IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Appellant, vs. 180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Respondents.	No. 84345
180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Appellants/Cross-Respondents, vs. CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent/Cross-Appellant.	No. 84640 **JOINT APPENDIX, VOLUME NO. 110**

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

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

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

Attorneys for City of Las Vegas

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

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

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

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

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

Attorneys for City of Las Vegas

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

180 LAND COMPANY, LCC, Plaintiff,	)	CASE NO. A-17-758528-J
vs.	)	DEPT. NO. XVI
LAS VEGAS, CITY OF, Defendant.	)	**Transcript of Proceedings**

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 26, 2021

ALL PENDING MOTIONS

APPEARANCES:

FOR 180 LAND COMPANY, LLC:	JAMES J. LEAVITT, ESQ. ELIZABETH GHANEM HAM, ESQ. AUTUMN L. WATERS, ESQ.
FOR CITY OF LAS VEGAS: (Appearing via BlueJeans Video conference)	GEORGE F. OGILVIE, III, ESQ. ANDREW W. SCHWARTZ, ESQ. CHRISTOPHER J. MOLINA, ESQ. REBECCA L. WOLFSON, ESQ.

RECORDED BY: MARIA GARABAY, COURT RECORDER
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LAS VEGAS, NEVADA, TUESDAY, OCTOBER 26, 2021, 9:35 A.M.

* * * *

THE COURT: ...the next matter and that would be page 12 of the calendar and it happens to be 180 Land Company, LLC versus the City of Las Vegas. And let's go ahead and get set up.

MS. GHANEM HAM: Good morning, Your Honor. Elizabeth Ghanem Ham on behalf of plaintiff 180 Land.

THE COURT: So we have -- here's the issue. We have the defense on BlueJeans, we have the plaintiff in the courtroom. I just want to make sure I understand how everyone feels about that.

MR. OGILVIE: Your Honor, this is George Ogilvie. My office contacted your chambers this morning to ask which courtroom this was being heard in this morning because the Court has made remarks that it won't be conducting the trial which starts tomorrow in this courtroom. So I wanted to make sure I was going to the correct courtroom and my secretary was advised that this would be a BlueJeans only hearing.

THE MARSHAL: That is correct, Your Honor.

THE COURT: Yeah.

MS. GHANEM HAM: And, Your Honor, I apologize. My office did call on either Wednesday or Thursday and asked if you were taking in live hearings and we were told we could come in person, so that's why we're here.

THE COURT: And I don't mind saying that I think what happened when you made the call last week, Lynn Berkheimer, my Judicial Executive Assistant, was not working. She was on a vacation. She was somewhere in the mountains of Utah driving her 4x4 and having a lot of fun. That's what she was doing, you know.

So anyway, I guess we can handle this a couple ways. Number one, Mr. Ogilvie, do you have an objection?

MR. OGILVIE: I'm thinking, Your Honor.

THE COURT: And that's okay. And tell me this. Where are you located? Are you out in Summerlin or are you downtown?

MR. OGILVIE: I'm -- I'm neither.

THE COURT: Okay. Because if you want to come down and you want to appear, we can break and I'm going to make sure you have -- I'm going to accommodate you, sir, if that's what you want to do.

MR. OGILVIE: I understand that. I understand that and appreciate it, Your Honor. As I say, I'm thinking. I think unfortunate miscommunication; however, I think we will just proceed as is.

THE COURT: Okay. Well, I can say this for the record. I can hear you very clearly. I can. I can hear you and see you very clearly. No problem there. Okay, we'll go ahead and get set up in the courtroom and I'll give you a

chance to get set up. And, Mr. Ogilvie, if there's something you want to look at, we'll make sure we accommodate you, sir. We will.

MR. OGILVIE: Thank you, Your Honor.

THE COURT: All right. I'll step down for a few moments. Let me know when you're ready.

THE MARSHAL: All rise. Court will be in recess for five minutes.

THE COURT: Yeah.

(Court recessed from 9:39 a.m. until 9:49 a.m.)

THE COURT: All right. And for the record, the next matter we're calling is 180 Land Company, LLC versus the City of Las Vegas. And let's go ahead and set forth our appearances for the record.

MR. LEAVITT: Your Honor, good morning. James J. Leavitt on behalf of the plaintiff landowner, 180 Land.

MS. WATERS: And I'm Autumn Waters, also on behalf of the plaintiff landowners, Your Honor.

MS. GHANEM HAM: Good morning, Your Honor. Elizabeth Ghanem Ham, also on behalf of plaintiff landowners.

THE COURT: All right.

MR. SCHWARTZ: Andrew Schwartz for the City, Your Honor.

THE COURT: Yes. Good morning, sir. And let's go ahead from the defense perspective. I think Mr. Schwartz set

forth his appearance.

MR. SCHWARTZ: Yes. Andrew Schwartz.

THE COURT: Yes.

MR. SCHWARTZ: Good morning, Your Honor. Andrew Schwartz for the City.

MR. OGILVIE: Good morning, Your Honor. George Ogilvie on behalf of the City of Las Vegas.

THE COURT: All right. And from the City's perspective, are there any more appearances that need to be set forth on the record?

MR. OGILVIE: I believe Rebecca Wolfson and Chris Molina are also participating this morning, Your Honor.

THE COURT: All right.

MR. OGILVIE: On behalf of the City.

THE COURT: Okay. I just wanted to make sure we didn't overlook their appearances. Okay. And so --

MR. OGILVIE: Your Honor.

THE COURT: Yes, sir?

MR. OGILVIE: Your Honor, this is George Ogilvie. I appreciate the Court's offer of an accommodation. If I could, though, ask Mr. Leavitt if he intends to provide the Court with exhibits, because we've argued enough cases against each other, I see that Mr. Leavitt typically provides the Court, whether it be this Court or other departments, with spiral-bound binders of exhibits. If he could contact his office and

have them forward those exhibits to me?

THE COURT: Mr. Leavitt?

MR. LEAVITT: I won't be doing that. I'll be referring to statutes and I might give the Court a copy of a statute. But other than that, no, I won't be presenting exhibits, Your Honor.

THE COURT: And so for the record, did you hear that, Mr. Ogilvie?

MR. OGILVIE: I did, Your Honor. Thank you. That's satisfactory.

THE COURT: Okay. All right. Okay, so I'm looking here, we have a few matters on calendar and I'm wondering, should we just proceed in case order or are there some issues we can resolve summarily before we get started?

MR. LEAVITT: Your Honor, James J. Leavitt on behalf of the plaintiff landowner. I think what might be the best thing to do is to address the summary judgment motion first. And the reason I say that is because part of that bleeds over into some of the other motions, also.

THE COURT: All right.

MR. LEAVITT: I know that's the most difficult one, but I think it's appropriate. And that will be -- it will take the longest to argue, but it will help resolve some of the other issues as well.

THE COURT: Okay. Did you hear that for the record,

Mr. Ogilvie?

MR. OGILVIE: Yes, we did.

THE COURT: And what's your impression of that? Should we handle that first or do we have an agreement?

MR. OGILVIE: I'll defer to the Court, Your Honor.

THE COURT: Okay. If there's no opposition to it, we'll go ahead and deal with that motion first. And as to my understanding, that's Plaintiff's Motion for Summary Judgment on Just Compensation. Is that correct?

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

THE COURT: Okay. You have the floor, sir.

MR. LEAVITT: Thank you, Your Honor.

Your Honor, the reason I said that the summary judgment motion should perhaps go first is because the landowners filed a motion for partial summary judgment, of course, on the just compensation issue, maintaining that there's only one appraisal report that's been submitted in this case and that's the appraisal report by Mr. Tio DiFederico, an MAI appraiser who has 36 years appraising property in the city of Las Vegas. And he went through all of the mandatory appraisal requirements and he arrived at a value of $34,135,000 for the taking of the property. And that's where we are in this case, Judge. We are at one issue in front of the jury. What's the value of the property as of December -- I'm sorry, as of September 14th, 2017.

THE COURT: You know, I have a question for you on that.

MR. LEAVITT: Sure.

THE COURT: And it's a real simple question.

MR. LEAVITT: Sure.

THE COURT: Is this motion in the proper posture procedurally that I can make that type of determination?

MR. LEAVITT: Yes, Your Honor. And the reason I say that is because the City itself has also counter-moved for summary judgment. And so the City has said, listen, we don't have any factual disputes, it's a legal question. Does the Court need to adopt the landowner's appraised value of $34,135,000, or does the Court need to adopt the City's position that the value of the property is zero?

THE COURT: But here's my question.

MR. LEAVITT: Yes.

THE COURT: At the end of the day, ultimately wouldn't a jury make that decision?

MR. LEAVITT: Yes. And here's where -- absolutely, Your Honor, in every single one of these cases that's how we do it, but in every single one of these cases the government shows up with an appraisal report. That's what's different in this case. And so --

THE COURT: I mean, I get that. But you have to remember, my question I think was really pretty specific as to

whether or not this case is in the proper procedural posture for me to render that type of decision.

MR. LEAVITT: And the reason I say that, yes, it is, Your Honor, is because -- well, let me take a step back. This Court -- in every inverse condemnation case there's three issues. The first issue is what is the property rights that the landowner had. This Court decided that issue was a matter of law. The second issue is whether there's been a taking of that property right. And this Court entered a decision as a matter of law that the property has been taken.

So now the sole issue that's being presented to the jury is what is the just compensation that must be paid for the taking of that property. And so this issue is teed up specifically for the jury to decide. However, if there's no factual dispute at this time, Your Honor, then this Court could make that determination of what the just compensation is.

But if I may, Your Honor, the critical point here is did the City have a mandatory duty to prepare an appraisal report and bring that appraisal report to the Court and to the jury? That's what really the real relevant question is before the Court, is does the City have a duty in every eminent domain case to prepare an appraisal report and present that appraisal report to the jury? And if the City doesn't meet that duty, what are the -- what's the remedy if the City does

not bring an appraisal report to this Court or to the jury? That's really what the question is.

And, Your Honor, Nevada has adopted two mandatory laws that state that the City of Las Vegas is required in this type of case to prepare an appraisal report and the City is prohibited from paying less than that appraisal report. It has a mandatory duty to take those actions. And, Your Honor, that comes right out of the Sisolak case. If we turn to the Sisolak --

THE COURT: And I don't mind, I'm just going to tell everybody -- I always tell everybody what I'm thinking; right? I just do.

MR. LEAVITT: Sure.

THE COURT: And when I look at this, this is my issue. Not issue, this is an observation. And I was just wondering from a procedural perspective, does the motion meet the requirements of Rule 56? It's really simple to me. It was -- jumped off the pages and so on, because I understand the underlying law behind it. I understand your position. You said, look, Judge, we have an expert. They don't have an expert. The sole issue to be determined by the jury would be value. I get that, and so on and so on.

But I sit back -- and this is something I always think about and I don't mind telling you this, especially when it comes to motions for summary judgment, typically when I see

a motion for summary judgment it's based upon a declaration and/or affidavit and/or testimony. Sometimes we have answers to interrogatories or requests for admissions that potentially could be the basis for that. And when I looked at it, it didn't seem that this case was at that evidentiary posture for me to make that determination.

MR. LEAVITT: Understood, Your Honor. If I -- and I want to address that issue, Your Honor.

THE COURT: Yeah. I mean, to me that's really -- that's like the elephant in the room --

MR. LEAVITT: Uh-huh.

THE COURT: -- when I looked at this because I said, you know -- I mean, I filed many a motion for summary judgment from a defense perspective and also from the plaintiff's perspective, but it was always based upon deposition testimony and/or discovery responses.

MR. LEAVITT: Right.

THE COURT: Sometimes you would have a declaration or affidavit, depending on the type of case it was. Sometimes you would have a declaration or affidavit, depending on the type of case it was. Sometimes -- and that was early on in my career when I was doing med-mal defense work. Sometimes, you know, we have an affidavit requirement and the like and so on.

I mean, but that's what I'm kind of looking at because to me -- I don't mind telling this. I don't know what

our Nevada Supreme Court would do with this, but I think they would kind of look at it in such a way where, okay, Judge, you're granting summary judgment based on what; right?

MR. LEAVITT: Understood. So what we submitted to the Court and what we attached to our motion, Your Honor, was the appraisal report that was completed during discovery which was prepared by the MAI appraiser. That means there's only been one appraisal report submitted in this case submitted by an MAI appaiser. But let me explain why that's important in this specific context, because eminent domain cases are under Chapter 37.

THE COURT: I'm not disagreeing. I'm looking at this through the lens of Rule 56.

MR. LEAVITT: I got it. And I understand what the question is, Your Honor. I understand.

THE COURT: I'm looking at it -- I mean, it's a real simple question. Through the lens of Rule 56 --

MR. LEAVITT: Right.

THE COURT: -- that's how I'm looking at it.

MR. LEAVITT: And, Your Honor, I understand what you're saying. You can either move through depositions, you can either move through discovery or you can move through affidavits. The evidence that we presented here was submitted during discovery. It is the appraisal report. And so that's the evidence that we're providing to the Court; nobody

disputes. Now, I could attach an affidavit and say here's the appraisal report, it was produced during discovery and we move for summary judgment based upon this appraisal report, but Your Honor --

THE COURT: Or you could actually incorporate that appraisal report into a declaration and/or affidavit that would have been produced during the course and scope of discovery and that potentially would meet the requirements of Rule 56. But my point is this -- and I'm looking at it. I don't -- do any -- is there any case law that stands for the proposition that a report in and of itself is sufficient from an evidentiary perspective to be the basis for a summary judgment motion?

MR. LEAVITT: And, Your Honor, my answer to that would be, yes, Your Honor, and let me explain why. And here's why, Your Honor. Nevada has adopted two specific rules, okay, and I want to start with this one. And this is where it meets that evidentiary standard that you're going at right now. The first rule that the Nevada Supreme Court adopted was in the Sisolak case, and in that case the Nevada Supreme Court stated that the provisions of the Federal Real Property Acquisition Act apply to all political subdivisions.

And, Your Honor, again to your question, your question is very pointed. I understand the question. So quoting the Nevada Supreme Court in the Sisolak case, they say

the provisions of that Federal Real Property Acquisition Act apply to all Nevada political subdivisions and agencies. That same -- what the Nevada Supreme Court cited to, Your Honor, was NRS 342.105. In NRS 342.105, the Nevada Legislature decided to apply these Federal Real Property Acquisition Acts to all political subdivisions in the state of Nevada. So what that means is that the City of Las Vegas is required in all of these eminent domain cases and inverse condemnation cases to follow that uniform Real Property Acquisition Act.

And, Your Honor, here was the policy for that act, is that in the 1960s and 1970s the government was taking property and they weren't paying the landowners what Congress thought was just compensation. And so what the legislature -- what Congress did and what the Nevada Legislature did is they said we're going to follow these federal rules. And these federal guidelines, Your Honor, are set forth in 42 U.S.C. 4651. And here's what's so critical about what we're here for today, is that federal law requires that in any of these eminent domain cases the government is required to hire an appraiser and the government is required to have that appraiser appraise the property, and that the government is prohibited from paying less than the value that appraiser comes up with.

That's 42 U.S.C. 4651, Section 3 and Section 4. Here's what Section 4 says. It says no owner shall be

required to surrender their property unless the government pays an amount not less than the agency's appraisal of the fair market value of the property. So what that says, Your Honor, is that the government cannot come into an eminent domain case without an appraisal report. It has to bring an appraisal report and it's prohibited from paying less than that appraisal report. So the government has not met that standard in this case.

THE COURT: Okay. So what is the impact, though, on that -- and there might be an evidentiary impact at the time of trial. I get that.

MR. LEAVITT: Yes.

THE COURT: But for the purposes of summary -- for summary judgment --

MR. LEAVITT: Right.

THE COURT: -- where the moving party bears the burden of proof, typically.

MR. LEAVITT: Right.

THE COURT: And you're asking me to evaluate or accept the -- I'm sorry, to accept the number by your appraiser. And my point is this. There's a report; right? And we don't have testimony, we don't have an affidavit and the like. And in a general sense, aren't reports hearsay?

MR. LEAVITT: Oh, I understand what you're saying, Your Honor. Yes, in and of themselves. However, Mr.

DiFederico attaches to his appraisal report a certification, which is the equivalent of a declaration. And attached to that appraisal report, Your Honor, and I can provide you a copy if you'd like --

THE COURT: We can pull it up.

MR. LEAVITT: Yeah. It's what exhibit?

MS. WATERS: Give him the Bates stamp number.

MR. LEAVITT: It's the Bates stamp number TDG Report104. So, I apologize, Your Honor, I was going down another path. I understand what you're saying, Your Honor.

THE COURT: Yeah. So it's the appraisal report of Tio DiFederico.

THE COURT: We're pulling it up. We'll print it out.

MR. LEAVITT: All right.

THE COURT: We'll look at it.

MR. LEAVITT: And again, it's the Bates stamp 000104 and 105. And so, Your Honor, as you have that before you, you can see the certification at the top. He certifies that the facts contained in the report are true and correct. And then he goes through the analysis that he's done, that he has no bias; that the compensation -- well, I'll let you read it, Your Honor.

THE COURT: Is there another page to this? Is there a signature?

THE CLERK: The second page.

MR. LEAVITT: Yeah, on page 105 is the signature.

THE COURT: I think we're missing a page or two. How many pages is the report? I'm looking here from a Bates stamp perspective, does it start at 104?

MR. LEAVITT: No. The report starts at --

THE COURT: No, no, I'm talking about the certification.

MR. LEAVITT: The certification starts at 104 and ends at 105.

THE COURT: Okay. All right, I see it.

MR. LEAVITT: Okay. And so, Your Honor, that was submitted with Mr. DiFederico's -- I don't know if the Court needs -- I'll let the Court look at that.

THE COURT: I mean -- no, I have it.

MR. LEAVITT: Okay.

THE COURT: I do have some thoughts on it, but I'm going to hear what Mr. Ogilvie has to say. But go ahead, sir.

MR. LEAVITT: Okay. So that's the certification, asserting that it's true and correct to the best of his knowledge. And it goes through and lays out that he's met every single one of the appraisal requirements. He states in there that he's the one who's personally done the work and certifies that it's all true and accurate.

Now, another issue is, Your Honor, we could have brought the deposition of Mr. DiFederico, but the City of Las

Vegas elected not to depose Mr. DiFederico. In fact, the City has not challenged one part of Mr. DiFederico's report. And to be clear, the City had every opportunity to do that. The City had an opportunity to exchange expert appraiser reports. And the City also had an opportunity to submit a review appraisal report of Mr. DiFederico's report, which is a specific process that's allowed under the appraisal guidelines, which would have been a rebuttal appraisal report to Mr. DiFederico's report.

So, Your Honor, we have the appraisal report that was done by Mr. DiFederico. We have that report which includes his declaration certifying that everything is true and correct and that he has been -- and that he is personally responsible for all of that information.

Your Honor, I want to go back now to this federal requirement under the Federal Real Property Acquisition Act that Nevada has adopted and imposed on the City of Las Vegas. That Act then defines what an appraisal report is, and it states that the appraisal must be a written statement by an independent and impartially prepared qualified appraiser, setting forth the opinion of value as of the relevant date of value. And so, Your Honor, we have one provision in the Nevada Revised Statutes that mandates that the City prepare an appraisal report and bring that appraisal report to the court, and that the City is prohibited from paying less than that

appraisal report.

And, Judge, I want to turn to a second section in the Nevada Revised Statutes. And you'll recall that we discussed this statute at the take hearing. It's NRS 37.039. This statute also specifically requires that the City of Las Vegas produce an appraisal report. Your Honor, as you'll remember, 37.039 says that if the government takes property for open space -- and, Your Honor, I can give you a copy of this if you want. It's that one that we looked at previously. Do you want me to --

THE COURT: No, I'm fine. I'm fine.

MR. LEAVITT: Okay. All right, that's okay. All right. So in NRS 37.039, the Nevada Legislature elected to meet and adopt a statute which specifically applies to this exact situation we're in today, that when the government takes property for open space, this is what the statute says. It says, "Notwithstanding any other provision of law." In other words, no matter what any other law says, when the government takes a parcel of property for open space, it must at a minimum -- and this is what it says, at a minimum provide an appraisal report and then it must provide to the landowner the value of that property as appraised by the agency's appraisal report.

Your Honor, these are mandatory provisions that the government must follow in order to come into an eminent domain

case. What the Nevada Legislature said was that the government is not permitted to even appear in an eminent domain case unless it brings an appraisal report. And the only appraisal report that we have in this case that's been prepared by an -- actually, the only appraisal report we have in this case that's prepared as of the September 14th, 2017 date of value is that of Mr. DiFederico. And the City has not challenged that report. It's the only one that appears in this case. They have not contested it. They have not said that the valuation was wrong.

In fact, Your Honor, for all intents and purposes they haven't deposed him, they haven't done a review report, they haven't provided a rebuttal report. For all intents and purposes they've conceded to this report, because if the government doesn't concede to this report, Your Honor, it jeopardizes federal funds. If the City doesn't have an appraisal report and agrees to pay at least that minimum amount of that appraisal report, the Federal Relocation Act would prohibit the City from receiving federal funds.

And so, Your Honor, our request -- well, let me go -- let me take just a couple more steps on this because -- and I want to talk about the policy for why the Nevada Supreme Court and why the Nevada Legislature have imposed these requirements on the City of Las Vegas. Well, the first reason is because we've adopted specific statutory provisions for how

property is valued. First, the property must be valued based upon its highest and best use. Secondly, once highest and best use is determined, the value must be -- the fair market value must be based upon the highest price. And then thirdly, all of those valuation -- all that valuation evidence must be determined as of the relevant date of value under NRS 37.120. And in this case, 37.120 says the date of value is September 14th, 2017, which is the date of service of summons.

So we have in the -- Your Honor, those are all constitutional provisions. In our Nevada Constitution it expressly states that these are the specific requirements that must be met and followed to value property in an eminent domain case. And if the appraisal report doesn't meet that standard or if a party doesn't bring evidence that meets that standard, the party is not permitted to show up at trial and argue for something different.

And the policy was laid out clearly in a case called Tacchino v. State. In that case the Nevada Supreme Court said that the word just in front of the word compensation was meant to intensify the meaning of that word compensation and conveys the idea that the compensation in these cases must be real, ample, full and substantial. And so the Nevada Supreme Court and the Nevada Legislature have adopted the provisions and adopted the laws, and it's actually set forth in the Constitution that the only way that real, ample, full and

substantial compensation can be met on the government's side is if the government brings in an appraisal report. And the rules expressly state that it cannot pay less than that.

So those are the two requirements for the government to show up in this case. Number one, it has to bring an appraisal report. And number two, it has to pay at least that value of that appraisal report.

And so, Your Honor, I do want to address where we are today just very quickly. As stated, the landowner strictly complied with this process. We've produced the appraisal report timely and turned it over. The government, however -- you'll recall, Your Honor, when we met, I believe it was in spring of this year, 2021, the City of Las Vegas actually got a continuance on the motion for summary judgment. You'll remember, Your Honor, you granted their 56(d) continuance. I remember you said, hey, this was the first time I've done this; I'm going to grant it. And we all remember what the City's underlying reason was for wanting that continuance. They said, listen, Judge, we have to go determine the economic impact of the property. That's why we continued this case, to allow the City to determine the economic impact.

And then we appeared on September 28th on the take hearing and this is what the Court asked the City: "What evidence do we have from a property evaluation that's been

submitted by the City?" Clearly, Your Honor, you were referring back to the underlying reason why you gave the City those five months to determine the economic impact. And this was the City's response: "We don't have to submit evidence of what the property was worth when the developer bought it, or what the property would be worth if developed or could be developed for residential."

The government could not be more wrong, Your Honor. The government is required under 37.039 to prepare an appraisal report and pay at least that value. The government is required under the Federal Real Property Acquisition Act to prepare an appraisal report and pay at least that value.

And so, Your Honor, it hasn't met that standard. Those are specific requirements that apply only to a government in an eminent domain case. And the obvious reason for that is to protect this landowner's just compensation. In other words, what the Legislature decided is it's not going to let the government come into these cases without an appraisal report, without valid evidence and just try and undercut all of the other valuation evidence. And Judge, that's what we're seeing here.

So on the City's countermotion for summary judgment, again, conceding that summary judgment is teed up and ready for the Court to decided, the City says, Wait a minute, the reason that we at the City should win summary judgment is

because there's a PR-OS on the property and the property is valueless. Judge, you already decided that issue as a matter of law and rejected it, so that's not a valid reason for the City to win summary judgment.

The second issue that the City argues in its brief is that there's been no taking. And the City says since there's been no taking, then just compensation can't be paid. Well, we just received the order yesterday that there's been a taking. Therefore, summary judgment can't be granted for the City on that issue.

And then the final issue that the City raises is the City says, listen, the landowners used the wrong date of value. Well, Your Honor, 37.120 is the statute which lays out the date of value and the landowner strictly complied with that. Therefore, that's not a reason to grant summary judgment for the City of Las Vegas.

And so, Your Honor, we submitted the evidence of an appraisal. We submitted the certification of the appraiser, declaring that everything in there is true and correct and that he personally did that work and provided it to the Court. There's no counter evidence to that that the City could present at a trial. Again, the only thing the City can bring is an appraisal report and must pay at least that value of that appraisal report.

So, Your Honor, we would request that the Court

grant summary judgment on that issue. And, Your Honor, if you have any other questions, I can answer them. But of course we would have attached the deposition of Mr. DiFederico, but the City didn't take it. There was no deposition done. So the best thing we had to certify the correctness of that report and to move it from hearsay was the declaration of Mr. DiFederico, which is attached to his report, Your Honor.

THE COURT: Okay, sir.

MR. LEAVITT: All right, Your Honor. Do you have any other questions for me, Judge?

THE COURT: No, not at this time, sir.

MR. LEAVITT: All right.

THE COURT: Okay. Mr. Ogilvie, sir.

MR. OGILVIE: Your Honor, Mr. Schwartz will be arguing.

THE COURT: Okay. All right.

MR. SCHWARTZ: Thank you, Your Honor.

Your Honor, the developer's motion for summary judgment should be denied. The argument is that the City had a mandatory duty to appraise the property and that's incorrect. All of the rules that counsel cited apply to an eminent domain case. This is not an eminent domain case. There are major differences between an eminent domain case and a regulatory takings case, which is an inverse condemnation case. All those rules that Mr. Leavitt cited apply to a case

where the government has affirmatively taken property by filing an eminent domain action. Those rules make a lot of sense in the context of eminent domain where it's incumbent on the government to appraise the property, offer the property owner the amount of the appraisal before the government goes to eminent domain.

But the burden is on the government in an eminent domain case where by filing the eminent domain action the government concedes liability. It takes the property at the time it files the eminent domain complaint. So of course the government should have to appraise the property because it's going to take the property and it should be required to follow certain rules to make sure it's fair to the property owner that if the government is going to take their property that they do an appraisal and that the appraisal follow certain rules. And the only issue in the case is what's the fair market value of the property on the date of value.

The date of value is the date of the taking, and in an eminent domain case the date of the taking is when the government files a complaint and a lis pendens or some document that is recorded in the chain of title that indicates the government is going to take the property. That's the taking. And those rules are all directed at that process.

This is a completely different process in this case. It is not an eminent domain case, it is an inverse

condemnation case where liability is the primary issue. If liability is established, then the court or a jury determines the damages. And the damages are not the fair market value of the property, as it is in an eminent domain case. The damages are the difference for the categorical and Penn Central claims which allege that the City has regulated the owner's use of the property to wipe out the value or nearly wipe out the value. So for those two claims the measure of damages is the value of the property before the taking, as opposed to the value of the property after the taking. That's a completely different measure of damages than in an eminent domain case.

So those rules logically do not apply in this case. The City doesn't need an appraisal to introduce evidence at the trial of the damage. The burden is on the property owner to prove that the value of the property immediately before the taking was wiped out, as compared to the value after the taking. The developer has submitted an appraisal in which the appraiser says that the value of the property immediately before the date of value -- and we want to address the date of value because the date of value in an eminent domain case does not apply in this case. But assuming that the date of value of September 14, 2017 is the date of value, the appraiser's opinion is that the property was worth $34,000,000 immediately before the date of value, based on the fact that the property owner had a right -- that the legal use of the property was

for residential; that the legally permissible use was for residential. And of course the appraiser is required to determine the highest and best use of the property, and to determine the highest and best use the appraiser has to make a judgment as to what use is physically feasible, economically feasible and legally permissible.

So the appraiser in this case concluded that residential use was legally permissible the day before the date of value. The appraiser then concludes that as of the date of value the City has taken the property and that -- and determined that residential use is not a legally permissible use.

So we don't need an appraisal to show that the developer has not been damaged in this case because immediately prior to September 14, 2017, residential use was not a legally permissible use. The City's general plan designated the property PR-OS, which means --

THE COURT: Well, I understand that. But for the purposes of this trial that ship has sailed. I just want to tell you that. That will be an appellate issue you have a right to raise on appeal. But I've already ruled on that issue. The jury is going to be instructed in accord with the rulings I've made in this case and I just want to make that very clear.

MR. SCHWARTZ: The Court said in paragraph 39 of

its findings of fact and conclusions of law, the Court rejects the City's defenses that a master plan/land use designation of PR-OS that affects this Court's property interest determination. So there is no authority cited for that proposition and it's --

THE COURT: It's like I said, sir, you're going to have to accept this fact. This is a fact as far as this case is concerned. I've made rulings. You have a right to appeal. I respect everyone's right to appeal. At the end of the day the evaluation in this case is going to be based on RPD7. That's what it's going to be. That's what the -- and if I'm wrong, the court of appeals and/or supreme court can say that. That's the law of the case. We're starting trial tomorrow. We're picking a jury tomorrow. I just want to tell you that. I'm not going to relitigate that issue. But go ahead.

MR. SCHWARTZ: Your Honor, can I request clarification?

THE COURT: I mean, no. Request clarification on what? I've issued an order; right? We have motions for that. I mean, if you want to seek relief pursuant to Rule 60 from one of my orders, that's okay, but it's not in front of me right now.

What we're going to do is this. We're going to deal with this specific motion. I look at this motion in a very straightforward manner. I understand what the position of the

landowner is. But I was concerned about the evidence in this case as it's currently postured for a motion for summary judgment. It's a procedural issue. And I'm waiting for your response to that.

MR. SCHWARTZ: Well, Your Honor, I don't know if the City has a position on whether this motion is procedurally improper, but we certainly --

THE COURT: I'm not talking about -- I'm not talking about the motion being procedurally improper. I'm talking about the status of the evidence because pursuant to Rule 56, if I'm going to grant summary judgment there has to be uncontroverted issues of fact. But it has to be based upon admissible evidence; right?

MR. SCHWARTZ: Yes.

THE COURT: And the question is whether this -- whether the report -- and I understand the report, I understand what the purposes of the report would have been pursuant to Rule 16.1, to place the other side on notice. And you have the opportunity to take their deposition or not, that's up to you. But my point is this. Is that enough to grant summary judgment? Simple question to me.

MR. SCHWARTZ: I -- no. First, we understand that the Court has I think found that the PR-OS designation is either invalid or inapplicable. We don't feel that that is clear.

THE COURT: How about irrelevant?

MR. SCHWARTZ: Or irrelevant. If the Court -- we do seek clarification as to exactly what the defect in the PR-OS designation is because it's a critical issue in this case. So if the Court --

THE COURT: I agree. But understand, sometimes you get the decision you want, sometimes you don't. When you don't, you appeal. At the end of the day -- because I'm not changing this. This is going to be the law of the case moving forward. If there's something brought to the attention of the jury that's not in line with my ruling, there can be sanctions. I don't mind telling you that, you know. But my point is this. That ship has sailed; right? I'm looking at it from this perspective because whatever decision I make regarding the summary judgment motion, here's my concern, whether it withstands scrutiny of an appellate court. I don't mind telling you that. It's really that simple.

And so the master plan, all that stuff, we're beyond that now. We're dealing with one issue and one issue only, and that's valuation. That's what we're going to trial for. We're not relitigating issues. And the jury is not getting jury instructions on those types of determinations I've made as a matter of law. I just want to be clear on that, because this is this case. We're going to trial tomorrow. I'm bringing in a jury tomorrow. We're going to start voir dire

tomorrow and we're going to get this case done next week.

MR. SCHWARTZ: Your Honor, I just want to make the City's position clear. We understand I think from the Court's ruling yesterday and from your comments this morning that the City is not to mention the PR-OS designation at the trial. The City will abide by --

THE COURT: How is it relevant in light of my decisions; right?

MR. SCHWARTZ: Pardon me?

THE COURT: But go ahead. Go ahead, sir. But I'm really focusing on -- I don't want to get sidetracked. We have a simple -- I won't say simple, but we have a straight-forward motion for partial summary judgment that's filed by the landowner in this case and this is what they're asking for. They want summary judgment granted in an amount of $34,135,000.00. That's what they want. That's what the issue is.

MR. SCHWARTZ: Yes, Your Honor. And the City contends that all of the rules that counsel cited for granting that motion are inapplicable, and the City also contends that there are triable issues of fact.

THE COURT: Okay.

MR. SCHWARTZ: The developer paid four and a half million dollars for the property. There's been no change in the property physically or legally between that and the

alleged date of value, and so the property couldn't possibly be worth thirty-four million dollars. The City intends to introduce evidence at the trial that the developer paid four and a half million dollars. The developer disputes that. That's a disputed issue of fact.

THE COURT: All right.

MR. SCHWARTZ: The City also intends to introduce evidence at the trial that the property is part of a larger parcel, the PRMP or the Badlands, and that the alleged taking of the property had no effect on the value of the property because the property was an amenity of the rest of the PRMP. It was also part of the Badlands and you can't segment that property out from the larger parcel. I believe that the developer intends to contest that fact.

The City also contends -- I think this is a legal issue, Your Honor, that the date of value is not September 14, 2017. In a taking case -- in a regulatory taking case, given the developer's categorical and Penn Central claims which allege that the City took some action that limited the developer's use of the property and that it was a taking, the date of value is the date that the City took the alleged action. The developer is quite vague about the actions that constituted taking. The developer asked the Court to look at kind of the gestalt of the City's actions, but that's not how the law of inverse condemnation works. There is a date when

the City took an action that took the property.

The developer asserts that the date of value of September 14, 2017 is the date that the developer filed the complaint, so that's the date the developer did something. Well, that may be the date of value in an eminent domain case where the government files a complaint and the filing of the complaint is the taking. That's not true in an inverse condemnation case. If the City denied some permit application and that that was a taking, then the date of value is the date that the application was denied.

So we have no date of value here that is recognized in the law. The developer is going to rely on the Alper case and that case doesn't apply. That case says that the rules for valuation in an eminent domain case are the same as in an inverse condemnation case. But that case does not say that the date of value in an inverse condemnation case is the date of filing of the complaint. In that case the government did not -- it moved to condemn the property. It physically took the property. And then the property owner said, well, you need to pay me, you have not filed an eminent domain case, so the developer files an inverse case. And the developer argued that the date of value was not the date that the property was taken but the date of trial because the government delayed the trial. So that case did not hold that the date of value in an inverse condemnation case is the date of filing the complaint.

That would be illogical. It would make no sense because the taking is some government action and the filing of the complaint is the property owner's action.

So that date of value is wrong. We think summary judgment should be granted because the developer has no evidence of a difference between the value of the property before the take and after the take on the correct date of value. There is no -- we don't know what the date of value of the take is because the developer has never identified what actions were the taking and what the dates are of the taking. It's relying on an incorrect rule.

We also argue that there is no evidence of any damage due to the developer's physical taking claim, which it styles as a per se regulatory taking. The DiFederico appraisal only addresses the damages for the categorical and the Penn Central claim, which are the claims regarding regulation of use. So we are going to trial on a physical taking claim where the developer has no evidence of damages.

Staying with the non-regulatory taking claim, the developer has submitted no evidence as to what the City's actions were that constituted a non-regulatory taking. The developer submitted evidence of actions that constituted a regulatory taking where the government limited the use of the property by denying permit applications by requiring the developer to obtain -- to file a certain application to build

a fence and to obtain additional access to the property. Those are all claims of a regulatory taking. There's no evidence that there's any action of the City of a non-regulatory nature, other than the alleged physical taking, which there's a separate cause of action for that.

There's no evidence of any action that constituted a non-regulatory taking and there's no evidence of any damage. The developer has not only not identified what the City did to effect a non-regulatory taking, but they have no evidence of any damage. And so the City should have summary judgment on those claims where the developer has no damage. But with respect to the categorical and Penn Central claims, there are triable issues of fact.

THE COURT: Okay, sir. Anything else?

MR. SCHWARTZ: Not at this time, Your Honor.

THE COURT: Okay. Thank you.

Mr. Leavitt.

MR. LEAVITT: Yeah. Your Honor, I was looking back through the rules. I mean, 56(f) allows us to move forward with or without affidavits. I understand that the evidence has to be admissible. This is what's happened on the motion for summary judgment is the landowners file a motion and attach Mr. DiFederico's appraisal report with his certification. The City did not object to that appraisal report. It has never once objected and said, hey, this

appraisal report is not admissible as part of this summary judgment hearing. And, in fact, the City relied upon Mr. DiFederico's report and cited to it as reason for summary judgment. So we didn't have an objection from the City of Las Vegas. Had the City of Las Vegas objected, then as part of our reply we could have provided any and all evidence necessary to meet any additional heightened standard of admissibility. So, for example, Your Honor, we could bring --

THE COURT: And I don't look at it as a heightened standard for admissibility, if you understand what I mean. Either it's admissible or it's not.

MR. LEAVITT: Oh, I understand.

THE COURT: There's no heightened standard there. But go ahead.

MR. LEAVITT: I understand. And we all know, Your Honor, that once evidence is presented, if the party doesn't object it comes in, and we haven't had an objection from the City of Las Vegas. So we can remedy -- the City's first time they objected was just now on TV here at this hearing. So we just texted Mr. DiFederico, Your Honor. We can have him down here in twenty minutes and we can have him take the stand and we can have him certify to the accurateness with live testimony of everything set forth in the report so it doesn't become hearsay or so it is admissible, the same as he would do at a trial. We could have him do an affidavit right now to

further confirm the certification that he has on his report.

I mean, so my concern, Your Honor, is we've been blindsided now by the City of Las Vegas.

THE COURT: Well, I don't mind telling you, here's my concern. I'll just tell you as the trial judge and I've seen this in front of the Nevada Supreme Court. I mean, I don't mind telling you this. There might be peripheral issues that aren't necessarily ultimately germane to the case and issues regarding potential waiver and the like. And what our supreme court will do from time to time, they'll just grab onto something.

And I'm looking at it from this perspective. I understand where this case's procedure. I get it. I do. And we have a jury coming in tomorrow. There might be some issues down the road at a close of the evidence where potentially I might have -- I might look at things differently. I don't know. I have to listen to the evidence. But my point is this, and I don't mind saying this. When I read the points and authorities, and I do so in every motion for summary judgment or partial summary judgment and the like, I always sit back and then the first thing I do is conduct a Rule 56 analysis. I just do, you know. And that's why I had the questions I did because -- and you could be a hundred percent right, but until Carson City says that. And we're so close; right?

And your suggestions we can't do. I get it, Mr. Leavitt, because we can call him Monday or Tuesday and he can do the same thing. I get it, I do. And that's my concern. And just as important, too, we're talking here and I don't mind saying this, this is what I'm doing, counsel, everyone, ladies and gentlemen. I think in a general sense -- I'm not saying I'm perfect. From time to time the supreme court will disagree, sometimes they won't. And, you know, another great example of that, and I don't mind telling you that, is the one case you bring to my attention regarding a ruling I made and when I granted the motion to amend to bring in the petition for judicial review, I was never even called upon to make -- I knew they were different standards. They just threw that in there.

MR. LEAVITT: Yeah.

THE COURT: You see where I'm going on this?

MR. LEAVITT: Sure, Your Honor.

THE COURT: I mean, it wasn't even an issue and they grabbed on that. I would have -- what I would have done, I don't mind saying, since I don't have the case anymore I can say this, I would have treated them differently with different standards. I understand the different standards, preponderance of the evidence versus a standard where there's substantial evidence and the record is important, the administrative tribunal. I get that -- or plain error of law.

But they didn't see it that way. And so I'm just trying to -- I guess what I'm trying to do is -- my best way to look at it is limit potential appellate issues.

MR. LEAVITT: Understood, Your Honor.

THE COURT: I mean, I'm always going to tell you what I'm thinking and that's my thought.

MR. LEAVITT: Understood.

THE COURT: Yeah. But go ahead, sir. Go ahead. I don't want to cut you off.

MR. LEAVITT: So that -- so, I mean, we've submitted -- here's where we are on the appraisal report. Number one, it's permissible. Obviously an appraisal report is permissible. I understand the hearsay implications. That's why we have Mr. DiFederico's certification. Secondly, the government never objected to this appraisal report, and in fact relied upon it in its countermotion for summary judgment, conceding to the evidentiary value of the appraisal report. I don't have an objection from them. For the first time today they say, hey, yeah, well I guess we do object, because you brought it up. And I understand why you brought it up, Your Honor. I understand that.

THE COURT: Yeah.

MR. LEAVITT: I'm not criticizing the Court in any way, shape or form, of course, but --

THE COURT: Especially when we're so -- we're

bringing a jury in tomorrow.

MR. LEAVITT: I got it. I got it. And so that was our concern is that having this brought upon us by the City at the last minute. Obviously we could have provided an additional affidavit.

But, Your Honor, I want to address two other issues really quick that Mr. Schwartz brought up. He said, Judge, this property, 250-acre property was an amenity for all of the surrounding area and it was limited to be a golf course because it was part of the Peccole Ranch Concept Plan and we're going to argue that at trial. Judge, that ship has sailed, okay.

THE COURT: I think I've said that.

MR. LEAVITT: I know you have, Your Honor. But that's my concern. So I want to be real clear here today that the sole issue -- we've argued the property interest issue. The Court decided it. We've argued the take issue. The Court decided it. That means that the only issue for trial is what is the value of that property taken on September 4th, 2017? That's it. We don't have a before condition and an after condition value. We don't have a before this or before that. It's just the City took that property. This case has been converted to a direct eminent domain case, meaning that the City has been found liable for the taking, and the sole issue is how much the City has to pay for that taking.

What I'm hearing from counsel is they're going to try and reargue everything. They're going to try and reargue the PR-OS, the PRMP.

THE COURT: I don't mind cautioning everyone on that. And we're all professionals and we understand that, you know, at the end of the day we're a country based upon the rules of law. And what I mean by that is this. If a trial court rules and you feel that the trial court has made a mistake in a ruling as a matter of law, plain error or abuse of discretion or whatever, you live with the Court's rulings; right? That's what you do. In front of a jury you live with the Court's rulings. And then what you do is this. You appeal it. That's all.

MR. LEAVITT: I agree.

THE COURT: You make your record and you appeal it. And I've had -- and I look back, I mean, I look back at some of the cases I've had and I've had issues where that has come up. And to be candid with you, this might have been ten, twelve years ago, it kind of surprised me that someone would violate a court's order, but they do. And I'm much more well aware of that. And I'm not saying in this case Mr. Schwartz and/or the City would do that, but I just want to just caution everybody just to remember what is the procedural posture of the case. Right? That's all. Because to be candid with everyone, I'm looking at it from this perspective. We could

be done with this case, potentially submit it to the jury by Thursday of next week.

MR. LEAVITT: I totally agree, Your Honor.

THE COURT: You know, because it's a simple issue. It really is. What's the value?

MR. LEAVITT: Right. And I agree, Your Honor. And that's, of course, what we have prepared and we prepared an appraisal report that determines that value.

Here's where I'll end, Your Honor. We have that appraisal report, which addresses that one issue. The City has conceded that it has no other evidence to contradict that. It has simply argued legal arguments to this Court, the PR-OS legal argument, the PRMP legal argument and the date of value legal argument. It loses every one of those. Not once did the City say we dispute the value and here's our evidence of that dispute as of September 14th, 2017. That's what our concern is and that's why we brought this motion now is because the City has produced no valuation evidence as of September 14th, 2017.

And a simple question could be to the City: Do you have any valuation evidence as of September 14th, 2017? If the City answers that question no, we don't, then, Your Honor, we're here now with one appraisal report. Mr. DiFederico. As of September 14th, 2017, the $34,135,000. All I heard from the City was it's going to try and reargue the legal issues.

That's it and that's what they put in their -- that's what the City put in its countermotion. Not once did the City say we have disputed evidence.

Your Honor, we do have the duty to bring forth evidence and present it to the Court and we've done that and we've met our burden. Here's our evidence. Here's our admissible evidence. We have a certification of it on $34,135,000. The City now has a duty as part of the summary judgment hearing to say, Judge, here is our contrary valuation evidence as of September 14th, 2017. Not something which is ten years old, not something which is seven years old, not even something, Your Honor, which is two years old. The City has to have valuation evidence as of September 14th, 2017. And if the City says to you today at this hearing we don't have valuation evidence as of September 14th 2017, then, Your Honor, summary judgment should be granted. And I will tell you, Your Honor, I know the City doesn't have valuation evidence as of September 14th, 2017. I know that because we don't have it from them.

So, Your Honor, I believe that we've met that evidentiary threshold and provided that evidence as of September 14th, 2017. And the City has to bring something to rebut that and the City does not have that. For that reason, Your Honor, we think that this is appropriate for summary judgment based upon that appraisal report and that

certification that we've submitted to the Court.

THE COURT: All right. And I guess we do have the countermotion with the reply. Anything you want to add, Mr. Schwartz, as far as your reply is concerned, sir? Are you on mute, sir?

MR. SCHWARTZ: Sorry, Your Honor. No, I think we've made our position clear that there are triable issues of fact as to the value. We intend to present evidence at the trial of the value of the property through the sale of the property to the developer, which the City contends was four and a half million dollars. And we intend to use that evidence to rebut Mr. DiFederico's appraisal. And the burden is on the property owner here to establish the value, and if Mr. DiFederico's appraisal fails to establish the before and after value, then the City should be entitled to the jury's verdict. So that's our case.

I would appreciate clarification. The City does not want to attempt to submit evidence at the trial that the Court has determined is not admissible, is not proper evidence. And I would like to be perfectly clear that the City is not to present or mention the PR-OS designation. As the Court said, it's irrelevant. So I take that to mean that the City is not to mention the PR-OS designation because that's our primary basis for challenging the DiFederico appraisal, that Mr. DiFederico has assumed a use in the before condition that was

not legally permissible. But if that -- I would like to be absolutely clear that that's the Court's ruling.

I also would request the Court to clarify whether the City would be permitted to submit evidence of the larger parcel. The larger parcel is an issue in any valuation case. And while it is also an issue in liability for a regulatory taking claim because the Court has to look at the economic impact of the regulation on the parcel as a whole or the larger parcel, it is also an issue in the valuation phase of a case. And --

THE COURT: But here's my question on that. And as far as the designation is concerned, I've ruled as a matter of law on that, so my decision will stand. Secondly, when it comes to issues regarding the importance of the larger parcel and how that would impact value, I would think as a threshold before you argue that to the jury you'd have to have an expert appraisal opinion on that specific issue. And if the City has no expert, that's not coming in, either.

I just want to make sure I'm clear on that because we're talking about potential issues that impact value, and making those types of arguments you have to have an expert to lay the foundation for that argument. If you don't have an expert, right, as it pertains to valuation, that actually would impact any potential arguments you can make in front of the jury. Right? I mean, I get it. I do. We dealt with

a lot of valuation issues. And when I look back, we had a construction defect case after two subclasses involving 30,000 homes that ultimately settled for close to three hundred million dollars. And my point is, I understand valuation. And it doesn't matter whether it's a tort case, this type of case or what, you've got to have experts to come in on those specific issues. And so hopefully I answered --

MR. SCHWARTZ: Your Honor, could I be heard on that?

THE COURT: Go ahead. Because that has to be developed.

MR. SCHWARTZ: Yes, it would, Your Honor. And the burden is on the property owner to establish the before and after value. If the appraiser, the expert for the property owner, has failed to consider the larger parcel, then the appraisal is invalid. The evidence of the larger parcel --

THE COURT: Well, here's the thing about that. You're making that argument, but that's argument. Right? That's argument. But my point is this. I'm going to listen to the appraiser and he's going to put on evidence as to the foundation for his opinion as it relates to the 35 acres. And I realize his deposition wasn't taken. It probably should have been taken. What I mean by that is this. We don't know -- I mean, you have a general sense, based upon the report, as to what their testimony is, but there can be ancillary issues

that are connected to that. You can't put everything in writing. But I still, and we can't over look this, I understand what the property owners' burden is in this case, but just as important, too, I would anticipate the City has burdens vis-a-vis as affirmative defenses in this case. Right?

MR. SCHWARTZ: Yes, Your Honor.

THE COURT: And so that's my point. You can't make argument without evidence to support it.

MR. SCHWARTZ: Your Honor, the evidence we intend to present is the history of the development of the Peccole Ranch Master Plan. And --

THE COURT: That's going to be another issue that's going to be part of the motion in limine tangentially, I think, as it pertains to what the purchase price of the property would have been. Right?

MR. LEAVITT: And we also have an order.

MR. SCHWARTZ: No, that's a different issue, Your Honor. And there's no motion in limine concerning the evidence of the larger parcel.

THE COURT: No, no, no. I'm talking about --

MR. SCHWARTZ: The evidence of the larger parcel --

THE COURT: I'm talking about the 2005 purchase price; right? And so here's my point. You're making arguments about the larger parcel and I've ruled as a matter

of law already, so that's not coming in; number one. But secondly, if you wanted it to come in, it's something that would have had to have been developed vis-a-vis expert testimony, I would think, as to why it's important to also consider the larger value. And then I can conduct a Hallmark type of analysis and determine whether it meets the assistance requirement or not. Right?

MR. SCHWARTZ: Well, Your Honor, I don't think we need a deposition to challenge the --

THE COURT: You need an expert, sir. You need an expert.

MR. SCHWARTZ: We -- the evidence we would present of the larger parcel would come in through the City's Community Development director and that would be evidence of public records showing the evolution of the development of the PRMP and how the subject property fit within that larger parcel. And that would be evidence that would refute the appraiser's assumption --

THE COURT: Says who?

MR. SCHWARTZ: -- that the larger parcel [video skips] the 35-acre property.

THE COURT: You'd have to have an -- no, no, no, no. You can make the record, but I think you'd have to have a duly designated expert pursuant to the discovery period to even make a threshold argument on that. And I'd have to make

a determination as to whether it's reliable or not. Because, remember, this is trial and under our Rules of Civil Procedure it's not like we used to have thirty years ago, just throw it all up against the wall and everything goes. It's not like that. Our supreme court has really pulled away from that.

MR. SCHWARTZ: The larger parcel is a question of fact. The larger parcel is a question of fact. And if the appraiser has failed to consider the larger parcel in the appraisal and that evidence would come in through not an expert but through public records, then the appraisal can be challenged. It's a question of fact.

THE COURT: It's not a question of fact. It's an evidentiary issue. You've got to have an expert for that. You just can't argue. I don't mind saying that. That will be good for the record, too. You just can't argue that.

All right. Anything else I need on that?

MR. LEAVITT: Not from the landowners, Your Honor.

THE COURT: Okay. This is what I'm going to do, and I think it's somewhat obvious based upon my discussions. But regarding both motions for summary judgment, I'm going to deny those. And I don't mind telling you this, Mr. Leavitt, I'm a little -- I don't know what a reviewing court will do and I think that one matter you brought to my attention is a classic example. We're close to trial and we'll be in trial next week. We'll hear what your expert has to say and so on. It

would be too late to bring him in procedurally and all that. I don't want to create some quagmire. We're also going to deny the countermotion for summary judgment.

So let's go ahead and move forward with Plaintiff Landowners' Motion in Limine No. 1: To Exclude the 2005 Purchase Price.

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

THE COURT: Yes, you may.

MR. LEAVITT: Your Honor, this one is -- I mean, we have a general rule. You know the general rule, Your Honor. Very briefly, it's only relevance evidence is admissible.

THE COURT: Right.

MR. LEAVITT: And if it's overly prejudicial, it doesn't come in. And what has happened in this specific area of eminent domain is the courts have said, listen, the purchase price can be extraordinarily prejudicial because a jury might hear a purchase price and say, hey, this guy has already made a bunch of money; let's just give him a million more dollars. And will fall well short of just compensation.

In fact, one court was really, really clear on that. They said, Admitting a low purchase price puts a landowner, quote, "in the position of seeking what some might regard as an excessively large profit on a comparatively small investment, which is clearly prejudicial." There can be no doubt, Your Honor, that if this type of evidence comes in

it's going to be clearly prejudicial to the landowner. I mean, we can take --

THE COURT: I don't mind saying this. Even as a threshold evidentiary issue, before I could even consider the purchase price I think first we'd have to have an expert that would say that's somehow relevant to the calculation. And we don't; right?

MR. LEAVITT: No. And you're absolutely right. Not only would that expert have to say it's relevant, but then what the expert would have to do is after that expert determines it's relevant, he or she would then have to adjust that price all the way up to our current date of value to make it relevant. So not only do you have to have the expert say it, but they have to adjust it.

Your Honor, the Nevada Supreme Court has been very clear. When we're in an eminent domain case, all evidence must be presented that proves the value of the property as of the date of vale, okay. So they have to first say, hey, I'm going to use this and then say -- adjust it up. Mr. DiFederico is the only expert that has reviewed that and said it's entirely irrelevant, okay. The City doesn't have an expert to rebut that. The City doesn't have anybody to come in and say that this is a relevant part of this case.

And, Your Honor, I want to go through just a couple other reasons that the evidence should be excluded. The

courts have been very clear that if you're going to include the purchase price, it has to be for substantially the same property that's included in that purchase price. Clearly we don't have that here. We have a 35-acre property that doesn't have any drainage issues and we have another 215 acres that has some drainage concerns. And that purchase of the property was for that entire 250 acres. So the purchase price doesn't even apply to this portion of the property. It wasn't -- the purchase price wasn't even towards this. So what you would not only need there, you'd need an expert so say, hey, it's relevant and then somehow parcel out how much of that purchase price was attributed to the 35 acres. No expert has done that, Your Honor.

In addition to that -- and Your Honor, I just -- this is what I did. What the City wants to tell the jury is that in 2005 the purchase price was $18,000 an acre and that's relevant. Your Honor, I think you saw in the motion, and I printed it out, I was going to hand Mr. Ogilvie a copy. I won't, but I'll just hold it up to the Court here and you can see it here, the sales that have occurred in the area. And, Your Honor, if I may come over here, most of these -- a great portion of these sales are right in here. There's four sales right in this area of the 35-acre property that are between eight hundred thousand to a million dollars an acre. Across the street are custom homes. Up here is Summerlin. Below the

landowners' property is Summerlin. It's within the Queensridge community.

And what the City wants to stand up and tell this jury, Your Honor, is that even though the properties are selling for a million dollars an acre in this area, that the purchase price of $18,000 an acre is relevant. That's what the City wants to do. And they got nobody. They could not find anybody, Your Honor, and I have to assume they looked. They could not find any expert that was willing to come into a court, raise their hand to the square and say I testify under oath that this is relevant.

THE COURT: Well, I actually opened up discovery and gave Rule 56(d) relief specifically for this purpose, going to the valuation and economic impact. That's what I thought; something like that. Understand, I've another 800, 900 cases, but I think that's kind of what I did.

MR. LEAVITT: That's exactly what you did, Your Honor. And, Your Honor, here's what's even the great -- even one of the greater concerns here, is we've laid out the history of this purchase. What the government says is the purchase price isn't even the purchase price. It arose out of some extraordinarily complex transactions. Their own attorney admitted that at the end of the day when these transactions closed, they had a lot of hair on them. The two persons most knowledgeable on both sides of that transaction, the buyer

and the seller both said that this transaction started in 2005 with an option and that it was extraordinarily complex. Not even the buyer and seller could agree upon what the price was that was paid because there were -- not only was the Quuensridge Towers involved in it, Tivoli Village was involved, Sahara Commons, a shopping center at the corner of Sahara and Hualapai was involved in this overall transaction. At the end of the day when it closed it was the acquisition of an entity and in that entity were personal property and other effects, licenses. There was a liquor license involved.

Your Honor, I'll sum it up this way. There was a veteran attorney who was involved in this case at one time and he said, listen, it's taken me a super long time to even get my arms around these transactions. So we don't even have agreement on what the purchase price was. And then there was an element of compulsion as part of this because back in 2005 the Peccole family couldn't meet certain capital calls. The Queensridge Towers were built on part of the golf course. And so there was an element of compulsion that they had to enter into this agreement to give the landowner the option in 2005.

Now, the first thing Mr. Schwartz is going to do is he's going to stand up and say, Judge, there wasn't an option in 2005. Mr. Bayne's deposition was taken. He was the Peccole representative. He admitted there was. Mr. Lowie's deposition was taken. He was the buyer of the property. He

stated there was.

So, Your Honor, we have a transaction that doesn't even cover the property at issue. It is extraordinarily complex. It has a lot of hair on it. And not one expert. The City couldn't even find one expert to say that it's relevant to the 2017 date of value.

So here's our concern, Your Honor, is at the end of the day if this evidence comes in, not only has the threshold requirement of relevance not been met through an expert, not only has it not been adjusted, not only has the price not been parceled out to apply just to this 35-acre property, but then we have the profound prejudice that can happen even if it was found to be relevant.

What would the jury say? The jury would say, listen, I understand that there's properties that all sold around this area for over a million dollars an acre, but hey, this guy only paid a little bit of money; right? And that's what the government to try and argue. That's what they're going to argue. And I'm assuming they'll tell you this, Judge. The landowner only paid a little bit of money, so we don't think he should get just compensation. That's really what their argument is.

And, Your Honor, we obviously disagree with the little bit of money. There's a huge disagreement about how much money was paid. But that's not what this case is about.

This case isn't about how much the landowners made or how much he should make. This case is about what is this property here, this 35 acres right here, what is it worth as of September 14th, 2017? That's it. And, Your Honor, as the Nevada Supreme Court stated, this is a battle of the experts. Only experts can testify to that value. And nobody has testified that this is relevant.

If I may have -- Oh. Well, you know what, Your Honor, I mean, I'll just address very quickly, the government has three arguments for why they want to bring it in. They say, well, it supports their PR-OS argument. We know that's not coming in because that's been a legal issue already decided. They also say that it supports the fact that there's been no taking. We know that that argument is not coming in because there's a taking been found.

And then they say, well, Judge, we have this 2010 appraisal report. They just disclosed it like two weeks ago, Your Honor -- the City did. This 2010 appraisal report where the appraiser valued income that the Peccoles were receiving on a golf course lease. He didn't appraise the real property. He didn't appraise the residential use. He didn't appraise the property as of the date of value. But the City says this purchase price is relevant to that and we're going to bring those in and we're going to give them to the jury.

Judge, I don't know how they get in an appraiser

that they disclosed two weeks ago that didn't even appraise the property at issue; didn't even appraise the real property; didn't use the date of value and didn't even -- didn't even appraise the property as a residential property, which is required to do in this case.

So, Your Honor, the three -- the underlying three reasons the City wants to bring in this purchase price have been either rejected by this Court or are entirely irrelevant. So for those reasons, Your Honor, we respectfully request that this purchase price evidence be excluded in its entirety.

Now, I will end with this. There are some cases where purchase price evidence comes in, but we didn't have this in those cases. These are the comparable sales in the area, Your Honor. On this list alone right here, and these are just some of them, are three, six, ten -- there's about 22 comparable sales in the immediate area of the subject property in this case which can be used to determine the value --

THE COURT: But I would think, and, you know, I don't mind -- I mean, yeah, we don't handle many inverse condemnation cases, but the law is the law when it comes to issues regarding damages; right? It just is. And there's no wild deviation. Everyone has a burden of proof. You have your expert. And just as important, I mean, for example, it doesn't matter whether this is a tort-based case or not.

And a good example is Giglio. She had a pre-existing condition. I determined it was too remote in time. You have a remoteness that also impacts valuation. For example, here you're talking about a transaction in 2005. How is that relevant to the value of real property per acre at this location on October 26, 2021; right? Just as important, too, if there's some other event or something like that and you wanted to bring a purchase price in, I would anticipate it would have to be coupled with an expert opinion to explain to me why that would be relevant. That gets tested under Hallmark. I'll make a determination as to whether it meets the assistance requirement, whether it's reliable, whether it's peer reviewed and all those wonderful types of things.

So my point is this. It doesn't matter what type of case it is. The law is the law. And I get what you're saying here and there's a lot of issues here, but at the end of the day as -- at the very outset, I would think, if you want to bring something in you have to answer what I call the for what purpose doctrine; right? And it deals with all types of evidence. For what purpose is this evidence being offered? Well, it's being offered as a -- here's a really great example. It would be like in the Wiliams case and they talked about independent alternative causation theory; right? Kind of like the same thing. You're giving an alternative value.

Well, you know what? That has to be testable. It has to be peer reviewed. It has to be reliable and all those wonderful type things.

And so my point is this. I get it as far as what the burden is. And so what I want to hear from the City is, okay, what do you have and why would that be relevant? For what purpose is it coming in? Is it testable? Does it meet the assistance requirement under Hallmark? I get it.

MR. LEAVITT: Yeah. And, Your Honor, and I'll sit down right now.

THE COURT: Is it too remote?

MR. LEAVITT: Right.

THE COURT: I mean, you actually talk about remoteness on page 16, I think, of your motion.

MR. LEAVITT: Yeah. You're absolutely correct. And I'll sit down on this point. That's why the federal law and Nevada law require the government to hire an appraiser, because that appraiser could have analyzed this and explained to the City why it's irrelevant. The City didn't do that, Your Honor.

THE COURT: Or it could have been I looked at it -- and I'm not saying necessarily I would have bought it, but it would make my job much easier if I had an expert come in and say, well, Judge, under the limited exception of this case, this is why it's relevant. And then we can test it.

MR. LEAVITT: Yeah.

THE COURT: But I don't even have that.

MR. LEAVITT: Understood, Your Honor. And there's five or six reasons that we add in our brief. I'm not going to go through them again, but I'll submit on the brief, Your Honor, those additional five or six reasons for why this clearly is legally inadmissible in this type of proceeding, Your Honor, and overly prejudicial.

THE COURT: I understand.

MR. LEAVITT: Thank you, Your Honor.

THE COURT: Okay. Mr. Schwartz, sir.

MR. SCHWARTZ: Thank you, Your Honor.

Your Honor, the sale didn't occur in 2005. The sale occurred in 2015, in March. Exhibit AAA, which was your tab 59 in the documents we submitted in previous hearings, is the membership interest purchase and sale agreement that shows that the sale of the Badlands, the 250-acre Badlands occurred in March of 2015. Now, we have evidence from the seller and a series of communications in 2014 and 2015 between the buyer and the seller that show that this was an arms-length transaction, that both the buyer and seller were knowledgeable, that this sale meets the definition of a fair market sale under Nevada law, and that the sale occurred in March of 2015. We have in Mr. -- all those records we would submit through the deposition of Bayne, who was representing

the seller of the property.

Now, what we have there is a sale at $18,000 an acre for the entire 250 acres of the Badlands. And whether the 35-acre property is worth more or less than other parts of the property is not relevant because the appraiser for the developer claims that the property is worth a million dollars per acre or near a million dollars per acre.

Now, the developer has the burden of proof on the issue of damages, which is the before and after value, and the credibility of the appraisal is at issue. And the City doesn't need an expert to attack the credibility of the appraisal. The jury is asked to determine whether that appraisal is credible or not. And the jury should hear evidence that the developer bought the property in 2015 for four and a half million dollars for the entire property and whether that was a fair market sale. Now, there has to be a presumption that this is an excellent comparable because it's the same property. You don't have to -- [inaudible].

THE COURT: Why does it have to be a presumption on anything? I mean, there's no law that says this is a presumption; right? And my point is this. I mean, I'm listening to you, sir, but at the end of the day you're making arguments, but I would anticipate that your arguments would have to be substantiated by expert opinions that go to the sole issue of valuation, of value; right? And if you don't --

MR. SCHWARTZ: No.

THE COURT: No, no, no, no, no. You're saying that. To me it would be like trying to come in and argue a person suffered an injury without a doctor. I mean, I just use that as an example. But you've got to have an expert when it comes to real estate appraisal and valuation.

MR. SCHWARTZ: Your Honor, could I address that, please?

THE COURT: Please. Please.

MR. SCHWARTZ: The appraiser for the developer has relied on five comparable sales. One of those sales was the month before the developer purchased the Badlands. It's from February of 2015. So the appraiser himself should have and the City has the right to prove that the appraiser did not consider what is essentially a perfect comparable, and that the appraiser's value of a million dollars per acre is not credible because a sale that occurred during the time frame that the appraiser admits is relevant, a sale occurred of the same property. So the appraiser doesn't have to make adjustments for location or offset improvements or topography or size or shape or any of the other adjustments. The developer's appraiser refused -- failed to consider a perfect comparable of property that demolishes the developer's value.

So the jury ought to hear that, that the developer paid $18,000 an acre in an arms-length transaction. It's a

fair market sale. We have strong evidence of that that we'd like to present to the jury. And that the developer's conclusion of value is simply not credible. There were no legal changes. There were no physical changes in the property between the date of value and the date of purchase.

So I think the jury is asked to evaluate the credibility of appraisers. If there are two appraisers, the jury evaluates the credibility of the two. But the jury -- juries [inaudible] and do evaluate the credibility of an appraiser based on not only the evidence presented on direct but on cross-examination. Cross-examination, of course, is sacred in this country as the revealer of truth. Without cross-examination we -- you could get away with just about anything. But this appraiser has excluded a perfect comparable, and on cross-examination the City would like the opportunity to show that the appraisal simply is not credible.

The jury doesn't -- this is an inverse condemnation case, it's not an eminent domain case where there are two appraisers, one for each side, and the jury has to choose between the two. This is an inverse case there the developer has to show damages based on the change in value before and after the take. So the jury is entitled to determine whether the developer suffered any damage at all and they're not bound by what the appraiser says. They can -- the City intends to

use some of the evidence that the appraiser has submitted of his comparable sales and show, well, we've got a comparable sale here that's a perfect comparable that this developer and the developer's appraiser simply refused to consider, and that goes to the appraisal's credibility.

Finally, this -- the sale was in 2015. There was no sale in 2005. The developer admits it has no documents, no documents whatsoever -- we've submitted to the Court the developer's response to interrogatories and request for documents where the developer says that they have no documents, no documents whatsoever that show that the purchase price of this property was anything other than 7.5 million. And we have evidence through the seller and through other documents produced by the developer, we have the seller's concession that three millions dollars of that purchase price was consideration for other property, putting the purchase price for the entire Badlands at 4.5 million.

It's impossible for that property to be worth 34 million two years later, which is essentially a 3,500 percent increase in value. The City ought to be allowed to submit this evidence to the jury. If the developer wants to contend that the sale occurred in 2005, they've admitted that they have no documents showing that the sale occurred in 2005. The developer contends that the sale price was $45 million. The developer admits they have absolutely -- they don't have

a scrap. They don't have a single document to show that that was the purchase price.

So we ought to let the jury decide whether the developer has any credibility in saying that the sale occurred in 2005 and that the purchase price was 45 million and that the purchase price was not 4.5 million. That's -- those are all issues of fact and they go directly to the developer's appraisal's credibility, so the City ought to have an opportunity to present that to the jury. Thank you.

THE COURT: Okay. Here's my question. Don't you feel that at some threshold the arguments you're making should be supported by expert opinions as it pertains to valuation in this case? Because you're making arguments and I understand the position you're taking, but -- I mean, another point, too, I was just thinking about as I was listening to you, this isn't the time to conduct discovery; right? I mean, discovery is done. And I would anticipate that when it comes to the 2015 transaction, whatever it might have been, that that would have been developed during discovery. And just as important, we would have some sort of expert opinion in this case specifically focusing on that.

MR. SCHWARTZ: That's a question of fact, Your Honor.

THE COURT: That's not a question of fact.

MR. SCHWARTZ: That's for the jury to decide when

the sale occurred.

THE COURT: No, I'm talking about the valuation issue and why the 2015 would be relevant in this case. That's what I'm talking about. Remember, it doesn't become a question of fact until the questions of fact are developed.

MR. SCHWARTZ: It doesn't require any development. It's market data and it undercuts the credibility of the developer's appraisal. The jury is supposed to make these determinations. What's the relevant market? What's the highest and best use? The jury makes all those determinations as to whether --

THE COURT: Don't you -- no, no, no. No, the jury is assisted by expert testimony to make those types of decisions. And so what evidence do we have that whatever transaction occurred in 2015 would have been the highest and best use for this property? It's a good question, isn't it?

MR. LEAVITT: Uh-huh.

MR. SCHWARTZ: Well, that's -- the jury determines whether there is a contract of sale.

THE COURT: No, no, no. You didn't answer my question. What evidence in the record do we have by an expert to support that statement you made that the jury is going to determine the highest and best use as it pertains to the 2015 transaction? Whatever that might have been. So I'm just calling it a transaction.

MR. SCHWARTZ: Well, I think the Court -- the issue is the market data. The highest and best use, I think the Court has ruled out the City's challenge to the developer's contention as to the highest and best use. So the issue now is are these sales indicative of the fair market value of the property on a particular date?

THE COURT: Okay, fine.

MR. SCHWARTZ: And that is an issue for the jury.

THE COURT: Here's my question, though. I'm not disagreeing with that statement. My question is this. What expert opinion has the City proffered in this case to support that argument?

MR. SCHWARTZ: The argument that the $4.5 million sale of the property is relevant to the market value of the property?

THE COURT: Absolutely.

MR. SCHWARTZ: We don't have an expert to say it's relevant, but I think we've got overwhelming evidence --

THE COURT: No, no. That it's relevant to the valuation for highest and best use in this case.

MR. SCHWARTZ: The $4.5 million purchase price does not go to the highest and best use issue. I think the Court has ruled it is a matter of law that the residential use was a legally permissible use as a matter of law. So that question has been decided. We can't present any evidence --

THE COURT: Wait, wait, wait, wait, wait. You just changed your argument slightly. What expert do we have in this case to support your argument that whatever transaction occurred in 2015 is germane to the value of this property as it pertains to the alleged taking date set forth by the plaintiff? I think -- was that September 14th, 2017?

MR. LEAVITT: Yes, Your Honor.

THE COURT: Okay.

MR. SCHWARTZ: We don't have an expert opinion that says that that sale is relevant. It's just obvious to a lay person that a sale of the very same property within the time frame that the developer's appraiser says is relevant, a sale of the very same property for a tiny fraction of what the developer's appraiser is saying the property is worth, that certainly goes to the developer appraisal's credibility. And we don't need an expert to say this sale is relevant.

I mean, you sell a house. You buy a house. You look at what similar properties are selling for in the neighborhood. Lay people do that all the time. That's why juries are allowed to decide value in eminent domain cases, because they evaluate everything that the appraiser does, all the assumptions, all the market data, and they decide whether it's credible or not. So when the developer's appraiser leaves out the best indication of market value of the property, then we're entitled to -- the City is entitled to

use that to question the credibility of the developer's appraisal.

The jury decides the value. They can decide that the value is whatever they want. There's no limit on what the jury can decide. They could decide that the property is worth $18,000 an acre, which is what the developer paid for it.

THE COURT: All right. Mr. Schwartz, anything else?

MR. SCHWARTZ: No, Your Honor.

THE COURT: Thank you.

Mr. Leavitt.

MR. LEAVITT: Your Honor, we pointed in our reply -- thank you. First of all, so Mr. Schwartz said it's obvious that anybody who comes out and appraises this property would have used that 2005 purchase price. You know who it wasn't obvious to? The City Tax Assessor. The City Tax Assessor went to evaluate this property for tax purposes. You want to know what sale he didn't use? This alleged 2005 or 2015 sale. He used sales that ranged from $500,000 an acre up to one million dollars an acre. Why? Because that 2005 and 2015 sale is entirely irrelevant to the highest and best use of this property as a residential property as of September 14th, 2017. The assessor evaluated the property as of 2016, December 2016, even closer to what Mr. Schwartz says is the 2015 sale, and didn't consider it. Why? Because it's irrelevant. Nobody has used it, Your Honor. Nobody has used

it because it doesn't go anywhere near to the value of the property based upon its highest and best use.

And, Your Honor, counsel keeps saying that this transaction occurred in 2015. I'm just going to read you one thing. This is Mr. Bayne's deposition.

"Question: Understood. Do you know whether Mr. Lowie had an option to purchase the property in 2000 -- prior to 2006?"

"From these documents we looked at today, it looks like he did."

So, Mr. Bayne and Mr. Lowie agreed that the transaction to acquire the 250-acre property was entered into in 2005. Counsel here is just making argument. Every single thing we just heard from counsel was just argument. So what he wants to do is he wants to add -- and I'll tell you, Judge, it will add three, possibly four days to this trial. Here's why. He took the deposition of Mr. Lowie. It went on for eight hours on this one issue. He took the deposition of Mr. Bayne. It went on for eight hours on this one issue. And you know what came out of that? This isn't relevant. Mr. Bayne himself said I don't know what the value of the property is as of September 14th, 2017. He said that right on the record. He's the seller -- or the person most knowledgeable regarding the property.

So, Your Honor, no expert has come here to testify

that this is relevant in any way, shape or form. And you heard Mr. Schwartz just do it. He said we're going to tell the jury that the property is only worth $18,000 an acre, without an appraisal report, without an expert. And when all the sales in this area range from a million to three million an acre, the only reason he would introduce that -- he knows it's not relevant -- is to prejudice the jury, Your Honor, and he shouldn't be permitted to do it in this case. So we respectfully request that it be excluded.

THE COURT: Okay. As far as Plaintiff's Motion in Limine No. 1, I'm going to grant the motion. And I think we have a very vigorous and well-developed record on this specific issue. But I don't mind saying this. I don't see how it's relevant; number one. Secondly, it's remote. Just as important, even for me to even consider it you'd have to have expert testimony to lay the foundation for it. This is akin to -- this is an independent evaluation. You've got to have an expert on that. You just do. You just can't point to records and documents and make arguments to the jury, especially in this case, because let's face it, it's a complex valuation case. It just is, and we're talking about residential real property located in a specific area in Summerlin. There's comparables and the like. And I just don't see how you can do it without an expert; right?

And just as important, too, we talk about the right

to cross-examination, but cross-examination -- the foundation of cross-examination can't be based upon irrelevant evidence. It has to be relevant. And that's why we file motions in limine; right? That's what we do. So that's going to be my decision.

And so let's move on to the next matter. What's Number 2? That's Plaintiff Landowners' Motion in Limine No. 2: To Exclude Source of Funds.

MR. LEAVITT: Yeah, Your Honor. I'll be very brief on this. Again, there's one issue. What's the just compensation as of September 14, 2017? Coming in and telling the jury, hey, jury, you have to be fair to taxpayers, or, hey, jury, you have to be fair to the public puts the jury in the position of paying the verdict because they're part of the public, they're part of the tax-paying community.

Our concern here, Your Honor, is that the City is going to do that. It will be an immediate mistrial. We don't want a mistrial. That's why we brought this motion. All practitioners in the area of eminent domain know not to do this.

THE COURT: This would be like bringing up, well, it's going to impact your insurance rates.

MR. LEAVITT: Exactly. It's going to impact your insurance coverage so, hey, don't give this guy any money. That's what it comes down to. And, Your Honor, you'll

remember that during discovery we actually asked the City what the source of funds would be to pay, and the City said it's entirely irrelevant. And this Court will recall and we didn't challenge it. This Court said, listen, as a trial judge I would never let into evidence in front of a jury or any argument that says taxpayers are going to be on the hook for this and as a result we shouldn't award money and give them their civil rights. So, Your Honor, and you were right. You were totally, one hundred percent right. Your decision on the discovery issue is in compliance with the case law we cited.

So here's what the City can't do. They can't say, hey, taxpayers are going to pay the verdict. They also can't say, hey, the public is going to pay the verdict because they're the public. There's no reason to say that. None. All the City has to do is come in here and present evidence of the value of the property as of September 14th, 2017. Who pays that verdict is entirely irrelevant, Your Honor, and therefore it should be excluded.

THE COURT: Okay. Thank you, sir.

We'll hear from the opposition.

MR. SCHWARTZ: Your Honor, the City had no intention of using the word taxpayers in this trial. The City merely wants the trial to be fair to say that the verdict has to be fair to both the developer and the public. We're not going to say that they -- to the public this or the public is going to

pay the verdict. We're going to say the developer -- the verdict has to be fair to both parties.

THE COURT: And this -- you get the last word, sir. I'm sorry.

MR. LEAVITT: Same thing, Your Honor. It's the same thing saying the taxpayers and public. Everybody knows it.

THE COURT: Right. I'm going to go ahead and grant Motion in Limine No. 2. There's no need to mention the public and/or taxpayers in this case.

Let's move on to Number 3.

MR. LEAVITT: Your Honor, Number 3 is to exclude any argument of the PR-OS or PRMP, Peccole Ranch Concept Plan. You've already, I think, made it abundantly clear here today that the City is not going to be permitted to come in and reargue issues that it already argued. The City argued ad nauseam this issue of PR-OS and PRMP. This Court ruled against the City, finding Number 39 that just came down yesterday.

THE COURT: I mean, the bottom line is this. That would be akin to me granting a motion for partial summary judgment on the issue of liability and then permitting liability to be argued in front of the jury.

MR. LEAVITT: Right. And so, Your Honor, Finding Number 39 says the City can't -- it ruled against the City on both of these issues. Therefore, the City should be

prohibited from bringing them in a trial, Your Honor. Straightforward, very quick argument. And, Your Honor, I could go through, if you want, the Bustos case, where the Nevada Supreme Court held this exact same issue, that when you're valuing property you don't talk about the master plan, you talk about zoning. And that's how this Court ruled. And so we want to move forward, Your Honor, with a trial on the highest and best use as residential and not discuss this PR-OS or PRMP that's already been denied, Your Honor.

THE COURT: Okay. Thank you, sir.

We'll hear from the City.

MR. SCHWARTZ: Your Honor, I think I understand that the Court is -- will not allow the City at the trial to mention the PR-OS designation of the property. The City contends that that goes to the highest and best use, which is an issue in value. I would, however, like to make a record, if I could, Your Honor.

THE COURT: Oh, sir, I always respect that. Of course I'm going to give you an opportunity to make your highest and best use as far the record is concerned.

MR. SCHWARTZ: All right. Your Honor, in the interest of time, could the City -- the City would like to file a written offer of proof on this and other issues. So would the Court -- with the Court's indulgence, we would just file a written offer of proof on a number of issues just to

put it in the record.

THE COURT: But, I mean, I have to know what the --

MR. SCHWARTZ: I don't want to take up everybody's time.

THE COURT: No, no. But, I mean, that would be potentially unfair to me and also the adverse party. And what I mean by that is if there's other issues out there -- and I know this for a fact. I don't mind saying this. I've walked into the chambers of a couple of our justices and they work very hard; number one. And number two, I was -- it kind of reminded me because the lights are somewhat dark and they have these two big computer screens up and they were looking at the records. And I can tell you there's a couple justices, they read these transcripts. They do.

And I know this. They appreciate when there's a well-developed transcript because that makes their job easier, instead of trying to guess why the trial judge did this or that or what the basis of his or her ruling might be. If the trial court states it for the record, then they can make a determination very quickly.

So all I'm saying is if there's anything you want to say, sir, go ahead and say it, because maybe I'll have --

MR. SCHWARTZ: All right. Thank you, Your Honor.

THE COURT: Maybe I'll have something to say, maybe I won't, but you've got to make your record.

MR. SCHWARTZ: All right, Your Honor. Thank you. Tab 19 in our documents is Nevada Revised Statutes 278.150. That provides that the planning commission of a city shall prepare a comprehensive, long-term general plan which in the commission's judgment bears relation to the planning of the physical development of the jurisdiction. And section 2 of that section says that the plan must be known as the master plan and must be prepared as a basis for the development of the city. In section 5 of that statute the legislature provides that the governing body or the city shall adopt a master plan for all of the city and county that must address each of the elements set forth in paragraph a through h, inclusive of section 278.160.

Section 278.160 provides that the master plan shall have a land use element in subsection D that concerns community design and standards and principles governing the subdivision of land and suggested patterns for community design and development. And a land use plan of existing land covering uses and comprehensive plans for the most desirable utilization of the land.

In Nevada Revised Statute 278.250, the legislature said that a zoning district may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. And in subsection 2, the legislature said that zoning regulations must be adopted

in accordance with the master plan for land use. In subsection 4 of that section, the legislature said that in exercising the powers granted in this section, the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate.

Tab 31 of your documents is the American West case, which states that -- at page 807 that municipal entities must adopt zoning regulations that are in substantial agreement with the master plan.

Nevada Revised Statute 278.349 is not controlling here. In 1989 the State -- the Nevada Supreme Court issued the decision in the Nova Horizon case, where it said that zoning regulations must be in substantial conformance with the master plan. In 1991, the legislature amended NRS 278.250 to say that zoning regulations must -- it formally said shall -- the legislature amended that statute to say zoning regulations must be in conformance with the master plan. That's doubling down on the fact that the master plan is the highest authority in determining land uses.

In tab 18 of the City's records, the City's binder submitted to the Court, is Bill Number 2011-23, passed in 2011 by the City Council, Ordinance Number 6152 that amended the land use and rural neighborhoods preservation element of the general plan. This is also Exhibit P to the City's appendices

of exhibits. In that exhibit at page 317, Bates 317, is a diagram showing that the 35-acre property is designated PR-OS in the City's general plan. The PR-OS designation reads, The Parks/Recreation Open Space category allows large public parks and recreation areas, such as public and private golf courses, trails, easements, drainageways, detention basins and any other large areas or permanent open land. So under the City's master plan, which is superior to zoning and determines the land uses in the City, residential use was not permitted on the 35-acre property at any time relevant to this case.

At tab 49 is Section 19.00.040 of the City's Unified Development Code. It's part of the Las Vegas Municipal Code. That statute states, "It is the intent of the City Council that all regulatory decisions made pursuant to this title be consistent with the general plan. Consistency with the general plan means not only consistency with the plan's land use and density designations, but also consistency with all policies and programs of the general plan, including those that promote compatibility of uses and densities and orderly development consistent with available resources.

Tab 2 in the Court's binder is the Order of Reversal of th Nevada Supreme Court, which is also Exhibit DDD in the City's appendices. In that case the Nevada Supreme Court found with regard to the 17-acre property, "The governing ordinances require the City to make specific findings to

approve a general plan amendment, a rezoning application and a site development plan amendment." This indicates that the City has discretion as to -- the requirement that the City make specific findings to approve a general plan amendment means two things. Number one, the City had discretion as to whether to approve the amendment, and two, that the general plan in that case which designated the 17-acre property, like this property, PR-OS, would have to be amended to allow residential development. And that's the Nevada Supreme Court. We contend that that ruling is issue preclusive in this case and defeats any highest and best use of the 35-acre property as residential because residential is not legally permissible.

In tab 38, this Court's decision granting -- or denying the petition for judicial review. In this case the Court said that the developer -- page 18 -- the developer purchased its interest in the Badlands Golf Course, knowing that the City's general plan showed the property as designated for parks, recreation and open space, and that the Peccole Ranch Master Plan development plan identified the property as being for open space and drainage, as sought by the developer's predecessor.

The Court said in paragraph 41, "The General Plan sets forth the City's policy to maintain the golf course property for parks, open space and recreation," citing the Nova Horizon case. The Court went on in paragraph 42, "The

City has an obligation to plan for these types of things, and when engaging in its general plan process goes to maintain the historical use for this area that dates back to the 1989 Peccole Ranch Master Plan, master development plan presented by the developer's predecessor."

The Court said in paragraph 44 on page 19 of tab 39, "It is up to the council through it's discretionary decision making to decide whether a change in the area or conditions justify the development sought by the developer and how any such development might look." In paragraph 47 the Court said that "The City's general plan provides the benchmarks to ensure orderly development. A city's master plan is the standard that commands deference and presumption of applicability."

Then the Court -- at tab 30 in the Court's binder is the Stratosphere Gaming case, which said that "Under Section 19.18.050 the City Council must approve the Stratosphere's proposed development of the property through the City's site development plan review process. That process requires the council to consider a number of factors and to exercise its discretion in reaching a decision. There is no evidence that the Stratosphere had a vested right to construct the proposed ride."

Tab 26 of the City's binder is Unified Development Code Section 19.16.100. This is the site development plan

review provision of the City's UDC. And that provides that the City has very broad discretion in approving site development permits. That discretion is incompatible with a constitutional right to develop anything that the developer chooses within the black letter limits of the zoning.

Tab 27 is UDC Section 19.10.050, which is the RPD zoning section of the code. That provides that RPD district has been to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space. So that section contemplates that there will be open space in an RPD district, as well as residential development. The City then designated the portions of the 611 acre part of the PRMP that was zoned RPD. It designated the residential portion as a residential designation under the general plan and then designated the open space, the golf course as PR-OS.

Tab 37 is a decision of the Ninth Circuit Court of Appeals involving the same parties, the same issue, and a final decision on the merits. There the court said, "To succeed on a procedural due process claim, a plaintiff must first demonstrate that he or she was deprived of a constitutionally-protected interest. To have a constitutionally-protected property interest in a government benefit such as a land use permit, an independent source such as state law must give rise to a legitimate claim of

entitlement that imposes significant limitations on the discretion of the decision maker." The Court said, "We reject as without merit plaintiff's contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally-protected property interest and should be given preclusive effect."

This was not a PJR case so it can't be distinguished on that basis. This was a constitutional challenge to the City's denial of a permit application, just like this case, making the identical arguments of this case that somehow zoning conferred a constitutional right to develop anything the developer chooses, as long as it's within the black letter limits of the zoning ordinance. This case should be applied as issue preclusion on the question of whether the PR-OS designation is valid and enforceable.

And finally, in tab 13, the Boulder City v. Cinnamon Hills Associates case, 110 Nev. 238, a 1984 case. The Nevada Supreme Court said there that in denying a due process challenge to the denial of a permit, a development permit, the Court said, "The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally-protected property interest." This is not a PJR law case, this is a case that's based on the underlying land use laws, as are all the other cases that hold that the City has

discretion as to whether to approve development of residential use on the Badlands property and are binding. Whether they're PJRs or not, PJRs are a procedural device. There is no substantive law in PJRs.

So the unanimous authority in Nevada is that there is no -- that whether a public agency has discretion that's not compatible, it cannot co-exist with a constitutional right to develop. The PR-OS designation is mandated by the State, is valid and enforceable regardless of the zoning.

Thank you, Your Honor.

THE COURT: Thank you, sir. And just as important, I think I just saved you some time because you did have an opportunity to read all that in the record.

Anyway, anything else you want to add? I'm sorry. Mr. Leavitt, go ahead.

MR. LEAVITT: Your Honor, I would -- I'll just say this. We'll incorporate all of our prior arguments in opposition to what Mr. Schwartz just said. And this Court's Finding Number 39, "The Court rejects the City's defenses that there's a Peccole Ranch Master Plan that governs the 35-acre property, and the City of Las Vegas Master Plan designation of PR-OS that affects the property interest determination."

The issue has already been fully briefed and fully decided. And I will just say this one last thing, Your Honor, and I'll close out here. It will take me one minute. In the

City of Las Vegas v. Bustos case, the City of Las Vegas made that almost verbatim exact argument that counsel just made. They said this, "This Court has held that a local government must defer to the master plan in making zone changes, and failure to do so results in reversible error."

And you want to know the cases the City cited to? The Nevada Supreme Court cites to them. The City of Las Vegas v. Bustos is an eminent domain case, right? And so the City cited to the supreme court these master plan cases and the Nova Horizon; the cases he just cited to you, the same ones. This is what the Nevada Supreme Court said. This is an inverse condemnation case, not a PJR case. It says, "The cases cited by the City are inapposite because they address enforcement of a master plan, not whether the district court should following zoning in an eminent domain case."

That's the issue, Judge. You followed zoning. You did the right thing. You excluded this PRMP, you excluded this PR-OS, consistent with Bustos, and your decision was right. And therefore, Your Honor, the Motion No. 3 should be granted to exclude the PRMP and the PR-OS.

THE COURT: All right. Okay. And as far as Motion in Limine No. 3 is concerned, we do have a well-developed record. And for the record, I'm going to go ahead and grant Motion in Limine No. 3, for all the reasons that have been set forth in the record previously. I'm looking at this. At this

point the open space dedication and the like is not relevant to the issue that the jury is going to be charged with starting tomorrow, once we get through voir dire and the like.

Okay. So where does that put us next?

MR. OGILVIE: Your Honor.

THE COURT: Yes?

MR. OGILVIE: This is George Ogilvie. If I could be heard?

THE COURT: Yes, you can.

MR. OGILVIE: So, first of all, let me apologize, Your Honor. I was in trial in Department 27 from September 20th to October 14th, so I missed the hearings on September 23rd, September 24th, the 27th and 28th, and have been also preparing for the arbitration hearing that I have next week.

So with that, I have to say that my ability to compromise (sic) in these proceedings has been somewhat compromised and is in large part the reason that Mr. Schwartz was making today's arguments. But I'm a little bit -- in preparing our case for trial, even preparing our opening statement, I have to get an understanding of what is and is not within the City's scope of defenses.

And I have to say that I'm surprised and chagrined to hear the argument made today that this -- there was a 2005 purchase option. The ability to purchase the -- and I say this because I took both -- Mr. Bayne's deposition and I

intended to present Mr. Bayne at trial. And I'm hearing that I'm not going to be able to present him and the evidence that he testified to during his deposition.

I also took Mr. Lowie's deposition and it was unequivocal from both of those depositions that there was no option that arose from these 2005 transactions that involved completely separate properties, Queensridge Towers, Great Wash Basin, which is Tivoli Village, and Sahara Commons. Those transactions had nothing, absolutely zero to do with the transaction for the purchase of Fore Stars or the 250-acre Badlands Golf Course, whichever way you want to characterize.

What happened was there was a 2007 letter of intent that distressed the purchase of the Badlands Golf Course that the developer in this case believed was breached, filed an action in 2007, Case Number A546847, against Fore Stars, which was -- [audio distortion; inaudible].

MR. LEAVITT: Your Honor, are we rearguing the motions? Are we rearguing the motions?

MR. OGILVIE: This letter of intent. And a settlement was entered into.

THE COURT: I think you're breaking up. Wait. Mr. Ogilvie, I'm not cutting you off. I can't hear you.

MR. OGILVIE: I apologize, Your Honor. I apologize Your Honor. There was a settlement agreement entered into in January 2008 which did a couple of things. One, it imposed a

restrictive covenant which said that the Badlands Golf Course will remain a golf course or open space and have no development activities upon it other than those activities expressly permitted by this agreement, unless consented to by Queensridge Tower, LLC. And then it also stated that there was a right of first refusal. There was never an option to purchase the Badlands Golf Course in favor of the developer. There was a right of first refusal. The documents are unequivocal that it was a right of first refusal to purchase the golf course that came from this January 2008 settlement agreement.

And it is undisputed that the membership purchase and interest -- membership purchase -- I'm sorry. Membership interest purchase and sale agreement that was dated December 1st, 2014 was for the purchase of this property, the -- originally the land that the golf course sat on but ultimately became the purchase of Fore Stars. It was entirely unrelated to any transaction in 2005. And, in fact, both Mr. Bayne and Mr. Lowie expressly stated under oath in their deposition that Mr. Lowie's entity or Mr. Lowie himself identified the purchase price for which the Badlands would be purchased. They identified it as seven and a half million dollars, which is reflected in the interest purchase and sale agreement, which has to be reduced by the three million dollars that was ultimately paid for the clubhouse on the golf course, and then

further reduced by the personal property that's identified in the purchase and sale agreement for Fore Stars, to bring the purchase price for the property, the 250 acres itself to less than four and a half million dollars.

And I had intended on presenting Mr. Bayne at trial to discuss exactly that. This 2014 -- December 1st, 2014 membership interest purchase and sale agreement that closed, by the way, on March 15th, 2015. And it is the evidence of the purchase price of less than four and a half million dollars for this -- the two and a half -- 250 acres.

So what I'm hearing, and I'm reading this -- I'm asking this, there's two parts to it. One, what I'm hearing is that we are prevented or prohibited from introducing any evidence of this 2015 purchase of Fore Stars for -- and the land, the 250 acres for less than four and a half million dollars. And then the second part is I had anticipated bringing in the evidence of the June 2015 letter of intent for the Calida Group to purchase the 17-acre property for $30,240,000. And --

THE COURT: Wait, wait, wait, wait, wait. I don't want to cut you off. It muffled when you said the figure. I don't know what --

MR. OGILVIE: The figure was $30,240,000. Now, it was my intention -- and again, it goes back to my disclaimer at the front. I apologize for not being able to participate

more, so I'm not exactly sure where we stand on those two issues, but I want to clarify where we stand on those two issues so I don't violate any Court orders. But what I think I'm hearing is with respect to the trial the City cannot introduce any evidence of the membership interest purchase and sale agreement that closed in 2015, and I cannot bring in any evidence of the letter of intent to sell the 17 acres to the Calida Group for $30,240,000 in 2015. Am I correct that those are the Court's rulings?

THE COURT: All right. You can -- has that even been brought up in this case on any level? I mean --

MR. LEAVITT: No, Your Honor. It's not even before the Court. Your Honor --

THE COURT: Go ahead. Go ahead.

MR. LEAVITT: First of all, I sat through both of those depositions. That was not what happened in these depositions, Your Honor. It's not what was said in these depositions. And, I mean, what I just heard from Mr. Ogilvie made it even more confusing of what may have happened. What we know, Your Honor, is -- what we just heard was argument from counsel. What we have in the deposition is, "Do you know whether Mr. Lowie had an option to purchase the property or a right of first refusal in 2006?" "From these documents we looked at today, it looks like he did." That's the seller. Mr. Lowie said, yes, I had an option in 2005. That's when

the price was agreed upon, Your Honor, is in 2005; number one. Number two, Your Honor, I don't want to go through it all again.

THE COURT: No, there's no need to.

MR. LEAVITT: Okay, Your Honor. I mean, I understand they're trying to make their record, Your Honor. Nothing that was said there should change this Court's order.

THE COURT: Okay. And -- go ahead, sir.

MR. OGILVIE: Your Honor, Mr. Leavitt conveniently cherry-picked some testimony from Mr. Bayne, and Mr. Bayne's testimony as a whole was very clear that the 2005 transactions had nothing to do at all with the 2015 purchase -- what ultimately resulted in the purchase of Fore Stars, which included the 250-acre Badlands Golf Course.

And if this is not subject -- if what I've just gone through is not subject to -- and Mr. Leavitt says it's not even at issue right now -- if these aren't subject to the Court's trial rulings or today's motions, then it seems to me that I'm able to bring this evidence forward in the trial.

THE COURT: All right.

MR. LEAVITT: Your Honor, we clearly filed a motion in limine to exclude the 2005 purchase price, so that's what's before the Court and that's what this Court ruled on.

THE COURT: All right. And, Mr. Ogilvie, for the record I granted Plaintiff's Motion in Limine No. 1, to

exclude the 2005 purchase price. Just as important -- and I think it's important to point out, and I realize you weren't involved in this, but one of the issues I really focused on would be essentially this. And understand this, we're not talking about issues of common knowledge that, you know, lay people can make a decision on. We're talking about complex real estate transactions involving potential real property that's going to be developed or alleged to be developed or the desire is to develop it.

And so when it comes down to just compensation in this case as it pertains to value, and the value date is going to be September 14th of 2017, my ruling has been fairly consistent in this regard, and this is one of the reasons why I denied plaintiff's motion for partial summary judgment on that issue dealt with admissible evidence.

But at the end of the day, and I just want to make sure you're clear on this, I would anticipate if that's relevant and/or germane to the valuation issue in this case that it would be supported or coupled with expert opinions as to why that's relevant, because that's what it's going to come down to, comparables. What's the value of the property at that date? And I'm looking for expert opinions on that. We have one expert, but we don't have one for the City. And so just to throw out figures, it would be akin to having potential injuries being introduced to the jury that's not

relevant to the claimed injury that the plaintiff is seeking recovery for.

And so the answer to your question would be yes, in the affirmative, it's not coming in. And the reason for it is this. I would -- and this is something that the court of appeals and/or supreme court is going to have to deal with. But in order to bring evidence such as that into this case, because it's being brought in to offer an alternative valuation, at the end of the day. That's what it is, an alternative value of this property. And you've got to have expert opinion on that. You just do. And I would anticipate you would have an expert opinion and say, look, Judge, this is why this is relevant to my valuation. We don't have any of that.

And so just to make sure I'm clear, and I'm glad you asked that question, Mr. Ogilvie, because I want to make sure I'm clear, too, as far as the thrust and focus of my decision making. This case is going to be about a valuation and that's what it's about. It's not going to be about taking issues. The sole issue is going to be just compensation and we're going to listen to the expert. And the City doesn't have an expert, and that just happens to be where we're at from a procedural perspective.

MR. LEAVITT: And, Your Honor, on that issue I have one other matter, if I could bring up really quick.

THE COURT: Yes.

MR. LEAVITT: We just received less than two weeks before trial that the City intends to call its former attorney in this case, Seth Floyd, as a witness. I mean, we need some direction on this. I mean, he was the attorney on this case and he was just disclosed two weeks ago to come in as a witness.

Secondly, Peter Lowenstein is not an appraiser. He was just disclosed. He's not an appraiser. He doesn't provide any valuation evidence. Keith Harper and a 2012 appraisal report that was done for estate purposes back in 2010, he was just disclosed about two weeks ago, saying that they were going to bring in a 2010 appraisal report that just valued the income from a golf course lease on the property. And then we just got notice that they're going to call William Bayne, and I think we've resolved that.

But we just got this two weeks ago, Your Honor. I haven't deposed -- none of them for value, by the way. None of them would -- Mr. Bayne said he doesn't know what the value of the property was in 2017; number one. Keith Harper says he hasn't done an appraisal report on this property as of 2017. He just valued a lease of income on a golf course in 2010 for estate purposes. And Mr. Floyd was the attorney in this case. And Mr. Lowenstein, he's a planner at the City. So none of these people have valuation evidence, Your Honor, and we just

got it two weeks ago. Your Honor, we kind of need some instruction that they're not coming in and testifying.

THE COURT: Mr. Ogilvie.

MR. OGILVIE: Well, let me -- let me address Mr. Floyd. The concern about an attorney testifying, it places the Court and the trier of fact in an awkward position. And it also places the witness in an awkward position if they're trying the case and then they're going to take the stand and testify about the case. And that's not the situation we have with Mr. Floyd. He is no longer the City attorney --

THE COURT: Well, sir, trust me, trust me, I don't want to cut you off, I really don't. It's really more fundamental than that. You can't disclose witnesses two weeks before trial and expect them to testify. I mean, that's in violation of Rule 16.1. That's in violation of my scheduling order that was issued in this matter pursuant to Rule 16 -- I think it's (D). Is it (D)? It doesn't matter. But it's in violation of so many issues because you just can't do that; right? You can't designate witnesses two weeks before trial, especially in this case. And this case is what now, four years old?

MR. LEAVITT: It is, Your Honor.

THE COURT: Right. And last but now least -- and here's the thing. And we have to remember the procedural history in this case. And I remember this with some detail

because there was an issue back in the spring of this year, I think it was, and I think there was -- I think Mr. Ogilvie sought Rule 56(d) relief or something like that and there was an issue regarding valuation. And so I wanted to open up discovery and let things occur so we're not dealing with it right now.

And I think the record is real clear on this in this regard. I gave both parties a full and ample opportunity to do what they needed to do in the prosecution and defense of this case. But if there's any witnesses designated two weeks before trial, I don't care about the merits of their testimony or anything like that. It's too late. I mean, this is a four year old case. They should have been designated a long time ago. And that's my decision. And so if they're going to be offered as witnesses in this case, they can't testify.

MR. OGILVIE: Your Honor, the declarations from both Mr. Lowenstein and Mr. Floyd were submitted in opposition to various landowners' motions. It's not a surprise. They were detailed declarations. And, in fact, the landowner has utilized Mr. Lowenstein's testimony from a different case in support of its motion for summary judgment. So there isn't any surprise with either of them preparing to testify at trial.

THE COURT: But how can that be? There's only a surprise if they're not listed as witnesses; right? I mean,

doesn't that have -- isn't that an important issue? I mean, you've got Rule 16.1. You're required to make a lot of disclosures. And you have interrogatory responses. I'm quite sure -- I would anticipate they would focus on who the witnesses you anticipate would testify at the time of trial. Because what happens there is really this straightforward and simple, that if somebody is designated as a witness to testify at trial, you conduct a different type of discovery when you take their deposition. It's just a different thrust; right?

MR. OGILVIE: Again, Your Honor, there isn't any surprise. And I would also add that the issues to be tried have evolved as a result of the Court's recent rulings. We are simply reacting to those. And because there's no surprise, all of those witnesses identified should be allowed to testify. And with respect to Mr. Bayne, Mr. Leavitt participated in the deposition of Mr. Bayne. There's no surprise that he would be a witness at trial.

THE COURT: Well, I can't speak for Mr. Leavitt, but I'll let him speak for a second on that issue.

MR. LEAVITT: Well, Your Honor, I asked Mr. Bayne one very specific issue and there was a reason I asked him. I said, Mr. Bayne, do you know what the value of the property is on September 14th, 2017? And his unequivocal answer was, Absolutely not. He said -- well, actually, I apologize, he said, "I do not." So he has no reason to even show up.

If he doesn't -- if we don't -- that's the only issue. What's the value of the property on September 14th, 2017. He has no information. We've excluded the purchase price. And so he shouldn't be permitted to testify, Your Honor. And, Your Honor, just because I take a deposition, if they don't list him it doesn't mean I'm not surprised. I mean, listen, if --

THE COURT: Well, and I will be a little bit more sophisticated than that. When you list someone as a witness, you take a totally different posture as far as discovery is concerned because you want to find out specifically if there's any testimony they might offer that would be adverse to your client's position. So you take a more in depth deposition, I would think.

MR. LEAVITT: Well, and even more important than that, Your Honor, had he said, listen, I know what the value of the property is on September 14th, 2017, then I would have gotten into it with him. What is it? Give me it all. But he said, no, I do not know. And that's the only issue. If he doesn't know, he's a lay witness, he's not an expert, so he can't bring any evidence to this trial that would be relevant in any way, shape or form, Your Honor.

THE COURT: And that's Mr. Bayne?

MR. LEAVITT: That's Mr. Bayne. He's a lay witness, not an expert, and he said he doesn't know what the value of the property is on September 14th, 2017. He did testify about

all of the transactions, but we've already excluded the purchase price. So it wouldn't be relevant to have him come in here and testify.

THE COURT: All right. And anything else you want to add, Mr. Ogilvie?

MR. OGILVIE: If the Court is excluding the purchase price of the 2015 transaction, that is -- that's the Court's ruling. But what I'm still not clear on is the evidence of the letter of intent from the Calida Group for the $30,240,000 purchase of the 17 acres.

MR. LEAVITT: Just very briefly, Your Honor. That's not been briefed before the Court. We did not bring a motion on that and neither did the City.

MR. OGILVIE: Okay. So then I would submit that it's open to introduction.

MR. LEAVITT: Your Honor, I can't go through everything I can possibly think of that the government might introduce. Obviously it would have to meet the threshold evidentiary standard, foundation, relevance, and then be admitted.

THE COURT: Mr. Ogilvie, at this point -- and for the record, we're talking about the letter of intent. Is that correct, sir?

MR. OGILVIE: Yes.

THE COURT: Okay. It hasn't been adjudicated yet?

MR. LEAVITT: Right.

MR. OGILVIE: The letter of intent from the Calida Group dated June 25th, 2015.

THE COURT: Yeah. It hasn't been adjudicated, sir.

MR. LEAVITT: I'm sorry, what date was it?

MR. OGILVIE: Okay.

MR. LEAVITT: I didn't hear. What date was it?

THE COURT: What date is it, Mr. Ogilvie?

MR. OGILVIE: June 25th, 2015.

MR. LEAVITT: Your Honor, I'm going to have to go look at that, obviously, to consider it.

THE COURT: I mean, we'll deal with it.

MR. LEAVITT: Yeah.

THE COURT: We'll deal with it.

MR. LEAVITT: All right.

(The Court confers with the clerk)

THE COURT: Yeah, there's two other matters regarding -- appear to be housekeeping. Motions to seal.

MR. LEAVITT: No opposition, Your Honor.

THE COURT: No opposition. Granted. All right. Before we break, because we have a one o'clock calendar or 1:30. What time?

THE CLERK: Yes, several. 2:00 p.m.

THE COURT: Okay, 2:00 p.m. So we have a little bit of time for lunch.

A couple things that are important to point out. It's my understanding we're going to be in the same courtroom we were in. That was Judge Krall. Is that correct?

THE CLERK: Yes.

THE COURT: We're going to be in her courtroom tomorrow. Starting at what time?

THE CLERK: 10:30, jury selection.

THE COURT: Jury selection, 10:30. How many are we bringing in, 45?

THE CLERK: I'm not sure of the particulars.

THE COURT: It's 40 or 45 are coming in. We have a wave coming in tomorrow and then another wave potentially the next day.

MR. LEAVITT: Okay.

THE COURT: What I will do is this. I mean, I do a traditional voir dire. The thrust and focus of my role is going to be very simple. Just, number one, make sure they understand why they're here and how important they are as far as the justice system is concerned. And secondly, I'll ask them a series of general questions, and what it accomplishes more so than anything would be simply this. I warm them up for you.

The questions I ask are not necessarily germane to any issue in the case, other than I want to make sure they understand and appreciate what jury instructions are and

they're going to promise to follow the instructions I give them. And I do spend some time on that because I think in many respects, you know, when we use legal terms or whatever like that, it would be just easier to call it the law. This is the law and you've got to promise to follow the law, because in essence that's what it is; right? And so, anyway, that's what we're going to do.

We start, again, at -- what time do we come in?

THE CLERK: 10:30.

THE COURT: 10:30. And I guess you can get in a little earlier and set up. Right?

THE CLERK: We do have a few matters at 9:00. We offered counsel an hour before, so 9:30.

THE COURT: 9:30.

MR. LEAVITT: Wait. So we show up at 9:30?

THE COURT: Yes.

MR. LEAVITT: Okay.

THE COURT: Ready to go.

MR. LEAVITT: Ready to go.

THE CLERK: Test equipment, etcetera.

MR. LEAVITT: Oh. So we can come in -- we can come in at 9:30 and test our equipment and then we'll start picking at 10:30. Is that what we're doing?

THE COURT: Yes.

MR. LEAVITT: Oh, okay. All right.

THE COURT: So in essence I'm trying to open up the courtroom because you want to come in, you might have placards or, you know, pictures and all these things that you want to bring in, because once we start you will be able to house certain things there. I mean, you're going to take your laptops and things like that, but, you know, exhibits you plan on using at the time of trial. I mean, I don't know what type of things you'll have in that regard, but you're free to set up. That's probably the best way to say it.

And just as important, too, have we considered jury instructions?

MS. WATERS: Your Honor, I have submitted our proposed jury instructions to the City and I haven't heard back from them.

THE COURT: All right. Well, that's something -- at least what we need to do is this. Before this week is up, I want to have both sides' proposed jury instructions so I can at least review them over the weekend.

MS. WATERS: Absolutely.

THE COURT: All right. Okay. With that in mind, I guess I'll see everyone. Prepare orders. And I will see everyone tomorrow. I guess we'll be ready to go, waiting on the jury at 10:30. It's at 10:30; right?

THE CLERK: 10:30.

THE COURT: Okay. Everyone enjoy your day.

MR. LEAVITT: Thank you, Your Honor.

MS. WATERS: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 12:22 P.M.

* * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Liz Garcia

Liz Garcia, Transcriber
LGM Transcription Service

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

180 LAND COMPANY, LCC, Plaintiff, vs. LAS VEGAS, CITY OF, Defendant.	)	CASE NO. A-17-758528-J DEPT. NO. XVI **Transcript of Proceedings**

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

WEDNESDAY, OCTOBER 27, 2021

BENCH TRIAL

APPEARANCES:

FOR 180 LAND COMPANY, LLC: JAMES J. LEAVITT, ESQ.
ELIZABETH GHANEM HAM, ESQ.
AUTUMN L. WATERS, ESQ.

FOR CITY OF LAS VEGAS: GEORGE F. OGILVIE, III, ESQ.
PHILLIP R. BYRNES, ESQ.
REBECCA L. WOLFSON, ESQ.

RECORDED BY: MARIA GARABAY, COURT RECORDER
TRANSCRIPTION BY: LGM TRANSCRIPTION SERVICE

LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 27, 2021, 10:24 A.M.

* * * *

THE COURT: Come on up, counsel.

MR. LEAVITT: Thank you, Your Honor.

COURT RECORDER: We're on the record now.

THE COURT: We're back on the record.

MR. LEAVITT: Your Honor, we'd like to put an agreement upon the record, the agreement that we previously stated. We'll put it on the record at this time --

THE COURT: Okay, sir.

MR. LEAVITT: -- with the Court's permission.

THE COURT: Yes.

MR. LEAVITT: The parties have agreed to waive the jury trial in this matter and agree that this matter will be heard and decided by way of a bench trial by the Court.

Secondly, the landowners will move to admit the appraisal report by -- prepared by appraiser Tio DiFederico that values the 34.07 acre property as of September 14th, 2017. That appraisal report has been marked as Exhibit Number 5 and that's the report that will be admitted. The City will not object to the admissibility of the appraisal report prepared by appraiser Tio DiFederico, Exhibit Number 5.

Based on the Court rulings in this matter, including the property interest findings of fact and conclusions of law, the take findings of fact and conclusions of law, and the

City's motions heard on September 23rd, 24th, 27th and 28th, and the rulings on the three motions in limine and the countermotions for summary judgment on October 26th, 2021 and subject to the City's offer of proof that was stated on the record on October 26th, 2021, the City has no evidence to admit at the bench trial in rebuttal of the valuation by Mr. DiFederico set forth in his appraisal report, which has been marked as Exhibit Number 5.

The parties agree that following the admission of the Tic DiFederico report at the bench trial, the Court will decide the valuation of the real property taken as of September 14th, 2017, which is the date the Court recognized as the date of valuation in this matter. The City, however, would reserve its right to challenge that September 14th, 2017 date of valuation on appeal.

This matter does not involve the taking of nor valuation of any water rights the landowners or any entities owned by the landowners may or may not own. All appeal rights of the parties are preserved. All post-trial rights are preserved, including but not limited to requests for attorney's fees, costs, interest, reimbursement of taxes, etcetera.

Following the Court's ruling in this matter from the bench, the matter would proceed as follows. Number one, the denial of the motion for summary judgment and -- actually,

let me rephrase that. The denial of the motion and counter-motion for summary judgment and three motion in limine orders will be entered. Those were the motions that were heard just yesterday on October 26, 2021. Findings of fact and conclusions of law would be submitted to the Court for entry by the Court. And all post-trial matters would then be heard by the Court.

MR. OGILVIE: Your Honor, that's a correct statement of our agreement.

THE COURT: Okay. And so I understand regarding the agreement to waive the right to a jury trial at this time. I do accept that. Secondly, and I do understand the thrust and focus of the agreement and stipulation, and my next question is where do we go from here? Because it's my understanding the appraisal report is Proposed Plaintiff's Exhibit Number 5. Is that correct, sir?

MR. LEAVITT: That's correct, Your Honor. So what we'd like to do is we'd like to open up the bench trial at this time. Both parties would waive opening and we would submit the appraisal report of Tio DiFederico as evidence.

THE COURT: Okay. And in light of the stipulation, any objection to that, Mr. Ogilvie?

MR. OGILVIE: I just want to break that down a little bit. I agree we waive openings.

THE COURT: Yes.

MR. OGILVIE: They, 180 Land, the plaintiff, is submitting Exhibit Number 5. And I believe the Court is asking if the City has an objection. The City does not.

THE COURT: Okay. And that's what -- although we're truncating it, I'm making sure we follow all the formalities that we normally would do, just for the record.

THE CLERK: And so for the record, Number 5 is admitted, Judge?

THE COURT: So admitted.

THE CLERK: Thank you, Judge.

(Plaintiff's Exhibit Number 5 admitted)

THE COURT: All right.

MR. LEAVITT: Okay. And, Your Honor, based upon that appraisal report that Mr. DiFederico has appraised, or, I mean, submitted in this -- let me rephrase that. Based upon the appraisal report of Mr. DiFederico, which is Exhibit Number 5, which we have submitted as evidence, that appraisal report values the landowners' 34.07 acre property as of the relevant and statutory date of valuation, which is September 14th, 2017, at $34,135,000. And we would ask that the Court enter a judgment based upon that appraisal report in the amount of $34,135,000 as the fair market value of the 34.07 acre property as of September 14th, 2017.

THE COURT: And anything you want to add, Mr. Ogilvie?

MR. OGILVIE: So if we're going through a formal bench trial, I presume Mr. Leavitt is resting at this time.

MR. LEAVITT: We're resting.

MR. OGILVIE: So I have a statement to make which is exactly what Mr. Leavitt stated on the record preceding the opening of the trial.

Based on the Court's rulings in this matter, including the property interest FFCL, the take interest, FFCL, and the City's motions heard on September 23rd, 24th, 27th and 28th of 2021, and the rulings on the three motions in limine and the competing motions for summary judgment on October 26, 2021, and subject to the offer of proof stated on the record by the City on October 26, 2021, the City has no evidence to admit in rebuttal to the valuation report by Mr. DiFederico, Exhibit 5. And again would state that the City does not stipulate to the September 14th, 2017 date of valuation and reserves its arguments regarding that date of valuation.

With that, the City has no other evidence to submit in opposition and would rest.

THE COURT: Thank you, sir. I just wanted to make sure that was formal.

And, Mr. Leavitt, I think you get the last word and then I'll have one final comment.

MR. LEAVITT: I get the last word, Your Honor. The parties have waived closing, but in conclusion the landowners

request that as there's no other evidence to rebut Mr. DiFederico's valuation of the property, that judgment be entered in the amount of $34,135,000.

THE COURT: And as far as Exhibit Number 5, do you have a copy of that? And has that been placed as a court exhibit, sir, for this matter?

THE CLERK: Yes, Judge.

THE COURT: All right. All right. And so this is what I'm going to do in light of the current status of this matter. I have not had a chance, of course, to review the report at this point as evidence; however, I will do so. And I anticipate making a decision on or before Friday.

What's next Friday?

THE CLERK: Friday next week is the 5th.

THE COURT: Yeah, on or before Friday, November 5th at the close of business at five o'clock. It will be before then, but I'm just telling you I have to read the report, so.

All right. Anything else? What do you need, sir?

THE CLERK: Oh, yes. Just housekeeping on the trial exhibits, Judge. For all unoffered and unadmitted exhibits, can they be returned to counsel?

MS. WATERS: Yes.

MR. OGILVIE: Yes.

THE COURT: Is that a yes?

MR. OGILVIE: Yes.

THE COURT: All right. So it will be a yes.

THE CLERK: Thank you, Judge.

THE COURT: All right. Well, I guess there's no other action you need from me right now. Is that correct?

MR. LEAVITT: That's correct, Your Honor. And then following your ruling we would propose findings of fact and conclusions of law. Is that what we would do?

THE COURT: Absolutely.

MR. LEAVITT: Okay.

THE COURT: Yes. Absolutely.

MR. LEAVITT: All right.

THE COURT: Because what I'll do, just for the record so you know, I'm going to issue a minute order and that's how it will be. And pursuant to that minute order, I'm going to request that you prepare formal findings of facts and conclusions of law. All right?

MR. LEAVITT: So, Your Honor, just really quick, do you want us to submit findings of fact and conclusions of law prior to that or after?

THE COURT: After.

MR. LEAVITT: Okay.

THE COURT: After.

MR. LEAVITT: All right.

THE COURT: There's no need to do it right now. After, because I need to review the report.

MR. LEAVITT: Understood. All right, Your Honor. Thank you, Your Honor.

THE COURT: And in all probability the decision will be before Friday, but I just wanted to give myself time.

MR. LEAVITT: Sure. Understood.

THE COURT: Okay. All right.

MR. LEAVITT: Thank you, Your Honor.

THE COURT: Everyone enjoy your day.

MR. LEAVITT: You, too, Your Honor.

MS. WATERS: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 10:34 A.M.

* * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Liz Garcia

Liz Garcia, Transcriber
LGM Transcription Service

Electronically Filed
10/28/2021 12:05 PM
CLERK OF THE COURT

DECN

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 through X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs.

-vs-

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

Defendants.

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

DECISION OF THE COURT

After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court's Decision is as follows:

1. The appraisal report introduced into evidence by Plaintiff conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice Institute.

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

2. The expert appraisal analysis performed by Tio S. DiFederico, MAI, a Nevada Certified Real Estate Appraiser, involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, County of Clark, Nevada.
3. The 34.07-acre property is hard zoned R-PD7 at all relevant times herein, and the permitted uses of the subject property are single-family and multi-family residential.
4. Although the site had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. The landowner had leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses.
5. According to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend experienced in 2016 was referred to as a "correction" as golf course closures occurring throughout the U.S. indicated there was an oversupply that required market correction. The local market data reflects that the Badlands wasn't an outlier struggling in a thriving golf course market. Based on what was happening in the national and local golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of that "correction." On December 1, 2016, the Badlands Golf Course closed.

…

…

6. After looking at the historical operations of the golf course, which were trending downward rapidly, Plaintiff's expert, Tio S. DiFederico, MAI, concluded that operating the golf course was not a financially feasible use of this property as of September 14, 2017. Based on his research, he concluded that the highest and best use of this property was a residential development. This use would be similar to the surrounding uses in the Queensridge and Summerlin communities.

7. On September 21, 2017, the Clark County Assessor sent the landowner a letter that stated since the subject property had ceased being used as a golf course on December 1, 2016, the land no longer met the definition of open space and was "disqualified for open-space assessment." The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes:

> NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the county assessor is notified or otherwise becomes aware that a parcel or any portion of a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred tax, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The county assessor shall assess the property pursuant to NRS 361.227 for the next fiscal year following the date of conversion to a higher use.

. . .

8. Due to the property tax increase, the property owner attempted to develop the property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the landowner to develop the property according to its zoning and residential designation.

9. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant.

10. The Court's Decision is based on a finding that the 34.07-acre Badlands property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government's unlawful taking of the 34.07-acre parcel of the Badlands property, Plaintiff's expert, DiFederico, concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the government's actions, this Court hereby determined that just compensation due to the government's unlawful taking of the 34.07-acre Badlands property is the sum of $34,135,000.00.

As a result, this Court hereby finds in favor of Plaintiff, 180 Land Company, LLC, and against Defendant, City of Las Vegas in the sum of $34,135,000.00, exclusive of attorney's fees and costs.

. . .

. . .

. . .

Counsel for Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Decision of the Court, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

Dated this 28th day of October, 2021

MH

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Timothy C. Williams
District Court Judge

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Decision was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/28/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com
Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com

Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Kermitt Waters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/1/2021

Elizabeth Ghanem	8861 W. Sahara Ave Ste. 120 Las Vegas, NV, 89117

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 DENYING CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time ("FFCL") was entered on the 4th day of November, 2021.

///

A copy of the FFCL is attached hereto.

DATED this 5th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters

Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 5th day of November, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
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
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

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CLERK OF THE COURT

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
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowner

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, Plaintiff, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **DENYING CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME** Hearing Date: October 19, 2021 Hearing Time: 9:05 AM

This matter having come before the Court for hearing on October 19, 2021, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter "Landowners"), counsel, James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III Esq. of McDonald Carano LLP appearing for and on

behalf of the Defendant, City of Las Vegas (hereinafter the "City"). The Court having considered the Points and Authorities on file and oral arguments presented, hereby enters the following Findings of Fact, Conclusions of Law and denying Defendants Emergency Motion to Continue Trial:

FINDINGS OF FACT

1. This case has been pending for four years.

2. In a status report to this Court in April of 2020, the City objected to bifurcation of the liability phase from the just compensation phase stating that "[b]ifurcation also will result in inefficiencies, duplication of efforts, delay, and increased costs. All discovery on the takings claims should be conducted at the same time.

5. On February 10, 2021, the 3rd Amended Order Setting Jury trial was issued by this Court. The Order provided strict dates of compliance and cautioned the parties that failure to comply shall result in sanctions including default judgment.

6. On April 6, 2021, after two years of open discovery in response to Landowners Motion to Determine Take, the City filed a 56(d) Motion on OST asking for more time to conduct discovery prior to the Court deciding the take issue. The Court granted the City's request but made it clear that this case was going to trial in October:

> [t]he bottom line is this: I'm just going to put everybody on notice right now. We're going to trial in October. I'm not moving the trial date.
>
> [o]ne thing for sure, and I think it's important, we're going to hold our trial date. We are. This case is going to trial. And as far as my calendar is concerned, we'll get it done in October.
>
> At the end of the day, I can tell you this, though: We're going to trial in October, regardless of what decision I make.
>
> *See 56 d motion Transcript pg 46 lines 4-7, pg 74 lines 14-18, pg 82 lines 19-21.*

7. On September 30, 2021, this Court conducted a calendar call for a seven-week stack setting trials according to all counsels availability. During the calendar call, counsel for the City did not disclose any conflicts with the proposed dates.

8. During the calendar call, this court set cases throughout the end of the seven-week stack.

9. The City filed an emergency motion to move this trial on October 11, 2021. By that date, all available dates for the seven-week stack had been filled.

10. The Court did inquire as to possible availability to accommodate the City's request to move the date on this seven-week stack. However, all other matters were proceeding forward.

12. As a reason for moving the firm trial setting, the City presented preoccupation with other litigation, a scheduling conflict of Mr. Ogilvie, and a misunderstanding of the firm setting.

CONCLUSIONS OF LAW

11. NRS 37.055 provides that eminent domain/inverse condemnation proceedings take precedence over certain other proceedings and must be quickly heard and determined.

12. The Nevada Supreme Court has held that it is the government's affirmative duty to move an eminent domain/inverse condemnation action to trial within two years of commencement of the action and/or the taking. *County of Clark v. Alper,* 100 Nev. 382, 391, 685 P. 2d 943, 949 (1984).

13. The City did not establish good cause pursuant to the Nevada Rules of Civil Procedure or the Eight Judicial District Court rules to move this firm trial setting beyond the seven-week stack.

14. Therefore, the City's Emergency Motion to Continue Trial on an Order Shortening Time is hereby **DENIED** and this matter shall proceed to trial with jury selection beginning on October 27, 2021 at 10:30am and October 28, 2021 at 9:30am and opening statements on November 1, 2021 at 9:30am.

Dated this 4th day of November, 2021

MH

119 D31 8676 EC1B
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James Jack Leavitt*
Kermitt L. Waters, ESQ., NBN 2571
James Jack Leavitt, ESQ., NBN 6032
Michael A. Schneider. ESQ., NBN 8887
Autumn Waters, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101
Attorneys for Plaintiff Landowners

Content Reviewed and Approved By:

McDONALD CARANO LLP

By: *Did not respond*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

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

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From:	James Leavitt
To:	Sandy Guerra
Cc:	Autumn Waters
Subject:	FW: FFCL denying motion to continue
Date:	Tuesday, October 26, 2021 2:18:50 PM
Attachments:	FFCL Denying MTN to Continue Trial.docx

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

From: James Leavitt
Sent: Thursday, October 21, 2021 2:22 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: FFCL denying motion to continue

George:

Could you please let me know if I have your authorization to affix your electronic signature to the attached proposed order denying motion to continue.

Thank you,

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing ' indings of ' act, Conclusions of Law and Judgment was served via the courtFs electronic e' ile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/4/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
EliMbeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Robert WcCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com

Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com
Wichael z all	mwall@hutchlegal.com
Waddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn z aters	autumn@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Wichael Schneider	michael@kermittwaters.com
Kermitt z aters	kermitt@kermittwaters.com
Evelyn z ashington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Wcdonaldcarano.com
Karen Surowiec	ksurowiec@Wcdonaldcarano.com
Christopher Wolina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
EliMbeth Ham	EHam@ehbcompanies.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew SchwartM	SchwartM@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David z eibel	weibel@smwlaw.com
Rebecca z olfson	rwolfson@lasvegasnevada.gov

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:** **ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY: 1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT**

PLEASE TAKE NOTICE that the Order Granting Plaintiffs' Motions in Limine Nos. 1, 2, and 3 Precluding the City From Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that

the Land was Dedicated as Open Space/City's PRMP and PROS Argument ("MIL Order") was entered on the 16th day of November, 2021.

A copy of the MIL Order is attached hereto.

DATED this 18th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 18th day of November, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY:1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
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
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

ELECTRONICALLY SERVED
11/16/2021 3:45 PM

Electronically Filed
11/16/2021 3:44 PM
CLERK OF THE COURT

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 **ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NO. 1, 2 AND 3 PRECLUDING THE CITY FROM PRESENTING TO THE JURY: 1. ANY EVIDENCE OR REFERENCE TO THE PURCHASE PRICE OF THE LAND; 2. ANY EVIDENCE OR REFERENCE TO SOURCE OF FUNDS; 3. ARGUMENT THAT THE LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT** Date of Hearing: October 26, 2021 Time of Hearing: 9:05 a.m.

Plaintiff Landowners' Motions in Limine to exclude 2005 purchase price (#1), to exclude source of funds (#2), and to exclude arguments that the Land was dedicated as Open Space/City's

Case Number: A-17-758528-J

PRMP and PROS (#3), having come before the Court on October 26, 2021, James J. Leavitt, Esq., Autumn L. Waters, Esq of the Law Offices of Kermitt L Waters and Plaintiff's in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").

The Court having reviewed the papers and pleadings on file, heard argument of counsel, and for good cause appearing hereby finds and orders as follows:

Findings Regarding Exclusion of Purchase Price

Regarding exclusion of the transaction consummating the purchase of the entity that owned the 35 Acre Property, the Court finds as follows:

1. The purchase price/transaction does not reflect the highest and best use of the 35 Acre Property on the date of valuation, which is September 14, 2017, pursuant to NRS 37.120 and Clark County v. Alper, 100 Nev. 382, 391 (1984).

2. The City has not identified an expert witness that can testify to the relevance of the purchase price/transaction as relates to the value of the 35 Acre Property, as of the September 14, 2017, date of valuation and the only expert to analyze the purchase price/transaction, appraiser Tio DiFederico, determined that it had no relationship to the value of the 35 Acre Property as of September 14, 2017.

3. The City has also failed to identify an expert witness that has adjusted the purchase price/transaction to the relevant September 14, 2017, date of valuation.

4. The purchase/transaction was not for substantially the same property at issue in this matter as it was for approximately 250 acres of land with the acquisition of Fore Stars, Ltd. and all of the assets and liabilities thereof, not just the 35 Acre Property at issue in this case.

5. The purchase price/transaction beginning in 2005 is too remote to the date of value (September 14, 2017) with changes in market fluctuations in values having occurred since the transaction. In fact, the City's own tax assessor did not use the purchase price/transaction when deciding the value of the 35 Acre Property for purposes of imposing real estate taxes on the property in 2016.

6. The evidence presented at the hearings showed that the purchase price/transaction arose out of a series of "complicated" transactions that had "a lot of hair" on them and elements of compulsion, because the Queensridge Towers were being constructed on part of the 250 Acre property causing the operator of the golf course to demand a large pay off; and, the predecessor owners could not meet other underlying obligations.

7. The Landowners presented evidence of the sales of other similar properties in the area of the 35 Acre Property that sold near the September 14, 2017, date of valuation, demonstrating there was no need to turn to the purchase price/transaction.

8. Any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. The sole issue in this case is the value of the 35 Acre Property as of September 14, 2017, and introducing the purchase price/transaction will confuse the jury as the jury is not tasked with unraveling the terms of the purchase price/transaction to decide what may or may not have been paid for the property.

9. Allowing the purchase price/transaction would allow the City to communicate to the jury that, since the Landowners paid a lower value for the property, they should not be entitled to their

constitutional right to payment of just compensation based on the value of the 35 Acre Property as of the September 14, 2017, date of value, which would be improper. And, the City has indicated this purpose having previously argued in this case that the Landowners made a windfall on their investment.

Conclusions of Law Regarding Exclusion of Purchase Price

10. NRS 37.120 provides that the date of valuation in an eminent domain case is either the date of first service of summons or, if there is more than a two year delay, the date of value may be moved to the date of trial. In Clark County v. Alper, 100 Nev. 382, 391 (1984), the Nevada Supreme Court held that the date of value provisions of NRS 37.120 apply to inverse condemnation proceedings, such as this. The date of first service of summons in this matter is September 14, 2017, therefore, the date of valuation is September 14, 2017.

11. The purchase/transaction must cover substantially the same property that is being acquired;[1] not be too remote; have occurred relevantly in point of time with no changes in conditions or marked fluctuations in values having occurred since the sale;[2] be bona fide;[3]

[1] 27 Am. Jur. 2d Eminent Domain section 534; West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999) (citing factors to admit purchase price, including "the sale must cover substantially the same property which is the subject of the appropriation action." Id., at 776); Pearl River Valley Water Supply Dist. V. May, 194 o.2d 226 (1967) (no abuse of discretion to exclude purchase price where sale of subject property was part of a much larger tract).

[2] 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957); West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999).

[3] 27 Am. Jur. 2d Eminent Domain section 534.

voluntary, not forced;[4] and, is not otherwise shown to have no probative value or that the prejudicial impact does not outweigh any negligible relevance.[5] The purchase/transaction must also be shown to meet evidentiary standards such that a real estate valuation expert would consider the purchase/transaction in his or her analysis.

12. As stated above, the purchase price/transaction does not meet this standard of admissibility. Moreover, the purchase price/transaction is not relevant to the value of the 35 Acre Property as of the statutorily mandated September 14, 2017, date of valuation. Therefore, the Court exercises its discretion to exclude the purchase price/transaction.

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[4] 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957).

[5] 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957). *See also* 5 Nichols on Eminent Domain 21.01(2)(a), 21-10 (2001) (sale must be bona fide, voluntary, relevant in point of time, and cover substantially the same property). The Nevada Supreme Court held admissible the purchase price for "goodwill" in a gas station where the goodwill price occurred in 1994 and the date of value was 1999 as there were no other comparable sales in state to consider. Dept. of Transp. v. Cowan, 120 Nev. 851 (2004). The Cowan case is consistent with the Landowners' position in this matter as the goodwill purchase price was easily identifiable and clearly set forth by way of contract and the Court found that the sale (1994) was not so remote to the date of value (1999) so that the price was an unfair criterion to consider in calculating damages. These two criteria are not present in this case, as set forth below. Also, the Cowans presented testimony that there were no similar leaseholds or business franchises in the Las Vegas market comparable to what the State had taken. Cowan, at 854. With no comparable leaseholds available in the market area the Court allowed evidence of the 5 year old purchase price which specifically placed a value on the business goodwill.

Findings Regarding Source of Funds

13. Throughout these proceedings the City has made repeated and express statements that allowing the Landowners to receive just compensation would negatively impact the taxpayers as the taxpayers would be the source of funds for payment of just compensation.

14. During the hearing of this matter, the City argued that it would not use the word taxpayers, but was intending on arguing that the jury must consider the public when considering just compensation. The term public is equivalent to taxpayers.

15. Referencing the source of funds to be used to pay an eminent domain verdict is similar to referencing "insurance" in a personal injury action.

Conclusions of Law Regarding Source of Funds

Regarding exclusion of the source of funds that would be used to pay the just compensation award in this case, the Court finds as follows:

16. The source of funds used to pay an eminent domain verdict is irrelevant in the determination of just compensation. City of Sioux Falls v. Kelley, 17871, 1994 WL 56585 (S.D. 1994) ("As a general rule, argument or evidence of the source of funds to pay the award is improper.") *See also*,19 A.L.R.3d 694 (Originally published in 1968). Nevada law is clear, "[i]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Clark County v. Alper, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984).

17. The source of funds used to pay this verdict or that the verdict would be paid by the taxpayers or the public is not even collaterally relevant to the determination of just compensation. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006) ("any financial

burden that the County must bear as a result of having to pay just compensation is irrelevant to the inquiry under the United States and Nevada Constitutions…").

18. Evidence which is not relevant is not admissible. NRS 48.025

19. Evidence which may be relevant is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. NRS 48.035

20. The Court finds that referencing the taxpayers or the public as the source of payment for the verdict in this matter is irrelevant, prejudicial and inadmissible.

Findings Regarding Arguments That the Property Was Dedicated as Open Space/ City's PRMP and PROS Argument

Regarding exclusion of the City's Master Plan PR-OS and Peccole Ranch Master Plan open space arguments, the Court finds as follows:

21. The Court has already determined the property interest the Landowners had prior to the City taking actions to interfere with that property interest, namely, that the 35 Acre Property has been zoned R-PD7 at all relevant times herein and the legally permissible uses of this R-PD7 zoned property is single family and multi-family residential.

22. The Court has also already rejected the notion that there is a City Master Plan PR-OS designation or a Peccole Ranch Master Plan open space designation that governs the use of the 35 Acre Property. *Findings of Fact and Conclusions of Law Re: Property Interest and Findings of Fact and Conclusions of Law Re: Take Issue.* The Court has also held, consistent with Nevada law, that zoning takes precedence over any other master plan designations. This is the law of this case.

23. The City argued during the hearing of this matter that it intended on presenting the arguments to the jury that there is a PR-OS Master Plan designation and a Peccole Ranch Master Plan open space designation on the 35 Acre Property.

24. The City further argued that the Peccole Ranch Master Plan open space argument was relevant to the City's larger parcel / segmentation argument, namely, that the 35 Acre Property is part of the larger Peccole Ranch Master Plan and thereby bound by certain conditions arising out of that Peccole Ranch Master Plan.

25. The City, however, presented no expert witness to testify to this larger parcel concept.

Conclusions of Law Regarding the City's PROS/PRMP Arguments

26. The District Court Judge is required to make two distinct sub-inquiries, which are mixed questions of fact and law. ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006).

27. On October 25, 2021, this Court entered the Findings of Fact and Conclusions of Law granting liability on all four of the Landowners' causes of action and rejecting the City's Master Plan PROS and Peccole Ranch Concept Plan open space arguments.

28. The argument that the property was set aside in the 80s or 90s under any Peccole Ranch Master Plan or Concept Plan or by virtue of an 'open space' designation, at any time, was found to be meritless as the property is not subject to the Peccole Ranch Master Plan or Concept Plan nor was it designated PR-OS in the City of Las Vegas 2020 Master Plan, or at any time prior, by any legal action.

29. As a result, the sole question left for the jury is the value[6] of the 35 Acre Property as of September 14, 2017, based on the property interest this Court already decided in the Findings of Fact and Conclusions of Law Re: Property Interest.

30. Therefore, the City is prohibited from arguing to the jury that there is a PR-OS or open space designation on the 35 Acre Property as of the relevant September 14, 2017, date of valuation.

31. The City is also prohibited from arguing that the 35 Acre Property is part of a larger parcel such as the Peccole Ranch Master Plan and thereby bound by the terms of that plan.

///

[6] Article 1 Section 22(5) defines Fair Market Value as "the highest price the property would bring on the open market." NRS 37.009 defines Value as "the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property."

IT IS HEREBY ORDERED that Plaintiff Landowners' Motions in Limine No. 1, 2 and 3 are **GRANTED** precluding the City from arguing, referencing or presenting to the jury the purchase price / transaction consummating the purchase of the Land, the source of funds including taxpayers or the public, and the City's PROS/PRMP and larger parcel / segmentation arguments.

Dated this 16th day of November, 2021

3DA 523 97F2 AEB1
Timothy C. Williams
District Court Judge

MH

Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: */s/ Autumn Waters*
Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

EHB COMPANIES
Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

Attorneys for Plaintiffs Landowners

Content Reviewed and Approved by:

McDONALD CARANO LLP

By: Did not respond
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

From:	Autumn Waters
To:	Sandy Guerra
Subject:	FW: 35 Acre Order on MIL 1, 2, and 3
Date:	Friday, November 5, 2021 10:08:00 AM
Attachments:	Order Granting Motions in Limine 1 2 3.docx

From: Autumn Waters
Sent: Tuesday, November 02, 2021 3:05 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>
Subject: 35 Acre Order on MIL 1, 2, and 3

Hi George,

Attached is the draft proposed order on MIL 1, 2, and 3. I would like to submit this to the Court by Thursday 11.4.21, so please let me know your thoughts by noon on Thursday.

Thank you

Autumn Waters, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 11j16j2021

Jeffry Doroca@	Bdoroca@d lasvegasnevada.gov
Leah Jennings	lBennings H mcdonaldcarano.com
Philip Myrnes	pbyrnesH lasvegasnevada.gov
Todd Mice	tlbH pisanellibice.com
Dustun Wolmes	dhhH pisanellibice.com
Jeffrey Andrews	BandrewsH lasvegasnevada.gov
Robert F cCoy	rmccoyH @nvlaw.com
Stephanie Allen	sallenH @nvlaw.com
Elizabeth Wam	EWamH ehbcompanies.com
Jelena Jovanovic	BovanovicH mcdonaldcarano.com

Amanda Yen	ayenH mcdonaldcarano.com
’ eorge Ogilvie III	gogilvieH F cdonaldcarano.com
Karen Surowiec	@surowiecH F cdonaldcarano.com
Christopher F olina	cmolinaH mcdonaldcarano.com
Jennifer Knighton	BknightonH ehbcompanies.com
Adar Magus	abagusH @nvlaw.com
Christopher Kaempfer	c@aempferH @nvlaw.com
F ichael G all	mwallH hutchlegal.com
F addy Carnate-Peralta	mcarnateH hutchlegal.com
Autumn G aters	autumnH @rmittwaters.com
James Leavitt	BmH @rmittwaters.com
F ichael Schneider	michaelH @rmittwaters.com
Kermitt G aters	@rmittH @rmittwaters.com
CluAynne Corwin	ccorwinH lasvegasnevada.gov
Evelyn G ashington	evelynH @rmittwaters.com
Stacy Sy@ora	stacyH @rmittwaters.com
Sandy ’ uerra	sandyH @rmittwaters.com
Jennifer Knighton	BknightonH ehbcompanies.com
Elizabeth Wam	EWamH ehbcompanies.com
Desiree Staggs	dstaggsH @nvlaw.com
Shannon Din@el	sdH pisanellibice.com
Debbie Leonard	debbieH leonardlawpc.com
Andrew Schwartz	SchwartzH smwlaw.com

Lauren Tarpey	LTarpeyH smwlaw.com
David G eibel	weibelH smwlaw.com
Rebecca G olfson	rwolfsonH lasvegasnevada.gov

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:** **ORDER DENYING PLAINTIFF LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON JUST COMPENSATION AND DENYING THE CITY'S COUNTERMOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Order Denying Plaintiff Landowners' Motion for Summary Judgment on Just Compensation and Denying the City's Countermotion for Summary Judgment ("Order") was entered on the 16th day of November, 2021.

///

A copy of the Order is attached hereto.

DATED this 18th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 18th day of November, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: ORDER DENYING PLAINTIFF LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON JUST COMPENSATION AND DENYING THE CITY'S COUNTERMOTION FOR SUMMARY JUDGMENT** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
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
ltarpey@smwlaw.com

/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

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 **ORDER DENYING PLAINTIFF LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON JUST COMPENSATION AND DENYING THE CITY'S COUNTERMOTION FOR SUMMARY JUDGMENT** Date of Hearing: October 26, 2021 Time of Hearing: 9:05 a.m.

Plaintiff Landowners' Motion for Summary Judgment on Just Compensation on Order Shortening Time, and City's Countermotion for Summary Judgment, having come before the Court on October 26, 2021, James J. Leavitt, Esq., Autumn L. Waters, Esq of the Law Offices of Kermitt L Waters and Plaintiff's in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff

Landowners 180 Land Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").

The Court having reviewed the papers and pleadings on file, heard argument of counsel, and for good cause appearing hereby finds that summary judgment is not appropriate at this time.

IT IS HEREBY ORDERED that Plaintiff Landowners' Motion for Summary Judgment on Just Compensation is **DENIED.**

IT IS FURTHER ORDERED that the City's Countermotion for Summary Judgment is **DENIED.**

Dated this 16th day of November, 2021

MH

2DA C11 C1F3 8F7A
Timothy C. Williams
District Court Judge

Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: */s/ Autumn Waters*
Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

EHB COMPANIES
Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

Attorneys for Plaintiffs Landowners

Content Reviewed and Approved by:

McDONALD CARANO LLP

By: Did not respond
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

From:	Autumn Waters
To:	Sandy Guerra
Subject:	FW: 35 acre Proposed order
Date:	Friday, November 5, 2021 10:07:26 AM
Attachments:	2021 11 02 Order Denying SJ-JC and City"s CM for SJ.docx

From: Autumn Waters
Sent: Thursday, November 04, 2021 4:29 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>
Subject: 35 acre Proposed order

Hi George,

Attached is the draft proposed order denying the Landowners Motion for Summary Judgment on Just Compensation and denying the City's Countermotion for Summary Judgment. Please let me know if I can affix your signature or if you have any concerns by tomorrow at noon. Thank you

Autumn Waters, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/16/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com

Amanda Yen	ayen@mcdonaldcarano.com
z eorge Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com
Michael G all	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn G aters	autumn@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Kermitt G aters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Evelyn G ashington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Sandy z uerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
EliWabeth Ham	EHam@ehbcompanies.com
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew SchwartW	SchwartW@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David G eibel	weibel@smwlaw.com
Rebecca G olfson	rwolfson@lasvegasnevada.gov

NOE
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
kermitt@kermittwaters.com
jim@kermittwaters.com
michael@kermittwaters.com
autumn@kermittwaters.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

ON JUST COMPENSATION

//

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law on Just Compensation was entered on the 18th day of November, 2021. A copy of the Findings of Fact and Conclusions of Law on Just Compensation is attached hereto

Dated this 24th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ *Autumn L. Waters, Esq.*
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 24th day of November, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON JUST COMPENSATION** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

SHUTE, MIHALY & WEINBERGER LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Evelyn Washington
An Employee of the LAW OFFICES
OF KERMITT L. WATERS

ELECTRONICALLY SERVED
11/18/2021 2:58 PM

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11/18/2021 2:57 PM
CLERK OF THE COURT

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
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 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **ON JUST COMPENSATION** **BENCH TRIAL: October 27, 2021**

///

Case Number: A-17-758528-J

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' in-house counsel Elizabeth Ghanem Ham, Esq., and with the City of Las Vegas (hereinafter "the City") appearing through its counsel, George F. Ogilvie III, Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City Attorney's Office.

Having reviewed and considered the evidence presented, the file and other matters referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law:

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation claim, the court must undertake two distinct sub-inquiries: "the court must first determine" the 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 Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that "whether the Government has inversely condemned private property is a question of law …" Sisolak, at 661. To decide these issues, the Court relies on eminent domain and inverse condemnation cases. *See* County of Clark v. Alper, 100 Nev. 382, 391 (1984) ("[I]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings.").

2. The Court entertained extensive argument on the first sub-inquiry, the property rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law

Regarding Plaintiff Landowners' Motion to Determine "Property Interest," on October 12, 2020 (hereinafter "FFCL Re: Property Interest").

3. In the FFCL Re: Property Interest, the Court held: 1) Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7 at all relevant times; 3) the Las Vegas Municipal Code (chapter 19) lists single-family and multi-family as the legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

4. The Court also entertained extensive argument on the second sub-inquiry, whether the City's actions had resulted in a taking, on September 23, 24, 27, and 28, 2021, and entered Findings of Fact and Conclusions of Law Granting Plaintiff 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 (hereinafter "FFCL Re: Taking").

5. In the FFCL Re: Taking, the Court held that the City engaged in actions that amounted to a taking of the Landowners' 35 Acre Property.

6. Upon deciding the property interest and taking, the only issue remaining in this case is the just compensation to which the Landowners are entitled for the taking of the 35 Acre Property.

7. In preparation for the jury trial on the just compensation, on October 26, 2021, the Court entertained argument on motions in limine and also the parties' cross motions for summary judgment, orders having been entered on those matters.

8. This case was set for a jury trial, with jury selection to be October 27 and 28, 2021, and opening arguments on November 1, 2021.

9. On October 27, 2021, the parties appeared before the Court and agreed to waive the jury trial and, instead, have this matter decided by way of bench trial.

10. An agreement to the procedure for that bench trial was put on the record at the October 27, 2021, appearance.

11. Pursuant to the agreement of the parties, the Court conducted a bench trial on October 27, 2021, on the sole issue of the fair market value of the 35 Acre Property.

II.

FINDINGS OF FACT

The Landowners' 35 Acre Property.

12. The property at issue in this case is a 34.07 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter "35 Acre Property"). As of September 14, 2017 and at the time of the October 27, 2021, bench trial, the 35 Acre Property was and remains vacant.

13. The 35 Acre Property is hard zoned R-PD7 at all relevant times herein, and the legally permitted uses of the property are single-family and multi-family residential. *See* FFCL Re: Property Interest and FFCL Re: Taking.

14. The Court has previously rejected challenges to this legally permissible use, including rejection of the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

/ / /

Evidence Presented at the Bench Trial on Fair Market Value of the 35 Acre Property.

15. Pursuant to the agreement of the parties,[1] the Landowners moved for admission of the appraisal report of Tio DiFederico (DiFederico Report) as the fair market value of the 35 Acre Property and the City did not object to nor contest the admissibility or admission of the DiFederico Report.

16. Appraiser Tio DiFederico is a Certified General Appraiser in the State of Nevada and earned the MAI designation from the Appraisal Institute, which is the highest designation for a real estate appraiser. TDG Rpt 000111-000113. DiFederico has appraised property in Las Vegas for over 35 years and has qualified to testify in Nevada Courts, including Clark County District Courts. Id.

17. The DiFederico Report was marked as Plaintiff Landowners' Trial Exhibit 5, with Bate's numbers TDG Rpt 000001 – 000136.

18. The DiFederico Report conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice Institute. TDG Rpt 000002.

19. The DiFederico Report identifies the property being appraised (the Landowners 34.07 acre property – "35 Acre Property"), reviews the current ownership and sales history, the intended user of the report, provides the proper definition of fair market value under Nevada law, and provides the scope of his work. TDG Rpt 000003-000013.

20. The DiFederico Report also identifies the relevant date of valuation as September 14, 2017, and values the 35 Acre Property as of this date. TDG Rpt 000010.

21. The DiFederico Report includes a Market Area Analysis. TDG Rpt 000014-000032.

[1] The parties agreed that this matter does not involve the taking of, nor valuation of, any water rights the Landowners may or may not own.

22. The DiFederico Report includes a detailed analysis of the 35 Acre Property that analyzes location, size, configuration, topography, soils, drainage, utilities (sewer, water, solid waste, electricity, telephone, and gas), street frontage and access, legal use of the property based on zoning, the surrounding uses, and other legal and regulatory constraints. TDG Rpt 000033-000052. The DiFederico Report property analysis concludes, "[o]verall, the site's R-PD7 zoning and physical characteristics were suitable for residential development that was prevalent in this area and bordered the subject site." Id., 000044.

23. The DiFederico Report provides a detailed analysis of the "highest and best use" of the 35 Acre Property, including the elements of legal permissibility, physical possibility, financial feasibility, and maximally productive. TDG Rpt 000054-000067. The DiFederico Report concludes, based on this highest and best use analysis, that "a residential use best met the four tests of highest and best use [as] of the effective date of value, September 14, 2017." Id., at 000067. This use would be similar to the surrounding uses in the Queensridge and Summerlin Communities. Id.

24. Although the 35 Acre Property had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. Id.

25. Therefore, the DiFederico Report also provides a detailed analysis of the past use of the 35 Acre Property as part of the Badlands golf course. TDG Rpt. 000060-000067. This golf course analysis is based on Mr. DiFederico's research, a report by Global Golf Advisors (GGA), and the past operations on the Badlands golf course. Id.

26. The DiFederico report finds that, according to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. Id. The trend experienced in 2016 was referred to as a "correction" as golf course closures occurring throughout the U.S. indicated there was an oversupply that required

market correction. Id. The local market data reflects that the Badlands wasn't an outlier struggling in a thriving golf course market. Id. Based on what was happening in the national golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of the "correction." On December 1, 2016, the Badlands golf course closed. Id.

27. The Landowner leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses. On December 1, 2016, the CEO of Elite Golf Management sent a letter to the Landowners stating that it could not generate a profit using the property for a golf course, even if Elite Golf were permitted to operate rent free: "it no longer makes sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues to struggle, and Badlands revenues have continued to decrease over the years. This year we will finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate we cannot continue to sustain the property where it makes financial sense to stay. Even with your generosity of the possibility of staying with no rent, we do not see how we can continue forward without losing a substantial sum of money over the next year." Id., 000066.

28. The DiFederico Report includes further detailed analysis of relevant golf course data of the potential for a golf course operation on the 35 Acre Property. TDG Rpt 000060-000066.

29. The DiFederico Report also specifically considered the historical operations of the golf course, which were trending downward rapidly. Id.

30. The DiFederico Report concluded that operating the golf course was not a financially feasible use of the 35 Acre Property as of September 14, 2017.

31. The DiFederico Report golf course conclusion is further supported by the Clark County Tax Assessor analysis on the 250 acre land (of which the 35 Acre Property was included). On September 21, 2017, the Clark County Assessor sent the Landowner a letter that stated since the 35 Acre Property had ceased being used as a golf course on December 1, 2016, the land no

longer met the definition of open space and was "disqualified for open-space assessment." The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes:

> "NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the county assessor is notified or otherwise becomes aware that a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred taxes, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The County assessor shall assess the property pursuant to NRS 361.2276 for the next fiscal year following the date of conversion to a higher use."

32. The Las Vegas City Charter states, "The County Assessor of the County is, ex officio, the City Assessor of the City." LV City Charter, sec. 3.120.

33. The City provided no evidence that a golf course use was financially feasible as of the September 14, 2017, date of value.

34. Once the DiFederico Report identified the highest and best use of the 35 Acre Property as residential, it then considered the three standard valuation methodologies – the cost approach, sales comparison approach, and income capitalization approach. TDG Rpt 000068. The DiFederico Report identifies the sales comparison and income capitalization approaches as appropriate methods to value the 35 Acre Property. Id.

35. Under the sales comparison approach, the DiFederico Report identifies five similar "superpad" properties that sold near in time to the September 14, 2017, date of valuation. Id., 000069-000075. The DiFederico Report defines a superpad site as a larger parcel of property that is sold to home developers for detached single-family residential developments. Id., 000069.

36. The DiFederico Report then makes adjustments to these five sales to compensate for the differences between the five sales and the 35 Acre Property. Id., 000076. These adjustments include time-market conditions, location, physical characteristics, etc. Id., 000076-000083.

37. After considering all five sales and making the appropriate adjustments to the five sales, the DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, under the sales comparison approach is $23.00 per square foot. Id., 000084. The exact square footage of the 35 Acre Property (34.07 acres) is 1,484,089 and applying the DiFederico Report's square foot value to this number arrives at a value of $34,135,000 for the 35 Acre Property as of September 14, 2017, under the sales comparison approach. Id., 000084.

38. As a check to the reasonableness of the $34,135,000 value concluded by the sales comparison approach, the DiFederico Report completed an income approach to value the 35 Acre Property, referred to as the discounted cash flow approach (hereinafter "DCF approach"). TDG Rpt 000085-000094. The DiFederico Report explains the steps under this DCF approach, which are generally to determine the value of finished lots, consider the time it would take to develop the finished lots, subtract out the costs, profit rate, and discount rate, and discount the net cash flow to arrive at a value of the property as of September 14, 2017. Id., 000086. A finished lot is one that has been put in a condition that it is ready to develop a residential unit on it.

39. The DiFederico Report confirms that the DCF approach is used in the real world by developers to determine the value of property. Id., 000086.

40. The DiFederico Report considers three scenarios under this DCF approach – a 61 lot, 16 lot, and 7 lot development. Id., 000085-000094.

41. The DiFederico Report provides detailed data for the value of finished lots on the 35 Acre Property, including sales of finished lots in the area of the 35 Acre Property that sold near the September 14, 2017, date of value. TDG Rp[t 000086-000088. This data showed that the

average value for finished lots selling in the area were $30, $49.28, and $71.84 per square foot., depending upon the area of Summerlin and the Queensridge Community. TDG Rpt 000086-000087. With this data, the DiFederico Report concluded at a value of $40 per square foot for the 61 lot scenario, $35 per square foot for the 16 lot scenario, and $32 per square foot for the 7 lot scenario. TDG Rpt 000087.

42. The DiFederico Report then provides a detailed, factual based, analysis of the time it would take to develop the finished lots, the expenses to develop the finished lots, the profit rate and discount rate, and the appropriate discount to the net cash flow. TDG Rpt 000088-000090.

43. With this factual based data, the DiFederico Report provides a discounted cash flow model for each of the three scenarios to arrive at a value for the 35 Acre Property under each scenario as follows: 1) for the 61 lot scenario, $32,820,000, 2) for the 16 lot scenario, $35,700,000, and, 3) for the 7 lot scenario, $34,400,000. TDG Rpt 000091-000094. The DiFederico Report uses this income approach to confirm the reasonableness of the $34,135,000 value under the sales comparison approach.

44. The DiFederico Report then concludes that, applying all of the facts and data in the Report, the fair market value of the 35 Acre Property as of September 14, 2017, is $34,135,000. TDG Rpt 000095.

45. The DiFederico Report also provides a detailed analysis of the City's actions toward the 35 Acre Property to determine the effect of the City's actions on the 35 Acre Property from a valuation viewpoint. TDG Rpt. 000096-000101. These City actions are the same actions set forth in the Court's FFCL Re: Taking.

46. The DiFederico Report concludes that the City's actions have taken all value from the 35 Acre Property.

47. The DiFederico Report concludes that the City's actions removed the possibility of residential development; however, the landowner is still required to pay property taxes as if the property could be developed with a residential use. TDG Rpt 000100. According to the DiFederico Report, this immediately added an annual expense that was over $205,000 and that amount would be expected to increase over time. Id.

48. The DiFederico Report concludes that, due to the City's actions, there is no market to sell the 35 Acre Property with these development restrictions along with the extraordinarily high annual expenses as the buyer would be paying for a property with no economic benefit that has annual expenses in excess of $205,000. TDG Rpt 000100.

49. The DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, is $34,135,000 and that the City's actions have taken all value from the property, resulting in "catastrophic damages to this property." TDG Rpt 000101.

50. The City did not produce an appraisal report or a review appraisal report during discovery or during the bench trial.

51. The City did not depose Mr. DiFederico.

52. The City represented at the October 27, 2021, bench trial that, based on the rulings entered by the Court rulings in this matter, including the FFCL Re: Property Interest, the FFCL Re: Take, the rulings on the three motions in limine, and the competing motions for summary judgment on October 26, 2021, the City did not have evidence to admit to rebut the DiFederico Report.

///

III.

CONCLUSIONS OF LAW

53. Consistent with the property tax increase, the Landowners attempted to develop the 35 Acre Property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the Landowners to develop the property according to its zoning and residential designation. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant. *See also* FFCL Re: Property Interest and FFCL Re: Taking.

54. The Court has previously rejected challenges to the Landowners' legally permissible residential use. Specifically, the Court has rejected the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan/ land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

55. Given that the Landowners had the legal right to use their 35 Acre Property for residential use and given that the City has taken the 35 Acre Property, the Court, based on the agreement of the parties, must determine the fair market value of the 35 Acre Property.

56. The Nevada Constitution provides that where property is taken it "shall be valued at is highest and best use." Nev. Const. art. 1, sec. 22 (3).

57. The Nevada Constitution further provides that in "all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market." Nev. Const. art. 1, sec. 22 (5).

58. NRS 37.120 provides that the date upon which taken property must be valued is the date of the first service of summons, except that if the action is not tried within two years after the date of the first service of summons, the date of valuation is the date of commencement of trial, if

a motion is brought to change the date of value to the date of trial and certain findings are made by the Court.

59. In the case of County of Clark v. Alper, 100 Nev. 382, 391 (1984), the Nevada Supreme Court held that NRS 37.120 applies to both eminent domain and inverse condemnation proceedings, reasoning, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Id.

60. The date of the first service of summons in this case is September 14, 2017, and neither party sought to change the date of valuation to the date of trial.

61. Therefore, the date of valuation in this inverse condemnation proceeding is the date of the first service of summons, which is September 14, 2017.

62. The Court finds that Mr. DiFederico has the expertise to value the 35 Acre Property.

63. The Court further finds that the valuation methodologies applied in the DiFederico Report are accepted methodologies to appraise property and are relevant and reliable to determine the value of the 35 Acre Property as of September 14, 2017.

64. The Court further finds that the DiFederico Report is based on reliable data, including reliable comparable sales, and is well-reasoned. The conclusions therein are well-supported.

65. The Court finds that the DiFederico Report properly applied and followed Nevada's eminent domain and inverse condemnation laws and that the Report appropriately analyzed and arrived at a proper highest and best use of the 35 Acre Property as residential use. This highest and best use conclusion is also supported by the Court's previous FFCL Re: Property Interest and FFCL Re: Taking.

66. The Court finds that the DiFederico Report properly followed Nevada law in applying the "highest price" standard of fair market value.

67. The Court's final decision is based on a finding that the 35 Acre Property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government's unlawful taking of the 35 Acre Property, the DiFederico Report concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the City's actions, the Court hereby determines that just compensation for the fair market value of the 35 Acre Property due to the City's unlawful taking of the 35 Acre Property is the sum of $34,135,000, exclusive of attorney's fees, costs, interest, and reimbursement of taxes.

68. As a result, the Court hereby finds in favor of the Landowners and against the City in the sum of $34,135,000.

69. The Court will accept post trial briefing on the law and facts to determine attorney's fees, costs, interest, and reimbursement of taxes as Article 1 Section 22(4) provides that "[j]ust compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred." Once the Court determines the compensation for these additional items, if any, the Court will write in the compensation for each of these items, if any, as follows:

The City shall pay to the Landowners attorney fees in the amount of

$ _____.

The City shall pay to the Landowners costs in the amount of $_____.

The City shall pay prejudgment interest in the amount of $_____ for interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest thereafter in the amount of $ _____ until the date the judgment is satisfied. NRS 37.175.

The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in the amount of $_____.

IV.

CONCLUSION

IT IS HEREBY ORDERED THAT, the City is ordered to pay the Landowners the amount of $34,135,000 as the fair market value for the taking of the Landowners 35 Acre Property, with the above items for attorney fees, interest, costs, and reimbursement of taxes reserved for post trial briefing.

Dated this 18th day of November, 2021

MH

B88 955 81A8 4EC7
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*_____
Kermitt L. Waters, Esq. (NV Bar No. 2571)
James J. Leavitt, Esq. (NV Bar No. 6032)
Michael A. Schneider, Esq. (NV Bar No. 8887)
Autumn L. Waters, Esq. (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

Content Reviewed and Approved By:

MCDONALD CARANO LLP

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

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

SHUTE, MIHALY & WEINBERGER, LLP
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
Attorneys for City of Las Vegas

From: James Leavitt
To: Sandy Guerra
Subject: FW: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order
Date: Wednesday, November 10, 2021 8:44:55 AM

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

From: James Leavitt
Sent: Wednesday, November 10, 2021 8:45 AM
To: 'George F. Ogilvie III' <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>; 'Elizabeth Ham (EHB Companies)' <eham@ehbcompanies.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

Thank you for your edits. Unfortunately, it is clear we will not come to agreement on the language of the FFCL re: Just Compensation.

Therefore, we will be submitting the Landowners' proposed FFCL re: Just Compensation to Judge Williams this morning.

I hope you have a good holiday weekend.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101

tel: (702) 733-8877
fax: (702) 731-1964

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, November 9, 2021 4:17 PM
To: James Leavitt <jim@kermittwaters.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

Attached are the City's edits to the proposed FFCL.

George F. Ogilvie III | Partner
McDONALD CARANO
P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, November 8, 2021 8:58 AM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

The only orders that have been submitted to the Court are:

FFCL on the motions in limine
FFCL on the denial of both summary judgment motions

We have not submitted the FFCL on just compensation (the most recent one I sent you). I intend to send the FFCL on just compensation to the Court Tuesday, end of business.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing ' indings of ' act, Conclusions of Law and Judgment was served via the courtFs electronic e' ile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/18/2021

Jeffry Dorocak	jdorocak@lasvegasnevada.gov
Leah Jennings	ljennings@mcdonaldcarano.com
Philip Byrnes	pbyrnes@lasvegasnevada.gov
Todd Bice	tlb@pisanellibice.com
Dustun Holmes	dhh@pisanellibice.com
Jeffrey Andrews	jandrews@lasvegasnevada.gov
Robert McCoy	rmccoy@kcnvlaw.com
Stephanie Allen	sallen@kcnvlaw.com
Adar Bagus	abagus@kcnvlaw.com
Christopher Kaempfer	ckaempfer@kcnvlaw.com

Michael Wall	mwall@hutchlegal.com
Maddy Carnate-Peralta	mcarnate@hutchlegal.com
Autumn Waters	autumn@kermittwaters.com
James Leavitt	jim@kermittwaters.com
Michael Schneider	michael@kermittwaters.com
Elizabeth Ham	EHam@ehbcompanies.com
Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
Amanda Yen	ayen@mcdonaldcarano.com
George Ogilvie III	gogilvie@Mcdonaldcarano.com
Karen Surowiec	ksurowiec@Mcdonaldcarano.com
Christopher Molina	cmolina@mcdonaldcarano.com
Jennifer Knighton	jknighton@ehbcompanies.com
Evelyn Washington	evelyn@kermittwaters.com
Stacy Sykora	stacy@kermittwaters.com
Sandy Guerra	sandy@kermittwaters.com
Jennifer Knighton	jknighton@ehbcompanies.com
Elizabeth Ham	EHam@ehbcompanies.com
Kermitt Waters	kermitt@kermittwaters.com
CluAynne Corwin	ccorwin@lasvegasnevada.gov
Desiree Staggs	dstaggs@kcnvlaw.com
Shannon Dinkel	sd@pisanellibice.com
Debbie Leonard	debbie@leonardlawpc.com
Andrew Schwartz	Schwartz@smwlaw.com

Lauren Tarpey	LTarpey@smwlaw.com
David Weibel	weibel@smwlaw.com
Rebecca Wolfson	rwolfson@lasvegasnevada.gov