

**Case No. 84640
and
Case No. 84345**

IN THE SUPREME COURT OF THE STATE OF NEVADA

180 LAND CO LLC, a Nevada limited-liability company, FORELIZABETH A. BROWN
Nevada limited-liability company, Clerk of Supreme Court

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

Eighth Judicial District Court, Clark County, Nevada
Case No. A-17-758528-J
Honorable Timothy C. Williams, Department 16

**RESPONSE TO MOTION TO CONSOLIDATE
AND**

COUNTERMOTION TO EXPEDITE APPEAL

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NRAP 26.1 DISCLOSURE

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

Respondents 180 LAND CO LLC (“180 Land”), a Nevada limited liability company, and FORE STARS LTD (“Fore Stars”), a Nevada limited liability company, (collectively “Landowners”), are not publicly traded companies, nor do Landowners have more than 10% of stock owned by a publicly traded company. These companies are effectively owned by two sets of principals, 50% by principals Paul and Vickie DeHart and 50% by principals Yohan and Merav Lowie, through various entities and family partnerships.

Landowners were represented in the district court by the Law Offices of Kermitt L. Waters and are represented in this Court by the same.

DATED this 26th day of May, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

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Appellants/Cross Respondents, 180 Land Co LLC and Fore Stars LTD (“Landowners”) agree that consolidation of the two related pending appeals, Case No. 84345 and Case No. 84640, will result in judicial economy and is therefore appropriate. The Landowners however, request that the briefing schedule and decision of this Court in the consolidated appeal be expedited, with the City of Las Vegas’ (“City”) opening brief due in 60 days, rather than the 90 days ordered by this Court.

RESPONSE TO CITY MOTION TO CONSOLIDATE

The City’s pending motion includes unnecessary and plainly incorrect facts and therefore, although the Landowners agree with the underlying request to consolidate, a brief and correct statement of facts is warranted.

This is an Article 1, §§ 8 and 22 constitutional proceeding wherein the Landowners maintain the City took by inverse condemnation their 35 Acre Property. Nev. Const. art. 1, §§ 8 and 22. The district court properly followed this Court’s mandatory three-step procedure for resolving the Landowners’ inverse condemnation claims, which is: (1) determine the Landowners’ property interest; (2) determine if that property interest was taken; and (3) if so, determine just compensation for the taking. *ASAP Storage v. City of Sparks*, 123 Nev. 639, 642 (2007).

First, as mandated by this Court, the district court determined the Landowners' property interest relying on zoning. *See e.g. City of Las Vegas v. Bustos*, 119 Nev. 360 (2003). As the parties stipulated that the zoning on the 35 Acre Property was R-PD7 (allowing up to 7.49 residential units per acre), the Court relied on this R-PD7 zoning and held the Landowners' property interest included the right to use their property for a residential purpose. *ASAP Storage Inc. v. City of Sparks*, 123 Nev. 639 (2007) (the bundle of property rights includes the "inalienable right to possess, use, and enjoy property." *Id.*, at 647).

Second, the district court held the City *per se* took the Landowners' 35 Acre Property for the surrounding neighbors' use as recreation and open space. Despite the Landowners' ownership and R-PD7 zoning, the City publicly informed the surrounding neighbors that the Landowners' 35 Acre Property was the public's to use for recreation and open space and the public is using the property as such. The City then passed two City Ordinances that: 1) target **only** the Landowners' 35 Acre Property; 2) include a provision that specifically authorizes the public to enter onto and use the Landowners' 35 Acre Property; and, 3) made it impossible for the Landowners to use their own property. The City also denied the Landowners' application to build 61 homes on the 35 Acre Property, even though the development met all City Code requirements, was consistent with the R-PD7 residential zoning, and the City's own Planning Department recommended that the residential

development be approved. The City also denied a master development agreement that would have allowed development of homes on the 35 Acre Property, even though the City's own planning department and City Attorney's Office largely drafted the master development agreement and both recommended approval. Further securing the Landowners' private property for public use, the City would not allow the Landowners to fence or even access their 35 Acre Property, because this would have interfered with the surrounding neighbor's use of the Landowners' property. Importantly, there was only one expert report presented to the district court, the Landowners' expert appraiser. The City did not produce any initial or rebuttal experts. The Landowners' expert appraiser determined the City's actions rendered the 35 Acre Property valueless and useless. Following a four-day evidentiary hearing the district court held the City "clearly" took the Landowners' Property for public use requiring the payment of just compensation.

Third, the district court held a bench trial to determine just compensation. Based on the report prepared by the Landowners' expert appraiser, the district court awarded \$34,135,000 as the fair market value of the 35 Acre Property taken by the City. Thereafter, the district court awarded the Landowners costs, attorney fees, reimbursement of taxes, and prejudgment interest. Nev. Const. art. 1, § 22(4) ("Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.").

The City appealed the awards resulting in Supreme Court Case No. 84345 and, following an unsuccessful settlement conference, this Court ordered the City's opening brief due in 90 days – August 16, 2022. The Landowners filed a separate appeal related to the district court's prejudgment interest ruling, resulting in Supreme Court Case No. 84640. As the two appeals are related, the Landowners agree they should be consolidated.

COUNTERMOTION TO EXPEDITE APPEAL

NRAP 2 specifically allows this Court to “expedite its decision.” In the case of *Board of County Commissioners of Clark County v. White*, 110 Nev. 567, 568–569 (1994), this Court ordered an appeal expedited based on the appellants “economic hardship” and “because the issues presented in [the] appeal were fully briefed in the court below.” These factors support expediting this appeal.

First, economic hardship is present in this appeal. The district court as the fact finder found and held that the City took and is in possession of the Landowners' 35 Acre Property and ordered the City to pay the just compensation verdict within 30 days and as a precondition to appeal as mandated under NRS 37.140 and NRS 37.170. These statutes were adopted to require immediate payment of just compensation verdicts, because “[t]he power not only to take possession of another's property, but also to postpone indefinitely the payment of just compensation for it,

is a power which may well have an oppressive effect” and “[i]t might well, through duress of circumstances, compel acceptance by a condemnee [landowner] of compensation felt not to be just.” *State v. Second Judicial District Court*, 75 Nev. 200, 205 (1959).

On May 9, 2022, however, this Court reversed the district court and entered an Order Granting Stay (in Case No. 84345). This Court’s Order Granting Stay has had a devastating economic impact on the Landowners¹. As this case stands, the Landowners have lost all use and possession of their property without any payment of just compensation, while, at the same time, they are required to pay real estate taxes based on a residential use (that amount to over \$200,000 per year) and all other carrying and maintenance costs for the property. NRS 37.140 and NRS 37.170 were specifically adopted to remedy this gross inequity, requiring payment of just compensation pending appeal. This Court determined those statutes did not apply to this case. Regardless of whether the statutes legally apply, the underlying equitable reasons for the statutes still apply – to assure timely payment of just compensation.

¹The Landowners acquired the land in March of 2015 and began development efforts immediately but to no avail given the City’s intentional actions to prevent development. This case has been pending for nearly five years with the City delaying at every turn.

Moreover, like the issues in the *Board of County Commissioners of Clark County v. White* case, the Landowners and the City have extensively briefed all issues to the district court over the past nearly five years of litigation.

Therefore, there is good cause to expedite the consolidated appeals. As stated, the City has been ordered to file its opening brief in Case No. 84345 within 90 days, or by August 16, 2022. The Landowners respectfully request that the City's opening brief be due 60 days from this Court's May 18, 2022, Order Reinstating Briefing in Case No. 84345, making the City's opening brief due on July 18, 2022. Once the briefing is complete, the Landowners request that the Court expedite any oral argument and the decision to the extent that this Court's docket allows. The Landowners understand the enormous burden of this Court's heavy caseload and the importance of this constitutional proceeding, however, expediting the consolidated appeals will strike a more equitable balance in light of the Court's Order Granting Stay of payment.

DATED this 26th day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE TO MOTION TO CONSOLIDATE AND COUNTERMOTION TO EXPEDITE APPEAL** was filed electronically with the Nevada Supreme Court on the 26th day of May, 2022.

Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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