

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.

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. 84345

Electronically Filed  
Aug 21 2022 09:43 p.m.  
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**JOINT APPENDIX,  
VOLUME NO. 9**

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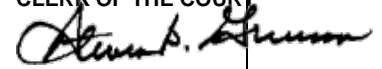
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*Attorneys for Plaintiff Landowners*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**NOTICE OF ENTRY OF ORDER  
GRANTING THE LANDOWNERS'  
COUNTERMOTION TO  
AMEND/SUPPLEMENT THE  
PLEADINGS; DENYING THE CITY'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS ON DEVELOPER'S  
INVERSE CONDEMNATION CLAIMS;  
AND DENYING LANDOWNERS'  
COUNTERMOTION FOR JUDICIAL  
DETERMINATION OF LIABILITY ON  
THE LANDOWNERS' INVERSE  
CONDEMNATION CLAIMS**

1       **PLEASE TAKE NOTICE** that on the 15<sup>th</sup> day of May, 2019, an Order Granting the  
2 Landowners' Countermotion to Amend/Supplement the Pleadings; Denying the City's Motion for  
3 Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and Denying the  
4 Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse  
5 Condemnation Claims, was entered in the above-captioned case, a copy of which is attached hereto.

6       DATED this 15<sup>th</sup> day of May, 2019.

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

8       By: /s/ Autumn Waters

9                               KERMIT L. WATERS, ESQ., NBN 2571  
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15                              *Attorneys for Plaintiff*

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 15<sup>th</sup> day of May, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER GRANTING THE LANDOWNERS' COUNTERMOTION TO**  
5 **AMEND/SUPPLEMENT THE PLEADINGS; DENYING THE CITY'S MOTION FOR**  
6 **JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION**  
7 **CLAIMS; AND DENYING THE LANDOWNERS' COUNTERMOTION FOR JUDICIAL**  
8 **DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE**  
9 **CONDEMNATION CLAIMS** was made by electronic means pursuant to EDCR 8.05(a) and  
10 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing  
11 system, with the date and time of the electronic service substituted for the date and place of deposit  
12 in the mail and addressed to each of the following:

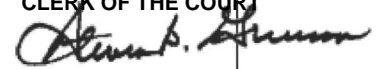
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24 /s/ Evelyn Washington  
25 An Employee of the Law Offices of Kermit L. Waters



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of  
the State of Nevada, ROE government entities I  
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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 The Landowners'  
Countermotion to Amend/Supplement the  
Pleadings; DENYING The City's Motion  
for Judgment on the Pleadings on  
Developer's Inverse Condemnation Claims;  
and DENYING the Landowners'  
Countermotion for Judicial Determination  
of Liability on the Landowners' Inverse  
Condemnation Claims**

Hearing Date: March 22, 2019  
Hearing Time: 1:30 p.m.

04-24-19P02:49 RCVD

**ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims**

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenor's (from the Petition for Judicial Review<sup>1</sup>) Oppositions and the Landowners Replies<sup>2</sup> to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenor's (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

**I. The Landowners' Countermotion to Supplement/Amend the Pleadings**

The Landowners moved this Court to supplement/amend their pleadings. The Landowners attached a copy of their proposed amended/supplemental complaint to their request pursuant to NRCP Rule 15. This matter is in its early stages, as discovery has yet to commence so no prejudice

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<sup>1</sup> The Intervenor's have not moved nor been granted entry into this case dealing with the Landowners' inverse condemnation claims, they have moved and been granted entry into the severed petition for judicial review.

<sup>2</sup> The Landowners withdrew this Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time, accordingly, no arguments were taken nor rulings issued.

1 or delay will result in allowing the amendment. The City argues that permitting the amendment  
2 would result in impermissible claim splitting as the Landowners currently have other litigation  
3 pending which also address the City action complained of in the amended/supplemental complaint.  
4 However, those other pending cases deal with other property also allegedly affected by the City  
5 action and do not seek relief for the property at issue in this case.

6 Leave to amend should be freely given when justice so requires. NRCP Rule 15(a)(2);  
7 Adamson v. Bowker, 85 Nev. 115, 121 (1969). Absent undue delay, bad faith or dilatory motive on  
8 the part of the movant, leave to amend should be freely given. Stephens v. Southern Nev. Music Co.,  
9 89 Nev. 104 (1973). Justice requires leave to amend under the facts of this case and there has been  
10 no showing of bad faith or dilatory motive on the part of the Landowners.

11 Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion to  
12 Supplement/Amend the Pleadings is **GRANTED**. The Landowners may file the amended /  
13 supplemental complaint in this matter.

14 **II. The City's Motion for Judgment on the Pleadings on Developer's Inverse  
Condemnation Claims**

15 The City moved this Court for judgment on the pleadings on the Landowners' inverse  
16 condemnation claims pursuant to NRCP 12(c). Only under rare circumstances is dismissal proper,  
17 such as where plaintiff can prove no set of facts entitling him to relief. Williams v. Gerber Prod.,  
18 552 F.3d 934, 939 (9<sup>th</sup> Cir. 2008). The Nevada Supreme Court has held that a motion to dismiss "is  
19 subject to a rigorous standard of review on appeal," that it will recognize all factual allegations as  
20 true, and draw all inferences in favor of the plaintiff. Buzz Stew, LLC v. City of North Las Vegas,  
21 181 P.3d 670, 672 (2008). The Nevada Supreme Court rejected the reasonable doubt standard and  
22 held that a complaint should be dismissed only where it appears beyond a doubt that the plaintiff  
23 could prove no set of facts, which, if true, would entitle the plaintiff to relief. Id., see also fn. 6.  
24 Additionally, Nevada is a notice pleading state. NRCP Rule 8; Liston v. Las Vegas Metropolitan  
25 Police Dep't, 111 Nev. 1575 (1995) (referring to an amended complaint, deposition testimony,  
26 interrogatory responses and pretrial demand statement as a basis to provide notice of facts that  
27 support a claim). Moreover, the Nevada Supreme Court has adopted the "policy of this state that  
28

cases be heard on the merits, whenever possible.” Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

**A. The Landowners’ Inverse Condemnation Claims**

The Landowners have asserted five (5) separate inverse condemnation claims for relief, a Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking and, finally, a Temporary Taking. Each of these claims is a valid claim in the State of Nevada:

Categorical Taking - “Categorical [taking] rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical use of her property.” McCarran Intern. Airport v. Sisolak, 122 Nev. 645, 663, 137 P. 3d 1110, 1122 (2006).

Penn Central Regulatory Taking - A Penn Central taking analysis examines three guideposts: the regulations economic impact on the property owner; the regulations interference with investment backed expectations; and, the character of the government action. Sisolak, supra, at 663.

Regulatory Per Se Taking - A Per Se Regulatory Taking occurs where government action “preserves” property for future use by the government. Sisolak, supra, at 731.

Non-regulatory Taking / De Facto Taking - A non-regulatory/de facto taking occurs where the government has “taken steps that directly and substantially interfere with [an] owner’s property rights to the extent of rendering the property unusable or valueless to the owner.” State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015). “To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely ‘taken’ in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights.” Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9<sup>th</sup> Cir. Ct. App. 1977).

Temporary Taking - “[T]emporary deprivations of use are compensable under the Taking Clause.” Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1011-12 (1992); Arkansas Game & Fish Comm’s v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012).

1 Here, the Landowners have alleged facts and provided documents sufficient to sustain these  
2 inverse condemnation claims as further set forth herein, which is sufficient to defeat the City's  
3 motion for judgment on the pleadings.

4 **B. The Landowners' Property Interest**

5 "An individual must have a property interest in order to support a takings claim....The term  
6 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the  
7 property." McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110, 1119 (2006). "It is well established  
8 that an individual's real property interest in land supports a takings claim." ASAP Storage, Inc. v.  
9 City of Sparks, 123 Nev. 639, 645, 173 P.3d 734, 738 (2007) *citing to Sisolak and Clark County v.*  
10 Alper, 100 Nev. 382 (1984). Meaning a landowner merely need allege an ownership interest in the  
11 land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners  
12 have made such an allegation.

13 The Landowners assert that they have a property interest and vested property rights in the  
14 Subject Property for the following reasons:

15 1) The Landowners assert that they own approximately 250 acres of real property  
16 generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard  
17 within the City of Las Vegas, Nevada; all of which acreage is more particularly described as  
18 Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005;  
19 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-  
20 202-001 ("250 Acre Residential Zoned Land"). This action deals specifically and only with Assessor  
21 Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres" and/or "Landowners'  
22 Property" or "Property").

23 2) The Landowners assert that they had a property interest in the 35 Acre Property; that  
24 they had the vested right to use and develop the 35 Acre Property; that the hard zoning on the 35  
25 Acre Property has always been for a residential use, including R-PD7 (Residential Planned  
26 Development District – 7.49 Units per Acre). The City does not contest that the hard zoning on the  
27 Landowners' Property has always been R-PD7.

1           3)     The Landowners assert that they had the vested right to use and develop the 35 Acre  
2 Property up to a density of 7.49 residential units per acre as long as the development is comparable  
3 and compatible with the existing adjacent and nearby residential development. The Landowners'  
4 property interest and vested property rights in the 35 Acre Property are recognized under the United  
5 States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

6           4)     The Landowners assert that their property interest and vested right to use and develop  
7 the 35 Acre Property is further confirmed by the following:

- 8           a)     On March 26, 1986, a letter was submitted to the City Planning Commission  
9 requesting zoning on the entire 250 Acre Residential Zoned Land (which  
10 includes the 35 Acre Property) and the zoning that was sought was R-PD7 as  
11 it allows the developer flexibility and shows that developing the 35 Acre  
12 Property for a residential use has always been the intent of the City and all  
13 prior owners.
- 14           b)     The City has confirmed the Landowners' property interest and vested right  
15 to use and develop the 35 Acre Property residentially in writing and orally in,  
16 without limitation, 1996, 2001, 2014, 2016, and 2018.
- 17           c)     The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which  
18 specifically and further demonstrates that the R-PD7 Zoning was codified and  
19 incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As  
20 part of this action, the City "repealed" any prior City actions that could  
21 conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances  
22 or parts of ordinances or sections, subsections, phrases, sentences, clauses or  
23 paragraphs contained in the Municipal Code of the City of Las Vegas,  
24 Nevada, 1983 Edition, in conflict herewith are hereby repealed."
- 25           d)     At a November 16, 2016, City Council hearing, Tom Perrigo, the City  
26 Planning Director, confirmed the 250 Acre Residential Zoned Land (which  
27 includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49  
28 residential units per acre.
- e)     Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre  
Residential Zoned Land (which includes the 35 Acre Property) is hard zoned  
R-PD7, which allows up to 7.49 residential units per acre.
- f)     The City Planning Staff has also confirmed the 250 Acre Residential Zoned  
Land (which includes the 35 Acre Property) is hard zoned R-PD7, which  
allows up to 7.49 residential units per acre.
- g)     The City's own 2020 master plan confirms the 250 Acre Residential Zoned  
Land (which includes the 35 Acre Property) is hard zoned R-PD7, which  
allows up to 7.49 residential units per acre.
- h)     The City issued two formal Zoning Verification Letters dated December 20,  
2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned  
Land (which includes the 35 Acre Property).

- 1 i) The City confirmed the Landowners' vested right to use and develop the 35  
2 Acres prior to the Landowners' acquisition of the 35 Acres and the  
3 Landowners materially relied upon the City's confirmation regarding the  
4 Subject Property's vested zoning rights.
- 5 j) The City has approved development on approximately 26 projects and over  
6 1,000 units in the area of the 250 Acre Residential Zoned Land (which  
7 includes the 35 Acre Property) on properties that are similarly situated to the  
8 35 Acre Property further establishing the Landowners' property interest and  
9 vested right to use and develop the 35 Acre Property.
- 10 k) The City has never denied an application to develop in the area of the 250  
11 Acre Residential Zoned Land (which includes the 35 Acre Property) on  
12 properties that are similarly situated to the 35 Acre Property further  
13 establishing the Landowners' property interest and vested right to use and  
14 develop the 35 Acre Property.
- 15 l) There has been a judicial finding that the Landowners have the "right to  
16 develop" the 35 Acre Property.
- 17 m) The Landowners' property interest and vested right to use and develop the  
18 entire 250 Acre Residential Zoned Land (which includes the 35 Acre  
19 Property) is so widely accepted that even the Clark County tax Assessor has  
20 assessed the property as residential for a value of approximately \$88 Million  
21 and the current Clark County website identifies the 35 Acre Property "zoned"  
22 R-PD7.
- 23 n) There have been no other officially and properly adopted plans or maps or  
24 other recorded document(s) that nullify, replace, and/or trump the  
25 Landowners' property interest and vested right to use and develop the 35  
26 Acre Property.
- 27 o) Although certain City of Las Vegas planning documents show a general plan  
28 designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre  
Property, that designation was placed on the Property by the City without the  
City having followed its own proper notice requirements or procedures.  
Therefore, any alleged PR-OS on any City planning document is being shown  
on the 35 Acre Property in error. The City's Attorney confirmed the City  
cannot determine how the PR-OS designation was placed on the Subject  
Property.
- p) The 35 Acre Property has always been zoned and land use planned for a  
residential use. The City has argued that the Peccole Concept Plan applies  
to the Landowners' 35 Acre Property and that plan has always identified the  
specific 35 Acre Property in this case for a residential use. The land use  
designation where the 35 Acre Property is located is identified for a  
residential use under the Peccole Concept Plan and no major modification of  
Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre  
Property for a residential use.
- Any determination of whether the Landowners have a "property interest" or the vested right to use  
the 35 Acre Property must be based on eminent domain law, rather than the land use law. The  
Nevada Supreme Court in both the Sisolak and Schwartz v. State, 111 Nev. 998, fn 6 (1995)

1 decisions held that all property owners in Nevada, including the Landowners in this case, have the  
2 vested right to use their property, even if that property is vacant, undeveloped, and without City  
3 approvals. The City can apply “valid” zoning regulations to the property to regulate the use of the  
4 property, but if those zoning regulations “rise to a taking,” Sisolak at fn 25, then the City is liable  
5 for the taking and must pay just compensation.

6 Here, the Landowners have alleged facts and provided documents sufficient to show they  
7 have a property interest in and a vested right to use the 35 Acre Property for a residential use, which  
8 is sufficient to defeat the City’s motion for judgment on the pleadings.

9 **C. City Actions the Landowners Claim Amount to A Taking**

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

23 The City has argued that the Court is limited to the record before the City Council in  
24 considering the Landowners’ applications and cannot consider all the other City action towards the  
25 Subject Property, however, the City cites the standard for petitions for judicial review, not inverse  
26 condemnation claims. A petition for judicial review is one of legislative grace and limits a court’s  
27 review to the record before the administrative body, unlike an inverse condemnation, which is of  
28

1 constitutional magnitude and requires all government actions against the property at issue to be  
2 considered.

3 The Landowners assert that the following City actions individually and/or cumulatively  
4 amount to a taking of their Property:

5 **1. City Denial of the 35 Acre Property Applications.**

6 The Landowners submitted complete applications to develop the 35 Acre Property for a  
7 residential use consistent with the R-PD7 hard zoning. *Exhibit 22: App LO 00000932-949*. The City  
8 Planning Staff determined that the proposed residential development was consistent with the R-PD7  
9 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified  
10 Development Code (Title 19), and appropriately recommended approval. *Exhibit 22: 4 App LO*  
11 *00000932-949 and Exhibit 23: 4 App LO 00000950-976*. Tom Perrigo, the City Planning Director,  
12 stated at the hearing on the Landowners' applications that the proposed development met all City  
13 requirements and should be approved. *Exhibit 5: 2 App LO 00000376 line 566 - 377 line 587*. The  
14 City Council denied the 35 Acre Property applications, stating as the sole basis for denial that the  
15 City did not want piecemeal development and instead wanted to see the entire 250 Acre Residential  
16 Zoned Land developed under one Master Development Agreement ("MDA").

17 **2. City Action #2: Denial of the Master Development Agreement (MDA).**

18 To comply with the City demand to have one unified development, for over two years  
19 (between July, 2015, and August 2, 2017), the Landowners worked with the City on an MDA that  
20 would allow development on the 35 Acre Property along with all other parcels that made up the 250  
21 Acre Residential Zoned Land. *Exhibit 25: 5 App LO 00001132-1179*. The Landowners complied  
22 with each and every City demand, making more concessions than any developer that has ever  
23 appeared before this City Council. A non-exhaustive list of the Landowners' concessions, as part  
24 of the MDA, include: 1) donation of approximately 100 acres as landscape, park equestrian facility,  
25 and recreation areas (*Exhibit 29: 8 App LO 00001836; Exhibit 24: 4 App LO 00000998 lines 599-*  
26 *601; Exhibit 30: 8 App LO 00001837*); 2) building two new parks, one with a vineyard; (Id.) and,  
27 3) reducing the number of units, increasing the minimum acreage lot size, and reducing the number  
28 and height of towers. *Exhibit 5: 2 App LO 00000431 lines 2060-2070; Exhibit 29: 8 App LO*

00001836; and Exhibit 30: 8 App LO 00001837. In total, the City required at least 16 new and revised versions of the MDA. Exhibit 28: 5-7 App LO 00001188-00001835. The City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement." Exhibit 24: 4 App LO 00000985 line 236 – 00000986 line 245; LO 00001071-00001073; and Exhibit 40: 9 App LO 00002047-2072. And, as will be explained below, the MDA also met and exceeded any and all major modification procedures and standards that are set forth in the City Code.

On August 2, 2017, the MDA was presented to the City Council and the City denied the MDA. Exhibit 24: 5 App LO 00001128-112. The City did not ask the Landowners to make more concessions, like increasing the setbacks or reducing the units per acre, it simply and plainly denied the MDA altogether. *Id.* As the 35 Acre Property is vacant, this meant that the property would remain vacant.

### **3. City Action #3: Adoption of the Yohan Lowie Bills.**

After denial of the MDA, the City adopted two Bills that solely target the 250 Acre Residential Zoned Land and preserve the Landowners' Property for public use. City Bill No. 2018-5 and Bill No. 2018-24 (now City Ordinances LVMC 19.16.105) not only target solely the Landowners' Property (no other golf course in the City is privately owned with residential zoning and no deed restrictions); but also requires the Landowners to preserve their Property for public use (LVMC 19.16.105 (E)(1)(d), (G)(1)(d)), provide ongoing public access to their Property (LVMC 19.16.105(G)(1)(d)), and provides that failure to comply with the Ordinances will result in a misdemeanor crime punishable by imprisonment and \$1,000 per day fine. (LVMC 19.16.105 (E)(1)(d), (G)(5)(b)&(c)). The Ordinance requires the Landowners to perform an extensive list of requirement, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City. LVMC 19.16.105.

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1                   **4. City Action #4: Denial of an Over the Counter, Routine Access Request.**

2           The Landowners have sufficiently alleged that in August of 2017, the Landowners filed with  
3 the City a routine over the counter request (specifically excluded from City Council review - LVMC  
4 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii)) for three access points to streets the 250 Acre  
5 Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way. *Exhibit 58: 10 App*  
6 *LO 00002359-2364*. The City denied the access applications citing as the sole basis for the denial,  
7 “the various public hearings and subsequent debates concerning the development on the subject site.”  
8 *Exhibit 59: 10 App LO 00002365*. The City required that the matter be presented to the City Council  
9 through a “Major Review.” The City has required that this extraordinary standard apply only to the  
10 Landowners to gain access to their property.

11           The Nevada Supreme Court has held that a landowner cannot be denied access to abutting  
12 roadways, because all property that abuts a public highway has a special right of easement to the  
13 public road for access purposes and this is a recognized property right in Nevada. Schwartz v. State,  
14 111 Nev. 998 (1995). The Court held that this right exists “despite the fact that the Landowner had  
15 not yet developed access.”Id., at 1003.

16                   **5. City Action #5: Denial of an Over the Counter, Routine Fence Request.**

17           The Landowners have sufficiently alleged that in August, 2017, the Landowners filed with  
18 the City a routine request to install chain link fencing to enclose two water features/ponds that are  
19 located on the 250 Acre Residential Zoned Land. *Exhibit 55: 10 App LO 00002345-2352*. The City  
20 Code expressly states that this application is similar to a building permit review that is granted over  
21 the counter and not subject to City Council review. LVMC 19.16.100(f)(2)(a) and  
22 19.16.100(f)(2)(a)(iii). The City denied the application, citing as the sole basis for denial, “the  
23 various public hearings and subsequent debates concerning the development on the subject site.”  
24 *Exhibit 56: 10 App LO 2343*. The City then required that the matter be presented to the City Council  
25 through a “Major Review” pursuant to LVMC 19.16.100(G)(1)(b) which states that “the Director  
26 determines that the proposed development could significantly impact the land uses on the site or on  
27 surrounding properties.” *Exhibit 57: 10 App LO 00002354-2358*.

1 The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-  
2 application conference, plans submittal, circulation to interested City departments for  
3 comments/recommendation/requirements, and publicly noticed Planning Commission and City  
4 Council hearings. The City has required that this extraordinary standard apply despite the fact that  
5 LVMC 19.16.100 F(3) specifically prohibits review by the City Council, “[t]he Provisions of this  
6 Paragraph (3) shall not apply to *building permit level reviews* described in Paragraph 2(a) of this  
7 Subsection (F). Enumerated in Paragraph 2(a) as only requiring a “building level review” are “onsite  
8 signs, walls and fences.”

9 **6. City Action #6: Denial of a Drainage Study.**

10 The Landowners have sufficiently alleged that in an attempt to clear the property, replace  
11 drainage facilities, etc., the Landowners submitted an application for a technical drainage study,  
12 which should have been routine, because the City and the Landowners already executed an On-Site  
13 Drainage Improvements Maintenance Agreement that allows the Landowners to remove and replace  
14 the flood control facilities on their property. *Exhibit 78: 12 App LO 00002936-2947*. Additionally,  
15 the two new City Ordinances referenced in City Action #3 require a technical drainage study.  
16 However, the City has refused to accept an application for a technical drainage study from the  
17 Landowners claiming the Landowners must first obtain entitlements, however, the new City  
18 Ordinances will not provide entitlements until a drainage study is received.

19 **7. City Action #7: The City’s Refusal to Even Consider the 133 Acre**  
20 **Property Applications.**

21 The Landowners have sufficiently alleged that as part of the numerous development  
22 applications filed by the Landowners over the past three years to develop all or portions of the 250  
23 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed  
24 to develop residential units on the 133 Acre Property (part of the 250 Acre Residential Zoned Land)  
25 consistent with the R-PD7 hard zoning. *Exhibit 47: 9 App LO 00002119-10 App LO 2256. Exhibit*  
26 *49: 10 App LO 00002271-2273*. The City Planning Staff determined that the proposed residential  
27 development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada  
28 Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and  
recommended approval. *Exhibit 51: 10 App. LO 00002308-2321*. Instead of approving the

1 development, the City Council delayed the hearing for several months until May 16, 2018 - the same  
2 day it was considering the Yohan Lowie Bill (now LVMC 19.16.105), referenced above in City  
3 Action #3. *Exhibit 50: 10 App LO 00002285-2287*. The City put the Yohan Lowie Bill on the  
4 morning agenda and the 133 Acre Property applications on the afternoon agenda. The City then  
5 approved the Yohan Lowie Bill in the morning session. Thereafter, Councilman Seroka asserted that  
6 the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike  
7 all of the applications for the 133 Acre Property filed by the Landowners. *Exhibit 6: 2 App LO*  
8 *00000490 lines 206-207*. The City then refused to allow the Landowners to be heard on their  
9 applications for the 133 Acre Property and voted to strike the applications. *Exhibit 51: 10 App LO*  
10 *00002308-2321 and Exhibit 53: 10 App LO 00002327-2336*.

11 **8. City Action #8: The City Announces It Will Never Allow Development**  
12 **on the 35 Acre Property, Because the City Wants the Property for a City**  
**Park and Wants to Pay Pennies on the Dollar for it.**

13 The Landowners have sufficiently alleged that in documents obtained from the City it was  
14 discovered that the City has already allocated \$15 million to acquire the Landowners' private  
15 property - "\$15 Million-Purchase Badlands and operate." *Exhibit 35: 8 App LO 00001922*. In this  
16 same connection, Councilman Seroka issued a statement during his campaign entitled "The Seroka  
17 Badlands Solution" which provides the intent to convert the Landowners' private property into a  
18 "fitness park." *Exhibit 34: 8 App LO 00001915*. In an interview with KNPR Seroka stated that he  
19 would "turn [the Landowners' private property] over to the City." *Id. at LO 00001917*. Councilman  
20 Coffin agreed, stating his intent referenced in an email as follows: "I think your third way is the only  
21 quick solution...Sell off the balance to be a golf course with water rights (key). Keep the bulk of  
22 Queensridge green." *Exhibit 54: 10 App LO 00002344*. Councilman Coffin and Seroka also  
23 exchanged emails wherein they state they will not compromise one inch and that they "need an  
24 approach to accomplish the desired outcome," which, as explained, is to prevent all development on  
25 the Landowners' Property so the City can take it for the City's park and only pay \$15 Million.  
26 *Exhibit 54: 10 App LO 00002340*. In furtherance of the City's preservation for public use, the City  
27 has announced that it will never allow any development on the 35 Acre Property or any other part  
28 of the 250 Acre Residential Zoned Land.

1 As it is universally understood that tax assessed value is well below market value, to  
2 “Purchase Badlands and operate” for “\$15 Million,” (which equates to less than 6% of the tax  
3 assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this  
4 shows that the City’s actions are in furtherance of a City scheme to specifically target the  
5 Landowners’ Property to have it remain in a vacant condition to be “turned over to the City” for a  
6 “fitness park” for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8*  
7 *App LO 00001922.*

8 **9. City Action #9: The City Shows an Unprecedented Level of Aggression**  
9 **To Deny All Use of the 250 Acre Residential Zoned Land.**

10 The Landowners have sufficiently alleged that the City has gone to unprecedented lengths  
11 to interfere with the use and enjoyment of the Landowners’s Property. Council members sought  
12 “intel” against one of the Landowners so that the “intel” could, presumably, be used to deny any  
13 development on the 250 Acre Residential Zoned Land (including the 35 Acre Property). In a text  
14 message to an unknown recipient, Councilman Coffin stated:

15 Any word on your PI enquiry about badlands [250 Acre Residential Zoned Land]  
16 guy?

17 While you are waiting to hear **is there a fair amount of intel on the scum** behind  
18 [sic] the badlands [250 Acre Residential Zoned Land] takeover? **Dirt will be handy**  
19 **if I need to get rough.** *Exhibit 81: 12 App LO 00002969. (emphasis supplied).*

20 Instructions were then given by Council Members on how to hide communications regarding the 250  
21 Acre Residential Zoned Land from the Courts. Councilman Coffin, after being issued a documents  
22 subpoena, wrote:

23 “Also, his team has filed an official request for all txt msg, email, anything at all on  
24 my personal phone and computer under an erroneous supreme court opinion...So  
25 everything is subject to being turned over so, for example, your letter to the c[i]ty  
26 email is now public and this response might become public (to Yohan). I am  
27 considering only using the phone but awaiting clarity from court. **Please pass word**  
28 **to all your neighbors. In any event tell them to NOT use the city email address**  
**but call or write to our personal addresses. For now...PS. Same crap applies to**  
**Steve [Seroka]** as he is also being individually sued i[n] Fed Court and also his  
personal stuff being sought. This is no secret so let all your neighbors know.”  
*Exhibit 54: 10 App LO 00002343. (Emphasis added).*

26 Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the  
27 Nevada Public Records Act *NRS 239.001(4)* by instructing them on how not to trigger any of the  
28 search terms being used in the subpoenas. “Also, please pass the word for everyone to not use  
B...l.nds in title or text of comms. That is how search works.” Councilman Seroka testified at the

1 Planning Commission (during his campaign) that it would be “over his dead body” before the  
2 Landowners could use their private property for which they have a vested right to develop. *Exhibit*  
3 *21: 4 App LO 00000930-931*. And, In reference to development on the Landowners’ Property,  
4 Councilman Coffin stated firmly “I am voting against the whole thing,” (*Exhibit 54: 10 App LO*  
5 *00002341*)

6  
7 **10. City Action #10: the City Reverses the Past Approval on the 17 Acre Property.**

8 The Landowners have sufficiently alleged that in approving the 17 Acre Property applications  
9 the City agreed the Landowners had the vested right to develop without a Major Modification, now  
10 the City is arguing in other documents that: 1) the Landowners have no property rights; and, 2) the  
11 approval on the 17 Acre Property was erroneous, because no major modification was filed:

12 “[T]he Developer must still apply for a major modification of the Master Plan before  
13 a takings claim can be considered...” *Exhibit 37: 8 App LO 00001943 lines 18-20*;

14 “Moreover, because the Developer has not sought a major modification of the Master  
15 Plan, the Court cannot determine if or to what extent a taking has occurred.” *Id. at*  
16 *LO 00001944 lines 4-5*;

17 “According to the Council’s decision, the Developer need only file an application for  
18 a major modification to the Peccole Ranch Master Development Plan ...to have its  
19 Applications considered.” *Exhibit 39: 9 App LO 00002028 lines 11-15*;

20 “Here, the Council’s action to strike the Applications as incomplete in the absence  
21 of a major modification application does not foreclose development on the Property  
22 or preclude the City from ultimately approving the Applications or other  
23 development applications that the Developer may subsequently submit. It simply held  
24 that the City would not consider the Applications without the Developer first  
25 submitting a major modification application.” *Id. at LO 00002032 lines 18-22*.

26 The reason the City changed its position is the City is seeking to deny the Landowners their  
27 constitutional property rights so the Landowners’ Property will remain in a vacant condition to be  
28 “turned over to the City” for a “fitness park” for 1% of its fair market value. *Exhibit 34: 8 App LO*  
*00001915 and Exhibit 35: 8 App LO 00001922*.

29  
30 **11. City Action #11: The City Retains Private Counsel to Advance an Open Space Designation on the 35 Acre Property.**

31 The Landowners have sufficiently alleged that the City has retained and authorized private  
32 counsel to advance an “open space” designation/major modification argument in this case to prevent  
33 any and all development on the 35 Acre Property. This is a contrary position from that taken by the

1 City over the past 32 years on at least 1,067 development units in the Peccole Concept Plan area.  
2 *Exhibit 105.* As explained above, over 1,000 units have been developed over the past 32 years in  
3 the Peccole Concept Plan area and not once did the City apply the “open space”/major modification  
4 argument it is now advancing, even though those +1,000 units were developed contrary to the land  
5 use designation on the Peccole Concept Plan. The City has specifically targeted the Landowners and  
6 their Property and is treating them differently than it has treated all other properties and owners in  
7 the area (+1,000 other units in the area) for the purpose of forcing the Landowners’ Property to  
8 remain in a vacant condition to be “turned over to the City” for a “fitness park” for 1% of its fair  
9 market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

10 Here, the Landowners have alleged facts and provided documents sufficient to show their  
11 Property has been taken by inverse condemnation, which is sufficient to defeat the City’s motion for  
12 judgment on the pleadings.

13  
14 **D. The City’s Argument that the Landowners have No Vested Property Right**

15 The City contends that the Landowners do not have a vested right to use their property for  
16 anything other than open space or a golf course. As set forth above, the Landowners have alleged  
17 facts and provided documents sufficient to show they have a property interest in and a vested right  
18 to use the 35 Acre Property for a residential use, which is sufficient to defeat the City’s motion for  
19 judgment on the pleadings.

20 **E. The City’s Argument that the Landowners’ Taking Claims are Not Ripe**

21 The City contends that the Landowners’s taking claims are not ripe, because they have not  
22 filed a major modification application, which the City contends is a precondition to any development  
23 on the Landowners’ Property. This City argument is closely related to the City’s vested rights  
24 argument as the City also contends the Landowners have no vested right to use their property for  
25 anything other than a golf course until such time as they submit a major modification application.  
26 The Landowners have alleged that a ripeness/exhaustion of administrative remedies analysis does  
27 not apply to the four inverse condemnation claims for which the Landowners’ are requesting a  
28 judicial finding of a taking - regulatory per se, non-regulatory/de facto, categorical, or temporary

1 taking of property<sup>4</sup> and, therefore, the City's ripeness/exhaustion of administrative remedies  
2 argument has no application to these four inverse condemnation claims. The Landowners further  
3 allege that the ripeness analysis only applies to the Landowners' inverse condemnation Penn Central  
4 Regulatory Takings Claim and, if the Court applies the ripeness analysis, all claims are ripe,<sup>5</sup>  
5 including the Penn Central claim.

6  
7 **1. The Landowners Allege Facts Sufficient to Show They Made At Least  
One Meaningful Application and It Would be Futile to Seek Any  
Further Approvals From the City.**

8 “While a landowner must give a land-use authority an opportunity to exercise its discretion,  
9 once [...] the permissible uses of the property are known to a reasonable degree of certainty, a  
10 [regulatory] taking claim [Penn Central claim] is likely to have ripened.”<sup>6</sup> The purpose of this rule  
11 is to understand what the land use authority will and will not allow to be developed on the property  
12 at issue. But, “[g]overnment authorities, of course, may not burden property by imposition of  
13 repetitive or unfair land-use procedures in order to avoid a final decision.”<sup>7</sup> “[W]hen exhausting  
14 available remedies, including the filing of a land-use permit application, is futile, a matter is deemed  
15 ripe for review.”<sup>8</sup>

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17 <sup>4</sup> Hsu v. County of Clark, supra, (“[d]ue to the “per se” nature of this taking, we further  
18 conclude that the landowners were not required to apply for a variance or otherwise exhaust their  
19 administrative remedies prior to bringing suit.” *Id.*, at 732); McCarran Int'l Airport v. Sisolak, 122  
20 Nev. 645, 137 P.3d 1110 (2006) (“Sisolak was not required to exhaust administrative remedies or  
21 obtain a final decision from the Clark County Commission by applying for a variance before  
bringing his inverse condemnation action based on a regulatory per se taking of his private property.”  
*Id.* at 664).

22 <sup>5</sup> The Nevada Supreme Court has stated regulatory takings claims are generally “not  
23 ripe until the government entity charged with implementing the regulations has reached a final  
24 decision regarding the application of the regulations to the property at issue.” State v. Eighth Jud.  
Dist. Ct., 131 Nev. Adv. Op. 41 (2015) (quoting Williamson County Reg'l Planning Comm'n v.  
Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)).

25 <sup>6</sup> Palazzolo v. Rhode Island, 533 U.S. 606, 620, (2001) (“The central question in  
26 resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether  
petitioner obtained a final decision from the Council determining the permitted use for the land.” *Id.*,  
at 618.).

27 <sup>7</sup> Palazzolo, at 621. Citing to Monterey v. Del Monte Dunes at Monterey, Ltd., 526  
28 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

<sup>8</sup> State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For  
example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,

1 In City of Monterey v. Del Monte Dunes 526 U.S. 687, 119 S.Ct. 1624 (1999) the United  
2 States Supreme Court held that a taking claim was ripe where the City of Monterey required 19  
3 changes to a development application and then asked the landowner to make even more changes.  
4 Finally, the landowner filed inverse condemnation claims. Similar to the City argument in this case,  
5 the City of Monterey asserted the landowners' inverse condemnation claims were not ripe for review.  
6 The City of Monterey asserted that the City's decision was not final and the landowners' claim was  
7 not ripe, because, if the landowner had worked longer with the City of Monterey or filed a different  
8 type of application with the City of Monterey, the City of Monterey may have approved development  
9 on the landowner's property. The United States Supreme Court approved the Ninth Circuit opinion  
10 as follows: "to require additional proposals would implicate the concerns about repetitive and unfair  
11 procedures" and "the city's decision was sufficiently final to render [the landowner's] claim ripe for  
12 review." Del Monte Dunes, at 698. The United States Supreme Court re-affirmed this rule in the  
13 Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448 (2001) holding the "Ripeness Doctrine does  
14 not require a landowner to submit applications for their own sake. Petitioner is required to explore  
15 development opportunities on his upland parcel only if there is uncertainty as to the land's permitted  
16 uses." *Id* at 622.

17 As set forth above, the Landowners have alleged facts and provided documents sufficient to  
18 show they submitted the necessary applications to develop the 35 Acre Property, that the City denied  
19 every attempt at development, and that it would be futile to seek any further development  
20

21 143 L.Ed. 2d 882 (1999) "[a]fter five years, five formal decisions, and 19 different site plans,  
22 [internal citation omitted] Del Monte Dunes decided the city would not permit development of the  
23 property under any circumstances." *Id.*, at 698. "After reviewing at some length the history of  
24 attempts to develop the property, the court found that to require additional proposals would implicate  
25 the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v.  
26 Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from  
27 Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126  
28 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for  
review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit  
applications for their own sake. Petitioner is required to explore development opportunities on his  
upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island,  
at 622.

1 applications from the City, which is sufficient to defeat the City's motion for judgment on the  
2 pleadings.

3                   **2. The Landowners Allege Facts Sufficient to Show That a Major**  
4                   **Modification Application Was Not Required To Ripen Their Inverse**  
5                   **Condemnation Claims**

6           The Landowners further allege that no major modification of the Peccole Concept Plan was  
7 necessary to develop the 35 Acre Property, because the Landowners were seeking to develop the 35  
8 Acre Property residentially and the land use designation on the Peccole Concept Plan for the 35 Acre  
9 Property is a residential use. *Exhibit 107*. Therefore, there was no need to "modify" the Peccole  
10 Concept Plan to develop the 35 Acre Property residentially.

11           The Landowners have also alleged that the City has never required a major modification  
12 application to develop properties included in the area of the Peccole Concept Plan. The Landowners  
13 allege the City has approved development for approximately 26 projects and over 1,000 units in the  
14 area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties  
15 that were developed with a use contrary to the Peccole Concept Plan and not once did the City  
16 require a major modification application.

17           Here, the Landowners have alleged facts and provided documents sufficient to show that a  
18 major modification was not required to ripen their inverse condemnation claims, which is sufficient  
19 to defeat the City's motion for judgment on the pleadings.

20                   **3. The Landowners Allege Facts Sufficient to Show That, Even if a Major**  
21                   **Modification Application was Necessary to Ripen Their Inverse**  
22                   **Condemnation Claims, They Met this Requirement**

23           Specific to the City's assertion that a major modification application is necessary to ripen the  
24 Landowners' inverse condemnation claims, the Landowners allege that even if a major modification  
25 application is required, the MDA the Landowners worked on with the City for over two years,  
26 referenced above, included and far exceeded all of the requirements of a major modification  
27 application. *Exhibit 28*. Moreover, the Landowners have cited to a statement by the City Attorney  
28 wherein he stated on the City Council record as follows: "Let me state something for the record just  
to make sure we're absolutely accurate on this. There was a request for a major modification that

1 accompanied the development agreement [MDA], that was voted down by Council. So that the  
2 modification, major mod was also voted down.” Exhibit 61, City Council Meeting of January 3,  
3 2018 Verbatim Transcript – Item 78, Page 80 of 83, lines 2353-2361. Additionally, the Landowners  
4 allege that they also submitted an application referred to as a General Plan Amendment (GPA),  
5 which includes and far exceeds the requirements of the City’s major modification application and  
6 the City denied the GPA as part of its denial of any use of the 35 Acre Property. Exhibit 5.

7 Here, the Landowners have alleged facts and provided documents sufficient to show that,  
8 even if a major modification application is required to ripen their inverse condemnation claims, they  
9 met these requirements, which is sufficient to defeat the City’s motion for judgment on the  
10 pleadings.

11 **F. The City’s Argument that the Statute of Limitation has Run on the Landowners**  
12 **Inverse Condemnation Claims**

13 The City contends that, if there was a taking, it resulted from the City action related to  
14 adoption of the City’s Master Plan and the City’s Master Plan was adopted more than 15 years ago  
15 and, therefore, the statute of limitations has run on the Landowners’ inverse condemnation claims.  
16 The Landowners contend that a City Plan cannot result in a taking, that the City must take action to  
17 implement the Plan on a specific property to make the City liable for a taking.

18 The statute of limitations for an inverse condemnation action in Nevada is 15 years. White  
19 Pine Limber v. City of Reno, 106 Nev. 778 (1990). Nevada law holds that merely writing a land use  
20 designation over a parcel of property on a City land use plan is “insufficient to constitute a taking  
21 for which an inverse condemnation action will lie.” Sproul Homes of Nev. v. State ex rel. Dept of  
22 Highways, 96 Nev. 441, 443 (1980) *citing to* Selby Realty Co. v. City of San Buenaventura, 169  
23 Cal.Rptr. 799, 514 P.2d 111, 116 (1973) (Inverse claims could not be maintained from a City’s  
24 “General Plan” showing public use of private land). *See also* State v. Eighth Jud. Dist. Ct., 131 Nev.  
25 Adv. Op. 41, 351 P.3d 736 (2015) (City’s amendment to its master plan to allow for a road widening  
26 project on private land did not amount to a regulatory taking). This rule and its policy are set forth  
27 by the Nevada Supreme Court as follows:

28 If a governmental entity and its responsible officials were held subject to a claim for  
inverse condemnation merely because a parcel of land was designated for potential

1 public use on one of the several authorized plans, the process of community planning  
2 would either grind to a halt, or deteriorate to publication of vacuous generalizations  
3 regarding the future use of land. We indulge in no hyperbole to suggest that if every  
4 landowner whose property might be affected at some vague and distant future time  
5 by any of these legislatively permissible plans was entitled to bring an action in  
6 declaratory relief to obtain a judicial declaration as to the validity and potential effect  
7 of the plan upon his land, the courts of this state would be inundated with futile  
8 litigation. Sproul Homes, supra, at 444.

9 Accordingly, the date that would trigger the statute of limitations would not be the master plan or  
10 necessarily the designation of the Property as PR-OS, but it will be the acts of the City of Las Vegas  
11 / City Council that would control.

12 Here, the Landowners have alleged facts and provided documents sufficient to show their  
13 property has been taken by inverse condemnation based upon the acts of the City of Las Vegas / City  
14 Council that occurred less than 15 years ago. Therefore, the City's statute of limitations argument  
15 is denied.

16 **G. The City's Argument that the Court Should Apply Its Holding in the Petition  
17 For Judicial Review to the Landowners Inverse Condemnation Claims**

18 The City contends that the Court's holding in the Landowners' petition for judicial review  
19 should control in this inverse condemnation action. However, both the facts and the law are different  
20 between the petition for judicial review and the inverse condemnation claims. The City itself made  
21 this argument when it moved to have the Landowners' inverse condemnation claims dismissed from  
22 the petition for judicial review earlier in this litigation. Calling them "two disparate sets of claims"  
23 the City argued that:

24 "The procedural and structural limitations imposed by petitions for judicial review  
25 and complaints, however, are such that they cannot afford either party ample  
26 opportunity to litigate, in a single lawsuit, all claims arising from the transaction. For  
27 instance, Petitioner's claim for judicial review will be "limited to the record below,"  
28 and "[t]he central inquiry is whether substantial evidence supports the agency's  
decision." United Exposition Service Company v. State Industrial Insurance System,  
109 Nev. 421,424, 851 P.2d 423,425 (1993). On the other hand, Petitioner's inverse  
condemnation claims initiate a new a civil action requiring discovery (not limited to  
the record below), and the central inquiry is whether Petitioner (as plaintiff) can  
establish its claims by a preponderance of the evidence. Thus, allowing Petitioner's  
four "alternative" inverse condemnation claims (i.e., the complaint) to remain on the  
Petition will create an impractical situation for the Court and parties, and may allow  
Petitioner to confuse the record for judicial review by attempting to augment it with  
discovery obtained in the inverse condemnation action." (October 30, 2017, City of  
Las Vegas Motion to Dismiss at 8:2)

1 The evidence and burden of proof are significantly different in a petition for judicial review  
2 than in civil litigation. And, as further recognized by the City, there will be additional facts in the  
3 inverse condemnation case that must be considered which were not permitted to be considered in  
4 the petition for judicial review. This is true, as only City Action #1 above was considered in the  
5 petition for judicial review, not City Actions #2-11. And, as stated above, this Court must consider  
6 all city actions in the aggregate in this inverse condemnation proceeding.

7 As an example, if the Court determined in a petition for judicial review that there was  
8 substantial evidence in the record to support the findings of a workers' compensation hearing  
9 officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the  
10 alleged injured individual, as there are different fact, different legal standards and different burdens  
11 of proof.

12 Furthermore, the law is also very different in an inverse condemnation case than in a petition  
13 for judicial review. Under inverse condemnation law, if the City exercises discretion to render a  
14 property valueless or useless, there is a taking. Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev.  
15 2007), McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of  
16 Monterey v. Del Monte Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina  
17 Coastal Council, 505 U.S. 1003 (1992). In an inverse condemnation case, every landowner in the  
18 state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken,  
19 just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all  
20 government action and the evidence considered is not limited to the record before the City Council.  
21 Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131  
22 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S.  
23 23, 133 S.Ct. 511 (2012). On the other hand, in petitions for judicial review, the City has discretion  
24 to deny a land use application as long as valid zoning laws are applied, there is no vested right to  
25 have a land use application granted, and the record is limited to the record before the City Council.  
26 Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).  
27  
28

1 The Court has previously entered a Nunc Pro Tunc Order in this case recognizing the petition  
2 for judicial review matter is different from the inverse condemnation matter:

3 “this Court had no intention of making any findings, conclusions of law or orders  
4 regarding the Landowners' severed inverse condemnation claims as a part of the  
5 Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL").  
6 Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions  
and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed  
nunc pro tunc.” (Order filed February 6, 2019).

7 For these reasons, it would be improper to apply the Court's ruling from the Landowners'  
8 petition for judicial review to the Landowners' inverse condemnation claims.

9  
10 **H. Conclusion on The City's Motion for Judgment on the Pleadings on Developer's  
Inverse Condemnation Claims**

11 The City moved the Court for judgment on the pleadings pursuant to NRCP 12(c). The rule  
12 is designed to provide a means of disposing of cases when material facts are not in dispute, and a  
13 judgment on the merits can be achieved by focusing on the contents of the pleadings. It has utility  
14 only when all material allegations of facts are admitted in the pleadings and only questions of law  
15 remain.

16 This Court reviewed extensive briefings and entertained three and a half to four hours of oral  
17 arguments which contained factual disputes and argument throughout the entire hearing. The Court  
18 cannot say as a matter of law that the Landowners have no case, there are still factual disputes that  
19 must be resolved. Moreover, the court finds that this case can be heard on the merits as that policy  
20 is provided in Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

21  
22 Accordingly, IT IS HEREBY ORDERED that The City's Motion for Judgment on the  
23 Pleadings on Developer's Inverse Condemnation Claims is **DENIED**.

24 **III. The Landowners Rule 56 Motion for Summary Judgment on Liability for the  
Landowners Inverse Condemnation Claims**

25 The Landowners countermoved this Court for summary judgment on the Landowners'  
26 inverse condemnation claims. Discovery has not commenced nor as of the date of the hearing have  
27 the parties had a NRCP 16.1 case conference. The Court finds it would be error to consider a Rule  
28 56 motion at this time.

1 Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion for Judicial  
2 Determination of Liability on the Landowners' Inverse Condemnation Claims is **DENIED** without  
3 prejudice.

4 **IT IS SO ORDERED.**

5 DATED this ~~6th~~ day of April, 2019. ~~CS~~  
6 May 14,  
7

8   
9 DISTRICT COURT JUDGE

10 Respectfully Submitted By:

11 **LAW OFFICES OF KERRITT L. WATERS**

12 By: 

13 Kermitt L. Waters, ESQ., NBN 2571

14 James Jack Leavitt, ESQ., NBN 6032

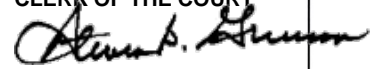
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19 *Attorneys for Plaintiff Landowners*



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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE

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

**SECOND AMENDMENT and FIRST  
SUPPLEMENT TO COMPLAINT FOR  
SEVERED ALTERNATIVE VERIFIED  
CLAIMS IN INVERSE  
CONDEMNATION**

**(Exempt from Arbitration – Action Seeking  
Review of Administrative Decision and  
Action Concerning Title To Real Property)**

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Page 1 of 37

1 LIMITED LIABILITY COMPANIES I through  
2 X, ROE quasi-governmental entities I through X,  
3 Defendant.  
4

5 COMES NOW Plaintiff, 180 Land Company, LLC, FORE STARS, Ltd., and SEVENTY  
6 ACRES, LLC, a Nevada Limited Liability Company, ("Landowner") by and through its attorneys  
7 of record, The Law Offices of Kermitt L. Waters and Hutchison & Steffen, for its Second  
8 Amendment and First Supplement To Complaint For Severed Alternative Claims In Inverse  
9 Condemnation complains and alleges as follows:

10 **PARTIES**

11 1. Landowners 180 Land Company, LLC, FORE STARS, Ltd., and SEVENTY  
12 ACRES, LLC, a Nevada Limited Liability Company, are organized and existing under the laws of  
13 the state of Nevada.

14 2. Respondent City of Las Vegas ("City") is a political subdivision of the State of  
15 Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes,  
16 including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation  
17 Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the  
18 regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just  
19 Compensation Clause of the United States Constitution and Article 1, sections 8 and Article 1,  
20 section 22 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the  
21 Taking of Our Land).

22 3. That the true names and capacities, whether individual, corporate, associate, or  
23 otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE  
24 CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X

1 (hereinafter collectively referred to as “DOEs”) inclusive are unknown to the Landowner at this  
2 time and who may have standing to sue in this matter and who, therefore, sue the Defendants by  
3 fictitious names and will ask leave of the Court to amend this Complaint to show the true names  
4 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as  
5 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other  
6 entities with standing to sue under the allegations set forth herein.

7 4. That the true names and capacities, whether individual, corporate, associate, or  
8 otherwise of Defendants named herein as ROE government entities I through X, ROE  
9 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY  
10 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter collectively  
11 referred to as “ROEs”), inclusive are unknown to the Landowner at this time, who therefore sue  
12 said Defendants by fictitious names and will ask leave of the Court to amend this Complaint to  
13 show the true names and capacities of Defendants when the same are ascertained; that said  
14 Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or actions,  
15 either alone or in concert with the aforementioned defendants, resulted in the claims set forth  
16 herein.

#### 17 JURISDICTION AND VENUE

18 5. The Court has jurisdiction over the alternative claims for inverse condemnation  
19 pursuant to the United States Constitution, Nevada State Constitution, the Nevada Revised Statutes  
20 and pursuant to the Court Order entered in this case on February 1, 2018.

21 6. Venue is proper in this judicial district pursuant to NRS 13.040.  
22  
23  
24

**GENERAL ALLEGATIONS**

**PROPERTY INTEREST / VESTED RIGHTS**

7. Landowner owns approximately 250 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005; 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-202-001 ("250 Acre Residential Zoned Land").

8. This Complaint more particularly addresses Assessor Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres").

9. At all relevant times herein, the Landowner had a property interest in the 35 Acre Property.

10. At all relevant times herein, the Landowner had the vested right to use and develop the 35 Acre Property.

11. At all relevant times herein the hard zoning on the 35 Acre Property has been for a residential use, including R-PD7 (Residential Planned Development District – 7.49 Units per Acre).

12. At all relevant times herein the Landowner had the vested right to use and develop the 35 Acre Property up to a density of 7.49 residential units per acre as long as the development is comparable and compatible with the existing adjacent and nearby residential development.

13. The Landowner's property interest in the 35 Acre Property and vested property rights in the 35 Acre Property are recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

1           14.     The Landowner's property interest and vested right to use and develop the 35 Acre  
2 Property is confirmed by the following:

3           15.     On March 26, 1986, a letter was submitted to the City Planning Commission  
4 requesting zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre  
5 Property) and the zoning that was sought was R-PD as it allows the developer flexibility and shows  
6 that developing the 35 Acre Property for a residential use has always been the intent of the City  
7 and all prior owners.

8           16.     The Landowner's property interest and vested right to use and develop the 35 Acre  
9 Property residentially has further been confirmed by the City of Las Vegas in writing and orally  
10 in, without limitation, 1996, 2001, 2014, 2016, and 2018.

11           17.     The City of Las Vegas adopted Zoning Bill No. Z-2001, Ordinance 5353, which  
12 specifically and further demonstrates that the R-PD7 Zoning was codified and incorporated into  
13 the City of Las Vegas' Amended Atlas in 2001. As part of this action, the City "repealed" any  
14 prior City actions that could possibly conflict with this R-PD7 hard zoning adopting: "SECTION  
15 4: All ordinances *or* parts of ordinances *or* sections, subsections, phrases, sentences, clauses or  
16 paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in  
17 conflict herewith are *hereby repealed.*"

18           18.     At a November 16, 2016, City Council hearing, Tom Perrigo, the City Planning  
19 Director, confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property)  
20 is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

21           19.     Long time City Attorney Brad Jerbic has also confirmed the 250 Acre Residential  
22 Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49  
23 residential units per acre.  
24

1           20.     The City of Las Vegas Planning Staff has also confirmed the 250 Acre Residential  
2 Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49  
3 residential units per acre.

4           21.     Even the City of Las Vegas' own 2020 master plan confirms the 250 Acre  
5 Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows  
6 up to 7.49 residential units per acre.

7           22.     The City issued two formal Zoning Verification Letters dated December 20, 2014,  
8 confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned Land (which includes the  
9 35 Acre Property).

10          23.     This vested right to use and develop the 35 Acres, was confirmed by the City prior  
11 to the Landowner's acquisition of the 35 Acres and the Landowner materially relied upon the  
12 City's confirmation regarding the Subject Property's vested zoning rights.

13          24.     Based upon information and belief, the City has approved development on  
14 approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land  
15 (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre  
16 Property further establishing the Landowner's property interest and vested right to use and develop  
17 the 35 Acre Property.

18          25.     Based upon information and belief, the City has never denied an application to  
19 develop in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property)  
20 on properties that are similarly situated to the 35 Acre Property further establishing the  
21 Landowner's property interest and vested right to use and develop the 35 Acre Property.

22          26.     The City is judicially estopped from now denying the Landowner's property  
23 interest and vested right to use and develop the 35 Acre Property residentially.  
24

1           27.     This property interest / vested right to use and develop the 250 Acre Residential  
2 Zoned Land, which includes the 35 Acre Property has also been confirmed by two orders issued  
3 by the Honorable District Court Judge Douglas E. Smith (the Smith Orders), which have been  
4 affirmed by the Nevada Supreme Court.

5           28.     There is a legal finding in the Smith Orders that the Landowner's have the "right to  
6 develop" the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

7           29.     There is a legal finding in the Smith Orders that the initial steps to develop,  
8 parceling the 250 Acre Residential Zoned Land (which includes the 35 Acre Property), had  
9 proceeded properly: "The Developer Defendants [Landowner] properly followed procedures for  
10 approval of a parcel map over Defendants' property [250 Acre Residential Zoned Land] pursuant  
11 to NRS 278.461(1)(a) because the division involved four or fewer lots. The Developer Defendants  
12 [Landowner] parcel map is a legal merger and re-subdividing of land within their own boundaries."

13           30.     The Smith Orders and the Nevada Supreme Court affirmance of the Landowner's  
14 property interest, vested right to use and develop, and right to develop the 250 Acre Residential  
15 Zoned Land (which includes the 35 Acre Property) are confirmed not only by the above facts, but  
16 also by the City's own public maps according to the Nevada Supreme Court.

17           31.     Accordingly, it is settled Nevada law that the Landowner has a property interest in  
18 and the vested "right to develop" this specific 35 Acre Property with a residential use.

19           32.     The City is bound by this settled Nevada law as the City was a party in the case  
20 wherein the Smith Orders were issued, the City had a full and fair opportunity to address the issues  
21 in that matter, and the Smith Orders have become final as they have been affirmed by the Nevada  
22 Supreme Court.

23           33.     The Landowner's property interest and vested right to use and develop the entire  
24 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is so widely accepted

1 that even the Clark County tax Assessor has assessed the property as residential for a value of  
2 approximately \$88 Million and the current Clark County website identifies the 35 Acre Property  
3 “zoned” R-PD7.

4 34. There have been no other officially and properly adopted plans or maps or other  
5 recorded document(s) that nullify, replace, and/or trump the Landowner’s property interest and  
6 vested right to use and develop the 35 Acre Property.

7 35. Although certain City of Las Vegas planning documents show a general plan  
8 designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre Property, that designation  
9 was placed on the Property by the City without the City having followed its own proper notice  
10 requirements or procedures. Therefore, any alleged PR-OS on any City planning document is  
11 being shown on the 35 Acre Property in error. The City’s Attorney confirmed the City cannot  
12 determine how the PR-OS designation was placed on the Subject Property.

13 36. Further the Smith Orders legally confirm that notwithstanding any alleged open  
14 space land use designation, the zoning on the 250 Acre Residential Zoned Land (which includes  
15 the 35 Acre Property) is a residential use - R-PD7.

16 37. The Smith Orders further legally reject any argument that suggests the 250 Acre  
17 Residential Zoned Land (which includes the 35 Acre Property) is zoned as open space or otherwise  
18 bound by an open space designation.

19 38. The Smith Orders further legally confirm that the hard, residential zoning of R-PD7  
20 trumps any other alleged open space designation on any other planning documents.

21 39. Although the 35 Acre Property was used for an interim golf course use, the  
22 Landowner has always had the right to close the golf course and not water it.

23 40. The Smith Orders confirmed that there is no appropriate “open space” designation  
24 on the 35 Acre Property and this was affirmed by the Nevada Supreme Court.

1           41.    Nevada Supreme Court precedent provides that the Landowner has a property  
2 interest and the vested right to use and develop the 250 Acre Residential Zoned Land (which  
3 includes the 35 Acre Property).

4                           **CITY ACTIONS TO TAKE THE LANDOWNER'S PROPERTY**

5           42.    The City has engaged in numerous systematic and aggressive actions to prevent  
6 any and all use of the 35 Acre Property thereby rendering the 35 Acre Property useless and  
7 valueless.

8           43.    The City actions and how the actions as a whole impact the 35 Acre Property are  
9 set forth herein so that the form, intensity, and the deliberateness of the City actions toward the 35  
10 Acre Property can be examined as all actions by the City in the aggregate, must be analyzed.

11          44.    Generally, and without limitation, there are 11 City actions the City has engaged in  
12 to prevent any and all use of the 35 Acre Property thereby rendering the 35 Acre Property useless  
13 and valueless.

14                           **City Action #1 - City Denial of the 35 Acre Property Applications**

15          45.    On or about December 29, 2016, and at the suggestion of the City, the Landowner  
16 filed with the City an application for a General Plan Amendment to change the General Plan  
17 Designation on the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) from  
18 PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) ("GPA-68385"). While an  
19 application for a General Plan Amendment was filed by the Landowner relating to the 250 Acre  
20 Residential Zoned Land (which includes the 35 Acre Property), being application number, GPA-  
21 68385; additional applications were filed by the Landowner with the City that related more  
22 particularly to the 35 Acre Property. Those zoning applications pertaining to the 35 Acres were  
23 application numbers WVR-68480; SDR-68481 and TMP-68482.

1           46.    The proposed General Plan Designation of "L" allows densities less than the  
2 corresponding General Plan Designation on the Property prior to the time any alleged PR-OS  
3 designation was improperly placed on the Property by the City.

4           47.    To the north of the 35 Acre Property are existing residences developed on lots  
5 generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

6           48.    In the center of the 35 Acre Property, are existing residences developed on lots  
7 generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

8           49.    To the south of the 35 Acre Property, are existing residences developed on lots  
9 generally ranging in size from three quarters (3/4) of an acre to one and one quarter (1 1/4) acre.

10          50.    On or about January 25, 2017, the Landowner filed with the City an application  
11 pertaining to the 35 Acre Property for a waiver to allow 32-foot private streets with a sidewalk on  
12 one side within a privately gated community where 47-foot private streets with sidewalks on both  
13 sides are required. The application was given number WVR-68480 ("WVR-68480").

14          51.    On or about January 4, 2017, the City required the Landowner to file an application  
15 pertaining to the 35 Acre Property for a Site Development Plan Review for a proposed 61-Lot  
16 single family residential development. The application was given number SDR-68481 ("SDR-  
17 68481").

18          52.    On or about January 4, 2017, the Landowner filed with the City an application  
19 pertaining to the 35 Acre Property for a Tentative Map for a proposed 61-Lot single family  
20 residential development. The application was given number TMP-68482 ("TMP-68482").

21          53.    The Planning Staff for the City's Planning Department ("Planning Staff") reviewed  
22 GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval  
23 for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No  
24 Recommendation" with regard to GPA-68385; however, in the "Agenda Memo-Planning" relating

1 to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of  
2 GPA-68385 as "Approval."

3 54. The City Planning Staff thoroughly reviewed the applications, determined that the  
4 proposed residential development was consistent with the R-PD7 hard zoning, that it met all  
5 requirements in the Nevada Revised Statutes, and in the City's Unified Development Code (Title  
6 19), and appropriately recommended approval.

7 55. Tom Perrigo, the City Planning Director, stated at the hearing on the Landowner's  
8 applications that the proposed development met all City requirements and should be approved.

9 56. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning  
10 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-  
11 68482.

12 57. After considering Landowner's comments, and those of the public, the Planning  
13 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's  
14 conditions.

15 58. The Planning Commission voted four to two in favor of GPA-68385, however, the  
16 vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote was,  
17 therefore, tantamount to a denial.

18 59. On June 21, 2017, the Las Vegas City Council ("City Council") heard WVR-68480,  
19 SDR-68481, TMP-68482 and GPA-68385.

20 60. In conjunction with this City Council public hearing, the Planning Staff, in  
21 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted "*the*  
22 *adjacent developments are designated ML (Medium Low Density Residential) with a density cap*  
23 *of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling*  
24 *units per acre...Compared with the densities and General Plan designations of the adjacent*

1 *residential development, the proposed L (Low Density Residential) designation is less dense and*  
2 *therefore appropriate for this area, capped at 5.49 units per acre." (emphasis added).*

3 61. The Planning Staff found the density of the proposed General Plan compatible with  
4 the existing adjacent land use designation, found the zoning designations compatible and found  
5 that the filed applications conform to other applicable adopted plans and policies that include  
6 approved neighborhood plans.

7 62. At the June 21, 2017, City Council hearing, the Landowner addressed the concerns  
8 of the individuals speaking in opposition, and provided substantial evidence, through the  
9 introduction of documents and through testimony, of expert witnesses and others, rebutting each  
10 and every opposition claim.

11 63. Included as part of the evidence presented by the Landowner at the June 21, 2017,  
12 City Council hearing, the Landowner introduced evidence, among other things, (i) that  
13 representatives of the City had specifically noted in both City public hearings and in public  
14 neighborhood meetings, that the standard for appropriate development based on the existing R-  
15 PD7 zoning on the 35 Acre Property would be whether the proposed lot sizes were compatible  
16 with and comparable to the lot sizes of the existing, adjoining residences; (ii) that the proposed lot  
17 sizes for the 35 Acre Property were compatible with and comparable to the lot sizes of the existing  
18 residences adjoining the lots proposed in the 35 Acres; (iii) that the density of 1.79 units per acre  
19 provided for in the 35 Acre Property was less than the density of those already existing residences  
20 adjoining the 35 Acre Property; and (iv) that both Planning Staff and the Planning Commission  
21 recommended approval of WVR-68480, SDR-68481 and TMP-68482, all of which applications  
22 pertain to the proposed development of the 35 Acre Property.

23 64. Any public statements made in opposition to the various applications were either  
24 conjecture or opinions unsupported by facts; all of which public statements were either rebutted

1 by findings as set forth in the Planning Staff report or through statements made by various City  
2 representatives at the time of the City Council public hearing or through evidence submitted by  
3 the Landowner at the time of the public hearing.

4 65. In spite of the Planning Staff recommendation of approval and the recommendation  
5 of approval from the Planning Commission, and despite the substantial evidence offered by the  
6 Landowner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite  
7 of the fact that no substantial evidence was offered in opposition, the City Council denied the  
8 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

9 66. The City Council's stated reason for the denial was its desire to see, not just the 35  
10 Acre Property, but the entire 250 Acre Residential Zoned Land, developed under one Master  
11 Development Agreement ("MDA") which would include all of the following properties:

12 APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally  
13 subdivided and separate and apart from the properties identified below;

14 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and  
15 is legally subdivided separate and apart from the 35 Acre Property;

16 APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and  
17 is legally subdivided separate and apart from the 35 Acre Property;

18 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is  
19 legally subdivided separate and apart from the 35 Acre Property;

20 APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and  
21 is legally subdivided separate and apart from the 35 Acre Property;

22 APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and  
23 is legally subdivided separate and apart from the 35 Acre Property and is owned by a  
24 different legal entity, Seventy Acres, LLC;

1 APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and  
2 is legally subdivided separate and apart from the 35 Acre Property and is owned by a  
3 different legal entity, Seventy Acres, LLC;

4 APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is  
5 legally subdivided separate and apart from the 35 Acre Property and is owned by a different  
6 legal entity, Seventy Acres, LLC;

7 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is  
8 legally subdivided separate and apart from the 35 Acre Property and is owned by a different  
9 legal entity, Fore Stars, LTD;

10 67. At the City Council hearing considering and ultimately denying WVR-68480,  
11 SDR-68481, TMP-68482 and GPA-68385, the City Council advised the Landowner that the only  
12 way the City Council would allow development on the 35 Acres was under one MDA for the  
13 entirety of the Property (totaling 250 Acre Residential Zoned Land).

14 68. At the time the City Council was considering WVR-68480, SDR-68481, TMP-  
15 68482 and GPA-68385, that would allow the 35 Acre Property to be developed, the City Council  
16 stated that the approval of the MDA is very, very close and “we are going to get there [approval  
17 of the MDA].” The City Council was referring to the next public hearing wherein the MDA would  
18 be voted on by the City Council.

19 69. The City Attorney stated that “if anybody has a list of things that should be in this  
20 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because  
21 I will listen to you and we’ll talk about it and if it needs to be in that agreement, we’ll do our best  
22 to get it in. . . . This is where I have to use my skills and say enough is enough and that’s why I  
23 said tonight ‘speak now or forever hold your peace.’ If somebody comes to me with an issue that  
24 they should have come to me with months ago I’m gonna ignore them ‘cause that’s just not fair

1 either. We can't continue to whittle away at this agreement by throwing new things at it all the  
2 time. There's been two years for people to make their comments. I think we are that close."

3 70. The City Attorney even stated "There's no doubt about it [approval of the MDA].  
4 If everybody thinks that this can't be resolved, I'm going to look like an idiot in a month and I  
5 deserve it. Okay?"

6 71. The City Council stated at the hearing that the sole basis for denial was the City's  
7 alleged desire to see the entire 250 Acre Residential Zoned Land developed under the MDA.

8 **City Action #2 - Denial of the Master Development Agreement (MDA)**

9 72. To comply with the City demand to have one unified development, for over two  
10 years (between July, 2015, and August 2, 2017), the Landowner worked with the City on an MDA  
11 that would allow development on the 35 Acre Property along with all other parcels that made up  
12 the 250 Acre Residential Zoned Land.

13 73. The amount of work that went in to the MDA was demanding and pervasive.

14 74. The Landowner complied with each and every City demand, making more  
15 concessions than any developer that has ever appeared before this City Council, according to  
16 Councilwoman Tarkanian.

17 75. A non-exhaustive list of the Landowner's concessions, as part of the MDA, include  
18 without limitation: 1) donation of approximately 100 acres as landscape, park equestrian facility,  
19 and recreation areas; 2) building brand new driveways and security gates and gate houses for the  
20 existing security entry ways for the Queensridge development; 3) building two new parks, one  
21 with a vineyard; and, 4) reducing the number of units, increasing the minimum acreage lot size,  
22 and reduced the number and height of towers.

23 76. The City demanded changes to the MDA that ranged from simple definitions, to  
24 the type of light poles, to the number of units and open space required for the overall project.

1           77.     In total, the City required approximately 16 new and revised versions of the MDA,  
2 over the two plus year period.

3           78.     In the end, the Landowner was very diligent in meeting all of the City's demands  
4 and the MDA met all of the City mandates, the Nevada Revised Statutes and the City's own Code  
5 requirements.

6           79.     Even the City's own Planning Staff, who participated at every step in preparing the  
7 MDA, recommended approval, stating the MDA "is in conformance with the requirements of the  
8 Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020  
9 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development  
10 Agreement."

11          80.     Based upon information and belief, the MDA met or exceeded any and all Major  
12 Modification procedures and standards that are set forth in the City Code.

13          81.     Notwithstanding that less than two months after the City Council said it was very,  
14 very close to approving the MDA, the Landowner's efforts and sweeping concessions, and the  
15 City's own Planning Staff recommendation to pass the MDA, and the fact that the MDA met each  
16 and every City Code Major Modification procedure and standard, and the City's promise that it  
17 would approve the MDA (the sole basis the City gave for denying the 35 Acre Property  
18 applications was to allow approval of the MDA), on August 2, 2017, the MDA was presented to  
19 the City Council and the City denied the entire MDA altogether.

20          82.     The City did not ask the Landowner to make more concessions, like increasing the  
21 setbacks or reducing the units per acre, it just simply and plainly denied the MDA in its entirety.

22          83.     The City's actions in denying Landowner's tentative map (TMP-68482), WVR-  
23 68480, SDR-68481, GPA-68385 and MDA foreclosed all development of the 35 Acre Property in  
24

1 violation of Landowner's property interest and vested right to use and develop the 35 Acre  
2 Property.

3 84. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,  
4 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

5 85. As the 35 Acre Property is vacant, this meant that the property would remain  
6 vacant.

7 86. These facts show that the City assertion that it wanted to see the entire 250 Acre  
8 Residential Zoned Land developed as one unit was an utter and complete farce. Regardless of  
9 whether the Landowner submits individual applications (35 Acres applications) or one omnibus  
10 plan for the entire 250 Acre Residential Zoned Land (the MDA), the City unilaterally denied any  
11 and all uses of the 35 Acre Property.

12 87. Based upon information and belief, the denial of the 35 Acre Property individual  
13 applications to develop and the MDA denial are in furtherance of a City scheme to specifically  
14 target the Landowner's Property to have it remain in a vacant condition to be turned over to the  
15 City for a park for pennies on the dollar – a value well below its fair market value.

### 16 City Action #3 - Adoption of the Yohan Lowie Bills

17 88. After denial of the MDA, the City then raced to adopt two new ordinances that  
18 solely target the 250 Acre Residential Zoned Land in order to create further barriers to  
19 development.

20 89. The first is Bill No. 2018-5, which Councilwomen Fiore acknowledged "[t]his bill  
21 is for one development and one development only. The bill is only about Badlands Golf  
22 Course [250 Acre Residential Zoned Land]. . . . "I call it the Yohan Lowie [a principle with the  
23 Landowner] Bill."

1           90.     Based upon information and belief, the purpose of the Yohan Lowie Bill was to  
2 block any possibility of developing the 35 Acre Property by giving veto power to adjoining  
3 property owners before any land use application can be submitted regardless of the existing hard  
4 zoning and whether the neighbors have any legal interest in the property or not.

5           91.     The second is Bill No. 2018-24, which, based upon information and belief, is also  
6 clearly intended to target only the Landowner's 250 Acre Residential Zoned Land (which includes  
7 the 35 Acre Property) by making it nearly impossible to develop and then applying unique laws to  
8 jail the Landowner for seeking development of his property.

9           92.     On October 15, 2018, a recommending committee considered Bill 2018-24 and it  
10 was shown that this Bill targets solely the Landowner's Property.

11           93.     Bill 2018-24 defines the "requirements pertaining to the Development Review and  
12 Approval Process, Development Standards, and the Closure Maintenance Plan" for re-purposing  
13 "certain" golf courses and open spaces.

14           94.     Bill 2018-24 requires costly and technical application procedures, including:  
15 approval of expensive and technical master drainage, traffic, and sewer studies before any  
16 applications can be submitted; ecological studies; 3D topographic development models; providing  
17 ongoing public access to the private land; and requiring the Landowner to hire security and  
18 monitoring details.

19           95.     Bill 2018-24 seeks to make it a misdemeanor subject to a \$1,000 a day fine or  
20 "imprisonment for a term of not more than six months" or any combination of the two for an owner  
21 of a discontinued golf course who fails to maintain the course to a level that existed on the date of  
22 discontinuance, regardless of whether the course can be profitably operated at such a level.

23

24

1           96.     According to Councilwoman Fiore at the September 4, 2018, Recommending  
2 Committee meeting, if adopted, this would be the only ordinance in the City development code  
3 which could enforce imprisonment on a landowner.

4           97.     Based upon information and belief, at the September 4, 2018, meeting, the City  
5 Staff confirmed that Bill 2018-24 could be applied retroactively. This makes an owner of any  
6 failing golf course an indentured servant to neighboring owners whether such neighbors have any  
7 legal interest to the property or not.

8           98.     On November 7, 2018, despite the Bill's sole intent to target the Landowner's  
9 Property and prevent its development, the City adopted the Bill.

10          99.     This further shows the lengths to which the City has gone to prevent the  
11 development of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) –  
12 seeking unique laws to jail the Landowner for pursuing development of his own property for which  
13 he has the “right to develop.”

14          100.    Based upon information and belief, the adoption of these two City Bills is in  
15 furtherance of a City scheme to specifically target the Landowner's Property to have it remain in  
16 a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well  
17 below its fair market value.

18                   **City Action #4 - Denial of an Over the Counter, Routine Access Request**

19          101.    In August 2017, the Landowner filed a request with the City for three access points  
20 to streets the 250 Acre Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai  
21 Way.

22          102.    Based upon information and belief, this was a routine over the counter request and  
23 is specifically excluded from City Council review.

1           103. Also, based upon information and belief, the Nevada Supreme Court has held that  
2 a landowner cannot be denied access to abutting roadways, because all property that abuts a public  
3 highway has a special right of easement to the public road for access purposes and this is a  
4 recognized property right in Nevada, even if the owner had not yet developed the access.

5           104. Contrary to this Nevada law, the City denied the Landowner's access application  
6 citing as the sole basis for the denial, "the various public hearings and subsequent debates  
7 concerning the development on the subject site."

8           105. In violation of its own City Code, the City required that the matter be presented to  
9 the City Council through a "Major Review."

10           106. Based upon information and belief, this access denial is in furtherance of a City  
11 scheme to specifically target the Landowner's Property to have it remain in a vacant condition to  
12 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
13 value.

14           **City Action #5 - Denial of an Over the Counter, Routine Fence Request**

15           107. In August, 2017, the Landowner filed with the City a routine request to install chain  
16 link fencing to enclose two water features/ponds that are located on the 250 Acre Residential  
17 Zoned Land.

18           108. Based upon information and belief, the City Code expressly states that this  
19 application is similar to a building permit review that is granted over the counter and not subject  
20 to City Council review.

21           109. The City denied the application, citing as the sole basis for denial, "the various  
22 public hearings and subsequent debates concerning the development on the subject site."

23           110. In violation of its own Code, the City then required that the matter be presented to  
24 the City Council through a "Major Review" pursuant to LVMC 19.16.100(G)(1)(b) which, based

1 upon information and belief, states that the Director determines that the proposed development  
2 could significantly impact the land uses on the site or on surrounding properties.

3 111. Based upon information and belief, the Major Review Process contained in LVMC  
4 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to  
5 interested City departments for comments/recommendation/requirements, and publicly noticed  
6 Planning Commission and City Council hearings. The City has required this extraordinary  
7 standard from the Landowner to install a simple chain link fence to enclose and protect two water  
8 features/ponds on his property.

9 112. Based upon information and belief, this fence denial is in furtherance of a City  
10 scheme to specifically target the Landowner's Property to have it remain in a vacant condition to  
11 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
12 value.

#### 13 **City Action #6 - Denial of a Drainage Study**

14 113. In an attempt to clear the property, replace drainage facilities, etc., the Landowner  
15 submitted an application for a Technical Drainage Study, which should have been routine, because  
16 the City and the Landowner have an On-Site Drainage Improvements Maintenance Agreement  
17 that allows the Landowner to remove and replace the flood control facilities on his property. The  
18 City would not accept the Landowners' application for a Technical Drainage Study.

19 114. Based upon information and belief, the City's Yohan Lowie Bill, referenced above,  
20 requires a technical drainage study in order to grant entitlements.

21 115. Based upon information and belief, the City, in furtherance of its scheme to keep  
22 the Landowner's property in a vacant condition to be turned over to the City for a park for pennies  
23 on the dollar – a value well below its fair market value - is mandating an impossible scenario - that  
24 **there can be no drainage study without entitlements while requiring a drainage study in**

1 **order to get entitlements.** This is a clear catch-22 intentionally designed by the City to prevent  
2 any use of the Landowners' property.

3 **City Action #7 - City Refusal to Even Consider the 133 Acre Property Applications**

4 116. As part of the numerous development applications filed by the Landowner over the  
5 past three years to develop all or portions of the 250 Acre Residential Zoned Land, in October and  
6 November 2017, the necessary applications were filed to develop residential units on the 133 Acre  
7 Property consistent with the R-PD7 hard zoning.

8 117. The City Planning Staff reviewed the applications, determined that the proposed  
9 residential development was consistent with the R-PD7 hard zoning, that it met all requirements  
10 in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code  
11 (Title 19), and recommended approval.

12 118. Instead of approving the development, the City Council delayed the hearing for  
13 several months until May 16, 2018 - the same day it was considering the Yohan Lowie Bill,  
14 referenced above.

15 119. The City put the Yohan Lowie Bill on the morning agenda and the 133 Acre  
16 Property applications on the afternoon agenda.

17 120. The City then approved the Yohan Lowie Bill in the morning session.

18 121. Thereafter, Councilman Seroka asserted that the Yohan Lowie Bill applied to deny  
19 development on the 133 Acre Property and moved to strike all of the applications for the 133 Acre  
20 Property filed by the Landowner.

21 122. The other Council members and City staff were taken a back and surprised by this  
22 attempt to deny the Landowner even the opportunity to be heard on the 133 Acre Property  
23 applications. Scott Adams (City Manager): "I would say we are not aware of the action. ... So  
24 we're not really in a position to respond technically on the merits of the motion, cause it, it's

1 something that I was not aware of.” Councilwoman Fiore: “none of us had any briefing on what  
2 just occurred.” Councilman Anthony: 95 percent of what Councilman Seroka said was, I heard it  
3 for the first time. So I – don’t know what it means. I don’t understand it.”

4 123. The City then refused to allow the Landowner to be heard on his applications for  
5 the 133 Acre Property and voted to strike the applications.

6 124. Based upon information and belief, the strategic adoption and application of the  
7 Yohan Lowie Bill to strike all of the 133 Acre Property development applications is further  
8 evidence of the City’s systematic and aggressive actions to deny any and all development on any  
9 part of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

10 125. Based upon information and belief, this City action is in furtherance of a City  
11 scheme to specifically target the Landowner’s Property to have it remain in a vacant condition to  
12 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
13 value.

14 **City Action #8 - The City Announced It Will Never Allow Development on the 35 Acre**  
15 **Property, Because the City Wants the Property for a City Park and Wants to Pay Pennies**  
**on the Dollar**

16 126. Based upon information and belief, the purpose for the repeated City denials and  
17 affirmative actions to create barriers to development is the City wants the Landowner’s Property  
18 for a City park.

19 127. In documents obtained from the City pursuant to a Nevada Public Records Request,  
20 it was discovered that the City has already allocated \$15 million to acquire the Landowner’s private  
21 property - “\$15 Million-Purchase Badlands and operate.”

22 128. Councilman Seroka issued a statement during his campaign entitled “The Seroka  
23 Badlands Solution” which provides the intent to convert the Landowner’s private property into a  
24 “fitness park.”

1           129. In an interview with KNPR Seroka stated that he would “turn [the Landowners’  
2 private property] over to the City.”

3           130. Councilman Coffin agreed as referenced in an email as follows: “I think your third  
4 way is the only quick solution...Sell off the balance to be a golf course with water rights (key).  
5 Keep the bulk of Queensridge green.”

6           131. Councilman Coffin and Seroka also exchanged emails wherein they state they will  
7 not compromise one inch and that they “need an approach to accomplish the desired outcome,”  
8 which, based upon information and belief, is to prevent all development on the Landowner’s  
9 Property so the city can take it for the City’s park.

10          132. The City has announced that it will never allow any development on the 35 Acre  
11 Property or any other part of the 250 Acre Residential Zoned Land.

12          133. Based upon information and belief, Councilman Seroka testified at the Planning  
13 Commission (during his campaign) that it would be “**over his dead body**” before the Landowner  
14 could use his private property for which he has a vested right to develop.

15          134. Based upon information and belief, in reference to development on the  
16 Landowner’s Property, Councilman Coffin stated firmly “I am voting against the whole thing,”  
17 calls the Landowner’s representative a “motherfucker,” and expresses his clear resolve to continue  
18 voting against any development on the 35 Acre Property.

19          135. Based upon information and belief, this City action is in furtherance of a City  
20 scheme to specifically target the Landowner’s Property to have it remain in a vacant condition to  
21 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
22 value.

23

24

1       **City Action #9 - The City has Shown an Unprecedented Level of Aggression to Deny All**  
2                               **Use of the 250 Acre Residential Zoned Land**

3               136.   The City has gone to unprecedented lengths to interfere with the use and enjoyment  
4 of the Landowner's Property.

5               137.   Based upon information and belief, Councilman Coffin sought "intel" against one  
6 of the Landowner representatives so that the intel could, presumably, be used to deny any  
7 development on the 250 Acre Residential Zoned Land (including the 35 Acre Property).

8               138.   Based upon information and belief, knowing the unconstitutionality of their actions,  
9 instructions were then given on how to hide communications regarding the 250 Acre Residential  
10 Zoned Land from the Courts.

11              139.   Based upon information and belief, Councilman Coffin advised Queensridge  
12 residents on how to circumvent the legal process and the Nevada Public Records Act by instructing  
13 how not to trigger any of the search terms being used in the subpoenas.

14              140.   Based upon information and belief, this City action is in furtherance of a City  
15 scheme to specifically target the Landowner's Property to have it remain in a vacant condition to  
16 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
17 value.

18                               **City Action #10 - the City has Reversed the Past Approval on the 17 Acre Property**

19              141.   The City has tried to claw back a past approval to develop on part of the 250 Acre  
20 Residential Zoned Land - the 17 Acre Property approvals.

21              142.   Whereas in approving the 17 Acre Property applications the City agreed the  
22 Landowner had the vested right to develop without a Major Modification, now the City is arguing  
23 in other documents that: 1) the Landowner has no property rights; and, 2) the approval on the 17  
24 Acre Property was erroneous, because no Major Modification was filed.

1           143. Based upon information and belief, this City action is in furtherance of a City  
2 scheme to specifically target the Landowner's Property to have it remain in a vacant condition to  
3 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
4 value.

5           **City Action #11 - The City Has Retained Private Counsel to Push an Invalid Open Space**  
6           **Designation on the 35 Acre Property**

7           144. Based upon information and belief, the City has now retained and authorized  
8 private counsel to push an invalid "open space" designation / Major Modification argument in this  
9 case to prevent any and all development on the 35 Acre Property.

10          145. Based upon information and belief, this is the exact opposite position the City and  
11 the City's staff has taken for the past 32 years on at least 1,067 development units in the Peccole  
12 Concept Plan area.

13          146. Based upon information and belief, approximately 1,000 units have been developed  
14 over the past 32 years in the Peccole Concept Plan area the City has never applied the "open space"  
15 / Major Modification argument now advanced by its retained counsel.

16          147. Based upon information and belief, the City has targeted this one Landowner and  
17 this one Property and is treating them differently than it has treated all other owners and developers  
18 in the area for the sole purpose of denying the Landowner his constitutional property rights so the  
19 Landowner's property will remain in a vacant condition to be turned over to the City for a park for  
20 pennies on the dollar – a value well below its fair market value.

21          148. Based upon information and belief, the City's actions singularly targets the  
22 Landowner and the Landowner's Property; the Property is vacant; and, the City's actions are in  
23 bad faith.  
24

1                   **EXHAUSTION OF ADMINISTRATIVE REMEDIES / RIPENESS**

2           149.   The Landowner's Alternative Verified Claims in Inverse Condemnation have been  
3 timely filed and, pursuant to the Court's Order entered on February 1, 2018, are ripe.

4           150.   The Landowner submitted at least one meaningful application to the City to develop  
5 the 35 Acre Property and the City denied each and every attempt to develop.

6           151.   The Landowner provided the City the opportunity to approve an allowable use of  
7 the 35 Acre Property and the City denied each and every use.

8           152.   The City denied the Landowner's applications to develop the 35 Acre Property as  
9 a stand alone parcel, even though the applications met every City Code requirement and the City's  
10 own planning staff recommended approval.

11          153.   The Landowner also worked on the MDA with the City for over two years that  
12 would have allowed development of the 35 Acre Property with the other parcels included in the  
13 250 Acre Residential Land. The City made over 700 changes to the MDA, sent the Landowner  
14 back to the drawing board at least 16 times to redo the MDA, and the Landowner agreed to more  
15 concessions than any landowner ever to appear before this City Council. The MDA even included  
16 the procedures and standards for a Major Modification and the City still denied the MDA  
17 altogether.

18          154.   If a Major Modification is required to exhaust administrative remedies / ripen the  
19 Landowner's taking claims, the MDA the Landowner worked on with the City for over two years  
20 included and far exceeded all of the procedures and standards for a Major Modification application.

21          155.   The Landowner cannot even get a permit to fence ponds on the 250 Acre  
22 Residential Zoned Land or a permit to utilize his legal and constitutionally guaranteed access to  
23 the Property.

1           156. The City adopted two Bills that specifically target and effectively eliminate all use  
2 of the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

3           157. Based upon information and belief, City Councilman Seroka stated that “over his  
4 dead body” will development be allowed and City Councilman Coffin put in writing that he will  
5 vote against any development on the 35 Acre Property.

6           158. The City has retained private counsel now to push the “open space” / Major  
7 Modification argument which is contrary to the City’s own actions for the past 32 years and actions  
8 on approximately 1,000 units that have developed in the area.

9           159. Based upon information and belief, this City action is in furtherance of a City  
10 scheme to specifically target the Landowner’s Property to have it remain in a vacant condition to  
11 be turned over to the City for a park for pennies on the dollar – a value well below its fair market  
12 value.

13           160. Therefore, the Landowner’s inverse condemnation claims are clearly ripe for  
14 adjudication.

15           161. It would be futile to submit any further applications to develop the 35 Acre Property  
16 to the City.

17           **FIRST ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**  
18                                   **(Categorical Taking)**

19           162. The Landowner repeats, re-alleges and incorporates by reference all paragraphs  
20 included in this pleading as if set forth in full herein.

21           163. The City reached a final decision that it will not allow development of Landowner’s  
22 35 Acres.

23           164. Any further requests or applications to the City to develop the 35 Acres would be  
24 futile.

1           165. The City's actions in this case have resulted in a direct appropriation of  
2 Landowner's 35 Acre property by entirely prohibiting the Landowner from using the 35 Acres for  
3 any purpose and reserving the 35 Acres vacant and undeveloped.

4           166. As a result of the City's actions, the Landowner has been unable to develop the 35  
5 Acres and any and all value in the 35 Acres has been entirely eliminated.

6           167. The City's actions have completely deprived the Landowner of all economically  
7 beneficial use of the 35 Acres.

8           168. Open space or golf course use is not an economic use of the 35 Acre Property.

9           169. The City's actions have resulted in a direct and substantial impact on the  
10 Landowner and on the 35 Acres.

11           170. The City's actions require the Landowner to suffer a permanent physical invasion  
12 of his property.

13           171. The City's actions result in a categorical taking of the Landowner's 35 Acre  
14 Property.

15           172. The City has not paid just compensation to the Landowner for this taking of his 35  
16 Acre Property.

17           173. The City's failure to pay just compensation to the Landowner for the taking of his  
18 35 Acre Property is a violation of the United States Constitution, the Nevada State Constitution,  
19 and the Nevada Revised Statutes, which require the payment of just compensation when private  
20 property is taken for a public use.

21           174. Therefore, the Landowner is compelled to bring this cause of action for the taking  
22 of the 35 Acre Property to recover just compensation for property the City is taking without  
23 payment of just compensation.

24           175. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

1       **SECOND ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**  
2                               **(Penn Central Regulatory Taking)**

3               176.   The Landowner repeats, re-alleges and incorporates by reference all paragraphs  
4 included in this pleading as if set forth in full herein.

5               177.   The City reached a final decision that it will not allow development of the  
6 Landowner's 35 Acres.

7               178.   Any further requests or applications to the City to develop the 35 Acres would be  
8 futile.

9               179.   The City already denied an application to develop the 35 Acres, even though: 1)  
10 the Landowner's proposed 35 Acre development was in conformance with its zoning density and  
11 was comparable and compatible with existing adjacent and nearby residential development; 2) the  
12 Planning Commission recommended approval; and 3) the City's own Staff recommended  
13 approval.

14              180.   The City affirmatively stated that it will not allow the Landowner to develop the 35  
15 Acres unless it is developed as part of the MDA, referenced above. The Landowner worked on  
16 the MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and  
17 with the City's direct and active involvement in the drafting and preparing the MDA and the City's  
18 statements that it would approve the MDA and despite nearly two years of working on the MDA,  
19 on or about August 2, 2017, the City denied the MDA.

20              181.   The City's actions have caused a direct and substantial economic impact on the  
21 Landowner, including but not limited to preventing development of the 35 Acres.

22              182.   The City was expressly advised of the economic impact the City's actions were  
23 having on Landowner.

24              183.   At all relevant times herein, the Landowner had specific and distinct investment  
backed expectations to develop the 35 Acres.

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1           184. These investment backed expectations are further supported by the fact that the  
2 City, itself, advised the Landowner of its vested rights to develop the 35 Acre Property prior to  
3 acquiring the 35 Acres.

4           185. The City was expressly advised of Landowner's investment backed expectations  
5 prior to denying the Landowner the use of the 35 Acres.

6           186. The City's actions are preserving the 35 Acres as open space for a public use and  
7 the public is actively using the 35 Acres.

8           187. The City's actions have resulted in the loss of the Landowner's investment backed  
9 expectations in the 35 Acres.

10          188. The character of the City action to deny the Landowner's use of the 35 Acres is  
11 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to  
12 a physical acquisition than adjusting the benefits and burdens of economic life to promote the  
13 common good.

14          189. The City never stated that the proposed development on the 35 Acres violated any  
15 code, regulation, statute, policy, etc. or that the Landowner did not have a vested property right to  
16 use/develop the 35 Acres.

17          190. The City provided only one reason for denying Landowner's request to develop the  
18 35 Acres - that the City would only approve the MDA that included the entirety of the 250 Acre  
19 Residential Zoned Land owned by various entities and that the MDA would allow development of  
20 the 35 Acres.

21          191. The City then, on or about August 2, 2017, denied the MDA, thereby preventing  
22 the development of the 35 Acres.

23          192. The City's actions meet all of the elements for a Penn Central regulatory taking.  
24

1           193.   The City has not paid just compensation to the Landowner for this taking of his 35  
2 Acre property.

3           194.   The City's failure to pay just compensation to the Landowner for the taking of his  
4 35 Acre Property is a violation of the United States Constitution, the Nevada State Constitution,  
5 and the Nevada Revised Statutes, which require the payment of just compensation when private  
6 property is taken for a public use.

7           195.   Therefore, the Landowner is compelled to bring this cause of action for the taking  
8 of the 35 Acre Property to recover just compensation for property the City is taking without  
9 payment of just compensation.

10          196.   The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

11           **THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**  
12                                   **(Regulatory Per Se Taking)**

13          197.   The Landowner repeats, re-alleges and incorporates by reference all paragraphs  
14 included in this pleading as if set forth in full herein.

15          198.   The City's actions stated above fail to follow the procedures for taking property set  
16 forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada's statutory provisions on  
17 eminent domain, and the United States and Nevada State Constitutions.

18          199.   The City's actions exclude the Landowner from using the 35 Acres and, instead,  
19 permanently reserve the 35 Acres for a public use and the public is using the 35 Acres and that use  
20 is expected to continue into the future.

21          200.   Based upon information and belief, the City is preserving the 35 Acre Property for  
22 a future public use by the City.

23          201.   The City's actions have shown an unconditional and permanent taking of the 35  
24 Acres.

1           202.   The City has not paid just compensation to the Landowner for this taking of his 35  
2 Acre property.

3           203.   The City's failure to pay just compensation to Landowner for the taking of his 35  
4 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and  
5 the Nevada Revised Statutes, which require the payment of just compensation when private  
6 property is taken for a public use.

7           204.   Therefore, Landowner is compelled to bring this cause of action for the taking of  
8 the 35 Acre property to recover just compensation for property the City is taking without payment  
9 of just compensation.

10          205.   The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

11           **FOURTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**  
12                                   **(Nonregulatory Taking)**

13          206.   The Landowner repeats, re-alleges and incorporates by reference all paragraphs  
14 included in this pleading as if set forth in full herein.

15          207.   The City actions directly and substantially interfere with the Landowner's vested  
16 property rights rendering the 35 Acres unusable and/or valueless.

17          208.   The City's actions substantially deprive the Landowner of the use and enjoyment  
18 of the 35 Acre Property.

19          209.   The City has taken steps that directly and substantially interfere with the  
20 Landowner's property rights to the extent of rendering the 35 Acre Property valueless or unusable.

21          210.   The City actions have rendered the 35 Acre Property unusable on the open market.

22          211.   The City has intentionally delayed approval of development on the 35 Acres and,  
23 ultimately, denied any and all development in a bad faith effort to preclude any use of the 35 Acres.

24          212.   The City's actions are oppressive and unreasonable.

          213.   The City's actions result in a nonregulatory taking of the Landowner's 35 Acres.

1           214. The City has not paid just compensation to the Landowner for this taking of his 35  
2 Acre Property.

3           215. The City's failure to pay just compensation to the Landowner for the taking of his  
4 35 Acre Property is a violation of the United States Constitution, the Nevada State Constitution,  
5 and the Nevada Revised Statutes, which require the payment of just compensation when private  
6 property is taken for a public use.

7           216. Therefore, the Landowner is compelled to bring this cause of action for the taking  
8 of the 35 Acre Property to recover just compensation for property the City is taking without  
9 payment of just compensation.

10          217. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00)

11           **FIFTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**  
12                                   **(Temporary Taking)**

13          218. The Landowner repeats, re-alleges and incorporates by reference all paragraphs  
14 included in this pleading as if set forth in full herein.

15          219. If there is subsequent City Action or a finding by the Nevada Supreme Court, or  
16 otherwise, that the Landowner may develop the 35 Acre Property, then there has been a temporary  
17 taking of the Landowner's 35 Acre Property for which just compensation must be paid.

18          220. The City has not offered to pay just compensation for this temporary taking.

19          221. The City failure to pay just compensation to the Landowner for the taking of his 35  
20 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the  
21 Nevada Revised Statutes, which require the payment of just compensation when private property  
22 is taken for a public use.

23          222. Therefore, the Landowner is compelled to bring this cause of action for the taking  
24 of the 35 Acre Property to recover just compensation for property the City has taken without  
payment of just compensation.

223. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

## SIXTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

**(Judicial Taking)**

224. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

225. If this Court elects to follow the Crockett Order (that was decided in the context of a land use case and which entirely ignores the Landowner's hard zoning and vested right to develop) to deny the taking in this case, this will add a judicial taking claim, because the Crockett Order would be applied to recharacterize the Landowner's 35 Acre Property from a hard zoned residential property with the vested "rights to develop" to a public park / open space.

226. The requested compensation for this claim is in excess of fifteen thousand dollars (\$15,000.00).

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment as follows:

1. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of the Landowner's Property by inverse condemnation,
  2. Prejudgment interest commencing from the date the City first froze the use of the 35 Acre Property which is prior to the filing of this Complaint in Inverse Condemnation;
  3. A preferential trial setting pursuant to NRS 37.055 on the alternative inverse condemnation claims;
  4. Payment for all costs incurred in attempting to develop the 35 Acres;
  5. For an award of attorneys' fees and costs incurred in and for this action; and,
- //

1           6.     For such further relief as the Court deems just and equitable under the  
2 circumstances.

3                     DATED THIS 15<sup>th</sup> day of ~~March~~ <sup>May</sup>, 2019.

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

5                     BY:    /s/ Kermitt L. Waters  
6                                 KERMITT L. WATERS, ESQ. (NBN 2571)  
7                                 JAMES J. LEAVITT, ESQ. (NBN 6032)  
8                                 MICHAEL SCHNEIDER, ESQ. (NBN 8887)  
9                                 AUTUMN WATERS, ESQ. (NBN 8917)

10                                **HUTCHISON & STEFFEN**

11                     BY:    /s/ Mark A. Hutchison  
12                               Mark A. Hutchison (4639)  
13                               Joseph S. Kistler (3458)  
14                               Robert T. Stewart (13770)

15                                *Attorneys for 180 Land Company, LLC*

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24


1 VERIFICATION

2 STATE OF NEVADA )  
3 ) :ss  
4 COUNTY OF CLARK )

5 Yohan Lowie, on behalf of the Landowner, being first duly sworn, upon oath, deposes and  
6 says: that he has read the foregoing **SECOND AMENDMENT and FIRST SUPPLEMENT TO**  
7 **COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE**  
8 **CONDEMNATION** and based upon information and belief knows the contents thereof to be true  
9 and correct to the best of his knowledge.

10   
11 YOHAN LOWIE

12 SUBSCRIBED and SWORN to before me  
13 This 15 day of May, 2019.

14   
15 NOTARY PUBLIC



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 15<sup>th</sup> day of May, 2019, a true and correct copy of the foregoing **SECOND**  
4 **AMENDMENT and FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED**  
5 **ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** was made by  
6 electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the  
7 Eighth Judicial District Court's electronic filing system, with the date and time of the electronic  
8 service substituted for the date and place of deposit in the mail and addressed to each of the  
9 following:

10  
11 **McDonald Carano LLP**

12 George F. Ogilvie III  
13 Debbie Leonard  
14 Amanda C. Yen  
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20 **Las Vegas City Attorney's Office**

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28  
/s/ *Evelyn Washington*  
An employee of the Law Offices of  
Kermit L. Waters

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

4

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9 180 LAND COMPANY LLC, )

10 Plaintiff, )

11 vs. )

12 LAS VEGAS CITY OF, )

13 Defendant. )

14

15

REPORTER'S TRANSCRIPT

16

OF

17 CITY OF LAS VEGAS'S MOTION TO STAY PROCEEDINGS PENDING  
18 RESOLUTION OF WRIT PETITION TO THE NEVADA SUPREME COURT  
19 ON ORDER SHORTENING TIME; PLAINTIFF'S OPPOSITION TO THE  
20 CITY OF LAS VEGAS'S MOTION TO STAY PROCEEDINGS PENDING  
21 RESOLUTION OF WRIT PETITION TO THE NEVADA SUPREME COURT  
22 ON ORDER SHORTENING TIME AND COUNTERMOTION FOR NUNC PRO  
23 TUNC ORDER

24

21 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

22

DISTRICT COURT JUDGE

23

DATED WEDNESDAY, MAY 15, 2019

24

25 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

Peggy Isom, CCR 541, RMR  
(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

Case Number: A-17-758528-J

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4

KERRITT L. WATERS

5

BY: KERRITT WATERS, ESQ.

6

BY: JAMES J. LEAVITT, ESQ.

7

BY: AUTUMN WATERS, ESQ.

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BY: GEORGE F. OGILVIE, III, ESQ.

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BY: DEBBIE LEONARD, ESQ.

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Pursuant to NRS 239.053, illegal to copy without payment.

1  
2 FOR THE INTERVENORS:  
3

4 PISANELLI BICE PLLC

5 BY: DUSTUN HOLMES, ESQ.

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Pursuant to NRS 239.053, illegal to copy without payment.

1 LAS VEGAS, NEVADA; WEDNESDAY, MAY 15, 2019

2 9:29 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5

6 THE COURT: Okay. We're going to move on.

7 Next up page 5. 180 Land Company LLC versus the City  
8 of Las Vegas.

9 MR. OGLIVIE: Good morning, your Honor.

09:01:02 10 George Ogilvie on behalf of the City of Las Vegas.

11 MS. LEONARD: Good morning, your Honor. Deb  
12 Leonard on behalf of the City of Las Vegas.

13 MR. WATERS: Kermitt Waters on behalf of the  
14 landowner, your Honor, 180 Land.

09:01:15 15 MR. LEAVITT: James J. Leavitt on behalf of  
16 the landowner, 180 Land, your Honor.

17 MR. HOLMES: Good morning, your Honor. Dustun  
18 Holmes on behalf of the intervenors.

19 MR. BICE: Good morning, your Honor. Todd  
09:01:21 20 Bice also on behalf of the intervenors.

21 THE COURT: All right. I didn't overlook  
22 anyone, did I?

23 MS. WATERS: Autumn Waters on behalf of the  
24 landowner, your Honor.

09:01:30 25 THE COURT: All right. I just want to make

Peggy Isom, CCR 541, RMR  
(702) 671-4402 - CROERT48@GMAIL.COM  
Pursuant to NRS 239.053, illegal to copy without payment.

09:01:32 1 sure.

2 All right. Once again, good morning. And  
3 it's my understanding we have a motion. Let me make  
4 sure I get it right. City of Las Vegas motion to stay  
09:01:44 5 proceedings pending resolution of the writ petition to  
6 the Nevada Supreme Court, and we have an opposition and  
7 countermotion for nunc pro tunc order.

8 All right. Sir.

9 MR. OGLIVIE: Your Honor, as stated in the  
09:02:02 10 City's motion and reply, the City seeks to -- seeks a  
11 writ from the Nevada Supreme Court that it will -- that  
12 the City will file upon the Court's entry of an order  
13 denying the City's motion for judgment on the  
14 pleadings.

09:02:23 15 City intends to seek that writ or file that  
16 writ petition immediately after the entry of that order  
17 and pending the adjudication of that writ. The City,  
18 through the motion before the Court this morning,  
19 respectfully seeks a stay of these proceedings pending  
09:02:44 20 Nevada Supreme Court's adjudication of the writ  
21 petition.

22 The basis of the writ petition is three fold.  
23 And it's all based upon the Court's denial of the  
24 motion for judgment on the pleadings.

09:03:00 25 First, as the Court has previously found and

09:03:02 1 the developer lacks any vested rights to have its  
2 development applications approved. As a matter of law  
3 then, the developer cannot assert a takings claim.  
4 Without any vested rights, the developer -- there  
09:03:25 5 cannot be a taking.

6 Not only did the Court make that determination  
7 in the findings of fact and conclusions of law that  
8 were entered in November 2018 which denied the  
9 developer's petition for judicial review, the Court  
09:03:45 10 reiterated that finding when it entered the -- when it  
11 issued its May 7, 2019, findings of fact and  
12 conclusions of law denying the developer's motion for a  
13 new trial. Specifically in paragraph 22 of the  
14 conclusions of law the Court stated, and I quote:

09:04:03 15 "This Court correctly concluded that the  
16 developer does not have vested rights to have  
17 35 acres approved. And neither Judge Smith's  
18 orders nor the Supreme Court's orders of  
19 affirmance alter that conclusion. Thus, as a  
09:04:19 20 matter of law there cannot" --

21 This is -- that was the end of the quote. The  
22 City's position and the position it will take in the  
23 writ petition to the Nevada Supreme Court that as a  
24 result of that conclusion, there cannot be a taking as  
09:04:38 25 a matter of law.

09:04:41 1           It's interesting to note that notwithstanding  
2 the arguments that developer makes to the contrary,  
3 that there can be a taking, even though there -- it has  
4 no vested rights, the developer in its counter-motion  
09:04:57 5 seeks to have that conclusion of law in the May 7,  
6 2019, findings of fact and conclusions of law stricken  
7 in the motion for order nunc pro tunc. The developer  
8 respectfully requests the Court to strike that  
9 paragraph, paragraph 22 of the conclusions of law,  
09:05:20 10 because it knows that if that conclusion of law stands,  
11 as a matter of law it cannot assert a takings claim in  
12 this matter.

13           So the City's position is that a stay is  
14 required to allow it the opportunity to address this  
09:05:40 15 matter before the Nevada Supreme Court which the City  
16 submits that the Nevada Supreme Court will accept that  
17 writ petition and, ultimately, grant the writ and  
18 direct this Court to reverse its decision on the motion  
19 for judgment on the pleadings and grant the City's  
09:06:07 20 motion for judgment on the pleadings.

21           The second basis, legal basis for the City's  
22 writ is that the Court's finding that the Crockett  
23 order, which is on appeal, and holds that no  
24 redevelopment of the golf course can occur without a  
09:06:28 25 major modification of the Peccole Ranch Master Plan has

09:06:35 1 preclusive effect. The Court not only, again, found  
2 that and made that conclusion of law in the November,  
3 2018, findings of fact and conclusions of law denying  
4 the petition for judicial review, the Court reiterated  
09:06:50 5 and confirmed that finding in the findings of fact and  
6 conclusions of law that were entered on May 7th, 2019,  
7 just a week ago in which the Court stated that  
8 conclusion of law 24:

9 "The Court correctly determined that  
09:07:06 10 Judge Crockett's order has preclusive effect  
11 here, and as a result, the developer must  
12 obtain the city council's approval of a major  
13 modification to the Peccole Ranch Master Plan  
14 before it may develop the 35-acre property."

09:07:24 15 Since the developer's inverse condemnation  
16 claims cannot be ripe under the Crockett order until  
17 the developer submits an application for a major  
18 modification, and the City grants that application,  
19 then the matter before this Court is not ripe. And  
09:07:45 20 ripeness is a jurisdictional requirement that the  
21 Nevada Supreme Court will -- on which the Nevada  
22 Supreme Court will entertain petitions for writs of  
23 mandamus, for prohibition, which is what the City is  
24 going to seek.

09:08:07 25 The last basis, legal basis for submitting the

09:08:11 1 writ is the fact that the developer's inverse  
2 condemnation claims are time barred because the  
3 developers predecessor in interest actually sought the  
4 open space designation which is set forth in the  
09:08:35 5 Peccole Ranch Master Plan.

6 Now, if the developer states that simply that  
7 an administerial act by the City of stamping something  
8 as open space or some other designation cannot trigger  
9 the statute of limitations. That does not address the  
09:08:54 10 fact that here the developer's predecessor in interest  
11 actually sought that designation and obtained that  
12 designation. So any ability to challenge that  
13 designation was triggered with the granting of the  
14 developer's predecessors in interest's request, which  
09:09:15 15 is beyond the 15 years -- 15-year statute of  
16 limitations.

17 For those three grounds, the developer -- or  
18 the City submits that the Nevada Supreme Court will  
19 accept the writ petition and ultimately grant the writ  
09:09:33 20 petition. And based on that, the City should not be  
21 required to litigate this matter before the trial  
22 court.

23 And we identified four factors in our motion  
24 under Hansen versus Eighth Judicial District Court in  
09:09:53 25 which the Nevada Supreme -- the Nevada Supreme Court

09:09:56 1 and the trial courts are to consider whether or not a  
2 stay should be issued.

3           Those four factors are: First, whether the  
4 object of the writ -- or the writ or appeal will be  
09:10:09 5 defeated if the stay is denied. And the City submits  
6 that because we are addressing a jurisdictional issue  
7 of ripeness, absolutely if the stay is denied and the  
8 City is required to litigate this case pending the  
9 adjudication of the writ petition, then the writ  
09:10:27 10 petition -- the object of the writ petition will be  
11 defeated.

12           The second factor is whether or not the City  
13 will suffer irreparable harm or serious injury if the  
14 stay is denied. And the City has stated in its moving  
09:10:48 15 papers, has identified specifically that the --  
16 notwithstanding this Court's finding on two occasions  
17 that the City acted within its discretionary authority  
18 to deny the applications that are at issue here, the  
19 City can be subject to an inverse condemnation claim.

09:11:13 20 And if that is the case, not only the City of  
21 Las Vegas, but Clark County, every municipality in  
22 Clark County, and every municipality and county in the  
23 state can be subject to an inverse condemnation claim  
24 even though there is a finding that the City acted  
09:11:33 25 within its discretionary authority and acted lawfully.

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09:11:41 1 And, moreover, in instances in which a developer lacks  
2 vested rights to have the applications at issue  
3 granted.

4 So if the irreparable harm, the serious harm  
09:11:57 5 is the floodgate, floodgates of litigation that the  
6 City and every municipality and every county in the  
7 state will be subjected to in the event that a stay is  
8 not imposed pending the adjudication of the City's writ  
9 petition.

09:12:15 10 The third factor of -- the third Hansen factor  
11 of whether or not --

12 THE COURT: Isn't that kind of speculative,  
13 though, as far as floodgates are concerned,  
14 Mr. Ogilvie?

09:12:29 15 MR. OGLIVIE: Certainly, certainly the  
16 developer makes that argument that the Chicken Little  
17 Sky is Falling argument is not realistic. I submit to  
18 the Court that it absolutely is realistic.

19 Here, if we look at what we have here, which  
09:12:46 20 is the City exercising its lawful -- its lawful  
21 authority in denying land use applications, but yet it  
22 is subject to litigation for inverse condemnation,  
23 twofold.

24 First of all I don't think it was speculation,  
09:13:13 25 your Honor. I think every educated -- when I say

09:13:18 1 educated I mean developer that is aware of the  
2 proceedings in takings law and land use law, will see  
3 this as an opportunity to use this as a sword to obtain  
4 the granting of the applications. First of all, to  
09:13:42 5 obtain the granting of the applications that it seeks  
6 and threaten the municipalities with, If you don't  
7 grant my applications I'm suing you because I have that  
8 right now.

9 The right --

09:13:57 10 THE COURT: But is that irreparable harm?  
11 Irreparable harm under any sort of definition?  
12 Because, typically, when you talk about irreparable or  
13 irreparable harm it's something tangible and  
14 significant. Here we're talking about the possibility  
09:14:13 15 of being sued, and there's been no establishment of  
16 floodgate of lawsuits specifically relating to inverse  
17 condemnation claims as a result of my decision.

18 MR. OGLIVIE: Well, it's always going to be  
19 speculative, your Honor. You can not state that  
09:14:29 20 there's going to be 100 more lawsuits against a  
21 municipality or any entity, state or private, as a  
22 result of ruling in litigation. That's an absolute  
23 impossibility.

24 I'm just submitting to the Court that  
09:14:48 25 absolutely any developer that is watching these

09:14:52 1 proceedings now has a hammer with which it can bludgeon  
2 every municipality to say, you know what, if you don't  
3 grant this, notwithstanding the fact that I don't have  
4 vested rights to the granting of these applications,  
09:15:10 5 notwithstanding the fact that you, City, county, have  
6 the ability to exercise your lawful authority to deny  
7 these applications, I'm going to sue you.

8           And what effect is that going to have on the  
9 cities and the municipalities and the counties? There  
09:15:29 10 it's going to be a great chilling effect that, in fact,  
11 they say, well, we can't be embroiled in this  
12 litigation. We have to proceed with a different  
13 course. And that different course is granting the  
14 applications, even though the City may have the  
09:15:49 15 discretionary authority to deny the applications.

16           THE COURT: And I think it's important to  
17 point out I respect that discretionary authority of the  
18 city council, and that's one of the reasons why I ruled  
19 the way I did.

09:16:04 20           But just as important too, isn't this case  
21 slightly different from that? Because keep in mind  
22 that when I'm making a determination as it relates to a  
23 petition for judicial review my thrust and focus is  
24 very limited to the record right before me. But it's  
09:16:19 25 my understanding that potentially it's part of the

09:16:22 1 basis for the inverse condemnation claim in the severed  
2 case. They're making claims of conduct of the city  
3 council and specific councilmen and women that occurred  
4 after the whole petition process. So they're going  
09:16:38 5 well beyond my narrow record. They're looking at a lot  
6 of other instances that would rise to potentially a  
7 taking.

8 And so that's one of the reasons why I said  
9 what you said, and I placed it on the record. Because  
09:16:56 10 I do think this is a very fascinating case. And it  
11 probably involves issues of first impression.

12 But in the countermotion -- and I'm glad I do  
13 talk on the record quite a bit. There is -- I think I  
14 was pretty clear as to how I was viewing this case, and  
09:17:13 15 potentially there's different standards involved.

16 And I looked at it through this prism. I'm  
17 saying -- because what you're saying is, Look, Judge,  
18 once you deny a petition for judicial review by  
19 operation of law there can never be an inverse  
09:17:30 20 condemnation claim brought by that developer.

21 MR. OGLIVIE: What I'm saying, your Honor, is  
22 that when the Court denies a petition for judicial  
23 review finding two things -- finding actually three  
24 things:

09:17:45 25 One, that the City acted within its

09:17:48 1 discretionary authority;

2 Two, that if the developer has no vested  
3 rights to the granting of these applications;

4 And three, that Judge Crockett's order that  
09:18:03 5 the developer must bring forth an application for major  
6 modification, and that application must be approved,  
7 that under those specific three instances, which is  
8 what is in this case, there cannot be a taking.

9 THE COURT: But here's my -- and understand.  
09:18:22 10 I'm not close to all the facts of this case because I  
11 have another thousand cases. And I'm just going on  
12 rote memory. But it's my recollection in the  
13 inverse -- in the severed case, wasn't there testimony  
14 by a council member, something to the effect, and I  
09:18:38 15 could be wrong because this is just based upon rote  
16 memory, that, Well maybe they didn't need a major  
17 modification. Was that an issue? Is my recollection  
18 wrong on that?

19 MR. LEAVITT: You're correct, your Honor.

09:18:53 20 THE COURT: Okay. I'm just -- this is all --  
21 because I read -- I remember when this came up before  
22 me, I read everything. I tried to. And it was a  
23 significant record.

24 MR. OGLIVIE: So let me -- let me address  
09:19:01 25 that, your Honor.

09:19:02 1

THE COURT: Yes.

2

MR. OGLIVIE: First of all, it wasn't a city council member, it was the City attorney had some question about it.

09:19:09 5

THE COURT: Okay. That's --

6

MR. OGLIVIE: But, but that was prior to the issuance of Judge Crockett's order. Judge Crockett's order is now the law unless and until it is reversed by the Nevada Supreme Court. Since that time, since the

09:19:28 10

issuance of Judge Crockett's order, the City has acted in conformity with that order in making a determination that unless -- until the developer submits an application for a major modification, the City does not have the ability to address any of the land use

09:19:51 15

applications submitted by this developer related to the former Badlands Golf Course.

17

So that, that issue did exist until Judge Crockett issued his order. But Judge Crockett took that issue off the table. It doesn't matter what

09:20:10 20

a city councilman thought. It doesn't matter how the City attorney interpreted the law. A judge has now interpreted the law and made a determination. And everyone has to live by that unless the Nevada Supreme Court reverses that decision.

09:20:28 25

THE COURT: And here's my next question. I

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09:20:29 1 mean, Judge Crockett's order didn't specifically deal  
2 with the 35 acres that are before me; is that correct?

3 MR. OGLIVIE: That is correct.

4 THE COURT: Okay.

09:20:38 5 MR. OGLIVIE: But this Court found that that  
6 order had preclusive effect on the 35-acre applications  
7 that are before this Court.

8 So this Court made a determination that not  
9 only does that order apply to the applications, the  
09:20:58 10 17 acres before Judge Crockett, but it applies to this,  
11 the four land use applications before the Court on the  
12 35 acres.

13 THE COURT: So, I guess, getting back to my  
14 question, because it appears to me that it would be the  
09:21:17 15 city's position that once the Court rules that there is  
16 substantial evidence in the record to support the  
17 decision of the city council by operation of law, the  
18 landowner shall be precluded from filing an inverse  
19 condemnation claim?

09:21:35 20 MR. OGLIVIE: And I will answer that as I did  
21 before. That not only is that the facts before this  
22 Court, but it's buttressed by the fact that this Court  
23 has made a determined -- a conclusion of law twice now,  
24 that the developer lacks vested rights to have the  
09:21:56 25 35 acre land use applications approved. And the

09:22:00 1 preclusive effect of Judge Crockett's overruling  
2 precludes an inverse taking claim as brought before the  
3 Court in this case.

4 Now, I understand the Court may or may not  
09:22:16 5 disagree with that proposition. The Court made a  
6 ruling against the City as a matter of law that the  
7 City wishes to challenge with the Supreme Court.

8 THE COURT: And I have no problem with that  
9 because I think it's a very unique issue, one of first  
09:22:37 10 impression maybe. I don't know.

11 MR. OGLIVIE: And I know this Court. And I  
12 know that your Honor is speaking candidly when it  
13 says -- makes the statement that it just did.

14 But I will submit to the Court that, in fact,  
09:22:51 15 this is a very important issue. And I'm not arguing  
16 with the Court today as to whether or not the  
17 Court's --

18 THE COURT: I understand.

19 MR. OGLIVIE: -- decision was right or wrong.  
09:23:02 20 All I'm suggesting to the Court is that the Court  
21 should issue a stay while this very important and  
22 interesting issue of law is decided by the Nevada  
23 Supreme Court.

24 So I've addressed three -- two of the Hansen  
09:23:26 25 factors.

09:23:26 1           The last, the third Hansen factor is whether  
2 or not the developer will suffer any irreparable harm  
3 or serious injury.

4           Oh, that was another point that I wanted to  
09:23:38 5 address with the Court's question to me whether or not  
6 there is irreparable harm to the City.

7           That Hansen factor is not just irreparable  
8 harm. It is also serious injury. And for all the  
9 reasons that I addressed irreparable harm, I submit to  
09:23:58 10 the Court they even -- they establish serious suffer --  
11 they establish serious injury even more so than  
12 irreparable harm.

13           The third factor again is whether or not the  
14 developer will suffer irreparable harm or serious  
09:24:17 15 injury if the stay is granted. Since the developer is  
16 only seeking compensation, money damages is not  
17 irreparable harm. Therefore, the developer cannot  
18 satisfy that standard, that factor.

19           And so we move to -- and in its opposition,  
09:24:41 20 the developer did not address any of those first three  
21 of the four Hansen factors. The only Hansen factors  
22 that the developer addressed in its opposition to the  
23 motion to stay was indirectly the fourth factor which  
24 is whether or not the City is likely to prevail on the  
09:25:04 25 merits of the writ petition.

09:25:06 1 And I submit to the Court, as I stated in my  
2 opening remarks, there are three basis for which the  
3 City seeks a determination by the Nevada Supreme Court  
4 that as a matter of law these inverse condemnation  
09:25:24 5 claims must be dismissed. The fact that  
6 Judge Crockett's ruling has preclusive effect, the fact  
7 that the developer lacks vested rights as found by this  
8 Court to have these applications approved, and the fact  
9 that the City acted within its discretionary authority.

09:25:48 10 So with those three factors, those three  
11 arguments combined, the City is confident of its -- of  
12 the merits of its writ petition and submits to the  
13 Court that the four factors combined lead to a  
14 determination by this Court that a stay should be  
09:26:13 15 issued.

16 And on that basis, your Honor, unless the  
17 Court has any further questions, I will submit it.

18 THE COURT: Not at this time, sir. Thank you.

19 MR. OGLIVIE: Thank you.

09:26:31 20 MR. LEAVITT: Good morning, your Honor.

21 Your Honor, what we just heard was actually a  
22 re-argument of our hearing that we were here last time  
23 on, which was our motion for summary judgment. And you  
24 will remember, your Honor, I addressed each and every  
09:26:42 25 one of these issues before the Court. And at the end

09:26:45 1 of that, after I argued each one of these issues, you  
2 asked Mr. Ogilvie if there was a factual dispute on  
3 every one of these issues. And Mr. Ogilvie stood up  
4 and said, I will contest factually every one of these  
09:26:55 5 issues that Mr. Leavitt just presented to you. And he  
6 said "so there are facts in dispute". Why is that so  
7 important? It's so important because Mr. Ogilvie  
8 gleans over the standard for a writ petition in this  
9 particular instance.

09:27:08 10 The Nevada Supreme Court first said that it  
11 will never accept a writ on a denial for a motion to  
12 dismiss. But then later it modified that rule, and it  
13 said we will accept a writ under very limited  
14 circumstances.

09:27:20 15 And this goes to whether or not Mr. Ogilvie  
16 will prevail on the merits and whether he should be  
17 granted a stay while he attempts to prevail on the  
18 merits. And the Nevada Supreme Court said we will only  
19 grant a writ petition under these very limited  
09:27:33 20 circumstances where there are no facts in dispute.

21 That's what the Nevada Supreme Court held.

22 And so with Mr. Ogilvie standing up at the  
23 last hearing and stating there are facts in dispute, he  
24 has defeated the very underlying purpose of his writ  
09:27:48 25 petition.

09:27:49 1 Just to give you an example here, your Honor.  
2 Mr. Ogilvie is right. We will argue to you as we have  
3 done in the past that a major modification has been  
4 filed for the 35-acre property. Not once, but twice  
09:28:02 5 we've met the standards and procedures for a major  
6 modification, and the City denied that major  
7 modification.  
8 The City is going to stand up and say we  
9 didn't file a major modification. That's a factual  
09:28:11 10 dispute.  
11 We will argue that the City did not properly  
12 adopt a PROS on our property. The City will stand up  
13 and say that they did properly adopt a PROS on our  
14 property. That, again, is a factual dispute. When you  
09:28:23 15 have factual disputes in a case on -- and on a  
16 motion -- or a denial of a motion to dismiss, the  
17 Nevada Supreme Court has unequivocally stated it will  
18 not grant a writ petition. It will not even entertain  
19 a writ petition.  
09:28:39 20 And if the Nevada Supreme Court is not going  
21 to entertain the City's writ petition, then there's  
22 absolutely no reason right now to grant a stay.  
23 So let me talk just briefly about the merits  
24 that Mr. Ogilvie has presented to you because he has to  
09:28:53 25 prove to you today that there is a likelihood of

09:28:56 1 success on the merits in order to get his stay, get his  
2 stay granted. These three issues he just mentioned  
3 whether there's a property interest, whether the claims  
4 are ripe and the statute of limitations has now been  
09:29:08 5 presented to three judges. It's been presented to you.  
6 It's been presented to Judge Sturman. It's been  
7 presented to Judge Bixler. And not one of them have  
8 granted the City's request.

9 Judge Sturman flat out denied the motion to  
09:29:21 10 dismiss. You flat out denied the motion to dismiss  
11 because these are meritless arguments. And if they're  
12 meritless arguments, there is no chance of the City  
13 prevailing at the Nevada Supreme Court on the merits.

14 I think a pretty good indication that the City  
09:29:35 15 does not have a likelihood of success on the merits is  
16 that we have four orders from three different judges  
17 rejecting these arguments by the City of Las Vegas  
18 they've made here to you today.

19 Just -- your Honor, just let me take a minute  
09:29:49 20 on a couple of these arguments. The statute of  
21 limitations argument that the City makes to you, that  
22 was rejected in 1980 by the Nevada Supreme Court in the  
23 Sproul Homes case.

24 The Nevada Supreme Court had an opportunity to  
09:30:00 25 revisit that statute of limitations argument in 2015 in

09:30:05 1 what's often referred to as the Ad America case. It's  
2 State versus Eighth Judicial District. And the Nevada  
3 Supreme Court again rejected the statute of limitations  
4 argument that the City just made to you here today. So  
09:30:16 5 for the past 35 years the Nevada Supreme Court has  
6 twice rejected the statute of limitations argument the  
7 City just presented to you here today.

8 On the ripeness issue, let me take just a  
9 minute and just let's look at what the City's really  
09:30:31 10 trying to do. And this ripeness issue and this major  
11 modification issue really shows why we can't bring the  
12 petition for judicial review findings of facts and  
13 conclusions of law into this inverse condemnation case.

14 The petition for judicial review as you just  
09:30:46 15 stated, your Honor, has a different standard, has a  
16 cutoff period. Remember that --

17 THE COURT: It's very limited in scope.

18 MR. LEAVITT: Very limited. In fact, that,  
19 that --

09:30:54 20 THE COURT: There were certain items I  
21 remember at the hearing, and it was argued vigorously,  
22 that, Judge, Look, these other items are outside of the  
23 scope of the record below. You can't even consider  
24 them. And I wouldn't do that. And what's unique about  
09:31:09 25 this case, I don't mind saying that, is this, because I

09:31:14 1 happen to hear both matters, i.e., the petition for  
2 judicial review, and now I have the inverse  
3 condemnation case in front of me.

4 In a typical scenario I can say this, I can't  
09:31:26 5 recall under any circumstances, unless it was a  
6 petition for judicial review, that I would rely upon  
7 the decision making of whatever tribunal that it might  
8 be in a separate lawsuit filed as a result of that.  
9 Because, to be candid with you, I don't think it has  
09:31:49 10 preclusive effect. I just don't. It doesn't --  
11 because they're different standards. They're different  
12 cases. This is -- the inverse condemnation, I think,  
13 appears to be much broader in nature.

14 MR. LEAVITT: And this is -- you're absolutely  
09:32:01 15 right. The petition for judicial review had an  
16 absolute cutoff period. It was June 21, 2017. And  
17 remember, our client tried to bring into that petition  
18 for judicial review the denial of the master  
19 development agreement. And the City asked that it be  
09:32:16 20 stricken, and you granted that because you said this is  
21 a cutoff period. My review is very limited.

22 THE COURT: It's very limited.

23 MR. LEAVITT: Very limited. And so there was  
24 only one act that you reviewed in the petition for  
09:32:25 25 judicial review. And that was the denial of the

09:32:27 1 35-acre application. The inverse condemnation case has  
2 12 government actions that we're alleging rise to the  
3 level of a taking. 12, which is significantly  
4 different than the petition for judicial review.

09:32:40 5 So let's just take just one of those facts for  
6 just very briefly, your Honor, and I want to make my  
7 record on this. In the petition for judicial review  
8 there was a finding that the landowner did not file a  
9 major modification. Remember the cutoff date was

09:32:53 10 June 21, 2017. However, in the inverse condemnation  
11 case, after June 21, 2017, there was a master  
12 development agreement that included all of the  
13 procedures and standards of a major modification.  
14 There was a general plan amendment that included and  
09:33:10 15 far exceeded all of the standards of a major  
16 modification application. And the City denied both of  
17 them.

18 So even though in the petition for judicial  
19 review there might be a finding that a major  
09:33:20 20 modification wasn't filed prior to June 21, 2017, in  
21 the inverse condemnation action, that same finding does  
22 not apply because, in fact, a major modification was  
23 applied for twice after June 21, 2017, and the City  
24 denied them both.

09:33:37 25 So to bring the petition for judicial review

09:33:39 1 finding that there wasn't a major modification filed  
2 into the inverse condemnation case provides an absolute  
3 fabrication of the facts. Because it limits the time  
4 period within which the major modification was not  
09:33:54 5 filed for in the petition for judicial review when, in  
6 fact, there was one filed for in the inverse  
7 condemnation case.

8 So that's just a very small example, your  
9 Honor. And I understand you get it that the facts are  
09:34:05 10 significantly larger in the inverse condemnation case.  
11 That we do have a major modification in the inverse  
12 condemnation case that may not have existed in the  
13 petition for judicial review.

14 Now, the City brings up this other issue.  
09:34:17 15 And, your Honor, I could -- I could talk about the  
16 property interest issue if you want me to. Whether  
17 there's vested property rights. We argued that ad  
18 nauseam at the last hearing. I can bring it up again.  
19 There is a 75-page brief which almost half of it  
09:34:32 20 addresses the property interest issue.

21 The property interest that we have, your  
22 Honor, is we have ownership of the property, number  
23 one. It's been hard zoned sense 1986. The Peccole  
24 Concept Plan that the City is touting to you here today  
09:34:45 25 identifies this specific property for a residential

09:34:48 1 use. It clearly has a vested right here to develop as  
2 a residential use. But those are all arguments that  
3 we've already made. Those are all arguments that we've  
4 already put in the record. And those are all arguments  
09:34:59 5 that the City lost on its motion to dismiss already.  
6 So that's, again, a very good indication that the City  
7 is not going to prevail on the merits in front of the  
8 Nevada Supreme Court on that issue.

9 But actually, let me talk about the discretion  
09:35:11 10 issue that the City has presented to you. The City  
11 says that the -- that it has absolute discretion to  
12 deny a land use application. I get that. It has  
13 discretion to deny a land use application. But it  
14 doesn't have discretion to then avoid the  
09:35:26 15 constitutional mandate of payment of just compensation.

16 What you didn't hear from the City of  
17 Las Vegas is that the City has the discretion to deny a  
18 landowner all use of their property and then avoid the  
19 Constitution. That's not what the City argued to you  
09:35:39 20 here today. And that's not what the City is entitled  
21 to do. And the reason the City didn't argue that is  
22 because that's not the law. That's what we're arguing  
23 about here in the inverse condemnation case.

24 In the PJR case, of course the City has  
09:35:51 25 discretion to deny a land use application. But when we

09:35:53 1 go over to the inverse condemnation case, if in  
2 exercising that discretion the City denies all use of  
3 the property and there's been a taking, it has to pay  
4 just compensation. Simply stated, that discretion is  
09:36:05 5 not a defense to the just compensation clause of the  
6 Nevada State and the United States Constitution.

7 Very quickly, your Honor, also on this  
8 property interest issue. The City says you don't have  
9 a vested property right in the petition for judicial  
09:36:20 10 review case in order to have your application approved.  
11 Now, that's different than the property interest you  
12 must show in an inverse condemnation case.

13 In the A.S.A.P. Storage case, the Nevada  
14 Supreme Court said the term private property in the  
09:36:33 15 Constitution requires that an individual have a  
16 property interest in order to assert a taking claim.  
17 And then here's the important part. They say that a  
18 individual's real property interest in land supports  
19 the taking claim.

09:36:46 20 So in the eminent domain case, all the  
21 landowner has to allege is we own property and you took  
22 it, and that's sufficient to defeat a motion to  
23 dismiss.

24 Again, he's mixing two different standards.  
09:36:59 25 And I know you understand this, your Honor, but I want

09:37:01 1 to make my record.

2 THE COURT: You have to make your record, sir.

3 MR. LEAVITT: Okay. And the standard for a

4 petition for judicial review on the vested property

09:37:08 5 rights is different than the standard for a property

6 right in an inverse condemnation case. Again, we

7 argued that ad nauseam. It's in the record, your

8 Honor.

9 But let me return -- let me turn just very

09:37:20 10 quickly to the City's argument of irreparable harm.

11 The Sky is Falling. That argument was made to the

12 Nevada Supreme Court in the Sisolak case. It was made

13 to the United States Supreme Courts in the Arkansas

14 Game and Fish case. And both the Nevada Supreme Court

09:37:31 15 and the United States Supreme Court rejected The Sky is

16 Falling argument.

17 We hear it -- the Nevada Supreme Court -- or

18 the United States Supreme Courts said we hear it time

19 and time again. If we protect the landowners

09:37:41 20 constitutional right to payment of just compensation,

21 the floodgates are going to open up. It hasn't

22 happened, your Honor. It hasn't happened in the past.

23 It won't happen in the future. These are very limited

24 circumstances where the City exercised its discretion,

09:37:55 25 and it denied this landowner all use of his property

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Pursuant to NRS 239.053, illegal to copy without payment.

09:37:59 1 when he had a zone -- a residential zoning on that  
2 property. And now the landowner is bringing a taking  
3 claim.

4 That's different than if the government  
09:38:08 5 exercises its discretion and says, Hey, instead of ten  
6 units you can only build five. We're not saying that,  
7 Hey, if the government had come to us and said, Hey,  
8 instead of ten units you can only build five, that  
9 that's a taking. That's not what happened here. The  
09:38:22 10 discretion that they exercised says you're not using  
11 anything. And over my dead body are you going to  
12 build. And I'm -- and we're going to vote against the  
13 whole thing.

14 That's what we have here is very different  
09:38:32 15 than the typical discretionary action that the  
16 government engages in. Therefore, there's not going to  
17 be these floodgates that open up.

18 On this other issue of whether the landowner  
19 is going to suffer prejudice, interest is never going  
09:38:44 20 to remedy this. I saw the argument in the government's  
21 brief that, Well, we're going to pay interest if there  
22 is ever a judgment. That's not going to remedy this.

23 Remember in front of the city council and  
24 before you at the last hearing I said, Judge, what we  
09:38:56 25 believe is happening here is the City is trying to

09:38:59 1 delay us out of this property. How are they doing it?  
2 We've made the representation to the City. We've made  
3 it to you that the carrying costs are significant on  
4 this property.

09:39:09 5 Just by way of example, the property is being  
6 tax assessed on a residential basis. That means our  
7 client has to pay taxes on a residential use of the  
8 property. And the City is not letting them use it for  
9 that residential use. So he's having to pay out of  
09:39:25 10 pocket. Getting to the end of his rope, your Honor.

11 THE COURT: Well, I mean, I don't know for  
12 sure, but that appears to me to be an evidentiary issue  
13 that might impact the taking calculation.

14 MR. LEAVITT: That absolutely will. But right  
09:39:37 15 now as we're standing here before you today, this is  
16 causing our client significant prejudice. We have  
17 pushed this case as hard as we can. And the last  
18 hearing we said, Judge, can we start discovery  
19 immediately. And after that hearing we immediately  
09:39:49 20 drafted discovery and sent it over to the City.

21 We want to move forward. We need to move  
22 forward because if we're continually delayed in this  
23 case, our client is going to continually have to come  
24 out of pocket, and the City is going to cost him out of  
09:40:02 25 this property.

09:40:03 1 THE COURT: That goes to the third factor.

2 MR. LEAVITT: Of prejudice. And, well, and

3 irreparable harm to the landowner. The -- this is --

4 irreparable harm, your Honor, is, typically, if you

09:40:11 5 have a home on a farm, and the City is getting ready to

6 bulldoze it. And you say, wait a minute. They don't

7 have a right to do that. Can we stay this because if

8 you bulldoze the home then there's going to be

9 irreparable harm. I'm never going to get my home back.

09:40:26 10 THE COURT: Well, typically, you see

11 irreparable harm in all property cases specifically as

12 it deals with ownership. I understand that concept.

13 MR. LEAVITT: Absolutely. But on the flip

14 side of that, the City is not making that type of --

09:40:34 15 they got to shows irreparable harm in order to get a

16 stay.

17 THE COURT: Because Nevada -- I mean, the

18 Supreme Court time and time again has said real

19 property is unique. I get it.

09:40:44 20 MR. LEAVITT: Absolutely. But the City -- and

21 I want to come back to that. But the City's

22 irreparable harm is they're saying, Hey, they have to

23 litigate a case. That has never been held to be

24 irreparable harm. Okay.

09:40:51 25 The irreparable harm that we will suffer, your

09:40:53 1 Honor, is there's a chance of losing this unique parcel  
2 of property if this case is stayed and we're not  
3 permitted to move forward.

4 And as you well know, as we all well know from  
09:41:03 5 the first day of property law, we learned that every  
6 single parcel of property is unique. If we lose this  
7 property, it will be irreparable harm. And because of  
8 that, your Honor, a stay should certainly not be  
9 granted under these circumstances.

09:41:16 10 Your Honor, I want to move to the -- I'll move  
11 to the nunc pro tunc request unless you have any  
12 further questions on the stay issue.

13 THE COURT: Not at this time, sir.

14 MR. LEAVITT: Okay. On the nunc pro tunc  
09:41:30 15 side, your Honor, what we are seeing right now is that  
16 the City of Las Vegas drafted a 75-page -- or I'm  
17 sorry, a 25-page findings of facts and conclusions of  
18 law from the petition for judicial review. And much of  
19 that language wasn't entirely necessary in the petition  
09:41:46 20 for judicial review. Okay.

21 Now, what the City is trying to do is, and  
22 you've seen it here and you've argued with -- or not  
23 argued, but you had a dialogue with Mr. Ogilvie at one  
24 of the last hearings where it was explained very  
09:42:01 25 clearly on the record that your intent was not to apply

09:42:03 1 the petition for judicial review order to the inverse  
2 condemnation case.

3 THE COURT: It was really that simple.

4 MR. LEAVITT: Okay.

09:42:08 5 THE COURT: Hopefully, I was very clear on  
6 that.

7 MR. LEAVITT: I get it that's simple. It was  
8 put in a minute order, and it was put in a written  
9 order, and a notice of entry of order was made. But  
09:42:17 10 the City is still trying to do it. The City is still  
11 trying to say that the petition for judicial review  
12 order applies in this inverse condemnation action  
13 despite the clear distinction between the two type of  
14 cases.

09:42:27 15 The rule on --

16 THE COURT: You know why that's important?  
17 Because, I mean, the only reason I think it's a much  
18 bigger issue in this case is the fact that I heard both  
19 the petition for judicial review, now I'm hearing the  
09:42:39 20 inverse condemnation action. And so I look at it from  
21 this perspective. That I just want to make sure the  
22 record is really clear. I understand the different  
23 standards. I understand the thrust and focus of what  
24 my review was when it came to the petition for judicial  
09:42:56 25 review. I get that.

09:42:59 1 Just as important, too, we have a severed  
2 case. And it specifically deals with an issue  
3 pertaining to inverse condemnation. I get that. A  
4 taking of real property by the government. Totally  
09:43:14 5 different standards involved. Right?  
6 MR. LEAVITT: Absolutely.  
7 THE COURT: So I even used examples I think at  
8 the prior hearing. Say if you had an administrative  
9 decision in a worker's comp case, would that have some  
09:43:26 10 impact on the case that goes to trial? No. It  
11 wouldn't. You know. Because it's a different standard  
12 there.  
13 But anyway, I get it, I do, as far as that's  
14 concerned. But, I mean, what specifically are you  
09:43:42 15 asking me to do?  
16 MR. LEAVITT: Well, here's the concern that we  
17 have. And if we go back, your Honor, to the very first  
18 day when this case was filed and the City first  
19 requested that we dismiss our inverse condemnation  
09:43:52 20 claim and bring it before another judge, remember the  
21 argument that we made? We said, no, Judge, we want you  
22 to hear both the petition for judicial review and the  
23 inverse condemnation case.  
24 And it's been phenomenal that that's what's  
09:44:03 25 occurred and what you ordered, is because now you're

09:44:06 1 able to see that you, having heard the facts in the  
2 petition for judicial review and heard the facts in the  
3 inverse condemnation case and read the case law from  
4 both of these two different types of cases, you know  
09:44:15 5 the difference and you understand the difference very  
6 well.

7 Our concern is that what the City is going to  
8 continually try to do, whether it's in front of the  
9 Nevada Supreme Court or in front of the Court of  
09:44:26 10 Appeals, is continually try and bring findings that you  
11 made in the petition for judicial review into the  
12 inverse condemnation case even though that's never what  
13 you intended. And that's been made very, very clear on  
14 the record.

09:44:40 15 And the nunc pro tunc that the Nevada Supreme  
16 Court has adopted in both the Mack case and the Findlay  
17 case says that the Court has the inherent authority to  
18 nunc pro tunc an order to make sure that his intent is  
19 put forward not only in that order but understood in  
09:44:54 20 the future.

21 And so what we've asked is we've submitted  
22 both of the recent orders from the petition for  
23 judicial review, the findings of fact and conclusions  
24 of law, and we've highlighted those portions that the  
09:45:05 25 City is trying to bring over from the PJR into the

09:45:08 1 inverse condemnation case which are absolutely not even  
2 necessary or germane to the petition for judicial  
3 review case.

4 The petition for judicial review is a very  
09:45:18 5 clean case. It said, is there their substantial  
6 evidence to uphold the City's denial of the 35-acre  
7 application? And so all that has to be done in that  
8 order, and if you read the order, the City's order that  
9 the City prepared with that highlighted language out,  
09:45:31 10 it's very clean and very straightforward. Doesn't  
11 impact the petition for judicial review findings at  
12 all. There's still findings there that there was  
13 substantial evidence to deny the 35-acre application.

14 But what it does is it takes out those portions that  
09:45:46 15 the City is trying to apply in the inverse condemnation  
16 action and furthers your intent of those orders for  
17 them not to apply in the inverse condemnation case.

18 And so we've submitted to you, it's Exhibit  
19 No. 2 and Exhibit No. 4. Exhibit No. 2 is the original  
09:46:03 20 findings of facts and conclusions of law which had --  
21 which removed those five specific paragraphs that the  
22 City had put in there before just actually overtly  
23 dismissing the inverse condemnation case. And Exhibit  
24 No. 4 is the most recent order you entered denying the  
09:46:22 25 motion to reconsider or a motion for a new trial on the

09:46:25 1 petition for judicial review.

2 Both of them have highlighted language that we  
3 think if taken out will, number one, further the intent  
4 of the Court and, number two, make it very clear that  
09:46:35 5 they did not intend to apply to the inverse  
6 condemnation case.

7 Now, the City's only opposition to that --

8 THE COURT: I don't think I have Exhibit 4 in  
9 my packet.

09:46:47 10 MR. BICE: That's in their reply brief.

11 MR. LEAVITT: Yeah. It's attached to the  
12 reply brief. Sorry.

13 Thank you, Mr. Bice.

14 THE COURT: I do have it.

09:46:55 15 MR. LEAVITT: Okay. But here's the City's  
16 only response as to that, your Honor, is the City says  
17 that we're trying to get another bite at the apple on  
18 the motion for new trial, a motion for reconsideration.  
19 That couldn't be further from the truth.

09:47:08 20 We're not asking you to change your findings  
21 in the petition for judicial review. You can keep your  
22 findings exactly what they are. Exactly what they were  
23 intended to be. Obviously, you have the authority to  
24 do that. I don't need to tell you, you can do that,  
09:47:21 25 but that's -- and that's what -- and those orders can

09:47:24 1 stay exactly how they are, but we remove the language  
2 that the City's trying to put into this inverse  
3 condemnation case. Again, furthering the intent of the  
4 Court.

09:47:33 5 So we'd ask, your Honor --

6 THE COURT: For example, and I just want to  
7 make sure I understand --

8 MR. LEAVITT: Sure.

9 THE COURT: -- the orders. I'm looking at  
09:47:39 10 Exhibit 4 page 9.

11 MR. LEAVITT: Okay.

12 THE COURT: I see certain portions were placed  
13 in yellow.

14 MR. LEAVITT: And absolutely. And then if you  
09:47:50 15 turn to page 10, there's some -- there's some language  
16 there. And if you look at Exhibit No. 2, there's a lot  
17 more, your Honor. To be frank, there's a lot more in  
18 Exhibit No. 2 which is attached to our original  
19 opposition and our counter motion for nunc pro tunc  
09:48:05 20 order. That Exhibit No. 2 has quite a bit of yellow  
21 highlighted language which we believe is not necessary  
22 or germane at all --

23 THE COURT: So you're --

24 MR. WATERS: -- to the order.

09:48:16 25 THE COURT: You're saying the yellow

09:48:18 1 highlighted language wouldn't be necessary to the  
2 order?

3 MR. LEAVITT: Yeah. And here's how -- this is  
4 how I really looked at it, your Honor. This is what  
09:48:23 5 really convinced me is I read the order without the  
6 yellow language.

7 And I said, Wow, this is a clean order. It  
8 furthers the intent of the Court. It doesn't change  
9 the final finding. And it -- and it isolates that  
09:48:38 10 petition for judicial review order specifically to the  
11 petition for judicial review cause. And makes it so  
12 that -- those findings do not apply to the inverse  
13 condemnation case which was never the intent of this  
14 Court.

09:48:52 15 Any further questions, your Honor, on the nunc  
16 pro tunc or the City's request for a stay?

17 THE COURT: No, sir.

18 MR. LEAVITT: Thank you, your Honor.

19 THE COURT: Sir.

09:49:07 20 MR. OGLIVIE: Your Honor, since the Court is  
21 looking at the order, the order that -- which is  
22 Exhibit 4, that the developer is seeking to strike  
23 language from, I have a couple of observations.

24 It's ironic, to say the least, and probably  
09:49:30 25 disingenuous for the developer to now be saying that

09:49:33 1 the highlighted portions of the findings of facts and  
2 conclusions of law regarding plaintiff's motion for a  
3 new trial, motion to alter or amend and/or reconsider  
4 the findings of facts and conclusions of law, and  
09:49:57 5 motion to stay pending Nevada Supreme Court directives  
6 should be stricken because this is the order, the  
7 findings of fact and conclusions of law that the  
8 developer submitted to the Court.

9 So this is not a matter of a motion for  
09:50:15 10 reconsideration in which the developer has submitted  
11 findings and conclusions that it may disagree with but  
12 were part of the Court's ruling. This is findings of  
13 fact and conclusions of law. And to be clear, what the  
14 order -- what the developer is seeking is for the Court  
09:50:39 15 to strike conclusions of law that the developer  
16 included in the proposed order. It's not saying we  
17 disagree with this. The developer is now saying the  
18 Court did not intend this.

19 THE COURT: And, Mr. Ogilvie, I'll just tell  
09:51:00 20 you this is kind of how I'm looking at it. I mean,  
21 when I denied the petition and I made a determination  
22 that there was substantial evidence in the record to  
23 support the decision of the city council, I had to make  
24 specific findings as far as that is concerned.

09:51:19 25 And for the most part, I mean, I'm going to

09:51:21 1 look at it, but I'm going to stand by probably my  
2 findings. But here's my point. Either I'm right or  
3 wrong as to how those are being used; right? And I  
4 think we have a fairly clear record in that regard.

09:51:34 5 Because after evaluating all the issues, I  
6 made a determination that there were two standards  
7 applicable here. And the thrust and scope of my  
8 decision was very limited as to what was before the  
9 city council. And I made a determination that there  
09:51:49 10 was substantial evidence in the record to support their  
11 decision.

12 And then I walk away. And I take that hat  
13 off. I take off my Chicago Cubs hat, and I put on my  
14 Chicago White Sox hat. And I move over to the inverse  
09:52:02 15 condemnation case. And because I'm a fan of both teams  
16 being a native of Chicago. And that's kind of what I  
17 did. I put my White Sox hat on. And now I have a  
18 different ball game to deal with. And that ball game  
19 happens to be an inverse condemnation and whether  
09:52:16 20 there's a taking or not.

21 And that's kind of how I look at it. And I  
22 don't mind teeing it up for the Supreme Court in that  
23 regard. Because they can say, Look, you thought about  
24 it, and you're right or wrong. And maybe we need some  
09:52:29 25 new law in this area. I have no problem with that at

09:52:32 1 all. I mean, I really and truly don't.

2 But I understand your position, sir, I do.

3 And I don't take that cavalierly changing the findings

4 I made. So I'll look at it, and I'll make a decision.

09:52:45 5 But I'm just wondering if the record is clear enough as  
6 it currently stands. Because one thing I don't want to  
7 do, I don't want to make any decisions that impacts the  
8 right of the City as it relates to my decision on the  
9 petition for judicial review.

09:53:00 10 Got it?

11 MR. OGLIVIE: Thank you, your Honor.

12 THE COURT: Yeah.

13 MR. OGLIVIE: I want to make two points.

14 THE COURT: Okay. With that, that probably  
09:53:06 15 helps you narrow the focus a lot.

16 MR. OGLIVIE: The Court's talking about  
17 findings. These aren't just findings, these are  
18 findings of facts. These are conclusions of law.

19 THE COURT: I understand. That too. We can  
09:53:17 20 put that together. But go ahead. What are your big  
21 concerns?

22 MR. OGLIVIE: Again, what the developer is  
23 seeking -- part of what the developer is seeking to  
24 remove from both the November, 2018, findings of fact  
09:53:30 25 and conclusions of law and the May 7 findings of fact

09:53:34 1 and conclusions of law are conclusions that support the  
2 Court's determination on the petition for judicial  
3 review.

4 One of the basis that the Court made that  
09:53:44 5 determination that the Court denied the developer's  
6 petition for judicial review is the conclusion of law  
7 that the developer does not have vested rights to have  
8 the 35-acre applications approved.

9 And not only was that stated in the November,  
09:54:05 10 2018, findings of fact, it was stated in the May 7,  
11 2019, findings of fact and conclusions of law as a  
12 conclusion of law, paragraph 22.

13 So that's not -- it's not a matter of, well,  
14 the Court is better educated now, because the Court  
09:54:24 15 wasn't any better -- isn't any better educated today  
16 than it was on May 7 at the time that these conclusions  
17 were included in that -- those findings of fact and  
18 conclusions of law.

19 And addressing the Court's -- I get -- there  
09:54:45 20 is no dispute, and I'm confused as to why the developer  
21 believes there's this dispute. There is no dispute  
22 that the Court has different burdens that it applies  
23 here. But findings of fact and conclusions of law, and  
24 in this case it is conclusions of law, those do not  
09:55:08 25 change.

09:55:09 1 Now, the standard to which the Court applies  
2 those conclusions, that is different. Absolutely. But  
3 you can't find on the one hand that it -- on the one  
4 hand being the petition for judicial review that the  
09:55:30 5 law says this. That the law says that the City has --  
6 had lawful -- exercised a lawful -- its lawful  
7 discretion and made a determination and conclusion in  
8 the inverse condemnation claims that the City did not  
9 exercise.

09:55:54 10 THE COURT: Well, here's my question in that  
11 regard. And this is what I really thought about, and I  
12 think this is an important issue. My job and  
13 responsibility sitting in a capacity as a trial judge  
14 reviewing the decisions of any administrative agency,  
09:56:12 15 city council, Clark County Commission, is very limited;  
16 right? And we can all agree. And I look at a petition  
17 for judicial review. And all I'm required to do is  
18 this: Number one, make sure there's no error of law.  
19 Of course, we can all agree to that.

09:56:29 20 But just as important too, when it comes to  
21 factual issues I'm not to sit there and weigh and  
22 balance the decision-making of the city council. All  
23 I'm to do -- and even question that to a certain  
24 extent. I understand what my role is. I'm just there  
09:56:44 25 to say, Okay, is there enough evidence here? Is it

09:56:47 1 substantial? Meaning, not a preponderance of the  
2 evidence. That is not the standard. That's a much  
3 different evidentiary standard.

4 Because, for example, in looking at those  
09:57:00 5 types of burdens on all the parties and also as far as  
6 the role that the trial court is concerned, how does  
7 that even apply to the inverse condemnation case where  
8 the plaintiff has a burden of proof to establish by a  
9 preponderance of the evidence? Because I'm wondering  
09:57:21 10 with a lower standard, how would that even come in?

11 Because, for example, the factual  
12 determination I would make in a petition for judicial  
13 review involves a much different standard than a  
14 factual determination I would make in a bench trial  
09:57:39 15 based upon preponderance of the evidence. They're  
16 different standards. They just are.

17 MR. OGLIVIE: Okay. Let me. I have two  
18 responses to that, your Honor.

19 THE COURT: Yes.

09:57:48 20 MR. OGLIVIE: I'm going to address the second  
21 one first.

22 THE COURT: Right.

23 MR. OGLIVIE: Again, the Court is referencing  
24 findings of fact. We are not addressing findings of  
09:57:58 25 fact here in this countermotion for order nunc pro

09:58:01 1 tunc. We are addressing conclusions of law. And I  
2 want to focus in on one in particular.

3 And that is, again, conclusion of law 22 in  
4 the proposed findings of fact and conclusions of law  
09:58:17 5 that the developer submitted.

6 THE COURT: Which exhibit is that again?

7 MR. OGLIVIE: That's Exhibit 4.

8 THE COURT: Okay. What page are you on, sir?

9 MR. OGLIVIE: Page 9.

09:58:38 10 THE COURT: Highlighted, of course, Yes, sir.

11 MR. OGLIVIE: Okay. I'm going to address the  
12 paragraphs 22 through 25. But I want to focus first on  
13 22 because this is -- this really hits the head.

14 Paragraph 2 says this Court correctly  
09:58:55 15 concluded that the developer does not have vested  
16 rights to have the 35-acre applications approved. And  
17 neither Judge Smith's orders nor Supreme Court orders  
18 of affirmance alter that conclusion.

19 Now, if we just take the first half of that,  
09:59:10 20 the correct -- the Court correctly concluded that the  
21 developer does not have vested rights to have the  
22 35-acre applications approved.

23 What the developer is suggesting is that is an  
24 appropriate -- that may have been an appropriate --  
09:59:23 25 they disagree with it. But that may have been an

09:59:28 1 appropriate finding on the petition for judicial  
2 review, but that is not -- this is their argument.  
3 That's not an appropriate conclusion of law as it  
4 relates to the inverse condemnation claims because the  
09:59:43 5 burdens are different. The burdens have nothing to do  
6 with whether or not a conclusion of law is the law of  
7 the case.

8 THE COURT: Well, here's my question. And  
9 understand I wasn't an inverse condemnation real  
10:00:00 10 property lawyer. But aren't we talking about different  
11 issues? Because my review is very limited. They have  
12 a companion case now that's before me. And it's  
13 focusing on the entire actions of the city council and  
14 whether they result in a taking that they should be  
10:00:21 15 compensated for.

16 MR. OGLIVIE: Okay.

17 THE COURT: And that's a -- that's a different  
18 animal. And so, for example, they might not have a  
19 vested right to have the applications approved based  
10:00:33 20 upon the limited judicial review in the petition for  
21 judicial review. That's a different animal than  
22 ownership of 35 acres of property, which as a matter of  
23 law they have vested property interest, and the entire  
24 actions of the City council despite the zoning for the  
10:00:57 25 35-acres precludes any and all development. And I

10:01:00 1 think that's the case in a nutshell. Have I missed  
2 anything?

3 MR. LEAVITT: That's right, your Honor.

4 THE COURT: Yeah. I mean, that's -- so those  
10:01:08 5 are different -- different cases. Completely  
6 different.

7 MR. OGLIVIE: Absolutely, those are different  
8 cases. And that goes to the City's position on the  
9 countermotion that the Court approved last month that  
10:01:22 10 the Court should not be granting leave to amend to  
11 include these different cases which exists in different  
12 departments. And I'm not going to reargue that, your  
13 Honor, but the Court raised it, and so I'm addressing  
14 it. Those are different cases.

10:01:39 15 But the point that I want to make -- two  
16 points that I want to make. First of all, the  
17 operative pleading before this Court that the Court --  
18 that the City moved for judgment on has an inverse  
19 taking claim -- has inverse taking claims related to  
10:01:59 20 one action. One action only. And that was the denial  
21 on June 21, 2017, of the four land use applications.  
22 That's the only taking that is alleged in the operative  
23 pleading before this Court on which the City moved for  
24 judgment on the pleadings. The Court denied that  
10:02:25 25 motion.

10:02:27 1           The City submits that -- well, the City  
2 doesn't submit. The City is going to file a writ  
3 petition to the Nevada Supreme Court challenging that  
4 ruling. And, again, the ruling is only whether or not  
10:02:44 5 the action by the City on June 21, 2017, constituted a  
6 taking. That was the only issue. That's the only  
7 allegation in the writ petition -- in the first amended  
8 complaint, the operative pleading. And that's what the  
9 motion for judgment on the pleadings is based on. And  
10:03:05 10 that is the basis for the writ petition.

11           THE COURT: I understand.

12           MR. OGLIVIE: Secondly, the factual  
13 findings -- well, no. Secondly, the different standard  
14 by the -- that the Court applies does not change  
10:03:28 15 things. It doesn't even change findings.

16           The Court may find in a plaintiff's personal  
17 injury case that there is -- that the defendant  
18 probably or -- by a preponderance of any evidence it's  
19 been established that the defendant ran the red light,  
10:04:01 20 that's a finding of fact. And, yes, there is a  
21 different standard applied to that determination in a  
22 criminal case which is beyond a reasonable doubt.

23           So, yes, there are different --

24           THE COURT: Well, because it's a higher  
10:04:18 25 standard --

10:04:19 1 MR. OGLIVIE: Right.

2 THE COURT: -- in a criminal case.

3 Potentially it could have preclusive effect in the

4 underlying case depending if there's a full trial on

10:04:27 5 the merits. I get that. That's a different standard.

6 MR. OGLIVIE: But that's not what we are

7 addressing here, your Honor. We are addressing -- what

8 the -- what the developer is positioning the Court to

9 do is --

10:04:40 10 THE COURT: You have to understand I'm not

11 convinced I'm going to change.

12 MR. OGLIVIE: I get it. I get it.

13 THE COURT: Yeah.

14 MR. OGLIVIE: I understand.

10:04:44 15 THE COURT: Yeah.

16 MR. OGLIVIE: I'm just making --

17 THE COURT: I'm just looking at it from this

18 perspective. Because we're using a term of art "vested

19 property rights". It seems to me that the vested

10:04:54 20 property right as it relates to the application

21 procedure before the building commission and the city

22 council is a much different and distinct property right

23 as determined by the United States Supreme Court as it

24 relates to a taking of property by a municipality or

10:05:11 25 government entity.

10:05:12 1 MR. OGLIVIE: And that's what the developer  
2 would have this Court believe. And that is one of the  
3 reasons that it's imperative that we file this writ.  
4 Because the vested rights are vested rights. They  
10:05:22 5 don't differ. There aren't different standards for  
6 vested rights. There aren't different types of vested  
7 rights.  
8 Vested rights in property are the same whether  
9 it's a regulatory taking, a physical taking, a land use  
10:05:42 10 applications. There is no difference between vested  
11 rights. And what the developer wants to do is to argue  
12 in the inverse condemnation action that --  
13 THE COURT: Is there any case law out there  
14 that draws a distinction between the issue I raised?  
10:06:04 15 Because it seems to me that there would be a  
16 distinction between, say, a one-off application denied  
17 by an administrative body versus a taking of real  
18 property based upon actions of a municipality or a  
19 governmental entity? Am I missing something there?  
10:06:28 20 MR. LEAVITT: There's three cases on that,  
21 your Honor.  
22 THE COURT: Okay. Do they recognize the  
23 distinction I'm discussing?  
24 MR. LEAVITT: They do, your Honor.  
10:06:34 25 THE COURT: Okay.

10:06:34 1 MR. LEAVITT: And I can explain that if you'd  
2 like after Mr. Ogilvie --

3 THE COURT: I haven't read them, but it just  
4 makes sense to me there might be a difference.

10:06:43 5 MR. LEAVITT: If you want, your Honor, I could  
6 mention them. It's Sisolak case, the Del Monte Dunes  
7 case, and the Lucas case.

8 THE COURT: Okay.

9 MR. OGLIVIE: Your Honor, there's legions of  
10:06:54 10 federal case law that says if the -- if the agency has  
11 lawfully exercised its discretion, there cannot be a  
12 regulatory taking. Doesn't -- I mean, there isn't  
13 any -- again, there's no difference between vested  
14 rights and vested rights.

10:07:18 15 Vested rights are what are required in order  
16 for a taking to occur, a regulatory taking as opposed  
17 to a physical taking. And then it's another issue that  
18 relates to the arguments at the last hearing because  
19 the developer wants to focus the Court on Sisolak,  
10:07:38 20 which is a physical taking, which there isn't any  
21 physical taking at issue in this case. It's only  
22 regulatory taking. And for a regulatory taking to  
23 occur, there cannot be -- not actually -- there must be  
24 vested rights.

10:08:03 25 So again, the developer wants to have you

10:08:06 1 remove these conclusions of law --

2 THE COURT: Here's my question. I haven't  
3 read Sisolak in a while, but I do remember reading it.  
4 But isn't the regulations or lack thereof, doesn't that  
10:08:18 5 result in a physical taking? Is that the distinction?

6 MR. OGLIVIE: No. The physical taking is an  
7 invasion of the property. That is not what is at issue  
8 here. This is a regulatory taking.

9 THE COURT: I mean, in Sisolak the county  
10:08:39 10 commission didn't invade Mr. Sisolak's property; right?

11 MR. WATERS: Yeah.

12 MR. OGLIVIE: The invasion was of the aircraft  
13 flying over -- or the prohibition of the height  
14 restriction -- on the height, the prohibition of the  
10:09:01 15 height development based on the aircraft flying, and  
16 the aircraft flying was the physical invasion of the  
17 Sisolak property. No such physical invasion is at  
18 issue before the Court.

19 So, again, the Court -- the developer wants to  
10:09:21 20 be able to argue if the Court removes paragraph 22 of  
21 the conclusions of law of the May 7 findings of fact  
22 and conclusions of law, the developer wants to have the  
23 ability to argue, in fact, it did have vested rights.  
24 It may not have had vested rights to have the 35-acre  
10:09:49 25 applications approved for purposes of a judicial

10:09:52 1 review, but it does have vested rights to have the  
2 35-acre applications approved for purposes of inverse  
3 condemnation. It cannot be so, your Honor. That is a  
4 conclusions of law that would be completely turned  
10:10:06 5 inside out if the Court granted the developer's  
6 countermotion for nunc pro tunc order.

7 Another conclusion of law is at paragraph 23.  
8 The developer has failed to show that the Court's  
9 conclusion that sufficient privity exists to bar the  
10:10:30 10 developers' petition for -- under the doctrine of issue  
11 preclusion was clearly erroneous. It doesn't matter  
12 whether the Court is applying the standard of abuse of  
13 discretion on a petition for judicial review or a  
14 preponderance of the evidence under an inverse taking  
10:10:50 15 claim, that conclusions of law exists on both sides.  
16 The Court can't make a determination for purposes of  
17 the petition for judicial review that sufficient  
18 privity exists to bar the developer's petition under  
19 the law -- doctrine of preclusion, issue preclusion and  
10:11:12 20 then make the absolute opposite conclusion that, in  
21 fact, there isn't sufficient privity.

22 THE COURT: I understand that. I do.

23 MR. OGLIVIE: Okay.

24 THE COURT: Yeah.

10:11:25 25 MR. OGLIVIE: And so and that goes exactly to

10:11:27 1 the rest of the paragraphs that the developer is  
2 seeking to strike.

3 And the reason -- and I said this in my  
4 opening remarks. The reason that the developer wants  
10:11:38 5 this Court to remove those conclusions of law is  
6 notwithstanding the developer's arguments to the  
7 contrary, and I submit the developer is misrepresenting  
8 the law, notwithstanding that misrepresentation of the  
9 law, the developer knows that the Nevada Supreme Court  
10:11:56 10 is going to find exactly that if there is no vested  
11 rights to have the 35-acre applications approved that  
12 means as a matter of law there can be no regulatory  
13 taking and the inverse condemnation claims must be  
14 denied.

10:12:21 15 Now, addressing some of the other arguments  
16 raised by Mr. Leavitt, his first argument was there's  
17 contested facts. The City -- the City's even conceded  
18 that there are contested facts. There are no contested  
19 facts for purposes of the motion for judgment on the  
10:12:42 20 pleadings.

21 As Mr. Leavitt, to his credit, conceded, it  
22 was in response to the developer's countermotion for  
23 summary judgment that the City said you can't grant --  
24 you can't grant summary judgment, Judge. There are  
10:13:00 25 contested issues. Those contested issues are not

10:13:04 1 present in the motion for judgment on the pleadings.

2 The facts are not in dispute.

3 The facts are that four applications were  
4 submitted to the City for approval by the developer.

10:13:21 5 The City denied those applications.

6 The developer challenged that denial and  
7 brought it to this Court on a petition for judicial  
8 review.

9 The Court reviewed the record which  
10:13:37 10 contained -- which the findings that the Court entered  
11 in November 2018 state the findings from the record.

12 And you don't hear the developer here arguing  
13 that there was no basis for those findings. Those  
14 findings are not disputed. And it's those findings on  
10:14:02 15 which the motion for judgment on the pleadings is  
16 founded.

17 The motion for judgment on the pleadings is  
18 entirely based on the Court's findings of fact and  
19 conclusions of law entered in November 2018. And it is  
10:14:21 20 the findings of fact -- the developer contests some  
21 conclusions of law, but the findings of fact are not in  
22 dispute. The only findings on which the motion for  
23 judgment on the pleadings are based are those findings  
24 set forth in the findings of fact and conclusions of  
10:14:46 25 law in November 2018, and they're undisputed. We're

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10:14:51 1 not going into these other issues of -- of these other  
2 claimed takings that if the developer has asserted in  
3 its counter motion and is attempting to assert in its  
4 second amended complaint. Those aren't at issue.

10:15:11 5 That's -- those facts are contested, whether  
6 or not something constituted a taking that was not  
7 before the city council on June 21, 2017. Those facts  
8 are disputed.

9 But the facts relevant to the petition for  
10 judicial review, they are not in dispute. And the  
11 facts that the motion for judgment on the pleadings,  
12 which is based on the Court's findings on the petition  
13 for judicial review are not in dispute. And,  
14 therefore, the Supreme Court will accept this writ  
10:15:46 15 because the facts are not in dispute.

16 I made -- Ms. Leonard advised me I made a  
17 mistake in my opening comments that I said this --  
18 these claims for inverse condemnation are only ripe if  
19 an application -- or if the City approves the  
10:16:16 20 application for major modification. I intended to say  
21 and should have said that the inverse condemnation  
22 claims are only ripe if a major -- application for  
23 major modification is submitted and denied, not  
24 approved. Obviously, it is -- if it is denied, then  
10:16:37 25 the case would be ripe.

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10:16:40 1 But it doesn't matter, denied or approved, the  
2 fact of the matter remains. The developer has  
3 withdrawn the only application for a major modification  
4 that it ever submitted. And as I argued in two prior  
10:16:57 5 hearings, nothing has prevented the developer from  
6 submitting another application for major modification.  
7 Nothing has prevented it from doing so from the day  
8 that it withdrew its prior application for major  
9 modification until today, and it refuses to do so again  
10:17:21 10 simply to support its tactical litigation decisions.  
11 That's the only reason that the developer refuses to  
12 submit another application for major modification.  
13 The developer argues that, yes, the City may  
14 have had lawful discretion to deny the applications,  
10:17:55 15 but the City does not have -- and this was the  
16 developer's argument, the City does not have the  
17 discretion to deny all use of the landowner's land and  
18 deny just compensation. And that's not the facts  
19 before this Court.  
10:18:10 20 The City has not denied all use of the  
21 landowner's land, of the developer's land. The City  
22 simply denied four land use applications. That's not  
23 denying all use. The developer purchased the golf  
24 course. The developer has the ongoing ability and  
10:18:33 25 right to use the land as a golf course. So to argue

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10:18:39 1 that the City has somehow denied all use of the  
2 landowner's land is simply unfounded.

3 If the developer has -- this is an important  
4 part. So the developer is now in its opposition to the  
10:19:02 5 motion to stay argued only the merits of the writ  
6 petition. The developer today has added the second  
7 argument, the second of the four Hansen factors. And  
8 that is that the developer will experience irreparable  
9 harm or suffer serious harm. Because the developer

10:19:30 10 argues the City is trying to delay the developer out of  
11 this property. The City is not trying to do anything.  
12 As the Court will recall, the City previously approved  
13 the land use applications relative to the 17-acre  
14 parcel. So the City is just -- is not taking a

10:19:51 15 position on who is right and who is wrong in this. The  
16 City is simply acting within its lawful discretion and  
17 made a determination that these land use applications  
18 should not be approved.

19 And that has steam rolled now for two years  
10:20:13 20 into this litigation. And the City hasn't taken any  
21 action to try to delay the developer, as the developer  
22 argues, out of this property.

23 The developer also argued we have pushed this  
24 as fast as we can. Well, no, it actually hasn't. It's  
10:20:40 25 disingenuous for the developer to stand up and argue as

10:20:45 1 loudly as it does about the prejudice that will inure  
2 to it as a result of the imposition of the stay when  
3 the developer itself requested in December 2018, and  
4 just four months ago in January in this Court, argued  
10:21:05 5 for a stay of these proceedings pending the  
6 adjudication of the appeal of the Crockett decision.

7           So for the developer to come in now, four  
8 months later, and say it is going to be irreparably  
9 harmed if the Court grants a stay of these proceedings,  
10:21:26 10 when it just four months ago was arguing for a stay of  
11 these proceedings, is absolutely disingenuous, and it  
12 does not satisfy the third Hansen factors. And the  
13 developer doesn't address the other two Hansen factors.

14           So, again, your Honor, all we're here for is a  
10:21:53 15 stay. As the Court recognized in its earlier  
16 conversation with me, the Supreme Court, Nevada Supreme  
17 Court is in the position to make a determination  
18 whether or not the motion for judgment on the pleadings  
19 should have been granted whether the Court was right or  
10:22:10 20 whether the Court was wrong. The Nevada Supreme Court  
21 is going to make that determination. That's not at  
22 issue before the Court today.

23           The only matter at issue before the Court  
24 today on the City's motion is whether or not a stay  
10:22:22 25 should be issued pending that writ petition. And the

10:22:28 1 City submits that in its briefs and in the arguments  
2 today, it's established that the Hansen factors have  
3 been satisfied, and that this Court should issue a  
4 stay. That's all it's asking. Simply issue a stay  
10:22:47 5 pending the adjudication of the City's writ petition.

6 Does the Court have any questions?

7 THE COURT: No, sir. I was listening.

8 MR. OGLIVIE: Thank you.

9 THE COURT: Anything else I need to know?

10:22:59 10 MR. BICE: Yes, your Honor. I'm going to  
11 address the opposition to the nunc pro tunc order.

12 MR. LEAVITT: Your Honor, I just have to  
13 address -- if you want me to address those three cases  
14 that Mr. Ogilvie brought up, so I can --

10:23:06 15 THE COURT: Yeah, you can do it.

16 And then, of course, sir, you can go ahead and  
17 deal specifically with the opposition to the nunc pro  
18 tunc.

19 MR. LEAVITT: You want him to go first and  
10:23:13 20 then I can go after?

21 THE COURT: No. You can just go ahead. You  
22 just want to give me some information.

23 MR. LEAVITT: Yeah. Just very quickly. The  
24 cases where the issue of this vested rights issue has  
10:23:24 25 come up in the context of a PJR versus an inverse

10:23:27 1 condemnation action, your Honor, first of all is the  
2 Sisolak case. In the Sisolak case, the Nevada Supreme  
3 Court said that the government does have the discretion  
4 to exercise -- or to deny a land use application. But  
10:23:37 5 if in exercising that discretion and in applying valid  
6 zoning ordinances there is a taking, then just  
7 compensation must be paid.

8           So even though the government has discretion  
9 to deny a land use application, even though they can  
10:23:53 10 come in here and say you don't have the vested right to  
11 have a land use application approved, if they deny that  
12 land use application and it results in a taking,  
13 according to the Nevada Supreme Court, just  
14 compensation must be paid.

10:24:04 15           In the City of Monterey versus Del Monte Dunes  
16 case the same rule was adopted by the United States  
17 Supreme Courts. The United States Supreme Court found  
18 that there was a potential taking there, even though  
19 the government had the right to deny the land use  
10:24:16 20 application.

21           In the Lucas versus South Carolina Coastal  
22 Commission case, Judge, the landowner admitted that the  
23 government had the discretion to deny his land use  
24 application. And the United States Supreme Court still  
10:24:28 25 held that there was sufficient facts in that case to

10:24:31 1 find a taking. So there's three cases right on point  
2 where -- which absolutely affirmed what you've said  
3 here today. That the property right in a PJR hearing  
4 is very different than a property right in an inverse  
10:24:43 5 condemnation case.

6 Now, the government has also said that the  
7 only action that we've alleged that amounts to a taking  
8 is a denial of the four applications on the 35-acre  
9 property case. Your Honor, that's absolutely untrue.  
10:24:53 10 And, in fact, we filed a notion to amend the pleadings  
11 to add all of the actions the City engaged in, and you  
12 granted that motion.

13 They denied the land use applications on this  
14 property. They denied the master development  
10:25:08 15 agreement. They denied the fence application. They  
16 denied the access application. They even adopted two  
17 bills that even the city council people said are the  
18 Yohan Lowie bills to prohibit further development of  
19 this property.

10:25:20 20 So for the government to stand at this podium  
21 and say that our case that we've brought only alleges  
22 that four applications have been denied is absolutely  
23 untrue. We've asserted 12 government actions that  
24 amount to a taking. You granted our request to amend  
10:25:35 25 our pleadings to include all of those actions, and they

10:25:37 1 are before the Court right now.

2 The government also brought up the fact that  
3 we asked for a stay previously. What the government is  
4 forgetting to tell you.

10:25:46 5 MR. OGLIVIE: Your Honor, I object. If -- if  
6 he's going -- he was providing the Court with some  
7 information about three cases he has the opportunity to  
8 argue in response on the motion -- the countermotion,  
9 but he's now re-arguing the --

10:25:59 10 THE COURT: And as far as the stay in the  
11 other cases, I get it.

12 MR. LEAVITT: Yeah. Your Honor, we asked for  
13 a motion for summary judgment. So that's clear  
14 indication that we're ready to move forward. And the  
10:26:08 15 stay was on the petition, to wait for the petition for  
16 judicial review.

17 THE COURT: I understand. I do.

18 MR. LEAVITT: So that was, in my opinion, a  
19 strong misdirection.

10:26:15 20 Last thing is these are the cases where the  
21 government said that these cases were all physical  
22 appropriation cases. In the Sisolak case, the physical  
23 taking was not the operative fact. It's exactly what  
24 you said. And in the Sisolak case the Nevada Supreme  
10:26:27 25 Court said that the operative taking fact was the

10:26:31 1 adoption of the ordinances. And the Nevada Supreme  
2 Court in a later decision called the Johnson decision  
3 clarified that and said the actual physical use of the  
4 air space by the airplanes was inconsequential. That  
10:26:45 5 the taking act was the adoption of the ordinances.  
6 That's why they called the Sisolak case a per se  
7 regulatory taking case, not just a physical taking  
8 case.  
9 Thank you, your Honor.  
10:26:57 10 THE COURT: Thank you, sir.  
11 Mr. Bice, sir.  
12 MR. BICE: Thank you, your Honor. Your Honor,  
13 I will be brief. If you look, your Honor, this  
14 purported nunc pro tunc order is -- it's just a  
10:27:16 15 disguised motion for you to reconsider now a third time  
16 the Court's prior rulings.  
17 A nunc pro tunc order is supposed to be  
18 something where the Court's prior order doesn't reflect  
19 its true intent, and so, therefore, it needs to go back  
10:27:29 20 and basically correct the true intent.  
21 Their request is that you essentially reverse  
22 yourself particularly on two significant issues.  
23 One, Mr. Ogilvie addressed this vested rights  
24 issue.  
10:27:41 25 And two, the issue about claim preclusion or

10:27:48 1 issue pollution, which we have raised. My client  
2 intervened in this action specifically to assert its  
3 rights under the doctrine of issue preclusion. And  
4 this Court agreed with that, and it ruled in my  
10:27:58 5 client's favor on that very point.

6 And now if you look at what they're -- they're  
7 not asking you -- they're not saying that your intent  
8 isn't clearly expressed in the order. They're just  
9 asking you to change it, to basically reverse yourself  
10:28:10 10 on the issue about claim preclusion. And there's  
11 absolutely no grounds for doing that.

12 We have litigated this issue over and over and  
13 over again. It is a broken record in this courtroom,  
14 with all due respect to the developer. And that's why  
10:28:24 15 we attached, your Honor, in our joinder an opposition.  
16 We attached Judge Mahan's ruling of this month. Just  
17 this month they sought, again, reconsideration from  
18 Judge Mahan on this exact issue about property rights,  
19 i.e., vested property rights for purposes of the 14th  
10:28:44 20 Amendment.

21 And you know what a taking claim is, your  
22 Honor, against state and local government. It's under  
23 the 5th through the 14th Amendment. The 5th Amendment  
24 applies to the federal government. Through the 14th  
10:28:54 25 Amendment is where you get your taking claims against

10:28:56 1 state and local government.

2 And what did Judge Mahan rule? They have  
3 no -- they litigated this issue and lost. It's issue  
4 preclusion, on top of issue preclusion, on top of issue  
10:29:07 5 preclusion.

6 What did Judge Mahan say in his opinion? They  
7 have no protected property interests. Because under  
8 state law and under the City Code, the City has  
9 tremendous discretion.

10:29:20 10 And all the cases he just referenced to you,  
11 what he fails to mention is in each of those cases, the  
12 City Code barred any development. In the Sisolak case  
13 it was the air rights. There was no building allowed  
14 above a certain level. Why? Because the airplanes  
10:29:37 15 needed to travel through that air space. So what the  
16 Supreme Court was saying is that is a per se taking  
17 because the government has seized the air rights  
18 forever.

19 And under no -- you couldn't submit an  
10:29:48 20 application and apply because the code made it crystal  
21 clear within that range you cannot develop, ever.

22 Here, the City has not adopted any code that  
23 says you cannot develop this property ever. As  
24 Mr. Ogilvie points out, they had -- they bought a golf  
10:30:04 25 course. And that was actually Judge Crockett's ruling.

10:30:07 1 What you did is you bought a golf course betting you  
2 had the political influence to get it changed, and your  
3 bet lost. And so now you're coming in and trying to  
4 blame everybody else for you failing to do your due  
10:30:18 5 diligence, developer. That's what Judge Crockett's  
6 ruling is at the end of the day.

7 So the issue preclusion issue applies per your  
8 ruling. It actually also applies per Judge Mahan's  
9 ruling. And there's no basis now for a fourth time. I  
10:30:34 10 believe this is four. Maybe it's only the third time  
11 they've asked you to change that ruling. But there  
12 isn't any grounds for it. And it certainly isn't a  
13 nunc pro tunc order which is designed to simply codify  
14 the Court's original intent. Your orders already  
10:30:49 15 codified that intent.

16 THE COURT: I think I've already done that,  
17 right?

18 MR. BICE: Yes. I think three different times  
19 at least.

10:30:55 20 Thank you, your Honor.

21 THE COURT: Mr. Ogilvie, did you finish, sir?

22 MR. OGLIVIE: I'll simply state there are  
23 arguments about what the law says. And everything that  
24 Mr. Leavitt made representation to, the City has legion  
10:31:16 25 of cases, as I stated, that state when a city or

10:31:23 1 municipality exercises lawful discretion to approve or  
2 deny land use applications, the developer does not have  
3 vested rights to the approval of those. Therefore,  
4 there cannot be a taking.

10:31:38 5 But those are the issues for the Nevada  
6 Supreme Court. The Nevada Supreme Court is going to  
7 hear it.

8 THE COURT: Absolutely.

9 MR. OGLIVIE: The only issue before the Court  
10 today is whether or not a stay should issue. And City  
11 submits that it should.

12 MR. LEAVITT: For the record, your Honor,  
13 could I have one of those cases that he named there's a  
14 legion of them?

10:31:55 15 THE COURT: Well, here's the thing. Whether  
16 those cases are produced today or not, I don't think  
17 they're going to impact my ultimate decision as far as  
18 this case is concerned.

19 I have two issues in front of me. The first  
10:32:05 20 deals specifically with whether or not pursuant to  
21 Nevada Rule of Appellate Procedure 8(C) I should grant  
22 a stay in this case. And that's what's in front of me.

23 And I thought about it. And I know we have  
24 the Hansen factors. I think we have the same factors  
10:32:22 25 that are set forth in 8(C). For example, number one,

10:32:24 1 whether the object of the appeal or writ petition will  
2 be defeated if the stay or injunction is denied. I  
3 don't see how that could happen, right?

4           The second factor is whether the writ petition  
10:32:38 5 will be defeated if the stay or injunction is denied.  
6 Well, I think there is -- there was an issue -- I'm  
7 sorry. Whether the appellate petitioner will suffer  
8 irreparable or serious injury if the stay or injunction  
9 was denied. And it's my recollection this deals  
10:32:56 10 specifically with one of the arguments: There will be  
11 a floodgate of litigation as it relates to potentially  
12 other developers, and costs, and the like. I don't see  
13 that. I really and truly don't. I'm not aware of any  
14 floodgate of litigation occurring. And so I don't know  
10:33:13 15 if that's been satisfied.

16           The third factor is whether respondent, real  
17 party in interest, would suffer irreparable or serious  
18 injury if the stay or injunction is granted. And this  
19 is -- and one of the things I tried to not overlook as  
10:33:32 20 a trial judge is simply this: Any time I have a case  
21 in front of me it typically involves real people with  
22 real claims and real injury, right?

23           And so there was an argument made that, for  
24 example, the landowner in this case is being assessed  
10:33:51 25 property taxes for residential property, and the

10:33:54 1 property hasn't been developed. So they're paying  
2 money on that.

3 Just as important too, I understand there's  
4 carrying costs and the like. I don't know what the  
10:34:02 5 specifics are, but I would anticipate that under the  
6 facts of this case, when it comes to finances and the  
7 like, and you're talking about 35 acres, I could see  
8 where there could be serious injury suffered by the  
9 plaintiff in this case from a financial perspective if  
10:34:23 10 this case doesn't proceed. That's probably the best  
11 way I can say it.

12 Last, but not least, I made my decision as to  
13 the probability or likelihood of prevailing on the  
14 merits of the appeal or writ petition. Sometimes I  
10:34:38 15 wonder why they even put that there because if I  
16 thought I made the improper decision, I would have  
17 ruled the other way; right?

18 So what I'm going to do is this. Regarding  
19 the stay, I'm going to deny the request for the stay.  
10:34:50 20 I think the underlying inverse condemnation case should  
21 go forward.

22 Moving on to the nunc pro tunc order. I'm  
23 going to tell you this. I'm going to take one look at  
24 it, but I don't -- I can't see a reason to change my  
10:35:02 25 order. Really and truly. Because this is how I look

10:35:04 1 at it. And I don't mind being -- pointing this out. I  
2 made certain determinations as a matter of law and also  
3 factual determinations as it relates to the petition  
4 for judicial review. I have no problem standing by  
10:35:23 5 those. I don't mind telling you that. I just look at  
6 the -- I look at them as being two different cases with  
7 potentially different standards that are applicable.  
8 The vested right definition as it relates to the  
9 petition for judicial review and what impact that has  
10:35:42 10 and whether the vested rights are different when it  
11 comes to a taking claim, Nevada Supreme Court is going  
12 to decide that.

13 See where I'm going on that? And so I'm going  
14 to look at it. But I'm going to tell you the chance --  
10:35:55 15 I'm just going to tell everybody. I don't think I'll  
16 change it. I just want to think about it. Maybe I'll  
17 add something, but I don't even know if I'll do that.  
18 I just want to read it and think about it. And so I'll  
19 get a decision on that real quick.

10:36:09 20 Anything you want to add, Mr. Ogilvie? I know  
21 you're looking at something.

22 MR. OGLIVIE: If I could have the Court's  
23 indulgence.

24 THE COURT: Just take a quick look. Sir.

10:36:21 25 MR. OGLIVIE: Yes. I understand the Court's

10:36:23 1 ruling. And I will reiterate that as soon as this  
2 Court issues the order denying the motion for judgment  
3 on the pleadings, the City will be filing its writ  
4 petition. It will also -- it cannot seek a stay from  
10:36:38 5 the Nevada Supreme Court until that writ petition is  
6 filed, so --

7 THE COURT: Am I missing something  
8 procedurally? Is there something I owe you?

9 MR. OGLIVIE: Yes. An order denying the  
10:36:52 10 City's motion for judgment on the pleadings.

11 THE COURT: Was that submitted?

12 MR. OGLIVIE: Yes. There are competing  
13 orders.

14 MS. WATERS: There are competing orders, your  
10:37:02 15 Honor.

16 THE COURT: When were those submitted?

17 MR. OGLIVIE: A couple weeks ago.

18 MS. WATERS: Yeah. Couple weeks ago.

19 THE COURT: All right.

10:37:08 20 MR. OGLIVIE: So, again, as soon as that order  
21 is entered, the City will be filing its writ petition.  
22 It's already 90 percent prepared. Just waiting on the  
23 final wording of the Court's order.

24 THE COURT: We'll expedite that for you.

10:37:24 25 MR. OGLIVIE: Okay. And, and, again, as soon

10:37:27 1 as we file that, then we can request a stay from the  
2 Nevada Supreme Court.

3 THE COURT: Absolutely.

4 MR. OGLIVIE: And I would simply ask this  
10:37:35 5 Court to enter a temporary stay pending an adjudication  
6 of our motion to stay before the Nevada Supreme Court.

7 MR. LEAVITT: Your Honor, we would strongly  
8 oppose that. Our interrogatories, our request for  
9 production of documents, our requests for admission  
10:37:51 10 that are necessary before with our summary judgment are  
11 in front of the City of Las Vegas right now. We had a  
12 hearing on the ECC last time. We explained the  
13 importance of moving forward with this case  
14 immediately. In other words what they're just asking  
10:38:05 15 for is a stay even though you've denied the stay.

16 THE COURT: A stay is a stay. Well, here's  
17 the -- you know, here's my concern about that. And I  
18 understand why you would request that, Mr. Ogilvie.  
19 But at the end of the day I'm going to make my decision  
10:38:21 20 based upon the Hansen rules, right, as far as the stay  
21 is concerned. Either it's a stay for all purposes or I  
22 deny it. That's kind of how I look at that.

23 And maybe the Supreme Court will look at it  
24 much differently. I can say this, if they granted it,  
10:38:36 25 it would make my job much easier. But I'm not looking

10:38:40 1 for an easier job. I just have to call it as I see it.  
2 Because I do feel, ultimately, they're going to -- I  
3 feel -- you don't see this very often, but I feel  
4 fairly strong that regardless of outcome, they'll  
10:38:53 5 probably issue a published decision in this case.  
6 Because it's a unique issue. And I don't know if it's  
7 been cited; right?

8 MR. LEAVITT: Right. At some point in time  
9 probably on appeal though after all the facts are heard  
10:39:03 10 on the merits.

11 THE COURT: All the dust.

12 MR. LEAVITT: Right. And so, your Honor, is  
13 it okay, we'll prepare the stay order and then submit  
14 that to counsel?

10:39:10 15 THE COURT: Submit that to counsel.

16 And what we'll do, I'm sure we have the  
17 orders. I'll take a look at the orders, and we'll get  
18 that done so we can get the clock moving very quickly,  
19 Mr. Ogilvie.

10:39:23 20 MR. OGLIVIE: Thank you, your Honor.

21 THE COURT: Okay. Everyone, enjoy your day.

22 IN UNISON: Thank you, your Honor.

23 (THE PROCEEDINGS WERE CONCLUDED.)

24

10:39:47 25 \* \* \* \* \*

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2

STATE OF NEVADA)

:SS

3

COUNTY OF CLARK)

4

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10:39:47 5

HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE

6

PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE

7

TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID

8

STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT

9

AND UNDER MY DIRECTION AND SUPERVISION AND THE

10:39:47 10

FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND

11

ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE

12

PROCEEDINGS HAD.

13

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED

14

MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF

10:39:47 15

NEVADA.

16

17

/s/ Peggy Isom

18

PEGGY ISOM, RMR, CCR 541

19

20

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<p><b>IN UNISON: [1]</b> 77/22  <b>MR. BICE: [5]</b> 4/19 39/10 63/10 67/12 70/18  <b>MR. HOLMES: [1]</b> 4/17  <b>MR. LEAVITT: [37]</b> 4/15 15/19 20/20 24/18 25/14 25/23 30/3 32/14 33/2 33/13 33/20 34/14 35/4 35/7 36/6 36/16 39/11 39/15 40/8 40/11 40/14 41/3 41/18 50/3 53/20 53/24 54/1 54/5 63/12 63/19 63/23 66/12 66/18 71/12 76/7 77/8 77/12  <b>MR. OGLIVIE: [52]</b> 4/9 5/9 11/15 12/18 14/21 15/24 16/2 16/6 17/3 17/5 17/20 18/11 18/19 20/19 41/20 44/11 44/13 44/16 44/22 47/17 47/20 47/23 48/7 48/9 48/11 49/16 50/7 51/12 52/1 52/6 52/12 52/14 52/16 53/1 54/9 55/6 55/12 56/23 56/25 63/8 66/5 70/22 71/9 74/22 74/25 75/9 75/12 75/17 75/20 75/25 76/4 77/20  <b>MR. WATERS: [3]</b> 4/13 40/24 55/11  <b>MS. LEONARD: [1]</b> 4/11  <b>MS. WATERS: [3]</b> 4/23 75/14 75/18  <b>THE COURT: [89]</b></p> <p><b>/</b></p> <p><b>/s [1]</b> 78/17</p> <p><b>1</b></p> <p><b>10 [1]</b> 40/15  <b>100 [1]</b> 12/20  <b>1000 [1]</b> 2/20  <b>12 [3]</b> 26/2 26/3 65/23  <b>14th [3]</b> 68/19</p>	<p>68/23 68/24  <b>15 [3]</b> 1/23 4/1 9/15  <b>15-year [1]</b> 9/15  <b>17 acres [1]</b> 17/10  <b>17-acre [1]</b> 61/13  <b>180 [4]</b> 1/9 4/7 4/14 4/16  <b>1964 [1]</b> 2/11  <b>1980 [1]</b> 23/22  <b>1986 [1]</b> 27/23</p> <p><b>2</b></p> <p><b>2015 [1]</b> 23/25  <b>2017 [8]</b> 25/16 26/10 26/11 26/20 26/23 50/21 51/5 59/7  <b>2018 [8]</b> 6/8 8/3 44/24 45/10 58/11 58/19 58/25 62/3  <b>2019 [6]</b> 1/23 4/1 6/11 7/6 8/6 45/11  <b>21 [8]</b> 25/16 26/10 26/11 26/20 26/23 50/21 51/5 59/7  <b>2100 [1]</b> 3/10  <b>2101 [1]</b> 3/11  <b>214-2100 [1]</b> 3/10  <b>214-2101 [1]</b> 3/11  <b>22 [7]</b> 6/13 7/9 45/12 48/3 48/12 48/13 55/20  <b>23 [1]</b> 56/7  <b>2300 [1]</b> 2/19  <b>24 [1]</b> 8/8  <b>25 [1]</b> 48/12  <b>25-page [1]</b> 34/17</p> <p><b>3</b></p> <p><b>300 [1]</b> 3/8  <b>35 [1]</b> 24/5  <b>35 acre [1]</b> 17/25  <b>35 acres [5]</b> 6/17 17/2 17/12 49/22 73/7  <b>35-ache [1]</b> 17/6  <b>35-acre [12]</b> 8/14 22/4 26/1 38/6 38/13 45/8 48/16 48/22 55/24 56/2 57/11 65/8  <b>35-acres [1]</b> 49/25</p> <p><b>4</b></p> <p><b>400 [1]</b> 3/7  <b>4100 [1]</b> 2/22</p>	<p><b>5</b></p> <p><b>541 [2]</b> 1/25 78/17  <b>5th [2]</b> 68/23 68/23</p> <p><b>7</b></p> <p><b>702 [6]</b> 2/10 2/11 2/22 2/23 3/10 3/11  <b>704 [1]</b> 2/8  <b>731-1964 [1]</b> 2/11  <b>733-8877 [1]</b> 2/10  <b>75-page [2]</b> 27/19 34/16  <b>7th [1]</b> 8/6</p> <p><b>8</b></p> <p><b>873-4100 [1]</b> 2/22  <b>873-9966 [1]</b> 2/23  <b>8877 [1]</b> 2/10  <b>89101 [2]</b> 2/9 3/9  <b>89102 [1]</b> 2/21</p> <p><b>9</b></p> <p><b>90 percent [1]</b> 75/22  <b>9966 [1]</b> 2/23  <b>9:29 [1]</b> 4/2</p> <p><b>:</b></p> <p><b>:SS [1]</b> 78/2</p> <p><b>A</b></p> <p><b>A.M [1]</b> 4/2  <b>A.S.A.P [1]</b> 29/13  <b>ability [6]</b> 9/12 13/6 16/14 55/23 60/24 78/11  <b>able [2]</b> 37/1 55/20  <b>about [23]</b> 12/12 12/14 16/4 22/23 24/24 27/15 28/9 28/23 43/23 44/16 46/11 49/10 62/1 66/7 67/25 68/10 68/18 70/23 71/23 73/7 74/16 74/18 76/17  <b>above [1]</b> 69/14  <b>absolute [5]</b> 12/22 25/16 27/2 28/11 56/20  <b>absolutely [20]</b> 10/7 11/18 12/25 22/22 25/14 32/14 33/13 33/20 36/6 38/1 40/14 46/2 50/7 62/11 65/2 65/9 65/22 68/11 71/8 76/3</p>	<p><b>abuse [1]</b> 56/12  <b>accept [5]</b> 7/16 9/19 21/11 21/13 59/14  <b>access [1]</b> 65/16  <b>according [1]</b> 64/13  <b>ACCURATE [1]</b> 78/11  <b>ache [1]</b> 17/6  <b>acre [14]</b> 8/14 17/25 22/4 26/1 38/6 38/13 45/8 48/16 48/22 55/24 56/2 57/11 61/13 65/8  <b>acres [7]</b> 6/17 17/2 17/10 17/12 49/22 49/25 73/7  <b>act [3]</b> 9/7 25/24 67/5  <b>acted [6]</b> 10/17 10/24 10/25 14/25 16/10 20/9  <b>acting [1]</b> 61/16  <b>action [13]</b> 26/21 31/15 35/12 35/20 38/16 50/20 50/20 51/5 53/12 61/21 64/1 65/7 68/2  <b>actions [7]</b> 26/2 49/13 49/24 53/18 65/11 65/23 65/25  <b>actual [1]</b> 67/3  <b>actually [10]</b> 9/3 9/11 14/23 20/21 28/9 38/22 54/23 61/24 69/25 70/8  <b>ad [3]</b> 24/1 27/17 30/7  <b>add [3]</b> 65/11 74/17 74/20  <b>added [1]</b> 61/6  <b>address [12]</b> 7/14 9/9 15/24 16/14 19/5 19/20 47/20 48/11 62/13 63/11 63/13 63/13  <b>addressed [5]</b> 18/24 19/9 19/22 20/24 67/23  <b>addresses [1]</b> 27/20  <b>addressing [8]</b> 10/6 45/19 47/24 48/1 50/13 52/7 52/7 57/15  <b>adjudication [7]</b></p>	<p>5/17 5/20 10/9 11/8 62/6 63/5 76/5  <b>administerial [1]</b> 9/7  <b>administrative [3]</b> 36/8 46/14 53/17  <b>admission [1]</b> 76/9  <b>admitted [1]</b> 64/22  <b>adopt [2]</b> 22/12 22/13  <b>adopted [4]</b> 37/16 64/16 65/16 69/22  <b>adoption [2]</b> 67/1 67/5  <b>advised [1]</b> 59/16  <b>affirmance [2]</b> 6/19 48/18  <b>affirmed [1]</b> 65/2  <b>after [10]</b> 5/16 14/4 21/1 26/11 26/23 32/19 43/5 54/2 63/20 77/9  <b>again [26]</b> 5/2 8/1 19/13 22/14 24/3 27/18 28/6 29/24 30/6 30/19 33/18 40/3 44/22 47/23 48/3 48/6 51/4 54/13 54/25 55/19 60/9 62/14 68/13 68/17 75/20 75/25  <b>against [5]</b> 12/20 18/6 31/12 68/22 68/25  <b>agency [2]</b> 46/14 54/10  <b>ago [5]</b> 8/7 62/4 62/10 75/17 75/18  <b>agree [2]</b> 46/16 46/19  <b>agreed [1]</b> 68/4  <b>agreement [3]</b> 25/19 26/12 65/15  <b>ahead [3]</b> 44/20 63/16 63/21  <b>air [4]</b> 67/4 69/13 69/15 69/17  <b>aircraft [3]</b> 55/12 55/15 55/16  <b>airplanes [2]</b> 67/4 69/14  <b>all [52]</b> 4/21 4/25 5/2 5/8 5/23 11/24 12/4 15/10 15/20 16/2 18/20 19/8 26/12 26/15 28/2 28/3 28/4 28/18 29/2 29/20 30/25</p>
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<b>A</b>	63/6 69/12 69/22 70/12 72/13 72/20 <b>anyone [1]</b> 4/22 <b>anything [5]</b> 31/11 50/2 61/11 63/9 74/20 <b>anyway [1]</b> 36/13 <b>appeal [6]</b> 7/23 10/4 62/6 72/1 73/14 77/9 <b>Appeals [1]</b> 37/10 <b>APPEARANCES [1]</b> 2/1 <b>appears [3]</b> 17/14 25/13 32/12 <b>appellate [2]</b> 71/21 72/7 <b>apple [1]</b> 39/17 <b>applicable [2]</b> 43/7 74/7 <b>application [31]</b> 8/17 8/18 15/5 15/6 16/13 26/1 26/16 28/12 28/13 28/25 29/10 38/7 38/13 52/20 53/16 59/19 59/20 59/22 60/3 60/6 60/8 60/12 64/4 64/9 64/11 64/12 64/20 64/24 65/15 65/16 69/20 <b>applications [37]</b> 6/2 10/18 11/2 11/21 12/4 12/5 12/7 13/4 13/7 13/14 13/15 15/3 16/15 17/6 17/9 17/11 17/25 20/8 45/8 48/16 48/22 49/19 50/21 53/10 55/25 56/2 57/11 58/3 58/5 60/14 60/22 61/13 61/17 65/8 65/13 65/22 71/2 <b>applied [2]</b> 26/23 51/21 <b>applies [8]</b> 17/10 35/12 45/22 46/1 51/14 68/24 70/7 70/8 <b>apply [9]</b> 17/9 26/22 34/25 38/15 38/17 39/5 41/12 47/7 69/20 <b>applying [2]</b> 56/12 64/5 <b>appropriate [4]</b>	48/24 48/24 49/1 49/3 <b>appropriation [1]</b> 66/22 <b>approval [3]</b> 8/12 58/4 71/3 <b>approve [1]</b> 71/1 <b>approved [19]</b> 6/2 6/17 15/6 17/25 20/8 29/10 45/8 48/16 48/22 49/19 50/9 55/25 56/2 57/11 59/24 60/1 61/12 61/18 64/11 <b>approves [1]</b> 59/19 <b>are [81]</b> <b>area [1]</b> 43/25 <b>aren't [5]</b> 44/17 49/10 53/5 53/6 59/4 <b>argue [9]</b> 22/2 22/11 28/21 53/11 55/20 55/23 60/25 61/25 66/8 <b>argued [11]</b> 21/1 24/21 27/17 28/19 30/7 34/22 34/23 60/4 61/5 61/23 62/4 <b>argues [3]</b> 60/13 61/10 61/22 <b>arguing [5]</b> 18/15 28/22 58/12 62/10 66/9 <b>argument [17]</b> 11/16 11/17 20/22 23/21 23/25 24/4 24/6 30/10 30/11 30/16 31/20 36/21 49/2 57/16 60/16 61/7 72/23 <b>arguments [15]</b> 7/2 20/11 23/11 23/12 23/17 23/20 28/2 28/3 28/4 54/18 57/6 57/15 63/1 70/23 72/10 <b>Arkansas [1]</b> 30/13 <b>art [1]</b> 52/18 <b>as [93]</b> <b>ask [2]</b> 40/5 76/4 <b>asked [6]</b> 21/2 25/19 37/21 66/3 66/12 70/11 <b>asking [6]</b> 36/15 39/20 63/4 68/7 68/9 76/14 <b>assert [5]</b> 6/3 7/11	29/16 59/3 68/2 <b>asserted [2]</b> 59/2 65/23 <b>assessed [2]</b> 32/6 72/24 <b>at [58]</b> 10/18 11/2 11/19 14/5 14/16 20/18 20/25 21/22 23/13 24/9 24/21 27/18 31/24 34/13 34/23 35/20 36/7 38/11 39/17 40/9 40/16 40/22 41/4 41/21 42/20 43/1 43/21 43/25 44/4 45/16 46/16 47/4 52/17 54/18 54/21 55/7 55/17 56/7 59/4 62/21 62/23 65/20 68/6 70/6 70/19 73/23 74/1 74/5 74/6 74/14 74/21 76/19 76/22 76/23 77/8 77/17 78/6 78/8 <b>attached [4]</b> 39/11 40/18 68/15 68/16 <b>attempting [1]</b> 59/3 <b>attempts [1]</b> 21/17 <b>attorney [2]</b> 16/3 16/21 <b>authority [10]</b> 10/17 10/25 11/21 13/6 13/15 13/17 15/1 20/9 37/17 39/23 <b>AUTUMN [2]</b> 2/7 4/23 <b>AVENUE [1]</b> 2/19 <b>avoid [2]</b> 28/14 28/18 <b>aware [2]</b> 12/1 72/13 <b>away [1]</b> 43/12 <b>B</b> <b>back [5]</b> 17/13 33/9 33/21 36/17 67/19 <b>Badlands [1]</b> 16/16 <b>balance [1]</b> 46/22 <b>ball [2]</b> 43/18 43/18 <b>bar [2]</b> 56/9 56/18 <b>barred [2]</b> 9/2 69/12 <b>based [12]</b> 5/23	9/20 15/15 47/15 49/19 51/9 53/18 55/15 58/18 58/23 59/12 76/20 <b>basically [2]</b> 67/20 68/9 <b>basis [13]</b> 5/22 7/21 7/21 8/25 8/25 14/1 20/2 20/16 32/6 45/4 51/10 58/13 70/9 <b>be [71]</b> 6/5 6/24 7/3 8/16 9/20 10/2 10/4 10/10 10/19 10/23 11/7 12/18 12/20 13/10 13/11 14/19 15/6 15/8 15/15 17/14 17/18 20/5 20/14 21/16 25/8 25/9 25/13 25/19 26/19 31/17 32/12 33/8 33/23 34/7 34/8 38/7 39/19 39/23 40/17 41/1 41/25 42/6 42/13 43/19 49/14 50/10 53/15 54/4 54/11 54/23 54/23 55/20 56/3 56/4 57/12 57/13 59/25 61/18 62/8 62/25 64/7 64/14 67/13 67/17 71/4 72/2 72/5 72/10 73/8 75/3 75/21 <b>because [57]</b> 7/10 9/2 10/6 12/7 12/12 13/21 14/9 14/17 15/10 15/15 15/21 17/14 18/9 21/7 22/24 23/11 24/25 25/9 25/11 25/20 26/22 27/3 28/22 32/22 33/7 33/17 34/7 35/17 36/11 36/25 42/6 43/5 43/15 43/23 44/6 45/14 47/4 47/9 47/11 48/13 49/4 49/11 51/24 52/18 53/4 53/15 54/18 59/15 61/9 69/7 69/14 69/17 69/20 73/15 73/25 77/2 77/6 <b>been [20]</b> 12/15 22/3 23/4 23/5 23/6 23/6 27/23 29/3
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(3) been... - concluded

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<b>S</b>	<b>Sisolak's [1]</b> 55/10	67/4 69/15	5/4 5/19 7/13 10/2	78/13
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<b>set [3]</b> 9/4 58/24	48/17	36/14 41/10 63/17	62/9 62/10 62/15	<b>sued [1]</b> 12/15
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10/2 18/21 20/14	37/21 38/7 38/18	65/20	<b>steam [1]</b> 61/19	<b>suing [1]</b> 12/7
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71/21 73/20	56/3 56/25 60/7	47/10 47/13 51/13	<b>stood [1]</b> 21/3	<b>SUPERVISION [1]</b>
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<b>simply [11]</b> 9/6	<b>something [10]</b>	24/2 29/6 58/11	10/23 11/22	21/21 22/17 22/20
29/4 60/10 60/22	9/7 12/13 15/14	68/22 69/1 69/8	<b>subjected [1]</b> 11/7	23/13 23/22 23/24
61/2 61/16 63/4	53/19 59/6 67/18	70/22 70/25 78/2	<b>submit [11]</b> 11/17	24/3 24/5 28/8
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48/10 63/7 63/16	<b>sort [1]</b> 12/11	30/13 30/15 30/18	<b>submitted [11]</b>	64/24 66/24 67/1
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55/9 55/17 64/2	<b>Sox [2]</b> 43/14	9/15 23/4 23/20	<b>submitting [3]</b>	32/12 35/21 37/18
64/2 66/22 66/24	43/17	23/25 24/3 24/6	8/25 12/24 60/6	40/7 40/8 46/18
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<b>S</b>	26/4 29/11 30/5	78/7	11/10 19/1 19/13	71/16
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23/19 24/8 26/5	67/10 67/12 70/20	12/25 13/4 13/7	20/10 20/10 26/5	29/21 76/23 78/5
43/12 43/13 44/3	77/20 77/22	15/3 20/4 20/8	28/2 28/3 28/4	<b>top [2]</b> 69/4 69/4
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<b>taken [2]</b> 39/3	13/18 14/8 16/5	23/11 23/17 23/20	43/3 45/17 45/24	<b>TRANSCRIBED [1]</b>
61/20	21/21 22/9 27/8	24/22 30/23 31/17	46/2 47/4 50/4 50/7	78/8
<b>takes [1]</b> 38/14	28/6 28/19 28/20	34/9 37/4 44/17	50/14 57/5 57/25	<b>TRANSCRIPT [2]</b>
<b>taking [55]</b> 6/5	28/22 28/22 29/11	44/17 44/18 45/16	58/5 58/13 58/13	1/15 78/10
6/24 7/3 14/7 15/8	29/22 31/4 31/9	50/11 55/1 59/1	58/14 58/23 59/4	<b>travel [1]</b> 69/15
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31/9 32/13 36/4	36/24 37/12 37/13	66/20 66/21	71/5 71/13 71/16	<b>trial [12]</b> 6/13 9/21
43/20 49/14 50/19	39/10 39/25 39/25	<b>they [45]</b> 13/11	74/5 75/16	10/1 36/10 38/25
50/19 50/22 51/6	43/16 43/21 45/13	15/16 19/10 19/10	<b>though [11]</b> 7/3	39/18 42/3 46/13
52/24 53/9 53/9	47/2 48/7 49/3	19/11 22/13 29/17	10/24 11/13 13/14	47/6 47/14 52/4
53/17 54/12 54/16	49/12 49/17 49/17	31/10 32/1 33/6	26/18 37/12 64/8	72/20
54/16 54/17 54/20	49/21 50/1 50/3	33/15 33/22 39/5	64/9 64/18 76/15	<b>tribunal [1]</b> 25/7
54/21 54/22 54/22	50/4 50/22 51/6	39/22 39/22 40/1	77/9	<b>tried [3]</b> 15/22
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44/16 49/10 73/7	74/6	47/15 58/25 68/6	14/16 48/12 68/23	61/11 70/3
<b>tangible [1]</b> 12/13	<b>then [19]</b> 6/3 8/19	68/6 68/7 68/8	68/24 69/15	<b>tunc [17]</b> 1/19 5/7
<b>tax [1]</b> 32/6	10/9 21/12 22/21	71/17 73/1 76/14	<b>thrust [3]</b> 13/23	7/7 34/11 34/14
<b>taxes [2]</b> 32/7	28/14 28/18 29/17	77/2	35/23 43/7	37/15 37/18 40/19
72/25	33/8 40/14 43/12	<b>they've [2]</b> 23/18	<b>Thus [1]</b> 6/19	41/16 48/1 56/6
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<b>tell [6]</b> 39/24 42/19	76/1 77/13	44/6 66/20 71/15	20/22 27/3 30/18	<b>turn [2]</b> 30/9 40/15
66/4 73/23 74/14	<b>there [84]</b>	<b>things [4]</b> 14/23	30/19 33/18 33/18	<b>turned [1]</b> 56/4
74/15	<b>there's [28]</b> 12/15	14/24 51/15 72/19	34/13 45/16 67/15	<b>twice [4]</b> 17/23
<b>telling [1]</b> 74/5	12/20 14/15 22/21	<b>think [25]</b> 11/24	70/9 70/10 72/20	22/4 24/6 26/23
<b>temporary [1]</b>	23/3 27/17 29/3	11/25 13/16 14/10	76/12 77/8 78/7	<b>two [20]</b> 10/16
76/5	31/16 33/8 34/1	14/13 18/9 23/14	<b>times [1]</b> 70/18	14/23 15/2 18/24
<b>ten [2]</b> 31/5 31/8	38/12 40/15 40/15	25/9 25/12 35/17	<b>TIMOTHY [1]</b> 1/21	29/24 35/13 37/4
<b>term [2]</b> 29/14	40/16 40/17 43/20	36/7 39/3 39/8 43/4	<b>today [17]</b> 18/16	39/4 43/6 44/13
52/18	45/21 46/18 52/4	46/12 50/1 70/16	22/25 23/18 24/4	47/17 50/15 60/4
<b>testimony [1]</b>	53/20 54/9 54/13	70/18 71/16 71/24	24/7 27/24 28/20	61/19 62/13 65/16
15/13	57/16 65/1 68/10	72/6 73/20 74/15	32/15 45/15 60/9	67/22 67/25 71/19
<b>than [10]</b> 19/11	70/9 71/13 73/3	74/16 74/18	61/6 62/22 62/24	74/6
	<b>THEREAFTER [1]</b>	<b>third [9]</b> 11/10	63/2 65/3 71/10	<b>twofold [1]</b> 11/23

Peggy Isom, CCR 541, RMR

(14) sword - twofold

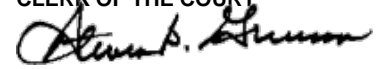
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<b>T</b>	<b>untrue [2]</b> 65/9 65/23 <b>up [15]</b> 4/7 15/21 21/3 21/22 22/8 22/12 27/14 27/18 30/21 31/17 43/22 61/25 63/14 63/25 66/2 <b>uphold [1]</b> 38/6 <b>upon [8]</b> 5/12 5/23 15/15 25/6 47/15 49/20 53/18 76/20 <b>us [2]</b> 31/7 32/1 <b>use [36]</b> 11/21 12/2 12/3 16/14 17/11 17/25 28/1 28/2 28/12 28/13 28/18 28/25 29/2 30/25 32/7 32/8 32/9 50/21 53/9 60/17 60/20 60/22 60/23 60/25 61/1 61/13 61/17 64/4 64/9 64/11 64/12 64/19 64/23 65/13 67/3 71/2 <b>used [2]</b> 36/7 43/3 <b>using [2]</b> 31/10 52/18	29/9 30/4 45/7 48/15 48/21 49/19 49/23 52/18 52/19 53/4 53/4 53/6 53/6 53/8 53/10 54/13 54/14 54/15 54/24 55/23 55/24 56/1 57/10 63/24 64/10 67/23 68/19 71/3 74/8 74/10 <b>viewing [1]</b> 14/14 <b>vigorously [1]</b> 24/21 <b>vote [1]</b> 31/12	<b>week [1]</b> 8/7 <b>weeks [2]</b> 75/17 75/18 <b>weigh [1]</b> 46/21 <b>well [22]</b> 12/18 13/11 14/5 15/16 31/21 32/11 33/2 33/10 34/4 34/4 36/16 37/6 45/13 46/10 49/8 51/1 51/13 51/24 61/24 71/15 72/6 76/16 <b>were [14]</b> 6/8 8/6 20/22 24/20 39/22 40/12 42/12 43/6 45/17 58/3 66/21 75/16 77/23 78/8 <b>WEST [1]</b> 2/19 <b>what [68]</b> 8/23 11/19 13/2 13/8 14/9 14/17 14/21 15/8 16/19 20/21 21/21 24/9 28/16 28/19 28/20 28/22 31/9 31/14 31/24 34/15 34/21 35/23 36/14 36/25 37/7 37/12 37/21 38/14 39/22 39/22 39/25 41/4 42/13 42/14 43/8 43/16 44/20 44/22 44/23 46/11 46/24 48/8 48/23 51/8 52/6 52/7 52/8 53/1 53/11 54/15 55/7 65/2 66/3 66/23 68/6 68/21 69/2 69/6 69/11 69/15 70/1 70/5 70/23 73/4 73/18 74/9 76/14 77/16 <b>what's [4]</b> 24/1 24/24 36/24 71/22 <b>whatever [1]</b> 25/7 <b>when [22]</b> 6/10 6/10 11/25 12/12 13/22 14/22 15/21 18/12 22/14 27/5 28/25 31/1 35/24 36/18 42/21 46/20 62/2 62/10 70/25 73/6 74/10 75/16 <b>where [11]</b> 21/20 30/24 34/24 47/7 63/24 65/2 66/20 67/18 68/25 73/8 74/13 <b>WHEREOF [1]</b>	78/13 <b>whether [35]</b> 10/1 10/3 10/12 11/11 18/16 19/1 19/5 19/13 19/24 21/15 21/16 23/3 23/3 27/16 31/18 37/8 43/19 49/6 49/14 51/4 53/8 56/12 59/5 62/18 62/19 62/20 62/24 71/10 71/15 71/20 72/1 72/4 72/7 72/16 74/10 <b>which [43]</b> 6/8 7/15 7/23 8/7 8/21 8/23 9/4 9/14 9/25 11/1 11/19 13/1 15/7 19/23 20/2 20/23 26/3 27/4 27/19 38/1 38/20 38/21 40/18 40/21 41/13 41/21 42/10 46/1 48/6 49/22 50/11 50/23 51/22 54/20 54/20 58/9 58/10 58/15 58/22 59/12 65/2 68/1 70/13 <b>while [3]</b> 18/21 21/17 55/3 <b>White [2]</b> 43/14 43/17 <b>who [2]</b> 61/15 61/15 <b>whole [2]</b> 14/4 31/13 <b>why [11]</b> 13/18 14/8 21/6 24/11 35/16 45/20 67/6 68/14 69/14 73/15 76/18 <b>will [46]</b> 5/11 5/12 6/22 7/16 8/21 8/22 9/18 10/4 10/10 10/13 11/7 12/2 17/20 18/14 19/2 19/14 20/17 20/24 21/4 21/11 21/13 21/16 21/18 22/2 22/11 22/12 22/17 22/18 32/14 33/25 34/7 39/3 59/14 61/8 61/12 62/1 67/13 72/1 72/5 72/7 72/10 75/1 75/3 75/4 75/21 76/23
<b>U</b>	<b>ultimate [1]</b> 71/17 <b>ultimately [3]</b> 7/17 9/19 77/2 <b>under [18]</b> 8/16 9/24 12/11 15/7 21/13 21/19 25/5 34/9 56/10 56/14 56/18 68/3 68/22 69/7 69/8 69/19 73/5 78/9 <b>underlying [3]</b> 21/24 52/4 73/20 <b>understand [22]</b> 15/9 18/4 18/18 27/9 29/25 33/12 35/22 35/23 37/5 40/7 44/2 44/19 46/24 49/9 51/11 52/10 52/14 56/22 66/17 73/3 74/25 76/18 <b>understanding [2]</b> 5/3 13/25 <b>understood [1]</b> 37/19 <b>undisputed [1]</b> 58/25 <b>unequivocally [1]</b> 22/17 <b>unfounded [1]</b> 61/2 <b>unique [6]</b> 18/9 24/24 33/19 34/1 34/6 77/6 <b>United [8]</b> 29/6 30/13 30/15 30/18 52/23 64/16 64/17 64/24 <b>units [2]</b> 31/6 31/8 <b>unless [6]</b> 16/8 16/12 16/23 20/16 25/5 34/11 <b>until [6]</b> 8/16 16/8 16/12 16/17 60/9 75/5	<b>valid [1]</b> 64/5 <b>VEGAS [14]</b> 1/12 2/9 2/21 3/9 4/1 4/8 4/10 4/12 5/4 10/21 23/17 28/17 34/16 76/11 <b>VEGAS'S [2]</b> 1/16 1/18 <b>versus [7]</b> 4/7 9/24 24/2 53/17 63/25 64/15 64/21 <b>very [38]</b> 13/24 14/10 18/9 18/15 18/21 21/13 21/19 21/24 24/17 24/18 25/21 25/22 25/23 26/6 27/8 28/6 29/7 30/9 30/23 31/14 34/24 35/5 36/17 37/5 37/13 37/13 38/4 38/10 38/10 39/4 43/8 46/15 49/11 63/23 65/4 68/5 77/3 77/18 <b>vested [41]</b> 6/1 6/4 6/16 7/4 11/2 13/4 15/2 17/24 20/7 27/17 28/1	<b>W</b> <b>wait [2]</b> 33/6 66/15 <b>waiting [1]</b> 75/22 <b>walk [1]</b> 43/12 <b>want [24]</b> 4/25 26/6 27/16 29/25 32/21 33/21 34/10 35/21 36/21 40/6 44/6 44/7 44/13 48/2 48/12 50/15 50/16 54/5 63/13 63/19 63/22 74/16 74/18 74/20 <b>wanted [1]</b> 19/4 <b>wants [6]</b> 53/11 54/19 54/25 55/19 55/22 57/4 <b>was [80]</b> <b>wasn't [7]</b> 15/13 16/2 26/20 27/1 34/19 45/15 49/9 <b>watching [1]</b> 12/25 <b>WATERS [5]</b> 2/4 2/5 2/7 4/13 4/23 <b>way [4]</b> 13/19 32/5 73/11 73/17 <b>we [85]</b> <b>we'd [1]</b> 40/5 <b>we'll [4]</b> 75/24 77/13 77/16 77/17 <b>we're [16]</b> 4/6 12/14 26/2 28/22 31/6 31/12 31/21 32/15 32/22 34/2 39/17 39/20 52/18 58/25 62/14 66/14 <b>we've [12]</b> 22/5 28/3 28/3 32/2 32/2 37/21 37/21 37/24 38/18 65/7 65/21 65/23 <b>WEDNESDAY [2]</b> 1/23 4/1	78/13 <b>whether [35]</b> 10/1 10/3 10/12 11/11 18/16 19/1 19/5 19/13 19/24 21/15 21/16 23/3 23/3 27/16 31/18 37/8 43/19 49/6 49/14 51/4 53/8 56/12 59/5 62/18 62/19 62/20 62/24 71/10 71/15 71/20 72/1 72/4 72/7 72/16 74/10 <b>which [43]</b> 6/8 7/15 7/23 8/7 8/21 8/23 9/4 9/14 9/25 11/1 11/19 13/1 15/7 19/23 20/2 20/23 26/3 27/4 27/19 38/1 38/20 38/21 40/18 40/21 41/13 41/21 42/10 46/1 48/6 49/22 50/11 50/23 51/22 54/20 54/20 58/9 58/10 58/15 58/22 59/12 65/2 68/1 70/13 <b>while [3]</b> 18/21 21/17 55/3 <b>White [2]</b> 43/14 43/17 <b>who [2]</b> 61/15 61/15 <b>whole [2]</b> 14/4 31/13 <b>why [11]</b> 13/18 14/8 21/6 24/11 35/16 45/20 67/6 68/14 69/14 73/15 76/18 <b>will [46]</b> 5/11 5/12 6/22 7/16 8/21 8/22 9/18 10/4 10/10 10/13 11/7 12/2 17/20 18/14 19/2 19/14 20/17 20/24 21/4 21/11 21/13 21/16 21/18 22/2 22/11 22/12 22/17 22/18 32/14 33/25 34/7 39/3 59/14 61/8 61/12 62/1 67/13 72/1 72/5 72/7 72/10 75/1 75/3 75/4 75/21 76/23

Peggy Isom, CCR 541, RMR (15) type - will  
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W	Y			
<b>WILLIAMS [1]</b> 1/21 <b>WILSON [1]</b> 2/16 <b>wishes [1]</b> 18/7 <b>withdrawn [1]</b> 60/3 <b>withdrew [1]</b> 60/8 <b>within [7]</b> 10/17 10/25 14/25 20/9 27/4 61/16 69/21 <b>without [3]</b> 6/4 7/24 41/5 <b>WITNESS [1]</b> 78/13 <b>women [1]</b> 14/3 <b>won't [1]</b> 30/23 <b>wonder [1]</b> 73/15 <b>wondering [2]</b> 44/5 47/9 <b>wording [1]</b> 75/23 <b>words [1]</b> 76/14 <b>worker's [1]</b> 36/9 <b>would [18]</b> 14/6 17/14 25/6 36/9 47/10 47/12 47/14 53/2 53/15 56/4 59/25 72/17 73/5 73/16 76/4 76/7 76/18 76/25 <b>wouldn't [3]</b> 24/24 36/11 41/1 <b>Wow [1]</b> 41/7 <b>writ [46]</b> 1/17 1/18 5/5 5/11 5/15 5/16 5/17 5/20 5/22 6/23 7/17 7/17 7/22 9/1 9/19 9/19 10/4 10/4 10/9 10/9 10/10 11/8 19/25 20/12 21/8 21/11 21/13 21/19 21/24 22/18 22/19 22/21 51/2 51/7 51/10 53/3 59/14 61/5 62/25 63/5 72/1 72/4 73/14 75/3 75/5 75/21 <b>writs [1]</b> 8/22 <b>written [1]</b> 35/8 <b>wrong [7]</b> 15/15 15/18 18/19 43/3 43/24 61/15 62/20	<b>Yeah [12]</b> 39/11 41/3 44/12 50/4 52/13 52/15 55/11 56/24 63/15 63/23 66/12 75/18 <b>year [1]</b> 9/15 <b>years [3]</b> 9/15 24/5 61/19 <b>yellow [4]</b> 40/13 40/20 40/25 41/6 <b>yes [11]</b> 16/1 47/19 48/10 51/20 51/23 60/13 63/10 70/18 74/25 75/9 75/12 <b>yet [1]</b> 11/21 <b>Yohan [1]</b> 65/18 <b>you [136]</b> <b>you'd [1]</b> 54/1 <b>you're [11]</b> 14/17 15/19 25/14 31/10 36/25 40/23 40/25 43/24 70/3 73/7 74/21 <b>you've [4]</b> 34/22 34/22 65/2 76/15 <b>your [89]</b> <b>yourself [2]</b> 67/22 68/9			
X	Z			
<b>XVI [1]</b> 1/3	<b>zone [1]</b> 31/1 <b>zoned [1]</b> 27/23 <b>zoning [3]</b> 31/1 49/24 64/6			

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21 *Attorneys for 180 Land Company, LLC*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

17 180 LAND CO LLC, a Nevada limited-liability 18 company; DOE INDIVIDUALS I through X; 19 DOE CORPORATIONS I through X; and 20 DOE LIMITED-LIABILITY COMPANIES I 21 through X, 22 23 Plaintiff, 24 25 v. 26 27 CITY OF LAS VEGAS, a political 28 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  <b>NOTICE OF ENTRY OF ORDER</b>
---	--

1 TO: ALL INTERESTED PARTIES

2 NOTICE IS HEREBY GIVEN that an *Order re April 2, 2019 NRCP 16 Conference* was  
3 entered in the above-entitled action on May 16, 2019, a copy of which is attached hereto.

4  
5 Dated this 17<sup>th</sup> day of May, 2019.

6 HUTCHISON & STEFFEN, PLLC

7 /s/ *Joseph S. Kistler*

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24  
25 *Attorneys for 180 Land Company, LLC*

26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC  
3 and that on this 17<sup>th</sup> day of May, 2019, I caused the above and foregoing document entitled

4 **NOTICE OF ENTRY OF ORDER** to be served as follows:  
5

- 6 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed  
7 envelope upon which first class postage was prepaid in Las Vegas, Nevada;  
8 and/or  
9 ☐ to be served via facsimile; and/or  
10 ☒ pursuant to NEFCR (9), to be electronically served through the Eighth Judicial  
11 District Court's electronic filing system, with the date and time of the electronic  
12 service substituted for the date and place of deposit in the mail; and/or  
13 ☐ to be hand-delivered;

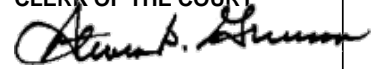
14 to the attorneys and/or parties listed below at the address and/or facsimile number indicated  
15 below:

16 Philip R. Byrnes  
17 Brad Jerbic  
18 Set T. Floyd  
19 City Attorney's Office  
20 495 S. Main Street, 6<sup>th</sup> Fl.  
21 Las Vegas, NV 89101  
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21 */s/ Bobbie Benitez*

22 \_\_\_\_\_  
23 An employee of Hutchison & Steffen, PLLC  
24  
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**ORDR  
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*Attorneys for 180 Land Company, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

180 LAND CO LLC, a Nevada limited-liability  
company; DOE INDIVIDUALS I through X;  
DOE CORPORATIONS I through X; and  
DOE 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

**[PROPOSED]**

**ORDER RE APRIL 2, 2019 NRCP 16**

**CONFERENCE**

1 On April 2, 2019, the Court held a NRCP 16 conference with counsel and corporate  
2 representatives of 180 Land Company, LLC ("Landowners") and the City of Las Vegas ("City"),  
3 with identities as reflected in the Court's Minutes. The conference regarded the, presently-  
4 pending inverse condemnation claims. The Landowners have sought leave to amend their  
5 operative Complaint. Leave to amend has been granted; that amendment has not yet occurred.  
6

7 The Court considered certain scheduling issues upon which the Parties did not agree,  
8 primarily concerning 1) bifurcating discovery and issue determination into two phases, with  
9 discovery and liability for the alleged taking occurring first and discovery and valuation of  
10 damages/just compensation determined second if a taking is established; 2) setting the discovery  
11 deadline; and 3) scheduling status conferences. Following argument, the Court made certain  
12 determinations and now issues the following order, which should be included in the Parties'  
13 NRCP 16.1(c) Joint Case Conference Report.  
14  
15  
16


### 17 ORDER

18 It is hereby Ordered that:

- 19 1. The inverse condemnation claims will be bifurcated by issue, with discovery and  
20 liability for a taking to be completed first ("Phase I") and discovery and valuation of  
21 damages/just compensation occurring thereafter ("Phase II"). Discovery for Phase I  
22 may commence immediately.  
23
- 24 2. The discovery deadline for Phase I is August 21, 2019.
- 25 3. A status conference will be held regarding Phase I on July 23, 2019 at the hour of 9:00  
26 a.m. to consider status of discovery, potential trial dates and any other appropriate issue.  
27 Each Party, if they so desire, may submit written status reports limited to five pages on  
28 or before five judicial days prior to the status conference.

4. The Parties shall comply with the requirements of NRCP 16.1 and include the dates given in this Order in their Joint Case Conference Report.

Dated this 14<sup>th</sup> day of May, 2019.

  
The Honorable Timothy C. Williams  
District Judge

**Submitted by:**  
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