

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No. 78792**

CITY OF LAS VEGAS, a political subdivision of the State of Nevada

Petitioner

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of  
Clark, and the Honorable Timothy C. Williams, District Judge,

Respondents

and

180 LAND CO, LLC, a Nevada limited-liability company,

Real Party in Interest

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District Court Case No.: A-17-758528-J  
Eighth Judicial District Court of Nevada

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**PETITIONER'S SUPPLEMENT TO  
APPENDIX VOLUME 6  
PA1051-PA1144**

<p>McDONALD CARANO LLP George F. Ogilvie III (#3552) Debbie Leonard (#8260) Amanda C. Yen (#9726) Christopher Molina (#14092) 2300 W. Sahara Ave, Suite 1200 Las Vegas, NV 89102 Phone: 702.873.4100 Fax: 702.873.9966 <a href="mailto:gogilvie@mcdonaldcarano.com">gogilvie@mcdonaldcarano.com</a> <a href="mailto:dleonard@mcdonaldcarano.com">dleonard@mcdonaldcarano.com</a> <a href="mailto:ayen@mcdonaldcarano.com">ayen@mcdonaldcarano.com</a> <a href="mailto:cmolina@mcdonaldcarano.com">cmolina@mcdonaldcarano.com</a></p>	<p>LAS VEGAS CITY ATTORNEY'S OFFICE Bradford R. Jerbic (#1056) Philip R. Byrnes (#166) Seth T. Floyd (#11959) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 <a href="mailto:bjerbic@lasvegasnevada.gov">bjerbic@lasvegasnevada.gov</a> <a href="mailto:pbyrnes@lasvegasnevada.gov">pbyrnes@lasvegasnevada.gov</a> <a href="mailto:sfloyd@lasvegasnevada.gov">sfloyd@lasvegasnevada.gov</a></p>
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*Attorneys for Petitioner*

Electronically Filed  
May 20 2019 11:10 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE	RANGE
7/18/2017	Petition for Judicial Review	1	PA0001	PA0008
9/7/2017	First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	1	PA0009	PA0027
2/23/2018	First Amended Complaint	1	PA0028	PA0044
2/28/2018	Errata to First Amended Complaint Pursuant to Court Order entered on February 2-[1], 2018 for Severed Alternative Verified Claims in Inverse Condemnation	1	PA0045	PA0061
2/28/2018	Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation Per Court Order Entered on February 1, 2018	1	PA0062	PA0076
3/5/2018	Order Granting Plaintiffs' Petition for Judicial Review in <i>Jack B. Binion, et al. v. The City of Las Vegas, et al.</i> , A-17-752344-J	1	PA0077	PA0090
4/17/2018	Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	1	PA0091	PA0152
6/26/2018	Errata to Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	1	PA0153	PA0199
11/26/2018	Notice of Entry of Order of Findings of Fact and Conclusions of Law on Petition for Judicial Review	1	PA0200	PA0227
12/13/2018	Motion for a New Trial Pursuant to NRC 59 (e) and Motion to Alter or Amend Pursuant to NRC 52(b) and/or Reconsider the Findings of Facts and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives	2	PA0228	PA0255

DATE	DOCUMENT	VOLUME	PAGE	RANGE
2/6/2019	Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	2	PA0256	PA0258
2/13/2019	City of Las Vegas' Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	2	PA0259	PA0272
3/4/2019	Plaintiff Landowners' Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required	2	PA0273	PA0399
3/14/2019	City of Las Vegas' Reply in Support of Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	3	PA0400	PA0483
3/18/2019	City of Las Vegas' Opposition to Plaintiff Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required	3	PA0484	PA0562
3/22/2019	Reporter's Transcript of Motions	4	PA0563	PA0725
4/15/2019	Plaintiff Landowners' Request for Admission to the City of Las Vegas - First Request	4	PA0726	PA0737
4/15/2019	Plaintiff Landowners' Request for Production of Documents to the City of Las Vegas - First Request	4	PA0738	PA0749
4/15/2019	Plaintiff Landowners' Early Case Conference Initial Disclosures <i>For Phase I – Liability</i> Pursuant to NRCP 16.1	4	PA0750	PA0760

DATE	DOCUMENT	VOLUME	PAGE	RANGE
4/23/2019	City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time	5	PA0761	PA0851
5/8/2019	Notice of Entry of Findings of Fact and Conclusions of Law on Plaintiff's Motion for New Trial	5	PA0852	PA0867
5/10/2019	Reply in Support of City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening time and Opposition to Countermotion for <i>Nunc Pro Tunc</i> Order	5	PA0868	PA0874
5/15/2019	Notice of Entry of Order Granting the Landowners' Countermotion to Amend/Supplement the Pleadings; Denying the City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and Denying Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims	5	PA0875	PA0901
5/15/2019	Court Minutes	5	PA0902	PA0902
	Excerpts from Record on Review ROR000032- ROR000033 ROR002648-ROR-002670 ROR002823-ROR002831 ROR002854- ROR002863 ROR0025968 ROR0032657 ROR0034009 ROR0034050 ROR0034059 ROR035183-035186	6	PA0903	PA0955
	District Court Docket	6	PA0956	PA1050

DATE	DOCUMENT	VOLUME	PAGE	RANGE
5/15/2019	Reporter's Transcript of City Of Las Vegas's Motion to Stay Proceedings Pending Resolution of Writ Petition to The Nevada Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time; Plaintiff's Opposition to the City of Las Vegas's Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time and Countermotion for Nunc Pro Tunc Order	6 (Supplement)	PA1051	PA1144

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**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **PETITIONER'S APPENDIX** does not contain the social security number of any person.

DATED this 20<sup>th</sup> day of May, 2019.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 20<sup>TH</sup> day of May, 2019, a copy of the foregoing **PETITIONER'S SUPPLEMENT TO APPENDIX VOLUME 6** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

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/s/ Pamela Miller  
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1 CASE NO. A-17-758528-J

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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180 LAND COMPANY LLC,

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Plaintiff,

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vs.

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LAS VEGAS CITY OF,

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Defendant.

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REPORTER'S TRANSCRIPT

16

OF

17

CITY OF LAS VEGAS'S MOTION TO STAY PROCEEDINGS PENDING  
RESOLUTION OF WRIT PETITION TO THE NEVADA SUPREME COURT  
ON ORDER SHORTENING TIME; PLAINTIFF'S OPPOSITION TO THE  
CITY OF LAS VEGAS'S MOTION TO STAY PROCEEDINGS PENDING  
RESOLUTION OF WRIT PETITION TO THE NEVADA SUPREME COURT  
ON ORDER SHORTENING TIME AND COUNTERMOTION FOR NUNC PRO  
TUNC ORDER

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

22

DISTRICT COURT JUDGE

23

DATED WEDNESDAY, MAY 15, 2019

24

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

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Pursuant to NRS 239.053, illegal to copy without payment.

PA1051

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PA1052

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 15, 2019

2 9:29 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5

6 THE COURT: Okay. We're going to move on.

7 Next up page 5. 180 Land Company LLC versus the City  
8 of Las Vegas.

9 MR. OGLIVIE: Good morning, your Honor.

09:01:02 10 George Ogilvie on behalf of the City of Las Vegas.

11 MS. LEONARD: Good morning, your Honor. Deb  
12 Leonard on behalf of the City of Las Vegas.

13 MR. WATERS: Kermitt Waters on behalf of the  
14 landowner, your Honor, 180 Land.

09:01:15 15 MR. LEAVITT: James J. Leavitt on behalf of  
16 the landowner, 180 Land, your Honor.

17 MR. HOLMES: Good morning, your Honor. Dustun  
18 Holmes on behalf of the intervenors.

19 MR. BICE: Good morning, your Honor. Todd  
09:01:21 20 Bice also on behalf of the intervenors.

21 THE COURT: All right. I didn't overlook  
22 anyone, did I?

23 MS. WATERS: Autumn Waters on behalf of the  
24 landowner, your Honor.

09:01:30 25 THE COURT: All right. I just want to make



09:01:32 1 sure.

2 All right. Once again, good morning. And  
3 it's my understanding we have a motion. Let me make  
4 sure I get it right. City of Las Vegas motion to stay  
09:01:44 5 proceedings pending resolution of the writ petition to  
6 the Nevada Supreme Court, and we have an opposition and  
7 countermotion for nunc pro tunc order.

8 All right. Sir.

9 MR. OGLIVIE: Your Honor, as stated in the  
09:02:02 10 City's motion and reply, the City seeks to -- seeks a  
11 writ from the Nevada Supreme Court that it will -- that  
12 the City will file upon the Court's entry of an order  
13 denying the City's motion for judgment on the  
14 pleadings.

09:02:23 15 City intends to seek that writ or file that  
16 writ petition immediately after the entry of that order  
17 and pending the adjudication of that writ. The City,  
18 through the motion before the Court this morning,  
19 respectfully seeks a stay of these proceedings pending  
09:02:44 20 Nevada Supreme Court's adjudication of the writ  
21 petition.

22 The basis of the writ petition is three fold.  
23 And it's all based upon the Court's denial of the  
24 motion for judgment on the pleadings.

09:03:00 25 First, as the Court has previously found and

09:03:02 1 the developer lacks any vested rights to have its  
2 development applications approved. As a matter of law  
3 then, the developer cannot assert a takings claim.  
4 Without any vested rights, the developer -- there  
09:03:25 5 cannot be a taking.

6 Not only did the Court make that determination  
7 in the findings of fact and conclusions of law that  
8 were entered in November 2018 which denied the  
9 developer's petition for judicial review, the Court  
09:03:45 10 reiterated that finding when it entered the -- when it  
11 issued its May 7, 2019, findings of fact and  
12 conclusions of law denying the developer's motion for a  
13 new trial. Specifically in paragraph 22 of the  
14 conclusions of law the Court stated, and I quote:

09:04:03 15 "This Court correctly concluded that the  
16 developer does not have vested rights to have  
17 35 acres approved. And neither Judge Smith's  
18 orders nor the Supreme Court's orders of  
19 affirmance alter that conclusion. Thus, as a  
09:04:19 20 matter of law there cannot" --

21 This is -- that was the end of the quote. The  
22 City's position and the position it will take in the  
23 writ petition to the Nevada Supreme Court that as a  
24 result of that conclusion, there cannot be a taking as  
09:04:38 25 a matter of law.

09:04:41 1           It's interesting to note that notwithstanding  
2 the arguments that developer makes to the contrary,  
3 that there can be a taking, even though there -- it has  
4 no vested rights, the developer in its counter motion  
09:04:57 5 seeks to have that conclusion of law in the May 7,  
6 2019, findings of fact and conclusions of law stricken  
7 in the motion for order nunc pro tunc. The developer  
8 respectfully requests the Court to strike that  
9 paragraph, paragraph 22 of the conclusions of law,  
09:05:20 10 because it knows that if that conclusion of law stands,  
11 as a matter of law it cannot assert a takings claim in  
12 this matter.

13           So the City's position is that a stay is  
14 required to allow it the opportunity to address this  
09:05:40 15 matter before the Nevada Supreme Court which the City  
16 submits that the Nevada Supreme Court will accept that  
17 writ petition and, ultimately, grant the writ and  
18 direct this Court to reverse its decision on the motion  
19 for judgment on the pleadings and grant the City's  
09:06:07 20 motion for judgment on the pleadings.

21           The second basis, legal basis for the City's  
22 writ is that the Court's finding that the Crockett  
23 order, which is on appeal, and holds that no  
24 redevelopment of the golf course can occur without a  
09:06:28 25 major modification of the Peccole Ranch Master Plan has

09:06:35 1 preclusive effect. The Court not only, again, found  
2 that and made that conclusion of law in the November,  
3 2018, findings of fact and conclusions of law denying  
4 the petition for judicial review, the Court reiterated  
09:06:50 5 and confirmed that finding in the findings of fact and  
6 conclusions of law that were entered on May 7th, 2019,  
7 just a week ago in which the Court stated that  
8 conclusion of law 24:

9 "The Court correctly determined that  
09:07:06 10 Judge Crockett's order has preclusive effect  
11 here, and as a result, the developer must  
12 obtain the city council's approval of a major  
13 modification to the Peccole Ranch Master Plan  
14 before it may develop the 35-acre property."

09:07:24 15 Since the developer's inverse condemnation  
16 claims cannot be ripe under the Crockett order until  
17 the developer submits an application for a major  
18 modification, and the City grants that application,  
19 then the matter before this Court is not ripe. And  
09:07:45 20 ripeness is a jurisdictional requirement that the  
21 Nevada Supreme Court will -- on which the Nevada  
22 Supreme Court will entertain petitions for writs of  
23 mandamus, for prohibition, which is what the City is  
24 going to seek.

09:08:07 25 The last basis, legal basis for submitting the

09:08:11 1 writ is the fact that the developer's inverse  
2 condemnation claims are time barred because the  
3 developers predecessor in interest actually sought the  
4 open space designation which is set forth in the  
09:08:35 5 Peccole Ranch Master Plan.

6 Now, if the developer states that simply that  
7 an administerial act by the City of stamping something  
8 as open space or some other designation cannot trigger  
9 the statute of limitations. That does not address the  
09:08:54 10 fact that here the developer's predecessor in interest  
11 actually sought that designation and obtained that  
12 designation. So any ability to challenge that  
13 designation was triggered with the granting of the  
14 developer's predecessors in interest's request, which  
09:09:15 15 is beyond the 15 years -- 15-year statute of  
16 limitations.

17 For those three grounds, the developer -- or  
18 the City submits that the Nevada Supreme Court will  
19 accept the writ petition and ultimately grant the writ  
09:09:33 20 petition. And based on that, the City should not be  
21 required to litigate this matter before the trial  
22 court.

23 And we identified four factors in our motion  
24 under Hansen versus Eighth Judicial District Court in  
09:09:53 25 which the Nevada Supreme -- the Nevada Supreme Court

09:09:56 1 and the trial courts are to consider whether or not a  
2 stay should be issued.

3           Those four factors are: First, whether the  
4 object of the writ -- or the writ or appeal will be  
09:10:09 5 defeated if the stay is denied. And the City submits  
6 that because we are addressing a jurisdictional issue  
7 of ripeness, absolutely if the stay is denied and the  
8 City is required to litigate this case pending the  
9 adjudication of the writ petition, then the writ  
09:10:27 10 petition -- the object of the writ petition will be  
11 defeated.

12           The second factor is whether or not the City  
13 will suffer irreparable harm or serious injury if the  
14 stay is denied. And the City has stated in its moving  
09:10:48 15 papers, has identified specifically that the --  
16 notwithstanding this Court's finding on two occasions  
17 that the City acted within its discretionary authority  
18 to deny the applications that are at issue here, the  
19 City can be subject to an inverse condemnation claim.  
09:11:13 20 And if that is the case, not only the City of  
21 Las Vegas, but Clark County, every municipality in  
22 Clark County, and every municipality and county in the  
23 state can be subject to an inverse condemnation claim  
24 even though there is a finding that the City acted  
09:11:33 25 within its discretionary authority and acted lawfully.

09:11:41 1 And, moreover, in instances in which a developer lacks  
2 vested rights to have the applications at issue  
3 granted.

4 So if the irreparable harm, the serious harm  
09:11:57 5 is the floodgate, floodgates of litigation that the  
6 City and every municipality and every county in the  
7 state will be subjected to in the event that a stay is  
8 not imposed pending the adjudication of the City's writ  
9 petition.

09:12:15 10 The third factor of -- the third Hansen factor  
11 of whether or not --

12 THE COURT: Isn't that kind of speculative,  
13 though, as far as floodgates are concerned,  
14 Mr. Ogilvie?

09:12:29 15 MR. OGLIVIE: Certainly, certainly the  
16 developer makes that argument that the Chicken Little  
17 Sky is Falling argument is not realistic. I submit to  
18 the Court that it absolutely is realistic.

19 Here, if we look at what we have here, which  
09:12:46 20 is the City exercising its lawful -- its lawful  
21 authority in denying land use applications, but yet it  
22 is subject to litigation for inverse condemnation,  
23 twofold.

24 First of all I don't think it was speculation,  
09:13:13 25 your Honor. I think every educated -- when I say

09:13:18 1 educated I mean developer that is aware of the  
2 proceedings in takings law and land use law, will see  
3 this as an opportunity to use this as a sword to obtain  
4 the granting of the applications. First of all, to  
09:13:42 5 obtain the granting of the applications that it seeks  
6 and threaten the municipalities with, If you don't  
7 grant my applications I'm suing you because I have that  
8 right now.

9 The right --

09:13:57 10 THE COURT: But is that irreparable harm?  
11 Irreparable harm under any sort of definition?  
12 Because, typically, when you talk about irreparable or  
13 irreparable harm it's something tangible and  
14 significant. Here we're talking about the possibility  
09:14:13 15 of being sued, and there's been no establishment of  
16 floodgate of lawsuits specifically relating to inverse  
17 condemnation claims as a result of my decision.

18 MR. OGLIVIE: Well, it's always going to be  
19 speculative, your Honor. You can not state that  
09:14:29 20 there's going to be 100 more lawsuits against a  
21 municipality or any entity, state or private, as a  
22 result of ruling in litigation. That's an absolute  
23 impossibility.

24 I'm just submitting to the Court that  
09:14:48 25 absolutely any developer that is watching these



09:14:52 1 proceedings now has a hammer with which it can bludgeon  
2 every municipality to say, you know what, if you don't  
3 grant this, notwithstanding the fact that I don't have  
4 vested rights to the granting of these applications,  
09:15:10 5 notwithstanding the fact that you, City, county, have  
6 the ability to exercise your lawful authority to deny  
7 these applications, I'm going to sue you.

8           And what effect is that going to have on the  
9 cities and the municipalities and the counties? There  
09:15:29 10 it's going to be a great chilling effect that, in fact,  
11 they say, well, we can't be embroiled in this  
12 litigation. We have to proceed with a different  
13 course. And that different course is granting the  
14 applications, even though the City may have the  
09:15:49 15 discretionary authority to deny the applications.

16           THE COURT: And I think it's important to  
17 point out I respect that discretionary authority of the  
18 city council, and that's one of the reasons why I ruled  
19 the way I did.

09:16:04 20           But just as important too, isn't this case  
21 slightly different from that? Because keep in mind  
22 that when I'm making a determination as it relates to a  
23 petition for judicial review my thrust and focus is  
24 very limited to the record right before me. But it's  
09:16:19 25 my understanding that potentially it's part of the

09:16:22 1 basis for the inverse condemnation claim in the severed  
2 case. They're making claims of conduct of the city  
3 council and specific councilmen and women that occurred  
4 after the whole petition process. So they're going  
09:16:38 5 well beyond my narrow record. They're looking at a lot  
6 of other instances that would rise to potentially a  
7 taking.

8 And so that's one of the reasons why I said  
9 what you said, and I placed it on the record. Because  
09:16:56 10 I do think this is a very fascinating case. And it  
11 probably involves issues of first impression.

12 But in the countermotion -- and I'm glad I do  
13 talk on the record quite a bit. There is -- I think I  
14 was pretty clear as to how I was viewing this case, and  
09:17:13 15 potentially there's different standards involved.

16 And I looked at it through this prism. I'm  
17 saying -- because what you're saying is, Look, Judge,  
18 once you deny a petition for judicial review by  
19 operation of law there can never be an inverse  
09:17:30 20 condemnation claim brought by that developer.

21 MR. OGLIVIE: What I'm saying, your Honor, is  
22 that when the Court denies a petition for judicial  
23 review finding two things -- finding actually three  
24 things:

09:17:45 25 One, that the City acted within its

09:17:48 1 discretionary authority;

2 Two, that if the developer has no vested  
3 rights to the granting of these applications;

4 And three, that Judge Crockett's order that  
09:18:03 5 the developer must bring forth an application for major  
6 modification, and that application must be approved,  
7 that under those specific three instances, which is  
8 what is in this case, there cannot be a taking.

9 THE COURT: But here's my -- and understand.  
09:18:22 10 I'm not close to all the facts of this case because I  
11 have another thousand cases. And I'm just going on  
12 rote memory. But it's my recollection in the  
13 inverse -- in the severed case, wasn't there testimony  
14 by a council member, something to the effect, and I  
09:18:38 15 could be wrong because this is just based upon rote  
16 memory, that, Well maybe they didn't need a major  
17 modification. Was that an issue? Is my recollection  
18 wrong on that?

19 MR. LEAVITT: You're correct, your Honor.

09:18:53 20 THE COURT: Okay. I'm just -- this is all --  
21 because I read -- I remember when this came up before  
22 me, I read everything. I tried to. And it was a  
23 significant record.

24 MR. OGLIVIE: So let me -- let me address  
09:19:01 25 that, your Honor.

09:19:02 1 THE COURT: Yes.

2 MR. OGLIVIE: First of all, it wasn't a city  
3 council member, it was the City attorney had some  
4 question about it.

09:19:09 5 THE COURT: Okay. That's --

6 MR. OGLIVIE: But, but that was prior to the  
7 issuance of Judge Crockett's order. Judge Crockett's  
8 order is now the law unless and until it is reversed by  
9 the Nevada Supreme Court. Since that time, since the  
09:19:28 10 issuance of Judge Crockett's order, the City has acted  
11 in conformity with that order in making a determination  
12 that unless -- until the developer submits an  
13 application for a major modification, the City does not  
14 have the ability to address any of the land use  
09:19:51 15 applications submitted by this developer related to the  
16 former Badlands Golf Course.

17 So that, that issue did exist until  
18 Judge Crockett issued his order. But Judge Crockett  
19 took that issue off the table. It doesn't matter what  
09:20:10 20 a city councilman thought. It doesn't matter how the  
21 City attorney interpreted the law. A judge has now  
22 interpreted the law and made a determination. And  
23 everyone has to live by that unless the Nevada Supreme  
24 Court reverses that decision.

09:20:28 25 THE COURT: And here's my next question. I

09:20:29 1 mean, Judge Crockett's order didn't specifically deal  
2 with the 35 acres that are before me; is that correct?

3 MR. OGLIVIE: That is correct.

4 THE COURT: Okay.

09:20:38 5 MR. OGLIVIE: But this Court found that that  
6 order had preclusive effect on the 35-acre applications  
7 that are before this Court.

8 So this Court made a determination that not  
9 only does that order apply to the applications, the  
09:20:58 10 17 acres before Judge Crockett, but it applies to this,  
11 the four land use applications before the Court on the  
12 35 acres.

13 THE COURT: So, I guess, getting back to my  
14 question, because it appears to me that it would be the  
09:21:17 15 city's position that once the Court rules that there is  
16 substantial evidence in the record to support the  
17 decision of the city council by operation of law, the  
18 landowner shall be precluded from filing an inverse  
19 condemnation claim?

09:21:35 20 MR. OGLIVIE: And I will answer that as I did  
21 before. That not only is that the facts before this  
22 Court, but it's buttressed by the fact that this Court  
23 has made a determined -- a conclusion of law twice now,  
24 that the developer lacks vested rights to have the  
09:21:56 25 35 acre land use applications approved. And the

09:22:00 1 preclusive effect of Judge Crockett's overruling  
2 precludes an inverse taking claim as brought before the  
3 Court in this case.

4 Now, I understand the Court may or may not  
09:22:16 5 disagree with that proposition. The Court made a  
6 ruling against the City as a matter of law that the  
7 City wishes to challenge with the Supreme Court.

8 THE COURT: And I have no problem with that  
9 because I think it's a very unique issue, one of first  
09:22:37 10 impression maybe. I don't know.

11 MR. OGLIVIE: And I know this Court. And I  
12 know that your Honor is speaking candidly when it  
13 says -- makes the statement that it just did.

14 But I will submit to the Court that, in fact,  
09:22:51 15 this is a very important issue. And I'm not arguing  
16 with the Court today as to whether or not the  
17 Court's --

18 THE COURT: I understand.

19 MR. OGLIVIE: -- decision was right or wrong.  
09:23:02 20 All I'm suggesting to the Court is that the Court  
21 should issue a stay while this very important and  
22 interesting issue of law is decided by the Nevada  
23 Supreme Court.

24 So I've addressed three -- two of the Hansen  
09:23:26 25 factors.

09:23:26 1           The last, the third Hansen factor is whether  
2 or not the developer will suffer any irreparable harm  
3 or serious injury.

4           Oh, that was another point that I wanted to  
09:23:38 5 address with the Court's question to me whether or not  
6 there is irreparable harm to the City.

7           That Hansen factor is not just irreparable  
8 harm. It is also serious injury. And for all the  
9 reasons that I addressed irreparable harm, I submit to  
09:23:58 10 the Court they even -- they establish serious suffer --  
11 they establish serious injury even more so than  
12 irreparable harm.

13           The third factor again is whether or not the  
14 developer will suffer irreparable harm or serious  
09:24:17 15 injury if the stay is granted. Since the developer is  
16 only seeking compensation, money damages is not  
17 irreparable harm. Therefore, the developer cannot  
18 satisfy that standard, that factor.

19           And so we move to -- and in its opposition,  
09:24:41 20 the developer did not address any of those first three  
21 of the four Hansen factors. The only Hansen factors  
22 that the developer addressed in its opposition to the  
23 motion to stay was indirectly the fourth factor which  
24 is whether or not the City is likely to prevail on the  
09:25:04 25 merits of the writ petition.

09:25:06 1 And I submit to the Court, as I stated in my  
2 opening remarks, there are three basis for which the  
3 City seeks a determination by the Nevada Supreme Court  
4 that as a matter of law these inverse condemnation  
09:25:24 5 claims must be dismissed. The fact that  
6 Judge Crockett's ruling has preclusive effect, the fact  
7 that the developer lacks vested rights as found by this  
8 Court to have these applications approved, and the fact  
9 that the City acted within its discretionary authority.

09:25:48 10 So with those three factors, those three  
11 arguments combined, the City is confident of its -- of  
12 the merits of its writ petition and submits to the  
13 Court that the four factors combined lead to a  
14 determination by this Court that a stay should be  
09:26:13 15 issued.

16 And on that basis, your Honor, unless the  
17 Court has any further questions, I will submit it.

18 THE COURT: Not at this time, sir. Thank you.

19 MR. OGLIVIE: Thank you.

09:26:31 20 MR. LEAVITT: Good morning, your Honor.

21 Your Honor, what we just heard was actually a  
22 re-argument of our hearing that we were here last time  
23 on, which was our motion for summary judgment. And you  
24 will remember, your Honor, I addressed each and every  
09:26:42 25 one of these issues before the Court. And at the end



09:26:45 1 of that, after I argued each one of these issues, you  
2 asked Mr. Ogilvie if there was a factual dispute on  
3 every one of these issues. And Mr. Ogilvie stood up  
4 and said, I will contest factually every one of these  
09:26:55 5 issues that Mr. Leavitt just presented to you. And he  
6 said "so there are facts in dispute". Why is that so  
7 important? It's so important because Mr. Ogilvie  
8 gleans over the standard for a writ petition in this  
9 particular instance.

09:27:08 10 The Nevada Supreme Court first said that it  
11 will never accept a writ on a denial for a motion to  
12 dismiss. But then later it modified that rule, and it  
13 said we will accept a writ under very limited  
14 circumstances.

09:27:20 15 And this goes to whether or not Mr. Ogilvie  
16 will prevail on the merits and whether he should be  
17 granted a stay while he attempts to prevail on the  
18 merits. And the Nevada Supreme Court said we will only  
19 grant a writ petition under these very limited  
09:27:33 20 circumstances where there are no facts in dispute.  
21 That's what the Nevada Supreme Court held.

22 And so with Mr. Ogilvie standing up at the  
23 last hearing and stating there are facts in dispute, he  
24 has defeated the very underlying purpose of his writ  
09:27:48 25 petition.

09:27:49 1 Just to give you an example here, your Honor.  
2 Mr. Ogilvie is right. We will argue to you as we have  
3 done in the past that a major modification has been  
4 filed for the 35-acre property. Not once, but twice  
09:28:02 5 we've met the standards and procedures for a major  
6 modification, and the City denied that major  
7 modification.

8 The City is going to stand up and say we  
9 didn't file a major modification. That's a factual  
09:28:11 10 dispute.

11 We will argue that the City did not properly  
12 adopt a PROS on our property. The City will stand up  
13 and say that they did properly adopt a PROS on our  
14 property. That, again, is a factual dispute. When you  
09:28:23 15 have factual disputes in a case on -- and on a  
16 motion -- or a denial of a motion to dismiss, the  
17 Nevada Supreme Court has unequivocally stated it will  
18 not grant a writ petition. It will not even entertain  
19 a writ petition.

09:28:39 20 And if the Nevada Supreme Court is not going  
21 to entertain the City's writ petition, then there's  
22 absolutely no reason right now to grant a stay.

23 So let me talk just briefly about the merits  
24 that Mr. Ogilvie has presented to you because he has to  
09:28:53 25 prove to you today that there is a likelihood of

09:28:56 1 success on the merits in order to get his stay, get his  
2 stay granted. These three issues he just mentioned  
3 whether there's a property interest, whether the claims  
4 are ripe and the statute of limitations has now been  
09:29:08 5 presented to three judges. It's been presented to you.  
6 It's been presented to Judge Sturman. It's been  
7 presented to Judge Bixler. And not one of them have  
8 granted the City's request.

9 Judge Sturman flat out denied the motion to  
09:29:21 10 dismiss. You flat out denied the motion to dismiss  
11 because these are meritless arguments. And if they're  
12 meritless arguments, there is no chance of the City  
13 prevailing at the Nevada Supreme Court on the merits.

14 I think a pretty good indication that the City  
09:29:35 15 does not have a likelihood of success on the merits is  
16 that we have four orders from three different judges  
17 rejecting these arguments by the City of Las Vegas  
18 they've made here to you today.

19 Just -- your Honor, just let me take a minute  
09:29:49 20 on a couple of these arguments. The statute of  
21 limitations argument that the City makes to you, that  
22 was rejected in 1980 by the Nevada Supreme Court in the  
23 Sproul Homes case.

24 The Nevada Supreme Court had an opportunity to  
09:30:00 25 revisit that statute of limitations argument in 2015 in

09:30:05 1 what's often referred to as the Ad America case. It's  
2 State versus Eighth Judicial District. And the Nevada  
3 Supreme Court again rejected the statute of limitations  
4 argument that the City just made to you here today. So  
09:30:16 5 for the past 35 years the Nevada Supreme Court has  
6 twice rejected the statute of limitations argument the  
7 City just presented to you here today.

8 On the ripeness issue, let me take just a  
9 minute and just let's look at what the City's really  
09:30:31 10 trying to do. And this ripeness issue and this major  
11 modification issue really shows why we can't bring the  
12 petition for judicial review findings of facts and  
13 conclusions of law into this inverse condemnation case.

14 The petition for judicial review as you just  
09:30:46 15 stated, your Honor, has a different standard, has a  
16 cutoff period. Remember that --

17 THE COURT: It's very limited in scope.

18 MR. LEAVITT: Very limited. In fact, that,  
19 that --

09:30:54 20 THE COURT: There were certain items I  
21 remember at the hearing, and it was argued vigorously,  
22 that, Judge, Look, these other items are outside of the  
23 scope of the record below. You can't even consider  
24 them. And I wouldn't do that. And what's unique about  
09:31:09 25 this case, I don't mind saying that, is this, because I

09:31:14 1 happen to hear both matters, i.e., the petition for  
2 judicial review, and now I have the inverse  
3 condemnation case in front of me.

4 In a typical scenario I can say this, I can't  
09:31:26 5 recall under any circumstances, unless it was a  
6 petition for judicial review, that I would rely upon  
7 the decision making of whatever tribunal that it might  
8 be in a separate lawsuit filed as a result of that.  
9 Because, to be candid with you, I don't think it has  
09:31:49 10 preclusive effect. I just don't. It doesn't --  
11 because they're different standards. They're different  
12 cases. This is -- the inverse condemnation, I think,  
13 appears to be much broader in nature.

14 MR. LEAVITT: And this is -- you're absolutely  
09:32:01 15 right. The petition for judicial review had an  
16 absolute cutoff period. It was June 21, 2017. And  
17 remember, our client tried to bring into that petition  
18 for judicial review the denial of the master  
19 development agreement. And the City asked that it be  
09:32:16 20 stricken, and you granted that because you said this is  
21 a cutoff period. My review is very limited.

22 THE COURT: It's very limited.

23 MR. LEAVITT: Very limited. And so there was  
24 only one act that you reviewed in the petition for  
09:32:25 25 judicial review. And that was the denial of the

09:32:27 1 35-acre application. The inverse condemnation case has  
2 12 government actions that we're alleging rise to the  
3 level of a taking. 12, which is significantly  
4 different than the petition for judicial review.

09:32:40 5 So let's just take just one of those facts for  
6 just very briefly, your Honor, and I want to make my  
7 record on this. In the petition for judicial review  
8 there was a finding that the landowner did not file a  
9 major modification. Remember the cutoff date was

09:32:53 10 June 21, 2017. However, in the inverse condemnation  
11 case, after June 21, 2017, there was a master  
12 development agreement that included all of the  
13 procedures and standards of a major modification.  
14 There was a general plan amendment that included and  
09:33:10 15 far exceeded all of the standards of a major  
16 modification application. And the City denied both of  
17 them.

18 So even though in the petition for judicial  
19 review there might be a finding that a major  
09:33:20 20 modification wasn't filed prior to June 21, 2017, in  
21 the inverse condemnation action, that same finding does  
22 not apply because, in fact, a major modification was  
23 applied for twice after June 21, 2017, and the City  
24 denied them both.

09:33:37 25 So to bring the petition for judicial review

09:33:39 1 finding that there wasn't a major modification filed  
2 into the inverse condemnation case provides an absolute  
3 fabrication of the facts. Because it limits the time  
4 period within which the major modification was not  
09:33:54 5 filed for in the petition for judicial review when, in  
6 fact, there was one filed for in the inverse  
7 condemnation case.

8 So that's just a very small example, your  
9 Honor. And I understand you get it that the facts are  
09:34:05 10 significantly larger in the inverse condemnation case.  
11 That we do have a major modification in the inverse  
12 condemnation case that may not have existed in the  
13 petition for judicial review.

14 Now, the City brings up this other issue.  
09:34:17 15 And, your Honor, I could -- I could talk about the  
16 property interest issue if you want me to. Whether  
17 there's vested property rights. We argued that ad  
18 nauseam at the last hearing. I can bring it up again.  
19 There is a 75-page brief which almost half of it  
09:34:32 20 addresses the property interest issue.

21 The property interest that we have, your  
22 Honor, is we have ownership of the property, number  
23 one. It's been hard zoned sense 1986. The Peccole  
24 Concept Plan that the City is touting to you here today  
09:34:45 25 identifies this specific property for a residential

09:34:48 1 use. It clearly has a vested right here to develop as  
2 a residential use. But those are all arguments that  
3 we've already made. Those are all arguments that we've  
4 already put in the record. And those are all arguments  
09:34:59 5 that the City lost on its motion to dismiss already.  
6 So that's, again, a very good indication that the City  
7 is not going to prevail on the merits in front of the  
8 Nevada Supreme Court on that issue.

9 But actually, let me talk about the discretion  
09:35:11 10 issue that the City has presented to you. The City  
11 says that the -- that it has absolute discretion to  
12 deny a land use application. I get that. It has  
13 discretion to deny a land use application. But it  
14 doesn't have discretion to then avoid the  
09:35:26 15 constitutional mandate of payment of just compensation.

16 What you didn't hear from the City of  
17 Las Vegas is that the City has the discretion to deny a  
18 landowner all use of their property and then avoid the  
19 Constitution. That's not what the City argued to you  
09:35:39 20 here today. And that's not what the City is entitled  
21 to do. And the reason the City didn't argue that is  
22 because that's not the law. That's what we're arguing  
23 about here in the inverse condemnation case.

24 In the PJR case, of course the City has  
09:35:51 25 discretion to deny a land use application. But when we



09:35:53 1 go over to the inverse condemnation case, if in  
2 exercising that discretion the City denies all use of  
3 the property and there's been a taking, it has to pay  
4 just compensation. Simply stated, that discretion is  
09:36:05 5 not a defense to the just compensation clause of the  
6 Nevada State and the United States Constitution.

7 Very quickly, your Honor, also on this  
8 property interest issue. The City says you don't have  
9 a vested property right in the petition for judicial  
09:36:20 10 review case in order to have your application approved.  
11 Now, that's different than the property interest you  
12 must show in an inverse condemnation case.

13 In the A.S.A.P. Storage case, the Nevada  
14 Supreme Court said the term private property in the  
09:36:33 15 Constitution requires that an individual have a  
16 property interest in order to assert a taking claim.  
17 And then here's the important part. They say that a  
18 individual's real property interest in land supports  
19 the taking claim.

09:36:46 20 So in the eminent domain case, all the  
21 landowner has to allege is we own property and you took  
22 it, and that's sufficient to defeat a motion to  
23 dismiss.

24 Again, he's mixing two different standards.  
09:36:59 25 And I know you understand this, your Honor, but I want

09:37:01 1 to make my record.

2 THE COURT: You have to make your record, sir.

3 MR. LEAVITT: Okay. And the standard for a

4 petition for judicial review on the vested property

09:37:08 5 rights is different than the standard for a property

6 right in an inverse condemnation case. Again, we

7 argued that ad nauseam. It's in the record, your

8 Honor.

9 But let me return -- let me turn just very

09:37:20 10 quickly to the City's argument of irreparable harm.

11 The Sky is Falling. That argument was made to the

12 Nevada Supreme Court in the Sisolak case. It was made

13 to the United States Supreme Courts in the Arkansas

14 Game and Fish case. And both the Nevada Supreme Court

09:37:31 15 and the United States Supreme Court rejected The Sky is

16 Falling argument.

17 We hear it -- the Nevada Supreme Court -- or

18 the United States Supreme Courts said we hear it time

19 and time again. If we protect the landowners

09:37:41 20 constitutional right to payment of just compensation,

21 the floodgates are going to open up. It hasn't

22 happened, your Honor. It hasn't happened in the past.

23 It won't happen in the future. These are very limited

24 circumstances where the City exercised its discretion,

09:37:55 25 and it denied this landowner all use of his property

09:37:59 1 when he had a zone -- a residential zoning on that  
2 property. And now the landowner is bringing a taking  
3 claim.

4 That's different than if the government  
09:38:08 5 exercises its discretion and says, Hey, instead of ten  
6 units you can only build five. We're not saying that,  
7 Hey, if the government had come to us and said, Hey,  
8 instead of ten units you can only build five, that  
9 that's a taking. That's not what happened here. The  
09:38:22 10 discretion that they exercised says you're not using  
11 anything. And over my dead body are you going to  
12 build. And I'm -- and we're going to vote against the  
13 whole thing.

14 That's what we have here is very different  
09:38:32 15 than the typical discretionary action that the  
16 government engages in. Therefore, there's not going to  
17 be these floodgates that open up.

18 On this other issue of whether the landowner  
19 is going to suffer prejudice, interest is never going  
09:38:44 20 to remedy this. I saw the argument in the government's  
21 brief that, Well, we're going to pay interest if there  
22 is ever a judgment. That's not going to remedy this.

23 Remember in front of the city council and  
24 before you at the last hearing I said, Judge, what we  
09:38:56 25 believe is happening here is the City is trying to

09:38:59 1 delay us out of this property. How are they doing it?  
2 We've made the representation to the City. We've made  
3 it to you that the carrying costs are significant on  
4 this property.

09:39:09 5 Just by way of example, the property is being  
6 tax assessed on a residential basis. That means our  
7 client has to pay taxes on a residential use of the  
8 property. And the City is not letting them use it for  
9 that residential use. So he's having to pay out of  
09:39:25 10 pocket. Getting to the end of his rope, your Honor.

11 THE COURT: Well, I mean, I don't know for  
12 sure, but that appears to me to be an evidentiary issue  
13 that might impact the taking calculation.

14 MR. LEAVITT: That absolutely will. But right  
09:39:37 15 now as we're standing here before you today, this is  
16 causing our client significant prejudice. We have  
17 pushed this case as hard as we can. And the last  
18 hearing we said, Judge, can we start discovery  
19 immediately. And after that hearing we immediately  
09:39:49 20 drafted discovery and sent it over to the City.

21 We want to move forward. We need to move  
22 forward because if we're continually delayed in this  
23 case, our client is going to continually have to come  
24 out of pocket, and the City is going to cost him out of  
09:40:02 25 this property.

09:40:03 1 THE COURT: That goes to the third factor.

2 MR. LEAVITT: Of prejudice. And, well, and

3 irreparable harm to the landowner. The -- this is --

4 irreparable harm, your Honor, is, typically, if you

09:40:11 5 have a home on a farm, and the City is getting ready to

6 bulldoze it. And you say, wait a minute. They don't

7 have a right to do that. Can we stay this because if

8 you bulldoze the home then there's going to be

9 irreparable harm. I'm never going to get my home back.

09:40:26 10 THE COURT: Well, typically, you see

11 irreparable harm in all property cases specifically as

12 it deals with ownership. I understand that concept.

13 MR. LEAVITT: Absolutely. But on the flip

14 side of that, the City is not making that type of --

09:40:34 15 they got to shows irreparable harm in order to get a

16 stay.

17 THE COURT: Because Nevada -- I mean, the

18 Supreme Court time and time again has said real

19 property is unique. I get it.

09:40:44 20 MR. LEAVITT: Absolutely. But the City -- and

21 I want to come back to that. But the City's

22 irreparable harm is they're saying, Hey, they have to

23 litigate a case. That has never been held to be

24 irreparable harm. Okay.

09:40:51 25 The irreparable harm that we will suffer, your

09:40:53 1 Honor, is there's a chance of losing this unique parcel  
2 of property if this case is stayed and we're not  
3 permitted to move forward.

4 And as you well know, as we all well know from  
09:41:03 5 the first day of property law, we learned that every  
6 single parcel of property is unique. If we lose this  
7 property, it will be irreparable harm. And because of  
8 that, your Honor, a stay should certainly not be  
9 granted under these circumstances.

09:41:16 10 Your Honor, I want to move to the -- I'll move  
11 to the nunc pro tunc request unless you have any  
12 further questions on the stay issue.

13 THE COURT: Not at this time, sir.

14 MR. LEAVITT: Okay. On the nunc pro tunc  
09:41:30 15 side, your Honor, what we are seeing right now is that  
16 the City of Las Vegas drafted a 75-page -- or I'm  
17 sorry, a 25-page findings of facts and conclusions of  
18 law from the petition for judicial review. And much of  
19 that language wasn't entirely necessary in the petition  
09:41:46 20 for judicial review. Okay.

21 Now, what the City is trying to do is, and  
22 you've seen it here and you've argued with -- or not  
23 argued, but you had a dialogue with Mr. Ogilvie at one  
24 of the last hearings where it was explained very  
09:42:01 25 clearly on the record that your intent was not to apply

09:42:03 1 the petition for judicial review order to the inverse  
2 condemnation case.

3 THE COURT: It was really that simple.

4 MR. LEAVITT: Okay.

09:42:08 5 THE COURT: Hopefully, I was very clear on  
6 that.

7 MR. LEAVITT: I get it that's simple. It was  
8 put in a minute order, and it was put in a written  
9 order, and a notice of entry of order was made. But  
09:42:17 10 the City is still trying to do it. The City is still  
11 trying to say that the petition for judicial review  
12 order applies in this inverse condemnation action  
13 despite the clear distinction between the two type of  
14 cases.

09:42:27 15 The rule on --

16 THE COURT: You know why that's important?  
17 Because, I mean, the only reason I think it's a much  
18 bigger issue in this case is the fact that I heard both  
19 the petition for judicial review, now I'm hearing the  
09:42:39 20 inverse condemnation action. And so I look at it from  
21 this perspective. That I just want to make sure the  
22 record is really clear. I understand the different  
23 standards. I understand the thrust and focus of what  
24 my review was when it came to the petition for judicial  
09:42:56 25 review. I get that.

09:42:59 1 Just as important, too, we have a severed  
2 case. And it specifically deals with an issue  
3 pertaining to inverse condemnation. I get that. A  
4 taking of real property by the government. Totally  
09:43:14 5 different standards involved. Right?

6 MR. LEAVITT: Absolutely.

7 THE COURT: So I even used examples I think at  
8 the prior hearing. Say if you had an administrative  
9 decision in a worker's comp case, would that have some  
09:43:26 10 impact on the case that goes to trial? No. It  
11 wouldn't. You know. Because it's a different standard  
12 there.

13 But anyway, I get it, I do, as far as that's  
14 concerned. But, I mean, what specifically are you  
09:43:42 15 asking me to do?

16 MR. LEAVITT: Well, here's the concern that we  
17 have. And if we go back, your Honor, to the very first  
18 day when this case was filed and the City first  
19 requested that we dismiss our inverse condemnation  
09:43:52 20 claim and bring it before another judge, remember the  
21 argument that we made? We said, no, Judge, we want you  
22 to hear both the petition for judicial review and the  
23 inverse condemnation case.

24 And it's been phenomenal that that's what's  
09:44:03 25 occurred and what you ordered, is because now you're



09:44:06 1 able to see that you, having heard the facts in the  
2 petition for judicial review and heard the facts in the  
3 inverse condemnation case and read the case law from  
4 both of these two different types of cases, you know  
09:44:15 5 the difference and you understand the difference very  
6 well.

7 Our concern is that what the City is going to  
8 continually try to do, whether it's in front of the  
9 Nevada Supreme Court or in front of the Court of  
09:44:26 10 Appeals, is continually try and bring findings that you  
11 made in the petition for judicial review into the  
12 inverse condemnation case even though that's never what  
13 you intended. And that's been made very, very clear on  
14 the record.

09:44:40 15 And the nunc pro tunc that the Nevada Supreme  
16 Court has adopted in both the Mack case and the Findlay  
17 case says that the Court has the inherent authority to  
18 nunc pro tunc an order to make sure that his intent is  
19 put forward not only in that order but understood in  
09:44:54 20 the future.

21 And so what we've asked is we've submitted  
22 both of the recent orders from the petition for  
23 judicial review, the findings of fact and conclusions  
24 of law, and we've highlighted those portions that the  
09:45:05 25 City is trying to bring over from the PJR into the

09:45:08 1 inverse condemnation case which are absolutely not even  
2 necessary or germane to the petition for judicial  
3 review case.

4 The petition for judicial review is a very  
09:45:18 5 clean case. It said, is there their substantial  
6 evidence to uphold the City's denial of the 35-acre  
7 application? And so all that has to be done in that  
8 order, and if you read the order, the City's order that  
9 the City prepared with that highlighted language out,

09:45:31 10 it's very clean and very straightforward. Doesn't  
11 impact the petition for judicial review findings at  
12 all. There's still findings there that there was  
13 substantial evidence to deny the 35-acre application.  
14 But what it does is it takes out those portions that  
09:45:46 15 the City is trying to apply in the inverse condemnation  
16 action and furthers your intent of those orders for  
17 them not to apply in the inverse condemnation case.

18 And so we've submitted to you, it's Exhibit  
19 No. 2 and Exhibit No. 4. Exhibit No. 2 is the original  
09:46:03 20 findings of facts and conclusions of law which had --  
21 which removed those five specific paragraphs that the  
22 City had put in there before just actually overtly  
23 dismissing the inverse condemnation case. And Exhibit  
24 No. 4 is the most recent order you entered denying the  
09:46:22 25 motion to reconsider or a motion for a new trial on the

09:46:25 1 petition for judicial review.

2 Both of them have highlighted language that we  
3 think if taken out will, number one, further the intent  
4 of the Court and, number two, make it very clear that  
09:46:35 5 they did not intend to apply to the inverse  
6 condemnation case.

7 Now, the City's only opposition to that --

8 THE COURT: I don't think I have Exhibit 4 in  
9 my packet.

09:46:47 10 MR. BICE: That's in their reply brief.

11 MR. LEAVITT: Yeah. It's attached to the  
12 reply brief. Sorry.

13 Thank you, Mr. Bice.

14 THE COURT: I do have it.

09:46:55 15 MR. LEAVITT: Okay. But here's the City's  
16 only response as to that, your Honor, is the City says  
17 that we're trying to get another bite at the apple on  
18 the motion for new trial, a motion for reconsideration.  
19 That couldn't be further from the truth.

09:47:08 20 We're not asking you to change your findings  
21 in the petition for judicial review. You can keep your  
22 findings exactly what they are. Exactly what they were  
23 intended to be. Obviously, you have the authority to  
24 do that. I don't need to tell you, you can do that,  
09:47:21 25 but that's -- and that's what -- and those orders can

09:47:24 1 stay exactly how they are, but we remove the language  
2 that the City's trying to put into this inverse  
3 condemnation case. Again, furthering the intent of the  
4 Court.

09:47:33 5 So we'd ask, your Honor --

6 THE COURT: For example, and I just want to  
7 make sure I understand --

8 MR. LEAVITT: Sure.

9 THE COURT: -- the orders. I'm looking at  
09:47:39 10 Exhibit 4 page 9.

11 MR. LEAVITT: Okay.

12 THE COURT: I see certain portions were placed  
13 in yellow.

14 MR. LEAVITT: And absolutely. And then if you  
09:47:50 15 turn to page 10, there's some -- there's some language  
16 there. And if you look at Exhibit No. 2, there's a lot  
17 more, your Honor. To be frank, there's a lot more in  
18 Exhibit No. 2 which is attached to our original  
19 opposition and our counter motion for nunc pro tunc

09:48:05 20 order. That Exhibit No. 2 has quite a bit of yellow  
21 highlighted language which we believe is not necessary  
22 or germane at all --

23 THE COURT: So you're --

24 MR. WATERS: -- to the order.

09:48:16 25 THE COURT: You're saying the yellow

09:48:18 1 highlighted language wouldn't be necessary to the  
2 order?

3 MR. LEAVITT: Yeah. And here's how -- this is  
4 how I really looked at it, your Honor. This is what  
09:48:23 5 really convinced me is I read the order without the  
6 yellow language.

7 And I said, Wow, this is a clean order. It  
8 furthers the intent of the Court. It doesn't change  
9 the final finding. And it -- and it isolates that  
09:48:38 10 petition for judicial review order specifically to the  
11 petition for judicial review cause. And makes it so  
12 that -- those findings do not apply to the inverse  
13 condemnation case which was never the intent of this  
14 Court.

09:48:52 15 Any further questions, your Honor, on the nunc  
16 pro tunc or the City's request for a stay?

17 THE COURT: No, sir.

18 MR. LEAVITT: Thank you, your Honor.

19 THE COURT: Sir.

09:49:07 20 MR. OGLIVIE: Your Honor, since the Court is  
21 looking at the order, the order that -- which is  
22 Exhibit 4, that the developer is seeking to strike  
23 language from, I have a couple of observations.

24 It's ironic, to say the least, and probably  
09:49:30 25 disingenuous for the developer to now be saying that

09:49:33 1 the highlighted portions of the findings of facts and  
2 conclusions of law regarding plaintiff's motion for a  
3 new trial, motion to alter or amend and/or reconsider  
4 the findings of facts and conclusions of law, and  
09:49:57 5 motion to stay pending Nevada Supreme Court directives  
6 should be stricken because this is the order, the  
7 findings of fact and conclusions of law that the  
8 developer submitted to the Court.

9           So this is not a matter of a motion for  
09:50:15 10 reconsideration in which the developer has submitted  
11 findings and conclusions that it may disagree with but  
12 were part of the Court's ruling. This is findings of  
13 fact and conclusions of law. And to be clear, what the  
14 order -- what the developer is seeking is for the Court  
09:50:39 15 to strike conclusions of law that the developer  
16 included in the proposed order. It's not saying we  
17 disagree with this. The developer is now saying the  
18 Court did not intend this.

19           THE COURT: And, Mr. Ogilvie, I'll just tell  
09:51:00 20 you this is kind of how I'm looking at it. I mean,  
21 when I denied the petition and I made a determination  
22 that there was substantial evidence in the record to  
23 support the decision of the city council, I had to make  
24 specific findings as far as that is concerned.

09:51:19 25           And for the most part, I mean, I'm going to

09:51:21 1 look at it, but I'm going to stand by probably my  
2 findings. But here's my point. Either I'm right or  
3 wrong as to how those are being used; right? And I  
4 think we have a fairly clear record in that regard.

09:51:34 5 Because after evaluating all the issues, I  
6 made a determination that there were two standards  
7 applicable here. And the thrust and scope of my  
8 decision was very limited as to what was before the  
9 city council. And I made a determination that there  
09:51:49 10 was substantial evidence in the record to support their  
11 decision.

12 And then I walk away. And I take that hat  
13 off. I take off my Chicago Cubs hat, and I put on my  
14 Chicago White Sox hat. And I move over to the inverse  
09:52:02 15 condemnation case. And because I'm a fan of both teams  
16 being a native of Chicago. And that's kind of what I  
17 did. I put my White Sox hat on. And now I have a  
18 different ball game to deal with. And that ball game  
19 happens to be an inverse condemnation and whether  
09:52:16 20 there's a taking or not.

21 And that's kind of how I look at it. And I  
22 don't mind teeing it up for the Supreme Court in that  
23 regard. Because they can say, Look, you thought about  
24 it, and you're right or wrong. And maybe we need some  
09:52:29 25 new law in this area. I have no problem with that at

09:52:32 1 all. I mean, I really and truly don't.

2 But I understand your position, sir, I do.

3 And I don't take that cavalierly changing the findings

4 I made. So I'll look at it, and I'll make a decision.

09:52:45 5 But I'm just wondering if the record is clear enough as  
6 it currently stands. Because one thing I don't want to  
7 do, I don't want to make any decisions that impacts the  
8 right of the City as it relates to my decision on the  
9 petition for judicial review.

09:53:00 10 Got it?

11 MR. OGLIVIE: Thank you, your Honor.

12 THE COURT: Yeah.

13 MR. OGLIVIE: I want to make two points.

14 THE COURT: Okay. With that, that probably  
09:53:06 15 helps you narrow the focus a lot.

16 MR. OGLIVIE: The Court's talking about  
17 findings. These aren't just findings, these are  
18 findings of facts. These are conclusions of law.

19 THE COURT: I understand. That too. We can  
09:53:17 20 put that together. But go ahead. What are your big  
21 concerns?

22 MR. OGLIVIE: Again, what the developer is  
23 seeking -- part of what the developer is seeking to  
24 remove from both the November, 2018, findings of fact  
09:53:30 25 and conclusions of law and the May 7 findings of fact



09:53:34 1 and conclusions of law are conclusions that support the  
2 Court's determination on the petition for judicial  
3 review.

4 One of the basis that the Court made that  
09:53:44 5 determination that the Court denied the developer's  
6 petition for judicial review is the conclusion of law  
7 that the developer does not have vested rights to have  
8 the 35-acre applications approved.

9 And not only was that stated in the November,  
09:54:05 10 2018, findings of fact, it was stated in the May 7,  
11 2019, findings of fact and conclusions of law as a  
12 conclusion of law, paragraph 22.

13 So that's not -- it's not a matter of, well,  
14 the Court is better educated now, because the Court  
09:54:24 15 wasn't any better -- isn't any better educated today  
16 than it was on May 7 at the time that these conclusions  
17 were included in that -- those findings of fact and  
18 conclusions of law.

19 And addressing the Court's -- I get -- there  
09:54:45 20 is no dispute, and I'm confused as to why the developer  
21 believes there's this dispute. There is no dispute  
22 that the Court has different burdens that it applies  
23 here. But findings of fact and conclusions of law, and  
24 in this case it is conclusions of law, those do not  
09:55:08 25 change.

09:55:09 1 Now, the standard to which the Court applies  
2 those conclusions, that is different. Absolutely. But  
3 you can't find on the one hand that it -- on the one  
4 hand being the petition for judicial review that the  
09:55:30 5 law says this. That the law says that the City has --  
6 had lawful -- exercised a lawful -- its lawful  
7 discretion and made a determination and conclusion in  
8 the inverse condemnation claims that the City did not  
9 exercise.

09:55:54 10 THE COURT: Well, here's my question in that  
11 regard. And this is what I really thought about, and I  
12 think this is an important issue. My job and  
13 responsibility sitting in a capacity as a trial judge  
14 reviewing the decisions of any administrative agency,  
09:56:12 15 city council, Clark County Commission, is very limited;  
16 right? And we can all agree. And I look at a petition  
17 for judicial review. And all I'm required to do is  
18 this: Number one, make sure there's no error of law.  
19 Of course, we can all agree to that.

09:56:29 20 But just as important too, when it comes to  
21 factual issues I'm not to sit there and weigh and  
22 balance the decision-making of the city council. All  
23 I'm to do -- and even question that to a certain  
24 extent. I understand what my role is. I'm just there  
09:56:44 25 to say, Okay, is there enough evidence here? Is it

09:56:47 1 substantial? Meaning, not a preponderance of the  
2 evidence. That is not the standard. That's a much  
3 different evidentiary standard.

4 Because, for example, in looking at those  
09:57:00 5 types of burdens on all the parties and also as far as  
6 the role that the trial court is concerned, how does  
7 that even apply to the inverse condemnation case where  
8 the plaintiff has a burden of proof to establish by a  
9 preponderance of the evidence? Because I'm wondering  
09:57:21 10 with a lower standard, how would that even come in?

11 Because, for example, the factual  
12 determination I would make in a petition for judicial  
13 review involves a much different standard than a  
14 factual determination I would make in a bench trial  
09:57:39 15 based upon preponderance of the evidence. They're  
16 different standards. They just are.

17 MR. OGLIVIE: Okay. Let me. I have two  
18 responses to that, your Honor.

19 THE COURT: Yes.

09:57:48 20 MR. OGLIVIE: I'm going to address the second  
21 one first.

22 THE COURT: Right.

23 MR. OGLIVIE: Again, the Court is referencing  
24 findings of fact. We are not addressing findings of  
09:57:58 25 fact here in this countermotion for order nunc pro

09:58:01 1 tunc. We are addressing conclusions of law. And I  
2 want to focus in on one in particular.

3 And that is, again, conclusion of law 22 in  
4 the proposed findings of fact and conclusions of law  
09:58:17 5 that the developer submitted.

6 THE COURT: Which exhibit is that again?

7 MR. OGLIVIE: That's Exhibit 4.

8 THE COURT: Okay. What page are you on, sir?

9 MR. OGLIVIE: Page 9.

09:58:38 10 THE COURT: Highlighted, of course, Yes, sir.

11 MR. OGLIVIE: Okay. I'm going to address the  
12 paragraphs 22 through 25. But I want to focus first on  
13 22 because this is -- this really hits the head.

14 Paragraph 2 says this Court correctly  
09:58:55 15 concluded that the developer does not have vested  
16 rights to have the 35-acre applications approved. And  
17 neither Judge Smith's orders nor Supreme Court orders  
18 of affirmance alter that conclusion.

19 Now, if we just take the first half of that,  
09:59:10 20 the correct -- the Court correctly concluded that the  
21 developer does not have vested rights to have the  
22 35-acre applications approved.

23 What the developer is suggesting is that is an  
24 appropriate -- that may have been an appropriate --  
09:59:23 25 they disagree with it. But that may have been an

09:59:28 1 appropriate finding on the petition for judicial  
2 review, but that is not -- this is their argument.  
3 That's not an appropriate conclusion of law as it  
4 relates to the inverse condemnation claims because the  
09:59:43 5 burdens are different. The burdens have nothing to do  
6 with whether or not a conclusion of law is the law of  
7 the case.

8 THE COURT: Well, here's my question. And  
9 understand I wasn't an inverse condemnation real  
10:00:00 10 property lawyer. But aren't we talking about different  
11 issues? Because my review is very limited. They have  
12 a companion case now that's before me. And it's  
13 focusing on the entire actions of the city council and  
14 whether they result in a taking that they should be  
10:00:21 15 compensated for.

16 MR. OGLIVIE: Okay.

17 THE COURT: And that's a -- that's a different  
18 animal. And so, for example, they might not have a  
19 vested right to have the applications approved based  
10:00:33 20 upon the limited judicial review in the petition for  
21 judicial review. That's a different animal than  
22 ownership of 35 acres of property, which as a matter of  
23 law they have vested property interest, and the entire  
24 actions of the City council despite the zoning for the  
10:00:57 25 35-acres precludes any and all development. And I

10:01:00 1 think that's the case in a nutshell. Have I missed  
2 anything?

3 MR. LEAVITT: That's right, your Honor.

4 THE COURT: Yeah. I mean, that's -- so those  
10:01:08 5 are different -- different cases. Completely  
6 different.

7 MR. OGLIVIE: Absolutely, those are different  
8 cases. And that goes to the City's position on the  
9 countermotion that the Court approved last month that  
10:01:22 10 the Court should not be granting leave to amend to  
11 include these different cases which exists in different  
12 departments. And I'm not going to reargue that, your  
13 Honor, but the Court raised it, and so I'm addressing  
14 it. Those are different cases.

10:01:39 15 But the point that I want to make -- two  
16 points that I want to make. First of all, the  
17 operative pleading before this Court that the Court --  
18 that the City moved for judgment on has an inverse  
19 taking claim -- has inverse taking claims related to  
10:01:59 20 one action. One action only. And that was the denial  
21 on June 21, 2017, of the four land use applications.  
22 That's the only taking that is alleged in the operative  
23 pleading before this Court on which the City moved for  
24 judgment on the pleadings. The Court denied that  
10:02:25 25 motion.

10:02:27 1 The City submits that -- well, the City  
2 doesn't submit. The City is going to file a writ  
3 petition to the Nevada Supreme Court challenging that  
4 ruling. And, again, the ruling is only whether or not  
10:02:44 5 the action by the City on June 21, 2017, constituted a  
6 taking. That was the only issue. That's the only  
7 allegation in the writ petition -- in the first amended  
8 complaint, the operative pleading. And that's what the  
9 motion for judgment on the pleadings is based on. And  
10:03:05 10 that is the basis for the writ petition.

11 THE COURT: I understand.

12 MR. OGLIVIE: Secondly, the factual  
13 findings -- well, no. Secondly, the different standard  
14 by the -- that the Court applies does not change  
10:03:28 15 things. It doesn't even change findings.

16 The Court may find in a plaintiff's personal  
17 injury case that there is -- that the defendant  
18 probably or -- by a preponderance of any evidence it's  
19 been established that the defendant ran the red light,  
10:04:01 20 that's a finding of fact. And, yes, there is a  
21 different standard applied to that determination in a  
22 criminal case which is beyond a reasonable doubt.

23 So, yes, there are different --

24 THE COURT: Well, because it's a higher  
10:04:18 25 standard --

10:04:19 1 MR. OGLIVIE: Right.

2 THE COURT: -- in a criminal case.

3 Potentially it could have preclusive effect in the

4 underlying case depending if there's a full trial on

10:04:27 5 the merits. I get that. That's a different standard.

6 MR. OGLIVIE: But that's not what we are

7 addressing here, your Honor. We are addressing -- what

8 the -- what the developer is positioning the Court to

9 do is --

10:04:40 10 THE COURT: You have to understand I'm not  
11 convinced I'm going to change.

12 MR. OGLIVIE: I get it. I get it.

13 THE COURT: Yeah.

14 MR. OGLIVIE: I understand.

10:04:44 15 THE COURT: Yeah.

16 MR. OGLIVIE: I'm just making --

17 THE COURT: I'm just looking at it from this  
18 perspective. Because we're using a term of art "vested  
19 property rights". It seems to me that the vested

10:04:54 20 property right as it relates to the application  
21 procedure before the building commission and the city  
22 council is a much different and distinct property right  
23 as determined by the United States Supreme Court as it  
24 relates to a taking of property by a municipality or  
10:05:11 25 government entity.



10:05:12 1 MR. OGLIVIE: And that's what the developer  
2 would have this Court believe. And that is one of the  
3 reasons that it's imperative that we file this writ.  
4 Because the vested rights are vested rights. They  
10:05:22 5 don't differ. There aren't different standards for  
6 vested rights. There aren't different types of vested  
7 rights.  
8 Vested rights in property are the same whether  
9 it's a regulatory taking, a physical taking, a land use  
10:05:42 10 applications. There is no difference between vested  
11 rights. And what the developer wants to do is to argue  
12 in the inverse condemnation action that --  
13 THE COURT: Is there any case law out there  
14 that draws a distinction between the issue I raised?  
10:06:04 15 Because it seems to me that there would be a  
16 distinction between, say, a one-off application denied  
17 by an administrative body versus a taking of real  
18 property based upon actions of a municipality or a  
19 governmental entity? Am I missing something there?  
10:06:28 20 MR. LEAVITT: There's three cases on that,  
21 your Honor.  
22 THE COURT: Okay. Do they recognize the  
23 distinction I'm discussing?  
24 MR. LEAVITT: They do, your Honor.  
10:06:34 25 THE COURT: Okay.

10:06:34 1 MR. LEAVITT: And I can explain that if you'd  
2 like after Mr. Ogilvie --

3 THE COURT: I haven't read them, but it just  
4 makes sense to me there might be a difference.

10:06:43 5 MR. LEAVITT: If you want, your Honor, I could  
6 mention them. It's Sisolak case, the Del Monte Dunes  
7 case, and the Lucas case.

8 THE COURT: Okay.

9 MR. OGLIVIE: Your Honor, there's legions of  
10:06:54 10 federal case law that says if the -- if the agency has  
11 lawfully exercised its discretion, there cannot be a  
12 regulatory taking. Doesn't -- I mean, there isn't  
13 any -- again, there's no difference between vested  
14 rights and vested rights.

10:07:18 15 Vested rights are what are required in order  
16 for a taking to occur, a regulatory taking as opposed  
17 to a physical taking. And then it's another issue that  
18 relates to the arguments at the last hearing because  
19 the developer wants to focus the Court on Sisolak,  
10:07:38 20 which is a physical taking, which there isn't any  
21 physical taking at issue in this case. It's only  
22 regulatory taking. And for a regulatory taking to  
23 occur, there cannot be -- not actually -- there must be  
24 vested rights.

10:08:03 25 So again, the developer wants to have you

10:08:06 1 remove these conclusions of law --

2 THE COURT: Here's my question. I haven't  
3 read Sisolak in a while, but I do remember reading it.  
4 But isn't the regulations or lack thereof, doesn't that  
10:08:18 5 result in a physical taking? Is that the distinction?

6 MR. OGLIVIE: No. The physical taking is an  
7 invasion of the property. That is not what is at issue  
8 here. This is a regulatory taking.

9 THE COURT: I mean, in Sisolak the county  
10:08:39 10 commission didn't invade Mr. Sisolak's property, right?

11 MR. WATERS: Yeah.

12 MR. OGLIVIE: The invasion was of the aircraft  
13 flying over -- or the prohibition of the height  
14 restriction -- on the height, the prohibition of the  
10:09:01 15 height development based on the aircraft flying, and  
16 the aircraft flying was the physical invasion of the  
17 Sisolak property. No such physical invasion is at  
18 issue before the Court.

19 So, again, the Court -- the developer wants to  
10:09:21 20 be able to argue if the Court removes paragraph 22 of  
21 the conclusions of law of the May 7 findings of fact  
22 and conclusions of law, the developer wants to have the  
23 ability to argue, in fact, it did have vested rights.  
24 It may not have had vested rights to have the 35-acre  
10:09:49 25 applications approved for purposes of a judicial

10:09:52 1 review, but it does have vested rights to have the  
2 35-acre applications approved for purposes of inverse  
3 condemnation. It cannot be so, your Honor. That is a  
4 conclusions of law that would be completely turned  
10:10:06 5 inside out if the Court granted the developer's  
6 countermotion for nunc pro tunc order.

7 Another conclusion of law is at paragraph 23.  
8 The developer has failed to show that the Court's  
9 conclusion that sufficient privity exists to bar the  
10:10:30 10 developers' petition for -- under the doctrine of issue  
11 preclusion was clearly erroneous. It doesn't matter  
12 whether the Court is applying the standard of abuse of  
13 discretion on a petition for judicial review or a  
14 preponderance of the evidence under an inverse taking  
10:10:50 15 claim, that conclusions of law exists on both sides.  
16 The Court can't make a determination for purposes of  
17 the petition for judicial review that sufficient  
18 privity exists to bar the developer's petition under  
19 the law -- doctrine of preclusion, issue preclusion and  
10:11:12 20 then make the absolute opposite conclusion that, in  
21 fact, there isn't sufficient privity.

22 THE COURT: I understand that. I do.

23 MR. OGLIVIE: Okay.

24 THE COURT: Yeah.

10:11:25 25 MR. OGLIVIE: And so and that goes exactly to

10:11:27 1 the rest of the paragraphs that the developer is  
2 seeking to strike.

3 And the reason -- and I said this in my  
4 opening remarks. The reason that the developer wants  
10:11:38 5 this Court to remove those conclusions of law is  
6 notwithstanding the developer's arguments to the  
7 contrary, and I submit the developer is misrepresenting  
8 the law, notwithstanding that misrepresentation of the  
9 law, the developer knows that the Nevada Supreme Court  
10:11:56 10 is going to find exactly that if there is no vested  
11 rights to have the 35-acre applications approved that  
12 means as a matter of law there can be no regulatory  
13 taking and the inverse condemnation claims must be  
14 denied.

10:12:21 15 Now, addressing some of the other arguments  
16 raised by Mr. Leavitt, his first argument was there's  
17 contested facts. The City -- the City's even conceded  
18 that there are contested facts. There are no contested  
19 facts for purposes of the motion for judgment on the  
10:12:42 20 pleadings.

21 As Mr. Leavitt, to his credit, conceded, it  
22 was in response to the developer's countermotion for  
23 summary judgment that the City said you can't grant --  
24 you can't grant summary judgment, Judge. There are  
10:13:00 25 contested issues. Those contested issues are not

10:13:04 1 present in the motion for judgment on the pleadings.

2 The facts are not in dispute.

3 The facts are that four applications were  
4 submitted to the City for approval by the developer.

10:13:21 5 The City denied those applications.

6 The developer challenged that denial and  
7 brought it to this Court on a petition for judicial  
8 review.

9 The Court reviewed the record which  
10:13:37 10 contained -- which the findings that the Court entered  
11 in November 2018 state the findings from the record.

12 And you don't hear the developer here arguing  
13 that there was no basis for those findings. Those  
14 findings are not disputed. And it's those findings on  
10:14:02 15 which the motion for judgment on the pleadings is  
16 founded.

17 The motion for judgment on the pleadings is  
18 entirely based on the Court's findings of fact and  
19 conclusions of law entered in November 2018. And it is  
10:14:21 20 the findings of fact -- the developer contests some  
21 conclusions of law, but the findings of fact are not in  
22 dispute. The only findings on which the motion for  
23 judgment on the pleadings are based are those findings  
24 set forth in the findings of fact and conclusions of  
10:14:46 25 law in November 2018, and they're undisputed. We're

10:14:51 1 not going into these other issues of -- of these other  
2 claimed takings that if the developer has asserted in  
3 its countermotion and is attempting to assert in its  
4 second amended complaint. Those aren't at issue.

10:15:11 5 That's -- those facts are contested, whether  
6 or not something constituted a taking that was not  
7 before the city council on June 21, 2017. Those facts  
8 are disputed.

9 But the facts relevant to the petition for  
10:15:26 10 judicial review, they are not in dispute. And the  
11 facts that the motion for judgment on the pleadings,  
12 which is based on the Court's findings on the petition  
13 for judicial review are not in dispute. And,  
14 therefore, the Supreme Court will accept this writ  
10:15:46 15 because the facts are not in dispute.

16 I made -- Ms. Leonard advised me I made a  
17 mistake in my opening comments that I said this --  
18 these claims for inverse condemnation are only ripe if  
19 an application -- or if the City approves the  
10:16:16 20 application for major modification. I intended to say  
21 and should have said that the inverse condemnation  
22 claims are only ripe if a major -- application for  
23 major modification is submitted and denied, not  
24 approved. Obviously, it is -- if it is denied, then  
10:16:37 25 the case would be ripe.

10:16:40 1 But it doesn't matter, denied or approved, the  
2 fact of the matter remains. The developer has  
3 withdrawn the only application for a major modification  
4 that it ever submitted. And as I argued in two prior  
10:16:57 5 hearings, nothing has prevented the developer from  
6 submitting another application for major modification.  
7 Nothing has prevented it from doing so from the day  
8 that it withdrew its prior application for major  
9 modification until today, and it refuses to do so again  
10:17:21 10 simply to support its tactical litigation decisions.  
11 That's the only reason that the developer refuses to  
12 submit another application for major modification.  
13 The developer argues that, yes, the City may  
14 have had lawful discretion to deny the applications,  
10:17:55 15 but the City does not have -- and this was the  
16 developer's argument, the City does not have the  
17 discretion to deny all use of the landowner's land and  
18 deny just compensation. And that's not the facts  
19 before this Court.  
10:18:10 20 The City has not denied all use of the  
21 landowner's land, of the developer's land. The City  
22 simply denied four land use applications. That's not  
23 denying all use. The developer purchased the golf  
24 course. The developer has the ongoing ability and  
10:18:33 25 right to use the land as a golf course. So to argue



10:18:39 1 that the City has somehow denied all use of the  
2 landowner's land is simply unfounded.

3 If the developer has -- this is an important  
4 part. So the developer is now in its opposition to the  
10:19:02 5 motion to stay argued only the merits of the writ  
6 petition. The developer today has added the second  
7 argument, the second of the four Hansen factors. And  
8 that is that the developer will experience irreparable  
9 harm or suffer serious harm. Because the developer

10:19:30 10 argues the City is trying to delay the developer out of  
11 this property. The City is not trying to do anything.  
12 As the Court will recall, the City previously approved  
13 the land use applications relative to the 17-acre  
14 parcel. So the City is just -- is not taking a  
10:19:51 15 position on who is right and who is wrong in this. The  
16 City is simply acting within its lawful discretion and  
17 made a determination that these land use applications  
18 should not be approved.

19 And that has steam rolled now for two years  
10:20:13 20 into this litigation. And the City hasn't taken any  
21 action to try to delay the developer, as the developer  
22 argues, out of this property.

23 The developer also argued we have pushed this  
24 as fast as we can. Well, no, it actually hasn't. It's  
10:20:40 25 disingenuous for the developer to stand up and argue as

10:20:45 1 loudly as it does about the prejudice that will inure  
2 to it as a result of the imposition of the stay when  
3 the developer itself requested in December 2018, and  
4 just four months ago in January in this Court, argued  
10:21:05 5 for a stay of these proceedings pending the  
6 adjudication of the appeal of the Crockett decision.

7 So for the developer to come in now, four  
8 months later, and say it is going to be irreparably  
9 harmed if the Court grants a stay of these proceedings,  
10:21:26 10 when it just four months ago was arguing for a stay of  
11 these proceedings, is absolutely disingenuous, and it  
12 does not satisfy the third Hansen factors. And the  
13 developer doesn't address the other two Hansen factors.

14 So, again, your Honor, all we're here for is a  
10:21:53 15 stay. As the Court recognized in its earlier  
16 conversation with me, the Supreme Court, Nevada Supreme  
17 Court is in the position to make a determination  
18 whether or not the motion for judgment on the pleadings  
19 should have been granted whether the Court was right or  
10:22:10 20 whether the Court was wrong. The Nevada Supreme Court  
21 is going to make that determination. That's not at  
22 issue before the Court today.

23 The only matter at issue before the Court  
24 today on the City's motion is whether or not a stay  
10:22:22 25 should be issued pending that writ petition. And the

10:22:28 1 City submits that in its briefs and in the arguments  
2 today, it's established that the Hansen factors have  
3 been satisfied, and that this Court should issue a  
4 stay. That's all it's asking. Simply issue a stay  
10:22:47 5 pending the adjudication of the City's writ petition.

6 Does the Court have any questions?

7 THE COURT: No, sir. I was listening.

8 MR. OGLIVIE: Thank you.

9 THE COURT: Anything else I need to know?

10:22:59 10 MR. BICE: Yes, your Honor. I'm going to  
11 address the opposition to the nunc pro tunc order.

12 MR. LEAVITT: Your Honor, I just have to  
13 address -- if you want me to address those three cases  
14 that Mr. Ogilvie brought up, so I can --

10:23:06 15 THE COURT: Yeah, you can do it.

16 And then, of course, sir, you can go ahead and  
17 deal specifically with the opposition to the nunc pro  
18 tunc.

19 MR. LEAVITT: You want him to go first and  
10:23:13 20 then I can go after?

21 THE COURT: No. You can just go ahead. You  
22 just want to give me some information.

23 MR. LEAVITT: Yeah. Just very quickly. The  
24 cases where the issue of this vested rights issue has  
10:23:24 25 come up in the context of a PJR versus an inverse

10:23:27 1 condemnation action, your Honor, first of all is the  
2 Sisolak case. In the Sisolak case, the Nevada Supreme  
3 Court said that the government does have the discretion  
4 to exercise -- or to deny a land use application. But  
10:23:37 5 if in exercising that discretion and in applying valid  
6 zoning ordinances there is a taking, then just  
7 compensation must be paid.

8           So even though the government has discretion  
9 to deny a land use application, even though they can  
10:23:53 10 come in here and say you don't have the vested right to  
11 have a land use application approved, if they deny that  
12 land use application and it results in a taking,  
13 according to the Nevada Supreme Court, just  
14 compensation must be paid.

10:24:04 15           In the City of Monterey versus Del Monte Dunes  
16 case the same rule was adopted by the United States  
17 Supreme Courts. The United States Supreme Court found  
18 that there was a potential taking there, even though  
19 the government had the right to deny the land use  
10:24:16 20 application.

21           In the Lucas versus South Carolina Coastal  
22 Commission case, Judge, the landowner admitted that the  
23 government had the discretion to deny his land use  
24 application. And the United States Supreme Court still  
10:24:28 25 held that there was sufficient facts in that case to

10:24:31 1 find a taking. So there's three cases right on point  
2 where -- which absolutely affirmed what you've said  
3 here today. That the property right in a PJR hearing  
4 is very different than a property right in an inverse  
10:24:43 5 condemnation case.

6 Now, the government has also said that the  
7 only action that we've alleged that amounts to a taking  
8 is a denial of the four applications on the 35-acre  
9 property case. Your Honor, that's absolutely untrue.  
10:24:53 10 And, in fact, we filed a motion to amend the pleadings  
11 to add all of the actions the City engaged in, and you  
12 granted that motion.

13 They denied the land use applications on this  
14 property. They denied the master development  
10:25:08 15 agreement. They denied the fence application. They  
16 denied the access application. They even adopted two  
17 bills that even the city council people said are the  
18 Yohan Lowie bills to prohibit further development of  
19 this property.

10:25:20 20 So for the government to stand at this podium  
21 and say that our case that we've brought only alleges  
22 that four applications have been denied is absolutely  
23 untrue. We've asserted 12 government actions that  
24 amount to a taking. You granted our request to amend  
10:25:35 25 our pleadings to include all of those actions, and they

10:25:37 1 are before the Court right now.

2 The government also brought up the fact that  
3 we asked for a stay previously. What the government is  
4 forgetting to tell you.

10:25:46 5 MR. OGLIVIE: Your Honor, I object. If -- if  
6 he's going -- he was providing the Court with some  
7 information about three cases he has the opportunity to  
8 argue in response on the motion -- the countermotion,  
9 but he's now re-arguing the --

10:25:59 10 THE COURT: And as far as the stay in the  
11 other cases, I get it.

12 MR. LEAVITT: Yeah. Your Honor, we asked for  
13 a motion for summary judgment. So that's clear  
14 indication that we're ready to move forward. And the  
10:26:08 15 stay was on the petition, to wait for the petition for  
16 judicial review.

17 THE COURT: I understand. I do.

18 MR. LEAVITT: So that was, in my opinion, a  
19 strong misdirection.

10:26:15 20 Last thing is these are the cases where the  
21 government said that these cases were all physical  
22 appropriation cases. In the Sisolak case, the physical  
23 taking was not the operative fact. It's exactly what  
24 you said. And in the Sisolak case the Nevada Supreme  
10:26:27 25 Court said that the operative taking fact was the

10:26:31 1 adoption of the ordinances. And the Nevada Supreme  
2 Court in a later decision called the Johnson decision  
3 clarified that and said the actual physical use of the  
4 air space by the airplanes was inconsequential. That  
10:26:45 5 the taking act was the adoption of the ordinances.  
6 That's why they called the Sisolak case a per se  
7 regulatory taking case, not just a physical taking  
8 case.

9 Thank you, your Honor.

10:26:57 10 THE COURT: Thank you, sir.

11 Mr. Bice, sir.

12 MR. BICE: Thank you, your Honor. Your Honor,  
13 I will be brief. If you look, your Honor, this  
14 purported nunc pro tunc order is -- it's just a  
10:27:16 15 disguised motion for you to reconsider now a third time  
16 the Court's prior rulings.

17 A nunc pro tunc order is supposed to be  
18 something where the Court's prior order doesn't reflect  
19 its true intent, and so, therefore, it needs to go back  
10:27:29 20 and basically correct the true intent.

21 Their request is that you essentially reverse  
22 yourself particularly on two significant issues.

23 One, Mr. Ogilvie addressed this vested rights  
24 issue.

10:27:41 25 And two, the issue about claim preclusion or

10:27:48 1 issue pollution, which we have raised. My client  
2 intervened in this action specifically to assert its  
3 rights under the doctrine of issue preclusion. And  
4 this Court agreed with that, and it ruled in my  
10:27:58 5 client's favor on that very point.

6 And now if you look at what they're -- they're  
7 not asking you -- they're not saying that your intent  
8 isn't clearly expressed in the order. They're just  
9 asking you to change it, to basically reverse yourself  
10:28:10 10 on the issue about claim preclusion. And there's  
11 absolutely no grounds for doing that.

12 We have litigated this issue over and over and  
13 over again. It is a broken record in this courtroom,  
14 with all due respect to the developer. And that's why  
10:28:24 15 we attached, your Honor, in our joinder an opposition.  
16 We attached Judge Mahan's ruling of this month. Just  
17 this month they sought, again, reconsideration from  
18 Judge Mahan on this exact issue about property rights,  
19 i.e., vested property rights for purposes of the 14th  
10:28:44 20 Amendment.

21 And you know what a taking claim is, your  
22 Honor, against state and local government. It's under  
23 the 5th through the 14th Amendment. The 5th Amendment  
24 applies to the federal government. Through the 14th  
10:28:54 25 Amendment is where you get your taking claims against



10:28:56 1 state and local government.

2 And what did Judge Mahan rule? They have  
3 no -- they litigated this issue and lost. It's issue  
4 preclusion, on top of issue preclusion, on top of issue  
10:29:07 5 preclusion.

6 What did Judge Mahan say in his opinion? They  
7 have no protected property interests. Because under  
8 state law and under the City Code, the City has  
9 tremendous discretion.

10:29:20 10 And all the cases he just referenced to you,  
11 what he fails to mention is in each of those cases, the  
12 City Code barred any development. In the Sisolak case  
13 it was the air rights. There was no building allowed  
14 above a certain level. Why? Because the airplanes  
10:29:37 15 needed to travel through that air space. So what the  
16 Supreme Court was saying is that is a per se taking  
17 because the government has seized the air rights  
18 forever.

19 And under no -- you couldn't submit an  
10:29:48 20 application and apply because the code made it crystal  
21 clear within that range you cannot develop, ever.

22 Here, the City has not adopted any code that  
23 says you cannot develop this property ever. As  
24 Mr. Ogilvie points out, they had -- they bought a golf  
10:30:04 25 course. And that was actually Judge Crockett's ruling.

10:30:07 1 What you did is you bought a golf course betting you  
2 had the political influence to get it changed, and your  
3 bet lost. And so now you're coming in and trying to  
4 blame everybody else for you failing to do your due  
10:30:18 5 diligence, developer. That's what Judge Crockett's  
6 ruling is at the end of the day.

7 So the issue preclusion issue applies per your  
8 ruling. It actually also applies per Judge Mahan's  
9 ruling. And there's no basis now for a fourth time. I  
10:30:34 10 believe this is four. Maybe it's only the third time  
11 they've asked you to change that ruling. But there  
12 isn't any grounds for it. And it certainly isn't a  
13 nunc pro tunc order which is designed to simply codify  
14 the Court's original intent. Your orders already  
10:30:49 15 codified that intent.

16 THE COURT: I think I've already done that;  
17 right?

18 MR. BICE: Yes. I think three different times  
19 at least.

10:30:55 20 Thank you, your Honor.

21 THE COURT: Mr. Ogilvie, did you finish, sir?

22 MR. OGLIVIE: I'll simply state there are  
23 arguments about what the law says. And everything that  
24 Mr. Leavitt made representation to, the City has legion  
10:31:16 25 of cases, as I stated, that state when a city or

10:31:23 1 municipality exercises lawful discretion to approve or  
2 deny land use applications, the developer does not have  
3 vested rights to the approval of those. Therefore,  
4 there cannot be a taking.

10:31:38 5 But those are the issues for the Nevada  
6 Supreme Court. The Nevada Supreme Court is going to  
7 hear it.

8 THE COURT: Absolutely.

9 MR. OGLIVIE: The only issue before the Court  
10 today is whether or not a stay should issue. And City  
11 submits that it should.

12 MR. LEAVITT: For the record, your Honor,  
13 could I have one of those cases that he named there's a  
14 legion of them?

10:31:55 15 THE COURT: Well, here's the thing. Whether  
16 those cases are produced today or not, I don't think  
17 they're going to impact my ultimate decision as far as  
18 this case is concerned.

19 I have two issues in front of me. The first  
10:32:05 20 deals specifically with whether or not pursuant to  
21 Nevada Rule of Appellate Procedure 8(C) I should grant  
22 a stay in this case. And that's what's in front of me.

23 And I thought about it. And I know we have  
24 the Hansen factors. I think we have the same factors  
10:32:22 25 that are set forth in 8(C). For example, number one,

10:32:24 1 whether the object of the appeal or writ petition will  
2 be defeated if the stay or injunction is denied. I  
3 don't see how that could happen; right?

4           The second factor is whether the writ petition  
10:32:38 5 will be defeated if the stay or injunction is denied.  
6 Well, I think there is -- there was an issue -- I'm  
7 sorry. Whether the appellate petitioner will suffer  
8 irreparable or serious injury if the stay or injunction  
9 was denied. And it's my recollection this deals  
10:32:56 10 specifically with one of the arguments: There will be  
11 a floodgate of litigation as it relates to potentially  
12 other developers, and costs, and the like. I don't see  
13 that. I really and truly don't. I'm not aware of any  
14 floodgate of litigation occurring. And so I don't know  
10:33:13 15 if that's been satisfied.

16           The third factor is whether respondent, real  
17 party in interest, would suffer irreparable or serious  
18 injury if the stay or injunction is granted. And this  
19 is -- and one of the things I tried to not overlook as  
10:33:32 20 a trial judge is simply this: Any time I have a case  
21 in front of me it typically involves real people with  
22 real claims and real injury; right?

23           And so there was an argument made that, for  
24 example, the landowner in this case is being assessed  
10:33:51 25 property taxes for residential property, and the

10:33:54 1 property hasn't been developed. So they're paying  
2 money on that.

3 Just as important too, I understand there's  
4 carrying costs and the like. I don't know what the  
10:34:02 5 specifics are, but I would anticipate that under the  
6 facts of this case, when it comes to finances and the  
7 like, and you're talking about 35 acres, I could see  
8 where there could be serious injury suffered by the  
9 plaintiff in this case from a financial perspective if  
10:34:23 10 this case doesn't proceed. That's probably the best  
11 way I can say it.

12 Last, but not least, I made my decision as to  
13 the probability or likelihood of prevailing on the  
14 merits of the appeal or writ petition. Sometimes I  
10:34:38 15 wonder why they even put that there because if I  
16 thought I made the improper decision, I would have  
17 ruled the other way; right?

18 So what I'm going to do is this. Regarding  
19 the stay, I'm going to deny the request for the stay.  
10:34:50 20 I think the underlying inverse condemnation case should  
21 go forward.

22 Moving on to the nunc pro tunc order. I'm  
23 going to tell you this. I'm going to take one look at  
24 it, but I don't -- I can't see a reason to change my  
10:35:02 25 order. Really and truly. Because this is how I look

10:35:04 1 at it. And I don't mind being -- pointing this out. I  
2 made certain determinations as a matter of law and also  
3 factual determinations as it relates to the petition  
4 for judicial review. I have no problem standing by  
10:35:23 5 those. I don't mind telling you that. I just look at  
6 the -- I look at them as being two different cases with  
7 potentially different standards that are applicable.  
8 The vested right definition as it relates to the  
9 petition for judicial review and what impact that has  
10:35:42 10 and whether the vested rights are different when it  
11 comes to a taking claim, Nevada Supreme Court is going  
12 to decide that.

13 See where I'm going on that? And so I'm going  
14 to look at it. But I'm going to tell you the chance --  
10:35:55 15 I'm just going to tell everybody. I don't think I'll  
16 change it. I just want to think about it. Maybe I'll  
17 add something, but I don't even know if I'll do that.  
18 I just want to read it and think about it. And so I'll  
19 get a decision on that real quick.

10:36:09 20 Anything you want to add, Mr. Ogilvie? I know  
21 you're looking at something.

22 MR. OGLIVIE: If I could have the Court's  
23 indulgence.

24 THE COURT: Just take a quick look. Sir.

10:36:21 25 MR. OGLIVIE: Yes. I understand the Court's

10:36:23 1 ruling. And I will reiterate that as soon as this  
2 Court issues the order denying the motion for judgment  
3 on the pleadings, the City will be filing its writ  
4 petition. It will also -- it cannot seek a stay from  
10:36:38 5 the Nevada Supreme Court until that writ petition is  
6 filed, so --

7 THE COURT: Am I missing something  
8 procedurally? Is there something I owe you?

9 MR. OGLIVIE: Yes. An order denying the  
10:36:52 10 City's motion for judgment on the pleadings.

11 THE COURT: Was that submitted?

12 MR. OGLIVIE: Yes. There are competing  
13 orders.

14 MS. WATERS: There are competing orders, your  
10:37:02 15 Honor.

16 THE COURT: When were those submitted?

17 MR. OGLIVIE: A couple weeks ago.

18 MS. WATERS: Yeah. Couple weeks ago.

19 THE COURT: All right.

10:37:08 20 MR. OGLIVIE: So, again, as soon as that order  
21 is entered, the City will be filing its writ petition.  
22 It's already 90 percent prepared. Just waiting on the  
23 final wording of the Court's order.

24 THE COURT: We'll expedite that for you.

10:37:24 25 MR. OGLIVIE: Okay. And, and, again, as soon

10:37:27 1 as we file that, then we can request a stay from the  
2 Nevada Supreme Court.

3 THE COURT: Absolutely.

4 MR. OGLIVIE: And I would simply ask this  
10:37:35 5 Court to enter a temporary stay pending an adjudication  
6 of our motion to stay before the Nevada Supreme Court.

7 MR. LEAVITT: Your Honor, we would strongly  
8 oppose that. Our interrogatories, our request for  
9 production of documents, our requests for admission  
10:37:51 10 that are necessary before with our summary judgment are  
11 in front of the City of Las Vegas right now. We had a  
12 hearing on the ECC last time. We explained the  
13 importance of moving forward with this case  
14 immediately. In other words what they're just asking  
10:38:05 15 for is a stay even though you've denied the stay.

16 THE COURT: A stay is a stay. Well, here's  
17 the -- you know, here's my concern about that. And I  
18 understand why you would request that, Mr. Ogilvie.  
19 But at the end of the day I'm going to make my decision  
10:38:21 20 based upon the Hansen rules, right, as far as the stay  
21 is concerned. Either it's a stay for all purposes or I  
22 deny it. That's kind of how I look at that.

23 And maybe the Supreme Court will look at it  
24 much differently. I can say this, if they granted it,  
10:38:36 25 it would make my job much easier. But I'm not looking



10:38:40 1 for an easier job. I just have to call it as I see it.  
2 Because I do feel, ultimately, they're going to -- I  
3 feel -- you don't see this very often, but I feel  
4 fairly strong that regardless of outcome, they'll  
10:38:53 5 probably issue a published decision in this case.

6 Because it's a unique issue. And I don't know if it's  
7 been cited, right?

8 MR. LEAVITT: Right. At some point in time  
9 probably on appeal though after all the facts are heard  
10:39:03 10 on the merits.

11 THE COURT: All the dust.

12 MR. LEAVITT: Right. And so, your Honor, is  
13 it okay, we'll prepare the stay order and then submit  
14 that to counsel?

10:39:10 15 THE COURT: Submit that to counsel.

16 And what we'll do, I'm sure we have the  
17 orders. I'll take a look at the orders, and we'll get  
18 that done so we can get the clock moving very quickly,  
19 Mr. Ogilvie.

10:39:23 20 MR. OGLIVIE: Thank you, your Honor.

21 THE COURT: Okay. Everyone, enjoy your day.

22 IN UNISON: Thank you, your Honor.

23 (THE PROCEEDINGS WERE CONCLUDED.)

24

10:39:47 25 \* \* \* \* \*

10:39:47 1                               REPORTER'S CERTIFICATE

2   STATE OF NEVADA)

3                               :SS

4   COUNTY OF CLARK)

10:39:47 5               I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO

6   HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPH ALL OF THE

7   PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE

8   TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID

9   STENOGRAPH NOTES WERE TRANSCRIBED INTO TYPEWRITING AT

10:39:47 10   AND UNDER MY DIRECTION AND SUPERVISION AND THE

11   FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND

12   ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE

13   PROCEEDINGS HAD.

14               IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED

15   MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF

10:39:47 16   NEVADA.

17   /s/ Peggy Isom

18   PEGGY ISOM, RMR, CCR 541

19

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<p><b>IN UNISON: [1]</b> 77/22 <b>MR. BICE: [5]</b> 4/19 39/10 63/10 67/12 70/18 <b>MR. HOLMES: [1]</b> 4/17 <b>MR. LEAVITT:</b> <b>[37]</b> 4/15 15/19 20/20 24/18 25/14 25/23 30/3 32/14 33/2 33/13 33/20 34/14 35/4 35/7 36/6 36/16 39/11 39/15 40/8 40/11 40/14 41/3 41/18 50/3 53/20 53/24 54/1 54/5 63/12 63/19 63/23 66/12 66/18 71/12 76/7 77/8 77/12 <b>MR. OGLIVIE:</b> <b>[52]</b> 4/9 5/9 11/15 12/18 14/21 15/24 16/2 16/6 17/3 17/5 17/20 18/11 18/19 20/19 41/20 44/11 44/13 44/16 44/22 47/17 47/20 47/23 48/7 48/9 48/11 49/16 50/7 51/12 52/1 52/6 52/12 52/14 52/16 53/1 54/9 55/6 55/12 56/23 56/25 63/8 66/5 70/22 71/9 74/22 74/25 75/9 75/12 75/17 75/20 75/25 76/4 77/20 <b>MR. WATERS: [3]</b> 4/13 40/24 55/11 <b>MS. LEONARD: [1]</b> 4/11 <b>MS. WATERS: [3]</b> 4/23 75/14 75/18 <b>THE COURT: [89]</b>  <b>/</b> <b>/s [1]</b> 78/17  <b>1</b> <b>10 [1]</b> 40/15 <b>100 [1]</b> 12/20 <b>1000 [1]</b> 2/20 <b>12 [3]</b> 26/2 26/3 65/23 <b>14th [3]</b> 68/19</p>	<p>68/23 68/24 <b>15 [3]</b> 1/23 4/1 9/15 <b>15-year [1]</b> 9/15 <b>17 acres [1]</b> 17/10 <b>17-acre [1]</b> 61/13 <b>180 [4]</b> 1/9 4/7 4/14 4/16 <b>1964 [1]</b> 2/11 <b>1980 [1]</b> 23/22 <b>1986 [1]</b> 27/23  <b>2</b> <b>2015 [1]</b> 23/25 <b>2017 [8]</b> 25/16 26/10 26/11 26/20 26/23 50/21 51/5 59/7 <b>2018 [8]</b> 6/8 8/3 44/24 45/10 58/11 58/19 58/25 62/3 <b>2019 [6]</b> 1/23 4/1 6/11 7/6 8/6 45/11 <b>21 [8]</b> 25/16 26/10 26/11 26/20 26/23 50/21 51/5 59/7 <b>2100 [1]</b> 3/10 <b>2101 [1]</b> 3/11 <b>214-2100 [1]</b> 3/10 <b>214-2101 [1]</b> 3/11 <b>22 [7]</b> 6/13 7/9 45/12 48/3 48/12 48/13 55/20 <b>23 [1]</b> 56/7 <b>2300 [1]</b> 2/19 <b>24 [1]</b> 8/8 <b>25 [1]</b> 48/12 <b>25-page [1]</b> 34/17  <b>3</b> <b>300 [1]</b> 3/8 <b>35 [1]</b> 24/5 <b>35 acre [1]</b> 17/25 <b>35 acres [5]</b> 6/17 17/2 17/12 49/22 73/7 <b>35-ache [1]</b> 17/6 <b>35-acre [12]</b> 8/14 22/4 26/1 38/6 38/13 45/8 48/16 48/22 55/24 56/2 57/11 65/8 <b>35-acres [1]</b> 49/25  <b>4</b> <b>400 [1]</b> 3/7 <b>4100 [1]</b> 2/22</p>	<p><b>5</b> <b>541 [2]</b> 1/25 78/17 <b>5th [2]</b> 68/23 68/23  <b>7</b> <b>702 [6]</b> 2/10 2/11 2/22 2/23 3/10 3/11 <b>704 [1]</b> 2/8 <b>731-1964 [1]</b> 2/11 <b>733-8877 [1]</b> 2/10 <b>75-page [2]</b> 27/19 34/16 <b>7th [1]</b> 8/6  <b>8</b> <b>873-4100 [1]</b> 2/22 <b>873-9966 [1]</b> 2/23 <b>8877 [1]</b> 2/10 <b>89101 [2]</b> 2/9 3/9 <b>89102 [1]</b> 2/21  <b>9</b> <b>90 percent [1]</b> 75/22 <b>9966 [1]</b> 2/23 <b>9:29 [1]</b> 4/2  <b>:</b> <b>:SS [1]</b> 78/2  <b>A</b> <b>A.M [1]</b> 4/2 <b>A.S.A.P [1]</b> 29/13 <b>ability [6]</b> 9/12 13/6 16/14 55/23 60/24 78/11 <b>able [2]</b> 37/1 55/20 <b>about [23]</b> 12/12 12/14 16/4 22/23 24/24 27/15 28/9 28/23 43/23 44/16 46/11 49/10 62/1 66/7 67/25 68/10 68/18 70/23 71/23 73/7 74/16 74/18 76/17 <b>above [1]</b> 69/14 <b>absolute [5]</b> 12/22 25/16 27/2 28/11 56/20 <b>absolutely [20]</b> 10/7 11/18 12/25 22/22 25/14 32/14 33/13 33/20 36/6 38/1 40/14 46/2 50/7 62/11 65/2 65/9 65/22 68/11 71/8 76/3</p>	<p><b>abuse [1]</b> 56/12 <b>accept [5]</b> 7/16 9/19 21/11 21/13 59/14 <b>access [1]</b> 65/16 <b>according [1]</b> 64/13 <b>ACCURATE [1]</b> 78/11 <b>ache [1]</b> 17/6 <b>acre [14]</b> 8/14 17/25 22/4 26/1 38/6 38/13 45/8 48/16 48/22 55/24 56/2 57/11 61/13 65/8 <b>acres [7]</b> 6/17 17/2 17/10 17/12 49/22 49/25 73/7 <b>act [3]</b> 9/7 25/24 67/5 <b>acted [6]</b> 10/17 10/24 10/25 14/25 16/10 20/9 <b>acting [1]</b> 61/16 <b>action [13]</b> 26/21 31/15 35/12 35/20 38/16 50/20 50/20 51/5 53/12 61/21 64/1 65/7 68/2 <b>actions [7]</b> 26/2 49/13 49/24 53/18 65/11 65/23 65/25 <b>actual [1]</b> 67/3 <b>actually [10]</b> 9/3 9/11 14/23 20/21 28/9 38/22 54/23 61/24 69/25 70/8 <b>ad [3]</b> 24/1 27/17 30/7 <b>add [3]</b> 65/11 74/17 74/20 <b>added [1]</b> 61/6 <b>address [12]</b> 7/14 9/9 15/24 16/14 19/5 19/20 47/20 48/11 62/13 63/11 63/13 63/13 <b>addressed [5]</b> 18/24 19/9 19/22 20/24 67/23 <b>addresses [1]</b> 27/20 <b>addressing [8]</b> 10/6 45/19 47/24 48/1 50/13 52/7 52/7 57/15 <b>adjudication [7]</b></p>	<p>5/17 5/20 10/9 11/8 62/6 63/5 76/5 <b>administerial [1]</b> 9/7 <b>administrative [3]</b> 36/8 46/14 53/17 <b>admission [1]</b> 76/9 <b>admitted [1]</b> 64/22 <b>adopt [2]</b> 22/12 22/13 <b>adopted [4]</b> 37/16 64/16 65/16 69/22 <b>adoption [2]</b> 67/1 67/5 <b>advised [1]</b> 59/16 <b>affirmance [2]</b> 6/19 48/18 <b>affirmed [1]</b> 65/2 <b>after [10]</b> 5/16 14/4 21/1 26/11 26/23 32/19 43/5 54/2 63/20 77/9 <b>again [26]</b> 5/2 8/1 19/13 22/14 24/3 27/18 28/6 29/24 30/6 30/19 33/18 40/3 44/22 47/23 48/3 48/6 51/4 54/13 54/25 55/19 60/9 62/14 68/13 68/17 75/20 75/25 <b>against [5]</b> 12/20 18/6 31/12 68/22 68/25 <b>agency [2]</b> 46/14 54/10 <b>ago [5]</b> 8/7 62/4 62/10 75/17 75/18 <b>agree [2]</b> 46/16 46/19 <b>agreed [1]</b> 68/4 <b>agreement [3]</b> 25/19 26/12 65/15 <b>ahead [3]</b> 44/20 63/16 63/21 <b>air [4]</b> 67/4 69/13 69/15 69/17 <b>aircraft [3]</b> 55/12 55/15 55/16 <b>airplanes [2]</b> 67/4 69/14 <b>all [52]</b> 4/21 4/25 5/2 5/8 5/23 11/24 12/4 15/10 15/20 16/2 18/20 19/8 26/12 26/15 28/2 28/3 28/4 28/18 29/2 29/20 30/25</p>
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<p><b>A</b></p> <p><b>all...</b> [31] 33/11 34/4 38/7 38/12 40/22 43/5 44/1 46/16 46/17 46/19 46/22 47/5 49/25 50/16 60/17 60/20 60/23 61/1 62/14 63/4 64/1 65/11 65/25 66/21 68/14 69/10 75/19 76/21 77/9 77/11 78/5</p> <p><b>allegation</b> [1] 51/7</p> <p><b>allege</b> [1] 29/21</p> <p><b>alleged</b> [2] 50/22 65/7</p> <p><b>alleges</b> [1] 65/21</p> <p><b>alleging</b> [1] 26/2</p> <p><b>allow</b> [1] 7/14</p> <p><b>allowed</b> [1] 69/13</p> <p><b>almost</b> [1] 27/19</p> <p><b>already</b> [6] 28/3 28/4 28/5 70/14 70/16 75/22</p> <p><b>also</b> [10] 4/20 19/8 29/7 47/5 61/23 65/6 66/2 70/8 74/2 75/4</p> <p><b>alter</b> [3] 6/19 42/3 48/18</p> <p><b>always</b> [1] 12/18</p> <p><b>Am</b> [2] 53/19 75/7</p> <p><b>amend</b> [4] 42/3 50/10 65/10 65/24</p> <p><b>amended</b> [2] 51/7 59/4</p> <p><b>amendment</b> [5] 26/14 68/20 68/23 68/23 68/25</p> <p><b>America</b> [1] 24/1</p> <p><b>amount</b> [1] 65/24</p> <p><b>amounts</b> [1] 65/7</p> <p><b>animal</b> [2] 49/18 49/21</p> <p><b>another</b> [8] 15/11 19/4 36/20 39/17 54/17 56/7 60/6 60/12</p> <p><b>answer</b> [1] 17/20</p> <p><b>anticipate</b> [1] 73/5</p> <p><b>any</b> [29] 6/1 6/4 9/12 12/11 12/21 12/25 16/14 19/2 19/20 20/17 25/5 34/11 41/15 44/7 45/15 45/15 46/14 49/25 51/18 53/13 54/13 54/20 61/20</p>	<p>63/6 69/12 69/22 70/12 72/13 72/20</p> <p><b>anyone</b> [1] 4/22</p> <p><b>anything</b> [5] 31/11 50/2 61/11 63/9 74/20</p> <p><b>anyway</b> [1] 36/13</p> <p><b>appeal</b> [6] 7/23 10/4 62/6 72/1 73/14 77/9</p> <p><b>Appeals</b> [1] 37/10</p> <p><b>APPEARANCES</b> [1] 2/1</p> <p><b>appears</b> [3] 17/14 25/13 32/12</p> <p><b>appellate</b> [2] 71/21 72/7</p> <p><b>apple</b> [1] 39/17</p> <p><b>applicable</b> [2] 43/7 74/7</p> <p><b>application</b> [31] 8/17 8/18 15/5 15/6 16/13 26/1 26/16 28/12 28/13 28/25 29/10 38/7 38/13 52/20 53/16 59/19 59/20 59/22 60/3 60/6 60/8 60/12 64/4 64/9 64/11 64/12 64/20 64/24 65/15 65/16 69/20</p> <p><b>applications</b> [37] 6/2 10/18 11/2 11/21 12/4 12/5 12/7 13/4 13/7 13/14 13/15 15/3 16/15 17/6 17/9 17/11 17/25 20/8 45/8 48/16 48/22 49/19 50/21 53/10 55/25 56/2 57/11 58/3 58/5 60/14 60/22 61/13 61/17 65/8 65/13 65/22 71/2</p> <p><b>applied</b> [2] 26/23 51/21</p> <p><b>applies</b> [8] 17/10 35/12 45/22 46/1 51/14 68/24 70/7 70/8</p> <p><b>apply</b> [9] 17/9 26/22 34/25 38/15 38/17 39/5 41/12 47/7 69/20</p> <p><b>applying</b> [2] 56/12 64/5</p> <p><b>appropriate</b> [4]</p>	<p>48/24 48/24 49/1 49/3</p> <p><b>appropriation</b> [1] 66/22</p> <p><b>approval</b> [3] 8/12 58/4 71/3</p> <p><b>approve</b> [1] 71/1</p> <p><b>approved</b> [19] 6/2 6/17 15/6 17/25 20/8 29/10 45/8 48/16 48/22 49/19 50/9 55/25 56/2 57/11 59/24 60/1 61/12 61/18 64/11</p> <p><b>approves</b> [1] 59/19</p> <p><b>are</b> [81]</p> <p><b>area</b> [1] 43/25</p> <p><b>aren't</b> [5] 44/17 49/10 53/5 53/6 59/4</p> <p><b>argue</b> [9] 22/2 22/11 28/21 53/11 55/20 55/23 60/25 61/25 66/8</p> <p><b>argued</b> [11] 21/1 24/21 27/17 28/19 30/7 34/22 34/23 60/4 61/5 61/23 62/4</p> <p><b>argues</b> [3] 60/13 61/10 61/22</p> <p><b>arguing</b> [5] 18/15 28/22 58/12 62/10 66/9</p> <p><b>argument</b> [17] 11/16 11/17 20/22 23/21 23/25 24/4 24/6 30/10 30/11 30/16 31/20 36/21 49/2 57/16 60/16 61/7 72/23</p> <p><b>arguments</b> [15] 7/2 20/11 23/11 23/12 23/17 23/20 28/2 28/3 28/4 54/18 57/6 57/15 63/1 70/23 72/10</p> <p><b>Arkansas</b> [1] 30/13</p> <p><b>art</b> [1] 52/18</p> <p><b>as</b> [93]</p> <p><b>ask</b> [2] 40/5 76/4</p> <p><b>asked</b> [6] 21/2 25/19 37/21 66/3 66/12 70/11</p> <p><b>asking</b> [6] 36/15 39/20 63/4 68/7 68/9 76/14</p> <p><b>assert</b> [5] 6/3 7/11</p>	<p>29/16 59/3 68/2</p> <p><b>asserted</b> [2] 59/2 65/23</p> <p><b>assessed</b> [2] 32/6 72/24</p> <p><b>at</b> [58] 10/18 11/2 11/19 14/5 14/16 20/18 20/25 21/22 23/13 24/9 24/21 27/18 31/24 34/13 34/23 35/20 36/7 38/11 39/17 40/9 40/16 40/22 41/4 41/21 42/20 43/1 43/21 43/25 44/4 45/16 46/16 47/4 52/17 54/18 54/21 55/7 55/17 56/7 59/4 62/21 62/23 65/20 68/6 70/6 70/19 73/23 74/1 74/5 74/6 74/14 74/21 76/19 76/22 76/23 77/8 77/17 78/6 78/8</p> <p><b>attached</b> [4] 39/11 40/18 68/15 68/16</p> <p><b>attempting</b> [1] 59/3</p> <p><b>attempts</b> [1] 21/17</p> <p><b>attorney</b> [2] 16/3 16/21</p> <p><b>authority</b> [10] 10/17 10/25 11/21 13/6 13/15 13/17 15/1 20/9 37/17 39/23</p> <p><b>AUTUMN</b> [2] 2/7 4/23</p> <p><b>AVENUE</b> [1] 2/19</p> <p><b>avoid</b> [2] 28/14 28/18</p> <p><b>aware</b> [2] 12/1 72/13</p> <p><b>away</b> [1] 43/12</p> <p><b>B</b></p> <p><b>back</b> [5] 17/13 33/9 33/21 36/17 67/19</p> <p><b>Badlands</b> [1] 16/16</p> <p><b>balance</b> [1] 46/22</p> <p><b>ball</b> [2] 43/18 43/18</p> <p><b>bar</b> [2] 56/9 56/18</p> <p><b>barred</b> [2] 9/2 69/12</p> <p><b>based</b> [12] 5/23</p>	<p>9/20 15/15 47/15 49/19 51/9 53/18 55/15 58/18 58/23 59/12 76/20</p> <p><b>basically</b> [2] 67/20 68/9</p> <p><b>basis</b> [13] 5/22 7/21 7/21 8/25 8/25 14/1 20/2 20/16 32/6 45/4 51/10 58/13 70/9</p> <p><b>be</b> [71] 6/5 6/24 7/3 8/16 9/20 10/2 10/4 10/10 10/19 10/23 11/7 12/18 12/20 13/10 13/11 14/19 15/6 15/8 15/15 17/14 17/18 20/5 20/14 21/16 25/8 25/9 25/13 25/19 26/19 31/17 32/12 33/8 33/23 34/7 34/8 38/7 39/19 39/23 40/17 41/1 41/25 42/6 42/13 43/19 49/14 50/10 53/15 54/4 54/11 54/23 54/23 55/20 56/3 56/4 57/12 57/13 59/25 61/18 62/8 62/25 64/7 64/14 67/13 67/17 71/4 72/2 72/5 72/10 73/8 75/3 75/21</p> <p><b>because</b> [57] 7/10 9/2 10/6 12/7 12/12 13/21 14/9 14/17 15/10 15/15 15/21 17/14 18/9 21/7 22/24 23/11 24/25 25/9 25/11 25/20 26/22 27/3 28/22 32/22 33/7 33/17 34/7 35/17 36/11 36/25 42/6 43/5 43/15 43/23 44/6 45/14 47/4 47/9 47/11 48/13 49/4 49/11 51/24 52/18 53/4 53/15 54/18 59/15 61/9 69/7 69/14 69/17 69/20 73/15 73/25 77/2 77/6</p> <p><b>been</b> [20] 12/15 22/3 23/4 23/5 23/6 23/6 27/23 29/3</p>
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<p><b>B</b></p> <p><b>been...</b> [12] 33/23 36/24 37/13 48/24 48/25 51/19 62/19 63/3 65/22 72/15 73/1 77/7</p> <p><b>before</b> [35] 1/21 5/18 7/15 8/14 8/19 9/21 13/24 15/21 17/2 17/7 17/10 17/11 17/21 17/21 18/2 20/25 31/24 32/15 36/20 38/22 43/8 49/12 50/17 50/23 52/21 55/18 59/7 60/19 62/22 62/23 66/1 71/9 76/6 76/10 78/6</p> <p><b>BEFORE-ENTITLED</b> [1] 78/6</p> <p><b>behalf</b> [7] 4/10 4/12 4/13 4/15 4/18 4/20 4/23</p> <p><b>being</b> [8] 12/15 32/5 43/3 43/16 46/4 72/24 74/1 74/6</p> <p><b>believe</b> [4] 31/25 40/21 53/2 70/10</p> <p><b>believes</b> [1] 45/21</p> <p><b>below</b> [1] 24/23</p> <p><b>bench</b> [1] 47/14</p> <p><b>best</b> [2] 73/10 78/11</p> <p><b>bet</b> [1] 70/3</p> <p><b>better</b> [3] 45/14 45/15 45/15</p> <p><b>betting</b> [1] 70/1</p> <p><b>between</b> [5] 35/13 53/10 53/14 53/16 54/13</p> <p><b>beyond</b> [3] 9/15 14/5 51/22</p> <p><b>BICE</b> [5] 3/4 3/6 4/20 39/13 67/11</p> <p><b>big</b> [1] 44/20</p> <p><b>bigger</b> [1] 35/18</p> <p><b>bills</b> [2] 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<b>T</b> <b>type [2]</b> 33/14 35/13 <b>types [3]</b> 37/4 47/5 53/6 <b>TYPEWRITING [1]</b> 78/8 <b>typical [2]</b> 25/4 31/15 <b>typically [4]</b> 12/12 33/4 33/10 72/21	<b>untrue [2]</b> 65/9 65/23 <b>up [15]</b> 4/7 15/21 21/3 21/22 22/8 22/12 27/14 27/18 30/21 31/17 43/22 61/25 63/14 63/25 66/2 <b>uphold [1]</b> 38/6 <b>upon [8]</b> 5/12 5/23 15/15 25/6 47/15 49/20 53/18 76/20 <b>us [2]</b> 31/7 32/1 <b>use [36]</b> 11/21 12/2 12/3 16/14 17/11 17/25 28/1 28/2 28/12 28/13 28/18 28/25 29/2 30/25 32/7 32/8 32/9 50/21 53/9 60/17 60/20 60/22 60/23 60/25 61/1 61/13 61/17 64/4 64/9 64/11 64/12 64/19 64/23 65/13 67/3 71/2 <b>used [2]</b> 36/7 43/3 <b>using [2]</b> 31/10 52/18	29/9 30/4 45/7 48/15 48/21 49/19 49/23 52/18 52/19 53/4 53/4 53/6 53/6 53/8 53/10 54/13 54/14 54/15 54/24 55/23 55/24 56/1 57/10 63/24 64/10 67/23 68/19 71/3 74/8 74/10 <b>viewing [1]</b> 14/14 <b>vigorously [1]</b> 24/21 <b>vote [1]</b> 31/12	<b>week [1]</b> 8/7 <b>weeks [2]</b> 75/17 75/18 <b>weigh [1]</b> 46/21 <b>well [22]</b> 12/18 13/11 14/5 15/16 31/21 32/11 33/2 33/10 34/4 34/4 36/16 37/6 45/13 46/10 49/8 51/1 51/13 51/24 61/24 71/15 72/6 76/16 <b>were [14]</b> 6/8 8/6 20/22 24/20 39/22 40/12 42/12 43/6 45/17 58/3 66/21 75/16 77/23 78/8 <b>WEST [1]</b> 2/19 <b>what [68]</b> 8/23 11/19 13/2 13/8 14/9 14/17 14/21 15/8 16/19 20/21 21/21 24/9 28/16 28/19 28/20 28/22 31/9 31/14 31/24 34/15 34/21 35/23 36/14 36/25 37/7 37/12 37/21 38/14 39/22 39/22 39/25 41/4 42/13 42/14 43/8 43/16 44/20 44/22 44/23 46/11 46/24 48/8 48/23 51/8 52/6 52/7 52/8 53/1 53/11 54/15 55/7 65/2 66/3 66/23 68/6 68/21 69/2 69/6 69/11 69/15 70/1 70/5 70/23 73/4 73/18 74/9 76/14 77/16 <b>what's [4]</b> 24/1 24/24 36/24 71/22 <b>whatever [1]</b> 25/7 <b>when [22]</b> 6/10 6/10 11/25 12/12 13/22 14/22 15/21 18/12 22/14 27/5 28/25 31/1 35/24 36/18 42/21 46/20 62/2 62/10 70/25 73/6 74/10 75/16 <b>where [11]</b> 21/20 30/24 34/24 47/7 63/24 65/2 66/20 67/18 68/25 73/8 74/13 <b>WHEREOF [1]</b>	78/13 <b>whether [35]</b> 10/1 10/3 10/12 11/11 18/16 19/1 19/5 19/13 19/24 21/15 21/16 23/3 23/3 27/16 31/18 37/8 43/19 49/6 49/14 51/4 53/8 56/12 59/5 62/18 62/19 62/20 62/24 71/10 71/15 71/20 72/1 72/4 72/7 72/16 74/10 <b>which [43]</b> 6/8 7/15 7/23 8/7 8/21 8/23 9/4 9/14 9/25 11/1 11/19 13/1 15/7 19/23 20/2 20/23 26/3 27/4 27/19 38/1 38/20 38/21 40/18 40/21 41/13 41/21 42/10 46/1 48/6 49/22 50/11 50/23 51/22 54/20 54/20 58/9 58/10 58/15 58/22 59/12 65/2 68/1 70/13 <b>while [3]</b> 18/21 21/17 55/3 <b>White [2]</b> 43/14 43/17 <b>who [2]</b> 61/15 61/15 <b>whole [2]</b> 14/4 31/13 <b>why [11]</b> 13/18 14/8 21/6 24/11 35/16 45/20 67/6 68/14 69/14 73/15 76/18 <b>will [46]</b> 5/11 5/12 6/22 7/16 8/21 8/22 9/18 10/4 10/10 10/13 11/7 12/2 17/20 18/14 19/2 19/14 20/17 20/24 21/4 21/11 21/13 21/16 21/18 22/2 22/11 22/12 22/17 22/18 32/14 33/25 34/7 39/3 59/14 61/8 61/12 62/1 67/13 72/1 72/5 72/7 72/10 75/1 75/3 75/4 75/21 76/23
<b>U</b> <b>ultimate [1]</b> 71/17 <b>ultimately [3]</b> 7/17 9/19 77/2 <b>under [18]</b> 8/16 9/24 12/11 15/7 21/13 21/19 25/5 34/9 56/10 56/14 56/18 68/3 68/22 69/7 69/8 69/19 73/5 78/9 <b>underlying [3]</b> 21/24 52/4 73/20 <b>understand [22]</b> 15/9 18/4 18/18 27/9 29/25 33/12 35/22 35/23 37/5 40/7 44/2 44/19 46/24 49/9 51/11 52/10 52/14 56/22 66/17 73/3 74/25 76/18 <b>understanding [2]</b> 5/3 13/25 <b>understood [1]</b> 37/19 <b>undisputed [1]</b> 58/25 <b>unequivocally [1]</b> 22/17 <b>unfounded [1]</b> 61/2 <b>unique [6]</b> 18/9 24/24 33/19 34/1 34/6 77/6 <b>United [8]</b> 29/6 30/13 30/15 30/18 52/23 64/16 64/17 64/24 <b>units [2]</b> 31/6 31/8 <b>unless [6]</b> 16/8 16/12 16/23 20/16 25/5 34/11 <b>until [6]</b> 8/16 16/8 16/12 16/17 60/9 75/5	<b>V</b> <b>valid [1]</b> 64/5 <b>VEGAS [14]</b> 1/12 2/9 2/21 3/9 4/1 4/8 4/10 4/12 5/4 10/21 23/17 28/17 34/16 76/11 <b>VEGAS'S [2]</b> 1/16 1/18 <b>versus [7]</b> 4/7 9/24 24/2 53/17 63/25 64/15 64/21 <b>very [38]</b> 13/24 14/10 18/9 18/15 18/21 21/13 21/19 21/24 24/17 24/18 25/21 25/22 25/23 26/6 27/8 28/6 29/7 30/9 30/23 31/14 34/24 35/5 36/17 37/5 37/13 37/13 38/4 38/10 38/10 39/4 43/8 46/15 49/11 63/23 65/4 68/5 77/3 77/18 <b>vested [41]</b> 6/1 6/4 6/16 7/4 11/2 13/4 15/2 17/24 20/7 27/17 28/1	<b>W</b> <b>wait [2]</b> 33/6 66/15 <b>waiting [1]</b> 75/22 <b>walk [1]</b> 43/12 <b>want [24]</b> 4/25 26/6 27/16 29/25 32/21 33/21 34/10 35/21 36/21 40/6 44/6 44/7 44/13 48/2 48/12 50/15 50/16 54/5 63/13 63/19 63/22 74/16 74/18 74/20 <b>wanted [1]</b> 19/4 <b>wants [6]</b> 53/11 54/19 54/25 55/19 55/22 57/4 <b>was [80]</b> <b>wasn't [7]</b> 15/13 16/2 26/20 27/1 34/19 45/15 49/9 <b>watching [1]</b> 12/25 <b>WATERS [5]</b> 2/4 2/5 2/7 4/13 4/23 <b>way [4]</b> 13/19 32/5 73/11 73/17 <b>we [85]</b> <b>we'd [1]</b> 40/5 <b>we'll [4]</b> 75/24 77/13 77/16 77/17 <b>we're [16]</b> 4/6 12/14 26/2 28/22 31/6 31/12 31/21 32/15 32/22 34/2 39/17 39/20 52/18 58/25 62/14 66/14 <b>we've [12]</b> 22/5 28/3 28/3 32/2 32/2 37/21 37/21 37/24 38/18 65/7 65/21 65/23 <b>WEDNESDAY [2]</b> 1/23 4/1		

<p><b>W</b></p> <p><b>WILLIAMS [1]</b> 1/21</p> <p><b>WILSON [1]</b> 2/16</p> <p><b>wishes [1]</b> 18/7</p> <p><b>withdrawn [1]</b> 60/3</p> <p><b>withdrew [1]</b> 60/8</p> <p><b>within [7]</b> 10/17 10/25 14/25 20/9 27/4 61/16 69/21</p> <p><b>without [3]</b> 6/4 7/24 41/5</p> <p><b>WITNESS [1]</b> 78/13</p> <p><b>women [1]</b> 14/3</p> <p><b>won't [1]</b> 30/23</p> <p><b>wonder [1]</b> 73/15</p> <p><b>wondering [2]</b> 44/5 47/9</p> <p><b>wording [1]</b> 75/23</p> <p><b>words [1]</b> 76/14</p> <p><b>worker's [1]</b> 36/9</p> <p><b>would [18]</b> 14/6 17/14 25/6 36/9 47/10 47/12 47/14 53/2 53/15 56/4 59/25 72/17 73/5 73/16 76/4 76/7 76/18 76/25</p> <p><b>wouldn't [3]</b> 24/24 36/11 41/1</p> <p><b>Wow [1]</b> 41/7</p> <p><b>writ [46]</b> 1/17 1/18 5/5 5/11 5/15 5/16 5/17 5/20 5/22 6/23 7/17 7/17 7/22 9/1 9/19 9/19 10/4 10/4 10/9 10/9 10/10 11/8 19/25 20/12 21/8 21/11 21/13 21/19 21/24 22/18 22/19 22/21 51/2 51/7 51/10 53/3 59/14 61/5 62/25 63/5 72/1 72/4 73/14 75/3 75/5 75/21</p> <p><b>writs [1]</b> 8/22</p> <p><b>written [1]</b> 35/8</p> <p><b>wrong [7]</b> 15/15 15/18 18/19 43/3 43/24 61/15 62/20</p> <hr/> <p><b>X</b></p> <p><b>XVI [1]</b> 1/3</p>	<p><b>Y</b></p> <p><b>Yeah [12]</b> 39/11 41/3 44/12 50/4 52/13 52/15 55/11 56/24 63/15 63/23 66/12 75/18</p> <p><b>year [1]</b> 9/15</p> <p><b>years [3]</b> 9/15 24/5 61/19</p> <p><b>yellow [4]</b> 40/13 40/20 40/25 41/6</p> <p><b>yes [11]</b> 16/1 47/19 48/10 51/20 51/23 60/13 63/10 70/18 74/25 75/9 75/12</p> <p><b>yet [1]</b> 11/21</p> <p><b>Yohan [1]</b> 65/18</p> <p><b>you [136]</b></p> <p><b>you'd [1]</b> 54/1</p> <p><b>you're [11]</b> 14/17 15/19 25/14 31/10 36/25 40/23 40/25 43/24 70/3 73/7 74/21</p> <p><b>you've [4]</b> 34/22 34/22 65/2 76/15</p> <p><b>your [89]</b></p> <p><b>yourself [2]</b> 67/22 68/9</p> <hr/> <p><b>Z</b></p> <p><b>zone [1]</b> 31/1</p> <p><b>zoned [1]</b> 27/23</p> <p><b>zoning [3]</b> 31/1 49/24 64/6</p>			
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