

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

No. 84345

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF NEVADA,

Respondent/Cross-Appellant.

No. 84640

**LANDOWNERS' MOTION TO
DISMISS THE CITY'S
CROSS-APPEAL IN CASE
NO. 84640**

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I. INTRODUCTION

180 Land Co., LLC and Fore Stars Ltd., Respondents in Case No. 84345 and Appellants/Cross-Respondents in Case No. 84640 (“Landowners”), move this Court to dismiss the cross-appeal filed by the City of Las Vegas (“City”) in No. 84640. Instead of filing this motion, the Landowners could wait until the City files its combined answering brief on appeal and opening brief on cross-appeal in Case No. 84640. However, the Landowners are proactively raising this issue to avoid potentially filing a later motion to strike the cross-appeal portions of the City’s combined brief, which would unnecessarily delay the briefing schedule. In essence, the City is not aggrieved by certain portions of its cross-appeal. And, the Court does not have appellate jurisdiction over other portions of the City’s cross-appeal. Finally, some of the City’s cross-appeal is duplicative of its own appeal filed in Case No. 84345.

This motion does not affect the current briefing schedule because the City’s cross-appeal brief would not otherwise be filed until after the Landowners file their opening brief in Case No. 84640. If the Court grants this motion and dismisses the City’s cross-appeal in Case No. 84640, the Court should also amend the caption.

II. RELEVANT BACKGROUND

On March 2, 2022, the City filed a notice of appeal in the District Court (attached as **Exhibit 1**) from the following orders:

1. The Findings of Fact and Conclusions of Law on Just Compensation filed on November 18, 2021;

2. The Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation filed on February 9, 2022;

3. Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs filed on February 16, 2022;

4. Order Granting Plaintiffs Landowners' Motion for Reimbursement of Property Taxes filed on February 16, 2022;

5. Order Granting Plaintiff Landowners' Motion for Attorney Fees in Part and Denying in Part filed on February 18, 2022; and

6. The Order Denying City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution filed on February 25, 2022.

The City's March 2, 2022, notice of appeal was docketed in this Court as Case No. 84345. In its docketing statement filed in Case No.

84345, the City outlined its issues to be presented in this appeal. In answering Question No. 9 of the docketing statement, the City attached a separate page which outlined 24 issues. See **Exhibit 2**.

On April 25, 2022, the Landowners filed their own notice of appeal in the District Court (attached as **Exhibit 3**) from the following orders:

1. The Final Judgment in Inverse Condemnation, only to the extent it refers to the issue of prejudgment interest, entered on April 18, 2022; and

2. The Findings of Fact and Conclusions of Law and Order Granting Plaintiffs' Motion for Pre-Judgment Interest, entered on April 1, 2022.

The Landowners' April 25, 2022, notice of appeal was docketed in this Court as Case No. 84640. In their docketing statement filed in Case No. 84640, the Landowners identified their presented issue in Question No. 9 of the docketing statement as: "Did the District Court err in not basing its determination of prejudgment interest on competent evidence of a proper rate of return to include a rate of return that could have been achieved had the Landowners invested their money in land similar to the land taken in this matter[?]" (attached as **Exhibit 4**).

On April 29, 2022, the City filed a notice of appeal in the District Court (attached as **Exhibit 5**) from the following orders:

1. The Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest filed on April 1, 2022; and

2. The Final Judgment in Inverse Condemnation filed on April 18, 2022.

The City's April 29, 2022, notice of appeal was docketed in this Court as a cross-appeal in Case No. 84640. Within the City's docketing statement filed in Case No. 84640, it outlined its issues on cross-appeal as follows:

1. Did the District Court err in awarding the Developer prejudgment interest in the amount of \$10,258,953.30 because it derives from the legally unsupportable Judgment?

2. Did the District Court err by concluding that Nevada Constitution Article 1, Section 22(4), which on its face applies only to eminent domain actions, requires payment of prejudgment interest in inverse condemnation cases?

3. Did the District Court err by applying NRS 37.175 in a regulatory takings case in which there has not been any physical occupation? *See Exhibit 6.*

The Landowners now move this Court to dismiss the City's cross-appeal in Case No. 84640.

III. LEGAL ARGUMENT

A. THE CITY IS NOT AGGRIEVED BY THE DISTRICT COURT'S ORDER AWARDING PREJUDGMENT INTEREST TO THE LANDOWNERS.

NRAP 3A(a) states, "A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial." "A party is 'aggrieved' within the meaning of NRAP 3A(a) 'when either a personal right or right of property is adversely and substantially affected' by a district court's ruling." *Valley Bank v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (citing *Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)). As applied to this motion, the key term in NRAP 3A(a) is whether the City is "aggrieved" by the District Court's order awarding prejudgment interest to the Landowners.

In comparing the District Court's order awarding prejudgment interest to the Landowners (**Exhibit 7**) to the City's opposition to the

Landowners' motion (**Exhibit 8**), the City won on every issue it raised in its opposition. In fact, the District Court's prejudgment interest order was drafted by counsel for the City and looks very similar to the City's opposition. Thus, the City cannot demonstrate that it is aggrieved by the District Court's order awarding prejudgment interest to the Landowners according to the City's own arguments.

Importantly, the City's second and third cross-appeal issues identified in its docketing statement (*see* **Exhibit 6**) were never raised in the District Court. The City's opposition to the Landowners' motion for prejudgment interest filed in the District Court contains no such arguments. *See* **Exhibit 8**. As such, the City cannot argue that it is aggrieved by issues that it never raised in the District Court. *See Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.") (citing *Britz v. Consolidated Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911 (1971); *Harper v. Lichtenberger*, 59 Nev. 495, 92 P.2d 719 (1939)). In any event, the City intends to raise similar, but more generalized, issues in Case No. 84345. *See* **Exhibit 2**, Nos. 15, 16, 19, 20, 21, 22, 24.

With regard to the City's first issue on cross-appeal, it was also not raised in the District Court and should not be considered for the first time in this Court. *See Old Aztec*, 97 Nev. at 52, 623 P.2d at 983. But, if the City completely vacates the District Court's judgment in Case No. 84345, such that the Landowners are no longer prevailing parties, the City has already argued that the Landowners could not recover additional damages based upon an allegedly "legally unsupportable Judgment." *See Exhibit 2*, No. 24. Even absent the City's argument, the same would also be true as an operation of law, given that this Court has jurisdiction over the District Court's order granting prejudgment interest. *See, e.g., Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 1129, 865 P.2d 1161, 1165–1166 (1993) (when a prevailing party changes on appeal, the award of costs will be vacated).

Therefore, the Court should determine that the City is not aggrieved by the District Court's order granting prejudgment interest to the Landowners. In making this determination, the Court should dismiss the City's cross-appeal in Case No. 84640.

B. THE FINAL JUDGMENT DOES NOT RESET THE TIME TO APPEAL FROM THE EARLIER ORDERS.

The City's cross-appeal in Case No. 84640 also identifies the "Final Judgment in Inverse Condemnation" as being challenged in this Court. *See Exhibit 5*. However, aside from the District Court's award of prejudgment interest to the Landowners (which does not aggrieve the City), the other amounts in the final judgment (**Exhibit 9**) were already contained within orders that the City appealed in Case No. 84345. *See Exhibit 1* (including attached orders). As a matter of law, since the District Court previously entered orders on each of the amounts in the final judgment, the time to appeal those orders ran from the time the orders were first entered, not from the time the final judgment was later entered. *See Campos-Garcia v. Johnson*, 130 Nev. 610, 611, 331 P.3d 890, 890 (2014) ("[A]n appeal must be taken from an appealable order when first entered; superfluous or duplicative orders and judgments—those filed after an appealable order has been entered that do nothing more than repeat the contents of that order—are not appealable and, generally, should not be rendered."). The City already appealed the orders in Case No. 84345 that are listed in the final judgment, which makes a subsequent appeal of the final judgment not only untimely under *Garcia-Campos* but also duplicative. *See Exhibits 1 & 9*. Therefore, the

Court lacks jurisdiction over the City's cross-appeal from the final judgment in Case No. 84640, which requires dismissal.

IV. CONCLUSION

In summary, the City is not aggrieved by certain portions of its cross-appeal in Case No. 84640. And, the Court does not have appellate jurisdiction over other portions of the City's cross-appeal. And, some of the City's cross-appeal is duplicative of its own appeal filed in Case No. 84345. Therefore, the Court should dismiss the City's cross-appeal in Case No. 84640. If the Court grants this motion and dismisses the City's cross-appeal in Case No. 84640, the Court should also amend the caption.

Dated this 29th day of July 2022.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **LANDOWNERS' MOTION TO DISMISS THE CITY'S CROSS-APPEAL IN CASE NO. 84640** with the Supreme Court of Nevada on the 29th day of July 2022. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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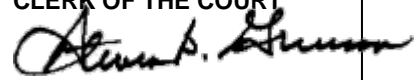
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180 Land Co., LLC, and Fore Stars Ltd.*

/s/ Anna Gresl

Anna Gresl, an employee of
CLAGGETT & SYKES LAW FIRM

EXHIBIT 1

EXHIBIT 1



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(Additional Counsel Identified on Signature Page)

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**DEFENDANT CITY OF LAS
VEGAS' NOTICE OF APPEAL**

Notice is hereby given that DEFENDANT CITY OF LAS VEGAS appeals to the Supreme
Court of Nevada from:

1. The Findings of Fact and Conclusions of Law on Just Compensation filed on
November 18, 2021, notice of entry of which was served electronically on
November 24, 2021, (attached as **Exhibit A**) and all decisions, rulings and
interlocutory orders made appealable by the foregoing;

2. The Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; [sic] and Granting Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation filed on February 9, 2022, notice of entry of which was served electronically on February 10, 2022 (attached as **Exhibit B**);
3. Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs filed on February 16, 2022, notice of entry of which was served electronically on February 17, 2022 (attached as **Exhibit C**);
4. Order Granting Plaintiffs Landowners' Motion for Reimbursement of Property Taxes filed on February 16, 2022, notice of entry of which was served electronically on February 17, 2022 (attached as **Exhibit D**);
5. Order Granting Plaintiff Landowners' Motion for Attorney Fees In Part and Denying In Part filed on February 18, 2022, notice of entry of which was served electronically on February 22, 2022 (attached as **Exhibit E**); and
6. The Order Denying City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution filed on February 25, 2022, notice of entry of which was served electronically on February 28, 2022 (attached as **Exhibit F**).

DATED this 2nd day of March, 2022.

McDONALD CARANO LLP

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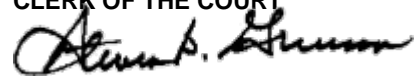
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 2nd day of March, 2022, I caused a true and correct copy of the foregoing **DEFENDANT CITY OF LAS VEGAS' NOTICE OF APPEAL** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

EXHIBIT “A”



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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

**NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

ON JUST COMPENSATION

//

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

Dated this 24th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

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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.

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.

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.

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24 ///

1 **III.**

2 **CONCLUSIONS OF LAW**

3 53. Consistent with the property tax increase, the Landowners attempted to develop the
4 35 Acre Property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential),
5 the City of Las Vegas prevented the legal use of the property as it would not allow the Landowners
6 to develop the property according to its zoning and residential designation. Consequently, the City
7 of Las Vegas prevented the legally permitted use of the property and required the property to remain
8 vacant. *See also* FFCL Re: Property Interest and FFCL Re: Taking.

9 54. The Court has previously rejected challenges to the Landowners' legally permissible
10 residential use. Specifically, the Court has rejected the City's arguments that there is a Peccole
11 Ranch Master Plan and a City of Las Vegas Master Plan/ land use designation of PR-OS or open
12 space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re:
13 Taking.

14 55. Given that the Landowners had the legal right to use their 35 Acre Property for
15 residential use and given that the City has taken the 35 Acre Property, the Court, based on the
16 agreement of the parties, must determine the fair market value of the 35 Acre Property.

17 56. The Nevada Constitution provides that where property is taken it "shall be valued at
18 is highest and best use." Nev. Const. art. 1, sec. 22 (3).

19 57. The Nevada Constitution further provides that in "all eminent domain actions where
20 fair market value is applied, it shall be defined as the highest price the property would bring on the
21 open market." Nev. Const. art. 1, sec. 22 (5).

22 58. NRS 37.120 provides that the date upon which taken property must be valued is the
23 date of the first service of summons, except that if the action is not tried within two years after the
24 date of the first service of summons, the date of valuation is the date of commencement of trial, if

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.

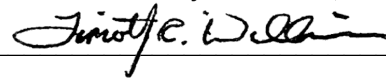
1 The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in
2 the amount of \$_____.

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 KERMITT L. WATERS**

MCDONALD CARANO LLP

15 /s/ James J. Leavitt

Declined to sign

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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.
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Sent: Wednesday, November 10, 2021 8:45 AM
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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.
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From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, November 9, 2021 4:17 PM
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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.
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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 Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 11/18/2021

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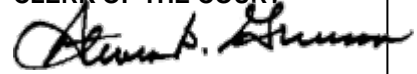
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EXHIBIT “B”



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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
DENYING THE CITY'S MOTION FOR
IMMEDIATE STAY OF JUDGMENT;
AND GRANTING PLAINTIFF
LANDOWNERS' COUNTERMOTION
TO ORDER THE CITY TO PAY THE
JUST COMPENSATION**

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of law and Order Denying the City's Motion for Immediate stay of Judgment; and Granting Plaintiff landowners' Countermotion to Order the City to Pay the Just Compensation ("Order") was entered on the 9th day of February, 2022.

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A copy of the Order is attached hereto.
DATED this 10th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
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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 10th day of February, 2022, 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 AND ORDER DENYING THE CITY'S MOTION FOR IMMEDIATE STAY OF**
6 **JUDGMENT; AND GRANTING PLAINTIFF LANDOWNERS' COUNTERMOTION TO**
7 **ORDER THE CITY TO PAY THE JUST COMPENSATION** was served on the below via the
8 Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
9 prepaid and addressed to, the following:

10 **MCDONALD CARANO LLP**

11 George F. Ogilvie III, Esq.
12 Christopher Molina, Esq.
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23 /s/ Sandy Guerra

24 an employee of the Law Offices of Kermitt L. Waters

FFCL/ORDER

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Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER DENYING THE CITY'S MOTION FOR IMMEDIATE STAY OF JUDGMENT; AND GRANTING PLAINTIFF LANDOWNERS' COUNTERMOTION TO ORDER THE CITY TO PAY THE JUST COMPENSATION

Date of Hearing: January 19, 2022

Time of Hearing: 10:00 a.m.

This matter came before the Court on January 19, 2022, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' in-house counsel Elizabeth Ghanem Ham, Esq., and with the City of Las Vegas

1 (hereinafter “City”) appearing through its counsel, George F. Ogilvie III, Esq. and Christopher J.
2 Molina, Esq. of McDonald Carano, LLP and Andrew M. Schwartz, Esq., of Shute, Mihaly and
3 Weinberger, LLP.

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

7 **I. FINDINGS OF FACT**

8 **A) Procedural Posture**

9 This is an inverse condemnation case brought by the Landowners against the City for the
10 taking by inverse condemnation of their approximately 35 acre property (“Landowners’ Property”
11 or “Subject Property”). The Court has reviewed extensive pleadings and has allowed lengthy
12 hearings on the facts and law relevant to the inverse condemnation issues in this matter and entered
13 findings of fact and conclusions of law on those issues. On October 12, 2020, the Court determined
14 the legally permissible use of the Landowners’ Property prior to the City’s actions at issue. *See*
15 *Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners’ Motion to Determine*
16 *“Property Interest” filed October 12, 2020*. After competing motions for summary judgment on
17 liability were filed and following four days of hearings, the Court granted summary judgment in
18 the Landowners’ favor, finding the City took by inverse condemnation the Landowners’ Property.
19 *See Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners’ Motion to*
20 *Determine Take and For Summary Judgment on The First, Third and Fourth Claims For Relief*
21 *filed October 25, 2021 (hereinafter “FFCL Re: City’s Taking”)*. Thereafter, the parties stipulated
22 to a bench trial wherein uncontroverted evidence established that the value of the Landowners’
23 Property taken by the City was \$34,135,000 and the City was ordered to pay this amount as just
24

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

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

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

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

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

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

8 **II. CONCLUSIONS OF LAW**

9 "Inverse condemnation proceedings are the constitutional equivalent to eminent domain
10 actions and are governed by the **same rules and principles that are applied to formal**
11 **condemnation proceedings.**" County of Clark v. Alper, 100 Nev 382, 391 (1984)(emphasis
12 added).

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

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

1 condition to the condemnor's right to maintain an appeal while remaining in possession." Id., at
2 205.

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

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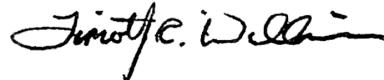
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1 **III. ORDER**

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

6 Dated this 9th day of February, 2022

7 

8 **58B 72C B710 CB01**
9 **Timothy C. Williams**
10 **District Court Judge**

MH

11 Respectfully Submitted By:

Content Reviewed and Approved By:

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

MCDONALD CARANO LLP

13 /s/ Autumn L. Waters

declined to sign

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15 James J. Leavitt, Esq. (NV Bar No. 6032)

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Attorneys for City of Las Vegas

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 Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 2/9/2022

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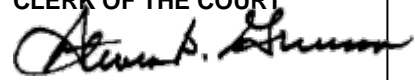
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EXHIBIT “C”



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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**ORDER GRANTING IN PART AND
DENYING IN PART THE CITY OF LAS
VEGAS' MOTION TO RETAX
MEMORANDUM OF COSTS**

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

PLEASE TAKE NOTICE that the Order Granting in Part and Denying in Part the City
of Las Vegas' Motion to Retax Memorandum of Costs ("Order") was entered on the 16th day of
February, 2022.

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A copy of the Order is attached hereto.

DATED this 17th day of February, 2022.

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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 IN PART AND
DENYING IN PART THE CITY OF LAS
VEGAS' MOTION TO RETAX
MEMORANDUM OF COSTS**

Date of Hearing: January 19, 2022

Time of Hearing: 10:00 a.m.

1 Defendant City of Las Vegas’ Motion to Retax Memorandum of Costs, having come before
2 the Court on January 19, 2022, James J. Leavitt, Esq. of the Law Offices of Kermitt L Waters and
3 Plaintiff’s in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners
4 180 Land Co and Fore Stars (“Landowners”), George F. Ogilvie III, Esq. and Christopher Molina,
5 Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger
6 LLP appearing on behalf of the City of Las Vegas (“City”).
7

8 The Court having reviewed the papers and pleadings on file, heard argument of counsel,
9 and for good cause appearing hereby **GRANTS IN PART** and **DENIES IN PART** the City of
10 Las Vegas’ Motion to Retax Memorandum of Costs and orders as follows:
11

12 The Landowners are entitled to recover costs actually incurred in this matter as the Nevada
13 Constitution provides that the Landowners’ “just compensation” award “shall include ... all
14 reasonable costs and expenses actually incurred.” Nev. Const. art. I § 22 (4). See also the Federal
15 Relocation Act. NRS 342.105 and 49 CFR § 24.107.
16

17 The Court finds the following costs to be reasonable and actually incurred in this matter as
18 they were undisputed:

19	8 th Judicial District Court Fees	\$200.00
20	Discovery Legal Services	\$481.25
21	LGM Transcription Services	\$571.14
22	Litigation Services, court reporting services	\$3,933.49
23	Margot Isom, court reporting services	\$3,293.72
24	National Court Reporters, court reporting services	\$6,693.23
25	Rhonda Aquilina, court reporting services	\$1,031.09
26	AT&T Conference Calls	\$32.52

1	Capriotti's	\$84.88
2	Parking and Lunch	\$121.27
3	Total	\$16,442.59

4 The Court further finds the following disputed costs to be reasonable and actually incurred
5 in this matter and, therefore, **DENIES** the City's request to retax the following costs:

6	HOLO Discovery	\$14,422.81
7	Nevada Supreme Court Law Library	\$33.20
8	Clark County Recorder	\$171.00
9	District Court Clerk	\$119.00
10	GGA Partners	\$11,162.41
11	Global Golf Advisors	\$67,094.00
12	The DiFederico Group	\$114,250.00
13	Jones Roach & Caringella	\$29,625.00
14	Legal Wings	\$290.00
15	8 th Judicial District Court E-Filing Fees	\$773.50
16	Oasis, court reporting services	\$1,049.00
17	In-house copy costs @ \$.15 per B/W and \$.25 for color	\$6,345.40
18	Total	\$245,335.32

19 The Court further finds the Westlaw billings to be reasonable and actually incurred in this
20 matter, but **GRANTS**, in part, the City's request to retax by reducing the Westlaw billings 75% to
21 account for the fact that all four related inverse condemnation cases (17, 35, 65, and 133 acre cases)
22 were identified as just one client on the Westlaw billings. Therefore, the \$50,669.02 Westlaw bill
23 is retaxed to **\$12,667.25**.

THEREFORE, IT IS HEREBY ORDERED THAT the City pay to the Landowners costs in the amount of **\$274,445.16**.

IT IS FURTHER ORDERED THAT the judgment that is entered in this matter shall include this **\$274,445.16** to be paid by the City to the Landowners.

Dated this 16th day of February, 2022

Timothy C. Williams

MH

51A C54 4F89 7CD2
Timothy C. Williams
District Court Judge

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMIT L. WATERS

McDONALD CARANO LLP

By: /s/ James J. Leavitt
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By: *Did Not Respond*
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(Admitted pro hac vice)
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Attorneys for City of Las Vegas

From: [Autumn Waters](#)
To: [Sandy Guerra](#)
Subject: FW: 35 acres - Proposed Orders on Costs and Taxes
Date: Wednesday, January 26, 2022 10:18:58 AM
Attachments: [Order Re Retax Costs.docx](#)
[Order Granting Motion to Reimburse Taxes.docx](#)

From: Autumn Waters
Sent: Friday, January 21, 2022 11:40 AM
To: 'gogilvie@mcdonaldcarano.com' <gogilvie@mcdonaldcarano.com>;
'cmolina@mcdonaldcarano.com' <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Elizabeth Ham (EHB Companies)
<eham@ehbcompanies.com>
Subject: 35 acres - Proposed Orders on Costs and Taxes

Hi George,

Attached for your review are the following proposed orders:

ORDER GRANTING IN PART AND DENYING IN PART THE CITY OF LAS VEGAS' MOTION TO
RETAX MEMORANDUM OF COSTS

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

Please let me know if I have your permission to attached your electronic signature to these proposed orders by Monday as we intend to submit them to the Court for signature first thing Tuesday morning.

Thank you and have a great weekend.

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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 was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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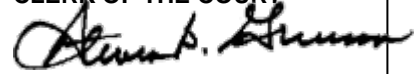
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EXHIBIT “D”



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Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**ORDER GRANTING PLAINTIFFS
LANDOWNERS' MOTION FOR
REIMBURSEMENT OF PROPERTY
TAXES**

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

PLEASE TAKE NOTICE that the Order Granting Plaintiffs Landowners' Motion for
Reimbursement of Property Taxes ("Order") was entered on the 16th day of February, 2022.

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A copy of the Order is attached hereto.

DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
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Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermit L. Waters, and
3 that on the 17th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS LANDOWNERS’**
5 **MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** was served on the below via
6 the Court’s electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
7 prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

9 George F. Ogilvie III, Esq.
10 Christopher Molina, Esq.
11 2300 W. Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
13 gogilvie@mcdonaldcarano.com
14 cmolina@mcdonaldcarano.com

15 **LAS VEGAS CITY ATTORNEY’S OFFICE**

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17 Philip R. Byrnes, Esq.
18 Rebecca Wolfson, Esq.
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24 **SHUTE, MIHALY & WEINBERGER, LLP**

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

ORDR

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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
LANDOWNERS' MOTION FOR
REIMBURSEMENT OF PROPERTY
TAXES**

Date of Hearing: January 19, 2022

Time of Hearing: 10:00 a.m.

1 Plaintiff Landowners’ Motion for Reimbursement of Taxes, having come before the Court
2 on January 19, 2022, James J. Leavitt, Esq. of the Law Offices of Kermitt L Waters and Plaintiff’s
3 in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land
4 Co and Fore Stars. (“Landowners”), George F. Ogilvie III, Esq. and Christopher Molina, Esq. of
5 McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP
6 appearing on behalf of the City of Las Vegas (“City”).
7

8 The Court having reviewed the papers and pleadings on file, heard argument of counsel,
9 and for good cause appearing hereby finds and orders as follows:

10 Nevada law provides that “[a]n owner who is dispossessed from his or her land when it is
11 taken for public use is no longer obligated to pay taxes” and the owner is entitled to reimbursement
12 of property taxes actually paid after the land is taken. County of Clark v. Alper, 100 Nev. 382,
13 395 (1984).
14

15 This Court entered Findings of Fact and Conclusions of Law Granting Plaintiff
16 Landowners’ Motion to Determine Take and for Summary Judgment on the First, Third, and
17 Fourth Claims for Relief and Denying the City of Las Vegas’ Countermotion for Summary
18 Judgment on the Second Claim for Relief, filed October 25, 2021 (FFCL Re: Take). The FFCL
19 Re: Take details the actions by the City that resulted in a taking of the Landowners’ Property, with
20 the first date of compensable injury being August 2, 2017. FFCL Re: Take, pp. 11-19, findings
21 46-86.
22

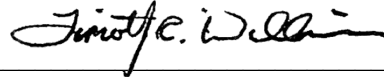
23 The Landowners presented uncontested evidence that they paid property taxes from August
24 2, 2017, up to the date of the hearing in this matter in the amount of \$976,889.38.
25

26 **THEREFORE, IT IS HEREBY ORDERED THAT** Plaintiff Landowners’ Motion for
27 Reimbursement of Property Taxes is **GRANTED** and the City shall reimburse the Landowners
28

for the taxes paid on the Subject Property from August 2, 2017, forward in the amount of \$976,889.38.

IT IS FURTHER ORDERED THAT the judgment that is entered in this matter shall include this \$976,889.38 to be paid by the City to the Landowners.

Dated this 16th day of February, 2022



MH

69B 1F6 D918 A34D
Timothy C. Williams
District Court Judge

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMIT L. WATERS

McDONALD CARANO LLP

By: /s/ James J. Leavitt
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James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
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Attorneys for City of Las Vegas

From: [Autumn Waters](#)
To: [Sandy Guerra](#)
Subject: FW: 35 acres - Proposed Orders on Costs and Taxes
Date: Wednesday, January 26, 2022 10:18:58 AM
Attachments: [Order Re Retax Costs.docx](#)
[Order Granting Motion to Reimburse Taxes.docx](#)

From: Autumn Waters
Sent: Friday, January 21, 2022 11:40 AM
To: 'gogilvie@mcdonaldcarano.com' <gogilvie@mcdonaldcarano.com>;
'cmolina@mcdonaldcarano.com' <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Elizabeth Ham (EHB Companies)
<eham@ehbcompanies.com>
Subject: 35 acres - Proposed Orders on Costs and Taxes

Hi George,

Attached for your review are the following proposed orders:

ORDER GRANTING IN PART AND DENYING IN PART THE CITY OF LAS VEGAS' MOTION TO
RETAX MEMORANDUM OF COSTS

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

Please let me know if I have your permission to attached your electronic signature to these proposed orders by Monday as we intend to submit them to the Court for signature first thing Tuesday morning.

Thank you and have a great weekend.

[Autumn Waters, Esq.](#)
[Law Offices of Kermitt L. Waters](#)
[704 South Ninth Street](#)
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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 Granting Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 2/16/2022

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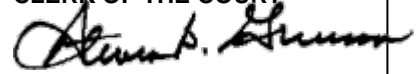
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Rebecca Wolfson	rwolfson@lasvegasnevada.gov

EXHIBIT “E”



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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**ORDER GRANTING PLAINTIFF
LANDOWNERS' MOTION FOR
ATTORNEY FEES IN PART AND
DENYING IN PART**

Hearing Date: February 3, 2022

Hearing Time: 1:30 p.m.

PLEASE TAKE NOTICE that the Order Granting Plaintiff Landowners' Motion for
Attorney Fees in Part and Denying in Part ("Order") was entered on the 18th day of February, 2022.

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A copy of the Order is attached hereto.
DATED this 22nd day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

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

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 22nd day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFF LANDOWNERS’**
5 **MOTION FOR ATTORNEY FEES IN PART AND DENYING IN PART** was served on the
6 below via the Court’s electronic filing/service system and/or deposited for mailing in the U.S.
7 Mail, postage prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

9 George F. Ogilvie III, Esq.
10 Christopher Molina, Esq.
11 2300 W. Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
13 gogilvie@mcdonaldcarano.com
14 cmolina@mcdonaldcarano.com

15 **LAS VEGAS CITY ATTORNEY’S OFFICE**

16 Bryan Scott, Esq., City Attorney
17 Philip R. Byrnes, Esq.
18 Rebecca Wolfson, Esq.
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/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

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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 PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES IN PART AND DENYING IN PART

Date of Hearing: February 3, 2022

Time of Hearing: 1:30 p.m.

Plaintiff Landowners' Motion for Attorney Fees, having come before the Court on February 3, 2022, James J. Leavitt, Esq. of the Law Offices of Kermitt L Waters and Plaintiff

1 Landowners’ in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff
2 Landowners 180 Land Co and Fore Stars. (“Landowners”), George F. Ogilvie III, Esq. and
3 Christopher Molina, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute
4 Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas (“City”).

5 The Court having reviewed the papers and pleadings on file, heard argument of counsel,
6 and for good cause appearing hereby finds and orders as follows:

7
8 The Landowners moved for an award of attorney fees pursuant to the Uniform Relocation
9 Assistance and Real Property Acquisition Act (“Relocation Act”) which Nevada has adopted in its
10 entirety pursuant to NRS 342.105; *see also McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 673
11 (2006) and *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007); 2) the Nevada Constitution
12 Article 1, Section 22 (4); and, 3) NRS 18.010(2)(b).

13
14 **A. The Relocation Act Provides for the Reimbursement of Attorney Fees**

15 The Relocation Act provides that an owner shall be “reimbursed for any reasonable
16 expenses, including reasonable attorney...fees, which the owner actually incurred because of a
17 condemnation proceeding” when, “[t]he court having jurisdiction renders a judgment in favor of
18 the owner in an inverse condemnation proceeding” 49 CFR § 24.107(c)(2020); NRS 342.105. The
19 Nevada Supreme Court has held that “[t]he Relocation Act requires that a state government entity
20 receiving federal funds institute formal condemnation proceedings to acquire any interest in real
21 property by exercising the power of eminent domain” and, if not, Nevada landowners may bring
22 inverse condemnation claims and “may recover attorney fees and costs if they succeed in an
23 inverse condemnation claim against the government.” *Sisolak*, at 673. Here, the Landowners have
24 established that the City inversely condemned their property and therefore may recover their
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1 reasonable attorney fees actually incurred pursuant to the Relocation Act, NRS 342.105 and
2 *Sisolak*.

3 The City argued that the Landowners had to establish a nexus between federal funds and
4 the project which took the Landowners' Property to recover attorney fees under the Relocation
5 Act. Insofar as a Nevada landowner may be required to show that the taking agency receives
6 federal funds to recover attorney fees under the Relocation Act or that the taking program receives
7 federal funds to recover attorney fees under the Relocation Act, the Landowners have established
8 both. The City receives federal funds generally and the City receives federal funds for its parks,
9 recreation and open space program, the program for which the City took the Landowners'
10 Property. *See Landowners' Mot. at Exhibits 12-16. Exhibit 12, screenshot of the City's Website*
11 *stating the City receives federal funds; Exhibit 13, the City's 2050 Master Plan where the City*
12 *details how it receives federal funds, specifically for parks and open space, see ATTY FEE MOT*
13 *0226; Exhibit 14, the City's SNPLMA Projects (SNPLMA is a federal grant program where federal*
14 *dollars are given to the City for Parks and Open Space); Exhibit 15, the City's 2017 Budget*
15 *detailing federal dollars received; Exhibit 16, City's 2021 Budget detailing federal dollars*
16 *received.* The Landowners are entitled to reimbursement of their reasonable attorney fees under
17 the Relocation Act.
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21 **B. Article 1, Section 22 Provides for the Reimbursement of Attorney Fees**

22 The Landowners also moved for attorney fees under the Nevada Constitution Article 1,
23 Section 22 (4). The Nevada constitution provides, "[i]n all eminent domain actions, just
24 compensation shall be defined as that sum of money, necessary to place the property owner back
25 in the same position, monetarily, without any governmental offsets, as if the property had never
26
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1 been taken.” Nev. Const. Art I § 22(4).¹ The Constitution further provides that “Just compensation
2 shall include, but is not limited to, compounded interest and all reasonable costs and expenses
3 actually incurred.” Nev. Const. Art I § 22(4) (emphasis added). Attorney fees are expenses
4 actually incurred. When interpreting constitutional provisions, the normal and ordinary meaning
5 of words **must** be utilized. *Strickland v. Waymire*, 126 Nev. 230, 234 (2010). The normal and
6 ordinary meaning of the word “*expense*,” include “the amount of money that is needed to pay for
7 or buy something” and “something on which money is spent.” [http://www.merriam-](http://www.merriam-webster.com/dictionary/expense)
8 [webster.com/dictionary/expense](http://www.merriam-webster.com/dictionary/expense). These normal and ordinary meanings of “*expense*” includes the
9 amount of money needed to pay for legal counsel. To the extent there is any question about the
10 normal and ordinary meaning of the language in an initiative petition, the Argument Opposing
11 Passage in the Sample Ballot specifically informed Nevada Voters in 2006 and 2008 that “Further,
12 we believe **taxpayers may have to pay all lawyers fees** and court expenses for any legal actions
13 brought by private parties on eminent domain!” (Bold added, “!” in original text). *See*
14 Landowners’ Motion *Exhibit 9*, p. 11 and *Exhibit 10*, p. 7. The Landowners are entitled to their
15 attorney fees actually incurred pursuant to Article 1 Section 22(4).
16
17
18

19 C. NRS 18.010(2)(b) Provides of Attorney Fees to the Prevailing Party

20 The Landowners also moved for attorney fees under NRS 18.010(2)(b) which also provides
21 for the award of attorney fees to the prevailing party “when the court finds that the claim,
22 counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought
23
24
25

26 ¹ Consistent with long standing Nevada law, in *Nevadans for the Prot. Of Prop. Rights v. Heller*,
27 122 Nev. 894, 908, 141 P.3d 1235, 1244-1245 (2006), the Nevada Supreme Court acknowledged
28 that Article 1 § 22 would apply to inverse condemnation actions. *See also Clark County v. Alper*,
100 Nev. 382, 395 (1984); *Argier v. Nevada Power Co.*, 114 Nev. 137, fn 2, 952 P.2d 1390 (1998).

1 or maintained without reasonable ground or to harass the prevailing party.” The Court finds that,
2 given the record of this case, it is also appropriate to award attorney fees pursuant to NRS
3 18.010(2)(b).

4 **D. Calculation of Attorney Fees**

5 Pursuant to *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007), attorney fees shall
6 be calculated based on the Lodestar analysis which requires “multiply the number of hours
7 reasonably spent on the case by a reasonable hourly rate.” *Id.*, at 637. The Landowners’ counsel
8 provided affidavits pursuant to NRCR Rule 54(d)(2)(B)(v)(a) “swearing that the fees were actually
9 and necessarily incurred and were reasonable.” The affidavits further provide that the
10 Landowners’ counsel have charged a rate of \$450 from August of 2017 up to May 31, 2019, and
11 a rate of \$675 per hour thereafter. The attorney hours submitted by Landowners’ counsel from
12 August of 2017 to February of 2022 totaled 3,906.91.

13 The Court finds the hours submitted by Landowners’ counsel to be reasonable and actually
14 incurred based on the affidavits of Landowners’ counsel, the record in the case, the complexity of
15 the case, the amount of work required in the case, and the fact that the City’s private attorneys
16 have billed the City for more hours than the Landowners’ counsel. *Landowners’ Reply at 8 and*
17 *Exhibit 18, 18a and 18b.*

18 The Court further finds that the rates of \$450 and \$675 per hour are reasonable based on
19 the specialized nature of this action, the skill and expertise of Landowners’ counsel, the rate in the
20 community (i.e. the City’s counsel charged the City \$550 per hour *Exhibit 17*, which the City did
21 not contest is a government rate known to be lower than the normal rate charged), the level of
22 difficulty and difficult nature of the case, the importance of the matters litigated, the large spread
23 in the damage calculation between the parties, the work performed and time needed to perform the
24

work, as well as the success of Landowners' counsel in this case. *See Landowners' motion for attorney fees pp. 11-26.*

The Landowners have also submitted for reimbursement of the Attorney's legal assistant fees which were also actually and reasonably incurred. The hours for the legal assistants total 1,063.93 and the Landowners submitted for these hours to be reimbursed at the actually incurred rate of \$50.00. There was no objection to the reasonableness of this time or rate.

To follow is a breakdown of the hours and rate for Landowners' counsel and legal assistants

Attorney hours from August 2017 to May 31, 2019

984.93 at \$450 = \$443,218.50

Attorney hours from June 1, 2019 to October 31, 2021

2,551.32 at \$675 = \$1,722,141.00

Attorney hours from November 1, 2021 – January 25, 2022

320.66 at \$675 = \$216,445.50

Attorney hours from January 26, 2022-February 3, 2022

50 at \$675 = \$33,750.00

Total Attorney Fees actually incurred = \$2,415,555.00

Legal Assistants hours August 2017- January 25, 2022

1,041.63 x \$50.00 = \$52,081.50

Legal Assistants hours from January 26, 2022 to February 3, 2022

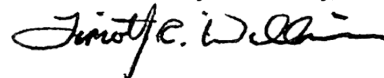
22.3 at \$50 = \$1,115.00

Total Legal Assistants Fees actually incurred= \$53,196.50

The Landowners also moved for an upward adjustment of attorney fees pursuant to 12 Hsu Factors. *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007). The Court declines to make such an adjustment.

THEREFORE, IT IS HEREBY ORDERED THAT The Plaintiff Landowners' Motion for Attorney Fees is **GRANTED in part** as to the attorney fees actually incurred and **DENIED in part**, as to an upward adjustment. The Landowners shall receive an award of their attorney fees actually incurred totaling \$2,415,555.00 and legal assistant fees actually incurred totaling \$53,196.50 for a total of **\$2,468,751.50.**

Dated this 18th day of February, 2022



MH

CAB 6B7 762F BC96
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 L. Waters

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Attorneys for City of Las Vegas

From: [Autumn Waters](#)
To: [George F. Ogilvie III](#); [Christopher Molina](#); [James Leavitt](#); [Sandy Guerra](#)
Subject: 35 acre Proposed Order Granting Attorney Fees in part
Date: Tuesday, February 8, 2022 11:52:23 AM
Attachments: [Order Granting Motion for Attorney Fees in part.docx](#)

Hi George,

Attached hereto is the proposed ORDER GRANTING PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES IN PART AND DENYING IN PART for your review. Please let me know if I have your permission to attached your electronic signature by Thursday, as I would like to submit the order on Friday. Thank you

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[Law Offices of Kermitt L. Waters](#)
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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 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: 2/18/2022

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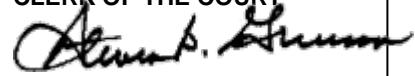
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EXHIBIT “F”



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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**ORDER DENYING CITY OF LAS
VEGAS' MOTION TO AMEND
JUDGMENT (Rules 59(e) and 60(b)) AND
STAY OF EXECUTION**

Hearing Date: February 11, 2022

Hearing Time: 1:15 p.m.

PLEASE TAKE NOTICE that the Order Denying City of Las Vegas' Motion to Amend
Judgment (Rules 59(e) and 60(b)) and Stay of Execution ("Order") was entered on the 25th day of
February, 2022.

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A copy of the Order is attached hereto.
DATED this 28th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
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Las Vegas, Nevada 89101
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Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermit L. Waters, and
3 that on the 28th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER DENYING CITY OF LAS VEGAS’**
5 **MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION**
6 was served on the below via the Court’s electronic filing/service system and/or deposited for
7 mailing in the U.S. Mail, postage prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

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10 Christopher Molina, Esq.
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cmolina@mcdonaldcarano.com

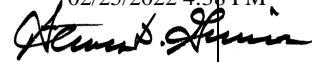
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21 /s/ Sandy Guerra
22 an employee of the Law Offices of Kermit L. Waters
23
24


CLERK OF THE COURT

ORDR

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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 DENYING CITY OF LAS
VEGAS' MOTION TO AMEND
JUDGMENT (Rules 59(e) and 60(b)) AND
STAY OF EXECUTION**

Date of Hearing: February 11, 2022

Time of Hearing: 1:15 p.m.

The City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of
Execution, having come before the Court on February 11, 2022, James J. Leavitt, Esq. of the Law

1 Offices of Kermitt L Waters and Plaintiff Landowners' in-house counsel Elizabeth Ghanem, Esq.
2 appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. ("Landowners"), George
3 F. Ogilvie III, Esq. and Christopher Molina, Esq. of McDonald Carano LLP and Andrew W.
4 Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas
5 ("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 The Nevada Supreme Court has held that "Inverse condemnation proceedings are the
10 constitutional equivalent to eminent domain actions and are governed by the same rules and
11 principles that are applied to formal condemnation proceedings." County of Clark v. Alper, 100
12 Nev 382, 391 (1984) (emphasis added). This has been the law in Nevada since 1984 and the Nevada
13 Supreme Court has reaffirmed this law numerous times since then.
14

15 Therefore, this Court will follow the statutory mandate as provided in Nevada's eminent
16 domain statutes, NRS Chapter 37, to resolve the pending matter in this inverse condemnation case.
17

18 This Court has previously entered findings of fact and conclusions of law that the City took
19 by inverse condemnation the Landowners' 35 Acre Property and must, accordingly, pay just
20 compensation.

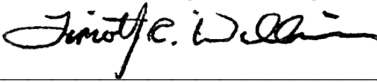
21 NRS 37.160 provides the procedure for passing title to the City of Las Vegas through a final
22 order of condemnation once the sums assessed against the City are paid to the Landowners.
23 Therefore, once the City pays the sums assessed in this matter to the Landowners, this Court will
24 enter a final order of condemnation as provided in NRS 37.160.
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1 This Court further finds that the Landowners have reversionary rights to the 35 Acre
2 Property as set forth in NRS 37.270 and article 1, section 22 (1) and (6) of the Nevada State
3 Constitution. These reversionary rights shall be set forth in the final order of condemnation.

4 The Court has previously denied the City's motion to stay execution and the City has
5 provided no facts or law to revisit or reconsider that prior ruling.
6

7 Based on the foregoing, **IT IS HEREBY ORDERED THAT** the City of Las Vegas Motion
8 to Amend Judgement (Rules 59(e) and 60(b)) and Stay of Execution is **DENIED** and, once the City
9 pays the sums assessed in this matter to the Landowners, the Court will enter a final order of
10 condemnation as provided herein.

11 Dated this 25th day of February, 2022

12 

13
14 338 491 34BF 1C81
15 Timothy C. Williams
16 District Court Judge

17 MH

Submitted By:

LAW OFFICES OF KERMIT L. WATERS

By: /s/ James J. Leavitt, Esq.

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)

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Attorneys for Plaintiffs Landowners

Content Reviewed and Approved by:

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By: Did not respond

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San Francisco, California 94102

Attorneys for City of Las Vegas

From: [James Leavitt](#)
To: [George F. Ogilvie III](#); [Christopher Molina](#)
Cc: [Autumn Waters](#); [Sandy Guerra](#)
Subject: Proposed Order - Friday Hearing on City Motion to Amend
Date: Saturday, February 12, 2022 8:27:34 AM
Attachments: [Order Denying CLV Motion to Amend Judgment.docx](#)

George:

Attached hereto is the proposed order from the hearing on the City's motion to amend.

Please review and let me know of any changes. We intend to send to the Court Wednesday morning.

Thank you and have a good weekend,
Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
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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 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: 2/25/2022

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EXHIBIT 2

EXHIBIT 2

9. Issues on Appeal. State concisely the principal issue(s) in this appeal:

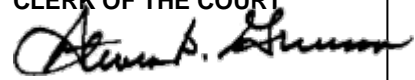
1. Did the District Court err in concluding that the City made a final decision that it would never allow any development of housing on the 35-Acre Property despite the fact that the Developer filed only one set of applications to develop the individual 35-Acre Property?
2. Did the District Court err in concluding that zoning confers a constitutionally protected property interest on property owners to use the property for any use the owner chooses as long as the use is a permitted use in the zoning district and notwithstanding the restrictions on use of the property in the City's General Plan?
3. Did the District Court err in concluding that a Nevada municipality effectively has no discretion under either the General Plan or zoning to disapprove and/or condition an owner's proposed use of property as long as the proposed use is a permitted use in the zoning district because, if they exercise such discretion, they will be liable for a taking and must pay just compensation?
4. By concluding that the City's denial of the Developer's application was a taking because the property was zoned R-PD7, did the District Court nullify NRS 278.150, NRS 278.250, and virtually the entire land use regulatory system of the State of Nevada, which requires that (a) cities have broad discretion to regulate land use to promote and protect the public interest; (b) cities shall adopt General Plans that govern the future uses of property; and (c) General Plan designations are superior to other land use regulations, including zoning?
5. Did the District Court err in concluding that the City has discretion to deny or condition the approval of land use development applications if the applicant then sues for a petition for judicial review, but the City has no discretion to deny or condition approval of the same application if the applicant then sues for a regulatory taking?
6. Did the District Court err in finding that single-family and multi-family housing are the only land uses permitted in an R-PD7 zoning district?
7. Did the District Court err in finding that the PR-OS designation of the Badlands is inconsistent with the R-PD7 zoning?

8. Did the District Court err in finding that the statements and actions of individual members of the City Council and City staff constitute regulation that binds the City?
9. Did the District Court err in finding that the opinions of individual members of the City Council and City staff as to the intent and effect of City and State law are binding on the City and the courts?
10. Did the District Court err in finding that the County Assessor's opinion of the scope of the City's authority to regulate the use of the Badlands, formulated in the course of the Assessor's appraisal of the Badlands, is binding on the City and the courts?
11. Did the District Court err in finding that the "parcel as a whole" for purposes of regulatory takings analysis is the 35-Acre Property, rather than the entire 1,569-acre Peccole Ranch Master Plan or the 250-Acre Badlands?
12. Did the District Court err in precluding the City from presenting to the jury any evidence and/or reference to: (1) the \$4,500,000 purchase price of the entire 250-Acre Badlands and the \$630,000 portion of the purchase price allocable to the 35-Acre Property; (2) the PR-OS designation of the Badlands; and (3) the Peccole Ranch Master Plan?
13. Did the District Court err in finding the City liable for a categorical and *Penn Central* taking of the 35-Acre Property and ordering the City to pay \$34,135,000 as just compensation?
14. Did the District Court err in finding that the date of value for purposes of liability and damages for categorical and *Penn Central* takings was September 14, 2017?
15. Did the District Court err in finding that the City effected a physical taking of the 35-Acre Property?
16. Did the District Court err in finding that the alleged denial of the Developer's applications for additional access and fencing was a physical occupation taking of the 35-Acre Property, particularly where the City simply instructed the Developer to file a different type of application?

17. Did the District Court err in finding that Bill Nos. 2018-5 and 2018-24 permanently compelled the Developer to allow the public to invade and occupy the 35-Acre Property?
18. Did the District Court err in finding that members of the public physically invaded and occupied the Badlands as a result of the enactment of Bill Nos. 2018-5 and 2018-24?
19. Did the District Court err in finding that the City permanently dispossessed the Developer from the 35-Acre Property?
20. Did the District Court err in finding the City liable for a non-regulatory taking?
21. Did the District Court err in denying the City's Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution to correct the Judgment's requirement that the City pay damages to the Developer without an associated requirement for the Developer to convey its fee simple interest in the 35-Acre Property to the City?
22. Did the District Court err in applying NRS 37.170, an eminent domain statute, to deny a stay pending appeal of this inverse condemnation case, even though the City has not taken permanent physical possession of the 35-Acre Property?
23. Did the District Court err in denying the City's request for a stay and by ordering, as a condition to any appeal, that the City had to first pay the Developer the \$34,135,000 Judgment?
24. Did the District Court err in awarding the Developer its reimbursement of property taxes, attorneys' fees and costs in the sum of \$4,707,002.04, all of which derive from the legally unsupportable Judgment?

EXHIBIT 3

EXHIBIT 3



1 **NOA**
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9 *Attorneys for Plaintiff Landowners*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 180 LAND CO LLC, a Nevada limited liability
13 company, FORE STARS Ltd., DOE
14 INDIVIDUALS I through X, ROE
CORPORATIONS I through X, and ROE
LIMITED LIABILITY COMPANIES I through
X,

15 Plaintiffs,

16 vs.

17 CITY OF LAS VEGAS, political subdivision of
18 the State of Nevada, ROE government entities I
19 through X, ROE CORPORATIONS I through X,
20 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

PLAINTIFFS' NOTICE OF APPEAL

21 Plaintiffs 180 LAND CO LLC and FORE STARS Ltd., by and through their attorneys of
22 record, the Law Offices of Kermitt L. Waters, hereby appeal to the Supreme Court of Nevada from
23 the following:
24

1. The Final Judgment in Inverse Condemnation, only to the extent it refers to the issue of prejudgment interest, entered on April 18, 2022 and attached hereto as *Exhibit A*; and

2. The Findings of Fact and Conclusions of Law and Order Granting Plaintiffs' Motion for Pre-Judgment Interest, entered on April 1, 2022 and attached hereto as *Exhibit B*.

DATED this 25th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

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Attorneys for Plaintiff Landowners

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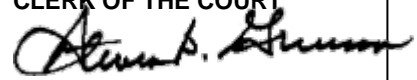
McDONALD CARANO LLP

LAS VEGAS CITY ATTORNEY'S OFFICE

SHUTE, MIHALY & WEINBERGER, LLP

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

Exhibit A



1 **NOE**
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14 Facsimile: (702) 731-1964
15 *Attorneys for Plaintiff Landowners*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,

17 Plaintiffs,

18 vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

**FINAL JUDGMENT IN INVERSE
CONDEMNATION**

21 **PLEASE TAKE NOTICE** that the Final Judgment in Inverse Condemnation
22 (“Judgment”) in the above referenced matter was entered on the 18th day of April, 2022.
23
24

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A copy of the Judgment is attached hereto.

DATED this 18th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
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Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff 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 April, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing:
4 **NOTICE OF ENTRY OF: FINAL JUDGMENT IN INVERSE CONDEMNATION** was
5 served on the below via the Court's electronic filing/service system and/or deposited for mailing
6 in the U.S. Mail, postage prepaid and addressed to, the following:

7 **McDONALD CARANO LLP**

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

11 **LAS VEGAS CITY ATTORNEY'S OFFICE**

12 Bryan Scott, Esq., City Attorney
13 Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
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14 bscott@lasvegasnevada.gov
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15 rwolfson@lasvegasnevada.gov

16 **SHUTE, MIHALY & WEINBERGER, LLP**

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18 Lauren M. Tarpey, Esq.
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19 schwartz@smwlaw.com
ltarpey@smwlaw.com

20 /s/ Sandy Guerra

an employee of the Law Offices of Kermitt L. Waters

**JGMT
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michael@kermittwaters.com
autumn@kermittwaters.com
Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

FINAL JUDGMENT IN INVERSE CONDEMNATION

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter “Landowners”) appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners’ corporate counsel Elizabeth Ghanem, Esq., and with the City

1 of Las Vegas (hereinafter “the City”) appearing through its counsel, George F. Ogilvie III, Esq.
2 of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City
3 Attorney’s Office and thereafter this Court entered Findings of Fact and Conclusions of Law on
4 Just Compensation, notice of entry occurring on November 24, 2021. Thereafter, the Court
5 entertained briefing and oral argument on all relevant post trial issues and entered the following
6 Orders: 1) Order Granting in Part and Denying in Part the City of Las Vegas’ Motion to Retax
7 Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting
8 Plaintiff Landowners’ Motion for Reimbursement of Property Taxes, notice of entry occurring
9 on February 17, 2022; 3) Order Granting Plaintiff Landowners’ Motion for Attorney Fees in Part
10 and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and
11 Conclusions of Law and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of
12 entry occurring on April 1, 2022.

13 Based on the referenced orders and findings of fact and conclusions of law having been
14 entered, pursuant to NRCP Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of
15 the Landowners and against the City of Las Vegas as follows:

16 The City shall pay to the Landowners for the taking of the 35 Acre Property **\$34,135,000.**

17 The City shall pay to the Landowners’ attorney fees in the amount of **\$2,468,751.50.**

18 The City shall pay to the Landowners’ costs in the amount of **\$274,445.16.**

19 The City shall reimburse the Landowners’ real estate taxes paid on the 35 Acre Property
20 in the amount of **\$976,889.38.**

21 The City shall pay prejudgment interest in the amount of **\$10,258,953.30** for interest up to
22 November 18, 2021, and shall pay interest on the judgment for any periods after November 18,
23 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1),
24 which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law
25 and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of entry occurring on April
26 1, 2022.
27
28

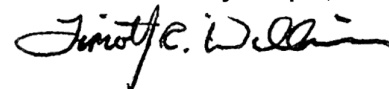
1 These sums assessed against the City and in favor of the Landowners shall be paid within
2 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions
3 of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting
4 Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of
5 entry occurring on February 10, 2022.
6

7 Interest will continue to accrue on the final judgment until satisfied.

8 The Landowners shall serve all parties written notice of entry of final judgment.
9

10 Dated this _____ day of April, 2022.

Dated this 18th day of April, 2022



93A 140 093E 36D8
Timothy C. Williams
District Court Judge

MH

14 Respectfully Submitted By:

Content Reviewed and Approved By:

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

MCDONALD CARANO LLP

17 /s/ James J. Leavitt

Did not respond

Kermitt L. Waters, Esq. (NV Bar No. 2571)

George F. Ogilvie III, Esq. (NV Bar No. 3552)

18 James J. Leavitt, Esq. (NV Bar No. 6032)

Christopher Molina, Esq. (NV Bar No. 14092)

19 Michael A. Schneider, Esq. (NV Bar No. 8887)

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(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: Final Judgment In Inverse Condemnation
Date: Wednesday, April 6, 2022 11:28:10 AM
Attachments: [Final Judgment 4.4.22 egh.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: Monday, April 4, 2022 1:58 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: Final Judgment In Inverse Condemnation

George:

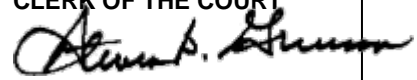
Attached is the Final Judgment in Inverse Condemnation. Please review and let me know if we have your permission to affix your signature.

We intend to submit to Judge Williams Wednesday, April 6, at 10:00 am.

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

Exhibit B



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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR PRE-
JUDGMENT INTEREST**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law and Order
Granting Plaintiff's Motion for Pre-Judgment Interest was entered in the above-referenced case on
the 1st day of April, 2022, a copy of which is attached hereto.

...

...

...

1 DATED this 1st day of April, 2022.

2 McDONALD CARANO LLP

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

6 LAS VEGAS CITY ATTORNEY'S OFFICE
7 Bryan K. Scott (NV Bar No. 4381)
8 Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
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9 SHUTE, MIHALY & WEINBERGER, LLP
10 Andrew W. Schwartz (Admitted *pro hac vice*)
11 Lauren M. Tarpey (Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

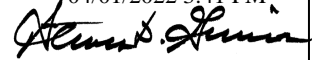
12
13 *Attorneys for City of Las Vegas*
14
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1st day of April, 2022, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP


CLERK OF THE COURT

FFCO

Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
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rwolfson@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision
of the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X;
ROE INDIVIDUALS I-X; ROE LIMITED-
LIABILITY COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**[PROPOSED] FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
PRE-JUDGMENT INTEREST**

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

...

1 The Motion came before the Court for hearing on February 3, 2022 at 1:40 p.m. James Jack
2 Leavitt, Autumn Waters, and Elizabeth Ghanem Ham appeared for Plaintiffs. George F. Ogilvie
3 III, Christopher Molina, and Andrew Schwartz appeared for the City. Having considered the points
4 and authorities on file with the Court and oral argument of counsel, the Court makes the following
5 findings of facts and conclusions of law:

6 **FINDINGS OF FACT**

7 1. In its November 18, 2021 Findings of Fact and Conclusions of Law on Just
8 Compensation, the Court awarded Plaintiffs \$34,135,000 for the City's taking of the 35-Acre
9 Property ("Judgment").

10 2. In its Motion to Determine Prejudgment Interest filed on December 9, 2021
11 ("Motion"), Plaintiffs contended that it is entitled to prejudgment interest on the \$34,135,000
12 Judgment under NRS 37.175 from the date of the City's taking, which Plaintiffs contend was
13 August 2, 2017, to February 2, 2022, the date Plaintiffs anticipated this Court would enter an order
14 granting prejudgment interest.

15 3. Plaintiffs further argued in its Motion that prejudgment interest could not be less
16 than the prime rate plus two percent, as provided in NRS 37.175(4)(b) and (c).

17 4. Plaintiffs further contended in the Motion that for Plaintiffs to be made whole; i.e.,
18 put in the same position monetarily as it would have been in had the City not taken the 35-Acre
19 Property, Plaintiffs should be awarded prejudgment interest on the Judgment at a rate equivalent to
20 the return that Plaintiffs would have achieved had Plaintiffs invested the Judgment in an
21 unidentified real estate venture in Las Vegas on the date of the alleged taking. Based on evidence
22 of appreciation in real estate values in Las Vegas from August 2017 through February 2022,
23 Plaintiffs claimed that it would have earned \$52,515,866.90 on its investment, plus \$46,687.19 per
24 day after February 2, 2022 until the Judgment is satisfied.

25 5. The City contended in its opposition that the rate of prejudgment interest should be
26 the statutory rate set forth in NRS 37.175, which is prime plus two percent.

27 ...

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CONCLUSIONS OF LAW

A. **Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking**

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) provides:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

2. Accordingly, a taking claimant is entitled to a rate of prejudgment interest on a taking judgment higher than the statutory rate of prime plus two percent only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsity*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

that prejudgment interest should not be the prime rate plus two percent as indicated by the statute, but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to put Plaintiffs in the same position as before the City's alleged taking. Neither *Barsy* nor the evidence supports this rate of interest.

5. In *Barsy*, the defendant in an eminent domain action owned a building occupied by two tenants. In 1988, the Nevada Department of Transportation ("NDOT") identified Barsy's property for acquisition by eminent domain for a highway construction project. In late 1988 or early 1989, a representative of NDOT informed Barsy's tenants "of the imminent project Due to NDOT's inability to indicate an accurate time frame for the acquisition of the property, the tenants refused to renew their leases upon expiration." 113 Nev. at 715-16, 941 P.2d at 974. "Barsy was unable to attract new tenants because of the uncertainty surrounding the acquisition by NDOT." *Id.* Barsy presumably had no income from his building after the tenants vacated. The NDOT delayed filing a condemnation action against Barsy until 1992, after Barsy's two tenants had vacated the premises. 113 Nev. at 716, 941 P.2d at 974. During the entire eminent domain action, Barsy was unable to attract new tenants and suffered lost income. *Id.*

6. In addition to awarding Barsy just compensation based on the fair market value of Barsy's property, the District Court awarded Barsy prejudgment interest of eight percent, two percent above the prime rate, rather than the rate specified in the eminent domain law at the time.¹ 100 Nev. at 178-19, 941 P.2d at 975-76. The court found that if the compensation had been paid before the judgment, Barsy could have used it to extend his mortgage, presumably at a lower rate, or invest in other property that would produce a return that would have made up for Barsy's lost income from before and during the litigation. Because the award of just compensation was insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

¹ At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest paid on one year's United States Treasury bills. NRS 37.175 was later amended to require prejudgment interest at the prime rate plus two percent.

7. Through the payment of prime plus two percent, Plaintiffs will be made whole. Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs, and the Court rejects Plaintiffs' reliance on that case.

B. No authority permits the award of profit that allegedly would have been earned from a speculative real estate investment under the guise of prejudgment "interest"

8. The Court finds that Plaintiffs request an award not of "interest" as defined in Nevada law, but rather "profit" from a hypothetical, and speculative, real estate investment. No authority supports this claim.

9. The Court rejects Plaintiffs' request to base prejudgment interest on the expert reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other real estate during the relevant period. The Court finds that the payment of prime plus two percent is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property not been taken.

10. "Interest" is defined by Oxford Languages as "money paid regularly at a particular rate for the use of money lent, or for delaying the repayment of a debt." "Profit" is defined by Oxford Languages as "a financial gain, especially the difference between the amount earned and the amount spent in buying, operating, or producing something." "Interest" in this case, therefore, is the return Plaintiffs would have earned if it had received the judgment in 2017 and loaned it to others. The interest rate would logically be a rate competitive with the rates charged by other lenders. That rate would be close to the prime rate. In Nevada, the Legislature has set that rate for eminent domain actions at two percent above the prime lending rate of large banks. Profit, by contrast, would be money that Plaintiffs could earn if it invested the money in a real estate venture. In that case, the investment would "produce" something of value that Plaintiffs could then sell or rent, hence, "profit." Interest, by its definition, is a known amount that must be paid by contract; profit, in contrast, is speculative, and depends on a myriad of factors.

11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the claim was not pure speculation, the return Plaintiffs claims it would have earned is not “interest.” Rather, it is “profit.” If this Court were to conflate “interest” with “profit” in the manner proposed by Plaintiffs, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it had been paid the money at the time of the damage, it could have invested the money in real estate, the stock market, its uncle’s business, or any other unidentified business venture; (b) obtain the testimony of an “expert” predicting that the investment in the hypothetical and unidentified venture would yield a profit of a certain amount; and (c) call the profit prejudgment “interest.” Profits from real estate investment and other businesses, however, are uncertain and generally too speculative to be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776 (2012) (excluding an expert’s lost profit estimates based on a hypothetical increased share of the market). Profit from a business investment lacks the certainty of the prime rate of interest, which is publicized by the federal government. The Nevada Supreme Court has determined that property owners are entitled to prejudgment “interest” on takings judgments, not prejudgment “profit” from speculative business ventures.

C. No Nevada court has awarded prejudgment interest in a taking case at a rate higher than prime plus two percent

12. There is no Nevada precedent for an award of annual prejudgment interest in a taking case greater than two percent above the prime rate and no precedent that prejudgment “interest” could be set by the speculative profit from an investment of the award of just compensation in another property or business venture.

13. In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the District Court for an evidentiary hearing to determine whether a different rate of interest was warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court indicated that the proper rate of prejudgment interest should be based “on the actual market rate of interest during the years in question.” There is no suggestion in *Alper* that the rate of prejudgment

1 interest could be the profit the condemnee could make by investing the award of just compensation
2 during the litigation.

3 14. In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered
4 that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject
5 property was “vacant, unimproved, and held for investment purposes at the time of the taking.” 103
6 Nev. at 623. There is no suggestion that prejudgment “interest” could be interpreted as the value of
7 the profit from a speculative investment of the judgment.

8 15. Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight
9 percent, which was two percent above the prime rate. The Court found that that loss was not fully
10 compensated in the award of just compensation and therefore it was necessary to restore Barsy to
11 his monetary position before NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d
12 at 975-76. Because the statutory prejudgment interest rate has been increased to prime plus two
13 percent after *Barsy*, the Court finds that that rate is consistent with all Nevada authority.

14 **D. Prejudgment interest must be compounded annually**

15 16. NRS 37.175 indicates that the Court has discretion to order annual compounding of
16 prejudgment interest.

17 17. However, the Nevada Constitution, article 1, section 22 (4), states “Just
18 Compensation shall include ... compounded interest.”

19 18. Accordingly, the award of interest shall be compounded annually.

20 **ORDER**

21 Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

22 1. The Motion is hereby GRANTED, IN PART.

23 2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate
24 prescribed by NRS 37.175 of prime rate plus 2 percent.

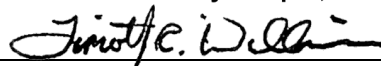
25 3. Accordingly, the prejudgment interest on the judgment of \$34,135,000 at a rate of
26 prime plus two percent and compounded annually from August 2, 2017 through November 18,
27 2021, is \$ \$10,258,953.30. See attached spreadsheet.

28

4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this ___ day of _____, 2022.

Dated this 1st day of April, 2022



DISTRICT COURT JUDGE

MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

Reviewed and Approved as to form and
content By:

McDONALD CARANO LLP

LAW OFFICES OF KERMIT L. WATERS

/s/ George F. Ogilvie III

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/s/ James J. Leavitt

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

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(Admitted *pro hac vice*)
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396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

From: James Leavitt <jim@kermittwaters.com>
Sent: Friday, April 1, 2022 8:57 AM
To: Christopher Molina; George F. Ogilvie III; Jelena Jovanovic
Cc: Autumn Waters; Michael Schneider; Elizabeth Ham (EHB Companies); Jennifer Knighton (EHB Companies)
Subject: FW: FFCL Re: Prejudgment Interest
Attachments: City's Proposed FFCL re Motion for Pre-Judgment Interest, 3-17-22 - version 5.docx

Chris:

Good morning.

With the revisions made, you may affix my signature to the FFCL.

Thank you, and have a great weekend.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

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: Christopher Molina <cmolina@mcdonaldcarano.com>
Sent: Thursday, March 31, 2022 8:06 AM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Good morning Jim,

We have no objection to changing "Developer" to Plaintiffs, which I have done in the attached version. We don't believe it's necessary to include additional findings regarding the evidence Plaintiffs presented to the court as it's already in the record and there's already a description of that evidence in conclusion of law #11.

I've now incorporated four rounds of revisions into this FFCL and it is long overdue. We will submit to chambers prior to our hearing this afternoon in the 133-acre case. Please let me know if I have permission to affix your signature.

Chris Molina | Attorney



P: 702.873.4100 | E: cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>

Sent: Wednesday, March 30, 2022 2:22 PM

To: Christopher Molina <cmolina@mcdonaldcarano.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>

Subject: RE: FFCL Re: Prejudgment Interest

Chris:

Attached is a redline with our clients edits. Two main changes:

1. The City wants to call our client "Developer" our client wants to be called "Landowners" - we changed this to "Plaintiffs".
2. Paragraph 4 – we more clearly identified the evidence that the Plaintiff Landowners presented to the Court – the two expert reports by DiFederico and Lenhart. This simply states the fact that these two reports were presented and in two sentences summarizes what was in both reports.

Let me know if this is good to go.

Jim

Jim Leavitt, Esq.
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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.

EXHIBIT 4

EXHIBIT 4

8. Nature of the action. Briefly describe the nature of the action and the result below:

Please see attached.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

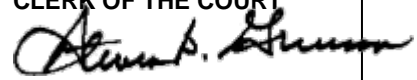
Did the District Court err in not basing its determination of prejudgment interest on competent evidence of a proper rate of return to include a rate of return that could have been achieved had the Landowners invested their money in land similar to the land taken in this matter.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

EXHIBIT 5

EXHIBIT 5



NOAS
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Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**DEFENDANT CITY OF LAS
VEGAS' NOTICE OF APPEAL**

Notice is hereby given that DEFENDANT CITY OF LAS VEGAS appeals to the Supreme
Court of Nevada from:

1. The Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion
for Pre-Judgment Interest filed on April 1, 2022, notice of entry of which was served electronically
on April 1, 2022, attached hereto as **Exhibit A**; and

2. The Final Judgment in Inverse Condemnation filed on April 18, 2022, notice of entry

of which was served electronically on April 18, 2022, attached hereto as **Exhibit B**.

DATED this 29th day of April, 2022.

McDONALD CARANO LLP

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

LAS VEGAS CITY ATTORNEY'S OFFICE
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SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (Admitted *pro hac vice*)
Lauren M. Tarpey (Admitted *pro hac vice*)
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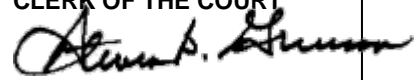
Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 29th day of April, 2022, I caused a true and correct copy of the foregoing **DEFENDANT CITY OF LAS VEGAS' NOTICE OF APPEAL** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “A”



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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR PRE-
JUDGMENT INTEREST**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law and Order
Granting Plaintiff's Motion for Pre-Judgment Interest was entered in the above-referenced case on
the 1st day of April, 2022, a copy of which is attached hereto.

...

...

...

DATED this 1st day of April, 2022.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
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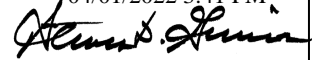
Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1st day of April, 2022, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP


CLERK OF THE COURT

FFCO

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Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
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rwolfson@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision
of the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X;
ROE INDIVIDUALS I-X; ROE LIMITED-
LIABILITY COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**[PROPOSED] FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
PRE-JUDGMENT INTEREST**

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

...

1 The Motion came before the Court for hearing on February 3, 2022 at 1:40 p.m. James Jack
2 Leavitt, Autumn Waters, and Elizabeth Ghanem Ham appeared for Plaintiffs. George F. Ogilvie
3 III, Christopher Molina, and Andrew Schwartz appeared for the City. Having considered the points
4 and authorities on file with the Court and oral argument of counsel, the Court makes the following
5 findings of facts and conclusions of law:

6 **FINDINGS OF FACT**

7 1. In its November 18, 2021 Findings of Fact and Conclusions of Law on Just
8 Compensation, the Court awarded Plaintiffs \$34,135,000 for the City's taking of the 35-Acre
9 Property ("Judgment").

10 2. In its Motion to Determine Prejudgment Interest filed on December 9, 2021
11 ("Motion"), Plaintiffs contended that it is entitled to prejudgment interest on the \$34,135,000
12 Judgment under NRS 37.175 from the date of the City's taking, which Plaintiffs contend was
13 August 2, 2017, to February 2, 2022, the date Plaintiffs anticipated this Court would enter an order
14 granting prejudgment interest.

15 3. Plaintiffs further argued in its Motion that prejudgment interest could not be less
16 than the prime rate plus two percent, as provided in NRS 37.175(4)(b) and (c).

17 4. Plaintiffs further contended in the Motion that for Plaintiffs to be made whole; i.e.,
18 put in the same position monetarily as it would have been in had the City not taken the 35-Acre
19 Property, Plaintiffs should be awarded prejudgment interest on the Judgment at a rate equivalent to
20 the return that Plaintiffs would have achieved had Plaintiffs invested the Judgment in an
21 unidentified real estate venture in Las Vegas on the date of the alleged taking. Based on evidence
22 of appreciation in real estate values in Las Vegas from August 2017 through February 2022,
23 Plaintiffs claimed that it would have earned \$52,515,866.90 on its investment, plus \$46,687.19 per
24 day after February 2, 2022 until the Judgment is satisfied.

25 5. The City contended in its opposition that the rate of prejudgment interest should be
26 the statutory rate set forth in NRS 37.175, which is prime plus two percent.

27 ...

28 ...

CONCLUSIONS OF LAW

A. Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) provides:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

2. Accordingly, a taking claimant is entitled to a rate of prejudgment interest on a taking judgment higher than the statutory rate of prime plus two percent only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsity*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

that prejudgment interest should not be the prime rate plus two percent as indicated by the statute, but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to put Plaintiffs in the same position as before the City's alleged taking. Neither *Barsy* nor the evidence supports this rate of interest.

5. In *Barsy*, the defendant in an eminent domain action owned a building occupied by two tenants. In 1988, the Nevada Department of Transportation ("NDOT") identified Barsy's property for acquisition by eminent domain for a highway construction project. In late 1988 or early 1989, a representative of NDOT informed Barsy's tenants "of the imminent project Due to NDOT's inability to indicate an accurate time frame for the acquisition of the property, the tenants refused to renew their leases upon expiration." 113 Nev. at 715-16, 941 P.2d at 974. "Barsy was unable to attract new tenants because of the uncertainty surrounding the acquisition by NDOT." *Id.* Barsy presumably had no income from his building after the tenants vacated. The NDOT delayed filing a condemnation action against Barsy until 1992, after Barsy's two tenants had vacated the premises. 113 Nev. at 716, 941 P.2d at 974. During the entire eminent domain action, Barsy was unable to attract new tenants and suffered lost income. *Id.*

6. In addition to awarding Barsy just compensation based on the fair market value of Barsy's property, the District Court awarded Barsy prejudgment interest of eight percent, two percent above the prime rate, rather than the rate specified in the eminent domain law at the time.¹ 100 Nev. at 178-19, 941 P.2d at 975-76. The court found that if the compensation had been paid before the judgment, Barsy could have used it to extend his mortgage, presumably at a lower rate, or invest in other property that would produce a return that would have made up for Barsy's lost income from before and during the litigation. Because the award of just compensation was insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

¹ At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest paid on one year's United States Treasury bills. NRS 37.175 was later amended to require prejudgment interest at the prime rate plus two percent.

7. Through the payment of prime plus two percent, Plaintiffs will be made whole. Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs, and the Court rejects Plaintiffs' reliance on that case.

B. No authority permits the award of profit that allegedly would have been earned from a speculative real estate investment under the guise of prejudgment "interest"

8. The Court finds that Plaintiffs request an award not of "interest" as defined in Nevada law, but rather "profit" from a hypothetical, and speculative, real estate investment. No authority supports this claim.

9. The Court rejects Plaintiffs' request to base prejudgment interest on the expert reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other real estate during the relevant period. The Court finds that the payment of prime plus two percent is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property not been taken.

10. "Interest" is defined by Oxford Languages as "money paid regularly at a particular rate for the use of money lent, or for delaying the repayment of a debt." "Profit" is defined by Oxford Languages as "a financial gain, especially the difference between the amount earned and the amount spent in buying, operating, or producing something." "Interest" in this case, therefore, is the return Plaintiffs would have earned if it had received the judgment in 2017 and loaned it to others. The interest rate would logically be a rate competitive with the rates charged by other lenders. That rate would be close to the prime rate. In Nevada, the Legislature has set that rate for eminent domain actions at two percent above the prime lending rate of large banks. Profit, by contrast, would be money that Plaintiffs could earn if it invested the money in a real estate venture. In that case, the investment would "produce" something of value that Plaintiffs could then sell or rent, hence, "profit." Interest, by its definition, is a known amount that must be paid by contract; profit, in contrast, is speculative, and depends on a myriad of factors.

11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the claim was not pure speculation, the return Plaintiffs claims it would have earned is not “interest.” Rather, it is “profit.” If this Court were to conflate “interest” with “profit” in the manner proposed by Plaintiffs, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it had been paid the money at the time of the damage, it could have invested the money in real estate, the stock market, its uncle’s business, or any other unidentified business venture; (b) obtain the testimony of an “expert” predicting that the investment in the hypothetical and unidentified venture would yield a profit of a certain amount; and (c) call the profit prejudgment “interest.” Profits from real estate investment and other businesses, however, are uncertain and generally too speculative to be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776 (2012) (excluding an expert’s lost profit estimates based on a hypothetical increased share of the market). Profit from a business investment lacks the certainty of the prime rate of interest, which is publicized by the federal government. The Nevada Supreme Court has determined that property owners are entitled to prejudgment “interest” on takings judgments, not prejudgment “profit” from speculative business ventures.

C. No Nevada court has awarded prejudgment interest in a taking case at a rate higher than prime plus two percent

12. There is no Nevada precedent for an award of annual prejudgment interest in a taking case greater than two percent above the prime rate and no precedent that prejudgment “interest” could be set by the speculative profit from an investment of the award of just compensation in another property or business venture.

13. In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the District Court for an evidentiary hearing to determine whether a different rate of interest was warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court indicated that the proper rate of prejudgment interest should be based “on the actual market rate of interest during the years in question.” There is no suggestion in *Alper* that the rate of prejudgment

1 interest could be the profit the condemnee could make by investing the award of just compensation
2 during the litigation.

3 14. In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered
4 that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject
5 property was “vacant, unimproved, and held for investment purposes at the time of the taking.” 103
6 Nev. at 623. There is no suggestion that prejudgment “interest” could be interpreted as the value of
7 the profit from a speculative investment of the judgment.

8 15. Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight
9 percent, which was two percent above the prime rate. The Court found that that loss was not fully
10 compensated in the award of just compensation and therefore it was necessary to restore Barsy to
11 his monetary position before NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d
12 at 975-76. Because the statutory prejudgment interest rate has been increased to prime plus two
13 percent after *Barsy*, the Court finds that that rate is consistent with all Nevada authority.

14 **D. Prejudgment interest must be compounded annually**

15 16. NRS 37.175 indicates that the Court has discretion to order annual compounding of
16 prejudgment interest.

17 17. However, the Nevada Constitution, article 1, section 22 (4), states “Just
18 Compensation shall include ... compounded interest.”

19 18. Accordingly, the award of interest shall be compounded annually.

20 **ORDER**

21 Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

22 1. The Motion is hereby GRANTED, IN PART.

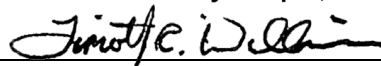
23 2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate
24 prescribed by NRS 37.175 of prime rate plus 2 percent.

25 3. Accordingly, the prejudgment interest on the judgment of \$34,135,000 at a rate of
26 prime plus two percent and compounded annually from August 2, 2017 through November 18,
27 2021, is \$ \$10,258,953.30. See attached spreadsheet.

4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this ___ day of _____, 2022.

Dated this 1st day of April, 2022



DISTRICT COURT JUDGE

MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

Reviewed and Approved as to form and
content By:

McDONALD CARANO LLP

LAW OFFICES OF KERMIT L. WATERS

/s/ George F. Ogilvie III

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LAS VEGAS CITY ATTORNEY'S OFFICE
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/s/ James J. Leavitt

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Michael A. Schneider, Esq., Bar No. 8887
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*Attorney for 180 Land Co LLC and Fore Stars
Ltd.*

SHUTE, MIHALY & WEINBERGER, LLP
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(Admitted *pro hac vice*)
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Attorneys for City of Las Vegas

From: James Leavitt <jim@kermittwaters.com>
Sent: Friday, April 1, 2022 8:57 AM
To: Christopher Molina; George F. Ogilvie III; Jelena Jovanovic
Cc: Autumn Waters; Michael Schneider; Elizabeth Ham (EHB Companies); Jennifer Knighton (EHB Companies)
Subject: FW: FFCL Re: Prejudgment Interest
Attachments: City's Proposed FFCL re Motion for Pre-Judgment Interest, 3-17-22 - version 5.docx

Chris:

Good morning.

With the revisions made, you may affix my signature to the FFCL.

Thank you, and have a great weekend.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
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tel: (702) 733-8877
fax: (702) 731-1964

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From: Christopher Molina <cmolina@mcdonaldcarano.com>
Sent: Thursday, March 31, 2022 8:06 AM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Good morning Jim,

We have no objection to changing "Developer" to Plaintiffs, which I have done in the attached version. We don't believe it's necessary to include additional findings regarding the evidence Plaintiffs presented to the court as it's already in the record and there's already a description of that evidence in conclusion of law #11.

I've now incorporated four rounds of revisions into this FFCL and it is long overdue. We will submit to chambers prior to our hearing this afternoon in the 133-acre case. Please let me know if I have permission to affix your signature.

Chris Molina | Attorney



P: 702.873.4100 | E: cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>

Sent: Wednesday, March 30, 2022 2:22 PM

To: Christopher Molina <cmolina@mcdonaldcarano.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>

Subject: RE: FFCL Re: Prejudgment Interest

Chris:

Attached is a redline with our clients edits. Two main changes:

1. The City wants to call our client "Developer" our client wants to be called "Landowners" - we changed this to "Plaintiffs".
2. Paragraph 4 – we more clearly identified the evidence that the Plaintiff Landowners presented to the Court – the two expert reports by DiFederico and Lenhart. This simply states the fact that these two reports were presented and in two sentences summarizes what was in both reports.

Let me know if this is good to go.

Jim

Jim Leavitt, Esq.
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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 Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 4/1/2022

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23 Jeffrey Andrews

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25 Stephanie Allen

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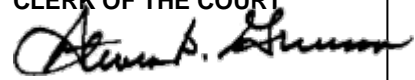
28

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3	Autumn Waters	autumn@kermittwaters.com
4	Michael Schneider	michael@kermittwaters.com
5	James Leavitt	jim@kermittwaters.com
6	Kermitt Waters	kermitt@kermittwaters.com
7	Elizabeth Ham	EHam@ehbcompanies.com
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Jennifer Knighton	jknighton@ehbcompanies.com
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EXHIBIT “B”



1 **NOE**
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8 Telephone: (702) 733-8877
Facsimile: (702) 731-1964
9 *Attorneys for Plaintiff Landowners*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 180 LAND CO., LLC, a Nevada limited liability
13 company, FORE STARS Ltd., DOE
14 INDIVIDUALS I through X, ROE
CORPORATIONS I through X, and ROE
LIMITED LIABILITY COMPANIES I through
X,

15 Plaintiffs,

16 vs.

17 CITY OF LAS VEGAS, political subdivision of
18 the State of Nevada, ROE government entities I
19 through X, ROE CORPORATIONS I through X,
20 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:

**FINAL JUDGMENT IN INVERSE
CONDEMNATION**

21 **PLEASE TAKE NOTICE** that the Final Judgment in Inverse Condemnation
22 (“Judgment”) in the above referenced matter was entered on the 18th day of April, 2022.
23
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A copy of the Judgment is attached hereto.

DATED this 18th day of April, 2022.

LAW OFFICES OF KERMIT L. WATERS

/s/Autumn L. Waters
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James J. Leavitt, Esq. (NSB 6032)
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**JGMT
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michael@kermittwaters.com
autumn@kermittwaters.com
Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

FINAL JUDGMENT IN INVERSE CONDEMNATION

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter “Landowners”) appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners’ corporate counsel Elizabeth Ghanem, Esq., and with the City

1 of Las Vegas (hereinafter “the City”) appearing through its counsel, George F. Ogilvie III, Esq.
2 of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City
3 Attorney’s Office and thereafter this Court entered Findings of Fact and Conclusions of Law on
4 Just Compensation, notice of entry occurring on November 24, 2021. Thereafter, the Court
5 entertained briefing and oral argument on all relevant post trial issues and entered the following
6 Orders: 1) Order Granting in Part and Denying in Part the City of Las Vegas’ Motion to Retax
7 Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting
8 Plaintiff Landowners’ Motion for Reimbursement of Property Taxes, notice of entry occurring
9 on February 17, 2022; 3) Order Granting Plaintiff Landowners’ Motion for Attorney Fees in Part
10 and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and
11 Conclusions of Law and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of
12 entry occurring on April 1, 2022.

13 Based on the referenced orders and findings of fact and conclusions of law having been
14 entered, pursuant to NRCP Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of
15 the Landowners and against the City of Las Vegas as follows:

16 The City shall pay to the Landowners for the taking of the 35 Acre Property **\$34,135,000.**

17 The City shall pay to the Landowners’ attorney fees in the amount of **\$2,468,751.50.**

18 The City shall pay to the Landowners’ costs in the amount of **\$274,445.16.**

19 The City shall reimburse the Landowners’ real estate taxes paid on the 35 Acre Property
20 in the amount of **\$976,889.38.**

21 The City shall pay prejudgment interest in the amount of **\$10,258,953.30** for interest up to
22 November 18, 2021, and shall pay interest on the judgment for any periods after November 18,
23 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1),
24 which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law
25 and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of entry occurring on April
26 1, 2022.
27
28

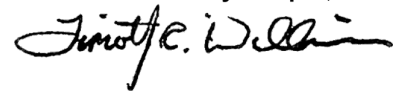
1 These sums assessed against the City and in favor of the Landowners shall be paid within
2 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions
3 of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting
4 Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of
5 entry occurring on February 10, 2022.
6

7 Interest will continue to accrue on the final judgment until satisfied.

8 The Landowners shall serve all parties written notice of entry of final judgment.
9

10 Dated this _____ day of April, 2022.

Dated this 18th day of April, 2022



93A 140 093E 36D8
Timothy C. Williams
District Court Judge

MH

14 Respectfully Submitted By:

Content Reviewed and Approved By:

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

MCDONALD CARANO LLP

17 /s/ James J. Leavitt

Did not respond

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George F. Ogilvie III, Esq. (NV Bar No. 3552)

18 James J. Leavitt, Esq. (NV Bar No. 6032)

Christopher Molina, Esq. (NV Bar No. 14092)

19 Michael A. Schneider, Esq. (NV Bar No. 8887)

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(Admitted *pro hac vice*)

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(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: Final Judgment In Inverse Condemnation
Date: Wednesday, April 6, 2022 11:28:10 AM
Attachments: [Final Judgment 4.4.22 egh.docx](#)

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
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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: Monday, April 4, 2022 1:58 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: Final Judgment In Inverse Condemnation

George:

Attached is the Final Judgment in Inverse Condemnation. Please review and let me know if we have your permission to affix your signature.

We intend to submit to Judge Williams Wednesday, April 6, at 10:00 am.

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

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
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EXHIBIT 6

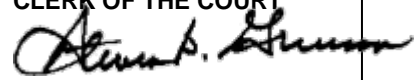
EXHIBIT 6

9. Issues on Appeal. State concisely the principal issue(s) in this appeal:

- a. Did the District Court err in awarding the Developer prejudgment interest in the amount of \$10,258,953.30 because it derives from the legally unsupportable Judgment?
- b. Did the district court err by concluding that Nevada Constitution Article 1, Section 22(4), which on its face applies only to eminent domain actions, requires payment of prejudgment interest in inverse condemnation cases?
- c. Did the district court err by applying NRS 37.175 in a regulatory takings case in which there has not been any physical occupation?

EXHIBIT 7

EXHIBIT 7



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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR PRE-
JUDGMENT INTEREST**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law and Order
Granting Plaintiff's Motion for Pre-Judgment Interest was entered in the above-referenced case on
the 1st day of April, 2022, a copy of which is attached hereto.

...

...

...

1 DATED this 1st day of April, 2022.

2 McDONALD CARANO LLP

3 By: /s/ George F. Ogilvie III
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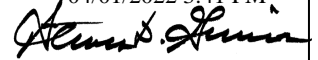
13 *Attorneys for City of Las Vegas*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1st day of April, 2022, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP


CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision
of the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X;
ROE INDIVIDUALS I-X; ROE LIMITED-
LIABILITY COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**[PROPOSED] FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
PRE-JUDGMENT INTEREST**

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

...

1 The Motion came before the Court for hearing on February 3, 2022 at 1:40 p.m. James Jack
2 Leavitt, Autumn Waters, and Elizabeth Ghanem Ham appeared for Plaintiffs. George F. Ogilvie
3 III, Christopher Molina, and Andrew Schwartz appeared for the City. Having considered the points
4 and authorities on file with the Court and oral argument of counsel, the Court makes the following
5 findings of facts and conclusions of law:

6 **FINDINGS OF FACT**

7 1. In its November 18, 2021 Findings of Fact and Conclusions of Law on Just
8 Compensation, the Court awarded Plaintiffs \$34,135,000 for the City's taking of the 35-Acre
9 Property ("Judgment").

10 2. In its Motion to Determine Prejudgment Interest filed on December 9, 2021
11 ("Motion"), Plaintiffs contended that it is entitled to prejudgment interest on the \$34,135,000
12 Judgment under NRS 37.175 from the date of the City's taking, which Plaintiffs contend was
13 August 2, 2017, to February 2, 2022, the date Plaintiffs anticipated this Court would enter an order
14 granting prejudgment interest.

15 3. Plaintiffs further argued in its Motion that prejudgment interest could not be less
16 than the prime rate plus two percent, as provided in NRS 37.175(4)(b) and (c).

17 4. Plaintiffs further contended in the Motion that for Plaintiffs to be made whole; i.e.,
18 put in the same position monetarily as it would have been in had the City not taken the 35-Acre
19 Property, Plaintiffs should be awarded prejudgment interest on the Judgment at a rate equivalent to
20 the return that Plaintiffs would have achieved had Plaintiffs invested the Judgment in an
21 unidentified real estate venture in Las Vegas on the date of the alleged taking. Based on evidence
22 of appreciation in real estate values in Las Vegas from August 2017 through February 2022,
23 Plaintiffs claimed that it would have earned \$52,515,866.90 on its investment, plus \$46,687.19 per
24 day after February 2, 2022 until the Judgment is satisfied.

25 5. The City contended in its opposition that the rate of prejudgment interest should be
26 the statutory rate set forth in NRS 37.175, which is prime plus two percent.

27 ...

28 ...

CONCLUSIONS OF LAW

A. Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) provides:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

2. Accordingly, a taking claimant is entitled to a rate of prejudgment interest on a taking judgment higher than the statutory rate of prime plus two percent only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsity*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

that prejudgment interest should not be the prime rate plus two percent as indicated by the statute, but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to put Plaintiffs in the same position as before the City's alleged taking. Neither *Barsy* nor the evidence supports this rate of interest.

5. In *Barsy*, the defendant in an eminent domain action owned a building occupied by two tenants. In 1988, the Nevada Department of Transportation ("NDOT") identified Barsy's property for acquisition by eminent domain for a highway construction project. In late 1988 or early 1989, a representative of NDOT informed Barsy's tenants "of the imminent project Due to NDOT's inability to indicate an accurate time frame for the acquisition of the property, the tenants refused to renew their leases upon expiration." 113 Nev. at 715-16, 941 P.2d at 974. "Barsy was unable to attract new tenants because of the uncertainty surrounding the acquisition by NDOT." *Id.* Barsy presumably had no income from his building after the tenants vacated. The NDOT delayed filing a condemnation action against Barsy until 1992, after Barsy's two tenants had vacated the premises. 113 Nev. at 716, 941 P.2d at 974. During the entire eminent domain action, Barsy was unable to attract new tenants and suffered lost income. *Id.*

6. In addition to awarding Barsy just compensation based on the fair market value of Barsy's property, the District Court awarded Barsy prejudgment interest of eight percent, two percent above the prime rate, rather than the rate specified in the eminent domain law at the time.¹ 100 Nev. at 178-19, 941 P.2d at 975-76. The court found that if the compensation had been paid before the judgment, Barsy could have used it to extend his mortgage, presumably at a lower rate, or invest in other property that would produce a return that would have made up for Barsy's lost income from before and during the litigation. Because the award of just compensation was insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

¹ At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest paid on one year's United States Treasury bills. NRS 37.175 was later amended to require prejudgment interest at the prime rate plus two percent.

1 7. Through the payment of prime plus two percent, Plaintiffs will be made whole.
2 Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs
3 in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs,
4 and the Court rejects Plaintiffs' reliance on that case.

5 **B. No authority permits the award of profit that allegedly would have been**
6 **earned from a speculative real estate investment under the guise of**
7 **prejudgment "interest"**

8 8. The Court finds that Plaintiffs request an award not of "interest" as defined in
9 Nevada law, but rather "profit" from a hypothetical, and speculative, real estate investment. No
10 authority supports this claim.

11 9. The Court rejects Plaintiffs' request to base prejudgment interest on the expert
12 reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other
13 real estate during the relevant period. The Court finds that the payment of prime plus two percent
14 is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property
15 not been taken.

16 10. "Interest" is defined by Oxford Languages as "money paid regularly at a particular
17 rate for the use of money lent, or for delaying the repayment of a debt." "Profit" is defined by
18 Oxford Languages as "a financial gain, especially the difference between the amount earned and
19 the amount spent in buying, operating, or producing something." "Interest" in this case, therefore,
20 is the return Plaintiffs would have earned if it had received the judgment in 2017 and loaned it to
21 others. The interest rate would logically be a rate competitive with the rates charged by other
22 lenders. That rate would be close to the prime rate. In Nevada, the Legislature has set that rate for
23 eminent domain actions at two percent above the prime lending rate of large banks. Profit, by
24 contrast, would be money that Plaintiffs could earn if it invested the money in a real estate venture.
25 In that case, the investment would "produce" something of value that Plaintiffs could then sell or
26 rent, hence, "profit." Interest, by its definition, is a known amount that must be paid by contract;
27 profit, in contrast, is speculative, and depends on a myriad of factors.

28 11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had
Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the claim was not pure speculation, the return Plaintiffs claims it would have earned is not “interest.” Rather, it is “profit.” If this Court were to conflate “interest” with “profit” in the manner proposed by Plaintiffs, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it had been paid the money at the time of the damage, it could have invested the money in real estate, the stock market, its uncle’s business, or any other unidentified business venture; (b) obtain the testimony of an “expert” predicting that the investment in the hypothetical and unidentified venture would yield a profit of a certain amount; and (c) call the profit prejudgment “interest.” Profits from real estate investment and other businesses, however, are uncertain and generally too speculative to be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776 (2012) (excluding an expert’s lost profit estimates based on a hypothetical increased share of the market). Profit from a business investment lacks the certainty of the prime rate of interest, which is publicized by the federal government. The Nevada Supreme Court has determined that property owners are entitled to prejudgment “interest” on takings judgments, not prejudgment “profit” from speculative business ventures.

C. No Nevada court has awarded prejudgment interest in a taking case at a rate higher than prime plus two percent

12. There is no Nevada precedent for an award of annual prejudgment interest in a taking case greater than two percent above the prime rate and no precedent that prejudgment “interest” could be set by the speculative profit from an investment of the award of just compensation in another property or business venture.

13. In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the District Court for an evidentiary hearing to determine whether a different rate of interest was warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court indicated that the proper rate of prejudgment interest should be based “on the actual market rate of interest during the years in question.” There is no suggestion in *Alper* that the rate of prejudgment

1 interest could be the profit the condemnee could make by investing the award of just compensation
2 during the litigation.

3 14. In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered
4 that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject
5 property was “vacant, unimproved, and held for investment purposes at the time of the taking.” 103
6 Nev. at 623. There is no suggestion that prejudgment “interest” could be interpreted as the value of
7 the profit from a speculative investment of the judgment.

8 15. Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight
9 percent, which was two percent above the prime rate. The Court found that that loss was not fully
10 compensated in the award of just compensation and therefore it was necessary to restore Barsy to
11 his monetary position before NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d
12 at 975-76. Because the statutory prejudgment interest rate has been increased to prime plus two
13 percent after *Barsy*, the Court finds that that rate is consistent with all Nevada authority.

14 **D. Prejudgment interest must be compounded annually**

15 16. NRS 37.175 indicates that the Court has discretion to order annual compounding of
16 prejudgment interest.

17 17. However, the Nevada Constitution, article 1, section 22 (4), states “Just
18 Compensation shall include ... compounded interest.”

19 18. Accordingly, the award of interest shall be compounded annually.

20 **ORDER**

21 Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

22 1. The Motion is hereby GRANTED, IN PART.

23 2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate
24 prescribed by NRS 37.175 of prime rate plus 2 percent.

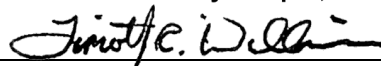
25 3. Accordingly, the prejudgment interest on the judgment of \$34,135,000 at a rate of
26 prime plus two percent and compounded annually from August 2, 2017 through November 18,
27 2021, is \$ \$10,258,953.30. See attached spreadsheet.

28

4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this ___ day of _____, 2022.

Dated this 1st day of April, 2022



DISTRICT COURT JUDGE

MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

Reviewed and Approved as to form and
content By:

McDONALD CARANO LLP

LAW OFFICES OF KERMIT L. WATERS

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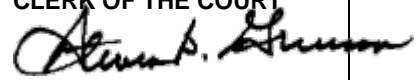
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EXHIBIT 8

EXHIBIT 8



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CITY OF LAS VEGAS, a political subdivision of the
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INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

Case No. A-17-758528-J

DEPT. NO.: XVI

**CITY'S OPPOSITION TO
DEVELOPER'S MOTION TO
DETERMINE PREJUDGMENT
INTEREST**

AND

**DECLARATION OF GEORGE F.
OGILVIE III**

(HEARING REQUESTED)

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

The Developer's motion to determine prejudgment interest ("Motion") requesting \$52,515,866.90 in "interest" is an improper grab for alleged consequential damages. The Court has already awarded the Developer \$34,135,000 for land the Developer bought for \$630,000, which is 54

1 times the Developer's investment.¹ To triple down on that enormous windfall by adding
2 \$52,515,866.90 for a total award of nearly \$87 million—a profit of 13,800 percent on its
3 investment—would be a further, and grave, blow to justice.

4 Under clear Nevada law, a taking claimant is entitled to a rate of prejudgment interest on a
5 taking judgment higher than the statutory rate of prime plus two percent (NRS 37.175) only if the
6 higher rate is necessary to put the claimant in the same monetary position it would have been without
7 the taking. Because the Court has already awarded the Developer 54 times the Developer's
8 investment in the 35-Acre Property, the Developer does not require *any* prejudgment interest, no less
9 interest at the extraordinary rate of 23 percent per year, to be made whole. Without conceding the
10 validity of the judgment, the City contends that the Motion is preposterous and should be denied.
11 Even if the Court limits prejudgment interest to the statutory rate, the Developer will be made far
12 more than whole.

13 Moreover, the Developer requests an award not of “interest” as defined in Nevada law, but
14 rather “profit” from a hypothetical, and completely speculative, real estate investment. No authority
15 supports this outlandish claim. The Developer wants money from the taxpayers equivalent to the
16 gains it alleges it would have made had it invested the \$34 million judgment in other real estate that
17 the Developer claims would have appreciated during this litigation. The Developer ignores the facts
18 and the law in arguing the City should pay 23 percent annual prejudgment interest on the judgment
19 because the Developer was deprived of a real estate investment opportunity.

20 The Developer is not in the business of buying land and selling it for more than it paid. It is
21 in the business of real estate development. The Developer, however, did not miss a real estate
22 development opportunity, even if the City had paid the Developer \$34,135,000 in 2017, because the
23 Developer's actions reveal that it had no intention of developing any real estate. After the Developer
24 bought the 250-acre Badlands in 2015, it segmented the property into four development sites. The
25 City approved the Developer's application to develop 435 luxury housing units on the 17-Acre
26 Property, yet the Developer has declined to build. Similarly, the Developer abandoned any attempt

27
28 ¹ The Developer purchased the entire-acre Badlands for \$4,500,000, or \$18,000 per acre. 35 acres x
\$18,000 = \$630,000.

1 to develop the 35-Acre Property after filing only one application. (The Master Development
2 Agreement the City denied was not an application to develop the 35-Acre Property standing alone.)
3 The Developer also abandoned its proposal to develop the 133-Acre Property without obtaining a
4 City decision on the merits of any application. And the Developer failed to file *any* application to
5 develop the 65-Acre Property. Accordingly, the Developer's claim that it needed the \$34 million
6 judgment in 2017 to engage in real estate development is wholly meritless, given that the Developer
7 has displayed no interest in actually developing the Badlands.

8 The Developer claims that Nevada eminent domain law governs an award of prejudgment
9 interest. Even if that were the case, the Developer should be limited to prejudgment interest at a rate
10 of prime plus two percent as provided by the eminent domain law.

11 **Argument**

12 **I. A rate of prejudgment interest higher than the statutory rate is not necessary to put the** 13 **Developer in the same position monetarily as if the City had not taken the property.**

14 The Developer has consistently contended that the eminent domain law provides the rules and
15 standards for judicial review for this regulatory taking action. *See, e.g.*, Motion at 3-4; Landowner's
16 Motion for Summary Judgment To Determine Take Etc. filed 3/26/21 at 36. The City disagrees with
17 that contention. Even assuming, however, that the Developer is correct, prejudgment interest here
18 would be governed by NRS 37.175, which provides, in relevant part:

19 4. The court shall determine, in a posttrial hearing, the award of interest
20 and award as interest the amount of money which will put the person from
21 whom the property is taken in as good a position monetarily as if the
property had not been taken. The district court shall enter an order
concerning:

- 22 (a) The date on which the computation of interest will commence;
- 23 (b) The rate of interest to be used to compute the award of interest,
24 which must not be less than the prime rate of interest plus 2
25 percent; and
- 26 (c) Whether the interest will be compounded annually.
- 27
- 28

1 The Developer also claims that prejudgment interest at 23 percent per year is required to make
2 the Developer “whole” *i.e.*, in the same position monetarily as before the alleged taking, under
3 Nevada Constitution Article 1, Section 22(4). This section provides:

4 In all eminent domain actions, just compensation shall be defined as that
5 sum of money, necessary to place the property owner back in the same
6 position, monetarily, without any governmental offsets, as if the property
7 had never been taken. Just compensation shall include, but is not limited to,
8 compounded interest and all reasonable costs and expenses actually
9 incurred.

10 The Developer relies on *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 172, 718, 941 P.2d
11 971 (1997), applying an earlier version of NRS 37.175, for the proposition that prejudgment interest
12 should not be the prime rate plus two percent as required by the statute, but rather 23 percent, to make
13 the Developer whole. An interest rate of 23 percent is not remotely necessary to put the Developer in
14 the same position as before the City’s alleged taking. Neither *Barsy* nor the evidence supports this
15 sky-high rate of interest.

16 In *Barsy*, the defendant in an eminent domain action owned a building occupied by two
17 tenants. In 1988, the Nevada Department of Transportation (“NDOT”) identified Barsy’s property
18 for acquisition by eminent domain for a highway construction project. In late 1988 or early 1989, a
19 representative of NDOT informed Barsy’s tenants “of the imminent project and of the relocation costs
20 and benefits which NDOT would pay them. Due to NDOT’s inability to indicate an accurate time
21 frame for the acquisition of the property, the tenants refused to renew their leases upon expiration.”
22 113 Nev. at 715-16, 941 P.2d at 974. “Barsy was unable to attract new tenants because of the
23 uncertainty surrounding the acquisition by NDOT.” *Id.* Barsy presumably had no income from his
24 building after the tenants vacated. The NDOT delayed filing a condemnation action against Barsy
25 until 1992, after Barsy’s two tenants had vacated the premises. 113 Nev. at 716, 941 P.2d at 974.
26 During the entire eminent domain action, Barsy was unable to attract new tenants and suffered lost
27 income. *Id.*
28

1 The District Court awarded Barsy prejudgment interest of eight percent, two percent above
2 the prime rate, rather than the rate specified in the eminent domain law at the time,² to account for
3 Barsy's lost rental income during the eminent domain litigation. 100 Nev. at 178-19, 941 P.2d at 975-
4 76. The higher rate was required, according to the Court, because the award of just compensation did
5 not account for Barsy's total damages due to the loss of his tenants and hence his income from the
6 property prior to and during the pendency of the eminent domain action. The Court found that if the
7 compensation had been paid before the judgment, Barsy could have used it to extend his mortgage,
8 presumably at a lower rate, or invest in other property that would produce a return that would have
9 made up for Barsy's lost income from before and during the litigation. In sum, the higher interest rate
10 was necessary to put Barsy in the same position monetarily as he would have been but for the blight
11 of the eminent domain action on his property. *See* NRS 37.175(4).

12 This case presents the opposite facts to *Barsy*. Here, the Developer has already been made
13 more than whole by the award of just compensation of \$34,135,000, which is 54 times the amount
14 the \$630,000 the Developer paid for the 35-Acre Property ($35 \times \$18,000/\text{acre} = \$630,000$;
15 $\$34,135,000/\$630,000 = 54$).³ This windfall is on top of the City's lifting the PR-OS designation and
16

17 ² At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest
18 paid on one year's United States Treasury bills. NRS 37.175 was later amended to require
19 prejudgment interest at the prime rate plus two percent.

20 ³ Under the Membership Purchase and Sale Agreement between the Peccoles and the
21 Developer, the Developer purchased the 250-acre Badlands golf course for \$7,500,000. Ex. AAA at
22 966. The City established from the Developer's own records and from the deposition of the
23 representative of the Peccoles who sold the Badlands to the Developer that \$3,000,000 of that
24 purchase price was consideration for other real estate interests, putting the price paid for the Badlands
25 at less than \$4,500,000, or less than \$18,000 per acre. Ex. FFFF at 1591-95; Ex. SSSS at 3787-88.
26 This price is not surprising given that both the Developer and the seller knew that the Badlands was
27 subject to the PR-OS designation. Ex. Y at 420; Ex. SSSS at 3780. Although the Developer alleges
28 that the purchase price was \$45 million (Ex. 12 at 456; Ex. 57 at 2-3), it concedes that it has no
documents or other objective evidence to support that claim. Ex. UUU at 1300; Ex. FFFF at 1595-
97; Ex. FFFF-34 at 1998 ("[T]here are no documents within the Plaintiffs custody and control that
state that the aggregate of consideration given to the Peccole family for the former Badlands golf
course property was \$45 million."). In sum, the Developer has no evidence to refute the very clear
documentation and the seller's testimony under oath that the purchase price for the entire 250-acre
Badlands was less than \$4.5 million, putting the purchase price of the 35-Acre Property at less than
\$630,000. Even if the Developer paid \$45 million for the Badlands, the judgment would be 5.5 times
(footnote continued on next page)

upzoning the 17-Acre Property to allow the construction of 435 luxury housing units, which, by the Developer's own evidence, increased the value of the Badlands by \$26 million. Ex. VVV at 1319; Ex. CCCC at 1496.⁴ Accordingly, requiring the City to pay any prejudgment interest, no less \$52 million, would only compound the injustice of the \$34,135,000 award and is not required to make the Developer whole monetarily. The Developer has already been made whole *95 times over* ($\$34,135,000 + \$26,000,000 = \$60,135,000 / \$630,000 = 95$). *Barsy*, therefore, provides no support to the Developer.

The Developer's claim that a rate of prejudgment interest higher than the statutory rate is necessary to put it in the same position monetarily before the City's alleged taking fails not only because the City changed the law to the Developer's significant benefit with regard to the 17-Acre Property and awarded the Developer \$34,135,000 for the alleged value of the 35-Acre Property, but also because the Developer's remaining 233 acres has potential for additional development.⁵ Nevertheless, the Developer has declined to attempt to make any use of this property. In 2018, adhering to Judge Crockett's Order then in effect, the City Council was compelled to strike the Developer's 133-Acre Applications because the Developer had not filed a Major Modification Application. After the Supreme Court reversed the Crockett Order, the City notified the Developer

the purchase price for the 35-Acre Property alone ($\$45,000,000 / 250 \text{ acres} = \$180,000 / \text{acre} \times 35 \text{ acres} = \$6,300,000$; $\$34,135,000 / \$6,300,000 = 5.5$).

⁴ The Nevada Supreme Court reinstated the City's approval of 435 luxury housing units on the 17-Acre Property in August 2020. Ex. DDD at 1014. The City notified the Developer in September 2020 that the City's approval of construction of 435 luxury housing units on the 17-Acre Property is valid and extended the approval for two years. Ex. GGG at 1021. The City notified the Developer again on December 23, 2021, that the approvals for the 435-unit project are valid and that the Developer can start building as soon as it obtains ministerial building permits. *See* Letter attached hereto as **Exhibit A** (unless otherwise noted, all exhibit references in this opposition refer to the City's Appendix of Exhibits). As Judge Herndon found, the Developer's contention that the City has nullified the 17-Acre approvals is frivolous. Ex. CCCC at 1508.

⁵ The Developer admitted in its appeal of its tax assessment that even after the Developer voluntarily closed the golf course in December 2016 (Ex. HHHH at 2181), the Badlands has continuing use, and therefore value, for golfing or golf practice. Ex. LLLL at 2210-11. Even if the Badlands had no use for golf after the Developer shut the golf course down, the Badlands had value as an open space amenity for the parcel as a whole, which is the Peccole Ranch Master Plan area. *See* Ex. XXX at 1392.

that it was free to refile the 133-Acre Applications to allow the City Council to consider the applications on the merits for the first time. Ex. NNN. Despite the fact that the City Council had not disapproved any application to develop the 133-Acre Property on the merits and that the City invited the Developer to resubmit the applications for a decision on the merits, the Developer declined to refile the applications or do anything to develop the 133-Acre Property. The Developer even vigorously opposed the City's request, made after the Nevada Supreme Court overturned the Crockett Order, that Judge Sturman remand the 133-Acre Applications to the City Council for consideration of the applications for the first time on the merits. Ex. AAAAA (Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021).

Similarly, after the Supreme Court's decision reversing Judge Crockett, the City also invited the Developer to file a first application for the 65-Acre Property (the Developer has not filed any applications to develop the 65-Acre Property) and a second application for the 35-Acre Property. Exs. OOO, PPP.⁶ The City recently reiterated its notice to the Developer that it is free to file applications to develop the 65-Acre, 133-Acre, and 35-Acre Properties. *See* Letter attached hereto as Exhibit A. The Developer ignored all such requests. It is clear, therefore, that not only has the Developer been placed in a significantly better position than it occupied prior to the City's alleged taking, but also that it has the potential to be put in a still better position merely by applying for additional development.

Thus, the Developer's claim rings hollow that it was harmed during this litigation by not having on hand either the \$4.5 million it paid for the Badlands or the \$34,135,000 judgment to ostensibly develop an alternative real estate project. The Developer has repeatedly made it clear that it has no interest in developing anything on the Badlands; its only interest is in receiving a massive gift from the public treasury for doing nothing other than litigating. Although the City handed the

⁶ The Developer filed only one application to develop the individual 35-Acre Property. After the City denied that application, the Developer failed to file a second application to develop the 35-Acre Property standing alone. *See* City's Supp. App. Vol. 24 Ex. DDDDD. Accordingly, the Developer's categorical and *Penn Central* regulatory taking claims are unripe. *See State v. Eighth Judicial Dist. Ct.*, 131 Nev. 411, 419-20, 351 P.3d 736, 742 (2015)

Developer a permit for 435 luxury units, the Developer has elected instead to attempt to try to extort \$386 million—the Developer’s total damages claim—from the taxpayers, and now, an additional \$52 million for prejudgment interest. If the Developer had elected to develop the Badlands instead of filing these regulatory taking actions, it would have no complaint that it was denied access to the City’s funds in 2017.

II. No Nevada Court has awarded prejudgment interest at rate higher than prime plus two percent

There is no Nevada precedent for an award of annual prejudgment interest in a taking case greater than two percent above the prime rate and no precedent that prejudgment “interest” could be set by the speculative profit from an investment of the award of just compensation in another property or business venture. Twenty three percent would be three times the statutory rate and would be unconscionable.

In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the District Court for an evidentiary hearing to determine whether a different rate of interest was warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court indicated that the proper rate of prejudgment interest should be based “on the actual market rate of interest during the years in question.” There is no suggestion in *Alper* that the rate of prejudgment interest could be the profit the condemnee could make by investing the award of just compensation during the litigation.

In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject property was “vacant, unimproved, and held for investment purposes at the time of the taking.” 103 Nev. at 623. There is no suggestion that prejudgment “interest” could be interpreted as the value of the profit from a speculative investment of the judgment.

Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight percent, which was two percent above the prime rate. The Court found that a rate higher than the statutory rate (at that time) was warranted to make up for Barsy’s precondemnation and condemnation damage;

1 namely, the loss of his tenants. The Court found that that loss was not fully compensated in the award
2 of just compensation and therefore it was necessary to restore Barsy to his monetary position before
3 NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d at 975-76. Because the statutory
4 prejudgment interest rate has been increased to prime plus two percent after *Barsy*, the Court should
5 find that that rate is consistent with all Nevada authority.

6 **III. The Developer does not seek interest on the judgment, but rather a windfall profit from**
7 **a speculative investment**

8 As demonstrated above, the exorbitant rate of prejudgment interest claimed by the Developer
9 is not necessary to put the Developer in its prior monetary position. Moreover, it is clear that the
10 Developer's lack of access to the judgment in 2017 did not prevent its development of the Badlands,
11 because the Developer has no intention of actually developing the Badlands. The Developer's
12 objective is to use the courts to effect a massive transfer of funds from the public treasury to the
13 Developer. Putting aside these facts, however, the Developer's claim to 23 percent annual
14 prejudgment interest is based on a perversion of the concept of interest. The Developer seeks lost
15 profits from a speculative investment under the guise of "interest." No authority supports the
16 Developer's claim.

17 "Interest" is defined by Oxford Languages as "money paid regularly at a particular rate for
18 the use of money lent, or for delaying the repayment of a debt." "Profit" is defined by Oxford
19 Languages as "a financial gain, especially the difference between the amount earned and the amount
20 spent in buying, operating, or producing something." "Interest" in this case, therefore, is the return
21 the Developer would have earned if it had received the judgment in 2017 and loaned it to others. The
22 interest rate would logically be a rate competitive with the rates charged by other lenders. That rate
23 would be close to the prime rate. In Nevada, the legislature has set that rate for eminent domain
24 actions at two percent above the prime lending rate of large banks. Profit, by contrast, would be
25 money that the Developer could earn if it invested the money in a real estate venture. In that case, the
26 investment would "produce" something of value that the Developer could then sell or rent, hence,
27 "profit." Interest, by its definition, is a known amount that must be paid by contract; profit, in contrast,
28 is speculative, and depends on a myriad of factors.

Here, the Developer relies on portions of the market data obtained by its consultants to concoct a hypothetical real estate investment project that, if started in 2017, would have made it a profit of 23 percent in every year between 2017 and the present day. This claim is pure speculation. But more important, it is not “interest.” It is “profit.” It has no place in determination of prejudgment interest.

If the Court were to conflate “interest” with “profit” in the manner proposed by the Developer, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it had been paid the money at the time of the damage, it could have invested the money in real estate, the stock market, its uncle’s business, or any other unidentified business venture; (b) obtain the testimony of an “expert” predicting that the investment in the hypothetical and unidentified venture would yield a profit of a certain amount; and (c) call the profit prejudgment “interest.” Profits from real estate investment and other businesses, however, are uncertain and generally too speculative to be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776 (2012) (excluding an expert’s lost profit estimates based on a hypothetical increased share of the market). Profit from a business investment is nowhere close to the certainty of the prime rate of interest, which is publicized by the federal government. The Nevada Supreme Court has determined that property owners are entitled to prejudgment “interest” on takings judgments, not prejudgment “profit” from speculative business ventures.

In the instant case, the Developer has submitted opinions of its consultants dated December 8, 2021, that if the Developer had access to the judgment in 2017 and invested in land in Las Vegas, the Developer would have made a profit of almost double the amount of the judgment by December 2021, and would continue to make a profit in the future. This opinion is rank speculation and should not be considered. If the Court considers the opinions of the Developer’s consultants to be relevant, however, the City should be given the opportunity to retain its own consultants to rebut their testimony.

IV. The prejudgment interest rate should be limited to \$10,632,369.64

As stated in the attached Declaration of George F. Ogilvie III, the prejudgment interest on the judgment of \$34,135,000 at the statutory rate prescribed by NRS 37.175 and NRS 99.040 calculated over the period August 2, 2017 through February 1, with interest compounded annually,

1 would be \$10,730,468.22. *Id.* ¶ 4 and Exs. A and B. Without conceding the erroneous award of
2 damages in this matter, the City submits the Court should deny the Developer's motion and award
3 \$10,730,468.22 in prejudgment interest.

4 **Conclusion**

5 The Developer's Motion should be denied. The prejudgment interest on the \$34,135,000
6 judgment should be \$10,730,468.22.

7 Dated this 23rd day of December, 2021.

8 McDONALD CARANO LLP

9 By: /s/ George F. Ogilvie III
10 George F. Ogilvie III (NV Bar No. 3552)
11 Christopher Molina (NV Bar No. 14092)
12 2300 W. Sahara Avenue, Suite 1200
13 Las Vegas, Nevada 89102
14 Telephone: (702) 873-4100
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ltarpey@smwlaw.com

Attorneys for City of Las Vegas

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

2. I make this declaration in support of the City's Opposition to the Developer's Motion to Determine Prejudgment Interest.

When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due.

4. Attached hereto as **Exhibit B** is the table of prime rates as ascertained by the Nevada Commissioner of Financial Institutions required to be used in accordance with NRS 99.040(1).

5. NRS 37.175 governs the prejudgment rate of interest in eminent domain actions. Applying the NRS 37.175 and NRS 99.040.(1) statutory rate that would accrue on \$34,135,000 judgment in this case, at an annual rate of prime plus two percent, compounded annually, from August 2, 2017 through February 1, 2022, the total prejudgment interest is \$10,730,468.22, as reflected in the spreadsheet attached hereto as **Exhibit C**.

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

DATED this 23rd day of December, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 23rd day of December, 2021, I caused a true and correct copy of the foregoing **CITY'S OPPOSITION TO DEVELOPER'S MOTION TO DETERMINE PREJUDGMENT INTEREST AND DECLARATION OF GEORGE F. OGILVIE III** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

EXHIBIT “A”



**LAS VEGAS
CITY COUNCIL**

CAROLYN G. GOODMAN
Mayor

STAVROS S. ANTHONY
Mayor Pro Tem

MICHELE FIORE
CEDRIC CREAR
BRIAN KNUDSEN
VICTORIA SEAMAN
OLIVIA DIAZ

JORGE CERVANTES
City Manager

DEPARTMENT OF PLANNING

SETH T. FLOYD

DIRECTOR OF
COMMUNITY DEVELOPMENT

CITY HALL

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cityoflasvegas
lasvegasnevada.gov

By Certified Mail and Email

December 23, 2021

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101
jim@kermittwaters.com

**RE: Entitlements on 17-Acre Property; Applications for
development of other segments of former Badlands Golf
Course**

Dear Mr. Leavitt:

17-Acre Entitlements

On March 26, 2020, the City sent you a letter concerning the Nevada Supreme Court's Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Order"). The Order reversed a decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J, which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 housing units on a 17-acre portion of the former Badlands golf course in the Peccole Ranch Master Plan ("PRMP") area. On September 1, 2020, the City sent you a letter noting that the remittitur in *Seventy Acres, LLC v. Binion* had been issued on August 24, 2020. The September 1, 2020 letter notified you that (a) the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) were reinstated, (b) the City Council's February 2017 action approving all discretionary entitlements required for your client's 435-unit project on the 17-acre portion of the Badlands are valid and will remain so for two years after the date of the remittitur, and (c) because no more discretionary entitlements are required to develop your client's project, the City will accept applications for any ministerial permits required to begin construction pursuant to the approved discretionary entitlements and the conditions included in them.

Since the City's March 26, 2020 letter, the City has received no applications for ministerial permits or other communications from you regarding the 435-unit project. This is to notify you, again, that the City will accept applications for any ministerial permits required to begin construction of the 435-unit project pursuant to the approved discretionary entitlements and the conditions included in them. As indicated in the City's September 1, 2020 letter, however, the entitlement to build the 435-unit project will expire two years from September 1, 2020, on August 31, 2022.

133-Acre Applications

While Judge Crockett's Order was in effect, the City followed the Court's directive and required a major modification of the PRMP to redevelop any part of the former Badlands golf course. This included approximately 133 acres of land owned by one of EHB's other subsidiaries, 180 Land Company, LLC, for which the City Council considered entitlement applications on May 16, 2018 ("the 133-Acre Applications"). The 133-Acre Applications consisted of GPA-72220, WVR-72004, SDR-72005, TMP-72006, WVR-72007, SDR-72008, TMP-72009, WVR-72010, SDR-72011, and TMP-72012. The City Council struck the 133-Acre Applications from its agenda as incomplete for two reasons. First, the 133-Acre Applications did not include an application for a major modification, as Judge Crockett's Order required. Second, the application for a general plan amendment violated the City's Unified Development Code §19.16.030(D) because it was duplicative of one that had been filed within the previous 12-month period and was therefore time-barred.

On March 26, 2020, the City sent you a letter notifying you that the Supreme Court has reversed Judge Crockett's Order, more than a year had passed from the original GPA request, and the City Council was then permitted by law to consider the 133-Acre Applications on their merits. Since March 2020, the City has received no applications or communication from your client regarding reconsideration of the 133-Acre Applications by the City Council on the merits. For the City Council to consider the 133-Acre Applications on the merits, 180 Land needs to contact the Department of Planning and request that the 133-Acre Applications be heard on the next available City Council agenda. No major modification need be filed. The City will waive any applicable fees for the reconsideration of your application.

65-Acre Property

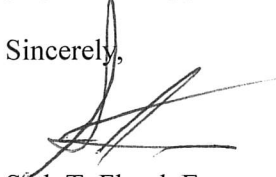
On March 26, 2020, the City sent you a letter notifying you of the Reversal Order and that your client had not submitted any applications or requests for entitlements to redevelop 65 acres of land owned by 180 Land Company, LLC, a subsidiary of your client EHB Properties ("65-Acre Property"). If your client wishes to file applications to redevelop the 65-Acre Property, your client may submit the applications to the City Planning Department. As a result of the reversal of the Crockett Order, your client does not need to submit a major modification application as part of its entitlement package.

35-Acre Property Applications

The City also sent you a letter dated April 15, 2020 regarding entitlements to redevelop 35 acres of land owned by one of EHB Properties, LLC's other subsidiaries, 180 Land Company, LLC ("35-Acre Property"). 180 Land filed one set of applications for entitlements to develop the 35 Acres (WVR-68480, SDR-68481, TMP-68482), which the City Council denied. Under the Reversal Order, and because 180 Land only submitted a single set of requests for entitlements, the City is now able to consider new applications to develop the 35 Acres without any requirement for a major modification application. If your client wishes to file additional applications to redevelop the 35-Acre Property, your client may submit the applications to the City Planning Department.

If you have any questions about the application process for development of any of the four Badlands parcels, please do not hesitate to contact me at (702) 229-6184. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to develop the 435-unit project or to apply to develop the other three development sites in the Badlands.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth T. Floyd', with a stylized flourish extending to the right.

Seth T. Floyd, Esq.
Director of Community Development

STF:mre

CERTIFIED MAIL NO. 7021-2720-0001-0127-9513

cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)
Phil Byrnes, Deputy City Attorney

EXHIBIT “B”

PRIME INTEREST RATE

NRS 99.040(1) requires:

"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due,"^{*}

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2021	3.25%	July 1, 2020	3.25%
January 1, 2020	4.75%	July 1, 2019	5.50%
January 1, 2019	5.50%	July 1, 2018	5.00%
January 1, 2018	4.50%	July 1, 2017	4.25%
January 1, 2017	3.75%	July 1, 2016	3.50%
January 1, 2016	3.50%	July 1, 2015	3.25%
January 1, 2015	3.25%	July 1, 2014	3.25%
January 1, 2014	3.25%	July 1, 2013	3.25%
January 1, 2013	3.25%	July 1, 2012	3.25%
January 1, 2012	3.25%	July 1, 2011	3.25%
January 1, 2011	3.25%	July 1, 2010	3.25%
January 1, 2010	3.25%	July 1, 2009	3.25%
January 1, 2009	3.25%	July 1, 2008	5.00%
January 1, 2008	7.25%	July 1, 2007	8.25%
January 1, 2007	8.25%	July 1, 2006	8.25%
January 1, 2006	7.25%	July 1, 2005	6.25%
January 1, 2005	5.25%	July 1, 2004	4.25%
January 1, 2004	4.00%	July 1, 2003	4.00%
January 1, 2003	4.25%	July 1, 2002	4.75%
January 1, 2002	4.75%	July 1, 2001	6.75%
January 1, 2001	9.50%	July 1, 2000	9.50%
January 1, 2000	8.25%	July 1, 1999	7.75%
January 1, 1999	7.75%	July 1, 1998	8.50%
January 1, 1998	8.50%	July 1, 1997	8.50%
January 1, 1997	8.25%	July 1, 1996	8.25%
January 1, 1996	8.50%	July 1, 1995	9.00%
January 1, 1995	8.50%	July 1, 1994	7.25%
January 1, 1994	6.00%	July 1, 1993	6.00%
January 1, 1993	6.00%	July 1, 1992	6.50%
January 1, 1992	6.50%	July 1, 1991	8.50%
January 1, 1991	10.00%	July 1, 1990	10.00%
January 1, 1990	10.50%	July 1, 1989	11.00%
January 1, 1989	10.50%	July 1, 1988	9.00%
January 1, 1988	8.75%	July 1, 1987	8.25%
January 1, 1987	Not Available		

^{*} Attorney General Opinion No. 98-20:

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is

EXHIBIT “C”

Interest Calculator / COMPOUNDING

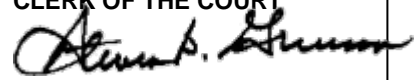
Begin Date: 8/2/2017

Judgment Amount \$34,135,000.00

Amount	Start date	End date	Days	Rate	Daily Rate	Interest	Daily Accrual
\$34,135,000.00	August 2, 2017	December 31, 2017	152	5.25%	0.01%	\$746,293.97	\$4,909.83
\$34,135,000.00	January 1, 2018	June 30, 2018	181	6.50%	0.02%	\$1,100,269.25	\$6,078.84
\$34,135,000.00	July 1, 2018	August 1, 2018	32	7.00%	0.02%	\$209,486.03	\$6,546.44
\$36,191,049.25	August 2, 2018	December 31, 2018	152	7.00%	0.02%	\$1,054,993.87	\$6,940.75
\$36,191,049.25	January 1, 2019	June 30, 2019	181	7.50%	0.02%	\$1,346,009.57	\$7,436.52
\$36,191,049.25	July 1, 2019	August 1, 2019	32	7.50%	0.02%	\$237,968.54	\$7,436.52
\$38,830,021.23	August 2, 2019	December 31, 2019	152	7.50%	0.02%	\$1,212,773.27	\$7,978.77
\$38,830,021.23	January 1, 2020	June 30, 2020	182	6.75%	0.02%	\$1,306,922.77	\$7,180.89
\$38,830,021.23	July 1, 2020	August 1, 2020	32	5.25%	0.01%	\$178,724.48	\$5,585.14
\$41,528,441.75	August 2, 2020	December 31, 2020	152	5.25%	0.01%	\$907,936.89	\$5,973.27
\$41,528,441.75	January 1, 2021	June 30, 2021	181	5.25%	0.01%	\$1,081,161.69	\$5,973.27
\$41,528,441.75	July 1, 2021	August 1, 2021	32	5.25%	0.01%	\$191,144.61	\$5,973.27
\$43,708,684.94	August 2, 2021	February 1, 2022	184	5.25%	0.01%	\$1,156,783.28	\$6,286.87
Judgment Balance	\$44,865,468.22					\$10,730,468.22	

EXHIBIT 9

EXHIBIT 9



1 **NOE**
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9 *Attorneys for Plaintiff Landowners*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 180 LAND CO., LLC, a Nevada limited liability
13 company, FORE STARS Ltd., DOE
14 INDIVIDUALS I through X, ROE
CORPORATIONS I through X, and ROE
LIMITED LIABILITY COMPANIES I through
X,

15 Plaintiffs,

16 vs.

17 CITY OF LAS VEGAS, political subdivision of
18 the State of Nevada, ROE government entities I
19 through X, ROE CORPORATIONS I through X,
20 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:

**FINAL JUDGMENT IN INVERSE
CONDEMNATION**

21 **PLEASE TAKE NOTICE** that the Final Judgment in Inverse Condemnation
22 (“Judgment”) in the above referenced matter was entered on the 18th day of April, 2022.
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A copy of the Judgment is attached hereto.

DATED this 18th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

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Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

FINAL JUDGMENT IN INVERSE CONDEMNATION

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter “Landowners”) appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners’ corporate counsel Elizabeth Ghanem, Esq., and with the City

1 of Las Vegas (hereinafter “the City”) appearing through its counsel, George F. Ogilvie III, Esq.
2 of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City
3 Attorney’s Office and thereafter this Court entered Findings of Fact and Conclusions of Law on
4 Just Compensation, notice of entry occurring on November 24, 2021. Thereafter, the Court
5 entertained briefing and oral argument on all relevant post trial issues and entered the following
6 Orders: 1) Order Granting in Part and Denying in Part the City of Las Vegas’ Motion to Retax
7 Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting
8 Plaintiff Landowners’ Motion for Reimbursement of Property Taxes, notice of entry occurring
9 on February 17, 2022; 3) Order Granting Plaintiff Landowners’ Motion for Attorney Fees in Part
10 and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and
11 Conclusions of Law and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of
12 entry occurring on April 1, 2022.

13 Based on the referenced orders and findings of fact and conclusions of law having been
14 entered, pursuant to NRCP Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of
15 the Landowners and against the City of Las Vegas as follows:

16 The City shall pay to the Landowners for the taking of the 35 Acre Property **\$34,135,000.**

17 The City shall pay to the Landowners’ attorney fees in the amount of **\$2,468,751.50.**

18 The City shall pay to the Landowners’ costs in the amount of **\$274,445.16.**

19 The City shall reimburse the Landowners’ real estate taxes paid on the 35 Acre Property
20 in the amount of **\$976,889.38.**

21 The City shall pay prejudgment interest in the amount of **\$10,258,953.30** for interest up to
22 November 18, 2021, and shall pay interest on the judgment for any periods after November 18,
23 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1),
24 which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law
25 and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of entry occurring on April
26 1, 2022.
27
28

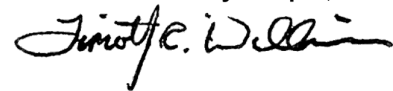
1 These sums assessed against the City and in favor of the Landowners shall be paid within
2 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions
3 of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting
4 Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of
5 entry occurring on February 10, 2022.
6

7 Interest will continue to accrue on the final judgment until satisfied.

8 The Landowners shall serve all parties written notice of entry of final judgment.
9

10 Dated this ____ day of April, 2022.

Dated this 18th day of April, 2022



93A 140 093E 36D8
Timothy C. Williams
District Court Judge

MH

14 Respectfully Submitted By:

Content Reviewed and Approved By:

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

MCDONALD CARANO LLP

17 /s/ James J. Leavitt

Did not respond

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