

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 84345

and

Case No. 84640

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180 LAND CO, LLC, a Nevada limited-liability company, FOR Elizabeth A. Brown
a Nevada limited liability company, Clerk of Supreme Court

Appellants/Cross-Respondents

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Respondent/Cross-Appellant

District Court Case No.: A-17-758528-J
Eighth Judicial District Court of Nevada

MOTION TO CONSOLIDATE APPEALS

<p>LAS VEGAS CITY ATTORNEY'S OFFICE Bryan K. Scott (#4381) Philip R. Byrnes (#166) Rebecca Wolfson (#14132) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bscott@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov rwolfson@lasvegasnevada.gov</p>	<p>McDONALD CARANO LLP George F. Ogilvie III (#3552) Amanda C. Yen (#9726) Christopher Molina (#14092) 2300 W. Sahara Ave, Suite 1200 Las Vegas, NV 89102 Phone: 702.873.4100 Fax: 702.873.9966 gogilvie@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com</p>
<p>LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com</p>	<p>SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102</p>

Attorneys for Respondent/Cross-Appellant City of Las Vegas

Pursuant to Rule 3(b)(2) of the Nevada Rules of Appellate Procedure, the City of Las Vegas (“City”) hereby requests the Court consolidate Nevada Supreme Court Case No. 84345 and Nevada Supreme Court Case No. 84640 as both appeals arise from the same case in the District Court, and concern the same underlying factual and procedural history, the same parties, and overlapping orders. Accordingly, consolidation of the two appeals will result in judicial economy for both the Court and parties.

I. PROCEDURAL HISTORY

A. The District Court Procedural History

On February 28, 2018, 180 Land Co LLC filed its Second Amended Petition for Judicial Review to Sever Alternative Claims in Inverse Condemnation Per Court Order Entered on February 1, 2018 (“PJR”), challenging the City’s denial of applications to build 61 houses on a 35-Acre segment of the 250-acre Badlands Golf Course (the “35-Acre Property”). The District Court denied the petition for judicial review, concluding as a matter of law that the City properly exercised its discretion in declining to lift the historic open space designation of the 35-Acre Property and in denying the applications to convert the 35-Acre Property to houses. The District Court further concluded zoning does not confer a vested property interest to develop even if the 35-Acre applications proposed a use permitted by the applicable zoning.

On May 15, 2019, 180 Land Co LLC and Fore Stars, Ltd. (collectively, the “Developer”)¹ filed their Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation alleging various taking claims against the City based upon the same denial of the 35-Acre applications. Notwithstanding the District Court’s aforementioned conclusions of law relative to the PJR, on October 12, 2020, when considering the Developer’s inverse condemnation claims, the District Court found (a) zoning confers a constitutionally protected property interest to use property for any permitted use in the zoning district; (b) Nevada cities have no discretion to disapprove or condition an owner’s proposed use of property as long as the use is a permitted use in the zoning district; (c) single-family and multi-family housing are the only permitted uses in a Residential Planned Development – 7 units/acre (“R-PD7”) zoning district; (d) the parks, recreation, and open space (“PR-OS”) designation in the City’s General Plan cannot prevent the owner from using its property for any use permitted by zoning; and (e) the parcel as a whole for purposes of regulatory takings analysis is the 35-Acre Property, rather than the 1,569-acre Peccole Ranch Master Plan (“PRMP”) or the 250-acre Badlands. These conclusions were contrary to Nevada law and the City’s development code and irreconcilable with the District Court’s

¹ The Developer also included Seventy Acres LLC as a plaintiff; however, the Developer voluntarily dismissed Seventy Acres LLC from the litigation on June 15, 2020.

prior (and correct) conclusions of law denying the Developer's petition for judicial review.

On October 25, 2021, the District Court concluded: (a) the City has made a final decision that the City will never allow any development of housing on the 35-Acre Property, despite the Developer's having filed only one set of applications to develop the individual 35-Acre Property; (b) the requirements in NRS 278.150 and NRS 278.250 that the City adopt a General Plan governing the future uses of property is effectively a nullity; (c) the Developer had a constitutional right to build 61 housing units on the 35-Acre Property despite the General Plan designation of PR-OS; (d) the City's denial of the Developer's application to build 61 housing units on the 35-Acre Property reduced the value of the Property to zero as of the September 14, 2017 date of value; (e) the City is liable for a taking of the 35-Acre Property; and (f) the value of the 35-Acre Property as of September 14, 2017 (assuming that the Developer had a constitutional right to build 61 housing units on the Property) was \$34,135,000.

On November 18, 2021, the District Court ordered the City to pay the Developer \$34,135,000 as just compensation (together with all interlocutory orders leading thereto, the "Judgment"). The City filed a Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution to address the irregularity that the Judgment required the City to pay damages to the Developer without an associated

requirement for the Developer to convey its fee simple interest in the 35-Acre Property to the City. The City preserved all other challenges to the Judgment for appeal. The City also moved the District Court to stay the Judgment pursuant to NRCP 62(b)(3) pending disposition of the Motion and, pursuant to NRCP 62(d)-(e) and NRAP 8(c), pending appeal. The District Court denied these motions.

In addition to the \$34 million Judgment, the District Court granted the Developer's post-trial motions for reimbursement of property taxes, attorneys' fees and costs in the sum of \$4,707,002.04.

B. Case No. 84345

On March 2, 2022, the City filed its Notice of Appeal, which initiated Case No. 84345. By its Notice of Appeal in Case No. 84345, the City appealed:

1. The Findings of Fact and Conclusions of Law on Just Compensation filed on November 18, 2021, notice of entry of which was served electronically on November 24, 2021 and all decisions, rulings and interlocutory orders made appealable by the foregoing;
2. The Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; [sic] and Granting Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation filed on February 9, 2022, notice of entry of which was served electronically on February 10, 2022;
3. Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs filed on February 16, 2022, notice of entry of which was served electronically on February 17, 2022;

4. Order Granting Plaintiffs Landowners' Motion for Reimbursement of Property Taxes filed on February 16, 2022, notice of entry of which was served electronically on February 17, 2022;
5. Order Granting Plaintiff Landowners' Motion for Attorney Fees In Part and Denying In Part filed on February 18, 2022, notice of entry of which was served electronically on February 22, 2022; and
6. The Order Denying City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution filed on February 25, 2022, notice of entry of which was served electronically on February 28, 2022.

C. Case No. 84640

At the time of the City's appeal in Case No. 84345, the Developer's motion for pre-judgment interest was pending before the District Court. On April 1, 2022, the District Court issued an order awarding the Developer \$10,258,953.30 in prejudgment interest (the "Pre-Judgment Interest Order"). On April 25, 2022, the Developer filed an appeal of the Pre-Judgment Interest Order, which initiated Case No. 84640. On April 29, 2022, the City filed its Notice of Appeal of the Pre-Judgment Interest Order, which the Court designated as a cross-appeal in Case No. 84640.

D. Briefing Schedules

On May 17, 2022, the Court issued a briefing schedule in Case No. 84640, which established a September 14, 2022 deadline for the Opening Brief and Appendix (120 days from the date of the order). On May 18, 2022, the Court issued

a briefing schedule for Case No. 84345, establishing an August 16, 2022 deadline for the Opening Brief and Appendix (90 days from the date of the order).

II. LEGAL ARGUMENT

Rule 3(b)(2) of the Nevada Rules of Appellate Procedure provides, “[w]hen the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.” *See* NRAP 3(b)(2).

Here, the City timely filed its Notice of Appeal in Case No. 84345. The District Court entered written notice of entry of the order resolving the City’s tolling motion on February 28, 2022, and the City filed its Notice of Appeal on March 2, 2022. Further, the Developer and City both timely filed Notices of Appeal in Case No. 84640. The District Court entered written notice of entry of the Pre-Judgment Interest Order on April 1, 2022, the Developer filed its Notice of Appeal on April 25, 2022, and the City filed its Notice of Appeal (treated as a cross-appeal) on April 29, 2022. Accordingly, the notices of appeal in both Case No. 84345 and Case No. 84640 were timely filed.

In addition, both appeals arise from the same case in the District Court, and concern the same underlying factual and legal issues, parties, and overlapping orders. The post-judgment awards to the Developer, which include the separately appealed Pre-Judgment Interest Order, all derive from the legally unsupportable

Judgment. In sum, the two appeals are interrelated and should therefore be briefed and decided together. If the appeals are not consolidated, the parties will file multiple briefs in the two appeals, thereby consuming significantly more resources of the parties and the Court. Consolidation is, therefore, warranted in the interests of judicial efficiency and economy.

III. CONCLUSION

The City respectfully requests the Court consolidate Case No. 84345 and Case No. 84640 to allow one set of appellate briefs and one briefing schedule, with the opening brief and appendix in the consolidated case being due in 120 days.

DATED this 20th day of May, 2022

BY: /s/ George F. Ogilvie III

<p>LAS VEGAS CITY ATTORNEY'S OFFICE Bryan K. Scott (#4381) Philip R. Byrnes (#166) Rebecca Wolfson (#14132) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bscott@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov rwolfson@lasvegasnevada.gov</p>	<p>McDONALD CARANO LLP George F. Ogilvie III (#3552) Amanda C. Yen (#9726) Christopher Molina (#14092) 2300 W. Sahara Ave, Suite 1200 Las Vegas, NV 89102 Phone: 702.873.4100 Fax: 702.873.9966 gogilvie@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com</p>
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Attorneys for Respondent/Cross-Appellant City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 20th day of May, a copy of the foregoing **MOTION TO CONSOLIDATE APPEALS** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system.

/s/ Jelena Jovanovic
An employee of McDonald Carano