

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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Aug 25 2022 04:23 p.m.  
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**JOINT APPENDIX,  
VOLUME NO. 109**

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

Nevada Bar No. 2571

[kermitt@kermittwaters.com](mailto:kermitt@kermittwaters.com)

James J. Leavitt, Esq.

Nevada Bar No. 6032

[jim@kermittwaters.com](mailto:jim@kermittwaters.com)

Michael A. Schneider, Esq.

Nevada Bar No. 8887

[michael@kermittwaters.com](mailto:michael@kermittwaters.com)

Autumn L. Waters, Esq.

Nevada Bar No. 8917

[autumn@kermittwaters.com](mailto:autumn@kermittwaters.com)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

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

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, Esq.

Nevada Bar No. 4381

[bscott@lasvegasnevada.gov](mailto:bscott@lasvegasnevada.gov)

Philip R. Byrnes, Esq.

[pbyrnes@lasvegasnevada.gov](mailto:pbyrnes@lasvegasnevada.gov)

Nevada Bar No. 166

Rebecca Wolfson, Esq.

[rwolfson@lasvegasnevada.gov](mailto:rwolfson@lasvegasnevada.gov)

Nevada Bar No. 14132

495 S. Main Street, 6th Floor

Las Vegas, Nevada 89101

Telephone: (702) 229-6629

*Attorneys for City of Las Vegas*

CLAGGETT & SYKES LAW FIRM

Micah S. Echols, Esq.

Nevada Bar No. 8437

[micah@claggettlaw.com](mailto:micah@claggettlaw.com)

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

(702) 655-2346 – Telephone

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

McDONALD CARANO LLP

George F. Ogilvie III, Esq.

Nevada Bar No. 3552

[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

Amanda C. Yen, Esq.

[ayen@mcdonaldcarano.com](mailto:ayen@mcdonaldcarano.com)

Nevada Bar No. 9726

Christopher Molina, Esq.

[cmolina@mcdonaldcarano.com](mailto:cmolina@mcdonaldcarano.com)

Nevada Bar No. 14092

2300 W. Sahara Ave., Ste. 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

LEONARD LAW, PC

Debbie Leonard, Esq.

[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)

Nevada Bar No. 8260

955 S. Virginia Street Ste. 220

Reno, Nevada 89502

Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz, Esq.

[schwartz@smwlaw.com](mailto:schwartz@smwlaw.com)

California Bar No. 87699

(admitted pro hac vice)

Lauren M. Tarpey, Esq.

[ltarpey@smwlaw.com](mailto:ltarpey@smwlaw.com)

California Bar No. 321775

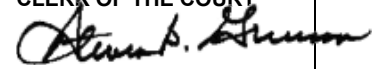
(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

*Attorneys for City of Las Vegas*



**PMEM**

Bryan K. Scott (NV Bar No. 4381)  
Philip R. Byrnes (NV Bar No. 166)  
Rebecca Wolfson (NV Bar No. 14132)  
LAS VEGAS CITY ATTORNEY'S OFFICE  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 229-6629  
Facsimile: (702) 386-1749  
bscott@lasvegasnevada.gov  
pbyrnes@lasvegasnevada.gov  
rwolfson@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

*Attorneys for Defendant City of Las Vegas*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No. A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS' PRE-TRIAL  
MEMORANDUM**

The City of Las Vegas ("City"), through its counsel of record, hereby submits the following  
Pre-Trial Memorandum pursuant to EDCR 2.67.

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...

...

**STATEMENT OF FACTS**

**The Subject Property**

The property at issue in this case is an approximately 35-acre portion of the former Badlands Golf Course (the “35-Acre Property”). It is zoned R-PD7 and designated PR-OS in the City’s General Plan. The R-PD7 zoning was approved in 1990 in conjunction with an amendment to the 1,539-acre Peccole Ranch Master Plan (“PRMP”), which set aside 211.6 acres for a golf course and drainage in the second phase of development. In 1992, the City incorporated the PRMP in the City’s General Plan and designated the golf course and drainage areas PR-OS for parks, recreation, and open space. The PR-OS general plan designation does not permit housing.

On March 2, 2015, the Peccole family sold Fore Stars Ltd. (“Fore Stars”) to the Developer for \$7.5 million. At the time, Fore Stars owned the entire 27-hole golf course but not the approximately 2.37-acre parcel where the clubhouse is located (the “Clubhouse Parcel”). While the Developer and the Peccole family were negotiating the sale of the golf course, the entity that owned the Clubhouse Parcel agreed to transfer it back to Fore Stars. As a result, the Peccole family increased the purchase price by \$3 million. Thus, of the \$7.5 million the Developer paid to acquire Fore Stars, \$3 million was allocated to the Clubhouse Parcel and less than \$4.5 million was for the 250-acre golf course. After acquiring Fore Stars, the Developer segmented the Badlands into four development sites, of 17, 35, 65, and 133 acres, placing ownership in different entities all under the Developer’s management and ownership. The Developer voluntarily closed the golf course in December of 2016.

**The Developer’s Applications**

On February 15, 2017, the City Council approved the Developer’s applications to develop 435 luxury condos on a 17-acre portion of the golf course (the “17-Acre Property”). The applications included a general plan amendment to lift the PR-OS designation (GPA-62387), a zone change to increase the allowable density on the property (ZON-62392), and a site development review (SDR-62393) (collectively, the “17-Acre Applications”).

While the 17-Acre Applications were pending, the Developer and the City engaged in negotiations regarding a development agreement for the entire golf course in conjunction with the Developer’s application for a Major Modification of the PRMP. However, on November 11, 2016,

1 the Developer withdrew the Major Modification application and the proposed development  
2 agreement. The City Council approved the Developer's request to withdraw the Major Modification  
3 application and the development agreement applications without prejudice.

4 After withdrawing the Major Modification and development agreement applications, the  
5 Developer submitted an application for a general plan amendment (GPA-68385) on an  
6 approximately 166.99-acre portion of the property, which included the 35-Acre Property. The  
7 Developer then submitted applications to develop a 61-lot residential subdivision on the 35-Acre  
8 Property, which included a waiver (WVR-68480), site development review (SDR-68481), and a  
9 tentative map application (TMP-68482) (collectively, the "35-Acre Applications").

10 While the 35-Acre Applications were pending, the City and the Developer began negotiating  
11 a new development agreement for the entire 250-acre property. The 35-Acre Applications were  
12 inconsistent with the proposed development agreement being negotiated.

13 On June 21, 2017, the 35-Acre Applications and GPA-68385 came before the City Council.  
14 The Council heard extensive opposition, which included objections that the Developer would  
15 eliminate the open space that was intended to serve as an amenity to the community and that the  
16 Developer was allowed to submit competing applications for piecemeal development, which the City  
17 had never previously allowed for any other developer. The Council also heard complaints that the  
18 applications were part of a strategic effort by the Developer to gain leverage in ongoing negotiations  
19 for a comprehensive development agreement. Ultimately, the Council denied the 35-Acre  
20 Applications due to significant public opposition to the proposed development and concerns over the  
21 impact of the proposed development on the surrounding residents.

22 Prior Proceedings

23 The Developer commenced this case on July 18, 2017 by filing a petition for judicial review  
24 challenging the City Council's denial of the 35-Acre Applications. On September 7, 2017, the  
25 Developer filed a First Amended Petition for Judicial Review and Alternative Claims in Inverse  
26 Condemnation. The operative complaint is now the Landowners' Second Amendment and First  
27 Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed on  
28 May 15, 2019 ("Second Amended Complaint"). The City filed its Answer to the Second Amended

Complaint on June 18, 2019.

On November 21, 2018, the Court denied the Developer's petition for judicial review challenging the City's denial of the 35-Acre Applications, finding that (1) the 35-Acre Property is part of the 250-Acre Badlands, (2) the Badlands was set aside as open space when the City approved the 1539-acre PRMP, (3) the City had discretion to approve or deny the 35-Acre Applications, (4) the PR-OS General Plan designation, which does not allow housing on the 35-Acre Property, controls the allowable uses of the Property, regardless of the zoning, (5) the zoning of the 35-Acre Property does not confer on the owner a property or vested right to build housing on the 35-Acre Property, and (6) statements of City staff as to the law applicable to the 35-Acre Property are not relevant to the legal constraints on use of the property, and (7) substantial evidence supported the City's decision to deny the 35-Acre Applications. On September 28, 2021, the Court granted the Developer's motion for summary judgment regarding liability and denied the City's countermotion for summary judgment on all causes of action. The parties filed cross-motions for summary judgment on the issue of damages, to be heard on October 26, 2021.

#### **CLAIMS FOR RELIEF**

The Second Amended Complaint sets forth six alternative claims for inverse condemnation:

1. First Alternative Claim for Relief in Inverse Condemnation- Categorical Taking.
2. Second Alternative Claim for Relief in Inverse Condemnation- Penn Central Regulatory Taking.
3. Third Alternative Claim for Relief in Inverse Condemnation- Regulatory Per Se Taking.
4. Fourth Alternative Claim for Relief in Inverse Condemnation- Nonregulatory Taking.
5. Fifth Alternative Claim for Relief in Inverse Condemnation- Temporary Taking.
6. Sixth Alternative Claim for Relief in Inverse Condemnation- Judicial Taking.

The Court has already ruled that the City liable for a taking under the first, second, third, and fourth claims.

#### **CLAIMS TO BE ABANDONED**

The Developer has abandoned the sixth claim for a judicial taking.

**AFFIRMATIVE DEFENSES**

1. First Affirmative Defense: The Second Amended Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's proposed development is inconsistent with the City's general plan.

3. Plaintiff failed to follow reasonable and necessary procedures in seeking approval for Plaintiff's proposed development.

4. Plaintiff lacks vested rights to have its development applications approved.

5. Plaintiff has failed to exhaust its administrative remedies.

6. Plaintiff's claims are not ripe.

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

8. The Second Amended Complaint violates the rule against splitting causes of action.

9. The City's actions toward Plaintiff were lawful, necessary, justified, and supported by substantial evidence.

10. Plaintiff has no greater rights to develop the subject property than Plaintiff's predecessor in interest.

11. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

12. Plaintiff's claims are barred by the statute of limitations.

13. Plaintiff has failed to mitigate its alleged damages.

14. The incidents alleged in the Second Amended Complaint, and the alleged damages and injuries, if any, to Plaintiff, were proximately caused or contributed to by the acts or omissions of Plaintiff and/or third parties not subject to the City's direction or control.

15. The Court lacks subject matter jurisdiction.

16. Plaintiff's claims are barred by the doctrine of laches.

17. Plaintiff lacked reasonable investment-backed expectations regarding its desire to redevelop the Badlands golf course.

18. Plaintiff has the same property rights that Plaintiff enjoyed prior to submitting applications to redevelop the Badlands golf course.

...

19. The City reserves the right to amend this list of affirmative defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

**DEFENSES TO BE ABANDONED**

None.

**THE DEVELOPER'S LIST OF EXHIBITS**

See Exhibit 1, Developer's Pretrial Disclosures.

**CITY'S OBJECTIONS TO THE DEVELOPER'S LIST OF EXHIBITS**

See Exhibit 2, City's Objections to Plaintiff Landowners' Pretrial Disclosures.

**THE DEVELOPER'S LIST OF WITNESSES**

See Exhibit 1, the Developer's Pretrial Disclosures.

**CITY'S OBJECTIONS TO PLAINTIFF'S LIST OF WITNESSES**

None.

**DEFENDANT'S LIST OF EXHIBITS**

See, Exhibit 3, City's Pretrial Disclosures.

**THE DEVELOPER'S OBJECTIONS TO DEFENDANT'S LIST OF EXHIBITS**

See Developer's Pre-Trial Memorandum filed October 21, 2021.

**DEFENDANT'S LIST OF WITNESSES**

See, Exhibit 3, City's Pretrial Disclosures.

**THE DEVELOPER' OBJECTIONS TO DEFENDANT'S LIST OF WITNESSES**

See Developer's Pre-Trial Memorandum filed October 21, 2021.

**AGREEMENTS AS TO LIMITATION OR EXCLUSION OF EVIDENCE**

None

**CONTESTED ISSUES OF LAW**

The purpose of the trial is to determine the value of the 35-Acre Property as of the date of value. The following are the contested issues of law at the trial:

1. The larger parcel. The Developer claims that the larger parcel for purposes of valuation is the 35-Acre Property. The City contends that the larger parcel is either the PRMP or the Badlands.



2. The date of value. The Developer contends that the date of value is September 14, 2017, the date the Developer served its complaint for a taking. The City contends that the date of value is the date the regulation or other City action that allegedly has taken the 35-Acre Property was imposed on the Property, which date has not been identified by the Developer and is fatal to the Developer's claim for damages. The City further contends that the Developer has not identified any action of the City on September 14, 2017 that affected the value of the 35-Acre Property.

3. The legally permissible uses of the 35-Acre Property immediately before the date of value. The Developer and its appraiser contend that the only legally permissible use of the 35-Acre Property immediately before the date of value was for housing. The City contends that the 35-Acre Property has been designated PR-OS in the General Plan continuously from prior to the Developer's purchase of the property to the present. The PR-OS designation, which this Court previously held is valid and applicable to the 35-Acre Property, does not permit housing and controls the permissible use of the property regardless of the zoning.

4. The value of the 35-Acre Property immediately before and after September 14, 2017. The Developer and its Appraiser contend that the value of the 35-Acre Property immediately before September 14, 2017 is \$34,100,000 based on the contention that housing was a legal use on that date, and zero immediately after September 14, 2017 based on the City's denial of the Developer's right to build housing. The City contends that the PR-OS designation, which this Court held is valid and applicable to the 35-Acre Property, did not permit housing before or after September 14, 2017. Under the Developer's own appraisal evidence, therefore, the value of the 35-Acre Property was zero both before and after the alleged date of value. Accordingly, the City cannot have "taken" the 35-Acre Property.

5. The property interest appraised by the Developer's appraiser. The Developer contends that the City has taken its right to develop housing on the 35-Acre Property and that that right was worth \$34,100,000 on the date of value. The City contends that the Developer has presented no evidence of the value of the right to develop housing on the 35-Acre Property because the Developer's appraiser valued the fee simple interest in the 35-Acre Property, not the right to develop housing.

**ESTIMATED TIME FOR TRIAL**

3-5 full days depending upon the rulings of the pending motions in limine scheduled to be heard on October 26, 2021.

**OTHER MATTERS**

None.

DATED this 22nd day of October 2021.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

George F. Ogilvie III (NV Bar No. 3552)  
Christopher Molina (NV Bar No. 14092)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102  
Telephone: (702) 873-4100  
Facsimile: (702) 873-9966  
gogilvie@mcdonalddcarano.com  
cmolina@mcdonalddcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE  
Bryan K. Scott (NV Bar No. 4381)  
Philip R. Byrnes (NV Bar No. 166)  
Rebecca Wolfson (NV Bar No. 14132)  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER LLP  
Andrew W. Schwartz (CA Bar No. 87699)  
(Admitted *pro hac vice*)  
Lauren M. Tarpey (CA Bar No. 321775)  
(Admitted *pro hac vice*)  
396 Hayes Street  
San Francisco, California 94102  
Telephone: (415) 552-7272  
Facsimile: (415) 552-5816  
schwartz@smwlaw.com  
ltarpey@smwlaw.com

*Attorneys for Defendant City of Las Vegas*

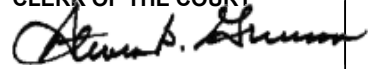
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of October, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' PRE-TRIAL MEMORANDUM** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

# **EXHIBIT “1”**



**LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

180 LAND CO., LLC, a Nevada limited liability  
company, FORE STARS Ltd., DOE  
INDIVIDUALS I through X, ROE  
CORPORATIONS I through X, and ROE  
LIMITED LIABILITY COMPANIES I through  
X,

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**PLAINTIFFS LANDOWNERS'  
PRETRIAL DISCLOSURES**

Pursuant to Rule 16.1(a)(3) of the Nevada Rules of Civil Procedure and the Court's recent  
setting of the trial date to begin on November 1, 2021, Plaintiffs Landowners, 180 Land Co., LLC  
and Fore Stars Ltd. ("Landowners"), hereby make the following disclosures:

///

1 As a preliminary matter these disclosures are made in light of the Finding of Fact and  
2 Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"  
3 dated October 12, 2020 as well as the Court's Granting of the Landowners' Motion to Determine  
4 Take (Order pending). Depending upon the City's disclosures and the Court's rulings on pending  
5 motions in limine, the Landowners reserve the right to supplement and amend these disclosures as  
6 deemed necessary.

7 **I. RULE 16.1(a)(3)(A)(i): IDENTIFICATION OF WITNESSES**

8 **A. Witnesses List**

9 The Landowners expect to present the following witnesses at trial, all of whom have been  
10 previously disclosed:

- 11 1. Yohan Lowie  
12 CEO EHB Companies LLC
- 13 2. Frank Pankratz  
14 President, EHB Companies LLC
- 15 3. Tio S. DiFederico, MAI  
16 The DiFederico Group

16 **B. Witnesses Landowners May Call if the Need Arises**

17 The Landowners may call the following witnesses if the need arises:

- 18 1. Donald Richards  
19 Superintendent of 250 Acres

20 In addition, the Landowners reserve the right to call any witness that the City discloses or  
21 presents through deposition.

22 **II. RULE 16.1(a)(3)(A)(ii): DEPOSITION DESIGNATIONS**

23 The Landowners reserve the right to supplement their disclosures upon receiving the City's  
24 disclosures.

///

1     **III.     RULE 16.1(a)(3)(A)(iii): IDENTIFICATION OF DOCUMENTS/EXHIBITS**

2             The Landowners identify the exhibits they expect to offer at trial and those they may offer  
3     if the need arises, as set forth in *Attachment 1*. The Landowners have included exhibits which  
4     may not be necessary, depending upon the Court’s rulings on pending motions in limine. The  
5     Landowners reserve the right to supplement their disclosures upon receiving the City’s disclosures  
6     and depending upon the Court’s rulings on pending motions in limine.

7             DATED this 4<sup>th</sup> day of October, 2021.

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

9   /s/ Autumn Waters  
10    Kermitt L. Waters, Esq. (NSB 2571)  
11    James J. Leavitt, Esq. (NSB 6032)  
12    Michael A. Schneider, Esq. (NSB 8887)  
13    Autumn L. Waters, Esq. (NSB 8917)  
14    704 South Ninth Street  
15    Las Vegas, Nevada 89101  
16    Telephone: (702) 733-8877  
17    Facsimile: (702) 731-1964  
18    *Attorneys for Plaintiffs Landowners*

15  
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**McDONALD CARANO LLP**  
George F. Ogilvie III, Esq.  
Christopher Molina, Esq.  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)  
[cmolina@mcdonaldcarano.com](mailto:cmolina@mcdonaldcarano.com)

**SHUTE, MIHALY & WEINBERGER, LLP**  
 Andrew W. Schwartz, Esq.  
 Lauren M. Tarpey, Esq.  
 396 Hayes Street  
 San Francisco, California 94102  
[schwartz@smwlaw.com](mailto:schwartz@smwlaw.com)  
[ltarpey@smwlaw.com](mailto:ltarpey@smwlaw.com)

4



Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
1.	Aerials of subject property		Exhibit 3 to Motion for Summary Judgment	Will	
2.	Aerial maps of the subject property as of the relevant date of valuation		Available for review at the Law Offices of Kerritt L. Waters	Will	
3.	Map or different properties		LO 00000001	May	
4.	EHB 20 Years in the Neighborhood		LO 0034766	Will	
5.	Appraisal report prepared by Tio DiFederico		TDG Rpt 000001-000136	Will	
	<b>The following are sub-documents from the Tio DiFederico Report</b>				
6.		Professional Qualification of Tio S. DiFederico MAI	TDG Rpt 000111-000113	Will	
7.		Appraisal Certification of Tio DiFederico MAI	TDG Rpt 000114	Will	
8.		Testimony of Depositions Tio S. DiFederico, MAI	TDG Rpt 000115	May	
9.		Legend of Photographs taken during August 12, 2020 site inspection	TDG Rpt 000033	Will	
10.		Subject Photographs	TDG Rpt 000034-000039	Will	
11.		Assessor parcel Map 138-31-2&138-31-3	TDG Rpt 000046	Will	
12.		Before Condition aerial	TDG Rpt 000045	Will	
13.		Assessor's Parcel Map 138-31-2	TDG Rpt 000047	Will	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
14.		Assessor's parcel Map 138-31-3	TDG Rpt 000048	Will	
15.		Site Plan for 61 Custom Home Lots (prepared by GCW 10/24/2017)	TDG Rpt 000049-000050	Will	
16.		Site Plan for 16 Custom Home Lots (prepared by GCW 10/13/2020)	TDG Rpt 000051	Will	
17.		Site Plan for 7 Custom Home Lots	TDG Rpt 000052	Will	
18.		Comparable Land Sales Chart	TDG Rpt 000069	Will	
19.		Comparable Land Sales Map	TDG Rpt 000070	Will	
20.		Comparable Land Sale 1	TDG Rpt 000071	Will	
21.		Comparable Land Sale 2	TDG Rpt 000072	Will	
22.		Comparable Land Sale 3	TDG Rpt 000073	Will	
23.		Comparable Land Sale 4	TDG Rpt 000074	Will	
24.		Comparable Land Sale 5	TDG Rpt 000075	Will	
25.		Summary of Just Compensation Due Chart	TDG Rpt 000101, 103	Will	
26.		Land Value Conclusion	TDG Rpt 000084	May	
27.		Summary of Salient Facts	TDG Rpt 000007	May	
28.		Southern Nevada Coincident Index	TDG Rpt 000017	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
29.		Southern Nevada Leading Index	TDG 000018	May	
30.		Southern Nevada Construction Index	TDG 000019	May	
31.		Southern Nevada Tourism Index	TDG 000020	May	
32.		Market Area Analysis	TDG 000023	May	
33.		Income Approach – Before Condition charts and analysis and conclusion	TDG Rpt 000091-95	May	
34.		Golf Course Closure Letters, Par 4	LO 001106-001107	May	
35.		Golf Course Closure Letter, Elite	LO 001108	May	
36.		Elite Golf Deposition, Keith Flatt	LO 001109 – 001159	May	
37.		Summary of Just Compensation Due to the Property Owner Due to the City's Actions	TDG Rpt 000101	May	
38.		Conclusion of Just Compensation	TDG Rpt 000103	Will	
39.	Appraisal work file of Tio DiFederico		TDG WF 000001-0006593; FP WF 000001-000456		
	<b>The following are sub-documents from the Tio DiFederico Work File</b>				
40.		Zoning Verification Letter	TDG WF 000028	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
41.		LVMC 19.10.050	TDG WF 000050	May	
42.		The Summit newspaper article	TDG WF 000134-136	May	
43.		75% up newspaper article	TDG WF 000138-139	May	
44.		The New Vision	TDG WF 000145-153, 005804-5811	May	
45.		LVMC 19.12 – entire section	TDG WF 05523-5603	May	
46.		Summit Lot Sales Chart	TDG WF 005786-5788	Will	
47.		Ridges / QR Lot Sales Chart	TDG WF 005789-5790	Will	
48.		Land Sales Adjustment Grid	TDG WF 005802	Will	
49.		7 Lots Index	TDG WF 006137-6140	May	
50.		Drainage feasibility report	TDG WF 006141-6149	May	
51.		Geotechnical Engineering Report	TDG WF 006150-6167	May	
52.		Water Pressure Maps	TDG WF 006168-6169	May	
53.		Sewer Map	TDG WF 006170	May	
54.		GCW Report	TDG WF 006172-6185	May	
55.		Landscape Cost Estimate	TDG WF 006196	May	
56.		16 Lots Index and attached documents and cost comparison chart	TDG WF 006206-6249	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
57.		61 Lots Index and attached documents and cost comparison chart	TDG WF 006251-6339	May	
58.		Las Vegas Luxury Market on the Rise article	TDG WF 006415-6422	May	
59.	Yohan Lowie's Work File		YL WF 000001 – YL WF 000818		
	<b>The following are sub-documents from the Yohan Lowie Work File</b>				
60.		Site Plan	YL WF 000001	Will	
61.		180 Land Cost Comparison 6 16 7	YL WF 000002	Will	
62.		Commercial Projects List	YL WF 000003	Will	
63.		Commercial Projects Map	YL WF 000004 – YL WF 000005	Will	
64.		Discovery Lands Summit Club Sells Custom Lots from \$3 to \$10 million LVRJ	YL WF 000006 – YL WF 000010	Will	
65.		Hutchison Office Deed	YL WF 000011- YL WF 000014	May	
66.		Calida PSA (17 acres)	LO 00037070 – 00037093 <i>See Mr. Lowie's deposition</i>	Will	
67.		Calida PSA RA	YL 000050 – YL WF 000084	Will	
68.		PSA Intermountain Health	YL WF 000084 – YL WF 000105	Will	
69.		The New Vision	YL WF 000106-000207	Will	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
70.		QT Appraisal	YL WF 000208-000339	May	
71.		Valbridge Appraisal	YL WF 000340-000429	May	
72.		Panther Alta Corner Deed	YL WF 000430 – YL WF 000435	May	
73.		Panther Hualapai Deed	YL WF 000436 – YL WF 000445	May	
74.		Queensridge Home list and map	YL WF 000446-000447	May	
75.		Photos of Projects completed by EHB	YL WF 000448-000462	May	
76.		Yohan Deposition – Binion	YL WF 000463 – YL WF 000517	May	
77.		Back Up Data for Damages Disclosed in Mr. Lowie's testimony disclosure - \$1,450,173.84	YL WF 000518 – 000695 (A summary will also be provided)	Will	
78.		35 acre Lots breakdown	YL WF 000696	Will	
79.		CMA SUMMARY / Land	YL WF 000697 – YL WF 000700	Will	
80.		RAS to DC Rampart Grant Bargain and Sale Deed	YL WF 000701 – YL WF 000776	May	
81.		Design – Build Lease	YL WF 000777 – YL WF 000818	May	
82.	Frank Pankratz Work File		FP WF 000001 – FP WF 000456		
	<b>The following are sub-documents from the Frank Pankratz Work File</b>				
	7 Lots Work File		FP WF 00003 – FP WF 000135		

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
83.		Cost Summary – 7 Lots	FP WF 000003	Will	
84.		Preliminary Site Plan	FP WF 000004	Will	
85.		Drainage	FP WF 000005 – 000007	5-6 (May) 7 (Will)	
86.		Soils & Other Suitability	FP WF 000008	May	
87.		Hydraulic Grade Lines	FP WF 000009 – 000010	May	
88.		Sewer	FP WF 000011	May	
89.		Traffic	FP WF 000012	May	
90.		Wastewater	FP WF 000013	May	
91.		Soils Report Part 1	FP WF 000014 – 000030	May	
92.		Soils Report Part 2	FP WF 000031 – 000055	31 (May) 32-33 (Will) 34-55 (May)	
93.		Soils Report Part 3	FP WF 000056 – 000074	May	
94.		CTS Firm Overview	FP WF 000075 – 000078	May	
95.		CTS Firm Overview (supplemental)	FP WF 000079	May	
96.		Existing Sewer	FP WF 000080	Will	
97.		LVVWD Pressure Zones	FP WF 000081	Will	
98.		Prelim Grading Plan – Color	FP WF 000082	Will	
99.		Prelim Grading Plan - B&W	FP WF 000083	Will	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
100.		Prelim Site Plan	FP WF 000084	Will	
101.		Sewer	FP WF 000085	Will	
102.		Water	FP WF 000086	Will	
103.		Storm Drain	FP WF 000087	Will	
104.		Roadways	FP WF 000088	Will	
105.		Landscaping	FP WF 000089	Will	
106.		Walls	FP WF 000090	Will	
107.		Grading Details and Sections	FP WF 000091	May	
108.		GCW Firm overview	FP WF 000092	May	
109.		GCW Firm Overview (supplemental)	FP WF 000093 - 000094	May	
110.		Aggregate Cost Estimate	FP WF 000095 – 000099	May	
111.		Aggregate Company Overview	FP WF 000100	May	
112.		Hirschi Company Reference Letter	FP WF 000101 - 000102	May	
113.		Engineering & Mapping Proposal	FP WF 000103 – 000108	May	
114.		Bond Estimate	FP WF 000109 – 000116	May	
115.		Cost Estimate	FP WF 000117	May	
116.		NVE Planning Memo	FP WF 000118	May	
117.		15% Cost increase description	FP WF 000119 – 000120	May	



Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
118.		STF INC. Firm Overview	FP WF 000121	May	
119.		Landscaping Cost Estimate	FP WF 000127	May	
120.		Plan Check Fee Schedule	FP WF 000128	May	
121.		Water Fee Schedule	FP WF 000129	May	
122.		Mark Fakler Resume	FP WF 000130 - 000132	May	
123.		Telephone and Cable Cost Estimate	FP WF 000133 – 000134	May	
124.		Tand Company Overview	FP WF 000135	May	
	16 Lots Work File		FP WF 000136 - 000270		
125.		Cost Summary – 16 Lots	FP WF 000138	Will	
126.		Prelim Site Plan	FP WF 000139	Will	
127.		Drainage	FP WF 000140 – 000142	May	
128.		Soils & Other Suitability	FP WF 000143	May	
129.		Hydraulic Grade Lines	FP WF 000144-000145	May	
130.		Sewer	FP WF 000146	May	
131.		Traffic	FP WF 000147	May	
132.		Waste Water	FP WF 000148	May	
133.		Soils Report Part 1	FP WF 000149 – 000165	May	
134.		Soils Report Part 2	FP WF 000166 – 000190	166 (May) 167-168 (Will) 169-190 (May)	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
135.		Soils Report Part 3	FP WF 000191 – 000209	May	
136.		CTS Firm Overview	FP WF 000210-000213	May	
137.		CTS Firm Overview (Supplemental)	FP WF 000214	May	
138.		Existing Sewer	FP WF 000215	Will	
139.		LVVWD Pressure Zones	FP WF 000216	Will	
140.		Prelim Grading Plan – Color	FP WF 000217	Will	
141.		Prelim Grading Plan – B&W	FP WF 000218	Will	
142.		Prelim Site Plan	FP WF 000219	Will	
143.		Sewer	FP WF 000220	Will	
144.		Water	FP WF 000221	Will	
145.		Storm Drain	FP WF 000222	Will	
146.		Roadways	FP WF 000223	Will	
147.		Landscaping	FP WF 000224	Will	
148.		Walls	FP WF 000225	Will	
149.		Grading Detail and Sections	FP WF 000226	May	
150.		GCW Firm Overview	FP WF 000227	May	
151.		GCW Firm Overview (supplemental)	FP WF 000228- 000229	May	
152.		Aggregate Cost Estimate	FP WF 000230 – 000234	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
153.		Aggregate Company Overview	FP WF 000235	May	
154.		Hirschi Company Reference Letter	FP WF 000236 - 000237	May	
155.		Engineering & mapping Proposal	FP WF 000238	May	
156.		Bond Estimate	FP WF 000244-000251	May	
157.		Cost Estimate	FP WF 000252	May	
158.		NVE Planning Memo	FP WF 000253	May	
159.		15% Cost Increase Description	FP WF 000254 – 000255	May	
160.		STF In Firm Overview	FP WF 000256	May	
161.		Natural Gas Cost Estimate	FP WF 000257 – 000258	May	
162.		15% Cost Increase Description	FP WF 000259 – 000260	May	
163.		STF Inc. Firm Overview	FP WF 000261	May	
164.		Landscaping Cost Estimate	FP WF 000262	May	
165.		Plan Check Fees Schedule	FP WF 000263	May	
166.		Water Fees Schedule	FP WF 000264	May	
167.		Mark Fakler Resume	FP WF 000265-000267	May	
168.		Telephone and Cable Cost Estimate	FP WF 000268 – 000269	May	
169.		Tand Company Overview	FP WF 000270	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
	61 Lots Work File		FP WF 000271 - 000456		
170.		Cost Summary – 61 Lot	FP WF 000273	Will	
171.		Approved SDR, TMP & Landscaping Plan	FP WF 000274 – 000289	275, 276, 280, 281, 283, 284, 285, (Will) 274, 277-279, 282, 286-289 (May)	
172.		Staff Report: SDR, TMP, WVR, GPA	FP WF 000290 – 000315	May	
173.		SDR Approval	FP WF 000316 – 000320	May	
174.		TMP Approval	FP WF 000321 – 000322	May	
175.		WVR Approval	FP WF 000323 – 000324	May	
176.		Drainage	FP WF 000325 -000327	May	
177.		Soils & Other Suitability	FP WF 000328	May	
178.		Hydraulic Grade Lines	FP WF 00329 – 000330	May	
179.		Sewer	FP WF 000331	May	
180.		Traffic	FP WF 000332	May	
181.		Wastewater	FP WF 000333	May	
182.		Soils Report Part 1	FP WF 000334 - 000350	May	
183.		Soils Report Part 2	FP WF 000351 - 000375	351 (May) 352-353 (Will) 354-375 (May)	
184.		Soils Report Part 3	FP WF 000376 – 000394	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
185.		CTS Firm Overview	FP WF 000395 – 000398	May	
186.		CTS Firm Overview (supplemental)	FP WF 000399	May	
187.		Existing Sewer	FP WF 000400	Will	
188.		LVVWD Pressure Zones	FP WF 000401	Will	
189.		Prelim Grading Plan – Color	FP WF 000402	Will	
190.		Prelim Grading Plan – B&W	FP WF 000403	Will	
191.		Sewer	FP WF 000404 – 000405	Will	
192.		Water	FP WF 000406	Will	
193.		Storm Drain	FP WF 000407	Will	
194.		Roadways	FP WF 000408	Will	
195.		Landscaping	FP WF 000409	Will	
196.		Walls	FP WF 000410	Will	
197.		Grading Details and Sections	FP WF 000411	May	
198.		GCW Firm Overview	FP WF 000412	May	
199.		GCW Firm Overview (Supplemental)	FP WF 000413 – 000414	May	
200.		Aggregate Cost Estimate	FP WF 000415 - 000419	May	
201.		Aggregate Company Overview	FP WF 000420	May	
202.		Hirschi Company Reference Letter	FP WF 000421 - 000422	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
203.		Engineering & Mapping Proposal	FP WF 000423 – 000428	May	
204.		Bond Estimate	FP WF 000429 – 000436	May	
205.		NVE Cost Estimate	FP WF 000437	May	
206.		NVE Planning Memo	FP WF 000438	May	
207.		15% Cost Increase Description	FP WF 000439 – 000440	May	
208.		STF INC Firm Overview	FP WF 000441	May	
209.		SWG Cost Estimate	FP WF 000442 – 000443	May	
210.		15% Cost Increase Description	FP WF 000444 – 000445	May	
211.		STF Inc. Firm Overview	FP WF 000446	May	
212.		Landscaping Cost Estimate	FP WF 000447	May	
213.		Landscaping Cost Estimate Memo	FP WF 000448	May	
214.		Plan Check Fees Schedule	FP WF 000449	May	
215.		Water Fees Schedule	FP WF 000450	May	
216.		Mark Fakler Resume	FP WF 000451 – 000453	May	
217.		Telephone and Cable Cost Estimate	FP WF 000454 – 000455	May	
218.		Tand Company Overview	FP WF 000456	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
	<i>The need for the following exhibits is dependent upon rulings on pending motions in limine</i>		<i>The need for the following exhibits is dependent upon rulings on pending motions in limine</i>		
219.	Lowie Deposition Exhibits	Exhibit 1 - Ownership Chart	FORE000798	May	
220.		Exhibit 6 – June 25, 2015- Letter from The Calida Group	LO 00037065 - 00037068 (Confidential)	May	
221.		Exhibit 7 – Agreement of Purchase and Sale of Property	LO 00037070- LO 00037093	May	
222.		Exhibit 9 – CLV125530	CLV 125530	May	
223.		Exhibit 11 – Record of Survey Boundary Line Adjustment	CLV305596 – CLV305600	May	
224.		Exhibit 12 – Flash Drive and Flash Drive	None	May	
225.		Exhibit 13 – Terms Sheet	LO 00037589 – 00037608 (Confidential A-17-758528-J)	May	
226.		Exhibit 14 – Securities Redemption Agreement dated September 14, 2005	LO 00037571 - 00037588 (Confidential A-17-758528-J)	May	
227.		Exhibit 15 – Securities Purchase Agreement (QT)	LO 00037485 - 00037522 (Confidential A-17-758528-J)	May	
228.		Exhibit 16 – Securities Redemption Agreement	LO 00037547 - 00037559 (Confidential A-17-758528-J)	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
229.		Exhibit 17 – Securities Purchase Agreement (GW)	LO 00037459 - 00037484 (Confidential A-17-758528-J)	May	
230.		Exhibit 18 – Securities Redemption Agreement	LO 00037560 - 00037567 (Confidential A-17-758528-J)	May	
231.		Exhibit 19 – Securities Purchase Agreement (SH)	LO 00037523 - 00037546 (Confidential A-17-758528-J)	May	
232.		Exhibit 20 – Badlands Golf Course Clubhouse Improvements Agreement	LO 00037620 - 00037657 (Confidential A-17-758528-J)	May	
233.		Exhibit 22 – Settlement Agreement	PNC0000677 – PNC0000682	May	
234.		Exhibit 23 – Restrictive Covenant	CLV303971 – CLV303972	May	
235.		Exhibit 24 – Settlement Agreement and Mutual Release	LO 0021093 - 0021144 (Confidential and Privileged NRCP 26 A-17-758528-J)	May	
236.		Exhibit 25 – PNC000748	PNC 000748	May	
237.		Exhibit 26 – June 12, 2014 Letter	LO 0035970-0035972 (Confidential and Privileged NRCP 26 A-17-758528-J)	May	
238.		Exhibit 27 – E-mail Exchange and Purchase and Sale Agreement	LO 0025237 - 0025263 (Confidential and Privileged NRCP 26c A-17-758528-J)	May	
239.		Exhibit 28 – Emails	LO 0018062 - 0018064 (Confidential and Privileged NRCP 26c A-17-758528-J)	May	
240.		Exhibit 29 – PNC000756-PNC000757	PNC 000756- PNC 000757	May	



Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
241.		Exhibit 30 – PNC000082	PNC 000082	May	
242.		Exhibit 31 – PNC001648-PNC001650	PNC 001648 – PNC 001650	May	
243.		Exhibit 32 – E-mail and Membership Interest Purchase and Sale Agreement	LO 0018675 - 0018693 (Confidential and Privileged NRCP 26 A-17-758528-J)	May	
244.		Exhibit 33 – E-mails	LO 0018821 - 0018822 (Confidential and Privileged NRCP 26 A-17-758528-J)	May	
245.		Exhibit 34 – LO 0018084	LO 0018084 (Confidential and Privileged NRCP 26c A-17-758528-J)	May	
246.		Exhibit 35 – PNC001241-PNC001242	PNC 001241 – PNC 001242	May	
247.		Exhibit 36 – LO 0024862- LO 0024863	LO 0024862 - 0024863 (Confidential and Privileged NRCP 26c A-17-758528-J)	May	
248.		Exhibit 37 – Membership Interest Purchase and Sale Agreement	LO 00004063 - 00004079 (Confidential)	May	
249.		Exhibit 38 – PNC000373-PNC000380	PNC 000373 – PNC 000373	May	
250.		Exhibit 39 – LO 0018083- LO 0018084	LO 0018083 - 0018084 (Confidential and Privileged NRCP 26c A-17-758528-J)	May	
251.		Exhibit 40 – December 23, 2014 Letter from Bobby Weed Golf Design	LO 00008835 – 00008839	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
252.		Exhibit 41 – LO 00009125	LO 00009125	May	
253.		Exhibit 42 – Badlands Conceptual Land Use Scenario	LO 00008833 – 00008834	May	
254.		Exhibit 43 – February 16, 2017 Letter	None	May	
255.		Exhibit 44 – May 27, 2016 Letter from The Calida Group	LO 00037105 (Confidential)	May	
	Bayne Deposition Exhibits				
256.		Exhibit 2 – Certificate of Amendment of the Articles of Incorporation of Peccole-Nevada Corporation	None	May	
257.		Exhibit 3 – Peccole Generalized Land Use Plan 04/15/1981	CLV 204367	May	
258.		Exhibit 3-A Peccole Generalized Land Use Plan 04/15/1981	CLV 204367	May	
259.		Exhibit 3-B Peccole Generalized Land Use Plan 04/15/1981	CLV 204367	May	
260.		Exhibit 4 -Peccole Ranch Phase One Land Use Case Files	CLV 204375	May	
261.		Exhibit 5 – Peccole Ranch Phase Two Land Use Case Files	CLV204366	May	

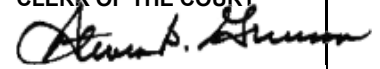
Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
262.		Exhibit 6 -Grant, Bargain and Sale Deed	CLV088319 – CLV088323	May	
263.		Exhibit 7 – Termination of Operating Lease Agreement (Badlands Golf Club)	LO 0016180 (A-17-758528-J Confidential and Privileged NRCP 26c)	May	
264.		Exhibit 9 – Operating Agreement of Queensridge Towers LLC	None	May	
265.		Exhibit 10 – Option to Purchase Real Property	CLV 307031 – CLV 307034	May	
266.		Exhibit 20 – Planning & Development Department Application/Petition Form	None	May	
267.		Exhibit 21 – Site Plan/Landscape Plan, Townhomes at Rampart and Alta	None	May	
268.		Exhibit 22 – JMA Architecture Studios Letter	None	May	
269.		Exhibit 23 – JMA Architecture Studios Letter	None	May	
270.		Exhibit 24 – Peccole Nevada Letter	None	May	

Attachment 1:  
Landowners' 16.1(a)(3)(A)(iii) Document-Exhibit List

Exhibit No.	Document Name/Type	Sub-Document Name/Type	Bate Stamp # (if available)	Will Use/ May Use	Objection Yes/No
271.		Exhibit 25 – JMA Architecture Studios Letter	None	May	
272.		Exhibit 33 - E-mail	LO 0021073	May	
273.		Exhibit 34 – E-mail	PNC 001326- PNC 001327	May	
274.		Exhibit 35 – E-mail and Purchase and Sale Agreement	LO 0025688 - 0025717 (A-17-758528-J Confidential and Privileged NRCIP 26c)	May	
275.		Exhibit 37 – E-mail and Purchase and Sale Agreement	LO 0026221 - 0026248 (A-17-758528-J Confidential and Privileged NRCIP 26c)	May	
276.		Exhibit 41 – E-mail	LO 0018596 - 0018597 (A-17-758528-J Confidential and Privileged NRCIP 26)	May	
277.		Exhibit 42 – Lot Line Adjustment Agreement	LO 0021863 – 0021869 (A-17-758528-J Confidential and Privileged NRCIP 26)	May	
278.		Exhibit 47 – E-mail	PNC 001603 – 001605	May	
279.		Exhibit 51 – Grant, Bargain, Sale Deed	None	May	
280.		Exhibit 52 – Record of Survey	None	May	
281.		Exhibit 53 – Minutes of Special Meeting of Board of Directors of Peccole-Nevada Corporation	LO 00037342-37343 (Confidential A-17-758528-J)	May	

# **EXHIBIT “2”**



1 **OBJ**

2 Bryan K. Scott (NV Bar No. 4381)  
3 Philip R. Byrnes (NV Bar No. 166)  
4 Rebecca Wolfson (NV Bar No. 14132)  
5 LAS VEGAS CITY ATTORNEY'S OFFICE  
6 495 South Main Street, 6th Floor  
7 Las Vegas, Nevada 89101  
8 Telephone: (702) 229-6629  
9 Facsimile: (702) 386-1749  
10 bscott@lasvegasnevada.gov  
11 pbyrnes@lasvegasnevada.gov  
12 rwolfson@lasvegasnevada.gov

13 (Additional Counsel Identified on Signature Page)

14 *Attorneys for City of Las Vegas*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 180 LAND CO LLC, a Nevada limited liability  
18 company, FORE STARS, LTD., a Nevada limited  
19 liability company and SEVENTY ACRES, LLC, a  
20 Nevada limited liability company, DOE  
21 INDIVIDUALS I-X, DOE CORPORATIONS I-X,  
22 and DOE LIMITED LIABILITY COMPANIES I-X,

23 Defendants,

24 v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS'  
OBJECTIONS TO PRETRIAL  
DISCLOSURES PURSUANT TO  
NRCP 16.1(a)(3)**

23 Pursuant to NRCP 16.1(a)(3), Defendant City of Las Vegas ("Defendant"), by and through  
24 its counsel of record the law firms of McDonald Carano LLP, Las Vegas City Attorney's Office  
25 and Shute, Mihaly and Weinberger, LLP, hereby makes the following objections to pretrial  
26 disclosures:

27 ...

28 ...

**I. OBJECTIONS TO DEFENDANTS' PROPOSED TRIAL EXHIBITS**

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
3.	Map or different properties		LO 00000001	Relevance; Lack of Foundation; Authenticity
4.	EHB Years in the Neighborhood		LO 0034766	Relevance; Incomplete; Prejudicial
5.	Appraisal report prepared by Tio DiFederico		TDG Rpt 000001-000136	Hearsay
6.		Professional Qualification of Tio S. DiFederico MAI	TDG Rpt 000111-000113	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
7.		Appraisal Certification of Tio DiFederico MAI	TDG Rpt 000114	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
8.		Testimony of Depositions Tio S. DiFederico, MAI	TDG Rpt 000115	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
9.		Legend of Photographs taken during August 12, 2020 site inspection	TDG Rpt 000033	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
10.		Subject Photographs	TDG Rpt 000034-000039	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
11.		Assessor parcel Map 138-31-2&138-31-3	TDG Rpt 000046	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
12.		Before Condition aerial	TDG Rpt 000045	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
13.		Assessor's Parcel Map 138-31-2	TDG Rpt 000047	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
14.		Assessor's parcel Map 138-31-3	TDG Rpt 000048	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
15.		Site Plan for 61 Custom Home Lots (prepared by GCW 10/24/2017)	TDG Rpt 000049-000050	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
16.		Site Plan for 16 Custom Home Lots (prepared by GCW 10/13/2020)	TDG Rpt 000051	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
17.		Site Plan for 7 Custom Home Lots	TDG Rpt 000052	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
18.		Comparable Land Sales Chart	TDG Rpt 000069	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
19.		Comparable Land Sales Map	TDG Rpt 000070	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
20.		Comparable Land Sale 1	TDG Rpt 000071	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
21.		Comparable Land Sale 2	TDG Rpt 000072	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
22.		Comparable Land Sale 3	TDG Rpt 000073	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
23.		Comparable Land Sale 4	TDG Rpt 000074	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
24.		Comparable Land Sale 5	TDG Rpt 000075	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
25.		Summary of Just Compensation Due Chart	TDG Rpt 000101, 103	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
26.		Land Value Conclusion	TDG Rpt 000084	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
27.		Summary of Salient Facts	TDG Rpt 000007	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
28.		Southern Nevada Coincident Index	TDG Rpt 000017	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
29.		Southern Nevada Leading Index	TDG 000018	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
30.		Southern Nevada Construction Index	TDG 000019	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
31.		Southern Nevada Tourism Index	TDG 000020	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
32.		Market Area Analysis	TDG 000023	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
33.		Income Approach – Before Condition charts and analysis and conclusion	TDG Rpt 000091-95	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete
34.		Golf Course Closure Letters, Par 4	LO 001106-001107	Relevance; Authenticity; Hearsay
35.		Golf Course Closure Letter, Elite	LO 001108	Relevance; Authenticity; Hearsay
36.		Elite Golf Deposition, Keith Flatt	LO 001109 – 001159	Relevance; Hearsay
37.		Summary of Just Compensation Due to the Property Owner Due to the City's Actions	TDG Rpt 000101	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete; Lack of Foundation
38.		Conclusion of Just Compensation	TDG Rpt 000103	Relevance; Prejudicial; Duplicative; Hearsay; Incomplete; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
39.	Appraisal work file of Tio DiFederico		TDG WF 000001-006593; FP WF 000001-000456	Relevance; Improper Designation of entire file as a single exhibit; Hearsay
40.		Zoning Verification Letter	TDG WF 000028	Relevance; Duplicative
41.		LVMC 19.10.050	TDG WF 000050	Incomplete; Best Evidence Rule
42.		The Summit newspaper article	TDG WF 000134-136	Relevance Hearsay Incomplete
43.		75% up newspaper article	TDG WF 000138-139	Relevance Hearsay Incomplete
44.		The New Vision	TDG WF 000145-153, 005804-5811	Relevance; Lack of Foundation; Hearsay; Incomplete
45.		LVMC 19.12 – entire section	TDG WF 05523-5603	Relevance; Lack of Foundation
46.		Summit Lot Sales Chart	TDG WF 005786-5788	Relevance; Lack of Foundation; Authenticity
47.		Ridges / QR Lot Sales Chart	TDG WF 005789-5790	Relevance; Lack of Foundation
48.		Land Sales Adjustment Grid	TDG WF 005802	Relevance; Lack of Foundation; Authenticity; Incomplete
49.		7 Lots Index	TDG WF 006137-6140	Relevance; Lack of Foundation; Authenticity Incomplete; Hearsay

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
50.		Drainage feasibility report	TDG WF 006141-6149	Relevance; Lack of Foundation; Opinion Testimony Authenticity Incomplete; Hearsay
51.		Geotechnical Engineering Report	TDG WF 006150-6167	Relevance; Lack of Foundation; Opinion Testimony Authenticity Incomplete; Hearsay
52.		Water Pressure Maps	TDG WF 006168-6169	Relevance; Lack of Foundation; Authenticity; Hearsay
53.		Sewer Map	TDG WF 006170	Relevance; Lack of Foundation; Authenticity; Hearsay
54.		GCW Report	TDG WF 006172-6185	Relevance; Lack of Foundation; Authenticity; Hearsay
55.		Landscape Cost Estimate	TDG WF 006196	Relevance; Lack of Foundation; Hearsay; Opinion
56.		16 Lots Index and attached documents and cost comparison chart	TDG WF 006206-6249	Relevance; Lack of Foundation; Authenticity Incomplete; Hearsay

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
57.		61 Lots Index and attached documents and cost comparison chart	TDG WF 006251-6339	Relevance; Lack of Foundation; Authenticity Incomplete; Hearsay
58.		Las Vegas Luxury Market on the Rise article	TDG WF 006415-6422	Relevance; Hearsay
59.	Yohan Lowie's Work File		YL WF 000001 – YLWF 000818	Improper Designation of Entire Work File
60.		Site Plan	YL WF 000001	Relevance; Lack of Foundation; Authenticity; Duplicative
61.		180 Land Cost Comparison 6 16 7	YL WF 000002	Relevance; Lack of Foundation; Hearsay; Opinion Testimony
62.		Commercial Projects List	YL WF 000003	Relevance; Authenticity; Prejudicial
63.		Commercial Projects Map	YL WF 000004 – YLWF 000005	Relevance; Authenticity; Prejudicial
64.		Discovery Lands Summit Club Sells Custom Lots from \$3 to \$10 million LVRJ	YL WF 000006 – YL WF 000010	Relevance; Hearsay
65.		Hutchison Office Deed	YL WF 000011- YL WF 000014	Relevance
67.		Calida PSA RA	YL 000050 – YL WF 000084	Relevance
68.		PSA Intermountain Health	YL WF 000084 – YL WF 000105	Relevance

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
69.		The New Vision	YL WF 000106-000207	Relevance; Lack of Foundation; Hearsay; Incomplete
70.		QT Appraisal	YL WF 000208-000339	Relevance
71.		Valbridge Appraisal	YL WF 000340-000429	Relevance
72.		Panther Alta Corner Deed	YL WF 000430 – YL WF 000435	Relevance
73.		Panther Hualapai Deed	YL WF 000436 – YL WF 000445	Relevance
74.		Queensridge Home list and map	YL WF 000446-000447	Relevance; Authenticity; Prejudicial; Lack of Foundation
75.		Photos of Projects completed by EHB	YL WF 000448-000462	Relevance; Authenticity; Prejudicial; Lack of Foundation
76.		Yohan Deposition – Binion	YL WF 000463 – YL WF 000517	Relevance; Hearsay; Incomplete; Authenticity
77.		Back Up Data for Damages Disclosed in Mr. Lowie's testimony disclosure - \$1,450,173.84	YL WF 000518 – 000695 (A summary will also be provided)	Relevance; Lack of Foundation; Authenticity; Opinion Testimony
78.		35 acre Lots breakdown	YL WF 000696	Relevance; Lack of Foundation; Authenticity; Opinion Testimony
79.		CMA SUMMARY / Land	YL WF 000697 – YL WF 000700	Relevance; Lack of Foundation; Authenticity
80.		RAS to DC Rampart Grant Bargain and Sale Deed	YL WF 000701 – YL WF 000776	Relevance; Lack of Foundation; Authenticity

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
81.		Design – Build Lease	YL WF 000777 – YL WF 000818	Relevance; Lack of Foundation; Authenticity
82.	Frank Pankratz Work File		FP WF 000001 – FP WF 000456	Improper Designation of Entire Work File
83.		Cost Summary – 7 Lots	FP WF 000003	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
84.		Preliminary Site Plan	FP WF 000004	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
85.		Drainage	FP WF 000005 – 000007	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
86.		Soils & Other Suitability	FP WF 000008	Relevance; Lack of Foundation; Authenticity; Hearsay; Opinion Testimony; Duplicative
87.		Hydraulic Grade Lines	FP WF 000009 – 000010	Relevance; Authenticity; Hearsay; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
88.		Sewer	FP WF 000011	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
89.		Traffic	FP WF 000012	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
90.		Wastewater	FP WF 000013	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
91.		Soils Report Part 1	FP WF 000014 – 000030	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
92.		Soils Report Part 2	FP WF 000031 – 000055	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
93.		Soils Report Part 3	FP WF 000056 – 000074	Relevance; Hearsay; Lack of Foundation; Opinion Testimony; Incomplete
94.		CTS Firm Overview	FP WF 000075 – 000078	Relevance; Lack of Foundation; Authenticity; Hearsay; Prejudicial



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
95.		CTS Firm Overview (supplemental)	FP WF 000079	Relevance; Lack of Foundation; Authenticity; Hearsay; Prejudicial
96.		Existing Sewer	FP WF 000080	Relevance; Lack of Foundation; Authenticity; Hearsay
97.		LVVWD Pressure Zones	FP WF 000081	Relevance; Lack of Foundation; Authenticity; Hearsay
98.		Prelim Grading Plan – Color	FP WF 000082	Relevance; Lack of Foundation; Authenticity; Hearsay
99.		Prelim Grading Plan - B&W	FP WF 000083	Relevance; Lack of Foundation; Authenticity; Hearsay
100.		Prelim Site Plan	FP WF 000084	Relevance; Lack of Foundation; Authenticity; Hearsay
101.		Sewer	FP WF 000085	Relevance; Lack of Foundation; Authenticity; Hearsay
102.		Water	FP WF 000086	Relevance; Lack of Foundation; Authenticity; Hearsay
103.		Storm Drain	FP WF 000087	Relevance; Lack of Foundation; Authenticity; Hearsay

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
104.		Roadways	FP WF 000088	Relevance; Lack of Foundation; Authenticity; Hearsay
105.		Landscaping	FP WF 000089	Relevance; Lack of Foundation; Authenticity; Hearsay
106.		Walls	FP WF 000090	Relevance; Lack of Foundation; Authenticity; Hearsay
107.		Grading Details and Sections	FP WF 000091	Relevance; Lack of Foundation; Authenticity; Hearsay
108.		GCW Firm overview	FP WF 000092	Relevance; Hearsay; Authenticity; Lack of Foundation; Prejudicial
109.		GCW Firm Overview (supplemental)	FP WF 000093 - 000094	Relevance; Hearsay; Authenticity; Lack of Foundation; Prejudicial
110.		Aggregate Cost Estimate	FP WF 000095 – 000099	Relevance; Hearsay; Authenticity; Lack of Foundation
111.		Aggregate Company Overview	FP WF 000100	Relevance; Hearsay; Authenticity; Lack of Foundation Prejudicial

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
112.		Hirschi Company Reference Letter	FP WF 000101 - 000102	Relevance; Hearsay; Authenticity; Lack of Foundation Prejudicial
113.		Engineering & Mapping Proposal	FP WF 000103 – 000108	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion testimony
114.		Bond Estimate	FP WF 000109 – 000116	Relevance; Authenticity; Lack of Foundation; Hearsay;
115.		Cost Estimate	FP WF 000117	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion testimony
116.		NVE Planning Memo	FP WF 000118	Relevance; Authenticity; Lack of Foundation; Hearsay
117.		15% Cost increase description	FP WF 000119 – 000120	Relevance; Hearsay
118.		STF INC. Firm Overview	FP WF 000121	Relevance; Authenticity; Lack of Foundation; Hearsay
119.		Landscaping Cost Estimate	FP WF 000127	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion Testimony

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
120.		Plan Check Fee Schedule	FP WF 000128	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion Testimony
121.		Water Fee Schedule	FP WF 000129	Relevance; Authenticity; Lack of Foundation; Hearsay; Opinion Testimony
122.		Mark Fakler Resume	FP WF 000130 - 000132	Relevance; Authenticity; Lack of Foundation; Hearsay; Prejudicial
123.		Telephone and Cable Cost Estimate	FP WF 000133 – 000134	Relevance; Authenticity; Lack of Foundation; Hearsay; Prejudicial
124.		Tand Company Overview	FP WF 000135	Relevance; Authenticity; Lack of Foundation; Hearsay; Prejudicial
125.		Cost Summary – 16 Lots	FP WF 000138	Relevance; Lack of Foundation; Hearsay; Authenticity
126.		Prelim Site Plan	FP WF 000139	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
127.		Drainage	FP WF 000140 – 000142	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
128.		Soils & Other Suitability	FP WF 000143	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
129.		Hydraulic Grade Lines	FP WF 000144-000145	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
130.		Sewer	FP WF 000146	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
131.		Traffic	FP WF 000147	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
132.		Waste Water	FP WF 000148	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
133.		Soils Report Part 1	FP WF 000149 – 000165	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
134.		Soils Report Part 2	FP WF 000166 – 000190	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
135.		Soils Report Part 3	FP WF 000191 – 000209	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
136.		CTS Firm Overview	FP WF 000210-000213	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
137.		CTS Firm Overview (Supplemental)	FP WF 000214	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
138.		Existing Sewer	FP WF 000215	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
139.		LVVWD Pressure Zones	FP WF 000216	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
140.		Prelim Grading Plan – Color	FP WF 000217	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
141.		Prelim Grading Plan – B&W	FP WF 000218	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
142.		Prelim Site Plan	FP WF 000219	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
143.		Sewer	FP WF 000220	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
144.		Water	FP WF 000221	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
145.		Storm Drain	FP WF 000222	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
146.		Roadways	FP WF 000223	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
147.		Landscaping	FP WF 000224	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
148.		Walls	FP WF 000225	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
149.		Grading Detail and Sections	FP WF 000226	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
150.		GCW Firm Overview	FP WF 000227	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
151.		GCW Firm Overview (supplemental)	FP WF 000228-000229	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
152.		Aggregate Cost Estimate	FP WF 000230 – 000234	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
153.		Aggregate Company Overview	FP WF 000235	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
154.		Hirschi Company Reference Letter	FP WF 000236 - 000237	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
155.		Engineering & mapping Proposal	FP WF 000238	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
156.		Bond Estimate	FP WF 000244-000251	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
157.		Cost Estimate	FP WF 000252	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
158.		NVE Planning Memo	FP WF 000253	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
159.		15% Cost Increase Description	FP WF 000254 – 000255	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
160.		STF In Firm Overview	FP WF 000256	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
161.		Natural Gas Cost Estimate	FP WF 000257 – 00258	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
162.		15% Cost Increase Description	FP WF 000259 – 000260	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
163.		STF Inc. Firm Overview	FP WF 000261	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
164.		Landscaping Cost Estimate	FP WF 000262	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
165.		Plan Check Fees Schedule	FP WF 000263	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
166.		Water Fees Schedule	FP WF 000264	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
167.		Mark Fakler Resume	FP WF 000265-000267	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
168.		Telephone and Cable Cost Estimate	FP WF 000268 – 000269	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
169.		Tand Company Overview	FP WF 000270	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
	61 Lots Work File		FP WF 000271 - 000456	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
170.		Cost Summary – 61 Lot	FP WF 000273	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
171.		Approved SDR, TMP & Landscaping Plan	FP WF 000274 – 000289	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
172.		Staff Report: SDR, TMP, WVR, GPA	FP WF 000290 – 000315	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
173.		SDR Approval	FP WF 000316 – 000320	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
174.		TMP Approval	FP WF 000321 – 000322	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
175.		WVR Approval	FP WF 000323 – 000324	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
176.		Drainage	FP WF 000325 - 000327	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
177.		Soils & Other Suitability	FP WF 000328	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
178.		Hydraulic Grade Lines	FP WF 00329 – 000330	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
179.		Sewer	FP WF 000331	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
180.		Traffic	FP WF 000332	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
181.		Wastewater	FP WF 000333	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
182.		Soils Report Part 1	FP WF 000334 - 000350	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
183.		Soils Report Part 2	FP WF 000351 - 000375	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
184.		Soils Report Part 3	FP WF 000376 – 000394	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
185.		CTS Firm Overview	FP WF 000395 – 000398	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
186.		CTS Firm Overview (supplemental)	FP WF 000399	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
187.		Existing Sewer	FP WF 000400	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
188.		LVVWD Pressure Zones	FP WF 000401	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
189.		Prelim Grading Plan – Color	FP WF 000402	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
190.		Prelim Grading Plan – B&W	FP WF 000403	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
191.		Sewer	FP WF 000404 – 000405	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
192.		Water	FP WF 000406	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
193.		Storm Drain	FP WF 000407	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
194.		Roadways	FP WF 000408	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
195.		Landscaping	FP WF 000409	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
196.		Walls	FP WF 000410	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation



Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
197.		Grading Details and Sections	FP WF 000411	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
198.		GCW Firm Overview	FP WF 000412	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
199.		GCW Firm Overview (Supplemental)	FP WF 000413 – 000414	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
200.		Aggregate Cost Estimate	FP WF 000415 - 000419	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
201.		Aggregate Company Overview	FP WF 000420	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
202.		Hirschi Company Reference Letter	FP WF 000421 - 000422	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
203.		Engineering & Mapping Proposal	FP WF 000423 – 000428	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
204.		Bond Estimate	FP WF 000429 – 000436	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
205.		NVE Cost Estimate	FP WF 000437	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
206.		NVE Planning Memo	FP WF 000438	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
207.		15% Cost Increase Description	FP WF 000439 – 000440	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
208.		STF INC Firm Overview	FP WF 000441	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
209.		SWG Cost Estimate	FP WF 000442 – 000443	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
210.		15% Cost Increase Description	FP WF 000444 – 000445	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
211.		STF Inc. Firm Overview	FP WF 000446	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
212.		Landscaping Cost Estimate	FP WF 000447	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
213.		Landscaping Cost Estimate Memo	FP WF 000448	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

Exhibit No.	Document Name/Type	Sub-Document	Bate Stamp	Objection
214.		Plan Check Fees Schedule	FP WF 000449	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
215.		Water Fees Schedule	FP WF 000450	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
216.		Mark Fakler Resume	FP WF 000451 – 000453	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
217.		Telephone and Cable Cost Estimate	FP WF 000454 – 000455	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation
218.		Tand Company Overview	FP WF 000456	Relevance; Hearsay; Authenticity; Opinion Testimony; Lack of Foundation

DATED this 18th day of October 2021.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

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

LAS VEGAS CITY ATTORNEY'S OFFICE  
Bryan K. Scott (NV Bar No. 4381)  
Philip R. Byrnes (NV Bar No. 166)  
Rebecca Wolfson (NV Bar No. 14132)  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101

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

*Attorneys for City of Las Vegas*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 18th day of October, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' OBJECTIONS TO PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

# **EXHIBIT “3”**

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

**PTD**  
Bryan K. Scott (NV Bar No. 4381)  
Philip R. Byrnes (NV Bar No. 166)  
Rebecca Wolfson (NV Bar No. 14132)  
LAS VEGAS CITY ATTORNEY'S OFFICE  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 229-6629  
Facsimile: (702) 386-1749  
bscott@lasvegasnevada.gov  
pbyrnes@lasvegasnevada.gov  
rwolfson@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

*Attorneys for City of Las Vegas*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Defendants,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS' PRETRIAL  
DISCLOSURES PURSUANT TO  
NRCP 16.1(a)(3)**

Pursuant to NRCP 16.1(a)(3), Defendant City of Las Vegas ("Defendant"), by and through  
its counsel of record the law firms of McDonald Carano LLP, Las Vegas City Attorney's Office  
and Shute, Mihaly and Weinberger, LLP, hereby makes the following pretrial disclosures:

...

...

...



**I. NRCP 16.1(a)(3)(A)(i) WITNESSES**

**A. Witnesses Defendant Expects to Present at Trial:**

1. William Bayne  
c/o Donald "Butch" Williams  
Williams Starbuck  
612 South Tenth Street  
Las Vegas, Nevada 89101
2. NRCP 30(b)(6) designee for Peccole-Nevada Corporation  
c/o Donald "Butch" Williams  
Williams Starbuck  
612 South Tenth Street  
Las Vegas, Nevada 89101
3. Peter Lowenstein  
c/o Las Vegas City Attorney's Office  
495 S. Main Street, 6<sup>th</sup> Floor  
Las Vegas, Nevada 89101
4. Seth Floyd  
c/o Las Vegas City Attorney's Office  
495 S. Main Street, 6<sup>th</sup> Floor  
Las Vegas, Nevada 89101
5. Yohan Lowie  
c/o Law offices of Kermitt L. Waters  
704 South Ninth Street  
Las Vegas, Nevada 89101
6. Keith Harper  
c/o Valuation Consultants  
4200 Cannoli Circle  
Las Vegas, Nevada 89102

**B. Witnesses who have been subpoenaed for trial:**

At this time, Defendant has not subpoenaed any witnesses for trial. Defendant reserves the right to update this information in advance of trial.

**C. Witnesses who may be called if the need arises:**

If the need arises, Defendant reserves the right to call any witness (including persons most knowledgeable and custodians of records) listed in Defendant's NRCP 16.1 initial disclosures and all supplemental NRCP 16.1 disclosures thereafter.

Defendant reserves the right to call any witness (including persons most knowledgeable and custodians of records) listed in its initial NRCP 16.1 disclosures and all supplemental NRCP 16.1

1 disclosures thereafter.

2 Defendant reserves the right to call any witness disclosed by any other party in this action,  
3 and to use any exhibit for purposes of rebuttal or impeachment.

4 Defendant reserves the right to object to any such witnesses identified by any other party to  
5 this matter.

6 Defendant reserves the right to cross-examine any such witnesses called by any other party  
7 to this matter.

8 Defendant reserves its right to amend or supplement its list of witnesses in advance of trial.

9 **II. NRCP 16.1(a)(3)(A)(ii) Witnesses to be Presented by Deposition**

10 At this time, Defendant does not anticipate presenting any other witnesses by deposition but  
11 reserves the right to present the testimony of William Bayne and Yohan Lowie by deposition.  
12 Defendant reserves its right to amend or supplement its list in advance of trial.

13 **III. NRCP 16.1(a)(3)(A)(iii) Exhibits.**

14 In accordance with NRCP 16.1(a)(3)(C), attached hereto as **Exhibit 1** is a spreadsheet  
15 identifying each exhibit Defendant expects to offer at trial or, if the need arises, may offer at trial.  
16 Defendant reserves the right to use as a trial exhibit any document disclosed or exchanged during  
17 discovery. Defendants further reserve the right to use any exhibits disclosed by any other party in  
18 this action, and to use any exhibit for purposes of rebuttal or impeachment.

19 Defendant anticipates using demonstrative exhibits in addition to evidentiary exhibits  
20 identified in Exhibit 1.

21 Defendant reserves the right to amend this list of exhibits following any future supplemental  
22 disclosure of documents from Defendants.

23 Defendant reserves the right to amend and supplement this disclosure in advance of trial.

24 ...

25 ...

26 ...

27 ...

28 ...

1 **IV. OBJECTIONS TO PRETRIAL DISCLOSURES**

2 All objections to other parties' pretrial disclosures will be made within the timeline provided  
3 in NRCp 16.1(a)(3).

4 DATED this 15th day of October 2021.

5 McDONALD CARANO LLP

6 By: /s/ George F. Ogilvie III

7 George F. Ogilvie III (NV Bar No. 3552)  
8 Christopher Molina (NV Bar No. 14092)  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

9 LAS VEGAS CITY ATTORNEY'S OFFICE  
10 Bryan K. Scott (NV Bar No. 4381)  
11 Philip R. Byrnes (NV Bar No. 166)  
12 Rebecca Wolfson (NV Bar No. 14132)  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101

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

16 *Attorneys for City of Las Vegas*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 15th day of October, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

# **EXHIBIT “1”**

City of Las Vegas' Pretrial Disclosures

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
500	Uniform Standards of Professional Appraisal Practice (USPAP)				
501	NRS 645C.650				
502	NRS 278.250(2)				
503	NAC 645C.400(1)				
504	2020-2021 USPAP Standards 104				
505	Standards Rule 1-2(e)(i) and 2-2(a)(iv)				
506	Declaration of Peter Lowenstein Declaration in Support of City of Las Vegas' Opposition to Developer's Briefs re Evidentiary Hearing and Renewed Motion for Summary Judgment				
507	Exhibit 1 to Peter Lowenstein Declaration: Diagram of Existing Access Points	CLV259288-CLV259292			
508	Exhibit 2 to Peter Lowenstein Declaration: July 5, 2017 Email from Mark Colloton	CLV259175-CLV259176			
509	Exhibit 3 to Peter Lowenstein Declaration: June 28, 2017 Permit application	CLV219705-CLV219707			
510	Exhibit 4 to Peter Lowenstein Declaration: June 29, 2017 Email from Mark Colloton re Rampart and Hualapai Access point letter	LO00002365			
511	Exhibit 5 to Peter Lowenstein Declaration: August 24, 2017 Letter from City Department of Planning	CLV259272			
512	Exhibit 6 to Peter Lowenstein Declaration: July 26, 2017 Email from Peter Lowenstein re Wall Fence	LO00002345-LO00002352			
513	Exhibit 7 to Peter Lowenstein Declaration: August 10, 2017 Application for Walls, Fences, or Retaining Walls; related materials	CLV259081; CLV221343-CLV221348			
514	Exhibit 8 to Peter Lowenstein Declaration: August 24, 2017 Email from Steve Gebeke re Meeting today regarding building permits C17-01047 & L17-00198	CLV281721-CLV281736			

City of Las Vegas' Pretrial Disclosures

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
515	Exhibit 9 to Peter Lowenstein Declaration: Bill No. 2018-24				
516	Exhibit 10 to Peter Lowenstein Declaration: Las Vegas City Council Ordinance No. 6056 and excerpts from Land Use & Rural Neighborhoods Preservation Element	CLV055480- CLV055489			
517	Exhibit 11 to Peter Lowenstein Declaration: documents submitted to Las Vegas Planning Commission by Jim Jimmerson at February 14, 2017 Planning Commission meeting-Purchase Agreement, Earnest Money Receipt and Escrow Instructions				
518	Chris Molina Declaration in Support of City of Las Vegas' Opposition to Developer's Briefs re Evidentiary Hearing and Renewed Motion for Summary Judgment	PNC000660- PNC000676			
519	Fully Executed Copy of Membership Interest Purchase and Sale Agreement for Fore Stars Ltd.				
520	Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property				
521	Reference map of properties involved in transactions between Developer and Peccole family	LO 0035305; LO 0035320			
522	Excerpt of appraisal for One Queensridge place dated October 13, 2005	CLV113932- CLV113976			
523	Site Plan Approval for One Queensridge Place (SDR-4206)	LO 00037571			
524	Securities Redemption Agreement dated September 14, 2005 (QT)	LO 00037485			
525	Securities Purchase Agreement dated September 14, 2005 (QT)	LO 0018451- LO 0018488			

City of Las Vegas' Pretrial Disclosures

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
526	Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005	LO 0021093- LO 0021144			
527	Settlement Agreement and Mutual Release dated June 28, 2013	LO 0018030; LO 0035970-			
528	June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course	LO 0025237- LO 0025263			
529	July 25, 2014 email and initial draft of Golf Course Purchase Agreement	LO 0025688- LO 0025717			
530	August 26, 2014 email from Todd Davis and revised purchase agreement	LO 0018059- LO 0018061			
531	August 27, 2014 email from Billy Bayne regarding purchase agreement	PNC000756- PNC000757			
532	September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal	PNC001648- PNC001650			
533	November 3, 2014 email regarding BGC Holdings LLC	LO 0018675 - LO 0018693			
534	November 26, 2014 email and initial draft of stock purchase and sale agreement	LO 0018821- LO 0018822			
535	December 1, 2015 emails regarding stock purchase agreement	LO 0018083- LO 0018084			
536	December 1, 2015 email and fully executed signature page for stock purchase agreement	LO 0018103- LO 0018104			
537	December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements	LO 0018142- LO 0018144			
538	February 19, 2015 emails regarding notes and clarifications to purchase agreement	LO 0024792			
539	February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	LO 0024862- LO 0024863			



City of Las Vegas' Pretrial Disclosures

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
540	February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	PNC000373-PNC000380			
541	Fully executed Membership Interest Purchase Agreement for WRL LLC	LO 0022045-LO 0022049			
542	June 12, 2015 email regarding clubhouse parcel and recorded parcel map	CLV034540 - CLV034543			
543	Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.				
544	Record of Survey for Hualapai Commons Ltd.				
545	Deed from Hualapai Commons Ltd. to EHC Hualapai LLC	CLV307081-CLV307097			
546	Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC				
547	City of Las Vegas' First Set of Interrogatories to Plaintiff				
548	Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3 <sup>rd</sup> Supplement				
549	City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff				
550	Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff				
551	September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents				
552	First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff				
553	Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time				

Exhibit Number	Description of Exhibit	Bates		Will Use/May Use	Objection Yes/No
554	Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time				
555	February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time				
556	April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order				
557	April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021				
558	Hydrologic Criteria and Drainage Design Manual, Section 200				
559	Hydrologic Criteria and Drainage Design Manual, Standard Form 1				
560	Hydrologic Criteria and Drainage Design Manual, Standard Form 2	LO35 00007687- LO35 00007690			
561	Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study	CLV038859; CLV038861; CLV038869; CLV038874- CLV038876			
562	Excerpts from Peccole Ranch Master Plan Phase II regarding drainage and open space				
563	Aerial photos and demonstrative aids showing Badlands open space and drainage system	CLV219166- CLV219165			
564	August 16, 2016 letter from City Streets & Sanitation Manager regarding Badlands Golf Course Drainage Maintenance	LO 0034791			
565	Excerpt from EHB Companies promotional materials regarding security concerns and drainage culverts				
566	Supplemental Declaration of Seth T. Floyd	CLV305002			
567	1981 Peccole Property Land Use Plan	CLV033591- CLV033672			

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
568	1985 Las Vegas General Plan	CLV307308- CLV307403			
569	1975 General Plan	CLV033177- CLV033404			
570	Planning Commission meeting records regarding 1985 General Plan	CLV035040			
571	1986 Venetian Foothills Master Plan	CLV036241			
572	1989 Peccole Ranch Master Plan	CLV214946			
573	1990 Master Development Plan Amendment	CLV053463- CLV053480			
574	Citizen's Advisory Committee records regarding 1992 General Plan	CLV052990- CLV053035			
575	1992 Las Vegas General Plan	CLV052989			
576	1992 Southwest Sector Map	CLV208167- CLV208174			
577	Ordinance No. 5250 (Adopting 2020 Master Plan)	CLV063654- CLV063736			
578	Las Vegas 2020 Master Plan	CLV208807- CLV208873			
579	Ordinance No. 5787 (Adopting 2005 Land Use Element)	CLV064163- CLV064550			
580	2005 Land Use Element	CLV212603- CLV212607			
581	Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)	CLV072957- CLV073056			
582	2009 Land Use and Rural Neighborhoods Preservation Element	CLV072504- CLV072513			
583	Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element)	CLV305605- CLV305615			
584	Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)	CLV07653- CLV07251			

City of Las Vegas' Pretrial Disclosures

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
585	2018 Land Use & Rural Neighborhoods Preservation Element				
586	Supplemental declaration of Seth Floyd	CLV052989			
587	Southwest Sector Land Use Map (1992)	CLV305855- CLV305857			
588	10/10/1991 Planning Commission Minutes	CLV305858- CLV305862			
589	10/22/1991 Planning Commission Minutes	CLV305863- CLV305865			
590	11/14/1991 Planning Commission Minutes	CLV305866- CLV305868			
591	11/26/1991 Planning Commission Minutes	CLV305869- CLV305876			
592	12/12/1991 Planning Commission Minutes	CLV053459- CLV053460			
593	12/12/1991 Planning Commission Resolution adopting 1992 General Plan	CLV305900			
594	2/5/1992 City Council Meeting Minutes	CLV305877- CLV305897			
595	2/18/1992 Recommending Committee Meeting Minutes	CLV305898- CLV305899			
596	2/19/1992 City Council Meeting Minutes	CLV218628- CLV218629			
597	3/12/1992 Planning Commission Meeting Minutes	CLV218636			
598	3/16/1992 Recommending Committee Meeting Minutes	CLV218630- CLV218632			
599	4/1/1992 City Council Meeting Minutes	CLV208383- CLV208385			
600	Ordinance No. 3636 (adopting new general plan)	CLV085846- CLV085849			

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
601	2/13/1992 Citizens Advisory Committee Meeting Minutes	CLV053471- CLV053480			
602	3/27/1991 Citizens Advisory Committee Mailout				
603	Supplemental Declaration of Seth Floyd				
604	Master planned communities with R-PD Zoning				
605	General Plan Maps for Master Planned Communities with R-PD zoning	FORE000798			
606	Ownership Chart				
607	Interrogatories - Verification dated August 1, 2019				
608	Interrogatories-Verification dated October 31, 2019				
609	Interrogatories 2nd Supplement				
610	Interrogatories 3rd Supplement	LO00037065- LO00037068			
611	June 25, 2015, Letter for the Calida Group	LO00037070- LO00037093			
612	Agreement of Purchase and Sale of Property				
613	Declaration of Yohan Lowie	CLV125530			
614	Response to zoning request				
615	Declaration of Yohan Lowie	CLV305596- 305600			
616	Record of Survey Boundary Line Adjustment				
617	Video clips	LO 00037589- LO 00037608			
618	Term Sheet	LO 00037571- LO00037588			
619	Securities Redemption Agreement dated September 14, 2005	LO00037485- LO00037522			
620	Securities Purchase Agreement (QT)	LO00037547- LO00037559			

City of Las Vegas' Pretrial Disclosures

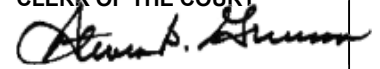
Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
621	Securities Redemption Agreement	LO00037459- LO00037484			
622	Securities Purchase Agreement (GW)	LO00037560- LO00037567			
623	Securities Redemption Agreement	LO00037523- LO00037546			
624	Securities Purchase Agreement (SH)	LO00037620- LO00037657			
625	Badlands Golf Course Clubhouse Improvements Agreement				
626	Complaint	PNC000677- PNC000682			
627	Settlement Agreement	CLV303971- CLV30972			
628	Restrictive Covenant	LO0021095- LO0021144			
629	Settlement Agreement and Mutual Release	PNC000748			
630	Email re GC LOI	LO 0018062- LO 0018064			
631	E-mail re PSA	PNC000756- PNC000757			
632	Email re BCG Holdings Leeter (Section 3 Right of First Refusal	PNC000082			
633	Letter to Assaf Lang from William Bayne	LO 0018675- LO 0018693			
634	Email from Henry Lichtenberger to William Bayne re Badlands Stock Purchase and Sale Agreement	PNC001241- PNC001242			
635	Email re PSAs	LO 00008835- LO 00008839			
636	December 23, 2014 letter from Bobby Weed Golf Design	LO0009125			

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use		Objection Yes/No
637	Email re Revised Badlands Ageement	LO 00008833- LO 00008834 CLV094446;			
638	Badlands Conceptual Land Use Scenario	CLV099259- CLV099262; CLV100503			
639	February 16, 2017 City Coucil letters	LO 00037105			
640	May 27, 2016 letter from the Calida Group	CLV204367			
641	Peccole Generalized Land Use Plan 4/15/1981	CLV204367			
642	Peccole Generalized Land Use Plan 4/15/1981	CLV204367			
643	Peccole Generalized Land Use Plan 4/15/1981	CLV204375			
644	Peccole Ranch Phase One Land Use Case Files	CLV204366			
645	Peccole Ranch Phase Two Land Use Case Files	CLV088319- CLV088323			
646	Grant, Bargain and Sale Deed	LO 0016180- LO 0016183			
647	Termination of Operating Lease Agreement (Badlands Golf Club)	TDG Rpt 00001- TDG Rpt 00010			
648	Appraisal of Real Property - The DiFederico Group				
649	Operating Agreement of Queensridge Towers LLC	CLV307031- CLV307034			
650	Option to Purchase Real Property	LO 00037620- LO 00037657			
651	Badlands Golf Course Clubhouse Improvements Agreement				
652	BGC Holdings. V. Fore Stars Complaint	CLV110460			
653	Planning & Development Department Application/Petition form	CLV126707			
654	Site Plan/Landscape Plan, Townhomes at Rampart and Alta	CLV110456			
655	JM A Architecture Studios Letter	CLV110434			
656	JM A Architecture Studios Letter	CLV137869			
657	Peccole Nevada Letter	CLV281626			

City of Las Vegas' Pretrial Disclosures

Exhibit Number	Description of Exhibit	Bates	Will Use/May Use	Objection Yes/No
658	JMA Architecture Studios Letter	LO 0021863- LO 0021869		
659	Lot Line Adjustment Agreement	LO 0021073		
660	Email from Henry Lichtenberger re Executed IDB	PNC001326- PNC001327		
661	Email from Henry Lichtenberger re Golf Course Purchase Agreement	LO 0026221- LO 0026248		
662	Email from Todd Davis to Henry Lichtenberger re Purchase and Sale Agreement	LO 0018596- LO 0018597		
663	Email from Henry Lichtenberger to Todd Davis re BGC Holdings Waiver	PNC001603		
664	Email from Yohan Lowie to Billy Bayne re PSAs	LO 00004063- LO 00004079		
665	Membership Interest Purchase and Sale Agreement			
666	Grant, Bargain and Sale Deed			
667	Record of Survey	LO 00037342- LO 00037343		
668	Minutes of Special Meeting of Board of Directors of Peccole-Nevada Corporation 216	VC000001- VC000130		
669	Valuation Consultants Appraisal	PNC001744- PNC001825		
670	Western Valuation Advisors Appraisal	TDG Rpt 000001- TDG Rpt 000136		
671	Tio Federico's Expert Report			





1 **RPLY**

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

3 Kermitt L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

9 Autumn L. Waters, Esq., Bar No. 8917

10 autumn@kermittwaters.com

11 704 South Ninth Street

12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 ***Attorneys for Plaintiff Landowner***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

16 180 LAND CO., LLC, a Nevada limited liability  
17 company, FORE STARS Ltd., DOE  
18 INDIVIDUALS I through X, ROE  
19 CORPORATIONS I through X, and ROE  
20 LIMITED LIABILITY COMPANIES I through  
21 X,

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**PLAINTIFF LANDOWNERS' REPLY IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT ON JUST  
COMPENSATION AND OPPOSITION  
TO THE CITY'S COUNTERMOTION  
FOR SUMMARY JUDGMENT  
ON ORDER SHORTENING TIME**

OST Hearing Date: October 26, 2021

OST Hearing Time: 9:05 a.m.

**I. INTRODUCTION**

25 The City concedes that summary judgment is appropriate and, in moving for a  
26 countermotion for summary judgment, the City further concedes that there is no genuine dispute  
27 as to any material fact related to the fair market value of the Subject Property on the date of value.  
28 NRCP 56. Instead, the City uses its opposition and countermotion to again reargue its failed

1 opposition to the Landowners’ Motion to Determine Property Interest and Motion to Determine  
2 Take. As this Court is well aware, determining whether a taking has occurred requires a two-step  
3 inquiry. First, the Court determines **as a matter of the law** the property interest the Landowners  
4 had prior to government interference. Second, the Court determines **as a matter of law** whether  
5 there has been a taking of that property interest. After that two-step process, if a taking is  
6 determined as it was here, then the quantum of “just compensation” must be ascertained. Nevada  
7 has adopted strict rules for determining “just compensation.” First, an expert appraiser must be  
8 retained who provides an appraisal report that determines the “highest and best use” of the  
9 property.<sup>1</sup> NRS 37.039, NRS 37.095, Nev. Const. Art. 1, sec. 22 (2) and (3). Second, based on  
10 that highest and best use, the expert appraiser must determine the “highest price” the property  
11 would bring on the open market. Nev. Const. Art. 1, sec. 22 (5). Third, the expert appraiser must  
12 make all of these determinations as of the statutorily mandated date of valuation. NRS 37.120  
13 provides that the date of valuation “must” be the date of service of summons, unless there has been  
14 a qualifying delay of more than 2 years and the owner moves for a trial date of value. In this case,  
15 the date of service of summons is September 14, 2017, therefore, only a valuation as of this date  
16 is relevant to determine just compensation.

17         The only new argument the City advances in its opposition and counter-motion is a grossly  
18 inaccurate date of value argument. Accordingly, this Reply will first address the date of value  
19 used in inverse condemnation cases in Nevada. The City also misrepresents Mr. DiFederico’s  
20 appraisal report, but the appraisal speaks for itself and ultimately, as the City has no evidence of  
21 value relevant to the date of value in this case, summary judgment is appropriate in the  
22 Landowners’ favor.

23 ///

24 \_\_\_\_\_  
<sup>1</sup> Nevada law also allows the landowner to testify to value.

1     **II.     LAW**

2             **A.     The Date of Value is Governed by NRS 37.120 - the Date of Service of**  
3             **Summons.**

4             It has long been the law in the State of Nevada that the date of value in both eminent domain  
5             and inverse condemnation actions is the statutory date of value under NRS 37.120. “Inverse  
6             condemnation proceedings are the constitutional equivalent to eminent domain actions and are  
7             governed by the same rules and principles that are applied to formal condemnation proceedings.”  
8             Clark County v. Alper, 100 Nev. 382, 391 (1984).

9             NRS 37.120 provides that in actions such as this “[t]o assess compensation and damages  
10            as provided in NRS 37.110, the date of the first service of the summons is the date of valuation.”  
11            “NRS 37.120 requires the measure of compensation to be based upon the value of the land taken  
12            on the date of service of the summons.” City of Elko v. Zillich, 100 Nev. 366, 369, 683 P.2d 5, 7  
13            (1984).

14            The City completely misrepresents the holding of Alper in an effort to falsely bolster its  
15            erroneous legal argument. Specifically, the City on page 9 of its opposition and counter-motion  
16            represents the following to this Court:

17                    “In a regulatory taking case, the date of value is the date on which the public agency  
18                    imposed the regulation that allegedly has taken the property. County of Clark v.  
19                    Alper, 100 Nev. 382, 391, 685 P.3d 943, 949 (1984) (holding that in an inverse  
20                    condemnation case, the date of value is the date ‘*that the property was taken*’).”  
21                    City Opp at 9:6-9.(emphasis added)

22            That, however, is absolutely not the holding of Alper. The language that the City quotes “*that the*  
23            *property was taken*” and the position the City advances is actually the same position the County  
24            of Clark advanced in Alper and the Court rejected in Alper. The Nevada Supreme Court, in the  
25            section titled “*Time of Valuation*” holds as follows:

                  “The county appeals from the lower court's ruling that the property should be valued  
                  as of the time that the action was brought to trial rather than the time *that the*  
                  *property was taken*. The district court based its holding on NRS 37.120(1)(b),

1 which allows valuation to be made as of the time of trial in formal eminent domain  
2 proceedings not brought to trial within a two-year period. In response, the County  
3 argues that NRS 37.120(1)(b) is applicable only to eminent domain proceedings  
4 brought by the condemnor under the authority of NRS Chapter 37 and is not  
5 applicable to inverse condemnation suits. We agree with the district court that the  
6 Alper parcel should properly be valued [pursuant to NRS 37.120].” Alper at 391

7 As this Court will recall, Alper is an inverse condemnation case. And, the same argument the City  
8 is advancing here, that the Landowners’ value evidence is improper because it is as of the statutory  
9 date of value and not the date of taking, is the same argument the County made in Alper and the  
10 same argument the Court rejected. The date of value in an inverse condemnation action is the date  
11 of service of summons pursuant to NRS 37.120. NRS 37.120 also provides that if the case is not  
12 brought to trial within 2 years and owner moves for a trial date of value, the court must determine  
13 who is primarily responsible for the delay, and if the government is primarily responsible, then the  
14 owner is entitled to a trial date of value. The Landowners have not moved the Court for such a  
15 ruling here. Accordingly, the correct date of value in this case, which was used by Mr. DiFederico  
16 is September 14, 2017, the date of service of summons. NRS 37.120.

17 In Alper the date of taking was stipulated to by the parties as being June 1, 1972 yet  
18 pursuant to NRS 37.120 the property was valued as of the date of trial in 1980. Alper at 391-392.  
19 In Sisolak the date of taking was in 1990 when height restriction ordinance 1221 was adopted, yet  
20 pursuant to NRS 37.120 the property was valued in May 2001, the date of service of summons.  
21 See Sisolak at 1118; see also *Exhibit 4* attached hereto which is the certificate of service for the  
22 Complaint in Sisolak.

23 Accordingly, there can be no doubt that in Nevada the date of value in an inverse  
24 condemnation action is controlled by NRS 37.120.<sup>2</sup> Here, that makes the date of value September

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<sup>2</sup> The City’s argument that each taking claim has a different date of value is unworkable. This is why Nevada has NRS 37.120 as it defines the date of value and that date of value applies to the entire action.

1 14, 2017, which is the date used by Landownera appraiser, Mr. DiFederico. As the City has no  
2 valuation of the Subject Property as of September 14, 2017, the Landowners are entitled to  
3 summary judgment in their favor.

4 **B. The City's PR-OS Argument Has Been Rejected And Thus, Mr. DiFederico**  
5 **Was Not Required to Adopt the City's Failed Argument.**

6 The City also argues that Mr. DiFederico's appraisal is not appropriate because Mr.  
7 DiFederico did not adopt the City's failed PR-OS litigation position. The City has argued ad  
8 nauseum that "PR-OS [in the City's Master Plan] does not permit housing as a matter of law."  
9 City Opp at 3:14, *passim*. Mr. DiFederico is not required to adopt the City's failed litigation  
10 position in valuing the Subject Property. Mr. DiFederico has appraised property in the City of Las  
11 Vegas for 36 years and has always relied on zoning to determine the legally permissible uses of  
12 property, consistent with this Court's holding. Furthermore, there is no doubt that Mr.  
13 DiFederico's analysis is consistent with this Court's ruling that the zoning of the Subject Property  
14 is R-PD7; that single family and multi family are the "legally permissible" uses of R-PD7 zoned  
15 properties; and "the permitted uses by right of the 35 Acre Property are single family and multi  
16 family residential." See October 12, 2020 FFCL Re: Property Interest. Specifically, in  
17 determining the legally permissible uses of the Subject Property Mr. DiFederico found that:

18 **"LEGALLY PERMISSIBLE**

19 In the before condition, the subject site consisted of an irregular-shaped 34.07-acre  
20 site located at the southeast corner of Hualapai Way and Alta Drive. The site is  
21 bordered by custom and semi-custom homes which are in the guard gated  
22 Queensridge development. The northwest and southwest corners of Alta and  
23 Hualapai are improved with similar custom homes in the Summerlin master  
24 planned community. The property's zoning was addressed in a hearing before  
District Court Judge Timothy C. Williams. The Court concluded that the subject  
property had been hard zoned R-PD7 since at least 1990 and the Las Vegas  
Municipal Code Section LVMC 19.10.050 lists single family and multi-family  
residential as the legally permissible uses on R-PD7 zoned properties. The Court  
Ordered that: 1) the 35 Acre Property is hard zoned R-PD7 at all relevant times  
herein; and 2) the permitted uses by right of the 35 Acre Property are single-family  
and multi-family residential." *This is consistent with my investigation as well.*  
*Exhibit 2 at TDG Rpt 000054. Emphasis added.*

1           Accordingly, Mr. DiFederico, consistent with this Court’s ruling and his own investigation,  
2 concluded that the legally permissible use of the Subject Property was residential consistent with  
3 zoning, and thereby rejected the City’s failed PR-OS / Master Plan argument.

4           As this Court may recall, all three City departments (including the tax department)  
5 determined that zoning is of the highest order, that zoning must be used to decide property rights  
6 in the City, and that zoning takes precedence over any inconsistent master plan. In fact, all three  
7 City departments agreed that the Subject Property is zoned R-PD7 and the R-PD7 grants the  
8 Landowners the right to develop residentially with the City tax department using the R-PD7 zoning  
9 to find the use is residential and collecting \$1 million per year in real estate taxes from the  
10 Landowners on this basis. The City even provided the Landowners a Zoning Verification Letter  
11 prior to the Landowners acquiring the Subject Property assuring the Landowners that they could  
12 utilize their property consistent with its zoning – for residential development.

13           This Court rejected the City’s invitation to apply the City’s PR-OS argument, because 1)  
14 zoning must be used to decide the property interest in an eminent domain case; 2) NRS 278.349  
15 provides that “zoning……. takes precedence,” and, 3) the City never showed during any of the  
16 hearings where the NRS Chapter 278 requirements to place the PR-OS on the 35 Acre Property  
17 were followed, namely, notice to the landowner. Moreover, this PR-OS argument has been  
18 presented 13 times, 12 times it has been rejected. The one time the City’s PR-OS argument was  
19 accepted was in the Crockett Order and that was reversed on appeal.

20           *Also, the exact same argument the City is making in its countermotion was presented to*  
21 *the Nevada Supreme Court and rejected in the case of City of Las Vegas v. Bustos, 119 Nev.*  
22 *360 (2003).* As this Court will recall, the Bustos case is cited in this Court’s October 12, 2020,  
23 FFCL re: property interest. Judge Jones also cites the Bustos decision in his FFCL re: property  
24 interest in the 17 Acre Case, as well as the Nevada Supreme Court in the Sisolak case, as a basis

1 to decide the property interest issue in those cases. In Bustos, Judge Porter held that the legally  
2 permissible uses of Mr. Bustos's property was commercial based on **zoning**, even though that  
3 commercial use was prohibited by the City's Master Plan. Bustos, at 352. That legally permissible  
4 use based on zoning was then used to value Mr. Bustos's property. Id. In Bustos, the City of Las  
5 Vegas made the same argument it is making to this Court - the City of Las Vegas argued that under  
6 petition for judicial review law, Judge Porter was bound by the City's Master Plan, the Master  
7 Plan designated Mr. Bustos's property as R-4 (residential) and the Master Plan R-4 (residential)  
8 designation prohibits commercial zoning on Mr. Bustos's property. The Nevada Supreme Court  
9 rejected the City's argument finding "the [petition for judicial review] cases cited by the City are  
10 inapposite because they address the enforcement of a master plan; not whether the district court  
11 may take into account the reasonable probability of rezoning in an eminent domain case." The  
12 Court held it would have been error to rely on the City's Master Plan and, instead, held "the district  
13 court properly considered the current zoning of the property, as well as the likelihood of a zoning  
14 change." Id., at 362.

15 The City further misrepresents the facts in an effort to twist the Nevada Supreme Court's  
16 opinion, reversing the Crocket Order in its favor, but to no avail, as the *simple truth* shows the  
17 fallacy in the City's position. The City wants the Court to believe that the Nevada Supreme Court's  
18 opinion reversing Judge Crockett stands for the position that "the Badlands cannot be developed  
19 with housing without an amendment to the General Plan" City Opp. at 6:16-17. Were the City, in  
20 any way, loyal to the truth, it would have mentioned that an amendment to the General Plan is only  
21 a requirement when seeking a zoning change, which is what was before the Supreme Court when  
22 it reviewed the Crocket Order. No zone change was sought here, as none was needed. The 35  
23 Acre Property has been zoned for residential use for decades, so no General Plan amendment was  
24 needed, nor did the Supreme Court ever state that under the General Plan housing is not allowed

1 on the 17 Acre Property,<sup>3</sup> that is what Judge Crocket ruled and the Supreme Court reversed that  
2 order.

3 The property interest issue has been decided. The legally permissible use of the Subject  
4 Property is residential. Mr. DiFederico has valued the Subject Property as residential. The City  
5 has no value of the Subject Property or expert testimony whatsoever. Therefore the Landowners'  
6 Motion for Summary Judgment should be granted in the amount of \$34,135,000.00.

7 **C. The City's Effort to Reargue the Taking Through Mr. DiFederico Must Be**  
8 **Rejected.**

9 The City argues that the appraiser is required to "address" the various takings claims. City  
10 Opp. at 10-12. The City is wrong. Whether the City has inversely condemned the Landowners'  
11 Property is a question of law. Sisolak at 1121. This Court held four days of hearings and generally<sup>4</sup>  
12 concluded there has been a taking **as a matter of law**, because:

13 1) the City has denied all use of the Landowners' Property so that the Property is  
14 preserved in an undeveloped state for the surrounding owners' use (viewshed, open space,  
15 recreation) and the City adopted two Bills to implement the preservation of the Landowners'  
16 Property for this public use; and,

17 2) the City adopted a Bill that forces the Landowners to acquiesce to a physical  
18 occupation of their Property by forcing the Landowners to allow "*ongoing public access*" onto  
19 their Property or be subjected to criminal penalties.

20 This Court concluded - - **"We've heard a lot of evidence in this case, and I think under**  
21 **the facts and circumstances, it's pretty clear that we had a taking."**

22  
23  
24 <sup>3</sup> The 17 Acre Property involved a zone change from R-PD7 to R-3 allowing more residential  
density. That is not at issue here.

<sup>4</sup> Pending formal order with more detail.



1           Therefore, the only remaining issue is the value of the Subject Property as of the date of  
2 value. Nevada has adopted specific rules for how to value property in these proceedings. First, as  
3 explained, there must be an appraisal report. NRS 37.039, NRS 37.095, Nev. Const. Art. 1, sec.  
4 22(2). And, the report must comply with the Uniform Standard of Professional Appraisal Practice.  
5 NAC 645C. Second, the report must provide a value of the Subject Property as of the proper date  
6 of value. NRS 37.120 and Alper state this must be as of the date of the service of summons or the  
7 date of trial (if requested by the owners and so ordered by the Court).

8           Only Mr. DiFederico has done this, the City has no admissible evidence of value.  
9 Therefore, summary judgment in the Landowners favor for the value provided by Mr. DiFederico  
10 is appropriate.

11 **III. CONCLUSION**

12           For the foregoing reasons the Landowners' Motion for Summary Judgment should be  
13 granted in the amount of \$34,135,000.00, and the City's Countermotion should be denied.

14           Respectfully submitted this 25<sup>th</sup> day of October, 2021.

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

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

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**McDONALD CARANO LLP**  
George F. Ogilvie III, Esq.  
Christopher Molina, Esq.  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)  
[cmolina@mcdonaldcarano.com](mailto:cmolina@mcdonaldcarano.com)

**SHUTE, MIHALY & WEINBERGER, LLP**  
 Andrew W. Schwartz, Esq.  
 Lauren M. Tarpey, Esq.  
 396 Hayes Street  
 San Francisco, California 94102  
[schwartz@smwlaw.com](mailto:schwartz@smwlaw.com)  
[ltarpey@smwlaw.com](mailto:ltarpey@smwlaw.com)

10

# Exhibit 4

**ORIGINAL**  
*District Court*

Clark County, Nevada

**FILED**

STEVE SISOLAK

Plaintiff,

vs.

MCCARRAN INTERNATIONAL AIRPORT  
and CLARK COUNTY, a political subdivision  
of the State of Nevada,

Defendants.

SERVE ON: RANDALL WALKER  
DIRECTOR OF AVIATION  
5757 Wayne Newton Blvd.  
Las Vegas, Nevada  
(702) 261-5211

**SUMMONS**

A434337  
XIII

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, who address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

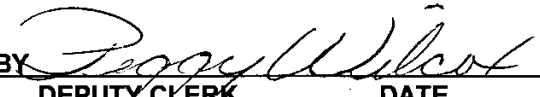
3. If you intend to seek the advise of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer to the complaint.

Issued at the direction of:

**SHIRLEY B. PARRAQUIRRE, Clerk of the Court**

  
**LAURA WIGHTMAN FITZSIMMONS #1263**  
Attorney for Plaintiff  
704 South 9<sup>th</sup> Street  
Las Vegas, Nevada 89101  
(702) 382-5333

BY   
**DEPUTY CLERK** **DATE**  
County Courthouse  
200 South Third Street **PEGGY WILCOX**  
Las Vegas, Nevada 89155

**RECEIVED**  
MAY 09 2001  
COUNTY

**MAY 07 2001**

**19635**

STATE OF Nevada )  
 ) ss.  
COUNTY OF Clark )

AFFIDAVIT OF SERVICE

Randall Walker Julie Killeen  
BEING DULY SWORN SAYS: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. The Affiant received 2 copy(ies) of the Summons and Complaint, \_\_\_\_\_

\_\_\_\_\_ on the 8<sup>th</sup> day of May, 2001 and served the same on the 8<sup>th</sup> day of May, 2001 by \_\_\_\_\_

(Affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant \_\_\_\_\_ at (state address) \_\_\_\_\_.
2. serving the defendant Randall Walker by personally delivering and leaving a copy with Linus Hyl, a person of suitable age and discretion residing at the defendant's usual place of abode located at: (state address) 500 South Grand Central Parkway Las Vegas, NV 89155.  
(Use paragraph 3 for service upon agent, completing A or B)
3. serving the defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_.
  - a. with \_\_\_\_\_ as \_\_\_\_\_, an agent lawfully designated by statute to accept service of process:
  - b. with \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

\_\_\_\_\_ ordinary mail  
\_\_\_\_\_ certified mail, return receipt requested  
\_\_\_\_\_ registered mail, return receipt requested

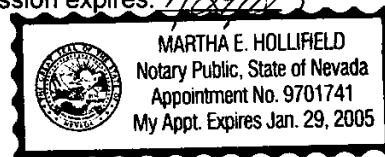
addressed to the defendant \_\_\_\_\_ at the defendant's last known address which is (state address) \_\_\_\_\_.

Julie Killeen  
Signature of person making service

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of May, 2001.

Martha E. Hollifield  
NOTARY PUBLIC in and for said County and State

My commission expires: 1/29/05  
(SEAL)



**Clark County, Nevada**

**STEVE SISOLAK**

**Plaintiff,**

**vs.**

**MCCARRAN INTERNATIONAL AIRPORT  
and CLARK COUNTY, a political subdivision  
of the State of Nevada,**

### Defendants.

) SERVE ON: DARIO HERRERA  
 ) c/o CLERK, COUNTY COMMISSIONERS OFFICE  
 ) 500 SOUTH GRAND CENTRAL PARKWAY  
 ) Las Vegas, Nevada 89155

CLERK

# SUMMONS

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW**

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, who address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advise of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer to the complaint.

**Issued at the direction of:**

**SHIRLEY B. PARRAQUIRRE, Clerk of the Court**

**LAURA WIGHTMAN WITZSIMMONS #1263**  
Attorney for Plaintiff  
704 South 9<sup>th</sup> Street  
Las Vegas, Nevada 89101  
(702) 382-5333

**RECEIVED**

MAY 09 2001

**COUNTY CLERK**

BY

**DEPUTY CLERK**

DATE \_\_\_\_\_

County Courthouse  
200 South Third Street

**PEGGY WILCOX**

Las Vegas, Nevada 89155 MAY 07 2001

19637

STATE OF Nevada )  
 ) ss.  
COUNTY OF Clark )

AFFIDAVIT OF SERVICE

Julie Killeen, BEING DULY SWORN SAYS: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. The Affiant received 2 copy(ies) of the Summons and Complaint, \_\_\_\_\_

\_\_\_\_\_ on the 8<sup>th</sup> day of May, 20 01 and served the same on the 8<sup>th</sup> day of May, 20 01 by \_\_\_\_\_

(Affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant \_\_\_\_\_  
at (state address) \_\_\_\_\_.
2. serving the defendant Dario Herrera by personally delivering and leaving a copy with Linus Hyl, a person of suitable age and discretion residing at the defendant's usual place of abode located at: (state address) 500 South Grand Central Parkway Las Vegas, NV 89155.  
(Use paragraph 3 for service upon agent, completing A or B)
3. serving the defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_.

- a. with \_\_\_\_\_ as \_\_\_\_\_, an agent lawfully designated by statute to accept service of process:
- b. with \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

\_\_\_\_\_ ordinary mail  
\_\_\_\_\_ certified mail, return receipt requested  
\_\_\_\_\_ registered mail, return receipt requested

addressed to the defendant \_\_\_\_\_ at the defendant's last known address which is (state address) \_\_\_\_\_

Julie Killeen  
Signature of person making service

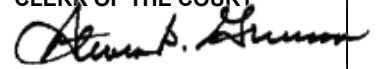
SUBSCRIBED AND SWORN to before me this

8<sup>th</sup> day of May, 2001

Martha E. Hollifield  
NOTARY PUBLIC in and for said County and State

My commission expires: 1/29/05  
(SEAL)





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

Kermitt L. Waters, Esq., Bar No. 2571  
kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032  
jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887  
michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917  
autumn@kermittwaters.com

704 South Ninth Street  
Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

180 LAND CO., LLC, a Nevada limited liability  
company, FORE STARS Ltd., DOE  
INDIVIDUALS I through X, ROE  
CORPORATIONS I through X, and ROE  
LIMITED LIABILITY COMPANIES I through  
X,

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**NOTICE OF ENTRY OF:**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
GRANTING PLAINTIFFS  
LANDOWNERS' MOTION TO  
DETERMINE TAKE AND FOR  
SUMMARY JUDGMENT ON  
THE FIRST, THIRD AND FOURTH  
CLAIMS FOR RELIEF;**

**AND**

**DENYING THE CITY OF LAS VEGAS'  
COUNTERMOTION FOR SUMMARY  
JUDGMENT ON THE SECOND CLAIM  
FOR RELIEF**

///



1           **PLEASE TAKE NOTICE** that the Findings of Fact and Conclusions of Law Granting  
2 Plaintiffs Landowners’ Motion to Determine Take and for Summary Judgment on the First, Third  
3 and Fourth Claims for Relief; and Denying the City of Las Vegas’ Countermotion for Summary  
4 Judgment on the Second Claim for Relief (“FFCL”) was entered on the 25<sup>th</sup> day of October, 2021.

5           A copy of the FFCL is attached hereto.

6           DATED this 25<sup>th</sup> day of October, 2021.

7

**LAW OFFICES OF KERMITT L. WATERS**

8

/s/ Autumn Waters

9

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

10

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

11

704 South Ninth Street

Las Vegas, Nevada 89101

12

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

13

***Attorneys for Plaintiffs Landowners***

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17

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and  
3 that on the 25<sup>th</sup> day of October, 2021, pursuant to NRCP 5(b), a true and correct copy of the  
4 foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF**  
5 **LAW GRANTING PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE TAKE**  
6 **AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS**  
7 **FOR RELIEF; AND DENYING THE CITY OF LAS VEGAS' COUNTERMOTION FOR**  
8 **SUMMARY JUDGMENT ON THE SECOND CLAIM FOR RELIEF** was served on the  
9 below via the Court's electronic filing/service system and/or deposited for mailing in the U.S.  
10 Mail, postage prepaid and addressed to, the following:

11 **McDONALD CARANO LLP**

12 George F. Ogilvie III, Esq.  
13 Christopher Molina, Esq.  
14 2300 W. Sahara Avenue, Suite 1200  
15 Las Vegas, Nevada 89102  
16 [gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)  
17 [cmolina@mcdonaldcarano.com](mailto:cmolina@mcdonaldcarano.com)

18 **LAS VEGAS CITY ATTORNEY'S OFFICE**

19 Bryan Scott, Esq., City Attorney  
20 Philip R. Byrnes, Esq.  
21 Rebecca Wolfson, Esq.  
22 495 S. Main Street, 6<sup>th</sup> Floor  
23 Las Vegas, Nevada 89101  
24 [bscott@lasvegasnevada.gov](mailto:bscott@lasvegasnevada.gov)  
[pbyrnes@lasvegasnevada.gov](mailto:pbyrnes@lasvegasnevada.gov)  
[rwolfson@lasvegasnevada.gov](mailto:rwolfson@lasvegasnevada.gov)

**SHUTE, MIHALY & WEINBERGER, LLP**

Andrew W. Schwartz, Esq.  
Lauren M. Tarpey, Esq.  
396 Hayes Street  
San Francisco, California 94102  
[schwartz@smwlaw.com](mailto:schwartz@smwlaw.com)  
[ltarpey@smwlaw.com](mailto:ltarpey@smwlaw.com)

/s/ Sandy Guerra

an employee of the Law Offices of Kermitt L. Waters

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

Kermitt L. Waters, Esq., Bar No. 2571  
kermitt@kermittwaters.com  
James J. Leavitt, Esq., Bar No. 6032  
jim@kermittwaters.com  
Michael A. Schneider, Esq., Bar No. 8887  
michael@kermittwaters.com  
Autumn L. Waters, Esq., Bar No. 8917  
autumn@kermittwaters.com  
704 South Ninth Street  
Las Vegas, Nevada 89101  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

180 LAND CO., LLC, a Nevada limited liability  
company, FORE STARS Ltd., DOE  
INDIVIDUALS I through X, ROE  
CORPORATIONS I through X, and ROE  
LIMITED LIABILITY COMPANIES I through  
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Plaintiffs,

vs.

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

Defendant.

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

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**GRANTING PLAINTIFFS  
LANDOWNERS' MOTION TO  
DETERMINE TAKE  
AND FOR SUMMARY JUDGMENT ON  
THE FIRST, THIRD AND FOURTH  
CLAIMS FOR RELIEF;**

**AND**

**DENYING THE CITY OF LAS VEGAS'  
COUNTERMOTION FOR SUMMARY  
JUDGMENT ON THE SECOND CLAIM  
FOR RELIEF**

**Hearing Dates and Times:**

September 23, 2021 at 1:30 p.m.;  
September 24, 2021 at 9:30 a.m.; and  
September 27 & 28, 2021 at 9:15 a.m.

1 Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter  
2 “Landowners”) brought Plaintiffs Landowners’ Motion to Determine Take and for Summary  
3 Judgment on the First, Third, and Fourth Claims for Relief, with Kermitt L. Waters, Esq., Autumn  
4 L. Waters, Esq., James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with in-  
5 house counsel Elizabeth Ghanem Ham, Esq. appearing for and on behalf of the Landowners, and  
6 George F. Ogilvie III, Esq., Christopher Molina, Esq. of McDonald Carrano, LLP along with  
7 Andrew Schwartz, Esq., of Shute, Mihaly and Weinberger, LLP with Philip R. Byrnes, Esq. and  
8 Rebecca Wolfson, Esq., with the City Attorney’s Office, appearing for and on behalf of the City  
9 of Las Vegas (hereinafter “the City”). The City brought a Countermotion for Summary Judgment  
10 on the Landowners’ Second Claim for Relief.

11 The Court has allowed a full and fair opportunity to brief the matters before the Court by  
12 entering orders that have allowed both the Landowners and the City to submit extensive briefs to  
13 the Court in excess of the EDCR 2.20(a) page limit. The Court has also allowed both parties a full  
14 and fair opportunity to present their evidence and provide extensive oral argument to the Court on  
15 all pending issues during hearings held on September 23, September 24, September 27, and  
16 September 28, 2021. Having reviewed all of the pleadings, including the submitted exhibits, and  
17 having heard extensive arguments and presentation of evidence, the Court hereby enters the  
18 following Findings of Fact and Conclusions of Law:

19  
20 **I.**

21 **INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE**

22 1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation  
23 claim, the court must “undertake two distinct sub-inquiries: “the court must first determine” the  
24 property rights “before proceeding to determine whether the governmental action constituted a  
taking.” ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International

1 Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that  
2 “whether the Government has inversely condemned private property is a question of law that we  
3 review de novo.” Sisolak, at 661. Therefore, this Court decides the property interest issue and the  
4 taking issue. To resolve the four taking claims at issue, the Court relies on United States Supreme  
5 Court and Nevada Supreme Court inverse condemnation and eminent domain precedent. *See*  
6 County of Clark v. Alper, 100 Nev. 382, 391 (1984) (“[I]nverse condemnation proceedings are the  
7 constitutional equivalent to eminent domain actions and are governed by the same rules and  
8 principles that are applied to formal condemnation proceedings.”).

9         2. This court entertained extensive argument on the first sub-inquiry, the property  
10 rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law  
11 Regarding Plaintiff Landowners’ Motion to Determine “Property Interest,” on October 12, 2020  
12 (hereinafter “FFCL Re: Property Interest”).

13         3. In the FFCL Re: Property Interest, this Court held: 1) Nevada eminent domain law  
14 provides that zoning must be relied upon to determine a landowners’ property interest in an  
15 eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7  
16 at all relevant times; 3) the Las Vegas Municipal Code lists single-family and multi-family as the  
17 legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35  
18 Acre Property are single-family and multi-family residential. Exhibit 1.

19         4. The City did not file a timely Eighth Judicial District Court Rule 2.24 motion for  
20 reconsideration of the FFCL Re: Property Interest.

21         5. On March 26, 2021, the Landowners filed Plaintiff Landowners’ Motion to  
22 Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief,  
23 requesting that the Court decide the second sub-inquiry, the take issue, referenced in the Sisolak,  
24 *supra*, case.

6. On April 8, 2021, the City filed a Rule 56(d) motion, requesting that the Court delay hearing the Plaintiff Landowners' Motion to Determine Take until such time as discovery closes and the Court granted the City's request. The City specifically requested additional time to conduct discovery on the economic impact analysis, namely, the potential economic impact of the City's actions on the 35 Acre Property.

7. Discovery closed on July 26, 2021, and the Court set the Landowners' Motion for Summary Judgment on the Landowners' First, Third, and Fourth Claims for Relief and the City's Countermotion for Summary Judgment on the Landowners' Second Claim for Relief for September 23 and September 24, 2021.

8. The Court, in order to allow the City additional time for presentation of evidence and oral argument, added two more days – September 27 and September 28, 2021, to the hearing.

9. Therefore, the Court allowed both parties substantial time to present any and all facts and law they determined were necessary to fully and fairly present their cases to the Court.

## II.

**FINDINGS OF FACT IN REGARD TO THE LANDOWNERS' MOTION FOR  
SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR  
RELIEF**

A.

## THE PROPERTY INTEREST ISSUE

10. Because the City extensively re-presented facts regarding the property interest the Landowners have in the 35 Acre Property during the four days of hearings, the Court will address some of these property interest facts.

///

1 **The Landowners' 35 Acre Property.**

2 11. The Landowners acquired all of the assets and liabilities of Fore Stars Ltd., which  
3 owned five parcels of property, consisting of 250 acres of land ("250 Acres"), of which the  
4 property at issue in this case was a part. Exhibit 44.

5 12. The property at issue in this case is a 34.07 acre parcel of property generally located  
6 near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the  
7 City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005  
8 (hereinafter "35 Acre Property"). At the time of the summary judgment hearing of this matter, the  
9 35 Acre Property was and remains vacant.

10 **The Landowners presented uncontested evidence of the due diligence conducted prior to**  
11 **acquiring ownership of the 35 Acre Property.**

12 13. In 2001, the Landowners principals were advised by the William Peccole Family,  
13 original owners of the 35 Acre Property, that at all times, it was zoned R-PD7, it had rights to  
14 develop, the property was intended for residential development, and the Peccole Family did not  
15 and would never place a deed restriction on the property. Exhibit 34, p. 000734, paras. 4-5.

16 14. Also in 2001, the Landowners confirmed that the CC&Rs for the Queensridge  
17 Community, the community adjacent to the 35 Acre Property, and the disclosures related to the  
18 acquisition of surrounding properties, disclosed that the 35 Acre Property is not a part of the  
19 Queensridge Community, there is no requirement that the 35 Acre Property be used as open space  
20 or a golf course as an amenity for the Queensridge Community, and the 35 Acre Property is  
21 available for "future development." Exhibit 34, 000734, paras. 4-5; Exhibit 38

22 15. In 2006, the Landowners met with Robert Ginzer, a City Planning official, and  
23 confirmed that the 35 Acre Property was zoned R-PD7 and there were no restrictions that could  
24 prevent development of the property. Exhibit 34, p. 000734, para. 6.

1           16.     In 2014, the Landowners met with Tom Perrigo and Peter Lowenstein, the highest  
2 ranking City Planners at that time, and they agreed to perform a study that took three weeks. At  
3 the end of this three week study, the City Planning Department reported that: 1) the 35 Acre  
4 Property is zoned for a residential use, R-PD7, and had vested rights to develop up to 7 residential  
5 units per acre; 2) the zoning trumps everything; and, 3) the owner of the 35 Acre Property can  
6 develop the property. Exhibit 34, p. 000735, para. 8.

7           17.     The City then issued, at the Landowners request, a Zoning Verification Letter, on  
8 December 30, 2014, which states, in part, that: 1) the 35 Acre Property is “zoned R-PD7  
9 (Residential Planned Development District – 7 units per acre;” 2) the “R-PD District is intended  
10 to provide for flexibility and innovation in residential development;” 3) the residential density  
11 allowed in the R-PD District shall be reflected by a numerical designation for that district,  
12 (Example, R-PD4 allows up to four units per gross acre);” and, 4) a “detailed listing of the  
13 permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 (“Las  
14 Vegas Zoning Code”) of the Las Vegas Municipal Code.” Exhibit 134.

15           18.     After obtaining the City’s Zoning Verification Letter, the Landowners closed on  
16 the acquisition of the 35 Acre Property via purchase of the entity Fore Stars, Ltd.. Exhibit 44.

17           19.     The Landowners also presented uncontested evidence of the City’s position of the  
18 validity and application of the R-PD7 zoning to the 35 Acre Property.

19           20.     During the development application process, veteran City Attorney Brad Jerbic  
20 stated, “Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in  
21 and develop.” Exhibit 163, 10.18.16 Special Planning Commission Meeting, p. 005023:3444-  
22 3445.

23           21.     Peter Lowenstein, head City Planner, testified during deposition that “a zone district  
24 gives a property owner property rights.” Exhibit 160, p. 005002:5-6.



1           22.     The City Planning Department provided a recommendation on the Master  
2 Development Agreement (“MDA”) application for the development of the entire 250 Acres,  
3 discussed below, that further confirmed the residential use of the 35 Acre Property. The MDA  
4 application provided for residential development on the 35 Acre Property and the City Planning  
5 Department issued a recommendation of approval for the MDA, finding it “conforms to the  
6 existing zoning district requirements.” Exhibit 77, p. 002671.

7           23.     The City Planning Department provided a recommendation on the 35 Acre Property  
8 stand-alone applications, discussed below, that further confirmed the residential use of the 35 Acre  
9 Property. The 35 Acre applications provided for a 61-lot residential development on the 35 Acre  
10 Property and the City Planning Department issued a recommendation of approval for the  
11 applications, as they were “in conformation with all Title 19 [City Zoning Code] and NRS  
12 requirements for tentative maps.” Exhibit 74, p. 002553.

13           24.     The Clark County Tax Assessor (“Tax Assessor”) confirmed the residential use of  
14 the 35 Acre Property based on R-PD7 zoning. NRS 361.227(1) requires that the tax assessor,  
15 when determining the taxable value of real property, shall appraise the full cash value of vacant  
16 land “by considering the uses to which it may lawfully be put” and “any legal restrictions upon  
17 those uses.” In 2016, the Clark County Tax Assessor (Tax Assessor) applied NRS 361.227(1) to  
18 the 35 Acre Property. Exhibit 120, p. 004222. The Tax Assessor determined the “lawful” use of  
19 the 250 Acres, including the 35 Acre Property, by relying upon the “Zoning Designation ... R-  
20 PD7” and identifying the use of the 250 Acres under this “R-PD7” zoning as “RESIDENTIAL.”  
21 Exhibit 52, p. 001185; Exhibit 51, p. 001182. The Tax Assessor imposed a real estate tax on the  
22 35 Acre Property, based on a residential use, of \$205,227.22 per year. Exhibit 50, p. 001180. It  
23 was undisputed that the Landowners have dutifully paid these annual real estate taxes. The City  
24

1 of Las Vegas City Charter states that, “[t]he County Assessor of the County is, ex officio, the City  
2 Assessor of the City.” Las Vegas City Charter, sections 3.120(1).

3 **The Landowners also presented uncontested evidence that the City has taken the position**  
4 **that the R-PD7 zoning is of the highest order and supersedes any City Master Plan or**  
**General Plan land use designations.**

5 25. On February 14, 2017, City Attorney Brad Jerbic stated at a Planning Commission  
6 meeting, “the rule is the hard zoning, in my opinion, does trump the General Plan designation.”  
7 Exhibit 75, 2.14.17 Planning Commission minutes, p. 002629:1787-1789.

8 26. The City Attorney’s Office submitted pleadings to Nevada District Courts, stating  
9 the City Master Plan “was a routine planning activity that had no legal effect on the use and  
10 development” of properties and “in the hierarchy, the land use designation [on the City Master  
11 Plan] is subordinate to the zoning designation.” Exhibit 156, p. 004925-4926; Exhibit 42, p.  
12 000992:8-12.

13 27. Two City Attorneys submitted affidavits to a Nevada District Court, stating “the  
14 Office of the City Attorney has consistently advised the City Council and the City staff that the  
15 City’s Master Plan is a planning document only.” Exhibits 157 and 158.

16 28. Tom Perrigo, head City Planner, testified in deposition that “if the land use [Master  
17 Plan] and the zoning aren’t in conformance, then the zoning would be the higher order  
18 entitlement.” Exhibit 159, p. 004936, 53:1-4.

19 29. The Landowners further submitted the Declaration of Stephanie Allen, a 17-year  
20 land use attorney in the City of Las Vegas, stating, “During by 17 years of work in the area of land  
21 use, it has always been the practice that zoning governs the determination of how land may be  
22 used. The master plan land use designation has always been considered a general plan document.  
23 I do not recall any government agency or employee ever making the argument that a master plan  
24 land use designation trumps zoning.” Exhibit 195, p. 006088, para 16.

1           30.     Additionally, during discovery, the Landowners requested that the City “[i]dentify  
2 and produce a complete copy of every City of Las Vegas Zoning Atlas Map from 1983 to present  
3 for the area within which the Subject Property is located or which includes the Subject Property  
4 and any drafts thereto, including the entire and complete file in the possession of the City of Las  
5 Vegas, the applications, minutes from the meetings, any and all communications, correspondence,  
6 letters, minutes, memos, ordinances, and drafts related directly or indirectly to these City of Las  
7 Vegas Zoning Atlas Maps from 1983 to present.” The City of Las Vegas’ Fourth Supplement to  
8 its Responses to Requests for Production of Documents, Set One, electronically served, 2.26.20,  
9 11:41 AM, p. 8, Request for Production No. 5.

10           31.     The City did not identify or produce the requested documents on the basis that,  
11 “such records are not proportionate to the needs of the case as the City does not dispute that the  
12 Subject Property is zoned R-PD7.” Id., p. 9.

13 **There is No Basis for This Court to Reconsider its FFCL Re: Property Interest.**

14           32.     The City never requested an appropriate EDCR 2.24 motion to reconsider this  
15 Court’s FFCL Re: Property Interest.

16           33.     Moreover, the facts above confirm this Court’s FFCL Re: Property Interest and the  
17 City failed to present any evidence during the four days of hearings that would persuade the Court  
18 to reconsider its FFCL Re: Property Interest.

19           34.     There are six Nevada Supreme Court cases, three inverse condemnation cases and  
20 three direct eminent domain cases, wherein the Nevada Supreme Court made it clear that the R-  
21 PD7 zoning must be relied upon to determine the Landowners’ property interest in this matter.  
22 McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006); Clark County v. Alper, 100 Nev. 382, 390  
23 (1984); City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); County of Clark v. Buckwalter, 974  
24 P.2d 1162 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh’g

1 sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist.  
2 No. 2, 436 P.2d 813 (Nev. 1968).

3 35. NRS 278.349(3)(e ) further supports the use of the R-PD7 zoning to determine  
4 the property interest issue in this matter, providing, “if any existing zoning ordinance is  
5 inconsistent with the master plan, the zoning ordinance takes precedence.”

6 36. NRS 40.005 also provides that “[i]n any proceeding involving the disposition of  
7 land the court shall consider the lot size and other applicable zoning requirements before ordering  
8 a physical division of the land.” Although not directly on point, this statute shows the Legislature’s  
9 intent to rely on zoning when addressing property rights in the State of Nevada.

10 37. Moreover, in the Sisolak, supra, case, the Nevada Supreme Court held “the first  
11 right established in the Nevada Constitution’s declaration of rights is the protection of a  
12 landowner’s inalienable rights to acquire, possess and protect private property,” that “the Nevada  
13 Constitution contemplates expansive property rights in the context of takings claims through  
14 eminent domain,” and “our state enjoys a rich history of protecting private property owners against  
15 government takings.” Sisolak, supra, 669-670. The Court held that “[t]he term ‘property’ includes  
16 all rights inherent in ownership, including the right to possess, use, and enjoy the property.” Id.,  
17 at 658.

18 38. And, in the very recent United States Supreme Court inverse condemnation case  
19 Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2071 (June 23, 2021), the United States Supreme  
20 Court held that “protection of property rights is ‘necessary to preserve freedom’ and ‘empowers  
21 persons to shape and to plan their own destiny in a world where governments are eager to do so  
22 for them.”

39. Finally, the Court rejects the City's defenses that there is a Peccole Ranch Master Plan that governs the 35 Acre Property and a City of Las Vegas Master Plan/ land use designation of PR-OS that affects this Court's property interest determination.

40. Moreover, the City did not present any evidence of deed restrictions or property encumbrances. Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by “secret intentions” and documents not noticed).

### B.

## THE TAKE ISSUE

41. Having already resolved the property interest issue, the Court will now move to the take issues.

### The Surrounding Property Owners.

42. After acquiring the 35 Acre Property, the Landowners began the process to develop the property for single family and multi-family uses.

43. Vickie DeHart, a Landowner representative, provided an uncontested declaration that on or about December 29, 2015, a representative of the surrounding property owners met with her, bragged that his group is “politically connected” and stated that he wanted 180 acres, with water rights, deeded to him for free and only then would his group “allow” the Landowners to develop the 250 Acres. Exhibit 94, p. 002836.

44. Then City Councilman Bob Beers testified in deposition that he was contacted by a representative of the surrounding property owners and asked “to get in the way of the landowners’ rights.” Exhibit 142, pp. 004586-4587.

45. Yohan Lowie, a Landowner representative, provided an uncontested declaration that within months of acquiring the 250 Acres, a City Councilman contacted him and advised him that a few surrounding homeowners were “demanding that no development occur on the 250 Acre

1 Land,” but if the Landowners handed over 180 acres of their 250 Acres to those homeowners, the  
2 City Councilman “would ‘allow’ me to build ‘anything I wanted’ on 70 of the 250 acres.” Exhibit  
3 35, p. 000741, paras. 5-6.

4 **The City’s Actions to Prevent the Landowners from Using the 35 Acre Property.**

5 **The Landowners’ Development Applications.**

6 46. Immediately after closing on the 250 Acres in early 2015, the Landowners retained  
7 veteran land use attorney, Christopher Kaempfer, to assist with making the applications to the City  
8 for the development of the 250 Acres, including the 35 Acre Property. Exhibit 48, p. 001160,  
9 paras. 6-8. Before Mr. Kaempfer would agree to represent the Landowners on their applications  
10 to develop, he confirmed the development rights as he and his wife live in the adjoining  
11 Queensridge Community. Id. Mr. Kaempfer’s research confirmed the R-PD7 zoning and he was  
12 provided a copy of the City’s Zoning Verification Letter (Exhibit 134). Mr. Kaempfer then met  
13 with Peter Lowenstein of the City of Las Vegas Planning Department “who advised me that the  
14 [250 Acres] could be developed in accordance with the R-PD7 zoning.” Id, para. 7. Mr. Kaempfer  
15 later had a meeting with then City Attorney, Brad Jerbic, and “was informed that the City of Las  
16 Vegas would ‘honor the zoning letter’ provided to the Landowner by the City of Las Vegas.” Id.  
17 The City did not contest this evidence.

18 47. The City also did not contest that, while the Landowners had a vision of how to  
19 develop the Land, the City directed the type of applications necessary for approval of development.  
20 Exhibit 34, p. 000736, para. 11.

21 48. The Landowners submitted uncontested evidence that the City would accept only  
22 one application to develop the 35 Acre Property - a Master Development Agreement that included  
23 all parts of the 250 Acres (“MDA”). Exhibit 34, p. 000737, para. 19; Exhibit 48, pp. 001161-1162,  
24 para. 11-13.

1           49.     Landowner representative, Yohan Lowie’s uncontested declaration provides,  
2     “Mayor Goodman informed [the Landowners during a December 16, 2015, meeting] that due to  
3     neighbors’ concerns the City would not allow ‘piecemeal development’ of the Land and that one  
4     application for the entirety of the 250 Acre Residential Zoned Land was necessary by way of a  
5     Master Development Agreement (“MDA”)” and that during the MDA process, “the City continued  
6     to make it clear to [the Landowners] that it would not allow development of individual parcels, but  
7     demanded that development only occur by way of the MDA.” Exhibit 34, p. 000538, para. 19, p.  
8     000539, para. 24:25-27.

9           50.     Mr. Kaempfer’s uncontested Declaration states: 1) that he had “no less than  
10    seventeen (17) meetings with the [City] Planning Department” regarding the “creation of a  
11    Development Agreement” which were necessitated by “public and private comments made to me  
12    by both elected and non-elected officials that they wanted to see a plan – via a Development  
13    Agreement – for the development of the entire Badlands and not just portions of it;” and, 2) the  
14    City advised him that “[the Landowners] either get an approved Development Agreement for the  
15    entirety of the Badlands or we get nothing.” Exhibit 48, pp. 001161-1162, paras. 11-13.

16          51.     The Landowners opposed the City mandated MDA, arguing that it is not required  
17    by law or code and would increase the time and cost to develop. Exhibit 34, para. 20.

18          52.     Nevertheless, with the City providing only one avenue to development, the  
19    Landowners moved forward with the City’s proposed MDA concept, that included development  
20    of the 35 Acre Property, along with the 17, 65, and 133 Acre properties. Exhibit 34, p. 000737,  
21    para. 20.

22          53.     The MDA process started in or about Spring of 2015 and the uncontested  
23    Declaration of Yohan Lowie states that through this process the City told the Landowners how the  
24    City wanted the 250 Acres developed, which included how the 35 Acre Property would be

1 developed, and the information and documents the City wanted as part of the MDA application  
2 process. Exhibit 34, pp. 000737-738, paras. 20-21.

3 54. The uncontested Declaration of Yohan Lowie further states that the MDA was  
4 drafted almost entirely by the City of Las Vegas and included all of the requirements the City  
5 wanted and required. Exhibit 34, p. 000738, para 22.

6 55. The City of Las Vegas Mayor stated on the record in a City Council meeting that  
7 the City Staff dedicated “an excess of hundreds of hours beyond the full day” working on the  
8 MDA. Exhibit 54, 8.2.17 City Council Meeting, p. 001343:697-701.

9 56. The City also did not contest the Declaration of Yohan Lowie, which states that the  
10 City’s MDA requirements cost the Landowners more than \$1 million over and above the normal  
11 costs for a development application of this type. Exhibit 34, p. 000738, para 21:4-6.

12 57. The uncontested evidence showed that the Landowners agreed to every City  
13 requirement in the MDA, spending an additional \$1 million in extra costs. Exhibit 34, p. 000737,  
14 para. 20:26-27; Exhibit 55, City required MDA concessions signed by Landowners; Exhibit 56,  
15 MDA memos and emails regarding MDA changes.

16 58. The City of Las Vegas Mayor also stated publicly, to the Landowners in a City  
17 Council hearing, “you did bend so much. And I know you are a developer, and developers are not  
18 in it to donate property. And you have been donating and putting back... And it’s costing you  
19 money every single day it delays.” Exhibit 53, 6.21.17 City Council Meeting, p. 001281:2462-  
20 2465. City Councilwoman Tarkanian also commented publicly at that same City Council hearing  
21 that she had never seen anybody give as many concessions as the Landowners as part of the MDA  
22 stating, “I’ve never seen that much given before.” Exhibit 53, p. 001293:2785-2787; p.  
23 001294:2810-2811.



1           59.     Landowner representative, Yohan Lowie, provided testimony that prior to the  
2 MDA being submitted for approval the City required, without limitation, detailed architectural  
3 drawings including 3D digital models for topography, elevations, etc., regional traffic studies,  
4 complete civil engineering packages, master detailed sewer studies, drainage studies, school  
5 district studies. Exhibit 34, p. 000738, para. 21. Mr. Lowie's Declaration further provides, "[i]n  
6 all my years of development and experience such costly and timely requirements are never required  
7 prior to the application approval because no developer would make such an extraordinary  
8 investment prior to entitlements, ie. approval of the application by the City." Id. The City did not  
9 contest this Declaration testimony.

10           60.     The Landowners provided further uncontested evidence that additional, non-  
11 exhaustive City demands / concessions made of the Landowners, as part of the MDA, included: 1)  
12 donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas;  
13 2) building brand new driveways and security gates and gate houses for the Queensridge  
14 Community; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units,  
15 increasing the minimum acreage lot size, and reducing the number and height of the towers.  
16 Exhibit 60, pp. 00001836-1837; Exhibit 54, 8.2.17 City Council Meeting, p. 001339, lines 599-  
17 601; Exhibit 53, 6.21.17 City Council Meeting, p. 001266:2060-2070; Exhibit 55.

18           61.     Further uncontested evidence showed that, during the MDA process the City  
19 required approximately 700 changes and 16 new and revised versions of the MDA.<sup>1</sup>

20           62.     The evidence showed that the Landowners communicated their frustration with  
21 how long the MDA process was taking, stating: "[w]e [the Landowners] have done that through  
22 many iterations, and those changes were not changes that were requested by the developer. They  
23

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24 <sup>1</sup> Exhibits 58 and 59, final page of exhibits shows the over 700 changes. Exhibit 61, 16 versions  
of the MDA generated from January, 2016 to July, 2017.

1 were changes requested by the City and/or through homeowners [surrounding neighbors] to the  
2 City.” Exhibit 54, 8.2.17 City Council Meeting, p. 001331:378-380. The City Attorney also  
3 recognized the “frustration” of the Landowners due to the length of time negotiating the MDA.<sup>2</sup>

4 63. The uncontested evidence showed the Landowners expressed their concern that the  
5 time, resources, and effort it was taking to negotiate the MDA may cause them to lose the property.  
6 Exhibit 53, 6.21.17 City Council Meeting, p. 001310:3234-3236.

7 64. While the MDA was pending resolution, the Landowners approached the City’s  
8 Planning Department to inquire about developing the 35 Acre Property as a stand-alone  
9 development, rather than as part of the MDA, and asked the City’s Planning Department to set  
10 forth all requirements the City could impose on the Landowners to develop the 35 Acre Property  
11 by itself. Exhibit 34, p. 000738, para 23.

12 65. The uncontested evidence submitted showed that the City’s Planning Department  
13 worked with the Landowners to prepare the stand-alone residential development applications for  
14 the 35 Acre Property and the applications were completed with the City’s Planning Department’s  
15 assistance. Exhibit 34, p. 000738, para 24; Exhibits 62-72, 35 Acre applications.

16 66. The City Planning Department then issued Staff Reports detailing the City Planning  
17 Department’s opinion on whether the 35 Acre stand-alone applications met all of the City  
18 development code requirements and standards and whether the applications should be approved.  
19 Exhibit 74.  
20  
21  
22

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23 <sup>2</sup> “But I do not like the tactics that look like we’re working, we’re working, we’re working and, by  
24 the way, here’s something you didn’t think of I could have been told about six months ago. I  
understand Mr. Lowie’s frustration. There’s some of that going on. There really is. And that’s  
unfortunate. I don’t consider that good faith, and I don’t consider it productive.” City Attorney  
Brad Jerbic. Exhibit 53, 6.21.17 City Council Meeting, p. 001301:2990-2993.

1           67.     The City Planning Department's analysis of the 35 Acre stand-alone applications  
2 confirmed that the "[s]ite access from Hualapai Way through a gate meets Uniform Standard  
3 Drawing specifications." Exhibit 74, p. 002552.

4           68.     The City Planning Department's analysis of the 35 Acre applications also stated  
5 that, "[t]he proposed residential lots throughout the subject site are comparable in size to the  
6 existing residential lots directly adjacent to the proposed lots" and "[t]he development standards  
7 proposed are compatible with those imposed on the adjacent lots." Exhibit 74, p. 002552.

8           69.     The City Planning Department's analysis of the 35 Acre Applications further stated  
9 that, "[t]he submitted Tentative Map is in conformance with all Title 19 and NRS requirements for  
10 tentative maps." Exhibit 74, p. 002553.

11           70.     The City Planning Department and the City Planning Commission recommended  
12 approval of the 35 Acre applications. Exhibit 74, pg. 02551 and 002557.  
13

14           71.     The 35 Acre Property as a stand-alone development was presented to the City  
15 Council for approval on June 21, 2017. Exhibit 53, 6.21.17 City Council Meeting.

16           72.     Tom Perrigo, the City's Planning Director appeared at the hearing on the  
17 Landowners' 35 Acre applications and stated that the Landowners' proposed development on the  
18 35 Acres, which the City Planning Department assisted with preparing, met all City requirements  
19 and should be approved. Exhibit 53, 6.21.17 City Council Meeting, p. 001211-1212:566-587.

20           73.     One City Council member acknowledged at the hearing that the 35 Acre Property  
21 applications met all City requirements, stating the proposed development was "so far inside the  
22 existing lines [the Las Vegas Code requirements]." Exhibit 53, 6.21.17 City Council Meeting, p.  
23 001286:2588-2590.  
24

1           74.     The City Council Members, however, stated the City's firm position that the City  
2 opposed individual development applications for parts of the 250 Acres, and, again, insisted on  
3 one MDA for the entire 250 Acres: 1) "I have to oppose this, because it's piecemeal approach  
4 (Councilman Coffin);" 2) "I don't like this piecemeal stuff. I don't think it works (Councilwoman  
5 Tarkanian); and, 3) "I made a commitment that I didn't want piecemeal," there is a need to move  
6 forward, "but not on a piecemeal level. I said that from the onset," "Out of total respect, I did say  
7 that I did not want to move forward piecemeal." (Mayor Goodman). Exhibit 53, 6.21.17 City  
8 Council Meeting, pp. 001287:2618; 001293:2781-2782; 001307:3161; 001237:1304-1305;  
9 001281:2460-2461.

10           75.     On June 21, 2017, the City Council, contrary to the City Planning Department's  
11 recommendation, and the City Planning Commission's recommendation denied the 35 Acre  
12 applications. Exhibit 93; Exhibit 53, 6.21.17 City Council Meeting, p. 001298:2906-2911.

13           76.     The City's official position for denial of the 35 Acre applications was the impact  
14 on "surrounding residents" and the City required an MDA for the entire 250 Acres, not  
15 "piecemeal" development. Exhibits 53 and 93.

16           77.     The Landowners' representative provided an uncontested Declaration, stating, that  
17 after the denial of the 35 Acre Applications, "[t]he City continued to make it clear to [the  
18 Landowners] that it would not allow development of individual parcels but demanded that  
19 development only occur by way of the MDA." Exhibit 34, p. 000738, para 24:25-27.

20           78.     The uncontested evidence showed that the Landowners then continued to work with  
21 the City to obtain approval to develop through the MDA applications process, which the City stated  
22 was the only way development may be allowed.  
23  
24

1           79.     The uncontested evidence further showed that the Landowners worked with the  
2 City for 2 ½ years on the MDA (between Spring, 2015, and August 2, 2017) and accepted all  
3 changes, additions, and conditions requested by the City.

4           80.     The City produced no evidence to contest that the Landowners agreed to every  
5 request and condition the City required in the MDA application.

6           81.     The MDA application, along with the MDA and all necessary supporting  
7 documents, was presented to the City Council for approval on August 2, 2017, approximately 40  
8 days after the City denied the stand-alone applications to develop the 35 Acre Property on the basis  
9 that the City wanted the MDA. Exhibits 54, 8.2.17 City Council Meeting; Exhibits 79-87.

10          82.     The City Planning Department issued a recommendation to the City Council that  
11 the MDA applications met all City requirements and that the MDA applications should be  
12 approved as follows:

13           The proposed Development Agreement conforms to the requirements of NRS 278  
14 regarding the content of development agreements. The proposed density and intensity of  
15 development conforms to the existing zoning district requirements for each specified  
16 development area. Through additional development and design controls, the proposed  
17 development demonstrates sensitivity to and compatibility with the existing single-  
18 family uses on the adjacent parcels. Furthermore, the development as proposed would be  
19 consistent with goals, objectives and policies of the Las Vegas 2020 Master Plan that call  
20 for walkable communities, access to transit options, access to recreational opportunities  
21 and dense urban hubs at the intersection of primary roads. Staff therefore recommends  
22 approval of the proposed Development Agreement. Exhibit 77, p. 002671.

23           83.     The uncontested evidence showed that, despite the City including all City  
24 requirements to develop in the MDA and the City's Planning Department recommending approval  
as the MDA met all City codes and standards, on August 2, 2017, the City Council denied the  
MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-  
4275.

          84.     The Landowners' representative, Yohan Lowie, provided an uncontested  
declaration that the City did not ask the Landowners to make more concessions, like increasing

1 setbacks or reducing units per acre, but rather, the City denied the MDA which denied the  
2 development of the entire 250 Acres, including the 35 Acre Property. Exhibit 34, p. 000739, para.  
3 26.

4 85. The minutes from the hearing on the MDA and the MDA denial letter further  
5 confirm that the City did not ask for more concessions, but rather, the City simply denied the  
6 MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-  
7 4275.

8 86. Therefore, the City denied an application to develop the 35 Acre Property as a  
9 stand-alone property and the MDA to develop the entire 250 Acres. Both of these denials were  
10 contrary to the recommendation of the City's Planning Department.

11 **The Landowners' Fence Application.**

12 87. The Landowners presented uncontested evidence of their attempts to secure the 250  
13 Acres and the City's denial of those attempts, contrary to the City Code, disregarding life safety  
14 concerns.

15 88. The Landowners submitted routine over the counter applications for a chain link  
16 fence around the perimeter of the 250 Acres, including the 35 Acre Property, and the Landowners  
17 submitted routine over the counter applications to fence the large ponds, one of which is located  
18 on the 35 Acre Property. Exhibit 91.

19 89. The Landowners provided argument that the chain link fences were necessary to  
20 secure the entire 250 Acres and to enclose the ponds on the property to exclude others from  
21 entering onto their privately owned property and to protect the life and safety of others.

22 90. Las Vegas Unified Development Code 19.16.100 F (2)(a) provides that a "fence"  
23 application is subject to a "Minor Review Process" and section 19.16.100 (F) (3) specifically  
24 exempts fences from a "Major Review Process." The Major Review Process . . . shall not apply  
to building permit level reviews described in Paragraph 2(a) of this Subsection (F).

1           91.     It was uncontested that the Major Review Process is significantly more involved  
2 than a Minor Review Process. Las Vegas Unified Development Code 19.16.100 (G).

3           92.     On August 24, 2017, the City sent the Landowners a letter of denial for the proposed  
4 chain link fences, stating it has “determined that the proximity to adjacent properties has the  
5 potential to have a significant impact on the surrounding properties,” explained the fence  
6 application was “denied” and, in violation of its own City Code, stated a “major review” would be  
7 required for the chain link fence application. Exhibit 92.

8           93.     The City’s attorney responded at the hearing on September 24, 2021, that perhaps  
9 the City succumbed to “political pressure” in denying the fence application.

10          94.     The Landowners presented uncontested evidence of three properties in the City of  
11 Las Vegas near the 35 Acre Property that received approval for fencing - New Horizon Academy  
12 on West Charleston, the closed Leslie’s Pool Supply on West Charleston, and vacant land on West  
13 Charleston. They also presented evidence that the vacant lot adjacent to the Nevada Supreme  
14 Court building, also in the City of Las Vegas jurisdiction, has an approved fence around it.

15          95.     The Landowners presented an interoffice City email wherein it is stated – “Follow  
16 up with CM Seroka regarding the Badlands fence permit. Want to take action on the Monday after  
17 find out cm’s conversations went over the weekend regarding the permit.” CLV06391 – Public  
18 Records Request. The email is dated August 21, 2017, three days prior to the City’s fence denial  
19 letter to the Landowners. Exhibit 92.

20 **The Landowners’ Access Application.**

21          96.     The Landowners presented uncontested evidence that they also submitted an  
22 application to the City to approve access to their 250 Acres, including specific access to the 35  
23 Acre Property and the City denied the access.

24          97.     The Landowners submitted routine over the counter applications to the City to  
provide access to the 250 Acres from Hualapai Way and Rampart Blvd. Exhibit 88. The 35 Acre

1 Property abuts Hualapai Way and approval of the access from Hualapai Way would allow direct  
2 access to the 35 Acre Property.

3 98. The Landowners explained in their access application to the City that the access  
4 was needed “for the tree and plant cutting, removal of related debris and soil testing equipment.”  
5 Exhibit 88, 002810.

6 99. As detailed above, the City Planning Department stated, in its Staff  
7 Recommendation on the 35 Acre Property stand-alone applications that, “[s]ite access from  
8 Hualapai Way through a gate meets Uniform Standard Drawing specifications.” Exhibit 74, p.  
9 002552.

10 100. During discovery, the City stated that, “[t]he Badlands [250 Acres] had general  
11 legal access to public roadways along Hualapai Way, Alta Drive, and Rampart Blvd.” City Third  
12 Supplement to Interrogatory Answers, electronically served, June 9, 2021, 10:4-5.

13 101. On August 24, 2017, the City denied the application for access, stating as the reason  
14 for denial, “the potential to have significant impact on the surrounding properties.” Exhibit 89,  
15 002816.

16 102. At the summary judgment hearing, the City was unable to provide a reasonable  
17 basis for denying the Landowners’ access application.

18 **The City’s Passage of Bills No. 2018-5 and 2018-24.**

19 103. The evidence established that, after the City denied the stand-alone 35 Acre  
20 applications to build, denied the MDA, denied the fence applications, and denied the access  
21 application, the City adopted two Bills, Bills No. 2018-5 and 2018-24. Exhibits 107 and 108.

22 104. The uncontested evidence presented showed the Bills targeted only the  
23 Landowners’ 250 Acres.

24 105. City Councilwoman Fiore stated on the record, “[f]or the past two years, the Las  
Vegas Council has been broiled in controversy over Badlands [250 Acres], and this [Bill 2018-24]



1 is the latest shot in a salvo against one developer” and “This bill is for one development and one  
2 development only. This bill is only about the Badlands Golf Course [250 Acres]” and “I call it the  
3 Yohan Lowie Bill.” Exhibit 114, 5.16.18 City Council Meeting, p. 003848-3849; Exhibit 115, p.  
4 003868; Exhibit 116, 5.14.18 Recommending Committee Meeting, pp. 003879, 003910. Yohan  
5 Lowie is one of the Landowner representatives.

6 106. Stephanie Allen, the Landowners’ land use attorney who represented the  
7 Landowners before the City on the development matters, stated that, “we did the analysis ... Out  
8 of the 292 parcels that the City provided [that the Bills could apply to], two properties remain.  
9 One of them is the former Badlands Golf Course [250 Acres], and if I could direct your attention  
10 to the overhead, the other is actually, interestingly, in Peccole Ranch. It’s this little pink area here.  
11 It’s a wash.” Exhibit 110, p. 003370.

12 107. The Landowners submitted the analysis performed by Ms. Allen establishing that  
13 Bills No. 2018-5 and 2018-24 target only the Landowners’ Property. Exhibits 111 and 112.

14 108. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 target  
15 only the Landowners’ 250 Acres.

16 109. The uncontested evidence presented showed the Bills made it impracticable and  
17 impossible to develop the 250 Acres.

18 110. Bills 2018-5 and 2018-24 included the following requirements before an  
19 application could be submitted to develop the 250 Acres: a master plan (showing areas proposed  
20 to remain open space, recreational amenities, wildlife habitat, areas proposed for residential use,  
21 including acreage, density, unit numbers and type, areas proposed for commercial, including  
22 acreage, density and type, a density or intensity), a full and complete development agreement, an  
23 environmental assessment (showing the project’s impact on wildlife, water, drainage, and  
24 ecology), a phase I environmental assessment report, a master drainage study, a master traffic

1 study, a master sanitary sewer study with total land uses proposes, connecting points, identification  
2 of all connection points, a 3D model of the project with accurate topography to show visual impacts  
3 as well as an edge condition cross section with improvements callouts and maintenance  
4 responsibility, analysis and report of alternatives for development, rationale for development, a  
5 mitigation report, CC&Rs for the development area, and a closure maintenance plan showing how  
6 the property will continue to be maintained as it has in the past (providing security and monitoring).  
7 Exhibits 107 and 108, ad passim.

8 111. The Bills also included vague requirements, such as development review to assure  
9 the development complies with “other” City policies and standards, and a requirement for anything  
10 else “the [City Planning] Department may determine are necessary.” Exhibit 108, p. 003212:12-  
11 13.

12 112. It was uncontested that Bill No. 2018-24 mandated that any development on the  
13 Landowners 250 Acres could only occur through a “development agreement” and, at the time Bill  
14 Nos. 2018-5 and 2018-24 were passed, the City had already denied a development agreement (the  
15 MDA) for the entire 250 Acres. Exhibit 78 (MDA denied on August 2, 2017); Exhibit 108, pp.  
16 003206-003207 (Bill No. 2018-24, passed on November 7, 2018).

17 113. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 made  
18 it impracticable and impossible to develop the 250 Acres.

19 114. The evidence presented showed the Bills preserved the 250 Acres for use by the  
20 public and authorized the public to use the 250 Acres, including the 35 Acre Property.

21 115. City Councilman Seroka was a vocal opponent to the Landowners building on the  
22 250 Acres.

1           116. Councilman Seroka presented to the surrounding property owners at a  
2 homeowner's association meeting that they had the right to use the Landowners' 250 Acres as  
3 recreation and open space.

4           “So when they built over there off of Hualapai and Sierra –Sahara –this land [250 Acres]  
5 is the open space. Every time that was built along Hualapai and Sahara, this [250 Acres]  
6 is the open space. Every community that was built around here, that [250 Acres] is the  
7 open space. The development across the street, across Rampart, that [250 Acres] is the  
8 open space....it is also documented as part recreation, open space...That is part recreation  
9 and open space...” *LO Appx., Ex. 136, 17:23-18:15, HOA meeting page*

10           “Now that we have the documentation clear, ***that is open space for this part of our***  
11 ***community. It is the recreation space for this part of it.*** It is not me, it is what the law  
12 says. ***It is what the contracts say between the city and the community, and that is what***  
13 ***you all are living on right now.***” *LO Appx., Ex. 136, 20:23-21:3, HOA meeting*  
14 *(emphasis added).*

15           117. Bill No. 2018-24 was “Sponsored by: Councilman Steven G. Seroka,” the vocal  
16 opponent to the Landowners developing the 250 Acres. Exhibit 108, p. 003202.

17           118. A provision was written into Bill No. 2018-24 which states under section “G. 2.  
18 Maintenance Plan Requirements,” that “the maintenance plan must, at a minimum and with respect  
19 to the property . . . d. Provide documentation regarding ***ongoing public access . . . and plans to***  
20 ***ensure that such access is maintained.***” Exhibit 108, pp. 003211-3212. Emphasis added.

21           119. The section “A. General” to Bill No. 2018-24 states that any proposal to repurpose  
22 the 250 Acres from a golf course “is subject to ... the requirements pertaining to ... the Closure  
23 Maintenance Plan set forth in Subsections (E ) and (G), inclusive,” which is where the requirement  
24 to provide “ongoing public” access is mandated in Bill No. 2018-24. Exhibit 108, pp. 003202-  
3203.

          120. The Landowners presented uncontested evidence that the neighbors are using the  
250 Acres. Exhibit 150 and pictures attached thereto.

1           121. Don Richards, the superintendent for the 250 Acres, submitted a declaration that  
2 those that entered onto the 35 Acre Property advised him that they were told that “it is our open  
3 space.” Exhibit 150, p. 004669, paras 6-7.

4           122. The effect of Bills No. 2018-5 and 2018-24 was to: 1) target only the Landowners’  
5 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the  
6 250 Acres for use by the public and authorize the public to use the 250 Acres.

7 **There is No Evidence that the 250 Acres is the Open Space or Recreation for the Area.**

8           123. It was uncontested that the 250 Acres, including the 35 Acre Property is privately-  
9 owned property.

10           124. Although Councilman Seroka announced the Queensridge Homeowners could use  
11 the 250 Acres for their open space and recreation, there was no evidence to support this  
12 announcement and contrary evidence showed this authorization was inaccurate. Exhibits 36-39.

13           125. The CC&Rs for the surrounding Queensridge Community state, “[t]he existing 18-  
14 hole golf course commonly known as the “Badlands Golf Course” [250 Acres] is not a part of the  
15 Property or the Annexable Property [Queensridge Community] and the Queensridge Community  
16 “is not required to[] include ... a golf course, parks, recreational areas, open space.” Exhibit 36,  
17 pp. 000761-762.

18           126. The Custom Lot Design Guidelines for the Queensridge Community also informed  
19 that the interim golf course on the 250 Acres was available for “future development.” Exhibit 37,  
20 p. 000896.

21           127. The Queensridge CC&Rs further disclosed to every purchaser of property within  
22 the Queensridge Community that the 250 Acres was “not a part” of the Queensridge Community,  
23 that purchasers in the community “shall not acquire any rights, privileges, interest, or membership”  
24 in the 250 Acres, there are no representations or warranties “concerning the preservation or

1 permanence of any view,” and lists the “Special Benefits Area Amenities” for the surrounding  
2 Queensridge Community, which does not include a golf course or open space or any other  
3 reference to the 250 Acres. Exhibit 38, ad passim.; Exhibit 39, pp. 000908-909, 911.

4 128. The Zoning Verification Letter the City provided the Landowners prior to the  
5 Landowners acquiring the 250 Acres also makes no mention of any open space or recreation  
6 restriction. Exhibit 134.

7 129. The Court was also presented with two findings of fact and conclusions of law  
8 entered in litigation between a Queensridge homeowner and the Landowners wherein the  
9 Queensridge homeowner alleged the 250 Acres was “open space” for the Queensridge Community  
10 and the District Court rejected this argument and entered findings that the 250 Acres is zoned “R-  
11 PD7” and the R-PD7 zoning gives the Landowners the “right to develop.” Exhibit 26, 000493;  
12 Exhibit 27, p. 000520. The matter was affirmed on appeal. Exhibits 28 and 29.

13 130. The caption for that litigation shows the City was a party to that action and,  
14 therefore, aware of the proceedings, however, counsel represented that the City was dismissed out  
15 of the case.

16 **Additional City Communications and Actions.**

17 131. The Landowners also presented evidence of communications and other actions  
18 taken by the City showing the City’s intent toward the 250 Acres after the Landowners acquired  
19 the 250 Acres.

20 132. The City identified \$15 million of potential City funds to purchase the 250 Acres  
21 (notwithstanding the Land was not for sale). Exhibit 144.

22 133. The City identified a “proposal regarding the acquisition and re-zoning of green  
23 space land [250 Acres].” Exhibit 128.

1           134. The City proposed / discussed a Bill to force “Open Space” on the 250 Acres,  
2 contrary to its legal zoning. Exhibit 121.

3           135. The City proposed a solution to “Sell off the balance [of the 250 Acres] to be a golf  
4 course with water rights (key). Keep the bulk of Queensridge green.” Exhibit 122.

5           136. The City engaged a golf course architect to “repurpose” the 250 Acres. Exhibit  
6 145.

7           137. One City Councilman referred to the Landowners’ proposal to build large estate  
8 homes on the residentially zoned 250 Acres as the same as “Bibi Netanyahu’s insertion of the  
9 concreted settlements in the West Bank neighborhoods.” Exhibit 123.

10          138. Then-Councilman Seroka testified at the Planning Commission (during his  
11 campaign) that it would be “over his dead body” before the Landowners could build homes on the  
12 250 Acres (Exhibit 124, 2.14.17 Planning Commission Meeting) and issued a statement during his  
13 campaign entitled “The Seroka Badlands Solution” which provides the intent to convert the  
14 Landowners’ private property into a “fitness park,” and in an interview with KNPR, he stated that  
15 he would “turn [the Landowners’ private property] over to the City.” Exhibit 125.

16          139. In reference to development on the 250 Acres, then-Councilman Coffin stated  
17 firmly “I am voting against the whole thing,” and “a majority is standing in his [Landowners] path  
18 [to development] (Exhibits 122 and 126) before the applications were finalized and presented to  
19 the City Council,<sup>3</sup> the councilman refers to the Landowners’ representative as a “sonofab[...],”  
20 “A[... ]hole,” “scum,” “motherf[... ]er,” “greedy developer,” “dirtball,” “clown,” and Narciss[ist]”  
21 with a “mental disorder,” (Exhibit 121) and seeks “intel” against the Landowner through a private  
22 investigator in case he needs to “get rough” with the Landowners (Exhibit 127).

23  
24 

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<sup>3</sup> This statement was made by email on April 6, 2017, and the applications were not presented to  
the City Council until June 21 and August 2 of 2017.

1           140.   Then-Councilmen Coffin and Seroka also exchanged emails wherein they stated  
2 they will not compromise one inch and that they “need an approach to accomplish the desired  
3 outcome,” - prevent development on the 250 Acres. Exhibit 122.

4           141.   An interoffice City email states, “If any one sees a permit for a grading or clear and  
5 grub at the *Badlands* Golf Course [250 Acres], please see Kevin, Rod, or me. Do Not Permit  
6 without approval from one of these three.” Exhibit 130, June 27, 2017, City email. Italics in  
7 original.

8           142.   City Emails were presented that showed City Council members discussing a  
9 strategy to not disclose information related to actions toward the 250 Acres, with instruction given,  
10 in violation of the Nevada Public Records Act,<sup>4</sup> on how to avoid the search terms being used in  
11 the subpoenas: “Also, please pass the word for everyone to not use B...l.nds in title or text of  
12 comms. That is how search works.” and “I am considering only using the phone but awaiting  
13 clarity from court. Please pass word to all your neighbors. In any event tell them to NOT use the  
14 city email address but call or write to our personal addresses. For now...PS. Same crap applies to  
15 Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his personal stuff being  
16 sought. This is no secret so let all your neighbors know.” Exhibit 122, p. 004232.

17 **Expert Opinions.**

18           143.   The Landowners introduced an appraisal report by Tio DiFederico of the 35 Acre  
19 Property. Exhibit 183.

20           144.   Mr. DiFederico has the M.A.I. designation, the highest designation for an appraiser.  
21 Exhibit 183, p. 005216.

22  
23  
24 <sup>4</sup> See NRS 239.001(4) (use of private entities in the provision of public services must not deprive  
members of the public access to inspect and copy books and records relating to the provision of  
those services)

145. Mr. DiFederico appraised the “before value” of the 35 Acre Property, which is the value of the 35 Acre Property as if it were available for residential development in compliance with the R-PD7 zoning and the “after value,” which is the value of the 35 Acre Property after all of the City actions toward the property. He concluded that the “before value” is \$34,135,000.00 and the “after value” is zero. Exhibit 183, p. 005216.

146. Mr. DiFederico concluded, “[d]ue to the effect of the government’s actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government’s actions, I concluded that the ‘after value’ would be zero.” Exhibit 183, p. 005216.

147. Discovery in this matter closed on July 26, 2021.

148. The City did not exchange an initial expert report or a rebuttal expert report to challenge Mr. DiFederico's opinions.

### III.

**CONCLUSIONS OF LAW REGARDING THE LANDOWNERS' MOTION FOR  
SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR  
RELIEF**

## Standard of Review

149. NRCP 56(c) provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Further, “summary judgment ... may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.” NRCP 56(c). In Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court eliminated the “slightest doubt standard,” holding that “[w]hile the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to



1 do more than simply show that there is some ‘metaphysical doubt’ as to the operative facts in order  
2 to avoid summary judgment being entered in the moving party's favor” and that “[t]he nonmoving  
3 party “ ‘is not entitled to build a case on the gossamer threads of whimsy, speculation, and  
4 conjecture.’”

5 150. The Nevada Supreme Court has held that this Court decides, as a matter of law,  
6 whether a taking has occurred. McCarran Int’l Airport v. Sisolak, 137 P.3d 1110 (2006) (“whether  
7 the Government has inversely condemned private property is a question of law that we review de  
8 novo.” Id., at 1119). *See also*, Moldon v. County of Clark, 124 Nev. 507, 511, 188 P.3d 76, 79  
9 (2008) (“whether a taking has occurred is a question of law...”).

10 151. This Court has already held that, in deciding the take issue in this case, the Court  
11 must consider all of the City actions in the aggregate toward the 35 Acre Property:

12 In determining whether a taking has occurred, Courts must look at the aggregate of all of  
13 the government actions because “the form, intensity, and the deliberateness of the  
14 government actions toward the property must be examined ... All actions by the  
15 [government], in the aggregate, must be analyzed.” Merkur v. City of Detroit, 680  
16 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d  
17 736 (Nev. 2015) (citing Arkansas Game & Fish Comm’s v. United States, 568 U.S. ---  
18 (2012)) (there is no “magic formula” in every case for determining whether particular  
19 government interference constitutes a taking under the U.S. Constitution; there are  
20 “nearly infinite variety of ways in which government actions or regulations can effect  
21 property interests.” Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd.,  
22 526 U.S. 687 (1999) (inverse condemnation action is an “ad hoc” proceeding that  
23 requires “complex factual assessments.” Id., at 720.); Lehigh-Northampton Airport  
24 Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) (“There is no bright  
line test to determine when government action shall be deemed a de facto taking; instead,  
each case must be examined and decided on its own facts.” Id., at 985-86).

20 The City has argued that the Court is limited to the record before the City Council in  
21 considering the Landowners’ applications and cannot consider all the other City action  
22 towards the Subject Property, however, the City cites the standard for petitions for  
23 judicial review, not inverse condemnation claims. A petition for judicial review is one  
24 of legislative grace and limits a court’s review to the record before the administrative  
body, unlike an inverse condemnation, which is of constitutional magnitude and requires  
all government actions against the property at issue to be considered.

1 Exhibit 8, May 15, 2019 Order Denying City’s Motion for Judgment on the Pleadings, pp. 000172-  
2 173.

3 152. The Nevada Supreme Court has also held “there are several invariable rules  
4 applicable to specific circumstances” and this Court will address three of those “invariable rules”  
5 for a taking in Nevada – a per se categorical taking (Landowners’ first claim for relief), a per se  
6 regulatory taking (Landowners’ Third Claim for Relief), and a non-regulatory / de facto taking  
7 (Landowners’ Fourth Claim for Relief). State v. Eighth Judicial District Court, 131 Nev. 411, 419  
8 (2015).

9 153. In addressing the invariable rules that apply to the Landowners’ First, Third, and  
10 Fourth Claims for Relief, the United States and Nevada Supreme Court have held that a Penn  
11 Central analysis, referenced later in this FFCL, does not apply to the Landowners’ First, Third,  
12 and Fourth Claims for Relief. Sisolak (“the *Penn Central*-type takings analysis does not govern  
13 this action [per se regulatory taking].” Id., at 1130); Cedar Point Nursery (“regulations in the first  
14 two categories constitute *per se* takings [per se categorical and per se regulatory]” and are not  
15 subject to a Penn Central analysis. Id., at 2070); State v. Eighth Judicial District Court (identifying  
16 a “Nonregulatory Analysis” separate and apart from a “*Penn Central* analysis” and applying a  
17 different standard to find a taking. Id., at 419 and 421).

18 **The Landowners are Entitled to Summary Judgment on Their First Claim For Relief – a Per**  
19 **Se Categorical Taking.**

20 154. The Nevada Supreme Court holds that a per se categorical taking occurs where  
21 government action “completely deprives an owner of all economical beneficial use of her  
22 property,” and, in these circumstances, just compensation is automatically warranted, meaning  
23 there is no defense to the taking. Sisolak, *supra*, at 662. A categorical taking does not require a  
24 physical invasion.

1           155. As detailed above, the City denied 100% of the Landowners' requests to use the 35  
2 Acre Property. The City denied the 35 Acre stand-alone applications, the MDA application, the  
3 perimeter fence application, the pond fence application, and the access application.

4           156. The City then adopted Bills No. 2018-5 and 2018-24 that: 1) target only the  
5 Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including  
6 the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized  
7 "ongoing public access" to the property.

8           157. The Court finds persuasive the expert appraisal report prepared by M.A.I. appraiser,  
9 Tio DiFederico, which concludes, "[d]ue to the effect of the government's actions, I concluded  
10 there was no market to sell this property [35 Acre Property] with the substantial tax burden but no  
11 potential use or income to offset the tax expense. Based on the government's actions, I concluded  
12 that the 'after value' would be zero." Exhibit 183, p. 005216. As detailed above, the City has not  
13 produced an expert report during discovery to challenge Mr. DiFederico's expert opinion.

14           158. The Court also finds that the Landowners presented substantial evidence that the  
15 historical golf course use is not an economical use. Exhibits 45-47. Appraiser, Tio DiFederico  
16 also concluded the golf course is not an economical use and the City presented no expert evidence  
17 to contest this conclusion. Exhibits 183, p. 005214.

18           159. The Court finds the City actions have caused the 35 Acre Property to lie vacant and  
19 useless to the Landowners and "completely deprive[d] [the Landowners] of all economical  
20 beneficial use of [their] property," specifically, the 35 Acre Property.

21           160. In addition to causing the 35 Acre Property to lie vacant and useless to the  
22 Landowners, the tax assessor has imposed, and the Landowners are paying, \$205,227.22 per year  
23 in real estate taxes based on a residential use. The Court also recognizes that there are other  
24 carrying costs for the vacant 35 Acre Property.

1           161. Therefore, summary judgment is granted in favor of the Landowners on the  
2 Landowners' First Claim for Relief – Per Se Categorical Taking.

3 **The Landowners are Entitled to Summary Judgment on Their Third Claim For Relief – a**  
4 **Per Se Regulatory Taking.**

5           162. The Nevada Supreme Court holds that a per se regulatory taking occurs where  
6 government action “authorizes” the public to use private property or “preserves” private property  
7 for public use. Sisolak, supra. See also Tien Fu Hsu v. County of Clark, 123 Nev. 625 (2007).  
8 The Sisolak and Hsu Courts held that the adoption of height restriction ordinance 1221 was a  
9 taking by inverse condemnation, because it preserved the privately-owned airspace for use by the  
10 public and authorized the public to use the privately-owned airspace.

11           163. The United States Supreme Court adopted the same rule in a very recent case,  
12 wherein the Court held that a government authorized invasion of private property is a taking.  
13 Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (June 23, 2021). The Cedar Point Nursery Court  
14 held that a California statute that authorized labor unions to enter onto private farms 120 days a  
15 year for up to 3 hours at a time, upon proper notice, is a taking by inverse condemnation.

16           164. When the government engages in per se regulatory taking actions, just  
17 compensation is automatically warranted, meaning there is no defense to the taking.

18           165. As detailed above, the City adopted Bills No. 2018-5 and 2018-24 that: 1) target  
19 only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres,  
20 including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and  
21 authorized “ongoing public access” to the property.

22           166. These Bills, alone, are a per se regulatory taking of the Landowners' 35 Acre  
23 Property as they are similar to the actions taken by the County in the Sisolak and the Hsu cases  
24 and the actions taken by the State of California in the Cedar Point Nursery case.

1 167. Moreover, the intent of the Bills was evidenced by the sponsor of the Bills,  
2 Councilman Seroka, when he advised the surrounding homeowners that the Landowners' 35 Acre  
3 Property was the surrounding property owners' open space and recreation, as detailed above.

4 168. The City's intent to preserve the 35 Acre Property for use by the surrounding public  
5 and to authorize the public to use the 35 Acre Property is further evidenced in the City's fence  
6 denial and access denial letters wherein the City states as a basis for the denials, the potential to  
7 have significant impact on the "surrounding properties." Exhibit 92, p. 002830; Exhibit 89, p.  
8 002816. The City's 35 Acre application denial letter also states as a basis for the denial, in part,  
9 concerns over the impact of the proposed development on "surrounding residents." Exhibit 93, p.  
10 002831.

11 169. The City's intent to preserve the 35 Acre Property for use by the public was further  
12 evidence by the numerous statements by City Councilmembers and other City employees,  
13 referenced above, that identified the 35 Acre Property for use by the surrounding property owners.

14 170. The Court finds unpersuasive the City's argument that statements by City  
15 Councilmembers and other City employees cannot be considered. In Sisolak, a per se regulatory  
16 taking case, the Court considered statements by Bill Keller, a principal planner with the Clark  
17 County Department of Aviation, in regards to the County height restrictions. Sisolak, supra, at  
18 653. Moreover, many of the City statements were made in judicial or quasi-judicial settings,  
19 meaning the City is judicially estopped from making contrary representations to this Court.  
20 Marcuse v. Del Webb Communities, 123 Nev. 278 (2007).

21 171. The uncontested Declaration of Christopher Kaempfer, the Landowners' land use  
22 attorney, also confirms the City's intent to preserve the 35 Acre Property for use by the surrounding  
23 public - "it became clear that despite our best efforts, and despite the merits of our applications(s),  
24 no Development Agreement was going to be approved by the City of Las Vegas unless virtually

1 all of the Badlands neighborhood supported such a Development Agreement; and it was equally  
2 clear that this neighborhood support was not going to be achieved because, as the lead of the  
3 neighborhood opposition exclaimed to me and other ‘I would rather see the golf course a desert  
4 than a single home built on it.’” Exhibit 48, p. 001161, para. 12.

5 172. The uncontested Declaration of Don Richards, supported by photographic  
6 evidence, confirms that the public was using the 35 Acre Property in conformance with the  
7 direction of the City. Exhibit 150, p. 004669, para. 7.

8 173. Moreover, “[t]he right to exclude is ‘one of the most treasured’ rights of property  
9 ownership” and “is ‘one of the most essential sticks in the bundle of rights that are commonly  
10 characterized as property’” and the City denied the Landowners the right to exclude others from  
11 the 35 Acre Property by denying the Landowners’ fence application, which is a taking in and of  
12 itself and further supports a finding of a per se regulatory taking. Cedar Point Nursery v. Hassid,  
13 141 S.Ct. 2063, 2072 (June 23, 2021).

14 174. Also, under Nevada law an owner of property that abuts a public road “has a special  
15 right of easement in a public road for access purposes” and “[t]his is a property right of easement  
16 which cannot be damaged or taken from the owner without due compensation” and the City denied  
17 the Landowners access to the 35 Acre Property by denying the Landowners’ access application  
18 which is a taking in and of itself and further supports a finding of a per se regulatory taking.  
19 Schwartz v. State, 111 Nev. 998 (1999).

20 175. Therefore, summary judgment is granted in favor of the Landowners on the  
21 Landowners’ Third Claim for Relief – a Per Se Regulatory Taking.

22 **The Landowners are Entitled to Summary Judgment on Their Fourth Claim For Relief – a**  
23 **Non-Regulatory / De Facto Taking.**

24 176. The Nevada Supreme Court holds that a non-regulatory / de facto taking occurs  
where the government has “taken steps that directly and substantially interfere[ ] with [an] owner’s

1 property rights to the extent of rendering the property unusable or valueless to the owner.” State  
2 v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). The Court relied on Richmond Elks  
3 Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9<sup>th</sup> Cir. 1977), where the Ninth  
4 Circuit held that “[t]o constitute a taking under the Fifth Amendment it is not necessary that  
5 property be absolutely ‘taken’ in the narrow sense of that word to come within the protection of  
6 this constitutional provision; it is sufficient if the action by the government involves a direct  
7 interference with or disturbance of property rights.”

8 177. The Nevada Supreme Court has further held in Sloat v. Turner, 93 Nev. 263, 269  
9 (1977), that a taking occurs where there is “some derogation of a right appurtenant to that property  
10 which is compensable” or “if some property right which is directly connected to the ownership or  
11 use of the property is substantially impaired or extinguished.” *See also*, Schwartz v. State, 111  
12 Nev. 998 (1995) (taking where “a property right which is directly connected to the use or  
13 ownership of the property is substantially impaired or extinguished.” Id., at 942).

14 178. Nichols on Eminent Domain further describes this non-regulatory / de facto taking  
15 claim as follows: “[c]ontrary to prevalent earlier views, it is now clear that a de facto taking does  
16 not require a physical invasion or appropriation of property. Rather, a substantial deprivation of a  
17 property owner’s use and enjoyment of his property may, in appropriate circumstances, be found  
18 to constitute a ‘taking’ of that property or of a compensable interest in the property...” 3A Nichols  
19 on Eminent Domain §6.05[2], 6-65 (3<sup>rd</sup> rev. ed. 2002).

20 179. Therefore, a Nevada non-regulatory / de facto taking occurs where government  
21 action renders property unusable or valueless to the owner or substantially impairs or extinguishes  
22 some right directly connected to the property.

23 180. The Court rejects the City’s assertion that a non-regulatory / de facto taking only  
24 applies to physical takings and precondemnation damages claims. First, there is nothing in the

1 case law that restricts non-regulatory / de facto takings to physical takings and Nichols on Eminent  
2 Domain, cited above, expressly rejects this argument. Second, in State v. Eighth Judicial District  
3 Court case, supra, the Court applies the standard for a non-regulatory / de facto taking and states  
4 in footnote 5 that, “[w]e decline to address Ad America’s precondemnation damages claim because  
5 the district court has not decided the issue,” showing the case was not a precondemnation damages  
6 case.

7 181. The Court finds that the aggregate of City actions, set forth above, substantially  
8 interfered with the use and enjoyment of the Landowners’ 35 Acre Property, rendering the 35 Acre  
9 Property unusable or valueless to the Landowners.

10 182. Therefore, summary judgment is granted in favor of the Landowners on the  
11 Landowners’ Fourth Claim for Relief – a Non-Regulatory / De Facto Taking.

12 **The Ripeness / Futility Doctrine do not Apply to the Landowners’ First, Third, and Fourth**  
13 **Claims for Relief.**

14 183. The Court follows Nevada Supreme Court precedent to not apply the ripeness /  
15 futility doctrine to the Landowners’ First, Third, and Fourth Claims for Relief.

16 184. The Nevada Supreme Court has held that a ripeness / futility analysis is inapplicable  
17 to the Landowners’ Per Se Regulatory and Per Se Categorical taking claims, because a “per se”  
18 taking is a taking in and of itself and there is no defense to the taking and no precondition to pass  
19 through a ripeness / futility analysis. The Court held in the Sisolak case that “Sisolak was not  
20 required to exhaust administrative remedies by applying for a variance before bringing his inverse  
21 condemnation action based on a regulatory per se taking of his private property.” Sisolak, supra,  
22 at 664. The Court’s ruling was made clear in Justice Maupin’s dissent in Sisolak, wherein he  
23 stated, “[w]hile I disagree with the majority that a regulatory per se taking has occurred in this  
24 instance, I do agree that Loretto and Lucas takings, like per se physical takings, do not require  
exhaustion of administrative remedies.” Sisolak at 684. And, in the Hsu case, the Court held,



1 “[d]ue to the “per se” nature of this taking, we further conclude that the landowners were not  
2 required to apply for a variance or otherwise exhaust their administrative remedies prior to  
3 bringing suit.” Hsu, 173 P.3d at 732 (2007).

4 185. The ripeness / futility doctrine also does not apply to the Landowners’ non-  
5 regulatory / de facto taking claim. The Nevada Supreme Court lays out the standard for a non-  
6 regulatory / de facto taking in the cases of State v. Eighth Judicial District, Sloat, and Schwartz  
7 and the Court does not impose a ripeness / futility requirement.

8 186. To the extent this is in conflict with federal takings jurisprudence, “...states may  
9 expand the individual rights of their citizens under state law beyond those provided under the  
10 Federal Constitution. Similarly, the United States Supreme Court has emphasized that a state may  
11 place stricter standards on its exercise of the takings power through its state constitution or state  
12 eminent domain statutes.” Sisolak at 669.

13 187. Therefore, under the laws of the State of Nevada, which this Court is bound by, an  
14 owner is not required to file any application with the land use authority to ripen a per se categorical  
15 taking, a per se regulatory taking, or a non-regulatory / de facto taking claim – the Landowners  
16 first, third, and fourth claims for relief.

17 **The City’s Segmentation Argument Does Not Apply.**

18 188. The City asks this Court to find that, since the City initially approved development  
19 on the 17 Acre Property, the City may demand that all remaining 233 acres of the 250 Acre Land,  
20 including the 35 Acre Property, be designated open space. The City calls this its “segmentation”  
21 argument.

22 189. The Nevada Supreme Court has held that the 35 Acre Property must be considered  
23 as a separate and independent parcel in this inverse condemnation proceeding, not as part of the  
24 larger 250 Acres:

1 “A question often arises as to how to determine what areas are portions of the parcel  
2 being condemned, and what areas constitute separate and independent parcels? Typically,  
3 the legal units into which land has been legally divided control the issue. That is, each  
4 legal unit (typically a tax parcel) is treated as a separate parcel....” City of North Las Vegas v. Eighth Judicial Dist. Court, 133 Nev. 995, \*2, 401 P.3d 211 (table)(May 17, 2017) 2017 WL 2210130 (unpublished disposition), *citing* 4A Julius L. Sackman, *Nichols on Eminent Domain* § 14B.01 (3d ed. 2016).

5 190. It is undisputed that the 35 Acre Property has its own Clark County Assessor Parcel  
6 Number – 138-31-201-005.

7 191. It is also undisputed that the 35 Acre Property has its own independent legal owner  
8 - 180 Land Co., LLC, a Nevada limited liability company.

9 192. The Court finds that it would be impermissible to conclude that Owner A is not  
10 damaged because the government approved a development on an entirely separate parcel owned  
11 by Owner B. Yet, that is what the City is arguing, that the alleged approvals on the 17 Acre  
12 Property negate damages on the 35 Acre property – a separate taxed and owned parcel.

13 193. The Court also finds that there is evidence that the City clawed back the 17 Acre  
14 approvals, which would negate any possible segmentation argument. As explained above, after  
15 the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre  
16 Property), denied the 35 Acre applications, denied the fence application (that would have allowed  
17 the Landowners to fence the 17 Acre Property) and denied the access application (that would have  
18 allowed access to the 17 Acre Property). The City also sent the Landowners an email that  
19 explained the 17 Acre approvals were “vacated, set aside and shall be void.” Exhibit 189.

20 194. The Court also finds that NRS 37.039 rejects the City’s segmentation argument.  
21 NRS 37.039 provides that if the City wants to designate property as open space (as the City is  
22 asking this Court to do), the City must pay just compensation for the property identified as open  
23 space.

1           195.   Additionally, the facts show that when the Landowners acquired the entity that  
2 owned the 250 Acres, it was already divided into five separate parcels. Exhibit 44, Deed.

3           196.   It is undisputed that then-City Planning Section Manager, Peter Lowenstein  
4 testified in a deposition that it was the City that requested further subdivision of the Land. “Q. So  
5 you wanted the developer here to subdivide the property further, correct? A. As part of the  
6 submittal, we were looking for that to be accomplished . . .” Exhibit 160, p. 004962.

7           197.   Therefore, there is no evidence to support the City’s claim that the Landowners  
8 intentionally segmented their property as a “transparent ploy” to “fabricate a takings claim” as the  
9 City argued with no supporting evidence.

10          198.   Accordingly, the Court denies the City’s segmentation argument.

11 **The City Cannot Revoke a Taking that Has Already Occurred.**

12          199.   This Court also denies the City’s request to find that the City revoked the taking  
13 actions by sending the Landowners a letter to invite them to re-apply to develop.

14          200.   The United States Supreme Court held in the case of Knick v Township of Scott,  
15 Pennsylvania, 139 S.Ct. 2162, 2170 (2019), that “[t]he Fifth Amendment right to full  
16 compensation arises at the time of the taking, regardless of post-taking remedies that may be  
17 available to the property owner.” The Knick Court further held “once there is a taking  
18 compensation *must* be awarded because as soon as private property has been taken, whether  
19 through formal condemnation proceedings, occupancy, physical invasion, or regulation, the  
20 landowner has *already* suffered a constitutional violation.” Id., at 2172. Italics in original. The  
21 Knick Court continued, “a property owner acquires an irrevocable right to just compensation  
22 immediately upon a taking” and concluded, “[a] bank robber might give the loot back, but he still  
23 robbed the bank.” Id., at 2172.

**Petition for Judicial Review Law.**

201. The Court declines the City's repeated attempts to apply Petition for Judicial Review (PJR) law and standards and this Court's orders from the PJR side of this case in this inverse condemnation case.

202. This Court has already ordered several times that PJR law cannot be applied in this inverse condemnation case and provided detailed legal and policy reasons for this conclusion as follows:

"Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. (internal citation omitted). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. (internal citation omitted). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council." Exhibit 8 at 22:13-27

"[B]oth the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them 'two disparate sets of claims' ..." Exhibit 8 at 21:15-20.

"The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof." Id., 22:1-11.

"A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered." Id., 8:25 – 9:2.

1 “For these reasons, it would be improper to apply the Court’s ruling from the  
2 Landowners’ petition for judicial review to the Landowners’ inverse condemnation  
claims.” Exhibit 8, 23:7-8. See also Exhibit 7, 11:20-22, May 7, 2019, Order

3 “This is an inverse condemnation case. It’s not a petition for judicial review. There’s  
4 clearly a difference in distinction there.” Exhibit 198, 5.13.21 hearing transcript at 39:7-  
9.

5 “And we’ve had a very rigorous discussion in the past in this case, and I think we have a  
6 pretty good record on how I viewed the petition for judicial review and whether or not  
that rises to a level of issue preclusion or claims preclusion vis-à-vis the inverse case.  
And I’ve ruled on that: right?” Exhibit 198, 5.13.21 hearing transcript at 41:6-12.

7 “But you’re not listening to me. I understand all that. I don’t see any need to replot this  
8 ground.” Exhibit 198, 5.13.21 hearing transcript at 43:24-44:1

9 “Wait. Wait. Wait. Wait...the law as it relates to petitions for judicial review are much  
10 different than a civil litigation seeking compensation for inverse condemnation, sir...the  
standards are different. I mean, for example, they got to meet their burden by a  
11 preponderance of the evidence. It’s substantial---I mean, it’s a totally different – it’s an  
administrative process versus a full-blown jury trial in this case. It’s different  
completely.” Exhibit 198, 5.13.21 hearing transcript at 69:20-70:7.

12 203. Moreover, when the PJR matter was pending before this Court, the City explained  
13 the deference the Court must give to the City’s decisions and how the Court’s hands were tied in  
14 the PJR matter. The City argued in pleadings in the PJR matter that “[t]he Court may ‘not  
15 substitute its judgment for that of a municipal entity;’” “[i]t is not the business of courts to decide  
16 zoning issues;” and “[a] ‘presumption of propriety’ attaches to governmental action on land use  
17 decisions.” City of Las Vegas’ Points and Authorities in Response to Second Amended Petition  
18 for Judicial Review, pp. 16-17, filed on June 26, 2018, in the PJR side of this case. And, the City’s  
19 counsel provided similar arguments at the hearing on the PJR matter as follows:

20 [This court] must apply a very simple standard, whether or not the city council abused its  
21 discretion in denying these applications. And in making a determination as to whether or  
not the city council abused its discretion, it’s simply a matter of whether or not there’s  
22 substantial evidence in the record to support the city council’s decision.  
This isn’t a matter of the standard of proof in a trial. . . . It’s not even the standard of proof  
23 in a civil trial, a preponderance of the evidence. It doesn’t even have to be 50-50 such  
that there’s - - 50 percent of the record supports the approval of the applications and 50  
24 percent of the evidence in the record supports the denial of the applications.

1 Its whether or not there's substantial evidence in the record. And substantial evidence  
2 has been defined as whether a reasonable mind could accept sufficient to support a  
3 conclusion. Reporter's Transcript of Petition for Judicial Review, June 29, 2018, p.  
4 144:4-25, PJR side of this matter.

5 204. No such deference is required in this inverse condemnation action. Instead, the  
6 Court is required to consider all of the City's actions in the aggregate to determine whether those  
7 actions amount to a taking.

8 205. Finally, the Nevada Supreme Court recently confirmed this Court's orders and the  
9 reasoning therein, holding "civil actions and judicial review proceedings are fundamentally  
10 different" and recognized that PJR and civil actions are "[l]ike water and oil, the two will not mix."  
11 City of Henderson v. Eighth Judicial District Court, 137 Nev., Adv. Op. 26 at 2 (Jun. 24, 2021).

12 206. Therefore, it would be improper to apply PJR law or this Court's orders from the  
13 PJR matter to this inverse condemnation case.

14 **Purchase Price.**

15 207. The Court also declines to apply any purchase price when deciding the taking  
16 issues.

17 208. First, there is no case law to support consideration of the purchase price paid for  
18 property when determining whether a taking occurred.

19 209. Second, the Landowners presented a pleading at the hearing that was submitted by  
20 the City in the 65 Acre case wherein the City argued, "[t]he Developer's purchase price, however,  
21 is not material to the City's *liability* for a regulatory taking." City's Response to Developer's Sur-  
22 Reply Brief Entitled "Notice of Status of Related Cases ETC.", filed on September 15, 2021, 3:17  
23 pm, Case No. A-18-780184-C (65 Acre Case). Italics in original.

24 ///

IV.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO THE CITY'S  
MOTION FOR SUMMARY JUDGMENT ON THE LANDOWNERS' SECOND CLAIM  
FOR RELIEF – PENN CENTRAL TAKING CLAIM**

210. The City moved for summary judgment on the Landowners' Second Claim for Relief – Penn Central Taking Claim.

211. A Penn Central Taking Claim is an inverse condemnation claim separate and distinct from the Per Se Categorical, Per Se Regulatory, and Non-Regulatory / De Facto taking claims and is governed by a different taking standard.

212. The standard for a Penn Central Taking Claim considers, on an ad hoc basis, three guideposts: 1) the regulations impact on the property owner; 2) the regulations interference with investment backed expectations; and, 3) the character of the government action. Sisolak, supra, at 663.

213. The City conceded at the hearing on September 28, 2021, that the Penn Central taking standard is a lower standard than a per se categorical standard and if the per se categorical taking standard has been met, then the Penn Central standard is met.

214. Moreover, as explained above, 1) the impact from the City's actions on the Landowners' 35 Acre Property has been to deny all economic use of the property; 2) the City's actions have interfered with the Landowners attempts to develop residentially, which were the Landowners' investment backed expectations; and, 3) the government provided no justification for denying all economical use of the 35 Acre Property.

215. Insofar as a ripeness / futility analysis applies to a Penn Central claim, the claim is ripe.

216. The Nevada Supreme Court holds that, "a claim that the application of government regulations effects a [Penn Central] taking of a property interest is not ripe until the government

1 entity charged with implementing the regulations has reached a final decision regarding the  
2 application of the regulations to the property at issue. . . . But when exhausting available remedies,  
3 including the filing of a land-use application, is futile, a matter is deemed ripe for review.” State  
4 v. Eighth Judicial Dist., supra, at 419.

5 217. Here, the Landowners’ Penn Central taking claim is ripe, because the City denied  
6 all of the applications the Landowners submitted to use the 35 Acre Property and the City adopted  
7 Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical  
8 and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35  
9 Acre Property for use by the public and authorized “ongoing public access” to the property.

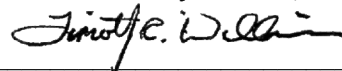
10 218. Therefore, given the City’s concession that the Penn Central taking standard is a  
11 lower standard than a per se categorical taking standard and the uncontested record in this matter,  
12 summary judgment is granted in favor of the Landowners on their second claim for relief – a Penn  
13 Central taking.

14 V.

15 **CONCLUSION**

16 **IT IS HEREBY ORDERED THAT** Summary Judgment is granted in favor of the  
17 Landowners on the Landowners’ First Claim for Relief – Per Se Categorical Taking, Second Claim  
18 for Relief – Penn Central Taking, Third Claim for Relief – Per Se Regulatory Taking, and Fourth  
19 Claim for Relief – Non-Regulatory / De Facto Taking. A jury trial is scheduled for November 1,  
20 2021, to determine the just compensation the Landowners are owed for the taking of the 35 Acre  
21 Property.

Dated this 25th day of October, 2021



998 183 8997 1E67  
Timothy C. Williams  
District Court Judge

MH



1 Respectfully Submitted By:

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

3 /s/ James J. Leavitt

4 Kermitt L. Waters, Esq. (NV Bar No. 2571)  
5 James J. Leavitt, Esq. (NV Bar No. 6032)  
6 Michael A. Schneider, Esq. (NV Bar No. 8887)  
7 Autumn L. Waters, Esq. (NV Bar No. 8917)  
704 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 733-8877  
Facsimile: (702) 731-1964

8 ***Attorneys for Plaintiff Landowners***

9  
10 Content Reviewed and Approved By:

11 **MCDONALD CARANO LLP**

12 Declined Signing

13 George F. Ogilvie III, Esq. (NV Bar No. 3552)  
14 Christopher Molina, Esq. (NV Bar No. 14092)  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

15 LAS VEGAS CITY ATTORNEY'S OFFICE  
16 Bryan K. Scott, Esq. (NV Bar No. 4381)  
17 Philip R. Byrnes, Esq. (NV Bar No. 166)  
18 Rebecca Wolfson, Esq. (NV Bar No. 14132)  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101

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

21 ***Attorneys for City of Las Vegas***

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

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6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

DEPT. NO. Department 16

8 vs.

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
16 case as listed below:

Service Date: 10/25/2021

17 Jeffrey Dorocak	jdorocak@lasvegasnevada.gov
18 Leah Jennings	ljennings@mcdonaldcarano.com
19 Philip Byrnes	pbyrnes@lasvegasnevada.gov
20 Todd Bice	tlb@pisanellibice.com
21 Dustun Holmes	dhh@pisanellibice.com
22 Jeffrey Andrews	jandrews@lasvegasnevada.gov
23 Elizabeth Ham	EHam@ehbcompanies.com
24 Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
25 Robert McCoy	rmccoy@kcnvlaw.com
26 Stephanie Allen	sallen@kcnvlaw.com

1	Adar Bagus	abagus@kcnvlaw.com
2	Christopher Kaempfer	ckaempfer@kcnvlaw.com
3	Michael Wall	mwall@hutchlegal.com
4	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
5	Autumn Waters	autumn@kermittwaters.com
6	James Leavitt	jim@kermittwaters.com
7	Michael Schneider	michael@kermittwaters.com
8	Kermitt Waters	kermitt@kermittwaters.com
9	Evelyn Washington	evelyn@kermittwaters.com
10	Stacy Sykora	stacy@kermittwaters.com
11	Amanda Yen	ayen@mcdonaldcarano.com
12	George Ogilvie III	gogilvie@Mcdonaldcarano.com
13	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
14	Christopher Molina	cmolina@mcdonaldcarano.com
15	Jennifer Knighton	jknighton@ehbcompanies.com
16	Sandy Guerra	sandy@kermittwaters.com
17	Jennifer Knighton	jknighton@ehbcompanies.com
18	Elizabeth Ham	EHam@ehbcompanies.com
19	CluAynne Corwin	ccorwin@lasvegasnevada.gov
20	Desiree Staggs	dstaggs@kcnvlaw.com
21	Shannon Dinkel	sd@pisanellibice.com
22	Debbie Leonard	debbie@leonardlawpc.com
23	Andrew Schwartz	Schwartz@smwlaw.com
24		
25		
26		
27		
28		

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22  
23  
24  
25  
26  
27  
28

Lauren Tarpey

LTarpey@smwlaw.com

David Weibel

weibel@smwlaw.com

Rebecca Wolfson

rwolfson@lasvegasnevada.gov