

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**AMENDED
JOINT APPENDIX
VOLUME 91**

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1 BY MR. JIMMERSON:
2 Q. You can answer the question.
3 A. There is a dash.
4 Q. For purposes of the judge and jury, they
5 won't see zero, they won't see 10, they won't see a
6 numeral, they'll see a dash, correct?
7 A. Yes.
8 Q. Can I ask you one more question? How many
9 residential units are developed in Tivoli, in the
10 commercial area of Tivoli?
11 A. In the commercial area of Tivoli?
12 Q. How many residential units were entitled
13 in the commercial area of Tivoli?
14 A. In the commercial area? You mean as part
15 of the entitlement?
16 Q. That's right.
17 A. It's 300.
18 Q. So as it was developed, the dash for
19 commercial use on Exhibit Number 8 turned out to be
20 300 as history has shown; is that right?
21 MR. BICE: Objection to the form.
22 Misstates the documents and misstates the record.
23 THE WITNESS: The site is currently
24 entitled for 300 units.
25 MR. JIMMERSON: Thank you.

1 EXAMINATION
2 BY MR. BICE:
3 Q. Were the zoning amended to allow
4 residential where it was commercial?
5 A. This is a commercial zoning district with
6 a special use permit for mixed use which allowed the
7 300 units.
8 Q. And that was at the time of approval,
9 correct?
10 A. That's at the time the City Council
11 approved the overall project known as Tivoli.
12 MR. BICE: Thank you. Thank you so much.
13 MR. JIMMERSON: And I do, for my end, I
14 apologize for the imposition to Mr. Lowenstein and to
15 Mr. Byrnes as well.
16 MR. BYRNES: At least I got an hour break.
17 THE VIDEOGRAPHER: This concludes the
18 deposition. The time is 7:22 p.m. And we are off
19 the video record.
20 (Whereupon, the deposition was concluded at
21 7:22 p.m.)
22 * * * * *
23
24
25

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Monice K. Campbell, a Certified Court Reporter
licensed by the State of Nevada, do hereby certify:
That I reported the deposition of Peter Lowenstein,
on Tuesday, December 20, 2016, at 10:46 a.m.

That prior to being deposed, the witness
was duly sworn by me to testify to the truth. That I
thereafter transcribed my said stenographic notes via
computer-aided transcription into written form, and
that the typewritten transcript is a complete, true
and accurate transcription of my said stenographic
notes; that review of the transcript was requested.

I further certify that I am not a relative,
employee or independent contractor of counsel or of
any of the parties involved in the proceeding; nor a
person financially interested in the proceeding; nor
do I have any other relationship that may reasonably
cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
4th day of January, 2017



MONICE K. CAMPBELL, CCR NO. 312

I, PETER LOWENSTEIN, deponent herein, do hereby declare under penalty of perjury that I have read the within and foregoing transcription of my deposition taken on Tuesday, December 20, 2016, in Las Vegas, Nevada, and that the same is a true record of the testimony given by me at the time and place hereinabove set forth, with the following exceptions:

PAGE	LINE	SHOULD READ:	REASON FOR CHANGE:
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24			PETER LOWENSTEIN	
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BY MR. BICE: [91] 469/1 470/16 471/12 474/5 474/23 477/6 477/14 477/22 478/3 478/16 479/24 480/13 481/5 481/23 482/17 483/3 483/13 484/1 484/6 484/13 485/4 485/14 485/20 486/10 486/21 487/7 488/2 488/13 488/17 489/11 490/4 491/6 491/15 491/21 492/17 494/3 494/22 495/12 496/4 497/2 497/11 497/18 497/23 498/10 499/3 500/13 500/24 501/4 501/20 502/2 503/6 503/16 503/23 504/8 505/1 505/8 505/20 506/2 506/10 506/25 507/10 507/18 508/20 509/5 509/20 510/17 510/24 511/8 512/7 512/22 513/1 513/10 513/21 514/6 517/18 518/3 518/11 518/25 519/25 520/4 520/13 520/23 521/11 521/20 522/10 522/22 567/19 568/11 568/14 569/6 571/1 BY MR. JIMMERSON: [246] 278/9 278/17 279/6 281/9 281/24 283/9 287/21 290/13 292/5 295/2 296/3 296/15 297/2 297/24 298/7 298/15 298/25 299/12 300/7 300/14 301/20 302/6 302/22 303/8 303/19 305/13 305/21 306/10 306/21 307/18 308/1 308/14 308/21 309/7 310/5 311/20 312/1 313/17 315/7 316/20 319/6 320/4 320/13 321/14 321/22 324/8 325/8 325/15 328/5 328/20 329/7 329/19 330/3 331/15 333/20 338/25 339/21 340/6 341/3 341/15 342/7 342/24 343/13 344/6 346/9 347/11 348/15 349/5 351/15 352/16 355/20 355/23 357/24 358/8 358/15 364/7 364/23 365/5 369/4 371/14 372/7 372/11 374/24 378/3 379/10 379/24 381/1 381/6 381/10 381/20 382/10 383/6 383/18 384/6 384/22 385/21 386/18 386/22 387/5 387/22 388/2 388/10 388/18 389/3 389/11 389/21 390/13 391/23 392/11 392/24 393/4 393/7 393/13 394/7 395/12 396/10 398/10 399/6 399/22 400/11 400/20 401/9 402/8 402/20 403/7 403/18 404/1 404/8 404/12	405/19 408/20 409/12 410/5 410/18 411/7 411/17 413/5 414/20 415/14 415/25 417/4 418/1 418/25 420/2 420/6 420/21 421/8 421/11 421/21 422/4 422/25 423/20 424/13 424/25 425/8 426/24 427/11 428/3 428/8 429/2 430/17 431/1 435/6 437/24 439/24 440/10 441/12 442/7 442/13 443/24 445/1 446/7 446/16 448/24 449/11 449/17 450/7 450/17 450/23 451/13 452/5 452/19 458/17 458/25 459/5 459/18 460/2 460/21 461/1 462/12 463/10 465/24 466/16 467/11 467/19 468/2 468/9 524/4 524/19 526/10 527/15 527/21 529/24 530/14 531/25 532/23 533/10 534/2 534/21 535/11 536/3 536/24 538/1 538/17 539/5 540/4 541/21 545/23 546/3 546/23 547/4 547/18 548/3 548/17 548/24 549/12 549/20 552/1 554/5 555/5 555/22 556/17 557/15 559/3 562/1 562/13 562/25 564/1 564/22 565/3 565/12 566/10 566/17 567/8 569/18 569/24 MR. BICE: [283] 278/2 280/15 280/20 287/19 290/12 292/2 294/21 295/25 296/11 296/25 297/20 298/5 298/14 298/21 300/1 300/12 301/18 301/23 302/13 302/17 303/4 303/16 304/23 305/19 306/8 307/14 307/16 307/24 308/11 308/16 309/5 311/10 316/8 316/12 318/22 319/2 321/10 324/6 324/24 325/3 325/7 325/13 327/20 328/4 329/5 329/16 329/18 329/22 331/13 338/24 339/20 340/5 340/17 341/8 341/23 342/4 342/6 342/21 343/11 344/3 345/15 345/20 345/24 346/2 347/7 348/7 352/10 353/3 353/7 353/18 354/9 354/18 354/23 355/4 355/8 355/10 355/14 357/18 358/3 358/12 364/22 365/3 369/2 371/23 372/2 374/10 374/14 374/20 378/1 379/4 379/22 380/5 381/5 381/8 381/23 382/3 383/11 383/15 384/3 384/20 385/25 386/20 387/1 387/18 387/25 388/15 389/2 389/7 389/10 389/17	390/5 391/21 392/9 392/23 393/3 393/6 393/11 394/1 396/9 398/8 399/2 399/19 400/3 400/17 401/7 402/5 402/15 403/5 403/16 404/7 404/10 405/7 405/11 405/13 405/15 409/11 411/6 411/13 415/13 416/25 417/24 418/18 418/20 418/23 420/1 420/4 420/19 421/7 421/10 421/17 422/2 422/21 423/18 424/11 424/24 425/6 426/21 428/1 428/6 429/1 430/16 435/5 439/10 439/17 440/9 441/10 442/5 442/10 443/18 444/25 446/2 446/6 446/12 449/7 449/15 450/3 450/16 450/19 451/11 458/15 458/19 459/4 459/25 462/10 465/22 466/14 467/9 467/24 468/8 486/2 486/7 490/1 502/10 502/16 502/19 502/22 502/25 503/3 507/23 507/25 508/3 508/8 508/11 508/16 509/3 509/11 509/17 514/22 515/8 515/15 515/19 516/1 516/5 516/9 516/15 516/20 516/24 517/2 518/23 523/3 523/7 523/9 523/19 524/16 526/23 526/25 527/3 529/22 531/21 531/24 532/21 533/8 533/21 534/15 535/4 535/8 535/22 536/6 536/9 536/12 536/16 537/24 538/12 538/25 539/21 541/19 545/19 546/1 546/12 547/2 547/12 547/24 548/13 548/19 549/5 549/18 551/23 551/25 553/22 553/25 554/24 555/18 556/14 557/11 558/21 561/24 562/11 562/21 563/24 564/11 564/14 565/1 565/9 566/5 566/15 567/3 568/20 568/24 569/2 569/14 569/22 570/20 571/11 MR. BYRNES: [40] 277/25 299/2 299/6 304/25 306/18 342/23 348/25 355/16 383/4 384/1 386/3 388/17 389/20 390/8 452/17 467/13 468/1 497/16 500/12 504/6 508/18 512/24 514/1 518/22 518/24 523/17 526/4 527/4 527/9 527/20 530/4 535/9 539/23 551/21 553/20 556/8 556/11 564/8 567/4 571/15 MR. JIMMERSON: [212] 277/15 280/12 280/16 280/24 281/5 283/3 299/4 299/8 302/16 303/6 307/15 310/3 311/13 311/17	311/24 316/11 316/14 318/20 318/25 319/4 320/10 321/18 325/1 325/5 328/3 328/13 333/16 342/1 342/5 345/18 345/22 345/25 346/4 349/1 352/25 353/5 353/11 353/24 354/17 354/19 354/25 355/6 355/9 355/11 355/18 363/21 364/4 371/12 371/21 371/25 372/4 374/12 374/17 378/25 379/5 381/25 382/5 383/13 387/3 389/8 405/6 405/8 405/12 405/14 405/17 410/16 417/2 418/19 418/21 427/4 430/22 439/12 439/18 446/4 449/9 459/14 460/20 468/14 468/18 470/12 474/3 474/20 477/2 477/10 477/20 478/1 478/11 479/22 480/10 480/23 481/20 482/13 482/21 483/7 483/23 484/4 484/9 485/2 485/16 485/23 486/4 486/17 487/23 488/7 489/5 489/24 491/3 491/13 491/19 492/12 493/19 494/10 495/9 495/25 496/21 497/7 497/14 497/21 498/4 498/24 500/9 500/17 501/2 501/14 501/24 502/7 502/14 502/18 502/20 502/23 503/1 503/12 503/21 504/4 504/23 505/5 505/10 505/23 506/8 506/17 507/4 507/14 507/21 507/24 508/1 508/5 508/9 508/13 508/24 509/9 509/13 510/13 510/19 511/3 511/25 512/18 513/6 513/17 514/3 514/19 515/3 515/14 515/16 515/23 516/3 516/7 516/12 516/17 516/25 517/7 517/13 517/22 518/8 518/20 520/2 520/6 520/19 521/7 521/15 522/6 522/15 523/5 523/11 523/20 526/5 526/24 527/1 527/5 530/6 530/11 533/9 535/5 536/8 536/11 536/14 539/25 549/8 551/24 553/23 556/10 556/12 564/10 564/12 566/7 567/7 568/10 568/16 568/22 569/3 569/10 570/24 571/12 MR. KAEMPFER: [1] 278/4 MR. LOWIE: [1] 278/5 THE COURT REPORTER: [22] 308/20 313/14 313/16 327/24 330/1 348/9 351/12 352/23 355/22 371/10 380/13 381/19 385/19 388/6 395/8 403/22 410/3
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<p>THE COURT REPORTER:... [5] 413/1 415/23 471/11 505/17 568/13 THE VIDEOGRAPHER: [25] 277/2 278/15 281/2 281/7 316/15 316/18 328/15 328/18 363/24 427/2 427/5 427/8 448/22 459/11 459/16 460/18 468/16 468/19 468/22 485/12 516/22 523/8 523/21 523/25 571/16 THE WITNESS: [141] 277/23 294/23 296/12 297/22 299/10 300/3 300/13 302/1 302/18 305/1 308/13 308/18 311/16 313/15 319/25 321/12 327/21 328/1 329/17 329/23 330/2 340/18 341/10 344/5 346/6 347/9 348/8 348/10 351/13 357/19 358/5 371/13 380/6 380/14 386/5 387/4 387/20 388/8 390/9 394/4 395/9 399/4 399/20 400/4 402/7 402/17 403/24 411/14 413/3 417/1 417/3 422/23 426/22 428/2 428/7 439/19 442/11 443/20 446/13 450/21 458/21 467/15 470/14 474/4 477/12 478/14 481/1 482/23 483/10 483/25 484/11 486/19 487/25 488/9 489/7 490/2 492/15 493/21 494/14 496/25 497/9 497/22 498/6 499/1 500/19 501/17 503/4 503/15 504/25 505/13 505/19 506/1 506/19 507/6 507/16 510/15 510/22 511/5 512/3 513/8 513/19 517/15 517/25 519/21 520/8 520/21 521/9 521/18 522/8 522/17 524/17 526/6 527/14 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541/5 1068 [1] 272/25 10:46 [2] 273/4 277/2 10:46 a.m [2] 277/7 572/7 10:51 [1] 281/4 10:55 a.m [1] 281/9 10G [1] 312/16 11 [5] 274/16 488/17 488/20 489/19 490/2 11-21-1996 [1] 274/16 11:40 a.m [1] 316/17 11:42 a.m [1] 316/20 11:57 a.m [1] 328/17 12 [9] 321/3 342/19 344/2 398/19 398/25 399/13 399/25 401/5 538/22 12-26 [1] 437/18 12-8-94 [1] 275/15 12/05/96 [1] 491/12 12/5 [1] 490/25 12/5/96 [1] 493/14 1200 [7] 348/15 357/4 357/15 357/17 357/21 358/11 359/7 1236 [1] 360/3 12:11 p.m [1] 328/20 12:30 [1] 279/5 12:45 [1] 279/5 12:54 p.m [1] 364/1 13 [22] 276/15 372/3 372/6 372/10 372/11 372/13 373/3 373/7 374/5 377/2</p>	<p>379/14 380/11 382/24 386/17 390/21 390/25 427/14 428/20 428/21 483/18 483/19 484/8 15 [2] 445/21 446/19 150 [1] 317/19 1569.6 acres [1] 439/2 16 [3] 356/25 431/11 491/1 16.1 [2] 352/15 354/15 166 [3] 529/11 529/20 530/24 166-acre [1] 561/22 1665 [6] 348/5 348/18 348/22 350/20 351/6 356/22 16th [5] 431/14 432/19 434/10 444/9 445/8 16th's [1] 444/17 17 acres [4] 326/8 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339/20 340/4 341/6 341/18 341/22 342/6 342/20 342/24 344/11 345/4 376/20 382/21 385/2 385/7 385/9 387/14 396/13 398/22 400/1 400/14 402/24 405/2 410/15 410/22 410/25 412/5 412/15 415/13 415/22 416/7 416/12 418/13 418/16 438/21 440/3 441/10 441/15 441/19 442/2 443/16 445/22 466/10 473/18 480/17 482/6 506/7 532/19 534/12 537/18 545/17 546/12 547/11 547/24 549/3 551/3 551/14 553/18 560/5 560/6 561/23 564/11 1990s [10] 330/15 332/15 337/21 338/5 338/13 338/16 430/3 533/14 534/25 535/8 1991 [8] 320/17 320/24 321/5 323/25 342/21 343/25 385/9 387/15 1992 [59] 280/5 341/7 365/23 366/2 366/12 367/2 367/10 369/2 369/16 371/9 372/1 372/17 372/21 373/4 373/8 374/9 375/22 376/3 376/5 376/7 376/23 379/18 380/5 382/22 383/9 384/10 384/24 385/23 388/15 389/15 396/23 419/13 421/14 422/1 422/16 424/20 427/17 428/5 428/13 428/19 430/8 438/15 438/18 463/13 463/16 464/8 464/10 464/15 464/19 464/20 465/1 466/11 466/12 482/8 482/25 500/16 500/21 504/3 505/19 1994 [6] 365/2 378/11 379/19 394/11 417/9 485/16 1995 [4] 377/1 415/23 417/10 422/21 1996 [25] 274/16 334/1 334/3 334/9 335/5 336/3 336/24 337/16 377/1 394/17 406/5 419/23 419/25 423/9 428/17 429/1 429/18 470/3 489/2 489/2 489/5 498/23 499/12 555/16 555/18 1998 [3] 419/15 498/8 498/9 1999 [8] 499/22 499/25 500/7 501/9 501/9 501/13 501/24 504/3</p> <hr/> <p>2</p> <hr/> <p>2,243 acres [1] 437/14 2,900 [1] 360/2 20 [8] 272/23 273/4 277/1</p>
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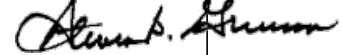
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Exhibit 192



1 **DECL**

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

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13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 *Attorneys for Plaintiff Landowners*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 180 LAND CO LLC, a Nevada limited liability
19 company; SEVENTY ACRES LLC, a Nevada
20 Limited Liability Company; FORE STARS, Ltd;
21 DOE INDIVIDUALS I through X, DOE
22 CORPORATIONS I through X, and DOE
23 LIMITED LIABILITY COMPANIES I through
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

**DECLARATION OF ELIZABETH
GHANEM HAM IN SUPPORT OF
PLAINTIFF LANDOWNERS' (1)
EVIDENTIARY HEARING BRIEF #1:
MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING THE
LANDOWNERS' PROPERTY
INTEREST; AND (2) EVIDENTIARY
HEARING BRIEF #2: MEMORANDUM
OF POINTS AND AUTHORITIES
REGARDING THE CITY'S ACTIONS
WHICH HAVE RESULTED IN A
TAKING OF THE LANDOWNERS'
PROPERTY**

Hearing Date: May 27 & 28, 2021

Hearing Time: 9:00 a.m.

///

///

DECLARATION OF ELIZABETH GHANEM HAM

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

1. I, Elizabeth Ghanem Ham, am licensed to practice law in the State of Nevada and am in-house counsel for EHB Companies, which is the manager of 180 Land LLC and Fore Stars, the owners of the 65 Acres Property at issue in the case of 180 Land Company, LLC, et al. v. City of Las Vegas, et al., Eighth Judicial District Court case number A-18-780184-C (65 Acre Inverse Condemnation Case).

2. I am familiar with the facts of the 65 Acre Inverse Condemnation Case and the documents and information supporting those facts and the manner in which the documents and information were obtained.

3. I submit this Declaration in support of Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the landowners' Property Interest; and Evidentiary Hearing Brief #2: Memorandum of Points and Authorities Regarding the City's Actions which have Resulted in a Taking of the Landowners Property. Some of the Exhibits include highlighting for the Court's convenience, which have been added to the original exhibits.

4. The following exhibits attached to the Landowners' Motion are Nevada Supreme Court and Eighth Judicial District Court filed orders, pleadings, motions, affidavits, etc., that were obtained through the court filing system or otherwise served to the Plaintiff Landowners in the inverse condemnation cases filed against the City, described as the 17, 35, 65, and 133 Acre Property cases in the Landowners' motion are consistent with the documents EHB Companies has possession of, and are true and correct copies of what they purport to be: Exhibits 1, 4, 7-29, 32, 41, 42, 95, 138, 139, 174 and 175.

1 5. Exhibit 117 is a true and correct copy of meeting minutes from an August 13,
2 2018, meeting with engineers representing the Landowners and City of Las Vegas representatives
3 regarding attempts by the Landowners to develop the property at issue in the 65-acre Property
4 case, which have been kept in our files in the normal course of business.

5 6. Exhibit 2 and 3 are true and correct copies of representations of maps of The
6 Property.
7

8 7. Exhibit 5, 6, 30, 86, 121, 122, 127-130, 143, 144, 145, 146 are true and correct
9 copies of documents that the Landowners obtained from the City of Las Vegas through a public
10 records request, the document bears the "CLV" date stamp from when it was produced pursuant
11 to the public records request and has been kept in our files in the normal course of business.
12

13 8. Exhibit 31, 33, 53, 54, 75, 104, 106, 109-110, 114, 116, 118, 119, 124, 131, 132,
14 135, 148 are true and correct copies of transcripts from City of Las Vegas Public meeting which
15 was downloaded from the City of Las Vegas public meeting website and has been kept in our
16 files in the normal course of business.

17 9. Exhibits 36-39 are true and correct copies of documents received as a result of
18 purchase of property located in the Master Planned Community of Queensridge and have been
19 kept in our files in the normal course of business.
20

21 10. Exhibit 34 is a true and correct copy of Declaration of Yohan Lowie made in
22 support of Landowners Opposition to the City's Motion for Summary Judgement and
23 Countermotions to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order
24 and has been kept in our files in the normal course of business.
25

26 11. Exhibit 35 is a true and correct copy of Declaration of Yohan Lowie made in
27 support of Plaintiff Landowners' Motion for a New Trial and to Amend Related to: Judge
28 Herndon's Findings of Fact and Conclusions of Law Granting City of Las Vegas Motion for

1 Summary Judgment, Entered on December 30, 2020 and has been kept in our files in the normal
2 course of business.

3 12. Exhibit 40 is a true and correct copy of the deposition of Yohan Lowie, in the
4 Matter of Binion v. Fore Stars and has been kept in our files in the normal course of business.

5 13. Exhibit 43 is a true and correct copy of City of Las Vegas Ordinance 5353.

6 14. Exhibit 44, 140 are true and correct copies of Grant, Bargain and Sale Deed
7 transferring ownership of The Property.
8

9 15. Exhibit 45 and 46 are true and correct copies of correspondence received from
10 Par 4 and Elite Golf Management.
11

12 16. Exhibit 47 is a true and correct copy of the Deposition of Keith Flatt in the case
13 Fore Stars Ltd., v Allen G. Nel, Case No. A-16-748359-C.

14 17. Exhibit 48 is a true and correct copy of the Declaration of Christopher L.
15 Kaempfer.

16 18. Exhibit 49 and 50 are true and correct copies of screenshots of the Clark County
17 Assessors Property Inquiry summary screen and Summary of Taxable Values.
18

19 19. Exhibit 51 is a true and correct copy of the Clark County Assessor's Summary of
20 Taxable Values received in our office and maintained in our office in the normal course of
21 business.

22 20. Exhibit 52 is a true and correct copy of the State Board of Equalization Assessors
23 Valuation from Cases 14-175, 176,177 maintained in our office as in the normal course of
24 business.
25

26 21. Exhibit 55 is a true and correct of City of Las Vegas required concessions signed
27 by Yohan Lowie.
28

1 22. Exhibit 56-59 are true and correct copies of the Badlands Development
2 Agreement with City of Las Vegas Comments, and Design Guidelines for The 250 that has been
3 maintained in our office in the normal course of business.

4 23. Exhibit 60 is a true and correct copy of The Two Fifty Development Agreement's
5 Executive Summary that has been maintained in our office in the normal course of business.

6 24. Exhibit 61 is a true and correct copy of Development Agreement for the Forest at
7 Queensridge and Orchestra Village at Queensridge.

8 25. Exhibits 62-74, 79-91, 97-103, 105, 111-113, 115, 133-134 are true and correct
9 copies of applications and documents submitted for the review of the City Council and Planning
10 Commission.
11

12 26. Exhibit 76 is a true and correct copy of the Agenda Summary Page for the June
13 21, 2017 City Council Meeting.

14 27. Exhibit 77 is a true and correct copy of the City of Las Vegas Staff report for the
15 June 21, 2017 Planning Meeting.

16 28. Exhibit 78 is a true and correct copy of the Agenda Summary Page for the August
17 2, 2017 City Council Agenda Summary Page.

18 29. Exhibits 92-93 are true and correct copies of correspondence received by the City
19 of Las Vegas which were maintained in our office in the normal course of business.

20 30. Exhibit 94 is a true and correct copy of the Declaration of Vickie DeHart
21 submitted in the Jack B. Binion, et al.. v. Fore Stars, Ltd. Case No. A-15-729053-B.

22 31. Exhibit 107 is a true and correct copy of Bill No. 2018-05, Ordinance 6617.

23 32. Exhibit 108 is a true and correct copy of Bill No. 2018-24, Ordinance 6650.

24 33. Exhibit 120 is a true and correct copy of State of Nevada State Board of
25 Equalization Notice of Decision, in the Matter of Fore Star Ltd., et al..
26
27
28

1 34. Exhibit 123 is a true and correct copy of March 27, 2017 Letter from City of Las
2 Vegas to Todd S. Polikoff.

3 35. Exhibit 125 is a true and correct copy of campaign materials distributed by Steve
4 Seroka.

5 36. Exhibit 126 are true and correct copies of Facebook posts made by Councilman
6 Bob Coffin.

7 37. Exhibit 136 is a true and correct copy of a transcript from a June 21, 2018 recorded
8 Homeowners association meeting.

9 38. Exhibit 137 are true and correct copies of photos taken by cameras installed on
10 The Property.

11 39. Exhibit 141 is a true and correct copy of the City of Las Vegas' Land Use
12 Hierarchy chart.

13 40. Exhibit 142 is a true and correct copy of the August 3, 2017 deposition of Bob
14 Beers Pgs. 31-36 in the Matter of Binion v. Fore Stars.

15 41. Exhibit 147 is a true and correct copy of a June 20, 2017 representation letter to
16 Councilman Bob Coffin from Jimmerson Law Firm.

17 42. Exhibit 149 is a true and correct copy of a Las Vegas review Journal Article titled
18 "Group that included rich and famous files suit over condo plans" downloaded from the Review
19 Journal Website.

20 43. Exhibit 150 is a true and correct copy of the Affidavit of Don Richards with
21 referenced pictures attached.

22 44. Exhibits 151, 152, and 153 are true and correct copies of the Tax Assessor
23 valuation for the combined 250 Acres properties and the 65 Acres property.

24 45. Exhibit 154 is a true and correct copy of the (1990) Zoning Ordinance Z-17-90.
25
26
27
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1 46. Exhibit 155 is a true and correct copy of Attorney General Opinion 84-06.

2 47. Exhibit 156 is a true and correct copy of the Opposition to Plaintiff Landowner's

3 Motion for Partial Summary Judgment on Liability for a Taking, submitted in the Moccasin &

4 95 LLC, et al. v. City of Las Vegas Case No. A-10-627506-C.

5 48. Exhibit 157 is a true and correct copy of the Affidavit of Bryan K. Scott.

6 49. Exhibit 158 is a true and correct copy of the Affidavit of James B. Lewis.

7 50. Exhibit 159 is a true and correct copy of the deposition of Tom Perrigo, Volume

8 I, in the Matter of Binion v. Fore Stars and has been kept in our files in the normal course of

9 business.

10 51. Exhibit 160 is a true and correct copy of the deposition of Peter Lowenstein, in

11 the Matter of Binion v. Fore Stars and has been kept in our files in the normal course of business.

12 52. Exhibit 161 is a true and correct copy of excerpts from the City of Las Vegas'

13 2050 Master Plan.

14 53. Exhibit 162 is a true and correct copy of City of Las Vegas Ordinance 3636.

15 54. Exhibit 163 is a true and correct copy of the partial Transcript for the City of Las

16 Vegas October 18, 2016 Special Planning Commission Meeting.

17 55. Exhibit 164 is a true and correct copy of the partial Transcript for the City of Las

18 Vegas May 16, 2018 City Council Meeting.

19 56. Exhibit 165 is a true and correct copy of the City of Las Vegas City Commission

20 Minutes from April 15, 1981.

21 57. Exhibit 166 is a true and correct copy of the Fore Stars Purchase Agreement dated

22 December 1, 2014.

23 58. Exhibits 167, 168, 169, 170 and 171 are true and correct copies of the Las Vegas

24 Municipal Code relevant to determine the uses permitted by right on R-PD7 zoned properties.

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59. Exhibits 172 and 173 are true and correct copies of Orders submitted in the Peccole v. 180 Land Co. LLC, et al. Case No. A-16-739654-C, dated November 30, 2016 and January 31, 2017.

60. Exhibits 174 and 175 are true and correct copies of Orders submitted in the Peccole v. 180 Land Co. LLC, et al. Nevada Supreme Court Appeal Case No. 72410, dated November 27, 2018 and October 17, 2018.

61. Exhibit 176 is a true and correct copy of the Stipulation for the State Board of Equalization from the Clark County Assessor, dated September 21, 2017.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

/s/ Elizabeth Ghanem Ham
Elizabeth Ghanem Ham

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 15th day of April, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing: **DECLARATION OF ELIZABETH GHANEM HAM IN SUPPORT OF PLAINTIFF LANDOWNERS' (1) EVIDENTIARY HEARING BRIEF #1: MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE LANDOWNERS' PROPERTY INTEREST; AND (2) EVIDENTIARY HEARING BRIEF #2: MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE CITY'S ACTIONS WHICH HAVE RESULTED IN A TAKING OF THE LANDOWNERS' PROPERTY** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

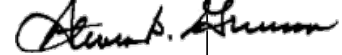
MCDONALD CARANO LLP
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pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

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

Exhibit 193



1 DECL

2 LAW OFFICES OF KERMITT L. WATERS

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12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 *Attorneys for Plaintiff Landowners*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 180 LAND CO LLC, a Nevada limited liability
19 company; SEVENTY ACRES LLC, a Nevada
20 Limited Liability Company; FORE STARS, Ltd;
21 DOE INDIVIDUALS I through X, DOE
22 CORPORATIONS I through X, and DOE
23 LIMITED LIABILITY COMPANIES I through
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C
Dept. No.: III

**DECLARATION OF FRANK
PANKRATZ IN SUPPORT OF
PLAINTIFF LANDOWNERS' (1)
EVIDENTIARY HEARING BRIEF #1:
MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING THE
LANDOWNERS' PROPERTY
INTEREST; AND (2) EVIDENTIARY
HEARING BRIEF #2: MEMORANDUM
OF POINTS AND AUTHORITIES
REGARDING THE CITY'S ACTIONS
WHICH HAVE RESULTED IN A
TAKING OF THE LANDOWNERS'
PROPERTY**

Hearing Date: May 27 & 28, 2021

Hearing Time: 9:00 a.m.

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DECLARATION OF FRANK PANKRATZ

I, Frank Pankratz, President of EHB Companies LLC, declare under penalty of perjury that the foregoing, which I have personal knowledge of, is true and correct:

1. I make this Declaration in support of Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum of Points and Authorities Regarding the Landowners' Property Interest and Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners' Property.
2. Exhibit 133 to the above referenced Evidentiary Briefs (also attached hereto) is a true and correct map retained in our offices and prepared in conjunction with an engineer retained by the Landowner along with reconciliation by the City of certain information therein pertaining to single family and multi-family as built and/or unit count.
3. Exhibit 133 correctly identifies the location of the Peccole Ranch Concept Plan, the interim use Badlands Golf Course, and the properties that were developed contrary to the Peccole Ranch Concept Plan and any alleged PR-OS on the City's Master (General) Plan.

DATED this 20th day of May, 2021.

/s/ Frank Pankratz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 20th day of May, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing: **DECLARATION OF FRANK PANKRATZ IN SUPPORT OF PLAINTIFF LANDOWNERS' (1) EVIDENTIARY HEARING BRIEF #1: MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE LANDOWNERS' PROPERTY INTEREST; AND (2) EVIDENTIARY HEARING BRIEF #2: MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE CITY'S ACTIONS WHICH HAVE RESULTED IN A TAKING OF THE LANDOWNERS' PROPERTY** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

MCDONALD CARANO LLP
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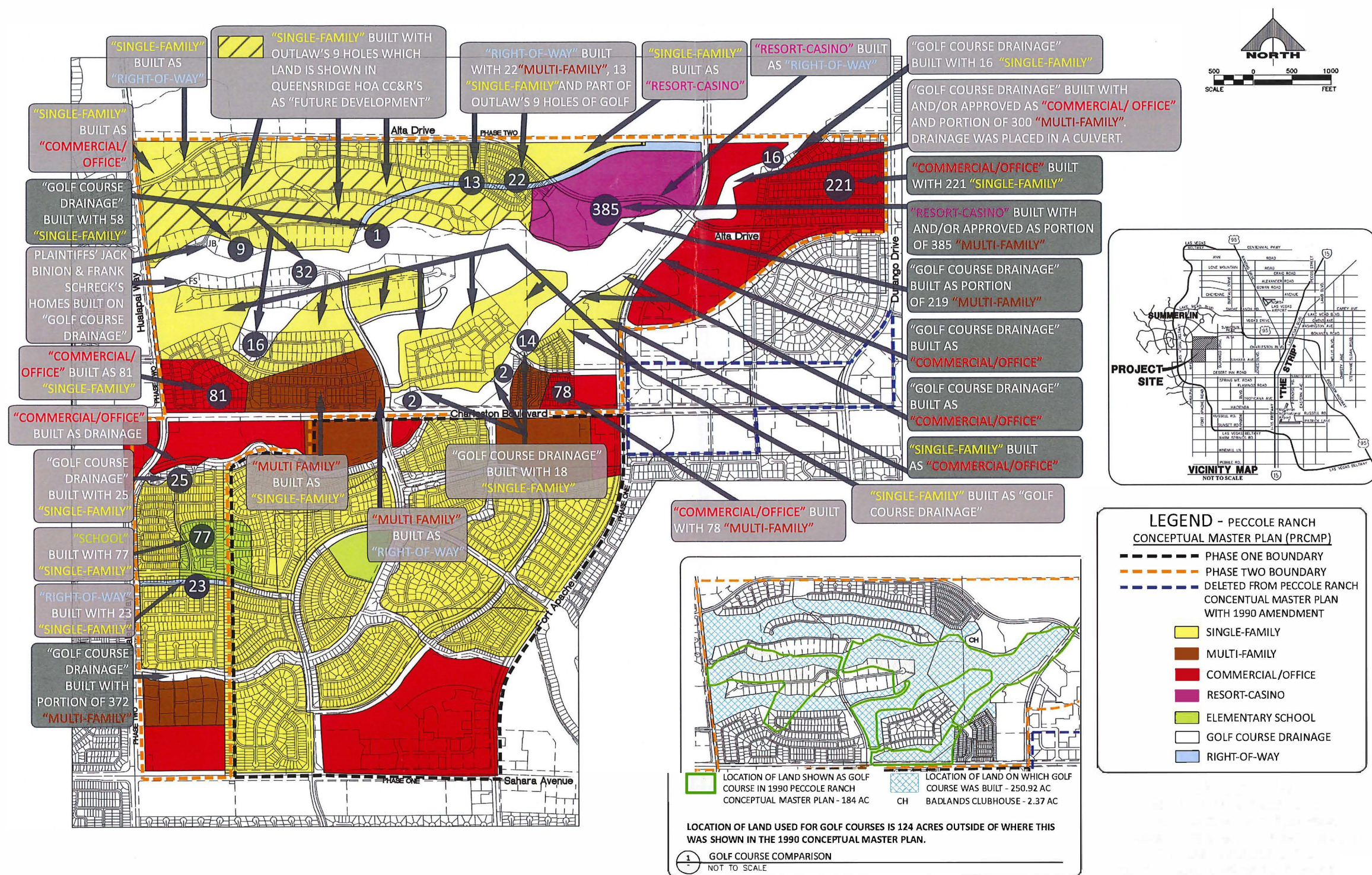
/s/ Sandy Guerra

Sandy Guerra, an Employee of the
Law Offices of Kermitt L. Waters

Exhibit 133

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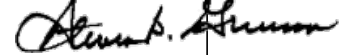
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Exhibit 194



1 DECL

2 LAW OFFICES OF KERMITT L. WATERS

3 Kermit L. Waters, Esq., Bar No. 2571

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5 James J. Leavitt, Esq., Bar No. 6032

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14 Facsimile: (702) 731-1964

15 *Attorneys for Plaintiff Landowners*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 180 LAND CO LLC, a Nevada limited liability
19 company; SEVENTY ACRES LLC, a Nevada
20 Limited Liability Company; FORE STARS, Ltd;
21 DOE INDIVIDUALS I through X, DOE
22 CORPORATIONS I through X, and DOE
23 LIMITED LIABILITY COMPANIES I through
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

**DECLARATION OF YOHAN LOWIE IN
SUPPORT OF PLAINTIFF
LANDOWNERS' REPLY IN SUPPORT
OF: PLAINTIFF LANDOWNERS'
EVIDENTIARY HEARING BRIEF #1
MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING THE
LANDOWNERS' PROPERTY
INTEREST AND REPLY IN SUPPORT
OF PLAINTIFF LANDOWNERS'
EVIDENTIARY HEARING BRIEF #2
MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING THE
CITY'S ACTIONS WHICH HAVE
RESULTED IN A TAKING OF THE
LANDOWNERS' PROPERTY AND IN
RESPONSE TO THE DECLARATION
OF J. CHRISTOPHER MOLINA**

Hearing Date: May 27 & 28, 2021

Hearing Time: 9:00 a.m.

DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

I make this Declaration in support of Plaintiff Landowners' REPLY IN SUPPORT OF: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum of Points and Authorities Regarding the Landowners' Property Interest and REPLY IN SUPPORT OF Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners' Property and in response to the Declaration of J. Christopher Molina (the "Molina Declaration").

1. I have never met or spoken with J. Christopher Molina. No person named "J. Christopher Molina" was involved in any transactions with the Peccole family where I was a principal on any side of the transaction.
2. I have been informed that J. Christopher Molina is an attorney at the law firm of McDonald Carano. The law firm of McDonald Carano was not involved in any transactions with the Peccole family where I was a principal on any side of the transaction.
3. I understand "personal knowledge" to mean knowledge gained through firsthand observation or experience. Based on my personal knowledge as stated in #2 and #3 above, the declaration by J. Christopher Molina that he has "personal knowledge" of any transactions with the Peccole family where I was a principal on any side of the transaction is untruthful.
4. In regard to the consideration for the acquisition of the membership interest of Fore Stars Ltd. the information attested to by J. Christopher Molina is replete with material inaccuracies, confusion, and untruthful statements. To name a few and generally:
 - a. The acquisition of the assets and liabilities, which included five parcels of land amounting to approximately 250 acres of residential zoned land, was significant and

1 included: 1) approximately 15 years of work, resources, sacrifice, effort, and earned
2 goodwill; 2) entering into an approximately \$100 million multi-transaction deal with
3 the Peccole family (the original owner of Fore Stars Ltd.) and a third party that
4 involved complex land transactions related to large tracts of land and developments,
5 including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and
6 Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the former Badlands
7 properties. The understanding among the parties was that \$45 million in
8 consideration had been exchanged for the acquisition of the property that was owned
9 by Fore Stars Ltd. comprising the "250 Acre Residential Zoned Land".
10

- 11 b. The "Developer" is not Queensridge Towers LLC ("QT").
12
13 c. Fore Stars Ltd. (then owned by the Peccole family) did not agree to transfer 5.13 acres
14 to QT "at no cost". Extensive consideration was exchanged as stated in the
15 Redemption Agreement.
16
17 d. The "Developer" as incorrectly used by J. Christopher Molina in his Declaration, had
18 no obligation to pay the Peccole family \$3 million.
19
20 e. The \$3,150,000 Clubhouse Obligation was owed by Queensridge Towers LLC to
21 Fore Stars Ltd (then owned by the Peccole family), not the other way around, and not
22 owed by the "Developer" or the Landowners' principals, as falsely state by J.
23 Christopher Molina.
24
25 f. The "Developer" never had an obligation to construct a new clubhouse.
26
27 g. In 2012, the Landowners' principals disassociated from QT and relinquished all
28 ownership, management or control of QT. Therefore, any reference to the Developer
as defined by the Molina declaration thereafter is false.

1 h. The 2013 Settlement was between QT and Fore Stars Ltd. (then owned by the
2 Peccoles), not the Landowners' principals.

3 5. Specifically, the following statements are inaccurate or blatantly false:

4 a. Paragraph 4 in the Molina declaration is false including the statement that the Peccole
5 family is the developer of the 1,539-acre Peccole Ranch Master Plan.

6 b. Paragraph 5 of the Molina declaration is false.

7 c. Paragraph 6 of the Molina declaration is false in that the summary of transactions and
8 obligations as portrayed is false.

9 d. Paragraph 7 of the Molina declaration is false.

10 e. Paragraph 9 of the Molina declaration is inaccurate as it falsely describes sales
11 transactions as recapitalization.

12 f. Paragraph 11 of the Molina declaration references a settlement agreement to which I
13 have no personal knowledge as neither I nor any entity I am affiliated with was a party
14 to that transaction.

15 g. Paragraph 12 of the Molina declaration references a letter attached to the 2013
16 Settlement to which I have no personal knowledge as neither I nor any entity I am
17 affiliated with was a party to that transaction. However, referencing the original
18 agreement and that the obligation to spend 3,150,000 by "the Developer" somehow
19 survived termination is false and defies the plain language of the transactional
20 documents.

21 h. Paragraph 12, 13, and 14 of the Molina declaration is inaccurate and appears to be
22 based upon documents and negotiations that were never executed.

23 i. Paragraph 16 of the Molina declaration is false.

24 j. Paragraph 17 of the Molina declaration is false in its assumed conclusion.

1 k. Paragraph 23 of the Molina declaration is false in that the Developer as defined by
2 Molina did not record said parcel map. QT is not and was not the Developer.

3 6. In regard to discovery requested relating to the amount paid for the acquisition of Fore
4 Stars, the documents produced to the City support the testimony that “the aggregate of
5 consideration given to the Peccole family for Fore Stars Ltd, the owner of the former
6 Badlands golf course properties was approximately \$45 million”. After reading the
7 Molina Declaration it is clear that J. Christopher Molina does not comprehend those
8 complex transactions and his testimony within his Declaration relating thereto makes
9 false conclusions. Furthermore, J. Christopher Molina’s continued reference to a “single
10 transaction” for a complex deal that involved a series of transactions is merely deceptive
11 semantics.
12

13
14 7. Upon information and belief: J. Christopher Molina did not attend the August 13, 2018
15 meeting between the City of Las Vegas (“CLV”) and GC Wallace Engineers (“GCW”);
16 The meeting minutes were prepared by GCW, a third party engineering firm; The City
17 did not like that the minutes memorialized what the CLV attendees stated at the meeting,
18 that the City’s ‘top down directive’ to City staff was that they are “not authorized to
19 provide conditional approval on this TDS”, so after receipt of the GCW minutes CLV’s
20 Peter Jackson desperately sought to alter the minutes to remove the City’s unfavorable
21 admissions made during the meeting directing GCW to have them “replaced in its
22 entirety”, and in fact attempted to distance himself from the happenings at the meeting
23 stating in his email “could you please let the minutes reflect that I had to leave the meeting
24 in the first 5 minutes or so to attend another meeting?”; The Plaintiff’s response to
25 accurately reflect everyone’s understandings was that “Seventy Acres LLC is OK with
26 attaching both Peter’s 8/21/18 email and Mark’s 9/12/18 email to the August 13 dated
27
28

1 GCW meeting minutes as CLV's comments to the meeting." It was the City of Las Vegas
2 representatives that sought to falsify the minutes, not GCW, nor Plaintiff. J. Christopher
3 Molina's statement that the "Developer's catch-22 argument relies on falsified evidence"
4 and J. Christopher Molina's statements on what occurred are both false testimonies.

5 8. The technical drainage study submitted on behalf of Plaintiff and discussed between
6 GCW and the CLV engineers was for land (17 Acres) that was already entitled by the
7 City, yet the City refused to allow the drainage work to proceed. J. Christopher Molina
8 confuses the ordinance requirements with the Technical Drainage Study on the entitled
9 17 acres. The CLV put a hard stop on Plaintiff's necessary drainage work with orders
10 coming "from the top". However, as it relates to other parcels not yet developed, the City
11 made it clear through the ordinance that it would not accept an application for
12 development without a drainage study and that no drainage study could be completed
13 until all litigation was resolved in relation to the Landowners' properties.

14 9. Plaintiff's land is residentially zoned property R-PD7. It was hard zoned R-PD7 from
15 U(M) by the City Council by Ordinance No. 5353 PASSED, ADOPTED AND
16 APPROVED on August 15, 2001, signed by Mayor Oscar Goodman and attested by City
17 Clerk Barbara Jo Ronemus. The ordinance did not change the then General Plan Land
18 Use Designation of M-Medium Density residential. In addition to hard zoning the
19 property for R-PD7 residential single and multi-family use, it provides that **"All**
20 **ordinances or part of ordinance or sections, subsections, phrases, sentences, clauses**
21 **or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,**
22 **1983 Edition, in conflict hereby repealed."** The R-PD7 zoning on the property is "the
23 law" of the land, not arguments by J. Christopher Molina declares.
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- 1 10. In 2015, City of Las Vegas Councilman Bob Beers, City Attorney Brad Jerbic, and
2 Planning Director Tom Perrigo admitted to me, in front of my team, that they [Bob, Brad
3 and Tom] have “no idea” how a PR-OS Land Use Designation was purportedly placed
4 on the property, and that no formal City adoption has ever occurred. Additionally, I was
5 told “But it doesn’t matter because zoning supersedes the General Plan”.
6
- 7 11. J. Christopher Molina’s statements that Plaintiff’s property is “open space and drainage”
8 under the Peccole Ranch Master Plan is a blatant falsity in contradiction to and in
9 complete disregard of the ruling of the Nevada Supreme Court in its Order of Reversal
10 on filed on March 5, 2020. The Supreme Court of the State of Nevada in Case No. 75481
11 ruled that the Peccole Ranch Master Plan does not apply to Plaintiff’s R-PD7 zoned land
12 and that no application for modification of the Peccole Ranch Master Plan was required
13 by Plaintiff to develop its property.
14
15 DATED this 21st day of May, 2021.

16
17
18 /s/ Yohan Lowie
Yohan Lowie
19
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 21th day of May, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing: Declaration Of Yohan Lowie In Support Of Plaintiff Landowners' Reply In Support Of: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum Of Points And Authorities Regarding The Landowners' Property Interest And Reply In Support Of Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum Of Points And Authorities Regarding The City's Actions Which Have Resulted In A Taking Of The Landowners' Property And In Response To The Declaration Of J. Christopher Molina was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

MCDONALD CARANO LLP
George F. Ogilvie III, Esq.
Amanda C. Yen, Esq.
Christopher Molina, Esq.
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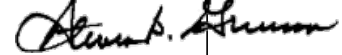
LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, City Attorney
Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
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Las Vegas, Nevada 89101
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pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

/s/ Sandy Guerra

Sandy Guerra, an Employee of the
Law Offices of Kermitt L. Waters

Exhibit 195



1 DECL

2 LAW OFFICES OF KERMITT L. WATERS

3 Kermit L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

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15 *Attorneys for Plaintiff Landowners*

16 DISTRICT COURT

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18 180 LAND CO LLC, a Nevada limited liability
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21 DOE INDIVIDUALS I through X, DOE
22 CORPORATIONS I through X, and DOE
23 LIMITED LIABILITY COMPANIES I through
24 X,

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

**DECLARATION OF STEPHANIE
ALLEN, ESQ., WHICH SUPPORTS
PLAINTIFF LANDOWNERS' REPLY IN
SUPPORT OF: PLAINTIFF
LANDOWNERS' EVIDENTIARY
HEARING BRIEF #1 MEMORANDUM
OF POINTS AND AUTHORITIES
REGARDING THE LANDOWNERS'
PROPERTY INTEREST AND REPLY IN
SUPPORT OF PLAINTIFF
LANDOWNERS' EVIDENTIARY
HEARING BRIEF #2 MEMORANDUM
OF POINTS AND AUTHORITIES
REGARDING THE CITY'S ACTIONS
WHICH HAVE RESULTED IN A
TAKING OF THE LANDOWNERS'
PROPERTY**

Hearing Date: May 27 & 28, 2021

Hearing Time: 9:00 a.m.

DECLARATION OF STEPHANIE ALLEN, ESQ.

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

1. I, Stephanie Allen, am licensed to practice law in the State of Nevada since 2003.

2. Since 2004, my principal area of my practice has been government affairs with an emphasis on land use and zoning.

3. Over the past 17 years, I have presented thousands of applications to local government agencies for a wide variety of developments, including various hotel/casino, commercial, and single family and multi-family developments.

4. I have also worked on and/or completed approximately ten development agreements for large developments. A Development Agreement is an agreement between a government entity and a person who has a legal or equitable interest in land, and it sets forth the long-range plans for the development of property.

5. I have presented these applications to various municipal agencies, including the City of Las Vegas, City of North Las Vegas, Clark County and Lincoln County.

6. I was retained by and assisted the owners of the 250 acre property located generally between Alta, Charleston, Hualapai, and Rampart in the jurisdiction of the City of Las Vegas – formally known as the Badlands golf course – to develop this property. In this capacity, I attended meetings with the landowners, the City of Las Vegas employees and representatives, including councilpersons, and the surrounding property owners. I estimate I attended more than 25 meetings in my efforts to assist with developing the 250 acre property.

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1 7. There was when I was assisting with preparing and presenting separate
2 applications, including but not limited to, an approximately 35 acre portion of the 250 acre
3 property, an approximately 133 acre portion of the 250 acre property, and a separate Master
4 Development Agreement (“MDA”) that would govern the development of the entire 250 acre
5 property.
6

7 8. Eventually, it was made clear by City of Las Vegas employees, councilpersons,
8 and the Mayor that the City would accept only one type of application to develop the 250 acre
9 property – an MDA. The City was very clear that it would not approve any application that
10 sought to develop the various parcels that made up the 250 acre property individually.
11

12 9. During the June 21, 2017, hearing before the City Council on the applications to
13 develop the 35 Acre Property several councilpersons and the Mayor stated on the record that
14 they did not want piecemeal development, meaning they did not want and would not approve
15 individual application for the 35, 133 or 65 acre properties. This was consistent with what I
16 was repeatedly told – that the City would accept only one application to develop the 250 acre
17 property – an MDA.
18

19 10. On June 21, 2017, the applications to develop 61 residential units on the 35 Acre
20 Property were presented to the City Council for approval. The City planning staff confirmed in
21 a staff report that the applications and the proposed 61 lot residential use on the 35 Acre
22 Property were in compliance with the R-PD7 zoning on the property, the City’s development
23 requirements, the City Municipal Code, and the Nevada Revised Statutes and, accordingly,
24 recommended approval.
25

26 11. The City Council denied the 35 Acre Property development applications at the
27 June 21, 2017, City Council meeting despite the fact that the proposal was allowed within the
28 existing R-RD7 zoning on the property.

1 12. I have presented thousands of applications to various local government agencies,
2 including the City of Las Vegas, in the past, and I cannot recall an application that I have
3 handled being denied when the development proposal was allowed as a matter of right under
4 the existing zoning.

5 13. On August 2, 2017, the MDA was presented to the City Council for approval.
6 The City planning staff confirmed in a staff report that the MDA met all Nevada Revised
7 Statute requirements and all City Municipal Code requirements and, accordingly,
8 recommended approval.
9

10 14. The City Council denied the MDA at the August 2, 2017, City Council meeting
11 despite the fact that the proposed written agreement had been negotiated and agreed upon in
12 good faith between the parties.
13

14 15. I have presented approximately ten development agreements before various
15 local government agencies, including the City of Las Vegas, in the past, and I cannot recall a
16 development agreement application being denied when the proposed written agreement had
17 been negotiated and agreed upon in good faith between the parties.
18

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1 16. During my 17 years of work in the area of land use, it has always been the
2 practice that zoning governs the determination of how land may be used. The master plan land
3 use designation has always been considered a general planning document. I do not recall any
4 government agency or employee ever making the argument that a master plan land use
5 designation trumps zoning.
6

7 I declare under penalty of perjury under the law of the State of Nevada that the
8 foregoing is true and correct.

9 Dated this 21st day of May, 2021.

10
11 

12 Stephanie Allen, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 24th day of May, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing: Declaration Of Stephanie Allen, Esq., Which Supports Plaintiff Landowners' Reply In Support Of: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum Of Points And Authorities Regarding The Landowners' Property Interest And Reply In Support Of Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum Of Points And Authorities Regarding The City's Actions Which Have Resulted In A Taking Of The Landowners' Property was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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/s/ Sandy Guerra

Sandy Guerra, an Employee of the
Law Offices of Kermitt L. Waters

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Exhibit 196

City of Las Vegas

AGENDA MEMO - PLANNING

CITY COUNCIL MEETING DATE: JANUARY 3, 2018

DEPARTMENT: PLANNING

ITEM DESCRIPTION: APPEAL OF THE DIRECTOR'S DECISION

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	RECOMMENDATION	REQUIRED FOR APPROVAL
DIR-72290	Staff recommends DENIAL.	

**** NOTIFICATION ****

NEIGHBORHOOD ASSOCIATIONS NOTIFIED N/A

NOTICES MAILED NEWSPAPER ONLY

APPROVALS 0

PROTESTS 0

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**** STAFF REPORT ****

PROJECT DESCRIPTION

On October 31, 2017, the Department of Planning accepted and agendaized applications related to three Planning Projects (PRJ-71990, PRJ-71991, and PRJ-71992) generally located on 282.08 acres at the southwest corner of Alta Drive and Rampart Boulevard without requiring a General Plan Amendment or a Major Modification. The appellant disagrees with the Director's interpretation of LVMC Title 19 that such applications were not required as a part of the project submittal and has appealed that decision not to require a General Plan Amendment or Major Modification to the City Council.

ISSUES

- For the three Planning Projects subject to this appeal three applications have been submitted for each as follows:
 - PRJ-71990, includes a:
 - Waiver (WVR-72004) of Title 19.02 to allow various types of private streets or private access easements not to meet public street standards;
 - Site Development Plan Review (SDR-72005) for developer-proposed standards for a single-family residential development as required for all planned developments zoned R-PD (Residential Planned Development); and
 - Tentative Map (TMP-72006) for a 75-lot single-family residential subdivision on a 22.19-acre parcel.
 - PRJ-71991, includes a:
 - Waiver (WVR-72007) of Title 19.02 to allow various types of private streets or private access easements not to meet public street standards;
 - Site Development Plan Review (SDR-72008) for developer-proposed standards for a single-family residential development as required for all planned developments zoned R-PD (Residential Planned Development); and
 - Tentative Map (TMP-72009) for a 106-lot single-family residential subdivision on a 76.93-acre parcel.
 - PRJ-71992, includes a:
 - Waiver (WVR-72010) of Title 19.02 to allow various types of private streets or private access easements over the proposed lots not to meet public street standards;
 - Site Development Plan Review (SDR-72011) for developer-proposed standards for a single-family residential development as required for all planned developments zoned R-PD (Residential Planned Development); and

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Staff Report Page Two
January 3, 2018 – City Council Meeting

- Tentative Map (TMP-72012) for a 53-lot single-family residential subdivision on a 33.80-acre parcel.
- While requested by staff, no General Plan Amendment was required at the time the Planning Project applications referenced above were accepted and agendaized by the Department. The developer, under protest, has since submitted a General Plan Amendment (GPA-72220), which is scheduled to be heard by the Planning Commission at its January 9, 2018 meeting. The appellant is appealing the Director's interpretation of LVMC Title 19 that a General Plan Amendment is not required.
- No Major Modification of the Peccole Ranch Master Development Plan was required at the time the Planning Project applications referenced above were accepted and agendaized by the Department. The appellant is appealing the Director's interpretation of LVMC Title 19 that a Major Modification is not required.

ANALYSIS

The applications subject to this appeal relate to parcels constituting a 282.08-acre portion of a developed, nonoperational golf course that is located within the Peccole Ranch Master Development Plan. The parcel is zoned R-PD7 (Residential Planned Development – 7 Units per Acre), which allows up to 7.49 dwelling units per acre spread out across the area covering the zoning district. This zoning district was approved April 4, 1990 (Z-0017-90) as part of the second phase of the Peccole Ranch Master Development Plan.

LVMC Title 19.16.010 (A) states that “except as otherwise authorized by this Title, approval of all Maps, Vacations, Rezoning, Site Development Plan Reviews, Special Use Permits, Variances, Waivers, Exceptions, Deviations and Development Agreements shall be consistent with the spirit and intent of the General Plan.” However, only LVMC Title 19.16.090 (C) related to a Rezoning application provides specially addresses a General Plan Amendment as follows: “if a proposed rezoning will not conform as to use or density, the application may not be approved unless the General Plan is amended first to accommodate the proposed rezoning.”

Within the area known as the Peccole Ranch Master Development Plan, the 1992 General Plan for the City of Las Vegas generally designated the then proposed golf course area P (Parks/Recreation/Open Space) and the proposed residential areas around the golf course as ML (Medium Low Density Residential). In 2005, these parcels were designated PR-OS (Parks/Recreation/Open Space) by the city's General Plan, a designation that does not address residential densities, as part of the adoption of a whole new Land Use Element. Unlike the 2005 General Plan, which used advances in Geographic Information Systems (GIS) to clearly designate the future land use at the parcel level, the 1992 General Plan used a “blob map” approach which depicted generalized areas under the various land use designations. As development activity other than those consistent with P (Parks/Recreation/Open Space), and later

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Staff Report Page Three
January 3, 2018 – City Council Meeting

PR-OS (Parks/Recreation/Open Space), and ML (Medium Low Density Residential) designations within the conceptual Peccole Ranch Master Development Plan were proposed, General Plan Amendments and Rezonings were submitted as appropriate to ensure consistency between proposed development and the General Plan. While there have been multiple amendments to the General Plan and or Rezonings to parcels located within the Peccole Ranch Master Development Plan area, no Major Modifications of the Master Development Plan were required in conjunction with those requests. Consistent with prior actions of the Department in processing and agendazing development applications within the Master Development Plan area and approvals of the City Council on those application, no Major Modification of the Peccole Ranch Master Development Plan is needed or appropriate given the scope of the proposed development.

As noted above and consistent with LVMC Title 19.16.010 (A), staff strives for consistency between the General Plan and any development proposals to be considered for approval. Staff requested that the applicant for the proposed Planning Projects subject to this appeal submit a General Plan Amendment concurrent with the proposal for redevelopment of the site to be congruent with the existing zoning in terms of residential density and land use. As no Rezoning was proposed as a part of the development proposal, approval of a General Plan Amendment is not a mandatory requirement for such development. Specifically, the zoning has established density limits and predates the current designation. The applicant had therefore originally opted not to request such an amendment, but has now submitted an application for a General Plan Amendment.

FINDINGS (DIR-72290)

Staff finds that the appeal is specious and that no application for a General Plan Amendment or Major Modification are required to hear the applications as submitted. Therefore, staff is recommending denial of this appeal.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
12/17/80	The Board of City Commissioners approved the Annexation (A-0018-80) of 2,243 acres bounded by Sahara Avenue on the south, Hualapai Way on the west, Ducharme Avenue on the north and Durango Drive on the east. The annexation became effective on 12/26/80.

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Staff Report Page Four
January 3, 2018 – City Council Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
02/15/89	The City Council considered and approved a revised master development plan for the subject site and renamed it Peccole Ranch to include 1,716.30 acres. Phase One of the Plan is generally located south of Charleston Boulevard, west of Fort Apache Road. Phase Two of the Plan is generally located north of Charleston Boulevard, west of Durango Drive, and south of Charleston Boulevard, east of Hualapai Way. The Planning Commission and staff recommended approval. A condition of approval limited the maximum number of dwelling units in Phase One to 3,150. [Peccole Ranch Master Development Plan]
04/04/90	The City Council approved an amendment to the Peccole Ranch Master Development Plan to make changes related to Phase Two of the Plan and to reduce the overall acreage to 1,569.60 acres. Approximately 212 acres of land in Phase Two was planned for a golf course. The Planning Commission and staff recommended approval. [Peccole Ranch Master Development Plan]
04/04/90	The City Council approved a Rezoning (Z-0017-90) from N-U (Non-Urban) (under Resolution of Intent to multiple zoning districts) to R-3 (Limited Multiple Residence), R-PD7 (Residential Planned Development – 7 Units per Acre) and C-1 (Limited Commercial) on 996.40 acres on the east side of Hualapai Way, west of Durango Drive, between the south boundary of Angel Park and Sahara Avenue. A condition of approval limited the maximum number of dwelling units for Phase Two of the Peccole Ranch Master Development Plan to 4,247 units. The Planning Commission and staff recommended approval. [Peccole Ranch Phase Two]
04/17/96	A Final Map for a 36-lot single family residential subdivision (Peccole West – Lot 9, Phase 1) on 13.61 acres generally located north of Charleston Boulevard, west of Rampart Boulevard was recorded. [Book 73 Page 34 of Plats]
09/06/96	A Final Map for a 35-lot single family residential subdivision (Peccole West – Lot 12-B – Phase 1) on 10.14 acres generally located north of Charleston Boulevard, east of Hualapai Way was recorded. [Book 75 Page 92 of Plats]
09/09/96	A Final Map for a 40-lot single family residential subdivision (Peccole West – Lot 12-A – Phase 1) on 11.81 acres generally located north of Charleston Boulevard, east of Hualapai Way was recorded. [Book 75 Page 100 of Plats]
12/05/96	A (Parent) Final Map (FM-0008-96) for a 16-lot subdivision (Peccole West) on 570.47 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 77 Page 23 of Plats]. The golf course was located on Lot 5 of this map.

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Staff Report Page Five
January 3, 2018 – City Council Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
12/12/96	A Final Map for a 44-lot single family residential subdivision (Peccole West – Lot 11) on 51.02 acres generally located south of Alta Drive, east of Hualapai Way was recorded. [Book 77 Page 31 of Plats]
05/19/97	A Final Map (FM-0103-96) for a 40-lot single family residential subdivision (Peccole West – Lot 12-A – Phase 2) on 11.71 acres generally located north of Charleston Boulevard, east of Hualapai Way was recorded. [Book 79 Page 77 of Plats]
10/03/97	A Final Map (FM-0098-96) for a 32-lot single family residential subdivision (Peccole West Lot 12-B – Phase 2) on 7.98 acres generally located north of Charleston Boulevard, east of Hualapai Way was recorded [Book 81 Page 53 of Plats].
03/30/98	A Final Map (FM-0190-96) for a four-lot subdivision (Peccole West Lot 10) on 184.01 acres at the southeast corner of Alta Drive and Hualapai Way was recorded [Book 83 Page 61 of Plats].
03/30/98	A Final Map [FM-0008-96(1)] to amend portions of Lots 5 and 10 of the Peccole West Subdivision Map on 368.81 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 83 Page 57 of Plats].
12/17/98	A Final Map (FM-0158-97) for a 21-lot single family residential subdivision (Peccole West – Parcel 20) on 25.03 acres generally located south of Alta Drive, east of Hualapai Way was recorded. [Book 87 Page 54 of Plats]
09/23/99	A Final Map (FM-0157-97) for a 41-lot single family residential subdivision (Peccole West – Parcel 19) on 17.04 acres generally located south of Alta Drive, east of Hualapai Way was recorded. [Book 91 Page 47 of Plats]
02/05/03	The City Council approved a General Plan Amendment (GPA-1333) to change the land use designation from SC (Service Commercial) to MLA (Medium Low Attached Density Residential) on 16.87 acres on the south side of Alta Drive, approximately 2,100 feet west of Rampart Boulevard. The Planning Commission recommended approval; staff recommended denial.
	The City Council approved a Rezoning (ZON-1340) from U (Undeveloped) [SC (Service Commercial) General Plan Designation] to R-PD10 (Residential Planned Development – 10 Units per Acre) on 16.87 acres on the south side of Alta Drive, approximately 2,100 feet west of Rampart Boulevard. The Planning Commission recommended approval; staff recommended denial.

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Staff Report Page Six
January 3, 2018 – City Council Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
	<p>The City Council approved a Variance (VAR-1342) to allow 0.79 acres of open space where 2.72 acres are required on 16.87 acres on the south side of Alta Drive, approximately 2,100 feet west of Rampart Boulevard. The Planning Commission recommended approval; staff recommended denial.</p> <p>The City Council approved a Site Development Plan Review (SDR-1341) for a proposed 166-lot single family residential development on 16.87 acres on the south side of Alta Drive, approximately 2,100 feet west of Rampart Boulevard. The Planning Commission recommended approval; staff recommended denial.</p>
06/18/15	A four-lot Parcel Map (PMP-59572) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 49 of Parcel Maps].
11/30/15	A two-lot Parcel Map (PMP-62257) on 70.52 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 91 of Parcel Maps].
03/15/16	A two-lot Parcel Map (PMP-63468) on 53.03 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 121 Page 12 of Parcel Maps].
11/16/16	At the applicant's request, the City Council voted to Withdraw Without Prejudice requests for a Major Modification (MOD-63600) of the 1990 Peccole Ranch Master Development Plan; a Development Agreement (DIR-63602) between 180 Land Co., LLC, et al. and the City of Las Vegas; a General Plan Amendment (GPA-63599) from PR-OS (Parks/Recreation/Open Space) to DR (Desert Rural Density Residential) and H (High Density Residential); and a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-E (Residence Estates) and R-4 (High Density Residential) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission recommended denial; staff recommended approval.
01/24/17	A four-lot Parcel Map (PMP-64285) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way was recorded [File 121 Page 100 of Parcel Maps].
02/15/17	The City Council approved a request for a General Plan Amendment (GPA-62387) to change the land use designation from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential) [amended to M (Medium Density Residential)] on 17.49 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission and staff recommended approval.

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Staff Report Page Seven
January 3, 2018 – City Council Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
	<p>The City Council approved a request for a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) [amended to R-3 (Medium Density Residential)] on 17.49 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission and staff recommended approval.</p> <p>The City Council approved a request for a Site Development Plan Review (SDR-62393) for a proposed 720-unit multi-family residential (condominium) development consisting of four, four-story buildings [amended to 435 condominium units] on 17.49 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission and staff recommended approval.</p>
06/21/17	<p>The City Council denied a request for a General Plan Amendment (GPA-68385) from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way. The Planning Commission recommended denial (failing to reach supermajority vote); staff recommended approval.</p> <p>The City Council denied a request for a Waiver (WVR-68480) to allow 32-foot private streets with a sidewalk on one side where 47-foot private streets with sidewalks on both sides are required within a proposed gated residential development on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way. The Planning Commission and staff recommended approval.</p> <p>The City Council denied a request for a Site Development Plan Review (SDR-68481) for a proposed 61-lot single family residential development on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way. The Planning Commission and staff recommended approval.</p> <p>The City Council denied a request for a Tentative Map (TMP-68482) for a proposed 61-lot single family residential development on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way. The Planning Commission and staff recommended approval.</p>
08/02/17	<p>The City Council denied a request for a Development Agreement (DIR-70539) between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission and staff recommended approval.</p>
12/12/17	<p>The Planning Commission held in abeyance applications associated with three Planning Projects (PRJ-71990, PRJ-71991, and PRJ-71992) generally located on 282.08 acres at the southwest corner of Alta Drive and Rampart Boulevard. Staff recommended approval.</p>

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Staff Report Page Eight
January 3, 2018 – City Council Meeting

<i>Most Recent Change of Ownership</i>	
11/16/15	A deed was recorded for a change in ownership of properties subject to this appeal.

<i>Pre-Application Meeting</i>
A pre-application meeting for this appeal was not required, nor was one held.

<i>Neighborhood Meeting</i>
A neighborhood meeting for this appeal was not required, nor was one held.

<i>Master Plan Areas</i>	<i>Compliance</i>
Peccole Ranch	Y
<i>Special Purpose and Overlay Districts</i>	<i>Compliance</i>
R-PD (Residential Planned Development) District	Y
PD (Planned Development) District	Y
<i>Other Plans or Special Requirements</i>	<i>Compliance</i>
Trails	Y
Las Vegas Redevelopment Plan Area	N/A
Project of Significant Impact (Development Impact Notification Assessment)	N/A
Project of Regional Significance	N/A

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Exhibit 197

**CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75**

1 **ITEM 74 - RESCIND - DIR-72290 - PUBLIC HEARING - FOR POSSIBLE ACTION ON**
2 **AN APPEAL OF DIRECTOR'S DECISION TO NOT REQUIRE APPLICATIONS FOR**
3 **A GENERAL PLAN AMENDMENT AND MAJOR MODIFICATION IN**
4 **CONJUNCTION WITH APPLICATIONS RELATED TO THREE PLANNING**
5 **PROJECTS (PRJ-71990, PRJ-71991, AND PRJ-71992) GENERALLY LOCATED ON**
6 **282.08 ACRES AT THE SOUTHWEST CORNER OF ALTA DRIVE AND RAMPART**
7 **BOULEVARD (APNS 138-31-601-008; 138-31-702-003; 138-31-702-004; 138-32-202-001;**
8 **138-32-210-008; AND 138-32-301-007), R-PD7 (RESIDENTIAL PLANNED**
9 **DEVELOPMENT - 7 UNITS PER ACRE) AND PD (PLANNED DEVELOPMENT)**
10 **ZONES, WARD 2 (SEROKA). STAFF RECOMMENDS DENIAL.**

11

12 **ITEM 75 - RECONSIDER - DIR-72290 - PUBLIC HEARING - FOR POSSIBLE ACTION**
13 **ON AN APPEAL OF DIRECTOR'S DECISION TO NOT REQUIRE APPLICATIONS**
14 **FOR A GENERAL PLAN AMENDMENT AND MAJOR MODIFICATION IN**
15 **CONJUNCTION WITH APPLICATIONS RELATED TO THREE PLANNING**
16 **PROJECTS (PRJ-71990, PRJ-71991, AND PRJ-71992) GENERALLY LOCATED ON**
17 **282.08 ACRES AT THE SOUTHWEST CORNER OF ALTA DRIVE AND RAMPART**
18 **BOULEVARD (APNS 138-31-601-008; 138-31-702-003; 138-31-702-004; 138-32-202-001;**
19 **138-32-210-008; AND 138-32-301-007), R-PD7 (RESIDENTIAL PLANNED**
20 **DEVELOPMENT - 7 UNITS PER ACRE) AND PD (PLANNED DEVELOPMENT)**
21 **ZONES, WARD 2 (SEROKA). STAFF RECOMMENDS DENIAL.**

22

23 **Appearance List:**

24 CAROLYN GOODMAN, Mayor
25 BRAD JERBIC, City Attorney
26 BOB COFFIN, Councilman
27 BRYAN D. SCOTT, Assistant City Attorney
28 MICHELE FIORE, Councilwoman
29 LOIS TARKANIAN, Councilwoman

**CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75**

30 RICKI Y. BARLOW, Councilman

31 STEVE SEROKA, Councilman

32

33 (20 minutes) [3:31 – 3:51]

34

35 Typed by: Speechpad.com

36 Proofed by: Arlene Coleman

**CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75**

37 **MAYOR GOODMAN**

38 Thank you for coming down, everyone. We'll move on to Agenda Item 74, Motion to Rescind
39 DIR-72290 for possible action on an Appeal of Director's decision to not require applications for
40 a general plan amendment and major modification in conjunction with applications related to
41 three Planning Projects (PRJ-71990, PRJ-71991, PRJ-71992) generally located on 282.08 acres
42 southwest corner of Alta and Rampart Boulevard, R-PD7 (Residential Planned Development - 7
43 Unit per Acre) acre and PD (Planned Development) Zones, Ward 2, Councilman Seroka. Staff
44 recommends denial. Mr. Jerbic?

45

46 **CITY ATTORNEY JERBIC**

47 Right here, Your Honor.

48

49 **MAYOR GOODMAN**

50 Yes, please.

51

52 **CITY ATTORNEY JERBIC**

53 As you recall at the last meeting, there was an appeal heard by this Council from a decision by
54 the Director to not require a major mod nor a general plan amendment for these three pending
55 applications. At that meeting, there was a vote to originally overturn the Director. That was a 3-3
56 vote, with Councilwoman Tarkanian abstaining. And then there was a vote to deny the appeal,
57 which passed on a 4-2 vote.

58 The way the parliamentary rules work is anybody who votes in the majority can ask for a
59 reconsideration of an item, provided it hasn't been relied on yet. This hasn't been relied on yet.
60 Any member of the majority, in this case Councilman Coffin, who voted in the for majority,
61 asked for a Motion to Reconsider.

62 So it's a two-part process. The first part is to vote on a Motion to Rescind your first vote. That is
63 Item 74. If Item 74 passes, then you go back to Item 75 and begin your hearing process over
64 again and revote at the end of it. If Item 74 does not pass, it ends there, and the original decision
65 that was made at the last meeting stands.

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**CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75**

66 So, with that said, I invite you to engage in whatever dialogue you want to have regarding the
67 Motion to Rescind. Keep in mind that I have advised Councilwoman Tarkanian that she cannot
68 vote on Item 74 because she abstained the last time. However, the reason for abstention was not
69 conflict of interest. The reason for abstention was receiving information at the last minute
70 without time to process it and vote in an informed way. If Councilwoman has read the material
71 since the last meeting and does feel that she can now vote on it and feels informed, if you were to
72 rescind, she would be able to vote on Item 75, but not on 74.

73

74 **MAYOR GOODMAN**

75 Okay. So, for clarification on the vote, there would be a motion by Councilman Coffin to rescind.
76 So if one agrees with that vote, you vote aye, and if you disagree, you vote nay. And if it passes,
77 then we move on to 75. If it does not pass, number 75 is moot, and what do we do with it?

78

79 **CITY ATTORNEY JERBIC**

80 At that point in time, you just wouldn't be able to hear it. We'd ask that it just be stricken from
81 the Agenda as a matter of parliamentary rule.

82

83 **MAYOR GOODMAN**

84 Okay.

85

86 **COUNCILMAN COFFIN**

87 Your Honor?

88

89 **MAYOR GOODMAN**

90 So I would assume you would do that or Staff would do that?

91

92 **CITY ATTORNEY JERBIC**

93 We'll make a record depending on what you vote on right now.

CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

94 **MAYOR GOODMAN**

95 Okay. So, Councilman, do you want to make your motion?

96

97 **COUNCILMAN COFFIN**

98 Thank you. Your Honor, I will after I get some more clarifying information from the City
99 Attorney. And I'm glad both of you are there, Brad, because yeah, last Wednesday, the meeting,
100 the last Council meeting I was blind with pain like a dummy. I didn't take a painkiller in the
101 afternoon. So I was pretty sore and was standing around, and I frankly, I dropped the ball. I voted
102 exactly the opposite of what I intended to do, and I didn't even know it at the time, because I
103 think it was the last item on the Agenda and we adjourned. That was about after 9 or 10 hours of
104 meeting.

105 Also at that time, Councilwoman Tarkanian needed additional information. She asked if she
106 could abstain, and I think, I forget which motion, because it was confusing. But she asked if she
107 could abstain, and you said no, she cannot abstain. And then you qualified that by saying, well,
108 there's, State law says you have to vote, unless you have a direct conflict of interest. There being
109 none – Is that correct?

110

111 **CITY ATTORNEY JERBIC**

112 Not exactly. My recollection is, and I think the Councilwoman may have the same recollection,
113 that normally, under normal abstentions, you do need a reason under State law and you need to
114 state it on the record. Whatever that reason is, you have to state it on the record. Nobody gets to
115 abstain by just saying I abstain. And normal abstentions are because of a conflict of interest. Her
116 abstention was a unique abstention, because it didn't have to do with a conflict. It had to do with
117 a lack of information.

118 But it's my recollection that the Councilwoman received information, but it was only the evening
119 before the vote and didn't have time to process it. And so what I advised is that she could abstain,
120 provided she put the reason on the record, and if she were in the future called upon to vote after
121 she had time to read it, she could jump back in.

**CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75**

122 **COUNCILMAN COFFIN**

123 So I guess, Your Honor, we have a good colloquy going here. And if you don't mind, we could
124 continue through you Mayor, to Brad and I, if we can discuss this, because this is where the rub
125 comes in. So I requested that next day, that would be Thursday, whatever the day was, the 4th
126 maybe of January, and I said I want to reconsider my vote. Like a dummy, I voted wrong. And as
127 it turned out, it did exactly the opposite effect of what I wanted. So I'm admitting my human
128 failings, and I did the normal thing.

129 Also, Councilwoman Tarkanian had sufficient and has had sufficient time to learn what to do.
130 Even though you said she could abstain, you had advised her not to. You said State law prohibits
131 her from abstaining, yet she did abstain.

132

133 **CITY ATTORNEY JERBIC**

134 Okay, Councilman. That was not the record I recall.

135

136 **COUNCILMAN COFFIN**

137 I'm confused. You didn't object to that. That's very important, because it plays a role in today that
138 I just found out 90 minutes ago. Ninety minutes ago, I talked to Deputy Scott there, Bryan?

139

140 **ASSISTANT CITY ATTORNEY SCOTT**

141 Yes.

142

143 **CITY ATTORNEY JERBIC**

144 He just conveyed to me that, for the first time, I had never heard this in all the discussions we've
145 had over the last two weeks, that if 74 does not pass, 75 dies. But 74 cannot pass. You never told
146 me that this was futile, because you're saying, you're advising Councilwoman Tarkanian not to
147 vote. Well, if she follows your guidance, and understand it's just guidance, she can't vote. It dies
148 again on, well, it would be a 3-3, let's say, if I voted properly, the way I feel I should and the way
149 I read the Council if there are no changes of opinion. But you never said that and you never
150 counseled her. You never counseled her, because we've talked about this. She said Brad said, let

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CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

151 me make sure we're understanding it, Brad said: I can't vote on 74, but I can vote on 75. You
152 didn't tell her that if 74 dies, because she can't vote, then 75 never comes up. See? She was under
153 the impression she'll have to abstain once and vote once.

154

155 **CITY ATTORNEY JERBIC**

156 You put me in an interesting position, because I brief people in an attorney/client context. I can
157 say that I have been consistent, in my opinion, from the beginning that, one, I'm not going to
158 make a comment on whether this is futile or not because I have said all —

159

160 **COUNCILMAN COFFIN**

161 I can't hear you, Brad. I'm sorry.

162

163 **CITY ATTORNEY JERBIC**

164 I've not said this is futile for you to pursue this. I have said you need four votes in order for the
165 Motion to Rescind to pass. And I have consistently said that unless the Motion to Rescind passes,
166 you don't get to number two, the reconsideration of the item as a whole. I don't believe I've ever
167 said anything inconsistent with that. So I have a different recollection, Councilman.

168

169 **COUNCILMAN COFFIN**

170 Well, then I guess through you, Your Honor, to Brad, what would be the point of doing all this
171 and going through this exercise? I was never counseled. You may not remember, but I can
172 remember not hearing because it makes sense. If I had heard you can't get enough votes to pass
173 74 and the Councilwoman's got to abstain, well that kills 75. But we wouldn't have gone there. I
174 would have shot myself, probably.

175 But in the end, you know, it's like what point is this exercise? But all the counsel you've been
176 giving I'm going to say maybe I'm wrong, maybe I misunderstood the Councilwoman. Maybe I
177 should say that she either misheard you or that she relayed a different kind of information to me
178 than you had in private conversation.

179 But this is the sense of the Council right now. In the last recorded votes we had, the new Council
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CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

180 had taken the position 4-3, in all circumstances, that we not move any further. Five days ago, as
181 if this didn't count, five days ago then, the court, a competent judge —

182

183 **COUNCILWOMAN FIORE**

184 Does this have anything to do with this motion, all this —

185

186 **COUNCILMAN COFFIN**

187 You bet it does.

188

189 **COUNCILWOMAN FIORE**

190 Brad, just wondering?

191

192 **COUNCILMAN COFFIN**

193 And next time you interrupt, I'm going to have to harass you again.

194

195 **COUNCILWOMAN FIORE**

196 That's okay, because harassment in my office gets graded.

197

198 **COUNCILMAN COFFIN**

199 Well, I'm going to score high too. You have this situation. The new Council is in 4 to 3 position.
200 This upends it if we don't reverse it. So then, five days ago, a judge, a competent judge, who does
201 business cases and understands these issues, ruled against us. We lost the case on this exact
202 point. Why would we today thumb our nose at the judge and say: Well, sorry Judge Crockett, but
203 we don't care what you said in court. We haven't even filed an appeal. We haven't even seen your
204 language that you use, but you spoke pretty loud and clear, Your Honor. But we don't care what
205 you said. Our position is going to be against you and for whoever, the developer.
206 This is, I guess it's awkward, Brad. I mean, unless the Councilwoman feels free to vote on 74,
207 which I believe she has the right to do, there are all kinds of rules of order. I have lived under
208 Mason's and under Robert's and under, you know, the Rule of 11 in the Senate. So I know the

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CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

209 rules. And you can advise, but you can't dictate how the Councilwoman can vote.
210 Your Honor, you know, it certainly is up for discussion. I haven't made the motion yet, but I want
211 to make sure that you feel the item is ready for the motion, and then I will make the motion.

212

213 **MAYOR GOODMAN**

214 Okay. Well, I think the clarity, and, of course, we all rely on Legal for everything. You have
215 every right, as far as I understand from Brad and Legal, to request, rescind your vote, and it has to
216 always go through someone who made the motion votes on it, and the fact that I thought Mr.
217 Jerbic, in clarification, when the vote was made, and I did ask him that I thought Councilwoman,
218 Mayor Pro Tem, had to vote. He said no because of the material and that will give her time. So
219 the vote was 3-3, and with a tie, a new motion, what this was, it dies. It has to have, and so on
220 this, you have every prerogative to ask to rescind the motion. The question is: Will the others that
221 voted one way or the other support that vote?

222 So the question is, Counsel, Mr. Counsel, does that mean only those who voted in the 4-3 vote,
223 or does the entire panel minus Councilwoman vote?

224

225 **CITY ATTORNEY JERBIC**

226 It is minus the Councilwoman, and it wasn't a 4-3 vote. It was a 4-2 —

227

228 **MAYOR GOODMAN**

229 Could you say it again into your mic? Sorry.

230

231 **CITY ATTORNEY JERBIC**

232 I'm sorry. It was a 4-2 vote that denied the appeal with the Councilwoman abstaining. The advice
233 I've given, and my recollection is having this conversation with the Councilman as well last week
234 and repeating it again on Monday morning at a 9:30 briefing, but nevertheless, I can respect
235 differences of memory. The fact is I've said from the beginning that it takes two things. It takes a
236 majority vote, and in this case, it takes a two-thirds vote under Nevada law. It turns out it's the
237 same thing in this case, because a 4-2 vote is two-thirds vote. So it takes a two-thirds vote for this

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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

238 to pass.

239

240 **MAYOR GOODMAN**

241 To rescind.

242

243 **CITY ATTORNEY JERBIC**

244 And everybody can vote except the Councilwoman, who abstained on the original vote.

245

246 **MAYOR GOODMAN**

247 Okay. That answers the question. So your motion, if you'll make it and we'll see.

248

249 **COUNCILMAN COFFIN**

250 Now it needs two-thirds to pass?

251

252 **MAYOR GOODMAN**

253 Correct. That's what he has said. It needs two-thirds.

254

255 **COUNCILMAN COFFIN**

256 Now that's the first time I heard that, the first time. I still have a good memory despite my

257 advanced age.

258

259 **MAYOR GOODMAN**

260 Okay. So you want to make your motion.

261

262 **COUNCILMAN COFFIN**

263 **I'm going to move to rescind. I'm going to move as a member of the prevailing side to call**

264 **for the rescission of 72290, which was passed at our last Council meeting.**

CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

265 **MAYOR GOODMAN**

266 Okay. There's a Motion to Rescind the prior vote on 74. Please vote and please post. And
267 Councilwoman, I think you, just for her record, a nay. Correct.
268

269 **COUNCILWOMAN TARKANIAN**

270 Oh, a nay, or —
271

272 **MAYOR GOODMAN**

273 No, you're right. You did the right thing.
274

275 **COUNCILMAN COFFIN**

276 Vote yes.
277

278 **MAYOR GOODMAN**

279 That's what I do. And please post. **(Motion failed with Goodman, Barlow and Fiore voting No**
280 **and Tarkanian abstaining)**. Okay. So with that vote, then it is —
281

282 **COUNCILMAN COFFIN**

283 So I guess 75 is out of order then, is that correct?
284

285 **CITY ATTORNEY JERBIC**

286 We'd ask you to take another vote, because we always like to see if anything passes. So we have
287 a Motion to Rescind. Do we have a Motion to Deny the Rescission?
288

289 **COUNCILWOMAN FIORE**

290 Yes, **you have a Motion to Deny the Rescind.**
291

292 **CITY ATTORNEY JERBIC**

293 Okay.

CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

294 **COUNCILMAN COFFIN**

295 Let me ask a question. What is the effect of that motion?

296

297 **MAYOR GOODMAN**

298 It's the same thing.

299

300 **COUNCILMAN BARLOW**

301 What is the effect of that motion?

302

303 **COUNCILMAN COFFIN**

304 Yeah. More than one of us want to know.

305

306 **MAYOR GOODMAN**

307 I don't know. It's Legal.

308

309 **COUNCILMAN BARLOW**

310 – send us back in the other direction.

311

312 **CITY ATTORNEY JERBIC**

313 We have, from the beginning of time, required that when a motion doesn't pass, that you take an

314 alternative motion to see if it does pass. That is exactly what happened two weeks ago when

315 there was a tie vote and we asked you to take a motion that was the opposite, and it turned out

316 that motion did pass. So even if this ends up 3-3 again, we have to go through the drill of trying

317 the alternative motion to see if it passes.

318

319 **MAYOR GOODMAN**

320 Okay. So, at which point, Councilwoman Mayor Pro Tem —

CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

321 **COUNCILMAN COFFIN**

322 Give me the language of, Your Honor, may I ask a —

323

324 **MAYOR GOODMAN**

325 — because it's the same issue, has to continue abstaining.

326

327 **CITY ATTORNEY JERBIC**

328 Yes.

329

330 **MAYOR GOODMAN**

331 Correct. Okay. You're voting on a motion, please.

332

333 **COUNCILMAN COFFIN**

334 I could not hear your colloquy, and I'm sure that Councilwoman wants to make a motion.

335

336 **MAYOR GOODMAN**

337 Because it's the same issue, Councilwoman still has to abstain.

338

339 **COUNCILWOMAN FIORE**

340 Right. I made a motion to deny.

341

342 **MAYOR GOODMAN**

343 So now we're going to have a motion at the request, a motion to deny.

344

345 **COUNCILWOMAN FIORE**

346 Right.

347

348 **MAYOR GOODMAN**

349 So please vote on the Motion to Deny.

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**CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75**

350 **COUNCILMAN COFFIN**

351 And the consequence of that vote is?

352

353 **COUNCILMAN BARLOW**

354 Still die.

355

356 **MAYOR GOODMAN**

357 Now, Councilman Seroka and Councilman Coffin?

358

359 **COUNCILMAN COFFIN**

360 What is the consequence? I want legal advice.

361

362 **COUNCILMAN BARLOW**

363 It will die.

364

365 **MAYOR GOODMAN**

366 It will die. If it's 3-3, it dies.

367

368 **COUNCILMAN COFFIN**

369 What dies, the measure or the plan?

370

371 **MAYOR GOODMAN**

372 The Motion to Rescind has already, well, we'll let it see where it comes up. Oh.

373

374 **COUNCILMAN COFFIN**

375 How did you rule on that?

376

377 **COUNCILWOMAN FIORE**

378 He hasn't ruled.

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CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

379 **MAYOR GOODMAN**

380 The reason you have requested that we motion in the affirmative now is because legally —
381

382 **CITY ATTORNEY JERBIC**

383 Let me say this. You've had a Motion to Rescind. It did not pass. It was a tie vote. Now we're
384 going to take a motion to not rescind, to deny the Motion to Rescind. If that ends up a tie vote,
385 it's over. There's not an affirmative number of votes to pass it.

386

387 **COUNCILMAN COFFIN**

388 So this is a motion to not rescind that I just made?

389

390 **CITY ATTORNEY JERBIC**

391 To not rescind. You made a Motion to Rescind. This is a Motion to Not Rescind.

392

393 **COUNCILMAN COFFIN**

394 Well, I'm telling you I'm still about in a legal fog here, and I'm not alone on this end of the dais.

395 Why don't you tell us the practical consequences of a yes vote and that of a no vote?

396

397 **CITY ATTORNEY JERBIC**

398 We ask always that you take a motion in the alternative to see if it's affirmative. If both votes are
399 tied, then this dies, and you don't get to Item 75. That's the consequence.

400

401 **COUNCILMAN COFFIN**

402 So what does a yes vote mean?

403

404 **COUNCILMAN SEROKA**

405 He's confused on what he's voting on.

CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

406 **COUNCILWOMAN FIORE**

407 You agree with me.

408

409 **CITY ATTORNEY JERBIC**

410 A yes vote, the Councilwoman has moved to not rescind. A yes vote means you agree to not
411 rescind the vote.

412

413 **COUNCILMAN COFFIN**

414 What does it mean though in terms of its effect? You keep repeating the parliamentary results.

415

416 **CITY ATTORNEY JERBIC**

417 Right.

418

419 **COUNCILMAN COFFIN**

420 But in essence, I know that my colleague on the left is getting impatient, but I'm asking legal
421 counsel for rulings here, and in plain language —

422

423 **CITY ATTORNEY JERBIC**

424 If it's a tie vote or an affirmative vote, there is no major modification and no general plan
425 amendment required from the Planning Department.

426

427 **COUNCILMAN COFFIN**

428 Thank you. I'm voting no then.

429

430 **MAYOR GOODMAN**

431 Okay. If you would vote and then please post. (**Motion failed with Coffin, Anthony and**
432 **Seroka voting No and Tarkanian abstaining.**) And that ends in the same tie, so 74 has failed
433 and been in the affirmative. And so, at this point, could you make the proper statement about 75?
434 Who's to strike?

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CITY COUNCIL MEETING OF
JANUARY 17, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

435 **CITY ATTORNEY JERBIC**

436 Having made the record I made before, we are at the point where the motion rescinded, not
437 passed, and, therefore, the Council is unable to hear number 75. I would like the Clerk to show
438 the record reflecting that and move on to the next business.

439

440 **MAYOR GOODMAN**

441 Okay. Do we vote to strike number 75, Counsel?

442

443 **COUNCILMAN COFFIN**

444 **I move to strike 75.**

445

446 **MAYOR GOODMAN**

447 Okay. So now we need a Motion to Strike. Councilman Barlow? Oh, Councilman Coffin made
448 the motion.

449

450 **COUNCILWOMAN TARKANIAN**

451 And now I vote.

452

453 **MAYOR GOODMAN**

454 Yes.

455

456 **COUNCILMAN COFFIN**

457 I mean, what good is it if — look, all right, **I withdraw my motion. I withdraw my motion.**

458

459 **COUNCILWOMAN FIORE**

460 Can I motion to strike since he withdrew? **I motion to strike.**

461

462 **MAYOR GOODMAN**

463 Okay.

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CITY COUNCIL MEETING OF
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VERBATIM TRANSCRIPT – AGENDA ITEMS 74-75

464 **COUNCILMAN COFFIN**

465 Okay. She has a motion on the floor.

466

467 **MAYOR GOODMAN**

468 There's a Motion to Strike made by Councilwoman Fiore on number 75. Please vote.

469

470 **COUNCILMAN COFFIN**

471 Now on the motion, may I ask a question of legal counsel? What is the effect of a yes or no vote?

472 And now Councilwoman Tarkanian can vote.

473

474 **MAYOR GOODMAN**

475 Okay. No, excuse me one second, because I have not read number 75. Let me read it, because I
476 want to make sure we're doing everything the right procedural way. Agenda Item 75, 74 we voted
477 on and failed, this is, and then a new motion, which was sustained in the positive.

478 This is reconsider DIR-72290, a public hearing, possible action on an Appeal of Director's
479 decision to not require applications for general plan amendment and major modification in
480 conjunction with applications related to three planning projects (PRJ-71990, PRJ-71991, PRJ-
481 71992) generally located on 282.08 acres, southwest corner of Alta and Rampart Boulevard, R-
482 PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development)
483 Zones, Ward 2, Councilman Seroka. Staff recommends denial.

484 And Mr. Jerbic, then we make a motion to strike?

485

486 **CITY ATTORNEY JERBIC**

487 No, you do not. Let me repeat. As a matter of law, this is one of those rare issues that you don't

488 even get to consider it in any form unless the Motion to Rescind passes. The Motion to Rescind

489 did not pass. As a matter of law, you cannot take action on 75. No motion to strike is necessary.

Exhibit 198

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 180 LAND COMPANY LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS CITY OF,)

13 Defendant.)

14 -----)

15

REPORTER'S TRANSCRIPT

16

OF

17

HEARING

(TELEPHONIC HEARING)

18

19 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED THURSDAY, MAY 13, 2021

23

24

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

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006118

16226

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3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
4 APPEARANCE)

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16227

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16228

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006121

16229

1 LAS VEGAS, NEVADA, THURSDAY, MAY 13, 2021

2 9:51 A.M.

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

4 * * * * *

5

6 THE COURT: Okay. Next up, page 12 of the
7 calendar, contested calendar, is 180 Land Company LLC
8 versus the City of Las Vegas.

9 Let's go ahead and set forth our appearances
09:51:26 10 on the record.

11 I assume we want to have this matter reported;
12 is that correct?

13 MR. LEAVITT: Yes, your Honor.

14 MR. OGILVIE: Yes, your Honor.

09:51:34 15 THE COURT: And who said yes? I know
16 everybody probably does, but go ahead. We just want to
17 make sure --

18 MR. SCHWARTZ: This is Andrew Schwartz
19 representing --

09:51:42 20 THE COURT: Go ahead, sir.

21 MR. SCHWARTZ: Andrew Schwartz representing
22 the City. We would like the matter to be reported,
23 please, your Honor.

24 THE COURT: It shall be reported, sir.

09:51:52 25 Okay. Let's go ahead and set our appearances

Peggy Isom, CCR 541, RMR
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006122

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09:51:52 1 on the record. We'll start first with the plaintiff.

2 MR. LEAVITT: Good morning, your Honor. James
3 J. Leavitt on behalf of the plaintiff landowner, 180
4 Land.

09:52:04 5 MS. HAM: Good morning, your Honor. Elizabeth
6 Ghanem Ham also on behalf of the plaintiffs.

7 MR. OGILVIE: Good morning, your Honor.
8 George Ogilvie on behalf of the City.

9 MR. SCHWARTZ: Andrew Schwartz, good morning,
09:52:20 10 your Honor, on behalf of the City.

11 MR. BYRNES: Good morning, your Honor. Phil
12 Byrnes on behalf of the City.

13 THE COURT: All right. Does that cover all
14 appearances? Okay.

09:52:37 15 MR. LEAVITT: Yes, your Honor, on behalf of
16 the plaintiff.

17 THE COURT: All right.

18 And it's my recollection we have the City's
19 motion for rehearing and reconsideration of the Court's
09:52:46 20 order granting plaintiff's motion to compel responses
21 to interrogatories.

22 We'll hear from the City.

23 MR. SCHWARTZ: Thank you, your Honor.

24 So the Court granted the motion to compel the
09:53:01 25 City to respond to three interrogatories that are

09:53:04 1 asking for the state of mind or the mental processes or
2 the reasons that a legislator, an elected
3 representative of the -- to the city council made the
4 decision or the reasons for his opinions on certain
09:53:23 5 matters.

6 He's a form -- this is Council Member Seroka,
7 former member of the city council.

8 So the motion -- the motion first is proper
9 because it's the -- the Court's decision must be based
09:53:43 10 on sufficient cause.

11 And if -- we contend that the decision was
12 clearly erroneous under the law, and we don't need new
13 facts or law to make that argument.

14 So the motion is procedurally proper, your
09:54:00 15 Honor.

16 The evidence that -- that the developer seeks
17 here is a state -- the -- the basis for a statement
18 that former Council Member Seroka made on June 21st,
19 2018, at a neighborhood meeting. This was not during a
09:54:21 20 city council hearing or in any official proceeding. It
21 was a meeting with a group outside the City.

22 And the statement that Council Member Seroka
23 purportedly makes, "So I went to school, and I studied
24 and studied the rules, and I learned as much as I could
09:54:41 25 from the experts, and I did study, and I learned a

09:54:45 1 lot."

2 The interrogatory asks the City to state the
3 name, address, and phone number, and a summary of what
4 Council Member Seroka learned from these experts.

09:55:02 5 Second interrogatory, same meeting, Council
6 Member Seroka said, "At the time it was generally
7 accepted accounting principles and generally accepted
8 percentage of acreage that is open space/recreational.
9 It is 20 percent. What we have up here is the

09:55:23 10 agreed-upon roughly 20 percent. It's in the ballpark."

11 And the interrogatory says, "State what city
12 code, ordinance, or regulation, and/or Nevada statute
13 required a 20 percent open space dedication between
14 1985 and 2005 as referenced by Councilman Seroka."

09:55:48 15 The third interrogatory is to provide the
16 location of every development in the City of Las Vegas
17 that had an approximately 20 percent open space
18 dedication requirement imposed on it by the City of
19 Las Vegas between 1985 and 2005 as referenced by
09:56:05 20 Councilman Seroka in this statement.

21 Now, let me make one thing clear, your Honor.
22 The City is not concerned about this -- answers to
23 these interrogatories. The substantive answers to the
24 interrogatories make absolutely no difference in this
09:56:25 25 case. The evidence would be totally irrelevant.

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09:56:31 1 But there is a significant principle at stake
2 here, and that's why we picked the extraordinary action
3 of bringing this motion for reconsideration.

4 THE COURT: And for the record --

09:56:45 5 MR. SCHWARTZ: Because --

6 THE COURT: Wait. Wait. Wait. For the
7 record, what are those principles?

8 MR. SCHWARTZ: I'm just --

9 THE COURT: Because at the end of the day --

09:56:50 10 MR. SCHWARTZ: I'm just about to tell you.

11 THE COURT: Wait. Wait. Because at the end
12 of the day, we talk about mental impressions. It
13 appears to me they're seeking to obtain facts. What
14 did he know, right? Who did he talk to?

09:57:01 15 MR. SCHWARTZ: That's my point, your Honor.

16 THE COURT: Who did he talk to? What did he
17 know?

18 MR. SCHWARTZ: This is --

19 THE COURT: And here's my point. I --

09:57:08 20 potentially, yes. And I'm not making that decision
21 now. But, remember, for the purposes of discovery,
22 it's broader than relevancy as it pertains to the
23 admissibility at the time of trial, right?

24 And we can all agree.

09:57:22 25 MR. SCHWARTZ: Your Honor --

09:57:23 1 THE COURT: That's a legal maxim. I mean,
2 discovery is broad. Just because you conduct discovery
3 doesn't mean it's going to be admissible. But just
4 because it's not admissible doesn't mean you can't
09:57:31 5 conduct discovery. They're different standards.

6 MR. SCHWARTZ: I agree with that.

7 THE COURT: Yeah.

8 MR. SCHWARTZ: I agree with that, your Honor.

9 What's at stake here is extremely important.
09:57:40 10 These are not facts. This is not percipient witness
11 testimony. These are the mental impressions, the
12 opinions of a legislator.

13 And the -- whether the courts can make this
14 inquiry at all goes right to the heart of our
09:57:57 15 democratic system of government. This is not
16 hyperbole. This inquiry undermines the separation of
17 powers between the courts on the one hand and the
18 legislative and administrative executive branches of
19 government on the other.

09:58:16 20 It's that important. And that's why we're
21 bringing this motion, your Honor.

22 THE COURT: Well, explain to me how it's that
23 important. Because at the end of the day, if a public
24 official makes -- makes potential public statements
09:58:28 25 that, ultimately, become potentially part of

09:58:32 1 litigation, maybe the adverse party has a right to
2 depose them if it's relevant for the purposes of
3 discovery, if it can lead to other admissible evidence.

4 Maybe it doesn't get -- get admitted at trial.

09:58:47 5 That's a totally different issue. But one, we're
6 not -- we're not -- this isn't a scenario where all of
7 a sudden 180 Land wants to go ahead and take the
8 depositions of the independent -- I'm sorry -- of each
9 individual member of the city council, right?

09:59:03 10 This is just focusing on public statements he
11 made. And it seems to me if a city councilman is
12 making public statements like that, maybe he's opened
13 up the door to some sort of inquiry.

14 But go ahead. I just want -- the reason why
09:59:15 15 I'm saying that is this: It's important for me, too,
16 as a trial judge, like in all the prior cases, to kind
17 of give me an indication at least as to what I'm
18 thinking about. And just as important too, if you
19 disagree, that's okay. You can just tell me why, and I
09:59:29 20 can consider that also. That's all part of, I guess,
21 what we do.

22 MR. SCHWARTZ: Well, your Honor, the -- this
23 type of discovery of the mental processes of a
24 legislator is, number one, completely irrelevant to the
09:59:46 25 issues in this case. And I will explain.

09:59:49 1 THE COURT: Okay. I'm listening for that. Go
2 ahead.

3 MR. SCHWARTZ: But it is also -- it is also
4 absolutely privileged, absolutely privileged. There's
09:59:56 5 an unqualified privilege that the Courts do not,
6 cannot -- they have no authority to probe the mental
7 processes of legislators.

8 THE COURT: And remember this.

9 MR. SCHWARTZ: That is an absolutely --

10:00:09 10 THE COURT: Wait. Wait. I'm not probing
11 anything. This is -- what's going on here is a party
12 to an inverse condemnation lawsuit is conducting the
13 probing. I'm not probing anything. They're trying to
14 conduct discovery.

10:00:22 15 And so as a trial judge and a gatekeeper, all
16 I'm saying is whether it's appropriate or not for 180
17 Land Company to conduct discovery. I'm not probing
18 anybody because I'm not an advocate to this case.

19 MR. SCHWARTZ: Well, your Honor, when I say
10:00:34 20 the Court, I mean, in a judicial proceeding. The --
21 the --

22 THE COURT: It's not the Court. It's the
23 party to the litigation. If that's the case, in every
24 lawsuit where a defendant conducts discovery or the
10:00:47 25 plaintiff conducts discovery, the argument could be

10:00:50 1 made that the Court is doing this. I'm not doing this.
2 All I'm doing is ruling whether it's appropriate or
3 not. That's all.

4 MR. SCHWARTZ: The privilege extends to any
10:01:01 5 kind of probe that is authorized by the Courts. And
6 under the Rules of Civil Procedure, a party, yes, can
7 take depositions and ask interrogatories.

8 The point is that the mental processes of a
9 legislator are absolutely privileged. That's the
10:01:18 10 point, that the party can't do it because it's
11 privileged.

12 And I will get to that, your Honor. But I
13 first think I need to explain why this testimony is not
14 relevant in this proceeding.

10:01:30 15 This is a takings case. The developer here
16 brings five takings claims. A categorical taking,
17 which is --

18 THE COURT: No. I got -- I understand. I
19 understand the Penn Central. I get it. But go ahead.

10:01:57 20 MR. SCHWARTZ: Categorical. Penn Central, a
21 physical takings claim that they call a regulatory per
22 se takings claim and a nonregulatory takings claim and
23 a temporary takings claim.

24 This evidence is not permitted to be
10:02:16 25 considered in any of these claims. And I need to

10:02:19 1 explain why, your Honor.

2 THE COURT: I'm listening for the floor. I'm
3 listening.

4 MR. SCHWARTZ: The -- the takings clause, the
10:02:29 5 Fifth Amendment of the Constitution and the Nevada
6 constitution, was originally intended to apply only to
7 eminent domain.

8 In 1922, in Pennsylvania Coal vs. Mahon, the
9 United States Supreme Court said: Where a regulation
10:02:46 10 prevents this coal company from using any of its coal,
11 it could be the functional equivalent of a direct
12 condemnation, of an eminent domain. There it's
13 deprived of the property of any economic use.

14 And the Court said, yes, we recognize the
10:03:08 15 authority of the state to regulate the use of that coal
16 so that if you mine the coal, it's not going to allow
17 the surface of the property to cave in. That's the
18 police powers of the state.

19 And the Court said, We're mindful of that.
10:03:23 20 And we show great deference to the police power of the
21 state to regulate the use of property for the community
22 good.

23 But in a case where the regulation goes so far
24 as to wipe out the value, the economic use of the
10:03:39 25 property, it can be the same as an eminent domain

10:03:43 1 taking, the functional equivalent.

2 Now, that was 1922, first regulatory takings
3 case.

4 In the meantime, between that -- that date and
10:03:55 5 1978 in Penn Central, the Court was preoccupied with
6 the New Deal legislation. And the Court -- and in the
7 end, the Court developed tests that were highly
8 deferential to government regulation of land use and
9 other social and economic activity.

10:04:15 10 In fact, that's when the Court developed the
11 rational basis test. Under the separation of powers,
12 the Courts don't make policy. They don't tell
13 legislatures what policies to make. They defer to
14 them.

10:04:28 15 In 1978, in the Penn Central case, Courts --
16 the Court found that the historic preservation
17 regulation that prevented the development of a 50-story
18 office building over Grand Central terminal was not a
19 taking. It didn't wipe out the value of the property.

10:04:49 20 It wasn't equivalent to an eminent domain taking
21 because the Penn Central still had the terminal, and
22 they could operate the terminal for its historic use.

23 But there the Court adopted a three-factor
24 test. The economic impact of the regulation on the
10:05:08 25 property, whether the regulation interfered with

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10:05:13 1 investment-backed expectations, and the character of
2 the regulation.

3 THE COURT: And, sir, I understand that.

4 MR. SCHWARTZ: Today the same --

10:05:18 5 THE COURT: Wait. Wait.

6 I understand that. That's why I granted
7 Mr. Ogilvie's motion as it related to the relief to
8 conduct discovery. Right? I mean, I get that.

9 MR. SCHWARTZ: Yes.

10:05:29 10 THE COURT: So ...

11 MR. SCHWARTZ: Yes. Yes, your Honor. And
12 that -- the evidence that Mr. Ogilvie sought in that
13 motion is relevant to a taking, and I'm trying to
14 explain why, and why the evidence sought here is
10:05:39 15 completely irrelevant.

16 THE COURT: Okay. Well, you don't have to
17 worry about the relevancy, because I wouldn't have
18 granted his 56(d) relief unless I thought it was
19 relevant; right? I did that.

10:05:51 20 I got it.

21 MR. SCHWARTZ: Yes.

22 THE COURT: I understood that.

23 And I think it's just as important for
24 everyone to understand, as a trial judge, I believe --

10:06:00 25 I understand the limitations on discovery. I get it.

10:06:03 1 But just as important too, I don't want to put
2 impediments in any party's obligation to develop their
3 theories of liability and/or defenses in a case.
4 And then I'll hear the dispositive motions.

10:06:18 5 But I'm going to give everyone a chance to do what they
6 have to do, assuming they're diligent and not dilatory.
7 And I can't say anyone is dilatory in this case,
8 because everyone appears to be -- there appears to be a
9 heightened level of diligence for both parties.

10:06:32 10 So I get that. Just tell me why this isn't
11 relevant. I understand that.

12 MR. SCHWARTZ: Okay. I'm -- I'm --
13 unfortunately, the -- the journey that the US Supreme
14 Court went through to get to where we are today and on
10:06:48 15 which the Nevada Supreme Court has based its taking
16 jurisprudence requires just a little bit more history,
17 if I could, your Honor.

18 THE COURT: And you have the floor, sir. I'm
19 listening.

10:06:58 20 MR. SCHWARTZ: So Penn Central -- something --
21 a taking could be something less than a total wipeout
22 under the three factors.

23 Then in 1980 -- and this is significant. In
24 1980, the United States Supreme Court decided Agins vs.
10:07:14 25 Tiburon. And in that case, the Court said that

10:07:20 1 restriction on development of five acres in Tiburon was
2 not a taking, and it adopted a two-factor test for a
3 taking.

4 Didn't -- it didn't adopt the Penn Central
10:07:32 5 test. It said taking is something -- a regulation
6 that -- that is a wipeout that denies all economically
7 viable use or does not substantially advance a
8 legitimate government objective.

9 And this is very important, your Honor,
10:07:49 10 because that test, the substantially advance test, goes
11 directly to the issue in this motion.

12 The substantially advance test, that's like a
13 means/ends test. That's a test, well, is the law a
14 good law or a bad law? Did it have good reasons to
10:08:07 15 support it or not?

16 Then the Court decided -- in 1982, it decided
17 Loretto where the New York -- City of New York required
18 owners of apartment buildings to allow cable TV
19 facilities on their property.

10:08:22 20 The Court said that's a physical taking.
21 Strict liability. If you allow -- if the regulation
22 allows the government or the public to physically
23 occupy property, it's -- it's a taking, automatic.

24 Then in 1992 in the Lucas case, the Supreme
10:08:45 25 Court said, okay, we've got two basic types of takings:

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10:08:56 1 Categorical or per se takings, same thing.

2 Categorical, per se, same thing.

3 A categorical or per se taking is a wipeout,

4 like in Pennsylvania Coal, wipes out the value, or a

10:09:12 5 physical taking. And in those cases, you don't need to

6 show anything else. If you've shown a wipeout or

7 you've shown a physical invasion, then compensation is

8 due.

9 In the case of the regulatory wipeout where a

10:09:28 10 regulation of use of property prevents all economic use

11 of the property, that's a categorical taking. The

12 Court said if you don't have a wipeout, the regulation

13 severely restricts use, you might have something less;

14 you might have a Penn Central takings claim.

10:09:48 15 So we've got the categorical regulation of
16 use; wipeout is a taking.

17 Something less, Penn Central.

18 Then --

19 THE COURT: I think --

10:10:05 20 MR. SCHWARTZ: I'm going to go all the way to
21 2005, your Honor, to the Lingle case, Lingle vs.
22 Chevron USA.

23 Now, in that case, the State of Hawaii adopted

24 a law that restricted oil companies that owned the real

10:10:21 25 estate for service stations in Hawaii, restricted their

10:10:25 1 right to increase rents in order to protect consumers
2 who the -- the object there was to prevent consumers
3 from paying inordinately high prices for retail
4 gasoline. So they restricted the rent that the -- that
10:10:44 5 the independent dealers could charge when they rent a
6 gas station from an oil company so that the independent
7 dealers could sell gas for less. That would benefit
8 consumers.

9 And the oil company claimed under the Agins
10:11:03 10 substantially advance test that that law didn't make
11 any sense. It didn't have good reasons for it. That
12 it wasn't going to work. That it was a bad law. It
13 was a stupid law. It was an unwise law.

14 And the Court held a trial with dueling
10:11:19 15 economists as to whether it was a good law or a bad
16 law, whether there were good reasons to support it or
17 not so good reasons, and found that the law was not
18 going to work and wasn't going to control prices and,
19 therefore, found it was a taking.

10:11:33 20 And there had been a lot of litigation up to
21 Lingle where litigants argued that legislation or that
22 a decision of disapproving a permit to use land was a
23 taking because it did not substantially advance
24 government interests, legitimate government interests;
10:11:54 25 that it was a bad law, bad reasons. The reasons for it

10:11:57 1 were either false or in bad faith or just not strong.

2 So this -- this case went up to the United
3 States Supreme Court. And the Court, in a unanimous
4 decision with no footnotes it read like a manifesto --

10:12:17 5 said: Wait a minute. We made a big mistake in Agins
6 in saying that a taking could be a regulation that does
7 not substantially advance legitimate state interests.
8 That's a means/ends test. That has nothing to do with
9 takings.

10:12:34 10 Now, your Honor, that's exactly what the --
11 this -- these interrogatories are going to. This --
12 it's really a substantially advance test that the Court
13 said has no place in takings.

14 So here's what the Court said:

10:12:53 15 First, it said -- and -- and we're now in
16 2005. The Court has come full circle from Pennsylvania
17 Coal in 1922. So it was 83 years later after a lot of
18 litigation in the Supreme Court and the lower courts,
19 the Court came full circle and simplified and narrowed
10:13:19 20 the test for a taking and clarified that it has only to
21 do with economic impact and nothing to do with whether
22 the decision is a good or a bad decision.

23 So the Court said in Lingle:

24 "Although our regulatory takings jurisprudence
10:13:37 25 cannot be characterized as unified, these three

10:13:40 1 inquiries (Loretto, Lucas, and Penn Central)" -- so
2 it's saying that Loretto, the physical taking; Lucas,
3 an excessive regulation of use that wipes out the
4 property, or Penn Central, the economic impact
10:13:57 5 regulation of use doesn't have to be a wipeout.

6 It says:

7 "These three inquiries share a common
8 touchstone. Each claims to identify" -- "each aims to
9 identify regulatory actions that are functionally
10:14:11 10 equivalent to the classic taking in which government
11 directly appropriates private property or ousts the
12 owner from his domain. Accordingly, each of these
13 tests focuses directly upon the severity of the burden
14 that government imposed upon private rights" -- "upon
10:14:27 15 private property rights."

16 So what it's saying is whether you've got a
17 categorical claim, a wipeout, or a Penn Central which
18 is something less, that it's got to be close to a
19 wipeout; otherwise, it's not the equivalent of eminent
10:14:43 20 domain.

21 And the Court is saying otherwise it loses
22 contact with the Constitution, which, remember, the
23 takings clause was supposed to be for direct
24 condemnation, for eminent domain. Well, it can be due
10:14:56 25 to regulation if it's the same function equivalent.

10:15:01 1 It's the same. That means that the economic impact has
2 to be so severe that it's the same as an eminent
3 domain.

4 So that means under any formulation of the
10:15:10 5 test, the economic burden of the regulation has to be
6 equivalent to eminent domain to wipe out or close to a
7 wipeout.

8 So what's the Court doing here? It's
9 balancing the -- the right of property owners to be
10:15:25 10 free from excessive government regulation, but it also
11 has to be highly deferential to the police power to
12 regulate land use of the public good.

13 And so in Lingle, the Court came out on giving
14 great deference to the police power and narrowing
10:15:46 15 takings to the extreme case where there is a wipeout or
16 a near wipeout of economic value.

17 And then the Nevada Supreme Court follows
18 Lingle in the Kelly case. The Court said that
19 regulation is a taking if it denies all economically
10:16:02 20 beneficial or productive use of land.

21 In the Boulder case, a taking -- it's -- it
22 was not a taking in that case because it -- the
23 regulation did not destroy all viable economic value of
24 the property.

10:16:18 25 And in State, in 2015, the Nevada Supreme

10:16:21 1 Court said that a regulation to be a taking must
2 completely deprive an owner of all economically
3 beneficial use of the property, quoting Lingle.

4 So what's the Court saying here? If you
10:16:35 5 don't -- don't -- you can't allege a taking unless you
6 can show that the regulation has wiped out the economic
7 value of the property or very close to it, period.

8 That's the test for a taking in the federal
9 courts, US Supreme Court, and in Nevada.

10:16:55 10 And the reasons for the regulation don't make
11 any difference.

12 Now, here's -- here's what the Court did on
13 the substantially advance test. Justice Scalia in the
14 oral argument said, you know, we're going to have to
10:17:07 15 eat humble pie on this one. The substantially advance
16 test was a big mistake.

17 The Court held that where the action was
18 arbitrary, irrational, or made in good faith has no
19 proper place in our takings jurisprudence. Why?
10:17:20 20 Because it doesn't help identify those regulations
21 whose effects are functionally comparable to government
22 appropriation or invasion of private property.

23 Indeed, such an -- so they're saying that this
24 inquiry is tethered neither to the next -- to the text
10:17:37 25 in the takings clause nor to the basic justification

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10:17:40 1 for allowing regulatory actions to be challenged under
2 the clause.

3 The Court said that the notion that a
4 regulation nevertheless takes property for public use
10:17:54 5 merely by virtue of its ineffectiveness or a
6 foolishness is untenable. Instead of addressing a
7 challenge regulation's effect on private property, the
8 substantially advances inquiry probes the regulation's
9 underlying validity.

10:18:10 10 Again, your Honor, this is directly relevant
11 to these interrogatories, because that's what they're
12 doing. Such inquiry is logically prior to and distinct
13 from the question whether a regulation effects a
14 taking, for the takings clause presupposes that the
10:18:25 15 government has acted pursuant to a valid public
16 purpose.

17 The clause expressly requires compensation
18 where government takes property for public use. It
19 does not bar government from interfering with property
10:18:38 20 rights but rather requires compensation in the event of
21 otherwise proper interference amounting to a taking.

22 Conversely, if a government action is found to
23 be impermissible, for instance, because it violates due
24 process, that's the end of the inquiry. No amount of
10:18:54 25 compensation can authorize such an action.

10:18:58 1 Finally, the substantially advances formula is
2 not only doctrinally untenable as a takings test; its
3 application as such would also present serious
4 practical difficulties.

10:19:11 5 This is, again, directly relevant to these
6 interrogatories, your Honor.

7 The Court went on to say the Agins formula --
8 that is the substantially advance test -- can be read
9 to demand heightened intense review of virtually any
10:19:23 10 regulation of private property. If so interpreted, it
11 would require courts to scrutinize the efficacy of a
12 vast array of state and federal regulations, a task for
13 which courts are not well-suited.

14 Moreover, it would empower and might often
10:19:39 15 require courts to substitute their predicted judgments
16 for those of elected legislators and expert agencies.

17 So, in sum, the reasons for the government
18 action have nothing to do with takings. Takings is
19 only concerned with the economic impact.

10:19:54 20 Whether a regulation is fair, whether it's
21 wise, completely irrelevant. If it's unfair or if the
22 claim is it's unfair or arbitrary and capricious or it
23 doesn't have good reasons, that's a due process claim,
24 not a takings claim.

10:20:14 25 So let's look at the -- the developer's claims

10:20:19 1 here. They have a categorical in Penn Central. They
2 claim that the City's denial of their applications to
3 develop the 35-acre property, which was done by a
4 legislative body, the city council at a public hearing,
10:20:31 5 they claim that -- that that is a wipeout taking, a
6 categorical taking, or a Penn Central claim, which has
7 got to be close to a wipeout.

8 So you look at the economic impact of that
9 decision. What bearing could former council members'
10:20:49 10 statements a year after that decision was made on the
11 35 acre applications, what power -- what opinions of
12 Council Member Seroka, what mental impressions, who he
13 relied on for an opinion and why, his reasons for an
14 opinion, what possible relevance would that have to the
10:21:11 15 inquiry before this Court, which is what is the
16 economic impact of a decision of the city council made
17 a year -- in June 2017 -- a year before Council Member
18 Seroka made those statements?

19 Not only that, Council Member Seroka was not
10:21:30 20 even on the city council when the city council
21 disapproved the 35-acre applications.

22 Again, what relevance could his state of mind
23 or his mental impressions or his reasons for holding an
24 opinion have -- what bearing could it have on that?

10:21:50 25 Now, yes, Council Member Seroka was on the

10:21:52 1 council when the council voted to deny a master
2 development agreement that the developer presented.
3 But this Court has said itself statements of individual
4 council members are not relevant, and this wasn't even
10:22:07 5 a statement at the hearing on the master development
6 agreement.

7 Council Member Seroka's statements, his
8 opinions are not the law. They -- his opinions alone
9 have no economic impact on this decision.

10:22:25 10 The decision is a matter of public record.
11 The only thing the Court looks at in this case is that
12 decision of the city council on the 35 acre
13 applications and the master development agreement and
14 what the economic impact was on the property. That's
10:22:43 15 why the Court properly granted the City's motion to
16 compel information about the economic impact of that
17 regulation on the property.

18 Council Member Seroka's opinions are
19 completely irrelevant.

10:22:57 20 In denying the potential for judicial review
21 in this case, this Court said, and I'm starting in
22 paragraph 33 of its --

23 THE COURT: You understand that's a different
24 standard, right?

03:07:54 25 (Multiple speaker cross-talk)

10:23:08 1 MR. SCHWARTZ: -- provisions of law --
2 THE COURT: That's a different standard. I
3 mean, that's a --
4 MR. SCHWARTZ: -- from November 26.
10:23:13 5 THE COURT: I don't want to go down that. I
6 don't want to open that up.
7 But go ahead, sir.
8 MR. SCHWARTZ: Well, you said in that
9 decision, your Honor, that the action this Court's
10:23:22 10 tasked to review is the decision of the governing body,
11 not statements made by individual city council members
12 leading up to that decision. The statements of
13 individual council members are not indicative of any
14 arbitrary or capricious decision making.
10:23:37 15 The action that the Court is tasked with
16 reviewing is the decision of the governing body, not
17 statements made by individual council members leading
18 up to the decision.
19 The council -- the council's action occurred
10:23:49 20 with a vote, not the prior statements made by
21 individual city council members.
22 The Court finds -- the Court -- and I'm
23 paraphrasing -- rejects the developer's contention that
24 the statements of individual council members require
10:24:02 25 the Court to overturn the council's decision.

10:24:04 1 And, yes, this was a petition for judicial
2 review. But the principle is the same. If -- if
3 the -- the only action of the City that's relevant here
4 is an action of the city council as a whole.

10:24:23 5 That principle applies whether it is -- the
6 challenge is to a petition for judicial review or in
7 takings, because what the Court focuses on is what is
8 the economic impact of a law, a regulation.

9 An individual council member's statements,
10:24:38 10 opinions, actions has nothing to do with the Court's
11 inquiry.

12 Now, the developer says, Well, we need to know
13 whether Council Member Seroke was telling the truth
14 when he made a statement at some meeting.

10:24:54 15 No, we don't.

16 What is -- what is -- what on earth does
17 whether his statement, well, I think this -- I think
18 that the law should be this or I think this happened,
19 what possible relevance could Judge -- Council Member
10:25:11 20 Seroke's, the truth or falsity of the reasons for his
21 opinion have to do with this case?

22 Now, nor are the statements that that
23 developer seeks to probe and the mental impressions
24 relevant at all to the physical takings claim. The
10:25:33 25 only thing relevant there is did the City pass a law

10:25:37 1 that required the developer to submit to the occupation
2 of the property by the public. Did it? Did the law
3 say that or not?

4 The developer relies on this bill, 2018-24,
10:25:51 5 passed in November of 2018. They claim that it -- that
6 the -- that the law required the developer to allow the
7 public on its property.

8 Well, that's a decision for the Court as to
9 what that law means. And just -- and Council Member
10:26:10 10 Seroka's statements either in the city council
11 proceeding on that law or outside have no bearing on
12 what that law means and what its application is.
13 That's a decision of the Court.

14 For the nonregulatory taking, same thing.
10:26:31 15 Justice -- Council Member Seroka's statements
16 about his opinions about things have nothing to do
17 whether the City's actions -- actions of the City, the
18 City, effected a nonregulatory taking.

19 The developer has never said what exactly the
10:26:48 20 City did to commit a nonregulatory taking.

21 But I can't see how it could possibly be
22 relevant. A nonregulatory taking is either a physical
23 taking. It's kind of duplicative of the Loretto
24 physical taking claim. Or there has to be some
10:27:02 25 precondemnation conduct that renders the property

10:27:07 1 useless or valueless.

2 Nothing that Council Member Seroka could say
3 or do as an individual could render the 35-acre
4 property useless or valueless. It's got to be a law,
10:27:22 5 something with the force of law. And that has to be
6 the city council voting as a group. And the Court
7 found that to be the case in denying the petition for
8 judicial review, and it applies here.

9 Now, here's what -- here's what the
10:27:34 10 developer's counsel stated at the hearing on the motion
11 to -- in opposition to the motion to compel.

12 I'm quoting here:

13 "If indeed there were no facts to support the
14 basis of Seroka's statement, then that would create a
10:27:51 15 problem for the City."

16 So counsel is saying if Seroka didn't have
17 good reasons for making that statement, that would be a
18 problem for the City, I guess, in its takings claims.

19 Another quote:

10:28:04 20 "So if there was no basis for Council
21 Member Seroka's statements, that causes a great
22 concern for the developer. If there was no
23 basis for Seroka's statements, it would be more
24 evidence to show that the City engaged in a
10:28:16 25 conduct to deny the developer all use of their

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10:28:19 1 property."

2 So, your Honor, that's the basis of our

3 request for these interrogatories.

4 So according to the developer's theory here,

10:28:31 5 if Council Member Seroka's statements are without basis

6 and if he didn't have good reason for making a

7 statement at any -- then the city council's decision,

8 the decision of the entire city council itself was

9 irrational and arbitrary and invalid.

10:28:46 10 Now, the Court already found that that

11 decision was not arbitrary or irrational and invalid.

12 But that's exactly what the developer is

13 trying to do here, your Honor. It's trying to retry

14 the petition for judicial review.

10:29:03 15 This is the takings claim. It has nothing to

16 do with whether there is substantial evidence to

17 support the decision of the city council. I mean,

18 getting beyond the fact that one individual member's

19 statements have nothing to do with the action of the

10:29:17 20 city council, which is at issue here, but whether the

21 city council's decision was a good or bad decision has

22 already been decided in the petition for judicial

23 review in paragraphs 4 and 10, 11, 19, 22.

24 The Court went on at great length about why

10:29:39 25 the -- the Court doesn't step into the shoes of the

10:29:47 1 decision-maker and dictate policy.

2 But these questions go directly to whether a
3 policy was a good or a bad policy. And that's why this
4 is so -- such a big problem for the City and for a
10:30:03 5 democratic system of government.

6 Because the reasons a legislature makes a
7 decision aren't relevant. They can't be relevant.
8 Otherwise, you could make policy through a lawsuit.

9 The Supreme Court in Lingle said the inquiry
10:30:23 10 about whether there's a legitimate basis for a decision
11 is a due process inquiry.

12 And that's exactly what this inquiry is. The
13 developer is trying to convert this case into a due
14 process case. But they haven't pled a due process
10:30:38 15 claim, nor could they, because the Ninth Circuit has
16 already ruled in a case where the developer sued
17 Council Member Seroke individually that the City and --
18 did not violate the developer's due process rights in
19 this case.

10:30:56 20 So that -- that's a -- decision is an issue
21 preclusion bar to a due process claim and, therefore,
22 it also should rule out any inquiry into the state of
23 mind or the mental impressions of a legislator to the
24 city.

10:31:14 25 Okay. So, that's -- that's why this is not

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10:31:18 1 relevant, your Honor. And I think the Court -- I think
2 relevance is really crucial to understand the second
3 reason why this motion to compel be denied, because,
4 you know, recognizing that this kind of thing -- this
10:31:39 5 kind of inquiry into a legislator's state of mind could
6 completely undermine our system of government. We have
7 separation of powers between -- in all levels of
8 government, including the State of Nevada. That's a
9 very strong policy for the state is separation of
10:31:56 10 powers between the judicial branch and the legislative
11 branch and the administrative executive branches. The
12 executive administrative branches and legislative
13 branches make social policy. They decide what are the
14 laws going to be to regulate the use of land to protect
10:32:13 15 community interests.

16 Now, the Courts do have a role -- and that's
17 under the Constitution.

18 But the United States Supreme Court and the
19 Nevada Supreme Court has said the only role for the
10:32:23 20 Court in land use policy is to award just compensation
21 where there's been a wipeout or a near wipeout. That's
22 the only role of the Court.

23 So we have cited -- we have cited 15 cases as
24 to why it is improper to inquire -- in discovery it is
10:32:46 25 improper to inquire into the state of mind of a

10:32:52 1 legislator or a decision-maker on a land use permit.

2 Same thing.

3 There's the mental process and deliberative
4 process privileges. Take, for example, the City of

10:33:03 5 Las Vegas vs. Foley. It's a Ninth Circuit case. It
6 says that -- the Court said:

7 "The relevant governmental interest is
8 determined by objective indicators as taken from the
9 face of the statute, the effect of the statute,

10:33:17 10 comparison to prior law, facts surrounding enactment of
11 the statute, the stated purpose, and the record of
12 proceedings."

13 That's the only way that a Court -- that's the
14 only evidence that a Court can look at in -- in

10:33:33 15 determining the meaning of the statute, the application
16 of the statute, interpreting the statute.

17 Again, we've cited 15 cases in support of the
18 absolute unqualified privilege of legislators against
19 discovery. You can't sit -- I mean, you can't sit down

10:33:53 20 a member of the Nevada legislature. You challenge a
21 law passed by the legislature and sit a member of the
22 Nevada legislature down for a deposition and ask them
23 if they had good reasons to pass that law, what was
24 their state of mind, who did they rely on.

10:34:08 25 THE COURT: But that's not -- but you know

10:34:08 1 what --

2 MR. SCHWARTZ: What experts did they rely on.

3 THE COURT: Sir, that's not what they're

4 asking for. And it's my recollection based upon the

10:34:13 5 history of this case, this councilman wasn't part of

6 the legislative process; right?

7 MR. SCHWARTZ: Well, he was not part of the

8 legislative process to deny the 35 acre applications.

9 THE COURT: Right.

10:34:29 10 MR. SCHWARTZ: He was for the -- for the

11 master development agreement.

12 But if he wasn't -- if he wasn't part of

13 the -- I mean, so what possible relevance could his

14 opinions have to the denial of the 35-acre

10:34:46 15 applications? That's what's at issue here.

16 THE COURT: Well, no, but, see --

17 MR. SCHWARTZ: Again --

18 THE COURT: What you're doing is you're

19 framing the issue. What you need to tell me is this:

10:34:53 20 How is this relevant to the affirmative defenses

21 alleged in this case? Because that's the position the

22 plaintiff is taking.

23 The plaintiff is saying, Look, Judge -- and

24 this is on page 10 of their opposition at line 14. It

10:35:08 25 starts:

10:35:09 1 "The landowner served Interrogatories 1, 2,
2 and 3 related to the City's defenses that there
3 was allegedly an open space dedication
4 requirement imposed on the 35-acre property
10:35:22 5 long ago and, as a result, the City's actions
6 cannot amount to a taking in this case."

7 MR. SCHWARTZ: Okay. The open space
8 dedication was a park and recreation open space
9 dedication in the general plan imposed by the city
10:35:41 10 council on the property in 1992.

11 And that -- that designation in the general
12 plan was readopted, affirmed multiple times both before
13 and after the developer acquired the property. And
14 that's our Exhibits I through Q.

10:36:06 15 Ordinances imposing a DROS general plan
16 designation on the property. That's legislation, your
17 Honor. Council Member Seroka had nothing to do with
18 that. And even if he did, his opinions are completely
19 irrelevant.

10:36:21 20 We've got an ordinance of the City that
21 imposes an open space, a PROS designation on the
22 property. And that -- these inquiries have absolutely
23 nothing to do with the validity or the application of
24 that ordinance. That's a job for the Courts. That's a
10:36:40 25 question of statutory interpretation, and these

10:36:43 1 facts --

2 (Multiple speaker cross-talk)

3 THE COURT: But I haven't -- I haven't been
4 asked to interpret any statutes yet. And my point is
10:36:50 5 maybe you're right from a purpose of relevancy for the
6 purposes of trial in this case. But understand, this
7 is discovery. This is an inverse condemnation case.
8 It's not a petition for judicial review. There's
9 clearly a difference in distinction there.

10:37:09 10 If the City is taking some defenses -- and you
11 can tell me if they're taking that position or not.
12 But if they're taking a position as it relates to the
13 open spaces, and it appears to me that based upon
14 public statements maybe this council member has some
10:37:27 15 information on that, it might be discoverable. Whether
16 it's admissible or not, that's another analysis I have
17 to conduct.

18 But --

19 MR. SCHWARTZ: What possible --

10:37:34 20 THE COURT: But is that part of the defense
21 that the City's taking in this case?

22 MR. SCHWARTZ: Our defense is that there's a
23 law on the books, and it's been on the books since
24 1992, that prevents residential use of the Badlands,
10:37:51 25 period. So that if the City decides it's not going to

10:37:57 1 change the law, there's no taking. Yes, that's our
2 position. Council Member Seroka's opinions about that
3 law in 2018 have absolutely nothing to do with whether
4 that defense is valid or not.

10:38:13 5 In the petition for judicial review this Court
6 said this:

7 "The developer" --

8 THE COURT: I'm not --

9 (Multiple speaker cross-talk)

10:38:19 10 MR. SCHWARTZ: "... its interest in the
11 Badlands Golf Course" --

12 THE COURT: Sir, I don't mind telling you
13 that --

14 (Multiple speaker cross-talk)

10:38:22 15 MR. SCHWARTZ: -- "noting that the City's
16 general plan" --

17 THE COURT: Wait. Wait. Wait.

18 For the purpose of the petition for judicial
19 review, that's not of ultimate concern with me right
10:38:30 20 now in an inverse condemnation case. I know
21 specifically why I ruled the way I ruled. You don't
22 have to refresh my recollection on that. And I feel
23 fairly confident in my decision made as it pertained to
24 the petition for judicial review. I don't mind saying
10:38:46 25 that.

10:38:46 1 I'm just looking at it from this perspective.
2 Because at the end of the day, I have to make a
3 determination as to whether or not this -- for the
4 purposes of discovery this inquiry is relevant.

10:39:00 5 Nothing more, nothing less, right?

6 And we've had a very rigorous discussion in
7 the past in this case, and I think we have a pretty
8 good record on how I viewed the petition for judicial
9 review and whether or not that rises to a level of
10:39:18 10 issue preclusion or claims preclusion vis-à-vis the
11 inverse condemnation case. And I've ruled on that,
12 right?

13 And so I'm trying to -- I want to understand
14 what your position is. I don't need the history. I
10:39:28 15 understand the economic impact. I had to because, I
16 mean, I don't mind saying this: The first time I've
17 ever granted a request for Rule 56(d) relief ever in
18 over 15 years in handling many, many, many, many
19 complex litigation cases before the motion --
10:39:46 20 opposition for the motion for summary judgment is filed
21 is in this case.

22 Because I went back and I looked at it and I
23 thought about it. And to me, it just kind of made
24 sense, right? It just did.

10:39:58 25 And just as important too, I try to be

10:40:00 1 efficient in my decision making.

2 Whether that bears fruit or not, I have no
3 clue.

4 But I just felt the City had a right to
10:40:08 5 conduct an inquiry on this issue; right? Over vigorous
6 objection.

7 And so on the flip side, here's the question:
8 Does -- the plaintiff in this case, the landowner, has
9 a right to conduct an inquiry on this issue if it's a
10:40:25 10 defense in this case as to not what the opinions are
11 but what facts this councilman was relying upon to give
12 that opinion. Maybe he has no facts at all. Maybe
13 they didn't even come in; right? I'm not making that
14 decision as far as admissibility at this point. Maybe
10:40:46 15 there will be a motion in limine on that issue.

16 I mean, I don't know. But --

17 MR. SCHWARTZ: But, your Honor --

18 THE COURT: -- I'm going to give everyone an
19 opportunity to develop their claims for relief and
10:40:59 20 their defenses. I'm going to do that.

21 MR. SCHWARTZ: The opinion has no relevance to
22 the case.

23 THE COURT: Okay. I understand.

24 MR. SCHWARTZ: So the reasons for the opinion
10:41:06 25 can't have any relevance to the case.

10:41:08 1 Your Honor, I do want to point out, in the
2 PJ -- in the decision denying the petition for judicial
3 review, the Court found that the parks, recreation, and
4 open space designation of the Badlands, which is a law,
10:41:25 5 a law passed by the city council, the Court found that
6 that law was valid and applied.

7 There can't be a valid PROS designation in the
8 law that -- that is valid and applicable for a PJR and
9 somehow that it's not a valid law or applicable for
10:41:46 10 purposes of taking it.

11 Now, the remedies -- the -- the -- what you
12 need to prove in a petition for judicial review is a --
13 you -- that there was substantial evidence -- or if
14 you're the petitioner, there's a lack of substantial
10:42:04 15 evidence to support the decision. So not good reasons.

16 In takings, you have to show a wipeout.

17 The remedies are different.

18 THE COURT: Well --

19 (Multiple speaker cross-talk)

10:42:11 20 MR. SCHWARTZ: The form -- of the defect --

21 THE COURT: I understand. But, sir, my point
22 is --

23 MR. SCHWARTZ: But the law is the same.

24 THE COURT: But you're not listening to me. I
10:42:17 25 understand all that. I don't see any need to replot

10:42:19 1 **this ground.** I understand what substantial evidence
2 means. I'll tell you what it means: More than a
3 scintilla of evidence, less than a preponderance of the
4 evidence. That's what it means. That's the definition
10:42:30 5 of "substantial evidence." I get it. I understand all
6 the burdens.

7 And so my point is this: I want to come back
8 to -- and if you say, Judge, the -- whatever he had to
9 say is not relevant to this inquiry. Okay. I get it.

10:42:49 10 MR. SCHWARTZ: Well, your Honor, just one
11 more --

12 THE COURT: Okay.

13 MR. SCHWARTZ: -- comment on that.

14 The general plan designation of the property
10:42:59 15 is a law.

16 And while there may be differences --
17 procedural differences between the PJR and a takings
18 claim, that law is the same for both.

19 And in the takings context, our defense to the
10:43:15 20 takings is that property, when the developer bought the
21 property -- I mean, if the judge -- you said this in
22 the PJR. When the developer bought the property, the
23 PR -- the PROS designation was the law. And it
24 applied. And you knew it. And that didn't allow
10:43:32 25 housing on the property.

10:43:34 1 So for the City to say, no, we're not going to
2 change that and allow housing on the property,
3 that's -- there was substantial evidence to support
4 that decision.

10:43:44 5 For the same reasons, we're talking about the
6 same law. And that law doesn't disappear just because
7 it's a different claim. That law is the same.

8 When the developer bought the property, the
9 property was designated PROS, and the general plan
10:44:00 10 prohibits housing, so it can't be a taking.

11 If the government says, Oh, we're just going
12 to maintain the status quo, we're just going to leave
13 the property the way it was when you bought it, that
14 can't have any economic impact on the property. This
10:44:14 15 is the nub of the case. The same law.

16 And what Council Member Seroka has to say
17 about whether that PROS designation of law is a valid
18 law or applicable, his opinions, how could they
19 possibly be relevant to that? They can't.

10:44:37 20 We briefed this issue of privilege. The
21 privilege is unqualified and absolute. We cited 15
22 cases that you cannot -- you cannot take the deposition
23 of a legislator unless they have percipient facts that
24 are relevant. That's the only case.

10:44:54 25 THE COURT: But that's what they're trying to

10:44:55 1 inquire, as to whether or not it's --

2 MR. SCHWARTZ: No.

3 THE COURT: Well, we'll listen to them, but
4 that was my impression. They want to know what are the
10:45:03 5 percipient facts that might be relevant to this case.
6 I get that.

7 MR. SCHWARTZ: Well, let me give you an
8 example, your Honor.

9 A legislator is walking down the street and
10:45:10 10 witnesses a car accident. The plaintiff or the parties
11 to that car accident can ask the legislator about what
12 the legislator saw.

13 But you -- there is an absolute, total
14 privilege against discovery from a legislator that goes
10:45:32 15 to the reasons -- anything they did as a legislator
16 with regard to the challenged matter.

17 THE COURT: Yeah.

18 MR. SCHWARTZ: That's the question for the
19 Courts, to interpret --

10:45:43 20 THE COURT: I agree with that.

21 MR. SCHWARTZ: -- the law.

22 THE COURT: I don't know if that's the best
23 example. But in a tort case, what he did the day
24 before, what bill he passed clearly is not germane to
10:45:52 25 whether or not he was following the rules of the road.

10:45:54 1 Here we have a slightly different scenario. It's a
2 claim for inverse condemnation.

3 MR. SCHWARTZ: Well --

4 THE COURT: Right?

10:45:59 5 MR. SCHWARTZ: -- except there -- we've cited
6 15 cases that say that you cannot do that. And in
7 their opposition to the motion, the developer didn't
8 even address the argument, the privilege, your Honor.
9 They cited no authority, no argument, nothing. They
10:46:14 10 didn't even mention it because there is no -- there is
11 no basis to oppose that. The privilege is absolute.
12 It's total.

13 Why is this important? Because any time
14 someone wants to challenge the -- a law, this means
10:46:33 15 they can -- they can sit down, the -- the elected
16 representatives of the people, and ask them: Why did
17 you vote for that law? What were your reasons? And
18 then show, well, they didn't have a good reason to vote
19 for it; therefore, the Court should strike down the
10:46:47 20 law.

21 This -- this goes to the heart of the
22 separation of powers. It's -- it's absolutely crucial
23 to our form of government where we have a legislative
24 branch of government, people elect -- it's a republican
10:47:03 25 form of government. They elect people to a

10:47:06 1 legislature. They make laws. The Courts don't make
2 the laws. They don't make the policies.

3 THE COURT: But, sir --

4 (Multiple speaker cross-talk)

10:47:11 5 MR. SCHWARTZ: -- they only interfere when it
6 implicates constitutional rights.

7 THE COURT: Here's my -- I mean, I'm looking
8 here at the question -- I mean, the cases you cited.
9 For example, it's -- I mean, the inquiry as far as
10:47:22 10 Mr. Seroka is concerned isn't going to go into as to
11 why or was he involved in the adoption of a specific
12 ordinance and why he adopted or voted for the
13 ordinance. It's my understanding that is not what the
14 inquiry is going to be about.

10:47:40 15 MR. SCHWARTZ: Well, then that inquiry is
16 totally irrelevant. The only thing that's relevant
17 here is what the city council did in passing a law. So
18 it's even less relevant.

19 I mean, what -- what is his -- what -- what he
10:47:55 20 had for breakfast, what he thinks about this, what he
21 thinks about that, it has nothing to do with this case,
22 which is the city council took an action. The
23 developer claims that it wiped out their value or near
24 wiped out their value or economic use of the property.

10:48:14 25 Council Member Seroka's thoughts, opinions,

10:48:18 1 reasons, who he talked to, nothing whatever to do with
2 that.

3 And if you let them take this deposition, then
4 what's to stop anybody from deposing a legislator?

10:48:31 5 What's the -- (indiscernible) of the fact -- to stop
6 them from deposing a judge, challenging a decision?

7 You know, the developer in this case
8 challenged -- they sued Judge Crockett. What's to stop
9 them from sitting Judge Crockett down and asking him,
10:48:48 10 What were the reasons for your decisions, to show that
11 he had bad reasons. What's to stop someone from
12 sitting down a member of Congress or the president who
13 has to sign legislation and take their deposition and
14 probe the reasons for their mental processes or the
10:49:02 15 deliberations they use or whom they relied on or what
16 they consulted.

17 Again, this goes to the very core of our
18 system of government. And that's why this is so
19 important, your Honor. This is -- this is absolutely
10:49:15 20 different --

21 THE COURT: But, I mean --

22 MR. SCHWARTZ: -- than the discovery the City
23 sought.

24 THE COURT: But the inquiry doesn't ask what
10:49:21 25 you're saying it asks for, right?

10:49:23 1 For example, I look at Interrogatory No. 1.
2 And I'm assuming that this is correct. But the inquiry
3 is the landowner have asked for names, addresses,
4 telephone numbers, and a summary of information that
10:49:36 5 was allegedly provided by experts to Mr. Seroka.

6 They're not asking him, Well, why did you vote
7 this way, or why did you do this, or why did you do
8 that? They're not asking him that question.

9 MR. SCHWARTZ: Oh, no. The next
10:49:49 10 interrogatories say -- say, you know, What's the basis
11 of your opinion that the City -- the City has a right
12 to require some developer to set aside 20 percent of
13 their property? That's what these questions ask for.

14 Look, counsel said at the hearing, at the last
10:50:08 15 hearing, if there's no basis for Council Member
16 Seroka's statements, it would be more evidence to show
17 that the City -- they've switched from Council Member
18 Seroka to the City -- engaged in a conduct to deny the
19 developer all use of the property.

10:50:28 20 First of all, what the City did, it passed a
21 law. It took -- it issued a decision on a development
22 application. It's in the public record. What the
23 City -- there's no dispute about what the City did.

24 Whether that conduct denied all use of the
10:50:43 25 property, you know, that -- that may be subject to

10:50:48 1 evidence. But Council Member Seroka's opinions about
2 some -- about some -- what he thinks the City did or
3 what the law is and who he relied on has absolutely
4 nothing to do with that.

10:51:03 5 You know, it said -- it -- Counsel said, if
6 indeed there were no facts to support the basis of
7 Council Member Seroka's statement, than that would
8 create a problem for the City.

9 What problem for the City? The issue is city
10:51:19 10 council takes an action. What's the economic impact on
11 the property?

12 It has nothing to do with it, your Honor. I
13 mean, the City's discovery -- if you compare the City's
14 discovery, we want to know how much the developer paid
10:51:38 15 for the property because we want to show that the
16 developer, in obtaining the City's approval for the
17 17-acre project for the 435 units has already
18 multiplied its investment by six times.

19 So that goes to the economic impact of the
10:51:53 20 regulation on the property. That's what a takings
21 inquiry is about.

22 We also wanted discovery on the physical
23 taking claim. They -- the developer submitted a
24 declaration, said the public's walking on my property,
10:52:05 25 and it's the City -- it's the City's fault or the City

10:52:08 1 told them they could do that. Well, that goes to the
2 physical taking claim.

3 This evidence has absolutely nothing to do
4 with anything, and it's very dangerous. Very
10:52:19 5 dangerous. Thank you.

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

7 THE MARSHAL: Your Honor, can we take a break?

8 THE COURT: Do you need a break, Peggy?

9 THE COURT REPORTER: Yeah.

10:52:29 10 THE COURT: Okay. What we're going to do,
11 we're going to take -- we only have one matter after
12 this, correct?

13 THE COURT CLERK: This is the final morning.

14 THE COURT: Oh, okay. We're going to take a
10:52:46 15 quick 15. This is the last matter on calendar for
16 today, for this morning.

17 THE COURT CLERK: This morning for sure.

18 THE COURT: Okay. We'll take 15. We'll give
19 our court reporter a break. And then we'll hear from
10:52:55 20 the plaintiff, 180, 180 Land.

21 -o0o-
(Recess)
22 -o0o-

23 THE COURT: Okay. We're going to go back live
24 and continue on.

11:11:39 25 And just want to make sure everyone is

11:11:43 1 connected.

2 Does it appear to be, CJ?

3 THE COURT CLERK: Um-hum. Three have video,
4 and the other three are by phone.

11:11:57 5 THE COURT: I thought Mr. Leavitt was on, was
6 he?

7 THE COURT CLERK: He is. I see his video.

8 MR. LEAVITT: I'm here, your Honor.

9 THE COURT: All right. I guess, sir, we're
11:12:03 10 going to pass the floor to you, sir.

11 MR. LEAVITT: I appreciate it, your Honor.

12 Your Honor, I'll be pointed in my response as
13 this is a discovery issue. Just very quickly, as you
14 recall, your Honor, there is a history here where we've
11:12:16 15 already heard this exact same issue and the exact same
16 argument that Mr. Schwartz just presented to you.
17 There is no new facts. And there's no new law that
18 Mr. Schwartz has brought to you to have you change your
19 mind.

11:12:26 20 And as you recall, approximately ten days ago
21 we were before you on the City's 56(d) motion. And as
22 you mentioned, that was an unusual request. It was a
23 request to not even allow us to present our summary
24 judgment so that the City could engage in discovery.

11:12:41 25 Well, that goes both ways.

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11:12:43 1 Now that the City has won that -- after the
2 City won that decision, now the City is saying it
3 doesn't want to engage in discovery, and it doesn't
4 want to respond to certain interrogatories.

11:12:52 5 Your Honor, this is a two-way street. And
6 when we lost that 56(d) motion, we lived with it.
7 Judge, we didn't bring a motion to reconsider. We're
8 going to go through discovery. We're going to comply
9 with the Court's order, and we'll refile that motion
11:13:04 10 for summary judgment at an appropriate time after
11 discovery is done.

12 But if the City is going to be able to engage
13 in discovery, so should the landowner. We should be
14 given that opportunity. And you heard what the City
11:13:15 15 said at the very beginning of their argument. I wrote
16 it down. They said the City is not concerned about
17 responding to the interrogatories.

18 The City didn't say it's overburdensome. The
19 City didn't say it would take too much time. The City
11:13:29 20 didn't say, Hey, this is going to be a big problem for
21 us, Judge.

22 The City said, We're not concerned about
23 responding to this interrogatory. And it won't.

24 It's very telling, your Honor, that the City
11:13:41 25 asked for the 56(d) motion. The City gets the time to

11:13:44 1 do discovery. The City is not concerned about
2 responding to this interrogatory, but the City simply
3 won't do it.

4 That tells us, your Honor, that there's
11:13:51 5 something there that the City does not want to disclose
6 which is adverse to the City's case.

7 Now, moving to Councilman Seroka, your Honor,
8 he stated -- it's in writing. We have the recording.
9 He stated that he has facts to show that there's an
11:14:09 10 open space or a PROS designation on the property. He
11 then told the surrounding homeowners that he has these
12 facts. And he told the surrounding homeowners because
13 of the facts that he has, the surrounding homeowners
14 can go onto the landowner's property and use it for
11:14:24 15 open space and recreation.

16 We are certainly entitled to those facts
17 because that is -- that goes to the very core of two
18 things, which I'll address, your Honor. It not only
19 goes to the core of the taking, but it also goes to the
11:14:37 20 core of the City's defense that there's this PROS.

21 We're certainly entitled to get the facts that
22 Mr. Seroka said that he knew about. And Mr. Seroka
23 said he received facts from an expert. We're entitled
24 to know the facts of who those experts are. We're
11:14:50 25 entitled to know the facts of what those experts told

11:14:54 1 him. He said he has facts that there's a 20 percent
2 requirement on the property. We're entitled to know
3 what those facts are. We're entitled to know where
4 those facts come from.

11:15:03 5 Now, counsel said that he cited to 15 cases
6 where there's a privilege that we're not entitled to
7 know these facts.

8 Well, Judge, we don't need to cite to 15
9 cases. We only need to cite to one case. It's a
11:15:18 10 Nevada Supreme Court case, and we cite it in our brief.
11 It's the DR Partners vs. Board of County Commissioners
12 case, a 2000 case. This is what the Court held in
13 regards to Mr. Schwartz' argument.

14 He said:

11:15:30 15 "The privilege is not, at least in general,
16 designed to protect purely factual matters."

17 And that's what we're asking for here. We're
18 not asking to go into what Mr. Seroka knew or didn't
19 know or what he was -- what was in his mind at the time
11:15:46 20 he made these statements. We're asking to find out the
21 facts that he said that he had at that time. That's
22 all we're asking for at this time.

23 And counsel keeps saying that we're not
24 entitled to depose him. At this point in time, we're
11:15:59 25 not asking for a deposition. All we're asking for are

11:16:03 1 the facts that he said he has.

2 We saw the words come out of his mouth --
3 they're in a transcript -- that he has these facts. We
4 want to see those facts.

11:16:13 5 Judge, let me tell you how these facts are
6 relevant. They're relevant in two ways, despite what
7 counsel tells you.

8 We have asserted a per se regulatory taking
9 claim. That per se regulatory taking claim clearly
11:16:27 10 states that if the government engages in an action that
11 authorizes the public to use private property or
12 preserves private property for use by the public, then
13 that's a taking.

14 Mr. Seroka told the surrounding homeowners
11:16:41 15 that the landowner's 250-acre property was their
16 recreation property. Mr. Seroka told the surrounding
17 landowners that they could enter onto the landowner's
18 property and use it. And we have the affidavit of Don
19 Richards where he has submitted hundreds of photos and
11:16:57 20 spoken to numerous of these individuals, showing
21 numerous of these individuals entering onto the
22 property, that asked them, Why are you on this
23 property?

24 And they said, Because the City authorized us
11:17:07 25 to be on your property.

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11:17:08 1 Your Honor, those are facts that go directly
2 to the taking claim that the landowners have made in
3 this case. They're facts that go directly to show that
4 the City authorized the public to enter onto the
11:17:23 5 landowner's property.

6 Now, I can see Mr. Schwartz's writing. I know
7 exactly what Mr. Schwartz is going to say here. He's
8 going to say, Judge, that's not -- that's not the
9 standard. Judge, you have to show a physical
11:17:35 10 appropriation or a total wipeout.

11 Okay. That's simply not true, and you've
12 already decided that issue.

13 And in your order, Judge, that was filed on
14 May 15th, 2019, you listed the landowner's taking
11:17:47 15 actions or taking causes of action. You listed all
16 five of them. And you listed the standard. And I'm
17 not going to rehash it here other than to read what one
18 of those standards is.

19 "To constitute a taking under the Fifth
11:17:59 20 Amendment, it's not necessary that the property
21 be absolutely taken in the narrow sense of that
22 word. It is sufficient if the action by the
23 government involves a direct interference with
24 or disturbance of property rights."

11:18:13 25 That's the law of this case.

11:18:14 1 And the law of this case is based upon the
2 State versus Eighth Judicial District Court case that
3 you cited in your order, and it's a correct statement
4 of the law, that the government engages in actions that
11:18:25 5 directly interfere with or disturb property rights,
6 that is a taking.

7 That's a direct quote from case law. That's a
8 direct quote from this order. And the Court does not
9 need to find the total wipeout or a physical
11:18:37 10 appropriation under Nevada law.

11 And these actions that Mr. Seroka engaged in
12 while he was a councilman telling the public that the
13 landowner's property is their property is one of the
14 aggregate of government actions that results in a
11:18:52 15 taking.

16 Now, what counsel is going to also say is
17 statements by councilpersons are irrelevant. I
18 probably heard that ten times during the argument.

19 That is patently untrue. In the Sisolak case,
11:19:06 20 your Honor, the Nevada Supreme Court has a long list of
21 the actions, and it goes through the facts and detail
22 in the Sisolak case.

23 Here's what the Court found was one of the
24 relevant facts to find a taking in the Sisolak case:

11:19:20 25 Sisolak spoke with Bill Keller, a principal

11:19:23 1 planner with the Department of Aviation.

2 So, Judge, we have, in the Sisolak case, Bill
3 Keller, he's a principal planner. He's not the highest
4 level person. He's not on the Board of County

11:19:35 5 Commissioners. He's not a councilperson. He's simply
6 a planner. I'm not degrading that. I'm just telling
7 you he's not one of the councilpersons.

8 Keller told Mr. Sisolak not to bother asking
9 for a variance to build above more than 75 feet because
11:19:48 10 the county wouldn't approve it. Keller stated that
11 height estimates would having -- would have -- given
12 Sisolak would have been in response to hypothetical
13 situations, not specific to Sisolak's property.

14 So the Court in the -- in the Sisolak case
11:20:01 15 relied upon statements by Bill Keller, a principal
16 planner, to assist it to find a taking in that case.

17 So for counsel to tell you that statements by
18 even higher level people at the City of Las Vegas,
19 councilpersons, are entirely irrelevant is patently
11:20:19 20 contrary to Nevada law, because Nevada law -- we don't
21 even have to say what Nevada law says. We see in the
22 decision that the Nevada Supreme Court relied upon the
23 statements by principal planner Mr. Keller.

24 Okay. So the first -- the first purpose for
11:20:36 25 obtaining this information is to help establish the

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11:20:39 1 taking itself.

2 These facts go to the very core of one of the
3 landowner's taking claims. And, Judge, you also hit it
4 right on the head.

11:20:48 5 You said, Well, wait a minute, Mr. Schwartz.
6 You're claiming as a defense this property has always
7 been an open space. You're claiming as a defense that
8 this property has always been PROS. These facts that
9 we want to discover, that we're asking for in these
11:21:02 10 interrogatories, go to those very issues.

11 I cannot think of anything more relevant than
12 the fact of who the experts were that Mr. Seroka spoke
13 to that told him this PROS and open space around the
14 property, the fact that the experts -- who those
11:21:18 15 experts are, their names, addresses, and telephone
16 numbers, the facts that Mr. Seroka said that 20 percent
17 of the property must be reserved for open space, we're
18 entitled to know the factual basis for that. Was it --
19 was it the Nevada Revised Statute? Was it City code?
11:21:32 20 Was it an ordinance? Was it a regulation? Who
21 provided him that 20 percent requirement? And all of
22 the developments in the City of Las Vegas that have
23 that 20 percent requirement.

24 Again, Mr. Schwartz said that the City has no
11:21:45 25 problem responding to this. This is an easy thing to

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11:21:48 1 respond to, that -- that -- the words that he used was
2 that the City is not concerned about responding to the
3 interrogatories. So there's no prejudice to the City.
4 There's no overburdensome. The City can provide this
11:22:00 5 data, which is clearly -- clearly discoverable, your
6 Honor, but clearly goes to these two incredibly
7 important issues in this case.

8 Now, one other issue that I want to address is
9 that Mr. Schwartz repeatedly is citing to the petition
11:22:16 10 for judicial review order. And, Judge, I know you've
11 heard this. You have three orders, Judge. There's
12 three -- not one, not two, but three orders where you
13 lay out in detail why the petition for judicial review
14 orders are entirely irrelevant in this inverse
11:22:31 15 condemnation case.

16 You said it several times. We're going to ask
17 that it be put in this order also. Because this will
18 now be the fourth time that the City is trying to argue
19 the petition for judicial review order in this case.
11:22:43 20 You said it's not relevant. You said it three times.
21 This will be the fourth time.

22 Let me -- let me -- let me explain a little
23 bit more just very quickly, again, why that petition
24 for judicial review order is specifically not relevant
11:22:57 25 to the PROS issue, which Mr. Schwartz either forgot

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11:23:00 1 about or didn't mention, is we appeared before you at
2 the end of 2020. In November 2020, there's an order
3 that's been entered in this case. And that order is on
4 the property rights issue. You'll recall, your Honor,
11:23:12 5 we had an argument over what the property rights are
6 that the landowner had prior to the government
7 interference. And you entered an order, and you held
8 that the property rights are that the property -- that
9 zoning must govern the determination of the property
11:23:24 10 rights. The zoning is R-PD7. And under R-PD7, the
11 landowners have the legally permissible right to use
12 the property for residential purposes.

13 And, therefore, the 35-acre property has the
14 right or is permitted by right to be used for
11:23:41 15 residential purposes. That's the order you entered.

16 Why did the Court not hang its hat on the PROS
17 that Mr. Schwartz is saying you already decided?
18 Here's why, Judge. Is because subsequent to -- or as
19 part of your PJR order, you relied upon the Crockett
11:23:56 20 order. You remember the Crockett order has been
21 adopted, and the Crockett order adopted the PROS
22 argument. We then appealed the Crockett order to the
23 Nevada Supreme Court, and the Nevada Supreme Court
24 reversed the Crockett order. It reversed the PROS
11:24:12 25 issue in the Crockett order.

11:24:13 1 Now, there's other bases that you have in your
2 PJR order to uphold it. For example, you said that
3 there were three bases to uphold your PJR order. One
4 of them was that the City relied upon the surrounding
11:24:27 5 landowners complaining that they -- they didn't want
6 this property developed. And you held that that was
7 substantial evidence for the City to deny the
8 application on the PJR side. Okay?

9 And you also said the PROS. But, again, that
11:24:40 10 PROS Crockett order has been reversed by the Nevada
11 Supreme Court. The Nevada Supreme Court reversed the
12 Crockett order in the 17-acre case.

13 And, your Honor, if I may say, that PJR
14 finding where you found that the City of Las Vegas
11:24:57 15 denied the applications based upon what the surrounding
16 property owners told them more fully supports the
17 taking action here because, again, one of the standards
18 to find a taking is if the government preserves
19 property for use by the surrounding property owners.

11:25:11 20 Your Honor, I could go on. I could go on and
21 I could respond to the -- the discussion that
22 Mr. Schwartz just presented to you about takings
23 jurisprudence. We don't need to do that right now,
24 Judge. All we need to know is that this -- these
11:25:29 25 facts, this evidence that we want to discover, is

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11:25:32 1 relevant to help establish the per se regulatory taking
2 claim, and it's relevant to rebut the City's continual
3 representation that there's some open space or PROS on
4 this property.

11:25:43 5 Now, Mr. Schwartz said, Hey, Judge, we don't
6 need to know this because there is an ordinance that
7 found that there is a PROS. They made that argument to
8 you in the end of 2020 in the property interest motion,
9 and it was rejected. The reason that argument was
11:25:57 10 rejected is because there is no ordinance that adopts a
11 PROS on the landowner's property.

12 Which brings into question: Why did
13 Mr. Seroka say this? Why did he say, Hey, I have all
14 these facts, I have all these experts, I have this
11:26:12 15 20 percent requirement. We should be able to obtain
16 those facts to help more fully rebut the City's
17 argument that there is this PROS and to more fully
18 establish the taking actions by the City of Las Vegas
19 in this matter.

11:26:25 20 Your Honor, if there's anything else you want
21 me to respond to, I can respond to it.

22 I will conclude by saying we've been down this
23 road. We've discussed it with the City. You entered
24 your order. The City didn't bring to you one fact or
11:26:41 25 one law different than it argued to you before. The

11:26:43 1 Courts have held that it's only under very rare
2 circumstances that a Court should reconsider its
3 holding, especially under this circumstance where the
4 City is asserting a continual defense and these facts
11:26:56 5 go directly to that defense.

6 And, your Honor, we're not talking here
7 about -- Mr. Schwartz has talked about how critically
8 important this is. Let's talk about how critically
9 important this is to the landowner. In the Knick
11:27:08 10 decision, a 2018 decision out of the United States
11 Supreme Court, the United States Supreme Court said
12 that these Fifth Amendment rights that these landowners
13 have in this case should be held in the highest regard
14 on the same level as other rights in the Bill of
11:27:23 15 Rights, the First Amendment, the Fourth Amendment, the
16 Sixth Amendment. Those are pretty important rights.
17 The Second Amendment. These are pretty important
18 rights that we have in our Bill of Rights. And the
19 Nevada -- United States Supreme Court said these Fifth
11:27:35 20 Amendment rights must be held at that same level.

21 And what we have here today is we have a
22 governmental entity wanting to make a defense to a
23 taking and not allow discovery on that defense in a
24 constitutional proceeding where constitutional rights
11:27:54 25 are at issue.

11:27:55 1 Your Honor, we have important rights here
2 also. We have rights here to the payment of just
3 compensation when our property is being taken by the
4 government that is held to the highest regard. The
11:28:06 5 government hasn't cited a -- a -- a policy which is
6 higher than what's found in the Bill of Rights.

7 So, your Honor, we think it's critical in
8 order to protect that right -- not I think. I know
9 it's critical in order to protect that right we be
11:28:21 10 given a full opportunity to engage in discovery the
11 same as the Court has given to the City by granting
12 that 56(d) motion.

13 And I can answer any questions, if you'd like,
14 your Honor.

11:28:32 15 THE COURT: None at this time, sir.

16 MR. LEAVITT: All right. Thank you.

17 THE COURT: We'll hear from the City in reply.

18 THE COURT CLERK: I can see Mr. Schwartz.

19 THE COURT: Mr. Schwartz, are you on, sir?

11:29:03 20 You might have to unmute.

21 MR. SCHWARTZ: I am, your Honor.

22 THE COURT: Okay.

23 MR. SCHWARTZ: Your Honor, counsel didn't cite
24 this DR Partners case in their opposition to the
11:29:16 25 motion. But I did look at the case while counsel was

11:29:21 1 arguing, and it doesn't apply, your Honor.

2 That was a case where litigants sought to show
3 that the government -- government employees were
4 misusing cell phones, were misusing public funds on
11:29:37 5 cell phone use. And they requested documents from the
6 city manager, not a legislator, but it's the city
7 manager.

8 And the Court found that the city manager and
9 the staff's discussions and use of those cell phones
11:29:55 10 was relevant -- of course was relevant in that case.

11 It has nothing to do with this case where
12 there is an absolute rule that a legislator cannot be
13 deposed or required to answer interrogatories or
14 produce documents. It's an unqualified, absolute rule.

11:30:16 15 We cited 15 cases for that rule. If the Court
16 were to allow these depositions or these
17 interrogatories -- require that these interrogatories
18 be answered, it would be completely unprecedented and
19 against the law.

11:30:31 20 Now, I think this issue of the PROS
21 designation goes to the heart of this case. Counsel
22 said the PROS designation does not exist. He said that
23 there is no such ordinance.

24 I refer the Court to the City's Exhibits I
11:30:53 25 through Q which are ordinances imposing the PROS

11:31:00 1 designation. And that goes to the heart of this case,
2 your Honor.

3 The -- whether the PROS designation applies to
4 the property, it clearly does. It's right there in the
11:31:16 5 ordinance. Nothing that Council Member Seroka or
6 anyone -- anyone can effect whether that designation
7 exists, whether it applies to the property. Again,
8 this Court has already determined that that PROS
9 designation is valid, that the developer knew about it
11:31:38 10 at the time they bought the property, and that the City
11 had no obligation to lift that designation.

12 That -- those facts, those issues are not only
13 irrelevant to the PJR claim, but they also go to the
14 inverse claim. And I spent a large part of this
11:31:57 15 hearing explaining why, yeah, the law of inverse
16 condemnation is no different than the law of PJR.
17 There is no -- there is no case law that says the law
18 is different when they're both based on the same
19 ordinance.

11:32:14 20 THE COURT: Wait. Wait. Wait. Wait.

21 MR. SCHWARTZ: The same law.

22 THE COURT: The law as it relates to petitions
23 for judicial review are much different than a civil
24 litigation seeking compensation for inverse
11:32:23 25 condemnation, sir.

11:32:26 1 MR. SCHWARTZ: Well --

2 THE COURT: The standards are different. I
3 mean, for example, they got to meet their burden by a
4 preponderance of the evidence. It's substantial -- I
11:32:33 5 mean, it's a totally different -- it's an
6 administrative process versus a full-blown jury trial
7 in this case. It's different completely.

8 MR. SCHWARTZ: But the underlying issue, your
9 Honor -- the underlying issue is, is there a PROS
11:32:45 10 designation?

11 THE COURT: Well, wait a second.

12 (Multiple speaker cross-talk)

13 MR. SCHWARTZ: Does it apply to the --

14 THE COURT: I'm going to tell you what the
11:32:49 15 underlying issue was in the other matter whether or not
16 there was substantial evidence in the record to support
17 the actions of the board or the city council.

18 MR. SCHWARTZ: That's correct.

19 THE COURT: And that's a much different
11:32:58 20 analysis than what's going on in this case.

21 If that's the case then, if you lose on
22 petition for judicial review, then you have no right to
23 a jury trial as a matter of law in an inverse
24 condemnation case.

11:33:10 25 And I don't think there's any law that says

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11:33:12 1 that.

2 MR. SCHWARTZ: You don't have a right to a
3 jury trial in -- for liability for an inverse
4 condemnation case, only on damages. But, your Honor --

11:33:20 5 THE COURT: That's what I'm talking about. I
6 understand what my role will be. I get it. I get
7 that.

8 But at the end of the day, when it comes to
9 damages, I'm not going to decide that, right?

11:33:28 10 MR. SCHWARTZ: No. The point is that the
11 basis for the Court to find that there was substantial
12 evidence and no abuse of discretion by the city council
13 in denying the 35-acre applications was the PROS
14 designation which the Court expounded on in its order
11:33:49 15 denying the petition for judicial review. The Court
16 said what that holds, that they had to apply for an
17 amendment, that it was discretionary for the City to
18 lift it.

19 The basis for their inverse claim is the same.
11:34:03 20 They've got to show that the City, in denying that
21 application, wiped out the economic value.

22 The fact and the law --

23 THE COURT: But what about the per se
24 regulatory taking?

03:07:54 25 (Multiple speaker cross-talk)

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11:34:14 1 MR. SCHWARTZ: The law --

2 THE COURT: What about -- but tell me, what
3 about the per se regulatory taking claim for relief in
4 this case?

11:34:21 5 MR. SCHWARTZ: That the PROS designation has
6 nothing to do with the physical takings claim.

7 The developers characterized their physical
8 takings claim as a per se regulatory taking.

9 The PROS designation has nothing to do with
11:34:40 10 that claim. That claim is whether the City passed a
11 law that required persons -- that required the
12 developer to allow the City or the public on their
13 property, physically on their property.

14 That is a question of interpretation for the
11:35:00 15 judge. Now, the developer relies on the Sisolak case,
16 which was a physical takings case. In that case, that
17 was a per se regulatory takings case where the
18 developer claimed that government regulation allowed
19 the public to use their air space.

11:35:21 20 Here's what the Court said in Sisolak:

21 "In determining whether a property owner
22 has suffered a per se taking by physical
23 invasion, a court must determine whether the
24 regulation has granted the government physical
11:35:34 25 possession of the property or whether it merely

11:35:36 1 forbids certain private uses of the space."
2 That could be the owner's use.
3 "If the regulation forces the property
4 owner to acquiesce to a permanent physical
11:35:48 5 occupation, compensation is automatically
6 warranted, since this constitutes a per se
7 taking. 'This element of required acquiescence
8 is at the heart of the concept of occupation.'
9 The second type of per se taking, complete
11:36:05 10 deprivation of value, is not at issue in this
11 case because Sisolak never argued that the
12 Ordinances completely deprived him of all
13 beneficial use of his property."
14 So Sisolak is clearly a physical takings case.
11:36:21 15 In that case, the Court interpreted ordinances which on
16 their face -- on their face -- require the property
17 owner to allow airplanes to fly in their airspace, to
18 physically occupy their property.
19 In the background section of the opinion, the
11:36:38 20 Court noted this discussion between the planner of -- a
21 planner and someone representing the property owner.
22 But it was background. It had nothing to do with the
23 Court's decision, which was to interpret an ordinance
24 on its face.
11:36:54 25 We have the same situation here. What -- what

11:37:00 1 Council Member Seroka told the public about who owned
2 what property and what they could do has nothing to do
3 with whether the City adopted an ordinance that
4 required the property owner to allow the City or the
11:37:15 5 public on their property.

6 Now, that's what's alleged. And we're going
7 to prove that the ordinance in question did not require
8 the developer to allow the public on their property.
9 That's for our motion for summary judgment.

11:37:28 10 But as far as what Seroka claims was the
11 regulation that required some set-aside of property for
12 open space is not at all relevant to the physical
13 takings claim. It's only potentially relevant to the
14 regulatory claim, the categorical claim, or the Penn
11:37:50 15 Central claim where the developer argues that
16 regulation prevented the developer's use of the
17 property.

18 However, the law is the law. You've looked at
19 Exhibits I through Q. They're ordinances. They say
11:38:03 20 PROS designation of the Badlands. It defines what PROS
21 means. It says you can open it and use it for these
22 uses, but you can't use it for housing. That's the
23 law. And that applies to an inverse condemnation claim
24 or a PJR or any other claim for relief regardless of
11:38:21 25 whether the claim -- the standard is substantial

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11:38:24 1 evidence or liability, that's the law. And the Court
2 has already recognized that law.

3 And in his closing remark, counsel said
4 these -- these statements go directly to our defense,
11:38:36 5 to the City's defense. He didn't say what that defense
6 was.

7 We -- we're not claiming that there was some
8 20 percent set-aside rule that Council Member Seroka
9 may have believed existed. We're showing the Court the
11:38:57 10 law, which is Exhibits I through Q, which are City
11 ordinances passed by the city council as a whole. The
12 City can only act through the city council to affect
13 property. Can only make laws through the city council.
14 These are the laws that apply in this case.

11:39:12 15 And the Court has never found that the
16 property owner has a property right to build
17 residential units in the subject property regardless of
18 the general plan. It's never found it has a property
19 right under zoning to do anything. In fact, the Court
11:39:34 20 found the opposite in the PJR.

21 So either the property owner has a property
22 right or not. And it doesn't matter whether it's a PJR
23 or inverse condemnation. If both claims are based on
24 the claim that the property owner has a property right
11:39:51 25 under zoning, which is an absurd proposition and

11:39:54 1 contradicted by all -- all authority, and, again, this
2 Court found that it does not, and the Ninth Circuit
3 found that it does not, which we contend is an issue
4 preclusion bar on that issue.

11:40:05 5 But these are all legal issues. They're for
6 the Court to decide based on ordinances and other
7 official City actions of the city council, which are
8 all in the public record. What Council Member Seroka
9 says about those actions or any other actions has
11:40:24 10 absolutely nothing to do with this case.

11 And, again, there is no precedent for allowing
12 a discovery from a legislator on a matter in
13 controversy, no precedent at all. All the cases are
14 the other way. And for very good reason, because to do
11:40:41 15 so would break down the separation of powers, and it
16 would have severe adverse effects on our republican
17 form of government.

18 Thank you.

19 THE COURT: All right. Okay. This is what
11:40:53 20 I'm going to do. And I want to make sure the record is
21 clear in this regard.

22 Number one, I see a distinct difference
23 between the mental processes of a member of the
24 legislature when it comes to enacting ordinances and/or
11:41:06 25 state statutes.

11:41:08 1 And that's not really what we're talking about
2 here, and that's not what the thrust of the
3 interrogatories really focus on.

4 Just as important too, and I want to say this
11:41:18 5 for the record: I don't believe in a "what's good for
6 the goose is good for the gander" argument when it
7 comes to any issue.

8 For example, I remember in one of my earlier
9 jury trials a lawyer said, Look, Judge, you sustained
11:41:36 10 their objection eight times in a row. Well, that's not
11 part of the analysis, because I've had cases where I've
12 had over a hundred pretrial motions. I don't sit there
13 and say, Well, I'm going to give some to one side and
14 some to the other. You just -- you just look at it
11:41:50 15 from an umpire's perspective, and you look at that one
16 pitch. And if that pitch is a strike, it's a strike.
17 If it's a ball, it's a ball.

18 Just as important, maybe you have a talented
19 pitcher on the mound like Sandy Koufax, who is known
11:42:06 20 for striking -- you know, striking -- throwing -- he
21 was known for his efficiency as a pitcher as it
22 pertains to strikeouts. And so that's my point.

23 Just as important too, this isn't a petition
24 for judicial review. It's not a motion for summary
11:42:21 25 judgment. All we're talking about here is a simple

11:42:24 1 discovery motion, more or less.

2 And the law is pretty clear as it relates to
3 discovery. And that's much broader than admissibility
4 at the time of trial.

11:42:36 5 Here, the plaintiff is alleging a per se
6 regulatory taking.

7 And I don't see any change in the law or facts
8 that would be the basis for me to grant a motion for
9 reconsideration under the facts of this case.

11:42:50 10 And so what I am going to do is this regarding
11 the City's motion for rehearing and also for
12 reconsideration, I'm going to grant the motion for
13 reconsideration and let the three interrogatories
14 stand.

11:43:03 15 That doesn't mean, Mr. Leavitt, that what you
16 find out will necessarily be admissible automatically
17 at the time of trial. I think you understand that.
18 But it's a simple discovery motion, nothing more,
19 nothing less.

11:43:17 20 And that's going to be the basis for my
21 decision today, gentlemen.

22 All right. And, Mr. Leavitt, can you prepare
23 the order, sir?

24 MR. LEAVITT: Yes, your Honor. I'll prepare
11:43:28 25 the order.

11:43:28 1 And thank you for your time.
2 THE COURT: All right. Everyone enjoy your
3 day.
4 MR. LEAVITT: Thank you.
11:43:33 5 MR. OGILVIE: Thank you.
6 MS. HAM: Thank you, your Honor.

7
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9
10 (Proceedings were concluded.)
11

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STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
MATTER AT THE TIME AND PLACE INDICATED, AND THAT
THEREAFTER SAID STENOGRAPHY NOTES WERE TRANSCRIBED INTO
TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

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<p>B</p> <p>bad... [6] 20/25 21/1 21/22 33/21 34/3 49/11</p> <p>Badlands [4] 39/24 40/11 43/4 74/20</p> <p>balancing [1] 23/9</p> <p>ball [2] 77/17 77/17</p> <p>ballpark [1] 8/10</p> <p>bar [3] 25/19 34/21 76/4</p> <p>based [9] 7/9 17/15 37/4 39/13 59/1 64/15 69/18 75/23 76/6</p> <p>bases [2] 64/1 64/3</p> <p>basic [2] 18/25 24/25</p> <p>basis [17] 7/17 15/11 32/14 32/20 32/23 33/2 33/5 34/10 47/11 50/10 50/15 51/6 61/18 71/11 71/19 78/8 78/20</p> <p>be [73] 5/22 5/24 7/9 8/25 10/3 12/25 13/24 14/11 14/25 17/8 17/8 17/21 21/6 21/25 22/5 22/18 22/23 22/24 23/2 23/5 23/9 23/11 24/1 25/1 25/23 26/8 27/7 30/18 31/21 31/24 32/4 32/5 32/7 32/17 32/23 34/7 35/3 35/14 39/15 41/25 42/15 43/7 44/16 45/10 45/19 46/5 48/14 50/16 50/25 53/2 53/12 54/12 54/13 54/20 57/25 58/21 61/17 62/17 62/18 62/21 63/14 65/15 66/13 66/20 67/9 68/12 68/18 68/18 71/6 73/2 78/8 78/16 78/20</p> <p>bearing [3] 27/9 27/24 31/11</p> <p>bears [1] 42/2</p> <p>because [43] 7/9 9/5 9/9 9/11 10/2</p>	<p>10/4 10/23 12/18 13/10 15/21 16/17 17/8 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