

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

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**JOINT APPENDIX,  
VOLUME NO. 107**

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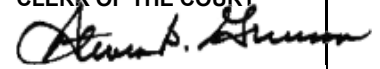
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15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 180 LAND CO LLC, a Nevada limited liability  
18 company, FORE STARS, LTD., a Nevada limited  
19 liability company and SEVENTY ACRES, LLC, a  
20 Nevada limited liability company, DOE  
21 INDIVIDUALS I-X, DOE CORPORATIONS I-X,  
22 and DOE LIMITED LIABILITY COMPANIES I-X,

23 Plaintiffs,

24 v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF ORDER  
SHORTENING TIME RE:**

**MOTION FOR IMMEDIATE STAY  
PENDING NEVADA SUPREME  
COURT'S CONSIDERATION OF  
CITY OF LAS VEGAS' PETITION  
FOR WRIT OF MANDAMUS**

23 **PLEASE TAKE NOTICE** that the Order Shortening Time was granted and the hearing on  
24 the Motion for Immediate Stay Pending Nevada Supreme Court's Consideration of City of Las  
25 Vegas' Petition for Writ of Mandamus (the "Motion") before the above-entitled Court is scheduled  
26 for October 26, 2021 at 9:05 a.m. Further, any opposition to the Motion must be filed and served  
27 on or before October 22, 2021. A copy of the Order Shortening Time is attached hereto.

28 . . .

DATED this 13<sup>th</sup> day of October, 2021.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 13th day of October, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER SHORTENING TIME RE: MOTION FOR IMMEDIATE STAY PENDING NEVADA SUPREME COURT'S CONSIDERATION OF CITY OF LAS VEGAS' PETITION FOR WRIT OF MANDAMUS** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

*Thomas S. Hume*  
CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No. A-17-758528-J

DEPT. NO.: XVI

**MOTION FOR IMMEDIATE STAY  
PENDING NEVADA SUPREME  
COURT'S CONSIDERATION OF  
CITY OF LAS VEGAS' PETITION  
FOR WRIT OF MANDAMUS ON  
ORDER SHORTENING TIME**

**(HEARING REQUESTED ON  
ORDER SHORTENING TIME)**

**OST Hearing Date:  
OST Hearing Time**

Pursuant to NRAP 8 and EDCR 2.26, the City of Las Vegas ("City") respectfully moves the  
Court for an immediate stay of further proceedings, including trial, in this matter, pending resolution  
of the City's forthcoming petition for writ of mandamus to the Nevada Supreme Court.

This motion to stay is supported by the existing record in this action, the attached  
memorandum of points and authorities and exhibits thereto, and any oral argument that the Court

1 may allow at the time of the hearing on this motion. The request for an order shortening time is  
2 supported by the Declaration of George F. Ogilvie III, which follows.

3 DATED this 12th day of October 2021.

4 McDONALD CARANO LLP

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MH  
Entered

**ORDER SHORTENING TIME**

Upon good cause shown, please take notice that the hearing before the above-entitled Court on **MOTION FOR IMMEDIATE STAY PENDING NEVADA SUPREME COURT'S CONSIDERATION OF CITY OF LAS VEGAS' PETITION FOR WRIT OF MANDAMUS ON ORDER SHORTENING TIME** is shortened to the 26th day of October, 2021, at 9:05 am     . m., or as soon thereafter as counsel may be heard.

IT IS FURTHER ORDERED that Plaintiffs shall file and serve their opposition, if any, on or before the 22nd day of October, 2021, and Defendant's reply brief, if any, shall be filed and served on or before the     day of October, 2021.

DATED this     day of October, 2021.

Dated this 12th day of October, 2021

  
DISTRICT COURT JUDGE

MH

8B9 1F1 0CA1 2F46  
Timothy C. Williams  
District Court Judge

**DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF MOTION FOR IMMEDIATE STAY PENDING NEVADA SUPREME COURT'S CONSIDERATION OF CITY OF LAS VEGAS' PETITION FOR WRIT OF MANDAMUS ON ORDER SHORTENING TIME**

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

1. I am an attorney licensed to practice law in the State of Nevada, and am a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas ("City") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I make this declaration in support of the City of Las Vegas' Motion for Immediate Stay Pending Nevada Supreme Court's Consideration of City Of Las Vegas' Petition for Writ of



1 Mandamus and, pursuant to EDCR 2.26, in support of the City's request for an order shortening time  
2 for hearing on this motion.

3 3. On September 28, 2021, the Court granted Plaintiffs' Motion to Determine Take and  
4 for Summary Judgment on the First, Third and Fourth Claims for Relief, finding the City liable for  
5 a taking of the Developer's 35-Acre Property, and denied the City's countermotion for summary  
6 judgment.

7 4. On September 30, 2021, the Court set an October 26, 2021 hearing on the Developer's  
8 motions in limine, and scheduled jury selection for a jury trial regarding Plaintiffs' claim for just  
9 compensation for October 27, 2021.

10 5. On October 1, 2021, in *180 Land Co. LLC, Fore Stars, Ltd. v. City of Las Vegas*,  
11 Eighth Judicial Dist. Ct. Case No. A-18-780184-C (the "65-Acre Case"), the Developer filed  
12 Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the  
13 Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge  
14 Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was  
15 Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States  
16 Supreme Court Precedent on the Take Issue. *See* City's Supp. App. Vol. 20, Exhibit WWW. The  
17 Developer's motion contends that this Court's September 28, 2021 ruling from the bench mandates  
18 that Judge Trujillo deny, on the basis of issue preclusion, the City's motion for summary judgment  
19 that is currently under submission in the 65-Acre case.

20 6. On September 29, 2021, an article appeared in the Las Vegas Review-Journal entitled  
21 "Judge rules Las Vegas took 35 acres on Badlands." *See id.*, Exhibit XXXX. On September 30,  
22 2021, a story appeared on KNTV entitled "City of Las Vegas suffers another defeat in battle over  
23 Badlands: Taxpayers shelling out millions for losing battle." *Id.* On October 5, 2021, an article  
24 appeared in the Las Vegas Review-Journal entitled "A win for all landowners': Judge rules Las  
25 Vegas took 35 acres on Badlands." *Id.* On October 5, 2021, an Editorial appeared in the Las Vegas  
26 Review-Journal entitled "Badlands money pit just got deeper." *Id.* On October 6, 2021, an article  
27 appeared in the Las Vegas Review-Journal entitled "Las Vegas to appeal Badlands ruling." *Id.*

28 . . .

/s/ George F. Ogilvie III  
GEORGE F. OGILVIE III

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The City of Las Vegas moves on shortened time for an emergency stay of all further proceedings in this action pending adjudication of the City's petition for a writ of mandamus to be filed imminently with the Nevada Supreme Court. In ruling that the City has "taken" the 35-Acre Property by denying a single application to build 61 houses on the property, the Court has held that (1) the zoning of property in Nevada confers a constitutionally protected property right in the owner to build whatever the owner desires as long as the use is a permitted use under the zoning and the development does not exceed the maximum density allowed by the zoning, (2) the government has no discretion to deny or condition approval of a development application, and (3) the government's Master Plan (General Plan) is irrelevant to any development application. In issuing these novel and unprecedented rulings, the Court has found unconstitutional virtually the entire land use regulatory scheme in Nevada, which requires cities to adopt General Plans to designate the legal use of property and confers broad discretion on cities to apply General Plan designations and zoning ordinances in the review of land use permit applications. NRS 278.010–278.630. The Court's ruling has also invalidated the City's General Plan and Unified Development Code, Las Vegas Municipal Code ("UDC") 19.10.010-19.18 & Appendices, under which the City exercises the discretionary powers granted by state law to process applications for land use permits. The Court's decision turns an extensive body of Nevada and Las Vegas property and land use law upside down.

In reaching the sweeping conclusion that local agencies no longer have discretion in the approval of land use permit applications, the Court has disregarded decades of unanimous Nevada Supreme Court authority to the contrary, and even a Nevada Supreme Court decision in a related case finding that to develop housing in the Badlands, an owner must first request and obtain the City's approval of an amendment to the General Plan, which currently does not allow housing on any part of the Badlands other than the 17-Acre Property. The Nevada Supreme Court said: "The governing ordinances require the City to make specific findings *to approve a general plan*

1 *amendment*, LVMC 19.16.030(1), a rezoning application, LVMC 19.16.090(L), and a site  
2 development plan amendment, LVMC 19.16.100(E).” Ex. DDD at 1014.<sup>1</sup>

3 The Badlands has been designated Parks/Recreation/Open Space (“PR-OS”) by ordinance  
4 in the City’s General Plan since 1992, and was so designated in 2015 when the Developer bought  
5 the Badlands. Exs. I, M, N, P, Q. PR-OS does not permit housing. By holding that the City’s  
6 “governing ordinances require the City to make specific findings to approve a general plan  
7 amendment,” the Supreme Court was necessarily acknowledging the validity of the PR-OS  
8 designation and the City’s discretion to change it or retain it. In approving the Developer’s  
9 applications to build 435 luxury housing units on the 17-Acre Property, the City upzoned the  
10 Property and lifted the PR-OS restriction to allow 25 units per acre. As thanks, the Developer claims  
11 that it has no desire to build the 435-unit project and instead sued the City for \$26 million for a  
12 “taking” of the 17-Acre Property, an amount that is six times the amount the Developer paid to  
13 purchase the entire 250-acre Badlands.

14 Ignoring authorities directly on point, this Court relies instead on cases that do not even  
15 address the issue. *E.g.*, *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645 (2006); *City of Las Vegas*  
16 *v. Bustos*, 119 Nev. 360 (2003). Moreover, the Court’s decision directly contradicts its earlier  
17 decision in this case that (a) zoning does not confer any rights on property owners, no less  
18 constitutional rights, (b) the PR-OS General Plan designation of the Badlands is valid and bars  
19 residential use of the Badlands, regardless of the zoning, and (c) the City has discretion to amend  
20 the PR-OS designation. Ex. XXX at 1385-86, 1391-94. Judges Sturman and Herndon have  
21 determined in the 133-Acre and 65-Acre cases that zoning does not confer any rights to build on  
22 property. City’s Supp. App. Vol. 20, Ex. ZZZZ at 154 (Judge Sturman: “Now the challenge that we  
23 have here is this idea that zoning defines the property rights. . . . zoning defines what you can apply  
24 to use your property as, not your absolute right. Within that zoning, you could apply to use your  
25 property with something that complies with that zoning.”); *see also id.* at 120, 130, 132, 134, 137,  
26 139-40, 142-49, 155-56, 161-62, 166-67; Ex. CCCC at 1496-97 (Judge Herndon: “Because the right  
27

28 <sup>1</sup> The case is *Seventy Acres, LLC v. Jack B. Binion, et al.*, NSC Case No. 75481.

1 to use land for a particular purpose *is not a fundamental constitutional right*, courts generally defer  
2 to the decisions of legislatures and administrative agencies charged with regulating land use.”)  
3 (emphasis added).<sup>2</sup>

4 The Developer contends that the Court’s decision is now an issue preclusion bar to a local  
5 agency’s exercise of discretion to deny or conditionally approve any application to develop property  
6 in the State of Nevada as long as the proposed development does not exceed the maximum density  
7 allowed by zoning and the proposed use is permitted by the zoning. Before an ordinary appeal of  
8 the Court’s ruling can be adjudicated by the Nevada Supreme Court, the land use regulatory system  
9 in Nevada could be thrown into chaos. Property owners could rush to file applications for intensive  
10 development of property, contending that if the application is not approved ministerially, the agency  
11 is liable for just compensation to the owner. Local agencies would be placed in the difficult position  
12 of either approving development that causes irreparable harm to the environment and other  
13 community values or facing financial disaster. To avoid this dark scenario, the City respectfully  
14 requests that the Court stay further proceedings to allow the Nevada Supreme Court to decide this  
15 vitally important question of law.

## 16 **II. ARGUMENT**

17 This Court has broad discretion to manage its docket and “control the disposition of the  
18 cases . . . with economy of time and effort for itself, for counsel, and for litigants.” *Maheu v. Eighth*  
19 *Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (quoting *Landis v. N. Am. Co.*, 299 U.S.  
20 248, 254-55 (1936)). In determining whether to stay any litigation pending resolution of writ  
21 proceedings, courts consider the following four factors: (1) whether the object of the writ petition  
22 will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious  
23 injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious  
24

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25 <sup>2</sup> The 133-Acre case before Judge Sturman is *180 Land Co. LLC, Fore Stars, Ltd., Seventy Acres,*  
26 *LLC v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-775804-J. The 65-Acre case in  
27 front of Judge Herndon before he was elevated to the Supreme Court is *180 Land Co. LLC, Fore*  
28 *Stars, Ltd. v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-780184-C. The 65-Acre case  
is now before Judge Trujillo. Judge Trujillo reheard the City’s motion for summary judgment but has  
not issued any orders.

injury if the stay is granted; and (4) whether the petitioner is likely to prevail on the writ petition. NRAP 8(c)(1)-(4); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The Nevada Supreme Court has “recognize[d] that if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38. This case meets all four factors.

**A. Every Community in the State of Nevada Could Suffer Irreparable Harm If the Stay is Denied Because Property Owners Will Claim a Constitutional Right to Build Virtually Anything They Choose While the City’s Appeal is Pending**

The first and second factors are satisfied for a variety of reasons. Immediately following the Court’s ruling from the bench finding a taking on September 28, 2021, the Developer filed a motion in the 65-Acre case claiming that this Court’s decision mandates that that Court find that the City is liable for a taking of the 65-Acre Property under issue preclusion. *See* City’s Supp. App. Vol. 20, Ex. WWW. For an issue of this extreme importance for the welfare of the entire State, the Nevada Supreme Court will undoubtedly have the final say as to whether this Court has erred. Because the Court’s ruling would effect a sea-change in State law regarding the scope of local police power delegated to cities by the State, the Nevada Supreme Court should decide this issue before the alleged precedent in this case is used to influence decisions by local public agencies throughout the state, including the City of Las Vegas, and by other District Courts.

If, while the Court’s ruling is on appeal, local governments feel compelled by the Court’s ruling to abandon their duty to exercise discretion over land use applications for the health, safety, and welfare of their constituents, the public interest would be seriously compromised. The State Legislature mandates that cities and counties “prepare and adopt a comprehensive, long-term plan for the physical development of the city, county, or region which in the commission’s judgment bears relation to the planning thereof” “as a basis for development of the city, county or region” (NRS 278.150(1) & (2) and to “regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land” “in accordance with the master plan for land use and be designed: . . . To preserve the quality of air and water resources. . . . To promote the conservation of open space . . . To provide for recreational needs . . . To protect life and property in areas subject to floods . . . To develop a timely, orderly and efficient arrangement of

1 transportation and public facilities and services . . . To promote health and the general welfare. . .  
2 .” NRS 278.250(1) & (2). If cities and counties follow this Court’s ruling invalidating the above  
3 discretionary powers and ministerially approve every application to develop property as long as it  
4 is for a use permitted in the zoning district, the object of the City’s Writ Petition—to preserve the  
5 prerogatives granted to local agencies to regulate land use in the best interest of the community—  
6 would be defeated. If the City prevails in the appeal, it would be too late to reverse the approvals  
7 of development that, while profitable for the landowner, would cause great harm to the community  
8 and that would not have been granted but for this Court’s decision that local agencies cannot  
9 exercise discretion in ruling on land use permit applications.

10 Moreover, the Supreme Court should be allowed an opportunity to resolve these crucial  
11 issues of law before this Court makes further rulings or reaches the issue of damages. If the City is  
12 required to pay the Developer \$35 million as the Developer has demanded, and if the Nevada  
13 Supreme Court later reverses the judgment, it is not clear that the City will be able to retrieve the  
14 money paid to the Developer, to the great detriment of the taxpayers.

15 The concern that local agencies and District Courts across the entire State might follow the  
16 Court’s ruling is real. The media has already reported the Court’s decision to the public. Ex. XXXX  
17 (September 30, October 5, and October 6 Las Vegas Register-Journal articles and editorial). At its  
18 meeting on October 6, 2021, the Las Vegas City Council described the Court’s ruling, alerting the  
19 public that a court has found that the City is now faced with the Hobson’s choice of either granting  
20 every land use permit application put before it or compensate property owners for the market value  
21 of their property. Ex. YYYY. As a result, local governments can expect a flood of building permit  
22 applications in which the applicants will claim a constitutional right to approval of their application  
23 or the right to compensation under the Court’s decision.

24 Similarly, if not stayed, the Court’s ruling will result in irreparable harm to the City and the  
25 public. The State’s planning and zoning laws set forth in NRS 278.010-278.828 are designed to  
26 protect the public against harmful development and to promote safe, healthy, efficient, well-  
27 balanced land use development that provides adequate amenities and services for all. The Court’s  
28 decision will likely create chaos in land use in the State in the near term and lead public agencies,

1 in reliance on this Court’s decision, to allow construction and other land uses that would have been  
2 denied or conditionally approved before the Court’s ruling, but that they now believe must be  
3 approved without conditions unless the agency is willing to use public money to pay compensation  
4 to potentially thousands of property owners. These physical changes in land use could not be  
5 undone if the Court’s decision is overturned years later in an ordinary appeal of a final judgment.  
6 Thus, the harm to the State if the Court’s ruling is not immediately stayed could be substantial and  
7 irreparable.

8 **B. Because the Developer Seeks Only Money Damages, the Developer Would Not**  
9 **Suffer Irreparable Harm If a Stay is Entered**

10 The third factor, lack of irreparable harm to the Developer, is easily met, because the  
11 Developer is seeking only money damages in each of the four Badlands cases. In March 2018,  
12 Judge Crockett invalidated the City’s approval of the Developer’s applications to construct 435  
13 luxury housing units in the 17-Acre portion of the Badlands on the ground that the Developer was  
14 required to file a major modification application (“MMA”) to develop housing in the Badlands  
15 (“Crockett Order”). More than a year ago, in September 2020, after the Nevada Supreme Court had  
16 overruled the Crockett Order and reinstated the City’s approval of construction of 435 luxury  
17 housing units in the Badlands (Exs. DDD, SSSS), the City notified the Developer that the order  
18 reinstating its approvals was final, the Developer was free to build, and the City was even extending  
19 the deadline for the Developer to start construction by two years to account for the time the appeal  
20 of Judge Crockett’s Order was pending in the Supreme Court. Ex. GGG. The Developer, however,  
21 has made it clear that it has no intention of actually building the 435-unit project. Instead, the  
22 Developer has elected to pursue the City for money damages in all four Badlands cases, even in the  
23 17-Acre case, making the outlandish claim that the City has “nullified” the 17-Acre approvals,  
24 despite the Supreme Court’s order reinstating the permits and the City’s express acknowledgement  
25 that the permits are valid for another two years.<sup>3</sup>

26 \_\_\_\_\_  
27 <sup>3</sup> This is the first case on record anywhere in the United States where a developer has sued the  
28 government for a taking despite approval of the developer’s application for development. It is also  
the first case where a developer, when granted a permit, pretends that the permit is invalid, instead  
(footnote continued on next page)



Further confirming that the Developer's only interest is in money damages, the City also afforded the Developer an opportunity to seek development of the 133-Acre Property, but the Developer has declined. In 2018, adhering to Judge Crockett's Order then in effect, the City Council was compelled to strike the Developer's 133-Acre Applications because the Developer had not filed an MMA. After the Supreme Court reversed the Crockett Order, the City notified the Developer that it was free to refile the applications to allow the City Council to consider the applications on the merits for the first time. Ex. NNN. Despite the fact that the City Council had not disapproved any application to develop the 133-Acre Property on the merits and the City invited the Developer to resubmit the applications for a decision on the merits, the Developer declined to refile the applications or do anything to attempt to develop the 133-Acre Property, and even vigorously opposed the City's request that Judge Sturman remand the 133-Acre Applications to the City Council for consideration of the applications on the merits. Ex. AAAAA (Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021).

In the aftermath of the Supreme Court's decision reversing Judge Crockett, the City also invited the Developer to file a first application for the 65-Acre Property (the Developer never filed any applications to develop the 65-Acre Property) and a second application for the 35-Acre Property. Exs. OOO, PPP. The Developer ignored all four City requests. It is clear, therefore, that the Developer is seeking only money damages. The Developer is entitled to interest on any damages from the date of the taking. *City of North Las Vegas v. 5th & Centennial*, 130 Nev. 619, 624, 331 P.3d 896, 899 ("[J]ust compensation includes interest from the date of taking").<sup>4</sup> A delay in payment of money damages where interest accrues on the damages is not irreparable harm. *See Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008) *abrogated*

seeking money damages for a taking. Judge Herndon held that the Developer's claim that the City has nullified its permit is "frivolous." Ex. CCCC at 1507-08.

<sup>4</sup> The Developer purchased the entire Badlands for less than \$4.5 million. Exs. AAA at 966, UUU at 1300, CCCC at 1496, FFFF at 1591-97. If the Developer eventually prevails in the trial court and the Supreme Court, it will be entitled to interest on whatever the courts award for a taking of the Badlands. Accordingly, the Developer would be made whole.

on other grounds by *Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Community Ass’n*, 2021 WL 4344955 (2021) (“Generally, harm is ‘irreparable’ if it cannot adequately be remedied by compensatory damages.”)<sup>5</sup>

**C. Because the Court’s Decision is Contrary to Nevada and Federal Caselaw, Nevada Revised Statutes, and City Ordinances, The City Is Likely To Prevail On Its Writ Petition**

The Developer faces three separate and insurmountable barriers to prevail on its categorical and *Penn Central* taking claims. The claims are not ripe. Even if ripe, the City did not wipe out or nearly wipe out the value of the 35-Acre Property. And even if the City had wiped out the value of the 35-Acre Property, the City allowed substantial development of the parcel as a whole, of which the 35-Acre Property is only one segment, negating a taking.

**1. The Categorical and *Penn Central* claims are not ripe**

First, these claims are unripe. In its categorical and *Penn Central* claims, the Developer alleges that the City excessively regulated the use of the 35-Acre Property. But as Judge Herndon found in the 65-Acre case, the court cannot determine whether the City has “taken” the property unless the City has made a final decision disallowing development that wipes out or nearly wipes out the economic value of the property. Judge Herndon found, in reliance on *Williamson County Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), that the Developer’s categorical and *Penn Central* claims were unripe and granted summary judgment to the City because the Developer had not filed and had denied any application to develop the individual 65-Acre Property. Ex. CCCC at 1504-15. Judge Sturman agreed with Judge Herndon’s

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<sup>5</sup> The Developer’s claim that it is harmed because it is incurring property taxes on property the use of which the City has denied during this litigation rings hollow. The City has given the Developer ample opportunity to develop the Badlands, including an invitation to file an application for the first time to develop the 65-Acre, to re-file its 133-Acre Applications for a decision for the first time on the merits, and to file a second application for the 35-Acre Property. The City even handed the Developer a permit for 435 luxury units on a silver platter, but the Developer has elected instead to attempt to try to extort \$386 million—the Developer’s total damages claim—from the taxpayers. Nor is the Developer in a position to complain about the amount of its property taxes. The Developer voluntarily shut down the golf course. As a result, under settled Nevada law, the Developer no longer qualified for a property tax break for a golf course. Ex. HHHH at 4222. Indeed, the Developer stipulated with the Assessor to settle its tax appeal and thus cannot be heard to claim that its property taxes are excessive. *Id.*

1 ripeness analysis, concluding that the categorical and *Penn Central* taking claims in the 133-Acre  
2 case are unripe because the City never had the chance to rule on the merits of the applications. *See*  
3 City's Supp. App. Vol. 20, Ex. ZZZZ at 152-53 ("I believe that with respect to the zoning issues  
4 that Herndon's analysis of ripeness is correct."); *see also id.* at 128-29, 150, 159.

5 *Williamson County* and all cases following that seminal decision require that a developer  
6 file and have denied at least two applications for development before a taking claim is ripe. 473  
7 U.S. at 191; *see* Ex. CCCC at 1504-05 and authorities cited therein (Judge Herndon: "A regulatory  
8 takings claim is ripe only when the landowner has filed at least one application that is denied and a  
9 second application for a reduced density or a variance that is also denied.") (citing *Williamson*  
10 *County*, 473 at 191). Here, the Developer filed only one set of applications to develop the 35-Acre  
11 Property, which the City denied. Under *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419-20, 351  
12 P.3d 736, 742 (2015), the Developer's regulation of use taking claims are clearly unripe because it  
13 failed to file and have denied at least two applications for development. As the Court noted in *State*,  
14 and as noted by Judge Herndon, the Developer must file applications to develop the "property at  
15 issue." 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186).  
16 Accordingly, applications to develop other segments of the Badlands or to develop property that  
17 included not only the 35-Acre Property standing alone but the entire Badlands, such as a Major  
18 Development Agreement ("MDA"), are irrelevant to determine final decision ripeness. *See* Ex.  
19 CCCC at 1506-07, 1509-12. As Judge Herndon concluded:

20 The Court also does not consider the MDA to constitute an initial application  
21 to develop the 65-Acre Property for purposes of a final decision because the  
22 MDA was not the specific and detailed application required for the City to take  
23 final action on a development project. . . . Given the uncertainty in the MDA as  
24 to what might be developed on the 65-Acre Property, the Court cannot  
25 determine what action the City Council would take on a proposal to develop  
only the 65-Acre Property. This once again places the court in the untenable  
position of having to speculate about what the City might have done, said  
speculation being improper."

26 Ex. CCCC at 1510-11. Because the Developer filed only one set of applications to develop the  
27 individual 35-Acre Property, its taking claims are unripe as a matter of well-established law.

28 . . .

**2. Because the 35-Acre Property was designated PR-OS in the City's General Plan when the Developer bought the Badlands, and PR-OS does not permit residential use, the City did not devalue the property by simply maintaining the status quo**

Even if its taking claims alleging an excessive burden on the owner's use of the 35-Acre Property were ripe, the Developer cannot prevail on its regulation of use claims because it cannot meet Nevada's test for a regulatory taking, which requires that the City's action must "completely deprive an owner of all economically beneficial use of her property." *State*, 131 Nev. at 419, 351 P.3d at 741 (internal quotes and citations omitted); *see also Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245-46, 871 P.2d 320, 324-35 (1994) (taking requires agency action that "destroy[s] all viable economic value of the prospective development property"). At the time the Developer bought the Badlands, the land could not legally be used for housing under the PR-OS General Plan designation, regardless of the zoning of the property. NRS 278.150 (requiring cities to adopt General Plans that govern land uses); NRS 278.250(2) (zoning "must" be consistent with General Plan); *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 111 (1995); *Nova Horizon, Inc. v. City Council of Reno*, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989). Indeed, UDC 19.00.040 provides:

It is the intent of the City Council that all regulatory decisions made pursuant to this Title be consistent with the General Plan. . . . For purposes of this Section, "consistency with the General Plan" means not only consistency with the Plan's land use and density designations, but also consistency with all policies and programs of the General Plan, including those that promote compatibility of uses and densities, and orderly development consistent with available resources.

Thus, even if the City had denied two separate applications to develop the property with housing, the City would not have changed the use or value of the 35-Acre Property by denying applications to build housing, and therefore it could not be liable for a taking.

**3. Because the City has permitted substantial development of the parcel as a whole, the taking claims fail**

Even if the ripeness analysis were rejected, the City's regulatory actions with respect to the 35-Acre Property must be analyzed in the context of the parcel as a whole, which is either the 1,596-

1 acre Peccole Ranch Master Plan (“PRMP”) or the 250-acre Badlands. *See Murr v. Wisconsin*, 137  
2 S. Ct. 1933, 1943-44 (2017) (requiring a wipeout or near wipeout of the parcel as a whole to find  
3 liability for a taking); *Kelly*, 109 Nev. at 651, 855 P2d at 1035 (finding that the developer had  
4 improperly segmented the property to manufacture a takings claim, and that “Uppaway must be  
5 viewed as a whole, not as thirty-nine individual lots” when assessing whether the developer had  
6 been deprived of all economic use). The City has permitted substantial development in both the  
7 PRMP and the Badlands, negating a taking of the 35-Acre Property that the Developer segmented  
8 from the Badlands. Again, Nevada authority is directly on point and requires rejection of the  
9 Developer’s taking claims regarding excessive regulation of the Developer’s use of the 35-Acre  
10 Property.<sup>6</sup>

11 This Court erred in ignoring the parcel-as-a-whole doctrine. The Court likely would not  
12 have found a taking if the Developer had not segmented the Badlands into four parts because the  
13 City approved 435 luxury units for the Badlands, which is substantial development. Nor would this  
14 Court have found a taking of the Badlands if the Developer had bought the entire PRMP from the  
15 original landowner and *then* developed thousands of housing units, a hotel, a casino, a retail  
16 shopping mall, and a golf course, and the City later denied a request to develop the Badlands, which  
17 served as an open space amenity to the PRMP. The fact that after full buildout of the PRMP the  
18 original landowner carved the open space out of the PRMP and sold it to the Developer does not  
19 require the City to allow the Developer to eliminate the open space that the City required to be set  
20 aside when the City approved the PRMP. Segmentation of the PRMP to attempt to compel the City  
21 to approve development is a bait and switch, prohibited by all courts that have confronted the issue.

22  
23  
24 <sup>6</sup> Judge Herndon saw through the Developer’s segmentation tactic, concluding that: “At the time the  
25 Developer bought the Badlands, the golf course business was in full operation. The Developer  
26 operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded  
27 parcel maps subdividing the Badlands into nine parcels. The Developer transferred 178.27 acres to  
28 180 Land Co. LLC . . . and 70.52 acres to Seventy Acres LLC . . . , leaving Fore Stars with 2.13  
acres. Each of these entities is controlled by the Developer’s EHB Companies LLC. The Developer  
then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual  
development applications for three of the segments, despite the Developer’s intent to develop the  
entire Badlands.” Ex. CCCC at 1490 (citations to exhibits omitted).

**4. The Developer's theory that zoning confers a right to build housing is contrary to authority**

Ignoring these taking standards, the Developer manufactures a taking test out of thin air by claiming a constitutionally protected property interest in a permit to build 61 housing units on the 35-Acre Property. This preposterous claim is based on the fact that the property is zoned R-PD7, which merely *permits* residential use, but confers no "rights," constitutional or otherwise. Under regulatory powers delegated by the state, Nevada cities are *required* to exercise discretion to promote the health, safety, and general welfare of the public in adopting, amending, and applying General Plans and zoning ordinances. NRS 278.150, NRS 278.250. The R-PD7 zoning ordinance that the Developer falsely claims confers a "right" to develop housing is in fact infused with discretion that is fundamentally inconsistent with the alleged "right to develop":

The R-PD District has been to provide for *flexibility and innovation* in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space. . . . Single-family and multi-family residential and supporting uses are permitted in the R-PD District *to the extent they are determined by the Director to be consistent with the density approved for the District and are compatible with surrounding uses*. . . . The approving body may attach to the amendment to an approved Site Development Plan Review *whatever conditions are deemed necessary to ensure the proper amenities and to assure that the proposed development will be compatible with surrounding existing and proposed land uses*.

UDC 19.10.050 (emphasis added). UDC 19.18.020 defines the term "Permitted Use" as "Any use allowed in a zoning district as a matter of right *if it is conducted in accordance with the restrictions applicable to that district*." (Emphasis added). This broad discretion to approve development generally and in particular in an R-PD zoning district is not compatible with a constitutional right to build whatever the owner wants to build. If the Developer were correct, a vast body of state and local land use regulations conferring discretion on the City would be rendered a nullity.

The Developer fails to cite a single case or statute that remotely supports its theory that the City lacks the discretion to limit the Developer's construction of housing in the Badlands. And the contention is contrary to all authority. *Stratosphere Gaming v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004) (holding that because City's site development review process

involved discretionary action by City Council, the project proponent had no vested right to construct); *id.* (“[C]ompatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest.”); *City of Reno v. Harris*, 111 Nev. 672, 679, 895 P.2d 663, 667 (1995) (“Once it is established that an area permits several uses, it is within the discretion and good judgment of the municipality to determine what specific use should be permitted.”); *Boulder City*, 110 Nev. at 246, 871 P.2d at 325 (“The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally protected property interest.”); *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992) (“Although the land upon which Von Goerken intended to construct a tavern was zoned to accommodate such a commercial enterprise, it is clear that compatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest.”); *Nevada Contractors v. Washoe County*, 106 Nev. 310, 314, 792 P.2d 31 (1990) (“Because of the Board’s particular expertise in zoning, the courts must defer to and not interfere with the Board’s discretion if this discretion is not abused.”); *Am. W. Dev., Inc.*, 111 Nev. at 807, 898 P.2d at 112 (“In order for rights in a proposed development project to vest, zoning or use approvals must not be subject to further governmental discretionary action affecting project commencement . . . .”); *Bd. of Cty. Comm’rs v. CMC of Nev., Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983) (There are no vested rights against changes in zoning laws “unless zoning or use approvals are not subject to further governmental discretionary actions affecting project commencement.”). The broad discretion granted to the City to limit the use of property cannot be reconciled with the notion that a property owner has a constitutionally protected “right” to build on their property.

The Developer’s attempt to distinguish these authorities on the grounds that they involved adjudication of petitions for judicial review (“PJR”) is without merit. A PJR is a procedure and remedy for challenging government decisions; it is an empty vessel. There is no substantive law of PJRs. These cases rejecting the Developer’s zoning-grants-property-rights theory are based squarely on the underlying Nevada law of property and land use regulation. These rules apply whether a property owner is challenging a regulation of the use of its property by PJR or by

complaint for a regulatory taking. Indeed, it would be an absurd result if the City Council had discretion to deny an application to develop property if after the City’s denial the applicant then sues for a PJR, but the City Council had no discretion to deny the application if the applicant then sues for a regulatory taking. Moreover, the *Boulder City* case was a constitutional challenge to the denial of a permit, not a PJR. 110 Nev. at 246, 871 P.2d at 325.

The Ninth Circuit agrees. In *180 Land Co. LLC v. City of Las Vegas*, Ninth Circuit Case No. 19-16114, in a case involving the same parties and legal issue, the Developer alleged that it has “vested zoning rights to develop residential units on the [Badlands].” Ex. HHH at 1037. The Ninth Circuit rejected that claim, finding that under Nevada property law, the Developer had no such right.

“To have a constitutionally protected property interest in a government benefit, such as a land use permit, an independent source, such as state law, must give rise to a “legitimate claim of entitlement,” that imposes significant limitations on the discretion of the decision maker. . . . We reject as without merit plaintiffs’ contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally protected property interest . . . .”

Ex. III at 1125-26. Like *Boulder City*, the *180 Land* case involved a constitutional challenge to a denial of a building permit, not a PJR. These authorities are directly on point and require judgment for the City on the Developer’s categorical and *Penn Central* claims.

**5. The Developer’s physical taking claim fails because the City did not exact an easement for public use of the 35-Acre Property**

Nor do the Developer’s physical taking, non-regulatory, and temporary taking claims have merit. Bill 2018-24, which the Developer claims exacted an easement from the Developer, did no such thing. *See* City’s Reply in Support of Countermotion for Summary Judgment filed 9/21/21 (“Reply”) at 21-23.

**6. The Developer submitted no evidence supporting a non-regulatory taking**

The Developer’s non-regulatory taking claim is also frivolous. The Developer presented no evidence to this Court that the City interfered with the Developer’s property, rendering it “unusable or valueless” as required in *State* for a non-regulatory taking. *Id.* at 23-24; *State*, 131 Nev. at 421,



1 351 P.3d at 743. Indeed, the only allegations the Developer could muster to support its non-  
2 regulatory taking claim is the contention that the City denied the Developer's applications for  
3 permits to use the property for housing, which states a regulatory taking claim, duplicating the  
4 Developer's first and second causes of action. *See* Reply at 24.

5 **7. Because the City did not effect a permanent taking of the 35-Acre Property,**  
6 **the temporary taking claim fails**

7 Finally, as demonstrated in the City's brief, the temporary taking claim must fail. Reply at  
8 24. Unless a court finds a permanent taking, the City cannot, as a matter of logic, be liable for a  
9 temporary taking. Because the City is not liable for a permanent taking here, it is also not liable for  
10 a temporary taking.

11 **III. CONCLUSION**

12 Because the Court's decision is contrary to all authority and could have far reaching  
13 effects on the entire State, giving property owners nearly unlimited rights to build on their property,  
14 the Court's ruling should be stayed to allow the Nevada Supreme Court to resolve this gravely  
15 important issue. This chaos will not be averted if the Court proceeds with trial and issues a final  
16 judgment and the City files an ordinary appeal. Because an appeal would not avoid irreparable  
17 harm, an immediate stay should be granted.

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1 Dated this 12th day of October, 2021.

2 McDONALD CARANO LLP

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

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5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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Lauren Tarpey

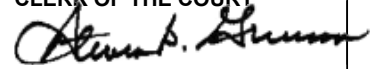
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**PLAINTIFF LANDOWNERS’  
OPPOSITION TO CITY OF LAS VEGAS’  
EMERGENCY MOTION TO CONTINUE  
TRIAL ON ORDER SHORTENING  
TIME**

Hearing Date: October 19, 2021  
Hearing Time: 9:05 AM

**I. INTRODUCTION**

As this Court is fully aware, this is an inverse condemnation case in which the matters presented are of the highest constitutional magnitude taking precedence over other matters and must be “quickly heard and determined”. *See* NRS 37.055. The Landowners have been subjected

1 to delay tactics by the City for far too long making the old adage “justice delayed is justice denied”  
2 a reality to the Landowners who have endured, amongst other things, economic hardship at the  
3 hands of the City. Now on the eve of a firm trial setting, the City’s counsel requests the trial be  
4 further delayed presenting as his primary reason, preoccupation with other litigation and  
5 essentially blaming this Court for the City’s counsel “misunderstanding” of a firm setting. Thus,  
6 as is more fully discussed below, good cause does not exist to further delay this matter as it would  
7 be extremely prejudicial to the Landowners to allow further delay. Accordingly, this motion  
8 should be denied.

9 **II. ARGUMENT**

10 For inverse condemnation actions a landowner must file and pursue claims in order to  
11 obtain just compensation of which the government has deprived them. The Nevada Supreme Court  
12 has held that it is the government’s **affirmative duty** to move an eminent domain/inverse  
13 condemnation action to trial within two years of the commencement of the action and/or the taking.  
14 *County of Clark v. Alper*, 100 Nev. 382, 391, 685 P. 2d 943, 949 (1984). The Nevada Supreme  
15 Court held “that the county cannot delay formal eminent domain proceedings on the expectation  
16 that the landowner will file an action for inverse condemnation and thereby avoid its obligation to  
17 bring the matter to trial within two years.” *Id.* Thus, the City has an **affirmative duty** to quickly  
18 move this matter to resolution. Despite this affirmative duty, the City has repeatedly delayed this  
19 case seeking extensions, improper removal, expansive and unnecessary discovery, repeated failed  
20 arguments and consequently this case has been pending for more than four years. The Landowners  
21 have objected throughout the proceedings that the City’s litigation tactics were aimed at harm and  
22 intentional delay causing tremendous financial burden to the Landowner.

23  
24 ///

1     **A.     The City’s Delays.**

2             The City has known about this firm trial setting for at least eight months when this Court’s  
3     Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call (hereinafter “Order Setting  
4     Trial”) was entered. *See Exhibit 1, Order Setting Trial.* And, this Court was unwavering in its  
5     directives to all parties that this case was going to trial later in October of 2021.

6             The City first attempted to delay this matter by filing multiple motions to dismiss before  
7     discovery even began.<sup>1</sup> Then, on August 22, 2019, the City improperly removed this matter to  
8     federal court causing substantial delay. *See Exhibit 2, Notice of Removal.*

9             Furthermore, the Landowners initially requested that discovery be bifurcated so that  
10    liability could first be established and then just compensation (damages) could be determined in a  
11    second phase as this was the more fiscally conservative course. The City strenuously objected  
12    insisting that the matters not be bifurcated. The City argued that “[b]ifurcation also will result in  
13    inefficiencies, duplication of efforts, delay, and increased costs. All discovery on the takings  
14    claims should be conducted at the same time.” *See The City of Las Vegas’ Status Report Submitted*  
15    *in Advance of April 1, 2020 Status Conference filed March 30, 2020 at 6:8-10 and 5:27-*  
16    28. Ultimately, the Landowners acquiesced to expedite the resolution of these matters as the City  
17    had already caused significant delay with its improper removal to federal court. Thus, the City  
18    cannot now complain that it needs more time by attempting to move and/or halt the just  
19    compensation portion of this matter after arguing vehemently against it.<sup>2</sup>

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23    <sup>1</sup> These actions included placing language in the PJR Order dismissing the inverse condemnation  
24    complaint altogether causing this Court to issue an Order *nunc pro tunc*. *See Nunc Pro Tunc Order*  
  *entered February 6, 2019; See also Court docket providing various motions to dismiss.*

<sup>2</sup> On October 13<sup>th</sup>, the City filed a Motion for Immediate Stay on Order Shortening Time.



1 The City has similarly wasted a tremendous amount of time and resources rearguing issues  
2 and rulings of this Court having filed multiple motions for reconsideration and motions to stay  
3 pending writ petitions.<sup>3</sup>

4 Finally, on April 8, 2021, after two years of open discovery in response to Landowners'  
5 Motion to Determine Take, the City filed a 56(d) Motion on OST asking for more time to conduct  
6 discovery. *See April 8, 2021 City's Motion for 56(d) on OST*. It was at that hearing that this Court  
7 made it abundantly clear that there would be no more delays and this case was going to trial in  
8 October:

9 [t]he bottom line is this: I'm just going to put everybody on notice right now. We're going  
10 to trial in October. I'm not moving the trial date.

11 [o]ne thing for sure, and I think it's important, we're going to hold our trial date. We are.  
12 This case is going to trial. And as far as my calendar is concerned, we'll get it done in  
13 October.

14 At the end of the day, I can tell you this, though: We're going to trial in October, regardless  
15 of what decision I make.

16 *See Exhibit 3, Hearing on City's Motion for 56 (d) pg 46 lines 4-7, pg 74 lines 14-18, pg*  
17 *82 lines 19-21.*

18 Thus, it is difficult to believe that City's counsel was confused and surprised at this Court's  
19 setting of the trial for October 27, 2021. As a basis for surprise and confusion the City cites to  
20 certain excerpts of the August 19<sup>th</sup> status check regarding trial readiness. However, when read in  
21 its totality, it is clear that the Court was informing the parties of its ability to move forward given  
22 the anticipated change of courtrooms being "moved back up to the towers . . . and probably  
23 courtroom B or C, which is a really big courtroom, I feel comfortable . . . we can still mitigate and

---

24 <sup>3</sup> Regardless of the Court rulings the City continued to reargue issues *ad nauseum* including  
wasting at least two days during the Liability phase rearguing the Property Interest and PJR law,  
issues this Court had ruled on.

1 do the appropriate protocols, *and try a case in that courtroom.*” See City’s Exhibit A Transcript pg  
2 16 lines 10-14. (*emphasis added*).

3 Moreover, any conflicts of time were required to be discussed during the pretrial calendar  
4 call set for September 30<sup>th</sup>. Thus, it is also difficult to believe that a seasoned attorney such as Mr.  
5 Ogilvie was unaware of and/or did not look at his calendar during the *calendar call* where it is  
6 incumbent on the attorneys to discuss their schedules with the Court and inform of any  
7 unavailability for the five week stack. Had the City’s counsel checked his calendar during the  
8 *calendar call*, Landowners would not have objected to a later date on the stack and this matter  
9 would have been set to accommodate that schedule. Instead, the City waited to disclose this  
10 scheduling conflict filing an emergency motion on order shortening time.

11 The Landowners have already been prejudiced suffering significant economic hardship  
12 caused by delays of the City. Claims of surprise, confusion or preoccupation hardly amount to  
13 good cause and thus, this motion should be denied.

14 **B. The City’s Violation of the Order Setting Trial.**

15 While the Landowners strictly complied with the Court’s Order Setting Trial, the City  
16 continues to snub its nose at Court orders.<sup>4</sup>

17 On February 10, 2021, eight months ago, this Court entered an amended Order Setting Jury  
18 Trial informing all parties of the five week stack, to begin, **October 25, 2021 at 9:30 a.m.** with  
19 firm dates of all pretrial filings. See Exhibit 1, Order. This Order provided strict dates of  
20 compliance and cautioned the parties that “Failure . . . to comply with this Order shall result in”  
21 sanctions including default judgment. *Id at pg 4.*

---

22  
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24 <sup>4</sup> This Court will recall that the City has violated the Landowners court ordered protective order,  
failed to respond to Court ordered discovery and ignored court rulings that the PJR order did not  
apply to the inverse condemnation claims.

1 Yet the City completely ignored the Order Setting Jury Trial feigning confusion as to the  
2 dates in spite of the Court's scheduling mandate and boldly stated at the calendar call and in its  
3 emergency motion to continue trial that it still had motions in limine to file, that deadline having  
4 passed on September 7, 2021. The City did not request a stipulation for additional time from the  
5 Landowners nor did it move the Court requesting more time to file motions in limine. And now,  
6 the City is belatedly attempting to disclose purported "evidence" of valuation long after the time  
7 for disclosure. The City's continued disregard for Court Orders and attempt to unilaterally change  
8 the Order Setting Jury Trial and move this trial must be denied. The City should not be permitted  
9 to file any motions in limine as the deadline to do so has long passed and documents and witnesses  
10 disclosed by the City for the first time on the eve of trial should be stricken.

11 **C. Counsels Unavailability.**

12 Finally, an attorney's schedule does not create "good cause" to move this trial. As stated  
13 above, the City's counsel's failure to confirm his schedule and provide this conflict at the time  
14 required to do so is not good cause. Furthermore, Mr. Ogilvie's unavailability on the dates ordered  
15 by this Court is of no real consequence. The City has no less than *seven* lawyers associated into  
16 this matter and Mr. Ogilvie does not appear to be the designated trial attorney as he did not  
17 participate at the liability hearing and was not even present for a majority of that hearing. Thus,  
18 to further delay this case because of one lawyer's schedule is prejudicial and unjust and does not  
19 amount to valid reasons let alone good cause to move this trial.

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**III. CONCLUSION**

The Landowners have waited long past the time mandated by the Nevada Supreme Court and the Nevada legislature in which to hear these types of cases bearing tremendous financial burden in the process. The City has presented no good cause to further delay this matter and thus, the City's emergency motion to delay this case should be denied.

DATED this 18<sup>th</sup> day of October, 2021.

*/s/ Elizabeth Ghanem Ham*  
**ELIZABETH GHANEM HAM**  
*In House Counsel for the Landowners*

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*Attorneys for Plaintiff Landowners*

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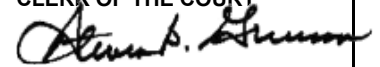
**McDONALD CARANO LLP**

**LAS VEGAS CITY ATTORNEY'S OFFICE**

**SHUTE, MIHALY & WEINBERGER, LLP**

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

# Exhibit 1



ARJT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

HEARING DATE(S)  
ENTERED IN  
ODYSSEY

**3<sup>RD</sup> AMENDED ORDER SETTING CIVIL JURY TRIAL,  
PRE-TRIAL/CALENDAR CALL**

**IT IS HEREBY ORDERED THAT:**

A. The above entitled case is set to be tried to a jury on a **five week stack**, to begin,  
**October 25, 2021 at 9:30 a.m.**

B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in proper  
person will be held on **October 14, 2021 at 10:30 a.m.**

C. Parties are to appear on **August 12, 2021 at 9:00a.m.**, for a Status Check re Trial  
Readiness.

D. The Pre-Trial Memorandum must be filed no later than **October 22, 2021**, with a  
courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper person)  
**MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should

**TIMOTHY C. WILLIAMS**  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

1 include the Memorandum an identification of orders on all motions in limine or motions for partial  
2 summary judgment previously made, a summary of any anticipated legal issues remaining, a brief  
3 summary of the opinions to be offered by any witness to be called to offer opinion testimony as well  
4 as any objections to the opinion testimony.

5 E. All motions in limine to exclude or admit evidence must be in writing and filed no  
6 later than **September 7, 2021**. Orders shortening time will not be signed except in **extreme**  
7 **emergencies**.  
8

9 F. Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P.  
10 16.1(a)(3) must be made at least 30 days before trial.

11 G. Discovery disputes that do not affect the Trial setting will be handled by the  
12 Discovery Commissioner. A request for an extension of the discovery deadline, if needed, must be  
13 submitted to this department in compliance with EDCR 2.35. Stipulations to continue trial will be  
14 allowed ONLY for cases that are less than three years old. All cases three years or older must file a  
15 motion and have it set for hearing before the Court.  
16

17 H. All discovery deadlines, deadlines for filing dispositive motions and motions to  
18 amend the pleadings or add parties are controlled by the previously issued Scheduling Order and/or  
19 any amendments or subsequent orders.  
20

21 I. All original depositions anticipated to be used in any manner during the trial must be  
22 delivered to the clerk prior to the firm trial date given at Calendar Call. If deposition testimony is  
23 anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions  
24 of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days  
25 prior to the firm trial date given at Calendar Call.. Any objections or counterdesignations (by  
26 page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day  
27 prior to the firm trial date. Counsel shall advise the clerk prior to publication.  
28



1 J. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All  
2 exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched placed in three  
3 ring binders along with the exhibit list. The sets must be delivered to the clerk two days prior to the  
4 firm trial date given at Calendar Call. Any demonstrative exhibits including exemplars anticipated  
5 to be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, counsel shall be  
6 prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise  
7 agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into  
8 evidence.  
9

10 K. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be  
11 included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or  
12 make specific objections to items to be included in the Jury Notebook.  
13

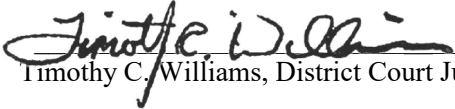
14 L. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to the  
15 jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall  
16 provide the Court, two (2) judicial days prior to the firm trial date given at Calendar Call, an agreed  
17 set of jury instructions and proposed form of verdict along with any additional proposed jury  
18 instructions with an electronic copy in Word format.  
19

20 **Failure of the designated trial attorney or any party appearing in proper person to**  
21 **appear for any court appearances or to comply with this Order shall result in any of the**  
22 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**  
23 **of trial date; and/or any other appropriate remedy or sanction.**

24 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they are*  
25 *going to require daily copies of the transcripts of this trial or real time court reporting. Failure to*  
26 *do so may result in a delay in the production of the transcripts or the availability of real time court*  
27 *reporting.*  
28

1 Counsel is required to advise the Court immediately when the case settles or is otherwise  
2 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate  
3 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A  
4 copy should be given to Chambers.

5 DATED: February 10, 2021

6  
7   
8 Timothy C. Williams, District Court Judge

9  
10 **CERTIFICATE OF SERVICE**

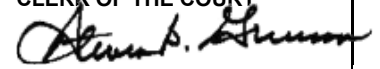
11 I hereby certify that on or about the date signed I caused the foregoing document to be  
12 electronically served pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served  
13 through the Eighth Judicial District Court's electronic filing system, with the date and time of  
14 the electronic service substituted for the date and place of deposit in the mail and/or fax to all  
15 registered service contacts on Odyssey File and Serve for Case No. A758528.

16  
17 /s/ Lynn Berkheimer  
18 \_\_\_\_\_  
19 Lynn Berkheimer, Judicial Executive Assistant

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TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

# Exhibit 2



**RMFC**  
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*Attorneys for City of Las Vegas*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, et al.

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

**NOTICE TO STATE COURT OF  
REMOVAL TO THE UNITED STATES  
DISTRICT COURT**

1 **TO: CLERK OF THE COURT FOR THE EIGHTH JUDICIAL DISTRICT COURT,**  
2 **PLAINTIFFS AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that, on August 22, 2019, defendant City of Las Vegas (the  
4 “City”) filed a Petition for Removal of Civil Action with the Clerk of the United States District  
5 Court for the District of Nevada removing this action to that court pursuant to 28 U.S.C. §§ 1331,  
6 1367, 1441 and 1446. A true and correct copy of Petition for Removal of Civil Action, excluding  
7 exhibits, is attached hereto as **Exhibit A**.

8 **PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1446, the filing of  
9 the Petition for Removal of Civil Action in the United States District Court for the District of  
10 Nevada effectuates the removal of this action. Accordingly, no further proceedings should take  
11 place in this Court unless and until the case has been remanded.

12 DATED this 22th day of August, 2019.

13 McDONALD CARANO LLP

14 By: /s/ George F. Ogilvie III  
15 George F. Ogilvie III, Esq. (NV Bar #3552)  
16 Amanda C. Yen (NV Bar #9726)  
17 Christopher Molina (NV Bar #14092)  
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18 Las Vegas, NV 89102

19 LEONARD LAW, PC  
20 Debbie Leonard (NV Bar #8260)  
955 S. Virginia St., Suite 220  
21 Reno, NV 89502

22 LAS VEGAS CITY ATTORNEY’S OFFICE  
23 Bradford R. Jerbic (NV Bar #1056)  
24 Philip R. Byrnes (NV Bar #166)  
Seth T. Floyd (NV Bar #11959)  
495 S. Main Street, 6th Floor  
25 Las Vegas, NV 89101

26 *Attorneys for City of Las Vegas*  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of August, 2019, a true and correct copy of the foregoing **NOTICE TO STATE COURT OF REMOVAL TO THE UNITED STATES DISTRICT COURT** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification as follows:

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

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

/s/ Jelena Jovanovic  
An employee of McDonald Carano LLP

# **EXHIBIT “A”**

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 sfloyd@lasvegasnevada.gov

*Attorneys for City of Las Vegas*

**UNITED STATES DISTRICT COURT  
 DISTRICT OF 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,

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.

**THE CITY OF LAS VEGAS'  
 PETITION FOR REMOVAL OF  
 CIVIL ACTION**

(Clark County District Court, Case  
 No. A-17-758528-J)



1 **TO: THE CLERK OF THE ABOVE-ENTITLED COURT, THE PARTIES, AND ALL**  
 2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446,  
 4 defendant City of Las Vegas (the “City”) files this Petition for Removal of Civil Action with  
 5 respect to the above-captioned case, which was filed and currently is pending in the District Court  
 6 of Clark County, State of Nevada, Case No. A-17-758528-J (the “State Court Action”). In support  
 7 of its Petition for Removal of Civil Action, the City states as follows:

8 **THE ACTION**

9 1. On May 15, 2019, plaintiffs 180 Land Company, LLC; Fore Stars, Ltd. and  
 10 Seventy Acres, LLC (collectively, the “Developer”) filed their Second Amendment and First  
 11 Supplement to Complaint for Severed Alternative Verified Claims In Inverse Condemnation  
 12 (“Complaint”) against the City. *See* Complaint attached hereto as **Exhibit A**.

13 2. The Complaint alleges causes of action for (1) Categorical Taking; (2) Penn  
 14 Central Regulatory Taking; (3) Regulatory Per Se Taking; (4) Nonregulatory Taking; (5)  
 15 Temporary Taking; and (6) Judicial Taking. *Id.*

16 3. The Developer claims that the City’s alleged taking was in violation of the United  
 17 States Constitution, the Nevada State Constitution and the Nevada Revised Statutes. *Id.*, ¶¶ 173,  
 18 194, 203, 215 and 221.

19 4. The Developer also alleges that the “City is also subject to all of the provisions of  
 20 the Just Compensation Clause of the United States Constitution.” *Id.*, ¶ 2; *see also* ¶¶ 173, 174,  
 21 193-5, 202-4, 214-16 and 219-22 (alleging that the City has not paid just compensation for the  
 22 alleged taking). For their relief, Developer seeks, among other things, “[a]n award of just  
 23 compensation. . . for the taking.” *Id.* at 35:15.

24 5. In addition to the Developer’s Complaint at **Exhibit A**, **Exhibit B** contains all prior  
 25 pleadings, services of process and orders that have been served on the City prior to the filing of  
 26 this Petition for Removal of Civil Action.

27 . . .

28 . . .

JURISDICTION AND VENUE

6. On June 21, 2019, the United States Supreme Court decided *Knick v. Township of Scott, Pennsylvania, et al.*, 139 S.Ct. 2162 (2019). *Knick* overruled, in part, *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) and held that a property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it and, therefore, may bring his claim in federal court under 42 U.S.C. § 1983 at the time of the alleged taking. *Knick*, 139 S.Ct. at 2167-8. In other words, *Knick* overturned the Supreme Court's prior ruling that a property owner's state law remedies must be exhausted before a taking claim could be filed in federal court.

7. Based on *Knick*, this Court has original jurisdiction under 28 U.S.C. § 1331. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The Developer's Complaint seeks just compensation for the City's alleged taking under the United States Constitution; therefore, pursuant to 28 U.S.C. § 1331, the Fifth Amendment of the United States Constitution and the United States Supreme Court's decision in *Knick*, this Court has jurisdiction over this action.

8. This action may be removed to this Court pursuant to 28 U.S.C. § 1441 as any action commenced in state court is removable if it might have been brought originally in federal court. *See* 28 U.S.C. § 1441(a); *see also Exxon Mobil Corp. v. Allapattach Servs., Inc.*, 545 U.S. 546, 563-64 (2005) ("[A] district court has original jurisdiction of a civil action for purposes of section 1441(a) as long as it has original jurisdiction over a subset of claims constituting the action").

9. The United States Supreme Court entered judgment in *Knick* on July 23, 2019. *See* United States Supreme Court Case No. 17-647 Docket and Notice of Issuance of Court Mandate collectively attached as **Exhibit C**. Therefore, this Removal is timely in that the City has sought removal within 30 days of the final judgment authorizing removal of this matter. *See* 28 U.S.C. § 1446(b)(3) ("[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy

1 of an amended pleading, motion, order or other paper from which it may first be ascertained that  
 2 the case is one which is or has become removable.”).

3 10. To the extent the Complaint alleges any state causes of action or other non-federal  
 4 claims, this Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. §  
 5 1367 because those claims arise out of the same operative facts as the Developer’s federal claims  
 6 and “form part of the same case or controversy under Article III of the United States Constitution.”  
 7 28 U.S.C. § 1367(a).

8 11. This Court is in the judicial district and division embracing the place where the  
 9 state court action was brought and is pending. Thus, this Court is the proper district court to which  
 10 this case should be removed. *See* 28 U.S.C. §§ 1441 and 1446(a).

11 **COMPLIANCE WITH 28 U.S.C. § 1446(d)**

12 12. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Petition for  
 13 Removal of Civil Action will be promptly served on the Developer and will be filed with the Clerk  
 14 of the District Court of the State of Nevada, Clark County, in the State Court Action.

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**PRAYER FOR REMOVAL**

WHEREFORE, the City prays that the State Court Action be removed to the United States District Court for the District of Nevada.

DATED this 22nd day of August, 2019.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III  
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**EXHIBIT LIST**

Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims In Inverse Condemnation	Exhibit A
State Court Action Prior Pleadings, Process and Orders	Exhibit B
United States Supreme Court Case No. 17-647 Docket and Notice of Issuance of Court Mandate	Exhibit C

**McDONALD & CARANO**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of August, 2019, I caused a true and correct copy of the foregoing **THE CITY OF LAS VEGAS' PETITION FOR REMOVAL OF CIVIL ACTION** to be electronically filed with the Clerk of the Court by using CM/ECF service and serving on all parties of record via U.S. Mail as follows:

LAW OFFICES OF KERMIT L. WATERS  
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James J. Leavitt, Esq.  
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/s/ Jelena Jovanovic  
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# Exhibit 3

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9

180 LAND COMPANY LLC,

)

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Plaintiff,

)

11

vs.

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12

LAS VEGAS CITY OF,

)

13

Defendant.

)

14

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REPORTER'S TRANSCRIPT

16

OF

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MOTION

18

(TELEPHONIC HEARING)

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED WEDNESDAY, APRIL 21, 2021

23

24

25

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

Peggy Isom, CCR 541, RMR



1 APPEARANCES:

2 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN  
3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC  
4 APPEARANCE)

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\* \* \* \* \*

Peggy Isom, CCR 541, RMR

1 LAS VEGAS, NEVADA; WEDNESDAY, APRIL 21, 2021

2 9:32 A.M.

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

4 \* \* \* \* \*

09:32:26 5 THE COURT: All right. It's my understanding  
6 everyone is here, and I just want to say good morning  
7 to everyone.

8 And let's go ahead and set forth our  
9 appearances for the record.

09:32:39 10 MR. LEAVITT: Your Honor, we can go first.  
11 It's the plaintiff. It's James J. Leavitt on behalf of  
12 the plaintiff, 180 Land. Also from our office sitting  
13 in is Autumn Waters.

14 MS. HAM: Good morning, your Honor. Elizabeth  
09:32:50 15 Ghanem Ham on behalf of the plaintiff landowners,  
16 in-house counsel.

17 MR. OGILVIE: Good morning, your Honor.  
18 George Ogilvie on behalf of the City of Las Vegas.

19 MR. SCHWARTZ: Good morning, your Honor.  
09:33:06 20 Andrew Schwartz for the City.

21 THE COURT: All right. Does that cover all  
22 appearances for the record? I think it does.

23 Secondly, do we want to have this matter  
24 reported?

09:33:22 25 MR. OGILVIE: Yes, please. This is George

Peggy Isom, CCR 541, RMR

09:33:24 1 Ogilvie. Yes, please, your Honor.

2 THE COURT: All right. And for the record,  
3 Madam Reporter, do you have all the appearances noted?

4 THE COURT REPORTER: I do. Thank you.

09:33:32 5 THE COURT: All right. Once again, good  
6 morning. I see we have a couple matters on calendar.

7 And looking as to how they're listed, we have  
8 the City of Las Vegas's Rule 56(d) motion on an order  
9 shortening time. And we also have a motion filed by  
09:33:46 10 the City for reconsideration as it pertains to the  
11 discovery responses, et cetera, vis-à-vis the damage  
12 calculation and related documents.

13 All right. So where should we go first?

14 MR. OGILVIE: Your Honor, this is George  
09:34:03 15 Ogilvie. We can proceed with the Rule 56(d) motion.

16 THE COURT: All right. And that's first on  
17 the calendar.

18 And that's fine. Okay. Mr. Ogilvie, you have  
19 the floor, sir.

09:34:13 20 MR. OGILVIE: Thank you, your Honor. I'll be  
21 very brief.

22 The developer has filed a motion for summary  
23 adjudication on its first, third, and fourth claims for  
24 relief set forth in its amended complaint.

09:34:31 25 The City has, through its motion, advised the

09:34:36 1 Court that taking action on those -- on this motion on  
2 those three causes of action is premature. The Court  
3 should deny the motion, the developer's motion for  
4 summary adjudication on those three causes of action  
09:34:57 5 without prejudice to allow the developer to bring the  
6 motion at a time once discovery is complete.

7           Discovery, as the Court understands, is not  
8 complete. And, in fact, the other motion that's on --  
9 on calendar today demonstrates that the motion is -- or  
09:35:21 10 that discovery is not complete.

11           But primarily I want to -- I want to take the  
12 Court back a few months and have the Court recall that  
13 on multiple occasions the developer has expressed to  
14 the Court and counsel some difficulties that it has had  
09:35:44 15 with its experts in preparing the expert witness  
16 disclosures that -- that I want to say the first time,  
17 but I don't believe it was the first scheduling order.

18           But the most recent first time that these  
19 expert witness disclosures were due were in August at a  
09:36:07 20 status conference. The developer requested an  
21 extension of the expert witness disclosure deadline.

22           The City, if the Court will recall, did not  
23 object to that. But in each instance, and I believe  
24 there have been -- I know there have been two. I  
09:36:25 25 believe there have also -- there have been actually

Peggy Isom, CCR 541, RMR

09:36:28 1 three instances in the last eight, ten months that the  
2 developer has requested an extension. And each time  
3 the City has expressed to the Court that it has no  
4 objection to these extensions.

09:36:43 5 And I'm not bringing up the extensions for  
6 purposes of being pejorative about the developer's  
7 development of its case, but simply to remind the Court  
8 that in each instance the City took the position that  
9 it didn't have an objection with the proviso that it be  
09:37:09 10 given enough time to prepare its case.

11 And in each instance, the Court responded to  
12 the City's request that certainly with -- unless -- if  
13 the City or any party can demonstrate to the Court that  
14 it has been diligent in its discovery in conducting  
09:37:33 15 discovery, that the Court would not cut off the -- that  
16 party's right to discovery and would allow the parties  
17 the opportunity to conduct the discovery that they  
18 need.

19 And based on that, the developer's requests  
09:37:51 20 for extension of expert disclosure deadlines has been  
21 so moved at the developer's request.

22 Now, we are facing premature -- a premature  
23 motion for summary adjudication in which the developer  
24 is attempting to cut off the City's right to conduct  
09:38:13 25 discovery on these three causes of action and properly

Peggy Isom, CCR 541, RMR

09:38:18 1 prepare its case relative to these three causes of  
2 action.

3 And I think it is -- it shouldn't be -- it  
4 shouldn't go unnoted that the -- this motion is brought  
09:38:35 5 and the hearing is requested in advance of the time  
6 that the developer's expert witness disclosures are  
7 even due.

8 And being cynical, I have to -- I have to  
9 believe that the problems that the developer's counsel  
09:38:55 10 has expressed in previous hearings that it was having  
11 with its experts preparing its -- their reports has  
12 something to do with this motion, that it is brought in  
13 advance of the deadline to produce the expert  
14 disclosures because the developer is still having  
09:39:15 15 problems with its experts supporting its claims.

16 Nonetheless, the point is, your Honor, that  
17 the City is not -- has not completed its discovery.  
18 The discovery should -- the City should be able to  
19 conduct all the discovery necessary to prepare its case  
09:39:35 20 and to -- before motions for summary adjudication are  
21 brought.

22 My second point is that the developer in  
23 support of its motion for summary judgment on these  
24 three causes of action produces an affidavit from a  
09:39:53 25 witness who has never been disclosed and the City has

Peggy Isom, CCR 541, RMR

09:40:01 1 not had the opportunity to conduct discovery, conduct a  
2 deposition on.

3 I -- it -- if the developer were to say that,  
4 well, this witness really isn't material, well, then  
09:40:17 5 why is the witness affidavit submitted in support of  
6 the developer's motion for summary judgment?  
7 Absolutely, the motion should be denied on that basis  
8 alone, that it's based in part upon an affidavit from a  
9 witness who's never been disclosed prior to the filing  
09:40:44 10 of the developer's motion.

11 Additionally, my third point is, your Honor,  
12 as the Court will recall, in response to the City's  
13 motion for -- motion to compel that was heard by the  
14 Court on November 17th, we were arguing over documents  
09:41:06 15 that the City has been requesting and have not been  
16 produced or had not been produced since July of 2019.

17 So 16 months later in November 2020, we were  
18 at a hearing before your Honor on the City's motion to  
19 compel. And at that time, and as the developer's  
09:41:34 20 counsel advised the Court, the development -- the  
21 developer's counsel called me the night before and  
22 introduced the subject of allowing a limited deposition  
23 of one of the principals of the developer, Yohan Lowie,  
24 based on documents that the developer would produce at  
09:41:56 25 the time of the deposition relative to a 20-year

Peggy Isom, CCR 541, RMR



09:42:01 1 history of the transactions between the developer and  
2 the Peccoles, that the developer contends support its  
3 contention that the value that it paid for the 250-acre  
4 Badlands was \$45 million.

09:42:20 5 Well, I'm not going to rehash that argument.  
6 I just want to bring the Court back to that -- to that  
7 argument and the resolution of that argument.

8 Ultimately, it was agreed that the developer  
9 would produce the documents of these -- this 20-year  
09:42:38 10 history of transactions between the developer and the  
11 Peccoles prior to the City taking the deposition of  
12 Mr. Lowie so that the City had the opportunity to  
13 review and evaluate the documents that it was going to  
14 use to take Mr. Lowie's deposition.

09:43:01 15 The developer last month, pursuant to the  
16 protective orders that were entered, produced some of  
17 the documents. They produced documents related to a  
18 2005 transaction between the developer and the  
19 Peccoles, but didn't produce any other documents from  
09:43:23 20 this purported 20-year history. That's the developer's  
21 terms, not mine: A 20-year period of complicated  
22 transactions with the Peccole family.

23 So we received one set of transactions from  
24 2005. We didn't receive any other documents, and we  
09:43:54 25 have requested the additional documents. And the

Peggy Isom, CCR 541, RMR

09:43:58 1 developer has responded that, well, there aren't any  
2 additional documents that are relevant to the value  
3 paid for the 250-acre Badlands property in 2015.

4 Well, if that's the case, that's the case.

09:44:18 5 But it's contrary to the representations made  
6 to this Court that there were documents, binders and  
7 binders of documents, that related to this 20-year  
8 history of transactions that support the \$45 million  
9 valuation that the developer places on its purchase of  
09:44:42 10 the Badlands.

11 Nonetheless, getting back to the point that  
12 I'm making here: We have -- we have only received  
13 those 2005 documents. Again, if that's all the  
14 documents that the developer is going to produce, fine.

09:44:56 15 But we're still entitled to conduct the deposition of  
16 Mr. Lowie relative to the transaction documents that  
17 the developer has produced, that purportedly support  
18 the developer's contention that it paid \$45 million for  
19 this property.

09:45:18 20 We haven't taken that deposition. We can  
21 schedule that deposition. I was hoping to get  
22 additional documents related to this 20-year history of  
23 complicated transactions, but apparently there's not  
24 going to be any forthcoming.

09:45:34 25 So nonetheless, the point is that the

Peggy Isom, CCR 541, RMR

09:45:38 1 developer, before any summary adjudication is briefed  
2 and adjudicated by this Court, should produce Mr. Lowie  
3 for deposition. That has not been conducted. And for  
4 that, as well as the other reasons I've stated, I would  
09:46:04 5 submit to the Court that the motion for summary  
6 adjudication on the first, third, and fourth claims for  
7 relief in the developer's amended complaint is  
8 premature and should be denied without prejudice.

9 My final point on this is, there isn't any  
09:46:23 10 prejudice to the developer if the Court denies the  
11 motion without prejudice.

12 In the event that on one or more causes of  
13 action the Court finds that there is liability, the  
14 next step would be the jury trial on damages.

09:46:41 15 Well, we can't have a jury trial on damages  
16 until all of the causes of action are adjudicated for  
17 liability.

18 So the developer admits that it is not seeking  
19 summary adjudication on its Penn Central claim. That  
09:47:04 20 Penn Central claim is integral to the claims brought by  
21 the developer in this action.

22 So at a minimum, the City is going to continue  
23 to conduct discovery on the Penn Central claim. At  
24 some point there will be cross motions for summary  
09:47:22 25 judgment brought on that Penn Central claim. Only

Peggy Isom, CCR 541, RMR

09:47:25 1 after that time, the time at which the Court rules on  
2 those cross motions for summary judgment, will there be  
3 a -- a -- a determination as to whether or not there's  
4 going to be a jury trial on damages; and, if so, that  
09:47:41 5 trial will be set.

6 So my point in this, your Honor, is nothing is  
7 going to happen relative to these causes of action, the  
8 first, third, and fourth causes of action that the  
9 developer is now seeking summary adjudication on until  
09:47:58 10 all the causes of action have been ruled upon by this  
11 Court for liability purposes.

12 Therefore, there is no -- absolutely no  
13 prejudice in denying the City's -- or denying the  
14 developer's motion without prejudice to allow the City  
09:48:15 15 to complete its discovery and run at the appropriate  
16 time the cross motions for summary judgment can be  
17 heard by this Court.

18 So I submit to the Court the motion for  
19 summary judgment should be -- or partial summary  
09:48:32 20 judgment should be denied without prejudice and  
21 granting leave for the developer to bring the motion  
22 along with any other causes of action that it seeks  
23 summary judgment -- adjudication on at the appropriate  
24 time.

09:48:50 25 THE COURT: All right. Thank you, sir.

09:48:54 1

And we'll hear from the plaintiff.

2

MR. LEAVITT: Thank you, your Honor. Good morning, your Honor. James J. Leavitt on behalf of the plaintiff.

09:49:02 5

Your Honor, there will be significant prejudice to the landowner if this summary judgment is not heard. And I think we need to put this in perspective, because what counsel just stated is that the exchange of expert reports have not occurred yet and the exchange of expert reports is not going to occur until after the hearing on the summary judgment.

09:49:16 10

That's simply not true. The exchange of expert reports, your Honor, is set for this Monday, April 26th. We will be exchanging expert reports on Monday, April 26th. The summary judgment hearing is not even set until May 21st, nearly a month later, your Honor.

09:49:30 15

So the government will have our expert reports. And I assure you, your Honor, contrary to what Mr. Ogilvie suggested to the Court, there is not any problem with the experts in this matter.

09:49:42 20

So, your Honor, we will present those expert reports to Mr. Ogilvie. He'll have them on Monday. The summary judgment will not even occur until a month after that.

09:49:56 25

Peggy Isom, CCR 541, RMR

09:49:56 1 And the expert reports, your Honor, are  
2 valuing the property in this case. That's what they  
3 will provide. That's for the -- that's for the  
4 valuation phase. They won't even directly address the  
09:50:07 5 matters that are before the Court. They're really  
6 addressing the valuation issue.

7 But, your Honor, again, here's where the  
8 prejudice occurs. This complaint in this case was  
9 filed in September 2017. Your Honor, that's nearly  
09:50:22 10 four years ago. That means this case has been ongoing  
11 for four years.

12 If you will recall, the landowners filed a  
13 motion for summary judgment one year after the  
14 complaint was filed, in December 2018.

09:50:36 15 We asked for summary judgment at that time.  
16 This Court said wait a minute. There hasn't been an  
17 answer filed. We haven't had a 16.1. So we need to  
18 have a 16.1, and we need to give the City an  
19 opportunity to file an answer.

09:50:48 20 That was two and a half years ago, your Honor.  
21 So the City has had two and a half years to conduct  
22 discovery in this case.

23 Now, this Court, on May 15th, 2019, entered an  
24 order denying the City's -- as you recall, the City  
09:51:07 25 filed four motions to dismiss in this case.

Peggy Isom, CCR 541, RMR

09:51:10 1           On May 15, 2019, this Court entered an order  
2 denying the City's motion to dismiss and also denying  
3 without prejudice the landowner's summary judgment on  
4 the take issue.

09:51:21 5           And then, two months after that, this Court  
6 had a status check in July 2019 and set a briefing  
7 schedule for liability -- for summary judgment on the  
8 liability issue.

9           This Court determined that the brief on  
09:51:40 10 liability should be due January 1st, 2020.

11           Okay. So we were going to have a hearing on  
12 this, Judge, over a year ago. Fifteen months ago, we  
13 were supposed to have a hearing on liability on the --  
14 on summary judgment on the liability issue.

09:51:56 15           So the question is, Judge, why didn't we have  
16 that hearing in January 2020 when this briefing  
17 schedule was set forth for summary judgment? You want  
18 to know why, Judge? Because the City filed an improper  
19 notice of removal to federal court.

09:52:13 20           They took this case out of the Court's hands  
21 knowing -- knowing, Judge, that we were going to have a  
22 hearing on liability. And that notice of removal,  
23 Judge, was only one month after this Court set the  
24 briefing schedule for summary judgment. So one month  
09:52:28 25 after this Court set the briefing schedule for summary

Peggy Isom, CCR 541, RMR

09:52:30 1 judgment, the City filed an improper notice of removal.

2 How do we know it's improper? Because the

3 federal court refused that notice of removal and

4 entered a written opinion, an extensive written

09:52:39 5 opinion, that the City's actions were improper in

6 trying to remove the case to federal court and remanded

7 it back to state court.

8 During that entire delay, the City has had

9 every single opportunity to do all of the discovery the

09:52:53 10 City needed to do in this case. They've had every

11 opportunity to obtain all the documents. They've had

12 every opportunity to go to the property and view it.

13 The City believes more documents are required

14 in this case. Judge, I don't know how many times we

09:53:07 15 can say this: We don't have more communications

16 amongst the landowners. We don't have more

17 communications than have already been produced.

18 The City's argument is essentially in its

19 other brief, which is tied to the 56(d) motion, is that

09:53:19 20 the City thinks that the landowner should have done

21 business differently than he did it. And because the

22 City thinks that he should have done business

23 differently than he did it, the City should get

24 documents that comport with the City's understanding of

09:53:31 25 how he should have done business.

Peggy Isom, CCR 541, RMR



09:53:33 1 That's what their argument is. Well, the  
2 documents don't exist. We can't produce something that  
3 doesn't exist, which is why this Court denied the  
4 City's motion to compel initially.

09:53:43 5 That means that the discovery has been  
6 completed which is necessary for these liability  
7 complaints -- or these liability issues.

8 Your Honor, just as a side note, the City's  
9 filed four motions to dismiss in this case.

09:53:55 10 The City has sought to dismiss this case  
11 through an improper inclusion of paragraphs in the --  
12 in the petition for judicial review order. I mean,  
13 Judge, it's gone on too long. And -- and we need to  
14 move forward with this case.

09:54:12 15 I mean, if we turn over the 65-acre case, your  
16 Honor, the City's filed a motion to dismiss in the  
17 65-acre case, then filed a motion to strike our  
18 opposition trying to prohibit us from even being heard  
19 on that issue. Judge Tierra Jones, for obvious  
09:54:26 20 reasons, denied that, and then the City withdrew their  
21 motion.

22 So I guess my point here, Judge, is we've had  
23 significant delay on the liability issue that was  
24 initially set for hearing in February 2020 with the  
09:54:39 25 brief due January 2020.

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09:54:43 1 We're now 15 months past that date. And keep  
2 in mind, Judge, when we appeared before you in July  
3 2019 and you set the briefing schedule on summary  
4 judgment on liability, the City didn't object. The  
09:54:54 5 City didn't object to that briefing schedule. The City  
6 did not object to liability -- the summary judgment on  
7 liability being heard 15 months ago.

8 So they've had 15 months to do all of the  
9 discovery they needed, over two and a half years since  
09:55:09 10 the initial summary judgment was issued. And -- and --  
11 and so what that means is for a year and a half prior  
12 to COVID, the City could have done everything they  
13 needed to do such as visit the property, determine the  
14 access. And I'm going to talk about those in just a  
09:55:23 15 moment.

16 And for a year during COVID they've had the  
17 opportunity to do it. Your Honor, in March 2020, I  
18 sent an email to the City, pleading with the City to  
19 come out to the property, inviting the City to go to  
09:55:35 20 the property. It's a 35-acre property. There's  
21 nothing that prohibited the City from visiting the  
22 property.

23 So, Judge, my -- we've -- we've had this --  
24 this discussion already on when liability should be  
09:55:48 25 determined. An order was entered in July 2019. The

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09:55:54 1 liability should have been determined in February 2020.  
2 We're now 15 months after that. What has the City been  
3 doing for 15 months? The City didn't -- again, did not  
4 object to liability being determined in 2020. Why are  
09:56:10 5 they objecting now?

6 So let me now turn, your Honor, to -- and I  
7 agree with Mr. Ogilvie. If there's issues, outstanding  
8 issues that are pertinent to and need to be addressed  
9 in the summary judgment, then they should be addressed  
09:56:22 10 through discovery.

11 But not when a party has had 2.5 years, two  
12 and a half years to get that information and just  
13 simply didn't get it. So -- or alleged -- or is  
14 alleging that they didn't get it.

09:56:34 15 But in addition to that, the discovery that  
16 the City is even asking for is entirely irrelevant to  
17 our pending claims.

18 Judge, we made a conscious decision to bring  
19 summary judgment only on our first claim for relief,  
09:56:48 20 the landowner's third claim for relief, and the  
21 landowner's fourth claim for relief. We made a  
22 conscious decision to not bring a summary judgment  
23 requesting summary judgment on the Penn Central  
24 regulatory taking claim.

09:57:04 25 Now, if we go to the City's primary argument

09:57:06 1 before you here today, Judge, here's their primary  
2 argument. On page 4, the first argument they make in  
3 their 56(d) motion to delay summary judgment, they say,  
4 "The landowner alleges that there's been a Penn Central  
09:57:18 5 regulatory taking of the entire Badlands property, and  
6 the City needs more discovery to address the Penn  
7 Central regulatory taking claim."

8           Apparently, the City didn't read the summary  
9 judgment motion before they wrote their 56(d) motion  
09:57:31 10 because their entire 56(d) motion is tied to the Penn  
11 Central regulatory taking claim, which addresses  
12 whether the landowner exhausted their administrative  
13 remedies.

14           Again, Judge, we are not moving for summary  
09:57:46 15 judgment on the Penn Central regulatory taking claim.

16           I want that to be abundantly clear. So all of  
17 the information that the City is asking for to address  
18 the Penn Central regulatory taking claim is entirely  
19 irrelevant to the claims that will be before the Court  
09:58:03 20 at the May 21st special setting that we have on  
21 liability for -- on the summary judgment for liability.

22           But, Judge, so let me -- let me just address  
23 very briefly what those claims are. The first claim is  
24 the -- is the landowner's claim for a per se regulatory  
09:58:20 25 taking. The Nevada Supreme Court addressed the

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09:58:23 1 standards for a per se regulatory taking.

2           They said if the government engages in actions  
3 that -- that preserved private property for the public  
4 use or authorizes the public to use private property,  
09:58:35 5 that's a taking. And the Court held that's a per se  
6 taking, meaning it's a taking in and of itself.

7           And what the -- what the Court focuses on  
8 entirely under that claim is what the government has  
9 done. It's entirely irrelevant what the landowner may  
09:58:50 10 or may not have done. It's entirely irrelevant what  
11 conversations the landowner may have had with their  
12 lender or what conversations they may have had amongst  
13 themselves or what the terms of the acquisition of the  
14 property was because the Court focuses solely and  
09:59:04 15 entirely on the government action.

16           We can look at the Sisolak case for  
17 instruction on that. In the Sisolak case, the Nevada  
18 Supreme Court looked at one thing: The county's action  
19 in adopting Height Restriction Ordinance No. 1221. And  
09:59:19 20 the Court held that the county action in adopting  
21 Height Restriction Ordinance No. 1221 in 1990 was the  
22 action that resulted in the taking and held that the  
23 date of taking was 1990.

24           The Nevada Supreme Court didn't look at what  
09:59:34 25 Mr. Sisolak paid for the property. They didn't look at

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09:59:37 1 his acquisition. They didn't look at his conversations  
2 with other people.

3 That's not what happened, Judge. What  
4 happened is they focused entirely on the government  
09:59:44 5 action.

6 Today we know what the government's actions  
7 are.

8 And our third claim for relief for a per se  
9 categorical taking, Judge, it's all in our brief. I'm  
09:59:53 10 not going to go through it again. Again, the Nevada  
11 Supreme Court held that a per se categorical taking  
12 claim focuses entirely on the government actions.

13 And they put the word "per se" in front of  
14 categorical takings because the government's actions in  
10:00:08 15 and of themselves result in a taking.

16 And so the Court looks at, okay, here's the  
17 standard for a per se categorical taking. And that  
18 standard is if the government is engaged in actions  
19 that deny the landowner all economic viable use of  
10:00:23 20 their property, there is a taking. There is no  
21 analysis of the landowner.

22 In fact, in all of these claims, Judge, the  
23 Nevada Supreme Court doesn't even require the landowner  
24 to exhaust their administrative remedies. The Court  
10:00:34 25 doesn't even care what the landowners have done. The

10:00:36 1 Court couldn't care less what the landowner has done  
2 because they focus on what the government has done and  
3 the impact to that property as a result of the  
4 government's actions.

10:00:44 5 The same for a nonregulatory de facto taking  
6 claim. That that claim, your Honor, goes back all the  
7 way to 1977, the Sloat vs. Turner case. And in that  
8 case, the Court held if the government engages in  
9 actions that substantially impair or extinguish a  
10:01:00 10 property right, there's a taking.

11 And here's how it -- we can put this just in a  
12 commonsense context, your Honor, is the landowner  
13 cannot do anything to cause the taking of his property.  
14 He can't do anything. It's only the government that  
10:01:16 15 can take action that results in the taking.

16 And that's all we're asking for in our summary  
17 judgment motion is to look at the standards for taking,  
18 look at the government's actions in this case, and  
19 determine if those government actions meet the standard  
10:01:30 20 for a taking. That's it.

21 So all of these other issues that counsel is  
22 trying to bring up about what the landowner may or may  
23 not have done, what the landowner may or may not have  
24 paid for the property, conversations he may have had  
10:01:43 25 with Mr. Peccole, conversations he may have had with

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10:01:46 1 his partners are entirely irrelevant to the pending  
2 motion for summary judgment.

3 Again, anything the landowner could or could  
4 not have done does not further substantiate a taking.  
10:01:59 5 It's only the government's actions that substantiates  
6 the taking in this case.

7 And there's been two and a half years of  
8 discovery since our first motion for summary judgment  
9 in this case.

10:02:11 10 We've obtained all of those government  
11 actions. The City should know those actions and they  
12 should have known them two and a half years ago because  
13 it's the City's actions that resulted in the taking.

14 Since we know what those actions are, the  
10:02:23 15 claims are properly before this Court, and there's no  
16 reason to further delay this.

17 Now, let me -- let me just talk about how this  
18 could prejudice the landowner and how it has prejudiced  
19 the landowner.

10:02:35 20 As you'll recall, Judge, when we originally  
21 brought our summary judgment motion clear back in 2018,  
22 I said to the Court, Judge, we have a problem here.  
23 This landowner has to carry a 35-acre property without  
24 the ability to develop it. He has to carry all of the  
10:02:55 25 costs. He has to pay significant attorney's fees. He

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10:02:58 1 has to pay all of the costs that are associated with  
2 carrying the property.

3 Let me just address one of those costs.

4 The City tax assessor has gone to the  
10:03:10 5 landowner's 35-acre property, identified in 2016 the  
6 landowner's property as a residential property,  
7 determined that the lawful use of the 35-acre property  
8 is a residential use, and has imposed a tax -- a real  
9 property tax on the landowner of \$205,000 a year on  
10:03:31 10 this property for use as a residential property for  
11 which he can't use it.

12 So for this four years since we've commenced  
13 this litigation, the landowner has been prohibited from  
14 using this property for a residential use as a result  
10:03:44 15 of the City's actions, and he's been required to pay  
16 \$200,000 a year in taxes. So let's just put that into  
17 perspective.

18 It's been two and a half years since the  
19 landowner first asked for summary judgment. It's been  
10:03:58 20 15 months since the City conceded to a briefing  
21 schedule on summary judgment on the taking issue. And  
22 in that two and a half years, he's paid \$500,000 just  
23 in real property taxes, part of which has gone to the  
24 City's coffers.

10:04:13 25 Why is that prejudice, Judge? Because it's

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10:04:15 1 money out of his pocket. His property sits there  
2 vacant. And where does that money go to? It goes  
3 partly to the City.

4 And once liability is determined -- and the  
10:04:23 5 City knows this. Once liability is determined, then  
6 those taxes end and they don't get to collect that  
7 \$205,000 from the landowner. So there is gross  
8 prejudice to the landowner by delaying this summary  
9 judgment hearing.

10:04:39 10 I can't express how -- how critical it is,  
11 Judge, that we were before the Court two and a half  
12 years ago on this summary judgment issue, the Court  
13 said we're going to allow some discovery, 16.1 and an  
14 answer.

10:04:51 15 Then later, just -- just five months later the  
16 Court set a briefing schedule for the summary judgment,  
17 gave the City a whole year to conduct discovery, the  
18 City didn't object to that briefing schedule on summary  
19 judgment for liability.

10:05:04 20 And the only reason we haven't had liability  
21 determined to this date is because the City filed that  
22 improper notice of removal to federal court causing us  
23 to miss that date.

24 The City has now had an additional 15 months  
10:05:16 25 since that initial briefing schedule was set for that

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10:05:21 1 summary judgment on liability.

2 And we need to move forward, Judge. The costs  
3 are crushing our landowner. I said that two and a half  
4 years ago. And I said it probably five or six

10:05:33 5 additional times since that time two and a half years  
6 ago.

7 Now, your Honor, let me end with identifying  
8 the issues that the City says it needs discovery on so  
9 that we can't have our day in Court. In other words,  
10:05:46 10 we can't get this liability determination because the  
11 City has to do these things. The first one is the City  
12 says it has to identify the property rights and the  
13 zoning on the property. Okay?

14 This is a response that the City gave in  
10:06:01 15 discovery over two -- about two years ago. The  
16 landowners asked for the City's opinion on -- or  
17 requested certain documents related to zoning. The  
18 City objected and then said in that discovery the City  
19 does not dispute that the subject property is zoned  
10:06:15 20 R-PD7. Before the Nevada Supreme Court, in the 17-acre  
21 case, the City said the 250 acres at issue has always  
22 been hard zoned R-PD7. The City does not dispute that  
23 the property is zoned R-PD7.

24 In addition to that, your Honor, we've had a  
10:06:33 25 full-blown hearing on the property rights issue. This

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10:06:36 1 zoning issue, this property rights issue the City says  
2 it needs more discovery on so we have to continue our  
3 liability, we already did it. As you'll remember, we  
4 filed extensive briefing on -- on the property interest  
10:06:48 5 issue. The landowners filed a motion to determine  
6 property rights.

7 I'm going to read just a few, Judge. This is  
8 important. So I'm going to read just a few findings  
9 this Court made as a result of that hearing where we  
10:06:58 10 had about three to four hours of argument. This is  
11 October 12, 2020, the Court held, Finding No. 16, the  
12 Court bases its property interests on eminent domain  
13 law.

14 Finding 17, Nevada eminent domain law provides  
10:07:12 15 that zoning must be relied upon to determine the  
16 property rights issue. Finding 18, the Court concludes  
17 that the 35-acre property has been hard zoned R-PD7  
18 since at least 1990. Finding 19, the Court further  
19 concludes that the city code lists single family and  
10:07:28 20 family -- single family and multifamily residential as  
21 the legally permissible uses of R-PD7-zoned property.  
22 And then the Court concludes the 35-acre property is  
23 zoned R-PD7 and the permitted uses by right of the  
24 35-acre property are single family and multifamily  
10:07:46 25 residential.

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10:07:47 1           So this argument at pages 7 and 11 of the  
2 City's 56(d) motion that they need discovery on zoning  
3 and land use issues is a red herring. It's already  
4 been done.

10:07:56 5           Secondly, the City says, well, it needs to  
6 visit the property so it can determine the access to  
7 the property. Needs to go out there and see what the  
8 access is. That was also part of the discovery that's  
9 occurred over two and a half years.

10:08:08 10           This is the City's response to the landowner's  
11 first set of interrogatories. The landowner has asked  
12 the City to identify what it believes to be the access  
13 to the 35-acre property. Here's the City's response,  
14 Judge.

10:08:19 15           Here's the City's response on access that the  
16 City said it needs more discovery on. Here's the  
17 City's response: The 35-acre portion of the property  
18 as defined has general legal access to public roadways  
19 along Hualapai Way and Alta Drive. The Badlands has  
10:08:35 20 general access to the public roadways along Hualapai,  
21 Alta, and Rampart.

22           So the City is telling you today that it needs  
23 to do discovery on access, so we need to kick our  
24 summary judgment on liability, deny the landowner due  
10:08:46 25 process, make him pay more fees to the City on an issue

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10:08:49 1 that the City already conceded to in discovery.

2 In addition to that, the Nevada Supreme Court  
3 has been very clear that every property that abuts a  
4 roadway has a property right, a legal right to access.

10:09:00 5 All the City has to do is read State vs. Schwartz and  
6 look at an aerial photo and see that the property abuts  
7 Hualapai, it abuts Alta, and, therefore, there is legal  
8 right to access, which is why the City answered this  
9 discovery about a year ago on the access issue that it  
10:09:14 10 now says it needs discovery on.

11 The City also says it has to visit the  
12 property.

13 Your Honor, a year ago I invited the City to  
14 the property.

10:09:22 15 Discovery has been ongoing for two and a half  
16 years. That means one and a half years prior to COVID  
17 and a year during COVID. And the City hasn't gone to  
18 the property? The summary judgment is set for May  
19 21st. They can go out Monday, Tuesday, Wednesday,  
10:09:37 20 Thursday, or Friday of next week. We invite them. We  
21 invited them a year ago. We invite them now. They can  
22 go to the property. Go visit it.

23 I don't know what more we can -- we could have  
24 done, Judge, than reached out to the City and said come  
10:09:50 25 visit the property.

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10:09:52 1 I don't know what more we could have also done  
2 than to reach out to the City and tell them to depose  
3 our client. We've sent emails to the City over this  
4 two-and-a-half-year period saying come depose our  
10:10:03 5 client. Depose him. He's available.

6 But now the City didn't do it, and now we're  
7 in a situation where we need to move forward with  
8 liability on -- in this case. The City says, well, we,  
9 the City, didn't depose the client; therefore, we want  
10:10:16 10 to depose him and kick the landowner's hearing on  
11 liability, which, your Honor, wouldn't change a thing  
12 at the summary judgment hearing, not a single thing,  
13 because nothing the landowner could possibly say will  
14 change what the City did to his property and to him  
10:10:34 15 over the past five years. Nothing will change that.

16 And, your Honor, they also say that they  
17 needed to depose Chris Kaempfer and Mr. Lowie because  
18 they submitted an affidavit. Your Honor, those  
19 affidavits list the property rights issue that's  
10:10:48 20 already been decided, and they confirm what the City  
21 did.

22 There's no inconsistencies between those  
23 affidavits and what the City's actions were, that they  
24 say that the City denied the 35-acre application. We  
10:11:01 25 have the document showing that. They say the City

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10:11:03 1 denied the MDA. We have the document showing that.  
2 So the affidavits say that the City denied a  
3 fence request. The affidavits say that the City denied  
4 access so that the property could be preserved for  
10:11:14 5 surrounding landowners. We have the documents showing  
6 that.  
7 We have all this information, Judge, so it  
8 won't change a thing.  
9 Then the last-ditch effort the City says is,  
10:11:23 10 well, wait a minute. We need to get communications  
11 between the developers, the lenders, and the Peccole  
12 family. We've given them everything we have. And  
13 nothing that they told the lenders, nothing that they  
14 told one another, nothing that they told the Peccoles  
10:11:35 15 will change what the City did to the landowner property  
16 for the last five years.  
17 Now, finally, what the City says is they need  
18 to investigate Mr. Richards' pictures that he used on  
19 the property. Judge, Mr. Richards attaches photos of  
10:11:51 20 individuals using the property and authenticates those  
21 photos. It's all it is.  
22 And here's the sole reason that was attached  
23 is because the City tells this Court that the Sisolak  
24 case requires a physical invasion. It clearly doesn't.  
10:12:07 25 The Sisolak court was very clear and so was the Hsu

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10:12:10 1 court that if the City engages in actions that  
2 authorizes the public to use property or preserves  
3 property for use by the public, that's a taking.

4 That's common sense, Judge. If a government  
10:12:21 5 adopts a statute that says the public can use your  
6 property, or if the government adopts a statute that  
7 says your property is preserved for the public, that in  
8 and of itself is a taking. You don't need to show a  
9 physical invasion.

10:12:32 10 But the government continually argues this  
11 isn't a show of physical invasion, so we attached those  
12 pictures showing that individuals are actually going  
13 onto the property at the direction of the City of Las  
14 Vegas, and we've provided the doc -- or the -- the  
10:12:45 15 hearing where the City of Las Vegas told people to go  
16 onto the landowner's property.

17 Not even needed, Judge, but we did it because  
18 the City said we needed it.

19 And, your Honor, again, it's merely an  
10:12:57 20 authentication of those photos.

21 Judge, let me end here. We've argued ad  
22 nauseam that in these inverse condemnation cases, the  
23 Court must engage in a two-step inquiry. The first  
24 inquiry is to determine the property rights issue.

10:13:14 25 This Court did that. This Court gave us a ton

10:13:18 1 of briefing. Gave us about three or four hours to  
2 argue and entered an order on October 12, 2020. It's  
3 entitled "Findings of Fact and Conclusions of Law  
4 Regarding Plaintiff Landowner's Motion to Determine  
10:13:30 5 Property Interests."

6 You made that first sub-inquiry. That was  
7 about six months ago.

8 It's time to now move to the second  
9 sub-inquiry that the Nevada Supreme Court requires be  
10:13:42 10 made in this case. And that second sub-inquiry is if  
11 the City engaged in actions under those three claims  
12 that we brought to take that property interest.

13 And, Judge, I mean, if we don't do this now,  
14 it's not going to give the parties enough time to  
10:14:03 15 prepare for the fall -- fall trial. It's been two and  
16 a half years of discovery. We've been extraordinarily  
17 patient.

18 Mr. Ogilvie is right. There have been some  
19 times we had to continue the exchange of expert  
10:14:15 20 reports, but that has nothing to do. What's an expert  
21 going to say? He is just going to say, hey, the City  
22 did these things. That's what the expert is going to  
23 say, the City did these things.

24 We know the City did these things. We know  
10:14:27 25 that the City denied the individual application. We

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10:14:29 1 know that the City denied the MBA. We know the City  
2 denied the access. These are things we know.

3 And, Judge, once we get to the May 21st  
4 hearing, if you look at all of these government actions  
10:14:39 5 and you say, "Hey, well, I don't think there's enough,"  
6 then you can at that point in time deny the motion  
7 without prejudice. You can at that point in time say,  
8 "Well, Mr. Leavitt, I'm looking at the standard here.  
9 And I think Mr. Lowie has to say one or two things."

10:14:54 10 You can do that at that time.

11 But to prohibit us at this time after two and  
12 a half years of discovery, after the motion -- after  
13 the property interest issue has been decided from even  
14 presenting this issue to the Court, after two and a  
10:15:06 15 half years, your Honor, will continue to cause gross  
16 prejudice to this landowner and continue to just be  
17 hundreds -- Judge, I'm not exaggerating here --  
18 hundreds of thousands of dollars a month.

19 We've already suffered that prejudice -- our  
10:15:21 20 client has already suffered that prejudice for two and  
21 a half years. Continuing it more will perpetuate that  
22 prejudice.

23 This matter is ripe, your Honor, and it should  
24 be presented to the Court for an adjudication. So we  
10:15:33 25 simply ask that the Court give us that day in court.

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10:15:35 1 Again -- and I'll conclude here -- if there's  
2 some 56(d) issue that comes up during that hearing, the  
3 Court can consider it then. The Court can go through  
4 the standard and look at the facts. It can go through  
10:15:48 5 the standard of the third claim for relief, the fourth  
6 claim for relief, the first claim for relief, and then  
7 apply the facts to that claim and determine whether the  
8 facts we know now amount to a taking.

9 So we respectfully request, Judge, to just  
10:16:01 10 give us this opportunity to present our case. We've  
11 waited for a very long time. We've -- the Court has  
12 been -- has been great on giving us a special setting  
13 in May 21st for the afternoon. We look forward to that  
14 special setting and look forward to the opportunity to  
10:16:16 15 finally present our case to this Court.

16 Thank you, your Honor.

17 THE COURT: All right. Thank you, sir.

18 MS. HAM: Your Honor, this is Elizabeth Ghanem  
19 Ham. I don't know if it's now, but it's perhaps after  
10:16:29 20 this particular, some of these issues, we did raise the  
21 breach -- the City's breach of the Court's protective  
22 order granted to us.

23 So I don't want to -- I don't know if you want  
24 me to address it now or after the discussion of -- or  
10:16:47 25 the ruling on -- maybe it's better suited for the other

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10:16:53 1 motion to reconsider, but I just wanted to raise at  
2 some point, I would like to address that as well.

3 THE COURT: Okay. And, ma'am --

4 MS. HAM: And I guess now that I'm saying it  
10:17:00 5 out loud, I realize it was more part of the other  
6 motion, so I'll wait on that.

7 THE COURT: Okay, ma'am. And thank you.

8 Okay. Mr. Ogilvie, sir.

9 MR. OGILVIE: Thank you, your Honor.

10:17:12 10 I hear again and again and again from the  
11 developer's counsel that the developer is entitled to  
12 its day in court.

13 Your Honor, the City is also entitled to its  
14 day in court.

10:17:23 15 And for the City to be properly and adequately  
16 provided that day in court, the City is entitled to  
17 conduct the discovery that it needs to prepare its  
18 case. It hasn't been able to do so.

19 What we have -- we have -- we have to take the  
10:17:43 20 deposition of Mr. Richards, which is the only basis on  
21 which the -- the only evidentiary basis on which the  
22 City -- or the developer supports its motion for a  
23 physical invasion.

24 We have to be able to take the deposition of  
10:18:00 25 Mr. Lowie and Mr. Kaempfer, whose deposition --

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10:18:03 1 THE COURT: I don't want to cut you off, but  
2 as far as Mr. Richards is concerned, I would anticipate  
3 it's his declaration and/or affidavit that supports the  
4 motion for summary judgment on the three discrete  
10:18:15 5 claims for relief, is that correct, sir?

6 MR. OGILVIE: You're posing that to me or  
7 Mr. Leavitt?

8 THE COURT: Okay. No, but, I mean -- no, it's  
9 for you. I just wanted to make sure I understand where  
10:18:28 10 we're at, because you said you needed to take  
11 Mr. Richards' deposition. And I remember listening to  
12 the argument a little earlier, you indicated that there  
13 was a declaration of an individual that you just became  
14 aware of for the first time, something like that.

10:18:44 15 MR. OGILVIE: That is, in fact, Mr. Richards,  
16 yes.

17 THE COURT: Okay. All right.

18 MR. OGILVIE: We're also entitled to take  
19 Mr. Lowie and Mr. Kaempfer's depositions.

10:18:53 20 Now, Mr. Leavitt argued at length that the  
21 City has had two and a half years to conduct discovery.  
22 Your Honor, I'll go back to the point that we've made  
23 again and again and again. We served discovery -- our  
24 initial discovery requests in July 2019. July 2nd,  
10:19:12 25 2019. Last month we received the documents that are in

10:19:19 1 part responsive -- responsive to those -- those  
2 discovery requests.

3 Those -- the -- we haven't been in a position  
4 to take Mr. Lowie's deposition until we received those  
10:19:35 5 documents. That was the subject of our hearings on  
6 November 17th and November 18th of last year, that the  
7 developer was going to produce those documents and then  
8 allow the City to take the deposition of Mr. Lowie  
9 based on this 20-year history of transactions between  
10:19:55 10 the developer and the Peccoles.

11 Mr. Leavitt said the City's primary argument  
12 is that -- is the Penn Central claim, the discovery for  
13 Penn Central discovery has not been completed.

14 As I said in my opening remarks is the primary  
10:20:21 15 basis for our motion is, in fact, that there have been  
16 several requests by the developer for an extension of  
17 expert witness deadlines, and the City always responded  
18 that it has no objection, but it wants to be -- ensure  
19 that it has the opportunity to conduct the discovery  
10:20:45 20 necessary to properly prepare its case.

21 And -- and I submit to the Court that the  
22 motion for summary judgment on the first, third, and  
23 fourth claims for relief is an attempt to cut off the  
24 City's ability to conduct that discovery.

10:21:04 25 The developer's counsel states that the only

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10:21:10 1 factors for the Court to consider on the first, third,  
2 and fourth claims for relief are the City's actions.  
3 The City disputes that and rejects that contention.

4 And we stated that in the reply that we filed  
10:21:28 5 yesterday. We identified how the -- the -- the  
6 discovery that the City needs is directly applicable to  
7 those causes of action as well as the Penn Central  
8 cause of action.

9 Additionally, the -- the City, one of its  
10:21:50 10 primary arguments relating to the prejudice is that  
11 there isn't any prejudice.

12 I didn't hear anything that Mr. Leavitt stated  
13 to contradict that. Mr. Leavitt stated that the costs  
14 are crushing the developer or the landowner. Well,  
10:22:09 15 that wasn't an issue the two or three times that the  
16 developers requested an extension of the discovery  
17 deadlines, so they shouldn't be bringing it before the  
18 Court at this point, saying that the City has been  
19 delaying and will continue to delay the adjudication of  
10:22:30 20 these -- of these claims.

21 The City hasn't been delaying. The City has  
22 been agreeing to the developer's requests for  
23 extensions.

24 The -- and finally, the prejudice issue.  
10:22:45 25 Again, even if the Court finds liability, the next step

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10:22:52 1 is a jury trial on damages.

2 The developer can't take new action, can't  
3 collect damages, which is -- which is what the  
4 developer's remedy is, is damages. And we're -- it's

10:23:05 5 clear -- it's clear at this point that the developer is  
6 only desirous of damages.

7 The developer doesn't want to develop this  
8 property anymore. The developer has the right to  
9 develop the 17-acre parcel which is adjacent to this  
10:23:25 10 75-acre parcel.

11 Going back in history -- your Honor, you know  
12 this -- the City approved the developer's applications  
13 to develop the 17-acre parcel, and the developer -- the  
14 City has continued to allow the developer to develop  
10:23:43 15 that parcel.

16 The developer doesn't want to. It hasn't  
17 taken any action on doing so. It's not going to take  
18 any action on developing the 35-acre parcel either. It  
19 simply wants damages. It wants a windfall of this  
10:23:59 20 \$7 1/2 million or this actually \$3 1/2 million purchase  
21 of this property.

22 It doesn't -- it -- it just -- it does not  
23 want to develop. It simply wants the damages. Which  
24 if the Court ultimately finds liability and if a jury  
10:24:19 25 ultimately finds damages, then -- then the developer

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10:24:25 1 will be entitled to damages.

2           There isn't any prejudice between now and the  
3 time that the developer brings -- or the developer and  
4 the City bring cross motions for summary judgment,  
10:24:39 5 the -- this -- there's nothing that's going to expedite  
6 the damages that the developer can collect the first,  
7 third, and fourth causes of action. So there isn't any  
8 prejudice to the developer.

9           The City ought to be able to fully conduct  
10:24:58 10 discovery and prepare its case, including taking the  
11 deposition of Mr. Lowie, which it hasn't been in a  
12 position to because the developer only last month  
13 produced the documents that we're going to take his  
14 deposition on; and take the deposition of Mr. Richards.

10:25:16 15           So, your Honor, we -- again, we submit to  
16 the -- the Court that the City should be allowed to  
17 complete its discovery. The City's motion for 56(d)  
18 ruling should be granted. The motion by the developer  
19 for summary judgment on the three causes of action  
10:25:38 20 should be denied without prejudice. And the -- and  
21 allow the developer to bring the -- to re-bring the  
22 motion after discovery is completed.

23           THE COURT: Okay. Anything else?

24           MR. LEAVITT: Your Honor, I don't want to  
10:25:54 25 interrupt, but if I may address that question about

10:25:57 1 Mr. Richards.

2 THE COURT: Well, here's the thing, gentlemen.

3 I want to make sure you both understand this. And one

4 thing I'm very sensitive to is a party's right to

10:26:05 5 conduct discovery, and for many reasons.

6 But -- and I think it's important to point out

7 that -- that, number one, if you don't permit a party

8 to conduct discovery and decisions are made

9 prematurely, that creates, as we all know, an appellate

10:26:24 10 issue. And I try to take appellate issues off the

11 table.

12 And I'm looking at this case, and I have a

13 fairly -- I remember a lot of the facts of this case

14 and also some of the prior hearings and discussions

10:26:37 15 we've had, and I realize we have a motion, for all

16 practical purposes, would be a summary judgment motion

17 as it relates to the taking and/or liability, vis-à-vis

18 the -- let me make sure I get the appropriate numbers

19 here -- the first, third, and fourth claims for relief

10:26:54 20 as set forth in the complaint.

21 And so in looking at it from this

22 perspective -- and I don't mind saying this -- my first

23 instinct would be this: That if an affidavit and/or

24 declaration is set forth as a basis to support a motion

10:27:13 25 for summary judgment or partial summary judgment and

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10:27:16 1 that individual isn't fully disclosed, I feel that the  
2 adverse party, if they raise that issue, would have a  
3 right to depose them; right? I mean, that's pretty  
4 straightforward, as far as that's concerned.

10:27:32 5 Next, and going back and looking at the  
6 history of the case, I remember we had some law and  
7 motion as it pertained to the calculation of damages.

8 And I think I addressed this in a minute order  
9 of some point or at some level, and I do understand the  
10:27:50 10 distinction between calculation of damages, for  
11 example, in a tort case. At the time of the early case  
12 conference, in a general sense, the plaintiff knows  
13 what their medical expenses are; right? They know what  
14 their wage loss is. They might not know what the pain  
10:28:09 15 and suffering claim will be, but they have a good idea.  
16 And so -- and I realize in a general sense you have to  
17 have expert testimony to support that. But they still  
18 know what the numbers are, typically.

19 In contrast, I did recognize the difference  
10:28:24 20 here in this case, and that's why I ruled the way I  
21 ruled is because I understand calculation of damages in  
22 a taking case is expert intensive. It's not a calc you  
23 say, look, you went to the doctor ten times and the  
24 doctor charged \$100 a visit and that's \$1,000. That's  
10:28:41 25 a different animal. And I get that.

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10:28:44 1           Then I'm looking at it from this perspective,  
2 too. And I don't mind telling you this. I don't think  
3 any decision I make today would result in prejudice in  
4 this regard because the bottom line is this: I'm just  
10:28:57 5 going to put everybody on notice right now. We're  
6 going to trial in October. I'm not moving the trial  
7 date.

8           And I think that potentially could result in  
9 prejudice, because the carrying costs appear to be  
10:29:09 10 fairly significant, and I get that. I do. I just want  
11 you to understand that. I'm not overlooking that.  
12 But -- and things have happened in the interim.

13           But in looking at the conclusion that's set  
14 forth in the reply that was filed yesterday, and I  
10:29:25 15 think this is really what has to be developed and  
16 discussed for -- and I'm looking at page 9 at line 15,  
17 and this is the first issue raised by the City as to  
18 why the motion should not be heard at this time or it's  
19 premature.

10:29:50 20           And that would be, I guess, one, developer --  
21 until the developer fully complies with the February  
22 24th order and produces all documents related to all  
23 relevant transactions between the developer and/or  
24 Peccole family.

10:30:08 25           Now, I get why that's being requested. And I

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10:30:13 1 remember the discussion on that. And that goes to the  
2 evaluation issue, it's my recollection.

3 And so, number one, I want to know why that  
4 would be necessary as it pertains to a potential  
10:30:28 5 governmental taking issue and resolution.

6 And I'll hear from Mr. Ogilvie first and then  
7 we'll pass it to Mr. Leavitt.

8 MR. OGILVIE: Thank you.

9 Your Honor, again, as stated earlier in the  
10:30:42 10 reply, all of -- all of the causes of action, perhaps  
11 other than a physical invasion, require the analysis of  
12 the investment or the valuation of the property prior  
13 to the -- prior to the purported taking and after.  
14 Because if there's no change in the value of the  
10:31:12 15 property as a result of government action, there is no  
16 taking.

17 So it's not just a matter of a damages issue;  
18 it is a matter of the seminal issue of whether or not  
19 there's been a taking.

10:31:27 20 And the -- and that valuation is -- is  
21 attributable to the causes of action that are -- is  
22 relevant to the causes of action sought by the  
23 developer.

24 Notwithstanding what the developer contends  
10:31:43 25 that it's only -- the focus is only on the City's

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10:31:49 1 action. The -- in order to determine whether or not  
2 there's been a taking, in any sense, the -- there has  
3 to be a determination of a value prior to and after to  
4 the government action.

10:32:04 5 THE COURT: Here's my next question as far as  
6 that's concerned. And I don't know specifically how  
7 the discovery requests were responded to. But do we  
8 know whether or not all documents have been produced as  
9 it relates to transactions between developer and the  
10:32:27 10 Peccole family?

11 MR. OGILVIE: Well, your Honor, what we  
12 included as an exhibit to the -- I don't recall if it  
13 was the motion. I think it was the reply brief. There  
14 was an email from Ms. Ghanem Ham stating,  
10:32:46 15 notwithstanding your belief that there are other  
16 transactions relevant to the \$45 million valuation that  
17 the -- that the developer places on its purchase of the  
18 property, the -- we've now produced the only documents  
19 that are relevant to that, which is the Suma 2005  
10:33:14 20 transaction involving Queensridge Towers, Tivoli  
21 Village and now -- and Hualapai Commons.

22 Now, if that's the case, that's the case.

23 We don't believe it is based on the  
24 representations of counsel at the November 17, 18  
10:33:36 25 hearings where the developer said, and I quote:

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10:33:40 1 "Again, what happened is out of those  
2 complicated land transaction deals was blowing the  
3 right to purchase the property. Just one of those  
4 complicated transactions that Mr. Lowie entered into  
10:33:58 5 with the Peccole family involved the Queensridge  
6 Towers; Tivoli Village, which is now -- which is built  
7 now; Hualapai Commons, which is on the corner of  
8 Hualapai and Sahara here in Las Vegas."

9 So taking the -- the developer's counsel at  
10:34:18 10 its word -- at his word, that this -- there was only --  
11 that this transaction involving Queensridge Towers,  
12 Tivoli Village, and Hualapai Commons is just one of  
13 these complicated transactions, we submit to the Court  
14 that there are others.

10:34:35 15 Additionally, the developer's counsel talked  
16 about binders and binders or several binders or many  
17 binders of transaction documents. What we received  
18 wouldn't fill a three -- one single three-ring binder.

19 And so in answer to your question whether or  
10:34:57 20 not all of these transactional documents have been  
21 produced, going from what the developer's counsel  
22 represented to the Court in November of last year,  
23 compared to what we received, we would say no.

24 THE COURT: All right.

10:35:16 25 MR. LEAVITT: Your Honor, may I be heard on



10:35:17 1 that?

2 THE COURT: Absolutely, yeah. Because we're  
3 going to go through the issue by issue as set forth  
4 there.

10:35:23 5 MR. LEAVITT: All right.

6 THE COURT: Because I want to make sure I  
7 understand exactly what's going on from a procedural  
8 perspective and where the case is as it pertains to  
9 document production and the like.

10:35:34 10 Mr. Leavitt, sir, or Ms. Ghanem Ham.

11 MR. LEAVITT: Yeah. So on that Item Number 1,  
12 there were two questions. The first question was, is  
13 that necessary to determine the taking. And the second  
14 question was whether those documents have been  
10:35:46 15 produced.

16 I'm going to address the first question and  
17 Ms. Ghanem Ham is going to address the second question.

18 So what the City is requesting, there are  
19 documents related to transactions between the developer  
10:35:58 20 and the Peccole family. Judge, just ask yourself, how  
21 could transactions between the developer and the  
22 Peccole family further the taking in this case? How?

23 It's such a commonsense answer. There's  
24 nothing that Mr. -- the developer and the Peccole  
10:36:20 25 family could have done that amounted to a taking of the

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10:36:23 1 property.

2           Now, counsel for the City or Mr. Ogilvie  
3 states, well, that's relevant to the value of the  
4 property prior to the taking and the value of the  
10:36:31 5 property after the taking, and there can be no taking  
6 if you look at the value prior to the value after and  
7 there's not been a total wipeout of the value of the  
8 property.

9           Judge, that statement right there appears  
10:36:43 10 nowhere in inverse condemnation law in the state of  
11 Nevada. Nowhere.

12           Instead, what the Nevada Supreme Court  
13 holds -- and we're moving on three claims -- is that if  
14 the government authorizes the public to use private  
10:36:57 15 property, that's a taking, whether they use it or not.

16 If the government preserves property for use by the  
17 public, that's a taking, whether they use it or not.

18           If the government engages in actions that  
19 substantially impair the use and enjoyment of the  
10:37:09 20 property, that is a nonregulatory de facto taking,  
21 whether there's -- so, your Honor, my point here, I can  
22 go through each one of these standards. And you don't  
23 look at the value of the property prior versus the  
24 value of the property after to determine that taking  
10:37:23 25 standard.

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10:37:23 1 A per se categorical taking doesn't even  
2 require that. A per se categorical taking states that  
3 if a government engages in actions that result in a  
4 loss of all economic viable use of the property, that's  
10:37:35 5 a taking.

6 All you have to do to make that determination,  
7 Judge, is to look at the government's actions and  
8 determine whether the government's actions foreclosed  
9 all use of the property.

10:37:44 10 We have that here. We went to the City and  
11 asked them to use our property, and they said no. They  
12 provided the only way to develop the property and they  
13 said no.

14 I don't know how much clearer we can get there  
10:37:57 15 for a per se categorical taking than the City saying  
16 you can't use your property. We, the City, are taxing  
17 you on a lawful residential use of the property, but  
18 we're not going to let you use your property. You're  
19 going to pay us, the City, \$200,000 a year on the  
10:38:11 20 lawful residential use, but we're not going to let you  
21 use the property. I don't know how much clearer it can  
22 be than that.

23 So these documents or transactions between the  
24 developer and the Peccole family are absolutely  
10:38:23 25 100 percent entirely irrelevant and the standard that

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10:38:26 1 counsel just cited to you might come into play on a  
2 Penn Central regulatory taking claim, but that claim is  
3 not before the Court on the summary judgment.

4 And, Judge, I got to go back to this depo of  
10:38:37 5 Mr. Richards. The answer -- it's a short answer to  
6 your question there, is Mr. Richards' deposition  
7 necessary for the taking? Absolutely not. It's not.  
8 We don't need it.

9 The sole reason it was provided to the Court  
10:38:49 10 is because the City continually represents to the Court  
11 that we need to show a physical appropriation or a  
12 physical use under the Sisolak case. That's wrong.

13 But we provided that so we can see the  
14 pictures. And we just authenticate those pictures.  
10:39:03 15 What are they going to do? Depose him and say, "Hey,  
16 are these the pictures?"

17 He's going to say, "Yeah."

18 What it's going to be, a ten-minute  
19 deposition?

10:39:10 20 So, Judge, I just don't see the -- I  
21 understand -- I totally agree with you, your Honor,  
22 that every party has to have the opportunity to conduct  
23 discovery. We have been at it for two and a half  
24 years.

10:39:20 25 And Mr. Richards' deposition, yes, he is a new

10:39:23 1 individual. Yes, he does have an affidavit, but it's  
2 not germane to the issues. It's only to show that even  
3 if we needed that physical appropriation, here's the  
4 pictures proving it and here's an affidavit

10:39:34 5 authenticating it.

6 So all of these issues the Cities are bringing  
7 up -- the City is bringing up, you'll see, Judge, when  
8 we go to the hearing on liability, we go through the  
9 standards, we go through the facts.

10:39:43 10 The City is not going to bring any of this to  
11 your attention because it's not going to be relevant.  
12 They're just trying to kick this and delay it further,  
13 Judge, and it's causing a lot of problems for our  
14 client, Judge, because, again, once we get that

10:39:56 15 liability determination, some of the costs shift. One  
16 is the taxes. Your Honor, that's \$20,000 a year.

17 If there was any client before you and they  
18 said, hey, Judge, this is costing me -- I'm sorry --  
19 20,000 a month, would we continue to make -- delay this  
10:40:08 20 so they have to continue to pay the City 20,000 a  
21 month? Certainly we wouldn't.

22 So that's the prejudice that's occurring here,  
23 Judge.

24 And, your Honor, I'll let Ms. Ghanem Ham  
10:40:18 25 address whether those documents have been produced

10:40:20 1 anyway to the City.

2 THE COURT: Okay. Thank you, sir.

3 Ma'am.

4 MS. HAM: Yes. Good morning, your Honor.

10:40:29 5 What you've heard from the City is just  
6 semantics and distortion as they continue to do  
7 throughout this matter, using discovery as sort of a  
8 tactical weapon to harass, delay, and cause further  
9 damage and harm to the landowner, something that we've  
10:40:43 10 experienced with the City since the beginning of our  
11 attempt to develop this land.

12 But in relation to your question specifically  
13 what Mr. Ogilvie and I take issue with him saying this  
14 is only one transaction as he enumerated the multiple  
10:40:58 15 transactions and documents that they received.

16 And what they received -- and -- and has  
17 stated them to you and Mr. Leavitt has repeated them to  
18 you.

19 What I said to this Court when I begged for a  
10:41:11 20 protective order, been begging for this protective  
21 order for over a year, the City immediately violated  
22 that order, which we'll get to shortly, but I think it  
23 does have some reference here.

24 What I said to this Court was there are  
10:41:25 25 binders and binders and binders. I could submit them

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10:41:28 1 for an in camera review. These are transactions that  
2 took place in 2005 and 2006 largely, and both the Court  
3 and myself said nobody wants to go through all of  
4 these -- these. They're bound books, which -- I don't  
10:41:42 5 know if you have that where you can see -- are right  
6 here on my -- on my desk.

7 I hadn't gone through them and Mr. Leavitt  
8 hadn't gone through them. And until I did, did I  
9 recognize that there -- that as it relates to what the  
10:41:56 10 City was asking for, and I told this Court then, those  
11 documents are not going to say X amount of dollars are  
12 being -- utilized to pay for just the golf course.  
13 They would not reference it. I told the Court that. I  
14 told the City that. And that's exactly what the  
10:42:16 15 documents showed.

16 What -- what happened and what transpired from  
17 those documents that were produced -- and we produced  
18 all of them -- the rest of the books that -- that --  
19 that I just showed you or that I referenced have  
10:42:29 20 largely to do -- Mr. Ogilvie is aware of it because I  
21 sent it to him in correspondence -- they're  
22 construction documents and they're renters' documents  
23 as it relates to the building of Tivoli and the Towers.

24 They have nothing to do with what -- what will  
10:42:47 25 ultimately and what has already been testified to as

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10:42:51 1 what was paid for that claim. And as Mr. Leavitt has  
2 always argued from the beginning, none of that matters.  
3 It's -- regardless has nothing to do, ultimately, with  
4 the value, and certainly nothing to do with the  
10:43:06 5 liability. And that's what we're asking for is for you  
6 to hear us on liability of three of those claims.

7 So have those documents been produced?  
8 100 percent they have.

9 You hear -- you heard the City's narrative  
10:43:19 10 from that production, what they now say was paid for  
11 the land, which, of course, we take issue with.

12 But regardless, there is nothing further to  
13 give them. Nor would I give them one more document  
14 once they have immediately violated the protective  
10:43:32 15 order and failed to -- to protect them. They filed  
16 them in open court, something they were not allowed to  
17 do.

18 Why would I give them one more document? Not  
19 that I have anything else, but I find it somewhat  
10:43:47 20 humorous that the City argues that they -- from the  
21 documents they can now prove that we paid little to  
22 nothing for the land, yet they want more documents to  
23 further confirm that.

24 It's just -- it's absurd. There's nothing  
10:44:01 25 further to give them. They have all the documents.

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10:44:03 1 They haven't outlined within those documents that they  
2 did receive that there was something else. They just  
3 believe there is. And on that basis, which is not an  
4 evidentiary basis or a basis for this Court to rule,  
10:44:15 5 they want more.

6 Now, I know we're getting into a little bit of  
7 the second motion before you, but it kind of bleeds  
8 together.

9 So as it relates to your question  
10:44:23 10 specifically, have we provided them with everything?  
11 Yes, we have. There's nothing more to give.

12 Thank you, your Honor. If there's anything  
13 further, I'd be happy to answer it.

14 THE COURT: Okay.

10:44:40 15 All right. Anything you want to add to that?  
16 Then I'll move on to the second issue as set forth,  
17 Mr. Ogilvie.

18 MR. OGILVIE: As I say, I can only go from  
19 what they represented in November. I read to you a  
10:44:53 20 portion of the transcript that this transaction that  
21 they produced documents of was just one of the  
22 complicated transactions that they contend supports  
23 their -- their valuation.

24 But there's also another quote that they -- in  
10:45:09 25 that same hearing, the developer's counsel said these

10:45:13 1 documents support, and I quote:

2 "Support the 20-year history that from those  
3 transactions was born this right to purchase it for the  
4 15 million."

10:45:26 5 So those aren't -- those aren't my words,  
6 Judge. That's the developer's counsel's words. And  
7 it's only based on those representations that we  
8 submitted to the developer that it had not complied  
9 with the Court's February order to produce these  
10:45:43 10 documents.

11 It -- if -- if they -- if the developer is  
12 going to stand on the fact that these are the only  
13 documents, well, there's not a lot I can do. It's just  
14 whether or not the Court wants to compel the additional  
10:46:00 15 documents or -- or let it go with the representations  
16 now made by counsel, which are, in my mind, contrary to  
17 what I heard in -- in November.

18 MS. HAM: Your Honor, I'm sorry. I have to  
19 take issue with -- it's not contrary. I 100 percent  
10:46:15 20 stand by the -- the statement that I made to this Court  
21 that they support -- they 100 percent support our  
22 position on what was paid for the land.

23 Whether Mr. Ogilvie chooses to ignore it or  
24 changes the narrative or somehow interprets it in a  
10:46:30 25 different manner, that's for presentation to your

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10:46:34 1 Honor. We're going to produce -- we're going to  
2 provide the story that we provided all along. It was  
3 truthful then that it supports our position and it's  
4 truthful now.

10:46:42 5 Would he extrapolate from those documents  
6 what -- the narrative that he wants to, you know,  
7 pretend happened, that's -- that's -- that's for  
8 presentation to this Court.

9 It doesn't mean there's more. It certainly  
10:46:53 10 doesn't mean there's more.

11 So, you know, I take issue with Mr. Ogilvie  
12 saying to you that I have misrepresented that or I  
13 misrepresented --

14 THE COURT REPORTER: I'm sorry. You cut out.  
10:47:07 15 Counsel. Counsel -- Judge, will you stop her?

16 THE COURT: And, ma'am, can you repeat your  
17 last sentence or two?

18 Is that correct, Ms. Reporter?

19 THE COURT REPORTER: Yeah. You cut out. I  
10:47:15 20 couldn't hear what you were saying.

21 MS. HAM: I'm sorry. I -- I don't know where  
22 I left off.

23 But my position is that what I said to the  
24 Court then in requesting a protective order and what  
10:47:29 25 I'm saying to the Court now, having produced those

10:47:32 1 documents under the protective order, has not changed.  
2 Our position is they do support the relationship and  
3 they do support all that transpired between the Peccole  
4 family and the principals of the landowners that  
10:47:49 5 ultimately led to the right to purchase this land.

6 That's what I told the Court. I told the  
7 Court it wouldn't mention the golf course. It wouldn't  
8 say we paid X for the golf course, and I was exactly  
9 right.

10:48:00 10 So Mr. Ogilvie's narrative and interpretation  
11 of those documents doesn't make it that -- so that  
12 there are more.

13 My position has never changed. It's never  
14 been disingenuous to this Court then or now.

10:48:14 15 And so I just take issue with Mr. Ogilvie  
16 claiming that I said something different then or that  
17 Mr. Leavitt said something different now that's  
18 different than what the documents show. The documents  
19 show exactly what I said they would.

10:48:28 20 So that's -- that's my only position. There  
21 is nothing more.

22 And then once we get into the other motion,  
23 you'll see that -- and the City claims are all public  
24 record anyway. So I don't know what more there is to  
10:48:41 25 give them if they're all public record and they can

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10:48:43 1 receive them, which, you know, we'll deal with then.  
2 Unless you want to discuss that now.

3 THE COURT: Not yet, ma'am.

4 But I just wanted to understand what the  
10:48:52 5 respective positions were of the parties as it relates  
6 to the five issues that were raised by the City and  
7 more specifically in the reply.

8 And so the next one would be the City has had  
9 an opportunity to depose Yohan Lowie.

10:49:12 10 Why is that important, Mr. Ogilvie? And I  
11 understand clearly where -- where it's germane to the  
12 issue and we've had rigorous -- rigorous discussion on  
13 the valuation. I get that. I get that.

14 But my focus and thrust as far as that  
10:49:27 15 question is concerned, it focuses on the first claim  
16 for relief, categorical taking; third claim,  
17 self-regulatory taking; and the fourth -- I guess the  
18 fifth claim because -- no, I'm sorry. Let me look at  
19 my notes here. Yes, the fourth claim for relief. One,  
10:49:51 20 three and four, how is that germane to that?

21 MR. OGILVIE: So, your Honor, I want to go  
22 back to address Mr. Leavitt's arguments about  
23 Mr. Richards' affidavit and -- and respond to that. If  
24 Mr. Richards' affidavit isn't necessary and, therefore,  
10:50:14 25 we're not entitled to conduct a deposition of him prior

10:50:18 1 to proceeding with their motion for summary judgment,  
2 his affidavit wouldn't have been submitted in support  
3 of the motion for summary judgment.

4 As it relates to the question regarding the  
10:50:33 5 opportunity to depose Mr. Lowie, again, your Honor,  
6 what -- what I said before, as identified in -- in the  
7 City's reply brief that was submitted yesterday, there  
8 isn't one case submitted by the developer in support  
9 of -- just a moment. I apologize. Someone's calling.

10:51:17 10 There was no legal authority to support the  
11 developer's argument that the inverse condemnation  
12 claims focus solely on the government's action. And as  
13 I indicated earlier, your Honor, these -- there can't  
14 be a taking if there is no diminishment in the value of  
10:51:34 15 the property.

16 So this value, again, it's not related solely  
17 to damages. It relates to whether or not there is a  
18 taking.

19 So the deposition of -- and -- and the City's  
10:51:47 20 position is that on this particular 35 acres -- again,  
21 the total purchase of the 250 acres, of which the  
22 35 acres is one of the four parcels, the -- as set  
23 forth in the purchase and sale agreement between the  
24 developer and the Peccoles, and it included an express  
10:52:17 25 \$7 1/2 million purchase price for the entire 250 acres,

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10:52:24 1 of which this is maybe 12 percent, 10 percent -- or  
2 it's more than 10 percent. You know, it's -- it's 35  
3 acres of 250 acres.

4 So the value that the City has been able to  
10:52:40 5 discern that the developer paid for this 35 acres is  
6 merely \$630,000.

7 So in order to determine whether or not there  
8 has been a taking, the City's entitled to confirm  
9 its -- its determination that \$630,000 was paid for  
10:53:05 10 this 35 acres with the -- by the taking of Mr. Lowie's  
11 deposition, which developer's counsel says is going to  
12 illuminate the City as to why that \$630,000 valuation  
13 is incorrect.

14 So I need to take his deposition to get to the  
10:53:30 15 very first determination as to whether or not there has  
16 been any diminishment of the value of that property in  
17 order to determine whether or not there's a taking.

18 THE COURT: All right. Mr. Leavitt.

19 MR. LEAVITT: Yes, your Honor. Your question  
10:54:05 20 is what relevance does the deposition of Yohan Lowie  
21 have to liability? Now, you correctly stated that he  
22 will testify regarding valuation. You correctly stated  
23 that he will be relevant to the valuation stage. But  
24 that -- but -- and Mr. Ogilvie addressed that.

10:54:21 25 But the question is: What relevance does

10:54:24 1 Yohan Lowie's testimony have to liability? Here's the  
2 City's -- your Honor, this is important. Here's what  
3 the City's argument is. We -- we, the City, think that  
4 Mr. Lowie only paid \$630,000 for a \$35 million piece of  
10:54:39 5 property. Let's just say that. He got a great deal.

6 And because he got a great deal, we, the City of  
7 Las Vegas get to take his property and not pay for it.

8 That's what the City's argument is. That's  
9 what it boils down to. The City wants to get Mr. Lowie

10:54:55 10 to admit that he only paid \$630,000 for this property  
11 that's worth over \$35 million. And because he got a  
12 great deal, we at the City can take his property and  
13 not pay for it. We can violate his constitutional  
14 rights. We can set the Constitution to the side  
10:55:11 15 because he got a great deal.

16 That's their argument.

17 So, your Honor, I inherent a \$100 million  
18 piece of property. I didn't pay a dime for it. The  
19 day after I hire it, the City of Las Vegas can pull  
10:55:24 20 their Euclids out there and build a freeway on it not  
21 paying me a penny for it because I got the property for  
22 free. I got a great deal. So the City gets to take it  
23 from me for free.

24 That's their argument to you, Judge. It's an  
10:55:36 25 outrageous argument that appears nowhere in any case

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10:55:39 1 law.

2 Now, counsel -- Mr. Ogilvie stated that I've  
3 not been able to cite to you any case law that says  
4 you're only supposed to focus on the government action.

10:55:47 5 Your Honor, in the Sisolak case, it's exactly what it  
6 says. It says you have to focus -- it only addresses  
7 government action.

8 In the State versus Eighth Judicial District  
9 Court case, a 2015 case, the Court repeatedly  
10 references government action.

10:56:00 11 They use those words. Not me, Judge. This is  
12 the Nevada Supreme Court stating it's focusing on  
13 government action.

14 And then Mr. Ogilvie -- and then the City's  
10:56:12 15 position is there has to be a total wipeout of the  
16 value so we look at the before and after condition.

17 Judge, let me just quote to you -- okay. I'm  
18 quoting to you the standard. I'm not just saying it.  
19 I'm not just making it up. I'm quoting you from case

10:56:24 20 law. 1977 Sloat versus Turner, the Court held that  
21 there is a taking when "some property right which is  
22 directly connected to ownership of the property is  
23 substantially impaired or extinguished."

24 They're talking about property rights. It  
10:56:41 25 focuses on a property right a landowner has, which is

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10:56:44 1 why the Court says you have to determine the property  
2 right first.

3           Then it focuses -- then the analysis focuses  
4 on the government's action to interfere with that  
10:56:54 5 property right. Not once in any -- and, Judge, here's  
6 all the case law. Here's the Nevada case law. It's  
7 right there. I got them all right here. Not once in  
8 these cases do they say the judge determines the value  
9 of the property before, then the judge determines the  
10:57:10 10 value of the property after, then the judge determines  
11 whether that property has been taken. That's not the  
12 analysis.

13           The Court focuses on -- the Court should focus  
14 on the property rights issue, which is why you entered  
10:57:23 15 your October 12, 2020 order, finding that the landowner  
16 had the property right to use this property for single  
17 family and multifamily residential uses. You held that  
18 they had the legally permissible right to do that.

19           So the only question now, Judge, for liability  
10:57:37 20 is: Did the City engage in action to interfere with  
21 that property right?

22           That's the question.

23           And if the Court -- and the Court will apply  
24 those three standards -- you hit it right on the head,  
10:57:51 25 Judge. You asked Mr. Ogilvie, "Well, what could

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10:57:53 1 Mr. Lowie say that meets these standards?"

2           Your Honor, there's nothing he can say. I  
3 mean, there's nothing he could have done himself to  
4 cause the taking. That's my point here. I'm trying to  
10:58:05 5 express so -- and I hope -- I hope I express it well  
6 enough so that we look at what the government did to  
7 the property right.

8           We don't look at what the landowner did to the  
9 property right. We look at what the government did.

10:58:17 10 Therefore, whether they depose Mr. Lowie or not is  
11 entirely irrelevant to liability.

12           Now, having said that, of course, his  
13 testimony will be relevant to the valuation phase.

14           So, your Honor, again -- and having said that,  
10:58:31 15 it's been 15 months since the last briefing scheduled  
16 on this. And counsel has had every opportunity -- we  
17 invited them to have every opportunity to depose him.  
18 And if they were serious about deposing him after  
19 receiving the documents on the -- on that number one we  
10:58:49 20 just went through, as Mrs. Ghanem Ham explained, after  
21 receiving those documents they would have immediately  
22 deposed him.

23           I don't know if this is a tactic where they  
24 just don't do anything, they don't go to the property,  
10:59:01 25 they pretend they don't know what the access is, they

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10:59:04 1 pretend they don't know what the zoning is, they don't  
2 depose the landowner, and then when we file a motion  
3 for summary judgment, they say, Judge, we have to do  
4 this now.

10:59:11 5 So your Honor, it would not affect or impact  
6 the situation now that we have before you on the  
7 summary judgment for liability. That's my answer to  
8 number two, Judge.

9 THE COURT: All right.

10:59:21 10 MR. OGILVIE: Your Honor, if I could respond.

11 THE COURT: Absolutely.

12 MR. OGILVIE: Your Honor, I should have  
13 addressed this earlier. With respect to the City's not  
14 inspecting the property to date, the developer on the  
10:59:39 15 one hand a year ago was taking advantage of the stay  
16 that was imposed by Administrative Order 20 dash, I  
17 think, 13, that stayed all discovery and -- and refused  
18 to produce any discovery during that time, yet now is  
19 using the amount of time that lapsed during that stay  
11:00:00 20 as a sword against the -- the developer -- or against  
21 the City's inspection.

22 The City had prearranged an inspection of the  
23 property -- I believe it was on March 31st. We had  
24 arranged it two weeks in advance. And then -- and  
11:00:18 25 fully intended to inspect the property at that time.

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11:00:21 1 And then the pandemic hit. And so everything  
2 was thrown up. And the Court -- we've had this  
3 discussion before at various status conferences, Judge,  
4 about the effect of the -- of the pandemic on discovery  
11:00:39 5 and moving cases forward. And the Court would be  
6 understanding in the party's efforts and lack of  
7 ability to conduct the discovery they think is  
8 necessary.

9 Your Honor, we're at a point now that we see  
11:00:58 10 some light at the end of the tunnel which --  
11 (telephonic audio glitch) --reduced positivity rates.  
12 And because of the -- the vaccinations that are  
13 available and that -- that people that have taken  
14 advantage of to conduct the discovery, the site  
11:01:16 15 inspections.

16 So to hear the -- the developer's counsel say  
17 that we -- we somehow have been sitting on our hands  
18 with respect to the site inspection, ignores the fact  
19 that the developer took advantage of the stay that was  
11:01:34 20 imposed as a result of this pandemic and now is using  
21 it as a sword against the City.

22 With respect to the -- the deposition of  
23 Mr. Lowie, why haven't -- why hasn't the City noticed  
24 the deposition after it received -- finally received  
11:01:54 25 after, let's see, 2019 to February 2021, what's that?

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11:02:02 1 19 months -- after 19 months of trying to get the  
2 documents, why didn't we immediately notice up  
3 Mr. Lowie's deposition?

4 I'll tell you, Judge. It's exactly for the  
11:02:13 5 reason that we have previously argued today. We didn't  
6 believe and -- and, frankly, I still don't believe that  
7 all the documents that we received last month are --  
8 are the 20 years of transactions that the developer's  
9 counsel represented would be produced.

11:02:34 10 So as I said earlier, if that's all that's  
11 going to be produced, then that's all that's going to  
12 be produced, and we'll take Mr. Lowie's deposition.

13 But it has always been -- it has been our  
14 position since we received the documents just last  
11:02:54 15 month -- it's not like we received them a year ago,  
16 Judge. We just received them last month. It's been  
17 our position that we're not going to take his  
18 deposition on a partial production of those 20 years of  
19 transactions.

11:03:11 20 But again, if that's all that's going to be  
21 produced, then that's all that's going to be produced,  
22 and we'll take Mr. Lowie's deposition. But to hear  
23 that we should have taken it up to this point  
24 without -- without all of the documents just rings  
11:03:26 25 hollow.

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11:03:27 1 With respect to the -- that the -- the City --  
2 that the only consideration is the government action  
3 relative to these -- these three claims for taking, the  
4 developer again and again references the Sisolak case,  
11:03:51 5 which was a physical taking, your Honor. And that's  
6 not what we're talking about in the -- in all of the  
7 three causes of action for which the developer is now  
8 seeking summary judgment.

9 Government action is one of the  
11:04:10 10 considerations, and -- and Mr. Leavitt, when he cites  
11 the cases that he says support his position, yes, those  
12 cases talk about government action.

13 But that is not the sole consideration in  
14 anything other than a physical taking.

11:04:30 15 So, again, and -- and there has to be a  
16 consideration of whether -- whether or not there's been  
17 a taking has to be determined whether or not --

18 THE COURT REPORTER: Mr. Ogilvie --  
19 Mr. Ogilvie, I'm sorry. It cut out a little bit. I  
11:04:42 20 didn't get the last sentence. "There has to be  
21 consideration of whether" --

22 MR. OGILVIE: Whether there has been a  
23 taking -- I'm sorry, Judge.

24 THE COURT: No, no, no. To me it's so clear  
11:05:01 25 what I have to do as far as this matter is concerned,

11:05:03 1 because here's my thoughts. And I've been listening.  
2 And, for example, we're arguing issues of law.  
3 And normally when you get a 56(d) request, typically  
4 it's at the end of the opposition to the motion for  
11:05:19 5 summary judgment.  
6 And as a trial judge, I've had an opportunity  
7 to be vetted as far as what the law is as it pertains  
8 to any specific issue.  
9 Here, we have arguments regarding whether or  
11:05:34 10 not, you know, what would be the standard I have to  
11 apply as it pertains to a taking in this case under  
12 three different theories of liability. And I'm  
13 listening to argument.  
14 And I think what I need to do is essentially  
11:05:52 15 this: Make sure it's clear in my mind as to what the  
16 specific components and/or elements would be before  
17 issuing a decision by just going back and sitting back  
18 and going through the cases again.  
19 Because normally I would have that opportunity  
11:06:11 20 to do so as it pertains to a motion for summary  
21 judgment. Now I'm dealing with 56(d) relief.  
22 But I understand specifically what the issues  
23 are based upon our rigorous discussion because I've  
24 been sitting back listening.  
11:06:28 25 And so I don't tell any -- I don't mind

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11:06:32 1 telling you this: Those are my thoughts.

2 Just as important, too, whatever decision I  
3 make today, I would anticipate -- or very shortly,  
4 because I realize time is of the essence insofar as  
11:06:44 5 this specific case is concerned. But -- and just as  
6 important, too, this is one of my thoughts insofar as  
7 this matter is concerned, because I get what's going  
8 on.

9 From a briefing perspective, Mr. Ogilvie,  
11:07:01 10 where are you at as far as opposition would be  
11 concerned? And whether you haven't started it or not  
12 or whatever, I'm okay with that. I'm just trying to  
13 figure it out and consider all factors.

14 Because at the -- one thing for sure, and I  
11:07:16 15 think it's important, we're going to hold our trial  
16 date. We are. This case is going to trial. And as  
17 far as my calendar is concerned, we'll get it done in  
18 October.

19 And just for the record, it's my understanding  
11:07:29 20 that all of the business court judges are moving up to  
21 the 16th floor of the RJC, which I think for me is a  
22 godsend because I'll have a much bigger courtroom. And  
23 so that won't be an issue either.

24 But where are you at, sir, as far as -- if you  
11:07:47 25 don't want to tell me, that's okay, too. I'm just

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11:07:50 1 trying to figure out where everything is when I make my  
2 decision.

3 MR. OGILVIE: Your Honor, we have started our  
4 opposition.

11:07:57 5 THE COURT: Okay.

6 MR. OGILVIE: Obviously, if the Court denied  
7 the Rule 56 motion, we have to turn in an opposition  
8 fairly quickly.

9 THE COURT: That's what I'm trying to  
11:08:09 10 figure -- trying to figure out.

11 And, for example, I mean -- and I don't know  
12 what I'm going to do, Mr. Ogilvie. My mind is really  
13 completely wide open. I just want to get closer to the  
14 case law. That's what I want to do.

11:08:21 15 But, for example, if I did deny it, it's not  
16 saying it would be -- I mean, my -- it wouldn't be the  
17 last word until I read all the points and authorities.

18 But I want to get closer to the specific case  
19 law that I'm dealing with as it relates to the first,  
11:08:39 20 third, and fourth claims for relief, because that will  
21 determine essentially what my ultimate decision will  
22 be.

23 Just as important, too -- and I understand  
24 your position as far as the site inspection is  
11:08:55 25 concerned. I mean, I get it. I know what's going on.

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11:08:58 1 But I just want to -- I think in order for me  
2 to make a decision that would withstand review -- and I  
3 don't mind saying that. I want to make sure I'm close  
4 to the law.

11:09:11 5 MR. OGILVIE: I appreciate that, your Honor.  
6 And I -- I totally endorse the Court's desire to become  
7 intimately familiar with the case law. So -- so I -- I  
8 support that.

9 I would ask -- I guess I would ask this, your  
11:09:29 10 Honor: That the -- in the event -- in the event that  
11 the Court, after reviewing everything that's been  
12 argued today, the factual basis and then reviewing the  
13 case law, in the event that the Court grants the motion  
14 for 56(d) relief and, therefore, denies the motion for  
11:09:56 15 summary judgment without prejudice, that's fine.

16 Then -- then things can be taken care of in proper  
17 order. That doesn't need to be determined now.

18 But in the event that the Court ultimately  
19 denies the City's -- the relief the City is seeking in  
11:10:18 20 its Rule 56(d) motion, that the City be given ten days  
21 from the issuance of the Court's minute order to file  
22 the opposition and then --

23 THE COURT: That's exactly what I wanted to  
24 know. That's exactly what I wanted to know. I get it.

11:10:41 25 MR. OGILVIE: Okay.

11:10:42 1 THE COURT: I do. I do. I get it.

2 MR. LEAVITT: If I may respond to that also,  
3 your Honor.

4 THE COURT: Yes, sir.

11:10:47 5 MR. LEAVITT: Just very briefly. So we  
6 anticipated something like this occurring.

7 And on April 15th, the parties entered into a  
8 stipulation and order. And the stipulation and order  
9 recognizes that we have scheduled a special setting  
11:10:59 10 with this Court on April 21st, 2001 -- I'm sorry -- May  
11 21st, 2001, is the special setting. I'm sorry, your  
12 Honor. It's May 19, 2001. So we have a special  
13 setting on the summary judgment issue from May 19th,  
14 2021, at 1:30 p.m. in the afternoon.

11:11:20 15 We anticipated that if this Court denies the  
16 City's 56(d) motion to -- at this time the City's  
17 opposition to the motion for summary judgment would be  
18 due on April 30th and the reply brief would be due May  
19 11th.

11:11:37 20 That would give all of the briefing to the  
21 Court ten -- or at least eight days prior to the  
22 special setting.

23 So here's what I would recommend, Judge, is  
24 you're right. The 56(d) motion is typically filed as  
11:11:49 25 an opposition to a motion for summary judgment. We

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11:11:53 1 appear at the summary judgment hearing. The Court  
2 hears all of the evidence that it's hearing today.  
3 We're arguing the motion for summary judgment  
4 before you today. We're arguing the standards. We're  
11:12:04 5 arguing the facts.  
6 What would be -- this is what I would  
7 recommend: Let's continue the City's 56(d) motion to  
8 that hearing on May 19th. Let's put all the issues  
9 before the Court at that point in time. Let's let the  
11:12:17 10 Court -- at least give the Court the opportunity to go  
11 through that -- that special setting, to go through the  
12 standards, go through the facts, and the Court can at  
13 that point in time make a determination of whether the  
14 City's actions amount to a taking.  
11:12:31 15 And when we only focus on the City's actions,  
16 if at that point in time the Court decides that, hey,  
17 wait a minute, I think that the other actions are  
18 necessary, we need to look at what Mr. Yohan Lowie  
19 said -- which, by the way, your Honor, I want to  
11:12:44 20 clarify.  
21 He does say in his affidavit that he confirms  
22 the City's actions. So to that extent, he confirms  
23 what the City did to his property. So to that extent  
24 he does support the liability in his affidavit. But  
11:12:55 25 those are confirming actions that the City engaged in

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11:12:58 1 that we have evidence of.

2           So my point, Judge, is that we have a  
3 stipulation and order on a briefing schedule. We can  
4 keep that -- that May 19th, 2021, special setting date,  
11:13:12 5 which sometimes, I understand, is difficult to get. We  
6 have the afternoon on May 19th from -- at 1:30 p.m.

7           We can -- we'll prepare the standards. We'll  
8 go through the facts. And then -- and then you can  
9 make a decision on whether these other factors are  
11:13:26 10 relevant or not, whether these 56(d) issues are  
11 relevant or not.

12           I think that's the appropriate action. We  
13 anticipate it. We did a stipulation and order. I  
14 understand it wasn't -- Mr. Ogilvie didn't stipulate he  
11:13:37 15 was going to -- and I don't want to misrepresent  
16 that -- he didn't stipulate that he was going to lose  
17 and he wanted to brief it. But we stipulated that in  
18 the event the Court did deny the 56(d), we would  
19 provide the City plenty of time to do that.

11:13:49 20           So that would be my request, Judge, let's move  
21 forward and consider the 56(d) at the appropriate time,  
22 which is the hearing on the summary judgment issue.

23           THE COURT: Okay.

24           And for the record --

11:14:00 25           MR. OGILVIE: Your Honor --

11:14:01 1 THE COURT: -- Mr. Leavitt, I thought about  
2 that, too. And I'm listening to everyone.  
3 Anything else you wanted to add? I don't want  
4 to overlook you, Mr. Ogilvie, or Ms. Ghanem Ham. I  
11:14:10 5 don't want to overlook you. I don't.  
6 MR. OGILVIE: Your Honor, I -- yes, we did  
7 enter -- we did -- there needed to be some -- when I  
8 say "order," some orderly resolution of briefing and  
9 whatnot going into this hearing.  
11:14:29 10 So, yes, we did enter into a stipulation that  
11 was premised upon the Court ruling today, but also  
12 anticipated that the Court may not rule today.  
13 And -- and as I said, I encourage the Court to  
14 delve into the case law on three -- these three causes  
11:14:52 15 of action before it rules on the City's 56(d) motion.  
16 And -- and simply asking that the Court --  
17 that the City not be required to respond to the  
18 developer's opposition -- or the developer's motion for  
19 summary judgment, prior to having the opportunity to  
11:15:15 20 conduct the discovery, is not an unreasonable request.  
21 So I -- again, I would endorse the Court's  
22 proposed course of action that the Court examine the  
23 case law, issue a ruling on the 56(d) motion, and then  
24 give the -- the City ten days to -- to file the  
11:15:36 25 opposition. And we set a hearing at -- when -- when

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11:15:40 1 available in the afternoon and -- and proceed further  
2 if -- if, in fact, the Court denies the Rule 56(d)  
3 motion, which, again, obviously the City submits  
4 that -- that it should not be denied.

11:15:57 5 And one other thing, your Honor. Before we  
6 got a little bit derailed, I was responding to  
7 Mr. Leavitt's arguments. And -- and it -- just one  
8 small point. Mr. Leavitt indicated what the Court's  
9 rulings or what the Court's findings of facts and  
11:16:18 10 conclusions of law from these developer's motion to  
11 determine a property interest, Mr. Leavitt indicated in  
12 his arguments that the Court found that residential use  
13 of the 35-acre property was a property right.

14 What the Court found -- and the order speaks  
11:16:43 15 for itself. I just want to be clear that what the  
16 Court found was that a -- that the residential use is a  
17 permitted use, not necessarily a property right. But  
18 the order -- the order speaks for itself.

19 THE COURT: Okay. I understand, sir.

11:17:04 20 All right. And what I'd like to do at this  
21 point -- and I'm going to go back and look at this. I  
22 realize time is of the essence.

23 And I can't tell you why things are this way,  
24 but from a historical perspective, typically, unless  
11:17:20 25 I'm in a jury trial, I tend to have my law and motion

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11:17:23 1 calendar -- I'm sorry -- my afternoons free for case  
2 review, reviewing points and authorities, and those  
3 types of things. But for the last 90 days, maybe 120  
4 days or so, we have been booked almost every afternoon.

11:17:42 5 And -- and which, in fact, I don't mind  
6 telling you this: That's one of the reasons why I came  
7 back down to the courthouse, because I've had my  
8 vaccinations now and, yes, we mitigate and do all the  
9 appropriate things we have to do, but I'm just more  
11:17:57 10 efficient, as you would anticipate, versus working at  
11 home in a home office.

12 But it's been somewhat difficult in that  
13 regard. And so -- but I do realize that time is of the  
14 essence. I'm going to -- this is a priority item for  
11:18:11 15 me to get a decision out very shortly as far as this is  
16 concerned.

17 And I do understand the competing interests  
18 and what the issues are.

19 At the end of the day, I can tell you this,  
11:18:20 20 though: We're going to trial in October, regardless of  
21 what decision I make.

22 Last, but not least -- and I don't know if we  
23 need as much rigorous discussion on this issue. We do  
24 have the City's motion for reconsideration. I do  
11:18:33 25 understand what the issues are.

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11:18:34 1           And this -- and clearly, this was part of the  
2 discussion we've had. But when it comes to the  
3 requested documentation, I was wondering, once the  
4 documents were produced pursuant to the motion to  
11:18:53 5 compel, were there any affirmations that, Look, this is  
6 all we have on this specific issue; there's nothing  
7 else?

8           I realize there was an email.

9           MS. HAM: Yes, your Honor. As it relates --  
11:19:11 10 are you asking about as it relates to the transactions  
11 that transpired 20 years ago?

12           THE COURT: Yes.

13           MS. HAM: It's a little different than how  
14 it's framed by the City. But that transpired 20 --  
11:19:25 15 about 20 years ago, as it relates to those documents,  
16 there is nothing further. There is a lot of  
17 construction documents, you know, with the various  
18 contractors and subs.

19           It's actually, you know, build -- some of  
11:19:40 20 those transactions that were referenced in the, you  
21 know, membership interest exchange and so forth. But  
22 beyond -- beyond my statement that transactions that  
23 gave rise to the right to purchase the property and  
24 how -- you know, what transpired then versus the later  
11:19:59 25 purchase of the 250 acres, as it relates to that, there

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11:20:03 1 is nothing further.

2 THE COURT: All right. Is --

3 MS. HAM: In other words, there's no other  
4 documents in that regard.

11:20:16 5 THE COURT: Mr. Ogilvie, sir.

6 MR. OGILVIE: So if I heard Ms. Ghanem Ham  
7 correctly, it was responding to the inquiry as to  
8 whether or not there are any additional transactional  
9 documents that support the developer's contention that  
11:20:38 10 it -- that the consideration that it paid for the 250  
11 acres was the \$45 million.

12 That -- that -- that representation has been  
13 made several times today, and -- and I understand that  
14 that's the developer's position.

11:20:59 15 But that's -- as the Court knows, that's not  
16 the only inquiry that's being -- or request that's  
17 being made by the City's motion for reconsideration.  
18 There are three groups of documents, the first being  
19 communications relevant to the developer's  
11:21:22 20 investment-backed expectations.

21 And those are communications with the  
22 developer's land use counsel, specifically Mr. Kaempfer  
23 and his colleague; and then there is the communications  
24 between the developer's principals. So what we  
11:21:44 25 received, your Honor, is -- is 12 emails between Yohan

11:21:48 1 Lowie -- or from Yohan Lowie and five emails from  
2 Vickie DeHart over the course of many or several years.

3 Your Honor, I have that many emails with my  
4 partners on a daily basis about a particular issue.

11:22:06 5 So I cannot imagine that what -- the only --  
6 the only emails between the developer's principals  
7 about the purchase of this 250 acres was a total of 17  
8 emails. So I -- I -- I can't say that I know for  
9 certain that there are more emails, but I just can't  
11:22:33 10 imagine that there are a total of 17 emails between the  
11 principals about this 250-acre purchase.

12 Then there's the communications with the  
13 developer's lenders. We received zero emails between  
14 the developer and the developer's lenders which have to  
11:22:58 15 contain information related to the developer's plans  
16 for the property.

17 And then communications with the Peccole  
18 family about this purchase. Notwithstanding the fact  
19 that there's been a representation, and an ongoing  
11:23:16 20 representation that there's 20 years of history between  
21 the developer and the Peccoles, we didn't receive  
22 the -- the emails that would be reflective of that.

23 Then finally, under the communications,  
24 there's communications with Greg Borgel, who is the --  
11:23:37 25 one of the developer's consultants. And we didn't

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11:23:41 1 receive any email communications with Greg Borgel,  
2 which would have been relevant evidence regarding the  
3 development potential for the property. Mr. Borgel, as  
4 the Court probably knows because he appears in many  
11:23:57 5 court actions, because he is a land use expert,  
6 probably one of the most widely used land use experts  
7 in southern Nevada.

8 We received no communications between  
9 Mr. Borgel and the developer.

11:24:15 10 And we submit that that evidence or the  
11 communications between the developer and Mr. Borgel  
12 would be highly relevant as to the development  
13 potential for the property -- for the 250 acres.

14 That second category of documents that we  
11:24:39 15 are -- that are submitted in the motion for  
16 reconsideration is the City's request for cost  
17 estimates. And we're not seeking expert materials,  
18 which, you know, maybe -- maybe this will be rendered  
19 moot by what we see in the expert disclosures.

11:25:00 20 I submit that I suspect that it won't be,  
21 because the -- the documents that will be referenced in  
22 the disclosures will be, for lack of a better word,  
23 cherrypicked to suit the developer's position in this  
24 litigation.

11:25:20 25 So we know that there are estimates --

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11:25:25 1 additional estimates, cost estimates for grading and  
2 drainage that were provided to the appraiser,  
3 Mr. Dunaway.

4 But we don't have those. And then these are  
11:25:42 5 not protected, and -- and they should be produced,  
6 because they're relevant to the development, the -- the  
7 developer's plans for development of the property,  
8 which goes to, you know -- and we're offering the  
9 liability.

11:26:01 10 Well, it's still a liability issue. But it's,  
11 you know, really indisputably relevant as to the  
12 damages that the -- that the developer will be seeking.  
13 And we have -- we don't have a bifurcated discovery  
14 process in this case.

11:26:20 15 It -- we're entitled to this -- this  
16 documentation now.

17 And then the last -- I'm sorry. We've already  
18 covered the transactions between the developer and the  
19 Peccoles. So it's -- it's -- it's those three groups  
11:26:44 20 of documents. We've already discussed the transaction  
21 documents. The developer's counsel's representations  
22 are what they are.

23 And I will submit it to the Court.

24 THE COURT: Okay. And Ms. Ghanem Ham,  
11:26:59 25 anything else you want to add, ma'am? I just want to

11:27:02 1 make sure.

2 MS. HAM: Yes, your Honor. I didn't address  
3 the other items. I wasn't sure that that's what you  
4 were asking.

11:27:09 5 THE COURT: Yes.

6 MS. HAM: But what you -- and I think  
7 Mr. Leavitt may want an opportunity to respond as well.

8 But what you are hearing is nothing new. They  
9 haven't even met the standards for a motion to

11:27:19 10 reconsider. You've heard this entire argument that was  
11 before you on a motion to compel, and you denied it.

12 You denied it because there simply are no -- I  
13 appreciate Mr. Ogilvie telling us how many emails he  
14 gets in a few minutes as an attorney. But to use that

11:27:38 15 as a basis that there must be more is, quite frankly,  
16 absurd.

17 Our, you know, principals are located in the  
18 same offices. So they could simply walk into an office  
19 to have a conversation. So his disbelief that we're

11:27:57 20 hiding the ball or there must be more because he says  
21 so or because it's based on his experience as a lawyer  
22 and how many emails he gets is absurd. It's absolutely  
23 absurd.

24 But I'm getting beyond just the basic standard  
11:28:13 25 of a motion to consider there's nothing new here,

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11:28:17 1 there's nothing more here. It's just a game that the  
2 City continually plays. It refuses to accept your  
3 orders. That's why it's filed four motions to dismiss  
4 our case in different ways. It refuses to accept your  
11:28:29 5 orders on discovery. That's why it continues to file  
6 motions for reconsideration without ever even  
7 addressing the standard for the motions to reconsider.  
8 So my -- I can reargue what I argued to you  
9 however many weeks ago it was when you first determined  
11:28:45 10 that they weren't entitled to more. We have produced  
11 to date over 38,000 pages of documents in response to  
12 the City's requests.  
13 We continue to provide them with documents,  
14 even though we argue that they are not related to  
11:29:05 15 either the claims or defenses. We give it to them  
16 anyway, so long as we're protected, something they  
17 completely likewise ignore. And I'll get to that  
18 request for sanctions when we're there.  
19 But there's nothing else to give them.  
11:29:20 20 Our responses haven't changed. This is not a  
21 new basis for which they seek. They've provided you  
22 zero evidentiary basis for why they want more, are  
23 entitled to more, think there are more.  
24 And I submit to you that Mr. Ogilvie's  
11:29:37 25 personal experience and emails he's received is not a

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11:29:40 1 basis to claim that we must have more. As -- do you  
2 want me to address each one specifically? Or I can  
3 turn it over to Mr. Leavitt.

4 But I just want to address one more statement  
11:29:49 5 that was made by the City earlier when they said that  
6 we utilized COVID as a means -- as a shield not to  
7 produce documents. During the heat of it last summer  
8 is when we produced -- largely produced this  
9 38,000-plus documents.

11:30:06 10 The only delay in production of any documents  
11 has been caused by the City itself for refusing to  
12 stipulate to a Court -- to a protective order. Later  
13 moving the Court to compel us to sign a protective  
14 order and requiring that those documents be utilized in  
11:30:26 15 every single case. Finally being granted a protective  
16 order and then immediately violating it.

17 So the -- this claim that we've delayed is  
18 just -- couldn't be further from the truth. Largely  
19 our production happened during that time. We continued  
11:30:40 20 to produce everything that they've asked us to produce.  
21 And if there's nothing more, there's simply no more.

22 But you've already ruled on all the other  
23 topics and issues. And so I don't -- unless this Court  
24 wants me to reargue what we argued weeks ago and when  
11:30:56 25 you made that reasonable determination that they've

11:30:58 1 received the documents, that there is enough, that  
2 there's nothing more that they're entitled to, I'm  
3 happy to reargue that. But I think you've -- you've  
4 heard it all before.

11:31:06 5 So I'll turn it over to Mr. Leavitt. I think  
6 he has some items to add.

7 Thank you, your Honor.

8 THE COURT: And, ma'am, I can't say I have a  
9 computer-like recollection on every issue.

11:31:18 10 For example, as it is relates to  
11 communications with the land use consultant, Greg  
12 Borgel, was that part of my prior ruling in this  
13 matter?

14 MS. HAM: Yes, your Honor, it was.

11:31:30 15 THE COURT: Okay. All right. Thank you,  
16 ma'am.

17 Mr. Leavitt.

18 MR. LEAVITT: Yes, your Honor. I'll just be  
19 very brief. As stated, there is a process for  
11:31:43 20 reconsidering a motion. That process has not been  
21 followed at this point.

22 The one issue in regards to the cost  
23 estimates, your Honor, we've reached out to our client.  
24 We've obtained all of the documents as it pertains to  
11:31:55 25 this 35-acre property.

11:31:58 1 We're here to adjudicate -- and you've  
2 addressed this issue several times. We're here to  
3 adjudicate the 35-acre property. We're not  
4 adjudicating the 17-acre, 65-acre or 133-acre property.

11:32:09 5 Those are before different judges. They're before  
6 Judge Trujillo; they're before Judge Sturman.

7 Other judges are deciding the issues in those  
8 cases. In those cases, there may be cost estimates to  
9 develop those portions of the property. But for this  
11:32:22 10 35-acre property, Judge, there are no cost estimates.

11 We've explained that, that there are none. And -- and  
12 we've produced every document that we could possibly  
13 produce.

14 I can only go to our client and say, here's  
11:32:35 15 the request. Please give us all the documents. They  
16 can give us the documents they have. We can't produce  
17 documents that we don't have.

18 Your Honor, we've met this request previously.  
19 We've argued it to you previously. And there's no  
11:32:44 20 reason to change that prior ruling because we've either  
21 produced the documents or the other documents don't  
22 exist, or the Court found that that was way outside the  
23 bounds of discovery and the landowner should not be  
24 required to -- to produce other documents.

11:32:59 25 But if you have any further questions, your

11:33:01 1 Honor, I can respond.

2 THE COURT: Not at this time, sir.

3 Mr. Ogilvie.

4 MR. OGILVIE: Yes. Thank you, your Honor.

11:33:09 5 What I didn't hear from the developer's  
6 counsel is that there are no more emails between the  
7 principals.

8 So what I heard was simply because I receive a  
9 lot of emails doesn't mean that there are more than 17  
11:33:24 10 emails between the principals on -- on -- relative to  
11 this purchase of 250 acres.

12 First of all, let me be quite clear. What I  
13 said wasn't that I receive a lot of emails. I said  
14 that to -- between my partners, who are all in my  
11:33:43 15 office here, I have -- I have more than 17 emails a day  
16 on a particular issue. So I just want to make sure  
17 that the record is clear on that I didn't say I receive  
18 a lot of emails from various matters.

19 But, again, what I didn't hear relative to  
11:34:04 20 emails between principal -- (telephonic audio  
21 glitch) -- is that there are no more than 17 or that  
22 they didn't send -- and this is -- this is really  
23 salient because we don't know if they kept the emails,  
24 that there were never more than 17 emails between  
11:34:22 25 Mr. Lowie and Ms. DeHart relative to the purchase of

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11:34:26 1 this property.

2 And if there -- and if -- if that's the  
3 representation, I would like to hear it.

4 Then relative to the lenders, I didn't hear  
11:34:37 5 any argument that there aren't any emails between the  
6 developer and the lenders or not any communications  
7 with the -- with the lenders.

8 So I submit to the Court that, again, it's  
9 relevant to the developer's plans for the property  
11:34:57 10 which is relevant to damages, at a minimum.

11 And, therefore, and -- and it's relevant to  
12 the Penn Central takings test. The -- the  
13 investment-backed expectations, reasonable  
14 investment-backed expectations of the developer.

11:35:18 15 So we're entitled to those as well as the  
16 communications between the developer and the Peccoles  
17 relative to the purchase of the property as well as the  
18 communications with Mr. Borgel about the property.

19 And finally, as addressing the issue that  
11:35:39 20 Mr. Leavitt argued, the cost estimates, what I'm  
21 hearing is a cute argument that there -- that there are  
22 no more cost estimates relative to the 35-acre  
23 property.

24 But if -- if there is cost estimates as to the  
11:35:59 25 250 acres as a whole, those should be produced now

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11:36:04 1 relative to this 35 acres, because the 35 acres is  
2 included within the 250-acre parcel -- property that  
3 they purchased. And, yes, they may not have cost  
4 estimates that apply only to the 35 acres.

11:36:23 5 But, again, if there are cost estimates  
6 relative to the 250 acres, we're entitled to those as  
7 well.

8 THE COURT: And was that issue addressed at  
9 the prior hearing? I don't remember that.

11:36:38 10 MR. OGILVIE: Well, your Honor, to go back, so  
11 the motion for reconsideration or -- I'm sorry. The  
12 motion to compel was originally heard on November 17th.  
13 And -- and, you know, I know the Court has a lot of  
14 matters that it hears, and it's heard a lot of matters  
11:36:58 15 since November 17th --

16 THE COURT: Yeah.

17 MR. OGILVIE: -- of last year. So -- so I  
18 just recount to the Court what transpired. I made my  
19 argument on the motion to compel.

11:37:08 20 And -- and we were focused on -- on November  
21 17th with the transaction documents. And Mr. Leavitt  
22 responded with his proposal regarding the 20 years of  
23 history of transaction documents and that we be allowed  
24 to take Mr. Lowie's deposition. At that time, they  
11:37:32 25 would produce the documents.

11:37:35 1 And then the argument directed towards, well,  
2 your Honor, if we do that, then we're entitled to  
3 receive those documents well in advance of the  
4 deposition. And so we discussed that for a while. And  
11:37:48 5 then, ultimately, that issue got -- didn't -- actually  
6 that issue did not get resolved that day. It was  
7 continued over to the next day. We had a status  
8 conference, a regularly scheduled status conference on  
9 November 18th.

11:38:06 10 So the developer asked the Court to -- to  
11 consider the proposal and discuss it with the client,  
12 the principals of the developer, whether or not they,  
13 indeed, would be willing to produce these transactions  
14 documents.

11:38:23 15 So the Court continued the hearing on the  
16 motion to compel to November 18th.

17 And we -- we heard from the developer on the  
18 morning of November 18th that, in fact, the developer  
19 would be producing these documents. And we argued  
11:38:41 20 about the protective order, whether one was necessary.

21 And as the Court will recall, the City's  
22 position is these aren't proprietary. They're not  
23 confidential. But we got beyond that, right? And  
24 then -- and then there was a protective order and we  
11:38:59 25 got through that.

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11:39:00 1 And then at the end of the hearing relative to  
2 the motion to compel, the Court indicated to me,  
3 Mr. Ogilvie, you know, I have the -- I have the City's  
4 motion relative to the rest of the requests. If the  
11:39:15 5 City would like to argue it further, you can, but I  
6 think I understand the City's position or the party's  
7 position.

8 And I'm paraphrasing, your Honor. I -- but --  
9 so -- so at that point there wasn't further argument on  
11:39:33 10 these specific documents that we're seeking on  
11 reconsideration today.

12 THE COURT: Okay. And so I just want to make  
13 sure I'm clear. These specific documents weren't  
14 identified with some form of particularity at the time  
11:39:47 15 of the prior hearings in this matter?

16 MR. OGILVIE: Yes, your Honor. I think we're  
17 all in agreement that that's correct.

18 THE COURT: Okay.

19 MR. LEAVITT: Your Honor, if I may. The  
11:39:56 20 question is: Has this issue of the cost estimates been  
21 addressed by the Court?

22 The short answer is yes. I mean, yes, they  
23 have. That's why it's part of the motion to  
24 reconsider.

11:40:11 25 I recall those hearings. I don't recall the



11:40:14 1 dates as well as Mr. Ogilvie does, but I recall having  
2 on my desk each one of these issues, and we addressed  
3 each one of these issues. So, yes, it has been fully  
4 briefed. It has been fully argued. And, again, if it  
11:40:24 5 hadn't been fully briefed and fully argued, the City  
6 wouldn't be asking for a reconsideration of that issue.

7 So that issue regarding the cost estimates has  
8 been addressed. There aren't any for this 35-acre  
9 property. I can't go to our client and say invent  
11:40:39 10 them. It doesn't exist, your Honor. So, yes, it has  
11 been addressed. And it's been fully briefed and  
12 argued. And the reconsideration at this time is  
13 inappropriate, your Honor, in our opinion.

14 THE COURT: What about the land use consultant  
11:40:49 15 issue?

16 MR. LEAVITT: I think Ms. Ghanem Ham is going  
17 to address that.

18 THE COURT: Okay.

19 MS. HAM: Your Honor, and I just want to -- I  
11:40:59 20 want to address, you know, Mr. Ogilvie's contention  
21 that he hasn't heard me testify as to whether there are  
22 more documents sent or not. And that -- that response  
23 is absurd as well because we responded in the request  
24 for production of documents saying "none."

11:41:16 25 We then held 2.34 conferences with the City

11:41:19 1 insisting there must be more where we said there is no  
2 more.

3 We have stated to this Court at multiple  
4 hearings there is nothing further.

11:41:30 5 So all of this is just a feigned response.  
6 Gee, we're so confused. We don't know what -- you  
7 haven't really told us whether there's more.

8 We have told them repeatedly in writing, in  
9 response to the request for production of documents, in  
11:41:45 10 2.34 conferences that have been held, and in court  
11 hearings that followed thereafter.

12 So to pretend like none of these have been  
13 vetted or none of these have been argued or none of  
14 these have been truly decided by you is just to sort of  
11:42:03 15 defend that they continue to file frivolous motions.

16 As it relates to Mr. Borgel, we list --  
17 Mr. Borgel was utilized in a couple of manners, but he  
18 was listed as a consultant. And I believe we did  
19 address that in the original motion, what we had or  
11:42:21 20 didn't have or why we didn't produce it. But

21 regardless, largely, attorney-client privilege as there  
22 was ongoing litigation at the time that we were still  
23 trying to develop. And the rest of it has either, you  
24 know, been produced through -- as Mr. Borgel did appear  
11:42:44 25 at some of our matters in front of city hall.

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11:42:46 1

So it was addressed, responded to.

2

I would have to look back at our production to

3

see what exact answer we gave or what was produced in

4

that regard or what we have in that regard. As I sit

11:43:01 5

here at this moment, not expecting to address each

6

issue all over again, I don't know exactly how we

7

responded or what was produced or if it was a privilege

8

log or beyond that. So I'd have to look that up, which

9

I'm trying to do as I sit here at my computer.

11:43:18 10

But I know that you ruled on it. And I know

11

that they brought nothing new to you. And -- and I

12

don't know what it is they're seeking from Mr. Borgel,

13

because I don't recall how the question was beyond just

14

give us everything you have with Mr. Borgel.

11:43:36 15

And I can't let you know at this moment

16

whether I have anything or not, whether there are

17

documents, what my answer was as it relates to that

18

particular one. But if you give me a moment, I can

19

continue to search for it to provide that answer.

11:43:47 20

But I would submit to you that whatever has

21

been produced is all that we have, or it's been

22

attorney-client privilege and you've already ruled in

23

those regards to all of those items. Both the lender,

24

the emails, and as it relates to Mr. Borgel. And I

11:44:08 25

believe it was in your minutes.

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11:44:10 1 But I would need an opportunity to pull that  
2 up specifically because, again, the City has produced  
3 nothing new, has not met the standards for a motion to  
4 reconsider, and it's already been hashed out and  
11:44:21 5 rehashed. And so I can address that particular issue  
6 if you want to give me time to find our response to it.

7 THE COURT: And that's fine, ma'am. While  
8 you're looking, if there is other issues you want to  
9 address, that would be fine, too.

11:45:11 10 MS. HAM: And, your Honor, I don't know if I'm  
11 going to be able to find it very quickly because there  
12 have been multiple requests for production both to 180  
13 Land for (indiscernible). If the City can identify  
14 which specific request it was, that would be helpful.

11:45:27 15 MR. OGILVIE: I couldn't tell you off the top  
16 of my head.

17 MR. LEAVITT: Mr. Ogilvie, do you have -- I'm  
18 looking through our discovery. I don't -- I'm not --  
19 I'm searching for "Borgel," and I'm not even seeing  
11:46:39 20 even the word "Borgel" appearing in any, which doesn't  
21 mean it doesn't exist. I'm just telling you I don't  
22 see it.

23 MS. HAM: I'm doing the same search so -- I  
24 likewise don't find it.

11:48:37 25 THE COURT: I just have one final question for

11:48:39 1 everyone. I just want to make sure I get the dates.  
2 What I want to do is this: I want to -- what was the  
3 date that motion to compel was heard? Do we know?

4 MR. OGILVIE: November 17th and 18th, 2020,  
11:48:54 5 your Honor.

6 THE COURT: Because I don't have the exact  
7 recollection like everyone else. This is your case;  
8 it's not my case.

9 But I do remember some discussion as it  
11:49:18 10 pertains to the burden pertaining to damage claim in  
11 this case.

12 And what I meant by that was this: I think I  
13 pointed out that if you're going to make a claim for  
14 damages, of course you are, that you've got to produce  
11:49:36 15 all documents that support that damage claim.

16 And just as important, too, the adverse party,  
17 i.e., the City, under the facts of this case has a  
18 right to test it based upon the production.

19 And I'm just trying to figure out in looking  
11:49:55 20 at it, because I'm going to go back and take a look at  
21 my order. And I do realize I've made certain  
22 decisions, and I'll probably stick with that.

23 But looking at, for example, Mr. Borgel, would  
24 that have come under some sort of generic request for  
11:50:16 25 production of documents, or was there anything

11:50:22 1 requested as it pertains to some specificity as it  
2 pertains to him? I don't know.

3 MR. LEAVITT: During our research, your Honor,  
4 I'm not finding anything which specifically requests  
11:50:32 5 information from Mr. Borgel. Perhaps Mr. Ogilvie could  
6 direct us to either a specific request for Mr. Borgel  
7 or a general request under which Mr. Borgel would fall.

8 MR. OGILVIE: So, your Honor, the City -- the  
9 developer in his third supplement to interrogatory  
11:50:50 10 responses, which was attached as Exhibit X to the  
11 City's motion to compel, requested the -- the developer  
12 to produce communications with the three local land use  
13 experts that the developer identified as consultants in  
14 its interrogatories.

11:51:14 15 And again, the developer identified  
16 Mr. Borgel, Mr. Chris Kaempfer, and Stephanie Allen in  
17 its third supplement to the interrogatory responses.

18 We didn't receive the communications.

19 So it -- on page 25 of our motion to compel,  
11:51:35 20 we stated -- we requested specifically, accordingly,  
21 the developer must be compelled to comply with Request  
22 No. 5 by producing all communications with Mr. Borgel,  
23 who is not an attorney.

24 And -- and going to the point that he is not  
11:51:54 25 an attorney, I want to address the developer's

11:51:59 1 counsel's representation today that those  
2 communications are somehow attorney-client privilege.

3           There is no attorney-client privilege.

4 Mr. Borgel is not an attorney. There is no basis for  
11:52:13 5 withholding Mr. Borgel -- the communications with  
6 Mr. Borgel on attorney-client privilege.

7           MS. HAM: Again, your Honor, I need to locate  
8 the exact request and how it was responded to. But in  
9 our opposition, written opposition that was provided to  
11:52:37 10 you over 17 -- and I think it was a general question as  
11 it related to consultants. Maybe it didn't specify  
12 Mr. Borgel, which is why in that search I can't find  
13 it.

14           Regardless, there were over 1,700 pages of  
11:52:50 15 documents provided to the City as it relates to their  
16 request for communications with consultants.

17           As far as -- and it -- I don't know that it  
18 would be a first time, because claiming that it would  
19 be either attorney-client privilege or attorney work  
11:53:11 20 product or something under one of the privilege  
21 designations, that was certainly responded to in our  
22 answer to the City for the requests for production.

23           So this continued, this is the first time  
24 we're hearing this and the first time we're hearing  
11:53:26 25 that, it just couldn't be further from the truth,

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11:53:28 1 because we did answer all the requests for productions  
2 and we did produce documents related thereto, and we  
3 did produce privilege logs related thereto. So, you  
4 know, what was before you the last time as -- in  
11:53:42 5 relation to consultants was that we provided 1,700  
6 pages worth of documents.

7 And I believe, your Honor, I'm trying to pull  
8 up your minute order. The minute order that was issued  
9 as a result of our hearings which addressed these  
11:53:55 10 items, and you recognized that we had produced what we  
11 had, you know, what was either in our possession or  
12 fell under the attorney-client privilege.

13 But you specifically ruled in relation to each  
14 of those items. And they're asking you to change that  
11:54:14 15 ruling based on nothing new before them. And so here  
16 we are all trying to recall exactly what took place in  
17 November and what was argued and what was said.

18 And this is why there's a standard for motion  
19 to reconsider, why you have to have something new to  
11:54:26 20 present to the Court, not just rearguing the same  
21 positions. Because here we are, you know, with so many  
22 issues before you and going back and trying to remember  
23 exactly what happened and pulling documents and wasting  
24 the Court's time and everyone else's in the meantime.

11:54:40 25 So I would just submit to you that in that



11:54:43 1 opposition and in your minute order, you did address  
2 each of those items that either we already produced a  
3 substantial amount of documents responsive thereto with  
4 objections, with proper objections, both claiming that  
11:54:57 5 either there were none, there's nothing further, you  
6 received everything; or it falls under a privilege.

7           So all of that has been presented and --  
8 and -- to this Court previously and again today. And  
9 so, you know, that -- that's what I have for you at  
11:55:14 10 this moment, again, still trying to locate exactly how  
11 we responded in the request for production.

12           But in reviewing our opposition, you know, we  
13 listed out under each item what was provided.  
14 Consultant, 1,707 documents produced. And then we  
11:55:31 15 listed the numbers, the Bates numbers for them, and  
16 then which items were held for privilege.  
17 Communications with the previous owners, 413 documents  
18 produced. Which ones were withheld by Bates number.

19           So they have them all in their -- in their  
11:55:48 20 possession. And you ruled specifically on each one of  
21 those items.

22           And so I would -- I would refer you back to  
23 our opposition page for specifically listing out each  
24 and every document that they received and/or whether we  
11:56:02 25 produced them under a privilege log. That opposition

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11:56:04 1 was filed with this Court 11/6 of 2020, if you want to  
2 refer back to it specifically.

3 And then your minute, which I'm searching for  
4 that was the basis of the eventual order, but you had a  
11:56:17 5 minute order relation to that also, sort of detailing  
6 what was produced and your ruling in regard to each of  
7 those items.

8 THE COURT: Is this the minute order dated  
9 January 29th, 2021? Is that it?

11:56:34 10 MS. HAM: I'm looking for that as well.  
11 January 29th.

12 THE COURT: I'm sorry. January 19th. Did I  
13 say 29th? It's the 19th, right?

14 THE COURT CLERK: Yes. January 19th.

11:56:51 15 MR. OGILVIE: Yes, your Honor. That --  
16 that -- that is the minute order.

17 THE COURT: Okay. I think there was one other  
18 issue regarding sanctions; is that correct?

19 MS. HAM: Yes, your Honor. It's in relation  
11:57:17 20 to the City's violation of the protective order. So  
21 I'll begin, if you'd like me to.

22 THE COURT: Yes, you may, ma'am.

23 MS. HAM: Okay. As you may recall, your  
24 Honor, I had been begging for a protective order for  
11:57:35 25 over a year now. Since February of 2020 when the City

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11:57:39 1 filed the motion to compel us to sign a protective  
2 order and that they be allowed to utilize all of these  
3 documents in every case, we had said to the Court then,  
4 we've said to you repeatedly, all we want is a  
11:57:51 5 protective order.

6 We begged you for a protective order because  
7 of the City's, quite frankly, outrageous actions during  
8 our attempts to develop, the way in which they sought  
9 intel on the principals of the landowners so that they  
11:58:06 10 could use it because, and I quote from one of our  
11 then-sitting council members, "Dirt may be handy if I  
12 need to get rough."

13 All of the ways that the City and the council  
14 members and the --

11:58:19 15 THE COURT REPORTER: I'm sorry, Counsel. You  
16 cut out. Counsel. Counsel. Counsel, you cut out.

17 THE COURT: Ma'am, you talked about the --

18 MS. HAM: Sorry. I don't know why it's being  
19 cut off.

11:58:37 20 Am I too far away or is it just cutting out  
21 completely?

22 THE COURT: I think for whatever reason it was  
23 an anomaly, because we've been hearing you fairly well.

24 MS. HAM: Okay. I apologize. So let me --  
11:58:47 25 let me back up just a bit.

11:58:51 1 I was kind of reminding the Court why we  
2 wanted a protective order. All of the City's actions  
3 and what they have done throughout the attempt to  
4 develop and throughout this lawsuit, we begged for  
11:59:05 5 protective orders. We asked and -- and that was the  
6 basis of delay, not -- not an unwillingness to provide  
7 documents, but our fear that the City would use -- do  
8 exactly what they did.

9 I told this Court that the City wouldn't  
11:59:22 10 adhere to -- that we were concerned how the Court --  
11 the City would utilize these documents.

12 We then -- you then granted us a protective  
13 order. Two weeks after your signing a protective order  
14 that we stipulated to and nine days after having  
11:59:37 15 received the documents, the City filed this motion to  
16 reconsider and attached those very documents they were  
17 not allowed to attach.

18 That by way of this court order, they were to  
19 notify us that they intended on filing it. We were  
11:59:53 20 then to bring the matter before you, your Honor, so  
21 that you could decide whether they could be publicly  
22 disseminated or not.

23 They completely thumbed their nose at the  
24 protective order as they've done every order by this  
12:00:05 25 Court. They thumb their nose at the law. They thumb

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12:00:08 1 their nose at what -- at anything that they -- they  
2 want to ignore in order to support their defense.  
3 What they -- what the City is -- is doing is  
4 using the discovery and using documents as a tactical  
12:00:24 5 weapon. It is their intent to harm us, which they have  
6 done. We have undergone substantial fees and costs in  
7 both maintaining this land and attorney's fees and  
8 taxes and all of the things that you have heard. And,  
9 frankly, your Honor, we have had enough.  
12:00:41 10 Since the inception of this case -- rather  
11 since the inception of the attempt to develop, the City  
12 has played games, run us through hoops, if you'd only  
13 do this, if you'd only do that, delayed development of  
14 our land for years, for years and years, in opposition  
12:01:00 15 of their own code and the own law only for their own  
16 nefarious reasons is all I can say to this Court.  
17 And you've heard some of them, and you're  
18 going to hear all of it when we get to the evidentiary  
19 hearing. But we are outraged at the City's immediate  
12:01:19 20 violation of the court ordered protective order.  
21 And we would ask this Court to stop the City's  
22 gamesmanship and to provide us with sanctions. Not  
23 only monetary sanctions, but sanctions in other ways.  
24 So I would ask this Court for my year-long  
12:01:41 25 fight of a protective order and many motions before

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12:01:43 1 this Court to -- to allow me -- I am certain that we  
2 have spent over -- well over \$25,000 attempting to get  
3 a protective order that was completely ignored by the  
4 City. Completely ignored by the City. So I would  
12:01:57 5 request a minimum sanction of \$25,000 for violation of  
6 that order.

7 I would also ask this Court to consider some  
8 of the sanctions that, at your discretion, can be  
9 provided when court orders, especially as it relates  
12:02:16 10 for not being a discovery order, as it related to  
11 discovery orders, and that would be items found under  
12 our Nevada Rules of Civil Procedure -- I believe it's  
13 37(b) -- prohibiting the disobedient party from  
14 supporting or opposing designated claims or defenses or  
12:02:38 15 introducing those designated materials into evidence.

16 And you heard a lot about how and why they  
17 need all of these transactional documents to support  
18 their position. I would ask this Court that -- to --  
19 to order that they cannot use what they claim is the  
12:02:55 20 purchase price as a basis or as a defense to their  
21 actions and to the liability of this case.

22 And I would also ask this Court that it not  
23 order us to produce further confidential documents,  
24 which we assuredly know now because the City has done  
12:03:12 25 it, they will immediately disseminate to the public by

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12:03:15 1 way of filing or otherwise.

2 And so I would ask this Court to grant us  
3 sanctions to prevent the City from their continued  
4 abusive discovery tactics to harass, delay, and

12:03:27 5 increase costs, and to -- and the games that they've  
6 played since our ownership of the land and attempt to  
7 develop.

8 And without Court -- the Court sanctioning the  
9 City, then they will continue to violate orders, ignore  
12:03:42 10 the law, ignore your orders. I -- I -- I've begged for  
11 a protective order which was ignored by the City, and I  
12 am now begging for sanctions to prevent the repeated  
13 discovery abuses.

14 I have nothing further to add on that.

12:03:57 15 Mr. Leavitt, I don't know if you have  
16 something you'd like to add.

17 MR. LEAVITT: No. I think Ms. Ghanem Ham  
18 handled that.

19 THE COURT: Okay.

12:04:15 20 Mr. Ogilvie, sir.

21 MR. OGILVIE: Thank you, your Honor.

22 I want to take a step back and address what I  
23 hear again and again and again without any -- any  
24 support whatsoever that the City, from the outset of  
12:04:34 25 the developer's ownership of this land, has taken

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12:04:40 1 actions to deprive the owner of the entire value of  
2 this 250 acres.

3 It's clearly not true, your Honor.

4 The very -- the very fact that this -- the  
12:04:55 5 City approved the -- the developer's applications  
6 relative to the 17-acre property to develop 435 luxury  
7 units on that 17 acres, which would have eclipsed the  
8 purchase price that the -- that the developer paid for  
9 the entire 250 acres by a factor of over ten, the City  
12:05:30 10 allowed the developer --

11 THE COURT: And, Mr. Ogilvie --

12 MR. OGILVIE: -- to develop --

13 THE COURT: Mr. Ogilvie, I don't want to cut  
14 you off, sir. I really don't. And, of course, if you  
12:05:36 15 want to make a record. But understand this: I  
16 understand what my charge would be as it pertains to  
17 Rule 37 sanctions, right?

18 And the way I look at this -- this -- this  
19 issue, I'm not going beyond what's contained in the  
12:05:50 20 points and authorities. And I don't mind saying this.  
21 In 15 years as a trial judge, I've always been very  
22 reluctant to assess sanctions or Rule 37 violations  
23 unless it was clear. What happened pre-litigation  
24 happened pre-litigation, right? That is another issue.

12:06:12 25 And I'm looking at it from this perspective.

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12:06:14 1 It was my recollection the primary issue dealt with  
2 potential breach of a confidentiality order issued by  
3 the Court.

4 Anything beyond that, I would -- I'd have to  
12:06:26 5 have thoroughly briefed and vetted. In fact, I have a  
6 hearing this afternoon starting at 1:30, I have to deal  
7 with that type of problem.

8 And I understand spoliation issues and all  
9 those wonderful things.

12:06:41 10 And so I think the thrust would be very  
11 limited, at least based upon what I have in front of me  
12 to whether these documents were confidential and they  
13 were produced in violation of a court order. That  
14 would be it.

12:06:56 15 MR. OGILVIE: I understand, your Honor.

16 I just -- I apologize. I just feel compelled  
17 at times to address what I hear in these -- in these  
18 hearings.

19 So let me -- let me address the documents.

12:07:11 20 THE COURT: Yeah.

21 MR. OGILVIE: The documents were produced  
22 before the protective order even existed.

23 So to claim that -- that they -- a protective  
24 order was imposed and then documents were -- were  
12:07:28 25 produced and then those -- those documents that were

12:07:30 1 produced after the protective order was imposed were --  
2 were improperly utilized is a fiction.

3 And then, secondly, none of these transaction  
4 documents contained any confidentiality provisions and  
12:07:50 5 then what could even be deemed confidential as they  
6 involve public -- the transactions involving public  
7 companies involved or listed on the Tel Aviv stock  
8 exchange.

9 So -- so it's -- to -- to claim that there are  
12:08:10 10 sanctionable disclosure of purportedly confidential  
11 documents just isn't accurate. And I -- I don't see  
12 any basis for being in a position of sanctions.

13 THE COURT: All right. Thank you, sir.

14 And, ma'am, you get the last word.

12:08:31 15 MR. OGILVIE: Or for that matter -- I'm sorry,  
16 your Honor.

17 THE COURT: Go ahead, sir.

18 MR. OGILVIE: For that matter, even a finding  
19 of a violation of a protective order.

12:08:44 20 MS. HAM: Your Honor, may I respond?

21 THE COURT: Yes.

22 MS. HAM: I don't know -- it's very difficult  
23 for me to, first of all, quell my emotions about what  
24 the City has done in this case and especially as it  
12:09:01 25 relates to violation of court orders.

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12:09:04 1 But to hear Mr. Ogilvie state that there was  
2 no protective order in place is just outrageous to me.

3 They filed a motion to reconsider using the  
4 very documents that you ordered be produced under this  
12:09:19 5 protective order and attached them to that motion and  
6 publicly filed them. And now they're saying, gee, we  
7 didn't have -- we didn't have a protective order in  
8 place.

9 That is -- couldn't be further from the truth.  
12:09:33 10 It was in place. Those were the documents -- the  
11 documents they received within the -- from these  
12 transactions that they then created an error from, were  
13 the very documents that were the subject of a  
14 protective order.

12:09:46 15 There were two orders that you granted. One  
16 for documents that had been previously produced and one  
17 for documents that they were requesting as it relates  
18 to the transactions.

19 They then filed a motion to reconsider,  
12:09:58 20 utilized those very documents that they had received  
21 from the transaction that -- from which was born the  
22 right to purchase this land, and saying we need more.

23 You have heard nothing from the City as to why  
24 they did that.

12:10:13 25 What they were supposed to do was put us on

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12:10:16 1 notice that they were intending on filing it so that we  
2 could bring the issue before you so that you could make  
3 some determination. They didn't do that. They ignored  
4 it completely and decided themselves, well, gee, we  
12:10:28 5 found out that one of the parties is a -- is a publicly  
6 traded party on the Tel Aviv exchange and, therefore,  
7 nothing is confidential.

8 That -- that is inaccurate, your Honor.

9 That is -- and then they cite the documents  
12:10:44 10 from 2013, not even as some kind of proof that these  
11 certain information in those documents is public,  
12 documents that we had to produce, documents that they  
13 had in their possession from before.

14 So they switched documents when they attempted  
12:11:02 15 in a paragraph to defend their position never having  
16 addressed their breach of the order. They have  
17 breached it. You can look at the documents yourself.  
18 They are stamped -- those documents are stamped  
19 confidential. They are stamped pursuant to the order  
12:11:17 20 that this Court granted us.

21 So I am -- and the City simply doesn't care.  
22 They ignore the orders that they don't care for.

23 So I am asking -- they have 100 percent  
24 breached your order. They will continue to breach the  
12:11:34 25 order, as we know, based on their actions. And the

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12:11:37 1 only reason I brought up all their actions  
2 pre-litigation was, that was the basis that I begged  
3 for the protective order because we knew what the City  
4 is up to because they've been doing this to us for  
12:11:47 5 years.

6 So, again, I ask you to give some teeth to the  
7 protective order, to give some meaning to your orders  
8 and sanction the City for their continued violation and  
9 abuses.

12:12:01 10 And I ask for a minimum of a \$25,000 sanction.  
11 We have been before this Court so many times begging  
12 for a protective order that they never intended on  
13 abiding by. And they didn't. And I've spent -- we  
14 have spent -- this company has spent, the landowners  
12:12:18 15 have spent thousands of dollars in an attempt to get a  
16 protective order that was completely ignored by the  
17 City. So we ask for that.

18 We ask for an order that stops them from  
19 claiming that we paid nothing for the land or that it's  
12:12:35 20 valueless.

21 THE COURT: Ma'am, we're going well beyond --

22 MS. HAM: And we ask --

23 THE COURT: I mean, that would have to be  
24 thoroughly briefed and vetted. If I'm going to deal  
12:12:43 25 with Rule 37 sanctions like that, that's akin to some

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12:12:46 1 sort of case-terminating sanction for filing documents  
2 that potentially were in violation of a protective  
3 order.

4 I don't think that will -- would withstand  
12:12:58 5 scrutiny by our Nevada Supreme Court.

6 I'm looking at it from a real simple  
7 perspective. This is what I'm going to do. I'm going  
8 to take a look at the protective order. It's my  
9 understanding that was signed on or entered on February  
12:13:09 10 24th, 2021.

11 And the alleged exhibits that would be in  
12 violation of the protective order would be Exhibits A  
13 through Q that are attached to the motion for  
14 reconsideration; right?

12:13:23 15 MS. HAM: Yes.

16 THE COURT: Am I missing something?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Okay. All right. That's what I  
19 am going to do. But I want to just keep it realistic  
12:13:32 20 for anything like that. Number one, there would have  
21 to be evidentiary hearings. There would have to be  
22 significant behavior from either party as it pertains  
23 to litigation or maybe some spoliation issues  
24 pre-litigation. And -- and just because lawyers are  
12:13:53 25 aggressive in their prosecution and/or defense of their

12:13:55 1 case doesn't necessarily rise to the level of  
2 sanctionable conduct. So I'm going to take a look at  
3 that.

4 And, Mr. Ogilvie, any reason -- are you saying  
12:14:08 5 that you feel that it's not in violation of the order?  
6 I just want to understand what your position is.

7 MR. OGILVIE: Correct, your Honor. The  
8 documents were produced before any protective order  
9 was -- was put in place.

12:14:21 10 THE COURT: So you're saying they wouldn't be  
11 covered by the protective order? Is that it?

12 MR. OGILVIE: Correct.

13 THE COURT: Okay. I understand.

14 All right. Okay.

12:14:31 15 MS. HAM: He didn't provide that in the brief.  
16 And I'm just -- that's not even accurate. But you can  
17 see for yourself when looking at the exhibits they  
18 attached and the date of the protective order and when  
19 they were provided.

12:14:41 20 THE COURT: I understand. Okay.

21 Everyone, enjoy your day.

22 MR. OGILVIE: Thank you, your Honor.

23 MR. LEAVITT: Thank you very much for the  
24 time.

12:14:48 25 THE COURT: Okay.

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(Proceedings were concluded.)

\* \* \* \* \*

Peggy Isom, CCR 541, RMR



## REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO  
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE  
TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED  
MATTER AT THE TIME AND PLACE INDICATED, AND THAT  
THEREAFTER SAID STENOGRAPHY NOTES WERE TRANSCRIBED INTO  
TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION  
AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE  
AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE  
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF  
NEVADA.

\_\_\_\_\_  
PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR

<b>MR. LEAVITT:</b> [16] 4/10 14/2 43/24 49/25 50/5 50/11 64/19 77/2 77/5 91/18 97/19 98/16 101/17 103/3 112/17 120/23 <b>MR. OGILVIE:</b> [39] 4/17 4/25 5/14 5/20 38/9 39/6 39/15 39/18 47/8 48/11 58/18 62/21 69/10 69/12 72/22 75/3 75/6 76/5 76/25 79/25 80/6 84/6 93/4 95/10 95/17 97/16 101/15 102/4 103/8 107/15 112/21 113/12 114/15 114/21 115/15 115/18 120/7 120/12 120/22 <b>MR. SCHWARTZ:</b> [1] 4/19 <b>MS. HAM: [26]</b> 4/14 37/18 38/4 55/4 59/18 60/21 83/9 83/13 84/3 88/2 88/6 91/14 98/19 101/10 101/23 104/7 107/10 107/19 107/23 108/18 108/24 115/20 115/22 118/22 119/15 120/15 <b>THE COURT</b> <b>CLERK: [1]</b> 107/14 <b>THE COURT</b> <b>REPORTER: [5]</b> 5/4 60/14 60/19 72/18 108/15 <b>THE COURT: [72]</b> 4/5 4/21 5/2 5/5 5/16 13/25 37/17 38/3 38/7 39/1 39/8 39/17 43/23 44/2 48/5 49/24 50/2 50/6 55/2 58/14 60/16 62/3 64/18 69/9 69/11 72/24 75/5 75/9 76/23 77/1 77/4 79/23 80/1 81/19 83/12 84/2 84/5 87/24 88/5 91/8 91/15	93/2 95/8 95/16 97/12 97/18 98/14 98/18 101/7 101/25 102/6 107/8 107/12 107/17 107/22 108/17 108/22 112/19 113/11 113/13 114/20 115/13 115/17 115/21 118/21 118/23 119/16 119/18 120/10 120/13 120/20 120/25 <b>THE WITNESS: [1]</b> 119/17 <b>\$</b> <b>\$1,000 [1]</b> 45/24 <b>\$100 [2]</b> 45/24 65/17 <b>\$20,000 [1]</b> 54/16 <b>\$200,000 [2]</b> 26/16 52/19 <b>\$205,000 [2]</b> 26/9 27/7 <b>\$25,000 [3]</b> 111/2 111/5 118/10 <b>\$3 [1]</b> 42/20 <b>\$3 1/2 million [1]</b> 42/20 <b>\$35 [2]</b> 65/4 65/11 <b>\$35 million [1]</b> 65/11 <b>\$45 [5]</b> 10/4 11/8 11/18 48/16 84/11 <b>\$45 million [3]</b> 10/4 11/18 48/16 <b>\$500,000 [1]</b> 26/22 <b>\$630,000 [5]</b> 64/6 64/9 64/12 65/4 65/10 <b>\$7 [2]</b> 42/20 63/25 <b>\$7 1/2 million [2]</b> 42/20 63/25 <b>-</b> <b>--reduced [1]</b> 70/11 <b>1</b> <b>1,700 [2]</b> 104/14 105/5 <b>1,707 [1]</b> 106/14 <b>10 [1]</b> 2/2 <b>10 percent [2]</b> 64/1 64/2 <b>100 percent [5]</b>	52/25 57/8 59/19 59/21 117/23 <b>1000 [1]</b> 3/7 <b>11 [1]</b> 30/1 <b>11/6 [1]</b> 107/1 <b>11th [1]</b> 77/19 <b>12 [4]</b> 29/11 35/2 67/15 84/25 <b>12 percent [1]</b> 64/1 <b>120 [2]</b> 2/21 82/3 <b>1215 [1]</b> 2/20 <b>1221 [2]</b> 22/19 22/21 <b>13 [1]</b> 69/17 <b>133-acre [1]</b> 92/4 <b>15 [11]</b> 16/1 19/1 19/7 19/8 20/2 20/3 26/20 27/24 46/16 68/15 113/21 <b>15 million [1]</b> 59/4 <b>15th [2]</b> 15/23 77/7 <b>16 [3]</b> 2/2 9/17 29/11 <b>16.1 [3]</b> 15/17 15/18 27/13 <b>16th [1]</b> 74/21 <b>17 [9]</b> 29/14 48/24 85/7 85/10 93/9 93/15 93/21 93/24 104/10 <b>17 acres [1]</b> 113/7 <b>17-acre [5]</b> 28/20 42/9 42/13 92/4 113/6 <b>17th [6]</b> 9/14 40/6 95/12 95/15 95/21 102/4 <b>18 [2]</b> 29/16 48/24 <b>180 [3]</b> 1/9 4/12 101/12 <b>18th [5]</b> 40/6 96/9 96/16 96/18 102/4 <b>19 [4]</b> 29/18 71/1 71/1 77/12 <b>1964 [1]</b> 2/13 <b>1977 [2]</b> 24/7 66/20 <b>1990 [3]</b> 22/21 22/23 29/18 <b>19th [7]</b> 77/13 78/8 79/4 79/6 107/12 107/13 107/14 <b>1:30 [1]</b> 114/6 <b>1:30 p.m [2]</b> 77/14 79/6	<b>1st [1]</b> 16/10 <b>2</b> <b>2.34 [2]</b> 98/25 99/10 <b>2.5 [1]</b> 20/11 <b>20 [8]</b> 69/16 71/8 71/18 83/11 83/14 83/15 85/20 95/22 <b>20,000 [2]</b> 54/19 54/20 <b>20-10 [1]</b> 2/2 <b>20-year [8]</b> 9/25 10/9 10/20 10/21 11/7 11/22 40/9 59/2 <b>2001 [3]</b> 77/10 77/11 77/12 <b>2005 [5]</b> 10/18 10/24 11/13 48/19 56/2 <b>2006 [1]</b> 56/2 <b>2013 [1]</b> 117/10 <b>2015 [2]</b> 11/3 66/9 <b>2016 [1]</b> 26/5 <b>2017 [1]</b> 15/9 <b>2018 [2]</b> 15/14 25/21 <b>2019 [9]</b> 9/16 15/23 16/1 16/6 19/3 19/25 39/24 39/25 70/25 <b>2020 [14]</b> 9/17 16/10 16/16 18/24 18/25 19/17 20/1 20/4 29/11 35/2 67/15 102/4 107/1 107/25 <b>2021 [7]</b> 1/22 4/1 70/25 77/14 79/4 107/9 119/10 <b>21 [2]</b> 1/22 4/1 <b>21st [7]</b> 14/16 21/20 31/19 36/3 37/13 77/10 77/11 <b>2300 [1]</b> 3/6 <b>24th [2]</b> 46/22 119/10 <b>25 [1]</b> 103/19 <b>250 [7]</b> 83/25 84/10 85/7 86/13 93/11 94/25 113/9 <b>250 acres [6]</b> 28/21 63/21 63/25 64/3 95/6 113/2 <b>250-acre [4]</b> 10/3 11/3 85/11 95/2 <b>26th [2]</b> 14/14 14/15	<b>29th [3]</b> 107/9 107/11 107/13 <b>2nd [1]</b> 39/24 <b>3</b> <b>30th [1]</b> 77/18 <b>31st [1]</b> 69/23 <b>35 [3]</b> 64/2 64/5 64/10 <b>35 acres [5]</b> 63/20 63/22 95/1 95/1 95/4 <b>35-acre [17]</b> 19/20 25/23 26/5 26/7 29/17 29/22 29/24 30/13 30/17 32/24 42/18 81/13 91/25 92/3 92/10 94/22 98/8 <b>37 [4]</b> 111/13 113/17 113/22 118/25 <b>38,000 [1]</b> 89/11 <b>38,000-plus [1]</b> 90/9 <b>396 [1]</b> 3/16 <b>4</b> <b>4100 [1]</b> 3/9 <b>413 [1]</b> 106/17 <b>415 [2]</b> 3/18 3/19 <b>435 [1]</b> 113/6 <b>5</b> <b>541 [2]</b> 1/25 122/17 <b>552-5816 [1]</b> 3/19 <b>552-7272 [1]</b> 3/18 <b>56 [23]</b> 5/8 5/15 17/19 21/3 21/9 21/10 30/2 37/2 43/17 73/3 73/21 75/7 76/14 76/20 77/16 77/24 78/7 79/10 79/18 79/21 80/15 80/23 81/2 <b>5816 [1]</b> 3/19 <b>6</b> <b>65-acre [3]</b> 18/15 18/17 92/4 <b>6930 [1]</b> 2/23 <b>6938 [1]</b> 2/24 <b>7</b> <b>702 [6]</b> 2/12 2/13 2/23 2/24 3/9 3/10 <b>704 [1]</b> 2/10 <b>7272 [1]</b> 3/18
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(1) MR. LEAVITT: - 7272

<b>7</b>	<b>access [14]</b> 19/14 30/6 30/8 30/12 30/15 30/18 30/20 30/23 31/4 31/8 31/9 33/4 36/2 68/25	78/22 78/25 86/5 108/7 109/2 111/21 113/1 117/25 118/1 <b>actually [5]</b> 6/25 34/12 42/20 83/19 96/5	<b>adopting [2]</b> 22/19 22/20 <b>adopts [2]</b> 34/5 34/6 <b>advance [4]</b> 8/5 8/13 69/24 96/3 <b>advantage [3]</b> 69/15 70/14 70/19 <b>adverse [2]</b> 45/2 102/16 <b>advised [2]</b> 5/25 9/20 <b>aerial [1]</b> 31/6 <b>affect [1]</b> 69/5 <b>affidavit [13]</b> 8/24 9/5 9/8 32/18 39/3 44/23 54/1 54/4 62/23 62/24 63/2 78/21 78/24 <b>affidavits [4]</b> 32/19 32/23 33/2 33/3 <b>affirmations [1]</b> 83/5 <b>after [32]</b> 13/1 14/11 14/25 15/13 16/5 16/23 16/25 20/2 36/11 36/12 36/12 36/14 37/19 37/24 43/22 47/13 48/3 51/5 51/6 51/24 65/19 66/16 67/10 68/18 68/20 70/24 70/25 71/1 76/11 109/13 109/14 115/1 <b>afternoon [6]</b> 37/13 77/14 79/6 81/1 82/4 114/6 <b>afternoons [1]</b> 82/1 <b>again [46]</b> 5/5 11/13 15/7 20/3 21/14 23/10 23/10 25/3 34/19 37/1 38/10 38/10 38/10 39/23 39/23 39/23 41/25 43/15 47/9 49/1 54/14 63/5 63/16 63/20 68/14 71/20 72/4 72/4 72/15 73/18 80/21 81/3 93/19 94/8 95/5 98/4 100/6 101/2 103/15 104/7 106/8 106/10 112/23 112/23 112/23 118/6	<b>against [3]</b> 69/20 69/20 70/21 <b>aggressive [1]</b> 119/25 <b>ago [20]</b> 15/10 15/20 16/12 16/12 19/7 25/12 27/12 28/4 28/6 28/15 31/9 31/13 31/21 35/7 69/15 71/15 83/11 83/15 89/9 90/24 <b>agree [2]</b> 20/7 53/21 <b>agreed [1]</b> 10/8 <b>agreeing [1]</b> 41/22 <b>agreement [2]</b> 63/23 97/17 <b>ahead [2]</b> 4/8 115/17 <b>akin [1]</b> 118/25 <b>all [110]</b> 2/2 4/5 4/21 4/21 5/2 5/3 5/5 5/13 5/16 8/19 11/13 12/16 13/10 13/25 17/9 17/11 19/8 21/16 23/9 23/19 23/22 24/6 24/16 24/21 25/10 25/24 26/1 31/5 33/7 33/21 36/4 37/17 39/17 44/9 44/15 46/22 46/22 47/10 47/10 48/8 49/20 49/24 50/5 52/4 52/6 52/9 54/6 56/3 56/18 57/25 58/15 60/2 61/3 61/23 61/25 64/18 67/6 67/7 69/9 69/17 71/7 71/10 71/11 71/20 71/21 71/24 72/6 74/13 74/20 75/17 77/20 78/2 78/8 81/20 82/8 83/6 84/2 90/22 91/4 91/15 91/24 92/15 93/12 93/14 97/17 99/5 100/6 100/21 100/23 102/15 103/22 105/1 105/16 106/7 106/19 108/2 108/4 108/13 109/2 110/8 110/16 110/18 111/17 114/8 115/13 115/23
<b>731-1964 [1]</b> 2/13 <b>733-8877 [1]</b> 2/12 <b>75-acre [1]</b> 42/10	<b>accordingly [1]</b> 103/20 <b>accurate [3]</b> 115/11 120/16 122/11 <b>acquisition [2]</b> 22/13 23/1 <b>acre [31]</b> 10/3 11/3 18/15 18/17 19/20 25/23 26/5 26/7 28/20 29/17 29/22 29/24 30/13 30/17 32/24 42/9 42/10 42/13 42/18 81/13 85/11 91/25 92/3 92/4 92/4 92/4 92/10 94/22 95/2 98/8 113/6 <b>acres [22]</b> 28/21 63/20 63/21 63/22 63/25 64/3 64/3 64/5 64/10 83/25 84/11 85/7 86/13 93/11 94/25 95/1 95/1 95/4 95/6 113/2 113/7 113/9 <b>action [46]</b> 6/1 6/2 6/4 7/25 8/2 8/24 12/13 12/16 12/21 13/7 13/8 13/10 13/22 22/15 22/18 22/20 22/22 23/5 24/15 41/7 41/8 42/2 42/17 42/18 43/7 43/19 47/10 47/15 47/21 47/22 48/1 48/4 63/12 66/4 66/7 66/10 66/13 67/4 67/20 72/2 72/7 72/9 72/12 79/12 80/15 80/22 <b>actions [37]</b> 17/5 22/2 23/6 23/12 23/14 23/18 24/4 24/9 24/18 24/19 25/5 25/11 25/11 25/13 25/14 26/15 32/23 34/1 35/11 36/4 41/2 51/18 52/3 52/7 52/8 78/14 78/15 78/17	<b>ad [1]</b> 34/21 <b>add [6]</b> 58/15 80/3 87/25 91/6 112/14 112/16 <b>addition [3]</b> 20/15 28/24 31/2 <b>additional [8]</b> 10/25 11/2 11/22 27/24 28/5 59/14 84/8 87/1 <b>Additionally [3]</b> 9/11 41/9 49/15 <b>address [26]</b> 15/4 21/6 21/17 21/22 26/3 37/24 38/2 43/25 50/16 50/17 54/25 62/22 88/2 90/2 90/4 98/17 98/20 99/19 100/5 101/5 101/9 103/25 106/1 112/22 114/17 114/19 <b>addressed [15]</b> 20/8 20/9 21/25 45/8 64/24 69/13 92/2 95/8 97/21 98/2 98/8 98/11 100/1 105/9 117/16 <b>addresses [2]</b> 21/11 66/6 <b>addressing [3]</b> 15/6 89/7 94/19 <b>adequately [1]</b> 38/15 <b>adhere [1]</b> 109/10 <b>adjacent [1]</b> 42/9 <b>adjudicate [2]</b> 92/1 92/3 <b>adjudicated [2]</b> 12/2 12/16 <b>adjudicating [1]</b> 92/4 <b>adjudication [11]</b> 5/23 6/4 7/23 8/20 12/1 12/6 12/19 13/9 13/23 36/24 41/19 <b>administrative [4]</b> 2/2 21/12 23/24 69/16 <b>admit [1]</b> 65/10 <b>admits [1]</b> 12/18	<b>adopting [2]</b> 22/19 22/20 <b>adopts [2]</b> 34/5 34/6 <b>advance [4]</b> 8/5 8/13 69/24 96/3 <b>advantage [3]</b> 69/15 70/14 70/19 <b>adverse [2]</b> 45/2 102/16 <b>advised [2]</b> 5/25 9/20 <b>aerial [1]</b> 31/6 <b>affect [1]</b> 69/5 <b>affidavit [13]</b> 8/24 9/5 9/8 32/18 39/3 44/23 54/1 54/4 62/23 62/24 63/2 78/21 78/24 <b>affidavits [4]</b> 32/19 32/23 33/2 33/3 <b>affirmations [1]</b> 83/5 <b>after [32]</b> 13/1 14/11 14/25 15/13 16/5 16/23 16/25 20/2 36/11 36/12 36/12 36/14 37/19 37/24 43/22 47/13 48/3 51/5 51/6 51/24 65/19 66/16 67/10 68/18 68/20 70/24 70/25 71/1 76/11 109/13 109/14 115/1 <b>afternoon [6]</b> 37/13 77/14 79/6 81/1 82/4 114/6 <b>afternoons [1]</b> 82/1 <b>again [46]</b> 5/5 11/13 15/7 20/3 21/14 23/10 23/10 25/3 34/19 37/1 38/10 38/10 38/10 39/23 39/23 39/23 41/25 43/15 47/9 49/1 54/14 63/5 63/16 63/20 68/14 71/20 72/4 72/4 72/15 73/18 80/21 81/3 93/19 94/8 95/5 98/4 100/6 101/2 103/15 104/7 106/8 106/10 112/23 112/23 112/23 118/6	<b>against [3]</b> 69/20 69/20 70/21 <b>aggressive [1]</b> 119/25 <b>ago [20]</b> 15/10 15/20 16/12 16/12 19/7 25/12 27/12 28/4 28/6 28/15 31/9 31/13 31/21 35/7 69/15 71/15 83/11 83/15 89/9 90/24 <b>agree [2]</b> 20/7 53/21 <b>agreed [1]</b> 10/8 <b>agreeing [1]</b> 41/22 <b>agreement [2]</b> 63/23 97/17 <b>ahead [2]</b> 4/8 115/17 <b>akin [1]</b> 118/25 <b>all [110]</b> 2/2 4/5 4/21 4/21 5/2 5/3 5/5 5/13 5/16 8/19 11/13 12/16 13/10 13/25 17/9 17/11 19/8 21/16 23/9 23/19 23/22 24/6 24/16 24/21 25/10 25/24 26/1 31/5 33/7 33/21 36/4 37/17 39/17 44/9 44/15 46/22 46/22 47/10 47/10 48/8 49/20 49/24 50/5 52/4 52/6 52/9 54/6 56/3 56/18 57/25 58/15 60/2 61/3 61/23 61/25 64/18 67/6 67/7 69/9 69/17 71/7 71/10 71/11 71/20 71/21 71/24 72/6 74/13 74/20 75/17 77/20 78/2 78/8 81/20 82/8 83/6 84/2 90/22 91/4 91/15 91/24 92/15 93/12 93/14 97/17 99/5 100/6 100/21 100/23 102/15 103/22 105/1 105/16 106/7 106/19 108/2 108/4 108/13 109/2 110/8 110/16 110/18 111/17 114/8 115/13 115/23
<b>8</b>	<b>873-4100 [1]</b> 3/9 <b>873-9966 [1]</b> 3/10 <b>8877 [1]</b> 2/12 <b>89101 [1]</b> 2/11 <b>89102 [1]</b> 3/8 <b>89117 [1]</b> 2/22			
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<b>:SS [1]</b> 122/2				
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(5) can... - condemnation

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(6) condition - depose

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(7) depose... - don't



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(12) involved - landowner

<b>L</b>	<b>lawsuit [1]</b> 109/4 <b>lawyer [1]</b> 88/21 <b>lawyers [1]</b> 119/24 <b>least [5]</b> 29/18 77/21 78/10 82/22 114/11 <b>leave [1]</b> 13/21 <b>LEAVITT [27]</b> 2/8 4/11 14/3 36/8 39/7 39/20 40/11 41/12 41/13 47/7 50/10 55/17 56/7 57/1 61/17 64/18 72/10 80/1 81/8 81/11 88/7 90/3 91/5 91/17 94/20 95/21 112/15 <b>Leavitt's [2]</b> 62/22 81/7 <b>led [1]</b> 61/5 <b>left [1]</b> 60/22 <b>legal [4]</b> 30/18 31/4 31/7 63/10 <b>legally [2]</b> 29/21 67/18 <b>lender [2]</b> 22/12 100/23 <b>lenders [7]</b> 33/11 33/13 85/13 85/14 94/4 94/6 94/7 <b>length [1]</b> 39/20 <b>less [1]</b> 24/1 <b>let [22]</b> 20/6 21/22 21/22 25/17 25/17 26/3 28/7 34/21 44/18 52/18 52/20 54/24 59/15 62/18 66/17 78/9 93/12 100/15 108/24 108/25 114/19 114/19 <b>let's [8]</b> 4/8 26/16 65/5 70/25 78/7 78/8 78/9 79/20 <b>level [2]</b> 45/9 120/1 <b>liability [47]</b> 12/13 12/17 13/11 16/7 16/8 16/10 16/13 16/14 16/22 18/6 18/7 18/23 19/4 19/6 19/7 19/24 20/1 20/4 21/21 21/21 27/4 27/5 27/19 27/20 28/1 28/10 29/3 30/24 32/8 32/11 41/25 42/24 44/17 54/8	54/15 57/5 57/6 64/21 65/1 67/19 68/11 69/7 73/12 78/24 87/9 87/10 111/21 <b>light [1]</b> 70/10 <b>like [15]</b> 38/2 39/14 50/9 71/15 77/6 81/20 91/9 94/3 97/5 99/12 102/7 107/21 112/16 118/25 119/20 <b>likewise [2]</b> 89/17 101/24 <b>limited [2]</b> 9/22 114/11 <b>line [2]</b> 46/4 46/16 <b>list [2]</b> 32/19 99/16 <b>listed [5]</b> 5/7 99/18 106/13 106/15 115/7 <b>listening [5]</b> 39/11 73/1 73/13 73/24 80/2 <b>listing [1]</b> 106/23 <b>lists [1]</b> 29/19 <b>litigation [8]</b> 26/13 86/24 99/22 113/23 113/24 118/2 119/23 119/24 <b>little [6]</b> 39/12 57/21 58/6 72/19 81/6 83/13 <b>LLC [2]</b> 1/9 2/18 <b>LLP [2]</b> 3/4 3/14 <b>local [1]</b> 103/12 <b>locate [2]</b> 104/7 106/10 <b>located [1]</b> 88/17 <b>log [2]</b> 100/8 106/25 <b>logs [1]</b> 105/3 <b>long [4]</b> 18/13 37/11 89/16 110/24 <b>look [30]</b> 22/16 22/24 22/25 23/1 24/17 24/18 31/6 36/4 37/4 37/13 37/14 45/23 51/6 51/23 52/7 62/18 66/16 68/6 68/8 68/9 78/18 81/21 83/5 100/2 100/8 102/20 113/18 117/17 119/8 120/2 <b>looked [1]</b> 22/18 <b>looking [16]</b> 5/7	36/8 44/12 44/21 45/5 46/1 46/13 46/16 101/8 101/18 102/19 102/23 107/10 113/25 119/6 120/17 <b>looks [1]</b> 23/16 <b>lose [1]</b> 79/16 <b>loss [2]</b> 45/14 52/4 <b>lot [10]</b> 44/13 54/13 59/13 83/16 93/9 93/13 93/18 95/13 95/14 111/16 <b>loud [1]</b> 38/5 <b>Lowie [23]</b> 9/23 10/12 11/16 12/2 32/17 36/9 38/25 39/19 40/8 43/11 49/4 62/9 63/5 64/20 65/4 65/9 68/1 68/10 70/23 78/18 85/1 85/1 93/25 <b>Lowie's [8]</b> 10/14 40/4 64/10 65/1 71/3 71/12 71/22 95/24 <b>luxury [1]</b> 113/6	<b>many [12]</b> 17/14 44/5 49/16 85/2 85/3 86/4 88/13 88/22 89/9 105/21 110/25 118/11 <b>March [2]</b> 19/17 69/23 <b>material [1]</b> 9/4 <b>materials [2]</b> 86/17 111/15 <b>matter [14]</b> 4/23 14/21 36/23 47/17 47/18 55/7 72/25 74/7 91/13 97/15 109/20 115/15 115/18 122/7 <b>matters [8]</b> 2/2 5/6 15/5 57/2 93/18 95/14 95/14 99/25 <b>may [36]</b> 14/16 15/23 16/1 21/20 22/9 22/10 22/11 22/12 24/22 24/22 24/23 24/23 24/24 24/25 31/18 36/3 37/13 43/25 49/25 77/2 77/10 77/12 77/13 77/18 78/8 79/4 79/6 80/12 88/7 92/8 95/3 97/19 107/22 107/23 108/11 115/20 <b>May 19 [1]</b> 77/12 <b>maybe [7]</b> 37/25 64/1 82/3 86/18 86/18 104/11 119/23 <b>MBA [1]</b> 36/1 <b>MCDONALD [1]</b> 3/4 <b>MCDONALDCARAN</b> <b>O.COM [1]</b> 3/11 <b>MDA [1]</b> 33/1 <b>me [39]</b> 9/21 20/6 21/22 21/22 25/17 25/17 26/3 28/7 34/21 37/24 39/6 44/18 54/18 62/18 65/21 65/23 66/11 66/17 72/24 74/21 74/25 76/1 82/15 90/2 90/24 93/12 97/2 98/21 100/18 101/6 107/21 108/24 108/25 111/1 114/11 114/19 114/19
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(13) landowner... - me

<b>M</b>	<b>mitigate [1]</b> 82/8	38/22 39/4 40/15	81/8 81/11 88/7	87/24 98/16 112/17
<b>me... [2]</b> 115/23	<b>moment [6]</b> 19/15	40/22 43/17 43/18	90/3 91/5 91/17	<b>Ms. Reporter [1]</b>
116/2	63/9 100/5 100/15	43/22 44/15 44/16	94/20 95/21 112/15	60/18
<b>mean [15]</b> 18/12	100/18 106/10	44/24 45/7 46/18	<b>Mr. Leavitt's [2]</b>	<b>much [5]</b> 52/14
18/15 35/13 39/8	<b>Monday [4]</b> 14/13	48/13 58/7 61/22	62/22 81/7	52/21 74/22 82/23
45/3 60/9 60/10	14/15 14/23 31/19	63/1 63/3 69/2 73/4	<b>Mr. Lowie [17]</b>	120/23
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75/25 93/9 97/22	110/23	76/14 76/20 77/16	32/17 36/9 38/25	29/20 29/24 67/17
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118/7	<b>month [13]</b> 10/15	80/18 80/23 81/3	68/1 68/10 70/23	<b>must [7]</b> 29/15
<b>means [5]</b> 15/10	14/16 14/24 16/23	81/10 81/25 82/24	93/25	34/23 88/15 88/20
18/5 19/11 31/16	16/24 36/18 39/25	83/4 84/17 86/15	<b>Mr. Lowie's [7]</b>	90/1 99/1 103/21
90/6	43/12 54/19 54/21	88/9 88/11 88/25	10/14 40/4 64/10	<b>my [60]</b> 4/5 8/22
<b>meant [1]</b> 102/12	71/7 71/15 71/16	91/20 95/11 95/12	71/3 71/12 71/22	9/11 12/9 13/6
<b>meantime [1]</b>	<b>months [17]</b> 6/12	95/19 96/16 97/2	95/24	18/22 19/23 40/14
105/24	7/1 9/17 16/5 16/12	97/4 97/23 99/19	<b>Mr. Ogilvie [36]</b>	44/22 47/2 48/5
<b>medical [1]</b> 45/13	19/1 19/7 19/8 20/2	101/3 102/3 103/11	5/18 14/20 14/23	51/21 56/6 56/6
<b>meet [1]</b> 24/19	20/3 26/20 27/15	103/19 105/18	20/7 35/18 38/8	59/5 59/16 60/23
<b>meets [1]</b> 68/1	27/24 35/7 68/15	108/1 109/15 116/3	47/6 51/2 55/13	61/13 61/20 62/14
<b>members [2]</b>	71/1 71/1	116/5 116/19	56/20 58/17 59/23	62/19 68/4 69/7
108/11 108/14	<b>moot [1]</b> 86/19	119/13	60/11 61/15 62/10	73/1 73/15 74/1
<b>membership [1]</b>	<b>more [49]</b> 12/12	<b>motions [12]</b> 8/20	64/24 66/2 66/14	74/6 74/17 74/19
83/21	17/13 17/15 17/16	12/24 13/2 13/16	67/25 72/19 74/9	75/1 75/12 75/16
<b>mention [1]</b> 61/7	21/6 29/2 30/16	15/25 18/9 43/4	75/12 79/14 80/4	75/21 79/2 79/20
<b>merely [2]</b> 34/19	30/25 31/23 32/1	89/3 89/6 89/7	84/5 88/13 93/3	81/25 82/1 82/7
64/6	36/21 38/5 57/13	99/15 110/25	97/3 98/1 101/17	83/22 85/3 89/8
<b>met [3]</b> 88/9 92/18	57/18 57/22 58/5	<b>move [6]</b> 18/14	103/5 112/20	91/12 93/14 93/14
101/3	58/11 60/9 60/10	28/2 32/7 35/8	113/11 113/13	95/18 98/2 100/9
<b>might [2]</b> 45/14	61/12 61/21 61/24	58/16 79/20	116/1 120/4	100/17 101/16
53/1	62/7 64/2 82/9 85/9	<b>moved [1]</b> 7/21	<b>Mr. Ogilvie's [3]</b>	102/8 102/21
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<b>million [12]</b> 10/4	89/10 89/22 89/23	46/6 51/13 70/5	<b>Mr. Peccole [1]</b>	114/1 115/23 119/8
11/8 11/18 42/20	89/23 90/1 90/4	74/20 90/13	24/25	122/9 122/11
42/20 48/16 59/4	90/21 90/21 91/2	<b>Mr [3]</b> 50/24 72/18	<b>Mr. Richards [7]</b>	122/14 122/14
63/25 65/4 65/11	93/6 93/9 93/15	103/16	33/19 38/20 39/2	<b>myself [1]</b> 56/3
65/17 84/11	93/21 93/24 94/22	<b>Mr. [129]</b>	39/15 43/14 44/1	
<b>mind [10]</b> 19/2	98/22 99/1 99/2	<b>Mr. Borgel [20]</b>	53/5	<b>N</b>
44/22 46/2 59/16	99/7 116/22	86/3 86/9 86/11	<b>Mr. Richards' [6]</b>	<b>NAME [1]</b> 122/14
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<b>minimum [4]</b>	<b>most [2]</b> 6/18 86/6	102/23 103/5 103/6	22/25	<b>nearly [2]</b> 14/16
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118/10	5/8 5/9 5/15 5/22	103/22 104/4 104/5	78/18	<b>necessarily [2]</b>
<b>minute [13]</b> 15/16	5/25 6/1 6/3 6/3 6/6	104/6 104/12	<b>Mrs. [1]</b> 68/20	81/17 120/1
33/10 45/8 53/18	6/8 6/9 7/23 8/4	<b>Mr. Dunaway [1]</b>	<b>Mrs. Ghanem [1]</b>	<b>necessary [10]</b>
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105/8 106/1 107/3	9/10 9/13 9/13 9/18	<b>Mr. Kaempfer [2]</b>	<b>Ms. [11]</b> 48/14	47/4 50/13 53/7
107/5 107/8 107/16	12/5 12/11 13/14	38/25 84/22	50/10 50/17 54/24	62/24 70/8 78/18
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100/25	16/2 17/19 18/4	39/19	87/24 93/25 98/16	<b>need [25]</b> 7/18
<b>misrepresent [1]</b>	18/16 18/17 18/21	<b>Mr. Leavitt [24]</b>	112/17	14/7 15/17 15/18
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<b>N</b>	<b>nonetheless [3]</b> 8/16 11/11 11/25 <b>nonregulatory [2]</b> 24/5 51/20 <b>Nor [1]</b> 57/13 <b>normally [2]</b> 73/3 73/19 <b>nose [3]</b> 109/23 109/25 110/1 <b>not [153]</b> <b>note [1]</b> 18/8 <b>noted [1]</b> 5/3 <b>notes [2]</b> 62/19 122/8 <b>nothing [38]</b> 13/6 19/21 32/13 32/15 33/13 33/13 33/14 35/20 43/5 50/24 56/24 57/3 57/4 57/12 57/22 57/24 58/11 61/21 68/2 68/3 83/6 83/16 84/1 88/8 88/25 89/1 89/19 90/21 91/2 99/4 100/11 101/3 105/15 106/5 112/14 116/23 117/7 118/19 <b>notice [8]</b> 16/19 16/22 17/1 17/3 27/22 46/5 71/2 117/1 <b>noticed [1]</b> 70/23 <b>notify [1]</b> 109/19 <b>notwithstanding</b> <b>[3]</b> 47/24 48/15 85/18 <b>November [16]</b> 9/14 9/17 40/6 40/6 48/24 49/22 58/19 59/17 95/12 95/15 95/20 96/9 96/16 96/18 102/4 105/17 <b>now [60]</b> 7/22 13/9 15/23 19/1 20/2 20/5 20/6 20/25 25/17 27/24 28/7 31/10 31/21 32/6 32/6 33/17 35/8 35/13 37/8 37/19 37/24 38/4 39/20 43/2 46/5 46/25 48/18 48/21 48/22 49/6 49/7 51/2 57/10 57/21 58/6 59/16 60/4 60/25 61/14 61/17 62/2 64/21 66/2 67/19	68/12 69/4 69/6 69/18 70/9 70/20 72/7 73/21 76/17 82/8 87/16 94/25 107/25 111/24 112/12 116/6 <b>nowhere [3]</b> 51/10 51/11 65/25 <b>number [7]</b> 44/7 47/3 50/11 68/19 69/8 106/18 119/20 <b>numbers [4]</b> 44/18 45/18 106/15 106/15 <b>NV [4]</b> 1/25 2/11 2/22 3/8	<b>O</b> <b>object [6]</b> 6/23 19/4 19/5 19/6 20/4 27/18 <b>objected [1]</b> 28/18 <b>objecting [1]</b> 20/5 <b>objection [3]</b> 7/4 7/9 40/18 <b>objections [2]</b> 106/4 106/4 <b>obtain [1]</b> 17/11 <b>obtained [2]</b> 25/10 91/24 <b>obvious [1]</b> 18/19 <b>obviously [2]</b> 75/6 81/3 <b>occasions [1]</b> 6/13 <b>occur [2]</b> 14/11 14/24 <b>occurred [2]</b> 14/9 30/9 <b>occurring [2]</b> 54/22 77/6 <b>occurs [1]</b> 15/8 <b>October [6]</b> 29/11 35/2 46/6 67/15 74/18 82/20 <b>off [9]</b> 7/15 7/24 39/1 40/23 44/10 60/22 101/15 108/19 113/14 <b>offering [1]</b> 87/8 <b>office [5]</b> 4/12 82/11 88/18 93/15 122/14 <b>offices [1]</b> 88/18 <b>OGILVIE [41]</b> 3/5 4/18 5/1 5/15 5/18 14/20 14/23 20/7 35/18 38/8 47/6 51/2 55/13 56/20 58/17 59/23 60/11	61/15 62/10 64/24 66/2 66/14 67/25 72/18 72/19 74/9 75/12 79/14 80/4 84/5 88/13 93/3 97/3 98/1 101/17 103/5 112/20 113/11 113/13 116/1 120/4 <b>Ogilvie's [3]</b> 61/10 89/24 98/20 <b>okay [33]</b> 5/18 16/11 23/16 28/13 38/3 38/7 38/8 39/8 39/17 43/23 55/2 58/14 66/17 74/12 74/25 75/5 76/25 79/23 81/19 87/24 91/15 97/12 97/18 98/18 107/17 107/23 108/24 112/19 119/18 120/13 120/14 120/20 120/25 <b>on [209]</b> <b>once [11]</b> 5/5 6/6 27/4 27/5 36/3 54/14 57/14 61/22 67/5 67/7 83/3 <b>one [56]</b> 9/23 10/23 12/12 15/13 16/23 16/24 22/18 26/3 28/11 31/16 33/14 36/9 41/9 44/3 44/7 46/20 47/3 49/3 49/12 49/18 51/22 54/15 55/14 57/13 57/18 58/21 62/8 62/19 63/8 63/22 68/19 69/15 72/9 74/6 74/14 81/5 81/7 82/6 85/25 86/6 90/2 90/4 91/22 96/20 98/2 98/3 100/18 101/25 104/20 106/20 107/17 108/10 116/15 116/16 117/5 119/20 <b>ones [1]</b> 106/18 <b>ongoing [4]</b> 15/10 31/15 85/19 99/22 <b>only [41]</b> 11/12 12/25 16/23 20/19 24/14 25/5 27/20 38/20 38/21 40/25 42/6 43/12 47/25	47/25 48/18 49/10 52/12 54/2 55/14 58/18 59/7 59/12 61/20 65/4 65/10 66/4 66/6 67/19 72/2 78/15 84/16 85/5 85/6 90/10 92/14 95/4 110/12 110/13 110/15 110/23 118/1 <b>onto [2]</b> 34/13 34/16 <b>open [2]</b> 57/16 75/13 <b>opening [1]</b> 40/14 <b>opinion [4]</b> 17/4 17/5 28/16 98/13 <b>opportunity [22]</b> 7/17 9/1 10/12 15/19 17/9 17/11 17/12 19/17 37/10 37/14 40/19 53/22 62/9 63/5 68/16 68/17 73/6 73/19 78/10 80/19 88/7 101/1 <b>opposing [1]</b> 111/14 <b>opposition [17]</b> 18/18 73/4 74/10 75/4 75/7 76/22 77/17 77/25 80/18 80/25 104/9 104/9 106/1 106/12 106/23 106/25 110/14 <b>or [138]</b> <b>order [93]</b> 2/2 5/8 6/17 15/24 16/1 18/12 19/25 35/2 37/22 45/8 46/22 48/1 55/20 55/21 55/22 57/15 59/9 60/24 61/1 64/7 64/17 67/15 69/16 76/1 76/17 76/21 77/8 77/8 79/3 79/13 80/8 81/14 81/18 81/18 90/12 90/14 90/16 96/20 96/24 102/21 105/8 105/8 106/1 107/4 107/5 107/8 107/16 107/20 107/24 108/2 108/5 108/6 109/2 109/13 109/13 109/18 109/24 109/24
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<b>O</b>	90/19 91/23 92/14 98/9 98/13 99/25 100/2 101/6 101/18 103/3 103/19 104/9 104/21 105/9 105/11 106/12 106/23 108/8 108/10 109/7 110/14 111/12 112/6 119/5 <b>out [28]</b> 16/20 19/19 27/1 30/7 31/19 31/24 32/2 38/5 44/6 49/1 60/14 60/19 65/20 72/19 74/13 75/1 75/10 82/15 91/23 101/4 102/13 102/19 106/13 106/23 108/16 108/16 108/20 117/5 <b>outlined [1]</b> 58/1 <b>outraged [1]</b> 110/19 <b>outrageous [3]</b> 65/25 108/7 116/2 <b>outset [1]</b> 112/24 <b>outside [1]</b> 92/22 <b>outstanding [1]</b> 20/7 <b>over [22]</b> 9/14 16/12 18/15 19/9 28/15 30/9 32/3 32/15 55/21 65/11 85/2 89/11 90/3 91/5 96/7 100/6 104/10 104/14 107/25 111/2 111/2 113/9 <b>overlook [2]</b> 80/4 80/5 <b>overlooking [1]</b> 46/11 <b>own [3]</b> 110/15 110/15 110/15 <b>owner [1]</b> 113/1 <b>owners [1]</b> 106/17 <b>ownership [3]</b> 66/22 112/6 112/25	89/11 104/14 105/6 <b>paid [18]</b> 10/3 11/3 11/18 22/25 24/24 26/22 57/1 57/10 57/21 59/22 61/8 64/5 64/9 65/4 65/10 84/10 113/8 118/19 <b>pain [1]</b> 45/14 <b>pandemic [3]</b> 70/1 70/4 70/20 <b>paragraph [1]</b> 117/15 <b>paragraphs [1]</b> 18/11 <b>paraphrasing [1]</b> 97/8 <b>parcel [6]</b> 42/9 42/10 42/13 42/15 42/18 95/2 <b>parcels [1]</b> 63/22 <b>part [8]</b> 9/8 26/23 30/8 38/5 40/1 83/1 91/12 97/23 <b>partial [3]</b> 13/19 44/25 71/18 <b>particular [6]</b> 37/20 63/20 85/4 93/16 100/18 101/5 <b>particularity [1]</b> 97/14 <b>parties [5]</b> 7/16 35/14 62/5 77/7 117/5 <b>partly [1]</b> 27/3 <b>partners [3]</b> 25/1 85/4 93/14 <b>party [9]</b> 7/13 20/11 44/7 45/2 53/22 102/16 111/13 117/6 119/22 <b>party's [4]</b> 7/16 44/4 70/6 97/6 <b>pass [1]</b> 47/7 <b>past [2]</b> 19/1 32/15 <b>patient [1]</b> 35/17 <b>pay [10]</b> 25/25 26/1 26/15 30/25 52/19 54/20 56/12 65/7 65/13 65/18 <b>paying [1]</b> 65/21 <b>PD7 [6]</b> 28/20 28/22 28/23 29/17 29/21 29/23 <b>Peccole [12]</b> 10/22 24/25 33/11 46/24 48/10 49/5 50/20	50/22 50/24 52/24 61/3 85/17 <b>Peccoles [9]</b> 10/2 10/11 10/19 33/14 40/10 63/24 85/21 87/19 94/16 <b>PEGGY [3]</b> 1/25 122/4 122/17 <b>pejorative [1]</b> 7/6 <b>pending [2]</b> 20/17 25/1 <b>Penn [15]</b> 12/19 12/20 12/23 12/25 20/23 21/4 21/6 21/10 21/15 21/18 40/12 40/13 41/7 53/2 94/12 <b>penny [1]</b> 65/21 <b>people [3]</b> 23/2 34/15 70/13 <b>per [10]</b> 21/24 22/1 22/5 23/8 23/11 23/13 23/17 52/1 52/2 52/15 <b>per se [10]</b> 21/24 22/1 22/5 23/8 23/11 23/13 23/17 52/1 52/2 52/15 <b>percent [8]</b> 52/25 57/8 59/19 59/21 64/1 64/1 64/2 117/23 <b>perhaps [3]</b> 37/19 47/10 103/5 <b>period [2]</b> 10/21 32/4 <b>permissible [2]</b> 29/21 67/18 <b>permit [1]</b> 44/7 <b>permitted [2]</b> 29/23 81/17 <b>perpetuate [1]</b> 36/21 <b>personal [1]</b> 89/25 <b>perspective [9]</b> 14/8 26/17 44/22 46/1 50/8 74/9 81/24 113/25 119/7 <b>pertained [1]</b> 45/7 <b>pertaining [1]</b> 102/10 <b>pertains [12]</b> 5/10 47/4 50/8 73/7 73/11 73/20 91/24 102/10 103/1 103/2 113/16 119/22 <b>pertinent [1]</b> 20/8 <b>petition [1]</b> 18/12	<b>phase [2]</b> 15/4 68/13 <b>photo [1]</b> 31/6 <b>photos [3]</b> 33/19 33/21 34/20 <b>physical [10]</b> 33/24 34/9 34/11 38/23 47/11 53/11 53/12 54/3 72/5 72/14 <b>pictures [6]</b> 33/18 34/12 53/14 53/14 53/16 54/4 <b>piece [2]</b> 65/4 65/18 <b>place [7]</b> 56/2 105/16 116/2 116/8 116/10 120/9 122/7 <b>places [2]</b> 11/9 48/17 <b>plaintiff [9]</b> 1/10 2/5 4/11 4/12 4/15 14/1 14/4 35/4 45/12 <b>plans [3]</b> 85/15 87/7 94/9 <b>play [1]</b> 53/1 <b>played [2]</b> 110/12 112/6 <b>plays [1]</b> 89/2 <b>pleading [1]</b> 19/18 <b>please [3]</b> 4/25 5/1 92/15 <b>plenty [1]</b> 79/19 <b>plus [1]</b> 90/9 <b>pocket [1]</b> 27/1 <b>point [30]</b> 8/16 8/22 9/11 11/11 11/25 12/9 12/24 13/6 18/22 36/6 36/7 38/2 39/22 41/18 42/5 44/6 45/9 51/21 68/4 70/9 71/23 78/9 78/13 78/16 79/2 81/8 81/21 91/21 97/9 103/24 <b>pointed [1]</b> 102/13 <b>points [3]</b> 75/17 82/2 113/20 <b>portion [2]</b> 30/17 58/20 <b>portions [1]</b> 92/9 <b>posing [1]</b> 39/6 <b>position [24]</b> 7/8 40/3 43/12 59/22 60/3 60/23 61/2 61/13 61/20 63/20
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<b>possession [3]</b> 105/11 106/20 117/13	<b>pretend [4]</b> 60/7 68/25 69/1 99/12	<b>produced [48]</b> 9/16 9/16 10/16 10/17 11/17 17/17 43/13 48/8 48/18 49/21 50/15 54/25 56/17 56/17 57/7 58/21 60/25 71/9 71/11 71/12 71/21 71/21 83/4 87/5 89/10 90/8 90/8 92/12 92/21 94/25 99/24 100/3 100/7 100/21 101/2 105/10 106/2 106/14 106/18 106/25 107/6 114/13 114/21 114/25 115/1 116/4 116/16 120/8	<b>proprietary [1]</b> 96/22	<b>purported [2]</b> 10/20 47/13
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<b>potential [4]</b> 47/4 86/3 86/13 114/2	<b>previous [2]</b> 8/10 106/17	<b>principally [1]</b> 6/11	<b>protect [1]</b> 57/15	<b>purposes [3]</b> 7/6 13/11 44/16
<b>potentially [2]</b> 46/8 119/2	<b>previously [5]</b> 71/5 92/18 92/19 106/8 116/16	<b>principals [10]</b> 9/23 61/4 84/24 85/6 85/11 88/17 93/7 93/10 96/12 108/9	<b>protected [2]</b> 87/5 89/16	<b>pursuant [4]</b> 2/2 10/15 83/4 117/19
<b>practical [1]</b> 44/16	<b>price [3]</b> 63/25 111/20 113/8	<b>principal [1]</b> 93/20	<b>protective [44]</b> 10/16 37/21 55/20 55/20 57/14 60/24 61/1 90/12 90/13 90/15 96/20 96/24 107/20 107/24 108/1 108/5 108/6 109/2 109/5 109/12 109/13 109/24 110/20 110/25 111/3 112/11 114/22 114/23 115/1 115/19 116/2 116/5 116/7 116/14 118/3 118/7 118/12 118/16 119/2 119/8 119/12 120/8 120/11 120/18	<b>put [8]</b> 14/7 23/13 24/11 26/16 46/5 78/8 116/25 120/9
<b>pre [4]</b> 113/23 113/24 118/2 119/24	<b>principally [1]</b> 6/11	<b>produces [2]</b> 8/24 46/22	<b>proved [15]</b> 34/14 38/16 52/12 53/9 53/13 58/10 60/2 87/2 89/21 104/9 104/15 105/5 106/13 111/9 120/19	<b>Q</b>
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<b>prematurely [1]</b> 44/9	<b>probably [4]</b> 28/4 86/4 86/6 102/22	<b>prohibited [2]</b> 19/21 26/13	<b>provisions [1]</b> 115/4	<b>quite [3]</b> 88/15 93/12 108/7
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(18) rates - result

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(19) resulted - six

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(20) Sloat - taking

<b>T</b>	120/22 120/23	57/18 57/25 58/10	63/13 63/14 63/17	63/13 67/8 68/1
<b>taking... [2]</b> 73/11	<b>that [737]</b>	61/25 62/1 67/7	64/7 64/15 65/20	72/3 72/3 79/9
78/14	<b>that's [96]</b> 5/16	68/17 71/15 71/16	66/15 66/21 67/7	79/10 80/14 81/10
<b>takings [2]</b> 23/14	5/18 6/8 10/20 11/4	89/13 89/15 89/19	72/15 72/20 72/22	87/4 96/13 96/19
94/12	11/4 11/13 14/12	98/10 99/8 105/15	80/7 83/5 83/8	96/22 97/10 97/13
<b>talk [3]</b> 19/14	15/2 15/3 15/3 15/9	106/15 106/19	83/16 83/16 83/25	98/2 98/3 99/12
25/17 72/12	18/1 22/5 22/5 23/3	106/25 110/17	84/8 84/18 84/23	99/13 99/14 105/9
<b>talked [2]</b> 49/15	24/16 24/20 30/8	116/5 116/6 118/18	85/9 85/10 86/25	108/2 109/11
108/17	32/19 34/3 34/4	<b>themselves [3]</b>	88/12 88/15 88/20	111/17 114/12
<b>talking [2]</b> 66/24	35/22 43/5 45/3	22/13 23/15 117/4	89/18 89/23 91/1	114/17 114/17
72/6	45/4 45/20 45/24	<b>then [76]</b> 9/4 16/5	91/19 92/8 92/10	115/3 116/11
<b>tax [3]</b> 26/4 26/8	45/24 46/13 46/25	18/17 18/20 20/9	92/11 93/6 93/9	117/10
26/9	48/6 48/22 48/22	27/5 27/15 28/18	93/21 93/24 94/2	<b>they [167]</b>
<b>taxes [5]</b> 26/16	51/3 51/15 51/17	29/22 33/9 36/6	94/5 94/21 94/21	<b>they're [16]</b> 5/7
26/23 27/6 54/16	52/4 53/12 54/16	37/3 37/6 40/7	94/24 95/5 96/24	15/5 54/12 56/4
110/8	54/22 54/22 56/14	42/25 42/25 46/1	97/9 98/8 98/21	56/21 56/22 61/25
<b>taxing [1]</b> 52/16	57/5 59/6 59/25	47/6 56/10 58/16	99/1 99/1 99/4	66/24 87/6 91/2
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<b>Tel [2]</b> 115/7 117/6	61/17 61/20 61/20	61/16 61/22 62/1	101/11 102/25	100/12 105/14
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(22) those... - used

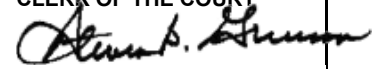
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Peggy Isom, CCR 541, RMR

(24) who's - zoning



1 **OBJ**

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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 180 LAND CO LLC, a Nevada limited liability  
18 company, FORE STARS, LTD., a Nevada limited  
19 liability company and SEVENTY ACRES, LLC, a  
20 Nevada limited liability company, DOE  
21 INDIVIDUALS I-X, DOE CORPORATIONS I-X,  
22 and DOE LIMITED LIABILITY COMPANIES I-X,

23 Defendants,

24 v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS'  
OBJECTIONS TO PRETRIAL  
DISCLOSURES PURSUANT TO  
NRCP 16.1(a)(3)**

23 Pursuant to NRCP 16.1(a)(3), Defendant City of Las Vegas ("Defendant"), by and through  
24 its counsel of record the law firms of McDonald Carano LLP, Las Vegas City Attorney's Office  
25 and Shute, Mihaly and Weinberger, LLP, hereby makes the following objections to pretrial  
26 disclosures:

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**I. OBJECTIONS TO DEFENDANTS' PROPOSED TRIAL EXHIBITS**

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
3.	Map or different properties		LO 00000001	Relevance; Lack of Foundation; Authenticity
4.	EHB Years in the Neighborhood		LO 0034766	Relevance; Incomplete; Prejudicial
5.	Appraisal report prepared by Tio DiFederico		TDG Rpt 000001-000136	Hearsay
6.		Professional Qualification of Tio S. DiFederico MAI	TDG Rpt 000111-000113	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
7.		Appraisal Certification of Tio DiFederico MAI	TDG Rpt 000114	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
8.		Testimony of Depositions Tio S. DiFederico, MAI	TDG Rpt 000115	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
9.		Legend of Photographs taken during August 12, 2020 site inspection	TDG Rpt 000033	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
10.		Subject Photographs	TDG Rpt 000034-000039	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
11.		Assessor parcel Map 138-31-2&138-31-3	TDG Rpt 000046	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
12.		Before Condition aerial	TDG Rpt 000045	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
13.		Assessor's Parcel Map 138-31-2	TDG Rpt 000047	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
14.		Assessor's parcel Map 138-31-3	TDG Rpt 000048	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
15.		Site Plan for 61 Custom Home Lots (prepared by GCW 10/24/2017)	TDG Rpt 000049-000050	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
16.		Site Plan for 16 Custom Home Lots (prepared by GCW 10/13/2020)	TDG Rpt 000051	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
17.		Site Plan for 7 Custom Home Lots	TDG Rpt 000052	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
18.		Comparable Land Sales Chart	TDG Rpt 000069	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
19.		Comparable Land Sales Map	TDG Rpt 000070	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
20.		Comparable Land Sale 1	TDG Rpt 000071	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
21.		Comparable Land Sale 2	TDG Rpt 000072	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
22.		Comparable Land Sale 3	TDG Rpt 000073	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
23.		Comparable Land Sale 4	TDG Rpt 000074	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
24.		Comparable Land Sale 5	TDG Rpt 000075	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
25.		Summary of Just Compensation Due Chart	TDG Rpt 000101, 103	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
26.		Land Value Conclusion	TDG Rpt 000084	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
27.		Summary of Salient Facts	TDG Rpt 000007	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
28.		Southern Nevada Coincident Index	TDG Rpt 000017	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
29.		Southern Nevada Leading Index	TDG 000018	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
30.		Southern Nevada Construction Index	TDG 000019	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
31.		Southern Nevada Tourism Index	TDG 000020	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
32.		Market Area Analysis	TDG 000023	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
33.		Income Approach – Before Condition charts and analysis and conclusion	TDG Rpt 000091-95	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
34.		Golf Course Closure Letters, Par 4	LO 001106-001107	Relevance; Authenticity; Hearsay
35.		Golf Course Closure Letter, Elite	LO 001108	Relevance; Authenticity; Hearsay
36.		Elite Golf Deposition, Keith Flatt	LO 001109 – 001159	Relevance; Hearsay
37.		Summary of Just Compensation Due to the Property Owner Due to the City's Actions	TDG Rpt 000101	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete; Lack of Foundation
38.		Conclusion of Just Compensation	TDG Rpt 000103	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
39.	Appraisal work file of Tio DiFederico		TDG WF 000001-006593; FP WF 000001-000456	Relevance; Improper Designation of entire file as a single exhibit; Hearsay
40.		Zoning Verification Letter	TDG WF 000028	Relevance; Duplicative
41.		LVMC 19.10.050	TDG WF 000050	Incomplete; Best Evidence Rule
42.		The Summit newspaper article	TDG WF 000134-136	Relevance Hearsay Incomplete
43.		75% up newspaper article	TDG WF 000138-139	Relevance Hearsay Incomplete
44.		The New Vision	TDG WF 000145-153, 005804-5811	Relevance; Lack of Foundation; Hearsay; Incomplete
45.		LVMC 19.12 – entire section	TDG WF 05523-5603	Relevance; Lack of Foundation
46.		Summit Lot Sales Chart	TDG WF 005786-5788	Relevance; Lack of Foundation; Authenticity
47.		Ridges / QR Lot Sales Chart	TDG WF 005789-5790	Relevance; Lack of Foundation
48.		Land Sales Adjustment Grid	TDG WF 005802	Relevance; Lack of Foundation; Authenticity; Incomplete
49.		7 Lots Index	TDG WF 006137-6140	Relevance; Lack of Foundation; Authenticity Incomplete; Hearsay

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
50.		Drainage feasibility report	TDG WF 006141-6149	Relevance; Lack of Foundation; Opinion Testimony Authenticity Incomplete; Hearsay
51.		Geotechnical Engineering Report	TDG WF 006150-6167	Relevance; Lack of Foundation; Opinion Testimony Authenticity Incomplete; Hearsay
52.		Water Pressure Maps	TDG WF 006168-6169	Relevance; Lack of Foundation; Authenticity; Hearsay
53.		Sewer Map	TDG WF 006170	Relevance; Lack of Foundation; Authenticity; Hearsay
54.		GCW Report	TDG WF 006172-6185	Relevance; Lack of Foundation; Authenticity; Hearsay
55.		Landscape Cost Estimate	TDG WF 006196	Relevance; Lack of Foundation; Hearsay; Opinion
56.		16 Lots Index and attached documents and cost comparison chart	TDG WF 006206-6249	Relevance; Lack of Foundation; Authenticity Incomplete; Hearsay



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
57.		61 Lots Index and attached documents and cost comparison chart	TDG WF 006251-6339	Relevance; Lack of Foundation; Authenticity Incomplete; Hearsay
58.		Las Vegas Luxury Market on the Rise article	TDG WF 006415-6422	Relevance; Hearsay
59.	Yohan Lowie's Work File		YL WF 000001 – YLWF 000818	Improper Designation of Entire Work File
60.		Site Plan	YL WF 000001	Relevance; Lack of Foundation; Authenticity; Duplicative
61.		180 Land Cost Comparison 6 16 7	YL WF 000002	Relevance; Lack of Foundation; Hearsay; Opinion Testimony
62.		Commercial Projects List	YL WF 000003	Relevance; Authenticity; Prejudicial
63.		Commercial Projects Map	YL WF 000004 – YLWF 000005	Relevance; Authenticity; Prejudicial
64.		Discovery Lands Summit Club Sells Custom Lots from \$3 to \$10 million LVRJ	YL WF 000006 – YL WF 000010	Relevance; Hearsay
65.		Hutchison Office Deed	YL WF 000011- YL WF 000014	Relevance
67.		Calida PSA RA	YL 000050 – YL WF 000084	Relevance
68.		PSA Intermountain Health	YL WF 000084 – YL WF 000105	Relevance

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
69.		The New Vision	YL WF 000106-000207	Relevance; Lack of Foundation; Hearsay; Incomplete
70.		QT Appraisal	YL WF 000208-000339	Relevance
71.		Valbridge Appraisal	YL WF 000340-000429	Relevance
72.		Panther Alta Corner Deed	YL WF 000430 – YL WF 000435	Relevance
73.		Panther Hualapai Deed	YL WF 000436 – YL WF 000445	Relevance
74.		Queensridge Home list and map	YL WF 000446-000447	Relevance; Authenticity; Prejudicial; Lack of Foundation
75.		Photos of Projects completed by EHB	YL WF 000448-000462	Relevance; Authenticity; Prejudicial; Lack of Foundation
76.		Yohan Deposition – Binion	YL WF 000463 – YL WF 000517	Relevance; Hearsay; Incomplete; Authenticity
77.		Back Up Data for Damages Disclosed in Mr. Lowie's testimony disclosure - \$1,450,173.84	YL WF 000518 – 000695 (A summary will also be provided)	Relevance; Lack of Foundation; Authenticity; Opinion Testimony
78.		35 acre Lots breakdown	YL WF 000696	Relevance; Lack of Foundation; Authenticity; Opinion Testimony
79.		CMA SUMMARY / Land	YL WF 000697 – YL WF 000700	Relevance; Lack of Foundation; Authenticity
80.		RAS to DC Rampart Grant Bargain and Sale Deed	YL WF 000701 – YL WF 000776	Relevance; Lack of Foundation; Authenticity

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
81.		Design – Build Lease	YL WF 000777 – YL WF 000818	Relevance; Lack of Foundation; Authenticity
82.	Frank Pankratz Work File		FP WF 000001 – FP WF 000456	Improper Designation of Entire Work File
83.		Cost Summary – 7 Lots	FP WF 000003	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
84.		Preliminary Site Plan	FP WF 000004	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
85.		Drainage	FP WF 000005 – 000007	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
86.		Soils & Other Suitability	FP WF 000008	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
87.		Hydraulic Grade Lines	FP WF 000009 – 000010	Relevance; Authenticity; Hearsay; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
88.		Sewer	FP WF 000011	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
89.		Traffic	FP WF 000012	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
90.		Wastewater	FP WF 000013	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
91.		Soils Report Part 1	FP WF 000014 – 000030	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
92.		Soils Report Part 2	FP WF 000031 – 000055	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
93.		Soils Report Part 3	FP WF 000056 – 000074	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
94.		CTS Firm Overview	FP WF 000075 – 000078	Relevance; Lack of Foundation; Authenticity; Hearsay; Prejudicial

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
95.		CTS Firm Overview (supplemental)	FP WF 000079	Relevance; Lack of Foundation; Authenticity; Hearsay; Prejudicial
96.		Existing Sewer	FP WF 000080	Relevance; Lack of Foundation; Authenticity; Hearsay
97.		LVVWD Pressure Zones	FP WF 000081	Relevance; Lack of Foundation; Authenticity; Hearsay
98.		Prelim Grading Plan – Color	FP WF 000082	Relevance; Lack of Foundation; Authenticity; Hearsay
99.		Prelim Grading Plan - B&W	FP WF 000083	Relevance; Lack of Foundation; Authenticity; Hearsay
100.		Prelim Site Plan	FP WF 000084	Relevance; Lack of Foundation; Authenticity; Hearsay
101.		Sewer	FP WF 000085	Relevance; Lack of Foundation; Authenticity; Hearsay
102.		Water	FP WF 000086	Relevance; Lack of Foundation; Authenticity; Hearsay
103.		Storm Drain	FP WF 000087	Relevance; Lack of Foundation; Authenticity; Hearsay

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
104.		Roadways	FP WF 000088	Relevance; Lack of Foundation; Authenticity; Hearsay
105.		Landscaping	FP WF 000089	Relevance; Lack of Foundation; Authenticity; Hearsay
106.		Walls	FP WF 000090	Relevance; Lack of Foundation; Authenticity; Hearsay
107.		Grading Details and Sections	FP WF 000091	Relevance; Lack of Foundation; Authenticity; Hearsay
108.		GCW Firm overview	FP WF 000092	Relevance; Hearsay; Authenticity; Lack of Foundation; Prejudicial
109.		GCW Firm Overview (supplemental)	FP WF 000093 - 000094	Relevance; Hearsay; Authenticity; Lack of Foundation; Prejudicial
110.		Aggregate Cost Estimate	FP WF 000095 – 000099	Relevance; Hearsay; Authenticity; Lack of Foundation
111.		Aggregate Company Overview	FP WF 000100	Relevance; Hearsay; Authenticity; Lack of Foundation Prejudicial

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
112.		Hirschi Company Reference Letter	FP WF 000101 - 000102	Relevance; Hearsay; Authenticity; Lack of Foundation Prejudicial
113.		Engineering & Mapping Proposal	FP WF 000103 – 000108	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion testimony
114.		Bond Estimate	FP WF 000109 – 000116	Relevance; Authenticity; Lack of Foundation; Hearsay;
115.		Cost Estimate	FP WF 000117	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion testimony
116.		NVE Planning Memo	FP WF 000118	Relevance; Authenticity; Lack of Foundation; Hearsay
117.		15% Cost increase description	FP WF 000119 – 000120	Relevance; Hearsay
118.		STF INC. Firm Overview	FP WF 000121	Relevance; Authenticity; Lack of Foundation; Hearsay
119.		Landscaping Cost Estimate	FP WF 000127	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion Testimony

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
120.		Plan Check Fee Schedule	FP WF 000128	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion Testimony
121.		Water Fee Schedule	FP WF 000129	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion Testimony
122.		Mark Fakler Resume	FP WF 000130 - 000132	Relevance; Authenticity; Lack of Foundation; Hearsay; Prejudicial
123.		Telephone and Cable Cost Estimate	FP WF 000133 – 000134	Relevance; Authenticity; Lack of Foundation; Hearsay; Prejudicial
124.		Tand Company Overview	FP WF 000135	Relevance; Authenticity; Lack of Foundation; Hearsay; Prejudicial
125.		Cost Summary – 16 Lots	FP WF 000138	Relevance; Lack of Foundation; Hearsay; Authenticity
126.		Prelim Site Plan	FP WF 000139	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
127.		Drainage	FP WF 000140 – 000142	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
128.		Soils & Other Suitability	FP WF 000143	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
129.		Hydraulic Grade Lines	FP WF 000144-000145	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
130.		Sewer	FP WF 000146	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
131.		Traffic	FP WF 000147	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
132.		Waste Water	FP WF 000148	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
133.		Soils Report Part 1	FP WF 000149 – 000165	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
134.		Soils Report Part 2	FP WF 000166 – 000190	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
135.		Soils Report Part 3	FP WF 000191 – 000209	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
136.		CTS Firm Overview	FP WF 000210-000213	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
137.		CTS Firm Overview (Supplemental)	FP WF 000214	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
138.		Existing Sewer	FP WF 000215	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
139.		LVVWD Pressure Zones	FP WF 000216	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
140.		Prelim Grading Plan – Color	FP WF 000217	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
141.		Prelim Grading Plan – B&W	FP WF 000218	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
142.		Prelim Site Plan	FP WF 000219	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
143.		Sewer	FP WF 000220	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
144.		Water	FP WF 000221	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
145.		Storm Drain	FP WF 000222	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
146.		Roadways	FP WF 000223	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
147.		Landscaping	FP WF 000224	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
148.		Walls	FP WF 000225	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
149.		Grading Detail and Sections	FP WF 000226	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
150.		GCW Firm Overview	FP WF 000227	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
151.		GCW Firm Overview (supplemental)	FP WF 000228-000229	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
152.		Aggregate Cost Estimate	FP WF 000230 – 000234	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
153.		Aggregate Company Overview	FP WF 000235	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
154.		Hirschi Company Reference Letter	FP WF 000236 - 000237	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
155.		Engineering & mapping Proposal	FP WF 000238	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
156.		Bond Estimate	FP WF 000244-000251	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
157.		Cost Estimate	FP WF 000252	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
158.		NVE Planning Memo	FP WF 000253	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
159.		15% Cost Increase Description	FP WF 000254 – 000255	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
160.		STF In Firm Overview	FP WF 000256	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
161.		Natural Gas Cost Estimate	FP WF 000257 – 00258	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
162.		15% Cost Increase Description	FP WF 000259 – 000260	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
163.		STF Inc. Firm Overview	FP WF 000261	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
164.		Landscaping Cost Estimate	FP WF 000262	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
165.		Plan Check Fees Schedule	FP WF 000263	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
166.		Water Fees Schedule	FP WF 000264	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
167.		Mark Fakler Resume	FP WF 000265-000267	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
168.		Telephone and Cable Cost Estimate	FP WF 000268 – 000269	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
169.		Tand Company Overview	FP WF 000270	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
	61 Lots Work File		FP WF 000271 - 000456	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
170.		Cost Summary – 61 Lot	FP WF 000273	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
171.		Approved SDR, TMP & Landscaping Plan	FP WF 000274 – 000289	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
172.		Staff Report: SDR, TMP, WVR, GPA	FP WF 000290 – 000315	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
173.		SDR Approval	FP WF 000316 – 000320	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
174.		TMP Approval	FP WF 000321 – 000322	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
175.		WVR Approval	FP WF 000323 – 000324	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
176.		Drainage	FP WF 000325 - 000327	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
177.		Soils & Other Suitability	FP WF 000328	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
178.		Hydraulic Grade Lines	FP WF 00329 – 000330	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
179.		Sewer	FP WF 000331	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
180.		Traffic	FP WF 000332	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
181.		Wastewater	FP WF 000333	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
182.		Soils Report Part 1	FP WF 000334 - 000350	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
183.		Soils Report Part 2	FP WF 000351 - 000375	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
184.		Soils Report Part 3	FP WF 000376 – 000394	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
185.		CTS Firm Overview	FP WF 000395 – 000398	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
186.		CTS Firm Overview (supplemental)	FP WF 000399	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
187.		Existing Sewer	FP WF 000400	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
188.		LVVWD Pressure Zones	FP WF 000401	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
189.		Prelim Grading Plan – Color	FP WF 000402	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
190.		Prelim Grading Plan – B&W	FP WF 000403	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
191.		Sewer	FP WF 000404 – 000405	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
192.		Water	FP WF 000406	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
193.		Storm Drain	FP WF 000407	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
194.		Roadways	FP WF 000408	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
195.		Landscaping	FP WF 000409	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
196.		Walls	FP WF 000410	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
197.		Grading Details and Sections	FP WF 000411	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
198.		GCW Firm Overview	FP WF 000412	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
199.		GCW Firm Overview (Supplemental)	FP WF 000413 – 000414	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
200.		Aggregate Cost Estimate	FP WF 000415 - 000419	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
201.		Aggregate Company Overview	FP WF 000420	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
202.		Hirschi Company Reference Letter	FP WF 000421 - 000422	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
203.		Engineering & Mapping Proposal	FP WF 000423 – 000428	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
204.		Bond Estimate	FP WF 000429 – 000436	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
205.		NVE Cost Estimate	FP WF 000437	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
206.		NVE Planning Memo	FP WF 000438	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
207.		15% Cost Increase Description	FP WF 000439 – 000440	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
208.		STF INC Firm Overview	FP WF 000441	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
209.		SWG Cost Estimate	FP WF 000442 – 000443	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
210.		15% Cost Increase Description	FP WF 000444 – 000445	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
211.		STF Inc. Firm Overview	FP WF 000446	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
212.		Landscaping Cost Estimate	FP WF 000447	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
213.		Landscaping Cost Estimate Memo	FP WF 000448	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
214.		Plan Check Fees Schedule	FP WF 000449	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
215.		Water Fees Schedule	FP WF 000450	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
216.		Mark Fakler Resume	FP WF 000451 – 000453	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
217.		Telephone and Cable Cost Estimate	FP WF 000454 – 000455	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
218.		Tand Company Overview	FP WF 000456	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation



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DATED this 18th day of October 2021.

McDONALD CARANO LLP

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 18th day of October, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' OBJECTIONS TO PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP