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

REAL PARTY IN INTEREST, 180 LAND CO., LLC'S RESPONSE TO "NOTICE" THAT EMERGENCY STAY RELIEF NEEDED BY MAY 24, 2019

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The City of Las Vegas has represented to this Court that not only does it need an "emergency" stay, but this stay must be granted by May 24, 2017.

The first "emergency" the City alleges is it will need to respond to discovery and Real Party in Interest, 180 Land, LLC ("Landowner") has not responded to the City's request for an extension of discovery. First, the City did not even request an extension of the discovery until May 15, 2019, the date the discovery was due. If the discovery issues were truly an extreme "emergency" as alleged by the City, the City would not have waited the entire 30 day period to respond to discovery to then ask for an extension on the due date. Second, counsel for the Landowners is preparing a response to the City's request for an extension, which will be sent shortly, to work with the City on producing the requested discovery.

The second "emergency" the City alleges is it will need to respond to an amended complaint by May 29, 2019. This is not an "emergency." The City also asserts the Landowner is "claim splitting," but then fails to explain why this creates an "emergency." Moreover, there is no claim splitting. Four different inverse condemnation lawsuits have been filed related to four distinct properties, with different ownership and different parcel numbers. This is not claim splitting and the City fails to even explain how this is claim splitting. Finally, the Landowners have reached out to the City to seek consolidation of some of these four different inverse

condemnation lawsuits and the City has refused to even respond to this overture. Apparently, this has been done so the City can tell this Court the Landowner is "claim splitting."

The third "emergency" the City alleges is the City Planning Commission will meet on May 29, 2019, and Judge Williams denial of the City's motion to dismiss the Landowner's inverse condemnation claims will "chill" the Planning Commissions ability to act with discretion. First, the Planning Commission does not deny or approve projects; it is merely a recommending body, whose recommendation is then presented to the City Council. Second, Judge Williams already held very clearly in the Petition for Judicial Review portion of this 35 Acre Property case that the City Council has "discretion" to deny land use applications. However, Judge Williams appropriately held that the City's "discretion" to deny land use applications is not a defense to a taking, otherwise, there would be no property rights in the State of Nevada, because the City wold have absolute "discretion" to deny those property rights at any time and for any reason. And, the allegations against the City in the Landowners' Amended Complaint go far beyond the City simply exercising its "discretion" to deny one singular land use application as the City repeatedly misrepresents to this Court. Judge Williams recognized this, rejected the City's misrepresentation in this regard, and held that, in the inverse condemnation case

where the Landowner owns a residentially zoned property (R-PD7) and there are allegations that the City has engaged in the following actions, these actions may rise to the level of a taking, which is sufficient to deny a motion to dismiss: 1) the City denied the Landowner's land use applications to develop the 35 Acre Property, even though the applications complied with the R-PD7 hard zoning, NRS, and the City's own Code (Title 19), and the City's own Planning Staff recommended approval; 2) the City denied the City's own Master Development Agreement (which was recommended by the City and drafted almost entirely by the City) to develop the 35 Acre Property as part of a master development; 3) the City raced to adopt two Bills that solely target and preclude development of the Landowner's entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property); 4) the City denied a routine over-the-counter request to put up a fence on the 35 Acre Property; 5) the City denied a routine over-the-counter request for access to the 35 Acre Property; 6) the City mandated an impossible development scenario - stating there can be no drainage study for development without entitlements, while at the same time requiring a drainage study to get entitlements; 7) the City also denied applications to develop the 133 Acre Property, even though the City's own Planning Staff recommended approval; and 8) one City councilman stated that it would be "**over his dead body**" before the Landowner could use his property and another stated unequivocally "I am

voting against the whole thing." *See Landowner's Opposition to the City's Motion for Stay.*

Moreover, this Court's decision to find a taking of property as a result of the adoption of height restrictions in McCarran Int'l Airport v. Sisolak, 137 P.3d 1110 (Nev. 2006), even though the adoption of the height restrictions was properly within the County's discretion, did not "chill" the actions by the commissioners of the local agency in Nevada and the United States Supreme Court decision to find a taking under similar facts in Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), did not "chill" local agency discretion in South Carolina. In fact, these very arguments were recently rejected by the United States Supreme Court in the case of Arkansas Game and Fish Com'n v. U.S., 568 U.S. 23, 36-37 (2016), wherein the Court held:

> Time and again in Takings Clause cases, the Court has heard that prophecy that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest. [citations omitted]. We have rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment's instruction. While we recognize the importance of the public interests the Government advances in this case, we do not see them as categorically different from the interest at stake in myriad other Taking Clause cases. **The sky did not fall after *Causby,* and today's modest decision augurs no deluge of takings liability.**" (emphasis supplied).

Accordingly, the City's "emergency" argument, along with its stay request, lacks any merit whatsoever.

Respectfully submitted this 23rd day of May, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 23rd day of May, 2019, a copy of the foregoing **REAL PARTY IN INTEREST, 180 LAND CO., LLC'S RESPONSE TO "NOTICE" THAT EMERGENCY STAY RELIEF NEEDED BY MAY 24, 2019** was electronically filed with the Clerk of 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 E-Flex system and others not registered will be served via U.S. mail as follows:

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