

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 84345

CITY OF LAS VEGAS, a political subdivision of the State of Nevada
Appellant
v.
180 LAND CO, LLC, a Nevada limited-liability company, FORE STARS LTD., a
Nevada limited liability company,
Respondents

Electronically Filed
Mar 09 2022 05:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S APPENDIX VOLUME V

<p>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</p>	<p>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</p>
<p>LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com</p>	<p>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</p>

Attorneys for Appellant

CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2017-07-18	Landowners' Petition for Judicial Review	I	AA0001	AA0008
2017-09-07	Landowners' First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	I	AA0009	AA0027
2017-09-20	Affidavit of Service of Summons and First Amended Petition for Judicial Review on City of Las Vegas	I	AA0028	AA0028
2018-02-05	City of Las Vegas' Answer to First Amended Petition for Judicial Review	I	AA0029	AA0032
2018-02-23	Landowners' First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	AA0033	AA0049
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	AA0050	AA0066
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	AA0067	AA0081

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2018-03-13	City's Answer to First Amended Complaint Pursuant to Court Order Entered on February 1, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	AA0082	AA0085
2018-03-19	City's Answer to Second Amended Petition for Judicial Review	I	AA0086	AA0089
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	AA0090	AA0127
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	AA0128	AA0155
2018-12-11	Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims (Exhibits omitted)	I	AA0156	AA0174
2018-12-13	Landowners' Motion for a New Trial Pursuant to NRCPC 59(e)	I	AA0175	AA0202
2018-12-20	Notice of Appeal	I	AA0203	AA0206
2019-02-06	Notice of Entry of Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	AA207	AA0212

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	AA0213	AA0228
2019-05-15	Landowners' Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	AA0229	AA0266
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	AA0267	AA0278
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0279	AA0283
2020-08-31	Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0284	AA0287
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	AA0288	AA0295

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2020-12-16	2 nd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0296	AA0299
2021-02-10	3 rd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0300	AA0303
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	AA0304	AA0309
2021-08-25	¹ City's Accumulated App'x Exhibit G - Ordinance No. 3472 and related documents (Second Amendment) (CLV65-000114-000137)	II	AA0310	AA0334
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	AA0335	AA0392

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").

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-08-25	City's Accumulated App'x Exhibit I - Excerpts of 1992 City of Las Vegas General Plan (CLV65-000216-218, 248)	II	AA0393	AA0397
2021-08-25	City's Accumulated App'x Exhibit J - City records related to Badlands Golf Course expansion (CLV65-000249-000254)	II	AA0398	AA0404
2021-08-25	City's Accumulated App'x Exhibit L- Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan (CLV65-000258-000273)	II	AA0405	AA0421
2021-08-25	City's Accumulated App'x Exhibit M - Miscellaneous Southwest Sector (CLV65-000274-000277)	II	AA0422	AA0426
2021-08-25	City's Accumulated App'x Exhibit N - Ordinance No. 5787 and Excerpts of 2005 Land Use Element (CLV65-000278-000291)	III	AA0427	AA0441
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	AA0442	AA0458

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-08-25	City's Accumulated App'x Exhibit Q - Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element (CLV65-000318-000332)	III	AA0459	AA0474
2021-08-25	City's Accumulated App'x Exhibit Y- EHB Companies promotional materials (CLV65-0034763-0034797)	III	AA0475	AA0510
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	AA0511	AA0532
2021-08-25	City's Accumulated App'x Exhibit EE-Order Granting Plaintiffs' Petition for Judicial Review (CLV65-000598-000611)	IV	AA0533	AA0547
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	AA0548	AA0576

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA0577	AA0585
2021-08-25	City's Accumulated App'x Exhibit AAA - Membership Interest Purchase and Sale Agreement (LO 00036807-36823)	IV	AA0586	AA0603
2021-08-25	City's Accumulated App'x Exhibit BBB - Transcript of May 16, 2018 City Council meeting (CLV65-045459-045532)	IV	AA0604	AA0621
2021-08-25	City's Accumulated App'x Exhibit DDD - Nevada Supreme Court March 5, 2020 Order of Reversal, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481 (1010-1016)	IV	AA0622	AA0629
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	AA0630	AA0636

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-08-25	City's Accumulated App'x Exhibit HHH - Complaint Pursuant to 42 U.S.C. § 1983, <i>180 Land Co. LLC et al. v City of Las Vegas, et al.</i> , 18-cv-00547 (2018) (1027-1054)	IV	AA0637	AA0665
2021-08-25	City's Accumulated App'x Exhibit III - 9 th Circuit Order in <i>180 Land Co. LLC; et al v. City of Las Vegas, et al.</i> , 18-cv-0547 (Oct. 19, 2020) (1123-1127)	IV	AA0666	AA0671
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	AA0672	AA0674
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	AA0675	AA0678
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 –I (CLV65-000969-000970)	IV	AA0679	AA0681

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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 <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020) (1295-1306)	IV	AA0682	AA0694
Intentionally Omitted		IV	AA0695	AA0733
2021-08-25	City's Accumulated App'x Exhibit DDDD - Peter Lowenstein Declaration and Ex. 9 thereto (1516-1522, 1554-1569)	IV	AA0734	AA0741Q
2021-08-25	City's Accumulated App'x Exhibit HHHH - State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i> (Nov. 30, 2017) Decision (004220-004224) (Exhibits omitted)	IV	AA0742	AA0747

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-09-15	Appendix of Exhibits in support of Plaintiffs Landowners' Reply in Support of Motion to Determine Take and Motion for Summary Judgment on the First, Third, and Fourth Claims for Relief and Opposition to the City's Counter-Motion for Summary Judgment - Ex. 194 (6076-6083)	V	AA0748	AA0759
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	AA0760	AA0774
2021-09-22	City's Accumulated App'x Exhibit VVVV – Declaration of Seth Floyd (3804-3805)	V	AA0774A	AA0774C
2021-09-22	City's Accumulated App'x Exhibit VVVV-1 – Master planned communities with R-PD Zoning (3806-3810)	V	AA0774D	AA0774I
2021-09-22	City's Accumulated App'x Exhibit VVVV-2 – General Plan Maps for Master Planned Communities with R-PD zoning (3811-3815)	V	AA0774J	AA0774O

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA0775	AA0779
Intentionally Omitted		V	AA0780	AA0787
2021-10-13	City's Accumulated App'x Exhibit WWW - October 1, 2021 Plaintiff Landowners' Motion on Order Shortening Time to Apply Issue Preclusion to the Property Interest Issue and Set a Hearing to Allow the Court to Consider a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue Case No. A-18-780184-C (3816-3877)	V	AA0788	AA0850
2021-10-19	City's Accumulated App'x Exhibit BBBB - 2005 land use applications filed by the Peccole family (CLV110456, 126670, 137869, 126669, 126708)	V	AA0851	AA0857

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA0858	AA0910
2021-10-28	Decision of the Court	V	AA0911	AA0918
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	AA0919	AA0930
2021-11-18	Findings of Fact and Conclusions of Law on Just Compensation	V	AA0931	AA0950
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	AA0951	AA0967

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-11-24	Landowners' Verified Memorandum of Costs (Exhibits omitted)	VI	AA0968	AA0972
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	AA0973	AA0995
2021-12-06	Landowners' Motion for Reimbursement of Property Taxes (Exhibits omitted)	VI	AA0996	AA1001
2021-12-09	Landowners' Motion for Attorney Fees	VI	AA1002	AA1030
2021-12-09	Landowners' Motion to Determine Prejudgment Interest	VI	AA1031	AA1042
2021-12-21	City's Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution	VI	AA1043	AA1049
2021-12-22	City's Motion for Immediate Stay of Judgment	VI	AA1050	AA1126
2022-01-26	Court Minutes	VI	AA1127	AA1127
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	AA1128	AA1139

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2022-02-17	Notice of Entry of Order Granting Plaintiffs Landowners' Motion for Reimbursement of Property Taxes	VI	AA1140	AA1150
2022-02-17	Notice of Entry of Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs	VI	AA1151	AA1162
2022-02-22	Notice of Entry of Order Granting Plaintiff Landowners' Motion for Attorney Fees in Part and Denying in Part	VI	AA1163	AA1176
2022-02-28	Minute Order granting Plaintiff's Motion for Pre-Judgment Interest	VI	AA1177	AA1177
2022-02-28	Notice of Entry of Order Denying City of Las Vegas' Motion to Amend Judgment and Stay of Execution	VI	AA1178	AA1188
2022-03-02	Notice of Appeal	VII	AA1189	AA1280

ALPHABETICAL INDEX TO APPELLANT'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2020-12-16	2 nd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0296	AA0299
2021-02-10	3 rd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0300	AA0303
2017-09-20	Affidavit of Service of Summons and First Amended Petition for Judicial Review on City of Las Vegas	I	AA0028	AA0028
2020-08-31	Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0284	AA0287
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	AA0304	AA0309
2021-09-15	Appendix of Exhibits in support of Plaintiffs Landowners' Reply in Support of Motion to Determine Take and Motion for Summary Judgment on the First, Third, and Fourth Claims for Relief and Opposition to the City's Counter-Motion for Summary Judgment - Ex. 194 (6076-6083)	V	AA0748	AA0759

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2018-02-05	City of Las Vegas' Answer to First Amended Petition for Judicial Review	I	AA0029	AA0032
2021-08-25	City's Accumulated App'x Exhibit AAA - Membership Interest Purchase and Sale Agreement (LO 00036807-36823)	IV	AA0586	AA0603
2021-08-25	City's Accumulated App'x Exhibit BBB - Transcript of May 16, 2018 City Council meeting (CLV65-045459-045532)	IV	AA0604	AA0621
2021-10-19	City's Accumulated App'x Exhibit BBBBBB - 2005 land use applications filed by the Peccole family (CLV110456, 126670, 137869, 126669, 126708)	V	AA0851	AA0857
2021-08-25	City's Accumulated App'x Exhibit DDD - Nevada Supreme Court March 5, 2020 Order of Reversal, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481 (1010-1016)	IV	AA0622	AA0629
2021-08-25	City's Accumulated App'x Exhibit DDDD - Peter Lowenstein Declaration and Ex. 9 thereto (1516-1522, 1554-1569)	IV	AA0734	AA0741Q

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-08-25	City's Accumulated App'x Exhibit EE-Order Granting Plaintiffs' Petition for Judicial Review (CLV65-000598-000611)	IV	AA0533	AA0547
2021-08-25	² City's Accumulated App'x Exhibit G - Ordinance No. 3472 and related documents (Second Amendment) (CLV65-000114-000137)	II	AA0310	AA0334
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	AA0630	AA0636
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	AA0335	AA0392

² 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").

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA0548	AA0576
2021-08-25	City's Accumulated App'x Exhibit HHH - Complaint Pursuant to 42 U.S.C. § 1983, <i>180 Land Co. LLC et al. v City of Las Vegas, et al.</i> , 18-cv-00547 (2018) (1027-1054)	IV	AA0637	AA0665
2021-08-25	City's Accumulated App'x Exhibit HHHH - State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i> (Nov. 30, 2017) Decision (004220-004224) (Exhibits omitted)	IV	AA0742	AA0747
2021-08-25	City's Accumulated App'x Exhibit I - Excerpts of 1992 City of Las Vegas General Plan (CLV65-000216-218, 248)	II	AA0393	AA0397
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	AA0577	AA0585

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-08-25	City's Accumulated App'x Exhibit III - 9 th Circuit Order in <i>180 Land Co. LLC; et al v. City of Las Vegas, et al.</i> , 18-cv-0547 (Oct. 19, 2020) (1123-1127)	IV	AA0666	AA0671
2021-08-25	City's Accumulated App'x Exhibit J - City records related to Badlands Golf Course expansion (CLV65-000249-000254)	II	AA0398	AA0404
2021-08-25	City's Accumulated App'x Exhibit L- Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan (CLV65-000258-000273)	II	AA0405	AA0421
2021-08-25	City's Accumulated App'x Exhibit M - Miscellaneous Southwest Sector (CLV65-000274-000277)	II	AA0422	AA0426
2021-08-25	City's Accumulated App'x Exhibit N - Ordinance No. 5787 and Excerpts of 2005 Land Use Element (CLV65-000278-000291)	III	AA0427	AA0441
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	AA0672	AA0674

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-08-25	City's Accumulated App'x Exhibit OOO - March 26, 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	AA0675	AA0678
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	AA0442	AA0458
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 –I (CLV65-000969-000970)	IV	AA0679	AA0681
2021-08-25	City's Accumulated App'x Exhibit Q - Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element (CLV65-000318-000332)	III	AA0459	AA0474
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	AA0760	AA0774

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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 <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020) (1295-1306)	IV	AA0682	AA0694
2021-09-22	City's Accumulated App'x Exhibit VVVV – Declaration of Seth Floyd (3804-3805)	V	AA0774A	AA0774C
2021-09-22	City's Accumulated App'x Exhibit VVVV-1 – Master planned communities with R-PD Zoning (3806-3810)	V	AA0774D	AA0774I
2021-09-22	City's Accumulated App'x Exhibit VVVV-2 – General Plan Maps for Master Planned Communities with R-PD zoning (3811-3815)	V	AA0774J	AA0774O

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-10-13	City's Accumulated App'x Exhibit WWW - October 1, 2021 Plaintiff Landowners' Motion on Order Shortening Time to Apply Issue Preclusion to the Property Interest Issue and Set a Hearing to Allow the Court to Consider a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue Case No. A-18-780184-C (3816-3877)	V	AA0788	AA0850
2021-08-25	City's Accumulated App'x Exhibit Y- EHB Companies promotional materials (CLV65-0034763-0034797)	III	AA0475	AA0510
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	AA0775	AA0779

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA0511	AA0532
2018-03-13	City's Answer to First Amended Complaint Pursuant to Court Order Entered on February 1, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	AA0082	AA0085
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	AA0267	AA0278
2018-03-19	City's Answer to Second Amended Petition for Judicial Review	I	AA0086	AA0089
2021-12-22	City's Motion for Immediate Stay of Judgment	VI	AA1050	AA1126
2021-12-21	City's Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution	VI	AA1043	AA1049
2022-01-26	Court Minutes	VI	AA1127	AA1127
2021-10-28	Decision of the Court	V	AA0911	AA0918

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-11-18	Findings of Fact and Conclusions of Law on Just Compensation	V	AA0931	AA0950
Intentionally Omitted		IV	AA0695	AA0733
Intentionally Omitted		V	AA0780	AA0787
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	AA0050	AA0066
2018-02-23	Landowners' First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	AA0033	AA0049
2017-09-07	Landowners' First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	I	AA0009	AA0027
2018-12-13	Landowners' Motion for a New Trial Pursuant to NRCP 59(e)	I	AA0175	AA0202
2021-12-09	Landowners' Motion for Attorney Fees	VI	AA1002	AA1030
2021-12-06	Landowners' Motion for Reimbursement of Property Taxes (Exhibits omitted)	VI	AA0996	AA1001

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2021-12-09	Landowners' Motion to Determine Prejudgment Interest	VI	AA1031	AA1042
2017-07-18	Landowners' Petition for Judicial Review	I	AA0001	AA0008
2018-12-11	Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims (Exhibits omitted)	I	AA0156	AA0174
2019-05-15	Landowners' Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	AA0229	AA0266
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	AA0067	AA0081
2021-11-24	Landowners' Verified Memorandum of Costs (Exhibits omitted)	VI	AA0968	AA0972
2022-02-28	Minute Order granting Plaintiff's Motion for Pre-Judgment Interest	VI	AA1177	AA1177
2018-12-20	Notice of Appeal	I	AA0203	AA0206
2022-03-02	Notice of Appeal	VII	AA1189	AA1280

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA1128	AA1139
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	AA0919	AA0930
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	AA0858	AA0910
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	AA0973	AA0995
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	AA0128	AA0155

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	AA0213	AA0228
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	AA0288	AA0295
2022-02-28	Notice of Entry of Order Denying City of Las Vegas' Motion to Amend Judgment and Stay of Execution	VI	AA1178	AA1188
2022-02-17	Notice of Entry of Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs	VI	AA1151	AA1162
2022-02-22	Notice of Entry of Order Granting Plaintiff Landowners' Motion for Attorney Fees in Part and Denying in Part	VI	AA1163	AA1176
2022-02-17	Notice of Entry of Order Granting Plaintiffs Landowners' Motion for Reimbursement of Property Taxes	VI	AA1140	AA1150

DATE	DOCUMENT	VOLUME	PAGE RANGE	
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	AA0951	AA0967
2019-02-06	Notice of Entry of Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	AA207	AA0212
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	AA0090	AA0127
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	AA0279	AA0283

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 9th day of March, 2022

BY: /s/ Debbie Leonard

<p>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</p>	<p>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</p>
<p>LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com</p>	<p>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</p>

Attorneys for Appellant

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). 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.

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 Respondents
180 Land Company, LLC and Fore Stars Ltd.

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 Respondents
180 Land Company, LLC and Fore Stars Ltd.

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 Respondents
180 Land Company, LLC and Fore Stars Ltd.

Dated: March 9, 2022

Elizabeth Ham, Esq.
EHB COMPANIES
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117
eham@ehbcompanies.com
Attorneys for Respondents
180 Land Company, LLC and Fore Stars Ltd.

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



APPN
LAW OFFICES OF KERMITT L. WATERS

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

**APPENDIX OF EXHIBITS IN SUPPORT
OF PLAINTIFFS LANDOWNERS'
REPLY IN SUPPORT OF MOTION TO
DETERMINE TAKE AND MOTION FOR
SUMMARY JUDGMENT ON THE FIRST,
THIRD AND FOURTH CLAIMS FOR
RELIEF AND OPPOSITION TO THE
CITY'S COUNTER-MOTION FOR
SUMMARY JUDGMENT**

VOLUME 21

Hearing Date: September 23, 2021

Hearing Time: 1:30 p.m.

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

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

DATED this 15th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

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

11 **McDONALD CARANO LLP**
12 George F. Ogilvie III, Esq.
13 Christopher Molina, Esq.
14 2300 W. Sahara Avenue, Suite 1200
15 Las Vegas, Nevada 89102
16 gogilvie@mcdonaldcarano.com
17 cmolina@mcdonaldcarano.com

18 **LAS VEGAS CITY ATTORNEY'S OFFICE**
19 **Bryan Scott, Esq., City Attorney**
20 Philip R. Byrnes, Esq.
21 Rebecca Wolfson, Esq.
22 495 S. Main Street, 6th Floor
23 Las Vegas, Nevada 89101
24 bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

25 **SHUTE, MIHALY & WEINBERGER, LLP**
26 Andrew W. Schwartz, Esq.
27 Lauren M. Tarpey, Esq.
28 396 Hayes Street
29 San Francisco, California 94102
30 schwartz@smwlaw.com
31 ltarpey@smwlaw.com

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

Exhibit 194



DECL

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

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

Hearing Date: May 27 & 28, 2021

Hearing Time: 9:00 a.m.

DECLARATION OF YOHAN LOWIE

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

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

1. I have never met or spoken with J. Christopher Molina. No person named "J. Christopher Molina" was involved in any transactions with the Peccole family where I was a principal on any side of the transaction.
2. I have been informed that J. Christopher Molina is an attorney at the law firm of McDonald Carano. The law firm of McDonald Carano was not involved in any transactions with the Peccole family where I was a principal on any side of the transaction.
3. I understand "personal knowledge" to mean knowledge gained through firsthand observation or experience. Based on my personal knowledge as stated in #2 and #3 above, the declaration by J. Christopher Molina that he has "personal knowledge" of any transactions with the Peccole family where I was a principal on any side of the transaction is untruthful.
4. In regard to the consideration for the acquisition of the membership interest of Fore Stars Ltd. the information attested to by J. Christopher Molina is replete with material inaccuracies, confusion, and untruthful statements. To name a few and generally:
 - a. The acquisition of the assets and liabilities, which included five parcels of land amounting to approximately 250 acres of residential zoned land, was significant and

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

- 11 b. The “Developer” is not Queensridge Towers LLC (“QT”).
- 12 c. Fore Stars Ltd. (then owned by the Peccole family) did not agree to transfer 5.13 acres
- 13 to QT “at no cost”. Extensive consideration was exchanged as stated in the
- 14 Redemption Agreement.
- 15 d. The “Developer” as incorrectly used by J. Christopher Molina in his Declaration, had
- 16 no obligation to pay the Peccole family \$3 million.
- 17 e. The \$3,150,000 Clubhouse Obligation was owed by Queensridge Towers LLC to
- 18 Fore Stars Ltd (then owned by the Peccole family), not the other way around, and not
- 19 owed by the “Developer” or the Landowners’ principals, as falsely state by J.
- 20 Christopher Molina.
- 21 f. The “Developer” never had an obligation to construct a new clubhouse.
- 22 g. In 2012, the Landowners’ principals disassociated from QT and relinquished all
- 23 ownership, management or control of QT. Therefore, any reference to the Developer
- 24 as defined by the Molina declaration thereafter is false.
- 25
- 26
- 27
- 28

- 1 h. The 2013 Settlement was between QT and Fore Stars Ltd. (then owned by the
2 Peccoles), not the Landowners' principals.
- 3 5. Specifically, the following statements are inaccurate or blatantly false:
- 4 a. Paragraph 4 in the Molina declaration is false including the statement that the Peccole
5 family is the developer of the 1,539-acre Peccole Ranch Master Plan.
- 6 b. Paragraph 5 of the Molina declaration is false.
- 7 c. Paragraph 6 of the Molina declaration is false in that the summary of transactions and
8 obligations as portrayed is false.
- 9 d. Paragraph 7 of the Molina declaration is false.
- 10 e. Paragraph 9 of the Molina declaration is inaccurate as it falsely describes sales
11 transactions as recapitalization.
- 12 f. Paragraph 11 of the Molina declaration references a settlement agreement to which I
13 have no personal knowledge as neither I nor any entity I am affiliated with was a party
14 to that transaction.
- 15 g. Paragraph 12 of the Molina declaration references a letter attached to the 2013
16 Settlement to which I have no personal knowledge as neither I nor any entity I am
17 affiliated with was a party to that transaction. However, referencing the original
18 agreement and that the obligation to spend 3,150,000 by "the Developer" somehow
19 survived termination is false and defies the plain language of the transactional
20 documents.
- 21 h. Paragraph 12, 13, and 14 of the Molina declaration is inaccurate and appears to be
22 based upon documents and negotiations that were never executed.
- 23 i. Paragraph 16 of the Molina declaration is false.
- 24 j. Paragraph 17 of the Molina declaration is false in its assumed conclusion.
- 25
26
27
28

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

3 6. In regard to discovery requested relating to the amount paid for the acquisition of Fore
4 Stars, the documents produced to the City support the testimony that “the aggregate of
5 consideration given to the Peccole family for Fore Stars Ltd, the owner of the former
6 Badlands golf course properties was approximately \$45 million”. After reading the
7 Molina Declaration it is clear that J. Christopher Molina does not comprehend those
8 complex transactions and his testimony within his Declaration relating thereto makes
9 false conclusions. Furthermore, J. Christopher Molina’s continued reference to a “single
10 transaction” for a complex deal that involved a series of transactions is merely deceptive
11 semantics.
12

13
14 7. Upon information and belief: J. Christopher Molina did not attend the August 13, 2018
15 meeting between the City of Las Vegas (“CLV”) and GC Wallace Engineers (“GCW”);
16 The meeting minutes were prepared by GCW, a third party engineering firm; The City
17 did not like that the minutes memorialized what the CLV attendees stated at the meeting,
18 that the City’s ‘top down directive’ to City staff was that they are “not authorized to
19 provide conditional approval on this TDS”, so after receipt of the GCW minutes CLV’s
20 Peter Jackson desperately sought to alter the minutes to remove the City’s unfavorable
21 admissions made during the meeting directing GCW to have them “replaced in its
22 entirety”, and in fact attempted to distance himself from the happenings at the meeting
23 stating in his email “could you please let the minutes reflect that I had to leave the meeting
24 in the first 5 minutes or so to attend another meeting?”; The Plaintiff’s response to
25 accurately reflect everyone’s understandings was that “Seventy Acres LLC is OK with
26 attaching both Peter’s 8/21/18 email and Mark’s 9/12/18 email to the August 13 dated
27
28

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

5 8. The technical drainage study submitted on behalf of Plaintiff and discussed between
6 GCW and the CLV engineers was for land (17 Acres) that was already entitled by the
7 City, yet the City refused to allow the drainage work to proceed. J. Christopher Molina
8 confuses the ordinance requirements with the Technical Drainage Study on the entitled
9 17 acres. The CLV put a hard stop on Plaintiff's necessary drainage work with orders
10 coming "from the top". However, as it relates to other parcels not yet developed, the City
11 made it clear through the ordinance that it would not accept an application for
12 development without a drainage study and that no drainage study could be completed
13 until all litigation was resolved in relation to the Landowners' properties.

14 9. Plaintiff's land is residentially zoned property R-PD7. It was hard zoned R-PD7 from
15 U(M) by the City Council by Ordinance No. 5353 PASSED, ADOPTED AND
16 APPROVED on August 15, 2001, signed by Mayor Oscar Goodman and attested by City
17 Clerk Barbara Jo Ronemus. The ordinance did not change the then General Plan Land
18 Use Designation of M-Medium Density residential. In addition to hard zoning the
19 property for R-PD7 residential single and multi-family use, it provides that "**All**
20 **ordinances or part of ordinance or sections, subsections, phrases, sentences, clauses**
21 **or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,**
22 **1983 Edition, in conflict hereby repealed.**" The R-PD7 zoning on the property is "the
23 law" of the land, not arguments by J. Christopher Molina declares.
24
25
26
27
28

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

6
7 11. J. Christopher Molina’s statements that Plaintiff’s property is “open space and drainage”
8 under the Peccole Ranch Master Plan is a blatant falsity in contradiction to and in
9 complete disregard of the ruling of the Nevada Supreme Court in its Order of Reversal
10 on filed on March 5, 2020. The Supreme Court of the State of Nevada in Case No. 75481
11 ruled that the Peccole Ranch Master Plan does not apply to Plaintiff’s R-PD7 zoned land
12 and that no application for modification of the Peccole Ranch Master Plan was required
13 by Plaintiff to develop its property.
14

15 DATED this 21st day of May, 2021.

16
17 /s/ Yohan Lowie
18 Yohan Lowie
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

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

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

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

EXHIBIT “SSSS”

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3		
4	180 LAND CO LLC, A Nevada)
	limited liability company,)
5	FORE STARS, LTD., a Nevada)
	limited liability company and)
6	SEVENTY ACRES, LLC, a Nevada)
	limited liability company, DOE)
7	INDIVIDUALS I-X, DOE)
	CORPORATIONS I-X, and DOE)
8	LIMITED LIABILITY COMPANIES)
	I-X,)
9)
)
10	Plaintiffs,)
)
11	vs.) CASE NO.: A-17-758528-J
) DEPT. NO.: XVI
12	CITY OF LAS VEGAS, a)
	political subdivision of the)
13	State of Nevada; ROE)
	GOVERNMENT ENTITIES I-X; ROE)
14	CORPORATIONS I-X; ROE)
	INDIVIDUALS I-X; ROE)
15	LIMITED-LIABILITY COMPANIES)
	I-X; ROE QUASI GOVERNMENTAL)
16	ENTITIES I-X,)
)
17)
	Defendants.)
18)
19		
20	CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF	
21	NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION	
22	WILLIAM BAYNE	
23	LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021	
24	REPORTED BY: JOHANNA VORCE, CCR NO. 913	
25	JOB NO.: 777801	

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

11 BY MR. OGILVIE:

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

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

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

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

1 develop the golf course?

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

15 Q. Okay.

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

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

19 BY MR. OGILVIE:

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

25 The application/petition for a general plan

1 Q. And is that his signature?

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

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

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

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

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

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

16 Q. Okay.

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

19 BY MR. OGILVIE:

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

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

5 Do you see that?

6 A. I do.

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

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

18 Q. Okay.

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

22 MR. OGILVIE: Duly noted.

23 THE COURT REPORTER: Was that Mr. Leavitt?

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

25 (Defendant's Exhibit 23 was marked

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

3 MR. OGILVIE: Well, okay.

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

8 BY MR. OGILVIE:

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

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

14 Q. And then --

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

18 Q. Okay.

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

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

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

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

4 THE WITNESS: Yeah.

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

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

15 BY MR. OGILVIE:

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

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

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

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

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

6 A. Liability.

7 Q. Okay.

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

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

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

18 BY MR. OGILVIE:

19 Q. Exhibit 34 is an e-mail exchange between Henry
20 Lichtenberger, Yohan Lowie, yourself, and Todd Davis. And
21 there's an e-mail -- initial e-mail from Mr. Lichtenberger.
22 It says, "I have received consent from the Peccole Family
23 for the revised purchase terms as it relates to the
24 \$3 million that was initial drafted as a term note."

25 What -- do you have an understanding of what

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

6 A. Yep.

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

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

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

15 A. Fore Stars.

16 Q. -- and the water rights?

17 A. That is correct.

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

20 BY MR. OGILVIE:

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

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

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

7 And so the attachment -- the second through, what,
8 20th page, whatever it is, of Exhibit 43 is the first
9 iteration of a purchase and sale agreement for the entity,
10 as opposed to the prior iterations that were for the assets
11 of the entity, correct?

12 A. That's correct.

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

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

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

24 A. That's correct.

25 Q. Under Section --

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

4 Q. Right.

5 A. We got the clubhouse back.

6 Q. Right.

7 A. Okay.

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

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

12 Q. The club -- okay.

13 A. -- meaning we had the clubhouse.

14 Q. The real property and the improvements?

15 A. Yeah.

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

17 A. Yeah.

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

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

22 A. Yes.

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

1 A. That is my belief.

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

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

8 A. And the business interest, yes.

9 Q. Okay. And the business interest.

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

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

1 million for the 250-acre golf course, correct?

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

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

7 Do you have another one?

8 MR. WILLIAMS: Objection; vague and ambiguous.

9 BY MR. OGILVIE:

10 Q. You can answer.

11 A. I got to learn how this objection stuff works.

12 I mean, based on what you said, I don't have an
13 argument.

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

16 FURTHER EXAMINATION

17 BY MR. LEAVITT:

18 Q. Okay. Let me ask a question here, though.

19 Because previously I asked you if it was true that Mr. Lowie
20 paid less than \$4.5 million for the land, and you said that
21 was not true, correct?

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

24 Q. Okay.

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

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) SS
4 COUNTY OF CLARK)

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

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

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

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

16 That a request has been made to review the
17 transcript.

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

23 Dated this 27th day of July, 2021.

24
25

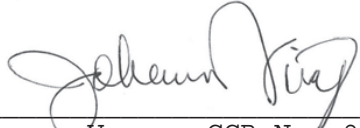

Johanna Vorce, CCR No. 913

EXHIBIT “VVVV”

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

7. The open space uses in each of the Master Planned Communities (i.e., golf courses and/or manmade lakes) were included in and made a part of the R-PD zoning district established for those communities. The PR-OS general plan designation is therefore consistent with zoning.

8. The following table identifies the zoning and general plan designations for both the residential and open space areas in each of the Master Planned Communities:

	Zoning: Residential & Open Space Areas	General Plan: Residential Areas Only	General Plan: Open Space Areas Only
Canyon Gate	R-PD4	L	PR-OS
Desert Shores	R-PD5	L	PR-OS
Lakes at Sahara	R-PD3	L / ML	PR-OS
Los Prados	R-PD9	ML	PR-OS
Painted Desert	R-PD5	ML	PR-OS

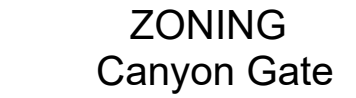
9. In order to develop residential uses on property designated PR-OS, the City's general plan must be amended to a designation that permits housing.









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

Executed this 10th day of September 2021.

/s/ Seth T. Floyd
SETH T. FLOYD

EXHIBIT “VVVV-1”



- | | |
|---|--|
|  | Canyon Gate |
|  | U - (GPA Designation) Undeveloped |
|  | R-PD - Residential Planned Development |
|  | R-1 - Single Family Residential |
|  | R-3 - Medium Density Residential |
|  | R-CL - Single Family Compact-Lot |
|  | C-1 - Limited Commercial |
|  | C-2 - General Commercial |

AA0774E

SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.

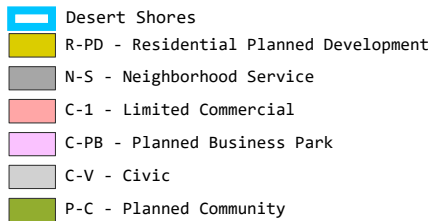
3806

Geographic Information System

Planning & Development Dept.
702-229-6301

Printed: Monday, August 9, 2021



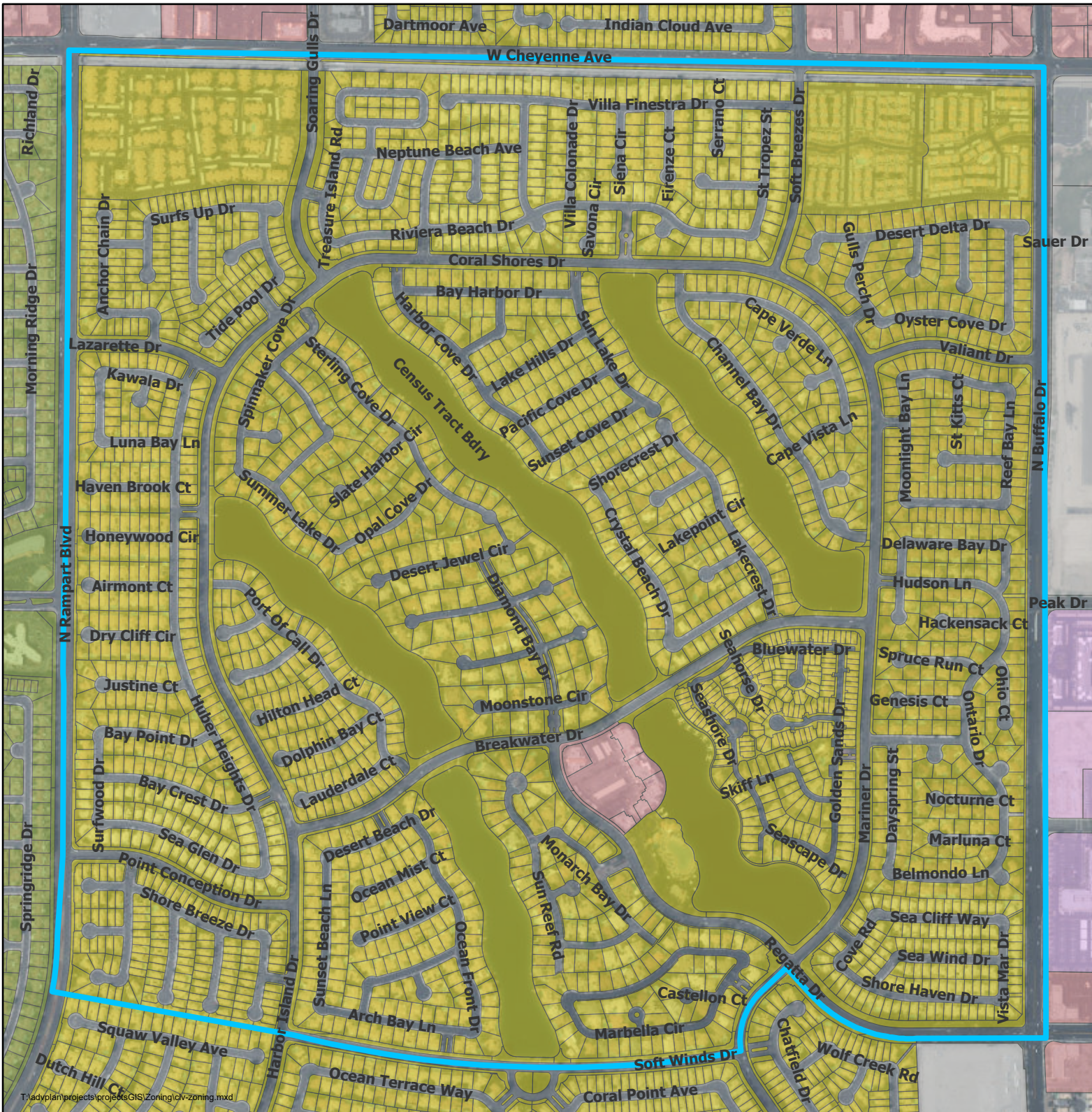


AA0774F









CLV Data Revised: August 19, 2020 ZON-78819

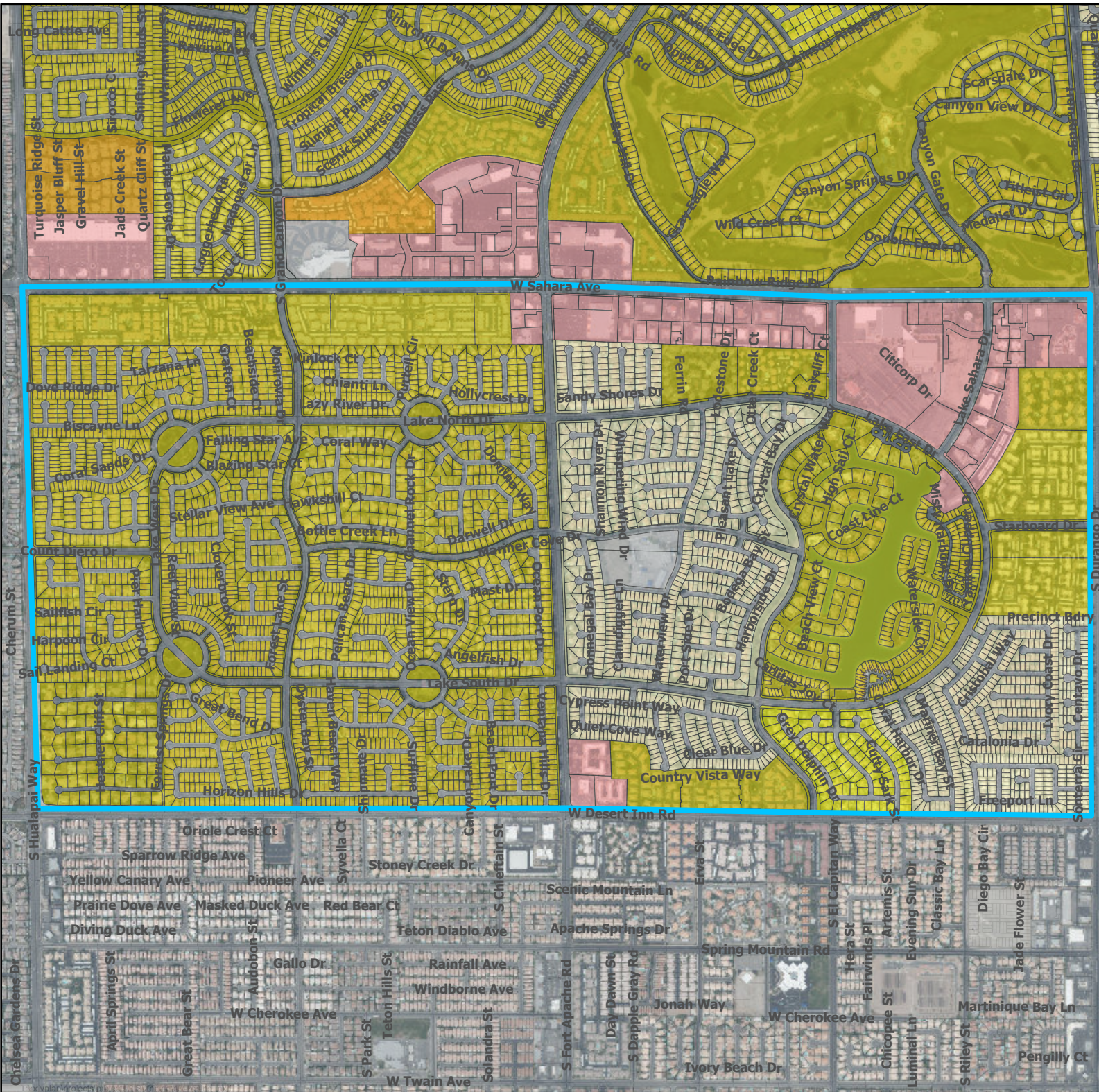


Printed: Monday, August 9, 2021



ZONING Lakes At Sahara

-  Lakes At Sahara
-  R-PD - Residential Planned Development
-  R-1 - Single Family Residential
-  R-CL - Single Family Compact-Lot
-  R-3 - Medium Density Residential
-  C-1 - Limited Commercial
-  C-2 - General Commercial
-  C-V - Civic



AA0774G








SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for informational purposes only.
3808
Geographic Information System
Planning & Development Dept.
702-229-6301

ZONING Los Prados

-  Los Prados
-  R-E - Residence Estates
-  R-D - Single Family Residential-Restricted
-  R-PD - Residential Planned Development
-  R-1 - Single Family Residential
-  R-CL - Single Family Compact-Lot
-  C-1 - Limited Commercial

AA0774H

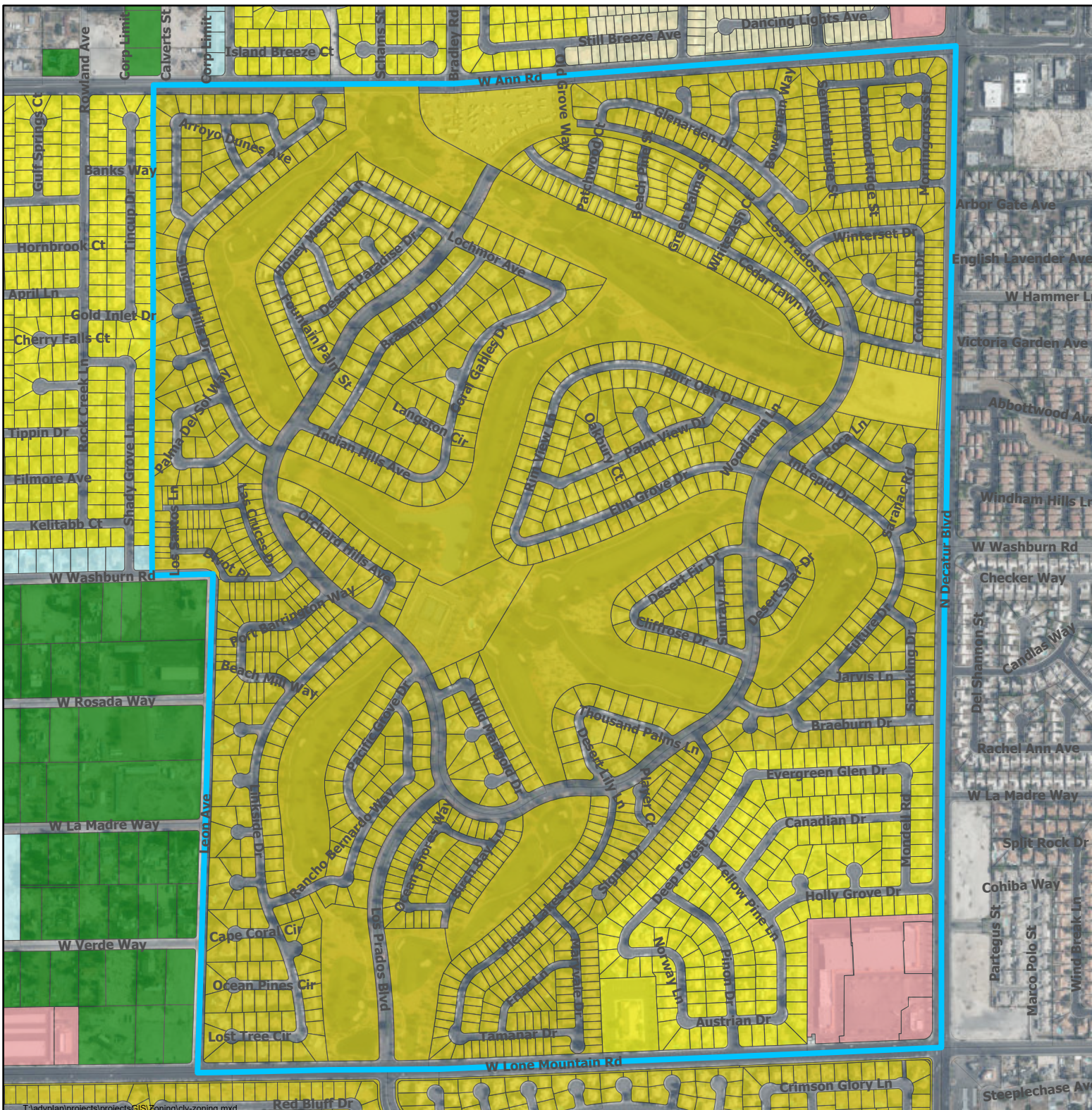
SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced
only to meet the needs of the City.
Due to continuous development activity
this map is for reference only.
3809
Geographic Information System
Planning & Development Dept.
702-229-6301

Printed: Monday, August 9, 2021



ZONING Painted Desert

- Painted Desert
- U - (GPA Designation) Undeveloped
- R-E - Residence Estates
- R-D - Single Family Residential-Restricted
- R-PD - Residential Planned Development
- R-1 - Single Family Residential
- R-CL - Single Family Compact-Lot
- R-3 - Medium Density Residential
- P-R - Professional Offices and Parking
- C-2 - General Commercial
- C-V - Civic
- PD - Planned Development
- T-C - Town Center

AA0774I

SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819













GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
 Planning & Development Dept.
 702-229-6301

Printed: Monday, August 9, 2021

EXHIBIT “VVVV-2”

Future Land Use Canyon Gate

-  Canyon Gate
-  Rural
-  Low
-  Medium
-  Medium Low
-  Medium Low Attached
-  Transit Oriented Corridor - 2
-  Transit Oriented Development - 2
-  Service Commercial
-  Parks/Recreation/Open Space

AA0774K

SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for informational purposes only.










Geographic Information System
Planning & Development Dept.
702-229-6301

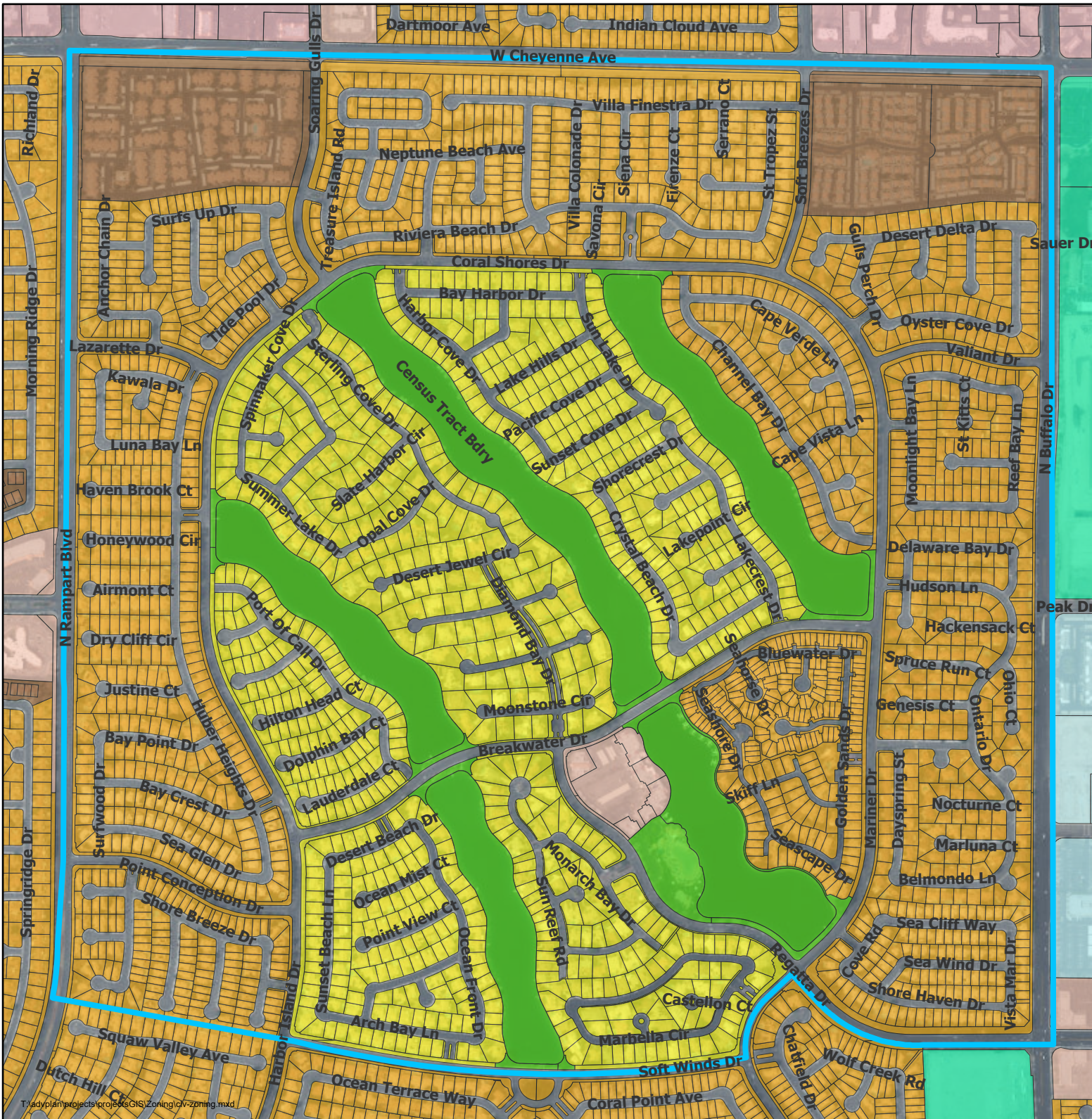
Printed: Tuesday, August 10, 2021



F:\adv\plan\projects\GIS\Zoning\clv\zoning.mxd

Future Land Use Desert Shores

-  Desert Shores
-  Low
-  Medium Low
-  Medium
-  Light Industry / Research
-  Neighborhood Mixed Use Center
-  Service Commercial
-  Parks/Recreation/Open Space
-  Public Facilities



AA0774L

SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

Printed: Tuesday, August 10, 2021

Future Land Use Lakes At Sahara

- Lakes At Sahara
- Low
- Medium Low
- Medium Low Attached
- Medium
- High
- Neighborhood Mixed Use Center
- Transit Oriented Corridor - 2
- Transit Oriented Development - 2
- Service Commercial
- Parks/Recreation/Open Space
- Public Facilities

AA0774M

SOURCE: City of Las Vegas , Planning and Development Department

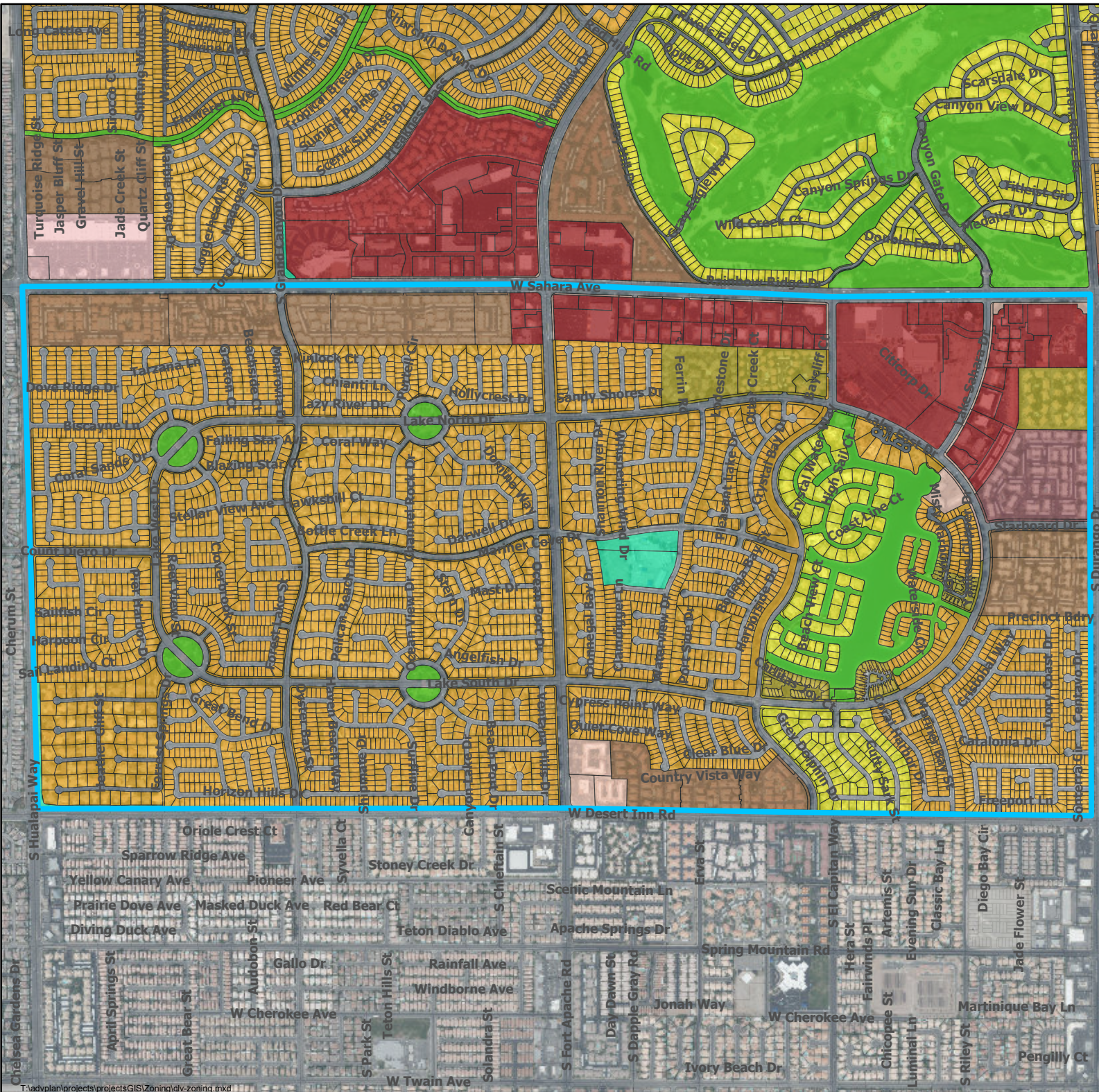
CLV Data Revised: August 19, 2020 ZON-78819









GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for informational purposes only.

Geographic Information System
Planning & Development Dept.
702-229-6301

Printed: Tuesday, August 10, 2021



Future Land Use Los Prados

-  Los Prados
-  Rural
-  Low
-  Medium Low
-  Service Commercial
-  Parks/Recreation/Open Space

AA0774N

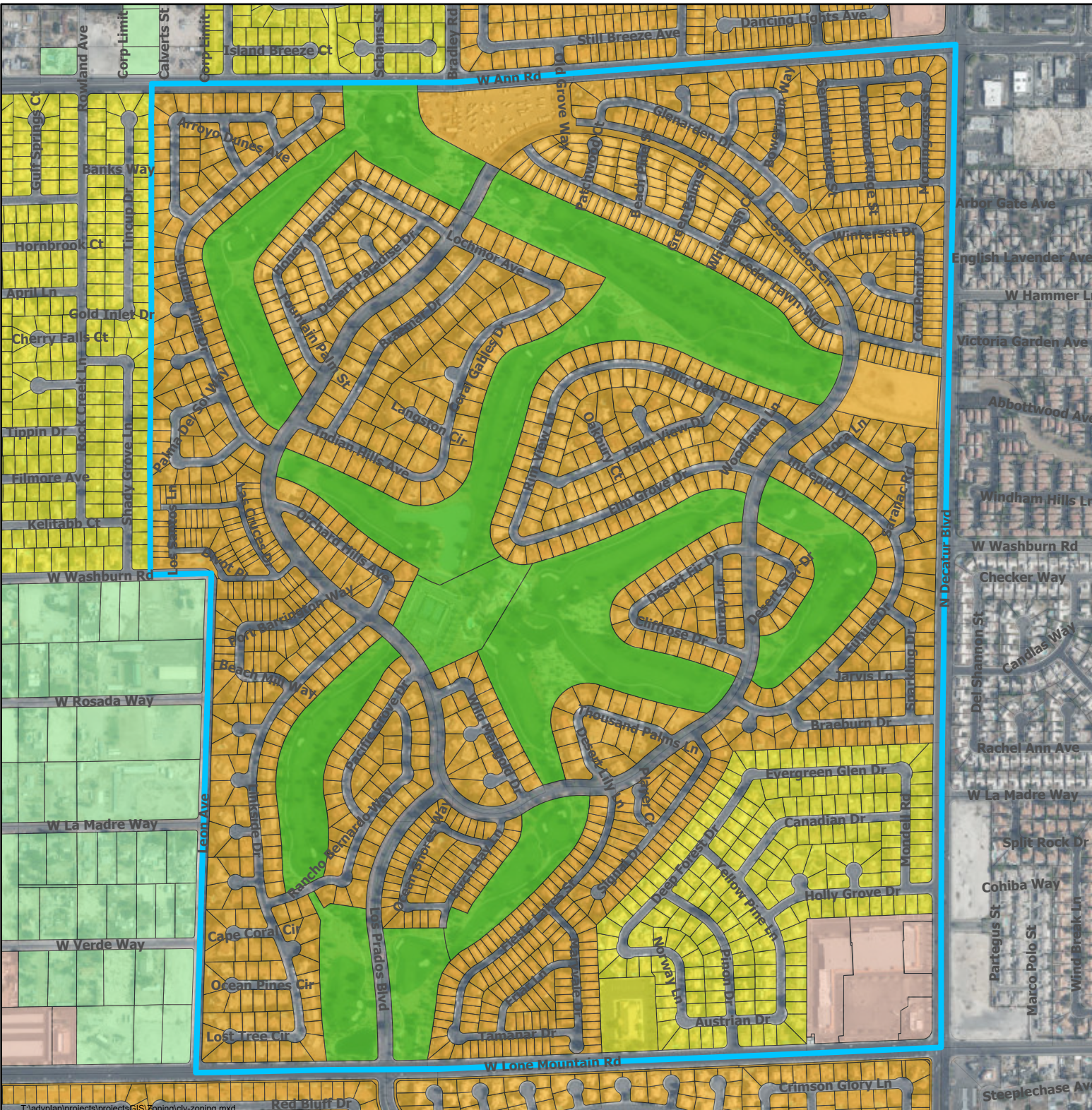
SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for review only.
3814
Geographic Information System
Planning & Development Dept.
702-229-6301

Printed: Tuesday, August 10, 2021



Future Land Use Painted Desert

- Painted Desert
- Rural Neighborhood Preservation
- Desert Rural
- Rural
- Low
- Medium Low
- Medium
- Neighborhood Mixed Use Center
- Transit Oriented Development - 2
- Office
- Parks/Recreation/Open Space
- Public Facilities
- Town Center

AA07740

SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.

Geographic Information System
Planning & Development Dept.
702-229-6301

Printed: Tuesday, August 10, 2021

EXHIBIT “YYYY”



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

1 **ITEM 63 – Discussion for possible action to approve filing a writ petition in the Nevada**
2 **Supreme Court relating to 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-**
3 **758528-J in the Eighth Judicial District Court - All Wards**

4

5 **Appearance List:**

6 CAROLYN GOODMAN, Mayor

7 BRYAN SCOTT, City Attorney

8 VICTORIA SEAMAN, Councilwoman

9 MICHELE FIORE, Councilwoman

10

11 (8 minutes, 21 seconds) [1:52:46 – 2:01:07]

12

13 Typed by: Debra A. Outland

14 Proofed by: Stacey Campbell

15

16 **MAYOR GOODMAN**

17 We're back. Believe it or not, we are back. And it is 11:02, and I think I was instructed to go to

18 63. So, whoops, let me turn off my cell phone. That's off. Okay. All right. Agenda Item 63.

19 Discussion for possible action to approve filing a writ petition in the Nevada Supreme Court

20 relating to 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J in the

21 Eighth Judicial Court - All Wards.

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

23

24 **BRYAN SCOTT**

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

26

27 **MAYOR GOODMAN**

28 Okay, and we are gonna, are you here? I believe at this point on that item, Agenda Item 63,

29 Councilwoman Seaman, in whose Ward this is, has asked to make a statement please. Go ahead.

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

30 **VICTORIA SEAMAN**

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

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

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

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

58 Today, this Council is going to decide whether we should appeal this case to the Nevada
59 Supreme Court or not, which means, we, as a Council, will vote on this matter. I've been told the
Page 2 of 4

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

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

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

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

71
72 **MICHELE FIORE**

73 Madam Mayor.

74
75 **MAYOR GOODMAN**

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

88 And, I appreciate your comments, Councilwoman Seaman. You have been in that from the days,
89 and I read your campaign talks and your debates and know that your passion is for the entire
Page 3 of 4

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

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

So, you please, go ahead.

MICHELE FIORE

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

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

MAYOR GOODMAN

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

Thank you, Mr. Scott.

BRYAN SCOTT

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

MAYOR GOODMAN

Thank you. Please do.

(END OF DISCUSSION)

AA0780-AA0787

INTENTIONALLY OMITTED

EXHIBIT “WWW”

1 **MOT**

2 **LAW OFFICES OF KERMITT L. WATERS**

3 Kermitt L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

9 Autumn L. Waters, Esq., Bar No. 8917

10 autumn@kermittwaters.com

11 704 South Ninth Street

12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 ***Attorneys for Plaintiff Landowners***

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 180 LAND CO LLC, a Nevada limited liability
19 company; SEVENTY ACRES LLC, a Nevada
20 Limited Liability Company; FORE STARS, Ltd
21 DOE INDIVIDUALS I through X, DOE
22 CORPORATIONS I through X, and DOE
23 LIMITED LIABILITY COMPANIES I through
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

**Plaintiff Landowners' Motion on Order
Shortening Time To:**

**1) Apply Issue Preclusion to the Property
Interest Issue;**

and

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

**Hearing Requested On Order Shortening
Time**

///

1 Pursuant to EDCR 2.26, the Plaintiffs 180 Land Co., LLC, Seventy Acres LLC, and Fore
2 Stars Ltd (“Landowners”) hereby submit that Judge Williams in the 35 Acre Case and Judge Jones
3 in the 17 Acre Case have decided the same exact property interest issue pending before this Court
4 and have entered detailed findings of fact and conclusions of law on this issue. Exhibits 1 and
5 198. Also, Judge Williams in the 35 Acre Case, just two days ago - September 28, 2021, decided
6 the same take issue pending before this Court, ruling from the Bench that - **“We’ve heard a lot
7 of evidence in this case, and I think under the facts and circumstances, it’s pretty clear that
8 we had a taking.”** Judge Williams found a taking under all four of the Landowners’ taking
9 claims. Therefore, this Court should consider the “issue preclusive” effect of these recent
10 decisions pursuant to Nevada Supreme Court precedent, which provides that, “issue preclusion is
11 applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression
12 of the adverse party.” Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258
13 (2014). *See also* Five Star Capital Corp. v. Ruby, 124 Nev. 1048 (2008) (“emphasizing” that
14 “[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action
15 will be estopped from being relitigated in a subsequent suit.” Italics in original. Id., at 1052).
16
17
18

19 This Court entered a minute order to consider, on October 21, 2021, the same property
20 interest and take issues in this 65 Acre Case. Therefore, this motion should be heard prior to the
21 October 21, 2021, date. Or, as explained herein, this Court could enter its findings of fact and
22 conclusions of law on the property interest issue as that issue has already been decided, with two
23 findings of fact and conclusions of law already entered by Judge Williams and Judge Jones in the
24 35 and 17 Acre Cases. This Court could then continue a decision on the take issue until such time
25 as Judge Williams findings of fact and conclusions of law are signed and submitted.
26

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

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

Respectfully submitted this 30th day of September, 2021.

LAW OFFICES OF KERMIT L. WATERS

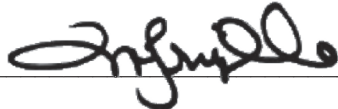
BY: /s/ James J. Leavitt
KERMIT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

ORDER SHORTENING TIME

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

_____ day of _____, 2021 at ____:____, or as soon thereafter as counsel may be heard. Plaintiff's Counsel must serve opposing counsel by 10/4 at 5 pm, opposing counsel has until 10/13 at 5 pm to file an opposition, and no reply will be allowed. The Court will continue its Chambers decision to 10/28. The hearing for this OST will be held on 10/25 at 10:30 a.m.

Dated this 1st day of October, 2021



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

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

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

4 1. I am an attorney licensed to practice law in the State of Nevada, and am an attorney
5 at the Law Offices of Kermitt L. Waters, the attorneys of record for the Landowners in this matter.
6

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

9 3. This declaration is made pursuant to EDCR 2.26.

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

12 17 Acre Case – pending before Judge Jones;

13 35 Acre Case – pending before Judge Williams;

14 **65 Acre Case – pending before this Court;** and
15

16 133 Acre Case – pending before Judge Sturman.

17 5. This Court is currently considering two issues in this 65 Acre Case – 1) the
18 property interest the Landowners had in the 65 Acre Case prior to the City interfering with that
19 property interest (the **property interest issue**); and 2) whether the City engaged in actions to take
20 that property interest (the **take issue**). This Court issued a minute order that assigned the decision
21 on these two issues for this Court's October 21, 2021, chambers calendar.
22

23 6. Very recently, on September 28, 2021, Judge Williams, in the 35 Acre Case, after
24 four days of hearings on the sole take issue, held that the City's actions resulted in a taking of the
25 Landowners Property - **"We've heard a lot of evidence in this case, and I think under the facts**
26 **and circumstances, it's pretty clear that we had a taking."**
27
28

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

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

9 9. Recently, on September 16, 2021, Judge Jones, in the 17 Acre Case, also entered
10 even more detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff**
11 **Landowners' Motion to Determine "Property Interest,"** with findings very similar to Judge
12 Williams findings on the property interest issue. Exhibit 198. This Judge Jones FFCL on the
13 property interest issue in the 17 Acre Case also granted the Landowners' property interest motion
14 in its entirety.
15

16 10. The Landowners have brought this motion on order shortening time, because this
17 Court entered a minute order that it will consider the exact same **property interest issue** in this
18 65 Acre Case, that has already been decided by Judge Williams and Judge Jones, on this Courts
19 October 21, 2021, chambers calendar.
20

21 11. The Nevada Supreme Court has held that this Court should consider the "issue
22 preclusive" effect of these recent decisions by Judge Williams (35 Acre Case) and by Judge Jones
23 (17 Acre Case) on the property interest issue - "issue preclusion is applied to conserve judicial
24 resources, maintain consistency, and avoid harassment or oppression of the adverse party."
25 Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014). *See also* Five
26 Star Capital Corp. v. Ruby, 124 Nev. 1048 (2008) ("emphasizing" that "[t]he doctrine provides
27
28

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

3 12. In this same connection, this Court should also consider the preclusive effect of
4 the Judge Williams decision on the take issue decided very recently - on September 28, 2021,
5 wherein Judge Williams ruled from the Bench and held that it is “clear” there has been a taking
6 of the 35 Acre Property, based on nearly identical facts that are pending before this Court on the
7 take issue.
8

9 13. Therefore, this motion should be heard prior to this Court’s October 21, 2021,
10 chambers calendar. Or, as explained herein, this Court could enter its findings of fact and
11 conclusions of law on the property interest issue as that issue has already been fully litigated and
12 decided with detailed findings of fact and conclusions of law already entered by Judge Williams
13 and Judge Jones in the 35 and 17 Acre Cases. The Landowners have submitted proposed FFCLs
14 for the property interest issue in this 65 Acre Case to this Court, which is attached hereto. This
15 Court could then continue the October 21, 2021, decision on the take issue until such time as
16 Judge Williams findings of fact and conclusions of law are signed.
17
18

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

21 Executed this 30th day of September, 2021.
22

23 /s/ James J. Leavitt
24 JAMES J. LEAVITT, ESQ.
25
26
27
28

1 **1. Introduction**

2 The Nevada Supreme Court held in Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.,
3 130 Nev. 252, 258 (2014), that “issue preclusion is applied to conserve judicial resources,
4 maintain consistency, and avoid harassment or oppression of the adverse party.” The Court has
5 “emphasized” in Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1052 (2008), that “[t]he
6 doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be
7 estopped from being relitigated in a subsequent suit.” Italics in original.

9 The Landowners have brought this motion, because the exact same **property interest**
10 **issue** currently pending before this Court in this 65 Acre Case has been “*actually* and *necessarily*
11 *[and fully] litigated*” before Judge Williams in the 35 Acre Case and before Judge Jones in the
12 17 Acre Case, with both Judges entering detailed Findings of Fact and Conclusions of Law
13 (FFCL) on the property interest issue. Exhibits 1 and 198. The Landowners request that this
14 Court apply those findings of fact and conclusions of law from the 35 and 17 Acre Cases, through
15 the doctrine of issue preclusion, to the property interest issue pending in this 65 Acre Case. The
16 Landowners have submitted proposed FFCLs for the property interest issue in this 65 Acre Case
17 to this Court, which is consistent with the Judge Williams and Judge Jones FFCLS and which is
18 attached hereto. This is the only way to comply with the Nevada Supreme Court rule and policy
19 for issue preclusion to “maintain consistency” in these four pending cases.

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

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

5 **2. Issue Preclusion on the Property Interest Issue**

6 As this Court will recall, there are four pending and related inverse condemnation cases
7 in the Eighth Judicial District Court:
8

- 9
 - 17 Acre Case – pending before Judge Jones;
 - 10 • 35 Acre Case – pending before Judge Williams
 - 11 • **65 Acre Case – pending before this Court;** and
 - 133 Acre Case – pending before Judge Sturman.

12 Each of these cases must be decided based on a two-step sub inquiry: first, the Court must
13 decide the property rights the Landowners had prior to the City interfering with that property
14 right (“**property interest issue**”); and, second, the court must decide whether that property right
15 has been taken (“**take issue**”). McCarran Int’l Airport v. Sisolak, 122 Nev. 645, 658, 137 P.3d
16 1110, 1119 (2006). All four courts are applying this two-step procedure.
17

18 On October 12, 2020, Judge Williams, in the 35 Acre Case, entered detailed **Findings of**
19 **Fact and Conclusions of Law Regarding Plaintiff Landowners’ Motion to Determine**
20 **“Property Interest,”** finding: **1)** the 35 Acre Property has at all relevant times had R-PD7
21 zoning; **2)** Nevada eminent domain law provides that zoning must be relied upon to determine
22 the property interest issue in an eminent domain case; **3)** the Las Vegas Municipal Code lists
23 single family and multi-family residential as the legally permissible uses of R-PD7 zoned
24 properties; and, **4)** the permitted uses by right of the 35 Acre Property are single family and multi-
25 family residential. Exhibit 1. Judge Williams rejected all other contrary City arguments,
26 including the City’s PR-OS argument and the Peccole Ranch Concept Plan arguments. Judge
27
28

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

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

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

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

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

3. Issue Preclusion on the Take Issue

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

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

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

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

1 Specifically, Judge Williams heard evidence that: **1)** Councilman Seroka met with the
2 owners of the property surrounding the 35 Acre Property and told them that the entire 250 Acre
3 Land (including the 35 and 65 Acre Properties) was their “recreation” and available for their use;
4 **2)** Councilman Seroka then “sponsored” Bill No. 2018-24 that made it impossible to develop the
5 250 Acre Land and specifically stated in the Bill that the Landowners must provide “ongoing
6 public access” to their property for the surrounding property owners; and **3)** the public was
7 actually using the Landowners’ property at the direction of the City as evidenced by the Don
8 Richards declaration and photos (Exhibit 150). Judge Williams correctly noted that this was a
9 taking, in and of itself, as provided in the Sisolak case, where the Court found a taking as a result
10 of the County of Clark adopting height restriction 1221 that preserved airspace for use by the
11 public and authorized the public to use airspace. Judge Williams holding is also consistent with
12 the Cedar Point Nursery case where the United States Supreme Court found a taking where
13 California adopted a statute that authorized labor unions to enter onto farms 120 days out of the
14 year for up to 3 hours per day in order to organize labor unions. Cedar Point Nursery v. Hassid,
15 141 S.Ct. 2063 (2021). These facts are the same for the 35 Acre and 65 Acre Cases.

16
17
18
19 Judge Williams also heard the City’s counsel’s comment at the hearing on Friday,
20 September 24, that the City denied the fencing around the property due to “political pressure”
21 from the surrounding property owners. This was a **critical concession** by the City of Las Vegas,
22 because the United States Supreme Court recently held that, “the right to exclude is ‘one of the
23 most treasured’ rights of property ownership.” Cedar Point Nursery, 141 S.Ct. 2063, 2072 (June
24 23, 2021). And, the City denied the Landowners this “most treasured rights of property
25 ownership” by denying the Landowners their right to exclude others from their property (by way
26 of fencing). It was further evidenced at the hearing before Judge Williams that, in denying the
27 fence, the City violated its own City Municipal Code, because the City Code states that a fence
28

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

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

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

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

21 Therefore, it is requested that this Court consider the FFCL by Judge Williams on the
22 take issue by allowing time for the FFCL to be signed by Judge Williams and presented to the
23 Court for consideration. This makes sense as discovery is complete in the 35 Acre Case.
24
25
26
27
28

1 Finally, as this Court will recall, the City claimed (incorrectly) that the purchase price for
2 the entire 250 Acre Land was only \$4.5 million and, therefore, there could not be a taking. On
3 September 15, 2021, the City filed a pleading with this Court stating the exact opposite, “[t]he
4 Developer’s purchase price, however, is not material to the City’s liability for a regulatory taking.”
5 See City’s Response to Developer’s Sur-Reply Brief Entitled “Notice of Status of Related Cases
6 ETC, filed September 15, 2021. And, two depositions were conducted of the PMK for Peccole
7 (the original owner of the 250 Acre Land) and Yohan Lowie, the Landowners’ representative
8 that focused entirely on the purchase price and revealed very clearly that the purchase price was
9 not \$4.5 million as represented by the City to this Court. Which may be the reason the City is
10 now arguing to the Court that the purchase price is not relevant to the take issue. These
11 depositions were recently submitted to the Court as they were conducted in the 35 Acre Case.
12

14 **4. Conclusion and Request of the Court**

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

16 First, on the property interest order, that the Court apply the Nevada Supreme Court
17 doctrine of issue preclusion and sign the Landowners’ proposed FFCL on the property interest
18 order as this is consistent with Judge Williams and Judge Jones property interest FFCLs already
19 entered in the 35 and 17 Acre Cases.
20

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

1 This is a Fifth Amendment Constitutional proceeding where important constitutional
2 rights are being adjudicated and the Landowners request an opportunity to provide all of the
3 relevant rulings and facts and arguments to the Court on the property interest and take issues.
4 The Constitutional right to “Just Compensation” deserves no less, and this Court has graciously
5 given both sides an opportunity to be heard and this additional information should also be heard.
6

7 Dated this 30th day of September, 2021.

8 **LAW OFFICES OF KERMIT L. WATERS**

9 By: /s/ James J. Leavitt
10 KERMIT L. WATERS, ESQ., NBN.2571
11 JAMES J. LEAVITT, ESQ., 6032
12 MICHAEL SCHNEIDER, ESQ., 8887
13 AUTUMN WATERS, ESQ., NBN 8917
14 *Attorneys for Plaintiff Landowners*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

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

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

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

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

1 **FFCL**

2 **LAW OFFICES OF KERMITT L. WATERS**

3 Kermitt L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

9 Autumn L. Waters, Esq., Bar No. 8917

10 autumn@kermittwaters.com

11 704 South Ninth Street

12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 *Attorneys for Plaintiff Landowners*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 180 LAND CO LLC, a Nevada limited liability
19 company; SEVENTY ACRES LLC, a Nevada
20 Limited Liability Company; FORE STARS, Ltd;
21 DOE INDIVIDUALS I through X, DOE
22 CORPORATIONS I through X, and DOE
23 LIMITED LIABILITY COMPANIES I through
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

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

Hearing Dates:

May 27, June 30, and July 2, 2021.

//

//

1 Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company,
2 SEVENTY ACRES, LLC, a Nevada Limited Liability Company, and FORE STARS, Ltd.
3 (hereinafter Landowners), brought Plaintiff Landowners' Evidentiary Hearing Brief #1,
4 Memorandum of Points and Authorities Regarding the Landowners' Property Interest before the
5 Court at an evidentiary hearing on May 27, June 30, and July 2, 2021 with Kermitt L. Waters,
6 Esq., Autumn Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters,
7 appearing for and on behalf of the Landowners along with the Landowners' in-house counsel,
8 Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq.,
9 of McDonald Carano, Andrew Schwartz, Esq. and Lauren M. Tarpey, Esq. of Shute, Mihaly &
10 Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City
11 Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City").
12 Having reviewed all pleadings and attached exhibits filed in this matter, and having heard
13 extensive oral arguments over a three-day evidentiary hearing, the Court enters, based on the
14 evidence presented, the following Findings of Fact and Conclusions of Law:
15
16
17

18 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19 1. The Landowners are the owner of an approximately 65 Acre parcel of property
20 generally located near the southeast corner of Hualapai Way and Alta Drive within the
21 geographic boundaries of the City of Las Vegas, more particularly described as Clark County
22 Assessor Parcels 138-31-801-002, 138-31-801-003, and 138-32-301-007 (hereinafter "65 Acre
23 Property").
24

25 2. Generally, the Landowners Brief to determine property interest requests that this
26 Court enter an order that, prior to any alleged City interference with the use of the 65 Acre
27 Property, the 65 Acre Property was hard zoned R-PD7 at all relevant times and that the legally
28

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

3 **The R-PD7 Zoning**

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

5 4. Landowner Exhibit 5, bates numbers 000019 – 000050, particularly the zoning
6 map on bates number 000032, is evidence that on May 20, 1981, the City of Las Vegas City
7 Commission (now the City Council), at a public hearing, zoned the 65 Acre Property for a
8 residential use (R-PD7).
9

10 5. Landowners' Exhibit 154, Bates numbers 004865 – 004921, particularly the City
11 action description on Bates number 004916, is evidence that on April 4, 1990, the City Council,
12 at a public hearing, confirmed the R-PD7 zoning on the 65 Acre Property and removed any
13 indication of a C-V (Civic) zoning on any part of the property owned by the Landowners'
14 predecessor, William Peccole (Peccole).
15

16 6. Landowners' Exhibit 43, Bates numbers 001019 – 001100, particularly Bates
17 number 001030, is evidence that on August 15, 2001, the City Council, at a public hearing,
18 adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 65 Acre Property and states
19 "All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or
20 paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in
21 conflict herewith are hereby repealed" (*See* Bates number 001020).
22

23 7. Landowners' Exhibit 134, Bates number 004406, is evidence that on December
24 30, 2014, in response to the Landowners' inquiry regarding zoning (prior to acquiring the 65
25 Acre Property), the City of Las Vegas Planning Department provided the Landowners an official
26 Zoning Verification Letter, stating, in part: 1) the 65 Acre Property is "zoned R-PD7 (Residential
27 Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide
28

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

6
7 **Legally Permitted Development on the R-PD7 Zoned 65 Acre Property**

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

12
13 9. LVMC 19.18.020 (Words and Terms Defined) defines Zoning District as "An
14 area designated on the Official Zoning Map in which certain uses are permitted and certain others
15 are not permitted, all in accordance with this Title."

16
17 10. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as "Any
18 use allowed in a zoning district as a matter of right if it is conducted in accordance with the
19 restrictions applicable to that district. Permitted uses are designated in the Land Use Table by
20 the Letter 'P.'"

21
22 11. LVMC 19.16.090 is entitled "Rezoning" and section (O) states that once zoning
23 is in place, "[s]uch approval authorizes the applicant to proceed with the process to develop
24 and/or use the property in accordance with the development and design standards and procedures
25 of all City departments and in conformance with all requirements and provisions of the City of
26 Las Vegas Municipal Code." See Landowner Exhibit 167.

27
28 12. LVMC 19.10.050 is the part of the LVMC directly applicable to the R-PD7 zoning
on the 65 Acre Property. Section (A) identifies the "Intent of the R-PD District" and states that

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

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

13 14. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7
14 zoning on the 65 Acre Property that the City “Council gave hard zoning to this golf course, R-
15 PD7, which allows somebody to come in and develop.” Landowners’ Exhibit 163, Transcript,
16 10.18.16 Special Planning Comm. Meeting, p. 117 at lines 3444-3445, 005023.

17 15. In a matter involving the entire 250 Acre Property brought by an adjoining
18 property owner in the Queensridge Community against the Landowners, the district court entered
19 detailed findings that the property was zoned R-PD7 and that “the zoning on the GC Land [250
20 Acres] dictates its use and [the Landowners] rights to develop their land.” Landowners’ Exhibit
21 172, Bates number 005115:3-8; Exhibit 173, Bates number 005142:11-12. The Nevada Supreme
22 Court affirmed. Landowners’ Exhibits 174 and 175.

23
24
25
26
27
28
///

**Zoning Governs the Property Interest Determination in Nevada
Inverse Condemnation Cases**

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

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

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

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

Petition for Judicial Review Law

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

1 804 (1995). This is an inverse condemnation case, not a petition for judicial review case, and the
2 Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding
3 the property interest in this inverse condemnation case. Moreover, the facts and law are different
4 between a petition for judicial review and inverse condemnation case and the evidence and
5 burden of proof are significantly different between the two cases.
6

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

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

10 22. First, as stated above, Nevada Supreme Court precedent relies on zoning to
11 determine the property interest in inverse condemnation and eminent domain proceedings, not a
12 master plan land use designation.
13

14 23. Second, even if there was a PR-OS designation on the City's Master Plan, zoning
15 would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides
16 if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes
17 precedence."
18

19 24. Third, Landowners' Exhibit 5, specifically Bates numbers 00013 and 00018, and
20 Landowners' Exhibit 6, specifically Bates numbers 000051 and 000069, are evidence that the
21 first City Master Plan designation for the 65 Acre Property was M/ML, which is the land use
22 designation for a residential use for 6-12 residential units per acre and which is consistent with
23 the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has
24 presented no evidence that the original M/ML City Master Plan land use designation was ever
25 changed from M/ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278
26 (See Landowner Exhibit 177) and LVMC 19.16.030 (Landowners' Exhibit 178).
27
28

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

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

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

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

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

4 **The “Condition” Issue**

5 30. The Court also declines the City’s request to find that City Exhibits E, G, and H
6 impose a condition that the 65 Acre Property remain a golf course and open space into perpetuity.
7 Although Exhibits E, G, and H include certain historical actions taken by the City and do
8 reference numerous “conditions,” none of these conditions identify the 65 Acre Property and
9 none of them impose a condition that any property remain a golf course or open space into
10 perpetuity.
11

12 31. Also, Landowners’ Exhibit 130, Bates number 004264, is evidence that the City’s
13 Planning Department searched for an ordinance imposing conditions on the 65 Acre Property
14 and concluded, “[t]here are no conditions mentioned that pertain to the maintenance of the open
15 space/golf course area.”
16

17 32. Additionally, Landowners’ Exhibit 186, Bates number 005356:11-13, is evidence
18 that City Attorney Brad Jerbic confirmed, “We [the City Attorney Office] have looked for a very
19 long time, and we can find no restrictions that require that this [250 acre property] stay a golf
20 course.”
21

22 33. Moreover, the CC&Rs Peccole drafted for the adjacent Queensridge Community
23 demonstrate there was no intent to impose a condition that the 250 Acre Property remain a golf
24 course or open space, instead, stating, “[t]he existing 18-hole golf course commonly known as
25 the “Badlands Golf Course” [250 Acre Property] is not a part of the Property or the Annexable
26 Property [Queensridge Community] and the Queensridge Community “is not required to[]
27
28

1 include ... a golf course, parks, recreational areas, open space.” Landowners’ Exhibit 36, Bates
2 numbers 000761-000762.

3 34. The Custom Lot Design Guidelines section of the Queensridge CC&Rs also
4 shows the 250 Acre Property available for “future development.” Landowners’ Exhibit 37, Bates
5 number 000896.
6

7 35. Also, the Lot Purchase Agreements for properties in the surrounding Queensridge
8 Community disclose: a) the “Special Benefits Area Amenities” for the surrounding Queensridge
9 Community does not include a golf course or open space; b) they “shall not acquire any rights,
10 privileges, interest, or membership” in the 250 Acre Property; c) there are no representations or
11 warranties “concerning the preservation or permanence of any view;” and, d) “adjacent or nearby
12 residential dwellings or other structures ... could potentially be constructed or modified in a
13 manner that could block or impair all of part of the view from the Lot and/or diminish the location
14 advantages of the Lot.” Landowners’ Exhibit 38, Bates numbers 000900 (para. 13); 000907 (para.
15 7) and Landowners’ Exhibit 39, Bates numbers 000908-000909, 000911.
16

17 36. There is no evidence of any alleged condition sufficient to meet Nevada’s
18 standard that “a grantee can only be bound by what he had notice of, not the secret intentions of
19 the grantor.” Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also* In re Champlain Oil Co.
20 Conditional Use Application, 93 A.3d 139 (Vt. 2014) (“land use regulations are in derogation of
21 private property rights and must be construed narrowly in favor of the landowner.” Id., at 141);
22 Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every
23 item discussed at a hearing becomes a “condition” to development, rather the local land use board
24 has a duty to “clearly state” the conditions within the approval ordinance without reference to the
25 minutes of a proceeding. Id., at 687). Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004)
26 (landowners cannot be bound by “secret intentions” and documents not noticed).
27
28

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

3 1) The determination of the property interest in this inverse condemnation action
4 must be based on inverse condemnation and eminent domain law;
5

6 2) Nevada inverse condemnation and eminent domain law provides that zoning must
7 be relied upon to determine the Landowners' property interest prior to any alleged City
8 interference with that property interest;
9

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

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

13 5) The legally permitted uses by right of the 65 Acre Property are single-family and
14 multi-family residential; and
15

16 6) The 65 Acre Property has at all times since 1981 been designated as "M"
17 (residential) on the City's Master land use plan.
18
19
20

21
22
23 RESPECTFULLY SUBMITTED BY:

24 **LAW OFFICES OF KERMIT L. WATERS**

25 By: /s/ James Jack Leavitt
26 KERMIT L. WATERS, ESQ., NBN.2571
27 JAMES J. LEAVITT, ESQ., 6032
28 MICHAEL SCHNEIDER, ESQ., 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Plaintiff Landowners

Exhibit 1

3843

AA0816



**FFCL
LAW OFFICES OF KERMITT L. WATERS**

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

Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

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

Hearing Date: September 17, 2020
Hearing Time: 9:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

000001

1 of the Defendant, City of Las Vegas (hereinafter the City). Having reviewed all pleadings and
2 attached exhibits filed in this matter and having heard extensive oral arguments on September 17,
3 2020, in regards to Plaintiff Landowners' Motion to Determine Property Interest, the Court hereby
4 enters the following Findings of Fact and Conclusions of Law:

5 **FINDINGS OF FACT**

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

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

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

20 4. In response to the Landowners' inquiry regarding zoning prior to purchasing the 35 Acre
21 Property, on December 30, 2014, the City of Las Vegas Planning & Development Department
22 provided the Landowners a Zoning Verification Letter, stating, in part: 1) the 35 Acre Property is
23 "zoned R-PD7 (Residential Planned Development District - 7 unites per acre);" 2) "[t]he density
24 allowed in the R-PD District shall be reflected by a numerical designation for that district.
25 (Example, R-PD4 allows up to four units per gross acre.); and 3) "A detailed listing of the
26 permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las
27 Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 3 to Landowners' Motion.
28

1 5. The City stated in its opposition to the Landowners' motion that the R-PD7 zoning on the
2 35 Acre Property "is not disputed." City's Opposition to Motion to Determine Property Interest,
3 10:17-18.

4 6. As stated in the City Zoning Verification Letter provided to the Landowners on December
5 30, 2014, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal
6 Code (hereinafter LVMC), Title 19.

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

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

12 9. LVMC 19.10.050 (A) also provides that "the types of development permitted within the
13 R-PD District can be more consistently achieved using the standard residential districts." Id. The
14 standard residential districts are listed on the City Land Use Table, LVMC 19.12.010. Exhibit 6 to
15 Landowners' Motion. The R-2 residential district listed on the City Land Use Table is the standard
16 residential district most comparable to the R-PD7 zoning, because R-PD7 allows up to 7 units per
17 acre¹ and R-2 allows 6-12 units per acre.² The "permitted" uses under the R-2 zoning on the City
18 Land Use Table include "Single Family, Attached" and "Single-Family, Detached" residential uses.
19 LVMC 19.12.010, Exhibit 6 to Landowners' Motion.

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

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

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

27 ¹ See City Zoning Verification Letter, Exhibit 3 to Landowners' Motion and LVMC
28 19.10.050 (A), Exhibit 5 to Landowners' Motion.

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

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

3 CONCLUSIONS OF LAW

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

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

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

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

20 17. Nevada eminent domain law provides that zoning must be relied upon to determine a
21 landowners’ property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev.
22 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).

23 18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least
24 1990.

27 ³ Exhibit 18 to Landowners’ Reply, App. at 0026 / 23:7-8

28 ⁴ Exhibit 18 to Landowners’ Reply, App. at 0010 / 7:26-27

1 19. The Court further concludes that the Las Vegas Municipal Code Section LVMC
2 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7
3 zoned properties.

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

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

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

9 DATED this 9th day of October, 2020.

10 
11 DISTRICT COURT JUDGE ZJ

12
13 Respectfully Submitted By:

14 **LAW OFFICES OF KERMITT L. WATERS**

15 By: /s/ James J. Leavitt
16 Kermitt L. Waters, ESQ., NBN 2571
17 James Jack Leavitt, ESQ., NBN 6032
18 Michael A. Schneider, ESQ., NBN 8887
19 Autumn Waters, ESQ., NBN 8917
20 704 S. 9th Street
21 Las Vegas, NV 89101
22 *Attorneys for Plaintiff Landowners*

23 Submitted to and Reviewed by:

24 **MCDONALD CARANO LLP**

25 By: Declined signing
26 George F. Ogilvie III, ESQ., NBN 3552
27 Amanda C. Yen, ESQ., NBN 9726
28 2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
Attorneys for the City of Las Vegas

Exhibit 4

3849

AA0822

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

1 George F. Ogilvie III (NV Bar #3552)
Amanda C. Yen (NV Bar #9726)
2 Christopher Molina (NV Bar #14092)
McDONALD CARANO LLP
3 2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102
4 Telephone: 702.873.4100; Facsimile: 702.873.9966
gogilvie@mcdonaldcarano.com
5 ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

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

10 Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
11 Seth T. Floyd (NV Bar #11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
12 495 S. Main Street, 6th Floor
Las Vegas, NV 89101
13 Telephone: 702.229.6629
Facsimile: 702.386.1749
14 bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
15 sfloyd@lasvegasnevada.gov

16 *Attorneys for City of Las Vegas*

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 180 LAND COMPANY, LLC, a Nevada limited
liability company, FORE STARS, LTD.,
20 SEVENTY ACRES, LLC, DOE
INDIVIDUALS I through X, DOE
21 CORPORATIONS I through X, DOE LIMITED
LIABILITY COMPANIES I through X,

22 Plaintiffs,
23 vs.

24 CITY OF LAS VEGAS, political subdivision of
the State of Nevada, ROE government entitles I
25 through X, ROE Corporations I through X, ROE
INDIVIDUALS I through X, ROE LIMITED
26 LIABILITY COMPANIES I through X, ROE
quasi-governmental entitles I through X,

27 Defendants.
28

CASE NO. 2:19-cv-01471-JCM-EJY

NOTICE OF RELATED CASES

000008

3850

AA0823

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

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

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

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

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

Common Plaintiffs

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

Common Defendant

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

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

1 **Common Property**

2 Each of the four cases involves portions of approximately 250 acres in the Queensridge
3 community formerly known as the Badlands Golf Course, and commonly described as Clark
4 County APNs 138-32-301-005, 138-31-201-005, 138-31-601-008, 138-31-702-003, 138-31-702-
5 004, 138-31-801-002, 138-31-801-003, and 138-32-301-007 (the “Badlands Property”). The four
6 cases involve four different portions of the Badlands Property that the Developer split into separate
7 parcels for redevelopment of the golf course.

8 **Common Causes of Action**

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

14 **Common/Similar Questions of Fact and Law**

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

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

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

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

5 DATED this 28th day of August, 2019.

6
7 McDONALD CARANO LLP

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

11
12 LEONARD LAW, PC
Debbie Leonard (NV Bar #8260)
13 955 S. Virginia St., Suite 220
Reno, NV 89502

14
15 LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic (NV Bar #1056)
16 Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
17 495 S. Main Street, 6th Floor
Las Vegas, NV 89101

18
19 *Attorneys for City of Las Vegas*
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF SERVICE

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

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

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

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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

Exhibit 198

3855

AA0828



1 NOE
LAW OFFICES OF KERMITT L. WATERS
2 Kermit L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
3 James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
4 Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
5 Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
6 704 South Ninth Street
Las Vegas, Nevada 89101
7 Telephone: (702) 733-8877
Facsimile: (702) 731-1964
8 Attorneys for Plaintiffs Landowners

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

20 Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

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

Hearing Date: August 13, 2021

Hearing Time: 8:30 a.m.

21 ///

22 ///

23 ///

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

DATED this 16th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

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

CERTIFICATE OF SERVICE

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

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

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

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

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

1 **FFCL**
2 **LAW OFFICES OF KERMITT L. WATERS**
3 Kermit L. Waters, Esq., Bar No. 2571
4 kermitt@kermittwaters.com
5 James J. Leavitt, Esq., Bar No. 6032
6 jim@kermittwaters.com
7 Michael A. Schneider, Esq., Bar No. 8887
8 michael@kermittwaters.com
9 Autumn L. Waters, Esq., Bar No. 8917
10 autumn@kermittwaters.com
11 704 South Ninth Street
12 Las Vegas, Nevada 89101
13 Telephone: (702) 733-8877
14 Facsimile: (702) 731-1964
15 *Attorneys for Plaintiffs Landowners*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FORE STARS, LTD; SEVENTY ACRES LLC,
12 a Nevada liability company; DOE
13 INDIVIDUALS I through X, DOE
14 CORPORATIONS I through X, and DOE
15 LIMITED LIABILITIES COMPANIES I
16 through X,

17 Plaintiffs,

18 vs.

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

24 Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

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

Hearing Date: August 13, 2021

Hearing Time: 8:30 a.m.

///

///

///

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

12 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

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

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

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

3 4. The Landowners filed a motion requesting that this Court enter a finding on the
4 first sub-inquiry to determine the property interest / “bundle of property sticks” they had in their
5 17 Acre Property prior to any alleged City interference with the use of the 17 Acre Property and
6 prior to the filing of the Complaint in this matter. Specifically, the Landowners request a finding
7 that the 17 Acre Property was hard zoned R-PD7 and re-zoned to R-3 and that the legally
8 permissible uses of the 17 Acre Property, pursuant to the R-PD7 and R-3 zoning, were single-
9 family and multi-family residential uses.

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

12 **The R-PD7 Zoning and the Landowners’ Due Diligence**

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

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

19 8. Landowners’ Exhibit 31, Bates numbers 000481 – 482, is evidence that on April 4,
20 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 17 Acre Property.

21 9. Landowners’ Exhibit 8, Bates numbers 000104 – 185 is evidence that on August
22 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7
23 zoning on the 17 Acre Property and states “All ordinances or parts of ordinances or sections,
24

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

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

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

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

22
23
24 ///

1 18. The Court relies on both inverse condemnation and direct eminent domain cases,
2 because the Nevada Supreme court has held, “inverse condemnation proceedings are the
3 constitutional equivalent to eminent domain actions and are governed by the same rules and
4 principles applied to formal condemnation proceedings.” County of Clark v. Alper, 100 Nev. 382,
5 391 (1984).

6 **The Nevada Legislature**

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

10 **The Nevada Executive Branch**

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

16 **Three City Departments**

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

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

1 23. The City Attorney's Office confirmed that zoning is of the highest order. Veteran
2 City Attorney Brad Jerbic stated, in speaking directly about this property, "the rule is the hard
3 zoning, in my opinion, does trump the General Plan [Master Plan] designation. Exhibit 17, p.
4 000227:1787-1789. Veteran deputy City attorney Phil Byrnes and Brad Jerbic submitted pleadings
5 to the Eighth Judicial District, which state: 1) "in the hierarchy, the land use designation [master
6 plan] is subordinate to the zoning designation;" 2) "zoning designations specifically define
7 allowable uses and contain the design and development guidelines for those intended uses;" and,
8 3) a master plan is a "planning document" and a land use designation on a master plan "was a
9 routine planning activity that had no legal effect on the use and development" of affected property.
10 Exhibit 24, 000253:8-12; Exhibit 26, 000282-283.

11 24. The City Tax Assessor's department confirmed that zoning is of the highest order.
12 After the Landowners acquired the 17 Acre Property, the Clark County Tax Assessor, who is "ex
13 officio, the City Assessor of the City" (City Charter Sec. 3.120), was required to determine the
14 "full cash value" of the 17 Acre Property by "considering the uses to which it may lawfully be
15 put" and "any legal or physical restrictions" pursuant to NRS 361.227(1). The assessor determined
16 the use of the 17 Acre Property to be "residential" based on the "zoning designation: R-PD7,"
17 placed a value of \$88 million on the entire 250 Acre Property, and has been taxing the Landowners
18 approximately \$1 million per year based on this lawful "residential" use. The City does not contest
19 this tax evidence. *See* Exhibit 40 (LO Appx. Ex. 49, Bates number 001164-001179); Exhibit 41
20 (LO Appx. Ex. 52, Bates number 001184-001189, specifically, 001185); Exhibit 53 (LO Appx.
21 Ex. 151, Bates number 004831-4836); Exhibit 53 (LO Appx. Ex. 152, Bates number 004837-
22 4861).

23
24 ///

1 25. Evidence was also presented at the evidentiary hearing that the City’s 2050 Master
2 Plan states that zoning is “the law” and the Master Plan is a “policy.” Exhibit 44, Bates number
3 000595.

4 26. Finally, the Court finds persuasive that in litigation involving adjoining
5 landowners, who were trying to stop residential development on the 17 Acre Property, the District
6 Court held “the zoning on the GC Land [250 Acre Property] dictates its use and Defendants
7 [Landowners] rights to develop their land. Exhibit 55 (LO Appx. Ex. 173, Bates number 005123-
8 5167, specifically 0005142:11-12).

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

13 28. As the evidence is undisputed that the 17 Acre Property had R-PD7 zoning since
14 1981 and was re-zoned to R-3 on February 15, 2017, the Court turns to the RPD-7 and R-3 zoning
15 to determine the property rights issue.

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

17 **General Zoning Standards**

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

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

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

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

9 **R-PD7 Zoning**

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

15 34. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7
16 zoning on the 17 Acre Property that the City “Council gave hard zoning to this golf course, R-
17 PD7, which allows somebody to come in and develop.” Landowners’ Exhibit 16, Transcript,
18 10.18.16 Special Planning Comm. Meeting, 000225:3444-3445.

19 **R-3 Zoning**

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

1 36. Accordingly, the R-PD7 and R-3 zoning on the 17 Acre Property provide the
2 Landowners the right to use the 17 Acre Property for single family residential and multi-family
3 residential uses. In fact, the City conceded this issue when it re-zoned the 17 Acre Property to R-
4 3 and granted the 435 residential units on February 15, 2017, prior to the filing of the complaint in
5 this matter. *See* Exhibit 3, 000015:8-9.

6 **The Judge Williams Order in the 35 Acre Case**

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

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

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

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

24 ///

Petition for Judicial Review Law

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

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

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

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

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

17 **The Herndon Order**

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

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

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

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

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

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

1 49. Third, Landowners' Exhibit 30, specifically Bates numbers 000443-448, and
2 Exhibit 42 (LO Appx. Ex. 6, specifically Bates numbers 000051 and 000069) are evidence that the
3 first City Master Plan designation for the 17 Acre Property was MED and ML, which is the land
4 use designation for a residential use for 6-12 residential units per acre and which is consistent with
5 the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has failed
6 to present the evidence showing that this original MED and ML City Master Plan land use
7 designation was ever legally changed from MED and ML to PR-OS, pursuant to the legal
8 requirements set forth in NRS Chapter 278 and LVMC 19.16.030. *See* Exhibit 56 (LO Appx. Exs.
9 177 and 178), listing the requirements to make a parcel specific amendment to the City's Master
10 Plan.

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

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

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

4 **The “Condition” Issue**

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

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

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

18 **The Purchase Price Issue**

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

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

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

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

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

- 12 1) The determination of the property interest in this inverse condemnation action must
13 be based on inverse condemnation and eminent domain law;
- 14 2) Nevada inverse condemnation and eminent domain law provides that zoning must
15 be relied upon to determine the Landowners' property interest prior to any alleged
16 City interference with that property interest;
- 17 3) The 17 Acre Property has been hard zoned R-PD7 since 1981 and was re-zoned to
18 R-3 prior to the filing of the Complaint in this matter;
- 19 4) The Las Vegas Municipal Code lists single-family and multi-family residential as
20 legally permissible uses on R-PD7 and R-3 zoned properties by right;
- 21 5) The legally permitted uses by right of the 17 Acre Property are single-family and
22 multi-family residential; and

23 ///

24 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

A handwritten signature, possibly "James Jack Leavitt", is written over a horizontal line. To the right of the signature, the date "9/15/21" is handwritten.

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMIT L. WATERS

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

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 180 Land Company, LLC,
7 Plaintiff(s)

CASE NO: A-18-780184-C

8 vs.

DEPT. NO. Department 3

9 Las Vegas City of, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 10/1/2021

15 Philip Byrnes	pbyrnes@lasvegasnevada.gov
16 Jeffrey Andrews	jandrews@lasvegasnevada.gov
17 George Ogilvie	gogilvie@mcdonaldcarano.com
18 Amanda Yen	ayen@mcdonaldcarano.com
19 Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
20 Autumn Waters	autumn@kermittwaters.com
21 Michael Schneider	michael@kermittwaters.com
22 James Leavitt	jim@kermittwaters.com
23 Elizabeth Ham	eHam@ehbcompanies.com
24 Jennifer Knighton	jknighton@ehbcompanies.com
25 Karen Surowiec	KSurowiec@mcdonaldcarano.com

1	Evelyn Washington	evelyn@kermittwaters.com
2	Stacy Sykora	stacy@kermittwaters.com
3	Andrew Schwartz	schwartz@smwlaw.com
4	Lauren Tarpey	ltarpey@smwlaw.com
5	Christopher Molina	cmolina@mcdonaldcarano.com
6	Leah Jennings	ljennings@mcdonaldcarano.com
7	Sandy Guerra	sandy@kermittwaters.com
8	Kermitt Waters	kermitt@kermittwaters.com
9	CluAynne Corwin	ccorwin@lasvegasnevada.gov
10	Debbie Leonard	debbie@leonardlawpc.com
11	David Weibel	weibel@smwlaw.com
12	Rebecca Wolfson	rwolfson@lasvegasnevada.gov
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

EXHIBIT “BBBBBB”



PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: GENERAL PLAN Amendment
Project Address (Location) SOUTHWEST CORNER OF RAMPART & ALTA DRIVE
Project Name TOWNHOMES AT RAMPART & ALTA Proposed Use RESIDENTIAL
Assessor's Parcel #(s) 138.31.312.003 Ward # 2
General Plan: existing PROS proposed M-LA Zoning: existing R-PD7 proposed R-PD7
Commercial Square Footage N/A Floor Area Ratio _____
Gross Acres 5.40 Lots/Units 34 Density 6.3 du/ac
Additional Information _____

PROPERTY OWNER FORE STARS, LTD Contact LARRY A. MILLER
Address 851 G. RAMPART Suite 220 Phone: 933-111 Fax: 933-0017
City LAS VEGAS State NV Zip 89145

APPLICANT JMA Contact CHERIE CAZMACH
Address 10150 COVINGTON CROSS DR Phone: 731-2033 Fax: 731-2039
City LAS VEGAS State NV Zip 89144

REPRESENTATIVE MORENO & ASSOCIATES Contact URIEL BORJES
Address 300 G. 4th Street Suite 1500 Phone: 383-8953 Fax: _____
City LAS VEGAS State NV Zip 89101

Property Owner Signature Larry A. Miller

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

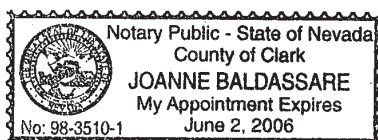
Print Name Larry A. Miller

Subscribed and sworn before me

This 31st day of August, 2005

Joanne Baldassare

Notary Public in and for said County and State



Revised 04/26/05

FOR DEPARTMENT USE ONLY

Case #	<u>GPA - 90609</u>
Meeting Date:	<u>10/20/05 10/6/05</u>
Total Fee:	<u>\$1350⁰⁰</u>
Date Received:	<u>8/31/05</u>
Received By:	<u>Eberly</u>

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

f:\depot\Application Packet\Application Form.doc

August 31, 2005

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

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

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

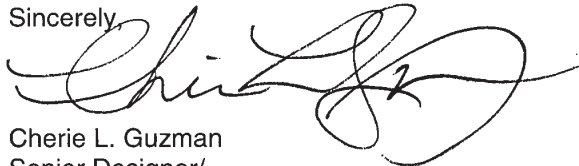
Dear Sir or Madam:

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

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

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

Sincerely,



Cherie L. Guzman
Senior Designer/
Entitlements Coordinator

JMA ARCHITECTURE STUDIOS

September 1, 2005

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

ATTN: Planning Staff

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

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

Dear Sir or Madam:

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

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

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

Sincerely,



Cherie L. Guzman
Senior Designer,
Entitlements Coordinator



Sent via Facsimile - 702-474-0352

November 10, 2005

Margo Wheeler
Director of Planning
City of Las Vegas

Attn: Doug Rankin

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

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

Sincerely,


J. Bruce Bayne,
Vice President

JBB/d

R-7D-7

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

P.02

Nov 10 2005 16:31

Fax: 702 933 0017

PECCOLE NEVADA

CLV000319

4314

CLV137869

AA0855

November 15, 2005

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

ATTN: Planning Staff

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

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

Dear Sir or Madam:

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

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

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

Sincerely,



Cherie L. Guzman
Senior Designer,
Entitlements Coordinator

VICINITY MAP



PROJECT DATA:

A.P.N.# 138-31-312-003
 A PORTION OF

GROSS AREA: 5.40 ac

NET AREA: 4.04 ac

F.A.R.: 15%

CURRENT ZONE: R-PD7

PROPOSED ZONE: R-PD7

DENSITY: 6.3 du/ac

UNIT DATA:

TOTAL: 34 UNITS

UNIT AREA: 3,000 S.F.

PARKING DATA:

REQUIRED:

RESIDENCES: 68 (2 PER D.U.)

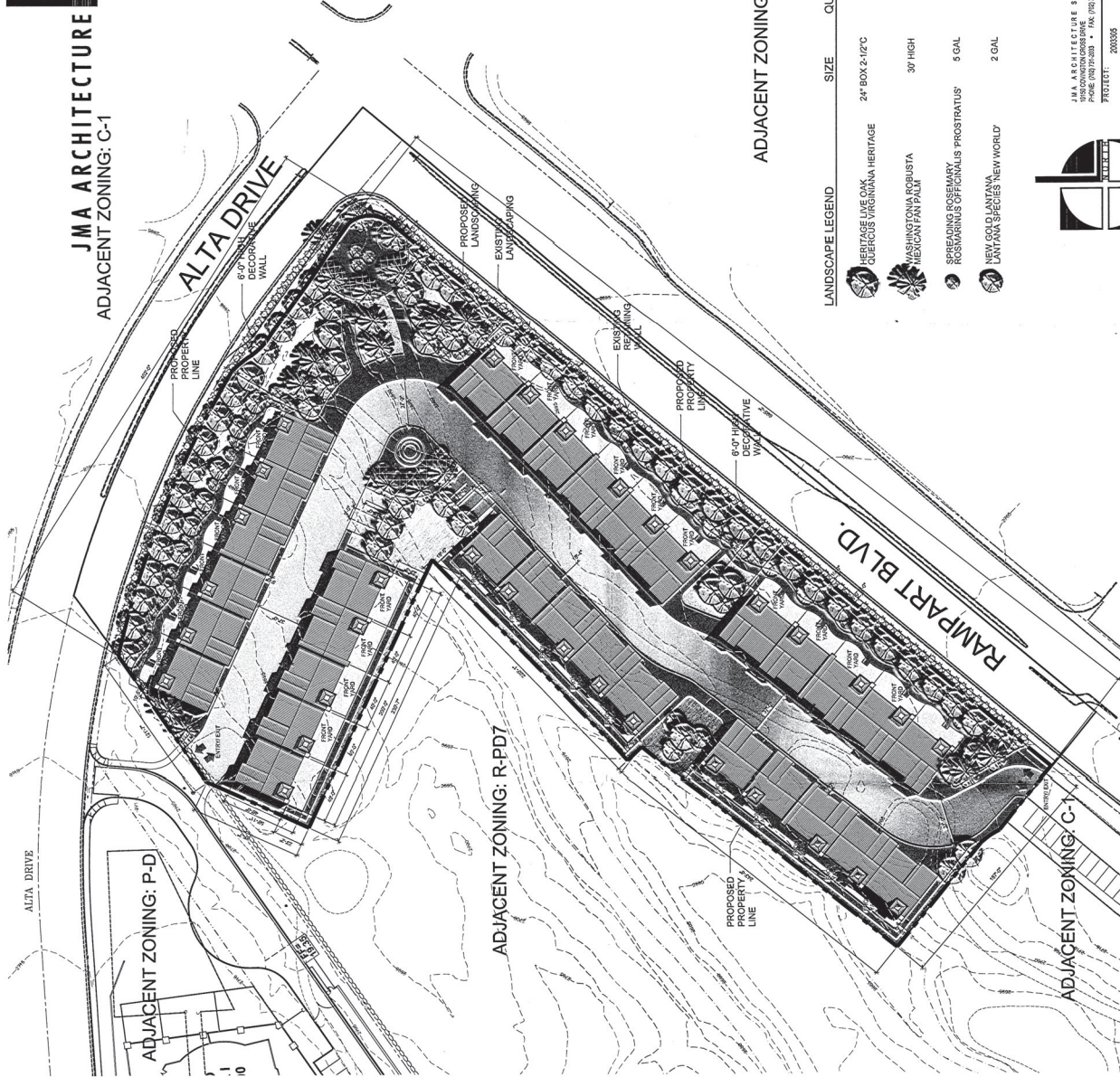
VISITOR: 6 (1 PER 6 D.U.)

TOTAL: 74 P.S.

TOTAL PROVIDED: 74 P.S. (68 RESIDENCE + 6 VISITOR)

SITE PLAN/ LANDSCAPE PLAN

TOWNHOMES AT RAMPART AND ALTA



ADJACENT ZONING: P-D

LANDSCAPE LEGEND	SIZE	QUANTITY
HERITAGE LIVE OAK	24" BOX 2-1/2"	137
QUERCUS VIRGINIANA HERITAGE		
WASHINGTON ROBUSTA	30" HIGH	9
MEXICAN PALM		
SPREADING ROSEMARY	5 GAL	38
ASPARAGUS OFFICINALIS PROSTRATUS		
NEW GOLD LANTANA	2 GAL	100
LANTANA SPECIES NEW WORLD		



JMA ARCHITECTURE STUDIOS
 1000 CONVENT ROAD, SUITE 100
 SAN ANTONIO, TEXAS 78204
 PHONE: (214) 343-1111 • FAX: (214) 343-1111 • WWW.JMA.COM
 PROJECT: 200305
 DATE: AUGUST 28, 2005
 SCALE: 1/8" = 1'-0"
 REVIEW: [Signature]
 APPROVED: [Signature]

ZON-9006
 09/22/05 PC

4316

CLV126708

**NOE
LAW OFFICES OF KERMITT L. WATERS**

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

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
GRANTING PLAINTIFFS
LANDOWNERS' MOTION TO
DETERMINE TAKE AND FOR
SUMMARY JUDGMENT ON
THE FIRST, THIRD AND FOURTH
CLAIMS FOR RELIEF;**

AND

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

///

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

A copy of the FFCL is attached hereto.

DATED this 25th day of October, 2021.

LAW OFFICES OF KERMIT 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

1 **CERTIFICATE OF SERVICE**

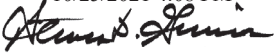
2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 25th day of October, 2021, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF**
5 **LAW GRANTING PLAINTIFFS LANDOWNERS' MOTION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

11 **McDONALD CARANO LLP**
12 George F. Ogilvie III, Esq.
13 Christopher Molina, Esq.
14 2300 W. Sahara Avenue, Suite 1200
15 Las Vegas, Nevada 89102
16 gogilvie@mcdonaldcarano.com
17 cmolina@mcdonaldcarano.com

18 **LAS VEGAS CITY ATTORNEY'S OFFICE**
19 Bryan Scott, Esq., City Attorney
20 Philip R. Byrnes, Esq.
21 Rebecca Wolfson, Esq.
22 495 S. Main Street, 6th Floor
23 Las Vegas, Nevada 89101
24 bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

25 **SHUTE, MIHALY & WEINBERGER, LLP**
26 Andrew W. Schwartz, Esq.
27 Lauren M. Tarpey, Esq.
28 396 Hayes Street
29 San Francisco, California 94102
30 schwartz@smwlaw.com
31 ltarpey@smwlaw.com

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


CLERK OF THE COURT

**FFCL
LAW OFFICES OF KERMITT L. WATERS**

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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

AND

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

Hearing Dates and Times:

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

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

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

19
20 **I.**

21 **INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE**

22 1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation
23 claim, the court must “undertake two distinct sub-inquiries: “the court must first determine” the
24 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

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

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

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

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

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

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

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

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

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

II.

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

A.

THE PROPERTY INTEREST ISSUE

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

///

1 **The Landowners' 35 Acre Property.**

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

5 12. The property at issue in this case is a 34.07 acre parcel of property generally located
6 near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the
7 City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005
8 (hereinafter "35 Acre Property"). At the time of the summary judgment hearing of this matter, the
9 35 Acre Property was and remains vacant.

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

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

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

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

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

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

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

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

19 20. During the development application process, veteran City Attorney Brad Jerbic
20 stated, “Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in
21 and develop.” Exhibit 163, 10.18.16 Special Planning Commission Meeting, p. 005023:3444-
22 3445.

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

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

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

13 24. The Clark County Tax Assessor (“Tax Assessor”) confirmed the residential use of
14 the 35 Acre Property based on R-PD7 zoning. NRS 361.227(1) requires that the tax assessor,
15 when determining the taxable value of real property, shall appraise the full cash value of vacant
16 land “by considering the uses to which it may lawfully be put” and “any legal restrictions upon
17 those uses.” In 2016, the Clark County Tax Assessor (Tax Assessor) applied NRS 361.227(1) to
18 the 35 Acre Property. Exhibit 120, p. 004222. The Tax Assessor determined the “lawful” use of
19 the 250 Acres, including the 35 Acre Property, by relying upon the “Zoning Designation ... R-
20 PD7” and identifying the use of the 250 Acres under this “R-PD7” zoning as “RESIDENTIAL.”
21 Exhibit 52, p. 001185; Exhibit 51, p. 001182. The Tax Assessor imposed a real estate tax on the
22 35 Acre Property, based on a residential use, of \$205,227.22 per year. Exhibit 50, p. 001180. It
23 was undisputed that the Landowners have dutifully paid these annual real estate taxes. The City
24

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

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

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

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

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

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

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

1 30. Additionally, during discovery, the Landowners requested that the City “[i]dentify
2 and produce a complete copy of every City of Las Vegas Zoning Atlas Map from 1983 to present
3 for the area within which the Subject Property is located or which includes the Subject Property
4 and any drafts thereto, including the entire and complete file in the possession of the City of Las
5 Vegas, the applications, minutes from the meetings, any and all communications, correspondence,
6 letters, minutes, memos, ordinances, and drafts related directly or indirectly to these City of Las
7 Vegas Zoning Atlas Maps from 1983 to present.” The City of Las Vegas’ Fourth Supplement to
8 its Responses to Requests for Production of Documents, Set One, electronically served, 2.26.20,
9 11:41 AM, p. 8, Request for Production No. 5.

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

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

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

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

19 34. There are six Nevada Supreme Court cases, three inverse condemnation cases and
20 three direct eminent domain cases, wherein the Nevada Supreme Court made it clear that the R-
21 PD7 zoning must be relied upon to determine the Landowners’ property interest in this matter.
22 McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006); Clark County v. Alper, 100 Nev. 382, 390
23 (1984); City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); County of Clark v. Buckwalter, 974
24 P.2d 1162 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh’g

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

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

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

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

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

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

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

B.

THE TAKE ISSUE

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

The Surrounding Property Owners.

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

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

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

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

1 Land,” but if the Landowners handed over 180 acres of their 250 Acres to those homeowners, the
2 City Councilman “would ‘allow’ me to build ‘anything I wanted’ on 70 of the 250 acres.” Exhibit
3 35, p. 000741, paras. 5-6.

4 **The City’s Actions to Prevent the Landowners from Using the 35 Acre Property.**

5 **The Landowners’ Development Applications.**

6 46. Immediately after closing on the 250 Acres in early 2015, the Landowners retained
7 veteran land use attorney, Christopher Kaempfer, to assist with making the applications to the City
8 for the development of the 250 Acres, including the 35 Acre Property. Exhibit 48, p. 001160,
9 paras. 6-8. Before Mr. Kaempfer would agree to represent the Landowners on their applications
10 to develop, he confirmed the development rights as he and his wife live in the adjoining
11 Queensridge Community. Id. Mr. Kaempfer’s research confirmed the R-PD7 zoning and he was
12 provided a copy of the City’s Zoning Verification Letter (Exhibit 134). Mr. Kaempfer then met
13 with Peter Lowenstein of the City of Las Vegas Planning Department “who advised me that the
14 [250 Acres] could be developed in accordance with the R-PD7 zoning.” Id, para. 7. Mr. Kaempfer
15 later had a meeting with then City Attorney, Brad Jerbic, and “was informed that the City of Las
16 Vegas would ‘honor the zoning letter’ provided to the Landowner by the City of Las Vegas.” Id.
17 The City did not contest this evidence.

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

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

1 49. Landowner representative, Yohan Lowie’s uncontested declaration provides,
2 “Mayor Goodman informed [the Landowners during a December 16, 2015, meeting] that due to
3 neighbors’ concerns the City would not allow ‘piecemeal development’ of the Land and that one
4 application for the entirety of the 250 Acre Residential Zoned Land was necessary by way of a
5 Master Development Agreement (“MDA”)” and that during the MDA process, “the City continued
6 to make it clear to [the Landowners] that it would not allow development of individual parcels, but
7 demanded that development only occur by way of the MDA.” Exhibit 34, p. 000538, para. 19, p.
8 000539, para. 24:25-27.

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

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

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

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

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

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

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

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

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

16 58. The City of Las Vegas Mayor also stated publicly, to the Landowners in a City
17 Council hearing, “you did bend so much. And I know you are a developer, and developers are not
18 in it to donate property. And you have been donating and putting back... And it’s costing you
19 money every single day it delays.” Exhibit 53, 6.21.17 City Council Meeting, p. 001281:2462-
20 2465. City Councilwoman Tarkanian also commented publicly at that same City Council hearing
21 that she had never seen anybody give as many concessions as the Landowners as part of the MDA
22 stating, “I’ve never seen that much given before.” Exhibit 53, p. 001293:2785-2787; p.
23 001294:2810-2811.

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

10 60. The Landowners provided further uncontested evidence that additional, non-
11 exhaustive City demands / concessions made of the Landowners, as part of the MDA, included: 1)
12 donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas;
13 2) building brand new driveways and security gates and gate houses for the Queensridge
14 Community; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units,
15 increasing the minimum acreage lot size, and reducing the number and height of the towers.
16 Exhibit 60, pp. 00001836-1837; Exhibit 54, 8.2.17 City Council Meeting, p. 001339, lines 599-
17 601; Exhibit 53, 6.21.17 City Council Meeting, p. 001266:2060-2070; Exhibit 55.

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

20 62. The evidence showed that the Landowners communicated their frustration with
21 how long the MDA process was taking, stating: "[w]e [the Landowners] have done that through
22 many iterations, and those changes were not changes that were requested by the developer. They
23

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

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

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

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

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

16 66. The City Planning Department then issued Staff Reports detailing the City Planning
17 Department’s opinion on whether the 35 Acre stand-alone applications met all of the City
18 development code requirements and standards and whether the applications should be approved.
19 Exhibit 74.
20
21
22

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

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

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

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

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

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

15 72. Tom Perrigo, the City’s Planning Director appeared at the hearing on the
16 Landowners’ 35 Acre applications and stated that the Landowners’ proposed development on the
17 35 Acres, which the City Planning Department assisted with preparing, met all City requirements
18 and should be approved. Exhibit 53, 6.21.17 City Council Meeting, p. 001211-1212:566-587.

19 73. One City Council member acknowledged at the hearing that the 35 Acre Property
20 applications met all City requirements, stating the proposed development was “so far inside the
21 existing lines [the Las Vegas Code requirements].” Exhibit 53, 6.21.17 City Council Meeting, p.
22 001286:2588-2590.
23
24

1 74. The City Council Members, however, stated the City's firm position that the City
2 opposed individual development applications for parts of the 250 Acres, and, again, insisted on
3 one MDA for the entire 250 Acres: 1) "I have to oppose this, because it's piecemeal approach
4 (Councilman Coffin);" 2) "I don't like this piecemeal stuff. I don't think it works (Councilwoman
5 Tarkanian); and, 3) "I made a commitment that I didn't want piecemeal," there is a need to move
6 forward, "but not on a piecemeal level. I said that from the onset," "Out of total respect, I did say
7 that I did not want to move forward piecemeal." (Mayor Goodman). Exhibit 53, 6.21.17 City
8 Council Meeting, pp. 001287:2618; 001293:2781-2782; 001307:3161; 001237:1304-1305;
9 001281:2460-2461.

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

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

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

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

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

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

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

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

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

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

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

1 setbacks or reducing units per acre, but rather, the City denied the MDA which denied the
2 development of the entire 250 Acres, including the 35 Acre Property. Exhibit 34, p. 000739, para.
3 26.

4 85. The minutes from the hearing on the MDA and the MDA denial letter further
5 confirm that the City did not ask for more concessions, but rather, the City simply denied the
6 MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-
7 4275.

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

11 **The Landowners' Fence Application.**

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

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

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

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

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

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

8 93. The City’s attorney responded at the hearing on September 24, 2021, that perhaps
9 the City succumbed to “political pressure” in denying the fence application.

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

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

20 **The Landowners’ Access Application.**

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

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

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

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

6 99. As detailed above, the City Planning Department stated, in its Staff
7 Recommendation on the 35 Acre Property stand-alone applications that, “[s]ite access from
8 Hualapai Way through a gate meets Uniform Standard Drawing specifications.” Exhibit 74, p.
9 002552.

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

13 101. On August 24, 2017, the City denied the application for access, stating as the reason
14 for denial, “the potential to have significant impact on the surrounding properties.” Exhibit 89,
15 002816.

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

18 **The City’s Passage of Bills No. 2018-5 and 2018-24.**

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

22 104. The uncontested evidence presented showed the Bills targeted only the
23 Landowners’ 250 Acres.

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

1 is the latest shot in a salvo against one developer” and “This bill is for one development and one
2 development only. This bill is only about the Badlands Golf Course [250 Acres]” and “I call it the
3 Yohan Lowie Bill.” Exhibit 114, 5.16.18 City Council Meeting, p. 003848-3849; Exhibit 115, p.
4 003868; Exhibit 116, 5.14.18 Recommending Committee Meeting, pp. 003879, 003910. Yohan
5 Lowie is one of the Landowner representatives.

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

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

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

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

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

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

8 111. The Bills also included vague requirements, such as development review to assure
9 the development complies with “other” City policies and standards, and a requirement for anything
10 else “the [City Planning] Department may determine are necessary.” Exhibit 108, p. 003212:12-
11 13.

12 112. It was uncontested that Bill No. 2018-24 mandated that any development on the
13 Landowners 250 Acres could only occur through a “development agreement” and, at the time Bill
14 Nos. 2018-5 and 2018-24 were passed, the City had already denied a development agreement (the
15 MDA) for the entire 250 Acres. Exhibit 78 (MDA denied on August 2, 2017); Exhibit 108, pp.
16 003206-003207 (Bill No. 2018-24, passed on November 7, 2018).

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

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

21 115. City Councilman Seroka was a vocal opponent to the Landowners building on the
22 250 Acres.

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

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

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

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

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

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

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

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

4 122. The effect of Bills No. 2018-5 and 2018-24 was to: 1) target only the Landowners’
5 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the
6 250 Acres for use by the public and authorize the public to use the 250 Acres.

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

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

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

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

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

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

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

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

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

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

16 **Additional City Communications and Actions.**

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

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

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

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

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

5 136. The City engaged a golf course architect to “repurpose” the 250 Acres. Exhibit
6 145.

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

10 138. Then-Councilman Seroka testified at the Planning Commission (during his
11 campaign) that it would be “over his dead body” before the Landowners could build homes on the
12 250 Acres (Exhibit 124, 2.14.17 Planning Commission Meeting) and issued a statement during his
13 campaign entitled “The Seroka Badlands Solution” which provides the intent to convert the
14 Landowners’ private property into a “fitness park,” and in an interview with KNPR, he stated that
15 he would “turn [the Landowners’ private property] over to the City.” Exhibit 125.

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

23
24 ³ This statement was made by email on April 6, 2017, and the applications were not presented to
the City Council until June 21 and August 2 of 2017.

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

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

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

17 **Expert Opinions.**

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

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

22
23
24 ⁴ See NRS 239.001(4) (use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services)

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

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

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

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

III.

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

Standard of Review

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

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

5 150. The Nevada Supreme Court has held that this Court decides, as a matter of law,
6 whether a taking has occurred. McCarran Int’l Airport v. Sisolak, 137 P.3d 1110 (2006) (“whether
7 the Government has inversely condemned private property is a question of law that we review de
8 novo.” Id., at 1119). *See also*, Moldon v. County of Clark, 124 Nev. 507, 511, 188 P.3d 76, 79
9 (2008) (“whether a taking has occurred is a question of law...”).

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

12 In determining whether a taking has occurred, Courts must look at the aggregate of all of
13 the government actions because “the form, intensity, and the deliberateness of the
14 government actions toward the property must be examined ... All actions by the
15 [government], in the aggregate, must be analyzed.” Merkur v. City of Detroit, 680
16 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d
17 736 (Nev. 2015) (citing Arkansas Game & Fish Comm’s v. United States, 568 U.S. ---
18 (2012)) (there is no “magic formula” in every case for determining whether particular
19 government interference constitutes a taking under the U.S. Constitution; there are
20 “nearly infinite variety of ways in which government actions or regulations can effect
21 property interests.” Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd.,
22 526 U.S. 687 (1999) (inverse condemnation action is an “ad hoc” proceeding that
23 requires “complex factual assessments.” Id., at 720.); Lehigh-Northampton Airport
24 Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) (“There is no bright
line test to determine when government action shall be deemed a de facto taking; instead,
each case must be examined and decided on its own facts.” Id., at 985-86).

20 The City has argued that the Court is limited to the record before the City Council in
21 considering the Landowners’ applications and cannot consider all the other City action
22 towards the Subject Property, however, the City cites the standard for petitions for
23 judicial review, not inverse condemnation claims. A petition for judicial review is one
24 of legislative grace and limits a court’s review to the record before the administrative
body, unlike an inverse condemnation, which is of constitutional magnitude and requires
all government actions against the property at issue to be considered.

1 Exhibit 8, May 15, 2019 Order Denying City’s Motion for Judgment on the Pleadings, pp. 000172-
2 173.

3 152. The Nevada Supreme Court has also held “there are several invariable rules
4 applicable to specific circumstances” and this Court will address three of those “invariable rules”
5 for a taking in Nevada – a per se categorical taking (Landowners’ first claim for relief), a per se
6 regulatory taking (Landowners’ Third Claim for Relief), and a non-regulatory / de facto taking
7 (Landowners’ Fourth Claim for Relief). State v. Eighth Judicial District Court, 131 Nev. 411, 419
8 (2015).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 168. The City's intent to preserve the 35 Acre Property for use by the surrounding public
5 and to authorize the public to use the 35 Acre Property is further evidenced in the City's fence
6 denial and access denial letters wherein the City states as a basis for the denials, the potential to
7 have significant impact on the "surrounding properties." Exhibit 92, p. 002830; Exhibit 89, p.
8 002816. The City's 35 Acre application denial letter also states as a basis for the denial, in part,
9 concerns over the impact of the proposed development on "surrounding residents." Exhibit 93, p.
10 002831.

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

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

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

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

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

8 173. Moreover, “[t]he right to exclude is ‘one of the most treasured’ rights of property
9 ownership” and “is ‘one of the most essential sticks in the bundle of rights that are commonly
10 characterized as property’” and the City denied the Landowners the right to exclude others from
11 the 35 Acre Property by denying the Landowners’ fence application, which is a taking in and of
12 itself and further supports a finding of a per se regulatory taking. Cedar Point Nursery v. Hassid,
13 141 S.Ct. 2063, 2072 (June 23, 2021).

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

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

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

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

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

8 177. The Nevada Supreme Court has further held in Sloat v. Turner, 93 Nev. 263, 269
9 (1977), that a taking occurs where there is “some derogation of a right appurtenant to that property
10 which is compensable” or “if some property right which is directly connected to the ownership or
11 use of the property is substantially impaired or extinguished.” *See also*, Schwartz v. State, 111
12 Nev. 998 (1995) (taking where “a property right which is directly connected to the use or
13 ownership of the property is substantially impaired or extinguished.” Id., at 942).

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **The City’s Segmentation Argument Does Not Apply.**

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

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

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

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

7 191. It is also undisputed that the 35 Acre Property has its own independent legal owner
8 - 180 Land Co., LLC, a Nevada limited liability company.

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

13 193. The Court also finds that there is evidence that the City clawed back the 17 Acre
14 approvals, which would negate any possible segmentation argument. As explained above, after
15 the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre
16 Property), denied the 35 Acre applications, denied the fence application (that would have allowed
17 the Landowners to fence the 17 Acre Property) and denied the access application (that would have
18 allowed access to the 17 Acre Property). The City also sent the Landowners an email that
19 explained the 17 Acre approvals were “vacated, set aside and shall be void.” Exhibit 189.

20 194. The Court also finds that NRS 37.039 rejects the City’s segmentation argument.
21 NRS 37.039 provides that if the City wants to designate property as open space (as the City is
22 asking this Court to do), the City must pay just compensation for the property identified as open
23 space.
24

1 195. Additionally, the facts show that when the Landowners acquired the entity that
2 owned the 250 Acres, it was already divided into five separate parcels. Exhibit 44, Deed.

3 196. It is undisputed that then-City Planning Section Manager, Peter Lowenstein
4 testified in a deposition that it was the City that requested further subdivision of the Land. “Q. So
5 you wanted the developer here to subdivide the property further, correct? A. As part of the
6 submittal, we were looking for that to be accomplished . . .” Exhibit 160, p. 004962.

7 197. Therefore, there is no evidence to support the City’s claim that the Landowners
8 intentionally segmented their property as a “transparent ploy” to “fabricate a takings claim” as the
9 City argued with no supporting evidence.

10 198. Accordingly, the Court denies the City’s segmentation argument.

11 **The City Cannot Revoke a Taking that Has Already Occurred.**

12 199. This Court also denies the City’s request to find that the City revoked the taking
13 actions by sending the Landowners a letter to invite them to re-apply to develop.

14 200. The United States Supreme Court held in the case of Knick v Township of Scott,
15 Pennsylvania, 139 S.Ct. 2162, 2170 (2019), that “[t]he Fifth Amendment right to full
16 compensation arises at the time of the taking, regardless of post-taking remedies that may be
17 available to the property owner.” The Knick Court further held “once there is a taking
18 compensation *must* be awarded because as soon as private property has been taken, whether
19 through formal condemnation proceedings, occupancy, physical invasion, or regulation, the
20 landowner has *already* suffered a constitutional violation.” Id., at 2172. Italics in original. The
21 Knick Court continued, “a property owner acquires an irrevocable right to just compensation
22 immediately upon a taking” and concluded, “[a] bank robber might give the loot back, but he still
23 robbed the bank.” Id., at 2172.

Petition for Judicial Review Law.

201. The Court declines the City’s repeated attempts to apply Petition for Judicial Review (PJR) law and standards and this Court’s orders from the PJR side of this case in this inverse condemnation case.

202. This Court has already ordered several times that PJR law cannot be applied in this inverse condemnation case and provided detailed legal and policy reasons for this conclusion as follows:

“Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. (internal citation omitted). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the “aggregate” of all government action and the evidence considered is not limited to the record before the City Council. (internal citation omitted). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council.” Exhibit 8 at 22:13-27

“[B]oth the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners’ inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them ‘two disparate sets of claims’ ...” Exhibit 8 at 21:15-20.

“The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers’ compensation hearing officer’s decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof.” Id., 22:1-11.

“A petition for judicial review is one of legislative grace and limits a court’s review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered.” Id., 8:25 – 9:2.

1 “For these reasons, it would be improper to apply the Court’s ruling from the
2 Landowners’ petition for judicial review to the Landowners’ inverse condemnation
claims.” Exhibit 8, 23:7-8. See also Exhibit 7, 11:20-22, May 7, 2019, Order

3 “This is an inverse condemnation case. It’s not a petition for judicial review. There’s
4 clearly a difference in distinction there.” Exhibit 198, 5.13.21 hearing transcript at 39:7-
9.

5 “And we’ve had a very rigorous discussion in the past in this case, and I think we have a
6 pretty good record on how I viewed the petition for judicial review and whether or not
that rises to a level of issue preclusion or claims preclusion vis-à-vis the inverse case.
And I’ve ruled on that: right?” Exhibit 198, 5.13.21 hearing transcript at 41:6-12.

7 “But you’re not listening to me. I understand all that. I don’t see any need to replot this
8 ground.” Exhibit 198, 5.13.21 hearing transcript at 43:24-44:1

9 “Wait. Wait. Wait. Wait...the law as it relates to petitions for judicial review are much
10 different than a civil litigation seeking compensation for inverse condemnation, sir...the
standards are different. I mean, for example, they got to meet their burden by a
11 preponderance of the evidence. It’s substantial---I mean, it’s a totally different – it’s an
administrative process versus a full-blown jury trial in this case. It’s different
12 completely.” Exhibit 198, 5.13.21 hearing transcript at 69:20-70:7.

13 203. Moreover, when the PJR matter was pending before this Court, the City explained
14 the deference the Court must give to the City’s decisions and how the Court’s hands were tied in
15 the PJR matter. The City argued in pleadings in the PJR matter that “[t]he Court may ‘not
16 substitute its judgment for that of a municipal entity;’” “[i]t is not the business of courts to decide
17 zoning issues;” and “[a] ‘presumption of propriety’ attaches to governmental action on land use
18 decisions.” City of Las Vegas’ Points and Authorities in Response to Second Amended Petition
19 for Judicial Review, pp. 16-17, filed on June 26, 2018, in the PJR side of this case. And, the City’s
20 counsel provided similar arguments at the hearing on the PJR matter as follows:

21 [This court] must apply a very simple standard, whether or not the city council abused its
22 discretion in denying these applications. And in making a determination as to whether or
not the city council abused its discretion, it’s simply a matter of whether or not there’s
23 substantial evidence in the record to support the city council’s decision.
This isn’t a matter of the standard of proof in a trial. . . . It’s not even the standard of proof
24 in a civil trial, a preponderance of the evidence. It doesn’t even have to be 50-50 such
that there’s - - 50 percent of the record supports the approval of the applications and 50
percent of the evidence in the record supports the denial of the applications.

1 Its whether or not there's substantial evidence in the record. And substantial evidence
2 has been defined as whether a reasonable mind could accept sufficient to support a
conclusion. Reporter's Transcript of Petition for Judicial Review, June 29, 2018, p.
3 144:4-25, PJR side of this matter.

4 204. No such deference is required in this inverse condemnation action. Instead, the
Court is required to consider all of the City's actions in the aggregate to determine whether those
5 actions amount to a taking.

6 205. Finally, the Nevada Supreme Court recently confirmed this Court's orders and the
7 reasoning therein, holding "civil actions and judicial review proceedings are fundamentally
8 different" and recognized that PJR and civil actions are "[l]ike water and oil, the two will not mix."
9 City of Henderson v. Eighth Judicial District Court, 137 Nev., Adv. Op. 26 at 2 (Jun. 24, 2021).

10 206. Therefore, it would be improper to apply PJR law or this Court's orders from the
11 PJR matter to this inverse condemnation case.

12 **Purchase Price.**

13 207. The Court also declines to apply any purchase price when deciding the taking
14 issues.

15 208. First, there is no case law to support consideration of the purchase price paid for
16 property when determining whether a taking occurred.

17 209. Second, the Landowners presented a pleading at the hearing that was submitted by
18 the City in the 65 Acre case wherein the City argued, "[t]he Developer's purchase price, however,
19 is not material to the City's *liability* for a regulatory taking." City's Response to Developer's Sur-
20 Reply Brief Entitled "Notice of Status of Related Cases ETC.", filed on September 15, 2021, 3:17
21 pm, Case No. A-18-780184-C (65 Acre Case). Italics in original.

22
23
24 ///

1 IV.

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO THE CITY'S**
3 **MOTION FOR SUMMARY JUDGMENT ON THE LANDOWNERS' SECOND CLAIM**
4 **FOR RELIEF – PENN CENTRAL TAKING CLAIM**

5 210. The City moved for summary judgment on the Landowners' Second Claim for
6 Relief – Penn Central Taking Claim.

7 211. A Penn Central Taking Claim is an inverse condemnation claim separate and
8 distinct from the Per Se Categorical, Per Se Regulatory, and Non-Regulatory / De Facto taking
9 claims and is governed by a different taking standard.

10 212. The standard for a Penn Central Taking Claim considers, on an ad hoc basis, three
11 guideposts: 1) the regulations impact on the property owner; 2) the regulations interference with
12 investment backed expectations; and, 3) the character of the government action. Sisolak, supra, at
13 663.

14 213. The City conceded at the hearing on September 28, 2021, that the Penn Central
15 taking standard is a lower standard than a per se categorical standard and if the per se categorical
16 taking standard has been met, then the Penn Central standard is met.

17 214. Moreover, as explained above, 1) the impact from the City's actions on the
18 Landowners' 35 Acre Property has been to deny all economic use of the property; 2) the City's
19 actions have interfered with the Landowners attempts to develop residentially, which were the
20 Landowners' investment backed expectations; and, 3) the government provided no justification
21 for denying all economical use of the 35 Acre Property.

22 215. Insofar as a ripeness / futility analysis applies to a Penn Central claim, the claim is
23 ripe.

24 216. The Nevada Supreme Court holds that, "a claim that the application of government
regulations effects a [Penn Central] taking of a property interest is not ripe until the government

1 entity charged with implementing the regulations has reached a final decision regarding the
2 application of the regulations to the property at issue. . . . But when exhausting available remedies,
3 including the filing of a land-use application, is futile, a matter is deemed ripe for review.” State
4 v. Eighth Judicial Dist., supra, at 419.

5 217. Here, the Landowners’ Penn Central taking claim is ripe, because the City denied
6 all of the applications the Landowners submitted to use the 35 Acre Property and the City adopted
7 Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical
8 and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35
9 Acre Property for use by the public and authorized “ongoing public access” to the property.

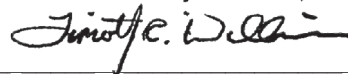
10 218. Therefore, given the City’s concession that the Penn Central taking standard is a
11 lower standard than a per se categorical taking standard and the uncontested record in this matter,
12 summary judgment is granted in favor of the Landowners on their second claim for relief – a Penn
13 Central taking.

14 V.

15 CONCLUSION

16 IT IS HEREBY ORDERED THAT Summary Judgment is granted in favor of the
17 Landowners on the Landowners’ First Claim for Relief – Per Se Categorical Taking, Second Claim
18 for Relief – Penn Central Taking, Third Claim for Relief – Per Se Regulatory Taking, and Fourth
19 Claim for Relief – Non-Regulatory / De Facto Taking. A jury trial is scheduled for November 1,
20 2021, to determine the just compensation the Landowners are owed for the taking of the 35 Acre
21 Property.

Dated this 25th day of October, 2021



998 183 8997 1E67
Timothy C. Williams
District Court Judge

MH

1 Respectfully Submitted By:

2 **LAW OFFICES OF KERMIT L. WATERS**

3 /s/ James J. Leavitt

4 Kermit L. Waters, Esq. (NV Bar No. 2571)
5 James J. Leavitt, Esq. (NV Bar No. 6032)
6 Michael A. Schneider, Esq. (NV Bar No. 8887)
7 Autumn L. Waters, Esq. (NV Bar No. 8917)
8 704 South Ninth Street
9 Las Vegas, Nevada 89101
10 Telephone: (702) 733-8877
11 Facsimile: (702) 731-1964

12 *Attorneys for Plaintiff Landowners*

13 Content Reviewed and Approved By:

14 **MCDONALD CARANO LLP**

15 Declined Signing

16 George F. Ogilvie III, Esq. (NV Bar No. 3552)
17 Christopher Molina, Esq. (NV Bar No. 14092)
18 2300 W. Sahara Avenue, Suite 1200
19 Las Vegas, Nevada 89102

20 **LAS VEGAS CITY ATTORNEY'S OFFICE**

21 Bryan K. Scott, Esq. (NV Bar No. 4381)
22 Philip R. Byrnes, Esq. (NV Bar No. 166)
23 Rebecca Wolfson, Esq. (NV Bar No. 14132)
24 495 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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 180 Land Company LLC,
Petitioner(s)

CASE NO: A-17-758528-J

7 vs.

DEPT. NO. Department 16

8
9 Las Vegas City of,
Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 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:

15 Service Date: 10/25/2021

16
17 Jeffry Dorocak

jdorocak@lasvegasnevada.gov

18 Leah Jennings

ljennings@mcdonaldcarano.com

19 Philip Byrnes

pbyrnes@lasvegasnevada.gov

20 Todd Bice

tlb@pisanellibice.com

21 Dustun Holmes

dhh@pisanellibice.com

22 Jeffrey Andrews

jandrews@lasvegasnevada.gov

23 Elizabeth Ham

EHam@ehbcompanies.com

24 Jelena Jovanovic

jjovanovic@mcdonaldcarano.com

25 Robert McCoy

rmccoy@kcnvlaw.com

26 Stephanie Allen

sallen@kcnvlaw.com

27
28
AA0908

1	Adar Bagus	abagus@kcnvlaw.com
2	Christopher Kaempfer	ckaempfer@kcnvlaw.com
3	Michael Wall	mwall@hutchlegal.com
4	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
5	Autumn Waters	autumn@kermittwaters.com
6	James Leavitt	jim@kermittwaters.com
7	Michael Schneider	michael@kermittwaters.com
8	Kermitt Waters	kermitt@kermittwaters.com
9	Evelyn Washington	evelyn@kermittwaters.com
10	Stacy Sykora	stacy@kermittwaters.com
11	Amanda Yen	ayen@mcdonaldcarano.com
12	George Ogilvie III	gogilvie@Mcdonaldcarano.com
13	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
14	Christopher Molina	cmolina@mcdonaldcarano.com
15	Jennifer Knighton	jknighton@ehbcompanies.com
16	Sandy Guerra	sandy@kermittwaters.com
17	Jennifer Knighton	jknighton@ehbcompanies.com
18	Elizabeth Ham	EHam@ehbcompanies.com
19	CluAynne Corwin	ccorwin@lasvegasnevada.gov
20	Desiree Staggs	dstaggs@kcnvlaw.com
21	Shannon Dinkel	sd@pisanellibice.com
22	Debbie Leonard	debbie@leonardlawpc.com
23	Andrew Schwartz	Schwartz@smwlaw.com
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

1 DECN

2
3 DISTRICT COURT

4
5 CLARK COUNTY, NEVADA

6 180 LAND CO., LLC, a Nevada limited liability
7 Company, FORE STARS LTD, a Nevada
8 Limited liability company and SEVENTY
9 ACRES, LLC, a Nevada limited liability
10 Company, DOE INDIVIDUALS I through X,
11 DOE CORPORATIONS I-X, and DOE
12 LIMITED LIABILITY COMPANIES I
13 through X,

14 Plaintiffs.

15 -vs-

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

16 CITY OF LAS VEGAS, a political subdivision
17 of the State of Nevada; ROE GOVERNMENT
18 ENTITIES I-X; ROE CORPORATIONS I-X;
19 ROE INDIVIDUALS I-XP; ROE LIMITED-
20 LIABILITY COMPANIES I-X; ROE QUASI-
21 GOVERNMENTAL ENTITIES I-X,

22 Defendants.

23
24 **DECISION OF THE COURT**

25 After review and consideration of the points and authorities on file herein, and oral
26 argument of counsel, the Court's Decision is as follows:

- 27 1. The appraisal report introduced into evidence by Plaintiff conforms to the
28 Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of
Professional Ethics and Standards of Professional Appraisal Practice Institute.

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

- 1 2. The expert appraisal analysis performed by Tio S. DiFederico, MAI, a Nevada
2 Certified Real Estate Appraiser, involves a 34.07-acre parcel of land located at the
3 southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, County of
4 Clark, Nevada.
5
6 3. The 34.07-acre property is hard zoned R-PD7 at all relevant times herein, and the
7 permitted uses of the subject property are single-family and multi-family
8 residential.
9
10 4. Although the site had been zoned R-PD7 since the early 1990s, the property had
11 historically been used as a portion of the Badlands Golf Course. The landowner
12 had leased the property to Elite Golf, a local operator managing the Badlands and
13 five (5) other local golf courses.
14
15 5. According to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005,
16 golf course supply increased by 44%, which far outpaced growth in golf
17 participation. The trend experienced in 2016 was referred to as a “correction” as
18 golf course closures occurring throughout the U.S. indicated there was an
19 oversupply that required market correction. The local market data reflects that
20 the Badlands wasn’t an outlier struggling in a thriving golf course market. Based
21 on what was happening in the national and local golf course markets, Las Vegas
22 was also experiencing this market “correction” and the Badlands golf course was
23 part of that “correction.” On December 1, 2016, the Badlands Golf Course closed.
24
25 ...
26 ...
27 ...
28

- 1 6. After looking at the historical operations of the golf course, which were trending
2 downward rapidly, Plaintiff's expert, Tio S. DiFederico, MAI, concluded that
3 operating the golf course was not a financially feasible use of this property as of
4 September 14, 2017. Based on his research, he concluded that the highest and
5 best use of this property was a residential development. This use would be similar
6 to the surrounding uses in the Queensridge and Summerlin communities.
7
8 7. On September 21, 2017, the Clark County Assessor sent the landowner a letter
9 that stated since the subject property had ceased being used as a golf course on
10 December 1, 2016, the land no longer met the definition of open space and was
11 "disqualified for open-space assessment." The Assessor converted the property to
12 a residential designation for tax purposes and then the deferred taxes were owed as
13 provided in NRS 361A.280. The following explains how they apply deferred
14 taxes:
15
16

17 NRS 361A.280 Payment of deferred tax when property converted to a
18 higher use. If the county assessor is notified or otherwise becomes aware
19 that a parcel or any portion of a parcel of real property which has received
20 agricultural or open-space use assessment has been converted to a higher
21 use, the county assessor shall add to the tax extended against that portion
22 of the property on the next property tax statement the deferred tax, which
23 is the difference between the taxes that would have been paid or payable
24 on the basis of the agricultural or open-space use valuation and the taxes
25 which would have been paid or payable on the basis of the taxable value
26 calculated pursuant to NRS 361A.277 for each year in which agricultural
27 or open-space use assessment was in effect for the property during the
28 fiscal year in which the property ceased to be used exclusively for
agricultural use or approved open-space use and the preceding 6 fiscal
years. The county assessor shall assess the property pursuant to NRS
361.227 for the next fiscal year following the date of conversion to a
higher use.

...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

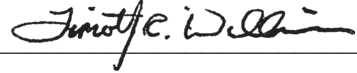
8. Due to the property tax increase, the property owner attempted to develop the property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the landowner to develop the property according to its zoning and residential designation.
9. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant.
10. The Court’s Decision is based on a finding that the 34.07-acre Badlands property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government’s unlawful taking of the 34.07-acre parcel of the Badlands property, Plaintiff’s expert, DiFederico, concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the government’s actions, this Court hereby determined that just compensation due to the government’s unlawful taking of the 34.07-acre Badlands property is the sum of \$34,135,000.00.

As a result, this Court hereby finds in favor of Plaintiff, 180 Land Company, LLC, and against Defendant, City of Las Vegas in the sum of \$34,135,000.00, exclusive of attorney’s fees and costs.

...
...
...

1 Counsel for Plaintiff shall prepare a detailed Order, Findings of Facts, and
2 Conclusions of Law, based not only on the foregoing Decision of the Court, but also on the
3 record on file herein. This is to be submitted to adverse counsel for review and approval
4 and/or submission of a competing Order or objections, prior to submitting to the Court for
5 review and signature.
6

7
8
9 Dated this 28th day of October, 2021

10 

MH

11 0AA 6FE F8FF D958
12 Timothy C. Williams
13 District Court Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 180 Land Company LLC,
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Decision was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/28/2021

16 Jeffry Dorocak

jdorocak@lasvegasnevada.gov

17 Leah Jennings

ljennings@mcdonaldcarano.com

18 Philip Byrnes

pbyrnes@lasvegasnevada.gov

19 Todd Bice

tlb@pisanellibice.com

20 Dustun Holmes

dhh@pisanellibice.com

21 Jeffrey Andrews

jandrews@lasvegasnevada.gov

22 Robert McCoy

rmccoy@kcnvlaw.com

23 Stephanie Allen

sallen@kcnvlaw.com

24 Adar Bagus

abagus@kcnvlaw.com

25 Christopher Kaempfer

ckaempfer@kcnvlaw.com

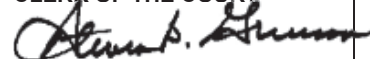
1	Michael Wall	mwall@hutchlegal.com
2	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
3	Autumn Waters	autumn@kermittwaters.com
4	Michael Schneider	michael@kermittwaters.com
5	Elizabeth Ham	EHam@ehbcompanies.com
6	Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
7	Amanda Yen	ayen@mcdonaldcarano.com
8	George Ogilvie III	gogilvie@Mcdonaldcarano.com
9	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
10	Christopher Molina	cmolina@mcdonaldcarano.com
11	Jennifer Knighton	jknighton@ehbcompanies.com
12	Evelyn Washington	evelyn@kermittwaters.com
13	Stacy Sykora	stacy@kermittwaters.com
14	James Leavitt	jim@kermittwaters.com
15	Kermitt Waters	kermitt@kermittwaters.com
16	CluAynne Corwin	ccorwin@lasvegasnevada.gov
17	Desiree Staggs	dstaggs@kcnvlaw.com
18	Shannon Dinkel	sd@pisanellibice.com
19	Debbie Leonard	debbie@leonardlawpc.com
20	Andrew Schwartz	Schwartz@smwlaw.com
21	Sandy Guerra	sandy@kermittwaters.com
22	Jennifer Knighton	jknighton@ehbcompanies.com
23	Elizabeth Ham	EHam@ehbcompanies.com
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/1/2021

Elizabeth Ghanem	8861 W. Sahara Ave Ste. 120 Las Vegas, NV, 89117
------------------	--



**NOE
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
DENYING CITY OF LAS VEGAS'
EMERGENCY MOTION TO CONTINUE
TRIAL ON ORDER SHORTENING
TIME**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Denying
City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time ("FFCL") was
entered on the 4th day of November, 2021.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A copy of the FFCL is attached hereto.

DATED this 5th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

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

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

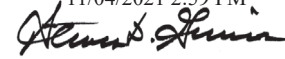
3
4
5
6
7
8
9
0
1
2
3
4

4
5
6
7
8
9
0
1
2
3
4

8
9
0
1
2
3
4

9
0
1
2
3
4

2
3
4


CLERK OF THE COURT

**FFCL
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowner

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**DENYING CITY OF LAS VEGAS'
EMERGENCY MOTION TO CONTINUE
TRIAL ON ORDER SHORTENING
TIME**

Hearing Date: October 19, 2021

Hearing Time: 9:05 AM

This matter having come before the Court for hearing on October 19, 2021, with
Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter "Landowners"),
counsel, James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on
behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem
Ham, Esq., and George F. Ogilvie III Esq. of McDonald Carano LLP appearing for and on

1 behalf of the Defendant, City of Las Vegas (hereinafter the “City”). The Court having
2 considered the Points and Authorities on file and oral arguments presented, hereby enters the
3 following Findings of Fact, Conclusions of Law and denying Defendants Emergency Motion to
4 Continue Trial:

5 **FINDINGS OF FACT**

6 1. This case has been pending for four years.

7 2. In a status report to this Court in April of 2020, the City objected to bifurcation of the
8 liability phase from the just compensation phase stating that “[b]ifurcation also will result in
9 inefficiencies, duplication of efforts, delay, and increased costs. All discovery on the takings
10 claims should be conducted at the same time.

11 5. On February 10, 2021, the 3rd Amended Order Setting Jury trial was issued by this
12 Court. The Order provided strict dates of compliance and cautioned the parties that failure to
13 comply shall result in sanctions including default judgment.

14 6. On April 6, 2021, after two years of open discovery in response to Landowners
15 Motion to Determine Take, the City filed a 56(d) Motion on OST asking for more time to conduct
16 discovery prior to the Court deciding the take issue. The Court granted the City’s request but made
17 it clear that this case was going to trial in October:

18 [t]he bottom line is this: I’m just going to put everybody on notice right now. We’re going
19 to trial in October. I’m not moving the trial date.

20 [o]ne thing for sure, and I think it’s important, we’re going to hold our trial date. We are.
21 This case is going to trial. And as far as my calendar is concerned, we’ll get it done in
22 October.

23 At the end of the day, I can tell you this, though: We’re going to trial in October, regardless
24 of what decision I make.

See 56 d motion Transcript pg 46 lines 4-7, pg 74 lines 14-18, pg 82 lines 19-21.

7. On September 30, 2021, this Court conducted a calendar call for a seven-week stack setting trials according to all counsels availability. During the calendar call, counsel for the City did not disclose any conflicts with the proposed dates.

8. During the calendar call, this court set cases throughout the end of the seven-week stack.

9. The City filed an emergency motion to move this trial on October 11, 2021. By that date, all available dates for the seven-week stack had been filled.

10. The Court did inquire as to possible availability to accommodate the City's request to move the date on this seven-week stack. However, all other matters were proceeding forward.

12. As a reason for moving the firm trial setting, the City presented preoccupation with other litigation, a scheduling conflict of Mr. Ogilvie, and a misunderstanding of the firm setting.

CONCLUSIONS OF LAW

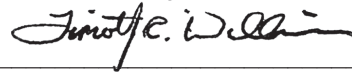
11. NRS 37.055 provides that eminent domain/inverse condemnation proceedings take precedence over certain other proceedings and must be quickly heard and determined.

12. The Nevada Supreme Court has held that it is the government's affirmative duty to move an eminent domain/inverse condemnation action to trial within two years of commencement of the action and/or the taking. *County of Clark v. Alper*, 100 Nev. 382, 391, 685 P. 2d 943, 949 (1984).

13. The City did not establish good cause pursuant to the Nevada Rules of Civil Procedure or the Eighth Judicial District Court rules to move this firm trial setting beyond the seven-week stack.

1 14. Therefore, the City's Emergency Motion to Continue Trial on an Order Shortening
2 Time is hereby **DENIED** and this matter shall proceed to trial with jury selection beginning on
3 October 27, 2021 at 10:30am and October 28, 2021 at 9:30am and opening statements on
4 November 1, 2021 at 9:30am.

Dated this 4th day of November, 2021



MH

119 D31 8676 EC1B
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James Jack Leavitt

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

Content Reviewed and Approved By:

McDONALD CARANO LLP

By:

Did not respond

George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From: [James Leavitt](#)
To: [Sandy Guerra](#)
Cc: [Autumn Waters](#)
Subject: FW: FFCL denying motion to continue
Date: Tuesday, October 26, 2021 2:18:50 PM
Attachments: [FFCL Denying MTN to Continue Trial.docx](#)

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

From: James Leavitt
Sent: Thursday, October 21, 2021 2:22 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: FFCL denying motion to continue

George:

Could you please let me know if I have your authorization to affix your electronic signature to the attached proposed order denying motion to continue.

Thank you,

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and

AA0926

may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 180 Land Company LLC,
Petitioner(s)

CASE NO: A-17-758528-J

7 vs.

DEPT. NO. Department 16

8
9 Las Vegas City of,
Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing ' findings of ' act, Conclusions of Law and Judgment was served via the
court's electronic e' ile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 11/4/2021

16 Jeffrey Dorocak

jdorocak@lasvegasnevada.gov

17 Leah Jennings

ljennings@mcdonaldcarano.com

18 Philip Byrnes

pbyrnes@lasvegasnevada.gov

19 Todd Bice

tlb@pisanellibice.com

20 Dustun Holmes

dhh@pisanellibice.com

21 Jeffrey Andrews

jandrews@lasvegasnevada.gov

22 EliMbeth Ham

EHam@ehbcompanies.com

23 Jelena Jovanovic

jjovanovic@mcdonaldcarano.com

24 Robert WcCoy

rmccoy@kcnvlaw.com

25 Stephanie Allen

sallen@kcnvlaw.com

26
27
28
AA0928

1	Adar Bagus	abagus@kcnvlaw.com
2	Christopher Kaempfer	ckaempfer@kcnvlaw.com
3	Michael Wall	mwall@hutchlegal.com
4	Waddy Carnate-Peralta	mcarnate@hutchlegal.com
5	Autumn Waters	autumn@kermittwaters.com
6	James Leavitt	jim@kermittwaters.com
7	Michael Schneider	michael@kermittwaters.com
8	Kermitt Waters	kermitt@kermittwaters.com
9	Evelyn Washington	evelyn@kermittwaters.com
10	Stacy Sykora	stacy@kermittwaters.com
11	Amanda Yen	ayen@mcdonaldcarano.com
12	George Ogilvie III	gogilvie@Wcdonaldcarano.com
13	Karen Surowiec	ksurowiec@Wcdonaldcarano.com
14	Christopher Wolina	cmolina@mcdonaldcarano.com
15	Jennifer Knighton	jknighton@ehbcompanies.com
16	Sandy Guerra	sandy@kermittwaters.com
17	Jennifer Knighton	jknighton@ehbcompanies.com
18	EliMbeth Ham	EHam@ehbcompanies.com
19	CluAynne Corwin	ccorwin@lasvegasnevada.gov
20	Desiree Staggs	dstaggs@kcnvlaw.com
21	Shannon Dinkel	sd@pisanellibice.com
22	Debbie Leonard	debbie@leonardlawpc.com
23	Andrew Schwartz	Schwartz@smwlaw.com
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lauren Tarpey

LTarpey@smwlaw.com

David z eibel

weibel@smwlaw.com

Rebecca z olfson

rwolfson@lasvegasnevada.gov

**FFCL
LAW OFFICES OF KERMITT L. WATERS**

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

ON JUST COMPENSATION

BENCH TRIAL: October 27, 2021

///

1 On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND
2 COMPANY, LLC and FORE STARS, Ltd. (hereinafter “Landowners”) appearing through their
3 counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L.
4 Waters, along with the Landowners’ in-house counsel Elizabeth Ghanem Ham, Esq., and with the
5 City of Las Vegas (hereinafter “the City”) appearing through its counsel, George F. Ogilvie III,
6 Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City
7 Attorney’s Office.

8 Having reviewed and considered the evidence presented, the file and other matters
9 referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law:

10 **I.**

11 **INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE**

12 1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation
13 claim, the court must undertake two distinct sub-inquiries: “the court must first determine” the
14 property rights “before proceeding to determine whether the governmental action constituted a
15 taking.” ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International
16 Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that
17 “whether the Government has inversely condemned private property is a question of law ...”
18 Sisolak, at 661. To decide these issues, the Court relies on eminent domain and inverse
19 condemnation cases. See County of Clark v. Alper, 100 Nev. 382, 391 (1984) (“[I]nverse
20 condemnation proceedings are the constitutional equivalent to eminent domain actions and are
21 governed by the same rules and principles that are applied to formal condemnation proceedings.”).

22 2. The Court entertained extensive argument on the first sub-inquiry, the property
23 rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law
24

1 Regarding Plaintiff Landowners' Motion to Determine "Property Interest," on October 12, 2020
2 (hereinafter "FFCL Re: Property Interest").

3 3. In the FFCL Re: Property Interest, the Court held: 1) Nevada eminent domain law
4 provides that zoning must be relied upon to determine a landowners' property interest in an eminent
5 domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7 at all
6 relevant times; 3) the Las Vegas Municipal Code (chapter 19) lists single-family and multi-family
7 as the legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of
8 the 35 Acre Property are single-family and multi-family residential.

9 4. The Court also entertained extensive argument on the second sub-inquiry, whether
10 the City's actions had resulted in a taking, on September 23, 24, 27, and 28, 2021, and entered
11 Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion to Determine
12 Take and For Summary Judgment on the First, Third, and Fourth Claims for Relief and Denying
13 the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief
14 (hereinafter "FFCL Re: Taking").

15 5. In the FFCL Re: Taking, the Court held that the City engaged in actions that
16 amounted to a taking of the Landowners' 35 Acre Property.

17 6. Upon deciding the property interest and taking, the only issue remaining in this case
18 is the just compensation to which the Landowners are entitled for the taking of the 35 Acre Property.

19 7. In preparation for the jury trial on the just compensation, on October 26, 2021, the
20 Court entertained argument on motions in limine and also the parties' cross motions for summary
21 judgment, orders having been entered on those matters.

22 8. This case was set for a jury trial, with jury selection to be October 27 and 28, 2021,
23 and opening arguments on November 1, 2021.
24

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.

1 22. The DiFederico Report includes a detailed analysis of the 35 Acre Property that
2 analyzes location, size, configuration, topography, soils, drainage, utilities (sewer, water, solid
3 waste, electricity, telephone, and gas), street frontage and access, legal use of the property based on
4 zoning, the surrounding uses, and other legal and regulatory constraints. TDG Rpt 000033-000052.
5 The DiFederico Report property analysis concludes, “[o]verall, the site’s R-PD7 zoning and
6 physical characteristics were suitable for residential development that was prevalent in this area and
7 bordered the subject site.” Id., 000044.

8 23. The DiFederico Report provides a detailed analysis of the “highest and best use” of
9 the 35 Acre Property, including the elements of legal permissibility, physical possibility, financial
10 feasibility, and maximally productive. TDG Rpt 000054-000067. The DiFederico Report
11 concludes, based on this highest and best use analysis, that “a residential use best met the four tests
12 of highest and best use [as] of the effective date of value, September 14, 2017.” Id., at 000067.
13 This use would be similar to the surrounding uses in the Queensridge and Summerlin Communities.
14 Id.

15 24. Although the 35 Acre Property had been zoned R-PD7 since the early 1990s, the
16 property had historically been used as a portion of the Badlands Golf Course. Id.

17 25. Therefore, the DiFederico Report also provides a detailed analysis of the past use of
18 the 35 Acre Property as part of the Badlands golf course. TDG Rpt. 000060-000067. This golf
19 course analysis is based on Mr. DiFederico’s research, a report by Global Golf Advisors (GGA),
20 and the past operations on the Badlands golf course. Id.

21 26. The DiFederico report finds that, according to a 2017 National Golf Foundation
22 (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth
23 in golf participation. Id. The trend experienced in 2016 was referred to as a “correction” as golf
24 course closures occurring throughout the U.S. indicated there was an oversupply that required

1 market correction. Id. The local market data reflects that the Badlands wasn't an outlier struggling
2 in a thriving golf course market. Id. Based on what was happening in the national golf course
3 markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course
4 was part of the "correction." On December 1, 2016, the Badlands golf course closed. Id.

5 27. The Landowner leased the property to Elite Golf, a local operator managing the
6 Badlands and five (5) other local golf courses. On December 1, 2016, the CEO of Elite Golf
7 Management sent a letter to the Landowners stating that it could not generate a profit using the
8 property for a golf course, even if Elite Golf were permitted to operate rent free: "it no longer makes
9 sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues
10 to struggle, and Badlands revenues have continued to decrease over the years. This year we will
11 finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate we
12 cannot continue to sustain the property where it makes financial sense to stay. Even with your
13 generosity of the possibility of staying with no rent, we do not see how we can continue forward
14 without losing a substantial sum of money over the next year." Id., 000066.

15 28. The DiFederico Report includes further detailed analysis of relevant golf course data
16 of the potential for a golf course operation on the 35 Acre Property. TDG Rpt 000060-000066.

17 29. The DiFederico Report also specifically considered the historical operations of the
18 golf course, which were trending downward rapidly. Id.

19 30. The DiFederico Report concluded that operating the golf course was not a
20 financially feasible use of the 35 Acre Property as of September 14, 2017.

21 31. The DiFederico Report golf course conclusion is further supported by the Clark
22 County Tax Assessor analysis on the 250 acre land (of which the 35 Acre Property was included).
23 On September 21, 2017, the Clark County Assessor sent the Landowner a letter that stated since
24 the 35 Acre Property had ceased being used as a golf course on December 1, 2016, the land no

1 longer met the definition of open space and was “disqualified for open-space assessment.” The
2 Assessor converted the property to a residential designation for tax purposes and then the deferred
3 taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred
4 taxes:

5 “NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the
6 county assessor is notified or otherwise becomes aware that a parcel of real property which
7 has received agricultural or open-space use assessment has been converted to a higher use,
8 the county assessor shall add to the tax extended against that portion of the property on the
9 next property tax statement the deferred taxes, which is the difference between the taxes
10 that would have been paid or payable on the basis of the agricultural or open-space use
11 valuation and the taxes which would have been paid or payable on the basis of the taxable
12 value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-
13 space use assessment was in effect for the property during the fiscal year in which the
14 property ceased to be used exclusively for agricultural use or approved open-space use and
15 the preceding 6 fiscal years. The County assessor shall assess the property pursuant to NRS
16 361.2276 for the next fiscal year following the date of conversion to a higher use.”

17 32. The Las Vegas City Charter states, “The County Assessor of the County is, ex
18 officio, the City Assessor of the City.” LV City Charter, sec. 3.120.

19 33. The City provided no evidence that a golf course use was financially feasible as of
20 the September 14, 2017, date of value.

21 34. Once the DiFederico Report identified the highest and best use of the 35 Acre
22 Property as residential, it then considered the three standard valuation methodologies – the cost
23 approach, sales comparison approach, and income capitalization approach. TDG Rpt 000068. The
24 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.

1 36. The DiFederico Report then makes adjustments to these five sales to compensate for
2 the differences between the five sales and the 35 Acre Property. Id., 000076. These adjustments
3 include time-market conditions, location, physical characteristics, etc. Id., 000076-000083.

4 37. After considering all five sales and making the appropriate adjustments to the five
5 sales, the DiFederico Report concludes that the value of the 35 Acre Property as of September 14,
6 2017, under the sales comparison approach is \$23.00 per square foot. Id., 000084. The exact square
7 footage of the 35 Acre Property (34.07 acres) is 1,484,089 and applying the DiFederico Report's
8 square foot value to this number arrives at a value of \$34,135,000 for the 35 Acre Property as of
9 September 14, 2017, under the sales comparison approach. Id., 000084.

10 38. As a check to the reasonableness of the \$34,135,000 value concluded by the sales
11 comparison approach, the DiFederico Report completed an income approach to value the 35 Acre
12 Property, referred to as the discounted cash flow approach (hereinafter "DCF approach"). TDG
13 Rpt 000085-000094. The DiFederico Report explains the steps under this DCF approach, which
14 are generally to determine the value of finished lots, consider the time it would take to develop the
15 finished lots, subtract out the costs, profit rate, and discount rate, and discount the net cash flow to
16 arrive at a value of the property as of September 14, 2017. Id., 000086. A finished lot is one that
17 has been put in a condition that it is ready to develop a residential unit on it.

18 39. The DiFederico Report confirms that the DCF approach is used in the real world by
19 developers to determine the value of property. Id., 000086.

20 40. The DiFederico Report considers three scenarios under this DCF approach – a 61
21 lot, 16 lot, and 7 lot development. Id., 000085-000094.

22 41. The DiFederico Report provides detailed data for the value of finished lots on the
23 35 Acre Property, including sales of finished lots in the area of the 35 Acre Property that sold near
24 the September 14, 2017, date of value. TDG Rpt 000086-000088. This data showed that the

1 average value for finished lots selling in the area were \$30, \$49.28, and \$71.84 per square foot.,
2 depending upon the area of Summerlin and the Queensridge Community. TDG Rpt 000086-
3 000087. With this data, the DiFederico Report concluded at a value of \$40 per square foot for the
4 61 lot scenario, \$35 per square foot for the 16 lot scenario, and \$32 per square foot for the 7 lot
5 scenario. TDG Rpt 000087.

6 42. The DiFederico Report then provides a detailed, factual based, analysis of the time
7 it would take to develop the finished lots, the expenses to develop the finished lots, the profit rate
8 and discount rate, and the appropriate discount to the net cash flow. TDG Rpt 000088-000090.

9 43. With this factual based data, the DiFederico Report provides a discounted cash flow
10 model for each of the three scenarios to arrive at a value for the 35 Acre Property under each
11 scenario as follows: 1) for the 61 lot scenario, \$32,820,000, 2) for the 16 lot scenario, \$35,700,000,
12 and, 3) for the 7 lot scenario, \$34,400,000. TDG Rpt 000091-000094. The DiFederico Report uses
13 this income approach to confirm the reasonableness of the \$34,135,000 value under the sales
14 comparison approach.

15 44. The DiFederico Report then concludes that, applying all of the facts and data in the
16 Report, the fair market value of the 35 Acre Property as of September 14, 2017, is \$34,135,000.
17 TDG Rpt 000095.

18 45. The DiFederico Report also provides a detailed analysis of the City's actions toward
19 the 35 Acre Property to determine the effect of the City's actions on the 35 Acre Property from a
20 valuation viewpoint. TDG Rpt. 000096-000101. These City actions are the same actions set forth
21 in the Court's FFCL Re: Taking.

22 46. The DiFederico Report concludes that the City's actions have taken all value from
23 the 35 Acre Property.
24

1 47. The DiFederico Report concludes that the City’s actions removed the possibility of
2 residential development; however, the landowner is still required to pay property taxes as if the
3 property could be developed with a residential use. TDG Rpt 000100. According to the DiFederico
4 Report, this immediately added an annual expense that was over \$205,000 and that amount would
5 be expected to increase over time. Id.

6 48. The DiFederico Report concludes that, due to the City’s actions, there is no market
7 to sell the 35 Acre Property with these development restrictions along with the extraordinarily high
8 annual expenses as the buyer would be paying for a property with no economic benefit that has
9 annual expenses in excess of \$205,000. TDG Rpt 000100.

10 49. The DiFederico Report concludes that the value of the 35 Acre Property as of
11 September 14, 2017, is \$34,135,000 and that the City’s actions have taken all value from the
12 property, resulting in “catastrophic damages to this property.” TDG Rpt 000101.

13 50. The City did not produce an appraisal report or a review appraisal report during
14 discovery or during the bench trial.

15 51. The City did not depose Mr. DiFederico.

16 52. The City represented at the October 27, 2021, bench trial that, based on the rulings
17 entered by the Court rulings in this matter, including the FFCL Re: Property Interest, the FFCL Re:
18 Take, the rulings on the three motions in limine, and the competing motions for summary judgment
19 on October 26, 2021, the City did not have evidence to admit to rebut the DiFederico Report.

20
21
22
23
24 ///

1

2

3

9

14

17

19

22

1 a motion is brought to change the date of value to the date of trial and certain findings are made by
2 the Court.

3 59. In the case of County of Clark v. Alper, 100 Nev. 382, 391 (1984), the Nevada
4 Supreme Court held that NRS 37.120 applies to both eminent domain and inverse condemnation
5 proceedings, reasoning, “inverse condemnation proceedings are the constitutional equivalent to
6 eminent domain actions and are governed by the same rules and principles that are applied to formal
7 condemnation proceedings.” Id.

8 60. The date of the first service of summons in this case is September 14, 2017, and
9 neither party sought to change the date of valuation to the date of trial.

10 61. Therefore, the date of valuation in this inverse condemnation proceeding is the date
11 of the first service of summons, which is September 14, 2017.

12 62. The Court finds that Mr. DiFederico has the expertise to value the 35 Acre Property.

13 63. The Court further finds that the valuation methodologies applied in the DiFederico
14 Report are accepted methodologies to appraise property and are relevant and reliable to determine
15 the value of the 35 Acre Property as of September 14, 2017.

16 64. The Court further finds that the DiFederico Report is based on reliable data,
17 including reliable comparable sales, and is well-reasoned. The conclusions therein are well-
18 supported.

19 65. The Court finds that the DiFederico Report properly applied and followed Nevada’s
20 eminent domain and inverse condemnation laws and that the Report appropriately analyzed and
21 arrived at a proper highest and best use of the 35 Acre Property as residential use. This highest and
22 best use conclusion is also supported by the Court’s previous FFCL Re: Property Interest and FFCL
23 Re: Taking.

1 66. The Court finds that the DiFederico Report properly followed Nevada law in
2 applying the “highest price” standard of fair market value.

3 67. The Court’s final decision is based on a finding that the 35 Acre Property could be
4 developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due
5 to the effect of the government’s unlawful taking of the 35 Acre Property, the DiFederico Report
6 concluded there was no market to sell this property with the substantial tax burden and no potential
7 use or income to offset the tax expense. Based on the City’s actions, the Court hereby determines
8 that just compensation for the fair market value of the 35 Acre Property due to the City’s unlawful
9 taking of the 35 Acre Property is the sum of \$34,135,000, exclusive of attorney’s fees, costs,
10 interest, and reimbursement of taxes.

11 68. As a result, the Court hereby finds in favor of the Landowners and against the City
12 in the sum of \$34,135,000.

13 69. The Court will accept post trial briefing on the law and facts to determine attorney’s
14 fees, costs, interest, and reimbursement of taxes as Article 1 Section 22(4) provides that “[j]ust
15 compensation shall include, but is not limited to, compounded interest and all reasonable costs and
16 expenses actually incurred.” Once the Court determines the compensation for these additional
17 items, if any, the Court will write in the compensation for each of these items, if any, as follows:

18 The City shall pay to the Landowners attorney fees in the amount of

19 \$ _____.

20 The City shall pay to the Landowners costs in the amount of \$ _____.

21 The City shall pay prejudgment interest in the amount of \$ _____ for
22 interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest
23 thereafter in the amount of \$ _____ until the date the judgment is
24 satisfied. NRS 37.175.

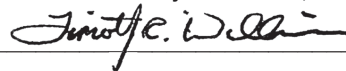
1 The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in
2 the amount of \$ _____.

3
4 **IV.**

5 **CONCLUSION**

6 **IT IS HEREBY ORDERED THAT**, the City is ordered to pay the Landowners the amount
7 of \$34,135,000 as the fair market value for the taking of the Landowners 35 Acre Property, with
8 the above items for attorney fees, interest, costs, and reimbursement of taxes reserved for post trial
9 briefing.

Dated this 18th day of November, 2021

10 

MH

11 **B88 955 81A8 4EC7**
12 **Timothy C. Williams**
District Court Judge

13 Respectfully Submitted By:

Content Reviewed and Approved By:

14 **LAW OFFICES OF KERMIT L. WATERS**

MCDONALD CARANO LLP

15 /s/ James J. Leavitt

Declined to sign

16 Kermitt L. Waters, Esq. (NV Bar No. 2571)
17 James J. Leavitt, Esq. (NV Bar No. 6032)
18 Michael A. Schneider, Esq. (NV Bar No. 8887)
19 Autumn L. Waters, Esq. (NV Bar No. 8917)
20 704 South Ninth Street
21 Las Vegas, Nevada 89101
22 Telephone: (702) 733-8877
23 Facsimile: (702) 731-1964
24 ***Attorneys for Plaintiff Landowners***

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

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

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

AA0946

tel: (702) 733-8877
fax: (702) 731-1964

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

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

AA0947

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 180 Land Company LLC,
Petitioner(s)

CASE NO: A-17-758528-J

7 vs.

DEPT. NO. Department 16

8
9 Las Vegas City of,
Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing ' findings of ' act, Conclusions of Law and Judgment was served via the
court's electronic e' ile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 11/18/2021

16 Jeffrey Dorocak

jdorocak@lasvegasnevada.gov

17 Leah Jennings

ljennings@mcdonaldcarano.com

18 Philip Byrnes

pbyrnes@lasvegasnevada.gov

19 Todd Bice

tlb@pisanellibice.com

20 Dustun Holmes

dhh@pisanellibice.com

21 Jeffrey Andrews

jandrews@lasvegasnevada.gov

22 Robert McCoy

rmccoy@kcnvlaw.com

23 Stephanie Allen

sallen@kcnvlaw.com

24 Adar Bagus

abagus@kcnvlaw.com

25 Christopher Kaempfer

ckaempfer@kcnvlaw.com

1	Michael Wall	mwall@hutchlegal.com
2	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
3	Autumn Waters	autumn@kermittwaters.com
4	James Leavitt	jim@kermittwaters.com
5	Michael Schneider	michael@kermittwaters.com
6	Elizabeth Ham	EHam@ehbcompanies.com
7	Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
8	Amanda Yen	ayen@mcdonaldcarano.com
9	George Ogilvie III	gogilvie@Mcdonaldcarano.com
10	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
11	Christopher Molina	cmolina@mcdonaldcarano.com
12	Jennifer Knighton	jknighton@ehbcompanies.com
13	Evelyn Washington	evelyn@kermittwaters.com
14	Stacy Sykora	stacy@kermittwaters.com
15	Sandy Guerra	sandy@kermittwaters.com
16	Jennifer Knighton	jknighton@ehbcompanies.com
17	Elizabeth Ham	EHam@ehbcompanies.com
18	Kermitt Waters	kermitt@kermittwaters.com
19	CluAynne Corwin	ccorwin@lasvegasnevada.gov
20	Desiree Staggs	dstaggs@kcnvlaw.com
21	Shannon Dinkel	sd@pisanellibice.com
22	Debbie Leonard	debbie@leonardlawpc.com
23	Andrew Schwartz	Schwartz@smwlaw.com
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lauren Tarpey

LTarpey@smwlaw.com

David Weibel

weibel@smwlaw.com

Rebecca Wolfson

rwolfson@lasvegasnevada.gov



**NOE
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**ORDER GRANTING PLAINTIFFS'
MOTIONS IN LIMINE NO. 1, 2 AND 3
PRECLUDING THE CITY FROM
PRESENTING TO THE JURY:
1. ANY EVIDENCE OR REFERENCE TO
THE PURCHASE PRICE OF THE LAND;
2. ANY EVIDENCE OR REFERENCE TO
SOURCE OF FUNDS; 3. ARGUMENT
THAT THE LAND WAS DEDICATED AS
OPEN SPACE/CITY'S PRMP AND PROS
ARGUMENT**

PLEASE TAKE NOTICE that the Order Granting Plaintiffs' Motions in Limine Nos. 1,
2, and 3 Precluding the City From Presenting to the Jury: 1. Any Evidence or Reference to the
Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that

1 the Land was Dedicated as Open Space/City's PRMP and PROS Argument ("MIL Order") was
2 entered on the 16th day of November, 2021.

3 A copy of the MIL Order is attached hereto.

4 DATED this 18th day of November, 2021.

5
6 **LAW OFFICES OF KERMITT L. WATERS**

7 /s/ James J. Leavitt

8 Kermitt L. Waters, Esq. (NSB 2571)

9 James J. Leavitt, Esq. (NSB 6032)

10 Michael A. Schneider, Esq. (NSB 8887)

11 Autumn L. Waters, Esq. (NSB 8917)

12 704 South Ninth Street

13 Las Vegas, Nevada 89101

14 Telephone: (702) 733-8877

15 Facsimile: (702) 731-1964

16 ***Attorneys for Plaintiffs Landowners***

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 18th day of November, 2021, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS' MOTIONS IN**
5 **LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE**
6 **JURY:1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE**
7 **LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT**
8 **THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS**
9 **ARGUMENT** was served on the below via the Court's electronic filing/service system and/or
10 deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

11 **McDONALD CARANO LLP**
12 George F. Ogilvie III, Esq.
13 Christopher Molina, Esq.
14 2300 W. Sahara Avenue, Suite 1200
15 Las Vegas, Nevada 89102
16 gogilvie@mcdonaldcarano.com
17 cmolina@mcdonaldcarano.com

18 **LAS VEGAS CITY ATTORNEY'S OFFICE**
19 Bryan Scott, Esq., City Attorney
20 Philip R. Byrnes, Esq.
21 Rebecca Wolfson, Esq.
22 495 S. Main Street, 6th Floor
23 Las Vegas, Nevada 89101
24 bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

25 **SHUTE, MIHALY & WEINBERGER, LLP**
26 Andrew W. Schwartz, Esq.
27 Lauren M. Tarpey, Esq.
28 396 Hayes Street
29 San Francisco, California 94102
30 schwartz@smwlaw.com
31 ltarpey@smwlaw.com

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

LAW OFFICES OF KERMITT L. WATERS

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY:
1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND;
2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT

Date of Hearing: October 26, 2021
Time of Hearing: 9:05 a.m.

Plaintiff Landowners' Motions in Limine to exclude 2005 purchase price (#1), to exclude source of funds (#2), and to exclude arguments that the Land was dedicated as Open Space/City's

1 PRMP and PROS (#3), having come before the Court on October 26, 2021, James J. Leavitt, Esq.,
2 Autumn L. Waters, Esq of the Law Offices of Kermit L Waters and Plaintiff's in-house counsel
3 Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars.
4 ("Landowners"), George F. Ogilvie III, Esq. of McDonald Carano LLP and Andrew W. Schwartz,
5 Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").
6

7 The Court having reviewed the papers and pleadings on file, heard argument of counsel,
8 and for good cause appearing hereby finds and orders as follows:

9 **Findings Regarding Exclusion of Purchase Price**

10 Regarding exclusion of the transaction consummating the purchase of the entity that owned
11 the 35 Acre Property, the Court finds as follows:
12

13 1. The purchase price/transaction does not reflect the highest and best use of the 35 Acre
14 Property on the date of valuation, which is September 14, 2017, pursuant to NRS 37.120 and Clark
15 County v. Alper, 100 Nev. 382, 391 (1984).
16

17 2. The City has not identified an expert witness that can testify to the relevance of the purchase
18 price/transaction as relates to the value of the 35 Acre Property, as of the September 14, 2017, date
19 of valuation and the only expert to analyze the purchase price/transaction, appraiser Tio
20 DiFederico, determined that it had no relationship to the value of the 35 Acre Property as of
21 September 14, 2017.
22

23 3. The City has also failed to identify an expert witness that has adjusted the purchase
24 price/transaction to the relevant September 14, 2017, date of valuation.
25
26
27
28

1 4. The purchase/transaction was not for substantially the same property at issue in this matter
2 as it was for approximately 250 acres of land with the acquisition of Fore Stars, Ltd. and all of the
3 assets and liabilities thereof, not just the 35 Acre Property at issue in this case.

4 5. The purchase price/transaction beginning in 2005 is too remote to the date of value
5 (September 14, 2017) with changes in market fluctuations in values having occurred since the
6 transaction. In fact, the City's own tax assessor did not use the purchase price/transaction when
7 deciding the value of the 35 Acre Property for purposes of imposing real estate taxes on the
8 property in 2016.

10 6. The evidence presented at the hearings showed that the purchase price/transaction arose
11 out of a series of "complicated" transactions that had "a lot of hair" on them and elements of
12 compulsion, because the Queensridge Towers were being constructed on part of the 250 Acre
13 property causing the operator of the golf course to demand a large pay off; and, the predecessor
14 owners could not meet other underlying obligations.

16 7. The Landowners presented evidence of the sales of other similar properties in the area of
17 the 35 Acre Property that sold near the September 14, 2017, date of valuation, demonstrating there
18 was no need to turn to the purchase price/transaction.

20 8. Any probative value is substantially outweighed by the danger of unfair prejudice,
21 confusion of the issues, and misleading the jury. The sole issue in this case is the value of the 35
22 Acre Property as of September 14, 2017, and introducing the purchase price/transaction will
23 confuse the jury as the jury is not tasked with unraveling the terms of the purchase price/transaction
24 to decide what may or may not have been paid for the property.

26 9. Allowing the purchase price/transaction would allow the City to communicate to the jury
27 that, since the Landowners paid a lower value for the property, they should not be entitled to their
28

1 constitutional right to payment of just compensation based on the value of the 35 Acre Property as
2 of the September 14, 2017, date of value, which would be improper. And, the City has indicated
3 this purpose having previously argued in this case that the Landowners made a windfall on their
4 investment.

6 **Conclusions of Law Regarding Exclusion of Purchase Price**

7 10. NRS 37.120 provides that the date of valuation in an eminent domain case is either the
8 date of first service of summons or, if there is more than a two year delay, the date of value may
9 be moved to the date of trial. In Clark County v. Alper, 100 Nev. 382, 391 (1984), the Nevada
10 Supreme Court held that the date of value provisions of NRS 37.120 apply to inverse condemnation
11 proceedings, such as this. The date of first service of summons in this matter is September 14,
12 2017, therefore, the date of valuation is September 14, 2017.

14 11. The purchase/transaction must cover substantially the same property that is being
15 acquired;¹ not be too remote; have occurred relevantly in point of time with no changes in
16 conditions or marked fluctuations in values having occurred since the sale;² be bona fide;³

22 ¹ 27 Am. Jur. 2d Eminent Domain section 534; West Virginia Div. of Highways v. Butler, 516
23 S.E.2d 769 (Supr. Ct. App. W.Va. 1999) (citing factors to admit purchase price, including “the
24 sale must cover substantially the same property which is the subject of the appropriation action.”
Id., at 776); Pearl River Valley Water Supply Dist. V. May, 194 o.2d 226 (1967) (no abuse of
25 discretion to exclude purchase price where sale of subject property was part of a much larger tract).

26 ² 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent
27 domain proceeding, of evidence as to price paid for condemned real property on sale prior to the
proceeding, 11 (2021, originally published in 1957); West Virginia Div. of Highways v. Butler,
516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999).

28 ³ 27 Am. Jur. 2d Eminent Domain section 534.

1 voluntary, not forced;⁴ and, is not otherwise shown to have no probative value or that the
2 prejudicial impact does not outweigh any negligible relevance.⁵ The purchase/transaction must
3 also be shown to meet evidentiary standards such that a real estate valuation expert would consider
4 the purchase/transaction in his or her analysis.

5
6 12. As stated above, the purchase price/transaction does not meet this standard of
7 admissibility. Moreover, the purchase price/transaction is not relevant to the value of the 35 Acre
8 Property as of the statutorily mandated September 14, 2017, date of valuation. Therefore, the
9 Court exercises its discretion to exclude the purchase price/transaction.
10

11
12
13
14 //

15
16
17 ⁴ 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent
18 domain proceeding, of evidence as to price paid for condemned real property on sale prior to the
19 proceeding, 11 (2021, originally published in 1957).

20 ⁵ 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for
21 condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957).
22 *See also* 5 Nichols on Eminent Domain 21.01(2)(a), 21-10 (2001) (sale must be bona fide,
23 voluntary, relevant in point of time, and cover substantially the same property). The Nevada
24 Supreme Court held admissible the purchase price for “goodwill” in a gas station where the
25 goodwill price occurred in 1994 and the date of value was 1999 as there were no other comparable
26 sales in state to consider. Dept. of Transp. v. Cowan, 120 Nev. 851 (2004). The Cowan case is
27 consistent with the Landowners’ position in this matter as the goodwill purchase price was easily
28 identifiable and clearly set forth by way of contract and the Court found that the sale (1994) was
not so remote to the date of value (1999) so that the price was an unfair criterion to consider in
calculating damages. These two criteria are not present in this case, as set forth below. Also, the
Cowans presented testimony that there were no similar leaseholds or business franchises in the
Las Vegas market comparable to what the State had taken. Cowan, at 854. With no comparable
leaseholds available in the market area the Court allowed evidence of the 5 year old purchase price
which specifically placed a value on the business goodwill.

1 **Findings Regarding Source of Funds**

2 13. Throughout these proceedings the City has made repeated and express statements that
3 allowing the Landowners to receive just compensation would negatively impact the taxpayers as
4 the taxpayers would be the source of funds for payment of just compensation.
5

6 14. During the hearing of this matter, the City argued that it would not use the word taxpayers,
7 but was intending on arguing that the jury must consider the public when considering just
8 compensation. The term public is equivalent to taxpayers.
9

10 15. Referencing the source of funds to be used to pay an eminent domain verdict is similar to
11 referencing “insurance” in a personal injury action.

12 **Conclusions of Law Regarding Source of Funds**

13 Regarding exclusion of the source of funds that would be used to pay the just compensation
14 award in this case, the Court finds as follows:
15

16 16. The source of funds used to pay an eminent domain verdict is irrelevant in the
17 determination of just compensation. City of Sioux Falls v. Kelley, 17871, 1994 WL 56585 (S.D.
18 1994) (“As a general rule, argument or evidence of the source of funds to pay the award is
19 improper.”) *See also*, 19 A.L.R.3d 694 (Originally published in 1968). Nevada law is clear,
20 “[i]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions
21 and are governed by the same rules and principles that are applied to formal condemnation
22 proceedings.” Clark County v. Alper, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984).
23

24 17. The source of funds used to pay this verdict or that the verdict would be paid by the
25 taxpayers or the public is not even collaterally relevant to the determination of just compensation.
26 McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006) (“any financial
27

1 burden that the County must bear as a result of having to pay just compensation is irrelevant to the
2 inquiry under the United States and Nevada Constitutions...”).

3 18. Evidence which is not relevant is not admissible. NRS 48.025

4 19. Evidence which may be relevant is not admissible if its probative value is substantially
5 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. NRS
6 48.035

7
8 20. The Court finds that referencing the taxpayers or the public as the source of payment for
9 the verdict in this matter is irrelevant, prejudicial and inadmissible.

10 **Findings Regarding Arguments That the Property Was Dedicated as Open Space/ City’s**
11 **PRMP and PROS Argument**

12 Regarding exclusion of the City’s Master Plan PR-OS and Peccole Ranch Master Plan open
13 space arguments, the Court finds as follows:

14
15 21. The Court has already determined the property interest the Landowners had prior to the
16 City taking actions to interfere with that property interest, namely, that the 35 Acre Property has
17 been zoned R-PD7 at all relevant times herein and the legally permissible uses of this R-PD7 zoned
18 property is single family and multi-family residential.

19
20 22. The Court has also already rejected the notion that there is a City Master Plan PR-OS
21 designation or a Peccole Ranch Master Plan open space designation that governs the use of the 35
22 Acre Property. *Findings of Fact and Conclusions of Law Re: Property Interest and Findings of*
23 *Fact and Conclusions of Law Re: Take Issue.* The Court has also held, consistent with Nevada
24 law, that zoning takes precedence over any other master plan designations. This is the law of this
25 case.
26
27
28

1 23. The City argued during the hearing of this matter that it intended on presenting the
2 arguments to the jury that there is a PR-OS Master Plan designation and a Peccole Ranch Master
3 Plan open space designation on the 35 Acre Property.

4 24. The City further argued that the Peccole Ranch Master Plan open space argument was
5 relevant to the City's larger parcel / segmentation argument, namely, that the 35 Acre Property is
6 part of the larger Peccole Ranch Master Plan and thereby bound by certain conditions arising out
7 of that Peccole Ranch Master Plan.

9 25. The City, however, presented no expert witness to testify to this larger parcel concept.

10 **Conclusions of Law Regarding the City's PROS/PRMP Arguments**

11 26. The District Court Judge is required to make two distinct sub-inquiries, which are mixed
12 questions of fact and law. ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639 (2008); McCarran
13 Int'l Airport v. Sisolak, 122 Nev. 645 (2006).

14 27. On October 25, 2021, this Court entered the Findings of Fact and Conclusions of Law
15 granting liability on all four of the Landowners' causes of action and rejecting the City's Master
16 Plan PROS and Peccole Ranch Concept Plan open space arguments.

17 28. The argument that the property was set aside in the 80s or 90s under any Peccole Ranch
18 Master Plan or Concept Plan or by virtue of an 'open space' designation, at any time, was found
19 to be meritless as the property is not subject to the Peccole Ranch Master Plan or Concept Plan nor
20 was it designated PR-OS in the City of Las Vegas 2020 Master Plan, or at any time prior, by any
21 legal action.
22
23
24
25
26
27
28

1 29. As a result, the sole question left for the jury is the value⁶ of the 35 Acre Property as of
2 September 14, 2017, based on the property interest this Court already decided in the Findings of
3 Fact and Conclusions of Law Re: Property Interest.

4 30. Therefore, the City is prohibited from arguing to the jury that there is a PR-OS or open
5 space designation on the 35 Acre Property as of the relevant September 14, 2017, date of valuation.
6

7 31. The City is also prohibited from arguing that the 35 Acre Property is part of a larger parcel
8 such as the Peccole Ranch Master Plan and thereby bound by the terms of that plan.
9

10
11
12
13
14
15
16
17
18 ///
19
20

21 ⁶ Article 1 Section 22(5) defines Fair Market Value as “the highest price the property would bring
22 on the open market.” NRS 37.009 defines Value as “the highest price, on the date of valuation,
23 that would be agreed to by a seller, who is willing to sell on the open market and has reasonable
24 time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and
25 the buyer had full knowledge of all the uses and purposes for which the property is reasonably
26 adaptable and available. In determining value, except as otherwise provided in this subsection, the
27 property sought to be condemned must be valued at its highest and best use without considering
28 any future dedication requirements imposed by the entity that is taking the property. If the property
 is condemned primarily for a profit-making purpose, the property sought to be condemned must
 be valued at the use to which the entity that is condemning the property intends to put the property,
 if such use results in a higher value for the property.”

IT IS HEREBY ORDERED that Plaintiff Landowners' Motions in Limine No. 1, 2 and 3 are **GRANTED** precluding the City from arguing, referencing or presenting to the jury the purchase price / transaction consummating the purchase of the Land, the source of funds including taxpayers or the public, and the City's PROS/PRMP and larger parcel / segmentation arguments.

Dated this 16th day of November, 2021

Timothy C. Wain

MH

3DA 523 97F2 AEB1
Timothy C. Williams
District Court Judge

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMITT L. WATERS

McDONALD CARANO LLP

By: /s/ Autumn Waters

Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

By: Did not respond

George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

EHB COMPANIES

Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

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

Attorneys for Plaintiffs Landowners

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted pro hac vice)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From: [Autumn Waters](#)
To: [Sandy Guerra](#)
Subject: FW: 35 Acre Order on MIL 1, 2, and 3
Date: Friday, November 5, 2021 10:08:00 AM
Attachments: [Order Granting Motions in Limine 1 2 3.docx](#)

From: Autumn Waters
Sent: Tuesday, November 02, 2021 3:05 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>
Subject: 35 Acre Order on MIL 1, 2, and 3

Hi George,

Attached is the draft proposed order on MIL 1, 2, and 3. I would like to submit this to the Court by Thursday 11.4.21, so please let me know your thoughts by noon on Thursday.

Thank you

[Autumn Waters, Esq.](#)
[Law Offices of Kermitt L. Waters](#)
[704 South Ninth Street](#)
[Las Vegas Nevada 89101](#)
[tel: \(702\) 733-8877](#)
[fax: \(702\) 731-1964](#)

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 180 Land Company LLC,
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order ' ranting F otion was served via the court/s electronic ekile
15 system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11j16j2021

16 Jeffry Doroca@

~~B~~loroca@H lasvegasnevada.gov

17 Leah Jennings

~~l~~BnningsH mcdonaldcarano.com

18 Philip Myrnes

pbyrnesH lasvegasnevada.gov

19 Todd Mce

tlbH pisanellibice.com

20 Dustun Wolmes

dhhH pisanellibice.com

21 Jeffrey Andrews

~~J~~andrewsH lasvegasnevada.gov

22 Robert F cCoy

rmccoyH @cnvlaw.com

23 Stephanie Allen

sallenH @cnvlaw.com

24 Elizabeth Wam

EWamH ehbcompanies.com

25 Jelena Jovanovic

~~B~~ovanovicH mcdonaldcarano.com

1	Amanda Yen	ayenH mcdonaldcarano.com
2	' eorge Ogilvie III	gogilvieH F cdonaldcarano.com
3	Karen Surowiec	@surowiecH F cdonaldcarano.com
4	Christopher F olina	cmolinaH mcdonaldcarano.com
5	Jennifer Knighton	R nighthonH ehbcompanies.com
6	Adar Magus	abagusH @nvlaw.com
7	Christopher Kaempfer	c@kaempferH @nvlaw.com
8	F ichael G all	mwallH hutchlegal.com
9	F addy Carnate-Peralta	mcarnateH hutchlegal.com
10	Autumn G aters	autumnH @ermittwaters.com
11	James Leavitt	BmH @ermittwaters.com
12	F ichael Schneider	michaelH @ermittwaters.com
13	Kermitt G aters	@ermittH @ermittwaters.com
14	CluAynne Corwin	ccorwinH lasvegasnevada.gov
15	Evelyn G ashington	evelynH @ermittwaters.com
16	Stacy Sy@ra	stacyH @ermittwaters.com
17	Sandy ' uerra	sandyH @ermittwaters.com
18	Jennifer Knighton	R nighthonH ehbcompanies.com
19	Elizabeth Wam	EWamH ehbcompanies.com
20	Desiree Staggs	dstaggsH @nvlaw.com
21	Shannon Din@l	sdH pisanellibice.com
22	Debbie Leonard	debbieH leonardlawpc.com
23	Andrew Schwartz	SchwartzH smwlaw.com
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lauren Tarpey	LTarpeyH smwlaw.com
David G eibel	weibelH smwlaw.com
Rebecca G olfson	rwolfsonH lasvegasnevada.gov