we do --

14 CHAIRMAN LAUGER: If the State --

15 MR. BRUNSON: When we determine that
16 there are damages --

17 CHAIRMAN LAUGER: If the State Supreme
18 Court has told you there is no protective view,
19 there's no view shed, whatever you want to call it,
20 wouldn't that strike you as maybe I should put an
21 extraordinary assumption there?

22 MR. BRUNSON: Well, so, first of all,
23 the Supreme Court didn't opine to that until several
24 years after the issuance of our report.

25 Second of all, if and when Mr. Jui is

1 called to testify on this, of course that aspect
2 won't be testified to. It won't even be allowed.
3 Now --

4 CHAIRMAN LAUGER: But you don't think
5 that --

6 MR. BRUNSON: -- hindsight being 20/20,
7 maybe I can see where you're going that we might
8 have said, hey, we're going to assume that it may or
9 may not, but we were instructed by our clients that
10 this is a legal issue that will be determined by the
11 courts, and that you are not to express those
12 opinions, and we get those -- those instructions all
13 the time from clients, and unless it's material --

14 CHAIRMAN LAUGER: Yeah, but so do I. So
15 I'll give you a prime example doing appraisal of a
16 roadway, a condemnation. Thirty-three feet from the
17 center was given by BLM. The next 17 feet, because
18 the City of Las Vegas wants 50 feet, you do the
19 appraisal, and you say it's an extraordinary
20 assumption that the 33 feet is granted and is giving
21 it contributory hundred dollar value.

22 Jump forward I don't know how many years
23 later, the State Supreme Court says, in fact, they
24 fought it, but I absolutely disclosed no, it's
25 already been granted, you're giving a contributory

1 value of a hundred dollars.

2 But to not state that, to me, is
3 disingenuous, it's leading, misleading, whatever you
4 want to call it.

5 MR. BRUNSON: Well, one, I would say
6 this isn't eminent domain. This is a case where --

7 CHAIRMAN LAUGER: I don't think the -- I
8 think you're trying to hide an awful lot of what I
9 think is leading appraisal behind your damages. And
10 whether we go into condemnation or just straight
11 civil litigation, that's not acceptable.

12 MR. BRUNSON: Well, all due respect,
13 sir, if you read the report, I think we went to
14 extraordinary measures. My role was developing the
15 survey. Mr. Jui's role was writing the report and
16 expressing his opinions on damages.

17 I consulted with him, and our role
18 throughout the whole thing, we made as sure as we
19 possibly could to be as neutral as possible.

20 If the damages -- if the survey had come
21 back indicating no damages, the client would have
22 spent a ton of money, and we would have said, hey,
23 there's damages. But they didn't.

24 The survey results came back indicating
25 that it was detrimental and expressing an opinion on

1 the quantifiable damages. And even though the legal
2 definition of market value says the highest, we
3 didn't -- he didn't go with the highest.

4 So I respect your opinion that perhaps
5 we should have expressed an extraordinary assumption
6 regarding whether or not views can be compensable
7 damages. We were told by counsel that that was a
8 legal decision, and we're not in the habit of
9 expressing opinions in our expert reports where the
10 counsel has told us it's a legal description that we
11 shouldn't touch.

12 Could we have put an extraordinary
13 assumption in there that they wouldn't have objected
14 to? Maybe. But I don't believe that the lack of
15 the extraordinary assumption --

16 CHAIRMAN LAUGER: I was trying to find
17 something else.

18 MR. BRUNSON: -- is significant.

19 CHAIRMAN LAUGER: All right. Any
20 questions from other commissioners before we finish
21 up?

22 COMMISSIONER STEFAN: I've just a
23 couple. Would you suggest that in your 750 there
24 were million dollars of damages that there are
25 damages portrayed in there to the real estate,

1 instead of all of this disclosure money, or is it
2 all disclosure?

3 MR. BRUNSON: I think the primary issue,
4 I don't know that we can -- that you can discern how
5 much of it is disclosure and how much of it is the
6 real estate itself. That would be for a court to
7 decide.

8 COMMISSIONER STEFAN: Because we talk a
9 lot about the value before, the value after, and the
10 value -- market value. I mean, a lot of that tends
11 to indicate to me that you're valuing the damages of
12 the real estate.

13 And if, in fact, now because the view is
14 not protected and technically there may not be any
15 damages to the real estate because of the view, is
16 it the job of a real estate appraiser to value lack
17 of disclosure?

18 MR. BRUNSON: The short answer would be
19 yes. The premise of value is disclosure. And when
20 somebody doesn't disclose, who are they going to
21 call other than an appraiser to figure out whether
22 or not that had an impact on the buyer's decision to
23 buy and what they would pay?

24 We're not a caveat emptor society
25 anymore. There are specific laws that protect

1 buyers from sellers and sellers from buyers that
2 require full disclosure.

3 COMMISSIONER STEFAN: And -- okay.
4 Thank you for answering that.

5 And to find out if that disclosure would
6 hurt the value of property, you would do a before
7 and an after valuation.

8 MR. BRUNSON: You would try to find
9 transactional data where somebody was not informed
10 of some relevant fact. We did an extensive search.
11 None of the supposed comps provided by State's
12 expert involved nondisclosure. They're all a fully
13 informed buyer and a fully informed seller. They're
14 not comps in this regard.

15 That's why we had to do a survey or a
16 questionnaire to determine whether or not
17 professionals believed that it would have an adverse
18 impact.

19 Asked multiple ways, the majority said
20 yes, it had an adverse impact. Asked to quantify
21 that in the condition where the Rosenbergs were
22 buying the property, they said zero to 50. In the
23 condition where there was more information
24 available, they said zero to 20.

25 Mr. Jui expressed to me and has affirmed

1 to you that that 30 percent differential was the
2 beginning of the basis of his damages. Mr. Lauger
3 asked earlier -- Commissioner Lauger asked earlier
4 about damages exceeding costs or costs to cure, and
5 in this case, it's an externality.

6 So, theoretically, you can't cure
7 externality. It belongs to someone else. But the
8 next case we're going to talk about, this is the
9 exception of the rule because there is a way to cure
10 it.

11 You buy the land, and if you buy the
12 land, you can put your own deed restriction on it,
13 and then you get what you thought you were getting
14 in the first place. To buy the land is over
15 Mr. Jui's estimate of damages. It's between 950 and
16 1.2, as I recall, retrospectively.

17 So not only did we fairly, neutrally,
18 without advocacy, measure whether there were damages
19 and then ask the respondents to define what they
20 thought those damages were, and then we followed the
21 definition of market value for damages, which is the
22 highest reasonably probable price, not the most
23 probable price, we still didn't go up 50.

24 He still chose a number that's below
25 what it would cost to actually cure it. To buy the

1 land and install a deed restriction yourself would
2 be 900 to 1.2.

3 COMMISSIONER STEFAN: Well, you could --
4 I guess you could argue that you could buy that
5 easement up in front and cure it.

6 MR. BRUNSON: You can't buy the
7 easement, you buy the property or you buy none of
8 it.

9 COMMISSIONER STEFAN: Yeah, I know, but
10 that cost to cure buys whole frontage of the golf
11 course and everything else, so, I mean, you're kind
12 of buying more than the cost of cure.

13 MR. BRUNSON: Well --

14 COMMISSIONER STEFAN: And you could also
15 technically resell that after the thing. I mean,
16 there's a lot of different ways to look at that.

17 MR. BRUNSON: There would definitely be
18 mitigating circumstances there. But the outlay
19 initially would be if they want to get what they
20 thought they would get --

21 COMMISSIONER STEFAN: Let's get off that
22 and move on.

23 MR. BRUNSON: -- then they'd have to buy
24 the land.

25 COMMISSIONER STEFAN: What if I had a

1 really unique home on a property where I could not
2 find any sales? Would you feel comfortable doing
3 your type of survey sending the set of plans and a
4 set of -- a list of everything that was going in it
5 to a hundred different brokers and getting their
6 opinions, and then somewhat averaging that out, and
7 using that as a value conclusion?

8 MR. BRUNSON: Well, one, that's an
9 interesting hypothetical. I can't imagine finding a
10 property where there's zero comps, unless you're
11 talking like a Palacio quality residence, something
12 like that, where there really is no market. And so
13 my example for you there would be business
14 valuation, if you're doing a partial interest.

15 COMMISSIONER STEFAN: I guess my point
16 is that in a sense isn't this survey basically a
17 tabulation of a bunch of opinions of people that for
18 one, never even saw the property?

19 MR. BRUNSON: Well --

20 COMMISSIONER STEFAN: You don't even
21 know who filled out the survey. You don't know --
22 you didn't go back and question any of the final --
23 I don't know, I can't even remember the few numbers
24 that -- I know you went -- you started at a
25 gazillion, but you ended up at 40 or 50.

1 MR. BRUNSON: I think you're
2 mischaracterizing how we did the survey.

3 COMMISSIONER STEFAN: I don't mean to.
4 I mean, you went to great extents. But, I mean, to
5 me, you went to a bunch of great extents to get to
6 that bottom few, and then, to me, it seemed like it
7 would have really -- the final step would have been
8 to really interview those people and really dive
9 into the expertise that they were offering to you.

10 MR. BRUNSON: Well, so it's interesting
11 you say that because the final step hasn't happened
12 in this case.

13 COMMISSIONER STEFAN: Well, the final
14 step of your survey.

15 MR. BRUNSON: This is a litigation case,
16 and so --

17 COMMISSIONER STEFAN: And secondly, you
18 thought the final case was going to be way over by
19 now --

20 MR. BRUNSON: No.

21 COMMISSIONER STEFAN: -- in this
22 assignment.

23 MR. BRUNSON: I disagree. We have --

24 COMMISSIONER STEFAN: Well, you had no

25 --

1 MR. BRUNSON: I have a case right now
2 that's five years old that's on --

3 COMMISSIONER STEFAN: I know, but you
4 had no idea this was going to go -- I mean, you
5 start out assuming that you're going to court. And
6 you should be ready to go to court and have an
7 outcome at that point.

8 MR. BRUNSON: And when the court date is
9 set, we're typically given 90 days notice and given
10 marching orders on what next steps to take to prep.

11 This is an example of work done after a
12 the report -- Exhibit E is an example of work done
13 after the report was submitted.

14 In litigation the report isn't the end
15 all, be all. It's the boundaries of what we're
16 allowed to testify about.

17 So because lack of disclosure exists in
18 the expert report, because the view corridors exist
19 in the expert report, Mr. Jui is allowed to testify
20 on those facts, and it's his testimony that becomes
21 evidence.

22 Clients in cases like this very
23 typically say, define your boundaries, give us a
24 meaningful qualification and quantification of
25 damages, and then if and when we don't settle, and

1 we get close to court, you'll have 90 days, and
2 we'll give you -- we'll tell you what to do next.

3 And so the interviews, and the things
4 like that, they're on our to-do list. But until the
5 client says resume work, we don't do that work.

6 COMMISSIONER STEFAN: Would you have in
7 hindsight rather met with 10 or 12 knowledgeable
8 developers and brokers that have specific knowledge
9 of that development and had a meeting with each one
10 of them and had their direct input?

11 MR. BRUNSON: So the short answer is no.
12 And would you like to know why?

13 COMMISSIONER STEFAN: If have you a
14 short answer.

15 MR. BRUNSON: Well, so we had just come
16 off a case where five brokers were interviewed by
17 the local MAIs, and let's just say the judge didn't
18 view that kindly, he thought that it was inadequate
19 for a damages survey, which is why we spoke to Orell
20 Anderson, and he pointed us to the page and the
21 chapter.

22 CHAIRMAN LAUGER: So you're suggesting
23 that not talking to someone and throwing it out on
24 the Internet, in your opinion, is better than
25 talking to live people?

1 MR. BRUNSON: We didn't throw it out on
2 the Internet. We threw it out to professional real
3 estate agents.

4 CHAIRMAN LAUGER: But you still -- you
5 have to admit that you've never been able to tell me
6 that you've talked to verify that these people who
7 said, I have six to ten years or ten or more, you've
8 never spoke to anyone to verify one of those.

9 THE WITNESS: Not yet we have not.

10 CHAIRMAN LAUGER: Okay.

11 MR. JUI: But we know who they are.

12 COMMISSIONER STEFAN: I guess my final
13 question, and I'll let in someone else, you testify
14 that he wrote the report. Did you review the draft
15 and make corrections and go back and forth in that
16 aspect?

17 MR. BRUNSON: No, that wasn't my role.

18 COMMISSIONER STEFAN: You never read the
19 draft at all?

20 MR. BRUNSON: Of course I read the
21 draft.

22 COMMISSIONER STEFAN: Okay.

23 MR. BRUNSON: But my role in this was as
24 a consulting expert. I don't know if you understand
25 the distinction, but --

1 CHAIRMAN LAUGER: Well, before you go
2 off on that, let me read you what the certification
3 says.

4 Michael L. Brunson, Nevada certified
5 residential appraiser, provided significant
6 professional appraisal assistance at the inspection
7 of such a property and the development of the
8 realtor survey research of case studies and review
9 of this report.

10 Is that a misstatement?

11 MR. BRUNSON: If -- it's not a
12 misstatement, but the review is just I'm looking at
13 the report for editing and typos and stuff like
14 that. It's not my job to correct his opinions.
15 It's not my job to correct his opinions.

16 He's the testifying expert. He's got to
17 be the one that they're his opinions so that he can
18 get up and defend them.

19 CHAIRMAN LAUGER: Any questions from
20 you?

21 COMMISSIONER HUBER: I had a list here
22 that so far all but one have been answered. I was
23 looking through earlier Mr. Potts' document, and I
24 was curious if -- it states that, of course, he
25 certifies that the survey was done appropriately,

1 early, unbiassed, and so forth.

2 Did Mr. Potts concur with your 50
3 percent choice?

4 MR. BRUNSON: So I can't answer that.
5 He -- he didn't say that in his declaration. He
6 simply concurred that the results were meaningful
7 and supported by the survey.

8 COMMISSIONER HUBER: Did you have -- do
9 you recall having any conversations with him outside
10 of this document that he provided about your -- what
11 you used as the results and how you used it?

12 MR. BRUNSON: So the short answer would
13 be no. Mr. Potts is an economist, his speciality is
14 developing surveys like this and analyzing data.
15 The only conversation that I recall with him was
16 regarding the distinction between market value in a
17 lending scenario, which is probable, and market
18 value in damages scenario, which is highest
19 probable.

20 And he never looked at me and said,
21 you're spot on. He looked at me and said, your
22 survey is neutral, your survey demonstrates damages
23 in the before and the after condition, and your
24 range from zero to 50, whatever you pick in there,
25 is supportable.

1 COMMISSIONER HUBER: I'm just looking
2 through my questions from previously. Yeah, they've
3 all been covered. That's the only one I had left.

4 CHAIRMAN LAUGER: Mr. Cronin.

5 MR. BRUNSON: The second answer to this
6 question, though, is that my conversations with Bob
7 were independent of whatever Craig's conclusions
8 were, and I really made an attempt not to lead Craig
9 towards my opinions. Once he expressed his
10 opinions, I asked him a couple of questions, well,
11 how are you going to support that, right?

12 Part of my role as a consulting expert
13 would probably be to make sure he's prepared at
14 trial. But Bob Potts and Craig never had specific
15 conversations.

16 COMMISSIONER HUBER: I came up with one
17 more question. In your report or your work file, is
18 there anywhere where it actually defines real estate
19 damages?

20 MR. BRUNSON: I believe we refer to the
21 definition in the appraisal report itself or it's
22 referred by reference in the book Real Estate
23 Damages. I'm looking at the definition section
24 right now.

25 MR. KEEGAN: I would just like to have

1 an opportunity to present to the commissioners on
2 Bates stamp 41 of our document the detrimental
3 condition analysis. It goes through very clearly
4 and identifies that the detrimental condition being
5 evaluated for purposes of the real estate damages is
6 a view corridor loss. On page 41 of our document,
7 it says --

8 MR. BRUNSON: Is that Bates stamped?

9 MR. KEEGAN: Yea, Bates stamp 41.

10 MR. BRUNSON: Could you give the
11 paginated number, please?

12 MR. KEEGAN: 41.

13 MR. BRUNSON: 41, thank you.

14 MR. KEEGAN: It's your appraisal report
15 real estate damage analysis, file number 1410.1884.

16 MR. JUI: You have the paginated page
17 somewhere.

18 MR. KEEGAN: I guess it's 25. You were
19 provided with the Bates stamps.

20 MR. BRUNSON: I just don't have that one
21 open, so I'm just asking for courtesy that you
22 provide that. Page 25?

23 MR. KEEGAN: Page 25 of your report,
24 it's Bates stamp 41 of the notice of documents.

25 MR. BRUNSON: Thank you.

1 MR. KEEGAN: And the detrimental
2 condition analysis, in my mind, clearly performed
3 was of the external conditions as it states the
4 airport noise, transmission lines, view and privacy
5 issues, and then it says, the detrimental condition
6 as it relates to such a property is more
7 specifically that of view diminution and/or privacy
8 issues.

9 MR. BRUNSON: So that's the class --

10 MR. KEEGAN: So I just want to make sure
11 that that doesn't escape the attention of the
12 commission. I brought that to the commission's
13 attention during our presentation.

14 I acknowledge readily that their
15 disclosure references throughout their both reports,
16 the restricted appraisal report by Mr. Brunson, but
17 the focus of the entire appraisal report, which
18 they're both testifying to having been performed was
19 the loss of view. That's what was apparently the
20 source of damages related to the failure of
21 disclosure.

22 You can't have one without the other. I
23 mean, let's not let that get lost. I just want to
24 make sure that that doesn't get lost.

25 MR. BRUNSON: So in response to that,

1 I'd like to take you to the very first page of the
2 report, and I'd ask you not to pick and choose
3 individual lines throughout the report. Let's
4 consider it in its entirety.

5 The second paragraph on paginated page
6 1, Bates stamped 0005, says -- and this is Mr. Jui's
7 language -- my analysis focuses on the lack of
8 disclosure regarding imminent and known changes to
9 the adjacent lot that impacted the subject views and
10 privacy as of the retrospective effective date.

11 It doesn't even mention the view
12 corridor specifically except as an ancillary
13 component of the damages. Again, it says my
14 analysis focuses on the lack of disclosure.

15 MR. KEEGAN: Disclosure of what?

16 MR. BRUNSON: The lack of disclosure
17 regarding imminent and known changes to the adjacent
18 lot that impacted the subject views and privacy.

19 Again, view is a component of the
20 damages, but the primary issue was and always has
21 been lack of disclosure as affirmed by the Supreme
22 Court when they remanded the case.

23 COMMISSIONER STEFAN: Okay.

24 CHAIRMAN LAUGER: Commissioners, any
25 other questions?

1 COMMISSIONER STEFAN: Two.

2 CHAIRMAN LAUGER: Go ahead.

3 COMMISSIONER STEFAN: Because of them
4 remanding it and taking out the view corridors, are
5 you going to just have the exact same stated damage
6 when you go back?

7 MR. BRUNSON: Again, this is the cart
8 before the horse issue. We're limited -- Mr. Jui is
9 limited in what he is allowed to testify to by the
10 four corners of the report.

11 So a judge will determine or a jury will
12 determine whether or not the view issue is allowable
13 and to what degree it is allowable. But I think the
14 fact that we clearly tie view as a component to the
15 lack of disclosure issue is clear at the beginning
16 of the report, middle of the report, the end of the
17 report -- again, if you go to a -- Mr. Jui's
18 reconciliation, he again references the lack of
19 disclosure.

20 The fact that the classification of an
21 externality deals with views is what Mr. Keegan was
22 focusing on, and that's not fair to focus on one
23 sentence in the middle of the broader report.

24 COMMISSIONER STEFAN: I know it was
25 tough, I was hoping for a yes or no answer. Would

1 you show up for just lack of disclosure with the
2 same damages?

3 MR. BRUNSON: That's a decision for the
4 courts and for our client to make --

5 COMMISSIONER STEFAN: Would you feel
6 comfortable --

7 MR. BRUNSON: -- as we move forward.

8 COMMISSIONER STEFAN: Would you feel
9 comfortable showing up for just a disclosure
10 argument with the same damages as you report in this
11 analysis?

12 MR. BRUNSON: The short answer would be
13 we have to be.

14 COMMISSIONER STEFAN: Okay.

15 MR. BRUNSON: And I don't get to show
16 up.

17 COMMISSIONER STEFAN: Would you -- I
18 don't know, this is the appraisal that we're going
19 to going to get to, 594, 598 Lairmont place, and
20 it's Bates stamped 2129.

21 MR. BRUNSON: Um-h'm.

22 COMMISSIONER STEFAN: And you talk about
23 the golf course lots with and without the deed
24 restriction. Is the deed restriction the one that
25 holds the property line -- holds the property line

1 back?

2 MR. BRUNSON: Yes.

3 COMMISSIONER STEFAN: Okay. So the
4 value with that deed restriction is 926, and value
5 of parcel one that's not on golf course is 746,
6 which is \$180,000 difference. Does that tell me
7 that the view component there is worth \$180,000?

8 MR. BRUNSON: That's one indication.
9 You can never involve --

10 COMMISSIONER STEFAN: They're side by
11 side, they're adjacent --

12 MR. BRUNSON: -- contributory value of a
13 golf course.

14 COMMISSIONER STEFAN: -- to --

15 MR. BRUNSON: 180,000.

16 COMMISSIONER STEFAN: They're adjacent
17 to each other, so one has -- so the entire view
18 component in this report is only worth \$180,000;
19 yet, in the other report, a sliver of the view
20 component and the lack of disclosure is worth a
21 million dollars.

22 I mean, do you see where -- do you see
23 where some --

24 MR. BRUNSON: Again, I think we answered
25 this --

1 COMMISSIONER STEFAN: -- people kind of
2 just sit back and go, what?

3 MR. BRUNSON: I think we answered this
4 multiple times. If this was simply view diminution,
5 percentage of the 180,000 would be very reasonable,
6 but it's not. It's lack of disclosure, and so --

7 COMMISSIONER STEFAN: Which is a
8 punitive damage to the real estate company --

9 MR. BRUNSON: Well, as Mr. Anderson --

10 COMMISSIONER STEFAN: -- which is not a
11 real estate problem or an appraisal problem.

12 MR. BRUNSON: As Mr. Anderson testified
13 to lacking a survey of qualified respondents to
14 qualify and quantify damages due to lack of
15 disclosure, it would just be one man's opinion, and
16 appraisers aren't allowed to do that.

17 Now, that said, neither Mr. Jui nor I,
18 when we serve as experts, are invested in whether or
19 not our clients win or lose. We're just invested in
20 is our methodology recognized, was it conducted
21 properly, is it in compliance with generally
22 accepted appraisal methodologies and standards?

23 COMMISSIONER STEFAN: I guess that's
24 where I'm struggling, the last part of that. I
25 guess I'm done.

1 CHAIRMAN LAUGER: Commissioner Cronin.

2 COMMISSIONER CRONIN: You had stated --

3 just read an excerpt that said that you were
4 evaluating imminent and known changes, but it -- can
5 you tell me what those changes -- what your findings
6 were? Did it have something to do with view?

7 MR. BRUNSON: If you read the timeline
8 in the report, it goes over the -- let me get to the
9 timeline.

10 COMMISSIONER CRONIN: I guess what I'm
11 asking is was view a component of that?

12 MR. BRUNSON: It's never been view.
13 It's always been disclosure of the extension --

14 COMMISSIONER CRONIN: But in your survey
15 it's -- premises has a lot to do with views,
16 correct?

17 THE WITNESS: Well, it's a component,
18 but it's always --

19 COMMISSIONER CRONIN: Well, that's why I
20 just asked you did it have to do with views?

21 MR. BRUNSON: It's a component. You
22 can't -- you can't separate it. The lack of
23 disclosure, which is the basis of the analysis,
24 includes a partial diminution of view.

25 And when we say imminent and known, the

1 selling agent to the adjacent parcel, who negotiated
2 with the Malicks, the owners of the adjacent land
3 for the purchase of the additional lot and went to
4 the City of Henderson and got it approved and
5 appeared and testified at Henderson commission
6 meetings to get it approved, they were aware that it
7 had already been approved and that it was going to
8 be extended.

9 That same party represented the
10 Rosenbergs and never told them that this lot was
11 extending.

12 As a matter of fact, in the contract
13 they give them a visual depiction of the buildable
14 envelope that is the original buildable envelope.
15 That's the issue in this case.

16 Now, you can call it punitive. That's
17 for a court to decide. It doesn't really matter to
18 me whether they say zero or they say a million, but
19 our data says that it starts at 30 percent based on
20 the differential between known information and
21 unknown information and reasonably goes up to 40.
22 But Mr. Jui didn't think 50, and I agreed with him
23 that 50 was too much.

24 COMMISSIONER CRONIN: So if I understand
25 this correctly, you haven't called any of the people

1 surveyed to backtrack to find out, none; is that
2 correct? Once you did it, you put it on your desk,
3 you submitted it -- you utilized it with your
4 client, but never called one person to find out.

5 MR. BRUNSON: Well, first of all --

6 COMMISSIONER CRONIN: Yes? No?

7 MR. BRUNSON: No, but your
8 characterization of that is unusual.

9 COMMISSIONER CRONIN: It's pretty
10 simple. You just pick up the phone, call five
11 people, ten people, and ask them, you know, hey --

12 MR. BRUNSON: Well, all due respect,
13 what's really simple is disclosing the truth, and
14 then we'd avoid this whole thing, right? So I mean,
15 if the client gives us the opportunity --

16 CHAIRMAN LAUGER: We're not here about
17 that part of it. He's just asking you a pretty
18 specific question. We don't need you to --

19 COMMISSIONER CRONIN: Yeah, I --

20 MR. BRUNSON: We didn't make phone calls
21 --

22 COMMISSIONER CRONIN: Not one?

23 MR. BRUNSON: -- yet. We're not done.

24 COMMISSIONER CRONIN: So when you
25 completed your analysis, you didn't feel like you

1 needed to cross check yourself to see if there was a
2 margin of error, like maybe let's just say call the
3 top five agents in your market area if they filled
4 out the survey and what they thought --

5 MR. BRUNSON: So there were --

6 COMMISSIONER CRONIN: -- or --

7 MR. BRUNSON: -- there were casual
8 conversations with several agents and brokers, but
9 they were casual and --

10 COMMISSIONER CRONIN: Okay. But you
11 just said no to my question, and now you're saying
12 there's casual conversation.

13 MR. BRUNSON: We didn't call the survey
14 respondents.

15 COMMISSIONER CRONIN: Okay.

16 MR. BRUNSON: And your question was did
17 we call the survey respondents? No, we did not.

18 COMMISSIONER CRONIN: Okay.

19 MR. BRUNSON: We have to be careful
20 about who we talk to with these things, so we can't
21 just willy nilly go out and just pick up the phone,
22 call, and say, hey --

23 COMMISSIONER CRONIN: Sure.

24 MR. BRUNSON: -- this particular lot,
25 what do you know, what do you think?

1 COMMISSIONER CRONIN: That's why --
2 okay. Then randomly select -- you know, throw the
3 names in the hat of who responded and pull out ten
4 and find out -- but that was not done; is that
5 correct?

6 MR. BRUNSON: As Exhibit E, it's on our
7 to-do list if and when the case continues.

8 COMMISSIONER CRONIN: So I have another
9 question regarding your -- how you -- how did you
10 select? Is it all across northern Nevada? I think
11 you testified to that or you stated that your --

12 MR. BRUNSON: We purchased the database.

13 COMMISSIONER CRONIN: You purchased the
14 database of everyone belonging to an MLS in Nevada
15 or just your MLS market area?

16 MR. BRUNSON: Nevada realtors.

17 COMMISSIONER CRONIN: Okay.

18 COMMISSIONER STEFAN: Northern and
19 southern? I'm sorry.

20 MR. BRUNSON: Nevada realtors period.
21 We're looking for people --

22 COMMISSIONER CRONIN: Did that include
23 every agent in Nevada or --

24 MR. BRUNSON: We purchased the database,
25 and it was represented to us, I remember it was

1 7,000, I think was the number, that it contained
2 7,000 e-mails that went out to all 7,000
3 individuals.

4 The response rate is low, but for this
5 type of a survey and for the timeframe that you
6 have, 30 to 90 days, it's adequate.

7 COMMISSIONER CRONIN: So how do you know
8 that these agents are even familiar in this type of
9 property or --

10 MR. BRUNSON: The very first question
11 asked them if they've ever represented high-end golf
12 course properties.

13 COMMISSIONER CRONIN: Okay. But you
14 have no checks and balances with that. You have no
15 selection in your process. I guess where I'm going
16 here is if I were sitting in your shoes, and that's
17 what I was going to utilize, it's pretty readily
18 available to you to utilize the MLS and do a search
19 of -- through MLS of golf course developments,
20 street addresses or whatever, and then to search
21 let's go back 12 months and let's find out the
22 agents that sold these properties on a golf course
23 who are familiar with the property. So you have
24 some type of expertise that you're flowing into your
25 survey that would actually maybe take the time to

1 answer it more. I guess --

2 MR. BRUNSON: The only broker --

3 COMMISSIONER CRONIN: -- in my opinion

4 --

5 MR. BRUNSON: The only broker that I had
6 a conversation with --

7 COMMISSIONER CRONIN: -- that would
8 render a credibility to what you were trying to
9 accomplish, but instead I'm supposed -- you sent
10 these surveys to let's say agents in market areas
11 that -- you sent it to agents in Winnemucca, Nevada
12 or Ely or Pahrump or maybe market areas that they
13 might not be totally -- and then my next question is
14 you offered an incentive to finish it, right? So
15 maybe they want to --

16 MR. BRUNSON: It's interesting you
17 brought that out.

18 COMMISSIONER CRONIN: -- get the
19 incentive at the end, so regardless, they're just
20 going to finish it to get the incentive that you
21 offered, right? Is that --

22 MR. BRUNSON: Incentives for surveys are
23 so commonplace. If you do it for an academic survey
24 -- I'm in my Ph.D right now. It's very common to
25 offer some sort of an incentive, and you never

1 assume the worst of survey respondents. You assume
2 that they're taking the survey because they want to
3 impart their professional expertise, not because --

4 COMMISSIONER CRONIN: Okay.

5 MR. BRUNSON: -- they're after a \$50
6 gift certificate.

7 COMMISSIONER CRONIN: But for me to
8 understand this correctly, you're rolling a million
9 -- a million dollars is a lot of money in my book
10 here. But there's no even calling back to make sure
11 that your findings are accurate or checks or
12 balances here to --

13 MR. BRUNSON: Sir, Commissioner Cronin,
14 the fact that the survey asks the same question
15 multiple times and gets similar results is not just
16 in would it be good or bad, it's in the percentages
17 and the dollar amounts as well, and those concur.

18 And the next step, if the case goes
19 forward, might be specific interviews, and I believe
20 that the client has a broker willing to testify
21 about the detrimental impacts of nondisclosure.

22 But that's outside my wheelhouse. My
23 wheelhouse is to perform a survey to come up with
24 data in a situation where transactional data doesn't
25 exist.

1 Now, you say it would be easy to pick up
2 the phone calls. I'm telling you the opposing
3 MAIs --

4 COMMISSIONER CRONIN: Mr. Brunson, I did
5 it every day. I did it yesterday, I did an
6 appraisal yesterday --

7 MR. BRUNSON: I hear you. We do that,
8 too.

9 COMMISSIONER CRONIN: -- and I picked up
10 the phone and I called -- I had ten comparable
11 sales, and I called ten brokers yesterday to discuss
12 each property that I was working on to get the
13 differences --

14 MR. BRUNSON: Understood.

15 COMMISSIONER CRONIN: -- so I would
16 select the best comps --

17 MR. BRUNSON: Understood.

18 COMMISSIONER CRONIN: -- and make proper
19 adjustments for my client. So, yes, I think it is
20 --

21 MR. BRUNSON: But here's the difference.

22 COMMISSIONER CRONIN: -- easy. It's
23 easy for me.

24 MR. BRUNSON: What I was going to say is
25 in the case we had just finished, the prominent MAIs

1 were chastised for doing exactly what you did, what
2 you suggest. They were chastised for picking up the
3 phone and calling the people they thought might
4 support their opinion.

5 The judge didn't take kindly to that.
6 He suggested that there were better ways to find
7 this information.

8 So we're coming off of that, and we
9 performed a survey that experts in survey techniques
10 say measures what we wanted to measure in a neutral
11 unbiassed manner and results in credible
12 quantifiable and qualitative data.

13 Will we at some point pick up the phone
14 and interview --

15 COMMISSIONER CRONIN: Okay.

16 MR. BRUNSON: -- those individuals?
17 Probably if the case pursues. But at that point in
18 time, it wasn't necessary.

19 COMMISSIONER CRONIN: But you couldn't
20 come up with like utilizing the MLSS to determine
21 agents that may have a greater knowledge to give you
22 more credible results? You couldn't have done that?
23 You couldn't have gone through MLS and done it, and
24 then put that in your criteria to your client that
25 you selectively utilized this to obtain more

1 credible results?

2 I would just find that that would result
3 in more -- I'm not an expert in developing surveys,
4 but by removing real estate professionals that
5 aren't privy to selling those properties, I would
6 feel that it would result in more accurate data for
7 your service.

8 MR. BRUNSON: And I mean no disrespect,
9 but your flawed assumption is that people from the
10 central part of the state in Winnemucca who have
11 never been on a golf course or represented a golf
12 course sale were accepted.

13 We used skip logic, and in the early
14 part of the survey it asks how long have you been
15 realtor? Next question was have ever represented
16 either a buyer or a seller in this sale of a golf
17 course property in excess of a million dollars? The
18 very next -- if they said no, they were excluded.
19 The very next question said how many of these -- and
20 you've got copies of the full survey. I would
21 assume that you would look at that, but it excludes
22 people as we go.

23 From the beginning we start broad,
24 7,000.

25 COMMISSIONER CRONIN: But my question is

1 why didn't you exclude --

2 MR. BRUNSON: No experience, thank you
3 for your time. Less experience, thank you for your
4 time. Never sold a golf course property, thank you
5 for time.

6 That's why we end up with 160 instead of
7 7,000 because we are ending up with people who do
8 have experience selling golf course properties in
9 excess of \$1 million.

10 CHAIRMAN LAUGER: Let's be clear --

11 COMMISSIONER CRONIN: You're assuming
12 that.

13 CHAIRMAN LAUGER: -- you're assuming
14 that because you never called anybody to verify
15 that.

16 MR. BRUNSON: They said, yes, that they
17 have that experience. Why would we assume somebody
18 would lie to us on a survey?

19 CHAIRMAN LAUGER: I don't think you can
20 put yourself in the shoes of someone who could use,
21 what was it a hundred or \$200 gift card?

22 MR. KEEGAN: I thought it was 50. Maybe
23 it was a hundred, but it wouldn't have been more
24 than a hundred.

25 CHAIRMAN LAUGER: I don't think you can

1 discount the fact that people would do that just to
2 get a gift card.

3 COMMISSIONER CRONIN: Well, I don't
4 think that they know --

5 MR. BRUNSON: Well, so even if they did,
6 the law of large numbers says that if you get enough
7 responses, that they get thrown out. And so we're
8 not saying that we went with the highest end. One
9 person said it's detrimental so it's detrimental.

10 CHAIRMAN LAUGER: Yeah, but --

11 MR. BRUNSON: The majority --

12 CHAIRMAN LAUGER: -- reader of this
13 report --

14 MR. BRUNSON: -- said it was
15 detrimental.

16 CHAIRMAN LAUGER: -- could never --
17 could never say that you choose not the highest end
18 because you don't provide the data that shows how
19 many were between 40 and 50 percent.

20 MR. BRUNSON: They could because it's a
21 litigation case, and everything is discoverable, and
22 if they ask, show me the percentages, we have to
23 hand it to them, and they say, isn't this the
24 percentages of respondents, doesn't this say that
25 the majority said 10 to 15 percent?

1 Mr. Jui would have to say, yes, it does.

2 Well, then why didn't you say 10 to 15 percent? I
3 imagine he would say because the definition of
4 damages, market value and damages, is the highest,
5 not the most probable.

6 CHAIRMAN LAUGER: In Nevada it's called
7 the highest price.

8 MR. BRUNSON: It's the highest price,
9 correct.

10 COMMISSIONER STEFAN: Would you agree
11 that it's highly probable that these damages vanish
12 when this property is sold to a third party?

13 MR. BRUNSON: With full disclosure?

14 COMMISSIONER STEFAN: Well, it doesn't
15 have to be full disclosure. The house is built,
16 isn't it, or not?

17 MR. BRUNSON: It's not built. It's
18 still vacant. It's in foreclosure.

19 COMMISSIONER STEFAN: Full disclosure.

20 MR. BRUNSON: So you assume full
21 disclosure, and then the price reflects any,
22 quote/unquote, consideration or damages.

23 The whole case here is how do you make
24 somebody whole when they've been precluded the
25 opportunity to make an informed decision?

1 COMMISSIONER STEFAN: I'm not asking
2 that. I'm just saying if this house gets put on the
3 market today under full assumption, do you think
4 it's only worth a million two?

5 MR. BRUNSON: That's not the question we
6 were hired to answer --

7 COMMISSIONER STEFAN: I understand.

8 MR. BRUNSON: -- and I don't know.

9 COMMISSIONER STEFAN: Okay. You didn't
10 do that appraisal assignment should be your answer.

11 MR. BRUNSON: Yeah.

12 COMMISSIONER STEFAN: I think secondly,
13 you based it on the principal of market value, which
14 I think assumes, you know, a willing buyer and
15 seller and --

16 MR. BRUNSON: Not the definition of
17 damages. It assumes a willing informed buyer and
18 seller.

19 COMMISSIONER STEFAN: Right, right.

20 THE WITNESS: And the lack of damages
21 here immediately following the market value being
22 the highest price in Nevada jury instruction is the
23 concept of the benefit of the bargain, and it
24 explicitly states that in a damaged scenario the
25 benefit of the bargain is given to the damaged

1 party.

2 COMMISSIONER STEFAN: Did you ever
3 consider that the damages would only apply to that
4 -- the value of view as opposed to the value of the
5 entire property?

6 MR. BRUNSON: I think we already
7 answered that question, it's not acceptable. View
8 is a component of the lack of disclosure damages.
9 And it's not just view, it's privacy, it's other
10 issues.

11 I mean, if you look at the aerials, it
12 went from two houses like this, where this is the
13 subject and this is the adjacent land, to the
14 potential for a house like this, right?

15 So when they expand that lot, not only
16 do they get to go further down, but they also get to
17 change the angle because it gets wider at the base.
18 So now instead of this, you have this, right?

19 And the question is can you qualify
20 whether or not the lack of disclosure represents
21 damages in the minds of professional real estate
22 agents who have sold million-dollar properties on
23 golf course -- courses with at least six years of
24 experience? And the majority asked twice in
25 different ways say, yes, it will be detrimental.

1 CHAIRMAN LAUGER: But will you agree
2 that when you say they were asked twice, you
3 filtered out anybody that didn't answer the way you
4 wanted them to so --

5 MR. BRUNSON: No, I wouldn't agree. We
6 filtered out people who weren't qualified.

7 CHAIRMAN LAUGER: No, you filtered out
8 people who said, in fact, that were beneficial to
9 that being out there.

10 MR. BRUNSON: No, we reported it. We
11 said a portion --

12 CHAIRMAN LAUGER: Right, but the next
13 question --

14 MR. BRUNSON: -- a portion of the market
15 --

16 CHAIRMAN LAUGER: -- that excluded those
17 people --

18 MR. BRUNSON: No, it didn't. Those same
19 people still got to answer the same question. It
20 was asked a different way to the same exact people.
21 The fact that a portion of them chose not to answer,
22 there's something called frustration, quit, or a
23 force quit in survey technology -- or survey
24 research, when they get asked the same question more
25 than once, some people just go, I already answered

1 this, and they just stop.

2 And so as you move forward, it makes
3 sense that you end up with a smaller pool of people
4 at the end than you did at the beginning.

5 CHAIRMAN LAUGER: Okay. All right.
6 Commissioners, are you done with questions?

7 COMMISSIONER STEFAN: I am.

8 COMMISSIONER HUBER: I am.

9 CHAIRMAN LAUGER: Commissioner Cronin,
10 you're done?

11 COMMISSIONER CRONIN: Yes.

12 CHAIRMAN LAUGER: Okay. So I'm going to
13 suggest we take about a -- let's do an eight-minute
14 break, and then we'll go to closing arguments.

15 MR. BRUNSON: Okay.

16 (At this time, a recess was
17 taken.)

18 CHAIRMAN LAUGER: Okay. We're back.
19 Okay. So I'm going to propose a way to go about
20 closing argument and going forward on this.

21 What has been suggested to me, and I
22 think makes sense, is because the two of these cases
23 are being heard together, but Mr. Brunson has
24 additional items on a separate item, I'd like to do
25 closing arguments for both sides, ten minutes a

1 piece, and then we'll go to hearing the rest of
2 Mr. Brunson's case, and then we'll go to our
3 discussion on it -- on the matter.

4 COMMISSIONER STEFAN: Are we doing
5 Mr. Brunson's case as to 594, 598?

6 CHAIRMAN LAUGER: We'll do that after we
7 have the closing argument. Okay. So what we would
8 do is we're going to hear the closing arguments of
9 this for the 590, and then we'll do -- we'll go to
10 Mr. Brunson's, yes. Is that acceptable? You
11 understand?

12 MR. BRUNSON: I do.

13 CHAIRMAN LAUGER: Okay. Mr. Keegan.

14 MR. KEEGAN: Thank you, Mr. Chairman.
15 So for clarification sake what I'm going to be is
16 summarizing the presentation of evidence of the
17 State's case in chief in the 590 reference, which is
18 part of Mr. Brunson's case, part A -- excuse me,
19 part B, and then all of Mr. Jui's case, which is
20 exclusively regarding 590 Lairmont, and that's Case
21 No. 2016-4145.

22 What I'd like to do for efficiency sake
23 is take the commissioners through the presentation
24 of evidence that the State made in reference to each
25 individual factual allegation and citation to the

1 Bates stamps that I believe we had -- that I know
2 the State presented during its case in chief as well
3 as the answers by both Mr. Jui and Brunson, because
4 many of the allegations were admitted, therefore, I
5 think that's pertinent.

6 Before I proceed, I want to make sure
7 that the commissioners haven't already done that.
8 If they have, I don't want to take us through that
9 exercise unnecessarily.

10 Can I ask the commissioners whether
11 they, as part of our previous three days of
12 proceedings, made notes and indicated on there a
13 complaint or anything as to the allegations and the
14 evidence that had been submitted in support of those
15 allegations?

16 COMMISSIONER STEFAN: If it was notes
17 from three months ago, I would love a refresher
18 class.

19 MR. KEEGAN: Okay. All right. So I'm
20 going to begin with Mr. Jui's case, which is
21 2016-4145. If you could have that document in front
22 of you, the complaint and notice of hearing.

23 There's going to be some cross
24 referencing here.

25 COMMISSIONER STEFAN: Of Jui's answers

1 or --

2 MR. KEEGAN: Yeah, you would benefit by
3 also having the answers in front of you. I believe
4 Mr. Jui's answer is dated October 4, 2018. It says
5 ValPro Group in the upper left-hand corner.

6 Care to proceed?

7 CHAIRMAN LAUGER: Yeah.

8 MR. KEEGAN: All right. You should have
9 copies of the State's complaint. I can supply it.

10 COMMISSIONER STEFAN: Do you know what
11 Bates stamp it is?

12 MR. KEEGAN: It's not Bates stamp. It's
13 a freestanding document. It should have been part
14 of the packet, the meeting packet.

15 COMMISSIONER STEFAN: So wouldn't they
16 have --

17 MR. KEEGAN: I have a single copy of the
18 complaint right here if you'd like it.

19 MS. WILLIAMS: And the meeting packet is
20 on your hard drive.

21 MR. KEEGAN: Here's a hard copy of the
22 complaint.

23 CHAIRMAN LAUGER: Okay. Are we ready?

24 COMMISSIONER STEFAN: Yes.

25 MR. KEEGAN: Do all the commissioners

1 have a copy of the complaint in front of them?

2 COMMISSIONER HUBER: Yes.

3 MR. KEEGAN: Commissioner Stefan, I
4 provided you a copy there.

5 COMMISSIONER STEFAN: Yes.

6 MR. KEEGAN: So beginning with factual
7 allegation one, the respondent is currently licensed
8 by the Division. That was admitted. I'm just
9 cross-referencing now. You can see on page 1 of the
10 answer that's admitted.

11 I'm just going to expedite this, unless
12 you request that I read them, allegation 2 was
13 admitted, allegation 3 was admitted, 4, 5, 6, 7,
14 allegation 8 was denied.

15 Respondent's files did contain an
16 engagement letter for the damage analysis, thereby
17 including a full scope of work. This was contested.
18 The date in which the respondent identified the
19 scope of work analysis or engagement letter was June
20 24, 2014. I don't have the Bates stamp number for
21 that document, but perhaps, in their closing
22 argument they can address that.

23 Moving on to allegation number 9, scope
24 of work. Identified in the respondent's damage
25 analysis, fails to identify the problem to be

1 solved, number one.

2 Two, determine the -- and perform the
3 scope of work necessary to develop credible
4 assignment results based on problems identified, and
5 three, fully disclose the scope of work in the
6 report.

7 The State presented evidence, which is
8 at Bates stamp number 33 of its packet. I would
9 submit that the scope of work does not -- excuse me,
10 the scope of work does not meet the USPAP definition
11 as required under the 2000 -- the effective rules
12 for assignments of 2014 and 15 for USPAP.

13 Allegation number 10 was admitted.
14 Allegation number 11 was denied. It states the
15 respondent failed to identify or analyze the
16 ownership history or recent sale as to 590 Lairmont
17 as of the effective date of the appraisal.

18 This was contested. Bates stamp numbers
19 31, 46, and 51 reflect evidence that there was at
20 least some minimal analysis of the ownership history
21 of Lairmont, 590 Lairmont.

22 Moving on to allegation number 12.
23 Allegation number 12 was admitted. Allegation
24 number 13 was admitted. Allegation number 14 was
25 denied, and that states damage analysis failed to

1 clearly disclose the application of the hypothetical
2 condition that a vacant real property to the east
3 had been expanded to the -- by the acquisition of an
4 additional 14,858 square feet of land with
5 accompanying plans to develop a larger home.

6 There was evidence submitted that this
7 was not clearly stated, the hypothetical condition
8 -- as a hypothetical condition in the report. I
9 have identified paragraph 10.

10 Moving on to allegation number 15, this
11 was admitted and denied in part. And that
12 allegation states, as of the effective date the
13 purchase of the additional parcel had not closed,
14 and the owners of the real property adjacent to the
15 east of 590 Lairmont had not completed their plans
16 to develop.

17 We submitted -- the Nevada Real Estate
18 Division submitted evidence that that was the case.
19 It goes in line with the hypothetical condition
20 because the parcel hadn't closed. In fact, it was
21 an assumption or a hypothetical condition in place
22 as part of the damage analysis report. At the time
23 that the report identifies a failure to disclose,
24 these plans were in the works, but they hadn't been
25 completed yet.

1 Moving on to allegation number 16. The
2 damage analysis failed to recognize that borrowing
3 views across adjacent properties are not guaranteed
4 as perpetuity by laws or any agreement in this case.

5 There was no response, I believe, in the
6 answer outside the scope of our expertise, calls for
7 a legal conclusion. The State's case identified the
8 Supreme Court's decision in Case No. 69399 with a
9 file date of September 13, 2018, involving the
10 parties to this appraisal, Frederic and Barbara
11 Rosenberg Living Trust versus McDonalds Highlands
12 Realty, et al.

13 That Supreme Court decision very clearly
14 identifies that viewsapes are not protected,
15 stating that Nevada has expressly repudiated the
16 doctrine of implied negative easements of light air
17 view for the purposes of private suit by one land
18 owner against another.

19 The entire basis in the opinion of the
20 Nevada Real Estate Division of the real estate
21 damage analysis is based upon the loss of view. The
22 failure to disclose is merely incidental to that.
23 The fact that it was a hypothetical condition at the
24 time the property closed renders the disclosure at
25 best a minimal part of what they were actually

1 trying to value, and that is the loss of viewscape.

2 The report is riddled with citations to
3 authors that reference the detrimental condition,
4 how to evaluate it, borrowed views, fishbowl effect,
5 the survey itself tries to show the angles of the
6 property, the 3D rendering.

7 I mean, it's absolutely clear that
8 that's the basis of what was being done here to try
9 and evaluate the loss of view. That's the basis of
10 damage analysis.

11 The testimony of Mr. Brunson 20, 30
12 minutes ago, he identified that he's not an expert
13 and he couldn't value -- the testimony of
14 Mr. Brunson that he couldn't value what the failure
15 to disclose was.

16 So then it has to be assumed, based on
17 the nature of what the real estate damage analysis
18 includes that they were merely focusing on the loss
19 of the view.

20 Moving on to allegation number 17. This
21 was denied. And I'd like to also point out the fact
22 that in the answer, Mr. Jui says, no response,
23 outside the scope of our expertise, calls for a
24 legal conclusion. Failure to respond -- and we can
25 confirm this with commission counselor -- to any

1 allegation and complaint, be it an administrative
2 complaint or a complaint filed with the court of
3 law, is considered admission.

4 You need to deny allegations and state
5 why you deny them. And here they're appearing to
6 deny it based on calling for a legal conclusion, but
7 failed to state that they say no response. So I
8 would constitute that as an admission, which is, in
9 fact, that is a legal conclusion.

10 Allegation number 17, the damage
11 analysis failed to identify permissible landscaping
12 as a possible obstruction of the borrowed views.
13 Nowhere in the report is that explained. Bates
14 stamp number 95 I think is what was cited to by the
15 respondents.

16 There's a reference about change in view
17 from the desert land to an improved lot with hard
18 landscaping in the rear part of the residential
19 structure is inconsequential and insignificant.

20 There was testimony by Mr. LaBow, and
21 he extensively reviewed the 3D rendering to reflect
22 that the building envelope would have minimal impact
23 on the views, if any, and that the expanded 14,858
24 square feet would only allow for outdoor
25 entertaining areas to be built.

1 Small perbulas and casitas in
2 landscaping, and their report identifies that that
3 would have minimal impact on the borrowed views,
4 which runs counter to the fact that the damage
5 analysis, it simply just fails to identify the
6 permissible landscaping, trees, bushes, and et
7 cetera, could obstruct the views of the property
8 without even considering the 14,858 square foot
9 section of land that was obtained through easement.

10 Allegation number 18, the respondent is
11 not trained in statistical analysis or experience in
12 generating surveys. There was some testimony when
13 Mr. Jui was examined that he didn't remember, but he
14 may have taken a statistics class, but he did not
15 take any coursework specific to sampling.

16 And I have written down Bates stamp
17 number 196, and that's part of the deposition taken
18 of Mr. Jui of our documents. The deposition was
19 taken as part of the lawsuit.

20 CHAIRMAN LAUGER: Mr. Keegan, you've
21 gone past the ten minutes, can you speed it up?

22 MR. KEEGAN: Yes. I'm doing my best.
23 That's why I kind of tried to ask the commissioners
24 if they've already evaluated the allegations.

25 CHAIRMAN LAUGER: Okay. No, I'm just

1 telling you.

2 MR. KEEGAN: Okay. I appreciate the
3 leeway, and we could extend --

4 CHAIRMAN LAUGER: We will, yeah.
5 Absolutely, we will.

6 MR. KEEGAN: -- the same courtesy to Mr.
7 Brunson and Mr. Jui.

8 Moving on to allegation number 19. The
9 damage analysis used the wrong borrowed view
10 corridor, it applied the same incorrect view
11 corridor to the survey.

12 Mr. LaBow's testimony spoke to this.
13 He conducted a rebuttal to the appraisal damage
14 analysis that addressed this issue.

15 Allegation number 20 was admitted and
16 denied. The damage analysis failed to include
17 paired sales or any sales data analysis to support
18 the 30 or 40 percent valuation loss. I have Bates
19 stamped citation number 98 is evidence of that,
20 which is, again, is admitted and denied in the
21 answer.

22 Allegation number 21, the damage
23 analysis presupposed loss and value to 598 Lairmont
24 and applies biases survey results. This was a
25 damage analysis that was conducted under, as

1 Mr. Brunson has identified, the auspice that there
2 was a failure to disclose, which in my mind
3 automatically puts one in the posture to presuppose
4 that there was damage.

5 Furthermore, it appears that the client
6 that had hired Mr. Jui and Mr. Brunson, you know,
7 was a law firm, and we identified that the
8 applicable USPAP Code 2014/15 has litigation
9 services advisory opinion, and it differentiates
10 litigation services from your typical appraisal
11 work.

12 But both of the appraisal restricted
13 report and the real estate damage analysis certify
14 that they were conducted in accordance with USPAP,
15 and therefore, should have been independent analysis
16 as a value as opposed to the rule which says as an
17 example when Marie provides litigation services as
18 an advocate -- and I'm reading advisory opinion 21
19 -- she has provided evaluation service outside of
20 the appraisal practice.

21 When performing services outside the
22 appraisal practice, Marie can act as an advocate and
23 accept contingent computation. The only USPAP
24 obligation is that she not misrepresent her role.
25 She must use care to distinguish her role from the

1 other roles that would carry expectation of being
2 impartial, objective, and independent, and acting as
3 an appraiser.

4 And we would submit that these -- both
5 the real estate damage analysis and the restricted
6 appraisal report certify that they're -- essentially
7 conduct and conforms with USPAP and don't identify
8 or delineate that they are being advocates in an
9 effort to promote a value figure for litigation
10 purposes. I have Bates stamp 99 identified as well
11 for evidence to support the allegation number 21.

12 Allegation number 22, the damage
13 analysis survey results are not supported by
14 transactional data. This was admitted and denied.
15 I have Bates stamp 98 to 99, Bates stamp 100.

16 And, again, I think the commissioners
17 are aware that there was minimal transactional data
18 to support the damage analysis.

19 Bates stamp 23 to the damage analysis --
20 excuse me, allegation 23, damage analysis survey
21 results are skewed towards negative value impact
22 responses.

23 The Nevada Real Estate Division went on
24 at length, and it's my error for not supplying at
25 least an audio copy or a transcript copy of the

1 record, but evaluating the statistical analysis and
2 how, you know, you start with thousands of
3 responses, and in the end, the real estate damage
4 analysis relies on, I think, it's approximately 50
5 or 60 responses, and out of a 200 population that
6 began the analysis, many of those were skipped.

7 At one point in the survey, for
8 instance, on Bates stamp number -- forgive me. Give
9 me a second here. Bates stamp number 70, the
10 question asks, if you answered yes to the
11 development of parcel two with the 14,000 square
12 foot has an impact on the value of land and the
13 marketability of the subject property, which of
14 these options would you most likely -- would you
15 consider the most likely impact on? There was no
16 impact, 22.45 percent of beneficial impact, 24.49
17 percent, and an adverse impact was 53 percent.

18 I mean, those are essentially 53 percent
19 to 47 percent saying there was either no impact or a
20 beneficial impact, but the survey and the results
21 that the real estate damage analysis comes to
22 clearly focuses on the detrimental impact and
23 ignored the 46 percent of the survey respondents.

24 And at this point, I'd like to point
25 that we are at a total of 49 responses.

1 MR. BRUNSON: What Bates number is that,
2 please?

3 MR. KEEGAN: That's number 70 of our
4 packet. It's -- your is 54.

5 And it -- so just so we're clear, at
6 that point in the survey, out of the X numbers of
7 thousands of solicited respondents, we had 203 had
8 skipped answering altogether, 49 had answered. And
9 of those 49, 26 said there was a detrimental impact,
10 53 percent. And those were the results that we're
11 really focused on.

12 So at that level of response, it seems
13 very likely, as Commissioner Cronin pointed out,
14 that it would have been just as easy to call 53
15 people who are more targeted and had experience in
16 the area. But we're relying on Internet results now
17 of unverified respondents.

18 It started off with -- and I don't have
19 the exact numbers, but I think we recall there were
20 thousands of initial e-mails sent out, and we're
21 down now to 49.

22 COMMISSIONER STEFAN: What number were
23 we on just then?

24 MR. KEEGAN: That was Bates stamp number
25 70 of our packet.

1 COMMISSIONER STEFAN: No, I got that.

2 What number was --

3 MR. KEEGAN: That was allegation number
4 23.

5 COMMISSIONER STEFAN: Yeah, okay.

6 MR. KEEGAN: Allegation number 24, the
7 damage analysis fails to account for existing
8 topographic physical and developed features of the
9 surrounding land to create fishbowl conditions and
10 diminish the privacy of 590 Lairmont.

11 We had Mr. LaBowy's rebuttal appraisal,
12 which identifies various features of golf courses
13 and particularly this property that has undulating
14 doom like features that limit and/or obstruct the
15 view, and also the fact that the fishbowl condition
16 is, in fact, inherent in golf courses.

17 We had a depiction that one of the
18 photographs from the neighboring property you could
19 see directly down into their entire swimming
20 facility from 590 Lairmont to the left.

21 Allegation number 25, the damage
22 analysis reflects that the respondent assessing --
23 reflects the respondent assessing timeframe of
24 disclosure of the acquisition of the additional
25 parcel by the defendant as part of the damage

1 analysis, which has nothing to do with an unbiased
2 assessment of the loss of value itself.

3 Again, the acquisition of the 14,858
4 square foot easement had not been completed. It was
5 in the works. Their damage analysis, the chronology
6 of their damage analysis, presumes the hypothetical
7 condition that that was already done, and then from
8 that standpoint it makes an analysis of how that may
9 as a developed feature have affected the existing
10 properties.

11 But, in fact, we heard testimony earlier
12 that the property is in foreclosure and remains
13 undeveloped.

14 And, in fact, I think during our -- the
15 end of our hearing last time, we went on to identify
16 how their damage analysis presupposes that the
17 vacant property itself damages, I think it was a 20
18 percent value. The vacant property has a 20 percent
19 diminution in value as to the existing property in
20 vacant condition.

21 So, apparently, despite Mr. Brunson's
22 earlier admonition that he's not an expert and can't
23 value the failure to disclose, that 20 percent
24 diminution in value attributable to a vacant piece
25 of property must be purely for the failure to

1 disclose.

2 If the property hadn't been developed,
3 the viewscape as a detrimental condition couldn't be
4 valued or couldn't -- a fact of diminution or a
5 detrimental condition, as they've identified.

6 Bates stamp number 26, the case studies
7 included in the damage analysis independent of
8 transactional data do not provide a reliable support
9 for the value conclusion.

10 There are two independent case study
11 evaluation analysis from authors cited to in the
12 real estate damage analysis. They in and of
13 themselves may support as literature a way to
14 evaluate the diminution of value, but without
15 independent transactional data, it's shaky at best
16 that that survey can be relied on as the basis alone
17 for the diminution in value.

18 Those are the allegations in the Jui
19 complaint, and in summary, we would state that the
20 statistical analysis performed here, it clearly
21 presupposed a damage result.

22 The damage result that was reached was
23 far outside the actual cost of the acquisition of
24 the easement itself, and the effort that was made by
25 the respondents to support their statistical

1 analysis lacks any professional statistical
2 analysis, they themselves are not statisticians, and
3 the results ignore respondents to the survey that
4 identify that there was no impact or beneficial
5 impact to the valuation of the property.

6 And for those reasons, the Nevada Real
7 Estate Division has identified the ten voluntary
8 violations of USPAP set forth in the complaint,
9 which I won't read or go through at this point for
10 the sake of time.

11 CHAIRMAN LAUGER: Okay. Thank you,
12 Mr. Keegan.

13 All right, Mr. Brunson and Mr. Jui, I'm
14 going to allow you 23 minutes. I lost count of some
15 time there, and we are losing our stenographer at
16 high noon, so you have 23 minutes.

17 MR. BRUNSON: Okay. So we're going to
18 do the same thing, except we're going to ask you to
19 maybe take some notes because it's confusing to look
20 at allegation 3, when allegation 3 is both
21 allegation 3 and allegation 1.

22 So I'm going to refer to them as Jui 3,
23 Brunson 1, okay? I'm going to skip Brunson 1
24 through 6, Jui 3, 4, 5, 6, 7, and 10 because we
25 admit those. Those are just factual statements.

1 Brunson 7, Jui 11 --

2 COMMISSIONER STEFAN: Can you just stay
3 with Brunson since we did Jui?

4 COUNSEL BHALLA: Mr. Brunson, I think
5 it's easier if you just refer to the allegations in
6 the Jui complaint right now since they are
7 overlapping.

8 MR. BRUNSON: Okay. Sure. So
9 allegation 11.

10 COMMISSIONER STEFAN: Are we just doing
11 the Jui, then?

12 COUNSEL BHALLA: Yes.

13 MR. BRUNSON: Sure. This is Jui 11. So
14 allegation Jui 11 says that we failed to identify or
15 analyze the ownership history or the recent sales.
16 I'm going to ask you to take a look at your leisure
17 -- that's not it? No, it is.

18 MR. JUI: Yes. Okay.

19 MR. BRUNSON: It alleges that we failed
20 to identify ownership history. We gave a timeline
21 on Bates 19, paginated page 15. We further
22 discussed the history of the subject transactions on
23 34 -- Bates 34, paginated page 30; Bates 39,
24 paginated page 35. We provided an exhaustive
25 analysis of the ownership history and the recent

1 transactions including the hearings and approvals
2 before the Henderson commission for the zone change
3 and the extension of the land. You could not
4 provide a more extensive analysis. That's simply a
5 false allegation.

6 Allegation 14, which would be Brunson
7 10, just to clarify, is the damage analysis fails to
8 clearly disclose the application of a hypothetical
9 condition.

10 Mr. Keegan erroneously considers the
11 approved zone change the approved purchase, and the
12 fact that the contract date pre -- or he assumes
13 that the closing date, the recording date of the
14 transaction, is the only relevant date, where we're
15 considering that meetings of the minds had already
16 occurred prior to the sale to the Rosenbergs.

17 The parties were well aware that the
18 extension had been approved by the City of
19 Henderson. They attended and filed -- they filed
20 the applications and attended the commission
21 hearings to get them approved. So that allegation
22 simple fails.

23 Allegation 15, number 11 is -- Brunson
24 11 is saying that the -- basically it's a
25 restatement. The purchase of the additional parcel

1 had not closed.

2 The closing date isn't relevant. What's
3 relevant is all the dates prior to that where the
4 selling agent was representing the sale to Malick
5 for the extended lots. They were well aware that it
6 was approved. This is not a hypothetical. This is
7 factual. So this allegation simple fails. There's
8 no hypothetical condition here. It was already
9 approved. It was fact.

10 CJ 16, when we say no response outside
11 the scope of our expertise, calls for a legal
12 conclusion -- this is Brunson 12. It says, it fails
13 to recognize the borrowed views across the adjacent
14 properties.

15 Mr. Keegan waxed on about the Supreme
16 Court decision that occurred almost a year, year or
17 two after our effective date. At the point we're
18 conducting our analysis, there was no Supreme Court
19 decision that said the borrowed view corridors
20 weren't compensable damages.

21 We had a discussion about this. Our
22 client told us it was a legal decision to be made by
23 the courts so we didn't address it in our court.

24 MR. KEEGAN: I just need to -- I know
25 it's improper to object during closing, but the

1 Supreme Court cites to a 1969 decision for that
2 basis. I just want to make clear.

3 MR. BRUNSON: And while that may be the
4 case, it's still a legal decision that our engaging
5 attorneys told us would be decided by the courts,
6 and that it was outside the purview of our analysis.
7 Not improper to ignore that.

8 Number 17, Brunson 13 deals with the
9 allegation of landscaping, whether or not it was
10 considered. In our response we point to multiple
11 pages in our report where we talk about the CONA
12 vision.

13 The other thing is is that that's not
14 what's at play. The landscaping that may or may not
15 fix this, there's a CONA vision restriction that
16 says that you can't plant landscaping to obscure
17 anything over there. We addressed it in our report.
18 It wasn't addressed in the other expert reports.
19 It's simply a false allegation. It's addressed in
20 our report in multiple places.

21 Allegation 18 -- oh, let me go back to
22 17. Mr. Keegan referenced Mr. LaBow's testimony
23 saying that the building envelope of flat work and
24 things of four feet or less would not affect the
25 adjacent property. That's a false assumption.

1 Mr. LaBowy's entire premise is based on
2 the fact that the building envelope did not change.
3 He indicated that he made phone calls, but never got
4 a call back when he testified to you. Jui and I on
5 separate dates went to the City of Henderson and
6 confirmed doing the work that you're supposed to do,
7 that the building envelope was, in fact, going to
8 change, and that the rear property line was, in
9 fact, the rear property line utilized in our survey
10 and in our analysis. So that's simply a false
11 analysis. We did consider it.

12 Mr. LaBowy's entire premise for his
13 report is false. The building envelope did change.
14 He says zero damages because the building envelope
15 was the same.

16 Eighteen. As far as our -- this
17 allegation says that we are not trained in
18 statistics. I'm approved by the State of Nevada and
19 seven other states to teach courses in beginning and
20 intermediate statistics. I've taken beginning
21 intermediate and advanced statistics in my BA, and
22 I'm currently in a doctorate using SPSS frequently.
23 I'm more than well trained.

24 As far as Mr. Jui's testimony, he said
25 he couldn't remember the specific date, but he's a

1 business minor. He's trained in the statistics
2 necessary -- we're dealing with points statistics.
3 He's trained in the statistics necessary to offer
4 credible opinion. That allegation simply fails.

5 Nineteen. This says that the survey
6 results are skewed toward negative value impact
7 responses. I'm sorry, this says that the damage
8 analysis use the wrong borrowed view corridor and
9 implied the same incorrect view across the survey.

10 First of all, the emphasis here is on
11 the view corridor. Our emphasis consistently from
12 the first page of the report, as it says, is on the
13 lack of disclosure. Beyond that, we also considered
14 the correct view corridor. So that allegation
15 failed.

16 Twenty, Brunson 16. Damages Analysis
17 failed to include paired sales or any data to
18 support the 30 to 40 percent. Of course, we did.
19 We say explicitly in the report that lacking
20 disclosure, you can't find transactional data; and
21 therefore, like it says in the work Real Estate
22 Damages third edition, you should use some sort of a
23 survey technique to find what professionals believe
24 is a reasonable credible diminution, if any.

25 Twenty-one, Brunson 17. Mr. Keegan says

1 that we presupposed the loss in value, that the lack
2 of disclosure that is the emphasis of our report
3 presupposes. If you simply read our report, it says
4 that the lack of disclosure is fact and that our job
5 is to determine what, if any, impact it has on value
6 or marketability.

7 Mr. Keegan implies we're acting as
8 advocates by reading to you from you advisory
9 opinion 21, and I think that, all due respect, I'm
10 the only expert in USPAP sitting anywhere in this
11 proximity, and it's not -- it's a false equivalency.
12 We never held ourselves to be advocates. We always
13 held ourselves out to be appraisers acting without
14 bias in an impartial manner. This allegation simply
15 fails based on the fact.

16 Allegation 22, Brunson 18 says that the
17 survey results are not supported by transactional
18 data. Basically it's a repeat of the prior question
19 above it. It doesn't matter the reference, but the
20 fact of the matter is transactional data doesn't
21 exist for sales where people weren't fully informed.
22 It's the basis and the foundation of value. So this
23 allegation simply fails.

24 Allegation 23, this is Brunson 19.
25 Damage analysis surveys are skewed toward negative

1 value responses. Mr. Keegan pointed you to Bates
2 stamp 54, but he, as he's done several times in this
3 case, he failed to read that question.

4 That question is not asking about an
5 impact on value. It's asking about an impact on
6 marketability because we measured both. Did the
7 lack of disclosure and the view issues result in a
8 lower price and/or a longer marketing time?

9 And he focused on the 60/40 split. It
10 still is true that 60 percent of the respondents
11 said it's negative. So the allegation that they're
12 skewed towards negative value impact responses is
13 false as demonstrated by the declaration of Bob
14 Potts, who's done hundreds, if not thousands, of
15 surveys like this, and the declaration of Orell
16 Anderson who literally wrote the chapter in Real
17 Estate Damages on how to conduct these surveys, and
18 both those gentlemen confirmed that we did a proper
19 analysis as recognized by appraisal methodologies,
20 and that the results measured what we intended to
21 measure in a non-biassed manner and were credible.

22 Mr. Anderson, I will say, did not say
23 they were credible because he didn't want to risk
24 the running afoul of appraisal rules and supporting
25 our opinion because he is an appraiser. Mr. Potts

1 did say they were credible.

2 Twenty-four, Brunson 20, says that the
3 damage analysis fails to account for existing
4 topographic, physical, and developed features that
5 create a fishbowl condition. That's simply false.

6 We clarified what the fishbowl condition
7 was. It's true that golf courses, yes, do have a
8 portion of the fishbowl effect, in essence,
9 regardless, but it's also true that when you extend
10 the adjacent house further back and at a greater
11 angle, that the fishbowl effect increases.

12 Again, it's the lack of disclosure of
13 that potential that is interesting and that is
14 relevant. In this case -- we're still on 21? We're
15 still on 20.

16 CHAIRMAN LAUGER: 24.

17 COUNSEL BHALLA: 24.

18 MR. BRUNSON: Twenty-four for Jui, 20
19 for me. I would ask you to just to take a look at
20 our -- I don't think you're going to have time to go
21 back and re-read the responses, but if you want to
22 read our written response, it just indicates that we
23 measure the impact of both the unimproved and the
24 improved condition, and in both the unimproved and
25 the improved condition the impact was found to be

1 negative, that the differential between the improved
2 condition and the unimproved condition was 30
3 percent; hence, the starting point for the opinion
4 of damages by Mr. Jui.

5 That leads us to allegation 25, Brunson
6 21. When we say that we admit in part and deny in
7 part, Mr. Keegan says that we presume, that -- but
8 we don't presume. We demonstrate factually that the
9 extension of the lot was a known fact that required
10 disclosure. And in this circumstance, at least, the
11 Supreme Court seems to agree with us because that's
12 why they remanded the case.

13 Mr. Keegan said that I testified that I
14 couldn't determine damages attributable to lack of
15 disclosure. That's not true. What I said was that
16 I couldn't delineate or distinguish within that the
17 damages contained both, they contain damages for the
18 view and damages for the lack of disclosure. But in
19 a way, his point sort of proves our point. The
20 differential between the approved and the unapproved
21 of 30 percent is a starting point to measure how
22 much of the damages are attributable to
23 nondisclosure.

24 If you just look at the differential
25 between the improved and the unimproved, the data

1 indicates that 30 percent of the damages, 30 percent
2 of the value of the property represents
3 nondisclosure. And if you just happened to be set
4 on most probable value, if you take the most
5 probable response of 10 to 15 percent and add the
6 nondisclosure differential with 30 percent, you get
7 the 40, and Mr. Jui's opinion was 30 to 40 percent.
8 Seems credible to me.

9 Mr. Keegan testified in his close that
10 our survey was the only basis for the diminution.
11 That's clearly not true. We gave three case
12 studies. The first case study was a literature
13 review that talked about whether or not in the
14 academic circle view corridors were valuable.

15 We named three -- I believe five
16 academic peer reviewed articles that indicated that
17 view corridors were, quote/unquote, sacrosanct and
18 holy, and the developers were well aware of the fact
19 that changing view corridors was not well received
20 especially at the upper end of the market.

21 We gave a second case study regarding
22 the Red Rock Country Club, a case that Mr. Jui and I
23 consulted on. We were well aware of the
24 circumstances there and the developer refused to
25 extend the lot boundaries on those properties unless

1 they could get a hundred percent buy-in from all
2 occupants.

3 They did it in two or three
4 circumstances without a hundred percent buy-in, and
5 they got a bunch of pushback, and in those cases
6 there was a flat work landscape four foot -- you
7 can't do over feet tall. That's not the case in our
8 case. But even when you did put that restriction on
9 there, it was still an adverse response by the
10 adjacent party. So second case study demonstrated
11 real world adverse response.

12 Third case study was the survey. When
13 we conducted the survey, the very first question to
14 answer an earlier question by Mr. Cronin was, are
15 you a currently licensed broker or agent active in
16 the Las Vegas market? This is Brunson 02431. This
17 was provided in our original packet, and I remember
18 pointing this out to you as we were leaving three
19 months ago.

20 The very first question. That explains
21 why we went from 7,000 to 170 because if you said
22 no, you were disqualified and thanks for your time
23 because we only wanted currently licensed broker or
24 agent active in the Las Vegas market.

25 Second question asked, did they have

1 experience listing or selling high-end golf course
2 properties. If they said, no, or less than five,
3 they were thanked for their time and moved on.

4 So we didn't just willy nilly pick
5 people who didn't know what was going on. We did
6 what experts in the field of surveys suggested. We
7 qualified the respondents, we omitted people who
8 weren't qualified, and we assumed that the responses
9 were truthful responses.

10 Mr. Keegan said that we ignored
11 responses that were beneficial. That's not true.
12 We clearly reported the fact that there were some
13 parties that said that it was either negative,
14 positive or neutral. That demonstrates our lack of
15 bias, the fact that our goal was to find what is the
16 predominant, and by clearly stating in our report.

17 Not only were there some parties that
18 said there was no impact, but also there were some
19 parties that said it was beneficial. We went with
20 the most likely, the most probable in this case
21 about whether there are damages.

22 The majority in every single case said
23 that this extension, disclosed or otherwise, was
24 negative to value and negative -- adverse to value
25 and adverse to marketability. It would lower the

1 price, and that it would increase marketing time.

2 So we clearly didn't ignore, we clearly didn't go in
3 with bias.

4 What I will say is this -- how much time
5 do we have, sir?

6 CHAIRMAN LAUGER: I think you have four
7 minutes.

8 MR. BRUNSON: Okay. The uniform
9 standards are very clear. They're a minimal level
10 of performance. If this were a simple view corridor
11 issue, I would agree with you that 30 to 40 percent
12 is outrageous, but it's not. It's a complex thing
13 to have to measure something that previously other
14 people haven't measured.

15 I'm not aware of any other appraiser,
16 and I looked nationally when we were doing our
17 literature study, I'm not aware of any other
18 appraiser that ever measured the impact of
19 nondisclosure on a property. Couldn't find any
20 articles on it. Couldn't find anybody who had done
21 this sort of work.

22 So we approached experts, Mr. Potts and
23 Orell Anderson, but how do we do this. We referred
24 to the literature. Real Estate Damages clearly says
25 if there's no transactional data, you conduct a

1 survey. They give us parameters on how to do that.

2 We followed those parameters almost to the letter.

3 Now, is it -- does it shock the
4 conscious? That's a measure in California when
5 you're measuring whether or not something is
6 credible or not. Does it shock the conscious? Does
7 it shock the conscious to hear that the diminution
8 could be 30 to 40 percent just because somebody
9 didn't disclose? Yeah.

10 But we didn't go into this saying we're
11 going to find damages. You can read our notes from
12 our very first client interview that says the
13 damages may be zero. We presented those to you
14 earlier. Throughout our report we say we're trying
15 to determine whether or not first to qualify the
16 damages and then to quantify.

17 We didn't just make one or two phone
18 calls to brokers who we know and that are our
19 friends, regardless of their experience, because
20 when you do that, you get chastised by a judge.
21 What they want to see is they want to see a written
22 document that can be replicated, and we have the
23 phone numbers of every single person minus about a
24 dozen, we have the phone numbers and the e-mails of
25 those parties.

1 It's on our to-do list to follow up with
2 them if and when the case does not settle. But as
3 of the signing date of the report, that had not been
4 done.

5 I don't believe that that makes it less
6 credible. I believe what happens here is we have a
7 very complex circumstance where the definition of
8 damages, the definition of value in the State of
9 Nevada, is not the most probable, like we're all
10 familiar with, it's the highest probable or the
11 highest price.

12 And the definition clearly states that
13 it's cost, plus any lack of use, plus any ancillary
14 cost, but any ongoing market resistance. By
15 definition, damages can well exceed the cost to
16 cure. That's hard for some people to understand,
17 but it's simply true.

18 The final thing I'll say is that the
19 appraisal reports here, they are not the completed
20 work. And I know that we're used to the appraisal
21 report being the completed work, you turn it in, and
22 that's it, and if it's not there, it doesn't exist.
23 That's not how it works in litigation.

24 In litigation, to the day of testimony,
25 the testifying expert can supplement their report,

1 and then the attorneys get to argue about whether or
2 not it's admissible. But to the discovery deadline
3 date, we're able to add any supplements we want to
4 clarify statements or to expand upon facts or
5 theories that are already touched on in the original
6 report.

7 This case is ongoing. This is a
8 district court case that is going to be heard. It's
9 clear to me that this complaint was filed by a party
10 who wanted to benefit their position in litigation.

11 You can disagree with the 30 to 40
12 percent, but the data clearly shows it. Shocks my
13 conscious as well, but the data clearly shows it.
14 An advocate would have said, let's go for something
15 that the judge and the jury would really buy and
16 would help our clients. That's not what we did.
17 That's not what happened in the report. We let the
18 data take us to the conclusion, and the conclusion
19 is supportable by data that was generated in a
20 recognized manner, vetted by professionals, and even
21 if it shocks your conscious, we're not saying it's
22 the absolute truth. That's for a judge and a jury
23 to decide.

24 We're saying this is what the data
25 indicates, just like an opinion of value is an

1 opinion. If the jury decides to split the baby or
2 the jury decides that the damages are zero, that's
3 fine with us because the data still says what the
4 data said.

5 CHAIRMAN LAUGER: Okay. So I'm going to
6 have to take care of some other Division business.
7 We're going to reconvene at 1:00 o'clock. I'd ask
8 Mr. Brunson and Mr. Jui to be back at 1:15.

9 MR. BRUNSON: Yep.

10 CHAIRMAN LAUGER: We're adjourned.

11 (At this time, a recess was
12 taken.)

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
 SS:
COUNTY OF CLARK)

I, Teri R. Ward, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the proceedings commencing on Tuesday, January 29, 2019, at 9:00 a.m.;

That I thereafter transcribed my said shorthand notes into typewriting; and that the typewritten transcript of said proceedings is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties; nor a relative, employee, or independent contractor of the parties involved in said action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 25th day of February, 2019.

Teri R. Ward

Teri R. Ward, CCR NO. 839



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EXHIBIT 8

1 **CRAIG JIU AND MICHAEL BRUNSON**
2 **C/O RPD ANALYTICS, LLC**
3 **9550 S. EASTERN AVE #253**
4 **LAS VEGAS, NV 89123**
5 **702-641-5657**

6 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
7 **STATE OF NEVADA**

8 **SHARATH CHANDRA, Administrator,)**
9 **REAL ESTATE DIVISION,)**
10 **DEPARTMENT OF BUSINESS AND)**
11 **INDUSTRY, STATE OF NEVADA,)**

Case No. 2016-4146 & AP 17.020.S

&

Case No. 2016-4145 & AP 17.021.S

12 **Petitioner,)**

DECLARATION OF ORELL C. ANDERSON

13 **vs.)**

FILED

Oct - 4 2018

M. Brunson & C. Jiu

14 **MICHAEL L. BRUNSON (AP 17.020.S))**
15 **(License No. A.0207222-CG))**

16 **CRAIG E. JIU (AP 17.021.S))**
17 **(License No. A.0002330-CG))**

18 **Respondents.)**

19 **DECLARATION OF ORELL C. ANDERSON**

20 **I, Orell C. Anderson declare as follows:**

- 21 **1. I am over the age of eighteen years old and am competent to testify.**
- 22 **2. I have personal knowledge of the facts set forth below, and if called upon to do so could**
23 **testify competently to those facts.**
- 24 **3. I am a resident of Orange County, California.**
- 25 **4. I am currently the President at Strategic Property Analytics, Inc. I have held this position**
26 **since mid-2014.**
- 27 **5. In 2014, I founded Strategic Property Analytics Inc., a consulting firm that specializes in**
28 **litigation support. For 15 years prior to this I was a member of Bell Anderson & Sanders LLC, a**
boutique firm specializing in real property damages. Before that I helped establish the real estate
damages practice at PricewaterhouseCoopers.

1 6. I am a certified general appraiser with credentials in the states of California, New York,
2 Utah, and Texas.

3 7. I hold the MAI designation from the Appraisal Institute.

4 8. I am a contributing author of the book Real Estate Damages (1st & 2nd Eds. and a
5 contributor to the 3rd edition) as published by the Appraisal Institute.

6 9. I specialize in real property damage economics and property value diminution and have
7 consulted on some of the largest climate, environmental, and terrorist cases in modern history,
8 including Hurricane Katrina, the Bikini Atoll Nuclear Test Site, the World Trade Center Site, and
9 Flight 93 Crash Site.

10 10. I am the Co-chair of the American Bar Association's Environmental Litigation Sub-
11 Committee on Expert Witnesses and Eminent Domain. I am the past Chair of the International
12 Right of Way Association's Valuation Community of Practice. I am also a member of the
13 International Right of Way Association, the Forensic Expert Witness Association and Lambda
14 Alpha International.

15 11. As a qualified expert, I have been retained in hundreds of cases and have testified in federal
16 and state courts; I also volunteer on special taskforces for major real estate fraud for the Los
17 Angeles district attorney's office.

18 12. I am a developer and instructor of courses and continuing education offerings for the
19 American Bar Association (ABA), the Appraisal Institute (AI) the International Right of Way
20 Association (IRWA), and the American Society of Appraisers (ASA) among others. The 14th Ed.
21 of The Appraisal of Real Estate sites me as the source for further reading of USPAP's Advisory
22 Opinion 9: The Appraisal of Real Property That May Be Impacted by Environmental
23 Contamination.

24 13. I am the recipient of the IRWA's Mark A. Green Award for Journalistic Excellence and
25 Outstanding Contribution to Right of Way in 1999 and was recognized as Southern California's
26 first National Volunteer of Distinction by the Appraisal Institute in 2012.

1 14. I am writing the damages section of the American Bar Association's upcoming treatise,
2 Environmental Litigation, as well as a chapter in the Appraisal Institute and International Right of
3 Way Association's upcoming book, Corridor Valuation.

4 15. I have lectured at both the Northern California and Southern California Chapters of the
5 Appraisal Institute at their Annual Litigation Seminars on "Surveying the Landscape:
6 How to Conduct an Admissible Survey."

7 16. Mr. Brunson has worked with me and my former business partners, Dr. Randall Bell and
8 Michaels Sanders, MAI as an independent contractor on multiple real estate damage engagements.

9 17. As a long-time mentor to Mr. Brunson, I frequently discuss unusual valuation scenarios with
10 him, including the use of Type I, Type II and Type III surveys.

11 18. Sometime in September or October of 2014, I was contacted by Mr. Brunson and asked to
12 consult on an informal basis regarding appropriate methodology for use in one of his firm's cases.

13 19. I was asked to provide my opinions regarding the use of a survey in a situation where
14 transactional data is sparse or non-existent.

15 20. My opinion was and is that without such a survey any calculation of damages would offer
16 a level of precision and predictability that ignores the behavior of market participants responding
17 to changes in use and risk; it would simply be the opinion of one qualified appraiser.

18 21. What a survey-based approach attempts to do is capture some of the potential impairment
19 due to use and risk issues by interviewing experienced market participants. Given the lack of
20 impaired market transactions, Brunson-Jiu determined that the most accurate method to use for
21 estimating diminution in value, if any would be to apply a market-derived percent discount to the
22 unimpaired value of the property.

23 22. Broker surveys are frequently used in determining discount rates when determining the
24 present value of future cash flows. Likewise, the percent discount used in the Brunson-Jiu report
25 was developed through the use of surveys of market participants. The opinion of damages was an
26 opinion informed by this survey.

1 23. I was also informally asked to help Brunson-Jiu, LLC on the Type II survey titled,
2 Broker/Agent Survey Rosenberg. The purpose of my assistance was to aid with the survey
3 illustrations, the survey questions, and to ensure that the overall survey was neutral and unbiased.

4 24. Type II Surveys are interviews with persons active in the market but not involved in the
5 transaction or not involved with the actual issue being studied. Such surveys are common place
6 within the appraisal community and are often simply an extension of Type I Surveys or interviews
7 with persons involved with the transaction or actual issue being studied (e.g. comp verification).

8 25. In my opinion, the Type II survey conducted by Brunson-Jiu, LLC was well designed, was
9 careful to avoid leading questions, and allowed respondents to provide an unbiased opinion of
10 whether or not the noted circumstance impacted the value and/or marketability of the subject
11 property.

12 26. Examples of the survey's neutrality from bias are as follows: Participants were selected
13 using a commercially available database of Nevada brokers/agents. Respondents were first asked
14 if they have experience with property at this level of the market. Qualified respondents were able
15 to choose whether they believe the described condition is neutral, positive, or negative.

16 27. Prior to signing this declaration, I have reviewed the survey and the survey results.

17 28. This recent review was the first time I had seen the results of the survey.

18 29. My professional opinion is that the survey accomplished the goal of supporting an
19 adjustment for the immediate matter; it provided data in a situation where there was no
20 transactional data, in an unbiased manner along with a professional opinion of the noted condition.

21 30. Unlike casual conversations or opinion interviews that licensed appraisers often do in these
22 situations, Brunson-Jiu, LLC wrote their questions down and appropriately administered the survey
23 to active market participants; their data can be reproduced by contacting the participants and asking
24 them the same questions.

1 31. As appraisers, we are practitioners not scholars who are often given to pick there research
2 goeographies with the benefits of a robust data set.

3 32. As appraisers, we are faced every day with real world appraisal problems that require
4 timely and practical solutions. That is precisely what Brunson-Jiu, LLC did.

5
6 **I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND**
7 **CORRECT.**

8 Dated this 4th day of October, 2018.

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13 Orell C. Anderson
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EXHIBIT 9

1 **CRAIG JIU AND MICHAEL BRUNSON**
2 **C/O RPD ANALYTICS, LLC**
3 **9550 S. EASTERN AVE #253**
4 **LAS VEGAS, NV 89123**
5 **702-641-5657**

6 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
7 **STATE OF NEVADA**

8 **SHARATH CHANDRA, Administrator,)**
9 **REAL ESTATE DIVISION,)**
10 **DEPARTMENT OF BUSINESS AND)**
11 **INDUSTRY, STATE OF NEVADA,)**

12 **Petitioner,)**

13 **vs.)**

14 **MICHAEL L. BRUNSON (AP 17.020.S))**
15 **(License No. A.0207222-CG))**

16 **CRAIG E. JIU (AP 17.021.S))**
17 **(License No. A.0002330-CG))**

18 **Respondents.)**

Case No. 2016-4146 & AP 17.020.S
&
Case No. 2016-4145 & AP 17.021.S

DECLARATION OF ROBERT POTTS

FILED

Oct - 4 2018

M. Brunson & C. Jiu

Michael L. Brunson

(Signature)

DECLARATION OF ROBERT POTTS

I, Robert Potts, declare as follows:

1. I am over the age of eighteen years old and am competent to testify.
2. I have personal knowledge of the facts set forth below, and if called upon to do so could testify competently to those facts.
3. I am a resident of Douglas County, Nevada.
4. I am currently the Research Director for the Nevada Governor's Office of Economic Development. I have held this position since February 2012.
5. From September 1993 to December 2011 I was the Assistant Director for the UNLV Center for Business and Economic Research.

1 6. Over the past 25 years I have regularly and extensively used primary survey data for
2 research and analysis whether collected by myself or others. As such, I have a deep
3 understanding of the critically important role sound survey methodology and questionnaire
4 design have in providing reliable analytical results and findings. I have experience with multiple
5 survey instruments including mail, telephone, fax, on-line, and customer-intercept. Examples of
6 my survey-based research, analysis and reporting include: the Las Vegas Perspective, the
7 Southern Nevada Business Confidence Index, and the Las Vegas Housing Market Conditions.

8 7. Sometime in September or October of 2014, I was contacted by Brunson-Jiu, LLC and
9 asked to consult regarding a survey they had developed for use in one of their cases.

10 8. I was asked to provide my opinions regarding a survey titled, Broker/Agent Survey
11 Rosenberg. The purpose of my consultation was to review the survey design and questions to
12 ensure that the overall survey was neutral and non-biased.

13 9. In my opinion, the survey was designed to avoid leading questions so respondents would
14 provide an unbiased opinion on whether or not the noted circumstance impacted the value and/or
15 marketability of the adjacent property.

16 10. Examples of the survey's neutrality include: The survey was disseminated using a
17 commercially available database of Nevada brokers/agents. Of those that responded the
18 opening questions selected out only those that had experience with property at this level of the
19 market so as to only collect qualified responses. Those qualified respondents were then able to
20 choose whether they believed the described condition was neutral, positive, or negative, and to
21 what degree within those condition categories.

22 11. Prior to signing this declaration, I have reviewed the survey and the survey results.

23 12. This recent review was the first time I had seen the results of the survey.

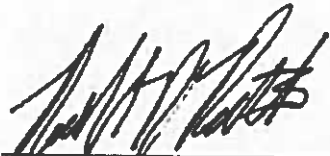
24 13. My professional opinion is that the survey accomplished the goal of measuring an
25 unbiased, professional opinion of the noted condition.

26 14. My professional opinion is that the survey credibly indicates that the respondents found
27 the extended lot line of the adjacent parcel to be an adverse condition in both the unimproved
28 and the improved scenarios.

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**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.**

Dated this 4th day of October, 2018.



Robert Potts

EXHIBIT 10

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DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS RENTAL AND)	
REPAIR LLC SERIES 74,)	
)	
Plaintiff,)	CASE NO. A728755
)	DEPT. NO. XXX
vs.)	
)	
ARLENE ANGELES,)	
)	
Defendant.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTIONS
BEFORE THE HONORABLE JERRY A. WIESE, II
WEDNESDAY, JANUARY 30, 2019
AT 10:11 A.M.
LAS VEGAS, NEVADA

REPORTED BY: KIMBERLY A. FARKAS, NV CCR No. 741

1 APPEARANCES:

2
3 For the Plaintiff:

4
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10 tnewberry@cnlawlv.com

11
12 For the Defendant:

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19 For Sunrise Ridge HOA:

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25 pdunkley@lipsonneilson.com

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 30, 2019

2
3 P R O C E E D I N G S

4 * * * * *

5
6 **THE COURT:** Thanks, folks. Sorry to keep you
7 sitting around all day.

8 The rest of you here on *Las Vegas Rental v.*
9 *Angeles*? You submit a pile like this, you know you're
10 going to go last; right?

11 **MS. CLARK NEWBERRY:** Yes, Your Honor.

12 **MS. MILLER:** I'm going to leave that, since
13 we had the opportunity to sit and chat for a little
14 while.

15 **THE COURT:** You've resolved the case?

16 **MS. CLARK NEWBERRY:** No.

17 **MS. MILLER:** Almost. Christina Miller on
18 behalf of Ocwen Loan Servicing.

19 **MS. CLARK NEWBERRY:** Tara Clark Newberry on
20 behalf of Las Vegas Rental and Repair.

21 **MR. DUNKLEY:** Peter Dunkley for Sunrise Ridge
22 HOA.

23 **THE COURT:** Good morning. We have Sunrise
24 motion for partial summary judgment. We have the
25 Rental motion for summary judgment, Ocwen's motions in

1 limine, Ocwen's motion for summary judgment on
2 preemption, Ocwen's motion for summary judgment --
3 there's a motion in limine for preadmission of the FHFA
4 statements. Where do you guys want to start?

5 **MS. CLARK NEWBERRY:** Your Honor, I believe,
6 obviously, there's competing motions in summary
7 judgment. I know this Court's philosophy on those
8 regarding HOA foreclosure sales. I wholly expect a
9 denial of all motions, Your Honor.

10 **THE COURT:** Not on the motions in limine.

11 **MS. CLARK NEWBERRY:** I meant the motions for
12 summary judgment. With regards to motions for summary
13 judgment, Your Honor, I think there are issues of fact
14 with regards to whether there is any type of a
15 Fannie Mae ownership. I think the documents show that
16 there's, you know, a discrepancy with regards to what
17 the affidavit of Mr. Babin says versus the assignments
18 of record and all the other information. And as the
19 Court acknowledged in a case prior to this morning, the
20 Court's expectation, as our argument is, is there's no
21 MSSC. There's no contract showing the custodial
22 agreement. There's no contract showing the servicer
23 relationship. All of these things are just not
24 provided. We don't believe they've met their burden to
25 show there was any type of an interest, thus, we don't

1 get to the analysis of the Federal Foreclosure Bar
2 unless they can meet that evidentiary threshold.

3 **THE COURT:** Depends which members of the
4 Supreme Court you ask.

5 **MS. CLARK NEWBERRY:** Well, I understand that,
6 Your Honor. And, again, and I think this Court is
7 correct. Even the city versus *SFR* case and any of the
8 other cases that are dealing with federal preemption
9 and were not postured to the court, the same analysis
10 that Your Honor has made with regards to the evidence
11 and the burden that the bank has. I think there are
12 assumptions that can be made. And certainly in a case
13 where an MSC was provided, that factually distinguishes
14 that case. In this case there is no MSC. There is no
15 evidence to support their argument that there's an
16 interest. So I believe the Court would be correct in
17 denying summary judgment and forcing a trial on that
18 issue.

19 That's my response with regards to the motion
20 for summary judgment. I just think there are issues of
21 fact that warrant a trial on the merits of the case and
22 that the Court is not in the position to decide at this
23 point because there are issues of fact. We dispute
24 Fannie Mae's interest.

25 Unique in this case, just to put it on the

1 record, Your Honor, when the HOA foreclosure sale took
2 place, One West Bank was the record beneficiary. After
3 the HOA foreclosure sale and after this lawsuit was
4 filed, then we had Ocwen become assigned One West's
5 interest in the deed of trust, and those documents also
6 reflect the note as well. So I think that issue of
7 fact alone is precarious and distinguishes this from
8 any of the other cases. You have a beneficiary
9 assigning the note and the deed of trust to not
10 Fannie Mae, but to Ocwen. And then throughout the
11 litigation, and as 4617 becomes a new argument, then
12 there's this issue that's alleged and raised.

13 As this court has indicated, those welcome
14 letters and some of those other things, they weren't
15 produced in this case, but I think there's a reason
16 they weren't produced in this case. Because those
17 welcome letters said, One West Bank owns your loan and
18 will be servicing it. And the next welcome letter says
19 Ocwen. I think this case leans heavily towards the
20 suspicion of whether there's any Fannie Mae interest
21 because their own actions and conduct, even after being
22 faced with a lawsuit, contradicts now what they're
23 arguing with regard to their summary judgment motion.
24 So I believe this Court is correct in scrutinizing
25 those documents, and would argue that the Nevada

1 Supreme Court certainly could see the factual
2 distinction of this case perhaps compared to this other
3 *SFR* case and some of the other unpublished decisions,
4 Your Honor.

5 **THE COURT:** So you're arguing that there's
6 genuine issues of material fact, but didn't you file a
7 motion for summary judgment, too?

8 **MS. CLARK NEWBERRY:** We did, Your Honor, with
9 regards to them not meeting that evidentiary burden. I
10 understand this Court's position. Keep in mind, our
11 motion was filed in May of 2018. And we deferred that
12 at the request of counsel on both sides, the ruling on
13 that, and allowed for those motions to be heard today.
14 Obviously, every Thursday we all take a look and see if
15 there's a case that affects any of these. And there's
16 no binding decision, I believe, on this Court with
17 regards to its evidentiary analysis.

18 So, yes, we filed a motion for summary
19 judgment because they hadn't produced any of these
20 documents. We believe the Court could find at that
21 point that they hadn't met their burden to show that we
22 even need to analyze the Federal Foreclosure Bar. We
23 would still maintain that. However, I know how this
24 Court feels about that issue.

25 So that's my position, Your Honor, is that

1 there isn't the evidence. And then I'll address the
2 motions in limine after the motion for summary
3 judgment.

4 **THE COURT:** Do you want to say something
5 about the summary judgment motion?

6 **MR. DUNKLEY:** Yeah. Our motion was on the
7 discrete state law base claims and not on the FHFA.
8 And I have a complete dog and pony show on the FHFA
9 issue, which I'll spare the Court and counsel on that.
10 It's all in the briefing on the unjust enrichment
11 claim, breach of contract, misrepresentation, and
12 negligence, and negligence based claims. I'm happy
13 to -- I can give you the high points or -- I think your
14 reputation is that you read things.

15 **THE COURT:** I do. But I'm happy to listen to
16 you because I know you guys want to make records on
17 these.

18 **MR. DUNKLEY:** I'll be real short.

19 **THE COURT:** Go ahead.

20 **MR. DUNKLEY:** On the unjust enrichment issue,
21 the bank did not confer any benefit to the HOA at all.
22 In fact, the money that the HOA received was from the
23 high bidder at the foreclosure sale and not from the
24 bank. That's kind of the first notch that kills the
25 claim.

1 The other thing is there has to be something
2 unjust about it in equity and good conscience. When
3 the HOA forecloses on a property, the HOA's best day
4 ever is being made whole, which is being compensated
5 for services the HOA already provided. So there's
6 nothing inequitable about the HOA getting paid past due
7 assessments from somebody else who is not the bank.

8 So to the extent there's an unjust enrichment
9 claim from the bank to anybody would be to the
10 borrower, the original homeowner, who took all the
11 bank's money and left town. As against the HOA,
12 there's no claim will there.

13 There's negotiation and negligence per se
14 claims. Luckily, we've had some clarifications since
15 these motions were filed. The Nevada Supreme Court has
16 said, used words like the statutory requirements for an
17 HOA are elaborate and there's no statutory duty to go
18 beyond NRS 116 at a foreclosure sale. So what we have
19 are the what I would call the wrote notices didn't
20 identify the super priority amount, the type of
21 arguments that created this statutory breach when the
22 statute at the time did not require those -- that
23 parsing of the notices.

24 The per se claim is not even pled
25 specifically enough to figure out what the alleged

1 defect on that claim is. Again, when the HOA receives
2 proceeds, whoever is handling the foreclosure is
3 obligated to follow the payment waterfall provision of
4 NRS 116, which provides for the payment of the HOA's
5 lien. It's a singular lien. It doesn't say payment of
6 the HOA as super priority portion, and then junior lien
7 holder, and then the sub-priority portion. It says,
8 pay the HOA's lien.

9 That's the whole purpose of an HOA's
10 enforcement is to be made whole for services it's
11 already provided. So assessments are based on a
12 budget. The HOA goes out and contracts or does work
13 and has to get -- and has to pay those people for those
14 services.

15 Misrepresentation claim is based on the
16 CC&Rs. CC&Rs are a covenant and not a -- not a
17 misrepresentation. So it kind of dovetails in with the
18 contract-based claims as well. So when you look at the
19 CC&Rs and the mortgage savings provision in the CC&Rs.
20 And then the bank undermines its misrepresentation
21 claim because it says misrepresentation requires
22 reliance. And so what did the bank do in reliance on
23 the CC&Rs? What it did is it included a plan deed
24 development rider in its deed of trust. It doesn't
25 say, our lien is unsaleable. It says, borrower, you

1 have to pay this lien. If you don't, we can elect to.
2 It's not an obligation that banks pay HOA liens. They
3 don't have to if they don't want to, but they can. But
4 the one person who is supposed to pay, according to the
5 contract they signed with the bank, is the borrower.

6 So for the bank to come in and say that the
7 HOA made a representation through a covenant running
8 with the land kind of mischaracterizes the whole
9 transaction, which was only between the borrower and
10 the bank. The HOA wasn't sitting at the table. There
11 was no -- the bank doesn't call the HOA and say, hey,
12 do you approve this borrower. And the borrower doesn't
13 go to the HOA and say, we'd like to use Bank of America
14 or whoever, Ocwen, or whoever is at the table now.

15 So reliance is undermined by the lender's own
16 documents, which require the borrower to pay those
17 assessments. There's no reliance when your own
18 documents require conforming with the CC&Rs.

19 And then the big elephant in the room on that
20 is also that NRS 116, as we know now, says that you
21 can't waive or vary by agreement the priority
22 provisions of NRS 116. And so the corollary to that is
23 also true, that if you can't waive priority by
24 agreement, then you certainly cannot alter, waive, or
25 vary them by disagreement. And so that's where we are

1 here. We think that it doesn't alter away and the
2 lender says it does, and we relied on it, and there's
3 your basis for the misrepresentation claim. So that
4 fails for those reasons.

5 The final -- there's two more. The breach of
6 contract good faith and fair dealing failed for the
7 same reason that the misrepresentation claim fails.
8 There's no -- if you walk through law school, breach of
9 contract analysis, there's no meeting of the minds.
10 There's no consideration paid to the HOA by the bank.
11 This is all -- the obligation to comply with the CC&Rs
12 is only on the borrower, only on the homeowner, doesn't
13 flow to the bank unless the bank wants to through some
14 separate deal with the borrower. So the universe of
15 the breach of contract claim by a bank is against the
16 borrower. They assert that the CC&Rs again create a
17 third-party beneficiary when CC&Rs are -- and I cited
18 the administrative covenant -- are a covenant that runs
19 with the land and not a contract. So to have a valid
20 and viable breach of contract claim even under a
21 third-party liability situation, you would need some
22 document that contemplates the alleged beneficiary and
23 some document where the person claiming the alleged
24 beneficiary has signed or agreed to be bound by some
25 obligation. We don't have that. That's missing here,

1 Your Honor and with the lack of a contract between the
2 HOA and the bank, so the good faith and fair dealing
3 claim fails.

4 The last theory of liability against the HOA
5 was this commercial reasonableness, and I'll spare you
6 that completely, Your Honor. Thank you.

7 **THE COURT:** Let me just ask this because
8 she's going to get up and say that the HOA was paid
9 \$3,699.43, but it was \$3,300 in excess of its lien. So
10 how is that not unjust enrichment or why doesn't that
11 at least create a genuine issue of material fact as it
12 relates to the excess funds?

13 **MR. DUNKLEY:** Because it was not a benefit
14 conferred by the lender. So it doesn't matter -- what
15 I'm saying as far as the bank's unjust enrichment
16 claim, it doesn't matter who paid that. If that's
17 really unjustly retained by the HOA, which it's not
18 because they're just getting made whole. They've
19 already provided services. So there's nothing in an
20 unjust enrichment claim that says, oh, you can receive
21 money for services you've provided unless it's really
22 super duper unfair to a bank.

23 So that \$3,000 paid was not the bank's money.
24 The bank has remedies against the people who are
25 obligated to pay that. I have a footnote in my outline

1 here. You need damages. And at some point in some way
2 we can't even show that the bank has been damaged at
3 all because they haven't pursued their contractual
4 remedies. They haven't foreclosed. They haven't
5 pursued the borrower on the note. So that \$3,000 is
6 essentially a hypothetical expense that they never paid
7 that the HOA got paid justly for services provided.

8 And so you can say -- I think it's fair to
9 characterize it as enrichment, but it's not to the
10 profit of the HOA. It's to compensate the HOA for what
11 they paid. And, certainly, if that money came from the
12 bank years ago, my client would surely have said,
13 here's your \$3,000 back, and we'll make this claim go
14 away.

15 **THE COURT:** Okay. Your turn.

16 **MS. MILLER:** Your Honor, there is a lot of
17 briefing in front of you. All of these arguments have
18 been addressed directly in our briefing. There isn't
19 really much for me to add that you haven't already
20 read. The only thing I would add is that our briefing
21 was completed at the end of, I think it was June 2018.
22 Insofar as the HERA, the Federal Foreclosure Bar MSJ,
23 there have been significant developments from both the
24 Nevada Supreme Court and the Ninth Circuit since that
25 time. As you heard Ms. Winslow tell you this morning,

1 they pretty much have shut the door on there being an
2 issue of fact as to Fannie Mae's ownership. Time and
3 again we have the Ninth Circuit and the Nevada Supreme
4 Court, in both published and unpublished opinions,
5 looking solely to those business record screenshots,
6 which are admissible as an original business record
7 under our evidentiary rules.

8 **THE COURT:** I have no problem with that. And
9 I always let them admit them.

10 **MS. MILLER:** Right, Your Honor. So that
11 combined with an affidavit from the witness for
12 Fannie Mae or Freddie Mac has been found sufficient,
13 that alone, to find Fannie Mae has an ownership
14 interest in the subject loan. And, again, that's come
15 down from the Ninth Circuit deciding a federal code
16 provision, HERA, and that is binding on this Court.
17 The Nevada Supreme Court time and again cites to the
18 Ninth Circuit opinions that specifically the *Berezovsky*
19 opinion, which has been briefed for you, as well as
20 further decisions, the *Elmer* decision that came down as
21 well. And we haven't had a lot of published decisions
22 from the Nevada Supreme Court recently, but that
23 appears to be not because they're hesitant in
24 publishing a decision, but because they keep relying on
25 already published opinions from the Nevada Supreme

1 Court itself and from the Ninth Circuit.

2 So the Nevada Supreme Court, the three
3 justice panels, appear to be saying, well, this isn't
4 anything new. We've already told you in the past this
5 is how it is. Whether it's relying on the *Edelstein*
6 decision or the *Montierth* decision or the Ninth Circuit
7 decisions, they keep going back to relying on something
8 that is already published precedent. So just because
9 we don't have a published decision on securitization or
10 FHFA consent, isn't necessarily to say because the
11 Nevada Supreme Court isn't yet ready to pull the
12 trigger on publishing that. It's because they've said,
13 hey, look, it's already been decided; we're just going
14 to follow what's already been set forth by the Ninth
15 Circuit deciding a federal code provision, or where the
16 Nevada Supreme Court in the *Christine View* opinion has
17 already addressed it in a published opinion.

18 So insofar as counsel is saying there's an
19 issue of fact as to ownership, well, the evidence in
20 the record, which time and again the Ninth Circuit and
21 Nevada Supreme Court have both said is sufficient, we
22 don't need to see anything further to confirm that
23 Fannie Mae has an ownership interest, really at this
24 point, Your Honor, is sufficient for you to rule on
25 summary judgment.

1 In addition, and, again, really important to
2 the summary judgment stage is that there is no evidence
3 in the record to dispute this. We don't have any
4 evidence or an affidavit, anything from anybody else
5 who's claiming that ownership interest.

6 Now, counsel may say, hey, well, there's
7 somebody else who is acting as beneficiary of record.
8 Well, that's already been addressed numerous times by
9 the Ninth Circuit and Nevada Supreme Court in published
10 authority that says, no, the servicer can act as the
11 beneficiary of record in its capacity as loan servicer
12 on behalf of Fannie Mae or Freddie Mac.

13 Recently, there's also a couple unpublished
14 opinions from the Nevada Supreme Court relying again on
15 the Ninth Circuit saying all you have to do is look at
16 the face of the deed of trust. The face of the deed of
17 trust says that this deed of trust is being executed on
18 a, quote/unquote, Fannie Mae/Freddie Mac uniform
19 instrument. Now, when the loan is originated and that
20 deed of trust is executed, there's no Fannie Mae or
21 Freddie Mac interest at that point. They're part of
22 the secondary mortgage market, and they usually
23 purchase a loan shortly after it's been originated.
24 But it's telling the world, hey, you need to be aware
25 that this loan is being done in conformity with

1 Fannie Mae and Freddie Mac's guidelines so that there
2 is the possibility it will be purchased by them. It
3 puts the world on record notice at a minimum that there
4 may be a Fannie Mae or Freddie Mac interest and that
5 they are obligated to inquire.

6 They can't just turn a blind eye and say,
7 well, you weren't a record beneficiary; there's no
8 assignment to you, therefore, you had no interest. And
9 that is pretty much where the Nevada Supreme Court went
10 at the end of December with two unpublished opinions
11 where they said, you don't need to record. There was
12 no obligation as of the pre-2011 recording statutes in
13 Nevada, specifically as to assignments of a deed of
14 trust, that required a change in ownership to be
15 recorded.

16 Now, the Ninth Circuit told us in, I believe
17 it was late June 2018, in the *Freddie Mac v. SFR*
18 opinion, which, unfortunately, was published after all
19 ever our briefing in this case, they said there's no
20 requirement that a change in ownership is recorded
21 looking directly at the Nevada Revised Statutes at all.
22 The only thing that was required to be recorded is an
23 assignment of the deed of trust. Well, a change in
24 ownership is not an assignment of any beneficial
25 interest.

1 As we can see from the servicing guide, the
2 servicing guide, which is a contract between Fannie Mae
3 or Freddie Mac and its loan servicers, it guides how
4 their relationship interacts and what each party's
5 obligation is. The servicing guide says, we give
6 authority to the servicers to act as beneficiary of
7 record.

8 So the Ninth Circuit looked at all of this
9 and said, yes, under Nevada law there's no requirement
10 to record a change in ownership. The Nevada Supreme
11 Court in the two recent opinions published -- excuse
12 me -- they were not published, but unpublished
13 decisions from late December of last year both looked
14 at NRS 106.210, which is the recording statute for
15 assignments of the deed of trust. And they said, well,
16 looking at NRS 106.210, in effect at the time of
17 Fannie Mae or Freddie Mac's ownership acquisition,
18 ownership interest, there was no requirement. The
19 statute at that time basically said, you may record an
20 assignment of deed of trust. There was no obligation
21 to record as there is in the current version.

22 So, because of that, the Nevada Supreme Court
23 said, it's fine that Fannie Mae's interest doesn't
24 appear in the title records for the property. Federal
25 preemption still applies. They had a protected

1 property interest.

2 That's the exact same situation as we have
3 here. Fannie Mae acquired the loan in 2006. There was
4 no obligation for them to record their interest. And
5 if we follow the Ninth Circuit, there's still no
6 obligation for them to record their interest. The
7 servicing guide specifically says they only are
8 required to record that assignment into the name of
9 their servicer either before they pursue foreclosure or
10 right after the foreclosure. That's governed by the
11 servicing guide. And both the Ninth Circuit and the
12 Nevada Supreme Court have said the servicing guide
13 governs this relationship.

14 Your Honor, it's pretty well settled at this
15 point. I understand. I would love to have additional
16 documents to show Fannie Mae's interest. But the fact
17 of the matter is, they're a paperless business entity
18 at this point. Everything they have is in online
19 databases. Those printouts are the record of their
20 ownership.

21 You've got before you the record of them
22 receiving information every single month since they
23 acquired the loan showing that the servicer is
24 reporting to them. It wouldn't make any sense for a
25 servicer to report to Fannie Mae on the status of the

1 loan if Fannie Mae had no interest. Ocwen has executed
2 a declaration in this case acknowledging they've
3 reviewed all their business records. They are the
4 servicer of the loan for Fannie Mae as the owner and
5 that is it. They have no ownership interest. They
6 have no ability to take any action other than what is
7 permitted by the servicing guide. And you have a
8 similar declaration from Fannie Mae in this case
9 saying, all of our records show we own this loan. One
10 West was our servicer. It is now Ocwen Loan Servicing.

11 Your Honor, you know these issues very well.
12 I don't want to belabor the point. I think we're all
13 pretty clear on how you rule on these. So unless I've
14 been able to dazzle you and convince you otherwise this
15 morning --

16 **THE COURT:** The whole Freddie/Fannie issue,
17 every time it comes up, I wonder -- I understand your
18 argument that the guide controls. But if the guide
19 controls, why do we not have some of the supporting
20 documents that we should have that the guide requires
21 that would evidence Fannie and Freddie's ownership
22 interest? Because the guide requires a specific
23 agreement between Fannie/Freddie and their servicer.
24 The guide requires a custodial agreement with the
25 custodian that holds the original note. I am told that

1 those documents exist but that no one has seen them, no
2 one has been able to provide them, which causes some
3 question in my mind.

4 The other question is if Freddie or Fannie
5 has an ownership interest in these loans, why is this a
6 different analysis than the original *SFR* analysis when
7 the Supreme Court said that the banks -- now, to be
8 fair, I was ruling contrary to the way the Supreme
9 Court ruled in *SFR*, but when *SFR* came out, the Supreme
10 Court said the banks had the opportunity to protect
11 their interest by showing up and bidding or by paying
12 off the super priority lien or lots of different things
13 banks could have done to preserve their interest. And
14 they didn't, because they sat on their rights, they
15 found against the banks; right. So the same analysis
16 could apply. Because if the bank is, in fact, a
17 servicer for Freddie and Fannie, and they know at the
18 time that an HOA is trying to foreclose on a property
19 that Fannie or Freddie is the owner of this property,
20 and there's an FHFA prohibition against divesting
21 Fannie or Freddie of any interest in the property, why
22 isn't that something that was addressed at the time of
23 the original foreclosure sale? That would have been
24 much easier than any other thing that they could have
25 done to prohibit a foreclosure sale from going forward

1 if they could establish an ownership interest at the
2 time of the foreclosure sale.

3 I've thought about this stuff a lot. I'll be
4 honest, I never liked real property law, but I
5 understand this stuff pretty well now, I think.

6 **MS. MILLER:** And, Your Honor, I think all of
7 us, you know, with the benefit of hindsight, looking at
8 this going, why didn't somebody make that decision back
9 in 2010, '11 when all these foreclosures were starting
10 to happen. But this is just my understanding. I don't
11 have anything from my client in writing saying this,
12 but -- and a witness will get on the stand and tell you
13 this if it goes to trial, but there was no need to take
14 any of those steps because the federal law protected
15 them. It protected them whether their interest was
16 recorded or wasn't recorded.

17 **THE COURT:** I understand that argument.

18 **MS. MILLER:** Right. As Ms. Newberry said
19 before, it's not a, quote/unquote, new argument that
20 was created when everybody was kind of scrambling
21 going, oh, my goodness, how do we protect our deed of
22 trust. No. This was law as of 2008. Just because it
23 wasn't raised in litigation previously, just because
24 there wasn't a recorded notice recorded on millions,
25 and I mean millions, of loans owned by Fannie Mae and

1 Freddie Mac, which would have been financially
2 crippling in and of itself, FHFA took both of them
3 under conservatorship, passed the Housing Economic
4 Recovery Act of 2008 --

5 **THE COURT:** I understand that. Don't you
6 just think it's very convenient that Freddie and Fannie
7 haven't become involved until the Supreme Court issued
8 the original *SFR* decision and said, we're going to rule
9 against the banks. And then the banks had to find a
10 way to try to maintain their interest, so now we get
11 Fannie and Freddie involved?

12 **MS. MILLER:** No, not necessarily, Your Honor.
13 I have plenty of cases, which were 2012-2013 cases,
14 where HERA was asserted as an affirmative defense
15 because the loan was owned by Fannie Mae. I haven't
16 had any where Freddie Mac was the owner because I
17 handle predominantly our Fannie Mae files. It's been
18 asserted since almost the start of this HOA foreclosure
19 litigation. I think it certainly ramped up once we
20 finally started to get some decisions from the Nevada
21 Supreme Court. But, again, those decisions coming down
22 in 2014, 2015, '16 from the Ninth Circuit and Nevada
23 Supreme Court were from cases that went to trial or
24 were briefed on summary judgment at least a year or 18
25 months beforehand. So this defense has been around for

1 a long time. It just took a while to get some tracks
2 and get some published opinions on it.

3 **THE COURT:** The Supreme Court may disagree
4 with me. And, like I said in that prior case, if they
5 come out with a published decision, they may decide to
6 publish the one that they did a couple weeks ago. I'm
7 not sure what they're going to do. But if they tell us
8 that it doesn't matter what they don't have, that the
9 screenshots are enough, I'm going to follow the Supreme
10 Court, but until then, I'm still skeptical.

11 **MS. MILLER:** I understand, Your Honor. So
12 that brings me to the next --

13 **THE COURT:** Talk about the State issues that
14 Mr. Dunkley talked about.

15 **MS. MILLER:** Sure. Again, I don't really
16 have anything to add. There hasn't been a lot of
17 change in the law on those state issues. The biggest
18 point I would like to point out, though, that I think
19 was the majority of Mr. Dunkley's argument was the
20 misrepresentation and the CC&Rs as a contract. Those
21 CC&Rs exist in that exact same state currently as the
22 date that the loan was originated.

23 As Mr. Dunkley pointed out, there is a PUD
24 rider identifying the HOA, identifying that there are
25 CC&Rs and obligating the homeowner to pay those monthly

1 assessments. As part of that, that basically is an
2 indication that the originating lender and all
3 subsequent owners of that loan were on notice of the
4 CC&Rs. The CC&Rs contain not only the mortgagee
5 protection clause saying, Don't worry, lenders, we're
6 not going to take any action that will adversely affect
7 you. But there are also provisions in there that say,
8 in order to induce Fannie Mae, Freddie Mac, FHA to get
9 involved in loans within our HOA community, we're going
10 to give you all these additional protections, including
11 that the HOA has to notify FHA, Freddie Mac, Fannie Mae
12 if they're making changes to the CC&Rs that are
13 substantially going to affect lenders. So there are
14 provisions in there.

15 And we do not dispute, Your Honor, that we
16 were not a party to the HOAs. There was no offer and
17 acceptance. There was no negotiation of the terms of
18 the CC&Rs. And there's no execution of the CC&Rs by a
19 lender or by Fannie Mae or Freddie Mac. But there are
20 provisions within it that provide protections,
21 voluntarily provided protections, from the HOA to
22 lenders, including Freddie Mac and Fannie Mae.

23 **THE COURT:** Third-party beneficiary.

24 **MS. MILLER:** Correct, Your Honor. We do not
25 argue we are a party to this. We argue that CC&Rs are

1 a recognized contract between the HOA and the
2 homeowners that live within the HOA. There is
3 published case law on that that says CC&Rs are a
4 contract. So any benefits, protections, provided by
5 those CC&Rs to a third party are necessarily terms of
6 that contract that a third-party beneficiary who's owed
7 those obligations and protections should be allowed to
8 rely on. And that is evidenced by the fact that
9 there's a PUD rider attached to the deed of trust.
10 It's also evidenced by the fact that the title
11 insurance policy specifically recognizes that there are
12 CC&Rs, including a mortgagee protection clause.

13 So I understand that while 116 may have come
14 about and said, hey, there is a super priority lien out
15 there, but the fact of the matter is the HOAs have
16 never taken any steps to revise their publicly-recorded
17 CC&Rs. To this day, anybody who pulls the CC&Rs who
18 may want to consider buying within an HOA community who
19 gets the benefit of reviewing CC&Rs before they sign on
20 the dotted line, they will read those and go, oh, it's
21 okay; my lender will be protected because that's what
22 the CC&Rs say.

23 As far as that being -- even if the Court
24 doesn't want to consider it a breach of contract, it
25 can certainly be considered a material

1 misrepresentation to not only lenders, third-party
2 beneficiaries, but also to homeowners that buy within
3 that community themselves. And that's a continuing
4 misrepresentation for as long as the HOA chooses not to
5 revise their CC&Rs.

6 Your Honor, everything else, it's in our
7 briefing. Unless you have any specific questions, I'll
8 rest on the briefing.

9 **THE COURT:** I'm going to deny all the summary
10 judgment motions, guys. I don't think that's a
11 surprise to anybody.

12 **MS. MILLER:** It's not, Your Honor. Your
13 Honor, we did have the benefit of having a chat between
14 us while we were waiting to be called this morning.
15 There is a settlement offer out there to Ms. Newberry's
16 client. The HOA has also made a settlement offer to
17 Fannie Mae. We've all agreed that there certainly
18 would be a lot of benefit to putting this case into a
19 settlement conference, a mandatory settlement
20 conference. And I have approval from Fannie Mae to
21 make a formal request that we do set it for an MSC. I
22 have some settlement authority. I think we can
23 probably make some pretty good progress on this one and
24 maybe save Your Honor's time and our time and our
25 clients' money trying to get this one settled instead

1 of pushing it to a trial.

2 **THE COURT:** What do you want me to do with
3 the motions in limine that are still pending for today?
4 Do you want me to rule on them or wait?

5 **MS. MILLER:** Your Honor, I'd be fine waiting
6 on them. Although, I am happy and I'm prepared to
7 discuss them today, but if that's your preference.

8 **THE COURT:** Sometimes if I rule on it, that
9 may make it more difficult to settle.

10 **MS. CLARK NEWBERRY:** Understood, Your Honor.
11 I have no preference either way. I'll defer to counsel
12 on whether they want it heard or not. I think the
13 motion for summary judgment will be the client
14 motivation to get a settlement on both sides. I don't
15 know that we need to rule on the motions in limine.

16 **THE COURT:** You guys are set for bench trial
17 on March 11th stack.

18 **MS. CLARK NEWBERRY:** Yes, Your Honor. So I
19 think we all talked about a continuance, obviously,
20 because I know that your chambers handles the
21 assignments of the settlement conference, but
22 typically, it takes at least a few weeks to get it set.
23 So I don't know that we'll be able to get the
24 settlement conference done, then have the motions in
25 limine heard, and then be prepared for that stack.

1 This is also a later case, Your Honor. We
2 don't have a five-year rule issue. I think moving to
3 the next stack or even two stacks, I doubt that Your
4 Honor would call our case as a bench trial with so many
5 others that could potentially be in front of it.

6 **THE COURT:** You may be right. I'm trying not
7 to continue cases from one stack to the next.

8 **MS. CLARK NEWBERRY:** I understand that, Your
9 Honor.

10 **THE COURT:** In looking at your motions in
11 limine, let's just discuss these real fast, I've got
12 Ocwen's motion to pre-admit the note, the deed of trust
13 and the assignments. I generally see those in every
14 case. They're going to be able to bring somebody
15 that's going to be able to lay the foundation for them
16 if they're not pre-admitted. Tell me why I shouldn't
17 allow those.

18 **MS. CLARK NEWBERRY:** Your Honor, with regard
19 to the deed of trust and the assignments, those are
20 recorded documents that the Court could take judicial
21 notice. It was never raised during my discussions with
22 Ms. Miller.

23 **THE COURT:** I know. The note is the only
24 thing.

25 **MS. CLARK NEWBERRY:** So we would have

1 stipulated to those in our joint exhibits.

2 **THE COURT:** I can tell you that the note that
3 they're going to provide, their Fannie Mae person is
4 going to be able to say that this was -- or their
5 servicing person is going to be able to say that this
6 is a copy taken from the file that's held by their
7 custodian. Nobody's ever seen the original, but they
8 have every reason to believe that this is kept in the
9 ordinary course of business. I've seen this over and
10 over and over.

11 **MS. CLARK NEWBERRY:** Your Honor, best
12 evidence rule. Because this is not a publicly-recorded
13 document, because the parties to that document are not
14 present, including the assignors, and I think you can
15 look at the assignments itself that says, you know, the
16 deed of trust and the note were assigned to One West
17 Bank. The note and the deed of trust was then assigned
18 to Ocwen. There is an issue of fact as to where is
19 this note, what happened to it. And I think the Court
20 can -- you know, I'm sure any affidavit that a party to
21 any case could come in and sign doesn't definitively
22 make those documents admissible. Because if there are
23 issues within the case that challenge the credibility
24 of that affidavit -- and I've had this in front of
25 Judge Jones recently, where a custodian of record for

1 an HOA trustee gave inconsistent testimony in her
2 deposition which raised credibility to her as a witness
3 and, therefore, her affidavit with regards to that.
4 And so you do have these issues of fact that can
5 challenge any of those standards. And, again, it's
6 hearsay. And the only way you can overcome hearsay is
7 with a business exception or a custodian of record.
8 There isn't one. There's no custodian of record that
9 was attached to the note.

10 **THE COURT:** Let me ask you this because my
11 understanding is the only problem you have with the
12 note is they need to establish ownership or possession
13 of the note. I'm assuming that the note was endorsed
14 in blank because they're all endorsed in blank. And
15 the argument that you're going to make is that there's
16 no evidence that Freddie or Fannie possesses that note.

17 **MS. CLARK NEWBERRY:** That and there's an
18 allonge on this one, Your Honor. That raises another
19 question. Was the allonge permanently affixed to the
20 note? We don't know because they never produce the
21 original. Typically, in these cases what I have found
22 is -- and, Your Honor, I've done consumer litigation
23 well before the HOA cases arose, and I've always
24 engaged in those discussion with the bank on behalf of
25 the actual borrower, which is, just because you have a

1 copy of it doesn't mean that's how it exists today.
2 And if it's been negotiated, and especially if you're
3 trying to claim that it's bearer paper, it's endorsed
4 in blank, you need to show up with it.

5 I understand that they can present it, have
6 an inspection, and then we swap the copy into the
7 court's record because they don't want the original to
8 be lodged with the court. I don't have a problem with
9 that. The problem is they haven't produced it. And
10 because we have this issue Your Honor has addressed and
11 counsel admitted to you today, they all operate in a
12 paperless environment.

13 I have had cases, and Judge Delaney has
14 adjudicated this very issue, where I was presented with
15 a copy. Later there was a requirement that the
16 original be possessed. They were not even remotely
17 close. And there were all kinds of endorsements and
18 allonge that were not on there. There was a
19 misrepresentation by the bank.

20 Now, in that particular case, was it fraud?
21 Was it error? Was it intentional? That wasn't the
22 premise of the court. It basically went down to
23 admissibility. And the best evidence rule requires,
24 especially in a clandestine document such as this note
25 that no one in this case was a party to its

1 origination, I think just as the Court is suspicious of
2 the afterthought of Fannie Mae interest, there's an
3 afterthought of where is this note? How does it exist
4 today? Because it is a dynamic document that is
5 constantly changing.

6 **THE COURT:** You've convinced me.

7 **MS. CLARK NEWBERRY:** That's my point. If
8 they had an authentication to it, I would have a
9 different argument for Your Honor. The fact is it's
10 just a copy of a copy.

11 **THE COURT:** They probably will. As far as
12 pre-admitting something, I'll pre-admit the deed and
13 the assignments. As far as the note is concerned, I
14 won't pre-admit it, but I anticipate you're going to be
15 able to bring somebody to lay a proper foundation.

16 **MS. CLARK NEWBERRY:** We would just reserve
17 our right to object as to those recorded documents on
18 the basis of relevance.

19 **THE COURT:** That's fine. Motion in limine
20 regarding testimony of Michael Brunson. The argument
21 is that he's going to try to establish the fair market
22 value of the property based on fire sale value,
23 essentially, as opposed to regular fair market value;
24 right?

25 **MS. MILLER:** Correct, Your Honor. Which we

1 argue goes directly to the relevance of any of his
2 testimony and the methodology he uses. It will not
3 assist you as the trier of fact at trial because it's
4 completely wrong standard as directed by the Nevada
5 Supreme Court in the *Shadow Wood* opinion. They
6 specifically say, we need to look at the sales price
7 compared to the fair market value. They don't say,
8 let's look at the sales price compared to similar
9 foreclosure sale impaired values. They say, no,
10 compare it to the fair market value.

11 I don't think there would ever be a
12 commercially unreasonable foreclosure sale if we only
13 ever looked at the value of the sale and then
14 retroactively compared it to other foreclosures. You
15 have to necessarily, in order to determine if that
16 20 percent threshold has been met, necessarily compare
17 it to a fair market valuation of the property.

18 **THE COURT:** Here's what I generally do on
19 these, because I've seen this before. I will generally
20 allow the expert to testify. And I will allow you to
21 argue to me what definition of fair market value I need
22 to apply. Because I'm going to have experts, I would
23 assume, on both sides, one that's going to use fire
24 sale values and one that's going to use fair market
25 values without considering distressed properties;

1 right?

2 And I understand the position is that the
3 Supreme Court has said fair market value. But I don't
4 know that the Supreme Court has specifically come out
5 and said, you can't consider distressed properties in
6 determining fair market value. So I'm going to let you
7 argue that. I'm not going to exclude him at this
8 point. The good thing is it's a bench trial, not a
9 jury trial. Even if I hear it, if I decide that the
10 weight of it is inconsequential or I shouldn't consider
11 it, I won't consider it. Fair enough?

12 **MS. CLARK NEWBERRY:** Your Honor, that goes to
13 our point. Just for the purpose of the record, because
14 I know there will be inevitable appeal if we don't
15 settle, with regards to Mr. Brunson's testimony, they
16 ignore the fact that his testimony is not limited
17 specifically to this definition of value. Mr. Brunson
18 makes a extinguishment regarding how do we prove the
19 negative. And if the price is too low, then there's
20 this analysis under *Tomiyasu* and *Golden* with regards to
21 unfairness, oppression, and fraud.

22 So there's been in allegation of fraud.
23 There's no fraud before the Court. I think the
24 argument of counsel in the briefs, the MSJ, was
25 unfairness. So in the absence of the proof of

1 unfairness, our expert provides an explanation for why
2 this property would have sold at the amount that it did
3 and show that it was not some nefarious conduct, which
4 there's no nefarious conduct that's been presented to
5 the Court. What they elaborate and allow for this
6 Court to take into consideration with regards to
7 balancing the equities is an explanation of what
8 actually happened. And what actually happened was the
9 market forces created the price at auction.

10 And so we do not set Mr. Brunson forth simply
11 on an issue of what was the value of the property that
12 day. Mr. Brunson provides an explanation to the Court
13 that this price could have happened without fraud,
14 unfairness, or oppression. And the reason we know that
15 is here's a huge segment of properties that all sold at
16 the same price range similarly situated. So that goes
17 to weighing the equities, Your Honor.

18 So that is the difference, I would say for
19 establishment of the record, is Mr. Brunson provides an
20 explanation to the Court as to what was going on in the
21 market. Obviously, an expert is required for that
22 understanding. Otherwise, it's just argument of
23 counsel. So we need the expert to present an
24 explanation of what the market conditions were and how
25 this HOA foreclosure sale price was determined.

1 **THE COURT:** It's a good argument.

2 **MS. CLARK NEWBERRY:** Then the second side of
3 that, Your Honor, is he did an appraisal review based
4 on USPAP standards. And the USPAP standards specify
5 that when an appraiser first takes on an assignment,
6 they have to properly define it. So Mr. Brunson
7 criticizes the manner in which that appraisal was
8 conducted.

9 And so we have two different issues here.
10 One, we have a battle of experts on who used the USPAP
11 correctly. Brunson claims that their expert did not.
12 Their expert I don't believe provided a rebuttal and
13 criticism -- under the USPAP there's an appraisal
14 report, an appraisal review. And it's codified as to
15 how certified appraisers go about addressing those
16 issues. So we do have a battle of experts with regards
17 to whether or not that initial report was done
18 correctly. And I think that, again, under the hallmark
19 standard in *Higgins*, they're both operating under
20 USPAP. They just disagree as to who got the definition
21 of the problem correct. So then that goes to weighing
22 credibility, and that's for the trier of fact.

23 That's our position, Your Honor, is that
24 Mr. Brunson will help this court in making a
25 determination as to whether that initial appraisal

1 report was done correctly. And then, aside from that,
2 which I think is the most important information that
3 Mr. Brunson will yield to the Court, is what was the
4 market conditions, why did this property sell at the
5 price that it did. I believe balancing the equities,
6 Mr. Brunson's analysis is the correct analysis, which
7 is simply that there's no fraud, oppression, or
8 unfairness. It's just simply the market conditions.

9 So that's what I present to the Court as far
10 as the purpose and the intention of the expert that
11 we're offering.

12 **MS. MILLER:** Your Honor, I'd just like to
13 address it. It sounds like a good argument at face
14 value, but what counsel is actually asking this Court
15 to allow her witness to do is provide legal testimony.
16 She wants to put a witness on the stand to first
17 discuss valuation, which he can discuss valuation
18 provided this Court finds that his methodology in
19 creating that valuation was correct or even relevant.

20 But, second of all, Mr. Brunson cannot
21 testify about fraud, oppression, and unfairness. That
22 is a legal issue. He is an expert witness who provided
23 a historical appraisal report. He is excluded. He
24 cannot testify about a legal issue.

25 And that was the second part of the our

1 motion in limine. Even if we forget about his poor
2 methodology under the USPAP, which, as a side note,
3 Mr. Brunson was before the Nevada Attorney General
4 yesterday on a complaint by the AG's office as to his
5 professional conduct because they found in other
6 appraisal reports that he did not conduct appraisals
7 pursuant to the USPAP standards. He did not conduct an
8 appraisal that was fair. He conducted an appraisal in
9 this other case -- and, I'm sorry, I don't know the
10 outcome of that hearing yesterday. But the allegation
11 from the AG's office is that he prepared an appraisal
12 report that was skewed to solely be beneficial to his
13 client. He didn't look at a correct number of
14 properties. He didn't compare comparable properties.

15 And that's exactly what we have here. He's
16 taking an already determined value and then creating an
17 analysis that supports that value. He's not looking at
18 it with a blank slate, going, okay, let me
19 independently look at this, compare identical
20 properties that sold at a foreclosure sale. Because in
21 this case, they're not identical properties. They
22 range from one- to three-bedroom properties. They
23 range in square footage. They're not even the same
24 size property. They're not of the identical or very
25 close physical proximity to the subject property in

1 this case. And they sold at very, very foreclosure
2 prices. One of them went for, I think it was just over
3 \$4,000, compared to one that was sold for \$31,000.

4 He looks at, I think it was, 20 properties,
5 but they're not even comparable. How can you compare a
6 property that has two bedrooms and two bathrooms and is
7 only 1,400 square foot and sold for \$4,000 to another
8 one that's four bedroom, two bathroom, 1,900 square
9 foot that sold for \$31,000. He's using improper
10 comparables. This is exactly what we're getting at,
11 besides the fact that he's taking an already determined
12 outcome and trying to justify that outcome, which is
13 not an appraisal. That is simply a paid-for opinion.
14 It's not a fair and equitable appraisal.

15 And, again, my apologies. The point I was
16 trying to make before with the blank slate is he didn't
17 come into it and say, I don't know anything about this;
18 let me appraise similar properties that sold at
19 foreclosure sale and come up with what I think would
20 have been a fair value to sell it. He took the value
21 that already existed and simply made up a method of
22 justifying that number. That is an incorrect
23 methodology.

24 So, Your Honor, again, I think I know
25 probably where you're going with your ruling on this.

1 I just wanted to make a clear record of this. And if
2 Your Honor is interested, I have a copy of that
3 complaint by the Attorney General's office against
4 Mr. Brunson. I believe it was dated October or
5 September of 2018. I'll reserve it for trial if we get
6 there. Otherwise, I'm happy to submit it to chambers
7 with a copy to counsel.

8 **THE COURT:** I don't need it now. I'm not
9 going to exclude him at this point. I'll let him
10 testify. You can object if you think there's something
11 improper at the time of his testimony. I'll consider
12 the weight of it based upon the evidence that he
13 presents and what it's based upon. If I determine that
14 I need to ignore it, I'll ignore it.

15 **MS. MILLER:** Thank you.

16 **THE COURT:** We've got a motion to pre-admit
17 the three FHFA statements. I have had trials where
18 there's been an FHFA representative there. So they
19 come in anyway if somebody is there. Are you trying
20 not to bring somebody?

21 **MS. MILLER:** Your Honor, I just actually -- I
22 don't really see the point in bringing an FHFA witness.
23 It's a legal issue, consent and HERA. The Ninth
24 Circuit, and I believe at this point the Nevada Supreme
25 Court has adopted the Ninth Circuit's opinion, saying

1 there was no requirement to give affirmative consent
2 from the FHFA or not give consent in an affirmative
3 manner.

4 **THE COURT:** In the letters, I mean, one of
5 the letters says that we're not going to give consent.

6 **MS. MILLER:** Correct, Your Honor. It says,
7 historically, we have never given consent and in the
8 future we never will give consent. Again, I would
9 submit that that is a legal issue. It's not an issue
10 of fact in this case.

11 **THE COURT:** I think I'm going to allow them.
12 I've seen them. I've considered them in the past. I
13 know what they say.

14 **MS. CLARK NEWBERRY:** Your Honor, we would
15 just argue that they've not been authenticated and it's
16 hearsay, and they have not overcome the exceptions --
17 they haven't explained that they're not hearsay and
18 they haven't overcome the exceptions. Just based
19 solely on the evidentiary requirements of Nevada law,
20 case law as well as procedure, the Court can't
21 pre-admit a document that we've objected to on the
22 basis of hearsay, and they have not overcome that
23 burden. So whether they can bring a witness to
24 authenticate them at trial and the Court admits them,
25 that's a completely separate argument. They brought

1 this motion in limine.

2 **THE COURT:** You're right. You're right.

3 **MS. MILLER:** Your Honor, may I just add to
4 this? Because it's not correct that we haven't
5 provided a basis for why these are admissible
6 currently. There is -- there are statutes here in
7 Nevada that provide that a public statement of a
8 federal government agency identified on a public
9 federal government website is admissible. That's
10 exactly what we have here. They are statements of a
11 federal government agency. I'm not talking about
12 statements of Fannie Mae. This is the Federal Housing
13 Finance Agency. It is an arm of our federal
14 government. They are absolutely admissible under that.
15 **THE COURT:** It's the public records exception
16 to the hearsay rule.

17 **MS. CLARK NEWBERRY:** If it was a public
18 record or a public statement of policy that was not
19 self-interested, we'd have a different discussion. But
20 here that statement was specifically in response to the
21 *SFR* decision, and was specifically garnered on behalf
22 of the alleged interest of the GSE, Fannie Mae in this
23 case. I don't believe that overcomes the exception.

24 A document that's prepared in anticipation of
25 litigation, even if it's prepared by the government, is

1 not admissible solely because it's deemed a public
2 record. There's an indicia of unreliability because it
3 was published solely for the purposes of the litigation
4 that's at issue and pending before every department in
5 this courthouse, Your Honor. I don't believe that
6 simply because they published it as a statement, that
7 it overcomes hearsay. It's a statement that they're
8 using to prove the matters asserted within that
9 document.

10 Now, if it was ODOT's report on
11 transportation, numerous of those things, that would be
12 something totally different because it wouldn't be
13 produced specifically for personal injury case that was
14 before this Court relevant to some other legal
15 government entity. So if someone had sued a
16 Metropolitan Police Department because of the way they
17 had conducted patrol or something like that, you could
18 get a statement from the Department of Transportation
19 regarding statistics. That's what that statute is
20 meant to provide, is that you don't have to haul in a
21 custodian of record from the Department of
22 Transportation to say, did you provide these
23 statistics? Yes.

24 When the very entity that produced it is at
25 issue in the case, it's self-interested and it doesn't

1 meet the exception to hearsay rule. I believe they
2 should have to -- and even if this Court is considering
3 that, it hasn't been authenticated. There's no
4 authentication. It's simply a printout.

5 I don't believe it can be admitted, certainly
6 not pre-admitted at this point, and there's nothing to
7 say that at trial they can try to get it into evidence.
8 If the Court makes that ruling, we'll make our
9 objection, preserve the record, and go up on appeal. I
10 think at this point there's no authentication. They
11 have not met their burden with the exception to
12 hearsay. I think that this Court, just as it's
13 suspicious of the affidavits claiming ownership, I
14 think the Court should be suspicious of the intent and
15 purpose of this document, and it shouldn't be
16 pre-admitted.

17 **THE COURT:** I think we all know the intent
18 and the purpose of the document. I think I'm going to
19 pre-admit it because it is a public statement. I've
20 seen it enough and I've heard testimony enough from
21 other witnesses, I could probably take judicial notice
22 that it is a statement that was issued by FHFA. Yes,
23 it's in response to, I don't know if it was the SFR
24 decision, but it's the mortgage foreclosure crisis in
25 Nevada. But the motivation of it I don't know matters.

1 If it's a public document, I'm going to allow it.

2 **MR. DUNKLEY:** Your Honor, just real quick.
3 The problem that I have with it, in addition to it's
4 not a statement under oath, allowing it for the truth
5 of the matter asserted, is that it contradicts the
6 language of the statute, which is permissive. The
7 language of the statute that they're attempting to
8 enforce permits the consent, and they're saying this is
9 the agency rewriting the statute.

10 **THE COURT:** It's the agency saying, we're not
11 going to consent. It's the agency exercising that
12 right that they have.

13 **MR. DUNKLEY:** In 2015, when this is a
14 foreclosure that took place in 2013. It's a
15 declaration or statement of convenience from. And I'm
16 glad counsel pointed this out. This is a federal
17 agency.

18 **THE COURT:** This foreclosure sale took place
19 in 2013, and the statements were all later?

20 **MS. CLARK NEWBERRY:** That's correct, Your
21 Honor. It's after the fact. It was created in
22 anticipation of litigation. It's not admissible.

23 **THE COURT:** The trial that I had yesterday
24 they tried to bring it in, too, and I don't think I did
25 allow it in simply because of the fact that it was

1 created after the date of the foreclosure. So I don't
2 know if there was relevance to it.

3 **MS. MILLER:** Your Honor, these were all
4 created after the fact. But they don't say anything
5 different than what the understanding under HERA by
6 FHFA already was. Specifically, that FHFA and
7 Freddie Mac and Fannie Mae rely on their servicers to
8 protect their interest. That FHFA has never in the
9 past, including in 2013 when the sale happened,
10 consented to extinguish the deed of trust and it never
11 will in the future.

12 **THE COURT:** I get it. Here's what you're
13 going to have to do. I have no doubt that they didn't
14 consent in this case, but you're going to have to bring
15 somebody that says that. They're going to have to
16 provide evidence that they did consent. I can't allow
17 a document that was produced after the foreclosure sale
18 to tell me what FHFA's decision would have been two
19 years prior.

20 **MS. MILLER:** Your Honor, that's where I was
21 going at first with I don't have to produce somebody to
22 say we never consented. That's an issue of law
23 pursuant to the Nevada Supreme Court and the Ninth
24 Circuit now saying there was no requirement to
25 affirmatively state that they would not consent or that

1 they would consent. Their silence was all that was
2 required to show no consent. So regardless of whether
3 after the fact FHFA came out and publicly said, hey,
4 look, we've never consented and we never will consent,
5 at this point, I mean, honestly, Your Honor, I'm not
6 sure I even need this FHFA statement.

7 Q. This can't be your only case. You have to
8 have tried these cases before. I know the questions
9 you're going to ask. You're going to have somebody on
10 the stand. You're going to say, is there anything in
11 your files that FHFA consented to this. Isn't that
12 something you expect to have your files if FHFA had
13 been asked to consent to this? Yes. We've all seen
14 this before. Generally, I'd say 95 percent of the
15 cases that I have, the parties agree on all of these
16 exhibits, and we have binders and binders of stuff
17 that's stipulated. Sounds like you guys aren't going
18 to stipulate to anything, but come try the case.

19 MS. MILLER: May we try it after an MSC?

20 THE COURT: Yes. I would suggest, why don't
21 you go back and talk to Tatyana and see if she can
22 squeeze you in before your trial date. I know March is
23 booked right now.

24 MS. MILLER: The only problem with that, Your
25 Honor, is I'm just not sure we can get an assigned

1 settlement judge and prepare sufficient briefing to the
2 supplement judgment beforehand. And I would like to
3 make sure --

4 **THE COURT:** It's the same in every case.

5 **MS. MILLER:** It is, but I'm not sure who our
6 assigned judge is going to be. If it's a senior judge,
7 we may end up with someone who may not be as familiar
8 with the specific nuances of HERA, may not know the
9 more recent opinions that have been issued.

10 **THE COURT:** You have seven pages, plus
11 exhibits, and you don't know who your settlement judge
12 is until a couple days before anyway. You're going to
13 have to just prepare a quick brief. Go talk to her and
14 see if she can squeeze you in so we can maintain your
15 trial date. Right now you've got a 3/11 trial date.
16 It's coming up real soon. And I know March is really
17 booked. I don't know if February is booked or not.
18 Ask her. If she can't fit you in, and we have to move
19 your trial date, we have to move your trial date.
20 Let's see if we can squeeze you in real fast.

21 **MS. MILLER:** Do you want us to go right now
22 and come back?

23 **THE COURT:** Sure. I'll go back there and
24 talk to her with you.

25 **MS. CLARK NEWBERRY:** Thank you, Your Honor.

(Proceedings concluded at 11:16 A.M.)

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ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
PROCEEDINGS.

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/S/ Kimberly A. Farkas, RPR, CRR

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