

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

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Clerk of Supreme Court

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**JOINT APPENDIX,
VOLUME NO. 19**

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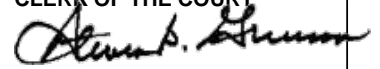
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Attorneys for Plaintiff Landowner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company, DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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

**PLAINTIFF LANDOWNERS' MOTION
TO STRIKE ONE SENTENCE RELATED
TO THE LANDOWNERS' PROTECTIVE
ORDER FROM ORDER GRANTING
THE CITY OF LAS VEGAS' MOTION
TO COMPEL AND FOR AN ORDER TO
SHOW CASE, FILED ON OCTOBER 12,
2020**

HEARING REQUESTED

Hearing date: _____
Hearing time: _____

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Plaintiff Landowners, by and through their undersigned counsel, moves this Court for an Order striking the following language from an order prepared by the City and filed in this case on October 12, 2020: “However, there did not, and does not, exist any protective order.”

This Motion is based upon the Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and papers on file in this matter, and such oral arguments as may be heard by the Court at the time of the hearing in this matter.

DATED this 28th day of October, 2020.

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/s/ Kermitt L. Waters
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Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
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AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

1 **NOTICE OF MOTION**

2 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

3 NOTICE IS HEREBY GIVEN that the undersigned will bring the above and foregoing
4 **PLAINTIFF LANDOWNERS' MOTION TO STRIKE ONE SENTENCE RELATED TO**
5 **THE LANDOWNERS' PROTECTIVE ORDER FROM ORDER GRANTING THE CITY**
6 **OF LAS VEGAS' MOTION TO COMPEL AND FOR AN ORDER TO SHOW CASE,**
7 **FILED ON OCTOBER 12, 2020** on for hearing before the above-entitled Court on the
8 day of _____, 20__, at the hour of _____, at the hour of ____ a.m/p.m. or as soon
9 thereafter as counsel may be heard in the Regional Justice Center, Department XVI, Courtroom
10 12D, 200 Lewis Avenue, Las Vegas, Nevada, 89101

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

12 /s/ Kermitt L. Waters

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17 *Attorneys for Plaintiff Landowners*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **1. Introduction**

20 As this Court is aware, this case seeks to remedy the systematic and aggressive actions by
21 the City to take the Landowners property without just compensation. During the process of
22 attempted development, the City engaged in extreme and outrageous conduct against the
23 Landowner and continue much of the same conduct during this litigation. With respect to this
24 motion, the City has sidled in language to a recent Order signed by this Court which nullifies a

1 protective order that has been and continues to be in place in this case. As this Court is aware this
2 tactic has become common practice by the City.¹

3 Specifically, this motion is brought to strike the following sentence from the Order Granting
4 City of Las Vegas' Motion to Compel and for an Order to Show Cause, which was prepared by the
5 City of Las Vegas and filed on October 12, 2020:

6 "However, there did not, and does not, exist any protective order."
7 Exhibit 1, 3:8 (Order Granting the City of Las Vegas' Motion to Compel and for an Order to Show
8 Cause). This sentence must be stricken from the City's Order because it is contrary to the actual
9 rulings in this case since the Discovery Commissioner entered an NRCP Rule 26(c) protective order
10 and, although this court modified that protective order, *it did not overrule the issuance of the*
11 *protective order*. Indeed, as is more fully discussed below, this Court confirmed the protective
12 order was still in place.

13 **2. Argument**

14 On Thursday, April 16, 2020, the Plaintiff Landowner, 180 Land, LLC (Landowners) and
15 the City of Las Vegas (City) appeared before Discovery Commissioner Erin Truman on the City's
16 Motion to Compel. The City's motion before Commissioner Truman requested the Court rule on
17 three items: 1) that 180 Land produce all documents withheld for confidentiality; 2) that the parties
18 finalize the stipulated protective order with specific proposals (allowing use in all other matters
19 adverse to the City); and, 3) that Seventy Acres, LLC (a party inadvertently named in this case and
20 now dismissed) be required to respond to discovery. *See Motion page 17 lines 18-29.*

21
22 ¹ After the hearing on the Petition for Judicial Review, the City submitted an order to this
23 Court dismissing the claims for inverse condemnation for lack of ripeness causing this Court to
24 issue an order *nunc pro tunc* and exclaim "I never intended on any level for that to be included in
this order. It was never briefed . . . This issue was never vetted. It was never raised. It was never
discussed; right?" Exhibit 7, p. 6 (January 17, 2019, Transcript of Plaintiff's Request for a
Rehearing).

1 Arguments were presented to Commissioner Truman and she held at the hearing as follows in
2 regards to the protective order issue:

3 Discovery Commissioner: All right. Dealing with the production of documents that
4 were withheld on the basis of confidentiality, 180 Land needs to provide those
5 documents. I will protect them for - - so the motion is granted in part and denied
6 in part. **The documents need to be provided and I will protect them for use in**
7 **this litigation only pursuant to NRCP 26.**

8 ...

9 **But they are to be protected subject to an order of protection pursuant to**
10 **NRCP 26(c) for use in this litigation only.** If the parties were able to agree to
11 other protective order, that would have been fine, but I'm not willing to extend it
12 beyond that.

13 Exhibit 2, 26:5-24 (Discovery Commissioner Transcript of Proceedings Re: The City of Las
14 Vegas' Motion to Compel Discovery). Emphasis supplied. Discovery Commissioner Truman
15 also entered a stay at the hearing for Seventy Acre LLC's responses to discovery until such time
16 as a motion to dismiss could be filed with this Court and that the documents produced by the
17 Landowners in this case could not be used in the other three inverse condemnation cases; that the
18 City would need to request production of the documents in those individual cases. Exhibit 2, 26-
19 27. An order was then entered, holding, in part, "The Discovery Commissioner further finds that
20 180 Land's information and documents **will be protected pursuant to Rule 26(c) of the Nevada**
21 **Rules of Civil Procedure.**" Exhibit 3, para. 11 (Order Re: Discovery Commissioner's Report
22 and Recommendations). Emphasis supplied.

23 Thereafter, the City filed an objection to Discovery Commissioner Truman's three findings
24 and a hearing was held before this Court on August 13, 2020. This Court affirmed Discovery

1 Commissioner Truman’s recommendation on the issue of Seventy Acre responding to discovery,
2 but took under advisement the “remaining issue of document usage and possession.” Exhibit 4
3 (Court Minutes, August 13, 2020, hearing).

4 On August 31, 2020, this Court entered a minute order, finding that the court “cannot limit
5 the use of the confidential information to this litigation only” and then “**OVERRULE[D]** the
6 Discovery Commissioners Recommendation that the protective information and documents may be
7 used in this litigation only.” Exhibit 5 (Minute Order re: Objection to Discovery Commissioner’s
8 Report (Issue of Documents Usage and Possession)).

9 Although the Landowners understand that the protective order was modified to an extent,
10 this court did not overrule the Discovery Commissioner’s protective order. This court only held
11 that the City could not be prohibited from using the confidential information in the three other
12 inverse condemnation proceedings. This means that the documents covered by the protective order
13 continue to be protected from public disclosure under NRCP Rule 26(c). In fact, at the September
14 9, 2020, Status Check hearing, Landowners’ counsel confirmed “what you reversed from the
15 discovery commissioner was not the NRCP 26(c-) protection” and the Court responded “right ...
16 It’s still in place.” Exhibit 6, 53:11-20 (Reporter’s Transcript of Hearing, September 9, 2020).

17 Therefore, as the City is aware having acknowledged the protective order², this Court kept
18 the protective order in place, but held that it could not limit the use of that confidential information
19 (covered by the protective order) to this litigation only; that the City could use that information in

20
21 ² The City has argued on more than one occasions that a protective order was in place. In the
22 City’s objection to the Discovery Commissioner’s Report and Recommendations, the City stated
23 the parties already agreed to “use the Confidential Information in the other three inverse
24 condemnation cases” even citing NRCP 26. Exhibit 8, p. 6, fn 3 (July 10, 2020, City Objection to
DCRR). In a Reply to a Motion to Compel, the City also stated, “[a]s this Court is well aware, the
Discovery Commissioner recommended that the documents produced by the Developer are to be
protected under NRCP 26 (c) by allowing the City to only use the Developer’s documents in this
case only.” Exhibit 9, p. 9, lines 12-15 (City Reply Re Motion to Compel).

1 the other three inverse condemnation cases. Therefore, the following line from the October 12,
2 2020, Order should be stricken: “However, there did not, and does not, exist any protective order.”

3 Respectfully submitted this 28th day of October, 2020.

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14 *Attorneys for Plaintiff Landowners*

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 28th day of October, 2020, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct
4 copy of **PLAINTIFF LANDOWNERS' MOTION TO STRIKE** was served on the below via the
5 Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
6 prepaid and addressed to, the following:

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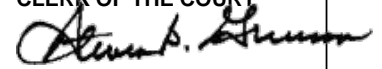
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21 /s/ Evelyn Washington

22 Evelyn Washington, an Employee of the
23 Law Offices of Kermitt L. Waters
24

Exhibit 1

**Order Granting the City of Las Vegas’
Motion to Compel and for an Order to Show Cause**



ORDER

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(Additional Counsel Identified on Signature Page)

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability
company, FORE STARS, LTD., a Nevada limited
liability company and SEVENTY ACRES, LLC, a
Nevada limited liability company, DOE
INDIVIDUALS I-X, DOE CORPORATIONS I-
X, and DOE LIMITED LIABILITY
COMPANIES I-X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X;
ROE INDIVIDUALS I-X; ROE LIMITED-
LIABILITY COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**ORDER GRANTING THE CITY OF
LAS VEGAS' MOTION TO COMPEL
AND FOR AN ORDER TO SHOW
CAUSE**

On September 9, 2020, the Court held a hearing on the Motion to Compel and For An Order To Show Cause (the "Motion") filed by Defendant City of Las Vegas ("City") against third-party Peccole-Nevada Corporation ("Peccole-Nevada"). George F. Ogilvie III, Esq., Seth T. Floyd, Esq., Andrew W. Schwartz, Esq. and Lauren Tarpey, Esq. appeared on behalf of the City; and James J. Leavitt, Esq. and Elizabeth Ghanem Ham, Esq. appeared on behalf of Plaintiffs 180 Land Co., LLC

...

1 (“180 Land”) and Fore Stars, Ltd. (“Fore Stars”) (collectively “Plaintiff”). No appearance was
2 made on behalf of Peccole-Nevada.

3 Having considered (i) the Motion and exhibits attached thereto, including the Declaration
4 of George F. Ogilvie III, Esq., (ii) the Plaintiff’s Opposition to Defendant City of Las Vegas’
5 Motion to Compel and for an Order to Show Cause (“Opposition”), (iii) Supplement to Plaintiffs’
6 Opposition to Defendant City of Las Vegas’ Motion to Compel and for Order to Show Cause
7 (“Supplement”), (iv) the City’s Reply in Support of Its Motion to Compel and For An Order to
8 Show Cause (“Reply”), and (v) the oral arguments of counsel, and good cause appearing, the Court
9 finds, concludes and orders as follows:

10 **FINDINGS**

11 1. On March 6, 2020, the City served a Notice of Taking the Deposition of the
12 Custodian of Records for Peccole-Nevada Corporation and Notice of Issuance of Subpoena Duces
13 Tecum (“Peccole COR Notice”) on the Plaintiff to allow the Plaintiff to object to and seek the
14 issuance of a protective order against the Subpoena should it want to do so.

15 2. On March 9, 2020, the City also served a Notice of Taking the Deposition of NRCP
16 30(b)(6) Designee of Peccole-Nevada Corporation and Notice of Issuance of Subpoena Duces
17 Tecum (“Peccole 30(b)(6) Notice”) on the Plaintiff.

18 3. The Plaintiff did not object to either the Peccole COR Notice or the Peccole 30(b)(6)
19 Notice. And the Plaintiff also chose not to file any motion for a protective order.

20 4. On March 18, 2020, the City served the Peccole-Nevada NRCP 30(b)(6) Subpoena
21 Duces Tecum (“30(b)(6) Subpoena”) on Peccole-Nevada and on March 19, 2020, the City served
22 the COR Subpoena, which was the subject of the City’s Motion, on Peccole-Nevada.

23 5. The City effectuated service on Peccole-Nevada prior to the issuance of
24 Administrative Order 20-09 (“AO 20-09”), which precluded the service of subpoenas for 30 days
25 starting from March 20, 2020.

26 6. On March 18, 2020, Peccole-Nevada contacted the City regarding compliance with
27 the 30(b)(6) Subpoena. The City agreed to work with Peccole-Nevada regarding the timing of the
28 30(b)(6) deposition, noting that the City also served the COR Subpoena on Peccole-Nevada and

1 further stating that once Peccole-Nevada produced the documents in response to the COR
2 Subpoena, then the parties could discuss the 30(b)(6) deposition.

3 7. Peccole-Nevada did not file any motion to quash or motion for a protective order.

4 8. On June 8, 2020, in-house counsel for EHB Companies, the Plaintiff's parent
5 company, sent an email to Peccole-Nevada and copied the City. Counsel represented that there
6 existed a protective order over the requested documents based on a minute order by the Discovery
7 Commissioner and that the Plaintiff absolutely objects to the disclosure of any responsive
8 documents. **However, there did not, and does not, exist any protective order.**

9 9. On July 22, 2020, the Plaintiff's counsel again emailed Peccole-Nevada and told
10 Peccole-Nevada to hold off on producing any responsive documents.

11 10. Between March 2020 and July 2020, Peccole-Nevada represented to the City, on at
12 least three separate occasions, that Peccole-Nevada had responsive documents in its possession that
13 it would be producing in response to the COR Subpoena.

14 11. The City and Peccole-Nevada engaged in multiple discussions both through email
15 and/or telephone on April 27; April 28; May 27; June 2; June 9; and July 19-21, 2020.

16 12. On or about July 24, 2020, Plaintiff's counsel spoke with the City's counsel and
17 proposed that the documents requested be subject to a protective order and, if agreed, would be
18 produced. The City did not accept Plaintiff's offer.

19 13. On July 27, Plaintiff's counsel sent an email to the City's counsel and requested a
20 response to the July 24, 2020 proposal. The City did not respond.

21 14. Because Peccole-Nevada only produced one document on June 10, 2020 that was
22 responsive to the COR Subpoena, the City filed its Motion on July 31, 2020.

23 15. On August 14, 2020, the Plaintiff filed its Opposition and, on August 24, 2020, the
24 Plaintiff filed a Supplement to its Opposition.

25 16. Peccole-Nevada did not file an Opposition to the Motion. Instead, according to
26 Peccole-Nevada's counsel's declaration attached to the Supplement, the Plaintiff informed Peccole-
27 Nevada that the Plaintiff would provide defense and indemnification to Peccole-Nevada.

28 17. On September 2, 2020, the City filed its Reply.

1 18. On September 9, 2020, the Court held a hearing on the Motion.

2 19. If any of these findings of fact should more properly be identified as a conclusion of
3 law, it shall be deemed a conclusion of law.

4 **CONCLUSIONS**

5 1. Pursuant to Rule 45(a)(1)(D) of the Nevada Rules of Civil Procedure, a party may
6 command any third party to “produce documents, electronically stored information, or tangible
7 things,” which “requires the responding person to permit inspection, copying, testing, or sampling
8 of the materials.” *See* NRCP 45(a)(1)(D).

9 2. “To invoke the protections of [Rule 45], the objecting party must file and serve
10 written objections to the subpoena and a motion for protective order under Rule 26(c) within 7 days
11 after being served with notice and a copy of the subpoena under Rule 45(a)(4)(A).” *See* NRCP
12 45(a)(4)(B)(ii).

13 3. The responding third party may also serve objections to the subpoena; however,
14 Rule 45 mandates that the “person making the objection must serve it before the earlier of the time
15 specified for compliance or 14 days after the subpoena is served.” *See* NRCP 45(c)(2)(B).

16 4. Rule 45 further allows a third party to file a motion to quash or modify a subpoena,
17 but the motion must be “timely.” *See* NRCP 45(c)(3).

18 5. The Plaintiff did not object to the notice of the COR Subpoena, nor did it file a
19 motion for a protective order.

20 6. Peccole-Nevada did not object to the COR Subpoena, nor did it file a motion to
21 quash or modify the COR Subpoena.

22 7. Rule 37(a)(1) of the Nevada Rules of Civil Procedure provides that “[o]n notice to
23 other parties and all affected persons, a party may move for an order compelling disclosure or
24 discovery.”

25 8. Rule 45(c)(2)(B)(ii) of the Nevada Rules of Civil Procedure also allows a party who
26 issued a subpoena to move for an order compelling production.

27 9. The City properly noticed and served the COR Subpoena, and Peccole-Nevada must
28 be compelled to provide all responsive documents to the City.

10. If any of these conclusions of law should more properly be identified as a finding of fact, then it shall be deemed a finding of fact.

ORDER

IT IS HEREBY ORDERED that the City's Motion is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Peccole-Nevada is compelled to produce the documents and information requested under the COR Subpoena within seven (7) calendar days from the notice of entry of this Order.

IT IS HEREBY FURTHER ORDERED that the City's request for sanctions is **DENIED**.

Dated this 9th day of October, 2020.


DISTRICT COURT JUDGE ZJ

Submitted By:

McDONALD CARANO LLP

Content Reviewed and Approved By:

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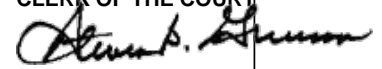
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*Attorneys for 180 Land Co., LLC and Fore
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Exhibit 2

**Discovery Commissioner Transcript
Motion to Compel**



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY LLC,

Plaintiff(s),

vs.

CITY OF LAS VEGAS,

Defendant(s).

Case No. A-17-758528-J

DEPT. XVI

BEFORE THE HONORABLE ERIN TRUMAN,
DISCOVERY COMMISSIONER

THURSDAY, APRIL 16, 2020

TRANSCRIPT OF PROCEEDINGS RE:
THE CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY

(Via Audio Via BlueJeans)

(Appearances on page 2.)

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s): ELIZABETH M. GHANEM HAM, ESQ.
 (Via BlueJeans)
 JAMES J. LEAVITT, ESQ.
 (Via BlueJeans)

For the Defendant(s): GEORGE F. OGILVIE III, ESQ.
 (Via BlueJeans)

1 **LAS VEGAS, NEVADA, THURSDAY, APRIL 16, 2020**

2 [Proceeding commenced at 9:06 a.m.]

3
4 DISCOVERY COMMISSIONER: Counsel for Plaintiff will
5 identify him or herself first, followed by Defendants.

6 MS. GHANEM HAM: Good morning, Your Honor.
7 Elizabeth Ghanem Ham on behalf of the plaintiff, in-house counsel
8 associated into the case.

9 DISCOVERY COMMISSIONER: Okay. Wait just a second.

10 MR. LEAVITT: Good morning, Your Honor.

11 DISCOVERY COMMISSIONER: I'm having a hard time
12 understanding you. Can you -- if you're on speaker phone, can you
13 take it off speaker phone?

14 MS. GHANEM HAM: Yeah.

15 DISCOVERY COMMISSIONER: Okay. And did you --
16 could you state your name again for the record.

17 MS. GHANEM HAM: Yes. Elizabeth Ghanem Ham on
18 behalf of the plaintiff, in-house counsel, I've been associated into
19 this matter. Is that better? Could you hear me more now?

20 DISCOVERY COMMISSIONER: No. We're having a very
21 difficult time understanding you.

22 MS. GHANEM HAM: Okay. Well, let me see --

23 DISCOVERY COMMISSIONER: Are you on video or on
24 phone?

25 MS. GHANEM HAM: Are you able to hear me now?

1 DISCOVERY COMMISSIONER: Yes.

2 MS. GHANEM HAM: Okay. I'm not sure what happened.

3 But my apologies.

4 DISCOVERY COMMISSIONER: Much better.

5 MS. GHANEM HAM: Okay.

6 DISCOVERY COMMISSIONER: Okay. And your name?

7 Can you state --

8 MS. GHANEM HAM: So it's pretty good now?

9 DISCOVERY COMMISSIONER: Can you state your name

10 again?

11 MS. GHANEM HAM: Yes. Elizabeth Ghanem Ham.

12 DISCOVERY COMMISSIONER: Can you spell that?

13 MS. GHANEM HAM: On behalf of -- yes. G-H-A-N-E-M,

14 and then Ham, H-A-M. I've been associated into this case, but I am

15 in-house counsel on behalf of the plaintiffs.

16 DISCOVERY COMMISSIONER: Okay.

17 MS. GHANEM HAM: 180 Land [indiscernible] Services,

18 Seventy Acres.

19 DISCOVERY COMMISSIONER: All right. And who else do

20 we have?

21 MR. LEAVITT: Good morning, Your Honor. Jim Leavitt on

22 behalf of the plaintiff landowners, with the law firm of Kermitt L.

23 Waters.

24 THE COURT CLERK: Could we have a bar number?

25 DISCOVERY COMMISSIONER: Could we have a bar

1 number, Mr. Leavitt?

2 MR. LEAVITT: Yes. 6032.

3 THE COURT CLERK: Thank you.

4 DISCOVERY COMMISSIONER: Okay. Thank you.

5 And who else do we have?

6 MR. LEAVITT: You're welcome.

7 MR. OGILVIE: Good morning, Your Honor. George
8 Ogilvie of McDonald Carano, Bar Number 3552, on behalf of the
9 City of Las Vegas.

10 DISCOVERY COMMISSIONER: Okay. Who else do we
11 have? Anyone else? Okay.

12 This is on for the City of Las Vegas's Motion to Compel.
13 And could -- if everyone could please state their name before they
14 begin speaking. I appreciate everyone being willing to appear by
15 alternate means, but there are some technical difficulties with doing
16 so. So if we could just have everyone please state their names
17 before they begin speaking, so we are clear who is speaking on the
18 record.

19 MS. GHANEM HAM: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: So this is City of Las
21 Vegas's Motion to Compel. Counsel, would you like to begin?

22 MR. OGILVIE: Thank you, Your Honor. This is George
23 Ogilvie.

24 This is the first time this matter has been before Your
25 Honor, so I will briefly get into the background.

1 This case involves a purported taking on behalf of -- or
2 brought on behalf of the developers of what used to be the
3 Badlands Golf Course in Queensridge in Las Vegas. The landowner
4 developer, 180 Land, has brought four actions, this is one of those
5 four, for purported taking by the City of Las Vegas relating to some
6 land use applications that were not approved by the City of Las
7 Vegas to be developed, the golf course.

8 The matter that's before you currently relates to discovery
9 [indiscernible] on behalf of the City of Las Vegas on July 2nd, 2019.
10 [Indiscernible], there were a number of Requests for Production of
11 Documents that 180 Land has failed to produce and has refused to
12 produce. In sum, we -- counsel for 180 Land and I went through
13 about six weeks of attempting to negotiate a stipulated protective
14 orders that 180 Land is requesting. And to be clear, City of Las
15 Vegas doesn't have any document that it currently is [indiscernible]
16 or privileged, and therefore, may not -- City of Land -- the City of
17 Las Vegas did not have a protective order accommodate 180 Land.
18 We were trying to work through a stipulated protective order that
19 originally was very onerous on the City of Las Vegas through some
20 issues. It became less onerous [indiscernible].

21 The matter that brought this to -- this issue of the
22 protective order to this Court is the fact that the -- 180 Land, the
23 plaintiff, is refusing to -- a couple of issues. The -- couple of the
24 City's positions on this -- the protective order.

25 The first issue is -- so, I guess I'll say this: There are

1 various cases that are ongoing between this plaintiff and the City of
2 Las Vegas. Some of them are inverse condemnation cases. Those
3 are the four cases that I mentioned briefly a few moments ago.

4 And there are other known unrelated cases. When I say
5 unrelated, they are not in inverse condemnation cases. They are
6 not [indiscernible] cases.

7 The City of Las Vegas has proposed in this -- the
8 [indiscernible] order that it allowed -- it be allowed to utilize the
9 documents produced by the plaintiff, 180 Land, in this litigation
10 upon reasonable notice to 180 Land that it's going to use these --
11 this -- these documents in the information in a non-inverse case,
12 which, upon receiving that notice, would allow 180 Land to evaluate
13 whether or not it had an objection to that use. And if 180 Land had
14 an objection, 180 Land could seek a protective order in that case
15 for -- to prevent the City of Las Vegas from using it.

16 City of Las -- 180 Land, on the other hand, takes the
17 position that even though --

18 DISCOVERY COMMISSIONER: Mr. Ogilvie, let me stop
19 you for just a second, Mr. Ogilvie. If you could speak directly into
20 the speaker, we're having a -- you're kind of going in and out and I
21 think it has to do with when, perhaps, you move from the speaker.

22 MR. OGILVIE: Okay.

23 DISCOVERY COMMISSIONER: Thank you.

24 MR. OGILVIE: I can pick up my handheld, if it would be
25 better for you.

1 DISCOVERY COMMISSIONER: Yeah, if you're -- that
2 would probably be better.

3 MR. OGILVIE: How's that?

4 DISCOVERY COMMISSIONER: That's better.

5 MR. OGILVIE: Okay. So 180 Land takes the position that,
6 not withstanding the fact that these documents and information
7 would already be in possession of the City, the City would then
8 have to, in any other case, any other non-inverse condemnation
9 case, City of Las Vegas would have to really initiate the same
10 discovery request to obtain the same information that it already
11 has, and then lead to a fight over whether or not City of Las Vegas
12 should be able to use that, the requested documents, in that case.

13 What 180 Land is proposing is an additional onerous step
14 on the City rather than getting right to the heart of whether or not
15 the City can use the documents in one of the non-inverse
16 condemnation cases. The 180 Land would bring a Motion for -- or a
17 Motion for Protective Order, and we will litigate it at that time. But
18 what 180 Land wants is an extra delay tactic, and being more
19 onerous, placing more burden on the City. But the City, having to
20 step back, request the information that it knows it exists, already
21 has in its possession, and then allow 180 Land 180 days -- or 180 --
22 I'm sorry -- 180 Land 30 days to make its objection and then force
23 the City of Las Vegas to meet and confer, and then file a Motion to
24 Compel. And the Motion to Compel is going to be iterating the very
25 same arguments that would be put forth in support for an -- in

1 opposition to a Motion for Protective Order under the City's
2 proposed guidelines.

3 So again, to be clear, I'm not sure I articulated it correctly.

4 DISCOVERY COMMISSIONER: Well, let me see if I
5 understand.

6 MR. OGILVIE: City of Las Vegas --

7 DISCOVERY COMMISSIONER: Let me repeat it back --

8 MR. OGILVIE: Okay.

9 DISCOVERY COMMISSIONER: -- and see if I understand
10 what you're wanting.

11 You --

12 MR. OGILVIE: Thanks.

13 DISCOVERY COMMISSIONER: First of all, the defendant,
14 City, and 180 Land, attempted to work out a stipulated protective
15 order so that these documents that Defendant is seeking could be
16 utilized in other litigation, correct?

17 MR. OGILVIE: Correct.

18 DISCOVERY COMMISSIONER: And the parties were
19 unable to arrive at an agreement as to a stipulated protective order.

20 MR. OGILVIE: Correct.

21 DISCOVERY COMMISSIONER: And so if the City -- the
22 City wants to use the confidential information produced by 180
23 Land in any other case in which the City is seeking these documents
24 without having to bring a Motion to Compel.

25 MR. OGILVIE: Pretty much correct. The City -- the cases

1 will only be cases adverse to 180 Land. So it's not like the City is
2 going to go use the documents in any other case against any other
3 party. It has to be a case in which 180 Land or one of its affiliates is
4 a party.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. OGILVIE: So the City proposes that it would simply
7 give 180 Land notice in these non-inverse condemnation cases that
8 it wants to use these documents, and give 180 Land the opportunity
9 to file a Motion for Protective Order preventing the City from using
10 it. Which, the City's position is that's a reasonable accommodation
11 to 180 Land, they preserve all of the protections that they need to
12 preserve the confidentiality of the documents that they're holding.

13 DISCOVERY COMMISSIONER: All right. Well, the
14 difficulty that I have, and I need to give counsel for 180 Land a
15 chance to respond, but the difficulty I have is I'm not going to
16 address what's relevant and discoverable in another action that's
17 not currently before me. I mean, if the parties are able to work out
18 a stipulated protective order, so be it. And I'm all for it.

19 But what I am tasked with doing is determining what
20 needs to be done in this case. And for this case, I can issue an
21 order and protect documents pursuant to NRCP 26(c) for use in this
22 litigation only.

23 If the parties can work out something where they can
24 utilize them in other cases, that's fine. But I'm not going to make a
25 blanket order that just because the documents are discoverable in

1 this case, that they're discoverable and can be utilized in another
2 case. I mean, that's an advisory opinion in my mind.

3 And so let me hear from counsel for 180 Land.

4 MS. GHANEM HAM: Thank you, Your Honor.

5 Let me start by saying that we have gotten --

6 DISCOVERY COMMISSIONER: Is this Ms. Ghanem? Is
7 this Ms. Ghanem Ham?

8 MS. GHANEM HAM: Yes. I apologize. Elizabeth Ghanem
9 Ham. Yes, Your Honor.

10 DISCOVERY COMMISSIONER: Thank you.

11 MS. GHANEM HAM: So I want to start by saying that we
12 have not refused to produce documents. We have only requested
13 confidentiality in doing so. Not just, you know, this is an -- also a
14 very public case. We're fighting the battle not only against the City,
15 but with a handful of neighbors in the Queensridge community who
16 have vowed to continue litigating this regardless of the court
17 decisions. So they have taken action [indiscernible] on that. So it's
18 important to us to have a confidentiality provision.

19 The City would have had these documents long ago if
20 they had just agreed to not utilize them in other collateral matters.
21 So I want to be clear, as well, we did agree to allow them to use it in
22 other -- even in other inverse cases. That wasn't enough for the
23 City.

24 So what I fear is happening, as a lot of -- even since the
25 motion was filed, is that they are using this case to discover

1 [indiscernible] discovery in other matters. And that is something
2 we have to stop at this time. So we did get some [indiscernible]
3 from us.

4 But I also want to state that the -- much of what they're
5 requesting is either irrelevant to this case. So it became very clear
6 that they were using it for other matters. We agreed anyway,
7 because we want to get to the end of this case. The City has been
8 delaying this for far too long, only to our detriment.

9 I agree with you that the City did not provide any reason
10 as to why this discovery would be relevant, and there were
11 collateral matters, which they would be required to do for a hearing
12 provision in a stipulated protective order. And they failed to do
13 that.

14 Not only that, in some of these collateral cases, they have
15 already been to the Court stating that these cases are not related to
16 our inverse matters. So they continue to shift their legal position,
17 not only the company, the court that they're in front of, but also
18 from motion to motion. So we're doing our best to comply with
19 them, diligently working on complying.

20 Of course, we've faced some challenges, given the
21 shutdown. We are not really operating our offices, but we continue
22 to work remotely to the best of our ability to produce those
23 documents. So as long as we get that protective order, and I state
24 again, they would have had the documents already had they
25 agreed.

1 DISCOVERY COMMISSIONER: All right. I just need to
2 interrupt for a second. It just became -- I just saw, as I'm looking
3 through this case online, that -- and it was -- I was not aware of it
4 until just now, that the firm of Hutchison and Steffen, is -- are they
5 still involved in this litigation?

6 MS. GHANEM HAM: Again, Elizabeth Ghanem Ham.

7 They're involved to the extent that they -- so we handled --

8 DISCOVERY COMMISSIONER: Okay. Don't tell me --

9 MS. GHANEM HAM: -- this case has two parts to it.

10 DISCOVERY COMMISSIONER: Okay. I just want to
11 disclose --

12 MS. GHANEM HAM: The contention --

13 DISCOVERY COMMISSIONER: I just want to disclose that
14 from approximately 2010 to 2007 [sic], I was a counsel at the law
15 firm of Hutchison and Steffen. I don't know whether this case was
16 open at that time. I had no involvement with it. I just wanted to
17 disclose that on the record so that if any party would like me to
18 recuse myself and have this matter handled by Judge Williams, I'm
19 certainly willing to do so.

20 I don't have any personal knowledge other than perhaps
21 what I've seen on the news related to this accident -- or to this
22 incident. Or, not incident, this transaction. I have no personal
23 knowledge with regard to the litigation. I just want to make sure
24 that that's clear on the record that I did previously work as -- of
25 counsel at the law firm of Hutchison and Steffen.

1 Sorry to interrupt. But if anyone would like me --
2 MS. GHANEM HAM: Your Honor --
3 DISCOVERY COMMISSIONER: -- to recuse myself, I'm
4 happy to do so.
5 MS. GHANEM HAM: Your Honor, Elizabeth Ghanem Ham
6 again.
7 What -- I missed the timeframe.
8 DISCOVERY COMMISSIONER: Approximately 2010 to
9 May of -- the end of May 2017.
10 MS. GHANEM HAM: Okay. I do not believe the firm was
11 involved at that time.
12 DISCOVERY COMMISSIONER: Okay. I just wanted to
13 make sure --
14 MS. GHANEM HAM: No.
15 DISCOVERY COMMISSIONER: -- that that had been
16 disclosed.
17 MS. GHANEM HAM: I -- and, in fact, I joined the
18 organization in I want to say September of 2017. So I know that --
19 DISCOVERY COMMISSIONER: Are you at the firm of --
20 MS. GHANEM HAM: -- yeah, [indiscernible].
21 DISCOVERY COMMISSIONER: What firm are you with?
22 MS. GHANEM HAM: I'm in-house counsel that's been
23 associated into this case --
24 DISCOVERY COMMISSIONER: Okay.
25 MS. GHANEM HAM: -- because I'd been involved in the

1 production of discovery, I'm handling this portion of the matter.
2 DISCOVERY COMMISSIONER: Okay.
3 MS. GHANEM HAM: I don't usually do that.
4 DISCOVERY COMMISSIONER: Okay. Thank you.
5 Yeah, it looks like this case didn't open until after I left the
6 law firm. But in any event, I wanted to disclose that.
7 All right. You may continue.
8 MS. GHANEM HAM: Okay. I have nothing -- I don't
9 have -- sorry, Elizabeth Ghanem Ham again. I don't have anything
10 further to add in that regard. I leave it to counsel.
11 DISCOVERY COMMISSIONER: All right. Counsel? Would
12 you like to respond, Mr. --
13 MR. OGILVIE: Is she talking -- oh, okay. I didn't know if
14 you were talking to Mr. Leavitt or me. This is George Ogilvie, Your
15 Honor.
16 Addressing the Court's concern, the City is not asking the
17 courts to make an advisory opinion as to whether these documents
18 would be relevant in any other case. The City is going to have
19 these documents as a result of the discovery in this case. But we --
20 what the City is suggesting is that it would be ridiculous for the City
21 to -- for all the parties, to act like the City doesn't have this
22 documentation or this information provided in the documentation
23 it -- when it is engaged in another case.
24 And so simply, the City is asking the Court, since the
25 developer has refused, to allow the City to say, Hey, 180 Land or its

1 affiliate, we have this -- these documents. We have this information
2 from 180 Land versus City of Las Vegas case, this inverse
3 condemnation case. It involved 35 acres. We want to use this
4 information in this other case rather than go through the charade of
5 pretending like we don't have this in this case, and requesting it
6 again for giving you notice that we want to use it in this case and
7 give you the opportunity to [indiscernible] a protective order if you
8 object to it.

9 Your Honor, that's not making an advisory opinion at all.
10 It's just me saying we have the information, if you want us to use it,
11 file a Motion for Protective Order.

12 DISCOVERY COMMISSIONER: All right. And what would
13 be the problem with that, Ms. Ghanem Ham?

14 MS. GHANEM HAM: So once again they're seeking to
15 shift the burden on us to file a protective order before they can even
16 show the relevancy of utilizing some of those documents in those
17 cases. They've been unable either in the -- the time that they filed
18 or in this hearing today to provide to me or you how they would be
19 relevant in the collateral matters. And that is a requirement for a
20 [indiscernible] provision and a stipulated protective order. They've
21 been unable to do that.

22 And so again, this is a pretty heated battle with the City,
23 and they continue to overreach in discovery, we have agreed to
24 provide them with documents we find not to even be relevant in
25 this case, and they continue to use discovery, we believe, in this

1 matter for other cases.

2 So that's really the issue. I mean, the more we agree to
3 things, the more they ask for. So I do think it's an advisory opinion,
4 [indiscernible] overly broad sharing provision without the City even
5 explaining how they're relevant in other cases, having addressed
6 other courts stating they're not.

7 So, you know, it's beyond a fishing expedition.

8 DISCOVERY COMMISSIONER: All right.

9 MR. OGILVIE: Your Honor, this is George. If I could
10 respond to that, Your Honor?

11 DISCOVERY COMMISSIONER: Sure.

12 MR. OGILVIE: Counsel hasn't provided the Court with one
13 iota of substance there. It is -- the City is not overreaching. If you
14 want to go through the document requests and the interrogatories
15 that we've served in this, they are very targeted, they are not a
16 fishing expedition for other matters. They're directed to
17 determining the City's offenses to this very action.

18 And let me be very specific, since counsel for the
19 developer has not. The City specifically is requesting the
20 transaction documents by which 180 Land acquired 250 acres of the
21 Badlands Golf Course. And that goes to the very heart of whether
22 or not there was a taking in this case. We requested these
23 documents on July 2nd, nine months ago. And we still do not have
24 the documents.

25 We've been attempting to bring this Motion to Compel

1 now for three months. And because it -- various issues outside of
2 either parties' control, it's now finally being heard. But it's nine
3 months into this request and we still don't have the documents that
4 are the most helpful to the City's defense. This isn't a fishing
5 expedition. And the City is not looking to use the documents
6 elsewhere. The City would just like to say if we have use for them
7 in another case, we want to provide you notice that we want to use
8 it another case, rather than go through the charade of pretending
9 we don't have this information to allow you, 180 Land, to seek a
10 protective order if you so desire.

11 MS. GHANEM HAM: Your Honor, Elizabeth Ghanem Ham.
12 May I respond to this specific item that Mr. Ogilvie has
13 raised?

14 DISCOVERY COMMISSIONER: Yes.

15 MS. GHANEM HAM: Okay. So we have already agreed to
16 allow them to use it in other inverse condemnation matters. How
17 they are relevant to the other litigation that are not takings, I have
18 no idea. And Mr. Ogilvie has not been able to state how that is so.

19 We have agreed to allow them to use it in other inverse
20 matters. In fact, we moved to consolidate some of those matters,
21 and the City objected. So to claim that we are somehow refusing to
22 allow that is simply absurd.

23 Not to mention that prior to this -- this case has bounced
24 back in -- you know, from state court to the Federal Court, at the
25 City's doing, far after their -- they were allowed to do so. And prior

1 to that, we had bifurcated the cases, or the case, rather, and
2 between the damaged -- the damages and the liability, we have
3 since agreed to allow all of it to go forward.

4 So it was not relevant when we were just discussing
5 liability. And I would state to you today that we still don't find it to
6 be relative to our takings claims. Regardless, we have agreed to
7 produce it. So again, we're just asking for a stipulated protective
8 order and that it not be allowed to be used in collateral matters that
9 do not involve our condemnation claims. Again, I have yet to hear
10 from Mr. Ogilvie how these would be relevant in those matters.

11 MR. OGILVIE: Your Honor, we're not dispute -- we're not
12 debating today the relevancy of these in other matters. We're
13 simply saying that the City shouldn't be hamstrung by having this
14 information that it deems at some point -- we don't even know what
15 the information is at this point, Your Honor, because they haven't
16 produced the documents. We shouldn't be hamstrung by having
17 that information and not being able to use it upon reasonable
18 notice.

19 And if it is not relevant, then perhaps what, you know, 180
20 Land's counsel is concerned about, if it's not relevant, the Court in
21 that matter would rule on the relevancy on a Motion for Protective
22 Order. There's no -- absolutely no prejudice to 180 Land by what
23 the City is proposing to -- again, for documents that it already has in
24 its possession, you know, notice to 180 Land that it wants to use it
25 another piece of litigation, and allow 180 Land in that litigation to

1 seek a protective order.

2 DISCOVERY COMMISSIONER: All right. And then so we
3 have this issue, is anyone -- would anyone else like to weigh in on
4 this issue? Mr. Leavitt?

5 MR. LEAVITT: Jim Leavitt, Your Honor, on behalf of the --
6 well, on behalf of the plaintiff, Landowner.

7 No, I'd think that Ms. Ghanem Ham handled it very well,
8 Your Honor.

9 DISCOVERY COMMISSIONER: All right. Thank you.

10 All right. So we have that issue, and then we have other
11 issues with regard to the interrogatories that need to be responded
12 to. Has that been resolved between the parties or do we need to
13 address that further?

14 MR. OGILVIE: We need to address that as well, Your
15 Honor.

16 DISCOVERY COMMISSIONER: I'm just going to say that,
17 first of all, the NRCP 33 allows that 40 interrogatories can be sent to
18 each party. And so I don't know if that clears that up for you. But
19 why don't we address that?

20 MR. OGILVIE: Your Honor, it's our -- it's -- this is George
21 Ogilvie.

22 It's our motion, City of Las Vegas agrees with you. And I'll
23 submit it.

24 DISCOVERY COMMISSIONER: Okay. Anything that you'd
25 like to add, Ms. Ghanem Ham?

1 MS. GHANEM HAM: Yes. I [indiscernible] allow -- or I'm
2 going to ask Mr. Leavitt to speak to that issue first, and then I'll
3 [indiscernible], if need be. But this [indiscernible] -- well, I'll let
4 Mr. Leavitt speak first.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. LEAVITT: Your Honor, Jim Leavitt on behalf of the
7 plaintiff, Landowner.

8 DISCOVERY COMMISSIONER: Good morning.

9 MR. LEAVITT: I agree with the analysis that 40 interros --
10 thank you -- that 40 interrogatories are allowed per party. However,
11 we contacted Mr. Ogilvie and explained to him that one of the
12 parties in this matter, which is Seventy Acres, was inadvertently
13 added as a party by our office. What happened is we filed a Motion
14 to Amend the pleadings before Judge Williams. And he allowed
15 that amendment to occur. And at that time, as I stated, our office
16 inadvertently added Seventy Acres as a party to that litigation.

17 I explained to Mr. Ogilvie that Seventy Acres has never
18 owned an interest at all in the 35 acre property, which is at issue in
19 this case. And we requested a stipulation that Seventy Acres LLC
20 be removed from the case, and the City of Las Vegas refused to do
21 that.

22 So we're putting it on the record now that Seventy Acres,
23 the Seventy Acres LLC does not have an interest in the property,
24 should not have been made a party to this action, and therefore,
25 we're going to move to remove Seventy Ares LLC as a party.

1 They never owned any interest in the property, Your
2 Honor. And in order to be named as a party in an inverse
3 condemnation action, the entity must be or must have an interest in
4 the property itself.

5 DISCOVERY COMMISSIONER: All right.

6 MR. LEAVITT: Insofar as the City of Las Vegas -- go
7 ahead. You understand what my argument is.

8 DISCOVERY COMMISSIONER: All right. The issue that I
9 have is they're still a party. I mean, at this point, there's no
10 countermotion for protection that I see with regard to that. They're
11 still a party. And as long as they are still a party to the litigation, I'm
12 going to allow the discovery to them.

13 I mean, if you were to have a Motion to Dismiss filed or,
14 you know, or if there was some other mechanism by which to
15 remove them from the case and that were to go forward, I certainly
16 would take that into account. But that hasn't happened at this
17 point.

18 So based on that, I'm going to allow the discovery to go
19 forward to them at this point. And so I think that we can deal with --
20 that'll be the recommendation on that. As long as they are
21 currently a party, discovery can proceed to them.

22 MS. GHANEM HAM: Your Honor --

23 DISCOVERY COMMISSIONER: Go ahead.

24 MS. GHANEM HAM: Elizabeth Ghanem Ham.

25 We had the status check with Judge Williams a couple of

1 weeks ago. At that time, we raised the issue and he had stated that
2 if you couldn't, you know, agree to it, then he would consider a
3 Motion to Dismiss.

4 Well, you know, as I've stated, we've been working
5 diligently on the discovery and all other matters as well, and been
6 limited in our ability to do so, given the state of affairs in Nevada
7 and elsewhere. So we would request a stay on that decision to give
8 us an opportunity to file our Motion to Dismiss.

9 DISCOVERY COMMISSIONER: I -- let me have Mr. -- let
10 Mr. Ogilvie have a chance to respond.

11 MR. OGILVIE: As an initial matter, Your Honor, this is not
12 the basis on which 180 Land was objecting. Well, Seventy Acres is
13 the plaintiff that they say they're going to seek to remove as a
14 plaintiff. This is not the basis on which Seventy Acres refused to
15 produce the discovery that was requested of them. It was simply
16 that the City had exceeded the number of interrogatories. And
17 their -- to their side, claiming that the three plaintiffs that are
18 represented by Kermitt Waters office are treated as one party for
19 purposes of our discovery rules, which, as the Court stated,
20 allows 40 interrogatories to each party.

21 DISCOVERY COMMISSIONER: Which is true.

22 MR. OGILVIE: So -- yes, it is true. But the -- my point is
23 the objection that we received was no, it's not each party; it's to
24 each side, and you don't get to serve 40 interrogatories upon each
25 of our three plaintiffs. That's the basis of which this motion was

1 brought.

2 This is -- the first argument, first time I've heard an
3 argument that the discovery should be disallowed as a result of an
4 attempt now by the plaintiffs to remove a party. And I would
5 submit to the Court that we served this discovery, I believe, in
6 January. There hasn't been anything to prevent one -- Seventy
7 Acres to remove itself from this litigation since the time that
8 discovery was served now, three months ago. And so there is no
9 basis for a stay of the Court's recommendation that the discovery
10 proceed as it relates to Seventy Acres.

11 MS. GHANEM HAM: Your Honor, Elizabeth Ghanem Ham.

12 I apologize. I just want to correct some -- or maybe ask an
13 additional information. When these -- when this -- the
14 interrogatories were originally served, we were in Federal Court,
15 that only allowed for 25.

16 DISCOVERY COMMISSIONER: I understand.

17 MS. GHANEM HAM: At that time, the [indiscernible]
18 provided responses, we provided responses with 47. They also
19 define Plaintiff as Seventy Acres, and those were responded to
20 there as well. And to be quite frank with you, we attempted in
21 every possible way to avoid these additional and unnecessary
22 discovery disputes.

23 As we have moved along, the case has become
24 abundantly clear that the City is, in my opinion, abusing the
25 discovery and overreaching. And so we are -- while we attempt to

1 cooperate in every way possible, they just continue to propound
2 discovery that is both overreaching and irrelevant. And while I
3 understand that each is allowed to respond to 40, we have finally
4 said it's enough.

5 So, originally, attempting to work with them and
6 cooperate, although Seventy Acres has no interest in this property
7 and should be considered as -- now that we see that they're utilizing
8 it for other means. And so that's where we stand on it.

9 And to be quite frank with you, while it [indiscernible] that
10 added them inadvertently, it was my failure to catch that when the
11 complaint was amended [indiscernible] because we have multiple
12 cases and they are a party to others.

13 So it was a mistake, it was inadvertent. We responded
14 anyway on behalf of Seventy Acres. But they continue to utilize the
15 system [indiscernible] an improper way. So that is why they're
16 getting some resistance from us at this time.

17 DISCOVERY COMMISSIONER: All right. Anything further
18 before I provide my recommendations?

19 MR. OGILVIE: Yes, Your Honor. This is George Ogilvie.

20 There hasn't been any showing that the City is
21 overreaching or seeking irrelevant evidence in this. So 180 Land,
22 Seventy Acres, Fore Stars, all -- the three plaintiffs, at any time,
23 could have brought a Motion for Protective Order if it truly believed
24 that the City was seeking irrelevant evidence. It hasn't. It's --
25 Seventy Acres has now had three months in which to seek to

1 remove itself from this action. There's no basis for denying the
2 discovery that we're requesting or staying that discovery.

3 DISCOVERY COMMISSIONER: All right. Anything further
4 from any counsel?

5 MS. GHANEM HAM: No, Your Honor.

6 DISCOVERY COMMISSIONER: All right. Dealing with the
7 production of documents that were withheld on the basis of
8 confidentiality, 180 Land needs to provide those documents. I will
9 protect them for -- so the motion is granted in part and denied in
10 part. The documents need to be provided and I will protect them
11 for use in this litigation only pursuant to NRCP 26.

12 I think to indicate -- or to allow them to be utilized in other
13 cases is shifting the burden. The cases were not consolidated for
14 discovery purposes. I will say that if documents are requested and
15 the City offers to make them confidential for use in the cases that
16 they are requested in and the plaintiff refuses to provide them,
17 that's -- that can also be a motion for -- that can also be the subject
18 of a motion which the Court would consider, and would consider
19 sanctions for not providing when an offer of protection has been
20 made.

21 But they are to be produced subject to an order of
22 protection pursuant to NRCP 26(c) for use in this litigation only. If
23 the parties were able to agree to other protective order, that would
24 have been fine, but I'm not willing to extend it beyond that.

25 With regard to the interrogatories to each party that have

1 been objected to based on number, under the Nevada Rules of Civil
2 Procedures, Rule 33, 40 interrogatories can be served to each party.
3 As long as the party remains in a case, they can be served
4 discovery. And so I am going to compel that that discovery be
5 responded to.

6 However, I am going to provide relief under EDCR 2.34(e)
7 that production is stayed until the discovery commissioner's report
8 and recommendation becomes a final order of the Court. And if
9 there is an objection filed with the judge or a Motion to Dismiss is
10 heard and/or decided before that time, then that -- that is the
11 alternative relief that'll be provided.

12 But it is compelled subject to a stay under EDCR 2.34(e),
13 that it will be due 14 days after the discovery commissioner's report
14 and recommendation becomes a final order of the Court.

15 I'm going to ask Mr. Ogilvie to prepare the report and
16 recommendation. Circulate that to all counsel for their review as to
17 form and content. Please have that submitted to the discovery
18 office within 14 days.

19 And pursuant to administrative order 20-10, all orders
20 are -- during the COVID-19 crisis are to be submitted electronically
21 with scanned or e-signatures. The address that that is to be sent to
22 is discoveryinbox, all spelled out, one word, at clarkcountycourts,
23 there's an S on the end of courts, dot US, all spelled out. And that
24 is where those reports and recommendations are to be sent.

25 MS. GHANEM HAM: Thank you, Your Honor.

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DISCOVERY COMMISSIONER: Thank you.

MR. OGILVIE: Thank you, Your Honor.

Your Honor, let me make sure I have that e-mail address correct. It's discoveryinbox, all one word, all spelled out, at clarkcountycourts, plural, dot US.

DISCOVERY COMMISSIONER: Yes.

MR. OGILVIE: Thank you, Your Honor.

DISCOVERY COMMISSIONER: Thank you. Everyone have a great day and stay well.

[Proceeding concluded at 9:47 a.m.]

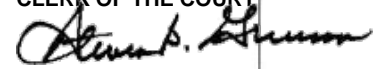
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches which resulted in the audio/video cutting out were experienced throughout the recording.


Shawna Ortega, CET*562

Exhibit 3

**Order Re: Discovery Commissioner's
Report and Recommendations**



DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited
liability company, et al.,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of
the State of Nevada, et al.,

Defendants.

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

HEARING DATE: 4/16/20
HEARING TIME: 9:00 a.m.

ORDER RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

☐ No timely objection having been filed,

☒ After reviewing the objections to the Report and Recommendations and good cause
appearing,

* * *

**DISCOVERY
COMMISSIONER**
EIGHTH JUDICIAL
DISTRICT COURT

1
2 AND

3 IT IS HEREBY ORDERED the Discovery Commissioner's Report and
4 Recommendations are affirmed and adopted.

5 IT IS HEREBY ORDERED the Discovery Commissioner's Report and
6 Recommendations are affirmed and adopted as modified in the following manner.
7 (attached hereto)

8 IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for
9 reconsideration or further action.

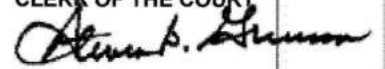
10
11 ✓ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is
12 set for August 13, 2020, at 9:00 a.m.

13
14 DATED this 22nd day of July, 2020.

15
16 
17 DISTRICT COURT JUDGE
18 LB

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**DISCOVERY
COMMISSIONER**
EIGHTH JUDICIAL
DISTRICT COURT



1 DCRR

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 180 LAND COMPANY, LLC, a Nevada limited
6 liability company, et al.,

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

7 Plaintiffs,

8 vs.

9 CITY OF LAS VEGAS, political subdivision of
10 the State of Nevada, et al.,

11 Defendants.

12 **DISCOVERY COMMISSIONER'S**
13 **REPORT and RECOMMENDATIONS**

14 **Hearing Date:** April 16, 2020

15 **Hearing Time:** 9:00 a.m.

16 **Attorney for Plaintiffs:** Elizabeth Ghanem Ham and James Leavitt

17 **Attorney for Defendant:** George F. Ogilvie III, Seth Floyd

18
19 **I.**
20 **FINDINGS**

21 1. On July 2, 2019, Defendant City of Las Vegas (the "City") served its Requests
22 for Production of Documents ("Requests for Documents"), Interrogatories, and Requests for
23 Admissions on Plaintiff 180 Land Company, LLC ("180 Land").

24 2. On August 1, 2019, 180 Land served its Responses to Defendant City of Las
25 Vegas' First Set of Requests for Admission to Plaintiff and Responses to Defendant City of Las
26 Vegas' First Set of Interrogatories to Plaintiff. 180 Land did not respond to the City's Requests
27 for Documents.

28 ...

**DISCOVERY
COMMISSIONER
EIGHTH JUDICIAL
DISTRICT COURT**

1 3. After requesting several extensions to respond to the Requests for Documents, on
2 October 31, 2019, 180 Land requested the City enter into a stipulated protective order to allow
3 180 Land produce certain documents responsive to the Requests for Production. The parties
4 were unable to agree to a stipulation protective order.

5 4. On February 26, 2020, the City filed a Motion to Compel ("Motion") 180 to
6 produce certain information and documents responsive to the Requests for Documents the City
7 had served upon 180 Land. 180 Land deemed the responsive documents confidential and
8 proprietary (the "Confidential Information"); 180 Land argued the Confidential Information
9 should be subject to protection.
10

11 5. The Motion requested a finding that (i) the parties are to finalize a stipulated
12 protective order allowing documents requested and received in this matter for all cases
13 involving the Plaintiff and the City and (ii) the City may serve 40 interrogatories on each of the
14 plaintiffs.

15 6. On March 12, 2020, 180 Land filed its Plaintiffs' Opposition to Defendant City
16 of Las Vegas' Motion to Compel Discovery ("Opposition").

17 7. On March 25, 2020, the City filed its Reply in Support of the Motion to Compel
18 ("Reply").

19 8. A hearing on the matter was held on April 6, 2020.

20 9. In regard to document production, counsel for the City argued the City was
21 seeking to use documents in this litigation for all matters in which the City is adverse to 180
22 Land, or its affiliates, and requested the Court order 180 Land to do so pursuant to a blanket
23 protective order.
24

25 10. The Discovery Commissioner stated she will not consider what is relevant in any
26 case that is not before the Commissioner and will not issue any blanket orders and/or advisory
27 opinions as to other matters.

28 11. The Discovery Commissioner further finds that 180 Land's information and
documents will be protected pursuant to Rule 26(c) of the Nevada Rules of Civil Procedure.

12. In regard to the service of interrogatories upon Seventy Acres, 180 Land's counsel argued that Seventy Acres was incorrectly added as a plaintiff in this action, and that Seventy Acres does not have any interest in the litigation and requested a stay until a Motion to Dismiss could be considered by the Court.

13. The Discovery Commissioner finds that Rule 33 of the Nevada Rules of Civil Procedure allows 40 interrogatories be issued to each party.

14. The Discovery Commissioner further finds that discovery on Seventy Acres may go forward as Seventy Acres is currently a party to the action.

15. The Discovery Commissioner further finds responses to discovery by Seventy Acres is stayed pursuant to EDCR 2.34 (e) until the DCCR becomes a final Order of the Court.

16. After reviewing the Motion, Opposition and Reply and entertaining argument from counsel for the parties, the Discovery Commissioner recommends as follows:

II. RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Motion is **GRANTED IN PART** and **DENIED IN PART**, as **FOLLOWS**:

IT IS RECOMMENDED that 180 Land must produce the Confidential Information; the information and documents are protected pursuant to Rule 26(c) of the Nevada Rules of Civil Procedure;

IT IS RECOMMENDED that the protected information and documents may be used in this litigation only.

IT IS RECOMMENDED that the protected information and documents are due no later than 14 days after this Discovery Commissioner's Report and Recommendation becomes a final Order of the Court.

IT IS RECOMMENDED that Seventy Acres is compelled to respond to the Interrogatories; however, the obligation to respond is **STAYED** pursuant to Rule 2.34 (e) of the Eighth Judicial District Court until this Report and Recommendation becomes a final Order of the Court.

The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 7th day of July, 2020.

Ann Leckman
DISCOVERY COMMISSIONER

**DISCOVERY
COMMISSIONER**
EIGHTH JUDICIAL
DISTRICT COURT

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Objection time will expire on July 21st **2020.**

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2020:

✓ Electronically filed and served counsel on July 7th, 2020, Pursuant to N.E.F.C.R. Rule 9.

By: Nathalie Simonetti
COMMISSIONER DESIGNEE

Exhibit 4

**Minute Order re Objection to Discovery
Commissioner's Report**

Other Judicial Review/Appeal

COURT MINUTES

August 13, 2020

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

August 13, 2020 09:00 AM Objection to Discovery Commissioner's Report

HEARD BY: Williams, Timothy C. COURTROOM: RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER: Isom, Peggy

PARTIES PRESENT:

Andrew W Schwartz	Attorney for Respondent
Elizabeth M. Ghanem	Attorney for Petitioner
George F. Ogilvie, III	Attorney for Respondent
James J Leavitt	Attorney for Petitioner
Philip R. Byrnes	Attorney for Respondent

JOURNAL ENTRIES

All parties present telephonically. Arguments by Mr. Ogilvie and Ms. Ghanem. COURT ORDERED, Discovery Commissioner's Report and Recommendations AFFIRMED; will issue minute order decision regarding remaining issue of documents usage and possession. Mr. Leavitt requested jury trial reset at this time in light of current public health climate to ensure statutory priority setting. COURT ORDERED, status check SET 8/19/20 regarding resetting trial date.

8/19/20 9:00 AM STATUS CHECK: RESETTING TRIAL DATE

Exhibit 5

**Minute Order re: Objection to Discovery Commissioner's
Report (Issue of Documents Usage and Possession)**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 31, 2020

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

August 31, 2020

8:00 AM

**Minute Order re: Objection to Discovery Commissioner's
Report (Issue of Documents Usage and Possession)**

HEARD BY: Williams, Timothy C.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

The Court notes that each judge must render a reasoned judgment by applying the law to the unique facts of the case that he or she presides over. Consequently, under the facts in the instant case, review of the DCCR, the briefs on file, and the stipulated protective agreement, the Court finds that it cannot limit the use of the confidential information to this litigation only. *See* DCRR at ¶¶ 9 and 10 and 3:23-24.

Consequently, the Court **OVERRULES** the Discover Commissioners Recommendation that the protective information and documents may be used in this litigation only. *See id.* **Defendant** shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

PRINT DATE: 08/31/2020

Page 1 of 2

Minutes Date: August 31, 2020

CLERK'S NOTE: This Minute Order has been served to counsel electronically through Odyssey eFile.

Exhibit 6

Transcript of Status Check

1 CASE NO. A-17-758528-J

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3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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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

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OF

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HEARING

(TELEPHONIC HEARING)

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED WEDNESDAY, SEPTEMBER 9, 2020

23

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25

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

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

1 APPEARANCES:

2 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN
3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
4 APPEARANCE)

5 FOR THE PLAINTIFF:

6
7 KERMITT L. WATERS

8 BY: JAMES J. LEAVITT, ESQ.

9 704 SOUTH NINTH STREET

10 LAS VEGAS, NV 89101

11 (702) 733-8877

12 (702) 731-1964

13 JIM@KERMITTWATERS.COM

14

15 AND

16

17 EHB COMPANIES LLC

18 BY: ELIZABETH HAM, ESQ.

19 1215 SOUTH FORT APACHE

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21 LAS VEGAS, NV 89117

22 (702) 940-6930

23 (702) 940-6938 Fax

24 EHAM@EHBCOMPANIES.COM

25

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Pursuant to NRS 239.053, illegal to copy without payment.

1 APPEARANCES CONTINUED:

2

3 FOR THE DEFENDANT:

4

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5

BY: GEORGE F. OGILVIE, III, ESQ.

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SUITE 1000

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13

AND

14

CITY OF LAS VEGAS

15

BY: SETH FLOYD, ESQ.

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17

NINTH FLOOR

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1 APPEARANCES CONTINUED:

2

3

SHUTE, MIHALY & WEINBERGER LLP

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BY: ANDREW W. SCHWARTZ, ESQ.

5

BY: LAUREN TARPEY, ESQ.

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396 HAYES STREET

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(415) 552-7272

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(415) 552-5816

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ANDREW W. SCHWARTZ

11

12

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Pursuant to NRS 239.053, illegal to copy without payment.

1 LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 9, 2020

2 9:55 A.M.

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

4 * * * * *

5
6 THE COURT: Next up we're at page 12. And
7 that would be 180 Land Company LLC versus the City of
8 Las Vegas. Let's go ahead and place our appearances on
9 the record. We'll start first with the plaintiffs and
09:54:59 10 move to the defense after that.

11 MS. HAM: Good morning, your Honor. Elizabeth
12 Ghanem Ham on behalf of 180 Land, in-house counsel.

13 MR. LEAVITT: Good morning, your Honor. James
14 J. Leavitt on behalf of 180 Land.

09:55:15 15 MR. OGILVIE: Good morning, your Honor. This
16 is George Ogilvie on behalf of the City of Las Vegas
17 Also appearing on behalf of the City are Seth Floyd,
18 Andrew Schwartz, and Lauren Tarpey.

19 THE COURT: Okay. Once again, good morning to
09:55:36 20 everyone. I see we have a couple of matters on
21 calendar, a few matters. And one would be a status
22 check regarding production issues brought by the City
23 of Las Vegas and possible briefing.

24 Next status check regarding discovery issues.

09:55:52 25 We have one other matter the City of Las Vegas motion

Peggy Isom, CCR 541, RMR

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09:55:56 1 to compel for an order shortening time. Let's go ahead
2 and start out, I guess, with the status checks first.

3 Hello?

4 MR. OGILIVIE: Jim, you going to go?

09:56:10 5 MR. LEAVITT: Your Honor, as far as the status
6 check is concerned, your Honor, we did receive -- we
7 did receive last night the City of Las Vegas status
8 report. We --

9 MR. OGILIVIE: I'm sorry. Jim, Jim, could I
09:56:24 10 interrupt?

11 MR. LEAVITT: Yeah.

12 MR. OGILIVIE: Your Honor, could we have this
13 matter reported?

14 THE COURT: We sure can, sir.

09:56:30 15 Peggy, did you get everybody's appearance or
16 do we need to place them on the record one more time?

17 THE COURT REPORTER: No. We're good, Judge.
18 Thanks.

19 THE COURT: Okay. All right.

09:56:42 20 MR. LEAVITT: Your Honor, James J. Leavitt
21 again on behalf of 180 Land LLC. We did receive last
22 night at 5:07 p.m. a status report. I didn't have a
23 chance to fully digest it, but I did read it briefly
24 before our hearing here today. And as outlined in the
09:56:58 25 City's status report, your Honor, we have supplemented

Peggy Isom, CCR 541, RMR
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09:57:02 1 our documents with an eighth supplement and a ninth
2 supplement. We have also supplemented requests for
3 production of documents.

4 As you'll recall at the last hearing there
09:57:13 5 were, I believe, three pages of missing documents. And
6 as noted in the City's status report, footnote one, we
7 have produced those. I believe we've produced those
8 three pages. If there is additional pages missing we
9 would certainly, certainly do that.

09:57:28 10 We also submitted our second request for
11 production of documents. I did tell Mr. Ogilvie at our
12 last status report that I would have those to him the
13 following week. Unfortunately, I had to leave out of
14 town at the last minute, and so we got them to him just
09:57:43 15 this week. We produced those documents that were
16 responsive to that request.

17 So, your Honor, we are moving in the right
18 direction. I understand that Mr. Ogilvie has some
19 concerns about some additional documents. He wanted to
09:57:57 20 have a meet and confer on that. Unfortunately, we were
21 all out of town. And Ms. Ghanem Ham who is actually
22 going to handle the meet and confer just returned to
23 town this week. And we can, of course, meet with him
24 to address any additional perceived deficiencies.

09:58:15 25 As I stated previously, your Honor, this is a

09:58:18 1 very -- I shouldn't say, very straightforward. This
2 can involve some complex eminent domain issues. But
3 those issues are very narrow, which is what is the
4 property interest that the landowner has? And has that
09:58:31 5 property interest been taken?

6 We are complying with the discovery just so we
7 don't have to continually have meet and confers and
8 additional discovery disputes. But the great majority
9 of these documents that are being requested in our
09:58:42 10 opinion are far outside the scope of these two very
11 narrow issues. But as I stated, your Honor, we are
12 seeking to comply. We're -- just to avoid any
13 additional arguments like we may have today.

14 So, your Honor, that's where we are on the
09:58:54 15 status check. We -- I noticed that Mr. Ogilvie wanted
16 to conduct depositions of the principals. We are more
17 than willing to do that. In fact, we've obtained dates
18 to do that. I can double-check with Ms. Ghanem Ham to
19 make sure that those dates are still available, and we
09:59:08 20 will make our principles available to conduct those
21 depositions.

22 So, your Honor, I feel that we're moving in
23 the right direction. I understand Mr. Ogilvie may have
24 some additional documents and information that he may
09:59:19 25 want from us. And we're back in town now, and I think

09:59:23 1 we can discuss those issues with him.

2 THE COURT: All right, sir. Thank you.

3 MR. LEAVITT: Uh-huh.

4 THE COURT: Mr. Ogilvie, sir.

09:59:34 5 MR. OGILVIE: Thank you, your Honor.

6 And as we acknowledged in our status report we
7 did receive the response to the second set of
8 interrogatories or discovery requests.

9 However, as set forth in the status report, if
09:59:58 10 they're deficient, first of all, I don't really need to
11 go into that. We pointed out a specific deficiency in,
12 on page 3 of the status report that we find the
13 response to be -- the response to Interrogatory No. 19
14 to be evasive. And, but I don't need to go into that
10:00:23 15 today because we're not here for a motion to compel
16 relative to those discovery responses.

17 However, we are in the same position now as we
18 were at the August status conference at which time the
19 Court suggested that the party's resolve the discovery
10:00:45 20 disputes. And if they have not been resolved by the
21 time we got to today's status conference that we would
22 set a briefing schedule on a motion to compel.

23 To facilitate the progress on these discovery
24 disputes, the City spent a lot of time going through
10:01:08 25 all the discovery disputes and submitted an omnibus --

10:01:12 1 a meet and confer letter on August 28th to the
2 developer's counsel outlining all of the failures of
3 the developer to respond and the deficiencies in other
4 responses. And requested that the -- that counsel for
10:01:34 5 the parties meet and confer on Monday, Tuesday, or
6 Wednesday of last week and asked for the best time for
7 that meet and confer.

8 Now, I understand that people leave town and
9 can't necessarily meet and confer when proposed, but we
10:01:54 10 did give them advance notice. Gave them three
11 wide-open days. Received word that, in fact, yes,
12 Ms. Ghanem Ham was out of town last week.

13 But today is Wednesday. Monday having been a
14 holiday. So we had yesterday. We haven't received any
10:02:15 15 response to that August 28th omnibus meet and confer
16 letter.

17 So again, we're in the same position we were a
18 month ago. And we would request that the Court set a
19 briefing schedule on the motion to compel. Because the
10:02:32 20 City has, in fact, attempted to satisfy its EDCR 2.34
21 obligations by identifying all of the deficient and
22 non-responsive responses that the developer has served
23 to the City's discovery requests. And we're still, as
24 we reported from August, not receiving a response to
10:03:02 25 those.

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10:03:03 1 So it's difficult for us to conduct 2.34 meet
2 and confer when counsel is not even being responsive to
3 the request to meet and confer.

4 So again, we're in the same position. I
10:03:19 5 appreciate what Mr. Leavitt said. In fact, yes, as we
6 confirmed in our status report, we did receive some
7 supplemental disclosures and a response to a second set
8 of discovery requests. But there are a litany of other
9 outstanding discovery matters that the developer is
10:03:48 10 just being nonresponsive to and we need to move
11 forward.

12 THE COURT: Okay. I understand, sir.

13 Mr. Leavitt, anything else you want to add,
14 sir?

10:04:00 15 MR. LEAVITT: Just briefly, your Honor. And
16 this is James Leavitt on behalf of 180 Land.

17 I understand Mr. Ogilvie's frustration. And I
18 think what we could do right now is we could set the
19 meet and confer within a week. If we're not able to
10:04:16 20 resolve everything then, I don't have a problem with
21 Mr. Ogilvie's briefing schedule.

22 Obviously, he can file that motion to compel
23 in the event we're not able to resolve these issues.
24 But I think with the recent production, and I do think
10:04:29 25 a quick meet and confer -- probably won't be quick

10:04:31 1 because there's a lot of documents that need to be
2 reviewed according to Mr. Ogilvie -- I think we could
3 schedule that now. See what we can work through and
4 hopefully entirely avoid the motion practice. If not,
10:04:44 5 significantly reduce the issues that need to be
6 addressed.

7 And --

8 THE COURT: Okay.

9 MR. LEAVITT: I know that Ms. Ghanem Ham,
10:04:51 10 she's been dropping in and out of the phone call, your
11 Honor. I apologize. And perhaps we can --

12 MS. HAM: I'm on the line now.

13 MR. LEAVITT: There we are now.

14 MS. HAM: Apologies. Yeah, I apologize, your
10:05:03 15 Honor. Ms. Ghanem Ham. For some reason I keep getting
16 booted out of this hearing. So I keep trying to dial
17 back in. And sometimes I'm getting echos. So I
18 apologize if it happens again during this hearing.

19 But I just want to respond to one issue in
10:05:20 20 regard to responding to Mr. Ogilvie's request for a
21 2.34. We certainly intend on conferring. I have been
22 out of town just having returned yesterday. And it was
23 certainly my intent to respond and provide some dates,
24 but last week was not possible.

10:05:36 25 So beyond that, I agree with Mr. Leavitt's

10:05:39 1 position that we can set it -- we could set a date now
2 if that works, and then move forward with the briefing
3 schedule. Or we can do both now if the EDCR is not
4 effective.

10:05:53 5 THE COURT: How about this. And I want your
6 input on this, Mr. Ogilvie, because you want to file
7 the motion.

8 I think it appears to me that on some level
9 the meet and confers have been successful and have
10 helped matters as far as moving discovery forward. I
11 understand it's your position potentially there's been
12 some deficiencies. I get that. How about this,
13 though? And I want to move efficiently.

14 Just as important I do understand that
10:06:18 15 sometimes you have a necessity for briefing schedule.
16 But to me this kind of makes sense because we're just
17 moving forward with litigation. We got a jury trial
18 set for next May. Hopefully that might be that window
19 where cases can be tried as far as time periods is
10:06:33 20 concerned. And I'm talking about jury trials.

21 But how about a meet and confer within ten
22 days. If it's not sufficient, you file your motion.

23 MR. OGILVIE: That sounds good, your Honor.

24 THE COURT: I mean, doesn't that make sense?
10:06:48 25 Really? Because I don't want to give an artificial

10:06:51 1 timeline to do it because under normal circumstances
2 you have a right to do it when it's appropriate.

3 And so it just makes sense to me in that
4 regard because whether you file it within two or three
10:07:03 5 days or a week, you just file it. Get it on calendar.
6 And we hear it on the merits.

7 Any objection to that, Mr. Leavitt?
8 Ms. Ghanem?

9 MR. LEAVITT: No, your Honor. I agree that's
10:07:14 10 the appropriate measure.

11 THE COURT: All right. And so, I guess, my
12 order will be have a meet and confer within ten days.
13 You meet and decide on when that will be appropriate.

14 And if unsuccessful, then, Mr. Ogilvie, do
10:07:29 15 what you have to do on behalf of your client.

16 MR. OGILIVIE: Thank you, your Honor.

17 THE COURT: Okay. Anything else?

18 MR. OGILIVIE: Not on the status conference on
19 behalf of the City, your Honor.

10:07:40 20 MR. LEAVITT: No, your Honor. Nothing else on
21 the status conference on behalf of 180 Land.

22 THE COURT: Okay. So what I'll do now I'm
23 looking here at the calendar. Other than, I guess, an
24 upcoming hearing on the 17th of September, there's
10:07:55 25 nothing else. There's no status checks or anything.

10:07:58 1 All right. So anyway, enjoy your day and stay
2 safe.

3 MR. OGILIVIE: Your Honor.

4 THE COURT: Can someone prepare an order for
10:08:04 5 me?

6 MR. OGILIVIE: This is George Ogilvie.

7 THE COURT: Mr. Ogilvie, yes.

8 MR. OGILIVIE: We still have the matter of the
9 City's motion to compel.

10:08:09 10 THE COURT: Okay. Yes, we do. You're right.
11 I see it here.

12 Mr. Olgilvie, sir.

13 MR. OGILIVIE: Thank you, your Honor.

14 Your Honor, this is -- this motion to compel
10:08:21 15 is not directed to the developer, plaintiff in this
16 matter. Notwithstanding the fact that the developer
17 has filed an opposition, the motion to compel is filed
18 to compel a response from a third party. The third
19 party being Peccole Nevada.

10:08:46 20 Now Peccole Nevada, to give the Court a little
21 background, was the developer of the Queensridge
22 property. And not only the Queensridge property but
23 all of Peccole Ranch which was 1500 acres as detailed
24 in the Peccole Ranch master plan back in 1992.

10:09:09 25 So while the developer has filed an

10:09:13 1 opposition, the Peccole Nevada to whom the custodian of
2 records subpoena was served requesting the documents at
3 issue has not filed an opposition. And pursuant to
4 EDCR 2.20(e), the fact that the parties subject to the
10:09:40 5 FINA and to the motion to compel that's not filed an
6 opposition moved that the Court can take the Court --
7 take the matter as uncontested and grant the motion.
8 So the City requests that the Court grant the motion.

9 But I also want to go into some of the
10:10:08 10 substantive arguments in the briefs. And first of all,
11 again, going to the fact that the developer 180 Land
12 has served or has filed an opposition, the time for the
13 developer to file an opposition or an objection to the
14 subpoena or to seek a protective order has long since
10:10:34 15 past.

16 The City pursuant to Rule 45 served the
17 subpoena and the notice for the subpoena and the
18 documents requested on the developer on March 6, 2020.
19 Pursuant to Rule 45, 180 Land had seven days to file an
10:10:59 20 objection. It didn't. And because 180 Land failed, it
21 did not file an objection, it waived any ability to
22 object to the subpoena. Not only did it not object to
23 the subpoena, it chose not to file any motion for a
24 protective order.

10:11:18 25 That was six months ago, your Honor. And then

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10:11:21 1 at that time the developer waived the objection that it
2 now seeks to assert.

3 Additionally, counsel for the City conducted a
4 meet and confer with the developer's counsel for nearly
10:11:34 5 two hours just four days after serving the notice of
6 the subpoena and notice of the deposition for the
7 documents that it intended to obtain from Peccole
8 Nevada. And nowhere during that nearly two-hour meet
9 and confer did the developer object to the custodian of
10:12:02 10 records subpoena or even raise the issue.

11 So, again, the 180 Land has failed to properly
12 assert any objection; therefore, the objection that it
13 poses in the opposition to the motion to compel has
14 been waived and the Court should disregard it.

10:12:22 15 But in the motion -- or in the opposition, the
16 developer contends that the City failed to satisfy its
17 EDCR 2.34 obligations to meet and confer. And as set
18 forth in, at length, in the declarations, in my
19 declaration that supports the motion to compel, the
10:12:46 20 City went well above what was required to satisfy its
21 meet and confer obligations.

22 For four months between March 18, 2020 and
23 July 22nd, 2020 I met and conferred with Peccole
24 Nevada's counsel many times. And those -- those
10:13:15 25 contacts were both verbal telephonic and email. And I

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10:13:24 1 can't say that I have ever granted any third party
2 subject to a subpoena as much time and as much leniency
3 as I did relative to the subpoena served on Peccole
4 Nevada.

10:13:38 5 Now, obviously, Peccole Nevada has certain
6 issues as we all did as a result of the pandemic. And
7 the administrative orders issued by the chief judge of
8 this Court required that the attorneys engaged in
9 discovery be civil and extend as much professional
10:14:00 10 courtesies as possible, which I submit to the Court I
11 did.

12 From the minute that I -- first time that I
13 contacted counsel for the Peccole Nevada, Mr. Butch
14 Williams, I advised Mr. Williams on March 18 that the
10:14:18 15 City completely understands and is willing to work with
16 his client and him. And that as long as we received
17 cooperation regarding the document production, I would
18 commit -- I told him I would commit that he would not
19 need to file a motion for protective order to
10:14:37 20 reschedule the deposition and the production of the
21 documents. And asked him, Does that sound fair?

22 I didn't receive a response to that. So then
23 on March -- on April 27 I again contacted Mr. Williams
24 and asked him about Peccole Nevada's outstanding
10:14:55 25 subpoena obligations. And Mr. Williams responded on

10:15:02 1 April 28th in an email saying that he should have some
2 documents by no later than mid next week, which would
3 be the week of May 4th.

4 I didn't receive any documents. So then on
10:15:16 5 May 27th, I again contacted Mr. Williams regarding the
6 production of documents, and Mr. Williams responded
7 that day via email saying I actually do have some
8 documents. I should have them to you in a couple of
9 days.

10:15:32 10 Couple of days passed and I didn't receive any
11 documents. So on June 2nd I contacted -- I called
12 Mr. Williams and asked him what he was going to -- when
13 he was going to produce the documents. And he said
14 that the developer through in-house counsel, Todd
10:15:53 15 Davis, had objected to the potential production by
16 Peccole Nevada. And he wanted Mr. -- he being
17 Mr. Williams, Peccole Nevada's counsel, wanted to give
18 the developer 24 hours to lodge an objection.

19 Twenty-four hours passed. I didn't receive
10:16:13 20 any notification of any objection by the developer, and
21 I didn't receive any documents from Peccole Nevada. So
22 on June 7th, now just five days later, I again
23 contacted Mr. Williams via email to ask him, to request
24 again the documents.

10:16:38 25 We had some back and forth. And then Peccole

10:16:42 1 Nevada's counsel, Mr. Davis interfered with the
2 production of those documents and stated --
3 misrepresented to Peccole Nevada's counsel that the
4 documents requested were the subject of a protective
10:16:56 5 order.

6 There's never been a protective order issued
7 in this case particularly relative to the third party
8 subpoena served on Peccole Nevada. There was never any
9 semblance of a protective order issued by this Court or
10:17:15 10 the discovery commissioner relative to the third party
11 subpoena.

12 In fact, that -- the subject of the documents
13 or that very third-party subpoena was never raised by
14 any party before this Court or the discovery
10:17:35 15 commissioner until the City brought the instant motion
16 to compel.

17 So the representation by the developer, not
18 the developer's counsel, but the developer itself, that
19 it was -- these documents were the subject of a
10:17:50 20 protective order was an outright misrepresentation.

21 Notwithstanding that, I had further
22 discussions with Mr. Williams, and he -- you know,
23 Mr. Williams said that he would produce the purchase
24 and sale agreement that is at the very heart of this
10:18:11 25 dispute, and I'll get to that in a few moments. But he

10:18:14 1 said I'll produce that and then tell me what else
2 you're interested in.

3 So in an attempt to further satisfy my
4 professional responsibilities and my obligations to
10:18:28 5 meet and confer and reach an agreement and compromise,
6 I narrowed the City's subpoena, the breadth of the
7 City's subpoena and emailed Mr. Williams with the
8 minimum documents that the City needs that were
9 responsive to the subpoena.

10:18:49 10 Again, the subpoena was served in March, and
11 now this was in July, July 19. I'm emailing after many
12 attempts to receive the documents from the Peccole
13 Nevada. I'm now emailing on July 19th a compromise of
14 the documents that the City requires to be produced
10:19:13 15 pursuant to the subpoena. And that's outlined in my
16 declaration. Specifically, the manner in which the
17 City through my emails to Mr. Williams reduced the
18 breadth of the documentation required.

19 Finally, on July 22nd, Mr. Williams left me a
10:19:37 20 voice mail message that Elizabeth Ghanem Ham, in-house
21 counsel for EHB Company and co-counsel for the
22 developer, would be reaching out to discuss the
23 subpoena and the request for the documents. I never
24 received any call from Ms. Ham regarding the third
10:19:56 25 party subpoena. I never received an email or any other

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10:20:01 1 type of correspondence from Ms. Ghanem Ham.

2 And finally, after that I attempted to reach
3 Mr. Williams by telephone. Left him a voice mail.

4 Never received any response. So now we're here
10:20:16 5 bringing the motion to compel.

6 And again, there isn't any basis for 180 Land
7 to object to the subpoena even if it had standing to.
8 The subpoena doesn't call for the disclosure of any
9 privileged documents, any proprietary documents, or any
10:20:37 10 other protected matter.

11 We met and conferred and with Peccole Nevada's
12 counsel numerous times, and Peccole Nevada's counsel
13 even promised that they would produce the documents one
14 time next week and another time in a couple of days.

10:20:57 15 We haven't received them.

16 So the City requests that -- two things. The
17 City requests that the Court grant the motion to compel
18 and that the Court issue sanctions against both the --
19 both the subject of the third party subpoena, Peccole
10:21:25 20 Nevada, and against 180 Land -- against Peccole Nevada

21 for failing to produce the documents requiring that the
22 City bring this motion to compel. And then on behalf
23 of sanctions against 180 Land for 180 Land's
24 interference with the City's attempt to conduct

10:21:48 25 third-party discovery.

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10:21:49 1 As outlined in the declaration in support of
2 the motion to compel, the 180 Land and its counsel have
3 on two occasions interfered with the City's attempt to
4 obtain the documents that were required by Peccole
10:22:07 5 Nevada to produce pursuant to the subpoena.

6 And this isn't the first time that the City
7 has -- or that the developer has interfered with the
8 City's attempts to conduct third-party discovery.

9 In May or in April I was to take a deposition
10 of golf course developer Bobby Weed in Florida. And a
11 couple -- a few days before the deposition was to take
12 place, I contacted Mr. Weed to request the documents
13 that were -- he was supposed to produce pursuant to the
14 subpoena that he failed to produce, and Mr. Weed told
10:22:44 15 me that he received a call from an attorney in
16 Las Vegas telling him that the deposition had been
17 canceled.

18 Well, I had never canceled that deposition and
19 no attorney on behalf of the City ever made that phone
10:22:58 20 call. So the only party that would have made that
21 phone call and told Mr. Weed that he didn't have to
22 produce the documents or appear for the deposition
23 would have been 180 Land's counsel.

24 So this is an ongoing problem that the City is
10:23:14 25 facing with the developer interfering with the City's

10:23:19 1 attempt to conduct third-party discovery.

2 Now, going to the documents that are being
3 requested. I have to explained to the Court why these
4 documents are so critical and why the developer has
10:23:33 5 failed to produce them in the 14 months, let's see
6 June, July 2019 to September 2020, 20 -- 14 months
7 since the City originally requested these documents
8 pursuant to request for production of documents that
9 the City served on 180 Land, and we still don't have
10:23:55 10 the documents. And not only do we not have the
11 documents from 180 Land, 180 Land's counsel is
12 interfering with our attempts to produce -- obtain the
13 documents from the third party that also has the
14 document.

10:24:10 15 So these documents are critical. And I'll
16 tell the Court why. In order for the developer to be
17 successful in its takings claim, the developer must
18 demonstrate that the City's actions have virtually
19 wiped out all use or value of the parcel in question.

10:24:32 20 And we cannot make that determination. The
21 Court can't make that determination without knowing the
22 value of the property before the City's alleged actions
23 and after the City's alleged actions.

24 And the best value that can be placed on the
10:24:52 25 property before the City took its actions are the very

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10:24:59 1 documents used to acquire that property. That is the
2 purchase and sale document which the City obtained
3 finally from the -- from Peccole Nevada. It was one of
4 two documents that Peccole Nevada finally produced.

10:25:16 5 And that document as I advised the Court two or three
6 status conferences ago reflected that the developer
7 purchased the property at issue for seven and a half
8 million dollars.

9 The developer contends that no, no, it -- it
10:25:40 10 set a total, an aggregate of \$45 million in acquiring
11 the property.

12 So the discovery that the City is attempting
13 to obtain, the documents that the City is attempting to
14 obtain are those documents which would establish

10:25:59 15 exactly how the developer can support its contention
16 that it acquired the property for \$45 million. And
17 specifically Request No. 16 served by the City on the
18 developer asks for all documents that support the
19 developer's Answer to Interrogatory No. 19 stating that

10:26:26 20 the aggregate of consideration given to the Peccole
21 family for the former Badlands Golf Course property was
22 approximately \$45 million. Essentially trying to get
23 all of the documents that support the developer's

24 contention that it paid an aggregate of \$45 million for
10:26:49 25 the property rather than the \$7.5 million dollars that

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10:26:51 1 is reflected in the purchase and sale agreement.

2 In response to that request, these are the
3 responses that we received just four days ago, five
4 days ago now.

10:27:04 5 If the developer made a litany of objections,
6 but then states "There are no documents within the
7 plaintiff's custody and control that states that the
8 aggregate of consideration given to the Peccole family
9 for the former Badlands Golf Course property was
10:27:27 10 \$45 million."

11 Well, the developer is being cute here because
12 the City did not request all documents that state the
13 aggregate of the consideration was \$45 million. Again,
14 the City requested that the developer produce all
10:27:44 15 documents stating that there are -- or reflecting that
16 the aggregate consideration given to the Peccole family
17 for the former Badlands property was the approximate
18 \$45 million. We're just asking for all the documents
19 that support that contention, and the developer refuses
10:28:02 20 to produce it, and the developer refuses to allow
21 Peccole Nevada to produce those documents.

22 And that's why we're here on this motion to
23 compel.

24 So again, we -- the documents that are being
10:28:19 25 requested are all documents relating to the transaction

10:28:24 1 that -- the transaction which is the transfer or the
2 acquisition by the developer of the 250 acres at issue.

3 Now, I want to address something that
4 Ms. Ghanem Ham stated in hearing either last month or
10:28:44 5 two months ago. And that was that the developer didn't
6 purchase the land. The developer purchased an entity.

7 That's true. The purchase and sale agreement
8 that we finally obtained from the Peccole Nevada,
9 reflects that Peccole Nevada sold an entity entailed --
10:29:10 10 known as Fore Stars. And Fore Stars, the only assets
11 owned by Fore Stars was the 250 acres at issue, which
12 is the Badlands Golf Course property and various pieces
13 of personal property, golf course equipment and the
14 like.

10:29:32 15 So essentially, yes, the developer purchased
16 an entity. But essentially what the developer
17 purchased was the 250-acre golf course property known
18 as the Badlands.

19 So the Court when it comes time to making a
10:29:52 20 determination as to whether or not a -- there was a
21 taking and that taking was the actions taken by the
22 City in passing ordinances or laws or approving or not
23 approving land use applications, whether those actions
24 by the City decreased or wiped out virtually all the
10:30:21 25 use or value of the property. So the -- again, the

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10:30:23 1 Court has to make a determination as to what the value
2 of the property was before the City's action and what
3 the value of the property was after the City's action.

4 Now, if you just look at the 250 acres and the
10:30:40 5 Court -- and the City submits to the Court when looking
6 at the value of the property, the Court will have to,
7 and as we proceed through this court, your Honor, we
8 will provide the Court with US Supreme Court precedent
9 which is 100 percent on point here that the property
10:31:04 10 that the Court looks at in making that determination is
11 the parcel as a whole.

12 And the parcel as a whole is not just the
13 35 acres that is in dispute in this very piece of
14 litigation. Again, the Peccole family developed
10:31:27 15 Peccole Ranch in 1992. It was 1500 acres. That
16 1500 acres is the parcel as a whole.

17 And since that development --

18 MS. HAM: Your Honor, your Honor, I apologize.
19 I hate to interrupt counsel when they're arguing. We
10:31:41 20 are far outside the scope of this motion before you.
21 If we are going to get into arguing of the very causes
22 of action that we have in this case, I don't know that
23 we need to continue down this line. I apologize. I
24 never like to interrupt counsel, but this is far beyond
10:31:58 25 the scope of the motion before you. And we're

10:32:00 1 rehashing issues you've already decided.

2 MR. OGILIVIE: Well, your Honor, I submit to
3 the Court, but none of this has been decided. But I
4 also submit to the Court that the background is
10:32:13 5 necessary for the Court to evaluate why these documents
6 that we are -- have been requesting for 14 months are
7 not only relevant but critical to the not only the
8 City's defense but to the Court's adjudication of the
9 issues before it.

10:32:33 10 So briefly, again, whether the City -- the
11 City submits to the Court that the parcel as a whole is
12 the 1500 acres. Even if the Court were to consider
13 that the property that the developer purchased in 2015,
14 the 250 acres, is the proper -- is the parcel as a
10:32:55 15 whole, again, pursuant to US Supreme Court precedent,
16 the Court must make a determination whether the City's
17 actions virtually wiped out all use or value in the
18 property.

19 Well, what the developer does not want the
10:33:13 20 Court to understand, and that's why I suspect that
21 counsel interrupted the argument is that the City
22 actually approved development on this 250 acres.

23 The City approved the development of 435
24 luxury units on a portion, on 17 acres of the
10:33:38 25 250 acres. And so the developer cannot establish that

10:33:46 1 there -- that City's actions wiped out virtually all
2 use or value of the property.

3 In fact, the City's actions have enhanced the
4 value of that property from the \$30,000 per acre that
10:34:03 5 the City -- or that the developer purchased the
6 property. And, again, we need to get the documents
7 that support that \$30,000 per acre value because the
8 Court, again, has to determine whether the City's
9 actions -- or has to determine the value before the
10:34:28 10 City's action and the value after the City's actions.

11 The City contends that the developer -- the
12 value of the property was \$30,000 per acre prior to the
13 City's actions. The City then took action relative to
14 a portion of that 250 acres that increased the value,
10:34:50 15 and if any development is allowed on the -- on these
16 250 acres, the developer's own appraisal documents
17 reflect that the value increases from \$30,000 per acre
18 to \$700,000 per acre.

19 Again, we need to get these documents because
10:35:15 20 the City contends that the developer only paid \$30,000
21 per acre. The developer contends that it paid
22 \$45 million for the entire 250 acres. So there is this
23 issue in dispute.

24 So the City is seeking to obtain the documents
10:35:38 25 that the developer contends supports its contention as

10:35:44 1 to how much it paid for the property. The developers
2 refused to produce it in the last 14 months, so the
3 City served a subpoena on a third party. The third
4 party has refused to produce the documents in
10:36:01 5 accordance with the developer's request. And, in fact,
6 its math is supported by the supplemental -- supplement
7 to the plaintiff's opposition to the motion to compel
8 which is an affidavit of Peccole Nevada's counsel in
9 which he states in an affidavit on July 22nd, 2020:

10:36:26 10 I spoke with Ms. Elizabeth Ghanem Ham who
11 repeated the objection to the production of
12 documents and informed that the plaintiffs
13 would provide a defense and indemnification to
14 Peccole Nevada if Peccole Nevada refuses to
10:36:44 15 comply with its obligations under the subpoena.

16 So that's what brings us to this point, your
17 Honor, with the motion to compel. The City has been
18 frustrated by the developer in obtaining the documents
19 directly from the developer. The developer has now
10:37:03 20 interfered twice, but particularly here in the City's
21 attempts to obtain the documents from Peccole Nevada
22 pursuant to the subpoena that was served six months ago
23 and is what the City has been objecting to, alluding to
24 in recent status conference before this Court without
10:37:26 25 bringing the specifics before this Court. So we're now

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10:37:30 1 bringing the specifics before this Court.

2 The motion should be granted. The documents
3 produced are not proprietary or privileged in any way.
4 The developer waived any ability to object to the
10:37:47 5 production of these documents by Peccole Nevada because
6 the developer failed to object within seven days
7 pursuant to Rule 45 back in March.

8 The developer failed to file a motion for
9 protective order. And Peccole Nevada the recipient of
10:38:08 10 the subpoena, has not objected to the subpoena, has not
11 filed a motion for protective order, and has not filed
12 the motion to compel; therefore, your Honor, the City
13 requests that the Court grant the motion, require the
14 documents to be produced, and impose sanctions in the
10:38:29 15 form of fees and costs against both Peccole Nevada for
16 failing to produce the documents requiring the City to
17 bring this motion and against the developer for
18 interfering with the production that the -- that
19 Peccole Nevada was obligated to produce.

10:38:49 20 THE COURT: Thank you, sir. And, Mr. Ogilvie,
21 I just have one additional question. I did review the
22 pleadings on file. I think there was an exhibit, and
23 it appears to be a -- I just want to make sure I
24 understand the background for it. It -- and it's in
10:39:02 25 the part of the email chain. From what -- from what I

10:39:05 1 can tell was sent from Donald Williams, Donald Butch
2 Williams, Esquire, on May -- I'm sorry, on June 8, 2020
3 at 9:23 a.m... And let me see if I can identify the
4 exhibit for the record.

10:39:21 5 I want to say it's an H, but I'm not sure.
6 Because there's a lot of exhibits here. Might be in F.
7 But let me see if I can get back to it real quick
8 because I'm scrolling on the computer.

9 But, in essence, what he says he -- I'm just
10:39:35 10 paraphrasing right now until I find it again. He
11 indicated that there was a protective order in place
12 and any idea where he got that from? Or where that
13 information came from?

14 MR. OGILIVIE: That information came from
10:39:50 15 in-house counsel for EHB Companies, which is the parent
16 company of 180 Land. And Mr. Todd Davis, the in-house
17 counsel, general counsel for EHB Companies sent
18 Mr. Williams an email objecting to the production by
19 Peccole, by Peccole Nevada and misrepresenting that, in
10:40:18 20 fact, there was a protective order in place.

21 THE COURT: I understand. I'm just scrolling
22 here. And that was -- I think that was a June 8th,
23 2020, email.

24 MR. OGILIVIE: That is correct, your Honor.
10:40:36 25 June 8th.

10:40:37 1 THE COURT: Okay. Okay. Thank you, sir.

2 MR. OGILIVIE: And that is -- that is

3 Exhibit G, your Honor, to the City's motion.

4 THE COURT: Right. Then that's the one that

10:40:49 5 starts out: Hi, George. Thank you for the reminder.

6 How does advising of a protective order being in place.

7 MR. OGILIVIE: Correct.

8 THE COURT: Okay.

9 MR. OGILIVIE: Yes, your Honor.

10:41:00 10 THE COURT: I understand.

11 All right. We'll hear from 180.

12 MS. HAM: Your Honor, Elizabeth Ghanem Ham on

13 behalf of 180. I'm going to address the matters that

14 are actually before you rather than the causes of

10:41:14 15 action in the ultimate -- to ultimately be decided by

16 you at the proper time. And I'll try to go through

17 them as I heard Mr. -- from the order in which I

18 believe he argued, Mr. Ogilvie argued them.

19 First of all through the purchase and sale

10:41:33 20 agreement, which Mr. Ogilvie does have as he stated to

21 you, we invoked the indemnity for the limited purposes

22 of this motion thereby agreeing to indemnify and

23 respond to this motion on behalf of Peccole Nevada.

24 The position that the City has taken is that

10:41:56 25 there's never been a protective order in place. They

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10:42:00 1 have repeated that to us in phone conversations even
2 after the discovery commissioner did, in fact, order a
3 protective order pursuant to NRCP 26(c).

4 Because of that and because of the actions of
10:42:14 5 the City during the entire attempt to develop, and I'm
6 talking about egregious actions where the City sought
7 intel again the principals of this company, so that,
8 and I quote:

9 "Dirt may be handy if I need to get rough."

10:42:31 10): The City in addition to some of their
11 egregious and outrageous actions have reached out to
12 other entities in attempt to stop our development, in
13 an attempt to affect the company far beyond this case
14 and this matter. And in doing, so we take great
10:42:51 15 concern over the documents that we produced to the
16 City. Which is why we have asked for the protective
17 order and confidentiality provision which we have been
18 granted.

19 The City has refused to acknowledge it, that
10:43:09 20 the discovery commissioner had ordered it in their
21 minute order saying there's nothing in place and going
22 as far as stating that the discovery commissioner's
23 order was not an order. It was only recommendation.

24 That is of great concern to us and it was
10:43:24 25 before this Court had an opportunity to review the

10:43:27 1 order and decide accordingly.

2 Okay. So the fact that they say that there
3 was never a protective order in place is concerning.
4 There is still a protective order in place.

10:43:39 5 Since that time the City has attempted to do
6 an end run around the protective order in attempting to
7 get the very same documents from third parties.

8 And I want to be very clear, and I think it's
9 clear in our opposition that all we have done is
10 requested that any documents produced by those third
11 parties be also subject to the same protective order.
12 The City has refused to acknowledge that protective
13 order. In this very case the city refused to respond.

14 Mr. Ogilvie complains that I did not respond
10:44:15 15 to him after Mr. Williams stated that I would. Well, I
16 did ask Mr. Leavitt to reach out to him, which
17 Mr. Ogilvie, I guess, failed to let you know.

18 Mr. Leavitt reached out on my behalf. And what he
19 asked Mr. Ogilvie was, So long as the document, you
10:44:35 20 will consider the documents under the same protective
21 order we will produce them immediately.

22 Mr. Ogilvie said, I will only allow that if,
23 if you agree to let me use them in all other cases.

24 We said we cannot do that. But, again, we
10:44:52 25 will release them now if you agree that they are under

10:44:56 1 the protective order. Mr. Ogilvie never responded.

2 Mr. Leavitt sent another email asking, again,

3 what is your position in regards to this? Rather than

4 responding to Mr. Leavitt, they filed a motion for

10:45:11 5 protective order. We did not have a 2.34 conference

6 with the City. They knew we had stepped in to protect

7 these documents from being produced without the proper

8 protections in place.

9 In regard to Mr. Davis's email it is an

10:45:32 10 outrageous comment to say that the developer has

11 misrepresented that there was a protective order in

12 place. In fact, the City was copied and Mr. Ogilvie on

13 the email from Mr. Davis to Mr. Williams. That simply

14 copied the discovery commissioner's minute order and

10:45:53 15 said this, decide for yourself, but Fore Stars does

16 object to this without being under the confidentiality

17 provision.

18 It is not a misrepresentation to cut and paste

19 and submit to the City a copy, which they're well aware

10:46:13 20 of, of the discovery commissioner's minute order

21 placing all of these documents under a protective

22 order. These documents are the very subject of a

23 protective order.

24 Whether they get them from us or the third

10:46:25 25 party, they are -- they remain the subject of a

10:46:30 1 protective order, and it is important to us. And I
2 just cannot understand why the City refuses to
3 recognize that we have -- that we have this protective
4 order in place but refuses to agree to keep them
10:46:44 5 confidential. To me, it underscores the concern that
6 we have that the City does intend to use them in an
7 improper manner, to disseminate them in an improper
8 manner.

9 Having said that, again we remain ready to
10:46:58 10 produce them so long as we are under -- or to remove
11 our objection so long as they are produced under the
12 protective order.

13 Now, in regard to the actual motion before
14 you, we believe Peccole Nevada did make good faith
10:47:13 15 efforts to comply with the City subpoena, and had a
16 reasonable and adequate excuse for any delays including
17 the pandemic that was happening at the very moment that
18 they served the subpoena, the concern of the health of
19 its principals in relation to the pandemic and the
10:47:29 20 burden associated with the production. Mr. Ogilvie
21 told you some of the correspondence that happened
22 between Peccole Nevada, Mr. Williams, and himself, but
23 not all of it.

24 The City also failed to cooperate pursuant to
10:47:41 25 the administrative orders concerning the coronavirus,

10:47:44 1 and instead took advantage of them, having set a
2 deposition out of state in Florida in the midst of it
3 and refusing to vacate those depositions.

4 We have absolutely never intended or in any
10:48:03 5 way interfered with production of it. We have simply
6 asked that any end run attempt around the protective
7 order, which is what they are attempting to do, that
8 the City acknowledge those very documents are under the
9 protective order. They have refused to do so.

10:48:23 10 The City did not make a good-faith effort to
11 confer with Peccole Nevada and the landowners pursuant
12 to 2.34 and the City is trying to circumvent the
13 discovery commissioner's decision. That is, as far as
14 I understand it, reversal of the discovery commissioner
10:48:41 15 by your Honor with not reversing the protective order.

16 All it -- all you said was I cannot prohibit
17 the use of documents elsewhere. Regardless of where
18 those documents are produced, they are under the
19 protective order.

10:48:54 20 The City continues to ignore it. The City has
21 the documents that it requested. Not only -- well,
22 primarily being produced by us. They have the PSA, as
23 Mr. Ogilvie went through with you.

24 Their position on the necessity of other
10:49:14 25 documents, and there's a lot of assumptions made by

10:49:17 1 Mr. Ogilvie that we are hiding something. We are
2 hiding nothing. We just want a protective order. We
3 need -- they are confidential.

4 Regardless, they also assume the City and
10:49:29 5 Mr. Ogilvie that we are not producing documents. And I
6 think he used the developer as being cute and refuses
7 to produce documents to support the response to an
8 interrogatory that the property was considered
9 purchased for \$45 million. I do not intend to tell

10:49:50 10 Mr. Ogilvie how to do his job, but when the response is
11 there are no documents, there simply are no documents.
12 Perhaps further discovery is needed.

13 Regardless, we continue to try to comply. We
14 did not interfere with any objections. We did not
10:50:08 15 interfere with any attempt to produce by third parties.
16 We merely stepped in and said, Could you please
17 acknowledge the confidentiality that we have asked for
18 in the protective order?

19 The City continues to complain that they have
10:50:24 20 asked for those documents a year ago, six months ago,
21 whenever it was. Again, we continue to go around and
22 around with this protective order. I said to you many
23 times, your Honor, they would have had those documents
24 a year ago if they had agreed to the protective order.

10:50:44 25 They refused to agree to the protective order and

10:50:47 1 instead filed a motion to compel.

2 The reason they refused to agree to the
3 protective order is because they have been conducting
4 discovery in other matters in this case, as you heard
10:50:59 5 from Mr. Ogilvie himself today, by claiming that this
6 case is really about the entire 250 acres. Your Honor
7 has already dismissed one of the other owners from this
8 matter.

9 While they can make a legal argument that they
10:51:16 10 believe is one parcel, they have refused in our request
11 for production of documents to even acknowledge the
12 definition of the subject matter of this case that is
13 the 35 acres; thereby refusing to answer and respond to
14 our request for production of documents claiming that
10:51:38 15 the definition of the land in this case must be the
16 entire 250.

17 So I don't know what else I can provide to
18 Mr. Ogilvie. All of these motions, I believe, are
19 just -- could have easily been worked out, as you said,
10:51:57 20 through a 2.34. We requested that Mr. Ogilvie only
21 consider the documents produced by Peccole are under
22 the protective order, and he refused and did not
23 respond to Mr. Leavitt; instead filing a motion to
24 compel. I don't know what else we can do. Either the
10:52:15 25 protective order is in place or it's not. When they're

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10:52:19 1 seeking the very same documents from third parties,
2 we -- we need those to also be confidential. It is the
3 subject matter of the protective order. Many of those
4 documents they have received already through us marked
10:52:34 5 confidential, I do not understand why the City refuses
6 to acknowledge the confidentiality portion. It would
7 make all of this process easier for everyone if they
8 simply would do so.

9 I have nothing further to add. I'm
10:52:50 10 referencing an email dated June 8, 2020, in regards to
11 your last question to Mr. Ogilvie, from Todd Davis to
12 Mr. Williams. Mr. Leavitt, myself, Mr. Ogilvie and
13 Mr. Floyd who is on the phone were all cc'd on that,
14 and it was simply the minutes, forwarding the minute
10:53:11 15 order from the discovery commissioner. To claim that
16 that was interference and misrepresentation by the
17 developer is a stretch to say the least.

18 And all we stated was as soon as the
19 protective order was formally in place, all of those
10:53:29 20 documents would be produced. We had some of them. I
21 remain confused about why the City refuses to
22 acknowledge the protective order and have the documents
23 produced. That way we could have avoided all of these
24 past motions in front of you if they had done so.

10:53:46 25 I have nothing further to add, your Honor. I

10:53:52 1 don't know if you want to hear any responses to
2 Mr. Ogilvie's argument in regard to inverse
3 condemnation, but I leave that to Mr. Leavitt if you
4 do.

10:54:06 5 THE COURT: Not at this time, ma'am.

6 Okay. Mr. Ogilvie.

7 MR. OGILVIE: Thank you, your Honor. Your
8 Honor, the City has provided letters and emails
9 supporting at each and every contention that it has
10:54:18 10 made in pursuant to this motion to compel.

11 The developer has not produced any
12 documentation to support any of the arguments that we
13 just heard from counsel for the developer.

14 The City, again, has requested these documents
10:54:40 15 for 14 months, has been frustrated. So it went to the
16 third party subpoena.

17 Now, I want to -- I want to clarify something
18 because this was a little bit tricky. Counsel for the
19 developer just argued that because the discovery
10:54:59 20 commissioner imposed a protective order, and I submit
21 to the Court it's clear that she didn't, she simply
22 said that the documents would be protected pursuant to
23 Rule 26, that because of the discovery commissioner's
24 ruling the City made, as counsel stated, an end run
10:55:20 25 around the protective order and subpoenaed the

10:55:24 1 documents from a third party. Well, your Honor, as the
2 documents and the docket will reflect, that subpoena to
3 the -- to Peccole Nevada was served in March well
4 before the April, I believe, 26 hearing before the
10:55:44 5 discovery commissioner.

6 So the subpoena was served, and the documents
7 were due to be produced by Peccole Nevada before any
8 hearing was even held before the discovery
9 commissioner. So there wasn't any end run around any
10:56:01 10 discovery commissioner ruling. And there wasn't an
11 attempt to, as counsel states, circumvent the discovery
12 commissioner's ruling.

13 The Court -- or counsel for the developer
14 argued that I failed to advise the Court that
10:56:20 15 Mr. Leavitt contacted me. Well, I'll direct counsel
16 and the Court to the paragraph 31 of my declaration. I
17 said: To his credit, Ms. Ham's co-counsel, Jim
18 Leavitt, reached out to me on July 24th as an
19 intermediary between his client and the Court to work
10:56:58 20 out a resolution, but the responses he conveyed from
21 his client to me were not acceptable.

22 So, in fact, I did advise the Court that
23 Mr. Leavitt responded or reached out to me.

24 I also heard the argument that the City knew
10:57:23 25 that the developer had stepped in to indemnify or

10:57:29 1 satisfy its indemnity obligation with Peccole Nevada
2 under the purchase and sale agreement. The City knew
3 no such thing that the developer had stepped in to
4 satisfy its indemnity obligation.

10:57:45 5 And notwithstanding that, your Honor, the
6 developer again has no standing to step into the shoes
7 of the developer to oppose this motion. Has no
8 standing to interfere with the City's rightful attempts
9 to conduct third party discovery.

10:58:12 10 And even if it had standing, it waived any of
11 the objections and contentions that it's making now.
12 Because it failed to satisfy its obligations under
13 Rule 45 between March 6th when the City served the
14 notice of the subpoena and March 13th which is the
10:58:34 15 seven days that the developer had to object to the
16 breadth or the actual service of the subpoena.

17 I also heard that these documents are a
18 subject of the protective order. They're not. These
19 documents have never been brought before this Court or
10:58:57 20 the discovery commissioner. The subpoena has never
21 been brought before this Court or the discovery
22 commissioner.

23 The argument was the City intends to use the
24 documents in an improper manner. Your Honor, I just
10:59:13 25 need the documents that are going to support the City's

10:59:18 1 defense. The City is entitled to receive those
2 documents. We've been seeking them for 14 months.
3 The developer refuses to produce them. The
4 developer refuses to allow a third party to respond to
10:59:33 5 a valid subpoena to produce those documents.
6 The argument was made by the developer's
7 counsel that the -- that Peccole Nevada's counsel had a
8 legitimate concern regarding his client's health. Your
9 Honor, there was no -- absolutely no legitimacy to that
11:00:02 10 argument. In fact, Mr. Williams, Butch Williams
11 communicated to me, Hey, George -- this was in I
12 believe June, May or June, and I don't know. I don't
13 recall if it's in the declaration. I believe that it
14 is. He said, Why don't we sit down and we will go
11:00:23 15 through -- we will sit down together and we'll go
16 through Billy Bayne's laptop computer, and he will
17 scroll through his, all of his documents, and you can
18 tell me what we want to see. And I responded, well,
19 you know, why -- rather than getting together in
11:00:44 20 person, why don't we attempt to do that virtually.
21 So there is no legitimacy to the argument that
22 there was -- that the documents hadn't been produced
23 because there was some feigned concern about
24 Mr. Bayne's health.
11:01:01 25 There was an argument that there was -- that

11:01:04 1 the City had no -- had not attempted to engage in a
2 good-faith attempt to meet and confer with the
3 developer. The City is under absolutely no obligation
4 to meet and confer with the developer pursuant to a
11:01:24 5 subpoena that the developer did not object to, did not
6 file a motion for protective order on, and that was
7 issued, not to the developer, but to a third party.

8 The City has a 2.34 obligation to meet and
9 confer with Peccole Nevada, which I submit to the
11:01:44 10 Court, again, the City went well beyond what was
11 required to meet and confer and attempt to reach a
12 compromise with the -- with Peccole Nevada regarding
13 the scope of that subpoena.

14 The argument that this should have been worked
11:02:13 15 out through a 2.34 meet and confer, again, we attempted
16 to do it. We had no obligation to conduct it with the
17 developer. And for the reasons stated, the developer's
18 failure to object to the subpoena, the developer's
19 failure to file a motion for protective order, the
11:02:42 20 subject of the subpoena, Peccole Nevada, failing to
21 satisfy its obligations, failing to file an objection,
22 failing to oppose this motion, the motion should be
23 granted and fees and costs should be awarded against
24 Peccole Nevada for failing to satisfy its Rule 45
11:03:03 25 obligations and against the developer for interfering

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11:03:07 1 with this third party discovery.

2 THE COURT: Okay. Sir. Thank you very much.

3 And I just have a couple of comments, I guess,
4 before I rule. I thought about this one issue, and it
11:03:21 5 appears to me it might be an ongoing issue regarding
6 this case.

7 Clearly, I understand the mandate of the --
8 and it's my recollection the amendment to rule, Nevada
9 Rules of Civil Procedure 45 as it pertains to
11:03:32 10 subpoenas, I get that. There is a seven-day time
11 period as set forth in the rule to object and/or seek
12 some sort of protective order. This wasn't done by the
13 developer in this case. And I think the record is
14 pretty clear in that regard.

11:03:49 15 Just as important I sit back and I try to say
16 to myself what would be the basis for the protective
17 order in this case? Would it be attorney work product?
18 Or confidential communications between a lawyer and
19 their client?

11:04:00 20 And the reason why I think that's kind of
21 important to point out, and this is one of the reasons
22 why -- and we can really develop this in the future as
23 far as, ultimately, what happens in this case, but I
24 actually sometimes think about Nevada Supreme Court
11:04:16 25 Rule 3 as it deals specifically with sealing and/or

11:04:20 1 sealing records and redacting court documents and those
2 types of things. Because it appears to me our Nevada
3 Supreme Court has taken a look at a lot of these
4 issues. And when it comes to utilizing the Courts,
11:04:32 5 pretty much if you use the Courts -- unless there's
6 specific exceptions what happens in the court of law is
7 public, and they set forth those exceptions. For
8 example, grounds to seal or redact records and the
9 like, and that goes to confidences, the Court's
11:04:51 10 required to make a written finding.

11 And historically, there's no doubt that you go
12 back ten years or so, and the Courts would just seal
13 records and make a determination almost ad hoc that
14 things were confidential and there was no access to
11:05:08 15 those documents and/or records and so on. And our
16 Supreme Court said no. Based upon Nevada Supreme Court
17 Rule 3 that's not how you handle it.

18 And the reason why I say that is this and I
19 sometimes have to deal with this. Even if parties
11:05:22 20 stipulate to seal or redact documents and the like, as
21 a trial judge, under Rule 3, I'm not required to accept
22 that.

23 In fact, I have to make a finding that there's
24 a basis for sealing or redacting records that maybe
11:05:42 25 it's public policy interest as far as that's concerned

11:05:47 1 or safety interest and so on.

2 And so my point this: When it comes to the
3 subpoenas at issue and the motion to compel I'm going
4 to grant that, Mr. Ogilvie. And the record is pretty
11:06:03 5 clear. There was no objection made timely as far as
6 the developer is concerned, and I accept that. I'm
7 going to follow the rule as far as that is concerned.

8 As far as ultimate usage of these documents,
9 we can deal with that at a later date and fully develop
11:06:21 10 it. I don't mind that occurring. But understand, my
11 decision I'm making today, that doesn't -- I'm not
12 saying that those documents are relevant for the
13 purposes of the trial. That's a different analysis.
14 And I think we all understand that.

11:06:39 15 But for the purposes of discovery in this
16 matter, I'm going to permit it, Mr. Ogilvie. I just
17 want you to understand that. But I'm not saying it's
18 admissible for the purposes of trial based upon
19 relevancy. That's another day, and you know that.

11:06:52 20 MR. OGILVIE: Understood.

21 THE COURT: Yeah. As far as sanctions are
22 concerned, I'm going to decline to sanction at this
23 point. And I am. But I just want to remind everyone
24 that when it comes to discovery, and as we all know,
11:07:06 25 it's much broader than admissibility at the time of

11:07:10 1 trial.

2 I realize you can't go -- there are limits.
3 You can't go on fishing expeditions. And I think
4 that's one of the issues that was discussed in the
11:07:20 5 Schlatter vs. Eighth Judicial District Court. And we
6 do have proportionality. I understand that too. And
7 that was added based upon the recent changes. We're
8 more than anything following the federal rules in that
9 regard. That doesn't appear to be an issue at this
11:07:35 10 point, but I realize that's the limitations too.

11 And so the bottom line is I'm going to grant
12 it. As far as documents, and I don't mind saying this,
13 we can fully develop its use in other cases. If my
14 public policy considerations based upon Nevada Supreme
11:07:58 15 Court Rule 3 is inappropriate, you can tell me that
16 later when it comes to potential usage. I don't mind
17 that. But those are some of my thoughts when I issued
18 the prior ruling in this case as far as usage and other
19 matters. But anyway, that's going to be my decision.

11:08:17 20 Mr. Ogilvie, you can prepare an order, sir, in
21 that regard. And is there anything else?

22 MR. OGILVIE: Thank you, your Honor. Not on
23 behalf of the City, your Honor.

24 THE COURT: Okay. All right. So anyway.

11:08:27 25 MS. HAM: Your Honor, for point of

11:08:29 1 clarification. This is Ms. Ghanem Ham. For point of
2 clarification, and I think I probably understand the
3 response, but because these documents we believe are
4 the subject of a protective order, will they be held to
11:08:48 5 the same confidentiality and the protection that we are
6 receiving in the documents we produce here?

7 THE COURT: This is -- I mean, number one,
8 I -- and this is my point: First and foremost, if they
9 were subject to a protective order, I would anticipate
11:09:09 10 there would be a specific protective order, not a
11 minute order regarding these documents.

12 Secondly, I think it's important to point out
13 as far as uses in other matters, I'm going to leave
14 that to briefing. That hasn't been specifically
11:09:30 15 addressed. I don't mind taking it head on. I
16 discussed some of the policy reasons behind Nevada
17 Supreme Court Rule 3 as it relates to redaction and/or
18 sealing of records. Just as important I pointed out
19 attorney-client privileges, and work product, and those
11:09:55 20 types of thing which is pretty clear.

21 If these are confidential, I would have to
22 make a determination what -- from a legal perspective
23 why they are confidential, for what reason. Are they
24 intellectual property? And there's a whole litany of
11:10:13 25 examples. Nevada Supreme Court Rule 3, for example,

11:10:21 1 involving public health and safety, and a lot of
2 different -- there's medical records, things like that,
3 and we're not there yet.

4 And so all I'm saying is this: These matters
11:10:34 5 will be produced. I'm granting it. If we want to dig
6 down a little deeper and file a motion in that regard,
7 of course, you're free to do so, ma'am.

8 MS. HAM: Thank you, your Honor. Just, and
9 I'm sorry for my confusion, just one more point of
11:10:54 10 clarification.

11 In your recent minute order, my understanding
12 is -- I had it up here a moment ago -- of your order
13 was that the -- what you reversed from the discovery
14 commissioner was not the NRCP 26(c) protection but
11:11:12 15 rather that they --

16 THE COURT: Right.

17 MS. HAM: Right. Okay. So that's still in
18 place.

19 THE COURT: It's still in place. But, you
11:11:17 20 know what, let's tee it up.

21 MS. HAM: Yeah.

22 THE COURT: I don't mind digging. Because in
23 a general sense, it -- let's go ahead and just attack
24 it head on.

11:11:28 25 And if you want to do briefing on all issues,

11:11:30 1 ma'am, in that regard I have no problem with it. And
2 I'm quite sure Mr. Ogilvie will file an opposition,
3 potentially. Maybe not. Maybe it can be worked out.
4 I don't know. But I think this is going to be an
11:11:43 5 important issue in this case.

6 And I don't mind telling you what some of my
7 thoughts were. For example, what do you do in a
8 products liability case and where there's information
9 obtained during discovery regarding whether or not a
11:12:02 10 product is safe, right? And there might be warnings or
11 things like that. Are you precluded from using that in
12 other products liability cases? And those are the
13 things I thought about. Really and truly. Does that
14 become part of the public record if there's no
11:12:19 15 settlement and the case goes to trial?

16 And I understand what can happen if you settle
17 a case. That's another different issue. But I see
18 this as a significant policy issue that we have to deal
19 with. And I don't mind having it teed up.

11:12:35 20 MS. HAM: Thank you, your Honor. I
21 understand.

22 THE COURT: Okay.

23 Mr. Ogilvie, you'll prepare an order, sir?

24 MR. OGILVIE: Yes. Thank you, your Honor.

11:12:43 25 THE COURT: Okay. And everyone enjoy your day

11:12:44

1 and stay safe.

2

MR. LEAVITT: Thank you, your Honor.

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(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.

PEGGY ISOM, RMR, CCR 541

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<p>); [1] 35/10</p> <p>MR. LEAVITT:</p> <p>[11] 5/13 6/5 6/11 6/20 9/3 11/15 12/9 12/13 14/9 14/20 55/2</p> <p>MR. OGILVIE:</p> <p>[22] 5/15 6/4 6/9 6/12 9/5 13/23 14/16 14/18 15/3 15/6 15/8 15/13 29/2 33/14 33/24 34/2 34/7 34/9 43/7 50/20 51/22 54/24</p> <p>MS. HAM: [10]</p> <p>5/11 12/12 12/14 28/18 34/12 51/25 53/8 53/17 53/21 54/20</p> <p>THE COURT</p> <p>REPORTER: [1] 6/17</p> <p>THE COURT: [32]</p> <p>5/6 5/19 6/14 6/19 9/2 9/4 11/12 12/8 13/5 13/24 14/11 14/17 14/22 15/4 15/7 15/10 32/20 33/21 34/1 34/4 34/8 34/10 43/5 48/2 50/21 51/24 52/7 53/16 53/19 53/22 54/22 54/25</p> <p>\$</p> <p>\$30,000 [5] 30/4 30/7 30/12 30/17 30/20</p> <p>\$45 [9] 25/10 25/16 25/22 25/24 26/10 26/13 26/18 30/22 40/9</p> <p>\$45 million [9]</p> <p>25/10 25/16 25/22 25/24 26/10 26/13 26/18 30/22 40/9</p> <p>\$7.5 [1] 25/25</p> <p>\$700,000 [1] 30/18</p> <p>1</p> <p>10 [1] 2/2</p> <p>100 percent [1] 28/9</p> <p>1000 [1] 3/7</p> <p>12 [1] 5/6</p> <p>120 [1] 2/20</p>	<p>1215 [1] 2/19</p> <p>13th [1] 45/14</p> <p>14 [6] 24/5 24/6 29/6 31/2 43/15 46/2</p> <p>1500 [1] 15/23</p> <p>1500 acres [3] 28/15 28/16 29/12</p> <p>16 [2] 2/2 25/17</p> <p>17 acres [1] 29/24</p> <p>1749 [1] 3/20</p> <p>17th [1] 14/24</p> <p>18 [2] 17/22 18/14</p> <p>180 [7] 1/9 5/7 5/12 5/14 16/19 34/11 34/13</p> <p>180 Land [13] 6/21 11/16 14/21 16/11 16/20 17/11 22/6 22/20 22/23 23/2 24/9 24/11 33/16</p> <p>180 Land's [3] 22/23 23/23 24/11</p> <p>19 [3] 9/13 21/11 25/19</p> <p>1964 [1] 2/12</p> <p>1992 [2] 15/24 28/15</p> <p>19th [1] 21/13</p> <p>2</p> <p>2.20 [1] 16/4</p> <p>2.34 [9] 10/20 11/1 12/21 17/17 37/5 39/12 41/20 47/8 47/15</p> <p>20 [1] 24/6</p> <p>20-10 [1] 2/2</p> <p>2015 [1] 29/13</p> <p>2019 [1] 24/6</p> <p>2020 [10] 1/22 5/1 16/18 17/22 17/23 24/6 31/9 33/2 33/23 42/10</p> <p>2269 [1] 3/19</p> <p>229-2269 [1] 3/19</p> <p>22nd [3] 17/23 21/19 31/9</p> <p>2300 [1] 3/6</p> <p>24 [1] 19/18</p> <p>24th [1] 44/18</p> <p>250 [1] 41/16</p> <p>250 acres [10] 27/2 27/11 28/4 29/14 29/22 29/25 30/14 30/16 30/22 41/6</p> <p>250-acre [1] 27/17</p>	<p>26 [4] 35/3 43/23 44/4 53/14</p> <p>27 [1] 18/23</p> <p>27th [1] 19/5</p> <p>28th [3] 10/1 10/15 19/1</p> <p>2nd [1] 19/11</p> <p>3</p> <p>31 [1] 44/16</p> <p>35 acres [2] 28/13 41/13</p> <p>386-1749 [1] 3/20</p> <p>396 [1] 4/6</p> <p>4</p> <p>400 [1] 3/16</p> <p>4100 [1] 3/9</p> <p>415 [2] 4/8 4/9</p> <p>435 [1] 29/23</p> <p>45 [6] 16/16 16/19 32/7 45/13 47/24 48/9</p> <p>4th [1] 19/3</p> <p>5</p> <p>541 [2] 1/25 56/17</p> <p>552-5816 [1] 4/9</p> <p>552-7272 [1] 4/8</p> <p>5816 [1] 4/9</p> <p>5:07 [1] 6/22</p> <p>6</p> <p>6930 [1] 2/22</p> <p>6938 [1] 2/23</p> <p>6th [1] 45/13</p> <p>7</p> <p>702 [8] 2/11 2/12 2/22 2/23 3/9 3/10 3/19 3/20</p> <p>704 [1] 2/9</p> <p>7272 [1] 4/8</p> <p>731-1964 [1] 2/12</p> <p>733-8877 [1] 2/11</p> <p>7th [1] 19/22</p> <p>8</p> <p>873-4100 [1] 3/9</p> <p>873-9966 [1] 3/10</p> <p>8877 [1] 2/11</p> <p>89101 [2] 2/10 3/18</p> <p>89102 [1] 3/8</p> <p>89117 [1] 2/21</p> <p>8th [2] 33/22 33/25</p> <p>9</p> <p>940-6930 [1] 2/22</p>	<p>940-6938 [1] 2/23</p> <p>94102 [1] 4/7</p> <p>9966 [1] 3/10</p> <p>9:23 a.m [1] 33/3</p> <p>9:55 [1] 5/2</p> <p>:</p> <p>:SS [1] 56/2</p> <p>A</p> <p>a.m [2] 5/2 33/3</p> <p>ability [3] 16/21 32/4 56/11</p> <p>able [2] 11/19 11/23</p> <p>about [13] 7/19 13/5 13/12 13/20 13/21 18/24 35/6 41/6 42/21 46/23 48/4 48/24 54/13</p> <p>above [1] 17/20</p> <p>absolutely [3] 39/4 46/9 47/3</p> <p>accept [2] 49/21 50/6</p> <p>acceptable [1] 44/21</p> <p>access [1] 49/14</p> <p>accordance [1] 31/5</p> <p>according [1] 12/2</p> <p>accordingly [1] 36/1</p> <p>ACCURATE [1] 56/11</p> <p>acknowledge [7] 35/19 36/12 39/8 40/17 41/11 42/6 42/22</p> <p>acknowledged [1] 9/6</p> <p>acquire [1] 25/1</p> <p>acquired [1] 25/16</p> <p>acquiring [1] 25/10</p> <p>acquisition [1] 27/2</p> <p>acre [7] 27/17 30/4 30/7 30/12 30/17 30/18 30/21</p> <p>acres [17] 15/23 27/2 27/11 28/4 28/13 28/15 28/16 29/12 29/14 29/22 29/24 29/25 30/14 30/16 30/22 41/6 41/13</p> <p>action [6] 28/2 28/3 28/22 30/10</p>	<p>30/13 34/15</p> <p>actions [15] 24/18 24/22 24/23 24/25 27/21 27/23 29/17 30/1 30/3 30/9 30/10 30/13 35/4 35/6 35/11</p> <p>actual [2] 38/13 45/16</p> <p>actually [5] 7/21 19/7 29/22 34/14 48/24</p> <p>ad [1] 49/13</p> <p>add [3] 11/13 42/9 42/25</p> <p>added [1] 51/7</p> <p>addition [1] 35/10</p> <p>additional [7] 7/8 7/19 7/24 8/8 8/13 8/24 32/21</p> <p>Additionally [1] 17/3</p> <p>address [3] 7/24 27/3 34/13</p> <p>addressed [2] 12/6 52/15</p> <p>adequate [1] 38/16</p> <p>adjudication [1] 29/8</p> <p>administrative [3] 2/2 18/7 38/25</p> <p>admissibility [1] 50/25</p> <p>admissible [1] 50/18</p> <p>advance [1] 10/10</p> <p>advantage [1] 39/1</p> <p>advise [2] 44/14 44/22</p> <p>advised [2] 18/14 25/5</p> <p>advising [1] 34/6</p> <p>affect [1] 35/13</p> <p>affidavit [2] 31/8 31/9</p> <p>after [9] 5/10 17/5 21/11 22/2 24/23 28/3 30/10 35/2 36/15</p> <p>again [32] 5/19 6/21 10/17 11/4 12/18 16/11 17/11 18/23 19/5 19/22 19/24 21/10 22/6 26/13 26/24 27/25 28/14 29/10 29/15</p>
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(1)): - again

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A	amendment [1] 48/8 analysis [1] 50/13 ANDREW [3] 4/4 4/10 5/18 another [4] 22/14 37/2 50/19 54/17 answer [2] 25/19 41/13 anticipate [1] 52/9 any [39] 7/24 8/12 10/14 14/7 16/21 16/23 17/12 18/1 19/4 19/10 19/20 19/20 19/21 20/8 20/14 21/24 21/25 22/4 22/6 22/8 22/9 22/9 30/15 32/3 32/4 33/12 36/10 38/16 39/4 39/6 40/14 40/15 43/1 43/11 43/12 44/7 44/9 44/9 45/10 anything [5] 11/13 14/17 14/25 51/8 51/21 anyway [3] 15/1 51/19 51/24 APACHE [1] 2/19 Apologies [1] 12/14 apologize [5] 12/11 12/14 12/18 28/18 28/23 appear [2] 23/22 51/9 appearance [2] 2/3 6/15 appearances [4] 2/1 2/24 3/22 5/8 appearing [1] 5/17 appears [4] 13/8 32/23 48/5 49/2 applications [1] 27/23 appraisal [1] 30/16 appreciate [1] 11/5 appropriate [3] 14/2 14/10 14/13 approved [2] 29/22 29/23 approving [2] 27/22 27/23 approximate [1] 26/17 approximately [1]	25/22 April [4] 18/23 19/1 23/9 44/4 April 27 [1] 18/23 April 28th [1] 19/1 are [60] argued [4] 34/18 34/18 43/19 44/14 arguing [2] 28/19 28/21 argument [10] 29/21 41/9 43/2 44/24 45/23 46/6 46/10 46/21 46/25 47/14 arguments [3] 8/13 16/10 43/12 around [6] 36/6 39/6 40/21 40/22 43/25 44/9 artificial [1] 13/25 as [88] ask [2] 19/23 36/16 asked [9] 10/6 18/21 18/24 19/12 35/16 36/19 39/6 40/17 40/20 asking [2] 26/18 37/2 asks [1] 25/18 assert [2] 17/2 17/12 assets [1] 27/10 associated [1] 38/20 assume [1] 40/4 assumptions [1] 39/25 at [31] 5/6 6/22 7/4 7/11 7/14 9/18 9/18 14/23 16/2 17/1 17/18 20/24 25/7 27/2 27/11 28/4 28/6 28/10 33/3 34/16 38/17 43/5 43/9 49/3 50/3 50/9 50/22 50/25 51/9 56/6 56/8 attack [1] 53/23 attempt [13] 21/3 22/24 23/3 24/1 35/5 35/12 35/13 39/6 40/15 44/11 46/20 47/2 47/11 attempted [5] 10/20 22/2 36/5 47/1 47/15	attempting [4] 25/12 25/13 36/6 39/7 attempts [5] 21/12 23/8 24/12 31/21 45/8 attorney [4] 23/15 23/19 48/17 52/19 attorney-client [1] 52/19 attorneys [1] 18/8 August [4] 9/18 10/1 10/15 10/24 August 28th [2] 10/1 10/15 available [2] 8/19 8/20 AVENUE [2] 3/6 3/16 avoid [2] 8/12 12/4 avoided [1] 42/23 awarded [1] 47/23 aware [1] 37/19 B back [8] 8/25 12/17 15/24 19/25 32/7 33/7 48/15 49/12 background [3] 15/21 29/4 32/24 Badlands [5] 25/21 26/9 26/17 27/12 27/18 based [4] 49/16 50/18 51/7 51/14 basis [3] 22/6 48/16 49/24 Bayne's [2] 46/16 46/24 be [43] 5/7 5/21 9/13 9/14 11/25 12/1 12/5 13/18 13/19 14/12 14/13 18/9 19/3 21/14 21/22 24/16 24/24 32/2 32/14 32/23 33/6 34/15 35/9 36/8 36/11 41/15 42/2 42/20 43/22 44/7 47/22 47/23 48/5 48/16 48/17 51/9 51/19 52/4 52/10 53/5 54/3 54/4 54/10 because [26] 9/15 10/19 12/1 13/6 13/16 13/25 14/1 14/4 16/20 26/11	30/7 30/19 32/5 33/6 33/8 35/4 35/4 41/3 43/18 43/19 43/23 45/12 46/23 49/2 52/3 53/22 become [1] 54/14 been [26] 8/5 9/20 10/13 12/10 12/21 13/9 13/11 17/14 20/6 23/16 23/23 29/3 29/6 31/17 31/23 34/25 35/17 41/3 41/19 43/15 45/19 45/21 46/2 46/22 47/14 52/14 before [25] 1/19 6/24 20/14 23/11 24/22 24/25 28/2 28/20 28/25 29/9 30/9 31/24 31/25 32/1 34/14 35/25 38/13 44/4 44/4 44/7 44/8 45/19 45/21 48/4 56/6 BEFORE-ENTITLED [1] 56/6 behalf [15] 5/12 5/14 5/16 5/17 6/21 11/16 14/15 14/19 14/21 22/22 23/19 34/13 34/23 36/18 51/23 behind [1] 52/16 being [14] 2/2 8/9 11/2 11/10 15/19 19/16 24/2 26/11 26/24 34/6 37/7 37/16 39/22 40/6 believe [10] 7/5 7/7 34/18 38/14 41/10 41/18 44/4 46/12 46/13 52/3 best [3] 10/6 24/24 56/11 between [5] 17/22 38/22 44/19 45/13 48/18 beyond [4] 12/25 28/24 35/13 47/10 Billy [1] 46/16 bit [1] 43/18 Bobby [1] 23/10 booted [1] 12/16 both [5] 13/3 17/25 22/18 22/19 32/15 bottom [1] 51/11 breadth [3] 21/6
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B	54/16 can't [5] 10/9 18/1 24/21 51/2 51/3 canceled [2] 23/17 23/18 cannot [5] 24/20 29/25 36/24 38/2 39/16 CARANO [1] 3/4 case [18] 1/1 20/7 28/22 35/13 36/13 41/4 41/6 41/12 41/15 48/6 48/13 48/17 48/23 51/18 54/5 54/8 54/15 54/17 cases [4] 13/19 36/23 51/13 54/12 causes [2] 28/21 34/14 cc'd [1] 42/13 CCR [2] 1/25 56/17 certain [1] 18/5 certainly [4] 7/9 7/9 12/21 12/23 CERTIFICATE [1] 56/1 CERTIFIED [1] 56/4 CERTIFY [1] 56/5 chain [1] 32/25 chance [1] 6/23 changes [1] 51/7 check [5] 5/22 5/24 6/6 8/15 8/18 checks [2] 6/2 14/25 chief [1] 18/7 chose [1] 16/23 circumstances [1] 14/1 circumvent [2] 39/12 44/11 city [91] City's [27] 6/25 7/6 10/23 15/9 21/6 21/7 22/24 23/3 23/8 23/25 24/18 24/22 24/23 28/2 28/3 29/8 29/16 30/1 30/3 30/8 30/10 30/10 30/13 31/20 34/3 45/8 45/25 civil [2] 18/9 48/9 claim [2] 24/17 42/15 claiming [2] 41/5	41/14 clarification [3] 52/1 52/2 53/10 clarify [1] 43/17 CLARK [3] 1/7 56/3 56/14 clear [6] 36/8 36/9 43/21 48/14 50/5 52/20 Clearly [1] 48/7 client [6] 14/15 18/16 44/19 44/21 48/19 52/19 client's [1] 46/8 co [2] 21/21 44/17 co-counsel [2] 21/21 44/17 comes [5] 27/19 49/4 50/2 50/24 51/16 comment [1] 37/10 comments [1] 48/3 commissioner [13] 20/10 20/15 35/2 35/20 39/14 42/15 43/20 44/5 44/9 44/10 45/20 45/22 53/14 commissioner's [6] 35/22 37/14 37/20 39/13 43/23 44/12 commit [2] 18/18 18/18 communicated [1] 46/11 communications [1] 48/18 COMPANIES [3] 2/17 33/15 33/17 company [6] 1/9 5/7 21/21 33/16 35/7 35/13 compel [25] 6/1 9/15 9/22 10/19 11/22 15/9 15/14 15/17 15/18 16/5 17/13 17/19 20/16 22/5 22/17 22/22 23/2 26/23 31/7 31/17 32/12 41/1 41/24 43/10 50/3 complain [1] 40/19 complains [1] 36/14 completely [1] 18/15	complex [1] 8/2 comply [4] 8/12 31/15 38/15 40/13 complying [1] 8/6 compromise [3] 21/5 21/13 47/12 computer [2] 33/8 46/16 concern [6] 35/15 35/24 38/5 38/18 46/8 46/23 concerned [6] 6/6 13/20 49/25 50/6 50/7 50/22 concerning [2] 36/3 38/25 concerns [1] 7/19 concluded [1] 55/4 condemnation [1] 43/3 conduct [8] 8/16 8/20 11/1 22/24 23/8 24/1 45/9 47/16 conducted [1] 17/3 conducting [1] 41/3 confer [24] 7/20 7/22 10/1 10/5 10/7 10/9 10/15 11/2 11/3 11/19 11/25 13/21 14/12 17/4 17/9 17/17 17/21 21/5 39/11 47/2 47/4 47/9 47/11 47/15 conference [6] 9/18 9/21 14/18 14/21 31/24 37/5 conferences [1] 25/6 conferred [2] 17/23 22/11 conferring [1] 12/21 confers [2] 8/7 13/9 confidences [1] 49/9 confidential [8] 38/5 40/3 42/2 42/5 48/18 49/14 52/21 52/23 confidentiality [5] 35/17 37/16 40/17 42/6 52/5 confirmed [1] 11/6	confused [1] 42/21 confusion [1] 53/9 consider [3] 29/12 36/20 41/21 consideration [4] 25/20 26/8 26/13 26/16 considerations [1] 51/14 considered [1] 40/8 CONSTITUTES [1] 56/10 contacted [7] 18/13 18/23 19/5 19/11 19/23 23/12 44/15 contacts [1] 17/25 contends [6] 17/16 25/9 30/11 30/20 30/21 30/25 contention [5] 25/15 25/24 26/19 30/25 43/9 contentions [1] 45/11 continually [1] 8/7 continue [3] 28/23 40/13 40/21 CONTINUED [2] 3/1 4/1 continues [2] 39/20 40/19 control [1] 26/7 conversations [1] 35/1 conveyed [1] 44/20 cooperate [1] 38/24 cooperation [1] 18/17 copied [2] 37/12 37/14 copy [1] 37/19 coronavirus [1] 38/25 correct [2] 33/24 34/7 correspondence [2] 22/1 38/21 costs [2] 32/15 47/23 could [9] 6/9 6/12 11/18 11/18 12/2 13/1 40/16 41/19 42/23 counsel [36] 5/12
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(3) breadth... - counsel

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12/17 13/15 48/24	stretch [1] 42/17	supporting [1]	7/14 10/10 10/10	53/15
49/19	subject [15] 16/4	43/9	19/8 22/15 24/5	they're [5] 9/10
soon [1] 42/18	18/2 20/4 20/12	supports [2] 17/19	34/17 34/18 36/21	28/19 37/19 41/25
sorry [3] 6/9 33/2	20/19 22/19 36/11	30/25	36/23 36/25 37/24	45/18
53/9	37/22 37/25 41/12	supposed [1]	38/4 38/6 38/7	thing [2] 45/3
sort [1] 48/12	42/3 45/18 47/20	23/13	38/10 39/1 42/20	52/20
sought [1] 35/6	52/4 52/9	Supreme [9] 28/8	46/2 46/3	things [6] 22/16
sound [1] 18/21	submit [6] 18/10	29/15 48/24 49/3	then [12] 11/20	49/2 49/14 53/2
sounds [1] 13/23	29/2 29/4 37/19	49/16 49/16 51/14	13/2 14/14 16/25	54/11 54/13
SOUTH [2] 2/9	43/20 47/9	52/17 52/25	18/22 19/4 19/25	think [18] 8/25
2/19	submits [2] 28/5	sure [5] 6/14 8/19	21/1 22/22 26/6	11/18 11/24 11/24
specific [3] 9/11	29/11	32/23 33/5 54/2	30/13 34/4	12/2 13/8 32/22
49/6 52/10	submitted [2] 7/10	suspect [1] 29/20	there [35] 7/4 7/8	33/22 36/8 40/6
specifically [4]	9/25	T	11/8 12/13 20/8	48/13 48/20 48/24
21/16 25/17 48/25	subpoena [44]	take [5] 16/6 16/7	22/6 26/6 26/15	50/14 51/3 52/2
52/14	16/2 16/14 16/17	23/9 23/11 35/14	27/20 30/1 30/22	52/12 54/4
specifics [2] 31/25	16/17 16/22 16/23	taken [4] 8/5	32/22 33/11 33/20	third [25] 15/18
32/1	17/6 17/10 18/2	27/21 34/24 49/3	36/2 36/4 37/11	15/18 18/1 20/7
spent [1] 9/24	18/3 18/25 20/8	taking [3] 27/21	40/11 40/11 44/9	20/10 20/13 21/24
spoke [1] 31/10	20/11 20/13 21/6	27/21 52/15	44/10 46/9 46/21	22/19 22/25 23/8
standing [4] 22/7	21/7 21/9 21/10	takings [1] 24/17	46/22 46/23 46/25	24/1 24/13 31/3
45/6 45/8 45/10	21/15 21/23 21/25	talking [2] 13/20	46/25 48/10 49/14	31/3 36/7 36/10
Stars [4] 27/10	22/7 22/8 22/19	35/6	50/5 51/2 51/21	37/24 40/15 42/1
27/10 27/11 37/15	23/5 23/14 31/3	TARPEY [2] 4/5	52/10 53/3 54/10	43/16 44/1 45/9
start [2] 5/9 6/2	31/15 31/22 32/10	5/18	there's [16] 12/1	46/4 47/7 48/1
starts [1] 34/5	32/10 38/15 38/18	tee [1] 53/20	13/11 14/24 14/25	third-party [4]
state [4] 26/12	43/16 44/2 44/6	teed [1] 54/19	20/6 33/6 34/25	20/13 22/25 23/8
39/2 56/2 56/14	45/14 45/16 45/20	telephone [1] 22/3	35/21 39/25 49/5	24/1
stated [9] 7/25	46/5 47/5 47/13	telephonic [3]	49/11 49/23 52/24	this [92]
8/11 20/2 27/4	47/18 47/20	1/17 2/2 17/25	53/2 54/8 54/14	those [34] 7/7 7/7
34/20 36/15 42/18	subpoenaed [1]	tell [7] 7/11 21/1	THEREAFTER [1]	7/12 7/15 8/3 8/19
43/24 47/17	43/25	24/16 33/1 40/9	56/7	8/20 9/1 9/16 10/25
states [4] 26/6	subpoenas [2]	46/18 51/15	thereby [2] 34/22	17/24 17/24 20/2
26/7 31/9 44/11	48/10 50/3	telling [2] 23/16	41/13	25/14 26/21 27/23
stating [3] 25/19	SUBSCRIBED [1]	54/6	therefore [2]	36/10 39/3 39/8

Peggy Isom, CCR 541, RMR

(11) sir... - those

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T	51/1 54/15 those... [15] 39/18 40/20 40/23 42/2 42/3 42/19 46/1 46/5 49/1 49/7 49/15 50/12 51/17 52/19 54/12 though [1] 13/13 thought [2] 48/4 54/13 thoughts [2] 51/17 54/7 three [5] 7/5 7/8 10/10 14/4 25/5 through [14] 9/24 12/3 19/14 21/17 28/7 34/16 34/19 39/23 41/20 42/4 46/15 46/16 46/17 47/15 time [21] 6/1 6/16 9/18 9/21 9/24 10/6 13/19 16/12 17/1 18/2 18/12 22/14 22/14 23/6 27/19 34/16 36/5 43/5 48/10 50/25 56/7 timeline [1] 14/1 timely [1] 50/5 times [3] 17/24 22/12 40/23 TIMOTHY [1] 1/19 today [6] 6/24 8/13 9/15 10/13 41/5 50/11 today's [1] 9/21 Todd [3] 19/14 33/16 42/11 together [2] 46/15 46/19 told [4] 18/18 23/14 23/21 38/21 too [2] 51/6 51/10 took [4] 24/25 30/13 39/1 56/5 total [1] 25/10 town [7] 7/14 7/21 7/23 8/25 10/8 10/12 12/22 transaction [2] 26/25 27/1 TRANSCRIBED [1] 56/8 TRANSCRIPT [2] 1/15 56/10 transfer [1] 27/1 trial [6] 13/17 49/21 50/13 50/18	13/20 tricky [1] 43/18 tried [1] 13/19 true [2] 27/7 56/10 truly [1] 54/13 try [3] 34/16 40/13 48/15 trying [3] 12/16 25/22 39/12 Tuesday [1] 10/5 Twenty [1] 19/19 Twenty-four [1] 19/19 twice [1] 31/20 two [9] 8/10 14/4 17/5 17/8 22/16 23/3 25/4 25/5 27/5 two-hour [1] 17/8 type [1] 22/1 types [2] 49/2 52/20 TYPEWRITING [1] 56/8 U Uh [1] 9/3 Uh-huh [1] 9/3 ultimate [2] 34/15 50/8 ultimately [2] 34/15 48/23 uncontested [1] 16/7 under [16] 14/1 31/15 36/20 36/25 37/16 37/21 38/10 38/11 39/8 39/18 41/21 45/2 45/12 47/3 49/21 56/9 underscores [1] 38/5 understand [22] 7/18 8/23 10/8 11/12 11/17 13/11 13/14 29/20 32/24 33/21 34/10 38/2 39/14 42/5 48/7 50/10 50/14 50/17 51/6 52/2 54/16 54/21 understanding [1] 53/11 understands [1] 18/15 Understood [1] 50/20 Unfortunately [2] 7/13 7/20	units [1] 29/24 unless [1] 49/5 unsuccessful [1] 14/14 until [2] 20/15 33/10 up [4] 5/6 53/12 53/20 54/19 upcoming [1] 14/24 upon [4] 49/16 50/18 51/7 51/14 us [11] 8/25 11/1 28/8 29/15 31/16 35/1 35/24 37/24 38/1 39/22 42/4 usage [3] 50/8 51/16 51/18 use [11] 24/19 27/23 27/25 29/17 30/2 36/23 38/6 39/17 45/23 49/5 51/13 used [2] 25/1 40/6 uses [1] 52/13 using [1] 54/11 utilizing [1] 49/4 V vacate [1] 39/3 valid [1] 46/5 value [16] 24/19 24/22 24/24 27/25 28/1 28/3 28/6 29/17 30/2 30/4 30/7 30/9 30/10 30/12 30/14 30/17 various [1] 27/12 VEGAS [13] 1/12 2/10 2/21 3/8 3/14 3/18 5/1 5/8 5/16 5/23 5/25 6/7 23/16 verbal [1] 17/25 versus [1] 5/7 very [17] 8/1 8/1 8/3 8/10 20/13 20/24 24/25 28/13 28/21 36/7 36/8 36/13 37/22 38/17 39/8 42/1 48/2 via [3] 2/2 19/7 19/23 virtually [5] 24/18 27/24 29/17 30/1 46/20 voice [2] 21/20 22/3	W waived [5] 16/21 17/1 17/14 32/4 45/10 want [22] 8/25 11/13 12/19 13/5 13/6 13/13 13/25 16/9 27/3 29/19 32/23 33/5 36/8 40/2 43/1 43/17 43/17 46/18 50/17 50/23 53/5 53/25 wanted [4] 7/19 8/15 19/16 19/17 warnings [1] 54/10 was [76] wasn't [3] 44/9 44/10 48/12 WATERS [1] 2/7 way [3] 32/3 39/5 42/23 we [136] we'll [3] 5/9 34/11 46/15 we're [19] 5/6 6/17 8/12 8/22 8/25 9/15 10/17 10/23 11/4 11/19 11/23 13/16 22/4 26/18 26/22 28/25 31/25 51/7 53/3 we've [3] 7/7 8/17 46/2 WEDNESDAY [4] 1/22 5/1 10/6 10/13 Weed [4] 23/10 23/12 23/14 23/21 week [11] 7/13 7/15 7/23 10/6 10/12 11/19 12/24 14/5 19/2 19/3 22/14 WEINBERGER [1] 4/3 well [13] 17/20 23/18 26/11 29/2 29/19 36/15 37/19 39/21 44/1 44/3 44/15 46/18 47/10 went [4] 17/20 39/23 43/15 47/10 were [20] 7/5 7/15 7/20 9/18 10/17 17/25 20/4 20/19 21/8 23/4 23/13 29/12 42/13 44/7 44/21 49/14 52/9	54/7 55/4 56/8 WEST [1] 3/6 what [35] 8/3 11/5 11/18 12/3 14/15 14/22 17/20 19/12 21/1 27/16 28/1 28/2 29/19 31/16 31/23 32/25 32/25 33/9 36/18 37/3 39/7 41/17 41/24 46/18 47/10 48/16 48/23 49/6 52/22 52/23 53/13 53/20 54/6 54/7 54/16 when [16] 10/9 11/2 14/2 14/13 19/12 27/19 28/5 28/19 40/10 41/25 45/13 49/4 50/2 50/24 51/16 51/17 whenever [1] 40/21 where [7] 8/14 13/19 33/12 33/12 35/6 39/17 54/8 WHEREOF [1] 56/13 whether [8] 14/4 27/20 27/23 29/10 29/16 30/8 37/24 54/9 which [24] 8/3 9/18 15/23 18/10 19/2 21/16 25/2 25/14 27/1 27/11 28/9 31/8 31/9 33/15 34/17 34/20 35/16 35/17 36/16 37/19 39/7 45/14 47/9 52/20 while [2] 15/25 41/9 who [3] 7/21 31/10 42/13 whole [6] 28/11 28/12 28/16 29/11 29/15 52/24 whom [1] 16/1 why [17] 24/3 24/4 24/16 26/22 29/5 29/20 35/16 38/2 42/5 42/21 46/14 46/19 46/20 48/20 48/22 49/18 52/23 wide [1] 10/11 wide-open [1] 10/11 will [16] 8/20
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Peggy Isom, CCR 541, RMR (12) those... - will
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<p>W</p> <p>will... [15] 14/12 14/13 28/6 28/8 36/20 36/21 36/22 36/25 44/2 46/14 46/15 46/16 52/4 53/5 54/2</p> <p>WILLIAMS [25] 1/19 18/14 18/14 18/23 18/25 19/5 19/6 19/12 19/17 19/23 20/22 20/23 21/7 21/17 21/19 22/3 33/1 33/2 33/18 36/15 37/13 38/22 42/12 46/10 46/10</p> <p>willing [2] 8/17 18/15</p> <p>WILSON [1] 3/4</p> <p>window [1] 13/18</p> <p>wiped [4] 24/19 27/24 29/17 30/1</p> <p>within [6] 11/19 13/21 14/4 14/12 26/6 32/6</p> <p>without [4] 24/21 31/24 37/7 37/16</p> <p>WITNESS [1] 56/13</p> <p>won't [1] 11/25</p> <p>word [1] 10/11</p> <p>work [5] 12/3 18/15 44/19 48/17 52/19</p> <p>worked [3] 41/19 47/14 54/3</p> <p>works [1] 13/2</p> <p>would [29] 5/7 5/21 7/9 7/12 9/21 10/18 18/17 18/18 18/18 19/2 20/23 21/22 22/13 23/20 23/23 25/14 31/13 36/15 40/23 42/6 42/8 42/20 43/22 48/16 48/17 49/12 52/9 52/10 52/21</p> <p>written [1] 49/10</p> <hr/> <p>X</p> <hr/> <p>XVI [1] 1/3</p> <hr/> <p>Y</p> <hr/> <p>Yeah [4] 6/11 12/14 50/21 53/21</p> <p>year [2] 40/20 40/24</p>	<p>years [1] 49/12</p> <p>yes [7] 10/11 11/5 15/7 15/10 27/15 34/9 54/24</p> <p>yesterday [2] 10/14 12/22</p> <p>yet [1] 53/3</p> <p>you [66]</p> <p>you'll [2] 7/4 54/23</p> <p>you're [3] 15/10 21/2 53/7</p> <p>you've [1] 29/1</p> <p>your [63]</p> <p>yourself [1] 37/15</p>			
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Peggy Isom, CCR 541, RMR (13) will... - yourself
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Exhibit 7

Transcript of Plaintiff's Request for Rehearing

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 180 LAND COMPANY LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS CITY OF,)

13 Defendant.)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

PLAINTIFF'S REQUEST FOR REHEARING

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED THURSDAY, JANUARY 17, 2019

22

23

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

25

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1 APPEARANCES:

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* * * * *

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1 LAS VEGAS, NEVADA; THURSDAY, JANUARY 17, 2019

2 9:08 A.M.

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

4 * * * * *

5

6 THE COURT: First up would be page 1. 180

7 Land Company versus City of Las Vegas. Well, it's

8 going to be uncontested because I'm going to issue a --

9 have someone issue a nunc pro tunc order.

09:08:58 10 And let's go ahead and place our appearances

11 on the record.

12 MR. LEAVITT: Your Honor, James A. Leavitt on

13 behalf of 180 Land LLC.

14 MR. WATERS: Kermitt L. Waters on behalf of

09:09:03 15 the 180 Land Company LLC.

16 MR. HUTCHISON: And Mark Hutchinson on behalf

17 of the 180 Land LLC.

18 MR. OGLIVIE: George Ogilvie on behalf the

19 City of Las Vegas.

09:09:11 20 MS. LEONARD: Debbie Leonard on behalf of the

21 City of Las Vegas.

22 MR. HOLMES: Dustun Holmes on behalf of the

23 intervenors, your Honor.

24 THE COURT: Okay. Anyway, normally, I invite

09:09:21 25 argument and discussion, but under the facts and

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09:09:24 1 circumstances of this case I see no need to. And I
2 don't mind telling you why.

3 First and foremost no one can argue what my
4 intent was when I issued my decision as it related to
09:09:38 5 the petition for judicial review from a -- and I
6 understand the history of this case. I remember when I
7 granted the motion to sever. I understand there's some
8 complex issues regarding eminent domain in the other
9 case. I haven't looked at it. I recognize that
09:09:55 10 they're there.

11 Secondly -- you should be reporting this.

12 THE COURT REPORTER: They are.

13 THE COURT: Okay. All right.

14 Secondly, I have never sua sponte ruled on any
09:10:08 15 issue in thousands of cases as a trial judge. I'm just
16 going to tell you that.

17 I read -- I was reading the points and
18 authorities. And as I was reading them, I called my
19 law clerk in. And I said what the heck is going on in
09:10:21 20 this case? I don't mind telling you that. And so he
21 said, Well, Judge I don't know. And understand this.
22 He was a new law clerk at the time. We rotate them out
23 every year.

24 MR. HUTCHISON: Right.

09:10:35 25 THE COURT: And I had him pull the minutes.

09:10:37 1 And at the very end of the order that was submitted for
2 my signature, and we'll be more specific for the
3 record, to my chagrin, and I think it was -- was it
4 paragraph, let me see here, 64 on page 23 of the order,
09:10:57 5 specifically set forth the following:

6 Further, petitioner's alternative claims
7 for inverse condemnation must be dismissed for
8 lack of ripeness.

9 I never intended on any level for that to be
09:11:09 10 included in the order. It was never briefed.

11 As a trial judge, I have certain core values.
12 I don't mind saying this. And I think from a
13 historical prospective everyone that has appeared in
14 this courtroom understands that, number one, I believe,
09:11:25 15 in the Seventh Amendment to the United States
16 Constitution. When it's close, let a jury decide. I
17 feel very strongly about that.

18 Just as -- and it was discussed, but it didn't
19 have to be really argued because I believe in due
09:11:39 20 process. That's one of the foundations of our justice
21 system. This issue was never vetted. It was never
22 raised. It was never discussed, right?

23 MR. HUTCHISON: Correct, your Honor.

24 MR. WATERS: That's correct.

09:11:51 25 MR. LEAVITT: Yes.

09:11:51 1 THE COURT: Yes. So it doesn't matter why
2 this was here. I'm not going to throw my law clerk
3 under the bus. We didn't catch it. And I want to make
4 sure the record is clear. And I want a nunc pro tunc
09:12:06 5 order superseding any determination as it relates to
6 "Further, petitioner's alternative claim for inverse
7 condemnation must be dismissed." Right?

8 And I want to make sure the record is clear.
9 I haven't made any factual rulings or determination as
09:12:24 10 it relates to the severed case. I have not made any
11 issue, rulings, or determinations as a matter of law as
12 it relates to the severed case.

13 Does everybody understand that?

14 MR. HUTCHISON: Yes, your Honor.

09:12:39 15 THE COURT: And normally, I invite too much
16 argument and discussion. And I've always taken a
17 cautious approach when it comes to all issues. And I
18 invite more briefing. That's how I've done it for
19 close to 14 years.

09:12:52 20 So this happened. We're going to move
21 forward. Can you prepare a nunc pro tunc order, sir,
22 for me to take a look at. And I'll take a close look
23 at it.

24 MR. WATERS: Sure.

09:13:04 25 THE COURT: And it's specifically regarding

09:13:05 1 the severed case.

2 MR. HUTCHISON: Yes, your Honor.

3 THE COURT: Anything else? Yes.

4 MR. LEAVITT: Yes, your Honor. Just on the

09:13:09 5 record really quick. The severed case is addressed in

6 findings number 63, 64, 65, and 66.

7 THE COURT: I see that.

8 MR. LEAVITT: Okay.

9 THE COURT: But I focused on the decision.

09:13:21 10 MR. LEAVITT: Understood.

11 THE COURT: It was really -- I mean, you know,

12 whether you win or lose, it was a very unique issue.

13 It involved judicial review of the city council.

14 That's it, am I right?

09:13:34 15 MR. HUTCHISON: Yes.

16 THE COURT: I'm glad -- I was going to call

17 you up first even if you weren't first because at the

18 end of the day there's -- we can't have argument on

19 what my intent was. Only I can express what my intent

09:13:46 20 was when I made my decision and had that placed on the

21 record. Right?

22 MR. HUTCHISON: Yes, your Honor.

23 MR. LEAVITT: Yes.

24 THE COURT: Well, you can't argue, Well,

09:13:55 25 Judge, this is what your intent was, right? No. You

09:13:56 1 can argue a lot of other things and the intent of the
2 legislature, but not my intent.

3 MR. HUTCHISON: Correct, your Honor.

4 THE COURT: And so for the record I just want
09:14:03 5 to make sure I'm clear. And you are correct, sir. You
6 pointed it out. You can prepare that type of order.
7 Nunc pro tunc. And we all know what that means.

8 MR. LEAVITT: Yes, your Honor.

9 THE COURT: Yeah. And so, anyway, that's what
09:14:14 10 I want to do. And we'll just move forward. And I
11 have -- I realize potentially in the inverse
12 condemnation case there's going to be some unique
13 issues. I don't know. Hypothetically, the entire
14 conduct of the city council could impact that. I don't
09:14:31 15 know. I'm pretty good at issue spotting. But my mind
16 is completely open. I just want to tell everybody
17 that.

18 MR. HUTCHISON: Thank you, your Honor.

19 MR. LEAVITT: Your Honor, we'll prepare the
09:14:42 20 order.

21 THE COURT: Prepare the order. And there's no
22 need for argument.

23 MR. WATERS: All right.

24 THE COURT: I'm sorry you had to do briefing.
09:14:47 25 But that's my decision. And to be honest with you, I

09:14:51 1 was kind of surprised when I saw it because I would
2 think you realize I don't do things that way.

3 MR. LEAVITT: I understand.

4 MR. WATERS: We respect that, your Honor.

09:14:59 5 Thank you.

6 THE COURT: Okay. Everyone, enjoy your day.

7 MR. LEAVITT: Thank you, your Honor.

8

9 (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.

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR
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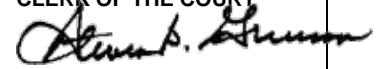
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Peggy Isom, CCR 541, RMR (3) said - your
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Exhibit 8

**City's Objection to Discovery Commissioner's
Report and Recommendations**



ODCR

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability
company, FORE STARS, LTD., a Nevada limited
liability company and SEVENTY ACRES, LLC, a
Nevada limited liability company, DOE
INDIVIDUALS I-X, DOE CORPORATIONS I-X,
and DOE LIMITED LIABILITY COMPANIES I-X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

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

**THE CITY OF LAS VEGAS'
OBJECTION TO THE DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATIONS**

HEARING REQUESTED

Pursuant to EDCR 2.34(f), Defendant City of Las Vegas (the "City") hereby submits this
objection ("Objection") to the Discovery Commissioner's July 7, 2020 Report and
Recommendations ("DCRR"), a copy of which is attached hereto as **Exhibit A**.

The City objects to the DCRR because the Discovery Commissioner (i) ignored the
agreement the City and Plaintiff 180 Land Co LLC ("180 Land") had reached regarding the use of
the documents 180 Land has withheld on the basis of confidentiality (the "Confidential

1 Information”) in current Badlands inverse condemnation cases between the City and 180 Land and
2 (ii) erroneously stayed the responses owed to written discovery by plaintiff Seventy Acres, LLC
3 (“Seventy Acres”)¹ to allow Seventy Acres to file a motion to dismiss with the Court and remove
4 itself as a party.

5 180 Land and the City agreed that the parties could use the Confidential Information
6 identified on 180 Land’s privilege log in *all* of the Badlands inverse condemnation cases that
7 involved the City and 180 Land and/or its affiliates. Despite this clear agreement, the Discovery
8 Commissioner limited the City’s use of the Confidential Information to this case only. This
9 recommendation would result in the City needlessly having to serve discovery requests for the very
10 same Confidential Information in each of the four Badlands inverse condemnation cases. As set
11 forth in detail below, when the parties were negotiating the protective order that 180 Land requested
12 to protect the Confidential Information, 180 Land expressly agreed that the City could use the
13 Confidential Information in all of the Badlands inverse condemnation cases because it is non-
14 sensical for the City to be required to separately requests documents already in its possession.
15 Accordingly, the City respectfully requests the Court reject the Discovery Commissioner’s
16 recommendation that the City is precluded from using the Confidential Information in the other
17 three inverse condemnation cases that involve the City and 180 Land and/or its affiliates.

18 Further, the City respectfully requests the Court reject the Discovery Commissioner’s
19 recommendation that stayed Seventy Acres’ responses to the interrogatories, which Seventy Acres
20 will argue voids its discovery obligations altogether. The City served the interrogatories on Seventy
21 Acres on **December 12, 2019**; thus, although Seventy Acres is now no longer a party, at the time
22 of service and at the time Seventy Acres’ responses were due, Seventy Acres was a plaintiff in this
23 matter and required to fulfill its discovery obligations. Importantly, Seventy Acres had not acquired
24 a protective order or any other order relieving it of its obligation to respond and, as determined by
25 the Discovery Commissioner, had not set forth any valid objection to support any refusal to respond

26 _____
27 ¹ 180 Land, Seventy Acres and Fore Stars, Ltd. (“Fore Stars”) are collectively referred to
28 herein as either “Plaintiffs” or “Developer.” All entities are represented by the same counsel.

1 to the discovery. Accordingly, the Discovery Commissioner erred in recommending a stay of
2 Seventy Acres' responses. Because Seventy Acres was a party at the time it was to respond to the
3 written discovery, the Court should, respectfully, reject the Discovery Commissioner's
4 recommendation, and order Seventy Acres to substantively respond to the interrogatories.

5 This Objection is supported by the following Memorandum of Points and Authorities, the
6 City of Las Vegas' Motion to Compel Discovery and accompanying exhibits ("Motion to Compel")
7 and the subsequent briefing, and any argument the Court may entertain at any hearing on this matter.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. FACTUAL AND LEGAL ARGUMENT**

10 Pursuant to EDCR 2.34(f)(1), "[w]ithin 14 days after being served with a report, a party
11 may file and serve written objections to the recommendations. Points and authorities may file and
12 serve written objections to the recommendations." See EDCR 2.34(f)(1). The Discovery
13 Commissioner served the DCRR on July 7, 2020. See **Ex. A**. Accordingly, this Objection is timely.

14 **A. 180 Land Agreed That The City Could Use The Confidential Information In**
15 **The Other Inverse Condemnation Cases In Which Both The City And 180 Land**
16 **And Its Affiliates Were Parties.**

17 July 2, 2019 – *over a year ago* – the City served Requests for Production of Documents
18 ("Requests for Documents") on 180 Land. See Motion to Compel at 008-020,² attached as **Exhibit**
19 **B** and incorporated herein as if set forth in full. To date, 180 Land still has not fully responded to
20 the Requests for Documents. Instead, after 180 Land requested several extensions and the City
21 continued to try and work with 180 Land to obtain the responsive documents, on October 31, 2019,
22 180 Land requested the City enter into a stipulated protective order to allow 180 Land produce the
23 Confidential Information. See Motion to Compel at 002-003, ¶¶ 6-14 and at 098. Although the
24 City did not need a protective order, from October 31, 2019 to December 11, 2019, the City worked
25 diligently with 180 Land to finalize a stipulated protective order. *Id.*, ¶¶ 18-19 at 004; 113-114 and
26 130-133.

27
28 ² The referenced numbers are the required Bates numbers in the lower right-hand corner of
the document pursuant to EDCR 2.27 to assist the Court in easy reference to the evidentiary support.

1 The City and 180 Land agreed on the majority of the provisions in the proposed stipulated
2 protective order, including and relevant here: “All CI [Confidential Information] produced by
3 180 Land in the 35-acre case may be used (subject to the Stipulated Protective Order) in any
4 of the four inverse condemnation cases.” *Id.* at 132 (emphasis added). 180 Land’s counsel was
5 clear in its stipulation and agreement. *Id.* at 130.

6 Specifically, on December 3, 2019, the City’s counsel set forth three bullet points on the
7 outstanding issues for the stipulated protective order:

8 From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
9 Sent: Tuesday, December 03, 2019 4:45 PM
10 To: Autumn Waters <autumn@kermittwaters.com>
11 Subject: RE: 35 acre discovery

12 Autumn,

13 I had the opportunity to speak with the City. What I propose below re use of claimed CI in
14 other cases is acceptable to the City. So, I see this as having three parts:

- 15 • All CI produced by 180 Land in the 35-acre case may be used (subject to the Stipulated
16 Protective Order) in any of the four inverse condemnation cases.
- 17 • If the City wants to use CI produced by 180 Land in the 35-acre case in non-inverse cases
18 in which the City and 180 Land (or its affiliates) are adverse, the City would give 180
19 Land notice of its intention, and 180 Land would have the opportunity to seek a
20 protective order in the case in which the City intends to use the CI.
- 21 • If the City wants to use CI produced by 180 Land in the 35-acre case in any other case,
22 the City could seek a modification of the Stipulated Protective Order in the 35-acre case.

I also discussed my concern re the language you propose if the City receives a Public Records Request. Your language, "are not public records and are confidential pursuant to court order", cannot be used, but I don't see that the practical effect of the language the City proposed is any different than what you proposed. Again, the City proposes responding that the documents are confidential pursuant to court order. If litigation ensued, the City would oppose the request, invite your clients to intervene, and comply with the court order.

I am available to discuss tomorrow. Let me know if you are. Thanks.

George

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | E: gogilvie@mcdonaldcarano.com

Notably, 180 Land *agreed* to the first bullet point:

From: Autumn Waters [<mailto:autumn@kermittwaters.com>]

Sent: Wednesday, December 4, 2019 3:33 PM

To: George F. Ogilvie III <gogilvie@McDonaldcarano.com>

Subject: RE: 35 acre discovery

Hi George,

I have spoken with my clients. We are good with the first bullet point. However, the second and third bullet point are problems.

As for the second bullet point, this is what my client proposes:

- If the City wants to use CI produced by 180 Land in the 35-acre case in non-inverse cases in which the City and 180 Land (or its affiliates) are adverse, the City will need to go THROUGH THE ORDINARY COURSE OF DISCOVERY in each case and the parties will address it THROUGH THE DISCOVERY PROCESS IN THE RESPECTIVE MATTER.

As for the third bullet point, while I recognize this may be a vehicle the City has available to it, my client is not willing to stipulate that the Protective Order could be modified. Is this necessary?

As for the public records, this should work, we just need to add language that nothing will be produced "upon request" AND will be opposed if court intervention is sought. Meaning the City will not produce the documents if the Landowner intervenes but instead will hold the documents until the court orders one way or the other.

Are you available tomorrow anytime between 10-2? Let me know and I will give you a call to discuss further.

Thank you

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Law Offices of Kermitt L. Waters
704 South Ninth Street
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tel: (702) 733-8877
fax: (702) 731-1964

1 *Id.* at 130-132 (highlight added).

2 Accordingly, 180 Land unquestionably and unequivocally agreed that the City may use the
3 Confidential Information that 180 Land produces in this matter in all inverse condemnation cases
4 in which both the City and 180 Land are parties. *Id.* The other three inverse condemnation cases
5 are: (i) Eighth Judicial District Court Case No.: A-18-780184-C; (ii) United States District Case
6 No. A-19-cv-01469-JAD-NJK; and (iii) United States District Court Case No.: 2:19-cv-01470-
7 RFB-BNW.³

8 Significantly, 180 Land did not this issue to the Discovery Commissioner in opposition to
9 the City’s Motion to Compel. *See* Motion to Compel, **Ex. B**; *see also* Plaintiffs’ Opposition to
10 Defendant City of Las Vegas’ Motion to Compel Discovery (“Opp. to Motion to Compel”),
11 attached as **Exhibit C**. And, importantly, 180 Land’s counsel admitted to the Discovery
12 Commissioner that 180 Land had agreed to allow the City to use the documents in the other inverse
13 condemnation cases. *See* April 16, 2020 Transcript of Proceedings (“April 16 Tr.”) at 10:23-24,
14 (“MS. GHANEM HAM: . . . So I want to be clear, as well, **we did agree to allow them to use it in**
15 **other – even in other inverse cases.**”) and 18:15-16 (“**So we have already agreed to allow them**
16 **to use it in other inverse condemnation matters.**”), relevant portions attached as **Exhibit D**
17 (emphasis added). Despite this agreement and the plain fact that it was not an issue that the
18 Discovery Commissioner needed to consider, the Discovery Commissioner erroneously
19 recommended that the Confidential Information may be used in this litigation only.⁴ *See* DCRR at
20 ¶¶ 9 and 10 and 3:23-24, **Ex. A**.

21
22
23 ³ The parties’ agreement to use the Confidential Information in the other three inverse
24 condemnation cases comports with the spirit of Nevada’s procedural rules, which “allows the
25 district court to eliminate redundant or disproportionate discovery and reduce the amount of
26 discovery that may be directed to matters that are otherwise proper subjects of inquiry.” *See*
27 Advisory Committee Note – 2019 Amendment to NRCPP 26. Moreover, Rule 26(b)(2)(C) of the
Nevada Rules of Civil Procedure specifically states that a court “must limit the frequency or extent
of discovery” particularly if the discovery sought “is cumulative or duplicative, or can be obtained
from some other source that is more convenient, less burdensome, or less expensive. *See* NRCPP
26(b)(2)(C).

28 ⁴ The Discovery Commissioner also erroneously states that the City requested a “blanket
protective order.” *See* DCRR at 2:23-24, **Ex. A**. Not so. A review of the Motion to Compel

1 Overruling this recommendation will therefore comport with the parties’ agreement and will
2 assist in conserving the parties’ resources and promote efficiency in the other inverse condemnation
3 cases since the parties and the subject property are the same. Specifically, both 180 Land and the
4 City are adverse in the three other cases and all of the cases concern allegations by 180 Land
5 regarding the City’s actions related to various portions of the 250 acres commonly known as the
6 “Badlands Property.” *See* Plaintiff Landowners’ Opposition to Defendant City of Las Vegas’
7 Motion to Strike at 2:18-21, relevant portions attached as **Exhibit E**.

8 Indeed, in Case No.: A-18-780184-C, 180 Land represented to the court that “[t]he subject
9 matter is the same in all four cases, namely, **the taking facts in all four cases are nearly identical.**”
10 *Id.* Further, 180 Land argued that this case will set the stage for the other three cases and even
11 sought a stay of the other three cases to conserve resources:

12 The 35 Acre Property case will, therefore, set the stage for liability for the
13 three other inverse condemnation cases (17, 65, and 133 Acre Property cases).
14 Thus, for reasons of judicial consistency, efficiency, and economy, a stay should be
entered in this case until such time as Judge Williams determines liability in the 35
Acre Property case.

15 *Id.* at 3:6-9. Clearly, allowing the City to use the Confidential Information produced in this case in
16 the other three cases, which 180 Land has argued are related to the same subject matter with “nearly
17 identical” facts to this case, will promote efficiency and economy. Accordingly, because the parties
18 agreed⁵ that the City could use the Confidential Information in the other inverse condemnation
19 cases and because the preclusion recommended by the Discovery Commissioner would needlessly
20 duplicate discovery between the same parties relating to the same property in the four cases, the
21 City respectfully requests the Court overrule the Discovery Commissioner’s recommendation.

22

23

24 demonstrates that the City merely requested that the protective order include language that would
25 allow the City to seek a modification of the protective order from the Court and/or allow the City
to notify 180 Land of its intention to use the documents in non-inverse cases and provide 180 Land
the opportunity to seek a protective order.

26

27

28

⁵ The Discovery Commissioner recognized that “[i]f the parties can work out something
where they can utilize them in other cases, that’s fine.” *See* April 16 Tr. at 10:23-24, **Ex. D**. Here,
the parties had worked out an agreement to allow the City to use the Confidential Information in all
of the inverse condemnation cases; yet, the Discovery Commissioner made a recommendation
contrary to that agreement.

B. Seventy Acres Should Be Compelled To Respond To The Written Discovery.

On December 12, 2019, prior to the Court’s dismissal of Seventy Acres as a plaintiff in this action, the City served six interrogatories on Seventy Acres. *See* Motion to Compel at 137-142, **Ex. B.** Seventy Acres never responded to the interrogatories and has now been dismissed from the case. Respectfully, the City requests the Court reject the Discovery Commissioner’s recommendation that Seventy Acres’ responses were stayed until the DCRR became a final order of the Court. *See* DCRR at 4:1-5, **Ex. A.** In effect, the Discovery Commissioner stayed the responses to allow Seventy Acres to file a motion to dismiss and be removed as a plaintiff in this action. *Id.*, ¶12 (“180 Land’s counsel argued that Seventy Acres was incorrectly added as a plaintiff in this action, and that Seventy Acres did not have any interest in the litigation and requested a stay until a Motion to Dismiss could be considered by the Court.”). This was in error because, at the time the City served the interrogatories, Seventy Acres: (i) was a plaintiff in this action; (ii) had not acquired – nor sought – a protective order or any order authorizing it to not respond; and (iii) did not provide any valid objection – as determined by the Discovery Commissioner – that would support its refusal to respond to the interrogatories.

For context, on December 12, 2019, the City served Seventy Acres with its First Set of Interrogatories to Plaintiff Seventy Acres, LLC, which consisted of six interrogatories. *See* Motion to Compel at 137-142, **Ex. B.** On January 13, 2020, Seventy Acres objected to each interrogatory by claiming that the City had exceeded its allowable interrogatories because the City had served its co-plaintiff, 180 Land, with interrogatories. *Id.* at 141:7-12. Seventy Acres did *not* object to a single interrogatory on the basis that it was inadvertently included as a plaintiff in this action. *Id.* at 141-142.

On January 15, 2020, the City’s counsel conducted a meet and confer regarding Seventy Acres’ objections and position that the City cannot propound interrogatories on Seventy Acres and/or co-plaintiff Fore Stars because it already served discovery on 180 Land. *Id.* at 007, ¶ 34. Because the Plaintiffs had unnecessarily protracted discovery in this matter and effectively stonewalled the City’s attempts to obtain the discovery necessary to litigate Plaintiffs’ claims, in order to expedite its receipt of Seventy Acres’ responses, the City agreed to 180 Land’s proposal

that 180 Land would respond to the interrogatories served on Seventy Acres in return for 180 Land having an additional six interrogatories to serve on the City. *Id.*, ¶ 35. Notwithstanding this accommodation, the City disagreed that it was precluded from serving interrogatories on Seventy Acres and sought to compel Seventy Acres' responses to the interrogatories. *See* Motion to Compel, **Ex. B.**

In its opposition to the Motion to Compel, Seventy Acres again stood on its objection and argued that because the City had already served interrogatories on 180 Land, it was precluded from serving interrogatories on any other plaintiff. *See* Opp. to Motion to Compel at 9:17-10:20, **Ex. C.** Again, Seventy Acres did *not* argue that it should not be compelled to respond because it was inadvertently added as a plaintiff in the matter. *Id.*

During the hearing on the Motion to Compel, Seventy Acres raised to the Discovery Commissioner, *for the first time*, that it should not have to respond to the interrogatories because it was inadvertently added as a party by its counsel. *See* April 16 Tr. at 21:10-22:4, **Ex. D.**⁶ In response, the Discovery Commissioner correctly noted that Seventy Acres was still a party and "there's no countermotion for protection that I see with regard to that. They're still a party. And as long as they are still a party to the litigation, I'm going to allow the discovery to them." *Id.* at 22:9-12. The Discovery Commissioner also stated that if there was a motion to dismiss filed, then she would take that into account, "[b]ut that hasn't happened at this point. So based on that, I'm going to allow the discovery to go forward to them at this point." *Id.* at 22:13-19. In other words, because Seventy Acres was still a party, Seventy Acres was obligated to respond to the written discovery. In response, Seventy Acres' counsel requested a stay, which the Discovery Commissioner granted. *Id.* at 23:7-8 and 27:6-14. The Discovery Commissioner's recommendation of a stay was in error.

As the following timeline demonstrates, Plaintiffs were dilatory in seeking to remove Seventy Acres from this case and Seventy Acres should have responded to the interrogatories while

⁶ Interestingly, Seventy Acres' counsel finally admitted that Seventy Acres agreed with the analysis that interrogatories are allowed "per party." *See* April 16. Tr. at 21:9-10, **Ex. D.** This admission was directly contrary to the position Seventy Acres and its counsel had taken since being served with the interrogatories.

it was still a party to the case:

<u>Date</u>	<u>Event</u>
May 15, 2019	180 Land amends its complaint to include Seventy Acres as a plaintiff. <i>See</i> Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation.
December 12, 2019	The City propounds the interrogatories on Seventy Acres. <i>See</i> Motion to Compel at 006, ¶ 30, Ex. B.
January 13, 2020	Seventy Acres objects to the interrogatories and does not substantively answer any of the six interrogatories. <i>Id.</i> at 137-143.
January 28, 2020	Because Seventy Acres failed to respond to the interrogatories and did not provide any valid basis for its failure to do so, the City filed a motion to compel in federal court. <i>See</i> Motion to Compel, fn. 2, Ex. B.
February 19, 2020	The Federal Court filed its Order of Remand.
February 26, 2020	The City filed its Motion to Compel in state court.
April 16, 2020	The Discovery Commissioner held a hearing on the City's Motion to Compel.
April 28, 2020	Plaintiffs finally filed a motion to dismiss Seventy Acres – almost a year after Seventy Acres was added as a plaintiff, almost five months after the City served Seventy Acres with the interrogatories, three months after the City filed its original motion to compel and almost two weeks after the Discovery Commissioner's hearing.
May 14, 2020	The Court held a hearing on the motion to dismiss and dismissed Seventy Acres from the action.

As the above timeline proves, Seventy Acres was a party to this matter when the City served Seventy Acres with the interrogatories and remained a party for over five months *after* the City had served the interrogatories. Seventy Acres *never* objected to the interrogatories on the basis that it had been inadvertently included as a plaintiff in this matter; instead, resting on the erroneous claim that the City had exceeded its allowable number of interrogatories because it had served discovery on its co-plaintiff. *See* Motion to Compel at 137-142, **Ex. B.** Accordingly, while the Discovery Commissioner was correct in her finding that a party to a case must respond to written discovery; she was incorrect in staying the responses until Plaintiffs filed a motion to dismiss Seventy Acres.

1 Rule 33(b)(1)(A) and (2) of the Nevada Rules of Civil Procedure expressly states that
2 interrogatories “must be answered...by the party to whom they are directed [and] [t]he responding
3 party must serve its answers and any objections within 30 days after being served with the
4 interrogatories.” And simply because Seventy Acres has now been dismissed from this matter does
5 not alter the plain facts and timeline as shown above. Plaintiffs’ counsel added Seventy Acres as a
6 party to this case on May 15, 2019, the City served its discovery on Seventy Acres on December
7 12, 2019 and Seventy Acres did not seek to be dismissed from this case until April 28, 2020.
8 Pursuant to Rule 33 of the Nevada Rules of Civil Procedure, the Discovery Commissioner should
9 have compelled Seventy Acres to respond to the interrogatories. Accordingly, the City respectfully
10 requests the Court overruled the Discovery Commissioner’s recommendation for a stay of the
11 responses and compel Seventy Acres to respond to the interrogatories.

12 **II. CONCLUSION**

13 The Discovery Commissioner incorrectly recommended that the City could use the
14 Confidential Information in this case only. In upholding the spirit of Nevada’s procedural rules,
15 the parties agreed that the Confidential Information produced in this matter could also be used in
16 the three other inverse condemnation cases. Accordingly, the Court should reject the Discovery
17 Commissioner’s recommendation, and order that the Confidential Information may also be used in
18 (i) Eighth Judicial District Court Case No.: A-18-780184-C; (ii) United States District Case No. A-
19 19-cv-01469-JAD-NJK; and (iii) United States District Court Case No.: 2:19-cv-01470-RFB-BNW
20 without the parties having to engage in any formal written discovery requests.

21 In addition, the Court should also overrule the Discovery Commissioner’s recommendation
22 regarding Seventy Acres. Seventy Acres was a plaintiff in this matter when its responses to the
23 interrogatories were due; it had not acquired a protective order or provided any valid basis to refuse
24 to respond to the interrogatories; thus, the Discovery Commissioner erred in recommending a stay
25 of Seventy Acres’ responses. Therefore, the City respectfully requests the Court reject the
26 Discovery Commissioner’s recommendation that Seventy Acres’ responses were stayed and
27 compel Seventy Acres to respond to the discovery.
28

Respectfully submitted this 10th day of July, 2020.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 10th day of July, 2020, I caused a true and correct copy of the foregoing **THE CITY OF LAS VEGAS' OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION** to be 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, and as referenced below to the following:

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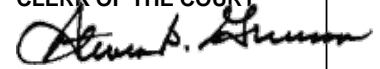
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Exhibit 9

City's Reply re Motion to Compel



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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability
company, FORE STARS, LTD., a Nevada limited
liability company and SEVENTY ACRES, LLC, a
Nevada limited liability company, DOE
INDIVIDUALS I-X, DOE CORPORATIONS I-X,
and DOE LIMITED LIABILITY COMPANIES I-X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of
the State of Nevada; ROE GOVERNMENT
ENTITIES I-X; ROE CORPORATIONS I-X; ROE
INDIVIDUALS I-X; ROE LIMITED-LIABILITY
COMPANIES I-X; ROE QUASI-
GOVERNMENTAL ENTITIES I-X,

Defendants.

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

**THE CITY OF LAS VEGAS' REPLY
IN SUPPORT OF ITS MOTION TO
COMPEL AND FOR AN ORDER TO
SHOW CAUSE**

Hearing Date: September 1, 2020
Hearing Time: 9:00 a.m.

I. INTRODUCTION

The Developer's Opposition to Defendant City of Las Vegas' Motion to Compel and For An Order To Show Cause ("Opposition") fails procedurally and substantively. As a threshold matter, procedurally, under Rule 45(a)(4)(B)(ii) of the Nevada Rules of Civil Procedure, the Developer had to serve an objection and file a motion for a protective order within 7 days after being served with the COR Notice; the Developer did not object and did not file a motion for a protective order. Accordingly, the Developer is five months too late to file an objection (in the

1 form of its Opposition) to the City's third-party subpoena and thus lacks standing to bring *any*
2 opposition. On this basis alone, the Developer's Opposition must be stricken and/or disregarded.

3 Substantively, the Developer does not present a single argument as to why the City's Motion
4 should be denied. As the evidence attached to the Motion underscores, the City conducted multiple
5 meet and confers with Peccole-Nevada's counsel, worked with Peccole-Nevada and its counsel to
6 provide reasonable expectations for the production of the responsive documents during the
7 uncertainty of COVID-19, and narrowed its COR Subpoena per Peccole-Nevada's request.
8 Peccole-Nevada, multiple times, represented that it had documents and would be producing them
9 in a week or days. Yet, despite the multiple representations that documents would be forthcoming,
10 Peccole-Nevada has only produced one document in response to the COR Subpoena.

11 In addition, and contrary to the misrepresentation by the Developer, no protective order has
12 been agreed to or imposed in this matter, much less one that governs the documents requested from
13 third-party Peccole-Nevada. **Moreover, the documents requested from Peccole-Nevada are not**
14 **proprietary, confidential or sensitive, and at no time has Peccole-Nevada or the Developer**
15 **made that argument, much less that demonstration.** Again, neither the Developer, nor Peccole-
16 Nevada, ever sought, much less obtained, a protective order. Thus, no protective order exists and
17 no justification exists for a protective order relative to Peccole-Nevada's documents. Accordingly,
18 the Developer's argument that the City should have complied with a protective order has no basis
19 in the reality of this case.

20 The Developer's arguments rest on half-truths and a complete lack of review of the
21 documentary evidence attached to the Motion. For example, the Developer repeatedly castigates
22 the City for not narrowing the COR Subpoena per Peccole-Nevada's request; however, the exhibits
23 attached to the Motion demonstrate just that – Peccole-Nevada requested the City attempt to narrow
24 its request and the City did. The Developer was unable to find a single argument to defend against
25 the City's Motion and thus resorts to (i) a misrepresentation of the history of the COR Subpoena;
26 (ii) a misrepresentation as to the effect of various Administrative Orders on the COR Subpoena;
27 and (iii) including generalities that lack any evidentiary support. Yet, despite this, the Developer
28 asks the Court to be awarded its (and Peccole-Nevada's) attorney's fees. The Developer should not

be rewarded for its failure to follow Rule 45, failure to review the exhibits attached to the Motion and presentation of misstatements to the Court. To that end, the City respectfully requests the Court grant its Motion in full, sanction Peccole-Nevada for failing to comply with the COR Subpoena (tellingly, Peccole-Nevada did not file an Opposition to the Motion), and award the City's its fees and costs from Peccole-Nevada associated with the COR Subpoena Motion and award the City its fees and costs from the Developer and/or its counsel associated with having to reply to and defend against the Developer's frivolous Opposition.

II. PROCEDURALLY, THE DEVELOPER LACKS STANDING TO FILE ITS OPPOSITION, WHICH SHOULD BE STRICKEN AS A ROGUE DOCUMENT

"To invoke the protections of [Rule 45], the objecting party must file and serve written objections to the subpoena and a motion for protective order under Rule 26(c) within 7 days after being served with notice and a copy of the subpoena under Rule 45(a)(4)(A)." *See* NRCP 45(a)(4)(B)(ii) (emphasis added). As stated in the Advisory Committee Note – 2019 Amendment, Rule 45 mandates that the issuing party provide 7 days' notice to the other parties to allow a party to file a "**timely** objection and a motion for a protective order asserting that the subpoena calls for disclosure of privileged, confidential, or other protected matter." *See* NRCP 45, Advisory Committee Note – 2019 Amendment (emphasis added). In other words, only a timely objection and motion for protective order "stays service of the subpoena until the court rules on the objection and motion" and a timely motion must be filed within 7 days after service of the notice and copy of the subpoena. *See* NRCP 45, Advisory Committee Note – 2019 Amendment; *see also* NRCP 45(a)(4)(B)(iv).

In accordance with Rule 45(a)(4), on March 6, 2020, the City served the COR Notice for Peccole-Nevada on the Developer to allow the Developer to object to and seek the issuance of a protective order against the Subpoena Duces Tecum should it want to do so. *See* COR Notice, Ex. B to the Motion. **The Developer did not object to the COR Notice, and the Developer also chose not to file any motion for a protective order.** Ogilvie Decl., ¶ 6, Ex. A to the Motion. Importantly, the Developer did not object and/or move for a protective order because no basis exists to assert that the COR Subpoena calls for any disclosure of privileged, confidential, or other

1 protected matter. A review of the COR Subpoena demonstrates that the documents requested are
2 not privileged, confidential or protected. *See* COR Notice at Ex. B to the Motion.

3 Accordingly, because the Developer did not object to the COR Notice and did not file a
4 motion for a protective order, the City properly served the 30(b)(6) Subpoena and the COR
5 Subpoena, which is the subject of the Motion. *See* Affidavits of Service, Ex. C to the Motion.
6 Because the Developer did not serve any timely objection and/or file any motion for a protective
7 order, the Developer lacks standing to oppose the Motion and its Opposition must be stricken. *See*
8 Opposition at 3:13-15 (admitting that the Developer “did not serve formal objections or file a
9 motion for protective order” over the COR Notice).

10 Regardless, and notwithstanding the admission that the Developer did not comply with Rule
11 45, the Developer’s attempts to explain why it chose not to serve any objection or file a motion for
12 a protective order ring hollow. Specifically, the Developer sets forth a timeline of the Governor’s
13 emergency directive and claims that the “uncertainty and difficulties that subsequently ensued over
14 the coronavirus pandemic” led to the Developer’s decision to not serve a “formal” objection or file
15 a motion for protective order. *Id.* at 3:9-15. The Developer does not provide any specifics as to the
16 uncertainties and/or difficulties; including only unsupported generalities. *Id.* And, it is worthy to
17 note that the Developer had 6 days *before* the emergency directive to take action, but it chose not
18 to do so. Further, nothing in the emergency directive precluded the Developer from serving an
19 objection. The Developer’s reliance on the emergency directive – issued 6 days after service of the
20 COR Notice – does not excuse its failure to simply serve an objection to the COR Notice.

21 Moreover, the Developer did not just fail to serve a “formal” objection, but it failed to serve
22 even an “informal” objection. Indeed, despite ample opportunity to do so, the Developer did not
23 raise the COR Subpoena with the City until three months after service (June 8) and it did so only
24 by copying the City’s counsel on an email to Peccole-Nevada’s counsel. *See* June 8, 2020 email,
25 Ex. G to the Motion. Significantly, on March 10, 2020, **within the 7-day period for the Developer**
26 **to object to the COR Notice**, the Developer’s counsel – James Leavitt, Autumn Waters and
27 Elizabeth Ham, along with EHB Companies’ other in-house counsel, Todd Davis – all participated
28 in a telephonic meet and confer with the City’s counsel that lasted almost two hours and **never even**

1 **raised the issue of the COR Notice**, much less objected to it. *See* Declaration of George F. Ogilvie,
2 III, Esq., ¶ 3, **Exhibit A**; *see also* March 10, 2020 email, **Exhibit B** (demonstrating the participants
3 and broad issues discussed during the March 10, 2020 meet and confer).¹ Nothing precluded any
4 of the Developer’s counsel from raising the COR Notice with the City’s counsel on March 10, 2020
5 – they simply chose not to object within the 7-day period. And nothing in the Governor’s
6 emergency directive issued on March 12 prevented them from doing so on March 10.²

7 Because the Developer made the choice to not object to and/or file a motion for a protective
8 order, it cannot now oppose the City’s motion to compel. *See* NRCP 45(a)(4)(B)(ii). The time for
9 the Developer to take any action has long since passed and, under the mandates of Rule 45, the
10 Court must disregard the Developer’s Opposition. The Developer should not be rewarded for its
11 complacency, its disregard for Rule 45 and its attempts to circumvent Nevada’s procedural rules.

12 **III. SUBSTANTIVELY, THE DEVELOPER’S OPPOSITION DOES NOT PROVIDE A**
13 **SINGLE BASIS FOR THIS COURT TO DENY THE CITY’S MOTION**

14 The Developer’s substantive arguments are based on misstatements, are contrary to the
15 documentary evidence presented to the Court and/or are empty arguments for which the Developer
16 did not provide any support.

17 ...
18 ...
19 ...

21
22 ¹ The Developer’s counsel was also in touch with the City’s counsel on March 12, 2020,
23 responding to the City’s inquiry as to whether the Developer intended on filing an opposition to the
24 City’s motion to compel since the deadline to file an opposition had passed. *See* March 12, 2020
25 email, **Exhibit C**. It appears that the Developer simply allows deadlines to come and go without
taking any action, as was done with the COR Notice and 30(b)(6) Notice. *See* City’s Status Report
for the August 19, 2020 Status Conference at 5:21-6:8 (discussing the Developer’s failure to
respond *at all* to a second set of requests for production of documents).

26 ² The Developer also mentions Administrative Order 20-01 (“AO 20-01”), which the Chief
27 Judge issued on March 13, 2020. *See* Opposition at 3:19-26. However, as admitted by the
28 Developer, AO 20-01 was issued “the day the [Developer’s] 7-day period to object to the subpoena
duces tecum ran under NRCP 45(4) [sic].” *Id.* at 3:19-20. Thus, nothing about AO 20-01 (or any
other Administrative Order that was issued after the 7-day period had run) has any bearing on
whether or not the Developer timely objected between March 6-13, 2020.

A. The Developer's Representations On Peccole-Nevada's Behalf Lack Merit (And Standing) And The Developer Failed To Provide Any Evidence To Support Its Representations

The Developer attempts to step into Peccole-Nevada's shoes and make representations on its behalf. *See* Opposition at 4:12-16 (claiming that the Peccole-Nevada made good faith efforts to comply with the City's requests despite the pandemic and administrative orders);³ *see also* at 5:17-6:6. However, the Developer does not provide any supporting evidence⁴ to support its "representations." *See generally* Opposition. *Id.* And contrary to the Developer's misstatement that Peccole-Nevada has produced "some responsive documents," the plain fact remains that Peccole-Nevada has provided only one document in response to the COR Subpoena served on March 19, 2020 despite the many representations from its counsel that it had documents to produce. *See* Opposition at 5:22-23; *see also* Motion at 5:25-26 and 9:11-12; April 28, 2020 email chain at 040, Ex. D to the Motion (Peccole-Nevada's counsel represented that he "should have some documents by no later than mid next week [the week of May 4]."); May 27, 2020 email, Ex. E to the Motion (Peccole-Nevada's counsel represented that "I actually do have some documents. I should have them to you in a couple days."); July 21, 2020 email, Ex. H to the Motion (Peccole-Nevada's counsel emailed the City's counsel that Mr. Bayne would send him "some things" and that he would therefore give the City some documents on Wednesday, July 22).

In addition, the documentary evidence provided by the City in support of its Motion unequivocally demonstrates that the City repeatedly attempted to work with and compromise with

³ While the Developer cites several Administrative Orders, importantly, the City served the COR Subpoena on Peccole-Nevada *before* Administrative Order 20-09 ("AO 20-09"). *See* Affidavits of Service, Ex. C to the Motion. Thus, the City was in full compliance with all administrative orders and did not violate AO 20-09. In addition, as the exhibits attached to the Motion underscore, the City fully accommodated Peccole-Nevada's requests and relied on Peccole-Nevada's counsel's many representations that documents were forthcoming. *See* Exs. A, D, E, F and H to the Motion.

⁴ The Developer filed a supplement six days after the deadline for it to file its Opposition, which included an affidavit from Donald "Butch" Williams, Peccole-Nevada's counsel. *See* Supplement to Plaintiffs' Opposition to Defendant City of Las Vegas' Motion to Compel and for Order to Show Cause ("Supplement") filed on August 24, 2020. The affidavit merely stated that Peccole-Nevada had made good faith efforts to comply with the COR Subpoena and that he received emails from the Developer's counsel on June 8 and July 22 that the requested documents were (erroneously) under a protective order and that the Developer objected to disclosure. *Id.*

1 Peccole-Nevada. *See* Exs. A, D, E, F and H to the Motion. The Developer harps on a statement
 2 from Peccole-Nevada’s counsel on July 20, 2020 that it would take Peccole-Nevada “over twenty
 3 hours” to download the requested documents. *See* Opposition at 5:24-26; *see also* Ex. F to the
 4 Motion. However, the Developer conveniently ignores the evidence that the City attempted to work
 5 with Peccole-Nevada on downloading the documents and that Peccole-Nevada had more than
 6 twenty hours to download the documents since it had received the COR Subpoena on March 19.
 7 The Developer also focuses on Peccole-Nevada’s request that the City narrow its request but, yet
 8 again, the Developer omits from the Court the fact that the City *did* narrow its request in an attempt
 9 to work with Peccole-Nevada. *See* Opposition at 5:26; *see also* Ex. F to the Motion.

10 Accordingly, the City respectfully requests the Court disregard the Developer’s
 11 unsupported and blatant misrepresentations regarding Peccole-Nevada’s actions. The documentary
 12 evidence attached to the Motion simply belies the Developer’s attempt to make these statements on
 13 Peccole-Nevada’s behalf.⁵

14 **B. The Developer Also Failed To Provide Any Support Regarding Its Claim That**
 15 **It Has Attempted To Facilitate Production Of The Requested Documents;**
 16 **Instead, The Evidence Contradicts Such Representations**

16 The Developer also claims – again without support – that it has made good faith efforts to
 17 facilitate the production of the documents. *See* Opposition at 4:17-19 and 9:14-22. However, the
 18 only evidence provided was that the Developer “absolutely objects” to the production of one
 19 document unless the City enters into a protective order – and this email was sent over 3 months
 20 after the Developer had notice of the COR Subpoena. *See* June 8, 2020 email, Ex. G to the Motion;
 21 *see also* Supplement at Ex. 2 (Developer’s counsel on July 22, telling Peccole-Nevada to “hold
 22

23 ⁵ The Developer includes an entire section devoted to the Administrative Orders issued by
 24 the Eighth Judicial District Court in response to the coronavirus pandemic and attempts to disparage
 25 the City and its counsel by incorrectly claiming that the City and its counsel were not acting civilly
 26 or cooperatively. *See* Opposition at 6:7-8:13. However, as evident from the exhibits to the Motion,
 27 the City has never been in violation of an Administrative Order and attempted to work with Peccole-
 28 Nevada’s counsel in all aspects of the production. *See* Exs. A, D, E, F and H to the Motion. Because
 the documentary evidence proves the Developer’s arguments to be completely contradictory to the
 history of this matter, the City need not address the Developer’s Administrative Order section in
 total. *Id.*; *see also* Section III(A), *supra* (addressing the disparaging and incorrect statements by
 the Developer regarding the history of communication with Peccole-Nevada’s counsel and the
 attempts by the City to work with and accommodate Peccole-Nevada at every step).

1 off.”). Accordingly, the City requests the Developer provide to this Court and the City all
2 correspondence between its counsel and Peccole-Nevada and/or its counsel as support for its claim
3 that it has attempted to facilitate production.

4 The Developer also makes much of a nonexistent “protective order” and that the City was
5 required to enter into one. *See* Opposition at 4:17-5:15, fn. 1 and 9:14-21. For a myriad of reasons,
6 the Developer’s reliance on a “protective order” is wholly misplaced. First, and most importantly,
7 neither Peccole-Nevada nor the Developer filed a motion for a protective order over the Peccole-
8 Nevada documents. That should end any question as to whether the Developer’s arguments
9 regarding a “protective order” are valid. The plain and simple fact is that the Developer knew about
10 the COR Subpoena on March 6 and did nothing about it. And Peccole-Nevada knew about the
11 COR Subpoena on March 19 and did nothing about it. Accordingly, withholding any responsive
12 documents pursuant to a non-existence “protective order” does not excuse Peccole-Nevada’s non-
13 compliance.

14 Further, Todd Davis’ June 8 email to Peccole-Nevada’s counsel completely misrepresented
15 the Discovery Commissioner’s minute order. *See* June 8, 2020 email, Ex. G to the Motion. Fatal
16 to Todd Davis’ email are the following salient facts: (i) the Developer did not object to any
17 production of documents under the COR Subpoena; (ii) the Developer still has not filed any motion
18 for a protective order over *any* production of documents, much less the Peccole-Nevada documents;
19 (iii) the question of the subpoenaed documents from Peccole-Nevada was not (and never has been)
20 before the Discovery Commissioner or this Court; (iv) the Discovery Commissioner’s
21 recommendation has absolutely no bearing on the Subpoena Duces Tecum or Peccole-Nevada’s
22 obligations thereunder; and (v) contrary to Todd Davis’ misrepresentation, no protective order
23 exists in this matter; rather, the Discovery Commissioner deemed the documents the City
24 successfully sought to compel *from the Developer* as protected under Rule 26(c) to be used in this
25
26
27
28

case only.⁶ *See* April 16, 2020 Minute Order; *see also* Discovery Commissioner Report and Recommendation at 4:19-24.

Tellingly, the City served the Developer with the COR Notice on March 6 and served Peccole-Nevada with the COR Subpoena on March 19. The Discovery Commissioner did not even hold a hearing on the City’s February 26 motion to compel until April 16. Thus, how could the documents responsive to the COR Subpoena be subject to any protective order when the hearing on the motion to compel was a month later, and neither the Developer, nor Peccole-Nevada, has ever filed a motion for protective order over the COR Subpoena.

In footnote 1 in the Opposition, among other misrepresentations regarding the City’s February 26 motion to compel, the Developer claims that the “parties were to sign a stipulated protective order accordingly.” *See* Opposition at fn. 1. Not true. The Discovery Commissioner did not order the parties to enter into any stipulated protective order; instead, **as the Court is well aware, the Discovery Commissioner recommended that the documents *produced by the Developer* are to be protected under NRCP 26(c) by allowing the City to only use the Developer’s documents in this case only.** *See* Discovery Commissioner Report and Recommendation at 4:19-24. Moreover, if, as the Developer contends, that the documents sought from Peccole-Nevada “were identical to the documents sought from the” Developer, then the Developer should have served a timely objection and filed a motion for protective order. *See* Opposition at fn. 1. It did not and still has not done so.

Finally, the Developer also mentions a July 27, 2020 email from its counsel to the City’s counsel. As stated in the Motion, although Peccole-Nevada indicated that Elizabeth Ham would be contacting the City’s counsel – she did not – Mr. Leavitt reached out as an intermediary to work out a resolution, but the responses he conveyed from his client were not acceptable. *See* Motion at 7:20-24. Those terms are identified in the July 27, 2020 email. *See* July 27, 2020 email, Ex. 2 to the Opposition. In sum, third-party documents to which no party served a timely objection and no

⁶ On August 31, 2020, the Court issued a Minute Order overruling the Discovery Commissioner’s Report and Recommendation finding that “the Court finds that it cannot limit the use of the confidential information to this litigation only.” *See* August 31, 2020 Minute Order.

1 party has ever sought a protective order cannot be subject to a stipulated protective order. The
2 Developer cannot circumvent the Nevada Rules of Civil Procedure and then claim that the City is
3 being unreasonable.

4 **C. Contrary To The Developer's Incorrect Position, The City Met And Conferred**
5 **With Peccole-Nevada's Counsel Multiple Times By Telephone And E-Mail.**

6 It appears that the Developer's counsel either failed to review the City's counsel's
7 declaration in support of the Motion, along with the myriad of emails between the City's counsel
8 and Peccole-Nevada's counsel or, worse, chose to ignore the evidence to disparage the City's
9 counsel and try to make some type of argument to the Court that the City did not engage in a meet
10 and confer prior to filing the Motion. *See* Opposition at 7:14-9:12. The City's counsel's declaration
11 attached as Ex. A to the Motion, however, sets forth the many emails and telephone calls conducted
12 between the City's counsel and Peccole-Nevada's counsel in multiple meet and confer attempts
13 regarding the COR Subpoena, including the City's agreement and attempt to narrow the COR
14 Subpoena, which the Developer completely ignores and argues the opposite to the Court. *See*
15 Opposition at 8:22; *see also* Ogilvie Decl., ¶¶ 8-18 and ¶¶ 21-30, Ex. A to the Motion. Clearly, the
16 City met is obligation under EDCR 2.34.

17 Moreover, the Developer is completely incorrect in its representations as to the effect of the
18 various Administrative Orders on the COR Subpoena. *See* Opposition at 6:12-14 and 7:24
19 (claiming that "all discovery deadlines were stayed until July 1, 2020"). First, as the Court knows,
20 Administrative Order 20-09 ("AO 20-09") precluded the issuance of third-party subpoenas for
21 thirty days following the entry of AO 20-09 unless approved by the Discovery Commissioner. *See*
22 AO 20-09 at 2:25-3:1. And, the City served its COR Subpoena prior to the issuance of the AO 20-
23 09. Despite serving the COR Subpoena before AO 20-09, the City, in good faith, worked with
24 Peccole-Nevada to ameliorate any affect the coronavirus pandemic had or was having on Peccole-
25 Nevada and its counsel. *See* Exs. A, D, E, F and H to the Motion.

26 Second, it was AO 20-09 – not AO 20-17 as represented by the Developer – that stayed
27 discovery; however, it did not stay responses to properly issued and timely subpoenas. *See* AO 20-
28 09 at 4:18-25. Instead, it stayed "pending, unexpired discovery deadlines pursuant to NRCP 31

1 (depositions by written questions), 33 (interrogatories to parties) 34 (producing documents,
2 electronically stored information and stored things, or entering onto land, for inspection or other
3 purposes), and/or 36 (requests for admission) shall be stayed for 30 days from the date of this order.”
4 *Id.* Responses to properly-served subpoenas issued prior to AO 20-09 (such as the COR Subpoena)
5 were never stayed. Regardless, the City consistently attempted to work with Peccole-Nevada and
6 its counsel to address and assist with any impact COVID-19 may have had or was having on its
7 response to the COR Subpoena. And, even if the response to the COR Subpoena was stayed until
8 July 1, 2020, *Peccole-Nevada still has not produced any documents after the July 1, 2020 date and*
9 *has only produced one document to date.*

10 Finally, the Developer ignores the plain fact that Peccole-Nevada’s counsel, *multiple times*,
11 represented to the City that it had responsive documents and intended on producing them. *See* April
12 28, 2020 email chain at 040, Ex. D to the Motion; May 27, 2020 email, and Ex. E to the Motion;
13 July 21, 2020 email, Ex. H to the Motion. Further, Peccole-Nevada never objected to the Subpoena,
14 nor did it assert, because it could not, that any of the documents were confidential, privileged and/or
15 contained proprietary information. Thus, if it was Peccole-Nevada’s position that all discovery
16 was stayed, the City was being unreasonable in its efforts to work with Peccole-Nevada, or that the
17 responsive documents were privileged, confidential and/or contained proprietary information, then
18 Peccole-Nevada would have filed a motion for a protective order; **it did not**. Instead, Peccole-
19 Nevada’s counsel represented on May 27 that “I actually do have some documents. I should have
20 them to you in a couple days.” *Id.* Accordingly, it is apparent from the Declaration of George F.
21 Ogilvie, III, Esq. and the email correspondence that the City met and conferred with Peccole-
22 Nevada multiple times before finally being forced to file the Motion.

23 **IV. PECCOLE-NEVADA FAILED TO FILE ANY OPPOSITION TO THE MOTION**
24 **AND DID NOT DEMONSTRATE WHY AN ORDER TO SHOW CAUSE SHOULD**
25 **NOT BE ISSUED**

26 Peccole-Nevada did not file any opposition to this Motion. Pursuant to EDCR 2.20(e),
27 “[w]ithin 14 days after the service of the motion...the opposing party must serve and file written
28 notice of nonopposition or opposition thereto, together with a memorandum of points and
authorities and supporting affidavits, if any, stating facts showing why the motion...should be

1 denied.” *See* EDCR 2.20(e). If an opposing party fails to file a written opposition, the party’s
 2 failure “may be construed as an admission that the motion...is meritorious and a consent to granting
 3 the same.” *Id.* Although the Developer filed a rogue opposition, Peccole-Nevada has not opposed
 4 the Motion.

5 The City emailed (on July 31, 2020), and provided by hand-delivery (on August 3, 2020), a
 6 copy of the Motion on Peccole-Nevada’s counsel. *See* Certificate of Service Re: The City of Las
 7 Vegas’ Motion to Compel and for an Order to Show Cause filed with the Court on August 3, 2020.
 8 And Peccole-Nevada’s counsel acknowledged receipt of the Motion on July 31, 2020 to the City’s
 9 counsel. *See* Ogilvie Decl., ¶ 4, **Ex. A**. Thus, Peccole-Nevada was fully aware of the Motion and
 10 relief requested. However, Peccole-Nevada did not file an opposition. Accordingly, pursuant to
 11 EDCR 2.20(e), Peccole-Nevada’s failure to oppose “may be construed as an admission that the
 12 motion...is meritorious and a consent to granting the same.” *See* EDCR 2.20(e).

13 **V. CONTRARY TO THE DEVELOPER’S REPRESENTATION TO PECCOLE-NEVADA, THE DEVELOPER HAS NOT PRODUCED THE DOCUMENTS TO**
 14 **THE CITY.**

15 On July 22, 2020, Elizabeth Ham, in-house counsel for the Developer’s parent company,
 16 EHB Companies and co-counsel of record in this matter, represented to Peccole-Nevada’s counsel
 17 regarding the documents responsive to the COR Subpoena that “additionally, these documents,
 18 [were] already produced by us....” *See* Supplement at Ex. 2. Despite this representation, after a
 19 review by the City’s counsel of the documents produced to date by the Developer, it does not appear
 20 that the Developer has produced all documents responsive to the COR Subpoena. *See* Ogilvie
 21 Decl., ¶ 6, **Ex. A**. In addition, the City cannot confirm this statement because it has never been
 22 provided a list of responsive documents to the COR Subpoena to compare with the documents
 23 produced thus far by the Developer. *Id.*

24 Moreover, the City’s counsel can confirm that the requested documents have not been
 25 produced. Specifically, the documents that the Developer has withheld relate to the Developer’s
 26 purchase of the Badlands Property in 2015 and its negotiations and financing for that purchase. The
 27 documents likely contain crucial evidence of the value of the property and the 35-Acre Property
 28 that the Developer carved out of the Badlands before the City imposed the regulation that the

Developer claims effected a taking. As such, the City has been requesting these documents for over a year to no avail.

Regulatory takings claims are divided into two broad categories: per se (also known as “categorical”) takings and *Penn Central* takings. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978)). A per se regulatory taking occurs either when a regulation requires an owner to suffer a permanent physical invasion of her property, or when a regulation “completely deprive[s] an owner of ‘all economically beneficial us[e]’ of her property.” *Lucas*, 505 U.S. at 1019) (emphasis in original)). A *Penn Central* regulatory taking is determined based on a review of several factors; “[p]rimary” among them is “[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.” *Id.* (quoting *Penn Central*, 438 U.S. at 124). “[E]conomic impact is determined by comparing the total value of the affected property before and after the government action.” *Colony Cove Props. v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018) (citing *MHC Fin. Ltd. P’ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013)). Thus, determining liability for both categories of regulatory takings requires assessing the economic impact of the government activity on the property at issue. The documents the Developer has failed to produce will likely shed light on the value of the 35-Acre Property before the regulation was imposed and thus the economic impact of the City’s alleged regulation on the property and the Developer’s expectations when it bought the property.

The Nevada Supreme Court showed that the economic impact of a regulation is central to the determination of liability for a taking in *Kelly v. Tahoe Regional Planning Agency*, 109 Nev. 638, 649, 855 P.2d 1027, 1034 (1993). In that case, the court held that land-use regulations did not effect a taking of a developer’s property, because an evaluation of the *Penn Central* factors revealed that the regulations did not deprive the developer of all economically viable use of his property. *Id.* at 649-50. With respect to the first *Penn Central* factor, the “economic impact of land-use regulations, which includes a valuation analysis,” the court noted that the developer’s lots “remain valuable assets,” based in part on the developer’s own appraiser’s determination that the “lots maintained substantial value.” *Id.* at 651. *Kelly* demonstrates, therefore, that the economic impact

of a regulation is central to determining whether a taking has occurred in the first place, even before reaching the question of damages. *See also Loveladies Harbor, Inc. v. U.S.*, 21 Cl. Ct. 153, 155, 157, 160 (1990), *aff'd*, 28 F.3d 1171 (Fed. Cir. 1994), *abrogated on other grounds as noted in Bass Enters. Prod. Co. v. U.S.*, 381 F.3d 1360 (Fed. Cir. 2004) (determination of takings liability requires comparison of “value of the property before the government action with the value after the government action”).

Once a court decides liability for a regulatory taking based on an analysis of the property values before and after regulation, those same values are used to determine the proper measure of damages. “Damages, in the form of just compensation, are the normal remedy for a takings claim.” *Daniel v. Cty. of Santa Barbara*, 288 F.3d 375, 384 (9th Cir. 2002); *Loveladies Harbor*, 21 Cl. Ct. at 161 (“proper measure of just compensation is said to be the property’s fair market value at the time of the taking.”) (citations omitted). Accordingly, the documents sought by the City go directly to the property’s value before and after the alleged regulatory taking, and it is readily apparent that those documents have not yet been produced and should be produced.

VI. IF ANY FEES ARE WARRANTED, THEY ARE DUE TO THE CITY FOR BRINGING THE MOTION AND FOR DEFENDING AGAINST A ROGUE DOCUMENT FILED BY THE DEVELOPER.

The exhibits attached to the Motion and the Declaration of George F. Ogilvie III, Esq. attached as Ex. A to the Motion underscore the City’s good faith efforts to meet and confer with Peccole-Nevada regarding the COR Subpoena. *See* Exs. A, D, F, G and H to the Motion. Simply because the Developer chooses to ignore the evidence in front of it does not erase the City’s good faith efforts, nor does it absolve Peccole-Nevada from being sanctioned.

In addition, and contrary to the Developer’s argument, Peccole-Nevada has not provided “any adequate excuse” for its failure to respond to the COR Subpoena. *See* Opposition at 10:1-2. In fact, throughout April, May and July, Peccole-Nevada represented that it had documents that would be produced “no later than mid next week [week of May 4]” or “I actually do have some documents. I should have them to you in a couple days” or that “some things” would be given to the City by Wednesday, July 22. *See* April 28, 2020 email chain at 040, Ex. D to the Motion; May 27, 2020 email, Ex. E to the Motion; July 21, 2020 email, Ex. H to the Motion. Importantly, “no

1 adequate excuse” can exist where Peccole-Nevada did not file any motion to quash the COR
2 Subpoena, did not file a motion for protective order and did not object to the COR Subpoena.

3 The documentary evidence proves: (i) the City served the COR Subpoena on Peccole-
4 Nevada on March 19, 2020; (ii) from April to July, 2020, the City worked with Peccole-Nevada to
5 narrow the COR Subpoena and alleviate any impact of COVID-19 on Peccole-Nevada and/or its
6 counsel; (iii) Peccole-Nevada represented multiple times it had documents and was ready to
7 produce them; (iv) neither the Developer, nor Peccole-Nevada, filed a motion for protective order
8 and no protective order is in place; and (v) Peccole-Nevada has only produced one document in
9 response to the COR Subpoena. Accordingly, pursuant to Rule 37(a)(5) of the Nevada Rules of
10 Civil Procedure, the Court should, respectfully, order Peccole-Nevada, its counsel, “or both to pay
11 the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” *See*
12 NRCP 37(a)(5).

13 Finally, the Developer and/or its counsel should be ordered to pay the City’s fees for
14 defending against its Opposition to which it (i) did not have standing to file; (ii) was fraught with
15 misrepresentations, half-truths, and attempts to disparage the City and its counsel; (iii) provided no
16 evidentiary support for its factual arguments; and (iv) included arguments that are directly refuted
17 by the documentary evidence attached to the Motion. *See* NRCP 37(a)(5) (allowing an award of
18 fees by “the party or attorney advising that conduct”).

19 **VII. CONCLUSION**

20 Based on the foregoing and the arguments and supporting evidence presented in the Motion,
21 the City respectfully requests the Court issue an Order:

- 22 • Compelling Peccole-Nevada to produce all documents responsive to the COR
23 Subpoena;
- 24 • To show cause as to why Peccole-Nevada should not be held in contempt of Court
25 for failing to comply with its obligations under the COR Subpoena;
- 26 • Sanctioning Peccole-Nevada for its failure to comply with the COR Subpoena by
27 awarding the City its fees and costs associated with the COR Subpoena and the
28 Motion; and

- Sanctioning the Developer and/or its counsel for filing and forcing the City to have to respond to a frivolous Opposition that misrepresented the history of this matter, misrepresenting the Administrative Orders in the Eighth Judicial District Court, did not have any evidence to support its bald statements and completely ignored the documentary evidence attached to the Motion.

Dated this 2nd day of September, 2020.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

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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 2nd day of September, 2020, a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE CITY OF LAS VEGAS' MOTION TO COMPEL AND FOR AN ORDER TO SHOW CAUSE** 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 on the following:

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Michael A. Schneider, Esq.
Autumn L. Waters, Esq.,
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/s/Jelena Jovanovic

An employee of McDonald Carano LLP

EXHIBIT “A”

DECLARATION OF GEORGE F. OGILVIE III

I, GEORGE F. OGILVIE III, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner in the law firm of McDonald Carano LLP. I am co-counsel for Defendant City of Las Vegas (the “City”) in Case No. A-17-758528-J. I am over the age of 18 years and a resident of Clark County, Nevada.

2. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

3. On March 10, 2020, the Developer’s counsel – James Leavitt, Autumn Waters and Elizabeth Ham, along with EHB Companies’ other in-house counsel, Todd Davis – all participated in a telephonic meet and confer with myself, my partner, Amanda Yen, and my associate, Chris Molina. The meet and confer lasted almost two hours and neither Mr. Leavitt, Ms. Waters, Ms. Ham nor Mr. Davis ever raised the issue of the COR Notice.

4. On July 31, 2020, I emailed a copy of the City’s Motion to counsel for Peccole-Nevada, Donald “Butch” Williams. Mr. Williams acknowledged receipt of the Motion that evening.

5. Regarding the documents responsive to the COR Subpoena, Ms. Ham’s July 22, 2020 email to Mr. Williams represents that “additionally, these documents, [were] already produced by us....” *See* Supplement to Plaintiffs’ Opposition to Defendant City of Las Vegas’ Motion to Compel and for Order to Show Cause (“Supplement”) at Ex. 2.

6. The documents the City requested in the COR Subpoena that the Developer has withheld from the City relate to the Developer’s purchase of the Badlands in 2015 and negotiations and financing for that purchase. Despite Ms. Ham’s representation in her July 22 email, after a review by my co-counsel of the documents produced to date by the Developer, it does not appear that the Developer has produced all documents in this category responsive to the COR Subpoena. In addition, the City cannot confirm this statement because it has never been provided a list of

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responsive documents to the COR Subpoena to compare with the documents produced thus far by the Developer.

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

Executed: the 2nd day of September, 2020.

/s/ George F. Ogilvie III
George F. Ogilvie III

EXHIBIT “B”

From: Amanda Yen
Sent: Tuesday, March 10, 2020 5:03 PM
To: Autumn Waters; James Leavitt
Cc: George F. Ogilvie III; Christopher Molina; Karen Surowiec; Jelena Jovanovic
Subject: March 10 Meet and Confer Summary

Please find a summary of today's meet and confer. The agreements made by the parties are in bold.

Participants: Todd Davis, Autumn Waters, Elizabeth Ham, Jim Leavitt, Chris Molina ("CM") and George Ogilvie ("GFO")

Outstanding Dec. 19, 2019 Meet and Confer Remaining Issues:

RFPD 5: Todd: Kaempfer/Crowell is outside counsel – not a consultant; CM: understand role but if communications related to the project then would expect to see emails b/w counsel and other consultants, which would remove the privilege; Todd: no exclusion of any communications with consultants as a result of any outside counsel being on the email chain; Todd: would put it on a privilege log if there are emails b/w Allen and GC Wallace; CM: also have an argument that not acting as counsel all the time but acting as a consultant – more of a nuance than just "acting as outside counsel"; **Todd: to the extent anything should be on a privilege log, it will be on the privilege log; GFO: accept representation**

RFPD 6: CM: agreed to limit the request to Peccole Nevada and Peccole family re ownership and other aspects of golf course – haven't received anything; **Todd: there are docs that are forthcoming** – communications were w/Billy Bane and have done searches and have some docs, nothing with Vicki DeHart who doesn't participate in these communications, there are some with Yohan; CM: when getting docs? **Elizabeth: wants to produce everything at once – so within the next two weeks; GFO: going to do a supplement en masse?; ACY: please bold what is the supp; Autumn: will do**

RFPD 8: Elizabeth: want additional exhibits in addition to what have – not withholding additional documents – doesn't exist – what has been produced are the calculations; CM: amended responses served on Jan 23, 2020 – no additional docs identified as responsive to this request so there should be a supplement identifying which docs have been produced then need to identify as responsive to RFPD 8; **Autumn: will review to see if a supplementing and identifying is appropriate (need to determine if officially produced or just as an exhibit to the motion);** CM: one doc identified as responsive but withheld as privilege

RFPD 10: CM: Autumn/Jim said had docs during the Dec. 19 meet and confer but haven't produced anything; Todd: to clarify – maintenance and operation as a golf course but plaintiff

did not operate it as the golf course, but looking from lessee; GFO: purchase of Fore Stars in March 2014 and golf course operated through 2014 and maybe through 2015; Todd: correct; GFO: distinction between plaintiff operating and company who leased to operate the golf course?; **Todd: golf course operated by the tenant – Fore Stars did not operate it but Par 4 did and then to Elite Golf Management so all financials, etc. needed to be subpoenaed by Par 4 and Elite Golf – since only acted as a landlord, to extent have anything whatsoever will produce – didn’t dig into what Fore Stars actually owned – when Elite left, golf course went away; GFO: could be wrong but assume predecessor would have had financials related to compromises on the lease; Todd: no idea, most of what requesting are hypotheticals – not aware that any books records were turned over, but are being completely cooperative; GFO: so are you going back to look? Todd: if can locate any financials then will turn it over – will look and turn it over even though this isn’t what the request is asking; CM: ground lease has the % rent and gross revenue so expect financials related to that; Todd: never received % rent, does believe some amendments but did not participate in % rent – this tenant was leaving when acquired Fore Stars so provided everything**

Badlands Property Definition: CM: still not entirely clear if the objection created a basis to withhold docs, would like to settle on a definition; Todd: matter is a defined parcel and if asking for something outside of the defined parcel – should reference the specific parcel # then will know what looking for; CM: in the requests defined the property as each of the parcel ##; Autumn: doesn’t think withheld any docs b/c of definition, just lodged the objection b/c don’t agree with, will send definitions back and forth until we agree on one; GFO: where are you going with this specific discussion, where are we off? Todd: confused as to what the issue is; CM: objected to everything b/c of the definition and did not know if withheld docs b/c of the objection – just look at RFPD 5; **Todd: were the docs produced just to a portion or to all – not aware any limitation based on the definition of the property, but can look at it; CM: yet, the objection goes on to say that asking for docs on property not at issue – we are not being overly broad when asking for docs related to the entire property b/c of what the relevant parcel is; Todd: just looking to be cooperative with the requests, with respect to the production of docs, don’t think that there has been any exclusion and agrees to take the extra step to confirm; GFO: withdraw objection?; Todd: objection stands but will cooperate and confirm; GFO: position putting us in is facing a doc that the landowner wants to use and we object and 180 Land says no, we had this objection in place; Todd: if there is a doc that runs afoul we will address it in the future but discussing hypotheticals in the future; GFO: entitled to request to withdraw objection since agree that the parcel ## accurately agree define what we are requesting – so please identify which RFPD doesn’t accurately capture; Jim: didn’t withhold anything and are complying; GFO: if Jim says, notwithstanding that objection, relative to these APNs we have responded to each request then that is fine; Todd: repeating what Todd has been saying – when get responses at that time then please check back with us – if concerns when receive supplement, check back with us and will address it; CM: can we define the property more narrowly, then please tell us so we are not confused as to what is being withheld/produced; Todd: if there is a concern, please let us know and we will address it; GFO: why kick the can down the road, can’t we narrow the issue and figure it out; Todd: we have b/c discussed RFPDs and will review, explained that there is no withholding and will confirm**

it and will provide it if there is a supplement – won't provide a blanket definition; CM: if not withdrawing the objection then how do we know not withholding docs; Elizabeth: asked us to include language that notwithstanding the objection and agreed; GFO: notwithstanding objection re Badlands, included docs covered all of the APNs identified; Todd: if the wording doesn't meet what looking for, we can address it and don't get to write the responses, if there is a concern with the supplement, we can address it; GFO: basis of frustration - served in July and here in March and arguing over requests over 9 months and have been slow-played; Todd: took out the layers with Todd/Elizabeth's participation and given a timeline, sorry for frustration but think we have been successful

Feb. 6 Letter Meet and Confer Issues:

Native Files/Metadata: CM: only being provided with pdfs and not native files, cannot organize when only have pdfs, provide us with native or metadata; Autumn: can give for specific ones; CM: any email; Autumn: too burdensome; CM: attachments don't have Bates, no metadata for creation of docs; ACY: burden of production is on 180 Land and must correct lack of Bates and native files are standard in production; Elizabeth: two issues – metadata and lack of Bates and attachments; CM: docs are useless without metadata – renderings of plans created by plans/architects then have multiple copies don't know when created so how do we know if relevant, timeframe – easier to produce the native files then backdoor metadata; **Todd: example doesn't justify the request, will look at what has been produced to see the extent of the problem, provide examples that will demonstrate concern; ACY: CM to shoot some examples over to them of the none Bates**

RFPD 1: CM: no letters of intent, terms sheets, nothing related to the acquisition of Fore Stars and Badlands, haven't been produced and not listed on the privilege log; **Todd: RFPD 1 and 6 – will provide a supplement on it and it is correspondence with Billy Bane, so supplementing;** CM: agreed to limit scope of RFPD 6, but what is listed in #1 is more than just bare communications b/w the buyer and seller, were there offers and counteroffers or letters of intent; **Todd: don't think letters of intent, just PSA, when receive supplemental responses let us know if anything not there that we were thinking of and the supplement should address both;** CM: when get the supplement, going to identify which docs are responsive to which request; Autumn: yes, been protocol so far

RFPD 2: CM: financing and acquisition docs – an appraisal listed, but not listed on the privilege log, what about opinion letters; Todd: none of that exists, acquisition of Badlands was not financed since Fore Stars was acquired and Fore Stars already owned the property, there is an acquisition of Fore Stars; CM: if we rephrase to ask for docs related to 180 Land's acquisition of Fore Stars will we get a different response; **Todd: don't have any problem giving the appraisal, piece of the property used as collateral under a loan for a different parcel different from this case and have no problem giving that appraisal and whatever collateral docs exist related to that small portion of the property, but no loan transaction re the acquisition of Fore Stars;** CM: so confused as to what the loan docs; Todd: money that

was pulled out of another property to be used in the acquisition of Fore Stars, just giving context, but asking for docs that don't exist; CM: no opinion letter for the \$15M loan; Todd: not aware of any; CM: if subpoena from Western Bank – won't receive anything? Todd: correct

RFPD 3: CM: docs reviewed by developer, got a good production, but thought would review Fore Star financial statements; Todd: received a copy of the lease with Par 4 and that is it, no financials, just rent received; CM: assumed liability of Fore Stars without requesting a balance sheet? **Elizabeth: asking questions better for deposition, assuming docs that just don't exist, believe have everything but will do a double-check to confirm; CM: want to be clear about financial statements – balance sheets, etc.; Elizabeth: understood and will double-check but think produced it all; Elizabeth: agreeing to provide appraisal if have not already done so**

RFPD 4: CM: organization docs, just got docs related to MS Northwest and the entities involved in the financing transaction, no operating agreements or articles of organization for the relevant parties involved; Elizabeth: all online; Todd: to the extent can obtain them publicly then the City should just get it; CM: that is fine; **Todd: will supplement to the extent have anything**

RFPD 5: CM: additional consultants identified on 180 Land's responses to the Rogs but did not produce any docs, also John Restrepo – who prepared the economic report attached to Major Mod; **Todd: not aware used Greg Borgel, will confirm and if was used as a consultant to outside counsel then he might be covered under privilege, Sklar Williams is outside counsel and not a consultant, John Restrepo – will look and see what they have on him**

RFPD 14: CM: confused re lack of documents for the waters rights, can look things up on the public; Todd: disagree any water rights appurtenant to the Badlands property, there are no water rights appurtenant to the property; CM: what is WRL, LLC then? Can list off the permits and litigation bw Nell and Fore Stars; Elizabeth: litigation over the lease for Nell's water rights and Fore Stars; CM: when rights are used for the Badlands Property then that is appurtenant to the property – looking for docs re how much the water rights cost; Todd: get a water rights attorney b/c no water rights, will provide the permit ## for the water used for the property during its operation as a golf course, the WRL is a separate and distinct entity that is not Fore Stars; GFO: setting aside definition of "appurtenant to," RFPD also says "associated with" so if there are water rights utilized for the golf course then the RFPD covers it; **Todd: agreed to provide the permit ## for the water rights used, there is a purchase and sale agreement re WRL and will NOT produce that doc, don't know what else looking for; GFO: why not provide the WRL purchase and sale agreement; Todd: not relevant to the action; GFO: if there are water rights involved in the transaction that relate to the irrigation of the golf course then it is relevant; GFO: want to know all information that can gather related to the water used to irrigate the golf course and obligation Fore Stars had related to those charges; Todd: and agreed to give the permit ## for the water rights; CM: don't need the permit ##, Lowie testified that purchased WRL in same Fore Stars transaction and the price was arbitrary then it is relevant and we will file a motion to compel; Todd: don't believe acquisition of WRL is relevant; GFO: testimony re**

purchase price of Fore Stars and WRL was \$15M so obviously all of the docs are relevant; Todd: separate transactions and separate entities, water rights owned by WRL and also Nell's water rights, these are third party vendors/services; GFO: understood position

Entitlement/Zoning Related Docs: CM: docs that are being withheld that address the issue of the RPD 7 zoning and the Peccole Ranch Master plan and entitlements, no communications related to those issues; Todd: agreed to provide docs with consultants, do not believe privilege log with every outside of counsel communication, agreed to comply with consultants, any attorney communications will update the privilege log; Elizabeth: docs related to understanding of entitlement of the property and nothing has been withheld on that basis – everything has been produced related to the understanding of the property; CM: thought there was a research memo on the understanding of the RPD 7 zoning; **Elizabeth: take responsibility for how it was handled and piecemealed and is getting involved to make streamlined and get better responses to us and better communication as to what actually exists; Todd: extent seeking to dig into atty/client communications then will object on that basis and limitations to what can request; CM: if we ask for targeted docs and you say no docs exist then no need to assert atty/client privilege, if telling us that there are no docs that are responsive then supplement; Todd: going to address each request comprehensively and thoroughly**

Yohan/Vicki DeHart emails: CM: lots of emails from Frank P. and his assistant but not a lot from Lowie or Vicki; Todd: have not excluded any emails from these people

Damages: CM: when is this going to be provided; Autumn: have not had a court force a landowner to provide damages calculations until expert reports; CM: there should at least be a categorical identification of damages without damages; **Autumn: will be with expert disclosures so when get expert report**

Two weeks will provide a supplement to everything

Amanda C. Yen | Partner

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EXHIBIT “C”

From: Autumn Waters <autumn@kermittwaters.com>
Sent: Thursday, March 12, 2020 12:38 PM
To: George F. Ogilvie III
Cc: James Leavitt; Amanda Yen
Subject: Re: 35-acre case

Hi George,
Yes

Sent from my iPhone

On Mar 12, 2020, at 9:08 AM, George F. Ogilvie III <gogilvie@mcdonaldcarano.com> wrote:

Jim/Autumn,

My calendar shows that 180 Land's opposition to the motion to compel was due yesterday. Will we see the opposition today?

George F. Ogilvie III | Partner

MCDONALD CARANO

2300 West Sahara Avenue | Suite 1200
Las Vegas, NV 89102

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