

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent/Cross-Appellant.

No. 84345

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**JOINT APPENDIX,
VOLUME NO. 94**

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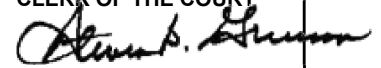
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In the Matter Of:
180 LAND vs CITY OF LAS VEGAS

September 23, 2021



DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

180 LAND CO., LLC, ET AL.,

Plaintiffs,

vs.

Case No. A-17-758528-J
Dept. No. 16

CITY OF LAS VEGAS, ET AL.,

Defendants.

MOTIONS

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS

On September 23, 2021

1:37 p.m. to 4:46 p.m.

For the Plaintiff: James J. Leavitt, Esq.
Autumn Waters, Esq.
Elizabeth Ghanem Ham, Esq.

For the Defendant: Christopher Molina, Esq.
Andrew Schwartz, Esq.
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.

Reported by: Kimberly A. Farkas, RPR, CCR #741

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

2 * * * * *

3 THE MARSHAL: Department 16 is now in
4 session. The Honorable Judge Timothy Williams
5 presiding. Thank you.

6 THE COURT: You may be seated. I want to say
7 good afternoon to everyone and welcome you to the 1:30
8 session. And this is 180 Land Company, LLC, et al. v.
9 the City of Las Vegas. And let's go ahead and set
10 forth our appearances for the record.

11 We'll start first with the plaintiff.

12 MR. LEAVITT: Good afternoon, Your Honor.
13 James J. Leavitt on behalf of the plaintiff landowner,
14 180 Land.

15 MS. WATERS: Good afternoon, Your Honor.
16 Autumn Waters on behalf of the landowners, as well.

17 MS. GHANEM: Good afternoon, Your Honor.
18 Elizabeth Ghanem here on behalf of the plaintiff
19 landowners. And with me today is Jennifer from my
20 office. We'll be managing the technology.

21 MR. SCHWARTZ: Andrew Schwartz for the City,
22 Your Honor. Good afternoon.

23 MR. BYRNES: Phil Byrnes for the City,
24 Your Honor.

25 MR. MOLINA: Good afternoon, Your Honor.

1 Chris Molina for the City.

2 MS. WOLFSON: Good afternoon, Your Honor.

3 Rebecca Wolfson for the City.

4 THE COURT: Okay. And, for the record, does
5 that cover all appearances? It appears to be. Okay.

6 It's my understanding, based upon what was
7 currently set on the calendar today, we have the
8 plaintiff landowner's motion to determine a taking, and
9 also for summary judgment on the first, third, and
10 fourth claims for relief.

11 Is that correct, counsel?

12 MR. LEAVITT: That's correct, Your Honor.

13 THE COURT: Okay. In light of that --

14 MR. SCHWARTZ: Your Honor?

15 THE COURT: Yes. Go ahead, sir.

16 MR. SCHWARTZ: We have a countermotion for
17 summary judgment on the calendar for the same day.

18 THE COURT: And you sure do.

19 MR. SCHWARTZ: Thank you.

20 THE COURT: I'll make it official. And the
21 City's opposition to developer's motion to determine a
22 taking and also motion for summary judgment on the
23 first, third, and fourth claims for relief and
24 countermotions for summary judgment. Is that correct?

25 MR. SCHWARTZ: Yes, Your Honor. Our motion

1 is for summary judgment on all claims.

2 THE COURT: I understand.

3 MR. SCHWARTZ: Thank you.

4 THE COURT: With that in mind, is there
5 anything we need to address preliminarily?

6 MR. LEAVITT: Not from the plaintiff,
7 Your Honor.

8 MR. SCHWARTZ: No, Your Honor. Ready to
9 proceed.

10 THE COURT: Okay. We can go ahead and get
11 started. And so who will be handling the argument on
12 behalf of the plaintiff?

13 MR. LEAVITT: James J. Leavitt, Your Honor.
14 I'll be handling it.

15 THE COURT: Okay. Sir, you may approach.
16 The lecturn is available for you.

17 MR. LEAVITT: Thank you. May I proceed,
18 Your Honor?

19 THE COURT: Yes, sir.

20 You know what we can do. I have a screen
21 here. There's one there; right? Is that visible to
22 everybody? Okay. Just want to make sure.

23 Mr. Leavitt, you may proceed, sir.

24 MR. LEAVITT: Your Honor, through the
25 arguments that we've done with you previously, what

1 I've been able to do is lay out an outline of my
2 argument. I've provided it in PowerPoint format and
3 I've also provided it in written format. And I do have
4 that, Your Honor. And so I have various folders that I
5 could hand to you. So we can see it on the monitor,
6 but I can also provide you a physical copy. I'm not
7 sure how you would like me to do that. I can give it
8 to the bailiff, Wesley, and he can present it to you,
9 Your Honor.

10 THE COURT: Is there any objection to him
11 handing me a physical copy of the PowerPoint
12 presentation?

13 MR. SCHWARTZ: No, Your Honor.

14 THE COURT: Okay. You can hand that to the
15 marshal.

16 MR. LEAVITT: Your Honor, we'll start with --
17 what I want to do is I want to start with the very
18 narrow issue that we're here for today. And if we can
19 open up the folder I just gave you, has the Nevada
20 inverse condemnation law. And if we open it, up the
21 very first slide there is "Nevada Inverse Condemnation
22 Law." And behind that, the next section, the next
23 page, the top of that page says, "Nevada's Mandatory
24 Inverse Condemnation Procedure."

25 We've talked about this previously that in

1 all of these inverse condemnation cases, the Nevada
2 Supreme Court has held that there's a two-step
3 procedure that we follow. The first step is to define
4 the property interest that the landowners had prior to
5 any city interference with that property interest. And
6 once that property interest is defined -- and what
7 we're talking about here is once the bundle of sticks
8 is defined that the landowners have, then and only
9 then, do we move to the take issue.

10 On October 12th, 2020, this Court entered an
11 order on the property interest issue. And we've
12 resubmitted that order to the Court to see that that
13 ruling and that decision has already been made on the
14 property interest issue. We appeared before the Court.
15 We had significant briefing. We had significant
16 argument.

17 And then at the end of that briefing and that
18 argument, this Court entered that first order that's
19 necessary in these inverse condemnation cases. And the
20 order that this Court entered was that, number one,
21 zoning is relied upon to determine a property interest.
22 Number two, the zoning is R-PD7. And number three,
23 under Nevada law and under the city's code, the legally
24 permissible uses of the property with R-PD7 zoning is
25 single-family and multi-family residential.

1 So, Your Honor, that very first preliminary
2 issue has been decided by this Court definitively on
3 October 12th, 2020. Because that first issue has
4 already been decided by the Court, we're now moving to
5 the second issue, which is the second sub-inquiry that
6 the Court requires us -- or which the Nevada Supreme
7 Court requires us to decide. And that second
8 sub-inquiry is very straightforward, Your Honor.

9 The second sub-inquiry is, did the City
10 engage in taking actions, or in actions to take the
11 landowners' 35-acre property for which the landowners
12 have the right to use for single-family and
13 multi-family residential uses.

14 So, Your Honor, that fairly narrow issue is
15 why we're here today. We filed our motion to address
16 that very narrow issue of, now that we've decided that
17 the landowners have the right to use the property for
18 single-family and multi-family residential uses, did
19 the City engage in actions to take that underlying
20 property interest.

21 Your Honor, if we turn to the next page in
22 the PowerPoint here, at the top of that page, it says,
23 "Three Invariable Rules."

24 It's not working on that --

25 THE COURT: Are you having a problem? I do

1 have the book.

2 MR. LEAVITT: You've got the book. We'll go
3 through the book and, hopefully, they can figure it
4 out.

5 The next section here is the three invariable
6 rules that the Nevada Supreme Court has used to decide
7 the take issue in the state of Nevada.

8 First, the court said, listen, we have no
9 magic formula to decide a taking in every single case.
10 The court went on to say, there's nearly infinite
11 variety of ways in which a taking can occur.

12 But then the court said this, Judge. The
13 court said, listen, there's many, many ways that a
14 taking can occur. But then in the State v. Eighth
15 Judicial District Court case, the court said,
16 nevertheless, there are several invariable rules
17 applicable to specific circumstances.

18 And then the court -- and the Nevada Supreme
19 Court has identified three invariable rules. So to
20 explain that a little bit more, Your Honor, the Supreme
21 Court said, listen, we're going to look at a whole
22 bunch of facts. And we can have a taking under many,
23 many different facts, but there's going to be three
24 specific circumstances where we are always going to
25 find a taking.

1 And here's the three specific circumstances
2 the Court said we're always going to find a taking.
3 Number one, on a per se regulatory taking. Number two,
4 on a per se categorical taking. And, number three, on
5 a non-regulatory de facto taking.

6 So under these three circumstances, the
7 Nevada Supreme Court said, these rules are invariable.
8 If the specific facts meet any one of these three
9 standards, the court is required to automatically find
10 a taking. There's no defense, there's no ripeness
11 issues. The court is required to look at the facts and
12 determine whether any one of these invariable rules has
13 been met.

14 So then I want to spend just a minute
15 identifying those invariable rules and the law that
16 applies to those invariable rules.

17 Turning to the next slide is the per se
18 regulatory taking. This is one of the claims that the
19 landowners are moving for summary judgment on. It's
20 landowners' third claim for relief, a per se regulatory
21 taking.

22 And turning to the next page, this is the
23 Nevada Supreme Court law on a per se regulatory taking.
24 The Nevada Supreme Court in the McCarran International
25 Airport and County of Clark v. Tien Fu Hsu case held

1 there's always going to be a per se taking if the
2 government engages in actions that preserve private
3 property for use by the public or authorize the public
4 to use private property.

5 And, Judge, that makes sense. If the
6 government says, hey, we're preserving your property
7 for use by somebody else, that's going to automatically
8 be a per se taking in and of itself. Or if the
9 government adopts any kind of action and says to a
10 landowner, we're authorizing the public to enter
11 physically onto your property, the Nevada Supreme Court
12 said that's in and of itself going to be a taking.

13 And, Judge, I want to refer to those facts
14 that occurred in the Sisolak case because they're very
15 demonstrative of the kind of takings that the Nevada
16 Supreme Court found in that per se regulatory taking.
17 And Sisolak, as you'll recall, the County of Clark
18 adopted height restriction known as number 1221 that
19 preserved Governor Sisolak and Mr. Hsu's airspace as
20 vacant airspace for use by the public. And that
21 underlying ordinance authorized the public to enter
22 into that airspace.

23 The taking action in that case that the
24 Nevada Supreme Court found was not the physical entry
25 of airplanes into the airspace. The Nevada Supreme

1 Court found that the adoption of height restriction
2 ordinance number 1221 was the taking action. So the
3 Court said, listen, if you just engage in actions to
4 preserve property for use by the public or you engage
5 in action that authorizes the public to use private
6 property, that's a taking.

7 And, Your Honor, I'll read from the very
8 conclusion of the Sisolak case. You see in the book I
9 have the most applicable cases. It's at page 16 of the
10 book behind there. The conclusion is the Court says,
11 Ordinances 1221 and 1599 appropriated private property
12 for public use without the payment of just
13 compensation.

14 It was the ordinances that resulted in the
15 taking because the ordinances themselves preserved the
16 property for use by the public and authorized the
17 public to use that private property.

18 Your Honor, the second bullet point from the
19 bottom of that sheet there, that's an important
20 finding. Because the Sisolak court had to determine
21 prejudgment interest. And in order to determine
22 prejudgment interest, the Sisolak court had to
23 determine what was the taking date, what was the taking
24 action. And, again, at page 675, the court held that
25 prejudgment interest was awarded from the date of

1 taking, which was the date the county passed
2 Ordinance 1221.

3 And then in a subsequent case, Your Honor,
4 Johnson v. McCarran International Airport, what had
5 happened, Your Honor, is we litigated those airspace
6 taking cases for about 15 years. Then after those
7 cases had been litigated, Mr. Johnson came forward and
8 said, hey, my property is near the airport. I want to
9 sue for a taking also.

10 So in that Johnson v. McCarran International
11 Airport case, the Nevada Supreme Court had to
12 definitively define what the date of taking was because
13 Mr. Johnson missed the statute of limitations. So the
14 court had to decide when did the taking occur in order
15 to commence the statute of limitations. And in the
16 Johnson case, the court held that the height
17 restriction 1221 effected a per se regulatory taking.
18 And then they went on to say, when the planes began
19 using the airspace was absolutely inconsequential to
20 determine the take.

21 So, Your Honor, in conclusion, a per se
22 regulatory taking in the state of Nevada occurs when
23 the government engages in actions that preserve private
24 property use by the public or authorizes the public to
25 use the property. It's inconsequential whether they

1 actually use the property.

2 And if we turn to the next page, Your Honor.

3 The United States Supreme Court, just two months ago,
4 adopted this same exact holding in a case called Cedar
5 Point Nursery v. Hassid. That's a June 2021 case. In
6 that case, the Court held that the right to exclude is
7 one of the most treasured rights of ownership. And
8 where the government authorizes the public to use
9 property, it is a per se regulatory taking.

10 What happened in this case is very, very
11 applicable here. First, the court said, Penn Central
12 has no place here. We don't do a Penn Central analysis
13 when there's a per se regulatory taking. That's what
14 the court said.

15 You're going to hear a lot about Penn Central
16 from the City of Las Vegas here today. And the
17 United States Supreme Court said, we don't even do a
18 Penn Central analysis under these circumstances. And
19 the taking facts in that case are extraordinarily
20 instructive.

21 First, California adopted a statute that
22 allowed these labor unions to enter onto private farms
23 for up to three hours a day for 120 days a year for --
24 with notice. And so the statute said, listen, labor
25 unions have a right to enter onto farms. The labor

1 organization tried to enter onto
2 Fowler Packing Company's property, but
3 Fowler Packing Company went out there and said, you're
4 not coming onto my property.

5 So the labor unions actually didn't even
6 enter onto Fowler Packing Company's property. And the
7 court in that case held that the taking was the passage
8 of the statute that authorized the public to enter onto
9 the property.

10 So that's very consistent with what the
11 Nevada Supreme Court held. So that's one of those
12 invariable rules. The Nevada Supreme Court said, when
13 the city, or any other government entity, takes this
14 type of action to preserve property for use by the
15 public or authorize the public to use it, that's going
16 to be an invariable rules where we are always going to
17 find a taking. And that's why the court put the words
18 "per se" in front of that type of claim. There is a
19 taking in and of itself.

20 So the question will be, and I'll get to this
21 in a moment, Your Honor, is did the City engage in
22 actions to preserve the landowners' property for use by
23 the public or did they engage in actions to authorize
24 the public to use the landowners' property.

25 Turning now, Your Honor, to the next slide,

1 which says, "Per se Categorical Taking, Landowners'
2 first claim for relief." Landowners are also asking
3 for summary judgment on a per se categorical taking.
4 The Nevada Supreme Court and the United States Supreme
5 Court have been very clear on what the standard is
6 here.

7 The Sisolak court adopted it. The Hsu court
8 adopted it. And the United States Supreme Court
9 adopted this same standard in a case called City of
10 Monterey v. Del Monte Dunes. And the taking standard
11 here is a per se taking occurs whenever the government
12 engages in actions that, quote, "Completely deprives an
13 owner of all economical beneficial use of her
14 property."

15 So if the government comes to a piece of
16 property and takes actions that completely deprive that
17 owner of all economical beneficial use of the property,
18 then the court says that's a per se taking. That's a
19 taking in and of itself. There's no defenses to that
20 taking. And the taking facts in the Del Monte Dunes
21 case are very instructive.

22 Del Monte Dunes went to the City of Monterey,
23 and they said, we have residentially zoned property,
24 just like the landowners in this case, Your Honor. As
25 this Court already found, the landowners have

1 residential zoned property. They had the right to use
2 that property for residential uses.

3 In the Del Monte Dunes case, the
4 United States Supreme Court recognized that Del Monte
5 Dunes had residential zoning and the right to use the
6 property for a multi-family residential use exactly as
7 this Court found in this case.

8 Then, exactly as the facts will show in this
9 case, Del Monte Dunes went to the City of Monterey and
10 asked to develop their property for residential
11 purposes. And they were denied, denied, and denied.
12 There was denial after denial. No matter what Del
13 Monte Dunes did, the City of Monterey said, you can't
14 build.

15 And so Del Monte Dunes sued the
16 City of Monterey because there was no other economic
17 use that could be made of the property. And then,
18 ultimately, in that case, a categorical taking was
19 found, and just compensation was awarded in the amount
20 of \$1,450,000.

21 So, in conclusion on this claim that the
22 landowners are seeking summary judgment on, a per se
23 categorical taking occurs when the government engages
24 in actions that deprive a landowner of all economic
25 beneficial use of their property. And this is, again,

1 one of those invariable rules where the Nevada Supreme
2 Court says, just compensation is automatically
3 warranted and there are absolutely no defenses to this
4 taking for obvious reasons.

5 If the government engages in actions that
6 economically deprive a landowner of the use of their
7 property, that's clearly a taking. So the Nevada
8 Supreme Court said, no matter what excuse the
9 government may have for doing it, no matter this
10 ripeness argument, none of it applies, Your Honor.

11 So the final claim that the landowners are
12 seeking summary judgment on is a non-regulatory
13 de facto taking claim. And this is the landowners'
14 fourth claim for relief on the next slide. And if we
15 turn to the next page in our book here, it's actually
16 page 10 in the bottom right-hand corner, Your Honor.
17 This is the standard in the state of Nevada for a
18 non-regulatory de facto taking.

19 And if I may pause for a minute here,
20 Your Honor. This non-regulatory de facto taking
21 standard was first adopted by the Nevada Supreme Court
22 in a case called Slope v. Turner in 1977. It was
23 reaffirmed by the Nevada Supreme Court in 1988 in a
24 case called State v. Las Vegas Building Materials, and
25 reaffirmed in a case called State v. Schwartz.

1 We're very familiar with those cases.

2 Actually, Mr. Waters from our offices litigated every
3 one of those cases from 1977 forward. It's been the
4 law in the state of Nevada for over 41 years.

5 Over 41 years the law has been as follows: A
6 non-regulatory de facto taking occurs, quote, "Where a
7 property right that is directly connected to the use or
8 ownership of the property is substantially impaired or
9 extinguished."

10 That is a verbatim quote from the Schwartz
11 decision, which was adopted previously in 1977 in the
12 Slope decision, and previously in the Las Vegas
13 Building Materials decision. In fact, the Schwartz
14 case cites to the Slope decision and cites to the
15 Las Vegas Building Materials decision.

16 The facts of the Richmond Elks Hall case are
17 actually instructive here. The reason I cite to the
18 Richmond Elks Hall case is because the Nevada Supreme
19 Court reaffirmed this non-regulatory de facto taking
20 standard in a 2015 case called State v. Eighth Judicial
21 District Court. In that State v. Eighth judicial
22 District Court case in 2015, the Court actually labeled
23 this type of taking as a non-regulatory de facto
24 taking, and then cited with authority to the
25 Richmond Elks Hall case, a 1977 Ninth Circuit case.

1 And Richmond Elks Hall owned a three-story
2 building. They were using it for rent. And the
3 government stated the Richmond Elks Hall property was
4 going to be taken, but Richmond Elks Hall could keep
5 their property if it redeveloped it.
6 Richmond Elks Hall refused to do that. And then the
7 government engaged in certain other actions over the
8 years to substantially interfere with the use of the
9 Richmond Elks Hall property.

10 At the end, Your Honor, Richmond Elks Hall's
11 income was reduced to less than one-third of what it
12 was before the agency adopted its plan. That's
13 critical right there, Your Honor. Because the Ninth
14 Circuit Court of Appeals received argument from the
15 government in that case. And the government said to
16 the Ninth Circuit Court of Appeals, time out.
17 Richmond Elks Hall still can use a third of their
18 building. In order for there to be a taking, you have
19 to have a total wipeout. That's what the government
20 argued to the Ninth Circuit Court of Appeals.

21 The Ninth Circuit Court of Appeals said,
22 absolutely not, and rejected the total wipeout
23 argument, and said, Richmond Elks Hall had a
24 three-story building. They could still use a third of
25 the building, and a third of the building was still

1 being rented, but the Ninth Circuit Court of Appeals
2 said that the government in that case substantially
3 interfered with the use and enjoyment of the
4 Richmond Elks Hall property to such as extent that it
5 became a taking. And the Nevada Supreme Court cited to
6 that law as authority.

7 So, Your Honor, this next claim that the
8 Nevada Supreme Court said is an invariable rule in the
9 State of Nevada is this non-regulatory de facto taking
10 claim that says, if the landowner has a property right
11 and the government substantially interferes with that
12 property right, that's always going to be a taking.

13 Now, I want to turn to the next page.
14 Because now I want to pause with what the landowners'
15 claims are. And I want to take just a moment,
16 Your Honor, and address what the City wants you to find
17 in this case. And this is the City's incorrect taking
18 standard.

19 The City says, number one, that it has
20 discretion under petition for judicial review law to
21 deny land use applications, and, therefore, there are
22 no property rights. And, Judge, as outrageous as that
23 may sound, that's its argument, that we don't have
24 property rights anymore. We're at
25 pre-constitutional era, according to the City, that

1 because the City has petitioned for judicial review
2 discretion, there are no property rights. That's its
3 first argument.

4 Then it says, separation of powers prohibits
5 you from intervening when the City exercises its
6 discretion. That's its second part of this rule.
7 Judge, I can tell you right now, and we cited you this
8 law, the United States Supreme Court in the Monongahela
9 case expressly rejected that and said the Court has a
10 duty to intervene when the government takes property.
11 And, in fact, used this example: The court said you
12 can't leave the fox to guard the hen house. That's the
13 exact example the court used.

14 THE COURT: I mean, from a historical
15 perspective, separation of powers have never been in
16 trial courts when issuing decisions pertaining to
17 actions of the city council, county commission, the
18 Nevada legislature, and/or Congress; right? I mean,
19 really.

20 MR. LEAVITT: Absolutely, Your Honor.

21 THE COURT: They overstep their bounds, the
22 only recourse is to go to another co-equal branch of
23 government. And that would be the judiciary. In fact,
24 the President of the United States is not immune from
25 that.

1 MR. LEAVITT: And you hit it right on the
2 head, Your Honor, absolutely. And that's from the very
3 beginning. It's a late 1800s decision. And it was
4 recited in a case called Lou Colliers, which was
5 recited in another case called Seaboard Airlines, which
6 are three United States Supreme Court opinions where
7 the court rejected the separation of powers statement,
8 and the United States Supreme Court said, you can't
9 leave the fox to guard the hen house. The courts are
10 there to act as the protectors of landowners' property
11 rights. Therefore, this whole separation of powers
12 argument that the City makes is absolutely unfounded.

13 Then the third part of the City's rule is
14 that this court can only find a taking where there's a
15 total wipeout of all value of the property. I'm going
16 to put this as simply as I can, Your Honor, and no
17 disrespect to the Court, of course. There is
18 absolutely no case in any jurisdiction anywhere that
19 adopts this law. None, whatsoever. Your Honor, I
20 haven't even read a magazine article, any type of
21 persuasive authority, that adopts this rule the City
22 wants you to adopt. It's patently incorrect.

23 And the Nevada Supreme Court in these three
24 types of takings that I just went through expressly
25 rejected this argument by the City that you apply

1 petition for judicial review of law, then you apply
2 separation of powers law. Then you cherry-pick from
3 some eminent domain cases and come up with a rule where
4 no landowner would ever be paid just compensation.

5 And if I could turn to the next page,
6 Your Honor. The next page is where the Nevada Supreme
7 Court -- and I'll just quote these quickly -- four
8 times, actually, expressly rejected this total wipeout,
9 separation of powers, pure discretion argument. In
10 *Schwartz v. State*, the court said, listen, if the
11 government substantially impairs or extinguishes
12 property, there's a taking.

13 The Nevada Constitution was amended in 2008
14 to say that if there's a taking or damaging of
15 property -- or damaging a property, it shall be valued
16 at its highest and best use.

17 *Richmond Elks Hall*, which the Nevada Supreme
18 Court cited to for authority, said to constitute a
19 taking under the Fifth Amendment, it's not necessary
20 that the property be absolutely taken within the narrow
21 sense of that word to come within the protection of the
22 Constitution.

23 Here's the words. Here's what the Nevada
24 Supreme Court approved. "It is sufficient that the
25 action by the government involves a direct interference

1 with, or disturbance of, property rights."

2 So if the government interferes with your
3 property rights directly or disturbs those property
4 rights, the Nevada Supreme Court is going to find a
5 taking. And in Nichols on Eminent Domain, they
6 conclude it all. And I'll tell you even why I cite
7 Nichols.

8 So contrary to the prevalent earlier views,
9 it's now clear that a de facto taking does not require
10 a physical invasion or appropriation. Rather, a
11 substantial deprivation of a property owner's use of
12 its property may, in appropriate circumstances, be
13 found to be a taking.

14 Why do I cite Nichols? Because the Nevada
15 Supreme Court cites Nichols 13 times in their eminent
16 domain and invariable rules cases; no less than 13
17 times. That's the authority the Nevada Supreme Court
18 relies on.

19 So, Your Honor, I want to sum this up on the
20 taking law. On the next page, this is a summary of the
21 taking issues based on Nevada's three invariable rules.

22 So here's why we're here today. Here's why
23 the landowners have come here. Under the per se
24 regulatory taking, the issue is framed very succinctly
25 like this. Where the landowners had the right to use

1 their 35-acre property for residential purposes, did
2 the City engage in actions to preserve that 35-acre
3 property for use by the public or authorize the public
4 to use the 35 acres?

5 Because remember, Judge, we've already been
6 down the property interest road. This Court entered a
7 definitive ruling on October 12th, 2020, stating that
8 the landowners had the absolute right to use their
9 property for residential purposes. So the only
10 question is did the government stop that and preserve
11 it for some other use finding a -- resulting in a
12 per se regulatory taking.

13 The next claim is a per se categorical
14 taking. The question is framed just like this. Again,
15 where the landowners had the right to use their 35-acre
16 property for residential purposes, did the City engage
17 in actions to completely deprive the landowners of all
18 economic beneficial use of their 35-acre property.

19 Again, under that standard, the Court already
20 decided the property interest issue, that the
21 landowners have the legally permissible right to use
22 their property for residential purposes. So the
23 question here is did the City engage in actions to
24 prohibit them from doing that, which is the only
25 economic use of the property.

1 The final question under a non-regulatory
2 de facto taking is did the City engage in actions to
3 substantially interfere with the landowners' legal
4 right to use their 35-acre property for residential
5 purposes. Again, the property interest issue under
6 that standard has already been decided, that the
7 landowners had the legal right to use their property
8 for residential purposes. So did the City engage in
9 actions to substantially interfere with that legal
10 right?

11 If this Court answers yes to any one of these
12 issues, then a taking should be found. That's what the
13 Nevada Supreme Court held. We don't have to go into
14 this Penn Central analysis. And every one of these
15 standards, under a per se regulatory taking standard,
16 the Nevada Supreme Court said in Sisolak, we don't go
17 into Penn Central.

18 Under a per se categorical taking standard,
19 the Nevada Supreme Court said, we don't apply
20 Penn Central. And in a non-regulatory de facto taking
21 claim, the Nevada Supreme Court said, we don't apply a
22 Penn Central analysis.

23 We don't apply a ripeness analysis to any of
24 these claims because if the government engages in these
25 actions, the actions are per se takings, a taking in

1 and of themselves.

2 So, Your Honor, turning to the next slide,
3 which is slide no. 14. It's headed, "All government
4 Actions Must be Considered."

5 So I'm going to -- so I've talked about the
6 standard, Judge. And now I'm going to move to the
7 facts. But before I move to the facts, I just want to
8 point out that in the State v. Eighth Judicial
9 District Court case, 2015, the Nevada Supreme Court
10 said there's nearly infinite variety of ways in which
11 the government actions or regulations can affect a
12 property interest.

13 The Nevada Supreme Court said very, very
14 clearly that the government can do an infinite number
15 of things and that the court is required to look at all
16 of that government action. And this Court actually
17 already entered a ruling on that issue. Exhibit No. 8
18 is an order you entered in this matter previously.
19 This issue has already come up.

20 And this is what this Court held in its
21 order. Quote: "In determining whether a taking has
22 occurred, courts must look at the aggregate of all of
23 the government's action because" -- and you're quoting
24 a case here -- "the form, intensity, and deliberateness
25 of the government's actions toward the property must be

1 examined. All actions by the government in the
2 aggregate must be analyzed."

3 Therefore, Your Honor, when we're deciding in
4 this hearing today, and tomorrow if we go into
5 tomorrow, when we're deciding that issue, we have to
6 look at all of the City's actions in the aggregate to
7 decide whether any of these takings occurred.

8 And, Your Honor, I'll conclude on the law
9 here just by saying, all of that case law which we just
10 cited to is attached in this booklet for the Court.
11 It's all tabbed and highlighted for the Court if the
12 Court wishes to so look at it.

13 So, Your Honor, when we're deciding the issue
14 here today, the number one thing is to decide the
15 taking standards. We've done it. There's three
16 invariable rules. The next step is to look at the
17 facts and see if the facts fit into any one of those
18 taking standards. And then, finally, to analyze those
19 facts as they compare to the take.

20 And so, Judge, now what I want to do, now
21 that we've looked at the taking standard, I want to
22 turn to the specific facts in this case. And I want to
23 identify those facts which are most important.

24 And, Judge, if I may, I have another book
25 here that I'd like to give to the Court.

1 THE COURT: And, for the record, you want
2 adverse counsel to know what's in that book?

3 MR. LEAVITT: What's that, Your Honor?

4 THE COURT: We should have them take a look

5 --

6 MR. LEAVITT: Oh, yeah.

7 THE COURT: -- and make sure there's no
8 objection.

9 MR. LEAVITT: These are the exhibits that
10 have already been submitted to the Court.

11 THE COURT: You can take a look. I won't
12 open them until you say everything is okay from a
13 defense perspective.

14 Go ahead, sir. I'm listening. I'm familiar
15 with the facts of the case.

16 MR. LEAVITT: I'm with you, Your Honor. I'm
17 going to point out the most important ones. So we have
18 this booklet right here. This is just my argument.

19 Then we have the book, which is the relevant
20 exhibits, which are the exhibits, the same exhibits, as
21 they appear on the motion. And so what I'll do is, I
22 want to first turn to the first tab, which is the
23 property acquisition.

24 Your Honor, I start with the acquisition of
25 the property because it becomes an issue, not by the

1 landowners, but by the government. There's important
2 facts that when the landowners acquired the property.
3 The first important fact is in March 2015, the
4 landowner acquired the entity known as Fore Stars,
5 Ltd., which owned five separate parcels. So when the
6 landowners acquired the entire 250-acre property --
7 and, Your Honor, I'll put this up, if that's okay.

8 THE COURT: That's fine.

9 MR. LEAVITT: This is marked as Exhibit No. 2
10 in the previously submitted exhibits to the Court.
11 It's an entire 250-acre property. And it's broken up
12 into four parts in this litigation that's pending. The
13 Court's aware of those four parts. But when the
14 landowners acquired the deed, Exhibit No. 44, lists
15 five separate parcels.

16 Then, Your Honor, in this exhibit book
17 would --

18 THE COURT: It's the 35 acres that are at
19 issue in this matter, and they were zoned R-PD7; is
20 that correct?

21 MR. LEAVITT: Absolutely, Your Honor.

22 The only facts that are before you is the
23 35-acre property. And during -- so after the
24 landowners acquired the property, they said, hey, we
25 want to go develop. They immediately started

1 developing.

2 And, Your Honor, why? Why did the landowners
3 immediately want to develop? Because they had a
4 250-acre vacant piece of property they were being taxed
5 by the City of Las Vegas as a residential property at
6 \$1 million a year, and they had significant carrying
7 costs. And so they immediately moved to develop.

8 They went to the City of Las Vegas and
9 Peter Lowenstein, who is the head planning section
10 manager at the City of Las Vegas, testified under
11 deposition oath that the City wanted the property split
12 up further into 10 parcels. And so the landowners did
13 that at the direction of the City of Las Vegas, split
14 it up into 10 parcels and began moving forward with
15 development.

16 The next tab is, "Surrounding Owners." And,
17 Your Honor, I'm not going to spend a lot of time on
18 this, but it shows why certain actions were taken in
19 this case, and so that's why it's relevant.

20 Exhibit No. 94 is the affidavit of
21 Vickie DeHart. She states in her affidavit,
22 Your Honor, lays out this foundation that when the
23 landowners went to develop the property, the
24 surrounding property owners vehemently opposed it and
25 told them, listen, you can't develop this property

1 unless you give to us 180 acres of your property plus
2 water rights for free. The landowners objected and
3 said, we're not going to do that.

4 And Exhibit No. 142 confirms that action.
5 Bob Beers, who was a councilman at the time, testified
6 under oath that he was contacted by the adjoining
7 property owners, and he was asked to have the City get
8 in the way of the landowners' rights. Get in the way
9 of their rights. He said, I'm not going to do that.
10 And because he wouldn't do that, Your Honor, "They
11 lodged a political campaign against me," is what he
12 testified to.

13 Continuing, Your Honor, to the next page.
14 The declaration of Yohan Lowie confirming what
15 happened, Exhibit No. 35. Exhibit No. 35 is
16 Mr. Lowie's deposition. He said that, "The surrounding
17 property owners demanded that I not develop my
18 property. They said I had to give them 180 acres for
19 free, plus water rights."

20 And then he said, "I needed to hand it over
21 to them for free without restrictions."

22 So look at the position the landowner is in.
23 And, Judge, you heard all of this evidence during the
24 property interest motion. The landowners worked
25 14 years to acquire the property. We have a pending

1 motion before you which lays out the due diligence that
2 was done for 14 years. The significant resources,
3 work, and effort that went into that.

4 And they finally acquire the property. They
5 move forward with development. And I don't know a
6 better way to say it, Your Honor, and these are the
7 words that the United States Supreme Court uses in a
8 case called Dolan v. City of Tigard. They said that
9 when those type of actions occur, it's like extortion.
10 That's the words the United States Supreme Court uses.

11 That you can't go to a landowner and say,
12 well, I'm only going to let you build on your 250 acres
13 if you give your adjoining landowner 180 of those
14 acres. That's the verbiage the Court used.

15 So, Your Honor, I want to move forward now
16 with the specific taking actions. With that foundation
17 laid, that the surrounding property owners vehemently
18 opposed it and that the city council members were
19 approached to get in the way of development, and that
20 Mr. Lowie himself was approached by the city council, a
21 city council member, and told him that he couldn't
22 develop unless he gave that property away, let's now
23 look at the City's actions towards the property.

24 The next one is the MDA. And I have a "1"
25 around that. The MDA is the Master Development

1 Agreement. And this testimony that I'm about to tell
2 you about, Judge, is undisputed.

3 In Exhibit 34, Mr. Lowie testified that the
4 City would only accept one application to develop the
5 35-acre property.

6 So he goes to develop his property. And the
7 City says, here's the only way you're going to be able
8 to develop the 35-acre property is through a Master
9 Development Agreement. That testimony is confirmed by
10 Chris Kaempfer, who is a 40-year land use attorney in
11 the state of Nevada.

12 Exhibit No. 48, he testified, and it's
13 highlighted here, that it was made abundantly clear to
14 him that the landowners would get a development
15 agreement for the entire property that includes the
16 35-acre property or they get nothing. That's his
17 quote.

18 Stephanie Allen, in Exhibit No. 54 in her
19 declaration stated the same thing. That they worked on
20 this, the Master Development Agreement, at length for
21 two years because that's what the City said the
22 landowners needed to do. So, Your Honor, the City
23 said, you, landowner, have one road to walk down in
24 order to develop the property, and that's through the
25 MDA application. That's the only way.

1 That's an undisputed fact. No evidence has
2 been presented by the City of Las Vegas to dispute that
3 that was the only way the City would allow development
4 of the 35-acre property. There's no affidavits.
5 There's no depositions. There's no statements on the
6 record. There's no evidence to dispute that,
7 Your Honor.

8 Turning to the next page. The landowners
9 complied and completed the Master Development
10 Agreement. Judge, that's all laid out in the briefs.
11 I'll highlight a couple things. It took two and a half
12 years to complete that.

13 The second bullet point in Exhibits 58 and 59
14 that are in this book here, Your Honor, the City
15 required at least 700 changes and 16 redrafts.

16 Those exhibits lay out all of the changes.
17 They do a comparison. And through computer they were
18 able to identify what the changes were and how many
19 they were and how many do-overs the City required.

20 Mayor Goodman even stated on the record in
21 Exhibit 54 that there were weekly meetings for two and
22 a half years with the City's department representatives
23 and hundreds of hours spent on this Master Development
24 Agreement.

25 Judge, this is the most significant

1 application that could possibly have been submitted.

2 And the City said to the landowners, that's the only
3 way you're going to be able to use your 35-acre
4 property.

5 We'll turn to the next page, Your Honor.

6 The MDA requirements were profoundly
7 excessive. This evidence shows that these landowners
8 were picked out and specifically targeted by the city
9 council.

10 Number one, Councilwoman Tarkanian, in
11 Exhibit 53, specifically stated in regards to the MDA,
12 "I've never seen a landowner have to give up that much
13 to develop their property. And I've never seen a
14 landowner agree to give up that much as part of this
15 MDA application in order to develop."

16 Again, the only avenue the City would allow.

17 Yohan Lowie is the landowner representative.
18 This is his Exhibit No. 34. Yohan Lowie, Your Honor,
19 has been developing property in the City of Las Vegas
20 for 25 years. At the last hearing that we were in
21 front of you, I don't know if you recall this,
22 Your Honor, but I laid out everything that he's
23 developed in this area, Tivoli Village, 42 of the 109
24 homes in Queensridge, Sahara and Hualapai, the
25 development at that area.

1 Your Honor, there's no single person who has
2 developed more property in this area than Mr. Lowie.
3 He actually designed and built the Nevada Supreme Court
4 building. So he has significant experience in
5 developing property.

6 Listen to what he says in his deposition.
7 "The demands by the City of Las Vegas cost us to incur
8 more than an additional \$1 million in fees and costs."

9 So, Judge, this MDA application, the
10 landowners had to do everything the City typically
11 requires, plus \$1 million.

12 He actually stated, and I believe this is in
13 his deposition testimony, that it actually approached
14 closer to \$2 million extra just because. And he did
15 it.

16 He went on to say, "Such costly and timely
17 requirements are never required."

18 25 years of developing property and he says
19 he's never had this happen before. They've never
20 required this.

21 Exhibit No. 55, Your Honor. This right here
22 is a letter that Mr. Yohan Lowie received. The City
23 met with him and said, hey, here's what you're going to
24 have to do as part of the Master Development Agreement.
25 They said, you're going to have to build a park with

1 vineyards. You're going to have to build new
2 gatehouses for the Queensridge community.

3 Judge, we learned in the property interest
4 motion that this property is not part of the
5 Queensridge community. We learned that it's entirely
6 separate from the Queensridge community. That
7 Mr. Peccole, when he built this whole area, put future
8 development on this 250-acre property and put
9 specifically in the CC&Rs that this is separate and
10 apart.

11 It can be developed. And nobody in
12 Queensridge has any rights to this property. That's
13 what we learned in our property interest motion. And
14 look at what the City is making them do. You have to
15 build brand new gates for the Queensridge community.
16 Controlled access, a park of 70 acres, 2.5-acre
17 nursery -- and this is probably my favorite -- land for
18 an equestrian facility.

19 You know what he did, Judge, that same day,
20 he signed it, dated it, and handed it back to the City,
21 said, I just want to use my property.

22 The Nevada Supreme Court in Sisolak says,
23 "Every landowner has a right to possess and use their
24 property." That's an exact quote. So he said, as the
25 Nevada Supreme Court said, I just want to use my

1 property.

2 And, Judge, despite the fact of these being
3 grossly unconstitutional exactions, he signed it and
4 said, I'll do it. I'll pay your extra million dollars.
5 I'll build the gates. I'll build the equestrian
6 facility just to approve the Master Development
7 Agreement so I can build homes on the properties.

8 But, Judge, it was taking so long and it was
9 so egregious what the City was requiring that the
10 landowner then went over and started a parallel
11 application for the 35-acre property. Your Honor,
12 that's the next section is the 35-acre property.

13 So while this Master Development Agreement
14 was being developed and the City was taking two and a
15 half years to do it. And, Judge, if I may just point
16 out, the City wrote the Master Development Agreement;
17 okay? While that was ongoing, the landowners said, we
18 want to develop the 35 acres. And that's this 35 acres
19 right here.

20 So the testimony is the landowners said,
21 let's go to the city planning department and let's ask
22 the city planning department what's the highest
23 restrictions you could possibly impose on the 35-acre
24 property to develop it. And then, guess what, put even
25 more strict restrictions on it because we want to make

1 sure this is approved. They worked with the City of
2 Las Vegas planning commission to prepare this plan
3 right here, Your Honor.

4 And if I could -- is it up? Doesn't look
5 like it's up.

6 I will point out the details just very
7 quickly on this, Your Honor. It was 35 acres. There
8 were 61 lots. The average lot size was a half acre.
9 The density was 1.7 units per acre. The R-PD7 zoning
10 allows up to 7 units per acre. But when they went to
11 the City, they wanted to make sure this gets approved
12 so they only proposed 1.7 units per acre. This is what
13 they proposed. They drafted it up. The City said, do
14 this. The landowners went and drafted it up.

15 To see how reasonable that is, Your Honor,
16 the Queensridge community has a density of 3.5 units
17 per acre. So all of the Queensridge homes that are
18 built around the 35-acre property are twice as dense.
19 There's twice as many units on the Queensridge
20 community as was being proposed on the 35-acre
21 property.

22 So those applications, all of them, are
23 prepared. They're prepared with the assistance of the
24 City's own planning department. And then what happened
25 is the City then sent this plan with all the

1 applications to all their agencies and all their
2 departments. And all their departments had an
3 opportunity to weigh in on whether this met the city
4 code requirements.

5 And let's go to the next page because this
6 gives us what the City said. This is the City's
7 planning department, Exhibit No. 74 on the next page.
8 They say just like this, the zoning is R-PD7. The
9 proposed density is allowed under R-PD7. And this is a
10 quote. "The proposal is, quote, less dense than the
11 existing R-PD7 zoning district allows."

12 Your Honor, that's entirely consistent with
13 your property interest order. You held that the
14 landowners' property is R-PD7, and they have a legal
15 right to use the property for residential purposes. So
16 did the planning department when this was submitted.

17 They went on to say, it's comparable in size
18 to the existing units. And then they said at
19 Exhibit No. 74, it conforms to all Title 19
20 requirements. It conforms to all NRS requirements.
21 And it conforms to the tentative map requirements.

22 And turning to the next page, Your Honor,
23 again at Exhibit No. 74. So what did the City's
24 planning commission recommend for this? Approval on
25 all bases, approval, approval, approval, approval.

1 Turning to the next page, which is slide
2 no. 15. This is at one of the hearings on the 35-acre
3 application. Remember Councilman Bob Beers who was
4 approached to try to stand in the way of development?
5 He said, just like this in Exhibit No. 33 at the
6 hearing, he said, I've looked at this. I've looked at
7 the city code. I've looked at the zoning. This is so
8 far inside the existing lines. That's their client.
9 The city council is the highest level at the City of
10 Las Vegas.

11 So their planning department said, this is
12 legally permissible. Their planning department said,
13 this should be approved. Their council member said on
14 the record, this is so far inside the existing lines.
15 Why was it so far inside the existing lines? Because
16 the landowners went to the planning commission and
17 said, impose as many restrictions as you can on us. We
18 just want to make sure we can build.

19 Again, Mr. Beers' statement is consistent --
20 or Councilman Beers' statement is consistent with what
21 you ruled on the property interest issue, the legal
22 right to use for residential.

23 The matter is then presented to the planning
24 commission, Exhibit No. 74, no. 16. The planning
25 commission votes to recommend approval. The matter

1 then goes to the city council on June 21st, 2017.
2 Here's what the council members say. I have to oppose
3 this because it's piecemeal.

4 Remember, Judge, what they said. Remember
5 what all the evidence, the uncontested evidence, is.
6 You can only do a Master Development Agreement to
7 develop the 35 acres. So at the hearing, three council
8 members say, I oppose it. It's piecemeal. I don't
9 like this piecemeal stuff. I don't want piecemeal. I
10 made a commitment that I wasn't going to allow
11 piecemeal.

12 Do you know, Your Honor, at that hearing,
13 there wasn't one legal basis given to deny this and
14 require the Master Development Agreement, not one legal
15 basis. They just said, we're not going to allow you to
16 develop the 35-acre property alone.

17 And then they said on the record, we're only
18 going to allow the Master Development Agreement.
19 Again, back to the Master Development Agreement
20 application.

21 So this application that the City planning
22 staff essentially prepared with the landowners that met
23 every single legal requirement, that the City had
24 absolutely no legal basis to deny, was denied by the
25 City of Las Vegas.

1 So what did the landowners do, Your Honor?
2 And, Your Honor, if you turn to page 18, I'll just
3 reference this. This is Bates stamp no. CLV_054375.
4 It's part of Exhibit No. 74. That's where
5 Councilman Kaufman made the movement to deny that
6 application.

7 THE COURT: For the record, was there an
8 objection?

9 MR. SCHWARTZ: No, Your Honor.

10 THE COURT: Just wanted to make sure. We're
11 referring to the relevant exhibit volume that was given
12 to me by plaintiffs' counsel, along with, it appears to
13 be a booklet, Landowners' Presentation of Taking Facts.

14 MR. LEAVITT: Yes. So, Your Honor, if you
15 open up Landowners' Presentation of Taking Facts to
16 page no. 18.

17 THE COURT: Go ahead, sir.

18 MR. LEAVITT: If you open up to page no. 18,
19 that's where the vote was taken, and this was denied,
20 the singular 35-acre application.

21 And let me conclude on that fact. Those are
22 important facts. The City denied what was so far
23 inside the lines. The City essentially denied what
24 could not be denied because it met every single legal
25 requirement. It met every single city requirement.

1 And it was entirely consistent with the R-PD7 zoning.

2 And it was significantly less dense than the R-PD7
3 zoning allows.

4 The best way to say it, Judge, the City
5 denied what could not be denied.

6 Then the City sent a letter to the landowner
7 explaining why. And this fits very closely into our
8 per se regulatory taking claim. It's the next page and
9 it's Exhibit No. 93.

10 The denial letter says the City denied this
11 because of the impact of the development on surrounding
12 residents. Remember the promise that was made to the
13 landowner? If you don't give us your property for
14 free, we're going to go to the City and make them stop
15 your development.

16 The City didn't even try and hide what it was
17 doing. They said, listen, we're not going to let you
18 build because the surrounding residents don't want you
19 to. And then they said, we have concerns on piecemeal
20 development of a master development planned area rather
21 than a cohesive plan.

22 So they said again on the record, we're only
23 going to allow a Master Development Agreement. Two
24 reasons for denial. We don't want to mess up the
25 surrounding property owners, and, number two, you've

1 got to go back to this, Judge, the Master Development
2 Agreement application.

3 So after -- this is a timeline, Judge. So
4 after that occurred, after the City denied the singular
5 application, the landowners then turned their attention
6 full-heartedly back to the Master Development Agreement
7 that the City promised would be approved.

8 And if you turn to page 21 of this booklet
9 here, page 21 is a public records email the landowners
10 received. It's Bates-stamped CLV_002074. Judge, you
11 and I all remember Brad Jerbic. He was the city's
12 attorney, longtime city attorney. He reported that
13 there is resolution on most matters in the entire area.

14 In other words, what he was saying there, he
15 was making reference to the Master Development
16 Agreement. This is on June 6th, 2017. We have
17 agreement, the City and the landowners. We have
18 agreement on the Master Development Agreement, on the
19 application.

20 They said, listen, it should be approved.
21 Brad Jerbic said, we've drafted the Master Development
22 Agreement. The City planning department said, we
23 participated in the Master Development Agreement. You
24 need to allow these landowners to build.

25 Turning to the next page. I mean, Judge, I

1 couldn't have said it better, Exhibit No. 77. This is
2 from the planning department on the Master Development
3 Agreement. Again, I'll preface this by saying what the
4 planning department is saying here is entirely
5 consistent with your property interest order you
6 entered on October 12, 2020.

7 The planning commission said about this
8 Master Development Agreement that it conforms to the
9 requirements of NRS 278. It conforms to the existing
10 zoning requirements. It demonstrates sensitivity and
11 compatibility with the adjacent single-family
12 residence.

13 Then goes on to say that it even is
14 consistent with the goals, objectives, and policies of
15 the Las Vegas Master Plan. So they said, this is
16 consistent not only with zoning, but it's absolutely
17 consistent with the city's master plan. This is the
18 City speaking. This isn't an attorney arguing. These
19 are substantive facts that were given by the City's own
20 agents and representatives.

21 And then they said, therefore, it should be
22 approved. Again, entirely consistent with your
23 property interest order.

24 And, Your Honor, the planning staff and the
25 city attorney's office recommended approval of this

1 Master Development Agreement because it was, again, so
2 far inside the lines, and the landowner agreed to every
3 single outrageous demand that was made at every single
4 step, costing him an extra million dollars in
5 application fees.

6 Turning to the next page, Your Honor, is
7 Exhibit No. 78. The matter is presented to the city
8 council on August 2nd, 2017. The city council denied
9 the MDA in its entirety.

10 So, Your Honor, I just got to point this out.
11 The City says, we'll only allow you to develop one way.
12 The City imposes every single outrageous requirement it
13 could impose on the landowner. The landowner does
14 every single thing the City says. The City, for the
15 most part, drafts the Master Development Application.
16 The city attorney's office says, it must be approved.
17 The city planning department recommends approval. And
18 it goes in front of the city council. In
19 Exhibit No. 78, the city council flat out denies it.

20 It is its own application. The City denied
21 its own application for developing the 35-acre
22 property. And then Exhibit No. 34 is Mr. Lowie's
23 declaration. He says, the City didn't ask us to make
24 more concessions. The City didn't ask us to do more
25 setbacks. The City didn't ask us to reduce the units

1 per acre. It just simply rejected the MDA all
2 together.

3 Two and a half years of work, all of the
4 regular application fees, over a million dollars in
5 extra fees, doing every single thing the City asked
6 them to do, the City drafting it, and then they denied
7 it.

8 Your Honor, that's uncontested. The City
9 doesn't contest that these things happened. The City
10 doesn't say anywhere in the pleadings that there was
11 another application that we gave the landowners to
12 apply for. The City doesn't say in the pleadings that
13 it didn't require these outrageous requirements.
14 Remember Councilwoman Tarkanian said, I've never seen
15 any landowner do this much to try to develop their
16 property, never. She's a well-seasoned councilwoman.

17 And it was denied.

18 So just up to this point, Judge, the City
19 said, you have one avenue to go down, the MDA. The
20 landowners went down it. They tried to do a singular
21 application. It was denied. When the City said, you
22 can't do a single application, you have to do an MDA,
23 the landowners moved back to the MDA, and it was
24 denied. The City closed the only doors to development
25 that the landowners had according to the City itself.

1 Turning to the next tab, Your Honor, the
2 landowners then apply for access. The next tab is
3 Exhibit No. 88. It's a map. And this map identifies
4 in yellow here, Judge, this is Hualapai Way right here.
5 It identifies three access points right here, two on
6 Hualapai way and one on Rampart. And on the right-hand
7 side is the application.

8 The landowners say, listen, we want access
9 from Hualapai Way to allow our trucks to go in and cut
10 the trees down, remove debris and soil and have testing
11 equipment on our property. You want to know why they
12 were doing that? Because you know what was happening
13 during the time the City wouldn't let them build? They
14 were sending out code enforcement repeatedly to the
15 property and citing the landowner. Fine. Give me
16 access so I can get my trucks on there to clean it up.
17 That's all he wanted to do.

18 Exhibit No. 88. Turning to the next page,
19 no. 26. This shows why, another reason why, this was
20 so critical. The Nevada Supreme Court in the Schwartz
21 v. State case, said that all Nevada landowners have
22 property right described as a special right of easement
23 in and a public road for access purposes.

24 You can't tell these people they can't use
25 this because they have a property right. And it's

1 called a special right of easement. When your property
2 abuts a road, you, in Nevada, have a special right of
3 easement to use that property according to the Nevada
4 Supreme Court in Schwartz v. State.

5 In interrogatories that were submitted in
6 this case, the City conceded that the 250-acre land had
7 general access along Hualapai Way, along Alta, and
8 along Rampart. They conceded that in interrogatories.

9 And, Your Honor, an access application is a
10 perfunctory application. I don't know if that's the
11 best way to say it, a boilerplate application. Since
12 you have a legal right to access roads, you simply go
13 give it to the City. The City gets it, they analyze
14 it, and they give it to you back over the counter. You
15 pay your fee. Not what happened here.

16 The next page is the City's denial letter,
17 Exhibit No. 89. And this denial letter says it all
18 again, Judge. It says, "This has the potential to have
19 significant impact on the surrounding properties,"
20 taking us, again, back to where we started. The
21 surrounding property owners contacted the City and
22 said, preserve that property for us. That's
23 Exhibit No. 89.

24 Now, the government has an excuse here that
25 they try and use. This letter itself, Your Honor, uses

1 the word, "Your access is denied." Then it goes to the
2 bottom and it says, but you can go through what's
3 called a major review process if you want.

4 Judge, we've submitted to you the
5 requirements of a major review process. That's what
6 you need to do when you build a Bellagio. That's the
7 major review process. This is an over-the-counter
8 application.

9 And what the City says, well, we didn't deny
10 you because we gave you an avenue to get your access,
11 which was the major review process, which requires
12 significant plans, planning meetings. You have to go
13 to the planning commission. You have to go to the city
14 council and everybody gets to show up and oppose it.

15 And they say, that's okay. And we put an
16 example in our brief. That's the equivalent of saying,
17 listen, we haven't denied you the right to vote. We
18 just made you walk or hike 50 miles to vote. And if
19 you don't want to hike 50 miles up a mountain to vote,
20 that's your fault. When you put impermissible barriers
21 in front of a Constitutional right, such as the right
22 to vote or the right to access your property, it is the
23 equivalent of a Constitutional denial.

24 And to come to this Court and say, we didn't
25 really deny them their access, we just told them they

1 had to go through the same process the Bellagio has to
2 go through to exercise their access rights, is not an
3 excuse, Your Honor.

4 Turning to the next page is a fence
5 application. The fence application, Your Honor, I
6 cite, to begin with, from Cedar Point Nursery. It's
7 this one right here. At the top it says, "Fence
8 Application." The reason I cite to Cedar Point Nursery
9 is that's one of the cases we have in our binder. This
10 case was just decided two months ago by the
11 United States Supreme Court.

12 The United States Supreme Court said, "The
13 right to exclude is one of the most treasured rights of
14 property ownership."

15 They went on to say, "We've stated that the
16 right to exclude is universally held to be a
17 fundamental element of a property right and is one of
18 the most essential sticks in the bundle of rights that
19 are commonly characterized as property."

20 So when we're looking at the landowners'
21 property right here, the most essential stick is the
22 right to exclude others and keep them off of your
23 property. Whether it's your home, whether it's your
24 car. And we see that, Your Honor, in the Fourth
25 Amendment, where you can't engage in unreasonable

1 searches and seizures because we don't want people --
2 we don't want the government going into our property.

3 And this is what the United States Supreme
4 Court was saying here. That is one of our most
5 treasured rights is the right to exclude others from
6 property.

7 And, Your Honor, Exhibit No. 91, is an
8 application the landowners filed. And they asked for
9 two things. They said, we want to put a fence or a
10 gate or barrier, whatever you want to call it, we want
11 to put a fence all around our property. We don't want
12 people using it anymore. At this time, significant
13 people were using it. And I'll get to that in a
14 moment.

15 So in Exhibit 91, this said, we want to put a
16 fence around this. And, importantly, specifically on
17 the 35-acre property, Your Honor, there was a pond
18 right here. You can see it if you drive by. There's a
19 massive pond. It had water in it. And they said in
20 the application, we want to put a fence around the pond
21 so people don't fall in it and die. And we want to put
22 a fence around the whole property so we can exclude
23 other people.

24 Same thing happened, Judge, Exhibit No. 92.
25 Well, your fence has the potential to have an impact

1 on, who, the surrounding property owners. How is the
2 only way this fence --

3 THE COURT: Fencing with a pond like that
4 could be looked upon as a premises liability issue.

5 MR. LEAVITT: Judge, that's exactly what
6 happened. Is our client contacted us and said, listen,
7 we've got a liability issue here. We want to fence
8 this pond. What did the government tell them?

9 THE COURT: We have nuisance laws and things
10 like that. I get that.

11 MR. LEAVITT: But, importantly, Your Honor,
12 not only did they want to protect other people from
13 falling in the pond and becoming -- well, drowning --

14 THE COURT: I'd be concerned about young
15 people, you know, children.

16 MR. LEAVITT: And, Your Honor, we've
17 submitted the affidavit of Don Richards where he has
18 hundreds of pictures showing --

19 THE COURT: They have ordinances specifically
20 dealing with that when it comes to swimming pools and
21 latching gates.

22 MR. LEAVITT: And that's what was happening
23 on the property. Young people were entering onto
24 property.

25 THE COURT: I should say self-latching gates.

1 MR. LEAVITT: Understood, Your Honor. Young
2 people were entering on the property, kids riding their
3 motorcycles, kids riding their bikes, people walking
4 through the whole property. We submitted the affidavit
5 of Don Richards which has those photos. So we wanted
6 the property to be secure.

7 But, again, to be able to put a fence around
8 the whole property gives the landowner the right to
9 exclude others. And the City sent a letter: It has
10 the potential to have impact to the surrounding
11 properties.

12 Judge, how could a fence being put up around
13 your property impact the surrounding property owners?
14 There's only one way. It keeps them off the property.
15 And the City didn't want the landowners to be able to
16 keep the adjoining owners off the property. We have a
17 bill to that effect.

18 Your Honor, that's Exhibit No. 92 that I was
19 just referring to.

20 Now, an interesting fact we found,
21 Your Honor, through a public records request. So this
22 fence -- it's an important date. That fence
23 application was denied on August 24th, 2017. The
24 access application was denied on August 24th, 2017.

25 Judge, let's turn to the next page. This is,

1 again, a behind-the-scenes email that we obtained
2 through a public records request.

3 I'll identify it as CLB06391. And this is an
4 email amongst the City personnel three days before the
5 fence application and the access application were
6 denied. The date is August 21st, 2017. Let me read
7 it. "Follow-up with Councilman Seroka regarding the
8 Badlands fence permit that we just went through. Want
9 to take action on Monday after to find out Councilman's
10 conversations went over the weekend regarding the
11 permit."

12 Why is that important? Because three days
13 before these permits were denied, three days before the
14 City wrote a letter saying, your access is denied, your
15 fence is denied, we have an email showing that red
16 flags were going up at the City. For a fence, for an
17 access, you've got to call a councilman, find out how
18 his conversations went over the weekend.

19 And, Judge, we know how the conversations
20 went on August 21st, 2017. Because on August 24th,
21 2017, the fence permit and the access permit were
22 denied. Again, showing specific action by the City of
23 Las Vegas to target this one landowner and treat them
24 differently than anybody else.

25 Which brings us to Bill No. 2018-24,

1 Your Honor.

2 I want to address three things about this
3 bill. It's attached as 107 and 108 to our exhibits.
4 But I want to give a little background first. A city
5 councilwoman, in describing this Bill No. 2018-24,
6 which was adopted in 2018. Judge, this is after the
7 City denied this application. It's after the City
8 denied the MDA.

9 That councilwoman says, "For the past
10 two years, the City has been embroiled in controversy
11 over Badlands. And this Bill 2018-24 is a latest shot
12 in a salvo against the land developer."

13 Judge, I had to look up "salvo." Didn't know
14 what it meant.

15 THE COURT: I know what it means. It's like
16 a broadside. I know what it is. It's a shot across
17 the bow. I know.

18 MR. LEAVITT: And she said, this is just the
19 latest shot. Then she goes on to admit on the record,
20 this bill is for one development, one development only,
21 it's only about the Badlands. Judge, that's
22 Exhibits 114, 115 and 116.

23 Stephanie Allen works for Chris Kaempfer.
24 She has been a land use attorney for over 17 years.
25 She stated this in her declaration. She did an

1 analysis of this bill. This is the only expert report
2 in the record on this bill. It's Exhibits 111, 112 and
3 110. It's a 365-page expert analysis that concludes,
4 consistent with what the councilwoman said, that this
5 Bill No. 2018-24 targets only the landowners' property.

6 Judge, a United States Supreme Court Justice,
7 Justice Stevens, in his opinion in the Lucas case said,
8 when the government targets one landowner, it makes,
9 quote, "The taking action" -- sorry -- the taking
10 action, quote, "much more formidable for obvious
11 reasons."

12 When the government adopts bills and laws and
13 ordinances, we expect the government to adopt those to
14 apply equally to all people, but it was admitted by the
15 councilwoman. And the only expert report on this issue
16 produced states, this bill was adopted with one
17 property owner in mind, and it applied to one property
18 owner, this 250-acre property.

19 That is unheard of. I have never heard of a
20 government adopting a law to target just one landowner,
21 but that's exactly what happened here, Judge. And it
22 is uncontested. We don't have anything from the City.
23 We don't have an affidavit. We don't have a
24 deposition. We don't have a citation to anything in
25 the record that even contests that the City did this.

1 The next page, Your Honor, is 34.

2 Then he goes to the requirements that the
3 City put in its bill. And, Your Honor, this clearly
4 shows that the City was preserving the property under a
5 per se regulatory taking. Why?

6 Your Honor, this is just a summary of some of
7 the requirements the City put in the bill that apply
8 only to this landowner. And, Your Honor, these
9 requirements are put in the bill before a development
10 application can even be submitted. Do you know any
11 landowner that's going to go through and spend millions
12 of dollars to do these things before they can even
13 submit an application?

14 Let me point out one of them because this
15 shows the impossibility of developing under
16 Bill No. 2018-24. Remember, Your Honor, the landowners
17 in 2017 submitted the Master Development Agreement and
18 it was denied. Well, the City put in Bill 2018-24 that
19 the only way the landowner could build was through a
20 Master Development Agreement. It had already been
21 denied.

22 That was a clear shot across the bow to the
23 landowner. We've already denied your development
24 agreement, and we're going to make you get a
25 development agreement that we already denied. Clear

1 and unequivocal communication to the landowner that no
2 matter what you do, you're not going to build.

3 Then look at the bottom. This is maybe the
4 most disturbing part of this bill. After requiring all
5 this, then it says, "and anything else the city
6 planning department may determine are necessary."

7 Judge, how many times have we looked at bills
8 and ordinances that are vague and ambiguous and we call
9 them unconstitutional. That could not be more vague
10 and ambiguous than after listing about 50 things the
11 landowner has to do, and then adding on there, hey,
12 anything else we may make you do.

13 The next page, Your Honor, is a critical
14 page. It's page no. 36, I believe. Let me make sure,
15 Judge. Page no. 35.

16 This is Section G of 2018-24. So this bill
17 not only preserves this property and prohibits the
18 landowner from building on it, then it goes so far to
19 say that the landowner, again, the only one that this
20 bill applies to, must provide documentation regarding
21 ongoing public access and to ensure that such access is
22 maintained.

23 I mean, Judge, have we ever seen a bill like
24 that, where the government says, you've got to let the
25 public go onto your property? You know where we saw

1 that bill? Was at Cedar Point Nursery, where the state
2 of California said to the farmers, you have to let the
3 labor unions go onto your property.

4 You want to know the difference between that
5 one and this one? Is the labor unions could only go
6 onto the farms in California 120 days out of the year
7 for a few hours a day and upon notice.

8 There's no such limitation here. 24/7,
9 anybody who wants to go onto the property, this bill
10 says the landowners have to allow it.

11 Now, I already know what Mr. Schwartz is
12 going to say. He's going to say, Judge, that's in
13 Section G and we did not enforce Section G against the
14 landowner.

15 With the Court's permission, I'd like to turn
16 to Exhibit 108 in the exhibit booklet.

17 THE COURT: I have it right in front me, sir.

18 MR. LEAVITT: Exhibit 108. The very first
19 page of Bill No. 2018-24 says, "Any proposal to
20 repurpose a golf course and build on it is subject to
21 the public engagement requirements set forth in C and
22 D, as well as pertaining to the development review
23 process" -- and carrying over to the next page -- "the
24 development standards and the closure maintenance plan
25 set forth in E and G."

1 That preamble to that bill says to this one
2 landowner, to whom this whole bill applies, that if
3 you're going to try to use your property, Section G
4 applies to you. And Section G expressly states, you
5 have to allow ongoing public access to your property.

6 So I'll conclude with these bills,
7 Your Honor. They do three things. Number one, they
8 target only the landowners' property. Number two, they
9 make it impossible to build, in other words, preserve
10 it. And then, number three, they require the landowner
11 to allow ongoing public access.

12 Your Honor, I want to move to the next tab.
13 I'm actually getting kind of close to being done with
14 the facts here.

15 The next tab is "Public Use." This is
16 Exhibit No. 136.

17 A councilman -- one of the city councilmen
18 goes to an HOA meeting for the Queensridge community.
19 And we've laid this out, Judge. I'll just cite one of
20 the quotes. We have several quotes from that meeting.
21 That councilman says, it's agreed upon, approved,
22 documented, required by the City. And then goes on to
23 say that this property here, the landowners' 250-acre
24 property, is open space and recreation area for this
25 part of the City of Las Vegas.

1 What does "recreation area" mean? It means
2 you can go onto the property and recreate. That's the
3 only thing recreation can mean. Which is consistent
4 with what the City did with Bill No. 2018-24. In
5 2018-24, Judge, the City said, you, the landowner, have
6 to allow ongoing public access to the property.

7 And, Judge, to be clear, that Bill 2018-24
8 went through a recommending committee, and it was
9 presented to the city council, and the city council
10 adopted it as its law.

11 Then we've submitted Exhibit No. 150, which
12 is Don Richards' affidavit. Don Richards -- I'll just
13 paraphrase here, Your Honor -- Don Richards is the
14 landowners' manager of the property.

15 Here on page 37, I've summarized or I quote
16 from his declaration, Exhibit No. 150. He says,
17 listen, I'm stopping these people. People are coming
18 on the property and I'm stopping them and asking,
19 listen, why are you here? They said, it's our open
20 space.

21 And some of them informed him that they
22 learned that from the councilman at the HOA meeting who
23 told them, hey, guys, this is your property to recreate
24 on, which was consistent, again, with Bill No. 2018-24
25 that the City had adopted.

1 And if you flip to the next page, Your Honor,
2 here it is. Hundreds of photos like this.
3 Skateboarders, motorcyclists, looks like families out
4 there walking, riding bicycles on the property.

5 And keep in mind, again, the City won't even
6 allow the landowner to fence it or protect the ponds
7 when this was happening on his property. All
8 authorized by the City of Las Vegas.

9 Your Honor, I want to turn to the next slide,
10 which is the 133-acre application. And, Judge, I want
11 to be clear here. The 133-acre application is separate
12 from the 35-acre application. I only want to briefly
13 mention this to further demonstrate what the City was
14 doing to the landowner.

15 The landowner submitted all applications
16 necessary to build on the 133-acre property and the
17 planning staff agreed that it should be approved.
18 That's Exhibits 101, 102, and 103. But the City
19 demanded that the landowner file, on this 133-acre
20 property, an application called a GPA application.

21 The landowner said, listen, I don't have to
22 file a GPA application, that's called a general plan
23 amendment application, because I have zoning. Your own
24 planning staff tells me I have zoning, which is R-PD7,
25 which means I can use the property for residential

1 purposes. But they say, you're not going to get any
2 applications done unless you file a GPA.

3 So he does it. And under protest, submits a
4 letter, Exhibit 182, with that application saying, I'm
5 going to do the GPA, but it's going to be under
6 protest.

7 Then he shows up at the hearing. And one of
8 the council members, before the applications were even
9 heard, before the landowner could even get up out of
10 his seat and go to the podium, says, Mayor, I'd like to
11 call a question at this time. I believe we've
12 established that the GPA is duplicative and the GPA
13 should not have been accepted, and then uses that as a
14 reason to strike all the applications.

15 So they made him file a GPA application that
16 he filed under protest, that he didn't think he should
17 have to file, and then they use that application as a
18 reason to strike all of the applications to develop the
19 133-acre property that the City's own planning staff
20 said should be approved.

21 Further just demonstrating the aggressive and
22 the systematic actions that the City was engaging in to
23 target this one property.

24 Judge, those are the facts. But I want to
25 conclude here on the facts with what was happening

1 behind the scenes. And that's the target facts. I'll
2 go through these quickly, Your Honor.

3 Page 42. On January 9th, 2018, in the heat
4 of all this, after the City denied all the
5 applications, Exhibit No. 144 is an email where the
6 City identifies \$15 million of City funds to purchase
7 the property. They then go on to say, in
8 Exhibit No. 128, again, September 26, 2018, at or about
9 the time Bill 2018-24 was adopted to stop all
10 development. Identified in that email a proposal
11 regarding acquisition and rezoning of green space land,
12 the 250-acre property.

13 On March 27th, Your Honor, the next one,
14 Exhibit No. 123, just a politically charged statement,
15 Your Honor, an entirely inappropriate statement. Won't
16 even go over it.

17 Exhibit No. 124, this is February 14th, 2017.
18 This is before the applications are even before the
19 city council. "Over my dead body will the property be
20 developed."

21 May 1st, 2017, Exhibit 122. "I'm voting
22 against the whole thing."

23 They don't even know what's before them yet.
24 They don't even have this. No matter what the
25 landowner brought, they said, I'm voting against the

1 whole thing. And the majority is standing in his path.

2 Those are Exhibits 122 and 126.

3 Going to the next page, again, behind the
4 scenes. Exhibit No. 122 is an email. Again, we
5 obtained these through a public records search where
6 they say, Speak in code because the landowners will try
7 and find out what we're doing. And we want you to
8 speak in code because if you don't use the word
9 "Badlands," you don't use the word, "take," that's how
10 the search works and they won't be able to find these.

11 Another councilman tells them not to use the
12 city's email address, Exhibit No. 122.
13 Exhibit No. 127, Any word on your private investigator
14 about the Badlands guy? They got a private
15 investigator. And they said in 127, Dirt will be handy
16 if I need to get rough.

17 Judge, I've been recently watching the
18 Muhammad Ali special, PBS. Judge, this wasn't the
19 "Thrilla in Manila." This wasn't the "Rumble in the
20 Jungle." This was a guy going out here who just wanted
21 to use his property that all city agencies said he
22 should be able to do. And they're hiring private
23 investigators to try to get dirt on him so they can get
24 rough with him?

25 When he went to the City and said, all I want

1 to do is build on a property that I have the legal
2 right to build, that's what was happening behind the
3 scenes, Judge.

4 And on the next page, it shows further how
5 the landowners were singled out. Judge, this is
6 Stephanie Allen's declaration on the site. It's
7 Exhibit No. 195. In no. 12 in her declaration. Listen
8 to this evidence. Remember what Justice Stevens said.
9 If a landowner is targeted by the government, that
10 makes the taking action much more formidable.

11 Stephanie Allen: "I've presented thousands
12 of applications to local agencies, including the City
13 of Las Vegas. I cannot recall an application that I've
14 handled being denied when the development proposal was
15 allowed as a matter of right under the existing
16 zoning."

17 The City's own planning staff said that was
18 allowed as a matter of right under their zoning. That
19 was the only one in 17 years of thousands of
20 applications that she's had that the City denied, that
21 any government entity denied.

22 She then goes on to say, "I've presented
23 approximately 10 development agreements before various
24 agencies, including the City of Las Vegas, and I can't
25 recall a development agreement being denied when the

1 written agreement had been agreed to and negotiated in
2 good faith between the parties."

3 She's only done 10 of them because they're so
4 extensive. They take two to three years to do. Judge,
5 never had one denied except this one. Clearly showing,
6 again, that the City of Las Vegas was targeting this
7 one landowner.

8 On the right-hand side of that exhibit is
9 Exhibit No. 94, again referring back to Vickie DeHart,
10 where we started, Judge, where the adjoining property
11 holders told the landowners, we're politically
12 connected and we're going to get the City to stop you
13 from developing. And, Judge, what we just went through
14 showed that happened.

15 Last email, Exhibit No. 133. June 27th,
16 2017, interoffice city email that we received through a
17 public records request. "If anyone sees a permit for
18 grading or clear grub at the Badlands Golf Course,
19 please see Kevin, Rod, or me. Quote: 'do not permit
20 without approval from one of these.'"

21 Again, showing the targeting actions of the
22 City of Las Vegas treating this landowner separate and
23 different from all other landowners.

24 Judge, we'll end on the facts with this.
25 Just a little graph we put together. These are the

1 taking actions on the 35-acre property. On the
2 left-hand side is the denial of the Master Development
3 Agreement. On the right-hand side is the denial of the
4 35-acre. On the left bottom is the denial of a safety
5 fencing and access. And on the right-hand bottom is
6 the adoption of the Yohan Lowie Bill.

7 You know a council member called Bill No.
8 2018-24 the "Yohan Lowie Bill", a representative of the
9 landowner, because they knew it only applied to these
10 landowners.

11 Those four facts, standing alone, amount to a
12 taking. But when you look at the aggregate of actions,
13 when you put all four of those facts together,
14 including all of the other actions that the City
15 engaged in, which are in small print there, Your Honor,
16 that's clearly a taking by the City of Las Vegas.

17 Judge, what I want to do is I want to close
18 down here. And I want to -- I want to just refer back
19 to the law and how these facts applied under each one
20 of these takings standards we started with.

21 THE COURT: Madam Court Reporter, are you
22 okay? Do you need a break?

23 THE COURT REPORTER: Whenever he's done.
24 It's fine.

25 MR. LEAVITT: I'll be 10 more minutes.

1 So now I want to apply the facts and go back
2 to the per se regulatory taking. This is the
3 landowners first claim for relief. The very narrow
4 issue here today is where the landowners had the right
5 to use the 35-acre property for residential purposes,
6 did the City engage in actions to preserve the 35-acre
7 property for use by the public?

8 Your Honor, the facts are as follows. The
9 35-acre application denial letter expressly said that
10 the City was denying the 35-acre application to develop
11 because of impact to surrounding landowners, that the
12 property was being preserved for them.

13 The master development denial, Your Honor,
14 for the whole property. The City made it very clear
15 during that process that it was denying the application
16 to preserve that property for the surrounding
17 landowners.

18 And the access denial letter, Exhibit No. 89.
19 The City put right in the letter that it's denying the
20 access because of impact to surrounding property
21 owners.

22 Exhibit 92, the fence denial letter. The
23 City said, we're denying this because of impact to
24 surrounding property owners.

25 Your Honor, if I may refer to Mr. Kaempfer's

1 affidavit, Exhibit No. 48, and paragraph 12. Again,
2 Mr. Kaempfer is a 40-year land use attorney. And in
3 his declaration he lays out the 17 meetings he had with
4 the City on the Master Development Agreement, all the
5 work he did, everything he did to develop this
6 property.

7 And in no. 12 he says that the City made it
8 clear that only a Master Development Agreement was
9 going to be approved. And then he said it would not be
10 approved unless all, virtually all, of the surrounding
11 property owners agreed. And then he said the
12 surrounding property owners made it abundantly clear
13 that they were going to stand in the way of
14 development.

15 And so Mr. Kaempfer made it very clear in his
16 declaration that the Master Development Agreement was
17 denied. Why? To preserve the property for the
18 surrounding landowners.

19 Bill Nos. 2018-5 and 2018-24 are also
20 relevant to this taking standard because they authorize
21 the public to use the private property. Remember,
22 Judge, if the landowner has the right to build on their
23 property and the government preserves that property for
24 use by the public, or authorizes the public to use the
25 property, that's a taking.

1 And we just read in Bill No. 2018-24 where
2 the City put it in writing that the landowners have to
3 allow ongoing public access to their property. Those
4 facts right there, Your Honor, meet this per se
5 regulatory taking standard. This is a taking in and of
6 itself. This is one of those invariable rules where
7 the Court is going to always find a taking.

8 And, Judge, to conclude on that list there,
9 we have the transcript from the HOA meeting where the
10 councilman expressly said, you can go on the property.
11 We have Don Richards' affidavit that people were
12 actually entering onto the property at the direction of
13 the City of Las Vegas.

14 Just like it was a per se regulatory taking
15 in the Cedar Point Nursery case to adopt a statute that
16 authorizes the labor unions to enter onto farms,
17 adopting Bill No. 2018-24 authorizing the public to
18 enter onto the property was also a taking, in addition
19 to the significant actions to preserve the property for
20 the surrounding property owners.

21 Judge, I'll be quick on this next one, the
22 per se categorical taking, the third claim for relief.
23 Again, going back to the law. The issue is where the
24 landowners have the right to use their 35-acre property
25 for residential purposes, did the City engage in

1 actions to completely deprive the landowner of all
2 economic beneficial use of their 35-acre property?

3 Here's the facts.

4 The City denied all landowner applications to
5 use the 35-acre property for a residential use, which
6 it is uncontested, is the only economically beneficial
7 use permitted under zoning. That's the only economic
8 beneficial use. The government tries to argue that a
9 golf course is its economic use.

10 Judge, we have an expert report from Elite
11 Golf. We have an expert report from Tio DiFederico.
12 Both saying the golf course was not an economic use.
13 And we have the letters from the individual at Par 4
14 who was operating the golf course before, who quit even
15 though they were offered water for free and the land
16 for free because it was uneconomical.

17 The only economic use of the property is
18 residential, and the City prohibited that economic use.

19 But that wasn't, apparently, good enough for
20 the City because the City, Judge, sent the tax assessor
21 out. This is such -- so inconsistent. They sent the
22 tax assessor out. The tax assessor, under
23 Chapter NRS 361.227, is required to determine the
24 lawful use of the property, and he does that.

25 He says, the property is zoned R-PD7. R-PD7

1 means you have the lawful right to use it for
2 residential. Therefore, I'm going to value it as a
3 residential use, and I'm going to put an \$88 million
4 value on the whole property. And you're going to get
5 taxed a million dollars for residential use. That's
6 specific to the 35-acre property, you have to pay
7 \$205,227.22. It has a negative value.

8 Judge, not only has there been a denial of
9 all economic viable use of the property, they're going
10 to put a negative value because the landowner has been
11 prohibited from using it for a residential purpose, all
12 the while the City is taxing the landowner \$205,000 as
13 if it was a residential use.

14 So, Your Honor, that per se categorical
15 taking standard is met. It is a taking in and of
16 itself. And it's that invariable rule.

17 The last one is a non-regulatory de facto
18 taking, the fourth claim for relief. This one,
19 Your Honor, the issue again: Did the City engage in
20 actions to substantially interfere with the landowners'
21 right to use the 35-acre property for residential
22 purposes?

23 Number one, the City denied all landowner
24 applications for residential use, its only economic
25 use. And then, Judge, the City adopted two bills, two

1 bills that targeted the property, prohibited its
2 development, and required ongoing public access.

3 So, Judge, on that last taking claim,
4 non-regulatory de facto taking, the landowners have
5 just two important facts: The landowners had the legal
6 right to use their property for residential, and the
7 City substantially interfered with that right.

8 And I want to say something about the Nevada
9 Supreme Court here. The Nevada Supreme Court didn't
10 say, listen, every interference with the use of your
11 property is a taking. They said, you have to show a
12 substantial interference.

13 Judge, I don't think -- I think under the
14 "reasonable person" standard that we apply in
15 everything in the law, any reasonable person would say
16 what the City did to these landowners was a substantial
17 interference with the use and enjoyment of the
18 property.

19 What more could the City have possibly done
20 to the landowners than deny all applications as a
21 shield and then pull out a sword and go on the
22 aggressive against the landowner, as one council member
23 called it, a salvo, and adopt a bill to prohibit the
24 development.

25 I'll close by this, Your Honor. These

1 landowners are developers. They don't buy land to sit
2 around and have it be vacant. They did every single
3 thing the City asked them to do to develop, under this
4 Court's standard that they had the right under zoning,
5 under City planning's standard that they had the right
6 to develop. They did every single thing they were
7 asked to do, more than any other landowner, Your Honor,
8 and they were denied at every single turn.

9 And there were bills adopted that only target
10 them. And, Judge, today this property lays vacant.
11 The 35-acre property lays vacant without a shovel of
12 dirt turned since their acquisition on March 2015, over
13 six years ago, Your Honor.

14 I don't know what better facts there can be
15 than a developer doing everything they can, a
16 well-known developer in this area, and the property
17 being vacant today solely as a result of the government
18 action, Your Honor.

19 Therefore, we ask that the Court enter a
20 taking on all three of these per se invariable rules.
21 And I'll close by this. We don't even get to
22 Penn Central, Judge. And the reason we don't is
23 because Penn Central doesn't apply in any one of these
24 three.

25 Your Honor, I can answer any questions you'd

1 like, if you want me to, on any of these taking facts
2 or the law.

3 THE COURT: Sir, for the record, I have no
4 questions at this time. We'll take a quick 15-minute
5 recess.

6 (Whereupon, a recess was taken.)

7 THE COURT: Everyone may be seated. All
8 right. I guess we can continue with arguments. And we
9 can hear from the City.

10 MR. SCHWARTZ: Your Honor, with the Court's
11 permission, Mr. Molina will be presenting the facts and
12 then I, Andrew Schwartz, will be presenting the legal
13 argument for the City.

14 THE COURT: And, sir, that's fine.

15 Any objection to that?

16 MR. LEAVITT: No, Your Honor.

17 THE COURT: All right.

18 Sir, you have the floor.

19 MR. MOLINA: Thank you, Your Honor. I hope
20 it's okay -- can I move this television?

21 THE COURT: Sir, wherever you want to put it,
22 I have no problem with that.

23 MR. MOLINA: So I'm going to walk you through
24 the evidence. And I want to set the record straight on
25 a number of things that the City takes issue with,

1 virtually all of the factual claims that the plaintiffs
2 made in this case. And the best way for me to do that
3 is to go in chronological order.

4 And this may take some time, but I think it's
5 important and necessary to actually walk through the
6 issues in the proper order so that the Court has the
7 right understanding of how things transpired. Because
8 it's very easy to take things out of context and make
9 it seem like there's some kind of evil plot to deny
10 Mr. Lowie the right to build this property.

11 The basic issue here is he has no right to
12 develop the property unless he follows the proper
13 applications and procedures for obtaining the correct
14 entitlements to carry out the development that he
15 wants. And it's just like you have a Constitutional
16 right to travel, doesn't mean that you have a
17 Constitutional right to drive a car without applying
18 for a driver's license.

19 So we're going to walk through some history
20 here. We're going to talk about the legislative
21 history between -- behind NRS 278, which is the
22 planning and zoning law. Then I'm going to talk about
23 the history of Las Vegas zoning regulations because I
24 think it's important to understand what happened here
25 with respect to R-PD7 zoning.

1 And the reason why that's important because
2 it's not --

3 THE COURT: I do have one question regarding
4 the R-PD7 zoning. Why did they tax it?

5 MR. MOLINA: So I can answer that in the
6 order or I can answer it now. But --

7 THE COURT: Whenever you feel it would be
8 appropriate.

9 MR. MOLINA: What happened is this. So under
10 NRS Chapter 361.8 -- I could be getting the chapter
11 wrong -- the state allows for a reduced assessment for
12 open space and golf course uses. And what happened is
13 that after the 17-acre applications were approved, the
14 golf course had been closed. There were applications
15 that were approved.

16 And the statute says that when the property
17 has been converted to a higher use, that, all of a
18 sudden, you have to actually pay the back taxes that
19 are owed on the property because you no longer qualify
20 for these reduced tax assessments under Chapter 361.8.

21 And the county assessor -- after the City
22 approved their initial applications to develop
23 435 luxury condo units on the 17-acre property, and
24 after the golf course had closed, the county assessor
25 sent Mr. Lowie a letter that said, you know, it's our

1 understanding that the Badlands Golf Course is closed
2 and, therefore, it's our position that it's been
3 converted to a higher use. Now you must pay back
4 taxes. You no longer qualify for these reduced taxes
5 under this statutory scheme that I've been talking
6 about.

7 Does that answer your question?

8 THE COURT: I mean, I do understand that, but
9 then they didn't permit the higher use.

10 MR. MOLINA: And here's part of the issue, is
11 that the City is not part of the tax assessor's office,
12 despite what Mr. Leavitt claims. The city charter,
13 which was adopted by the Nevada legislature in 1983,
14 states that the county assessor is the ex-officio tax
15 assessor for the city. And so the county assessor is
16 essentially responsible for collecting taxes on all
17 property in the city.

18 What happened is they sent this notice to
19 Mr. Lowie, a notice of audit or some kind of
20 assessment, higher assessment. And there was a -- he
21 challenged it. And he challenged it before the Board
22 of Equalization. And he argued that the property could
23 still be used as a golf course and, therefore, it has
24 not been converted to a higher use.

25 And the Board of Equalization did not make a

1 determination on the arguments. They actually
2 stipulated that it was converted to a higher use. And
3 so Mr. Lowie accepted the assessor's determination even
4 though he could have argued that it was still, you
5 know, could be used as a golf course even though they
6 had shut it down.

7 But there was another argument that he did
8 not make at all, which is, under the statute, you can
9 also qualify for reduced tax assessments based on an
10 open space master plan designation. And that would
11 have really harmed Mr. Lowie's arguments in this case
12 because if he had conceded that there was a PR-OS open
13 space --

14 THE COURT: I kind of get that, but his
15 property was actually zoned a specific way, R-PD7. So
16 why should he freely give up that designation?

17 MR. MOLINA: I'm really glad that you asked
18 that question. And maybe we should just go straight
19 into the exhibit.

20 THE COURT: Go straight into it, sir.

21 MR. MOLINA: I think I hear you loud and
22 clear. So I'm actually going to --

23 Eric, you want to pull up your exhibits.

24 So I want to walk through how this zoning got
25 applied and how it was -- how it was used. And,

1 actually, if I could just have five minutes to sort of
2 explain the difference between conventional zoning and
3 planned unit development zoning, I think it's really
4 important to actually go through that so the Court
5 understands that.

6 THE COURT: Yes, sir, you have the floor.

7 MR. MOLINA: All right. Thank you.

8 So I want to walk through some things. I'll
9 move through this very quickly, and I will actually go
10 just straight to the zoning ordinances.

11 So this is the first comprehensive zoning
12 ordinance in Las Vegas history. And what I just sort
13 of breezed through was the background on how cities in
14 America adopted zoning ordinances in the '20s through
15 enabling legislation that was sponsored by the
16 Department of Commerce. Virtually all 50 states have
17 adopted those enabling acts, the Standard City Planning
18 Act, and that's exactly what NRS 278 is based on.

19 So what I skipped over here, and I'll come
20 back to it later if we have time, was just showing how
21 the statute that we have is based on these two enabling
22 acts. And the key to these enabling acts is that they
23 all say the same thing, that zoning must be in
24 accordance with the comprehensive plan.

25 And you'll see this is the first

1 comprehensive zoning ordinance. And I say
2 "comprehensive" in the sense that it's got full
3 regulations for all different types of zoning. There's
4 11 different types of zoning districts established by
5 this ordinance. It says it right here at the bottom,
6 "In accordance with a comprehensive plan."

7 So that is the essential, you know,
8 relationship between zoning and the master plan, is
9 that zoning must be in accordance with the
10 comprehensive plan. And if it's not, then it's
11 considered spot zoning, and that's illegal because that
12 defeats the purpose of zoning.

13 So you have to plan before you can zone. And
14 if you don't plan, then the zoning is actually
15 ultra vires the enabling act. Because the enabling act
16 says that you must zone in accordance with the
17 comprehensive plan.

18 So that's the first thing that I wanted to
19 kind of establish here. Because we'll see that over
20 and over, especially with respect to the properties
21 that we're dealing with.

22 Now, this is Bill McCauley. And,
23 incidentally, he was elected to the city council the
24 year after the first comprehensive zoning ordinance was
25 passed. He was very, very dialed in. He knew how

1 planning and development worked. And, in fact, when he
2 went to actually start developing his property,
3 Mayor Oran Gragson was one of his partners. And so
4 they both were very civic-minded people, understood how
5 the process worked, and they had a vision; okay.

6 And I'll tell you where he got this property
7 because it's actually pretty interesting. He was
8 36 years old when he acquired 3040 acres in Las Vegas.
9 And the way that he did it was under the Taylor Grazing
10 Act. And under the Taylor Grazing Act, you could swap
11 property. He apparently had gathered up all this
12 property with his partners in Elko and swapped it with
13 the federal government for property that's out here.

14 It's not even on the map. It's off the map.
15 This is a 1954 roadmap. If you were to look very
16 closely at this you'd see it actually says Usely
17 (phonetic), Peccole, et al. He's completely surrounded
18 by federal land except you've got the Hughes site down
19 here, which was the Howard Hughes development. This is
20 just background just showing the evolution of the
21 city's master plan.

22 In 1962, they adopt another comprehensive
23 ordinance, zoning ordinance. This is still what I
24 would call a traditional sort of conventional zoning
25 ordinance.

1 And I do want to touch on this briefly
2 because this is sort of critical. This was part of the
3 procedure that they used for rezoning property. And
4 this is going to make a lot of sense when we actually
5 get into how the property was zoned R-PD7. Is that the
6 city wouldn't just amend its zoning map and change a
7 property's zoning just when they approved it. They
8 actually had to see if the development was going to pan
9 out the way that they thought.

10 So they made people -- well, they approved
11 applications for rezoning. They adopted a resolution
12 of intent. And what that basically meant is that they
13 would commit to rezoning the property upon satisfaction
14 of, you know, all the conditions that were imposed on
15 the approval. And that's just what this says right
16 here.

17 So getting back to the difference between
18 conventional zoning and planned unit development zoning
19 or flexible zoning. This is conventional zoning. And
20 with conventional, you have what's called a single
21 building lot envelope. You have uniform setback
22 requirements. All of these properties are exactly the
23 same length from the street. They have uniform side
24 yard requirements, and it's very monotonous.

25 And it's actually a big problem from a larger

1 planning perspective because it causes urban sprawl and
2 there's all kinds of traffic issues and it's just not
3 actually safe.

4 So in the '60s, this happened all over the
5 country, is that they said -- that is actually the
6 zoning ordinance that was in effect when those
7 properties were built. And you can see that it's --
8 there shall be a side yard of no less than 15 feet, you
9 know, a rear yard of not less than 25 feet.

10 And what would happen is people would just
11 build as much as they could within this framework.
12 Because if you want to sell houses, if you're a
13 developer, you want to make as much money as possible.
14 So you fill up the single building lot envelope. You
15 go as high as you can, you go as wide as you can, and
16 as close to the street, and as far back.

17 And so every house looks exactly the same.
18 And what people would complain about is that it would
19 be the zoning that would design the building and not
20 the architect.

21 And, you know, this is what I was just
22 explaining here. Traditional single lot zoning
23 envelope was originally developed to preserve light and
24 air, the length, width, and height of an envelope
25 defined each lot. The reality is the zoning ordinance

1 designs the building.

2 Another thing that happened that changed the
3 way that zoning is used is FHA financing. Because the
4 FHA would not finance property with common open space.
5 Because what would happen is -- the only way to do this
6 before homeowners associations is that everybody would
7 be joint tenants in common of the common open space.
8 And so you couldn't get FHA financing for a house in a
9 neighborhood where all the neighbors owned the park in
10 the middle jointly.

11 So that's another thing that kind of changed
12 the landscape in terms of zoning, is that, you know,
13 after World War II, there was this housing crisis and
14 they needed to come up with this way to build larger,
15 bigger communities. And so they found a way to make
16 financing available for them.

17 And this is a Law Review article,
18 Pennsylvania Law Review article, by the chief planner
19 of the Federal Housing Administration explaining, you
20 know, the reasons why you have planned unit development
21 zoning.

22 And I won't go through this, but really the
23 benefit of this is to provide parks and open space.
24 Because the idea is that if you don't have uniform
25 setbacks, you can take a little bit of each parcel and

1 make it a little bit smaller and then you can put a
2 park in the middle of the community and it would
3 benefit everybody to have this common open space.

4 And this is an example right here of what's
5 called cluster zoning, where you increase the density
6 on one portion of the site so that you can create open
7 space for everybody in the neighborhood and other areas
8 of the site.

9 And these articles that I'm citing, this is
10 the 1960s. And this is another example of clustering
11 where you have two dwelling units per gross acre on the
12 top. You have 12 units in each of these. And the
13 density of dwelling units per acre always stays the
14 same regardless of the configuration; right.

15 So you can have two dwelling units per acre
16 spread out. You can have two dwelling units per acre
17 on a smaller piece and leave some of it undeveloped.
18 Or you can have two dwelling units per acre and put it
19 on this small little plot right here and this provides
20 the most amount of open space.

21 This is actually good for developers because
22 this allows them to be creative the way that they use
23 site planning. They don't have to lay out utilities in
24 odd configurations. And it's better for the community.

25 So this is just what happened in the '60s;

1 right. And this is the first planned unit development
2 ordinance. And this is just, I think, two years before
3 the RPD ordinance. But you can see that the Board of
4 City Commissioners -- they weren't a city council until
5 1938 -- but the Board of City Commissioners, they
6 adopted this ordinance.

7 And it says it right here, "The purpose of a
8 planned unit development is to allow maximum
9 flexibility and innovation of residential design and
10 land utilization. It is not intended primarily to be
11 used to reduce the cost of residential development nor
12 is it intended to provide rental units in a
13 single-family district. A planned unit development may
14 consist of single-family units, townhouses, cluster
15 units, condominiums, garden apartments, or any
16 combination thereof."

17 And so the benefit of this for developers was
18 actually they could sell a different type of product to
19 people of different socioeconomic classes. Where
20 before, you really just had single-family homes where
21 everybody was just trying to fill up the entire lot.

22 So, you know, that was the theory behind
23 this, is that you can have a mix of different housing
24 types in one development. And the way that this
25 changes zoning is that you're not zoning lot-by-lot.

1 You're zoning an entire tract of land before it gets
2 subdivided.

3 That's the key difference here, that you're
4 zoning an entire area, and that entire area includes
5 all the amenities that planned unit development zoning
6 can provide.

7 So, and just for historical reference here,
8 you have, "Permission to construct shall be applied for
9 and processed in the same manner as a reclassification
10 of property."

11 So that means you have to basically apply for
12 a rezoning to get a planned unit development.

13 And it says, "Detailed development plans must
14 be submitted with the application indicating uses of
15 property, delineation of property ownerships, floor
16 plans, and elevations of buildings."

17 So the downside or, I guess, the challenge of
18 planned unit development is that you have to design the
19 neighborhood before you present it to the city. Which
20 is, it kind of creates the chicken-or-egg problem,
21 where you don't want to spend all these up-front costs
22 on development, but at the same time, you want a better
23 product.

24 You want to, you know, have all these nice
25 amenities because people will pay for them. People

1 will pay more money for a lot on a golf course. And so
2 you have to actually design the thing ahead of time and
3 that's just the reality of this.

4 And that's -- honestly, it's almost a hundred
5 percent of all development occurs this way nowadays, is
6 that you actually have to come up with all your plans
7 ahead of time. It adds to the cost of development, but
8 it produces a much better product.

9 So this is some city minutes, just for, you
10 know, to see how the city applied that initial PUD
11 ordinance. He's talking about cluster homes. This
12 is -- Don Saylor is the director of planning in 1969,
13 and Oran Gragson is the mayor. And I keep coming back
14 to that. He's talking about everybody in the
15 development will buy a condominium for fee simple and
16 they'll occupy that area in joint tenancy and that's
17 the problem. But you see down here he's actually
18 talking about the FHA financing.

19 Now, this is the 1972 ordinance. And this is
20 the actual RPD ordinance. And this is Appendix R in
21 the City's appendix of exhibits. It's got virtually
22 the same language as the planning and development
23 ordinance. Says, "The purpose of planning and
24 development is to allow a maximum flexibility for
25 imaginative and innovative residential design and land

1 utilization in accordance with the general plan."

2 In accordance with the general plan.

3 MR. LEAVITT: Your Honor, may I be heard on
4 one short objection?

5 THE COURT: Yes.

6 MR. LEAVITT: Your Honor, the property
7 interest issue was fully briefed and fully adjudicated.
8 They argued that extensively, the underlying property
9 interest issue. An order was entered on October 12,
10 2020. EDCR 2.24 requires that if the City is going to
11 reargue this issue, they have to give me notice of it.

12 They have to file a notice of rehearing. They have
13 14 days to do that. I was not put on notice that this
14 was going to be reheard. In fact, this PowerPoint --

15 THE COURT: You're not arguing a property
16 interest, are you, sir?

17 MR. MOLINA: No.

18 THE COURT: He's giving me -- I'm not going
19 to tell anybody what to argue or not to argue. But
20 that ship has sailed.

21 MR. LEAVITT: Totally agree, Your Honor. I
22 only want to lodge my objection that the Court already
23 found that RPD zoning controls the property interest
24 issue. RPD zoning gives the landowner the legal right
25 to use the property for single-family/multi-family

1 residential uses. And I have not seen this PowerPoint.
2 I don't even have a copy of it. They didn't even give
3 me a copy over here.

4 And my final objection is this whole thing
5 about a planned unit development was presented to the
6 Nevada Supreme Court. And the Nevada Supreme Court, in
7 a published or issued opinion on this property, said
8 the parcel does not carry the planned development
9 zoning, district zoning designation. It carries the
10 R-PD7 zoning.

11 That's my objection, Your Honor. As long as
12 we're not revisiting the underlying property interest
13 issue and try to reargue the R-PD7 zoning or reargue an
14 issue that's already been decided, that the landowners
15 have a right to use the property for
16 single-family/multi-family residential uses, then of
17 course I wouldn't try to stop counsel from making those
18 arguments.

19 And, Your Honor, I'd like a copy of the
20 PowerPoint presentation so we can have it because I
21 have never seen any of this.

22 MR. MOLINA: We mailed them a copy.

23 We can email them. This is in our exhibits.

24 THE COURT: I don't mind telling everyone
25 this. I listen with some interest to this. I don't

1 mind saying this. I'm from Chicago. And Chicago is
2 known for their open spaces and zoning. In fact, I
3 think Chicago was just named number 1 most beautiful
4 city in the country within the last 30 days or so, I
5 think number 2 in the world.

6 If you go downtown and you look at all the
7 parks and waterfront and all those wonderful things, I
8 kind of get it. But my thoughts are, and I always tell
9 everyone what I'm thinking about, I mean, I get the
10 historical perspective as far as the zoning and the
11 residential plan development and the like, but here we
12 have a scenario where we had zoning of R-PD7; right,
13 and that's what it was.

14 And the question is this. It seems to me
15 that based upon the character and nature of the plan
16 that was in effect, that would be in conformance with
17 the real property and the homes and the like in the
18 adjacent area, right there at Queensridge; right?

19 MR. MOLINA: Right. And that's what I'm
20 trying to explain. We don't dispute that the property
21 is an R-PD7.

22 THE COURT: I get it.

23 MR. MOLINA: We dispute what that means.

24 MR. LEAVITT: Your Honor, if I may object,
25 we've litigated what R-PD7 means.

1 THE COURT: I've already ruled on that.

2 MR. LEAVITT: Your Honor, we have not been
3 given notice that they're rearguing an issue under
4 R-PD7.

5 THE COURT: We're not going to reargue any
6 issue unless I've ruled on an issue. I understand the
7 purpose of today's hearing. I'm going to make a
8 determination before we're done as to whether or not
9 there was a taking.

10 And if there was a taking, I'm going to go
11 ahead and define what type of taking it would be based
12 upon the different claims for relief. Nothing more,
13 nothing less.

14 MR. LEAVITT: Thank you, Your Honor.

15 MR. MOLINA: And, again, I'm trying to put
16 everything in context here.

17 THE COURT: I'm letting you do it, sir. I
18 know what my charge is today. I got pending motions
19 for summary judgment, countermotions for summary
20 judgment. I'm going to follow the call of the question
21 and issue a decision.

22 MR. MOLINA: Thank you, Your Honor. So we
23 have another just example of Don Saylor, the planning
24 commissioner at the time, that the 1972 RPD ordinance
25 was enacted, saying that this is a planned unit

1 development. RPD is a planned unit development. It's
2 intended to protect open space.

3 And I'll point out one thing about the 1975
4 general plan because there's been arguments about what
5 it was designated and whether that designation was
6 valid. And, ultimately, you know, the City's position
7 is there can't be a taking when you haven't complied
8 with the procedures to amend the general plan.

9 And that's what the City requires, is they
10 require a general plan amendment to make sure that the
11 zoning is consistent with the general plan.

12 THE COURT: Wasn't that issue like that
13 discussed in the Sisolak case?

14 MR. MOLINA: No, not quite. So in Sisolak,
15 we're talking about physical takings. And I would
16 prefer to just stick to the facts and let Mr. Schwartz
17 argue the law.

18 THE COURT: The only reason I brought that up
19 is I read Sisolak. And I thought that was one of the
20 issues that was discovered. And maybe it would be -- I
21 think in Sisolak they said you don't have to exhaust
22 your administrative rights.

23 That's kind of what you're talking about.
24 And that's the reason why I brought that up. Because
25 at the end of the day, I have to make a determination

1 if the actions of the City rise to the level of taking
2 pursuant to the Fifth Amendment of the United States
3 Constitution, and/or the Nevada State Constitution.

4 And I do understand that. And I even
5 understand it could be argued, based upon, I think it
6 was the discussion in Sisolak, that the rights set
7 forth in the Nevada Constitution are even stronger than
8 they are in the United States Constitution.

9 So my point is I kind of get it. I just want
10 to get to --

11 MR. MOLINA: We're going to get to -- I'm
12 teasing you a little bit. We're going to get to the
13 grand finale. Let me just address the Sisolak thing.

14 Sisolak is a physical takings case. And
15 under Nevada law, the airspace up to a certain level is
16 considered, you know, part of the fee simple interest.

17 And the part above that, whatever they -- you
18 know, it's the Federal Aviation, FAA regulations, that
19 define what a safe approach height is. And,
20 essentially, everything below that height is part of
21 your fee simple interest. It's the ad coelum doctrine.
22 You own everything below and everything above. But
23 actually you own it up to that certain height.

24 THE COURT: I get that. But what about
25 denied access?

1 MR. MOLINA: Well, denied access is -- I'd
2 like to present all of this in order.

3 THE COURT: But you brought it up when you
4 talk about a physical taking. That wasn't really what
5 I was focused on. I remember in Sisolak it did discuss
6 that he didn't have an exhaustion of administrative
7 remedies.

8 MR. MOLINA: Right. But what I was
9 explaining with Sisolak was he didn't have to exhaust
10 his administrative remedies because there was a
11 physical taking. So having a height variance wouldn't
12 actually make any difference because people would still
13 be invading his airspace that he owned. They would
14 physically occupy his property. So that's why you
15 didn't need a variance in Sisolak.

16 THE COURT: But my question is this. Denying
17 access, is that any different?

18 MR. MOLINA: Is denying access different than
19 having a physical invasion? I think there is a
20 distinction there, but let me just pose a hypothetical
21 for you.

22 You've got subdivisions all over the city
23 where there's people with fences --

24 THE COURT: I don't mind saying this. It
25 seems to me it could be argued if you're denying

1 someone access to their property, that's akin to a
2 physical taking.

3 MR. MOLINA: No. And --

4 THE COURT: If I go to your house -- no. No.
5 Listen to me. I don't know where you live. Doesn't
6 matter. If I go to your house and I put up a fence
7 around your house and I deny you access, what is that?

8 MR. MOLINA: The City did not put a fence
9 around his house.

10 THE COURT: No. No. I'm just asking you a
11 question. And my question was this. Denying access.
12 You said it was not a physical taking. My question is
13 this. Well, why not?

14 MR. MOLINA: Because he had the same access
15 that he had when he bought the property. So --

16 THE COURT: He didn't have the same access;
17 right?

18 MR. MOLINA: The property is the same,
19 exactly as it was when he bought it.

20 THE COURT: But he didn't have access to do
21 what he wanted to do; right?

22 MR. MOLINA: But there's a process for
23 opening up a street into a public thoroughfare. And
24 what I was saying is that if everybody who had a
25 backyard that fronts a street was just able to knock

1 down the wall and put a new road in, it would just be
2 chaos.

3 And that's why there's a process for doing
4 that. And I will address all of that, but I want to go
5 in order so we can understand the issues in context.

6 THE COURT: I'm trying to figure out why the
7 City would deny a property owner a request to place
8 fencing around a pond. To me, that's kind of a really
9 big deal. And it could be done in such a way where it
10 could be, I would anticipate, aesthetically pleasing to
11 the community.

12 There's a lot of ways that could be done.
13 And the only reason I bring that up, I was a tort
14 lawyer and I understand premises liability and
15 potential liability issues. I get that.

16 MR. SCHWARTZ: Your Honor --

17 THE COURT: Go ahead. If you want to jump
18 in, sir, I have no problem with that.

19 MR. SCHWARTZ: That is a legal issue,
20 Your Honor, and I was going to address that. And I
21 believe I can answer the Court's questions.

22 THE COURT: Take a note. Write that down.
23 You can answer that for me. I won't ask him that
24 again, sir.

25 MR. SCHWARTZ: Thank you, Your Honor.

1 MR. MOLINA: I will tell you this, because
2 I'm talking just about the facts; right, is that when
3 they submitted a request for fencing, they wanted to do
4 a chain link fence. And the city code very clearly
5 says that you have to actually comply with the site
6 development review standards for fencing for your
7 community.

8 You can't just put up a fence that's not the
9 same. So they asked them to submit an application for
10 fencing that's not just chain link fence, and they just
11 never followed through.

12 THE COURT: Okay.

13 MR. MOLINA: That's it. This is all in
14 Peter Lowenstein's declaration. It's attached to our
15 exhibits. He goes through all of the fencing and
16 access issues. He explains why they requested that
17 Mr. Lowie actually apply through this procedure for
18 fencing and access, and then he just never did.

19 And that's the theme of all of this, is that
20 the City has rules and procedures for how you're
21 supposed to apply for things. And Mr. Lowie and his
22 land use counsel, Chris Kaempfer and Stephanie Allen,
23 had a different feeling about it. They didn't think he
24 needed to do different things. There's specific issues
25 on each property.

1 With respect to the 35-acre property, you
2 actually had -- they had a general plan amendment
3 application, but it was on 166 acres, not just the
4 35 acres. And so they didn't have applications in the
5 pipeline for the remaining 130 acres of that. They had
6 just the stand-alone GPA.

7 And the density that was requested was up to
8 5.49 units per acre. And the City said, well, we're
9 not going to approve a general plan on 166 acres when
10 you're only applying for site development review and
11 tentative map applications on 35 acres, unless we see
12 what you're going to do with the other 133 acres.

13 And why are you applying for entitlements
14 that are in excess of the density that you said you
15 were going to build and that we were negotiating in the
16 development agreement?

17 And so that was the real issue there, was he
18 didn't want to submit a GPA just for that property.
19 And he wouldn't, you know, make the density consistent
20 with what they were negotiating in the development
21 agreement, as he said he was going to do.

22 So there's all of these little --

23 THE COURT: Was there any problem with the
24 R-PD7?

25 MR. MOLINA: Let's get back to that. Okay.

1 So if you notice here in the City's general plan, they
2 talk about density categories and they talk about three
3 types of RPDs. And we're dealing just with residential
4 planing development. And in an ARPD you can have
5 50 percent high-density housing. In a BRPD, you can
6 have 10 percent medium density.

7 And so these are the mix of land uses that
8 you can put into a residential planning district is
9 what they use RPD for. But it's pretty confusing
10 because it's very similar to residential planning
11 development.

12 So this is the table in the 1975 general
13 plan. And the reason why this is relevant is because
14 McCauley, William McCauley, ends up submitting an
15 application for rezoning the master plan in 1981. And
16 this is the general plan that's in effect when he does
17 that.

18 And this is a little bit more of the tables
19 that are in the 1975 general plan. All of this is
20 attached to our appendix. It's attached to the current
21 community development director's declaration. And this
22 is just really to give you an understanding of how the
23 City looked at things from a planning perspective.

24 Because there was no zoning tool for a master
25 planned community in the 1980s. They hadn't really

1 gotten that far. And so they had to use the toolbox
2 that they had to create a master planned community.
3 And this is, essentially, part of the tools that they
4 had, was looking at the different densities, how much
5 high-density housing can you have within a given square
6 mile, what's the population capacity that you can have
7 in that given square mile. And what are the other
8 supporting uses, like parks, recreation, facilities,
9 open space, neighborhood service centers that would
10 reduce the amount of land that you would need to have
11 or could have for a high density or low density
12 housing.

13 So this is sort of the framework that the
14 City used to make zoning decisions in the 1980s when
15 William McCauley came to the City.

16 And this is just the parks and recreation
17 element. This is really just a policy. It's not a
18 specific regulation. But there are aspects of the
19 City's general plan that are, you know, sort of
20 aspirational policies. And then there are aspects of
21 the City's general plan that are actually regulatory in
22 nature. And, specifically, what I'm referring to is
23 the land use plan.

24 And then the 1975 general plan ended with
25 this idea that they recognized it's very hard to plan

1 out an entire city all at once, but you could
2 potentially come up with a better plan if you focused
3 on special areas, smaller areas, geographically, and
4 just kind of identified what was in those areas, you
5 know, breaking things up into sort of logical kind of
6 units.

7 And so what they said here is that, you know,
8 in the next 10 years, before you got the next general
9 plan, we are going to come up with a more precise
10 planning process. And, in fact, they did in 1980.

11 And this is the letter that William McCauley
12 wrote. This is Exhibit A in our appendix. And
13 William McCauley asked the mayor, he says, we want to
14 annex our 2,200 acres into the City of Las Vegas and
15 with the cooperation of the City of Las Vegas we would
16 like to go forward with the master plan of the entire
17 parcel.

18 So he wants to master plan the entire parcel
19 and the question is how does he do it?

20 So now we'll actually pull the actual
21 exhibits up. I will let my paralegal take over the
22 screen here.

23 This is the 2,200 acres that McCauley annexed
24 into the City of Las Vegas. And this is the property
25 that was in the plat, all Section 5, all Section 6 --

1 he actually gave this to his brother -- and the south
2 three-quarters of Sections 31 and 32.

3 And if you look at this area over here, this
4 is the boundaries of the -- actually, this is 1989.
5 This is his land in 1981 right after he annexes it.
6 Those are the boundaries. That lines up.

7 Now, if you go to the next page in Exhibit A,
8 this is the discussion about the annexation. And in
9 the middle paragraph, you know, McCauley is talking
10 about annexing it and being a part of Las Vegas and
11 planning the property with the City.

12 And they're all excited about this because
13 this is the largest annexation in City history.
14 They've never done this before. And the only, you
15 know, largest annexation after that was the Suma
16 Corporation, which was the Hughes site, the Howard
17 Hughes property.

18 So let's go to Exhibit B.

19 And I want to kind of show the pattern here
20 of how the City applied these zoning tools that were
21 available to them at the time. The first thing that
22 they did, after McCauley annexed his property, was they
23 adopted the general plan. They amended the general
24 plan. You have to zone in accordance with the
25 comprehensive plan so they amended their general plan

1 and they extended the suburban development west and
2 that will be relevant later on because it will tell us
3 sort of what the density is.

4 Now, on the next page, Item 14.

5 Then they adopted a generalized land use
6 plan. So they extend what the City called suburban.
7 They moved it west because there was nothing out there
8 at the time. And then they adopted this plan. So
9 first you adopt the general plan. And then they did
10 this basically like a specific plan that they kind of
11 thought was possible during the 1975, when they came up
12 with the 1975 general plan.

13 And McCauley says, we want to zone the entire
14 property in accordance with this plan. So that tells
15 you right there that he's asking for planned unit
16 development zoning. I want to zone the entire parcel
17 of land. I want to get all of this property zoned all
18 at once.

19 How is the City going to do that unless you
20 tell them what your plans look like. This is the
21 difference between single-lot zoning and zoning of
22 large subdivisions.

23 And if we go to page 4. This is the city
24 council or the city commission. Still a couple years
25 before they came city council. And you'll see the way

1 they have these agenda items on there. The general
2 plan amendment first, and then the generalized land use
3 plan. So the planning commission approved the
4 generalized land use plan amendment and then the City
5 approved it.

6 Let's go to 6. These are, essentially, the
7 staff reports, very early version of this. And it,
8 basically, explains, you know, why do we do this.
9 Well, there was no land use plan when the property was
10 annexed into the city.

11 The next item says, "McCauley intends to
12 start development on this property as soon as possible
13 and wishes to have it rezoned from end use, non-urban,
14 to various residential densities and for commercial use
15 in the immediate future. A separate generalized land
16 use plan would provide a guide for the zone change that
17 will be requested on the entire parcel as soon as the
18 general plan is amended."

19 So you have to plan before you zone.
20 Otherwise, you're not zoning in accordance with the
21 comprehensive plan and you're exceeding the enabling
22 acts, delegation of the police power, from the state to
23 the city.

24 Let's go to page 7.

25 So this is the general plan amendment. And

1 if you can see, this is very rudimentary. It's not
2 really sophisticated at all. But these are the general
3 plan, sort of, categories, that existed in 1981. They
4 just said, we're going to do suburban here. We're
5 going to do urban here. We're going to do rural over
6 here. That's all they did with this is they moved the
7 suburban west.

8 This is the generalized land use plan that
9 the City approved. And you have to plan where the
10 streets are. You have to tell us what the densities
11 are going to be. You have to tell us where you're
12 going to put commercial, all these things. He's got
13 schools, neighborhood parks, things like that. There's
14 a reservoir. So this is a very early plan.

15 And then -- go ahead.

16 This is the area that was zoned. That's it.

17 So now he's gotten the general plan
18 amendment. He's gotten his generalized land use plan.
19 Now he has to actually come and have the property
20 zoned. And that's what happens. He files Z3481. The
21 way that the City used to do this is the last two
22 digits of this were the year when it was filed and the
23 first two digits were the number of the application
24 when it was filed.

25 And I want to address what zoning was for the

1 Badlands property in 1981 because it wasn't R-PD7.

2 But let's just go to the next.

3 This is Z3481. This is just the zoning
4 application. They approved it. This is minutes on,
5 you know, what the basis was for this. You've got
6 Larry Miller, who is William McCauley's son-in-law, who
7 is there explaining that they're going to reduce the
8 density, and in favor and on behalf of property owners.
9 The zoning is at its maximum density. But there is a
10 possibility that it will be lowered as the property is
11 being built. This will be called Venetian Foothills.

12 Put up Exhibit 165.

13 So the zoning map that was in that Z3481 case
14 law it's illegible; you can't read it. But one of the
15 conditions of approval that they put on McCauley is
16 they said, you have to tell everybody where everything
17 is going. You have to put up signs that are showing
18 what areas are actually being zoned.

19 And he came back to the City and he says, I
20 don't actually want to put up these signs because
21 people just keep vandalizing them.

22 So what he did was he proposed that instead
23 of putting up signs, he would have homeowners
24 acknowledge what the zoning was. And if you go to 85
25 of this exhibit, and you zoom in on the left side, you

1 can see it's actually R-PD8. It's not R-PD7. That
2 didn't come until much later. It was R-PD8.

3 So the City approves this under a resolution
4 of intent. Remember they don't actually rezone
5 everything until the development is actually done. And
6 this never really got built out. It never really even
7 got started on this. So there was no R-PD7 zoning at
8 this point in time.

9 Let's go to Exhibit QQQQ2.

10 This is again talking about residential
11 planning districts. They're thinking about the city in
12 square miles. They're not thinking about it in terms
13 of individual parcels. And they're talking about what
14 we were just saying, there's the urban, suburban, and
15 rural. They break it down. What's the purpose of
16 these different things?

17 Go to the next page.

18 And then they talk about, okay, well, what's
19 the mix of density that you can have in an urban
20 neighborhood. You can have 50 percent high density.
21 You can have 25 percent medium density. You can have
22 25 percent medium low. And so that was sort of the
23 idea here.

24 Let's zoom in on the top paragraph that's
25 highlighted.

1 If one of the density categories is exceeded
2 in any particular residential planning district, the
3 difference must be made up from other density
4 categories in order to maintain the same overall
5 character and density pattern within the residential
6 planning district.

7 So we're zoning for density. We're not
8 zoning for particular locations of structures. We're
9 zoning for density. And that's the idea. So if you
10 put -- if you want to put high-density housing on one
11 part of your property, you've got to reduce the density
12 somewhere else.

13 Go to the last paragraph on that page.

14 So the other thing here is they come up with
15 this community profile system. This is consistent with
16 what they wanted to do under the 1975 general plan.
17 They wanted to basically have specific plans for
18 different communities.

19 And later on, in 1992, when they adopt the
20 general plan that designates the Badlands Golf Course
21 PR-OS, all they do is they take these community profile
22 maps and they mush them together in one bigger map. So
23 that's sort of what this is.

24 Let's go to QQQQ4.

25 So there's supposed to be these community

1 profiles that were adopted at the same time as the 1985
2 general plan. The homeowners association or the
3 Homebuilders Association of Southern Nevada was kind of
4 against it so they wanted some more time. But these
5 are the community profile records that were in the
6 minutes when they were adopted. We don't know exactly
7 what got adopted. There's no records.

8 But if you go to page 116.

9 So this is community profile 13. This is
10 where McCauley's property is. It says it right here.
11 It says, most of the area between Sahara Avenue and
12 Angel Park has been master planned and is known as "The
13 McCauley Property."

14 And go to the next page.

15 And there it is. And this is exactly what
16 that McCauley land use plan that the City approved in
17 1981 looked like. So they just took that and they put
18 it into this community profile map, and they said, this
19 is our general plan now; okay.

20 So in 1986 -- go to Exhibit C -- McCauley
21 goes back to the City. And he says, I have a new plan.
22 And I want to do this different layout. Looks
23 completely different. I want two golf courses. And
24 I'm going to reduce the overall size of the master plan
25 because I had a falling out with Canyon Gate, the guy

1 who owns Canyon Gate. There was issues with that.

2 The key thing to note here, though, is when
3 you look at the land use tables, you have zoning by
4 density. And they talk about what are the land uses.
5 So custom, single family, single-family homes, patio
6 homes, single family.

7 Then you get all the way down to
8 open space/golf course. You see the zoning it's RPD.
9 It's RPD because it's part of that residential planning
10 district. You're zoning that entire parcel. And that
11 golf course is going to be part of the community. Open
12 space is going to be part of the community.

13 So it doesn't have a density on it. It
14 doesn't have any number of units. But we have acres
15 and we have RPD zoning for open space and golf course.
16 And it's the same thing down here. If you look at the
17 future phases, so this master plan came with the
18 rezoning application for phase one.

19 But if you look at the future phases, you've
20 got open space and golf course down here, 200 acres, no
21 density. There's no residential density next to that
22 piece.

23 So let's go into the -- this is the
24 narrative; right? And he explains it. He says -- this
25 is Wayne Smith, his planner, his company did planning

1 for most of McCauley Ranch. He says this master plan
2 approval includes circulation, land use, overall
3 density. The zoning approvals requested are RPD for
4 residential uses and densities ranging from 2.2 to 22
5 dwelling units per acre. C1 for the commercial sites,
6 PR for the office sites.

7 Then he says the zoning for a resort, tennis
8 club, casitas, and golf course is also desired under an
9 RPD designation. The RPD category is requested at the
10 direction of the planning staff, as it allows the
11 developer flexibility and the City design control.

12 So everybody knew that the golf course was
13 going to be zoned RPD. That was just -- that's how
14 everybody understood and interpreted and applied the
15 RPD zoning at this time.

16 Let's go on to page 6.

17 It says, "The focal point of Venetian
18 Foothills is the 18-hole golf course and clubhouse,
19 which is centrally located and easily viewed throughout
20 the development. The golf course open space system
21 provides open space buffers between differing land uses
22 and will create a pleasant and attractive environment.
23 On-site retention is maintained by the golf course
24 open-space system" -- he's talking about water --
25 "utilizing the existing washes throughout the golf

1 course directs the flow of water that historically
2 flows from the foothills to Angel Park."

3 And then -- let's go to the next page.

4 These are the land use tables. Again, you've
5 got types of land uses, types of zoning. So custom,
6 single-family, RPD. How many units per acre, 2.5.
7 You've got single-family, RPD, 7 dwelling units per
8 acre. Down below you've got open space/golf course,
9 198. And this one doesn't actually say it, but go to
10 the next page. Doesn't have the zoning.

11 Open space/golf course. We know that they
12 included this because it was on the master plan. They
13 included that within the RPD designation. It said it
14 on the beginning of the page. So you've got 200 acres
15 of open space and golf course that's zoned RPD with
16 zero residential density.

17 Go to the next page.

18 And this is just the summary of the whole
19 place. So he was originally contemplating doing two
20 golf courses. He wanted 400 acres of open space. They
21 didn't end up developing that much, but that was sort
22 of the intent.

23 Let's keep going.

24 He presents the master plan to the planning
25 commission. The planning commission approves the

1 master plan. And they put all these conditions in
2 there, things that you would expect a master developer
3 to do. Construction of flood controls, and, you know,
4 changing the streets, things like that.

5 And then after they approved the master plan,
6 then they file a zoning application. And this is the
7 same thing that they did in 1981. They filed a master
8 plan or a land use plan, and then they filed a zoning
9 application, because you have to zone in accordance
10 with a comprehensive plan.

11 And this just tells you what they are. And
12 if you note the conditions of approval, there's a
13 resolution of intent. And remember, in 1981, there was
14 a resolution of intent to rezone the property. This
15 changed the zoning and the resolution of intent and it
16 expunged all previous resolutions of intent.

17 And then the other condition of approval was
18 that you have to conform to the master development
19 plan.

20 THE COURT: Sir, I think this is a good time
21 to break, don't you?

22 MR. MOLINA: Yeah. Absolutely.

23 THE COURT: We're going to break right now.
24 It's 4:45. We'll break for the evening. Tomorrow
25 morning we'll reconvene at 9:30. How is that? And

1 we'll have all day tomorrow if necessary.

2 MR. SCHWARTZ: Thank you, Your Honor.

3 THE COURT: Everyone enjoy your evening.

4 (Proceedings adjourned at 4:46 p.m.)

5 -o0o-

6 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
7 PROCEEDINGS.

8

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/S/ Kimberly A. Farkas, RPR, CRR

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