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Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

180 LAND CO LLC, a Nevada limited-liability
company; DOE INDIVIDUALS I through X;
DOE CORPORATIONS I through X; and
DOE LIMITED-LIABILITY COMPANIES I
through X,

Petitioners,

v.

Case No. A-17-758528-J
Dept. No. XVI

NOTICE OF APPEAL

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X,

Defendants.

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Notice is given that 180 LAND CO LLC, Petitioner in the above-captioned matter, appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law on Petition for Judicial Review, and Order which was entered by the district court on November 21, 2018.

1 Petitioner notes that the matter in district court was severed between a petition for
2 judicial review and several claims sounding in inverse condemnation. However, the Order of
3 November 21, 2018, not only denies judicial review, it dismisses all of the claims for inverse
4 condemnation, with no recognition that the matter had been severed into two actions, and that
5 separate pleadings were filed. Therefore, petitioner, the only petitioner in the severed actions
6 below, appeals from all aspects of the district court's Order with respect to all of the pleaded but
7 severed matters.
8

9 DATED this 20 day of December, 2018.
10

11 HUTCHISON & STEFFEN, PLLC

12 
13

14 Mark A. Hutchison (4639)
15 Michael K. Wall (2098)
16 Joseph S. Kistler (3458)
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23 Michael Schneider (8887)
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Las Vegas, Nevada 89101

25 *Attorneys for Petitioner*
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 20th day of December, 2018, I caused the above and foregoing document entitled **NOTICE OF APPEAL** to be served as follows:


- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via facsimile; and/or
- XXX pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

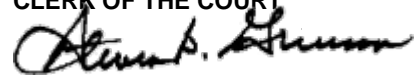
to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Bradford R. Jerbic (1056)
Philip R. Byrnes (166)
Seth T. Floyd (11959)
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Attorneys for City of Las Vegas

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Attorneys for Intervenors


An employee of Hutchison & Steffen, PLLC



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company; DOE INDIVIDUALS I through X;
DOE CORPORATIONS I through X; and
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through X,

Petitioners,

v.

Case No. A-17-758528-J
Dept. No. XVI

CASE APPEAL STATEMENT

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X,

Defendants.

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Intervenors.

1. Party filing this Case Appeal Statement.

This appeal and case appeal statement is filed on behalf of petitioner 180 LAND CO LLC in the action above.

///

1 **2. Judge issuing the decision, judgment or order appealed from.**

2 The Honorable District Judge Timothy C. Williams, Eighth Judicial District Court,
3 Clark County, Department 16, District Court Case No. A-17-758528-J

4 **3. Parties to the proceedings in the district court.**

5 180 Land Co LLC Petitioner

6 City of Las Vegas; ROE Government Entities;

7 ROE Individuals; ROE QUASI-Governmental Entities Defendants

8
9 Jack B. Binion, an individual; Duncan R. and Irene Lee,
10 individuals and Trustees of the Lee Family Trust;

11 Frank A. Schreck, an individual; Turner Investments,
12 Ltd., a Nevada Limited Liability Company; Roger P. and

13 Carolyn G. Wagner, individuals and Trustees of the
14 Wagner Family Trust, Betty Englestad as Trustee of the

15 Betty Englestad Trust; Pyramid Lake Holdings, LLC;

16 Jason and Shereen Awad as Trustees of the Awad Asset

17 Protection Trust, Thomas Love as Trustee of the Zena Trust;

18 Steve and Karen Thomas as Trustees of the Steve and Karen

19 Thomas Trust; Susan Sullivan as Trustee of the Kenneth J.

20 Sullivan Family Trust, and Dr. Gregory Bigler and

21 Sally Bigler Intervenor

22 **4. Parties involved in this appeal.**

23 180 Land Co LLC Appellant

24 City of Las Vegas Respondent

25 **5. The name, law firms, addresses and telephone numbers of all counsel on appeal,**
26 **and the party or parties they represent.**

27 HUTCHISON & STEFFEN, PLLC

28 Mark A. Hutchison (4639)

Michael K. Wall (2098)

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Attorneys for Intervenors

- 6. Whether any attorney identified above is not licensed to practice law in Nevada and if so whether the District Court granted that attorney permission to appear under SCR 42. (Attached copy of District Court's order).**
N/A
- 7. Whether respondents were represented by appointed or retained counsel in the district court.**
Respondents were represented by retained counsel.
- 8. Whether appellant was represented by appointed or retained counsel in the district court.**
Appellant was represented by retained counsel.
- 9. Whether appellant was granted leave to proceed in forma pauperis in the district court.**
N/A
- 10. The date the proceedings commenced in district court.**
Petition for Judicial Review was filed July 18, 2017.
- 11. Brief description of the nature of the action and result in district court.**

1 The action below was commenced by a petition for judicial review concerning four land
2 development applications regarding a portion of a Residential Zoned Property, approximately
3 35 acres of 180 Land's property, to be developed into 61 large single family residential lots.
4 Petitioner filed this petition for judicial review after the City Council denied the Applications
5 contrary to the legal framework or correct application of NRS 278 and Title 19 of the Las Vegas
6 Municipal Code. Petitioner then amended its petition to add several claims of inverse
7 condemnation. The district court severed the petition for judicial review from the claims for
8 inverse condemnation, but later denied the petition for judicial review and dismissed the claims
9 for inverse condemnation in a single order.
10

11 **12. Whether the case has been the subject of a previous appeal.**

12 No.
13

14 **13. Whether the appeal involves child custody or visitation.**

15 N/A
16

17 **14. Whether the appeal involves the possibility of settlement.**

18 Settlement seems unlikely at this stage.
19

20 Dated this 20 day of December, 2018.

21 HUTCHISON & STEFFEN, PLLC

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13 *Attorneys for Petitioner*
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CERTIFICATE OF SERVICE

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

☐ to be served via facsimile; and/or

XXX pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

☐ to be hand-delivered;


to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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Las Vegas, NV 89102
Attorneys for City of Las Vegas


An employee of Hutchison & Steffen, PLLC

CASE SUMMARY**CASE NO. A-17-758528-J**

180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

§
§
§
§
§

Location: **Department 16**
 Judicial Officer: **Williams, Timothy C.**
 Filed on: **07/18/2017**
 Cross-Reference Case Number: **A758528**

CASE INFORMATION**Statistical Closures**

12/12/2018 Stipulated Judgment

Case Type: **Other Judicial Review/Appeal**

Case
Status: **12/12/2018 Reopened**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-17-758528-J
 Court Department 16
 Date Assigned 07/18/2017
 Judicial Officer Williams, Timothy C.

PARTY INFORMATION

Petitioner **180 Land Company LLC**

Lead Attorneys

Hutchison, Mark A
Retained
 702-385-2500(W)

Respondent **Las Vegas City of**

Byrnes, Philip R.
Retained
 702-229-6629(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

07/18/2017



Petition for Judicial Review
 Filed by: Petitioner 180 Land Company LLC
Petition for Judicial Review

07/18/2017



Initial Appearance Fee Disclosure
 Filed By: Petitioner 180 Land Company LLC
Initial Appearance Fee Disclosure

07/19/2017



Summons Electronically Issued - Service Pending
 Party: Petitioner 180 Land Company LLC
Summons

09/07/2017



Notice of Association of Counsel
Notice of Association of Counsel

09/07/2017



Petition for Judicial Review
First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation

09/14/2017
















Summons Electronically Issued - Service Pending
 Party: Petitioner 180 Land Company LLC

CASE SUMMARY
CASE NO. A-17-758528-J

Summons

09/20/2017	 Affidavit of Service Filed By: Petitioner 180 Land Company LLC <i>Affidavit of Service (City of Las Vegas)</i>
10/30/2017	 Motion to Dismiss Filed By: Respondent Las Vegas City of <i>City of Las Vegas' Motion to Dismiss or, in the Alternative, Motion to Strike</i>
11/17/2017	 Opposition and Countermotion Filed By: Petitioner 180 Land Company LLC <i>Petitioner s Opposition To City Of Las Vegas Motion To Dismiss And Countermotion To Stay Litigation Of Alternative Inverse Condemnation Claims Until Resolution Of The Petition For Judicial Review</i>
12/05/2017	 Stipulation and Order <i>Stipulation and Order to Continue Hearing on City of Las Vegas' Motion to Dismiss and Countermotion to Stay Litigation of Alternative Inverse Condemnation Claims Until Resolution of the Petition for Judicial Review</i>
12/06/2017	 Notice of Entry of Order <i>Notice of Entry of Order to Continue Hearing on City of Las Vegas' Motion to Dismiss and Countermotion to Stay Litigation of Alternative Inverse Condemnation Claims Until Resolution of the Petition for Judicial Review</i>
12/14/2017	 Stipulation and Order Filed by: Respondent Las Vegas City of <i>Stipulation and Order to Extend Response Deadlines</i>
12/19/2017	 Notice of Entry of Order Filed By: Respondent Las Vegas City of <i>Notice of Entry of Stipulation and Order to Extend Response Deadlines</i>
12/21/2017	 Reply in Support Filed By: Respondent Las Vegas City of <i>City of Las Vegas' Reply in Support of its Motion to Dismiss and Opposition to Petitioner's Countermotion to Stay Litigation</i>
01/05/2018	 Reply in Support Filed By: Petitioner 180 Land Company LLC <i>Petitioner s Reply In Support Of Its Countermotion To Stay Litigation Of Alternative Inverse Condemnation Claims Until Resolution Of The Petition For Judicial Review</i>
01/18/2018	 Transmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review</i>
01/18/2018	 Transmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 1 of 157</i>
01/18/2018	 Transmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 2 of 157</i>

CASE SUMMARY
CASE NO. A-17-758528-J

01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 3 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 4 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 5 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 6 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 7 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 8 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 9 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 10 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 11 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 12 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 13 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 14 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 15 of 157</i>
01/18/2018	

CASE SUMMARY
CASE NO. A-17-758528-J

	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 16 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 17 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 18 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 19 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 20 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 21 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 22 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 23 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 24 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 25 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 30</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 26 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 28</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of

CASE SUMMARY

CASE NO. A-17-758528-J

Transmittal of Record for Review, Volume 27 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 29 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 31 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 34 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 33 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 35 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 37 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 32 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 36 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 38 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 39

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 40 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 41 of 157

01/18/2018
















Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 42 of 157

CASE SUMMARY
CASE NO. A-17-758528-J

01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 43 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 45 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 44 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 46 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 47 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 48 of 157</i></p>
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01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 51 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 50 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 52 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 53 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 54 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasmittal of Record for Review, Volume 55 of 157</i></p>
01/18/2018	 <p>Trasmittal of Record</p>

CASE SUMMARY
CASE NO. A-17-758528-J

	Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 56 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 57 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 58 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 59 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 60 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 61 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 62 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 63 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 64 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 65 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 66 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 67 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 69 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 68 of 157</i>

CASE SUMMARY
CASE NO. A-17-758528-J

01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 71 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 72 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 70 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 75 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 74 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 81 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 83</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 82 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 76 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 86 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 77, Pages ROR016112-ROR016411</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 78, Pages ROR016412-ROR016711</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 79, Pages ROR016712-ROR016871</i>
01/18/2018	

CASE SUMMARY

CASE NO. A-17-758528-J

	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 80, Pages ROR016872-ROR017011</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 85, Pages ROR017912-ROR018211</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 87, Pages ROR018512-ROR018811</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 88, Pages ROR018812-ROR018971</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 89, Pages ROR018972-ROR019111</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 90, Pages ROR019112-ROR019411</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 91 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 92 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 93 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 98 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 100 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 94 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review, Volume 97 of 157</i>
01/18/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of

CASE SUMMARY
CASE NO. A-17-758528-J

Transmittal of Record for Review, Volume 95 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 96 of 157

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review

01/18/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 84, Pages ROR017612-ROR07911

01/19/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal of Record for Review, Volume 73 of 157

01/22/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal Of Record For Review Volume 108 of 157, Pages ROR023912 ROR024211

01/22/2018



Transmittal of Record

Filed By: Respondent Las Vegas City of
Transmittal Of Record For Review Volume 109, Pages ROR024212 ROR024511

CASE SUMMARY






CASE NO. A-17-758528-J

01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 110, Pages ROR024512 ROR024811</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 111 of 157, Pages ROR024812 ROR025111</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 112 of 157, Pages ROR025112 ROR025411</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 113 of 157, Pages ROR025412 ROR025711</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 114 of 157, Pages ROR025712 ROR025866</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal Of Record For Review Volume 115 of 157, Pages ROR025867 ROR026011</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal Of Record For Review Volume 116 of 157, Pages ROR026012 ROR026311</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal Of Record For Review Volume 117 of 157, Pages ROR026312 ROR026461</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal Of Record For Review Volume 118 of 157, Pages ROR026462 ROR026611</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 119 of 157, Pages ROR026612 ROR026791</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 120 of 157, Pages ROR026792 ROR026911</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 121 of 157, Pages ROR026912 ROR026992</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 122 of 157, Pages ROR026993 ROR027237</i>
01/22/2018	 Trasmittal of Record

CASE SUMMARY
CASE NO. A-17-758528-J















	<p>Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 123 of 157, Pages ROR027238 ROR027482</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 124 of 157, Pages ROR027483 ROR027632</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal Of Record For Review Volume 125 of 157, Pages ROR027633 ROR027727</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 126 of 157, Pages ROR027728 ROR027972</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 127 of 157, Pages ROR027973 ROR028102</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 128 of 157, Pages ROR028103 ROR028217</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 129 of 157, Pages ROR028218 ROR028462</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 130 of 157, Pages ROR028463 ROR028707</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 131 of 157, Pages ROR028708 ROR028952</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 132 of 157, Pages ROR028953 ROR029197</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 133 of 157, Pages ROR029198 ROR029442</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 134 of 157, Pages ROR029443 ROR029687</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 135 of 157, Pages ROR029688 ROR029932</i></p>
01/22/2018	<p> Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 136 of 157, Pages ROR029933 ROR030040</i></p>

CASE SUMMARY
CASE NO. A-17-758528-J

01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 137 of 157, Pages ROR030041 ROR030190</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 138 of 157, Pages ROR030191 ROR030330</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 139 of 157, Pages ROR030331 ROR030620</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 141 of 157, Pages ROR030911 ROR031060</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 140 of 157, Pages ROR030621 ROR030910</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 144 of 157, Pages ROR031491 ROR031780</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of record for Review Volume 145 of 157, Pages ROR031781 ROR032070</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 146 of 157, Pages ROR032071 ROR032360</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 147 of 157, Pages ROR032071 ROR032360</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 148 of 157, Pages ROR032651 ROR032800</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Trasnmittal of Record for Review Volume 149 of 157, Pages ROR032801 ROR032940</i>
01/22/2018	 Trasmittal Party: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 150 of 157, Pages ROR032941 ROR033230</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 151 of 157, Pages ROR033231 ROR033520</i>
01/22/2018	



CASE SUMMARY

CASE NO. A-17-758528-J

	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 152 of 157, Pages ROR033521 ROR033810</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 153 of 157, Pages ROR033811 ROR034100</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 154 of 157, Pages ROR34101 ROR034390</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 156 of 157, Pages ROR034681 ROR034970</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 155 of 157, Pages ROR034391 ROR034680</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 157 of 157, Pages ROR034971 ROR035182</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 143 of 157, Pages ROR031201 ROR031490</i>
01/22/2018	 Trasmittal of Record Filed By: Respondent Las Vegas City of <i>Transmittal of Record for Review Volume 142, Pages ROR031061 ROR031200</i>
02/01/2018	 Order Filed By: Petitioner 180 Land Company LLC <i>Order Denying Motion to Dismiss and Countermotion to Stay Litigation</i>
02/02/2018	 Notice of Entry of Order Filed By: Petitioner 180 Land Company LLC <i>Notice of Entry of Order Denying Motion to Dismiss and Countermotion to Stay Litigation</i>
02/05/2018	 Notice <i>Notice of Disassociation</i>
02/05/2018	 Answer to Complaint Filed by: Respondent Las Vegas City of <i>City of Las Vegas' Answer to First Amended Petition for Judicial Review</i>
02/13/2018	 Stipulation and Order Filed by: Petitioner 180 Land Company LLC <i>Stipulation and Order to Set Briefing Schedule</i>
02/13/2018	 Notice of Entry of Stipulation and Order Filed By: Petitioner 180 Land Company LLC <i>Notice of Entry of Stipulation and Order to Set Briefing Schedule</i>

CASE SUMMARY

CASE NO. A-17-758528-J

02/13/2018	 Notice of Entry of Stipulation and Order Filed By: Petitioner 180 Land Company LLC <i>Notice of Entry of Stipulation and Order to Set Briefing Schedule (Corrected)</i>
02/23/2018	 First Amended Complaint Filed By: Petitioner 180 Land Company LLC <i>First Amended Complaint Pursuant to Court Order Entered on February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation</i>
02/28/2018	 Amended Petition Filed By: Petitioner 180 Land Company LLC <i>Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation per Court Order entered on February 1, 2018</i>
02/28/2018	 Errata Filed By: Petitioner 180 Land Company LLC <i>Errata to First Amended Complaint Pursuant to Court Order Entered on February 1, 2018 for Severed Alternative Verified Claims in Inverse Condemnation</i>
03/13/2018	 Answer to Amended Complaint Filed By: Respondent Las Vegas City of <i>City of Las Vegas' Answer to First Amended Complaint Pursuant to Court Order Entered on February 1, 2018 for Severed Alternative Verified Claims in Inverse Condemnation</i>
03/19/2018	 Answer to Complaint Filed by: Respondent Las Vegas City of <i>City of Las Vegas' Answer to Second Amended Petition for Judicial Review</i>
03/28/2018	 Stipulation and Order Filed by: Petitioner 180 Land Company LLC <i>Stipulation and Order to Extend Briefing Schedule Deadlines Relating to Petitioner's Second Amended Petition for Judicial Review</i>
03/28/2018	 Notice of Entry of Stipulation and Order Filed By: Petitioner 180 Land Company LLC <i>Notice of Entry of Stipulation and order to Extend Briefing Schedule Deadlines Relating to Petitioner's Second Amended Petition for Judicial Review</i>
04/02/2018	 Association of Counsel Filed By: Respondent Las Vegas City of <i>Association of Counsel/Notice of Appearance</i>
04/16/2018	 Stipulation and Order Filed by: Petitioner 180 Land Company LLC <i>Stipulation and Order to Extend Briefing Schedule Deadlines Relating to Petitioner's Second Amended Petition for Judicial Review [Second Request]</i>
04/16/2018	 Notice of Entry of Stipulation and Order Filed By: Petitioner 180 Land Company LLC <i>Notice of Entry of Stipulation and Order to Extend Briefing Schedule Deadlines Relating to Petitioner's Second Amended Petition for Judicial Review</i>
04/17/2018	 Motion to Intervene Party: Intervenor Binion, Jack B; Intervenor Lee, Duncan R; Intervenor Schreck, Frank

CASE SUMMARY

CASE NO. A-17-758528-J

A; Intervenor Turner Investments LTD; Intervenor Wagner, Rover P; Intervenor Love, Thomas; Intervenor Thomas, Steve; Intervenor Sullivan, Susan; Intervenor Bigler, Gregory; Intervenor Lee, Irene
Motion to Intervene on an Order Shortening Time

04/17/2018



Petitioners Opening Brief

Filed by: Petitioner 180 Land Company LLC
Petitioner's Memorandum of Points and Authorities in support of Second Amended Petition for Judicial Review

04/20/2018



Substitution of Attorney

Filed by: Respondent Las Vegas City of
Substitution of Counsel

04/26/2018



Stipulation and Order

Filed by: Intervenor Binion, Jack B; Intervenor Lee, Duncan R; Intervenor Schreck, Frank A; Intervenor Turner Investments LTD; Intervenor Wagner, Rover P; Intervenor Englestad, Betty; Intervenor Pyramid Lake Holdings LLC; Intervenor Awad, Jason; Intervenor Love, Thomas; Intervenor Thomas, Steve; Intervenor Sullivan, Susan; Intervenor Bigler, Gregory; Intervenor Lee, Irene; Intervenor Wagner, Carolyn G; Intervenor Awad, Shereen; Intervenor Thomas, Karen; Intervenor Bigler, Sally; Intervenor Lee Family Trust; Intervenor Wagner Family Trust; Intervenor Betty Englestad Trust; Intervenor Awad Asset Protection Trust; Intervenor Zena Trust; Intervenor Steve and Karen Thomas Trust; Intervenor Kenneth J Sullivan Family Trust
Stipulation And Order To Continue Hearing On Motion To Intervene

04/26/2018



Notice of Entry of Order

Filed By: Intervenor Binion, Jack B; Intervenor Lee, Duncan R; Intervenor Schreck, Frank A; Intervenor Turner Investments LTD; Intervenor Wagner, Rover P; Intervenor Englestad, Betty; Intervenor Pyramid Lake Holdings LLC; Intervenor Awad, Jason; Intervenor Love, Thomas; Intervenor Thomas, Steve; Intervenor Sullivan, Susan; Intervenor Bigler, Gregory; Intervenor Lee, Irene; Intervenor Wagner, Carolyn G; Intervenor Awad, Shereen; Intervenor Thomas, Karen; Intervenor Bigler, Sally; Intervenor Lee Family Trust; Intervenor Wagner Family Trust; Intervenor Betty Englestad Trust; Intervenor Awad Asset Protection Trust; Intervenor Zena Trust; Intervenor Steve and Karen Thomas Trust; Intervenor Kenneth J Sullivan Family Trust
Notice Of Entry Of Order

05/02/2018



Opposition to Motion

Filed By: Petitioner 180 Land Company LLC
Petitioner's Opposition to Motion to Intervene

05/07/2018



Motion to Extend

Party: Respondent Las Vegas City of
City of Las Vegas' Motion to Extend Briefing Schedule and Continue Hearing on 180 Land Co LLC's Second Amended Petition for Judicial Review on Order Shortening Time

05/09/2018



Opposition

Filed By: Petitioner 180 Land Company LLC
Petitioner's Opposition to Motion to Extend Briefing Schedule and Continue Hearing

05/09/2018



Reply

Filed by: Respondent Las Vegas City of
Reply in Support of City of Las Vegas' Motion to Extend Briefing Schedule and Continue Hearing on 180 Land Co LLC's Second Amended Petition for Judicial Review on Order Shortening Time

06/06/2018



Stipulation and Order

CASE SUMMARY

CASE NO. A-17-758528-J

Filed by: Petitioner 180 Land Company LLC
Stipulation and Order to Extend Briefing Schedule Deadlines and Continue Hearing relating to Second Amended Petition for Judicial Review

06/08/2018



Notice of Entry

Filed By: Petitioner 180 Land Company LLC
Notice of Entry of Stipulation and Order to Extend Briefing Schedule Deadlines and Continue Hearing relating to Second Amended Petition for Judicial Review (third request)

06/11/2018



Notice

Filed By: Intervenor Binion, Jack B
Notice of Submission of Proposed Order

06/21/2018



Errata

Filed By: Respondent Las Vegas City of
Errata to Transmittal of Record for Review

06/26/2018



Respondent's Answering Brief

Filed by: Respondent Las Vegas City of
City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review

06/26/2018



Request for Judicial Notice

Filed By: Respondent Las Vegas City of
Request for Judicial Notice in Support of City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review

06/26/2018



Appendix

Filed By: Intervenor Binion, Jack B
Appendix to Intervenor's Answering Brief

06/26/2018



Errata

Filed By: Petitioner 180 Land Company LLC
Errata to Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review

06/26/2018



Answering Brief

Filed By: Intervenor Binion, Jack B; Intervenor Lee, Duncan R; Intervenor Schreck, Frank A; Intervenor Turner Investments LTD; Intervenor Wagner, Rover P; Intervenor Englestad, Betty; Intervenor Pyramid Lake Holdings LLC; Intervenor Awad, Jason; Intervenor Love, Thomas; Intervenor Thomas, Steve; Intervenor Sullivan, Susan; Intervenor Bigler, Gregory; Intervenor Lee, Irene; Intervenor Wagner, Carolyn G; Intervenor Awad, Shereen; Intervenor Thomas, Karen; Intervenor Bigler, Sally; Intervenor Lee Family Trust; Intervenor Wagner Family Trust; Intervenor Betty Englestad Trust; Intervenor Awad Asset Protection Trust; Intervenor Zena Trust; Intervenor Steve and Karen Thomas Trust; Intervenor Kenneth J Sullivan Family Trust
Intervenor's Answering Brief

06/28/2018



Errata

Filed By: Respondent Las Vegas City of
City of Las Vegas' Errata to Points and Authorities in Response to Second Amended Petition for Judicial Review

06/28/2018



Initial Appearance Fee Disclosure

Filed By: Intervenor Lee, Duncan R; Intervenor Schreck, Frank A; Intervenor Turner Investments LTD; Intervenor Wagner, Rover P; Intervenor Englestad, Betty; Intervenor Pyramid Lake Holdings LLC; Intervenor Awad, Jason; Intervenor Love,

CASE SUMMARY

CASE NO. A-17-758528-J

Thomas; Intervenor Thomas, Steve; Intervenor Sullivan, Susan; Intervenor Bigler, Gregory; Intervenor Lee, Irene; Intervenor Wagner, Carolyn G; Intervenor Awad, Shereen; Intervenor Thomas, Karen; Intervenor Bigler, Sally; Intervenor Lee Family Trust; Intervenor Wagner Family Trust; Intervenor Betty Englestad Trust; Intervenor Awad Asset Protection Trust; Intervenor Zena Trust; Intervenor Steve and Karen Thomas Trust; Intervenor Kenneth J Sullivan Family Trust
Initial Appearance Fee Disclosure

06/28/2018



Order Granting Motion

Filed By: Intervenor Binion, Jack B
Order Granting Motion to Intervene

06/28/2018



Notice of Entry of Order

Filed By: Intervenor Binion, Jack B
Notice of Entry of Order Granting Motion to Intervene

06/28/2018



Request for Judicial Notice

Filed By: Petitioner 180 Land Company LLC
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONER S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SECOND AMENDED PETITION FOR JUDICIAL REVIEW

06/29/2018



Motion to Strike

Filed By: Petitioner 180 Land Company LLC
Emergency Motion to Strike "Errata to Transmittal of Record for Review" filed by the City of Las Vegas on June 21, 2018; Application for Order Shortening Tme

07/02/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC
Petitioner 180 Land Co LLC's Hearing Exhibits to Petition for Judicial Review

07/13/2018



Stipulation and Order

Stipulation and Order Regarding Briefing Schedule and Hearing Date for Petitioner's Emergency Motion to Strike "Errata to Transmittal of Record of Review"

07/17/2018



Notice of Entry of Stipulation and Order

Filed By: Petitioner 180 Land Company LLC
Notice of Entry of Stipulation and Order regarding Briefing Schedule and Hearing Date for Petitioner's Emergency Motion to Strike "Errata to Transmittal of Record for Review"

07/17/2018



Opposition to Motion

Filed By: Respondent Las Vegas City of
City of Las Vegas' Opposition to Petitioner's Motion to Strike Errata to Transmittal of Record for Review

07/20/2018



Reply to Opposition

Filed by: Petitioner 180 Land Company LLC
180 Land's Reply to City of Las Vegas' Opposition to Motion to Strike

07/31/2018



Stipulation and Order

Stipulation and Order Regarding Post-Hearing Submissions

07/31/2018



Notice of Entry of Stipulation and Order

Notice of Entry of Stipulation and Order Regarding Post-Hearing Submissions

07/31/2018

CASE SUMMARY

CASE NO. A-17-758528-J

	 Reply Filed by: Petitioner 180 Land Company LLC <i>Petitioner's Post-Hearing Reply Brief</i>
08/06/2018	 Errata <i>Notice of Errata re Petitioner's Post-Hearing Reply Brief</i>
08/07/2018	 Order Denying Motion Filed By: Respondent Las Vegas City of <i>Order Denying Petitioner's Emergency Motion to Strike Errata to Transmittal of Record for Review</i>
08/07/2018	 Reply Filed by: Respondent Las Vegas City of <i>City of Las Vegas' Post-Hearing Sur-Reply Brief</i>
08/07/2018	 Notice of Entry of Order Filed By: Respondent Las Vegas City of <i>Notice of Entry of Order Denying Petitioner's Emergency Motion to Strike Errata to Transmittal of Record</i>
08/07/2018	 Brief Filed By: Intervenor Binion, Jack B <i>Intervenors' Post-Hearing Brief</i>
08/14/2018	 Notice Filed By: Petitioner 180 Land Company LLC <i>Notice of Lodging Proposed Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review</i>
08/14/2018	 Notice Filed By: Intervenor Binion, Jack B <i>Notice of Submission of Proposed Findings of Fact, Conclusions of Law, and Order</i>
08/15/2018	 Notice Filed By: Petitioner 180 Land Company LLC <i>Notice of Erratum for Proposed Findings of Fact, Conclusions of Law and Order Lodged August 14, 2018</i>
08/17/2018	 Request Filed by: Petitioner 180 Land Company LLC <i>Petitioner's Request for Consideration of Additional Pleading</i>
08/21/2018	 Request for Judicial Notice Filed By: Petitioner 180 Land Company LLC <i>REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONER S PROPOSED REPLY TO CITY OF LAS VEGAS POST-HEARING SUR-REPLY BRIEF (REQUEST FOR CONSIDERATION OF THE REPLY FILED AUGUST 17, 2018)</i>
08/21/2018	 Errata Filed By: Respondent Las Vegas City of <i>City of Las Vegas' Errata to Sur-Reply Brief and Proposed Findings of Fact and Conclusions of Law</i>
10/29/2018	 Request for Judicial Notice

CASE SUMMARY

CASE NO. A-17-758528-J

Filed By: Petitioner 180 Land Company LLC
Request for Judicial Notice

10/29/2018



Notice

Filed By: Respondent Las Vegas City of
Notice of Submission of [Proposed] Findings of Fact and Conclusions of Law on Petition for Judicial Review

11/06/2018



Notice

Filed By: Petitioner 180 Land Company LLC
Notice Of Submission Of [Proposed] Findings Of Fact, Conclusions Of Law And Order Denying Petition For Judicial Review

11/21/2018



Findings of Fact, Conclusions of Law and Order

Filed By: Respondent Las Vegas City of
Findings of Fact and Conclusions of Law on Petition for Judicial Review

11/26/2018



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Respondent Las Vegas City of
Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review

12/11/2018



Ex Parte Application

Party: Petitioner 180 Land Company LLC
Ex Parte Application to File Motion for Summary Judgment that Exceeds the EDCR 2.20(a) Page Limit

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC
Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 1

12/11/2018



Appendix

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 2

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC
Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 3

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC
Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 7

12/11/2018



Appendix

Appendix of Exhibits in Support of Motion for Summary Judgement on Liability for the Landowners' Inverse Condemnation Claims, Vol. 16

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC
Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 4

12/11/2018



Appendix

CASE SUMMARY

CASE NO. A-17-758528-J

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 8

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 5

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 6

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 9

12/11/2018



Appendix

Appendix of Exhibits in Support of Motion Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 15

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 10

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 11

12/11/2018



Appendix

Filed By: Petitioner 180 Land Company LLC

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 12

12/11/2018



Appendix

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 13

12/11/2018



Appendix

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 15

12/11/2018



Appendix

Appendix of Exhibits in Support of Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims, Vol. 14

12/11/2018



Motion for Summary Judgment

Filed By: Petitioner 180 Land Company LLC

Plaintiff Landowners' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims

12/11/2018



Motion

Filed By: Petitioner 180 Land Company LLC

CASE SUMMARY

CASE NO. A-17-758528-J

Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/12/2018



Order to Statistically Close Case
Civil Order to Statistically Close Case

12/13/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibits 7 - 8 in Support of Motion for a New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives

12/13/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibits 1 - 6 in Support of Motion for a New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives

12/13/2018



Motion for New Trial
Filed By: Petitioner 180 Land Company LLC
Motion for a New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives

12/14/2018



Supplement
Filed by: Petitioner 180 Land Company LLC
Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibit 5 - Supplement to: Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibit 6 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibit 7 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits
Exhibit 8 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibit 9 - Support to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits
Filed By: Petitioner 180 Land Company LLC
Exhibit 11 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of

CASE SUMMARY

CASE NO. A-17-758528-J

Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 12 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 10 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 13 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 14 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 16 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 15 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 17 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 19 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 18 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/14/2018



Exhibits

Filed By: Petitioner 180 Land Company LLC

Exhibit 20 - Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims

12/17/2018



Opposition to Motion

Filed By: Petitioner 180 Land Company LLC

Plaintiff Landowners' Opposition to the City's Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability for The Landowners' Inverse Condemnation Claims on Order

CASE SUMMARY
CASE NO. A-17-758528-J

Shortening Time

12/20/2018



Notice of Appeal

Filed By: Petitioner 180 Land Company LLC

Notice of Appeal

12/20/2018



Case Appeal Statement

Filed By: Petitioner 180 Land Company LLC

Case Appeal Statement

12/21/2018



Motion to Strike

Filed By: Respondent Las Vegas City of

Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims on Order Shortening Time

DISPOSITIONS

11/21/2018

Order Denying Judicial Review (Judicial Officer: Williams, Timothy C.)

Debtors: 180 Land Company LLC (Petitioner)

Creditors: Las Vegas City of (Respondent)

Judgment: 11/21/2018, Docketed: 11/26/2018

11/21/2018

Order of Dismissal (Judicial Officer: Williams, Timothy C.)

Debtors: 180 Land Company LLC (Petitioner)

Creditors: Las Vegas City of (Respondent)

Judgment: 11/21/2018, Docketed: 11/26/2018

Comment: Certain Claims

HEARINGS

01/11/2018

Motion to Dismiss (9:00 AM) (Judicial Officer: Williams, Timothy C.)

City of Las Vegas' Motion to Dismiss or, in the Alternative, Motion to Strike
Motion Denied;

01/11/2018

Opposition and Countermotion (9:00 AM) (Judicial Officer: Williams, Timothy C.)

Petitioner's Opposition to City of Las Vegas' Motion to Dismiss and Countermotion to Stay Litigation of Alternative Inverse Condemnation Claims Until Resolution of the Petition for Judicial Review
Granted;

01/11/2018



All Pending Motions (9:00 AM) (Judicial Officer: Williams, Timothy C.)

Matter Heard;

Journal Entry Details:

CITY OF LAS VEGAS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE PETITIONER'S OPPOSITION TO CITY OF LAS VEGAS' MOTION TO DISMISS AND COUNTERMOTION TO STAY LITIGATION OF ALTERNATIVE INVERSE CONDEMNATION CLAIMS UNTIL RESOLUTION OF THE PETITION FOR JUDICIAL REVIEW Arguments by counsel regarding condemnation claims and initial pleading filed. Mr. Leavitt addressed the timeliness issue, stating the Petition was sent to clerk of the court in a timely manner pursuant to rules. Court ruled as a matter of law that the Amended Petition was timely filed due to an error with the clerk's office. Mr. Leavitt discussed the ripeness issue. Mr. Dorocak reviewed the Petition for Judicial Review as the initial pleading and inverse condemnation claims, stating it was improper and should be dismissed. Court's inquiry regarding administrative and judicial remedies of inverse condemnation claims. Upon court's inquiry, Mr. Dorocak stated the court could not sever pleadings because claims were not brought properly. Colloquy regarding the initial pleading. Court stated a hybrid petition was filed. COURT ORDERED, Motion to Dismiss DENIED, and Motion to Strike DENIED, the inverse condemnation claims severed, and the Motion to Stay the Inverse Condemnation Claims is GRANTED, and determined it would deal strictly with judicial review; COURT FURTHER ORDERED, the Amended Complaint would be filed with the inverse condemnation claim, and the Complaint must be filed within 30 days.;

CASE SUMMARY

CASE NO. A-17-758528-J

04/12/2018



Status Check (11:00 AM) (Judicial Officer: Williams, Timothy C.)

Status Check (Telephonic) with Counsel re production of copies of cites to Record to the court [counsel to schedule conference call-court to dial in]

Matter Heard;

Journal Entry Details:

Mr. Kistler stated this matter is in the briefing stage; the Opening Brief had not yet been filed; a Stipulation would be filed with court regarding subsequent briefing. Colloquy regarding briefing procedure and disqualification of counsel. Court advised counsel to file a motion if there was an issue. Colloquy regarding date for the hearing. Court directed counsel to have briefing filed one week prior to the hearing, and ORDERED, hearing date SET. Upon counsels' request, COURT FURTHER ORDERED, page limitation for briefing waived. 6/22/18 9:30 AM PETITION FOR JUDICIAL REVIEW;

05/08/2018



Motion to Intervene (9:00 AM) (Judicial Officer: Williams, Timothy C.)

Motion to Intervene on an Order Shortening Time

Motion Granted;

Journal Entry Details:

Kirill Mikhaylov, Esq. present on behalf of Intervenor. Arguments by counsel regarding the Motion. COURT ORDERED, matter TAKEN UNDER ADVISEMENT and advised a decision would be issued.;

05/10/2018



Motion (9:00 AM) (Judicial Officer: Williams, Timothy C.)

City of Las Vegas' Motion to Extend Briefing Schedule and Continue Hearing on 180 Land Co LLC's Second Amended Petition for Judicial Review on Order Shortening Time

Matter Heard;

Journal Entry Details:

Mr. Ogilvie requested and parties stipulated to move the hearing to June 29. Petitioner agrees to respond through June 26. Mr. Holmes requested time to file a reply the day of the hearing or the next week. Mr. Hutchison requested a week after the opposition is due to file the reply. Mr. Ogilvie stated what is said in the reply might have some impact on his argument. Mr. Hutchison stated he would have the compressed reply brief in by the 28th. Court directed counsel to prepare a stipulation regarding deadlines. 6/29/18 9:30 AM HEARING: PETITION FOR JUDICIAL REVIEW;

05/16/2018



Minute Order (3:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order - No Hearing Held; re: Motion to Intervene on Order Shortening Time

Journal Entry Details:

*After a review and consideration of the points and authorities on file herein, and the argument of counsel, the Court determined as follows: It is important to point out that the instant action is one of many court actions stemming from the proposed development of the Badlands golf course and the surrounding Queensridge community. Consequently, the Court feels compelled to review the instant Motion to Intervene not based solely on the limited procedural history in this matter, but to also consider all past actions of the Las Vegas City Council as it relates to the development of the Badlands golf course. The Court has determined that the past history of the Las Vegas City Council is important. Pursuant to NRCP 24(a)(2), the Intervenor has demonstrated a sufficient interest in the litigation subject matter. The Intervenor could suffer impairment to their ability to protect their interests if they fail to intervene in this matter. The Intervenor's application is timely. Regarding the third factor set forth by the Nevada Supreme Court in *Hairr v. First Judicial District Court*, 132 Nev. Adv. Op. 16 (2016), whether the Intervenor's interests are adequately represented by existing parties to the current action, the Court is well aware of the assumption of adequacy of representation, especially when the government is acting on behalf of a constituency it represents. Thus, in an absence of a very compelling showing to the contrary, it will be presumed that the government adequately represents its citizens when the applicant shares the same interests. Based on history, the prior actions of the Las Vegas City Council as they relate to the development of the Badlands golf course have been adverse to the interests of the Intervenor in this matter. Moreover, the interests of the Intervenor relate to the ownership and protection of real property and its attributes, which has been recognized as unique under Nevada law. See *Dixon v. Thatcher*, 103 Nev. 414, 416 (1987). The Intervenor's real property is adjacent to and will be affected by any subsequent development of the Badlands golf course, and that development is directly at issue in this litigation. In contrast, the City is not seeking to protect its property rights and has no standing to protect the unique property rights of the Intervenor. Thus, in light of the prior actions of the Las Vegas City Council and the potential impact on the Intervenor's property*

CASE SUMMARY

CASE NO. A-17-758528-J

rights, this Court finds that the interests of the Intervenor are not adequately represented or protected by the City of Las Vegas, and grants the Motion to Intervene pursuant to NRCP 24 (a)(2). Lastly, the Intervenor also meet the requirements of NRCP 24(b)(2) as it relates to permissive intervention, so permissive intervention is also warranted. Based on the foregoing, the Motion to Intervene pursuant to NRCP 24(a)(2) and (b)(2) shall be GRANTED. Additionally, the Intervenor shall follow the briefing schedule that is forthcoming. Counsel for the Intervenor shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered parties by the Judicial Executive Assistant./ev 5/16/18;

06/29/2018



Petition for Judicial Review (9:30 AM) (Judicial Officer: Williams, Timothy C.)

Oral Argument on Petition for Judicial Review

Denied;

Journal Entry Details:

Colloquy regarding consideration of the emergency motion to strike pages and the June 21 hearing. Upon Court's inquiry, Mr. Hutchison agreed to go forward with today's hearing and the Court could ignore, if necessary. Mr. Holmes argued going forward today was putting the cart before the horse. Court advised it had not had an opportunity to review the Order Shortening Time, however would proceed with the hearing, and advised counsel to make an objection if something came up that should be stricken. Mr. Hutchison presented a binder of citations; stated 180 Land Company had an application to develop their property, had zoning permits, complied with every land use and development requirement; stated his clients were not land speculators. Court noted it was not concerned about how the parties were characterized. Ms. Allen provided an overview of the property and zoning. Court inquired regarding if it should hold the city council to the same standard as a trial court. Arguments by Mr. Hutchison and Mr. Holmes regarding the master plan and applicable statutory law. Mr. Hutchison discussed rights to the property under the zoning; argued his client complied with all of the City's requirements, and argued his client was denied specific reasoning regarding rejection of the development. Upon Court's inquiry, Mr. Hutchison responded there was no evidence that the City considered the ordinance during the meeting, and the City's ultimate decision, which occurred prior to the June 21 hearing, should not be considered. Court directed counsel to provide supplemental briefing regarding the development agreement. COURT ORDERED, counsel to discuss and agree regarding continuing the hearing date of July 3, 2018. Court inquired regarding what was applicable under the law. Mr. Ogilvie argued the City of Las Vegas does not have an interest or anything to gain by denying the Petitioner's request. Court stated there must be a basis for the City to make a decision. Court inquired what specific concerns there were by homeowners; Mr. Ogilvie replied congestion and the lack of open space were the issues. Discussion by Court and Mr. Ogilvie regarding the master plan and the developer of the property. Mr. Holmes argued regarding applicable statutory law. Court inquired regarding ordinance designation; discussed the term "master plan"; requested substantial evidence that supported the decision of the city council. Court stated it was not sure if the City Council's actions were arbitrary and capricious; argued regarding a causal link. Mr. Hutchison requested City Council's decision be reversed. Mr. Kaempher argued the Stratosphere decision is completely different and should not be used; argued master plans are ever-changing. COURT ORDERED, attorneys to meet and confer regarding the briefing schedules, and submit a stipulation; counsel to submit the Findings of Fact and Conclusions of Law in Microsoft Word format for editing.;

07/03/2018



Motion (9:00 AM) (Judicial Officer: Williams, Timothy C.)

07/03/2018, 07/25/2018

Emergency Motion to Strike " Errata to Transmittal of Record for Review" Filed by the City of Las Vegas on June 21, 2018; Application for Order Shortening Time

MINUTES

Vacate; Counsel to submit Stipulation per Law Clerk

Motion Denied;

Journal Entry Details:

Mr. Kistler argued regarding portions of the record being stricken unilaterally; stated the petition concerns actions taken by City Council; argued no portion of the record submitted to the court should be deleted; requested the errata be stricken, and if treated as a motion filed by the City, requested motion be denied, however would agree to stipulate to expansion of the record to include the four letters of 180 Land Company LLC's applications. Mr. Ogilvie

CASE SUMMARY

CASE NO. A-17-758528-J

argued the City is attempting to make sure the court is given proper record and can make a determination on that record, the only issue on the merits is whether substantial evidence supported the decision on June 21, 2017, argued any action taking place after that hearing was not taken into consideration at the time City Council took action; stated items were inadvertently included in the record, should be removed, and should not be considered on the record. Mr. Kistler argued regarding the record, and what should be included. COURT ORDERED, Motion DENIED; Court advised the record in this case was limited to what was in front of City Council the day of or before the June 21, 2017 hearing; the errata stands.;

MINUTES

Vacate; Counsel to submit Stipulation per Law Clerk

Motion Denied;

Journal Entry Details:

Matter not called. Vacated; Counsel to submit Stipulation per Law Clerk.;

07/16/2018



Status Check (1:30 PM) (Judicial Officer: Williams, Timothy C.)

Telephonic Status Check

Matter Heard;

Journal Entry Details:

Joseph Kistler, Esq. present on behalf of Petitioner. All counsel present telephonically. Arguments by counsel regarding procedure for post-trial briefs and proposed findings of fact and conclusions of law. COURT ORDERED, briefing schedule SET; Mr. Kistler to file a reply to the brief filed by the City including any new issues, questions or concerns during the hearing on or before July 31, 2018; Intervenor to file a sur-reply regarding anything raised in the reply and questions the Court had during the hearing on or before August 6, 2018; each party to submit a findings of fact and conclusions of law for review on or before August 14, 2018; Court advised additional argument or briefing may be requested on or before August 17, 2018, and if requests are made, there would be limitations. Court directed Mr. Kistler to prepare the Order.;

10/11/2018



Minute Order (1:53 PM) (Judicial Officer: Williams, Timothy C.)

Re: Petition for Judicial Review

Minute Order - No Hearing Held;

Journal Entry Details:

After a review and consideration of the points and authorities on file herein, the record on appeal and argument of counsel, the Court determines as follows: Two issues were present for review: (1) whether substantial evidence supported the Las Vegas City Council's decision to deny developer 180 Land Company, LLC's application for residential development on land designated as open space/golf course/drainage; and (2) does Judge Crockett's decision -- holding that the Master Plan precludes any redevelopment by Seventy Acres, LLC of the open space/golf course/drainage area absent a proper and approved application for a Major Modification of the Master Plan -- bind the developer and its related entities such as 180 Land Company, LLC under the doctrine of issue/claims preclusion. In reviewing the decision of the Las Vegas City Council, the thrust and focus of the Court in the instant matter shall be limited. As the Nevada Supreme Court noted in *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, [w]hen a district court has reviewed a zoning decision without taking additional evidence and the decision is appealed to the court, the scope of review is limited to a determination of whether the agency or municipality which made the decision appealed from committed an abuse of discretion. A decision that lacks support in the form of substantial evidence is arbitrary and capricious and, therefore, an abuse of discretion. We have defined substantial evidence as that which a reasonable mind might accept as adequate to support a conclusion (emphasis added). Based on a review of the record, the 35-acre parcel at issue was once part of the 250.92 acres of land commonly referred to as the Badlands Golf Course and subject to the specifications set forth in the Peccole Ranch Master Planned Community, which were initially approved by the City of Las Vegas in 1990. Under the Master Plan, in addition to use as a golf course, the Badlands parcel was designed to be in a major flood zone and was designated as flood drainage and open spaces. Of paramount significance, the 35 acres that are subject to judicial review were part of prior applications to develop the 250.92 acre Badlands Golf Course before the Las Vegas Planning Commission and City Council. Thus, the Las Vegas City Council's decision to accept or deny the application of Petitioners was not made in a vacuum. It was based on the Petitioner and its affiliates multiple applications to the City Council that resulted in a significant administrative history with numerous attempts to develop the Badlands Golf Course. A review of the record reveals that the Las Vegas City Council received major public opposition not only to the 35-acre parcel at issue, but public opposition to major modifications to the Master Plan regarding the 250.92 acre Badlands

CASE SUMMARY**CASE NO. A-17-758528-J**

property as well as a smaller sub-parcel consisting of 17.49 acres. For example, public meetings were well attended with overwhelming opposition and the City received approximately 586 written protests regarding a proposed 2016 Development Agreement and many emails in protest. The 2016 Development Agreement was an attempt to make a major modification to the Master Plan, which was ultimately withdrawn without prejudice. The record also reveals that the Mayor emphasized that the City Council sought a comprehensive redevelopment plan for the entire Badlands property to ensure compatibility with the surrounding properties and to provide adequate flood control. Also, the developers represented to the Mayor and City Council their desire to develop not just a portion of the Badlands property, but the entire parcel. Notwithstanding, the City Council approved the developer application regarding the 17.49 acre parcel without a major modification to the Master Plan. Not only was there public opposition, but certain nearby homeowners retained private counsel and sought relief from the Courts seeking judicial review of the City Council's approval of the 17.49 acre application. The ultimate outcome of the Petition for Judicial Review as to the 17.49 acre matter was not considered by this Court in reviewing the actions of the Las Vegas City Council. However, it underscores the fact that a group of homeowners were strident in their opposition to the development plans approved by the Las Vegas City Council regarding the 17.49 acre parcel. In assessing the actions of the Mayor and City Council and to determine whether there is substantial evidence in the record to support their decision, it is patently apparent that the pending Petition for Judicial Review is not a simple one-time application assessing whether to approve the developer's land use. The record reflects that the Mayor and City Council considered the Badland project history and negotiations between the City and the nearby property owners. There was steadfast and considerable public opposition to the Applications, including challenges to the compatibility with the surrounding areas. Also, the Court considered the piece-meal development argument presented by the Petitioner. However, the record reveals the Mayor and City Council, in light of the public opposition, wanted a unified agreement and development proposal for the entire Badlands property to ensure orderly development that would be compatible with the surrounding area as required by the Master Plan. Even expert testimony was provided by Ngai Pindall, a law professor who teaches Municipal Planning and Zoning. Professor Pindall opined that good land use practice required an amendment to the Master Plan because it gave all stakeholders a chance to be heard and considered. In light of the significant record, the Court hereby determines that there was substantial evidence in the record to support the decision of the Las Vegas City Council. The Court also considered whether the developer, 180 Land Company, LLC's Petition is barred under the doctrine of issue preclusion as asserted by Intervenor, based on the decision of Judge Crockett in the matter of Jack B. Binion, et al. v. The City of Las Vegas and Seventy Acres, LLC, Case No. A-17-752344-J. The Court reviewed recent Nevada case law and the expanded concept of privity which is to be broadly construed beyond its literal and historic meaning to include any situation in which the relationship between the parties is sufficiently close to supply preclusion. Thus, privity will now encompass a relationship in which there is a substantial identity between the parties which results in a sufficient commonality of interest. See, *Mendenhall v. Tassinari*, 403 P.3d 364 (Nev. 2017). Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands properties before the City Council and reviewed the Complaint filed in the United States District Court, Case 2:18-cv-00547-JCM-CWH, Plaintiffs 180 Land Co. LLC, Fore Stars, Ltd., Seventy Acres, LLC and Yohan Lowie in his individual capacity, to determine whether there is a substantial identity of the parties resulting in a sufficient commonality of interest and therefore privity. The Federal Complaint reveals that in March of 2015, Yohan Lowie and his partners acquired a membership interest in Fore Star Ltd., which at the time owned the 250.92 acre Badlands property. In June, 2015, Fore Star Ltd. redrew boundaries of various parcels that compromised the Badlands property, and in November 2015, ownership of approximately 178.27 acres of land was transferred to Petitioner, 180 Land Co. LLC and approximately 70.52 acres of land was transferred to Seventy Acres, LLC, a party in the Judge Crockett matter. The impact of Judge Crockett's Order, which the City of Las Vegas accepted and did not appeal, would require both the 180 Land Co., LLC and Seventy Acres, LLC's parcels of land to apply to the Las Vegas City Council for an amendment to the Master Plan before development of the entire Badlands properties. A review of the August 3, 2017 deposition of Yohan Lowie reveals a 50% ownership interest in both Seventy Acres, LLC and 180 Land Co., LLC. Thus, 180 Land Co., LLC would have received a substantial benefit had Judge Crockett denied the Petition for Judicial Review in that it would not be required to seek amendment to the Master Plan as a condition to develop the Badlands properties. Also, from the record, Mr. Lowie manages and controls the 180 Land Co., LLC and Seventy Acres, LLC. Therefore, the record demonstrates a substantial identity between the 180 Land Co., LLC and Seventy Acres, LLC based on shared interest and actions. Further, the issue raised by Intervenor, which once again challenges whether any attempt to develop part of the Badlands properties without first applying for and addressing a major modification to the Master Plan, is identical to the issues litigated before Judge Crockett. Lastly, this issue was fully

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-758528-J

adjudicated. The Court hereby determines that the Doctrine of Issue Preclusion applies to the instant matter. Based on the foregoing, the Court has determined there is substantial evidence in the record to support the Decision of the Las Vegas City Council to deny the application at issue. Additionally, the Doctrine of Issue Preclusion controls and it would be improper after a determination of substantial identity between 180 Land Co., LLC and Seventy Acres, LLC, to permit the Petitioner to circumvent the decision of Judge Crockett on issues that were fully adjudicated. Therefore, the Petition for Judicial Review of 180 Land Company, LLC is hereby DENIED. Each party is requested to submit their proposed Finding of Fact, Conclusions of Law and Order based not only on the foregoing Minute Order, but also on the record on file herein. Any submissions made to the Court must be served on all parties. CLERK S NOTE: This Minute Order was electronically served to all parties registered through Odyssey eFile. ;

11/08/2018	CANCELED Calendar Call (10:30 AM) (Judicial Officer: Williams, Timothy C.) <i>Vacated - Set in Error</i>
01/17/2019	Motion For Reconsideration (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims</i>
01/22/2019	Motion for New Trial (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Motion for a New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives</i>
01/22/2019	Motion to Strike (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Motion to Strike Plaintiff's Motion for Summary Judgment on Liability for the Landowners Inverse Condemnation Claims on Order Shortening Time</i>
02/06/2019	Motion for Summary Judgment (9:30 AM) (Judicial Officer: Williams, Timothy C.) <i>Plaintiff Landowners' Motion for Summary Judgment on Liability for the Landowners' Inverse Comdemnation Claims</i>

DATE

FINANCIAL INFORMATION

Intervenor Binion, Jack B	
Total Charges	703.00
Total Payments and Credits	703.00
Balance Due as of 12/26/2018	0.00
 Petitioner 180 Land Company LLC	
Total Charges	494.00
Total Payments and Credits	494.00
Balance Due as of 12/26/2018	0.00
 Respondent Las Vegas City of	
Total Charges	669.00
Total Payments and Credits	669.00
Balance Due as of 12/26/2018	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): 180 LAND COMPANY, LLC, a Nevada limited liability company	Defendant(s) (name/address/phone): CITY OF LAS VEGAS, a political subdivision of the State of Nevada
Attorney (name/address/phone): Christopher L. Kaempfer (#1264); James E. Smyth II (#6506) and Stephanie H. Allen (#8486), KAEMPFER CROWELL, 1980 Festival Plaza Dr., Ste. 650, Las Vegas, NV 89135 (702) 792-7000	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input checked="" type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

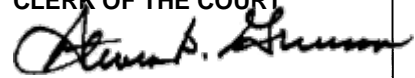
Business Court filings should be filed using the Business Court civil coversheet.

July 17, 2017

Date

Signature of Initiating party or representative

See other side for family-related case filings.



FFCO

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability
company; DOE INDIVIDUALS I through X;
DOE CORPORATIONS I through X; and
DOE LIMITED-LIABILITY COMPANIES I
through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political
subdivision of the State of Nevada; ROE
GOVERNMENT ENTITIES I through X;
ROE CORPORATIONS I through X; ROE
INDIVIDUALS I through X; ROE LIMITED-
LIABILITY COMPANIES I through X; ROE
QUASI-GOVERNMENTAL ENTITIES I
through X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PETITION FOR JUDICIAL REVIEW**

OCT 30 2018

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Petitioner 180 Land Company, LLC filed a petition for judicial review (“Petition”) of the Las Vegas City Council’s June 21, 2017 decision to deny four land use applications (“Applications”) filed by Petitioner to develop a 34.07-acre portion of the Badlands Golf Course (“the 35-Acre Property”). The Court granted a motion to intervene filed by surrounding homeowners (“Intervenors”) whose real property is adjacent to and affected by the proposed development of the 35-Acre Property. The Court having reviewed the briefs submitted in support of and in opposition to the Petition, having conducted a hearing on the Petition on June 29, 2018, having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

A. The Badlands Golf Course and Peccole Ranch Master Development Plan

1. The 35-Acre Property is a portion of 250.92 acres of land commonly referred to as the Badlands Golf Course (“the Badlands Property”). (ROR 22140-201; 25819).

...

2. The Badlands Property is located between Alta Drive (to the north), Charleston Boulevard (to the south), Rampart Boulevard (to the east), and Hualapai Way (to the west), and is spread out within existing residential development, primarily the Queensridge Common Interest Community. (ROR 18831; 24093).

3. The Badlands Property is part of what was originally the Venetian Foothills Master Development Plan on 1,923 acres of land, which was approved by the Las Vegas City Council (the "Council") on May 7, 1986. (ROR 25820).

4. The plan included two 18-hole golf courses, one of which would later become known as "Badlands." (ROR 2635-36; 2646).

5. Both golf courses were designed to be in a major flood zone and were designated as flood drainage and open space. (ROR 2595-2604; 2635-36; 4587).

6. The Council required these designations when approving the plan to address flooding, and to provide open space in the master planned area. (*Id.*).

7. The City's General Plan identifies the Badlands Property as Parks, Recreation and Open Space ("PR-OS"). (ROR 25546).

8. The City holds a drainage easement within the Badlands Property. (ROR 4597; 5171; 5785).

9. The original master plan applicant, William Peccole/Western Devcor, Inc., conveyed its interest to an entity called Peccole Ranch Partnership. (ROR 2622; 20046-47; 25968).

10. On February 15, 1989, the Council approved a revised master development plan for 1,716.30 acres, known as "the Peccole Ranch Master Development Plan" ("the Master Development Plan"). (ROR 25821).

11. On April 4, 1990, the Council approved an amendment to the Master Development Plan to make changes related to Phase Two, and to reduce the overall acreage to 1,569.60 acres. (*Id.*).

12. Approximately 212 acres of land in Phase Two was set aside for a golf course, with the overall Peccole Ranch Master Plan having 253.07 net acres for golf course, open space and

1 drainage. (ROR 2666; 25821).

2 13. Like its predecessor, the Master Development Plan identified the golf course area
3 as being for flood drainage and golf course purposes, which satisfied the City's open space
4 requirement. (ROR 2658-2660).

5 14. Phase Two of the Master Plan was completed such that the golf course is now
6 surrounded by residential development. (ROR 32-33).

7 15. The 35-Acre Property that is the subject of the Applications at issue here lies within
8 the Phase Two area of the Master Plan. (ROR 10).

9 16. Through a number of successive conveyances, Peccole Ranch Partnership's
10 interest in the Badlands Property, amounting to 250.92 acres, was transferred to an entity called
11 Fore Stars, Ltd., an affiliate of Petitioner. (ROR 24073-75; 25968).

12 17. On June 18, 2015, Fore Stars transferred 178.27 acres to Petitioner and 70.52 acres
13 to Seventy Acres, LLC, another affiliate, and retained the remaining 2.13 acres. (*Id.*).

14 18. The three affiliated entities – Petitioner (i.e., 180 Land Co., LLC), Seventy Acres
15 LLC and Fore Stars, Ltd. (collectively, “the Developer”) – are all managed by EHB Companies,
16 LLC, which, in turn, is managed by Paul Dehart, Vicki Dehart, Yohan Lowie and Frank Pankratz.
17 (ROR 1070; 1147; 1154; 3607-3611; 4027; 5256-57; 5726-29). The Court takes judicial notice of
18 the complaint filed by 180 Land Co., LLC, Fore Stars, Ltd., Seventy Acres, LLC, and Yohan
19 Lowie in the United States District Court, Case No. 2:18-cv-00547-JCM-CWH (“the Federal
20 Complaint”), which alleges these facts.

21 19. Mr. Lowie and various attorneys represented the Developer with regard to its
22 development applications before the Council. (ROR 24466-24593).

23 **B. The Developer's Prior Applications to Develop the Badlands Property**

24 20. On November 15, 2015, the Developer filed applications for a General Plan
25 Amendment, Re-zoning and Site Development Plan Review to change the classification of 17.49
26 acres within the 250.92-acre Badlands Property from Parks Recreation/Open Space to High
27 Density (“the 17-Acres Applications”). (ROR 25546; ROR 25602; ROR 25607).

28 21. The 17-Acre Property is located in the northeast corner of the Badlands Property,

1 distant from and not adjacent to existing residential development. (ROR 33).

2 22. In reviewing the 17-Acres Applications, the City's planning staff recognized that
3 the 17-Acre Property was part of the Master Development Plan and stated that any amendment of
4 the Master Development Plan must occur through a major modification pursuant to Title
5 19.10.040 of the City's Unified Development Code. (ROR 25532).

6 23. Members of the public opposed the 17-Acre Applications on numerous grounds.
7 (ROR 25768-78).

8 24. On February 25, 2016, the Developer submitted an application for a major
9 modification to the Master Development Plan (the "Major Modification Application") and a
10 proposed development agreement (which it named the "2016 Peccole Ranch Master Plan") for the
11 entire 250.92-acre Badlands Property ("the proposed 2016 Development Agreement"). (ROR
12 25729; 25831-34).

13 25. In support of the Major Modification Application, the Developer asserted that the
14 proposed 2016 Development Agreement was in conformance with the Las Vegas General Plan
15 Planning Guidelines to "[e]ncourage the master planning of large parcels under single ownership
16 in the growth areas of the City to ensure a desirable living environment and maximum efficiency
17 and savings in the provision of new public facilities and services." (ROR 25986).

18 26. The Developer also asserted that it would "guarantee that the development of the
19 golf course property would be accomplished in a way that ensures that Queensridge will retain the
20 uniqueness that makes living in Queensridge so special." (ROR 25966).

21 27. Thereafter, the Developer sought abeyances from the Planning Commission on the
22 17-Acres Applications to engage in dialogue with the surrounding neighbors, and to allow the
23 hearings on the Major Modification Application and the 17-Acre Applications to proceed
24 simultaneously. (ROR 25569; 25613; 25716; 25795; 26014; 26195; 26667; 27989).

25 28. The Council heard considerable opposition to the Major Modification Application
26 and the proposed 2016 Development Agreement regarding, among other things, traffic,
27 conservation, quality of life and schools. (ROR 25988-26010; 26017-45; 26072-89; 26091-107).

28 ...

29. At a March 28, 2016 neighborhood meeting, 183 members of the public attended who were “overwhelmingly opposed” to the proposed development. (ROR 25823-24).

30. The City received approximately 586 written protests regarding the proposed 2016 Development Agreement plus multiple e-mails to individual Council members in opposition. (ROR 31053; ROR 989-1069).

31. In approximately April 2016, City Attorney Brad Jerbic became involved in the negotiation of the proposed 2016 Development Agreement to facilitate discussions between the Developer and the nearby residents. Over the course of the next year, Mr. Jerbic and Planning Director Tom Perrigo met with the Developer’s representatives and various members of the public, including representatives of the Queensridge HOA and individual homeowners, in an effort to reach consensus regarding a comprehensive development plan for the Badlands Property. (ROR 27990).

32. The Mayor continued to inquire about the status of the negotiations, and Council members expressed their desire that the parties negotiate a comprehensive master plan that meets the City’s requirements for orderly and compatible development. (ROR 17335).

33. Prior to the Council voting on the Major Modification Application, the Developer requested to withdraw it without prejudice. (ROR 1; 5; 6262).

34. Several members of the public opposed the “without prejudice” request, arguing that the withdrawal should be with prejudice to ensure that the Developer would create a development plan for the entire Badlands Property with input from neighbors. (ROR 1077-79, 1083).

35. In response, the Mayor received assurances from the Developer’s lawyer that the Developer would engage in good-faith negotiations with neighboring homeowners. (ROR 1115).

36. The Developer also represented that it did not seek to develop the Badlands Property in a piecemeal fashion: “[I]t’s not our desire to just build 17.49 acres of property that we wanted to build the rest of it, and that’s why we agreed to the withdrawal without prejudice to meet [with neighboring property owners] to try to do everything we can.” (ROR 1325). Based on these assurances, the Council approved the Developer’s request to withdraw the Major

1 Modification Application and proposed 2016 Development Agreement without prejudice. (ROR
2 2; 1129-1135).

3 37. The Mayor reiterated that the Council sought a comprehensive plan for the entire
4 Badlands Property to ensure that any development would be compatible with surrounding
5 properties and provide adequate flood control. (ROR 17321-22).

6 38. The Developer's counsel acknowledged the necessity for a master development
7 plan for the entire Badlands Property. (ROR 17335).

8 39. City Planning Staff recommended approval of the 17-Acres Applications with
9 several conditions, including the approval of both (1) the Major Modification Application and (2)
10 the proposed 2016 Development Agreement. (ROR 27625-26, 27629).

11 40. On October 18, 2016, the City's Planning Commission recommended granting the
12 17-Acres Applications but denying the Major Modification Application. (ROR 1; 31691-92).

13 41. The Council heard the 17-Acres Applications at its November 16, 2016 meeting.
14 (ROR 1075-76).

15 42. The Council members expressed that a comprehensive plan for the entire Badlands
16 Property was necessary to avoid piecemeal development and ensure compatible land densities and
17 uses. (ROR 1310-14).

18 43. Nevertheless, the Council and the Planning Director recognized the 17-Acre
19 Property as distinct from the rest of the Badlands Property due to its configuration, lot size,
20 isolation and distance from existing development. (ROR 1311-12).

21 44. To allow time for negotiations between the Developer and the project opponents
22 on a comprehensive development agreement, the Council held the 17-Acres Applications in
23 abeyance until February 15, 2017. (ROR 1342; 6465-6470, 11231).

24 45. On February 15, 2017, the Council again considered the 17-Acres Applications.
25 (ROR 17235).

26 46. The Developer stated that it had reduced the requested number of units from 720
27 to 435 to match the compatibility of adjacent Queensridge Towers. (ROR 17237-38).

28 ...

1 47. Based on the reduction and compatibility effort made by the Developer, the
2 Council approved the 17-Acres Applications with certain modifications and conditions. (ROR
3 11233; 17352-57).

4 48. Certain nearby homeowners petitioned for judicial review of the Council's
5 approval of the 17-Acres Applications. *See Jack B. Binion, et al v. The City of Las Vegas, et al.*,
6 A-17-752344-J.

7 49. On March 5, 2018, the Honorable James Crockett granted the homeowners'
8 petition for judicial review, concluding that a major modification of the Master Development Plan
9 to change the open space designation of the Badlands Golf Course was legally required before the
10 Council could approve the 17-Acres Applications ("the Crockett Order"). The Court takes judicial
11 notice of the Crockett Order.

12 **C. The 35-Acres Applications at Issue in this Petition for Judicial Review**

13 50. The instant case seeks judicial review of the Council's denial of the Applications
14 filed by Petitioner to develop the 35-Acre Property.

15 51. The Applications consisted of: an application for a General Plan Amendment for
16 166.99 acres to change the existing City's General Plan designation from Parks Recreation/Open
17 Space to Low Density Residential (ROR 32657); a Waiver on the size of the private streets (ROR
18 34009); a Site Development Review for 61 lots (ROR 34050); and a Tentative Map Plan
19 application for the 35-Acre Property. (ROR 34059).

20 52. The development proposed in the Applications was inconsistent with the proposed
21 2016 Development Agreement that was being negotiated. (ROR 1217-1221; 17250-52; 32657;
22 34050; 34059).

23 53. The Council members expressed concern that the Developer was not being
24 forthcoming and was stringing along neighboring homeowners who were attempting to negotiate
25 a comprehensive development plan that the Council could approve. (ROR 1305; 1319).

26 54. The Applications came up for consideration during the February 14, 2017 Planning
27 Commission meeting. (ROR 33924).

28 ...

55. Numerous members of the public expressed opposition, specifically identifying the following areas of concern: (1) existing land use designations did not allow the proposed development; (2) the proposed development was inconsistent with the Master Development Plan and the City's General Plan; (3) the Planning Commission's decision would set a precedent that would enable development of open space and turn the expectations of neighboring homeowners upside down; (4) the Applications required a major modification of the Master Development Plan; (5) neighboring residents have a right to enjoyment of their property according to state statutes; (6) the proposed development would negatively affect property values and the characteristics of the neighborhood; and (7) the development would result in over-crowded schools. (ROR 33934-69).

56. Project opponents also expressed uncertainty and anxiety regarding the Developer's lack of a comprehensive development plan for the entire Badlands Property. (*Id.*).

57. The Planning Commission did not approve Petitioner's application for the General Plan Amendment, which required a super-majority vote, but did approve the Waiver, Site Development Review and the Tentative Map applications, subject to conditions as stated by City Staff and during the meeting. (ROR 33998-99; 34003).

58. After several abeyances (requested once by City Planning Staff and twice by Petitioner), the four Applications for the 35-Acre Property came before the Council on June 21, 2017. (ROR 17360; 18825-27; 20304-05; 24466).

59. The objections that had been presented in advance of and at the Planning Commission meeting were included in the Council's meeting materials. (ROR 22294-24196).

60. As had occurred throughout the two-year history of the Developer's various applications, the Council heard extensive public opposition, which included research, factual arguments, legal arguments and expert opinions. (ROR 22205-78; 22294-24196). The objections included, among others, the following:

- a. The Council was allowing the Developer to submit competing applications for piecemeal development, which the City had never previously allowed for any other developer. (ROR 24205).

b. The Applications did not follow the process required by planning principles. (Report submitted by Ngai Pindell, Boyd School of Law professor of property law, ROR 24222-23).

c. The General Plan Amendment application exceeds the allowable unit cap. (ROR 24225-229).

d. The Developer failed to conduct a development impact notice and assessment. (ROR 24231-36).

e. The Applications are not consistent with the Master Development Plan or the City's General Plan. (ROR 24231-36).

f. The design guidelines for Queensridge, which were approved by the City and recorded in 1996, reference the golf course, and residents purchased property and built homes in reliance on that document. (ROR 24237-38).

g. The Applications were a strategic effort by the Developer to gain leverage in the comprehensive development agreement negotiations that were ongoing. (Queensridge HOA attorney Shauna Hughes, ROR 24242-44).

h. Security would be a problem. (ROR 24246-47).

i. Approval of the Applications in the absence of a comprehensive plan for Badlands Property would be irresponsible. (ROR 24254-55).

j. The proposed General Plan Amendment would approve approximately 911 homes with no flood control or any other necessary requirements. (ROR 24262).

61. After considering the public's opposition, the Mayor inquired as to the status of negotiations related to a comprehensive development agreement for the entire Badlands Property. The City Attorney responded that no agreement had been reached. (ROR 24208-09).

62. The Developer and its counsel represented that only if the Council approved the four Applications would it then be willing to negotiate a comprehensive development agreement and plan for the entire Badlands Property. (ROR 24215, 24217, 24278-80).

63. The Council voted to deny the Applications. (ROR 24397).

64. On June 28, 2017, the City issued its final notices, which indicated that the

Council's denial of the Applications was "due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area." (ROR 35183-86).

65. The Petitioner filed this petition for judicial review to challenge the Council's denial of the Applications.

66. Petitioner has not presented any evidence to the Court that it has a pending application for a major modification for the 35-Acre Property at issue in this Petition for Judicial Review.

II. CONCLUSIONS OF LAW

A. Standard of Review

1. In a petition for judicial review under NRS 278.3195, the district court reviews the record below to determine whether the decision was supported by substantial evidence. *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

2. "Substantial evidence is that which a reasonable mind could accept as sufficient to support a conclusion." *Id.*

3. The scope of the Court's review is limited to the record made before the administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

4. The Court may "not substitute its judgment for that of a municipal entity if substantial evidence supports the entity's action." *Id.*

5. "[I]t is not the business of courts to decide zoning issues... Because of the [governing body's] particular expertise in zoning, courts must defer to and not interfere with the [governing body's] discretion if this discretion is not abused." *Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

6. The decision of the City Council to grant or deny applications for a general plan amendment, rezoning, and site development plan review is a discretionary act. *See Enterprise*

1 *Citizens Action Committee v. Clark County Bd. of Comm'rs*, 112 Nev. 649, 653, 918 P.2d 305,
2 308 (1996); *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756,
3 760 (2004).

4 7. "If a discretionary act is supported by substantial evidence, there is no abuse of
5 discretion." *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by*
6 *statute on other grounds*.

7 8. Zoning actions are presumed valid. *Nova Horizon, Inc. v. City Council of the City*
8 *of Reno*, 105 Nev. 92, 94, 769 P.2d 721, 722 (1989).

9 9. A "presumption of propriety" attaches to governmental action on land use
10 decisions. *City Council of City of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 373 (1986). A
11 disappointed applicant bears a "heavy burden" to overcome this presumption. *Id.*

12 10. On a petition for judicial review, the Court may not step into the shoes of the
13 Council, reweigh the evidence, consider evidence not presented to the Council or make its own
14 judgment calls as to how a land use application should have been decided. *See Bd. of Cty. Comm'rs*
15 *of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

16 **B. Substantial Evidence Supported the City Council's Decision**

17 11. The record before the Court amply shows that the Council's June 21, 2017 decision
18 to deny the Applications for the 35-Acre Property ("the Decision") was supported by substantial
19 evidence.

20 12. "Substantial evidence can come in many forms" and "need not be voluminous."
21 *Comstock Residents Ass'n v. Lyon County Bd. of Comm'rs*, 385 P.3d 607 (Nev. 2016)
22 (unpublished disposition), *citing McKenzie v. Shelly*, 77 Nev. 237, 240, 362 P.2d. 268, 269 (1961);
23 *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

24 13. Public opposition to a proposed project is an adequate basis to deny a land use
25 application. *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 501, 654
26 P.2d at 533.

27 14. "[A] local government may weigh public opinion in making a land-use decision."
28 *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *accord Eldorado Hills, LLC v. Clark*

1 *County Bd. of Commissioners*, 386 P.3d 999, 2016 WL 7439360, *2 (Nev. Dec. 22, 2016)
2 (unpublished disposition).

3 15. “[L]ay objections [that are] substantial and specific” meet the substantial evidence
4 standard. *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98,
5 787 P.2d 782, 783 (1990) (distinguishing *City Council, Reno v. Travelers Hotel, Ltd.*, 100 Nev.
6 436, 683 P.2d 960 (1984)); *Stratosphere Gaming*, 120 Nev. at 529-30, 96 P.3d at 761.

7 16. “Section 19.18.050(E)(5) [of the Las Vegas Municipal Code] provides that the site
8 development plan review process is intended to ensure that the proposed development is
9 ‘harmonious and compatible with development in the area’ and that it is not ‘unsightly,
10 undesirable, or obnoxious in appearance.’ The language of this ordinance clearly invites public
11 opinion.” *Stratosphere Gaming*, 120 Nev. at 528–29, 96 P.3d at 760.

12 17. The considerable public opposition to the Applications that was in the record
13 before the Council meets the substantial evidence standard. That record included written and
14 stated objections, research, legal arguments and expert opinions regarding the project’s
15 incompatibility with existing uses and with the vision for the area specified in the City’s General
16 Plan and the Peccole Ranch Master Development Plan. (ROR 2658-2666, 22294-24196, 24492-
17 24504, 25821). The opponents argued that a development must be consistent with the General
18 Plan, and what the Developer proposed was inconsistent with the Parks, Recreation and Open
19 Space designation for the Badlands Golf Course in the City’s General Plan. (ROR 24492-24504,
20 32820-21; 32842-55; 33935-36). If the applications were granted, they argued, it would set a
21 precedent that would enable development of open space in other areas, thereby defeating the
22 financial and other expectations of people who purchased homes in proximity to open space. (ROR
23 24492-24504, 33936). Because of the open space designation in the Peccole Ranch Master
24 Development Plan, the opponents contended, the Applications required a major modification,
25 which had not been approved. (ROR 24494-95; 33938). The opponents also expressed concerns
26 regarding compatibility with the neighborhood, school overcrowding and lack of a development
27 plan for the entire Badlands Property. (ROR 24492-24504, 24526, 33934-69).

28 18. The record before the Council constitutes substantial evidence to support the

Decision. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760.

19. The Court rejects the evidence that the Developer contends conflicts with the Council's Decision because the Court may not substitute its judgment for that of the Council. "[J]ust because there was conflicting evidence does not compel interference with the Board's decision so long as the decision was supported by substantial evidence." *Liquor & Gaming Licensing Bd.*, 106 Nev. at 98, 787 P.2d at 783. The Court's job is to evaluate whether substantial evidence supports the Council's decision, not whether there is substantial evidence to support a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836 n.36, 138 P.3d 486, 497 (2006). This is because the administrative body alone, not a reviewing court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99, 787 P.2d at 784.

C. The Council's Decision Was Within the Bounds of the Council's Discretion Over Land Use Matters

20. "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures." NRS 278.020(1).

21. The City's discretion is broad:

A city board acts arbitrarily and capriciously when it denies a [land use application] without any reason for doing so.... [The essence of the abuse of discretion, of the arbitrariness or capriciousness of governmental action in denying a[n] ... application, is most often found in an apparent absence of any grounds or reason for the decision. We did it just because we did it. *Irvine*, 102 Nev. at 279-80, 721 P.2d at 372-73 (quotations omitted).

22. The Council's Decision was free from any arbitrary or capricious decision making because it provided multiple reasons for denial of the Applications, all of which are well supported in the record.

23. The Council properly exercised its discretion to conclude that the development proposed in the Applications was not compatible with surrounding areas and failed to set forth an orderly development plan to alter the open space designation found in both the City's General Plan and the Peccole Ranch Master Development Plan.

1 24. The concept of “compatibility” is inherently discretionary, and the Council was
2 well within its discretion to decide that the development presented in the Applications was not
3 compatible with neighboring properties, including the open space designation on the remainder of
4 the Badlands Golf Course. *See Stratosphere*, 120 Nev. at 529, 96 P.3d at 761.

5 25. Residential zoning alone does not determine compatibility. The City’s General
6 Plan, the Peccole Ranch Master Development Plan, density, design and other factors do as well.
7 The property adjacent to the 35-Acre Property remains used for open space and drainage, as
8 contemplated by the City’s planning documents, so the Developer’s comparison to adjacent
9 residential development is an incomplete “compatibility” assessment.

10 26. The City’s Unified Development Code seeks to, among other things, promote
11 “orderly growth and development” in order to “maintain ... the character and stability of present
12 and future land use and development.” Title 19.00.030(G). One stated purpose is:

13 To coordinate and ensure the execution of the City’s General Plan through effective
14 implementation of development review requirements, adequate facility and services
15 review and other goals, policies or programs contained in the General Plan. Title
16 19.00.030(I).

17 27. The City’s Unified Development Code broadly lays out the various matters the
18 Council should consider when exercising its discretion. Those considerations, which include
19 broad goals as well as specific factors for each type of land use application, circumscribe the limits
20 of the Council’s discretion. UDC 19.00.030, 19.16.030, 19.16.100, 19.16.130.

21 28. The Council was within the bounds of its discretion to request a development
22 agreement for the Badlands Property before allowing a General Plan Amendment to change a
23 portion of the property from Parks, Recreation and Open Space to residential uses. *See* Title
24 19.00.030(I). A comprehensive plan already exists for the Badlands Property; it is found in the
25 city’s General Plan, which designates the property as Parks, Recreation and Open Space. The
26 Developer sought to change that designation. Under these circumstances, it was reasonable for the
27 Council to expect assurances that the Developer would create an orderly and comprehensive plan
28 for the entire open space property moving forward.

...

29. The Court rejects the Developer's argument that a comprehensive development plan was somehow inappropriate because the parcels that make up the Badlands Property have different owners. (PPA 17:12-18:13, 23:9-14). In presenting the Developer's arguments in favor of these Applications and other land use applications relating to the development of the Badlands Property, Yohan Lowie has leveraged the fact that the three owner entities of the Badlands Property are affiliates managed by one entity – EHB Companies, LLC – which in turn is managed by Mr. Lowie and just three others. (ROR 1325; 4027; 5256-57; 17336; 24544; 25968). The Developer promoted the EHB brand and other projects it has built in Las Vegas to advance the Applications. (ROR 3607-3611; 5726-29; 5870-76; 17336; 24549-50). Additionally, by proposing the 2016 Development Agreement for the entire Badlands Property, the Developer acknowledged that the affiliated entities are one and the same. (ROR 25729).

30. The cases cited by the Developer did not involve properties owned by closely affiliated entities and are therefore inapplicable. (PPA 35:3-37:7, *citing Tinseltown Cinema, LLC v. City of Olive Branch*, 158 So.3d 367, 371 (Miss. App. Ct. 2015); *Hwy. Oil, Inc. v. City of Lenexa*, 547 P.2d 330, 331 (Kan. 1976)). They also did not involve areas that are within a master development plan area.

31. There is no evidence in the record to support the Developer's contention that it is somehow being singled out for "special treatment" because the Council sought orderly planned development within a Master Development Plan area (PPA 37:11-23).

32. Planning staff's recommendation is immaterial to whether substantial evidence supported the Council's decision because a governing body has discretion to make land use decisions separate and apart from what staff may recommend. *See Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 455, 254 P.3d 641, 644 (2011) (affirming County Commission's denial of special use permit even where planning staff recommended it be granted); *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760 (affirming City Council's denial of site development plan application even where planning staff recommended approval). The Court notes that the Planning Commission denied the Developer's General Plan Amendment application.

...

33. The statements of individual council members are not indicative of any arbitrary or capricious decision making. The action that the Court is tasked with reviewing is the decision of the governing body, not statements made by individual council members leading up to that decision. *See* NRS 278.3195(4); *Nevada Contractors*, 106 Nev. at 313, 792 P.2d at 33; *see also Comm'n on Ethics of the State of Nevada v. Hansen*, 134 Nev. Adv. Op. 40, 419 P.3d 140, 142 (2018) (discussing when action by board is required); *City of Corpus Christi v. Bayfront Assocs., Ltd.*, 814 S.W.2d 98, 105 (Tex. Ct. App. 1991) (“A city can act by and through its governing body; statements of individual council members are not binding on the city.”). “The test is not what was said before or after, but what was done at the time of the voting.” *Lopez v. Imperial Cty. Sheriff's Office*, 80 Cal. Rptr. 3d 557, 560 (Cal. Ct. App. 2008). The Council’s action to deny the Applications occurred with its vote, not with the prior statements made by individual council members. NRS 241.03555(1). The Court finds nothing improper in the statements by individual Council members and rejects the Developer’s contention that the statements of individual Council members require the Court to overturn the Council’s Decision.

D. The City’s Denial of the Applications Was Fully Compliant With the Law

34. The Court rejects the Developer’s argument that the RPD-7 zoning designation on the Badlands Property somehow required the Council to approve its Applications.

35. A zoning designation does not give the developer a vested right to have its development applications approved. “In order for rights in a proposed development project to vest, zoning or use approvals *must not be subject to further governmental discretionary action affecting project commencement*, and the developer must prove considerable reliance on the approvals granted.” *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that because City’s site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct).

36. “[C]ompatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest.” *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors*, 106 Nev. at 311,

1 792 P.2d at 31-32 (affirming county commission's denial of a special use permit even though
2 property was zoned for the use).

3 37. The four Applications submitted to the Council for a general plan amendment,
4 tentative map, site development review and waiver were all subject to the Council's discretionary
5 decision making, no matter the zoning designation. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d
6 at 112; *Doumani*, 114 Nev. at 53, 952 P.2d at 17; *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of*
7 *Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).

8 38. The Court rejects the Developer's attempt to distinguish the *Stratosphere* case,
9 which concluded that the very same decision-making process at issue here was squarely within
10 the Council's discretion, no matter that the property was zoned for the proposed use. *Id.* at 527;
11 96 P.3d at 759.

12 39. Statements from planning staff or the City Attorney that the Badlands Property has
13 an RPD-7 zoning designation do not alter this conclusion. *See id.*

14 40. The Developer purchased its interest in the Badlands Golf Course knowing that the
15 City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-
16 OS) and that the Peccole Ranch Master Development Plan identified the property as being for
17 open space and drainage, as sought and obtained by the Developer's predecessor. (ROR 24073-
18 75; 25968).

19 41. The General Plan sets forth the City's policy to maintain the golf course property
20 for parks, open space and recreation. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

21 42. The City has an obligation to plan for these types of things, and when engaging in
22 its General Plan process, chose to maintain the historical use for this area that dates back to the
23 1989 Peccole Ranch Master Development Plan presented by the Developer's predecessor. (ROR
24 24492-24504).

25 43. The golf course was part of a comprehensive development scheme, and the entire
26 Peccole Ranch master planned area was built out around the golf course. (ROR 2595-2604; 2635-
27 36; 4587; 25820).

28 ...

1 44. It is up to the Council – through its discretionary decision making – to decide
2 whether a change in the area or conditions justify the development sought by the Developer and
3 how any such development might look. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

4 45. The Clark County Assessor’s assessment determinations regarding the Badlands
5 Property did not usurp the Council’s exclusive authority over land use decisions. The information
6 cited by the Developer in support of this argument is not part of the record on review and therefore
7 must be disregarded.¹ *See C.A.G.*, 98 Nev. at 500, 654 P.2d at 533. The Council alone and not the
8 County Assessor, has the sole discretion to amend the open space designation for the Badlands
9 Property. *See* NRS 278.020(1); *Doumani*, 114 Nev. at 53, 952 P.2d at 17.

10 46. The Applications included requests for a General Plan Amendment and Waiver. In
11 that the Developer asked for exceptions to the rules, its assertion that approval was somehow
12 mandated simply because there is RPD-7 zoning on the property is plainly wrong. It was well
13 within the Council’s discretion to determine that the Developer did not meet the criteria for a
14 General Plan Amendment or Waiver found in the Unified Development Code and to reject the
15 Site Development Plan and Tentative Map application, accordingly, no matter the zoning
16 designation. UDC 19.00.030, 19.16.030, 19.16.050, 19.16.100, 19.16.130.

17 47. The City’s General Plan provides the benchmarks to ensure orderly development.
18 A city’s master plan is the “standard that commands deference and presumption of applicability.”
19 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; *see also City of Reno v. Citizens for Cold Springs*,
20 126 Nev. 263, 266, 236 P.3d 10, 12 (2010) (“Master plans contain long-term comprehensive
21 guides for the orderly development and growth for an area.”). Substantial compliance with the
22 master plan is required. *Nova*, 105 Nev. at 96-97, 769 P.2d at 723-24.

23 48. By submitting a General Plan Amendment application, the Developer
24 acknowledged that one was needed to reconcile the differences between the General Plan
25

26 ¹ The documents attached as Exhibits 2-5 to Petitioner’s points and authorities are not part
27 of the Record on Review and are not considered by the Court. *See C.A.G.*, 98 Nev. at 500, 654
28 P.2d at 533. The documents attached as Exhibit 1, however, were inadvertently omitted from the
Record on Review but were subsequently added by the City. *See Errata to Transmittal of Record
on Review* filed June 20, 2018; ROR 35183-86.

1 designation and the zoning. (ROR 32657). Even if the Developer now contends it only submitted
2 the General Plan Amendment application at the insistence of the City, once the Developer
3 submitted the application, nothing required the Council to approve it. Denial of the GPA
4 application was wholly within the Council's discretion. *See Nevada Contractors*, 106 Nev. at 314,
5 792 P.2d at 33.

6 49. The Court rejects the Developer's contention that NRS 278.349(3)(e) abolishes the
7 Council's discretion to deny land use applications.

8 50. First, NRS 278.349(3) merely provides that the governing body "shall consider" a
9 list of factors when deciding whether to approve a tentative map. Subsection (e) upon which the
10 Developer relies, however, is only one factor.

11 51. In addition, NRS 278.349(3)(e) relates only to tentative map applications, and the
12 Applications at issue here also sought a waiver of the City's development standards, a General
13 Plan Amendment to change the PR-OS designation and a Site Development Plan review. A
14 tentative map is a mechanism by which a landowner may divide a parcel of land into five or more
15 parcels for transfer or development; approval of a map alone does not grant development rights.
16 NRS 278.019; NRS 278.320.

17 52. Finally, NRS 278.349(e) does not confer any vested rights.

18 53. "[M]unicipal entities must adopt zoning regulations that are in substantial
19 agreement with the master plan." *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112, *quoting*
20 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; NRS 278.250(2).

21 54. The City's Unified Development Code states as follows:

22 Compliance with General Plan

23 Except as otherwise authorized by this Title, approval of all Maps, Vacations,
24 Rezoning, *Site Development Plan Reviews*, Special Use Permits, Variances,
Waivers, Exceptions, Deviations and Development Agreements shall be consistent
with the spirit and intent of the General Plan. UDC 19.16.010(A).

25 It is the intent of the City Council that all regulatory decisions made pursuant to
26 this Title be consistent with the General Plan. For purposes of this Section,
27 "consistency with the General Plan" means not only consistency with the Plan's
land use and density designations, but also consistency with all policies and
28 programs of the General Plan, including those that promote compatibility of uses
and densities, and orderly development consistent with available resources. UDC
19.00.040.

1 55. Consistent with this law, the City properly required that the Developer obtain
2 approval of a General Plan Amendment in order to proceed with any development.

3 **E. The Doctrine of Issue Preclusion Bars Petitioner from Relitigating Issues**
4 **Decided by Judge Crockett**

5 56. The Court further concludes that the doctrine of issue preclusion requires denial of
6 the Petition for Judicial Review.

7 57. Issue preclusion applies when the following elements are satisfied: (1) the issue
8 decided in the prior litigation must be identical to the issue presented in the current action; (2) the
9 initial ruling must have been on the merits and have become final; (3) the party against whom the
10 judgment is asserted must have been a party or in privity with a party to the prior litigation; and
11 (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 124 Nev.
12 1048, 1055, 194 P.3d 709, 713 (2008).

13 58. Having taken judicial notice of Judge Crockett's Order, the Court concludes that
14 the issue raised by Intervenors, which once again challenges the Developer's attempts to develop
15 the Badlands Property without a major modification of the Master Plan, is identical to the issue
16 Judge Crockett decided issue in *Jack B. Binion, et al v. The City of Las Vegas, et al*, A-17-752344-
17 J. The impact the Crockett Order, which the City did not appeal, requires both Seventy Acres and
18 Petitioner to seek a major modification of the Master Plan before developing the Badlands
19 Property. The Court rejects Petitioner's argument that the issue here is not the same because it
20 involves a different set of applications from those before Judge Crockett; that is a distinction
21 without a difference. "Issue preclusion cannot be avoided by attempting to raise a new legal or
22 factual argument that involves the same ultimate issue previously decided in the prior case."
23 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916-
24 17 (2014).

25 59. Judge Crockett's decision in *Jack B. Binion, et al v. The City of Las Vegas, et al*,
26 A-17-752344-J was on the merits and has become final for purposes of issue preclusion. A
27 judgment is final for purposes of issue preclusion if it is "sufficiently firm" and "procedurally
28

definite” in resolving an issue. *See Kirsch v. Traber*, 134 Nev., Adv. Op. 22, 414 P.3d 818, 822–23 (Nev. 2018) (citing Restatement (Second) of Judgments § 13 & cmt. g). “Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal.” *Id.* at 822-823 (citations and punctuation omitted). Petitioner’s appeal of the Crockett Order confirms that it was a final decision on the merits.

60. The Court reviewed recent Nevada case law and the expanded concept of privity, which is to be broadly construed beyond its literal and historic meaning to encompass relationships where there is “substantial identity between parties, that is, when there is sufficient commonality of interest.” *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 369 (2017) (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1081–82 (9th Cir. 2003) (internal quotation marks omitted). Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands Property and having taken judicial notice of the Federal Complaint, the Court concludes there is a substantial identity of interest between Seventy Acres and Petitioner, which satisfies the privity requirement. Petitioner’s argument that it is not in privity with Seventy Acres is contradicted by the Federal Complaint, which reveals that Seventy Acres and Petitioner are under common ownership and control and acquired their respective interests in the Badlands Property through an affiliate, Fore Stars, Ltd.

61. The issue of whether a major modification is required for development of the Badlands Property was actually and necessarily litigated. “When an issue is properly raised and is submitted for determination, the issue is actually litigated.” *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. at 262, 321 P.3d at 918 (internal punctuation and quotations omitted) (citing *Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). “Whether an issue was necessarily litigated turns on ‘whether the common issue was necessary to the judgment in the earlier suit.’” *Id.* (citing *Tarkanian v. State Indus. Ins. Sys.*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)). Since Judge Crockett’s decision was entirely dependent on this issue, the issue was necessarily litigated.

1 62. Given the substantial identity of interest among Seventy Acres, LLC and
2 Petitioner, it would be improper to permit Petitioner to circumvent the Crockett Order with respect
3 to the issues that were fully adjudicated.

4 63. Where Petitioner has no vested rights to have its development applications
5 approved, and the Council properly exercised its discretion to deny the applications, there can be
6 no taking as a matter of law such that Petitioner's alternative claims for inverse condemnation
7 must be dismissed. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) ("The Fifth
8 Amendment's Takings Clause prevents the Legislature (and other government actors) from
9 depriving private persons of vested property rights except for a 'public use' and upon payment of
10 'just compensation.'"); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949).

11 64. Further, Petitioner's alternative claims for inverse condemnation must be
12 dismissed for lack of ripeness. *See Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1230-31, 122
13 Nev. 877, 887 (2006).

14 65. "Nevada has a long history of requiring an actual justiciable controversy as a
15 predicate to judicial relief." *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229,
16 233 (1988), *quoting Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

17 66. Here, Petitioner failed to apply for a major modification, a prerequisite to any
18 development of the Badlands Property. *See Crockett Order*. Having failed to comply with this
19 necessary prerequisite, Petitioner's alternative claims for inverse condemnation are not ripe and
20 must be dismissed.

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ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Petition for Judicial Review is DENIED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.

DATED: 11/18, 2018.


TIMOTHY C. WILLIAMS
District Court Judge

Submitted By:

McDONALD CARANO LLP

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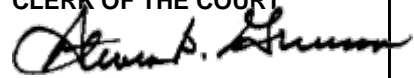
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Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of November, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP



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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability
company; DOE INDIVIDUALS I through X;
DOE CORPORATIONS I through X; and
DOE LIMITED-LIABILITY COMPANIES I
through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political
subdivision of the State of Nevada; ROE
GOVERNMENT ENTITIES I through X;
ROE CORPORATIONS I through X; ROE
INDIVIDUALS I through X; ROE LIMITED-
LIABILITY COMPANIES I through X; ROE
QUASI-GOVERNMENTAL ENTITIES I
through X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW
ON PETITION FOR JUDICIAL
REVIEW**

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

NOTICE IS HEREBY GIVEN to all parties that Findings of Fact, Conclusions of Law were entered in the above-captioned case on the 21st day of November, 2018, a copy of which is attached hereto.

Dated this 26th day of November, 2018.

McDONALD CARANO LLP

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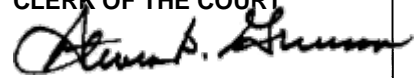
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 26th day of November, 2018, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP



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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability
company; DOE INDIVIDUALS I through X;
DOE CORPORATIONS I through X; and
DOE LIMITED-LIABILITY COMPANIES I
through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political
subdivision of the State of Nevada; ROE
GOVERNMENT ENTITIES I through X;
ROE CORPORATIONS I through X; ROE
INDIVIDUALS I through X; ROE LIMITED-
LIABILITY COMPANIES I through X; ROE
QUASI-GOVERNMENTAL ENTITIES I
through X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PETITION FOR JUDICIAL REVIEW**

OCT 30 2018

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Petitioner 180 Land Company, LLC filed a petition for judicial review (“Petition”) of the Las Vegas City Council’s June 21, 2017 decision to deny four land use applications (“Applications”) filed by Petitioner to develop a 34.07-acre portion of the Badlands Golf Course (“the 35-Acre Property”). The Court granted a motion to intervene filed by surrounding homeowners (“Intervenors”) whose real property is adjacent to and affected by the proposed development of the 35-Acre Property. The Court having reviewed the briefs submitted in support of and in opposition to the Petition, having conducted a hearing on the Petition on June 29, 2018, having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

A. The Badlands Golf Course and Peccole Ranch Master Development Plan

1. The 35-Acre Property is a portion of 250.92 acres of land commonly referred to as the Badlands Golf Course (“the Badlands Property”). (ROR 22140-201; 25819).

...

2. The Badlands Property is located between Alta Drive (to the north), Charleston Boulevard (to the south), Rampart Boulevard (to the east), and Hualapai Way (to the west), and is spread out within existing residential development, primarily the Queensridge Common Interest Community. (ROR 18831; 24093).

3. The Badlands Property is part of what was originally the Venetian Foothills Master Development Plan on 1,923 acres of land, which was approved by the Las Vegas City Council (the "Council") on May 7, 1986. (ROR 25820).

4. The plan included two 18-hole golf courses, one of which would later become known as "Badlands." (ROR 2635-36; 2646).

5. Both golf courses were designed to be in a major flood zone and were designated as flood drainage and open space. (ROR 2595-2604; 2635-36; 4587).

6. The Council required these designations when approving the plan to address flooding, and to provide open space in the master planned area. (*Id.*).

7. The City's General Plan identifies the Badlands Property as Parks, Recreation and Open Space ("PR-OS"). (ROR 25546).

8. The City holds a drainage easement within the Badlands Property. (ROR 4597; 5171; 5785).

9. The original master plan applicant, William Peccole/Western Devcor, Inc., conveyed its interest to an entity called Peccole Ranch Partnership. (ROR 2622; 20046-47; 25968).

10. On February 15, 1989, the Council approved a revised master development plan for 1,716.30 acres, known as "the Peccole Ranch Master Development Plan" ("the Master Development Plan"). (ROR 25821).

11. On April 4, 1990, the Council approved an amendment to the Master Development Plan to make changes related to Phase Two, and to reduce the overall acreage to 1,569.60 acres. (*Id.*).

12. Approximately 212 acres of land in Phase Two was set aside for a golf course, with the overall Peccole Ranch Master Plan having 253.07 net acres for golf course, open space and

1 drainage. (ROR 2666; 25821).

2 13. Like its predecessor, the Master Development Plan identified the golf course area
3 as being for flood drainage and golf course purposes, which satisfied the City's open space
4 requirement. (ROR 2658-2660).

5 14. Phase Two of the Master Plan was completed such that the golf course is now
6 surrounded by residential development. (ROR 32-33).

7 15. The 35-Acre Property that is the subject of the Applications at issue here lies within
8 the Phase Two area of the Master Plan. (ROR 10).

9 16. Through a number of successive conveyances, Peccole Ranch Partnership's
10 interest in the Badlands Property, amounting to 250.92 acres, was transferred to an entity called
11 Fore Stars, Ltd., an affiliate of Petitioner. (ROR 24073-75; 25968).

12 17. On June 18, 2015, Fore Stars transferred 178.27 acres to Petitioner and 70.52 acres
13 to Seventy Acres, LLC, another affiliate, and retained the remaining 2.13 acres. (*Id.*).

14 18. The three affiliated entities – Petitioner (i.e., 180 Land Co., LLC), Seventy Acres
15 LLC and Fore Stars, Ltd. (collectively, “the Developer”) – are all managed by EHB Companies,
16 LLC, which, in turn, is managed by Paul Dehart, Vicki Dehart, Yohan Lowie and Frank Pankratz.
17 (ROR 1070; 1147; 1154; 3607-3611; 4027; 5256-57; 5726-29). The Court takes judicial notice of
18 the complaint filed by 180 Land Co., LLC, Fore Stars, Ltd., Seventy Acres, LLC, and Yohan
19 Lowie in the United States District Court, Case No. 2:18-cv-00547-JCM-CWH (“the Federal
20 Complaint”), which alleges these facts.

21 19. Mr. Lowie and various attorneys represented the Developer with regard to its
22 development applications before the Council. (ROR 24466-24593).

23 **B. The Developer's Prior Applications to Develop the Badlands Property**

24 20. On November 15, 2015, the Developer filed applications for a General Plan
25 Amendment, Re-zoning and Site Development Plan Review to change the classification of 17.49
26 acres within the 250.92-acre Badlands Property from Parks Recreation/Open Space to High
27 Density (“the 17-Acres Applications”). (ROR 25546; ROR 25602; ROR 25607).

28 21. The 17-Acre Property is located in the northeast corner of the Badlands Property,

1 distant from and not adjacent to existing residential development. (ROR 33).

2 22. In reviewing the 17-Acres Applications, the City's planning staff recognized that
3 the 17-Acre Property was part of the Master Development Plan and stated that any amendment of
4 the Master Development Plan must occur through a major modification pursuant to Title
5 19.10.040 of the City's Unified Development Code. (ROR 25532).

6 23. Members of the public opposed the 17-Acre Applications on numerous grounds.
7 (ROR 25768-78).

8 24. On February 25, 2016, the Developer submitted an application for a major
9 modification to the Master Development Plan (the "Major Modification Application") and a
10 proposed development agreement (which it named the "2016 Peccole Ranch Master Plan") for the
11 entire 250.92-acre Badlands Property ("the proposed 2016 Development Agreement"). (ROR
12 25729; 25831-34).

13 25. In support of the Major Modification Application, the Developer asserted that the
14 proposed 2016 Development Agreement was in conformance with the Las Vegas General Plan
15 Planning Guidelines to "[e]ncourage the master planning of large parcels under single ownership
16 in the growth areas of the City to ensure a desirable living environment and maximum efficiency
17 and savings in the provision of new public facilities and services." (ROR 25986).

18 26. The Developer also asserted that it would "guarantee that the development of the
19 golf course property would be accomplished in a way that ensures that Queensridge will retain the
20 uniqueness that makes living in Queensridge so special." (ROR 25966).

21 27. Thereafter, the Developer sought abeyances from the Planning Commission on the
22 17-Acres Applications to engage in dialogue with the surrounding neighbors, and to allow the
23 hearings on the Major Modification Application and the 17-Acre Applications to proceed
24 simultaneously. (ROR 25569; 25613; 25716; 25795; 26014; 26195; 26667; 27989).

25 28. The Council heard considerable opposition to the Major Modification Application
26 and the proposed 2016 Development Agreement regarding, among other things, traffic,
27 conservation, quality of life and schools. (ROR 25988-26010; 26017-45; 26072-89; 26091-107).

28 ...

29. At a March 28, 2016 neighborhood meeting, 183 members of the public attended who were “overwhelmingly opposed” to the proposed development. (ROR 25823-24).

30. The City received approximately 586 written protests regarding the proposed 2016 Development Agreement plus multiple e-mails to individual Council members in opposition. (ROR 31053; ROR 989-1069).

31. In approximately April 2016, City Attorney Brad Jerbic became involved in the negotiation of the proposed 2016 Development Agreement to facilitate discussions between the Developer and the nearby residents. Over the course of the next year, Mr. Jerbic and Planning Director Tom Perrigo met with the Developer’s representatives and various members of the public, including representatives of the Queensridge HOA and individual homeowners, in an effort to reach consensus regarding a comprehensive development plan for the Badlands Property. (ROR 27990).

32. The Mayor continued to inquire about the status of the negotiations, and Council members expressed their desire that the parties negotiate a comprehensive master plan that meets the City’s requirements for orderly and compatible development. (ROR 17335).

33. Prior to the Council voting on the Major Modification Application, the Developer requested to withdraw it without prejudice. (ROR 1; 5; 6262).

34. Several members of the public opposed the “without prejudice” request, arguing that the withdrawal should be with prejudice to ensure that the Developer would create a development plan for the entire Badlands Property with input from neighbors. (ROR 1077-79, 1083).

35. In response, the Mayor received assurances from the Developer’s lawyer that the Developer would engage in good-faith negotiations with neighboring homeowners. (ROR 1115).

36. The Developer also represented that it did not seek to develop the Badlands Property in a piecemeal fashion: “[I]t’s not our desire to just build 17.49 acres of property that we wanted to build the rest of it, and that’s why we agreed to the withdrawal without prejudice to meet [with neighboring property owners] to try to do everything we can.” (ROR 1325). Based on these assurances, the Council approved the Developer’s request to withdraw the Major

1 Modification Application and proposed 2016 Development Agreement without prejudice. (ROR
2 2; 1129-1135).

3 37. The Mayor reiterated that the Council sought a comprehensive plan for the entire
4 Badlands Property to ensure that any development would be compatible with surrounding
5 properties and provide adequate flood control. (ROR 17321-22).

6 38. The Developer's counsel acknowledged the necessity for a master development
7 plan for the entire Badlands Property. (ROR 17335).

8 39. City Planning Staff recommended approval of the 17-Acres Applications with
9 several conditions, including the approval of both (1) the Major Modification Application and (2)
10 the proposed 2016 Development Agreement. (ROR 27625-26, 27629).

11 40. On October 18, 2016, the City's Planning Commission recommended granting the
12 17-Acres Applications but denying the Major Modification Application. (ROR 1; 31691-92).

13 41. The Council heard the 17-Acres Applications at its November 16, 2016 meeting.
14 (ROR 1075-76).

15 42. The Council members expressed that a comprehensive plan for the entire Badlands
16 Property was necessary to avoid piecemeal development and ensure compatible land densities and
17 uses. (ROR 1310-14).

18 43. Nevertheless, the Council and the Planning Director recognized the 17-Acre
19 Property as distinct from the rest of the Badlands Property due to its configuration, lot size,
20 isolation and distance from existing development. (ROR 1311-12).

21 44. To allow time for negotiations between the Developer and the project opponents
22 on a comprehensive development agreement, the Council held the 17-Acres Applications in
23 abeyance until February 15, 2017. (ROR 1342; 6465-6470, 11231).

24 45. On February 15, 2017, the Council again considered the 17-Acres Applications.
25 (ROR 17235).

26 46. The Developer stated that it had reduced the requested number of units from 720
27 to 435 to match the compatibility of adjacent Queensridge Towers. (ROR 17237-38).

28 ...

1 47. Based on the reduction and compatibility effort made by the Developer, the
2 Council approved the 17-Acres Applications with certain modifications and conditions. (ROR
3 11233; 17352-57).

4 48. Certain nearby homeowners petitioned for judicial review of the Council's
5 approval of the 17-Acres Applications. *See Jack B. Binion, et al v. The City of Las Vegas, et al.*,
6 A-17-752344-J.

7 49. On March 5, 2018, the Honorable James Crockett granted the homeowners'
8 petition for judicial review, concluding that a major modification of the Master Development Plan
9 to change the open space designation of the Badlands Golf Course was legally required before the
10 Council could approve the 17-Acres Applications ("the Crockett Order"). The Court takes judicial
11 notice of the Crockett Order.

12 **C. The 35-Acres Applications at Issue in this Petition for Judicial Review**

13 50. The instant case seeks judicial review of the Council's denial of the Applications
14 filed by Petitioner to develop the 35-Acre Property.

15 51. The Applications consisted of: an application for a General Plan Amendment for
16 166.99 acres to change the existing City's General Plan designation from Parks Recreation/Open
17 Space to Low Density Residential (ROR 32657); a Waiver on the size of the private streets (ROR
18 34009); a Site Development Review for 61 lots (ROR 34050); and a Tentative Map Plan
19 application for the 35-Acre Property. (ROR 34059).

20 52. The development proposed in the Applications was inconsistent with the proposed
21 2016 Development Agreement that was being negotiated. (ROR 1217-1221; 17250-52; 32657;
22 34050; 34059).

23 53. The Council members expressed concern that the Developer was not being
24 forthcoming and was stringing along neighboring homeowners who were attempting to negotiate
25 a comprehensive development plan that the Council could approve. (ROR 1305; 1319).

26 54. The Applications came up for consideration during the February 14, 2017 Planning
27 Commission meeting. (ROR 33924).

28 ...

55. Numerous members of the public expressed opposition, specifically identifying the following areas of concern: (1) existing land use designations did not allow the proposed development; (2) the proposed development was inconsistent with the Master Development Plan and the City's General Plan; (3) the Planning Commission's decision would set a precedent that would enable development of open space and turn the expectations of neighboring homeowners upside down; (4) the Applications required a major modification of the Master Development Plan; (5) neighboring residents have a right to enjoyment of their property according to state statutes; (6) the proposed development would negatively affect property values and the characteristics of the neighborhood; and (7) the development would result in over-crowded schools. (ROR 33934-69).

56. Project opponents also expressed uncertainty and anxiety regarding the Developer's lack of a comprehensive development plan for the entire Badlands Property. (*Id.*).

57. The Planning Commission did not approve Petitioner's application for the General Plan Amendment, which required a super-majority vote, but did approve the Waiver, Site Development Review and the Tentative Map applications, subject to conditions as stated by City Staff and during the meeting. (ROR 33998-99; 34003).

58. After several abeyances (requested once by City Planning Staff and twice by Petitioner), the four Applications for the 35-Acre Property came before the Council on June 21, 2017. (ROR 17360; 18825-27; 20304-05; 24466).

59. The objections that had been presented in advance of and at the Planning Commission meeting were included in the Council's meeting materials. (ROR 22294-24196).

60. As had occurred throughout the two-year history of the Developer's various applications, the Council heard extensive public opposition, which included research, factual arguments, legal arguments and expert opinions. (ROR 22205-78; 22294-24196). The objections included, among others, the following:

- a. The Council was allowing the Developer to submit competing applications for piecemeal development, which the City had never previously allowed for any other developer. (ROR 24205).

b. The Applications did not follow the process required by planning principles. (Report submitted by Ngai Pindell, Boyd School of Law professor of property law, ROR 24222-23).

c. The General Plan Amendment application exceeds the allowable unit cap. (ROR 24225-229).

d. The Developer failed to conduct a development impact notice and assessment. (ROR 24231-36).

e. The Applications are not consistent with the Master Development Plan or the City's General Plan. (ROR 24231-36).

f. The design guidelines for Queensridge, which were approved by the City and recorded in 1996, reference the golf course, and residents purchased property and built homes in reliance on that document. (ROR 24237-38).

g. The Applications were a strategic effort by the Developer to gain leverage in the comprehensive development agreement negotiations that were ongoing. (Queensridge HOA attorney Shauna Hughes, ROR 24242-44).

h. Security would be a problem. (ROR 24246-47).

i. Approval of the Applications in the absence of a comprehensive plan for Badlands Property would be irresponsible. (ROR 24254-55).

j. The proposed General Plan Amendment would approve approximately 911 homes with no flood control or any other necessary requirements. (ROR 24262).

61. After considering the public's opposition, the Mayor inquired as to the status of negotiations related to a comprehensive development agreement for the entire Badlands Property. The City Attorney responded that no agreement had been reached. (ROR 24208-09).

62. The Developer and its counsel represented that only if the Council approved the four Applications would it then be willing to negotiate a comprehensive development agreement and plan for the entire Badlands Property. (ROR 24215, 24217, 24278-80).

63. The Council voted to deny the Applications. (ROR 24397).

64. On June 28, 2017, the City issued its final notices, which indicated that the

Council's denial of the Applications was "due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area." (ROR 35183-86).

65. The Petitioner filed this petition for judicial review to challenge the Council's denial of the Applications.

66. Petitioner has not presented any evidence to the Court that it has a pending application for a major modification for the 35-Acre Property at issue in this Petition for Judicial Review.

II. CONCLUSIONS OF LAW

A. Standard of Review

1. In a petition for judicial review under NRS 278.3195, the district court reviews the record below to determine whether the decision was supported by substantial evidence. *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

2. "Substantial evidence is that which a reasonable mind could accept as sufficient to support a conclusion." *Id.*

3. The scope of the Court's review is limited to the record made before the administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

4. The Court may "not substitute its judgment for that of a municipal entity if substantial evidence supports the entity's action." *Id.*

5. "[I]t is not the business of courts to decide zoning issues... Because of the [governing body's] particular expertise in zoning, courts must defer to and not interfere with the [governing body's] discretion if this discretion is not abused." *Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

6. The decision of the City Council to grant or deny applications for a general plan amendment, rezoning, and site development plan review is a discretionary act. *See Enterprise*

1 *Citizens Action Committee v. Clark County Bd. of Comm'rs*, 112 Nev. 649, 653, 918 P.2d 305,
2 308 (1996); *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756,
3 760 (2004).

4 7. "If a discretionary act is supported by substantial evidence, there is no abuse of
5 discretion." *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by*
6 *statute on other grounds*.

7 8. Zoning actions are presumed valid. *Nova Horizon, Inc. v. City Council of the City*
8 *of Reno*, 105 Nev. 92, 94, 769 P.2d 721, 722 (1989).

9 9. A "presumption of propriety" attaches to governmental action on land use
10 decisions. *City Council of City of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 373 (1986). A
11 disappointed applicant bears a "heavy burden" to overcome this presumption. *Id.*

12 10. On a petition for judicial review, the Court may not step into the shoes of the
13 Council, reweigh the evidence, consider evidence not presented to the Council or make its own
14 judgment calls as to how a land use application should have been decided. *See Bd. of Cty. Comm'rs*
15 *of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

16 **B. Substantial Evidence Supported the City Council's Decision**

17 11. The record before the Court amply shows that the Council's June 21, 2017 decision
18 to deny the Applications for the 35-Acre Property ("the Decision") was supported by substantial
19 evidence.

20 12. "Substantial evidence can come in many forms" and "need not be voluminous."
21 *Comstock Residents Ass'n v. Lyon County Bd. of Comm'rs*, 385 P.3d 607 (Nev. 2016)
22 (unpublished disposition), *citing McKenzie v. Shelly*, 77 Nev. 237, 240, 362 P.2d. 268, 269 (1961);
23 *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

24 13. Public opposition to a proposed project is an adequate basis to deny a land use
25 application. *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 501, 654
26 P.2d at 533.

27 14. "[A] local government may weigh public opinion in making a land-use decision."
28 *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *accord Eldorado Hills, LLC v. Clark*

1 *County Bd. of Commissioners*, 386 P.3d 999, 2016 WL 7439360, *2 (Nev. Dec. 22, 2016)
2 (unpublished disposition).

3 15. “[L]ay objections [that are] substantial and specific” meet the substantial evidence
4 standard. *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98,
5 787 P.2d 782, 783 (1990) (distinguishing *City Council, Reno v. Travelers Hotel, Ltd.*, 100 Nev.
6 436, 683 P.2d 960 (1984)); *Stratosphere Gaming*, 120 Nev. at 529-30, 96 P.3d at 761.

7 16. “Section 19.18.050(E)(5) [of the Las Vegas Municipal Code] provides that the site
8 development plan review process is intended to ensure that the proposed development is
9 ‘harmonious and compatible with development in the area’ and that it is not ‘unsightly,
10 undesirable, or obnoxious in appearance.’ The language of this ordinance clearly invites public
11 opinion.” *Stratosphere Gaming*, 120 Nev. at 528–29, 96 P.3d at 760.

12 17. The considerable public opposition to the Applications that was in the record
13 before the Council meets the substantial evidence standard. That record included written and
14 stated objections, research, legal arguments and expert opinions regarding the project’s
15 incompatibility with existing uses and with the vision for the area specified in the City’s General
16 Plan and the Peccole Ranch Master Development Plan. (ROR 2658-2666, 22294-24196, 24492-
17 24504, 25821). The opponents argued that a development must be consistent with the General
18 Plan, and what the Developer proposed was inconsistent with the Parks, Recreation and Open
19 Space designation for the Badlands Golf Course in the City’s General Plan. (ROR 24492-24504,
20 32820-21; 32842-55; 33935-36). If the applications were granted, they argued, it would set a
21 precedent that would enable development of open space in other areas, thereby defeating the
22 financial and other expectations of people who purchased homes in proximity to open space. (ROR
23 24492-24504, 33936). Because of the open space designation in the Peccole Ranch Master
24 Development Plan, the opponents contended, the Applications required a major modification,
25 which had not been approved. (ROR 24494-95; 33938). The opponents also expressed concerns
26 regarding compatibility with the neighborhood, school overcrowding and lack of a development
27 plan for the entire Badlands Property. (ROR 24492-24504, 24526, 33934-69).

28 18. The record before the Council constitutes substantial evidence to support the

Decision. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760.

19. The Court rejects the evidence that the Developer contends conflicts with the Council's Decision because the Court may not substitute its judgment for that of the Council. "[J]ust because there was conflicting evidence does not compel interference with the Board's decision so long as the decision was supported by substantial evidence." *Liquor & Gaming Licensing Bd.*, 106 Nev. at 98, 787 P.2d at 783. The Court's job is to evaluate whether substantial evidence supports the Council's decision, not whether there is substantial evidence to support a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836 n.36, 138 P.3d 486, 497 (2006). This is because the administrative body alone, not a reviewing court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99, 787 P.2d at 784.

C. The Council's Decision Was Within the Bounds of the Council's Discretion Over Land Use Matters

20. "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures." NRS 278.020(1).

21. The City's discretion is broad:

A city board acts arbitrarily and capriciously when it denies a [land use application] without any reason for doing so.... [The essence of the abuse of discretion, of the arbitrariness or capriciousness of governmental action in denying a[n] ... application, is most often found in an apparent absence of any grounds or reason for the decision. We did it just because we did it. *Irvine*, 102 Nev. at 279-80, 721 P.2d at 372-73 (quotations omitted).

22. The Council's Decision was free from any arbitrary or capricious decision making because it provided multiple reasons for denial of the Applications, all of which are well supported in the record.

23. The Council properly exercised its discretion to conclude that the development proposed in the Applications was not compatible with surrounding areas and failed to set forth an orderly development plan to alter the open space designation found in both the City's General Plan and the Peccole Ranch Master Development Plan.

1 24. The concept of “compatibility” is inherently discretionary, and the Council was
2 well within its discretion to decide that the development presented in the Applications was not
3 compatible with neighboring properties, including the open space designation on the remainder of
4 the Badlands Golf Course. *See Stratosphere*, 120 Nev. at 529, 96 P.3d at 761.

5 25. Residential zoning alone does not determine compatibility. The City’s General
6 Plan, the Peccole Ranch Master Development Plan, density, design and other factors do as well.
7 The property adjacent to the 35-Acre Property remains used for open space and drainage, as
8 contemplated by the City’s planning documents, so the Developer’s comparison to adjacent
9 residential development is an incomplete “compatibility” assessment.

10 26. The City’s Unified Development Code seeks to, among other things, promote
11 “orderly growth and development” in order to “maintain ... the character and stability of present
12 and future land use and development.” Title 19.00.030(G). One stated purpose is:

13 To coordinate and ensure the execution of the City’s General Plan through effective
14 implementation of development review requirements, adequate facility and services
15 review and other goals, policies or programs contained in the General Plan. Title
16 19.00.030(I).

17 27. The City’s Unified Development Code broadly lays out the various matters the
18 Council should consider when exercising its discretion. Those considerations, which include
19 broad goals as well as specific factors for each type of land use application, circumscribe the limits
20 of the Council’s discretion. UDC 19.00.030, 19.16.030, 19.16.100, 19.16.130.

21 28. The Council was within the bounds of its discretion to request a development
22 agreement for the Badlands Property before allowing a General Plan Amendment to change a
23 portion of the property from Parks, Recreation and Open Space to residential uses. *See* Title
24 19.00.030(I). A comprehensive plan already exists for the Badlands Property; it is found in the
25 city’s General Plan, which designates the property as Parks, Recreation and Open Space. The
26 Developer sought to change that designation. Under these circumstances, it was reasonable for the
27 Council to expect assurances that the Developer would create an orderly and comprehensive plan
28 for the entire open space property moving forward.

...

29. The Court rejects the Developer's argument that a comprehensive development plan was somehow inappropriate because the parcels that make up the Badlands Property have different owners. (PPA 17:12-18:13, 23:9-14). In presenting the Developer's arguments in favor of these Applications and other land use applications relating to the development of the Badlands Property, Yohan Lowie has leveraged the fact that the three owner entities of the Badlands Property are affiliates managed by one entity – EHB Companies, LLC – which in turn is managed by Mr. Lowie and just three others. (ROR 1325; 4027; 5256-57; 17336; 24544; 25968). The Developer promoted the EHB brand and other projects it has built in Las Vegas to advance the Applications. (ROR 3607-3611; 5726-29; 5870-76; 17336; 24549-50). Additionally, by proposing the 2016 Development Agreement for the entire Badlands Property, the Developer acknowledged that the affiliated entities are one and the same. (ROR 25729).

30. The cases cited by the Developer did not involve properties owned by closely affiliated entities and are therefore inapplicable. (PPA 35:3-37:7, *citing Tinseltown Cinema, LLC v. City of Olive Branch*, 158 So.3d 367, 371 (Miss. App. Ct. 2015); *Hwy. Oil, Inc. v. City of Lenexa*, 547 P.2d 330, 331 (Kan. 1976)). They also did not involve areas that are within a master development plan area.

31. There is no evidence in the record to support the Developer's contention that it is somehow being singled out for "special treatment" because the Council sought orderly planned development within a Master Development Plan area (PPA 37:11-23).

32. Planning staff's recommendation is immaterial to whether substantial evidence supported the Council's decision because a governing body has discretion to make land use decisions separate and apart from what staff may recommend. *See Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 455, 254 P.3d 641, 644 (2011) (affirming County Commission's denial of special use permit even where planning staff recommended it be granted); *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760 (affirming City Council's denial of site development plan application even where planning staff recommended approval). The Court notes that the Planning Commission denied the Developer's General Plan Amendment application.

...

33. The statements of individual council members are not indicative of any arbitrary or capricious decision making. The action that the Court is tasked with reviewing is the decision of the governing body, not statements made by individual council members leading up to that decision. *See* NRS 278.3195(4); *Nevada Contractors*, 106 Nev. at 313, 792 P.2d at 33; *see also Comm'n on Ethics of the State of Nevada v. Hansen*, 134 Nev. Adv. Op. 40, 419 P.3d 140, 142 (2018) (discussing when action by board is required); *City of Corpus Christi v. Bayfront Assocs., Ltd.*, 814 S.W.2d 98, 105 (Tex. Ct. App. 1991) (“A city can act by and through its governing body; statements of individual council members are not binding on the city.”). “The test is not what was said before or after, but what was done at the time of the voting.” *Lopez v. Imperial Cty. Sheriff's Office*, 80 Cal. Rptr. 3d 557, 560 (Cal. Ct. App. 2008). The Council’s action to deny the Applications occurred with its vote, not with the prior statements made by individual council members. NRS 241.03555(1). The Court finds nothing improper in the statements by individual Council members and rejects the Developer’s contention that the statements of individual Council members require the Court to overturn the Council’s Decision.

D. The City’s Denial of the Applications Was Fully Compliant With the Law

34. The Court rejects the Developer’s argument that the RPD-7 zoning designation on the Badlands Property somehow required the Council to approve its Applications.

35. A zoning designation does not give the developer a vested right to have its development applications approved. “In order for rights in a proposed development project to vest, zoning or use approvals *must not be subject to further governmental discretionary action affecting project commencement*, and the developer must prove considerable reliance on the approvals granted.” *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that because City’s site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct).

36. “[C]ompatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest.” *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors*, 106 Nev. at 311,

1 792 P.2d at 31-32 (affirming county commission's denial of a special use permit even though
2 property was zoned for the use).

3 37. The four Applications submitted to the Council for a general plan amendment,
4 tentative map, site development review and waiver were all subject to the Council's discretionary
5 decision making, no matter the zoning designation. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d
6 at 112; *Doumani*, 114 Nev. at 53, 952 P.2d at 17; *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of*
7 *Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).

8 38. The Court rejects the Developer's attempt to distinguish the *Stratosphere* case,
9 which concluded that the very same decision-making process at issue here was squarely within
10 the Council's discretion, no matter that the property was zoned for the proposed use. *Id.* at 527;
11 96 P.3d at 759.

12 39. Statements from planning staff or the City Attorney that the Badlands Property has
13 an RPD-7 zoning designation do not alter this conclusion. *See id.*

14 40. The Developer purchased its interest in the Badlands Golf Course knowing that the
15 City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-
16 OS) and that the Peccole Ranch Master Development Plan identified the property as being for
17 open space and drainage, as sought and obtained by the Developer's predecessor. (ROR 24073-
18 75; 25968).

19 41. The General Plan sets forth the City's policy to maintain the golf course property
20 for parks, open space and recreation. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

21 42. The City has an obligation to plan for these types of things, and when engaging in
22 its General Plan process, chose to maintain the historical use for this area that dates back to the
23 1989 Peccole Ranch Master Development Plan presented by the Developer's predecessor. (ROR
24 24492-24504).

25 43. The golf course was part of a comprehensive development scheme, and the entire
26 Peccole Ranch master planned area was built out around the golf course. (ROR 2595-2604; 2635-
27 36; 4587; 25820).

28 ...

1 44. It is up to the Council – through its discretionary decision making – to decide
2 whether a change in the area or conditions justify the development sought by the Developer and
3 how any such development might look. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

4 45. The Clark County Assessor’s assessment determinations regarding the Badlands
5 Property did not usurp the Council’s exclusive authority over land use decisions. The information
6 cited by the Developer in support of this argument is not part of the record on review and therefore
7 must be disregarded.¹ *See C.A.G.*, 98 Nev. at 500, 654 P.2d at 533. The Council alone and not the
8 County Assessor, has the sole discretion to amend the open space designation for the Badlands
9 Property. *See* NRS 278.020(1); *Doumani*, 114 Nev. at 53, 952 P.2d at 17.

10 46. The Applications included requests for a General Plan Amendment and Waiver. In
11 that the Developer asked for exceptions to the rules, its assertion that approval was somehow
12 mandated simply because there is RPD-7 zoning on the property is plainly wrong. It was well
13 within the Council’s discretion to determine that the Developer did not meet the criteria for a
14 General Plan Amendment or Waiver found in the Unified Development Code and to reject the
15 Site Development Plan and Tentative Map application, accordingly, no matter the zoning
16 designation. UDC 19.00.030, 19.16.030, 19.16.050, 19.16.100, 19.16.130.

17 47. The City’s General Plan provides the benchmarks to ensure orderly development.
18 A city’s master plan is the “standard that commands deference and presumption of applicability.”
19 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; *see also City of Reno v. Citizens for Cold Springs*,
20 126 Nev. 263, 266, 236 P.3d 10, 12 (2010) (“Master plans contain long-term comprehensive
21 guides for the orderly development and growth for an area.”). Substantial compliance with the
22 master plan is required. *Nova*, 105 Nev. at 96-97, 769 P.2d at 723-24.

23 48. By submitting a General Plan Amendment application, the Developer
24 acknowledged that one was needed to reconcile the differences between the General Plan
25

26 ¹ The documents attached as Exhibits 2-5 to Petitioner’s points and authorities are not part
27 of the Record on Review and are not considered by the Court. *See C.A.G.*, 98 Nev. at 500, 654
28 P.2d at 533. The documents attached as Exhibit 1, however, were inadvertently omitted from the
Record on Review but were subsequently added by the City. *See Errata to Transmittal of Record
on Review* filed June 20, 2018; ROR 35183-86.

1 designation and the zoning. (ROR 32657). Even if the Developer now contends it only submitted
2 the General Plan Amendment application at the insistence of the City, once the Developer
3 submitted the application, nothing required the Council to approve it. Denial of the GPA
4 application was wholly within the Council's discretion. *See Nevada Contractors*, 106 Nev. at 314,
5 792 P.2d at 33.

6 49. The Court rejects the Developer's contention that NRS 278.349(3)(e) abolishes the
7 Council's discretion to deny land use applications.

8 50. First, NRS 278.349(3) merely provides that the governing body "shall consider" a
9 list of factors when deciding whether to approve a tentative map. Subsection (e) upon which the
10 Developer relies, however, is only one factor.

11 51. In addition, NRS 278.349(3)(e) relates only to tentative map applications, and the
12 Applications at issue here also sought a waiver of the City's development standards, a General
13 Plan Amendment to change the PR-OS designation and a Site Development Plan review. A
14 tentative map is a mechanism by which a landowner may divide a parcel of land into five or more
15 parcels for transfer or development; approval of a map alone does not grant development rights.
16 NRS 278.019; NRS 278.320.

17 52. Finally, NRS 278.349(e) does not confer any vested rights.

18 53. "[M]unicipal entities must adopt zoning regulations that are in substantial
19 agreement with the master plan." *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112, *quoting*
20 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; NRS 278.250(2).

21 54. The City's Unified Development Code states as follows:

22 Compliance with General Plan

23 Except as otherwise authorized by this Title, approval of all Maps, Vacations,
24 Rezoning, *Site Development Plan Reviews*, Special Use Permits, Variances,
Waivers, Exceptions, Deviations and Development Agreements shall be consistent
with the spirit and intent of the General Plan. UDC 19.16.010(A).

25 It is the intent of the City Council that all regulatory decisions made pursuant to
26 this Title be consistent with the General Plan. For purposes of this Section,
27 "consistency with the General Plan" means not only consistency with the Plan's
land use and density designations, but also consistency with all policies and
28 programs of the General Plan, including those that promote compatibility of uses
and densities, and orderly development consistent with available resources. UDC
19.00.040.

1 55. Consistent with this law, the City properly required that the Developer obtain
2 approval of a General Plan Amendment in order to proceed with any development.

3 **E. The Doctrine of Issue Preclusion Bars Petitioner from Relitigating Issues**
4 **Decided by Judge Crockett**

5 56. The Court further concludes that the doctrine of issue preclusion requires denial of
6 the Petition for Judicial Review.

7 57. Issue preclusion applies when the following elements are satisfied: (1) the issue
8 decided in the prior litigation must be identical to the issue presented in the current action; (2) the
9 initial ruling must have been on the merits and have become final; (3) the party against whom the
10 judgment is asserted must have been a party or in privity with a party to the prior litigation; and
11 (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 124 Nev.
12 1048, 1055, 194 P.3d 709, 713 (2008).

13 58. Having taken judicial notice of Judge Crockett's Order, the Court concludes that
14 the issue raised by Intervenor, which once again challenges the Developer's attempts to develop
15 the Badlands Property without a major modification of the Master Plan, is identical to the issue
16 Judge Crockett decided issue in *Jack B. Binion, et al v. The City of Las Vegas, et al*, A-17-752344-
17 J. The impact the Crockett Order, which the City did not appeal, requires both Seventy Acres and
18 Petitioner to seek a major modification of the Master Plan before developing the Badlands
19 Property. The Court rejects Petitioner's argument that the issue here is not the same because it
20 involves a different set of applications from those before Judge Crockett; that is a distinction
21 without a difference. "Issue preclusion cannot be avoided by attempting to raise a new legal or
22 factual argument that involves the same ultimate issue previously decided in the prior case."
23 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916-
24 17 (2014).

25 59. Judge Crockett's decision in *Jack B. Binion, et al v. The City of Las Vegas, et al*,
26 A-17-752344-J was on the merits and has become final for purposes of issue preclusion. A
27 judgment is final for purposes of issue preclusion if it is "sufficiently firm" and "procedurally
28

definite” in resolving an issue. *See Kirsch v. Traber*, 134 Nev., Adv. Op. 22, 414 P.3d 818, 822–23 (Nev. 2018) (citing Restatement (Second) of Judgments § 13 & cmt. g). “Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal.” *Id.* at 822-823 (citations and punctuation omitted). Petitioner’s appeal of the Crockett Order confirms that it was a final decision on the merits.

60. The Court reviewed recent Nevada case law and the expanded concept of privity, which is to be broadly construed beyond its literal and historic meaning to encompass relationships where there is “substantial identity between parties, that is, when there is sufficient commonality of interest.” *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 369 (2017) (quoting *Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1081–82 (9th Cir. 2003) (internal quotation marks omitted). Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands Property and having taken judicial notice of the Federal Complaint, the Court concludes there is a substantial identity of interest between Seventy Acres and Petitioner, which satisfies the privity requirement. Petitioner’s argument that it is not in privity with Seventy Acres is contradicted by the Federal Complaint, which reveals that Seventy Acres and Petitioner are under common ownership and control and acquired their respective interests in the Badlands Property through an affiliate, Fore Stars, Ltd.

61. The issue of whether a major modification is required for development of the Badlands Property was actually and necessarily litigated. “When an issue is properly raised and is submitted for determination, the issue is actually litigated.” *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. at 262, 321 P.3d at 918 (internal punctuation and quotations omitted) (citing *Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). “Whether an issue was necessarily litigated turns on ‘whether the common issue was necessary to the judgment in the earlier suit.’” *Id.* (citing *Tarkanian v. State Indus. Ins. Sys.*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)). Since Judge Crockett’s decision was entirely dependent on this issue, the issue was necessarily litigated.

1 62. Given the substantial identity of interest among Seventy Acres, LLC and
2 Petitioner, it would be improper to permit Petitioner to circumvent the Crockett Order with respect
3 to the issues that were fully adjudicated.

4 63. Where Petitioner has no vested rights to have its development applications
5 approved, and the Council properly exercised its discretion to deny the applications, there can be
6 no taking as a matter of law such that Petitioner's alternative claims for inverse condemnation
7 must be dismissed. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) ("The Fifth
8 Amendment's Takings Clause prevents the Legislature (and other government actors) from
9 depriving private persons of vested property rights except for a 'public use' and upon payment of
10 'just compensation.'"); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949).

11 64. Further, Petitioner's alternative claims for inverse condemnation must be
12 dismissed for lack of ripeness. *See Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1230-31, 122
13 Nev. 877, 887 (2006).

14 65. "Nevada has a long history of requiring an actual justiciable controversy as a
15 predicate to judicial relief." *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229,
16 233 (1988), *quoting Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

17 66. Here, Petitioner failed to apply for a major modification, a prerequisite to any
18 development of the Badlands Property. *See Crockett Order*. Having failed to comply with this
19 necessary prerequisite, Petitioner's alternative claims for inverse condemnation are not ripe and
20 must be dismissed.

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ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Petition for Judicial Review is DENIED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.

DATED: 11/18, 2018.


TIMOTHY C. WILLIAMS
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
George F. Ogilvie III, Esq. (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
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Seth T. Floyd (NV Bar #11959)
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Las Vegas, NV 89101

Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of November, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

January 11, 2018

A-17-758528-J	180 Land Company LLC, Petitioner(s)
	vs.
	Las Vegas City of, Respondent(s)

January 11, 2018

9:00 AM

All Pending Motions

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT:	Daniels, Ryan W.	Attorney
	Dorocak, Jeffry M.	Attorney
	Leavitt, James J	Attorney
	Schneider, Michael A.	Attorney
	Waters, Kermitt L.	Attorney

JOURNAL ENTRIES

- CITY OF LAS VEGAS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE PETITIONER'S OPPOSITION TO CITY OF LAS VEGAS' MOTION TO DISMISS AND COUNTERMOTION TO STAY LITIGATION OF ALTERNATIVE INVERSE CONDEMNATION CLAIMS UNTIL RESOLUTION OF THE PETITION FOR JUDICIAL REVIEW

Arguments by counsel regarding condemnation claims and initial pleading filed. Mr. Leavitt addressed the timeliness issue, stating the Petition was sent to clerk of the court in a timely manner pursuant to rules. Court ruled as a matter of law that the Amended Petition was timely filed due to an error with the clerk's office. Mr. Leavitt discussed the ripeness issue. Mr. Dorocak reviewed the Petition for Judicial Review as the initial pleading and inverse condemnation claims, stating it was improper and should be dismissed. Court's inquiry regarding administrative and judicial remedies of inverse condemnation claims. Upon court's inquiry, Mr. Dorocak stated the court could not sever pleadings because claims were not brought properly. Colloquy regarding the initial pleading. Court stated a hybrid petition was filed. COURT ORDERED, Motion to Dismiss DENIED, and Motion to

Strike DENIED, the inverse condemnation claims severed, and the Motion to Stay the Inverse Condemnation Claims is GRANTED, and determined it would deal strictly with judicial review; COURT FURTHER ORDERED, the Amended Complaint would be filed with the inverse condemnation claim, and the Complaint must be filed within 30 days.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

April 12, 2018

A-17-758528-J	180 Land Company LLC, Petitioner(s)
	vs.
	Las Vegas City of, Respondent(s)

April 12, 2018 11:00 AM Status Check

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT:	Byrnes, Philip R.	Attorney
	Kistler, Joseph S.	Attorney
	Stewart, Robert T.	Attorney

JOURNAL ENTRIES

- Mr. Kistler stated this matter is in the briefing stage; the Opening Brief had not yet been filed; a Stipulation would be filed with court regarding subsequent briefing. Colloquy regarding briefing procedure and disqualification of counsel. Court advised counsel to file a motion if there was an issue. Colloquy regarding date for the hearing. Court directed counsel to have briefing filed one week prior to the hearing, and ORDERED, hearing date SET. Upon counsels' request, COURT FURTHER ORDERED, page limitation for briefing waived.

6/22/18 9:30 AM PETITION FOR JUDICIAL REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

May 08, 2018

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

May 08, 2018 9:00 AM Motion to Intervene

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

PARTIES

PRESENT:	Holmes, Dustun H	Attorney
	Hutchison, Mark A	Attorney
	Ogilvie, George F., III	Attorney

JOURNAL ENTRIES

- Kirill Mikhaylov, Esq. present on behalf of Intervenor. Arguments by counsel regarding the Motion. COURT ORDERED, matter TAKEN UNDER ADVISEMENT and advised a decision would be issued.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

May 10, 2018

A-17-758528-J	180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)
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May 10, 2018

9:00 AM

Motion

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

PARTIES

PRESENT:	Holmes, Dustun H Hutchison, Mark A Ogilvie, George F., III Stewart, Robert T.	Attorney Attorney Attorney Attorney
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JOURNAL ENTRIES

- Mr. Ogilvie requested and parties stipulated to move the hearing to June 29. Petitioner agrees to respond through June 26. Mr. Holmes requested time to file a reply the day of the hearing or the next week. Mr. Hutchison requested a week after the opposition is due to file the reply. Mr. Ogilvie stated what is said in the reply might have some impact on his argument. Mr. Hutchison stated he would have the compressed reply brief in by the 28th. Court directed counsel to prepare a stipulation regarding deadlines.

6/29/18 9:30 AM HEARING: PETITION FOR JUDICIAL REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

May 16, 2018

A-17-758528-J	180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)
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May 16, 2018

3:00 AM

Minute Order

**re: Motion to
Intervene on Order
Shortening Time**

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- After a review and consideration of the points and authorities on file herein, and the argument of counsel, the Court determined as follows:

It is important to point out that the instant action is one of many court actions stemming from the proposed development of the Badlands golf course and the surrounding Queensridge community. Consequently, the Court feels compelled to review the instant Motion to Intervene not based solely on the limited procedural history in this matter, but to also consider all past actions of the Las Vegas City Council as it relates to the development of the Badlands golf course. The Court has determined that the past history of the Las Vegas City Council is important.

Pursuant to NRCP 24(a)(2), the Intervenor has demonstrated a sufficient interest in the litigation subject matter. The Intervenor could suffer impairment to their ability to protect their interests if they fail to intervene in this matter. The Intervenor's application is timely.

Regarding the third factor set forth by the Nevada Supreme Court in *Hairr v. First Judicial District Court*, 132 Nev. Adv. Op. 16 (2016), whether the Intervenor's interests are adequately represented by

existing parties to the current action, the Court is well aware of the assumption of adequacy of representation, especially when the government is acting on behalf of a constituency it represents. Thus, in an absence of a very compelling showing to the contrary, it will be presumed that the government adequately represents its citizens when the applicant shares the same interests.

Based on history, the prior actions of the Las Vegas City Council as they relate to the development of the Badlands golf course have been adverse to the interests of the Intervenor in this matter. Moreover, the interests of the Intervenor relate to the ownership and protection of real property and its attributes, which has been recognized as unique under Nevada law. See *Dixon v. Thatcher*, 103 Nev. 414, 416 (1987). The Intervenor's real property is adjacent to and will be affected by any subsequent development of the Badlands golf course, and that development is directly at issue in this litigation. In contrast, the City is not seeking to protect its property rights and has no standing to protect the unique property rights of the Intervenor. Thus, in light of the prior actions of the Las Vegas City Council and the potential impact on the Intervenor's property rights, this Court finds that the interests of the Intervenor are not adequately represented or protected by the City of Las Vegas, and grants the Motion to Intervene pursuant to NRCP 24(a)(2).

Lastly, the Intervenor also meets the requirements of NRCP 24(b)(2) as it relates to permissive intervention, so permissive intervention is also warranted.

Based on the foregoing, the Motion to Intervene pursuant to NRCP 24(a)(2) and (b)(2) shall be GRANTED. Additionally, the Intervenor shall follow the briefing schedule that is forthcoming.

Counsel for the Intervenor shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered parties by the Judicial Executive Assistant.//ev 5/16/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

June 29, 2018

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

June 29, 2018

9:30 AM

Petition for Judicial Review

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT:	Allen, Stephanie Hardie	Attorney
	Holmes, Dustun H	Attorney
	Hutchison, Mark A	Attorney
	Kaempfer, Christopher Leigh	Attorney
	Kistler, Joseph S.	Attorney
	Leavitt, James J	Attorney
	Mikhaylov, Kirill V.	Attorney
	Ogilvie, George F., III	Attorney
	Yen, Amanda C.	Attorney

JOURNAL ENTRIES

- Colloquy regarding consideration of the emergency motion to strike pages and the June 21 hearing. Upon Court's inquiry, Mr. Hutchison agreed to go forward with today's hearing and the Court could ignore, if necessary. Mr. Holmes argued going forward today was putting the cart before the horse. Court advised it had not had an opportunity to review the Order Shortening Time, however would proceed with the hearing, and advised counsel to make an objection if something came up that should be stricken. Mr. Hutchison presented a binder of citations; stated 180 Land Company had an application to develop their property, had zoning permits, complied with every land use and development requirement; stated his clients were not land speculators. Court noted it was not concerned about how the parties were characterized. Ms. Allen provided an overview of the property and zoning. Court inquired regarding if it should hold the city council to the same standard as a trial

court. Arguments by Mr. Hutchison and Mr. Holmes regarding the master plan and applicable statutory law. Mr. Hutchison discussed rights to the property under the zoning; argued his client complied with all of the City's requirements, and argued his client was denied specific reasoning regarding rejection of the development. Upon Court's inquiry, Mr. Hutchison responded there was no evidence that the City considered the ordinance during the meeting, and the City's ultimate decision, which occurred prior to the June 21 hearing, should not be considered. Court directed counsel to provide supplemental briefing regarding the development agreement. COURT ORDERED, counsel to discuss and agree regarding continuing the hearing date of July 3, 2018. Court inquired regarding what was applicable under the law. Mr. Ogilvie argued the City of Las Vegas does not have an interest or anything to gain by denying the Petitioner's request. Court stated there must be a basis for the City to make a decision. Court inquired what specific concerns there were by homeowners; Mr. Ogilvie replied congestion and the lack of open space were the issues. Discussion by Court and Mr. Ogilvie regarding the master plan and the developer of the property. Mr. Holmes argued regarding applicable statutory law. Court inquired regarding ordinance designation; discussed the term "master plan"; requested substantial evidence that supported the decision of the city counsel. Court stated it was not sure if the City Council's actions were arbitrary and capricious; argued regarding a causal link. Mr. Hutchison requested City Council's decision be reversed. Mr. Kaempher argued the Stratosphere decision is completely different and should not be used; argued master plans are ever-changing. COURT ORDERED, attorneys to meet and confer regarding the briefing schedules, and submit a stipulation; counsel to submit the Findings of Fact and Conclusions of Law in Microsoft Word format for editing.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

July 03, 2018

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

July 03, 2018

9:00 AM

Motion

**Counsel to submit
Stipulation per Law
Clerk**

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 03H

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Matter not called. Vacated; Counsel to submit Stipulation per Law Clerk.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

July 16, 2018

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

July 16, 2018

1:30 PM

Status Check

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

PARTIES

PRESENT:	Bice, Todd L	Attorney
	Holmes, Dustun H	Attorney
	Ogilvie, George F., III	Attorney

JOURNAL ENTRIES

- Joseph Kistler, Esq. present on behalf of Petitioner. All counsel present telephonically. Arguments by counsel regarding procedure for post-trial briefs and proposed findings of fact and conclusions of law. COURT ORDERED, briefing schedule SET; Mr. Kistler to file a reply to the brief filed by the City including any new issues, questions or concerns during the hearing on or before July 31, 2018; Intervenor to file a sur-reply regarding anything raised in the reply and questions the Court had during the hearing on or before August 6, 2018; each party to submit a findings of fact and conclusions of law for review on or before August 14, 2018; Court advised additional argument or briefing may be requested on or before August 17, 2018, and if requests are made, there would be limitations. Court directed Mr. Kistler to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

July 25, 2018

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

July 25, 2018

9:00 AM

Motion

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 03H

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT:	Bice, Todd L	Attorney
	Holmes, Dustun H	Attorney
	Kistler, Joseph S.	Attorney
	Ogilvie, George F., III	Attorney

JOURNAL ENTRIES

- Mr. Kistler argued regarding portions of the record being stricken unilaterally; stated the petition concerns actions taken by City Council; argued no portion of the record submitted to the court should be deleted; requested the errata be stricken, and if treated as a motion filed by the City, requested motion be denied, however would agree to stipulate to expansion of the record to include the four letters of 180 Land Company LLC's applications. Mr. Ogilvie argued the City is attempting to make sure the court is given proper record and can make a determination on that record, the only issue on the merits is whether substantial evidence supported the decision on June 21, 2017, argued any action taking place after that hearing was not taken into consideration at the time City Council took action; stated items were inadvertently included in the record, should be removed, and should not be considered on the record. Mr. Kistler argued regarding the record, and what should be included. COURT ORDERED, Motion DENIED; Court advised the record in this case was limited to what was in front of City Council the day of or before the June 21, 2017 hearing; the errata stands.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

October 11, 2018

A-17-758528-J	180 Land Company LLC, Petitioner(s)
	vs.
	Las Vegas City of, Respondent(s)

October 11, 2018

1:53 PM

Minute Order

HEARD BY: Williams, Timothy C.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- After a review and consideration of the points and authorities on file herein, the record on appeal and argument of counsel, the Court determines as follows:

Two issues were present for review: (1) whether substantial evidence supported the Las Vegas City Council s decision to deny developer 180 Land Company, LLC s application for residential development on land designated as open space/ golf course/ drainage; and (2) does Judge Crockett s decision -- holding that the Master Plan precludes any redevelopment by Seventy Acres, LLC of the open space/ golf course/ drainage area absent a proper and approved application for a Major Modification of the Master Plan -- bind the developer and its related entities such as 180 Land Company, LLC under the doctrine of issue/ claims preclusion.

In reviewing the decision of the Las Vegas City Council, the thrust and focus of the Court in the instant matter shall be limited. As the Nevada Supreme Court noted in Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 528, [w]hen a district court has reviewed a zoning decision without taking additional evidence and the decision is appealed to the court, the scope of review is limited to a determination of whether the agency or municipality which made the decision appealed from committed an abuse of discretion. A decision that lacks support in the form of substantial evidence is arbitrary and capricious and, therefore, an abuse of discretion. We have defined substantial evidence

as that which a reasonable mind might accept as adequate to support a conclusion (emphasis added). Based on a review of the record, the 35-acre parcel at issue was once part of the 250.92 acres of land commonly referred to as the Badlands Golf Course and subject to the specifications set forth in the Peccole Ranch Master Planned Community, which were initially approved by the City of Las Vegas in 1990. Under the Master Plan, in addition to use as a golf course, the Badlands parcel was designed to be in a major flood zone and was designated as flood drainage and open spaces. Of paramount significance, the 35 acres that are subject to judicial review were part of prior applications to develop the 250.92 acre Badlands Golf Course before the Las Vegas Planning Commission and City Council. Thus, the Las Vegas City Council's decision to accept or deny the application of Petitioners was not made in a vacuum. It was based on the Petitioner and its affiliates' multiple applications to the City Council that resulted in a significant administrative history with numerous attempts to develop the Badlands Golf Course.

A review of the record reveals that the Las Vegas City Council received major public opposition not only to the 35-acre parcel at issue, but public opposition to major modifications to the Master Plan regarding the 250.92 acre Badlands property as well as a smaller sub-parcel consisting of 17.49 acres. For example, public meetings were well attended with overwhelming opposition and the City received approximately 586 written protests regarding a proposed 2016 Development Agreement and many emails in protest. The 2016 Development Agreement was an attempt to make a major modification to the Master Plan, which was ultimately withdrawn without prejudice. The record also reveals that the Mayor emphasized that the City Council sought a comprehensive redevelopment plan for the entire Badlands property to ensure compatibility with the surrounding properties and to provide adequate flood control. Also, the developers represented to the Mayor and City Council their desire to develop not just a portion of the Badlands property, but the entire parcel. Notwithstanding, the City Council approved the developer application regarding the 17.49 acre parcel without a major modification to the Master Plan. Not only was there public opposition, but certain nearby homeowners retained private counsel and sought relief from the Courts seeking judicial review of the City Council's approval of the 17.49 acre application. The ultimate outcome of the Petition for Judicial Review as to the 17.49 acre matter was not considered by this Court in reviewing the actions of the Las Vegas City Council. However, it underscores the fact that a group of homeowners were strident in their opposition to the development plans approved by the Las Vegas City Council regarding the 17.49 acre parcel.

In assessing the actions of the Mayor and City Council and to determine whether there is substantial evidence in the record to support their decision, it is patently apparent that the pending Petition for Judicial Review is not a simple one-time application assessing whether to approve the developer's land use. The record reflects that the Mayor and City Council considered the Badland project history and negotiations between the City and the nearby property owners. There was steadfast and considerable public opposition to the Applications, including challenges to the compatibility with the surrounding areas. Also, the Court considered the piece-meal development argument presented by the Petitioner. However, the record reveals the Mayor and City Council, in light of the public opposition, wanted a unified agreement and development proposal for the entire Badlands property to ensure orderly development that would be compatible with the surrounding area as required by

the Master Plan. Even expert testimony was provided by Ngai Pindall, a law professor who teaches Municipal Planning and Zoning. Professor Pindall opined that good land use practice required an amendment to the Master Plan because it gave all stakeholders a chance to be heard and considered. In light of the significant record, the Court hereby determines that there was substantial evidence in the record to support the decision of the Las Vegas City Council.

The Court also considered whether the developer, 180 Land Company, LLC's Petition is barred under the doctrine of issue preclusion as asserted by Intervenor, based on the decision of Judge Crockett in the matter of Jack B. Binion, et al. v. The City of Las Vegas and Seventy Acres, LLC, Case No. A-17-752344-J. The Court reviewed recent Nevada case law and the expanded concept of privity which is to be broadly construed beyond its literal and historic meaning to include any situation in which the relationship between the parties is sufficiently close to supply preclusion. Thus, privity will now encompass a relationship in which there is a substantial identity between the parties which results in a sufficient commonality of interest. See, *Mendenhall v. Tassinari*, 403 P.3d 364 (Nev. 2017). Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands properties before the City Council and reviewed the Complaint filed in the United States District Court, Case 2:18-cv-00547-JCM-CWH, Plaintiffs 180 Land Co. LLC, Fore Stars, Ltd., Seventy Acres, LLC and Yohan Lowie in his individual capacity, to determine whether there is a substantial identity of the parties resulting in a sufficient commonality of interest and therefore privity. The Federal Complaint reveals that in March of 2015, Yohan Lowie and his partners acquired a membership interest in Fore Star Ltd., which at the time owned the 250.92 acre Badlands property. In June, 2015, Fore Star Ltd. redrew boundaries of various parcels that compromised the Badlands property, and in November 2015, ownership of approximately 178.27 acres of land was transferred to Petitioner, 180 Land Co. LLC and approximately 70.52 acres of land was transferred to Seventy Acres, LLC, a party in the Judge Crockett matter. The impact of Judge Crockett's Order, which the City of Las Vegas accepted and did not appeal, would require both the 180 Land Co., LLC and Seventy Acres, LLC's parcels of land to apply to the Las Vegas City Council for an amendment to the Master Plan before development of the entire Badlands properties.

A review of the August 3, 2017 deposition of Yohan Lowie reveals a 50% ownership interest in both Seventy Acres, LLC and 180 Land Co., LLC. Thus, 180 Land Co., LLC would have received a substantial benefit had Judge Crockett denied the Petition for Judicial Review in that it would not be required to seek amendment to the Master Plan as a condition to develop the Badlands properties. Also, from the record, Mr. Lowie manages and controls the 180 Land Co., LLC and Seventy Acres, LLC. Therefore, the record demonstrates a substantial identity between the 180 Land Co., LLC and Seventy Acres, LLC based on shared interest and actions. Further, the issue raised by Intervenor, which once again challenges whether any attempt to develop part of the Badlands properties without first applying for and addressing a major modification to the Master Plan, is identical to the issues litigated before Judge Crockett. Lastly, this issue was fully adjudicated. The Court hereby determines that the Doctrine of Issue Preclusion applies to the instant matter.

Based on the foregoing, the Court has determined there is substantial evidence in the record to support the Decision of the Las Vegas City Council to deny the application at issue. Additionally, the

Doctrine of Issue Preclusion controls and it would be improper after a determination of substantial identity between 180 Land Co., LLC and Seventy Acres, LLC, to permit the Petitioner to circumvent the decision of Judge Crockett on issues that were fully adjudicated.

Therefore, the Petition for Judicial Review of 180 Land Company, LLC is hereby DENIED. Each party is requested to submit their proposed Finding of Fact, Conclusions of Law and Order based not only on the foregoing Minute Order, but also on the record on file herein. Any submissions made to the Court must be served on all parties.

CLERK S NOTE: This Minute Order was electronically served to all parties registered through Odyssey eFile.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MARK A. HUTCHISON, ESQ.
10080 W. ALTA DR., STE 200
LAS VEGAS, NV 89145

DATE: December 26, 2018
CASE: A-17-758528-J

RE CASE: 180 LAND CO LLC vs. CITY OF LAS VEGAS

NOTICE OF APPEAL FILED: December 20, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

180 LAND CO LLC,

Petitioner(s),

vs.

CITY OF LAS VEGAS,

Defendant(s),

Case No: A-17-758528-J

Dept No: XVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 26 day of December 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk