

Hiding Tortoise Presence Data Tripped Up Wonder Valley Inn Proponents

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What appeared to be clear sailing toward the routine approval of a proposal to establish a resort hotel in the desert community of Wonder Valley ran into a ruinous typhoon when public input revealed the extent to which the project proponents had attempted to conceal from county land use officials conditions relating to the property on which the development was to take place.

After a four-hour 37-minute and 45-second public hearing, the San Bernardino County Planning Commission March 23 rejected the San Bernardino County Land Use Services staff's recommendation and denied a proposal by Jason Landver and Alan Greenburg to construct the Wonder Inn on what would roughly total 12 acres within a 21.22-acre parcel and an adjoining 3.18 parcel located at 78201 Amboy Road, not too distant from the southwest corner of Amboy Road and Gammel Road.

Going into the meeting, Landver and Greenberg had the momentum of a county land use services department staff recommendation that the planning commission endorse the project to the San Bernardino County Board of Supervisors, which as the county's ultimate elected decision-making body, alone has the authority to adopt the mitigated negative declaration and mitigation monitoring and reporting program for the project, adopt the findings for the approval of the project and approve changing the RL-5 zoning, allowing for rural residential living consisting of a single residential home on five acres, which applied to 21.22 acres of the property to CS, zoning, that is commercial service use, and approve the conditional use permit for the project to proceed.

Landver and Greenberg had sought a conditional use permit, policy land use amendment and zone change to construct a 106-room hotel, to include an all-night restaurant, spa/wellness center, conference hall and event center, a 6,000-square foot swimming pool, hot tubs, outdoor showers, a 180,000-gallon water tank and a 205-space parking lot on 24.4 acres lie within 223 acres Landver and Greenberg have acquired entailing the site and the land surrounding it. While 3.18 of those acres are currently zoned for commercial service use that is consistent with a hotel or a resort, the remaining 21.22 acres on the site bore the Residential Living 5-acre minimum lot size zoning.

Representing Landver and Greenberg was a team of consultants, led by the politically well-connected David Mlynarski, a former planning issue staff member with the cities of Fontana and Palmdale and a member of the American Planning Association, the Baldy View Chapter of the Building Industry Association, of which he is currently an executive committee member, the Inland Empire Economic Recovery Corporation, of which he is also the chief financial officer, and the National Association of Home Builders. Landver and Greenberg had turned to Mlynarski, who has a track record of positively influencing the politicians in favor of the developmental proposals of his clients and overcoming or sidestepping resistance to the development initiatives of his clients.

A series of no fewer than three faux pas, misrepresentations and extraordinary acknowledgments by Mlynarski and another member of the development team, Julie Gilbert, as well as by Landver himself ultimately consigned the project to rejection by the planning commission, which does not, however, have ultimate say in the fate of the proposal, as the commission was only set to make a recommendation with regard to the project and the requested preemptive declarations to proceed that the proponents were seeking.

Mlynarski told the commission that the project being considered would preserve much of the area's rural character.

"Of the 24.4 acres, which is the expanded commercial zone, the actual footprint that's being placed on the ground is about 12 acres," Mlynarski said. "So, about half of the commercial zone is going to remain open space, desertscape, natural."

Thursday's proceedings began with Senior Planner Azhar Khan, the land use services department staff member who was assigned to the project giving an enthusiastic preview and endorsement of the project and its amenities, its pool, event center, the restaurant, the office, storage space. Service room and employee facilities he referred to as the "back of the house," the fitness center, spa, event space, swimming pool and outdoor showers, sunken garden, geodesic domes and astronomy pergola. There would be no hot air ballooning or all-terrain vehicle activity at the site, Khan said, countering assertions made by project opponents. Khan said that staff recommended that the planning commission recommend that the board of supervisors adopt the mitigated negative declaration and mitigation monitoring and reporting program for the project, adopt the findings for the approval of the project and approve changing the RL-5 zoning, allowing for rural residential living consisting of a single residential home on five acres, which applied to 21.22 acres of the property to CS, zoning, that is commercial service use, and approve the conditional use permit for the project to proceed.

Landver explained away previous indications that he and Greenberg intended to build not only the resort hotel but to develop the surrounding 198.6 acres residentially, consistent with the RL-5 zoning.

He said, "There's a modular builder that's currently bidding on the project. They have a blog on their website. At one time we did talk about homes with them because in the very beginning we thought about it, but since then we scrapped the idea of building homes and just focused only on the hotel project." He said, "This hotel will bring significant TOT [transitory occupancy tax or bed /hotel tax] and other sales tax and revenue, upwards of more than a million dollars per year."

Landver promoted the proposed project as an upscale place that would add more to the region than another Motel 6.

Landver, who prides himself on his public relations and marketing skill, ultimately tripped himself and Greenberg up by aggressively seeking to assert their right to develop the property as they see fit.

"It may seem like the whole town is against us but we have received letters from hundreds of families in the Wonder Valley, Joshua Tree and Southern California as a whole," Landver said. Many of these people are scared to speak out in public because they're afraid that the naysayers will hate them for years to come and they don't want to fight with their neighbors. Behind closed doors, many local residents have sent us letters and have told us in person that they support the project, and they truly feel the project will enrich the region. One resident that lives right down the street on Amboy Road said it best in a letter he sent int. He said, 'We live in a capitalist society. If it's not built now, then it will go somewhere else. We will lose out. It's the American dream to be able to open up a business. Just know there are many of us who want it to move forward, more of

us than don't want it to go forward.'

Landver cast himself and Greenberg, first generation Americans of parents who, he said, fled persecution in the Soviet Union, as victims of local residents who were resistant to him and Greenberg living out the American dream.

"It seems that a lot of people are against progress and growth at all costs," he said. "We started looking for a hotel site for over two years. We found a beautiful but neglected property. It's called the pink post office. We were excited because the site is allowed to be developed as a hotel by rights since it is commercially zoned already."

A bit later in the hearing, Planning Commission Chairman Jonathan Weldy, who is a general contractor, land developer himself as the president of the Meridian Land Development Company and an unabashed advocate of the building industry, took issue with Landver's assertion that he and Greenberg could develop the property "by rights."

"You said two things that I want to ask about," said Weldy, who then quoted Landver as saying. "We are allowed to develop by right.' I'm a little bit confused about that piece of it. And the second part of it is you said, 'We're not Motel 6.' I don't want to take on Motel 6. On the other hand, a land use designation doesn't go with an owner. Which means you could sell to Motel 6. When we begin to look at this and we listen to the story of what it is that you are doing, it's appealing. But the other piece of this is once we make that zoning designation, that zoning designation goes with the land. And its next owner may not be as virtuous or visionary as you in the fullness of time. So, it's appealing, but I want to make sure you understand that we are required to separate that. What we are looking at is the appropriateness of the land use designation and whether or not that changes there with your vision but also as a facility without your vision."

Weldy continued, "So, to Dave's [Mlynarski's] comment that we have a twelve-acre footprint on a 24-acre site and there's open space around it, that designation we're talking about would be the entire 24 acres, which means subsequent design or build or change or evolution or expansion would not be prohibited. So, could you address that comment about the development of a hotel is allowed by right?"

Landver responded, "The site [i.e., the 3.18-acres around which the remaining 21.22 acres is situated and upon which an existing structure, known as "the pink building" to locals stands] is commercially zoned and if we wanted to have less than 20 rooms, for example, and there was less than 10,000 square feet, we would be able to bypass this process. You're allowed to have a hotel at this site. The only question is, we wanted to do something, a little bit larger, go to a larger footprint to work here."

At that point, Heidi Duron, who has now advanced to the position of county planner and in her more than two decades with the county has established herself as being more than accommodating of development, disputed Landver's assertion that he and Greenberg had an unencumbered right to proceed with the project as they envision it.

"It is commercially zoned," Duron said, "and it is permitted. It is not allowed by right. It would still require a discretionary review."

At best, Weldy said, indicating even that was doubtful, the duo might be able to construct a modest motel.

"You'd need a conditional use permit as opposed to a zoning change, which are in my opinion, galactically different. The way that sounded was 'We can do this anyway.' And you can do this maybe, but on a de minimis scale.

Landver, Mlynarski and Gilbert engaged in yet another serious misstep by making an assertion that the property was unencumbered by the presence of the endangered desert tortoise, while simultaneously appearing to have hidden documentation stating the shelled reptiles indeed traverse of actually live upon the land.

Mlynarski, perhaps banking on sympathy he hoped to generate in Weldy, whose involvement in development projects in the desert have been likewise complicated by considerations pertaining to the desert tortoise, somewhat ill-advisedly launched a backhanded attack on Ed LaRue, the biologist that documented the presence of the tortoise on the property to be developed. Gilbert then doubled down in a ham-handed effort to discredit LaRue, succeeding only in convincing the majority of onlookers, including members of the planning commission and perhaps even Weldy, that the development had played fast and loose with the data relating to the tortoise. After trying and failing to establish that the presence of tortoises on the property was not an issue that the proponents would need to contend with or the commission should consider in its deliberations over the project, both Mlynarski and Gilbert, somewhat belatedly in the proceedings, seemed to come to appreciate the damage that they had inflicted on their own credibility and sought to convince the commission that Landver and Greenberg would incorporate design elements in the project intended to allow the tortoises on the property to both survive and transit the site.

The 3.18 acres has on it a structure, referred to by locals as “the big pink building,” which Landver’s and Greenburg’s team referred to as a postal building, but which in actuality had originally been created as an electrical switching station for the homestead structures in the area. Landver and Greenberg intend the existing building to be retained as the lobby of the hotel and restaurant in the project they are proposing.

Both Landver, who characterized the existing pink building as a postal facility, and Mlynarski, whose representation of the proponents made no mention of any contamination issues at the site, were inexplicably caught flatfooted by information that surfaced during the course of the meeting which indicated that the building was utilized for a far different purpose than they had acknowledged and that potentially hazardous chemicals and substances were likely or indeed had been used at the facility and could have contaminated the site. Given the availability of the information pertaining to the previous history of the building in question, the pointed reference to it during the meeting brought into question the thoroughness of Mlynarski’s research into the property and, by extension, the validity of his other conclusions relating to its suitability for the development proposed.

Despite Landver’s assertion at the meeting and in previous public statements that support for the project runs as high or higher than opposition to it, all 47 of those local residents who addressed the planning commission by means of video/audio hook-up from the county facility in Joshua Tree went on record as opposed to the project. No one made any statement in favor of the proposal.

David Rubinstein said that the sheriff and fire department response times to Wonder Valley are already 15 minutes or more after the 2017 closure of fire station and that people forego ambulance service and instead drive their neighbors to the hospital during medical emergencies.

“Emergency services in Wonder Valley are already inadequate to the needs of the population,” Rubinstein said. “The Wonder Inn proposal estimates an additional 220 guests and staff every day. That is a more than 20 percent increase in the population overnight. That’s 20 percent more people falling in pools and getting bitten by rattlesnakes, that’s 20 percent more people getting dangerously dehydrated because they’re not used to the desert climate, and that’s 20 percent more people having heart attacks, strokes and accidentally catching

things on fire. They will have to use already overtaxed public services. The health and property of our community, of my friends and family are being put at risk for a project that I believe offers little or no benefit to the residents of Wonder Valley.”

Darcy Phillips said, “The hydrology and water studies completed by the developers are insufficient to assess the effect of the proposed project on the surrounding area when many residents rely on wells as their sole source of drinking water. The lack of investigation of the potential increased groundwater use on wells in the surrounding area in the initial study/negative declaration is a major oversight. A drop in groundwater levels due to the Wonder Inn’s increased water could have devastating effects on the surrounding community. Redrilling wells is extremely costly and unaffordable for many residents, leaving them potentially without consistent access to drinking water.”

Pat Flanagan, the director of the Morongo Basin Conservation Association, said no tortoises or tortoise burrows or tortoise were observed in the study performed by the consultants hired by the project proponents, which she said clashed with a survey performed in April 2020 by Ed LaRue of Circle Mountain Biological Consultants. Flanagan said that Alan Greenberg had contacted LaRue before she had. LaRue had discovered positive tortoise evidence on the 40 acres surrounding the pink building consisting of a subadult desert tortoise carcass of an adult tortoise, seven fresh scats of adult tortoises, two older adult scats, 15 fresh subadult scats and two older subadult scats and a burrow. The information contained in that survey was being withheld from the commission, Flanagan said.

LaRue questioned the validity of the 2021 survey performed at the behest of Landver and Greenberg, which found no tortoises. She said the protocol for that survey was not described.

“According to the California Environmental Quality Act, there is substantial evidence this project may have significant effects on the environment and for its protection an environmental impact report must be prepared,” Flanagan said.

Richard Gray, a 25-year mental health professional, said the project would involve “encroachment.” Those who lived in a place like Wonder Valley do so for the tranquility of the area and the project would represent, he indicated, a threat to the mental health of those who live there. “These residents are in constant fear of nonresidents interrupting the peace and quality of life they have struggled to achieve and maintain,” said Gray. “The unavoidable intrusion of the occasional thoughtless or even belligerent neighbor is one thing, but the sense that nonresidents see the complex desert as a blank slate under which they can project their own half-thought-out dreams of financial success at whatever cost to the community is terrifying to the rightful inhabitants.”

Alfred Loop, citing tests of water in the area that showed unhealthful levels of arsenic, hexavalent chromium and fluoride, said, “Please do not rezone this area as commercial. It should remain rural.”

Larry LeVour said that a letter submitted by the proponents of the project cited a letter from “a horticulturalist that justifies groundwater extraction. Shouldn’t this come from a hydrologist or geologist? The letter does not even reference the correct groundwater basin. The letter references the Joshua Tree Basin and the Mesquite Lake Basin. The Wonder Inn will get its water from the Dale Valley Groundwater Basin. The letter references a 2017 report written for the Twentynine Palms Water District, which does not pull from the Dale Valley Groundwater Basin.”

Melinda Fletcher told the commission, “Your approval of the project Wonder Inn will forever change the density

of our neighborhood. The increased volume of traffic on the two-lane sandy shoulder road will greatly increase the possibility of severe accidents.”

Eric Hamburg who represents a grassroots effort against the project said, “We responded to the initial study with facts in our 187-page document. We have reviewed the staff report. That, to say the least, gives short shrift to our factual concerns.” Hamburg said transportation issues relating to the project were inadequately dealt with in the initial study for the mitigated negative declaration.

“The developers have not made a compelling case that the proposal would be consistent with and reinforce Wonder Valley’s physical and historical character and identity,” Hamburg said. “We want what people who have chosen to live in and visit Wonder Valley have always wanted: space, healthy air, quiet, tranquility and to enjoy the dark skies. Do not open the door to even further inevitable and ruinous development there. Because all of our factual objections, at a minimum a full environmental impact report should be ordered.”

Hailey Levine said the desert tortoise is “critically endangered. Tortoises will be impacted if this development is approved to proceed.”

Russ Cohen said he and the Stop Wonder Inn group had submitted comments with regard to the initial study for the mitigated negative declaration. “In the written comments that I submitted as well as those in the Stop Wonder Inn group package facts were stated by myself and my colleagues in relation to the California Environmental Quality Act questions and requirements and the county policy plan and land use elements, guidelines and requirements. Item by item the facts were presented and proven in our comments to the initial study. There are at least nine land use elements that do not meet the requirements or intent of each of these elements and do not have and have not been adequately rebutted in the staff report. The applicants and staff report do not fully consider our comments as required by the California Environmental Quality Act. Many of these land use elements are requirements that have not been met and could never be met.”

Cohen said, “So, I ask: why the applicants have been allowed to proceed with this proposed project when they do comply with many of the land use elements or its simple requirements? But aside from all of the California Environmental Quality Act and county policy plan requirements and elements that have not been met, I still cannot get my head around the fact that this huge proposed Wonder Inn even got this far. In the entirety of Wonder Valley, there is no potable water, no wastewater treatment, a dangerous two-lane highway and dirt roads and no public services whatsoever. How could any planning department approve a project where the land itself cannot support it? This is basic planning 101.”

Gina Cohen presented photographs of tortoises taken on or near her homestead cabin in Wonder Valley.

Remo Packer said, “My biggest concern is once you get this foot in the door to allow a commercial entity of this scope, what is going to happen next? How many other people will you allow to have this happen to?”

Elizabeth Wheeler said, “We don’t need a convention center out here in Wonder Valley, which is what this is going to be. Wonder Valley does not feed into this kind of design. I would totally encourage the environmental impact report study to be conducted, a deep dive into what this will look like in the future.”

Adrian Field said, “The initial study document presented by the developer really does contain many inconsistencies, missing data, vague suppositions and that is, I am sorry to say, a fact. The truth is that the potentially serious environmental failings of the plan presented in the environmental checklist are glossed over or buried in spurious red herrings.”

Field contrasted the familiarity of the community with the land and the lack of familiarity of the developers with

the project area.

“Against all odds, we have submitted our findings, and our findings are that there is significant and factual cause for concern with this project,” Field said. “To be clear, the area we are talking about is a truly valuable historical and impressive ecological resource found in very few places on the planet. I also think that close and special attention should be paid to what the community that actually lives in Wonder Valley has to say. The very least that this project requires is a serious environmental impact review before continuing on.”

Martin Ostendorf said, “To me, the loss of dark sky from this large concentrated development, ignoring the sewage requirements for the project, minimizing the safety and health aspects to well water, the quite predictable increase of dust with its negative health impacts as well as the increase in unwanted noise not only at the site but beyond are giving me great pause. Dark sky and quiet are amongst the many reasons people come, live in and visit this part of the Mojave Desert.”

Margaret Ostendorp said the project if approved would impact the air quality that she located in Wonder Valley to ensure for herself. “This project will impact human health,” she said.

Gary Tufell said, “We currently do not have adequate public services for our community, especially fire and paramedic services, resulting in numerous houses burning to the ground due to insufficient fire response. The addition of the proposed Wonder Inn will further increase the burden upon Wonder Valley’s already stressed public services. Wonder Valley simply does not have the infrastructure nor the public services to support this development. I urge you to deny this project or at minimum require a full environmental impact report before considering this project.”

Jeffrey Barrett indicated that the expansion of the commercial zone from 3.18 acres to 24.4 acres would overburden the existing infrastructure.

Luke Basulto displayed a photo he had taken on February 13, 2023 along creosote scrubland he said was “less than 40 feet from the road within a stone’s throw of the development site, well within sight of the pink building” which featured “a tortoise about six months old hatched last autumn that occupied an old ground squirrel burrow to make it through the winter, new to life and facing the destruction of its home.”

Chris Clark, an associate director of the National Parks Association, said, “It seems unlikely tortoises do not occur on the site.”

He said a habitat conservation plan for the tortoise was required for the property to be developed. “This, in and of itself, is enough reason for the county to bounce this back to land use services and require that a full environmental impact report is prepared,” Clark said. “It certainly is enough reason for a court to order that be done. I think we’d all prefer that it be done voluntarily on the county’s part. It is in the best interest of everyone concerned, including the proponent.”

Dena Torrenz said, “It seems highly prudent that a complete environmental impact report be completed in relation to the Wonder Inn project. The precedent set by not demanding such an approach seems highly irresponsible in regards to this project and future projects in the area.”

Aiden Koch said the project would “undermine that sense of desert that so many people come here for.”

John Talley Jones said, “The applicant stated that Wonder Valley ‘has no community plan.’ Apparently, they didn’t look. If they had opened the county policy plan and read it, they would have discovered that Wonder Valley Community Action Guide existed before the applicant purchased the property.”

Kimberly Zzyzx said, “According to recent information from Desert Beacon, the current well on the property is

dry. How can a project of this scale, with a 6,300-square foot pool, exist on a dry well without causing unsustainable depletion of the Dale Basin aquifer?

Zzyzx further said, "Since the Wonder Valley Fire Station closure in 2017, response times have lengthened to nearly 15 minutes. Will the Wonder Inn developers be funding a reopening of the fire station and providing ambulances?"

Michael Cohen said, "The project estimates that it will only require a staff of 20. This number is not realistic for a 106-room hotel with a restaurant and full-service spa that is promoted as a five-star facility. According to www.hotelmanagement.net, hundred room hotels support 66 jobs at the hotel itself. In addition to the 106 hotel guest rooms, the Wonder Inn hotel complex also advertises a 100-seat 24-hour restaurant, full-service spa and conference rooms year-round. It seems unlikely that the Wonder Inn with its further planned developments would be able to maintain an appropriate level of service with a staff of less than 25 employees total over three shifts. It appears that this staffing number was presented to gain approval for a transient non-community water system, but in reality is significantly under the staffing requirements of a hotel."

Lee Scott said, "Missing from the applicants' plan is how they will provide for emergency services. Emergency services are already overburdened in this area. Also missing from the applicants' plan is where will the employees be housed. We have a housing crisis already due to the oversaturation of vacation rentals."

Cordelia Reynolds said, "There is not a demand for a resort of this size in Wonder Valley." She called the project "greedy and gross."

Catherine Collins said, "This is a huge resort and there is nothing like this in Wonder Valley or anywhere else in the Morongo Basin for that matter. This development will not blend into the surrounding area. The height, density and number of proposed structures makes it impossible to blend in with the surrounding homes and natural landscape. These parcels should not be rezoned."

Mark Houston told the planning commission, "The pink building was not a post office but a "staging area and office for the rural electrical cooperative that energized Wonder Valley. Putting in a power infrastructure means transformers. Back in 1960, transformers meant polychlorinated biphenyls, PCBs. There is good reason to believe they may have been stored at that site or even serviced at that site during its initial use. I think it's not responsible to require soil testing to make nobody is exposed to that currently."

Houston said another use for the site was a mining cooperative that used a cyanide recovery process to release gold out of ore. "This filtration process was done on site, there at the pink building," Houston said. "You need to ask yourself, 'Was that stuff handled responsibly? What did they do with the residue afterwards?' In the interest of public safety, this isn't something that should be left to ambiguity. The best course of action would be to deny the project, but if the project has to go through without an environmental impact report."

Caroline Partamian voiced concern about the commission relying upon conclusions relating to the ecological impact of the project made by environmental consultants and biologists hired by the proponent.

Steve Bardwell said, "A focused environmental impact report is needed for the Wonder Inn."

Sarah Kennington said, "The proposed Wonder Inn would have a significant and negative impact on the environment. It would damage the quality of life, perhaps life itself for the resident tortoises, other wildlife and humans, all the while providing no amenities and little or no economic benefit to the local community. I urge you to deny this project or minimally to require an environmental impact report."

Melissa Spur, noting the proponents own 11 parcels totaling 223 acres, said, "It is unclear what is planned for

the additional almost 220 acres. Why were they not included in the project application? The lack of full disclosure inspires concerns about piecemealing, which is prohibited by the California Environmental Quality Act. This project should be rejected until the applicant provides full disclosure of all elements in their applications.”

In what was for many literally unbelievable, Mlynarski acknowledged that neither the proponents nor their development team knew the actual history of the pink building. Multiple sources, including the Sentinel, had previously alluded to the building as having housed the Homestead Valley Rural Electrical Cooperative transforming station.

“We’ve learned some things today,” Mlynarski claimed. “Gosh, I didn’t know it was used for industrial uses at one point in time and as an electrical substation putting in backbone systems throughout Wonder Valley and so forth. It did seem like a practical place of sorts because the property was disturbed.”

More problematic than the history of the pink building was the pall that had spread over the hearing when Flanagan, Levine, Gina Cohen, Basulto, Clark and Kennington raised the specter of Landver and Greenberg and their team hiding evidence relating to the presence of desert tortoises on their property from the land use services department and the planning commission.

Julie Gilbert acknowledged that “Mr. LaRue is a very respected desert tortoise biologist, does fantastic work.” Nevertheless, she seemed to suggest that he had been hired in 2020 by someone with developmental designs on the property and that his findings were supposed to remain confidential, since, apparently, his findings were contrary to the interest of the party that had hired him and he was, she implied, obliged to keep his mouth shut. “This was,” Gilbert said, “extreme, the fact that it [revelation of LaRue’s findings] came during public comment from the opposition. Even though he didn’t sign a nondisclosure agreement, there’s just something called professional ethics. So, I certainly as a consultant will never be using Circle Mountain and I’ll certainly be letting my colleagues know that their information can be up for grabs. So, very upset about that whole thing came out. We were very surprised that the report came out. Nobody had it in the files.”

Mlynarski too expressed dampened outrage that LaRue had been commissioned to do a confidential study by someone he knew was interested in developing the property in question and then disclosed the results of that survey which harmed the prospect of the land being developed.

“That desert tortoise survey that was done about four years ago by the gentleman out of Wrightwood [LaRue] was done in conjunction with an architectural group that was looking at some preliminary designs for when the project was actually very small. They had only acquired 40 acres at that time. So, what they did is this consulting group went ahead and got a tortoise study done by a gentleman up in Wrightwood and that tortoise study was never presented, was never brought forward. In fact, none of us even had knowledge of the study until Pat Flanagan contacted the gentleman who did the study. We tried to obtain a copy of that study, but when we contacted the consulting firm, they said well, they’ve never been paid for the study all this many years. So, they said, ‘If you’d like a copy of the study, then somebody needs to pay the invoice.’ But somehow Miss Flanagan was able to obtain a copy of the study for no fee.”

Gilbert further damaged the prospect of her client getting approval for the Wonder Inn project when she used the terms “take” and “take permit” with regard to the tortoises, and did not clarify whether Landver and Greenberg were looking to “take” the tortoises in the sense that they would kill them or “take” the tortoises in the sense that they might simply remove them from the property and place them elsewhere in the desert.

Neither Mlynarski nor Gilbert clarified what protocol the biologist Landver and Greenberg had hired followed in doing the 2021 survey that they claimed found no tortoises.

As it was becoming clear with the progression of the hearing, Mlynarski and Gilbert radically amended the Landver and Greenberg team's position with regard to the tortoises, going from the contention that nothing needed to be done about them because they weren't present on the property to saying the mitigation monitoring program for the project was revised to require a focused survey by a permitted biologist for the entire area during the tortoises breeding season and that Landver and Greenberg would obtain an "incidental take permit" from the California Department of Fish & Wildlife if any tortoises were discovered.

Planning commissioner Mike Stoffell noted the "discrepancy" in their before and after positions with regard to the tortoises.

Mlynarski, whose body language reflected that he knew his clients' project was going down in flames, made a last-ditch effort to salvage it.

"There was never any intention to destroy any habitat or ignore any findings," he said. "We really wish that whoever the gentleman was up in Wrightwood who did the study, we wish that he would have shared it with the county or shared it with us before he shared it with other people, but the fact that we have it now and ELMT [the environmental consulting group that Landver and Greenberg hired] went out and did some additional work recently to verify what was currently on site, So they've done two surveys now and both of their surveys have not come up with any findings that I'm aware of."

Confronted by Stoffell over the sharp contrast between the evidence presented that the property is home to tortoises and the effort Landver and Greenberg's team had made to convince the decision-makers that tortoises were not present on the property, a visibly pained Mlynarski began, "I'll just briefly say this tortoise thing is..." and then paused. Mentally recompensing himself, he said, "None of us want to have any disruption of environmental conditions. The protocol that Julie mentioned that has to occur, like burrowing owl or anything, there's going to be pre-construction inspections done. If there's any evidence of a burrow or the finding of a tortoise, then the protocol kicks in. You don't get to go in there and disturb the property. Just like Native American consultation, you get conditioned that you have to do observation and so forth before construction or even if you are in construction, if something is found, you stop and then you deal with it. It's a very precise process. The permits are not easy to obtain. Federal and Local offices will be involved in that."

Caught out, Gilbert admitted they had not done a focused study, and then, somewhat implausibly stated that the development team would be "happy" to take steps to protect any tortoises that show up on the property, after having earlier suggested no such measures were necessary because no tortoises were on the property.

"Had we known about the report early on, had there been any indication that there had been tortoises nearby, things would have been different," she said, "but happy to find that out now and we're happy to take care of it."

Weldy, returning to whether the project and its scope represented a compatible land use in the area. He pressed Landver about whether a limited commercial use – the electric switching station located on a limited expanse of just over three acres, which was intended for and had been utilized to provide a relatively benign and unobtrusive service to domestic homestead sites – could or should be bootstrapped up into something of far greater land use intensity.

"This is an anomaly of zoning that you have found," he said to Landver. "So the question is do we really have a compatible land use to take that anomaly and magnify it quite a bit. We spent a lot of time talking about

property rights and about what you can expect from zoning, what's in my neighborhood, and transition, appropriate changes for traffic and resources and so on. I'm struggling with this inconsistent zoning, making it bigger in this substantially rural area. That is not an indictment of the business plan or the concept or the fact that we need to expand out there. Help me understand the consistency of zoning when we go and expand what was an anomaly, wasn't really planned that way. Somebody said, 'Let's go put a building out there and we're going to use it to electrify the neighborhood.' I'm not sure that is enough of a toehold, at least for me, to say this [the resort hotel] is a compatible use. It feels a little jarring compared to everything else that's there." Landver gave it his best shot, saying that there was another site of either 22 acres or 40 acres located a mile away at Utah Trail and Amboy Road that was entirely zoned for commercial use. He said there were homes all around that property, and that was why he and Greenberg had had opted for the acreage they purchased, which has no homes on it and no homes immediately adjacent to it and therefore would not represent a conflicting use.

Weldy then said, "The people that are right around that [the 22 or 40 acres zoned for commercial use] know full well that it is zoned commercial, has been for a long period of time. Here you have people that are around it who have had a rural [residential] designation and a pink building. It may be an eyesore or a nuisance, but a pink building. They seem to accept that, but the expectation is, for a long time, rural residential."

Mlynarski leapt into the breach.

"What is the expectation when you move into an area and you think that's what it's going to be like forever?" Mlynarski said. "Land use is a tricky subject. This area has transitioned for decades It is rural, but it is the back door to Vegas, the back door to Laughlin. You've got an airport to the south. You've Twentynine Palms. You have a National [Park]. That has changed the characteristic of this community over decades, as well. Who would have ever believe that three-and-a-half million want to go to Joshua Tree, but they do. I think that's part of the reason this group acquired such a large footprint [223 acres]."

Weldy offered his view that having space between the development and the adjacent properties might not sufficiently mitigate the untoward impacts of the project given the dissimilarity or incompatibility of the two land uses.

"The issue of transition or separation is different when we're looking at high density, medium density standard residential in a developed area," Weldy said. "Out here where the spaces are so big and interrupted, the scale is just different. I don't have an answer for that. So, what is an appropriate buffer zone and what does that look like? It's not clear cut. This is a pretty grand scale. That's part of my struggle with the zoning because this is pretty ambitious."

When Weldy sought from the commission what its sentiments were, Commissioner Michael Stoffel said, "Everything that I've heard and read, I'm not able to support it as it is," Michael Stoffel said. "I would make a motion to not recommend the project – or deny the project – based on the land use designation and the scope of going from the small property to such a large property in the area.

Weldy stated his opinion that "Environmental [issues are] not a concern. This is a grand change between them [zoning allowances] and I can't support this.

Commissioner Kareem Gongora indicated he was apprehensive about supporting the project without an environmental impact report. He said, "I find the project itself very appealing but I think the land use concern, the access to services, resources and the multitude of concern in this area make me not in favor of the project

in this certain location. From a land use perspective, I'm not inclined to support this project at this time.”

A refinement of the motion was articulated by Weldy to declare the commission as making a finding that the zoning Landver and Greenberg were seeking is incompatible in size and intensity to the zoning around it. Stoffel's motion was seconded by Matthew Slowik. The motion passed unanimously with the support of Weldy, Stoffel, Slowik and Commissioner Kareem Gongora. Commissioner Melissa Demirci

The refinement of the motion's language by Weldy was intended to give Landver and Greenberg a basis upon which to appeal the commission's decision to the board of supervisors, which has the authority to grant or deny the project proposal, including the conditional use permit, policy land use amendment, zone change and mitigated negative declaration.

According to County Counsel Jason Searles “This is a recommendation item, so if the commission is not recommending approval, the matter dies here unless it is appealed by the applicant.”

Landver and Greenberg have 30 days from March 23 to file that appeal.

-Mark Gutglueck

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