

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  
Feb 17 2023 04:01 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

No. 84640

**LANDOWNERS'  
OPPOSITION TO CITY'S  
MOTION FOR EXTENSION  
OF TIME TO FILE REPLY  
BRIEF ON APPEAL AND  
ANSWERING BRIEF ON  
CROSS-APPEAL**

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**LANDOWNERS' OPPOSITION TO  
CITY'S MOTION FOR EXTENSION OF TIME TO FILE  
REPLY BRIEF ON APPEAL AND  
ANSWERING BRIEF ON CROSS-APPEAL**

In its motion, the City asks for an extension of 30 days after this Court resolves the City's pending motion to strike to file its combined reply on appeal and answering brief on cross-appeal. However, the City's position presumes that it cannot work on the draft of its combined brief while the Court decides the motion to strike. Yet, the City should not be permitted to stand still during this interim, particularly because the Court expedited this appeal. *See Exhibit 1.*

The Landowners acquired the land that is the subject of this dispute *eight years ago*. As stated in the answering brief, the City delayed the Landowners for over 2½ years before finally foreclosing all development of their land. During the litigation, the City has intentionally delayed these cases by, among other things, removing all cases to federal court (long after the removal window closed), filing multiple and repeated motions to dismiss, filing motions to reconsider, and continually arguing issues already decided by the several district courts, causing every case to be up against the five-year rule of NRCP 41(e). Justice delayed is justice denied has become a reality to the Landowners for matters that

are supposed to be brought to trial by the government within two years. *See County of Clark v. Alper*, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984) (it is the government’s affirmative duty to move an inverse condemnation action to trial within two years of the commencement of the action).

Importantly, the City’s pending motion to strike was designed to delay the briefing in this appeal because all the documents that the City claimed were “outside the record” were court orders and City documents necessary to rebut specific arguments that the City raised in its opening brief. As reflected in the attached District Court order (*see Exhibit 2*, at 4-5), the City has intentionally delayed these matters. Therefore, the Landowners request that this Court deny the City’s request for an extension of 30 days and expedite its ruling on the City’s motion to strike. Alternatively, the Court should limit the extension for the City’s combined brief following the Court’s resolution of the pending motion to strike to no more than 15 days, which is reasonable since the City should have already begun drafting its combined brief and has three law firms working on this appeal (along with the City’s own attorneys).

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Fifteen days is more than an adequate amount of time for the City to adjust its combined brief, given the vast resources that it has dedicated to this appeal.

Dated this 17th day of February 2023.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

---

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# **EXHIBIT 1**

# **EXHIBIT 1**

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.,

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

**FILED**

JUN 20 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

No. 84640

*ORDER REGARDING MOTIONS*

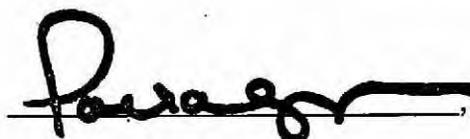
City of Las Vegas, appellant in Docket No. 84345 and respondent/cross-appellant in Docket No. 84640 has filed a motion to consolidate these appeals and cross-appeal on the ground that they arise from the same district court litigation and involve the same factual and procedural background and the same parties and issues. NRAP 3(b)(2). Cause appearing, the motion is granted, and these appeals and cross-appeal shall be consolidated for all appellate purposes.

Respondents and appellants/cross-respondents 180 Land Co. LLC, and Fore Stars Ltd. (collectively, Landowners) have filed a response to the motion to consolidate in which they agree to consolidation but move

to expedite the briefing based on financial pressures devolving from the imposition of the stay. The motion is opposed, and the Landowners have filed a reply.

The motion to expedite is granted to the following extent. City of Las Vegas shall have until August 16, 2022, to file and serve an opening brief in Docket No. 84345. Landowners shall likewise have until August 16, 2022, to file an opening brief on appeal in Docket No. 84640. Thereafter, briefing shall proceed in accordance with NRAP 28.1.

It is so ORDERED.

 C.J.

cc: McDonald Carano LLP/Las Vegas  
Shute, Mihaly & Weinberger, LLP  
Las Vegas City Attorney  
Leonard Law, PC  
Law Offices of Kermitt L. Waters  
EHB Companies, LLC

# **EXHIBIT 2**

# **EXHIBIT 2**

**ORDR**

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*Attorneys for Plaintiffs Landowners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD; SEVENTY ACRES LLC,  
a Nevada liability company; DOE  
INDIVIDUALS I through X, DOE  
CORPORATIONS I through X, and DOE  
LIMITED LIABILITIES COMPANIES I  
through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-773268-C

Dept. No.: XXIX

**ORDER GRANTING**

**PLAINTIFF LANDOWNERS' MOTION  
TO DETERMINE DATE OF VALUE  
PURSUANT TO NRS 37.120**

Date of Hearing: November 15, 2022

Time of Hearing: 9:00 a.m.

Plaintiff Landowners' Motion To Determine Date of Value Pursuant to NRS 37.120,  
having come before the Court on November 15, 2022, with James J. Leavitt, Esq., Kermitt L.  
Waters, Esq., and Autumn Waters, Esq., of the Law Offices of Kermitt L Waters and Plaintiff's

1 in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners Fore Stars  
2 Ltd and Seventy Acres, LLC (“Landowners”), and George F. Ogilvie III, Esq. and Christopher  
3 Molina, Esq., of McDonald Carano LLP, and Andrew W. Schwartz, Esq., of Shute, Mihaly &  
4 Weinberger, LLP, appearing on behalf of the City of Las Vegas (“City”).

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

- 7
- 8 1. This Court previously held: 1) “the legally permitted uses by right of the 17 Acre Property  
9 [at issue in this matter] are single-family and multi-family residential;” 2) “that the City  
10 engaged in actions to authorize the public to enter onto the 17 Acre Property and preserve  
11 the 17 Acre Property for use by the public and surrounding neighbors meeting Nevada’s  
12 standard for a per se regulatory taking thereby resulting in the taking of the entire 17 Acre  
13 Property by inverse condemnation;” 3) “[w]hen the government engages in per se  
14 regulatory taking actions, just compensation is automatically warranted, meaning there is  
15 no defense to the taking;” and, 4) “[a] jury trial is scheduled for December 5, 2022, wherein  
16 a jury will determine the fair market value of the 17 Acre Property **as of the applicable  
17 date of valuation.**” *See Findings of Fact and Conclusions of Law Regarding Plaintiff  
18 Landowners’ Motion to Determine “Property Interest.” Filed September 16, 2021, p. 16;  
19 Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners’ Motion to  
20 Determine Take and for Summary Judgment on the Third and Fifth Claims for Relief:  
21 Granting Summary Judgment on the Landowners’ Fifth Claim for Relief and Denying  
22 Summary Judgment on the Landowners Third Claim for Relief, filed October 27, 2022,  
23 findings 147, 127, and conclusion (“FFCL Re: Take”). Emphasis supplied.*

1 2. To determine the “applicable date of valuation,” the Landowners’ brought before this Court  
2 Plaintiff Landowners’ Motion To Determine Date of Value Pursuant to NRS 37.120.

3 3. The Landowners’ motion requested that this Court find the date of valuation in this case to  
4 be October 10, 2022, pursuant to NRS 37.120. October 10, 2022 is the date this matter  
5 was first set for trial, but the trial was continued to December 5, 2022, to accommodate the  
6 City’s counsel’s sabbatical.

7  
8 4. The City opposed the Landowners’ motion, arguing that NRS 37.120 does not apply to  
9 inverse condemnation actions, like the pending action, and the date of valuation should be  
10 the “date of taking.”

11 5. Having reviewed Landowners’ Motion To Determine Date of Value Pursuant to NRS  
12 37.120 and the related briefings and oral arguments on the matter, this Court hereby  
13 GRANTS Plaintiff Landowners’ motion. The Court is persuaded as to the controlling  
14 language in *County of Clark v. Alper*, 100 Nev. 382, 391, 685 P. 2d 943, 949 (1984) and  
15 *McCarran Int’l. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110, 1126-1127 (2006), as it  
16 applies to the issue set forth by the Landowners’ motion.

17  
18  
19 6. In the *Alper* case, the Nevada Supreme Court held NRS 37.120 applies to set the date of  
20 valuation in inverse condemnation cases. The Court held “NRS 37.120(1)(b) places the  
21 burden on the government to move the case to trial within two years after the case is  
22 commenced” and “[i]f it does not, and the delay is not primarily caused by the actions of  
23 the landowner, the government must account for the increased value of the property.”  
24 *Alper*, at 391.

25  
26 7. NRS 37.120 was also applied to determine the date of valuation in *Sisolak*, which was an  
27 inverse condemnation case.

1 8. Therefore, this Court will apply NRS 37.120 to set the date of valuation in this inverse  
2 condemnation case.

3 9. NRS 37.120(1) provides in pertinent part:

4 “To assess compensation and damages as provided in NRS 37.110, the date of the first  
5 service of the summons is the date of valuation, except that, if the action is not tried within  
6 2 years after the date of the first service of the summons, and the court makes a written  
7 finding that the delay is caused primarily by the [government] or is caused by congestion  
8 or backlog in the calendar of the court, the date of valuation is the date of the actual  
9 commencement of the trial.”  
10

11 10. Applying NRS 37.120, the date of valuation is the date of trial.

12 11. The date of first service of summons in this case was May 17, 2018, and the date this case  
13 was set for trial was October 10, 2022. Thus, there has been more than a 2 year delay  
14 from the date of the first service of summons to the date of trial.  
15

16 12. As set forth in Landowners’ moving papers, the delay (from the date of service of summons  
17 to the date of trial) is 1,663 days and the City is attributed with, at least, 1,488 days of this  
18 delay, because the City filed three motions to dismiss, removed the matter to federal court  
19 (remand order back to State court was 1 year later). The City did not file an Answer to the  
20 Inverse Condemnation Complaint until March 18, 2021, nearly three years after service of  
21 summons.  
22

23 13. The City did not contest in its opposition or at oral argument that the delay in bringing this  
24 matter to trial is attributed to the City or that the delay in bringing this matter to trial was  
25 caused primarily by the City.  
26  
27  
28

1 14. Based upon the record, this Court finds that this matter was not tried within 2 years after  
2 the date of the first service of the summons, and hereby enters a written finding that the  
3 delay in bringing this matter to trial within 2 years was caused primarily by the City and,  
4 therefore, the date of valuation is the date of trial.

5 15. The date of valuation shall be October 10, 2022, even though this matter is currently set  
6 for a December 5, 2022, trial, because the City caused a continuance of the trial date (to  
7 accommodate the City's counsel's sabbatical) after discovery closed. Given that the  
8 Landowners' appraiser used the October 10, 2022, date to determine the fair market value  
9 of the 17 Acre Property during discovery and because October 10, 2022, is commensurate  
10 to the actual trial date of December 5, 2022, the Court will maintain October 10, 2022 as  
11 the date of valuation.  
12  
13

14 16. Therefore, the sole issue that will be presented to and decided by the jury at the December  
15 5, 2022, trial, is "the fair market value of the 17 Acre Property as of the applicable date of  
16 valuation" - October 10, 2022. *See FFCL Re: Take, conclusion.*  
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21 ///

25 ///

1 **IT IS HEREBY ORDERED** that Plaintiff Landowners' Motion To Determine Date of  
2 Value Pursuant to NRS 37.120 is **GRANTED** and the sole issue to be presented to and decided  
3 by the jury at the December 5, 2022, trial, is "the fair market value of the 17 Acre Property as of  
4 the applicable date of valuation" - October 10, 2022.

5 Dated this 12th day of December, 2022

6   
7

8 **DBB 1AF 40F6 AA6E**  
9 **David M Jones**  
10 **District Court Judge**

11 Submitted By:

12 LAW OFFICES OF KERMIT L. WATERS

13 By: /s/ James J. Leavitt  
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15 James J. Leavitt (NV Bar No. 6032)  
16 Michael A. Schneider (NV Bar No. 8887)  
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19 Las Vegas, Nevada 89101

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24 ***Attorneys for Plaintiffs Landowners***

Content Reviewed and Approved by:

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**To:** [George F. Ogilvie III](#); [Christopher Molina](#)  
**Cc:** [Autumn Waters](#)  
**Subject:** Landowners" Proposed Orders on DOV and the Pretrial Conference Request - 17 Acre Case  
**Date:** Monday, November 21, 2022 1:46:00 PM  
**Attachments:** [Order Granting DOV Motion.docx](#)  
[Order Holding Moot LO Motion for Pretrial Conference.docx](#)

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George:

I hope you had a good weekend.

Attached are the following Landowners' proposed orders relevant to the matters before Judge Jones at the November 15, 2022, hearing:

Order Granting Plaintiff Landowners' Motion to Determine Date of Value Pursuant to NRS 37.120;  
and,

Order Re: Plaintiff Landowners' Motion for NRCP 16 Pretrial Conference on Order Shortening Time.

Please let me know if we have your authority to affix your signature to these two orders. We intend to submit both Orders to Judge Jones Wednesday afternoon.

Thank you and have a great Thanksgiving.

Jim

**Jim Leavitt, Esq.**  
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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Fore Stars Ltd, Plaintiff(s)

CASE NO: A-18-773268-C

7 vs.

DEPT. NO. Department 29

8 City of Las Vegas, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/12/2022

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **LANDOWNERS' OPPOSITION TO CITY'S MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL** with the Supreme Court of Nevada on the 17th day of February 2023. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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