

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 112, PART 2**

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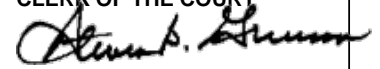
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

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

Hearing Requested

COMES NOW Plaintiff Landowners, 180 LAND CO., LLC and FORE STARS Ltd.
(hereinafter "the Landowners"), by and through their attorneys, the Law Offices of Kermitt L.
Waters, and hereby files this Motion to Determine Prejudgment Interest.

///

1 This motion is based upon the papers and pleadings on file, the appendix of exhibits and
2 declarations attached hereto and any evidence or argument heard at the time of the hearing on this
3 matter.

4 DATED this 9th day of December, 2021.

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

6 /s/ James J. Leavitt

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15 ***Attorneys for Plaintiffs Landowners***

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 This is a constitutional proceeding brought under Article 1, Section 8 of the Nevada State
19 Constitution.¹ A Judgment of \$34,135,000 was entered in favor of Plaintiff Landowners, 180
20 LAND CO., LLC and FORE STARS Ltd. (hereinafter “the Landowners”) and against the City of
21 Las Vegas (hereinafter “the City”). This post trial motion is brought to request that the Court
22 determine the prejudgment interest owed on the \$34,135,000 verdict.² To determine the
23 prejudgment interest owed, the Landowners request that the Court make three findings: 1) the date
24 interest should commence; 2) the proper interest rate; and, 3) whether interest should be
compounded monthly or annually.

¹ Nev. Const. art. I§§ 8, 22. *See also* U.S. Const. amend. V.

² Pursuant to NRS 37.175(1) the Landowners are entitled to prejudgment interest until the judgment is satisfied. The City has yet to satisfy the judgment, so the daily interest rate is provided for the period until the City satisfies the judgment.

1
2 **II. LAW**

3 Nevada has adopted very specific rules for deciding the prejudgment interest award in the
4 context of this inverse condemnation action. The following legal argument sets forth these specific
5 rules and how they apply to this inverse condemnation action.

6 **A. Prejudgment Interest Must be Awarded as Part of the Landowners' "Just Compensation" Award.**

7 It is well settled that the constitutional mandate of "just compensation" includes
8 prejudgment interest: "Just compensation shall include, but is not limited to, **compounded**
9 **interest** and all reasonable costs and expenses actually incurred" Nev. Const. art. I §22(4)
10 (emphasis added); NRS 37.120(3). It is also well settled that "just compensation" must be "real,
11 substantial, full and ample" and it must put the landowner in "as good a position monetarily" as
12 she would have been in had her property not been taken. Id. Therefore, the Landowners are entitled
13 to an amount of prejudgment interest that is real, substantial, full, and ample, which will put them
14 back in the same position, monetarily, as they would have been, had their property not been taken.
15 Id.

16 **B. This Court Decides Three Issues to Calculate the Landowners' Prejudgment Interest.**

17
18 Nevada has adopted specific legislation for deciding the prejudgment interest issues in this
19 inverse condemnation case, requiring that this Court decide three issues: 1) the date interest
20 commences; 2) the rate; and, 3) how to compound the interest:

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

- a) The date on which the computation of interest will commence;
- b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

1 c) Whether the interest will be compounded annually."

2 NRS 37.175 (4).

3 **1. First Issue - Interest Must Commence on the Date of First Injury.**

4 In an eminent domain and inverse condemnation case, where the market value is not paid
5 contemporaneously with the taking, "the owner is entitled to interest for the delay in the payment
6 from the date of the taking until the date of the payment." Clark County v. Alper, 100 Nev. 382,
7 392 (1984). *See also* McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006) (affirming award of
8 prejudgment interest in an inverse condemnation proceeding from the date of taking until the date
9 of payment). "The purpose of awarding interest is to compensate the landowner for the delay in
10 the monetary payment that occurred after the property had been taken." Id.

11 Unlike some cases where there is one specific act that results in the taking, here, the City
12 engaged in numerous systematic and aggressive actions toward the Landowners' 35 Acre Property
13 to prohibit all use of the property so that the surrounding public could use the Landowners'
14 Property. *See* Findings of Fact and Conclusions of Law Granting Landowners' Motion to
15 Determine Take, filed October 25, 2021 ("FFCL Re: Take"). Under these circumstances, the Court
16 looks to the first date of compensable injury resulting from the government's conduct. City of
17 North Las Vegas v. 5th & Centennial, LLC., 130 Nev. 619 (2014) (relying on eminent domain
18 statutes and law to commence interest in a precondemnation damages case on the first date of
19 compensable injury).

20 This Court's FFCL Re: Take provides guidance on the first date of compensable injury.
21 The FFCL Re: Take finds that the City, at the direction of the surrounding owners, denied all
22 Landowner requests to use the 35 Acre Property for a residential use, even though the City's own
23 Planning Department determined the proposed residential use complied with all City development
24 standards and all Nevada Revised Statute requirements. FFCL Re: Take, filed October 25, 2021,

1 p. 11:5 – p. 19:10. The City first denied the 35 Acre stand-alone application on June 21, 2017, on
2 the basis that the City was going to approve the Master Development Agreement (MDA) for the
3 entire 250 Acres, but then when the MDA was presented for approval just 42 days later on **August**
4 **2, 2017**, the City denied the MDA. Id. Finding #86 on page 19 concisely states, “the City denied
5 an application to develop the 35 Acre Property as a stand-alone property and the MDA to develop
6 the entire 250 Acres. Both denials were contrary to the recommendation of the City’s Planning
7 Department.” Id. The City then followed this up with countless systematic and aggressive actions
8 to deny all use of the 35 Acre Property. *See generally* the FFCL Re: Take. Therefore, the first
9 date of injury is at least **August 2, 2017**, the date of the MDA denial and, accordingly, the
10 Landowners recommend that this date be used as “[t]he date on which the computation of interest
11 will commence” under NRS 37.175(4).

12 **2. Second Issue - The Rate of Interest to Be Used to Compute the Award**
13 **of Interest.**

14 The Nevada Supreme Court has held that the determination of the interest rate in an
15 eminent domain action is a question of fact for the district court judge to decide post trial. State
16 ex rel. Dept. of Transp. v. Barsy, 113 Nev. 712 (1997). The Nevada Revised Statutes and Nevada
17 eminent domain and inverse condemnation law provide the standard on this question of fact. NRS
18 37.175 (4) provides that the prejudgment interest rate in an eminent domain case must not be less
19 than the prime rate of interest plus 2 percent. The Nevada Supreme Court has recognized that this
20 prime plus 2 percent is the “floor” - “[s]tatutory interest rates as applied to prejudgment interest
21 are generally considered as a ‘floor’ on the rate allowable for compensation under the fifth
22 amendment.” Clark County v. Alper, *supra*, at 394. *See also* State ex rel. Dept. of Transp. v.
23 Barsy, 113 Nev. 712, *overruled on unrelated issue* (1997) (eminent domain case rejecting the
24 argument that the statutory rate is prima facie evidence of a fair rate and holding the statutory rate
is a “floor on permissible rates.” Id., at 719). This “floor” rate is not used if competent evidence

1 of a more appropriate rate is provided - “once competent evidence is presented supporting another
2 rate of interest as being more appropriate, the district judge must then determine which rate would
3 permit the most reasonable interest rate.” Barsy, at 718. The Court reasoned that just
4 compensation requires that the landowner “be put in as good position pecuniarily as he would have
5 been if his property had not been taken” and the “purpose of awarding interest is to compensate
6 the landowner for the delay in the monetary payment that occurred after the property has been
7 taken.” Barsy, at 718.

8 Therefore, this Court should determine the proper interest rate based on what rate of return
9 the Landowners could have achieved on \$34,135,000 had it been paid on August 2, 2017, the date
10 set forth above. This requires the Court to decide the proper rate of return from 2017 (the date of
11 take) to 2021 (the date of judgment).

12 In the Barsy case, as one factor to decide the proper interest rate, Mr. Barsy’s expert
13 testified that a prudent landowner would have “invested his money in land similar to that
14 condemned” and the district court relied, in part, on this rate of return on land as the basis for the
15 proper interest rate and the Nevada Supreme Court held this substantially supported the district
16 court’s interest rate finding. Barsy, at 718-19. Moreover, as this Court heard extensively during
17 this litigation, the Landowners principals are real estate developers who invest in land for the
18 purpose of future development and/or sale and, therefore, the only way the Landowners can be
19 “put in as good position pecuniarily as [they] would have been if [their] property had not been
20 taken” is to consider the rate of return on land investments during the relevant period.³ Therefore,
21 the Landowners, following Barsy, have obtained the rate of return on vacant single-family and
22 multi-family residential properties in Las Vegas during the relevant periods (2017-2021) – which

23
24 ³ The Landowners have incurred significant other losses as a result of the City’s actions in this
matter, including substantial damages to their company, meaning that even this award of
prejudgment interest will not fully cover all of their losses.

1 is consistent with the legally permissible uses of the 35 Acre Property. Based on this data, the
2 Landowners then suggest a proper rate of return.

3 **a. Rate of Return on Vacant Residential Land Similar to the 35**
4 **Acre Property, Following the Barsy Decision.**

5 To determine the rate of return on land similar to the 35 Acre Property for the years 2017
6 - 2021, the Landowners provide two sources: 1) an analysis by expert appraiser Tio DiFederico;
7 and, 2) an analysis by real estate expert, Bill Lenhart. *Exhibits 1 and 2, respectively.*

8 **Analysis by Appraiser Tio DiFederico⁴** – Mr. DiFederico researched and
9 analyzed the appreciation rate for vacant residential land in Las Vegas from August 2, 2017 –
10 September, 2021. He considered Colliers International Research & Forecast Reports from the 3rd
11 quarter 2017 through 3rd quarter 2021, which reported an increase of 190.2% for vacant residential
12 land in the Southwest submarket of Las Vegas – the location of the 35 Acre Property (which
13 equates to **30.5% per year, to be compounded annually**). *Exhibit 1, p. 1 and p. 3, Summary*
14 *Chart*. He also considered data compiled by CoStar, a source relied upon by expert appraisers that
15 compiles property sales in Las Vegas, which showed an increase of 128.6% for vacant residential
16 land in Las Vegas from 2017-2021 (which equates to **23% per year, to be compounded**
17 **annually**). *Exhibit 1, p. 2 and p. 3, Summary Chart*. He also considered the rate increase for
18 vacant residential finished lots sold in the Summit, a residential area in Summerlin, which showed
19 an increase of 97.1% from 2017-2021 (which equates to **18.9% per year, to be compounded**
20 **annually**). *Exhibit 1, p. 2 and p. 3, Summary Chart*. Mr. DiFederico also considered the sale and
21 resale of five vacant residential properties in Las Vegas during the relevant 2017-2021 period,
22 which showed an increase of **23% per year, to be compounded annually**. *Exhibit 1, p. 4*. Mr.

23 ⁴ Mr. DiFederico confirms by Declaration that all of the data in his report is considered relevant
24 and reliable in his field of expertise and is true and correct. *Exhibit 1A, Declaration of Tio*
DiFederico.

1 DiFederico then concludes that an investor who purchased residential land in the area of the 35
2 Acre Property in 2017 and held that investment until 2021, would have received a rate of return of
3 23%, to be compounded annually. *Id.* This analysis is consistent with the analysis that was
4 approved in the Barsy case.

5 **Analysis by Real Estate Expert Bill Lenhart⁵** – Mr. Lenhart is the managing member of
6 a large real estate brokerage company - Sunbelt Development and Realty Partners, LLC. He
7 researched seven properties that were originally purchased by investors at Clark County auctions
8 (involving BLM / Clark County Aviation properties) and then resold that property during the
9 relevant 2017-2021 period. *Exhibit 2.* All eight of the sales and re-sales involve vacant residential
10 land in the southwest sector of the Las Vegas valley – near the area of the 35 Acre Property. *Id.*
11 These eight sales and resales showed an annual rate of return on these residential properties of
12 39.40%, 25.81%, 47.82%, 47.99%, 45.50%, 45.50%, 22.03%, and 15.32%. *Id.* He concluded,
13 based on his research and analysis, that an investor that invested \$34,135,000 in vacant residential
14 land in the Southwest sector of Las Vegas in 2017 and resold it in 2021 would reasonably expect
15 an annual rate of return of **25-27%, to be compounded annually.** *Id.* This analysis is also
16 consistent with the analysis that was approved in the Barsy case.

17 Therefore, a proper rate of return (interest rate) to apply in specific context of this inverse
18 condemnation case is either 23% or 25-27%, to be compounded annually.

19 **3. Third Issue - Whether the Interest Will Be Compounded.**

20 The final determination this Court must make to calculate the prejudgment interest is
21 whether the interest will be compounded annually or more often. The Nevada Constitution states,
22 “[j]ust compensation shall include, but is not limited to, **compounded interest** and all reasonable
23

24 ⁵ Mr. Lenhart confirms by Declaration that all of the data in his report is considered relevant and
reliable in his field of expertise and is true and correct. *Exhibit 2A, Declaration of Bill Lenhart.*

1 costs and expenses actually incurred" Nev. Const. art. I §22(4) (emphasis added). NRS 37.175(1)
2 further provides that this compounding continues "until the date the judgment is satisfied."
3 Therefore, the interest amounts herein will continue to increase until the City satisfies the
4 judgment.

5 There are several ways to compound interest - annually, quarterly, monthly, weekly, daily,
6 etc. Here, experts Tio DiFederico and Bill Lenhart opine that, if the rate of return on land is used,
7 then the rate should be compounded annually. *Exhibits 1 and 2*. This is what an investor in the
8 real world would have achieved had the \$34,135,000 judgment been paid in 2017. And, it is what
9 the Landowners would have received on their land investments, which is necessary to "be put in
10 as good position pecuniarily as [they] would have been if [their] property had not been taken."
11 Barsy, at 718. And, the "purpose of awarding interest is to compensate the [Landowners] for the
12 delay in the monetary payment that occurred after the property has been taken." Id.

13 Accordingly, applying the rate of return on land, requires that this rate be compounded
14 annually.

15 **III. CONCLUSION AND CALCULATIONS**

16 The analysis above provides the basis for the Court to calculate the prejudgment interest in
17 this matter. **First**, it is respectfully requested that prejudgment interest commence on August 2,
18 2017. **Second**, it is respectfully requested that this Court order 23% as the rate of return,⁶ as this
19 is the rate most commensurate with land value increases, like the 35 Acre Property, and this same
20 analysis was approved in the Barsy case.⁷ **Third**, it is respectfully requested that the rate of return
21 be compounded annually. Using these data points, the prejudgment interest award in this case may
22

23 ⁶ As set forth above, Mr. Lenhart's report arrived at a 25-27% rate of return, which may also be
24 considered by this Court. In the event this Court determines the proper rate of return is 25-27%,
the Landowners will provide calculations for this rate of return.

⁷ As indicated above, this 23% is the lowest rate of return provided by the experts.

1 be easily calculated, using a compound interest calculator, which results in the following
2 prejudgment interest award from August 2, 2017 (date of take) – February 2, 2022 (anticipated
3 date of entry of prejudgment interest order):

4 \$34,135,000 x 23% for 4.5 years, compounded annually = **\$52,515,866.90** in prejudgment
5 interest.

6 *See Exhibits 3, 4, and 5, three different compound interest calculators inputting the above data*
7 *and uniformly arriving at \$52,515,866.90 in prejudgment interest.*

8 Additionally, prejudgment interest continues to run until the judgment is satisfied. NRS
9 37.175(1). The prejudgment interest for the final half year is \$8,520,411.33, or \$17,040,822.70 for
10 a full year – up to August 2, 2022. *See Exhibit 5.* This equates to \$46,687.19 per day
11 (\$17,040,822.70 / 365 = \$46,687.19). Therefore, it is respectfully requested that the daily
12 prejudgment interest accrue at a rate of **\$46,687.19 per day** until the City satisfies the judgment.
13 This daily rate will apply up to August 2, 2022, meaning if the City does not satisfy the judgment
14 by that date, the daily prejudgment interest will continue to accrue as follows:

- 15 • For the period August 2, 2022 – August 2, 2023 – **\$54,601.92 per day**
16 (\$19,929,699.57 interest / 365); and,
- 17 • For the period August 2, 2023 – August 2, 2024 – **\$67,160.36 per day**
18 (\$24,513,530.51 interest / 365).

19 *See Exhibits 6 and 7, daily rates taken from the interest calculations for August 2, 2022 – August*
20 *2023 and August 2023 – August 2024.*

21 Two blanks were left in the FFCL re: Just Compensation and Judgment in Inverse
22 Condemnation for prejudgment interest. It is respectfully requested that those two blanks now be
23 filled in as follows:

1 The City shall pay prejudgment interest in the amount of **\$52,515,866.90** for interest up to
2 ~~the date of judgment (October 27, 2021)~~ February 2, 2022,⁸ and a daily prejudgment interest
3 thereafter in the amount of **\$46,687.19 (up to August 2, 2022); \$54,601.92 (up to August 2,**
4 **2023); and, \$67,160.36 (up to August 2, 2024)**, until the date the judgment is satisfied. NRS
5 37.175.

6 DATED this 9th day of December, 2021.

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23
24 ⁸ The October 27, 2021, date should be changed to February 2, 2022, as this date reflects the
anticipated date of entry of the prejudgment interest order, meaning interest should be calculated
up to this date, with daily interest running thereafter until the City satisfies the judgment.

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/s/ Sandy Guerra
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