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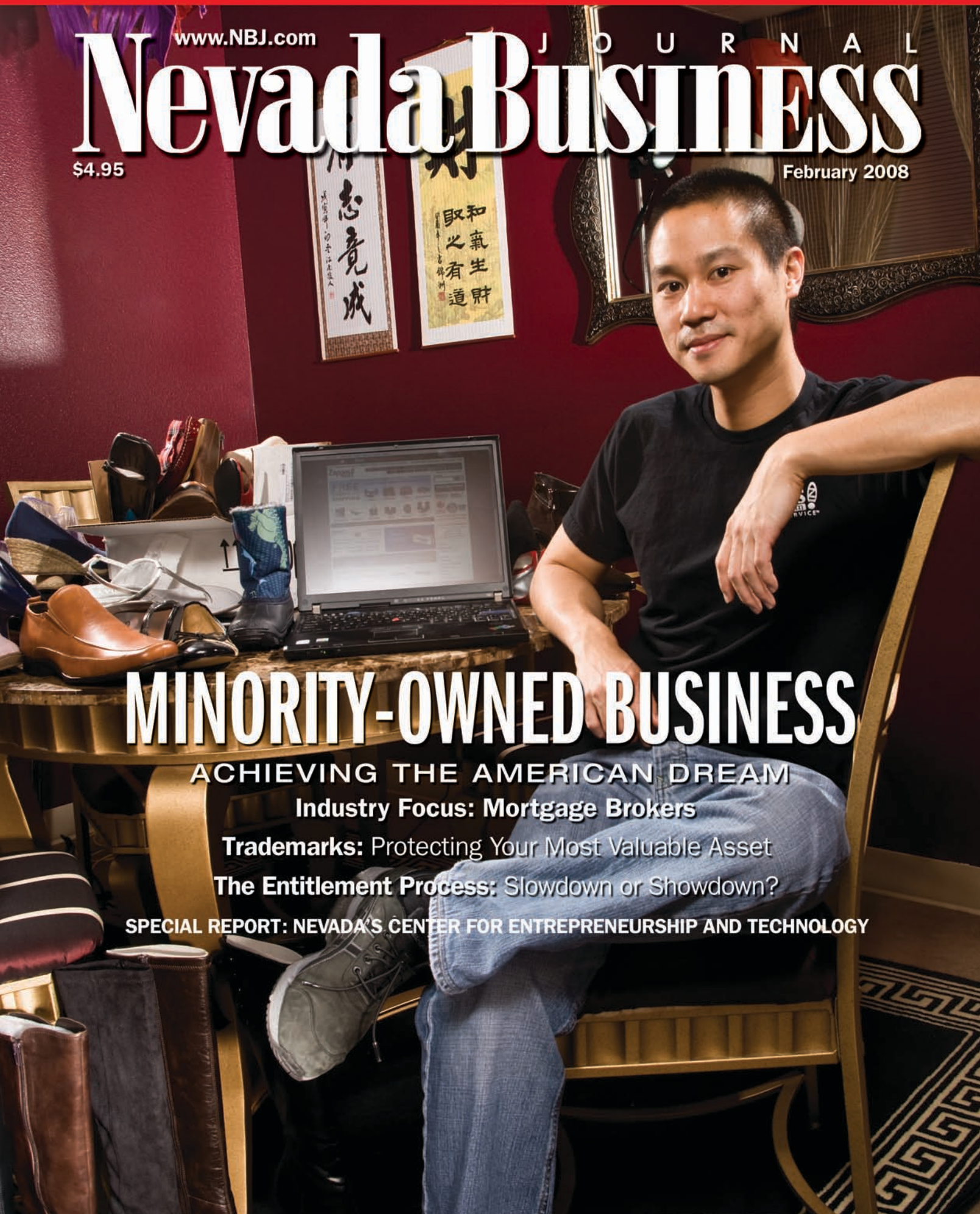
Nevada Business Journal

$4.95

February 2008



MINORITY-OWNED BUSINESS

ACHIEVING THE AMERICAN DREAM

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COMMENTARY

LYLE E. BRENNAN
Publisher

Guard and Reserve Member Employees Are You Complying with the Law?

More than 5,000 Nevadans are members of the National Guard or Reservc, and most have full-time jobs in the private sector.

Now that more than half of our active-duty military forces come from Reserve or National Guard units, reservists are dealing with problems they didn't have in previous years. They are facing deployments that can last up to two years, and they may be sent out several times to Iraq, Afghanistan or other troubled parts of the world. They are also called upon to help with natural disasters such as floods, fires and earthquakes.

From the employer's point of view, having an employee who is a "citizen soldier" has its pluses and minuses. While some reservists work for large companies like Wal-Mart or Home Depot, the vast majority are employed by very small firms. Losing a key employee may cause a substantial hardship to your company, and sometimes deployments are sprung on reservists rather suddenly, giving them little time to notify their employer. Even those who are not called to active duty must attend monthly drills and annual training sessions, and they may also have to take leave for specialized schools. This can create major scheduling conflicts for employers.

On the plus side, most employers find that National Guard and Reserve members are exactly the kind of conscientious, steady workers who enhance any office or job site. Combat veterans are trained to complete their missions, handle stressful situations and respect authority. They learn skills in the military that translate into their civilian jobs. Besides technical proficiency, these include leadership training and teamwork.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides job protection and reinstatement rights to employees who participate in the National Guard and Reserve. All employers need to familiarize themselves with the provisions of this important law. Here are just a few of them: National Guard and Reserve members are entitled to a leave of absence from their civilian employers for military duty, whether voluntary or involuntary; employees are entitled to restoration of employment following military service, with seniority, status and rate of pay as if continuously employed; people cannot be discriminated against in hiring, retention, promotions or other benefits because of their military affiliation or obligations.

If you're having problems dealing with employees who are members of the Guard or Reserve, or if you are looking for ways to show your support, there is an organization that's available to give you help and advice. The National Committee for Employer Support of the Guard and Reserve (ESGR) operates programs directed toward U.S. employers, employees and communities to help reservists and their employers learn to communicate better.

I encourage all Nevada employers to make use of the resources available from the ESGR, either on its Web site, by phone or through local volunteers. They can supply you with pamphlets and other printed materials, including an Employer Resource Guide, and also a DVD designed for human resources professionals, titled "Managing Your Military Employees Effectively."

The ESGR also operates an ombudsman program to provide third-party assistance and informal mediation services in cases where employers and employees cannot agree on the often complex issues arising from the federal law. "The ESGR provides mediation in disputes,

Continued on Page 8

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Nevada Business Journal
A division of Business Link, LLC

February 2008 • Volume 23 • No. 2

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Nevada Business Journal is a division of **Business Link, LLC.** 375 N. Stephanie St.,Bldg. 23, Suite 2311, Henderson, NV 89014. It is listed in Standard Rates and Data, #20A-Business-Metro, State and Regional. **TopRank Nevada – Annual Statewide Book of Lists** is a publication of **Nevada Business Journal.**

Advertisers should contact Sales at (702) 735-7003, or write to: **Nevada Business Journal**, 375 N. Stephanie St., Bldg. 23, Suite 2311, Henderson, NV 89014. Demographic information available upon request. Month-to-month circulation may vary.

Nevada Business Journal is published monthly with one additional issue each year. Subscription rate is $44.00 per year. Special order single-copy price is $7.50. **TopRank Nevada – Annual Statewide Book of Lists**, a compilation of lists which have appeared in **Nevada Business Journal** over the past 12 months, is published on an annual basis.

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CHANGE OF ADDRESS: POSTMASTER: Send address changes to **Nevada Business Journal**, 375 N. Stephanie St., Bldg. 23, Suite 2311, Henderson, NV 89014. Subscribers please include previous address or mailing label. Allow six weeks.

EDITORIAL SUBMISSIONS: Address all submissions to the attention of April McCoy. Unsolicited manuscripts must be accompanied by a SASE. **Nevada Business Journal** assumes no responsibility for unsolicited materials.

DISCLAIMER: Editorial views expressed in this magazine, as well as those appearing in area focus and industry focus supplements are not necessarily those of the publisher or its boards.

COVER:
Tony Hsieh, chief executive officer of Zappos.com, is one of many minority business owners who gave insight on doing business in the Silver State.

Photo: Opulence Studios

BUILDING NEVADA:
Christine Kidd, development services center manager for the City of Henderson, is one of the many city officials who review and approve plans for building in Nevada.

Photo: Opulence Studios

SPECIAL REPORT:
Nevada's Center for Entrepreneurship and Technology is a organization that fosters the entrepreneurial spirit and innovation in Nevada.

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but we'd rather avoid conflict," said Phil Dixon, ESGR's employer outreach director for Nevada. "We want to be pro-active and help people avoid disagreements by making sure employers know their rights and responsibilities." Dixon, who is based in Las Vegas, is one of several ESGR volunteers in communities throughout Nevada who are available to speak to employers, service clubs and community groups.

Dixon advises employers to review military leave policies to make sure they comply with the law. Managers and supervisors need to know about USERRA and have the tools they need to effectively manage reservist employees. Ask your employee's commander to supply you with a military duty schedule for the unit. If you see potential conflicts between your employee's work and military schedules, address them as early as possible so you'll have a chance to negotiate alternative arrangements.

One way to let your employees and your community know that you stand behind our service members is to sign a Statement of Support, which is available on the ESGR Web site. It doesn't cost anything, and takes only a few minutes of your time. The certificate can be proudly displayed in your office. It seems like the least we can do for the "citizen soldiers" who are sacrificing so much for our country.

To contact Employer Support of the Guard and Reserve
www.esgr.net
800-336-4590
Employer Outreach Director for Nevada, Phil Dixon
pldixon@cox.net

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BUSINESS UP FRONT

Consumer Electronics Industry Sales to Jump

The consumer electronics (CE) industry is projected to post a 6.1 percent increase in revenues in 2008 with total shipments forecast to top $171 billion. The Consumer Electronics Association released its estimate of final shipment revenues for 2007, which totaled $161 billion, up 8.2 percent over 2006. The overall projection for growth of 2008 is closer to the long-term historical average for the industry, and is well above expected growth levels for other industry sectors, including housing and new vehicles. Sales of television displays continue to be the largest contributor to the CE industry, representing 16 percent of shipment dollars. The video gaming category continues to set records, with estimated growth of 50 percent in 2007.

Fostering Creative Environments

Work environments can tend to feel stagnant and cumbersome when filled with forms, protocol and chains of command. How do you move beyond methodology of business to spark ingenuity throughout your workforce? Here are some suggestions to encourage creativity from Dale Carnegie Training.

• Initiate creativity – set up brainstorming sessions and be the first to throw out a radical idea that contradicts current practices.

• Create a trusting environment – provide a space where employees feel comfortable brainstorming and conveying ideas that may be more adventurous.

• Provide training and vocational opportunities – organize workshops for your employees to improve leadership skills and interoffice communications.

• Be open and accessible – make it known that your door is always open to all ideas.

• Ask for feedback – solicit requests from your employees to confirm your loyalty and investment to the staff.

How CEOs Should Determine Leadership Roles

CEOs, for any type and size of an organization, cannot and should not do it all, but today's CEOs attempt to wear too many hats. Based on their capabilities and the organization's needs, they should focus on their most precious commodity – time. Here are eight primary CEO roles, according to Kepner-Tregoe Inc., an international consulting and training services firm.

• Visionary – generates big, new ideas.

• Strategist – identifies products/services to offer, selects market to serve, determines product emphasis, and builds competitive advantages.

• Implementer – ensures operational excellence.

• Motivator – builds an executive team, empowers employees, and creates an attractive culture.

• Rainmaker – establishes high-level customer relationship, and lands big orders – the salesperson-in-chief.

• Marketer – embodies the brand by giving speeches, handles interviews with media, and appearing in advertisements.

• Dealmaker – finds partners, and negotiates business arrangements.

• Ambassador – satisfies investors, persuades lawmakers, educates and impacts regulators, and meets the needs of board members.

More Clicks Than Conversation

Business people are doing more typing than talking when communicating on the job. Sixty-five percent of executives prefer to receive e-mail over other forms of communication, according to a recent survey from OfficeTeam. Conversely, the preference for face-to-face meetings, paper memos and voicemail has dropped. Here are five tips to avoid e-mail overload and ensure your messages are well-received.

• Make it clear. State the purpose for the message upfront, followed by back-up details.

• Avoid sending a copy to everyone. Only forward messages to those who are directly involved with the topic being addressed.

• Keep it brief. Don't expect others to read a long message or e-mail chain – provide a brief summary.

• Don't cry wolf. Only mark a message "urgent" when it is truly critical for the recipient to read immediately.

• Provide context. Describe the e-mail contents in the subject line so the recipient can prioritize messages and search for your note in the future.

FACE TO FACE

Juan DeVarreau

Chief Operating Officer
Beasley & DeVarreau Sotheby's International Realty
Las Vegas

Years in Nevada: 20

Years with Firm: 10

Type of business:
Real Estate Sales and Marketing

Biggest Business Challenge:
My biggest challenge was convincing my father to let me attend real estate school instead of college. He thought real estate was too volatile and wanted me to pursue a career with more stability.

What do you like best about your job?
I love meeting people and being part of making their dreams become realities.

If you could start over and choose a different profession, what would it be?
A television evangelist.

How do you spend your time when you're not working?
By nature I am an analytical soul, so I love writing quotes.

What would you like your legacy to be?
An honest, humble soul who lived to give to others.

Little-known fact about yourself:
Although I love people, I have fantasized about being a hermit.

Best Business Advice:
Live as though someone is always watching and listening. Never take for granted the moment you have before you.

Will Nevada's real estate market ever be as hot as it was?
The negative backlash resulted from investors taking advantage of the low interest rates coupled with sub prime market lending frenzy. The new Las Vegas is industry and consumer driven. With businesses such as the World Market Center and The World Jewelry Center, bringing the "Who's Who" of executives along with them, our real estate market will be hotly desired.

Jade M. Anderson

Founder & President
Capstone Brokerage Inc.,
Las Vegas

Years in Nevada: 16

Years with Firm: 10

Type of business:
Risk Management and Insurance Brokerage

Biggest business challenge:
Finding talented people for our organization in this tapped labor market.

What do you like best about your job?
Creating our company's culture and creating opportunities for others to have the kind of job they are excited to get up for each morning.

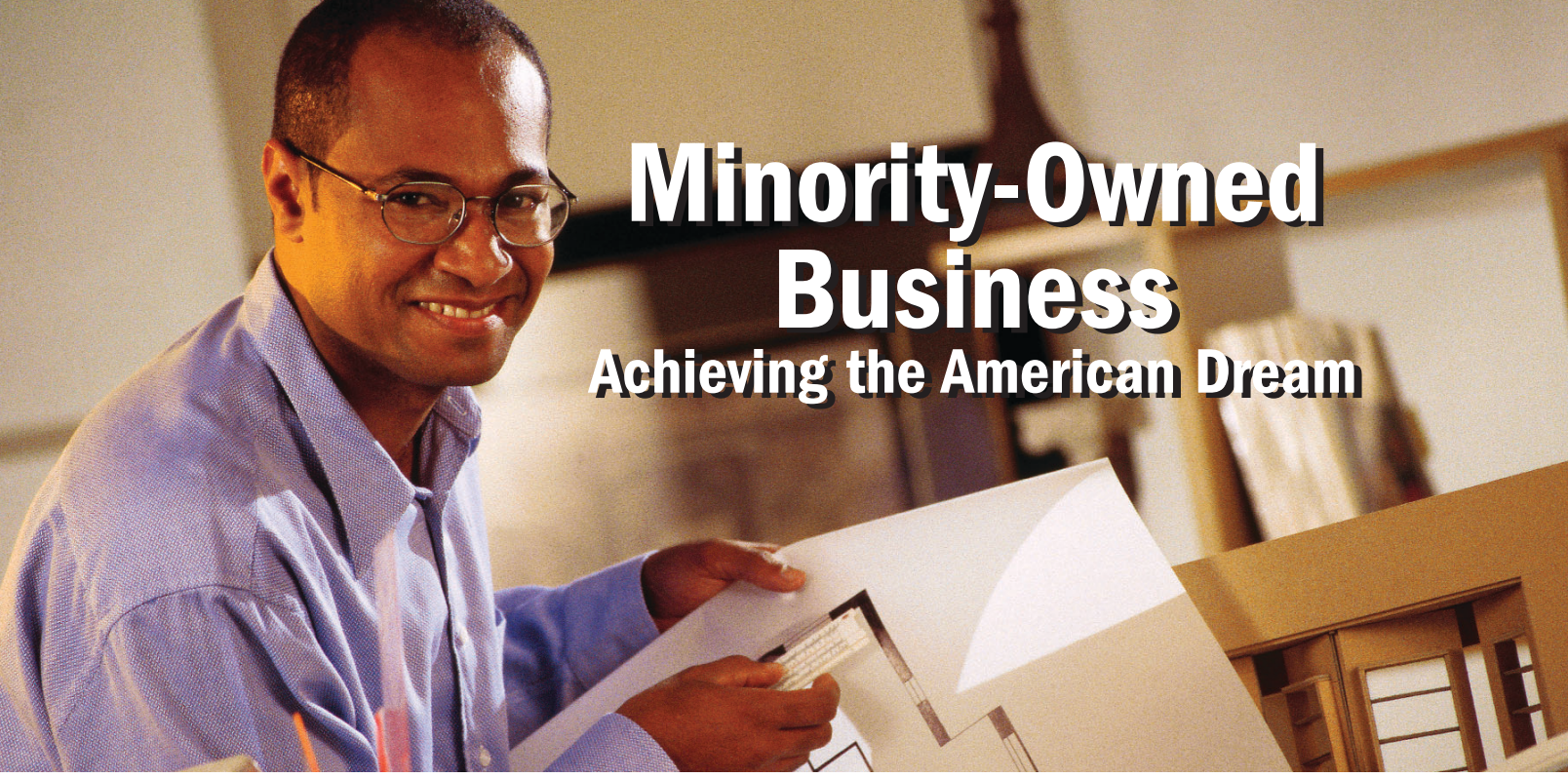
If you could start over and choose a different profession, what would it be?
I would start a consulting company, helping other entrepreneurs achieve their dreams.

How do you spend your time when you're not working?
Mostly with my family, as I have two small children at home.

Little-known fact about yourself:
I have a stamp collection.

Best Business Advice:
Find what you are passionate about and pursue in relentlessly. The most successful people in this world are the ones who get to do what they love. Secondly, keep learning. I have made myself a student of business, as the more I learn and bring back to my business, the more successful our company.

What is the most overlooked type of insurance?
Employment Practice Liability Insurance (EPLI), covers businesses against claims by workers that their legal rights as employees of the company have been violated. While most suits are filed against large corporations, no company is immune to such lawsuits. Recognizing that smaller companies now need this kind of protection, some insurers provide this coverage as an endorsement to their business owners policy (BOP).



Minority-Owned Business

Achieving the American Dream

Minority-owned businesses are an integral part of Nevada's economy. Last year, $1.8 billion worth of services were purchased from minority-owned and operated businesses, according to the Nevada Minority Business Council, an organization that pairs minority-owned businesses with corporations. Here's a look at some of the state's minority business owners and their companies.

It's High Time for Success
Reno Watch & Clock

Philip Narong, 52, has committed his entire life to what is a dying craft in the U.S. – watch and clock repair. The master repairman learned the trade from his uncle, at age 14, in his native Thailand. His first job was repairing watches. After saving up enough money, he moved to California, lured by the appeal of American culture. He first worked at a jewelry store in Los Angeles, and subsequently, traveled to Northern Nevada where he decided to establish his own business.

Narong opened Reno Watch & Clock in 1999. Working solo, he repairs all kinds of watches and clocks, including family heirlooms and antiques – some having been manufactured as long ago as the 1700s. Sometimes when parts aren't available for a particular piece, he fashions his own. He has several high-profile customers, including Gov. Jim Gibbons and his wife, Dawn Gibbons. In addition, jewelers refer more complicated repairs to Narong.

Being a minority hasn't affected his business in any way, Narong said. "Everyone treats me well," he said. "They know me. I've been in the country a long time. I'm an American now. This is my home."

He attributes his business success and reputation – his greatest achievement, he feels – to hard work, honesty and integrity. "I love what I do," he said. "I love the customers and want to give back to them." He derives joy from his ability to fix his customers' merchandise and seeing them satisfied – a policy manifested through the guarantee that stands behind all his work. "Money is not important," he said. "I like taking care of my customers. That's important to me."

When he's not restoring the delicate movements of his clients; valuable timepieces, he enjoys another, rather divergent passion: attending live boxing events with friends. "I'm a fight fan," he said. "For a big fight, I have to be in Vegas."

Narong's greatest hardship over the years has been in living and working so far away from his family in Thailand.

He has missed them tremendously, he said. His parents have since passed away and, today, his only sibling, a brother, lives in California.

Narong's clients will be happy to learn that he plans to continue running Reno Watch & Clock Repair for several more years until retirement. When he does retire, he intends to return to Thailand and live among his extended family, where, he said, "I belong."

If the Shoe Fits
Zappos.com

In the late 1990s, Tony Hsieh and his Venture Frogs partner, Alfred Lin, invested in about 20 different Internet startups, including: Ask Jeeves, the first commercial question-answering search engine; MongoMusic, a digital music infrastructure developer; and Zappos.com, shoe e-tailer. Along with his $500,000 investment in Zappos.com in 1999, Hsieh served as an adviser to the company on a part-time basis. His involvement rapidly grew, and he eventually became Zappos' chief executive officer.

"It turned out that Zappos was the most promising and the most fun," the 34 year old said. "That's why I began spending more and more time with the company."

Hsieh's passions include providing top-quality customer service and building an organization where employees enjoy the family-type atmosphere, he said. In fact, he's most proud of his contribution to Zappos. "I think it's pretty important that one not be in business just to make money," he added. "You should be doing what you're passionate about."

Under Hsieh's leadership, Zappos (short for "zapatos," the Spanish word for "shoes") reached gross merchandise sales of $597 million in 2006. The company employs about 1,600 people between its Las Vegas corporate office and Kentucky warehouse. Today, along with shoes, Zappos sells clothing, handbags and accessories. "We'll be expanding much more beyond that, as well," Hsieh said.

Prior to forming Venture Frogs, Hsieh graduated from Harvard University with a bachelor's degree in computer science. He co-founded and grew LinkExchange, an online advertising site, which, at age 24, he sold to Microsoft for $265 million.

Being Asian has neither been an advantage nor a disadvantage in business, Hsieh said. He attributes his success to the talented people with whom he surrounds himself. "The relationships I've developed over time have become very meaningful," he said.

Hsieh's role at Zappos is to maintain and improve the company culture, he said, since happy employees are crucial to delivering excellent customer service. "Zappos is like one big family. People really enjoy coming to the office," he said. "It's a lot of fun; we always have wacky, creative things going on just randomly." These activities include parades of costume-clad employees and monthly karaoke sessions. Managers are encouraged to spend 10 to 20 percent of their work hours outside the office with their teams.

When not working, Hsieh enjoys interacting with friends – most of whom are fellow Zappos employees – movies and running. He has participated in the Las Vegas Marathon over the past three years, the most recent of which about 150 employees joined him.

Hsieh's vision for Zappos is a company that offers the best customer service associated with online sales of all kinds of merchandise. "We're just going to keep innovating ways to improve service and continually raise the bar," he said. "We want Zappos to be a household name that people are passionate about."

From the Ground Up
Figueroa Masonry

Hugo Figueroa parlayed his engineering degree, knowledge of the masonry industry (gained from summers working with his family as a youngster) and experience working in corporate America into his own business venture. Two years ago, at age 27, he and his wife, Angelica Saldivar, then 26, started Figueroa Masonry.

The Sparks-based business handcrafts fireplaces, fire pits, patios, entryways, facades and more out of stone, block, thin brick, slate, flagstone and pavers and specializes in stone veneer. "We're really proud of what we've

accomplished," Figueroa said.

While the business is now growing, its startup was a bit bumpy. "It was a lot of hard work in the beginning, we spent many sleepless nights," Figueroa said. The biggest challenges these young, Hispanic business owners have faced include their attempts to break into an industry with few minorities, and disproving people's preconceived ideas about them. "Sometimes the first thing people ask is if we have papers," Figueroa said, "Or if we speak English."

To overcome the misconceptions, the company works hard on customer service – treating people well, keeping promises, arriving at jobs on time and performing quality work. "Once we do one or two jobs for a client, he or she sees how professional we are," Figueroa said. "Our reputation for top-level work is beginning to spread."

Figueroa has also had to contend with the residential real estate market slump. To adapt, he obtained a California contractor's license so his company could work in Lake Tahoe and Truckee. Consequently, projects there now constitute about 85 percent of the company's current workload. In the coming years, Figueroa plans to continue growing the firm, relocate the office and potentially expand into additional Northern California locations.

Success comes from being motivated, and maintaining the solid work ethic instilled by his family, along with their continued support, Figueroa said. He and Saldivar put in 70-plus hours a week. The two love outdoor recreation – camping, fishing, hiking, off-roading – and fit these activities in when they can.

The most rewarding part of running the company is giving his 22 employees the opportunities to not only learn the trade, but also to provide for their families, Figueroa said. Figueroa's advice for any young minority considering self-employment is: "Really know what you're getting into. Save your money. Get training. Don't give up."

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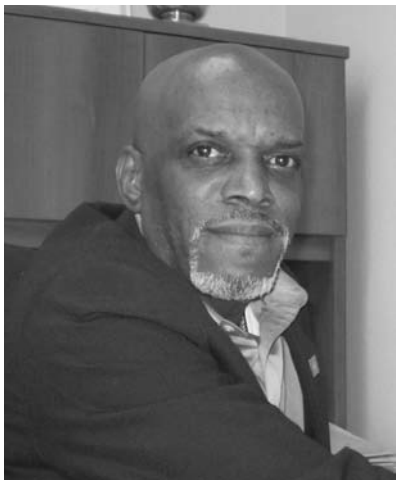

Be All That You Can Be
PrideStaff

Sixty-year-old Bob Daniel embodies Henry Ford's sentiment: "If you think you can or think you can't, you will be right." Self-conviction has propelled Daniel through the Air Force, the Vietnam War, decades of working for others, bachelor's and master's degrees and, most recently, two years of self-employment.

In 2006 he launched the Las Vegas franchise of PrideStaff, a national staffing company that places people in temporary, temporary-to-hire and direct job positions. "Success comes with hard work and belief in oneself," he said. "If you're willing to go at it with all your fiber, whether you're a minority or not, you will be successful. You can't allow doubt to creep in."

Being an African-American hasn't been a barrier to Daniel's success. "The most important thing is to first, be a good business person," he said. "Being a minority is secondary. What's important is to be perceived as a good business person who happens to be a minority."

That objective, according to Daniel, is accomplished by keeping one's

word, maintaining high standards for honesty and integrity, and by building solid relationships. "I'm what they call 'old school'," Daniel said. "I believe your word is your name."

Daniel's biggest challenge in life was the realization, as an adult, that he needed a college education to compete in his field. While working full-time at IBM in various marketing and sales positions, he attended Pace University and obtained a bachelor's degree then a master's degree in business administration.

Subsequently, Micron Computer recruited him to be vice president of business development. Then, Fuji USA hired him as vice president of sales. It was after that he decided to go into business for himself. "I wanted to put my stamp on something, give something back, and make a contribution," he said. "I am very bullish about the work I'm doing. I believe it's something absolutely needed. I'm very passionate about it and I believe that it's going to pay off."

When not working – he logs about 65 to 70 hours a week – he enjoys spending time with his wife of 39 years and playing with his latest technological gadgets. His most recent acquisition, a digital turntable, allows him to record his 500 vinyl albums onto DVDs. Daniel also loves the feeling that comes with finding the perfect fit when matching an employee to a client employer. "That's what I find most rewarding," he said.

Making Their Way to the Top Top Notch Barber Shop

Despite logging 60- to 70-hour work weeks running Top Notch, their barber shop in Sparks, owners Charles Hodges and Derek Bennett still make time for the community's youth. Along with coaching football, the two mentor and advise countless children.

"We enjoy watching the kids grow up, and seeing many of them become successful and live out their dreams," said Bennett, 37. In fact, for his contributions, Bennett has received a Jefferson Award for community service and an NAACP Youth Advocacy Award.

"People want to put labels on you and try to put a negative spin on your positive accomplishments."

The two native Nevadans, friends since age nine, have run Top Notch for 10 years. Hodges, 36, opened the shop alone, and encouraged Bennett to attend barber school and join him – an offer Bennett soon accepted. Top Notch delivers haircuts and "fades" (a smooth blending of varying hair lengths) to people of any ethnicity, age or social statuses. "It's a multicultural establishment," Hodges said. "We do all kinds of hair."

Despite their open-door policy and the success of their business, Hodges and Bennett have encountered naysayers and people with stereotypical

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views. Sometimes new customers walk in and hesitate when they see it's a shop run by Blacks. "A lot of people have misconceptions about how all young Black men behave," Bennett said. "People want to put labels on you and try to put a negative spin on your positive accomplishments. You have to rise above and look past that."

They don't let the negativity bother them, as they work hard and are proud of what they do.

"I feel we can't be touched," Hodges said. "People always come back. One day, we'll have a chain of Top Notch Barber Shops."

The two struggle to find a balance between their professional and personal lives. Hodges has two daughters and enjoys riding his 2004 Road King Harley-Davidson motorcycle. Bennett and his wife like to attend their three sons' sporting events and go to San Francisco 49ers games. "It's hard to have a business," Hodges said. "People don't realize how tough it is and time consuming. We're always working to support our kids."

Hodges and Bennett are full of advice for young minorities interested in running a business.

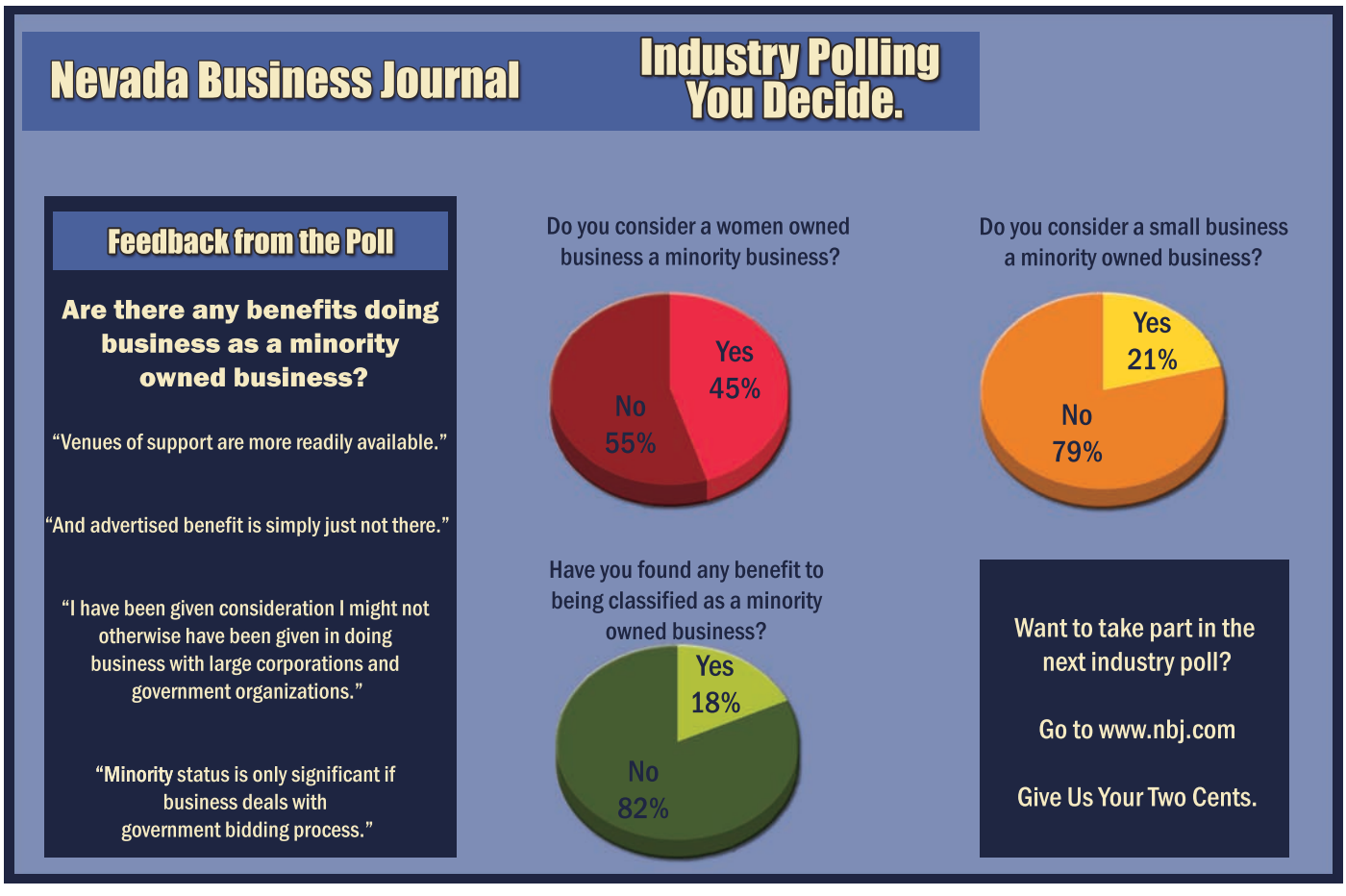
"Don't let anyone tell you that your business can't be successful," Bennett said. "Make up your mind to refuse to fail. Just keep on working, and fight through the stereotypes." Stay focused, Hodges added. "Keep your eye on the dream. Don't let anybody mess with your dream.

Wrestling with Success ManagedPay

In operating his Las Vegas business, ManagedPay Founder and President Bill Rosado employs the strategy that

made him a championship freestyle wrestler during the 1970s and early 1980s. That is, pushing for little advancements or successes each day.

"[With wrestling], I took it one day at a time," he said. "I wanted to execute a move a little cleaner, or run harder or faster. Some days I achieved my goals, while other days, I had



setbacks. [In business], we know the kind of clients we want, what we want to deliver, and we set out to accomplish our objectives one day at a time."

This self-described Air Force brat dedicated the first portion of his life to athletics. He was a judo national champion at age 13 and on the U.S. Olympic wrestling team in 1976. In 1980, Rosado won the Olympic trials, but was denied the opportunity to complete when President Carter boycotted the Moscow games. After failing to earn a spot on the 1984 Olympic team, he retired as an athlete and coached wrestling at the University of Nevada, Las Vegas as he began to focus on a new career.

Over the next 12 years he worked at a series of payroll and human resources companies, but never felt completely satisfied until he became his own employer. "Back in those days, I always worked as hard at my job as I did to become an Olympic athlete, and yet, my employers never recognized my efforts," he said. Rosado's solution was to launch a company that provides payroll and employer services, such as human resources and benefits. Today, ManagedPay employs 30 people and can't operate without Rosado. "I'm the glue that holds it all together," he said.

According to Rosado, his Puerto Rican heritage has brought him neither advantage or disadvantage as a business owner. Moreover, he has never experience any prejudice. "In the business community, I'm respected for what I've accomplished," he stated. "Earning the right to something, in my opinion, is the most important ingredient for success."

Today, Rosado remains active in the sport of wrestling, privately coaching on the side. He also is a pilot and Boy Scout leader – his 14-year-old-son, Matthew, is a member of the organization. He enjoys watching Matthew compete in tae kwon do and bowling, and loves to fly his family on short trips to nearby destinations. Rosado's eldest son, Billy, has followed his grandfather's example and is now a first lieutenant in the U.S. Air Force.

In the coming years, Rosado plans to stay focused on client retention, continued growth and succession planning. "I just want to build a company that is going to be stable for my employees and give them opportunities to earn a piece of the American dream," he said. "My long-range plan is that one, if not both, of my boys will step in and pick up the reins for me."

Doresa Banning is a freelance writer based in Northern Nevada.

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Trademarks

Protecting Your Most Valuable Asset

Perfume seller Jacqueline Tran of San Jose discovered the hard way that trademarks can be the most valuable asset a company owns. Wanting to cash in on the popularity of online commerce back in the late 1990s, Tran set up several Web sites using versions of the words "perfume" and "bay" as domain names. When she applied for a trademark for Perfumebay with the United States Patent and Trademark Office (PTO), however, she quickly found out that the road to online riches could be filled with dangerous potholes. Online auctioneer, eBay, learned of her application and filed legal opposition stating that perfumebay.com would infringe upon its company trademark. Founded in 1995 by Pierre Omidyar, eBay has become one of the most recognizable trademarks in the country. With business conducted exclusively on the Internet, the company depends upon customers using that trademark name to connect with its Web site, ebay.com. As a registered trademark of the business, the mark eBay has become a household word that specifically identifies Omidyar's online business.

Late last year, the United States Court of Appeals for the Ninth Circuit upheld rulings in favor of eBay noting that Tran could not use the mark Perfumebay because it could confuse customers into thinking that it was part of eBay. In protecting its trademark all through litigation, eBay was doing the appropriate thing, according to attorneys who specialize in intellectual property rights. "The brand only exists in the mind of the consumer, but it can be a company's most valuable asset," said Lauri Thompson, a shareholder at the law firm of Greenberg Traurig in Las Vegas.

Duane Frizell, Callister & Reynolds

What is a Trademark?

A trademark is a word, symbol or phrase used to identify a specific seller's or manufacturer's products from another. It makes it easier for a consumer to discern the origin of a producer and to have confidence in the results of its purchase. For example, an apple on a computer is a pretty good indication that the machine is manufactured by Apple Computer, Inc. and not by Dell Computer. Trademarks can be arbitrary, suggestive, descriptive or generic, but must be distinctive in their capacity to distinguish the product they are associated with. Arbitrary marks, such as Exxon, Kodak or the Nike swoosh, bear no logical relationship to their products but still serve to specifically identify them. Suggestive marks, such as Coppertone, hint at the product without actually naming it. Descriptive trademarks describe a characteristic of the product, such as All Bran or Holiday Inn. Generic marks describe the general category of the product, such as computer or stereo. Any trademark can become generic over time if it becomes the synonymous identifier of a particular type of product, such as

Xerox (copiers) or Kleenex (facial tissue). While the first three categories of marks are protected in varying degrees by trademark laws, generic marks are not, because they are colloquial terms that are in general used to describe a type of product.

Trademarks were originally protected by state common law, but in the late 1800s the federal government stepped in with legislation that has steadily expanded over the years. Probably the most comprehensive body of law is the Trademark Act of 1946, also known as the Lanham Act, which defines rights to use marks, outlines the process for registering them, and enumerates the penalties for infringing upon them. "Trademark law exists to avoid confusion among consumers," said West Allen, partner at Lewis and Roca LLP. "It arises out of the need for consumers to use recognized marks and symbols, such as an indication of source, quality and protection against false endorsement," he added. Even though the law has been modified a number of times since its inception, more legislation is needed to reflect modern business practices, especially since the advent of the Internet. "Laws are always trailing behind technology," explained Michael Stein, a partner at Snell & Wilmer law firm in Las Vegas.

Considering how valuable a trademark is to a business, it's critical that the company do whatever it can to protect it, according to Susan Pitz, an associate with Hale Lane law firm in Las Vegas. Pitz reached a client that, after five years in business, experienced infringement of its trademark when another, competing business appeared with a very similar name. The second business was able to poach customers from Pitz's client through the confusion that resulted from the similar names and services. "They [the second business] clearly went about using a similar name to trick consumers," she said. Luckily for her client, Pitz was able to prevent further damage through a cease-and-desist letter, and thus, avoid expensive litigation.

Lauri Thompson, Greenberg Traurig

When litigation does occur in cases of infringement (although attorneys admit that it's rare), the primary standard is to determine whether confusion as to the source of the goods or services has resulted on the part of the consumer. Courts will consider the following:

- Strength and similarity of the marks;
- Proximity of the goods;
- Similarity of marketing;
- Evidence of confusion;
- Defendant's intent.

Although these factors are valuable tools for making a determination, intellectual property cases, such as trademark infringement, can be complex and unique. "It's a mental challenge because cases hinge on such subtleties," said Stein.

Aside from infringement, trademark owners can also sue for dilution because of blurring or tarnishment of their mark. A trademark can be blurred if it is used to identify a dissimilar product such as Polaroid shoes or Ralph Lauren cigarettes.

Susan Pitz, Hale Lane

It can be tarnished if it is used in association with an inferior or objectionable product, such as a Bellagio brothel. "Where we have the most risk is because of our privileged gaming licenses referring to other gaming uses or objectionable content online," Thompson said.

Counterfeiting and Piracy

Some of the largest and most egregious cases of trademark crime involve the overseas manufacture of such products as cigarettes, clothing, jewelry and watches which are branded with well-known trademarks, such as Coach, Rolex or Marlboro, and are then sold abroad or in this country as legitimate goods. "This is becoming more and more of a problem," according to David Merrill, a partner who specializes in counterfeiting and piracy at Las Vegas-based Bailey Kennedy law firm. "Terrorist groups are using counterfeiting of trademarks to finance terrorist activities," he said. When consumers buy knock-off goods at a fraction of the expected price, they support the proliferation of this type of crime. "You're basically stealing from the trademark owner,"

David Merrill, Bailey Kennedy

Merrill said. If a deal seems too good to be true, it probably is. "The everyday person just thinks that it's a good deal but there's a further reaching impact of this," Merrill cautioned. Trademark counterfeiting and piracy have become ever more sophisticated in recent years, accounting for bil-

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West Allen, Lewis & Roca

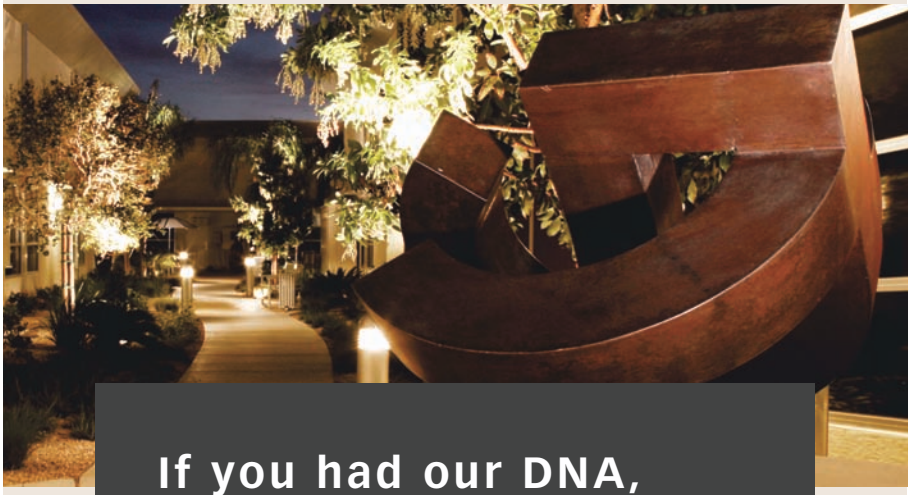
lions of dollars of revenue worldwide. Aside from eager buyers searching for bargains, the illegal enterprises are emboldened by insufficient law enforcement and the deficit of cases prosecuted under anti-counterfeiting laws. By contrast, the war on drugs is given much more oversight, according to Merrill.

Merrill recalled a typical case of his in which his client was a legitimate cigarette manufacturer whose trademark was being used on counterfeit cigarettes. Although he said that tracking down the people involved is often a difficult undertaking. "I accompanied the U.S. marshal to seize the goods," he said. Counterfeit goods are often found at swap meets and, in the case of tobacco products, at small cigarette retail establishments. Although Merrill was able to get civil relief for his client without litigation, it represents just one case of many. This type of crime is likely to continue because the profits are large and the penalties almost nonexistent.

Cybersquatting and the Internet

With the proliferation of commerce on the Internet, the bar was raised on both the level of sophistication and the physical reach of trademark infringement. "Nobody realized the extent to which the Internet was going to change business," Pitz said. "You didn't think about protecting your rights back then."

The Internet has expanded the world of trademark law by exposing marks to worldwide marketing channels and consumers in a manner that was previously impossible, according to Allen. The simplest form of infringement is cybersquatting, which is registering, selling or using a domain name in order to profit from somebody else's trademark. Selling the domain name to the owner of the trademark at a large profit was considered a savvy business move in some circles years ago. The Anti-Cybersquatting Consumer Protection Act of 1999,



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however, clearly defines this as an illegal activity. As more and more businesses become aware of the value of domain names, this type of infringement is expected to decrease.

More insidious and sophisticated than cybersquatting is the practice of burying trademark names within the meta tags found in the HTML code of Web sites. Invisible to the Web page viewer, the tags contain information that is used by search engines to describe or index a page so that Internet users will be directed there based upon the information included in its description. Although designed to provide such necessary and innocuous information such as who created the page, how often it is updated and which key words represent the content, meta tags have also been used to misdirect Internet users to the wrong sites. If Pepsi were to bury "CocaCola" in the meta tags for its Web site, for example, users of some search engines could be directed to Pepsi when they were intending to go to CocaCola. "It's no different than changing a sign on the freeway to misdirect people," said Duane Frizell, as associate with Callister & Reynolds law firm in Las Vegas.

Trademark Protection

Because the risks of trademark infringement and dilution are very real to many businesses, attorneys emphasize the importance of protecting marks because they are a vital company asset. Ideally a business should first consult a trademark attorney before undertaking the investigative process of adopting a trademark. By doing an extensive search, the attorney can assure the client that the potential mark will not infringe on any others that are already in use. Once a mark is found to be suitable, it should be used in commerce and then registered with the PTO. Initial registrations are issued for 10 years, but in order to avoid cancellation after five years, the business must file an affidavit saying that the trademark is still in use. From then on, attorneys recommend businesses take the following steps to ensure the proper care and feeding of a trademark:

- Give public notice of your trademark rights by using the registered symbols recommended by the PTO.
- Use the mark as an adjective such as Kleenex facial tissue.
- Create a distinct style for the mark through bolding, underlining and capitalization to distinguish it from surrounding text.
- Affix the mark to the products and physical materials related to the business.

Michael Stein, Snell & Wilmer

Trademark owners need to take responsibility for maintaining their marks by being vigilant against any potential cases of infringement. This is most easily accomplished through a watch service that will regularly check for improper uses online and also monitor new registrations. Business owners should make the effort to educate themselves about their Web pages, rather than leaving all the decisions to their Web masters. To discourage the proliferation of infringement, mark owners should also be willing to enforce violations, even if it means litigation.

For business startups, it makes sense to consult intellectual property specialists as part of the initial business planning process. New enterprises have the advantage of doing things properly by following the rules that will protect their assets and keep them out of court. Having the foresight to plan ahead is critical, according to Pitz. "We try to do things on the front end so you don't end up in litigation," she explained.

Jeanne Lauf Walpole is a freelance writer based in Northern Nevada.

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Mortgage Brokers
He Said, She Said

The mortgage industry took a turn for the worse last year, as many people were forced to foreclose on their new homes and mortgage companies were compelled to close their doors. Foreclosures contributed to near-record-level inventory in a housing market that, recently, had so few homes available for sale, new listings often ignited bidding wars and residential developments had lengthy waiting lists. So, where is Nevada's real estate market headed? Has it finally reached rock bottom? Will it ever be as hot as it was once before?

The "Freeze"

As circumstances continued to deteriorate for the mortgage industry, and those with mortgages, it became necessary for the government to step in. In December, President Bush introduced a solution to limit the disruption to the economy entitled The Hope Now Alliance. The proposal calls for a five-year freeze on interest rates for those who can afford to keep making their current mortgage payments, but might be at risk for foreclosure if their adjustable rates ballooned at the end of the locked period. Around 1.2 million homeowners are expected to benefit from this program. The Federal Housing Administration, in addition, launched a new program called FHA-Secure, which helps refinance existing loans to borrowers whose ARM rates are increasing.

What does this mean to mortgage brokers? Will the industry turnaround and prove itself again? The answers to these questions may depend upon the source and the locale, as well as varying market conditions.

Many industry experts agree that the president's freeze on rates is a good start to ease the pain many have experienced in the last year. "The freeze will help with the extreme cases – subprime loans – which only represent about 6 or 7 percent of all loans," said Eric Cross, senior loan consultant manager at Southwest Commercial Real Estate in Las Vegas. "But of that percentage, about one third are delinquent or in default – that's the scary part." Although the freeze may be beneficial, certain requirements must be fulfilled before a person is eligible. It will only help those people who are not behind on their loan originated between

Continued on Page 41

Continued From Page 24

January 2005 and July 2007. Of course, the freeze is good only for primary loans, and does not apply to investors or speculators who tried to make money in the market, said Cross. Marcie Benvin, broker/owner of Cetus Mortgage, Ltd., which specializes in construction lending on residential loans in Reno, disagrees and feels that the freeze will have little impact for borrowers who are in trouble with their loans. "If the government wanted to help the owner-occupied borrowers, they would raise the FHA loan limits and allow people to refinance into an interest rate they could handle," she said.

How did the mortgage industry get into such a mess, and how will it recover? Many blame Wall Street because it had so much money to lend. Companies that didn't have a mortgage background were suddenly providing loans as a way to pick up extra business, said Cross. With the influx of firms entering the high-profit-margin mortgage industry, traditional loans and qualifying standards were lowered. Another factor involved the Option ARM loans that were sold to people without their total understanding of the loan and how the interest rate could change dramatically.

"I think the market will correct itself over time," said Steve Brockman, president of Builders Capital Inc. in Las Vegas. "Going forward, buyers will have to qualify for financing based on more conservative guidelines such as down payment, income, credit score – the system that worked quite well for decades prior to the run of sub-prime lending."

Competition in the Marketplace

Larger banks in the state have become more competitive in the mortgage industry. "They are surviving the market conditions because they have higher deposits that keep them well capitalized," said Cross. "There is a stark contrast, however, to mortgage bankers – they don't have the depth of cross-collateralization." According to John Moran, principal of Moran Financial Services, a commercial real estate finance company, the banking community has pulled back somewhat due to the volume of home loans and hard money lenders, combined with the availability of land.

Banks have survived the current market conditions, but many mort-

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gage bankers have gone out of business as a result. "Banks are huge competitors for commercial projects," said Benvin. "Although they are scrambling for good loans in today's market, banks can be highly competitive on their rates and fees, which further tightens the market."

Falling Interest Rates

The commercial mortgage industry has been affected by the residential mortgage meltdown, which has resulted in higher interest rates, lower loan amounts and more stringent underwriting criteria. "As a result of the mortgage crisis, spreads on commercial loans have increased as investors demand a higher return on mortgage-backed securities," said Brockman. "The increase in spreads has caused higher interest rates on loans even if the underlying index is unchanged or slightly lower than in recent months."

However, interest rates are still hovering in the lower range and analysts believe they will continue to decline. "Interest rates will continue to fall throughout 2008, as this is the only thing that can help the market," said Benvin. "At low interest rates, people can refinance and lower their payments." Although these low rates will be an incentive for prospective homebuyers, it is not expected to create another housing boom.

Raising the Bar

The influx of people who moved into the mortgage brokerage field was followed by an exodus. Instead of residential brokers migrating to the commercial side, they have fled the industry as a whole. "The commercial mortgage business is not what it was a few years ago, but it hasn't been hit nearly as hard as the residential side," said Brockman.

However, a number of residential brokers perceive greener pastures on the commercial side of the lending fence. "Some brokers have experience in both residential and commercial – but that number is few," said Benvin. "My concern is that brokers are jumping into the commercial market without the knowledge and experience to handle commercial loans."

The state of Nevada, however, has raised the bar for those coming into the profession. "Licensing requirements are tough enough, but are about to become tougher in Nevada," said Benvin. During the 2007 Legislature, Gov. Jim Gibbons signed AB 375, which mandates testing and/or additional educational requirements before a person can obtain a broker's license. "We have some of the most rigid requirements coming online in 2008 to originate loans for mortgage brokers," she said.

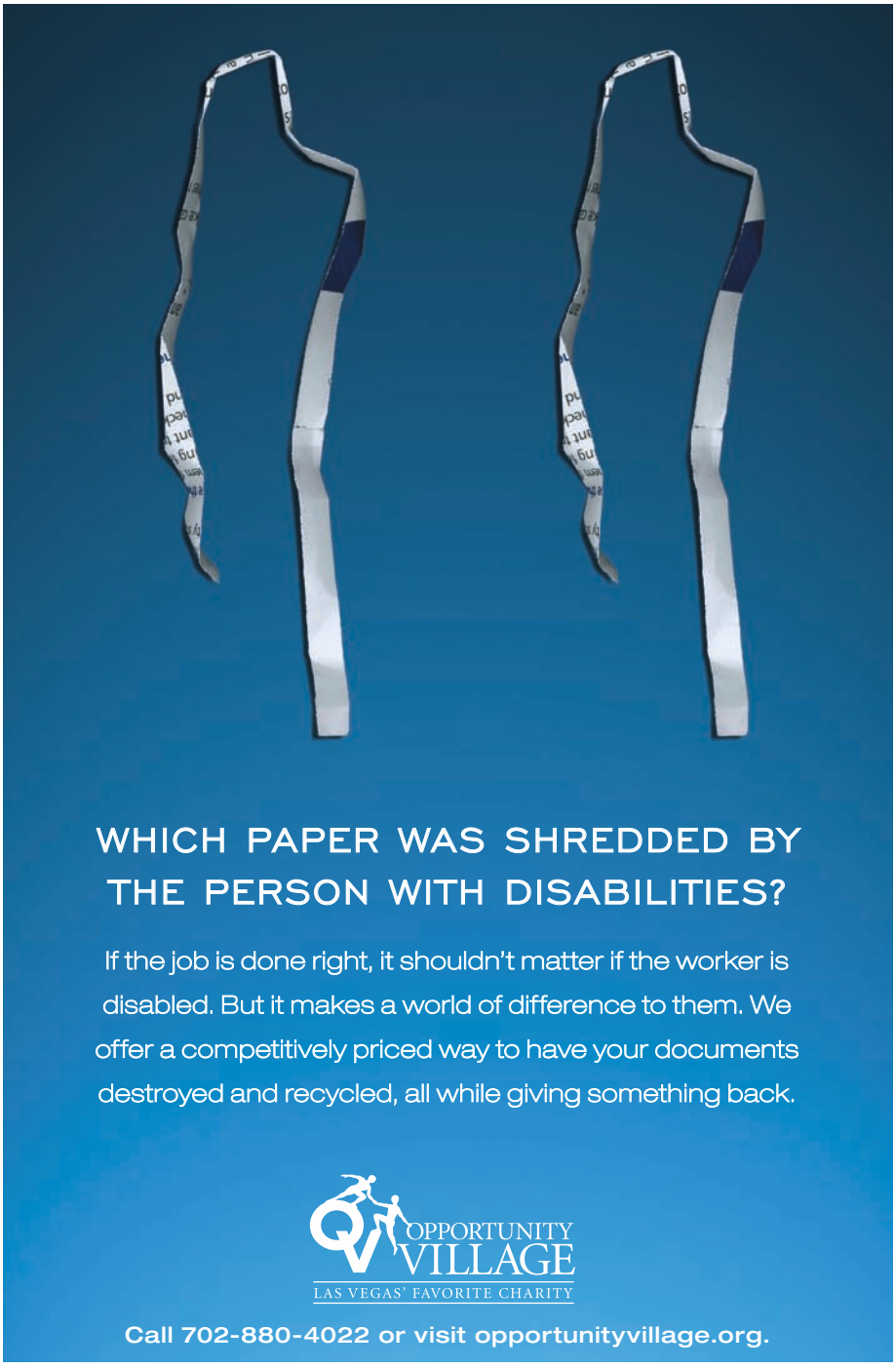
Looking Ahead

Last year's housing slump and foreclosure rate contributed to the industry's current downturn. As all good things must come to an end, most industry experts agree that the residential market has reached the bottom and will regain momentum – partly in response to projects on the Strip – toward the latter half of the year. "A pent-up demand for new and used homes is growing across the Las Vegas Valley," said Moran. "And, in turn, I think the residential market is going to turnaround this year."

Where does the commercial sector stand in the coming months? Will it experience similar issues as the residential sector? "Later this year, commercial real estate will see a lag effect from the residential market," said Cross. "It won't be as dramatic though, because qualifying standards are completely different for business loans." In Northern Nevada, the commercial market is expected to slacken, as well. "We [in Northern Nevada] will experience a slower growth rate until the end of the second quarter of 2008," said Benvin. "We currently have an oversupply of garden office space which will take some time to sell."

As with any cycle, the market will come back around and recover with time. Most experts agree that the residential market, as well as increases in commercial lease rates will rebound in the second half of this year. After all, Nevada is a state known for its low taxes and business friendly economy which has helped recruit many to move here. Similar to the domino effect, when one market falls, its counterpart falls, too, and when one market remains strong, the other follows suit.

April McCoy is associate editor of Nevada Business Journal.



NEVADA BUSINESS JOURNAL

Building Nevada

Christine Kidd, development services center manager at the City of Henderson, was among other experts who discussed the challenges of processing permits in the Silver State.

THE ENTITLEMENT PROCESS

SLOWDOWN OR SHOWDOWN?

Whether commercial construction in Nevada is booming, holding its own, or slowing, depends on whom you talk to and the part of the state used as the reference point. Commercial development under construction in Clark County – particularly along that valuable corridor of land we know as The Strip – continues unabated, with cranes flying high and multimillion dollar projects rising ever higher. It is the primary engine driving the economy, dominated by major multifaceted projects such as City Center, Eschelon, Palazzo and Encore. According to Dean Friedli, assistant director of Clark County Development Services, the planning and permitting process for these major commercial projects generates long lines and a requires a good deal of time. "So many elements involved, from zoning and land use, to NDOT road change issues. Submitting plans for a major project review usually involves corrections, changes, updates – all of which go back to the designer, then back to our staff for review. So our time frame is always dependent on this back-and-forth process."

Gearing up or gearing down, the department always has the added element of staffing challenges to deal with. "We've really been able to pick up the pace by using outside consultants, particularly for plan examination," added Friedli. "From inception to construction, it just takes time. Echelon, for example, is just now getting permits pulled to begin construction. That's a project that was announced a year ago, and is anticipating a two- to three-year construction period. We are not only dealing with the main project, but also the tenant improvements, stores, shops and restaurants that will populate the Palazzo, Encore and City Center. That's going to be our challenge over the next few years, just trying to keep pace with the flood of plans we know is coming. We have to gage what the market is going to do, however, government doesn't work like the private sector. It takes us longer to react to market trends."

Recruitment isn't always easy when the employees required are highly skilled professionals, such as engineers, who are qualified and certified to conduct plan reviews. Trying to attract and retain staff while competing with the private sector is difficult. The numbers are staggering. According to Friedli, the value of the projects that have been announced or are currently under construction on the Strip total more than $36 billion – give or take a $100 million, or so.

Reno–Sparks

Northern Nevada has experienced a sharp decline in commercial projects and permits. Neil Krutz, community development department director for the city of Sparks, estimates that total permit activity is off about 30 percent overall, with even the commercial permits slowing to a level that allows his staff to stay on top of the curve. He anticipates a relatively slow year for 2008, but predicts activity will regain momentum and accelerate by the second half of 2009.

Like Clark County, Sparks has experienced the same type of municipal growth, where the commercial development follows in the wake of residential development. However, Krutz said Sparks is approaching its saturation point and, consequently, community leaders and developers are compelled to find increasingly creative ways to accommodate growth. A prime example is found on the old site of the famed Helms Construction gravel pit. The city of Sparks took possession of the land – and the 120-foot deep pit that scrapped the site – when Helms declared bankruptcy in the early 1990's. The city turned the pit into an 80-acre lake surrounded by a community park. The lake, in turn, has become the core for a major commercial project now under development – The Legends at Sparks Marina, an outdoor mall comprising of more than 1 million square feet or retail space, and a 1,000-room hotel-casino.

"Our focus on projects such as The Legends at Sparks Marina will be on

facilities planning and permitting, and tenant improvements," noted Krutz. "Our department staffed-up over the last few years. Now, in today's market, we need to staff-down. So far we have been able to keep our budget and expenses in line simply through attrition." Currently, the department includes a staff of 90 and occupies about 2 million square feet of office space.

Washoe County

Washoe County, which oversees the unincorporated areas that don't fall within the city limits of Sparks and Reno, actually witness minimal commercial development. Don Jeppson, the chief building official for Washoe County, said the department only issues about 50 commercial permits per year, and most of those are for remodeling and additions.

About 15 permits are actually issued annually for new projects, and a large portion of those are within Spanish Springs, a new industrial and commercial development north of Sparks. The project includes strip malls, as well as office/warehouse properties with loading docks. "Washoe County actually relies more on residential than commercial construction," noted Jeppson. "So, we felt the downturn more than Reno and Sparks. Home permits have decreased by more than 50 percent over the last two years. We've seen a 50 percent drop in percent as well. But, the dollar impact has not been as dramatic. In 2006, we issued 40 commercial permits and 13 were issued in 2007."

In August, the department eliminated two positions and support staff reducing its payroll from 31 to 19. Like many of governmental entities, the Washoe County building department is run as an Enterprise Fund, and is funded by the developers and builders who pay for its services. All of the money generated by the department stays in the department and does not flow to the county's general fund, nor does the department receive any money from the county for its operation or overhead. "We do have to follow the county guidelines for hiring and layoffs, so it isn't always simple," said Jeppson. "In some ways it is like a non-profit. We are limited on the amount of money we can have in a rainy day fund, we perform a continuing balancing act to match our revenue to our expenses. But, it does a good service for our developers who had initially requested the Enterprise Fund structure. They can see that their fees go directly to support the permitting process."

The Strip's multimillion dollar projects require a good deal of time for the planning and permitting process.

Clark County

Back in Southern Nevada, Las Vegas official Paul Wilkins, director of building and safety, is upbeat about his staff, his department and the future. Though they have experienced a slight decrease in commercial permit requests, still, many exciting projects are either under construction or coming on line within the city limits.

As for current conditions, Wilkins admits that we are in a respite right now. "We are gearing up for the end of 2009, when I predict we will be so busy we won't know what to do. I think it's going to start the third or last quarter of 2008 in both housing and commercial. We are in a little slump, but expect no layoffs. We've got great people, and we're keeping them all." To save taxpayer money, Wilkins is developing a program that would actually loan his inspectors to other city departments that can make good use of their expertise. "My plan is to keep everyone busy. So, we are in the process of facilitating the concept so

our inspectors can do work for the planning department, neighborhood services, public works and even the fire department. I've also contacted the county to see if they want to rent my people. It's a plan that can save our taxpayers a lot of money."

North Las Vegas

Meanwhile, North Las Vegas has growing pains of its own. The city has granted funding to fill several key vacant positions, which should help reduce the amount of time applicants spend waiting in line. According to Director Tony Vibabul, "Permit delays, on the other hand, deal more with the review/approval process. We offer an expedited review service for an additional fee for structural and architectural reviews in the Building Safety Division. Although this does not guarantee expediting review by all departments, it usually does help speed up the process."

In North Las Vegas, the average time between plan submittal and final approval for tenant improvements is about three weeks and for new construction, four to five weeks, noted Vibabul. That is, of course, assuming civil plans and land use conditions are approved. Officials from all jurisdictions advise that the two most important factors that help facilitate plan approval are the clarity of submitted drawings and the responsiveness of the design team in returning corrections to department staff. North Las Vegas staff members feel their biggest challenge is to provide their customers with a true one-stop-shop center to handle the entire development and permitting operation. "The city's Information Technology Department is also currently working with us to provide interactive tools allowing customers to access our records to view their up-to-the-minute status for plan checks and inspections," continued Vibabul.

Like its sister communities, North Las Vegas outsources plan reviews and has developed a fee inspector program that gives the division flexibility to cover the ebb and flow of developments. It helps accommodate the fluctuations in permitting activity, as well as temporary staffing shortages. "As for the overall process, we are pleased with the positive feedback we have received from the industry in regards to the level of service we are providing," added Vibabul. "The market fluctuates between residential and commercial needs, so we try to shift our resources in the direction that compliments those changes in the industry."

Henderson

Henderson is awash in substantial new projects. "We've seen no decrease in commercial permits, in fact, we've seen an increase," noted Development Services Center Manager Christine Kidd. The Henderson City Tower project was announced earlier this year. Located in the city's new downtown e-development district at Lake Mead Boulevard and Water Street, City Tower is a $90 million, mixed-use development featuring two12-story and two 15-story towers, 40,000 square feet of retail space, 168,000 square feet of office space, 137 condominiums and nine penthouse residences. The project is scheduled to open in two years. Also slated for the same area is City Crossing, developed by Plise Companies. The 126-acre development will include a 6 million-square-foot, mixed-use project with office, retail and residential space. Another 600,000 square feet will be used for retail including fitness facilities, movie theaters and restaurants. The balance of space at City Crossing is designated for 2,500 residential units.

While City Tower and City Crossing are destined to change Henderson's downtown skyline, on the opposite side of the city, plans are underway for The M Resort Spa and Casino to be located at Las Vegas Boulevard and St. Rose Parkway. The $1 billion project includes an 11-story resort totaling 390 rooms and suites. Other details include 90,000 square feet of gaming space and more than 40,000 square feet of meeting and conference space. The project sits on approximately 80 acres and is set for a spring 2009 completion.

Even with all of the new projects flooding Henderson, Kidd is proud of the Development Services Center's track record. "More than 75 percent of our customers are served within five minutes, with an average wait time less than three minutes," cited Kidd. "We meet our plan review service target 99 percent of the time, as well." The department is constantly rating its efficiency, and a visit to the Web site reveals its current on-time rates, including 98.6 percent for plan review services and a 99.4 percent for inspection services. Accordingly, Kidd said no staff reductions are planned at this time. In fact, the department needs to add a structural engineer. "We do some limited outsourcing, particularly plan reviews for grading and structural work," he said.

The Process

The bureaucratic course a project charts from the initial submission of its plans to the final approval and the awarding of permits, is known as the entitlement process. In the city of Reno, Chris Good, interim director, explained that the amount of time necessary to complete the entitlement process varies widely depending upon a project's type, size and complexity. For example, if the owner of a small business wants to put a new wall up

inside an existing structure, such a project would typically require a relatively brief review process, involving plan checkers, fire inspectors and code enforcement, and may pass approval in as little as two or three weeks. A larger, more complex project, however, like Reno's recent Peppermill expansion, can take six months to go through the review process before permits are issued.

In the city of Reno, the volume of commercial permit activity from November 2006 to November 2007 has seen a modest decrease. In 2006, the number of permits totaled 159, for 2007 the figure was 123. "Even with that decrease, however, our commercial permit traffic is helping to keep our revenues reasonable while the housing market weakens," noted Good. "As a city government, we don't rely on housing permits to the extent that some county governments do. During the housing boom, we knew that the increased revenue stream would not continue indefinitely, so we did not begin expanding our full-time permanent staff. Instead we sent the overflow to contractors, so when the market began to weaken and the workload shrank, we simply did not renew those contracts."

Due to this foresight and the city manager's ability to move staff to areas where the work demand exists, the city has been able to avoid layoffs, so far. With the stabilization fund and standard rule of holding back 2 percent of the annual budget, the city has also been able to avoid across-the-board budget cuts, in spite of the slower economy and lower revenues. Overflow work was outsourced to building inspectors, planners to review cases and write recommendations, as well as managers of some staff in engineering and building departments.

So, just what does it take to guide a commercial project through the entitlement process? All of the entities have some form of checklist that is readily available online or from the appropriate development department, but suffice it to say that Rome wasn't built in a day. For example, the city of Reno's guidelines for submission include cover sheet instructions including project identification and location through more than a dozen items including flood zone.

General requirements start with a permit application from the Community Development Department, one complete set of plans and calculations (other entities require up to five sets of plans for commercial projects), plus a second set of plans for review by the

Health Department. Developers must also supply a site plan and an additional list of 16 very specific items before the project is sent to the department staff or outsourced for plan review – one of the most labor intensive parts of the process. Delays can occur during plan review whenever the original designers are called upon to make revisions or corrections before the review can proceed.

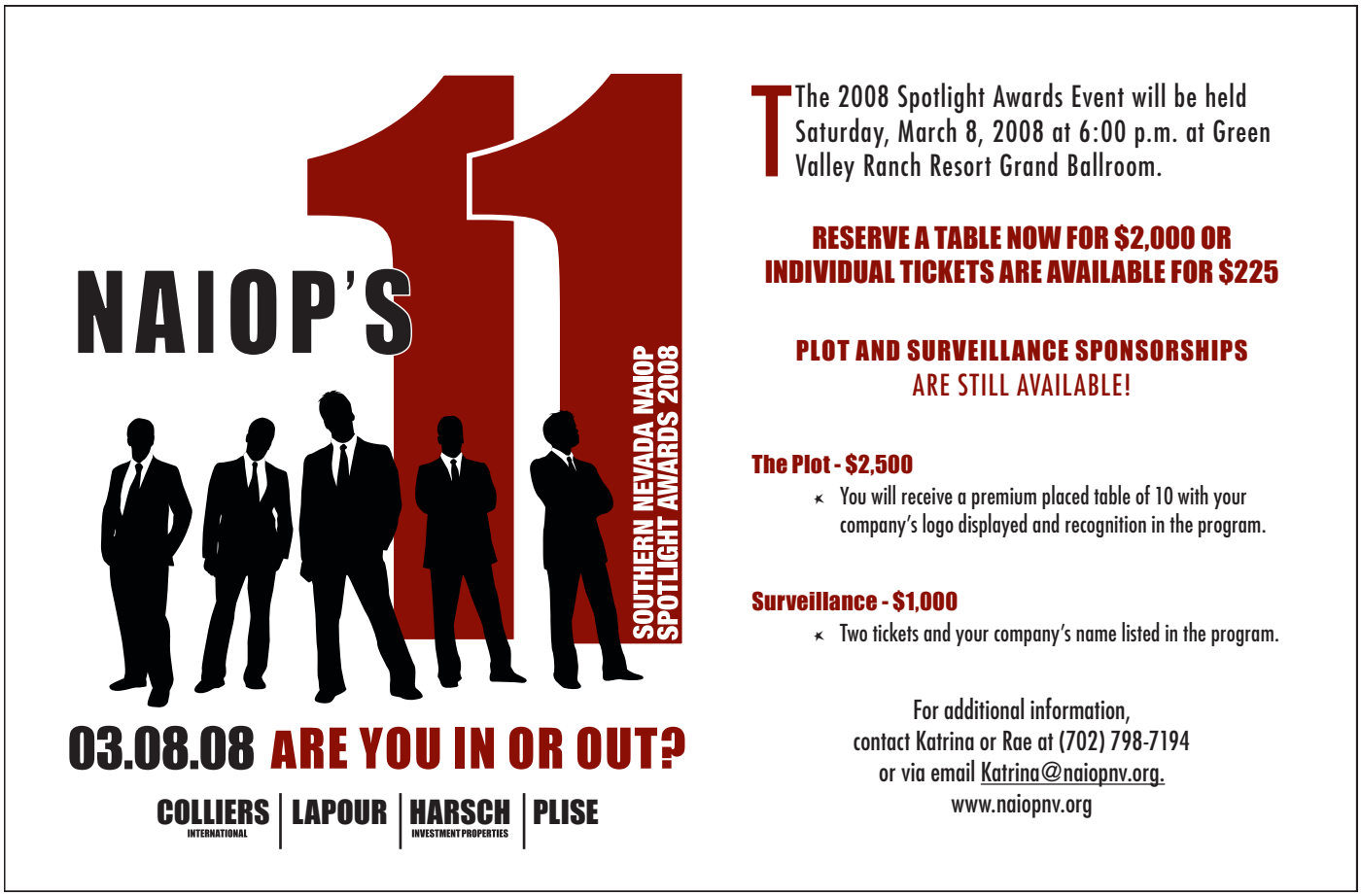
Once the plans are approved, the project is then submitted to the appropriate governmental body and scheduled for on the agenda of the next available meeting, which, depending on the locale and the frequency of its meetings, can take several months. Prior to the meeting, notices describing the project are mailed to adjacent or nearby property owners who may not be affected by the development. Should any property owners attend the meeting to voice legitimate objections to the project, the developer may have to return to the drawing board to make changes that address these concerns. Occasionally, opposition to be a project is so vehement, the developer elects to abandon it altogether.

Additional slowdowns in the entitlement process can also occur with traffic plan reviews, curb-cut issues and zoning. A zoning or use change can cause major delays, as well as it must be reviewed and set on a meeting agenda for discussion.

It is impossible to develop an estimated average processing time from start to finish because each project is unique. Times can vary according to the season, the building department's workload and staffing issues. Obviously the more complicated the project, the more time is required for the entitlement process.

According to Las Vegas-based Applied Analysis, for every 1,000 Southern Nevada residents, approximately 87 acres are developed to include everything from open space to retail, office to multi-family. That's 87 acres worth of planning, designs, reviews and permits. So, with 2 million residents in the Las Vegas Valley, that equates to 2,000 separate 87-acre parcels that have been, or will be, developed. When seen from that perspective, it is nothing short of miraculous that everything runs as smoothly as it does.

Lynne Montel Sloane is a freelance writer based in Southern Nevada.



Industrial Market Summary

3rd Quarter 2007

Building Nevada

Las Vegas

According to the Nevada Department of Employment, Training and Rehabilitation, 169,800 industrial-related jobs were recorded in September 2007, a net decrease of 400 or 0.24 percent, from September 2006. During this 12-month period, the largest increase was in the Transportation & Warehousing sector, with 1,300 new jobs added, followed by Manufacturing, with 400 new jobs added. Construction lost approximately 1,300 jobs.

In the third quarter of 2007, the Las Vegas Valley's speculative industrial vacancy rate increased by 0.4 percentage points to 4.8 percent. This increase in vacancy was also accompanied by a drop in the average monthly asking rent, from $0.82 per square foot to $0.76 NNN. The Airport and Henderson submarkets experienced the highest rent decreases, $0.14 and $0.09.

Overall, industrial completions (new space entering the marketplace) in the third quarter of 2007 totaled 935,543 square feet, a decrease from 1,308,438 square feet in the second quarter or 2007. This resulted in an absorption-to-completion ratio of .48 foot of demand for every foot of supply. The North Las Vegas submarket led Valley completions in the third quarter with 583,920 square feet.

Light Distribution industrial space had the highest net absorption with 211,724 square feet, followed by Warehouse Distribution, R&D Flex and Incubator. If all of the industrial space presently under construction or planned is completed, it would represent a 9 percent increase in the Valley's industrial inventory. Additionally, if all available space in existing buildings was added to this forward-supply, it would take approximately 3.6 years to absorb it all.

Reno

More than 2.9 million square feet of construction has been completed as of the third quarter of 2007 thus far, with an additional 2.92 million square feet under construction and 2.26 million square feet planned within 12 months and 877,000 square feet offered for Build-to-Suit. The completion will increase the overall vacancy rate in the early months of 2008 especially in the Tahoe Reno Industrial Center in McCarran.

With the vacancy rate in TRIC at 48.7 percent in the third quarter it is obvious that any large credit tenants should be able to negotiate reasonably good concessions. Interestingly, even with more than 1.2 million square feet of vacant space in TRIC, outside developers continue to show interest in the Northern Nevada Market.

Development Arts has broken ground on a 632,000-square-foot building in the new West America Commerce Center, as well as McShane Development with a 566,200-square-foot building. Both McShane and Development Arts have additional phases planned, which should provide a steady stream of product for years to come.

To illustrate in interest point relative to the Northern Nevada vacancy, with the largest industrial base of 28 million square feet concentrated in Sparks with a vacancy of only 5.2 percent. Stead has a base of 8.8 million square feet and 8.3 percent vacancy, and the rest of Reno with 26 million square feet and vacancy at 5.3 percent. McCarran, with a base of 2.6 million square feet and a vacancy rate of 49 percent, distorts the picture and will continue to do so unless demand increases significantly.

INDUSTRIAL– 3RD QUARTER 2007

TOTAL MARKET	LAS VEGAS	RENO
Total Square Feet	97,277,016	65,474,641
Vacant Square Feet	4,690,836	4,429,458
Percent Vacant	4.8%	6.8%
New Construction	935,543	1,095,420
Net Absorption	449,404	1,745,216
Average Lease SF/MO (NNN)	$0.76	$0.53
Under Construction	3,122,529	2,936,116
Planned	5,636,567	2,666,944
WAREHOUSE/DISTRIBUTION		
Total Square Feet	41,717,896	32,414,297
Vacant Square Feet	1,481,830	2,994,264
Percent Vacant	3.6%	9.2%
New Construction	603,420	145,000
Net Absorption	200,024	738,379
Average Lease SF/MO (NNN)	$0.50	$0.37
Under Construction	1,978,808	2,381,700
Planned	3,290,642	1,094,500
INDUSTRIAL		
Total Square Feet	27,386,323	32,792,717
Vacant Square Feet	1,216,522	1,406,760
Percent Vacant	4.4%	4.3%
New Construction	149,105	950,420
Net Absorption	-38,741	1,070,285
Average Lease SF/MO (NNN)	$0.87	$0.68
Under Construction	162,210	554,416
Planned	988,073	1,572,444
INCUBATOR		
Total Square Feet	8,029,440	na
Vacant Square Feet	393,714	na
Percent Vacant	4.9%	na
New Construction	0	na
Net Absorption	7,866	na
Average Lease SF/MO (NNN)	$0.93	na
Under Construction	0	na
Planned	100,800	na
INCUBATOR/RD/FLEX		
Total Square Feet	4,739,414	267,627
Vacant Square Feet	530,786	28,434
Percent Vacant	11.2%	10.6%
New Construction	53,490	0
Net Absorption	68,531	-55
Average Lease SF/MO (NNN)	$1.12	$0.93
Under Construction	654,183	0
Planned	991,552	0

Next Month: RETAIL

ABBREVIATION KEY

MGFS:	Modified Gross Full-Service
SF/MO:	Square Foot Per Month
NNN:	Net Net Net

SOUTHERN NEVADA STATISTICS COMPILED BY COLLIERS INTERNATIONAL AND RESTREPO CONSULTING

NORTHERN NEVADA STATISTICS COMPILED BY COLLIERS INTERNATIONAL RENO

AmLand Development
Focusing on Trends

AmLand Development began as a modest homebuilding company nearly two decades ago. Today, the company – led by Wayne Krygier, chief executive officer and president, and Chet Nichols, executive vice president – has grown to become a notable mixed-use and residential developer in Las Vegas with a respected presence within the Las Vegas real estate and development communities.

The company's philosophy is simple: it aims to create appropriate, attractive and practical developments that exceed the minimum standard; and endeavors to develop projects that are positive contributions to neighborhoods where they are found.

Currently, AmLand Development, in a joint venture with BSR Group USA – a publicly-traded global developer with a reputation for innovative engineering – is building the mixed-use community of ONE Lifestyle Condominiums Las Vegas. The property, which spans 20 acres at the corner of Las Vegas Boulevard South and Blue Diamond Road, will feature two high-rise luxury condominium towers, along with low- and mid-rise and brownstone residences, as well as office and retail space. "The new lifestyle condominium projects, such as ONE Las Vegas, have an added value upon which you cannot put a price," said Nichols.

AmLand is also developing the Tuscan-themed Prima at Lake Las Vegas, a niche community in the resort location. The project utilizes AmLand's contemporary design, development execution and commitment to exceptional value.

The company has worked on numerous projects including: View Pointe, a development of one- and two-story homes for first-time buyers located in Northwest Las Vegas; Mountain Gate Townhomes, two-story luxury townhomes in a gated community; Villa Trieste, a luxury townhome community; Tournament Hills Custom Homes, large contemporary luxury homes located in Summerlin on the Tournament Hills Golf Course; Vila di Lago at Lake Las Vegas, resort style homes on the North Shore; and Park Avenue Luxury Condominiums, the first urban mid-rise lifestyle condominiums in Las Vegas.

In 2003, AmLand was chosen by the National Association of Home Builders to build the official showcase homes for Vila di Lago at Lake Las Vegas. The homes featured a unique integration of home products and technology, coupled with the latest architectural trends. The homes created for the community were the first townhomes ever produced for the Builders Show, which featured trend-setting architecture and technology.

According to Nichols, the current downturn in real estate is an overreaction similar to the exuberance exhibited during 2002 through 2005. "In 2008, I think there will be a tipping point where demand will catch up with supply," Nichols said. "When this happens, the value of residential real estate will return to replacement cost, which is higher than the current sales prices." Despite the current housing market slump, the company keeps progressing. It plans to focus its upcoming efforts on mixed-use and in-fill developments within various markets in the Western part of the country.

WE'RE BETTER TOGETHER

Armstrong Teasdale Strengthens Nevada Presence

San Francisco and **Reno** have joined Las Vegas as the newest offices of Armstrong Teasdale. The attorneys of Senn Meulemans LLP, a San Francisco based law firm with offices in Reno and Las Vegas, have joined Armstrong Teasdale. With more than 265 attorneys, Armstrong Teasdale provides a coast-to-coast and international presence focused on sophisticated local advice and exceptional client service.

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Midtown Place

Great Basin Internet Services Acquires WPTI Telecom and Broadband

Great Basin Internet Services Inc. (GBIS) has acquired WPTI Telecom, LLC and WPTI Broadband, LLC, a provider of Internet connectivity and collocation land-voice solutions for broadband applications in Minden. This merger will provide GBIS with access to competitive local exchange carrier status, meaning it can provide customers with both voice and data solutions. WPTI Telecom will operate as a wholly-owned subsidiary of GBIS. Financial details of the merger have not been disclosed. WPTI President and Founder Tony Prestigiacomo will become GBIS vice president and will manage WPTI Telecom product sales.

Arizona-Based Law Firm Expands Into Nevada

Jennings, Strouss & Salmon, a firm with offices in Arizona and Washington, D.C., has expanded into Las Vegas. The company joined with Berkley, Gordon & Goldstein in Las Vegas. Berkley, Gordon & Goldstein's three attorneys will become partners of Jennings, Strouss & Salmon. The team brings more than 90 years' combined experience in alternative dispute resolution, banking and finance, business formation, commercial litigation, construction, corporate, estate planning, family law, landlord/tenant and real estate law.

GLVAR Reports Median Price Drops

Following the trends from the final months of 2007, statistics released by the Greater Las Vegas Association of Realtors (GLVAR) show that local home prices decreased for single-family homes in December. The median price of a single-family home sold in the Las Vegas area decreased 4.9 percent to $260,000. The median sales price for condominiums increased 2.8 percent to $185,000. The number of homes listed for sale decreased 6.3 percent, and the number of condos listed declined 8 percent.

Colliers International Sells Out Centra Point Office Park

Colliers International handled the sale of all eight buildings at Centra Point Office Park totaling $126.4 million. Centra Point is comprised of 26 acres of land located on West Sunset Boulevard and totals 386,264 square feet. The buildings range in size from 15,000 square feet to 76,000 square feet. Tenants include State Farm Insurance, Stewart Title, Wells Fargo Home Mortgage and Pulte Homes.

Panattoni Development Closes on 20-Acre Parcel

Panattoni Development closed on 20 acres of land within the Pacific Gateway Industrial Center in Fernley. NAI Alliance represented Panattoni throughout the process. The 337,500-square-foot Trex building will be the second build-to-suit project in Fernley by Panattoni. In 1999, the company completed the 588,000-square-foot building for Amazon.com.

Midtown Place Developed through Joint Venture

American Nevada Company and The Vista Group announced a joint venture with Place Properties to develop Midtown Place, the first major student housing complex serving UNLV students. The project, located at Maryland Parkway and Cottage Grove, will be the first off-campus student housing complex for UNLV. Upon completion, the project will encompass approximately 3,000 suites. The mixed-use property will also include neighborhood retail and restaurants. Humphreys and Partners Architects, LP is the architect for the project.

First U.S. Solar Thermal Power Plant Built in Nevada

Ausra Inc, the developer of utility-scale solar thermal power, announced it is building the first U.S. manufacturing plant for solar thermal power systems in Las Vegas. The 130,000-square-foot manufacturing and distribution center will produce reflectors, towers, absorber tubes and other components of the company's solar thermal power plants. Solar thermal power plants use fields of mirrors to capture the sun's power to produce electricity without pollution. The plant will begin regular operation in April 2008.

R.H. Donnelley Launches DexKnows.com in Las Vegas

R. H. Donnelley recently unveiled DexKnows.com, a local online directory. The site allows consumers to find relevant information with the following features:

• My itinerary planning – provides step-by-step directions and estimated travel times.

• Ratings and reviews – provides ability to rate local business and register to write reviews of those businesses.

• Comparison shopping – offers side-by-side listings so consumers can evaluate criteria they find most important.

• Personalization tools – allows users to build their own personal index of favorite businesses for easy access.

• Advanced mapping – provides maps that clearly display locations of businesses.

• Business search – allows consumers to search businesses based on keywords.

• Resident search – includes complete residential information.

Burnham Real Estate and Commerce CRG/Cushman Wakefield Merge

Commerce CRG's Las Vegas office and Burnham Real Estate's local office have merged. The merger is part of the acquisition of Burnham by Cushman & Wakefield. As the Nevada Alliance partner, Commerce CRG is bringing Burnham's 20 employees – including several senior brokers – on board, increasing the staff from 35 to 55. The merger will boost the firm's property management portfolio by nearly 2 million square feet, to about 8 million square feet in Nevada and Utah.

Safety Training Classes

Las Vegas – *Classes held at 1301 N. Green Valley Parkway, Suite 200, Henderson, NV 89074. Register by calling us at (702) 486-9144.*

OSHA Injury and Illness Recordkeeping
February 12, 9 a.m. – 12:30 p.m.
The presentation covers employer injury and illness recordkeeping requirements of the OSH Act of 1970. The discussion includes: OSHA's basic recordkeeping requirements outlined in 29 CFR 1904, injury and illness recordkeeping criteria, recordable and non-recordable injury and illness determination, recordkeeping forms and their maintenance, and posting requirements.

Workplace Violence Awareness
February 19, 8:30 a.m. – 4:30 p.m.
This class offers a comprehensive overview of violent behavior in the workplace. Participants are introduced to the dimensions of violence and aggression and the precursors to workplace violence. Regulatory measures and OSHA's commitment to combating violence in the workplace are discussed. The class includes individual and group participant activities. Discussions also focus on: categories of violent behavior, fundamental concepts of physical security, and a systems approach to target hardening and prevention - reduction strategies.

Reno – *Classes held at 4600 Kietzke Lane, Suite E-144, Reno, NV 89502. Register by calling (775) 824-4632 or (775) 824-4630.*

Introduction to OSHA
February 26, 1 p.m. – 4 p.m.
This awareness training is intended to familiarize the participant with the purpose and history of the OSHA act, functions of the enforcement section, functions of the consultation section, and sources of the occupational safety and health standards.

Elko – *Classes held at Great Basin College at 1500 College Parkway, Elko, NV 89801. Register by calling (775) 778-3312 or (877) 4SAFENV.*

Excavation Regulatory Review
February 13, 8:30 a.m. – 12:30 p.m.
This program provides attendees with a general overview of the requirements of OSHA's Excavation standard (29 CFR 1926, Subpart P). The topics covered include basic soil mechanics, competent and qualified persons, soil classification, general requirements for excavations, protective systems, and inspection requirements.

For a complete list of classes, please visit www.4safenv.state.nv.us

Safety classes are a free service of the Safety Consultation and Training Section of the Nevada Division of Industrial Relations. Due to limited space, register early.

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Diversity in the Workplace

A Broader Scope

There has been a steady evolution in the workplace in terms of how businesses regard diversity. Historically, diversity was associated with affirmative action plans requiring some businesses to hire and promote under-represented groups of women and minorities. The goal of affirmative action was to assure that the workforce demographics of businesses were representative of the population demographics in the communities where the businesses operated.

Today, a diverse workforce has a much broader definition, including differences in ethnic and cultural groups, generational variety, language, education, sexual preference or lifestyle choices, physical abilities and even organizational position. While most employers appreciate the changing scope of diversity, there remains a great deal of untapped potential in how businesses can leverage diversity.

To create sustainable change, business leaders must first make a personal commitment to promote diversity within their businesses and communities. A diverse workforce can help a business gain a competitive, however, the cooperation and participation of the entire management team are essential to support a culture of inclusion among employees.

Like all quality initiatives, inclusion requires an ongoing focus. Business leaders must be more innovative in their approach to recruiting, developing and leveraging diversity to hire and retain top talent in a shrinking labor market. When diversity becomes a core value, business opportunities emerge, communication improves and collaborative work environments develop. Diversity creates an environment where employees are empowered to contribute competitive ideas and share in access to opportunities and challenges. These dynamics influence business growth and profitability while reducing attrition and absenteeism.

Managing diversity can be complex and time-consuming. The best approach is to develop a team of employees who represent all levels of the organization and all walks of life. This team is responsible for defining the parameters of an inclusive workplace and creating a roadmap to enhance participation from a broad cross section of employees. It is critical to develop a communication strategy to help employees understand what the business is trying to accomplish and how roles contribute to the overall success of the company.

To assure that diversity is not viewed as a flavor-of-the-month employment policy, inclusive behaviors must be integrated into the heart and soul of the organization. Managers must consistently model the behaviors the organization wants to promote. Responsibility for encouraging and supporting diversity sits with all levels of management, from front-line supervisors to the CEO. The organization should measure perceptions from employees and applicants to understand their employment experience. Conduct an employee survey prior to implementing improvement efforts to create a baseline for assessing the impact of any change that these efforts elicit.

A diverse workforce mirrors the changing demographics of our marketplace. Customers make increasing demands upon businesses to understand their unique needs. Businesses that adopt diverse perspectives and ideas from a well-rounded workforce will be positioned to build a competitive edge through new product development and growth into new markets. At the same time, the work culture will become more collaborative with an emphasis on teaching, learning and sharing information. Successful businesses move quickly to identify tools and training designed to educate their workforce about the benefits of diversity.

Steve Conine is president of Talent Framework and AccuStaff, and Connie Johnson is managing director of Talent Framework.

Nevada's Education Vanguard

Expanding the Development of Charter Schools

It's time to bring public charter schools to the forefront of Nevada education. Battle-worn and born of hardy pioneering stock, many of Nevada's chartered public schools are emerging as successful, avant-garde educational models.

The growing popularity of charter schools in Nevada and nationwide is testimony to parents' desire for quality education options for their children. Four thousand charter schools serve more than 1 million students across 40 states and the District of Columbia. The Nevada charter vanguard is now 22 schools strong, serving more than 7,000 students. Most have waiting lists.

Despite this increasing popularity, the Nevada State Board of Education recently voted to "temporarily suspend" the acceptance of new charter applications until resources are available for the adequate processing and monitoring of charter schools. At a time of tight state coffers and school districts seeking hundreds of millions of dollars for new facilities, it makes economic sense to alleviate some of the congestion with new, more efficient options.

Charter schools are independently operated public schools designed and run by educators, parents, community leaders, businesses and educational entrepreneurs. Although laws vary from state to state, charter schools are given flexibility and freedom from most regulations in exchange for student achievement and public accountability.

Charter schools are sponsored by legislatively approved bodies who accept the responsibility of monitoring school performance, compliance with state and federal laws, and adherence to the school's stated mission and instructional design.

Charter schools operate under a performance contract (charter) with their authorizer in return for a commitment to meet higher accountability standards. State laws determine the types of bodies that can authorize charter schools, including state and local boards of education, universities and colleges, charter school boards, municipalities and nonprofits.

Chartered public schools are also small businesses operating independently, without the economies of scale resources – and bureaucratic inefficiencies – of large school districts. Nevada charter schools' basic operations are financed with pupil allocations and tax revenues, just as district schools are.

Unlike district schools, charter schools lack the authority to issue bonds for facilities, and in Nevada are not allocated additional funds to support facility acquisition, construction/renovation, maintenance or overhead. Facilities are acquired with great difficulty and only with aid from businesses, investors and philanthropists who support public education.

To be financially sustainable, charter schools must be frugal. Like any small business, the early years are typically a day-to-day financial struggle. Necessarily, most charter school administrators become efficient business managers. They are economy-minded and forward looking; they understand balance sheets, cost-effective operating strategies, and how to leverage community resources.

Nevada's charter school movement has had 10 years of steady progress, overcoming obstacles to close the achievement gap between advantaged and disadvantaged students. Though some have distorted their records, most charters have performed admirably – financially and educationally. Indeed, Nevada's charter schools have favorably impacted the public school system by creating more effective models for learning and teaching that district schools now emulate.

Quality charter schools are the result of the efforts of dedicated individuals, practical laws, effective policies and prudent operational practices. At a time when Nevada's troubled public school system is making headlines for failing to make adequate yearly progress and for high dropout rates, those who unconditionally embrace charter schools for their potential to improve student achievement and provide relief to a distressed traditional public school system will be the true vanguards of public education.

Ricci Rodriguez-Elkins is the founder and executive director of the Center For Charter School Development and a policy fellow of the Nevada Policy Research Institute.

Smooth Sailing with Financial Lenders

Understanding the Five Cs of Credit

Whether a business is seeking funds for working capital, equipment or inventory, construction, or for any other reason, a lender will assess credit worthiness based on five factors known as the "Five Cs of credit." These are:

1. Capacity to pay bills and repay the loan through a comparison of revenue against reoccurring debts;

2. Collateral as security for the loan;

3. Capital including assets the owner has invested in the company personally, because this commitment lessens the chance of defaulting on the loan;

4. Conditions of the loan, including the local and national economic climate for the industry, the purpose of the loan,the overall principal amount and interest rate; and

5. Character of the person requesting the loan based on their reputation and perceived trustworthiness, experience in business and industry, apparent viability of the business, and the credit history. On a commercial loan, both personal and business credit reports are relied on as a strong indicator of future payment performance.

Together, these elements reassure the lender that the company can repay the loan and that the additional debt load will not cripple cash flow or cause excessive financial stress for the business.

A solid understanding of the above "Five Cs" and attention to a business's credit report before initiating the lending process positively impacts the outcome of loan requests. Discovery and repair of potential issues before beginning the loan process can be significantly faster than being declined the funding, then having to fix the issues and reapply for the loan.

Even for businesses that aren't actively seeking a loan, a credit rating should be closely monitored. Almost every business will require credit from its suppliers at some point. Those prospective suppliers usually check a credit report before extending credit terms and limits.

Before You Apply

Before you apply for any type of credit or financing, there are a few basic requirements that must be in place. A new business must obtain all necessary licenses, registrations and permits for the city, county and state governments. Also, it should secure a Federal Tax ID Number or Employer Identification Number, which is akin to a business social security number. It is also important to register with a few business credit organizations, such as Dun & Bradstreet and the business divisions of Equifax, TransUnion and Experian.

Once basic accounts with vendors and suppliers have been established, it is critical to take care of those accounts diligently because they are the foundation of a business credit report. Ideally, before lenders are approached, an 18- to 24-month credit history should be established. However, if the owner has a strong personal credit history, the lack of a business history is not a barrier toward obtaining a loan.

Hidden Costs of Bad Credit

A negative credit report can manifest itself in unexpected ways far beyond just costing the business a higher interest rate and/or lower credit limit on debts. The cost of insurance premiums, for example, is usually higher when the insured is considered a higher risk. Contracts can be won or lost based on the credit report, since potential new clients and vendors may use it to judge financial stability or evaluate competitors.

It is important to regularly check credit reports for changes and accuracy, just as people do for their personal credit. If a business waits until it needs credit before repairing or rebuilding their credit report, it can significantly delay or halt the process, and the total financing cost can be drastically increased.

Bruce Ford is chief operating officer of the Las Vegas-based holding company, Community Bancorp.

"We have always done it that way!"

It's Time for Change

"We have always done it that way!" is a statement heard all too often when asking why an organization does things the way it does. The fallacy in that approach is obvious when considering that a successful business operations, like anything else, must adapt with the times, and to continue to do things as before can have huge repercussions. Surprisingly, the insight originates, not from management, but new employees. Business owners should learn to recognize the value of the fresh outlook that new employees can bring to the organization.

In many cases, the usual approach to doing business just does not seem to make much sense to new staff members, but if told enough times "we always do it that way," one of two things will occur. First, they may try to change the status quo, however, if they are discouraged from making changes enough times, they may either go with the flow, or simply choose to leave the organization.

Businesses should be looking at everything they do to determine if their actions are getting results and reveal the revisions necessary to achieve objectives. A critical analysis should be continued to examine all aspects of an operation, from employee recruitment to the delivery of product. A careful analysis should include policies, organizational structure, production processes and any other activity the organization undertakes. Additionally, an organization should create a benchmark to measure itself against other organizations, whether in the same industry or not.

One local organization wondered why it was unable to recruit good people. The organization did an excellent job of recruiting and identifying qualified employees but their internal hiring approval process took so long that many of the applicants had already accepted positions elsewhere. The approval process typically required one or two weeks to obtain the inordinate number of approval signatures deemed necessary. Adding to the problem, the individuals whose signatures were required were located at several different sites, time winding through the corporate mail. Although, the company had always done its recruitment that way, its inability to make rapid hiring decisions proved costly when several potentially valuable employees were lost to the delays. Clearly, change was necessary.

The entire process from job posting to the new employee's first day was tracked and analyzed in great detail, including the time spent in the company mail system, sitting at someone's desk, compiling the job offer, and conducting the necessary background checks. In the end, the company reduced the number of signatures needed, and converted paper forms to electronic documents that could be reviewed and approved online, thus, reducing turnaround time from weeks to days. Change is seldom easy, and often creates some angst within an organization, but in today's increasing competitive business environment, companies must remain nimble, adapting and evolving whenever necessary. The challenge is to become proactive to the need for change and not be satisfied with hearing, "We've always done it that way."

Mark Keays is president of Desert Management Services, a Las Vegas-based management consulting firm.

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1031 Exchanges In Nevada

Is It Safe To Go Back In The Water?

On the heels of the Southwest Exchange Corporation litigation, the Nevada Legislature has moved quickly to reduce the risks associated with 1031 exchange accommodators. Exchanges are highly regulated for qualification as a tax deferred exchange under the Internal Revenue Code, however, state regulation of exchanges has been limited or non-existent. Prior to the new regulations, Nevada's exchange regulations were minimal. With the newly enacted regulations, is it safe for real estate investors to play in the 1031 waters again, or do they remain at risk of losing exchange funds?

A "1031 exchange" is a tax-deferred (not tax-free) exchange under Section 1031 of the Internal Revenue Code. Section 1031 permits a taxpayer to defer gain on the sale or exchange of certain types of property. For delayed exchanges, a qualified intermediary must hold the funds received from the sale or exchange until the replacement property is purchased. It is the regulation of these intermediaries that leads to the risk of the taxpayer losing its exchange money.

The new regulations bring qualified intermediaries under the control of the Division of Financial Institutions (DFI) of the Nevada Department of Business and Industry. The DFI now has regulatory and auditing rights and controls over an intermediary, which will permit stricter oversight of the exchange industry in Nevada. The DFI also has broader authority to suspend or revoke an intermediary's license and may impose fines for non-compliance or failure to obtain a license. However, these fines may not be sufficient at $200 per day, per violation.

The key to the legislation is the protection of the funds held by the intermediary. First, the intermediary, as a fiduciary of the client, must deposit all exchange funds in a financial institution that is federally insured by a private insurer. The funds must be clearly designated as "trust funds" or "escrow accounts" and must be kept separate and apart from the intermediary's funds. Second, the funds held for the account of a client may not be withdrawn from the holding account without the signature of the taxpayer. This offers significant protection to clients that was non-existent prior to this legislation. Third, the security to be posted by the intermediary has been raised to $1 million. However, given the larger dollar values typically involved with exchanges, this limit should be raised higher, or tied to the value of specific transactions. Finally, intermediaries are required to maintain $250,000 of errors and omissions insurance.

A 1031 exchange can deliver many potential benefits, including tax deferral, diversification of investments, exchanging one large parcel for several smaller parcels, or vice-versa, and participating in fractional interests or tenants-in-common arrangements (allowing for participation in a higher value transaction that otherwise would not be available to a small investor). The benefits of an exchange can outweigh the risks associated with entrusting funds to a third party. To further reduce risks, a taxpayer should ask the intermediary how the funds are protected, make certain the funds are placed in a separate account with a reputable financial institution, and verify the existence of bonding or other posted security. Although not a guarantee, using large title companies, banks or their affiliates may reduce the risk of foul play and wrongdoing.

In short, conduct due diligence to protect your investment. While the new Nevada regulations do not guarantee protection of a 1031 participant's funds, the legislation provides significantly more protection than was previously available. So although the 1031 exchange waters are not 100 percent safe from thieves and schemers, the risks associated with intermediaries have been substantially reduced.

Don Martin is a partner with the law firm of Fennemore Craig, a regional firm with offices in Nevada, Arizona and Colorado.

The Change Dynamic

Simply Political Strategy

Quick: what's a six-letter word that if you use over and over, might just win you the most important elected office in the free world?

That magic word is … change. Give yourself a gold star if you guessed correctly. It is the word that is on the lips of every major presidential candidate this election year. Whether they've been in office for decades, or around politics only a short time, would-be office holders are saying they will be agents of change at an alarming rate.

Can they really bring about major change in a system that has been largely unchanged for the past 200 years? Probably not. Why, then, is every candidate saying they can, and attempting to sell that message to the voters? Would they blatantly lie to people just to get their support?

The candidates promoting an agenda of change are not necessarily lying and really do want to do things differently than the current administration. However, there is another reason they are talking about change: pure political strategy.

It is well known by campaign operatives that when people are comfortable, happy and satisfied with their lot in life, they don't feel all that motivated to get out and vote. Why would they? When things are going fine, then the status quo is a lot more attractive.

In order to motivate voters to get up off the couch and go to the polls, you have to make them believe that things are bad, that our government is off track and that their jobs or livelihoods may be in trouble.

When politicians talk about change, they are trying to convince voters that the current administration, or in some cases their opponent, is performing badly and needs to be thrown out. That is truly the only way to motivate a voting block to get to the polls.

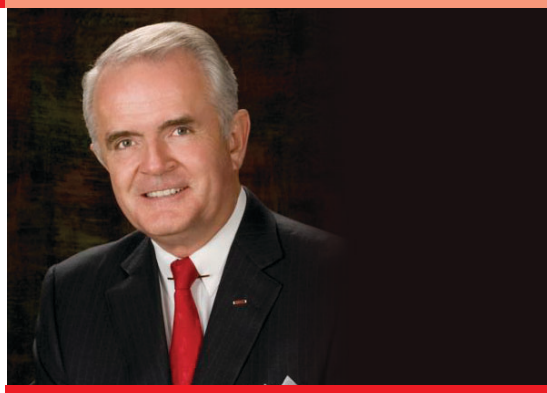
Barack Obama used this message brilliantly in the Iowa Caucuses, making voters believe that he was the candidate best suited to fix their troubles and restore the United States to greatness. He did such a fantastic job, even Hillary Clinton had to start talking about change, even though her campaign message has been based on experience.

The change dynamic has worked so well, you are definitely going to see other candidates using it this election cycle, from those running for dog catcher to the highest-profile races on the ballot. If you can convince the electorate that the system is broken, and you are the best mechanic to fix it and save them money, then in this environment, you win.

The only real problem with this kind of mentality is that often, when these agents of change get to public office, because they have little experience they are just unable to successfully navigate a system that is not set up for outsiders. They are often marginalized by the more experienced pros and end up failing to accomplish any of their agenda.

If they manage to survive their first term, you will see them running on a platform of vast experience in the following election, while the next person claiming to fight for change tries to unseat them. It's a vicious cycle that has been repeated since the first contested elections.

Michael Sullivan is president of Knight Consulting, a local government affairs firm.



Gov. Jim Gibbons

How will Nevada benefit from lower taxes and fiscal policies?

Low Taxes and Responsible Fiscal Policies: Path to Nevada's Future

As Governor, I pledged to Nevada's families and business owners that I would keep their taxes low and affordable. Doing so will ensure that businesses and consumers are not forced into shouldering the burden of runaway government spending. In the Nevada State Legislature, in Congress and now as Governor, I remain steadfast in my commitment to ensure that taxpayer dollars are spent efficiently and responsibly.

New or increased taxes would have a stifling effect on our economy, forcing Nevadans to fund irresponsible tax and spend policies.

The tremendous growth and prosperity that Nevada has experienced over the past ten years is due largely in part to our pro-business tax climate. I will continue to fight any and all efforts to raise taxes on the hardworking people of this state. Allowing businesses and employees to keep more of what they earn creates jobs, increases wages and salaries for families and provides for a stronger economy.

Unique in many ways, Nevada chooses to be a low-tax state, and in recent years, we have moved up from No. 6 to No. 3 in the Tax Foundation's annual State Business Tax Climate Index.

This low-tax, pro-business environment has led to billions of dollars in investments and has created thousands of new jobs.

However, like many states across the nation, Nevada's statewide revenue collections have not been keeping pace with previous fiscal projections, thus prompting us to take necessary steps to prepare for revenue shortages.

"I suggest that higher taxes are the last thing that hard-working Nevadans can afford when they must pay more for basic essentials such as food, gas and electricity."

While Nevada's forecasted shortfall is primarily driven by a decrease in sales tax revenues, the nationwide slowdown in the housing market has also significantly impacted the economy. Recognizing the significant impact that this will have on homeowners and business, the sate provides many services to help families and business owners facing foreclosure.

To address the challenge of declining revenues, I implemented a modest and broad-based 4.5% reduction in spending for all State agencies and departments. While some are calling for tax increases, I suggest that higher taxes are the last thing that hard-working Nevadans can afford when they must pay more for basic essentials such as food, gas and electricity. Nevada families and businesses must live within their budgetary means; likewise, it is not unreasonable to expect state government to do the same.

Despite these challenges, it is important to note that the economy of Nevada is still strong, and historically, every period of decreased sales tax revenue has been followed by an increase in those same revenues in the following years.

I continue to explore many innovative pro-business policies that will reduce unnecessary bureaucratic red-tape, ensuring that we remain a business friendly state.

The quality of life we enjoy here in Nevada – locally, regionally, and statewide – is a direct result of continued economic development and growth. This growth allows us to maintain and build new roads, build and fund schools, and provide law enforcement services and first responders who keep our children and families safe. As Governor, I will continue to support responsible policies that make Nevada the best place to grow a business.

The Real Estate Workout Equation

What Both Parties Should Know

Few today would argue against a significant deterioration in the residential and commercial real estate markets having occurred, both nationally and locally. As owners of troubled real estate projects weigh their options in the face of impaired cash flows, completion delays, delinquent payments and declining property values, their lenders and landlords will search for ways to recoup their investments while lessening the attraction of bankruptcy protection for their borrowers and tenants. Increasingly, both sides will turn to a real estate workout to achieve these goals.

Since many real estate projects are owned by single asset entities, any security or assurance that a lender or landlord would normally demand in the event of a default, such as additional collateral or guaranties, will not be available. The demand itself may increase the likelihood that the owner or tenant will file for bankruptcy, an unpalatable risk for most lenders and landlords.

Workouts are agreements between defaulting parties and the parties to whom they owe financial obligations that provide for payment of the obligation, while affording the defaulting party the opportunity to benefit from the value in the project. Most real estate workouts involve providing the distressed party with the time it needs to improve the asset, while maximizing the odds of payment and minimizing the incentives for a bankruptcy filing.

Both parties can explore a number of options. The terms of the loan or lease can be renegotiated to lower the loan or rent payment, extend the loan term, allow for interest only payments for a certain time period, defer defaulted payments to the end of the term, or allow the delinquency to be repaid over time. The project may be redesigned to a more manageable size. For loans, all or a portion of the property could be sold or refinanced while the lender forebears all or part of the regular payments. The borrower or tenant could be recapitalized with a new partner contributing additional equity thereby providing the lender or landlord with a potential additional guarantor, as well as new expertise, which may decrease the likelihood of future problems. The parties could also agree on a settlement, which, for a lease, may involve early termination with payment of a termination fee. For a loan, the borrower may consider conveyance of the property to the lender with a deed in lieu of foreclosure in return for releasing the borrower and guarantors. In any event, the lender and landlord should retain the ability to pursue their original remedies if the workout is unsuccessful.

Workout agreements should be in writing. The parties should acknowledge and affirm the terms of the original agreement. The borrower or tenant should waive any claims against the lender or landlord, and the consideration for the accommodations made to the distressed party, should be clearly explained, including payment of an extension fee or additional interest over the extended term. The distressed party should be required to fully disclose its financial condition, both at the time the agreement is executed and on a continuing basis during the term of the workout. Unlike an ordinary transaction, if negotiations concerning the workout fail, the parties cannot walk away from each other. Litigation is not just possible, but probable. Therefore, the parties should also strongly consider entering into a written pre-workout agreement before negotiations commence, providing that statements made during workout negotiations cannot be used against a party in any subsequent litigation.

If the current deterioration in the local real estate market continues, understanding the benefits and limitations of workouts will become increasingly critical for participants in every segment of the real estate industry. Be sure to consult with experienced legal counsel before entering into a workout agreement.

David A. Barksdale is partner of Ballard Spahr Andrews & Ingersoll, a law firm located in Las Vegas.

BUSINESS INDICATORS

The indicators have revealed a mixed picture for both the Nevada and U.S. economies. Increasingly, however, the data point to increased chances for both a national and silver state recession. Nevada has been in an imbalance position ever since the housing markets in Las Vegas and Reno peaked. Nevada has seen marked decline in prices and sales. Recovery from an excess supply of housing units has taken time, and more time is needed to burn off the excess. In the meantime, the subprime housing finance problem has turned into a credit crunch. Great uncertainty prevails about the value of new sophisticated financial instruments.

The Federal Reserve has reduced the federal funds rate, the discount rate, and created a new auction facility to address the liquidity needs of the financial system. Further efforts on both monetary and fiscal fronts may yet be needed. Future efforts, however, face limitations. The current inflation levels are at or near the top end of the Fed's comfort zone. An economic stimulation package runs the risk of touching off a round of destructive inflation.

Most economic indicators become available after some time. So, recession identification is after the fact. We are struggling with proxy measures to ascertain the current state of affairs. A recession occurs with observable general decline in overall spending, income, and jobs. A national recession appears in the monthly income, spending, industrial production, and jobs. In the Silver State, useful monthly indicators are taxable sales, gaming revenue, visitor volume, and jobs. So far these series do not show recessions for the U.S., Nevada, or Southern Nevada.

A number of proxy measures of recession, that is, indicators which have historically been correlated with recessions, have softened of late, leaving many to believe that a recession is either already at hand or is highly likely. It bears noting that many indicators continue on the positive side, however. In addition, the credit crunch and the increasingly international basis of finance have some believing that not all of the positive indicators should be valued as in the same way as in the past. Job indicators offer some of the best information at this time. The unemployment rates have jumped of late, currently at 5.0, 5.2, 5.3, and 4.8, respectively for the U.S., Nevada, Las Vegas, and Reno. Holiday sales offer further corroborating evidence of weakness. This evidence gives a hint at further decline and increased probability of a recession.

R. Keith Schwer
UNLV Center for Business and Economic Research

	UNITS	DATES	DATA LATEST	DATA PREVIOUS	DATA YEAR AGO	GROWTH RECENT	GROWTH YEAR AGO	COMMENTS
NEVADA						(%)	(%)	
Employment	1,000 employees	11/07	1,314.0	1,310.2	1,303.6	0.3	0.8	Small Gain
Unemployment Rate	%, NSA	11/07	5.2	5.0	4.1	4.0	26.8	Rising
Taxable Sales	$ billion	10/07	3.980	4.191	3.817	-5.0	4.3	Weak Month
Gaming Revenue	$ million	11/07	981.12	1,164.88	1,140.74	-15.8	-14.0	Down
Passengers	passengers	11/07	4.146	4.519	4.291	-8.3	-3.4	Down
Gasoline Sales	million gallons	10/07	98.56	98.08	97.47	0.5	1.1	Flat
Visitor Volume	million visitors	10/07	4.413	4.301	4.411	2.6	0.0	Up Monthly
CLARK COUNTY						(%)	(%)	
Employment	1,000 employees	11/07	945.4	935.3	935.3	1.1	1.1	Modest Gain
Unemployment Rate	%, NSA	11/07	5.3	5.1	4.1	3.9	29.3	Rising
Taxable Sales	$ billion	10/07	2.979	3.073	2.798	-3.1	6.5	Down
Gaming Revenue	$ million	11/07	828.73	1,001.32	989.64	-17.2	-16.3	Down
Residential Permits	units permitted	11/07	2,411	4,468	1,410	-46.0	71.0	Irregular
Commercial Permits	permits	11/07	82	270	109	-69.6	-24.8	Down
Passengers	million persons	11/07	3.839	4.117	3.924	-6.8	-2.2	Down
Gasoline Sales	million gallons	10/07	67.98	67.24	67.14	1.1	1.2	Slow Growth
Visitor Volume	million visitors	10/07	3.787	3.647	3.793	3.8	-0.2	Full House
WASHOE COUNTY						(%)	(%)	
Employment	1,000 employees	11/07	228.4	228.4	228.0	0.0	0.2	Flat
Unemployment Rate	%, NSA	11/07	4.8	4.5	3.6	6.7	33.3	Rising
Taxable Sales	$ billion	10/07	0.556	0.639	0.568	-13.0	-2.1	Down
Gaming Revenue	$ million	11/07	80.18	85.57	80.86	-6.3	-0.8	Down
Residential Permits	units permitted	11/07	94	210	110	-55.2	-14.5	Down
Commercial Permits	permits	11/07	34	34	33	0.0	3.0	Flat
Passengers	million persons	11/07	0.375	0.397	0.362	-5.5	3.8	Down
Gasoline Sales	million gallons	10/07	15.54	15.53	15.50	0.0	0.2	Flat
Visitor Volume	million visitors	10/07	0.416	0.449	0.407	-7.5	2.1	Down
UNITED STATES						(%)	(%)	
Employment	million, SA	12/07	138.495	138.477	137.167	0.0	1.0	Slowing
Unemployment Rate	%, SA	12/07	5.0	4.7	4.4	6.4	13.6	Up
Consumer Price Index	82-84=100, NSA	11/07	210.2	208.9	201.5	0.6	4.3	Up
Core CPI	82-84=100, NSA	11/07	212.4	212.3	207.6	0.0	2.3	Problem
Employment Cost Index	89.06=100, SA	3Q07	105.9	105.1	102.4	0.8	3.4	Above Projected Growth
Productivity Index	92=100, SA	3Q07	139.6	137.8	136.1	1.3	2.5	Up
Retail Sales Growth	$ billion, SA	11/07	385.753	381.088	363.234	1.2	6.2	Up Modestly
Auto and Truck Sales	million, SA	12/07	16.23	16.16	16.56	0.4	-2.0	Weak
Housing Starts	million, SA	11/07	1.187	1.232	1.565	-3.7	-24.2	Down
GDP Growth	$ billion, SA	3Q07	11,658.9	11,520.1	11,336.7	1.2	2.8	Expansion Continues
U.S. Dollar	97.01=100	12/07	99.270	98.370	106.530	0.9	-6.8	Up Modestly
Trade Balance	$ billion, SA	10/07	-57.823	-57.118	-58.165	1.2	-0.6	Improving of Late
S&P 500	monthly close	12/07	1,468.36	1,481.14	1,418.30	-0.9	3.5	Weak
Real Short-Term Rates	%, NSA	11/07	2.66	3.69	5.09	-27.9	-47.7	Stron Demand
Treasury Yield Spread	%, NSA	10/07	1.03	0.80	-0.41	28.8	-351.2	Upward Sloping

SOURCES: Nevada Department of Taxation; Nevada Department of Employment, Training and Rehabilitation; UNR Bureau of Business and Economic Research; UNLV Center for Business and Economic Research; McCarran International Airport; Reno/Tahoe International Airport; Las Vegas Convention and Visitors Authority; Reno-Sparks Convention and Visitors Authority; U.S. Department of Commerce, U.S. Bureau of Labor Statistics, U.S. Census Bureau; U.S. Federal Reserve Bank.

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