

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.

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**JOINT APPENDIX,
VOLUME NO. 126**

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

180 LAND COMPANY, LLC,

Petitioner,

vs.

CITY OF LAS VEGAS,

Respondent.

AND RELATED PARTIES

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 03, 2022

**PLAINTIFF LANDOWNERS' MOTION TO DETERMINE PREJUDGMENT
INTEREST**

[645] PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES

APPEARANCES (VIA BLUEJEANS):

FOR THE PETITIONERS:

JAMES J. LEAVITT, ESQ.
ELIZABETH GHANEM HAM, ESQ.

FOR THE RESPONDENT:

GEORGE F. OGILVIE, III, ESQ.
PHILIP R. BYRNES, ESQ.
J. CHRISTOPHER MOLINA, ESQ.
ANDREW W. SCHWARTZ, ESQ.
REBECCA L. WOLFSON, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER
TRANSCRIBED BY: JC REPORTING, INC.

1 LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 3, 2022, 1:40 P.M.

2 * * * * *

3 THE COURT: All right. I just want to say good
4 afternoon to everyone and welcome you to our afternoon February
5 3rd, 2022 calendar.

6 And let's go ahead and set forth our appearances.
7 We'll start first with the plaintiff and then we'll move to the
8 defense.

9 MR. LEAVITT: Good afternoon, Your Honor. James J.
10 Leavitt here on behalf of the plaintiff, 180 Land, LLC,
11 landowners.

12 Elizabeth, we can't hear you.

13 THE COURT: Yeah, you'll have to hit star 4, ma'am.

14 MS. GHANEM HAM: Sorry about that. Sorry about that.
15 Good afternoon, everyone. Good afternoon, Your Honor.
16 Elizabeth Ghanem Ham on behalf of 180 Land and Fore Stars
17 Landowners.

18 THE COURT: Okay.

19 MR. OGILVIE: Good afternoon, Your Honor. George
20 Ogilvie on behalf of the City of Las Vegas.

21 MR. SCHWARTZ: Good afternoon, Your Honor. This is
22 Andrew Schwartz for the City of Las Vegas.

23 MR. MOLINA: Good afternoon, Your Honor. This is
24 Chris Molina on behalf of the City.

25 MS. WOLFSON: And good afternoon, Your Honor.

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1 Rebecca Wolfson also on behalf of the City of Las Vegas.

2 MR. BYRNES: And good afternoon, Your Honor. Phil
3 Byrnes on behalf of the City of Las Vegas.

4 THE COURT: And I think that covers all appearances;
5 is that correct?

6 MR. LEAVITT: Yes, on behalf of the plaintiff, Your
7 Honor.

8 THE COURT: All right. And I --

9 MR. OGILVIE: Yes, Your Honor.

10 THE COURT: All right. Okay. So once again, good
11 afternoon.

12 And I see we have, from what I can gather in looking
13 at the calendar, we have two pending motions. One would be
14 plaintiff landowners' motion for determination of prejudgment
15 interest, and the second would be plaintiff landowners' motion
16 for attorneys' fees.

17 Which one should we handle first?

18 MR. LEAVITT: Well, Your Honor, I think perhaps the
19 prejudgment interest one would be best to handle first.

20 THE COURT: All right. Okay. And, Mr. Ogilvie, is
21 that fine? No objection there?

22 MR. OGILVIE: Yes, Your Honor. No objection.

23 THE COURT: All right. Then that's what we'll do.

24 All right. Sir, you have the floor.

25 MR. LEAVITT: Thank you, Your Honor. Again, James J.

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1 Leavitt on behalf of the plaintiff landowners.

2 Your Honor, this motion for prejudgment interest is a
3 standard motion that's filed in every eminent domain case, and
4 especially in every inverse condemnation case where the amount
5 recovered is higher than what the government offered; or, as
6 the case is in an inverse condemnation case, is the award. And
7 the prejudgment interest is statutory, or at least the
8 procedure for prejudgment interest is statutory. There's three
9 issues that need to be resolved posttrial by the Court
10 according to the statute 37.18175.

11 Two issues appear to be undisputed. In fact, there
12 was no opposition drafted by the City of Las Vegas regarding
13 two issues, which is the date of commencement of interest,
14 which is August 2nd, 2017. And there was no opposition to
15 the interest being compounded annually. Those are two of the
16 issues that the statutes require us to address and that the
17 Court is to resolve as part of the determination of prejudgment
18 interest.

19 The only disputed issue before you now, in order to
20 calculate the prejudgment interest is what is the rate of
21 return that should be used.

22 So that's the issue that I'll address right now is
23 what rate should be used to determine the prejudgment interest
24 on behalf of the landowners in this case on the \$34 million
25 verdict.

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1 First, the rule. The Nevada Supreme Court has held
2 that prejudgment interest is part of the just compensation
3 award. The Nevada Constitution also states very clearly that
4 the determination of the rate of return for prejudgment
5 interest is also part of the just compensation award meaning
6 that it's part of the constitutionally mandated rights that the
7 landowners have in this case.

8 The test that the Nevada Supreme Court has used to
9 determine the rate of return is that rate which will put the
10 landowner back in the same position monetarily as he would have
11 been in had his property not been taken.

12 Now, that's a pretty general rule, but the Nevada
13 Supreme Court goes on to explain the purpose of that rule which
14 more fully explains how that rule should be applied when
15 determining the rate of return. The Supreme Court said that
16 interest is to compensate for the period that the landowners
17 were, and this is a quote, "deprived of the use of the proceeds
18 that should have been paid at the time of the taking."

19 So what the Court is saying here is we're going to go
20 back to August 2nd, 2017. We're going to assume that the
21 landowner had, for purposes of this case, \$34,135,000. What
22 rate of return could this landowner have achieved on that
23 \$34 million had that money been paid on August 2nd, 2017?
24 And there's a strong public policy for this rule that the Court
25 has adopted, especially in an inverse condemnation case.

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1 First, the government has had use of the property.
2 It's been taken from the landowner. And secondly, the
3 landowner has not been paid for that taking. And so what
4 interest does is it compensates the landowner for that lost use
5 of those proceeds during that period.

6 Now, before I discuss the specific rule, I want to
7 address one of the concerns or one of the issues that the City
8 raised in its brief. The City doesn't make an argument that
9 the rate of return is improper. The City doesn't make an
10 argument that the landowners have improperly calculated the
11 rate of return. 90 percent of the City's brief is the amount
12 of money that the landowners are asking for in prejudgment
13 interest is too high. The Nevada Supreme Court has addressed
14 that issue twice.

15 First, in the *Sisolak* case, the Nevada Supreme Court
16 awarded interest to Mr. *Sisolak* that more than doubled his
17 award. Mr. *Sisolak* received approximately \$6 million in that
18 inverse condemnation case for the taking of his airspace. The
19 prejudgment interest was significantly higher than \$6 million.

20 In the *Alper* case, the Nevada Supreme Court, and I'll
21 quote what they say here, "As indicated by the award in the
22 present case, prejudgment interest may be very substantial in
23 protracted condemnation proceedings." And here's what they
24 say, "and may, in fact, exceed the inflated value of the land."

25 That's especially true in an inverse condemnation

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1 case because they tend to be very protracted, as you've seen in
2 this case. The landowners -- the landowners have to prove the
3 property interest. The landowners have to prove the take. The
4 landowners have to prove the just compensation phase all
5 through discovery. In a direct eminent domain case, you go to
6 trial, and the only issue is how much does the government have
7 to pay? So that's why prejudgment interest is very high in
8 these inverse condemnation cases.

9 So now how do we calculate the rate of return here?
10 The Nevada Legislature has adopted a statute, and in that
11 statute, the Nevada Legislature says that the Court shall
12 determine the rate, and then it says that rate shall not be
13 below prime plus 2 percent.

14 So, Your Honor, prime plus 2 percent as the City has
15 argued, is not the rate of return that should be applied in
16 this case. Instead, the rate of return that should be applied
17 in this case is that rate which would put the landowner back in
18 the same position monetarily as he would have been in had his
19 property not been taken.

20 Now, Your Honor, we've done this for a long time, as
21 you're well aware, and there's only one case in Nevada where
22 the District Court Judge granted prejudgment interest based
23 upon a certain rate of return, and then that issue was taken up
24 to the Nevada Supreme Court, and the Nevada Supreme Court
25 affirmed. And here's what the Nevada Supreme Court said. It's

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1 in the *State versus Barsy* case.

2 First, the Nevada Supreme Court said the rate of
3 return is a question of fact. Secondly, the rate of return
4 must be based upon evidence taken posttrial by the District
5 Court Judge, and thirdly, here's the only piece, Your Honor,
6 out of all the cases that we have in Nevada on inverse
7 condemnation and on prejudgment interest. This is the only
8 place where the Nevada Supreme Court indicates the type of
9 evidence that it will accept to determine the rate of return.
10 And this is what the Court said in *Barsy*, that the rate that
11 could be achieved -- the test is the rate that could have been
12 achieved had the landowners, and here's the quote, "invested
13 his money in land similar to that condemned."

14 So what the Nevada Supreme Court relied upon in the
15 *Barsy* case was what was the land increase like during the
16 relevant period? In other words, if the landowner had been
17 paid their money as of 2017 and invested that money in land
18 similar to that condemned, to quote *Barsy*, what would he have
19 achieved? And we've provided to you two reports which include
20 empirical evidence. One is by Mr. DiFederico, who was the
21 appraiser in this case, and the other is by Mr. Lenhart, who's
22 a broker. This is the precise evidence that the Nevada Supreme
23 Court held should be considered when determining the rate of
24 return on the prejudgment issue in the *Barsy* case.

25 And, Your Honor, I can go through the DiFederico

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1 report with you if you'd like. I can go through the Lenhart
2 report, but both of those reports -- well, first of all, the
3 DiFederico report arrives at a rate of return of 23 percent for
4 the relevant period in this case, and the Lenhart report
5 arrives at a rate of return of 25 to 27 percent of the relevant
6 period.

7 I'll reference just the DiFederico report for just a
8 moment, Your Honor. Mr. DiFederico investigated Colliers
9 International Survey, a well-respected survey, to determine
10 what the rate of return was on land similar to the 35 acre
11 property from 2017 to 2022.

12 He also referenced CoStar in his report, and CoStar,
13 Your Honor, is a compilation of sales and resales of property,
14 and they have data which shows wherein you can identify
15 properties that are similar to the 35-acre property and
16 determine what those properties sold and resold for and
17 determine what the rate of increase was for those properties
18 during the relevant period.

19 He also referred to, in his report, to lot sales that
20 have occurred in the area that are similar to the landowner's
21 property.

22 And then he didn't end there. He went and found five
23 individual properties that had sold and resold during the
24 relevant period to support his number, and then he concluded,
25 Your Honor, based upon those four sources of empirical

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1 evidence, that the proper rate of return to apply in this case,
2 following the Barsity standard, is 23 percent each year,
3 compounded annually.

4 Mr. Lenhart, Your Honor, followed the same process.
5 Except for he used seven sales and resales of properties during
6 the relevant period, and he came in with even a higher rate of
7 return of 25 to 27 percent.

8 Because that is the only evidence before the Court
9 right now on what the proper rate of return is, the landowners
10 chose the lowest number there, 23 percent, so there would be no
11 dispute as to what the rate of return should be for the
12 prejudgment interest in this case, Your Honor.

13 So, Your Honor, unless you have any questions, the
14 request is straightforward. Prejudgment interest should
15 commence from August 2nd, 2017. That's not a disputed issue.

16 That prejudgment interest should be compounded
17 annually. That's not a disputed issue.

18 And the rate of return should be 23 percent, as
19 that's the only evidence that's before this Court on this
20 question of fact that's pending, Your Honor.

21 Do you have any questions for me, Judge?

22 THE COURT: Not at this time, sir.

23 MR. LEAVITT: Okay.

24 THE COURT: Okay. And from the defense, we'll hear
25 from whoever's arguing this motion.

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1 MR. SCHWARTZ: Yes, Your Honor. This is Andrew
2 Schwartz, and I'll be -- I'll be representing the City on this
3 motion.

4 There is no dispute that the minimum interest rate
5 for prejudgment interest in this case is prime plus 2 percent.
6 The only test, the only standard that the Court has to apply to
7 allow the Court to award prejudgment interest above that rate
8 is this constitutional standard that the -- the Constitution
9 and the case law is essentially saying the Court should award
10 the prime plus 2 percent rate from the statute unless a higher
11 rate would be necessary to make the property owner whole. And
12 we do not have those facts in this case. In fact, we have just
13 the opposite. We have just the opposite, Your Honor. There is
14 absolutely no reason to award the property owner more than the
15 statutory rate to make it whole because it's already been made
16 whole 54 times by the judgment.

17 Now, the Developer paid, and this is -- the Developer
18 paid four and a half million dollars for the 250-acre Badlands.
19 That's \$18,000 an acre. This is the 35-acre case. So the
20 Developer paid \$630,000 for the 35-acre segment of the property
21 that he carved out of the Badlands.

22 The Court has awarded the Developer \$34,135,000 in
23 takings damages in this case.

24 So that's 54 times the Developer's investment in the
25 property, and so it -- it cannot be, it cannot be the case here

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1 that more money in interest above prime plus 2 percent is
2 necessary to make the Developer whole here, and the case is
3 even stronger that the Developer doesn't need extraordinarily
4 high rate of interest to be made whole.

5 Not only has the Developer already made 54 times its
6 investment in the 35-acre property, but the City approved 435
7 luxury housing units for construction on the 17-acre segment of
8 the Badlands. And by the Developer's own evidence, that
9 increased the value of just the 17-acre portion by 26 million.

10 So now you have a four and a half million dollar
11 investment with one judgment for 34 million. The City's
12 approval of development in one part that's increased the value
13 by 26 million. So you've got -- that's \$60 million. So you've
14 got an investment of four and a half million dollars.

15 Now, the Developer has received in damages and in
16 enhanced value of the property due to the City's approval, you
17 know, the City lifted the PR-OS designation and rezoned the
18 property to allow 435 units. Now, you've got \$60 million plus
19 the Developer still has 200 acres left, 200 acres left of the
20 Badlands in which to develop.

21 The Developer applied to develop the 133 acres
22 portion of the property under Judge Crockett's order. The City
23 couldn't consider that application because the Developer didn't
24 file a major modification application.

25 Well, so the City never examined the 133-acre

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1 applications on the merits.

2 Then the Nevada Supreme Court reversed that and said
3 you don't need a major modification application. The City --
4 the City then wrote to the Developer and said now that the
5 Judge Crockett order has been reversed, refile your
6 applications for the 133-acre case. They haven't refiled the
7 application. In fact, the City asked Judge Sturman to remand
8 those applications to the City Council so the City Council
9 could decide them on the merits, and the Developer opposed it.
10 In fact, the Developer dismissed its petition for judicial
11 review on the 133-acre case. So then in the 65-acre case, the
12 Developer never even filed one application.

13 So the Developer can't seriously argue this
14 extraordinary interest rate to make it whole. If you include
15 the -- what the -- the \$52 million that they're seeking in
16 prejudgment interest, you add that to the 34 million in this
17 case, that would be, by my calculations, a 13,800 percent
18 profit, 13,800 percent profit on an investment in the property.
19 So they don't meet the test, and that's the only test for an
20 extraordinarily high interest rate.

21 And I'll address the *Barsy* case. The *Barsy* case
22 doesn't apply. First of all, *Barsy* was an eminent domain case.
23 The Court there said the government took -- delayed in filing
24 the eminent domain action. The government wanted the property
25 for a public project, delayed filing the eminent domain action

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1 and during that period, *Barsy* lost tenants and lost money. So
2 when the Court awarded *Barsy* the fair market value of the
3 property on the date of value, the Court included, well, this
4 isn't enough to make *Barsy* whole because he lost some tenants.
5 So they said -- the Court accepted evidence that what would --
6 what would the interest rate be if *Barsy* had invested that in a
7 building that had tenants so that he could make the return and
8 that what he lost when the City delayed in the condemnation
9 action.

10 Number one, the *Barsy* was -- needed a higher interest
11 rate to be made whole, and that finding cannot be made in this
12 case. We're as far from that determination as you can get.

13 And the second thing is, the Court there didn't say
14 that you get the profit from an investment, the profit from an
15 investment of that -- of the amount of the award. It said what
16 would be the equivalent if you invested that property in
17 property that had tenants, which was the value of the property
18 that *Barsy* would have had had his tenants not moved out due to
19 the condemnation blight.

20 And so therefore, the Court was just adjusting the
21 interest rate, which is what the return on money that *Barsy*
22 would get in order to compensate him for something that he
23 lost. And in this case, the Developer lost nothing like that.
24 The Developer has been rewarded with a windfall, at least with
25 the judgment, 54 times its investment.

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1 The *Alper* case -- and by the way, the interest rate
2 the Court found in *Barsy* was what, prime plus 2 percent.
3 That's the -- that's ultimately what the Court concluded was a
4 fair rate of interest, prime plus 2 percent.

5 The *Alper* case, there was a case where the City
6 physically took possession of the property. The county
7 physically took possession of the property for a public
8 project, for a road project, and the property owner brought an
9 inverse case because the City didn't file an eminent domain
10 case. So that was really an eminent domain case where the
11 government agency took possession of the property and
12 dispossessed the property owner.

13 Similar to *Barsy* where the Court was -- it was an
14 eminent domain case that took the Court -- the agency
15 ultimately took possession of the property. And in there, the
16 Court said that -- that *Alper* was entitled to what rate of
17 interest? Prime plus 2 percent. Prime plus 2 percent.

18 He didn't say that *Alper* could take the condemnation
19 award and invest it in some speculative investment and that the
20 Court would speculate, well, how much money would you have made
21 on this speculative investment. What if you put it in the
22 stock market or, you know, well, then you have to assume, well,
23 what if you put it in NASDAQ and NASDAQ went down during the
24 period that you put it in the Fortune 500 stocks, and that went
25 up during the period.

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1 The Court didn't say that you could invest the money.
2 It said they're entitled to a higher rate of interest.
3 Interest is the return on money. It's not profit from a
4 speculative development.

5 So neither *Alper* -- and moreover, *Alper* in *Barsy*
6 don't apply to this case because this was a regulatory taking
7 case concerning the agency's regulation of the owners use of
8 the property. This was not an eminent domain case like *Barsy*
9 and *Alper* where the government actually took physical
10 possession of the property.

11 All the City did here, according to the Court in its
12 judgment, was regulate the owners use of the property. The
13 City never dispossessed the owner from the property. During
14 this entire time the property owner had the full possession and
15 use of the property where use is allowed by law.

16 So there's no reason to determine here that because
17 the property owner was dispossessed from the property that the
18 property owner needed the money to -- that -- in the judgment
19 to replace that property.

20 Now, the Developer argues here that -- oh, and let me
21 back up.

22 So there are three cases, Your Honor, that are like
23 this in Nevada where the claim, the taking claim was that the
24 regulation of the owners use of the property affected a taking.

25 The Court here awarded the \$34 million for the

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1 categorical and Penn Central claims, where the property owner
2 alleged that the City's regulation of the owners use of the
3 property was a taking.

4 Alper and Barsy are completely different cases.
5 Those are eminent domain cases where the government took
6 physical possession of the property. The property owner didn't
7 have possession and use of the property during the -- during
8 most of the lawsuit in Barsy and in any part of the lawsuit in
9 the Alper case.

10 In Nevada, there are three cases like this. They are
11 the State case, the Kelly case and the Boulder City case. In
12 all of those cases, the Supreme Court found that the taking had
13 to wipe out all use and value of the property. That wasn't the
14 case there either because the cases weren't ripe or because the
15 owner still had some use of the property or that the agency
16 didn't change the law applicable to the property.

17 And in each of those cases, the Nevada Supreme Court
18 found no taking. So we don't have the case like this where the
19 claim is excessive regulation of the owners use of the property
20 resulted in the taking. Where the Court then found a taking
21 and awarded prejudgment interest, not of some interest rate,
22 but of the amount of the award, if the amount of the award had
23 been invested and what would the -- the property owner have
24 earned on that investment. We don't have a case that says that
25 that applies here. Even if Barsy held that you can set the

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1 interest rate by what the owner would have earned had the owner
2 invested the award at the time of the taking in some
3 speculative investment.

4 So that means that the only guidance for the Court
5 here in this case is from the Constitution, which is the
6 standard. Make the property owner whole.

7 And I've explained the property owner has already
8 been made more whole 54 times by just the judgment alone.

9 Now, the Developer, assuming, assuming that it wasn't
10 clear that the Developer here has already been made whole by
11 the judgment, the Developer says, well, we would have invested
12 this money in some -- in real estate. We would have invested
13 this money in some speculative real estate venture.

14 Well, that's not really true here because this is a
15 real estate developer. They build. That's their business.
16 They don't buy land and hold the land and hope that it
17 appreciates.

18 And in this case, what would the Developer have done
19 with the money? Well, it certainly wouldn't have built
20 anything. It didn't need the money to build anything. So it
21 wasn't harmed because it didn't have \$34 million.

22 When he went into this project, he paid four and a
23 half million for the 250 acres. The Developer must have had
24 the money to develop the property at that time if that was the
25 Developer's intent. It didn't need an extra 34 million to make

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1 this profitable, particularly when it paid so little for the
2 land, four and a half million.

3 So this is a real estate developer. What they're
4 saying is that they would've taken the money and, at the time,
5 they would have been prescient enough to know that the
6 investing that money in the real estate market would have
7 earned them a greater return than prime plus 2 percent, that
8 they would -- if they would have had a crystal ball, and they
9 would've earned that money.

10 Or, you know, who's to say whether they or any other
11 property owner, if this is going to be the rule in takings
12 cases, any time you have a condemnation award, you can
13 always -- the owner could always argue, well, I would've
14 invested it. I would've invested it in Zoom, or I would have
15 invested it in SpaceX, and, you know, quadrupled my money.
16 What if they thought, well, I think the stock market is the
17 best place to invest the money. Would they have made what is a
18 hundred percent on the judgment over four years? Well, who's
19 to say.

20 The whole thing is completely speculative, and that's
21 why all the cases and the statutes in the Constitution talk in
22 terms of interest. Interest is return on money. It's the time
23 value of money.

24 What the Developer is seeking here is profit. It's a
25 completely different thing, and profit that's speculative. We

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1 know what the interest rates are. We know what the prime rate
2 is, and we can add 2 percent to that, but -- and but we don't
3 know what the Developer would have invested this money in a
4 profitable venture.

5 Or even if you -- even if you were to allow the
6 Developer to gamble on the judgment and pay the interest rate
7 equivalent to what the Developer would have earned in profit on
8 a speculative venture, what they now in hindsight say they
9 would've done, you know, you've got 2020 hindsight. Oh, yeah,
10 we would have invested in the real estate market because that
11 seems to have increased substantially. Well, that can't be the
12 measure of the prejudgment interest.

13 But assuming none of that is true, the Developer
14 doesn't have an appraisal of what this property or what any
15 property would've been worth had the Developer bought it back
16 in 2017. Their valuation evidence is just average values for a
17 certain type of real estate. They just take an average. That
18 wouldn't be admissible in court.

19 So to appraise property, you need to compare the
20 property to sales of comparable property, actual market data.
21 You can't just average the change in average prices for an
22 entire class of properties and say, well, that's my damage
23 because real estate development is speculative, and who's to
24 say whether one property would have appreciated at the same
25 rate as another property. The whole thing kind of collapses

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1 under speculation.

2 So just thinking in terms of an interest rate, just
3 stepping back and looking at the big picture, 23 percent annual
4 interest rate, I mean, that's like double the usury rate.
5 Who's ever heard of an interest rate so high? No Nevada cases
6 ever, ever found that prejudgment interest to be so high, and,
7 as I've said, in no takings case either inverse or eminent
8 domain takings case where prejudgment interest has been
9 addressed, it's never been higher than prime plus 2 percent in
10 my research.

11 So all we have here, Your Honor, is the
12 constitutional requirement to make the Developer whole and for
13 the Developer to claim that they need another \$52 million to be
14 made whole after they've already earned 54 times their
15 investment in this property is -- that would be -- that would
16 be an unjust result to put it mildly.

17 Now, the Developer has claimed that they actually
18 spent \$45 million to buy the Badlands and a hundred million
19 dollars seems to change over time.

20 There is absolutely no evidence, no evidence that the
21 Developer paid more than four and a half million dollars for
22 the Badlands.

23 The contract, the contract of sale between the
24 Developer here and the Peccoles, who developed the Peccole
25 Ranch Master Plan, was for seven and a half million for the

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1 entire Badlands. And the City has established by the documents
2 that went back and forth between the Developer and the Peccoles
3 in negotiations for that purchase that 3 million of that
4 purchase price was for other real estate --

5 THE COURT: Sir, I think we lost you. You faded out.
6 The last word that you set forth on the record was -- what was
7 it? Are you there?

8 Didn't he say real estate? Was that the last word
9 before you?

10 THE COURT RECORDER: He is not --

11 THE COURT: Because I thought he said real estate. I
12 was listening.

13 (Pause in the proceedings.)

14 THE COURT: Did we lose everybody over --

15 THE COURT RECORDER: No, just him.

16 THE COURT: You'll have to call him.

17 MR. LEAVITT: Your Honor.

18 THE COURT: Yes.

19 MR. LEAVITT: James J. Leavitt. I'm still here on
20 the line.

21 THE COURT: Okay. Thank you, sir.

22 THE COURT RECORDER: I'm going to put something on
23 chat, Your Honor.

24 THE COURT: And e-mail him so he knows we lost him.

25 (Pause in the proceedings.)

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1 THE COURT: Mr. Ogilvie, can you hear me, sir?

2 MR. OGILVIE: Yes, Your Honor. I'm here.

3 THE COURT: Is there anyway you can contact
4 Mr. Schwartz for us.

5 MR. OGILVIE: I was going to ask Sarah Lucy to
6 contact him. I'm sure she's already attempted.

7 THE COURT: You know what we'll do, I think it makes
8 sense, and I think if my memory is correct, I think the last
9 word he set forth on the record was "real estate." Maybe that
10 can cue him, but anyway let's take a 10-minute recess to give
11 him an opportunity to reconnect, and you can, you know, take
12 that time to maybe call him personally or whatever has to be
13 done, but we're going to take 10 minutes to accommodate him.
14 Okay.

15 MR. OGILVIE: Thank you, Your Honor.

16 THE COURT: We'll be in recess for 10 minutes.

17 (Proceedings recessed at 2:16 p.m., until 2:32 p.m.)

18 THE COURT: All right. We're back on the record.

19 Is that correct, ma'am?

20 THE COURT RECORDER: Yes, Your Honor.

21 THE COURT: All right. And, Mr. Schwartz, I think
22 the last word you set forth on the record was real estate. I
23 might be wrong on that, but I was following your argument, sir.

24 Do we have him?

25 THE COURT RECORDER: Mr. Schwartz, are you there?

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1 THE COURT: Did we lose him?

2 THE COURT RECORDER: Judge, we must have lost him
3 again. He was there.

4 Mr. Schwartz, can you hear us?

5 MR. SCHWARTZ: Yes. I'm sorry.

6 Your Honor, I think I was addressing the four and a
7 half million dollar purchase price, which is important here
8 because it goes directly to the issue of whether the Developer
9 here needs to be made whole by getting an award of \$52 million
10 in prejudgment interest.

11 The four and a half million dollar purchase price is
12 established by overwhelming evidence. The contract between the
13 Developer and the Peccoles who sold the Badlands to the
14 Developer in March of 2015, provided that the purchase price
15 was seven and a half million dollars.

16 This was a negotiated purchase between two
17 sophisticated real estate developers, an arm's-length
18 transaction. It was a -- there's no indication it was not a
19 fair market transaction. And the -- it was a heavily
20 negotiated price. In discovery the Developer didn't want to
21 release, but we finally got an order from the Court to (video
22 interference) the Developer to release the documents concerning
23 this negotiation, and they established that \$3 million of the
24 seven and a half million dollar purchase price was for other
25 real estate, and this is confirmed by the seller, by the

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1 Peccoles in a deposition.

2 So the purchase price of the Badlands was four and a
3 half million dollars, and the Developers claim that the
4 purchase price is actually \$45 million, and I think at trial
5 they said a hundred million dollars was the purchase price. In
6 discovery, the City requested documents from the Developer to
7 support that contention. \$7.5 million in the contract signed
8 by both parties, and that documents indicate 3 million that was
9 for other real estate.

10 What documents do you have to establish end dollar
11 purchase price or any purchase price other than what it states
12 in the documents that we have. None. The Developer has
13 produced not a shred of evidence. Only the Developer's claim
14 that the purchase price was \$45 million, not a single document.
15 Who purchases property for \$45 million and doesn't have a
16 single document to show that that's the case, you know,
17 that's -- it's preposterous for the Developer to allege that.

18 Then so we are left with a \$34,135,000 that's 54
19 times what the Developer paid for the 35-acre property. They
20 paid 18,000 an acre, \$630,000 for 35 acres compared to
21 \$54 million -- excuse me \$34 million, which is 54 times what
22 they invested in the property.

23 So it -- the Developer can't seriously contend here
24 that the Developer needs an extraordinary interest rate of
25 something above prime plus 2 percent to be made whole when the

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1 Developer's already been made whole many times over and still
2 has (video interference), made the 26 million on the 17-acre
3 property and still developed the 133-acre, 65-acre property.
4 The City sent them a letter saying go ahead and apply. You
5 haven't really applied. The City hasn't reviewed an
6 application on the merits. They still have that property that
7 might be developed or that they can use for uses permitted by
8 the PR-OS designation.

9 So they've really got -- they really received a huge
10 windfall in this case, and awarding them \$52 million in the
11 interest in addition to that would be -- would not be in the
12 interest of justice.

13 I did want to say one more thing about the *Sisolak*
14 case. In that case, that was a physical taking case where the
15 Court awarded prejudgment interest. The opinion, the Supreme
16 Court opinion doesn't say what the interest rate was. It just
17 says prejudgment interest was awarded. There is no discussion
18 in that case that the interest rate would be whatever the
19 Developer claims it could have made in profit had the Developer
20 invested that money in some speculative investment.

21 So apparently the interest rate there in the *Sisolak*
22 case was just the statutory rate.

23 So there is no case that supports the Developer's
24 position that instead of interest they're entitled to profit in
25 this speculative investment.

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1 The only authority that really applies here is the
2 constitutional authority for an interest rate that's higher
3 than prime plus 2 percent only if the property owner can show
4 that they need that to be made whole to be put in the same
5 monetary position as they were without the -- without the
6 award, and that's impossible in this case. Thank you.

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

8 We'll hear from Mr. Leavitt.

9 MR. LEAVITT: Thank you, Your Honor. James J.
10 Leavitt on behalf of the plaintiff landowner 180 Land.

11 Judge, this is a hearing on a very narrow issue:
12 What is the rate of return to apply for the prejudgment
13 interest issue in an inverse condemnation case. That's it.
14 And the Nevada Supreme Court has been very clear that that's a
15 question of fact to be decided by the Judge in a posttrial
16 hearing based upon evidence.

17 Counsel, didn't provide you one shred of evidence of
18 what the proper rate of return would be. He made again about
19 95 percent of his argument was based upon irrelevant issues. I
20 do want to address just a couple of those.

21 First he attempts to rewrite the decision that this
22 Court made. He keeps saying that this case is a regulatory
23 taking. This Court found that there was a per se taking of the
24 landowner's property where the landowner has been dispossessed
25 of that property. We are now here to determine the remedy that

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1 the landowner should receive after getting a just compensation
2 award, a remedy that's set forth in the Constitution and a
3 remedy that's set forth in the statutes, and that remedy is
4 prejudgment interest. The purpose for prejudgment interest is
5 to, Number 1, remedy what the government has done in this case
6 by taking the property and not paying the landowner for that
7 property. It's been five years now, five years now that the
8 government has had possession of the property, and the
9 landowners haven't been paid.

10 So the Nevada Supreme Court said that under those
11 circumstances, in an inverse condemnation case, prejudgment
12 interest must be paid for that period that the landowner was
13 dispossessed and lost use of the property. Now, the entire
14 premise for Mr. Schwartz's argument that he just made was the
15 2005 purchase price.

16 Your Honor, there is not a case in this country that
17 relies upon a 17-year-old purchase price to determine
18 prejudgment interest. There's not a case in this country that
19 considers a 17-year-old purchase price when determining the
20 proper rate of return, firstly. So it's entirely irrelevant.
21 The entire premise for the argument that was just made is
22 entirely irrelevant.

23 In addition to being irrelevant, it's not even true.
24 Your Honor, we had pretrial hearings. We had motions in limine
25 on the purchase price, and the 2005 purchase price was excluded

1 because it was so irrelevant to determine the value of the
2 property as of the 2017 date of value.

3 Now, counsel repeated probably 15 times his belief
4 that \$4.5 million was paid for the property. There's no basis
5 for that, Your Honor. The government took the deposition of
6 the PMK of the seller of the property and the deposition of the
7 PMK of a buyer of the property, Mr. Johan Lowy. Both of them
8 confirmed that the purchase occurred in 2005. It was a
9 complicated transaction. There was a lot of hair on it, and
10 the buyer, the PMK buyer stated that when you take all of the
11 consideration into -- or you consider all of the consideration
12 for in that 2005 purchase price that it amounted to over a
13 hundred million dollars.

14 Those are the PMKs, Your Honor, not argument of
15 counsel, but those were the PMKs. And, Your Honor, that's why
16 that evidence was excluded. It was excluded to determine just
17 compensation for the same reasons it should be excluded to
18 determine prejudgment interest.

19 Now, let me address the Barsity decision. As I laid
20 out, Your Honor --

21 THE COURT: And I'm going to jump in for a second.

22 MR. LEAVITT: -- Barsity is a decision -- sure.

23 THE COURT: And I just want to make sure the record
24 is clear in this regard because from a historical perspective,
25 I do remember a lot of the law and motion in this case. Now,

1 understand, when it comes to discovery, and I know everyone
2 understands it is relevancy for the purposes of discovery is
3 much broader than admissibility at the time of trial; right?
4 We all understand that.

5 MR. LEAVITT: Right.

6 THE COURT: And that's one of the reasons why I
7 permitted discovery on the purchase price issue; however,
8 ultimately, at the end of the day, when it comes to the value
9 and just compensation at the time of taking, that's not
10 relevant, really and truly. It comes down to what was the
11 valuation back in 2017 when I made a determination there was a
12 taking in this case.

13 Just -- and this is important to point out as far as
14 that value is concerned. I mean, two things. First and
15 foremost, that was a question of fact; right. Secondly, we had
16 an evaluation from the plaintiff at approximately 34 million or
17 so, and then I had nothing else to consider. So in many
18 respects, when it comes to that evaluation, that's what was
19 admitted at the hearing, and so that's what I went with; right?
20 And that's kind of important to point out.

21 For the record, I do -- and this is a question I have
22 for everyone. I did read the Barsity case, and I think that's
23 what you're going to. I have a copy of it. The text right in
24 front of me, and I'll just read into the record what the trial
25 court -- I'm sorry, the Supreme Court set forth in that

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1 specific case.

2 And this is the, to me, some of the really important
3 and pertinent language, and this is off of page 718 of the
4 decision, and that would be 113 Nevada Reporter 718, and I'm
5 looking right here, and it starts out as follows: NDOT
6 contends that the statutory rate operates as a prima facie
7 evidence of a fair rate, period. In Clark County versus Alper,
8 and they cite the case. This Court referred to the statutory
9 rate as a floor on permissible rates and allowed the
10 legislature -- it allowed that legislative amendments
11 increasing the statutory rate where prima facie proof of an
12 interest -- of an increase in interest rates, not prima facie
13 proof of a fair rate, and that's really important to point out.

14 And they go further. They said this Court further
15 held that the determination of a proper interest rate is a
16 question of fact, and the District Court was not bound by the
17 statutory rate, period. And so that's kind of where we're at
18 right now. I understand it's a question of fact. I get that.

19 And so here we have evidence from two experts offered
20 by the plaintiff at this stage of the proceedings, and it's
21 pretty clear what the opinions are. And so anyway, when it
22 comes to determining what would be just compensation as it
23 pertains to -- and I want to make it really clear. I'll go
24 ahead and set it forth as it's stated in the case because I
25 don't want to misquote it.

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1 The Court further went on and said, quote, This Court
2 further held that the determination of a proper interest rate
3 is a question of fact, and the District Court was not bound by
4 the statutory interest rate. We stated that just compensation
5 requires that the landowner be put in as good position
6 pecuniarily as he would have been if his property had not been
7 taken.

8 The purpose of awarding interest is to compensate the
9 landowner for the delay in the monetary payment that occurred
10 after the property had been taken, and that appears to be
11 fairly clear to me, and so at the end of the day, that's what
12 we're really looking at. We're looking at, okay, what is the
13 appropriate, fair rate under the facts of this case based upon
14 the current evidence as set forth in the record?

15 Is that a little distortion?

16 THE COURT RECORDER: I'm going to mute somebody.

17 THE COURT: Okay. And that's where we're at
18 primarily.

19 And so my question, my first question is this. What
20 does a trial court like me do under the facts of this case
21 where I have to decide what the rate should be; right, in light
22 of the current state of the evidence, because this is a
23 question of fact. And I'll just throw that out because I have
24 a lot of other thoughts in that regard too.

25 Mr. Leavitt, and then we'll hear from Mr. Schwartz.

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1 MR. LEAVITT: Thank you, Your Honor. Again, James J.
2 Leavitt on behalf of 180 Land, the plaintiff landowners.

3 And continuing in the decision, Your Honor, and
4 you're absolutely correct as going forward in reading the case,
5 it's a question of fact based upon the evidence that's
6 presented. And as we continue down the case, on page 718, that
7 note 6 is where the Court specifically identifies the evidence
8 that was considered by the lower District Court Judge and
9 affirmed by the Nevada Supreme Court.

10 Again, this is the only case that I'm aware of where
11 the Nevada Supreme Court identifies the type of evidence that
12 it would consider when determining the fair rate, and it's
13 right here. It says Barsy's expert, at Headnote 6 testified
14 that a prudent landowner would have paid off the mortgage on
15 the land or invested his money in land similar to that
16 condemned rather than hold the land at such a low rate of
17 return.

18 So what we did, Your Honor, is we presented our -- we
19 presented these two experts with that precise language and said
20 we want you to determine for us the rate of return that the
21 landowners could have achieved on the \$34,135,000 had they
22 invested in land similar to that condemned, and that's the
23 evidence that we brought to you, which is the specific evidence
24 that the Nevada Supreme Court relied upon in *Barsy*.

25 Now, Your Honor, counsel stated that what happened in

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1 Barsy is that the Court granted interest to make up for lost
2 tenants and lost money that was -- that Mr. Barsy had incurred
3 as a result of tenants leaving his property. Your Honor, we
4 litigated that case. That appears nowhere in that case. The
5 lost tenant compensation was compensated through what was
6 called precondemnation damages in that case.

7 Then after that precondemnation damages was paid and
8 compensation was paid for the land on top of that, the Nevada
9 Supreme Court awarded prejudgment interest. There's not a
10 citation in any part of that record. I don't recall that ever
11 even being an issue that interest was awarded to make up for
12 lost tenants. It's an entirely made up rendition of the case,
13 Your Honor.

14 The case is very clear that the interest that was
15 awarded in Barsy was because Mr. Barsy was not timely paid. It
16 was for the lost use of the proceeds and that interest rate was
17 based upon what he could have earned had he invested that money
18 in land similar to what was taken, and that's again, Your
19 Honor, the evidence that we presented to you.

20 The Alper case. Counsel stated that in Alper the
21 Nevada Supreme Court awarded prime plus two. Again, that's not
22 true. In Alper, the Nevada Supreme Court remanded the case
23 back to the lower District Court Judge and gave a very clear
24 signal to the lower District Court Judge.

25 In Alper, the Nevada Supreme Court wanted to make

1 sure that the type of arguments that we're hearing today don't
2 influence the determination of interest. Again, the Court said
3 that -- in *Alper* it sent the case back to the District Court
4 and then told the District Court, listen, interest may be very
5 substantial in this case and may, in fact, exceed the inflated
6 value of the land.

7 The Court wanted to be very clear to the District
8 Court Judge that it was sending that *Alper* case back to is that
9 listen, your interest calculation must be based on the
10 Constitution. It must be based upon the proper rate and in
11 times it's going to far exceed the value of the land taken,
12 just like it far exceeded the value of the land taken in the
13 *Sisolak* case.

14 The other argument that counsel makes is that we're
15 asking for profit. Your Honor, we're not asking for any
16 profit. We didn't bring to you a project. We didn't go out
17 and build an apartment complex and say here's the money we
18 would have earned. That's not what we did.

19 Again, we gave to two different experts, who by the
20 way prepared their reports entirely independent of one another
21 and gave the instruction from *Barsy*: What is the rate of
22 return the landowners could have achieved by investing in land
23 similar to that condemned, and they both provided empirical
24 evidence of exactly what that rate of return would have been
25 during the relevant period.

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1 And, Your Honor, I'll just say this briefly. All of
2 this argument and statements about building and not building
3 again, entirely irrelevant to why we're here today.

4 I'll address one last final argument, Your Honor.
5 His counsel said these landowners would not have developed or
6 reinvested in land. These landowners wouldn't have done this.
7 I have no idea how Mr. Schwartz knows that. It's argument of
8 counsel, but we do have evidence, which is why we're here
9 today, is to review evidence and arrive at a fair rate based
10 upon the question of fact presented to you, and that evidence
11 was attached to our reply as Exhibit Number 8, and it's the
12 declaration of Vicki DeHart (phonetic). She is one of the
13 principals in this case. I'll just read a very small portion
14 of it:

15 That the common practice of the partnership
16 is to invest in real estate proceeds -- invest
17 in real estate property. That they never would
18 have invested in any type of instrument or land
19 that only yields prime plus two, and then they
20 say the proceeds would have been reinvested in
21 vacant land or improved real property by means
22 of a 1033 exchange.

23 Which is the eminent domain version of a 1031
24 exchange.

25 So the evidence that's before us here today is that

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1 the proceeds would have been invested in land. That's the
2 exact evidence. We didn't even need the declaration because
3 that's the exact direction that the Nevada Supreme Court has
4 given in the *Barsy* case is to determine the rate of return that
5 would have been achieved if they had invested the money in land
6 similar to that condemned.

7 So, Your Honor, we ask that you enter an order.
8 Again, the other two issues are not in dispute. The only issue
9 is what's that fair rate of return? And in particular, for
10 this landowner who does land investments, in fact, we've
11 referred to the landowner repeatedly through this proceeding as
12 the landowner, and the City has repeatedly referred to them as
13 the Developer, and now the City wants to pretend like he's not
14 a land investor; he's not a Developer.

15 We have the perfect situation here, Your Honor, for
16 this question of fact where we have the perfect plaintiff who
17 only invests in land. Their business has never invested in
18 stocks or any other type of investment instrument that would
19 bring a rate of return of prime plus 2 percent as set forth in
20 Ms. DeHart's declaration. She lays it out very clearly what
21 they invest in. Not only do we have the perfect plaintiff, but
22 we have the perfect facts which line up identical to the *Barsy*
23 case, which is exactly what the *Barsy* court decided.

24 So, Your Honor, we would respectfully request,
25 pursuant to the *Barsy* decision, that the rate of return of

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1 23 percent be applied. That's the only empirical evidence
2 before the Court which establishes a fair rate of return, Your
3 Honor.

4 THE COURT: All right. And I did ask some questions.
5 Mr. Schwartz, out of fairness, I'm going to give you a chance
6 to address those, sir.

7 MR. SCHWARTZ: Thank you, Your Honor.

8 In the *Barsy* case and the *Alper* case, these are
9 physical takings cases. The Court did not -- there's no
10 evidence, no evidence whatsoever that the City dispossessed the
11 property owner from the property, that the City took possession
12 of the property. There's no evidence of that whatsoever.
13 Those cases don't really apply. The cases that apply here are
14 *Kelly*, *Boulder City and State*, and those cases hold that to
15 show a taking through regulation of the owners use of the
16 property there has to be a complete wipeout in value. And
17 there clearly wasn't a complete wipeout of value for all of the
18 reasons that we have presented in evidence in this entire case,
19 including their argument to the tax assessor that the property
20 still had golf course use of the property after the City
21 allegedly -- after the City denied the 35-acre application.
22 That statement was made by the Developer's attorney two months
23 after the City denied the Developer's applications.

24 But be that as it may, the City has not, has not
25 dispossessed the Developer. There's no evidence of that, and

1 so I don't think the Court's decision could be based on the
2 Borsy and Alper case because those are cases involving eminent
3 domain with a physical possession of the property.

4 By I think that the argument -- the Developer's
5 argument here loses sight of the standard here. Yeah, if the
6 Developer had invested the money in the real estate market, in
7 2020 hindsight, they would have made -- they could've made some
8 big profits. It would depend on what property they invested in
9 because some appreciated, and some didn't appreciate, and
10 they're just dealing with averages here.

11 So this requires the Court to speculate as to what
12 this 23 percent, pure speculation.

13 But anyway --

14 THE COURT: And so --

15 MR. SCHWARTZ: -- maybe they would have made more
16 money if they had invested the award.

17 THE COURT: No. No. I don't want to cut you off, I
18 don't. Why would it be speculation? That's what I need to
19 know.

20 MR. SCHWARTZ: Well, the evidence before the Court as
21 to the rate of appreciation of real estate, not the interest
22 rate -- we're getting far afield here from interest, which is a
23 problem, but the rate of appreciation of real estate is an
24 average rate. It's an average rate. So the Court does have
25 evidence of a proper interest rate, which is the statutory

1 rate. The legislature is saying here's the rate. Unless you
2 can show, unless you can show that the owner needs a higher
3 rate to be made whole.

4 But what the evidence before this Court is not an
5 interest rate. It's the average rate of return of certain
6 types of real estate in the City of Las Vegas in the last four
7 years. So it's entirely speculative to say, if I'm a judgment
8 creditor in a takings case, I would have invested the money. I
9 would've invested the money in real estate, and the property I
10 would have invested in would have appreciated at the average
11 rate of all these properties. I would've been wise enough to
12 invest it in property where I wouldn't have lost money or maybe
13 not lucky enough to invest it in property that -- where its
14 value multiplied many times in that period, but it's the
15 average rate. So it's just -- it's 2020 hindsight about a
16 speculative investment. And you could say the same thing.

17 What if the stock market had gone up 30 percent per
18 year since 2017. The Developer could then say, well, I
19 would've taken that 34 million and invested it in the stock
20 market, and I would have made an average the increase in the
21 market, in the Fortune 500 or the NASDAQ. I would've made that
22 money. Purely speculative, and I don't think that the
23 Constitution or the legislature intended that this Court would
24 be engaging in that kind of speculation in setting an interest
25 rate.

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1 The Court would set an interest rate needs to look at
2 what's the return on the value -- the time value of money.
3 What's the return on that money had they invested it and got
4 interest, not profit. And then the Court the Constitution
5 says, well, the Court can't set an interest rate that's higher
6 than the statutory rate in order to make the property owner
7 whole.

8 So, yeah, there's evidence before the Court of how
9 the real estate market appreciated overall in Las Vegas, but
10 there is no evidence before the Court that an interest rate
11 higher than the statutory rate is necessary to make this
12 property owner whole, like in *Barsy*.

13 That's -- counsel's rendition of the facts in *Barsy*
14 is not correct. In *Barsy*, the Court said you lost tenants. So
15 in awarding the -- in awarding the awards for the value of your
16 property -- remember, this is the condemnation action. The
17 agency took possession, took title of the property for a public
18 project. Condemnation action. The award of fair market value
19 as of the date of value was not enough to compensate for your
20 lost tenants, nor was the precondemnation interest. That's why
21 the Court said we're going to set an interest rate that's
22 higher -- higher than we otherwise would because to make up --
23 to make up for your lost value of your real estate during the
24 time when the City hadn't condemned your property.

25 If the precondemnation damages in *Barsy* were enough

1 to compensate the property owner for the lost tenants, then why
2 would the Court engage in this inquiry about an interest rate
3 necessary to make the property owner whole. So the facts as
4 the Developer has described them are wrong.

5 So we focus now on the standard, which is you need to
6 make the property owner whole.

7 Now, this Developer says, well, you need to make me
8 whole because I needed this money to build. I'm a developer.
9 I build -- I build things.

10 Well, the City has established, has clearly
11 established that this Developer has no interest in building on
12 the Badlands property. It had a permit to build 435 units on
13 the 17-acre property, and it's done nothing, nothing to build,
14 and, of course, the reason? Well, because that doesn't fit
15 with its narrative here, which is that it's victimized by the
16 City.

17 The Developer could've filed another application to
18 develop the 35-acre property at the City's invitation. It
19 didn't do so. It could have tried to develop the 133-acre and
20 65-acre property. It had no interest. So the Developer didn't
21 need this money.

22 My point is, Your Honor, the Developer didn't need
23 this money to make it whole so that it could engage in some
24 real estate development. It didn't have any interest in that.
25 It's just using the Courts here to get, you know, a windfall

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1 from the taxpayers. So it didn't need a higher interest rate
2 to be made whole.

3 And my final point is this, okay. And there is
4 absolutely no evidence that the purchase price, and the Court I
5 think needs to focus on the amount the Developer paid for the
6 property in order to determine whether the interest rate on the
7 judgment needs to be extraordinarily high to make the Developer
8 whole. So then purchase price is directly relevant.

9 Now --

10 THE COURT: And I have a question for that, and this
11 is just more of a hypothetical than anything else. I mean, I
12 look at my house I currently live in, and I don't mind saying
13 it, I mean, I'm fortunate I live in a great neighborhood, and
14 I've been in the house for about 9, 10 years, and the value has
15 doubled; right? And we all know what the real estate market
16 has done over the last three or four years, more than doubled.

17 But my question would be this. Hypothetically, if
18 there was a taking done by a governmental entity today, why
19 would the purchase price be relevant on any level? Because
20 it's worth what it's worth at the time of the taking. So why
21 am I --

22 MR. SCHWARTZ: Well, that's right.

23 THE COURT: Yeah. And so why am I focused on that
24 issue? Because now we're looking at the time period post
25 taking during the litigation where the landowner was deprived

1 of usage in looking at what the appropriate interest rate
2 should be for that.

3 And I kind of get that, but -- and here's -- and I
4 don't mind -- this -- and I get it. That's why I'm spending a
5 lot of time on this because I understand it's a lot of money.
6 There's a lot of risk. I get it. I understand all of that.

7 Here is my question, and this is straight from the
8 *Barsy* case. It provides the following: Quote, While the
9 statutory rate should be used if unchallenged, once competent
10 evidence is presented supporting another rate of interest as
11 being more appropriate, and this is where the language gets
12 really interesting, quote, The District Court must determine
13 which rate would permit the most reasonable interest rate;
14 right. What would be reasonable, and that's specifically what
15 the language from the case provides, and so that's what I'm
16 required to do.

17 And I realize there's a lot here. There's a lot at
18 risk, I do, and I want to make sure -- because I want to really
19 take my time as far as this specific issue is concerned.

20 And so, Mr. Schwartz, in light of that, what do I do?
21 I mean, I want to make sure I understand what your position is
22 because right now, I mean, I have to determine ultimately a
23 question of fact. I do have two evaluations from the landowner
24 in this case, and that I have to grapple with as the fact
25 finder, and we can all agree to that, and that's what I'm

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1 required to do.

2 And just as important, when it comes to review, it's
3 my understanding that at the end of the day, what the reviewing
4 court would look at, and they would make a determination as to
5 whether or not whatever decision I make is supported by
6 substantial evidence in the record; right, more likely to than
7 not, preponderance of the evidence standard.

8 But go ahead, sir. I don't want to cut you off. I'm
9 going to open it up for you. I have made a lot of comments
10 there.

11 You have the floor.

12 Of course, we're going to hear from Mr. Leavitt after
13 you're done.

14 MR. SCHWARTZ: The legislature has determined that a
15 proper rate of interest for a judgment is -- prejudgment
16 interest is prime plus 2 percent, and the law provides that you
17 can -- that the Court can find that the rate is higher than
18 that if it's necessary to make the property owner whole.

19 This Court has been asked to determine an interest
20 rate that will make the property owner whole, and that's in
21 addition to the award; right? Because the Court's already made
22 an award of 34 million plus.

23 So the Court's task is to find an interest rate that
24 is necessary to make the property owner whole. So in this
25 case, the property owner bought the property for four and half

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1 million. Now, why is that significant? Well, because the
2 award is 54 times what the property owner paid for the 35-acre
3 property, 54 times. And the property owner's appraiser, the
4 property owner's appraiser said that the property is worth
5 \$34 million and change if the property owner -- if the property
6 can be developed with housing, and it's worth zero if it's not,
7 if it can't be developed for housing.

8 In his appraiser -- in his appraisal, Mr. DiFederico
9 used comparable sales to value the property. One of his sales
10 was from February of 2015. That's a month before the close on
11 the sale of the Badlands property. And this notion that there
12 was some 2005 purchase price, there's no evidence of that, and
13 it's not relevant because we've got a purchase and sale
14 contract from 2015 between --

15 THE COURT: So tell me this, sir --

16 MR. SCHWARTZ: -- it's been authenticated --

17 THE COURT: -- and I don't want to cut you off. I
18 don't want to cut you off on this issue. I don't, but you keep
19 going back to the purchase price, and why would that be
20 relevant as it pertains to the ultimate determination I made in
21 this case regarding the value of the property at the time of
22 taking? Because we can all agree --

23 MR. SCHWARTZ: Because it's relevant --

24 THE COURT: -- assets -- you know, you can buy
25 something if you hold it, and sometimes you buy in the right

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1 area, and the property can make -- increase dramatically over
2 17 years, and consequently, why would the purchase price matter
3 when the fair market value at the time of taking could be 50
4 times or a hundred times what the purchase price will be?

5 And that happens a lot with real property, especially
6 in a growing community like Las Vegas. Because I've been here
7 since 1985, and I would anticipate some parts of the Valley
8 back in 1985, I remember this where St. Rose Parkway is located
9 was raw desert. Today I don't know what that property is
10 worth, and that's kind of my point. I'm trying to figure out
11 on any level why the purchase price would be germane. I just
12 don't see it.

13 MR. SCHWARTZ: Because the Court's already awarded
14 what the Court says is just compensation of \$34 million. And
15 in setting the interest rate, the Court looks to whether the
16 property owner needs to be made whole, not what they would have
17 made had they invested that money in some investment. The
18 Court is here trying to determine an interest rate (video
19 interference).

20 THE COURT: And that interest rate -- and the
21 interest rate from the time the taking occurred up until I make
22 the decision, like we would in any case involving prejudgment
23 interest; right?

24 MR. SCHWARTZ: But what -- that's not interest. What
25 happened after the judgment, after the -- excuse me, after the

1 alleged taking, what happened after the alleged taking, that's
2 subject to prejudgment interest. The legislature didn't say,
3 you know, what -- that you can get what's called profit for
4 investing the money that you should have received on that date.
5 That would leave these taking cases over to a complete
6 free-for-all of grossly speculative evidence, like we have in
7 this case, about what the property owner would have made.

8 That's not typically admissible in evidence. It's
9 too speculative, but that's not the test, and that's why the
10 test is interest, and the interest has to be, if it's going to
11 be higher than the statutory amount, it has to be to make the
12 property owner whole for something that happened before the
13 taking in this case.

14 Now if I could finish my point about this purchase
15 price.

16 So the Developer's appraiser said that one of the
17 sales that and which he relied for his \$34 million value for
18 just the 35-acre property was from February of 2015. Well, the
19 sale of the 35-acre property occurred in March of 2015. So you
20 can't say that the very same property is not relevant to the
21 value of the property --

22 THE COURT: No. No. Say that --

23 MR. SCHWARTZ: -- when their own appraiser is
24 admitting --

25 THE COURT: And, Mr. Schwartz --

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1 MR. SCHWARTZ: -- that these sales are relevant --

2 THE COURT: Mr. Schwartz, I don't want to cut you
3 off. Say that again so I can make sure I -- so I can make sure
4 I can follow you. I think you were talking -- I just want to
5 make sure I understand what your position is. You said -- did
6 you say 1985?

7 MR. SCHWARTZ: No. I said 2015.

8 THE COURT: Okay, no. No. I want to follow you.
9 The 2015 transaction. Go ahead and tell me what you said. I
10 want to listen. Go ahead.

11 MR. SCHWARTZ: So an appraiser values property by
12 comparing the subject property with sales of similar property.
13 The more similar the property, the more accurate the appraisal,
14 the less subject to the appraisal. The sale of the very same
15 property, the very same property that's at issue is -- can be a
16 perfect comparable. It's the same property. It's got the same
17 location, the same topography, the same features. Everything
18 is the same. So there's not much guesswork.

19 So when this appraiser considered sales of property
20 from before the date of value, the date that the Badlands
21 transaction, so you can't say that this appraiser -- that the
22 sale of the Badlands being about two years -- two years and
23 five months before the alleged date of value, you can't say
24 that it's too old, that there's -- that it's too old. So it's
25 almost a perfect comparable, and that property sold for 18,000

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1 an acre.

2 Mr. DiFederico said that that same property, that
3 same property is now worth almost a million dollars an acre.
4 So when you compare the Developer's investment in the property
5 with the judgment, the Developer made 54 times their
6 investment. You don't need to give them a high interest rate
7 to make them whole.

8 Let's take the Developer's allegation that they spent
9 45 million for the property. Heck, why not a million, a
10 hundred million, a hundred million dollars. There's no
11 evidence of that, but let's say a hundred million. That's
12 400,000 and acre. This Court has awarded the Developer almost
13 a million dollars per acre for this property. So that's more
14 than twice what the Developer paid, even with the Developer's
15 false claim that they paid a hundred million dollars for the
16 Badlands.

17 So the Developer doesn't need this extraordinarily
18 high interest rate to be made whole for something that the
19 government did.

20 The Developer also had the right to change the date
21 of value to the date of trial. The Developer didn't do that.

22 If -- you know, if the -- if the property had
23 appreciated like they say, well, the Developer could have done
24 that. They didn't do that.

25 But the evidence to the Court, that's before the

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1 Court is completely speculative. In any takings case where
2 there's a damage award, is the Court going to say well, you
3 know, I am going to, you know, in looking back in the two or
4 three years from the time of award of prejudgment interest to
5 the alleged taking, the Court's going to look back and say,
6 well, the Developer is going to -- the property owner is going
7 to say, well, I would have invested it in my uncle's -- my
8 uncle's shoe business, and I would have -- and, look, my
9 uncle's business made, you know, these exorbitant profits, and
10 so that's my -- that's what I lost.

11 I just think that the Court going down this road,
12 even if the Court can consider this, because again, there's no
13 evidence the Developer hasn't been made whole, if the Court
14 goes down that road, it's requiring the Court to engage in rank
15 speculation.

16 And it also will end up in a completely unjust
17 result. I mean, the Developer has already made 54 times its
18 investment in the property. And to award the Developer another
19 \$52 million just it kind of shocks the conscience.

20 So there's no grounds for it. The Developer has
21 already made a windfall. It doesn't need to double down on the
22 windfall.

23 THE COURT: So I guess the bottom line, sir, what
24 you're saying, look, Judge, you should stick to the statutory
25 rate?

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1 MR. SCHWARTZ: That's right. We calculated what the
2 statutory rate would yield based on the judgment. Again, we're
3 not conceding anything about liability in this case or, you
4 know, that the compensation awarded was just, but based on the
5 Court's judgment and the facts of this case, the unrefuted
6 facts, an interest rate higher than the statutory rate would be
7 unconscionable, would -- it would pile an enormous windfall on
8 top of what is already an enormous windfall, giving the
9 Developer, as I calculated, 13,800 percent profit on its
10 investment.

11 THE COURT: I understand, sir. I just wanted to make
12 sure I wasn't overlooking anything.

13 All right. And have you said everything you need to
14 say right now, sir? Then I'll go ahead and give Mr. Leavitt
15 the last word on this issue.

16 MR. SCHWARTZ: Yeah. One more thing. In the *Sisolak*
17 case, the prejudgment interest was greater than the award
18 because it was assessed over a very long period of time, a very
19 long period of time. But it's my understanding that the
20 interest rate awarded in *Sisolak* was the statutory rate. It
21 wasn't -- it wasn't -- it wasn't what the Developer could have
22 invested in the property. I mean, if that were the case,
23 certainly the Developer in that case could have made the
24 argument, well, I could've taken the money and invested it in
25 this and invested it in that and made higher than the statutory

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1 rate.

2 I don't think that occurred in the *Sisolak* case
3 because there was no showing that the Developer needed a higher
4 interest rate to be made whole, and that's really the point
5 here.

6 The Court doesn't get to all of this other evidence
7 unless the Court finds that the Developer -- that something
8 about that award was not enough to compensate the Developer,
9 just not enough to give them 54 times their investment in the
10 property. They need more. That's the --

11 THE COURT: But is --

12 MR. SCHWARTZ: That's the decision the Court needs to
13 make.

14 THE COURT: But here's my question though. Is that
15 really the standard? And the reason why I asked that question,
16 and this come straight from the *Barsy* case, and this is what
17 the Nevada Supreme Court sets fourth, and I think I've read
18 this in the record before, but quote,

19 "While the statutory rate should be used if
20 unchallenged, once competent evidence is
21 presented supporting another rate of interest
22 being more appropriate, the trial judge must" --

23 Meaning I have no alternative here.

24 -- "then determine which rate would permit
25 the most reasonable interest rate."

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1 And so that's where we're at right now.

2 MR. SCHWARTZ: But the reasonable rate, Your Honor,
3 is the rate that's necessary to make the property owner whole.
4 The Court in that case said that the owner lost tenants while
5 the agency delayed the -- filing the eminent domain action.

6 Again, the Court already -- if the Court had already
7 made the owner whole with the award of the fair market value of
8 the property and the prejudgment -- the precondemnation damages
9 award, if it had already made the owner whole, then under the
10 Constitution, there would be no reason to award higher than the
11 statutory rate. That's only, you know, a reasonable rate is
12 only the rate that's necessary to make the owner whole, the
13 owner whole.

14 And in this case, in *Barsy*, I think it's pretty clear
15 the Court was giving a rate higher than the statutory rate
16 because they wanted to make the property owner whole, and they
17 said well, you can invest another real estate where you get a
18 higher return. That's because the assumption is you'd have
19 tenants, and you'd be getting a higher return than the return
20 that you got during this period, which was because you didn't
21 have tenants.

22 So that's why the Court there found, well, we need to
23 give a higher rate, and so we'll use, you know, we'll
24 compensate this owner who wasn't made whole by the awards with
25 this higher rate, and it just happens to be that the evidence

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1 was, well, what -- what he would have invested in this other
2 real estate to where if they had tenants he would've made up
3 that money had he lost, that he lost because the agency caused
4 him to lose his tenants.

5 We don't have that situation here. We have the
6 opposite situation where the Developer invested a certain
7 amount of money, and the Courts awarded the investor 54 times
8 what the Developer invested in the property. So the Developer
9 didn't lose anything. They got a huge windfall. So there's no
10 reason to award prejudgment interest in addition to that huge
11 windfall, to give them double or triple, yes, 52 million, would
12 have been having tripling their windfall.

13 You know, under the Constitution to test this, you
14 got to make the property owner whole. I think that's what the
15 Court needs to focus on, and there's no evidence that this
16 Developer needs yet more money to be made whole.

17 THE COURT: All right, sir. And thank you.

18 And we'll hear from Mr. Leavitt now.

19 MR. LEAVITT: Thank you, Your Honor. James J.
20 Leavitt on behalf of 180 Land, the plaintiff landowner again.

21 Your Honor, counsel said that the legislature
22 determined prime plus 2 percent to be the appropriate rate.
23 That's not what the legislature determined. The legislature
24 that the state says -- that the statute states the rate of
25 interest to be used to compute the award of interest must be

1 determined by the Court which, quote, must not be less than
2 prime plus 2 percent. The legislature never once determined
3 the prime plus 2 percent is the appropriate rate. They simply
4 said it cannot be below that.

5 And as you read from *Barsy*, the Nevada Supreme Court
6 said that once you receive competent evidence, you must
7 determine the rate which would be the most reasonable interest
8 rate. So the operative words there are reasonable interest
9 rate.

10 I will quote from the report by Bill Lenhart. This
11 is interest motion Bates stamp 0085. He concludes that he's
12 done his entire research here and that he says that the rate
13 which a landowner, and I'm going to quote, would reasonably
14 expect is a compound rate of 25 to 27 percent a year.

15 Your Honor used the exact standard that the Nevada
16 Supreme Court asked this Court to follow and asked *Barsy* to
17 follow, which what is the reasonable interest rate based upon
18 the rate of return for land during the relevant period.

19 Mr. DiFederico in his report, interest motion, dash,
20 0005, arrived at the same conclusion of a reasonable interest
21 rate except for he arrived at 23 percent, again pursuant to the
22 *Barsy* decision.

23 So, Your Honor, the question was to Mr. Schwartz, why
24 is this speculative? It's not, Your Honor. There's three
25 reasons this rate of return is not speculative. Number one,

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1 the rate of return based upon land is what the landowners do.
2 They've done it in the past, and they're doing it now. They
3 invest in land.

4 Number two, it's what *Barsy* relies upon. *Barsy*
5 relies upon evidence of what the rate of return is of land
6 during the relevant period to determine the rate of interest.

7 And third, it's what the experts have confirmed in
8 this case.

9 So we have the landowners doing it. We have the
10 *Barsy* court relying it on it, and we have the experts
11 confirming it. That's the evidence before the Court right now
12 on this question of fact.

13 What we don't have from the City is any evidence of
14 why prime plus two should apply. They provided no evidence
15 from anybody, from an expert other than argument of counsel.
16 And what is that argument of counsel based on? He reargues the
17 purchase price that this Court has already ruled on, and he
18 tries to claim that that purchase price occurred in 2015. Both
19 the person most knowledgeable on the sale and the person most
20 knowledgeable on the purchase stated that the purchase price
21 was in 2005.

22 I'm going to quote just very briefly, Your Honor,
23 from this Court's order on the purchase price. Number one, the
24 purchase price transaction does not reflect the highest and
25 best use of the 35-acre property on the date of value.

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1 Number two, the City has not identified an expert
2 that can testify to it.

3 Number five finding, jumping ahead, the purchase
4 price transaction beginning in 2005 is too remote to the date
5 of value with changes in the market fluctuations.

6 And then, Your Honor, I'm not going to continue to
7 read. That's the Court's motion -- that's the Court's order on
8 the motion in limine. We've been down this road. We've argued
9 this issue ad nauseam. The purchase price has been excluded
10 because it's so remote.

11 I will end with one example. You buy a parcel of
12 property in Las Vegas in 2005, your home. Say you got it for
13 \$50,000. Since 2005, which would not be unheard of, the
14 property is now worth \$700,000.

15 Under Mr. Schwartz's analysis here, all the City
16 would have to pay is \$50,000 because that made you whole, no
17 interest, not the increase in the value of your land, but let's
18 go back 17 years. Let's look at what you paid for the
19 property, and we'll give you 50 grand. Now, you've been made
20 whole. That's not the standard.

21 The standard is determining the value of the property
22 on the date of value. Once that property valuation is
23 determined, then the interest rate is -- then interest is based
24 on that value, and the rate is based on the time period in
25 which the landowners lost the use of those proceeds, and the

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1 Nevada Supreme Court in Basy said, look to land increases.

2 We've done that, Your Honor, and that's the only
3 evidence before the Court.

4 We respectfully request that you apply that -- or
5 that you rule that that 23 percent rate of return should be
6 applied because there's no evidence to contest it, just like
7 there was no evidence to contest the \$34 million value.

8 Thank you, Your Honor.

9 THE COURT: All right. And I don't mind saying this.
10 I mean, I thought about this case. I thought about my prior
11 decision as it pertained to the 34 million. And at the end of
12 the day there was no other alternative as far as value is
13 concerned.

14 And then, I mean, this -- I don't mind saying this to
15 everyone. The amounts being requested are significant sums of
16 money. I've made a lot of decisions in the past regarding
17 sums. I mean, I've had judgments in excess of \$500,000,000 in
18 this department that I had to reduce. That was for punitive
19 damages. It's my recollection I reduced it by -- I think it
20 was a State Farm Insurance Company case in front of the supreme
21 court where punitive damages had to have some sort of
22 relationship to compensatory damages, no more than 10 to 1.
23 And I had to reduce that. I forget what the exact sum was.
24 But I'm just saying we've had a lot of cases like that.

25 But here -- and this is the real -- I guess where the

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1 rubber meets the road. We have argument about potentially what
2 would be the most reasonable interest rate, but I have no
3 evidence. And that's kind of what I'm grappling with right
4 now. We have no challenge under Hallmark as to —

5 MR. SCHWARTZ: Your Honor.

6 THE COURT: Yeah, go ahead.

7 MR. SCHWARTZ: Counsel freely intermixes rate of
8 return with interest rate. The expert testimony that was
9 presented to this Court are the rates of appreciation of real
10 estate. They are not reasonable interest rates. There's no
11 evidence from the developer of a reasonable interest rate in
12 this case.

13 THE COURT: All right.

14 MR. SCHWARTZ: He said the expert said a reasonable
15 interest rate is such and such, 23 percent per year. No,
16 that's not what the evidence shows. The evidence shows that
17 real estate, that the average of a class of real estate in Las
18 Vegas appreciated at a certain rate. Interest rate is the time
19 value of money. There's no case in Nevada where the Court has
20 awarded prejudgment interest at greater than prime plus
21 2 percent. Thank you.

22 THE COURT: All right. And I'm going to tell
23 everyone this. Am I going to make a decision right now? No.
24 I'm going to go back and read everything because there's a lot
25 of money involved. But at the end of the day, I'm going to

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1 give the best decision I can give. It's going to be relatively
2 quick. It's my recollection I didn't sit on the last decision;
3 maybe, what, four or five days, a week at most, and that's what
4 I'm going to do.

5 But why does it matter -- I see the case -- what it
6 says here was -- and we can focus on that. It says, "While the
7 statutory rate should be used if unchallenged, once competent
8 evidence is presented supporting another rate of interest" --
9 right, that's what the case says -- "as being more appropriate,
10 the district court must determine which rate would permit the
11 most reasonable interest rate." And that's what the case says.

12 And then we have a scenario where there's interest
13 rates being offered by the plaintiff from an expert
14 perspective. I understand there's been argument, but as it
15 pertains to the methodology and those things, they really
16 haven't been challenged with another report. Right?

17 Anything you want to add to that, Mr. Leavitt? I
18 think you're frozen right now.

19 MR. LEAVITT: I'm on, Your Honor.

20 THE COURT: Okay.

21 MR. LEAVITT: No, Your Honor. And it's absolutely
22 correct that the evidence is unchallenged at this point in
23 time. So, again, we submit based upon the pleadings and based
24 upon the argument.

25 THE COURT: I understand. And I won't -- I think the

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1 last time I got it done -- in fact, I think all the important
2 decisions I've gotten done pretty quick historically, like
3 within a week or so. I'm going to do the same thing. I just
4 want to go through it. It's a lot of money, but at the end of
5 the day I have to make a decision and I won't sit on it. It
6 will be done quickly.

7 MR. LEAVITT: Thank you.

8 THE COURT: All right. So we have one other matter
9 regarding attorney's fees.

10 And, Mr. Leavitt, you've got the floor, sir.

11 MR. LEAVITT: Yes, Your Honor. Thank you. Your
12 Honor, in our opening motion we listed three different sources
13 for recovery of attorney's fees in an inverse condemnation
14 case. I will address just two of those sources during my
15 argument today.

16 The first source is the Nevada Constitution. The
17 Nevada Constitution was amended in 2008 and it added a
18 provision, Article 1, Section 22, subclause 4, which states
19 what just compensation includes. And it says, "Just
20 compensation shall include but is not limited to interest and
21 all reasonable costs and expenses actually incurred in the
22 action."

23 So, Your Honor, the Nevada Constitution is abundantly
24 clear that a landowner recovers costs, and we've already done
25 that part of this case, and all expenses that that landowner

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1 must incur in an eminent domain action or has incurred in an
2 eminent domain case. Those expenses clearly include attorney's
3 fees. The City has not even challenged the language that the
4 Constitution -- the provision of expenses includes attorney's
5 fees. Therefore, Your Honor, we would respectfully request
6 that attorney's fees be granted under that provision of the
7 Constitution.

8 But I do want to note one thing because when this
9 constitutional provision was placed on the ballot in 2006 and
10 2008, it was made very clear to the voters by the opponents of
11 the ballot question that this provision would require the
12 government to pay attorney's fees. We've laid that out in our
13 brief. And the voters of the State of Nevada passed this
14 constitutional provision in 2006 with almost 70 percent of the
15 voters. And, Your Honor, I don't know of many ballot questions
16 or elected officials that get 70 percent of the vote. Not only
17 in 2006 but in 2008, once again 70 percent of the electorate
18 voted to pass this section of the Nevada Constitution so that
19 landowners in these eminent domain cases would be reimbursed
20 for their attorney's fees. So, Your Honor, that's the first
21 section that allows for reimbursement of attorney's fees.

22 The second provision that allows for attorney's fees
23 arises out of the Sisolak and Hsu cases. Again, you're very
24 familiar with the Sisolak case. You're very familiar with the
25 Hsu case. Both of those cases cite to the Federal Relocation

1 Act and both of them say that once a landowner prevails in an
2 inverse condemnation case, that landowner is entitled to their
3 attorney's fees.

4 There's two provisions that the Nevada Supreme Court
5 cites to. 42 U.S.C. 4654, that's cited in the *Sisolak* case.
6 It's right on point. It says if a landowner prevails in an
7 inverse case, the government shall pay those attorney's fees.
8 49 CFR, Section 24.107 says the owner of real property shall be
9 reimbursed their attorney's fees if a judgment in inverse
10 condemnation is rendered in their favor. So these are
11 provisions that are cited by the Nevada Supreme Court in both
12 the *Sisolak* case and the *Hsu* case that where a landowner
13 prevails in an inverse condemnation case they're entitled to
14 their attorney's fees. And that's without exception, Your
15 Honor. The *Hsu* case, or the *Sisolak* case said very
16 succinctly -- here's what it said. "Because *Sisolak* is a
17 property owner who was successful in his inverse condemnation
18 case, the plain terms of the Act allowed the district court to
19 award reasonable attorney's fees." In the *Hsu* case the same
20 exact language is repeated. So we have two different avenues
21 to award attorney's fees.

22 Number one, the Constitution says just compensation
23 shall include reimbursement of all costs and expenses. All
24 costs and expenses clearly contemplates attorney's fees. And
25 then the *Hsu* and *Sisolak* rule, which state that in the State of

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1 Nevada if a landowner prevails in an inverse condemnation
2 action they're entitled to reimbursement of their attorney's
3 fees.

4 Now, the argument that the City is going to make
5 about the *Sisolak* and *Hsu* case is they're going to say that,
6 Judge, the landowners in *Sisolak* and *Hsu* were only entitled to
7 attorney's fees because they showed that there were federal
8 funds involved in the taking. And they're going to say that
9 you have to show some type of connection or nexus between the
10 taking and the federal funds.

11 There's two reasons that's not true. Number one,
12 Your Honor, in an inverse condemnation case there are no funds.
13 The government doesn't allocate funds to acquire the property.
14 The government is denying the taking. Therefore, you can't
15 have a direct nexus between the federal funds that the
16 government receives and the taking of the property. All there
17 has to be is some kind of general nexus between the
18 government's program or the government itself and receiving
19 federal funds. So we see this all the time, Your Honor.

20 What the Federal Government will do is they'll say
21 we'll give you federal funds if you do certain things. And in
22 this case the Federal Government says we will give you federal
23 funds as long as you, the City, follow our Act, and if you take
24 property by inverse condemnation you have to reimburse a
25 landowner all of their attorney's fees. This is an absolute

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1 requirement to the City of Las Vegas receiving federal funds.
2 In fact, if the City contests the attorney's fees here, it
3 would be jeopardizing receiving federal funds because it would
4 be contrary to the Federal Relocation Act.

5 Having said that, Your Honor, we have presented to
6 the Court -- they're all before the Court, Exhibit Number 12,
7 Exhibit Number 13 and Exhibit Number 14, which show the City
8 receives federal funds. The City receives federal funds
9 generally for all of its operations, and then Exhibits Number
10 13 and 14 show that the City receives federal funds
11 specifically for parks and open space under what's called
12 Southern Nevada Public Lands Management Act. It's known as
13 SNPLMA. Under SNPLMA, the City of Las Vegas receives federal
14 funds from the federal government to acquire properties and to
15 build properties for parks and open space.

16 That's the purpose for which the property has been
17 taken here, Your Honor. So insofar as there is some type of
18 nexus required to show federal funds between the property
19 that's being taken and -- or, I'm sorry, a nexus between the
20 property being taken and the federal funds that the City of Las
21 Vegas receives, that's set forth in Exhibits Number 12, 13 and
22 14. So, Your Honor, according to those two provisions, the
23 landowners are clearly entitled to reimbursement of their
24 attorney's fees.

25 So the final question, Your Honor, if they're

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1 entitled to reimbursement of attorney's fees, would be how much
2 should that be? The Nevada Supreme Court provided a specific
3 formula for calculating attorney's fees in inverse condemnation
4 cases, and it's unique to inverse condemnation cases in the
5 *County of Clark v. Tien Fu Hsu* case. In that case we litigated
6 on behalf of Mr. Hsu for 14 years, and at the end of that case
7 the Nevada Supreme Court said you're going to get your
8 attorney's fees and here's how they have to be calculated in
9 two steps.

10 Number one, the Lodestar. This Court knows the
11 Lodestar. I'm not going to go through it. You look at the
12 hours and you multiply it by a reasonable rate. The hours we
13 provided to this Court are based upon the affidavits of all of
14 the counsel. Pursuant to NRCP 54, we've laid out those hours.
15 We've stated in our affidavits for every attorney that copious
16 records were given or kept.

17 On the hourly rate, those hourly rates were done down
18 to the tenth degree, so that, for example, if an individual
19 worked one hour and seven minutes that's 1.1 hours that was
20 recorded. Those were all added up solely and specifically for
21 this 35-acre case, meaning that none of the hours that we are
22 seeking to recover for attorney's fees in this case were spent
23 in the 65, 133 or 17-acre case. That's set forth clearly in
24 our affidavit. And, Your Honor, the rate that we have provided
25 to you was \$450 up to June 1, 2019, and after that it was \$675.

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1 So pursuant to that first step, Your Honor, we've
2 given the Court the total hours worked. It's set forth in the
3 documents. I can provide that to the Court. But the total
4 hours that are worked we've given to the Court and the rate
5 that has been provided of \$450 and \$675 for attorneys and then
6 \$50 for legal assistance, Your Honor, is absolutely reasonable.
7 That was the actual rate that was charged to the client. And
8 so it's the actual rate multiplied by the hours worked that the
9 client has incurred in this case.

10 So the next step, Your Honor, after the actual rate
11 has been determined and the amount is given, is a twelve factor
12 analysis. And, Judge, I'm not going to go through all twelve
13 factors. But the twelve factors are set forth in the Hsu case.
14 We've laid them out in detail in our brief. And I believe --
15 and they're factors that this Court weighs. I believe eleven
16 of the twelve factors were clearly met in this case.

17 I'll address just a few of them, Your Honor.
18 Factors 3 and 9 to consider for whether the rate should be
19 enhanced looks at the skill and experience of the attorneys.
20 Your Honor, eminent domain is a very, very specialized area.
21 The Law Office of Kermitt L. Waters is the only firm that
22 specializes solely in eminent domain in the entire state of
23 Nevada. There's 110 years of combined experience which focuses
24 solely -- or wherein the attorneys for those 110 years have
25 focused exclusively on eminent domain work. The Owners'

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1 Council of America chooses one firm out of every state to be a
2 part of that council. They chose the Law Office of Kermitt
3 Waters.

4 So, Your Honor -- and I'll just address this. The
5 constitutional provisions that we've been discussing in this
6 case, Article 1, Section 8, were drafted by the Law Office of
7 Kermitt L. Waters. The actual case that we're discussing to
8 determine attorney's fees, *County of Clark v. Tien Fu Hsu*, was
9 taken up to the Nevada -- litigated for 14 years and taken up
10 to the Nevada Supreme Court twice by the Law Office of Kermitt
11 L. Waters. So, Your Honor, the skill and experience of the
12 attorneys are clearly met to justify an enhanced fee.

13 Factor Number 5, Your Honor, is what's the customary
14 fee for specialized eminent domain cases. And, Your Honor, we
15 have that here. This is one of the cases where we don't have
16 to go look at what other attorneys charge. We don't have to
17 look at what other people in other specialties get because the
18 Nevada Supreme Court decided the fee for an eminent domain
19 attorney in an inverse condemnation case in *Sisolak*. The
20 Nevada Supreme Court awarded a fee of \$1,392 per hour times
21 1,400 hours. And, Your Honor, that was fifteen years ago.

22 So the one specific issue that really is before you
23 here today that the City really contests is the rate. Again,
24 the last issue was the rate of return on interest; here it's
25 the attorney rate. We ask that the Court follow that *Sisolak*.

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1 decision and provide a rate, an attorney hourly rate similar to
2 what was awarded in *Sisolak*. What was awarded in *Sisolak* was
3 \$1,392 per hour. That's the same attorney fee that should be
4 awarded in this case.

5 So, and then the final factor, Your Honor, Factor 12
6 was awards in similar cases. So in the *Sisolak* case,
7 Mr. *Sisolak* got almost \$500,000 less than his appraisal. In
8 this case the landowners, 180 Land, obtained the exact amount
9 of their appraisal report. And in *Sisolak* the Court awarded
10 \$1,392 as the hourly rate. So the award in *Sisolak*, Your
11 Honor, or the comparison of the award in *Sisolak* with the award
12 here, in addition to the actual hourly rate that was awarded in
13 *Sisolak*, we request that the Court multiply the hours worked in
14 this case by a rate similar to what was given in the *Sisolak*
15 case.

16 And, Your Honor, we've set that forth in our reply.
17 And just briefly, with the Court's indulgence, just very
18 quickly I'll get that for the Court. We set it forth in the
19 reply and we also set it forth in our opening motion. For
20 Mr. Waters, a rate of \$1,500 per hour. For James Leavitt, a
21 rate of \$1,300 per hour, which is \$92 less than what the
22 specialized eminent domain counsel received in *Sisolak*
23 fifteen years ago.

24 And for Ms. Waters and Mr. Schneider, \$800 an hour,
25 which is \$500 an hour less than what the specialized eminent

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1 domain counsel was awarded in Sisolak.

2 So, Your Honor, with that said, number one, we
3 respectfully request that the Court award attorney's fees and
4 that the attorney's fees be calculated based upon those rates
5 that I just set forth based upon the Hsu factors.

6 THE COURT: Okay. Thank you, sir.

7 And we'll hear the opposition.

8 MR. MOLINA: Thank you, Your Honor. Personally and
9 for the City I'll be handling this opposition. So I think that
10 we agree with the developer on probably one thing, and that's
11 that there are two steps in this analysis. First, you have a
12 basis for awarding attorney's fees; and second, if there is a
13 basis, what is a reasonable fee. And as Mr. Leavitt stated,
14 there are three bases that the developer is attempting to
15 recover attorney's fees under. The first one is the Uniform
16 Relocation Assistance and Real Property Acquisition Policies
17 Act of 1970. That's -- we'll refer to that as the Uniform
18 Relocation Act. The second basis is Article 1, Section 22,
19 subsection 4 of the Nevada Constitution. And then also in
20 their motion they've also argued that they should be entitled
21 to attorney's fees under NRS 18.010, subsection 2(b).

22 I'll start with the Uniform Relocation Act because I
23 think that that's probably the most complicated one to get
24 through. Now, the developer has cited Title 49 of the Code of
25 Federal Regulations, Section 24.107, for the proposition that

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1 the Court must award attorney's fees in inverse condemnation
2 actions, and we have directed the Court in our briefing to the
3 applicability section of that regulation. That's
4 Section 24.101. And what this says is that the Uniform
5 Relocation Act applies to two different types of programs or
6 projects.

7 The first one is a direct federal program or project,
8 and that means that there's a direct federal program and it's
9 an acquisition of real property for a direct federal program or
10 project.

11 The second type is a program or project receiving
12 federal financial assistance, and this is under subsection (b)
13 of that regulation. And it says, "The requirements of this
14 subpart apply to any acquisition of real property for programs
15 and projects where there is federal financial assistance in any
16 part of the project costs."

17 And where I'm going with this is that the City has no
18 project planned for the 35-acre property. The City has no
19 federal funding that they are going to receive for this
20 hypothetical project that does not exist. And so this section
21 plainly on its face does not apply.

22 Well, why did it apply in *Sisolak*? Well, it's pretty
23 clear why it applied in *Sisolak*, and the court made it quite
24 clear and I'll just quote from it. It says,

25 "Here, the Relocation Act entitles *Sisolak*

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1 to an award of attorney's fees because the
2 County received federal funding for numerous
3 improvements at McCarran Airport, including
4 runway construction and land acquisition. The
5 County was eligible to receive the federal
6 funding specifically because it made assurances
7 that it took steps by enacting ordinances to
8 protect the airspace needed for aerial
9 approaches to the airport and to prevent future
10 construction in that airspace."

11 So what you have in *Sisolak* and what you also have in
12 the Hsu case is a federal project, a federal -- a program or
13 project that receives federal funding, and we don't have that
14 here. What Mr. Leavitt has argued is that, well, the City
15 receives federal funds generally and they receive federal funds
16 through the Southern Nevada Lands Public Management Act, and
17 therefore, you know, this is enough to make the Uniform
18 Relocation Act apply, and that's -- it's simply false.

19 What he does is he focuses on this language in
20 *Sisolak* where the *Sisolak* court rejected the County's argument
21 that there must be a specific nexus. The *Sisolak* court never
22 held that there can be no nexus; as long as you receive federal
23 funds the Uniform Relocation Act applies. That's not what they
24 said. What they said was there doesn't need to be a specific
25 nexus. And so there has to be a nexus and that's just sort of

1 the bottom line here is that there's no program or project
2 that's going to receive any federal funding here. The City is
3 certainly not going to get any money from the federal
4 government to pay the just compensation award or any other sums
5 that are awarded against the City. And there's simply no
6 project and there's no nexus.

7 And what's telling here is that you have two other
8 Nevada Supreme Court cases, one that predates *Sisolak* and the
9 other one is post *Sisolak*. The one that predates *Sisolak* is
10 *Alper* and *Alper* was not overruled by *Sisolak*. In *Alper*, the
11 Court made it quite clear that -- and I'll just go ahead and
12 read from it. It says,

13 "Since the Alpers did not produce any
14 evidence that federal funds had been received by
15 the County to acquire or widen that portion of
16 Flamingo Road which is subject to the present
17 inverse condemnation proceeding, NRS 342.320(2)
18 does not apply."

19 And that statute that the court cited there was the
20 State equivalent of the Uniform Properties Act -- Uniform
21 Relocation Act, and it simply just says that when it applies to
22 an agency the policies must be followed. That's all that that
23 says, so it's essentially the same rule. And as I've already
24 explained, it just simply doesn't apply.

25 So before *Sisolak* you have the Nevada Supreme Court

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1 saying if you don't show that there's any evidence that there
2 was federal funds received for this project -- there was
3 actually a project there, a street widening project -- then
4 this doesn't apply. And after *Sisolak* we have another case.
5 We have *Buzz Stew*. And in *Buzz Stew v. City of North Las Vegas*
6 the court kind of tangentially rejected expert evidence of the
7 Uniform Relocation Act. And what they said there was,

8 "Any additional testimony regarding the
9 Relocation Act, the district court did not err
10 in excluding this evidence, as *Buzz Stew* failed
11 to show that federal funds were used for the
12 project."

13 The project. No evidence showing that federal funds
14 were used for the project. And again, you have a project there
15 and here we do not. There's no project. What is the project?
16 It does not exist. So you have case law before and after
17 *Sisolak* that explains that there has to be a nexus.

18 There doesn't have to be a specific nexus, but it's
19 got to be a nexus. You can't just say that, oh, every city in
20 the country, basically, receives federal funding. And if that
21 were enough to trigger the statute, then we wouldn't have this
22 conversation right now. It would be completely clear based on
23 the case law and the Nevada Supreme Court certainly wouldn't
24 have rejected that argument in *Buzz Stew*.

25 So, and I'll also say one more thing about *Buzz Stew*.

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1 because the Nevada Supreme Court cited two cases, one from the
2 Seventh Circuit and one from Colorado. In the Seventh Circuit
3 decision, *Rhodes v. City of Chicago for Use of Schools*, the
4 Seventh Circuit held Section 4655, which is the statute that
5 gives rise to the regulations that I was discussing before,

6 "Section 4655 is applicable only when
7 federal financial assistance is used in or
8 directly supports the property acquisition."

9 And then the Seventh Circuit went on to say,

10 "While substantial sums of federal money
11 are channeled into the Chicago public school
12 system, there is no evidence that federal funds
13 are used for the acquisition of property by the
14 Chicago Board of Education."

15 So again, there's got to be some kind of a nexus and
16 there's got to be a project. The other case that the Nevada
17 Supreme Court cited to in *Buzz Stew is Regional Transportation*
18 *District v. Outdoor Systems, Inc.* That was a Colorado
19 decision. And there -- that is an en banc Colorado decision.
20 And there the court stated that the regulations under the
21 Uniform Relocation Act,

22 "make clear that not every acquisition made
23 by a state agency that ultimately wins federal
24 funding falls within the Act's ambit. The
25 phrasing of the regulation implies that it

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1 covers situations where an agency identifies a
2 parcel of land needed for a particular project
3 and then sets out to obtain it."

4 So we've got, you know, very recent or fairly recent
5 Nevada Supreme Court authority in *Buzz Stew* citing to both of
6 these cases and they reached the same conclusion that the City
7 is arguing here that unless you have a project and unless you
8 can show that there's funding that's at least related to that
9 project, then the Uniform Relocation Act doesn't apply. So we
10 would submit that that's pretty -- that should be a pretty
11 simple issue, Your Honor. We don't think that there's really
12 any legitimate basis to claim that the Uniform Relocation Act
13 applies.

14 The next basis that the developer is relying on to
15 claim attorney's fees is Article 1, Section 22, subsection 4 of
16 the Nevada Constitution. And as Mr. Leavitt noted, this is
17 something that Mr. Waters had participated in. And nowhere in
18 this section is the word inverse condemnation mentioned at all.
19 And that is pretty telling.

20 And for the same reason that -- I'll get back to this
21 in a second, but in *Buzz Stew* what happened is that the City of
22 North Las Vegas actually prevailed in that action, and what
23 they said was -- the developer, the property owner there had
24 argued that the Nevada Constitution protected against an award
25 of costs. And the court said, well, in eminent domain

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1 actions -- this is the *Buzz Stew* court -- they said in eminent
2 domain actions such costs are curtailed. And they cited to
3 Nevada Constitution Article 1, Section 22, subsection 7. And
4 then they went on to say,

5 "The present case was an unsuccessful
6 action for pre-condemnation damages wherein the
7 City prevailed on its defense. Therefore, we
8 cannot say that under the facts of this case the
9 district court clearly erred."

10 And what the court just did there is they
11 distinguished an action for pre-condemnation damages from an
12 action based in eminent domain. And they held that it doesn't
13 apply to an action for pre-condemnation damages because the
14 constitutional provision at issue here on its face only refers
15 to eminent domain proceedings. It's qualified and limited to
16 eminent domain proceedings.

17 And the other key thing here is that in reaching that
18 conclusion the Nevada Supreme Court cited to a California case,
19 *Locklin v. City of LaFayette*, that held that an inverse
20 condemnation plaintiff who did not prevail in a takings claim
21 was not entitled to be shielded by the law against awarding
22 costs in eminent domain actions. So not only did the Nevada
23 Supreme Court distinguish the *Buzz Stew* case from the
24 constitutional provision that allows for -- that shields
25 landowners from having to pay the government their costs, it

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1 also distinguished inverse condemnation from eminent domain in
2 citing to this *Locklin v. City of Lafayette* case. And this is
3 very recent, Your Honor. This is a 2015 decision basically
4 distinguishing that.

5 And so it's clear, then, that this is -- there is a
6 distinction that's important here for purposes of construing
7 the Nevada Constitution, and that distinction is that these
8 provisions, these protective provisions that were adopted by
9 the voters in 2008, they only apply to eminent domain actions,
10 and that's pretty clear.

11 I'll respond to one thing that Mr. Leavitt pointed
12 out about the ballot initiative. They made this argument in
13 their motion that because the Nevada voters, you know, were
14 given the information about the Act that said that, you know,
15 the government would have to pay attorney's fees in every
16 eminent domain case, therefore the Nevada voters knew that
17 attorney's were going to have to be paid in inverse
18 condemnation cases. Well, I mean, there's very clear law in
19 Nevada that those ballot explanations are not proper for
20 purposes of ascertaining legislative intent. That's now how
21 you construe a ballot proposition.

22 So for those reasons, we would argue that Article 1,
23 Section 22 of the Nevada Constitution does not apply to an
24 inverse condemnation action and it does not apply to this case.

25 And, Your Honor, I'll just briefly address the last

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1 basis. I don't think that Mr. Leavitt spent much time on this
2 but, you know, they also claimed attorney's fees in their
3 motion under NRS. 18.010 2(b). And, you know, that provision,
4 as I know the Court is aware, it applies when, you know,
5 somebody makes a claim or a counterclaim or interposes some
6 kind of a defense for the purpose of harassing the other side,
7 being vexatious, frivolous arguments, things of that nature.
8 And we would submit that all of the arguments that we've made
9 in this case have been based on well-established law.

10 Everything that we've argued here has been supported
11 by ample law. And certainly there has been no effort on the
12 City's part to try to harass the developer in making any
13 arguments. That's just simply not true.

14 So, really we should not even get into the second
15 step of the analysis, which is what is a reasonable fee,
16 because we don't have a basis for awarding attorney's fees
17 here. The Uniform Relocation Act doesn't apply. The Nevada
18 Constitution provisions, the PISTOL amendments do not apply to
19 inverse condemnation cases. And we just don't have a grounds
20 here for applying NRS 18.010 2(b). But obviously I have to
21 respond to those and of course we can get -- these fees are
22 just outrageous.

23 The interesting thing here is that the developer
24 incurred 2.1 million dollars in attorney's fees, according to
25 their motion, and they're requesting 3.4 million dollars in

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1 attorney's fees based on this argument that they should be
2 entitled to an enhanced fee under *Hsu*. Now, *Hsu* doesn't say
3 that the court can award an enhanced fee. What it says is that
4 you can make an appropriate adjustment.

5 And I'll just -- actually, to be careful here, I'll
6 read the language verbatim. What *Hsu* said was, "Following
7 determination of the lodestar amount, we leave it to the sound
8 discretion of the district court to adjust this fee based
9 upon" -- twelve factors. It doesn't say enhanced fee. That is
10 something that the developer completely made up. If you search
11 that decision for the word enhanced or enhance or increase or
12 upward adjustment, none of those things come up. It's an
13 adjustment based on these factors and it's basically to make
14 the fee reasonable.

15 And so all that *Hsu* said was that you multiply the
16 number of hours spent by a reasonable rate and then you adjust
17 it based on these factors. It doesn't say that they get an
18 enhanced fee. And an enhanced fee of 1.3 million dollars, Your
19 Honor, is pretty steep.

20 What the developer doesn't talk about in his motion
21 is all of the law that we have in Nevada about what's a
22 reasonable fee. It's pretty clear that when a court determines
23 what a reasonable fee is, it looks at the relevant
24 jurisdiction, and the relevant jurisdiction here is the Las
25 Vegas market.

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1 So what we did is we went out and we got this Real
2 Rate Report from Wolters Kluwer and they published that report
3 specifically for these types of motions so that the court can
4 see what -- you know, what is the market charging, you know,
5 from year to year and that can be used as a basis to determine
6 reasonableness of a fee. So what we showed in the rate report
7 was that in 2017 the average rate charged was \$410 for partners
8 and \$264 for associates in the Las Vegas market. And that was
9 pretty steady. In 2018 it was \$444 for partners and \$279 for
10 associates. In 2019 it actually went down a little bit. For
11 partners it went down to \$438 for partners and \$281 for
12 associates.

13 So that just puts a little bit of context here on
14 what the developer is requesting, which is \$1,500 an hour for
15 Kermitt Waters; \$1,300 per hour for Mr. Leavitt; \$800 per hour
16 for Autumn Waters; and \$800 per hour for Mr. Schneider. All of
17 those rates are at least twice the amount of the average rates
18 that are charged in the Las Vegas submarket.

19 And with respect to the rates that Mr. Waters and Mr.
20 Leavitt are requesting, it's almost three times or almost four
21 times the amount of the average rate, which was around \$438 for
22 partners in 2019.

23 So, Your Honor, we think that these are grossly, you
24 know, disproportionate to what's reasonable in the Las Vegas
25 market. But once again, we don't think that we even get to

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1 this step in the analysis because there's just no basis for
2 awarding attorney's fees in this case.

3 THE COURT: And, sir, I just have one question. What
4 about the references made to the *Sisolak* case and the hourly
5 rate that was awarded in that matter?

6 MR. MOLINA: Sure. So in the *Sisolak* case the
7 counsel for Sisolak, Laura Rehfeldt, she took that case on a
8 contingency fee. And I believe that we actually attached to
9 our opposition the lower court's analysis of, you know, how he
10 arrived at that amount. And essentially, you know, what he did
11 was he looked at this as a contingency case and compensated her
12 for taking on the risk of, you know, litigating that case all
13 the way up to the Nevada Supreme Court and back and not having
14 been paid at all during that time. And so a higher amount for
15 that case was appropriate, given the fact that she had taken on
16 that risk and, you know, she deserved to be compensated for it.

17 In this case the developer actually got paid. They
18 got paid, according to their motion, 2.1 million dollars in
19 fees already. So it wasn't a contingency fee, and so it's not
20 appropriate to use what was awarded in *Sisolak* as a benchmark
21 for what's appropriate and reasonable in this case.

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

23 MR. MOLINA: Thank you.

24 THE COURT: And, Mr. Leavitt?

25 MR. LEAVITT: Yes, Your Honor. Again, James J.

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1 Leavitt on behalf of the plaintiff, 180 Land, landowner. Your
2 Honor, I'll start where we ended there on the Sisolak hourly
3 rate. It's true that Ms. Fitzsimmons handled the Sisolak case
4 on a contingency fee basis; however, the court never once
5 stated that it was awarding that attorney fee of \$1,392 based
6 on a contingency fee. That's nowhere in the decision. Nowhere
7 in the decision does the court say, hey, because you had such
8 great risk that you might not get paid, we're going to pay --
9 we're going to affirm a \$1,392 award. The court expressly
10 stated that she was awarded the amount of the fee, which was
11 \$1,392 times 1,400 hours, Your Honor. There was no caveat.
12 Therefore, that's the only case that we have in Nevada that
13 provides a reasonable rate for an attorney who specializes in
14 an eminent domain case.

15 The government has tried to attach this Real Rate
16 Report, which is a general rate report, which are general fees
17 for general attorneys. There's nothing in there about the rate
18 that attorneys charge in a specialized area or a rate that
19 attorneys are entitled to in a specialized area.

20 Secondly, the rate that's in that Real Rate Report
21 that counsel brought to you is less than the attorney fee rate
22 that Mr. Ogilvie's office is charging, Your Honor. And that's
23 a government rate. We laid out in our report that government
24 rates are typically lower. So, Your Honor, that Real Rate
25 Report is -- it has no basis in Nevada law, number one. It's

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1 not cited in any Nevada case, number two. And number three,
2 it's contrary to the *Sisolak* decision.

3 Again, we have a case right on point which is
4 fifteen years old. Your Honor, we didn't go into the *Sisolak*
5 case and say, listen, \$1,392 was awarded in *Sisolak* and we want
6 you to adjust that up for fifteen years. We didn't do that.
7 My rate that I'm asking for is \$92 an hour less than *Sisolak's*
8 rate or the attorney in *Sisolak's* rate fifteen years ago. It's
9 a little bit higher for Mr. Waters for obvious reasons.
10 Mr. Waters has been described as the preeminent eminent domain
11 attorney on the entire west coast. He's known as that for the
12 west coast. There's another attorney for the east coast. So
13 an hourly rate in this specialized area that we've requested is
14 consistent not only with *Sisolak* but consistent with the
15 experience and the reputation of 110 years of specializing in
16 the area of eminent domain.

17 Now, counsel also brought up the *Hsu* decision. If
18 the *Hsu* case -- if in the *Hsu* case the Nevada Supreme Court did
19 not want the court to consider the twelve factors for an
20 enhanced rate, all the court would have had to have done is say
21 determine -- under the Lodestar analysis determine a reasonable
22 rate and then multiply it by the hours, and the analysis would
23 end there. It would entirely end there.

24 But the Nevada Supreme Court understood the nature of
25 an inverse condemnation case and said that after the court

1 determines the reasonable hourly rate, after the court -- or
2 times that by the number of hours worked, the court must then
3 consider these twelve factors. And every one of those twelve
4 factors are targeted towards enhancing a fee. Why would the
5 court want you to consider the reputation and skill of the
6 attorney if it was going to reduce the fee? Why would the
7 court want you to consider the outcome if it was going to
8 reduce the fee? So, Your Honor, it's clear that those factors
9 were provided to ask the court to look at the rate that was
10 charged, actually charged in the case and then enhance it
11 upward, exactly as was done in the *Sisolak* case, other than the
12 contingency fee was the starting point.

13 And, Your Honor, I will add one thing here.
14 Typically in an inverse condemnation case the contingency fee
15 is 30 percent. That fee would be more than 10 million dollars
16 in this case. So the fee which we're asking for here, which is
17 based upon \$1,392, that counsel says is outrageous based on
18 3.4 million dollars, is less than one-third of the typical
19 contingency fee that we would have charged in an inverse
20 condemnation case such as this.

21 I'll turn to the Constitution. The City of Las Vegas
22 concedes that attorney's fees under the Constitution are part
23 of a just compensation award. But what the City says is they
24 say, well, that's just part of the just compensation award in
25 an eminent domain case, you don't get attorney's fees in an

1 inverse condemnation case. Your Honor, this Court has entered
2 findings of fact and conclusions of law. The Nevada Supreme
3 Court has entered a holding in *Alper*. The Nevada Supreme Court
4 has entered a holding in *Argier* and about five other cases that
5 stated that eminent domain cases are the constitutional
6 equivalent of inverse condemnation cases and are governed by
7 the same rules and principles. So therefore, if a landowner is
8 entitled to recover their attorney's fees in an eminent domain
9 case, they're entitled to recover their fees in an inverse
10 condemnation case.

11 That not only is long-standing precedent in the state
12 of Nevada that the two cases are the constitutional equivalent,
13 but it's the law of this case now. So to argue that -- or to
14 try and split hairs between an inverse condemnation case and an
15 eminent domain case at this point in the case is simply
16 unreasonable, Your Honor, since it's already been adjudicated
17 fully in this case and by the Nevada Supreme Court.

18 Secondly, it makes no sense whatsoever to grant
19 attorney's fees under the Constitution in a direct eminent
20 domain case but not an inverse condemnation case. Let me read
21 to you the policy that comes out of the *Sisolak* case. So in
22 the *Sisolak* case the Nevada Supreme Court awarded attorney's
23 fees in an inverse condemnation case and here's what the court
24 held. It is inevitable that a landowner in an inverse
25 condemnation case will be forced to pay greater litigation

1 expenses than would have been necessary than if the City had
2 properly performed its function and condemned the property.

3 What the Nevada Supreme Court is saying there is that
4 when a landowner brings an inverse condemnation case they have
5 to incur greater fees and costs and expenses. Therefore,
6 they're entitled to their attorney's fees. Counsel is trying
7 to wear that policy exactly backwards and say, well, if the
8 government acts properly, as it should have done in this case,
9 but if the government acts properly and files an eminent domain
10 case and you go through the eminent domain process, the
11 landowner is entitled to attorney's fees under the
12 Constitution. But if the government doesn't act properly and
13 it tries to take that property without paying for it and the
14 landowners have to sue the government in inverse condemnation,
15 the landowner doesn't get attorney's fees. It makes absolutely
16 no sense whatsoever. It's contrary to the public policy that's
17 set forth in the *Sisolak* decision and it's contrary to the law
18 of this case and Nevada Supreme Court precedent that inverse
19 condemnation cases deserve the same protection as eminent
20 domain cases.

21 Actually, Your Honor, the Nevada Supreme Court has
22 been very clear that landowners in inverse condemnation cases
23 get greater protections than landowners in direct eminent
24 domain cases because in an inverse condemnation case the
25 government has acted improperly and tried to take the property

1 without paying for it, which is a violation of the landowner's
2 constitutional right. And because the government violates that
3 constitutional right, the government has to pay the landowner's
4 attorney's fees.

5 Your Honor, I'll address the last -- a couple last
6 issues on the Relocation Act. Your Honor, counsel is making
7 the same argument that the County of Clark made in *Hsu* and in
8 *Sisolak* because there has to be a direct nexus between the
9 federal funds received and the project for which the property
10 is being taken. Your Honor, in an inverse condemnation case
11 there is no project for which the property is being taken.
12 That's the issue. The government tries to take the property
13 without paying for it without a project, and that was the case
14 in the *Sisolak* case, or that was the situation in the *Sisolak*
15 case.

16 In the *Sisolak* case, the airport received federal
17 funds, but Mr. Sisolak's property was one mile away from the
18 airport. It wasn't part of some project at the airport, as
19 counsel stated. There was no project and no funds for that
20 project. The reason Mr. Sisolak was able to recover attorney's
21 fees is because he presented evidence to the district court
22 that the airport receives federal funds and is therefore bound
23 by the Federal Relocation Act.

24 Here, we've provided that same evidence; not only
25 that the City of Las Vegas generally receives federal funds,

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1 but the City of Las Vegas receives federal funds for the
2 specific taking that happened in this case. Under the Southern
3 Nevada Public Lands Management Act, the City gets federal funds
4 for parks and open space. They apply for it. They get it.
5 Not only is that a general nexus, Your Honor, that's a specific
6 nexus directly tied to the purpose for which this property was
7 taken. And you remember well, Your Honor, and I'm not going to
8 go back through the facts of how this property was taken for a
9 public park and open space. Therefore, Your Honor, the
10 landowners are entitled to reimbursement of attorney's fees
11 under the Constitution, the constitutional provision which
12 applies to eminent domain and inverse condemnation cases, and
13 they're entitled to reimbursement of their attorney's fees
14 under the plain language of the *Sisolak* case. And we'd ask
15 this Court that it apply that enhanced fee, very similar to
16 what was given to the specialized eminent domain counsel in
17 *Sisolak* fifteen years ago.

18 I'll address one last issue, the *Buzz Stew* case.
19 Counsel cites the *Buzz Stew* case as apparently some type of
20 grounds to deny attorney's fees. In *Buzz Stew*, number one, it
21 was a pre-condemnation damage case, and number two, the
22 landowner lost. He didn't win. This is an inverse
23 condemnation case and the landowners won. Therefore, *Buzz Stew*
24 has absolutely no application here. When a landowner prevails
25 in an inverse condemnation case in the state of Nevada, they

1 are entitled to their attorney's fees, not only under the
2 constitutional provision, but also under *Sisolak* and *Hsu*.

3 And I'll just say one last thing, Your Honor. The
4 Constitution was not unclear. The Constitution says just
5 compensation shall include. What was this case about? This
6 case was about just compensation. So just compensation shall
7 include those costs and those expenses actually incurred. That
8 means what we're talking about (video interference) that they
9 be awarded.

10 THE COURT: We lost you at the very end there, sir.

11 MR. LEAVITT: What's that, Your Honor?

12 THE COURT: We lost you at the very end there, the
13 last 10 seconds or so. And then when you're done, I have a
14 question for you.

15 MR. LEAVITT: Sure. Your Honor, my only statement is
16 that Article 1, Section 22 of the Nevada Constitution states
17 that just compensation shall include -- and then it goes on to
18 describe what's included. And, Your Honor, clearly attorney's
19 fees were part of that. Therefore, just compensation includes
20 payment of attorney's fees in this case.

21 And then I'll entertain your question, Your Honor.

22 THE COURT: And here's my question. I'm looking at,
23 I think it's page 10 of the motion, and it itemizes the actual
24 amount of fees that were paid, I think. And this would start
25 at line 1. It says, "The following shows the total attorney's

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1 fees using these rates." And would that have been -- and I
2 guess it totals up, \$2,165,359.50. And plus it has a certain
3 number for legal assistants at a \$50 rate and that total was
4 \$44,912.50. Would that be the actual fees incurred in this
5 case?

6 MR. LEAVITT: Yes, Your Honor. Those are the actual
7 fees incurred. However, subsequent to the filing of the motion
8 additional attorney's fees were incurred, and those additional
9 attorney's fees are on page 9 of the reply.

10 THE COURT: Okay.

11 MR. LEAVITT: And I can give you those numbers if
12 you'd like, but you can see them on page 9.

13 THE COURT: Yeah. I have everything right in front
14 of me.

15 MR. LEAVITT: Yeah. On page 9, line 6. And the
16 additional legal assistant hours worked are page 9, line 9. So
17 adding -- so on line 6, adding the \$211,000 to the -- rounding
18 out the -- sorry, the two hundred -- or, I'm sorry, the
19 2.1 million and change, that's the actual fees incurred up to
20 January 25th.

21 THE COURT: Okay. And here's my question, Mr.
22 Leavitt. And I do agree that -- with your argument regarding
23 the award of fees pursuant to the Uniform Relocation Act,
24 pursuant to the Nevada Constitution, and also I understand your
25 position as it relates to the application of NRS 18.010. But

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1 if I'm going to award fees under the facts of this case, why
2 wouldn't I award them as they were actually incurred?

3 MR. LEAVITT: Your Honor, the Constitution does say
4 actually incurred.

5 THE COURT: Yes.

6 MR. LEAVITT: And as does the -- as does the cases.
7 They do say actually incurred. The only authority that we have
8 for enhancement of fee is the *Hsu* case. The *Hsu* case does say
9 that there is a 2-step process in these specific inverse
10 condemnation cases, and it starts at Headnote 8 and it goes
11 through and says that in an inverse condemnation you're
12 entitled to recover attorney's fees. And first there has to be
13 a Lodestar analysis where you multiply -- and it says "multiply
14 the number of hours reasonably spent on the case by a
15 reasonable hourly rate." So you find out what the hourly rate
16 is and you multiply it. And we know what that is here.

17 Then the court goes on to say -- it does say,
18 "Following determination of the lodestar amount, we leave it to
19 the sound discretion of the district court to adjust this fee
20 award based upon" -- and then there's twelve factors.

21 So, frankly, Your Honor, it's within this Court's
22 sound discretion on whether to award a higher fee than those
23 actually incurred. And the authority that we have for that is
24 the *Sisolak* case where \$1,392 per hour was awarded. And, Your
25 Honor, I would submit to the Court that if the Court simply

1 followed the *Sisolak* case and awarded \$1,392 an hour, it would
2 be consistent with that. We took the *Sisolak* award and the
3 \$1,392 amount and we adjusted it amongst the various attorneys
4 in the office. But again, the basis is that Headnote 8, which
5 is page 637 of the *Hsu* decision.

6 THE COURT: All right. And I just want to make sure
7 I understand the distinction between the calculations that are
8 set forth on page 11 of the motion and page 9 of the reply
9 because it appears to me that, for example, since October 31st
10 of 2021 the hourly rate has gone up. Is that correct or no?

11 MR. LEAVITT: Well, the hourly rate went up on
12 June 1st. Your Honor, I have that right here. The hourly rate
13 went up on June 1st in I think the year of 2019. So prior to
14 June 1st, 2019, the rate was \$450, and after June 1st, 2019,
15 the rate was \$675. So the attorney hours since October 31st,
16 2021, are based upon that \$675 rate which had been in place
17 since June 1st, 2019.

18 THE COURT: All right.

19 MR. LEAVITT: And you can see, Your Honor, on page 9
20 on the left-hand column there along the attorneys is the
21 actually incurred, and then on the right-hand side is the rate
22 that has been requested pursuant to *Sisolak*.

23 THE COURT: And so I just want to make sure I get
24 this correctly, that since October 31st of 2021, for example,
25 based upon the \$675,000 (as said) rate the amount of fees

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1 incurred have been \$211,350.50?

2 MR. LEAVITT: That's correct, Your Honor.

3 THE COURT: Okay. And the legal assistant rate
4 hasn't changed, has it?

5 MR. LEAVITT: That's correct, Your Honor. It's been
6 \$50 the entire time.

7 THE COURT: Okay. All right. Is there anything else
8 I need to know?

9 MR. LEAVITT: No, Your Honor. I think that -- I
10 think we have done quite a bit today and I think I have nothing
11 more to add, Your Honor.

12 THE COURT: Okay. And as far as fees are concerned,
13 and I do understand the *Hsu* case, but what I am going to do is
14 this. And this is a big case, there's no question about that.
15 I'm going to award the attorney's fees under the three areas
16 that we discussed pursuant to the Uniform Relocation Act, the
17 Nevada Constitution an NRS 18.010. And I'm going to go with
18 the language in the Constitution as far as fees actually
19 incurred. And so I just want to make sure I get this correct.

20 It appears to me, at least based upon what I
21 currently have in front of me based upon the actual incurred
22 fees, I'm looking at the chart set forth on page 11 of the
23 motion. That would be \$2,165,359.50. And everything is
24 itemized there because there has been a change.

25 But then moving on, there's additional fees that have

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1 been incurred since October 31st of 2021, and that's, from what
2 I can tell -- and I'm looking here to make sure I get this
3 figure correct, it is the total additional hours based upon the
4 actual incurred post October 31st of 2021. That would be --
5 and tell me if I'm wrong or not, but that appears to me to be
6 \$211,350.50, plus the additional -- and I don't want to
7 overlook this, the legal assistant work. We had one,
8 \$44,912.50 plus additional post October 31st of 2021, of
9 \$7,023.50. Is that correct?

10 MR. LEAVITT: That's correct, Your Honor.

11 THE COURT: All right. Okay. And included would be
12 the time spent arguing today and preparation for today, and you
13 can prepare a memorandum on that. So I'm going to award the
14 attorney's fees as set forth on the record.

15 The only matter I have to look at and just think
16 about, I don't mind saying this, is the prejudgment interest
17 issue. And I just want to think -- just like the other one, I
18 just want to deliberate and think about that. And I think
19 it's -- and I'll make -- if I have some thoughts, I'll point
20 them out in my decision. But I do understand the current
21 status of the evidence. And, as the trial court under these
22 circumstances, I'm the finder of fact and I have to weigh and
23 balance the evidence. I get that. Everyone understand?

24 Do we have a question, Mr. Leavitt?

25 MR. LEAVITT: Yeah, Your Honor, I have one question.

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1 We have -- I have a conflict in our hearing next week, which is
2 February 8th. I was wondering if we could have -- I'm out
3 February 8th and February 9th. If we could do that on
4 February 10th or anytime thereafter, I'm available.

5 THE COURT: All right. Time is flying, isn't it?
6 It's February. It's already February. I have no problem. So
7 as far as the City is concerned, and I've always accommodated
8 everyone in this matter, what dates are available again, Mr.
9 Leavitt?

10 MR. LEAVITT: I can do the afternoon of February 9th
11 or I can do February 10th. Frankly, any day thereafter I'm
12 open.

13 THE COURT: Okay. What do we have? And then we can
14 see if the City is also available at the same time.

15 (The Court confers with the clerk)

16 THE COURT: But what dates are we talking about?

17 THE CLERK: Oh, Next week, moving it from next
18 Tuesday; right?

19 THE COURT: Yes, the 8th. Whenever it's currently
20 set. It's set for the 8th at 9:00 o'clock a.m. -- 9:05 a.m.

21 THE CLERK: Correct. I would recommend, Judge, the
22 9th, Wednesday, 9:30.

23 MR. LEAVITT: That -- I can't do the 9th.

24 THE COURT: He can't do the 9th.

25 THE CLERK: Oh, I'm sorry.

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1 MR. LEAVITT: I could do the 9th in the afternoon.

2 THE CLERK: Oh, I see. Unfortunately, we have a
3 special setting both the afternoon of Wednesday and Thursday.

4 (Colloquy regarding other matters on calendar)

5 MR. LEAVITT: I could do Monday, the 14th.

6 THE CLERK: That's a jury trial. That's a one-week
7 jury trial.

8 THE COURT: Oh, we're going into jury trials, believe
9 it or not.

10 MR. LEAVITT: Oh, boy.

11 THE COURT: It's only one week. We can't do
12 two weeks. Is that case definitely going? It looks like it,
13 huh?

14 (Colloquy regarding other matters on calendar)

15 THE COURT: Let's set them during that time, that
16 first week. And I think probably what we need to do, I'm glad
17 you brought that up. We need to bring -- do a status check as
18 far as trial readiness is concerned for that 2-week trial.
19 Let's try to get them in soon.

20 THE CLERK: Okay.

21 MR. LEAVITT: And, Your Honor, I could do the morning
22 of the 10th or the afternoon of the 10th or the morning of the
23 11th or afternoon of the 11th if those other times don't work.

24 (The Court confers with the clerk)

25 THE COURT: This is what we're going to do. And I

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1 can't promise you this, but we're going to try to make this
2 work. I do have a two-week jury trial currently set that week,
3 but based upon the current Administrative Order we're not
4 conducting two-week jury trials. So it sounds to me that
5 Tuesday of that week might be available.

6 Is that correct, in the afternoon?

7 THE CLERK: Correct, the afternoon.

8 THE COURT: All right. And what we're going to do,
9 if we have -- if it's available for everyone right now, we'll
10 use that date. If something happens, I'll let you know and
11 we'll move it.

12 MR. LEAVITT: Your Honor, are we talking about
13 Tuesday, February 22nd?

14 THE COURT: Correct. Afternoon.

15 MR. SCHWARTZ: Your Honor, this is Andrew Schwartz.
16 I'm going to be arguing that motion and I am on vacation that
17 week.

18 THE COURT: Well, your vacation is very important,
19 sir. We'll have to go to another week. That will make it easy
20 for us. What about the following week?

21 (The Court confers with the clerk)

22 THE COURT: So I'm looking here. Today is currently
23 the 2nd of February; right? And that matter is currently set
24 for the 8th of February. We don't have anything the week of
25 the --

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1 And, Mr. Schwartz, you're on vacation which week,
2 sir?

3 MR. SCHWARTZ: The week of February 21st, Your Honor.
4 Returning --

5 THE COURT: Okay. So I'm taking that completely out
6 of the discussion. I always, without reservation -- I can't
7 remember in 16 years ever not giving consideration to holidays,
8 vacations and the like to any lawyer. So that's out, we can't
9 use that. Why can't we use --

10 MR. SCHWARTZ: Thank you.

11 THE COURT: You don't have to worry about that, sir.
12 Isn't there a date we can use on the week of the 7th or the
13 week of the 14th for -- all we need is a couple hours.

14 (The Court confers with the clerk)

15 MR. LEAVITT: And, Your Honor, I think Mr. Ogilvie
16 will probably agree that this one is -- it's the motion to
17 amend. It should not -- I would think maximum an hour.

18 THE COURT: Right.

19 MR. LEAVITT: It's just -- it's one narrow issue on
20 the amendment.

21 MR. OGILVIE: Your Honor, there's plenty of hearings
22 that I thought were going to be a half hour or an hour and
23 turned out to be three or four. So I'm not saying that it will
24 be, I'm just basing it on the history of arguments in this
25 case.

1 THE COURT: All I can say is, Mr. Ogilvie, that's why
2 I always give you an afternoon by yourself if I can.

3 MR. OGILVIE: Appreciate it.

4 (The Court confers with the clerk)

5 THE COURT: And the 11th wasn't good; is that
6 correct? That was a problem?

7 MR. SCHWARTZ: The 11th is good for me, Your Honor.
8 Andrew Schwartz. Sorry. Yeah, the 11th is fine.

9 MR. LEAVITT: The 11th is good for counsel for the
10 plaintiff.

11 (The Court confers with the clerk)

12 THE COURT: You know what I'm going to do? This is
13 what I'm going to do. And the 11th is good for everybody;
14 right?

15 MR. OGILVIE: Yes.

16 MR. SCHWARTZ: Yes.

17 MR. LEAVITT: Yes.

18 THE COURT: All right. This is what I'm going to do.
19 We're going to set this matter for the afternoon of
20 February 11th at 1:15. You will have the entire afternoon,
21 Mr. Ogilvie, if you need it.

22 MR. OGILVIE: Thank you, Your Honor.

23 THE COURT: That's what I'm going to do because I
24 understand the importance of vacation. Everyone deserves one.
25 Lawyers work very hard, a lot of stress, so I always honor

1 those. But it seems to me that's probably the best time we can
2 do it. We don't want to kick the can down the road and kick
3 the can down the road. And what I'm going to do with the bench
4 trial, they've been going on for awhile, I'm just going to tell
5 them they can't come back that day and they'll have to find
6 another day. That's what we're going to do. And they should
7 be finished, anyway. That's how I look at it. They've had
8 enough time.

9 So, for the record, we're going to come back -- I'm
10 sorry. For the record, we're going to vacate the hearing
11 that's currently set for February 8th, 2022, at 9:05 a.m. And
12 that will be moved to February 11th at 1:15 p.m.

13 Is that correct, sir?

14 THE CLERK: Correct.

15 THE COURT: All right. That's what we're going to
16 do.

17 MR. OGILVIE: Your Honor.

18 THE COURT: Sir?

19 MR. OGILVIE: This is George Ogilvie.

20 THE COURT: Is that George Ogilvie? Yeah.

21 MR. OGILVIE: Yes. An issue has arisen -- well, it
22 hasn't arisen. An issue exists relative to the Court's order
23 regarding the stay. And so plaintiff's counsel --

24 THE COURT: And I don't mind telling you, I grappled
25 with that, Mr. Ogilvie, I really did. But go ahead.

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1 MR. OGILVIE: I understand, Your Honor. And I'm not
2 arguing or rearguing the motion. I'm not arguing the
3 legitimacy or the merit of the findings of fact and conclusions
4 of law that plaintiff's counsel submitted. They submitted it,
5 I believe, yesterday or maybe the day before. I need
6 clarification for purposes of seeking relief from the supreme
7 court and that's the reason that I'm asking the question that
8 I'm asking. So in the Court's minute order the Court said,
9 "Additionally, based upon a 30-day delay in payment, the City
10 would have time to seek a stay, if appropriate, from the Nevada
11 Supreme Court."

12 And so my question is -- and I understand that the
13 Court hasn't signed an order yet. The Court has its order or
14 the proposed order from the plaintiff. It has the City's
15 objections to that proposed order. But for purposes of the
16 City seeking a stay, I need to have an understanding of what
17 that 30-day delay in payment means because in order for the
18 City to -- the City cannot seek a stay at this point unless it
19 does one of two things. Either it awaits the filing of a
20 notice of appeal, which would open a supreme court case in
21 which we could seek a stay. That's not tenable in the current
22 (video interference).

23 THE COURT: No, no. And I don't want to cut you off.
24 You broke up. You said that's not tenable, and then it got
25 muffled. Go ahead.

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1 MR. OGILVIE: I'm sorry. It's not tenable in this
2 case because I don't know if the relief that the plaintiff is
3 being granted would allow the plaintiff to seek execution on
4 sums assessed prior to the filing of a notice of appeal. So
5 the only path that the City has that's viable for seeking
6 relief from the Court's order regarding -- just regarding the
7 stay.

8 THE COURT: I understand.

9 MR. OGILVIE: That's all I'm limiting my argument to
10 or my --

11 THE COURT: Question.

12 MR. OGILVIE: -- comments to. We can only seek a
13 stay through an emergency petition for a writ, and in order to
14 do that there has to be a pending harm within 14 days. And I
15 can't aver to the supreme court that there is this 14-day event
16 that could occur because I'm not clear on what the Court's
17 minute order says. So I'm just -- I'm trying to get some
18 clarification so I have a path forward relative to a stay --
19 seeking a stay before the supreme court.

20 THE COURT: I mean, I looked at it through this lens,
21 Mr. Ogilvie. I was looking at the time -- pursuant to the
22 statute, it's my recollection payment from the City doesn't
23 have to be tendered until -- I guess there's a 30-day time
24 period before the payment would be required to be tendered to
25 the landowner under the statute.

1 MR. OGILVIE: Right.

2 THE COURT: And so I was looking at it through that
3 lens that hypothetically if the judgment is entered you could
4 take it and say, look -- run to the supreme court within the
5 appropriate stay time period and say, look, we've been denied a
6 stay below and this is a really unique issue regarding a
7 potential statutory conflict with the Rules of Appellate
8 Procedure and specifically as it relates to the fact that
9 normally a municipality government authority has certain rights
10 given pursuant to the rule and so on. And so I was looking at
11 it through that lens.

12 MR. OGILVIE: I understand and I believe the Court is
13 referring to NRS 37.140 when it refers to the 30-day time
14 frame.

15 THE COURT: Right.

16 MR. OGILVIE: But 37.140 says 30 days from final
17 judgment. And as we argued to the Court last week or maybe
18 two weeks ago, I can't remember, final judgment is defined in
19 37.009 as being a judgment from which no appeal can be taken
20 and there is no further relief that can be sought from the
21 Court. So if I -- from the City's perspective, Your Honor,
22 37.140 wouldn't become effective, that 30-day time period under
23 37.140 would not become effective until all appeals in this
24 matter have been exhausted, and that's not where we're at.

25 And I'm not here to argue that point. I want to make

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1 clear to the Court I'm just seeking some -- something -- some
2 clarification by which I can go to the supreme court and say if
3 I'm not granted this relief this is what's going to happen in
4 14 days. Or, you know, if I was -- the easiest thing from the
5 City's perspective is if this Court -- and here I am arguing
6 and I apologize to opposing counsel. They're not prepared for
7 this. But the easiest thing for me would be a reconsideration
8 of the Court's order that granted a stay through -- 30 days
9 from the Court's entering a findings of fact and conclusions of
10 law regarding the Rule 59 and 60 motion to alter or amend the
11 judgment, which the Court just set for a hearing now on
12 February 11th. So I apologize for arguing that.

13 And the only reason I am is I'm kind of cornered here
14 and I'm in a position that there isn't any vehicle through
15 which I can -- if the Court signs the proposed order that was
16 submitted by the plaintiff within the last two days, I'm in a
17 bind and I don't have any way to seek relief from the supreme
18 court.

19 MR. LEAVITT: Your Honor, if I may?

20 THE COURT: Yes.

21 MR. LEAVITT: James J. Leavitt again on behalf of
22 plaintiff landowner, 180 Land. The procedure is very clear.
23 Every eminent domain goes through this. So does every inverse
24 condemnation case. Under 37.140, the City is required to pay
25 the sum of money within 30 days of final judgment. Now, if the

1 City takes appeal and just as Mr. Ogilvie argued, that final
2 judgment wouldn't occur until the end of the appeal, it just
3 erased 37.140's mandate that the money be paid within 30 days.
4 That's why the Nevada Legislature adopted 37.170, which says as
5 a precondition to appeal the City must pay the judgment.
6 That's why your order was very clear. It wasn't difficult to
7 understand.

8 It was very clear that the judgment will be entered
9 and the City has 30 days to pay that judgment. And there's a
10 30-day window within which the City can seek a stay, which was
11 the exact procedure in *State v. Second Judicial District Court*.
12 In *State v. Second Judicial District Court* is where the Nevada
13 Supreme Court said that 37.170 requires payment as a
14 precondition to appeal, and here's what the State did. The
15 State of Nevada brought prohibition proceedings against the
16 Second Judicial Court for the County of Washoe to restrain the
17 court from enforcing the order requiring them to pay. So
18 that's the procedure.

19 And the City of Las Vegas can go directly to the
20 Nevada Supreme Court and ask for that -- a prohibition or a
21 mandamus, however they want to do it, for a stay. Again,
22 that's the way it's done in every one of these cases. But
23 there's not just one prong, there's two prongs to the
24 requirement to pay.

25 Number one, under 37.140 within 30 days, and number

1 two, under 37.170 and the Second Judicial District Court case
2 decision as a precondition to appeal. That's what we argued in
3 our briefs. That's what was granted. And that's what's
4 clearly stated in the Court's decision, that there is that
5 30-day window within which it can go to the supreme court.

6 MR. OGILVIE: Okay. Well, I apologize again for
7 arguing this, Your Honor. I can't --

8 THE COURT: Yeah. And, Mr. Ogilvie, there's no need
9 to apologize. I mean, I looked at it from this perspective
10 when I -- and I don't have the statutes right in front of me,
11 Chapter 37. But I came to the conclusion that I can't rewrite,
12 you know, the Nevada Legislature's statutes, and I went with
13 the statutes as to how I interpreted my decision.

14 And I respect the City's right to appeal. And I do
15 understand there was a potential conflict between substantive
16 rights granted pursuant to the statute versus rules of
17 procedure and so on. And so I just felt that let the supreme
18 court decide that issue. And I would hope that they would
19 understand the urgency of your request and make the appropriate
20 decision.

21 And that's what I wanted to truly just point out when
22 I thought about it and I grappled with it because I do
23 understand. I mean, I didn't issue that decision lightly. I
24 didn't, you know. And I understand that and I felt in many
25 respects -- and it's okay to disagree with my decision, but the

1 way I interpreted the statutory scheme, that's the ultimate
2 result I came up with.

3 And I was saying to myself, well, let the Nevada
4 Supreme Court and the Court of Appeals decide that issue as far
5 as a stay is concerned. And of course it wouldn't be the Court
6 of Appeals, this would go straight to the Nevada Supreme Court.
7 We know that. This wouldn't get pushed down. They would
8 decide that. And I would hope their docket is such that they
9 could recognize the urgency of your request and make a decision
10 very quickly on this issue.

11 Now, whether or not -- and I'm not an appellate
12 lawyer. Maybe somebody should call Dan Polsenberg or Joel
13 Henriod, and maybe there's some sort of emergency writ that can
14 be ran up. I don't know. I just don't because my appellate
15 work is limited to probably about five or six decisions over
16 the years, and that's about it. It's something I didn't do
17 routinely.

18 MR. OGILVIE: Okay.

19 THE COURT: But all I can say, Mr. Ogilvie, if
20 there's -- whatever you file, you file. And of course we
21 entertain orders shortening times. I can't think of any time
22 I've rejected one in 16 years, close to 16 years, and I always
23 entertain them. I understand the importance of them to get in
24 front of the Court very quickly. If you have to do what you
25 have to do, that's fine. I have no problem with that. But

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1 that was my thought process, and I don't mind sharing that with
2 everyone.

3 MR. OGILVIE: I appreciate that, Your Honor.

4 THE COURT: All right.

5 MR. OGILVIE: I have nothing further.

6 THE COURT: Okay. Thank you, sir. Okay. So we do
7 have a date; right? I'm giving priority to this matter. That
8 will be February 11th at 1:15.

9 THE CLERK: That's what I have, Judge.

10 THE COURT: All right. And that's where we're moving
11 the motion from the 8th. Everyone enjoy your day.

12 MR. OGILVIE: Thank you, Your Honor.

13 MR. LEAVITT: Thank you. Have a great evening.

14 (Proceedings concluded at 4:57 p.m.)

15 -oOo-

16 ATTEST: I do hereby certify that I have truly and correctly
17 transcribed the audio/video proceedings in the above-entitled
18 case to the best of my ability.

19
20 

21 Dana L. Williams
22 Transcriber

23 ADDITIONAL TRANSCRIBER: Liz Garcia
24
25

MR. BYRNES: [1] 3/2 MR. LEAVITT: [45] 2/9 3/6 3/18 3/25 10/23 22/17 22/19 27/9 29/22 30/5 33/1 55/19 61/19 61/21 62/7 62/11 83/25 91/11 91/15 92/6 92/11 92/15 93/3 93/6 94/11 94/19 95/2 95/5 95/9 96/10 96/25 97/10 97/23 98/1 98/5 98/10 98/21 99/12 100/15 100/19 101/9 101/17 106/19 106/21 110/13 MR. MOLINA: [4] 2/23 71/8 83/6 83/23 MR. OGILVIE: [25] 2/19 3/9 3/22 23/2 23/5 23/15 100/21 101/3 101/15 101/22 102/17 102/19 102/21 103/1 104/1 104/9 104/12 105/1 105/12 105/16 108/6 109/18 110/3 110/5 110/12 MR. SCHWARTZ: [28] 2/21 11/1 24/5 38/7 39/15 39/20 43/22 45/14 46/16 46/23 47/13 47/24 48/23 49/1 49/7 49/11 52/1 52/16 53/12 54/2 60/5 60/7 60/14 99/15 100/3 100/10 101/7 101/16 MS. GHANEM HAM: [1] 2/14 MS. WOLFSON: [1] 2/25 THE CLERK: [9] 97/17 97/21 97/25 98/2 98/6 98/20 99/7 102/14 110/9 THE COURT RECORDER: [7] 22/10 22/15 22/22 23/20 23/25 24/2 32/16 THE COURT: [109] 2/3 2/13 2/18 3/4 3/8 3/10 3/20 3/23 10/22 10/24 22/5 22/11 22/14 22/16 22/18 22/21 22/24 23/1 23/3 23/7 23/16 23/18 23/21 24/1 27/7 29/21 29/23 30/6 32/17 38/4 39/14 39/17 43/10 43/23 46/15 46/17 46/24 47/20 48/22 48/25 49/2 49/8 51/23 52/11 53/11 53/14 55/17 59/9 60/6 60/13 60/22 61/20 61/25 62/8 71/6 83/3 83/22 83/24 91/10 91/12 91/22 92/10 92/13 92/21 93/5 94/6 94/18 94/23 95/3 95/7 95/12 96/11 97/5 97/13 97/16 97/19	97/24 98/8 98/11 98/15 98/25 99/8 99/14 99/18 99/22 100/5 100/11 100/18 101/1 101/5 101/12 101/18 101/23 102/15 102/18 102/20 102/24 103/23 104/8 104/11 104/20 105/2 105/15 106/20 108/8 109/19 110/4 110/6 110/10 \$ \$1,300 [2] 70/21 82/15 \$1,392 [11] 69/20 70/3 70/10 84/5 84/9 84/11 85/5 86/17 93/24 94/1 94/3 \$1,500 [2] 70/20 82/14 \$18,000 [1] 11/19 \$2,165,359.50 [2] 92/2 95/23 \$211,000 [1] 92/17 \$211,350.50 [2] 95/1 96/6 \$264 [1] 82/8 \$279 [1] 82/9 \$281 [1] 82/11 \$3 [1] 24/23 \$3 million [1] 24/23 \$34 [9] 4/24 5/23 16/25 18/21 25/21 46/5 47/14 48/17 59/7 \$34 million [9] 4/24 5/23 16/25 18/21 25/21 46/5 47/14 48/17 69/7 \$34,135,000 [4] 5/21 11/22 25/18 33/21 \$4.5 [1] 29/4 \$4.5 million [1] 29/4 \$410 [1] 82/7 \$438 [2] 82/11 82/21 \$44,912.50 [2] 92/4 96/8 \$444 [1] 82/9 \$45 [4] 21/18 25/4 25/14 25/15 \$45 million [4] 21/18 25/4 25/14 25/15 \$450 [3] 67/25 68/5 94/14 \$50 [3] 68/6 92/3 95/6 \$50,000 [2] 58/13 58/16 \$500 [1] 70/25 \$500,000 [1] 70/7 \$500,000,000 [1] 58/17 \$52 [5] 13/15 21/13 24/9 26/10 51/19 \$52 million [5] 13/15 21/13 24/9 26/10 51/19 \$54 [1] 25/21 \$54 million [1] 25/21 \$6 [2] 6/17 6/19 \$6 million [2] 6/17 6/19 \$60 [2] 12/13 12/18 \$60 million [2] 12/13 12/18 \$630,000 [2] 11/20	25/20 \$675 [4] 67/25 68/5 94/15 94/16 \$675,000 [1] 94/25 \$7,023.50 [1] 96/9 \$7.5 [1] 25/7 \$7.5 million [1] 25/7 \$700,000 [1] 58/14 \$800 [3] 70/24 82/15 82/16 \$92 [2] 70/21 85/7 - 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15 *Attorneys for Plaintiff Landowners*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

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

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

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

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A copy of the Order is attached hereto.

DATED this 10th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

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Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 10th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF**
5 **LAW AND ORDER DENYING THE CITY'S MOTION FOR IMMEDIATE STAY OF**
6 **JUDGMENT; AND GRANTING PLAINTIFF LANDOWNERS' COUNTERMOTION TO**
7 **ORDER THE CITY TO PAY THE JUST COMPENSATION** was served on the below via the
8 Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
9 prepaid and addressed to, the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

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

**Date of Hearing: January 19, 2022
Time of Hearing: 10:00 a.m.**

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

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

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

7 **I. FINDINGS OF FACT**

8 **A) Procedural Posture**

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

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

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

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

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

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

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

8 II. CONCLUSIONS OF LAW

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

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

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

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

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

19 //

20 //

21 //

22 //

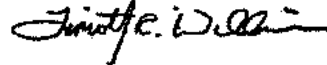
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1 **III. ORDER**

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

6 Dated this 9th day of February, 2022

7 

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

MH

11 Respectfully Submitted By:

Content Reviewed and Approved By:

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

MCDONALD CARANO LLP

13 /s/ Autumn L. Waters

declined to sign

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2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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

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Steven D. Grierson

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

180 LAND COMPANY, LCC,)	
)	
Plaintiff,)	CASE NO. A-17-758528-J
)	
vs.)	DEPT. NO. XVI
)	
LAS VEGAS, CITY OF,)	
)	
Defendant.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 11, 2022

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

APPEARANCES: (Via BlueJeans Videoconference)

FOR 180 LAND COMPANY, LLC:	JAMES J. LEAVITT, ESQ.
	ELIZABETH M. GHANEM, ESQ.

FOR CITY OF LAS VEGAS:	ANDREW W. SCHWARTZ, ESQ.
(Appearing in person)	GEORGE F. OGILVIE, III, ESQ.

RECORDED BY: MARIA GARABAY, COURT RECORDER
TRANSCRIPTION BY: LGM TRANSCRIPTION SERVICE

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 11, 2022, 1:18 P.M.

2 * * * *

3 COURT RECORDER: We're on the record, Your Honor.

4 THE COURT: All right. And I want to say good
5 afternoon to everyone.

6 MR. OGILVIE: Good afternoon, Your Honor.

7 THE COURT: All right.

8 MR. SCHWARTZ: Good afternoon, Your Honor.

9 MR. LEAVITT: Good afternoon, Your Honor.

10 THE COURT: Okay. And let's go ahead and set forth
11 our appearances for the record.

12 MR. LEAVITT: Good afternoon, Your Honor. James J.
13 Leavitt on behalf of the plaintiff landowners, 180 Land.

14 MS. GHANEM: Good afternoon, Your Honor. Elizabeth
15 Ghanem Ham also on behalf of plaintiff landowners.

16 MR. OGILVIE: Good afternoon, Your Honor. George
17 Ogilvie.

18 MR. SCHWARTZ: Andrew Schwartz.

19 MR. OGILVIE: Go ahead, Andrew.

20 MR. SCHWARTZ: I'm sorry, George. It's Andrew
21 Schwartz representing the City, Your Honor.

22 MR. OGILVIE: George Ogilvie on behalf of the City
23 as well, Your Honor.

24 THE COURT: All right. Does that cover all
25 appearances?

1 MR. LEAVITT: That does on behalf of plaintiff,
2 Your Honor.

3 THE COURT: All right. And let's go ahead and get
4 started. Mr. Ogilvie, good afternoon to you, sir.

5 And anyway, it's my understanding we have one matter
6 on this afternoon. Is that correct?

7 THE CLERK: That's correct.

8 THE COURT: And that's the City of Las Vegas' motion
9 to amend judgment and to stay execution.

10 MR. SCHWARTZ: That's correct, Your Honor. This is
11 Andrew Schwartz. I'll be arguing for the City.

12 THE COURT: All right. And, sir, you have the floor.

13 MR. SCHWARTZ: Thank you. Your Honor, this motion
14 is simple and straightforward. In the November 24, 2021
15 judgment, the Court required the City to pay the landowners
16 \$34,135,000, but did not provide that if the City pays that
17 money to the developer that the City would take title to the
18 property in question. And whereas, of course, the City
19 objects to the judgment and objects to payment of the money
20 and has contended that the City's appeal would stay the
21 obligation to pay that money, the City is -- and we are aware
22 that the Court disagrees with that position and has ordered
23 the City to pay the money within 30 days, specifically in its
24 motion to deny the City's motion for a stay -- in its order
25 denying the City's motion for a stay filed on February 9, the

1 Court said that the City has to pay the money, the judgment in
2 30 days and as a condition of appeal. That order denying the
3 City's motion to stay also did not require that if the City
4 pays the money that title to the property would be transferred
5 to the City.

6 So what we're asking is that that order and that the
7 judgment, the November 24, 2021 judgment be amended to state
8 that if the City pays the money to the developer that the
9 City -- that title to the property would be transferred to
10 the City.

11 Now, the developer takes the position that the
12 judgment doesn't have to say that because this is an eminent
13 domain case and the eminent domain law requires that the
14 City pay the money into the court within 30 days and that the
15 Court would then order -- issue a final order of condemnation
16 transferring title. That procedure doesn't apply, so that's
17 not satisfactory to make sure that the City is transferred
18 title to the property if the City pays the money.

19 And I would like to address why that eminent domain
20 statute is not appropriate here. That statute, it's NRS
21 37.160, applies to eminent domain actions, and those are
22 actions where a public agency files an eminent domain action
23 because it needs the property for a public project. The
24 agency often takes early possession of the property while
25 the issue of valuation is being litigated. And then it's

1 appropriate when judgment is entered that the agency has to
2 pay for the property because the agency needs the property and
3 is going to take possession and title of the property, if the
4 possession isn't already obtained. So it makes sense that
5 the public agency would have to pay the money as a condition
6 of receiving title to the property.

7 That's not our case here. This is a case where
8 the Court ordered damages of 34 million plus for the City's
9 regulation of the use -- of the owner's use of the property.
10 The Court did not order any damages for the City's alleged
11 physical possession of the property. The City has never taken
12 physical possession of the property. It has not dispossessed
13 the property. There is no evidence to that effect. And even
14 if this Bill 2018-24 law that the developer claims authorized
15 the public to enter the property, even that -- well, it
16 didn't apply and we established that it didn't apply. The
17 Court disagrees with that. But even if it did apply, that
18 legislation was repealed in January of 2020.

19 So to have -- so this case is not at all equivalent
20 to an eminent domain case where the government has taken or
21 will take physical possession of the property because it needs
22 the property. This is a case where the Court awarded damages
23 for the City's regulation of the owner's use. And there are
24 only three cases in Nevada where that claim has been made, a
25 taking for excessive regulation of the owner's use. That's

1 the State case and the Kelly case and the Boulder City case.
2 In all three of those cases the court found that the action of
3 the agency did not affect a taking. So the court never faced
4 the issue of what you do if the court awards a judgment or a
5 regulatory taking of the property or regulation of the owner's
6 use. That's a case where the owner still has possession and
7 title of the property but the claim is that the regulation of
8 the owner's use has effectively taken the property. So in
9 that case the agency doesn't want the property, doesn't need
10 it for a public project.

11 And so therefore, as we have argued, and I admit
12 the Court rejected it, we think erroneously that the Court
13 rejected the fact that this is a regulatory taking case where
14 the City doesn't want or need the property. And so if the
15 City pays the money to the developer and takes title and
16 possession of the property and the judgment is reversed on
17 appeal, it's going to be extremely difficult to unwind that
18 transaction, to retrieve that money. And the City in the
19 meantime can't do anything with the property because it may
20 have to give the property back.

21 So we don't think that it's at all appropriate in
22 this case for the City to have to pay the money within 30 days
23 and then apply the eminent domain procedure that transfers
24 title to the City. We recognize that the Court has heard this
25 argument and rejected it, but I did want to make a record here

1 that this is not a case where the Court has awarded damages
2 for a permanent, physical occupation of the property. This is
3 not a case where the City had dispossessed the property owner.
4 In the case of Tahoe-Sierra v. Tahoe Regional Planning Agency
5 in the U.S. Supreme Court, that's at 535 U.S. 302, it's a
6 2002 case, in that case the court said that there's this
7 long-standing distinction between acquisitions of property
8 for public use on the one hand and regulations prohibiting
9 private use.

10 So it drew a sharp distinction between these
11 physical takings cases where the government takes physical
12 possession or the public takes permanent physical possession.
13 It says that -- and that holding is echoed in the McCarran
14 International Airport v. Sisolak case from the State of
15 Nevada. And that's at 122 Nev. 645, a 2006 case, at pages
16 662 and 663. The court there said that categorical rules --
17 categorical means the same things as per se -- these rules
18 apply either when the owner has to suffer a permanent physical
19 invasion of her property. I'm quoting there, "a permanent
20 physical invasion" or deprives the owner of beneficial use
21 of the property.

22 So the first case is the physical taking case where
23 either the government physically takes possession of the
24 property or authorizes someone to physically occupy the
25 property. The court in Sisolak said, "In determining whether

1 a property owner has suffered a per se taking by physical
2 invasion, a court has to determine whether the regulation has
3 granted the government physical possession of the property or
4 whether it merely forbids certain private uses of the space.
5 If the regulation forces the property owner to acquiesce to
6 a permanent physical invasion, compensation is automatically
7 warranted since this constitutes a per se taking. This element
8 of required acquiescence is at the heart of the concept of
9 occupation."

10 The second type of per se taking, complete
11 deprivation of value, is not at issue in this case. So the
12 courts there are distinguishing between the present case, this
13 Badlands case where the Court found that the City's limitation
14 of the owner's use was a taking. There's no evidence and the
15 Court cited to no evidence that the City has physically
16 occupied the property or that the City's ordinance, 2018-24,
17 has authorized the public to permanently occupy the property.

18 Now, at best -- and again, that ordinance doesn't
19 apply in this case, but even if it did it could only be found
20 to have authorized public occupation for the 15 months that
21 that ordinance was in effect. Now, we contend that, of
22 course, that didn't happen. It didn't apply. The public
23 didn't occupy the property as a result of the ordinance. But
24 even if it did, it doesn't qualify as a permanent physical
25 invasion. So therefore these procedures for payment of the

1 judgment into court in exchange for the public taking the
2 property for a public project don't apply.

3 What we're asking for, and we're not -- we're not
4 expecting the Court to change its decision that it's going to
5 apply the eminent domain laws. We want to make a record that
6 they don't apply. All we want -- we're asking for is that
7 that judgement from November 24 stay; that if the City pays
8 the money into court that title has to transfer because the
9 way the judgment reads now the City has to pay the money into
10 court but the Court doesn't say in exchange you get title
11 to the property. So, of course we'll let the Nevada Supreme
12 Court decide whether the City has to pay the money now or
13 later, but regardless of the outcome of the appeal, if the
14 City pays that money to the developer, it should at least
15 get title to the property.

16 So that's the limited relief we're asking for is
17 that the Court amend the judgment to state that if the City
18 pays the money then title will be transferred to the City.

19 Thank you.

20 THE COURT: Thank you, sir.

21 Mr. Leavitt, sir.

22 MR. LEAVITT: Yes. Good afternoon, Your Honor.
23 Hearing Mr. Schwartz' argument today, we don't have a
24 disagreement over what the impact is when the government
25 pays the money. We have a disagreement over the procedure.

1 And so counsel is arguing for a procedure that is
2 nowhere in Nevada law. It's not in any of the statutes nor
3 any of the case law. They've cited no support for their
4 procedure. What the City wants is they want to pay the funds
5 and then get a quit claim deed. That's not the procedure in
6 Nevada. Nevada has a very, very specific procedure for what
7 occurs when the government pays the funds in an eminent domain
8 case and an inverse condemnation case, and it's set forth in
9 37.260 -- or, I'm sorry, 37.160.

10 And that procedure is very clear. It says after
11 the government pays the money a final order of condemnation
12 is prepared and it states -- it first describes the property.
13 And we've done hundreds of these final orders of condemnation.
14 They describe the property, number one. That's easily done.
15 Number two, they describe the purpose of such condemnation,
16 and the purpose of such condemnation is very well set forth
17 in the findings of fact and conclusions of law on the take
18 issue. We will simply quote those verbatim in the final order
19 of condemnation. And then title to the property described
20 therein will vest in plaintiffs for the purposes stated
21 therein.

22 Now, that's the final order of condemnation statute,
23 37.160. That was adopted in 1965. There has been two
24 limitations subsequent to that statute that were adopted in
25 2005 and another one in 2008. First, in 2005 the Nevada State

1 Legislature decided to adopt -- right here, they decided to
2 pass 37.270. And what 37.270 states is that notwithstanding
3 any other provision of law. In other words, notwithstanding
4 NRS 37.160, that if the government tries to sell that property
5 it will automatically revert back to the original owner of
6 the property for the price that was paid. That's the statute.

7 The Constitution was amended in 2008 to specifically
8 reference a final order of condemnation. In Article 1,
9 Section 22, subsection 6, it specifically references final
10 orders of condemnation and says that if property is not used
11 within five years for the purpose for which it was taken, then
12 the property will automatically revert back to the property
13 owner by repaying the original purchase price. And then they
14 say the five years begins to run from the date of entry of
15 the final order of condemnation.

16 So the process here is the same that should be
17 followed in every eminent domain case in the state of Nevada.
18 Every inverse condemnation case that's ever been done in
19 the state of Nevada is there will be a final order of
20 condemnation, it will describe the property, describe the
21 purpose for the taking. It will say title will vest once the
22 City pays the property, and then there must be a provision
23 that complies with 37.270 and the Constitution that states
24 that if the government tries to sell that property to a
25 private individual other than the landowner, the landowner

1 will have the -- the original landowner -- the original
2 landowner will have the opportunity to repurchase that
3 property for the price that was paid originally by the
4 government.

5 That's the only thing we're asking for here is
6 that the statutes be followed and that the Constitution be
7 followed. Counsel made a whole bunch of arguments about what
8 happened in this case about the taking. He said this isn't
9 a per se categorical taking where the government has denied
10 all economic viable use of the property. Judge, there's a
11 finding. The first finding in the conclusion of law section
12 of the findings of fact and conclusions of law states that
13 there's been a per se categorical taking, which means a denial
14 -- and then it goes on to state there's been a denial of all
15 economic viable use of the property.

16 The next finding in the conclusions of law is that
17 there's been a per se regulatory taking of the property. And
18 a per se regulatory taking of the property is based upon the
19 physical use of the property. As you'll recall, Councilman
20 Seroka announced to the public that the landowner's property
21 was a park and it was for a park for their recreation. The
22 City then passed a bill stating that the landowners couldn't
23 use their property and that they had to allow ongoing public
24 access to their property. In other words, it was taken for a
25 park. And then the next finding in the findings of fact and

1 conclusions of law, I believe it's Number 117, is that the
2 landowners produced unequivocal evidence that the public was
3 actually using the property.

4 So, yes, this is a physical appropriation. This
5 is a per se taking. And those findings have already been
6 made, have already been set forth in the findings of fact and
7 conclusions of law and we're well past that. The sole reason
8 we're here for today is to decide how does title pass once
9 the government pays the money. And as I stated previously,
10 Your Honor, title should pass according to the statutes
11 pursuant to a final order of condemnation.

12 And I'll say just one last thing. It appears that
13 the government doesn't want that reversionary language in
14 there in the final order of condemnation. It appears that
15 the government is saying once we, the government, pay for
16 this property, we ought to be able to do whatever we want
17 with it. That's not the way the eminent domain statutes read;
18 number one.

19 Number two, it further shows what the predatory
20 actions of the government were here. As you'll recall, Your
21 Honor, from the very beginning, at the very beginning of this
22 case, the very first fact is that the surrounding property
23 owners contacted the landowners and told them that they had
24 to give the property to the surrounding property owners; that
25 the landowners had to give their property to the surrounding

1 property owners. That's what started this whole lawsuit. And
2 then there's evidence that those surrounding property owners
3 went to the City of Las Vegas officials and had them prohibit
4 the landowner from using their property in an attempt to
5 preserve this property -- well, not an attempt -- to preserve
6 this property for the surrounding property owners.

7 So our concern here, Your Honor, is that that
8 predatory action is continuing. In other words, the City
9 is trying to get title without the constitutional and the
10 statutory restrictions, which state that you don't get to --
11 once the government takes property by inverse condemnation,
12 it doesn't just get to willy-nilly do with it what it wants.
13 It has a purpose for which it was taken and that it cannot
14 retransfer that property to a private entity or a private
15 person without first offering it to the original owner from
16 whom it was taken for the original price. The Constitution
17 is clear. The statutes are clear, Your Honor.

18 So, again, we don't oppose that title will pass to
19 the City once the money is paid, but we have to follow the
20 statutes, which are 37.160 and 37.270, Your Honor. And that's
21 all I have, Your Honor, unless you have a question for me.

22 THE COURT: I don't.

23 All right. And we'll hear from the reply.

24 MR. SCHWARTZ: Your Honor, this is not an eminent
25 domain case. This is a case of first impression. This is an

1 inverse condemnation case of first impression. There are
2 only three cases where the Nevada Supreme Court has analyzed
3 a claim that regulation of the use -- the owner's use of
4 property is a taking. That's what this Court found, that the
5 City's regulation of the owner's use, a limitation of the
6 owner's use is a taking.

7 And the appraisal that was offered in evidence by
8 the developer is based on a determination that -- or the
9 judgment in this case is based on a determination that the
10 appraiser's conclusion that the City's regulation of the
11 use of the property, the private property of all value, the
12 owner's use, that's the basis of the judgment. That's the
13 basis of the \$34 million payment, not any physical invasion,
14 because there wasn't a physical invasion. But even if there
15 was, there wasn't any damages. There was no evidence of
16 damage and the Court didn't assess any damage.

17 So there are three cases in Nevada where this claim
18 was analyzed, and in those cases the court found no taking.
19 We think those cases should have been controlling in this case
20 and there shouldn't have been a finding of a taking. But the
21 Court has found a taking for an excessive regulation of the
22 owner's use. There is no case, there's no authority as to
23 how you handle the payment in that case, the payment of the
24 judgment, because all the cases are either eminent domain
25 cases or inverse condemnation cases where the government took

1 physical possession of the property and didn't file an eminent
2 domain case. They're all cases in which the government wanted
3 the property, it was an involuntary sale of the property by
4 the property owner, so the government could take the property
5 for a public project. There is no public project here; not
6 public project. The City doesn't want the property. It has
7 no use for the property.

8 THE COURT: I mean, well, it occurs to me -- it
9 could be argued, based upon the facts, that the public project
10 was open spaces and a park for the adjoining property owners.
11 And I think that's the problem we have here. But go ahead.

12 MR. SCHWARTZ: No. That's a regulation of the
13 owner's use. The claim here is that by regulating --
14 restricting the owner's use to what is allowed in the PROS
15 designation, Parks, Recreation and Open Space, the claim is
16 that that is a physical taking. And I just quoted from the
17 Sisolak case, from the Sierra-Tahoe case, that is not a
18 physical taking. That is not a per se physical taking.
19 A regulation of use is different from a physical occupation.
20 There has to be a physical occupation by the government. So
21 by requiring that the owner continue using that property for
22 PROS, it's not a physical taking. Eminent domain only applies
23 in physical takings where the agency is taking the property
24 for a public project. So those cases don't apply.

25 I don't think the Court needs to decide this issue,

1 however, if it says in the judgment that if the City pays
2 the money that the title will be transferred to the City.
3 That's all we're asking for here. I think this is water
4 under the bridge. You know, we disagree with the Court about
5 the difference between a physical and a regulatory taking.
6 We don't think there's any law on this.

7 You can't apply the eminent -- a good example is
8 what counsel is saying about the right to repurchase the
9 property. What's the purpose of that policy in state eminent
10 domain law? Well, it's where a property owner's property is
11 involuntarily taken from them, physically taken from them for
12 a public project. If the government doesn't use the property
13 for the public project and the property owner wants the
14 property back, they didn't want to give it to the government
15 in the first place, that's not our case. So that doctrine
16 makes no sense. The City doesn't want the property. It's
17 not an involuntary sale to the City.

18 THE COURT: But, really, isn't that more of --

19 MR. SCHWARTZ: It's an involuntary purchase.

20 THE COURT: Isn't that more of an argument versus
21 the conduct of the City Council in this case? Right? They
22 made statements regarding the use of the property for the
23 public.

24 MR. SCHWARTZ: Well, okay.

25 THE COURT: I mean, didn't -- but I mean --

1 MR. SCHWARTZ: So you're talking about the alleged
2 statement of one council member.

3 THE COURT: I mean, it's a City Council member.
4 I mean --

5 MR. SCHWARTZ: That can't bind -- even if that
6 statement was made, that doesn't bind the City. The defendant
7 here is the City. The City acts through the City Council, a
8 majority vote of the City Council. An individual City Council
9 member can't bind the City to something like this. There's
10 no -- there's absolutely no authority and that wouldn't make
11 any sense. City Council members make statements in their
12 individual --

13 THE COURT: Well, it does make sense in this regard
14 because the entire City Council, their actions ultimately
15 were no different than that one City Councilman. Right?

16 MR. SCHWARTZ: Oh, there's no evidence of that.
17 There's absolutely no evidence of that.

18 THE COURT: Well, but I mean, there is evidence of
19 it because of their actions. Ultimately, what did the City
20 Council do in this case?

21 MR. SCHWARTZ: The City Council denied applications,
22 one application to build housing on the 35-acre property.

23 THE COURT: And I have a question for you. What do
24 I do with this language --

25 MR. SCHWARTZ: That's all it did.

1 THE COURT: Wait. I have a question for you. This
2 is straight out of the Alper case. And please understand
3 this. I do understand what my limitations are and I do
4 understand and respect some of your arguments. But the bottom
5 line is this. What do I do when the Nevada Supreme Court in
6 the Alper case back in 1984 -- that's a long time ago -- said
7 the following. This is their quote: "Inverse condemnation
8 proceedings are the constitutional equivalent to an eminent
9 domain action and are governed by the same rules and
10 principles that are applied to formal condemnation
11 proceedings."

12 Now, and the reason why I think that's important
13 to point out, I'm not going to say I don't necessarily respect
14 and understand some of the arguments the City has made, but
15 the Nevada Supreme Court has ruled and set forth in the Alper
16 decision that it is a constitutional equivalency, right there,
17 to eminent domain actions and are governed -- and they went
18 further. When you really think about it, they went further
19 and they said the following, "and are governed by the same
20 rules and principles that are applied to a formal condemnation
21 proceeding." Okay. What does that mean? Well, that tells me
22 that I'm going to follow the rules as set forth in Chapter 37.
23 They haven't made a distinction for me to follow.

24 MR. SCHWARTZ: Well, Your Honor, can I address that?
25 Can I address that, Your Honor?

1 THE COURT: I mean, my point is, they haven't made
2 a distinction for me to follow.

3 MR. SCHWARTZ: I don't think that's correct. Can
4 I address that, Your Honor?

5 THE COURT: That's why I'm -- and the reason I'm
6 asking that question, and of course I'm going to give Mr.
7 Leavitt an opportunity to comment on it, too, but all my
8 decisions in many respects come back to Alper. That's a
9 statement by our Nevada Supreme Court. I just can't ignore
10 it and do what I want to do.

11 But, go ahead, sir. Go ahead and comment.

12 MR. SCHWARTZ: The Alper statement needs to be put
13 in context. Alper was a physical takings case. It was really
14 an eminent domain case. It was an inverse case in that the
15 City took physical possession of the property for a public
16 project. It filed one of these certificates instead of filing
17 an eminent domain action. And the property owner had to bring
18 an inverse condemnation action for the physical taking of its
19 property to force the government agency to essentially bring
20 an eminent domain action, which it did.

21 So, there, the government needed the property for
22 a public project and the issue in Alper was -- so it was
23 equivalent to an eminent domain case. The government there --
24 what was at issue was not whether the government had a right
25 to take the property or whether the government was liable for

1 a taking. The parties stipulated. The government physically
2 took my property; of course the government is liable. This
3 is like an eminent domain case.

4 And the court there said, yeah, eminent domain is
5 equivalent to inverse but in terms of value. That statement
6 of the court, Your Honor, needs to be put in context. It
7 would make no sense -- it makes no sense in the context of
8 an inverse condemnation case where what's at issue is the
9 regulation of the owner's use of the property. That's a
10 completely different type of case. And logically an eminent
11 domain -- the rules for eminent domain cannot apply to the
12 question of liability in a case like that.

13 This is a case like State, Kelly and Boulder City.
14 Government regulates the owner's use of the property
15 excessively, such that it is deemed the equivalent -- the
16 equivalent of a physical taking, but it's a completely
17 different concept.

18 So the rules for eminent domain where the owner --
19 where the agency concedes liability for the taking, we're
20 taking the property, we need it for a public project and we're
21 going to pay for it, the only issue is how much you pay. So
22 those rules that apply in eminent domain couldn't possibly
23 apply in a case like this where what's at issue is a liability
24 for a regulatory taking, a liability for a regulatory taking
25 because liability is not at issue in those eminent domain

1 cases. And conceptually they're completely different. It's
2 a physical taking of the property. You take possession and
3 title for a public project. In a regulatory taking case like
4 the case here, liability is -- depends on how much has the
5 government limited the owner's use of the property. So you
6 can't just willy-nilly apply rules for eminent domain to a
7 regulatory taking case.

8 Now, yes, this issue goes to -- the issue before
9 the Court is whether -- you know, how should the judgment be
10 paid, what's the timing of the judgment and how should title
11 transfer if the judgment is paid? Well, it makes no sense to
12 apply the eminent domain rules here because the City doesn't
13 want the property. And if the City pays the developer
14 \$34 million plus for this property and then the City takes
15 title to the property, it can't do anything with the property
16 because if the City wins on appeal it's going to have to give
17 the property back. That's going to be difficult enough, but
18 a greater problem, as we pointed out to the Court, is the
19 money is going to be gone. The City is not going to be able
20 to recover that money.

21 Now, in an eminent domain case that's not a problem
22 because the City wants the property. It needs the property.
23 It needs it for a public project. So, yes, it's going to have
24 to pay some money. In this case it's an involuntary -- it's
25 not an involuntary sale of the property, and so the City is

1 going to be in deep trouble if it wins on appeal and it has
2 already paid that money.

3 So that's what we argued. You know, I think the
4 Court -- we think that the developer is leading the Court
5 into error here, but the Court has decided that in spite of
6 the City's arguments that the City is going to have to pay
7 the money now. So I'm not expecting the Court to reverse
8 that, even though I think we're dead right. But I do think
9 the Court should at least recite in the judgment that if the
10 City is going to be compelled to pay this money that at least
11 the City is going to receive title to the property.

12 THE COURT: All right. And, sir, thank you.

13 Mr. Leavitt, any comments you wanted to make, sir,
14 on the questions I raised?

15 MR. LEAVITT: Yeah, I'll briefly address the first
16 question which does -- counsel addressed the issue of whether
17 eminent domain and inverse condemnation law are the same
18 and whether -- I'm sorry, the constitutional equivalent,
19 whether the same rules and principles apply and he tried to
20 distinguish Alper. Very briefly, Your Honor, Alper was an
21 inverse condemnation case where the Court held that same
22 ruling that you just quoted.

23 We also cited to you Argier v. Nevada Power Company,
24 which was a direct condemnation action. And in that case we
25 cited to inverse condemnation law in a direct condemnation

1 action. And the Nevada Supreme Court held that was proper,
2 quoted Alper and said inverse condemnation law also applies
3 in direct condemnation cases.

4 We also cited to 5th & Centennial v. City of North
5 Las Vegas, which is now a pre-condemnation damage case. And
6 in that case again the Nevada Supreme Court held that an
7 inverse condemnation case and a direct condemnation case
8 are the constitutional equivalent of one another and a pre-
9 condemnation damage case is a type of inverse condemnation
10 case, and therefore they're the constitutional equivalent
11 and the same rules apply.

12 So no matter whether we're in an inverse case, a
13 direct case or a pre-condemnation damages case, the Nevada
14 Supreme Court reverts to that rule that they're all the
15 constitutional equivalent and the same rules and principles
16 apply. And why do they do that? Because once you get past
17 liability, whatever case you're in the rules are the same
18 from then on. That's why the court has done that.

19 And the Nevada Supreme Court never once has said
20 here's our body of law for inverse condemnation cases and
21 here's our body of law for direct condemnation cases. That
22 would be totally unworkable. The court would have to somehow
23 split hairs and say, well, this is the law for inverse, this
24 is the law for direct. The Court said that it's not going to
25 do that and in Nevada it has elected not to do that.

1 Now, one other thing I'll just reference very
2 briefly, Your Honor, is that counsel said that, well, if this
3 was a physical taking case then the eminent domain rules would
4 apply. This Court found -- I'll very briefly summarize this.
5 This Court found in its findings of fact and conclusions of
6 law and you alluded to it. Number one, the councilman stated
7 to the surrounding property owners, this is your open space,
8 this is your park. It didn't end there. Then the entire City
9 Council adopted a bill that targeted only this landowner's
10 property, made it impossible to build on the property, and
11 then said this property is for the surrounding property owners
12 to use, and forced the landowner as part of that bill to allow
13 ongoing public access to the property.

14 The next fact is, and I'll quote this one in the
15 findings of fact and conclusions of law. "The landowners
16 presented uncontested evidence that the neighbors are using
17 the 250-acre property. Don Richards, the superintendent,
18 submitted a declaration that those entering onto the property
19 advised him that it was our open space. And they learned
20 that it was their open space from the City, not only from the
21 councilman but from the City Council adopting a bill saying
22 it was their open space.

23 Your Honor, that's no different than condemning a
24 parcel of property in a direct condemnation action, putting a
25 sign on it and saying this is the park. I'll use Jaycee Park,

1 that's where I grew up in downtown, this is Jaycee Park and
2 the public enters onto the park. That's the same exact thing
3 that happened here.

4 Therefore, even under counsel's argument that if
5 this is a physical take then eminent domain law would apply,
6 we have a physical take and therefore even under his argument
7 eminent domain should apply.

8 So, Your Honor, we could just do an order here out
9 of this hearing which states that once the money is paid a
10 final order of condemnation will be issued pursuant to NRS
11 37.170 and 37.270. Both of those provisions have to be in
12 that order so that the final order of condemnation applies and
13 the reversionary rights apply. And, I'm sorry, Your Honor,
14 one other thing would be in there, which is the constitutional
15 provisions which are subsection 1 and subsection 6 of Article
16 1, Section 22.

17 Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 And, Mr. Schwartz, you get the last word, sir.

20 MR. SCHWARTZ: Thank you, Your Honor. None of the
21 cases that the developer has cited, either in this hearing
22 or in their papers, involved anything other than either an
23 eminent domain action or an inverse condemnation action that
24 was in effect an eminent domain action where the public agency
25 took physical possession of the property for a public project.

1 Throughout this litigation the developer has
2 conflated physical and regulatory taking. Eminent domain
3 involves a physical taking. A regulatory taking involves a
4 regulation of the owner's use. It doesn't involve a physical
5 taking. So all of the cases simply that the developer cited
6 don't apply and they don't apply as a matter of logic. Here,
7 as we said, there is no precedent for applying the eminent
8 domain procedure to a case where regulation of the owner's
9 use is at issue.

10 Now, we have already litigated this issue of
11 physical taking. We think that the Court's judgment -- we
12 think there's no evidence of a physical taking, of a permanent
13 physical taking. The legislation did not say what counsel
14 said it says. It didn't apply to this property. There's no
15 action of the City Council that authorized the physical --
16 the public physically occupy the property and the City hasn't
17 dispossessed the property owner.

18 We're not expecting the Court to change the Court's
19 mind on that. But we think that the judgment should not
20 recite that the eminent domain law procedure applies. We
21 think that the Court should just merely say if the City pays
22 the judgment that title shall be transferred to the City, and
23 not specify a procedure because we think it's error to apply
24 the eminent domain procedures here because that implies that
25 the City has to pay the money, has to pay the judgment within

1 30 days, which is completely appropriate in an eminent domain
2 case where the government wants the property and is not going
3 to give it back, but it's completely inappropriate in this
4 case where the government does not want the property and an
5 appeal could require unwinding the whole transaction.

6 An appeal in an eminent domain case doesn't unwind
7 the transaction. The government is going to keep the property.
8 Maybe the government will have to pay more or less, but the
9 government keeps the property. That's not our case. If we
10 win on appeal, the City wins on appeal, it's going to be a
11 nightmare to try to unravel this transaction. And that's why
12 we think the judgment should just say merely that if the City
13 pays the judgment that title shall be transferred to the City.

14 Thank you.

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

16 This is what I'm going to do. And I think it's
17 important, once again, and I don't mind saying this. As far
18 as a lot of my decisions in this case, they were based upon
19 the holding and the comments of our Nevada Supreme Court in
20 the Alper case. And it's important to point this out because
21 I think it goes a little bit further than the City feels
22 because first it says "inverse condemnation proceedings are
23 the constitutional equivalent to eminent domain actions."

24 And here's my point. They didn't stop there; right?
25 If they stopped there, maybe we would have some potentially

1 arguments for gray areas as to what that means. But then they
2 go further and they say, "and are governed by the same rules
3 and principles that are applied to a formal condemnation
4 proceeding." Period, close quote. It's right there.

5 And so based upon that case, and that's a 1984 case,
6 it's been around for a long time, and a lot of the other cases
7 that have been cited, our Nevada Supreme Court has had an
8 opportunity, if they wanted to draw distinctions they could
9 do that, but they never did.

10 And so here's my point. As far as the motion to
11 amend the judgment pursuant to Rule 59(e) and 60(b), I'm going
12 to deny it. Just as important, too, I'm going to follow the
13 statutory mandate as it pertains to payment and the like under
14 NRS 37.160 and 37.270 and the Nevada Constitution. That's
15 what I'm going to do.

16 All right. And so, anyway --

17 MR. SCHWARTZ: Thank you, Your Honor.

18 THE COURT: -- Mr. Leavitt, will you prepare an
19 order and circulate it?

20 MR. LEAVITT: Yes, Your Honor. I'll prepare an
21 order and run it by Mr. Ogilvie.

22 THE COURT: Okay. All right. And I think that's
23 it; right? We don't have anything further scheduled?

24 THE CLERK: That's it.

25 THE COURT: All right. Everyone enjoy your day.

1 MR. OGILVIE: Have a good weekend, Your Honor.
2 THE COURT: You have a good one, too, sir.
3 MR. LEAVITT: Thank you, Your Honor. Have a good
4 weekend.
5 MS. GHANEM HAM: Thank you.
6 (PROCEEDINGS CONCLUDED AT 2:03 P.M.)
7 * * * *

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.


Liz Garcia, Transcriber
LGM Transcription Service



**NOE
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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

NOTICE OF ENTRY OF:

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

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

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

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A copy of the Order is attached hereto.

DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

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Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

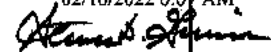
2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 17th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS LANDOWNERS'**
5 **MOTION FOR REIMBURSEMENT OF PROPERTY TAXES**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

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


CLERK OF THE COURT

ORDR

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Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: January 19, 2022

Time of Hearing: 10:00 a.m.

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

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

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

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

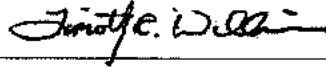
23 The Landowners presented uncontested evidence that they paid property taxes from August
24 2, 2017, up to the date of the hearing in this matter in the amount of \$976,889.38.
25

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

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

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

Dated this 16th day of February, 2022



MH

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

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMIT L. WATERS

MCDONALD CARANO LLP

By: /s/ James J. Leavitt

Kermit L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

By: Did not respond

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396 Hayes Street
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Attorneys for City of Las Vegas

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

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

Hi George,

Attached for your review are the following proposed orders:

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

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

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

Thank you and have a great weekend.

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

This e-mail, and any attachments thereto, is intended only for use by the addressee(s)
named herein and may contain legally privileged and/or confidential information. If you
are not the intended recipient of this e-mail, you are hereby notified that any dissemination,
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permanently delete the original and any copy of any e-mail and any printout thereof.

23032

Further information about the firm will be provided upon request.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 2/16/2022

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18	Shannon Din@l	sdH pisanellibice.com
19	Debbie Leonard	debbieH leonardlawpc.com
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21	Lauren Tarpey	LTarpeyH smwlaw.com
22	David z eibel	weibelH smwlaw.com
23	Sandy F uerra	sandyH @rmittwaters.com
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28		

1	Jennifer Knighton	JKnightonH ehbcompanies.com
2		
3	Elizabeth Wam	EWamH ehbcompanies.com
4	Rebecca z olfson	rwolfsonH lasvegasnevada.gov
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Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

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

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

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

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A copy of the Order is attached hereto.

DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 17th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING IN PART AND DENYING IN**
5 **PART THE CITY OF LAS VEGAS' MOTION TO RETAX MEMORANDUM OF COSTS**
6 was served on the below via the Court's electronic filing/service system and/or deposited for
7 mailing in the U.S. Mail, postage prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

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

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

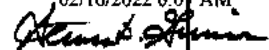
13 Bryan Scott, Esq., City Attorney
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Rebecca Wolfson, Esq.
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pbyrnes@lasvegasnevada.gov
16 rwolfson@lasvegasnevada.gov

17 **SHUTE, MIHALY & WEINBERGER, LLP**

18 Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
19 San Francisco, California 94102
schwartz@smwlaw.com
20 ltarpey@smwlaw.com

21 /s/ Sandy Guerra

22 an employee of the Law Offices of Kermitt L. Waters
23
24


CLERK OF THE COURT

ORDER

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Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: January 19, 2022

Time of Hearing: 10:00 a.m.

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

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

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

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

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

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

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

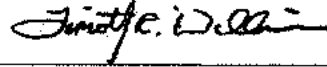
6		
7	HOLO Discovery	\$14,422.81
8	Nevada Supreme Court Law Library	\$33.20
9	Clark County Recorder	\$171.00
10	District Court Clerk	\$119.00
11	GGA Partners	\$11,162.41
12		
13	Global Golf Advisors	\$67,094.00
14	The DiFederico Group	\$114,250.00
15	Jones Roach & Caringella	\$29,625.00
16	Legal Wings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

22 The Court further finds the Westlaw billings to be reasonable and actually incurred in this
23 matter, but **GRANTS**, in part, the City's request to retax by reducing the Westlaw billings 75% to
24 account for the fact that all four related inverse condemnation cases (17, 35, 65, and 133 acre cases)
25 were identified as just one client on the Westlaw billings. Therefore, the \$50,669.02 Westlaw bill
26 is retaxed to **\$12,667.25**.
27

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

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

5
6 Dated this 16th day of February, 2022

7 

8 **51A C54 4F89 7CD2**
9 **Timothy C. Williams**
10 **District Court Judge**

MH

11 Submitted By:

Content Reviewed and Approved by:

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

McDONALD CARANO LLP

13 By: /s/ James J. Leavitt

By: Did Not Respond

14 Kermit L. Waters (NV Bar No. 2571)

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

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

Christopher Molina (NV Bar No. 14092)

16 Michael A. Schneider (NV Bar No. 8887)

2300 W. Sahara Avenue, Suite 1200

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Las Vegas, Nevada 89102

18 704 South Ninth Street

19 Las Vegas, Nevada 89101

LAS VEGAS CITY ATTORNEY'S OFFICE

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20 **EHB COMPANIES**

21 Elizabeth Ghanem Ham, Esq. (NV Bar 6987)

22 1215 S. Fort Apache Road, Suite 120

23 Las Vegas, NV 89117

24 **Attorneys for Plaintiffs Landowners**

SHUTE, MIHALY & WEINBERGER, LLP

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(Admitted pro hac vice)

Lauren M. Tarpey (CA Bar No. 321775)

(Admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Attorneys for City of Las Vegas

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

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

Hi George,

Attached for your review are the following proposed orders:

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

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

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

Thank you and have a great weekend.

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

This e-mail, and any attachments thereto, is intended only for use by the addressee(s)
named herein and may contain legally privileged and/or confidential information. If you
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permanently delete the original and any copy of any e-mail and any printout thereof.

23044

Further information about the firm will be provided upon request.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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

CASE NO: A-17-758528-J

DEPT. NO. Department 16

8 vs.

9 Las Vegas City of,
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

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

Hearing Date: February 3, 2022

Hearing Time: 1:30 p.m.

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

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A copy of the Order is attached hereto.

DATED this 22nd day of February, 2022.

LAW OFFICES OF KERMIT L. WATERS

/s/Autumn L. Waters

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

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

8 **MCDONALD CARANO LLP**

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

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

13 Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
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21 /s/ Sandy Guerra

22 an employee of the Law Offices of Kermitt L. Waters
23
24

ORDR

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Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: February 3, 2022

Time of Hearing: 1:30 p.m.

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

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

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

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

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

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

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

21 **B. Article 1, Section 22 Provides for the Reimbursement of Attorney Fees**

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

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

20 The Landowners also moved for attorney fees under NRS 18.010(2)(b) which also provides
21 for the award of attorney fees to the prevailing party “when the court finds that the claim,
22 counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought
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26 ¹ Consistent with long standing Nevada law, in *Nevadans for the Prot. Of Prop. Rights v. Heller*,
27 122 Nev. 894, 908, 141 P.3d 1235, 1244-1245 (2006), the Nevada Supreme Court acknowledged
28 that Article 1 § 22 would apply to inverse condemnation actions. See also *Clark County v. Alper*,
100 Nev. 382, 395 (1984); *Argier v. Nevada Power Co.*, 114 Nev. 137, fn 2, 952 P.2d 1390 (1998).

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

4 **D. Calculation of Attorney Fees**

5 Pursuant to *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007), attorney fees shall
6 be calculated based on the Lodestar analysis which requires “multiply the number of hours
7 reasonably spent on the case by a reasonable hourly rate.” *Id.*, at 637. The Landowners’ counsel
8 provided affidavits pursuant to NRCF Rule 54(d)(2)(B)(v)(a) “swearing that the fees were actually
9 and necessarily incurred and were reasonable.” The affidavits further provide that the
10 Landowners’ counsel have charged a rate of \$450 from August of 2017 up to May 31, 2019, and
11 a rate of \$675 per hour thereafter. The attorney hours submitted by Landowners’ counsel from
12 August of 2017 to February of 2022 totaled 3,906.91.
13

14 The Court finds the hours submitted by Landowners’ counsel to be reasonable and actually
15 incurred based on the affidavits of Landowners’ counsel, the record in the case, the complexity of
16 the case, the amount of work required in the case, and the fact that the City’s private attorneys
17 have billed the City for more hours than the Landowners’ counsel. *Landowners’ Reply at 8 and*
18 *Exhibit 18, 18a and 18b.*
19

20 The Court further finds that the rates of \$450 and \$675 per hour are reasonable based on
21 the specialized nature of this action, the skill and expertise of Landowners’ counsel, the rate in the
22 community (i.e. the City’s counsel charged the City \$550 per hour *Exhibit 17*, which the City did
23 not contest is a government rate known to be lower than the normal rate charged), the level of
24 difficulty and difficult nature of the case, the importance of the matters litigated, the large spread
25 in the damage calculation between the parties, the work performed and time needed to perform the
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1 work, as well as the success of Landowners' counsel in this case. *See Landowners' motion for*
2 *attorney fees pp. 11-26.*

3 The Landowners have also submitted for reimbursement of the Attorney's legal assistant
4 fees which were also actually and reasonably incurred. The hours for the legal assistants total
5 1,063.93 and the Landowners submitted for these hours to be reimbursed at the actually incurred
6 rate of \$50.00. There was no objection to the reasonableness of this time or rate.
7

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

9 **Attorney hours from August 2017 to May 31, 2019**

10 984.93 at \$450 = \$443,218.50

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

12 2,551.32 at \$675 = \$1,722,141.00

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

14 320.66 at \$675 = \$216,445.50

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

16 50 at \$675 = \$33,750.00

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

18 **Legal Assistants hours August 2017- January 25, 2022**

19 1,041.63 x \$50.00 = \$52,081.50

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

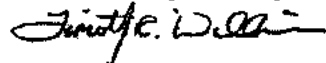
21 22.3 at \$50 = \$1,115.00

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

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

4 **THEREFORE, IT IS HEREBY ORDERED THAT** The Plaintiff Landowners' Motion
5 for Attorney Fees is **GRANTED in part** as to the attorney fees actually incurred and **DENIED in**
6 **part**, as to an upward adjustment. The Landowners shall receive an award of their attorney fees
7 actually incurred totaling \$2,415,555.00 and legal assistant fees actually incurred totaling
8 \$53,196.50 for a total of \$2,468,751.50.

Dated this 18th day of February, 2022



CAB 6B7 762F BC96
Timothy C. Williams
District Court Judge

MH

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMIT L. WATERS

McDONALD CARANO LLP

By: /s/ Autumn L. Waters

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

Hi George,

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

Autumn Waters, Esq.
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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 2/18/2022

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

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

Hearing Date: February 11, 2022

Hearing Time: 1:15 p.m.

PLEASE TAKE NOTICE that the Order Denying City of Las Vegas' Motion to Amend

Judgment (Rules 59(e) and 60(b)) and Stay of Execution ("Order") was entered on the 25th day of
February, 2022.

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A copy of the Order is attached hereto.

DATED this 28th day of February, 2022.

LAW OFFICES OF KERMIT L. WATERS

/s/Autumn L. Waters

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Attorneys for Plaintiff Landowners

1 **CERTIFICATE OF SERVICE**

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

8 **McDONALD CARANO LLP**

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17 **SHUTE, MIHALY & WEINBERGER, LLP**

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21 /s/ Sandy Guerra

22 an employee of the Law Offices of Kermit L. Waters
23
24

ORDER

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Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: February 11, 2022

Time of Hearing: 1:15 p.m.

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

1 Offices of Kermit L. Waters and Plaintiff Landowners' in-house counsel Elizabeth Ghanem, Esq.
2 appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. ("Landowners"), George
3 F. Ogilvie III, Esq. and Christopher Molina, Esq. of McDonald Carano LLP and Andrew W.
4 Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas
5 ("City").
6

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

9 The Nevada Supreme Court has held that "Inverse condemnation proceedings are the
10 constitutional equivalent to eminent domain actions and are governed by the same rules and
11 principles that are applied to formal condemnation proceedings." County of Clark v. Alper, 100
12 Nev 382, 391 (1984) (emphasis added). This has been the law in Nevada since 1984 and the Nevada
13 Supreme Court has reaffirmed this law numerous times since then.
14

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

18 This Court has previously entered findings of fact and conclusions of law that the City took
19 by inverse condemnation the Landowners' 35 Acre Property and must, accordingly, pay just
20 compensation.
21

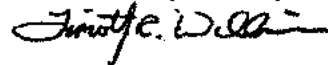
22 NRS 37.160 provides the procedure for passing title to the City of Las Vegas through a final
23 order of condemnation once the sums assessed against the City are paid to the Landowners.
24 Therefore, once the City pays the sums assessed in this matter to the Landowners, this Court will
25 enter a final order of condemnation as provided in NRS 37.160.
26
27
28

1 This Court further finds that the Landowners have reversionary rights to the 35 Acre
2 Property as set forth in NRS 37.270 and article 1, section 22 (1) and (6) of the Nevada State
3 Constitution. These reversionary rights shall be set forth in the final order of condemnation.

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

6
7 Based on the foregoing, **IT IS HEREBY ORDERED THAT** the City of Las Vegas Motion
8 to Amend Judgement (Rules 59(e) and 60(b)) and Stay of Execution is **DENIED** and, once the City
9 pays the sums assessed in this matter to the Landowners, the Court will enter a final order of
10 condemnation as provided herein.

11 Dated this 25th day of February, 2022

12 

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

17 MH

1 Submitted By:

2 LAW OFFICES OF KERMIT L. WATERS

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

4 Kermitt L. Waters (NV Bar No. 2571)

5 James J. Leavitt (NV Bar No. 6032)

6 Michael A. Schneider (NV Bar No. 8887)

7 Autumn L. Waters (NV Bar No. 8917)

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10 EHB COMPANIES

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13 Las Vegas, NV 89117

14 *Attorneys for Plaintiffs Landowners*

Content Reviewed and Approved by:

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By: Did not respond

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Attorneys for City of Las Vegas

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

George:

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

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

Thank you and have a good weekend,
Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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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**

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

15 Service Date: 2/25/2022

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

February 28, 2022

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

February 28, 2022 3:00 AM Minute Order

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After review and consideration of the points and authorities on file herein and oral argument of counsel, the Court determined as follows:

Plaintiff's Motion for Pre-Judgment Interest shall be GRANTED. However, the interest calculation shall be based on the statutory rate, pursuant to NRS 37.175, of prime rate plus 2% interest.

Counsel on behalf of Defendant City of Las Vegas shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

PRINT DATE: 02/28/2022

Page 1 of 1

Minutes Date: February 28, 2022

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