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 VI
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

MEMC
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, 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

VERIFIED MEMORANDUM OF COSTS

COMES NOW Plaintiffs Landowners, 180 land Co., LLC and Fore Stars Ltd. (hereinafter "Landowners"), by and through their attorneys, the Law Offices of Kermitt L. Waters, and hereby

submits their Memorandum of Costs and Disbursements, with attached documentation of such disbursements, as follows:

Photocopy Fees: (See attached invoices, Exhibit 1):

Holo Discovery	$ 14,422.81
NV Supreme Court Law Library	$ 33.20

Research and Certified Copies (See attached invoices, Exhibit 2):

Clark County Recorder	$ 171.00
District Court Clerk	$ 119.00

Experts and Retainers (See attached invoices, Exhibit 3):

GGA Partners	$ 11,162.41
Global Golf Advisors	$ 67,094.00
The DiFederico Group	$ 114,250.00
Jones Roach & Caringella	$ 29,625.00

Process Service (See attached invoices, Exhibit 4):

Legal Wings	$ 290.00

Shipping Fees (See attached invoices, Exhibit 5):

Fedex	$ 61.33

Court Filing Fees (See attached Invoices, Exhibit 6):

8th Judicial District Court (E-filing Fees)	$ 808.50
8th Judicial District Court Clerk	$ 200.00

Court Reporting/Transcripts (See attached Invoices, Exhibit 7):

Discovery Legal Services	$ 481.25
LGM Transcription Services	$ 571.14
Litigation Services	$ 3,933.49
Margot Isom	$ 3,293.72
National Court Reporters	$ 6,693.23
Oasis	$ 1,049.00
Rhonda Aquilina	$ 1,031.09

Online Research (See attached Invoices, Exhibit 8):

Westlaw	$ 50,669.02

In Office Copies (See attached Invoices, Exhibit 9):

13,276 color copies @ .25 per pg. = $3,319.00 20,176 b/w copies @ .15 per page = $3,026.40	$ 6,345.40

Miscellaneous Charges (See attached Invoices, Exhibit 10)

AT&T Conference Calls	$ 32.52
Capriotti's	$ 84.88
Parking and Lunch	$ 121.27
Total Costs	**$312,543.26**

Pursuant to NRS 17.130(1), Plaintiffs request an award of prejudgment interest on the costs from the time incurred.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *Kermitt L. 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 Plaintiff Landowners

DECLARATION OF AUTUMN WATERS

AUTUMN WATERS, first being duly sworn, states under penalty of perjury that Declarant is an attorney for the Plaintiff Landowners, 180 LAND CO., LLC and FORE STARS, LTD. and has personal knowledge of the above costs expended; that the items contained in the above memorandum are true and correct to the best of this Declarant's knowledge and belief; and that said costs have been necessarily incurred and paid in this action.

DATED this 24th day of November, 2021.

/s/ *Autumn Waters*
AUTUMN WATERS, Esq., Declarant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 24th day of November, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of **VERIFIED MEMORANDUM OF COSTS** was served on the below via the Court's electronic filing/service:

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

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

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/ Evelyn Washington
Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters

NOE
LAW OFFICES OF KERMITT L. 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
kermitt@kermittwaters.com
jim@kermittwaters.com
michael@kermittwaters.com
autumn@kermittwaters.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J
DEPT. NO.: XVI

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

ON JUST COMPENSATION

//

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law on Just Compensation was entered on the 18th day of November, 2021. A copy of the Findings of Fact and Conclusions of Law on Just Compensation is attached hereto

Dated this 24th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ *Autumn L. Waters, Esq.*
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

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 24th day of November, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON JUST COMPENSATION** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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 K. Scott, City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

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

/s/ Evelyn Washington
An Employee of the LAW OFFICES
OF KERMITT L. WATERS

ELECTRONICALLY SERVED
11/18/2021 2:58 PM

Electronically Filed
11/18/2021 2:57 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** **ON JUST COMPENSATION** **BENCH TRIAL: October 27, 2021**

///

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.

/ / /

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.

///

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

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 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

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 **PLAINTIFF LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** ***Hearing Requested***

COMES NOW Plaintiffs Landowners, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "the Landowners"), by and through their attorneys of record, the Law Offices of Kermitt L. Waters, pursuant to Article 1 Section 22(4) of the Nevada Constitution and Clark County v. Alper, 100 Nev. 382, 395 (1984) and hereby respectfully submit Plaintiffs Landowners' Motion for Reimbursement of Property Taxes in the amount of $ 925,582.57.

This motion is based upon the papers and pleadings on file, the exhibits attached hereto, and any evidence or argument heard at the time of the hearing on this matter.

DATED this 6th day of December, 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

This is a constitutional proceeding brought under Article 1 Section 8 and 22 of the Nevada Constitution. The Landowners were forced to bring this action against the City of Las Vegas ("City") on September 14, 2017, as the City had unconstitutionally taken the Landowners' 35 Acre Property. This motion is brought for reimbursement of the property taxes the Landowners were wrongly forced to pay after being dispossessed of their property. Had the City followed the law and initiated formal eminent domain proceedings under Chapter 37 of the Nevada Revised Statutes, the 35 Acre Property would have been taken off the tax rolls and the Landowners would not have had to incur nearly a million dollars in property taxes. However, because the City did not follow the law, the Landowners were forced to file this action and, not only litigate against the City for over 4 long years, but the Landowners were also forced to bear the burden of property taxes they never should have had to pay during this 4-year period. During this time period the Landowners were forced to make 18 property tax payments totaling $925,582.57 for the 35 Acre

Property. (*See Exhibit 1 and 2*). Pursuant to Article 1 Section 22(4) of the Nevada Constitution and Clark County v. Alper, 100 Nev. 382, 395 (1984) the Landowners are entitled to be reimbursed for these payments.

II. LAW

A. An Owner Who is Dispossessed of her Property is no longer Obligated to Pay Taxes.

In Nevada, a property owner is entitled to be reimbursed for the property taxes she actually paid after her property was taken by the government as "[a]n owner who is dispossessed from his or her land when it is taken for public use is no longer obligated to pay taxes." Clark County v. Alper, 100 Nev. 382, 395 (1984). Alper speaks directly to this point.

"The Alpers claim that they should be reimbursed by the county for all taxes paid by them since the June 1, 1972 date of taking. We agree…The district court is therefore reversed with instructions to reimburse the Alpers for property taxes actually paid after the land was taken by the county." Alper at 395.

Article 1 Section 22(4) of the Nevada Constitution provides that "[i]n all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken." Here, to make the Landowners whole, they must be reimbursed for the property taxes they were forced to pay after being dispossessed by the City from their property.

B. Date Upon Which Property Taxes Were No Longer Obligated – The Date of First Injury.

The date upon which property taxes were no longer obligated is the date the owner is dispossessed of her property. In situation such as this, where the government engages in numerous taking actions, the Nevada Supreme Court looks to the first date of compensable injury resulting from the government's conduct. City of North Las Vegas v. 5th & Centennial, LLC., 130 Nev. 619

(2014) (relying on eminent domain statutes and law to commence interest in a precondemnation damages case on the first date of compensable injury).

This Court's FFCL Re: Take provides guidance on the first date of compensable injury. The FFCL Re: Take finds that the City, at the direction of the surrounding owners, denied all Landowner requests to use the 35 Acre Property for a residential use, even though the City's own Planning Department determined the proposed residential use complied with all City development standards and all Nevada Revised Statute requirements. *FFCL Re: Take, filed October 25, 2021, p. 11:5 – p. 19:10*. The City first denied the 35 Acre stand-alone application on June 21, 2017, on the basis that it would only approve one Master Development Agreement (MDA) for the entire 250 Acres, but then denied the MDA when it was presented for approval just 42 days later on August 2, 2017. *Id*. Finding #86 on page 19 concisely states, "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." *Id*. The City then followed this up with countless systematic and aggressive actions to deny all use of the 35 Acre Property. *See generally the FFCL Re: Take*. Therefore, the first date of injury is at least **August 2, 2017**, the date the City denied the MDA, after claiming to deny the 35 Acre stand-alone application because it would only approve the MDA.

C. Calculations.

The Landowners made the following real property tax payments for the 35 Acre Property after August 2, 2017 and request reimbursement of the same:

Due Date	Check Number	Amount Paid
8/21/2017	1043	$ 51,308.59
10/2/2017	1043	$ 53,359.15
1/1/2018	1056	$ 51,306.81
3/5/2018	1062	$ 51,306.81
8/20/2018	1080	$ 51,308.57
10/1/2018	1096	$ 51,306.80
1/7/2019	1125	$ 51,306.80
3/4/2019	1137	$ 51,306.80
8/19/2019	1167	$ 51,308.55
10/7/2019	1186	$ 51,306.81
1/6/2020	1210	$ 51,306.81
3/2/2020	1225	$ 51,306.81
8/17/2020	1258	$ 51,309.21
10/5/2020	1273	$ 51,306.81
1/4/2021	1292	$ 51,306.81
3/1/2021	1307	$ 51,306.81
8/16/2021	1332	$ 51,306.81
10/4/2021	1340	$ 51,306.81
Total Paid		**$ 925,582.57**

See Exhibit 2

III. CONCLUSION

For the foregoing reasons, it is respectfully requested that the City be ordered to reimburse the Landowners for the **$925,582.57** of real property taxes they were forced to pay for the 35 Acre Property after August 2, 2017.

DATED this 6th day of December, 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 6th day of December, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **PLAINTIFF LANDOWNERS' MOTION FOR REIMBURESEMNT OF PROPERTY TAXES** 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

MOT

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, 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 **PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES** ***Hearing Requested***

COMES NOW Plaintiffs Landowners, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "Landowners"), by and through their attorneys of record, the Law Offices of Kermitt L. Waters, and hereby respectfully submit Plaintiffs Landowners' Motion for Attorney Fees.

///

This motion is based upon NRCP Rule 54 and those other laws set forth herein, the papers and pleadings on file, the declarations of counsel attached hereto and any evidence or argument heard at the time of the hearing on this matter.

DATED this 9th day of December, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn L. 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

This is an inverse condemnation action brought by 180 LAND CO, LLC, and FORE STARS Ltd. ("Landowners") against the City of Las Vegas ("City") for the taking of the Landowners' 34.07 acre residentially zoned property located near the southeast corner of Hualapai Way and Alta Drive in Las Vegas, Nevada ("35 Acre Property" and/or "Landowners' Property"). This case involved three phases: 1) the property interest phase - the determination of the property interest the Landowners had prior to the City's actions; 2) the take phase - whether the City engaged in actions to take the Landowners' property; and, 3) the value phase - the value of the Landowners' Property taken by the City. The Landowners have prevailed in all 3 phases and, as the prevailing party in an inverse condemnation case, the Landowners are entitled to an award of attorney fees. The attorney fees award should be based on: 1) the Lodestar method – the hours worked times the hourly rate; and, 2) an enhanced fee based on the 12 Hsu Factors.

II. LAW

A. Law Requiring Attorney Fees.

There are three sources of Nevada law that provide the City must pay the Landowners' attorney fees in this inverse condemnation action – 1) the Uniform Relocation Assistance and Real Property Acquisition Act ("Relocation Act"); 2) the Nevada Constitution Article 1, Section 22 (4); and, 3) NRS 18.010(2)(b).

1. The Relocation Act

In the seminal inverse condemnation case of McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 673 (2006), the district court awarded Mr. Sisolak attorney fees as a prevailing landowner in an inverse condemnation action and the Supreme Court affirmed, holding, "the district court properly based its award of attorney fees on a relevant provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Relocation Act)." *See also* Tien Fu Hsu v. County of Clark, 123 Nev. 625, 637 (2007) (adopting the same Sisolak attorney fees law). The Court held that "[t]he Relocation Act requires that a state government entity receiving federal funds institute formal condemnation proceedings to acquire any interest in real property by exercising the power of eminent domain" and, if not, Nevada landowners may bring inverse condemnation claims and "may recover attorney fees and costs if they succeed in an inverse condemnation claim against the government." Sisolak, at 673. The Sisolak Court held that these attorney fee provisions "apply to all Nevada political subdivisions and agencies" that receive federal funds. Id., at 674. The Court further held that there does not need to be a specific nexus between federal funds and the project for which the property has been taken, which had previously been suggested in a prior case – Alper. Id. Finally, the Court held that eligibility for attorney fees is not limited to those situations where a person has been displaced. Id., at 675. The Court then plainly stated the standard for recovery of attorney fees in an inverse condemnation action –

"Because Sisolak is ***a property owner who was successful in his inverse condemnation action***, the plain terms of the Relocation Act allowed the District Court to award reasonable attorney fees and costs." Id.

Here, the Landowners are property owners who were successful in their inverse condemnation action and, therefore, the plain terms of the Relocation Act allow recovery of attorney fees. Specifically, 49 CFR § 24.107(c)(2020) provides:

> **§ 24.107 Certain litigation expenses.** The owner of the real property *shall* be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if: …(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding. (*Exhibit 7*, 49 CFR 24) (emphasis added).

And, insofar as the rule may require a showing that the taking agency receives federal funds to recover attorney fees under the Relocation Act, the Court can take judicial notice that the City receives federal funds as this issue is beyond dispute and attached hereto is evidence of the City's federal funding. *See Exhibits 12-16. Exhibit 12, screenshot of the City's Website stating the City receives federal funds; Exhibit 13, the City's 2050 Master Plan where the City details how it receives federal funds, specifically for parks and open space see ATTY FEE MOT 0226; Exhibit 14, the City's SNPLMA Projects (SNPLMA is a federal grant program where federal dollars are given to the City for Parks and Open Space); Exhibit 15, the City's 2017 Budget detailing federal dollars received; Exhibit 16, City's 2021 Budget detailing federal dollars received.*

Therefore, the Landowners are entitled to recovery of attorney fees under the Relocation Act and the law set forth in Sisolak and Hsu.

2. Nevada Constitution Article 1, Section 22 (4) – Effective 2008 after the Sisolak and Hsu Decisions.

While not necessary to explore, as there is a statute directly on point and two cases interpreting that statute to mean a successful landowner in an inverse condemnation case is entitled

to attorney fees, the Nevada constitution also provides for attorney fees. Specifically, the Nevada constitution provides, "[i]n all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken." Nev. Const. Art I § 22(4). The Constitution further provides that "Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred." Nev. Const. Art I § 22(4)(emphasis added). Attorney fees are expenses actually incurred. As the Nevada Supreme Court specifically stated, when interpreting constitutional provisions, the normal and ordinary meaning of words **must** be utilized. Strickland v. Waymire, 126 Nev. 230, 234 (2010). The normal and ordinary meaning of the word *"expense,"* according to Merriam-Webster, include "the amount of money that is needed to pay for or buy something" and "something on which money is spent."[1] These normal and ordinary meanings of *"expense"* certainly includes the amount of money needed to pay for legal counsel. Therefore, pursuant to the normal and ordinary meanings of the word *"expense"* it is clear that the voters of Nevada intended to include attorney fees, otherwise, the voters would not have voted so overwhelmingly for the passage of Article 1, Section 22.

When a constitutional provision's language is clear on its face, as is the case here, the Court will not go beyond that language in determining the voters' intent. Strickland at 608. However, this constitutional provision was presented to and overwhelmingly approved by the Nevada electorate twice – 2006 and 2008 – and it was clear that the voters knew that passing Article 1, Section 22 would mean that Just Compensation would include attorney fees for a landowner, meaning that the government would have to pay for a landowner's attorney fees in eminent domain matters. In fact, the Argument Opposing Passage in the Sample Ballot specifically informed Nevada Voters in 2006 and 2008 that "Further, we believe **taxpayers may have to pay all lawyers**

[1] http://www.merriam-webster.com/dictionary/expense

fees and court expenses for any legal actions brought by private parties on eminent domain!" (Bold added, "!" in original text)(*Exhibit 9,* p. 11 and *Exhibit 10,* p. 7). The drafters of the Argument Opposing Passage were so certain that the government would have to pay for a landowner's attorney fees in an eminent domain action under Article 1, Section 22, that they even added an exclamation point "!" to the end of that sentence to denote its major significance to all Nevada voters. An exclamation point is used to "indicate forceful utterance or strong feeling" or to indicate "major significance."[2] Accordingly, the opponents of Article 1, Section 22 made sure that even if the normal and ordinary meaning of *expenses* was somehow lost on the Nevada voters, that the voters were made aware that it would include attorney fees.

There can be no doubt, by both the normal and ordinary meaning and then as reinforced by the Argument Opposing Passage that the Nevada voters intended for the government to pay for a landowner's attorney fees when a landowner's private property is taken by eminent domain. Accordingly, Article 1 § 22(4) provides that landowners must be reimbursed for their attorney fees.

Furthermore, the intent of the just compensation clause and Article 1 § 22 is to put the landowner back in the same position monetarily as if the property had never been taken. A landowner simply cannot be made whole until they have been reimbursed for their attorney fees. As will be shown below, attorney fees can be significant in these matters, and requiring a landowner to bear the burden of her own attorney fees in a constitutional matter such as this would have a chilling effect on constitutional rights and just compensation as defined would never be achieved.

There was an effort by the Legislature to unwind part of Article 1 § 22(4) with NRS 37.120 as it relates to direct condemnation actions by excluding attorney's fees, however, as made clear

[2] http://www.merriam-webster.com/dictionary/exclamation%20point

by NRS 37.185 such legislative exclusion (whether valid or not) is not applicable to an inverse condemnation action, such as this, where there is no question that the Landowners are entitled to attorney fees - "[t]his section (that denies attorney fees) does not apply in an inverse condemnation action if the owner of the property that is the subject of the actions makes a request for attorney's fees from the other party to the action." NRS 37.185.

3. NRS 18.010(2)(b).

The Landowners are additionally entitled to attorney fees under NRS 18.010(2)(b) which provides in pertinent part that, under certain circumstances, the court may award a prevailing party attorney fees:

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

As the Court is aware, the City challenged all three phases of the Landowners' inverse condemnation case. The City repeatedly re-argued issues that had already been decided, made arguments contrary to the position of its own client (the City Attorney, Planning, Tax departments, and City Councilpersons), argued contrary to long standing Nevada eminent domain and inverse condemnation precedent, and argued for a taking standard that has never been the law in any jurisdiction. The City repeatedly argued petition for judicial review law, despite at least 4 orders from the Court rejecting the petition for judicial review law's application to inverse condemnation and a decision directly on point from the Nevada Supreme Court that petition for judicial review law should not be used. *See* City of Henderson v. Eighth Judicial District Court, 137 Nev. Adv.Op. 26 (June 24, 2021). The City simply ignored the Court's orders and Nevada Supreme Court

precedent. The specifics of these actions are set forth below, as they are relevant to the first of the 12 Hsu Factors for enhancing the Landowners' attorney fees award. However, suffice it to say the City's frivolous and vexation claims overburdened both this Court's limited judicial resources and substantially increased the costs of engaging in business. Therefore, as more fully set forth below, the Landowners are entitled to recovery of attorney fees under NRS 18.010(2)(b).

In summary, the Landowners are entitled to attorney fees under specific inverse condemnation federal and state statutory law, the Nevada Constitution, Nevada case law and general Nevada statutory law. The following section will show how Nevada has elected to calculate these attorney fees in the specific context of an inverse condemnation case.

B. Nevada Inverse Condemnation Law Provides a Two-Step Process to Determine the Attorney Fee Award.

The leading case on calculation of attorney fees, in an inverse condemnation case, is Tien Fu Hsu v. County of Clark, 123 Nev. 625 (1007). Hsu requires a two-step process. **First,** the district court applies the lodestar analysis to "multiply the number of hours reasonably spent on the case by a reasonable hourly rate." Id., at 637. **Second**, the district court applies its "sound discretion" and adjusts the fee upward or downward based upon 12 Factors: "(1) the time and work required; (2) the difficulty of the issue; (3) the skill required to perform the service; (4) the amount of time taken away from other work; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed on the attorney by the case; (8) the amount of money involved and the results obtained; (9) the reputation, experience, and ability of the attorney; (10) the lack of desirability of the case; (11) the length of the acquaintanceship with the client; and, (12) awards in similar cases." Id. These 12 Factors will be referred to herein as the "12 Hsu Factors."

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The 12 Hsu Factors are guide posts and the district court has wide discretion when applying them, because the district court is most familiar with the case, having been present during all of the proceedings.

1. The First Step – Attorney Fees Actually Incurred.

a. The Numbers of Hours the Law Offices of Kermitt L. Waters Spent on the 35 Acre Case.

Kermitt L. Waters, James Jack Leavitt, Autumn Waters, and Michael Schneider, of the Law Offices of Kermitt L. Waters, (jointly referred to as "Landowners' Counsel") were the four attorneys that worked on behalf of the Landowners in this 35 Acre inverse condemnation case. Landowners' Counsel were retained, beginning on or about August 14, 2017. From that date forward, Landowners' Counsel have kept contemporaneous records of the hours worked on this 35 Acre Case. *Exhibits 1, 2, 3, and 4* (Declarations of Landowners' Counsel). The Landowners' Counsel were very careful to identify the hours worked on this 35 Acre Case separate from the other three cases - 17, 65, and 133 Acre Cases. Id. The total hours worked for **all four cases,** as of October 31, 2021, was 6,866.93, while the total hours for the 35 Acre Case individually were only 3,536.25. The hours identified herein for recovery of attorney fees are the hours worked exclusively on the 35 Acre Case as of October 31, 2021.[3] Id. In those circumstances where work was performed for all four cases, the hours for that work was split four ways between the 17, 35, 65, and 133 Acre cases, meaning ¼ of those hours are identified as work in the 35 Acre Case pending before the Court. Id. To assure that correct hourly records were kept, the hours worked on the 35 Acre Case were either recorded when the individual task was complete, at the end of the day each task was completed, or very shortly thereafter. Id.

[3] A supplemental calculation of additional hours will be included in the reply or at the conclusion of the post-trial motion practice, as attorney hours are still accumulating.

The following shows the hours worked by each attorney over the more than four years **in this 35 Acre Case only**:

Kermitt L. Waters	217.9
James Jack Leavitt	1,338.45
Autumn L. Waters	1,446.68
Michael A. Schneider	533.22
TOTAL	**3,536.25**

See Declarations attached hereto as *Exhibits 1, 2, 3, and 4*.

The following are the hours worked by Landowners' Counsels' legal assistants during this more than four-year period **in the 35 Acre Case only**:

Sandy Guerra	264.52
Stacy Sykora	156.35
Evelyn Washington	477.14
TOTAL	**898.25**

See *Exhibit 3 at ¶ 11.*

b. The Blended and Reduced Hourly Rate.

The Landowners' Counsel saw the grave injustice that was being imposed on the Landowners. The Landowners were struggling under the excessive costs the City forced them to endure and the massive burden of the monthly carrying costs the Landowners had to shoulder as involuntary trustees for the City. Therefore, from the commencement of this case through May 31, 2019, that hourly rate was significantly reduced to $450.00. From June 1, 2019, that hourly rate was adjusted upward, but still based on a reduced hourly rate of $675.00 per hour. The rate for the legal assistants has been a consistent $50 per hour.

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The following shows the total attorney fees, using these rates:

Attorney	**$450 (8/17-6/19)**	**$675 (6/19-10/21)**
Kermitt L. Waters	123.67	94.22
James Jack Leavitt	314.68	1,023.77
Autumn L. Waters	330.08	1,116.61
Michael A. Schneider	216.50	316.72
TOTAL HOURS	**984.93**	**2,551.32**
TOTAL FEES	**$443,218.50**	**$1,722,141 = $2,165,359.50**

Legal Assistants

Total hours worked = 898.25 x hourly rate of $50.00 = $44,912.50

See Declarations, Exhibits 1 – 5.

Therefore, the total attorney fees and legal assistant fees actually incurred amounts to **$2,165,359.50 + $44,912.50 = $2,210,272.00**. As will be shown, this rate was a significantly reduced rate for the Law Offices of Kermitt Waters and the specialized area of inverse condemnation practice. Therefore, an enhanced hourly rate is justified based on the second step to determine attorney fees in this inverse condemnation case – consideration of the 12 Hsu Factors.

2. The Second Step - Analysis of the 12 Hsu Factors Justifies an Enhanced Attorney Fee.

The consideration of enhanced fees pursuant to the 12 Hsu Factors is in the sound discretion of the Court, because the Court was present during all of the hearings and, therefore, is best suited to consider these 12 Factors. Hsu at 637.

As a preliminary matter, perhaps the best indication of an appropriate enhanced hourly rate under the 12 Hsu Factors is to consider the hourly rate approved in the seminal Sisolak case, which was an inverse condemnation case, like this 35 Acre Case. In that case, counsel for Governor Sisolak limited her practice to inverse condemnation at that time. She had a contingency fee and

therefore, did not keep hourly records, but, instead, provided an affidavit estimating the hours worked at 1,400 hours. *Exhibit 8, Attorney Fee Affidavit of Counsel in the Sisolak case.* The Sisolak Court approved a fee of $1,950,000. Sisolak, supra, 657 and 671. Dividing the $1,950,000 approved fee by the 1,400 hours worked on the Sisolak case, results in an approved hourly rate of $1,392 per hour. Therefore, the Nevada Supreme Court has approved an hourly rate of $1,392 per hour for the very specialized area of inverse condemnation. And, this hourly rate was approved over 15 years ago.

The following shows that at least 11 of these 12 Hsu Factors are applicable in this case, justifying an enhanced hourly rate, commensurate with the $1,392 hourly rate approved in the Sisolak case.

- **HSU FACTOR #1 - THE TIME AND WORK REQUIRED**

The time and work required is relevant to both this first Hsu Factor and the underlying basis for awarding attorney fees under NRS 18.010(2)(b), referenced above. The time required for the Sisolak case was only about one year. *Exhibit 8, Attorney Fee Affidavit of Counsel in the Sisolak case.* Here, due to the City's improper litigation strategy to repeatedly re-argue issues that had already been decided; argue contrary to the position of its own client; argue contrary to long standing Nevada eminent domain and inverse condemnation precedent; repeatedly argue inappropriate petition for judicial review law and ignore the Court's orders and Nevada Supreme Court precedent, the time required in this case was over four years. Therefore, this Factor justifies an enhanced hourly rate at least commensurate with the $1,392 per hour approved in Sisolak. The following further supports an enhanced fee.

(a) The City's Improper Attempts to Dismiss and Remove to Federal Court.

As the Court will recall, this inverse condemnation case involved three phases under Nevada law: 1) the determination of the property interest; 2) the determination of whether the

City's actions amounted to a taking; and, 3) the value of the property taken. Before the Landowners even got to these three phases, the City filed a motion to dismiss and a redundant motion for judgment on the pleadings and lost both requests. *City Motion to Dismiss, filed October 30, 2017; City Motion for Judgment on the Pleadings, filed February 13, 2019*. The City then sought a Writ to the Nevada Supreme Court, which the Landowners had to oppose, and, after the City lost the Writ, the City requested a panel rehearing and, after losing that, requested en banc reconsideration, which it lost. *See City Notice of Filing of Petition for Writ, filed on May 17, 2019.*

Compounding the amount and complexity of the work in this case, the City then conflated findings from the petition for judicial side of the 35 Acre Case with the inverse condemnation side. As the Court will recall, the Court order severed the petition for judicial review matter from this inverse condemnation case and tried both cases entirely separate and independent from one another. This Courts' severance order proved correct by a recent Nevada Supreme Court case. *See* City of Henderson, supra. The City however, improperly included four paragraphs in the FFCL entered in the petition for judicial review matter that wrongfully dismissed the Landowners' inverse condemnation case. This required the Landowners to file a motion to reconsider that petition for judicial review FFCL to remove those improperly included four paragraphs. *Landowners' request for reconsideration, filed December 11, 2018.* Instead of conceding the four paragraphs were improper, the City filed a 25-page opposition and then, brazenly, asked for sanctions against the Landowners. *City Opposition to reconsideration, filed January 1, 2019; City Motion to Strike Landowners Motion for Summary Judgment, filed December 21, 2018 (asking for sanctions against the Landowners).* These City actions were pure procedural gamesmanship, used as an attempt to deny the Landowners their due process right and to cause excessive litigation costs and attorney fees for the Landowners. The Court saw through the City's improper actions and, at the hearing on the Landowners' motion, called the case up first in time and stated the matter "is

going to be uncontested because I'm going to issue a - - have someone issue a nunc pro tunc order." *Exhibit 11, 4:6-9, 16.* This Court continued, "I never intended on any level for that to be included in the order" and, in the order granting reconsideration, held, "this Court had no intention of making any findings of fact, conclusions of law or orders regarding the landowners severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018 [petition for judicial review FFCL]." *Nunc Pro Tunc Order, filed February 6, 2019, 6:9-10.*

The City also filed an improper removal to federal court on August 22, 2019 – more than two years after this case commenced and, after significant briefing and oral arguments. The federal court issued a written opinion that the removal was improper. *City Notice of Removal, filed August 22, 2019.* The City's improper removal delayed this matter, and caused significantly more time and attorney hours defeating the improper removal.

(b) The City's Frivolous Property Interest Arguments.

Upon remand, the Landowners were finally able to move to the first phase in this inverse condemnation action – the property interest, but the City's vexatious and frivolous tactics continued. The City repeatedly argued against long standing Nevada inverse condemnation precedent. The City argued contrary to Alper, Sisolak and Hsu. These are foundational cases in this area of law. It is not proper and it is vexatious and harassing to come to Nevada and force a Nevada landowner to argue over already well-established law, yet that is exactly what the City forced upon the Landowners in this case.

During this phase, as the Court will recall, the City repeatedly and vexatiously argued that the Landowners did not have the property right to use their Property for anything other than a park or open space because, according to the City, there was a City Master Plan PR-OS designation or a Peccole Ranch Master Plan open space designation on the 35 Acre Property and these "master

plan" designations trump the R-PD7 zoning (PR-OS / PRMP Argument). This was a baseless and frivolous argument.

First, the Queensridge Homeowners brought this same "open space" argument back in a 2016 case and the district court held that the entire 250 Acres has always been zoned "R-PD7," the zoning "dictates its use," and gives the Landowners the "right to develop" and the arguments to the contrary were "frivolous" and awarded the Landowners attorney fees. *SJMT Exhibits 172*, vol. 19, filed September 15, 2021 at 005115:3-4; *SJMT Exhibit 173*, vol. 19 filed September 15, 2021 at 005142:11-12, 005152:23-24, 005167:10-18.[4] The Nevada Supreme Court affirmed the ruling and the district court's attorney fee award. *SJMT Exhibit 175*, vol. 19 filed September 15, 2021 at p. 4. The City had actual knowledge of this ruling and this should have been sufficient for the City to concede: 1) the R-PD7 zoning governs the use of the 35 Acre Property; and, 2) that R-PD7 zoning gives the Landowners the "right to develop" residential units.

Second, there are 6 Nevada Supreme Court eminent domain / inverse condemnation cases on point that hold zoning must be used to decide the property interest issue in an inverse condemnation case, not the master plan. In fact, the City was a party to the eminent domain case of City of Las Vegas v. Bustos, 119 Nev. 360 (2003), and the City argued in that case that the courts should follow the City's master plan, not zoning, under petition for judicial review law and the district court and Supreme Court rejected the City's argument, finding zoning must be followed.

Third, the City's master plan PR-OS / PRMP Argument was flatly rejected by the City itself. As the Court will recall, the City Attorney's Office, the City Planning Department, and the City Tax Assessor flatly rejected this City argument. *See Landowners' Reply in Support of*

[4] The SJMT Exhibits are the exhibits presented to the Court at the summary judgment hearing on the take issue. *Exhibits 1-150* filed on March 26, 2021 and *Exhibits 151-198* filed on September 15, 2021.

Plaintiff Landowners' Motion to Determine "Property Interest," filed September 9, 2020, pp. 9-10, 14-16, 18-20. The City's own master plan says it is only a "policy" and zoning is the "law." *SJMT Exhibit 161, vol. 19* filed September 15, 2021, City 2050 Master Plan pages. Long-time land use attorney Stephanie Allen confirmed how frivolous this City argument was, submitting an affidavit that states in her 17 years of practice, zoning always governed property uses, the master plan was just a planning document, and that "I don't recall any government agency or employee ever making the argument that a master plan land use designation trumps zoning." *SJMT Exhibit 195,* vol. 21 filed September 15, 2021 at 006088.

Despite this well-settled eminent domain law on the property interest issue, the City repeatedly and unceasingly cited to petition for judicial review law to claim the Landowners never had a right to use their property to begin with, because the City has "discretion" to deny the use of property. The Court entered at least four orders that petition for judicial review law does not apply, and the Supreme Court entered a recent decision confirming the Court's orders - that petition for judicial review law does not apply in this inverse condemnation action. City of Henderson v. Eighth Judicial District Court, 137 Nev. Adv.Op. 26 (June 24, 2021). *See also FFCL Re: Take, pp. 41-43.* The City didn't care and, even after the City of Henderson decision, continued to extensively cite petition for judicial review law and the PR-OS / PRMP Argument all the way up to trial, requiring a motion in limine to exclude the argument. As the Court is aware, this caused significant time and work to address.

(c) The City's Frivolous Take Arguments.

The City clearly has the right to challenge inverse condemnation claims brought by landowners, what the City doesn't have a right to do is force a landowner to reargue long standing Nevada takings jurisprudence. The City engaged in systematic and aggressive actions to take the Landowners' 35 Acre Property that clearly met Nevada's four taking standards. *See FFCL Re:*

Take. The City did not deny these actions. Instead, the City argued that Nevada law is not actually the law and cited to a series of "separation of powers" and petition for judicial review cases to claim that: 1) the City has "discretion" to deny landowners the use of their property in Nevada; 2) the doctrine of "separation of powers" prohibits the Court from interfering with the City's "discretion" to deny Nevada landowners the use of their property, and, 3) the Courts can only intervene in the most egregious circumstances where there is a "total wipe out" of value. This was a frivolous argument that has not been accepted in Nevada, where our Court has held: 1) the "first right" in Nevada's Constitution is the "inalienable right to acquire, possess and protect private property;" 2) 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, at 669-670. This, again, complicated and compounded the briefing and arguments on the take issue, requiring an excessive amount of time to address. *See e.g. Exhibit 6, summary of list of filings.*

Then, when it came time to determine the City's liability for its taking actions, the City again caused significantly delay (and more attorney hours) by claiming it needed more time and discovery to determine the economic impact the City's actions had on the Landowners' Property. *See Transcr. of hearing on April 21, 2021 at 47-48*. In a shocking revelation, when it came time to present this economic impact, the City had nothing to present and claimed it didn't need anything, completely contrary to the reasons it provided to obtain more time and discovery.

Attached as *Exhibit 6* is a list of the substantive pleadings, identifying the number of pages for each pleading and the number of pages for the extensive exhibits. As identified in *Exhibit 6*, the City's litigation tactics required **2,009** pages of substantive pleadings and **29,977** pages of exhibits. *Exhibit 6.* In fact, the City's briefs kept getting longer and longer, as if each attorney for the City that reviewed the briefs would simply add more sections, as opposed to edits and

revisions. The City's vexatious pleading practice crescendoed with a 92 page brief. *See City Opp. to Motion to Determine Take filed August 25, 2021*. The City additionally filed motions and then would withdraw them the day before the Landowners' opposition was due. *See Notice of Withdrawal filed October 21, 2021.* Again, causing excessive attorney hours.

Finally, as the Court will recall, the City also made extensive discovery requests, demanded monthly status checks, filed numerous motions to compel (nearly all of which were denied) and filed lengthy status reports before each status check all of which required Landowners' Counsel's attention. The City waged a war of attrition on the Landowners in an attempt to litigate them into submission. This is a constitutional proceeding, and such litigation tactics should be strongly discouraged. The only means of discouragement is to award the Landowners and their Counsel substantial attorney fees.

Therefore, Factor #1 justifies an enhanced attorney fee.

- **HSU FACTOR #2 - THE DIFFICULTY OF THE ISSUE**

Inverse condemnation cases can be very difficult to litigate. The government has unlimited resources, allowing it to hold a heavy hammer over the landowner's head. In fact, the City had to go out of state to find an attorney to handle this case. So, in addition to hiring McDonald Carano (one of the larger firms in Nevada) the City also hire Shute Mihaly and Weinberg from San Francisco. Accordingly, the City had two separate law firms submitting work that the Landowners' Counsel had to address. This shows not only the inherent difficulty of the issues in this case, but also how the City unnecessarily made those issues more difficult.

Therefore, Factor #2 justifies an enhanced attorney fee.

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- **HSU FACTOR #3 - THE SKILL REQUIRED TO PERFORM THE SERVICES**

and

- **HSU FACTOR #9 - THE REPUTATION, EXPERIENCE, AND ABILITY OF THE ATTORNEY**

As Factors #3 and #9 are interrelated, these two Factors will be analyzed together.

In regards to Factor #3, eminent domain / inverse condemnation is a very specialized area of law that involves complicated and difficult issues. Nichols on Eminent Domain, the foremost authority on eminent domain law has over 20 volumes that discuss the law in this area, demonstrating there are many unique nuances of inverse condemnation law. Nevada's eminent domain statutes (Chapter 37) fall under TITLE 3 – which are referred to as "special actions and proceedings." The Nevada State Constitution dedicates nine provisions to eminent domain in Article 1, Section 22. It is beyond dispute that this is a very specialized area of law that very few attorneys practice in and requires a specific skill set. This is further evidenced by the fact that, McDonald Carano, one of the larger firms in Nevada had to associate counsel in from San Francisco to litigate the Landowners' inverse condemnation claims. Therefore, Factor #3 justifies an enhanced attorney fee.

In regard to Factor #9, the Law Offices of Kermitt L. Waters' eminent domain and inverse condemnation expertise is incomparable. As will be explained, the attorneys with the Law Offices of Kermitt L. Waters have, combined, over **110 years** of legal expertise in Nevada eminent domain and inverse condemnation law. They are responsible for most of Nevada's eminent domain caselaw and drafted in its entirety the nine eminent domain provisions in Nevada's Constitution. In fact, the Law Offices of Kermitt L. Waters represented Mr. Hsu for over 14 years, which resulted in the Hsu case that includes the 12 Factors that guides this Court's award of attorney fees in this case.

Kermitt L. Waters has practiced exclusively in the area of eminent domain and inverse condemnation in the State of Nevada for over 50 years. *See Exhibit 1, Declaration of Kermitt L. Waters for all facts relevant to his expertise.* He has represented 100s of landowners at the district court and appellate court levels in Nevada and has recovered more for landowners than any other attorney in the history of Nevada. The Owners' Counsel of America is a network of attorneys who represents landowners across the country and chooses only one lawyer from each State to be a member and Mr. Waters was chosen for Nevada. Mr. Waters has more published and unpublished Nevada Supreme Court eminent domain and inverse condemnation cases than any other attorney in the history of Nevada. In 2005 – 2006, Mr. Waters drafted 9 eminent domain and inverse condemnation provisions to be added to the Nevada Constitution through amendment and personally financed the ballot initiative, which included being personally sued by many government entities trying to stop the initiative. The people of Nevada overwhelmingly voted in 2006 and 2008 to amend the Constitution to adopt the nine provisions drafted by Mr. Waters which are now part of the Nevada Constitution. *See* Nev. Const. art. 1, sec. 22 (1) – (9). Mr. Waters was also Arby Alper's trial counsel, in the Alper case, which has been heavily cited in all three phases of this case. In summary, Mr. Waters' work has resulted in numerous published and unpublished eminent domain and inverse condemnation Supreme Court decisions and he drafted the eminent domain provisions in the Nevada Constitution.

Although Mr. Waters did not present the majority of oral arguments, he was always present during strategy meetings and at the hearings, providing wisdom and guidance on how the case must proceed. As stated by former Las Vegas Mayor, Jan Laverty Jones, "I don't think anyone is more powerful in their representation of a client … He's passionate, he's dogged." The Law Offices of Kermitt L. Waters has the reputation of being the "preeminent eminent domain firm on

the West Coast." *See Exhibit 1, Declaration of Kermitt L. Waters for all facts relevant to his expertise.* Mr. Waters' contribution and work in this matter was incomparable.

James Jack Leavitt has practiced exclusively in the area of eminent domain and inverse condemnation in the State of Nevada for over 25 years. *See Exhibit 2, Declaration of James Jack Leavitt for all facts relevant to his expertise.* He went to work for Mr. Waters during his second year of law school in 1995. He passed the Nevada State Bar prior to his final semester of law school (Nevada allowed that back in 1995). After graduating, he continued his work with Mr. Waters and has been with him ever since. Like Mr. Waters, Mr. Leavitt has limited his practice exclusively to eminent domain and inverse condemnation for his entire career, having briefed, argued, and presented cases to the Nevada judiciary on nearly every issue a Nevada landowner may face when the government takes their property, frequently issues of first impression in Nevada. Mr. Leavitt has testified at the Nevada Legislature on behalf of proposed eminent domain legislation, he assisted Mr. Waters with drafting the Nevada Constitution's eminent domain provisions (as explained above), he has argued many eminent domain cases to the Nevada Supreme Court, again, frequently issues of first impression, and he appears as counsel on many published eminent domain decisions in Nevada. Mr. Leavitt has Co-chaired CLE seminars on eminent domain and has frequently presented at conferences on eminent domain issues.

Autumn L. Waters has practiced exclusively in the area of eminent domain and inverse condemnation in the State of Nevada for over 18 years. *See Exhibit 3, Declaration of Autumn L. Waters for all facts relevant to her expertise.* Ms. Waters worked for the Law Offices of Kermitt L. Waters during law school and then joined the firm in 2003 directly out of law school and has dedicated her entire practice to eminent domain and inverse condemnation. Ms. Waters has represented Nevada landowners in a wide variety of eminent domain and inverse condemnation cases, including preparing Amicus Curiae briefs to the Nevada Supreme Court in defense of Article

1, Section 22, to ensure the protections intended by the amendments were maintained. Ms. Waters has practiced in both state and federal court at both the trial and appellate court levels dealing with unique and complex takings issues. Ms. Waters has chaired several CLE seminars dedicated to eminent domain and inverse condemnation.

Michael A. Schneider has practiced exclusively in the area of eminent domain and inverse condemnation in the State of Nevada for over 18 years. *See Exhibit 4, Declaration of Michael A. Schneider for all facts relevant to his expertise.* Like both Mr. Leavitt and Ms. Waters, Mr. Schneider worked for the Law Offices of Kermitt L. Waters while in law school and upon graduation continued working with Mr. Waters and has for his entire career. Mr. Schneider has litigated some of the most complex eminent domain and inverse condemnation cases in the State of Nevada and has been instrumental in recovering millions of dollars for Nevada landowners. Mr. Schneider has briefed numerous eminent domain matters before the Nevada Supreme Court, including matters of first impression. He assisted Mr. Waters with drafting the constitutional provisions on eminent domain which were adopted in Nevada and are now the operative law in the state. Mr. Schneider has presented eminent domain topics at both national and regional CLE seminars and has co-authored ABA publications on eminent domain law for the State of Nevada.

In summary, this combined over 110 years of practicing exclusively in the area of eminent domain and inverse condemnation in the State of Nevada has resulted in a reputation for the Law Offices of Kermitt L. Waters, as the "preeminent eminent domain firm on the west coast." *See Exhibit 1, Declaration of Kermitt L. Waters for all facts relevant to his expertise.*

Therefore, Factors #3 and #9 justify an enhanced attorney fee.

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- **HSU FACTOR #4 - THE AMOUNT OF TIME TAKEN AWAY FROM OTHER WORK**

As explained above and as this Court saw over the past four years, it is beyond dispute that this case would cause a smaller law firm, like the Law Offices of Kermitt L. Waters, to take time away from other work. For four years the City buried the Landowners' Counsel with improper motions to dismiss, improper orders, improper removal to federal court, discovery, motions to compel, extensive pleadings, repeated and extensive citations to inapplicable petition for judicial review law, and **excessive** re-argument of already settled facts and law. The City even repeatedly re-argued issues to the Court that the Court had already decided. The Law Offices of Kermitt L. Waters is a small firm with four attorneys and it was impossible to maintain a full calendar of cases during this four-year period. There were times when this 35 Acre Case occupied all or nearly all of the time of all attorneys at the Law Offices of Kermitt L. Waters. And, there were several occasions over the past four years when cases were turned down due to the time needed to manage this 35 Acre Case. *See Exhibit 2, Declaration of James Jack Leavitt.* Therefore, Factor #4 justifies an enhanced attorney fee.

- **HSU FACTOR #5 - THE CUSTOMARY FEE**

When deciding Factor #5, the Court should consider the "rates and practices prevailing in the relevant market." City of Burlington v. Dague, 505 U.S. 557, 567 (1992). The Court should also consider that eminent domain and inverse condemnation is a very unique and specialized area of practice. In this connection, as explained above, perhaps the best evidence of an appropriate hourly rate for specialized eminent domain counsel is the $1,392 hourly rate awarded in the Sisolak inverse condemnation case. As explained, in Sisolak, the Court awarded a fee of $1,950,000, based on an "estimate" of 1,400 hours worked, which amounts to $1,392 per hour. And, that hourly rate was approved over 15 years ago.

Based on the over 110 years of combined inverse condemnation experience and using the Sisolak decision as a guide, a reasonable hourly rate for this inverse condemnation case is as follows:

Kermitt L. Waters (over 50 years experience)	$1,500 per hour
James Jack Leavitt (over 25 years experience)	$1,300 per hour
Autumn Waters (over 18 years experience)	$ 800 per hour
Michael Schneider (over 18 years experience)	$ 800 per hour

Therefore, Factor #5 justifies an enhanced attorney fee and the hourly rates above should be used to determine the enhanced attorney fee, which is calculated below.

- **HSU FACTOR #6 - WHETHER THE FEE IS FIXED OR CONTINGENT**

While a contingency fee comes with an acknowledged risk that the attorney will receive no payment, which is not present here, the Landowners' Counsel did apply a significant reduction in their hourly rate to ensure that the Landowners were able to pursue their constitutional rights. This should be considered in applying an upward adjustment.

- **HSU FACTOR #7 - THE TIME LIMITATIONS IMPOSED ON THE ATTORNEY BY THE CASE**

The Landowners were paying to maintain property the City had taken which was a great financial strain. This imposed time limitations on the Landowners' Counsel to pursue matters as quickly as possible, despite the City's litigation strategy to hire two separate law firms to litigate the Landowners into submission. Defending against the City's litigation strategy was all consuming at times. Factor #7 justifies an enhanced fee.

- **HSU FACTOR #8 - THE AMOUNT OF MONEY INVOLVED AND THE RESULTS OBTAINED**

The City denied liability, claiming not to owe the Landowners any money for the taking of the 35 Acre Property. The Landowners' appraiser valued the property at nearly $35 Million. That

is a tremendous spread and it is not yet complete. The Landowners will also be entitled to interest which will increase that spread even more - the Nevada Supreme Court has held that prejudgment interest is part of the just compensation award and this prejudgment interest will be calculated by the Court post trial pursuant to NRS 37.175. *See* Clark County v. Alper, 100 Nev. 382 (1984).

Also, the Landowners prevailed at every phase of these proceedings - the property interest, take, and value phases - despite lengthy opposition over a four-year period. The Landowners also defeated numerous attempts to dismiss this matter, including defeating the City's Writ Petition to the Nevada Supreme Court. At the end of the day, the Court entered a judgment in favor of the Landowners for the exact amount the Landowners' appraiser valued the property at - $34,135,000. *See FFCL Re: Just Compensation, filed November 18, 2021.*

The amount of money involved in this matter is significant and the results the Landowners' Counsel obtained speak for themselves.

Therefore, Factor #8 justifies an enhanced attorney fee.

- **HSU FACTOR #10 - THE LACK OF DESIRABILITY OF THE CASE**

Anytime a party has to fight the unlimited resources of the government, it is an undesirable case. This case was even more challenging as the Landowners were suffering every month with excessive carrying costs associated with being an involuntary trustee for the City. It is not desirable to have a client who is suffering under the weight of City Hall (literally). Second, as this Court will recall, the City's private counsel explained on September 24, 2021, during the hearings on the take issue that the denial of the fence application was, perhaps, "politically charged" and there is no doubt that the facts of this case bore this out. In fact, numerous judges have recused themselves from the companion cases, arguably reflecting on the lack of desirability of these cases. Third, the tenor of the City's counsel has made this case lack desirability. In nearly every brief, the City has accused the Landowners' Counsel of filing frivolous claims stating "It is hard to

conceive of a greater abuse of the legal system than this case."[5] The City's counsel has called the Landowners' Counsel's argument "absurd," just to name one of the insulting comments the Landowners' Counsel has had to endure. And, at every turn, the City's counsel improperly alleged that Landowners' Counsel was "misrepresenting" the law. The barrage of insults from the City has added to the lack of desirability of this case.

Therefore, Factor #10 justifies an enhanced attorney fee.

- **HSU FACTOR #11 - THE LENGTH OF THE ACQUAINTANCESHIP WITH THE CLIENT**

The Law Offices of Kermit L. Waters has represented the Landowners from the very beginning of this inverse condemnation case, from August, 2017, to present. Therefore, this Factor #11 justifies an enhanced attorney fee.

- **HSU FACTOR #12 - AWARDS IN SIMILAR CASES**

The seminal inverse condemnation case of Sisolak provides a bench mark of the success obtained in this case and the appropriate fee enhancement. In Sisolak, Governor Sisolak retained two expert appraisers who valued his taken airspace at $6,980,000 and $6,970,000, the Government had valued the taken airspace at $200,000. Sisolak, at 657. The jury returned a verdict of $6,500,000, which is $480,000 and $470,000 less than Governor Sisolak's expert appraisers' values. Id. Based on the success in Sisolak case, Judge Mark Denton awarded Mr. Sisolak's lawyer an enhanced attorney fee of $1,392 per hour (total of $1,950,000 for 1,400 hours of work). The Nevada Supreme Court affirmed this $1,392 per hour attorney fee.

Here, the Landowners obtained an award of $34,135,000 – the exact value opined by the Landowners' expert appraiser, Tio DiFederico. Therefore, the result in this case was not only higher, but it was not reduced below the value of the Landowners' appraiser's value, as was the

[5] City Opp. and CM for Summary Judgment date August 25, 2021 at 2:5.

award in the Sisolak case. Therefore, the Landowners' success in this case exceeds that in the Sisolak case. Accordingly, an hourly rate commensurate with the $1,392 per hour fee awarded in Sisolak, adjusted upward for time, is appropriate.

Therefore, Factor #12 justifies an enhanced attorney fee.

3. Requested Attorney Fee.

As explained above, the total attorney fees paid to the Law Offices of Kermitt L. Waters to date in this 35 Acre Case is $2,165,359.50, based on a blended reduced rate of $450 per hour (from August, 2017 to May, 2019) and $675 per hour (from June, 2019 – November, 2021).

However, an enhanced fee is appropriate here. Based on the argument above, the following is a summary of the hours worked for each attorney at the Law Offices of Kermitt L. Waters and the requested enhanced hourly rate:

Kermitt L. Waters – 217.9 hours x $1,500 per hour =	$326,850.00
James Jack Leavitt – 1,338.45 hours x $1,300 per hour =	$1,739,985.00
Autumn Waters – 1,446.68 hours x $800 per hour =	$917,344.00
Michael Schneider – 533.22 hours x $800 per hour =	$426,576.00
TOTAL	**$3,410,755.00**

III. CONCLUSION

As explained, the second step to calculate attorney's fees set forth in Hsu, provides that the Court use its "sound discretion" and consider the 12 Hsu Factors to "adjust this fee award." The Supreme Court clearly intended that the 12 Hsu Factors be considered by the Court to adjust the fee upward. Otherwise, there would have been no reason to include these 12 Factors to "adjust" the fee; the Nevada Supreme Court could have merely ordered a straight calculation of hours worked multiplied by a reasonable hourly rate. Moreover, it is clear that the application of the 12 Hsu Factors warrants an upward adjustment of the attorney fee. Furthermore, the City's litigation

tactics in this case warrant an upward adjustment, to not only encourage counsel to take difficult constitutional cases such as this, but also to discourage the government from trying to suppress constitutional rights through a war of attrition.

Based on the foregoing, the Landowners' request an attorney fee award in the amount of **$3,410,755.00.** The Landowners also request reimbursement of fees paid for the Law Offices of Kermitt L. Waters legal assistants in the amount of **$44,912.50.**

DATED this 9th day of December, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn L. 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 9th day of December 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES** 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

MOT

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, 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 **PLAINTIFF LANDOWNERS' MOTION TO DETERMINE PREJUDGMENT INTEREST** ***Hearing Requested***

COMES NOW Plaintiff Landowners, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "the Landowners"), by and through their attorneys, the Law Offices of Kermitt L. Waters, and hereby files this Motion to Determine Prejudgment Interest.

///

This motion is based upon the papers and pleadings on file, the appendix of exhibits and declarations attached hereto and any evidence or argument heard at the time of the hearing on this matter.

DATED this 9th day of December, 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a constitutional proceeding brought under Article 1, Section 8 of the Nevada State Constitution.[1] A Judgment of $34,135,000 was entered in favor of Plaintiff Landowners, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "the Landowners") and against the City of Las Vegas (hereinafter "the City"). This post trial motion is brought to request that the Court determine the prejudgment interest owed on the $34,135,000 verdict.[2] To determine the prejudgment interest owed, the Landowners request that the Court make three findings: 1) the date interest should commence; 2) the proper interest rate; and, 3) whether interest should be compounded monthly or annually.

[1] Nev. Const. art. I§§ 8, 22. *See also* U.S. Const. amend. V.

[2] Pursuant to NRS 37.175(1) the Landowners are entitled to prejudgment interest until the judgment is satisfied. The City has yet to satisfy the judgment, so the daily interest rate is provided for the period until the City satisfies the judgment.

II. LAW

Nevada has adopted very specific rules for deciding the prejudgment interest award in the context of this inverse condemnation action. The following legal argument sets forth these specific rules and how they apply to this inverse condemnation action.

A. Prejudgment Interest Must be Awarded as Part of the Landowners' "Just Compensation" Award.

It is well settled that the constitutional mandate of "just compensation" includes prejudgment interest: "Just compensation shall include, but is not limited to, **compounded interest** and all reasonable costs and expenses actually incurred" Nev. Const. art. I §22(4) (emphasis added); NRS 37.120(3). It is also well settled that "just compensation" must be "real, substantial, full and ample" and it must put the landowner in "as good a position monetarily" as she would have been in had her property not been taken. Id. Therefore, the Landowners are entitled to an amount of prejudgment interest that is real, substantial, full, and ample, which will put them back in the same position, monetarily, as they would have been, had their property not been taken. Id.

B. This Court Decides Three Issues to Calculate the Landowners' Prejudgment Interest.

Nevada has adopted specific legislation for deciding the prejudgment interest issues in this inverse condemnation case, requiring that this Court decide three issues: 1) the date interest commences; 2) the rate; and, 3) how to compound the interest:

> "The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:
>
> a) The date on which the computation of interest will commence;
> b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

c) Whether the interest will be compounded annually."

NRS 37.175 (4).

1. First Issue - Interest Must Commence on the Date of First Injury.

In an eminent domain and inverse condemnation case, where the market value is not paid contemporaneously with the taking, "the owner is entitled to interest for the delay in the payment from the date of the taking until the date of the payment." Clark County v. Alper, 100 Nev. 382, 392 (1984). *See also* McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006) (affirming award of prejudgment interest in an inverse condemnation proceeding from the date of taking until the date of payment). "The purpose of awarding interest is to compensate the landowner for the delay in the monetary payment that occurred after the property had been taken." Id.

Unlike some cases where there is one specific act that results in the taking, here, the City engaged in numerous systematic and aggressive actions toward the Landowners' 35 Acre Property to prohibit all use of the property so that the surrounding public could use the Landowners' Property. *See* Findings of Fact and Conclusions of Law Granting Landowners' Motion to Determine Take, filed October 25, 2021 ("FFCL Re: Take"). Under these circumstances, the Court looks to the first date of compensable injury resulting from the government's conduct. City of North Las Vegas v. 5th & Centennial, LLC., 130 Nev. 619 (2014) (relying on eminent domain statutes and law to commence interest in a precondemnation damages case on the first date of compensable injury).

This Court's FFCL Re: Take provides guidance on the first date of compensable injury. The FFCL Re: Take finds that the City, at the direction of the surrounding owners, denied all Landowner requests to use the 35 Acre Property for a residential use, even though the City's own Planning Department determined the proposed residential use complied with all City development standards and all Nevada Revised Statute requirements. FFCL Re: Take, filed October 25, 2021,

p. 11:5 – p. 19:10. The City first denied the 35 Acre stand-alone application on June 21, 2017, on the basis that the City was going to approve the Master Development Agreement (MDA) for the entire 250 Acres, but then when the MDA was presented for approval just 42 days later on **August 2, 2017**, the City denied the MDA. Id. Finding #86 on page 19 concisely states, "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 denials were contrary to the recommendation of the City's Planning Department." Id. The City then followed this up with countless systematic and aggressive actions to deny all use of the 35 Acre Property. *See generally* the FFCL Re: Take. Therefore, the first date of injury is at least **August 2, 2017**, the date of the MDA denial and, accordingly, the Landowners recommend that this date be used as "[t]he date on which the computation of interest will commence" under NRS 37.175(4).

2. Second Issue - The Rate of Interest to Be Used to Compute the Award of Interest.

The Nevada Supreme Court has held that the determination of the interest rate in an eminent domain action is a question of fact for the district court judge to decide post trial. State ex rel. Dept. of Transp. v. Barsy, 113 Nev. 712 (1997). The Nevada Revised Statutes and Nevada eminent domain and inverse condemnation law provide the standard on this question of fact. NRS 37.175 (4) provides that the prejudgment interest rate in an eminent domain case must not be less than the prime rate of interest plus 2 percent. The Nevada Supreme Court has recognized that this prime plus 2 percent is the "floor" - "[s]tatutory interest rates as applied to prejudgment interest are generally considered as a 'floor' on the rate allowable for compensation under the fifth amendment." Clark County v. Alper, supra, at 394. *See also* State ex rel. Dept. of Transp. v. Barsy, 113 Nev. 712, *overruled on unrelated issue* (1997) (eminent domain case rejecting the argument that the statutory rate is prima facie evidence of a fair rate and holding the statutory rate is a "floor on permissible rates." Id., at 719). This "floor" rate is not used if competent evidence

of a more appropriate rate is provided - "once competent evidence is presented supporting another rate of interest as being more appropriate, the district judge must then determine which rate would permit the most reasonable interest rate." Barsy, at 718. The Court reasoned that just compensation requires that the landowner "be put in as good position pecuniarily as he would have been if his property had not been taken" and the "purpose of awarding interest is to compensate the landowner for the delay in the monetary payment that occurred after the property has been taken." Barsy, at 718.

Therefore, this Court should determine the proper interest rate based on what rate of return the Landowners could have achieved on $34,135,000 had it been paid on August 2, 2017, the date set forth above. This requires the Court to decide the proper rate of return from 2017 (the date of take) to 2021 (the date of judgment).

In the Barsy case, as one factor to decide the proper interest rate, Mr. Barsy's expert testified that a prudent landowner would have "invested his money in land similar to that condemned" and the district court relied, in part, on this rate of return on land as the basis for the proper interest rate and the Nevada Supreme Court held this substantially supported the district court's interest rate finding. Barsy, at 718-19. Moreover, as this Court heard extensively during this litigation, the Landowners principals are **real estate** developers who invest in land for the purpose of future development and/or sale and, therefore, the only way the Landowners can be "put in as good position pecuniarily as [they] would have been if [their] property had not been taken" is to consider the rate of return on land investments during the relevant period.[3] Therefore, the Landowners, following Barsy, have obtained the rate of return on vacant single-family and multi-family residential properties in Las Vegas during the relevant periods (2017-2021) – which

[3] The Landowners have incurred significant other losses as a result of the City's actions in this matter, including substantial damages to their company, meaning that even this award of prejudgment interest will not fully cover all of their losses.

is consistent with the legally permissible uses of the 35 Acre Property. Based on this data, the Landowners then suggest a proper rate of return.

a. Rate of Return on Vacant Residential Land Similar to the 35 Acre Property, Following the Barsy Decision.

To determine the rate of return on land similar to the 35 Acre Property for the years 2017 - 2021, the Landowners provide two sources: 1) an analysis by expert appraiser Tio DiFederico; and, 2) an analysis by real estate expert, Bill Lenhart. *Exhibits 1 and 2, respectively.*

Analysis by Appraiser Tio DiFederico[4] – Mr. DiFederico researched and analyzed the appreciation rate for vacant residential land in Las Vegas from August 2, 2017 – September, 2021. He considered Colliers International Research & Forecast Reports from the 3rd quarter 2017 through 3rd quarter 2021, which reported an increase of 190.2% for vacant residential land in the Southwest submarket of Las Vegas – the location of the 35 Acre Property (which equates to **30.5% per year, to be compounded annually**). *Exhibit 1, p. 1 and p. 3, Summary Chart.* He also considered data compiled by CoStar, a source relied upon by expert appraisers that compiles property sales in Las Vegas, which showed an increase of 128.6% for vacant residential land in Las Vegas from 2017-2021 (which equates to **23% per year, to be compounded annually**). *Exhibit 1, p. 2 and p. 3, Summary Chart.* He also considered the rate increase for vacant residential finished lots sold in the Summit, a residential area in Summerlin, which showed an increase of 97.1% from 2017-2021 (which equates to **18.9% per year, to be compounded annually**). *Exhibit 1, p. 2 and p. 3, Summary Chart.* Mr. DiFederico also considered the sale and resale of five vacant residential properties in Las Vegas during the relevant 2017-2021 period, which showed an increase of **23% per year, to be compounded annually**. *Exhibit 1, p. 4.* Mr.

[4] Mr. DiFederico confirms by Declaration that all of the data in his report is considered relevant and reliable in his field of expertise and is true and correct. *Exhibit 1A, Declaration of Tio DiFederico*.

DiFederico then concludes that an investor who purchased residential land in the area of the 35 Acre Property in 2017 and held that investment until 2021, would have received a rate of return of 23%, to be compounded annually. *Id.* This analysis is consistent with the analysis that was approved in the Barsy case.

Analysis by Real Estate Expert Bill Lenhart[5] – Mr. Lenhart is the managing member of a large real estate brokerage company - Sunbelt Development and Realty Partners, LLC. He researched seven properties that were originally purchased by investors at Clark County auctions (involving BLM / Clark County Aviation properties) and then resold that property during the relevant 2017-2021 period. *Exhibit 2.* All eight of the sales and re-sales involve vacant residential land in the southwest sector of the Las Vegas valley – near the area of the 35 Acre Property. *Id.* These eight sales and resales showed an annual rate of return on these residential properties of 39.40%, 25.81%, 47.82%, 47.99%, 45.50%, 45.50%, 22.03%, and 15.32%. *Id.* He concluded, based on his research and analysis, that an investor that invested $34,135,000 in vacant residential land in the Southwest sector of Las Vegas in 2017 and resold it in 2021 would reasonably expect an annual rate of return of **25-27%, to be compounded annually**. *Id.* This analysis is also consistent with the analysis that was approved in the Barsy case.

Therefore, a proper rate of return (interest rate) to apply in specific context of this inverse condemnation case is either 23% or 25-27%, to be compounded annually.

3. Third Issue - Whether the Interest Will Be Compounded.

The final determination this Court must make to calculate the prejudgment interest is whether the interest will be compounded annually or more often. The Nevada Constitution states, "[j]ust compensation shall include, but is not limited to, **compounded interest** and all reasonable

[5] Mr. Lenhart confirms by Declaration that all of the data in his report is considered relevant and reliable in his field of expertise and is true and correct. *Exhibit 2A, Declaration of Bill Lenhart.*

costs and expenses actually incurred" Nev. Const. art. I §22(4) (emphasis added). NRS 37.175(1) further provides that this compounding continues "until the date the judgment is satisfied." Therefore, the interest amounts herein will continue to increase until the City satisfies the judgment.

There are several ways to compound interest - annually, quarterly, monthly, weekly, daily, etc. Here, experts Tio DiFederico and Bill Lenhart opine that, if the rate of return on land is used, then the rate should be compounded annually. *Exhibits 1 and 2.* This is what an investor in the real world would have achieved had the $34,135,000 judgment been paid in 2017. And, it is what the Landowners would have received on their land investments, which is necessary to "be put in as good position pecuniarily as [they] would have been if [their] property had not been taken." Barsy, at 718. And, the "purpose of awarding interest is to compensate the [Landowners] for the delay in the monetary payment that occurred after the property has been taken." Id.

Accordingly, applying the rate of return on land, requires that this rate be compounded annually.

III. CONCLUSION AND CALCULATIONS

The analysis above provides the basis for the Court to calculate the prejudgment interest in this matter. **First**, it is respectfully requested that prejudgment interest commence on August 2, 2017. **Second**, it is respectfully requested that this Court order 23% as the rate of return,[6] as this is the rate most commensurate with land value increases, like the 35 Acre Property, and this same analysis was approved in the Barsy case.[7] **Third,** it is respectfully requested that the rate of return be compounded annually. Using these data points, the prejudgment interest award in this case may

[6] As set forth above, Mr. Lenhart's report arrived at a 25-27% rate of return, which may also be considered by this Court. In the event this Court determines the proper rate of return is 25-27%, the Landowners will provide calculations for this rate of return.

[7] As indicated above, this 23% is the lowest rate of return provided by the experts.

be easily calculated, using a compound interest calculator, which results in the following prejudgment interest award from August 2, 2017 (date of take) – February 2, 2022 (anticipated date of entry of prejudgment interest order):

> $34,135,000 x 23% for 4.5 years, compounded annually = **$52,515,866.90** in prejudgment interest.

See Exhibits 3, 4, and 5, three different compound interest calculators inputting the above data and uniformly arriving at $52,515,866.90 in prejudgment interest.

Additionally, prejudgment interest continues to run until the judgment is satisfied. NRS 37.175(1). The prejudgment interest for the final half year is $8,520,411.33, or $17,040,822.70 for a full year – up to August 2, 2022. *See Exhibit 5.* This equates to $46,687.19 per day ($17,040,822.70 / 365 = $46,687.19). Therefore, it is respectfully requested that the daily prejudgment interest accrue at a rate of **$46,687.19 per day** until the City satisfies the judgment. This daily rate will apply up to August 2, 2022, meaning if the City does not satisfy the judgment by that date, the daily prejudgment interest will continue to accrue as follows:

- For the period August 2, 2022 – August 2, 2023 – **$54,601.92 per day** ($19,929,699.57 interest / 365); and,
- For the period August 2, 2023 – August 2, 2024 – **$67,160.36 per day** ($24,513,530.51 interest / 365).

See Exhibits 6 and 7, daily rates taken from the interest calculations for August 2, 2022 – August 2023 and August 2023 – August 2024.

Two blanks were left in the FFCL re: Just Compensation and Judgment in Inverse Condemnation for prejudgment interest. It is respectfully requested that those two blanks now be filled in as follows:

The City shall pay prejudgment interest in the amount of **$52,515,866.90** for interest up to ~~the date of judgment (October 27, 2021)~~ February 2, 2022,[8] and a daily prejudgment interest thereafter in the amount of **$46,687.19 (up to August 2, 2022); $54,601.92 (up to August 2, 2023); and, $67,160.36 (up to August 2, 2024)**, until the date the judgment is satisfied. NRS 37.175.

DATED this 9th day of December, 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

[8] The October 27, 2021, date should be changed to February 2, 2022, as this date reflects the anticipated date of entry of the prejudgment interest order, meaning interest should be calculated up to this date, with daily interest running thereafter until the City satisfies the judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 9th day of December, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE PREJUDGMENT INTEREST** 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

MAMJ
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, 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, v. 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. A-17-758528-J Dept. No. XVI **CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** **(HEARING REQUESTED)**

Pursuant to Rules 59(e), 60(b) and 62(b) of the Nevada Rules of Civil Procedure, the City of Las Vegas ("City") respectfully moves for an amendment of the Findings of Fact and Conclusions of Law on Just Compensation of this Court awarding Plaintiffs $34,135,000 in damages and requiring further briefing on the Developer's request for interest on the damage award, costs, attorneys' fees, and property taxes ("Judgment"). The Court entered notice of the Judgment on November 24, 2021. This motion is supported by the existing record in this action, the memorandum of points and authorities, and any oral argument that the Court may allow at the time of the hearing on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

On November 18, 2021, after conducting a 1-day bench trial, the Court filed the Judgment, notice of which was entered on November 24, 2021, awarding the Developer damages of $34,135,000 for the City's alleged taking of the 35-Acre Property, despite the fact that the Developer purchased the entire 250-acre Badlands for less than $4.5 million only two years before the alleged taking (the Court excluded all evidence of the $4.5 million purchase price). While the Judgment requires the City to pay the Developer $34,135,000 for the "taking" of the 35-Acre Property, the Judgment fails to provide that if the City pays the Judgment, the Developer shall be required to convey fee simple title to the 35-Acre Property to the City. It would be contrary to law and unjust for the City to pay the Developer for "taking" the property yet allow the Developer to retain possession and title to the property.

Legal Standard

The Court may grant a motion to amend a judgment under NRCP 59(e) to correct manifest errors of law or to prevent manifest injustice. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). The court has additional authority under NRCP 60(b) to grant relief from a judgment or order for "any . . . reason that justifies relief."

Argument

I. The Court should amend the Judgment to require that, if the City pays the Judgment, the Developer shall convey fee simple title to the 35-Acre Property to the City

The Judgment erred in not requiring the Developer to convey its fee simple interest in the 35-Acre Property to the City if the City pays the damage award to the Developer. A deed conveying fee simple interest to the government is required upon payment of just compensation for the alleged taking. *See Milens of California v. Richmond Redevelopment Agency*, 665 F.2d 906, 910 (9th Cir. 1982); *Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency*, 561 F.2d 1327, 1332 (9th Cir. 1977). Although the Judgment requires the City to pay the alleged market value of the 35-Acre Property—approximately $34 million—it provides no mechanism or procedure for the City to take title to the Property, nor any requirement that the Developer convey title. Unless the Judgment is

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

amended to add this requirement, the City faces the manifest injustice of paying for "taking" the property without actually receiving title. To avoid manifest injustice to the City—and a further unwarranted windfall to the Developer—the Court must amend the Judgment to provide such a procedure and requirement.

Without waiving its rights to challenge the Judgment, the City suggests that an additional paragraph should be added to provide that if the City deposits the just compensation and any other amounts that the Court determines are owed to the Developer with the Clerk of the District Court, the Developer shall deposit a deed conveying fee simple title to the 35-Acre Property to the City, whereupon the Clerk shall transfer the deed to the City and the money deposited by the City to the Developer.[1]

II. Because eminent domain law does not apply to this inverse condemnation action, the Court should not impose obligations on the City under NRS Chapter 37

The Developer may contend that the Court should apply NRS 37.140 to this case. That eminent domain statute requires that a public agency taking property by eminent domain must pay the just compensation within 30 days after final judgment and also pay certain prejudgment interest, respectively. These statutory provisions do not apply to this inverse condemnation case.

NRS Chapter 37, the state's eminent domain law, applies only where a public agency has exercised its power of eminent domain. NRS 37.0095; *see also Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 9, 106 P.3d 1198, 1199 (2005) ("NRS Chapter 37 . . . contains the statutory scheme governing Nevada eminent domain proceedings"); *Gold Ridge Partners v. Sierra Pacific Power Co.*, 128 Nev. 495, 499, 285 P.3d 1059, 1062 (2012) ("NRS Chapter 37 governs the power of a public agency to take property through eminent domain proceedings"). As Judge Herndon correctly found,

[1] The City would not be required to deposit the just compensation with the Clerk until the Judgment becomes final after appellate review. Because the City intends to appeal the Judgment and move for a stay, which should be granted as a matter of law, the Judgment would not become final until and unless the Nevada Supreme Court affirms the Judgment and issues a remittitur. *See Clark Cty. Off. of Coroner/Med. Exam'r v. Las Vegas Rev.-J.*, 134 Nev. 174, 177, 415 P.3d 16, 19 (2018) ("[u]pon motion, as a secured party, the state or local government is generally entitled to a stay of a money judgment under NRCP 62(d) without posting a supersedeas bond or other security."). The City is separately filing a motion to stay the Judgment.

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

eminent domain and inverse condemnation "have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken." *See* City's Appendix of Exhibits Vol. 8 filed 8/25/21, Ex. CCCC at 1499 fn. 4. By contrast, in inverse condemnation, "the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation." *Id.*

Despite the clear differences between the two doctrines, the Developer has consistently conflated them, relying primarily on language in *Clark County v. Alper*, 100 Nev. 382, 685 P.2d 943 (1984). But *Alper* does not support the proposition that the State's eminent domain law applies wholesale to inverse condemnation cases. In *Alper*, the county physically condemned property for a road-widening project but failed to initiate formal eminent domain proceedings under NRS Chapter 37. 100 Nev. at 391, 685 P.2d at 949. Only then did the property owner file an inverse condemnation action, at which point the parties stipulated to the county's liability. *Id.* The trial court valued the property as of the time of trial rather than the time of the taking when the City physically took possession of the property. In doing so, the court relied on NRS 37.120(1)(b), which allows valuation to be made as of the time of trial where the government does not bring a formal eminent domain proceeding to trial within two years after taking property. *Id.*[2]

The county argued that because the property owner's case was technically brought in inverse condemnation, NRS 37.120(1)(b) was inapplicable. *Id.* The Supreme Court upheld the trial court's date of valuation, holding that "the county [could not] delay formal eminent domain proceedings on the expectation that the landowner [would] file an action for inverse condemnation and thereby avoid its obligation to bring the matter to trial within two years." *Id.* The Court further noted that the eminent domain law "places the burden on the government to move the case to trial within two years after the action is commenced. If it does not, and the delay is not primarily caused by the actions of the

[2] NRS 37.120 has since been amended and no longer includes a subsection (1)(b). However, the substance of the law is essentially unchanged, and still provides that property is valued as of the date of trial if the government fails to bring an eminent domain action to trial within two years of the taking. NRS 37.120.

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

landowner, the government must account for the increased value of the property." *Id.* Therefore, to the extent *Alper* holds that eminent domain and inverse condemnation proceedings may be governed by the same rules, that holding is limited to the narrow issue of the date of valuation if the agency that has physically taken the property does not file an eminent domain action and bring it to trial within two years after the date of physical possession. *Id*.

Alper's reasoning was based on the fact that the County physically took property but failed to initiate and timely bring to trial a formal eminent domain proceeding. *Id.* In other words, the County could not take advantage of inverse condemnation law—which would have valued the property at the time of the taking—by failing to meet its obligations under the eminent domain law. Therefore, *Alper* applies narrowly to the small subset of cases where the government physically takes property but fails to initiate eminent domain proceedings, thereby forcing the property owner to file an inverse condemnation action.

No such circumstances exist here. This is a regulatory taking action. The City has not exercised its eminent domain powers under NRS Chapter 37. The Developer does not claim that the City took physical possession of the property, nor does the Developer claim any damages for the alleged public trespass on its property. In sharp contrast to *Alper*, the Developer claims that the City prevented the Developer's *development* of the property for its desired use. This is not a case where the City took physical possession of the property to build a public facility yet failed to file an eminent domain action. Unlike eminent domain actions where the public agency requires title and possession to build a public project, such as a road or a wastewater treatment plant, and in many cases has already taken possession of the property and started the project (*see* NRS 37.100 providing for condemning agency's possession of property prior to judgment to avoid delay in implementing public project), here the City does not need or want the 35-Acre Property for a public facility. Accordingly, it would be a manifest error of law to require the City to pay the assessed compensation within 30 days after

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

the Judgment under NRS 37.140, which has no application to this case. In amending the Judgment, therefore, the Court should not rely on the provisions of NRS Chapter 37, including NRS 37.140.[3]

Conclusion

The City respectfully requests that the Court grant its motion and alter and/or amend the Judgment accordingly. In addition, under Rule 62(b)(3) of the Nevada Rules of Civil Procedure, the City requests that the Court stay any execution of the Judgment pending the disposition of this Motion.[4]

DATED this 21st day of December 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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

[3] Even if the Court finds that NRS Chapter 37 applies, the City would not be required to pay the Judgment within 30 days. NRS 37.140 requires payment of just compensation only after entry of a "final judgment." "'Final judgment' means a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment." NRS 37.009(2). The Judgment here can be directly attacked by all three procedures and is not final for purposes of NRS 37.140. Accordingly, even assuming *arguendo* NRS 37.140 applies, the City is not required to pay the Judgment unless and until the Nevada Supreme Court affirms it and issues a remittitur.

[4] The City also intends to file a Motion to Stay execution of the Judgment under NRCP 62(d) and 62(e) and NRAP 8 pending the disposition of the instant Motion, which has tolled the time by which the City may file a notice of appeal of the Judgment.

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 21st day of December, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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

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CLERK OF THE COURT

MSTY
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

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

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, v. 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.	Case No. A-17-758528-J DEPT. NO.: XVI **MOTION FOR IMMEDIATE STAY OF JUDGMENT** **(HEARING REQUESTED ON ORDER SHORTENING TIME)** **OST Hearing Date:** **OST Hearing Time:**

Under Rules 62(b)(3) and (4), 62(d) and 62(e) of the Nevada Rules of Civil Procedure, Nevada Rule of Appellate Procedure 8, and EDCR 2.26, the City of Las Vegas respectfully moves the Court for an immediate stay of the Findings of Fact and Conclusions of Law on Just Compensation of this Court ("Judgment") awarding Plaintiffs $34,135,000 in damages and potentially interest on the damage award, costs, attorneys' fees, and property taxes, pending a final resolution of the City's Motion to Amend Judgment ("Motion to Amend") and its appeal of the

Judgment to the Nevada Supreme Court.[1] The Court filed the Judgment on November 18, 2021, and Plaintiffs 180 Land Co LLC and Fore Stars Ltd (the "Developer") filed the Notice of Entry of Order of the Judgment on November 24, 2021.

In addition to issuing an immediate stay of the Judgment, the City requests that the Court issue an immediate stay of the following decisions of the Court:

1. Findings of Fact and Conclusions of Law Regarding Plaintiff Landowner's Motion to Determine "Property Interest" filed October 12, 2020;
2. Findings of Fact and Conclusions of Law Granting Plaintiff Landowner's 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 filed October 25, 2021; and
3. Decision of the Court filed October 28, 2021.

This motion for an immediate stay is supported by the existing record in this action, the attached Declaration of George F. Ogilvie III, a memorandum of points and authorities, and any oral argument that the Court may allow at the time of the hearing on this Motion.

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[1] Because a motion filed pursuant to NRCP 59(e) tolls the time for the City to file an appeal and allows the Court to maintain jurisdiction over this matter, the City has not filed any notice of appeal at this time. NRAP 4(a)(4). However, the City intends to file a notice of appeal pending the disposition of its Motion to Amend. The notice of appeal will provide a separate basis for an automatic stay without bond. *See* Section I(A), *infra*. Accordingly, the City includes that basis for an automatic stay in the instant Motion.

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

ORDER SHORTENING TIME

virtual

Upon good cause shown, please take notice that the hearing before the above-entitled Court on the City of Las Vegas' **MOTION FOR IMMEDIATE STAY OF JUDGMENT** is shortened to the ~~_____ day of December, 2021, at ___: _____ __. m.~~, or as soon thereafter as counsel may be heard.

January 13, 2022 at 9:30 am

MH
Ent

IT IS FURTHER ORDERED that Plaintiffs shall file and serve their opposition, if any, on or before the ~~_____ day of December, 2021~~, and Defendant's reply brief, if any, shall be filed and served on or before the ~~____ day of December, 2021~~.

January 5, 2022

January 11, 2022

Dated this 22nd day of December, 2021

DISTRICT COURT JUDGE

MH

31B EF5 0A4A 17AE
Timothy C. Williams
District Court Judge

Submitted by:

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

*BlueJeans Dial-in: 1-408-419-1715
Meeting ID: 305 354 001
Participant Passcode: 2258
Online: https://bluejeans.com/305354001/2258

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 Defendant City of Las Vegas

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

DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF CITY OF LAS VEGAS' MOTION FOR IMMEDIATE STAY OF JUDGMENT

I, George F. Ogilvie III, declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and I am a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas ("City") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I make this declaration in support of the City's Motion for Immediate Stay of Judgment and in support of the City's request for an order shortening the time for a hearing on this motion.

3. On November 21, 2018, the Court filed its Findings of Fact and Conclusions of Law on Petition for Judicial Review denying Plaintiffs' Petition for Judicial Review ("PJR FFCL"), finding, among other things, that (a) zoning does not confer constitutionally protected property interests on property owners to use the property for the use the owner chooses, even if the proposed use is a permitted use in the zoning district, (b) Nevada cities have discretion to disapprove or condition an owner's proposed use of property even if the proposed use is a permitted use in the zoning district, (c) single or multi-family housing is not permitted in the Badlands because the Badlands was designated PR-OS in the City's General Plan on the date Plaintiffs purchased the Badlands, and the Badlands is currently designated PR-OS, (d) the City Council has discretion to change the General Plan designation of the Badlands or leave the designation in place.

4. On October 12, 2020, the Court filed its Findings of Fact and Conclusions of Law Regarding Plaintiff Landowner's Motion to Determine "Property Interest" ("FFCL re Property Interest") finding, among other things, that (a) zoning confers constitutionally protected property interests on property owners to use the property for any use the owner chooses as long as the use is a permitted use in the zoning district; (b) Nevada cities have no discretion to disapprove or condition the owner's proposed use as long as the use is a permitted use in the zoning district; (c) single and

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

multi-family housing are the only permitted uses in an R-PD7 zoning district; (d) because the Badlands is zoned R-PD7, single and multi-family housing are the only permitted uses in the Badlands; (e) the General Plan designation of property cannot prevent the owner from using its property for any use permitted by zoning.

5. On October 25, 2021, the Court filed its Findings of Fact and Conclusions of Law Granting Plaintiff Landowner's 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 re Take"), finding, among other things, that (a) despite the City's denial of only one set of applications to develop the individual 35-Acre Property ("35-Acre Application"), the City has made a final decision that the City will never allow any development of structures on the 35-Acre Property; (b) because the City denied one set of applications filed by the Developer to construct 61 housing units on the 35-Acre Property, the City is liable for a taking of the 35-Acre Property, despite the Court's earlier conclusions of law that (i) the 35-Acre Property is designated PR-OS in the City's General Plan, which does not permit residential use, (ii) the R-PD7 zoning of the Badlands does not confer a property right to develop the property, and (iii) even if zoning conferred property rights and the zoning were inconsistent with the General Plan designation of the property, the PR-OS designation is superior to zoning and controls the allowable use of the 35-Acre Property; (c) the City's Bill 2018-24 effected a physical taking of the 35-Acre Property despite the fact that that legislation did not apply to the 35-Acre Property on its face and the City never applied the legislation to the 35-Acre Property; and (d) the City is liable for a nonregulatory taking despite the Court's failure to identify any nonregulatory action of the City that wiped out all use or value of the 35-Acre Property to the Developer.

6. On October 28, 2021, the Court filed its Decision of the Court ("Decision") finding that the City must pay the Developer $34,135,000 as just compensation for the City's alleged taking of the 35-Acre Property.

7. On November 13, 2021, the Court filed its 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.

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

Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument ("MIL Order"). Among other things, the MIL Order excluded all evidence that (a) the Developer purchased the entire 250-acre Badlands for less than $4.5 million in an arms-length open market transaction in March 2015, and thus a 35-Acre portion of the Badlands could not possibly be worth $34,135,000 in June 2017 when the City denied the Developer's one set of applications to build 61 housing units on the 35-Acre Property; (b) by the Developer's own evidence, the City's approval of construction of 435 luxury housing units on a 17-Acre portion of the Badlands increased the value of the 17-Acre Property alone to more than $26 million, and the Developer still has 233 acres of the Badlands to use for development, parks, recreation, or open space; (c) at the times the Developer purchased the Badlands and applied to construct 61 housing units on the 35-Acre Property, the Badlands was designated PR-OS in the City's General Plan, which did not permit residential development, and therefore the highest and best use of the Badlands was not residential, as the Developer's appraiser concluded, but rather uses allowed by the PR-OS designation; and (d) because the highest and best use of the 35-Acre Property was PR-OS at the time the City denied the Developer's application, the City's denial of the application did not change the use or value of the Badlands and the Developer suffered no damage as a result of the City's actions.

8. On November 18, 2021, the Court filed its Findings of Fact and Conclusions of Law on Just Compensation ("Judgment") awarding Plaintiffs damages of $34,135,000 for the City's alleged taking of the 35-Acre Property despite excluding the City's evidence that the Developer purchased the entire 250-acre Badlands for less than $4.5 million, and allowing briefing on and reserving its decision on Plaintiffs' claim for attorneys' fees, costs, prejudgment interest, and property taxes.

9. On November 10, 2021, in *180 Land Co. LLC, Fore Stars, Ltd. v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-780184-C ("65-Acre case"), the Developer filed "Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the Property Interest Issue [FFCL re Property Interest]; 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 [FFCL re Take]; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent

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2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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Nevada and United States Supreme Court Precedent on the Take Issue" ("65-Acre Issue Preclusion Motion"). *See* City's Supp. App. Vol. 20 filed 10/13/21, Exhibit WWWW. The Developer's 65-Acre Issue Preclusion Motion contended that this Court's FFCL re Property Interest, FFCL re Take, and Decision mandate that Judge Trujillo deny the City's motion for summary judgment now under submission in the 65-Acre case and, by implication, enter other rulings consistent with the FFCL re Property Interest, FFCL re Take, and Decision, on the grounds that those decisions would have preclusive effect on all issues in common in the 35-Acre and 65-Acre cases.

10. On November 15, 2021, in *Fore Stars, Ltd. v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-773268-C ("17-Acre case"), the Developer filed its Supplement to Plaintiff Landowners' Opposition to City's Motion for Summary Judgment and Countermotion for Discovery Pursuant to NRCP 56(d) ("17-Acre Issue Preclusion Motion"). *See* City's Supp. App. Vol. 24 filed 12/20/21, Exhibit CCCCC. The 17-Acre Issue Preclusion Motion contends that Judge Jones should deny, on the basis of issue preclusion, the City's motion for summary judgment that is now under submission in the 17-Acre case, allow the Developer discovery, and, by implication, enter other rulings consistent with the FFCL re Property Interest, FFCL re Take, and Decision in the 17-Acre case on the grounds that those decisions would have preclusive effect on all issues in common in the 35-Acre and 17-Acre cases.

11. The following media articles, copies of which are attached hereto as **Exhibit A**,[2] alerted the public, property owners, and real estate developers in Nevada to the Judgment:

a. September 29, 2021 Las Vegas Review-Journal, "Judge rules Las Vegas took 35 acres on Badlands."

b. September 30, 2021, KNTV "City of Las Vegas suffers another defeat in battle over Badlands: Taxpayers shelling out millions for losing battle."

c. October 5, 2021, Las Vegas Review-Journal, "A win for all landowners': Judge rules Las Vegas took 35 acres on Badlands."

[2] Exhibit A is the only exhibit attached to this motion. All other exhibit references contained herein refer to the City's appendix of exhibits on file with the Court.

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2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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d. October 5, 2021, Editorial in Las Vegas Review-Journal, "Badlands money pit just got deeper."

e. October 6, 2021, Las Vegas Review-Journal, "Las Vegas to appeal Badlands ruling."

f. November 1, 2021, Insurance Journal, "Vegas Owes Builder $34M in Golf Course Dispute" which stated: "Almost all development plans stalled at City Hall in disputes about whether zoning rules prohibit housing and allow only open-space projects."

g. November 30, 2021, Las Vegas Register-Journal, "Time for City to end the Badlands debacle" which stated that "Judge Williams ordered the City to pay $34.1 million for denying the Developer's application to develop the 35-Acre Property with housing 'even though the land was zoned for residential development.'"

h. November 30, 2021, Las Vegas Register-Journal, "Las Vegas to appeal $34M judgment in Badlands ruling" which stated: "[The Developer] accused the City of illegally interfering with development to the point that it made the land impossible to build upon and wiped out its economic value."

i. December 1, 2021, KTNV "First financial verdict dealt to City of Las Vegas in years-long Badlands battle" which stated: "Judge Tim Williams said the City of Las Vegas prevented the legally permitted use of the property . . . ."

j. December 1, 2021, AP News, "Judge rules Vegas owes builder $34M in golf course dispute" which stated: "[The dispute is] about whether zoning rules prohibit housing and allow only open-space projects."

12. At a public session of the Las Vegas City Council on October 6, 2021, members of the City Council explained their understanding that the City is liable for a taking of the 35-Acre Property because the Developer had a legal right to build residences insofar as that use is permitted by the zoning of the property. *See* City's Supp. Appendix of Exhibits Vol. 20 filed 10/13/21, Exhibit YYYY.

13. The City contends that the Court's FFCL re Property Interest, and FFCL re Take, and Judgment are contradicted by all Nevada and federal authority, and it intends to file a notice of

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

appeal and respectfully requests that this Court stay enforcement of the Judgment while the appeal is pending before the Nevada Supreme Court.

14. Consistent with standard practice, I am serving a courtesy copy of the motion to stay and the proposed order shortening time on Plaintiffs' counsel at the same time I submit the documents to the Court for signature.

15. Once I receive the signed Order Shortening Time, I will promptly file the same and the motion to stay through the Court's electronic filing system.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

DATED this 21st day of December, 2021.

/s/ George F. Ogilvie III
George F. Ogilvie III

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

The City of Las Vegas moves on shortened time for an emergency stay of enforcement of the Judgment pending the disposition of its Motion to Amend and the disposition of the City's appeal, which the City will file after the resolution of the Motion to Amend. Under NRCP 62(b)(3) and (4), the City is entitled to a stay pending the disposition of its Motion to Amend. In addition, the City is entitled to a stay pending appeal as a matter of right, without posting a supersedeas bond under NRCP 62(d) and 62(e). Alternatively, a stay is warranted under the NRAP 8(c) factors.

In ruling that the City has "taken" the 35-Acre Property by denying a single set of applications to build 61 houses on the property, the Court has held that (1) the zoning of property confers a constitutionally protected property right in the owner to build whatever the owner desires as long as the use is permitted under the zoning; (2) the government has no discretion to deny or condition approval of a development application; and (3) Master Plans (General Plans) are irrelevant to any development application. In issuing these unprecedented rulings, the Court has found unconstitutional virtually the entire land use regulatory scheme in Nevada, which requires cities to adopt General Plans governing the legal use of property and confers broad discretion on

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

cities to apply General Plan designations and zoning ordinances in reviewing land use permit applications. *See* NRS 278.010–278.630; *see e.g.*, NRS 278.150(1) ("The planning commission shall prepare and adopt a . . . general plan for the physical development of the city . . . which *in the commission's judgment* bears relation to the planning . . . for the development of the city.") (emphasis added); NRS 278.250(2) ("The zoning regulations *must* be adopted in accordance with the master plan for land use and be designed: . . . (b) To promote the conservation of open space . . . (k) To promote health and the general welfare.") (emphasis added); NRS 278.250(4) ("In exercising the powers granted in this section, the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate . . . .").

The Court's ruling also invalidates the City's General Plan and Las Vegas Municipal Code (Unified Development Code ("UDC")) sections 19.10-19.18 and Appendices, under which the City exercises the discretionary powers granted by state law to process land use applications. The UDC requires that, unless otherwise authorized by the UDC, all development approvals must be "consistent with the spirit and intent of the General Plan." UDC 19.16.010.A. The UDC also explains, for example, that the purpose of the review of Site Development Plans is to ensure that proposed development is compatible with nearby development and the General Plan. UDC 19.16.100.E. The City's discretion in reviewing these plans is emphasized by the fact that the UDC provides that the reviewing body may attach "to the amendment to an approved Site Development Plan Review whatever conditions are deemed necessary to ensure the proper amenities and to assure that the proposed development will be compatible" with nearby development. UDC 19.10.050.D. Similarly, the General Plan's Land Use Element states that "any zoning or rezoning or rezoning request must be in substantial agreement with the Master Plan . . . ." Ex. AAAA at 1435 . . . The Court's decision turns this extensive body of property and land use law on its head.

In reaching the sweeping conclusion that local agencies no longer have discretion in the approval of land use permit applications, the Court has disregarded decades of unanimous Nevada Supreme Court authority to the contrary. *See*, *e.g.*, *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527, 96 P.3d 756, 759-60 (2004) (holding that because City of Las Vegas' site development review process [the same process at issue in this case] involved discretionary action

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PHONE 702.873.4100 • FAX 702.873.9966

by the City Council, the project proponent had no vested right to construct); *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 246, 871 P.2d 320, 325 (1994) ("The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally protected property interest."). Indeed, if property owners have a constitutionally protected property right to approval of any application for development they choose the file, the three Nevada Supreme Court decisions adjudicating regulatory takings claim based on denial of a land use development application, all of which find no taking, would have reached the opposite conclusion. *See State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35. These cases, ignored in the Court's rulings, do not even remotely recognize a constitutional right to build conferred by zoning. They stand for the opposite proposition.

This Court's rulings also ignore a Nevada Supreme Court decision in, *Seventy Acres, LLC v. Jack B. Binion, et al.*, NSC Case No. 75481, a related case finding that to develop housing in the Badlands, an owner must first obtain the City's discretionary approval of an amendment to the General Plan. The Badlands has been designated Parks/Recreation/Open Space ("PR-OS") by ordinance in the City's General Plan since 1992 and was so designated in 2015 when the Developer bought the Badlands. Exs. I, M, N, P, Q. The PR-OS designation does not permit housing. In reinstating the City's approval of 435 luxury housing units for the 17-Acre Property, the Nevada Supreme Court stated that "[t]he governing ordinances require the City to make specific findings to approve a general plan amendment, LVMC 19.16.030(1)," among other applications. Ex. DDD at 1014. In so finding, the Supreme Court necessarily acknowledged both the validity of the PR-OS designation *and* the City's discretion to change it or retain it.

Ignoring authorities directly on point, this Court's rulings rely instead on cases that do not even address the issue. *E.g.*, *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006); *City of Las Vegas v. Bustos*, 119 Nev. 360 (2003). Moreover, the Court's recent rulings directly contradict its earlier decision in this case that: (a) "[a] zoning designation does not give the developer a vested right to have its development applications approved"; (b) the PR-OS General Plan designation is

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

valid and bars residential use of the Badlands, regardless of the zoning; and (c) the City has discretion to amend the PR-OS designation. Ex. XXX at 1385-86. In particular, in its PJR FFCL, this Court stated that the City Council's decision to grant or deny a general plan amendment application was a discretionary act. *Id.* The Court stated that the City Council was "well within" its discretion to determine that the Developer did not meet the criteria for a General Plan Amendment, regardless of the property's zoning designation.

This Court also found, as a matter of law, that the PR-OS designation governed the permissible uses of the 35-Acre Property, regardless of the zoning, necessarily rejecting the notion that zoning confers rights to build. *Id.* at 1392-94. The Court stated, "no matter the zoning designation," the applications for a general plan amendment were "subject to the Council's discretionary decision making." *Id.* The Court further found that the Developer had purchased the Badlands "knowing that the City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-OS)," and that it was up to the Council to decide whether a change in the area or conditions justified the Developer's requested development. *Id.*

The Court's decision is also contrary to the conclusions reached by Judges Sturman and Herndon in the 133-Acre and 65-Acre cases that zoning does not confer any right to build. City's Supp. App. Vol. 21-22, Ex. ZZZZ at 154 (Judge Sturman: "Now the challenge that we have here is this idea that zoning defines the property rights. . . . zoning defines what you can apply to use your property as, not your absolute right."); *see also id*. at 139-40, 142-49, 155-56, 161-62, 166-67; Ex. CCCC at 1496-97 (Judge Herndon: "Because the right to use land for a particular purpose *is not a fundamental constitutional right*, courts generally defer to the decisions of legislatures and administrative agencies charged with regulating land use.") (emphasis added).[3]

[3] The 133-Acre case before Judge Sturman is *180 Land Co. LLC, Fore Stars, Ltd., Seventy Acres, LLC v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-775804-J. In the 65-Acre case, *180 Land Co. LLC, Fore Stars, Ltd. v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-780184-C, Judge Herndon granted summary judgment for the City before he elevated to the Nevada Supreme Court. The 65-Acre case is now before Judge Trujillo. Judge Trujillo reheard the City's motion for summary judgment but has not issued a ruling.

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PHONE 702.873.4100 • FAX 702.873.9966

Before an ordinary appeal of the Court's ruling can be adjudicated by the Nevada Supreme Court, the land use regulatory system in Nevada could be thrown into chaos due to the perceived significance attributed by governing bodies to the Court's conclusions. As an indication of the potential effects of the Court's decision, the Developer contends that the decision is an issue-preclusion bar to a local agency's exercise of discretion to deny or condition its approval of any application to develop property in Nevada, as long as the proposed development is permitted by the zoning. Based on this rationale, property owners could rush to file applications for intensive development of property, contending that if the application is not approved ministerially, the agency is liable for just compensation to the owner. Local agencies would be placed in the difficult position of either approving development that causes irreparable harm to the environment and other community values or facing financial disaster. To avoid this dark scenario, the City requests that the Court stay the Judgment to allow this Court to rule on the pending Motion to Amend and further, to allow the Nevada Supreme Court time to review and correct the Court's Judgment.

The financial component of the Court's Judgment fails to take into account that the Developer paid less than $4.5 million for the entire 250-acre Badlands in 2015 in an arms-length transaction. Accordingly, a 35-Acre portion of the Badlands cannot possibly have a value of $34,135,000 only two years after the Developer's purchased the 250-acre property for $4.5 million, or $630,000 for the 35-Acre Property (4,500,000/250 = $18,000/acre x 35 = $630,000). This Court, however, excluded the City's evidence of the purchase price of the property, despite the fact that it is a perfect comparable sale for the 35-Acre Property. The Judgment should, therefore, be stayed before the City is required to pay the Judgment to allow the Supreme Court time to review the Court's conclusion that the City is required to pay the Developer $34,135,000 for a property that the Developer purchased for $630,000.

The Judgment should also be stayed because it ignores the City's approval of the Developer's applications to build 435 luxury housing units on the 17-Acre Property, which is part of the 250-acre parcel as a whole. In approving the 435-unit project, the City upzoned the Property and lifted the PR-OS restriction to allow 25 housing units per acre. According to Judge Herndon, the City's approval increased the value of the 17-Acre Property alone to more than $26 million. Ex.

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2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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CCCC at 1495. As the City demonstrated, the Developer engaged in the prohibited tactic of segmenting the 250-acre Badlands into four separate development sites and separately suing for a taking on each site. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 641 & n.1, 651, 855 P2d 1027, 1029 & n.1 (1993). In ignoring the parcel as a whole, the Court fails to acknowledge that the Developer has made six times its initial investment in the Badlands on the 17-Acre Property alone, and the Developer also owns the remaining 233 acres with the potential for development or continued use as a park, recreational, and open space amenity.

In sum, if the Judgment stands, the value of 52 acres of the Badlands would be increased from less than $1 million (17 acres + 35 acres x $18,000/acre purchase price = $936,000) to more than $60 million ($26 million for 17-Acre Property + $34 million for 35-Acre Property) in two years, and the Developer would also retain 198 acres of the Badlands for future use. The Judgment is a miscarriage of justice and is likely to be reversed.

Argument

This Court has broad discretion to manage its docket and "control the disposition of the cases with economy of time and effort for itself, for counsel, and for litigants." *Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)).

I. The City is entitled as a matter of right to a stay of the Judgment's requirement that the City pay damages to the Developer without posting a supersedeas bond, or is alternatively entitled to a stay under the NRAP 8(c) factors.

A. The Judgment should be stayed pending disposition of the Motion to Amend.

Rule 62(b)(3) and (4) of the Nevada Rules of Civil Procedure state that "the court may stay execution on a judgment – or any proceedings to enforce it – pending disposition of any of the following motions: . . .(3) under Rule 59, for a new trial or to alter or amend a judgment; or (4) under Rule 60, for relief from a judgment or order." *See* NRCP 62(b)(3) and (4). On December 21, 2021, the City filed its Motion to Amend under NRCP 59(e) and NRCP 60. Accordingly, the City requests that the Court stay execution of the Judgment pending a ruling on the Motion to Amend. In addition, the City requests that the stay be imposed without posting a bond because the City

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

intends to file a notice of appeal of the Judgment immediately after the Court rules on the Motion to Amend and, thus, the City will be entitled to an automatic stay without posting a bond as set forth in NRCP 62(d).

B. The City is entitled to an automatic stay of the money judgment without posting a bond.

The City is entitled to a stay as a matter of right – without posting a supersedeas bond – simply by filing this motion. NRCP 62(d) requires private appellants to file a bond as a prerequisite to a stay of the judgment. Public agencies, however, are exempt from the general rule: "When an appeal is taken by the State or by any county, city or town within the State, or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant." NRCP 62(e). The Supreme Court requires that NRCP 62(d) and (e) be read conjunctively to give a local government such as the City a right to a stay pending appeal without posting a bond. *Clark Cty. Off. of Coroner/Med. Exam'r v. Las Vegas Rev.-J.*, 134 Nev. 174, 177, 415 P.3d 16, 19 (2018). As the Supreme Court explained, "Upon motion, as a secured party, the state or local government is generally entitled to a stay of a money judgment under NRCP 62(d) without posting a supersedeas bond or other security." *Id.* As a result, upon the City's filing of this motion, and because the City intends to file its notice of appeal immediately following the Court's decision on the Motion to Amend, the Court should grant an automatic stay of the Judgment and further order that no bond is required. *See id.*

C. Even if a stay of the money judgment were not automatically warranted, the City is entitled to a stay of the money judgment under the NRAP 8(c) factors.

Even if the Court were to conclude, notwithstanding the foregoing authority, that the City is not entitled to an automatic stay of the money judgment under NRAP 62 (b)(3) and (4) and 62(d) and (e), it should nevertheless find the City is entitled to stay the money judgment pursuant to the NRAP 8(c) factors. In determining whether to stay a judgment pending an appeal, courts consider the following four factors: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether the appellant will suffer irreparable or serious injury if the stay is denied; (3) whether the respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether the appellant is likely to prevail on the appeal. NRAP 8(c)(1)-(4); *Mikohn Gaming Corp. v. McCrea*,

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

120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The Nevada Supreme Court has "recognized[d] that if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38. Applying these factors to the money judgment in this case, the City is entitled to a stay.

1. The object of the City's appeal would be defeated and the City would suffer irreparable harm if the stay were denied.

The City satisfies the first and second factors. The object of the City's appeal is to overturn the judgment finding it liable for a taking and ordering immediate payment of $34 million and perhaps additional money in the form of prejudgment interest, property taxes, attorneys' fees, and costs sought by the Developer (the Developer claims prejudgment interest of $52 million, more than $3 million in attorneys' fees, $1 million in property taxes, and more than $300,000 in costs). If the stay were denied and the City were forced to pay the money judgment, the Developer could spend or allocate the money elsewhere, and the City might never recover it, even if its appeal were successful. *Cf. Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000) (noting that increased litigation expenses alone do not constitute irreparable harm). In such a scenario, the money would be irrevocably lost, and "any victory on appeal will be hollow." *Mikohn*, 120 Nev. at 252, 89 P.3d at 39. The loss of $34 million, and perhaps more for prejudgment interest, etc. from the public treasury, would similarly constitute an irreparable harm to the City. For these reasons, the first and second factors weigh heavily in favor of granting the City a stay.

2. The Developer will not suffer injury if the stay were granted.

The City also satisfies the third factor. Permitting a stay of the money judgment against the City while its appeal is pending will not cause harm to the Developer. Instead, in the event the City's appeal is not successful, the Developer will be entitled to interest on the judgment even while it is stayed under NRS 17.130. As a result, the Developer would be made whole for the delay in payment by the additional interest it will earn on the Judgment.

. . .

. . .

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PHONE 702.873.4100 • FAX 702.873.9966

3. The City is likely to prevail on appeal.

The fourth factor weighs in the City's favor because the City is likely to prevail on appeal. When moving for a stay pending appeal, "a movant does not always have to show a probability of success on the merits," but instead "must 'present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.'" *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting *Ruiz v. Estelle* (5th Cir. 1981) 650 F.2d 555, 565).

a. The Categorical and *Penn Central* claims are devoid of merit

The Developer faces three separate and insurmountable barriers to prevail on its categorical and *Penn Central* taking claims. First, the claims are not ripe. Second, even if deemed ripe, the City did not wipe out or nearly wipe out the value of the 35-Acre Property. Third, even if the City had wiped out the value of the 35-Acre Property, the City allowed substantial development of the parcel as a whole, of which the 35-Acre Property is only one segment, negating a taking.

i. The Categorical and *Penn Central* claims are not ripe

In its categorical and *Penn Central* claims, the Developer alleges that the City excessively regulated the use of the 35-Acre Property. But as Judge Herndon found in the 65-Acre case, the court cannot determine whether the City has "taken" the property unless the City has made a final decision disallowing development that wipes out or nearly wipes out the economic value of the property. Judge Herndon found, in reliance on *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985) and *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419-20, 351 P.3d 736, 742 (2015), that the Developer's categorical and *Penn Central* claims were unripe and granted summary judgment to the City because the Developer had not filed and had denied any application to develop the individual 65-Acre Property. Ex. CCCC at 1504-15. Judge Sturman agreed with Judge Herndon's ripeness analysis, concluding that the categorical and *Penn Central* taking claims in the 133-Acre case are unripe because the City never had the chance to rule on the merits of the applications. *See* City's Supp. App. Vol. 21-22, Ex. ZZZZ at 152-53 ("I believe that with respect to the zoning issues that Herndon's analysis of ripeness is correct."); *see also id*. at 128-29, 150, 159.

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2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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Williamson County and all cases following that seminal decision require that a developer file and have denied at least two applications for development before a taking claim is ripe. 473 U.S. at 191; *see* Ex. CCCC at 1504-05 and authorities cited therein (Judge Herndon: "A regulatory takings claim is ripe only when the landowner has filed at least one application that is denied and a second application for a reduced density or a variance that is also denied.") (citing *Williamson County*, 473 at 191). Here, the Developer filed only one set of applications to develop the 35-Acre Property, which the City denied. Under *State*, 131 Nev. at 419-20, 351 P.3d at 742, the Developer's regulation of use taking claims are clearly unripe because it failed to file and have denied at least two applications for development of the property it claims was taken. As the Court noted in *State*, and as noted by Judge Herndon, the Developer must file applications to develop the "property at issue." *Id*. (quoting *Williamson County*, 473 U.S. at 186). Accordingly, applications to develop other segments of the Badlands or to develop property that included not only the 35-Acre Property standing alone but the entire Badlands, such as a Major Development Agreement ("MDA"), are irrelevant to determine final decision ripeness. *See* Ex. CCCC at 1506-07, 1509-12. As Judge Herndon concluded:

> The Court also does not consider the MDA to constitute an initial application to develop the 65-Acre Property for purposes of a final decision because the MDA was not the specific and detailed application required for the City to take final action on a development project. . . . Given the uncertainty in the MDA as to what might be developed on the 65-Acre Property, the Court cannot determine what action the City Council would take on a proposal to develop only the 65-Acre Property. This once again places the court in the untenable position of having to speculate about what the City might have done, said speculation being improper."

Ex. CCCC at 1510-11. Because the Developer filed only one set of applications to develop the individual 35-Acre Property, its taking claims are unripe as a matter of well-established law.

ii. Because the 35-Acre Property was designated PR-OS in the City's General Plan when the Developer bought the Badlands, and PR-OS does not permit residential use, the City did not devalue the property by simply maintaining the status quo

Even if the Developer's taking claims alleging an excessive burden on the owner's use of

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

the 35-Acre Property were ripe, the Developer cannot prevail on its regulation of use claims because it cannot meet Nevada's test for a regulatory taking, which requires that the City's action must "completely deprive an owner of all economically beneficial use of her property." *State*, 131 Nev. at 419, 351 P.3d at 741 (internal quotes and citations omitted); *see also Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245-46, 871 P.2d 320, 324-35 (1994) (taking requires agency action that "destroy[s] all viable economic value of the prospective development property"). At the time the Developer bought the Badlands, the land could not legally be used for housing under the PR-OS General Plan designation, regardless of the zoning of the property. NRS 278.150 (requiring cities to adopt General Plans that govern land uses); NRS 278.250(2) (zoning "must" be consistent with General Plan); *Am. W. Dev.,* 111 Nev. at 807, 898 P.2d at 111; *Nova Horizon, Inc. v. City Council of Reno*, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989).

Indeed, UDC 19.00.040 provides:

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

Thus, even if the City had denied two separate applications to develop the property with housing, the City would not have changed the use or value of the 35-Acre Property by declining to lift the PR-OS designation and denying applications to build housing and, therefore, it could not be liable for a taking.

iii. Because the City has permitted substantial development of the parcel as a whole, the taking claims fail

Even if the ripeness analysis were rejected, the City's regulatory actions with respect to the 35-Acre Property must be analyzed in the context of the parcel as a whole, which is either the 1,596-acre Peccole Ranch Master Plan ("PRMP") or the 250-acre Badlands. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017) (requiring a wipeout or near wipeout of the parcel as a whole to find

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

liability for a taking); *Kelly*, 109 Nev. at 651, 855 P2d at 1035 (finding that the developer had improperly segmented the property to manufacture a takings claim, and that "Uppaway must be viewed as a whole, not as thirty-nine individual lots" when assessing whether the developer had been deprived of all economic use). The City has permitted substantial development in both the PRMP and the Badlands, negating a taking of the 35-Acre Property that the Developer segmented from the Badlands. Again, Nevada authority is directly on point and requires rejection of the Developer's taking claims of excessive regulation of the Developer's use of the 35-Acre Property.[4]

This Court erred in not recognizing the parcel-as-a-whole doctrine. The Court would not have found a taking if the Developer had not segmented the Badlands into four parts because the City approved 435 luxury units for the Badlands, which is substantial development. Nor would this Court have found a taking of the Badlands if the Developer had bought the entire PRMP from the original landowner and *then* developed thousands of housing units, a hotel, a casino, a retail shopping mall, and a golf course, and the City later denied a request to develop the Badlands, which had been approved as an open space amenity for the PRMP. The fact that, after full buildout of the PRMP the original landowner carved the open space out of the PRMP and sold it to the Developer does not require the City to allow the Developer to eliminate the open space that the City required to be set aside as a condition of approval of the PRMP. Segmentation of the PRMP to attempt to compel the City to approve development is prohibited by all courts that have confronted the issue.

iv. The Developer's theory that zoning confers a right to build housing is contrary to all authority

Ignoring these taking standards, the Developer manufactures a takings test out of thin air by claiming a constitutionally protected property interest in a permit to build 61 housing units on the

[4] Judge Herndon saw through the Developer's segmentation tactic, concluding that: "At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. The Developer transferred 178.27 acres to 180 Land Co. LLC . . . and 70.52 acres to Seventy Acres LLC . . . , leaving Fore Stars with 2.13 acres. Each of these entities is controlled by the Developer's EHB Companies LLC. The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands." Ex. CCCC at 1490 (citations to exhibits omitted).

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

35-Acre Property. This claim is based on the fact that the property is zoned R-PD7, which merely *permits* residential use, but confers no "rights," constitutional or otherwise. Under regulatory powers delegated by the state, Nevada cities are *required* to exercise discretion to promote the health, safety and general welfare of the public in adopting, amending, and applying General Plans and zoning ordinances. NRS 278.150, NRS 278.250. The R-PD7 zoning ordinance that the Developer falsely claims confers a "right" to develop housing is in fact infused with discretion that is inconsistent with the alleged "right to develop":

> The R-PD District has been to provide for *flexibility and innovation* in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, . . . Single-family and multi-family residential and supporting uses are permitted in the R-PD District *to the extent they are determined by the Director to be consistent with the density approved for the District and are compatible with surrounding uses*. . . . The approving body may attach to the amendment to an approved Site Development Plan Review *whatever conditions are deemed necessary to ensure the proper amenities and to assure that the proposed development will be compatible with surrounding existing and proposed land uses*.

UDC 19.10.050 (emphasis added).

UDC 19.18.020 defines the term "Permitted Use" as "[a]ny use allowed in a zoning district as a matter of right *if it is conducted in accordance with the restrictions applicable to that district*." (Emphasis added). This broad discretion to approve development generally and, in particular, in an R-PD-7 zoning district, is not compatible with a constitutional right to build whatever the owner wants to build. If the Developer were correct, a vast body of state and local land use regulations conferring discretion on the City would be rendered a nullity.

The Developer fails to cite a single case or statute that remotely supports its theory that the City lacks the discretion to limit the Developer's construction of housing in the Badlands. And the Developer's contention is contrary to all authority. *Stratosphere Gaming v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004) (holding that because City's site development review process involved discretionary action by City Council, the project proponent had no vested right to construct); *id*. ("[C]ompatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest."); *City of Reno v. Harris*, 111 Nev. 672, 679, 895 P.2d 663, 667 (1995) ("Once it is established that an area permits several

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

uses, it is within the discretion and good judgment of the municipality to determine what specific use should be permitted."); *Boulder City*, 110 Nev. at 246, 871 P.2d at 325 ("The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally protected property interest."); *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992) ("Although the land upon which Von Goerken intended to construct a tavern was zoned to accommodate such a commercial enterprise, it is clear that compatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest."); *Nevada Contractors v. Washoe County*, 106 Nev. 310, 314, 792 P.2d 31 (1990) ("Because of the Board's particular expertise in zoning, the courts must defer to and not interfere with the Board's discretion if this discretion is not abused."); *Am. W. Dev., Inc.*, 111 Nev. at 807, 898 P.2d at 112 ("In order for rights in a proposed development project to vest, zoning or use approvals must not be subject to further governmental discretionary action affecting project commencement . . . "); *Bd. of Cty. Comm'rs v. CMC of Nev., Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983) (There are no vested rights against changes in zoning laws "unless zoning or use approvals are not subject to further governmental discretionary actions affecting project commencement."). The broad discretion granted to the City to limit the use of property cannot be reconciled with the notion that a property owner has a constitutionally protected "right" to build on their property.

The Developer's attempt to distinguish these authorities on the grounds that they involved adjudication of petitions for judicial review ("PJR") is without merit. A PJR is a procedure and remedy for challenging government decisions that employs the same substantive law as an original claim. There is no separate substantive law of PJRs. *See*, *e.g.*, *Bombardier Transp. (Holdings) USA, Inc. v. Nevada Lab. Comm'r*, 135 Nev. 15, 18, 433 P.3d 248, 252 (2019) (reviewing de novo "statutory interpretation questions in the administrative context"). The cases rejecting the Developer's zoning-grants-property-rights theory are based squarely on the underlying Nevada law of property and land use regulation. These rules apply whether a property owner is challenging a regulation of the use of its property by PJR or by complaint for a regulatory taking. Indeed, it would be an absurd result if the City Council had discretion to deny an application to develop property if

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

after the City's denial the applicant then sues for a PJR, but the City Council had no discretion to deny the application if the applicant then sues for a regulatory taking. Moreover, the *Boulder City* case, squarely rejecting the notion that owners have property rights in zoning, was a constitutional challenge to the denial of a permit, not a PJR. 110 Nev. at 246, 871 P.2d at 325.

The Ninth Circuit agrees. In *180 Land Co. LLC v. City of Las Vegas*, Ninth Circuit Case No. 19-16114, a case involving the same parties and legal issue, the Developer alleged that it has "vested zoning rights to develop residential units on the [Badlands]." Ex. HHH at 1037. The Ninth Circuit rejected that claim, finding the Developer had no such right under Nevada property law:

> "To have a constitutionally protected property interest in a government benefit, such as a land use permit, an independent source, such as state law, must give rise to a "legitimate claim of entitlement," that imposes significant limitations on the discretion of the decision maker. . . . We reject as without merit plaintiffs' contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally protected property interest . . . ."

Ex. III at 1125-26. Like *Boulder City*, the *180 Land* case involved a constitutional challenge to a denial of a building permit, not a PJR. These authorities are directly on point and require judgment for the City on the Developer's categorical and *Penn Central* claims.

b. The Developer's physical taking claim fails because the City did not exact an easement for public use of the 35-Acre Property

Nor does the Developer's physical taking claim have the slightest merit. Bill 2018-24, which the Developer claims exacted an easement from the Developer, did no such thing. *See* City's Reply in Support of Countermotion for Summary Judgment filed 9/21/21 ("9/21/21 Reply") at 21-23.

c. No evidence supports a non-regulatory taking

The Developer's non-regulatory taking claim is also frivolous. The Developer presented no evidence to this Court that the City interfered with the Developer's property, rendering it "unusable or valueless" as required in *State* for a non-regulatory taking. *Id*. at 23-24; *State*, 131 Nev. at 421, 351 P.3d at 743. Indeed, the only allegations the Developer could muster to support its non-regulatory taking claim is the contention that the City denied the Developer's applications for permits to use the property for housing, *which states a regulatory taking claim*, duplicating the Developer's first and second causes of action. *See* 9/21/21 Reply at 24.

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

d. Because the City did not effect a permanent taking of the 35-Acre Property, the temporary taking claim fails

Finally, as demonstrated in the City's brief, the temporary taking claim must fail. A temporary taking occurs when a court finds that a regulation effects a permanent taking under *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992) or *Penn Central*, and the public agency thereafter rescinds the regulation to avoid paying compensation for a permanent taking. *First English Evangelical Lutheran Church of Glendale v. L.A. Cnty.*, 482 U.S. 304, 318-19, 321 (1987). Because the Court should not have found a permanent taking, the temporary taking claim necessarily fails as a matter of law.

As the foregoing analysis demonstrates, the City is likely to prevail on the merits of its appeal. The Judgment is inconsistent with all state and federal statutory and caselaw, the Court's own previous ruling in the same case on the petition for judicial review, with the decision of the Nevada Supreme Court in the 17-Acre Case, and with the decisions of Judges Herndon and Sturman in the 65-Acre and 133-Acre cases, respectively. For all these reasons, the City is likely to prevail on appeal. At a minimum, the City has "present[ed] a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Hansen*, 116 Nev. at 659, 6 P.3d at 987.

II. A stay of the Court's FFCL re Property Interest, FFCL re Take, 10/28/21 Decision, and 11/18/21 Judgment is also warranted under the NRAP 8(c) factors

Applying the same NRAP 8(c) factors described above to the Court's decisions in this case, all interlocutory decisions should also be stayed pending the City's appeal. All of the Court's substantive decisions in the FFCL re Property Interest, the FFCL re Take, the Decision, and the Judgment, satisfy the four factors in NRAP 8.

A. The City and every other community in the State of Nevada could suffer irreparable harm if the stay is denied because property owners could claim a constitutional right to build while the City's appeal is pending

The first and second factors are satisfied for a variety of reasons. Because the Court's ruling could effect a sea-change in State law regarding the scope of local police power to regulated land use delegated to cities by the State, the Nevada Supreme Court should decide this issue before the

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

alleged precedent in this case is used to influence decisions by local public agencies throughout the State. For an issue of this extreme importance, the Nevada Supreme Court will obviously determine whether this Court has erred.

If, while the Court's ruling is on appeal, local governments feel compelled by the Court's ruling to abandon their duty to exercise discretion over land use applications, the public interest would be seriously compromised. The State Legislature mandates that cities and counties, "prepare and adopt a comprehensive, long-term plan" for their physical development and to "regulate and restrict" the construction, alteration and use of buildings or lands in accordance with that plan to preserve air and water quality, promote the conservation of open space, provide for recreation, and generally promote health and welfare. NRS 278.250(1) & (2). If cities and counties follow this Court's ruling invalidating these discretionary powers and ministerially approve every application that is consistent with a zoning district, then the object of the City's appeal – to preserve local agencies' authority to regulate land use in the best interest of the community – would be defeated. In such a scenario, even if the City prevails in the appeal, it would be too late to reverse these approvals of development that would cause great harm to the community and the environment that would not have been granted but for the Court's decision.

The concern that local agencies and District Courts across the entire State might follow the Court's ruling that (a) property owners have constitutional rights conferred by zoning to build whatever they choose as long as the use is a permitted use under the zoning ordinance, (b) cities and counties have no discretion to disapprove or condition an owner's real estate development project as long as the project is for a permitted use, and (c) the general plans of cities and counties are nullities is real. The media has already reported the Court's decision to the public. *See* Ogilvie Decl. ¶¶11.a-j and Exhibit A attached hereto. For example, the November 30, 2021 article in the Las Vegas Register-Journal, entitled *Time for City to end the Badlands debacle*, states that Judge Williams ordered the City to pay $34.1 million for denying the Developer's application to develop the 35-Acre Property with housing "even though the land was zoned for residential development." *Id*. At its meeting on October 6, 2021, the Las Vegas City Council described the Court's ruling, alerting the public that a court has found that the City is now faced with the Hobson's choice of

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

either granting every land use permit application put before it or compensate property owners for the market value of their property. *See* City's Supp. App. Vol. 20, Ex. YYYY. As a result, local governments can expect a flood of building permit applications in which the applicants will claim a constitutional right to approval of their application or the right to compensation under the Court's decision.

The Developer has also attempted to use the Court's decision in the other pending cases involving the Badlands. For example, immediately following the Court's ruling finding a taking on September 28, 2021, the Developer filed a motion in the 65-Acre case claiming that this Court's decision mandates that the Court find that the City is liable for a taking of the 65-Acre Property under issue preclusion. *See* City's Supp. App. Vol. 20, Ex. WWWW.

Similarly, if not stayed, the Court's ruling will result in irreparable harm to the City and the public. The State's planning and zoning laws set forth in NRS 278.010-278.828 are designed to protect the public against harmful development and to promote safe, healthy, efficient, well-balanced land use development that provides adequate amenities and services for all. If deemed authoritative by local land use decision makers, the Court's decision will likely create chaos in land use in the State in the near term and lead public agencies, in reliance on this Court's decision, to allow construction and other land uses that would have been denied or conditionally approved before the Court's ruling. While this matter is on appeal, those decision makers might believe they must approve land use applications without conditions unless the agency is willing to use public money to pay compensation to potentially thousands of property owners. Once these applications are approved and the projects built during the pendency of the appeal, these potentially harmful physical changes in land use could not be undone should the Nevada Supreme Court reverse the Court's Judgment. The bell cannot be unrung.

B. The Nevada Supreme Court should be allowed an opportunity to resolve these crucial issues of law before the City is required to part with more than $34 million of the taxpayers money

If the City is required to pay the Developer $34 million plus another $50 million+ in prejudgment interest, attorneys' fees, property taxes, and costs, but the Nevada Supreme Court later reverses the Judgment, the City is unlikely to retrieve the money paid to the Developer, to the

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

detriment of the taxpayers. In contrast to the extreme public harm if the City is required to pay the Judgment to the Developer within 30 days, a stay of the Judgment would not prejudice the Developer in the least. The Judgment is entitled to interest under NRS 17.100 until paid. Thus, the harm to the State if the Court's ruling is not immediately stayed could be substantial and irreparable.

C. Because the Developer was awarded only money damages, the Developer would not suffer irreparable harm if a stay is entered

The third factor, lack of irreparable harm to the Developer, is easily met, because the Developer sought and was awarded only money damages. In March 2018, Judge Crockett invalidated the City's approval of the Developer's applications to construct 435 luxury housing units in the 17-Acre portion of the Badlands on the ground that the Developer was required to file a major modification application ("MMA") to develop housing in the Badlands ("Crockett Order"). More than one year ago, in September 2020, after the Nevada Supreme Court had overruled the Crockett Order and reinstated the City's approval of construction of 435 luxury housing units in the Badlands (Exs. DDD, SSSS), the City notified the Developer that the order reinstating its approvals was final, the Developer was free to build. The City even extended the deadline for the Developer to start construction by two years to account for the time the appeal of Judge Crockett's Order was pending in the Supreme Court. Ex. GGG. The Developer, however, has made it clear that it has no intention of actually building the 435-unit project. Instead, the Developer has elected to pursue the City for money damages in all four Badlands cases, even in the 17-Acre case, making the outlandish claim that the City has "nullified" the 17-Acre approvals, despite the Supreme Court's order reinstating the permits and the City's express acknowledgement that the permits are valid for another two years.[5]

[5] Based on the City's research and experience, this is the first case on record anywhere in the United States where a developer has sued the government for a taking despite approval of the developer's application for development. It is also the first case where a developer, when granted a permit, pretends that the permit is invalid, instead seeking money damages for a taking. Judge Herndon held that the Developer's claim that the City has nullified the permit to build 435 luxury units on the 17-Acre Property is "frivolous." Ex. CCCC at 1507-08.

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PHONE 702.873.4100 • FAX 702.873.9966

Further confirming that the Developer's only interest is in money damages, the City also afforded the Developer an opportunity to seek development of the 133-Acre Property, but the Developer has declined. In 2018, adhering to Judge Crockett's Order then in effect, the City Council was compelled to strike the Developer's 133-Acre Applications because the Developer had not filed a Major Modification Application. After the Supreme Court reversed the Crockett Order, the City notified the Developer that it was free to refile the applications to allow the City Council to consider the applications on the merits for the first time. Ex. NNN. Despite the fact that the City Council had not disapproved any application to develop the 133-Acre Property on the merits and the City invited the Developer to resubmit the applications for a decision on the merits, the Developer declined to refile the applications or do anything to attempt to develop the 133-Acre Property, and even vigorously opposed the City's request that Judge Sturman remand the 133-Acre Applications to the City Council for consideration of the applications for the first time on the merits. Ex. AAAAA (Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021).

In the aftermath of the Supreme Court's decision reversing Judge Crockett, the City also invited the Developer to file a first application for the 65-Acre Property (the Developer had not filed any applications to develop the 65-Acre Property) and a second application for the 35-Acre Property. Exs. OOO, PPP. The Developer ignored all four City requests. Clearly, the Developer is seeking the relief of money damages only. The Developer is entitled to interest on any damages from the date of the taking. *City of North Las Vegas v. 5th & Centennial*, 130 Nev. 619, 624, 331 P.3d 896, 899 ("[J]ust compensation includes interest from the date of taking."). Moreover, the Developer will receive the statutory rate of interest on any judgment. NRS 17.100. A delay in payment of money damages where interest accrues on the damages is not irreparable harm. *See Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008) *abrogated on other grounds by Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Community Ass'n*, 2021 WL 4344955 (2021) ("Generally, harm is 'irreparable' if it cannot adequately be remedied by compensatory damages.").

The Developer's claim that it is harmed because it is incurring property taxes on property

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

the use of which the city has denied during this litigation rings hollow. The City has given the Developer ample opportunity to develop the Badlands, including approving the 17-Acre applications and inviting the Developer to file an application for the first time to develop the 65-Acre Property, re-file its 133-Acre Applications for decision for the first time on the merits, and file a second application for the 35-Acre Property. Although the City handed the Developer a permit for 435 luxury units on a silver platter, the Developer has elected instead to attempt to try to extort $386 million – the Developer's total damages claim - from the taxpayers. If the Developer had developed the Badlands, it would have no complaint that it had to pay property taxes.

The Developer's claim for reimbursement of the property taxes it paid during this litigation is pure hypocrisy. The Developer is in no position to complain about the amount of its property taxes where the Developer voluntarily shut down the golf course. As a result, under settled Nevada law, the Developer no longer qualified for a tax break for a golf course. Ex. HHHH at 4222.

Moreover, the Developer contends that the Clark County tax assessor based its tax assessment on the assessor's opinion that the highest and best use of the 35-Acre Property was residential. The Developer appealed the Assessor's determination but failed to argue to the assessor in its appeal that the PR-OS designation of the property prevented residential use of the property, instead entering a settlement with the Assessor that the Badlands would be assessed based on a highest and best use of housing. According to the Developer's appraiser, unless the 35-Acre Property could be used for housing, it's value would be zero. Plaintiff Landowner's Motion for Summary Judgment on Just Compensation filed 10/5/21, Ex. 2 at 95-96. In that case, the tax assessment, according to the Developer's appraiser, would also be zero. *Id*. at 96. Of course, the Developer could not concede in the appeal that the property was designated PR-OS and should be assessed at zero without undercutting its regulatory taking claims against the City, where the Developer hoped to achieve a windfall in takings damages based on the fiction that the PR-OS designation either does not exist or that the General Plan is a nullity. The Developer's strategy has, thus far, paid off. While it claims approximately $1 million for reimbursement of property tax payments, this Court awarded the Developer more than $34 million for a regulatory taking of only a 35-Acre portion of the Badlands. The Developer cannot have it both ways: it cannot agree with

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

the Assessor to an incorrect highest and best use of the property and then claim that it should be reimbursed for tax payments based on that phony agreement.

As demonstrated above, the Developer is entitled to interest on the Judgment until it is paid. Accordingly, the Developer would be made whole if the Nevada Supreme Court does not reverse the Judgment. In addition to entitlement to interest, the Developer's loss of immediate access to the funds awarded in the Judgment would not constitute irreparable harm to the Developer. The Developer purchased the entire 250-acre Badlands for less than $4.5 million. Exs. AAA at 966, UUU at 1300, CCCC at 1496, FFFF at 1591-97. The City's approval of the 435-unit project on the 17-Acre Property already increased the value of that property by $26 million and the Developer would retain the remaining 233 acres of the Badlands for potential development or use as park, recreation, or open space. The Developer, accordingly, could start building today and reap and multiply its investment in the Badlands by a factor of six, even without the Judgment. Accordingly, the Developer can hardly claim harm as a result of a stay of the Judgment.

D. Because the Court's decisions are contrary to Nevada and federal caselaw, Nevada Revised statutes, and City ordinances, the City is likely to prevail on its appeal

For the reasons presented at pages 8-15 above, the City is likely to prevail on the merits of its appeal. Accordingly, the Court should stay its Judgment pending a decision of the Nevada Supreme Court on the merits of the City's appeal.

Conclusion

Because the Court's decision is contrary to all authority and could have far reaching effects on the entire State, giving property owners nearly unlimited rights to build on their property, the Court's Judgment should be stayed pending the disposition of the Motion to Amend and the City's appeal to the Nevada Supreme Court without the need for the City to post any security.

DATED this 21st day of December 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

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

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 Defendant City of Las Vegas

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 __ day of December, 2021, I caused a true and correct copy of the foregoing **MOTION FOR IMMEDIATE STAY OF JUDGMENT** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

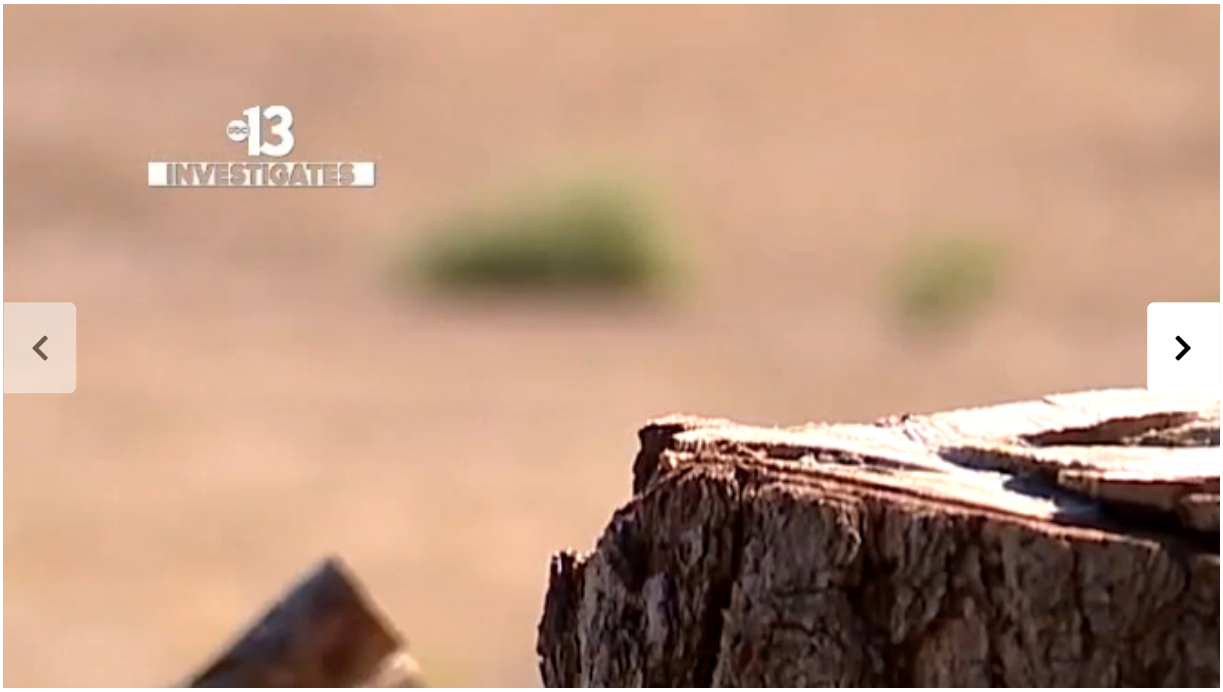
/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “A”

13 INVESTIGATES

City of Las Vegas suffers another defeat in battle over Badlands

Taxpayers shelling out millions for losing battle



The battle over Badlands continues in Las Vegas, Darcy Spears reports.




By: Darcy Spears

Posted at 3:26 PM, Sep 29, 2021 and last updated 11:37 AM, Sep 30, 2021

LAS VEGAS (KTNV) — Another major court victory has been delivered to the developer in the battle over Badlands.

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Williams then ruled that the City of Las Vegas illegally "took" the land.

A "taking" is when the government seizes private property for public use.

In the Badlands case, Judge Williams ruled city leaders restricted the owner's rights so much that it equated to a physical seizure.

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Developer Yohan Lowie bought the land in 2015 and the city approved his plan to turn the defunct golf course into luxury homes and tree-lined walking paths.

But, as 13 Investigates first exposed in 2018, high-powered Queensridge homeowners fought it, effectively halting any development of Badlands.

As the property was held in limbo, it became a wasteland, safety hazard, and haven for crime.

Lowie sued the city for taking his property, denying his building permit applications and clawing back the zoning.

In March of last year, the Nevada Supreme Court ruled development of Badlands should have been allowed all along.

Tuesday's ruling in District Court adds to that with Judge Williams saying, "I think under the vast facts and circumstances, it's pretty clear that we had a taking."

Vickie DeHart, executive managing partner of Lowie's EHB Companies said,“This has been a six-year battle that has taken all of our resources. Fighting the government and politically connected people who threatened to take our land early on is no easy feat. It is wonderful to see justice prevail and the courts uphold our constitutional rights. A win for us is a win for all landowners.”

This case, which covers 35 acres and 61 lots, is just one of multiple ongoing Badlands cases that have cost taxpayers millions: $4,060,288.00 to date.

And the dollar figure will only get higher as the next phase of the case determines how much the city has to pay for taking Lowie's land.

We reached out to the City Attorney's office for comment, but they declined, saying "It's the city's practice not to comment on ongoing or pending litigation."

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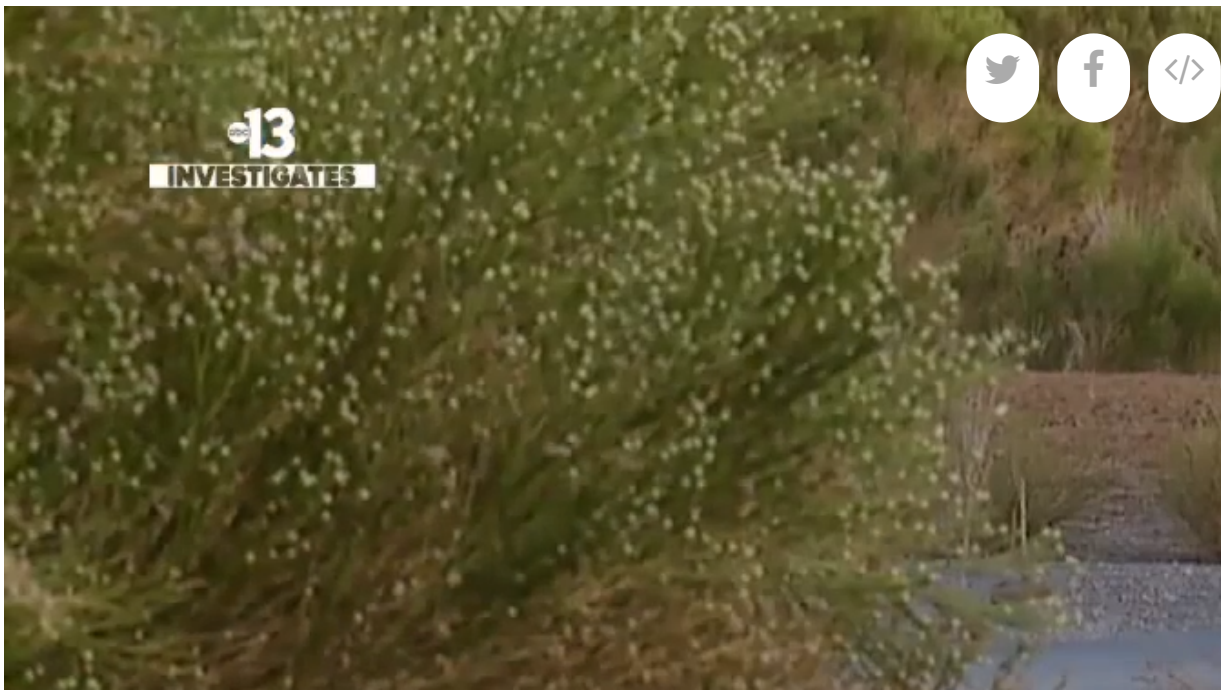
13 INVESTIGATES

City of Las Vegas suffers another defeat in battle over Badlands

Taxpayers shelling out millions for losing battle



The battle over Badlands continues in Las Vegas, Darcy Spears reports.




By: Darcy Spears

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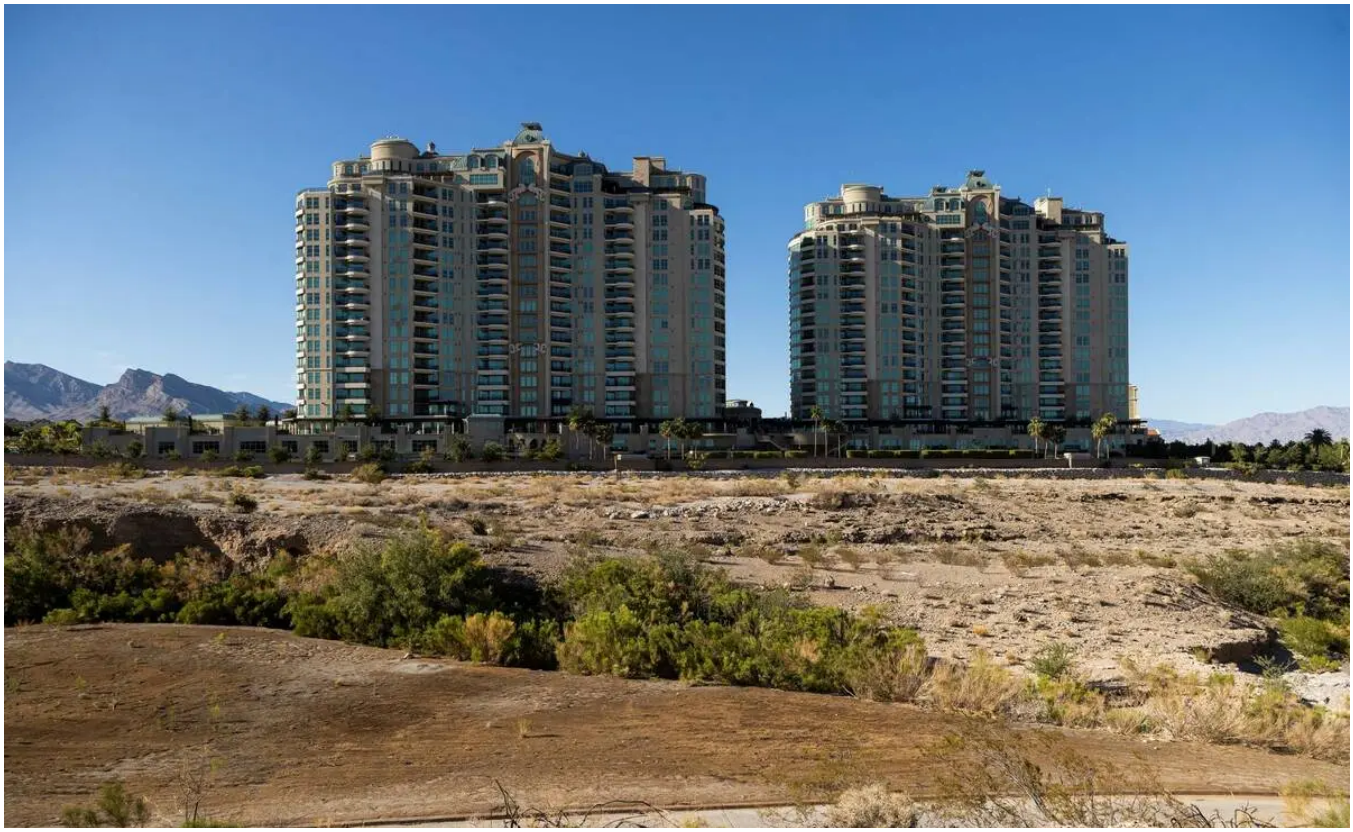
'A win for all landowners': Judge rules Las Vegas took 35 acres on Badlands



The land where the now defunct Badlands Golf Course lies empty on Wednesday, Sept. 29, 2021, in Las Vegas. (Benjamin Hager/Las Vegas Review-Journal) @benjaminhphoto

By Shea Johnson Las Vegas Review-Journal

September 29, 2021 - 1:42 pm

Updated September 30, 2021 - 12:13 am

A Clark County District Court judge has agreed with the developer behind stalled housing plans on the defunct Badlands Golf Club course near Summerlin who claimed that interference by Las Vegas officials made land impossible to develop.

Judge Timothy Williams ruled on Tuesday in favor of developer EHB Cos., which alleged that city actions were tantamount to the city taking the

company's 35-acre parcel near the intersection of Hualapai Way and Alta Drive, court records show.

In recent years, the Las Vegas City Council has held or rejected plans to build homes on the closed golf course except for a 435-condominium project on 17 acres that has not moved forward. EHB has contended that lengthy delays and denials were unnecessary and aimed at preserving the private land's use for the surrounding public.

Efforts to develop the golf course began after EHB purchased the land in 2015. During marathon hearings that followed, lawmakers expressed distaste for piecemeal development. Plans were also opposed by a coalition of residents in the upscale Queensridge neighborhood, which the course weaves through, citing fears of high density and diminishing property values.

"This has been a four-year battle that has taken all of our resources," said Vickie DeHart, a principal with EHB, in a statement. "Fighting the government and politically connected people who threatened to take our land early on is no easy feat. It is wonderful to see justice prevail and the courts uphold our constitutional rights. A win for us is a win for all landowners."

Three other cases pending

The decision Tuesday from the case brought forth in 2017 marks the second liability ruling in four so-called inverse condemnation cases filed by EHB. It is the first to go its way, although a ruling favorable to the city in December regarding a 65-acre parcel was later reopened and is under review, court records show.

Each case represents a different parcel of the former golf course and each case is in front of a different Clark County District Court judge. But

combined the lawsuits account for the entire 250-acre plot and make the same central allegation: a "categorical taking."

In essence, the developer is arguing that it deserves to be compensated because it claims the city's purported intention to preserve private property for public use has wiped out the economic value of the land.

Attorney Kermitt Waters, one of the lawyers representing EHB in litigation, said Wednesday he believed it was only "a matter of time" before the city would be found liable in the remaining cases following Tuesday's ruling.

Allegations of extortion

The stakes could be high depending on the outcome of the cases. EHB CEO Yohan Lowie previously estimated that the city would be liable for more than $1 billion in damages. In an August rebuttal to the lawsuit in question, city attorneys wrote that a finding against the city "would bring down the entire system of land use regulation in the State of Nevada."

In court filings, city attorneys say the developer knew the land was designated for open space, recreation and parks when it purchased the land six years ago, although EHB insists that residential construction is permitted. City attorneys also noted that the council may exercise discretion on land-use matters, such as when they allowed the scaled-back condominium project.

"If the Developer admits that it has the right to proceed with construction of its 435-unit luxury housing project, its narrative of victimization in this and the other three lawsuits is exposed as a fraud and a cynical appeal to the courts to help it extort hundreds of millions of dollars from the taxpayers," city attorneys wrote in a court filing.

Lowie, himself, has accused Queensridge residents of trying to extort him.

Item does not exist or is inaccessible.

Damages to be determined

The city declined to comment Wednesday on the ruling in the case, citing its practice of not publicly addressing ongoing or pending litigation. A hearing on readiness for trial to establish damages is scheduled Thursday, according to Waters and court records.

It is one of at least a dozen lawsuits brought forward by EHB in recent years in the protracted and expensive legal battle it has waged against the city. The court fight has cost Las Vegas taxpayers more than $4 million in legal fees and staff expenses as of Sept. 23, according to city-provided figures.

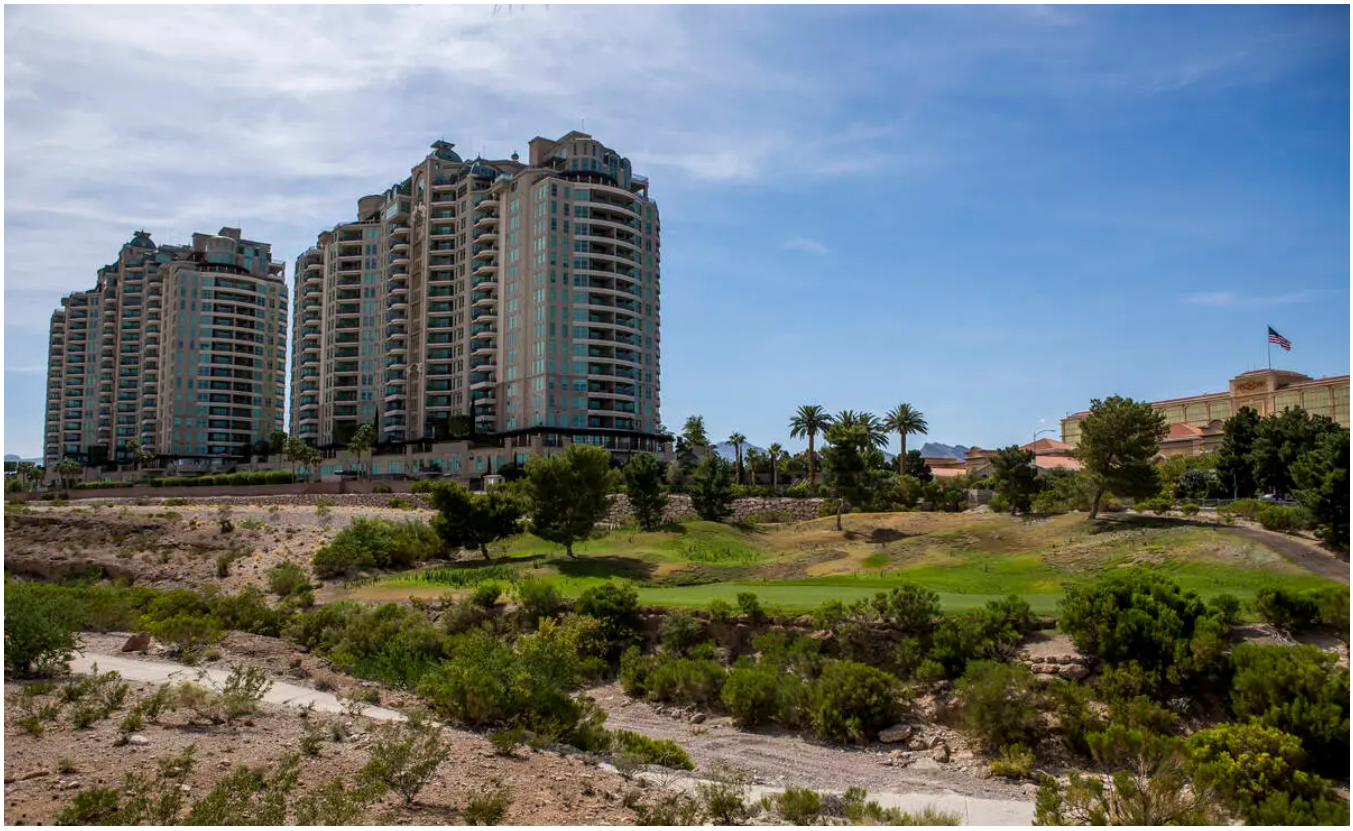
"When I ran for office, I ran with a goal of bringing the City of Las Vegas and the developer together to avoid this eventual day in court," said Las Vegas Councilwoman Victoria Seaman, whose district covers the golf course, in a statement.

Seaman had criticized her predecessor, ex-Councilman Steve Seroka, for representing a "few people in Queensridge" and not taxpayers or the city throughout the dispute. Seaman's candidacy in 2019 was supported by a union and developer-linked company that contributed to a Seaman-backed effort to recall Seroka, who ultimately stepped down amid allegations of sexual harassment.

"While the legal process will linger on, and costs to the taxpayers will continue to mount, my objective has always been to avoid this litigation and work for an amicable resolution," Seaman said. "My position remains the same."

Contact Shea Johnson at sjohnson@reviewjournal.com or 702-383-0272. Follow @Shea_LVRJ on Twitter.

EDITORIAL: Badlands money pit just got deeper



The 250-acre site of a closed golf course is now slated for the development of condos, estate lots and a hotel, photographed on Tuesday, June 6, 2017. Patrick Connolly Las Vegas Review-Journal @PConnPie

Las Vegas Review-Journal

October 2, 2021 - 9:01 pm

The dilapidated Badlands golf course is more than just an unkempt expanse of scruffy land winding its way through the exclusive Queensridge development. It's also a massive money pit for the city of Las Vegas.

On Tuesday, a District Court judge added to the city's misery by siding with a developer in a long-running dispute involving the property. It was an unsurprising decision in the face of the city's hubris and exposes city taxpayers to millions in liability. It's also a cautionary tale for elected officials and bureaucrats who believe that zoning codes give them virtually unlimited powers to dictate how private land owners use their property.

The case at hand involved EHB Cos., a development outfit that bought the 35-acre parcel south of Alta between Hualapai and Rampart in 2015 with an eye on building residential homes on the golf course, which had gone belly-up two years earlier. The plan angered several homeowners in the surrounding Queensridge community who felt it would devalue their residences. City officials initially OK'd the project, but well-heeled homeowners living nearby fought the approval and won in District Court. The Nevada Supreme Court last year overturned that decision.

But in 2017, a newly constituted City Council rescinded the initial go-ahead and began erecting barriers to the EHB development, triggering more lawsuits. The council even passed a narrowly tailored ordinance essentially outlawing residential development on old golf courses. City taxpayers have paid the price, shelling out more than $4 million for litigation.

In fact, the land was zoned for residential development from the get-go and the city had little legal basis to deny EHB's plans. Former City Councilman Bob Beers, who represented the area in question, likely lost his seat in 2017 for defending the developers. He warned time and again that city officials were putting taxpayers at risk by ignoring their obligations.

"After an exhaustive review of historical records and the law," Mr. Beers wrote in a 2019 Review-Journal op-ed on the property, "both the city attorney and the Planning Department agreed that the land was still zoned residential from the last action the City Council took. Yes, it was 20 years ago and all of the council members at that time are no longer serving. But zoning, once granted, doesn't change."

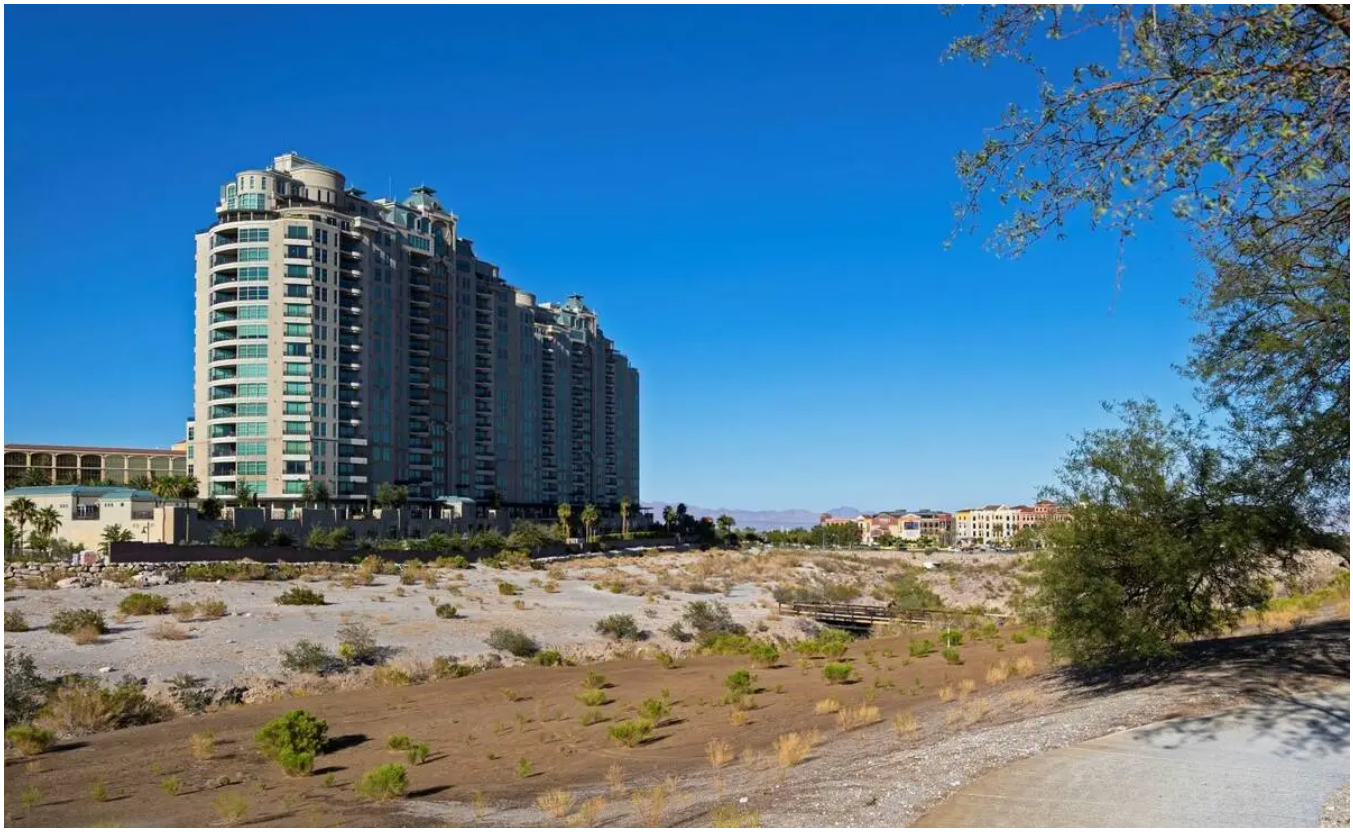
Had the city listened to Mr. Beers, it wouldn't be in this mess. Instead, attorneys representing the city were reduced to arguing that EHB's lawsuit seeking compensation for the city's obstructionism was an attempt to "extort hundreds of millions of dollars from taxpayers."

The courts weren't buying that malarkey. On Tuesday, District Judge Timothy Williams held that EHB had a legitimate Fifth Amendment claim against the city for its overzealous attempt to restrict development on the Badlands property. "I think under the vast facts and circumstances," the judge said, "It's pretty clear that we had a taking."

The next step in the saga could be a hearing to determine how big a hit city taxpayers will take thanks to their misguided representatives. The city may have an appeal in mind, but that would be a colossal waste. At this point, the City Council needs to minimize the damage and do what it should have done years ago: See what EHB will accept to make this whole fiasco go away.

And in the future, when city officials may be tempted to flex their regulatory muscle against an unpopular property owner, perhaps they'll remember the high costs of arbitrarily and capriciously denying owners the economic use of their property.

Las Vegas City Council votes to appeal Badlands ruling to Supreme Court



The land where the now defunct Badlands Golf Course lies empty on Wednesday, Sept. 29, 2021, in Las Vegas. (Benjamin Hager/Las Vegas Review-Journal) @benjaminhphoto

By Shea Johnson Las Vegas Review-Journal

October 6, 2021 - 11:27 am

Updated October 6, 2021 - 6:19 pm

Las Vegas city officials will contest a recent court ruling in a long-stewing clash with the owner of the former Badlands Golf Club, seeking to curtail the liability to city taxpayers who have already footed the bill for millions of dollars in legal fees.

Clark County District Court Judge Timothy Williams ruled Sept. 28 in favor of EHB Cos., which accused the city of "taking" 35 acres through actions that made the developer's land impossible to develop.

The council voted 6-1 on Wednesday to appeal to the Nevada Supreme Court.

EHB had proposed housing plans on the defunct golf course near Summerlin and later sued the city in 2017 after contending that lengthy delays and denials from City Hall were unnecessary and aimed at preserving the private land's use for the surrounding public.

The city attorney's office said it believed the lower court ruling to be "legally improper."

Councilwoman Victoria Seaman, who represents the district where the expensive land-use battle has been waged, called upon the city to once more reach out to the developer before filing its appeal.

"The city council has an opportunity to correct the mistakes of the past councils," she said.

Seaman has pressed for settling the dispute since running for office in a special election more than two years ago. She noted that taxpayers could end up paying for a government taking.

"The recent court ruling has put that reality more into focus today," she said.

Seaman also sponsored city-approved bills that scrapped and replaced stringent rules on developing golf courses and open spaces in January 2020, saying they eliminated burdensome regulations but maintained government oversight.

City lawmakers have frequently approved spending more money to fight at least a dozen Badlands-related cases in court. Seaman has often paired her reluctant "yes" votes with calls for resolution, although any agreement outside of court to stop the bleeding appears unlikely. EHB CEO Yohan Lowie

told the Las Vegas Review-Journal last year that "we don't trust the city one bit."

"I must vote for the appeal because I work for the city taxpayers and at this point I believe that we have to continue on," Seaman said Wednesday.

'This has to stop'

Las Vegas has paid more than $4 million in legal fees and staff expenses on Badlands litigation since fiscal year 2015, according to city-provided figures. Councilwoman Michele Fiore, the lone dissenter on appealing the recent court ruling, claimed the real number is about $10 million.

"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 taxpayers millions," she said. "So I am not in support to continue this battle. I am in support in making the city whole."

The court case in question is only one of four similar so-called inverse condemnation cases filed by EHB, with each representing a different parcel adding up to 250 acres for the full golf course plot. The other three lawsuits remain pending. A favorable ruling to the city in December regarding a 65-acre parcel was later reopened.

It is not clear how much the city could be ordered to pay if it were to lose the other cases, and if the recent ruling is not overturned, but Seaman said she has heard projections in the hundreds of millions of dollars. Lowie said last year he believed the city would be liable for more than $1 billion.

Contact Shea Johnson at sjohnson@reviewjournal.com or 702-383-0272. Follow @Shea_LVRJ on Twitter.

INSURANCE JOURNAL

View this article online: https://www.insurancejournal.com/news/west/2021/11/01/640060.htm

Vegas Owes Builder $34M in Golf Course Dispute

A Nevada court judge has ordered the city of Las Vegas to pay about $34 million to a developer who has tried for years to build homes on a vacant former golf course in northwest Las Vegas.

Clark County District Court Judge Timothy Williams previously found the city liable for blocking development of the former Badlands Golf Club course by 180 Land Co. LLC, a company belonging to developer EHB Cos.

The Las Vegas Review-Journal reported the city could be on the hook for much more.

The civil judgment involves a nearly 35-acre parcel, in just one of four lawsuits related to large slices of the disputed 250 acres including the golf course. It does not count attorney fees.

Similar lawsuits are pending before different judges over developers' plans for parcels totaling 133 acres , 65 acres and 17 acres.

EHB sought to build homes after buying the property in 2015 south of the Summerlin Parkway near the upscale Queensridge neighborhood.

Almost all development plans stalled at City Hall in disputes about whether zoning rules prohibit housing and allow only open-space projects. Lawsuits were filed in 2017 and 2018.

City Councilwoman Victoria Seaman represents the district where the property is located. She ran a special election campaign in 2019 that largely centered on her vow to settle the dispute to protect taxpayers.

Seaman told the Review-Journal on Friday that continued litigation is wasting taxpayer money and that the city should reach an agreement with the developer.

The City Council voted this month to appeal Williams' ruling. City officials declined to comment about the judgment, citing a practice of not speaking publicly about litigation.

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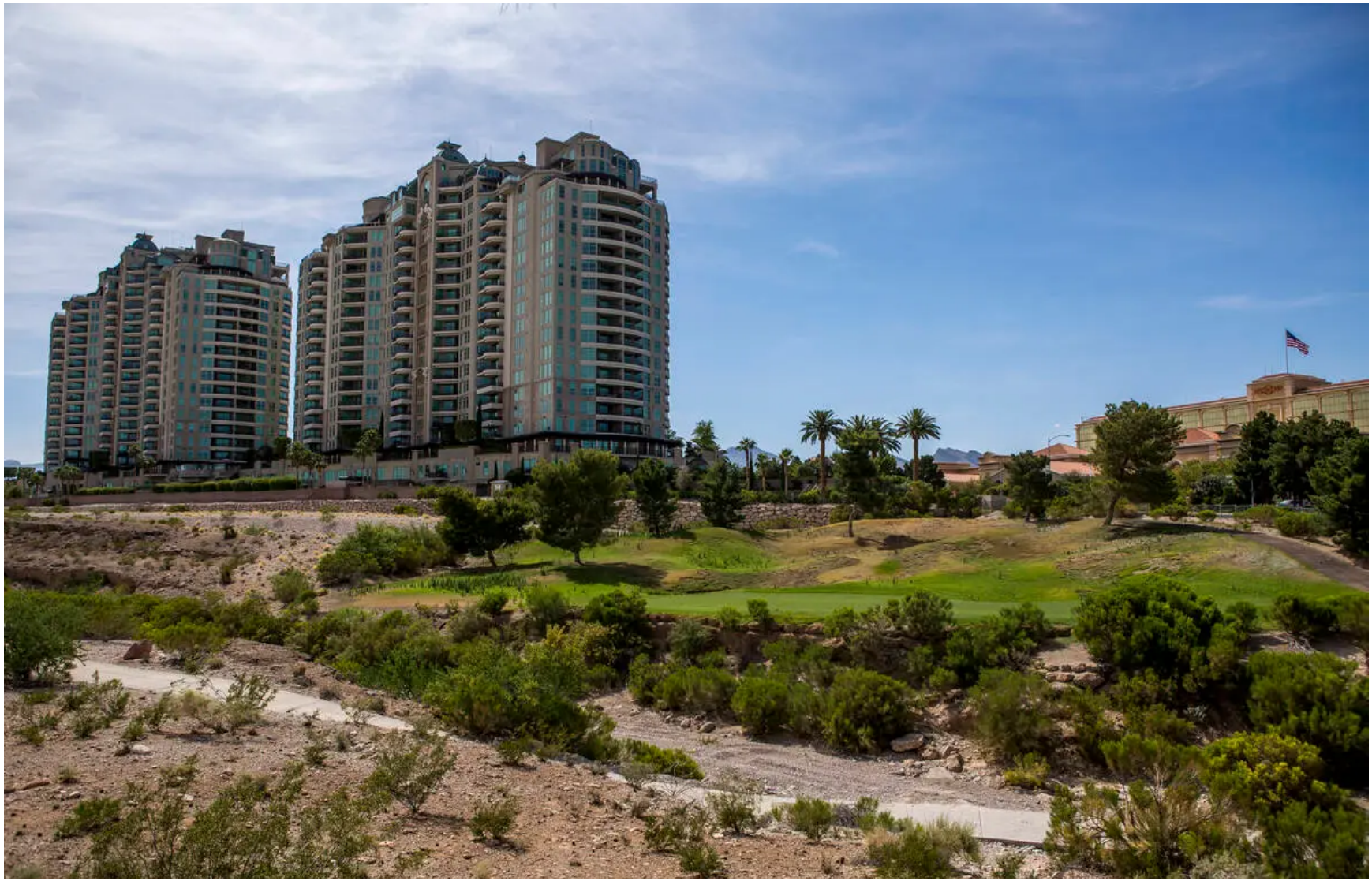
EDITORIAL: Time for city to end the Badlands debacle



The 250-acre site of a closed golf course is now slated for the development of condos, estate lots and a hotel. Patrick Connolly Las Vegas Review-Journal @PConnPie

November 4, 2021 - 9:00 pm

Brochures for the Problem Gamblers Helpline — slogan: When the fun stops — are available at many Las Vegas gaming establishments. Perhaps a few pamphlets should also be distributed to City Council members, who seem intent on going all in with a losing hand in their reckless showdown with a local developer.

Last week, a Clark County judge ordered the city to pay $34.1 million to EHB Cos., which for six years has been trying to develop the abandoned Badlands golf course on the west side. Residents of the surrounding upscale Queensridge community opposed the plan and convinced a majority of the City Council to block the proposal even though the land was zoned for residential development.

That led to numerous lawsuits.

In September, District Judge Timothy Williams determined that the city had indeed committed a taking under the Fifth Amendment by refusing to let the developer make use of 35 acres on the now dilapidated golf course. Last week's $34 million award was determined to be "just compensation." Three other related legal filings — each dealing separately with parcels of 133, 65 and 17 acres — remain unresolved.

Do the math. If the remaining 215 acres are valued similarly, the city — read: local taxpayers — could be on the hook for another $209 million, making the total payout $243 million, not including the legal fees the city has expended to fight this futile battle.

This dispute should have been resolved long ago. The city had little legal basis to abuse its regulatory authority to deny the Badlands makeover. Yet the council last month voted to appeal Judge Williams' ruling. Apparently, those 10-spot keno wagers don't seem like such a reach when you're playing with other people's money.

But the Williams ruling, along with the seven-figure judgment, should bring council members to their senses. Stop gambling with money collected from city taxpayers and cut a deal with EHB Cos. "We are wasting taxpayer money," said Councilwoman Victoria Seaman, who represents the district that includes Badlands, "and it is time to come to the table, no matter what happened in the past, and make it right."

She's correct. Yes, the makeup of the council has changed somewhat from when the dispute began. But it's well past time that this council took seriously the potential taxpayer liability here and moved to minimize the damage. The alternative is to roll the dice with their political futures.

Las Vegas to appeal $34M judgment in Badlands ruling

Las Vegas to appeal $34M judgment in Badlands ruling

By **Shea Johnson** Las Vegas Review-Journal

November 17, 2021 - 10:06 am

The Las Vegas City Council voted on Wednesday to appeal to the state Supreme Court a $34 million judgment against the city after it was found liable for "taking" a nearly 35-acre parcel on the defunct Badlands Golf Club course.

District Court Judge Timothy Williams, who found the city liable for the so-called government taking in late September, awarded the multimillion dollar judgment late last month to 180 Land Co. LLC., a company belonging to developer EHB Cos.

City lawmakers previously voted to appeal Williams' liability ruling, with the city attorney's office finding it to be "legally improper." It is the same justification that led the council on Wednesday to appeal the monetary judgment too, a move that was expected.

EHB had sought to construct housing on the closed golf course after its 2015 purchase of the 250-acre plot winding through the upscale Queensridge neighborhood near Summerlin.

But after nearly all of its plans stalled in City Hall, it accused the city of illegally interfering with development to the point that it made the land impossible to build upon and wiped out its economic value.

Government-taking cases that involve parcels of 133, 65 and 17 acres remain undecided, raising concerns that the damages to city taxpayers may significantly grow.

"I, along with the Las Vegas taxpayers, are getting more frustrated by the day," Councilwoman Victoria Seaman said.

"We must get this settled once and for all."

Seaman sought assurances that the city was involved in active negotiations with the developer.

City Manager Jorge Cervantes said the city met with EHB Cos. representatives two weeks ago, noting that "those conversations are ongoing."

The city has spent more than $4 million defending itself in at least a dozen lawsuits and in staff expenses related to the politically charged Badlands dispute since fiscal year 2015, according to city-provided figures.

Councilwoman Michele Fiore, the lone dissenter to both appeals, has claimed the real costs are about $10 million.

Contact Shea Johnson at sjohnson@reviewjournal.com or 702-383-0272. Follow @Shea_LVRJ on Twitter.

13 INVESTIGATES

First financial verdict dealt to City of Las Vegas in years-long Badlands battle

Judge awards $34 million to developer

KTNV LAS VEGAS

The first financial verdict has been dealt to the City of Las Vegas in its ongoing battle over the Badlands golf course, and as it's a big one: $34 million. 13 Investigates' Darcy Spears has been on top of this long-running legal fight and as she reports, this is just the beginning.

By: Darcy Spears

Posted at 11:47 PM, Oct 28, 2021 and last updated 12:04 AM, Oct 29, 2021

LAS VEGAS (KTNV) — $1 million an acre. That's what a judge awarded the developer for one parcel of land on the vast Badlands golf course.

Land the judge ruled the City of Las Vegas took illegally. Now, we're all paying for it.

The Badlands golf course, now a wasteland, was supposed to have been converted to luxury homes years ago. Developer Yohan Lowie owns it. It's zoned for residential development.

But, the city essentially seized it by blocking development plans.

As a result, it's been locked up in a court battle for five years. But as of Thursday, there's light at the end of the tunnel.

"It's been a long road, so we were really happy that justice prevailed over politics," said Elizabeth Ghanem, an attorney for the developer. "We always knew we had the law on our side, so it was nice to see the court's

KTNV LAS VEGAS

RELATED: Battle over Badlands reaches boiling point

The politics behind the city's battle involves a handful of wealthy Queensbridge homeowners who didn't want development on the shuttered golf course behind their homes. Some have since sold their mansions and moved, but the battle rages on.

"It was a nice decision from the court to sort of lay out in more detail what the city's actions were and to confirm that we've always had rights," Ghanem said.

The judge's ruling involves the parcel of land at the southeast corner of Alta drive and Hualapai way.

Judge Tim Williams said the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant. Due to the government's unlawful taking of the land, he ruled the city must pay $34,135,000.

"The judgment we received from the court is just the beginning," said Ghanem. "There will be costs associated with that and interest starting from the date of value, so we expect that amount to be substantial on top of the judgment."

PREVIOUS: Taxpayers will continue to foot multi-million-dollar bill as city votes to appeal Badlands ruling

KTNV LAS VEGAS

> *13 Chief Investigator Darcy Spears: "A lot of people ask us, 'What's going to happen with that land? What can you tell them and what kind of a message do you want taxpayers to hear from your side of the fence?'*
>
> *Attorney Elizabeth Ghanem: "Well, we're hopeful that this court's decision will encourage the city to come to a final resolution of all matters, which will be beneficial to everyone, including the community."*

The city wouldn't talk about the court ruling, citing its practice of not commenting on ongoing litigation.

Thursday's court ruling covers just one 35-acre parcel on the 250-acre Badlands property. There are three more pending lawsuits on the other parcels, so this may just be the tip of the iceberg.

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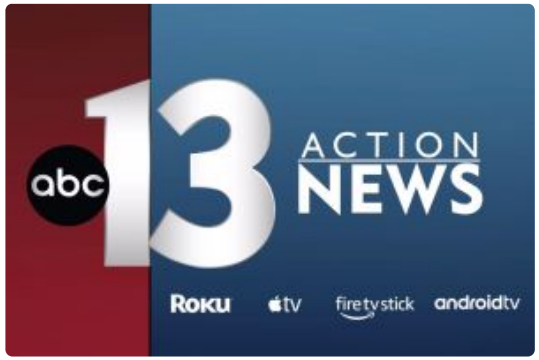

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about whether zoning rules prohibit housing and allow only open-space projects. Lawsuits were filed in 2017 and 2018.

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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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A-17-758528-J

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal	**COURT MINUTES**	**January 26, 2022**

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

January 26, 2022 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After review and consideration of the points and authorities on file herein, supplemental briefing, and oral argument of counsel, the Court determined as follows:

After considering the mandatory language under NRS 37.140, which grants a landowner a substantive right whereby the government must, within 30 days after final judgment, pay the sum of money assessed in an eminent domain or inverse condemnation case, this Court feels compelled to deny the City's Motion for Immediate Stay of Judgment in this matter. The Court's decision is based on a determination that the more specific eminent domain statutes, such as NRS 37.140, which grants landowners substantive rights, take precedence over the general rules of procedure relied upon by the City of Las Vegas.

Additionally, based upon the 30-day delay in payment, the City would have time to seek a stay, if appropriate, from the Nevada Supreme Court. Based on the foregoing, Defendant City of Las Vegas' Motion for Immediate Stay of Judgment shall be DENIED. Additionally, Plaintiff 180 Land Co.'s Countermotion to Order the City of Las Vegas to pay the just compensation shall be GRANTED.

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

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

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 Plaintiff 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 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** **Hearing Date: January 19, 2022** **Hearing Time: 10:00 a.m.**

PLEASE TAKE NOTICE that the 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 ("Order") was entered on the 9th day of February, 2022.

///

A copy of the Order is attached hereto.

DATED this 10th day of February, 2022.

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 10th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **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** 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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CLERK OF THE COURT

FFCL/ORDER

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 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** **Date of Hearing: January 19, 2022** **Time of Hearing: 10:00 a.m.**

This matter came before the Court on January 19, 2022, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, 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 "City") appearing through its counsel, George F. Ogilvie III, Esq. and Christopher J. Molina, Esq. of McDonald Carano, LLP and Andrew M. Schwartz, Esq., of Shute, Mihaly and Weinberger, LLP.

Having reviewed and considered the pleadings, arguments of counsel, the evidence presented, the file and other matters referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law and Order:

I. FINDINGS OF FACT

A) Procedural Posture

This is an inverse condemnation case brought by the Landowners against the City for the taking by inverse condemnation of their approximately 35 acre property ("Landowners' Property" or "Subject Property"). The Court has reviewed extensive pleadings and has allowed lengthy hearings on the facts and law relevant to the inverse condemnation issues in this matter and entered findings of fact and conclusions of law on those issues. On October 12, 2020, the Court determined the legally permissible use of the Landowners' Property prior to the City's actions at issue. *See Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest" filed October 12, 2020.* After competing motions for summary judgment on liability were filed and following four days of hearings, the Court granted summary judgment in the Landowners' favor, finding the City took by inverse condemnation the Landowners' Property. S*ee 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 filed October 25, 2021 (hereinafter "FFCL Re: City's Taking").* Thereafter, the parties stipulated to a bench trial wherein uncontroverted evidence established that the value of the Landowners' Property taken by the City was $34,135,000 and the City was ordered to pay this amount as just

compensation for the taking. *Finding of Fact and Conclusions of Law on Just Compensation filed November 18, 2021* at ¶ 9, 15, 50 and 52.

The City moved the Court to stay payment of the award based on NRCP Rule 62 and NRAP Rule 8. The Landowners opposed the City's stay request and filed a countermotion to have the City pay the award based on NRS 37.140, 37.170 and State v. Second Judicial District Court, 75 Nev. 200 (1959).

B) The City is in Possession of the Landowners' Property.

Based upon the undisputed evidence in this case, this Court found the Landowners have established a ***"per se" taking*** of their property. *FFCL Re: City's Taking at ¶ 154-175.* A "per se" taking means the City is in possession of the Landowners' Property. Id. The City has taken the Landowners' Property for the surrounding neighbors' use and enjoyment and has prevented the Landowners from doing anything with the Subject Property that would interfere with the surrounding neighbors' use of the Subject Property. The City has preserved the Subject Property for public use and has authorized the public to use the Subject Property. The City has additionally denied any use of the Landowners' Property that would conflict with said public use resulting in a complete depravation of any economically beneficial use of the Subject Property.

For example, the City prevented the Landowners from constructing a fence around the Subject Property, as a fence would prevent the surrounding neighbors from using the Subject Property. *FFCL Re: City's Taking at ¶ 87-95*. The City passed ordinances (Bills 2018-5 and 2018-24) that: 1) targeted only the Landowners' Property; 2) made it impossible to develop; and 3) preserved the Landowners' Property for the surrounding neighbors' use by ensuring the surrounding neighbors had ongoing access to the Landowners' Property. *FFCL Re: City's Taking at ¶ 103-122.* The City ordinances authorized the surrounding neighbors to use the Landowners' Property for recreation and open space and the City went into the community and told the

surrounding neighbors that the Landowners' Property was theirs to use as their own recreation and open space. *FFCL Re: City's Taking at ¶ 116-122.* The City denied the Landowners access to their own property because the City did not want the Landowners' access to impact the surrounding neighbors use of the Landowners' Property. *FFCL Re: City's Taking at ¶ 96-103.* Uncontested expert opinion established that the City's actions left the Subject Property with zero value. *FFCL Re: City's Taking at ¶ 145-148.* Accordingly, the Landowners have been dispossessed of the Subject Property by the City and the City is in possession of the Subject Property for a public use.

II. CONCLUSIONS OF LAW

"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.**" County of Clark v. Alper, 100 Nev 382, 391 (1984)(emphasis added).

NRS 37.140 provides that any "sum of money assessed" against the government in an eminent domain or inverse condemnation action must be paid within 30 days of the final judgment – "The [government] must, within 30 days after final judgment, pay the sum of money assessed." NRS 37.140. This statute uses the mandatory "must" language and provides no exceptions.

NRS 37.170 mandates that, as a precondition to an appeal in an eminent domain or inverse condemnation case, the government must pay the award. NRS 37.170. The Nevada Supreme Court addressed the applicability of NRS 37.170 in the case of State v. Second Judicial District Court, 75 Nev. 200 (1959). In that case, the State of Nevada made the *same arguments the City made here* – that it does not need to pay an award as a condition to appeal. The district court in Second Judicial District Court denied the State's request and ordered payment of the award. Id., at 202. The State appealed. The Nevada Supreme Court affirmed, rejecting the State's arguments. Accordingly, as held in Second Judicial District Court "the deposit provided by NRS 37.170 is a

condition to the condemnor's right to maintain an appeal while remaining in possession." Id., at 205.

After considering the mandatory language under NRS 37.140, which grants a landowner a substantive right whereby the government must, within 30 days after final judgment, pay the sum of money assessed in an eminent domain or inverse condemnation case, as well as the mandate under NRS 37.170 which preconditions any appeal on payment of the sum of money assessed (addressed in Second Judicial District Court), the Court is compelled to deny the City's Motion for Immediate Stay of Judgment in this matter. The Court's decision is based on a determination that the more specific eminent domain statutes, such as NRS 37.140 and 37.170, which grant the Landowners substantive rights, take precedence in this special proceeding over the general rules of procedure relied upon by the City. *See* Doe Dancer I v. La Fuente, Inc., 137 Nev. Adv. Op. 3, 431 P.3d 860, 871 (2021) (recognizing the "general/specific canon" that when two statutes conflict, "the more specific statute will take precedence, and is construed as an exception to the more general statute." Id., at 871.); City of Sparks v. Reno Newspapers, Inc., 133 Nev. 398, 400, 401 (2017) ("it is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally." Id., at 400-401). Additionally, with the 30-day delay in payment under NRS 37.140, the City will have sufficient time to seek a stay, if appropriate, from the Nevada Supreme Court.

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III. ORDER

IT IS HEREBY ORDERED THAT the City's Motion for Immediate Stay of Judgment shall be **DENIED**. Additionally, the Landowners' Countermotion to Order the City of Las Vegas to pay the just compensation assessed shall be **GRANTED**. The City is hereby ordered to pay all sums assessed in this matter within 30 days of final judgment and as a condition to appeal.

Dated this 9th day of February, 2022

58B 72C B710 CB01
Timothy C. Williams
District Court Judge

MH

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

/s/ *Autumn L. Waters*
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

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 Findings of Fact, Conclusions of Law and Order 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: 2/9/2022

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
Christopher Kaempfer	ckaempfer@kcnvlaw.com
Adar Bagus	abagus@kcnvlaw.com

Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Kermitt Waters	kermitt@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
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.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
Sandy Guerra	sandy@kermittwaters.com

Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov