

**Case No. 84640  
and  
Case No. 84345**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

180 LAND CO LLC, a Nevada limited-liability company, FOR  
Nevada limited-liability company,

*Appellants/Cross-Respondents,*

vs.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

*Respondent/Cross-Appellant.*

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Eighth Judicial District Court, Clark County, Nevada  
Case No. A-17-758528-J  
Honorable Timothy C. Williams, Department 16

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**REPLY IN SUPPORT OF COUNTERMOTION TO EXPEDITE APPEAL**

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This Court has recognized that delaying payment of just compensation in these type of constitutional condemnation proceedings, “is a power which may well have an oppressive effect” on Nevada landowners. *St. v. 2<sup>nd</sup> Jud. Dist. Ct.*, 75 Nev. 200, 205 (1959). The Landowners have already suffered a devastating economic impact and further delay will only cause more substantial harm. Denigrating this impact to the Landowners, the City provides baseless arguments to oppose expediting appeal.

### **1. There are Only 4 Issues on Appeal.**

Contrary to the City’s claim, there are only four categories of issues, which have already been extensively briefed before the district court: 1) the property interest issue; 2) the take issue; 3) the just compensation issue; and, 4) the post-trial issues of costs, attorney fees, reimbursement of property taxes, and prejudgment interest. Rather than providing brevity as required by the appellate rules, the City dissects these four categories into 27 issues.

The Property Interest Issue – This Court must decide whether the district court properly relied on zoning to determine the property interest the Landowners had in their 35 Acre Property prior to the City engaging in actions to take that property. This is not a complex issue as: 1) this Court has recognized that the first right established in the Nevada Constitution’s declaration of rights is the protection of a landowners “inalienable right to acquire, possess, and protect private property;”

*McCarran v. Sisolak*, 122 Nev. 645, 669 (2006), 2) this Court has held that this property right includes “the inalienable right to possess, use, and enjoy the property;” *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647 (2007)(emphasis added) and, 3) this Court has held in six separate opinions that zoning must be used to decide the property interest issue / right to use in all condemnation cases. *McCarran v. Sisolak*, 122 Nev. 645 (2006); *Co. of Clark v. Alper*, 100 Nev. 382, 390 (1984); *City of Las Vegas v. Bustos*, 119 Nev. 360 (2003); *Co. of Clark v. Buckwalter*, 115 Nev. 58 (1999); *Alper v. State*, 95 Nev. 876 (1979), on reh'g sub nom; *Alper v. State*, 96 Nev. 925 (1980); *Andrews v. Kingsbury*, 84 Nev. 88 (1968).

The Take Issue – This Court must decide whether the district court properly considered the aggregate of City actions to find a taking. This is not a complex issue in this case as this Court has adopted certain “invariable rules applicable to specific circumstances” to decide when a taking occurs. *St. v. 8<sup>th</sup> Jud. Dist. Ct.*, 131 Nev. 411, 419 (2015). Here, the City passed two City Ordinances that: 1) target only the Landowners’ 35 Acre Property; 2) include a provision that specifically authorizes the public to enter onto and use the Landowners’ 35 Acre Property; and, 3) made it impossible for the Landowners to use their own property. The City denied the Landowners’ four applications to use their property. And, the City in public meetings, emails, and letters stated it took these actions to preserve the Landowners’ property to be used by the surrounding neighbors. In other words, the City took the

Landowners’ “inalienable right” to use their property and preserved it for use by the public. No matter how many issues the City feigns, these actions meet this Court’s “invariable rules” to find a taking. It is not even a close call, with the district court finding the City “clearly” took the Landowners’ Property.

The Just Compensation Issue – The amount of just compensation is not an issue in this case. The Landowners produced an appraisal report and the City chose not to produce either a direct or rebuttal expert and, instead conceded to the Landowners’ appraisal and therefore, the district court determined the fair market value of \$34,135,000 based on the Landowners’ appraisal report.

Post-Trial Issues – The post-trial issues are all straight-forward. This Court and the Legislature have adopted a clear body of law related to the post trial issues. Therefore, the City’s baseless argument that there are 27 issues is not grounds to delay this appeal.

## **2. The City’s Criticism of the District Court is Not Grounds for Delay.**

The City claims that the Landowners’ request for an expedited appeal is to prevent this Court from taking a “deep dive” (Opp. at 4) into the facts and law having convinced the district court to do the same. After nearly five years of litigation due mostly to the City’s intentional delays, such a statement is offensive and plainly false. The district court granted every request to file pleadings in excess of the page limits, granted nearly every City request to delay or extend the proceedings,

scheduled special settings for the hearings and added two additional days to the liability (take issue) evidentiary hearing, at the City's request which the City utilized to re-argue the already decided property interest issue. The district court allowed the parties *every* opportunity to present the facts and the law.

As there are only four relevant issues, all based on well-settled condemnation law, this can be handled on an expedited basis. The City's claim that the district court did not fully develop the facts and law and that this Court is incapable of doing so under an expedited schedule is baseless and nothing more than hyperbole.

### **3. The Landowners' Correction of Facts is no Grounds for Delay.**

The City claims expediting is improper, because both parties accuse one another of misrepresenting the facts. This too is not grounds to delay. There is a well-developed record, this Court will decide which party correctly represents the facts. The district court issued clear and concise findings of fact and conclusions of law with detailed citations to the record and the law. One reason the district court awarded \$2.4 million in attorney fees was the City's continual misrepresentation of the facts, continual re-argument of well-settled issues, and continual delay tactics. This Court should not allow further perpetuation of this City tactic.

### **4. The City's Meritless Arguments Are Not Grounds for Delay.**

The City's "deep dive" argument is an attempt to over-complicate this case by asking this Court to consider petition for judicial review and other non-

condemnation law to deny the Landowners their constitutional rights. The City repeatedly cited to the district court inapplicable petition for judicial review law to claim the City has “discretion” to decide land use applications and, therefore, landowners do not have the right to use their property. The City claimed that since there is no right to use, landowners have no property rights, and since there are no property rights, then the City could not have taken the Landowners’ Property. The district court entered several orders, holding petition for judicial review law is inapplicable in this condemnation case. *See e.g. City of Henderson v. 8<sup>th</sup> Jud. Dist. Ct.*, 137 Nev. Adv. Op. 26 (2021). Yet, the City continued to cite the irrelevant law for its outrageous argument that there are no property rights in Nevada. Meritless arguments, based on irrelevant, invented issues, are not grounds to delay these proceedings.

## **5. Conclusion**

Justice delayed is justice denied. The City successfully delayed the district court proceedings for nearly five years, all while being in possession of the Landowners’ 35 Acre Property without payment of just compensation. Now that it has obtained a further stay of payment from this Court, it intends to continue this perpetual delay. Expediting the appeal will strike a more equitable balance in light of the Court’s Order Granting Stay of payment.

DATED this 7<sup>th</sup> day of June, 2022.

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

*/s/ James J. Leavitt*

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **REPLY IN SUPPORT OF COUNTERMOTION TO EXPEDITE APPEAL** was filed electronically with the Nevada Supreme Court on the 7<sup>th</sup> day of June, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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