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

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

REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING WRIT PETITION

(relief needed by May 24, 2019)

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A. The Court's Decision Will Have Widespread Ramifications For The Developer's Numerous Lawsuits And For Discretionary Land Use Decisions Statewide

The Developer has extensive litigation in various courts related to its efforts to redevelop the Badlands golf course into residential uses. *See* Writ Petition n.1. In some of those cases, the Developer has sued or threatened to sue the judges who have ruled against the Developer. 6(1147) (suing Judge Crockett for a judicial taking); 2(307, 341, 397) (threatening to sue Judge Williams if he does not rule in favor of the Developer). Some of the district court cases are stayed or dismissed without prejudice pending a decision from this Court in Case No. 75481 and one has allowed the inverse condemnation claims to proceed notwithstanding the absence of vested rights. 6(1167-1169).[1] All cases present the same threshold legal question of whether the Developer's lack of vested rights to have redevelopment applications approved requires dismissal of the inverse condemnation claims, as a matter of law.

Judicial economy and the public interest warrant a stay while the Court decides this issue. *See Ass'n of Irritated Residents v. Fred Schakel Dairy*, 634 F.Supp.2d 1081, 1096 (E.D.Cal. 2008); *Dagdagan v. City of Vallejo*, 682 F.Supp.2d 1100, 1117 (E.D.Cal. 2010) (issuing stay where issues before appellate court affected lower court proceedings); *Umatilla Waterquality Protective Ass'n, Inc. v. Smith Frozen*

[1] Because only the minute order has so far been entered in Case No. A-18-775804-J, discovery has not yet proceeded.

Foods, Inc., 962 F.Supp. 1312, 1323 (D.Or. 1997) (staying case "[g]iven the importance of the [appellate] issues to the rest of this case").

Absent a stay, the City Council and decision makers throughout the State will be chilled from appropriately exercising their discretion to deny applications. This harm will be irreparable, and there is no plain and speedy remedy to address it other than writ relief. Needless public resources will be expended that can never be recovered. If a developer's lack of vested rights is not enough to obtain dismissal of inverse condemnation claims at the pleadings stage, public entities will have no protection from protracted and expensive trial court proceedings that strain their capacity to provide public services and serve their core functions. Because the effects will be immediate, the purpose of the writ will be defeated.

B. The Developer's Alleged Carrying Costs and Property Taxes Do Not Constitute Irreparable Harm

The only alleged harms of which the Developer complains are "carrying costs" and "residential tax assessment," both of which can be remedied through damages and therefore are not irreparable. *See Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 723 (2015). To support these contentions, the Developer cites only to the arguments of its counsel below (2OMS256, 294-295), which do not constitute evidence. *See Butler v. State*, 120 Nev. 879, 897, 102 P.3d 71, 84 (2004). Even if they did, the Developer alone is responsible for the increase in property taxes

and loss of income from its unilateral decision to stop using the property as a golf course. A stay will cause no irreparable harm to the Developer.

C. There is No Factual Dispute Regarding the Principles of Law at Issue in the City's Writ Petition

The City's Writ Petition is based solely on issues of law for which no facts are in dispute. 1(219-225); 5(863). To contend otherwise, the Developer cites to a portion of the March 22, 2019 transcript. However, as the transcript makes clear, the district court simultaneously heard the City's motion for judgment on the pleadings and the Developer's countermotion for "judicial determination of liability." 4(577, 620-621, 629-693). The Developer conflates the arguments on those two motions.

For its countermotion, the Developer attached reams of exhibits and asserted that summary judgment should be entered in its favor. 2(273-399). In opposition, the City argued there was a sufficient factual dispute ***as to the Developer's countermotion*** to prevent summary judgment against the City. 3(484-562). As to the purely legal issues presented in the City's motion for judgment on the pleadings, the City was clear (and still maintains) that no factual disputes exist. 2(259-272).

D. The Developer's Opposition Relies On Matters That Were Not Before The City Council When It Denied The 35-Acre Applications

The Developer repeats the misleading tactics here that it employed in the district court by pointing to information that post-dates the City Council's June 21, 2017 Decision. The Developer's First Amended Complaint, which is the operative

pleading at issue in the Writ Petition, alleges only that June 21, 2017 Decision constituted a taking. 1(28-44). Nothing else.

Nevertheless, the Developer's opposition cites to: (1) the City's **May 15, 2019** responses to requests for admission (6OMS1275-1289); (2) transcripts of the City Council's **August 2, 2017, January 3, 2018** and **May 16, 2018** meetings (4OMS799-872; 5OMS962-1176; 5-6OMS1186-1267); (3) the Developer's amended complaint filed on **May 15, 2019** (1OMS001-038); and (4) letters from **August 24, 2017** (6OMS1290-1294). None of this could support the Developer's argument that the Council's earlier action on June 21, 2017 constituted a taking.

The Developer's citations to matters that occurred on or before June 21, 2017 relate to the property's zoning designation, which is irrelevant because "[a] zoning designation does not give the developer a vested right to have its development applications approved." 1(219-222), *citing Am. W. Dev., Inc. v. Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995); *Stratosphere*, 120 Nev. at 527–28, 96 P.3d at 759–60; *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *Nev. Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990).

E. The City Is Likely to Succeed On The Merits

Under *Stratosphere* and similar precedent, because the City Council had discretion to deny the Applications, the Developer has no vested right to have them approved. *Bowers v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012); *Application of*

Filippini, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Absent vested rights, there can be no regulatory taking. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994).

The law of what constitutes a vested right does not change depending on the type of proceeding. To argue otherwise, the Developer relies exclusively on cases that involved a physical invasion of property and a facial attack on a statute, rather than the as-applied discretionary land use applications at issue here. Opp. at 8-9, *citing McCarran v. Sisolak*, 122 Nev. 645, 137 P.3d 1110, 1119 (2006); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992). If the Developer's argument is accepted as true, every land use authority in the State is exposed to takings liability for decisions that are squarely within governmental discretion, contrary to *Stratosphere*. That is a "potentially significant, recurring question of law" for which writ relief appropriate. *Buckwalter v. Dist. Ct.*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010).

Moreover, this Court has not hesitated to issue a writ of prohibition when a district court acts without jurisdiction. *See Gaming Control Bd. v. Breen*, 99 Nev. 320, 324, 661 P.2d 1309, 1311 (1983); *Gray Line Tours v. Eighth Jud. Dist. Ct.*, 99 Nev. 124, 126, 659 P.2d 304, 305 (1983). The Developer simply refuses to file the major modification application that the district court repeatedly stated must first be approved. 1(223-225); 5(863). The inverse condemnation claims, therefore, are not ripe, and the district court lacks jurisdiction. *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985).

Because these are all important legal questions, of which the Court's review "would promote sound judicial economy and administration," the City submits that writ relief is warranted here. *Int'l Game Tech. v. Sec. Jud. Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).

DATED this 23rd 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 23rd day of May, 2019, a copy of the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING WRIT PETITION** 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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