

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

Electronically Filed
Oct 27 2022 02:29 PM
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**AMENDED
JOINT APPENDIX
VOLUME 17, PART 4 OF 4
(Nos. 3278-3314)**

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

Nevada Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq.

Nevada Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq.

Nevada Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq.

Nevada Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

*Attorneys for 180 Land Co., LLC and
Fore Stars, Ltd.*

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, Esq.

Nevada Bar No. 4381

bscott@lasvegasnevada.gov

Philip R. Byrnes, Esq.

pbyrnes@lasvegasnevada.gov

Nevada Bar No. 166

Rebecca Wolfson, Esq.

rwolfson@lasvegasnevada.gov

Nevada Bar No. 14132

495 S. Main Street, 6th Floor

Las Vegas, Nevada 89101

Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM

Micah S. Echols, Esq.

Nevada Bar No. 8437

micah@claggettlaw.com

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

(702) 655-2346 – Telephone

*Attorneys for 180 Land Co., LLC and
Fore Stars, Ltd.*

McDONALD CARANO LLP

George F. Ogilvie III, Esq.

Nevada Bar No. 3552

gogilvie@mcdonaldcarano.com

Amanda C. Yen, Esq.

ayen@mcdonaldcarano.com

Nevada Bar No. 9726

Christopher Molina, Esq.

cmolina@mcdonaldcarano.com

Nevada Bar No. 14092

2300 W. Sahara Ave., Ste. 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

LEONARD LAW, PC

Debbie Leonard, Esq.

debbie@leonardlawpc.com

Nevada Bar No. 8260

955 S. Virginia Street Ste. 220

Reno, Nevada 89502

Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz, Esq.

schwartz@smwlaw.com

California Bar No. 87699

(admitted pro hac vice)

Lauren M. Tarpey, Esq.

ltarpey@smwlaw.com

California Bar No. 321775

(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

Attorneys for City of Las Vegas

Exhibit 38

Southern Nevada GIS ~ OpenWeb Info Mapper



The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information

Parcel:	138-31-314-006
Owner Name(s):	BINION JACK B & PHYLLIS M
Site Address:	9831 ORIENT EXPRESS CT
Jurisdiction:	Las Vegas - 89145
Zoning Classification:	Residential Planned Deveopment District (R-PD7)

Misc Information

Subdivision Name:	PECCOLE WEST-PARCEL 20	
Lot Block:	Lot:6 Block:B	Construction Year: 2001
Sale Date:	02/1999	T-R-S: 20-60-31
Sale Price:	\$562,000	Census Tract: 3226
Recorded Doc Number:	19990226 00005210	Estimated Lot Size: 1.02
Flight Date:	Aerial Flight Date: Mar.18.2017	

Elected Officials

Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA
Board of Education:	3 - FELICIA ORTIZ	Minor Civil Division:	Las Vegas

Southern Nevada GIS ~ OpenWeb Info Mapper



The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information

Parcel:	138-31-314-007
Owner Name(s):	ABDELAZIZ GAMAL and FELAYA AMAL
Site Address:	9821 ORIENT EXPRESS CT
Jurisdiction:	Las Vegas - 89145
Zoning Classification:	Residential Planned Deveopment District (R-PD7)

Misc Information

Subdivision Name:	PECCOLE WEST-PARCEL 20		
Lot Block:	Lot:7 Block:B	Construction Year:	Construction Year: 2003
Sale Date:	09/2011	T-R-S:	20-60-31
Sale Price:	\$3,000,000	Census Tract:	3226
Recorded Doc Number:	20110916 00002084	Estimated Lot Size:	Estimated Lot Size: 1.35
Flight Date:	Aerial Flight Date: Mar.18.2017		

Elected Officials

Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA
Board of Education:	3 - FELICIA ORTIZ	Minor Civil Division:	Las Vegas

Southern Nevada GIS ~ OpenWeb Info Mapper



The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information

Parcel:	138-31-314-008
Owner Name(s):	ROESENER & WENGER-ROESENER TRUST and ROESENER DALE W TRS
Site Address:	9811 ORIENT EXPRESS CT
Jurisdiction:	Las Vegas - 89145
Zoning Classification:	Residential Planned Deveopment District (R-PD7)

Misc Information

Subdivision Name: **PECCOLE WEST**-PARCEL 20

Lot Block:	Lot:8 Block:B	Construction Year:	Construction Year: 2003
Sale Date:	03/2001	T-R-S:	20-60-31
Sale Price:	\$631,000	Census Tract:	3226
Recorded Doc Number:	20010329 00002200	Estimated Lot Size:	Estimated Lot Size: 1.24
Flight Date:	Aerial Flight Date: Mar.18.2017		

Elected Officials

Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)

Southern Nevada GIS ~ OpenWeb Info Mapper



The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information

Parcel:	138-31-314-009
Owner Name(s):	FARIES DURWARD JR & TARRY A
Site Address:	9801 ORIENT EXPRESS CT
Jurisdiction:	Las Vegas - 89145
Zoning Classification:	Residential Planned Deveopment District (R-PD7)

Misc Information

Subdivision Name:	PECCOLE WEST-PARCEL 20	
Lot Block:	Lot:9 Block:B	Construction Year: 2002
Sale Date:	06/2003	T-R-S: 20-60-31
Sale Price:	\$4,200,000	Census Tract: 3226
Recorded Doc Number:	20030611 00000220	Estimated Lot Size: 1.13
Flight Date:	Aerial Flight Date: Mar.18.2017	

Elected Officials

Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA
Board of Education:	3 - FELICIA ORTIZ	Minor Civil Division:	Las Vegas

Southern Nevada GIS ~ OpenWeb Info Mapper



The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 9/5/2018

Property Information

Parcel:	138-31-311-014
Owner Name(s):	SCHRECK FRANK A and BAUMAN-FRERES JULIETTA
Site Address:	9824 WINTER PALACE DR
Jurisdiction:	Las Vegas - 89145
Zoning Classification:	Residential Planned Deveopment District (R-PD7)

Misc Information

Subdivision Name:	PECCOLE WEST-LOT 11		
Lot Block:	Lot:25 Block:A	Construction Year:	Construction Year: 1998
Sale Date:	04/2014	T-R-S:	20-60-31
Sale Price:	\$2,125,000	Census Tract:	3226
Recorded Doc Number:	20150914 00001800	Estimated Lot Size:	Estimated Lot Size: 0.84
Flight Date:	Aerial Flight Date: Mar.18.2017		

Elected Officials

Commission District:	C - LARRY BROWN (D)	City Ward:	2 - STEVE SEROKA
US Senate:	Dean Heller, Catherine Cortez-Masto	US Congress:	3 - JACKY ROSEN (D)
State Senate:	8 - PATRICIA FARLEY (N)	State Assembly:	2 - JOHN HAMBRICK (R)
School District:	E - LOLA BROOKS	University Regent:	7 - MARK DOUBRAVA

Exhibit 39

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT N. PECCOLE; AND NANCY A.
PECCOLE,
Appellants,

vs.

FORE STARS, LTD., A NEVADA
LIMITED LIABILITY COMPANY; 180
LAND CO., LLC, A NEVADA LIMITED
LIABILITY COMPANY; SEVENTY
ACRES, LLC, A NEVADA LIMITED
LIABILITY COMPANY; EHB
COMPANIES, LLC, A NEVADA LIMITED
LIABILITY COMPANY; YOHAN LOWIE,
AN INDIVIDUAL; VICKIE DEHART, AN
INDIVIDUAL; AND FRANK PANKRATZ,
AN INDIVIDUAL,
Respondents.

ROBERT N. PECCOLE; AND NANCY A.
PECCOLE, INDIVIDUALS,
Appellants,

vs.

FORE STARS, LTD., A NEVADA
LIMITED LIABILITY COMPANY; 180
LAND CO., LLC, A NEVADA LIMITED
LIABILITY COMPANY; SEVENTY
ACRES, LLC, A NEVADA LIMITED
LIABILITY COMPANY; EHB
COMPANIES, LLC, A NEVADA LIMITED
LIABILITY COMPANY; YOHAN LOWIE,
AN INDIVIDUAL; VICKIE DEHART, AN
INDIVIDUAL; AND FRANK PANKRATZ,
AN INDIVIDUAL,
Respondents.

No. 72410

FILED

OCT 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 72455

ORDER OF AFFIRMANCE

These consolidated appeals are from district court orders
awarding attorney fees and costs and denying NRCP 60(b) relief from a

SUPREME COURT
OF
NEVADA

(O) 1947A 

18-40859

0146

3285

dismissal order in a real property dispute.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

This case arises out of a dispute appellants have with respondents, who are planning to develop property on which a golf course is presently located, and which appellants argue is subject to development restrictions under the Master Declaration of Covenants, Conditions, Restrictions and Easements (CC&Rs) for the Queensridge community in Las Vegas where appellants reside. Appellants sued respondents for injunctive relief and damages based on theories of impaired property rights and fraud. The district court dismissed appellants' complaint and then denied appellants' motion for NRCP 60(b) relief. Additionally, the district court awarded respondents a total of \$128,131.22 in attorney fees and costs. These appeals followed.

First, appellants argue that the district court abused its discretion in denying NRCP 60(b) relief by relying on an invalid amendment to the CC&Rs in concluding that the golf course property was not subject to the CC&Rs. Because the record supports the district court's determination that the golf course land was not part of the Queensridge community under the original CC&Rs and public maps and records, regardless of the amendment, we conclude the district court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (providing that the district court has

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion).

Second, appellants contend that the district court violated their procedural due process rights by awarding respondents attorney fees and costs without first holding an evidentiary hearing. We disagree. An evidentiary hearing is not required before an award of attorney fees and costs. *See Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (providing that the requirement of “an opportunity to be heard” before sanctions may issue “does not require [the court to hold] an oral or evidentiary hearing on the issue”). Appellants had notice of respondents’ motions for attorney fees and costs and took advantage of the opportunity to respond to those requests in writing and orally. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that due process requires notice and opportunity to be heard). Thus, we conclude the district court did not violate appellants’ due process rights by failing to hold an evidentiary hearing before awarding respondents attorney fees and costs.


Lastly, appellants assert that appellant Robert Peccole’s preparation, research, and 55-year legal career demonstrate that the attorney fees and costs award as a sanction was improper. NRS 18.010(2)(b) permits the district court to award attorney fees to a prevailing party when the court finds that the claim “was brought or maintained without reasonable ground or to harass the prevailing party.” Additionally, EDCR 7.60(b) allows the district court to impose a sanction including attorney fees


and costs when an attorney or party “without just cause. . . [p]resents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted. . . [or] multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.”

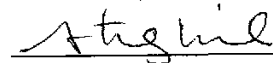
Appellants filed a complaint alleging the golf course land was subject to the CC&Rs when the CC&Rs and public maps of the property demonstrated that the golf course land was not. Further, after the district court denied appellants’ first motion for a preliminary injunction and explained its reasoning, appellants filed a second almost identical motion, a motion for rehearing of the denial of one of those motions, and a renewed motion for preliminary injunction, all of which included the same facts or argument. Additionally, the district court repeatedly warned appellants that they were too close to the issue to see it clearly or accept any of the court’s decisions and despite this warning, they continued to file repetitive and meritless motions. The district court limited the award to fees and costs incurred in defending the repetitive motions and issued specific findings regarding each of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and the record supports the amount awarded. See *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (requiring the district court to consider the *Brunzell* factors when awarding attorney fees). Further, Robert’s extensive experience as an attorney is not a factor under *Brunzell* and because the district court was within its discretion to award attorney fees and costs for the repetitive and frivolous parts of the litigation, it is unclear how Robert’s extensive legal career would make the award improper. Thus, we conclude the district court did not abuse its discretion in awarding respondents attorney fees and costs. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330, 130 P.3d 1280,

1288 (2006) (explaining that this court will not overturn a district court's decision to award attorney fees and costs as a sanction absent a manifest abuse of discretion). Accordingly, we

ORDER the judgments of the district court AFFIRMED.

, C.J.
Douglas

, J.
Gibbons

, J.
Stiglich

cc: Hon. Douglas Smith, District Judge
Ara H. Shirinian, Settlement Judge
Peccole & Peccole, Ltd.
The Jimmerson Law Firm, P.C
Sklar Williams LLP
EHB Companies, LLC
Eighth District Court Clerk

Exhibit 40

**CITY COUNCIL MEETING OF
JANUARY 3, 2018
VERBATIM TRANSCRIPT – ITEM 78**

Item 78 - DIR-72290 - PUBLIC HEARING - For possible action on an Appeal of Director's decision to not require applications for a General Plan Amendment and Major Modification in conjunction with 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 (APNs 138-31-601-008; 138-31-702-003; 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka). Staff recommends DENIAL.

Appearance List:

CAROLYN G. GOODMAN, Mayor
FRANK SCHRECK, Appellant, 9824 Winter Palace Drive
BRAD JERBIC, City Attorney
TODD BICE, Legal Counsel for Frank Schreck, 400 South 7th Street
LOIS TARKANIAN, Mayor Pro Tem/Councilwoman
LUANN D. HOLMES, City Clerk
RICKI Y. BARLOW, Councilman
STAVROS S. ANTHONY, Councilman
DOUG RANKIN
PETER LOWENSTEIN, Acting Planning Director
STEVEN G. SEROKA, Councilman
TOM PERRIGO, Executive Director of Community Development
MICHAEL BUCKLEY, 300 South 4th Street
NGAI PINDELL, Boyd School of Law, University of Nevada, Las Vegas
BOB COFFIN, Councilman
UNIDENTIFIED FEMALE
MICHELE FIORE, Councilwoman
YOHAN LOWIE, 215 South Fort Apache Road
CHRIS KAEMPFER, representing EHB Companies
ELIZABETH GHANEM HAM, 1215 South Forst Apache, Four Stars and 180 Land,
representing the Applicant

**CITY COUNCIL MEETING OF
JANUARY 3, 2018
VERBATIM TRANSCRIPT – ITEM 78**

32 STEPHANIE ALLEN, representing EHB Companies
33 BOB PECCOLE, Attorney, 4997 Verlaine, Queensridge Resident
34 GEORGE GARCIA, 1055 Whitney Ranch Drive, Suite 210
35
36 (3 hours, 23 minutes, 48 seconds) [5:57:50 – 8:34:02]
37
38 Typed by: Speechpad.com
39 Proofed by: Ashley Foster

**CITY COUNCIL MEETING OF
JANUARY 3, 2018
VERBATIM TRANSCRIPT – ITEM 78**

492 **CITY ATTORNEY BRAD JERBIC**

493 I'm not trying to deprive you of making your record, and to be honest with you, I don't really care
494 what the outcome is. So having said that, I think there is a factual predicate here, though, that
495 isn't quite accurate. I don't know — and I'm going to talk to Mr. Lowenstein about this —
496 because if Mr. Lowenstein agrees with you, then you need to make this record that you're about
497 to make.

498 But it was my understanding that if you come in with a zone change and the zone change is
499 incompatible with the General Plan, you are required by our Code to submit a General Plan
500 Amendment at the same time as the zone change. However, if you have hard zoning, the Code is
501 silent as to whether or not you have to submit a General Plan Amendment. Do I have that right?

502

503 **PETER LOWENSTEIN**

504 Through you, Madam Mayor, it's not explicit that it requires a General Plan Amendment other
505 than for a rezoning application, as you initially stated.

506

507 **CITY ATTORNEY BRAD JERBIC**

508 I think this is important, because I don't think the argument, Mr. Bice, is that hard zoning trumps
509 the General Plan. It's that the Code is silent as to whether or not you need a General Plan
510 Amendment when you have hard zoning. And I think that's the question, because I don't think
511 anybody on staff is making the argument that you made.

512

513 **TODD BICE**

514 I think we disagree with your statement, Mr. Jerbic —

515

516 **MAYOR GOODMAN**

517 Wait, wait, wait, your mic's not on. We can't hear you.

518

519 **TODD BICE**

520 Oh sorry. I think the thing where we in part, Brad, disagree, or Mr. Jerbic, that we disagree is the
521 label "hard zoning," because again, this is R-PD. This was not zoned as R-7. This was R-PD7.

Exhibit 41

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75481

SEVENTY ACRES, LLC,
Appellant,

v.

JACK B. BINION ET AL,
Respondents,

On Appeal from Eighth Judicial District Court
Honorable Jim Crockett

RESPONDENTS' ANSWERING BRIEF

Electronically Filed
Feb 07 2019 09:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Todd L. Bice, Esq., Bar No. 4534
tlb@pisanellibice.com
Dustin H. Holmes, Esq., Bar No. 12776
dhh@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100

Attorneys for Respondents

0154

Docket 75481 Document 2019-05876

3295

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Turner Investments, LTD is a Nevada Limited Liability Company owned by Clyde Turner. Pyramid Lakes Holding LLC is a Nevada Limited Liability owned by Tim and Kris Ann McGarry. All other Respondents are individuals and/or trustees of the respective trust identified.

Pisanelli Bice represents the Respondents in this Court and similarly represented the Respondents in the District Court.

DATED this 6th day of February, 2018.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Dustun H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Respondents

TABLE OF CONTENTS

I. ROUTING STATEMENT	1
II. ISSUES PRESENTED	2
III. STATEMENT OF THE CASE / SUMMARY OF THE ARGUMENT.....	2
IV. STATEMENT OF THE FACTS	5
A. The Development of the Peccole Ranch Master Plan Community.	5
B. A Land Speculator Acquires the Property Decades Later, Betting that he can Change the Land Use.	10
C. The Developer Gets the City to Disregard its own Requirements.	12
1. The City admits that the Code mandates a Major Modification to the previously approved Master Plan.	12
2. The Planning Commission Denies the Major Modification Sought by the Developer.	17
3. The City Council now votes 4-to-3 to ignore the Master Plan.	19
D. The District Rules that the City Must Follow its Own Code.	27
V. ARGUMENT.....	30
A. The Requirements of the City Code do not Change Based upon the Developer's Foot Stomping.	30
1. A Major Modification is a Legal Prerequisite to Change a Master Plan.	32
2. The only interpretation that violates statutory construction is the Developer's newly-adopted approach.	36
3. The District Court properly rejected the City's newly-minted interpretation proffered for litigation.	38
4. A zoning application is not a substitute for a major modification.	40
B. Substantial Evidence Does Not Support the City's Action.	42
C. The District Court Did Not "Exceed the Proper Scope of Judicial Review."	46
D. The Developer's "Judicial Taking" Claim is Unfounded.	48

1. The Court should decline to entertain the Developer's purported judicial taking claim.	49
2. The United States Supreme Court has never established a judicial taking claim.....	51
3. There has been no judicial taking.	55
VI. CONCLUSION	59

TABLE OF AUTHORITIES

Cases

<i>Am. W. Dev., Inc. v. City of Henderson</i> , 111 Nev. 804, 898 P.2d 110 (1995) .	32, 44
<i>Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark</i> , 407 P.3d 702(Nev. 2017).....	55
<i>Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nevada, Inc.</i> , 99 Nev. 739 670 P.2d 102 (1983)	39
<i>Bowen v. Georgetown Univ. Hosp.</i> , 488 U.S. 204, 109 S. Ct. 468 (1988).....	42
<i>Bowyer v. Taack</i> , 107 Nev. 625, 817 P.2d 1176 (1991).....	40
<i>Brace v. United States</i> , 72 Fed. Cl. 337 (2006), <i>aff'd</i> , 250 F. App'x 359 (Fed. Cir. 2007)	60
<i>Brinkerhoff-Faris Tr. & Sav. Co. v. Hill</i> , 281 U.S. 673, 50 S. Ct. 451 (1930).....	60
<i>Chickasaw Nation v. United States</i> , 534 U.S. 84, 122 S. Ct. 528 (2001).....	38
<i>Christopher v. SmithKline Beecham Corp.</i> , 567 U.S. 142, 132 S. Ct. 2156 (2012).....	42
<i>City Council of City of Reno v. Travelers Hotel, Ltd.</i> , 100 Nev. 436.....	47
<i>City Council of Reno v. Reno Newspapers</i> , 105 Nev. 886, 784 P.2d 974 (1989).....	40
<i>City of Boulder v. General Sales Drivers</i> , 101 Nev. 117, 694 P.2d 498 (1985).....	40
<i>City of Las Vegas v. Laughlin</i> , 111 Nev. 557 893 P.2d 383 (1995)	50
<i>City of N. Las Vegas v. Eighth Judicial Dist. Court ex rel. Cty. of Clark</i> , 122 Nev. 1197, 147 P.3d 1109 (2006)	31
<i>City of Reno v. Citizens for Cold Springs</i> , 126 Nev. 263, 236 P.3d 10 (2010)	32
<i>Defs. of Wildlife v. Norton</i> , 258 F.3d 1136 (9th Cir. 2001)	42
<i>Great N. Ry. Co. v. Sunburst Oil & Ref. Co.</i> , 287 U.S. 358, 53 S. Ct. 145 (1932) .	60
<i>Hertz v. Woodman</i> , 218 U.S. 205, 30 S.Ct. 621 (1910).....	58
<i>International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Daniel</i> , 439 U.S. 551, 99 S.Ct. 790 (1979).....	42
<i>Jaworski v. Rhode Island Bd. of Regents for Ed.</i> , 530 F. Supp. 60 (D.R.I. 1981) ..	32

<i>Maxwell v. State Indus. Ins. Sys.</i> , 109 Nev. 327, 849 P.2d 267 (1993).....	33
<i>Neil v. Biggers</i> , 409 U.S. 188, 93 S. Ct. 375 (1972).....	58
<i>Nova Horizon, Inc. v. City Council of the City of Reno</i> , 105 Nev. 92, 769 P.2d 721, (1989).....	64
<i>Petro-Hunt, L.L.C. v. United States</i> , 126 Fed. Cl. 367 (2016), aff'd, 862 F.3d 1370 (Fed. Cir. 2017)	57
<i>PruneYard Shopping Ctr. v. Robins</i> , 447 U.S. 74, 100 S. Ct. 2035 (1980)	59
<i>Robert E. v. Justice Court</i> , 99 Nev. 443, 664 P.2d 957 (1983)	39
<i>State ex rel. Johns v. Gragson</i> , 89 Nev. 478, 515 P.2d 65 (1973).....	46
<i>Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.</i> , 560 U.S. 702, 130 S. Ct. 2592 (2010)	passim
<i>Stratosphere Gaming Corp. v. City of Las Vegas</i> , 120 Nev. 523, 96 P.3d 756 (2004).....	45, 50, 65
<i>Sustainable Growth v. Jumpers, LLC</i> , 122 Nev. 53, 128 P.3d 452 (2006)	64
<i>Tidal Oil Co. v. Flanagan</i> , 263 U.S. 444, 44 S. Ct. 197 (1924).....	60
<i>Tighe v. Las Vegas Metro. Police Dep't</i> , 110 Nev. 632, 877 P.2d 1032 (1994)	47
<i>Tupper v. Kroc</i> , 88 Nev. 146, 494 P.2d 1275 (1972)	44
<i>United States v. Orso</i> , 275 F.3d 1190 (9th Cir. 2001)	32
<i>Valdez v. Employers Ins. Co. of Nevada</i> , 123 Nev. 170, 162 P.3d 148 (2007).....	33
<i>Webb's Fabulous Pharmacies, Inc. v. Beckwith</i> , 449 U.S. 155, 101 S. Ct. 446 (1980).....	59
<i>Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City</i> , 473 U.S. 172, 105 S. Ct. 3108 (1985)	54

Statutes

<i>Nev. R. Stat. § 278.330</i>	63
<i>Nev. R. Stat. § 278.349</i>	62, 63, 64

Rules

<i>NRAP 17(a)(10)-(11)</i>	I
<i>NRAP 17(b)(10)</i>	I

Codes

LVMC 19.10.040 *passim*

LVMC 19.10.050..... *passim*

I. ROUTING STATEMENT

This matter is presumptively before the Court of Appeals. Namely, a petition from judicial review from the City of Las Vegas' (the "City") approval of developmental applications in contravention of the law. NRAP 17(b)(10). However, Respondents Jack B. Binion, Duncan R. and Irene Lee, individuals and trustees of the Lee Family Trust, Frank A. Schreck, Turner Investments, LTD, Rover P. and Carolyn G. Wagner, individuals and trustees of the Wagner Family Trust, Betty Englestad as trustee of the Betty Englestad Trust, Pyramid Lake Holdings, LLC, Jason and Shereen Awad as trustees of the Awad Asset Protection Trust, Thomas Love as trustee of the Zena Trust, Steve and Karen Thomas as trustees of the Steve and Karen Thomas Trust, Susan Sullivan as trustee of the Kenneth J. Sullivan Family Trust, Dr. Gregory Bigler and Sally Bigler (collectively the "Surrounding Homeowners") do not object to the Court retaining this appeal.

But, the Surrounding Homeowners certainly dispute Appellant Seventy Acres, LLC ("Seventy Acres") naked and unsupported assertion that this appeal presents "issues of error correction," issues of "first impression" concerning the United States or Nevada Constitution, or issues of "first impression" of statewide public importance. NRAP 17(a)(10)-(11).

II. ISSUES PRESENTED

1. Whether the District Court correctly found that the City must follow its own laws – laws that it has long interpreted to preclude altering a master plan residential community without seeking what is known as a Major Modification under the City's Code – and rejecting a one-time interpretation that was meant for litigation purposes?

2. Is the City's land use approval improper – changing the City's General Plan as well as a residential communities' Master Plan –when it rests upon the Developer "promising" to negotiate "in the future" if the City will just give him approvals now?

3. Whether this Court should entertain the Developer's purported judicial taking claim raised for the first time on appeal, even though the developer has already chosen to pursue that issue in a separate district court proceeding, and if so, does a judicial decision which makes no changes to any property rights amount to a taking under the Fifth Amendment?

III. STATEMENT OF THE CASE / SUMMARY OF THE ARGUMENT

This appeal arises from a land speculator's acquisition of approximately 250 acres of land set aside to serve as open space/parks/drainage within the Peccole Ranch Master Plan. Specifically, decades after this planned community's creation

and development, Yohan Lowie ("Lowie")¹, and the entities he controls² sought to fundamentally change the Peccole Ranch Master Planned Development by subdividing the property and then developing it for additional housing within the Master Plan community.³ The Developer's present appeal stems from three applications related to his desire to build a 435 residential housing unit on approximately 17 acres of the land designated as Park/Open Space/Drainage within this Master Plan community.

The Developer's appeal seeks to revise history and the record below. The Developer omits (tellingly) the City's repeated applications of its own Code in explaining that no development may occur on the subject property absent compliance with the City Code's Title 19 provisions governing modifications of a

¹ The seated justices of the Nevada Supreme Court have in the past recused themselves from hearing matters pertaining to Mr. Lowie and his companies as the Court's past "business relationship would cause a reasonable person to question the impartiality of all the currently seated justices..." *See RA Southeast Land, LLC v. Eighth Jud. Dist. Ct.*, No. 68778, Order of Recusal, filed June 8, 2016.

² The named Appellant in this matter is Seventy Acres. This is one of three single-member limited liability companies that is ultimately owned and controlled by Lowie and his affiliated company, EHB Companies, LLC ("EHB"). The other two entities are 180 Land Co., LLC ("180 Land") and Fore Stars, LTD. ("Fore Stars"). Collectively these entities and individuals are referred to as the "Developer" in this brief.

³ The manner in which Developer subdivided the property is the subject of a separate lawsuit and related petition for this Court. *See Fore Stars, LTD, et al v. Eighth Jud. Dist. Ct.*, Case No. 73813.

previously approved Master Plan. Indeed, the Developer knew full well of this requirements which is why it submitted an application. It was only when the Developer realized he could not secure the votes – having lost a vote on a Major Modification before the Planning Commission – that he suddenly reversed course and brow beat the City's Planning Director into claiming that the Code meant the opposite of what the City had long insisted.

When confronted by the District Court over this prior and long-standing Interpretation, the City Attorney adopted an utterly new interpretation – solely developed in litigation – and claimed that the City's prior position should be disregarded as a "mistake". But as the District Court recognized, there was no "mistake." Instead, the City has simply manufactured a new interpretation – for the first time in litigation –to rationalize land use approvals that the City knew violated the requirements of its Code, approvals that were given based upon little more than the Developer's "promise" that in the future he could "negotiate". 71 AA 17423.

Contrary to the wants of the Developer, the City is bound to follow the requirements of its own Code, particularly requirements the City has long recognized and which the Developer himself recognized until they became an inconvenient obstacle. Tellingly, the City has accepted the District Court's ruling that it violated its own Code and declined to appeal.

IV. STATEMENT OF THE FACTS

A. The Development of the Peccole Ranch Master Plan Community.

In 1986, the Peccole Family presented their initial Master Development Plan under the name Venetian Foothills to the City. 11 AA 2666-2672. The original Master Plan contemplated two 18-hole golf courses (which would become known as Canyon Gate in Phase I and Badlands in Phase II). *Id.* The golf courses were "the focal point of the development," designed to be in a major flood zone and designated to serve as flood drainage and open space. *Id.* The City mandated these designations to address the natural flood problem and serve as the open space necessary for master plan developments. 11 AA 2628 – 2633.

In 1989, the Peccole Family submitted and the City approved the Peccole Ranch Master Plan that focused upon Phase I in the area from W. Sahara north to W. Charleston Blvd within the boundaries of Hualapai Way on the west and Durango Dr. on the east. In 1990, as development progressed on Phase I, the Peccole Family presented their Phase II portion of the Peccole Ranch Master Plan to the City, focusing upon the land located from west Charleston Boulevard north to Alta Drive west to Hualapai Way and east to Durango Drive ("Phase II Master Plan" or "Peccole Ranch Master Plan"). 15 AA 3452-3473. Queensridge (as it is known today) was included as part of this plan and covered West Charleston Boulevard north to Alta Drive, west to Hualapai Way and east to Rampart Boulevard. 15 AA 3465 ("A 50

acre single-family parcel central to Phase Two offers extensive golf course frontage to future residents in an exclusive environment bounded on all sides by the golf course.").

The Peccole Ranch Master Plan specifically defined what would become known as the Badlands golf course as flood drainage/golf course in addition to satisfying the required open space/parks necessitated by the City for a Master Planned Development. 15 AA 3463-3465. The Phase II Master Plan expressly designated the land as golf course drainage/open space and specifically was presented as zero net density and zero net units. 15 AA 3471. As the Phase II Master Plan makes clear, the Peccole Family knew residential development would not be feasible in the natural flood zone, but a golf course could be used to enhance the value of the surrounding residential lots:

A focal point of Peccole Ranch Phase Two is the 199.8 acre golf course and open space drainage way system which traverses the site along the natural wash system. All residential parcels within Phase Two, except one, have exposure to the golf course and open space areas The close proximity to Angel Park along with the extensive ***golf course and open space network were determining factors in the decision not to integrate a public park in the proposed Plan...*** The design of the ***golf course has been instrumental in*** preserving the natural character of the land and ***controlling drainage on and through the property.***

15 AA 3463-3465 (emphasis added). The Phase II Master Plan amplifies that it is a planned development, incorporating a multitude of permitted land uses as well as special emphasis on the open space:

Incorporates office, neighborhood commercial, a nursing home, and a mixed-use village center around a strong residential base in a cohesive manner. A destination resort-casino, commercial/office and commercial center have been proposed in the most northern portion of the project area. Special attention has been given to the compatibility of neighboring uses for smooth transitioning, circulation patterns, convenience and aesthetics. *An extensive 253 acre golf course and linear open space system winding throughout the community provides a positive focal point while creating a mechanism to handle drainage flows.*

15 AA 3457 (emphasis added). Likewise, the Phase II Master Plan outlines the permissible land use for each portion of the planned development, providing that there would be up to 2,807 single-family residential units on 401 acres, 1,440 multi-family units on 60 acres, and open space/golf course/drainage on approximately 211 acres. 15 AA 3471.

The City's Code in place in 1990 specified a zoning category known as Residential Planned Development districts ("R-PD"). Although the City's Code no longer provides for such zoning districts, this sort of zoning approval was common at the time for comprehensive planned developments. As the City's Code then provided, the purpose of the R-PD was "to allow maximum flexibility for imaginative and innovative residential design and land utilization in accordance with the General Plan. It is intended to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of open space, separation of pedestrian and vehicular traffic and homogeneity of patterns." 29 AA 7087.

The number that follows R-PD reflects the potential average number of

dwelling units allowed *per gross acre*; not the permissible use or density for all land within the Peccole Ranch Master Plan. *Id.* Instead, as shown by the Peccole Ranch Master Plan specific land use designations were provided in the plan. As the Phase II Master Plan provides for the single-family units which would border the proposed golf course/open space, the zoning sought was for a maximum of seven (7) single-family units per gross acre. 15 AA 3471. Yet, for the proposed golf course drainage, zero net density and zero net units were permitted. *Id.*

On April 4, 1990, in Case No. Z-17-90, the City Council approved Phase II of the Peccole Ranch Master Plan. 2 AA 258-266. As part of the approval, the City Council recited the land uses provided in the Peccole Ranch Master Plan. As set forth in the City's minutes of approval, the following table indicates the approved land use as an acreage for Phase II:

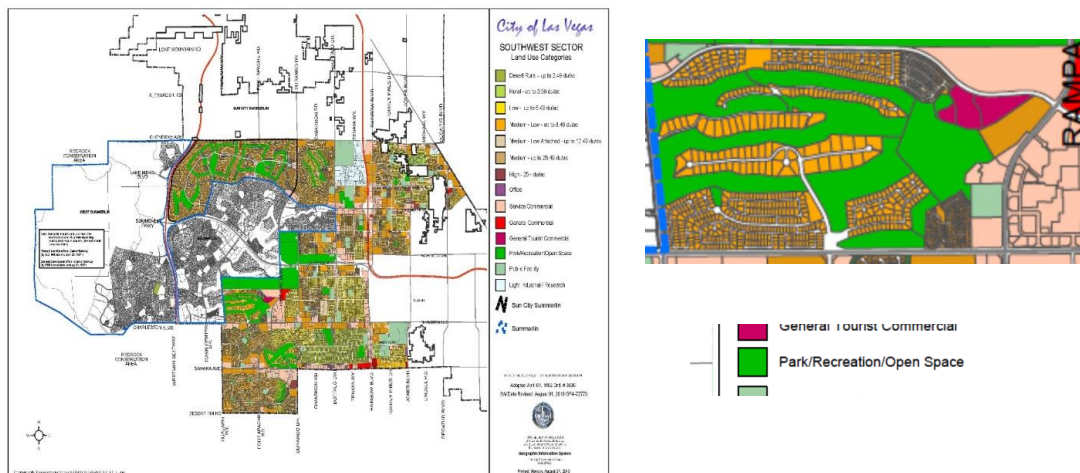
<u>LAND USE</u>	<u>PHASE II ACREAGE</u>	<u>PERCENT OF SITE</u>
Single Family	401	40.30 %
Multi-family	60	6.02 %
Neighborhood Commercial/Office	194.3	19.50 %
Resort/Casino	56.0	5.62 %
Golf Course/Drainage	211.6	21.24 %
School	13.1	1.31 %
Rights-of-Way	60.4	6.07 %

Id.

These specific designations of the Peccole Ranch Master Plan were incorporated as part of the R-PD zoning district and all other zoning was extinguished. Indeed, underscoring the original developer's emphasis on the use of

open space as part of its R-PD zoning approval, the City conditioned the approval with the express notation that the maximum number of dwelling units that would be allowed for Phase II was 4,247 as denoted in the Plan. *Id.* Thus, in approving the Peccole Ranch Master Plan, the City expressly designated the subject property as open space/golf course/drainage with zero net density. As shown by the City's approval of the zoning it is subject to "[c]onformance to the conditions of approval for the Peccole Ranch Master Development Plan, Phase II." *Id.*

The City confirmed the Peccole Ranch Master Plan in subsequent amendments and re-adoption of its own General or Master Plan, both in 1992 and again in 1999. 29 AA 7094-7098. On the maps of the City's Master Plan, the land for the golf course/open space/drainage is expressly designated as Parks/Recreation/Open Space (PR-OS):



29 AA 7066 (the color version is included above and is publically available

in CLV 2020 Master Plan, Land Use & Rural Neighborhoods Preservation Element, Map 3: Southwest Sector Land Use)

Both the City's Master Plan and the City's Code preclude residential units on land designed as PR-OS. As the City's Master Plan specifies: "the parks/recreation/open space category allows large public parks and recreation areas such as public and private golf courses, trails, easements, drainage ways, detention basins and other large areas or *permanent open land*." 29 AA 6951; CLV 2020 Master Plan, Land Use & Rural Neighborhoods Preservation Element, Description of Master Plan Land Use Categories. Moreover, as the land use designation table in the City's Master Plan indicates residential density is not permitted for land designated PR-OS. *Id.*; CLV 2020 Master Plan, Land Use & Rural Neighborhoods Preservation Element, Table 5, Land Use Designations.

The City memorialized all Master Developments Plans in the 2020 Master Plan. Not coincidentally this portion of the City's Master Plan expressly identifies Peccole Ranch as a *Master Development Plan* in the Southwest Sector. 29 AA 7089-7090.

B. A Land Speculator Acquires the Property Decades Later, Betting that he can Change the Land Use.

After approval by the City, and as the City would later admit, all future development was done in deference to the Peccole Ranch Master Plan. 73 AA 17751("[s]ince adoption of the 1990 Peccole Ranch Master Plan *the property was*

Exhibit 42

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

3 Kermit L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
4 James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
5 Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
6 Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
7 704 South Ninth Street
Las Vegas, Nevada 89101
8 Telephone: (702) 733-8877
Facsimile: (702) 731-1964

9 *Attorneys for Plaintiff Landowners*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

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

15
16 Plaintiffs,

17 vs.

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

21 Defendants.
22

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

23 **DECLARATION OF JAMES J. LEAVITT, ESQ.**
24
25
26
27
28

1 **STATE OF NEVADA**)
2 **COUNTY OF CLARK**) ss.

3 JAMES JACK LEAVITT, first being duly sworn, on oath deposes and states:

4 1. I am an attorney licensed to practice law in the State of Nevada, and am an attorney at the Law
5 Offices of Kermitt L. Waters, the attorneys of record for 180 LAND COMPANY, LLC, a
6 Nevada Limited Liability Company, and FORE STARS, Ltd. (Landowners) in the above-
7 captioned matter. I make this declaration based on personal knowledge and if called upon to
8 testify to the matters herein I am competent to do so.

9 2. This Declaration is submitted in support of the Landowners' Reply in Support of Plaintiff
10 Landowners' Motion to Determine Property Interest for purposes of verifying the authenticity
11 of the Exhibits attached to said motion as follows:

12 a. Exhibits 17 - 41 are true and correct copies of what they purport to be and, in those
13 instances where a partial of the exhibit is provided, I can, upon the Court's request,
14 provide a full copy of the exhibit.

15 b. This Declaration if made in good faith and not for purposes of delay.

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

18 Dated this 9th day of September, 2020.

19

20 SS/ James J. Leavitt
21 JAMES JACK LEAVITT

22

23

24

25

26

27

28