IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. _____

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, FORE STARS LTD., a Nevada limited liability company,

Real Parties in Interest

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

APPENDIX VOLUME V
TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF CERTIORARI
(action needed by February 23, 2022)

LAS VEGAS CITY ATTORNEY'S OFFICE Bryan K. Scott (#4381) Philip R. Byrnes (#166) Rebecca Wolfson (#14132) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bscott@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov rwolfson@lasvegasnevada.gov	McDONALD CARANO LLP George F. Ogilvie III (#3552) 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 gogilvie@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com

LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com	SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102

Attorneys for Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2017-07-18	Landowners' Petition for Judicial Review	I	PA0001	PA0008
2017-09-07	Landowners' First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	I	PA0009	PA0027
2017-09-20	Affidavit of Service of Summons and First Amended Petition for Judicial Review on City of Las Vegas	I	PA0028	PA0028
2018-02-05	City of Las Vegas' Answer to First Amended Petition for Judicial Review	I	PA0029	PA0032
2018-02-23	Landowners' First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	PA0033	PA0049
2018-02-28	Landowners' Errata to First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	PA0050	PA0066
2018-02-28	Landowners' Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation per Court Order Entered on February 1, 2018	I	PA0067	PA0081

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2018-03-19	City's Answer to Second Amended Petition for Judicial Review	I	PA0086	PA0089
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	PA0090	PA0127
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	PA0128	PA0155
2018-12-11	Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims (Exhibits omitted)	I	PA0156	PA0174
2018-12-13	Landowners' Motion for a New Trial Pursuant to NRCP 59(e)	I	PA0175	PA0202
2018-12-20	Notice of Appeal	I	PA0203	PA0206
2019-02-06	Notice of Entry of Order *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	PA0207	PA0212

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2019-05-08	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives	II	PA0213	PA0228
2019-05-15	Landowners' Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	PA0229	PA0266
2019-06-18	City's Answer to Plaintiff 180 Land Company's Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	PA0267	PA0278
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0279	PA0283
2020-08-31	Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0284	PA0287
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	PA0288	PA0295

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2020-12-16	2nd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0296	PA0299
2021-02-10	3rd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0300	PA0303
2021-03-26	Appendix of Exhibits in Support of Plaintiff Landowner's Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief - Exhibit 150 (004669-004670)	II	PA0304	PA0309
2021-08-25	[1]City's Accumulated App'x Exhibit G - Ordinance No. 3472 and related documents (Second Amendment) (CLV65-000114-000137)	II	PA0310	PA0334
2021-08-25	City's Accumulated App'x Exhibit H - City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application (CLV65-000138-000194)	II	PA0335	PA0392

[1] Due to the voluminous nature of the documents filed in this case and to avoid duplicative filing of exhibits, the City filed a cumulative appendix of exhibits, which the City cited in multiple motions and other substantive filings ("City's Accumulated App'x").

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2021-08-25	City's Accumulated App'x Exhibit I - Excerpts of 1992 City of Las Vegas General Plan (CLV65-000216-218, 248)	II	PA0393	PA0397
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2021-08-25	City's Accumulated App'x Exhibit N - Ordinance No. 5787 and Excerpts of 2005 Land Use Element (CLV65-000278-000291)	III	PA0427	PA0441
2021-08-25	City's Accumulated App'x Exhibit P - Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element (CLV65-000302-000317)	III	PA0442	PA0458

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2021-08-25	City's Accumulated App'x Exhibit Y- EHB Companies promotional materials (CLV65-0034763-0034797)	III	PA0475	PA0510
2021-08-25	City's Accumulated App'x Exhibit Z - General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications (CLV65-000446-000466)	III	PA0511	PA0532
2021-08-25	City's Accumulated App'x Exhibit EE-Order Granting Plaintiffs' Petition for Judicial Review (CLV65-000598-000611)	IV	PA0533	PA0547
2021-08-25	City's Accumulated App'x Exhibit HH - General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications (CLV65-000644-0671)	IV	PA0548	PA0576

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2021-08-25	City's Accumulated App'x Exhibit II - June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480 (CLV65-000672-000679)	IV	PA0577	PA0585
2021-08-25	City's Accumulated App'x Exhibit AAA - Membership Interest Purchase and Sale Agreement (LO 00036807-36823)	IV	PA0586	PA0603
2021-08-25	City's Accumulated App'x Exhibit BBB - Transcript of May 16, 2018 City Council meeting (CLV65-045459-045532)	IV	PA0604	PA0621
2021-08-25	City's Accumulated App'x Exhibit DDD - Nevada Supreme Court March 5, 2020 Order of Reversal, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481 (1010-1016)	IV	PA0622	PA0629
2021-08-25	City's Accumulated App'x Exhibit GGG - September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435- Unit Housing Development Project in Badlands (1021-1026)	IV	PA0630	PA0636

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2021-08-25	City's Accumulated App'x Exhibit III - 9th Circuit Order in *180 Land Co. LLC; et al v. City of Las Vegas, et al.*, 18-cv-0547 (Oct. 19, 2020) (1123-1127)	IV	PA0666	PA0671
2021-08-25	City's Accumulated App'x Exhibit NNN - March 26, 2020 Letter from City of Las Vegas to Landowners' Counsel (CLV65-000967-000968)	IV	PA0672	PA0674
2021-08-25	City's Accumulated App'x Exhibit OOO - March 26, 2020 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres (CLV65-000971-000973)	IV	PA0675	PA0678
2021-08-25	City's Accumulated App'x Exhibit PPP - April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres –l (CLV65-000969-000970)	IV	PA0679	PA0681

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2021-08-25	City's Accumulated App'x Exhibit UUU - Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020) (1295-1306)	IV	PA0682	PA0694
2021-08-25	City's Accumulated App'x Exhibit CCCC - Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-18-780184-C (Dec. 30, 2020) (1478-1515)	IV	PA0695	PA0733
2021-08-25	City's Accumulated App'x Exhibit DDDD - Peter Lowenstein Declaration and Ex. 9 thereto (1516-1522, 1554-1569)	IV	PA0734	PA0741Q
2021-08-25	City's Accumulated App'x Exhibit HHHH - State of Nevada State Board of Equalization Notice of Decision, *In the Matter of Fore Star Ltd., et al.* (Nov. 30, 2017) Decision (004220-004224) (Exhibits omitted)	IV	PA0742	PA0747

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2021-09-22	City's Accumulated App'x Exhibit SSSS - Excerpts of NRCP 30(b)(6) Designee of Peccole Nevada Corporation – William Bayne (3776-3789)	V	PA0760	PA0774
2021-10-13	City's Accumulated App'x Exhibit YYYY- City Council Meeting of October 6, 2021 Verbatim Transcript – Agenda Item 63 (inadvertently omitted from the 10-13-2021 appendix. Errata filed 2/8/2022) (3898-3901)	V	PA0775	PA0779
2021-10-13	City's Accumulated App'x Exhibit ZZZZ - Transcripts of September 13 & 17, 2021 Hearing in the 133-Acre Case (Case No. A-18-775804-J) (Excerpts) (3902, 4029-4030, 4053-4054, 4060, 4112)	V	PA0780	PA0787

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2021-10-19	City's Accumulated App'x Exhibit BBBBB - 2005 land use applications filed by the Peccole family (CLV110456, 126670, 137869, 126669, 126708)	V	PA0851	PA0857
2021-10-25	Notice of Entry of Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion on the Second Claim for Relief	V	PA0858	PA0910
2021-10-28	Decision of the Court	V	PA0911	PA0918

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2021-11-05	Notice of Entry of Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	V	PA0919	PA0930
2021-11-18	Findings of Fact and Conclusions of Law on Just Compensation	V	PA0931	PA0950
2021-11-18	Notice of Entry of Order Granting Plaintiffs' Motions in Limine No. 1, 2 and 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument	V	PA0951	PA0967
2021-11-24	Landowners' Verified Memorandum of Costs (Exhibits omitted)	VI	PA0968	PA0972
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	PA0973	PA0995
2021-12-06	Landowners' Motion for Reimbursement of Property Taxes (Exhibits omitted)	VI	PA0996	PA1001
2021-12-09	Landowners' Motion for Attorney Fees	VI	PA1002	PA1030

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2021-12-09	Landowners' Motion to Determine Prejudgment Interest	VI	PA1031	PA1042
2021-12-21	City's Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution	VI	PA1043	PA1049
2021-12-22	City's Motion for Immediate Stay of Judgment	VI	PA1050	PA1126
2022-01-26	Court Minutes	VI	PA1127	PA1127
2022-02-10	Notice of Entry of Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the city to Pay the Just Compensation	VI	PA1128	PA1139

ALPHABETICAL INDEX TO PETITIONER'S APPENDIX

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2022-01-26	Court Minutes	VI	PA1127	PA1127
2021-10-28	Decision of the Court	V	PA0911	PA0918
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2022-02-10	Notice of Entry of Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the city to Pay the Just Compensation	VI	PA1128	PA1139
2021-11-05	Notice of Entry of Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	V	PA0919	PA0930
2021-10-25	Notice of Entry of Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion on the Second Claim for Relief	V	PA0858	PA0910
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	PA0973	PA0995
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	PA0128	PA0155

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2019-05-08	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives	II	PA0213	PA0228
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	PA0288	PA0295
2021-11-18	Notice of Entry of Order Granting Plaintiffs' Motions in Limine No. 1, 2 and 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument	V	PA0951	PA0967
2019-02-06	Notice of Entry of Order *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	PA0207	PA0212
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	PA0090	PA0127

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0279	PA0283

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 10th day of February, 2022.

BY: /s/ Debbie Leonard

LAS VEGAS CITY ATTORNEY'S OFFICE Bryan K. Scott (#4381) Philip R. Byrnes (#166) Rebecca Wolfson (#14132) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bscott@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov rwolfson@lasvegasnevada.gov	McDONALD CARANO LLP George F. Ogilvie III (#3552) 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 gogilvie@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com
LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com	SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court on today's date by using the Nevada Supreme Court's E-Filing system (E-Flex). Upon the Clerk's docketing of this case and e-filing of the foregoing document, participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail at the following addresses. I also certify that a courtesy copy of the foregoing document was sent by email on today's date to the email addresses listed below.

The Honorable Timothy C. Williams
District Court Department XVI
Regional Justice Center
200 Lewis Avenue,
Las Vegas, Nevada 89155
dept16lc@clarkcountycourts.us
Respondent

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.,
kermitt@kermittwaters.com
James J. Leavitt, Esq.
jim@kermittwaters.com
Michael A. Schneider, Esq.
michael@kermittwaters.com
Autumn L. Waters, Esq.
autumn@kermittwaters.com
Michael K. Wall, Esq.
mwall@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Real Party in Interest
180 Land Company, LLC

KAEMPFER CROWELL
Christopher L. Kaempfer
Stephanie H. Allen
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
ckaempfer@kcnvlaw.com
sallen@kcnvlaw.com
Attorneys for Real Party in Interest
180 Land Company, LLC

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison
Joseph S. Kistler
Matthew K. Schriever
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com
Attorneys for Real Party in Interest
180 Land Company, LLC

Elizabeth Ham, Esq.
EHB COMPANIES
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117
eham@ehbcompanies.com

Dated: February 10, 2022

/s/ Tricia Trevino
An employee of Leonard Law, PC

APPN
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFFS LANDOWNERS' REPLY IN SUPPORT OF MOTION TO DETERMINE TAKE AND MOTION FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF AND OPPOSITION TO THE CITY'S COUNTER-MOTION FOR SUMMARY JUDGMENT** **VOLUME 21** **Hearing Date: September 23, 2021** **Hearing Time: 1:30 p.m.**

The Plaintiffs, 180 Land Co LLC and Fore Stars, Ltd. (hereinafter referred to as "Landowners") hereby submit this Appendix of Exhibits in Support of their Reply in Support of their Motion to Determine Take and Motion for Summary Judgment on the First, Third and Fourth Claims for Relief which also Opposes the City's Counter-Motion for Summary Judgment as follows:

194	**Declaration of Yohan Lowie in Support of Plaintiff Landowners' Reply in Support of: Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest; and (2) Evidentiary Hearing Brief #2: Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners' Property**	**21**	**006076-006083**
195	**Declaration of Stephanie Allen, Esq., which Supports Plaintiff Landowners' Reply in Support of: Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest; and (2) Evidentiary Hearing Brief #2: Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners' Property**	**21**	**006084-006089**
196	**January 3, 2018 CLV Agenda Memo-Planning-Staff Recommendation of Denial**	**21**	**006090-006098**
197	**City Council Meeting of January 17, 2018 Transcript re Agenda Items 74-75**	**21**	**006099-006117**
198	**May 13, 2021 Transcript of Hearing re City's Motion for Reconsideration of Order Granting in Part and Denying in Part the Landowners' Motion to Compel the City to Answer Interrogatories**	**21**	**006118-006213**

DATED this 15th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 15th day of September, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFFS LANDOWNERS' REPLY IN SUPPORT OF MOTION TO DETERMINE TAKE AND MOTION FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF AND OPPOSITION TO THE CITY'S COUNTER-MOTION FOR SUMMARY JUDGMENT- VOLUME 21** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

Exhibit 194

DECL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company; SEVENTY ACRES LLC, a Nevada Limited Liability Company; FORE STARS, Ltd; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-780184-C
Dept. No.: III

DECLARATION OF YOHAN LOWIE IN SUPPORT OF PLAINTIFF LANDOWNERS' REPLY IN SUPPORT OF: PLAINTIFF LANDOWNERS' EVIDENTIARY HEARING BRIEF #1 MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE LANDOWNERS' PROPERTY INTEREST AND REPLY IN SUPPORT OF PLAINTIFF LANDOWNERS' EVIDENTIARY HEARING BRIEF #2 MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE CITY'S ACTIONS WHICH HAVE RESULTED IN A TAKING OF THE LANDOWNERS' PROPERTY AND IN RESPONSE TO THE DECLARATION OF J. CHRISTOPHER MOLINA

Hearing Date: May 27 & 28, 2021
Hearing Time: 9:00 a.m.

DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

I make this Declaration in support of Plaintiff Landowners' REPLY IN SUPPORT OF: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum of Points and Authorities Regarding the Landowners' Property Interest and REPLY IN SUPPORT OF Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners' Property and in response to the Declaration of J. Christopher Molina (the "Molina Declaration").

1. I have never met or spoken with J. Christopher Molina. No person named "J. Christopher Molina" was involved in any transactions with the Peccole family where I was a principal on any side of the transaction.

2. I have been informed that J. Christopher Molina is an attorney at the law firm of McDonald Carano. The law firm of McDonald Carano was not involved in any transactions with the Peccole family where I was a principal on any side of the transaction.

3. I understand "personal knowledge" to mean knowledge gained through firsthand observation or experience. Based on my personal knowledge as stated in #2 and #3 above, the declaration by J. Christopher Molina that he has "personal knowledge" of any transactions with the Peccole family where I was a principal on any side of the transaction is untruthful.

4. In regard to the consideration for the acquisition of the membership interest of Fore Stars Ltd. the information attested to by J. Christopher Molina is replete with material inaccuracies, confusion, and untruthful statements. To name a few and generally:

   a. The acquisition of the assets and liabilities, which included five parcels of land amounting to approximately 250 acres of residential zoned land, was significant and

included: 1) approximately 15 years of work, resources, sacrifice, effort, and earned goodwill; 2) entering into an approximately $100 million multi-transaction deal with the Peccole family (the original owner of Fore Stars Ltd.) and a third party that involved complex land transactions related to large tracts of land and developments, including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the former Badlands properties. The understanding among the parties was that $45 million in consideration had been exchanged for the acquisition of the property that was owned by Fore Stars Ltd. comprising the "250 Acre Residential Zoned Land".

b. The "Developer" is not Queensridge Towers LLC ("QT").

c. Fore Stars Ltd. (then owned by the Peccole family) did not agree to transfer 5.13 acres to QT "at no cost". Extensive consideration was exchanged as stated in the Redemption Agreement.

d. The "Developer" as incorrectly used by J. Christopher Molina in his Declaration, had no obligation to pay the Peccole family $3 million.

e. The $3,150,000 Clubhouse Obligation was owed by Queensridge Towers LLC to Fore Stars Ltd (then owned by the Peccole family), not the other way around, and not owed by the "Developer" or the Landowners' principals, as falsely state by J. Christopher Molina.

f. The "Developer" never had an obligation to construct a new clubhouse.

g. In 2012, the Landowners' principals disassociated from QT and relinquished all ownership, management or control of QT. Therefore, any reference to the Developer as defined by the Molina declaration thereafter is false.

h. The 2013 Settlement was between QT and Fore Stars Ltd. (then owned by the Peccoles), not the Landowners' principals.

5. Specifically, the following statements are inaccurate or blatantly false:

a. Paragraph 4 in the Molina declaration is false including the statement that the Peccole family is the developer of the 1,539-acre Peccole Ranch Master Plan.

b. Paragraph 5 of the Molina declaration is false.

c. Paragraph 6 of the Molina declaration is false in that the summary of transactions and obligations as portrayed is false.

d. Paragraph 7 of the Molina declaration is false.

e. Paragraph 9 of the Molina declaration is inaccurate as it falsely describes sales transactions as recapitalization.

f. Paragraph 11 of the Molina declaration references a settlement agreement to which I have no personal knowledge as neither I nor any entity I am affiliated with was a party to that transaction.

g. Paragraph 12 of the Molina declaration references a letter attached to the 2013 Settlement to which I have no personal knowledge as neither I nor any entity I am affiliated with was a party to that transaction. However, referencing the original agreement and that the obligation to spend 3,150,000 by "the Developer" somehow survived termination is false and defies the plain language of the transactional documents.

h. Paragraph 12, 13, and 14 of the Molina declaration is inaccurate and appears to be based upon documents and negotiations that were never executed.

i. Paragraph 16 of the Molina declaration is false.

j. Paragraph 17 of the Molina declaration is false in its assumed conclusion.

k. Paragraph 23 of the Molina declaration is false in that the Developer as defined by Molina did not record said parcel map. QT is not and was not the Developer.

6. In regard to discovery requested relating to the amount paid for the acquisition of Fore Stars, the documents produced to the City support the testimony that "the aggregate of consideration given to the Peccole family for Fore Stars Ltd, the owner of the former Badlands golf course properties was approximately $45 million". After reading the Molina Declaration it is clear that J. Christopher Molina does not comprehend those complex transactions and his testimony within his Declaration relating thereto makes false conclusions. Furthermore, J. Christopher Molina's continued reference to a "single transaction" for a complex deal that involved a series of transactions is merely deceptive semantics.

7. Upon information and belief: J. Christopher Molina did not attend the August 13, 2018 meeting between the City of Las Vegas ("CLV") and GC Wallace Engineers ("GCW"); The meeting minutes were prepared by GCW, a third party engineering firm; The City did not like that the minutes memorialized what the CLV attendees stated at the meeting, that the City's 'top down directive' to City staff was that they are "not authorized to provide conditional approval on this TDS", so after receipt of the GCW minutes CLV's Peter Jackson desperately sought to alter the minutes to remove the City's unfavorable admissions made during the meeting directing GCW to have them "replaced in its entirety", and in fact attempted to distance himself from the happenings at the meeting stating in his email "could you please let the minutes reflect that I had to leave the meeting in the first 5 minutes or so to attend another meeting?"; The Plaintiff's response to accurately reflect everyone's understandings was that "Seventy Acres LLC is OK with attaching both Peter's 8/21/18 email and Mark's 9/12/18 email to the August 13 dated

GCW meeting minutes as CLV's comments to the meeting."; It was the City of Las Vegas representatives that sought to falsify the minutes, not GCW, nor Plaintiff. J. Christopher Molina's statement that the "Developer's catch-22 argument relies on falsified evidence" and J. Christopher Molina's statements on what occurred are both false testimonies.

8. The technical drainage study submitted on behalf of Plaintiff and discussed between GCW and the CLV engineers was for land (17 Acres) that was already entitled by the City, yet the City refused to allow the drainage work to proceed. J. Christopher Molina confuses the ordinance requirements with the Technical Drainage Study on the entitled 17 acres. The CLV put a hard stop on Plaintiff's necessary drainage work with orders coming "from the top". However, as it relates to other parcels not yet developed, the City made it clear through the ordinance that it would not accept an application for development without a drainage study and that no drainage study could be completed until all litigation was resolved in relation to the Landowners' properties.

9. Plaintiff's land is residentially zoned property R-PD7. It was hard zoned R-PD7 from U(M) by the City Council by Ordinance No. 5353 PASSED, ADOPTED AND APPROVED on August 15, 2001, signed by Mayor Oscar Goodman and attested by City Clerk Barbara Jo Ronemus. The ordinance did not change the then General Plan Land Use Designation of M-Medium Density residential. In addition to hard zoning the property for R-PD7 residential single and multi-family use, it provides that "**All ordinances or part of ordinance or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict hereby repealed**." The R-PD7 zoning on the property is "the law" of the land, not arguments by J. Christopher Molina declares.

10. In 2015, City of Las Vegas Councilman Bob Beers, City Attorney Brad Jerbic, and Planning Director Tom Perrigo admitted to me, in front of my team, that they [Bob, Brad and Tom] have "no idea" how a PR-OS Land Use Designation was purportedly placed on the property, and that no formal City adoption has ever occurred. Additionally, I was told "But it doesn't matter because zoning supersedes the General Plan".

11. J. Christopher Molina's statements that Plaintiff's property is "open space and drainage" under the Peccole Ranch Master Plan is a blatant falsity in contradiction to and in complete disregard of the ruling of the Nevada Supreme Court in its Order of Reversal on filed on March 5, 2020. The Supreme Court of the State of Nevada in Case No. 75481 ruled that the Peccole Ranch Master Plan does not apply to Plaintiff's R-PD7 zoned land and that no application for modification of the Peccole Ranch Master Plan was required by Plaintiff to develop its property.

DATED this 21st day of May, 2021.

/s/ Yohan Lowie
Yohan Lowie

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 21th day of May, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing: Declaration Of Yohan Lowie In Support Of Plaintiff Landowners' Reply In Support Of: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum Of Points And Authorities Regarding The Landowners' Property Interest And Reply In Support Of Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum Of Points And Authorities Regarding The City's Actions Which Have Resulted In A Taking Of The Landowners' Property And In Response To The Declaration Of J. Christopher Molina was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

MCDONALD CARANO LLP
George F. Ogilvie III, Esq.
Amanda C. Yen, Esq.
Christopher Molina, Esq.
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, City Attorney
Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbynes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

/s/ Sandy Guerra
Sandy Guerra, an Employee of the
Law Offices of Kermitt L. Waters

EXHIBIT “SSSS”

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, A Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X,	)	
Plaintiffs,	)	
vs.	)	CASE NO.: A-17-758528-J
	)	DEPT. NO.: XVI
CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI GOVERNMENTAL ENTITIES I-X,	)	
Defendants.	)	

CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF

NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION

WILLIAM BAYNE

LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021

REPORTED BY: JOHANNA VORCE, CCR NO. 913

JOB NO.: 777801

I believe Clyde Spitze was at a couple of those meetings as well at Bad- -- we met at the Badlands Golf Course Country Club at the restaurant in there. And we -- we talked several -- talked to Hyatt several times. And then afterwards, at some point, Mr. Lowie -- he might have even walked -- walked through the middle of one of those meetings. I can't remember. But anyways, he found out, was upset, didn't feel that we had the -- the ability to do what we were contemplating doing, and then brought forth the lawsuit.

BY MR. OGILVIE:

Q. Do you have an understanding as to why he had that belief?

A. After doing a little bit of research and understanding the situation more, I think it was because there was a -- there was a conversation, at some point, between him and other members of my family about, at some point, he would want to potentially buy the golf course. And so I felt -- I think he felt like we were not being honorable to that conversation.

Q. Okay. So let me -- let me just take a slight detour and -- and discuss this negotiation with Hyatt, or the background of the negotiation with Hyatt.

It was -- or was it -- was it Peccole -- the Peccole Family's understanding that it had an ability to

develop the golf course?

A. We've always had the understanding that we could develop on the golf course. It was -- it's never been our intent to get rid of the golf course. So there was never a point in our family where we discussed just turning the golf course completely off and doing away with the golf course. But it always has been our intent -- we need to enhance the golf course and figure out a way for it to become a financially viable operation, whether that means adding a tennis club, whether that means adding a larger clubhouse that can support weddings and venues, whether that means adding a few lots here and there where we can carve out some lots onto the golf course. Those were all things that we had contemplated and talked about over the years.

Q. Okay.

A. But never talked about not having a golf course.

(Defendant's Exhibit 20 was marked for identification.)

BY MR. OGILVIE:

Q. Let me direct your attention to what's been marked as Exhibit 20. Exhibit 20 is a Planning & Development Department -- City of Las Vegas Planning & Development Department Application/Petition Form that the -- I'm just going to go through it top to bottom.

The application/petition for a general plan

Q. And is that his signature?

A. Well, I wasn't there when he signed it, but that looks like his signature.

Q. Okay. The representative is Moreno & Associates, contact Greg Borgel.

Do you know of an individual by the name of Greg Borgel?

A. I do know an individual by the name of Greg Borgel.

Q. Did he perform land use regulation work for -- on behalf of Fore Stars?

A. At about that time, when Clyde stopped, they did use Greg Borgel, and they also used another company. The name will come to me in a second. We used DC Wallace for a few things. Roy Clark I think is his name, I think.

Q. Okay.

(Defendant's Exhibit 22 was marked for identification.)

BY MR. OGILVIE:

Q. Let me direct your attention to what's been marked as Exhibit 22. It is an August 31st, 2005 letter from Cherie Guzman at JMA Architecture Studios. It is described as "Queensridge Townhomes, Justification Letter/Project Description," and it indicates that, "We are requesting a general plan amendment for the development of a 34-unit

townhome project." It goes on to talk about the project a little bit. The last sentence of the first paragraph says, "The general plan designation is PROS and the site is zoned R-PD7."

Do you see that?

A. I do.

Q. Do you have an understanding whether -- in August 2005, whether the Peccole Family understood that the general plan designation for the Badlands property was PROS?

A. Having gone back through our history a little bit and going through some of our documents, I think we had an understanding that it was -- the general plan was PROS because we would often go in when we got tax bills, and the tax bills would come in, and then we would go ahead and -- and fight to get the tax bills reduced because it was under a general plan designation of PROS. So I would say we did understand that.

Q. Okay.

MR. LEAVITT: And just to lodge a continuing objection on that, George. Lacks foundation and also calls for a legal conclusion.

MR. OGILVIE: Duly noted.

THE COURT REPORTER: Was that Mr. Leavitt?

MR. OGILVIE: Yes, that was Mr. Leavitt.

(Defendant's Exhibit 23 was marked

have -- we don't have a subpoena on it, and so just voluntarily producing it makes me a little uneasy.

MR. OGILVIE: Well, okay.

MR. WILLIAMS: But why don't you guys talk about it after the deposition and then see if you can work it out, and then I'll have it in my office, I'm sure, by no later than Monday. Billy gives me stuff pretty quickly.

BY MR. OGILVIE:

Q. Okay. So this appraisal that you believe was conducted on Fore Stars in 2010, I think that's the year you said, do you have a recollection as to the appraised value of Fore Stars?

A. Yes, I do. It's $3.9 million.

Q. And then --

A. That did not -- let me clarify. That did not include the operational assets, nor did that include the water rights.

Q. Okay.

A. That was just for the -- the fee simple property.

Q. Okay. And I think you indicated that the -- your recollection of the operational assets, essentially the equipment, was -- was less than 2- or $300,000?

A. Yeah. I don't -- I don't remember the exact number, but it -- it didn't -- it didn't strike me when we got it that it was very much money.

THE COURT REPORTER: I'm sorry, I'm sorry, you have to slow down. You're talking too fast. Can you start over?

THE WITNESS: Yeah.

THE COURT REPORTER: "I didn't have to pay any assignment assumption agreements. I didn't have to do anything because basically Mr. Lowie would have stepped in."

THE WITNESS: He would have stepped in to Fore Stars' position. And by stepping into Fore Stars' position, there was no need for an assignment and assumption agreements, and so it -- it just made it cleaner. That was part of the reason that we -- we contemplated switching. That's not all the reason, but that's -- that's a chunk of it.

BY MR. OGILVIE:

Q. Was part of the reason also the claim of a first right of refusal by some third-party other than Mr. Lowie's entities?

A. No. Actually, we settled that before we -- no, that's not why.

The other part of the reason for switching to a securities agreement was I felt it gave us more protection as we went forward, not knowing how or what Yohan would do from a development standpoint. It was my family's intention to always keep the golf course. And because that was our

intention, we weren't very nervous about developing on the golf course. But we didn't know exactly what Yohan would do, and so that was another way to kind of buffer us from -- from what he chose to do.

Q. When you say "buffer" you, buffer you from what?

A. Liability.

Q. Okay.

A. I didn't want to try to go back in and rep and warranty everything that Fore Stars or my family had ever done or said. It was too complicated and it's too old. And so if I switch it to a securities agreement, he's Fore Stars.

MR. OGILVIE: Okay. Let's move forward. We jumped ahead a little bit there, but let's move forward with another document, another e-mail.

(Defendant's Exhibit 34 was marked for identification.)

BY MR. OGILVIE:

Q. Exhibit 34 is an e-mail exchange between Henry Lichtenberger, Yohan Lowie, yourself, and Todd Davis. And there's an e-mail -- initial e-mail from Mr. Lichtenberger. It says, "I have received consent from the Peccole Family for the revised purchase terms as it relates to the $3 million that was initial drafted as a term note."

What -- do you have an understanding of what

Queensridge Towers and Fore Stars. And this is the document that finalized the transfer back to Fore Stars of the two-point-something acres that was the subject of the election for -- to conclude the clubhouse improvements agreement, correct?

A. Yep.

Q. So you -- is it true and accurate to say that as of the date of this document, November 14th, 2014, that you had resolved that Golf Course Clubhouse Improvements Agreement?

A. Yes. And that's -- the purchase price went from 12 to 15.

Q. When you say "the purchase price," you're talking about the purchase price of Fore Stars --

A. Fore Stars.

Q. -- and the water rights?

A. That is correct.

(Defendant's Exhibit 43 was marked for identification.)

BY MR. OGILVIE:

Q. Directing your attention to what's been marked as Exhibit 43. It is an e-mail exchange and "Membership Interest Purchase and Sale Agreement" from -- the e-mail is from Mr. Lichtenberger to you, Yohan Lowie, and Todd Davis dated -- what did I say -- November 26th, 2014. The

attached -- and Mr. Lichtenberger says, "Attached is initial draft of the Stock Purchase Agreement for the Golf Course."

So this -- and he goes on to say in the second sentence, "The document differs greatly from the former draft of the Asset Purchase Agreement so creating a marked version would not be very beneficial."

And so the attachment -- the second through, what, 20th page, whatever it is, of Exhibit 43 is the first iteration of a purchase and sale agreement for the entity, as opposed to the prior iterations that were for the assets of the entity, correct?

A. That's correct.

Q. And this is this -- references the fact that Fore Stars owns the real property that constitutes the Badlands Golf Course, and WRL LLC is the entity that owns the water rights that are appertinent to the golf course, correct?

A. That is correct. Yeah, that was correct.

Q. And if we go to page 2, the purchase price now, as a result of the lot line adjustment agreement between Queensridge Towers and Fore Stars from November 14th, 2014, is $15 million because you are now transferring that additional two-point-something acres where the clubhouse sits?

A. That's correct.

Q. Under Section --

A. Well, yeah. It's -- it's worth -- it's worth that money because not only are we transferring the additional -- we're transferring the clubhouse.

Q. Right.

A. We got the clubhouse back.

Q. Right.

A. Okay.

Q. So you're valuing the clubhouse, you and -- in this case --

A. It wasn't just that additional two acres. It was -- it was the clubhouse --

Q. The club -- okay.

A. -- meaning we had the clubhouse.

Q. The real property and the improvements?

A. Yeah.

Q. And you're valuing that at $3 million?

A. Yeah.

Q. So in Section 2.01(b), it talks about a feasibility period.

Is that like a -- do you have an understanding that that was the purchaser's due diligence period?

A. Yes.

Q. And it was 30 days from the effective date, effective date being -- oh, not actually -- not filled in at this point because it's just a draft, right?

A. That is my belief.

Q. Mr. Leavitt asked you some questions about valuation, and you said you -- your knowledge is that the value was $15 million total as of December 1st, 2014.

That $15 million total, that's for the -- the -- what ultimately became the purchase agreement for WRL and the purchase agreement of Fore Stars, correct?

A. And the business interest, yes.

Q. Okay. And the business interest.

And then Mr. -- addressing -- addressing Mr. Leavitt's quote of Mr. Molina's declaration, which I'm paraphrasing, Lowie paid -- Mr. Lowie paid less than $4 1/2 million for the golf course.

You know how he came to that, that valuation, right? He took the $7 1/2 million and reduced it by the value of the equipment that you testified was worth no more than 2- or $300,000, so let's -- let's call it $100,000, just for sake of the question. So it reduces the $7 1/2 million purchase price of Fore Stars to 7.4 for the real property. And then the -- the 250 acres that's at issue in these lawsuits doesn't include the property -- the two-point-something acres that you valued at $3 million that you got in the -- in the election by Queensridge Towers on the Clubhouse Improvements Agreement. So reducing that -- call it 7.4 by $3 million, that would be less than $4 1/2

million for the 250-acre golf course, correct?

MS. HAM: I'll make an objection on the record to the form of the question.

MR. LEAVITT: Yeah. And it lacks foundation and assumes evidence not in -- or assumes facts not in evidence. It's speculative, conjectural, and confusing.

Do you have another one?

MR. WILLIAMS: Objection; vague and ambiguous.

BY MR. OGILVIE:

Q. You can answer.

A. I got to learn how this objection stuff works. I mean, based on what you said, I don't have an argument.

MR. OGILVIE: Okay. I don't have anything further.

FURTHER EXAMINATION

BY MR. LEAVITT:

Q. Okay. Let me ask a question here, though. Because previously I asked you if it was true that Mr. Lowie paid less than $4.5 million for the land, and you said that was not true, correct?

A. It was not. The purchase and sales securities agreement was for 7.5 million.

Q. Okay.

A. But if you want to do the math that way --

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

I, Johanna Vorce, Certified Court Reporter, do hereby certify:

That I reported the taking of the deposition of the witness, WILLIAM BAYNE, commencing on Friday, July 16, 2021, at 9:10 a.m.

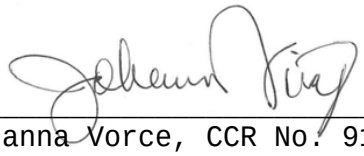
That prior to being examined, the witness was by me duly sworn to testify to the truth.

That I thereafter transcribed my shorthand notes, and the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes.

That a request has been made to review the transcript.

I further certify that I am not a relative or employee of an attorney or counsel of any party involved in said action, nor a relative or employee of the parties involved, nor a person financially interested in said action.

Dated this 27th day of July, 2021.



Johanna Vorce, CCR No. 913

EXHIBIT “YYYY”

CITY COUNCIL MEETING OF
OCTOBER 6, 2021
VERBATIM TRANSCRIPT – AGENDA ITEM 63

ITEM 63 – Discussion for possible action to approve filing a writ petition in the Nevada Supreme Court relating to 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J in the Eighth Judicial District Court - All Wards

Appearance List:

CAROLYN GOODMAN, Mayor
BRYAN SCOTT, City Attorney
VICTORIA SEAMAN, Councilwoman
MICHELE FIORE, Councilwoman

(8 minutes, 21 seconds) [1:52:46 – 2:01:07]

Typed by: Debra A. Outland
Proofed by: Stacey Campbell

MAYOR GOODMAN

We're back. Believe it or not, we are back. And it is 11:02, and I think I was instructed to go to 63. So, whoops, let me turn off my cell phone. That's off. Okay. All right. Agenda Item 63. Discussion for possible action to approve filing a writ petition in the Nevada Supreme Court relating to 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J in the Eighth Judicial Court - All Wards.

And so, I think the floor is yours, Mr. Scott.

BRYAN SCOTT

Everything's in order, Mayor. We're just waiting for a motion from you.

MAYOR GOODMAN

Okay, and we are gonna, are you here? I believe at this point on that item, Agenda Item 63, Councilwoman Seaman, in whose Ward this is, has asked to make a statement please. Go ahead.

VICTORIA SEAMAN

Thank you, Madam Mayor. When I ran for office two years ago in a Special Election, the Badlands issue was the primary issue facing my constituents in Ward 2. At the time, I was vocal about the fact that this issue, while taking place in Ward 2, could become the burden of all taxpayers in the city of Las Vegas, not just an issue facing those living in the Queensridge community, where the dilapidated Badlands golf course now sits. Then, only three years into the process, lawsuits were being filed, one after the other at a rapid pace, looking very much like a resolution could take many years. My contention then, as it is still is today, is that we must get together with the developer and find a resolution or the taxpayers could end up someday footing the bill for a government taking.

The recent court ruling has put that reality more into focus today. Some have said that if we lose in court, this could cost the city hundreds of millions of dollars. I don't think any member of this Council is willing to put the city of Las Vegas taxpayers at risk. Sunday, the Las Vegas Review Journal put out an editorial and said to date, the City of Las Vegas has spent close to $4 million of taxpayer money to fight what may be a losing cause.

Last week, a District Court judge sided with the developer. The City has gone far beyond the ordinary to stop this developer, even creating an ordinance through a previous Council that many called the Yohan Lowie ordinance outlawing residential development in old golf, on old golf courses. The Review Journal went on by saying this land was zoned for residential development from the start. Both the precious City, both the previous City Attorney and the Planning Department all agreed that the land was still zoned residential from an action the City took 20 years ago. Zoning that was once granted, doesn't change.

The court has said that EHB Companies has a legitimate Fifth Amendment claim against the City for an overzealous attempt to restrict development of the Badlands property. I was quoted years ago when I ran, that it's not a matter of time if the City pays, but a matter of how large the check the City writes to the developer. Now, a court has decided. At the end of this month, a jury will be selected, and beginning at the start of next month, the courts will once again hear this matter, but this time, to determine how much money the taxpayers will pay.

Today, this Council is going to decide whether we should appeal this case to the Nevada Supreme Court or not, which means, we, as a Council, will vote on this matter. I've been told the

City has reached out to the developer, and the developer has expressed no interest in settling this matter out of court. I would like to ask our representatives to reach out to the developer one more time before filing this appeal. The City Council has an opportunity to correct the mistakes of the past Councils.

So, my job as a City Councilwoman is to fight on and protect the taxpayers, and as I vote to do this appeal, I'm going to ask that we continue to try to reach out and settle this, but again, I, must vote for the appeal because my, I work for the City taxpayers, and at this point, I believe we have to continue on. I do know that we've all reached out to the developer, the Mayor, the City Attorney, with no resolution.

So, with saying that, it is in my Ward. I wish we could come up with a resolution. I will be voting for the appeal.

MICHELE FIORE

Madam Mayor.

MAYOR GOODMAN

Thank you very much. If I may, I'd like to make a comment here. Having been in, on this Council since 2011, as well as with Mayor Pro Tem, we heard all of the appeals from both sides each time, and every time that we had the opportunity, I know I spoke to the fact this would end up at the Nevada Supreme Court. This is a legal issue, and I didn't think even at that time as we were listening to pleas from both sides. We are now at a point on this, advice from our City Attorney and the legal staff is to go ahead and approve a writ petition, ultimately, finally at the Nevada Supreme Court, where if we could have moved it right then and there, we would know the fault if it lies anywhere in totality or in pieces or whatever. So, I am very, I'm going to ask Councilwoman Fiore if she wishes to speak, but I think we have been dealing with this for such a long time, and the ultimate decision is with the Nevada Supreme Court, which this moves it to so we can finally get resolution here. And from my perspective, we just need to move it forward and take the advice of our legal counsel and move forward.

And, I appreciate your comments, Councilwoman Seaman. You have been in that from the days, and I read your campaign talks and your debates and know that your passion is for the entire

community in Ward 2, which this has divided. So, my hope is that we will move forward and move this to the Supreme Court and get it done.

So, you please, go ahead.

MICHELE FIORE

Thank you, Madam Mayor. So, I'm – I've been here for four years, and this has been an ongoing thing, and I believe the Review Journal's got their numbers a little confused. If they go way back, we're about 10 million bucks in law right now, and that's on you, the taxpayers, including my Ward constituency. So, I will not be voting today, yes, to go forth because this has to stop, and unfortunately, past Councils have made political mistakes and it has cost the taxpayers millions, and it's going to continue costing the taxpayers millions.

So, I am not in support to continue this battle. I am in support in making the city whole and, letting business as, when I first got elected, when they said this was, this dirt was for residential building, I voted that way from the first day. Our counsel advised me of that. So, I'm going to be voting to stop the fighting, and I'm going to be voting against this measure.

MAYOR GOODMAN

Okay, thank you very much. We're gonna go ahead, and I'm going to make a **motion to approve Agenda Item 63,** and thank you both for your comments. And please vote. **And that motion carries. (Motion carried with Fiore voting No)**

Thank you, Mr. Scott.

BRYAN SCOTT

Thank you, Mayor and Council, and we'll keep you informed as we always have.

MAYOR GOODMAN

Thank you. Please do.

(END OF DISCUSSION)

EXHIBIT “ZZZZ”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY LLC, ET AL., Petitioners, vs. CITY OF LAS VEGAS, Respondent.	CASE#: A-18-775804-J DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN
DISTRICT COURT JUDGE

MONDAY, SEPTEMBER 13, 2021

RECORDER'S TRANSCRIPT OF PENDING MOTINOS

APPEARANCES:

For the Petitioners:	JAMES J. LEAVITT, ESQ. KERMIT L. WATERS, ESQ. ELIZABETH M. GHANEM, ES. AUTUM L. WATERS, ESQ. MICHAL A. SCHNEIDER, ESQ
For the Respondent:	GEORGE F. OGILVIE, III, ESQ. PHILIP R. BYRNES, ESQ. REBECCA L. WOLFSON, ESQ. J. CHRISTOPHER MOLINA, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

I want to say inventive. That is an inventive procedural tool. But I get the point. I think that's what Judge Williams -- either he foresaw that as likely to be what would happen or, I don't know, read their minds. So I didn't know it was a thing you could do, but I'm going to assume that the Clerk's office can make it so because that's, it seems to me, is the appropriate remedy.

So here's my question. Where they're filed together, because see, the -- and that one -- in the other case, the PJR was new. And so he said transfer the PJR part, give it to a new judge, but keep the filing date.

MR. SCHWARTZ: Right.

THE COURT: Do you transfer to a new judge, or do you just give it a new case number so it's clear when it goes up on appeal that it's a different matter you're -- and that's the problem in the other case where they won't consider it because you don't have a final decision. So that's seems to me that severs the case. Essentially, it severs the cases. It makes it a new case, gives it a new case number. I'm not sure you have to direct the clerk to reassign.

MR. SCHWARTZ: Your Honor, can I address that?

THE COURT: They said nothing about that.

MR. SCHWARTZ: Can I address that?

THE COURT: Yeah.

MR. SCHWARTZ: I think that the nub of this *City of Henderson* opinion is that if you have two heard by the same judge, it's going to be very confusing because with a PJR, you're confined to the

administrative record; with the civil complaint, you're not. There's a different remedy for a PJR from a civil complaint. There's a different standard, substantial evidence or failure to proceed by law. And with a -- in this case, an inverse condemnation claim, you have to show a wipeout or some extreme regulation or liability for damages. And the Court said one judge should not hear the two causes of action because, they say, they're like oil and water.

And the judge -- the Court went on at some length about why. He says, you know, to conclude otherwise, to allow the two matters to be heard by the same judge, he says to conclude otherwise, I'm reading from the *City of Henderson*. "To conclude otherwise would allow confusingly hybrid proceedings in the district courts, where in the limited appellate review of an administrative decision would be combined with fraud, original civil trial matters. Thus, *Solid State* could not initiate judicial review proceedings within the existing civil action."

So the Courts -- their concern is that there's going to be some confusion when you look at -- when the Court is considering the record. If it can look at the administrative record in one proceeding, but it's also got the civil complaint in front of it where it's not confined to the record, it will seize on facts that aren't in the record because, you know, it's hard to exclude some fact from the judge's mind once you've heard it. And facts that might be relevant to the substantial evidence to a civil liability for damages might not be -- have been before the decision-maker. Only the administrative record is before the decision-maker.

counsel, Your Honor, to address. Do you want to address that? Do you want me to address it?

MS. GANHEM: Yeah. Either way, Your Honor. Then we would submit that we withdraw the petition for judicial review at this time so the inverse condemnation case can go forward with you -- this Court, and that our time to be heard will no longer be delayed.

THE COURT: Okay. All right. So with respect to the petition for judicial review, the Court declines to strike it and would instead follow the procedure of footnote 5 in *City of Henderson* and, quote, "transfer it" to a new case number. In order to avoid delay, the City -- the landowner has agreed to withdraw the petition for judicial review and proceed with the complaint only as a civil action on their equitable claims. Okay.

So the petition for judicial review is withdrawn without prejudice. I'm assuming without prejudice as to any issues. So for your order, I granted the alternative relief. I would follow the transfer procedure. However, the party has -- the landowner has chosen to abandon the petition for judicial review and proceed only on the remaining causes of action of the complaint.

MR. BYRNES: Your Honor, can we go off the record and talk amongst ourselves?

THE COURT: Sure. Let's take a break.

MR. BYRNES: We have -- we're working into some mine field too.

THE COURT: Yeah. Let's do that.

[Recess taken from 2:59 p.m. to 3:16 p.m.]

MR. OGILVIE: Understanding of what the City's intention was in bringing the motions that are being heard today, and that is to bring this matter back to where it was in May of 2018 when these applications came up before the City Council. And the City Council took no action, struck the applications because it would have been in violation of Judge Crockett's order at the time if it had considered and granted them.

The City's intention was to put itself back in that same position now that Judge Crockett's order has been reversed. So with that said, let me talk about two things. One, delay. There hasn't been an attempt to delay. And in fact, a year-and-a-half ago, the City invited the developer to move forward with those applications after Judge -- immediately after the Supreme Court reversed Judge Crockett's order. So there hasn't been this million dollars in taxes paid just because the City is taking some action. No. It's because the developer has sought not to pursue those applications. The developer, as we argued in the motion for remand, should be required to pursue those applications.

Now, with respect to the purported withdrawal of the PJR, Rule 41 does not allow that. The City has answered the PJR and amended pleading. Rule 41 only says the plaintiff can only withdraw a complaint as a matter of right one time; otherwise, it needs consent, or it needs to file a motion and have leave of court. So the City objects to that. It's not for purposes of delay. It's, again, for purposes of placing the parties where they should have been in May of 2018, but for Judge

it is going to be reassigned. If the Clerk's Office does that when I send them this order, you may end up with a different judge. But for right now, I know of no reason why you would need it. Tim Williams directed them to give them a new judge. I don't know why.

MR. LEAVITT: Okay. And Your Honor, we feel, in light of that, with the Court's order, we can move forward with the motion to determine property interests.

MR. OGILVIE: That's baffling, Your Honor, because if the case is assigned to a new judge, that would be premature. We don't know. So we object to moving forward on that motion.

THE COURT: Okay. Well, and here's the problem. Whatever is determined is whatever is determined, and it's the law of the case. Whoever takes it over, takes it over. So we're just going to go -- we're going to just keep moving.

MR. OGILVIE: Okay.

MR. LEAVITT: And so may I move forward, Your Honor, with that motion?

THE COURT: Yes.

MR. LEAVITT: Okay. Your Honor, as we've argued numerous times before, in moving now to the inverse condemnation side of the case --

THE COURT: Correct.

MR. LEAVITT: -- which has the -- excuse me --

MR. OGILVIE: Thank you, Judge.

MR. LEAVITT: -- which as we've argued several times before

asking.

THE COURT: So that's why I said I think we're going to need more time. So Friday?

MR. MOLINA: Your Honor, just a point of clarification.

THE COURT: Yes.

MR. MOLINA: Do you want two separate orders for the motion to dismiss and motion to remand, or can we combine them?

THE COURT: You can combine them, I mean, if that's easiest for you. Just like review them with counsel and make sure we got them.

MR. MOLINA: Thank you.

MS. GHANEM: Thank you, Your Honor.

THE COURT: And we'll see you guys then on Friday. Two of you are going to be here. If you can't be here, Mr. Schwartz, we certainly understand --

MR. SCHWARTZ: Thank you, Your Honor.

THE COURT: -- and thank you for being here today.

MR. LEAVITT: Thank you, Your Honor. And thank you for everything today, for time. Glad to be out of her by 5:00.

[Proceedings adjourned at 5:00 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Jessica B. Cahill

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT “WWWW”

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LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company; SEVENTY ACRES LLC, a Nevada Limited Liability Company; FORE STARS, Ltd; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-780184-C
Dept. No.: III

Plaintiff Landowners' Motion on Order Shortening Time To:

1) Apply Issue Preclusion to the Property Interest Issue;

and

2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue

Hearing Requested On Order Shortening Time

///

Case Number: A-18-780184-C

Pursuant to EDCR 2.26, the Plaintiffs 180 Land Co., LLC, Seventy Acres LLC, and Fore Stars Ltd ("Landowners") hereby submit that Judge Williams in the 35 Acre Case and Judge Jones in the 17 Acre Case have decided the same exact property interest issue pending before this Court and have entered detailed findings of fact and conclusions of law on this issue. Exhibits 1 and 198. Also, Judge Williams in the 35 Acre Case, just two days ago - September 28, 2021, decided the same take issue pending before this Court, ruling from the Bench that - **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."** Judge Williams found a taking under all four of the Landowners' taking claims. Therefore, this Court should consider the "issue preclusive" effect of these recent decisions pursuant to Nevada Supreme Court precedent, which provides that, "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014). *See also* Five Star Capital Corp. v. Ruby, 124 Nev. 1048 (2008) ("emphasizing" that "[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Italics in original. Id., at 1052).

This Court entered a minute order to consider, on October 21, 2021, the same property interest and take issues in this 65 Acre Case. Therefore, this motion should be heard prior to the October 21, 2021, date. Or, as explained herein, this Court could enter its findings of fact and conclusions of law on the property interest issue as that issue has already been decided, with two findings of fact and conclusions of law already entered by Judge Williams and Judge Jones in the 35 and 17 Acre Cases. This Court could then continue a decision on the take issue until such time as Judge Williams findings of fact and conclusions of law are signed and submitted.

This Motion and request for hearing on shortened time are made and based upon the existing record in this action, the following Declaration of James Jack Leavitt and the

Memorandum of Points and Authorities, and any oral argument the Court may entertain at the time of the hearing on this Motion.

Respectfully submitted this 30th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ *James J. Leavitt*
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

ORDER SHORTENING TIME

Upon good cause shown, please take notice that the hearing before the above-entitled Court on **Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue** is shortened to be heard on the

_____ day of _____, 2021 at ___:____ , or as soon thereafter as counsel may be heard.

Plaintiff's Counsel must serve opposing counsel by 10/4 at 5 pm, opposing counsel has until 10/13 at 5 pm to file an opposition, and no reply will be allowed. The Court will continue its Chambers decision to 10/28. The hearing for this OST will be held on 10/25 at 10:30 a.m.

Dated this 1st day of October, 2021

5F9 0F2 9718 4F45
Monica Trujillo
District Court Judge

DECLARATION OF JAMES J. LEAVITT IN SUPPORT OF PLAINTIFF LANDOWNERS' NRCP 56(d) REQUEST

I, JAMES J. LEAVITT, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am an attorney at the Law Offices of Kermitt L. Waters, the attorneys of record for the Landowners in this matter.

2. If called upon to testify to the contents of this declaration, I am legally competent to do so in a court of law.

3. This declaration is made pursuant to EDCR 2.26.

4. There are four pending and related inverse condemnation cases in the Eighth Judicial District Court:

17 Acre Case – pending before Judge Jones;

35 Acre Case – pending before Judge Williams;

65 Acre Case – pending before this Court; and

133 Acre Case – pending before Judge Sturman.

5. This Court is currently considering two issues in this 65 Acre Case – 1) the property interest the Landowners had in the 65 Acre Case prior to the City interfering with that property interest (the **property interest issue**); and 2) whether the City engaged in actions to take that property interest (the **take issue**). This Court issued a minute order that assigned the decision on these two issues for this Court's October 21, 2021, chambers calendar.

6. Very recently, on September 28, 2021, Judge Williams, in the 35 Acre Case, after four days of hearings on the sole take issue, held that the City's actions resulted in a taking of the Landowners Property - **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."**

7. The Landowners are currently preparing the findings of fact and conclusions of law on the take issue to circulate to Judge Williams and it is anticipated that FFCL will be signed within two weeks.

8. Previously, on October 12, 2020, Judge Williams, in the 35 Acre Case, had entered detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest."** Exhibit 1. This Judge Williams FFCL on the property interest issue in the 35 Acre Case granted the Landowners' property interest motion in its entirety.

9. Recently, on September 16, 2021, Judge Jones, in the 17 Acre Case, also entered even more detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"** with findings very similar to Judge Williams findings on the property interest issue. Exhibit 198. This Judge Jones FFCL on the property interest issue in the 17 Acre Case also granted the Landowners' property interest motion in its entirety.

10. The Landowners have brought this motion on order shortening time, because this Court entered a minute order that it will consider the exact same **property interest issue** in this 65 Acre Case, that has already been decided by Judge Williams and Judge Jones, on this Courts October 21, 2021, chambers calendar.

11. The Nevada Supreme Court has held that this Court should consider the "issue preclusive" effect of these recent decisions by Judge Williams (35 Acre Case) and by Judge Jones (17 Acre Case) on the property interest issue - "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014). *See also* Five Star Capital Corp. v. Ruby, 124 Nev. 1048 (2008) ("emphasizing" that "[t]he doctrine provides

that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Italics in original. Id., at 1052).

12. In this same connection, this Court should also consider the preclusive effect of the Judge Williams decision on the take issue decided very recently - on September 28, 2021, wherein Judge Williams ruled from the Bench and held that it is "clear" there has been a taking of the 35 Acre Property, based on nearly identical facts that are pending before this Court on the take issue.

13. Therefore, this motion should be heard prior to this Court's October 21, 2021, chambers calendar. Or, as explained herein, this Court could enter its findings of fact and conclusions of law on the property interest issue as that issue has already been fully litigated and decided with detailed findings of fact and conclusions of law already entered by Judge Williams and Judge Jones in the 35 and 17 Acre Cases. The Landowners have submitted proposed FFCLs for the property interest issue in this 65 Acre Case to this Court, which is attached hereto. This Court could then continue the October 21, 2021, decision on the take issue until such time as Judge Williams findings of fact and conclusions of law are signed.

14. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of September, 2021.

/s/ *James J. Leavitt*
JAMES J. LEAVITT, ESQ.

1. Introduction

The Nevada Supreme Court held in Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014), that "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." The Court has "emphasized" in Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1052 (2008), that "[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Italics in original.

The Landowners have brought this motion, because the exact same **property interest issue** currently pending before this Court in this 65 Acre Case has been "*actually* and *necessarily [and fully] litigated*" before Judge Williams in the 35 Acre Case and before Judge Jones in the 17 Acre Case, with both Judges entering detailed Findings of Fact and Conclusions of Law (FFCL) on the property interest issue. Exhibits 1 and 198. The Landowners request that this Court apply those findings of fact and conclusions of law from the 35 and 17 Acre Cases, through the doctrine of issue preclusion, to the property interest issue pending in this 65 Acre Case. The Landowners have submitted proposed FFCLs for the property interest issue in this 65 Acre Case to this Court, which is consistent with the Judge Williams and Judge Jones FFCLS and which is attached hereto. This is the only way to comply with the Nevada Supreme Court rule and policy for issue preclusion to "maintain consistency" in these four pending cases.

The Landowners have also brought this motion, because the same **take issue** pending before this Court in this 65 Acre Case was just presented to Judge Williams in the 35 Acre Case – where all evidence and facts were presented to Judge Williams, because there has been full and complete discovery (and discovery has closed) in the 35 Acre Case. Judge Williams heard all evidence and facts on the sole **take issue** in the 35 Acre Case over a four-day period - September 23, 24, 27, 28, 2021. Judge Williams ruled from the Bench that it was "clear" there was a taking

- **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."** In short, the 35 Acre Case has proceeded further in litigation than any other case, with discovery complete, the property interest issue decided, the take issue decided, and trial on just compensation set for November 1, 2021.

2. Issue Preclusion on the Property Interest Issue

As this Court will recall, there are four pending and related inverse condemnation cases in the Eighth Judicial District Court:

- 17 Acre Case – pending before Judge Jones;
- 35 Acre Case – pending before Judge Williams
- **65 Acre Case – pending before this Court**; and
- 133 Acre Case – pending before Judge Sturman.

Each of these cases must be decided based on a two-step sub inquiry: first, the Court must decide the property rights the Landowners had prior to the City interfering with that property right **("property interest issue");** and, second, the court must decide whether that property right has been taken **("take issue")**. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 658, 137 P.3d 1110, 1119 (2006). All four courts are applying this two-step procedure.

On October 12, 2020, Judge Williams, in the 35 Acre Case, entered detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"** finding: **1)** the 35 Acre Property has at all relevant times had R-PD7 zoning; **2)** Nevada eminent domain law provides that zoning must be relied upon to determine the property interest issue in an eminent domain case; **3)** the Las Vegas Municipal Code lists single family and multi-family residential as the legally permissible uses of R-PD7 zoned properties; and, **4)** the permitted uses by right of the 35 Acre Property are single family and multi-family residential. Exhibit 1. Judge Williams rejected all other contrary City arguments, including the City's PR-OS argument and the Peccole Ranch Concept Plan arguments. Judge

Williams, just recently in hearings on the take issue (September 23, 24, 27, and 28), again confirmed the property rights issue and rejected the City's PR-OS and Peccole Ranch Concept Plan arguments.

On September 16, 2021, Judge Jones, in the 17 Acre Case, entered even more detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"** with findings very similar to Judge Williams findings on the property interest issue. Exhibit 198. Judge Jones, like Judge Williams, rejected the City's PR-OS argument and Peccole Ranch Concept Plan arguments. Exhibit 198, pp. 13-15.

The Nevada Supreme Court held that issue preclusion applies where: 1) the issue decided in the prior litigation is identical; 2) the ruling was on the merits and final; 3) the party against whom judgment is sought was the same party in the prior litigation; and, 4) the issue was actually and necessarily litigated. Alcantara, supra, at 258 (Nev. 2014). Here, the property interest issue decided by Judges Williams and Jones in the 35 and 17 Acre Cases is identical to the property interest issue pending before this Court – all four properties had the R-PD7 zoning designation. Judge Williams and Jones property interest FFCLs were on the merits and final. The party against whom the FFCLs were entered are the City of Las Vegas, the same party before this Court. The property interest issue was actually and necessarily litigated – extensively – in both cases. And, finally, the City has conceded that these four cases involve, "common plaintiffs, a common defendant, a common property, common causes of action and common questions of law and fact." Exhibit 4, p. 000009, attached hereto.

Therefore, in compliance with the Nevada Supreme Court doctrine of issue preclusion, this Court should enter a property interest order consistent with the Judge Williams and Judge Jones property interest orders. The Landowners submitted to this Court proposed FFCLs on the property interest issue that is consistent with Judge Williams and Judge Jones property interest

orders. *See attached, Landowners' proposed "Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest.* The Landowners request that this Court sign the Landowners' proposed property interest FFCL as this will "maintain consistency and avoid harassment or oppression" as directed by the Nevada Supreme Court. Alcantara, supra, at 258 (Nev. 2014). It will also comply with the Courts direction that"[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Five Star Capital, supra, at 1052 (Nev. 2008), italics in original.

3. Issue Preclusion on the Take Issue

The Nevada Supreme Court doctrine of issue preclusion is also implicated on the take issue. As stated, Judge Williams held a four day evidentiary hearing (September 23, 24, 27, and 28) on the sole take issue – whether the City engaged in actions to take the 35 Acre Property. On September 28, 2021, Judge Williams held that the City's actions amounted to a taking under all four of the Landowners' taking claims:

- Per Se Categorical Taking
- Per Se Regulatory Taking
- Non-Regulatory / De Facto Taking
- Penn Central Regulatory Taking

In fact, after hearing all of the evidence over four days on the sole issue of the taking, Judge Williams stated, on the record, **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."**

The taking facts in the 35 Acre Property Case are almost identical to the taking facts in this 65 Acre Case.

Specifically, Judge Williams heard evidence that: **1)** Councilman Seroka met with the owners of the property surrounding the 35 Acre Property and told them that the entire 250 Acre Land (including the 35 and 65 Acre Properties) was their "recreation" and available for their use; **2)** Councilman Seroka then "sponsored" Bill No. 2018-24 that made it impossible to develop the 250 Acre Land and specifically stated in the Bill that the Landowners must provide "ongoing public access" to their property for the surrounding property owners; and **3)** the public was actually using the Landowners' property at the direction of the City as evidenced by the Don Richards declaration and photos (Exhibit 150). Judge Williams correctly noted that this was a taking, in and of itself, as provided in the Sisolak case, where the Court found a taking as a result of the County of Clark adopting height restriction 1221 that preserved airspace for use by the public and authorized the public to use airspace. Judge Williams holding is also consistent with the Cedar Point Nursery case where the United States Supreme Court found a taking where California adopted a statute that authorized labor unions to enter onto farms 120 days out of the year for up to 3 hours per day in order to organize labor unions. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (2021). These facts are the same for the 35 Acre and 65 Acre Cases.

Judge Williams also heard the City's counsel's comment at the hearing on Friday, September 24, that the City denied the fencing around the property due to "political pressure" from the surrounding property owners. This was a ***critical concession*** by the City of Las Vegas, because the United States Supreme Court recently held that, "the right to exclude is 'one of the most treasured' rights of property ownership." Cedar Point Nursery, 141 S.Ct. 2063, 2072 (June 23, 2021). And, the City denied the Landowners this "most treasured rights of property ownership" by denying the Landowners their right to exclude others from their property (by way of fencing). It was further evidenced at the hearing before Judge Williams that, in denying the fence, the City violated its own City Municipal Code, because the City Code states that a fence

application may only be reviewed under a "Minor Review," and the City's efforts to force the Landowners through a "Major Review" for the fence, a prolonged and protracted process that is used for approval of hotel/casinos, was the same as a denial. *See* LVMC 19.16.100. These facts are the same for the 35 Acre and the 65 Acre Cases.

Judge Williams also found that the City denied the Landowners' application to gain access to their 250 Acre Land and this was a taking in and of itself, because the Nevada Supreme Court held in the case of Schwartz v. State, 111 Nev. 998, 1001 (1995), that a property owner has a "special right of easement" in an abutting roadway and "this is a property right of easement which cannot be damaged or taken from the owner without due compensation." These facts are the same for the 35 Acre and the 65 Acre Cases.

Judge Williams also considered the denial of the Master Development Agreement as a basis to find a taking. As this Court will recall, the City mandated the MDA as the only way to develop the 17, 35, 65, and 133 Acre Properties as a whole, demanded exactly what was included in the MDA, the MDA took 2.5 years to complete, and the City Planning Department and the City Attorney's Office recommended approval of the MDA as it met all City requirements, including being consistent with the zoning and the City master plan. The City then denied the MDA altogether without equivocation. These facts are the same for the 35 Acre and the 65 Acre Case.

Judge Williams FFCL on the take issue is currently being prepared and circulated for approval and signature. It is anticipated that it will be signed within two weeks.

Therefore, it is requested that this Court consider the FFCL by Judge Williams on the take issue by allowing time for the FFCL to be signed by Judge Williams and presented to the Court for consideration. This makes sense as discovery is complete in the 35 Acre Case.

Finally, as this Court will recall, the City claimed (incorrectly) that the purchase price for the entire 250 Acre Land was only $4.5 million and, therefore, there could not be a taking. On September 15, 2021, the City filed a pleading with this Court stating the exact opposite, "[t]he Developer's purchase price, however, is not material to the City's liability for a regulatory taking." *See* City's Response to Developer's Sur-Reply Brief Entitled "Notice of Status of Related Cases ETC, filed September 15, 2021. And, two depositions were conducted of the PMK for Peccole (the original owner of the 250 Acre Land) and Yohan Lowie, the Landowners' representative that focused entirely on the purchase price and revealed very clearly that the purchase price was **not** $4.5 million as represented by the City to this Court. Which may be the reason the City is now arguing to the Court that the purchase price is not relevant to the take issue. These depositions were recently submitted to the Court as they were conducted in the 35 Acre Case.

4. Conclusion and Request of the Court

Based on the foregoing, the Landowners respectfully make two requests of the Court.

First, on the property interest order, that the Court apply the Nevada Supreme Court doctrine of issue preclusion and sign the Landowners' proposed FFCL on the property interest order as this is consistent with Judge Williams and Judge Jones property interest FFCLs already entered in the 35 and 17 Acre Cases.

Second, that the Court allow time for Judge Williams 35 Acre Case FFCL on the take issue to be signed, which should be within two weeks. Judge Williams already decided from the Bench on September 28, 2021, that the City's actions "clearly" amount to a taking. Once this Court receives the Judge Williams FFCL on the take issue, it may consider the preclusive effect the already decided take issue in the 35 Acre Case may have in this 65 Acre Case. Or, even the persuasive impact it may have on this Court's decision as the 35 Acre Case has been fully litigated through discovery.

This is a Fifth Amendment Constitutional proceeding where important constitutional rights are being adjudicated and the Landowners request an opportunity to provide all of the relevant rulings and facts and arguments to the Court on the property interest and take issues. The Constitutional right to "Just Compensation" deserves no less, and this Court has graciously given both sides an opportunity to be heard and this additional information should also be heard.

Dated this 30th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
KERMITT L. WATERS, ESQ., NBN.2571
JAMES J. LEAVITT, ESQ., 6032
MICHAEL SCHNEIDER, ESQ., 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 30th day of September, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

Landowners' proposed "Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest.

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FFCL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company; SEVENTY ACRES LLC, a Nevada Limited Liability Company; FORE STARS, Ltd; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-780184-C
Dept. No.: III

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' EVIDENTIARY HEARING BRIEF #1: MEMORANDUM OR POINTS AND AUTHORITIES REGARDING THE LANDOWNERS' PROPERTY INTEREST

Hearing Dates:
May 27, June 30, and July 2, 2021.

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Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company, SEVENTY ACRES, LLC, a Nevada Limited Liability Company, and FORE STARS, Ltd. (hereinafter Landowners), brought Plaintiff Landowners' Evidentiary Hearing Brief #1, Memorandum of Points and Authorities Regarding the Landowners' Property Interest before the Court at an evidentiary hearing on May 27, June 30, and July 2, 2021 with Kermitt L. Waters, Esq., Autumn Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq., of McDonald Carano, Andrew Schwartz, Esq. and Lauren M. Tarpey, Esq. of Shute, Mihaly & Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). Having reviewed all pleadings and attached exhibits filed in this matter, and having heard extensive oral arguments over a three-day evidentiary hearing, the Court enters, based on the evidence presented, the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Landowners are the owner of an approximately 65 Acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcels 138-31-801-002, 138-31-801-003, and 138-32-301-007 (hereinafter "65 Acre Property").

2. Generally, the Landowners Brief to determine property interest requests that this Court enter an order that, prior to any alleged City interference with the use of the 65 Acre Property, the 65 Acre Property was hard zoned R-PD7 at all relevant times and that the legally

permissible uses of the 65 Acre Property, pursuant to the R-PD7 zoning, were single-family and multi-family residential uses.

The R-PD7 Zoning

3. The City does not contest the R-PD7 zoning on the 65 Acre Property.

4. Landowner Exhibit 5, bate numbers 000019 – 000050, particularly the zoning map on bate number 000032, is evidence that on May 20, 1981, the City of Las Vegas City Commission (now the City Council), at a public hearing, zoned the 65 Acre Property for a residential use (R-PD7).

5. Landowners' Exhibit 154, Bates numbers 004865 – 004921, particularly the City action description on Bates number 004916, is evidence that on April 4, 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 65 Acre Property and removed any indication of a C-V (Civic) zoning on any part of the property owned by the Landowners' predecessor, William Peccole (Peccole).

6. Landowners' Exhibit 43, Bates numbers 001019 – 001100, particularly Bates number 001030, is evidence that on August 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 65 Acre Property and states "All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed" (*See* Bates number 001020).

7. Landowners' Exhibit 134, Bates number 004406, is evidence that on December 30, 2014, in response to the Landowners' inquiry regarding zoning (prior to acquiring the 65 Acre Property), the City of Las Vegas Planning Department provided the Landowners an official Zoning Verification Letter, stating, in part: 1) the 65 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide

for flexibility and innovation in residential development;" 3) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 4) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code."

Legally Permitted Development on the R-PD7 Zoned 65 Acre Property

8. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, Exhibit 134, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter "LVMC"), Title 19. Therefore, the Court looks to the LVMC for guidance on the legally permitted uses of property zoned R-PD7.

9. LVMC 19.18.020 (Words and Terms Defined) defines Zoning District as "An area designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with this Title."

10. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as "Any use allowed in a zoning district as a matter of right if it is conducted in accordance with the restrictions applicable to that district. Permitted uses are designated in the Land Use Table by the Letter 'P.'"

11. LVMC 19.16.090 is entitled "Rezoning" and section (O) states that once zoning is in place, "[s]uch approval authorizes the applicant to proceed with the process to develop and/or use the property in accordance with the development and design standards and procedures of all City departments and in conformance with all requirements and provisions of the City of Las Vegas Municipal Code." *See* Landowner Exhibit 167.

12. LVMC 19.10.050 is the part of the LVMC directly applicable to the R-PD7 zoning on the 65 Acre Property. Section (A) identifies the "Intent of the R-PD District" and states that

"the R-PD District has been to provide for flexibility and innovation in residential development" and section (C) lists as the "Permitted Land Uses," "Single family and multi-family residential." *See* Landowners' Exhibit 168.

13. LVMC 19.10.050 (A) and (C) further state that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts," which are set forth in the City Land Use Table at LVMC 19.12.010. The standard residential district on the City Land Use Table, which is most closely related to the R-PD7 zoning on the 65 Acre Property, is the R-2 zoning district, because R-PD7 zoning permits up to 7 units per acre and R-2 zoning permits 6-12 units per acre. *See* LVMC 19.06.100. The City Land Use Table identifies single family residential attached and detached with a "P" designation for R-2 zoned properties and then defines the "P" as "The use is permitted as a principal use in that zoning district by right." *See* Landowners' Exhibits 170 and 171.

14. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7 zoning on the 65 Acre Property that the City "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Landowners' Exhibit 163, Transcript, 10.18.16 Special Planning Comm. Meeting, p. 117 at lines 3444-3445, 005023.

15. In a matter involving the entire 250 Acre Property brought by an adjoining property owner in the Queensridge Community against the Landowners, the district court entered detailed findings that the property was zoned R-PD7 and that "the zoning on the GC Land [250 Acres] dictates its use and [the Landowners] rights to develop their land." Landowners' Exhibit 172, Bates number 005115:3-8; Exhibit 173, Bates number 005142:11-12. The Nevada Supreme Court affirmed. Landowners' Exhibits 174 and 175.

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Zoning Governs the Property Interest Determination in Nevada Inverse Condemnation Cases

16. Nevada Supreme Court precedent provides that zoning governs the property interest determination in this inverse condemnation case.

17. In the inverse condemnation case of McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006), the Nevada Supreme Court, in the section entitled "The Property," determined Mr. Sisolak's property rights, relying on zoning: "During the 1980's, Sisolak bought three adjacent parcels of land for investment purposes, which were each zoned for the development of a hotel, a casino, or apartments." Sisolak, at 651. Zoning was also used to determine the compensation due Mr. Sisolak. Sisolak, at 672.

18. In the inverse condemnation case of Clark County v. Alper, 100 Nev. 382, 390 (1984), the Nevada Supreme Court held, "when determining the market value of a parcel of land at its highest and best use, due consideration should be given to those zoning ordinances that would be taken into account by a prudent and willing buyer."

19. In the eminent domain case of City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003), the Nevada Supreme Court affirmed a district court, concluding "the district court properly considered the current zoning of the property, as well as the likelihood of a zoning change." *See also* County of Clark v. Buckwalter, 974 P.2d 1162, 59 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813, 814 (Nev. 1968)

Petition for Judicial Review Law

20. The Court declines the City's request to apply petition for judicial review rules from the cases of Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523 (2004); Nova Horizon v. City of Reno, 105 Nev. 92 (1989); Am. W. Dev. Inc. v. City of Henderson, 111 Nev.

804 (1995). This is an inverse condemnation case, not a petition for judicial review case, and the Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding the property interest in this inverse condemnation case. Moreover, the facts and law are different between a petition for judicial review and inverse condemnation case and the evidence and burden of proof are significantly different between the two cases.

The Master Plan Land Use as Parks, Recreation, Open Space (PR-OS) Issue

21. The Court declines the City's request to apply the City Master Plan to determine the property interest in this eminent domain case.

22. First, as stated above, Nevada Supreme Court precedent relies on zoning to determine the property interest in inverse condemnation and eminent domain proceedings, not a master plan land use designation.

23. Second, even if there was a PR-OS designation on the City's Master Plan, zoning would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

24. Third, Landowners' Exhibit 5, specifically Bates numbers 00013 and 00018, and Landowners' Exhibit 6, specifically Bates numbers 000051 and 000069, are evidence that the first City Master Plan designation for the 65 Acre Property was M/ML, which is the land use designation for a residential use for 6-12 residential units per acre and which is consistent with the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has presented no evidence that the original M/ML City Master Plan land use designation was ever changed from M/ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278 (*See* Landowner Exhibit 177) and LVMC 19.16.030 (Landowners' Exhibit 178).

25. Fourth, Landowners' Exhibit 43, Bates number 001030, identifies the "M" designation on the 65 Acre Property as late as August 15, 2001, as part of City Ordinance 5353, adopted on said date, further confirming the M residential designation was never changed on the City's Master Plan.

26. Fifth, Landowners' Exhibit 154, Bates numbers 004865 – 004921, particularly the City action description on Bates number 004916, is evidence that on April 4, 1990, the City Council, at a public hearing, removed any potential indication of C-V (Civic) zoning on any part of the property owned by the Landowners' predecessor, William Peccole, and C-V zoning is the only zoning that would have been consistent with a PR-OS master plan land use designation (see Landowners' Exhibit 179). In that same action, on April 4, 1990, the City and Peccole agreed to the following uses on all property owned by Peccole - "Proposed Use: Single Family Dwellings, Multi-Family Dwellings, Commercial, Office and Resort/Casino" and none of these are consistent with a PR-OS master plan designation. Id.

27. Sixth, City Attorney, Brad Jerbic, confirmed the City Attorney's Office researched the alleged PR-OS Master Plan Land Use designation and determined there was never a proper change to PR-OS on the City's Master Plan: "There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." Landowners' Exhibit 31, Bates number 000565:1943-1948.

28. The Court also declines the City's request to find the Landowners conceded to a PR-OS master plan land use designation. Landowners' Exhibit 180 (December 7, 2016, letter from Landowners' attorney to City attorney Brad Jerbic) and Exhibit 182 (November 30, 2017, letter from Landowners to City Planning Department) are evidence that the Landowners opposed and objected to the City's allegation of a PR-OS master plan land use designation.

29. Finally, the City's 25-day statute of limitations argument does not apply here, because the Landowners are not challenging a change to the PR-OS on the City's master plan, they maintain, and the Court agrees, that the evidence shows a PR-OS change never occurred

The "Condition" Issue

30. The Court also declines the City's request to find that City Exhibits E, G, and H impose a condition that the 65 Acre Property remain a golf course and open space into perpetuity. Although Exhibits E, G, and H include certain historical actions taken by the City and do reference numerous "conditions," none of these conditions identify the 65 Acre Property and none of them impose a condition that any property remain a golf course or open space into perpetuity.

31. Also, Landowners' Exhibit 130, Bates number 004264, is evidence that the City's Planning Department searched for an ordinance imposing conditions on the 65 Acre Property and concluded, "[t]here are no conditions mentioned that pertain to the maintenance of the open space/golf course area."

32. Additionally, Landowners' Exhibit 186, Bates number 005356:11-13, is evidence that City Attorney Brad Jerbic confirmed, "We [the City Attorney Office] have looked for a very long time, and we can find no restrictions that require that this [250 acre property] stay a golf course."

33. Moreover, the CC&Rs Peccole drafted for the adjacent Queensridge Community demonstrate there was no intent to impose a condition that the 250 Acre Property remain a golf course or open space, instead, stating, "[t]he existing 18-hole golf course commonly known as the "Badlands Golf Course" [250 Acre Property] is not a part of the Property or the Annexable Property [Queensridge Community] and the Queensridge Community "is not required to[]

include … a golf course, parks, recreational areas, open space." Landowners' Exhibit 36, Bates numbers 000761-000762.

34. The Custom Lot Design Guidelines section of the Queensridge CC&Rs also shows the 250 Acre Property available for "future development." Landowners' Exhibit 37, Bates number 000896.

35. Also, the Lot Purchase Agreements for properties in the surrounding Queensridge Community disclose: a) the "Special Benefits Area Amenities" for the surrounding Queensridge Community does not include a golf course or open space; b) they "shall not acquire any rights, privileges, interest, or membership" in the 250 Acre Property; c) there are no representations or warranties "concerning the preservation or permanence of any view;" and, d) "adjacent or nearby residential dwellings or other structures … could potentially be constructed or modified in a manner that could block or impair all of part of the view from the Lot and/or diminish the location advantages of the Lot." Landowners' Exhibit 38, Bates numbers 000900 (para. 13); 000907 (para. 7) and Landowners' Exhibit 39, Bates numbers 000908-000909, 000911.

36. There is no evidence of any alleged condition sufficient to meet Nevada's standard that "a grantee can only be bound by what he had notice of, not the secret intentions of the grantor." Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also* In re Champlain Oil Co. Conditional Use Application, 93 A.3d 139 (Vt. 2014) ("land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." Id., at 141); Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every item discussed at a hearing becomes a "condition" to development, rather the local land use board has a duty to "clearly state" the conditions within the approval ordinance without reference to the minutes of a proceeding. Id., at 687). Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by "secret intentions" and documents not noticed).

Therefore, the Landowners' request that the Court determine the property interest is **GRANTED** and it is hereby **ORDERED** that:

1) The determination of the property interest in this inverse condemnation action must be based on inverse condemnation and eminent domain law;

2) Nevada inverse condemnation and eminent domain law provides that zoning must be relied upon to determine the Landowners' property interest prior to any alleged City interference with that property interest;

3) The 65 Acre Property has been hard zoned R-PD7 at all relevant times herein;

4) The Las Vegas Municipal Code lists single-family and multi-family residential as the legally permissible uses on R-PD7 zoned properties;

5) The legally permitted uses by right of the 65 Acre Property are single-family and multi-family residential; and

6) The 65 Acre Property has at all times since 1981 been designated as "M" (residential) on the City's Master land use plan.

_____

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James Jack Leavitt*
KERMITT L. WATERS, ESQ., NBN.2571
JAMES J. LEAVITT, ESQ., 6032
MICHAEL SCHNEIDER, ESQ., 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Plaintiff Landowners

Exhibit 1

FFCL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** Hearing Date: September 17, 2020 Hearing Time: 9:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine Property Interest before the Court on September 17, 2020, with James Jack Leavitt, Esq of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilve III Esq. and Andrew Schwartz, Esq. appearing for and on behalf

Case Number: A-17-758528-J

of the Defendant, City of Las Vegas (hereinafter the City). Having reviewed all pleadings and attached exhibits filed in this matter and having heard extensive oral arguments on September 17, 2020, in regards to Plaintiff Landowners' Motion to Determine Property Interest, the Court hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff 180 Land Company, LLC is the owner of an approximately 35 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter 35 Acre Property).

2. The Landowners' Motion to Determine Property Interest requests this Court enter an order that: 1) the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2) that the permitted uses by right under the R-PD7 zoning are single-family and multi-family residential.

3. In their submitted briefs, the Landowners and the City presented evidence that the 35 Acre Property has been zoned R-PD7 since at least 1990, including: 1) Z-17-90, Resolution of Intent to Rezone the 35 Acre Property to R-PD7, dated March 8, 1990 (Exhibit H to City's Opposition, Vol. 1:00193); and, Ordinance 5353, passed by the City of Las Vegas City Council in 2001, which hard zoned the 35 Acre Property to R-PD7 and repealed anything in conflict (Exhibit 10 to Landowners' Motion).

4. In response to the Landowners' inquiry regarding zoning prior to purchasing the 35 Acre Property, on December 30, 2014, the City of Las Vegas Planning & Development Department provided the Landowners a Zoning Verification Letter, stating, in part: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 unites per acre);" 2) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 3 to Landowners' Motion.

5. The City stated in its opposition to the Landowners' motion that the R-PD7 zoning on the 35 Acre Property "is not disputed." City's Opposition to Motion to Determine Property Interest, 10:17-18.

6. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter LVMC), Title 19.

7. LVMC 19.10.050 is entitled "R-PD Residential Planned Development District" and is the applicable section of the LVMC used to determine those permitted uses on R-PD7 zoned properties in the City of Las Vegas. Exhibit 5 to Landowners' Motion.

8. LVMC 19.10.050 (C) lists as "Permitted Land Uses" on R-PD zoned properties "[s]ingle-family and multi-family residential." Id.

9. LVMC 19.10.050 (A) also provides that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts." Id. The standard residential districts are listed on the City Land Use Table, LVMC 19.12.010. Exhibit 6 to Landowners' Motion. The R-2 residential district listed on the City Land Use Table is the standard residential district most comparable to the R-PD7 zoning, because R-PD7 allows up to 7 units per acre[1] and R-2 allows 6-12 units per acre.[2] The "permitted" uses under the R-2 zoning on the City Land Use Table include "Single Family, Attached" and "Single-Family, Detached" residential uses. LVMC 19.12.010, Exhibit 6 to Landowners' Motion.

10. Table 1 to the City Land Use Table provides that if a use is "permitted" in a certain zoning district then "the use is permitted as a principle use in that zoning district by right." Id.

11. "Permitted Use" is also defined at LVMC 19.18.020 as "[a]ny use allowed in a zoning district as a matter of right." Exhibit 8 to Landowners' Motion.

12. The Landowners have alleged that the City of Las Vegas has taken the 35 Acre Property by inverse condemnation, asserting five (5) separate inverse condemnation claims for relief, a

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[1] *See* City Zoning Verification Letter, Exhibit 3 to Landowners' Motion and LVMC 19.10.050 (A), Exhibit 5 to Landowners' Motion.

[2] *See* LVMC 19.06.100, Exhibit 7 to Landowners' Motion.

Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking, and a Temporary Taking.

CONCLUSIONS OF LAW

13. The Nevada Supreme Court has held that in an inverse condemnation, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the bundle of sticks owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

14. The Landowners' Motion to Determine Property Interest narrowly addresses this first sub inquiry and, accordingly, this Court will only determine the first sub inquiry.

15. In addressing this first sub inquiry, this Court has previously held that: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims;"[3] and, 2) "[a]ny determination of whether the Landowners have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law."[4]

16. Therefore, the Court bases its property interest decision on eminent domain law.

17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).

18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990.

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[3] Exhibit 18 to Landowners' Reply, App. at 0026 / 23:7-8

[4] Exhibit 18 to Landowners' Reply, App. at 0010 / 7:26-27

19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

DATED this 9th day of October, 2020.

DISTRICT COURT JUDGE ZJ

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James J. Leavitt
Kermitt L. Waters, ESQ., NBN 2571
James Jack Leavitt, ESQ., NBN 6032
Michael A. Schneider. ESQ., NBN 8887
Autumn Waters, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101
Attorneys for Plaintiff Landowners

Submitted to and Reviewed by:

MCDONALD CARANO LLP

By: *Declined signing*
George F. Ogilvie III, ESQ., NBN 3552
Amanda C. Yen, ESQ., NBN 9726
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
Attorneys for the City of Las Vegas

Exhibit 4

George F. Ogilvie III (NV Bar #3552)
Amanda C. Yen (NV Bar #9726)
Christopher Molina (NV Bar #14092)
McDONALD CARANO LLP
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102
Telephone: 702.873.4100; Facsimile: 702.873.9966
gogilvie@mcdonaldcarano.com
ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

Debbie Leonard (NV Bar #8260)
LEONARD LAW, PC
955 S. Virginia St., Suite 220
Reno, NV 89502
Telephone: 775.964.4656
debbie@leonardlawpc.com

Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 S. Main Street, 6th Floor
Las Vegas, NV 89101
Telephone: 702.229.6629
Facsimile: 702.386.1749
bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Attorneys for City of Las Vegas

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	CASE NO. 2:19-cv-01471-JCM-EJY **NOTICE OF RELATED CASES**

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Pursuant to LR 42-1, Defendant City of Las Vegas, by and through its undersigned counsel, hereby provides notice to the Court that this case is related to the following three cases pending in the United States District Court for the District of Nevada:[1]

180 Land Co LLC, et al. v. City of Las Vegas; Case No. 2:19-cv-01467-KJD-DJA

Fore Stars, Ltd. and Seventy Acres LLC v. City of Las Vegas and The Eighth Judicial District Court, Dept. 24 (Hon. Jim Crockett, District Court Judge, in His Official Capacity); Case No. 2:19-cv-01469-JAD-NJK

180 Land Co LLC v. City of Las Vegas; Case No. 2:19-cv-01470-RFB-BNW

As set forth below, the instant action and the three above-referenced related cases involve common plaintiffs, a common defendant, a common property, common causes of action, and common questions of fact and law. Therefore, assignment to a single district judge is likely to effect a substantial savings of judicial effort.

Common Plaintiffs

Each of the four cases involves one or more of three affiliated entities as plaintiffs: Fore Stars, Ltd.; Seventy Acres LLC; and 180 Land Co LLC. All three of these entities (collectively, the "Developer") are managed by EHB Companies, LLC, which, in turn, is managed by Yohan Lowie, Paul Dehart, Vicki Dehart, and Frank Pankratz.

Common Defendant

The City of Las Vegas is a named defendant in all four cases. In three of these cases, the City of Las Vegas is the only named defendant; in the fourth case (Case No. 2:19-cv-01469-JAD-NJK), the Developer also named the Eighth Judicial District Court, County of Clark, State of Nevada (the Honorable Jim Crockett, District Court Judge, in his official capacity) as a defendant.

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[1] LR 42-1 requires parties to provide notice of related cases "whether active or terminated". Accordingly, the City of Las Vegas provides notice to the Court that this case is also related to the terminated case styled, *180 Land Co LLC; Fore Stars, Ltd.; Seventy Acres LLC; and Yohan Lowie v. City of Las Vegas; James Coffin; and Steven Seroka*; Case No. 2:18-CV-547 JCM (CWH). That case shared commonality of plaintiffs, defendant City of Las Vegas, facts, and the same 250-acre property as the instant action, but involved different causes of action. On December 21, 2018, the Honorable James C. Mahan entered an order granting defendants' second motion to dismiss (ECF No. 72), resulting in the termination of that case.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Common Property

Each of the four cases involves portions of approximately 250 acres in the Queensridge community formerly known as the Badlands Golf Course, and commonly described as Clark County APNs 138-32-301-005, 138-31-201-005, 138-31-601-008, 138-31-702-003, 138-31-702-004, 138-31-801-002, 138-31-801-003, and 138-32-301-007 (the "Badlands Property"). The four cases involve four different portions of the Badlands Property that the Developer split into separate parcels for redevelopment of the golf course.

Common Causes of Action

In each of the four cases, the Developer asserts takings claims against the City of Las Vegas under the United States Constitution and the Constitution of the State of Nevada relative to the Developer's attempt to redevelop the Badlands Property. In the case in which the Developer named the Honorable Jim Crockett, Eighth Judicial District Court Judge as a defendant, the Developer also asserts a judicial takings claim.

Common/Similar Questions of Fact and Law

The City of Las Vegas removed each of the four cases on August 22, 2019 pursuant to *Knick v. Township of Scott, Pennsylvania*, et al., 139 S.Ct. 2162 (2019). Thus, common issues of jurisdiction are present in each case. Additionally, common/similar issues of fact exist in the cases as the Developer has alleged eleven actions taken by the City of Las Vegas that constitute a common basis for the takings claims asserted in the cases, including the allegation, "The City has Shown an Unprecedented Level of Aggression to Deny All Use of the 250 Acre Residential Zoned Land." Further, common issues of law exist relative to whether the City of Las Vegas' actions constitute a categorical taking, a *Penn Central* regulatory taking, a regulatory *per se* taking, a nonregulatory taking, or a temporary taking.

Each of the four cases involves redevelopment of the Badlands Property, common parties, common claims, and common questions of fact and law. As such, adjudication of these four actions would entail substantial duplication of labor if the actions were heard by different district judges. Additionally, as opposed to considering the individual parcels subdivided by the Developer in the respective four cases, the Court must consider the property as a whole for

purposes of determining whether a regulatory taking has occurred. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1948, 198 L. Ed. 2d 497 (2017).

Therefore, the City of Las Vegas respectfully submits that consolidation of the above-referenced actions is appropriate.

DATED this 28th day of August, 2019.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III, Esq. (NV Bar #3552)
Amanda C. Yen (NV Bar #9726)
Christopher Molina (NV Bar #14092)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

LEONARD LAW, PC
Debbie Leonard (NV Bar #8260)
955 S. Virginia St., Suite 220
Reno, NV 89502

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 28th day of August, 2019, I caused a true and correct copy of the foregoing **NOTICE OF RELATED CASES** to be electronically filed with the Clerk of the Court by using CM/ECF service and serving on all parties of record via U.S. Mail as follows:

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.,
704 South Ninth Street
Las Vegas, Nevada 89101

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison
Joseph S. Kistler
Matthew K. Schriever
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

Exhibit 198

NOE
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD; SEVENTY ACRES LLC, a Nevada liability company; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITIES COMPANIES I through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE government entities I though X, ROE LIMITED LIABILITY COMPANIES I though X, ROE quasi-governmental I through X,

Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"

Hearing Date: August 13, 2021
Hearing Time: 8:30 a.m.

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PLEASE TAKE NOTICE that on the 16th day of September, 2021, the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest" was entered in the above-captioned case, a copy of which is attached hereto.

DATED this 16th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

BY: */s/ Autumn Waters*
KERMITT L. WATERS, ESQ.
Nevada Bar. No. 2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 16th day of September, 2021, pursuant to NRCP (5)(b) a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** was made by electronic means, to be electronically served through the Eighth Judicial District Court's filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
Schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

FFCL

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD; SEVENTY ACRES LLC, a Nevada liability company; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITIES COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE government entities I though X, ROE LIMITED LIABILITY COMPANIES I though X, ROE quasi-governmental I through X, Defendants.	Case No.: A-18-773268-C Dept No.: XXIX **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** **Hearing Date: August 13, 2021** **Hearing Time: 8:30 a.m.**

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Plaintiffs, FORE STARS, LTD. and SEVENTY ACRES LLC, a Nevada Limited Liability Company (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine "Property Interest" before the Court at an evidentiary hearing on August 13, 2021, with Kermitt L. Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq., of McDonald Carano, Andrew Schwartz, Esq. of Shute, Mihaly & Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). Having reviewed all pleadings and attached exhibits filed in this matter, and having heard extensive oral arguments at the evidentiary hearing, the Court enters, based on the evidence presented, the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Landowners are the owner of an approximately 17.49 Acre parcel of property generally located near the southwest corner of Rampart Blvd and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel number 138-32-301-005 (hereinafter "17 Acre Property").

2. On April 20, 2018, the Landowners filed a complaint alleging that the City took their property by inverse condemnation.

3. The Nevada Supreme Court has held that in an inverse condemnation action, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the "bundle of sticks" owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District

Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

4. The Landowners filed a motion requesting that this Court enter a finding on the first sub-inquiry to determine the property interest / "bundle of property sticks" they had in their 17 Acre Property prior to any alleged City interference with the use of the 17 Acre Property and prior to the filing of the Complaint in this matter. Specifically, the Landowners request a finding that the 17 Acre Property was hard zoned R-PD7 and re-zoned to R-3 and that the legally permissible uses of the 17 Acre Property, pursuant to the R-PD7 and R-3 zoning, were single-family and multi-family residential uses.

5. As the Landowners' request narrowly addresses this first sub inquiry, this Court will only determine the first sub inquiry, at this time.

The R-PD7 Zoning and the Landowners' Due Diligence

6. The City conceded the R-PD7 zoning at the evidentiary hearing and the evidence presented confirms this R-PD7 zoning.

7. Landowner Exhibit 30, Bates numbers 000443 – 000480, particularly the zoning action and map on bates numbers 000449-451, and 462, is evidence that on May 20, 1981, the City of Las Vegas City Commission (now the City Council), at a public hearing, zoned the 17 Acre Property for a residential use (R-PD7).

8. Landowners' Exhibit 31, Bates numbers 000481 – 482, is evidence that on April 4, 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 17 Acre Property.

9. Landowners' Exhibit 8, Bates numbers 000104 – 185 is evidence that on August 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 17 Acre Property and states "All ordinances or parts of ordinances or sections,

subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

10. The Landowners presented further evidence that from 2001 through 2014, prior to acquiring the 17 Acre Property, they engaged in significant due diligence to confirm the zoning and developability of the 17 Acre Property and, during this approximately 14 year period, the City of Las Vegas Planning Department, on numerous occasions, confirmed the residential zoning on the 17 Acre Property, that the residential zoning governed the development of the 17 Acre Property, and this residential zoning conferred the right to develop the 17 Acre Property residentially. Exhibit 5, 000042, para. 6; 000043, para. 8; Exhibit 6, 000068, pp. 74-75.

11. The Landowners presented further evidence that, to complete their due diligence just prior to acquiring the 17 Acre Property, they requested and obtained from the City a "Zoning Verification Letter" on December 30, 2014, which states, in part: 1) the 17 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide for flexibility and innovation in residential development;" 3) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 4) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 7.

12. The City also did not contest during the evidentiary hearing that the residential zoning information was provided to the Landowners as part of their due diligence prior to acquiring the 17 Acre Property.

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The R-3 Zoning

13. The parties agree that, prior to the April 20, 2018, filing of the complaint in this matter, on February 15, 2017, the City of Las Vegas re-zoned the 17 Acre Property to R-3, for the construction of 435 residential units. Exhibit 3, 000015:8-9; Exhibit 5, at 000263-275.

Zoning and the Likelihood of a Re-Zoning Governs the Property Interest Determination in Nevada Inverse Condemnation Cases

The Nevada Supreme Court

14. Nevada Supreme Court precedent provides that zoning and the likelihood of re-zoning governs the property interest determination in this inverse condemnation case.

15. In the inverse condemnation case of McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006), the Nevada Supreme Court, in the section entitled "The Property," determined Mr. Sisolak's property rights, relying on zoning: "During the 1980's, Sisolak bought three adjacent parcels of land for investment purposes, which were each zoned for the development of a hotel, a casino, or apartments." Sisolak, at 651. Zoning was also used to determine the compensation due Mr. Sisolak. Sisolak, at 672.

16. In the inverse condemnation case of Clark County v. Alper, 100 Nev. 382, 390 (1984), the Nevada Supreme Court held, "when determining the market value of a parcel of land at its highest and best use, due consideration should be given to those zoning ordinances that would be taken into account by a prudent and willing buyer."

17. In the eminent domain case of City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003), the Nevada Supreme Court affirmed a district court, concluding "the district court properly considered the current zoning of the property, as well as the likelihood of a zoning change." *See also* County of Clark v. Buckwalter, 974 P.2d 1162, 59 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813, 814 (Nev. 1968).

18. The Court relies on both inverse condemnation and direct eminent domain cases, because the Nevada Supreme court has held, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles applied to formal condemnation proceedings." County of Clark v. Alper, 100 Nev. 382, 391 (1984).

The Nevada Legislature

19. Nevada Revised Statutes also provide that zoning is of the highest order when determining property rights in the State of Nevada. NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

The Nevada Executive Branch

20. The Court also finds persuasive Attorney General Opinion 84-06, which finds that "[i]n 1977, the Nevada Legislature declared its intention that zoning ordinances take precedence over provisions contained in a master plan" and that the Legislature's "recent enactment buttresses our conclusion that the Nevada Legislature always intended local zoning ordinances to control over general statements or provisions of a master plan." Exhibit 23.

Three City Departments

21. The Court also finds persuasive that the three departments at the City which would provide an opinion on the adoption, interpretation, and application of zoning at the City of Las Vegas have confirmed zoning is of the highest order when determining property rights.

22. The City Planning Department confirmed zoning is of the highest order: 1) zoning trumps everything; 2) "if the land use [master plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement; 3) and "a zone district gives a property owner property rights." Exhibit 6, 000068, pp. 74-75; Exhibit 46, 000608, p. 53:4-6; Exhibit 54 (LO Appx. Ex. 160 at 005007, p. 242:5-6.

23. The City Attorney's Office confirmed that zoning is of the highest order. Veteran City Attorney Brad Jerbic stated, in speaking directly about this property, "the rule is the hard zoning, in my opinion, does trump the General Plan [Master Plan] designation. Exhibit 17, p. 000227:1787-1789. Veteran deputy City attorney Phil Byrnes and Brad Jerbic submitted pleadings to the Eighth Judicial District, which state: 1) "in the hierarchy, the land use designation [master plan] is subordinate to the zoning designation;" 2) "zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses;" and, 3) a master plan is a "planning document" and a land use designation on a master plan "was a routine planning activity that had no legal effect on the use and development" of affected property. Exhibit 24, 000253:8-12; Exhibit 26, 000282-283.

24. The City Tax Assessor's department confirmed that zoning is of the highest order. After the Landowners acquired the 17 Acre Property, the Clark County Tax Assessor, who is "ex officio, the City Assessor of the City" (City Charter Sec. 3.120), was required to determine the "full cash value" of the 17 Acre Property by "considering the uses to which it may lawfully be put" and "any legal or physical restrictions" pursuant to NRS 361.227(1). The assessor determined the use of the 17 Acre Property to be "residential" based on the "zoning designation: R-PD7," placed a value of $88 million on the entire 250 Acre Property, and has been taxing the Landowners approximately $1 million per year based on this lawful "residential" use. The City does not contest this tax evidence. *See* Exhibit 40 (LO Appx. Ex. 49, Bates number 001164-001179); Exhibit 41 (LO Appx. Ex. 52, Bates number 001184-001189, specifically, 001185); Exhibit 53 (LO Appx. Ex. 151, Bates number 004831-4836); Exhibit 53 (LO Appx. Ex. 152, Bates number 004837-4861).

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25. Evidence was also presented at the evidentiary hearing that the City's 2050 Master Plan states that zoning is "the law" and the Master Plan is a "policy." Exhibit 44, Bates number 000595.

26. Finally, the Court finds persuasive that in litigation involving adjoining landowners, who were trying to stop residential development on the 17 Acre Property, the District Court held "the zoning on the GC Land [250 Acre Property] dictates its use and Defendants [Landowners] rights to develop their land. Exhibit 55 (LO Appx. Ex. 173, Bates number 005123-5167, specifically 0005142:11-12).

27. Based on the foregoing, the Court will rely on zoning to determine the property rights issue in this matter. Specifically, the Court will consider "the current zoning of the property, as well as the likelihood of a zoning change" as directed by the Nevada Supreme Court in City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003).

28. As the evidence is undisputed that the 17 Acre Property had R-PD7 zoning since 1981 and was re-zoned to R-3 on February 15, 2017, the Court turns to the RPD-7 and R-3 zoning to determine the property rights issue.

Legally Permissible Uses of R-PD7 and R-3 Zoned Properties

General Zoning Standards

29. As stated in the City's official Zoning Verification Letter provided to the Landowners on December 30, 2014, Exhibit 7, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter "LVMC") Title 19. Therefore, the Court looks to the LVMC for guidance on the legally permitted uses of property zoned R-PD7.

30. LVMC 19.18.020 (Words and Terms Defined) defines Zoning District as "An area designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with this Title."

31. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as "Any use allowed in a zoning district as a matter of right if it is conducted in accordance with the restrictions applicable to that district. Permitted uses are designated in the Land Use Table by the Letter 'P.'"

32. LVMC 19.16.090 is entitled "Rezoning" and section (O) states that once zoning is in place, "[s]uch approval authorizes the applicant to proceed with the process to develop and/or use the property in accordance with the development and design standards and procedures of all City departments and in conformance with all requirements and provisions of the City of Las Vegas Municipal Code."

R-PD7 Zoning

33. LVMC 19.10.050 is the part of the LVMC directly applicable to the R-PD7 zoning on the 17 Acre Property. The "R" in P-PD7 zoning stands for "residential. Section (A) identifies the "Intent of the R-PD District" and states that "the R-PD District has been to provide for flexibility and innovation in residential development" and section (C) lists as the "Permitted Land Uses," "Single family and multi-family residential." Exhibit 10.

34. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7 zoning on the 17 Acre Property that the City "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Landowners' Exhibit 16, Transcript, 10.18.16 Special Planning Comm. Meeting, 000225:3444-3445.

R-3 Zoning

35. In regards to R-3 zoning, LVMC 19.12.010(B) is the City Code "Land Use Table" which identifies those uses "permitted as a principle use in that zoning district by right" with a "P" designation. The R-3 zoning lists "multi-family residential," "single family attached," and "single family detached" with a "P" designation, meaning these are uses "permitted as a principle use in [the R-3] zoning district by right."

36. Accordingly, the R-PD7 and R-3 zoning on the 17 Acre Property provide the Landowners the right to use the 17 Acre Property for single family residential and multi-family residential uses. In fact, the City conceded this issue when it re-zoned the 17 Acre Property to R-3 and granted the 435 residential units on February 15, 2017, prior to the filing of the complaint in this matter. *See* Exhibit 3, 000015:8-9.

The Judge Williams Order in the 35 Acre Case

37. The Court also takes notice of the property interest order entered by Judge Williams in the 35 Acre Case, which addressed the same issue before this Court, except that the 35 Acre Property was not yet re-zoned to R-3 prior to the filing of the Complaint in that matter.

38. Judge Williams held: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims" as they are entirely different types of proceedings; 2) "any determination of whether the Landowners' have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law;" 3) "Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case [citations omitted];" and, 4) "the Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties." Exhibit 2.

39. Judge Williams then concluded, "1) "the 35 Acre Property is hard zoned R-PD7 at all relevant time herein; and, 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential." Exhibit 2.

40. The Court finds Judge Williams order in the 35 Acre Case to be persuasive as it is on the same issue now pending before this Court.

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Petition for Judicial Review Law

41. The Court declines the City's request to apply petition for judicial review rules from the cases of Stratosphere Gaming Corp.. v. City of Las Vegas, 120 Nev. 523 (2004); Nova Horizon v. City of Reno, 105 Nev. 92 (1989); Am. W. Dev. Inc. v. City of Henderson, 111 Nev. 804 (1995), Boulder City v. Cinnamon Hills Assoc., 110 Nev. 238 (1994); Tigh v. Von Goerken, 108 Nev. 440 (1992) and other petition for judicial review cases cited by the City. The Nevada Supreme Court very recently held in City of Henderson v. Eighth Judicial Dist. Ct, 137 Nev. Adv. Op. 26 (June 24, 2001) that petition for judicial review actions are entirely distinct from other civil actions - "[c]ivil actions and judicial review actions are distinct types of legal proceedings. ... Thus the district court's role is entirely different in hearing a petition for judicial review, where the district court functions in a quasi-appellate role distinct from its usual role as a trial court." The Court concluded that "petitions for judicial review of land use decisions pursuant to NRS 278.3195 are distinct from civil actions, and as such, they cannot be joined together" and "[t]o conclude otherwise would allow confusingly hybrid proceedings in the district courts, wherein the limited appellate review of an administrative decision would be combined with broad, original civil trial matters." Id. This is an inverse condemnation case, not a petition for judicial review case, and the Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding the property interest in this inverse condemnation case. Therefore, it would be improper to apply petition for judicial review law (that has limited review) in this inverse condemnation action (that includes broad, original review).

42. The Court also declines the City's request to apply the petition for judicial review order from the 35 Acre Case entered by Judge Williams for the reasons stated above. Moreover, Judge Williams himself held "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims."

Exhibit 2, 000012:14-16. Additionally, the Judge Williams 35 Acre petition for judicial review order was based, in part, on the Crockett Order [that adopted the PR-OS] and the Crockett Order has been reversed by the Nevada Supreme Court (Exhibit 4). Finally, as explained, Judge Williams granted the Landowners' motion to determine property interest in the inverse condemnation side of the 35 Acre Case (Exhibit 2), which is directly relevant to the pending issue, not the questionable petition for judicial review order.

43. The Court also declines the City's request to apply the petition for judicial review order from the 133 Acre Case entered by Judge Sturman for the reasons stated above. Moreover, Judge Sturman's petition for judicial review order expressly states that, "Without reaching any other issued raised by the parties, the Court makes the following conclusions of law: 1. Based on the doctrine of issue preclusion, Judge Crockett's Order has preclusive effect on this case." Eighth Judicial District Court case no. A-18-775804-J, filing dated July 29, 2021, p. 7:2-5. And, the Crockett Order has been reversed by the Nevada Supreme Court. Exhibit 4.

44. Finally, the City's petition for judicial review law is inconsequential as the City conceded the R-PD7 zoning and conceded the use of the 17 Acre Property for 435 residential units when it re-zoned the property to R-3 zoning to allow this use on February 15, 2017.

The Herndon Order

45. The Court also declines the City's request to apply the Herndon Order from the 65 Acre Case. Judge Herndon stated at the end of his order that his ruling was very limited to the ripeness doctrine and that ripeness holding "renders further court inquiry unnecessary." Eighth Judicial District Court case no. A-18-780184-C, filed on December 30, 2020, p. 35:5-8. Judge Herndon also specifically held that "the court believes that addressing the merits of any of the remaining issues would be unwise as there are companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect

in the other pending court actions, much like the then controlling Crockett Order [now reversed] was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case." Id., p. 35:9-14. Therefore, Judge Herndon did not reach the merits of the pending property interest issue and, moreover, it would be improper for this Court to rely on the Herndon Order where Judge Herndon himself held it should not be relied upon.

The Master Plan Land Use as Parks, Recreation, Open Space (PR-OS) Issue

46. The Court declines the City's request to apply the City Master Plan, in place of zoning, to determine the property interest in this inverse condemnation case.

47. First, as stated above, Nevada Supreme Court precedent relies on zoning to determine the property interest in inverse condemnation and eminent domain proceedings, not a master plan land use designation. In this same connection, as explained above, three City departments – Planning, the City Attorney's Office, and Taxation – have confirmed that zoning is applied to determine property rights. The City tax department in 2016 used "residential" based on the "zoning designation: R-PD7," as the "lawful" use of the 17 Acre Property in order to collect taxes from the Landowners in the amount of $1 million per year for the past five years and back taxes upon conversion pursuant to NRS 361A.280. To allow the City to shift positions in this inverse condemnation action, where it may be liable to pay compensation, and now claim that the residential zoning is not used to determine the "lawful" use of the property, but instead the master plan PR-OS designation should be applied, violates basic and fundamental notions of fairness and justice.

48. Second, even if there was a PR-OS land use designation on the City's Master Plan, zoning would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

49. Third, Landowners' Exhibit 30, specifically Bates numbers 000443-448, and Exhibit 42 (LO Appx. Ex. 6, specifically Bates numbers 000051 and 000069) are evidence that the first City Master Plan designation for the 17 Acre Property was MED and ML, which is the land use designation for a residential use for 6-12 residential units per acre and which is consistent with the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has failed to present the evidence showing that this original MED and ML City Master Plan land use designation was ever legally changed from MED and ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278 and LVMC 19.16.030. *See* Exhibit 56 (LO Appx. Exs. 177 and 178), listing the requirements to make a parcel specific amendment to the City's Master Plan.

50. Fourth, City Attorney, Brad Jerbic, confirmed the City Attorney's Office researched the alleged PR-OS Master Plan land use designation and determined there was never a proper change to PR-OS on the City's Master Plan: "There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." Exhibit 18, Bates number 000228:1943-1948.

51. The Court also declines the City's request to find the Landowners conceded to a PR-OS master plan land use designation. The Landowners presented evidence that they vehemently objected in writing to any alleged PR-OS designation on any part of the 250 Acre Property and, when requested by the City to file a GPA application that references the PR-OS designation, the Landowners submitted the GPA application with a letter stating the GPA application was "submitted under protest." Exhibit 56 (LO Appx. Exs. 180 and 182).

52. Finally, the City's 25-day statute of limitations argument does not apply here, because the Landowners are not challenging a change to the PR-OS on the City's master plan, they maintain, and the Court agrees, that the evidence shows a PR-OS change never occurred

The "Condition" Issue

53. The Court also declines the City's request to find there is a "condition" that the 17 Acre Property remain a golf course and open space into perpetuity.

54. There is no evidence that there is any such alleged condition or that the alleged condition was ever properly recorded at the Clark County Recorder's Office in the 17 Acre Property chain of title.

55. Moreover, "a grantee can only be bound by what he had notice of, not the secret intentions of the grantor." Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also* In re Champlain Oil Co. Conditional Use Application, 93 A.3d 139 (Vt. 2014) ("land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." Id., at 141); Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every item discussed at a hearing becomes a "condition" to development, rather the local land use board has a duty to "clearly state" the conditions within the approval ordinance without reference to the minutes of a proceeding. Id., at 687).

The Purchase Price Issue

56. The Court declines the City's request to apply the purchase price the Landowners paid to acquire all of the assets of Fore Stars, Ltd., the entity that owned the entire 250 Acre Property (that includes the 17 Acre Property) in 2015, as one of the guiding factors to decide the property rights issue.

57. The City cites no Nevada law where a court relied on the purchase price to decide the pending property rights issues and the six Nevada Supreme Court inverse condemnation and

direct condemnation cases referenced above uniformly relied on zoning, not a purchase price paid for a property, to determine the property rights issue.

58. Moreover, although the City presented evidence of what the purchase price for the Fore Stars, Ltd. entity may have been, the Landowners referenced the deposition of the principle, Yohan Lowie, that occurred one day prior to the hearing in this matter, on August 12, 2021, and argued that, in that deposition, Mr. Lowie laid out in detail the approximately 14 years of due diligence and work done to acquire the 250 Acre Property, the extensive consideration that was involved in the acquisition, amounting to approximately $100 million and $45 million of direct monetary compensation, which is contrary to the purchase price presented by the City.

Therefore, the Landowners' request that the Court determine the property interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) The determination of the property interest in this inverse condemnation action must be based on inverse condemnation and eminent domain law;

2) Nevada inverse condemnation and eminent domain law provides that zoning must be relied upon to determine the Landowners' property interest prior to any alleged City interference with that property interest;

3) The 17 Acre Property has been hard zoned R-PD7 since 1981 and was re-zoned to R-3 prior to the filing of the Complaint in this matter;

4) The Las Vegas Municipal Code lists single-family and multi-family residential as legally permissible uses on R-PD7 and R-3 zoned properties by right;

5) The legally permitted uses by right of the 17 Acre Property are single-family and multi-family residential; and

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6) The 17 Acre Property has at all times since 1981 been designated as "M" (residential) on the City's Master land use plan.

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMITT L. WATERS

/s/ *James Jack Leavitt*
KERMITT L. WATERS, ESQ., NBN.2571
JAMES J. LEAVITT, ESQ., 6032
MICHAEL SCHNEIDER, ESQ., 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Plaintiff Landowners

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company, LLC, Plaintiff(s) vs. Las Vegas City of, Defendant(s)	CASE NO: A-18-780184-C DEPT. NO. Department 3

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/1/2021

Philip Byrnes	pbyrnes@lasvegasnevada.gov
Jeffrey Andrews	jandrews@lasvegasnevada.gov
George Ogilvie	gogilvie@mcdonaldcarano.com
Amanda Yen	ayen@mcdonaldcarano.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Autumn Waters	autumn@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Elizabeth Ham	eHam@ehbcompanies.com
Jennifer Knighton	jknighton@ehbcompanies.com
Karen Surowiec	KSurowiec@mcdonaldcarano.com

Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Andrew Schwartz	schwartz@smwlaw.com
Lauren Tarpey	ltarpey@smwlaw.com
Christopher Molina	cmolina@mcdonaldcarano.com
Leah Jennings	ljennings@mcdonaldcarano.com
Sandy Guerra	sandy@kermittwaters.com
Kermitt Waters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Debbie Leonard	debbie@leonardlawpc.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

EXHIBIT “BBBBB”

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: GENERAL PLAN AMENDMENT

Project Address (Location) SOUTHWEST CORNER OF RAMPART & ALTA DRIVE

Project Name TOWNHOMES AT RAMPART & ALTA **Proposed Use** RESIDENTIAL

Assessor's Parcel #(s) 138.31.312.003 **Ward #** 2

General Plan: existing PROS proposed M-LA **Zoning:** existing R-PD7 proposed R-PD7

Commercial Square Footage N/A **Floor Area Ratio** _____

Gross Acres 5.40 **Lots/Units** 34 **Density** 6.3 du/ac

Additional Information _____

PROPERTY OWNER FORE STARS, LTD **Contact** LARRY A. MILLER

Address 851 S. RAMPART Suite 220 **Phone:** 933-111 **Fax:** 933-0017

City LAS VEGAS **State** NV **Zip** 89145

APPLICANT JMA **Contact** CHERIE CAUDLE

Address 10150 COVINGTON CROSS DR **Phone:** 731-2033 **Fax:** 731-2039

City LAS VEGAS **State** NV **Zip** 89144

REPRESENTATIVE MORENO & ASSOCIATES **Contact** URSULA BORDEL

Address 300 S. 4th Street Suite 1500 **Phone:** 383-8953 **Fax:** _____

City LAS VEGAS **State** NV **Zip** 89101

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Larry A. Miller

Subscribed and sworn before me

This 31st day of August, 2005.

Joanne Baldassare

Notary Public in and for said County and State

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

FOR DEPARTMENT USE ONLY

Case #	GPA-90169
Meeting Date:	~~10/20/05~~ 10/6/05
Total Fee:	$1350.00
Date Received:*	8/31/05
Received By:	EBerna

* The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

JMA ARCHITECTURE STUDIOS

August 31, 2005

City of Las Vegas
Current Planning Division
Development Services Center
731 South 4th Street
Las Vegas, NV 89101

RE: Queensridge Townhomes
Justification Letter / Project Description
JMA No. 2003305

APN: A portion of 138-31-312-003

Dear Sir or Madam:

We are requesting a General Plan Amendment for the development of a 34-unit town home project. The town homes are approximately 3,000 s.f. each and have a 2-car garage. Visitor parking and pedestrian plazas are provided throughout the development. This development will be located on the southwest corner of Rampart Boulevard and Alta Drive. The General Plan designation is PROS and the site is zoned R-PD7.

We are requesting a general plan designation of M-LA.

If you should have any questions regarding this application, please do not hesitate to call our office. Thank you.

Sincerely,

Cherie L. Guzman
Senior Designer/
Entitlements Coordinator

GPA-9069

10150 COVINGTON CROSS DRIVE • LAS VEGAS, NEVADA 89144 • Phone: (702) 731 2033 • FACSIMILE: (702) 731 2039 • www.jmaarch.com

4312

JMA ARCHITECTURE STUDIOS

September 1, 2005

City of Las Vegas
Development Services Center
731 S. 4th Street
Las Vegas, NV 89101

ATTN: Planning Staff

RE: Townhomes at Rampart & Alta
JMA No. 2003305
Held Item
Application Number: #SDR-8632

APN: A portion of 138-31-312-003

Dear Sir or Madam:

Per your request we respectfully request application #SDR-8632 and #ZON-9006, for the development of a 32-unit town home project, be held until Thursday, October 6, 2005 Planning Commission meeting, (Wednesday, November 2, 2005 City Council meeting), to allow the items to be in conjunction with #GPA-9069.

We also respectfully request application WVR-8674 be withdrawn and the $600.00 application fee be refundable. We no longer need the Waiver of Title 18 that was originally requested; justification letter dated August 9, 2005, for a twenty-four foot private drive throughout the project. We are providing a thirty-seven foot drive throughout the project.

If you should have any questions regarding this request, please do not hesitate to call our office. Thank you.

Sincerely,

Cherie L. Guzman
Senior Designer,
Entitlements Coordinator

10150 COVINGTON CROSS DRIVE • LAS VEGAS, NEVADA 89144 • Phone: (702) 731 2033 • FACSIMILE: (702) 731 2039 • www.jmaarch.com

PECCOLE NEVADA

Sent via Facsmile – 702-474-0352

November 10, 2005

Margo Wheeler
Director of Planning
City of Las Vegas

Attn: Doug Rankin

Please remove the case on Item Number SDR86632, the condominium project located at the S/W corner of Alta and Rampart.

This request should be made as part of the file that Peccole Nevada has no further intention of pursuing this item. Thank you for you assistance in this matter.

Sincerely,

J. Bruce Bayne,
Vice President

JBB/d

R-PD-7

851 S. Rampart Boulevard • Suite 220 • Las Vegas, Nevada 89145 • Telephone 702 933-1111 • Fax: 702 933-0017

JMA ARCHITECTURE STUDIOS

November 15, 2005

City of Las Vegas
Development Services Center
731 S. 4th Street
Las Vegas, NV 89101

ATTN: Planning Staff

RE: Townhomes at Rampart & Alta
JMA No. 2003305
Application Number: **#GPA-9069**

APN: A portion of 138-31-312-003

Dear Sir or Madam:

We respectfully request application **#GPA-9069** in conjunction with **#SDR-8632** and **#ZON-9006**, for the development of a 32-unit town home project, be withdrawn from the City of Las Vegas application process.

The item was scheduled to be heard at the next quarterly GPA meeting which will be Thursday, January 12, 2006 Planning Commission meeting, (Wednesday, February 15, 2006 City Council meeting).

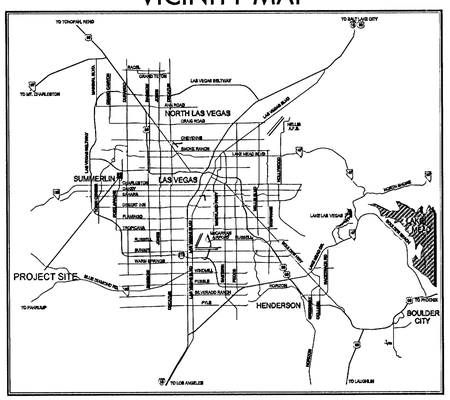
If you should have any questions regarding this request, please do not hesitate to call our office. Thank you.

Sincerely,

Cherie L. Guzman
Senior Designer,
Entitlements Coordinator

10150 COVINGTON CROSS DRIVE • LAS VEGAS, NEVADA 89144 • Phone: (702) 731 2033 • FACSIMILE: (702) 731 2039 • www.jmaarch.com

VICINITY MAP



PROJECT DATA:

A.P.N.#	A PORTION OF 138-31-312-003
GROSS AREA:	5.40 ac
NET AREA:	4.04 ac
F.A.R.:	15%
CURRENT ZONE:	R-PD7
PROPOSED ZONE:	R-PD7
DENSITY:	6.3 du/ac

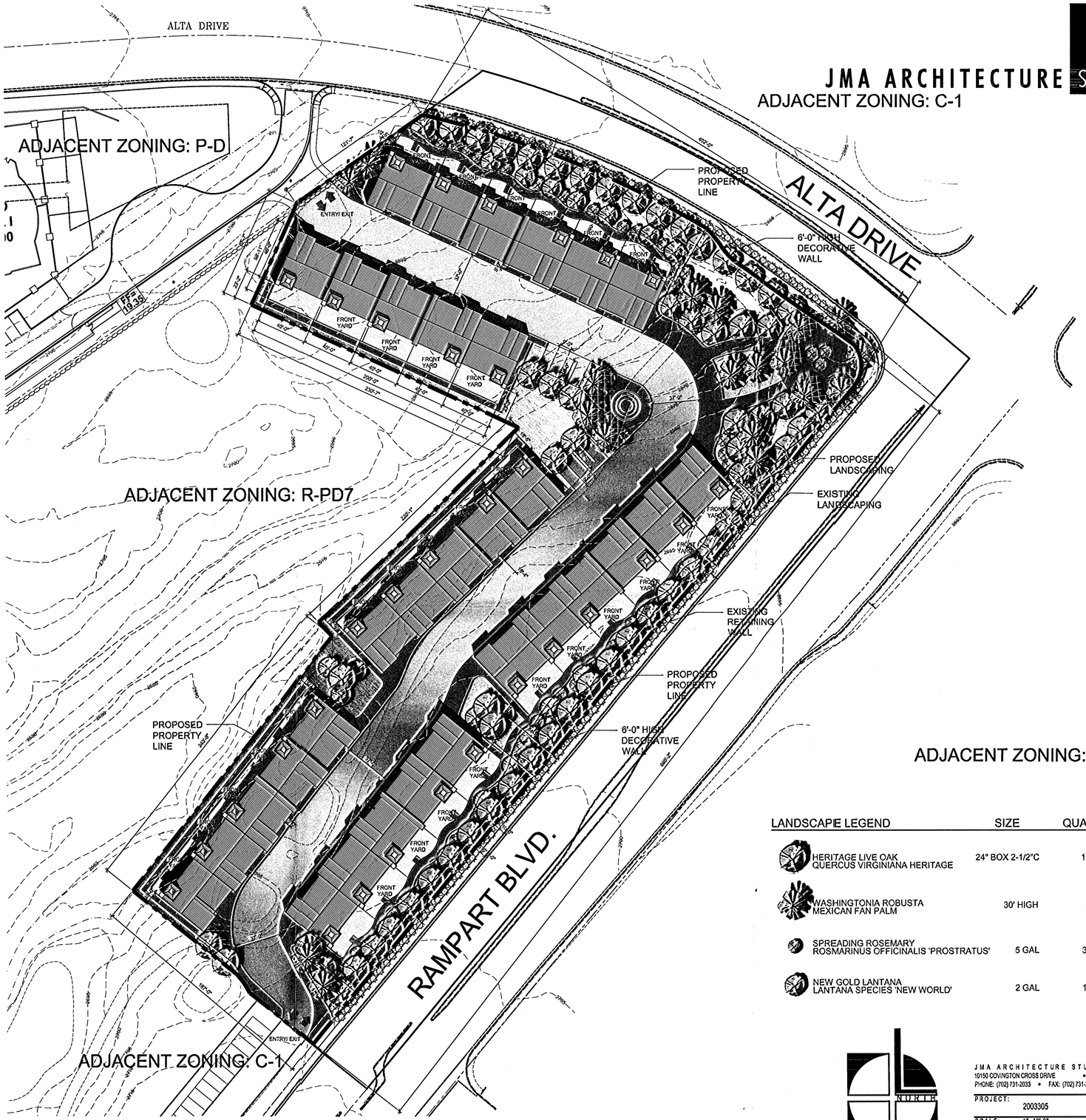
UNIT DATA:

TOTAL:	34 UNITS
UNIT AREA:	3,000 S.F.

PARKING DATA:

REQUIRED:

RESIDENCES:	68 (2 PER D.U.)
VISITOR:	6 (1 PER 6 D.U.)
TOTAL:	74 P.S.
TOTAL PROVIDED:	74 P.S. (68 RESIDENCE + 6 VISITOR)



JMA ARCHITECTURE STUDIOS

ADJACENT ZONING: C-1

ADJACENT ZONING: P-D

LANDSCAPE LEGEND	SIZE	QUANTITY
HERITAGE LIVE OAK QUERCUS VIRGINIANA HERITAGE	24" BOX 2-1/2"C	137
WASHINGTONIA ROBUSTA MEXICAN FAN PALM	30' HIGH	9
SPREADING ROSEMARY ROSMARINUS OFFICINALIS 'PROSTRATUS'	5 GAL	36
NEW GOLD LANTANA LANTANA SPECIES 'NEW WORLD'	2 GAL	100

RECEIVED AUG 29 2005

NORTH

ABEY TO 1/12/2006
W/ THORAWIN

JMA ARCHITECTURE STUDIOS
10150 COVINGTON CROSS DRIVE • LAS VEGAS, NV 89144
PHONE: (702) 731-2033 • FAX: (702) 731-2039 • WWW.JMAARCH.COM

PROJECT:	DATE:
2003305	AUGUST 29, 2005
SCALE: 1"=40'-0" 1"=60'-0"	REVIEW:

ZON-9006
09/22/05 PC

SITE PLAN/ LANDSCAPE PLAN

TOWNHOMES AT RAMPART AND ALTA

4316

CLV126708

PA0857

NOE
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF:** **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF;** **AND** **DENYING THE CITY OF LAS VEGAS' COUNTERMOTION FOR SUMMARY JUDGMENT ON THE SECOND CLAIM FOR RELIEF**

///

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief; and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief ("FFCL") was entered on the 25th day of October, 2021.

A copy of the FFCL is attached hereto.

DATED this 25th day of October, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 25th day of October, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF; AND DENYING THE CITY OF LAS VEGAS' COUNTERMOTION FOR SUMMARY JUDGMENT ON THE SECOND CLAIM FOR RELIEF** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

ELECTRONICALLY SERVED
10/25/2021 4:08 PM

Electronically Filed
10/25/2021 4:08 PM
CLERK OF THE COURT

FFCL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendant.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

GRANTING PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF;

AND

DENYING THE CITY OF LAS VEGAS' COUNTERMOTION FOR SUMMARY JUDGMENT ON THE SECOND CLAIM FOR RELIEF

Hearing Dates and Times:
September 23, 2021 at 1:30 p.m.;
September 24, 2021 at 9:30 a.m.; and
September 27 & 28, 2021 at 9:15 a.m.

Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") brought Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief, with Kermitt L. Waters, Esq., Autumn L. Waters, Esq., James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with in-house counsel Elizabeth Ghanem Ham, Esq. appearing for and on behalf of the Landowners, and George F. Ogilvie III, Esq., Christopher Molina, Esq. of McDonald Carrano, LLP along with Andrew Schwartz, Esq., of Shute, Mihaly and Weinberger, LLP with Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., with the City Attorney's Office, appearing for and on behalf of the City of Las Vegas (hereinafter "the City"). The City brought a Countermotion for Summary Judgment on the Landowners' Second Claim for Relief.

The Court has allowed a full and fair opportunity to brief the matters before the Court by entering orders that have allowed both the Landowners and the City to submit extensive briefs to the Court in excess of the EDCR 2.20(a) page limit. The Court has also allowed both parties a full and fair opportunity to present their evidence and provide extensive oral argument to the Court on all pending issues during hearings held on September 23, September 24, September 27, and September 28, 2021. Having reviewed all of the pleadings, including the submitted exhibits, and having heard extensive arguments and presentation of evidence, the Court hereby enters the following Findings of Fact and Conclusions of Law:

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation claim, the court must "undertake two distinct sub-inquiries: "the court must first determine" the property rights "before proceeding to determine whether the governmental action constituted a taking." ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International

Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that "whether the Government has inversely condemned private property is a question of law that we review de novo." Sisolak, at 661. Therefore, this Court decides the property interest issue and the taking issue. To resolve the four taking claims at issue, the Court relies on United States Supreme Court and Nevada Supreme Court inverse condemnation and eminent domain precedent. *See* County of Clark v. Alper, 100 Nev. 382, 391 (1984) ("[I]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings.").

2. This court entertained extensive argument on the first sub-inquiry, the property rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest," on October 12, 2020 (hereinafter "FFCL Re: Property Interest").

3. In the FFCL Re: Property Interest, this Court held: 1) Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7 at all relevant times; 3) the Las Vegas Municipal Code lists single-family and multi-family as the legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential. Exhibit 1.

4. The City did not file a timely Eighth Judicial District Court Rule 2.24 motion for reconsideration of the FFCL Re: Property Interest.

5. On March 26, 2021, the Landowners filed Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief, requesting that the Court decide the second sub-inquiry, the take issue, referenced in the Sisolak, supra, case.

6. On April 8, 2021, the City filed a Rule 56(d) motion, requesting that the Court delay hearing the Plaintiff Landowners' Motion to Determine Take until such time as discovery closes and the Court granted the City's request. The City specifically requested additional time to conduct discovery on the economic impact analysis, namely, the potential economic impact of the City's actions on the 35 Acre Property.

7. Discovery closed on July 26, 2021, and the Court set the Landowners' Motion for Summary Judgment on the Landowners' First, Third, and Fourth Claims for Relief and the City's Countermotion for Summary Judgment on the Landowners' Second Claim for Relief for September 23 and September 24, 2021.

8. The Court, in order to allow the City additional time for presentation of evidence and oral argument, added two more days – September 27 and September 28, 2021, to the hearing.

9. Therefore, the Court allowed both parties substantial time to present any and all facts and law they determined were necessary to fully and fairly present their cases to the Court.

II.

FINDINGS OF FACT IN REGARD TO THE LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF

A.

THE PROPERTY INTEREST ISSUE

10. Because the City extensively re-presented facts regarding the property interest the Landowners have in the 35 Acre Property during the four days of hearings, the Court will address some of these property interest facts.

///

The Landowners' 35 Acre Property.

11. The Landowners acquired all of the assets and liabilities of Fore Stars Ltd., which owned five parcels of property, consisting of 250 acres of land ("250 Acres"), of which the property at issue in this case was a part. Exhibit 44.

12. The property at issue in this case is a 34.07 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter "35 Acre Property"). At the time of the summary judgment hearing of this matter, the 35 Acre Property was and remains vacant.

The Landowners presented uncontested evidence of the due diligence conducted prior to acquiring ownership of the 35 Acre Property.

13. In 2001, the Landowners principals were advised by the William Peccole Family, original owners of the 35 Acre Property, that at all times, it was zoned R-PD7, it had rights to develop, the property was intended for residential development, and the Peccole Family did not and would never place a deed restriction on the property. Exhibit 34, p. 000734, paras. 4-5.

14. Also in 2001, the Landowners confirmed that the CC&Rs for the Queensridge Community, the community adjacent to the 35 Acre Property, and the disclosures related to the acquisition of surrounding properties, disclosed that the 35 Acre Property is not a part of the Queensridge Community, there is no requirement that the 35 Acre Property be used as open space or a golf course as an amenity for the Queensridge Community, and the 35 Acre Property is available for "future development." Exhibit 34, 000734, paras. 4-5; Exhibit 38

15. In 2006, the Landowners met with Robert Ginzer, a City Planning official, and confirmed that the 35 Acre Property was zoned R-PD7 and there were no restrictions that could prevent development of the property. Exhibit 34, p. 000734, para. 6.

16. In 2014, the Landowners met with Tom Perrigo and Peter Lowenstein, the highest ranking City Planners at that time, and they agreed to perform a study that took three weeks. At the end of this three week study, the City Planning Department reported that: 1) the 35 Acre Property is zoned for a residential use, R-PD7, and had vested rights to develop up to 7 residential units per acre; 2) the zoning trumps everything; and, 3) the owner of the 35 Acre Property can develop the property. Exhibit 34, p. 000735, para. 8.

17. The City then issued, at the Landowners request, a Zoning Verification Letter, on December 30, 2014, which states, in part, that: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) the "R-PD District is intended to provide for flexibility and innovation in residential development;" 3) the residential density allowed in the R-PD District shall be reflected by a numerical designation for that district, (Example, R-PD4 allows up to four units per gross acre);" and, 4) a "detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 134.

18. After obtaining the City's Zoning Verification Letter, the Landowners closed on the acquisition of the 35 Acre Property via purchase of the entity Fore Stars, Ltd.. Exhibit 44.

19. The Landowners also presented uncontested evidence of the City's position of the validity and application of the R-PD7 zoning to the 35 Acre Property.

20. During the development application process, veteran City Attorney Brad Jerbic stated, "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Exhibit 163, 10.18.16 Special Planning Commission Meeting, p. 005023:3444-3445.

21. Peter Lowenstein, head City Planner, testified during deposition that "a zone district gives a property owner property rights." Exhibit 160, p. 005002:5-6.

22. The City Planning Department provided a recommendation on the Master Development Agreement ("MDA") application for the development of the entire 250 Acres, discussed below, that further confirmed the residential use of the 35 Acre Property. The MDA application provided for residential development on the 35 Acre Property and the City Planning Department issued a recommendation of approval for the MDA, finding it "conforms to the existing zoning district requirements." Exhibit 77, p. 002671.

23. The City Planning Department provided a recommendation on the 35 Acre Property stand-alone applications, discussed below, that further confirmed the residential use of the 35 Acre Property. The 35 Acre applications provided for a 61-lot residential development on the 35 Acre Property and the City Planning Department issued a recommendation of approval for the applications, as they were "in conformation with all Title 19 [City Zoning Code] and NRS requirements for tentative maps." Exhibit 74, p. 002553.

24. The Clark County Tax Assessor ("Tax Assessor") confirmed the residential use of the 35 Acre Property based on R-PD7 zoning. NRS 361.227(1) requires that the tax assessor, when determining the taxable value of real property, shall appraise the full cash value of vacant land "by considering the uses to which it may lawfully be put" and "any legal restrictions upon those uses." In 2016, the Clark County Tax Assessor (Tax Assessor) applied NRS 361.227(1) to the 35 Acre Property. Exhibit 120, p. 004222. The Tax Assessor determined the "lawful" use of the 250 Acres, including the 35 Acre Property, by relying upon the "Zoning Designation … R-PD7" and identifying the use of the 250 Acres under this "R-PD7" zoning as "RESIDENTIAL." Exhibit 52, p. 001185; Exhibit 51, p. 001182. The Tax Assessor imposed a real estate tax on the 35 Acre Property, based on a residential use, of $205,227.22 per year. Exhibit 50, p. 001180. It was undisputed that the Landowners have dutifully paid these annual real estate taxes. The City

of Las Vegas City Charter states that, "t[]he County Assessor of the County is, ex officio, the City Assessor of the City." Las Vegas City Charter, sections 3.120(1).

The Landowners also presented uncontested evidence that the City has taken the position that the R-PD7 zoning is of the highest order and supersedes any City Master Plan or General Plan land use designations.

25. On February 14, 2017, City Attorney Brad Jerbic stated at a Planning Commission meeting, "the rule is the hard zoning, in my opinion, does trump the General Plan designation." Exhibit 75, 2.14.17 Planning Commission minutes, p. 002629:1787-1789.

26. The City Attorney's Office submitted pleadings to Nevada District Courts, stating the City Master Plan "was a routine planning activity that had no legal effect on the use and development" of properties and "in the hierarchy, the land use designation [on the City Master Plan] is subordinate to the zoning designation." Exhibit 156, p. 004925-4926; Exhibit 42, p. 000992:8-12.

27. Two City Attorneys submitted affidavits to a Nevada District Court, stating "the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan is a planning document only." Exhibits 157 and 158.

28. Tom Perrigo, head City Planner, testified in deposition that "if the land use [Master Plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement." Exhibit 159, p. 004936, 53:1-4.

29. The Landowners further submitted the Declaration of Stephanie Allen, a 17-year land use attorney in the City of Las Vegas, stating, "During by 17 years of work in the area of land use, it has always been the practice that zoning governs the determination of how land may be used. The master plan land use designation has always been considered a general plan document. I do not recall any government agency or employee ever making the argument that a master plan land use designation trumps zoning." Exhibit 195, p. 006088, para 16.

30. Additionally, during discovery, the Landowners requested that the City "[i]dentify and produce a complete copy of every City of Las Vegas Zoning Atlas Map from 1983 to present for the area within which the Subject Property is located or which includes the Subject Property and any drafts thereto, including the entire and complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings, any and all communications, correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to these City of Las Vegas Zoning Atlas Maps from 1983 to present." The City of Las Vegas' Fourth Supplement to its Responses to Requests for Production of Documents, Set One, electronically served, 2.26.20, 11:41 AM, p. 8, Request for Production No. 5.

31. The City did not identify or produce the requested documents on the basis that, "such records are not proportionate to the needs of the case as the City does not dispute that the Subject Property is zoned R-PD7." Id., p. 9.

There is No Basis for This Court to Reconsider its FFCL Re: Property Interest.

32. The City never requested an appropriate EDCR 2.24 motion to reconsider this Court's FFCL Re: Property Interest.

33. Moreover, the facts above confirm this Court's FFCL Re: Property Interest and the City failed to present any evidence during the four days of hearings that would persuade the Court to reconsider its FFCL Re: Property Interest.

34. There are six Nevada Supreme Court cases, three inverse condemnation cases and three direct eminent domain cases, wherein the Nevada Supreme Court made it clear that the R-PD7 zoning must be relied upon to determine the Landowners' property interest in this matter. McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006); Clark County v. Alper, 100 Nev. 382, 390 (1984); City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); County of Clark v. Buckwalter, 974 P.2d 1162 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g

sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813 (Nev. 1968).

35. NRS 278.349(3)(e) further supports the use of the R-PD7 zoning to determine the property interest issue in this matter, providing, "if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence."

36. NRS 40.005 also provides that "[i]n any proceeding involving the disposition of land the court shall consider the lot size and other applicable zoning requirements before ordering a physical division of the land." Although not directly on point, this statute shows the Legislature's intent to rely on zoning when addressing property rights in the State of Nevada.

37. Moreover, in the Sisolak, supra, case, the Nevada Supreme Court held "the first right established in the Nevada Constitution's declaration of rights is the protection of a landowner's inalienable rights to acquire, possess and protect private property," that "the Nevada Constitution contemplates expansive property rights in the context of takings claims through eminent domain," and "our state enjoys a rich history of protecting private property owners against government takings." Sisolak, supra, 669-670. The Court held that "[t]he term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." Id., at 658.

38. And, in the very recent United States Supreme Court inverse condemnation case Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2071 (June 23, 2021), the United States Supreme Court held that "protection of property rights is 'necessary to preserve freedom' and 'empowers persons to shape and to plan their own destiny in a world where governments are eager to do so for them."

39. Finally, the Court rejects the City's defenses that there is a Peccole Ranch Master Plan that governs the 35 Acre Property and a City of Las Vegas Master Plan/ land use designation of PR-OS that affects this Court's property interest determination.

40. Moreover, the City did not present any evidence of deed restrictions or property encumbrances. Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by "secret intentions" and documents not noticed).

B.

THE TAKE ISSUE

41. Having already resolved the property interest issue, the Court will now move to the take issues.

The Surrounding Property Owners.

42. After acquiring the 35 Acre Property, the Landowners began the process to develop the property for single family and multi-family uses.

43. Vickie DeHart, a Landowner representative, provided an uncontested declaration that on or about December 29, 2015, a representative of the surrounding property owners met with her, bragged that his group is "politically connected" and stated that he wanted 180 acres, with water rights, deeded to him for free and only then would his group "allow" the Landowners to develop the 250 Acres. Exhibit 94, p. 002836.

44. Then City Councilman Bob Beers testified in deposition that he was contacted by a representative of the surrounding property owners and asked "to get in the way of the landowners' rights." Exhibit 142, pp. 004586-4587.

45. Yohan Lowie, a Landowner representative, provided an uncontested declaration that within months of acquiring the 250 Acres, a City Councilman contacted him and advised him that a few surrounding homeowners were "demanding that no development occur on the 250 Acre

Land," but if the Landowners handed over 180 acres of their 250 Acres to those homeowners, the City Councilman "would 'allow' me to build 'anything I wanted' on 70 of the 250 acres." Exhibit 35, p. 000741, paras. 5-6.

The City's Actions to Prevent the Landowners from Using the 35 Acre Property.

The Landowners' Development Applications.

46. Immediately after closing on the 250 Acres in early 2015, the Landowners retained veteran land use attorney, Christopher Kaempfer, to assist with making the applications to the City for the development of the 250 Acres, including the 35 Acre Property. Exhibit 48, p. 001160, paras. 6-8. Before Mr. Kaempfer would agree to represent the Landowners on their applications to develop, he confirmed the development rights as he and his wife live in the adjoining Queensridge Community. Id. Mr. Kaempfer's research confirmed the R-PD7 zoning and he was provided a copy of the City's Zoning Verification Letter (Exhibit 134). Mr. Kaempfer then met with Peter Lowenstein of the City of Las Vegas Planning Department "who advised me that the [250 Acres] could be developed in accordance with the R-PD7 zoning." Id, para. 7. Mr. Kaempfer later had a meeting with then City Attorney, Brad Jerbic, and "was informed that the City of Las Vegas would 'honor the zoning letter' provided to the Landowner by the City of Las Vegas." Id. The City did not contest this evidence.

47. The City also did not contest that, while the Landowners had a vision of how to develop the Land, the City directed the type of applications necessary for approval of development. Exhibit 34, p. 000736, para. 11.

48. The Landowners submitted uncontested evidence that the City would accept only one application to develop the 35 Acre Property - a Master Development Agreement that included all parts of the 250 Acres ("MDA"). Exhibit 34, p. 000737, para. 19; Exhibit 48, pp. 001161-1162, para. 11-13.

49. Landowner representative, Yohan Lowie's uncontested declaration provides, "Mayor Goodman informed [the Landowners during a December 16, 2015, meeting] that due to neighbors' concerns the City would not allow 'piecemeal development' of the Land and that one application for the entirety of the 250 Acre Residential Zoned Land was necessary by way of a Master Development Agreement ("MDA")" and that during the MDA process, "the City continued to make it clear to [the Landowners] that it would not allow development of individual parcels, but demanded that development only occur by way of the MDA." Exhibit 34, p. 000538, para. 19, p. 000539, para. 24:25-27.

50. Mr. Kaempfer's uncontested Declaration states: 1) that he had "no less than seventeen (17) meetings with the [City] Planning Department" regarding the "creation of a Development Agreement" which were necessitated by "public and private comments made to me by both elected and non-elected officials that they wanted to see a plan – via a Development Agreement – for the development of the entire Badlands and not just portions of it;" and, 2) the City advised him that "[the Landowners] either get an approved Development Agreement for the entirety of the Badlands or we get nothing." Exhibit 48, pp. 001161-1162, paras. 11-13.

51. The Landowners opposed the City mandated MDA, arguing that it is not required by law or code and would increase the time and cost to develop. Exhibit 34, para. 20.

52. Nevertheless, with the City providing only one avenue to development, the Landowners moved forward with the City's proposed MDA concept, that included development of the 35 Acre Property, along with the 17, 65, and 133 Acre properties. Exhibit 34, p. 000737, para. 20.

53. The MDA process started in or about Spring of 2015 and the uncontested Declaration of Yohan Lowie states that through this process the City told the Landowners how the City wanted the 250 Acres developed, which included how the 35 Acre Property would be

developed, and the information and documents the City wanted as part of the MDA application process. Exhibit 34, pp. 000737-738, paras. 20-21.

54. The uncontested Declaration of Yohan Lowie further states that the MDA was drafted almost entirely by the City of Las Vegas and included all of the requirements the City wanted and required. Exhibit 34, p. 000738, para 22.

55. The City of Las Vegas Mayor stated on the record in a City Council meeting that the City Staff dedicated "an excess of hundreds of hours beyond the full day" working on the MDA. Exhibit 54, 8.2.17 City Council Meeting, p. 001343:697-701.

56. The City also did not contest the Declaration of Yohan Lowie, which states that the City's MDA requirements cost the Landowners more than $1 million over and above the normal costs for a development application of this type. Exhibit 34, p. 000738, para 21:4-6.

57. The uncontested evidence showed that the Landowners agreed to every City requirement in the MDA, spending an additional $1 million in extra costs. Exhibit 34, p. 000737, para. 20:26-27; Exhibit 55, City required MDA concessions signed by Landowners; Exhibit 56, MDA memos and emails regarding MDA changes.

58. The City of Las Vegas Mayor also stated publicly, to the Landowners in a City Council hearing, "you did bend so much. And I know you are a developer, and developers are not in it to donate property. And you have been donating and putting back... And it's costing you money every single day it delays." Exhibit 53, 6.21.17 City Council Meeting, p. 001281:2462-2465. City Councilwoman Tarkanian also commented publicly at that same City Council hearing that she had never seen anybody give as many concessions as the Landowners as part of the MDA stating, "I've never seen that much given before." Exhibit 53, p. 001293:2785-2787; p. 001294:2810-2811.

59. Landowner representative, Yohan Lowie, provided testimony that prior to the MDA being submitted for approval the City required, without limitation, detailed architectural drawings including 3D digital models for topography, elevations, etc., regional traffic studies, complete civil engineering packages, master detailed sewer studies, drainage studies, school district studies. Exhibit 34, p. 000738, para. 21. Mr. Lowie's Declaration further provides, "[i]n all my years of development and experience such costly and timely requirements are never required prior to the application approval because no developer would make such an extraordinary investment prior to entitlements, ie. approval of the application by the City." Id. The City did not contest this Declaration testimony.

60. The Landowners provided further uncontested evidence that additional, non-exhaustive City demands / concessions made of the Landowners, as part of the MDA, included: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas; 2) building brand new driveways and security gates and gate houses for the Queensridge Community; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units, increasing the minimum acreage lot size, and reducing the number and height of the towers. Exhibit 60, pp. 00001836-1837; Exhibit 54, 8.2.17 City Council Meeting, p. 001339, lines 599-601; Exhibit 53, 6.21.17 City Council Meeting, p. 001266:2060-2070; Exhibit 55.

61. Further uncontested evidence showed that, during the MDA process the City required approximately 700 changes and 16 new and revised versions of the MDA.[1]

62. The evidence showed that the Landowners communicated their frustration with how long the MDA process was taking, stating: "[w]e [the Landowners] have done that through many iterations, and those changes were not changes that were requested by the developer. They

[1] Exhibits 58 and 59, final page of exhibits shows the over 700 changes. Exhibit 61, 16 versions of the MDA generated from January, 2016 to July, 2017.

were changes requested by the City and/or through homeowners [surrounding neighbors] to the City." Exhibit 54, 8.2.17 City Council Meeting, p. 001331:378-380. The City Attorney also recognized the "frustration" of the Landowners due to the length of time negotiating the MDA.[2]

63. The uncontested evidence showed the Landowners expressed their concern that the time, resources, and effort it was taking to negotiate the MDA may cause them to lose the property. Exhibit 53, 6.21.17 City Council Meeting, p. 001310:3234-3236.

64. While the MDA was pending resolution, the Landowners approached the City's Planning Department to inquire about developing the 35 Acre Property as a stand-alone development, rather than as part of the MDA, and asked the City's Planning Department to set forth all requirements the City could impose on the Landowners to develop the 35 Acre Property by itself. Exhibit 34, p. 000738, para 23.

65. The uncontested evidence submitted showed that the City's Planning Department worked with the Landowners to prepare the stand-alone residential development applications for the 35 Acre Property and the applications were completed with the City's Planning Department's assistance. Exhibit 34, p. 000738, para 24; Exhibits 62-72, 35 Acre applications.

66. The City Planning Department then issued Staff Reports detailing the City Planning Department's opinion on whether the 35 Acre stand-alone applications met all of the City development code requirements and standards and whether the applications should be approved. Exhibit 74.

[2] "But I do not like the tactics that look like we're working, we're working, we're working and, by the way, here's something you didn't think of I could have been told about six months ago. I understand Mr. Lowie's frustration. There's some of that going on. There really is. And that's unfortunate. I don't consider that good faith, and I don't consider it productive." City Attorney Brad Jerbic. Exhibit 53, 6.21.17 City Council Meeting, p. 001301:2990-2993.

67. The City Planning Department's analysis of the 35 Acre stand-alone applications confirmed that the "[s]ite access from Hualapai Way through a gate meets Uniform Standard Drawing specifications." Exhibit 74, p. 002552.

68. The City Planning Department's analysis of the 35 Acre applications also stated that, "[t]he proposed residential lots throughout the subject site are comparable in size to the existing residential lots directly adjacent to the proposed lots" and "[t]he development standards proposed are compatible with those imposed on the adjacent lots." Exhibit 74, p. 002552.

69. The City Planning Department's analysis of the 35 Acre Applications further stated that, "[t]he submitted Tentative Map is in conformance with all Title 19 and NRS requirements for tentative maps." Exhibit 74, p. 002553.

70. The City Planning Department and the City Planning Commission recommended approval of the 35 Acre applications. Exhibit 74, pg. 02551 and 002557.

71. The 35 Acre Property as a stand-alone development was presented to the City Council for approval on June 21, 2017. Exhibit 53, 6.21.17 City Council Meeting.

72. Tom Perrigo, the City's Planning Director appeared at the hearing on the Landowners' 35 Acre applications and stated that the Landowners' proposed development on the 35 Acres, which the City Planning Department assisted with preparing, met all City requirements and should be approved. Exhibit 53, 6.21.17 City Council Meeting, p. 001211-1212:566-587.

73. One City Council member acknowledged at the hearing that the 35 Acre Property applications met all City requirements, stating the proposed development was "so far inside the existing lines [the Las Vegas Code requirements]." Exhibit 53, 6.21.17 City Council Meeting, p. 001286:2588-2590.

74. The City Council Members, however, stated the City's firm position that the City opposed individual development applications for parts of the 250 Acres, and, again, insisted on one MDA for the entire 250 Acres: 1) "I have to oppose this, because it's piecemeal approach (Councilman Coffin);" 2) "I don't like this piecemeal stuff. I don't think it works (Councilwoman Tarkanian); and, 3) "I made a commitment that I didn't want piecemeal," there is a need to move forward, "but not on a piecemeal level. I said that from the onset," "Out of total respect, I did say that I did not want to move forward piecemeal." (Mayor Goodman). Exhibit 53, 6.21.17 City Council Meeting, pp. 001287:2618; 001293:2781-2782; 001307:3161; 001237:1304-1305; 001281:2460-2461.

75. On June 21, 2017, the City Council, contrary to the City Planning Department's recommendation, and the City Planning Commission's recommendation denied the 35 Acre applications. Exhibit 93; Exhibit 53, 6.21.17 City Council Meeting, p. 001298:2906-2911.

76. The City's official position for denial of the 35 Acre applications was the impact on "surrounding residents" and the City required an MDA for the entire 250 Acres, not "piecemeal" development. Exhibits 53 and 93.

77. The Landowners' representative provided an uncontested Declaration, stating, that after the denial of the 35 Acre Applications, "[t]he City continued to make it clear to [the Landowners] that it would not allow development of individual parcels but demanded that development only occur by way of the MDA." Exhibit 34, p. 000738, para 24:25-27.

78. The uncontested evidence showed that the Landowners then continued to work with the City to obtain approval to develop through the MDA applications process, which the City stated was the only way development may be allowed.

79. The uncontested evidence further showed that the Landowners worked with the City for 2 ½ years on the MDA (between Spring, 2015, and August 2, 2017) and accepted all changes, additions, and conditions requested by the City.

80. The City produced no evidence to contest that the Landowners agreed to every request and condition the City required in the MDA application.

81. The MDA application, along with the MDA and all necessary supporting documents, was presented to the City Council for approval on August 2, 2017, approximately 40 days after the City denied the stand-alone applications to develop the 35 Acre Property on the basis that the City wanted the MDA. Exhibits 54, 8.2.17 City Council Meeting; Exhibits 79-87.

82. The City Planning Department issued a recommendation to the City Council that the MDA applications met all City requirements and that the MDA applications should be approved as follows:

> The proposed Development Agreement conforms to the requirements of NRS 278 regarding the content of development agreements. The proposed density and intensity of development conforms to the existing zoning district requirements for each specified development area. Through additional development and design controls, the proposed development demonstrates sensitivity to and compatibility with the existing single-family uses on the adjacent parcels. Furthermore, the development as proposed would be consistent with goals, objectives and policies of the Las Vegas 2020 Master Plan that call for walkable communities, access to transit options, access to recreational opportunities and dense urban hubs at the intersection of primary roads. Staff therefore recommends approval of the proposed Development Agreement. Exhibit 77, p. 002671.

83. The uncontested evidence showed that, despite the City including all City requirements to develop in the MDA and the City's Planning Department recommending approval as the MDA met all City codes and standards, on August 2, 2017, the City Council denied the MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-4275.

84. The Landowners' representative, Yohan Lowie, provided an uncontested declaration that the City did not ask the Landowners to make more concessions, like increasing

setbacks or reducing units per acre, but rather, the City denied the MDA which denied the development of the entire 250 Acres, including the 35 Acre Property. Exhibit 34, p. 000739, para. 26.

85. The minutes from the hearing on the MDA and the MDA denial letter further confirm that the City did not ask for more concessions, but rather, the City simply denied the MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-4275.

86. Therefore, the City denied an application to develop the 35 Acre Property as a stand-alone property and the MDA to develop the entire 250 Acres. Both of these denials were contrary to the recommendation of the City's Planning Department.

The Landowners' Fence Application.

87. The Landowners presented uncontested evidence of their attempts to secure the 250 Acres and the City's denial of those attempts, contrary to the City Code, disregarding life safety concerns.

88. The Landowners submitted routine over the counter applications for a chain link fence around the perimeter of the 250 Acres, including the 35 Acre Property, and the Landowners submitted routine over the counter applications to fence the large ponds, one of which is located on the 35 Acre Property. Exhibit 91.

89. The Landowners provided argument that the chain link fences were necessary to secure the entire 250 Acres and to enclose the ponds on the property to exclude others from entering onto their privately owned property and to protect the life and safety of others.

90. Las Vegas Unified Development Code 19.16.100 F (2)(a) provides that a "fence" application is subject to a "Minor Review Process" and section 19.16.100 (F) (3) specifically exempts fences from a "Major Review Process." The Major Review Process . . . shall not apply to building permit level reviews described in Paragraph 2(a) of this Subsection (F).

91. It was uncontested that the Major Review Process is significantly more involved than a Minor Review Process. Las Vegas Unified Development Code 19.16.100 (G).

92. On August 24, 2017, the City sent the Landowners a letter of denial for the proposed chain link fences, stating it has "determined that the proximity to adjacent properties has the potential to have a significant impact on the surrounding properties," explained the fence application was "denied" and, in violation of its own City Code, stated a "major review" would be required for the chain link fence application. Exhibit 92.

93. The City's attorney responded at the hearing on September 24, 2021, that perhaps the City succumbed to "political pressure" in denying the fence application.

94. The Landowners presented uncontested evidence of three properties in the City of Las Vegas near the 35 Acre Property that received approval for fencing - New Horizon Academy on West Charleston, the closed Leslie's Pool Supply on West Charleston, and vacant land on West Charleston. They also presented evidence that the vacant lot adjacent to the Nevada Supreme Court building, also in the City of Las Vegas jurisdiction, has an approved fence around it.

95. The Landowners presented an interoffice City email wherein it is stated – "Follow up with CM Seroka regarding the Badlands fence permit. Want to take action on the Monday after find out cm's conversations went over the weekend regarding the permit." CLV06391 – Public Records Request. The email is dated August 21, 2017, three days prior to the City's fence denial letter to the Landowners. Exhibit 92.

The Landowners' Access Application.

96. The Landowners presented uncontested evidence that they also submitted an application to the City to approve access to their 250 Acres, including specific access to the 35 Acre Property and the City denied the access.

97. The Landowners submitted routine over the counter applications to the City to provide access to the 250 Acres from Hualapai Way and Rampart Blvd. Exhibit 88. The 35 Acre

Property abuts Hualapai Way and approval of the access from Hualapai Way would allow direct access to the 35 Acre Property.

98. The Landowners explained in their access application to the City that the access was needed "for the tree and plant cutting, removal of related debris and soil testing equipment." Exhibit 88, 002810.

99. As detailed above, the City Planning Department stated, in its Staff Recommendation on the 35 Acre Property stand-alone applications that, "[s]ite access from Hualapai Way through a gate meets Uniform Standard Drawing specifications." Exhibit 74, p. 002552.

100. During discovery, the City stated that, "[t]he Badlands [250 Acres] had general legal access to public roadways along Hualapai Way, Alta Drive, and Rampart Blvd." City Third Supplement to Interrogatory Answers, electronically served, June 9, 2021, 10:4-5.

101. On August 24, 2017, the City denied the application for access, stating as the reason for denial, "the potential to have significant impact on the surrounding properties." Exhibit 89, 002816.

102. At the summary judgment hearing, the City was unable to provide a reasonable basis for denying the Landowners' access application.

The City's Passage of Bills No. 2018-5 and 2018-24.

103. The evidence established that, after the City denied the stand-alone 35 Acre applications to build, denied the MDA, denied the fence applications, and denied the access application, the City adopted two Bills, Bills No. 2018-5 and 2018-24. Exhibits 107 and 108.

104. The uncontested evidence presented showed the Bills targeted only the Landowners' 250 Acres.

105. City Councilwoman Fiore stated on the record, "[f]or the past two years, the Las Vegas Council has been broiled in controversy over Badlands [250 Acres], and this [Bill 2018-24]

is the latest shot in a salvo against one developer" and "This bill is for one development and one development only. This bill is only about the Badlands Golf Course [250 Acres]" and "I call it the Yohan Lowie Bill." Exhibit 114, 5.16.18 City Council Meeting, p. 003848-3849; Exhibit 115, p. 003868; Exhibit 116, 5.14.18 Recommending Committee Meeting, pp. 003879, 003910. Yohan Lowie is one of the Landowner representatives.

106. Stephanie Allen, the Landowners' land use attorney who represented the Landowners before the City on the development matters, stated that, "we did the analysis … Out of the 292 parcels that the City provided [that the Bills could apply to], two properties remain. One of them is the former Badlands Golf Course [250 Acres], and if I could direct your attention to the overhead, the other is actually, interestingly, in Peccole Ranch. It's this little pink area here. It's a wash." Exhibit 110, p. 003370.

107. The Landowners submitted the analysis performed by Ms. Allen establishing that Bills No. 2018-5 and 2018-24 target only the Landowners' Property. Exhibits 111 and 112.

108. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 target only the Landowners' 250 Acres.

109. The uncontested evidence presented showed the Bills made it impracticable and impossible to develop the 250 Acres.

110. Bills 2018-5 and 2018-24 included the following requirements before an application could be submitted to develop the 250 Acres: a master plan (showing areas proposed to remain open space, recreational amenities, wildlife habitat, areas proposed for residential use, including acreage, density, unit numbers and type, areas proposed for commercial, including acreage, density and type, a density or intensity), a full and complete development agreement, an environmental assessment (showing the project's impact on wildlife, water, drainage, and ecology), a phase I environmental assessment report, a master drainage study, a master traffic

study, a master sanitary sewer study with total land uses proposes, connecting points, identification of all connection points, a 3D model of the project with accurate topography to show visual impacts as well as an edge condition cross section with improvements callouts and maintenance responsibility, analysis and report of alternatives for development, rationale for development, a mitigation report, CC&Rs for the development area, and a closure maintenance plan showing how the property will continue to be maintained as it has in the past (providing security and monitoring). Exhibits 107 and 108, ad passim.

111. The Bills also included vague requirements, such as development review to assure the development complies with "other" City policies and standards, and a requirement for anything else "the [City Planning] Department may determine are necessary." Exhibit 108, p. 003212:12-13.

112. It was uncontested that Bill No. 2018-24 mandated that any development on the Landowners 250 Acres could only occur through a "development agreement" and, at the time Bill Nos. 2018-5 and 2018-24 were passed, the City had already denied a development agreement (the MDA) for the entire 250 Acres. Exhibit 78 (MDA denied on August 2, 2017); Exhibit 108, pp. 003206-003207 (Bill No. 2018-24, passed on November 7, 2018).

113. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 made it impracticable and impossible to develop the 250 Acres.

114. The evidence presented showed the Bills preserved the 250 Acres for use by the public and authorized the public to use the 250 Acres, including the 35 Acre Property.

115. City Councilman Seroka was a vocal opponent to the Landowners building on the 250 Acres.

116. Councilman Seroka presented to the surrounding property owners at a homeowner's association meeting that they had the right to use the Landowners' 250 Acres as recreation and open space.

> "So when they built over there off of Hualapai and Sierra –Sahara –this land [250 Acres] is the open space. Every time that was built along Hualapai and Sahara, this [250 Acres] is the open space. Every community that was built around here, that [250 Acres] is the open space. The development across the street, across Rampart, that [250 Acres] is the open space….it is also documented as part recreation, open space…That is part recreation and open space…" *LO Appx., Ex. 136*, 17:23-18:15, HOA meeting page

> "Now that we have the documentation clear, ***that is open space for this part of our community. It is the recreation space for this part of it***. It is not me, it is what the law says. ***It is what the contracts say between the city and the community, and that is what you all are living on right now***." *LO Appx., Ex. 136*, 20:23-21:3, HOA meeting (emphasis added).

117. Bill No. 2018-24 was "Sponsored by: Councilman Steven G. Seroka," the vocal opponent to the Landowners developing the 250 Acres. Exhibit 108, p. 003202.

118. A provision was written into Bill No. 2018-24 which states under section "G. 2. Maintenance Plan Requirements," that "the maintenance plan must, at a minimum and with respect to the property . . . d. Provide documentation regarding ***ongoing public access . . . and plans to ensure that such access is maintained.***" Exhibit 108, pp. 003211-3212. Emphasis added.

119. The section "A. General" to Bill No. 2018-24 states that any proposal to repurpose the 250 Acres from a golf course "is subject to … the requirements pertaining to … the Closure Maintenance Plan set forth in Subsections (E) and (G), inclusive," which is where the requirement to provide "ongoing public" access is mandated in Bill No. 2018-24. Exhibit 108, pp. 003202-3203.

120. The Landowners presented uncontested evidence that the neighbors are using the 250 Acres. Exhibit 150 and pictures attached thereto.

121. Don Richards, the superintendent for the 250 Acres, submitted a declaration that those that entered onto the 35 Acre Property advised him that they were told that "it is our open space." Exhibit 150, p. 004669, paras 6-7.

122. The effect of Bills No. 2018-5 and 2018-24 was to: 1) target only the Landowners' 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the 250 Acres for use by the public and authorize the public to use the 250 Acres.

There is No Evidence that the 250 Acres is the Open Space or Recreation for the Area.

123. It was uncontested that the 250 Acres, including the 35 Acre Property is privately-owned property.

124. Although Councilman Seroka announced the Queensridge Homeowners could use the 250 Acres for their open space and recreation, there was no evidence to support this announcement and contrary evidence showed this authorization was inaccurate. Exhibits 36-39.

125. The CC&Rs for the surrounding Queensridge Community state, "[t]he existing 18-hole golf course commonly known as the "Badlands Golf Course" [250 Acres] is not a part of the Property or the Annexable Property [Queensridge Community] and the Queensridge Community "is not required to[] include … a golf course, parks, recreational areas, open space." Exhibit 36, pp. 000761-762.

126. The Custom Lot Design Guidelines for the Queensridge Community also informed that the interim golf course on the 250 Acres was available for "future development." Exhibit 37, p. 000896.

127. The Queensridge CC&Rs further disclosed to every purchaser of property within the Queensridge Community that the 250 Acres was "not a part" of the Queensridge Community, that purchasers in the community "shall not acquire any rights, privileges, interest, or membership" in the 250 Acres, there are no representations or warranties "concerning the preservation or

permanence of any view," and lists the "Special Benefits Area Amenities" for the surrounding Queensridge Community, which does not include a golf course or open space or any other reference to the 250 Acres. Exhibit 38, ad passim.; Exhibit 39, pp. 000908-909, 911.

128. The Zoning Verification Letter the City provided the Landowners prior to the Landowners acquiring the 250 Acres also makes no mention of any open space or recreation restriction. Exhibit 134.

129. The Court was also presented with two findings of fact and conclusions of law entered in litigation between a Queensridge homeowner and the Landowners wherein the Queensridge homeowner alleged the 250 Acres was "open space" for the Queensridge Community and the District Court rejected this argument and entered findings that the 250 Acres is zoned "R-PD7" and the R-PD7 zoning gives the Landowners the "right to develop." Exhibit 26, 000493; Exhibit 27, p. 000520. The matter was affirmed on appeal. Exhibits 28 and 29.

130. The caption for that litigation shows the City was a party to that action and, therefore, aware of the proceedings, however, counsel represented that the City was dismissed out of the case.

Additional City Communications and Actions.

131. The Landowners also presented evidence of communications and other actions taken by the City showing the City's intent toward the 250 Acres after the Landowners acquired the 250 Acres.

132. The City identified $15 million of potential City funds to purchase the 250 Acres (notwithstanding the Land was not for sale). Exhibit 144.

133. The City identified a "proposal regarding the acquisition and re-zoning of green space land [250 Acres]." Exhibit 128.

134. The City proposed / discussed a Bill to force "Open Space" on the 250 Acres, contrary to its legal zoning. Exhibit 121.

135. The City proposed a solution to "Sell off the balance [of the 250 Acres] to be a golf course with water rights (key). Keep the bulk of Queensridge green." Exhibit 122.

136. The City engaged a golf course architect to "repurpose" the 250 Acres. Exhibit 145.

137. One City Councilman referred to the Landowners' proposal to build large estate homes on the residentially zoned 250 Acres as the same as "Bibi Netanyahu's insertion of the concreted settlements in the West Bank neighborhoods." Exhibit 123.

138. Then-Councilman Seroka testified at the Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could build homes on the 250 Acres (Exhibit 124, 2.14.17 Planning Commission Meeting) and issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowners' private property into a "fitness park," and in an interview with KNPR, he stated that he would "turn [the Landowners' private property] over to the City." Exhibit 125.

139. In reference to development on the 250 Acres, then-Councilman Coffin stated firmly "I am voting against the whole thing," and "a majority is standing in his [Landowners] path [to development] (Exhibits 122 and 126) before the applications were finalized and presented to the City Council,[3] the councilman refers to the Landowners' representative as a "sonofab[…]," "A[…]hole," "scum," "motherf[…]er," "greedy developer," "dirtball," "clown," and Narciss[ist]" with a "mental disorder," (Exhibit 121) and seeks "intel" against the Landowner through a private investigator in case he needs to "get rough" with the Landowners (Exhibit 127).

[3] This statement was made by email on April 6, 2017, and the applications were not presented to the City Council until June 21 and August 2 of 2017.

140. Then-Councilmen Coffin and Seroka also exchanged emails wherein they stated they will not compromise one inch and that they "need an approach to accomplish the desired outcome," - prevent development on the 250 Acres. Exhibit 122.

141. An interoffice City email states, "If any one sees a permit for a grading or clear and grub at the *Badlands* Golf Course [250 Acres], please see Kevin, Rod, or me. Do Not Permit without approval from one of these three." Exhibit 130, June 27, 2017, City email. Italics in original.

142. City Emails were presented that showed City Council members discussing a strategy to not disclose information related to actions toward the 250 Acres, with instruction given, in violation of the Nevada Public Records Act,[4] on how to avoid the search terms being used in the subpoenas: "Also, please pass the word for everyone to not use B…l..nds in title or text of comms. That is how search works." and "I am considering only using the phone but awaiting clarity from court. Please pass word to all your neighbors. In any event tell them to NOT use the city email address but call or write to our personal addresses. For now…PS. Same crap applies to Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his personal stuff being sought. This is no secret so let all your neighbors know." Exhibit 122, p. 004232.

Expert Opinions.

143. The Landowners introduced an appraisal report by Tio DiFederico of the 35 Acre Property. Exhibit 183.

144. Mr. DiFederico has the M.A.I. designation, the highest designation for an appraiser. Exhibit 183, p. 005216.

[4] *See* NRS 239.001(4) (use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services)

145. Mr. DiFederico appraised the "before value" of the 35 Acre Property, which is the value of the 35 Acre Property as if it were available for residential development in compliance with the R-PD7 zoning and the "after value," which is the value of the 35 Acre Property after all of the City actions toward the property. He concluded that the "before value" is $34,135,000.00 and the "after value" is zero. Exhibit 183, p. 005216.

146. Mr. DiFederico concluded, "[d]ue to the effect of the government's actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the 'after value' would be zero." Exhibit 183, p. 005216.

147. Discovery in this matter closed on July 26, 2021.

148. The City did not exchange an initial expert report or a rebuttal expert report to challenge Mr. DiFederico's opinions.

III.

CONCLUSIONS OF LAW REGARDING THE LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF

Standard of Review

149. NRCP 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Further, "summary judgment ... may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." NRCP 56(c). In Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court eliminated the "slightest doubt standard," holding that "[w]hile the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to

do more than simply show that there is some 'metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor" and that "[t]he nonmoving party " 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'"

150. The Nevada Supreme Court has held that this Court decides, as a matter of law, whether a taking has occurred. McCarran Int'l Airport v. Sisolak, 137 P.3d 1110 (2006) ("whether the Government has inversely condemned private property is a question of law that we review de novo." Id., at 1119). *See also,* Moldon v. County of Clark, 124 Nev. 507, 511, 188 P.3d 76, 79 (2008) ("whether a taking has occurred is a question of law…").

151. This Court has already held that, in deciding the take issue in this case, the Court must consider all of the City actions in the aggregate toward the 35 Acre Property:

> In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). See also State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (citing Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).
>
> The City has argued that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered.

Exhibit 8, May 15, 2019 Order Denying City's Motion for Judgment on the Pleadings, pp. 000172-173.

152. The Nevada Supreme Court has also held "there are several invariable rules applicable to specific circumstances" and this Court will address three of those "invariable rules" for a taking in Nevada – a per se categorical taking (Landowners' first claim for relief), a per se regulatory taking (Landowners' Third Claim for Relief), and a non-regulatory / de facto taking (Landowners' Fourth Claim for Relief). State v. Eighth Judicial District Court, 131 Nev. 411, 419 (2015).

153. In addressing the invariable rules that apply to the Landowners' First, Third, and Fourth Claims for Relief, the United States and Nevada Supreme Court have held that a Penn Central analysis, referenced later in this FFCL, does not apply to the Landowners' First, Third, and Fourth Claims for Relief. Sisolak ("the *Penn Central*-type takings analysis does not govern this action [per se regulatory taking]." Id., at 1130); Cedar Point Nursery ("regulations in the first two categories constitute *per se* takings [per se categorical and per se regulatory]" and are not subject to a Penn Central analysis. Id., at 2070); State v. Eighth Judicial District Court (identifying a "Nonregulatory Analysis" separate and apart from a "*Penn Central* analysis" and applying a different standard to find a taking. Id., at 419 and 421).

The Landowners are Entitled to Summary Judgment on Their First Claim For Relief – a Per Se Categorical Taking.

154. The Nevada Supreme Court holds that a per se categorical taking occurs where government action "completely deprives an owner of all economical beneficial use of her property," and, in these circumstances, just compensation is automatically warranted, meaning there is no defense to the taking. Sisolak, supra, at 662. A categorical taking does not require a physical invasion.

155. As detailed above, the City denied 100% of the Landowners' requests to use the 35 Acre Property. The City denied the 35 Acre stand-alone applications, the MDA application, the perimeter fence application, the pond fence application, and the access application.

156. The City then adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

157. The Court finds persuasive the expert appraisal report prepared by M.A.I. appraiser, Tio DiFederico, which concludes, "[d]ue to the effect of the government's actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the 'after value' would be zero." Exhibit 183, p. 005216. As detailed above, the City has not produced an expert report during discovery to challenge Mr. DiFederico's expert opinion.

158. The Court also finds that the Landowners presented substantial evidence that the historical golf course use is not an economical use. Exhibits 45-47. Appraiser, Tio DiFederico also concluded the golf course is not an economical use and the City presented no expert evidence to contest this conclusion. Exhibits 183, p. 005214.

159. The Court finds the City actions have caused the 35 Acre Property to lie vacant and useless to the Landowners and "completely deprive[d] [the Landowners] of all economical beneficial use of [their] property," specifically, the 35 Acre Property.

160. In addition to causing the 35 Acre Property to lie vacant and useless to the Landowners, the tax assessor has imposed, and the Landowners are paying, $205,227.22 per year in real estate taxes based on a residential use. The Court also recognizes that there are other carrying costs for the vacant 35 Acre Property.

161. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' First Claim for Relief – Per Se Categorical Taking.

The Landowners are Entitled to Summary Judgment on Their Third Claim For Relief – a Per Se Regulatory Taking.

162. The Nevada Supreme Court holds that a per se regulatory taking occurs where government action "authorizes" the public to use private property or "preserves" private property for public use. Sisolak, supra. *See also* Tien Fu Hsu v. County of Clark, 123 Nev. 625 (2007). The Sisolak and Hsu Courts held that the adoption of height restriction ordinance 1221 was a taking by inverse condemnation, because it preserved the privately-owned airspace for use by the public and authorized the public to use the privately-owned airspace.

163. The United States Supreme Court adopted the same rule in a very recent case, wherein the Court held that a government authorized invasion of private property is a taking. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (June 23, 2021). The Cedar Point Nursery Court held that a California statute that authorized labor unions to enter onto private farms 120 days a year for up to 3 hours at a time, upon proper notice, is a taking by inverse condemnation.

164. When the government engages in per se regulatory taking actions, just compensation is automatically warranted, meaning there is no defense to the taking.

165. As detailed above, the City adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

166. These Bills, alone, are a per se regulatory taking of the Landowners' 35 Acre Property as they are similar to the actions taken by the County in the Sisolak and the Hsu cases and the actions taken by the State of California in the Cedar Point Nursery case.

167. Moreover, the intent of the Bills was evidenced by the sponsor of the Bills, Councilman Seroka, when he advised the surrounding homeowners that the Landowners' 35 Acre Property was the surrounding property owners' open space and recreation, as detailed above.

168. The City's intent to preserve the 35 Acre Property for use by the surrounding public and to authorize the public to use the 35 Acre Property is further evidenced in the City's fence denial and access denial letters wherein the City states as a basis for the denials, the potential to have significant impact on the "surrounding properties." Exhibit 92, p. 002830; Exhibit 89, p. 002816. The City's 35 Acre application denial letter also states as a basis for the denial, in part, concerns over the impact of the proposed development on "surrounding residents." Exhibit 93, p. 002831.

169. The City's intent to preserve the 35 Acre Property for use by the public was further evidence by the numerous statements by City Councilmembers and other City employees, referenced above, that identified the 35 Acre Property for use by the surrounding property owners.

170. The Court finds unpersuasive the City's argument that statements by City Councilmembers and other City employees cannot be considered. In Sisolak, a per se regulatory taking case, the Court considered statements by Bill Keller, a principal planner with the Clark County Department of Aviation, in regards to the County height restrictions. Sisolak, supra, at 653. Moreover, many of the City statements were made in judicial or quasi-judicial settings, meaning the City is judicially estopped from making contrary representations to this Court. Marcuse v. Del Webb Communities, 123 Nev. 278 (2007).

171. The uncontested Declaration of Christopher Kaempfer, the Landowners' land use attorney, also confirms the City's intent to preserve the 35 Acre Property for use by the surrounding public - "it became clear that despite our best efforts, and despite the merits of our applications(s), no Development Agreement was going to be approved by the City of Las Vegas unless virtually

all of the Badlands neighborhood supported such a Development Agreement; and it was equally clear that this neighborhood support was not going to be achieved because, as the lead of the neighborhood opposition exclaimed to me and other 'I would rather see the golf course a desert than a single home built on it.'" Exhibit 48, p. 001161, para. 12.

172. The uncontested Declaration of Don Richards, supported by photographic evidence, confirms that the public was using the 35 Acre Property in conformance with the direction of the City. Exhibit 150, p. 004669, para. 7.

173. Moreover, "[t]he right to exclude is 'one of the most treasured' rights of property ownership" and "is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property'" and the City denied the Landowners the right to exclude others from the 35 Acre Property by denying the Landowners' fence application, which is a taking in and of itself and further supports a finding of a per se regulatory taking. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2072 (June 23, 2021).

174. Also, under Nevada law an owner of property that abuts a public road "has a special right of easement in a public road for access purposes" and "[t]his is a property right of easement which cannot be damaged or taken from the owner without due compensation" and the City denied the Landowners access to the 35 Acre Property by denying the Landowners' access application which is a taking in and of itself and further supports a finding of a per se regulatory taking. Schwartz v. State, 111 Nev. 998 (1999).

175. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' Third Claim for Relief – a Per Se Regulatory Taking.

The Landowners are Entitled to Summary Judgment on Their Fourth Claim For Relief – a Non-Regulatory / De Facto Taking.

176. The Nevada Supreme Court holds that a non-regulatory / de facto taking occurs where the government has "taken steps that directly and substantially interfere[ ] with [an] owner's

property rights to the extent of rendering the property unusable or valueless to the owner." State v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). The Court relied on Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. 1977), where the Ninth Circuit held that "[t]o constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights."

177. The Nevada Supreme Court has further held in Sloat v. Turner, 93 Nev. 263, 269 (1977), that a taking occurs where there is "some derogation of a right appurtenant to that property which is compensable" or "if some property right which is directly connected to the ownership or use of the property is substantially impaired or extinguished." *See also,* Schwartz v. State, 111 Nev. 998 (1995) (taking where "a property right which is directly connected to the use or ownership of the property is substantially impaired or extinguished." Id., at 942).

178. Nichols on Eminent Domain further describes this non-regulatory / de facto taking claim as follows: "[c]ontrary to prevalent earlier views, it is now clear that a de facto taking does not require a physical invasion or appropriation of property. Rather, a substantial deprivation of a property owner's use and enjoyment of his property may, in appropriate circumstances, be found to constitute a 'taking' of that property or of a compensable interest in the property..." 3A Nichols on Eminent Domain §6.05[2], 6-65 (3rd rev. ed. 2002).

179. Therefore, a Nevada non-regulatory / de facto taking occurs where government action renders property unusable or valueless to the owner or substantially impairs or extinguishes some right directly connected to the property.

180. The Court rejects the City's assertion that a non-regulatory / de facto taking only applies to physical takings and precondemnation damages claims. First, there is nothing in the

case law that restricts non-regulatory / de facto takings to physical takings and Nichols on Eminent Domain, cited above, expressly rejects this argument. Second, in State v. Eighth Judicial District Court case, supra, the Court applies the standard for a non-regulatory / de facto taking and states in footnote 5 that, "[w]e decline to address Ad America's precondemnation damages claim because the district court has not decided the issue," showing the case was not a precondemnation damages case.

181. The Court finds that the aggregate of City actions, set forth above, substantially interfered with the use and enjoyment of the Landowners' 35 Acre Property, rendering the 35 Acre Property unusable or valueless to the Landowners.

182. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' Fourth Claim for Relief – a Non-Regulatory / De Facto Taking.

The Ripeness / Futility Doctrine do not Apply to the Landowners' First, Third, and Fourth Claims for Relief.

183. The Court follows Nevada Supreme Court precedent to not apply the ripeness / futility doctrine to the Landowners' First, Third, and Fourth Claims for Relief.

184. The Nevada Supreme Court has held that a ripeness / futility analysis is inapplicable to the Landowners' Per Se Regulatory and Per Se Categorical taking claims, because a "per se" taking is a taking in and of itself and there is no defense to the taking and no precondition to pass through a ripeness / futility analysis. The Court held in the Sisolak case that "Sisolak was not required to exhaust administrative remedies by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Sisolak, supra, at 664. The Court's ruling was made clear in Justice Maupin's dissent in Sisolak, wherein he stated, "[w]hile I disagree with the majority that a regulatory per se taking has occurred in this instance, I do agree that Loretto and Lucas takings, like per se physical takings, do not require exhaustion of administrative remedies." Sisolak at 684. And, in the Hsu case, the Court held,

"[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Hsu, 173 P.3d at 732 (2007).

185. The ripeness / futility doctrine also does not apply to the Landowners' non-regulatory / de facto taking claim. The Nevada Supreme Court lays out the standard for a non-regulatory / de facto taking in the cases of State v. Eighth Judicial District, Sloat, and Schwartz and the Court does not impose a ripeness / futility requirement.

186. To the extent this is in conflict with federal takings jurisprudence, "…states may expand the individual rights of their citizens under state law beyond those provided under the Federal Constitution. Similarly, the United States Supreme Court has emphasized that a state may place stricter standards on its exercise of the takings power through its state constitution or state eminent domain statutes." Sisolak at 669.

187. Therefore, under the laws of the State of Nevada, which this Court is bound by, an owner is not required to file any application with the land use authority to ripen a per se categorical taking, a per se regulatory taking, or a non-regulatory / de facto taking claim – the Landowners first, third, and fourth claims for relief.

The City's Segmentation Argument Does Not Apply.

188. The City asks this Court to find that, since the City initially approved development on the 17 Acre Property, the City may demand that all remaining 233 acres of the 250 Acre Land, including the 35 Acre Property, be designated open space. The City calls this its "segmentation" argument.

189. The Nevada Supreme Court has held that the 35 Acre Property must be considered as a separate and independent parcel in this inverse condemnation proceeding, not as part of the larger 250 Acres:

> "A question often arises as to how to determine what areas are portions of the parcel being condemned, and what areas constitute separate and independent parcels? Typically, the legal units into which land has been legally divided control the issue. That is, each legal unit (typically a tax parcel) is treated as a separate parcel...." City of North Las Vegas v. Eighth Judicial Dist. Court, 133 Nev. 995, *2, 401 P.3d 211 (table)(May 17, 2017) 2017 WL 2210130 (unpublished disposition), *citing* 4A Julius L. Sackman, *Nichols on Eminent Domain* § 14B.01 (3d ed. 2016).

190. It is undisputed that the 35 Acre Property has its own Clark County Assessor Parcel Number – 138-31-201-005.

191. It is also undisputed that the 35 Acre Property has its own independent legal owner - 180 Land Co., LLC, a Nevada limited liability company.

192. The Court finds that it would be impermissible to conclude that Owner A is not damaged because the government approved a development on an entirely separate parcel owned by Owner B. Yet, that is what the City is arguing, that the alleged approvals on the 17 Acre Property negate damages on the 35 Acre property – a separate taxed and owned parcel.

193. The Court also finds that there is evidence that the City clawed back the 17 Acre approvals, which would negate any possible segmentation argument. As explained above, after the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre Property), denied the 35 Acre applications, denied the fence application (that would have allowed the Landowners to fence the 17 Acre Property) and denied the access application (that would have allowed access to the 17 Acre Property). The City also sent the Landowners an email that explained the 17 Acre approvals were "vacated, set aside and shall be void." Exhibit 189.

194. The Court also finds that NRS 37.039 rejects the City's segmentation argument. NRS 37.039 provides that if the City wants to designate property as open space (as the City is asking this Court to do), the City must pay just compensation for the property identified as open space.

195. Additionally, the facts show that when the Landowners acquired the entity that owned the 250 Acres, it was already divided into five separate parcels. Exhibit 44, Deed.

196. It is undisputed that then-City Planning Section Manager, Peter Lowenstein testified in a deposition that it was the City that requested further subdivision of the Land. "Q. So you wanted the developer here to subdivide the property further, correct? A. As part of the submittal, we were looking for that to be accomplished . . ." Exhibit 160, p. 004962.

197. Therefore, there is no evidence to support the City's claim that the Landowners intentionally segmented their property as a "transparent ploy" to "fabricate a takings claim" as the City argued with no supporting evidence.

198. Accordingly, the Court denies the City's segmentation argument.

The City Cannot Revoke a Taking that Has Already Occurred.

199. This Court also denies the City's request to find that the City revoked the taking actions by sending the Landowners a letter to invite them to re-apply to develop.

200. The United States Supreme Court held in the case of Knick v Township of Scott, Pennsylvania, 139 S.Ct. 2162, 2170 (2019), that "[t]he Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner." The Knick Court further held "once there is a taking compensation *must* be awarded because as soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has *already* suffered a constitutional violation." Id., at 2172. Italics in original. The Knick Court continued, "a property owner acquires an irrevocable right to just compensation immediately upon a taking" and concluded, "[a] bank robber might give the loot back, but he still robbed the bank." Id., at 2172.

Petition for Judicial Review Law.

201. The Court declines the City's repeated attempts to apply Petition for Judicial Review (PJR) law and standards and this Court's orders from the PJR side of this case in this inverse condemnation case.

202. This Court has already ordered several times that PJR law cannot be applied in this inverse condemnation case and provided detailed legal and policy reasons for this conclusion as follows:

> "Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. (internal citation omitted). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. (internal citation omitted). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council." Exhibit 8 at 22:13-27

> "[B]oth the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them 'two disparate sets of claims' ..." Exhibit 8 at 21:15-20.

> "The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof." Id., 22:1-11.

> "A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered." Id., 8:25 – 9:2.

> "For these reasons, it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims." Exhibit 8, 23:7-8. See also Exhibit 7, 11:20-22, May 7, 2019, Order
>
> "This is an inverse condemnation case. It's not a petition for judicial review. There's clearly a difference in distinction there." Exhibit 198, 5.13.21 hearing transcript at 39:7-9.
>
> "And we've had a very rigorous discussion in the past in this case, and I think we have a pretty good record on how I viewed the petition for judicial review and whether or not that rises to a level of issue preclusion or claims preclusion vis-à-vis the inverse case. And I've ruled on that: right?" Exhibit 198, 5.13.21 hearing transcript at 41:6-12.
>
> "But you're not listening to me. I understand all that. I don't see any need to replow this ground." Exhibit 198, 5.13.21 hearing transcript at 43:24-44:1
>
> "Wait. Wait. Wait. Wait…the law as it relates to petitions for judicial review are much different than a civil litigation seeking compensation for inverse condemnation, sir…the standards are different. I mean, for example, they got to meet their burden by a preponderance of the evidence. It's substantial---I mean, it's a totally different – it's an administrative process versus a full-blown jury trial in this case. It's different completely." Exhibit 198, 5.13.21 hearing transcript at 69:20-70:7.

203. Moreover, when the PJR matter was pending before this Court, the City explained the deference the Court must give to the City's decisions and how the Court's hands were tied in the PJR matter. The City argued in pleadings in the PJR matter that "[t]he Court may 'not substitute its judgment for that of a municipal entity;" "[i]t is not the business of courts to decide zoning issues;" and "[a] 'presumption of propriety' attaches to governmental action on land use decisions." City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review, pp. 16-17, filed on June 26, 2018, in the PJR side of this case. And, the City's counsel provided similar arguments at the hearing on the PJR matter as follows:

> [This court] must apply a very simple standard, whether or not the city council abused its discretion in denying these applications. And in making a determination as to whether or not the city council abused its discretion, it's simply a matter of whether or not there's substantial evidence in the record to support the city council's decision.
> This isn't a matter of the standard of proof in a trial. . . . It's not even the standard of proof in a civil trial, a preponderance of the evidence. It doesn't even have to be 50-50 such that there's - - 50 percent of the record supports the approval of the applications and 50 percent of the evidence in the record supports the denial of the applications.

> Its whether or not there's substantial evidence in the record. And substantial evidence has been defined as whether a reasonable mind could accept sufficient to support a conclusion. Reporter's Transcript of Petition for Judicial Review, June 29, 2018, p. 144:4-25, PJR side of this matter.

204. No such deference is required in this inverse condemnation action. Instead, the Court is required to consider all of the City's actions in the aggregate to determine whether those actions amount to a taking.

205. Finally, the Nevada Supreme Court recently confirmed this Court's orders and the reasoning therein, holding "civil actions and judicial review proceedings are fundamentally different" and recognized that PJR and civil actions are "[l]ike water and oil, the two will not mix." City of Henderson v. Eighth Judicial District Court, 137 Nev., Adv. Op. 26 at 2 (Jun. 24, 2021).

206. Therefore, it would be improper to apply PJR law or this Court's orders from the PJR matter to this inverse condemnation case.

Purchase Price.

207. The Court also declines to apply any purchase price when deciding the taking issues.

208. First, there is no case law to support consideration of the purchase price paid for property when determining whether a taking occurred.

209. Second, the Landowners presented a pleading at the hearing that was submitted by the City in the 65 Acre case wherein the City argued, "[t]he Developer's purchase price, however, is not material to the City's *liability* for a regulatory taking." City's Response to Developer's Sur-Reply Brief Entitled "Notice of Status of Related Cases ETC.", filed on September 15, 2021, 3:17 pm, Case No. A-18-780184-C (65 Acre Case). Italics in original.

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IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO THE CITY'S MOTION FOR SUMMARY JUDGMENT ON THE LANDOWNERS' SECOND CLAIM FOR RELIEF – PENN CENTRAL TAKING CLAIM

210. The City moved for summary judgment on the Landowners' Second Claim for Relief – Penn Central Taking Claim.

211. A Penn Central Taking Claim is an inverse condemnation claim separate and distinct from the Per Se Categorical, Per Se Regulatory, and Non-Regulatory / De Facto taking claims and is governed by a different taking standard.

212. The standard for a Penn Central Taking Claim considers, on an ad hoc basis, three guideposts: 1) the regulations impact on the property owner; 2) the regulations interference with investment backed expectations; and, 3) the character of the government action. Sisolak, supra, at 663.

213. The City conceded at the hearing on September 28, 2021, that the Penn Central taking standard is a lower standard than a per se categorical standard and if the per se categorical taking standard has been met, then the Penn Central standard is met.

214. Moreover, as explained above, 1) the impact from the City's actions on the Landowners' 35 Acre Property has been to deny all economic use of the property; 2) the City's actions have interfered with the Landowners attempts to develop residentially, which were the Landowners' investment backed expectations; and, 3) the government provided no justification for denying all economical use of the 35 Acre Property.

215. Insofar as a ripeness / futility analysis applies to a Penn Central claim, the claim is ripe.

216. The Nevada Supreme Court holds that, "a claim that the application of government regulations effects a [Penn Central] taking of a property interest is not ripe until the government

entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. . . . But when exhausting available remedies, including the filing of a land-use application, is futile, a matter is deemed ripe for review." State v. Eighth Judicial Dist., supra, at 419.

217. Here, the Landowners' Penn Central taking claim is ripe, because the City denied all of the applications the Landowners submitted to use the 35 Acre Property and the City adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

218. Therefore, given the City's concession that the Penn Central taking standard is a lower standard than a per se categorical taking standard and the uncontested record in this matter, summary judgment is granted in favor of the Landowners on their second claim for relief – a Penn Central taking.

V.

CONCLUSION

IT IS HEREBY ORDERED THAT Summary Judgment is granted in favor of the Landowners on the Landowners' First Claim for Relief – Per Se Categorical Taking, Second Claim for Relief – Penn Central Taking, Third Claim for Relief – Per Se Regulatory Taking, and Fourth Claim for Relief – Non-Regulatory / De Facto Taking. A jury trial is scheduled for November 1, 2021, to determine the just compensation the Landowners are owed for the taking of the 35 Acre Property.

Dated this 25th day of October, 2021

MH

998 183 8997 1E67
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

_/s/ *James J. Leavitt*_____
Kermitt L. Waters, Esq. (NV Bar No. 2571)
James J. Leavitt, Esq. (NV Bar No. 6032)
Michael A. Schneider, Esq. (NV Bar No. 8887)
Autumn L. Waters, Esq. (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

Content Reviewed and Approved By:

MCDONALD CARANO LLP

Declined Signing
George F. Ogilvie III, Esq. (NV Bar No. 3552)
Christopher Molina, Esq. (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, Esq. (NV Bar No. 4381)
Philip R. Byrnes, Esq. (NV Bar No. 166)
Rebecca Wolfson, Esq. (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq. (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey, Esq. (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

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Service Date: 10/25/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com

Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com
Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Kermitt Waters	kermitt@kermittwaters.com
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

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DECN

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability Company, FORE STARS LTD, a Nevada Limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability Company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs.

-vs-

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

Defendants.

CASE NO.: A-17-758528-J
DEPT. NO.: XVI

DECISION OF THE COURT

After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court's Decision is as follows:

1. The appraisal report introduced into evidence by Plaintiff conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice Institute.

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

Case Number: A-17-758528-J

2. The expert appraisal analysis performed by Tio S. DiFederico, MAI, a Nevada Certified Real Estate Appraiser, involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, County of Clark, Nevada.
3. The 34.07-acre property is hard zoned R-PD7 at all relevant times herein, and the permitted uses of the subject property are single-family and multi-family residential.
4. Although the site had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. The landowner had leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses.
5. According to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend experienced in 2016 was referred to as a "correction" as golf course closures occurring throughout the U.S. indicated there was an oversupply that required market correction. The local market data reflects that the Badlands wasn't an outlier struggling in a thriving golf course market. Based on what was happening in the national and local golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of that "correction." On December 1, 2016, the Badlands Golf Course closed.

…

…

6. After looking at the historical operations of the golf course, which were trending downward rapidly, Plaintiff's expert, Tio S. DiFederico, MAI, concluded that operating the golf course was not a financially feasible use of this property as of September 14, 2017. Based on his research, he concluded that the highest and best use of this property was a residential development. This use would be similar to the surrounding uses in the Queensridge and Summerlin communities.

7. On September 21, 2017, the Clark County Assessor sent the landowner a letter that stated since the subject property had ceased being used as a golf course on December 1, 2016, the land no longer met the definition of open space and was "disqualified for open-space assessment." The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes:

> NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the county assessor is notified or otherwise becomes aware that a parcel or any portion of a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred tax, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The county assessor shall assess the property pursuant to NRS 361.227 for the next fiscal year following the date of conversion to a higher use.

. . .

8. Due to the property tax increase, the property owner attempted to develop the property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the landowner to develop the property according to its zoning and residential designation.

9. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant.

10. The Court's Decision is based on a finding that the 34.07-acre Badlands property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government's unlawful taking of the 34.07-acre parcel of the Badlands property, Plaintiff's expert, DiFederico, concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the government's actions, this Court hereby determined that just compensation due to the government's unlawful taking of the 34.07-acre Badlands property is the sum of $34,135,000.00.

As a result, this Court hereby finds in favor of Plaintiff, 180 Land Company, LLC, and against Defendant, City of Las Vegas in the sum of $34,135,000.00, exclusive of attorney's fees and costs.

. . .

. . .

. . .

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

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

Dated this 28th day of October, 2021

MH

0AA 6FE F8FF D958
Timothy C. Williams
District Court Judge

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 10/28/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com
Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com

Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Kermitt Waters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/1/2021

Elizabeth Ghanem	8861 W. Sahara Ave Ste. 120 Las Vegas, NV, 89117

NOE
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF:** **FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time ("FFCL") was entered on the 4th day of November, 2021.

///

A copy of the FFCL is attached hereto.

DATED this 5th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters

Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 5th day of November, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

ELECTRONICALLY SERVED
11/4/2021 3:00 PM

Electronically Filed
11/04/2021 2:59 PM
CLERK OF THE COURT

FFCL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowner

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiff, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **DENYING CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME** Hearing Date: October 19, 2021 Hearing Time: 9:05 AM

This matter having come before the Court for hearing on October 19, 2021, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter "Landowners"), counsel, James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III Esq. of McDonald Carano LLP appearing for and on

behalf of the Defendant, City of Las Vegas (hereinafter the "City"). The Court having considered the Points and Authorities on file and oral arguments presented, hereby enters the following Findings of Fact, Conclusions of Law and denying Defendants Emergency Motion to Continue Trial:

FINDINGS OF FACT

1. This case has been pending for four years.

2. In a status report to this Court in April of 2020, the City objected to bifurcation of the liability phase from the just compensation phase stating that "[b]ifurcation also will result in inefficiencies, duplication of efforts, delay, and increased costs. All discovery on the takings claims should be conducted at the same time.

5. On February 10, 2021, the 3rd Amended Order Setting Jury trial was issued by this Court. The Order provided strict dates of compliance and cautioned the parties that failure to comply shall result in sanctions including default judgment.

6. On April 6, 2021, after two years of open discovery in response to Landowners Motion to Determine Take, the City filed a 56(d) Motion on OST asking for more time to conduct discovery prior to the Court deciding the take issue. The Court granted the City's request but made it clear that this case was going to trial in October:

> [t]he bottom line is this: I'm just going to put everybody on notice right now. We're going to trial in October. I'm not moving the trial date.
>
> [o]ne thing for sure, and I think it's important, we're going to hold our trial date. We are. This case is going to trial. And as far as my calendar is concerned, we'll get it done in October.
>
> At the end of the day, I can tell you this, though: We're going to trial in October, regardless of what decision I make.
>
> *See 56 d motion Transcript pg 46 lines 4-7, pg 74 lines 14-18, pg 82 lines 19-21.*

7. On September 30, 2021, this Court conducted a calendar call for a seven-week stack setting trials according to all counsels availability. During the calendar call, counsel for the City did not disclose any conflicts with the proposed dates.

8. During the calendar call, this court set cases throughout the end of the seven-week stack.

9. The City filed an emergency motion to move this trial on October 11, 2021. By that date, all available dates for the seven-week stack had been filled.

10. The Court did inquire as to possible availability to accommodate the City's request to move the date on this seven-week stack. However, all other matters were proceeding forward.

12. As a reason for moving the firm trial setting, the City presented preoccupation with other litigation, a scheduling conflict of Mr. Ogilvie, and a misunderstanding of the firm setting.

CONCLUSIONS OF LAW

11. NRS 37.055 provides that eminent domain/inverse condemnation proceedings take precedence over certain other proceedings and must be quickly heard and determined.

12. The Nevada Supreme Court has held that it is the government's affirmative duty to move an eminent domain/inverse condemnation action to trial within two years of commencement of the action and/or the taking. *County of Clark v. Alper,* 100 Nev. 382, 391, 685 P. 2d 943, 949 (1984).

13. The City did not establish good cause pursuant to the Nevada Rules of Civil Procedure or the Eight Judicial District Court rules to move this firm trial setting beyond the seven-week stack.

14. Therefore, the City's Emergency Motion to Continue Trial on an Order Shortening Time is hereby **DENIED** and this matter shall proceed to trial with jury selection beginning on October 27, 2021 at 10:30am and October 28, 2021 at 9:30am and opening statements on November 1, 2021 at 9:30am.

Dated this 4th day of November, 2021

MH

119 D31 8676 EC1B
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James Jack Leavitt*
Kermitt L. Waters, ESQ., NBN 2571
James Jack Leavitt, ESQ., NBN 6032
Michael A. Schneider. ESQ., NBN 8887
Autumn Waters, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101
Attorneys for Plaintiff Landowners

Content Reviewed and Approved By:

McDONALD CARANO LLP

By: *Did not respond*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From:	James Leavitt
To:	Sandy Guerra
Cc:	Autumn Waters
Subject:	FW: FFCL denying motion to continue
Date:	Tuesday, October 26, 2021 2:18:50 PM
Attachments:	FFCL Denying MTN to Continue Trial.docx

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

From: James Leavitt
Sent: Thursday, October 21, 2021 2:22 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: FFCL denying motion to continue

George:

Could you please let me know if I have your authorization to affix your electronic signature to the attached proposed order denying motion to continue.

Thank you,

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

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Service Date: 11/4/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com

Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com
Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
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George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
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Jennifer Knighton	jknighton@ehbcompanies.com
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CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

FFCL
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **ON JUST COMPENSATION** **BENCH TRIAL: October 27, 2021**

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On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' in-house counsel Elizabeth Ghanem Ham, Esq., and with the City of Las Vegas (hereinafter "the City") appearing through its counsel, George F. Ogilvie III, Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City Attorney's Office.

Having reviewed and considered the evidence presented, the file and other matters referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law:

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation claim, the court must undertake two distinct sub-inquiries: "the court must first determine" the property rights "before proceeding to determine whether the governmental action constituted a taking." ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that "whether the Government has inversely condemned private property is a question of law …" Sisolak, at 661. To decide these issues, the Court relies on eminent domain and inverse condemnation cases. *See* County of Clark v. Alper, 100 Nev. 382, 391 (1984) ("[I]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings.").

2. The Court entertained extensive argument on the first sub-inquiry, the property rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law

Regarding Plaintiff Landowners' Motion to Determine "Property Interest," on October 12, 2020 (hereinafter "FFCL Re: Property Interest").

3. In the FFCL Re: Property Interest, the Court held: 1) Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7 at all relevant times; 3) the Las Vegas Municipal Code (chapter 19) lists single-family and multi-family as the legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

4. The Court also entertained extensive argument on the second sub-inquiry, whether the City's actions had resulted in a taking, on September 23, 24, 27, and 28, 2021, and entered Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third, and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief (hereinafter "FFCL Re: Taking").

5. In the FFCL Re: Taking, the Court held that the City engaged in actions that amounted to a taking of the Landowners' 35 Acre Property.

6. Upon deciding the property interest and taking, the only issue remaining in this case is the just compensation to which the Landowners are entitled for the taking of the 35 Acre Property.

7. In preparation for the jury trial on the just compensation, on October 26, 2021, the Court entertained argument on motions in limine and also the parties' cross motions for summary judgment, orders having been entered on those matters.

8. This case was set for a jury trial, with jury selection to be October 27 and 28, 2021, and opening arguments on November 1, 2021.

9. On October 27, 2021, the parties appeared before the Court and agreed to waive the jury trial and, instead, have this matter decided by way of bench trial.

10. An agreement to the procedure for that bench trial was put on the record at the October 27, 2021, appearance.

11. Pursuant to the agreement of the parties, the Court conducted a bench trial on October 27, 2021, on the sole issue of the fair market value of the 35 Acre Property.

II.

FINDINGS OF FACT

The Landowners' 35 Acre Property.

12. The property at issue in this case is a 34.07 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter "35 Acre Property"). As of September 14, 2017 and at the time of the October 27, 2021, bench trial, the 35 Acre Property was and remains vacant.

13. The 35 Acre Property is hard zoned R-PD7 at all relevant times herein, and the legally permitted uses of the property are single-family and multi-family residential. *See* FFCL Re: Property Interest and FFCL Re: Taking.

14. The Court has previously rejected challenges to this legally permissible use, including rejection of the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

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Evidence Presented at the Bench Trial on Fair Market Value of the 35 Acre Property.

15. Pursuant to the agreement of the parties,[1] the Landowners moved for admission of the appraisal report of Tio DiFederico (DiFederico Report) as the fair market value of the 35 Acre Property and the City did not object to nor contest the admissibility or admission of the DiFederico Report.

16. Appraiser Tio DiFederico is a Certified General Appraiser in the State of Nevada and earned the MAI designation from the Appraisal Institute, which is the highest designation for a real estate appraiser. TDG Rpt 000111-000113. DiFederico has appraised property in Las Vegas for over 35 years and has qualified to testify in Nevada Courts, including Clark County District Courts. Id.

17. The DiFederico Report was marked as Plaintiff Landowners' Trial Exhibit 5, with Bate's numbers TDG Rpt 000001 – 000136.

18. The DiFederico Report conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice Institute. TDG Rpt 000002.

19. The DiFederico Report identifies the property being appraised (the Landowners 34.07 acre property – "35 Acre Property"), reviews the current ownership and sales history, the intended user of the report, provides the proper definition of fair market value under Nevada law, and provides the scope of his work. TDG Rpt 000003-000013.

20. The DiFederico Report also identifies the relevant date of valuation as September 14, 2017, and values the 35 Acre Property as of this date. TDG Rpt 000010.

21. The DiFederico Report includes a Market Area Analysis. TDG Rpt 000014-000032.

[1] The parties agreed that this matter does not involve the taking of, nor valuation of, any water rights the Landowners may or may not own.

22. The DiFederico Report includes a detailed analysis of the 35 Acre Property that analyzes location, size, configuration, topography, soils, drainage, utilities (sewer, water, solid waste, electricity, telephone, and gas), street frontage and access, legal use of the property based on zoning, the surrounding uses, and other legal and regulatory constraints. TDG Rpt 000033-000052. The DiFederico Report property analysis concludes, "[o]verall, the site's R-PD7 zoning and physical characteristics were suitable for residential development that was prevalent in this area and bordered the subject site." Id., 000044.

23. The DiFederico Report provides a detailed analysis of the "highest and best use" of the 35 Acre Property, including the elements of legal permissibility, physical possibility, financial feasibility, and maximally productive. TDG Rpt 000054-000067. The DiFederico Report concludes, based on this highest and best use analysis, that "a residential use best met the four tests of highest and best use [as] of the effective date of value, September 14, 2017." Id., at 000067. This use would be similar to the surrounding uses in the Queensridge and Summerlin Communities. Id.

24. Although the 35 Acre Property had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. Id.

25. Therefore, the DiFederico Report also provides a detailed analysis of the past use of the 35 Acre Property as part of the Badlands golf course. TDG Rpt. 000060-000067. This golf course analysis is based on Mr. DiFederico's research, a report by Global Golf Advisors (GGA), and the past operations on the Badlands golf course. Id.

26. The DiFederico report finds that, according to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. Id. The trend experienced in 2016 was referred to as a "correction" as golf course closures occurring throughout the U.S. indicated there was an oversupply that required

market correction. Id. The local market data reflects that the Badlands wasn't an outlier struggling in a thriving golf course market. Id. Based on what was happening in the national golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of the "correction." On December 1, 2016, the Badlands golf course closed. Id.

27. The Landowner leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses. On December 1, 2016, the CEO of Elite Golf Management sent a letter to the Landowners stating that it could not generate a profit using the property for a golf course, even if Elite Golf were permitted to operate rent free: "it no longer makes sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues to struggle, and Badlands revenues have continued to decrease over the years. This year we will finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate we cannot continue to sustain the property where it makes financial sense to stay. Even with your generosity of the possibility of staying with no rent, we do not see how we can continue forward without losing a substantial sum of money over the next year." Id., 000066.

28. The DiFederico Report includes further detailed analysis of relevant golf course data of the potential for a golf course operation on the 35 Acre Property. TDG Rpt 000060-000066.

29. The DiFederico Report also specifically considered the historical operations of the golf course, which were trending downward rapidly. Id.

30. The DiFederico Report concluded that operating the golf course was not a financially feasible use of the 35 Acre Property as of September 14, 2017.

31. The DiFederico Report golf course conclusion is further supported by the Clark County Tax Assessor analysis on the 250 acre land (of which the 35 Acre Property was included). On September 21, 2017, the Clark County Assessor sent the Landowner a letter that stated since the 35 Acre Property had ceased being used as a golf course on December 1, 2016, the land no

longer met the definition of open space and was "disqualified for open-space assessment." The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes:

> "NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the county assessor is notified or otherwise becomes aware that a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred taxes, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The County assessor shall assess the property pursuant to NRS 361.2276 for the next fiscal year following the date of conversion to a higher use."

32. The Las Vegas City Charter states, "The County Assessor of the County is, ex officio, the City Assessor of the City." LV City Charter, sec. 3.120.

33. The City provided no evidence that a golf course use was financially feasible as of the September 14, 2017, date of value.

34. Once the DiFederico Report identified the highest and best use of the 35 Acre Property as residential, it then considered the three standard valuation methodologies – the cost approach, sales comparison approach, and income capitalization approach. TDG Rpt 000068. The DiFederico Report identifies the sales comparison and income capitalization approaches as appropriate methods to value the 35 Acre Property. Id.

35. Under the sales comparison approach, the DiFederico Report identifies five similar "superpad" properties that sold near in time to the September 14, 2017, date of valuation. Id., 000069-000075. The DiFederico Report defines a superpad site as a larger parcel of property that is sold to home developers for detached single-family residential developments. Id., 000069.

36. The DiFederico Report then makes adjustments to these five sales to compensate for the differences between the five sales and the 35 Acre Property. Id., 000076. These adjustments include time-market conditions, location, physical characteristics, etc. Id., 000076-000083.

37. After considering all five sales and making the appropriate adjustments to the five sales, the DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, under the sales comparison approach is $23.00 per square foot. Id., 000084. The exact square footage of the 35 Acre Property (34.07 acres) is 1,484,089 and applying the DiFederico Report's square foot value to this number arrives at a value of $34,135,000 for the 35 Acre Property as of September 14, 2017, under the sales comparison approach. Id., 000084.

38. As a check to the reasonableness of the $34,135,000 value concluded by the sales comparison approach, the DiFederico Report completed an income approach to value the 35 Acre Property, referred to as the discounted cash flow approach (hereinafter "DCF approach"). TDG Rpt 000085-000094. The DiFederico Report explains the steps under this DCF approach, which are generally to determine the value of finished lots, consider the time it would take to develop the finished lots, subtract out the costs, profit rate, and discount rate, and discount the net cash flow to arrive at a value of the property as of September 14, 2017. Id., 000086. A finished lot is one that has been put in a condition that it is ready to develop a residential unit on it.

39. The DiFederico Report confirms that the DCF approach is used in the real world by developers to determine the value of property. Id., 000086.

40. The DiFederico Report considers three scenarios under this DCF approach – a 61 lot, 16 lot, and 7 lot development. Id., 000085-000094.

41. The DiFederico Report provides detailed data for the value of finished lots on the 35 Acre Property, including sales of finished lots in the area of the 35 Acre Property that sold near the September 14, 2017, date of value. TDG Rp[t 000086-000088. This data showed that the

average value for finished lots selling in the area were $30, $49.28, and $71.84 per square foot., depending upon the area of Summerlin and the Queensridge Community. TDG Rpt 000086-000087. With this data, the DiFederico Report concluded at a value of $40 per square foot for the 61 lot scenario, $35 per square foot for the 16 lot scenario, and $32 per square foot for the 7 lot scenario. TDG Rpt 000087.

42. The DiFederico Report then provides a detailed, factual based, analysis of the time it would take to develop the finished lots, the expenses to develop the finished lots, the profit rate and discount rate, and the appropriate discount to the net cash flow. TDG Rpt 000088-000090.

43. With this factual based data, the DiFederico Report provides a discounted cash flow model for each of the three scenarios to arrive at a value for the 35 Acre Property under each scenario as follows: 1) for the 61 lot scenario, $32,820,000, 2) for the 16 lot scenario, $35,700,000, and, 3) for the 7 lot scenario, $34,400,000. TDG Rpt 000091-000094. The DiFederico Report uses this income approach to confirm the reasonableness of the $34,135,000 value under the sales comparison approach.

44. The DiFederico Report then concludes that, applying all of the facts and data in the Report, the fair market value of the 35 Acre Property as of September 14, 2017, is $34,135,000. TDG Rpt 000095.

45. The DiFederico Report also provides a detailed analysis of the City's actions toward the 35 Acre Property to determine the effect of the City's actions on the 35 Acre Property from a valuation viewpoint. TDG Rpt. 000096-000101. These City actions are the same actions set forth in the Court's FFCL Re: Taking.

46. The DiFederico Report concludes that the City's actions have taken all value from the 35 Acre Property.

47. The DiFederico Report concludes that the City's actions removed the possibility of residential development; however, the landowner is still required to pay property taxes as if the property could be developed with a residential use. TDG Rpt 000100. According to the DiFederico Report, this immediately added an annual expense that was over $205,000 and that amount would be expected to increase over time. Id.

48. The DiFederico Report concludes that, due to the City's actions, there is no market to sell the 35 Acre Property with these development restrictions along with the extraordinarily high annual expenses as the buyer would be paying for a property with no economic benefit that has annual expenses in excess of $205,000. TDG Rpt 000100.

49. The DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, is $34,135,000 and that the City's actions have taken all value from the property, resulting in "catastrophic damages to this property." TDG Rpt 000101.

50. The City did not produce an appraisal report or a review appraisal report during discovery or during the bench trial.

51. The City did not depose Mr. DiFederico.

52. The City represented at the October 27, 2021, bench trial that, based on the rulings entered by the Court rulings in this matter, including the FFCL Re: Property Interest, the FFCL Re: Take, the rulings on the three motions in limine, and the competing motions for summary judgment on October 26, 2021, the City did not have evidence to admit to rebut the DiFederico Report.

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III.

CONCLUSIONS OF LAW

53. Consistent with the property tax increase, the Landowners attempted to develop the 35 Acre Property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the Landowners to develop the property according to its zoning and residential designation. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant. *See also* FFCL Re: Property Interest and FFCL Re: Taking.

54. The Court has previously rejected challenges to the Landowners' legally permissible residential use. Specifically, the Court has rejected the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan/ land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

55. Given that the Landowners had the legal right to use their 35 Acre Property for residential use and given that the City has taken the 35 Acre Property, the Court, based on the agreement of the parties, must determine the fair market value of the 35 Acre Property.

56. The Nevada Constitution provides that where property is taken it "shall be valued at is highest and best use." Nev. Const. art. 1, sec. 22 (3).

57. The Nevada Constitution further provides that in "all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market." Nev. Const. art. 1, sec. 22 (5).

58. NRS 37.120 provides that the date upon which taken property must be valued is the date of the first service of summons, except that if the action is not tried within two years after the date of the first service of summons, the date of valuation is the date of commencement of trial, if

a motion is brought to change the date of value to the date of trial and certain findings are made by the Court.

59. In the case of County of Clark v. Alper, 100 Nev. 382, 391 (1984), the Nevada Supreme Court held that NRS 37.120 applies to both eminent domain and inverse condemnation proceedings, reasoning, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Id.

60. The date of the first service of summons in this case is September 14, 2017, and neither party sought to change the date of valuation to the date of trial.

61. Therefore, the date of valuation in this inverse condemnation proceeding is the date of the first service of summons, which is September 14, 2017.

62. The Court finds that Mr. DiFederico has the expertise to value the 35 Acre Property.

63. The Court further finds that the valuation methodologies applied in the DiFederico Report are accepted methodologies to appraise property and are relevant and reliable to determine the value of the 35 Acre Property as of September 14, 2017.

64. The Court further finds that the DiFederico Report is based on reliable data, including reliable comparable sales, and is well-reasoned. The conclusions therein are well-supported.

65. The Court finds that the DiFederico Report properly applied and followed Nevada's eminent domain and inverse condemnation laws and that the Report appropriately analyzed and arrived at a proper highest and best use of the 35 Acre Property as residential use. This highest and best use conclusion is also supported by the Court's previous FFCL Re: Property Interest and FFCL Re: Taking.

66. The Court finds that the DiFederico Report properly followed Nevada law in applying the "highest price" standard of fair market value.

67. The Court's final decision is based on a finding that the 35 Acre Property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government's unlawful taking of the 35 Acre Property, the DiFederico Report concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the City's actions, the Court hereby determines that just compensation for the fair market value of the 35 Acre Property due to the City's unlawful taking of the 35 Acre Property is the sum of $34,135,000, exclusive of attorney's fees, costs, interest, and reimbursement of taxes.

68. As a result, the Court hereby finds in favor of the Landowners and against the City in the sum of $34,135,000.

69. The Court will accept post trial briefing on the law and facts to determine attorney's fees, costs, interest, and reimbursement of taxes as Article 1 Section 22(4) provides that "[j]ust compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred." Once the Court determines the compensation for these additional items, if any, the Court will write in the compensation for each of these items, if any, as follows:

The City shall pay to the Landowners attorney fees in the amount of

$ _____.

The City shall pay to the Landowners costs in the amount of $_____.

The City shall pay prejudgment interest in the amount of $_____ for interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest thereafter in the amount of $ _____ until the date the judgment is satisfied. NRS 37.175.

The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in the amount of $_____.

IV.

CONCLUSION

IT IS HEREBY ORDERED THAT, the City is ordered to pay the Landowners the amount of $34,135,000 as the fair market value for the taking of the Landowners 35 Acre Property, with the above items for attorney fees, interest, costs, and reimbursement of taxes reserved for post trial briefing.

Dated this 18th day of November, 2021

MH

B88 955 81A8 4EC7
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*_____
Kermitt L. Waters, Esq. (NV Bar No. 2571)
James J. Leavitt, Esq. (NV Bar No. 6032)
Michael A. Schneider, Esq. (NV Bar No. 8887)
Autumn L. Waters, Esq. (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

Content Reviewed and Approved By:

MCDONALD CARANO LLP

Declined to sign_____
George F. Ogilvie III, Esq. (NV Bar No. 3552)
Christopher Molina, Esq. (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, Esq. (NV Bar No. 4381)
Philip R. Byrnes, Esq. (NV Bar No. 166)
Rebecca Wolfson, Esq. (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq. (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey, Esq. (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From: James Leavitt
To: Sandy Guerra
Subject: FW: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order
Date: Wednesday, November 10, 2021 8:44:55 AM

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

From: James Leavitt
Sent: Wednesday, November 10, 2021 8:45 AM
To: 'George F. Ogilvie III' <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>; 'Elizabeth Ham (EHB Companies)' <eham@ehbcompanies.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

Thank you for your edits. Unfortunately, it is clear we will not come to agreement on the language of the FFCL re: Just Compensation.

Therefore, we will be submitting the Landowners' proposed FFCL re: Just Compensation to Judge Williams this morning.

I hope you have a good holiday weekend.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101

tel: (702) 733-8877
fax: (702) 731-1964

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, November 9, 2021 4:17 PM
To: James Leavitt <jim@kermittwaters.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

Attached are the City's edits to the proposed FFCL.

George F. Ogilvie III | Partner
McDONALD CARANO
P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, November 8, 2021 8:58 AM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

The only orders that have been submitted to the Court are:

FFCL on the motions in limine
FFCL on the denial of both summary judgment motions

We have not submitted the FFCL on just compensation (the most recent one I sent you). I intend to send the FFCL on just compensation to the Court Tuesday, end of business.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/18/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com
Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com

Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com
Kermitt Waters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

NOE
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF:** **ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY: 1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT**

PLEASE TAKE NOTICE that the Order Granting Plaintiffs' Motions in Limine Nos. 1, 2, and 3 Precluding the City From Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that

the Land was Dedicated as Open Space/City's PRMP and PROS Argument ("MIL Order") was entered on the 16th day of November, 2021.

A copy of the MIL Order is attached hereto.

DATED this 18th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 18th day of November, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY:1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

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11/16/2021 3:44 PM
CLERK OF THE COURT

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY: 1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT** Date of Hearing: October 26, 2021 Time of Hearing: 9:05 a.m.

Plaintiff Landowners' Motions in Limine to exclude 2005 purchase price (#1), to exclude source of funds (#2), and to exclude arguments that the Land was dedicated as Open Space/City's

Case Number: A-17-758528-J

PRMP and PROS (#3), having come before the Court on October 26, 2021, James J. Leavitt, Esq., Autumn L. Waters, Esq of the Law Offices of Kermitt L Waters and Plaintiff's in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").

The Court having reviewed the papers and pleadings on file, heard argument of counsel, and for good cause appearing hereby finds and orders as follows:

Findings Regarding Exclusion of Purchase Price

Regarding exclusion of the transaction consummating the purchase of the entity that owned the 35 Acre Property, the Court finds as follows:

1. The purchase price/transaction does not reflect the highest and best use of the 35 Acre Property on the date of valuation, which is September 14, 2017, pursuant to NRS 37.120 and Clark County v. Alper, 100 Nev. 382, 391 (1984).

2. The City has not identified an expert witness that can testify to the relevance of the purchase price/transaction as relates to the value of the 35 Acre Property, as of the September 14, 2017, date of valuation and the only expert to analyze the purchase price/transaction, appraiser Tio DiFederico, determined that it had no relationship to the value of the 35 Acre Property as of September 14, 2017.

3. The City has also failed to identify an expert witness that has adjusted the purchase price/transaction to the relevant September 14, 2017, date of valuation.

4. The purchase/transaction was not for substantially the same property at issue in this matter as it was for approximately 250 acres of land with the acquisition of Fore Stars, Ltd. and all of the assets and liabilities thereof, not just the 35 Acre Property at issue in this case.

5. The purchase price/transaction beginning in 2005 is too remote to the date of value (September 14, 2017) with changes in market fluctuations in values having occurred since the transaction. In fact, the City's own tax assessor did not use the purchase price/transaction when deciding the value of the 35 Acre Property for purposes of imposing real estate taxes on the property in 2016.

6. The evidence presented at the hearings showed that the purchase price/transaction arose out of a series of "complicated" transactions that had "a lot of hair" on them and elements of compulsion, because the Queensridge Towers were being constructed on part of the 250 Acre property causing the operator of the golf course to demand a large pay off; and, the predecessor owners could not meet other underlying obligations.

7. The Landowners presented evidence of the sales of other similar properties in the area of the 35 Acre Property that sold near the September 14, 2017, date of valuation, demonstrating there was no need to turn to the purchase price/transaction.

8. Any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. The sole issue in this case is the value of the 35 Acre Property as of September 14, 2017, and introducing the purchase price/transaction will confuse the jury as the jury is not tasked with unraveling the terms of the purchase price/transaction to decide what may or may not have been paid for the property.

9. Allowing the purchase price/transaction would allow the City to communicate to the jury that, since the Landowners paid a lower value for the property, they should not be entitled to their

constitutional right to payment of just compensation based on the value of the 35 Acre Property as of the September 14, 2017, date of value, which would be improper. And, the City has indicated this purpose having previously argued in this case that the Landowners made a windfall on their investment.

Conclusions of Law Regarding Exclusion of Purchase Price

10. NRS 37.120 provides that the date of valuation in an eminent domain case is either the date of first service of summons or, if there is more than a two year delay, the date of value may be moved to the date of trial. In Clark County v. Alper, 100 Nev. 382, 391 (1984), the Nevada Supreme Court held that the date of value provisions of NRS 37.120 apply to inverse condemnation proceedings, such as this. The date of first service of summons in this matter is September 14, 2017, therefore, the date of valuation is September 14, 2017.

11. The purchase/transaction must cover substantially the same property that is being acquired;[1] not be too remote; have occurred relevantly in point of time with no changes in conditions or marked fluctuations in values having occurred since the sale;[2] be bona fide;[3]

[1] 27 Am. Jur. 2d Eminent Domain section 534; West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999) (citing factors to admit purchase price, including "the sale must cover substantially the same property which is the subject of the appropriation action." Id., at 776); Pearl River Valley Water Supply Dist. V. May, 194 o.2d 226 (1967) (no abuse of discretion to exclude purchase price where sale of subject property was part of a much larger tract).

[2] 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957); West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999).

[3] 27 Am. Jur. 2d Eminent Domain section 534.

voluntary, not forced;[4] and, is not otherwise shown to have no probative value or that the prejudicial impact does not outweigh any negligible relevance.[5] The purchase/transaction must also be shown to meet evidentiary standards such that a real estate valuation expert would consider the purchase/transaction in his or her analysis.

12. As stated above, the purchase price/transaction does not meet this standard of admissibility. Moreover, the purchase price/transaction is not relevant to the value of the 35 Acre Property as of the statutorily mandated September 14, 2017, date of valuation. Therefore, the Court exercises its discretion to exclude the purchase price/transaction.

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[4] 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957).

[5] 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957). *See also* 5 Nichols on Eminent Domain 21.01(2)(a), 21-10 (2001) (sale must be bona fide, voluntary, relevant in point of time, and cover substantially the same property). The Nevada Supreme Court held admissible the purchase price for "goodwill" in a gas station where the goodwill price occurred in 1994 and the date of value was 1999 as there were no other comparable sales in state to consider. Dept. of Transp. v. Cowan, 120 Nev. 851 (2004). The Cowan case is consistent with the Landowners' position in this matter as the goodwill purchase price was easily identifiable and clearly set forth by way of contract and the Court found that the sale (1994) was not so remote to the date of value (1999) so that the price was an unfair criterion to consider in calculating damages. These two criteria are not present in this case, as set forth below. Also, the Cowans presented testimony that there were no similar leaseholds or business franchises in the Las Vegas market comparable to what the State had taken. Cowan, at 854. With no comparable leaseholds available in the market area the Court allowed evidence of the 5 year old purchase price which specifically placed a value on the business goodwill.

Findings Regarding Source of Funds

13. Throughout these proceedings the City has made repeated and express statements that allowing the Landowners to receive just compensation would negatively impact the taxpayers as the taxpayers would be the source of funds for payment of just compensation.

14. During the hearing of this matter, the City argued that it would not use the word taxpayers, but was intending on arguing that the jury must consider the public when considering just compensation. The term public is equivalent to taxpayers.

15. Referencing the source of funds to be used to pay an eminent domain verdict is similar to referencing "insurance" in a personal injury action.

Conclusions of Law Regarding Source of Funds

Regarding exclusion of the source of funds that would be used to pay the just compensation award in this case, the Court finds as follows:

16. The source of funds used to pay an eminent domain verdict is irrelevant in the determination of just compensation. City of Sioux Falls v. Kelley, 17871, 1994 WL 56585 (S.D. 1994) ("As a general rule, argument or evidence of the source of funds to pay the award is improper.") *See also*,19 A.L.R.3d 694 (Originally published in 1968). Nevada law is clear, "[i]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Clark County v. Alper, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984).

17. The source of funds used to pay this verdict or that the verdict would be paid by the taxpayers or the public is not even collaterally relevant to the determination of just compensation. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006) ("any financial

burden that the County must bear as a result of having to pay just compensation is irrelevant to the inquiry under the United States and Nevada Constitutions…").

18. Evidence which is not relevant is not admissible. NRS 48.025

19. Evidence which may be relevant is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. NRS 48.035

20. The Court finds that referencing the taxpayers or the public as the source of payment for the verdict in this matter is irrelevant, prejudicial and inadmissible.

Findings Regarding Arguments That the Property Was Dedicated as Open Space/ City's PRMP and PROS Argument

Regarding exclusion of the City's Master Plan PR-OS and Peccole Ranch Master Plan open space arguments, the Court finds as follows:

21. The Court has already determined the property interest the Landowners had prior to the City taking actions to interfere with that property interest, namely, that the 35 Acre Property has been zoned R-PD7 at all relevant times herein and the legally permissible uses of this R-PD7 zoned property is single family and multi-family residential.

22. The Court has also already rejected the notion that there is a City Master Plan PR-OS designation or a Peccole Ranch Master Plan open space designation that governs the use of the 35 Acre Property. *Findings of Fact and Conclusions of Law Re: Property Interest and Findings of Fact and Conclusions of Law Re: Take Issue.* The Court has also held, consistent with Nevada law, that zoning takes precedence over any other master plan designations. This is the law of this case.

23. The City argued during the hearing of this matter that it intended on presenting the arguments to the jury that there is a PR-OS Master Plan designation and a Peccole Ranch Master Plan open space designation on the 35 Acre Property.

24. The City further argued that the Peccole Ranch Master Plan open space argument was relevant to the City's larger parcel / segmentation argument, namely, that the 35 Acre Property is part of the larger Peccole Ranch Master Plan and thereby bound by certain conditions arising out of that Peccole Ranch Master Plan.

25. The City, however, presented no expert witness to testify to this larger parcel concept.

Conclusions of Law Regarding the City's PROS/PRMP Arguments

26. The District Court Judge is required to make two distinct sub-inquiries, which are mixed questions of fact and law. ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006).

27. On October 25, 2021, this Court entered the Findings of Fact and Conclusions of Law granting liability on all four of the Landowners' causes of action and rejecting the City's Master Plan PROS and Peccole Ranch Concept Plan open space arguments.

28. The argument that the property was set aside in the 80s or 90s under any Peccole Ranch Master Plan or Concept Plan or by virtue of an 'open space' designation, at any time, was found to be meritless as the property is not subject to the Peccole Ranch Master Plan or Concept Plan nor was it designated PR-OS in the City of Las Vegas 2020 Master Plan, or at any time prior, by any legal action.

29. As a result, the sole question left for the jury is the value[6] of the 35 Acre Property as of September 14, 2017, based on the property interest this Court already decided in the Findings of Fact and Conclusions of Law Re: Property Interest.

30. Therefore, the City is prohibited from arguing to the jury that there is a PR-OS or open space designation on the 35 Acre Property as of the relevant September 14, 2017, date of valuation.

31. The City is also prohibited from arguing that the 35 Acre Property is part of a larger parcel such as the Peccole Ranch Master Plan and thereby bound by the terms of that plan.

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[6] Article 1 Section 22(5) defines Fair Market Value as "the highest price the property would bring on the open market." NRS 37.009 defines Value as "the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property."

IT IS HEREBY ORDERED that Plaintiff Landowners' Motions in Limine No. 1, 2 and 3 are **GRANTED** precluding the City from arguing, referencing or presenting to the jury the purchase price / transaction consummating the purchase of the Land, the source of funds including taxpayers or the public, and the City's PROS/PRMP and larger parcel / segmentation arguments.

Dated this 16th day of November, 2021

MH

3DA 523 97F2 AEB1
Timothy C. Williams
District Court Judge

Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: */s/ Autumn Waters*
Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

EHB COMPANIES
Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

Attorneys for Plaintiffs Landowners

Content Reviewed and Approved by:

McDONALD CARANO LLP

By: Did not respond
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted pro hac vice)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From:	Autumn Waters
To:	Sandy Guerra
Subject:	FW: 35 Acre Order on MIL 1, 2, and 3
Date:	Friday, November 5, 2021 10:08:00 AM
Attachments:	Order Granting Motions in Limine 1 2 3.docx

From: Autumn Waters
Sent: Tuesday, November 02, 2021 3:05 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>
Subject: 35 Acre Order on MIL 1, 2, and 3

Hi George,

Attached is the draft proposed order on MIL 1, 2, and 3. I would like to submit this to the Court by Thursday 11.4.21, so please let me know your thoughts by noon on Thursday.

Thank you

Autumn Waters, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/16/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com

Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com
Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Kermitt Waters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov