

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
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**JOINT APPENDIX,
VOLUME NO. 1**

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CERTIFIED AS A TRUE COPY

Pages: 377 signed/certified
At 11:03 am on April 20, 2017
By Scott D Widney
Enterprise Records Officer
City of Las Vegas

City of Las Vegas

Agenda Item No.: **52.**

Scott D Widney

AGENDA SUMMARY PAGE - PLANNING
PLANNING COMMISSION MEETING OF: APRIL 12, 2016

DEPARTMENT: PLANNING

DIRECTOR: TOM PERRIGO

☐ Consent ☒ Discussion

SUBJECT:

MOD-63600 - MAJOR MODIFICATION - PUBLIC HEARING - APPLICANT: 180 LAND CO, LLC - OWNER: SEVENTY ACRES, LLC, ET AL - For possible action on a request for a Major Modification of the 1990 Peccole Ranch Master Plan TO AMEND THE NUMBER OF ALLOWABLE UNITS, TO CHANGE THE LAND USE DESIGNATION OF PARCELS COMPRISING THE CURRENT BADLANDS GOLF COURSE, TO PROVIDE STANDARDS FOR REDEVELOPMENT OF SUCH PARCELS AND TO REFLECT THE AS-BUILT CONDITION OF THE REMAINING PROPERTIES on 1,569.60 acres generally located east of Hualapai Way, between Alta Drive and Sahara Avenue (APNs Multiple), Ward 2 (Beers) [PRJ-63491]. Staff has NO RECOMMENDATION.

C.C.: 5/18/2016

PROTESTS RECEIVED BEFORE:

Planning Commission Mtg.

50

City Council Meeting

0

APPROVALS RECEIVED BEFORE:

Planning Commission Mtg.

12

City Council Meeting

0

RECOMMENDATION:

Staff has NO RECOMMENDATION

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Abeyance Request Submitted by - EHB Companies - MOD-63600, GPA-63599, ZON-63601 and DIR-63602 [PRJ-63491]
3. Staff Report- MOD-63600, GPA-63599 and ZON-63601 [PRJ-63491]
4. Supporting Documentation- MOD-63600, DIR-63602, GPA-63599 and ZON-63601 [PRJ-63491]
5. Photo(s) - MOD-63600, DIR-63602, GPA-63599 and ZON-63601 [PRJ-63491]
6. Justification Letter
7. Peccole Ranch Master Plan
8. Protest/Support Postcards - MOD-63600 and DIR-63602 [PRJ-63491]
9. Submitted after Final Agenda - Abeyance Request and Telephone Protest/Support Log for MOD-63600, GPA-63599, ZON-63601 and DIR-63602 [PRJ-63491], Protest Email for MOD-63600 and GPA-63599 [PRJ-63491] and Protest/Support Postcards for MOD-63600 and DIR-63602 [PRJ-63491]

Motion made by TRINITY HAVEN SCHLOTTMAN to Hold in abeyance Items 17 and 18, 22-24, 52-55, 72-74 and 80 to 5/10/2016 and Withdraw without prejudice Items 26 and 27

ROR025813



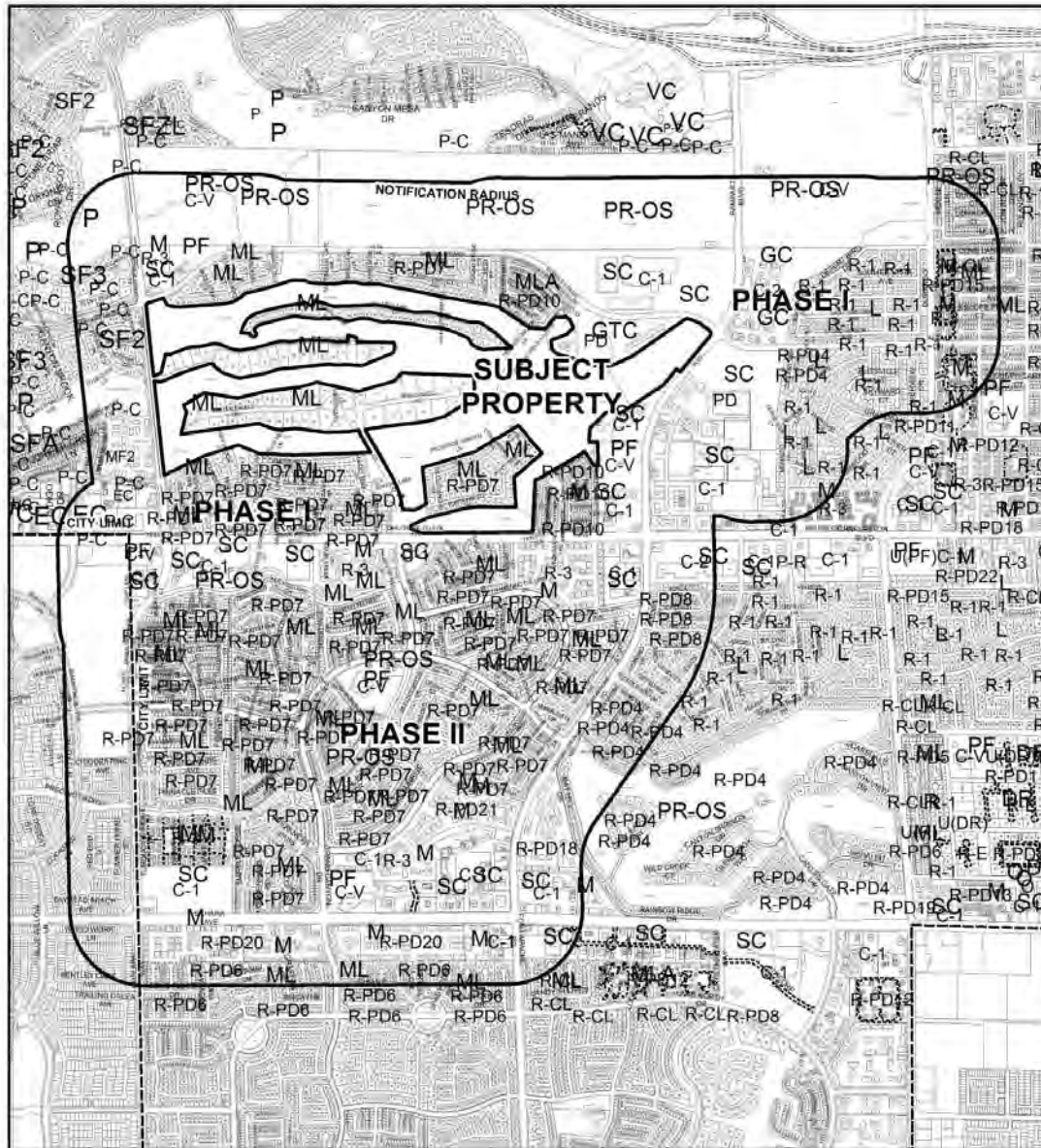
Agenda Item No.: **52.**

PLANNING COMMISSION MEETING OF: APRIL 12, 2016

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

CEDRIC CREAR, GLENN TROWBRIDGE, VICKI QUINN, TODD L. MOODY, TRINITY
HAVEN SCHLOTTMAN, GUS FLANGAS, SAM CHERRY; (Against-None); (Abstain-None);
(Did Not Vote-None); (Excused-None)

ROR025814



CASE: MOD-63600 (PRJ-63491)

RADIUS: 1000 FEET FROM PHASE I AND II

GENERAL PLAN OF SUBJECT PROPERTY: PR-OS (PARKS/RECREATION/OPEN SPACE)

**PROPOSED GENERAL PLAN OF SUBJECT PROPERTY: DR (DESERT RURAL DENSITY RESIDENTIAL)
AND H (HIGH DENSITY RESIDENTIAL)**

ROR025815



March 25, 2016

Mr. Tom Perrigo
Planning Director
City of Las Vegas
333 N. Rancho Dr.
Las Vegas, NV 89106

RE: Abeyance request for MOD-63600, GPA-63599, ZON-63601 and DIR-63602

Dear Mr. Perrigo,

Pursuant to our discussions over the past two weeks this is an Abeyance request for referenced from the April 12th to the May 10th Planning Commission Meeting. This request is for the purpose of providing more time for continued communications with our neighbors. In this regard, we have two publicly noticed meetings already scheduled with the neighborhood, one on March 28 2016 and the other on April 4, 2016, with individually scheduled meetings with neighbors being offered through the month of April. It is in everyone's best interest that all neighbors are given ample opportunity to understand the project in its entirety before any public hearings are held before either the Planning Commission or the City Council. Thank you in advance.

Yours truly,

Frank Pankratz
As Manager of EHB Companies LLC,
the Manager of 180 Land Co. LLC,
Seventy Acres LLC and Fore Stars Ltd.

1215 South Fort Apache Road, Suite 120
Las Vegas, NV 89117
702.940.6930 / 702.940.6931 Fax

RECEIVED

MAR 25 2016

**AGENDA ITEMS 52-55
04/12/16 PC MEETING**

ROR025817

City of Las Vegas

AGENDA MEMO - PLANNING

PLANNING COMMISSION MEETING DATE: APRIL 12, 2016

DEPARTMENT: PLANNING

ITEM DESCRIPTION: APPLICANT/OWNER: 180 LAND CO, LLC, ET AL

**** STAFF RECOMMENDATION(S) ****

<i>CASE NUMBER</i>	<i>RECOMMENDATION</i>	<i>REQUIRED FOR APPROVAL</i>
MOD-63600	Staff recommends NO RECOMMENDATION.	
GPA-63599	Staff recommends NO RECOMMENDATION.	MOD-63600
ZON-63601	Staff recommends NO RECOMMENDATION.	MOD-63600 GPA-63599

SS

ROR025818

**** STAFF REPORT ****

PROJECT DESCRIPTION

The applicant is proposing to redevelop the 250.92 acres (referred to in the applicant's documents as "the Property") that make up the Badlands Golf Course at the southwest corner of Alta Drive and Rampart Boulevard. This area is subject to the Peccole Ranch Master Plan (hereafter, "the Plan"), which was adopted in 1989 and amended in 1990. Since that time, numerous developmental changes have occurred in the Plan area without a corresponding update to the Plan. With an aim to rectify the inconsistencies of the Plan and to add residential units to the Property, the applicant is requesting a Major Modification to the Peccole Ranch Master Plan to memorialize the as-built condition of the existing properties on the overall 1,569-acre site and to change the land use designation in the Plan from Golf Course/Open Space/Drainage to Single-Family Residential and Multi-Family Residential.

Specifically, the number of allowable residential units is proposed to increase. An associated development agreement proposes standards for development of the golf course property in two categories: R-E (Residence Estates) for single-family residential uses and R-4 (High Density Residential) for multi-family uses. In addition, the Plan would be updated through a Major Modification to provide additional drainage infrastructure, which would remove some existing properties from federal flood plain designation. No new commercial is proposed within the Plan area.

ISSUES

- The Badlands golf course was enlarged from the 1990 Peccole Ranch Master Plan (184 acres to 250 acres) without modification of the Plan and built in a different location than was shown on the 1990 plan.
- If approved, the prior General Plan Amendment (GPA-62387) and Rezoning (ZON-62392) requests would be subsumed into this General Plan Amendment and Rezoning proposal.
- A Major Modification of the Peccole Ranch Master Plan is requested.
- A General Plan Amendment is requested to change the General Plan land use designation of the Property from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential) on the east 67.22 acres of the Property and to DR (Desert Rural Density Residential) on the remaining 183.70 acres of the Property.
- A Rezoning is requested to change the zoning designation of the Property from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) on the east 67.22 acres of the Property and to R-E (Residence Estates) on the remaining 183.70 acres of the Property.

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ROR025819

Staff Report Page Two

April 12, 2016 - Planning Commission Meeting

- A related development agreement is to contain a unique set of development standards for the development of property in the proposed R-4 and R-E Districts. The analysis and report for the development agreement will be under a separate Director's Business Item (DIR-63602).
- The proposed amendment would allow for up to 3,020 multi-family residential units to be built on the east 67.22 acres of the Property.
- The proposed amendment would allow for up to 60 single family residential estates to be constructed on the west 183.70 acres of the Property.
- No new commercial is proposed.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
12/17/80	The Board of City Commissioners approved the Annexation (A-0018-80) of 2,243 acres bounded by Sahara Avenue on the south, Hualapai Way on the west, Ducharme Avenue on the north and Durango Drive on the east. The annexation became effective on 12/26/80.
05/20/81	The Board of City Commissioners approved a Rezoning (Z-0034-81) from N-U (Non-Urban) to R-1 (Single Family Residence), R-2 (Two Family Residence), R-3 (Limited Multiple Residence), R-MHP (Residential Mobile Home Park), R-PD7 (Residential Planned Development), R-PD8 (Residential Planned Development), P-R (Professional Offices and Parking), C-1 (Limited Commercial), C-2 (General Commercial) and C-V (Civic) generally located north of Sahara Avenue, south of Westcliff Drive and extending two miles west of Durango Drive. The Planning Commission and staff recommended approval. This application included a "generalized land use plan."
05/07/86	The City Council approved the Master Development Plan for Venetian Foothills on 1,923 acres generally located north of Sahara Avenue between Durango Drive and Hualapai Way. The Planning Commission and staff recommended approval. This plan included two 18-hole golf courses and a 106-acre regional shopping center. [Venetian Foothills Master Development Plan]
	The City Council approved a Rezoning (Z-0030-86) to reclassify property from N-U (Non-Urban) (under Resolution of Intent) to R-PD4 (Residential Planned Development), P-R (Professional Offices and Parking), C-1 (Limited Commercial), and C-V (Civic) on 585.00 acres generally located north of Sahara Avenue between Durango Drive and Hualapai Way. The Planning Commission and staff recommended approval. [Venetian Foothills Phase One]

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ROR025820

Staff Report Page Tree

April 12, 2016 - Planning Commission Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
02/15/89	The City Council considered and approved a revised master development plan for the subject site and renamed it Peccole Ranch to encumber 1,716.30 acres. Phase One of the Plan is generally located south of Charleston Boulevard, west of Fort Apache Road. Phase Two of the Plan is generally located north of Charleston Boulevard, west of Durango Drive, and south of Charleston Boulevard, east of Hualapai Way. The Planning Commission and staff recommended approval. A condition of approval limited the maximum number of dwelling units in Phase One to 3,150. The Phase One portion of the plan on 448.80 acres was subsequently rezoned (Z-0139-88). [Peccole Ranch Master Development Plan]
04/04/90	The City Council approved an amendment to the Peccole Ranch Master Development Plan to make changes related to Phase Two of the Plan and to reduce the overall acreage to 1,569.60 acres. Approximately 212 acres of land in Phase Two was planned for a golf course. The Planning Commission and staff recommended approval. [Peccole Ranch Master Development Plan]
	The City Council approved a Rezoning (Z-0017-90) from N-U (Non-Urban) (under Resolution of Intent to multiple zoning districts) to R-3 (Limited Multiple Residence), R-PD7 (Residential Planned Development – 7 Units per Acre) and C-1 (Limited Commercial) on 996.40 acres on the east side of Hualapai Way, west of Durango Drive, between the south boundary of Angel Park and Sahara Avenue. A condition of approval limited the maximum number of dwelling units for Phase Two of the Peccole Ranch Master Development Plan to 4,247 units. The Planning Commission and staff recommended approval. [Peccole Ranch Phase Two]
12/05/96	A (Parent) Final Map (FM-0008-96) for a 16-lot subdivision (Peccole West) on 570.47 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 77 Page 23 of Plats]. The golf course was located on Lot 5 of this map.
03/30/98	A Final Map [FM-0190-96] for a four-lot subdivision (Peccole West Lot 10) on 184.01 acres at the southeast corner of Alta Drive and Hualapai Way was recorded [Book 83 Page 61 of Plats].
03/30/98	A Final Map [FM-0008-96(1)] to amend portions of Lots 5 and 10 of the Peccole West Subdivision Map on 368.81 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 83 Page 57 of Plats].
07/07/04	The City Council approved a Rezoning (ZON-4205) from R-PD7 (Residential Planned Development – 7 Units per Acre) and U (Undeveloped) [M (Medium Density Residential) General Plan Designation] to PD (Planned Development) on 20.10 acres on the south side of Alta Drive, approximately 450 feet west of Rampart Boulevard. The request included the Queensridge Towers Master Development Plan and Design Standards. The Planning Commission and staff recommended approval.

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ROR025821

Staff Report Page Four

April 12, 2016 - Planning Commission Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
07/07/04	The City Council approved a Variance (VAR-4207) to allow a side yard setback of 239 feet where residential adjacency standards require 570 feet on 20.10 acres on the south side of Alta Drive, approximately 450 feet west of Rampart Boulevard.
07/07/04	The City Council approved a Site Development Plan Review (SDR-4206) for a 385-unit condominium complex, consisting of two 16-story and two 18-story towers with ancillary uses, clubhouse, and a 17,400 square foot, single-story office building on 20.10 acres on the south side of Alta Drive, approximately 450 feet west of Rampart Boulevard.
01/12/06	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice its application for a General Plan Amendment (GPA-9069) from PR-OS (Parks/Recreation/Open Space) to MLA (Medium Low Attached Density Residential) on 6.10 acres at the southwest corner of Alta Drive and Rampart Boulevard.
01/12/06	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice its application for a Rezoning (ZON-9006) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-PD7 (Residential Planned Development – 7 Units per Acre) on 5.40 acres at the southwest corner of Alta Drive and Rampart Boulevard.
01/12/06	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice its application for a Site Development Plan Review (SDR-8632) for a proposed 24-unit townhome development on 6.10 acres at the southwest corner of Alta Drive and Rampart Boulevard.
08/06/14	The City Council approved a Major Modification (MOD-53701) of the Queensridge Towers Development Standards dated May 20, 2004 to amend development standards regarding land use, building setbacks and stepbacks, building height and parking on 20.10 acres on the south side of Alta Drive, approximately 410 feet west of Rampart Boulevard.
08/06/14	The City Council approved a Variance (VAR-53502) to allow a 582-foot building setback where residential adjacency standards require an 810-foot setback for a proposed 22-story residential tower on a 7.87-acre portion of a 10.53-acre parcel at 9119 Alta Drive.
08/06/14	The City Council approved a Major Amendment (SDR-53503) of an approved Site Development Plan Review (SDR-4206) for a proposed 22-story, 310-foot tall, 166-unit multi-family building and a single-story, 33-foot tall, 17,400 square-foot office building on a 7.87-acre portion of a 10.53-acre parcel at 9119 Alta Drive.
06/18/15	A four-lot Parcel Map (PMP-59572) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 49 of Parcel Maps].

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ROR025822

Staff Report Page Five

April 12, 2016 - Planning Commission Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
11/30/15	A two-lot Parcel Map (PMP-62257) on 70.52 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 91 of Parcel Maps].
01/12/16	The City Council voted to abey requests for a General Plan Amendment (GPA-62387) from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential), a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) and a Site Development Plan Review (SDR-62393) for a proposed 720-unit multi-family residential development to the 03/08/16 Planning Commission meeting at the request of the applicant.
03/08/16	The City Council voted to abey GPA-62387, ZON-62392 and SDR-62393 to the 04/12/16 Planning Commission meeting at the request of the applicant.
03/15/16	A two-lot Parcel Map (PMP-63468) on 53.03 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 121 Page 12 of Parcel Maps].

<i>Most Recent Change of Ownership</i>	
04/14/05	A deed was recorded for a change in ownership on APN 138-32-202-001.
11/16/15	A deed was recorded for a change in ownership on APN 138-31-702-002; 138-31-801-002 and 003; 138-32-301-005 and 007.

<i>Related Building Permits/Business Licenses</i>	
There are no building permits or business licenses relevant to these requests.	

<i>Pre-Application Meeting</i>	
Multiple meetings were held with the applicant to discuss the proposed development and its impacts, and the timelines and requirements for application submittal.	

<i>Neighborhood Meeting</i>	
03/28/16	A neighborhood meeting was held at the Suncoast Hotel and Casino, 9090 Alta Drive, Las Vegas. There were 11 members of the development team, 183 members of the public, one Department of Planning staff member and one City Councilperson in attendance. After attendees signed in, they were offered a welcome letter and a hard copy of the video presentation. The developer's representative prefaced the presentation of the development proposal by explaining that the golf course will eventually be removed due to

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ROR025823

Staff Report Page Six

April 12, 2016 - Planning Commission Meeting

<i>Neighborhood Meeting</i>	
	<p>high maintenance costs and that changing the zoning is a way to preserve the low density of the neighborhood but also to increase demand for housing and commercial services in the area. The representative answered residents' questions for 40 minutes, and then invited those in attendance to visit any of four stations where large informational boards were set up and additional questions could be asked of the development team. Comment cards addressed to the Department of Planning were placed on tables for attendees to pick up.</p> <p>Concerns included the following:</p> <ul style="list-style-type: none"> • Residents purchased homes with the understanding that the golf course would remain. • Excavation: Grading cuts and fills would use existing earthwork material, and therefore there would not be trucks moving dirt in and out of the development. • The development agreement calls for 24-hour construction, which raised concerns over noise. A provision would be added that no noise would be generated during regular nighttime hours. • Adding over 3,000 units would strain water resources and raise fire and flood insurance premiums. <p>Those in attendance were overwhelmingly opposed to the project, including amending the city's General Plan and rezoning of the golf course.</p>
04/04/16	A second neighborhood meeting was held with nearby residents at the Badlands Golf Club House, 9119 Alta Drive, Las Vegas.

<i>Field Check</i>	
03/03/16	The overall site includes a mix of various uses, including single family residential of varying density, multi-family residential, schools, parks and other civic uses, neighborhood commercial and a 27-hole public golf course. A majority of the single family residential areas situated around the golf course are gated.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres (MOD)	1569.60
Net Acres (GPA/ZON/DIR)	250.92

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ROR025824

Staff Report Page Seven

April 12, 2016 - Planning Commission Meeting

<i>Surrounding Property</i>	<i>Existing Land Use Per Title 19.12</i>	<i>Planned or Special Land Use Designation</i>	<i>Existing Zoning District</i>
Subject Property	Commercial Recreation/Amusement (Outdoor) – Golf Course	PR-OS (Parks/Recreation/Open Space)	R-PD7 (Residential Planned Development – 7 Units per Acre)
North	Multi-Family Residential (Condominiums) / Club House	GTC (General Tourist Commercial)	PD (Planned Development)
	Hotel/Casino	SC (Service Commercial)	C-1 (Limited Commercial)
	Office, Medical or Dental		
	Single Family, Detached	ML (Medium Low Density Residential)	R-PD7 (Residential Planned Development – 7 Units per Acre)
		MLA (Medium Low Attached Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
South	Office, Other Than Listed	SC (Service Commercial)	C-1 (Limited Commercial)
	Single Family, Detached	ML (Medium Low Density Residential)	R-PD7 (Residential Planned Development – 7 Units per Acre)
	Single Family, Attached	M (Medium Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
	Multi-Family Residential		R-3 (Medium Density Residential)
East	Shopping Center	SC (Service Commercial)	PD (Planned Development)
	Office, Other Than Listed		C-1 (Limited Commercial)
	Mixed Use	GC (General Commercial)	C-2 (General Commercial)
	Utility Installation	PF (Public Facilities)	C-V (Civic)
	Single Family, Attached	M (Medium Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)

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ROR025825

Staff Report Page Eight

April 12, 2016 - Planning Commission Meeting

<i>Surrounding Property</i>	<i>Existing Land Use Per Title 19.12</i>	<i>Planned or Special Land Use Designation</i>	<i>Existing Zoning District</i>
West	Single Family, Detached	SF2 (Single Family Detached – 6 Units per Acre)	P-C (Planned Community)
	Golf Course	P (Parks/Open Space)	
	Multi-Family Residential	MF2 (Medium Density Multi-family – 21 Units per Acre)	

<i>Master Plan Areas</i>	<i>Compliance</i>
Peccole Ranch	Y
<i>Special Purpose and Overlay Districts</i>	<i>Compliance</i>
R-PD (Residential Planned Development) District	Y
PD (Planned Development) District	Y
<i>Other Plans or Special Requirements</i>	<i>Compliance</i>
Trails (Pedestrian Path – Rampart)	Y
Las Vegas Redevelopment Plan Area	N/A
Project of Significant Impact (Development Impact Notification Assessment)	Y
Project of Regional Significance	Y

DEVELOPMENT STANDARDS

Pursuant to the related Development Agreement (DIR-63602) for redevelopment of the 250.92-acre golf course (“the Property”), the following standards would apply if approved:

Proposed R-4 lots:

<i>Standard</i>	<i>Title 19 Standards</i>	<i>Proposed</i>
Min. Lot Size	7,000 SF	7,000 SF
Min. Lot Width	N/A	N/A
Dwelling Units per Acre	Limited by height and underlying General Plan designation	45 du/ac (Development Area 1) 60 du/ac (Development Area 2) 36 du/ac (Development Area 3)
Min. Setbacks <ul style="list-style-type: none"> • Front • Side • Corner • Rear 	10 Feet 5 Feet 5 Feet 20 Feet	All buildings shall be set back at least 60 feet from any existing residence

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ROR025826

Staff Report Page Nine

April 12, 2016 - Planning Commission Meeting

<i>Standard</i>	<i>Title 19 Standards</i>	<i>Proposed</i>
Min. Distance Between Buildings	Unlimited	N/A, except as restricted by conditions of approval of SDR
Max. Lot Coverage	N/A	N/A
Max. Building Height— <ul style="list-style-type: none"> Up to 4 stories 5-6 stories Towers (7+ stories) 	55 Feet	55 Feet 75 Feet 250 Feet
Max. Accessory Structure Height	2 Stories/55 Feet or the height of the principal dwelling unit, whichever is less	Height of the principal dwelling unit
Trash Enclosure	Screened, Gated, w/ a Roof or Trellis	Screened, Gated, w/ a Roof or Trellis
Mech. Equipment	Screened	Screened

Proposed R-E lots:

<i>Standard</i>	<i>Title 19 Standards</i>	<i>Proposed</i>
Min. Lot Size	20,000 SF	43,560 SF
Min. Lot Width	100 Feet	N/A
Max. Dwelling Units per Acre	2.18 du/ac	0.33 du/ac
Dwelling Units per Lot	1	1
Min. Setbacks <ul style="list-style-type: none"> Front Side Corner Rear 	50 Feet 10 Feet 15 Feet 35 Feet	All buildings shall be set back at least 60 feet from any existing residence
Max. Lot Coverage	N/A	N/A
Max. Building Height	2 Stories/35 Feet	3 Stories over Basement/50 Feet
Max. Accessory Structure Height	2 Stories/35 Feet, whichever is less	Lesser of 3 Stories/50 Feet
Patio Covers	15-foot setback to side, rear and corner side PL from posts	5-foot setback from all property lines

<i>Existing Zoning</i>	<i>Permitted Density</i>	<i>Units Allowed</i>
R-PD7 (Residential Planned Development – 7 Units per Acre)	7.49 du/ac	1,879

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ROR025827

Staff Report Page Ten

April 12, 2016 - Planning Commission Meeting

<i>Proposed Zoning</i>	<i>Permitted Density (proposed)</i>	<i>Units Allowed</i>
R-4 (High Density Residential)*	Unlimited, except by height	Limited by height
R-E (Residence Estates)*	1 du/ac	183
<i>Existing General Plan</i>	<i>Permitted Density</i>	<i>Units Allowed</i>
PR-OS (Parks/Recreation/Open Space)	N/A	None
<i>Proposed General Plan</i>	<i>Permitted Density</i>	<i>Units Allowed</i>
H (High Density Residential)	Unlimited	Unlimited
DR (Desert Rural Density Residential)	2.49 du/ac	457

*The R-4 and R-E Districts are as proposed by the Major Modification.

<i>Street Name</i>	<i>Functional Classification of Street(s)</i>	<i>Governing Document</i>	<i>Actual Street Width (Feet)</i>	<i>Compliance with Street Section</i>
Rampart Boulevard	Primary Arterial	Master Plan of Streets and Highways Map	100	Y
Alta Drive	Major Collector	Master Plan of Streets and Highways Map	84	Y

ANALYSIS

Since the original approval of the reclassification of property (Z-0017-90) that created the Peccole Ranch Master Plan Phase Two area, there have been numerous land use entitlements processed within the overall Master Plan area. Entitlements have ranged from Site Development Plan Reviews to establish Residential Planned Development (R-PD) zoning district development standards to the amending of the City of Las Vegas 2020 Master Plan and City of Las Vegas Zoning Atlas. Past land use entitlement practices have varied in respect to proposed developments within the Peccole Ranch Master Plan Phase Two area, specifically in regards to the means by which previous developers have been able to propose development with or without an associated modification of the Peccole Ranch Master Plan. Since adoption of the 1990 Peccole Ranch Master Plan the property was developed with deference to the Plan.

FINDINGS (MOD-63600)

Additional time is needed to review and evaluate the Major Modification and associated Development Agreement (DIR-63602). Therefore, no finding can be reached at this time.

SS

ROR025828

FINDINGS (GPA-63599)

Section 19.16.030(I) of the Las Vegas Zoning Code requires that the following conditions be met in order to justify a General Plan Amendment:

1. **The density and intensity of the proposed General Plan Amendment is compatible with the existing adjacent land use designations,**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

2. **The zoning designations allowed by the proposed amendment will be compatible with the existing adjacent land uses or zoning districts,**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

3. **There are adequate transportation, recreation, utility, and other facilities to accommodate the uses and densities permitted by the proposed General Plan Amendment; and**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

4. **The proposed amendment conforms to other applicable adopted plans and policies that include approved neighborhood plans.**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

FINDINGS (ZON-63601)

In order to approve a Rezoning application, pursuant to Title 19.16.090(L), the Planning Commission or City Council must affirm the following:

SS

ROR025829

Staff Report Page Twelve

April 12, 2016 - Planning Commission Meeting

1. The proposal conforms to the General Plan.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

2. The uses which would be allowed on the subject property by approving the rezoning will be compatible with the surrounding land uses and zoning districts.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

3. Growth and development factors in the community indicate the need for or appropriateness of the rezoning.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

4. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed zoning district.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 44

NOTICES MAILED 6903 - MOD-63600 and DIR-63602
1495 - GPA-63599 and ZON-63601

APPROVALS 3 - MOD-63600 and DIR-63602
1 - GPA-63599 and ZON-63601

PROTESTS 23 - MOD-63600 and DIR-63602
18 - GPA-63599 and ZON-63601

SS

ROR025830



DEPARTMENT OF PLANNING

STATEMENT OF FINANCIAL INTEREST

Case Number: **MOD-63600** APN: 138-31-702-002; 138-31-801-002

Name of Property Owner: 180 Land Co LLC

Name of Applicant: 180 Land Co LLC

Name of Representative: Frank Pankratz

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes

☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____ EHB COMPANIES LLC, its MANAGER

Signature of Property Owner: _____

Print Name: FRANK PANKRATZ, its MANAGER

Subscribed and sworn before me

This 25th day of FEBRUARY, 2016
Kathleen K Momot
 Notary Public in and for said County and State



Revised 11-14-06

F:\depo\Application Packet\Statement of Financial Interest.pdf

PRJ-63491
02/29/16

ROR025831



DEPARTMENT OF PLANNING

STATEMENT OF FINANCIAL INTEREST

Case Number: **MOD-63600** APN: 138-32-301-005; 138-32-301-006

Name of Property Owner: Seventy Acres LLC

Name of Applicant: Seventy Acres LLC

Name of Representative: Frank Pankratz

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes

☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____
ETHB COMPANIES LLC, its Manager

Signature of Property Owner: _____

Print Name: *FRANK PANKRATZ, its Manager*

Subscribed and sworn before me

This 15th day of February, 2016

Kathleen K. Momot
Notary Public in and for said County and State





DEPARTMENT OF PLANNING

STATEMENT OF FINANCIAL INTEREST

Case Number: **MOD-63600** APN: 138-32-202-001;

Name of Property Owner: Fore Stars, Ltd

Name of Applicant: Fore Stars, Ltd.

Name of Representative: Frank Pankratz

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes

☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____
ENB COMPANIES, LLC, its MANAGER

Signature of Property Owner: _____

Print Name: *FRANK PANKRATZ, its MANAGER*

Subscribed and sworn before me

This *25th* day of *February*, 20 *16*

Kathleen K. Momot
Notary Public in and for said County and State





DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: MAJOR MODIFICATION
 Project Address (Location): Multiple
 Project Name: 2016 Peccole Ranch Master Plan Proposed Use: _____
 Assessor's Parcel #(s): Multiple Ward #: 2
 General Plan: existing NA proposed NA Zoning: existing NA proposed NA
 Commercial Square Footage: _____ Floor Area Ratio: _____
 Gross Acres: 1.569.6 Lots/Units: _____ Density: _____
 Additional Information: _____

PROPERTY OWNER <u>Multiple</u>	Contact: _____
Address: _____	Phone: _____ Fax: _____
City: _____	State: _____ Zip: _____
E-mail Address: _____	

APPLICANT <u>180 Land Co LLC</u>	Contact: <u>Frank Pankratz</u>
Address: <u>1215 South Fort Apache, Suite 120</u>	Phone: <u>(702) 940-8930</u> Fax: <u>(702) 940-8931</u>
City: <u>Las Vegas</u>	State: <u>Nevada</u> Zip: <u>89117</u>
E-mail Address: <u>Frank@ehbcompanies.com</u>	

REPRESENTATIVE <u>GCW, Inc.</u>	Contact: <u>Cindie Gee</u>
Address: <u>1555 South Rainbow</u>	Phone: <u>(702) 894-2107</u> Fax: <u>(702) 894-2299</u>
City: <u>Las Vegas</u>	State: <u>Nevada</u> Zip: <u>89146</u>
E-mail Address: <u>cgee@gcwengineering.com</u>	

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies, false information, or incomplete application may cause the application to be rejected. I further certify that I am the owner or purchaser (or agent holder) of the property involved in this application, or the owner or agent fully authorized by the owner to make this submission, as indicated by the owner's signature below.

Property Owner Signature*

*An authorized agent may sign in lieu of the property owner and must include the name of the owner and the name of the agent.

Print Name Frank Pankratz

Subscribed and sworn before me

This 25 day of February, 2016

Leeann Stewart-Schencke

Notary Public in and for said County and State



Revised 10/23/08

FOR DEPARTMENT USE ONLY

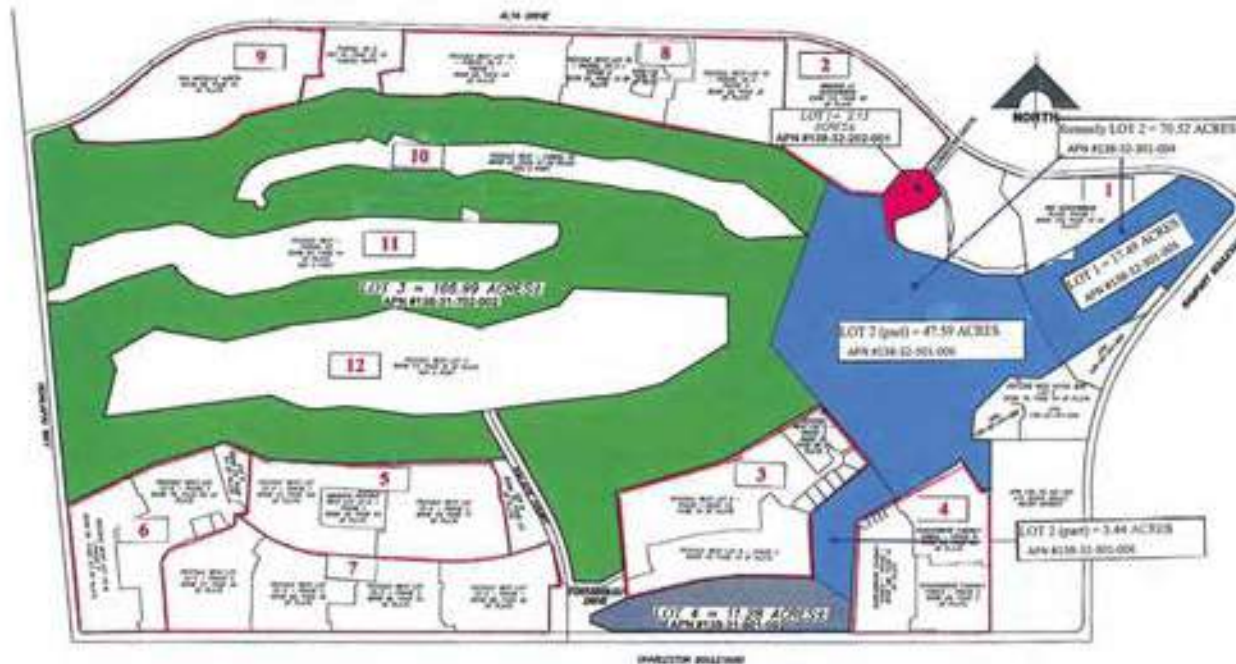
Case # MOD-63600
Meeting Date: _____
Total Fee: _____
Date Received:*
Received By: _____

*The application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable portions of the Zoning Ordinance.
 Elided: Application Packet Modified Form.pdf

PRJ-63491
02/25/16

ROR025834

EXHIBIT 1 PARCEL MAP



PRJ-63491
03/03/16

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025835



LAS VEGAS
CITY COUNCIL

CAROLYN G. GOODMAN
MAYOR

STAVROS S. ANTHONY
MAYOR PRO TEM

LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
BOB COFFIN
BOB BEERS

ELIZABETH N. FRETWELL
CITY MANAGER

CITY OF LAS VEGAS
DEPARTMENT OF PLANNING
DEVELOPMENT SERVICES CENTER
333 NORTH RANCHO DRIVE
3RD FLOOR
LAS VEGAS, NEVADA 89106

VOICE 702.229.6301
FAX 702.474.0352
TTY 702.386.9108
www.lasvegasnevada.gov

EXHIBIT 2

December 30, 2014

Frank Pankratz
ENB Companies
9755 W. Charleston Blvd.
Las Vegas, NV 89117

RE: 138-31-713-002
138-31-712-004
138-31-610-002
138-31-212-002 (ZVL-57350)



Mr. Pankratz,

This letter is in response to a request for zoning verification on properties located within Las Vegas, Nevada with Assessor's Parcel Numbers of 138-31-713-002; 138-31-712-004; 138-31-610-002; and 138-31-212-002. The subject properties are zoned R-PD7 (Residential Planned Development District - 7 Units per Acre).

The R-PD District is intended to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.) A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code. The Las Vegas Zoning Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/LawsCodes/zoning_laws.htm

The department is unable to provide you with a statement as to whether or not this property conforms to current City codes. If a use or building is nonconforming, then Title 19.14 grants certain rights to the owner, which are addressed in Sections 19.14.040 and 19.14.050 located in Title 19 ("Unified Development Code") of the Las Vegas Municipal Code. The Unified Development Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/files/CLV_Unified_Development_Code.pdf

Should you wish to obtain copies of a Certificate of Occupancy or other public records related to the subject property, please contact the Las Vegas Building and Safety Department at (702) 229-6251. Information regarding City code violations on the subject property can be obtained from the Code Enforcement Division of the Building and Safety Department at (702) 229-2330.

If you have any questions concerning this matter, please contact me at (702) 229-6745.

Sincerely,

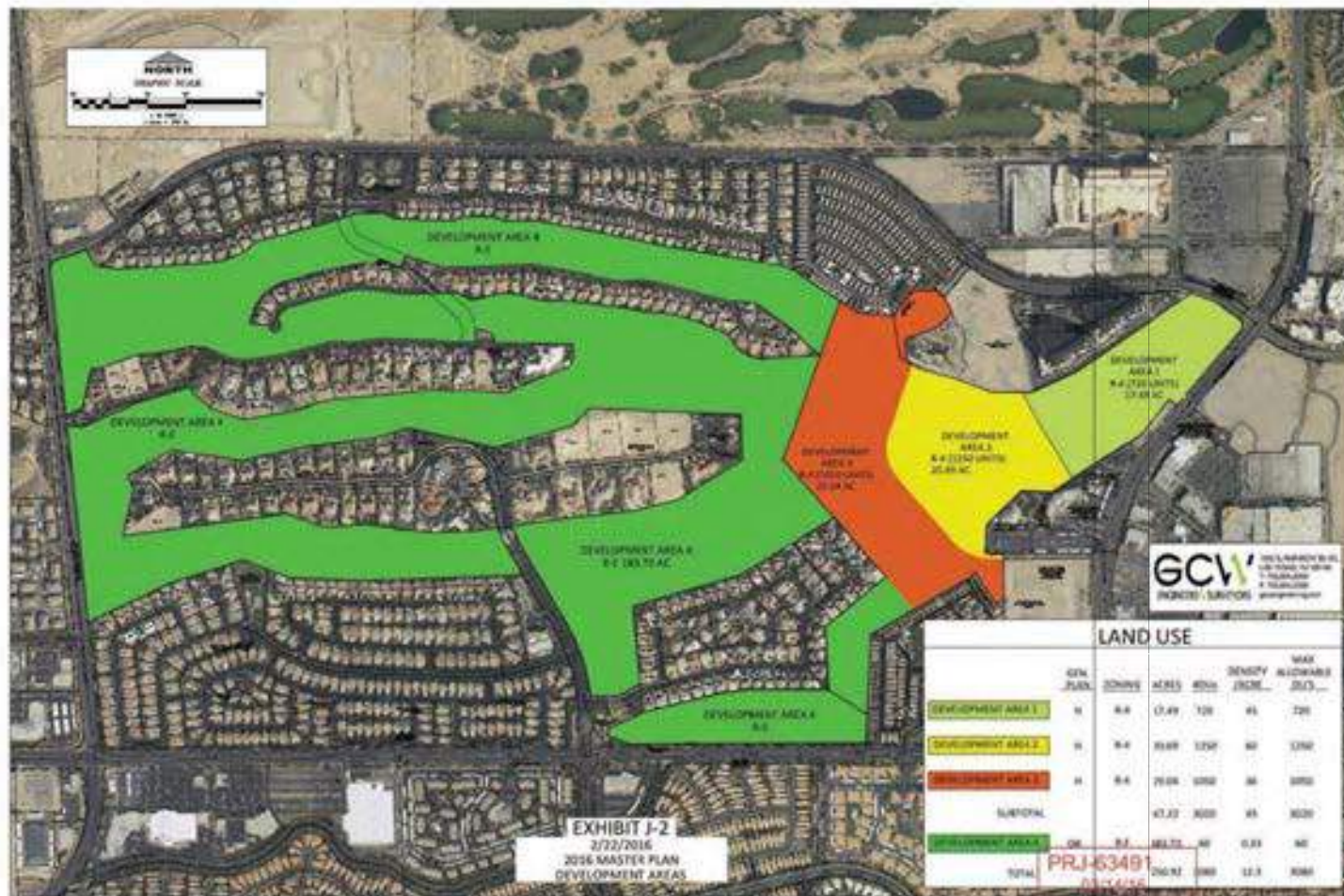
Nicole Eddowes
Planner I
Planning & Development Department

PRJ-63491
02/25/16

FM 00734-04 12

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

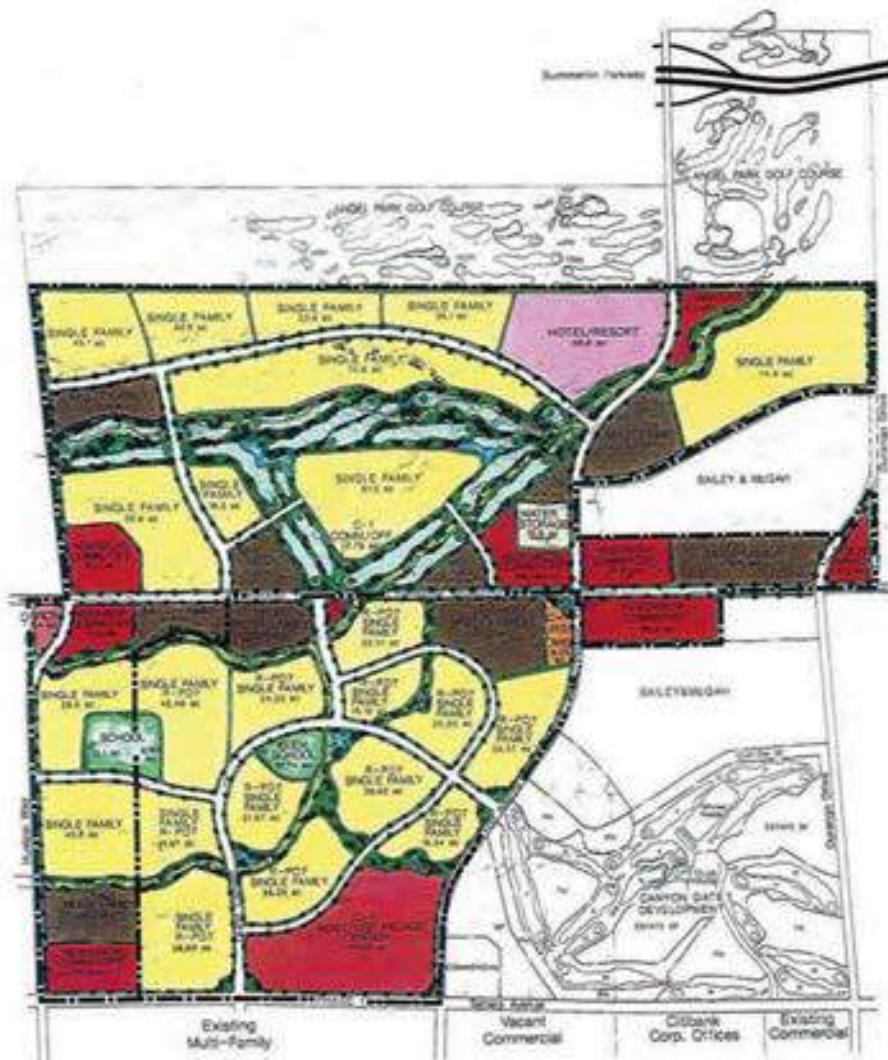
ROR025836



MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025837

ROR025838



SITE DATA - PHASE 1			
LAND USE	NET ACRES	NET DENSITY (DU/AC)	UNITS
Existing Home	8.25		
Single Family	106.48	1.9	2299
Multi-Family	49.28	24.3	1084
Multi-Use Village Center			
Commercial/Office	40.20		
Apartment	55.54	84.8	1900
Commercial/Office	2.73		
Drainage/Open Space	41.67		
R.O.W.	33.87		
Elementary School	17.34		
PHASE 1 TOTAL	272.16	8.8	4399

SITE DATA - FUTURE PHASES	
LAND USE	ACRES
Single Family	687.8
Multi-Family	133.8
Regional Office	137.7
Office	5.4
Hotel/Resort	58.6
Water Storage	15.8
Golf Course/Drainage	227.1
R.O.W.	90.5
School	10.7
FUTURE PHASES TOTAL	1463.7
GRAND TOTAL	1736.0

MASTER PLAN Peccole Ranch Partnership

Suite 900, Capital Place
1701 West Grand Street
Edmonton, Alberta T5K 0J8 • 403-422-7800

Prepared by:
A. Wayne Smith & Associates
1515 East Main Street, Suite 100
Phoenix, Arizona 85044 • (602) 254-1474



EXHIBIT B

EXHIBIT A
2/22/2016
1989 APPROVED
PECCOLE RANCH
MASTER PLAN

RU-63601
00016

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

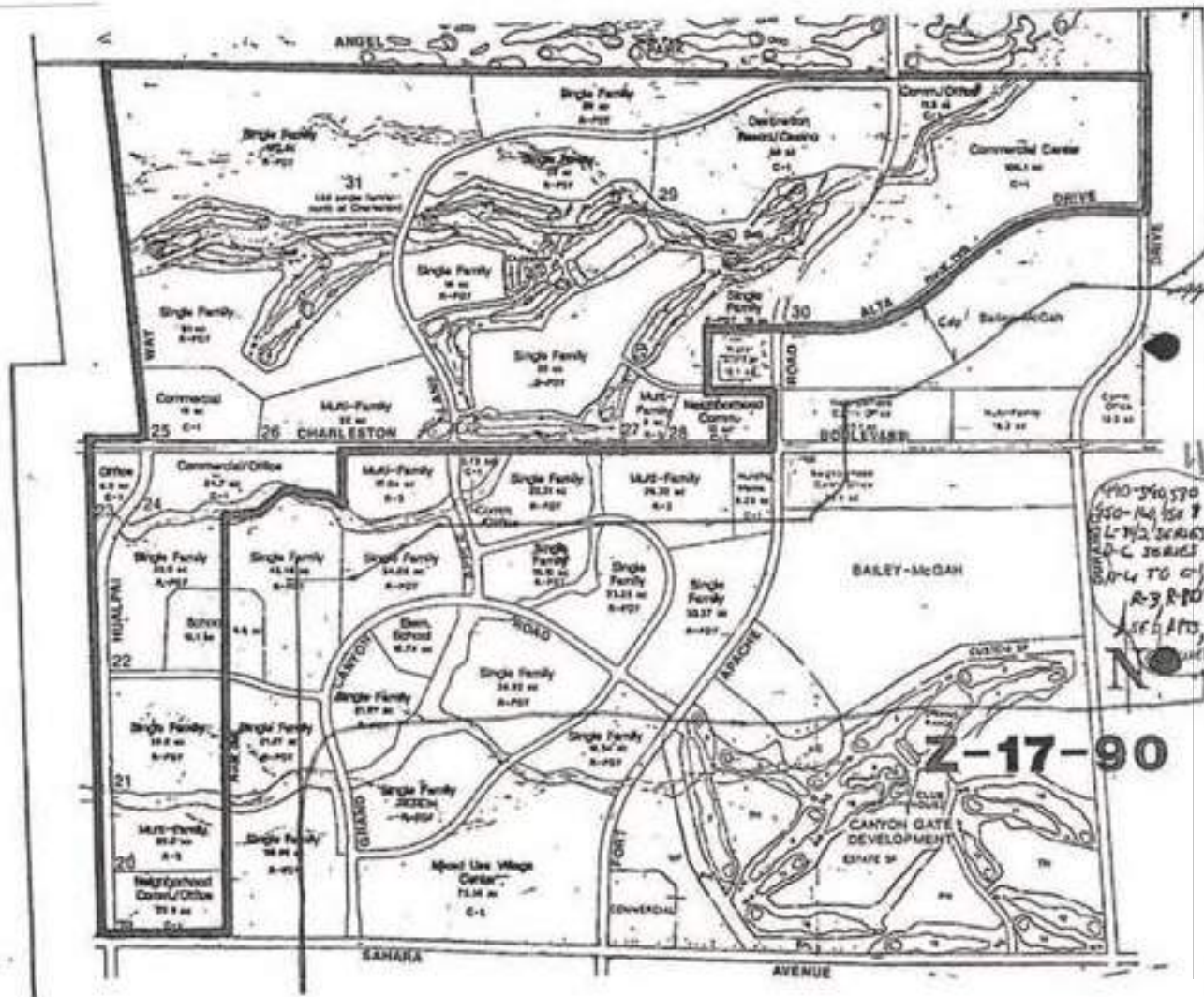


EXHIBIT B
2/22/2016
1990 APPROVED
PECCOLE RANCH
MASTER PLAN

ROR025839

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

EXHIBIT C
2/22/2016
AREA PLAN AS SUBMITTED WITH THE
PROPOSED AND SUBSEQUENTLY APPROVED
1990 PECROLE RANCH MASTER PLAN

28

ROR025841



LEGEND

- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY
- DELETED FROM MASTER PLAN WITH 1990 AMENDMENT



EXHIBIT D
 2/22/2016
 PECCOLE RANCH MASTER PLAN
 BOTH AS-BUILT AND
 AS PRESENTLY ZONED

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

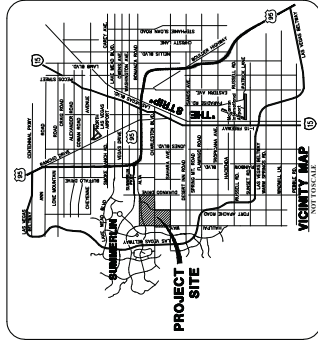
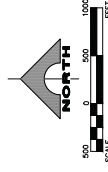
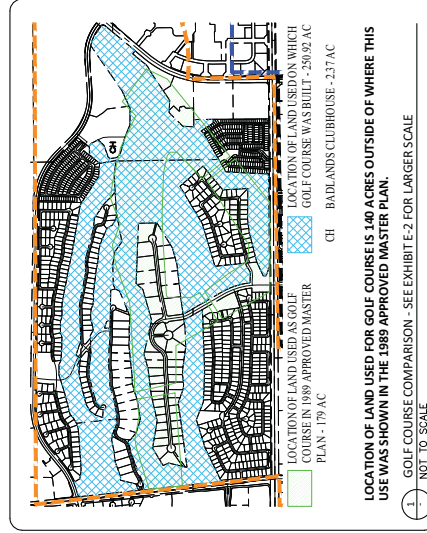
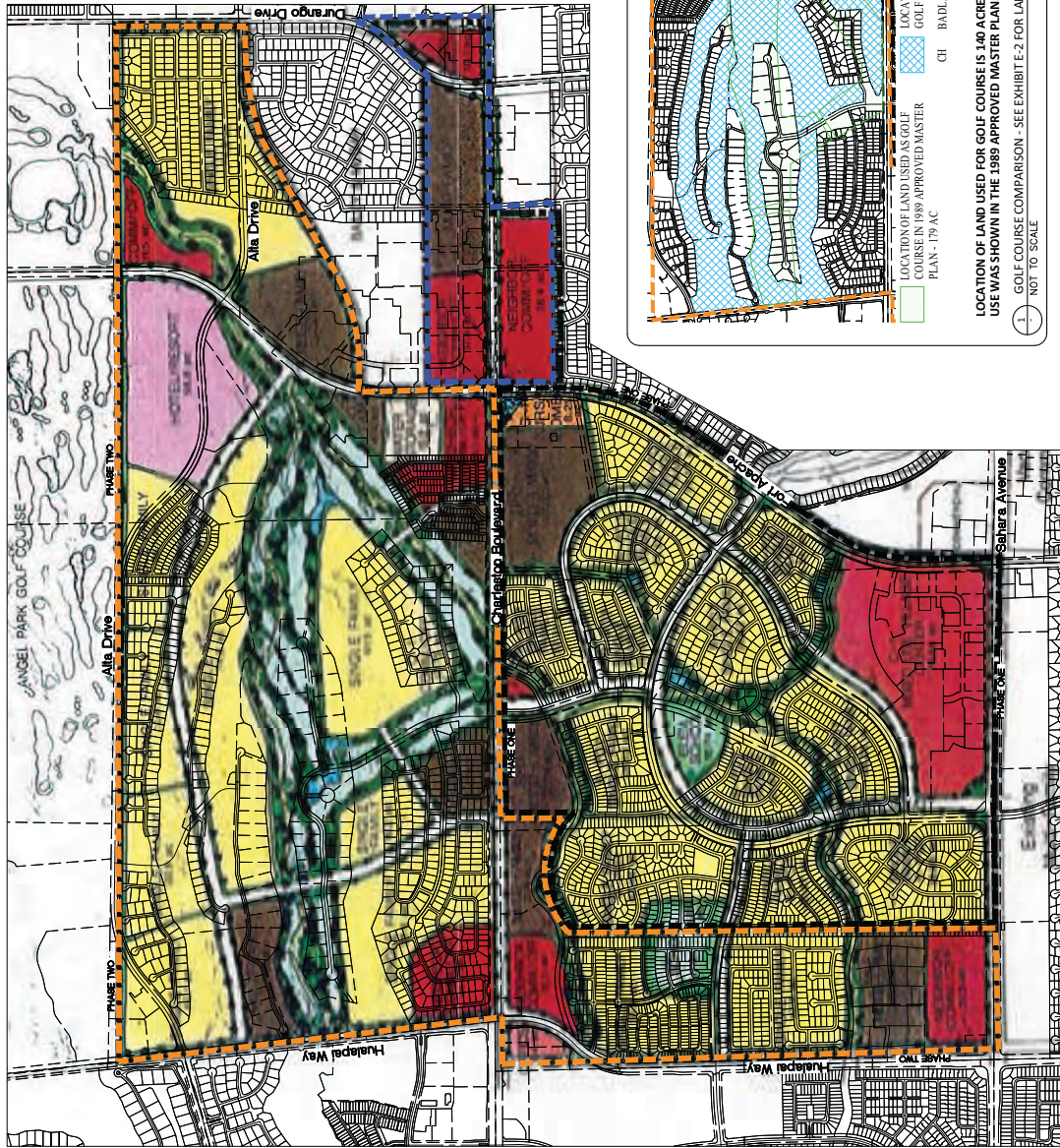


EXHIBIT E-1
2/22/2016
PECCOLE RANCH MASTER PLAN
AS-BUILT (EXHIBIT D) OVERLAYED ON
THE 1989 APPROVED PECCOLE RANCH
MASTER PLAN (EXHIBIT A)

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025842

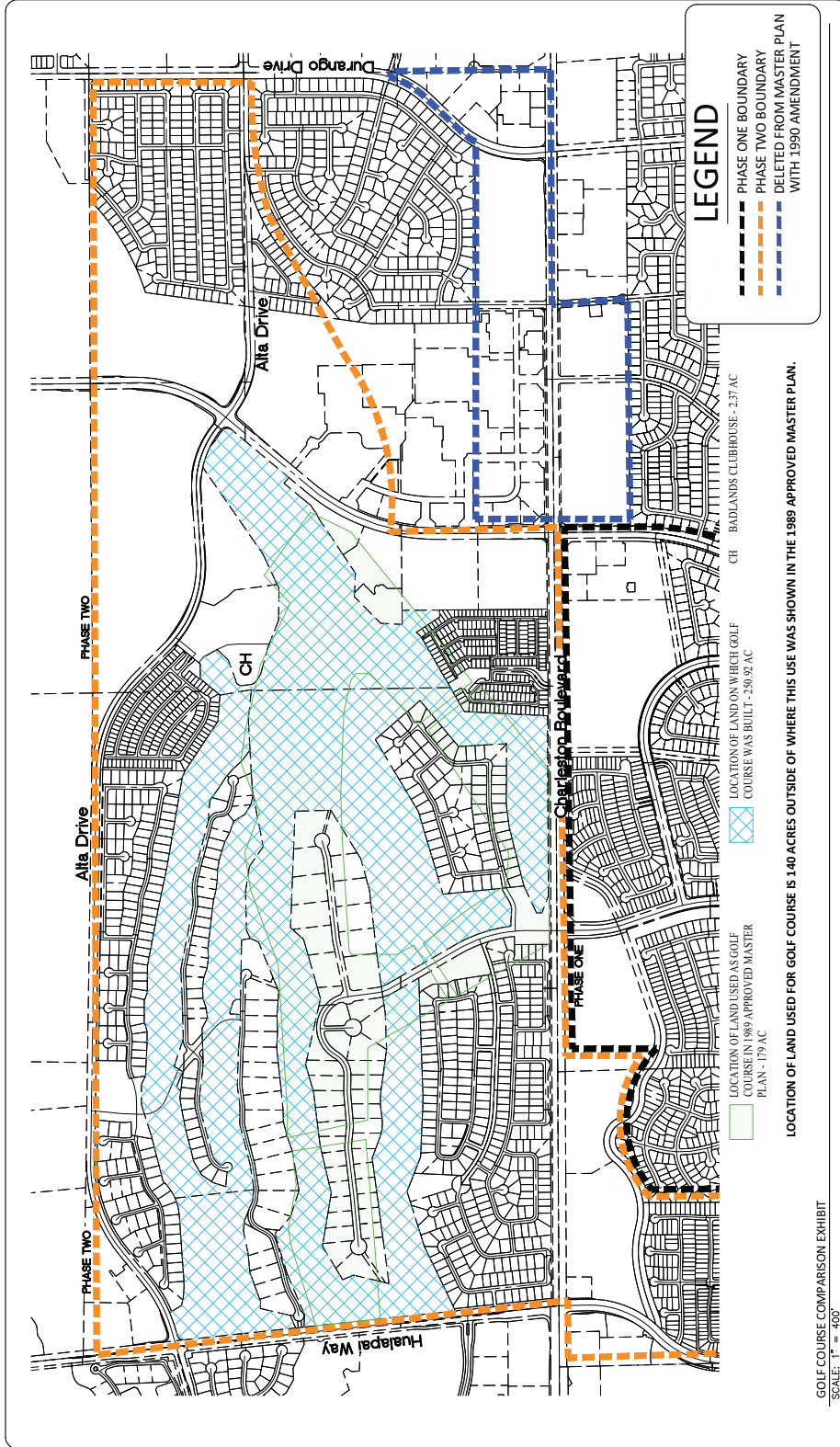


EXHIBIT E-2
2/22/2016
PECCOLE RANCH MASTER PLAN
GOLF COURSE LOCATION IN 1989
APPROVED PECCOLE RANCH MASTER PLAN
VS CURRENT LOCATION

GCV 1555 S. RAINBOW BLVD.
LAS VEGAS, NV 89146
P: 702.894.2299
F: 702.894.2299
gcvengineering.com

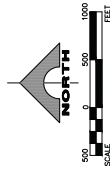
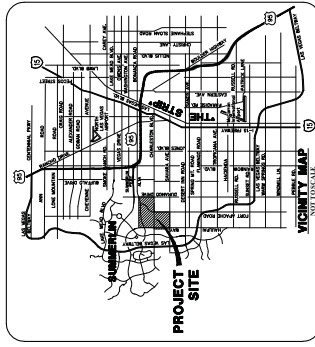
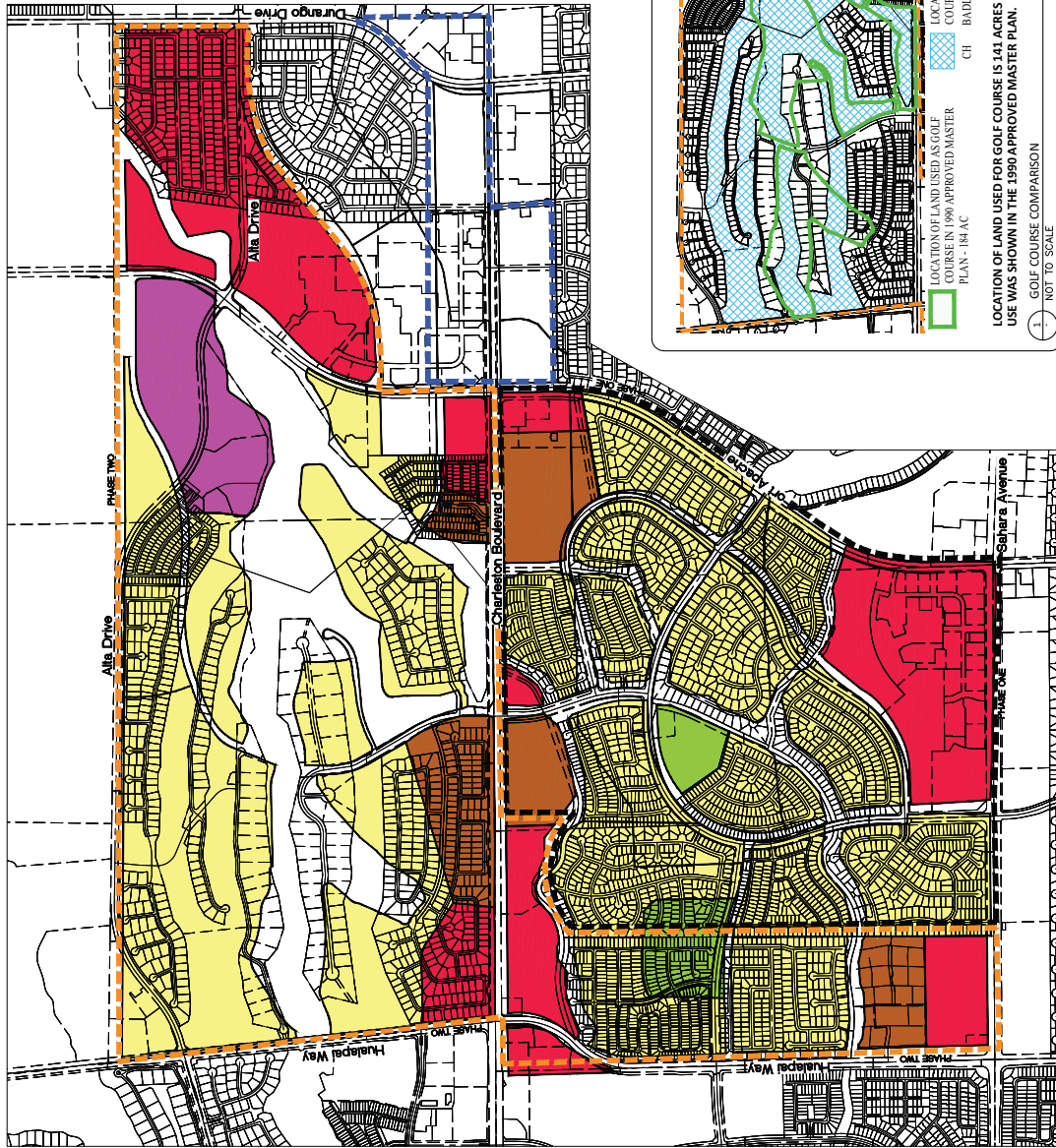
ENGINEERS & SURVEYORS

NORTH

0 400 800
FEET
SCALE

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

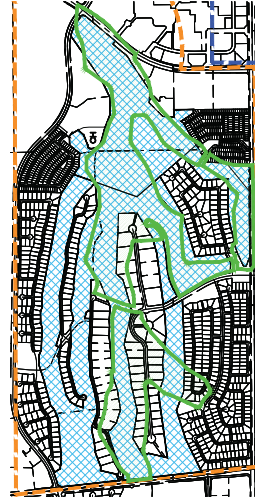
ROR025843



LEGEND

--- PHASE ONE BOUNDARY
 --- PHASE TWO BOUNDARY
 --- DELETED FROM MASTER PLAN WITH 1990 AMENDMENT

■ SINGLE FAMILY
 ■ MULTI FAMILY
 ■ HOTEL/RESORT
 ■ COMMERCIAL
 ■ SCHOOL



LOCATION OF LAND USED FOR GOLF COURSE IS 141 ACRES OUTSIDE OF WHERE THIS USE WAS SHOWN IN THE 1990 APPROVED MASTER PLAN.

1 GOLF COURSE COMPARISON
 2 NOT TO SCALE

EXHIBIT F-1

2/22/2016
 PECCOLE RANCH MASTER PLAN
 AS-BUILT (EXHIBIT D) OVERLAYED ON
 THE 1990 APPROVED PECCOLE RANCH
 MASTER PLAN (EXHIBIT B)

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025844

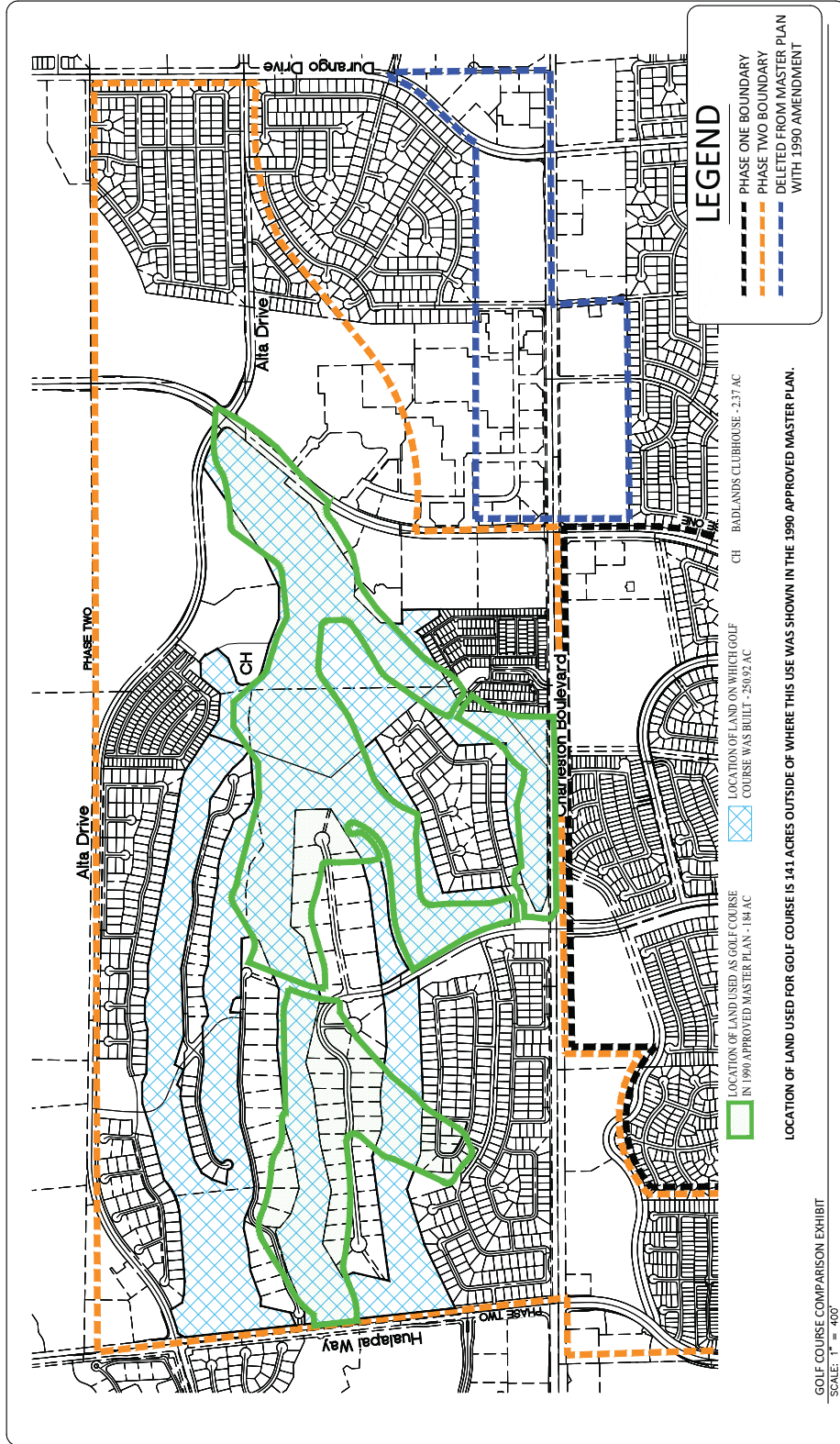
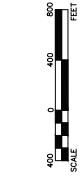
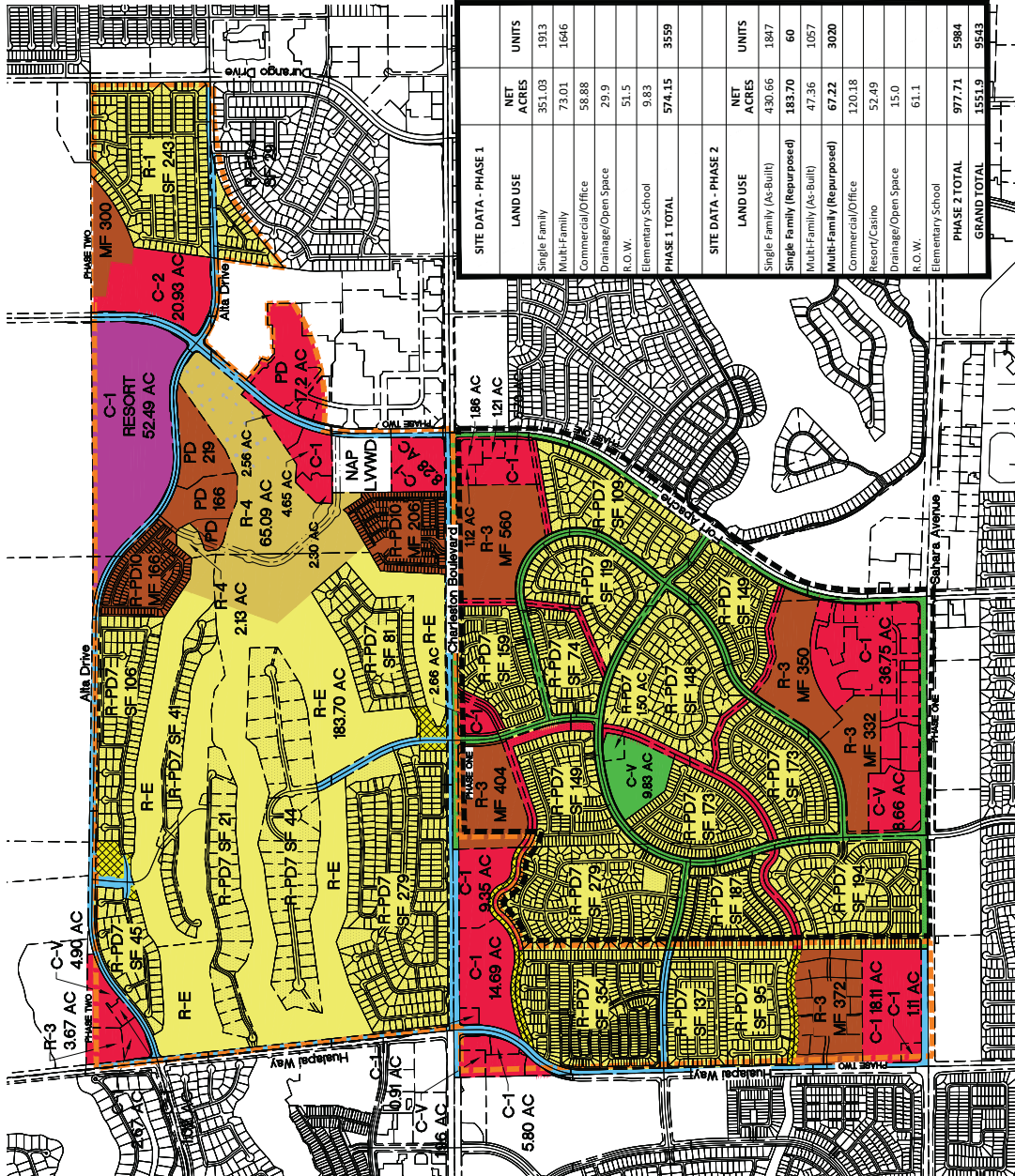


EXHIBIT F-2
 2/22/2016
 PECCOLE RANCH MASTER PLAN
 GOLF COURSE LOCATION IN 1990
 APPROVED PECCOLE RANCH MASTER PLAN
 VS CURRENT LOCATION

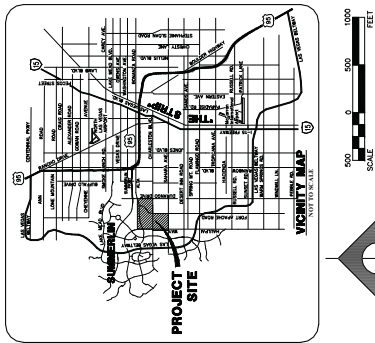


MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025845



SITE DATA - PHASE 1		
LAND USE	NET ACRES	UNITS
Single Family	351.03	1913
Multi-Family	73.01	1646
Commercial/Office	58.88	
Drainage/Open Space	29.9	
R.O.W.	51.5	
Elementary School	9.83	
PHASE 1 TOTAL	574.15	3559
SITE DATA - PHASE 2		
LAND USE	NET ACRES	UNITS
Single Family (As-Built)	430.66	1847
Single Family (Repurposed)	183.70	60
Multi-Family (As-Built)	47.36	1057
Multi-Family (Repurposed)	67.22	3020
Commercial/Office	120.18	
Resort/Casino	52.49	
Drainage/Open Space	15.0	
R.O.W.	61.1	
Elementary School		
PHASE 2 TOTAL	977.71	5984
GRAND TOTAL	1551.9	9543



- LEGEND**
- R-4 - 3020 UNITS - 45 DU/AC
 - R-E - THE R-E ZONING ALLOWS 367 LOTS (A VERY SUBSTANTIAL DOWN ZONING FROM THE CURRENT R-PD7 WHICH @ 7.49 DU/AC ALLOWS 1376 DU's); NOTWITHSTANDING THE DEVELOPERS HAVE CHOSEN, FOR CONSERVATION PURPOSES, MINIMUM 1-ACRE LOT SIZES WITH A MAXIMUM OF 60 HOMESITES.
 - EXISTING SCHOOL
 - EXISTING COMMERCIAL/OFFICE
 - EXISTING HOTEL/RESORT
 - EXISTING MULTI-FAMILY
 - EXISTING SINGLE FAMILY
 - PHASE ONE DRAINAGE/OPEN SPACE
 - PHASE TWO DRAINAGE/OPEN SPACE
 - PHASE ONE ROW
 - PHASE TWO ROW
 - PHASE ONE BOUNDARY
 - PHASE TWO BOUNDARY

GCV
ENGINEERS & SURVEYORS
gcvengineering.com
F: 702.894.2298

PRJ-63491 2/22/2016
EXHIBIT G
2015 MASTER PLAN
(MODIFICATION TO 1990 MASTER PLAN)

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025846



LAS VEGAS
CITY COUNCIL

CAROLYN G. GOODMAN
MAYOR

STAVROS S. ANTHONY
MAYOR PRO TEM

LOIS TARKANIAN
STEVEN D. ROSS
RICKY Y. BARLOW
BOB COFFIN
BOB BEERS

ELIZABETH N. FRETWELL
CITY MANAGER

December 30, 2014

Frank Pankratz
ENB Companies
9755 W. Charleston Blvd.
Las Vegas, NV 89117

RE: 138-31-713-002
138-31-712-004
138-31-610-002
138-31-212-002 (ZVL-57350)

EXHIBIT H



Mr. Pankratz,

This letter is in response to a request for zoning verification on properties located within Las Vegas, Nevada with Assessor's Parcel Numbers of 138-31-713-002; 138-31-712-004; 138-31-610-002; and 138-31-212-002. The subject properties are zoned R-PD7 (Residential Planned Development District - 7 Units per Acre).

The R-PD District is intended to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.) A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code. The Las Vegas Zoning Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/LawsCodes/zoning_laws.htm

The department is unable to provide you with a statement as to whether or not this property conforms to current City codes. If a use or building is nonconforming, then Title 19.14 grants certain rights to the owner, which are addressed in Sections 19.14.040 and 19.14.050 located in Title 19 ("Unified Development Code") of the Las Vegas Municipal Code. The Unified Development Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/files/CLV_Unified_Development_Code.pdf

Should you wish to obtain copies of a Certificate of Occupancy or other public records related to the subject property, please contact the Las Vegas Building and Safety Department at (702) 229-6251. Information regarding City code violations on the subject property can be obtained from the Code Enforcement Division of the Building and Safety Department at (702) 229-2330.

If you have any questions concerning this matter, please contact me at (702) 229-6745.

Sincerely,

Nicole Eddowes
Planner I
Planning & Development Department

CITY OF LAS VEGAS
DEPARTMENT OF PLANNING
DEVELOPMENT SERVICES CENTER
333 NORTH RANCHO DRIVE
3RD FLOOR
LAS VEGAS, NEVADA 89108

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PRJ-63491
02/25/16

PM-0073a 04 12

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025847

EXHIBIT I

PECCOLE MASTER PLAN

250.92 ACREAGE TABULATIONS WITH CURRENT/ PROPOSED ZONING AND GENERAL PLAN DESIGNATIONS

COMMENT	SINGLE FAMILY						MULTI-FAMILY						TOTAL
	CURRENT			PROPOSED			CURRENT			PROPOSED			
	APN#	ACRES	ZONING	GENERAL PLAN DESIGNATION	ZONING	GENERAL PLAN DESIGNATION	APN#	ACRES	ZONING	GENERAL PLAN DESIGNATION	ZONING	GENERAL PLAN DESIGNATION	
Previously part of APN# 138-32-301-004 (70.52 acre parcel)							138-32-301-005 (2)	17.45	RPD-7	PROS	R-4	H	17.45
Previously part of APN#138-32-301-006 (53.03 acres) - parcel map in process							(2)	47.59	RPD-7	PROS	R-4	H	47.6
Previously part of APN#138-32-301-006 (53.03 acres) - parcel map in process (4)	(2)	5.44	R-PD?	PROS	R-E	Residential							5.44
	138-31-801-002 (1)	11.28	R-PD?	PROS	R-E	Residential							
	138-31-702-002 (3)	146.99	R-PD?	PROS	R-E	Residential							
SUB TOTAL		183.71						65.08					248.79
Clubhouse parking lot parcel							138-32-202-001 (8)	2.13	PD	PROS	R-4	H	2.13
TOTAL		183.71						67.21					250.92

NOTES:

(1) Ownership 180 Land Company LLC

(2) Ownership Seventy Acres LLC

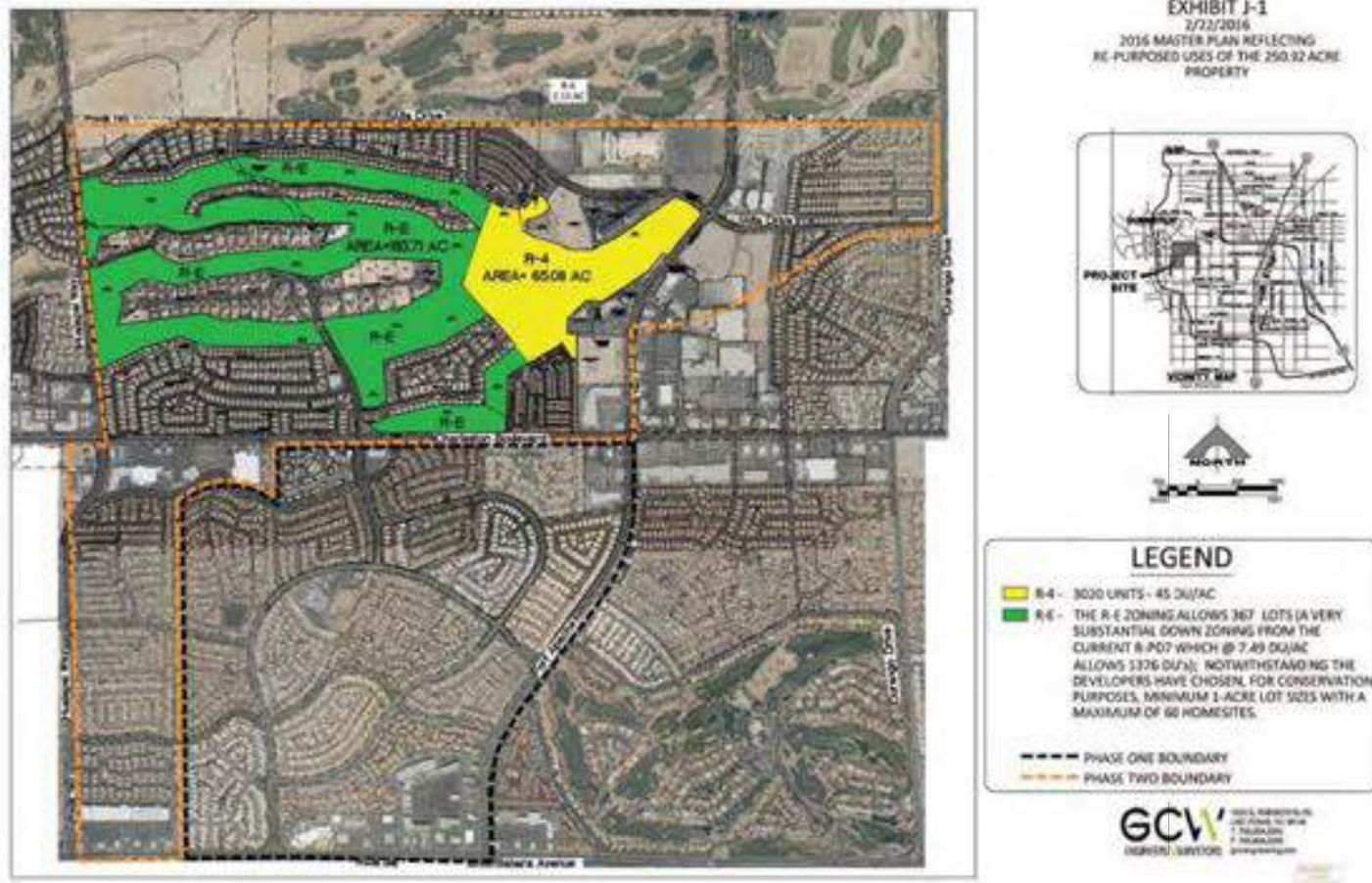
(3) Ownership Fore Stars Ltd

(4) Acreage within the above 53.03 acre parcel that lies between Fountainsblew and Fairway Pointe- single family neighborhoods that will be part of the single family and not part of the multi-family.

PRJ-63491
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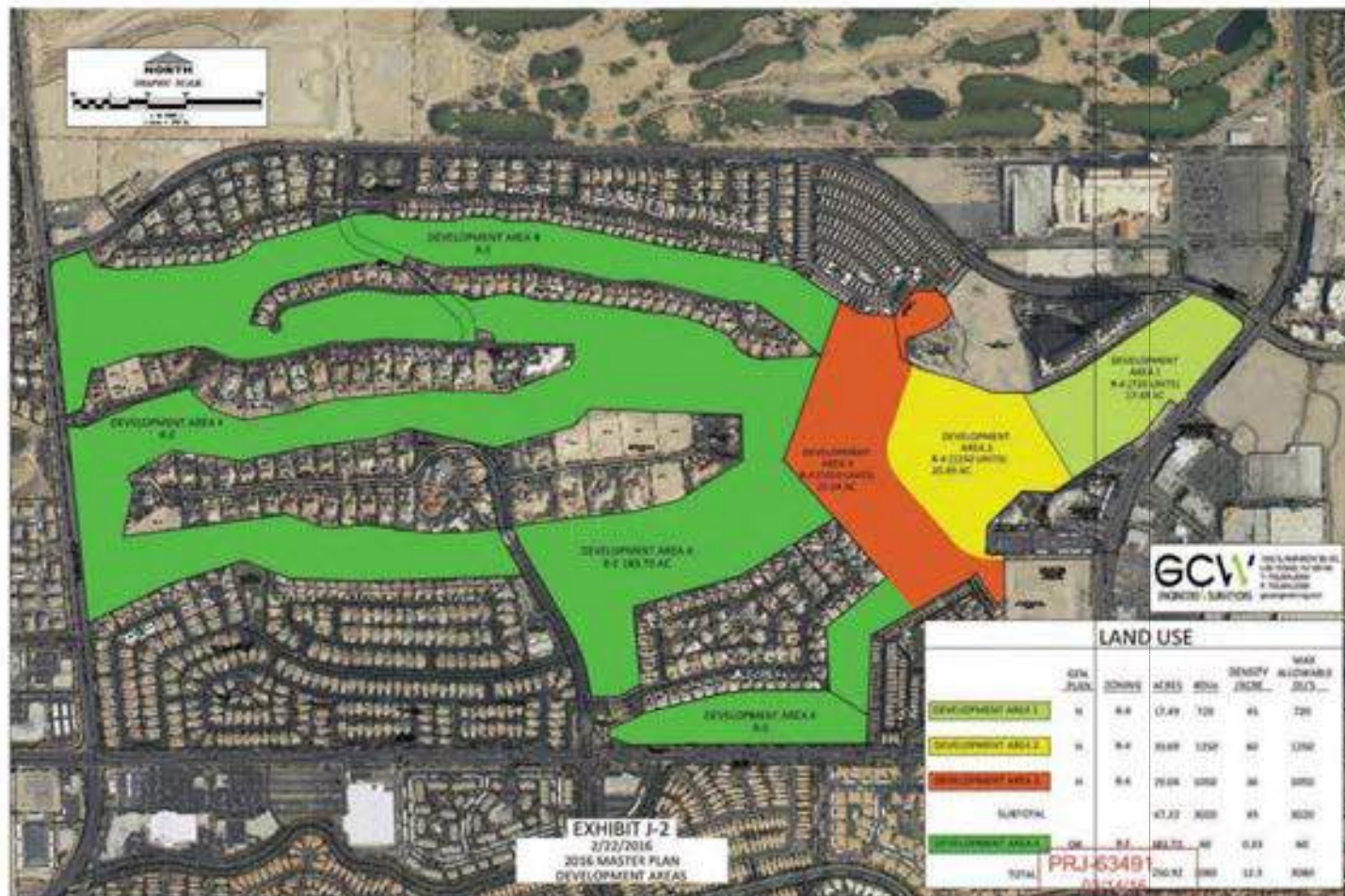
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MOD-63600, GPA-63599, ZON-63601 and DIR-63602



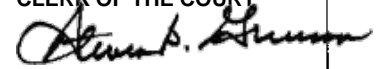
MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025849



MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025850



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15 sallen@kcnvlaw.com
16 *Attorneys for Petitioner*

DISTRICT COURT
CLARK COUNTY, NEVADA

18 180 LAND COMPANY, LLC, a Nevada limited
19 liability company,

Petitioner,

vs.

20 CITY OF LAS VEGAS, political subdivision of
21 the State of Nevada,

Defendant.

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

Department 16

PETITION FOR JUDICIAL REVIEW
(Exempt from Arbitration – Action Seeking
Review of Administrative Decision)

Petitioner, by and through its attorneys of record, Kaempfer Crowell, for its Petition for
Judicial Review complains and alleges as follows:

PARTIES

1. Petitioner ("Petitioner") is organized and existing under the laws of the state of
Nevada.

2. Respondent City of Las Vegas ("City") is a political subdivision of the State of
Nevada.

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Page 1 of 8

1 numbers WVR-68480; SDR-68481 and TMP-68482. These applications are discussed in further
2 detail in paragraphs 16, 17 and 18, below.

3 9. Although the Property currently shows the General Plan Designation of PR-OS
4 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without
5 the City having followed its own proper notice requirements or procedures. Therefore, the
6 General Plan Designation of PR-OS is being shown on the Property in error.

7 10. On or about December 29, 2016, and at the suggestion of the City, Petitioner filed
8 with the City an application for a General Plan Amendment to change the General Plan
9 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open
10 Space) to L (Low Density Residential) and the application was given number GPA-68385
11 ("GPA-68385").

12 11. This proposed General Plan Designation of "L" corresponded to the General Plan
13 Designation on the Property prior to the time the PR-OS designation was improperly placed on
14 the Property by the City.

15 12. As noted, while the General Plan Amendment application (GPA-68385) related to
16 the Property, the balance of the applications filed with the City related specifically to the
17 proposed development of sixty one (61) residential lots on the 35 Acres.

18 13. To the north of the 35 Acres are existing residences developed on lots generally
19 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

20 14. In the center of the 35 Acres, are existing residences developed on lots generally
21 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

22 15. To the south of the 35 Acres are existing residences developed on lots generally
23 ranging in size from three quarters (3/4) of an acre to one and one quarter (1 1/4) acre.

24

1 16. On or about January 25, 2017, Petitioner filed with the City an application
2 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one
3 side within a privately gated community where 47-foot private streets with sidewalks on both
4 sides are required. The application was given number WVR-68480 ("WVR-68480").

5 17. On or about January 4, 2017, Petitioner filed with the City an application
6 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single
7 family residential development. The application was given number SDR-68481 ("SDR-68481").

8 18. On or about January 4, 2017, Petitioner filed with the City an application
9 pertaining to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential
10 development. The application was given number TMP-68482 ("TMP-68482").

11 19. The Planning Staff for the City's Planning Department ("Planning Staff")
12 reviewed GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations
13 of approval for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had
14 "No Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning"
15 relating to the City Council meeting date of June 21, 2017, Planning Staff noted its
16 recommendation of GPA-68385 as "Approval."

17 20. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning
18 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-
19 68482.

20 21. After considering Petitioner's comments, and those of the public, the Planning
21 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's
22 conditions.

1 22. The Planning Commission voted four to two in favor of GPA-68385, however,
2 the vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote
3 was, therefore, tantamount to a denial.

4 23. On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard
5 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

6 24. In conjunction with this City Council public hearing, the Planning Staff, in
7 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted *"the*
8 *adjacent developments are designated ML (Medium Low Density Residential) with a density*
9 *cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79*
10 *dwelling units per acre...Compared with the densities and General Plan designations of the*
11 *adjacent residential development, the proposed L (Low Density Residential) designation is less*
12 *dense and therefore appropriate for this area, capped at 5.49 units per acre."* (emphasis
13 added).

14 25. The Planning Staff found the density of the proposed General Plan compatible
15 with the existing adjacent land use designation, found the zoning designations compatible and
16 found that the filed applications conform to other applicable adopted plans and policies that
17 include approved neighborhood plans.

18 26. At the June 21, 2017 City Council hearing, Petitioner addressed the concerns of
19 the individuals speaking in opposition, and provided substantial evidence, through the
20 introduction of documents and through testimony, of expert witnesses and others, rebutting each
21 and every opposition claim.

22 27. Included as part of the evidence presented by Petitioner at the June 21, 2017 City
23 Council hearing, Petitioner introduced evidence, among other things, (i) that representatives of
24 the City had specifically noted in both City public hearings and in public neighborhood

1 meetings, that the standard for appropriate development based on the existing R-PD7 zoning on
2 the Property would be whether the proposed lot sizes were compatible with and comparable to
3 the lot sizes of the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres
4 were compatible with and comparable to the lot sizes of the existing residences adjoining the lots
5 proposed in the 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres
6 was less than the density of those already existing residences adjoining the 35 Acres; and (iv)
7 that both Planning Staff and the Planning Commission recommended approval of WVR-68480,
8 SDR-68481 and TMP-68482, all of which applications pertain to the proposed development of
9 the 35 Acres.

10 28. Any public statements made in opposition to the various applications were either
11 conjecture or opinions unsupported by facts; all of which public statements were either rebutted
12 by findings as set forth in the Planning Staff report or through statements made by various City
13 representatives at the time of the City Council public hearing or through evidence submitted by
14 Petitioner at the time of the public hearing.

15 29. In spite of the Planning Staff recommendation of approval and the
16 recommendation of approval from the Planning Commission, and despite the substantial
17 evidence offered by Petitioner in support of the WVR-68480, SDR-68481, TMP-68482 and
18 GPA-68385; and in spite of the fact there no substantial evidence was offered in opposition, the
19 City Council denied the WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

20 30. This denial by the City Council was not supported by substantial evidence and
21 was arbitrary and capricious.

22 31. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,
23 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

1 32. This Petition for Judicial Review has been filed within 25 days of the Notices of
2 Final Action as required by NRS 278.3195.

3
4 **FIRST CLAIM FOR RELIEF**
5 **(Judicial Review)**

6 33. Petitioner repeats, re-alleges and incorporates by reference the foregoing
7 paragraphs as if set forth in full herein.

8 34. City has a duty to refrain from exercising its zoning and land use authority in a
9 manner that is arbitrary and capricious.

10 35. City, by engaging in the conduct set forth above, acted arbitrarily and capriciously
11 when it denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

12 36. City's decisions denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385
13 were not supported by evidence a reasonable mind would find adequate to support denials.

14 37. By denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 without
15 substantial evidence supporting such denials, City abused its discretion.

16 38. City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482
17 and GPA-68385 has caused Petitioner to suffer real and significant damages.

18 39. Petitioner is aggrieved by City's denial of WVR-68480, SDR-68481, TMP-68482
19 and GPA-68385.

20 40. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law
21 to correct City's arbitrary and capricious actions.

22 41. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of City's
23 arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

24 ///

///

1 PRAYER FOR RELIEF

2 **WHEREFORE**, Petitioner prays for judgment as follows:

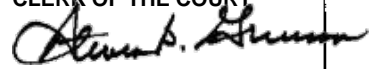
- 3 1. For judicial review of City's denial of WVR-68480, SDR-68481, TMP-68482 and
4 GPA-68385;
- 5 2. For an Order reversing City's denial of WVR-68480, SDR-68481, TMP-68482
6 and GPA-68385; and
- 7 3. For an award of attorneys fees and costs incurred in the filing of this action.
- 8 4. For such further relief as the Court deems just and equitable under the
9 circumstances.

10 DATED this 17th day of July, 2017.

11 KAEMPFER CROWELL.

12
13 BY: 

14 CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)
15 JAMES E. SMYTH II (Nevada Bar No. 6506)
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22 *Attorneys for Petitioner*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 180 LAND COMPANY, LLC, a Nevada limited
20 liability company, DOE INDIVIDUALS I
21 through X, DOE CORPORATIONS I through X,
22 and DOE LIMITED LIABILITY COMPANIES
23 I through X,

22 Petitioners,

23 vs.

24 CITY OF LAS VEGAS, political subdivision of
the State of Nevada, ROE government entities I

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

**FIRST AMENDED PETITION FOR
JUDICIAL REVIEW AND
ALTERNATIVE VERIFIED CLAIMS IN
INVERSE CONDEMNATION
(Exempt from Arbitration – Action Seeking
Review of Administrative Decision and
Action Concerning Title To Real Property)**

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1 through X, ROE CORPORATIONS I through X,
2 ROE INDIVIDUALS I through X, ROE
3 LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,
Defendant.

4
5 Petitioner, by and through its attorneys of record, Kaempfer Crowell and The Law
6 Offices of Kermitt L. Waters, for its Petition for Judicial Review and alternative claims in
7 inverse condemnation complains and alleges as follows:

8 **PARTIES**

9 1. Petitioner ("Petitioner and/or Landowner") is organized and existing under the
10 laws of the state of Nevada.

11 2. Respondent City of Las Vegas ("City") is a political subdivision of the State of
12 Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes,
13 including NRS 342.105, which makes obligatory on the City all of the Federal Uniform
14 Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655,
15 and the regulations adopted pursuant thereto. The City is also subject to all of the provisions of
16 the Just Compensation Clause of the United States Constitution and Article 1, sections 8 and 22
17 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our
18 Land).

19 3. That the true names and capacities, whether individual, corporate, associate, or
20 otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE
21 CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X
22 (hereinafter collectively referred to as "DOEs") inclusive are unknown to Petitioner at this time
23 and who may have standing to sue in this matter and who, therefore, sue the Defendants by
24 fictitious names and will ask leave of the Court to amend this Complaint to show the true names

1 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as
2 principles; that at all times relevant herein, Plaintiff DOE's were persons, corporations, or other
3 entities with standing to sue under the allegations set forth herein.

4 4. That the true names and capacities, whether individual, corporate, associate, or
5 otherwise of Defendants named herein as ROE government entities I through X, ROE
6 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY
7 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter
8 collectively referred to as "ROEs"), inclusive are unknown to the Landowners at this time, who
9 therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this
10 Complaint to show the true names and capacities of Defendants when the same are ascertained;
11 that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or
12 actions, either alone or in concert with the aforementioned defendants, resulted in the claims set
13 forth herein.

14 **JURISDICTION AND VENUE**

15 5. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS
16 278.0235 and NRS 278.3195 and this Court has jurisdiction over the alternative claims for
17 inverse condemnation pursuant to the United States Constitution, Nevada State Constitution and
18 the Nevada Revised Statutes.

19 6. Venue is proper in this judicial district pursuant to NRS 13.040.

20 **GENERAL ALLEGATIONS**

21 7. Petitioner owns 166.99 acres of real property generally located south of Alta
22 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,
23 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-
24 31-702-003, 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

1 8. The existing zoning on the Property is R-PD7 (Residential Planned Development
2 District – 7.49 Units per Acre).

3 9. The R-PD7 zoning designation on the Property allows for up to 7.49 residential
4 units per acre; but such zoning designation is still subject to the approved densities being
5 comparable to and compatible with the existing adjacent and nearby residential development.

6 10. While an application for a General Plan Amendment was filed by Petitioner
7 relating to the Property, being application number, GPA-68385; additional applications were
8 filed by Petitioner with the City that related more particularly to a parcel consisting of 34.07
9 acres, being Assessor's Parcel Number 138-31-201-005. (This 34.07 acres is hereinafter referred
10 to as the "35 Acres".) Those zoning applications pertaining to these 35 Acres were application
11 numbers WVR-68480; SDR-68481 and TMP-68482. These applications are discussed in further
12 detail in paragraphs below.

13 11. At all relevant times herein, Petitioner had the vested right to use and develop the
14 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is
15 comparable and compatible with the existing adjacent and nearby residential development.

16 12. This vested right to use and develop the 35 Acres, was confirmed by the City
17 prior to Petitioner's acquisition of the 35 Acres and Petitioner materially relied upon the City's
18 confirmation regarding the Property's vested zoning rights.

19 13. Petitioner's vested property rights in the 35 Acres is recognized under the United
20 States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

21 14. Although the Property currently shows the General Plan Designation of PR-OS
22 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without
23 the City having followed its own proper notice requirements or procedures. Therefore, the
24 General Plan Designation of PR-OS is being shown on the Property in error.

1 15. On or about December 29, 2016, and at the suggestion of the City, Petitioner filed
2 with the City an application for a General Plan Amendment to change the General Plan
3 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open
4 Space) to L (Low Density Residential) and the application was given number GPA-68385
5 ("GPA-68385").

6 16. This proposed General Plan Designation of "L" allows densities less than the
7 corresponding General Plan Designation on the Property prior to the time the PR-OS designation
8 was improperly placed on the Property by the City.

9 17. As noted, while the General Plan Amendment application (GPA-68385) related to
10 the Property, the balance of the applications filed with the City related specifically to the
11 proposed development of sixty one (61) residential lots on the 35 Acres.

12 18. To the north of the 35 Acres are existing residences developed on lots generally
13 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

14 19. In the center of the 35 Acres, are existing residences developed on lots generally
15 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

16 20. To the south of the 35 Acres are existing residences developed on lots generally
17 ranging in size from three quarters (3/4) of an acre to one and one quarter (1 1/4) acre.

18 21. On or about January 25, 2017, Petitioner filed with the City an application
19 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one
20 side within a privately gated community where 47-foot private streets with sidewalks on both
21 sides are required. The application was given number WVR-68480 ("WVR-68480").

22 22. On or about January 4, 2017, the City required Petitioner to file an application
23 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single
24 family residential development. The application was given number SDR-68481 ("SDR-68481").

1 23. On or about January 4, 2017, Petitioner filed with the City an application
2 pertaining to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential
3 development. The application was given number TMP-68482 ("TMP-68482").

4 24. The Planning Staff for the City's Planning Department ("Planning Staff")
5 reviewed GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations
6 of approval for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had
7 "No Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning"
8 relating to the City Council meeting date of June 21, 2017, Planning Staff noted its
9 recommendation of GPA-68385 as "Approval."

10 25. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning
11 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-
12 68482.

13 26. After considering Petitioner's comments, and those of the public, the Planning
14 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's
15 conditions.

16 27. The Planning Commission voted four to two in favor of GPA-68385, however,
17 the vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote
18 was, therefore, tantamount to a denial.

19 28. On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard
20 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

21 29. In conjunction with this City Council public hearing, the Planning Staff, in
22 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted *"the*
23 *adjacent developments are designated ML (Medium Low Density Residential) with a density*
24 *cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79*

1 dwelling units per acre...Compared with the densities and General Plan designations of the
2 adjacent residential development, the proposed L (Low Density Residential) designation is less
3 dense and therefore appropriate for this area, capped at 5.49 units per acre." (emphasis
4 added).

5 30. The Planning Staff found the density of the proposed General Plan compatible
6 with the existing adjacent land use designation, found the zoning designations compatible and
7 found that the filed applications conform to other applicable adopted plans and policies that
8 include approved neighborhood plans.

9 31. At the June 21, 2017 City Council hearing, Petitioner addressed the concerns of
10 the individuals speaking in opposition, and provided substantial evidence, through the
11 introduction of documents and through testimony, of expert witnesses and others, rebutting each
12 and every opposition claim.

13 32. Included as part of the evidence presented by Petitioner at the June 21, 2017 City
14 Council hearing, Petitioner introduced evidence, among other things, (i) that representatives of
15 the City had specifically noted in both City public hearings and in public neighborhood
16 meetings, that the standard for appropriate development based on the existing R-PD7 zoning on
17 the Property would be whether the proposed lot sizes were compatible with and comparable to
18 the lot sizes of the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres
19 were compatible with and comparable to the lot sizes of the existing residences adjoining the lots
20 proposed in the 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres
21 was less than the density of those already existing residences adjoining the 35 Acres; and (iv)
22 that both Planning Staff and the Planning Commission recommended approval of WVR-68480,
23 SDR-68481 and TMP-68482, all of which applications pertain to the proposed development of
24 the 35 Acres.

1 33. Any public statements made in opposition to the various applications were either
2 conjecture or opinions unsupported by facts; all of which public statements were either rebutted
3 by findings as set forth in the Planning Staff report or through statements made by various City
4 representatives at the time of the City Council public hearing or through evidence submitted by
5 Petitioner at the time of the public hearing.

6 34. In spite of the Planning Staff recommendation of approval and the
7 recommendation of approval from the Planning Commission, and despite the substantial
8 evidence offered by Petitioner in support of the WVR-68480, SDR-68481, TMP-68482 and
9 GPA-68385; and in spite of the fact that no substantial evidence was offered in opposition, the
10 City Council denied the WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

11 35. The City Council's stated reason for the denial was its desire to see, not just the
12 35 Acres, but the entire 250.92 acres of property, developed under one master development
13 agreement which would include all of the following properties in that master development
14 agreement:

15 APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally
16 subdivided and separate and apart from the properties identified below;

17 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and
18 is legally subdivided separate and apart from the 35 Acres;

19 APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and
20 is legally subdivided separate and apart from the 35 Acres;

21 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is
22 legally subdivided separate and apart from the 35 Acres;

23 APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and
24 is legally subdivided separate and apart from the 35 Acres;

1 APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and
2 is legally subdivided separate and apart from the 35 Acres and is owned by a different
3 legal entity, Seventy Acres, LLC;

4 APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and
5 is legally subdivided separate and apart from the 35 Acres and is owned by a different
6 legal entity, Seventy Acres, LLC;

7 APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is
8 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
9 entity, Seventy Acres, LLC;

10 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is
11 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
12 entity, Fore Stars, LTD;

13 36. At the City Council hearing considering and ultimately denying WVR-68480,
14 SDR-68481, TMP-68482 and GPA-68385, the City Council advised Petitioner that the only way
15 the City Council would allow development on the 35 Acres was under a master development
16 agreement for the entirety of the Property (totaling 250.92 acres).

17 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-
18 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated
19 that the approval of the master development agreement is very, very close and “we are going to
20 get there [approval of the master development agreement].” The City Council was referring to
21 the next public hearing wherein the master development agreement (“MDA”) would be voted on
22 by the City Council.

23 38. The City Attorney stated that “if anybody has a list of things that should be in this
24 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because

1 I will listen to you and we'll talk about it and if it needs to be in that agreement, we'll do our best
2 to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I
3 said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue
4 that they should have come to me with months ago I'm gonna ignore them 'cause that's just not
5 fair either. We can't continue to whittle away at this agreement by throwing new things at it all
6 the time. There's been two years for people to make their comments. I think we are that close."

7 39. On August 2, 2017, less than two months after the City Council said it was very,
8 very close to approving the MDA, the City Council voted to deny the MDA altogether.

9 40. The City's actions in denying Petitioner's tentative map (TMP-68482), WVR-
10 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of
11 Petitioner's vested right to develop the 35 Acres.

12 41. This denial by the City Council was not supported by substantial evidence and
13 was arbitrary and capricious.

14 42. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,
15 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

16 43. This Petition for Judicial Review has been filed within 25 days of the Notices of
17 Final Action as required by NRS 278.3195.

18
19 **FIRST CLAIM FOR RELIEF**
(Judicial Review)

20 44. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
21 included in this pleading as if set forth in full herein.

22 45. The City has a duty to refrain from exercising its zoning and land use authority in
23 a manner that is arbitrary and capricious.

24

1 46. The City, by engaging in the conduct set forth above, acted arbitrarily and
2 capriciously when it denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

3 47. The City's decisions denying WVR-68480, SDR-68481, TMP-68482 and GPA-
4 68385 were not supported by evidence a reasonable mind would find adequate to support
5 denials.

6 48. By denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 without
7 substantial evidence supporting such denials, the City abused its discretion.

8 49. The City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-
9 68482 and GPA-68385 has caused Petitioner to suffer real and significant damages.

10 50. Petitioner is aggrieved by the City's denial of WVR-68480, SDR-68481, TMP-
11 68482 and GPA-68385.

12 51. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law
13 to correct the City's arbitrary and capricious actions.

14 52. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of the City's
15 arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

16 **FIRST ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

17 **(Categorical Taking)**

18 53. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
19 included in this pleading as if set forth in full herein.

20 54. The City reached a final decision that it will not allow development of Petitioner's
21 35 Acres.

22 55. Any further requests to the City to develop the 35 Acres would be futile.
23
24

1 56. The City's actions in this case have resulted in a direct appropriation of
2 Petitioner's 35 Acre property by entirely prohibiting Petitioner from using the 35 Acres for any
3 purpose and reserving the 35 Acres undeveloped.

4 57. As a result of the City's actions, Petitioner has been unable to develop the 35
5 Acres and any and all value in the 35 Acres has been entirely eliminated.

6 58. The City's actions have completely deprived Petitioner of all economically
7 beneficial use of the 35 Acres.

8 59. The City's actions have resulted in a direct and substantial impact on Petitioner
9 and on the 35 Acres.

10 60. The City's actions result in a categorical taking of Petitioner's 35 Acre property.

11 61. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
12 property.

13 62. The City's failure to pay just compensation to Petitioner for the taking of its 35
14 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
15 the Nevada Revised Statutes, which require the payment of just compensation when private
16 property is taken for a public use.

17 63. Therefore, Petitioner is compelled to bring this cause of action for the taking of
18 the 35 Acre property to recover just compensation for property the City is taking without
19 payment of just compensation.

20 64. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

21 **SECOND ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

22 **(Penn Central Regulatory Taking)**

23 65. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
24 included in this pleading as if set forth in full herein.

1 66. The City reached a final decision that it will not allow development of Petitioner's
2 35 Acres.

3 67. Any further requests to the City to develop the 35 Acres would be futile.

4 68. The City already denied an application to develop the 35 Acres, even though: 1)
5 Petitioner's proposed 35 Acre development was in conformance with its zoning density and was
6 comparable and compatible with existing adjacent and nearby residential development; 2) the
7 Planning Commission recommended approval; and 3) the City's own Staff recommended
8 approval.

9 69. The City affirmatively stated that it will not allow Petitioner to develop the 35
10 Acres unless it is developed as part of the MDA, referenced above. Petitioner worked on the
11 MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and
12 with the City's direct and active involvement in the drafting and preparing the MDA and the
13 City's statements that it would approve the MDA and despite nearly two years of working on the
14 MDA, on or about August 2, 2017, the City denied the MDA.

15 70. The City's actions have caused a direct and substantial economic impact on
16 Petitioner, including but not limited to preventing development of the 35 Acres.

17 71. The City was expressly advised of the economic impact the City's actions were
18 having on Petitioner.

19 72. At all relevant times herein Petitioner had specific and distinct investment backed
20 expectations to develop the 35 Acres.

21 73. These investment backed expectations are further supported by the fact that the
22 City, itself, advised Petitioner of its vested rights to develop the 35 Acre property prior to
23 acquiring the 35 Acres.

24

1 74. The City was expressly advised of Petitioner's investment backed expectations
2 prior to denying Petitioner the use of the 35 Acres.

3 75. The City's actions are preserving the 35 Acres as open space for a public use and
4 the public is actively using the 35 Acres.

5 76. The City's actions have resulted in the loss of Petitioner's investment backed
6 expectations in the 35 Acres.

7 77. The character of the City action to deny Petitioner's use of the 35 Acres is
8 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to
9 a physical acquisition than adjusting the benefits and burdens of economic life to promote the
10 common good.

11 78. The City never stated that the proposed development on the 35 Acres violated any
12 code, regulation, statute, policy, etc. or that Petitioner did not have a vested property right to
13 develop the 35 Acres.

14 79. The City provided only one reason for denying Petitioner's request to develop the
15 35 Acres - that the City would only approve the MDA that included the entirety of the 250.92
16 acres owned by various entities and that the MDA would allow development of the 35 Acres.

17 80. The City then, on or about August 2, 2017, denied the MDA, thereby preventing
18 the development of the 35 Acres.

19 81. The City's actions meet all of the elements for a Penn Central regulatory taking.

20 82. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
21 property.

22 83. The City's failure to pay just compensation to Petitioner for the taking of its 35
23 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
24

1 the Nevada Revised Statutes, which require the payment of just compensation when private
2 property is taken for a public use.

3 84. Therefore, Petitioner is compelled to bring this cause of action for the taking of
4 the 35 Acre property to recover just compensation for property the City is taking without
5 payment of just compensation.

6 85. The requested compensation is in excess of ten thousand dollars (\$15,000.00).

7 **THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

8 **(Regulatory Per Se Taking)**

9 86. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
10 included in this pleading as if set forth in full herein.

11 87. The City's actions stated above fail to follow the procedures for taking property
12 set forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada's statutory provisions
13 on eminent domain, and the United States and Nevada State Constitutions.

14 88. The City's actions exclude the Petitioner from using the 35 Acres and, instead,
15 permanently reserve the 35 Acres for a public use and the public is using the 35 Acres.

16 89. The City's actions have shown an unconditional and permanent taking of the 35
17 Acres.

18 90. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
19 property.

20 91. The City's failure to pay just compensation to Petitioner for the taking of its 35
21 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
22 the Nevada Revised Statutes, which require the payment of just compensation when private
23 property is taken for a public use.

24

1 92. Therefore, Petitioner is compelled to bring this cause of action for the taking of
2 the 35 Acre property to recover just compensation for property the City is taking without
3 payment of just compensation.

4 93. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

5 **FOURTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

6 **(Nonregulatory Taking)**

7 94. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
8 included in this pleading as if set forth in full herein.

9 95. The City actions directly and substantially interfere with Petitioner's vested
10 property rights rendering the 35 Acres unusable and/or valueless.

11 96. The City has intentionally delayed approval of development on the 35 Acres and,
12 ultimately, denied any and all development in a bad faith effort to preclude any use of the 35
13 Acres.

14 97. The City's actions are oppressive and unreasonable.

15 98. The City's actions result in a nonregulatory taking of Petitioner's 35 Acres.

16 99. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
17 property.

18 100. The City's failure to pay just compensation to Petitioner for the taking of its 35
19 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
20 the Nevada Revised Statutes, which require the payment of just compensation when private
21 property is taken for a public use.

22 101. Therefore, Petitioner is compelled to bring this cause of action for the taking of
23 the 35 Acre property to recover just compensation for property the City is taking without
24 payment of just compensation.

102. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. For judicial review of City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;

2. For an Order reversing City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and

3. Alternatively, an award of just compensation according to the proof for the taking and/or damaging of the Petitioner's property by inverse condemnation,

4. Prejudgment interest commencing from the date the City first froze the use of the 35 Acre property which is prior to the filing of this Complaint in Inverse Condemnation;

5. Upon conclusion of the judicial review claims, a preferential trial setting pursuant to NRS 37.055 on the alternative inverse condemnation claims;


6. Payment for all costs incurred in attempting to develop the 35 Acres.

7. For an award of attorneys fees and costs incurred in and for this action.

1 8. For such further relief as the Court deems just and equitable under the
2 circumstances.

3 DATED this 7th day of September, 2017.

4 KAEMPFER CROWELL

5 
6 BY: _____
7 CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)
8 JAMES E. SMYTH II (Nevada Bar No. 6506)
9 STEPHANIE H. ALLEN (Nevada Bar No. 8486)
10 KAEMPFER CROWELL
11 1980 Festival Plaza Drive, Suite 650
12 Las Vegas, Nevada 89135

13 LAW OFFICES OF KERMITT L. WATERS

14 BY: /s/ Kermit L. Waters
15 KERMITT L. WATERS, ESQ.
16 Nevada Bar. No. 2571
17 JAMES J. LEAVITT, ESQ.
18 Nevada Bar No. 6032
19 MICHAEL SCHNEIDER, ESQ.
20 Nevada Bar No. 8887
21 AUTUMN WATERS, ESQ.
22 Nevada Bar No. 8917
23
24

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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

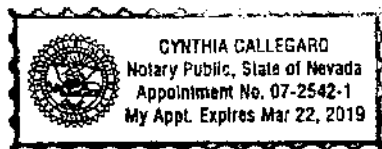
Yohan Lowie, on behalf of Petitioner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **FIRST AMENDED PETITION FOR JUDICIAL REVIEW AND ALTERNATIVE CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

YOHAN LOWIE

SUBSCRIBED and SWORN to before me
This 7 day of September, 2017.

NOTARY PUBLIC

Cynthia Callegaro
Cynthia Callegaro



Attorney or Party without Attorney: KAEMPFER CROWELL CHRISTOPHER L. KAEMPFER (NBN 1264) 1980 FESTIVAL PLAZA, SUITE 650 LAS VEGAS, NV 89135 Telephone No: (702) 792-7000		Ref. No. or File No.:	
Attorney For: PETITIONER			
Insert name of Court, and Judicial District and Branch Court: DISTRICT COURT, CLARK COUNTY, NEVADA			
Petitioner: 180 LAND COMPANY, LLC, a Nevada limited liability company, et al., Defendant: CITY OF LAS VEGAS, political subdivision of the State of Nevada, et al.,			
AFFIDAVIT OF SERVICE		Hearing Date:	Time:
		Dept/Div: XVI	Case Number: A-17-758528-J


- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the SUMMONS; FIRST AMENDED PETITION FOR JUDICIAL REVIEW AND ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION; NOTICE OF ASSOCIATION OF COUNSEL; PETITION FOR JUDICIAL REVIEW
- Party served: CITY OF LAS VEGAS, political subdivision of the State of Nevada
 - Person served: SARA MAYS, ADMINISTRATIVE SUPPORT ASSISTANT, a person of suitable age and discretion, authorized to accept at the below listed address.
- Address where the party was served: 495 S. MAIN STREET
LAS VEGAS, NV 89101
- I served the party:
 - by personal service, I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu, Sep 14 2017 (2) at: 02:30 PM

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

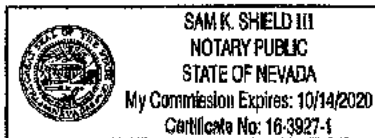
6. Person Who Served Papers:


- Leidy Serna (R-029907)
- FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
- (702) 671-4002

9.19.17
(Date)


(Signature)

7. STATE OF NEVADA, COUNTY OF Clark
 Subscribed and sworn to (or affirmed) before on this 19 day of September, 2017 by Leidy Serna (R-029907)
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.



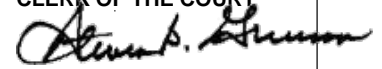

(Notary Signature)



AFFIDAVIT OF SERVICE

1667507
(55049823)

Case Number: A-17-758528-J



1 ANSC
BRADFORD R. JERBIC
2 City Attorney
Nevada Bar No. 1056
3 PHILIP R. BYRNES
Senior Litigation Counsel
4 Nevada Bar No. 166
JEFFRY M. DOROCAC
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7 (702) 229-6629 (office)
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8 Email: jdorocak@lasvegasnevada.gov
Attorneys for CITY OF LAS VEGAS
9

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

15 Petitioners,

16 vs.

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

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

21 Respondents.
22

23 **CITY OF LAS VEGAS' ANSWER TO**
24 **FIRST AMENDED PETITION FOR JUDICIAL REVIEW**

25 Respondent CITY OF LAS VEGAS, through its attorneys, BRADFORD R. JERBIC, City
26 Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, and JEFFRY M. DOROCAC, Deputy
27 City Attorney, answers Petitioner 180 LAND COMPANY, LLC's First Amended Petition for
28 Judicial Review (the "Petition") on file herein as follows:

1 1. Respondent CITY OF LAS VEGAS denies the allegations contained in
2 paragraphs 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
3 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, and 52 of the
4 Petition.

5 2. Respondent CITY OF LAS VEGAS is without knowledge and information
6 sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 3, and 4 of
7 the Petition and, therefore, denies the same.

8 3. Respondent CITY OF LAS VEGAS admits the allegations in paragraph 6 of the
9 Petition.

10 4. Answering paragraph 2 of the Petition, Respondent CITY OF LAS VEGAS
11 admits that it is a Nevada municipality and denies the remaining allegations of paragraph 2.

12 5. Answering paragraph 44 of the Petition, Respondent CITY OF LAS VEGAS
13 repeats and realleges its responses to Paragraphs 1 through 52 as though fully set forth herein.

14 6. Respondent CITY OF LAS VEGAS neither admits nor denies the remaining
15 allegations (paragraphs 53-102) of the Petition because the Court severed these allegations from
16 the Petition by Order dated January 25, 2018.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 Petitioner has failed to state a claim upon which relief may be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Petitioner has failed to exhaust their administrative remedies.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Petitioner's claims are not ripe.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Petitioner lacks standing to pursue the instant Petition.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Respondent City of Las Vegas is entitled to the immunities and limitations on liability set
28 forth in NRS 41.032, 41.033 and 41.035.

1 SIXTH AFFIRMATIVE DEFENSE

2 Petitioner's claims are barred by res judicata.

3 SEVENTH AFFIRMATIVE DEFENSE

4 Petitioner's claims are barred by collateral estoppel.

5 WHEREFORE, Respondent CITY OF LAS VEGAS prays for judgment, after briefing
6 and argument as set forth in E.D.C.R. 2.15, as follows:

- 7 1. That Petitioner takes nothing by way of its Petition;
- 8 2. That Respondent CITY OF LAS VEGAS be awarded its costs and reasonable
9 attorney's fees; and
- 10 3. For such other and further relief as this Court may deem just and proper.

11 DATED this 5th day of February, 2018.

12 BRADFORD R. JERBIC
13 City Attorney

14 By: 

15 PHILIP R. BYRNES
16 Senior Litigation Counsel
17 Nevada Bar No. 166
18 JEFFRY M. DOROCAK
19 Deputy City Attorney
20 Nevada Bar No. 13109
21 495 South Main Street, Sixth Floor
22 Las Vegas, NV 89101
23 Attorneys for CITY OF LAS VEGAS
24
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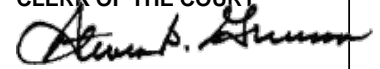
CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2018, I served a true and correct copy of the foregoing CITY OF LAS VEGAS' ANSWER TO FIRST AMENDED PETITION FOR JUDICIAL REVIEW through the electronic filing system of the Eighth Judicial District Court of the State of Nevada, pursuant to Nevada Electronic Filing and Conversion Rules, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135
Attorneys for Petitioners

Kermitt L. Waters, Esq.
LAW OFFICES OF KERMIT L. WATERS
704 S. Ninth Street
Las Vegas, NV 89101
Attorneys for Petitioners


AN EMPLOYEE OF THE CITY OF LAS VEGAS



**ACOMP
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Fax: (702) 385-2086

Attorneys for 180 Land Company, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited
liability company, DOE INDIVIDUALS I
through X, DOE CORPORATIONS I through X,
and DOE LIMITED LIABILITY COMPANIES
I through X,

Plaintiff,

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

**FIRST AMENDED COMPLAINT
PURSUANT TO COURT ORDER
ENTERED ON FEBRUARY 2, 2018 FOR
SEVERED ALTERNATIVE VERIFIED
CLAIMS IN INVERSE
CONDEMNATION**

**(Exempt from Arbitration – Action Seeking
Review of Administrative Decision and
Action Concerning Title To Real Property)**

COMES NOW Plaintiff, 180 Land Company, LLC (“Landowner”) and pursuant to the Order of the Court entered on February 2, 2018, by and through its attorneys of record, The Law Offices of Kermitt L. Waters and Hutchison & Steffen, for its First Amended Complaint Pursuant to Court Order Entered On February 2, 2018 For Severed Alternative Claims In Inverse Condemnation complains and alleges as follows:

PARTIES

1. Landowner is organized and existing under the laws of the state of Nevada.
2. Respondent City of Las Vegas ("City") is a political subdivision of the State of Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes, including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just Compensation Clause of the United States Constitution and Article 1, sections 8 and 22 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).
3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as “DOEs”) inclusive are unknown to the Landowner at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as

1 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other
2 entities with standing to sue under the allegations set forth herein.

3 4. That the true names and capacities, whether individual, corporate, associate, or
4 otherwise of Defendants named herein as ROE government entities I through X, ROE
5 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY
6 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter
7 collectively referred to as "ROEs"), inclusive are unknown to the Landowner at this time, who
8 therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this
9 Complaint to show the true names and capacities of Defendants when the same are ascertained;
10 that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or
11 actions, either alone or in concert with the aforementioned defendants, resulted in the claims set
12 forth herein.

13 **JURISDICTION AND VENUE**

14 5. The Court has jurisdiction over the alternative claims for inverse condemnation
15 pursuant to the United States Constitution, Nevada State Constitution, the Nevada Revised Statutes
16 and pursuant to the Court Order entered in this case on February 2, 2018.

17 6. Venue is proper in this judicial district pursuant to NRS 13.040.

18 **GENERAL ALLEGATIONS**

19 7. Landowner owns 166.99 acres of real property generally located south of Alta
20 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,
21 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-
22 702-003, 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

23 8. The existing zoning on the Property is R-PD7 (Residential Planned Development
24 District – 7.49 Units per Acre).

1 9. The R-PD7 zoning designation on the Property allows for up to 7.49 residential
2 units per acre; but such zoning designation is still subject to the approved densities being
3 comparable to and compatible with the existing adjacent and nearby residential development.

4 10. While an application for a General Plan Amendment was filed by the Landowner
5 relating to the Property, being application number, GPA-68385; additional applications were filed
6 by the Landowner with the City that related more particularly to a parcel consisting of 34.07 acres,
7 being Assessor's Parcel Number 138-31-201-005. (This 34.07 acres is hereinafter referred to as
8 the "35 Acres".) Those zoning applications pertaining to these 35 Acres were application numbers
9 WVR-68480; SDR-68481 and TMP-68482. These applications are discussed in further detail in
10 paragraphs below.

11 11. At all relevant times herein, the Landowner had the vested right to use and develop
12 the 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is
13 comparable and compatible with the existing adjacent and nearby residential development.

14 12. This vested right to use and develop the 35 Acres, was confirmed by the City prior
15 to Landowner's acquisition of the 35 Acres and Landowner materially relied upon the City's
16 confirmation regarding the Property's vested zoning rights.

17 13. Landowner's vested property rights in the 35 Acres are recognized under the United
18 States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

19 14. Although the Property currently shows the General Plan Designation of PR-OS
20 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without
21 the City having followed its own proper notice requirements or procedures. Therefore, the General
22 Plan Designation of PR-OS is being shown on the Property in error.

23 15. On or about December 29, 2016, and at the suggestion of the City, Landowner filed
24 with the City an application for a General Plan Amendment to change the General Plan

1 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open Space)
2 to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-
3 68385").

4 16. This proposed General Plan Designation of "L" allows densities less than the
5 corresponding General Plan Designation on the Property prior to the time the PR-OS designation
6 was improperly placed on the Property by the City.

7 17. As noted, while the General Plan Amendment application (GPA-68385) related to
8 the Property, the balance of the applications filed with the City related specifically to the proposed
9 development of sixty one (61) residential lots on the 35 Acres.

10 18. To the north of the 35 Acres are existing residences developed on lots generally
11 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

12 19. In the center of the 35 Acres, are existing residences developed on lots generally
13 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

14 20. To the south of the 35 Acres are existing residences developed on lots generally
15 ranging in size from three quarters (3/4) of an acre to one and one quarter (1 1/4) acre.

16 21. On or about January 25, 2017, Landowner filed with the City an application
17 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one side
18 within a privately gated community where 47-foot private streets with sidewalks on both sides are
19 required. The application was given number WVR-68480 ("WVR-68480").

20 22. On or about January 4, 2017, the City required Landowner to file an application
21 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single family
22 residential development. The application was given number SDR-68481 ("SDR-68481").
23
24

1 23. On or about January 4, 2017, Landowner filed with the City an application
2 pertaining to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential
3 development. The application was given number TMP-68482 ("TMP-68482").

4 24. The Planning Staff for the City's Planning Department ("Planning Staff") reviewed
5 GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval
6 for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No
7 Recommendation" with regard to GPA-68385; however, in the "Agenda Memo-Planning" relating
8 to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of
9 GPA-68385 as "Approval."

10 25. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning
11 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-
12 68482.

13 26. After considering Landowner's comments, and those of the public, the Planning
14 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's
15 conditions.

16 27. The Planning Commission voted four to two in favor of GPA-68385, however, the
17 vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote was,
18 therefore, tantamount to a denial.

19 28. On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard
20 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

21 29. In conjunction with this City Council public hearing, the Planning Staff, in
22 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted ***"the***
23 ***adjacent developments are designated ML (Medium Low Density Residential) with a density cap***
24 ***of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling***

1 *units per acre...Compared with the densities and General Plan designations of the adjacent*
2 *residential development, the proposed L (Low Density Residential) designation is less dense and*
3 *therefore appropriate for this area, capped at 5.49 units per acre." (emphasis added).*

4 30. The Planning Staff found the density of the proposed General Plan compatible with
5 the existing adjacent land use designation, found the zoning designations compatible and found
6 that the filed applications conform to other applicable adopted plans and policies that include
7 approved neighborhood plans.

8 31. At the June 21, 2017, City Council hearing, Landowner addressed the concerns of
9 the individuals speaking in opposition, and provided substantial evidence, through the introduction
10 of documents and through testimony, of expert witnesses and others, rebutting each and every
11 opposition claim.

12 32. Included as part of the evidence presented by Landowner at the June 21, 2017, City
13 Council hearing, Landowner introduced evidence, among other things, (i) that representatives of
14 the City had specifically noted in both City public hearings and in public neighborhood meetings,
15 that the standard for appropriate development based on the existing R-PD7 zoning on the Property
16 would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of
17 the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres were compatible
18 with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the
19 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres was less than the
20 density of those already existing residences adjoining the 35 Acres; and (iv) that both Planning
21 Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and
22 TMP-68482, all of which applications pertain to the proposed development of the 35 Acres.

23 33. Any public statements made in opposition to the various applications were either
24 conjecture or opinions unsupported by facts; all of which public statements were either rebutted

1 by findings as set forth in the Planning Staff report or through statements made by various City
2 representatives at the time of the City Council public hearing or through evidence submitted by
3 Landowner at the time of the public hearing.

4 34. In spite of the Planning Staff recommendation of approval and the recommendation
5 of approval from the Planning Commission, and despite the substantial evidence offered by
6 Landowner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite
7 of the fact that no substantial evidence was offered in opposition, the City Council denied the
8 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

9 35. The City Council's stated reason for the denial was its desire to see, not just the 35
10 Acres, but the entire 250.92 acres of property, developed under one master development agreement
11 which would include all of the following properties in that master development agreement:

12 APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally
13 subdivided and separate and apart from the properties identified below;

14 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and
15 is legally subdivided separate and apart from the 35 Acres;

16 APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and
17 is legally subdivided separate and apart from the 35 Acres;

18 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is
19 legally subdivided separate and apart from the 35 Acres;

20 APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and
21 is legally subdivided separate and apart from the 35 Acres;

22 APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and
23 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal
24 entity, Seventy Acres, LLC;

1 APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and
2 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal
3 entity, Seventy Acres, LLC;

4 APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is
5 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
6 entity, Seventy Acres, LLC;

7 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is
8 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
9 entity, Fore Stars, LTD;

10 36. At the City Council hearing considering and ultimately denying WVR-68480,
11 SDR-68481, TMP-68482 and GPA-68385, the City Council advised Landowner that the only way
12 the City Council would allow development on the 35 Acres was under a master development
13 agreement for the entirety of the Property (totaling 250.92 acres).

14 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-
15 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated
16 that the approval of the master development agreement is very, very close and “we are going to
17 get there [approval of the master development agreement].” The City Council was referring to the
18 next public hearing wherein the master development agreement (“MDA”) would be voted on by
19 the City Council.

20 38. The City Attorney stated that “if anybody has a list of things that should be in this
21 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because
22 I will listen to you and we’ll talk about it and if it needs to be in that agreement, we’ll do our best
23 to get it in. . . . This is where I have to use my skills and say enough is enough and that’s why I
24 said tonight ‘speak now or forever hold your peace.’ If somebody comes to me with an issue that

1 they should have come to me with months ago I'm gonna ignore them 'cause that's just not fair
2 either. We can't continue to whittle away at this agreement by throwing new things at it all the
3 time. There's been two years for people to make their comments. I think we are that close."

4 39. On August 2, 2017, less than two months after the City Council said it was very,
5 very close to approving the MDA, the City Council voted to deny the MDA altogether.

6 40. The City's actions in denying Landowner's tentative map (TMP-68482), WVR-
7 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of
8 Landowner's vested right to develop the 35 Acres.

9 41. This denial by the City Council was not supported by substantial evidence and was
10 arbitrary and capricious.

11 42. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,
12 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

13 43. The Landowner's Alternative Verified Claims in Inverse Condemnation have been
14 timely filed and, pursuant to the Court's Order entered on February 2, 2018, are ripe.

15 **FIRST ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

16 **(Categorical Taking)**

17 44. Landowner repeats, re-alleges and incorporates by reference all paragraphs
18 included in this pleading as if set forth in full herein.

19 45. The City reached a final decision that it will not allow development of
20 Landowner's 35 Acres.

21 46. Any further requests to the City to develop the 35 Acres would be futile.

22 47. The City's actions in this case have resulted in a direct appropriation of
23 Landowner's 35 Acre property by entirely prohibiting Landowner from using the 35 Acres for
24 any purpose and reserving the 35 Acres undeveloped.

1 48. As a result of the City's actions, Landowner has been unable to develop the 35
2 Acres and any and all value in the 35 Acres has been entirely eliminated.

3 49. The City's actions have completely deprived Landowner of all economically
4 beneficial use of the 35 Acres.

5 50. The City's actions have resulted in a direct and substantial impact on the
6 Landowner and on the 35 Acres.

7 51. The City's actions result in a categorical taking of Landowner's 35 Acre property.

8 52. The City has not paid just compensation to the Landowner for this taking of its 35
9 Acre property.

10 53. The City's failure to pay just compensation to Landowner for the taking of its 35
11 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
12 the Nevada Revised Statutes, which require the payment of just compensation when private
13 property is taken for a public use.

14 54. Therefore, Landowner is compelled to bring this cause of action for the taking of
15 the 35 Acre property to recover just compensation for property the City is taking without
16 payment of just compensation.

17 55. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

18 **SECOND ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

19 **(Penn Central Regulatory Taking)**

20 56. Landowner repeats, re-alleges and incorporates by reference all paragraphs
21 included in this pleading as if set forth in full herein.

22 57. The City reached a final decision that it will not allow development of
23 Landowner's 35 Acres.

24 58. Any further requests to the City to develop the 35 Acres would be futile.

1 59. The City already denied an application to develop the 35 Acres, even though: 1)
2 Landowner's proposed 35 Acre development was in conformance with its zoning density and
3 was comparable and compatible with existing adjacent and nearby residential development; 2)
4 the Planning Commission recommended approval; and 3) the City's own Staff recommended
5 approval.

6 60. The City affirmatively stated that it will not allow Landowner to develop the 35
7 Acres unless it is developed as part of the MDA, referenced above. Landowner worked on the
8 MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and
9 with the City's direct and active involvement in the drafting and preparing the MDA and the
10 City's statements that it would approve the MDA and despite nearly two years of working on the
11 MDA, on or about August 2, 2017, the City denied the MDA.

12 61. The City's actions have caused a direct and substantial economic impact on
13 Landowner, including but not limited to preventing development of the 35 Acres.

14 62. The City was expressly advised of the economic impact the City's actions were
15 having on Landowner.

16 63. At all relevant times herein, Landowner had specific and distinct investment
17 backed expectations to develop the 35 Acres.

18 64. These investment backed expectations are further supported by the fact that the
19 City, itself, advised Landowner of its vested rights to develop the 35 Acre property prior to
20 acquiring the 35 Acres.

21 65. The City was expressly advised of Landowner's investment backed expectations
22 prior to denying Landowner the use of the 35 Acres.

23 66. The City's actions are preserving the 35 Acres as open space for a public use and
24 the public is actively using the 35 Acres.

1 67. The City's actions have resulted in the loss of Landowner's investment backed
2 expectations in the 35 Acres.

3 68. The character of the City action to deny Landowner's use of the 35 Acres is
4 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to
5 a physical acquisition than adjusting the benefits and burdens of economic life to promote the
6 common good.

7 69. The City never stated that the proposed development on the 35 Acres violated any
8 code, regulation, statute, policy, etc. or that Landowner did not have a vested property right to
9 develop the 35 Acres.

10 70. The City provided only one reason for denying Landowner's request to develop
11 the 35 Acres - that the City would only approve the MDA that included the entirety of the 250.92
12 acres owned by various entities and that the MDA would allow development of the 35 Acres.

13 71. The City then, on or about August 2, 2017, denied the MDA, thereby preventing
14 the development of the 35 Acres.

15 72. The City's actions meet all of the elements for a Penn Central regulatory taking.

16 73. The City has not paid just compensation to Landowner for this taking of its 35
17 Acre property.

18 74. The City's failure to pay just compensation to Landowner for the taking of its 35
19 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
20 the Nevada Revised Statutes, which require the payment of just compensation when private
21 property is taken for a public use.

22 75. Therefore, Landowner is compelled to bring this cause of action for the taking of
23 the 35 Acre property to recover just compensation for property the City is taking without
24 payment of just compensation.

1 76. The requested compensation is in excess of ten thousand dollars (\$15,000.00).

2 **THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

3 **(Regulatory Per Se Taking)**

4 77. Landowner repeats, re-alleges and incorporates by reference all paragraphs
5 included in this pleading as if set forth in full herein.

6 78. The City's actions stated above fail to follow the procedures for taking property
7 set forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada's statutory provisions
8 on eminent domain, and the United States and Nevada State Constitutions.

9 79. The City's actions exclude the Landowner from using the 35 Acres and, instead,
10 permanently reserve the 35 Acres for a public use and the public is using the 35 Acres.

11 80. The City's actions have shown an unconditional and permanent taking of the 35
12 Acres.

13 81. The City has not paid just compensation to the Landowner for this taking of its 35
14 Acre property.

15 82. The City's failure to pay just compensation to Landowner for the taking of its 35
16 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
17 the Nevada Revised Statutes, which require the payment of just compensation when private
18 property is taken for a public use.

19 83. Therefore, Landowner is compelled to bring this cause of action for the taking of
20 the 35 Acre property to recover just compensation for property the City is taking without
21 payment of just compensation.

22 84. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

1 **FOURTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

2 **(Nonregulatory Taking)**

3 85. Landowner repeats, re-alleges and incorporates by reference all paragraphs
4 included in this pleading as if set forth in full herein.

5 86. The City actions directly and substantially interfere with Landowner's vested
6 property rights rendering the 35 Acres unusable and/or valueless.

7 87. The City has intentionally delayed approval of development on the 35 Acres and,
8 ultimately, denied any and all development in a bad faith effort to preclude any use of the 35
9 Acres.

10 88. The City's actions are oppressive and unreasonable.

11 89. The City's actions result in a nonregulatory taking of Landowner's 35 Acres.

12 90. The City has not paid just compensation to Landowner for this taking of its 35
13 Acre property.

14 91. The City's failure to pay just compensation to Landowner for the taking of its 35
15 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
16 the Nevada Revised Statutes, which require the payment of just compensation when private
17 property is taken for a public use.

18 92. Therefore, Landowner is compelled to bring this cause of action for the taking of
19 the 35 Acre property to recover just compensation for property the City is taking without
20 payment of just compensation.

21 93. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

22 ///

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 3 1. An award of just compensation according to the proof for the taking (permanent or
4 temporary) and/or damaging of the Landowner's property by inverse condemnation,
5 2. Prejudgment interest commencing from the date the City first froze the use of the
6 35 Acre property which is prior to the filing of this Complaint in Inverse Condemnation;
7 3. Upon conclusion of the judicial review claim(s), a preferential trial setting
8 pursuant to NRS 37.055 on the alternative inverse condemnation claims;
9 4. Payment for all costs incurred in attempting to develop the 35 Acres;
10 5. For an award of attorneys' fees and costs incurred in and for this action; and,
11 6. For such further relief as the Court deems just and equitable under the
12 circumstances.

13 DATED THIS 23rd day of February, 2018.

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

15 BY: /s/ Kermitt L. Waters
16 KERMITT L. WATERS, ESQ.
17 Nevada Bar. No.2571
18 JAMES J. LEAVITT, ESQ.
19 Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
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Nevada Bar No. 8917

20 **HUTCHISON & STEFFEN**

21 BY: /s/ Mark A. Hutchison
22 Mark A. Hutchison (4639)
23 Joseph S. Kistler (3458)
24 Robert T. Stewart (13770)

Attorneys for 180 Land Company, LLC

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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

Yohan Lowie, on behalf of the Landowner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **FIRST AMENDED COMPLAINT PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 2, 2018 FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

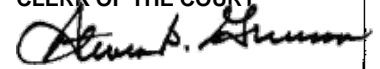


YOHAN LOWIE

SUBSCRIBED and SWORN to before me
This 26 day of February, 2018.


NOTARY PUBLIC





1 PTJR

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2 Mark A. Hutchison (4639)

3 Joseph S. Kistler (3458)

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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Petitioners,

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

**SECOND AMENDED PETITION FOR
JUDICIAL REVIEW TO SEVER
ALTERNATIVE VERIFIED CLAIMS IN
INVERSE CONDEMNATION PER
COURT ORDER ENTERED ON
FEBRUARY 1, 2018**

**(Exempt from Arbitration – Action Seeking
Review of Administrative Decision and
Action Concerning Title To Real Property)**

The First Amended Petition is amended pursuant to the Court's Order entered on February 1, 2018, to sever the Alternative Verified Claims In Inverse Condemnation filed in this action on September 7, 2017. The allegations in this Second Amended Petition For Judicial Review To Sever Alternative Verified Claims In Inverse Condemnation Per Court Order Entered On February 1, 2018 are in all material respects the same as filed on September 7, 2017, except for the severed Alternative Verified Claims In Inverse Condemnation which are being severed from this Petition and filed in this same case before Department 16 of the Eighth Judicial District for the State of Nevada contemporaneously herewith pursuant to the Court's Order Entered on February 1, 2018, as the First Amended Complaint Pursuant to Court Order Entered On February 1, 2018 For Severed Alternative Verified Claims In Inverse Condemnation.

1 Petitioner, by and through its attorneys of record, Hutchison & Steffen, Kaempfer Crowell,
2 and The Law Offices of Kermitt L. Waters, for its Petition for Judicial Review complains and
3 alleges as follows:

4 **PARTIES**

5 1. Petitioner ("Petitioner and/or Landowner") is organized and existing under the laws
6 of the state of Nevada.

7 2. Respondent City of Las Vegas ("City") is a political subdivision of the State of
8 Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes,
9 including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation
10 Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the
11 regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just
12 Compensation Clause of the United States Constitution and Article 1, sections 8 and 22 of the
13 Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).

14 3. That the true names and capacities, whether individual, corporate, associate, or
15 otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE
16 CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X
17 (hereinafter collectively referred to as "DOEs") inclusive are unknown to Petitioner at this time
18 and who may have standing to sue in this matter and who, therefore, sue the Defendants by
19 fictitious names and will ask leave of the Court to amend this Complaint to show the true names
20 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as
21 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other
22 entities with standing to sue under the allegations set forth herein.

23 4. That the true names and capacities, whether individual, corporate, associate, or
24 otherwise of Defendants named herein as ROE government entities I through X, ROE

1 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY
2 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter
3 collectively referred to as "ROEs"), inclusive are unknown to the Landowners at this time, who
4 therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this
5 Complaint to show the true names and capacities of Defendants when the same are ascertained;
6 that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or
7 actions, either alone or in concert with the aforementioned defendants, resulted in the claims set
8 forth herein.

9 JURISDICTION AND VENUE

10 5. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS
11 278.0235 and NRS 278.3195 and this Court has jurisdiction over the alternative claims for inverse
12 condemnation pursuant to the United States Constitution, Nevada State Constitution and the
13 Nevada Revised Statutes.

14 6. Venue is proper in this judicial district pursuant to NRS 13.040.

15 GENERAL ALLEGATIONS

16 7. Petitioner owns 166.99 acres of real property generally located south of Alta Drive,
17 east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada;
18 all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003,
19 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

20 8. The existing zoning on the Property is R-PD7 (Residential Planned Development
21 District – 7.49 Units per Acre).

22 9. The R-PD7 zoning designation on the Property allows for up to 7.49 residential
23 units per acre; but such zoning designation is still subject to the approved densities being
24 comparable to and compatible with the existing adjacent and nearby residential development.

1 10. While an application for a General Plan Amendment was filed by Petitioner relating
2 to the Property, being application number, GPA-68385; additional applications were filed by
3 Petitioner with the City that related more particularly to a parcel consisting of 34.07 acres, being
4 Assessor's Parcel Number 138-31-201-005. (This 34.07 acres is hereinafter referred to as the "35
5 Acres".) Those zoning applications pertaining to these 35 Acres were application numbers WVR-
6 68480; SDR-68481 and TMP-68482. These applications are discussed in further detail in
7 paragraphs below.

8 11. At all relevant times herein, Petitioner had the vested right to use and develop the
9 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is
10 comparable and compatible with the existing adjacent and nearby residential development.

11 12. This vested right to use and develop the 35 Acres, was confirmed by the City prior
12 to Petitioner's acquisition of the 35 Acres and Petitioner materially relied upon the City's
13 confirmation regarding the Property's vested zoning rights.

14 13. Petitioner's vested property rights in the 35 Acres is recognized under the United
15 States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

16 14. Although the Property currently shows the General Plan Designation of PR-OS
17 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without
18 the City having followed its own proper notice requirements or procedures. Therefore, the General
19 Plan Designation of PR-OS is being shown on the Property in error.

20 15. On or about December 29, 2016, and at the suggestion of the City, Petitioner filed
21 with the City an application for a General Plan Amendment to change the General Plan
22 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open Space)
23 to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-
24 68385").

1 16. This proposed General Plan Designation of "L" allows densities less than the
2 corresponding General Plan Designation on the Property prior to the time the PR-OS designation
3 was improperly placed on the Property by the City.

4 17. As noted, while the General Plan Amendment application (GPA-68385) related to
5 the Property, the balance of the applications filed with the City related specifically to the proposed
6 development of sixty one (61) residential lots on the 35 Acres.

7 18. To the north of the 35 Acres are existing residences developed on lots generally
8 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

9 19. In the center of the 35 Acres, are existing residences developed on lots generally
10 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

11 20. To the south of the 35 Acres are existing residences developed on lots generally
12 ranging in size from three quarters (3/4) of an acre to one and one quarter (1¼) acre.

13 21. On or about January 25, 2017, Petitioner filed with the City an application
14 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one side
15 within a privately gated community where 47-foot private streets with sidewalks on both sides are
16 required. The application was given number WVR-68480 ("WVR-68480").

17 22. On or about January 4, 2017, the City required Petitioner to file an application
18 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single family
19 residential development. The application was given number SDR-68481 ("SDR-68481").

20 23. On or about January 4, 2017, Petitioner filed with the City an application pertaining
21 to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential development.
22 The application was given number TMP-68482 ("TMP-68482").

23 24. The Planning Staff for the City's Planning Department ("Planning Staff") reviewed
24 GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval

1 for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No
2 Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning" relating
3 to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of
4 GPA-68385 as "Approval."

5 25. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning
6 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-
7 68482.

8 26. After considering Petitioner's comments, and those of the public, the Planning
9 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's
10 conditions.

11 27. The Planning Commission voted four to two in favor of GPA-68385, however, the
12 vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote was,
13 therefore, tantamount to a denial.

14 28. On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard
15 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

16 29. In conjunction with this City Council public hearing, the Planning Staff, in
17 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted "*the*
18 *adjacent developments are designated ML (Medium Low Density Residential) with a density cap*
19 *of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling*
20 *units per acre...Compared with the densities and General Plan designations of the adjacent*
21 *residential development, the proposed L (Low Density Residential) designation is less dense and*
22 *therefore appropriate for this area, capped at 5.49 units per acre.*" (emphasis added).

23 30. The Planning Staff found the density of the proposed General Plan compatible with
24 the existing adjacent land use designation, found the zoning designations compatible and found

1 that the filed applications conform to other applicable adopted plans and policies that include
2 approved neighborhood plans.

3 31. At the June 21, 2017 City Council hearing, Petitioner addressed the concerns of the
4 individuals speaking in opposition, and provided substantial evidence, through the introduction of
5 documents and through testimony, of expert witnesses and others, rebutting each and every
6 opposition claim.

7 32. Included as part of the evidence presented by Petitioner at the June 21, 2017 City
8 Council hearing, Petitioner introduced evidence, among other things, (i) that representatives of the
9 City had specifically noted in both City public hearings and in public neighborhood meetings, that
10 the standard for appropriate development based on the existing R-PD7 zoning on the Property
11 would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of
12 the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres were compatible
13 with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the
14 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres was less than the
15 density of those already existing residences adjoining the 35 Acres; and (iv) that both Planning
16 Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and
17 TMP-68482, all of which applications pertain to the proposed development of the 35 Acres.

18 33. Any public statements made in opposition to the various applications were either
19 conjecture or opinions unsupported by facts; all of which public statements were either rebutted
20 by findings as set forth in the Planning Staff report or through statements made by various City
21 representatives at the time of the City Council public hearing or through evidence submitted by
22 Petitioner at the time of the public hearing.

23 34. In spite of the Planning Staff recommendation of approval and the recommendation
24 of approval from the Planning Commission, and despite the substantial evidence offered by

1 Petitioner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite
2 of the fact that no substantial evidence was offered in opposition, the City Council denied the
3 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

4 35. The City Council's stated reason for the denial was its desire to see, not just the 35
5 Acres, but the entire 250.92 acres of property, developed under one master development agreement
6 which would include all of the following properties in that master development agreement:

7 APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally
8 subdivided and separate and apart from the properties identified below;

9 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and
10 is legally subdivided separate and apart from the 35 Acres;

11 APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and
12 is legally subdivided separate and apart from the 35 Acres;

13 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is
14 legally subdivided separate and apart from the 35 Acres;

15 APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and
16 is legally subdivided separate and apart from the 35 Acres;

17 APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and
18 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal
19 entity, Seventy Acres, LLC;

20 APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and
21 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal
22 entity, Seventy Acres, LLC;

23

24

1 APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is
2 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
3 entity, Seventy Acres, LLC;

4 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is
5 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
6 entity, Fore Stars, LTD;

7 36. At the City Council hearing considering and ultimately denying WVR-68480,
8 SDR-68481, TMP-68482 and GPA-68385, the City Council advised Petitioner that the only way
9 the City Council would allow development on the 35 Acres was under a master development
10 agreement for the entirety of the Property (totaling 250.92 acres).

11 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-
12 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated
13 that the approval of the master development agreement is very, very close and “we are going to
14 get there [approval of the master development agreement].” The City Council was referring to the
15 next public hearing wherein the master development agreement (“MDA”) would be voted on by
16 the City Council.

17 38. The City Attorney stated that “if anybody has a list of things that should be in this
18 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because
19 I will listen to you and we’ll talk about it and if it needs to be in that agreement, we’ll do our best
20 to get it in. . . . This is where I have to use my skills and say enough is enough and that’s why I
21 said tonight ‘speak now or forever hold your peace.’ If somebody comes to me with an issue that
22 they should have come to me with months ago I’m gonna ignore them ‘cause that’s just not fair
23 either. We can’t continue to whittle away at this agreement by throwing new things at it all the
24 time. There’s been two years for people to make their comments. I think we are that close.”

39. On August 2, 2017, less than two months after the City Council said it was very, very close to approving the MDA, the City Council voted to deny the MDA altogether.

40. The City's actions in denying Petitioner's tentative map (TMP-68482), WVR-68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of Petitioner's vested right to develop the 35 Acres.

41. This denial by the City Council was not supported by substantial evidence and was arbitrary and capricious.

42. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480, SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

43. This Petition for Judicial Review has been filed within 25 days of the Notices of Final Action as required by NRS 278.3195.

FIRST CLAIM FOR RELIEF
(Judicial Review)

44. Petitioner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

45. The City has a duty to refrain from exercising its zoning and land use authority in a manner that is arbitrary and capricious.

46. The City, by engaging in the conduct set forth above, acted arbitrarily and capriciously when it denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

47. The City's decisions denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 were not supported by evidence a reasonable mind would find adequate to support denials.

48. By denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 without substantial evidence supporting such denials, the City abused its discretion.

49. The City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385 has caused Petitioner to suffer real and significant damages.

50. Petitioner is aggrieved by the City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

51. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law to correct the City's arbitrary and capricious actions.

52. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of the City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. For judicial review of City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;

2. For an Order reversing City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;

3. Payment for all costs incurred in attempting to develop the 35 Acres;

4. For an award of attorneys' fees and costs incurred in and for this action; and,

///

1 5. For such further relief as the Court deems just and equitable under the
2 circumstances.

3 DATED this 28th day of February 2018.

4 **HUTCHISON & STEFFEN, PLLC**

5 BY: Joseph S. Kistler
6 Mark A. Hutchison (4639)
7 Joseph S. Kistler (3458)
8 Robert T. Stewart (13770)

9 **KAEMPFER CROWELL**

10 BY: /s/ Christopher Kaempfer
11 CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)
12 JAMES E. SMYTH II (Nevada Bar No. 6506)
13 STEPHANIE H. ALLEN (Nevada Bar No. 8486)
14 KAEMPFER CROWELL
15 1980 Festival Plaza Drive, Suite 650
16 Las Vegas, Nevada 89135

17 **LAW OFFICES OF KERMIT L. WATERS**

18 BY: /s/ Kermitt L. Waters
19 KERMIT L. WATERS, ESQ.
20 Nevada Bar. No. 2571
21 JAMES J. LEAVITT, ESQ.
22 Nevada Bar No. 6032
23 MICHAEL SCHNEIDER, ESQ.
24 Nevada Bar No. 8887
 AUTUMN WATERS, ESQ.
 Nevada Bar No. 8917

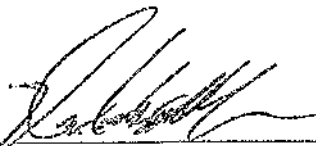
Attorneys for Petitioner

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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

Yohan Lowie, on behalf of Petitioner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **SECOND AMENDED PETITION FOR JUDICIAL REVIEW TO SEVER ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION PER COURT ORDER ENTERED ON FEBRUARY 1, 2018** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.



YOHAN LOWIE



SUBSCRIBED and SWORN to before me
This 2nd day of February, 2018.


NOTARY PUBLIC

1 Certificate of Service

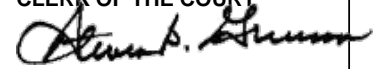
2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 PLLC and that on this 28th day of February 2018, I caused a true and correct copy of the attached
4 **SECOND AMENDED PETITION FOR JUDICIAL REVIEW TO SEVER
ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION PER COURT
ORDER ENTERED ON FEBRUARY 1, 2018** to be served as follows:

5 [X] pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the
6 Eighth Judicial District Court's electronic filing system, with the date and time of
the electronic service substituted for the date and place of deposit in the mail;
and/or

7 to the attorney(s) listed below at the address and/or facsimile number indicated below:

8 CITY ATTORNEY'S OFFICE
9 Bradford R. Jerbic
Philip R. Byrnes
10 Jeffrey M. Dorocak
495 S. Main Street, 6th Floor
11 Las Vegas, NV 89101
702-229-6629
12 *Attorneys for City of Las Vegas*

13
14 Suzanne Marshad
an employee of Hutchison & Steffen



**ERR-ACOM
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Attorneys for 180 Land Company, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited
liability company, DOE INDIVIDUALS I
through X, DOE CORPORATIONS I through X,
and DOE LIMITED LIABILITY COMPANIES
I through X,

Plaintiff,

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

**ERRATA TO FIRST AMENDED
COMPLAINT PURSUANT TO COURT
ORDER ENTERED ON FEBRUARY 2 [1],
2018 FOR SEVERED ALTERNATIVE
VERIFIED CLAIMS IN INVERSE
CONDEMNATION**

**(Exempt from Arbitration – Action Seeking
Review of Administrative Decision and
Action Concerning Title To Real Property)**

ERRATA STATEMENT: *This Errata is being filed to the First Amended Complaint filed in this matter on February 23, 2018, to correct references to February 2, 2018, as the date of the entry of the order permitting filing of the First Amended Complaint for the Severed Alternative Verified Claims in Inverse Condemnation in this case. The order allowing the amendment was entered on February 1, 2018. Accordingly, the references to February 2, 2018 are stricken and February 1, 2018 is inserted herein.*

COMES NOW Plaintiff, 180 Land Company, LLC (“Landowner”) and pursuant to the Order of the Court entered on February 2 [1], 2018, by and through its attorneys of record, The Law Offices of Kermitt L. Waters and Hutchison & Steffen, for its First Amended Complaint Pursuant to Court Order Entered On February 2 [1], 2018 For Severed Alternative Claims In Inverse Condemnation complains and alleges as follows:

PARTIES

1. Landowner is organized and existing under the laws of the state of Nevada.
2. Respondent City of Las Vegas ("City") is a political subdivision of the State of Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes, including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just Compensation Clause of the United States Constitution and Article 1, sections 8 and 22 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).
3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as “DOEs”) inclusive are unknown to the Landowner at this

1 time and who may have standing to sue in this matter and who, therefore, sue the Defendants by
2 fictitious names and will ask leave of the Court to amend this Complaint to show the true names
3 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as
4 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other
5 entities with standing to sue under the allegations set forth herein.

6 4. That the true names and capacities, whether individual, corporate, associate, or
7 otherwise of Defendants named herein as ROE government entities I through X, ROE
8 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY
9 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter collectively
10 referred to as "ROEs"), inclusive are unknown to the Landowner at this time, who therefore sue
11 said Defendants by fictitious names and will ask leave of the Court to amend this Complaint to
12 show the true names and capacities of Defendants when the same are ascertained; that said
13 Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or actions,
14 either alone or in concert with the aforementioned defendants, resulted in the claims set forth
15 herein.

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the alternative claims for inverse condemnation
18 pursuant to the United States Constitution, Nevada State Constitution, the Nevada Revised Statutes
19 and pursuant to the Court Order entered in this case on February 2 [1], 2018.

20 6. Venue is proper in this judicial district pursuant to NRS 13.040.

21 **GENERAL ALLEGATIONS**

22 7. Landowner owns 166.99 acres of real property generally located south of Alta
23 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,
24

1 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-
2 702-003, 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

3 8. The existing zoning on the Property is R-PD7 (Residential Planned Development
4 District – 7.49 Units per Acre).

5 9. The R-PD7 zoning designation on the Property allows for up to 7.49 residential
6 units per acre; but such zoning designation is still subject to the approved densities being
7 comparable to and compatible with the existing adjacent and nearby residential development.

8 10. While an application for a General Plan Amendment was filed by the Landowner
9 relating to the Property, being application number, GPA-68385; additional applications were filed
10 by the Landowner with the City that related more particularly to a parcel consisting of 34.07 acres,
11 being Assessor's Parcel Number 138-31-201-005. (This 34.07 acres is hereinafter referred to as
12 the "35 Acres".) Those zoning applications pertaining to these 35 Acres were application numbers
13 WVR-68480; SDR-68481 and TMP-68482. These applications are discussed in further detail in
14 paragraphs below.

15 11. At all relevant times herein, the Landowner had the vested right to use and develop
16 the 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is
17 comparable and compatible with the existing adjacent and nearby residential development.

18 12. This vested right to use and develop the 35 Acres, was confirmed by the City prior
19 to Landowner's acquisition of the 35 Acres and Landowner materially relied upon the City's
20 confirmation regarding the Property's vested zoning rights.

21 13. Landowner's vested property rights in the 35 Acres are recognized under the United
22 States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

23 14. Although the Property currently shows the General Plan Designation of PR-OS
24 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without

1 the City having followed its own proper notice requirements or procedures. Therefore, the General
2 Plan Designation of PR-OS is being shown on the Property in error.

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22 within a privately gated community where 47-foot private streets with sidewalks on both sides are
23 required. The application was given number WVR-68480 ("WVR-68480").
24

1 22. On or about January 4, 2017, the City required Landowner to file an application
2 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single family
3 residential development. The application was given number SDR-68481 ("SDR-68481").

4 23. On or about January 4, 2017, Landowner filed with the City an application
5 pertaining to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential
6 development. The application was given number TMP-68482 ("TMP-68482").

7 24. The Planning Staff for the City's Planning Department ("Planning Staff") reviewed
8 GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval
9 for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No
10 Recommendation" with regard to GPA-68385; however, in the "Agenda Memo-Planning" relating
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14 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-
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21 the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres were compatible
22 with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the
23 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres was less than the
24 density of those already existing residences adjoining the 35 Acres; and (iv) that both Planning

1 Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and
2 TMP-68482, all of which applications pertain to the proposed development of the 35 Acres.

3 33. Any public statements made in opposition to the various applications were either
4 conjecture or opinions unsupported by facts; all of which public statements were either rebutted
5 by findings as set forth in the Planning Staff report or through statements made by various City
6 representatives at the time of the City Council public hearing or through evidence submitted by
7 Landowner at the time of the public hearing.

8 34. In spite of the Planning Staff recommendation of approval and the recommendation
9 of approval from the Planning Commission, and despite the substantial evidence offered by
10 Landowner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite
11 of the fact that no substantial evidence was offered in opposition, the City Council denied the
12 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

13 35. The City Council's stated reason for the denial was its desire to see, not just the 35
14 Acres, but the entire 250.92 acres of property, developed under one master development agreement
15 which would include all of the following properties in that master development agreement:

16 APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally
17 subdivided and separate and apart from the properties identified below;

18 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and
19 is legally subdivided separate and apart from the 35 Acres;

20 APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and
21 is legally subdivided separate and apart from the 35 Acres;

22 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is
23 legally subdivided separate and apart from the 35 Acres;

1 APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and
2 is legally subdivided separate and apart from the 35 Acres;

3 APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and
4 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal
5 entity, Seventy Acres, LLC;

6 APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and
7 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal
8 entity, Seventy Acres, LLC;

9 APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is
10 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
11 entity, Seventy Acres, LLC;

12 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is
13 legally subdivided separate and apart from the 35 Acres and is owned by a different legal
14 entity, Fore Stars, LTD;

15 36. At the City Council hearing considering and ultimately denying WVR-68480,
16 SDR-68481, TMP-68482 and GPA-68385, the City Council advised Landowner that the only way
17 the City Council would allow development on the 35 Acres was under a master development
18 agreement for the entirety of the Property (totaling 250.92 acres).

19 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-
20 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated
21 that the approval of the master development agreement is very, very close and “we are going to
22 get there [approval of the master development agreement].” The City Council was referring to the
23 next public hearing wherein the master development agreement (“MDA”) would be voted on by
24 the City Council.

1 38. The City Attorney stated that “if anybody has a list of things that should be in this
2 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because
3 I will listen to you and we’ll talk about it and if it needs to be in that agreement, we’ll do our best
4 to get it in. . . . This is where I have to use my skills and say enough is enough and that’s why I
5 said tonight ‘speak now or forever hold your peace.’ If somebody comes to me with an issue that
6 they should have come to me with months ago I’m gonna ignore them ‘cause that’s just not fair
7 either. We can’t continue to whittle away at this agreement by throwing new things at it all the
8 time. There’s been two years for people to make their comments. I think we are that close.”

9 39. On August 2, 2017, less than two months after the City Council said it was very,
10 very close to approving the MDA, the City Council voted to deny the MDA altogether.

11 40. The City’s actions in denying Landowner’s tentative map (TMP-68482), WVR-
12 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of
13 Landowner’s vested right to develop the 35 Acres.

14 41. This denial by the City Council was not supported by substantial evidence and was
15 arbitrary and capricious.

16 42. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,
17 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

18 43. The Landowner’s Alternative Verified Claims in Inverse Condemnation have been
19 timely filed and, pursuant to the Court’s Order entered on February 2 [1], 2018, are ripe.

20 **FIRST ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

21 **(Categorical Taking)**

22 44. Landowner repeats, re-alleges and incorporates by reference all paragraphs
23 included in this pleading as if set forth in full herein.

1 45. The City reached a final decision that it will not allow development of Landowner's
2 35 Acres.

3 46. Any further requests to the City to develop the 35 Acres would be futile.

4 47. The City's actions in this case have resulted in a direct appropriation of
5 Landowner's 35 Acre property by entirely prohibiting Landowner from using the 35 Acres for any
6 purpose and reserving the 35 Acres undeveloped.

7 48. As a result of the City's actions, Landowner has been unable to develop the 35
8 Acres and any and all value in the 35 Acres has been entirely eliminated.

9 49. The City's actions have completely deprived Landowner of all economically
10 beneficial use of the 35 Acres.

11 50. The City's actions have resulted in a direct and substantial impact on the
12 Landowner and on the 35 Acres.

13 51. The City's actions result in a categorical taking of Landowner's 35 Acre property.

14 52. The City has not paid just compensation to the Landowner for this taking of its 35
15 Acre property.

16 53. The City's failure to pay just compensation to Landowner for the taking of its 35
17 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
18 the Nevada Revised Statutes, which require the payment of just compensation when private
19 property is taken for a public use.

20 54. Therefore, Landowner is compelled to bring this cause of action for the taking of
21 the 35 Acre property to recover just compensation for property the City is taking without payment
22 of just compensation.

23 55. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).
24

1 **SECOND ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

2 **(Penn Central Regulatory Taking)**

3 56. Landowner repeats, re-alleges and incorporates by reference all paragraphs
4 included in this pleading as if set forth in full herein.

5 57. The City reached a final decision that it will not allow development of Landowner's
6 35 Acres.

7 58. Any further requests to the City to develop the 35 Acres would be futile.

8 59. The City already denied an application to develop the 35 Acres, even though: 1)
9 Landowner's proposed 35 Acre development was in conformance with its zoning density and was
10 comparable and compatible with existing adjacent and nearby residential development; 2) the
11 Planning Commission recommended approval; and 3) the City's own Staff recommended
12 approval.

13 60. The City affirmatively stated that it will not allow Landowner to develop the 35
14 Acres unless it is developed as part of the MDA, referenced above. Landowner worked on the
15 MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and
16 with the City's direct and active involvement in the drafting and preparing the MDA and the City's
17 statements that it would approve the MDA and despite nearly two years of working on the MDA,
18 on or about August 2, 2017, the City denied the MDA.

19 61. The City's actions have caused a direct and substantial economic impact on
20 Landowner, including but not limited to preventing development of the 35 Acres.

21 62. The City was expressly advised of the economic impact the City's actions were
22 having on Landowner.

23 63. At all relevant times herein, Landowner had specific and distinct investment backed
24 expectations to develop the 35 Acres.

1 64. These investment backed expectations are further supported by the fact that the
2 City, itself, advised Landowner of its vested rights to develop the 35 Acre property prior to
3 acquiring the 35 Acres.

4 65. The City was expressly advised of Landowner's investment backed expectations
5 prior to denying Landowner the use of the 35 Acres.

6 66. The City's actions are preserving the 35 Acres as open space for a public use and
7 the public is actively using the 35 Acres.

8 67. The City's actions have resulted in the loss of Landowner's investment backed
9 expectations in the 35 Acres.

10 68. The character of the City action to deny Landowner's use of the 35 Acres is
11 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to
12 a physical acquisition than adjusting the benefits and burdens of economic life to promote the
13 common good.

14 69. The City never stated that the proposed development on the 35 Acres violated any
15 code, regulation, statute, policy, etc. or that Landowner did not have a vested property right to
16 develop the 35 Acres.

17 70. The City provided only one reason for denying Landowner's request to develop the
18 35 Acres - that the City would only approve the MDA that included the entirety of the 250.92 acres
19 owned by various entities and that the MDA would allow development of the 35 Acres.

20 71. The City then, on or about August 2, 2017, denied the MDA, thereby preventing
21 the development of the 35 Acres.

22 72. The City's actions meet all of the elements for a Penn Central regulatory taking.

23 73. The City has not paid just compensation to Landowner for this taking of its 35 Acre
24 property.

1 74. The City's failure to pay just compensation to Landowner for the taking of its 35
2 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
3 the Nevada Revised Statutes, which require the payment of just compensation when private
4 property is taken for a public use.

5 75. Therefore, Landowner is compelled to bring this cause of action for the taking of
6 the 35 Acre property to recover just compensation for property the City is taking without payment
7 of just compensation.

8 76. The requested compensation is in excess of ten thousand dollars (\$15,000.00).

9 **THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

10 **(Regulatory Per Se Taking)**

11 77. Landowner repeats, re-alleges and incorporates by reference all paragraphs
12 included in this pleading as if set forth in full herein.

13 78. The City's actions stated above fail to follow the procedures for taking property set
14 forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada's statutory provisions on
15 eminent domain, and the United States and Nevada State Constitutions.

16 79. The City's actions exclude the Landowner from using the 35 Acres and, instead,
17 permanently reserve the 35 Acres for a public use and the public is using the 35 Acres.

18 80. The City's actions have shown an unconditional and permanent taking of the 35
19 Acres.

20 81. The City has not paid just compensation to the Landowner for this taking of its 35
21 Acre property.

22 82. The City's failure to pay just compensation to Landowner for the taking of its 35
23 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
24

1 the Nevada Revised Statutes, which require the payment of just compensation when private
2 property is taken for a public use.

3 83. Therefore, Landowner is compelled to bring this cause of action for the taking of
4 the 35 Acre property to recover just compensation for property the City is taking without payment
5 of just compensation.

6 84. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

7 **FOURTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

8 **(Nonregulatory Taking)**

9 85. Landowner repeats, re-alleges and incorporates by reference all paragraphs
10 included in this pleading as if set forth in full herein.

11 86. The City actions directly and substantially interfere with Landowner's vested
12 property rights rendering the 35 Acres unusable and/or valueless.

13 87. The City has intentionally delayed approval of development on the 35 Acres and,
14 ultimately, denied any and all development in a bad faith effort to preclude any use of the 35 Acres.

15 88. The City's actions are oppressive and unreasonable.

16 89. The City's actions result in a nonregulatory taking of Landowner's 35 Acres.

17 90. The City has not paid just compensation to Landowner for this taking of its 35 Acre
18 property.

19 91. The City's failure to pay just compensation to Landowner for the taking of its 35
20 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
21 the Nevada Revised Statutes, which require the payment of just compensation when private
22 property is taken for a public use.

1 92. Therefore, Landowner is compelled to bring this cause of action for the taking of
2 the 35 Acre property to recover just compensation for property the City is taking without payment
3 of just compensation.

4 93. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00)

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 7 1. An award of just compensation according to the proof for the taking (permanent or
8 temporary) and/or damaging of the Landowner's property by inverse condemnation,
9 2. Prejudgment interest commencing from the date the City first froze the use of the
10 35 Acre property which is prior to the filing of this Complaint in Inverse Condemnation;
11 3. Upon conclusion of the judicial review claim(s), a preferential trial setting pursuant
12 to NRS 37.055 on the alternative inverse condemnation claims;
13 4. Payment for all costs incurred in attempting to develop the 35 Acres;
14 5. For an award of attorneys' fees and costs incurred in and for this action; and,
15 6. For such further relief as the Court deems just and equitable under the
16 circumstances.

17 DATED THIS 26th day of February, 2018.

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

19 BY: /s/ Kermitt L. Waters
20 KERMITT L. WATERS, ESQ. (NBN 2571)
21 JAMES J. LEAVITT, ESQ. (NBN 6032)
22 MICHAEL SCHNEIDER, ESQ. (NBN 8887)
23 AUTUMN WATERS, ESQ. (NBN 8917)

24 **HUTCHISON & STEFFEN**

 BY: /s/ Mark A. Hutchison
 Mark A. Hutchison (4639)
 Joseph S. Kistler (3458)
 Robert T. Stewart (13770)

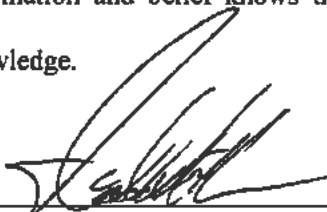
Attorneys for 180 Land Company, LLC

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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

Yohan Lowie, on behalf of the Landowner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **ERRATA TO FIRST AMENDED COMPLAINT PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 2 [1], 2018 FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

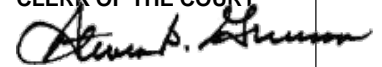


YOHAN LOWIE



SUBSCRIBED and SWORN to before me
This 20th day of February, 2018.


NOTARY PUBLIC



ANAC
BRADFORD R. JERBIC
City Attorney
Nevada Bar No. 1056
PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
JEFFRY M. DOROCAC
Deputy City Attorney
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495 South Main Street, Sixth Floor
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Email: jdorocak@lasvegasnevada.gov
Attorneys for CITY OF LAS VEGAS

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada
limited liability company, DOE
INDIVIDUALS I through X, DOE
CORPORATIONS I through X, and DOE
LIMITED LIABILITY COMPANIES I
through X,

Plaintiffs,

vs.

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

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,

Defendants.

**CITY OF LAS VEGAS' ANSWER TO FIRST AMENDED COMPLAINT
PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 1, 2018 FOR
SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION**

Defendant CITY OF LAS VEGAS, through its attorneys, BRADFORD R. JERBIC, City
Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, and JEFFRY M. DOROCAC, Deputy
City Attorney, answers Plaintiff's First Amended Complaint for Severed Alternative Verified
Claims in Inverse Condemnation (the "Complaint") as follows:

1 1. Defendant CITY OF LAS VEGAS is without knowledge and information
2 sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 3, 4, 5, 6, 7,
3 and 8 of Plaintiff's Complaint and, therefore, denies the same.

4 2. Defendant CITY OF LAS VEGAS admits that it is a political subdivision of the
5 State of Nevada, but is without knowledge and information sufficient to form a belief as to the
6 truth of the remaining allegation contained in Paragraph 2 of Plaintiff's Complaint and, thus,
7 denies the same.

8 3. Defendant CITY OF LAS VEGAS denies the allegations contained in Paragraphs
9 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,
10 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62,
11 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90,
12 91, 92, and 93 of Plaintiff's Complaint.

13 4. Answering Paragraphs 44, 56, 77, and 85 of Plaintiff's Complaint, Defendant
14 CITY OF LAS VEGAS repeats and realleges its responses to Paragraphs 1 through 93, inclusive,
15 as though fully set forth herein.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 Plaintiff has failed to state a claim upon which relief may be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to exhaust its administrative remedies.

21 **THIRD AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred by res judicata and/or collateral estoppel.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Defendant CITY OF LAS VEGAS is entitled to the immunities and limitations on
25 liability set forth in NRS 41.032, 41.033 and 41.035.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are not ripe.

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SIXTH AFFIRMATIVE DEFENSE

The City of Las Vegas has neither the obligation nor intention to acquire any portion of the subject property.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the result of third parties not subject to the direction and control of the City of Las Vegas.

WHEREFORE, Defendant CITY OF LAS VEGAS requests that Plaintiff take nothing by way of its First Amended Complaint for Severed Alternative Verified Claims in Inverse Condemnation on file herein and that Defendant CITY OF LAS VEGAS be awarded its costs and reasonable attorney's fees.

DATED this 12th day of March, 2018.

BRADFORD R. JERBIC
City Attorney

By:



PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
JEFFRY M. DOROCAK
Deputy City Attorney
Nevada Bar No. 13109
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

CERTIFICATE OF SERVICE

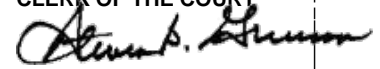
I hereby certify that on March ¹³~~12~~, 2018, I served a true and correct copy of the foregoing CITY OF LAS VEGAS' ANSWER TO FIRST AMENDED COMPLAINT PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 1, 2018 FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION through the electronic filing system of the Eighth Judicial District Court of the State of Nevada, pursuant to Nevada Electronic Filing and Conversion Rules, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135
Attorneys for 180 LAND COMPANY, LLC

Mark A. Hutchison, Esq.
HUTCHISON & STEFFEN, LLP
10800 West Alta Drive, #200
Las Vegas, NV 89145
Attorneys for 180 LAND COMPANY, LLC

Kermitt L. Waters, Esq.
LAW OFFICES OF KERMIT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101
Attorneys for 180 LAND COMPANY, LLC


AN EMPLOYEE OF THE CITY OF LAS VEGAS



1 ANSC
2 BRADFORD R. JERBIC
3 City Attorney
4 Nevada Bar No. 1056
5 By: PHILIP R. BYRNES
6 Senior Litigation Counsel
7 Nevada Bar No. 166
8 JEFFRY M. DOROCAC
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13 (702) 229-6629 (office)
14 (702) 386-1749 (fax)
15 Email: jdorocak@lasvegasnevada.gov
16 Attorneys for CITY OF LAS VEGAS

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 180 LAND COMPANY, LLC, a Nevada
13 limited liability company, DOE
14 INDIVIDUALS I through X, DOE
15 CORPORATIONS I through X, and DOE
16 LIMITED LIABILITY COMPANIES I
17 through X,

15 Petitioners,

16 vs.

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

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

21 Respondents.

23 **CITY OF LAS VEGAS' ANSWER TO**
24 **SECOND AMENDED PETITION FOR JUDICIAL REVIEW**

25 Respondent CITY OF LAS VEGAS, through its attorneys, BRADFORD R. JERBIC, City
26 Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, and JEFFRY M. DOROCAC, Deputy
27 City Attorney, answers Petitioner 180 LAND COMPANY, LLC's Second Amended Petition for
28 Judicial Review (the "Petition") on file herein as follows:

1 1. Respondent CITY OF LAS VEGAS denies the allegations contained in
2 paragraphs 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
3 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, and 52 of the
4 Petition.

5 2. Respondent CITY OF LAS VEGAS is without knowledge and information
6 sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 3, and 4 of
7 the Petition and, therefore, denies the same.

8 3. Respondent CITY OF LAS VEGAS admits the allegations in paragraph 6 of the
9 Petition.

10 4. Answering paragraph 2 of the Petition, Respondent CITY OF LAS VEGAS
11 admits that it is a Nevada municipality and denies the remaining allegations of paragraph 2.

12 5. Answering paragraph 44 of the Petition, Respondent CITY OF LAS VEGAS
13 repeats and realleges its responses to Paragraphs 1 through 52 as though fully set forth herein.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 Petitioner has failed to state a claim upon which relief may be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Petitioner has failed to exhaust their administrative remedies.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Petitioner's claims are not ripe.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 Petitioner lacks standing to pursue the instant Petition.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Respondent City of Las Vegas is entitled to the immunities and limitations on liability set
25 forth in NRS 41.032, 41.033 and 41.035.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Petitioner's claims are barred by res judicata.

28

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by collateral estoppel.

WHEREFORE, Respondent CITY OF LAS VEGAS prays for judgment, after briefing and argument as set forth in E.D.C.R. 2.15, as follows:

1. That Petitioner takes nothing by way of its Petition;
2. That Respondent CITY OF LAS VEGAS be awarded its costs and reasonable attorney's fees; and
3. For such other and further relief as this Court may deem just and proper.

DATED this 19th day of March, 2018.

BRADFORD R. JERBIC
City Attorney

By: 

PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
JEFFRY M. DOROCAK
Deputy City Attorney
Nevada Bar No. 13109
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS


CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2018, I served a true and correct copy of the foregoing
CITY OF LAS VEGAS' ANSWER TO SECOND AMENDED PETITION FOR JUDICIAL
REVIEW through the electronic filing system of the Eighth Judicial District Court of the State of
Nevada, pursuant to Nevada Electronic Filing and Conversion Rules, (or, if necessary, by United
States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135
Attorneys for 180 LAND COMPANY, LLC

Mark A. Hutchison, Esq.
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, #200
Las Vegas, NV 89145
Attorneys for 180 LAND COMPANY, LLC

Kermitt L. Waters, Esq.
LAW OFFICES OF KERMIT L. WATERS
704 S. Ninth Street
Las Vegas, NV 89101
Attorneys for 180 LAND COMPANY, LLC


AN EMPLOYEE OF THE CITY OF LAS VEGAS

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

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180 LAND COMPANY LLC,

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Plaintiff,

)

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vs.

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LAS VEGAS CITY OF,

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Defendant.

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REPORTER'S TRANSCRIPT
OF
HEARING

16

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

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21

DATED TUESDAY, MAY 8, 2018

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4

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1 LAS VEGAS, NEVADA, TUESDAY, MAY 8, 2018

2 9:31 A.M.

3 P R O C E E D I N G S

4 * * * * *

5

6 THE COURT: Next up, page 3, 180 Land Company
7 LLC versus the City of Las Vegas.

8 THE COURT REPORTER: Does either side want
9 this reported?

10 MR. HUTCHISON: Yes.

11 MR. OGILVIE: Good morning, your Honor.

12 THE COURT: All right. Good morning. Let's
13 go ahead and note our appearances for the record.

14 MR. HOLMES: Good morning, your Honor. Dustun
15 Holmes on behalf of the proposed intervenors.

16 MR. OGILVIE: George Ogilvie on behalf of the
17 City of Las Vegas.

18 MR. MIKHAYLOV: Kirill Mikhaylov on behalf of
19 the proposed intervenors.

20 MR. HUTCHISON: Good morning, Mark Hutchinson
21 and Rob Spears on behalf of the petitioners, 180 Land
22 Company, as well as Elizabeth Ham on behalf of 180 Land
23 Company at counsel table.

24 THE COURT: What do you need, ma'am? You got
25 everything?

1 MS. HAM: Yes.

2 THE COURT: All right.

3 Sir, you have the floor.

4 MR. HOLMES: Thank you, your Honor.

5 As this Court knows, this action is one of
6 several actions stemming from attempts to redevelop
7 what was formally known as Bad Lands Golf Course.
8 These lawsuits for the most part have involved the
9 three identical parties: The proposed intervenors here
10 who are surrounding homeowners; the developer; and the
11 City.

12 This action in particular deals with the
13 City's denial of the developers' application seeking
14 development of 61 residential lots on 35 acres of
15 property of what was formally known as Bad Lands Golf
16 Course.

17 Intervenors here, as I mentioned, are all
18 surrounding homeowners and they all will extensively
19 participated in the underlying process before the City
20 council. And indeed, the developer has actually filed
21 the opening memorandum in support of its repetition.
22 And in reading through that, he -- the developer spends
23 considerable time in his writ petition actually trying
24 to discredit and challenge the evidence the intervenors
25 presented in front of the City council, including the

1 expert evidence we presented in opposition of this --
2 these applications.

3 As this Court is also likely aware from the
4 briefing we submitted, this is not the first
5 application that has faced judicial review. The
6 developer and the City have already litigated and lost
7 an issue that we maintain directly affects the request
8 the developer seeks in this Court.

9 Judge Crockett ruled that a major modification
10 of Peccole Ranch was legally required under the City's
11 code. Here, now, the developer seeks a court order
12 from this Court order, directing -- directing the City
13 to approve these application with no major
14 modification, and we're going to maintain, your Honor,
15 that that is an issue preclusion that the City and the
16 developer has already lost and litigated in front of
17 Judge Crockett.

18 Now, the intervenors here, we're not seeking
19 to delay these proceedings. We're seeking simply to
20 intervene, to preserve and protect our rights. There's
21 absolutely no harm to the developer in granting this
22 intervention. Instead, it just seems that the
23 developer merely opposes this intervention here because
24 it seeks relief that is directly contrary to an issue
25 it has already litigated and lost in front of

1 Judge Crockett.

2 Now, intervenors here we think have satisfied
3 all the core requirements that are long for
4 intervention. As a matter of right, intervenors have a
5 sufficient interest in the subject matter which will be
6 impaired absent intervention. As I mentioned, all the
7 intervenors are surrounding homeowners whose property
8 is directly affected by the denial and approval of
9 these applications at issue in front of your Honor.

10 The intervenors also participated in the
11 underlying proceedings before the City. As I
12 mentioned, we presented expert evidence, documents,
13 testimony in opposition to the application, and we
14 believe we should have a right in front of your Honor
15 to defend those issues we lodged in front of the City
16 council.

17 And disposition of this matter directly
18 impacts our rights and, of course, ruling against the
19 City and the developer here. Collectively, we submit
20 that this amounts to sufficient interest that would
21 impair absent intervention. And we've cited in our
22 briefs the case law that supports the interests of
23 surrounding homeowners in challenging the developers'
24 applications. That's the Mesa Gate Homeowners
25 Association case from the Nevada Supreme Court.

1 There's also Ninth Circuit case law, your
2 Honor, that says participation in the underlying
3 proceedings does give rise to a sufficient interest for
4 intervention.

5 And then also enforcement of a judgment. Now,
6 they cited in opposition, I think it was a Eleventh
7 Circuit case, that says enforcement of the judgment
8 isn't sufficient for intervention. But actually the
9 Ninth Circuit says the opposite, and there's a Ninth
10 Circuit case.

11 Since we did file a reply, it's the In Re
12 Estate Ferdinand E. Marcos Human Rights litigation --
13 536 F3d 980, and that Court actually distinguished the
14 case they cited and said: The party's interest is
15 particularized and direct when it has an interest in
16 adjudicating an issue it has raised in one proceeding,
17 and it lands in a proceeding -- in another proceeding
18 for disposition.

19 So we submit all of those collectively, your
20 Honor, gives us right sufficient to intervene here.

21 Now, turning to the third analysis, the third
22 factor under intervention as a matter of right.

23 Intervenor's interest is not adequately represented by
24 the City. We've briefed this issue. And the City has
25 actually taken positions directly contrary to our

1 interests, your Honor.

2 Even after Judge Crockett's ruling, there's
3 another litigation on judicial review for the City's
4 actually still not requiring a major modification for
5 other applications, even after Judge Crockett has
6 determined that a major modification was necessary.

7 So we submit that this -- the developer and --
8 or the City's interest is, of course, adverse to us,
9 and the Nevada Supreme Court says when the interests
10 are adverse, that's sufficient under the law.

11 And the last prong, your Honor, is the
12 prejudice to developer. And the case law makes clear
13 on this point that the most important question is
14 timely -- is on the timeliness, is a question of
15 prejudice.

16 And we would submit that there's absolutely no
17 prejudice permitting us to intervene here, your Honor.
18 This is a petition for judicial review, as you know.
19 There's no additional discovery that's going to be
20 conducted in this matter for our intervention. And the
21 Court still hasn't heard that on the merits on this
22 case on the judicial review.

23 The City's answering brief, I think they just
24 filed a motion to extend that time. We're not going to
25 delay these proceedings. We'll file our answer when

1 the City does and when this Court determines that
2 briefing schedule is appropriate.

3 Under those, we would submit that intervention
4 as a matter of right is sufficient here, your Honor.
5 And if you don't have any questions for me, I'll submit
6 it on that.

7 THE COURT: Not at this time, sir.

8 MR. HOLMES: Thank you.

9 THE COURT: I guess the City has no position;
10 is that correct?

11 MR. OGILVIE: That's correct, your Honor.

12 THE COURT: Okay. Thank you, sir.

13 All right.

14 MR. HUTCHISON: Your Honor, good morning.
15 Thank you.

16 Let me just begin with what we've seen in the
17 motion papers heard from counsel here today at great
18 length, particularly the papers that the intervenors,
19 the proposed intervenors, intended intervenors, have
20 property rights on the undeveloped land. There's just
21 really three things the Court needs to keep in mind in
22 this regard, your Honor.

23 One is that for 17 years the undeveloped land
24 has been zoned RPD7. 17 years. The undeveloped land
25 has been zoned RPD7 for 17 years.

1 The City also provided zoning verification
2 letters to my client back in December of 2014,
3 confirmed the zoning before my client ever determined
4 to purchase the undeveloped property.

5 And then lastly and most importantly, your
6 Honor, which is just the law. It's straightforward.
7 It's NRS 278.349(3)(e).

8 NRS 278.349(3)(e) provides that in relation to
9 approving tentative maps, which is what we're talking
10 about here, either the approval or the denial of the
11 tentative maps for the 35 acres, when you're
12 considering that, the statute requires that the
13 government body --

14 THE COURT: But here's my question, and I
15 don't want to get far afield to the merits of the
16 underlying action. The question is: Do the adjacent
17 property owners have a right to intervene pursuant to
18 NRCP 24?

19 MR. HUTCHISON: They do, your Honor. That's
20 actually what the question is, and that is what the --
21 the point of what I'm making, your Honor. They have to
22 show that they've got an interest in the subject matter
23 of the lawsuit, right?

24 THE COURT: And tell me, if they're an
25 adjacent property owner, why don't they have an

1 interest? Because there's reams of case law that deals
2 specifically with that issue. And I've noticed
3 everyone has cited a lot of the federal cases, but I
4 did my own -- I always do my own independent research,
5 I do.

6 MR. HUTCHISON: Right.

7 THE COURT: And when it comes to Rule 24, a
8 lot of the federal court said, Look, as it comes to
9 intervention as a matter of right, that specific rule
10 should be liberally construed as to its application.

11 And so I looked at it from this perspective,
12 and it goes to one of the first issues here. Do they
13 have a legally protected -- protectable property right?

14 That's one of the key components as a trial judge I
15 have to look for, and that goes to the first element,
16 somewhat analogous to what we -- we use here in the
17 state of Nevada.

18 And so whether -- I mean, if that's the case,
19 then why do -- you know, for example, you can have a
20 gas station coming into the neighborhood, and then it
21 can impact the neighborhood. And you don't even have
22 to be directly adjacent to it. You can be in the close
23 proximity and people all the time --

24 MR. HUTCHISON: Sure.

25 THE COURT: -- run down to City hall and say,

1 Look, don't build that gas station, or don't build that
2 big box, and this is why.

3 MR. HUTCHISON: Right. Your Honor, with -- if
4 I can clarify those situations from what we're talking
5 about here.

6 We're talking about a motion to intervene, the
7 standard applies there, versus whether or not you can
8 come in and be heard on a land use application, either
9 before a City council or even before the Supreme Court.
10 The case law that was cited, the Mesa Gate homeowners
11 association case, that involved whether or not abutting
12 property owners have the right to petition for judicial
13 review on land use application issues. Does not have
14 to do with whether or not it's a matter of right you
15 can intervene an existing action.

16 That case, your Honor, the Supreme Court case,
17 so for that one is the Hare case which we've cited for
18 the Court directly on point. Hare versus First
19 Judicial District. And what the -- what the Hare case
20 says that you've got to have -- this abutting property
21 basis is not a sufficient interest to require the
22 intervention.

23 Multiple courts have actually addressed that,
24 due to abutting property owners then have a right to
25 intervene, not on whether or not the land use

1 application is pending, but on a right to intervene.
2 Is that as a matter of right enough interest, just
3 abutting the property?

4 We cited three different cases to the Court:
5 The Lloyd decision, the Unitarian Universalist Church
6 decision, and the Grimes decision.

7 (Clarification by the court reporter.)

8 MR. HUTCHISON: This says that the abutting
9 property owners is not a basis, and it actually fails
10 to satisfy the sufficient interest required to
11 intervene, your Honor. So that's what the difference
12 is. We're not talking about an application for land
13 use; we're talking about an intervention.

14 And do they all get to intervene just because
15 you're an abutting property owner? The Courts have
16 universally said no.

17 The -- as I mentioned, the case that the --
18 that intervenors rely on is a case involving a land use
19 decision and a petition for a writ. That is a
20 completely different standard, your Honor.

21 So that's the reason that just abutting
22 property owners do not have -- do not have the proper
23 interest in order to, as a matter of right, intervene
24 in a case.

25 Furthermore, your Honor, participating in a

1 City council hearing likewise is not enough of an
2 interest to, then, as a matter of right say, I get to
3 participate in anything related to judicial procedures
4 in an action that I was involved in at the
5 administrative level. Anybody can go make public
6 comments. Anybody can go oppose, as the Court has
7 already mentioned, before a City council. But that
8 does not alone provide, then, as a sufficient basis,
9 your Honor, as a matter of right to an intervention.
10 That's what we're talking about here.

11 And then finally, your Honor -- and really I
12 think the whole basis of the reason for the
13 intervention is this. And you heard it from counsel.
14 They want to be able to -- they want to come in. They
15 want to stay Judge Crockett rulings trumps everything,
16 it's the end of the story, it's the issue preclusion --

17 THE COURT: But can't they say that anyway;
18 right?

19 MR. HUTCHISON: So, your Honor --

20 THE COURT: I mean, really, the City could
21 probably say that.

22 MR. HUTCHISON: Your Honor, the question is
23 whether or not that is enough to bestow as a matter of
24 right the sufficient interest to intervene. And,
25 again, the case law on that is clear, and we submitted

1 to the Court, the case. We cited the case of UMG
2 Recording, Inc., as well as other cases that held that:

3 "Even where a Court's order has a direct
4 identifiable effect on a separate action that
5 would be -- the would be beneficiaries on that
6 affect may not invoke that interest in support
7 of a motion to intervene as a matter of right."

8 So we're not much talking about, Well, could
9 they do it, you know? Is it something that could be
10 argued by the City?

11 The question here is you've got a party that
12 is coming into court saying, I've got a sufficient
13 interest. And the basis of that sufficient interest,
14 those threefold basis of that sufficient interest, your
15 Honor, as I've just noted, are not legally sufficient.

16 So we would suggest, your Honor, and we
17 would -- we would -- we would ask the Court to
18 recognize that those three bases, this idea that there
19 is, you know, we abut the property so we have a legal
20 right, and that's a sufficient interest. The idea that
21 we participated in City council meetings, that's a
22 sufficient interest. The idea that there's a court
23 order that we want to have enforced, that that is a
24 sufficient interest.

25 All of those have been rejected by case law

1 previously considered. This is not a basis for a right
2 for intervention, your Honor. And -- and I was
3 starting off with sort of --

4 THE COURT: What about -- I mean,
5 hypothetically couldn't I make a determination or
6 decision that adversely affects the adjacent property
7 owners as a matter of law?

8 And the reason why I'm bringing that up, I
9 mean, there was a -- I thought a fairly interesting
10 discussion in Moore's Federal Practice and Procedure as
11 it relates to this specific issue.

12 And what they focused on, they talked about
13 res judicata and/or issue preclusion, but they said
14 there's also a component here, and they made a
15 distinction. And they called it, I think, a negative
16 stare decisis because stare decisis specifically deals
17 with issues of law, that it could impact others.

18 And so under their discussion, they say if
19 there's an issue of law that could negatively impact
20 somebody, potentially they have a right to intervene.

21 MR. HUTCHISON: Your Honor, that goes, then,
22 to the element of are they adequately represented by --

23 THE COURT: But I only bring that up because
24 that's out there.

25 MR. HUTCHISON: Yeah. So -- so, Judge, let me

1 just move on that second reason, which is, is -- are
2 the potential intervenors here, the intended
3 intervenors, are they adequately represented by a party
4 to the litigation. And the whole touchstone on that,
5 your Honor, is regardless of what rulings the Court
6 makes, the whole focus of that, your Honor, under the
7 law is are the objectives the same? Do the cities
8 share the same objective as the intervenor? The answer
9 is of course.

10 They want to affirm the City council's ruling
11 that denied the tentative maps and that there was no
12 abuse of discretion. That's their -- both of their
13 objectives are -- are aimed at that same result.

14 How you get there, arguments you make, legal
15 reasoning, that's the means to get to the objective,
16 your Honor. The Hare decision was very specific on
17 that point in terms of, you know, denying the right to
18 intervene, because you may want to come make a
19 different legal argument, and that's exactly what they
20 want to say.

21 They want to come in and say Judge Crockett's
22 order rules the day. You got to have a major
23 modification. And, therefore, you should affirm the
24 denial of the City council's decisions not to approve
25 the tentative maps.

1 That's just a means to get to the same
2 objective, your Honor. And, again, the case law, the
3 Hare decision is very clear on that. If you have the
4 same objective as somebody who's already in the case,
5 then that is not -- then you are adequately
6 represented. It's not per se inadequate
7 representation.

8 And that's really the argument that the
9 intervenors make is that we're not adequately
10 represented. We got to go present this point of view
11 from Judge Crockett decision.

12 And if the Court is -- by the way, just as an
13 aside. If the Court wants to consider Judge Crockett's
14 decision, which, by the way, had -- it was completely,
15 you know, different parties, different lawsuit --

16 THE COURT: But see that's -- wait, wait.

17 MR. HUTCHISON: -- different application.

18 THE COURT: Wait, wait, wait.

19 That's why I specifically asked the question
20 on the doctrine of reverse stare decisis, because they
21 make a distinction between res judicata or issue
22 preclusion claims preclusion. And that's what they
23 talked about. They said, you know what, under those
24 circumstance when you look at it from a res judicata
25 perspective, you don't have the same parties,

1 et cetera. You just don't.

2 However, there can be issues or law that have
3 determined that impact somebody that has a stare
4 decisis impact at that point.

5 MR. HUTCHISON: Your Honor, if you're going to
6 consider --

7 THE COURT: I thought that was a really
8 fascinating concept. And I never thought about that,
9 but it's straight out of Moore's Federal Practice and
10 Procedure.

11 MR. HUTCHISON: Yeah.

12 THE COURT: And these are things the federal
13 courts have looked at.

14 MR. HUTCHISON: And, your Honor, what I would
15 just ask the Court to do is remember that the Nevada
16 Supreme Court in 2016 has addressed this issue in the
17 Hare decision, Hare versus the First Judicial District
18 Court. That was these -- there was an attempt to
19 intervene in the education savings account case where
20 they challenged the constitutionality of it the parents
21 and the students wanted to intervene.

22 And the Court said, No. You're adequately
23 represented by State of Nevada.

24 And they said, Well, we got all kind of
25 reverse stare decisis issues. We got all kinds of

1 other legal issues.

2 THE COURT: So that's not the first time
3 that's come up?

4 MR. HUTCHISON: No, it's not the first time
5 it's come up.

6 THE COURT: Okay. I get that.

7 MR. HUTCHISON: But let me tell you what the
8 result. The result was denial of the motion to
9 intervene and affirmed by the Nevada Supreme Court.
10 Why? Because the State of Nevada it is presumed and,
11 in fact, is a compelling argument -- compelling showing
12 requirement.

13 You have to show, Judge -- under this -- under
14 this Hare decision that if the State of Nevada or one
15 of its political subdivisions, like the City, is a
16 party, that -- that they are presumed to adequately
17 represent their constituency. And you have to show
18 what's called a compelling showing that they're not
19 adequately representing you. There's no compelling
20 showing here.

21 The objectives are the same. The State, the
22 City of Las Vegas will adequately represent its
23 constituents, unless you can compel and show me
24 otherwise. That's the -- that's the -- that's the
25 specific holding, your Honor, in the Hare decision.

1 And this case is being defended and argued by
2 the City of Las Vegas, represented by Brad Jerbic's
3 office, represented very competently by McDonald
4 Carano.

5 The intervenors' interest are represented.
6 They both want to get to the same objective: Uphold
7 the City council decision denying the tentative maps.
8 The case law says you better showing something really
9 compelling to suggest otherwise that the City is going
10 to be able to adequately represent you. There's been
11 no showing here, your Honor. That's the -- that's
12 the -- that's the Hare decision.

13 THE COURT: What consideration, if any, should
14 I -- should I give to the past actions of the City as
15 it relates to this specific litigation?

16 MR. HUTCHISON: You should give consideration
17 to what the objectives of this case are. The fact that
18 you are opposing counsel in a different case or
19 opposing parties in a different case does not weigh in
20 or whether you're adequately represented by the City of
21 Las Vegas. The question is very narrow.

22 What are you seeking in this case? In this
23 case they want to affirm the City council's decision.
24 So does the City. They're adequately represented by
25 the City. They may have different arguments. They are

1 going to -- they want to argue Judge Crockett. The
2 City wants to argue something else. That's not the
3 legal test. The legal test doesn't tell me about the
4 means, talk about the objectives.

5 And so, Judge, to answer your question, if
6 you're a party to a separate litigation that has no
7 bearing in terms of whether you're adequately
8 represented in the case in which you seek to intervene.
9 And they are adequately represented, based on the --
10 based on the case law, your Honor.

11 Let me just -- can I get to a final point
12 here, which is the undue -- undue prejudice and the
13 timeliness. This goes to both prongs, both the -- this
14 goes to a prong in both the intervention as a matter or
15 right as well as discretionary intervention, your
16 Honor.

17 This petition has been pending for ten months.
18 Ten months. This is supposed to be a quick -- a quick
19 and speedy remedy that is supposed to happen when we
20 come to court. Your Honor, we know, and we've cited
21 Exhibit 13, emails -- or an email that really what the
22 intervenors want to do is to prolong the developers'
23 agony. They want to delay these proceedings. They
24 know that they've got a carrying cost on this property,
25 and they know the longer they can delay this, the more

1 my client will suffer and potentially would not be able
2 to meet those carrying costs. That's their strategy.
3 They set forth that strategy in an email.

4 We believed, your Honor, and we want -- we
5 can't stress it enough, that in allowing this
6 intervention will display these proceedings, will
7 prejudice my clients, and that's one of the other
8 reasons they want to do this. They want to be able to
9 come in and delay these proceedings so my client has
10 got to continue to pay ten of thousands of dollars
11 every single month in order to carry the cost for this
12 property. Your Honor, that's a basis for the Court to
13 deny both as a matter of right as well as permissively.

14 And I would ask the Court to exercise the
15 Court's judgment here. What does -- why do they need
16 any other representation beside the City of Las Vegas
17 who are getting to the very same result? You've got
18 very competent counsel with McDonald Carano. You got
19 Brad Jerbic's office.

20 Very competent counsel here. They want to get
21 to the same result. Don't let them delay this. Don't
22 let them prejudice my client by continuing far beyond
23 where we ought to be in terms of a fair and speedy
24 resolution to this petition, your Honor.

25 And we'd ask you to consider those -- those

1 issues and deny the -- deny the motion.

2 THE COURT: Thank you, sir.

3 MR. HOLMES: Thank you, your Honor.

4 I'll start in reverse order. On the
5 prejudice, your Honor, we don't seek to delay these
6 proceedings. We'll file our answers in brief when the
7 City files it, and I think it's interesting that the
8 developer says that there's been some sort of delay in
9 this proceeding, but I know that they filed
10 stipulations and requested a continuance from this
11 Court to file their opening brief, so I don't think
12 it's fair to come in and say that we're seeking to
13 delay these proceedings.

14 There's issues that come up in briefing
15 schedule, as counsel probably knows, but we won't -- we
16 won't request a continuance in the briefing schedule.
17 We'll file an answer at the same time as the City files
18 its answering brief in this matter.

19 I think the -- and then going to the
20 intervenors --

21 THE COURT: What about the adequate
22 representation issue?

23 MR. HOLMES: Yes, your Honor. That's what I
24 was going to touch upon.

25 The Hare decision actually makes it clear that

1 adequate representation, there isn't -- that compelling
2 showing -- doesn't have to be shown when there's
3 adverse -- when the interests are adverse. And I don't
4 think there's any question that our interests are
5 adverse. Their opposition actually -- actually makes
6 clear and recognizes the City and intervenors'
7 interests are adverse.

8 They say that our argument about a major
9 modification has been rejected over and over and over
10 again by the City. That, of course, is the whole
11 point. Our interests are not aligned; the interests
12 are adverse.

13 And so we would submit that under the law that
14 that's sufficient, even with the Hare decision, that it
15 says that that compelling showing doesn't have to apply
16 when the interests are adverse, like we have it here,
17 your Honor.

18 Now, going back to the sufficient interest, we
19 believe that -- I would note that it would be a unique
20 proposition under the law that if somehow the
21 surrounding homeowners have sufficient interests to
22 file a petition for judicial review or investigate as
23 they filed a writ proceeding, because I think that was
24 before they enacted the NRS statute allowing petitions
25 for judicial review, but the Supreme Court said there,

1 you actually -- one of their arguments was surrounding
2 homeowners, you don't have an interest sufficient. You
3 have no standing here to file that.

4 The Supreme Court rejected that argument, your
5 Honor, and said, No, surrounding homeowners do have
6 sufficient interests in this litigation.

7 So I think it would be a unique proposition
8 that, Oh, you can file a petition for judicial review,
9 you have sufficient interests there, but you don't have
10 sufficient interests to intervene. I just don't think
11 the law permits that. And I think the law is actually
12 contrary to that point, your Honor.

13 So we would submit that we have satisfied all
14 the elements requiring intervention as a matter of
15 right, here, your Honor. As your Honor recognized, the
16 intervention should be liberally construed.

17 There is absolutely no prejudice, no harm --

18 THE COURT: Is there any disagreement on that
19 issue regarding the application of Rule 24 and how --
20 and whether it should be liberally construed or not?

21 MR. HOLMES: I don't --

22 THE COURT: I mean, there's case law that says
23 that.

24 MR. HUTCHISON: Judge, it's fine to construe
25 it how the case law says to construe it, but you got

1 four -- you got four elements.

2 THE COURT: I understand.

3 MR. HUTCHISON: Yeah. And it's conjunctive;
4 it's not disjunctive, so --

5 THE COURT: Well, but here's another thing,
6 too, whether the case law I think stands for the
7 proposition that -- that the elements can have
8 different impacts and they can have different weights,
9 as long as the trial Court considers all four of them.
10 That's what's most important. And I'm not saying
11 they're necessarily equal. It can vary depending on
12 the facts of the specific case, right? That's my
13 understanding how that works.

14 MR. HUTCHISON: Judge, but you've got to
15 satisfy each of the four, and what we have argued, your
16 Honor, is --

17 THE COURT: I'm not disagreeing with that.

18 MR. HUTCHISON: -- they haven't satisfied at
19 least two of them.

20 THE COURT: And I'm not disagreeing with that.
21 Here's the -- the real big issue I see right now, and
22 I'm not 100 percent sure on it, and I'm going to go
23 back and read Hare. It's the adequate representation
24 component. That's the one I really want to sit back
25 and focus on.

1 MR. HOLMES: And on that point, your Honor, I
2 would submit that the developer actually made the
3 contrary argument in front of Judge Jones when they
4 sought intervention in another writ petition on this
5 thing. They said that our interests isn't adequately
6 aligned with the City, blah, blah, blah. Even though
7 we seek the same result, our interests aren't aligned.

8 Now they come in front of your Honor and say,
9 Well, their interests are aligned. I just don't think
10 that is any credible argument to that, your Honor.

11 THE COURT: You want to add to that?

12 MR. HUTCHISON: Well, Judge, come on. We are
13 the property owners. My clients own the property. We
14 have the title to the property.

15 MR. HOLMES: Your Honor --

16 MR. HUTCHISON: The case law is clear on that.

17 THE COURT REPORTER: I need one at a time.

18 MR. HOLMES: Sorry.

19 MR. HUTCHISON: The case law is clear on that.

20 You are the property owner, and you are the title
21 owner, you have a unique position within which to
22 assert a position for petition for judicial review.
23 Much different --

24 THE COURT: I'm not saying your client doesn't
25 have that right. It's obvious they do.

1 MR. HUTCHISON: Okay.

2 Now, Judge, just -- if you're going to go back
3 and look at this, then look at page 16 of the motion --
4 page 16, lines 26 through 28, and page 17, lines 1
5 through 2, where the petitioners say thus, although --
6 excuse me, the intervenors say:

7 "Thus, although, intervenors will seek a
8 ruling of holding the City council's denial of
9 the applications (the same result the City will
10 hopefully advocate for) intervenors' interest
11 in defending the City's action are adverse to
12 the City's position is actively taken in other
13 pending lawsuits."

14 That is not a basis, your Honor. This is the
15 lawsuit you have to evaluate. Do you have the same
16 objectives? And if you have do, you're adequately
17 represented. And if it's the government, you got to
18 show a compelling reason, a compelling reason under
19 Hare, your Honor. So I do --

20 THE COURT: And last, but not least, as far as
21 adequate representation, are you saying I -- I'm
22 precluded from looking at the prior history of the
23 dispute?

24 MR. HUTCHISON: I'm saying the case law says
25 that in looking at -- I mean, you can look at all --

1 everything you want, your Honor. But what you ask when
2 you say are you adequately represented in the lawsuit
3 you're seeking to entertain, the one question is what
4 are your objectives. If your objectives are the same,
5 you're adequately represented, regardless of how you
6 get there and if you have different means.

7 And if it's the government, you have got to
8 show it's basically a compelling interest or a
9 compelling reason why the government is not going to
10 adequately represent its constituents.

11 THE COURT: And I don't mind explaining to you
12 the reason why I -- I've been focusing and thinking
13 about that specific issue is, you know, you look at the
14 history of the -- of the case, and on some level from a
15 City council perspective, the City council took
16 positions that would potentially be adverse to the
17 intervenor in this case. And consequently can I simply
18 ignore that?

19 Because let's face it -- and we all know this.
20 Litigation can be very complex and sophisticated. It
21 can, especially -- and this isn't a rear-ender fender
22 bender. We can all agree, right?

23 MR. HUTCHISON: Yeah, we can agree.

24 THE COURT: And so -- and so I'm looking at
25 it, and I am just wondering how do I -- because what's

1 interesting about it is in the federal case law really
2 says this: You focus on the -- the movant, i.e., the
3 party seeking intervention when you conduct your
4 analysis.

5 And so I'm looking at it from their
6 perspective. I'm saying to myself, okay. We have a
7 history. And do I think -- or do I know Mr. Ogilvie is
8 going to do the best he can in the representation of
9 the City in this case? I have no doubt about that.
10 That's what he's going to do.

11 But I'm looking at it from the movant's
12 perspective because they might feel, wait, he's doing a
13 great job for the City, but there's certain things the
14 Court needs to know about from a historical perspective
15 in this case that might impact their client from an
16 issue of law perspective. And that's what I'm thinking
17 about. I just want to tell you that.

18 MR. HUTCHISON: Okay. Your Honor, may I just
19 indulge the Court one more moment --

20 THE COURT: You can.

21 MR. HUTCHISON: -- and allow Ms. Ham to just
22 address the Court please.

23 THE COURT: That's fine.

24 Ma'am.

25 MS. HAM: Good morning, your Honor. So I'm

1 in-house counsel for EHB Companies, the manager of 180
2 Land, 70 Acres, and various other entities involved in
3 this particular property.

4 So you asked a question about are you
5 precluded from looking at the other decisions in this
6 case, and I want to make clear that there are ten
7 parcels of land, different owners. They are not the
8 same property certainly, not Judge Crockett's
9 decision --

10 THE COURT: Ma'am, you don't understand my
11 question. I made a clear distinction between claim
12 preclusion and issue preclusion.

13 MS. HAM: I understand. That's what --

14 THE COURT: That's what the -- I think it's
15 called reverse stare decisis issue deals specifically
16 with, because I could hypothetically make a legal
17 ruling that impacts them.

18 MS. HAM: I understand that completely. And,
19 in fact, I just argued that res judicata issue in
20 another courtroom.

21 But I just want you to know --

22 THE COURT: Not res judicata, stare decisis.
23 Big difference.

24 MS. HAM: No, I understand.

25 But what I want you to know is if you're going

1 to consider other orders of the Court, there is another
2 order from another Court that did, in fact, involve 180
3 Land, the applicant in this case. But this particular
4 case, this 61 lots that we're talking about, stands
5 apart from any of the other matters, from any of the
6 other parcels. And it has never been considered before
7 the City council, separate and apart. So this is a
8 completely separate issue.

9 But to the extent that you --

10 THE COURT: Say that again so I can understand
11 that, ma'am.

12 MS. HAM: Okay.

13 THE COURT: Go ahead.

14 MS. HAM: Okay. This application that's
15 before you on a petition for judicial review has not
16 been decided by any other Court. This particular
17 application for this parcel of land, for the 61 lots on
18 the 34 acres, which is what's before you, that has not
19 been decided by any other Court.

20 THE COURT: Okay. Here's my question. And --
21 and we'll clear the record. I didn't mean reverse
22 stare decisis, negative stare decisis. That is the
23 term of art.

24 Are there decisions I can make as a matter of
25 law in this case that will impact the adjoining

1 property owners?

2 And understand, that's different than the
3 issue preclusion claim preclusion. I understand these
4 aren't the same parties. I get that.

5 MR. HOLMES: I would submit absolutely, your
6 Honor. The request they seek from this Court is an
7 order directing the City council to approve these
8 applications without a major modification. Now, we
9 would -- I don't want to get in the merits because --

10 THE COURT: I'm not going to get in the
11 merits.

12 MR. HOLMES: Exactly.

13 THE COURT: That's another day, right?

14 MR. HOLMES: But this whole argument about a
15 different entity, separate entity, there's no basis for
16 that. We'll get into that later on.

17 I think their judicial admissions and other
18 proceedings, the declaration of Vickie DeHart, they
19 submitted in an opposition that says she's the managing
20 member of all defendants in this case, this -- this is
21 the one developer. It's EHB Company and Yohan Lowie
22 and the DeHarts and who all the principals of EHB.

23 There won't be any issue on that, your Honor.

24 MR. HUTCHISON: Judge, there will be a lot of
25 issues on that, I guarantee it.

1 THE COURT: I just want to make sure -- I
2 don't want to -- as a trial judge, I get the issue. Is
3 there any -- should I even consider the doctrine? I
4 meant it wasn't really necessarily thoroughly explored;
5 right? As far as the doctrine or the application of
6 reverse stare decisis.

7 MR. HUTCHISON: Judge, we think this Court is,
8 well equipped to make its own decision about all these
9 issues.

10 THE COURT: I got you.

11 MR. HUTCHISON: And -- and -- and the effort
12 to suggest you're bound by some other lawsuit and some
13 other case on some other property on some other parcel
14 with other parties is not legally supportable.

15 THE COURT: And I've always been a free
16 thinker on that, so what other judges do has never
17 impacted my ultimate decision.

18 MR. HUTCHISON: We understand, your Honor. We
19 would just submit that the intervenors under the law
20 should be permitted a right to intervene to represent
21 their interest in this matter.

22 THE COURT: I understand.

23 MR. HUTCHISON: Thank you.

24 THE COURT: And I'll move post haste. I'll
25 get something to you. Minute order, maybe, by Friday.

1 MR. HUTCHISON: Okay.

2 THE COURT: I'm in trial right now, but this
3 is important. I got to move. I got a lot of things to
4 move on.

5 MR. HUTCHISON: Thank you, your Honor.

6 MR. HOLMES: Thank you, your Honor.

7 MS. HAM: Thank you, your Honor.

8 THE COURT: Enjoy your day.

9 MR. HUTCHISON: Thank you so much.

10

11 (Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

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(1) MR. HOLMES: - argument

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(2) argument... - counsel

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(9) what... - zoning

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 180 LAND COMPANY LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS CITY OF,)

13 Defendant.)

14

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REPORTER'S TRANSCRIPT
OF
MOTION

16

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

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DATED WEDNESDAY, JULY 25, 2018

22

23

24 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

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1 LAS VEGAS, NEVADA; WEDNESDAY, JULY 25, 2018

2 9:14 A.M.

3 P R O C E E D I N G S

4 * * * * *

5

6 THE COURT: All right. We're going to move on
7 to the contested calendar. Next up, page 13, 180 Land
8 Company LLC versus City of Las Vegas, et al.

9 THE COURT REPORTER: Does either side want
10 this reported?

11 MR. KISTLER: Yes, please.

12 MR. OGILVIE: George Ogilvie on behalf of the
13 City of Las Vegas, your Honor.

14 MR. HOLMES: Good morning, your Honor. Dustun
15 Holmes on behalf of the intervenors.

16 MR. KISTLER: Good morning, your Honor.
17 Joseph Kistler of the law firm of Hutchinson Steffen on
18 behalf of the petitioner 180 Land.

19 Your Honor, this is my motion.

20 MR. BICE: Good morning, your Honor. Todd
21 Bice on behalf of the intervenor.

22 THE COURT: All right. Good morning. And for
23 the record, this is petitioner's emergency motion to
24 strike errata to transmittal of record for review; is
25 that correct?

1 MR. KISTLER: Yes, your Honor.

2 THE COURT: All right. You have the floor,
3 sir.

4 MR. KISTLER: Thank you, your Honor.

5 Judge, when this errata came in, obviously, we
6 had difficulty with it. We have difficulty with the
7 overarching concept of a party litigant after a record
8 was certified as complete being able to unilaterally
9 delete portions of the record that is inconsistent with
10 that litigant's litigation position, and that's what we
11 have here.

12 Your Honor, we have the City of Las Vegas,
13 after the record having been certified as complete and
14 appropriate for the Court's consideration unilaterally
15 stating that certain portions of the record that are
16 inconsistent with the arguments that they made in this
17 case that those portions of the record should be
18 deleted or are deleted unilaterally.

19 Your Honor, we received an opposition to our
20 motion to strike only from the City. We didn't receive
21 anything from the intervenors.

22 And we also replied to the motion. The
23 interesting thing here, your Honor, in addition to the
24 matters that are set forth in the pleadings is an
25 additional case that we would like to cite to the Court

1 for the Court's attention. And that case is City of
2 Reno versus Citizens for Cold Springs, 126 Nevada 263,
3 236 Pac.3d 10, a 2010 case of the Nevada Supreme Court.

4 Your Honor, these -- that case, the Cold
5 Spring case, is interesting because what we -- what we
6 had in that case was we had the city council of the
7 City of Reno taking action with the action they were
8 taking or referencing a future action by the reasonable
9 natural planning commission regarding certain proposed
10 amendments that the -- that the city council had
11 amended.

12 And the Court in this particular case
13 determined that those later actions by the RTC, even
14 though they hadn't occurred at the time that the
15 decision was made by the city council of the City of
16 Reno, those nevertheless were appropriately considered
17 as part of the record, because they were referenced by
18 the city council at the time that the city council took
19 action.

20 In this particular case, in our case, as is
21 set forth in the pleadings, we have two issues that are
22 being -- or two general issues that are being presented
23 to the city council on June the 21st, 2017. One is a
24 development agreement. The other is applications to --
25 for land use of four different -- four different

1 applications that are coming up on their own that would
2 have been included within the development agreement,
3 if, in fact, the development agreement had been entered
4 into.

5 The transcript of that hearing on June the
6 21st, 2017, is replete with references to the
7 development agreement and the time, or lack thereof, of
8 the development agreement with the -- with my client's
9 applications that were denied by the city council, but
10 specific on that date -- but specifically were denied
11 because there was no development agreement in the city
12 council's view and because there was no major
13 modification that was necessary in the city council's
14 view.

15 So the development agreement was abey'd
16 forbode from the June 21, 2017, date by the city
17 council to August the 2nd, 2017, at which time it was
18 stricken from the agenda and killed by the city
19 council.

20 So what we have is this petition concerns
21 actions that were taken by the city council on June the
22 21st, 2017. And one of the actions that was taken on
23 June the 21st, 2017, was to abey the development
24 agreement to August the 2nd, 2017, at which time they
25 killed it.

1 The City argued that the relevancy, the
2 existence or lack of existence of the development
3 agreement in its opposition to the petition when, in
4 fact, the abeyance by the city council on that same day
5 and the resolution on -- upon abeyance on August the
6 2nd contradicts their argument that they presented
7 before the Court.

8 So we would argue that the original certified
9 record, as it went forward to all the parties and the
10 Court, should not be -- no portion of that should be
11 deleted; that, in fact, the -- the record in this case
12 can include, under the Cold Springs case, can include
13 information or events that occurred subsequent to an
14 actual vote on an application when that subsequent
15 event is referenced at the time of the petitioned
16 decision, or if it necessarily is helpful for the Court
17 to -- to determine whether or not the city council
18 acted arbitrary and capriciously on the applications on
19 June the 21st, 2017.

20 So we would move to strike the errata. Or if
21 the Court considers the errata as a motion to delete
22 portions of the certified record, that the City's -- if
23 it's treated as a motion filed by the City, that that
24 motion should be denied.

25 Your Honor, we would, however, agree to

1 stipulate to the expansion of the record as stated in
2 our reply pleading to include the four letters of
3 denial of my client's applications, which would be --
4 or which are identified as ROR-035183 through
5 ROR-035186.

6 Does your Honor have any questions concerning
7 the positions that we've taken in this motion or any of
8 the pleadings or in today's argument?

9 THE COURT: Not at this time. I'm going to
10 listen to what the City has to say. Then I'll make
11 then -- then I might have some questions for you.

12 MR. KISTLER: Then I'll sit down.

13 THE COURT: Okay.

14 MR. OGILVIE: Good morning, your Honor.

15 THE COURT: Good morning.

16 MR. OGILVIE: Notwithstanding the allegations
17 of nefarious conduct on behalf of the City, the City is
18 only attempting to make sure that this Court is
19 presented with the proper record and can base its
20 determination of this petition for judicial review on
21 the proper record.

22 As has been argued on the merits, in the
23 briefs, and in the June 29th hearing before your Honor,
24 the only issue before the Court on the merits is
25 whether or not substantial evidence before the city

1 council on June 21, 2017, supported the determination
2 or the actions taken on the application.

3 Any evidence, any actions, any materials
4 subsequent to June 21, 2017, cannot be considered by
5 this Court because it was not before the city council
6 and is not part of the record before the city council
7 at the time that it took its actions on June 21, 2011.

8 Now, I harken back to the telephonic hearing
9 that we conducted last Monday, I guess. It was nine
10 days ago in which the Court said to all counsel, it
11 would like to avoid any procedural errors or creating
12 any procedural issues for appeal.

13 And I think that's exactly what petitioner is
14 doing by requesting this Court to consider items,
15 actions -- items and actions that were not part of the
16 record on June 21, 2017, at the time the city council
17 took its action.

18 As I stated at the hearing on June 29th --

19 THE COURT: Mr. Ogilvie, I don't mind saying
20 this, I mean, that's a concern I have even today,
21 regarding today's motion. And I thought about that.
22 And I don't mind -- I'll tee this up for both of you
23 because it appears to me that what we essentially have
24 here would be a clawback; right? Certain documents
25 were placed in the record and potentially they should

1 not have been there, and so whether it's appropriate
2 for the petitioner or a respondent or some party to
3 clawback that -- those documents that weren't properly
4 before the city council. That's kind of how I look at
5 it.

6 And also I was thinking about this, too,
7 because I remember I was at the state bar convention a
8 couple weeks ago in Chicago, my hometown. And one of
9 the -- and they were talking about an amendment to the
10 rules of -- Nevada Rules of Civil Procedure as it
11 relates to privileged documents and potentially having
12 a clawback mechanism in place because, you know,
13 traditionally if you are claiming privilege, you
14 produce it, the Courts have looked at it as being
15 waived.

16 But I think now they're considering putting in
17 a clawback and saying, Wait a second here. Mistakes
18 can be made as part of the human condition. Should
19 parties be penalized because of that, you know.

20 Especially when they take action. I'm not
21 saying that, you know, it's a scenario where you can
22 wait and sit on your rights forever and then clawback,
23 but, you know, done within a reasonable period of time.

24 So those are some of the things I was thinking
25 about. And I am concerned about an overwhelming issue

1 regarding what I consider could be plain error. I
2 mean, I can make the right decision. They send it back
3 to me procedurally and say, Judge, you shouldn't have
4 considered this. I don't know, but I worry about that.

5 MR. OGILVIE: I think there is an element of
6 clawback to it in that it is parallel to an inadvertent
7 disclosure.

8 THE COURT: Right.

9 MR. OGILVIE: And what this is is an
10 inadvertent inclusion of certain items in the record.
11 But as the statute requires, Nevada law requires, the
12 City to present and transmit the record to the Court
13 for its consideration under -- whenever a petition for
14 judicial review is filed.

15 The City did so, but because of the delay
16 between the time for the transmittal of the record
17 prior -- from the time of the action taken by the City,
18 and the transmittal of the record, there was so much
19 intervening time and so many intervening actions took
20 place that inadvertently there were items included in
21 the transmittal of that record that were subsequent to
22 the action taken on June 21. It was clearly
23 inadvertent. There is no bad faith. There's no
24 nefarious conduct. There's no ulterior motive.

25 It simply was a mistake that the City has --

1 again, the City has the obligation to transmit the
2 proper record, and it only took proper action to
3 remediate the inadvertent conclusion of those
4 subsequent events.

5 And I think it's axiomatic that the Court can
6 consider them because they were not before the city
7 council on June 21. And, therefore, they should be
8 removed from the record.

9 THE COURT: Okay. Thank you, sir.

10 All right. Mr. Kistler.

11 MR. KISTLER: Your Honor, there is no
12 good-faith argument that the second set of documents
13 was not before the city council at the time they took
14 action on June the 21st, 2015. That is the development
15 agreement. That is the staff's recommendations. And
16 the transcription of the June 21, 2017, hearing meeting
17 of the city council whereby my client's applications
18 were denied as replete with references to those
19 documents and to the development agreement.

20 The more interesting question as we put in our
21 pleading is if, in fact, the city council says on June
22 the 21st, 2017, as it did, that we have a development
23 agreement before us. But we're going to abey a
24 consideration of that and later kill it on August the
25 17th. Then they deny my client's applications, at

1 least in large part, based upon "piecemeal" development
2 because there's no development agreement, then that
3 action on August the 2nd, 2017, helps explain whether
4 or not the city council abused its discretion in
5 denying my client's applications on June the 21st,
6 2017.

7 Your Honor, we set forth a promise on the
8 record by Mr. Jerbic to my client regarding the
9 development agreement on July the -- on June the 21st,
10 2017. A promise before the vote occurred on my
11 client's applications.

12 And that promise that was made to my client on
13 June the 21st, 2017, regarding the development
14 agreement went totally completely unfilled. In fact,
15 the development agreement was stricken from the record
16 on August 2nd, 2017, and not even placed up for a vote.

17 So --

18 THE COURT: So are you saying -- and I just
19 want to make sure I'm clear on this because I feel from
20 a procedural perspective my decision-making would be
21 limited to what was in front of the city council as a
22 result or on June 21, 2017. And so it sounds like to
23 me you're saying, Look, Judge, these documents were
24 before the city council.

25 Is that what you're saying? I just want to

1 make sure. Is that a question of fact?

2 MR. KISTLER: The --

3 THE COURT: Because I do feel that it's
4 important because they were making a vote that specific
5 day that was adverse to your client. Consequently, if
6 I'm going to make a determination as to the actions of
7 the city council, I have to limit the scope and thrust
8 of my review to what was before the city council right
9 before that vote being taken. So that's my concern.

10 MR. KISTLER: That's not exactly correct, your
11 Honor. What we have is, what the law says, is that
12 your Honor should consider the record regarding this
13 case because it doesn't necessarily say that the record
14 ends at the time that the vote is taken.

15 What we have in this case, your Honor, on June
16 the 21st, 2017, is the development agreement came up
17 for -- was on the agenda. My client's applications
18 were on the agenda. The interplay between those two
19 agenda items was discussed extensively by the city
20 council on June 21 --

21 THE COURT: But you're saying -- then you're
22 saying it was part of the record.

23 MR. KISTLER: It was part of the record, your
24 Honor.

25 THE COURT: That's why I asked the original

1 question.

2 MR. KISTLER: The development agreement --
3 what -- what -- what the City doesn't want is, your
4 Honor, they don't want you to consider that they denied
5 the development agreement despite staff and the
6 planning commission's recommended approvals. They
7 don't want you to consider that on June the 21st, 2017,
8 the development agreement was abey'd, and then they
9 don't want you to consider that on August the 2nd,
10 2017, despite promises that were on the record on June
11 the 21st, 2017, and references made to the development
12 agreement on June the 21st, 2017, that they killed
13 it -- they, the city council -- killed it on August the
14 2nd, 2017.

15 That's what they don't want you to consider.

16 THE COURT: Was the Cold Springs case cited in
17 the moving papers? I don't remember.

18 MR. KISTLER: It wasn't cited in the
19 pleadings -- or it wasn't cited in the briefing on this
20 case, on this issue. It wasn't cited -- I don't
21 believe it was cited by the City. I can tell you it
22 was not cited by us.

23 THE COURT: Okay. Because I haven't had a
24 chance to read it.

25 MR. KISTLER: Okay. So --

1 THE COURT: So I'm at a disadvantage.

2 But go ahead.

3 MR. OGILVIE: As is the City.

4 THE COURT: Yes.

5 MR. KISTLER: Your Honor, you know, the threat
6 of plain error is -- by the City in this particular
7 case, is kind of the threat of the Bogeyman for the
8 Court. If you do this, it's going to be plain error.
9 Mr. Kistler is trying to interject plain error into
10 this case by asking the Court to consider the
11 resolution of what was discussed on June the 21st,
12 2017, the development agreement, the resolution of that
13 that occurred on August the 2nd, 2017. You know,
14 there's no Bogeyman there.

15 Your Honor, the Bogeyman would be if the Court
16 does not consider the entire record, and this part of
17 the record that was originally certified, the August 2,
18 2017, denial, is part of -- is part of the reason and
19 rationale for the city council's actions on June the
20 21st, 2017.

21 It should be considered by the Court.

22 THE COURT: Any response to that, Mr. Ogilvie?
23 Then I'll make a decision.

24 Because I am concerned about overstepping.

25 MR. OGILVIE: I will only respond to

1 Mr. Kistler's comments about what the City wants the
2 Court to disregard or what it wants the Court to
3 consider.

4 It's not a function of what the City wants the
5 Court to consider or not consider. It is a function of
6 what the law requires. And the law prohibits the Court
7 going beyond what was before the city council on June
8 the 21st, 2017.

9 THE COURT: All right. Anything else I need?

10 And you do get -- if you want one final
11 comment, sir, then I'll rule.

12 MR. KISTLER: Your Honor, the development
13 agreement was before the city council on June the 21st,
14 2017. It was discussed June the 21st, 2017. It was
15 abey'd. Vote was abey'd past that date. And then they
16 voted. And based on the lack of a development
17 agreement in place, at least in part, the city council
18 voted and denied my client's applications on that
19 ground.

20 The fact that they killed the development
21 agreement upon its abey'd August 2, 2017, agenda
22 placement is probative, relevant. It was argued in the
23 pleadings. And it is information that your Honor
24 should consider as part of the record, as was
25 originally certified in this case prior to the errata.

1 That's it.

2 THE COURT: This is what I'm going to do:
3 Regarding petitioner's emergency motion to strike the
4 errata of the transmittal of the record for review
5 filed by the City on June 21st, 2018 [sic], I'm going
6 to deny the motion to strike filed.

7 And the reason for it is this: I haven't had
8 a chance to read the Cold Springs case. It would have
9 been nice if I would have had a chance. I would have
10 done that. But I feel it's important to make sure the
11 focus of the review -- judicial review in this case
12 will be limited to what was in front of the city
13 council as it relates to the day of or before the June
14 the 21st, 2017, record.

15 And so the errata to the transmittal of the
16 record will stand. I just want to make sure I'm clear
17 on that.

18 Does everybody understand that? Any
19 questions?

20 MR. OGILVIE: No, your Honor.

21 THE COURT: All right. Everyone, enjoy your
22 day.

23 IN UNISON: Thank you, your Honor.

24

25 (Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

IN UNISON: [1] 19/23 MR. BICE: [1] 4/20 MR. HOLMES: [1] 4/14 MR. KISTLER: [14] 4/11 4/16 5/1 5/4 9/12 13/11 15/2 15/10 15/23 16/2 16/18 16/25 17/5 18/12 MR. OGILVIE: [8] 4/12 9/14 9/16 12/5 12/9 17/3 17/25 19/20 THE COURT REPORTER: [1] 4/9 THE COURT: [21] 4/6 4/22 5/2 9/9 9/13 9/15 10/19 12/8 13/9 14/18 15/3 15/21 15/25 16/16 16/23 17/1 17/4 17/22 18/9 19/2 19/21	14/22 15/20 2100 [1] 3/11 2101 [1] 3/12 214-2100 [1] 3/11 214-2101 [1] 3/12 21st [21] 6/23 7/6 7/22 7/23 8/19 13/14 13/22 14/5 14/9 14/13 15/16 16/7 16/11 16/12 17/11 17/20 18/8 18/13 18/14 19/5 19/14 2300 [1] 2/19 236 [1] 6/3 25 [2] 1/21 4/1 2500 [1] 2/10 263 [1] 6/2 29th [2] 9/23 10/18 2nd [8] 7/17 7/24 8/6 14/3 14/16 16/9 16/14 17/13	16/8 18/15 18/15 18/21 abeyance [2] 8/4 8/5 ABILITY [1] 21/11 able [1] 5/8 about [8] 10/21 11/6 11/9 11/25 11/25 12/4 17/24 18/1 abused [1] 14/4 ACCURATE [1] 21/11 acted [1] 8/18 action [11] 6/7 6/7 6/8 6/19 10/17 11/20 12/17 12/22 13/2 13/14 14/3 actions [11] 6/13 7/21 7/22 10/2 10/3 10/7 10/15 10/15 12/19 15/6 17/19 actual [1] 8/14 addition [1] 5/23 additional [1] 5/25 adverse [1] 15/5 after [2] 5/7 5/13 again [1] 13/1 agenda [5] 7/18 15/17 15/18 15/19 18/21 ago [2] 10/10 11/8 agree [1] 8/25 agreement [25] ahead [1] 17/2 al [1] 4/8 all [9] 4/6 4/22 5/2 8/9 10/10 13/10 18/9 19/21 21/5 allegations [1] 9/16 also [2] 5/22 11/6 ALTA [1] 2/7 am [2] 11/25 17/24 amended [1] 6/11 amendment [1] 11/9 amendments [1] 6/10 any [9] 9/6 9/7 10/3 10/3 10/3 10/11 10/12 17/22 19/18 anything [2] 5/21 18/9 appeal [1] 10/12 APPEARANCES [2] 1/25 2/25	appears [1] 10/23 application [2] 8/14 10/2 applications [11] 6/24 7/1 7/9 8/18 9/3 13/17 13/25 14/5 14/11 15/17 18/18 appropriate [2] 5/14 11/1 appropriately [1] 6/16 approvals [1] 16/6 arbitrary [1] 8/18 are [10] 5/15 5/18 5/24 6/21 6/22 7/1 9/4 11/13 11/24 14/18 argue [1] 8/8 argued [3] 8/1 9/22 18/22 argument [3] 8/6 9/8 13/12 arguments [1] 5/16 as [24] asked [1] 15/25 asking [1] 17/10 at [19] 6/14 6/18 7/17 7/24 8/15 9/9 10/7 10/16 10/18 11/4 11/7 11/14 13/13 13/25 15/14 17/1 18/17 21/6 21/8 attempting [1] 9/18 attention [1] 6/1 August [11] 7/17 7/24 8/5 13/24 14/3 14/16 16/9 16/13 17/13 17/17 18/21 August 2 [2] 17/17 18/21 August 2nd [1] 14/16 AVENUE [1] 2/19 avoid [1] 10/11 axiomatic [1] 13/5	10/24 11/18 11/19 12/1 13/7 14/20 17/8 17/15 17/21 19/12 because [18] 6/5 6/17 7/11 7/12 10/5 10/23 11/7 11/12 11/19 12/15 13/6 14/2 14/19 15/3 15/4 15/13 16/23 17/24 been [6] 5/13 7/2 7/3 9/22 11/1 19/9 before [19] 1/18 8/7 9/23 9/24 9/25 10/5 10/6 11/4 13/6 13/13 13/23 14/10 14/24 15/8 15/9 18/7 18/13 19/13 21/6 BEFORE-ENTITLED [1] 21/6 behalf [5] 4/12 4/15 4/18 4/21 9/17 being [5] 5/8 6/22 6/22 11/14 15/9 believe [1] 16/21 BEST [1] 21/11 between [2] 12/16 15/18 beyond [1] 18/7 BICE [3] 3/5 3/7 4/21 Bogeyman [3] 17/7 17/14 17/15 both [1] 10/22 briefing [1] 16/19 briefs [1] 9/23 but [11] 7/9 7/10 11/16 11/23 12/4 12/11 12/15 13/23 15/21 17/2 19/10
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(1) IN UNISON: - CERTIFICATE

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(2) certified - helps

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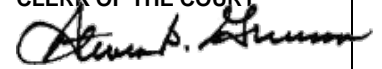
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(5) those... - your



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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER 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, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

NOTICE IS HEREBY GIVEN to all parties that Findings of Fact, Conclusions of Law were entered in the above-captioned case on the 21st day of November, 2018, a copy of which is attached hereto.

Dated this 26th day of November, 2018.

McDONALD CARANO LLP

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Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 26th day of November, 2018, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

Steven D. Grierson

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Attorneys for Defendants City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability
company; DOE INDIVIDUALS I through X;
DOE CORPORATIONS I through X; and
DOE LIMITED-LIABILITY COMPANIES I
through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PETITION FOR JUDICIAL REVIEW**

OCT 30 2018

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JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER 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, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Petitioner 180 Land Company, LLC filed a petition for judicial review ("Petition") of the Las Vegas City Council's June 21, 2017 decision to deny four land use applications ("Applications") filed by Petitioner to develop a 34.07-acre portion of the Badlands Golf Course ("the 35-Acre Property"). The Court granted a motion to intervene filed by surrounding homeowners ("Intervenors") whose real property is adjacent to and affected by the proposed development of the 35-Acre Property. The Court having reviewed the briefs submitted in support of and in opposition to the Petition, having conducted a hearing on the Petition on June 29, 2018, having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

A. The Badlands Golf Course and Peccole Ranch Master Development Plan

1. The 35-Acre Property is a portion of 250.92 acres of land commonly referred to as the Badlands Golf Course ("the Badlands Property"). (ROR 22140-201; 25819).

...

2. The Badlands Property is located between Alta Drive (to the north), Charleston Boulevard (to the south), Rampart Boulevard (to the east), and Hualapai Way (to the west), and is spread out within existing residential development, primarily the Queensridge Common Interest Community. (ROR 18831; 24093).

3. The Badlands Property is part of what was originally the Venetian Foothills Master Development Plan on 1,923 acres of land, which was approved by the Las Vegas City Council (the "Council") on May 7, 1986. (ROR 25820).

4. The plan included two 18-hole golf courses, one of which would later become known as "Badlands." (ROR 2635-36; 2646).

5. Both golf courses were designed to be in a major flood zone and were designated as flood drainage and open space. (ROR 2595-2604; 2635-36; 4587).

6. The Council required these designations when approving the plan to address flooding, and to provide open space in the master planned area. (*Id.*).

7. The City's General Plan identifies the Badlands Property as Parks, Recreation and Open Space ("PR-OS"). (ROR 25546).

8. The City holds a drainage easement within the Badlands Property. (ROR 4597; 5171; 5785).

9. The original master plan applicant, William Peccole/Western Devcor, Inc., conveyed its interest to an entity called Peccole Ranch Partnership. (ROR 2622; 20046-47; 25968).

10. On February 15, 1989, the Council approved a revised master development plan for 1,716.30 acres, known as "the Peccole Ranch Master Development Plan" ("the Master Development Plan"). (ROR 25821).

11. On April 4, 1990, the Council approved an amendment to the Master Development Plan to make changes related to Phase Two, and to reduce the overall acreage to 1,569.60 acres. (*Id.*).

12. Approximately 212 acres of land in Phase Two was set aside for a golf course, with the overall Peccole Ranch Master Plan having 253.07 net acres for golf course, open space and

1 drainage. (ROR 2666; 25821).

2 13. Like its predecessor, the Master Development Plan identified the golf course area
3 as being for flood drainage and golf course purposes, which satisfied the City's open space
4 requirement. (ROR 2658-2660).

5 14. Phase Two of the Master Plan was completed such that the golf course is now
6 surrounded by residential development. (ROR 32-33).

7 15. The 35-Acre Property that is the subject of the Applications at issue here lies within
8 the Phase Two area of the Master Plan. (ROR 10).

9 16. Through a number of successive conveyances, Peccole Ranch Partnership's
10 interest in the Badlands Property, amounting to 250.92 acres, was transferred to an entity called
11 Fore Stars, Ltd., an affiliate of Petitioner. (ROR 24073-75; 25968).

12 17. On June 18, 2015, Fore Stars transferred 178.27 acres to Petitioner and 70.52 acres
13 to Seventy Acres, LLC, another affiliate, and retained the remaining 2.13 acres. (*Id.*).

14 18. The three affiliated entities - Petitioner (i.e., 180 Land Co., LLC), Seventy Acres
15 LLC and Fore Stars, Ltd. (collectively, "the Developer") - are all managed by EHB Companies,
16 LLC, which, in turn, is managed by Paul Dehart, Vicki Dehart, Yohan Lowie and Frank Pankratz.
17 (ROR 1070; 1147; 1154; 3607-3611; 4027; 5256-57; 5726-29). The Court takes judicial notice of
18 the complaint filed by 180 Land Co., LLC, Fore Stars, Ltd., Seventy Acres, LLC, and Yohan
19 Lowie in the United States District Court, Case No. 2:18-cv-00547-JCM-CWH ("the Federal
20 Complaint"), which alleges these facts.

21 19. Mr. Lowie and various attorneys represented the Developer with regard to its
22 development applications before the Council. (ROR 24466-24593).

23 **B. The Developer's Prior Applications to Develop the Badlands Property**

24 20. On November 15, 2015, the Developer filed applications for a General Plan
25 Amendment, Re-zoning and Site Development Plan Review to change the classification of 17.49
26 acres within the 250.92-acre Badlands Property from Parks Recreation/Open Space to High
27 Density ("the 17-Acre Applications"). (ROR 25546; ROR 25602; ROR 25607).

28 21. The 17-Acre Property is located in the northeast corner of the Badlands Property,

1 distant from and not adjacent to existing residential development. (ROR 33).

2 22. In reviewing the 17-Acres Applications, the City's planning staff recognized that
3 the 17-Acre Property was part of the Master Development Plan and stated that any amendment of
4 the Master Development Plan must occur through a major modification pursuant to Title
5 19.10.040 of the City's Unified Development Code. (ROR 25532).

6 23. Members of the public opposed the 17-Acre Applications on numerous grounds.
7 (ROR 25768-78).

8 24. On February 25, 2016, the Developer submitted an application for a major
9 modification to the Master Development Plan (the "Major Modification Application") and a
10 proposed development agreement (which it named the "2016 Peccole Ranch Master Plan") for the
11 entire 250.92-acre Badlands Property ("the proposed 2016 Development Agreement"). (ROR
12 25729; 25831-34).

13 25. In support of the Major Modification Application, the Developer asserted that the
14 proposed 2016 Development Agreement was in conformance with the Las Vegas General Plan
15 Planning Guidelines to "[e]ncourage the master planning of large parcels under single ownership
16 in the growth areas of the City to ensure a desirable living environment and maximum efficiency
17 and savings in the provision of new public facilities and services." (ROR 25986).

18 26. The Developer also asserted that it would "guarantee that the development of the
19 golf course property would be accomplished in a way that ensures that Queensridge will retain the
20 uniqueness that makes living in Queensridge so special." (ROR 25966).

21 27. Thereafter, the Developer sought abeyances from the Planning Commission on the
22 17-Acres Applications to engage in dialogue with the surrounding neighbors, and to allow the
23 hearings on the Major Modification Application and the 17-Acre Applications to proceed
24 simultaneously. (ROR 25569; 25613; 25716; 25795; 26014; 26195; 26667; 27989).

25 28. The Council heard considerable opposition to the Major Modification Application
26 and the proposed 2016 Development Agreement regarding, among other things, traffic,
27 conservation, quality of life and schools. (ROR 25988-26010; 26017-45; 26072-89; 26091-107).

28 ...

1 29. At a March 28, 2016 neighborhood meeting, 183 members of the public attended
2 who were “overwhelmingly opposed” to the proposed development. (ROR 25823-24).

3 30. The City received approximately 586 written protests regarding the proposed 2016
4 Development Agreement plus multiple e-mails to individual Council members in opposition.
5 (ROR 31053; ROR 989-1069).

6 31. In approximately April 2016, City Attorney Brad Jerbic became involved in the
7 negotiation of the proposed 2016 Development Agreement to facilitate discussions between the
8 Developer and the nearby residents. Over the course of the next year, Mr. Jerbic and Planning
9 Director Tom Perrigo met with the Developer’s representatives and various members of the
10 public, including representatives of the Queensridge HOA and individual homeowners, in an
11 effort to reach consensus regarding a comprehensive development plan for the Badlands Property.
12 (ROR 27990).

13 32. The Mayor continued to inquire about the status of the negotiations, and Council
14 members expressed their desire that the parties negotiate a comprehensive master plan that meets
15 the City’s requirements for orderly and compatible development. (ROR 17335).

16 33. Prior to the Council voting on the Major Modification Application, the Developer
17 requested to withdraw it without prejudice. (ROR 1; 5; 6262).

18 34. Several members of the public opposed the “without prejudice” request, arguing
19 that the withdrawal should be with prejudice to ensure that the Developer would create a
20 development plan for the entire Badlands Property with input from neighbors. (ROR 1077-79,
21 1083).

22 35. In response, the Mayor received assurances from the Developer’s lawyer that the
23 Developer would engage in good-faith negotiations with neighboring homeowners. (ROR 1115).

24 36. The Developer also represented that it did not seek to develop the Badlands
25 Property in a piecemeal fashion: “[I]t’s not our desire to just build 17.49 acres of property that we
26 wanted to build the rest of it, and that’s why we agreed to the withdrawal without prejudice to
27 meet [with neighboring property owners] to try to do everything we can.” (ROR 1325). Based on
28 these assurances, the Council approved the Developer’s request to withdraw the Major

1 Modification Application and proposed 2016 Development Agreement without prejudice. (ROR
2 2; 1129-1135).

3 37. The Mayor reiterated that the Council sought a comprehensive plan for the entire
4 Badlands Property to ensure that any development would be compatible with surrounding
5 properties and provide adequate flood control. (ROR 17321-22).

6 38. The Developer's counsel acknowledged the necessity for a master development
7 plan for the entire Badlands Property. (ROR 17335).

8 39. City Planning Staff recommended approval of the 17-Acres Applications with
9 several conditions, including the approval of both (1) the Major Modification Application and (2)
10 the proposed 2016 Development Agreement. (ROR 27625-26, 27629).

11 40. On October 18, 2016, the City's Planning Commission recommended granting the
12 17-Acres Applications but denying the Major Modification Application. (ROR 1; 31691-92).

13 41. The Council heard the 17-Acres Applications at its November 16, 2016 meeting.
14 (ROR 1075-76).

15 42. The Council members expressed that a comprehensive plan for the entire Badlands
16 Property was necessary to avoid piecemeal development and ensure compatible land densities and
17 uses. (ROR 1310-14).

18 43. Nevertheless, the Council and the Planning Director recognized the 17-Acre
19 Property as distinct from the rest of the Badlands Property due to its configuration, lot size,
20 isolation and distance from existing development. (ROR 1311-12).

21 44. To allow time for negotiations between the Developer and the project opponents
22 on a comprehensive development agreement, the Council held the 17-Acres Applications in
23 abeyance until February 15, 2017. (ROR 1342; 6465-6470, 11231).

24 45. On February 15, 2017, the Council again considered the 17-Acres Applications.
25 (ROR 17235).

26 46. The Developer stated that it had reduced the requested number of units from 720
27 to 435 to match the compatibility of adjacent Queensridge Towers. (ROR 17237-38).

28 ...

47. Based on the reduction and compatibility effort made by the Developer, the Council approved the 17-Acres Applications with certain modifications and conditions. (ROR 11233; 17352-57).

48. Certain nearby homeowners petitioned for judicial review of the Council's approval of the 17-Acres Applications. *See Jack B. Binion, et al v. The City of Las Vegas, et al.*, A-17-752344-J.

49. On March 5, 2018, the Honorable James Crockett granted the homeowners' petition for judicial review, concluding that a major modification of the Master Development Plan to change the open space designation of the Badlands Golf Course was legally required before the Council could approve the 17-Acres Applications ("the Crockett Order"). The Court takes judicial notice of the Crockett Order.

C. The 35-Acres Applications at Issue in this Petition for Judicial Review

50. The instant case seeks judicial review of the Council's denial of the Applications filed by Petitioner to develop the 35-Acre Property.

51. The Applications consisted of: an application for a General Plan Amendment for 166.99 acres to change the existing City's General Plan designation from Parks Recreation/Open Space to Low Density Residential (ROR 32657); a Waiver on the size of the private streets (ROR 34009); a Site Development Review for 61 lots (ROR 34050); and a Tentative Map Plan application for the 35-Acre Property. (ROR 34059).

52. The development proposed in the Applications was inconsistent with the proposed 2016 Development Agreement that was being negotiated. (ROR 1217-1221; 17250-52; 32657; 34050; 34059).

53. The Council members expressed concern that the Developer was not being forthcoming and was stringing along neighboring homeowners who were attempting to negotiate a comprehensive development plan that the Council could approve. (ROR 1305; 1319).

54. The Applications came up for consideration during the February 14, 2017 Planning Commission meeting. (ROR 33924).

...

1 55. Numerous members of the public expressed opposition, specifically identifying the
2 following areas of concern: (1) existing land use designations did not allow the proposed
3 development; (2) the proposed development was inconsistent with the Master Development Plan
4 and the City's General Plan; (3) the Planning Commission's decision would set a precedent that
5 would enable development of open space and turn the expectations of neighboring homeowners
6 upside down; (4) the Applications required a major modification of the Master Development Plan;
7 (5) neighboring residents have a right to enjoyment of their property according to state statutes;
8 (6) the proposed development would negatively affect property values and the characteristics of
9 the neighborhood; and (7) the development would result in over-crowded schools. (ROR 33934-
10 69).

11 56. Project opponents also expressed uncertainty and anxiety regarding the
12 Developer's lack of a comprehensive development plan for the entire Badlands Property. (*Id.*).

13 57. The Planning Commission did not approve Petitioner's application for the General
14 Plan Amendment, which required a super-majority vote, but did approve the Waiver, Site
15 Development Review and the Tentative Map applications, subject to conditions as stated by City
16 Staff and during the meeting. (ROR 33998-99; 34003).

17 58. After several abeyances (requested once by City Planning Staff and twice by
18 Petitioner), the four Applications for the 35-Acre Property came before the Council on June 21,
19 2017. (ROR 17360; 18825-27; 20304-05; 24466).

20 59. The objections that had been presented in advance of and at the Planning
21 Commission meeting were included in the Council's meeting materials. (ROR 22294-24196).

22 60. As had occurred throughout the two-year history of the Developer's various
23 applications, the Council heard extensive public opposition, which included research, factual
24 arguments, legal arguments and expert opinions. (ROR 22205-78; 22294-24196). The objections
25 included, among others, the following:

26 a. The Council was allowing the Developer to submit competing applications
27 for piecemeal development, which the City had never previously allowed for any
28 other developer. (ROR 24205).

1 b. The Applications did not follow the process required by planning
2 principles. (Report submitted by Ngai Pindell, Boyd School of Law professor of
3 property law, ROR 24222-23).

4 c. The General Plan Amendment application exceeds the allowable unit cap.
5 (ROR 24225-229).

6 d. The Developer failed to conduct a development impact notice and
7 assessment. (ROR 24231-36).

8 e. The Applications are not consistent with the Master Development Plan or
9 the City's General Plan. (ROR 24231-36).

10 f. The design guidelines for Queensridge, which were approved by the City
11 and recorded in 1996, reference the golf course, and residents purchased property
12 and built homes in reliance on that document. (ROR 24237-38).

13 g. The Applications were a strategic effort by the Developer to gain leverage
14 in the comprehensive development agreement negotiations that were ongoing.
15 (Queensridge HOA attorney Shauna Hughes, ROR 24242-44).

16 h. Security would be a problem. (ROR 24246-47).

17 i. Approval of the Applications in the absence of a comprehensive plan for
18 Badlands Property would be irresponsible. (ROR 24254-55).

19 j. The proposed General Plan Amendment would approve approximately 911
20 homes with no flood control or any other necessary requirements. (ROR 24262).

21 61. After considering the public's opposition, the Mayor inquired as to the status of
22 negotiations related to a comprehensive development agreement for the entire Badlands Property.
23 The City Attorney responded that no agreement had been reached. (ROR 24208-09).

24 62. The Developer and its counsel represented that only if the Council approved the
25 four Applications would it then be willing to negotiate a comprehensive development agreement
26 and plan for the entire Badlands Property. (ROR 24215, 24217, 24278-80).

27 63. The Council voted to deny the Applications. (ROR 24397).

28 64. On June 28, 2017, the City issued its final notices, which indicated that the

Council's denial of the Applications was "due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area." (ROR 35183-86).

65. The Petitioner filed this petition for judicial review to challenge the Council's denial of the Applications.

66. Petitioner has not presented any evidence to the Court that it has a pending application for a major modification for the 35-Acre Property at issue in this Petition for Judicial Review.

II. CONCLUSIONS OF LAW

A. Standard of Review

1. In a petition for judicial review under NRS 278.3195, the district court reviews the record below to determine whether the decision was supported by substantial evidence. *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

2. "Substantial evidence is that which a reasonable mind could accept as sufficient to support a conclusion." *Id.*

3. The scope of the Court's review is limited to the record made before the administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

4. The Court may "not substitute its judgment for that of a municipal entity if substantial evidence supports the entity's action." *Id.*

5. "[I]t is not the business of courts to decide zoning issues... Because of the [governing body's] particular expertise in zoning, courts must defer to and not interfere with the [governing body's] discretion if this discretion is not abused." *Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

6. The decision of the City Council to grant or deny applications for a general plan amendment, rezoning, and site development plan review is a discretionary act. *See Enterprise*

Citizens Action Committee v. Clark County Bd. of Comm'rs, 112 Nev. 649, 653, 918 P.2d 305, 308 (1996); *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

7. "If a discretionary act is supported by substantial evidence, there is no abuse of discretion." *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by statute on other grounds*.

8. Zoning actions are presumed valid. *Nova Horizon, Inc. v. City Council of the City of Reno*, 105 Nev. 92,94, 769 P.2d 721, 722 (1989).

9. A "presumption of propriety" attaches to governmental action on land use decisions. *City Council of City of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 373 (1986). A disappointed applicant bears a "heavy burden" to overcome this presumption. *Id.*

10. On a petition for judicial review, the Court may not step into the shoes of the Council, reweigh the evidence, consider evidence not presented to the Council or make its own judgment calls as to how a land use application should have been decided. *See Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

B. Substantial Evidence Supported the City Council's Decision

11. The record before the Court amply shows that the Council's June 21, 2017 decision to deny the Applications for the 35-Acre Property ("the Decision") was supported by substantial evidence.

12. "Substantial evidence can come in many forms" and "need not be voluminous." *Comstock Residents Ass'n v. Lyon County Bd. of Comm'rs*, 385 P.3d 607 (Nev. 2016) (unpublished disposition), *citing McKenzie v. Shelly*, 77 Nev. 237, 240, 362 P.2d. 268, 269 (1961); *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

13. Public opposition to a proposed project is an adequate basis to deny a land use application. *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 501, 654 P.2d at 533.

14. "[A] local government may weigh public opinion in making a land-use decision." *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *accord Eldorado Hills, LLC v. Clark*

1 *County Bd. of Commissioners*, 386 P.3d 999, 2016 WL 7439360, *2 (Nev. Dec. 22, 2016)
2 (unpublished disposition).

3 15. “[L]ay objections [that are] substantial and specific” meet the substantial evidence
4 standard. *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98,
5 787 P.2d 782, 783 (1990) (distinguishing *City Council, Reno v. Travelers Hotel, Ltd.*, 100 Nev.
6 436, 683 P.2d 960 (1984)); *Stratosphere Gaming*, 120 Nev. at 529-30, 96 P.3d at 761.

7 16. “Section 19.18.050(E)(5) [of the Las Vegas Municipal Code] provides that the site
8 development plan review process is intended to ensure that the proposed development is
9 ‘harmonious and compatible with development in the area’ and that it is not ‘unsightly,
10 undesirable, or obnoxious in appearance.’ The language of this ordinance clearly invites public
11 opinion.” *Stratosphere Gaming*, 120 Nev. at 528–29, 96 P.3d at 760.

12 17. The considerable public opposition to the Applications that was in the record
13 before the Council meets the substantial evidence standard. That record included written and
14 stated objections, research, legal arguments and expert opinions regarding the project’s
15 incompatibility with existing uses and with the vision for the area specified in the City’s General
16 Plan and the Peccole Ranch Master Development Plan. (ROR 2658-2666, 22294-24196, 24492-
17 24504, 25821). The opponents argued that a development must be consistent with the General
18 Plan, and what the Developer proposed was inconsistent with the Parks, Recreation and Open
19 Space designation for the Badlands Golf Course in the City’s General Plan. (ROR 24492-24504,
20 32820-21; 32842-55; 33935-36). If the applications were granted, they argued, it would set a
21 precedent that would enable development of open space in other areas, thereby defeating the
22 financial and other expectations of people who purchased homes in proximity to open space. (ROR
23 24492-24504, 33936). Because of the open space designation in the Peccole Ranch Master
24 Development Plan, the opponents contended, the Applications required a major modification,
25 which had not been approved. (ROR 24494-95; 33938). The opponents also expressed concerns
26 regarding compatibility with the neighborhood, school overcrowding and lack of a development
27 plan for the entire Badlands Property. (ROR 24492-24504, 24526, 33934-69).

28 18. The record before the Council constitutes substantial evidence to support the

Decision. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760.

19. The Court rejects the evidence that the Developer contends conflicts with the Council's Decision because the Court may not substitute its judgment for that of the Council. "[J]ust because there was conflicting evidence does not compel interference with the Board's decision so long as the decision was supported by substantial evidence." *Liquor & Gaming Licensing Bd.*, 106 Nev. at 98, 787 P.2d at 783. The Court's job is to evaluate whether substantial evidence supports the Council's decision, not whether there is substantial evidence to support a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836 n.36, 138 P.3d 486, 497 (2006). This is because the administrative body alone, not a reviewing court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99, 787 P.2d at 784.

C. The Council's Decision Was Within the Bounds of the Council's Discretion Over Land Use Matters

20. "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures." NRS 278.020(1).

21. The City's discretion is broad:

A city board acts arbitrarily and capriciously when it denies a [land use application] without any reason for doing so.... [The essence of the abuse of discretion, of the arbitrariness or capriciousness of governmental action in denying a[n] ... application, is most often found in an apparent absence of any grounds or reason for the decision. We did it just because we did it. *Irvine*, 102 Nev. at 279-80, 721 P.2d at 372-73 (quotations omitted).

22. The Council's Decision was free from any arbitrary or capricious decision making because it provided multiple reasons for denial of the Applications, all of which are well supported in the record.

23. The Council properly exercised its discretion to conclude that the development proposed in the Applications was not compatible with surrounding areas and failed to set forth an orderly development plan to alter the open space designation found in both the City's General Plan and the Peccole Ranch Master Development Plan.

24. The concept of “compatibility” is inherently discretionary, and the Council was well within its discretion to decide that the development presented in the Applications was not compatible with neighboring properties, including the open space designation on the remainder of the Badlands Golf Course. *See Stratosphere*, 120 Nev. at 529, 96 P.3d at 761.

25. Residential zoning alone does not determine compatibility. The City’s General Plan, the Peccole Ranch Master Development Plan, density, design and other factors do as well. The property adjacent to the 35-Acre Property remains used for open space and drainage, as contemplated by the City’s planning documents, so the Developer’s comparison to adjacent residential development is an incomplete “compatibility” assessment.

26. The City’s Unified Development Code seeks to, among other things, promote “orderly growth and development” in order to “maintain ... the character and stability of present and future land use and development.” Title 19.00.030(G). One stated purpose is:

To coordinate and ensure the execution of the City’s General Plan through effective implementation of development review requirements, adequate facility and services review and other goals, policies or programs contained in the General Plan. Title 19.00.030(I).

27. The City’s Unified Development Code broadly lays out the various matters the Council should consider when exercising its discretion. Those considerations, which include broad goals as well as specific factors for each type of land use application, circumscribe the limits of the Council’s discretion. UDC 19.00.030, 19.16.030, 19.16.100, 19.16.130.

28. The Council was within the bounds of its discretion to request a development agreement for the Badlands Property before allowing a General Plan Amendment to change a portion of the property from Parks, Recreation and Open Space to residential uses. *See* Title 19.00.030(I). A comprehensive plan already exists for the Badlands Property; it is found in the city’s General Plan, which designates the property as Parks, Recreation and Open Space. The Developer sought to change that designation. Under these circumstances, it was reasonable for the Council to expect assurances that the Developer would create an orderly and comprehensive plan for the entire open space property moving forward.

...

29. The Court rejects the Developer’s argument that a comprehensive development plan was somehow inappropriate because the parcels that make up the Badlands Property have different owners. (PPA 17:12-18:13, 23:9-14). In presenting the Developer’s arguments in favor of these Applications and other land use applications relating to the development of the Badlands Property, Yohan Lowie has leveraged the fact that the three owner entities of the Badlands Property are affiliates managed by one entity – EHB Companies, LLC – which in turn is managed by Mr. Lowie and just three others. (ROR 1325; 4027; 5256-57; 17336; 24544; 25968). The Developer promoted the EHB brand and other projects it has built in Las Vegas to advance the Applications. (ROR 3607-3611; 5726-29; 5870-76; 17336; 24549-50). Additionally, by proposing the 2016 Development Agreement for the entire Badlands Property, the Developer acknowledged that the affiliated entities are one and the same. (ROR 25729).

30. The cases cited by the Developer did not involve properties owned by closely affiliated entities and are therefore inapplicable. (PPA 35:3-37:7, *citing Tinseltown Cinema, LLC v. City of Olive Branch*, 158 So.3d 367, 371 (Miss. App. Ct. 2015); *Hwy. Oil, Inc. v. City of Lenexa*, 547 P.2d 330, 331 (Kan. 1976)). They also did not involve areas that are within a master development plan area.

31. There is no evidence in the record to support the Developer’s contention that it is somehow being singled out for “special treatment” because the Council sought orderly planned development within a Master Development Plan area (PPA 37:11-23).

32. Planning staff’s recommendation is immaterial to whether substantial evidence supported the Council’s decision because a governing body has discretion to make land use decisions separate and apart from what staff may recommend. *See Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 455, 254 P.3d 641, 644 (2011) (affirming County Commission’s denial of special use permit even where planning staff recommended it be granted); *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760 (affirming City Council’s denial of site development plan application even where planning staff recommended approval). The Court notes that the Planning Commission denied the Developer’s General Plan Amendment application.

...

33. The statements of individual council members are not indicative of any arbitrary or capricious decision making. The action that the Court is tasked with reviewing is the decision of the governing body, not statements made by individual council members leading up to that decision. *See* NRS 278.3195(4); *Nevada Contractors*, 106 Nev. at 313, 792 P.2d at 33; *see also Comm'n on Ethics of the State of Nevada v. Hansen*, 134 Nev. Adv. Op. 40, 419 P.3d 140, 142 (2018) (discussing when action by board is required); *City of Corpus Christi v. Bayfront Assocs., Ltd.*, 814 S.W.2d 98, 105 (Tex. Ct. App. 1991) (“A city can act by and through its governing body; statements of individual council members are not binding on the city.”). “The test is not what was said before or after, but what was done at the time of the voting.” *Lopez v. Imperial Cty. Sheriff's Office*, 80 Cal. Rptr. 3d 557, 560 (Cal. Ct. App. 2008). The Council’s action to deny the Applications occurred with its vote, not with the prior statements made by individual council members. NRS 241.03555(1). The Court finds nothing improper in the statements by individual Council members and rejects the Developer’s contention that the statements of individual Council members require the Court to overturn the Council’s Decision.

D. The City’s Denial of the Applications Was Fully Compliant With the Law

34. The Court rejects the Developer’s argument that the RPD-7 zoning designation on the Badlands Property somehow required the Council to approve its Applications.

35. A zoning designation does not give the developer a vested right to have its development applications approved. “In order for rights in a proposed development project to vest, zoning or use approvals *must not be subject to further governmental discretionary action affecting project commencement*, and the developer must prove considerable reliance on the approvals granted.” *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that because City’s site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct).

36. “[C]ompatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest.” *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors*, 106 Nev. at 311,

1 792 P.2d at 31-32 (affirming county commission's denial of a special use permit even though
2 property was zoned for the use).

3 37. The four Applications submitted to the Council for a general plan amendment,
4 tentative map, site development review and waiver were all subject to the Council's discretionary
5 decision making, no matter the zoning designation. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d
6 at 112; *Doumani*, 114 Nev. at 53, 952 P.2d at 17; *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of*
7 *Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).

8 38. The Court rejects the Developer's attempt to distinguish the *Stratosphere* case,
9 which concluded that the very same decision-making process at issue here was squarely within
10 the Council's discretion, no matter that the property was zoned for the proposed use. *Id.* at 527;
11 96 P.3d at 759.

12 39. Statements from planning staff or the City Attorney that the Badlands Property has
13 an RPD-7 zoning designation do not alter this conclusion. *See id.*

14 40. The Developer purchased its interest in the Badlands Golf Course knowing that the
15 City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-
16 OS) and that the Peccole Ranch Master Development Plan identified the property as being for
17 open space and drainage, as sought and obtained by the Developer's predecessor. (ROR 24073-
18 75; 25968).

19 41. The General Plan sets forth the City's policy to maintain the golf course property
20 for parks, open space and recreation. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

21 42. The City has an obligation to plan for these types of things, and when engaging in
22 its General Plan process, chose to maintain the historical use for this area that dates back to the
23 1989 Peccole Ranch Master Development Plan presented by the Developer's predecessor. (ROR
24 24492-24504).

25 43. The golf course was part of a comprehensive development scheme, and the entire
26 Peccole Ranch master planned area was built out around the golf course. (ROR 2595-2604; 2635-
27 36; 4587; 25820).

28 ...

1 44. It is up to the Council – through its discretionary decision making – to decide
2 whether a change in the area or conditions justify the development sought by the Developer and
3 how any such development might look. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

4 45. The Clark County Assessor’s assessment determinations regarding the Badlands
5 Property did not usurp the Council’s exclusive authority over land use decisions. The information
6 cited by the Developer in support of this argument is not part of the record on review and therefore
7 must be disregarded.¹ *See C.A.G.*, 98 Nev. at 500, 654 P.2d at 533. The Council alone and not the
8 County Assessor, has the sole discretion to amend the open space designation for the Badlands
9 Property. *See* NRS 278.020(1); *Doumani*, 114 Nev. at 53, 952 P.2d at 17.

10 46. The Applications included requests for a General Plan Amendment and Waiver. In
11 that the Developer asked for exceptions to the rules, its assertion that approval was somehow
12 mandated simply because there is RPD-7 zoning on the property is plainly wrong. It was well
13 within the Council’s discretion to determine that the Developer did not meet the criteria for a
14 General Plan Amendment or Waiver found in the Unified Development Code and to reject the
15 Site Development Plan and Tentative Map application, accordingly, no matter the zoning
16 designation. UDC 19.00.030, 19.16.030, 19.16.050, 19.16.100, 19.16.130.

17 47. The City’s General Plan provides the benchmarks to ensure orderly development.
18 A city’s master plan is the “standard that commands deference and presumption of applicability.”
19 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; *see also City of Reno v. Citizens for Cold Springs*,
20 126 Nev. 263, 266, 236 P.3d 10, 12 (2010) (“Master plans contain long-term comprehensive
21 guides for the orderly development and growth for an area.”). Substantial compliance with the
22 master plan is required. *Nova*, 105 Nev. at 96-97, 769 P.2d at 723-24.

23 48. By submitting a General Plan Amendment application, the Developer
24 acknowledged that one was needed to reconcile the differences between the General Plan
25

26
27 ¹ The documents attached as Exhibits 2-5 to Petitioner’s points and authorities are not part
28 of the Record on Review and are not considered by the Court. *See C.A.G.*, 98 Nev. at 500, 654
P.2d at 533. The documents attached as Exhibit 1, however, were inadvertently omitted from the
Record on Review but were subsequently added by the City. *See Errata to Transmittal of Record
on Review* filed June 20, 2018; ROR 35183-86.

1 designation and the zoning. (ROR 32657). Even if the Developer now contends it only submitted
2 the General Plan Amendment application at the insistence of the City, once the Developer
3 submitted the application, nothing required the Council to approve it. Denial of the GPA
4 application was wholly within the Council's discretion. *See Nevada Contractors*, 106 Nev. at 314,
5 792 P.2d at 33.

6 49. The Court rejects the Developer's contention that NRS 278.349(3)(e) abolishes the
7 Council's discretion to deny land use applications.

8 50. First, NRS 278.349(3) merely provides that the governing body "shall consider" a
9 list of factors when deciding whether to approve a tentative map. Subsection (e) upon which the
10 Developer relies, however, is only one factor.

11 51. In addition, NRS 278.349(3)(e) relates only to tentative map applications, and the
12 Applications at issue here also sought a waiver of the City's development standards, a General
13 Plan Amendment to change the PR-OS designation and a Site Development Plan review. A
14 tentative map is a mechanism by which a landowner may divide a parcel of land into five or more
15 parcels for transfer or development; approval of a map alone does not grant development rights.
16 NRS 278.019; NRS 278.320.

17 52. Finally, NRS 278.349(e) does not confer any vested rights.

18 53. "[M]unicipal entities must adopt zoning regulations that are in substantial
19 agreement with the master plan." *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112, *quoting*
20 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; NRS 278.250(2).

21 54. The City's Unified Development Code states as follows:

22 Compliance with General Plan

23 Except as otherwise authorized by this Title, approval of all Maps, Vacations,
24 Rezoning, *Site Development Plan Reviews*, Special Use Permits, Variances,
Waivers, Exceptions, Deviations and Development Agreements shall be consistent
25 with the spirit and intent of the General Plan. UDC 19.16.010(A).

26 It is the intent of the City Council that all regulatory decisions made pursuant to
27 this Title be consistent with the General Plan. For purposes of this Section,
28 "consistency with the General Plan" means not only consistency with the Plan's
land use and density designations, but also consistency with all policies and
programs of the General Plan, including those that promote compatibility of uses
and densities, and orderly development consistent with available resources. UDC
19.00.040.

1 55. Consistent with this law, the City properly required that the Developer obtain
2 approval of a General Plan Amendment in order to proceed with any development.

3 **E. The Doctrine of Issue Preclusion Bars Petitioner from Relitigating Issues**
4 **Decided by Judge Crockett**

5 56. The Court further concludes that the doctrine of issue preclusion requires denial of
6 the Petition for Judicial Review.

7 57. Issue preclusion applies when the following elements are satisfied: (1) the issue
8 decided in the prior litigation must be identical to the issue presented in the current action; (2) the
9 initial ruling must have been on the merits and have become final; (3) the party against whom the
10 judgment is asserted must have been a party or in privity with a party to the prior litigation; and
11 (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 124 Nev.
12 1048, 1055, 194 P.3d 709, 713 (2008).

13 58. Having taken judicial notice of Judge Crockett's Order, the Court concludes that
14 the issue raised by Intervenor, which once again challenges the Developer's attempts to develop
15 the Badlands Property without a major modification of the Master Plan, is identical to the issue
16 Judge Crockett decided issue in *Jack B. Binion, et al v. The City of Las Vegas, et al*, A-17-752344-
17 J. The impact the Crockett Order, which the City did not appeal, requires both Seventy Acres and
18 Petitioner to seek a major modification of the Master Plan before developing the Badlands
19 Property. The Court rejects Petitioner's argument that the issue here is not the same because it
20 involves a different set of applications from those before Judge Crockett; that is a distinction
21 without a difference. "Issue preclusion cannot be avoided by attempting to raise a new legal or
22 factual argument that involves the same ultimate issue previously decided in the prior case."
23 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916-
24 17 (2014).

25 59. Judge Crockett's decision in *Jack B. Binion, et al v. The City of Las Vegas, et al*,
26 A-17-752344-J was on the merits and has become final for purposes of issue preclusion. A
27 judgment is final for purposes of issue preclusion if it is "sufficiently firm" and "procedurally
28

1 definite” in resolving an issue. *See Kirsch v. Traber*, 134 Nev., Adv. Op. 22, 414 P.3d 818, 822–
2 23 (Nev. 2018) (citing Restatement (Second) of Judgments § 13 & cmt. g). “Factors indicating
3 finality include (a) that the parties were fully heard, (b) that the court supported its decision with
4 a reasoned opinion, and (c) that the decision was subject to appeal.” *Id.* at 822-823 (citations and
5 punctuation omitted). Petitioner’s appeal of the Crockett Order confirms that it was a final
6 decision on the merits.

7 60. The Court reviewed recent Nevada case law and the expanded concept of privity,
8 which is to be broadly construed beyond its literal and historic meaning to encompass relationships
9 where there is “substantial identity between parties, that is, when there is sufficient commonality
10 of interest.” *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 369 (2017) (quoting
11 *Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1081–82 (9th
12 Cir. 2003) (internal quotation marks omitted). Applying the expanded concept of privity, the Court
13 considered the history of the land-use applications pertaining to the Badlands Property and having
14 taken judicial notice of the Federal Complaint, the Court concludes there is a substantial identity
15 of interest between Seventy Acres and Petitioner, which satisfies the privity requirement.
16 Petitioner’s argument that it is not in privity with Seventy Acres is contradicted by the Federal
17 Complaint, which reveals that Seventy Acres and Petitioner are under common ownership and
18 control and acquired their respective interests in the Badlands Property through an affiliate, Fore
19 Stars, Ltd.

20 61. The issue of whether a major modification is required for development of the
21 Badlands Property was actually and necessarily litigated. “When an issue is properly raised and is
22 submitted for determination, the issue is actually litigated.” *Alcantara ex rel. Alcantara v. Wal-*
23 *Mart Stores, Inc.*, 130 Nev. at 262, 321 P.3d at 918 (internal punctuation and quotations omitted)
24 (citing *Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). “Whether an issue was
25 necessarily litigated turns on ‘whether the common issue was necessary to the judgment in the
26 earlier suit.’” *Id.* (citing *Tarkanian v. State Indus. Ins. Sys.*, 110 Nev. 581, 599, 879 P.2d 1180,
27 1191 (1994)). Since Judge Crockett’s decision was entirely dependent on this issue, the issue was
28 necessarily litigated.

1 62. Given the substantial identity of interest among Seventy Acres, LLC and
2 Petitioner, it would be improper to permit Petitioner to circumvent the Crockett Order with respect
3 to the issues that were fully adjudicated.

4 63. Where Petitioner has no vested rights to have its development applications
5 approved, and the Council properly exercised its discretion to deny the applications, there can be
6 no taking as a matter of law such that Petitioner's alternative claims for inverse condemnation
7 must be dismissed. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) ("The Fifth
8 Amendment's Takings Clause prevents the Legislature (and other government actors) from
9 depriving private persons of vested property rights except for a 'public use' and upon payment of
10 'just compensation.'"); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949).

11 64. Further, Petitioner's alternative claims for inverse condemnation must be
12 dismissed for lack of ripeness. *See Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1230-31, 122
13 Nev. 877, 887 (2006).

14 65. "Nevada has a long history of requiring an actual justiciable controversy as a
15 predicate to judicial relief." *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229,
16 233 (1988), *quoting Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

17 66. Here, Petitioner failed to apply for a major modification, a prerequisite to any
18 development of the Badlands Property. *See Crockett Order*. Having failed to comply with this
19 necessary prerequisite, Petitioner's alternative claims for inverse condemnation are not ripe and
20 must be dismissed.

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ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Petition for Judicial Review is DENIED.


IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.

DATED: 11/18, 2018.


TIMOTHY C. WILLIAMS
District Court Judge

Submitted By:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of November, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP