

No. 84221

IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

Eighth Judicial District Court, Clark County, Nevada

Case No. A-17-758528-J

Honorable Timothy C. Williams, Department 16

**NOTICE OF JUSTICE PARTICIPATION IN LOWER TRIBUNAL AND
MOTION FOR DISQUALIFICATION**

ELIZABETH GHANEM HAM, ESQ., NBN 6987

eham@ehbcompanies.com

1215 South Fort Apache road

Las Vegas, Nevada 89117

Telephone: (702) 940-6930

Attorney for 180 Land Co, LLC and Fore Stars Ltd.

Electronically Filed
Mar 08 2022 03:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

I. INTRODUCTION

This is an inverse condemnation case brought by the Real Parties in Interest 180 LAND CO, LLC, a Nevada limited-liability company, and FORE STARS LTD., a Nevada limited-liability company (collectively “Landowners”), against the City of Las Vegas (“City”). This is one of four cases¹ which seeks to remedy the illegal and unjust actions of the City to preserve the Landowners’ 250 acres of residentially zoned land for the use and enjoyment of the surrounding neighbors without paying the Landowners for the taking of their property. The 250 acres consist of 10 parcels that are contiguous and owned by three entities, 180 Land Co, LLC, Fore Stars Ltd., and Seventy Acres LLC. Significantly, the City’s actions that constitute a taking of the 250 acres exist in every case and include, but are not limited to, the City’s denial of a master development agreement for the entire 250 acres, the City denial of fence applications for the perimeter of the entire 250 acres, the City’s denial of access applications for various portions of the 250 acres, and the City’s adoption of an ordinance that that: (a) targets only the 250 acres; (b) makes it impossible to develop any part of the 250 acres; and (c) allows the public to access the Landowners entire

¹ There are three additional inverse condemnation cases currently pending in the Eighth Judicial district Court, Clark County, Nevada: case nos. A-18-773268-C (“17-Acre Case”), A-18-775804-J (“133-Acre Case”), and A-18-780184-C (“65-Acre Case”).

privately-owned 250 acres so the public can use it for their recreation and open space.

On February 11, 2022, the City filed an Emergency Petition for Writ of Mandamus, Or in the Alternative, Writ of Certiorari (“the City’s Petition”). The Honorable Douglas W. Herndon (“Justice Herndon”) is an Associate Justice assigned to the City’s Petition in this matter. *See* Order Directing Answer at p. 2 (February 22, 2022). Previously, Justice Herndon was also the district judge in one of the four cases below, and the Landowners respectfully request his disqualification on the following grounds:

Nev. Code of Jud. Conduct, Rule 2.11(A), and (6)(d). Specifically, Justice Herndon was the “judge presiding over the 65-Acre [C]ase” (case no. A-18-780184) referred to by the City in its Writ Petition. *See, e.g.*, City’s Writ Petition (“WP”) at 22-24 and n. 6-7. The City references Justice Herndon’s district court decision, relying on it as reasoning why it will likely prevail on appeal. *See id.* Importantly, the City has also made that decision part of the record here by including it in the writ petition’s appendix. *See* Petition Appendix (“PA”) IV-PA0699-0733. It is not readily apparent from the City’s Writ Petition, however, that Justice Herndon is the judge that previously presided over the 65-Acre Case because the City never identifies him as the district judge in that case. Accordingly, the Landowners hereby inform the Court of these facts and respectfully request Judge Herndon’s

disqualification on the grounds that he previously presided over a related matter in another court, namely, the 65-Acre Case.

II. LEGAL AUTHORITY

Pursuant to NRAP 35(a)(1) a motion for disqualification shall be timely made and must be filed within 60 days after docketing of the appeal. On February 11, 2022, the City sought extraordinary relief to stay the Landowners' just compensation award pending appeal. On February 22, 2022, the Court directed the Landowners to file an answer. *See* Order Directing Answer at p. 2. Justice Herndon signed that order. *See id.* As such, the Landowners now timely request disqualification of Justice Herndon prior to the Court's consideration of the merits of the City's Writ Petition.

It is axiomatic that an appellate judge cannot review a matter which he or she previously presided over as a district court judge. *See* Nev. Code of Jud. Conduct, Rule 2.11(A)(6)(d). This is to "uphold and promote the independence, integrity, and impartiality of the judiciary." *Id.*, Canon 1. Indeed, "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." *Id.*, Rule 1.2. It would be impossible for a Justice (or anyone for that matter) to be impartial in reviewing their own decision. As such, a judge must

disqualify himself or herself in such circumstances as well as any others in which the judge's impartiality might reasonably be questioned. *See id.*, Rule 2.11(A).

III. ARGUMENT

Although Justice Herndon did not previously preside over this matter in another court, he did so in related proceedings, namely, the 65-Acre Case. *See* PA IV-PA0699-0733. In fact, the City cites his district court decision at least three times in its Writ Petition, relying on it to demonstrate why it will likely prevail on appeal. *See* WP at 22-24 and n. 6-7. And, the City included that decision in the appendix thereby making it a part of the record on appeal here. *See* PA IV-PA0699-0733. Moreover, the City has repeatedly argued that Justice Herndon's district court decision in the 65-Acre Case should apply to the Landowners' other inverse condemnation actions, including this one. *See Declaration of Elizabeth Ghanem Ham* ¶ 6. Because the City has interjected Justice Herndon's district court decision in this matter, the Court must necessarily consider it to determine whether extraordinary relief is warranted here and ultimately to resolve the City's pending appeal. Absent disqualification, Justice Herndon will be compelled to consider his previous district court decision, a circumstance in which his impartiality might reasonably be questioned. *See* Nev. Code of Jud. Conduct, Rule 2.11(A); *see also* Rule 1.2 ("A judge shall act at all times in a manner that promotes public confidence

in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”).

Significantly, Justice Herndon himself recognized that disqualification/recusal might eventually be necessary to avoid the appearance of impropriety:

I began kind of getting the sense of this is a case that’s probably going back to the Supreme Court in one or more of these four different cases in some fashion at some time . . . [s]o I kind of feel like I have some sense of propriety and responsibility to say should I move forward with this and therefore not be available to involve myself in the case and be another Justice that has to recuse if and when any of this litigation goes back to the Supreme Court, or should I move it now and not make any decisions on anything so that I could be involved in it?

See Exhibit A, Transcript, Before The Honorable Douglas W. Herndon, December 16, 2020 (partial), p. 4:24-25, p. 5:7-13, pp. 7-9; *see also Declaration of Elizabeth Ghanem Ham* ¶ 7. The parties acknowledged Judge Herndon’s position regarding recusal and requested that the matter proceed. *See id.* As Justice Herndon astutely predicted, the case is now before this Court and his recusal is necessary to avoid the appearance of impropriety. Accordingly, the Landowners respectfully requested that Justice Herndon be disqualified from sitting in this matter.

IV. CONCLUSION

Based on the foregoing, the Landowners' Motion for Disqualification should be granted in its entirety.

DATED this 8th day of March, 2022.

ELIZABETH GHANEM HAM

/s/ Elizabeth Ghanem Ham

Elizabeth Ghanem Ham, Esq. Bar No. 6987

Attorney for 180 Land Co, LLC and Fore Stars Ltd.

**DECLARATION OF ELIZABETH GHANEM HAM, ESQ. IN SUPPORT
OF THE LANDOWNERS' NOTICE OF JUSTICE PARTICIPATION IN
LOWER TRIBUNAL AND MOTION FOR DISQUALIFICATION**

STATE OF NEVADA }
COUNTY OF CLARK } ss.

Elizabeth Ghanem Ham, ESQ., being duly sworn, deposes and says as follows:

1. I am in-house counsel of record for Real Parties in Interest 180 LAND CO, LLC, a Nevada limited liability company, and FORE STARS, LTD., a Nevada limited liability company, (collectively “Landowners”), in the above-captioned matter. I am over eighteen years of age, an attorney duly-licensed to practice law in the State of Nevada.

2. I make this Declaration in support of the Landowners’ NOTICE OF JUSTICE PARTICIPATION IN LOWER TRIBUNAL AND MOTION FOR DISQUALIFICATION. I am competent to testify to the following facts known personally to me, except as to those facts stated on information and belief, and as to those facts, I believe them to be true.

3. On February 11, 2022, Petitioner City of Las Vegas (“City”) filed an Emergency Petition for Writ of Mandamus, Or in the Alternative, Writ of Certiorari (“the City’s Petition”), referencing a district judge and citing his decision several times to demonstrate why extraordinary relief is warranted and the City is likely to prevail on appeal. *See, e.g.*, City’s Writ Petition (“WP”) at 22-24 and n. 6-7. That

district court decision is also included in the City's appendix. *See* Petition Appendix ("PA") IV-PA0699-0733.

4. The Honorable Douglas W. Herndon ("Justice Herndon") is an Associate Justice of this Court. He is also the district court judge referred to in the City's Petition as the "judge presiding over the 65-Acre [C]ase" (case no. A-18-780184). It is not readily apparent, however, that Justice Herndon previously presided over the 65-Acre Case because the City never identifies him as the district judge in that case.

5. On February 22, 2022, the Court directed the Landowners to file an answer. *See* Order Directing Answer at p. 2. Justice Herndon signed that order. *See id.* Accordingly, the Landowners became aware of the facts set forth herein on February 22, 2022 when they received the Court's order signed by Justice Herndon.

6. The City has repeatedly argued that Justice Herndon's district court decision in the 65-Acre Case should apply to the Landowners' other inverse condemnation actions, including this one.

7. Justice Herndon himself previously recognized that disqualification/recusal might eventually be necessary to avoid the appearance of impropriety. *See* Exhibit A, Transcript, Before The Honorable Douglas W. Herndon, December 16, 2020 (partial), p. 4:24-25, p. 5:7-13, pp. 7-9. The parties

acknowledged Judge Herndon's position regarding recusal and requested that the matter proceed. *See id.*

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

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ Elizabeth Ghanem Ham

ELIZABETH GHANEM HAM

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the foregoing motion and all supporting documents and they comply with all applicable Nevada Rules of Appellate Procedure and, in particular, are in the form required by NRAP 35.

I further certify that, based on personal investigation, I believe all grounds asserted to be legally valid and all supporting factual allegations to be true, and the foregoing motion is made in good faith and not for purposes of delay or for other improper motive.

I understand that I may be subject to sanctions in the event that the accompanying motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of March, 2022.

ELIZABETH GHANEM HAM

/s/ Elizabeth Ghanem Ham

Elizabeth Ghanem Ham, Esq. Bar No. 6987

Attorney for 180 Land Co, LLC and Fore Stars Ltd.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF JUSTICE PARTICIPATION IN LOWER TRIBUNAL AND MOTION FOR DISQUALIFICATION** was filed electronically with the Nevada Supreme Court on the 8th day of March, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

**SHUTE, MIHALY &
WEINBERGER, LLP**

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

**LAS VEGAS CITY ATTORNEY'S
OFFICE**

Bryan 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

/s/ Sandy Guerra

An Employee of the Law Offices of Kermitt L. Water