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.

No. 84345

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. 84640

JOINT APPENDIX, VOLUME NO. 53

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
Nevada Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq.
Nevada Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq.
Nevada Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq.
Nevada Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877

Attorneys for 180 Land Co., LLC and Fore Stars, Ltd.

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, Esq.
Nevada Bar No. 4381
bscott@lasvegasnevada.gov
Philip R. Byrnes, Esq.
pbyrnes@lasvegasnevada.gov
Nevada Bar No. 166
Rebecca Wolfson, Esq.
rwolfson@lasvegasnevada.gov
Nevada Bar No. 14132
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM
Micah S. Echols, Esq.
Nevada Bar No. 8437
micah@claggettlaw.com
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone

Attorneys for 180 Land Co., LLC and Fore Stars, Ltd.

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Nevada Bar No. 3552
gogilvie@mcdonaldcarano.com
Amanda C. Yen, Esq.
ayen@mcdonaldcarano.com
Nevada Bar No. 9726
Christopher Molina, Esq.
cmolina@mcdonaldcarano.com
Nevada Bar No. 14092
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Telephone: (702)873-4100

LEONARD LAW, PC
Debbie Leonard, Esq.
debbie@leonardlawpc.com
Nevada Bar No. 8260
955 S. Virginia Street Ste. 220
Reno, Nevada 89502
Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
schwartz@smwlaw.com
California Bar No. 87699
(admitted pro hac vice)
Lauren M. Tarpey, Esq.
ltarpey@smwlaw.com
California Bar No. 321775
(admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272

Attorneys for City of Las Vegas

APEN
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov

(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 **APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S MOTION FOR REHEARING AND RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RESPONSES TO INTERROGATORIES**

Defendant City of Las Vegas hereby submits this Appendix of Exhibits in Support of its Motion for Rehearing and Reconsideration of Court's Order Granting Plaintiffs' Motion to Compel Responses to Interrogatories.

. . .

. . .

. . .

. . .

. . .

Exhibit	Exhibit Description	Bates No.
A	Reporter's Transcript of Hearing, Feb. 16, 2021	001-007
B	Complaint Pursuant to 42 U.S.C. § 1983	008-035
C	Brief of Appellants, *180 Land Co. LLC, et al.*	036-146
D	9th Circuit Memorandum Opinion	147-151

Dated this 8th day of April, 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 8th day of April, 2021, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S MOTION FOR REHEARING AND RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RESPONSES TO INTERROGATORIES** 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:

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.,
704 South Ninth Street
Las Vegas, Nevada 89101

EHB COMPANIES
Elizabeth Ghanem Ham, Esq.
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

EXHIBIT “A”

CASE NO. A-17-758528-J

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

180 LAND COMPANY LLC,
Plaintiff,
vs.
LAS VEGAS CITY OF,
Defendant.

REPORTER'S TRANSCRIPT
OF
HEARING
(TELEPHONIC HEARING)

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED TUESDAY, FEBRUARY 16, 2021

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

APPEARANCES:

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

FOR THE PLAINTIFF:

KERMITT L. WATERS
BY: JAMES J. LEAVITT, ESQ.
704 SOUTH NINTH STREET
LAS VEGAS, NV 89101
(702)733-8877
(702)731-1964
JIM@KERMITTWATERS.COM

AND

EHB COMPANIES LLC
BY: ELIZABETH HAM, ESQ.
1215 SOUTH FORT APACHE
SUITE 120
LAS VEGAS, NV 89117
(702) 940-6930
(702) 940-6938 Fax
EHAM@EHBCOMPANIES.COM

APPEARANCES CONTINUED:

FOR THE DEFENDANT:

MCDONALD CARANO WILSON, LLP
BY: GEORGE F. OGILVIE, III, ESQ.
2300 WEST SAHARA AVENUE
SUITE 1000
LAS VEGAS, NV 89102
(702) 873-4100
(702) 873-9966 Fax
GOGILVIE@MCDONALDCARANO.COM

AND

SHUTE, MIHALY & WEINBERGER LLP
BY: ANDREW W. SCHWARTZ, ESQ.
396 HAYES STREET
SAN FRANCISCO, CA 94102
(415) 552-7272
(415) 552-5816
ANDREW W. SCHWARTZ

* * * * *

11:16:12 at mental impressions. We're not asking for the Court or anybody else to go into the mind of the councilman. We want the facts that were the basis for these statements.

11:16:21 And, your Honor, if, indeed, there were no facts to support the basis of this statement then that would create a problem for the City of Las Vegas because in these inverse condemnation cases, if the government engages in bad faith actions in relation to

11:16:34 or in regards to the denials on a property and in inverse condemnation action, the case law is pretty clear that that makes the inverse condemnation claim much more formidable.

So if there was no basis for these statements,

11:16:51 that causes a great concern for the landowner. It would be more evidence to show that the City engaged in a conduct to deny the landowner all use of their property because these statements were made to the homeowners who were the adjoining landowner to the

11:17:06 landowner's property. And if there was no basis for these statements, and they were not true statements, then we would have a councilman going to the adjoining landowner trying to rouse them up to oppose the landowner development on the property.

11:17:19 So, your Honor, that's the basis for our

request on Interrogatory No. 1, 2, and 3. And I just briefly want to address the City's final argument in opposing those interrogatories is they state that statements by individual council members is not relevant to any taking action.

Well, your Honor, the Nevada Supreme Court disagrees with that. And, in fact, in the Sisolak case when the -- when the Court was deciding the taking actions in that case, they specifically referred to statements that were made by Bill Keller who was a principal planner with the Clark County Department of Aviation. That's to very briefly quote one statement from the Court from the Sisolak Court. Keller told Mr. Sisolak not to bother asking for a variance to build for more than 75 feet because the county would not approve it.

So the court looked at that statement. There were other statements. But they looked at the specific statements of a Department of Aviation planner to assist with the taking determination.

Certainly, if those statements by an individual Department of Aviation planner were relevant to a taking then certainly statements by the high ranking councilperson directly related to the property at issue on a defense that the City is making in this

Sisolak's air space was actually, quote, "inconsequential" end quote. It was the act of authorizing the public to use that property.

So Sisolak is right on point. And we've alleged the per se regulatory taking case. The facts set forth in Sisolak are right on point. The fact that the Nevada Supreme Court relied on statements by a planner to assist with finding the taking is very pointed and very relevant to this matter where the statements are made, not only by a planner, but by the highest ranking city official in regards to a specific defense being made by the government.

So, your Honor, we request that the government answer these interrogatories, after they answer them -- and that's all we're asking for is an answer. After they answer them, we can review that. See if those are adequate or not. We may be able to just move on. But we're entitled to have at least an answer on issues very pertinent and relevant to their defenses, your Honor.

And with that, your Honor, I'll submit my reply.

THE COURT: Yeah. And first going to Interrogatory No. 6.

MR. LEAVITT: Yes.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOTYPE 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

EXHIBIT “B”

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Robert T. Stewart (13770)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
rstewart@hutchlegal.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; Seventy Acres LLC, a Nevada limited-liability company; Yohan Lowie, an individual,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; JAMES R. COFFIN, in both his official capacity with the City of Las Vegas and in his personal capacity; STEVEN G. SEROKA, in both his official capacity with the City of Las Vegas and in his personal capacity,

Defendants.

COMPLAINT PURSUANT TO 42 U.S.C. § 1983

Jury trial requested

Plaintiffs 180 Land Co LLC, Fore Stars, Ltd., Seventy Acres LLC, and Yohan Lowie (collectively, "Plaintiffs") complain against the above-referenced defendants (collectively, "Defendants") as follows:

/ / /

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1. Jurisdiction and Venue.

1. This lawsuit is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation that occurred under color of state statute, ordinance, regulation, custom, and usage of the rights, privileges, and immunities secured to the Plaintiffs by the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of Article 4, Section 21 and the Due Process Clause of Article 1, Section 8(5) of the Constitution of the State of Nevada.

2. With respect to Plaintiffs' claims arising from Defendants' violations of Plaintiffs' rights secured by the United States Constitution, original jurisdiction is conferred upon this Court by 28 U.S.C. § 1331.

3. With respect to Plaintiffs' claims arising from Defendants' violations of Plaintiffs' rights secured by the Constitution and laws of the State of Nevada, supplemental jurisdiction is conferred upon this Court by 28 U.S.C. § 1367(a).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) because the acts or omissions which form the basis of the Plaintiffs' claims occurred in the State of Nevada and all Defendants reside in the State of Nevada.

2. The Parties.

5. Plaintiff Fore Stars, Ltd. ("Fore Stars") is, and at all relevant times was, a Nevada limited-liability company.

6. Plaintiff 180 Land Co LLC ("180 Land") is, and at all relevant times was, a Nevada limited-liability company.

7. Plaintiff Seventy Acres LLC ("Seventy Acres") is, and at all relevant times was, a Nevada limited-liability company.

8. Fore Stars, 180 Land and Seventy Acres are managed by EHB Companies LLC, a Nevada limited-liability company.

9. Plaintiff Yohan Lowie is, and at all relevant times was, an individual residing in Clark County, Nevada. Yohan Lowie is a Manager of EHB Companies LLC.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

10. Defendant City of Las Vegas ("City") is, and at all relevant times was, a political subdivision of the State of Nevada and a municipal corporation subject to the provisions of the Nevada Revised Statutes. The governing body of the City is the "City Council," which is comprised of six councilpersons and the mayor.

11. Defendant James R. Coffin ("Coffin") is, and at all relevant times was, an individual residing in Clark County, Nevada. From approximately July 2011 to the present, Defendant Coffin was and continues to be a councilperson on the City Council.

12. Defendant Steven G. Seroka ("Seroka") is, and at all relevant times was, an individual residing in Clark County, Nevada. From approximately July 19, 2017 to the present, Defendant Seroka was and continues to be a councilperson on the City Council.

3. General Allegations.

13. Yohan Lowie and his partners have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs and semi-custom homes, and (4) the recently-opened Nevada Supreme Court and Appellate Court building located in downtown Las Vegas.

A. The Land.

14. Fore Stars, 180 Land and Seventy Acres (collectively "Plaintiff Landowners") collectively own approximately 250 acres of real property (collectively the "Land") within the boundaries of the City. The Land is located between the following roads: Alta Drive (to the north of the Land); Charleston Boulevard (to the south of the Land); Rampart Boulevard (to the east of the Land); and Hualapai Way (to the west of the Land).

15. In March 2015, Yohan Lowie and his partners, acquired the membership interests of Fore Stars, which at that time owned the entirety of the parcels that comprise the Land.

16. In June, 2015, Fore Stars re-drew the boundaries of the various parcels that comprise the Land, and in November, 2015 ownership of approximately 178.27 acres of the Land

was transferred to 180 Land and approximately 70.52 acres of the Land was transferred to Seventy Acres. Fore Stars retained ownership of approximately 4.5 acres of the Land.

17. Today, 180 Land owns the parcels with the following Clark County Assessor Parcel Numbers ("APNs"): APNs 138-31-201-005 (herein referred to as "Parcel 1," totaling 34.07 acres), 138-31-601-008 (herein referred to as "Parcel 2," totaling 22.19 acres), 138-31-702-003 (herein referred to as "Parcel 3," totaling 76.93 acres), 138-31-702-004 (herein referred to as "Parcel 4," totaling 33.8 acres), and 138-31-801-002 (herein referred to as "Parcel 5," totaling 11.28 acres).

18. Today, Seventy Acres owns the parcels more particularly described by the Clark County Assessor as APNs 138-31-801-003 (herein referred to as "Parcel 6," totaling 5.44 acres), 138-32-301-007 (herein referred to as "Parcel 7," totaling 47.59 acres), and 138-32-301-005 (herein referred to as "Parcel 8," totaling 17.49 acres).

19. Today, Fore Stars owns the parcels more particularly described by the Clark County Assessor as APNs 138-32-210-008 (herein referred to as "Parcel 9," totaling 2.37 acres); and 138-32-202-001 (herein referred to as "Parcel 10," totaling 2.13 acres).

20. The Land abuts the common interest community commonly known as "Queensridge" (the "Queensridge CIC"). The Queensridge CIC is governed by the Master Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge ("Queensridge Master Declaration"), recorded with the Clark County Recorder's Office on May 30, 1996.

21. The Land is not a part of the Queensridge CIC.

22. In Clark County, Nevada, District Court Case No. A-16-739654, Judge Douglas Smith affirmed that the Land is not part of the Queensridge CIC in an order dated November 30, 2016 and titled Findings of Fact and Conclusions of Law (the "November 30, 2016 Court Order"). In finding No. 53 of the November 30, 2016 Order, Judge Smith found that "The land which is owned by the Defendants [herein "Plaintiff Landowners"], upon which the Badlands Golf Course is presently operated ("GC Land") [herein "Land"] that was never annexed into the Queensridge CIC, never became part of the "Property" as defined in the Queensridge Master Declaration and is therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

Master Declaration." A true and correct copy of the November 30, 2016 Court Order is attached as Exhibit 1.

23. The Queensridge Master Declaration provides in recital B, on page 2, "*The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property*." After the Badlands Golf Course was expanded to 27 holes, the Queensridge Master Declaration was refiled in an August 16, 2002 filing of the Amended and Restated Queensridge Master Declaration providing "*The existing 27-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property*."

24. The Land was leased to a golf course operator. On August 31, 2016, the golf course operator served a 90 day notice of termination of the Golf Course Lease. On December 1, 2016, the Golf Course Lease terminated, the golf course operator vacated the property and the property ceased to be used as a golf course.

25. The Clark County Assessor determined that the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, is no longer deemed to be used as an open-space use under NRS 361A.050, in accordance with NRS 361A.230 the Land has been disqualified for open-space use assessment, and the Land has been converted to a higher use in accordance with NRS 361A.031 (collectively "Clark County Assessor Determinations").

26. On November 30, 2017, the State of Nevada State Board of Equalization approved, by unanimous vote, the Clark County Assessor's Determinations. True and correct copies of the approval letter from the Nevada State Board of Equalization and the "determination and stipulation" documents from the Clark County Assessor are attached as Exhibit 2.

27. The taxes are assessed on the Land by the Clark County Assessor based on the following "higher use(s)" of the Land:

a. The Assessor Land Use Classification for Parcel 1 is "**12.00 – Vacant – Single Family Residential**";

b. The Assessor Land Use Classification for Parcel 2 is "**12.00 – Vacant Single Family Residential**";

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

c. The Assessor Land Use Classification for Parcel 3 is "**12.00 – Vacant Single Family Residential**";

d. The Assessor Land Use Classification for Parcel 4 is "**12.00 – Vacant Single Family Residential**";

e. The Assessor Land Use Classification for Parcel 5 is "**12.00 – Vacant Single Family Residential**";

f. The Assessor Land Use Classification for Parcel 6 "**12.00 – Vacant Single Family Residential**";

g. The Assessor Land Use Classification for Parcel 7 is "**12.00 – Vacant Single Family Residential**"

h. The Assessor Land Use Classification for Parcel 8 is "**13.000 – Vacant – Multi residential**";

i. The Assessor Land Use Classification for Parcel 9 is "**40.399 – General Commercial, Other Commercial**"; and

j. The Assessor Land Use Classification for Parcel 10 is "**12.00 – Vacant Single Family Residential**".

28. As a result of the cessation of the golf course operations on the Land and the conversion of the Land to higher use(s), meaning a use other than agricultural use or open-space use, Plaintiff Landowners were required by Nevada law to pay property taxes for the tax years commencing in 2011 through the present, based on the value of the respective higher uses for each of the parcels.

B. The planning and zoning relating to the Land.

29. At all relevant times, the City Council and its councilpersons acted under color of state statute, ordinance, regulation, and custom and usage. Nevada Revised Statutes, Title 21 provides for the incorporation of cities and towns within the State of Nevada, such as the City. The Municipal Code of the City of Las Vegas, Nevada ("Municipal Code"), which includes the Las Vegas City Charter, provides for the roles, responsibilities, and authorities of the City Council and the councilpersons. Nevada Revised Statutes, Chapter 278 provides for the State of Nevada's

laws for zoning and land use. An official policy and custom of the City is for the City Council to participate in and adjudicate zoning and land use matters that arise in the City.

30. The Las Vegas City Council adopted the Unified Development Code – Title 19 ("Title 19") as part of its Municipal Code pursuant to the provisions of the Nevada Revised Statutes (NRS), including NRS Chapter 278. The City of Las Vegas Official Zoning Map Atlas is a part of Title 19.

31. Title 19 establishes "zoning districts". Zoning districts are areas designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with Title 19.

32. The "PD" and "R-PD" zoning districts are separate and distinct from each other, with each being governed by different sections of Title 19. The PD district is governed by Title 19.10.40 subsection titled "PD Planned District Development" and the R-PD district is governed by Title 19.10.050 subsection titled "R-PD Residential Planned Development District".

33. The density allowed in the R-PD District is reflected by a numerical designation for that district. By way of example, R-PD4 allows up to four units per gross acre.

34. On August 15, 2001, the Las Vegas City Council passed, adopted and approved Bill No. Z-2001-1 Ordinance No. 5353 zoning Parcels 1, 2, 3, 4, 5, 6, 7, 8, and 10 R-PD7.

35. In the November 30, 2016 Court Order, Finding No. 58 states that "…the R-PD7 Zoning was codified and incorporated into the amended Atlas in 2001."

36. CLV Ordinance 5353 provided in its Section 4: "All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada 1983 Edition, in conflict herewith are hereby repealed."

37. On December 30, 2014, the City of Las Vegas issued a zoning verification letter for the Land confirming that "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." A true and correct copy of the "Zoning Verification Letter" is attached as Exhibit 3.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

38. On October 18, 2016, at a Las Vegas Special Planning Commission Meeting specifically relating to the Land, City Attorney Brad Jerbic confirmed that the Land is hard zoned R-PD7 entitling the property owners up to 7.49 units per acre, subject to adjacency and compatibility planning principles.

39. The November 30, 2016 Court Order affirmed City Attorney Jerbic's legal opinion in Finding No. 58 stating "Attorney Jerbic's presentation is supported by the documentation of public record"; and in Finding No. 82 stating, "The Court finds that the GC Land owner by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements."

40. Today, the zoning districts for the various parcels comprising the Land, are as follows:

a. The zoning district for Parcel 1 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

b. The zoning district for Parcel 2 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

c. The zoning district for Parcel 3 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

d. The zoning district for Parcel 4 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

e. The zoning district for Parcel 5 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

f. The zoning district for Parcel 6 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

g. The zoning district for Parcel 7 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

h. In February 2017, the zoning district for Parcel 8 was changed by the Las Vegas City Council from "R-PD7" (per CLV Ordinance 5353 adopted on August 15,

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

2001) to "R-4". R-4 is the zoning designation for residential high-density multi-family unit development;

i. The zoning district for Parcel 9 was changed to "PD" in July of 2004;

j. The zoning district for Parcel 10 was changed to "PD" in July of 2004;

41. The November 30, 2016 Court Order found in Finding No. 82, "The Court finds that the GC Land owned by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements."

42. The November 30, 2016 Court Order also affirmed the Plaintiff Landowner's property rights in Finding No. 81 which stated, "The Court finds that the Developer Defendants ["Plaintiff Landowners" in the present matter] have the right to develop the GC Land ["Land" in the present matter]."

43. At all relevant times — including from the time the Land was purchased in or around March 2015 to the present — Plaintiffs have been entitled with the rights to develop the Land with residential dwelling units under the R-PD7 zoning district subject to compliance with Title 19.

C. Plaintiffs' applications to develop the Land.

44. It is the purpose and intent of the Las Vegas City Council for Title 19:

a. to promote the establishment of a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for the review and approval of all proposed development, divisions, and mapping of land within the City in a manner consistent with Nevada law;

b. to promote fair procedures that are efficient and effective in terms of time and expense and that appropriate process is followed in the review and approval of applications made under Title 19;

c. to be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed and elected officials; and to foster a positive customer service attitude and to respect the rights of all applicants and affected citizens

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

45. Title 19 provides that no land shall be divided, used, or structure constructed upon, except in accordance with the regulations and requirements of Title 19, including the requirement to obtain applicable approvals and permits prior to the development of the property.

46. In Title 19 the City codified the process that the City must follow when reviewing and adjudicating an application to use or develop real property within the City's jurisdiction, whether within the property's existing zoning district classification or as part of an application to change the zoning. The process is codified in Title 19 and NRS Chapter 278.

47. The City Council acts in a quasi-judicial capacity when reviewing and acting upon applications related to the use and development of real property within the City.

48. Since 2015, in accordance and compliance with NRS 278 and Title 19, Plaintiff Landowners have submitted numerous applications to the City relating to development and use of the Land, including but not limited to, site development reviews (SDR), zone change requests (ZON), waiver requests (WVR), and general plan amendments (GPA).

49. In late-2015, and continuing to the present, a handful of wealthy and influential homeowners living in the Queensridge CIC and One Queensridge Place (the "Queensridge Elite") schemed to oppose *any and all* development or use of the Land, notwithstanding that:

a. the Land was not part of the Queensridge CIC, the Queensridge Master Declaration expressly stated that the "golf course commonly known as "Badlands Golf Course" is not a part of the Property or the Annexable Property [of the Queensridge CIC]";

b. the Queensridge CIC custom Purchase Agreements expressly disclosed:

   i. "Seller has made no representations or warranties concerning zoning or the future development of phases of the Planned Community [Queensridge] or the surrounding area or nearby property";

   ii. "Purchaser shall not acquire any rights, privileges, interest, or membership in the Badlands Golf Course or any other golf course, public or private, or any country club membership by virtue of its purchase of the Lot";

iii. "The view may at present or in the future include, without limitation, adjacent or nearby single-family homes, multiple family residential structures, commercial structures, utility facilities, landscaping and other items"

c. the One Queensridge Place purchase documents expressly disclosed:

i. in the Purchase Contract, "Seller makes no representation as to the subdivision, use or development of any adjoining or neighboring land…views from the Unit may be obstructed by future development of adjoining or neighboring land and Seller disclaims any representation that views from the Unit will not be altered or obstructed by development of neighboring land", and "Neither Seller nor its affiliates made any representation whatsoever relating to the future development of neighboring or adjacent land and expressly reserve the right to develop this land in any manner that Seller or Seller's affiliates determine in their sole discretion."

ii. In the Public Offering Statement (2007), " current zoning on the contiguous parcels is as follows: [to the] South R-PD7 Residential up to 7 du."

d. Plaintiffs have vested zoning rights to develop residential units on the Land.

50. The City Council has held numerous and lengthy hearings on Plaintiff Landowners' applications for use and/or development of the Land.

D. Defendant Coffin's personal agenda, animus, bias, and discrimination against Plaintiff Lowie and Plaintiff Landowners in the development of the Land.

51. Defendant Coffin has repeatedly and publicly, including during City Council hearings, furthered his personal agenda and demonstrated personal animus against Mr. Lowie, an American citizen of Israeli descent, for reasons totally unconnected to the merits of Plaintiff Landowners' applications.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

52. In late 2015, Defendant Coffin contacted Mr. Lowie about the development of the Land, telling Mr. Lowie to "shut up and listen" and telling Mr. Lowie that Jack Binion was demanding that no development occur on the portion of the Land where 18 of the 27 holes of the Badlands Golf Course were located (*i.e.*, approximately 180 acres comprising Parcels 1, 2, 3, and 4). Defendant Coffin told Mr. Lowie that if Mr. Binion's demands were met that Defendant Coffin would "allow" Mr. Lowie to build "anything" he wanted on the remainder portion of the Land (*i.e* approximately 70 acres comprising Parcels 5, 6, 7, 8, 9, and 10). Defendant Coffin told Mr. Lowie that Mr. Binion was Defendant Coffin's longtime friend and that he would not take a position against Mr. Binion.

53. In or around April 2016, in a meeting between a representative of the Plaintiffs and Mr. Binion, Defendant Coffin repeated his command not to develop the portion of the Land where the 18 holes of the golf course were located. In that meeting, the Plaintiffs' representatives were told by Defendant Coffin that in order to allow any development on the northeast portion of the Land, Plaintiffs need to "hand over" 183 acres of the Land and certain water rights in perpetuity to a group of wealthy and high-profile members of the Queensridge community ("Queensridge Elite"). Defendant Coffin told the Plaintiffs' representatives that this was a "fair deal" and that Plaintiffs should accept it.

54. In or around February 2016, in a meeting between Defendant Coffin and Mr. Lowie, Defendant Coffin made statements that compared Mr. Lowie's personal actions in pursuing the development of the Land to the treatment of "unruly Palestinians." Thereafter, Defendant Coffin authored and sent a letter to Todd Polikoff, the president and CEO of Jewish Nevada, wherein Defendant Coffin stated, "*In the context of the Council meeting in question I was describing a private meeting with Mr. Yohan Lowie and his colleagues at EHB. I said that I thought his opportunistic handling of the Badlands purchase and his arrogant disregard of the Queensridge neighborhood reminded me of Bibi Netanyahu's insertion of the concreted settlements in the West Bank Neighborhoods. To me it is just as inconsiderate and Yohan looked upon them as a band of unruly Palestinians. I feel that it is such*." A true and correct copy of the letter sent from Defendant Coffin to Todd Polikoff is attached as Exhibit 4.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

55. In April 2017, in a City meeting relating to the Plaintiffs' applications, Defendant Coffin met with Anthony Speigel, a representative of the Plaintiffs. Defendant Coffin told Mr. Speigel that the only issue that mattered to Defendant Coffin was the statements that Defendant Coffin made to Mr. Lowie regarding "unruly Palestinians." Defendant Coffin stated that until that issue is remedied, [Defendant Coffin] could not be impartial to any application that [the Plaintiffs] present before the City Council. Defendant Coffin followed through with this statement by subsequently voting to deny every application relating to the development of the Land or, alternatively, voting to hold in abeyance a vote to approve or deny Plaintiffs' applications thereby causing extensive delay and costs to Plaintiffs. Defendant Coffin in furtherance of his ultimatum given to Plaintiffs, and admitted inability to be impartial toward Plaintiff Lowie, has voted against every one of Plaintiffs' applications to develop the Land.

56. On June 20, 2017, Plaintiffs sent a letter to Defendant Coffin recommending his recusal from Plaintiffs' applications to develop a portion of the Land set to be heard June 21, 2017. Defendant Coffin ignored the letter and on June 21, 2017 voted to deny Plaintiffs' applications.

57. On February 15, 2018, Plaintiffs sent a letter to Defendant Coffin, formally requesting that Defendant Coffin recuse himself from voting on all matters before the City Council related to Plaintiffs' efforts to exercise their property rights and develop the Land. A true and correct copy of the letter to Defendant Coffin requesting Defendant Coffin's recusal is attached as Exhibit 5. On February 21, 2018, at a City Council hearing, Plaintiffs made another request that Defendant Coffin recuse himself from voting on all matters related to Plaintiffs' Land. In response, on February 21, 2018, Defendant Coffin stated at the same City Council hearing that he would not recuse himself from participating in and voting on matters before the City Council related to Plaintiffs' applications. Defendant Coffin, on the record, embraced his earlier Lowie-targeted anti-Semitic comments and comparisons to Israeli Prime Minister Netanyahu. Defendant Coffin proceeded to call Prime Minister Netanyahu a "buffoon" who "was driving his country to war." After stating that he would not recuse himself, Defendant Coffin proceeded to vote on a motion for an abeyance of several of Plaintiffs' applications, despite Plaintiffs' objection to the

abeyance and right to have the applications heard and voted upon and despite the fact that this would further delay decision on Plaintiffs' applications, causing additional unnecessary costs to Plaintiffs.

58. In all instances where Plaintiffs' applications relating to the development of the Land were presented to the City Council, Defendant Coffin was a member of the City Council and voted on all applications related to the projects. In every instance, in furtherance of his ultimatum given to Plaintiffs, admitted inability to be impartial and personal bias against Plaintiffs, Defendant Coffin advocated against and voted against Plaintiffs' applications.

E. Defendant Seroka's personal agenda, animus, bias, and discrimination against Plaintiff Lowie and Plaintiff Landowners in the development of the Land.

59. From July 2017 to the present, Defendant Seroka has been a member of the City Council, representing Ward 2. The Land is located in Ward 2.

60. Defendant Seroka campaigned on the promise that, if elected to the City Council, he would prevent Plaintiff Landowners from developing the Land.

61. Defendant Seroka's campaign was heavily financed by members of the Queensridge Elite.

62. Upon information and belief, Defendant Seroka agreed to deny Plaintiffs' constitutional property rights in exchange for campaign funding by the Queensridge Elite.

63. Notwithstanding Plaintiff Landowner's property rights, the Land's zoning, the Queensridge Master Declaration, the Queensridge purchase documents and disclosures, and the November 30, 2016 Court Order, during Defendant Seroka's campaign he publicly proclaimed:

a. That he was "**focused on the property rights of the existing homeowners, all of whom have an expectation to the open space that played heavily in their [previous] decisions to purchase**".

b. That, if elected, he would require Plaintiff Landowners to participate in a property swap with the City of Las Vegas. He called it the "Seroka Badlands Solution." Upon information and belief, the City of Las Vegas deemed the Seroka Badlands Solution "illegal".

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

c. At a Planning Commission in February 2017, while wearing a "Steve Seroka for Las Vegas City Council" pin, at the podium, Seroka stated that he was "**representing [his] neighbors in Queensridge and hundreds of thousands of people that [he] had spoken to in [his] community**." At the hearing, Defendant Seroka strongly advocated against the Plaintiffs' property rights and applications, broadcasting that "**over my dead body will I allow a project that would drive property values down 30%**" and "**over my dead body will I allow a project that will set a precedent that will ripple across the community that those property values not just affected in Queensridge but throughout the community**."

64. Shortly after Defendant Seroka was sworn in as a City Council member, he appointed Christina Roush, his rival in the election, as the Planning Commissioner for Ward 2. Upon information and belief, Ms. Roush was specifically appointed by Defendant Seroka because of her vocal opposition to the land rights of the Plaintiff Landowners during her campaign.

65. On August 2, 2017, the City Council held a hearing on a development application (in this case, a "Development Agreement") that the City demanded Plaintiffs submit relating to the development of the Land. The Development Agreement had been negotiated and drafted by and between the Staff, the City Attorney, and representatives for Plaintiffs, and received recommendations for approval by Staff and the Planning Commission. Notwithstanding such recommendations for approval, Defendant Seroka made a motion to deny the Development Agreement and read a prepared statement underscoring the basis for denial.

66. Upon information and belief, the statement made by Defendant Seroka at the August 2, 2017 City Council hearing was written by Frank Schreck, the leader among the Queensridge Elite.

67. At a City Council hearing on September 6, 2017, as a direct attack on the Plaintiff Landowners' efforts to exercise their property rights and develop the Land, Defendant Seroka proposed that the City impose a six-month development moratorium directed to delay the development of the Land ("Queensridge Ordinance"). Defendant Seroka made the motion to

approve the Queensridge Ordinance, and upon Defendant Seroka's determining that the moratorium motion would fail, he modified it to convert it to a directive to City Staff to revise the ordinance so that the City Council could revisit it in the future.

68. In November 29, 2017, in a "town hall meeting" held at the Queensridge CIC clubhouse, Defendant Seroka publicly stated, while a member of the City Council and while Plaintiffs' applications for the development of the Land were pending before the City Council, that for the City to follow the letter of the law in adjudicating Plaintiffs' applications — as Staff desired to do — was "**the stupidest thing in the world**." In contravention to his duties as a seated Councilman, Defendant Seroka advocated to the residents of the Queensridge CIC to send in opposition letters to all of Plaintiffs' applications and development efforts to both the Planning Commission and City Council.

69. On February 15, 2018, Plaintiffs sent a letter to Defendant Seroka, formally requesting that Defendant Seroka recuse himself from voting on all matters before the City Council related to Plaintiffs' efforts to exercise their property rights to develop the Land. A true and correct copy of the letter to Defendant Seroka requesting Defendant Seroka's recusal is attached as Exhibit 6. On February 21, 2018, at a City Council hearing, Plaintiffs made another request that Defendant Seroka recuse himself from voting on all matters related to Plaintiffs' Land. In response, on February 21, 2018, Defendant Seroka stated at the same City Council hearing that he would not recuse himself from participating in and voting on matters before the City Council related to Plaintiffs' applications. After stating that he would not recuse himself, Defendant Seroka proceeded to vote on a motion for an abeyance of several of Plaintiffs' applications, despite Plaintiffs' objections to the abeyance and right to have the applications heard and voted upon and despite the fact that this would further delay decision on Plaintiffs' applications, causing additional unnecessary costs to Plaintiffs.

70. In all instances where Plaintiffs' applications relating to the development of the Land were presented to the City Council after July 2017, Defendant Seroka was a member of the City Council and voted on all applications related to the projects. In every instance, in furtherance of his statements that applying applicable law to Plaintiffs' applications would be "the stupidest

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

thing in the world," and his objective inability to be fair and impartial regarding Plaintiffs, Defendant Seroka advocated against and voted against Plaintiffs' applications.

F. Defendant Coffin and Defendant Seroka illegally scheme to deprive Plaintiff Landowners of their constitutional property rights through abuse of authority and violation of municipal code.

71. Upon information and belief, Defendant Coffin and Defendant Seroka have aggressively advocated to the City Staff, Planning Commission, and City Council members to oppose all of Plaintiff Landowners' applications with the City relating in any way to the Land.

72. Upon information and belief, Defendant Coffin and Defendant Seroka conspired with members of the Queensridge Elite to deprive Plaintiffs of their property rights and constitutional rights of equal protection and due process.

73. Upon information and belief, Defendant Coffin and Defendant Seroka are conducting their duties as members of the City Council under the direction of Frank Schreck, Jack Binion and the Queensridge Elite with the instructions and intention to deny the constitutional property rights of Plaintiff Landowners.

74. Upon information and belief, Defendant Coffin and Seroka have acted illegally and with the intent to deprive Plaintiffs of their constitutional rights to equal protection and procedural due process, by among other things, they:

a. Instructed City Staff to to alter federal mails by checking the 'I OPPOSE' box on City of Las Vegas Official Notice of Public Hearing postcards, both before cards are sent to Las Vegas citizens, and after returned by the United States Post Office; and

b. Instructed City Staff to violate Title 19.16.100(F)(3), which provides that the City Council may not review building permit level reviews, by mandating that all building permit level review applications submitted by Plaintiff Landowners must go through formal City Council hearings, thereby depriving Plaintiffs of the ability to protect or safely access the Land; and

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

c. Instructed City Staff to alter Staff Reports relating to land use applications submitted by Plaintiff Landowners, such that they fraudulently describe the Land's permitted use as "Non-operational Golf Course" a non-existent classification under Title 19.12, as opposed to the proper Title 19.12 classification for the Land being "Single Family, Vacant"; delete the Existing Land Use column reference to "Title 19.12"; and make other biased and non-customary changes to the reports intended to prejudice Plaintiff Landowners' zoning rights; and

d. Instructed City Staff to impose applications submittal requirements upon Plaintiff Landowners' that are intended solely for the purpose of delay; and

e. Instructed City Staff to draft the Queensridge Ordinance in a manner to target and impair the constitutional property rights and existing zoning rights of Plaintiff Landowners; and

f. Instructed City Staff on what to say at public hearings such that notwithstanding that the Queensridge Ordinance is specifically targeted at the Land, the City Staff is fed sound bites to give the appearance of broad applicability; and

g. Instructed City Staff not to do an analysis of what properties would actually be subject to the Queensridge Ordinance; and

h. Requested that third party quasi-municipal and county agencies manufacture unjustified reasons to support the denial of the applications by the City Council.

75. Have taken the position that the PROS land use designation governs the use of the Land in blatant violation of NRS 278.349(3)(e), which states, in pertinent part, as follows: "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider . . . [c]onformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence . . . ."When Defendant Coffin and Defendant Seroka took the aforementioned actions as councilpersons of the City Council against Plaintiffs' applications to develop the Land, Defendant Coffin, Defendant Seroka, and the City Council were acting under the color of the Las Vegas City Charter, which outlines the position and duties of a councilperson of the City Council

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

(*see, e.g.*, Articles I, II, III); Title 19, which contains the City's laws for zoning and land use; and Nevada Revised Statutes, Chapter 278, which contains the State of Nevada's laws for zoning and land use.

76. The City and the City Council permitted Defendant Coffin and Defendant Seroka to engage in the aforementioned conduct that was intended to intentionally violate Plaintiffs' constitutional rights of equal protection and due process.

77. The City and the City Council have treated Plaintiffs as a class of one, foisting upon them extraordinary requirements that have not been required of other similarly situated individuals or entities. The City's and the City Council's treatment of Plaintiffs as a class of one has caused Plaintiffs to incur extraordinary costs and expenses in attempting to meet requirements that are both unlawful and not required of any other similarly situated individual or entity.

78. The City and the City Council have also consciously and willfully prevented Plaintiffs from having their applications heard by an impartial decision maker such that Plaintiffs' applications are either denied or decisions delayed, causing extensive delay and costs to Plaintiffs.

79. The City and the City Council ratified Defendant Coffin's and Defendant Seroka's aforementioned conduct.

80. Regardless of the ultimate outcome of any of Plaintiffs' applications concerning the Land, Plaintiffs have suffered substantial harm in the process of pursuing approval of such applications based on the conduct of Defendants as set forth herein.

First Cause of Action

Violation of Equal Protection of 14th Amendment to United States Constitution, brought pursuant to 42 U.S.C. § 1983 (against all Defendants)

81. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

82. Section 1 of the 14th Amendment to the United States Constitution states, in part, as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

83. Plaintiffs have vested property rights in the Land.

84. Plaintiffs have been deprived of their equal protection rights, privileges, and immunities provided by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The deprivation was caused by Defendants' actions that were taken under color of state statute, ordinance, regulation, and custom and usage.

85. Defendants acted with an intent and purpose to discriminate against Plaintiffs.

86. Defendant Coffin's discrimination towards Plaintiffs is based, in part, on Plaintiff Lowie's Israeli ethnicity and Jewish faith. Defendant Coffin's discrimination was not narrowly tailored to advance a compelling government interest.

87. Defendants, including Defendant Coffin and Defendant Seroka and other members of the City Council, acted with an intent and purpose to single out Plaintiffs from other similarly situated land use applicants and property owners. Defendants had no rational basis for treating Plaintiffs differently than other similarly situated land use applicants and property owners. When other similarly situated land use applicants and property owners presented applications to the City Council that were similar to Plaintiffs' applications — meaning, in part, that the applications conformed with all relevant laws and regulations and were approved by the Staff and the Planning Commission — the City Council has not repeatedly refused to approve such applications, created unreasonable delay, or imposed unsupported and suspect conditions, like the City Council has done with Plaintiffs' applications. Further, with respect to the property rights, development rights, and applications of other developers and property owners that are similarly situated to Plaintiffs, the City Council has not openly, unconditionally, and publicly advocated against those property rights, development rights, and applications, like Defendant Coffin and Defendant Seroka have done, including in private gatherings, City Council meetings, "town hall meetings," and elsewhere with respect to Plaintiffs' applications. Further, with respect to the property rights, zoning rights, and applications of other developers and property owners that are similarly situated to Plaintiffs and the Principals, the City Council has not repeatedly refused to uphold and approve

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

those rights and applications due to certain councilpersons' personal friendships with wealthy, high-profile homeowners who are opposed to the applications, like Defendant Coffin and Defendant Seroka have done towards Plaintiffs' applications due to personal relationships with Frank Schreck, Jack Binion and other members of the Queensridge Elite. Upon information and belief, the applications to develop the Land have experienced more delays, abeyances, and denials than any other applications in the history of the City of Las Vegas.

88. Defendants' conduct in violating Plaintiffs' equal protection rights, privileges, and immunities provided by the Equal Protection Clause of the 14th Amendment to the United States Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

89. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Equal Protection Clause of the 14th Amendment to the United States Constitution, as set forth herein, in a sum to be proven at trial.

90. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Second Cause of Action

Violation of Procedural Due Process of 14th Amendment to United States Constitution, brought pursuant to 42 U.S.C. § 1983 (against all Defendants)

91. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

92. Section 1 of the 14th Amendment to the United States Constitution states, in part, as follows: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

93. Plaintiffs have been deprived of their procedural due process rights, privileges, and immunities provided by the Due Process Clause of the Fourteenth Amendment of the United

States Constitution. The deprivation was caused by Defendants acting under color of state statute, ordinance, regulation, and custom and usage.

94. Defendant Coffin and Defendant Seroka, as members of the City Council, participated in and voted at multiple hearings wherein the City Council voted on and adjudicated whether Plaintiffs would be allowed to develop the Land pursuant to Plaintiffs' applications. Further, Defendant Coffin and Defendant Seroka participated in multiple meetings and discussions relating to Plaintiffs' applications to develop the Land.

95. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to act as impartial decision-makers.

96. The members of the City Council, including Defendant Coffin and Defendant Seroka, have not acted as impartial decision-makers. The members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Plaintiffs and as a result, the City Council has repeatedly refused to approve such applications, has created unreasonable delay, and has imposed unsupported and suspect conditions, all of which cause unnecessary and extraordinary costs to Plaintiffs in pursuing the right to develop the Land.

97. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to base their decisions on articulated standards and requirements — such as the standards and requirements provided for by the relevant laws and regulations, including those in Title 19 and Nevada Revised Statutes, and Chapter 278— but the members of the City Council, including Defendant Coffin and Defendant Seroka, did not do so. Instead, the members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Plaintiffs and their applications to develop the Land. In fact, Defendant Seroka publicly advocated against application of relevant law regarding Plaintiffs' applications.

98. Defendant Coffin and Defendant Seroka also made their decisions and engaged in their City Council discussions motivated by favoritism and partiality to their friends who lived in

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

the Queensridge CIC and were members of the Queensridge Elite, such as Mr. Binion's friendship with Defendant Coffin and Defendant Seroka's relationship with Frank Schreck.

99. Defendants' conduct in violating Plaintiffs' due process rights, privileges, and immunities provided by the Due Process Clause of the 14th Amendment to the U.S. Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

100. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Procedural Due Process Clause of the 14th Amendment to the United States Constitution, as set forth herein, in a sum to be proven at trial.

101. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Third Cause of Action
Violation of Equal Protection of Article 4, Section 21 of Nevada Constitution (against all Defendants)

102. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

103. Article 4, Section 21 of the Nevada Constitution states as follows: "In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State."

104. Plaintiffs have vested property rights in the Land. Plaintiffs have been deprived of their equal protection rights, privileges, and immunities provided by the Equal Protection Clause of the Nevada Constitution. The deprivation was caused by Defendants' actions that were taken under color of state statute, ordinance, regulation, and custom and usage. For example, when Defendant Coffin and Defendant Seroka took the aforementioned actions as councilpersons of the City Council against Plaintiffs and Plaintiffs' applications to develop the Land, Defendant Coffin, Defendant Seroka, and the City Council were acting under the color of the Las Vegas City

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

Charter, which outlines the position and duties of a councilperson of the City Council (*see, e.g.*, Articles I, II, III); Title 19, which contains the City's laws for zoning and land use; Nevada Revised Statutes, Chapter 278, which contains the State of Nevada's laws for zoning and land use.

105. Defendants acted with an intent and purpose to discriminate against Plaintiffs.

106. Defendant Coffin's discrimination towards Plaintiffs was based, at least in part, on Plaintiff Lowie's Israeli ethnicity and Jewish faith. Defendant Coffin's discrimination was not narrowly tailored to advance a compelling government interest.

107. Defendants, including Defendant Coffin and Defendant Seroka and other members of the City Council, acted with an intent and purpose to single out Plaintiffs from other similarly situated land use applicants and property owners. Defendants had no rational basis for treating Plaintiffs differently than other similarly situated land use applicants and property owners. When other similarly situated land use applicants and property owners presented development applications to the City Council that were similar to Plaintiffs' applications — meaning, in part, that the applications conformed with all relevant laws and regulations and were approved by the Staff and the Planning Commission — the City Council has not repeatedly refused to approve such applications, created delays, or imposed unsupported and suspect classifications, like the City Council has done with Plaintiffs' applications. Further, with respect to the property rights, development rights, and applications of other property owners that are similarly situated to Plaintiffs, the City Council has not openly, unconditionally, and publicly advocated against those property rights, zoning rights, and applications, like Defendant Seroka and Defendant Coffin have done, including in private gatherings, City Council meetings, "town-hall meetings," and elsewhere with respect to Plaintiffs' applications. Further, with respect to the property rights, zoning rights, and applications of other land use applicants and property owners that are similarly situated to Plaintiffs, the City Council has not repeatedly refused to uphold and approve those rights and applications due to certain councilpersons' personal friendships with wealthy, high-profile homeowners who are opposed to the applications, like Defendant Coffin and Defendant

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

Seroka have done towards Plaintiffs and Plaintiffs' applications due to personal relationships with Frank Schreck, Jack Binion and other members of the Queensridge Elite.

108. Defendants' conduct in violating Plaintiffs' equal protection rights, privileges, and immunities provided by the Nevada Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

109. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Equal Protection Clause of the Nevada Constitution, as set forth herein, in a sum to be proven at trial.

110. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Fourth Cause of Action

Violation of Procedural Due Process of Article 1, Section 8(5) of Nevada Constitution (against all Defendants)

111. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

112. Article 1, Section 8(5) of the Nevada Constitution states, in part, as follows: "No person shall be deprived of life, liberty, or property, without due process of law."

113. Plaintiffs have been deprived of their procedural due process rights, privileges, and immunities provided by the Due Process Clause of the Nevada Constitution. The deprivation was caused by Defendants acting under color of state statute, ordinance, regulation, and custom and usage.

114. Defendant Coffin and Defendant Seroka, as members of the City Council, participated in and voted at multiple hearings wherein the City Council voted on and adjudicated whether Plaintiffs would be allowed to develop the Land and associated conditions pursuant to

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

Plaintiffs' applications. Further, Defendant Coffin and Defendant Seroka participated in multiple meetings and discussions relating to Plaintiffs' applications to develop the Land.

115. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to act as impartial decision-makers, but the members of the City Council, including Defendant Coffin and Defendant Seroka, were not impartial decision-makers. The members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Mr. Lowie and Plaintiffs' applications to develop the Land.

116. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to base their decisions on articulated standards and requirements — such as the standards and requirements provided for by the relevant laws and regulations, including those in Title 19 and Nevada Revised Statutes, Chapter 278— but the members of the City Council, including Defendant Coffin and Defendant Seroka, did not do so. Instead, the members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Plaintiffs, and Plaintiffs' applications to develop the Land. In fact, Defendant Seroka publicly advocated against application of relevant law regarding Plaintiffs' applications. Defendant Coffin and Defendant Seroka also made their decisions and engaged in their City Council discussions motivated by favoritism and partiality to their friends Frank Schreck, Jack Binion and other members of the Queensridge Elite.

117. Defendants' conduct in violating Plaintiffs' due process rights, privileges, and immunities provided by the Due Process Clause of the Nevada Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

118. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Procedural Due Process Clause of the Nevada Constitution, as set forth herein, in a sum to be proven at trial.

119. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Fifth Cause of Action

Attorneys' fees and costs as special damages, pursuant to Nevada Rule of Civil Procedure 9(g) (against all Defendants)

120. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

121. Based upon Defendants' aforementioned violations of Plaintiffs' constitutional rights, privileges, and immunities, Plaintiffs have incurred attorneys' fees and costs in bringing this lawsuit to protect and enforce Plaintiffs' rights.

122. The attorneys' fees and costs incurred by Plaintiffs were directly and proximately caused by Defendants' violations of Plaintiffs' constitutional rights, privileges, and immunities. Defendants' actions involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, were motivated by evil and malicious motive and intent.

123. It was reasonably foreseeable that Plaintiffs would have to incur attorneys' fees and costs in response to Defendants' violations of Plaintiffs' constitutional rights, privileges, and immunities.

124. Plaintiffs are therefore entitled to recover their attorneys' fees and costs as special damages pursuant to Nevada Rule of Civil Procedure 9(g).

Prayer for Relief

Plaintiffs pray for relief, as follows:

1. Injunctive relief;

2. An award of damages in the nature of fees, costs, and expenses incurred as a result of Defendants' unlawful actions set forth herein, in an amount to be proven at trial;

3. An award of punitive damages;

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

4. An award of attorneys' fees and litigation costs pursuant to 42 U.S.C. § 1988 and Nevada Rule of Civil Procedure 9(g); and

5. Any other relief that this Court deems necessary and justified.

Plaintiffs also demand a jury trial for all issues triable by a jury.

Dated this 26th day of March 2018.

HUTCHISON & STEFFEN, PLLC

/s/ Mark A. Hutchison

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Robert T. Stewart (13770)
Attorneys for Plaintiffs

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

EXHIBIT "C"

Case No. 19-16114

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

180 LAND CO LLC; et al.,

Plaintiffs - Appellants,

vs.

CITY OF LAS VEGAS; et al.,

Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

BRIEF OF APPELLANTS 180 LAND CO LLC; FORE STARS, LTD.; SEVENTY ACRES LLC; AND YOHAN LOWIE

MARSHALL C. WALLACE (BAR NO. 127103)
ALEXANDER J. DOHERTY (BAR NO. 261552)
ABBY L. BLOETSCHER (BAR NO. 312759)
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
Phone: (415) 837-1515
Fax: (415) 837-1516

Attorneys for Appellants

FRAP 26-1 CORPORATE DISCLOSURE STATEMENT

Appellants 180 Land Co LLC's, Fore Stars, Ltd.'s, and Seventy Acres LLC's parent company is EHB Companies LLC, a Nevada Limited Liability Company.

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC; Fore Stars, Ltd.; Seventy Acres LLC; and Yohan Lowie

TABLE OF CONTENTS

Page

Page

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Page(s)

Page(s)

Page(s)

Statutes

Page(s)

Rules

Constitutional Provisions

I. STATEMENT OF JURISDICTION

The United States District Court for the District of Nevada ("District Court") had original jurisdiction over this action under 28 U.S.C. § 1331 as the lawsuit involved claims brought pursuant to 42 U.S.C. § 1983, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The District Court had supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

The District Court granted a motion to dismiss by defendants City of Las Vegas, James Coffin, and Steven Seroka on December 21, 2018. Judgment was entered on December 27, 2018. On May 2, 2019, the District Court denied Appellants' motion for reconsideration. Appellants timely filed a notice of appeal of the District Court's final orders on December 21, 2018 and May 2, 2019 to this Court on May 30, 2019. Fed. R. App. Proc. 4(a)(1)(A). The appeal is taken from a final order and judgement that disposed of Appellants' claims.

II. ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in dismissing Appellants' Complaint under 42 U.S.C. § 1983 for violation of equal protection of the laws, when the Complaint alleged detailed facts describing Appellees' discrimination against Appellants in denials and delays of their property development applications, based

on the national origin and religion of Appellants' principal, Mr. Yohan Lowie.

2. Whether the District Court erred in dismissing Appellants' Complaint under 42 U.S.C. § 1983 for violation of equal protection of the laws, when the Complaint alleged detailed facts describing Appellees' treatment of Appellants and their 250 Acres of residential-zoned property as a "class of one" in applying and enacting land use regulations and ordinances to delay and deny development of Appellants' 250 Acres.

3. Whether the District Court erred in dismissing Appellants' Complaint under 42 U.S.C. § 1983 for deprivation of property without due process of law, when the Complaint alleged detailed facts describing Appellees' deprivation of Appellants' established right to develop their 250 Acres of land in accord with hard zoning of up to 7.49 residential units per acre, through biased and arbitrary government actions.

4. Whether the District Court abused its discretion in dismissing all of Appellants' claims without leave to amend any of the allegations or claims in the Complaint, and instead swiftly entering judgment preventing amendment.

III. ADDENDUM OF PERTINENT STATUTES AND OTHER REFERENCE MATERIALS

A map of the subject property, along with verbatim statements of pertinent constitutional and statutory provisions and other relevant authority, highlighted for ease of reference, are set forth in the Addendum submitted herewith pursuant to

Circuit Rule 28-2.7.

IV. STATEMENT OF THE CASE, INCLUDING FACTS AND PROCEDURAL HISTORY

A. Introduction

More than four years ago, Appellants 180 Land Co LLC, Fore Stars Ltd., and Seventy Acres, LLC ("Landowners") acquired Fore Stars, Ltd. the then owner of 250 acres of land (the "250 Acres"), which the City of Las Vegas ("City") had zoned by ordinance in 2001 to permit up to 7.49 residential units per acre. Before acquisition, the City expressly confirmed this zoning and allowable density; Landowners' principals relied on that confirmation in acquiring the 250 Acres. Over the next several years, Landowners jumped through every one of the dozens of hoops the City erected for their development applications. In 2017 the City Planning staff recommended, and the City Planning Commission approved, a formal Development Agreement providing for residential development of the 250 Acres.

But when these approvals reached the Las Vegas City Council, hardball politics entered the picture. A handful of wealthy neighbors (the "Queensridge Elite") who had no rights at all in the 250 Acres, enlisted two City Councilmen – one of whom displayed national origin and religious prejudice against an Israeli principal of the Landowners – to shut down all development of the properties. The Queensridge Elite gave an ultimatum: The Landowners had to hand over 180 of

the 250 Acres immediately adjacent to their residences and then the Queensridge Elite would "allow" development of the remaining 70 acres, or they would use their political influence to shut down all development of the entire 250 acres. When the Landowners rejected this extortion, the Queensridge Elite made good on their threat: Acting as agents of the Queensridge Elite, Las Vegas City Councilmen Bob Coffin and Steve Seroka wrongfully delayed action on all of Landowners' applications, forced Landowners to comply with requirements, and then enacted an ordinance applying only to the 250 Acres, crafted to stymie all development of that property. The machinations of Coffin and Seroka on behalf of the Queensridge Elite stripped Landowners of all equal protection and due process before the City Council, and brought about precisely the outcome the Queensridge Elite had threatened: the shutdown of all development of the 250 Acres.

Once all avenues at the City has been exhausted, the Landowners had only one refuge – the protection of property rights under the United States and Nevada Constitutions, and only one sentry – the Courts. The Landowners filed this action, alleging denial of Constitutional guarantees of equal protection and due process, and seeking damages under 42 U.S.C. § 1983.

Rather than safeguarding the Landowners' constitutional protections, however, the U.S. District Court (Hon. James C. Mahan) in essence ruled that the Landowners had no such protections. Instead of construing the Landowners'

allegations as true, as required on a motion to dismiss, the District Court flipped the burden, accepted the ***Defendants'*** allegations as true, summarily dismissed the Landowners' Complaint, and immediately entered judgment ending the case. The District Court ignored the Landowners' detailed allegations that the City and the Council Members had discriminated against the Landowners based on their national origin and religion, and that the collective effect of the City's decisions and actions made the Landowners a "class of one" – allegations fully sufficient to state claims for denial of equal protection of the laws under the Fourteenth Amendment. The District Court just as swiftly, and just as erroneously, jettisoned the Landowners' due process claims: The District Court concluded that even though the Landowners owned fee simple title to the 250 Acres, even though the 250 Acres was zoned for up to 7.49 residential units per acre, and even though the Landowners had satisfied every City requirement in obtaining City staff's recommendation for approval and Planning Commission's approval for development of the 250 Acres, the Landowners did not have a constitutionally protected property interest in development of any of the 250 Acres. The District Court compounded its error, and further abandoned the rules on a motion to dismiss, by depriving the Landowners of an opportunity to amend the Complaint to address the Court's rulings.

The Landowners therefore turn to this Court to uphold their constitutional

protections and grant them the basic procedural rights under Fed. R. Civ. P. 12(b) to have the allegations of their Complaint taken as true, and to permit the Complaint to proceed, because it states claims for relief under United States and Nevada law. At a minimum, this Court should reverse and remand the case with instructions to the District Court to permit the Landowners to amend the Complaint.

B. Facts

All of the following facts are alleged in the Complaint, found in the exhibits to the Complaint, set forth in the documents the parties presented to the District Court, or judicially noticeable by this Court. On appeal, the Court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). *See* Request for Judicial Notice.

1. The 250 Acres – Land That At All Relevant Times Has Been Zoned for Residential Development

Landowners collectively own approximately 250 acres of prime residential real estate in the Queensridge district of Las Vegas (the "250 Acres"). Appellants' Excerpts of Record ("ER"), 973. Queensridge is one of the most exclusive and expensive residential neighborhood in the city. *Id*.

Landowners' 250 Acres consists of 10 parcels, which, at all relevant times,

has been zoned for residential development. For reference, the Addendum contains maps depicting the property and a tablet summarizing the allegations of the Complaint regarding the ownership, assessors' parcel numbers, acreage and zoning of the 10 parcels. In 2001, Las Vegas Ordinance No. 5353 confirmed the zoning of Parcels 1-8 and 10 as "R-PD7" – Residential Planned Development District permitting up to 7.49 units per acre. ER 977. That R-PD7 designation remains to this day for Parcels 1-7; Parcel 8 is now zoned R-4 (high-density multifamily development); and smaller parcels 9 and 10 are presently zoned "PD," permitting high-density residential and commercial development at the entrance to the 250 Acres. ER 978-979.

2. The Queensridge Common Interest Community

Queensridge is a luxury Common Interest Community ("Queensridge CIC"). The Queensridge CIC was established, and has at all times been governed, by the Master Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge recorded in 1996 ("Queensridge Master Declaration"). ER 974.

The Queensridge CIC weaves in and around the 250 Acres. For years, the owners of the 250 Acres leased the property for the Badlands golf course. ER 975. The Queensridge CIC homeowners have never owned any interest in 250 Acres or golf course operation. ER 974. The Queensridge Master Declaration did not extend to the 250 Acres. Indeed, it expressly **excluded** the 250 Acres and the golf

course occupying that land:

> The existing 27-hole golf course commonly known as the "Badlands Golf Course" is not part of the [Queensridge CIC] Property or the Annexable Property. ER 975.

Consistent with that fact, when the Queensridge CIC properties were sold, the custom purchase agreements for the properties told the buyers the 250 Acres "was not part of the Queensridge CIC"; the "golf course commonly known as 'Badlands Golf Course' is not a part of the Property or the Annexable Property" of the Queensridge CIC; the seller made no representations or warranties regarding "zoning or the future development of phases" of "Queensridge or the surrounding area or nearby property"; and "the view may at present or in the future include, without limitation, adjacent or nearby single-family homes, multiple family residential structures, commercial structures, utility facilities, landscaping and other items." ER 980.

In 2016, when members of the Queensridge Elite tried to claim rights in the 250 Acres, Judge Douglas Smith of the Eighth Judicial District Court of Nevada definitively ruled the Master Declaration did not grant, and the Queensridge CIC owners did not have, any rights in the 250 Acres or the golf course operation then occupying the 250 Acres. ER 971. The court concluded:

> The land which is presently owned by [Landowners], upon which the Badlands Golf course is presently operated . . . was never annexed into the Queensridge

> CIC, never became part of the "Property" as defined in the Queensridge Master Declaration and is therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge Master Declaration. ER 971, 1012.

In short, the owners of the luxury homes in the Queensridge CIC did not and do not have any interest in the 250 Acres; had and have no rights in the 250 Acres or the defunct golf course operations; and expressly acknowledged they had no rights in the 250 Acres or the golf course operations. ER 974-975. To the contrary, the Queensridge CIC owners for years enjoyed homes fronting the golf course for free: paying no fees, dues, maintenance, water charges or insurance on the 250 Acres or golf course operations.

At heart, this is a case of wealthy and powerful homeowners who have enjoyed an amenity at the expense of others for decades, and now seek to abuse the political and legal system, to keep that sweetheart arrangement in place.

3. Fore Stars' Acquisition Of The 250 Acres After The City Formally Verifies The Zoning To Be R-PD7

Yohan Lowie, an American citizen of Israeli descent and prominent Las Vegas real estate developer, was well-acquainted with the Queensridge neighborhood and the Queensridge CIC. Mr. Lowie developed the One Queensridge Place condominium towers and the nearby destination Tivoli Village shopping center. ER 973. As a developer of the surrounding area, Mr. Lowie

wanted to ensure that something complementary would be built on the residentially zoned property.

Before doing so, he took the precaution of confirming the residential zoning with the City of Las Vegas – one of the Appellees in this case. ER 1008. In response, the City issued an official City Zoning Verification Letter on December 30, 2014. ER 977, 1032. In that letter, the City certified in writing that "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." *Id*. The City added that "[t]he R-PD District is intended to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns." *Id*.

Relying on the City's verification, Mr. Lowie and his partners acquired Fore Stars Ltd., and thereby the 250 Acres in March 2015. ER 973.

4. The Queensridge Elite Vow To Stop Any Development Unless The Landowners Forfeit More Than Two-Thirds Of Their Property

The Landowners then began the process of seeking entitlements to build on their land consistent with the R-PD7 zoning. ER 980. A small but powerful cluster of Queensridge residents (the "Queensridge Elite") adamantly opposed the idea that their neighbors (the Landowners) might be allowed to use neighboring property (the 250 Acres) in the same way the Queensridge Elite used their own

property (high-end residences), rather than preserving their adjacent no-cost golf course greenbelt view. *Id*. From 2015 forward, the Queensridge Elite relentlessly opposed any and all development of the 250 Acres. *Id*. Title 19, the Las Vegas Unified Development Code ("Title 19") promised Las Vegas landowners the City would establish "a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for the review and approval of all proposed development," and "promote fair procedures that are efficient and effective" in handling land development applications. The Queensridge Elite, in concert with the officials over which they had influence, caused the City to violate this pledge of equity and fairness.

5. The Queensridge Elite Enlist Las Vegas City Councilman Bob Coffin As Their Agent To Stop Development Of The 250 Acres

The Queensridge Elite were led by Jack Binion, a longtime gaming operator, and Frank Schreck, a prominent gaming industry lawyer. Mr. Binion promptly enlisted his "longtime friend" Las Vegas City Councilman Bob Coffin, in the cause to stop the Landowners' development of the 250 Acres. ER 980. Coffin agreed to take direction from Binion and Schreck, with the specific intention and plan to deny the Landowners their constitutional rights in the 250 Acres. ER 987.

It did not take long for Coffin to make clear he was working not for the public benefit, but for the Queensridge Elite. Within months of the Landowners' acquisition of the 250 Acres, Coffin told Mr. Lowie that Mr. Binion was

demanding that no development occur on 180 of the 250 Acres (Parcels 1-4), but that Coffin would "allow" Mr. Lowie to build "anything he wanted" on the remaining 70 acres (Parcels 5-10) if the Landowners gave up the 180 acres. ER 987. Several months later, in April 2016, Coffin told the Landowners that to allow any development at all on the 70 acres, the Landowners would have to "hand over" the 180 acres, and associated water rights, to the Queensridge Elite in perpetuity. *Id*.

In the same discussions, Coffin revealed his motivation went beyond just helping his colleagues. Councilman Coffin openly displayed bias against Mr. Lowie based on his Israeli heritage and Jewish faith. Coffin told Mr. Lowie he compared his purchase of the 250 Acres to Israeli Prime Minister Netanyahu's establishment of Israeli settlements in the West Bank, and accused Mr. Lowie of treating the Queensridge CIC residents as "a band of unruly Palestinians." ER 982. As time went on, Coffin amplified his expressions of discrimination and animus towards Mr. Lowie, calling Mr. Lowie a "crazy Israeli," "motherfucker," and "scum:"

> I just called to congratulate and realized it might be too late. Therd [sic] is a lot to ask you about starting with your oppo on that **crazy Israeli**. Next few days gonna be crucial on Badlands.
>
> **No tolerance on this one**. Pls ask Tim to post me later when more is known. Yeah, I am looking elsewbere [sic]

> next few hours. Badlands rides on this! ER 453; emphasis added).

Councilman Coffin also issued the following text message:

> Any word on your PI enquiry about badlands guy?
>
> While you are waiting to hear **is there a fair amount of intel** on the **scum** bebind [sic] the badlands takeover? **Dirt will be handy if I need to get rough**. ER 454; emphasis added).

While these statements are shocking for a public official, they go far beyond intemperate: they demonstrate Coffin was not acting as a public servant, but as a vigilante intent on stripping Landowners of their development rights, based on national origin and religious animus, and the intent to financially benefit adjacent property owners whose interests he had pledged to serve.

Such revelations make it no surprise that, as the Complaint alleges, Coffin acted outside of Title 19 and contrary to Landowners' development of the 250 Acres at every single opportunity. ER 984.

6. Councilman Seroka Joins With Councilman Coffin To Stop Development Of The 250 Acres

The Queensridge Elite then doubled down on their political strategy. The Las Vegas City Council seat for Ward 2, which includes Queensridge, was up for election in July 2017. The Queensridge Elite identified Stephen Seroka as a candidate that would do their bidding on the 250 Acres. They agreed with Seroka

to provide campaign financing in exchange for his opposition to the Landowners' development. ER 984.

Seroka proved a loyal operative. He made defeating the Landowners' development plans the centerpiece of his campaign. In the campaign Seroka publicly proclaimed that he was "focused on the property rights of the existing homeowners, all of whom have an expectation to the open space that played heavily in their [previous] decisions to purchase." ER 984. He promised that, if elected, he would "require" the Landowners to participate in a property swap with the City of Las Vegas, which he coined as the "Seroka Badlands Solution." *Id*. As the election approached, Seroka boldly committed that if elected he would vote against all development proposals for the 250 Acres. At a Planning Commission meeting in February 2017, he said that, "representing my neighbors in Queensridge," he would allow the development "over my dead body." ER 985. As a result of such protests, the City Council delayed any action on the Landowners' pending development application until the election took place, in violation of Nevada law. ER 947.

Seroka was elected in July 2017. Just like Coffin, Seroka acted and spoke against the Landowners' development of the 250 Acres at every opportunity. ER 986-987. Like Coffin, he did so not to carry out his view of the public interest, but to benefit himself and a select group of confederates – the Queensridge Elite.

ER 987.

Seroka and Coffin made little effort to conceal their animus towards the Landowners and their development applications. Throughout the Landowners' efforts to get the 250 Acres entitled, Seroka instructed City Staff to impose inapplicable requirements upon Landowners intended solely for the purpose of obstruction and delay. ER 988. In November 2017 Seroka went so far as to publicly proclaim that for the City to "follow the letter of the law" in considering the Landowners' applications would be "the stupidest thing in the world." ER 986.

The law required the District Court to accept as true the alleged fact that in all matters involving development of the 250 Acres, Councilmen Coffin and Seroka abdicated their public responsibility be objective and impartial, and instead acted as agents of the Queensridge Elite. The Complaint so alleges: "Defendant Coffin and Defendant Seroka are conducting their duties as members of the City Council under the direction of Frank Schreck, Jack Binion and the Queensridge Elite with the instructions and intention to deny the constitutional property rights of Plaintiff Landowners." ER 987.

7. The Landowners Do Everything The City Asks Of Them And More, Attempting To Obtain Approval Of Development Of The 250 Acres

The Landowners refused to capitulate to such hardball tactics. Instead, they trusted that, because they owned 250 Acres of land hard zoned for residential

development of up to 1,875 units, they would receive fair process and development approvals if they presented development plans comparable to and compatible with the surrounding area.

They proceeded to do just that. Over the course of more than three years, the Landowners addressed every requirement of Title 19 and every request, condition and suggestion imposed by the City's Planning staff and Planning Commission as they prosecuted their applications to develop the 250 Acres. ER 949. Despite the efforts of Coffin and Seroka to thwart them, the Landowners navigated this maze, meeting every demand the City imposed. As another court has ruled:

> To comply with the City demand to have one unified development, for over two years…the Landowners worked with the City on an MDA that would allow development on the 35 Acre Property along with all other parcels that made up the 250 Acre Residential Zoned Land…The Landowners complied with each and every City demand, making more concessions than any developer that has ever appeared before this City Council…In total, the City required at least 16 new and revised versions of the MDA. Request for Judicial Notice ("RJN"), 55.

As a result, when in 2017 the Landowners presented a comprehensive, thoughtful and beneficial proposal for development of the 250 Acres, including only 60 homes on the 180 acres adjacent to the Queensridge CIC – far below the

zoned density of up to 7.49 units per acre – City Planning staff and the City Attorney unequivocally recommended approval of the application. ER 985. The Las Vegas Planning Commission agreed, approving the Landowners' project for the 250 Acres. ER 539.

At that point the Landowners had received all necessary approvals for their project for the 250 Acres except one – that of the City Council. On August 2, 2017, the City Council held a hearing on the Landowners' comprehensive plan that the City had demanded Plaintiffs submit for the entire 250 Acres. ER 985. The Development Agreement embodying the comprehensive plan had been negotiated, drafted and received a recommendation for approval by City Staff and the City Attorney, and the City Planning Commission had already approved it at a public hearing. *Id*. But true to his promise, Defendant Seroka made a motion to deny the Development Agreement, and in seeking denial read a prepared statement drafted by Mr. Schreck. *Id*. The City denied the Development Agreement. *Id*. The Complaint alleges Coffin's and Seroka's vehement opposition was the driving factor. ER 986-987.

8. Judge Douglas Smith Rules The Landowners Have A Vested Right To Develop The Residential Zoned Property

The Queensridge Elite did not limit themselves to politics in trying to stop development of the 250 Acres; they also attempted to use the courts to cause delay and financial harm to Landowners as they promised they would do. In 2016,

certain of the Queensridge Elite sued the Landowners and the City, claiming the 250 Acres was subject to the Queensridge Master Declaration. Nevada District Court Judge Douglas Smith rejected those allegations in late 2017 and ruled the property owners in the Queensridge CIC have no interest in, or right to control or limit development of the 250 Acres. ER 1016. Equally important, Judge Smith concluded the 250 Acres was "hard zoned R-PD7," allowing "up to 7.49 residential units per acre," and most importantly, ruled the Landowners "have the right to develop" the 250 Acres. ER 1017.

9. Seroka and Coffin Cause The City To Enact Illegal Ordinances Targeting Only The Landowners' Property

In light of that ruling, the Queensridge Elite, in league with Coffin and Seroka, sought to permanently freeze the Landowners' development plans by causing the City to enact two bills targeting only the 250 Acres – Las Vegas City Bill No. 2018-5 and Bill No. 2018-24. ER 986.

Those bills have been consolidated into City Ordinance LVMC § 19.16.105 (the "Ordinance"). A Nevada court has already ruled the documents support the allegation that "[The Ordinance] not only targets solely the Landowners' Property" but also requires "the Landowners to perform an extensive list of requirements, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City." RJN 56. The Ordinance went as far as criminalizing any violations. *Id*. It singled out,

and shut down any development of, the 250 Acres. The Complaint alleges Coffin and Seroka instructed City Staff to draft the Ordinance in a manner to target and impair the constitutional property rights and existing zoning rights exclusively the Landowners. ER 988.

The Court must accept on this appeal that Coffin and Seroka succeeded: The Complaint specifically alleges the Ordinance is specifically targeted at the 250 Acres, that it in fact applies only to the 250 Acres, and that Seroka and Coffin instructed City Staff not to do an analysis of what properties would actually be subject to the Ordinance because they knew that analysis would identify only the 250 Acres. ER 988.

That wasn't enough for the City. At the behest of Coffin and Seroka, the City took the unprecedented action of requiring that every permit the Landowners might seek for their property be reviewed by the City Council. Ordinarily, building permits are determined by City Staff and may not be heard by City Council under Title 19.16.100(F)(3). Coffin and Seroka instructed City Staff to violate Title 19.16.100(F)(3) by mandating that all building permit level review applications submitted by Plaintiff Landowners, including simple safety fencing, go through formal City Council hearings. ER 987. The City subjected no other property and no other property owner to such illegal procedures. RJN 58 ["The City has required that this extraordinary standard apply despite the fact that LVMC

19.16.100 F(3) specifically prohibits review by the City Council."]).

10. Coffin And Seroka Refuse To Recuse Themselves

Coffin's and Seroka's statements and their conduct demonstrated their illegal and vigorous opposition to any development of the 250 Acres. The Landowners therefore quite sensibly requested that Coffin and Seroka recuse themselves from any proceeding involving the 250 Acres. ER 1037, 10057. Once again, Coffin and Seroka acted in the interests of the Queensridge Elite, not the public: Had the Landowners' applications been contrary to the public interest, each readily could have recused himself, knowing the remaining Council members would protect the public interest. Knowing they had to be involved to stop the Landowners' development, both refused recusal, and both persisted in doing everything in their power to stop Landowners' development of the 250 Acres. ER 983-984.

11. Coffin's, Seroka's And The City's Conduct Frustrated All Development Of The 250 Acres

Coffin and Seroka accomplished more than they ever could have hoped. Despite the fact that Landowners' land is hard zoned residential for up to 7.49 residential units per acre, despite Landowners' years of applications, despite the Landowners' satisfaction of every requirement imposed by City Planners and the Planning Commission, despite City staff's recommendations for approval, and despite the City Planning Commission approvals, the Landowners' applications for development of the 250 Acres have been systematically rejected by the City

Council.

This result has occurred not because of some inadequacy of the Landowners' applications, not because of any Landowner failure to comply with rules or requirements, and not because the City acted consisted with the public interest; as the Complaint expressly alleges, and the District Court was required to accept as true, the City has stripped Landowners of their development rights:

- "with an intent and purpose to discriminate against Plaintiffs";
- "with an intent and purpose to single out Plaintiffs from other similarly situated land use applicants and property owners";
- "motivated by evil and malicious motive and intent" and with "reckless and callous indifference to Plaintiffs' constitutionally protected rights." ER 990-991.

As a result, the Landowners' applications to develop their land "have experienced more delays, abeyances, and denials than any other applications in the history of the City of Las Vegas." ER 991. The City and the City Council have treated Landowners as a "class of one," foisting upon them extraordinary requirements that have not been required of other similarly situated individuals or entities. ER 989. The Complaint continues that the City's treatment of Landowners as a class of one and denial of their right to develop their land has "caused Landowners to incur extraordinary costs and expenses in attempting to

meet requirements that are both unlawful and not required of any other similarly situated individual or entity." *Id*. The Landowners have therefore suffered damages, including "increased maintenance and carrying costs, engineering fees, and architectural fees." ER 991.

C. Procedural History

1. The Landowners' Civil Rights Complaint

When Seroka and Coffin had both refused to remove themselves from proceedings regarding the 250 Acres, the Landowners recognized there was no chance the City would afford them fair or equal treatment under the laws. On March 26, 2018 they filed this action. ER 971.

The Landowners' Complaint alleged in detail the history of Coffin's, Seroka's and City's deprivation of the Landowners' equal protection and due process rights in the 250 Acres, as follows.

- The City, Coffin and Seroka deprived Landowners of equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution (First Cause of Action) and Article 4, Section 21 of Nevada Constitution (Third Cause of Action).
- The City, Coffin and Seroka deprived Landowners of due process of law in violation of the 14th Amendment of the U.S. Constitution (Second Cause of Action) and Section 8(5) of the Nevada Constitution

(Fourth Cause of Action).

The Landowners claimed attorneys' fees as special damages in a Fifth Cause of Action, and prayed for injunctive relief and damages. ER 997-978.

2. Appellees' Motions To Dismiss

The City, and Coffin and Seroka separately moved to dismiss the Complaint in May 2018. On May 2, 2018, the City filed its Motion to Dismiss. ER 950. On May 15, 2018, Coffin and Seroka filed their Motion to Dismiss, and their Joinder to the City's May 2, 2018 Motion. ER 921, 916. On May 22, 2018, the City filed its Joinder to Coffin's and Seroka's May 15, 2018 Motion to Dismiss. ER 911. As a result of the joinders, the Defendants City and Seroka each effectively, and improperly, made two motions to dismiss.

While those motions were pending, the parties proceeded with discovery. The discovery yielded additional evidence supporting all of the Landowners' claims, so in October 2018, the Landowners filed a motion for the District Court to consider additional evidence on the motions to dismiss. ER 239.

In the same Fall 2018 timeframe, the Landowners learned Seroka was seeking to enact the Ordinance targeting the 250 Acres and criminalizing their development applications. The Landowners asked Seroka and Coffin to recuse themselves; when they declined to do so, Landowners asked the Court for an emergency injunction precluding them from participating in any proceedings

regarding the 250 Acres. ER 761. The District Court denied that injunction on October 11, 2018. ER 254.

3. The District Court's Dismissal Order And Immediate Judgment

On December 21, 2018 the District Court ruled on the pending motions to dismiss, without affording the Landowners argument. The District Court's Order dispatched each of the Landowners' claims on a single ground:

- The District Court denied the Landowners' motion to consider supplemental documents on the ground that the court's duty on a motion to dismiss is to "primarily examine the allegations in the complaint to determine whether a plaintiff has filed a proper pleading." ER 9.
- Because Defendants had two motions to dismiss pending, and the first failed to conform to pleading requirements, the District Court denied the first without prejudice. *Id*.
- The District Court granted the second motion to dismiss as to the equal protection claims, ruling that although the Landowners alleged they had been treated as a "class of one," "the complaint does not provide any details regarding similarly situated landowners," and "[w]ithout greater similarities between plaintiffs and the preferred class of similarly situated landowners, the allegations in the complaint cannot 'plausibly suggest an entitlement to relief.'" Rather than permit leave to amend to address this

lack of detail, however, the District Court dismissed the First and Third Causes of Action for Equal Protection, without prejudice. ER 10.

- The District Court granted Defendants' motion to dismiss the due process claims on the sole basis that "plaintiffs' alleged right to develop the Badlands property is not a constitutionally protected property interest." ER 11. The District Court reasoned that Landowners had procedural protections under Las Vegas Codes, but those "do not contain language that significantly limits the City Council's discretion," so because the City Council could arbitrarily reject the Landowners' applications, Landowners had no constitutionally protected property interest in any of the 250 Acres. The District Court dismissed the due process claims with prejudice. ER 10-11.

Having dismissed all of Landowners claims, the Court swiftly entered Judgment without request or motion, three court days later, on December 27, 2018. ER 5.

4. The Landowners' Motion For Reconsideration

The Landowners timely moved for reconsideration and clarification of the Judgment. The Landowners explained that the District Court's decision the Landowners had no "constitutionally protected property interest" ran directly contrary to the determination by Judge Smith, affirmed by the Nevada Supreme

Court, that Landowners have a vested right to develop the residential zoned property in the 250 Acres. ER 93. The Landowners further showed how the District Court's ruling was being misused in separate and independent Nevada state court inverse condemnation litigation, and demonstrated why the issue of whether one has a property interest for due process purposes is distinct from the issue of whether private property has been taken, requiring payment of just compensation under the U.S. and Nevada Constitutions. ER 100-101.

The District Court denied reconsideration, concluding that its due process ruling and the state court inverse condemnation cases "have nothing to do with one another," and the Landowners "have failed to show that state law creates a property interest to develop the Badlands property which the Due Process Clause of the Fourteenth Amendment protects." ER 4. The District Court declined to address any of the other issues the Landowners raised. *Id*.

The Landowners timely appealed all components of the District Court's December 21, 2018 Order dismissing the Complaint and declining to consider additional documents, and its May 2, 2019 Order denying the Landowners' motion for reconsideration or clarification. ER 14-15.

5. The Inconsistent Ruling In The State Court Inverse Condemnation Action

Just after the District Court denied reconsideration, parallel state court litigation produced a result inconsistent with the District Court's rulings. In *180*

Land Co, LLC v. City of Las Vegas, Eighth Judicial District Court of Nevada Case No. A-17-758528-J, an inverse condemnation case involving 35 of the 250 Acres (the "State Court Action"), the Eighth Judicial District Court of Nevada (Hon. Timothy Williams) rejected a pleading challenge by the City, holding the complaint in that action alleged a taking under the Fifth Amendment of the U.S. Constitution. RJN 45.[1] Similar to this case, the City in the State Court Action argued that 180 Land Co had not alleged a vested property interest in the 35 acres sufficient to support Fifth Amendment taking claim. RJN 62. The Nevada court disagreed: "Here, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings. RJN 54. The Nevada court identified 11 alleged acts of the City supporting its conclusion that the Landowners had alleged a property interest in and vested right to use the 35 acres for a residential use, and the City had taken Landowners' property without just compensation. RJN 55-62.

V. SUMMARY OF ARGUMENT

The orders below strongly suggest the District Court concluded the parties'

[1] Judge Williams denied the City's motion for judgment on the pleadings; subsequently, the Nevada Supreme Court denied the City's writ petition for review of the order, and denied the City's petition for rehearing on the writ. RJN 71, 73. As of the time of this brief, the City has sought *en banc* reconsideration of the denial of the writ petition.

disputes were best addressed in the pending state court cases, and therefore sought to swiftly and summarily terminate federal court litigation of those disputes. In so doing, the District Court erred, both by failing to accept the allegations of the Complaint and the inferences flowing reasonably from those allegations, and by bypassing the rule requiring a grant of leave to amend where a plaintiff might be able to allege additional facts. These errors infected each of the Landowners' claims.

First, the District Court erroneously dismissed the Landowners' Equal Protection claims. The Landowners' Complaint plausibly alleged in ample fact detail that (a) Coffin, Seroka and the City intentionally discriminated against the Landowners on the basis of the national origin and the Jewish faith of Mr. Lowie, and (b) the defendants intentionally treated the Landowners and the 250 Acres differently from similarly situated individuals and their property, and that there was no rational state purpose for the different treatment. Either is sufficient to state a claim for denial of Equal Protection.

Second, the District Court similarly failed to credit the Landowners' allegations showing the City and the Councilmen deprived the Landowners of constitutionally-protected property interests without due process of law. The Complaint alleged facts showing Landowners' ownership of the 250 Acres, and their reasonable expectation of development entitlement deriving from existing

rules or understanding under Nevada law sufficient to state a protected property interest. Moreover, this test looks to Nevada law, and the property interest for due process purposes is broader than the property interest required for a Fifth Amendment taking claim, so the order of Judge Smith is preclusive of the issue here, and Judge Williams' order in the State Court Action also establishes the Complaint alleges a sufficient protected property interest for due process purposes, and requires reversal of the District Court's order dismissing the Landowners' due process claims. The Complaint also alleges a viable substantive due process claim, independently requiring reversal.

Finally, the District Court compounded these errors by dismissing the Complaint without permitting the Landowners the opportunity to amend, and instead rushing to enter final judgment. At a minimum, this Court should reverse to permit the Landowners the basic procedural right of a fair opportunity to address any perceived deficiencies in the Complaint.

VI. STANDARD OF REVIEW

An order granting a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is subject to *de novo* review. *Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013). "All well-pleaded allegations of material fact in the complaint are accepted as true and are construed in the light most favorable to the non-moving party." *Id.* To survive a motion to

dismiss, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

An order denying a motion for reconsideration is reviewed for abuse of discretion. *Smith v. Pac. Props & Dev. Corp.*, 358 F.3d 1097, 1100 (9th Cir. 2004). However, whether the denial "rests on an inaccurate view of the law and is therefore an abuse of discretion requires [the Court] to review the underlying legal determination de novo." *Id*. (citation omitted).

VII. ARGUMENT

A. The Landowners' Detailed Allegations of Discriminatory Intent and Disparate Treatment Are Sufficient to Plausibly Allege a Violation of The Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment prohibits a governmental actor from denying to "any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. There are two ways to establish an equal protection violation. First, a plaintiff may allege that he was intentionally discriminated against on the basis of his membership in an identifiable class. *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134-37 (9th Cir. 2003). Second, a plaintiff may allege the defendant intentionally

treated him differently from similarly situated individuals, and that there was no rational state purpose for the different treatment. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). The latter theory is known as a "class-of-one" equal protection claim. *Id.* The Complaint in this case plausibly alleges Equal Protection causes of action under both theories pursuant to both the U.S. and Nevada Constitutions.[2]

1. The Complaint Adequately Alleges Class-Based Equal Protection Causes of Action Based On Mr. Lowie's National Origin

"To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998) ("§ 1983 claims based on Equal Protection violations must plead intentional unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory intent"). Protected classes include race and national origin. *City of Cleburne v. Cleburne Living Center*, 473 U.S.

[2] The analysis is the same under both Constitutions. Article 4, section 21, of the Nevada Constitution has been interpreted to provide equal protection guarantees equivalent to those under the U.S. Constitution. *Armijo v. State*, 111 Nev. 1303, 1304 (Nev. 1995) ("[T]he standard of the Equal Protection Clause of the Nevada Constitution [is] the same as the federal standard.").

432, 440 (1985). In the context of a land use action, a governmental actor engaging in such discrimination violates the Equal Protection Clause. *See Avenue 6E Investments, LLC v. City of Yuma, Ariz*., 818 F.3d 493, 502 (9th Cir. 2016).

In *Avenue 6E Investments, LLC*, this Court determined the complaint contained sufficient allegations that the City of Yuma's denial of a rezoning application was motivated by animus against Hispanics – and therefore held the plaintiff real estate developers stated a plausible claim for relief under the Equal Protection Clause. *Avenue 6E Investments, LLC* at 504. The Court based its decision, in substantial part, on the complaint's allegations regarding racial animus in the community and the City of Yuma's deviation from normal procedures. *Id.* at 505-507.

Even though the government officials in *Avenue 6E Investments, LLC* expressed no bias, it was sufficient that members of the community expressed animus, and government officials were aware of it. *Id.* at 504 ("The presence of community animus can support a finding of discriminatory motives by government officials, even if the officials do not personally hold such views."). Further, even though the alleged statements by members of the public did not "expressly refer[] to race or national origin," the use of racially charged "code words" – such as concerns about "large families" and "unattended children" – plausibly suggested discriminatory intent. *Id.* at 505-506.

The developers also plausibly alleged discriminatory intent on the basis of the City of Yuma's deviation from its normal procedures. *Avenue 6E Investments, LLC* at 507. "In denying the rezoning, the City Council's decision ran contrary to the unanimous recommendation provided by the City's Planning and Zoning Commission, as well as the recommendation of City planning staff." *Id.* The City's decision to ignore the advice and recommendations of its own land use experts suggested discriminatory intent. *Id.* The fact that the City had approved similar zoning decisions in the past likewise suggested racial animus. *Id.*

For very similar reasons, the Complaint in this case plausibly alleges an Equal Protection violation based on the national origin and Jewish faith of the Landowners' principal, Mr. Lowie. Indeed, this case does not involve a government official's mere awareness of *the public's* animus, as in *Avenue 6E Investments, LLC*. The Complaint alleges animus by a government official *himself*, Las Vegas City Councilman Bob Coffin. Mr. Coffin did not even attempt to conceal his national origin animus through euphemisms or code words. He analogized Mr. Lowie's acquisition of the 250 Acres to the highly controversial establishment of Israeli settlements in the West Bank by Israeli Prime Minister Benjamin Netanyahu. ER 982. And he accused Mr. Lowie of treating the Queensridge CIC residents as "a band of unruly Palestinians." *Id*. Mr. Coffin's express attacks on Mr. Lowie's Israeli heritage make this case even a clearer equal

protection violation than *Avenue 6E Investments, LLC.* They also serve as code words for anti-Semitism. For the pleadings issue here, the Landowners have alleged both illegal discrimination based on national origin and religious affiliation. Either is sufficient to support a *per se* equal protection violation.

The Complaint further alleges that Mr. Coffin's animus infected the City Council's consideration of the Landowners' land use applications, precipitating the denial of those applications and thereby preventing any development of the 250 Acres. A plaintiff need not plead or prove that discriminatory purpose was the *sole* purpose of the government body's action, but rather only that it was a motivating factor. *Avenue 6E Investments* at 504. The Complaint's allegations do so. ER 990-991.

As in *Avenue 6E Investments*, the Complaint here contains detailed allegations of the City's deviation from normal procedures. The holding in *Avenue 6E Investments* applies verbatim in this case: "In denying the rezoning, the City Council's decision ran contrary to the unanimous recommendation provided by the City's Planning and Zoning Commission, as well as the recommendation of City planning staff." *Avenue 6E Investments, LLC* at 507. While that allegation by itself is enough to require reversal, the Complaint goes further, alleging the Defendants acted "with an intent and purpose to single out Plaintiffs from other similarly situated land use applicants and property owners," and that as a result,

Landowners have experienced more delays, abeyances, and denials than any other applications in the history of the City of Las Vegas." ER 990-991. The Complaint alleges the Ordinance is specifically targeted at the 250 Acres, that it in fact applies only to the 250 Acres, and that Seroka and Coffin instructed City Staff not to perform an analysis of what properties would actually be subject to the Ordinance because they knew that analysis would identify only the 250 Acres. ER 987-988.

The foregoing allegations are all allegations of specific facts – not legal conclusions. The law required the District Court to not only presume the truth of these allegations but also draw all reasonable inferences from the allegations in *Landowners'* favor. Instead, the District Court disregarded the allegations. For this reason alone, this Court should reverse.

2. The Complaint Adequately Alleges Equal Protection Causes of Action Based on a "Class of One" Theory

A property owner states a claim for denial of equal protection – even in the absence of class-based discrimination – by alleging "similarly situated" persons or properties received better treatment, i.e., by alleging the plaintiff has been irrationally singled out. *Carpinteria Valley Farms, Ltd. v. County of Santa Barbara*, 344 F.3d 822 (9th Cir. 2003); *Herrington v. County of Sonoma*, 834 F.2d 1488, 1501 (9th Cir. 1987). To state a "class-of-one" claim under the Equal Protection Clause, a plaintiff must allege that it has "been intentionally treated differently from others similarly situated and that there is no rational basis for the

difference in treatment." *Engquist v. Oregon Dep't of Agr.*, 553 U.S. 591, 601 (2008); *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 944 (9th Cir. 2004); *Gerhart v. Lake County Mont.*, 637 F.3d 1013, 1022 (9th Cir. 2011).

The Complaint plausibly alleges the Landowners were singled out for unique treatment by the City Council. ER 990-991; *see Carpinteria* at 830 (allegations that a county's actions relating to a private polo field application and residential building permit imposed conditions not imposed on similarly situated property owners). The Landowners alleged that other property developers that had submitted land development applications *already recommended for approval by the City's staff and approved by the Planning Commission* were not subjected to unreasonable delays, the imposition of unsupported conditions, and the vigorous personal opposition of City Council members, including Messrs. Coffin and Seroka. ER 990-991; *see Gerhart* at 1022 (property owner was singled out for unique treatment because county's decision to put land use permit application "on hold" and eventually deny it was an "outlying occurrence" compared to other applications). The Landowners further alleged, on information and belief, that their applications have been subjected to more obstruction than any other application in Las Vegas history. ER 990-991; *Arista Records LLC v. Doe*, 604 F.3d 110, 120 (2d Cir. 2010) (the *Twombly* plausibility standard does not preclude a plaintiff from pleading facts "upon information and belief"). *That* is a plausible

allegation of a "class of one."

The Complaint contains abundant allegations that the Landowners' unique treatment was intentional. The City Council obstructed the Landowners' development plans *on purpose* because the 250 Acres abutted the community of the politically well-connected Queensridge Elite. ER 987-988. Further, although subjective ill will is *not* required to state a plausible "class of one" claim, *see Gerhart* at 1022, the Complaint plausibly alleges exactly that in the form of Councilman Coffin's invidious, profane attacks against Mr. Lowie. ER 982-983.

Finally, the Complaint plausibly alleges the absence of a rational basis for the Landowners' differential treatment. Singling out the Landowners' development applications based on Mr. Lowie's Israeli descent is not a rational basis. ER 959. The fact that wealthy, well-connected homeowners did not want the Landowners' development to replace their no-cost greenbelt also provides no rational basis for the City's unprecedented obstruction. ER 991.

These allegations "plausibly suggest an entitlement to relief" pursuant to a "class of one" equal protection theory. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Nothing more was required for these causes of action to proceed past the pleadings stage, which, post-*Twombly*, is not supposed to constitute an onerous hurdle. *Twombly*, 550 U.S. at 556 (plausibility "does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a

reasonable expectation that discovery will reveal evidence" to support the plaintiff's allegations).

3. The District Court Ignored The Complaint's Class-Based Equal Protection Theory and Improperly Subjected The "Class of One" Theory to a Heightened Pleading Standard

The Complaint plainly includes equal protection allegations based on Mr. Lowie's national origin, *see* ER 990, 994, and both sides discussed the matter in their papers below, albeit not extensively. The District Court nevertheless chose not to address the matter at all. ER 10.

Instead, the court erroneously construed the Complaint to plead only a "class of one" theory. ER 10. The court deemed those allegations inadequate on the ground that the complaint is purportedly missing "details regarding similarly situated landowners…." *Id.* As demonstrated above, however, the Complaint alleges a similarly situated group, i.e., property developers that submitted land development applications that were already approved by the City's staff and Planning Commission. ER 990-991.

To the extent the District Court took issue with the Complaint's failure to *identify* those other real estate developers, the court erred. The level of detail required by the District Court is not required by the law. *Twombly* did not change the required level of *specificity* of a complaint's allegations: "we do not require heightened fact pleading of specifics, but only enough facts to state a claim to

relief that is plausible on its face." *Twombly*, 550 U.S. at 570. The facts alleged by the Landowners – i.e., that other planned and approved real estate developments were not subjected to the same hurdles, requirements, and ordinances – do indeed "plausibly suggest an entitlement to relief." ER 990-991, *Starr*, 652 F.3d at 1216. The identity of those similarly situated is a matter of *proof*, not pleading.

The case cited by the District Court, *Thornton v. City of St. Helens*, 425 F.3d 1158 (9th Cir. 2005), provides no support for the court's erroneous rule. In *Thornton*, this Court determined, on summary judgment, that there simply was no similarly situated business because the plaintiffs' automobile wrecking yard was the only such business in the defendant city. *Id.* at 1167-68. *Thornton* did not involve *pleading* requirements at all. As adequately alleged in the Landowners' complaint, Las Vegas contains many other similarly situated property developers that will provide – beyond the pleadings stage – a meaningful comparison to the Landowners for the purposes of the "class of one" analysis. The District Court erred by requiring the Landowners to set forth their evidence supporting this fact allegation at the pleadings stage.

B. The District Court Abused Its Discretion by Failing to Provide Landowners Leave to Amend Their Equal Protection Causes of Action

The District Court also erred by failing to provide the Landowners leave to amend the equal protection causes of action – and then blocking any attempt to seek such relief by entering judgment just *three court days* after issuing the order

on the motion to dismiss. For this reason too, this Court should reverse.

"Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (quoting the rule). "Dismissal of a complaint without leave to amend is only proper when, upon de novo review, it is clear that the complaint could not be saved by any amendment." *Arizona Students' Association v. Arizona Board of Regents*, 824 F.3d 858, 871 (9th Cir. 2016). "A district court's decision to deny a party leave to amend its complaint is reviewed for an abuse of discretion." *Id.* Such a denial is reviewed "strictly," however, "in light of the strong policy permitting amendment." *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).

Even if this Court were to conclude the Landowners' Complaint does not plausibly allege a "class of one" equal protection claim – which it does – it is certainly true the claim can be saved by amendment. The District Court tacitly acknowledged as much, dismissing the equal protection claims solely on the ground the Complaint lacked certain "*details* regarding similarly situated landowners…." ER 10. To the extent the court deemed these claims defective, the defect was merely one of pleading, not law. Indeed, the District Court's decision to dismiss these claims *without* prejudice confirms the court's conclusion that amendment would not be futile. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (dismissal without prejudice "would imply that the court did

not believe the defects in the complaint were unremediable").

Rather than afford the Landowners with an opportunity to amend, however, the District Court went out of its way to prevent any such amendment. In its order, the court did not address whether leave to amend was appropriate at all, even though that issue naturally goes hand-in-hand with the dismissal without prejudice of any cause of action in an initial complaint. ER 12-13. The District Court then went a step further: It affirmatively blocked the Landowners from seeking leave to amend by rushing to enter final judgment against them just three court days later with the Christmas holiday sandwiched in between. *See Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996) (holding that "a motion to amend the complaint can only be entertained if the judgment is first reopened under [Federal] Rule [of Civil Procedure] 59 or 60").

Although the Landowners failed to expressly *request* leave to amend in their opposition to the motion to dismiss, that omission does not justify the District Court's actions. "In dismissing for failure to state a claim, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Doe v. U.S.*, 58 F.3d 494, 497 (9th Cir. 1995) (quotation marks omitted); *Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986) ("It is of no consequence that no request to amend the pleading was

made in the district court.").

In sum, by dismissing the Landowners' claims without prejudice, the court should have afforded "a reasonable opportunity to file an amended complaint." *Arizona Students' Association* at 871. That is especially so given that the complaint was the Landowners' *initial* complaint, and, as detailed above, the District Court plainly believed that amendment was not futile. By ignoring the issue of whether leave to amend was appropriate and rushing to enter judgment, the District Court violated Ninth Circuit precedent and acted inconsistently with the letter and spirit of the Federal Rules. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1254-55 (9th Cir. 2010) ("While district courts enjoy a wide latitude of discretion in case management, this discretion is circumscribed by the courts' overriding obligation to construe and administer the procedural rules so as 'to secure the just, speedy, and inexpensive determination of every action and proceeding.'" (quoting Fed. R. Civ. P. 1)). For this reason too, this Court should reverse.

C. The District Court Erred in Dismissing The Landowners' Procedural Due Process Cause of Action

The District Court dispatched the Landowners' due process claims in much the same flawed way. To state a procedural due process claim under the U.S. Constitution, a plaintiff must allege the existence of "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the

government; [and] (3) lack of process." *Portman v. Cty. of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). The Landowners alleged all three elements. Just as with the Equal Protection claims, the District Court dismissed because it failed to consider Landowners' actual allegations and applied erroneous legal standards.

1. The Landowners Have a Property Interest Protected by The Constitution

(a) The Nevada State Court Judgment Affirming The Landowners' Protected Property Interest Bound The District Court and Was Entitled to Issue Preclusive Effect

On November 21, 2016, the Nevada District Court for Clark County entered judgment in a lawsuit filed by a wealthy family living in Queensridge against the Landowners, the City of Las Vegas, and others. ER 1000. The plaintiffs sought, among other things, injunctive relief against the Landowners' development of the same land at issue here. ER 1003, 1011. In entering judgment against the plaintiffs, the court ruled that the Landowners "have the right to develop the [Golf Course] Land" in a manner consistent with the property's R-PD7. ER 1017. This state court judgment was and is entitled to preclusive effect.

"The Federal Full Faith and Credit Statute, 28 U.S.C. §1738, requires federal courts to give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.'" *Gonzales, v. California Department of Corrections*, 739 F.3d 1226, 1230 (9th Cir. 2014) (quotation marks omitted). Under Nevada law, a judgment

has issue preclusive effect when four elements are met: "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 713 (Nev. 2008). "The availability of collateral estoppel is a mixed question of law and fact which this court reviews de novo." *Eilrich v. Remas*, 839 F.2d 630, 632 (9th Cir. 1988).

The state court judgment satisfies all four elements. First, the issue here is whether the Landowners have a property right in the 250 Acres that is cognizable under *state* law. *Boone v. Redevelopment Agency of San Jose*, 841 F.2d 886, 893 (9th Cir. 1988) ("Whether a property right exists is determined by state law."). Applying state law, the Nevada state court found exactly that in the judgment, confirming the Landowners' right to develop the land. ER 1017.

Second, the judgment was entered pursuant to the court's ruling granting the Landowners' motion to dismiss all of the plaintiffs' claims and dismissing all such claims with prejudice. ER 1023. The Nevada Supreme Court subsequently affirmed the judgment. The second element is therefore met too. *Zalk-Josephs Co. v. Wells-Cargo*, 81 Nev. 163, 169-70 (1965) (dismissal with prejudice pursuant to NRCP 12(b) is a judgment on the merits).

Third, Appellee The City of Las Vegas was a party to the state court action. ER 1000. Appellees Seroka and Coffin were not parties, but that does not matter. Any interests Seroka and Coffin had in the subject matter of the state court lawsuit were adequately represented by the City of Las Vegas. *See Alcantara v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 917-18 (Nev. 2014) (adopting Restatement (Second) of Judgments section 41, providing that privity can be established through adequate representation). Indeed, the City and Messrs. Seroka and Coffin have litigated the action from which this appeal arises in virtually identical lockstep, making the same arguments and seeking the same relief.[3]

The fourth "actually and necessarily litigated" element is also met. "When an issue is properly raised . . . and is submitted for determination, . . . the issue is actually litigated." *Alcantara v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 918 (Nev. 2014) (quotation marks removed). The plaintiffs in the state court action claimed that the Landowners' planned redevelopment of the 250 Acres would deprive them of "vested rights" they purportedly had in the land pursuant to the Queensridge CIC's Master Declaration . ER 1002. As such, the court actually and necessarily determined *what* property rights the Landowners had in the former golf course,

[3] In fact, the District Court denied the City's motion to dismiss on procedural grounds, but still dismissed the claims against the City because the City "joined" in Seroka and Coffin's motion (who likewise joined in the City's motion). Given the City had filed its own motion to dismiss, the "joinder" was improper and provided the City with effectively two motions to dismiss.

what rights, if any, the plaintiffs had in the property, and whether the planned redevelopment of the site infringed on any such rights of plaintiffs.

Most fundamentally, the application of issue preclusion here serves the doctrine's purpose, i.e., "to prevent multiple litigation causing vexation and expense to the parties and wasted judicial resources by precluding parties from relitigating issues." *Kirsch v. Traber*, 414 P.3d 818, 821 (Nev. 2018) (quotation marks omitted). The state court has already determined the Landowners have a development right in the 250 Acres legally cognizable under state law. The law precluded the District Court from reaching the opposite conclusion.

(b) The District Court's Decision Cannot Be Reconciled With a Second State Court Order Entered Recently in an Inverse Condemnation Case

The recent order by Judge Williams of the Eighth Judicial District Court of Nevada reinforces this result. Citing no fewer than eleven separate grounds, the state court denied the City's Motion for Judgment on the Pleadings, concluding Landowners alleged a sufficient property interest to state a cause of action for a taking under the Fifth Amendment. RJN 58-65. The governing law establishes that such a protected interest is broader than, and encompasses, the vested property interest a party must show to establish a taking of property without just compensation under the Fifth and Fourteenth Amendments of the United States Constitution. *Harris v. County of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990)

(plaintiff's loss of ability to use land for commercial purposes was a protected property right under the due process clause, even though it was not a "vested right"); *Federal Lands Legal Consortium v. United States*, 195 F.3d 1190, 1196 (10th Cir. 1999) (the fact that a grazing permit is not "property" under the Takings Clause does not prevent the same permit from constituting "property" under the Due Process Clause). Therefore, the property interest required for a due process claim is broader than – and effectively a superset of – the property interest one must show for taking cause of action.

Consequently, the order in the State Court Action holding that the Landowners' allegations state a sufficient property interest for a takings claims requires the conclusion that the Landowners' allegations state a sufficient property interest for a due process claim. The District Court's Order that is the subject of this appeal cannot be reconciled with Judge Williams' May 2019 Order denying the City's Motion for Judgment on the Pleadings in the State Court action. Defendants might argue that the Complaint here did not allege the same facts but (a) that is not so, as the Landowners' interest in the 250 Acres has not changed from the State Court Action to here, and (b) even if that were true, the District Court should have allowed leave to amend rather than dismissing and entering judgment. Either way, the Order upholding the pleading of a takings claim in the State Court Action weighs strongly in favor of reversal here. That is particularly true because this

Court looks to Nevada law to determine whether Landowner's complaint alleges a constitutionally-protected property interest for the purposes of a due process claim. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59-60 (1999).

(c) The Landowners Are Fee Simple Owners of Land Hard Zoned For Residential Development and Have a Constitutionally-Protected Right to The Use and Development of Their Land

Even if there were no state court decisions, the outcome would be the same, because the Complaint plausibly alleged the existence of a protected property right. "The right of [an owner] to devote [his] land to any legitimate use is properly within the protection of the Constitution." *Harris v. County of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990) (*quoting Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121, 49 S. Ct. 50, 73 L. Ed. 210 (1928)); *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 949 (9th Cir. 2004) (recognizing "a constitutionally protected property interest in a landowner's right to devote [his or her] land to any legitimate use"). *Perry v. Sindermann*, 408 U.S. 593, 601 (1972) explains: "'[P]roperty' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by existing rules or understandings. . . Regardless of its source, "to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."

Roth, 408 U.S. at 577.

In *Squaw Valley Dev. Co.*, for example, this Court recognized that the plaintiff ski resort owners had a protected right to the use and enjoyment of their property, which was allegedly interfered with in the form of the "overzealous and selective regulation" of the resorts by a local water quality control board. *Id.* Similarly, in *Harris*, the county's rezoning of the plaintiff's property – used as an all-terrain vehicle rental facility – as residential easily met the standard. 904 F.2d 497, 503 (9th Cir. 1990); *see also Nasierowski Bros. Inv. Co. v. Sterling Heights*, 949 F.2d 890, 897 (6th Cir. 1991) (property developer had constitutionally-protected property interest in previous zoning classification under which proposed development had been approved).

Moreover, a contract with a public agency, or its equivalent, gives rise to a protected property right. *Parks v. Watson*, 716 F.2d 646, 656 (9th Cir. 1993) (A contract between a city and a property owner in which the city agreed to vacate streets would give property owner an entitlement sufficient for due process protection); *accord Federal Lands Legal Consortium v. United States,* 195 F.3d 1190, 1196 (9th Cir. 1999) (property protected by due process clause includes an "interest" secured by an "understanding").

Here, the Landowners allege that they own the 250 Acres, the land is zoned in such a manner that they have the right to develop the land up to 7.49 residential

units per acre, the City expressly certified that zoning in a Zoning Verification Letter, and the Landowners relied on that Zoning Verification Letter in acquiring the 250 Acres. ER 973, 977. The allegation of the Verification Letter and the Landowners' reliance on that letter by itself is enough to show a protected property interest. But the Complaint goes further, alleging that Landowners submitted repeated applications to develop the land, as guided and invited by the City's own Planners, the applications complied with all relevant laws and regulations, and the applications were *approved* by the Planning Commission. ER 990-991. Yet, as the Complaint expressly alleges, the City Council engaged in a concerted and successful effort to obstruct and outright thwart *any* such development efforts.

The Complaint thus plausibly alleges a constitutionally-protected property right by the Landowners to develop their land in accordance with its zoning classification. Indeed, the Landowners respectfully submit that this is not a close call. *See Schneider v. County of San Diego*, 28 F.3d 89, 92 (9th Cir. 1994) (loss of use and enjoyment of cars "[c]learly" a protectable interest).

2. The Complaint Alleges Appellees' Deprivation of The Landowners' Property Rights

There can be no reasonable dispute that the Complaint adequately alleges the second element of a due process claim, i.e., government deprivation of a protected right. The Complaint alleges, in painstaking detail, a persistent, concerted, four-year campaign of delays, obstruction, and sabotage, spearheaded by City

Councilmembers Coffin and Seroka and designed to block the Landowners' lawful efforts to develop their property. ER 980-989.

3. The City's Biased Decision-Making Process Was The Antithesis of Due Process

The Complaint also satisfies the third element of the Landowners' claim, i.e., whether the process afforded the Landowners was constitutionally adequate. "It is well-settled that the Due Process Clause prevents the state from depriving a plaintiff of a protected property interest without a fair trial in a fair tribunal." *Stivers v. Pierce*, 71 F.3d 732, 741 (9th Cir. 1995). Fairness requires an absence of bias. *Id.*; *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) ("a biased decisionmaker [is] constitutionally unacceptable"). "A plaintiff can establish a procedural due process claim by demonstrating either actual bias by the adjudicator or that the adjudicator's pecuniary or personal interest in the outcome of the proceedings may create an *appearance of partiality*." *Stivers* at 741 (quotation marks omitted).

This standard applies to both courts and administrative bodies. *Stivers* at 741 (involving Nevada private investigators licensing board). Further, the bias of a single person on a multi-member decision making body is sufficient. *Id.* at 748 ("The plaintiff need not demonstrate that the biased member's vote was decisive or that his views influenced those of other members. Whether actual or apparent, bias on the part of a single member of a tribunal taints the proceedings and violates due process.").

The Complaint is replete with specific allegations of Councilmen Coffin and Seroka's actual and implied bias. The Complaint details Coffin's bias against Mr. Lowie on the basis of his Israeli descent. ER 981-983. The Complaint further alleges Coffin and Seroka's personal interest in thwarting the development plans in order to please their wealthy benefactors in the Queensridge community. ER 982-984, 987. The Complaint also describes how Coffin and Seroka, in both private and public statements, have made clear their intention to delay, oppose, and obstruct any attempt by the Landowners to develop their property. ER 982, 984; *Stivers* at 741 741 (bias is present if "the adjudicator has prejudged, or reasonably appears to have prejudged, an issue" (quotation marks omitted)).

Such facts easily supply a plausible allegation of a lack of due process.

4. This Court Should Reject Any Argument That Procedural Due Process Does Not Apply to Appellees' Actions

In the trial court, Appellees argued procedural due process constraints did not apply to the "legislative" actions they took with respect to the Landowners' proposed development. In the event Appellees resurrect that argument here, the Court will find it has no merit.

The law in the Ninth Circuit on this topic is clear. In the land use context, government actions exceptionally affecting "a relatively small number of persons" or property owners, as opposed to a large population, are subject to due process requirements. *Harris v. County of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990). In

Harris, this Court determined that the County's decision to revise a broadly applicable general plan so as to rezone the plaintiff's property and the land adjacent to it was subject to due process requirements because it affected the plaintiff individually.

So too here. The Complaint explicitly and repeatedly alleged that Coffin, Seroka, and the City deprived the Landowners of their property interest by denials of various land use applications relating specifically to the Landowners' property. ER 987-988. Such actions are plainly adjudicatory and administrative under Ninth Circuit precedent.

Indeed, even the City's enactment of the Ordinance was an administrative, not legislative, act because the Ordinance is alleged to have targeted the Landowners' property as a "class of one." Specifically, the Complaint alleges Councilmen Coffin and Seroka "instructed City Staff to draft the Ordinance in a manner to target and impair the constitutional property rights and existing zoning rights of Plaintiffs" and that the Ordinance exclusively targeted, and applied to, the Landowners' property. ER 988. These allegations bring the ostensibly "legislative" act of enacting ordinances squarely into the adjudicative/administrative category. *See Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) ("Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.").

D. The Landowners Were Entitled to Leave to Amend The Due Process Claims

The District Court dismissed the due process claims *with* prejudice. ER 12. That was an abuse of discretion because the court applied the wrong law. *Sali v. Corona Reg'l Med. Ctr.*, 889 F.3d 623 (9th Cir. 2018) ("[A]n error of law is a per se abuse of discretion." (quotation marks omitted)).

The District Court based its ruling solely on the ground the Landowners' "alleged right to develop the Badlands property is not a constitutionally protected property interest." ER 10. However, the court reached that conclusion by erroneously analogizing this case to cases involving a "government benefit, such as a license or permit…." ER 11. As detailed above, the court read the Complaint too restrictively. The Complaint alleges Appellees' multi-year campaign of obstruction against every aspect of the Landowners' attempts to develop the property. ER 980-988. The property right implicated is not a government benefit in the form of this or that permit but rather something much more fundamental, i.e., the Landowners' right to the legitimate, reasonable use of the 250 Acres. ER 980 (Queensridge Elite "schemed to oppose *any and all* development or use of the Land").

Accordingly, the analysis applicable to cases involving property rights in the form of governmental benefits – which focuses on whether the governmental decision maker's discretion is limited by substantive restrictions – does not control

in this case alleging the deprivation of one of the key "bundle of sticks" included in the 250 Acres. *See, e.g., Gerhart v. Lake County Mont.*, 637 F.3d 1013, 1021 (9th Cir. 2011) (assessing whether plaintiff had a protected property interest in a road approach permit); *Wedges/Ledges of California v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994) (arcade game licenses); *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 903 (9th Cir. 2007) (billboard permit). By applying these authorities and denying leave to amend the due process claims based thereon, the District Court abused its discretion.

E. The Complaint Plausibly Alleges a Substantive Due Process Claim

While the Complaint explicitly sought redress for the denial of Landowners' procedural due process rights under the Fourteenth Amendment, this Court also should conclude the Landowners alleged sufficient facts to state a substantive due process claim. Where a plaintiff alleges that the denial of due process consists of an official's arbitrary action, "a claim for violation of substantive due process is indistinguishable from a claim for violation of procedural due process." *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951, 957-58 (9th Cir. 1991), cert. granted, judgment vacated sub nom. *City of Rocklin v. Sierra Lakes Reserve*, 506 U.S. 802, 113 S. Ct. 31, 121 L. Ed. 2d 4 (1992), and opinion vacated in part, 987 F.2d 662 (9th Cir. 1993).[4] This Court has expressly acknowledged that a

[4] Although the Supreme Court vacated the judgment in Sierra Lake Reserve and

procedural due process claim can also be stated as a substantive due process claim, and can arise out of the same facts. *Id*. It is the substance of the Complaint, not any label attached to a cause of action, that matters. *See Harris v. County of Riverside*, 904 F.2d 497, 501-502 (9th Cir. 1990).

In the land use context, a defendant violates substantive due process if its actions "lacked a rational relationship to a government interest." *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 485 (9th Cir. 2008). This Court's decision in *Del Monte Dunes v. Monterey*, 920 F.2d 1496 (9th Cir. 1990), is dispositive here. In that case, a real estate developer alleged a substantive due process claim against the City of Monterey, California, arising from the city's denial of the developer's application to build residential units on oceanfront property. *Id.* at 1508. The district court dismissed the claim pursuant to the city's motion to dismiss and motion for summary judgment. *Id.* at 1499 n.1.

This Court reversed. The Court noted, as a preliminary matter, that motions to dismiss and motions for summary judgment "must be viewed with particular skepticism" in such land use cases. *Del Monte Dunes* at 1508 ("The importance of the specific facts and circumstances relating to the property and the facts and

---

remanded the action, the Ninth Circuit reinstated the relevant portions of *Sierra* Lake. *Sierra Lake Reserve v. City of Rocklin*, 987 F.2d 662 (9th Cir. 1993) ("We therefore vacate Part I of the Sierra Lake Reserve opinion, which dealt with the physical taking claim. We retain Part II because the due process and equal protection claims it considered are unaffected by *Yee*").

circumstances relating to the governmental action militate against summary resolution in most cases."). The Court then held the developer's allegations and affidavits were sufficient to survive the summary judgment stage. According to those allegations and affidavits, the city council first approved the development project and then reversed course and rejected it – not for "valid regulatory reasons" but rather "to forestall any reasonable development of the property" due to "political pressure from neighbors and other residents of the city to preserve the property as open space." *Id.* The Court determined it could not rule, as a matter of law, that the city's actions were not arbitrary and irrational for the purposes of substantive due process, and therefore "[t]his issue must await determination after a trial on the merits." *Id.*

The Complaint alleges a substantially similar fact pattern in which the Landowners sought to develop their property but were thwarted by Appellees due to political pressure from the Queensridge Elite to preserve the property as open space. ER 980-982, 985. The Complaint further alleges that Appellees' opposition to the Landowners' redevelopment plans was motivated not by a valid regulatory reason but rather because of Coffin's invidious animus against Mr. Lowie and Coffin and Seroka's corrupt relationships with wealthy supporters. ER 982-984, 987. These allegations are more than sufficient to allow the Landowners' due process claim past the pleadings stage.

F. Councilmen Seroka and Coffin Are Not Immune From Suit

In the District Court, Councilmen Coffin and Seroka also moved to dismiss on immunity grounds.[5] Such arguments have no merit.

Officials performing legislative acts that involve the formulation of policy and apply to the community at large are afforded absolute immunity. *Kuzinich v. County of Santa Clara*, 689 F.2d 1345, 1349 (9th Cir. 1982). Those performing administrative or executive functions involving ad hoc decision making directed at one or a few individuals are not. *Bateson v. Geisse*, 857 F.2d 1300, 1304 (9th Cir. 1988) (city council members' who denied building permit were not entitled to absolute immunity); *Zamsky v. Hansell*, 933 F.2d 677, 679 (9th Cir. 1991) (commission members who ruled on whether the county's proposed land use plan complied with existing regulations were not entitled to absolute immunity). All of the actions complained of in the Complaint uniquely affected, and indeed were specifically directed against, the Landowners – no one else. Seroka and Coffin are not entitled to absolute immunity.

Nor are they entitled to qualified immunity. The law at the time of the constitutional violations alleged in the Complaint was clearly established and provided "fair warning" to Councilmen Coffin and Seroka that their conduct was unlawful. *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1136-37 (9th

[5] As a matter of law, the City has "no immunity from lawsuits resulting from [its] constitutional torts." *Bateson v. Geisse*, 857 F.2d 1300, 1304 (9th Cir. 1988).

Cir. 2003). Qualified immunity does not apply to a government official's invidious discrimination. *Ae Ja Elliot-Park v. Manglona*, 592 F.3d 1003, 1008-09 (9th Cir. 2010). The Complaint's allegations of discrimination against Mr. Lowie based on his national origin are sufficient to defeat qualified immunity on a motion to dismiss. ER 950-952; *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001) (dismissal pursuant to Rule 12(b)(6) on qualified immunity grounds improper if the plaintiff "alleged acts to which qualified immunity may not apply"). Further, the four-year campaign of obstruction of the Landowners' development efforts – directed solely against the Landowners and motivated by a corrupt interest in pleasing a handful of individuals – runs afoul of clearly established "class of one" equal protection principles and due process. ER 980-989.

VIII. CONCLUSION

The Complaint alleges in detail the saga of a powerful Las Vegas elite conspiring with City Councilmen to deny the Landowners their established right to residential development of 250 acres of land, based not on the public interest, but on illegal discrimination and illicit financial deals. Those allegations readily state claims for violations of the Landowners' Constitutionally-guaranteed rights of equal protection and due process. Yet the District Court sidestepped its obligations to accept the allegations and their fair inferences as true, to fairly apply the substantive law, and to liberally permit amendment, erroneously dismissing the

Complaint and swiftly entering Judgment, improperly precluding amendment.

This Court should reverse the District Court's Orders and Judgment, and remand to the District Court with instructions to permit the case to proceed based on the Complaint. Alternatively, and at a minimum, this Court should reverse the Judgment and remand to the District Court with instructions to permit the Landowners to amend the Complaint within a reasonable time.

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC, Fore Stars Ltd., Seventy Acres LLC; and Yohan Lowie

STATEMENT OF RELATED CASES

No related cases are known to be pending in this Court.

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC, Fore Stars Ltd., Seventy Acres LLC; and Yohan Lowie

CERTIFICATE OF COMPLIANCE WITH FRAP 32

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 13,928 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2007 14-point Times New Roman.

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC, Fore Stars Ltd., Seventy Acres LLC; and Yohan Lowie

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC, Fore Stars Ltd., Seventy Acres LLC; and Yohan Lowie

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 19-16114

I am the attorney or self-represented party.

This brief contains 13,928 **words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- (•) complies with the word limit of Cir. R. 32-1.
- ( ) is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ( ) is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ( ) is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ( ) complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ( ) it is a joint brief submitted by separately represented parties;
  - ( ) a party or parties are filing a single brief in response to multiple briefs; or
  - ( ) a party or parties are filing a single brief in response to a longer joint brief.
- ( ) complies with the length limit designated by court order dated [ ].
- ( ) is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Marshall C. Wallace **Date** August 28, 2019

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Case No. 19-16114

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

180 LAND CO LLC; et al.,

Plaintiffs - Appellants,

vs.

CITY OF LAS VEGAS; et al.,

Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

ADDENDUM OF PERTINENT STATUTES CITED BY APPELLANTS 180 LAND CO LLC; FORE STARS, LTD; SEVENTY ACRES LLC; AND YOHAN LOWIE

MARSHALL C. WALLACE (BAR NO. 127103)
ABBY L. BLOETSCHER (BAR NO. 312759)
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
Phone: (415) 837-1515
Fax: (415) 837-1516

Attorneys for Appellants

TABLE OF CONTENTS

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC, Fore Stars Ltd., Seventy Acres LLC; and Yohan Lowie

CERTIFICATE OF SERVICE

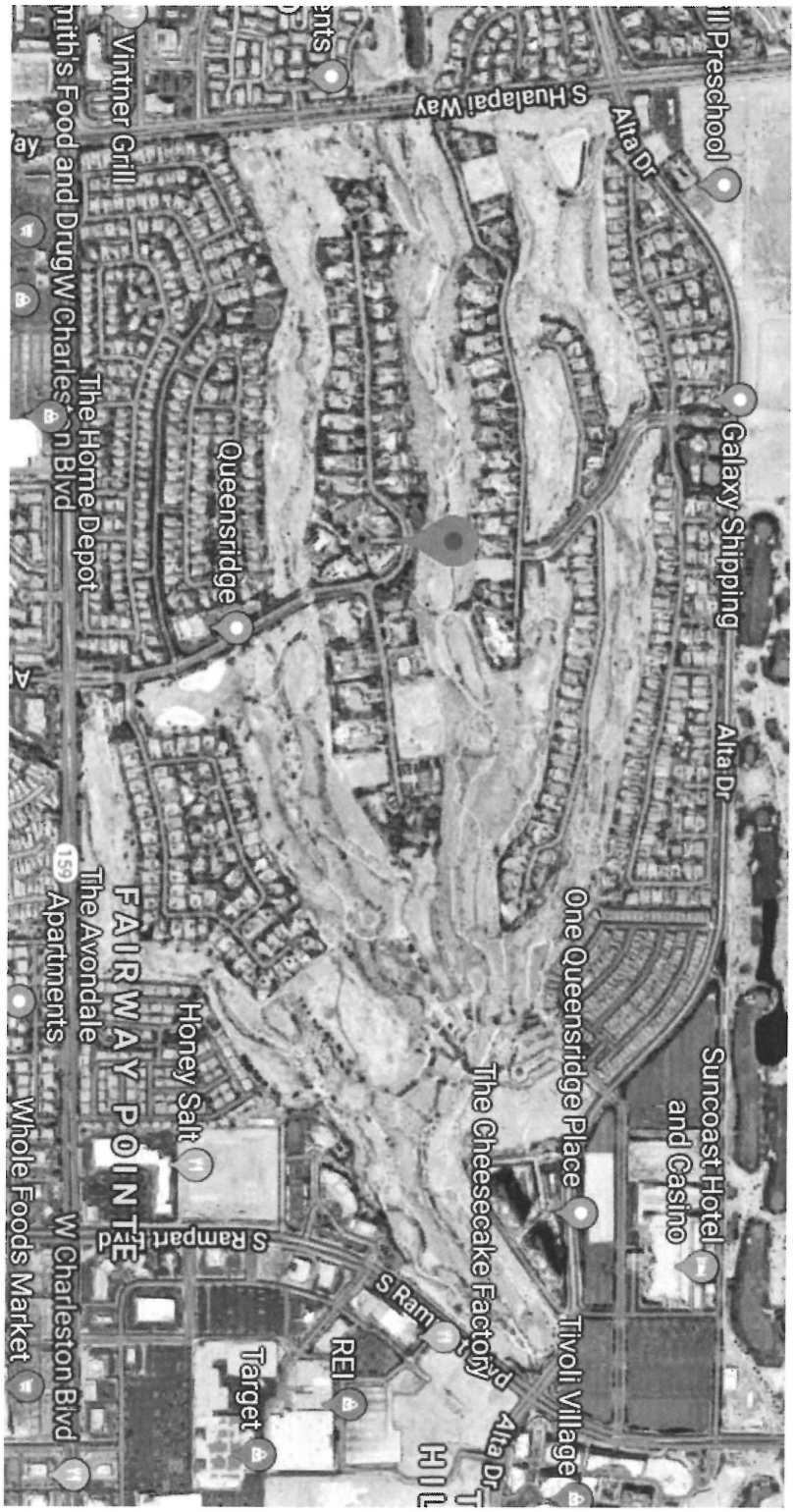
I hereby certify that on August 28, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

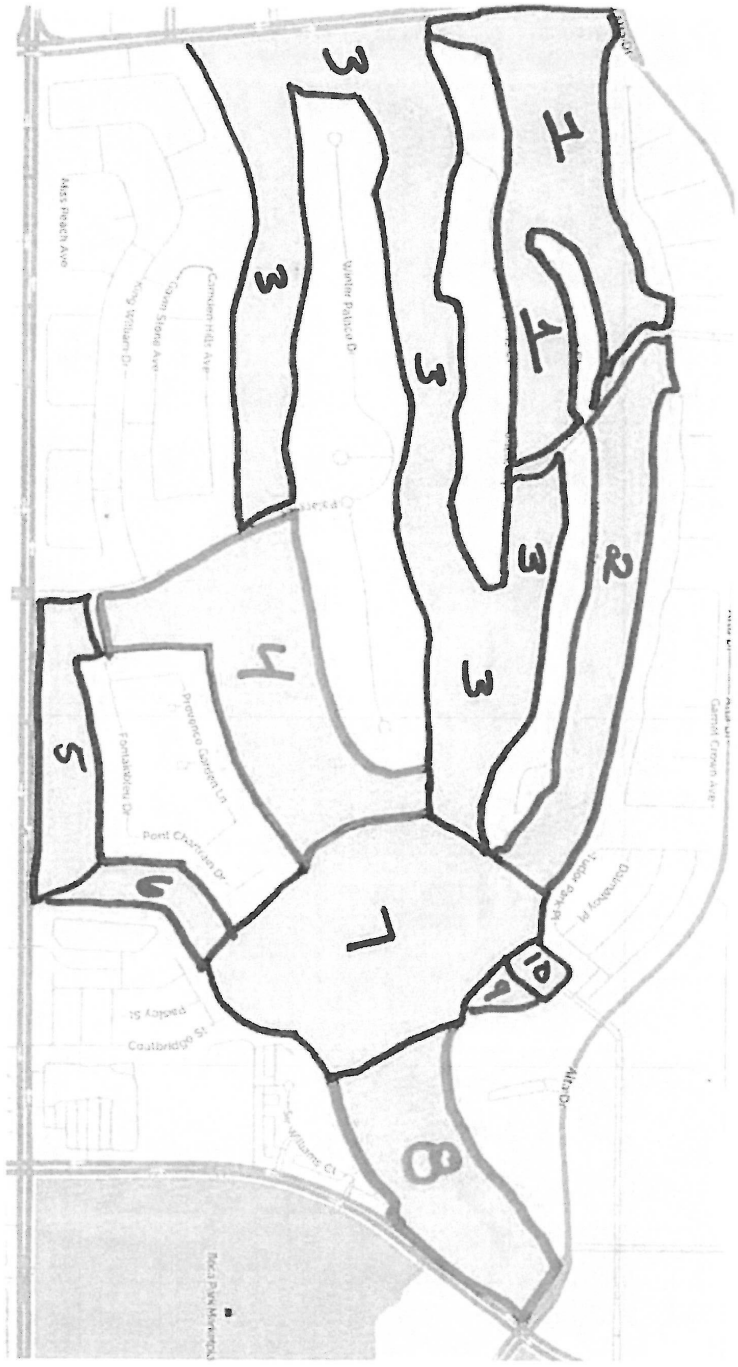
I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 28, 2019

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ *Marshall C. Wallace*
MARSHALL C. WALLACE
Attorneys for Appellants
180 Land Co LLC, Fore Stars Ltd., Seventy Acres LLC; and Yohan Lowie




1
1
2
3
3
3
3
4
5
6
7
8
9
10

	OWNER	APN	ACREAGE	ZONING
1	180 Land Co. LLC	138-31-201-005	34.07	R-PD7
2	180 Land Co. LLC	138-31-601-008	22.19	R-PD7
3	180 Land Co. LLC	138-31-702-003	76.97	R-PD7
4	180 Land Co. LLC	138-31-702-004	33.8	R-PD7
5	180 Land Co. LLC	138-31-801-002	11.28	R-PD7
6	Seventy Acres LLC	138-31-801-003	5.44	R-PD7
7	Seventy Acres LLC	138-32-301-007	47.59	R-PD7
8	Seventy Acres LLC	138-32-301-005	17.49	R-4
9	Fore Stars, Ltd.	138-32-210-008	2.37	PD
10	Fore Stars, Ltd.	183-32-202-001	2.13	PD

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 116-47.

West's Nevada Revised Statutes Annotated
The Constitution of the State of Nevada (Refs & Annos)
Article 1. Declaration of Rights

N.R.S. Const. Art. 1, § 8

§ 8. Rights of accused in criminal prosecutions; jeopardy; rights of victims of crime; due process of law; eminent domain

Currentness

1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or attorney-general of the state, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. No person shall be deprived of life, liberty, or property, without due process of law.

3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

Credits
Amended in 1912, 1996 and 2018. The first amendment was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 346; Statutes of Nevada 1911, p. 454. The second amendment was proposed and passed by the 1993 legislature; agreed to and passed by the 1995 legislature; and approved and ratified by the people at the 1996 general election. See: Statutes of Nevada 1993, p. 3065; Statutes of Nevada 1995, p. 2880. The third amendment was proposed and passed by the 2015 legislature; agreed to and passed by the 2017 legislature; and approved and ratified by the people at the 2018 general election.

N. R. S. Const. Art. 1, § 8, NV CONST Art. 1, § 8
Current through all legislation operative or effective up to and including July 1, 2019. Some statute sections may be more current, see credits for details.

End of Document

West's Nevada Revised Statutes Annotated
The Constitution of the State of Nevada (Refs & Annos)
Article 4. Legislative Department

N.R.S. Const. Art. 4, § 21

§ 21. General laws to have uniform application

Currentness

In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

N. R. S. Const. Art. 4, § 21, NV CONST Art. 4, § 21
Current through all legislation operative or effective up to and including July 1, 2019. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 83. Courts of Appeals (Refs & Annos)

28 U.S.C.A. § 1291

§ 1291. Final decisions of district courts

Currentness

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; Pub.L. 85-508, § 12(e), July 7, 1958, 72 Stat. 348; Pub.L. 97-164, Title I, § 124, Apr. 2, 1982, 96 Stat. 36.)

28 U.S.C.A. § 1291, 28 USCA § 1291
Current through P.L. 116-50.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1331

§ 1331. Federal question

Currentness

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 930; Pub.L. 85-554, § 1, July 25, 1958, 72 Stat. 415; Pub.L. 94-574, § 2, Oct. 21, 1976, 90 Stat. 2721; Pub.L. 96-486, § 2(a), Dec. 1, 1980, 94 Stat. 2369.)

28 U.S.C.A. § 1331, 28 USCA § 1331
Current through P.L. 116-47.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1367

§ 1367. Supplemental jurisdiction

Currentness

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

CREDIT(S)

(Added Pub.L. 101-650, Title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.)

28 U.S.C.A. § 1367, 28 USCA § 1367
Current through P.L. 116-47.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996
Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in six separate documents. Notes of Decisions for subdivisions I to IX are contained in this document. For additional Notes of Decisions, see 42 § 1983, ante.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C.A. § 1983, 42 USCA § 1983
Current through P.L. 116-47.

End of Document

1 Federal Rules of Civil Procedure, Rules and Commentary Rule 12

Federal Rules of Civil Procedure, Rules and Commentary | February 2019 Update
Steven S. Gensler

III. Pleadings and Motions

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity. The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) United States Officers or Employees Sued in an Individual Capacity. A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2) to (5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1) to (7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

CREDIT(S)

(Amended December 27, 1946, eff. March 19, 1948; January 21, 1963, eff. July 1, 1963; February 28, 1966, eff. July 1, 1966; March 2, 1987, eff. August 1, 1987; April 22, 1993, eff. December 1, 1993; April 17, 2000, eff. December 1, 2000; April 30, 2007, eff. December 1, 2007; March 26, 2009, eff. December 1, 2009.)

West's Key Number Digest

- West's Key Number Digest, Federal Civil Procedure 901 to 1149
- West's Key Number Digest, Pleading 341 to 369
- West's Key Number Digest, Pretrial Procedure 2

United States Code Annotated
Federal Rules of Appellate Procedure (Refs & Annos)
Title II. Appeal from a Judgment or Order of a District Court

Federal Rules of Appellate Procedure Rule 4, 28 U.S.C.A.

Rule 4. Appeal as of Right--When Taken

Currentness

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf--including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure--and does so within the time allowed by those rules--the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order--but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)--becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective--without amendment--to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

CREDIT(S)

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7111, 102 Stat. 4419; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2017, eff. Dec. 1, 2017.)

Footnotes

1 A redraft of Rule 4(a)(7) was faxed to members of the Appellate Rules Committee two weeks after our meeting in New Orleans. The Committee consented to the redraft without objection.

F. R. A. P. Rule 4, 28 U.S.C.A., FRAP Rule 4

Including Amendments Received Through 8-1-19

End of Document

19.00.030 Purpose and Intent

It is the purpose and intent of the City Council that this Title promotes the following purposes:

General

A. To preserve and enhance the present qualities and advantages that exist in the City;

B. To encourage the most appropriate use of land, water and natural resources consistent with the public interest;

C. To overcome present problems and handicaps and effectively manage future problems that may result from the use and development of land and property;

D. To prevent the impacts of both overcrowding of land and undue concentrations of population as well as the negative effects of leapfrogging sprawl and underutilization of land and property;

E. To manage the orderly and efficient provision of adequate levels of public facilities and services necessary to support planned development;

F. To protect human, environmental, social, natural and economic resources;

G. To maintain, through orderly growth and development, the character and stability of present and future land use and development in the City.

H. To ensure that required on-site and off-site dedications and public improvements are properly installed or guaranteed;

Implementation of General Plan

I. To coordinate and ensure the execution of the City's General Plan through effective implementation of development review requirements, adequate facility and services review and other goals, policies or programs contained in the General Plan.

Comprehensive, Consistent and Equitable Regulations

J. To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for the review and approval of all proposed development, divisions, and mapping of land within the City in a manner consistent with State law.

Efficiently and Effectively Managed Procedures

K. To promote fair procedures that are efficient and effective in terms of time and expense and that appropriate process is followed in the review and approval of applications made under this Title;

L. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed and elected officials; and

M. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.

Sustainability

N. To promote the implementation of the "Sustaining Las Vegas" Policy, Sustainable Energy Strategy and Climate Protection resolution of the City.

19.16.100 Site Development Plan Review

A. **Purpose**

The purpose of the Site Development Plan Review process is to ensure that each development:

1. Is consistent with the General Plan, this Title and other regulations, plans and policies of the City;
2. Contributes to the long term attractiveness of the City;
3. Contributes to the economic vitality of the community by ensuring compatibility of development throughout the community; and
4. Contributes to the public safety, health and general welfare.

B. **Applicability**

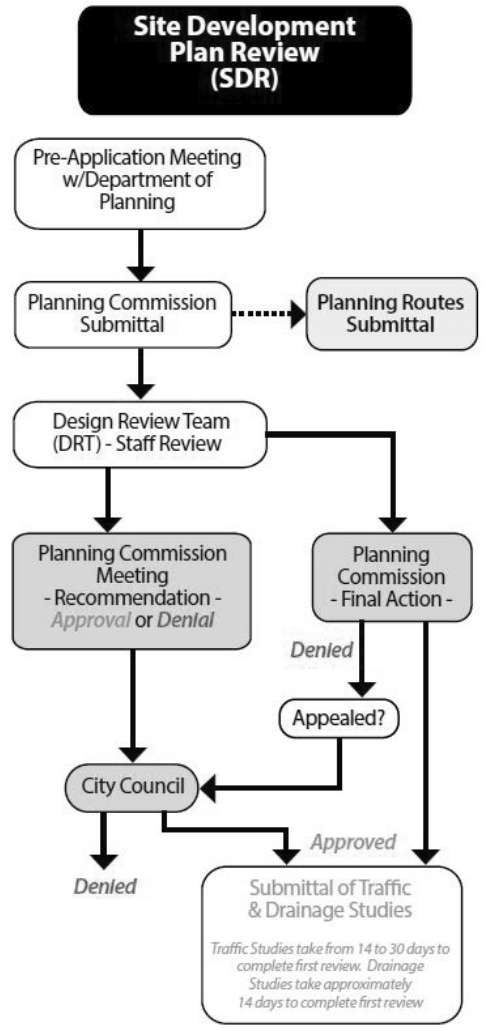
1. **Site Development Plan Review Required.** Except as otherwise provided in this Subsection (B), a Site Development Plan Review is required for all development in the City.
2. **Exemptions.** Except where the City Council or Planning Commission has specifically reserved the right of review through a prior action, the following activities and improvements do not require a Site Development Plan Review:
   a. Demolition of a structure;
   b. Normal repairs and maintenance of an existing building or structure; and
   c. Activities and improvements undertaken in conjunction with a Temporary Commercial Permit or a special event permit issued under LVMC Chapter 12.02.
3. **Certain Conversions.** The conversion of any development from multi-family or apartment development to condominium or co-op status shall require a Site Development Plan Review.

(Ord. 6196 §6, 05/16/12)

C. **Authority**

1. The Director shall have the authority to:
   a. Determine whether an activity or improvement is exempt under Paragraph (2) of Subsection (B) of this Section;
   b. Determine whether a Site Development Plan will be subject to a major review or a minor review under this Section; and
   c. Approve or deny any Site Development Plan which requires a minor review; provided, however, that final approval authority shall rest with:
      i. The Planning Commission, if the Commission specifically has reserved the right, through prior action, to review and maintain approval authority of any Site Development Plan; or
      ii. The City Council, if the Council specifically has reserved the right, through prior action, to review and maintain approval authority of any Site Development Plan, or if a member of the City Council requests a review pursuant to this Section.

Site Development Plan Review 19.16.100
Typical Review Process



2. In approving a Site Development Plan, the Director, or if applicable, the Planning Commission or City Council, may impose conditions deemed necessary to ensure the orderly development of the site.

D. **Design Standards**

All required Site Development Plans shall meet or exceed the minimum standards established in this Title. In addition, the City may adopt policy documents as a resource for acceptable standards and design solutions. To the extent that such documents establish minimum requirements and standards and are formally adopted by the City Council, Site Development Plans must comply with those documents.

E. **Criteria for Review of Site Development Plans**

The review of Site Development Plans is intended to ensure that:

1. The proposed development is compatible with adjacent development and development in the area;
2. The proposed development is consistent with the General Plan, this Title and other duly-adopted City plans, policies and standards;
3. Site access and circulation do not negatively impact adjacent roadways or neighborhood traffic;
4. Building and landscape materials are appropriate for the area and for the City;
5. Building elevations, design characteristics and other architectural and aesthetic features are not unsightly, undesirable or obnoxious in appearance; create an orderly and aesthetically pleasing environment; and are harmonious and compatible with development in the area;
6. Appropriate measures are taken to secure and protect the public health, safety and general welfare.

F. **Minor Review of Site Development Plans**

1. **Minor Review Decisions.** Site Development Plans requiring Minor Reviews may be approved administratively by the Director. Minor Reviews include without limitation:
   a. Alterations which affect the external dimensions of an existing building or structure that complies with all applicable requirements of this Title and with any previous conditions or discretionary approval.
   b. New commercial or industrial construction that complies with all applicable requirements of this Title.
   c. New residential construction that complies with all applicable requirements of this Title and is not part of a sequential application for additional units.
   d. Live/Work units which comply with the provisions of LVMC 19.10.170, all other applicable requirements of this Title, and any previous conditions or discretionary approvals.
   e. Development-type conversions of any of the following, where the conversion complies with all applicable requirements of this Title:
      i. Residential to commercial;
      ii. Commercial to residential; or
      iii. Multi-family or apartments to condominium or co-op.
2. **Minor Review Process.** A Minor Development Review is initiated by the submittal of a Site Development Plan Review application or an application for a Building Permit.
   a. **Building Permit Level Review.** Minor Site Development Plans for the construction types listed in this Subparagraph (a) shall be submitted and reviewed as part of a building permit application. Issuance of a building permit shall constitute approval of the Minor Review and no further action is required. The construction types eligible for such treatment are the following:
      i. Single family dwelling units, duplex dwelling units or multi-family residential development not exceeding four units;
      ii. Residential accessory buildings;
      iii. On-site signs, walls and fences;
      iv. Sculptures, fountains and other similar improvements;
      v. Patio covers, carports, and commercial shade structures;
      vi. Wireless communication facilities, antennas, satellite dishes, solar panels and small wind energy systems;
      vii. Alterations which do not affect the external dimensions of an existing building or structure;

viii. Alterations which will result in a change of use or type of occupancy within part or all of an existing building or structure; and

ix. Alterations which affect the external dimensions of an existing building or structure, but do not increase the net floor area as defined by Chapter 19.18.

b. **Regular Planning Application Level Review.** Minor Site Development Plans for development that is not listed in Subparagraph (a) of this Paragraph (2) shall be submitted as part of a Minor Site Development Plan Review application.

3. **Review by City Council.** Except as otherwise provided by this Paragraph (3), the administrative approval of a Site Development Plan pursuant to this Subsection (F) shall be final action unless, no later than 10 days following the approval, a member of the City Council files with the Director a written request for the Site Development Plan to be reviewed pursuant to the Major Review Process. In the event such a request is filed, the Site Development Plan shall be subject to the Major Review Process set forth in Paragraph (2) of Subsection (G) of this Section. Such a review may require the payment of a notification fee prior to a public hearing. The provisions of this Paragraph (3) shall not apply to building permit level reviews described in Paragraph 2(a) of this Subsection (f).

(Ord. 6281 § 6, 10/02/13)

G. **Major Review of Site Development Plans**

1. **Major Review**. A Site Development Plan shall require a Major Review and a public hearing when it does not qualify for a Minor Review under Subsection (F) of this Section. In addition, a Major Review is required if:

a. The Planning Commission or City Council, through prior action, has determined that the proposed project or improvement shall be processed as a Major Review; or

b. The Director determines that the proposed development could significantly impact the land uses on the site or on surrounding properties.

2. **Major Review Process**

a. **Application.** A pre-application conference pursuant to LVMC 19.16.010(B)(3) is required prior to submitting an application for a Major Development Review. A Site Development Plan requiring a Major Development Review shall be filed with the Department. The application shall be signed and notarized:

i. By the owner of the property, where the development is to be undertaken by the owner or the owner's authorized agent; or

ii. By a prospective purchaser or the property, where the property is owned by the State of Nevada or the United States of America and the prospective purchaser has:

A. Entered into a contract with the governmental entity to obtain ownership of the property;

B. Provided to the Department a letter from the governmental entity indicating that it consents to the filing of the application and agrees to be bound by the application; or

C. Provided to the Department a letter from the governmental entity indicating that it has no objection to the filing of the application.

In the case of an application that is supported by a letter of no objection under Subparagraph (a)(ii)(C) of this Paragraph (2), the applicant shall acknowledge in writing by means of a form provided by the Department or in a form acceptable to the City Attorney, that the processing of the application is done as an accommodation only; that the application, the results thereof, and any entitlements related thereto are dependent upon the applicant's obtaining an enforceable contractual interest in the property; and that the applicant assumes the risk of proceeding without any assurance that approval of the application will lead to an ability to implement the approval.

b. **Drawings and Plans Required.** Plans describing the proposed development of the property shall be submitted as required by the Director. Complete working drawings are not necessary; however, proposed structures (including building elevations), streets, driveways and access points, sight visibility restriction zones (as described in LVMC 19.02.190), on-site circulation and parking, walls, landscaping, building materials, dumpster locations and other improvements must be shown. Preliminary drawings must contain sufficient information to permit the determination of compliance with good planning practices, applicable standards and ordinances. Floor plans are not normally required. For any development site where twenty percent or more of the aggregate site has slope of natural grade above four percent, a cross section must be submitted. Each cross section must extend a minimum

of one hundred feet beyond the limits of the project at each property line, showing the location and finish floor elevations of adjacent structures; the maximum grade differentials; and the elevations of existing and proposed conditions.

c. **Circulation to Departments.** After an application has been determined complete, it shall be forwarded to interested City Departments for their respective comments, recommendations and requirements.

d. **Planning Commission Notice and Hearing**

After interested City Departments have had the opportunity for comment and the Department has conducted its review, each application for Major Review shall be presented to the Planning Commission. Notice of the time, place and purpose of the hearing must be given at least ten days before the hearing by:

i. Publishing the notice in a newspaper of general circulation within the City;

ii. Mailing a copy of the notice to:

A. The Applicant;

B. Each owner of real property located within a minimum of one thousand feet of the property described in the application;

C. Each tenant of any mobile home park that is located within one thousand feet of the property described in the application;

D. The owner of each of the thirty separately-owner parcels nearest to the property described in the application to the extent this notice does not duplicate the notice otherwise required by this Subparagraph (d);

E. Any advisory board which has been established for the affected area by the City Council; and

F. The president or head of any registered local neighborhood organization whose organization boundaries are located within a minimum of one mile of the property described in the application.

e. **Planning Commission Decision.** In making its final decision, the Planning Commission shall consider the recommendation of the City Departments, the evidence presented at the hearing and the criteria set forth in Subsection (E) of this Section 19.16.100. The Planning Commission may approve, approve with conditions, or deny an application for a Major Review. All actions by the Planning Commission are final unless:

i. An appeal is filed by the applicant in accordance with Subparagraph (f) below;

ii. Otherwise required by prior action of the City Council; or

iii. In the case of Planning Commission approval, a member of the City Council files with the City Clerk, within 10 days following the approval, a written request for the Council to review the approval.

f. **Appeal of Planning Commission Action.** If the applicant is aggrieved by the Planning Commission's denial of an application, or by any condition imposed upon an approval, the applicant may appeal the decision to the City Council by written request. In the case of an approval, an appeal may be filed by any property owner within the area of notification for the Planning Commission hearing, as well as by anyone who appeared, either in person, through an authorized representative or in writing, before the Planning Commission regarding the application. Any appeal must be filed in the Office of the City Clerk within ten days after the Planning Commission's action. Pursuant to LVMC 19.16.010(C), the City Council may establish one or more fees to be paid in connection with the filing of an appeal under the Subparagraph (f), and the amount of any fee so established shall be as set forth in the Fee Schedule.

g. **City Council Notice and Hearing.** All Major Reviews requiring review by the City Council shall be forwarded to the Office of the City Clerk and shall be placed on the next available City Council agenda for hearing. The City Clerk shall mail written notice of the Council hearing, at least ten days before the hearing, to the property owners who were notified by mail of the Planning Commission hearing, or to the current owners of record in case of properties whose ownership has changed in the interim.

h. **City Council Decision.** In making its final decision, the City Council shall consider the recommendation of the City Departments and the Planning Commission, the evidence presented at the hearing and the criteria set forth in Subsection (E) of this Section 19.16.100. The City Council may approve, approve with conditions, or deny an application for a Major Review. All actions by the City Council are final. Written notice of the decision shall be

provided to the applicant, agent or both. A copy of the notice shall also be filed with the City Clerk, and the date of the notice shall be deemed to be the date notice of the decision is filed with the City Clerk.

H. **Amendment to an Approved Site Development Plan**

After a Site Development Plan has been approved, any request to amend the approved Plan shall be submitted to the Department. Upon receipt of an amendment request, the Director shall determine if the amendment is to be processed under the Minor Review process set forth in Subsection (F) or under the Major Review process set forth in Subsection (G), taking into account the factors and considerations set forth in those subsections.

I. **Revocation or Modification**

1. **Notice.** The authority responsible for the final approval of a Site Development Plan may hold a hearing to revoke or modify an approved Site Development Plan. In cases where the Director was the approval authority, the Director may issue a written notice of hearing concerning a possible revocation or modification of the Plan, or may refer the item to the Planning Commission. At least ten days prior to any hearing, written notice of the hearing shall be delivered to the owner, developer, or both. Notice may be delivered in person or by certified mail, return receipt requested, to the address shown in the records of the Clark County Assessor.
2. **Grounds.** A Site Development Plan approval may be revoked or modified by the reviewing authority for cause, including a finding of one or more of the following:
   a. That the Site Development Plan approval was obtained by misrepresentation or fraud;
   b. That the development is not in compliance with one or more of the conditions of approval;
   c. That the development is in violation of any State or local law, ordinance or regulation; or
   d. That the time limits specified in Paragraph (1) of Subsection (K) have expired.
3. **Notice of Decision.** Written notice of the decision shall be provided to the owner, developer or agent. A copy of the notice shall also be filed with the City Clerk, and the date of the notice shall be deemed to be the date notice of the decision is filed with the City Clerk.

(Ord. 6297 § 2, 02/05/14)

J. **Expiration**

A Site Development Plan which is not exercised within the approval period shall be void, unless an extension of time is granted upon a showing of good cause. An extension of time may be granted only if application therefor is made prior to the expiration of the approval period. For purposes of this Subsection (J):

1. The “approval period” for a Site Development Plan is the time period specified in the approval, if one is specified, and is two years otherwise.
2. For purposes of this Subsection (J), a Site Development Plan is deemed exercised as follows:
   a. Upon the issuance of a building permit for a principal structure on the site;
   b. In the case of a residential subdivision, upon the recordation of a final subdivision map;
   c. If its exercise is expressly recognized in the form of, or in connection with, a Condition of Approval associated with a relevant or related application; or
   d. If its exercise is expressly recognized by an action or communication of the Director.

If the building permit referred to in this Section is allowed to expire and no new permit has been issued (or a reinstatement or reissuance of the expired permit) within the "approval period" specified in Paragraph (1) of this Subsection (J), the Site Development Plan expires.

K. **Concurrent Approvals - Temporary Development**

At the discretion of the City Council, a Site Development Plan may be approved, concurrent with other development approval, to allow a temporary development to be constructed without expunging or invalidating an active, unexpired Site Development Plan, Special Use Permit or associated approval(s). For purposes of this Subsection, “temporary development” means development that is distinct from the long-term development otherwise approved for the site

and is intended as an interim use of the site for a limited period of time. Any such concurrent approval for temporary development is subject to the following requirements and limitations:

1. Approval for a temporary development may be for a period not to exceed three years, except as may be extended by means of one Extension of Time for a period not to exceed three years. A request for Extension of Time shall be by means of an application for Extension of Time pursuant to Section 19.16.260, and shall be subject to review and approval by the City Council.
2. No more than one temporary development may be approved for a particular site at any one time.
3. At the conclusion of the time period specified in Paragraph (1) above, including any approved Extension of Time, the developer must agree to abandon the temporary development in favor of the initial, unexpired Site Development Plan approval. Otherwise, the original entitlements are subject to revocation as provided for under Subsection (I) of this Section, and the temporary development shall become the entitled development for the site. Notwithstanding the preceding sentence, if an approval for temporary development under this Subsection (K) included any deviations from standards, including exceptions, waivers, or variances, the developer will be required to resubmit to the entitlement process for approval of the temporary development as the long-term development for the site. This requirement is in recognition of the possibility that 1) the rationale for seeking and granting such deviations may have been that the development was intended to be temporary only and 2) as a result, such deviations might not have been granted otherwise.

(Ord. 6297 § 3, 02/05/14)

(Ord. 6486 § 3 to 8, 12/16/15)

(Ord. 6664 § 7, 12/19/18)

19.16.105 Repurposing of Certain Golf Courses or Open Spaces

A. **General.** Except as otherwise provided in this Section, any proposal by or on behalf of a property owner to repurpose a golf course or open space, whether or not currently in use as such, is subject to the Public Engagement Program requirements set forth in Subsections (C) and (D), as well as the requirements pertaining to the Development Review and Approval Process, Development Standards, and the Closure Maintenance Plan set forth in Subsections (E) to (G), inclusive. The requirements of this Section apply to repurposing a golf course or open space located within 1) an existing residential development, 2) a development within an R-PD District, 3) an area encompassed by a Special Area Plan adopted by the City, or 4) an area subject to a Master Development Plan within a PD District. For purposes of this Section, "repurposing" includes changing or converting all or a portion of the use of the golf course or open space to one or more other uses.

B. **Exceptions.** This Section does not apply to:

1. Any project that has been approved as part of the City of Las Vegas Capital Improvement Plan.
2. Any project that is governed by a development agreement that has been approved pursuant to LVMC 19.16.150.
3. The repurposing of any area that has served as open space pertaining to a nonresidential development where that open space functions as an area for vehicle parking, landscaping, or any similar incidental use.
4. The reprogramming of open space recreational amenities that simply changes or adds to the programming or activities available at or within that open space.
5. The repurposing of any area where the currently-required development application or applications to accomplish the repurposing already have been approved by the approval authority, with no further discretionary approval pending.

C. **Public Engagement Program Requirements.** In connection with the scheduling of a preapplication conference pursuant to LVMC 19.16.010(B)(5), the applicant for a repurposing project subject to this Section must provide to the Department in writing a proposed Public Engagement Program meeting the requirements of this Subsection (C). The requirements of Subsections (C) and (D) must be completed before the submission and processing of the land use application(s) to which the pre-application conference applies. A PEP shall include, at a minimum, one in-person neighborhood meeting regarding the repurposing proposal and a summary report documenting public engagement activities. The applicant is encouraged, but not required, to conduct additional public engagement activities beyond those required by the preceding sentence. Additional public engagement activities may include, but are not limited to, the following components:

1. Applicant's Alternatives Statement. This document is designed to inform the Department and stakeholders about the applicant's options and intentions, including the following statements:
   a. A statement summarizing the alternatives if the golf course or open space is not repurposed and the current use of the property ceases.
   b. A statement summarizing the rationale for repurposing in lieu of continuing to operate or maintain the golf course or open space, or finding another party to do so.
   c. A statement summarizing the proposal to repurpose the golf course or open space with a compatible use.
   d. A statement summarizing how the applicant's proposal will mitigate impacts of the proposed land uses on schools, traffic, parks, emergency services, and utility infrastructure.
   e. A statement summarizing the pertinent portions of any covenants, conditions and restrictions for the development area and the applicant's intentions regarding compliance therewith.
   f. If applicable, a statement summarizing any negotiations with the City in regards to a new or amended Development Agreement for the area.
2. Neighborhood Meeting. The PEP shall include at a minimum the neighborhood meeting that is described in this Subsection (C). Notice of such meeting shall be provided in general accordance with the notice provisions and procedures for a General Plan Amendment in LVMC Title 19.16.030(F)(2), except that no newspaper publication is required and the providing of notice shall be the responsibility of the applicant rather than the City. The applicant shall develop a written plan for compliance with the notice requirements of the preceding sentence, which shall be submitted to the Department for review and approval in advance of implementation. The required neighborhood

meeting must be scheduled to begin between the hours of 5:30 pm and 6:30 pm, except that the Department in particular cases may require that a meeting begin earlier in the day to allow greater participation levels. Additional neighborhood meetings are encouraged, but not required.

3. Design Workshops. The applicant may provide conceptual development plans at design workshops and solicit input from stakeholder groups. The applicant is encouraged (without requirement or limitation) to provide separate design workshops for each of the following stakeholder groups, as applicable:
   a. Owners of properties that are adjacent to the area proposed for repurposing;
   b. The owners of all other property within the same subdivision (master subdivision, if applicable), Master Development Plan Area or Special Area Plan area; and
   c. Local neighborhood organizations and business owners located within the same Master Development Plan Area or Special Area Plan area.

D. **Summary Report.** Upon completion of a PEP, the applicant shall provide a report to the Department detailing the PEP's implementation, activities and outcomes. The summary report shall be included with any land use entitlement application related to a repurposing proposal. To document the applicant's public engagement activities, the summary report shall include the following, as applicable:

1. The original Applicant's Alternatives Statement.
2. Any revised Applicant's Alternatives Statement that has been produced as a result of the process.
3. Affidavit of mailings pertaining to the mailing of notice of the Applicant's Alternative Statements to prescribed stakeholders, and of the means by which the Alternatives Statements were made available to stakeholders.
4. Affidavits of mailings for the notices to prescribed stakeholders for all required neighborhood meetings and any design workshops,
5. Scanned copies of any and all sign-in sheets that were used for all required neighborhood meetings and any design workshops.
6. Meeting notes that may have been taken from all required neighborhood meetings and any design workshops.
7. Electronic copy of a spreadsheet with all comments received at meetings and workshops and the applicant's statement of how each of those comments were addressed, if applicable.
8. Affidavit of mailing for, and results of, a public engagement survey sent to all meeting and workshop attendees.
9. Accounting of City staff time devoted to required neighborhood meetings and any design workshops.
10. A copy of all materials distributed or displayed by the applicant at all neighborhood meetings and design workshops.
11. Statements from any facilitator of design workshops summarizing the input and results.
12. A statement acknowledging that additional public comment heard through a land use application's public hearing process will be taken into consideration by the applicant.

E. **Development Review and Approval Process.**

1. Purpose. The City's review of golf course or open space repurposing projects is intended to ensure that:
   a. The proposed repurposing is compatible and harmonious with adjacent development;
   b. The proposed repurposing is consistent with the General Plan, this Title and other duly-adopted City plans, policies and standards;
   c. Impacts of the proposed repurposing on schools, traffic, parks, emergency services, utility infrastructure, and environmental quality are mitigated;
   d. Open space is preserved in furtherance of the goals and objectives of the City's 2020 Master Plan with regard to the preservation of open space; and
   e. Appropriate measures are taken to secure and protect the public health, safety and general welfare.
2. General Provisions.
   a. Development of the area within a repurposing project subject to this Section will be governed by a development agreement and specific standards adopted by the City in conjunction with applications filed pursuant to this Title. The approval of a development agreement and these applications (the "Development Approvals") will include design criteria, infrastructure and public facility requirements, allowable land uses and densities, etc.

b. Development of the area within a repurposing project shall be in accordance with all applicable City Plans and policies, including the Centennial Hills Sector Plan, the Las Vegas 2020 Master Plan (and subsequent City of Las Vegas Master Plans) and Title 19.

c. Any General Plan Land Use designation and/or Special Area Plan Land Use designations that pertain to the area within a repurposing project shall be proposed to be made consistent with that of the proposed density and use of the project by means of a request to do so that is filed concurrently with any other required application. The means of doing so, whether by a General Plan Amendment or Major Modification, shall be determined in accordance with the Land Use & Rural Neighborhood Preservation Element of the Las Vegas 2020 Master Plan, as may be amended from time to time.

3. Additional Application Submittal Requirements. In addition to the requirements for submitting an application for Site Development Plan Review as detailed in LVMC 19.16.100, or any other required application under Title 19, the applicant for a repurposing project subject to this Section must submit the following items in conjunction with any such applications:

a. A certificate of survey regarding the repurposing project area, depicting:

i. Legal property description lot, block, subdivision name;

ii. Name, address, and phone number of property owner and developer;

iii. Bearings and lot line lengths;

iv. Building locations and dimensions;

v. Existing grade contours;

vi. Proposed grade contours;

vii. North arrow and scale;

viii. Street name and adjacent street names;

ix. Benchmark and benchmark locations;

x. Complete name, address and phone number of engineering firm;

xi. Drainage arrows;

xii. List of symbols;

xiii. Registered Surveyor number and signature;

xiv. Wetlands, conservation easements, and flood zone and elevation, if applicable;

xv. Location of any wells or septic drain field or septic tanks; and

xvi. Other existing easements (public or private) of record.

b. A proposed master land use plan for the repurposing project area, depicting:

i. Areas proposed to be retained as golf course or open space, including acreage, any operation agreements, and easement agreements;

ii. Areas proposed to be converted to open space, including acreage, recreational amenities, wildlife habitat, easements, dedications or conveyances;

iii. Areas proposed to be converted to residential use, including acreage, density, unit numbers and type;

iv. Areas proposed to be converted to commercial use, including acreage, density and type; and

v. Proposed easements and grants for public utility purposes and conservation.

c. A density or intensity exhibit for the repurposing project area, depicting:

i. Developed commercial gross floor areas and residential densities;

ii. Undeveloped but entitled commercial gross floor area and residential densities;

iii. Proposed residential densities; and

iv. Proposed commercial gross floor areas.

d. For a repurposing project area of one acre or more in size, an environmental assessment worksheet for the repurposing project area, consisting of:

i. Documentation of the project's impacts on wildlife, water, drainage, and ecology; and

ii. A copy of a Phase I environmental site assessment report for the repurposing project area.

e. For a repurposing project area of one acre or more in size, conceptual master studies that have been conditionally approved by the Department of Public Works prior to submittal of any formal Title 19 application, including:

i. A conceptual master drainage study (for any repurposing project of 2 acres or larger in size);

ii. A conceptual master traffic study for any repurposing project that will generate 100 or more peak hour trips; and

iii. A conceptual master sanitary sewer study. Regarding this study, the applicant must contact the City's Sanitary Sewer Planning Section to submit the initial draft of the study, to address all comments provided by that Section, and thereafter to receive approval of the study. The study shall identify locations where public sewer easements with drivable access will be provided to service the proposed development by gravity means. The study shall also include the total land use(s) proposed, anticipated connection point(s) to existing sewer system, calculations and exhibits to identify diameter and capacity of all on-property and off-property sewer improvements necessary to meet the needs of the development and the City.

f. For a repurposing project area of one acre or more in size, a 3D model of the repurposing project with accurate topography to illustrate potential visual impacts, as well as an edge condition cross section with improvements callouts and maintenance responsibility.

g. One or more construction and development phasing plans for any repurposing project to be completed in more than one phase.

h. A PEP Summary Report as required pursuant to Subsection (D).

F. **Development Standards.** Except as otherwise provided in this Subsection (F), each repurposing project subject to this Section shall conform to the standards as set forth in LVMC Chapters 9.02, 19.06 and 19.08, as well as any applicable development agreements and special area plans. In addition, in connection with the consideration of any development applications filed pursuant to LVMC Chapter 19.16, the Planning Commission and City Council shall take into account (and may impose conditions and requirements related to) the purpose set forth in Paragraph (1) of Subsection (E) of this Section, as well as the standards and considerations set forth in this Subsection (F).

1. When new development within the area of the repurposing project will be adjacent to existing residential development, the new development shall:

a. Provide minimum setbacks that meet or exceed those of the existing development.

b. Ensure that accessory structures are limited to a height of one story and 15 feet.

c. Provide screening of the uses and equipment listed in LVMC 19.08.040(E)(4) so that they are screened from view from all existing residential development adjacent to the repurposing project area and from public view from all rights-of-way, pedestrian areas, and parking lots.

d. Provide landscape buffering on all lots adjacent to existing residential development.

e. Screen all parking lots within the repurposing project area from view of existing residential properties adjacent to that area.

2. Existing channels or washes shall be retained or the developer shall provide additional means for drainage and flood control, as shown in a master drainage study approved by the Department of Public Works.

3. Where repurposing will result in the elimination or reduction in size of a contiguous golf course or open space, the developer shall consider providing for other facilities or amenities or resources that might help offset or mitigate the impact of the elimination or reduction.

4. The additional requirements imposed by this Subsection (F) shall not apply to the repurposing of property that is governed by covenants, conditions and restrictions (CC&R's) which address the repurposing of gold courses or open spaces in any manner whatsoever, whether or not the provisions of those CC&R's are similar to or consistent with this Section. This exemption applies whether or not there is any likelihood that the applicable provisions of the CC&R's will be enforced.

G. **Closure Maintenance Plan.** At any time after the Department becomes aware that a golf course that would be subject to this Section if repurposed has ceased operation or will be ceasing operation, the Department may notify the property owner of the requirement to comply with this Section. Similarly, at any time after the Department becomes aware that an open space that would be subject to this Section if repurposed has been withdrawn from use or will be withdrawn from use, the Department may notify the property owner of the requirement to comply with this Section. Any such notification shall be by means of certified mail and by posting at the subject site. Within 10 days after the

mailing and posting of the notice, the property owner shall meet with the Department to discuss the proposed plans for the property and process of complying with this Section. Within 30 days after the mailing and posting of the notice, the property owner shall submit to the Department a closure maintenance plan ("the maintenance plan") for review by the Department.

1. Purpose. The purpose of a maintenance plan is to address and protect the health, safety, and general welfare of occupants of properties surrounding the subject site, as well as to protect the neighborhood against nuisances, blight and deterioration that might result by the discontinuance of golf course operations or the withdrawal from use of an open space. The maintenance plan will accomplish those objectives by establishing minimum requirements for the maintenance of the subject site. Except as otherwise provided in the next succeeding sentence, the maintenance plan must ensure that the subject site is maintained to the same level as existed on the date of discontinuance or withdrawal until a repurposing project and related development applications have been approved pursuant to this Title. For discontinuances or withdrawals occurring before the effective date of this Ordinance, the required maintenance level shall be as established by the Department, taking into account the lapse of time, availability of resources, and other relevant factors.
2. Maintenance Plan Requirements. In addition to detailing how the subject property will be maintained so as to be in compliance with LVMC Chapter 9.04, LVMC 16.02.010, and LVMC 19.06.040(F), the maintenance plan must, at a minimum and with respect to the property:
   a. Ensure that all exterior areas are kept free from dry vegetation, tumbleweeds, weeds, bushes, tall grass, and trees which present a visual blight upon the area, which may harbor insect or rodent infestations, or which are likely to become a fire hazard or result in a condition which may threaten the health, safety or welfare of adjacent property owners or occupants;
   b. Provide security and monitoring details;
   c. Establish a service or other contact information by which the public may register comments or complaints regarding maintenance concerns;
   d. Provide documentation regarding ongoing public access, access to utility easements, and plans to ensure that such access is maintained;
   e. Detail how all applicable federal, state and local permitting requirements will be met; and
   f. Provide any additional or supplemental items the Department may determine are necessary in connection with review of the maintenance plan.
3. Maintenance Plan Neighborhood Meeting. The property owner shall conduct a neighborhood meeting regarding the proposed maintenance plan, which shall be a prerequisite to final approval of the maintenance plan. Notice of such a meeting shall be provided in general accordance with the notice provisions and procedures for a General Plan Amendment in LVMC 19.16.030(F)(2), except that no newspaper publication is required and the providing of notice shall be the responsibility of the applicant rather than the City. In addition, notice of the meeting shall be provided to the Department at least 10 calendar days in advance of the meeting.
4. A maintenance plan that has been approved by the City may be recorded against the property at the property owner's expense.
5. Failure to comply with the provisions of this Subsection (G) or with the terms of an approved maintenance plan:
   a. Shall be grounds for the denial of any development application under this Title that would be required for a repurposing project subject to this Section;
   b. Is unlawful and may be enforced by means of a misdemeanor prosecution; and
   c. In addition to and independent of any enforcement authority or remedy described in this Title, may be enforced as in the case of a violation of Title 6 by means of a civil proceeding pursuant to LVMC 6.02.400 to 6.02.460, inclusive.

(Ord. 6650 § 3, 11/07/18)

EXHIBIT “D”

FILED

OCT 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

180 LAND CO. LLC; et al., Plaintiffs-Appellants, v. CITY OF LAS VEGAS; et al., Defendants-Appellees.	No. 19-16114 DC No. 2:18 cv-0547-JCM MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted September 16, 2020
San Francisco, California

Before: WALLACE, TASHIMA, and BADE, Circuit Judges.

Plaintiffs, land developers who own property in Las Vegas, Nevada, appeal from the district court's judgment dismissing their 42 U.S.C. § 1983 action alleging equal protection and procedural due process claims stemming from the Las Vegas City Council's denial of plaintiffs' applications to develop their property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6); denial of leave to amend is reviewed for abuse of discretion. *Cervantes*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1040–41 (9th Cir. 2011). We affirm in part, vacate in part, and remand.

1. The district court properly dismissed plaintiffs' "class of one" equal protection claim because plaintiffs failed to allege facts that were sufficient to show that plaintiffs were intentionally treated differently from others similarly situated. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam) (stating elements of an equal protection "class of one" claim); *see also In re Candelaria*, 245 P.3d 518, 523 (Nev. 2010) (holding that the standard under the Equal Protection Clause of the Nevada Constitution is the same as the federal standard).

Contrary to plaintiffs' contention, the district court did not apply a heightened pleading standard to evaluate plaintiffs' "class of one" equal protection claim. Rather, the district court properly applied binding precedent and correctly determined that plaintiffs failed to plead sufficient facts regarding similarly situated landowners. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (clarifying that a complaint does not "suffice if it tenders naked assertions devoid of further factual enhancement") (citation, alteration and internal quotation marks omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (stating that a complaint must provide "enough facts to state a claim to relief that is plausible on its face").

Although plaintiffs concede that they failed to request leave to amend below,

the district court abused its discretion by denying plaintiffs leave to amend their "class of one" equal protection claim because it is not clear that the claim's shortcomings cannot be cured by amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[A] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." (quotation marks and citation omitted)). Thus, although we affirm the dismissal of plaintiffs' "class of one" equal protection claim, we vacate the district court's denial of leave to amend and remand with instructions to grant plaintiffs leave to amend their "class of one" claim.

2. Dismissal of plaintiffs' class-based equal protection claim was proper because plaintiffs alleged contradictory facts as to defendants' motivation that were insufficient to show that intentional discrimination was a motivating factor for defendants' actions. *See Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016) (holding that an equal protection claim is supported if a discriminatory purpose was a motivating factor behind the challenged action); *Somers v. Apple, Inc.*, 729 F.3d 953, 964 (9th Cir. 2013) (holding that plaintiff's theory was "implausible in the face of contradictory . . . facts alleged in her complaint").

3. The district court properly dismissed plaintiffs' procedural due

process claim because plaintiffs failed to allege facts sufficient to show that they were deprived of a constitutionally protected property interest. To succeed on a procedural due process claim, a plaintiff must first demonstrate that he or she was deprived of a constitutionally protected interest. To have a constitutionally protected property interest in a government benefit, such as a land use permit, an independent source, such as state law, must give rise to a "legitimate claim of entitlement," that imposes significant limitations on the discretion of the decision maker. *Gerhart v. Lake County, Mont.*, 637 F.3d 1013, 1019, 1022 (9th Cir. 2011); *see also Reinkemeyer v. Safeco Ins. Co.*, 16 P.3d 1069, 1072 (Nev. 2001) (observing that federal caselaw is used to interpret the Due Process Clause of the Nevada Constitution).

We reject as without merit plaintiffs' contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally protected property interest and should be given preclusive effect.

The district court did not abuse its discretion by denying plaintiffs leave to amend their class-based equal protection claim or their due process claim because these claims cannot be cured by amendment.

We do not consider claims that were not raised in the operative complaint, including any substantive due process claim. *See Crawford v. Lungren*, 96 F.3d 380, 389 n.6 (9th Cir. 1996) (declining to address claims raised for the first time on

appeal).

Plaintiffs' Request for Judicial Notice (Docket Entry No. 18) is denied as unnecessary.

• ● •

The dismissal of plaintiffs' claims is affirmed, as is the denial of leave to amend plaintiffs' complaint, except that plaintiffs shall be granted leave to amend their "class of one" equal protection claim.

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

RIS
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for Defendant
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

REPLY IN SUPPORT OF CITY OF LAS VEGAS' MOTION FOR RECONSIDERATION OF ORDER GRANTING IN PART AND DENYING IN PART THE CITY'S MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS

Hearing Date: April 15, 2021
Hearing Time: 9:00 a.m.

The City of Las Vegas ("City") submits the following Reply in Support of the City's Motion for Reconsideration of Order Granting in Part and Denying in Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculations, and Related Documents ("Motion for Reconsideration").

…

…

…

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

I. INTRODUCTION

After the City filed its Motion for Reconsideration, the Developer filed a Motion to Determine Take and for Summary Judgement on the First, Third, and Fourth Claims for Relief ("MSJ"), essentially asking the Court to rule on the merits of the case without resolving pending discovery disputes, including those raised by the Motion for Reconsideration. To support the MSJ, the Developer submitted declarations attesting to transactions and other subjects for which the City has been seeking discovery for nearly two years. *See* Declarations of Yohan Lowie attached hereto as **Exhibit A**; *see also* Declaration of Chris Kaempfer attached hereto as **Exhibit B**.

Instead of producing documents to support its contentions, the Developer continues to argue that the City should "just depose Mr. Lowie to learn the historical facts surrounding the purchase of the Badlands Property…" *See* Opposition ("Opp.") at 6:6-7. The Developer also continues to argue that the scope of discovery is limited by the Developer's self-serving claims about relevancy. *Id.* at 6, fn. 7. The Court expressly rejected both of these arguments during the hearing on the City's Motion to Compel Discovery Responses, Documents and Damages Calculations and Related Documents on Order Shortening Time ("Motion to Compel"):

> When it comes to issues regarding relevancy or whether certain discovery is relevant, ***there's a much broader brush as it relates to relevancy for the purposes of discovery versus admissibility at the time of trial***. …Whether or not the purchase price is relevant or not or the amount of consideration paid is relevant or not for the ultimate decision-making in this case, I can't say. But it seems to me, as a baseline, ***the government probably has a right to find out, okay, how did this transaction occur? Just as important too, what was paid***? And last, but not least, and this is -- I just look back at my time taking depositions of experts in more complex cases, ***I would always like to have all documents I need in front of me to prepare for that deposition and documents that the witnesses potentially will rely upon***, because unless I have that complete file history, I don't know what's important and necessarily what's not important.

See Ex. C to Motion for Reconsideration ("Motion"), November 17, 2020 Hearing Transcript at p. 77 (emphasis added).

Despite the Court's February 24 Order compelling the Developer to produce all documents that support its claim that it paid $45 million to acquire the Badlands Property, the Developer is now refusing to produce any additional documents, claiming that the documents it produced before

the City filed its Motion to Compel (and a handful of other irrelevant documents) are the only documents that support the Developer's claim that it paid $45 million for the property. Ultimately, if the Developer fails to produce documents to support its claims about the amount it paid for the property, then that's the Developer's problem. But the Developer should not be permitted to obstruct the City's access to evidence supporting its claim that the Developer paid only $4.5 million for the property, which is the primary basis for the City's Motion for Reconsideration.

The City recognizes that the Motion to Compel addressed numerous issues related to the Developer's discovery abuses and perhaps too many to address in one motion. Nearly the entire hearing on the City's Motion to Compel focused on one issue -- the Developer's contention that it paid $45 million for the Badlands Property -- and very little time was devoted to other issues. For these reasons, the City is asking the Court to take a closer look at those issues before cutting off the City's right to discovery.

II. LEGAL ARGUMENT

A. The Court Has Inherent Authority to Reconsider Its Own Rulings

The Developer's arguments regarding the appropriate standard for reconsideration reflect a fundamental misunderstanding of the Court's inherent authority. In the words of Justice Cardozo, "[i]t is well settled that whatever can be done upon motion to the court may, by the court, upon further motion by either party, be altered, modified or wholly undone." *Belmont v. Erie R. Co.*, 1869 WL 6291 (N.Y. Sup. Ct. 1869). Contrary to what the Developer claims, the Court has broad authority "to amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on motion in the progress of the cause or proceeding." *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975).[1]

The Developer nevertheless argues that reconsideration is warranted "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached," citing *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

[1] The Developer attempts to distinguish *Trail v. Faretto* but the facts of the case do not diminish the authority of the general rules cited by the Court.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

However, despite what the Developer claims, it is not an abuse of discretion to grant reconsideration where, "[a]lthough ***the facts and the law were unchanged***, the judge was more familiar with the case by the time the second motion was heard, and [] persuaded by the rationale of the newly cited authority." *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 218, 606 P.2d 1095, 1097 (1980) (emphasis added).[2]

Attempting to invent new law, the Developer contends that a "rigorous standard" applies to reconsideration and that "the City doesn't even address the reconsideration standard, concluding instead that prejudice and manifest injustice will result if the Court does not reconsider its prior discovery decision." *See* Opp. at p. 4, ln. 3-4. Once again, this argument simply misunderstands the Court's power to reconsider its own rulings. *See Mannah v. Robinson*, 199 Okla. 551, 552, 188 P.2d 360, 362 ("[a] court of record has the inherent power of its own motion to set aside, vacate, or modify its orders, however conclusive in their character, during the term at which such orders are rendered or entered of record") (cited with approval by *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975); *see also Belmont v. Erie R. Co.*, 1869 WL 6291 (N.Y. Sup. Ct. 1869) (noting that the power to grant reconsideration is the "most important power, because, if the position assumed be true, that when a motion has been once heard, and decided, there is no remedy against the order made, except that which an appeal will afford, then it will be found that the most flagrant injustice may often happen, without the possibility of the sufferer obtaining any redress.")

Finally, the Developer argues that reconsideration should be denied because all the issues raised in the motion were already rejected and decided by this Court. *See* Opp. at p. 4, ln. 6-7. Obviously, there would be no reason for the City to file a motion for reconsideration if that were

---

[2] The Developer argues that *Harvey's* is inapposite because "the district judge to whom the first motion was made consented to the rehearing" and "[n]o such circumstances exist here." *See* Opp. at p. 4, fn. 5. Quoting portions of cases without context has its perils. The Developer apparently does not realize that, in *Harvey's*, the judge who granted reconsideration was the same judge who decided the first motion. The footnote in *Harvey's* indicating that "the judge to whom the motion was first made consented to re-argument" was merely intended to distinguish *Moore*, which held that a "district judge abused his discretion by granting a second motion for rehearing after previous motions for summary judgment and rehearing had been denied by another judge." *See Harvey's,* 96 Nev. at 218, 606 P.2d at 1097 n. 2.

not the case. "[A] motion for reconsideration is nothing more than an invitation to the court to consider exercising its inherent power to vacate or modify its own judgment." 56 Am. Jur. 2d Motions, Rules, and Orders § 40. Here, the City is asking the Court to take a closer look at certain rulings that limit the City's ability to conduct discovery regarding essential issues in the case. Contrary to the Developer's assertion, the Motion for Reconsideration provides additional factual support that was not included in the City's Motion to Compel. The Motion for Reconsideration also sets forth an extended legal analysis of the issues in the case that warrant further discovery. The arguments and evidence submitted in support of the Developer's MSJ, filed after the Motion for Reconsideration, provide further support for the City's request for reconsideration.

B. Issues for Reconsideration

1. Transactions and Communications With the Peccole Family

The Developer's opposition acknowledges that the City is entitled to receive all documents related to the Developer's contention that it paid $45 million for the Badlands Property prior to taking Yohan Lowie's deposition. *See* Opp. at 5:17-19. The documents the Developer ended up producing, however, are far different from the documents the Developer's counsel described during the hearing on the City's Motion to Compel. The Developer's counsel claimed there were 20-years of transactions that would support the Developer's claim. *See* Motion Ex. C, Nov. 17 Transcript.

Specifically, the Developer's counsel represented that "the right to acquire the 250-acre property, the due diligence done to acquire that property, and the consideration paid for the right to acquire the property occurred over an approximately 20-year period." *Id.* at 19:18-21. The Developer's counsel also stated:

> ***Just one of those complicated transactions*** that Mr. Lowie entered into with the Peccole family involved the Queensridge Towers; Tivoli Village, which is built now; Hualapai Commons, which is on the corner of Hualapai and Sahara here in Las Vegas; two other partners; the prior golf course operator. ***Just one of them***.

Id. at 22:10-16 (emphasis added).

Despite the Developer's representation that the transaction involving Queensridge Towers, Tivoli Village, and Hualapai Commons was "just one of the complicated transactions" that would purportedly support the Developer's claim that it paid $45 million for the Badlands Property, all of

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

the documents produced related exclusively to this one transaction. *See* 4/1/21 Letter to Developer's Counsel attached as **Exhibit C**. In response to the City's letter highlighting the inconsistencies between the documents produced and the representations made during the hearing on the Motion to Compel, the Developer's counsel stated:

> In response to your letter dated April 1, 2021, regarding production of documents, please note that the Landowner has fully complied with the Court Order. You are correct that Mr. Lowie has worked with the Peccole family for over 20 years and that there have been many transactions between them. As it relates to the 250 acres however, those documents are in your possession.… As I stated in the hearing, "They support the 20-year history that from those transactions was born this right to purchase it . . ." The only other clarification I can provide is that the "binders" I referenced are bound books that, again if you read the transcript, I had yet to fully review… Again, you are in possession of all of the documents relating to the transactions that in your own words "support your contention that you paid $45 million."

See 4/6/21 Email from Elizabeth Ham attached as **Exhibit D**.

The lack of candor shown by the Developer's counsel with respect to these documents is astonishing. The main transaction documents the Developer produced to "support" the claim that it paid $45 million for the Badlands Property had already been produced months before the City filed its Motion to Compel. In fact, one of them was even attached to the Motion to Compel. *See* Motion to Compel Ex. BB, Badlands Golf Course Clubhouse Improvements Agreement. The Developer failed to disclose that the documents it was withholding and claiming to be highly confidential, included documents that had already been produced.

The Developer now accuses the City of breaching the protective order by attaching documents to its Motion for Reconsideration, which documents the Developer produced before the protective order even existed. In other words, the Developer is claiming that the protective order applies retroactively to documents the Developer produced several months before and then reproduced pursuant to the order. As it turns out, none of the transaction documents contain any confidentiality provisions and none of them could possibly even be deemed confidential, as the transactions involve public companies listed on the Tel Aviv Stock Exchange.

In fact, it is not difficult to find the terms of that deal in publicly disclosed financial statements simply by searching for them on Google. *See* 2013 Consolidated Financial Statements

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

attached as **Exhibit E**. The financial statements prepared for members of Queensridge Towers LLC even confirm the City's so-called "narrative" that the Developer paid only $4.5 million to acquire the Badlands Property, stating:

> On September 6, 2005, additional land was purchased from an affiliate of Queensridge Highrise, LLC (QH), the original managing Member. **The additional land contained a clubhouse. In lieu of a cash payment, the Company entered into a contract with the affiliate of QH to construct a new clubhouse on the adjacent golf course owned by the affiliate of QH for an amount not to exceed $3,150,000 and to make improvements to the golf course in an amount of $850,000.** In addition, the Company agreed to convey four condominium units to certain affiliates of QH. The value of these condominium units, totaling $5,387,167, had previously been recorded as an accrued liability.

Id. at p. 8.

The "affiliate" of Queensridge Highrise described above was Fore Stars Ltd., which was still owned by the Peccole family at the time. The "contract with the affiliate" was the Badlands Golf Course Clubhouse Improvements Agreement. The financial statements go on to describe the 2013 settlement agreement that arose from Queensridge Towers LLC's failure to build a new club house for Fore Stars Ltd., stating:

> **On June 28, 2013, the Company entered into a settlement and mutual release agreement with QH**. The agreement allowed for…changes to the conveyed condominium units…
>
> **Additionally, the agreement included an option whereas the Company can terminate its obligation to reimburse for existing improvements made to the golf course and future construction of a new clubhouse in exchange for the additional land that contained the clubhouse**. The Company has the ability to exercise this option at any time within 18 months of the date of agreement. As at June 30, 2013 and December 31, 2012, the Company has accrued $850,000 for liability associated with the completed golf course improvements. The Company has not exercised this option as at August 7, 2013.

Id.

The transaction descriptions from the financial statements are consistent with the "narrative" outlined in the City's Motion to Compel and further detailed in the Motion for Reconsideration. This "narrative" is not based "on the gossamer threads of whimsy, speculation and conjecture," as the Developer contends, but on the plain language of the transaction documents themselves. The Developer, on the other hand, refuses to back off from the ridiculous claim that

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

"[w]ithin this complex deal, $45 million was directly allocated to the acquisition of Fore Stars." *See* **Ex. A**, Lowie Decl. Ultimately, as this court recognized, the Developer has the burden of proving that it paid $45 million to acquire the Badlands Property. *See* Motion Ex. C, Nov. 17 Transcript at 51:13-20. However, the City should be permitted to obtain discovery that supports its position that the Developer only paid $4.5 million to acquire property.

Contrary to what the Developer claims, the City does not need a fishing expedition to prove the Developer only paid $4.5 million to acquire the Badlands Property. The City only needs documents related to three transactions: (1) the BGC holdings settlement agreement; (2) the 2013 Settlement Agreement between Fore Stars and Queensridge Towers LLC; and (3) the lease with option to purchase the Developer's corporate offices.

As explained in the City's Motion to Compel, the Developer sued the Peccole family to enforce a letter of intent to purchase the Badlands Property in 2007. The settlement agreement gave the Developer's affiliate, BGC Holdings LLC, a right of first refusal to purchase the Badlands Property. *See* BGC Settlement Agreement attached as **Exhibit F**. The relevant portions of the settlement agreement provide in pertinent part:

> SECTION 2
>
> Restrictive Covenant
>
> Fore Stars has agreed that the Real Property **will remain a golf course or open space and have no development activities upon it**, other than normal, in the usual course of busines activities for the golf course and those activities expressly permitted by this Agreement, unless consented to in writing by Queensridge Towers LLC (the "Restrictive Covenant."). The Restrictive Covenant shall remain in effect until the such time as Phase II of the Queensridge Towers Development is completed and all units offered to the public for sale are sold and have closed escrow. **Fore Stars will further memorialize this commitment by providing Queensridge Towers LLC with an instrument in recordable form setting for the Restrictive Covenant in favor of Queensbridge Towers LLC**….
>
> SECTION 3
>
> Right of First Refusal
>
> For a period ending on the earlier of (i) seven years after the delivery of the Restrictive Covenant or (ii) such time as Phase II of the Queensridge is completed and seventy-five (75%) of all units offered to the public for sale are sold and have closed escrow, BGC shall have the right of first refusal to purchase the Real Property. Upon receipt of any bonafide offer to purchase the Real Property on terms acceptable to Fore Stars for cash and/or cash and financing (the "Offer to Purchase"), Fore Stars shall provide written notice of

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

> the Offer to Purchase to BGC (the "First Refusal Notice"). **BGC shall then have seven (7) business days after receipt of the First Refusal Notice to exercise its right of first refusal by giving written notice of its intention to purchase the Real Property on the same terms and conditions as set forth in the Offer to Purchase**. In the event BGC declines an Offer to Purchase and a sale does not occur, Fore Stars shall so notify BGC promptly in writing and the Right of First Refusal shall be deemed fully reinstated in accordance with its terms.

See **Ex. F**, BGC Settlement Agreement.

According to Mr. Lowie's declaration, the Peccole family gave him "six months' notice" to exercise the right to purchase the Badlands Property in or around June of 2014. *See* **Ex. A**. The Developer has not produced the notice the Peccoles allegedly sent or any correspondence related to it, so it is unclear whether the Peccole family received an offer from a third party that triggered the right of first refusal under the settlement agreement.

On June 12, 2014, the Developer sent the Peccole family a letter of intent (LOI) offering to purchase the Badlands Property, water rights, and golf course assets for $12 million. *See* Motion Ex. I, LOI.[3] It is unclear what happened after the LOI was sent because the Developer has produced virtually no communications between June 12, 2014 and the end of July when the initial draft of the purchase agreement was circulated. However, the initial draft of the purchase agreement used a $15 million purchase price instead of $12 million proposed in the LOI. *See* July 25, 2014 draft purchase agreement attached as **Exhibit G**.

The question is--why the extra $3 million? If the right of first refusal was triggered by a bona fide third-party offer, the Developer would have had the right to purchase the property on the same terms and the Peccole family could not have demanded an additional $3 million without breaching the settlement agreement. The only logical explanation is that the Developer did not have an enforceable right to purchase the property, either because it no longer controlled BGC Holdings LLC or because the right of refusal was never triggered in the first place. Either way, the

[3] The Developer initially claimed it could not find the LOI even though it produced the email from Billy Bayne replying and confirming receipt. The Developer later produced the LOI but could not produce the email transmitting the LOI.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

City has a right to find out if the right of first refusal was triggered by a third party offer and whether the Developer had the right to exercise it. In addition, the City has a right to know why the Developer was willing to purchase the property subject to a restrictive covenant that required the property to be maintained as open space or a golf course for at least three years after the Developer purchased the property.

As explained in the Motion for Reconsideration, Queensridge Towers LLC agreed to reimburse Fore Stars Ltd. for up to $3,150,000 for the cost of building a new clubhouse. *See* Motion at 5:13-24; *see also* Motion Exhibit G, Clubhouse Improvements Agreement. As explained in the publicly disclosed financial statements for Queensridge Towers LLC, a settlement agreement entered in 2013 gave Queensridge Towers the option to terminate its obligation to reimburse Fore Stars for the new clubhouse by conveying the land where the existing clubhouse is located back to Fore Stars.

The fact that the $3 million increase to the purchase price for the Badlands Property matched the amount the Queensridge Towers LLC still owed the Peccole family was no coincidence. Although the structure of the Fore Stars acquisition changed over time, the $3 million figure remained constant. On August 25, 2014, the attorney representing the Peccole family sent an email to Yohan Lowie stating:

> I have received consent from the Peccole Family for the revised purchase terms **as it relates to the $3 million that was initial drafted as a term note**. Please advise if you will be circulating a revised agreement, which Yohan advised me was in process last Friday. I have no problem revising the agreement to reflect these new terms, but I would prefer to receive any other comments you have to the initial draft of the purchase agreement so I can handle them at the same time.

See 8/25/2014 Email from Henry Lichtenberger attached as **Exhibit H**.

The following day, on August 26, 2014, the Peccole's attorney sent the following comments regarding the revised draft of the agreement:

> I have reviewed the revised agreement. The changes to both Sections 16 and 17 of the Agreement make further review or comment unnecessary. For any transaction to proceed to a definitive agreement and ultimate closing, the Seller must receive from the Purchaser (or an affiliate of the Purchaser with sufficient financial resources) **a full and complete indemnification (with no qualifications)** as it relates to the Real Property, Water Rights and the golf course **covering, without limitation, any proposed or planned development activities that may occur on the Real Property** by the Purchaser.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

> **Absent this type of language, we should simply terminate this transaction.** My client understands that all rights granted to BGC Holdings LLC (an affiliate of the Purchaser) under the Settlement Agreement dated January 28, 2008 – namely the right of first refusal -- remains in effect in accordance with the express terms as set forth in the Settlement Agreement.

See August 26, 2014 Email from Henry Lichtenberger attached as **Exhibit I** (emphasis added).

On August 27, 2014, Billy Bayne replied on behalf of the Peccole family with additional terms:

> 1. A full blanket indemnification from Yohan to us.
>
> 2. That Should IDB give us money instead of the land associated with their phase 2 we will give Yohan anything **in excess of the 3 million dollars to help offset the cost of the clubhouse**.
>
> 3. We do not care how you value the different parts of the transaction, provided, that we get 12 million on closing and **3 million should you end up buying the phase 2 property if we obtain it**. Thus if you want to put more money toward the water rights than the land that will be up to you.
>
> 4. Yohan will put into an escrow account 200k in the next few days which will be non-refundable in the next 30 calendar days. Provided Yohan would like another 30 calendar days of due diligence he will pledge 300k 31 calendar days from now which will be non-refundable upon its pledge, and then if he would like another 30 calendar days he may pledge another non-refundable 100k 62 calendar days from now. Once money is pledged I will stop discussing selling the course to other individuals.
>
> 5. There will be a management agreement in place on the course after Nov. 1, 2014 with Par 4 golf. That management agreement will be assumed by Yohan and may be canceled with 30 days notice to Par 4 golf. I of course will provide a copy of the management agreement once we get it.

Id.

The parties signed an agreement on December 1, 2014 but continued negotiating the terms until the week before the scheduled closing date in March of 2015. *See* December 1, 2014 Email re Stock Purchase Agreement signature pages; attached as **Exhibit J**; *see also* February 19, 2015 Email re: PSAs attached as **Exhibit K.** The communications that took place during the weeks leading up to the closing make clear that the Peccole family was not willing to move forward without the additional $3 million:

> I discussed with the family for some time yesterday and last night, the possibility of closing with 12M and extending the option on the end cap at Hualapai for 1 year ***as you work to pay off the additional 3m***, as well as extending the reps and the warranties, as you proposed yesterday. The families

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

> position, is that they have a signed agreement, they are and were comfortable with, and they are not willing to change the terms, at this stage.

Id. The email quoted above mentions the last set of documents the City needs to confirm its "narrative" – the option on the end cap at Hualapai. As explained in the Motion for Reconsideration, the Developer's corporate office in the Hualapai Commons shopping center was referred to as the "end cap" and the Developer had an option to purchase the end cap that was apparently going to expire with the year. The Developer could not exercise the option because it had pledged the end cap as collateral under the clubhouse improvements agreement, and if the Developer acquired Fore Stars without paying off the $3 million, the lien on its office collateral would be null. *See* 2/19/2015 Email from Todd Davis attached as **Exhibit L** ("Of course, by virtue of our purchasing Fore Stars Ltd. the encumbrance would have gone away anyway.")

In sum, the City only needs documents related to three transactions with the Peccole family in order to confirm its so-called "narrative" that the Developer paid only $3.5 million for the Badlands Property: (1) the BGC holdings settlement agreement; (2) the 2013 Settlement Agreement between Fore Stars and Queensridge Towers LLC; and (3) the lease with option to purchase the Developer's corporate offices.

As to the BGC Holdings settlement agreement, the City needs documents identifying whether the Developer had the right to exercise the right of first refusal, the 6-months' notice the Developer claims the Peccole family gave him to purchase the Badlands, and terms of any offer that may have triggered the right of first refusal. In addition, the City needs documents confirming if the restrictive covenant was terminated after the Developer acquired Fore Stars and any communications between the Developer and Queensridge Towers LLC regarding the same.

With respect to the 2013 Settlement Agreement, the City needs documents showing when Queensridge Towers LLC elected to transfer the clubhouse back to Fore Stars, whether any additional consideration was exchanged between Queensridge Towers LLC and Fore Stars after the closing, and any other correspondence related to the 2013 Settlement Agreement. The Developer's claim that it has no documents related to this agreement is false based on Yohan Lowie's declaration which acknowledges that the acquisition of Fore Stars involved a "post-closing obligation to resolve

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

a lot line dispute" with Queensridge Towers LLC. *See* **Ex. A**, Lowie Declarations.

Finally, with respect to the lease option agreement for the end cap, the City simply needs the lease, any amendments to the lease, and documents related to the Developer's exercise of the option to purchase the end cap form the Developer.

2. Communications With Land Use Counsel

After refusing to produce even a privilege log for communications with the Developer's land use counsel, Chris Kaempfer, the Developer submitted Mr. Kaempfer's declaration in support of the MSJ. Mr. Kaempfer's declaration states that he attended no less than seventeen meetings with the City and had numerous telephone calls and email exchanges with City representatives. *See* **Ex. B** at ¶ 11. His declaration also describes his participation in several neighborhood meetings. *Id*. at ¶ 10.

Mr. Kaempfer's communications with the Developer regarding these lobbying efforts are not privileged. *See In re Grand Jury Subpoenas dated Mar. 9, 2001*, 179 F. Supp. 2d 270, 285 (S.D.N.Y. 2001) ("[i]f a lawyer happens to act as a lobbyist, matters conveyed to the attorney for the purpose of having the attorney fulfill the lobbyist role do not become privileged by virtue of the fact that the lobbyist has a law degree or may under other circumstances give legal advice to the client, including advice on matters that may also be the subject of the lobbying efforts.") Moreover, "[s]ummaries of legislative meetings, progress reports, and general updates on lobbying activities do not constitute legal advice and, therefore, are not protected by the work-product immunity." *Id*.

As to the Developer's remaining communications with Mr. Kaempfer, the Developer has waived the privilege by failing to produce a privilege log and by placing its communications with Mr. Kaempfer at issue. *See Silon v. American Home Assurance Co.*, 2009 WL 10693643, at *2 (D. Nev. 2009) ("failure to comply with privilege log requirements will result in a finding that discovery opponents have failed to meet their burden of establishing the applicability of the privilege.") *see also Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) ("Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived."). The Developer's opposition to the City's Motion to Compel admitted that there may be thousands of emails with Mr. Kaempfer that the Developer has never disclosed on a

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

privilege log and the Developer and the Developer put these communications at issue by attempting to support the MSJ with Mr. Kaempfer's declaration.

3. Communications With The Developer's Lenders

The Developer's categorical taking and nonregulatory taking claims depend on the Developer's allegation that the Badlands Property has no value. *See* Second Amended Complaint at ¶¶ 167, 209. The Developer's nonregulatory taking claim, in particular, alleges that the City took steps that render the Badlands Property valueless or unusable. Only one Nevada Supreme Court decision has recognized that a nonregulatory taking is even possible. *See State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 421, 351 P.3d 736, 743 (2015). In holding that the nonregulatory taking standard only applies in extreme cases, the Court considered the facts of *Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency*, 561 F.2d 1327 (9th Cir.1977) as an example. *Id.* at 421-22.

In *Richmond*, the plaintiff's property was within an area declared blighted in September 1959. 561 F.2d at 1329. The redevelopment plan was given wide publicity, a schedule for acquiring property within the project area was established, and the redevelopment agency began acquisition and demolition in the area. *Id.* As a result of street construction in the redevelopment area, the plaintiff's property basement was flooded at various times between 1970 and 1972. *Id.* at 1330. In addition, part of the street improvements required sealing off portions of the plaintiff's basement. *Id.* In 1972, the agency informed the plaintiff that it would not acquire the property. The district court held that a compensable taking occurred in 1968, nine years after the declaration of blight. The court's determination that the property was useless and valueless was based in part on the fact that commercial lenders refused to make loans on the property. *Id.* at 1331.

Unlike the plaintiff in *Richmond*, the Developer has been able to encumber the Badlands Property, which tends to disprove the Developer's claim that the property has no value. Nevertheless, the Developer refuses to produce communications with its lender, Vegas Ventures Funding LLC, that would either confirm or deny the Developer's allegations. The Developer cannot even articulate a legitimate justification for refusing to produce these communications, it simply claims that no communications exist. *See* Opp. at 9:11-13. This is absurd. To be clear, the Developer has not produced a single communication with Vegas Ventures Funding LLC. Nothing.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

The only documents the Developer has produced related to the loan are copies of the loan agreement, promissory note, and four extension agreements, with all of the terms redacted. *See* Vegas Ventures Funding LLC loan documents attached as **Exhibit M**. With proper context, these loan documents will demonstrate that the Badlands is not useless and valueless, and will resolve a dispositive issue in the case.

III. CONCLUSION

For the reasons described above, the City respectfully requests that the Court reconsider its Order Granting In Part and Denying In Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents.

DATED this 9th day of April, 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Amanda C. Yen (NV Bar No. 9726)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (admitted *pro hac vice*)
Lauren M. Tarpey (admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 9th day of April, 2021, a true and correct copy of the foregoing **REPLY IN SUPPORT OF CITY OF LAS VEGAS' MOTION FOR RECONSIDERATION OF ORDER GRANTING IN PART AND DENYING IN PART THE CITY'S MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS** 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:

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.,
704 South Ninth Street
Las Vegas, Nevada 89101

EHB COMPANIES
Elizabeth G. Ham, Esq.
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

/s/Jelena Jovanovic
An employee of McDonald Carano LLP