

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

Electronically Filed
Aug 25 2022 04:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**JOINT APPENDIX,
VOLUME NO. 118**

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

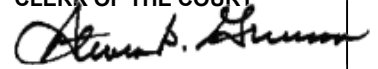
(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

Attorneys for City of Las Vegas



APPN
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 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

**APPENDIX OF EXHIBITS IN SUPPORT
OF PLAINTIFF LANDOWNERS'
OPPOSITION TO CITY OF LAS VEGAS'
MOTION TO RETAX MEMORANDUM
OF COSTS**

Hearing Date: January 18, 2022

Hearing Time: 9:05 AM

The Plaintiffs, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "the
Landowners"), by and through their attorneys, the Law Offices of Kermitt L. Waters, hereby file
this Appendix of Exhibits in Support of Plaintiff Landowners' Opposition to City of Las Vegas'
Motion to Retax Memorandum of Costs as follows:

Exhibit No.	Description	Vol. No.	Bates No.
11	Chart of Costs	1	Ex. 11, Pg. 0001 - 0003
12	04.27.21 22 nd Supplement to 16.1 Disclosures – Initial Expert Disclosure	1	Ex. 12, Pg. 00001 - 0036
13	List of Substantive Pleadings	1	Ex. 13, Pg. 00001 - 0006
14	Declaration of Sandy Guerra	1	Ex. 14, Pg. 0001 - 0002
15	07.26.21 Plaintiff Landowners' Twenty-Third Supplement to Initial Witness List and Disclosures Pursuant to NRCP 16.1	1	Ex. 15, Pg. 00001 - 0027
16	10.08.21 Eighteenth Supplement to City of Las Vegas' Initial Disclosures Pursuant to NRCP 16.1	1	Ex. 16, Pg. 0001 - 0010
17	Application for Subpoena	1	Ex. 17, Pg. 0001 - 0006
18	Excerpts from 08.16.19 Deposition Transcript of Clyde O. Spitze	1	Ex. 18, Pg. 0001 - 0002
19	HOLO Invoice	1	Ex 19., Pg. 0001
20	09.27.21 Reporter's Transcript of Telephonic Proceedings	1	Ex. 20, Pg. 0001 - 0093
21	09.03.20 Email from Law Library	1	Ex. 21, Pg. 0001
22	Declaration of Evelyn Washington	1	Ex. 22, Pg. 0001
23	Declaration of Autumn Waters	1	Ex 23, Pg. 0001
24	10.18.19 Proposed Discovery Plan and Scheduling Order [2:19-cv-01467-KJD-DJA]	1	Ex. 24, Pg. 00001 - 0009

DATED this 23rd day of December, 2021.

LAW OFFICES OF KERMIT 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 Plaintiff Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 23rd day of December 2021, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF LANDOWNERS'
5 OPPOSITION TO CITY OF LAS VEGAS' MOTION TO RETAX MEMORANDUM OF
6 COSTS was served on the below via the Court's electronic filing/service system and/or deposited
7 for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

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

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

13 Bryan Scott, Esq., City Attorney
Philip R. Byrnes, Esq.
Rebecca Wolfson, Esq.
14 495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
15 bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
16 rwolfson@lasvegasnevada.gov

17 **SHUTE, MIHALY & WEINBERGER, LLP**

18 Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
19 San Francisco, California 94102
schwartz@smwlaw.com
20 ltarpey@smwlaw.com

21 /s/ Sandy Guerra
22 an employee of the Law Offices of Kermitt L. Waters
23
24

Exhibit 11

Item	Cost	Amount	Disputed	Undisputed	Withdrawn	Amended
	<u>Photocopy Fees</u> <u>(See attached invoices, Exhibit 1):</u>					
1	Holo Discovery	\$ 14,422.81	✓			
2	NV Supreme Court Law Library	\$ 33.20	✓			
	<u>Research and Certified Copies</u> <u>(See attached invoices, Exhibit 2):</u>					
3	Clark County Recorder	\$ 171.00	✓			
4	District Court Clerk	\$ 119.00	✓			
	<u>Experts and Retainers</u> <u>(See attached invoices, Exhibit 3):</u>					
5	GGA Partners	\$ 11,162.41	✓			
6	Global Golf Advisors	\$ 67,094.00	✓			
7	The DiFederico Group	\$ 114,250.00	✓			
8	Jones Roach & Caringella	\$ 29,625.00	✓			
	<u>Process Service</u> <u>(See attached invoices, Exhibit 4):</u>					
9	Legal Wings	\$ 290.00	✓			
	<u>Shipping Fees</u> <u>(See attached invoices, Exhibit 5):</u>					
10	Fedex	\$ 61.33			✓	

Item	Cost	Amount	Disputed	Undisputed	Withdrawn	Amended
	<u>Court Filing Fees</u> <u>(See attached Invoices, Exhibit 6):</u>					
11	8 th Judicial District Court (E-filing Fees)	\$ 808.50				✓ \$773.50
12	8 th Judicial District Court Clerk	\$ 200.00		✓		
	<u>Court Reporting/Transcripts</u> <u>(See attached Invoices, Exhibit 7):</u>					
13	Discovery Legal Services	\$ 481.25		✓		
14	LGM Transcription Services	\$ 571.14		✓		
15	Litigation Services	\$ 3,933.49		✓		
16	Margot Isom	\$ 3,293.72		✓		
17	National Court Reporters	\$ 6,693.23		✓		
18	Oasis	\$ 1,049.00	✓			
19	Rhonda Aquilina	\$ 1,031.09		✓		
	<u>Online Research</u> <u>(See attached Invoices, Exhibit 8):</u>					
20	Westlaw	\$ 50,669.02	✓			
	<u>In Office Copies (See attached Invoices, Exhibit 9):</u>					
21	13,276 color copies @ .25 per pg. = \$3,319.00 20,176 b/w copies @ .15 per page = \$3,026.40	\$ 6,345.40	✓			

Item	Cost	Amount	Disputed	Undisputed	Withdrawn	Amended
	<u>Miscellaneous Charges</u> <u>(See attached Invoices, Exhibit 10):</u>					
22	AT&T Conference Calls	\$ 32.52		✓		
23	Capriotti's	\$ 84.88		✓		
24	Parking and Lunch	\$ 121.27		✓		

Exhibit 12

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,

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,

Defendants.

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

PLAINTIFF LANDOWNERS'
TWENTY-SECOND SUPPLEMENT
TO INITIAL WITNESS LIST AND
DISCLOSURES PURSUANT TO NRCP
16.1

Initial Expert Disclosure

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS.

Plaintiff 180 LAND COMPANY, LLC (hereinafter "Landowners"), by and through their
counsel of record, the Law Offices of Kermitt L. Waters, hereby submits their **twenty-second
supplement** to initial list of witnesses and documents pursuant to NRCP 16.1, as follows:

I.

LIST OF WITNESSES

A. NRCP Rule 16.1(a)(1)(A) disclosure: The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information:

1. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City's guidelines, instructions, process and/or procedures for adopting a land use designation on the City of Las Vegas General Plan Land Use Element and/or Master Plan, including the guidelines, instructions, process and/or procedures applicable for each and every year from 1986 to present.

2. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City of Las Vegas guidelines, instructions, process and/or procedures implemented to place a designation of PR-OS or any similar open space designation on all or any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element.

3. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the Master Development Agreement referenced in the Landowners' Complaint.

4. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the major modification process.

5. Steve Seroka
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

1 Mr. Seroka may have information regarding the facts and circumstances surrounding the
2 allegations alleged in the Landowners' Complaint which occurred while Mr. Seroka was running
3 for the City Council and while Mr. Seroka was on the City Council.

4 6. Person Most Knowledgeable
180 LAND COMPANY, LLC
c/o Law Offices of Kermitt L. Waters
5 704 South Ninth Street
Las Vegas Nevada 89101

6 Person Most Knowledgeable at 180 Land Company, LLC regarding the facts and
7 circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to
8 Phase 1 of discovery, liability.

9 7. Person Most Knowledgeable
FORE STARS, Ltd
c/o Law Offices of Kermitt L. Waters
10 704 South Ninth Street
Las Vegas Nevada 89101

11 Person Most Knowledgeable at FORE STARS, LTD regarding the facts and circumstances
12 surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
13 discovery, liability.

14 8. Person Most Knowledgeable
SEVENTY ACRES, LLC
c/o Law Offices of Kermitt L. Waters
15 704 South Ninth Street
Las Vegas Nevada 89101

16 Person Most Knowledgeable at Seventy Acres, LLC regarding the facts and circumstances
17 surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
18 discovery, liability.

19 9. Donald Richards
Superintendent of 250 Acres (former Badlands golf course)
c/o Law Offices of Kermitt L. Waters
20 704 South Ninth Street
Las Vegas, Nevada 89101

21 Mr. Richards is the superintendent of the 250 Acres of Residential Zoned Land and has
22 been since approximately November 2015. He therefore is familiar with the property and may
23 have information related thereto. My Richards has also provided an affidavit in this matter dated
24 March 23, 2021, he may testify regarding the same, as well as the photographs taken by the infrared
trail cameras he installed on the Property.

1 **First Supplement to Donald Richards**

2 Don Richards, superintendent/manager of 250 Acres (former Badlands golf course)
3 Mr. Richards will testify as a representative of and on behalf of the Landowners and, based upon
4 his extensive expertise (see Curriculum Vitae, attached) in regard to any and all issues arising out
5 of and related to his work on the 35 Acre Property, including soils conditions and use of those soils
6 for development, and the physical possibility element of highest and best use. Mr. Richards will
7 also testify regarding the use of the 35 Acre Property by the public, including the surrounding
8 property owners and the photos he has obtained of these individuals using the property.

9 Mr. Richards is the Property Superintendent/Manager assigned to the 35 Acre Property. He has
10 had this position from early 2014 to present. His responsibilities include, but are not limited to,
11 managing the FEMA maintenance and preservation of FEMA flood zone areas, compliance with
12 CLV Fire department to mitigate fire hazards, maintaining the property for safety compliance,
13 interacting with the health department, coordinating any access required for any City personnel,
14 and interfacing with Metro Police regarding trespassers and vagrant's activity on property.

15 **Physical Possibility**

16 Mr. Richards will testify, based on his extensive experience in the development of residential and
17 commercial properties in the City of Las Vegas and surrounding area, that, at all relevant times
18 (including the date of value), it was physically possible to develop the 35 Acre Property with single
19 family and/or multi-family residential uses.

20 Mr. Richards will describe the physical attributes and shape of the 35 Acre Property, including the
21 topography, as set forth in the documents he reviewed, set forth below, and based upon his
22 knowledge and understanding of the 35 Acre Property. He will describe the surrounding
23 developments, including the homes built to the east, west, south, and north of the 35 Acre Property
24 and that this demonstrates that the soils and topography will allow development of residential units
on the 35 Acre Property and how the soils can be used in development of the property.

Mr. Richards will describe the access to the 35 Acre Property and how that access could be
developed from Hualapai Way and Alta Drive for residential development. He will testify that the
35 Acre Property has 995 feet of frontage on Hualapai Way and 248 feet of frontage on Alta Drive.
He will testify that the offsites, including curb, gutter, sidewalk, and landscaping are currently
installed on Hualapai Way and Alta Drive.

Mr. Richards will additionally testify that the 35 Acre Property is in FEMA Flood Zone X, there
were little to no drainage flows entering the 35 Acre Property, the development of the 35 Acre
Property with single family and multi-family residential uses will add little to no additional
drainage to or from the 35 Acre Property and, therefore, any impacts to the downstream drainage
are insignificant. He will testify that the natural drainage flow is generally from the western
portion of the property to the eastern portion of the property. Mr. Richards will testify that during
his entire time as Property Superintendent for the 35 Acre Property he has never once seen flooding
on the 35 Acre Property.

This testimony will be based on his knowledge and understanding of the 35 Acre Property and,
specifically, the data and documents described below, which more specifically identifies each of
these issues.

1 **The facts and data that Mr. Richards relied upon include, but is not limited to:**

2 Photos of individuals using the property, previously produced.
3 FEMA flood maps.

4 Numerous aerial photos of the 35 Acre Property and surrounding area.

5 His 40 + years of experience as a landscape and site development specialist and Commercial
6 Property Superintendent, including without limitation several large-scale developments in the Las
7 Vegas area, including Tivoli Village, One Queensridge Place, and Sahara Center.

8 The Exhibits Mr. Richards will rely upon are referenced above and he will be asked to identify the
9 35 Acre Property and the surrounding area based on aerial photos that will be presented as exhibits
10 at trial.

11 *Curriculum Vitae – see attached.*

12
13 **10. Frank Pankratz**
14 **President, EHB Companies LLC**
15 **c/o Law Offices of Kermitt L. Waters**
16 **704 South Ninth Street**
17 **Las Vegas, Nevada 89101**

18 Mr. Pankratz will testify as a representative of and on behalf of the Landowners and, based upon
19 his extensive expertise (see Curriculum Vitae, attached) in regards to any and all issues arising out
20 of and related to the physical possibility and financial feasibility elements as they relate to the 35
21 Acre Property at issue in this matter.

22 **Physical Possibility**

23 Mr. Pankratz will testify, based on his extensive experience in the development of residential
24 properties in the City of Las Vegas and surrounding area, that, at all relevant times (including the
25 date of value), it was physically possible to develop the 35 Acre Property with single family and/or
26 multi-family residential uses.

27 Mr. Pankratz will testify regarding the developability of the 35 Acre Property and all issues related
28 to this development.

29 Mr. Pankratz will testify that the 35 Acre Property is 34.07 acres or 1,484,084 square feet.

30 Mr. Pankratz will describe the physical attributes and shape of the 35 Acre Property, including the
31 topography, as set forth in the documents he reviewed, set forth below, and based upon his
32 knowledge and understanding of the 35 Acre Property. He will describe the surrounding
33 developments, including the homes built to the east, west, south, and north of the 35 Acre Property
34 and that this demonstrates that the soils and topography will allow development of residential units
35 on the 35 Acre Property. He will support this testimony further with the documents, including the
36 soils report, referenced below. He will conclude that the development of residential units is
37 physically possible.

38 Mr. Pankratz will describe the access to the 35 Acre Property and how that access could be
39 developed from Hualapai Way and Alta Drive for residential development. He will testify that 35
40 Acre Property has 995 feet of frontage on Hualapai Way and 248 feet of frontage on Alta Drive.

1 He will testify that the offsites, including curb, gutter, sidewalk, and landscaping are currently
2 installed on Hualapai Way and Alta Drive.

3 Mr. Pankratz will additionally testify that the 35 Acre Property is in FEMA Flood Zone X, there
4 were little to no drainage flows entering the 35 Acre Property, the development of the 35 Acre
5 Property with single family and multi-family residential uses will add little to no additional
6 drainage to or from the 35 Acre Property and, therefore, any impacts to the downstream drainage
7 are insignificant. He will testify that the natural drainage flow is generally from the western
8 portion of the property to the eastern portion of the property.

9 Mr. Pankratz will testify in regards to the location of the utilities for development and that the
10 location of these utilities is sufficient for residential development.

11 Mr. Pankratz will testify in regards to the grading work for the development of the 35 Acre
12 Property and that the grading could be accomplished for the development of residential units on
13 the property, based on his experience developing these types of properties and the data and
14 documents referenced below.

15 Mr. Pankratz will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how
16 each could be configured, and how construction of homes on each of these lots could occur to
17 support the physical possibility of such a residential use of the 35 Acre Property.
18 This testimony will be based on his knowledge and understanding of the 35 Acre Property and,
19 specifically, the data and documents described below, which more specifically identifies each of
20 these issues.

21 **Financial Feasibility**

22 Mr. Pankratz will testify, based on his extensive experience in the development of residential
23 properties in the City of Las Vegas and surrounding area, that, at all relevant times, it was
24 financially feasible to develop the 35 Acre Property with single family and/or multi-family
residential uses. Mr. Pankratz will describe the surrounding area and development he was
personally involved with in the surrounding area, including the following:

One Queensridge Place
Sahara Center
Tivoli Village
Sun City Summerlin

Mr. Pankratz will testify regarding the residential real estate market as of the date of valuation and
that this residential market was ideal for residential development. He will testify that the Las
Vegas residential real estate market as of the relevant date of value would have supported the
construction and sale of residential units on the 35 Acre Property.

Mr. Pankratz will testify that the location of the 35 Acre Property is a premium location for
residential development at all relevant times. He will describe the surrounding residential
developments, including the homes built in the Queensridge Community and the Summerlin
Community and explain that these are some of the most sought-after residential developments in
the City of Las Vegas. He will explain that the 35 Acre Property is one of few parcels in this area
that is available for residential development.

Mr. Pankratz will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how each could be configured, and how construction of homes on each of these lots could occur to support the financial feasibility of such a residential use of the 35 Acre Property.

The facts and data that Mr. Pankratz relied upon include, but is not limited to:

All of the cost estimates data for the 7, 16, and 61 lot configurations, including the Index and Summary, the preliminary site plan, the memos and opinions of the developability, the soils report, the existing infrastructure, the GCW – Engineering, Design, the Aggregate industries cost estimates for – Grading, Wet Utilities, Concrete & Roadways, Retaining Walls, the GCW – Engineering and Bond Estimate, NVE – Electrical, SWG – Natural Gas, Don Richards – Landscaping, Fakler consulting fees and estimates. Tand – Telephone & Cable fees and estimates.

These documents are produced concurrently herein and are numbered FP WF 000001 – through FP WF 000456.

FEMA flood map.

Numerous aerial photos of the 35 Acre Property and surrounding area.

His 40+years of experience in the land development and homebuilding industry, including without limitation several large-scale residential developments in the Las Vegas area including:

- Alliante – 2,000 acres in North Las Vegas, NV – Del Webb with American Nevada Corporation
- General Manager of Del Webb's:
 - Anthem, Las Vegas, NV – 5,000 acres/13,700 homes.
 - Sun City Summerlin, Las Vegas, NV 1,500 acres/7,800 homes
 - Sun City MacDonald Ranch, Henderson, NV – 600 acres/2800 homes
- Oversight manager:

The Exhibits Mr. Pankratz will rely upon are referenced above and he will be asked to identify the 35 Acre Property and the surrounding area based on aerial photos that will be presented as exhibits at trial.

Curriculum Vitae – see attached.

**11. Yohan Lowie
CEO EHB Companies LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101**

Mr. Lowie will testify as a representative of and on behalf of the Landowners and, based upon his extensive expertise (see Curriculum Vitae, attached), in regard to any and all issues arising out of and related to the physical possibility, financial feasibility, legal possibility, and maximally productive elements of highest and best use as they relate to the 35 Acre Property at issue in this matter. Mr. Lowie will also testify to the due diligence conducted prior to acquiring the 35 Acre Property. Mr. Lowie will also testify to the value of the 35 Acre Property prior to any City interference with the use of the property. Mr. Lowie will also testify to the value of the 35 Acre

1 Property after any and all City interference with the use of the property, which will include
2 testimony of all City actions taken to prevent the use of the 35 Acre Property. This testimony will
3 be as of the relevant date of valuation and will be offered as part of the just compensation the
4 Landowners are entitled to as a result of the taking in this matter. Mr. Lowie will also testify to
5 all of the damages that have been incurred as a result of the City's actions in this matter. Mr.
6 Lowie will also testify in regard to any and all matters raised in **PLAINTIFF LANDOWNERS'**
7 **MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST,**
8 **THIRD AND FOURTH CLAIMS FOR RELIEF**, including any and all exhibits attached
9 thereto.

10 **Expertise**

11 Mr. Lowie will testify based on his extensive experience in the development of residential and
12 commercial properties in the City of Las Vegas and surrounding area including, but not limited to,
13 the following:

14 One Queensridge Place

15 Tivoli Village

16 Sahara Center

17 106 custom homes in Queensridge

18 200+ homes in Las Vegas

19 Nevada Appellate and Supreme Court Building

20 See documents produced herewith, including bates numbered YL WF 000003 – 000004, 000446-
21 000462.

22 **Due Diligence**

23 Mr. Lowie will testify to the facts and circumstances of the approximate 20-year history of
24 development with the Peccole family including the legal developability of the 250 acres (which
includes the 35 Acre Property), its relation to the Queensridge Community, the City's opinion of
developability since 2006 and the facts and circumstances giving rise to the right to acquire the
250 acres.

Mr. Lowie will further testify to the facts and circumstances surrounding exercising the
right to purchase the 250-acre property and additional due diligence conducted in or
around 2014 including the zoning and confirmation thereof by the City of Las Vegas
prior to the purchase of Fore Stars, Ltd.

This due diligence testimony will also be based, in part, on the following:

Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third,
and Fourth Claims for Relief.

Declarations of Yohan Lowie, dated November 23, 2020, and January 27, 2021, previously
produced.

Deposition of Yohan Lowie, Binion v. Fore Stars, dated August 4, 2017, produced herewith, bates
numbers LO 00037822 – LO 00037876. Specifically, see pages 33-85, wherein Mr. Lowie
testifies, in part, to the due diligence.

1 **Highest and Best Use**
2 **Physical Possibility**

3 Mr. Lowie will testify that the 35 Acre Property is 34.07 acres or 1,484,084 square feet.

4 Mr. Lowie will testify, based on his extensive experience in development of properties in the City
5 of Las Vegas and surrounding area, that, at all relevant times (including the date of value), it was
6 physically possible to develop the 35 Acre Property with single family and/or multi-family
7 residential uses and a Skilled Nursing/Assisted Living/Carefree Living Facilities.

8 Mr. Lowie will testify regarding the developability of the 35 Acre Property and all issues related
9 to this development.

10 Mr. Lowie will describe the physical attributes and shape of the 35 Acre Property, including the
11 topography, as set forth in the documents he reviewed, set forth below, and based upon his
12 knowledge and understanding of the 35 Acre Property. He will describe the surrounding
13 developments, including the homes and other developments built to the east, west, south, and north
14 of the 35 Acre Property and that this demonstrates that the soils and topography will allow
15 development of residential units and a Skilled Nursing/Assisted Living/Carefree Living Facilities
16 on the 35 Acre Property. He will support this testimony further with the documents, including the
17 soils report, referenced below. He will conclude that the development of residential units is
18 physically possible.

19 Mr. Lowie will describe the access to the 35 Acre Property and how that access could be developed
20 from Hualapai Way and Alta Drive for residential development and a Skilled Nursing/Assisted
21 Living/Carefree Living Facilities on the 35 Acre Property. He will testify that 35 Acre Property
22 has 995 feet of frontage on Hualapai Way and 248 feet of frontage on Alta Drive. He will testify
23 that the offsites, including curb, gutter, sidewalk, and landscaping are currently installed on
24 Hualapai Way and Alta Drive.

Mr. Lowie will additionally testify that the 35 Acre Property is not in an active FEMA Flood Zone,
there were little to no drainage flows entering the 35 Acre Property, the development of the 35
Acre Property with single family and multi-family residential uses will add little to no additional
drainage to or from the 35 Acre Property and, therefore, any impacts to the downstream drainage
are insignificant. He will testify that the natural drainage flow is generally from the western
portion of the property to the eastern portion of the property. Mr. Lowie will further testify to all
of the drainage work that was done on the nearby Tivoli Village as this work has provided him the
knowledge and understanding of all relevant drainage issues in the area, including on the 35 Acre
Property.

Mr. Lowie may also testify in regard to the location of the utilities for development and that the
location of these utilities is sufficient for residential development.

Mr. Lowie will testify in regard to the topography of the 35 Acre Property and how this topography
benefits development. He will further testify in regard to the grading work for the development of
the 35 Acre Property and that the grading could be accomplished for the development of residential
units and a Skilled Nursing/Assisted Living/Carefree Living Facilities on the property, based on
his experience developing these types of properties and the data and documents referenced below.

1 Mr. Lowie will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how
2 each could be configured, and how construction of homes on each of these lots could occur to
3 support the physical possibility of such a residential use of the 35 Acre Property.
4 This testimony will be based on his knowledge and understanding of the 35 Acre Property and,
5 specifically, the data and documents produced herewith and dated stamped FP WF 000001 – FP
6 WF 000456, which also identifies each of these issues.

7
8 **Legal Permissibility**

9 Mr. Lowie will testify in regard to the legal permissible uses of the 35 Acre Property. He will
10 testify that the 35 Acre Property has at all times been designated for residential development, which
11 also allows a Skilled Nursing/Assisted Living/Carefree Living Facilities. He will testify that,
12 based on his experience in developing properties, zoning has been used to determine the legal
13 permissible uses of the property. The permitted uses by right are based on the existing zoning,
14 unless a higher zoning designation could be achieved. He will testify that, at all relevant times,
15 the 35 Acre Property has been zoned R-PD7. He will testify that any relevant City land use plans
16 also designated the 35 Acre Property for residential and professional uses.

17 **Financial Feasibility**

18 Mr. Lowie will testify, based on his extensive experience in the development of properties in the
19 City of Las Vegas and surrounding area, that, at all relevant times, it was financially feasible to
20 develop the 35 Acre Property with single family and/or multi-family residential uses or a Skilled
21 Nursing/Assisted Living/Carefree Living Facilities. Mr. Lowie will describe the surrounding area
22 and development he was personally involved with in the surrounding area, as described herein and
23 in his C.V.

24 Mr. Lowie will testify regarding the residential and Skilled Nursing/Assisted Living/Carefree
Living Facilities real estate market as of the date of valuation and that this market was ideal for
this type of development. He will testify that the Las Vegas market as of the relevant date of value
would have supported the construction and sale of residential units on the 35 Acre Property and
Skilled Nursing/Assisted Living/Carefree Living Facilities.

Mr. Lowie will testify that the location of the 35 Acre Property is a premium location for residential
development at all relevant times. He will describe the surrounding residential developments,
including the homes built in the Queensridge Community and the Summerlin Community and
explain that these are some of the most sought-after residential developments in the City of Las
Vegas. He will explain that the 35 Acre Property is one of few parcels in this area that is available
for residential development.

Mr. Lowie will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how
each could be configured, and how construction of homes on each of these lots could occur to
support the financial feasibility of such a residential use of the 35 Acre Property.

///
///

1 **Maximally Productive**

2 Mr. Lowie will testify in regard to the uses of the 35 Acre Property that are maximally productive
3 based on his valuation analysis set forth below.

4 **Value**

5 **Before Condition Value – Mr. Lowie’s Opinion of Value for the 35 Acre Property as of
September 14, 2017, with the R-PD7 zoning and without improper City interference.**

6 Mr. Lowie will testify to the value of the 35 Acre Property under two valuation approaches – the
7 comparable sales approach and the subdivision approach.

8 **Comparable sales approach**

9 Mr. Lowie’s opinion of value under the comparable sales approach will be based on the sale of
10 other similarly situated large parcels of property adjusted for differences.

11 Mr. Lowie’s opinion of value under the comparable sales approach is \$59-60 million in an as is
12 condition, as of the date of value, but expecting entitlements.

13 The basis for Mr. Lowie’s opinion of value is the following:

14 Utilizing the information on land sold to Calida for apartments, attached.

15 Care facility, assisted living, and nursing home data. This includes the development
16 currently occurring - The Villas. See attached document, bate numbers YL WF 000777 –
YL WF 000818.

17 *Calida Sale (17 acres), attached.

18 *RA sale to Intermountain (8.5 acres), attached.

19 *Peccole sale of land near the intersection of Hualapai Way and Alta Drive,
20 attached.

21 *Calida Sale (RA acres), attached.

22 **Subdivision approach**

23 Mr. Lowie will testify that the subdivision approach is how properties, like the 35 Acre Property,
24 are valued in the real world.

25 **Valuation of the 35 Acre Property under a 61 Lots Scenario**

26 Total Value of each lot:

27 Large lots approx. 1 acre plus
28 15 lots

29 Medium lots approx. .5 acre
30 5 lots

31 Small lots approx. .3 acres
32 41 lots

33 Total: \$66,650,000

34 Minus Costs \$7,904,429

35 Net value of entire property: \$58,750,571

36 ///

1 Valuation of the 35 Acre Property under a **16 Lots Scenario**
2 Large lots approx.. - 4 acres
3 Total: \$65,000,000
4 Costs: \$6,017,620
5 Net value of entire property: \$58,982,380

6 Valuation of the 35 Acre Property under a **7 Lots Scenario**: \$1,500,000 per acre
7 Total: \$51,105,000 (34.07 x \$1,500,000 per acre)
8 Costs: \$5,586,533
9 Net Value of Entire Property: \$45,518,467

10 **Valuation of the 7 Lots when connected to the adjacent 180 acres and utilizing water rights.**
11 Lots : \$52,500,000
12 With Water Rights: \$16,000,000
13 Total Value: \$68,500,000
14 COST: \$5,586,533
15 Net Value: \$62,913,467

16 The basis for Mr. Lowie's per lot valuations as set forth in the 7, 16, and 61 lot scenarios above
17 is set forth in the produced documents and as follows:
18 Lot sales in Discovery
19 Lot sales in the Ridges
20 Lot sales in Queensridge
21 Other lot sales
22 Market Demands as of the relevant date of valuation.
23 See attached document numbered YL WF 000697 - YL WF 000700, which
24 identifies these sales.

15 Mr. Lowie will further testify that a Skilled Nursing/Assisted Living/Carefree Living Facilities
16 was reasonably probable on the 35 Acre Property as of the relevant date of valuation and that the
17 value of the property applying this use is as follows:
18 \$1,750,000 per acre
19 TOTAL: \$59,500,000 (rounded) (34.07 acres x \$1,750,000 per acre).

18 The basis for Mr. Lowie's valuation of \$1,750,000 per acre for the Skilled Nursing/Assisted
19 Living/Carefree Living Facilities is the sale to Calida at Rampart and Alta, see bate numbers YL
20 WF 000701 - YL WF 000776, and the data and information related to that project identified as
21 The Villas, see bates numbers YL WF 000777 – YL WF 000818.

20 Conclusion – Based upon the foregoing, Mr. Lowie will testify that the value of the 35 Acre
21 Property, without improper City interference as of the relevant date of valuation, is \$58,000,000 -
22 \$62,900,000.

23 **After Condition Value – Mr. Lowie's Opinion of Value for the 35 Acre Property as of**
24 **September 14, 2017, with the improper City interference**

1 Mr. Lowie will also testify to the value of the 35 Acre Property, as of the relevant date of valuation,
2 considering the City's improper actions and interference with the development of the property
3 including the facts and circumstances surrounding that interference, which are set forth in detail in
PLAINTIFF LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY
JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF. Some of
these City actions, include but are not limited to, the following:

4 The City required onerous Master Development Agreement (MDA).
Every grossly unreasonable request the City made to use the 35 Acre Property
5 The City's recommendation to submit development of 180 Land Co 35 Acre
Property and the application/development process
6 The City's denial of the 35 Acre application
The City's denial of the MDA
7 The City's denial of an access permit
The City denial of a fence permit
8 The City striking the 133 Acre Applications
The City adoption of the Yohan Lowie Bills
9 The City's bad acts including the City's intentions discovered thereafter via public
records requests.

10 Mr. Lowie will testify as to the reasons provided by the City for each of these actions, including
11 to preserve the 35 Acre Property for use by the surrounding property owners.

12 Mr. Lowie will testify that these City actions have precluded the use of the 35 Acre Property,
13 resulting in the property remaining vacant, while the Landowners are required to pay any and all
carrying costs.

14 Mr. Lowie will also testify that just one of the carrying costs is the real property tax of over
\$200,000, which was imposed on the 35 Acre Property based on a lawful residential use of the
15 property. He may also testify in regard to any and all matters related to how that tax was imposed
on the 35 Acre Property in 2016. Mr. Lowie will testify that the Landowners have paid this real
16 estate tax, which is currently over \$200,000 per year.

17 Conclusion – Mr. Lowie will testify that the value of the 35 Acre Property after the improper City
interference is a negative value. He will testify that the City actions have precluded the use of the
18 35 Acre Property as set forth above. He will testify that the loss of use of the 35 Acre Property,
with the real estate tax burden and the additional costs for maintenance results in a negative value
19 for the 35 Acre Property.

20 Mr. Lowie will testify in regard to all of the maintenance costs associated with the 35 Acre Property
that have been incurred during the time the City has precluded use of the property, which costs are
21 discussed more fully below.

22 Mr. Lowie may also testify in regard to any and all issues that may arise in regard to the past
interim use of the 35 Acre Property as part of the Badlands golf course. He may testify in regard
23 to all evidence showing how that golf course use was not contemplated as a long-term use of the
property, that the use was never authorized, that the use was terminated prior to the date of
24 valuation in this matter and why the use was terminated (it was not financially feasible), and that
the golf course use is an illegal use as of the relevant date of valuation.

1 **Damages**

2 Mr. Lowie will testify in regard to any and all other damages that were incurred as a result of the
3 City's interference with the use of the 35 Acre Property, which interference is set forth in the after-
4 condition value, above. Mr. Lowie will also testify to all of those matters set forth in **PLAINTIFF**
5 **LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY**
6 **JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF**, including
specifically all of the City actions set forth therein. Mr. Lowie will testify that, as a result of all of
these City actions, additional damages were incurred in that estimated amount of \$1,450,173.84.
These damages are summarized and set forth in the documents produced herein. See specifically
bate numbers YL WF 000518 – YL WF 000695, privilege log regarding attorney bills to follow.

7 The documents and exhibits Mr. Lowie has relied upon, in part, have been previously produced
8 (see documents produced in regard to the acquisition of the 250 acre property and exhibits attached
9 to Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First,
Third, and Fourth Claims for Relief) and further documents are produced herewith as bate numbers
YL WF 000001 – YL WF 000696.

10 The testimony set forth above is not intended to be an exhaustive list and detail of any and all
11 testimony Mr. Lowie will provide, but rather a summary of his testimony and this testimony will
12 be further supplemented during his deposition and as discovery continues. Mr. Lowie will also
respond to any and all expert opinions, arguments, testimony, or other matters that are presented
by the City in this matter.

13 **12. Tio S. DiFederico, MAI**
14 **The DiFederico Group**
15 **7641 Post Road**
Las Vegas, NV 89113
(702) 734-3030

16 Mr. DiFederico's report, curriculum vitae, list of publications if any, list of depositions and
17 testimony if any, fee schedule, work file and additional reviewed documents are disclosed
18 herewith. Mr. DiFederico will testify to those matters, information, and opinions provided in the
19 report(s) produced herewith (and any and all supplements thereto) and any and all matters,
20 information and opinions which reasonably flows therefrom. Mr. DiFederico may also testify to
21 those matters and information contained in the work file produced herewith and additional
22 documents disclosed herein as well as all matters and information which may reasonably flow
23 therefrom.
24

B. NRCP Rule 16.1(a)(1)(B) disclosure: A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b):

II.

**INDEX TO PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE
DISCLOSURES PURSUANT TO NRCP 16.1**

Docume nt No.	Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
7	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order and Judgment, Eighth Judicial District Court Case No. A-16-739654-C filed 1.31.17	3	LO 00000557-00000601
8	Intentionally left blank	3	LO 00000602-00000618
9	12.7.16 Letter From Jimerson to Jerbic	3	LO 00000619-00000627
10	City of Las Vegas' Answering Brief, Eighth Judicial District Court Case No. A-17-752344-J filed 10.23.17	3	LO 00000628-00000658
11	7.12.16 City of Las Vegas Planning Commission Meeting Transcript Excerpts Items 4, 6, 29-31, 32-35	3	LO 00000659-00000660
12	Staff Recommendation 10.18.16 Special Planning Commission Meeting	3	LO 00000661-00000679
13	10.18.16 Special Planning Commission Meeting Agenda Items 10-12 Summary Pages	3	LO 00000680-00000685
14	2.15.17 City Council Meeting Transcript Items 100-102	3-4	LO 00000686-00000813
15	LVMC 19.10.040	4	LO 00000814-00000816

1	16	LVMC 19.10.050	4	LO 00000817-00000818
2	17	Staff Recommendation 2.15.17 City Council Meeting GPA-62387, ZON-62392, SDR-62393	4	LO 00000819-00000839
3	18	2.15.17 City Council Agenda Summary Pages Items 100-102	4	LO 00000840-00000846
4	19	Seroka Campaign Contributions	4	LO 00000847-00000895
5	20	Crear Campaign Contributions	4	LO 00000896-00000929
6	21	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	4	LO 00000930-00000931
7	22	35 Acre Applications: SDR-68481; TMP-68482; WVR-68480	4	LO 00000932-00000949
8	23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR-68481, TMP 68482	4	LO 00000950-00000976
9	24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
10	25	MDA Combined Documents	5	LO 00001132-00001179
11	26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
12	27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
13	28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
14	29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
15	30	City requested concessions signed by Landowners' representative dated 5.4.17	8	LO 00001837
16	31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
17	32	Two Fifty Development Agreement (MDA) Comparison - July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
18	33	The Two Fifty Design Guidelines, development Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913
19	34	Seroka Campaign Literature	8	LO 00001914-00001919
20	35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
21	36		8	LO 00001923-00001938

1		Tax Assessor's Values for 250 Acre Residential Land		
2	37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7.02.18	8	LO 00001939-00001963
3				
4	38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
5	39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
6	40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
7	41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
8	42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
9				
10	43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
11	44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
12	45	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	9	LO 00002099-00002105
13	46	Bill No. 2018-24	9	LO 00002106-00002118
14	47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
15				
16	48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
17	49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
18	50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
19	51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
20	52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
21	53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336
22	54	Coffin Email	10	LO 00002337-00002344
23	55	8.10.17 Application for Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
24	56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353

1	57	LVMC 19.16.100	10	LO 00002354-00002358
2	58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364
3	59	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	10	LO 00002365
4	60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
5	61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
6	62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
7	63	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	10-11	LO 00002473-00002543
8	64	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
9	65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
10	66	Master Declaration of Covenants, Conditions, Restrictions and Easement for Queensridge	11	LO 00002552-00002704
11	67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement for Queensridge effective 10.1.2000	11	LO 00002705
12	68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants’ Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz NRCP 12(b)(5) Motion to Dismiss Plaintiffs’ Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
13	69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
14	70	Land Use Hierarchy Exhibit	11	LO 00002740
15	71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11-12	LO 00002741-00002820
16	72	Order Granting Plaintiffs’ Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834
17	73	City of Las Vegas’ Reply in Support of Its Motion to Dismiss and Opposition to Petitioner’s Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 12.21.17	12	LO 00002835-00002840
18	74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay	12	LO 00002841-00002849

1		Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18		
2	75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851
3	76	Email	12	LO 00002852
4	77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
5	78	1.23.17 onsite Drainage Agreement	12	LO 00002936-00002947
6	79	9.11.18 PC – Hardstone Temp Permit Transcript	12	LO 00002948-00002958
7	80	Estate Lot Concepts	12	LO 00002959-00002963
8	81	Text Messages	12	LO 00002964-00002976
9	82	Intentionally left blank	12	Not bates stamped
10	83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
11	84	Supreme Court Affirmance	13	LO 00002983-00002990
12	85	City Confirmation of R-PD7	13	LO 00002991-00003020
13	86	De Facto Case Law	13	LO 00003021-00003023
14	87	Johnson v. McCarran	13	LO 00003024-00003026
15	88	Boulder Karen v. Clark County	13	LO 00003027-00003092
16	89	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	13	LO 00003093-00003095
17	90	Bill No. 2018-24	13	LO 00003096-00003108
18	91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
19	92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
20	93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
21	94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564
22	95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593
23	96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
24	97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
	98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
	99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884

1	100	2019.01.07 Robert Summerfield Email	16	LO 00003885
2	101	02.06.2019 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891
3				
4	102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
5	103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
6	104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
7	105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
8	106	2020 Master Plan – Southwest Sector Zoning	16	LO 00003940
9	107	35 Acre in Relation to Peccole Plan	16	LO 00003941
10	108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
11	109	GPA Code and Application	17	LO 00004035-00004044
12	110	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00004045- 00007607 (abandoned LO 6190-6215; 6243-6411; 6421-6704; 7436-7538)
13	111	No Documents Assigned to this Bates range		LO 00007608-00008188
14	112	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00008189-00009861 (abandoned LO 9353-9833)
15				
16	113	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00009862-0010915
17				
18	114	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 0010916-0011440
19	115	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents, Request No. 5		LO 0011441-0012534
20				
21	116	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 11		LO 0012535-0016083
22				
23	117	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 2		LO 0016084-0018029
24				

1	118	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 6	LO 0018030-0018441
2			
3	119	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 1	LO 0018442-0022899
4			
5	120	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 14	LO 0022900-0025236
6			
7	121	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 3	LO 0025237-0029411
8			
9	122	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 5	LO 0029412-0033196
10			
11	123	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 9	LO 0033197-0033795
12			
13	124	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 5	LO 0033796-0033804
14			
15	125	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27	LO 0033805-0033826
16			
17	126	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 28-29	LO 0033827-0034181
18			
19	127	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27	LO 0034182-0034186
20			
21	128	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 21	LO 0034187-0034761
22			
23	129	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 22	LO 0034762-0035783
24			
	130	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 20	LO 0035784-0035819

131	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27		LO 0033817
132	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 28-29		LO 0034115-0034116
133	Clear and Grub files		LO 0035820-0035851
134	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 18		LO 0035852-0035858
135	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 9		LO 0035859-0035896
136	Documents <i>identified</i> in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 8		Privileged and Confidential LO 0035897-0035903
137	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 6		LO 0035904-0035969
138	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 1		LO 0035970-0035972
139	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 7		LO 0035973-0036601
140	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 7		LO 0036602-0036806
141	Native Files		LO35 00000001-00009668
142	Documents released from Privilege Log responsive to Request for Production of Documents to Plaintiff, Request No. 1		LO 00004063-00004079 <i>also produced as</i> LO 0036807-0036823
143	Documents <i>identified</i> in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 8		Amended Privileged and Confidential LO 0035897-0035903

144	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 12		LO 0037065-0037112
145	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 13		LO 0037113-0037258
146	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 14		LO 0037259-0037279
147	Documents previously produced <i>LO 0037070-0037093</i> in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 12 <i>redactions</i>		LO 0037070-0037093
148	<i>Confidential Information</i> Documents produced in Response to Request for Production of Documents to Plaintiff 180 Land Co. LLC, Request No. 16		LO 0037280-0037661
149	Photos taken by cameras installed on the Property		LO 0037662-0037821
150	Yohan Lowie Work File <i>*Contains Documents Under Protective Order</i>		YL WF 000001- YL WF 000818
151	Frank Pankratz Work File		FP WF 000001- FP WF 000456
152	The DiFederico Group Report		TDG Rpt 000001- TDG Rpt 000136
153	The DiFederico Group Work File and Additional Documents Considered by The DiFederico Group		TDG WF 000001- TDG WF 006593 FP WF 000001- FP WF 000456

///

1 III.

2 COMPUTATION OF DAMAGES

3 C. A computation of any category of damages claimed by the disclosing party, making
4 available for inspection and copying as under Rule 34 the documents or other
evidentiary matter, not privileged or protected from disclosure, on which such
computation is based, including materials bearing on the nature and extent of injuries
suffered:

5 **Objection:** The Landowners object to disclosing the computation of any category of
6 “damages” at this time as this information requires the preparation of expert reports that will be
7 produced in the normal course of discovery as provided in the Nevada Discovery Rules. The
8 Landowners further object to disclosing any category of “damages” as discovery has been
9 bifurcated, the damages/just compensation phase of discovery has not commenced yet.
10 Additionally, the computation of any category of “damages” may contain attorney work product,
11 privileged information, and may require legal instructions or court rulings, accordingly, the same
cannot be produced at this time.

12 The Landowners will disclose their expert opinions/testimony regarding the just
13 compensation owed pursuant to NRCP 16.1(a)(2) and in accordance with the scheduling order set
in this matter.

14 The Landowners further object to disclosing the computation of any category of “damages”
15 at this time as the date of value has not be determined by the Court. Without waiving said
16 objections, and assuming the date of value is on or about September 7, 2017 (the date the inverse
17 condemnation claims were filed and served on the City) the Landowners’ preliminary estimate of
18 damages (just compensation) for the total taking of the 35 Acre Property (APN 138-31-201-005)
is approximately \$54 Million. This is an average of the per acre value assigned by the following:
19 1) an appraisal report prepared by Lubawy and Associates of seventy acres of property formerly
20 known as APN 138-32-301-004 at + \$700,510/acre as of July 2015; 2) an offer to purchase 16-18
21 acres of the seventy-acre property formerly known as APN 138-32-301-004 for + \$1,525,000/acre
22 as of December 2015; and, 3) the sale of APN 138-32-314-001 for + \$2,478,000/acre as of August
23 2019. This computation will be supplemented upon the completion of expert reports, if needed,
or as otherwise deemed necessary in this matter. The Landowners’ damages also include
24

1 pre-judgment and post-judgment interest and attorney fees and costs, which will be calculated after
2 trial.

3 The Landowners' damages also include property tax payments (which are public record).

4 *This computation will be supplemented upon the completion of expert reports, if needed,*
5 *or as otherwise deemed necessary in this matter*

6 **First Supplement to Damage Calculation**

7 See the Expert Report and Work file of Tio DiFederico produced herewith, as well as
8 Mr. Lowie's disclosures also provided herewith.

9 IV.

10 **POTENTIALLY APPLICABLE INSURANCE AGREEMENTS**

11 **D. For inspection and copying as under Rule 34 any insurance agreement under which**
12 **any person carrying on an insurance business may be liable to satisfy party or all of**
13 **a judgment which may be entered in the action to indemnify or reimburse for**
14 **payments made to satisfy the judgment and any disclaimer or limitation of coverage**
15 **or reservation or frights under any such insurance agreement:**

16 N/A

17 The Landowners incorporate by reference herein all witnesses and documents disclosed by
18 other parties to this action, including those documents attached to pleadings or papers in this
19 matter. The Landowners further reserve the right to supplement and/or amend these disclosures
20 as discovery continues. The Landowners also reserve the right to object to the introduction and/or
21 admissibility of any document at the time of trial.

22
23
24 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

***THE LANDOWNERS RESERVE THE RIGHT TO SUPPLEMENT AND/OR AMEND
THESE DISCLOSURES AS DEEMED NECESSARY IN THIS MATTER.***

DATED this 27th day of April, 2021.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917
Attorneys for Plaintiffs Landowner

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 27th
3 day of April, 2021, I caused a true and correct copy of the PLAINTIFF LANDOWNERS'
4 TWENTY-SECOND SUPPLEMENT TO INITIAL WITNESS LIST AND DISCLOSURES
5 PURSUANT TO NRCP 16.1-Initial Expert Disclosure, to be submitted electronically for filing
6 and service via the Court's E-Filing system on the parties listed below. The date and time of the
7 electronic proof of service is in place of the date and place of deposit in the mail.

8 **McDONALD CARANO LLP**

9 George F. Ogilvie, III, Esq.
Amanda C. Yen, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
10 gogilvie@mcdonaldcarano.com
11 ayen@mcdonaldcarano.com
12 cmolina@mcdonaldcarano.com

13 **[X] Hand delivery CD containing documents Bates-Stamped**
FP WF 000001-FP -WF 000456
14 **TDG Rpt 000001-TDG Rpt 000136**
TDG WF 000001- TDG WF 006593
15 **YL WF 000001-000818**

16 **LAW VEGAS CITY ATTORNEY'S OFFICE**

17 Bryan K. Scott, Esq.
Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
18 bscott@lasvegasnevada.gov
19 pbyrnes@lasvegasnevada.gov
20 sfloyd@lasvegasnevada.gov

21 **SHUTE, MIHALY & WEINBERGER, LLP**

22 Andrew W. Schwartz, Esq. (*Pro hac vice*)
Lauren M. Tarpey, Esq. (*Pro hac vice*)
396 Hayes Street
San Francisco, California 94102
23 schwartz@smwlaw.com
24 ltarpey@smwlaw.com

/s/Evelyn Washington

Employee of LAW OFFICES OF KERMIT L. WATERS

DONALD T. RICHARDS

3201 Marina Port Circle

Las Vegas, NV 89117

WORK EXPERIENCE:

(2014 – Present) King Commercial Property Management Group, Sahara Center, Las Vegas NV - Operations and Site Development Manager

- Responsibilities include operational management and site development management of two 40-acre commercial sites and a 250-acre golf course.
- Owner's representative at all their commercial sites for (TI) design and development and new tenant projects presently under construction.

(2011 – 2014) Commercial Property Management, Tivoli Village, Las Vegas, NV Operations Manager

- Responsible for the daily operational management of a 10 acre "Mix Use Urban Village".
- Develop and manage CAM Operation's yearly budget (\$3.2MM). Negotiate and executed all contracts for outsourced services. Outsourced services include building mechanical, plumbing, electrical and data systems, life safety systems (fire), security, valet, housekeeping and HVAC contractors.
- Manage in house engineering staff and landscape site maintenance staff.
- Assist General Manager and Marketing with operational management at all special events.
- Manage all new and existing tenant improvement (TI) projects.
- Developed and managed Preventative Maintenance Service program and Emergency Action Plan.

(2006 – 2011) Executive Home Builders, Las Vegas, NV - Director of Site Development & Landscape Architecture

- Responsible for the management of all phases of site development and landscape design / development for two major projects in Las Vegas, NV.
 - Queensridge Towers, a \$400MM, 214-Unit luxury high-rise condominiums
 - Tivoli Village, a \$900MM, mix use urban community area / outdoor retail center
- Negotiated all on site subcontractor contracts and managed material purchasing.
- Manage (45) field personnel performing in-house concrete, landscape and site development work.
- Performed daily field inspections of all site work including coordination of work scheduling and sequencing.
- Integrated all site work with general construction including management of SWPPP and safety coordination.
- Directed regular site walk and inspections with Owners, Financial Investors, City and OSHA Inspectors.

(2005 – 2006) Focus Property Group, Las Vegas, NV - Director of Landscape Architecture / Director Design Review Committee

- Manage all landscape, hardscape and site development from conceptual development to construction document production for six Master Planned Communities.
 - Combined project landscape budget in excess of \$200MM
- Managed outsource landscape architects and developed landscape and site design criteria for each project.
- Managed the processing and approval of civil plans, plot plan review, architectural and landscape product submittals at each community as Director of the Design Review Committee.
- Enforced all Builder Non-Compliance Issues.
- Negotiated contracts for all nursery stock to insure product availability, pricing and quality.
- Worked closely with SNWA and irrigation product manufacturers to develop a "water smart" community with responsible landscape design and "cutting edge" irrigation technology.

(2004 – 2005) Carina Communities, Las Vegas, NV – Director of Landscape Development

- Managed all of the landscape and site development improvements for Carina Communities.
- Designed all commercial pools, landscape streetscapes, hardscapes and open spaces.
- Worked closely with Carina departments (Land Development, Housing, and Marketing) and various Architects and Engineers throughout the design development and construction process.
- Developed project budgets and manage the design process from conceptual design to construction documents and installation to ensure product quality and cost control.
- Managed all contract administration, purchasing of Owner supplied materials such as specimen trees, project construction and scheduling.

(2003 – 2004) Gothic Landscape, Inc., NV – Project Manager

- Managed all landscape and general engineering projects at Aliante, a Master Planned Community.
 - Scope of work included all streetscapes, hardscapes, greenbelts, golf course planting, one 10 acre and one 15acre multi use park
- Directed all direct cost estimating, bid solicitation, award of contracts, contract administration, construction project management and scheduling.
- Negotiated contracts with the project owner American Nevada Corporation.
- Worked with the landscape architect and owner to maintain the owner's aggressive construction schedule, control development costs and ensure product quality.

(1998 – 2003) Del Webb Communities, NV – Landscape Division Manager

- Managed Del Webb's custom residential Landscape Design Center.
 - Within one year, the department grew to 20% net profit on \$5MM gross sales per year
- Developed cost saving programs by expanding the Landscape Design Department services to include in-house production of residential plot plans, landscape design and construction management of model parks, streetscapes, public parks, commercial pools and desert re-vegetation program.
 - In-house plot plan service realized a 250% increase in plot plan production per week with improved accuracy and considerable reduction of outsourced A/E direct costs
 - In-house re-design of the desert re-vegetation program produced \$1MM construction cost savings at the second golf course built at Anthem

(1995 – 1998) Richards & Emert, Sacramento, CA – Co-Owner

- Oversaw all landscape and general engineering work related to large master planned communities, public, federal and municipal projects.
 - Ten million dollars in gross sales within first two years of operation
 - Major projects include Spanos Park, a master planned community in Stockton, CA, South Davis Park, Davis, CA and Lakeside, a master planned community in Elk Grove, CA.

(1994 – 1995) California Landscape, Inc., Sacramento, CA – VP / Branch Manager

- Manager of a large landscape and general engineering contractor based in Southern California.
- Hired to open Northern California office.
 - Generated \$8MM in gross sales in the Sacramento market in first year of operation
 - Projects included master planned residential communities, public, municipal, commercial landscape and general engineering development.

(1989 – 1994) Valley Crest Landscape, Pleasanton, CA – Business Developer

- Developed business center for a large landscape and general engineering construction company.
- Directed all new business development in the Sacramento area.
 - Projects included large master plan communities, public works, federal and municipal projects as well as large commercial projects throughout Northern California
 - Participated in the development of one public and three private golf courses in Northern California.
- Managed design / build landscape development of the Safeway Distribution Center in Tracy, CA. The project returned a 40% net profit for the company
 - Top ten in National Sales 1992 & 1993.
 - Number one in National Sales 1994 with \$27MM in gross sales.

(1979 – 1989) Don Richards Landscape & Maintenance, Visalia, CA – Owner

- Specialized in design build residential and commercial landscape construction and agriculture irrigation design and construction.
 - Projects included custom residential homes with enhanced landscape and site development improvements, landscape design / development of commercial buildings, strip malls, community parks and agriculture irrigation projects.

(1974 – 1979) Don Richards Landscape & Maintenance, Los Angeles, CA – Owner

- Operated design build residential and commercial landscape construction and maintenance company.
 - Projects included custom residential homes in the greater Los Angeles area and all commercial centers developed by Fazio Markets from San Diego to Ventura.

EDUCATION:

1970 – 1972 AA Degree, Los Angeles Pierce Junior College, Los Angeles, CA
1972 – 1974 Biology, California State University, Northridge, Northridge, CA
1975 – 1976 Landscape Architecture, University California Los Angeles, Los Angeles, CA

LICENSES / CERTIFICATIONS:

C-27 Landscape Contractor, State of California (inactive)
OSHA 30 Certified
First Aid, CPR & AED Certified
SWPPP Certified
Clark County Air Quality Dust Control Certified
Lift equipment Certified
Safety & fall protection Certified
Laser equipment Certified
Scaffold erection Certified
Powdered activated tool Certified

AWARDS / HONORS:

1985 Landscape Beautification Award, City of Visalia, CA - Security Pacific Bank Plaza
1996 Credited Landscape Architect (grandfathered), State of California
2007 Realtor Magazine Commercial Landscape of the Year, City of Las Vegas, NV - Queensridge Towers
2011 Best of Las Vegas Commercial Landscape & Architecture Award, City of Las Vegas, NV - Tivoli Village

Frank Pankratz

As the President of EHB Companies (ebbcompanies.com) since 2003, Frank Pankratz is uniquely suited for this position and the related responsibilities. Having a solid education and business background, he is a senior real estate executive with proven leadership performance; with his team members he holds a long record of achieving superior results in large volume homebuilding operations and master-planned community developments. He has extensive operational and leadership experience complementing EHB's diverse real estate development activities ranging from extraordinary high-quality custom homes, high-end vertical multi-family, neighborhood shopping centers, office, industrial and land development.

Mr. Pankratz previously, over a sixteen-year period served in a management capacity with Pulte and Del Webb Corporations, most recently as the Arizona Group President, during which time nearly 3,900 homes were sold in 2002. Prior thereto he was President of Del Webb's Nevada and Eastern Communities (Chicago, Virginia, S. Carolina, and Florida), General Manager of Del Webb's S. California operations and had oversight of those in N. California.

In addition to being responsible for a period for Del Webb's commercial and construction components, he participated as a senior management team member in the national evaluation of expansion of Del Webb's active adult offering into new markets and served as executive in charge in various regions and participated in developing/directing the company's profitable growth including strategic land acquisitions, product and systems efficiency improvements and ongoing operations.

Real estate developments over which he had a management role were consistently best sellers in their respective markets. This included Del Webb's Southern and Northern California communities through the very long and deep California real estate downturn in the early/mid 1990's.

Mr. Pankratz was either the local executive in charge or part of the management team, over many years, of numerous large developments, some being start-ups and/or joint ventures, including:

- Alliant – 2,000 acres in North Las Vegas, NV – Del Webb with American Nevada Corporation
- General Manager of Del Webb's:
 - Sun City Palm Desert, S. Calif – 1,700 acres/5,000 homes; initially Del Webb with Sunrise Company
 - Anthem, Las Vegas, NV – 5,000 acres/13,700 homes.
 - Sun City Summerlin, Las Vegas, NV 1,500 acres/7,800 homes

- Sun City MacDonald Ranch, Henderson, NV – 600 acres/2800 homes
- Oversight manager:
 - Sun City Roseville, N. Calif – 1,200 acres/3,200 homes
 - Sun City Lincoln Hills. N. Calif – 3,000 acres/6,800 homes.
- The Foothills, Phoenix, AZ – 4,200 acres - Del Webb with Burns International
- Mountain Park Ranch, Phoenix, AZ – 2,500 acres – Genstar with American Continental Corporation
- Gila Springs, Chandler, AZ – 320 acres – Marlboro with Pima S& L
- The Quadrangles, Tempe, AZ - 510 apartments – Marlboro with Blue Valley S&L
- Central Park Square, Phoenix, AZ – 215,000 sq. ft. 15 story mid-rise office – GM Horton Corporation with Martens Development
- A Denver metro and two Colorado Springs apartment projects totaling 900+ apartments – GM Horton Corporation
- Bernardo Heights, San Diego, S. Calif. master planned golf course community – 1,000 acres/3,600 homes
- Penasquitos Properties, San Diego, S. Calif – 5,000 acres

Mr. Pankratz, from an early age gained a broad experience in agriculture – grain, livestock, mechanics, and construction, having been raised on a large diverse farm in Saskatchewan, Canada. He went on to gain his Bachelor of Commerce degree at University of Saskatchewan, his Canadian Chartered Accountant (CA) designation via McGill University, and, articulated for his CA at Deloitte Touche, in Montreal. He then joined Genstar, a large diversified operating company in construction, land development, homebuilding, manufacturing, tug and barge operations and ship building, to head from Vancouver, BC, its western Canadian audit department. He was transferred to San Francisco as part of the management team for startup of diverse international transportation joint ventures to provide worldwide tug and barge operations as well as both stevedoring and trucking operations in Saudi Arabia.

Mr. Pankratz has received several prestigious real estate industry awards and recognitions including the Desert Chapter's Builder of the Year in 1993 from the Building Industry Association of Southern California, Southern California Desert Contractor's Association's Developer of the Year in 1993, and was inducted into California Builder's Hall of Fame in 1995.

Yohan Lowie, Principal and Chief Executive Officer

Yohan is the CEO and co-founder with Paul and Vickie DeHart of Executive Home Builders, Inc. (EHB). EHB is one of the most prestigious and highly respected custom home developers in Las Vegas. Yohan's developments include The Nevada Supreme Court and Appellate Court building, One Queensridge Place, Tivoli Village, Sahara Center, Durango Commons, Lake Sahara Plaza 1 & 2, Fort Apache Commons Shopping Center, The Villas Senior Care, as well as 40 Custom Homes in the Queensridge Neighborhood.

Previously, Yohan was CEO and founder of Mirage Estates, a company that acquired, subdivided/entitled land and planned, designed, and constructed largely with its own labor base, custom and semi-custom homes in Las Vegas.

Yohan has been in the real estate development business in Las Vegas since 1993. Previously, he was General Manager and Co-Principal of the Contractors State Licensing School in California which during his three-year ownership expanded from seven to eleven schools throughout the state. Yohan came to the United States in 1986. He was born and raised in Israel where he served in one of the Israeli army elite units for four years.

Yohan's real estate experience includes land acquisition, entitlements, and development; custom and production home building; commercial office and retail construction, leasing and management; nursing home design, development and construction; and the design of high-rise condominiums.

Yohan's expertise in procurement, design, craftsmanship and use of stone materials in his buildings significantly distinguishes his offerings as very high-end, quality, and unique in the marketplace and sets them apart from the competition.

Yohan's success is a result of the combination of his commitment, passion, strong work ethic, expertise in design and construction, attention to details, understanding of costs, commitment to quality, knowledge of building materials, craftsmanship, strong interpersonal skills, and entrepreneurial acumen.

Developments

Commercial/ Mixed Use

Tivoli Village: Located at Rampart Blvd and Alta Drive at the Edge of Summerlin, Tivoli Village features over 785,000 sq ft of retail, restaurant, and office space. Tivoli Village is comprised of 18 unique buildings with distinctive architecture.

Sahara Center: Sahara Center is an \$85 Million dollar, 220,000 sq ft retail center anchored by the 3rd highest grossing Sprouts in the nation, as well as TJ Maxx, HomeGoods and Petco.

Charleston Stone Mart: 22,000 Sq ft. located at the northeast corner of Durango Drive and Charleston Ave.

Fort Apache Commons: 65,000 Sq Ft. located at the southwest corner of Fort Apache Drive and Charleston Ave.

Lake Sahara Plaza 1 and 2: 153,000 S Ft. located at the Southwest corner of Sahara Drive and Durango Drive.

Luxury High-Rise

One Queensridge Place: Features 219 Condominiums with an average unit size of 3,500 sq ft. with total sales of over \$500 Million.

Government

Nevada Supreme and Appellate Courthouse: Comprised of 26,100 sq ft office building houses offices and chambers for both the Supreme Court of Nevada and Nevada Court of Appeals, as well as a 72-seat grand courtroom for oral arguments.

Senior Care

The Villa's: A 12-room Assisted Living care facility for Seniors located on the corner of Tropical Parkway and Corbett Street.

Custom Residential in Queensridge

1	9301 Verlaine Court, Las Vegas, NV 89145
2	9309 Verlaine Court, Las Vegas, NV 89145
3	9313 Verlaine Court, Las Vegas, NV 89145
4	9317 Verlaine Court, Las Vegas, NV 89145
5	9325 Verlaine Court, Las Vegas, NV 89145
6	9401 Verlaine Court, Las Vegas, NV 89145
7	9405 Verlaine Court, Las Vegas, NV 89145
8	9409 Kings Gate Court, Las Vegas, NV 89145
9	9409 Verlaine Court, Las Vegas, NV 89145
10	9413 Verlaine Court, Las Vegas, NV 89145
11	9417 Verlaine Court, Las Vegas, NV 89145
12	9421 Verlaine Court, Las Vegas, NV 89145
13	9425 Verlaine Court, Las Vegas, NV 89145
14	9501 Kings Gate Court, Las Vegas, NV 89145
15	9501 Verlaine Court, Las Vegas, NV 89145
16	9504 Kings Gate, Las Vegas, NV 89145
17	9505 Kings Gate, Las Vegas, NV 89145
18	9505 Verlaine Court, Las Vegas, NV 89145
19	9509 Verlaine Court, Las Vegas, NV 89145
20	9513 Verlaine Court, Las Vegas, NV 89145
21	9517 Verlaine Court, Las Vegas, NV 89145
22	9521 Verlaine Court, Las Vegas, NV 89145
23	9525 Verlaine Court, Las Vegas, NV 89145
24	9601 Verlaine Court, Las Vegas, NV 89145
25	9605 Verlaine Court, Las Vegas, NV 89145
26	9609 Verlaine Court, Las Vegas, NV 89145
27	9613 Verlaine Court, Las Vegas, NV 89145
28	9617 Verlaine Court, Las Vegas, NV 89145
29	9621 Verlaine Court, Las Vegas, NV 89145
30	9705 Winter Palace, Las Vegas, NV 89145
31	9708 Winter Palace, Las Vegas, NV 89145
32	9709 Winter Palace, Las Vegas, NV 89145
33	9713 Winter Palace, Las Vegas, NV 89145
34	9720 Winter Palace, Las Vegas, NV 89145
35	9724 Verlaine Court, Las Vegas, NV 89145
36	9800 Winter Palace, Las Vegas, NV 89145
37	9801 Orient Express, Las Vegas, NV 89145

38	9804 Winter Palace, Las Vegas, NV 89145
39	9817 Winter Palace, Las Vegas, NV 89145
40	9821 Orient Express, Las Vegas, NV 89145

Exhibit 13

Substantive Pleading	No. of Pages	No. of Pgs. of Exhibits
07.18.17 Petition for Judicial Review	8	0
09.07.17 First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	19	0
10.30.17 CLV Motion to Dismiss	10	10
12.21.17 Petitioner's Opposition To City Of Las Vegas Motion To Dismiss And Countermotion To Stay Litigation Of Alternative Inverse Condemnation Claims Until Resolution Of The Petition For Judicial Review	21	16
12.21.17 City of Las Vegas' Reply in Support of its Motion to Dismiss and Opposition to Petitioner's Countermotion to Stay Litigation	6	0
01.05.18 Petitioner's Reply In Support Of Its Countermotion To Stay Litigation Of Alternative Inverse Condemnation Claims Until Resolution Of The Petition For Judicial Review	7	0
02.05.18 City of Las Vegas' Answer to First Amended Petition for Judicial Review	4	0
02.23.18 First Amended Complaint Pursuant to Court Order Entered on February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	17	0
02.28.18 Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation per Court Order entered on February 1, 2018	15	0
03.13.18 City of Las Vegas' Answer to First Amended Complaint Pursuant to Court Order Entered on February 1, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	4	0
03.19.18 City of Las Vegas' Answer to Second Amended Petition for Judicial Review	4	0
04.17.18 Motion to Intervene on an Order Shortening Time	19	100
04.17.18 Petitioner's Memorandum of Points and Authorities in support of Second Amended Petition for Judicial Review	43	19
05.02.18 Petitioner's Opposition to Motion to Intervene	18	339
05.07.18 City of Las Vegas' Motion to Extend Briefing Schedule and Continue Hearing on 180 Land Co LLC's Second Amended Petition for Judicial Review on Order Shortening Time	10	4
05.09.18 Petitioner's Opposition to Motion to Extend Briefing Schedule and Continue Hearing	12	14
05.09.18 Reply in Support of City of Las Vegas' Motion to Extend Briefing Schedule and Continue Hearing on 180 Land Co LLC's Second Amended Petition for Judicial Review on Order Shortening Time	4	0
06.26.18 City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review	35	181
06.26.18 Request for Judicial Notice in Support of City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review	4	18
06.26.18 Intervenor's Answering Brief	33	181
06.28.18 Request for Judicial Notice in Support of Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	9	76

Ex. 13, Pg. 0001

21572

Substantive Pleading	No. of Pages	No. of Pgs. of Exhibits
06.29.18 Emergency Motion to Strike "Errata to Transmittal of Record for Review" filed by the City of Las Vegas on June 21, 2018; Application for Order Shortening Time	11	0
07.02.18 Petitioner 180 Land Co LLC's Hearing Exhibits to Petition for Judicial	119	0
07.17.18 City of Las Vegas' Opposition to Petitioner's Motion to Strike Errata to Transmittal of Record for Review	9	4
07.20.18 180 Land's Reply to City of Las Vegas' Opposition to Motion to Strike	11	7
07.31.18 Petitioner's Post-Hearing Reply Brief	31	19
08.07.18 City of Las Vegas' Post-Hearing Sur-Reply Brief	16	0
08.07.18 Intervenors' Post-Hearing Brief	18	0
12.11.18 Plaintiff Landowners' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims	65	4,075
12.11.18 Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims	19	100
12.13.18 Motion for a New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives	28	300
12.14.18 Supplement to: Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation	69	4,022
12.17.18 Plaintiff Landowners' Opposition to the City's Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability for The Landowners' Inverse Condemnation Claims on Order Shortening Time	7	10
12.21.18 Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims on Order Shortening Time	9	0
01.07.19 City of Las Vegas' Opposition to Motion for a New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives	14	20
01.07.19 City of Las Vegas' Opposition to Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims	26	31
01.07.19 Intervenors City of Las Vegas' Opposition to Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims	11	9
01.10.19 Reply in Support of Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability for the Landowners' Inverse Condemnation Claims	7	0
01.14.19 Reply Re: Plaintiff Landowners' Request for Rehearing / Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims	33	52
01.14.19 Petitioner's Omnibus Reply in Support of Motion for New Trial Pursuant to NRCP 59(e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Fact and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives	12	0

Substantive Pleading	No. of Pages	No. of Pgs. of Exhibits
02.13.19 City of Las Vegas' Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	14	0
03.04.19 Plaintiff Landowners' Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Condemnation Claims and Countermotion to Supplement/Amend the Pleading, If Required	89	159
03.08.19 Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time	10	191
03.14.19 City of Las Vegas' Reply in Support of Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	19	65
03.18.19 City of Las Vegas' Opposition to Plaintiff Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, if Required	14	65
03.18.19 City of Las Vegas' Opposition to Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time	8	179
03.21.19 Reply in Support of Plaintiff Landowners' Motion to Estop the City's Private Attorney for Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time	3	0
03.21.19 Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, if Required	11	14
03.21.19 Opposition To Plaintiff Landowners' Motion To Estop The City's Private Attorney From Making The Major Modification Argument Or For An Order To Show Cause Why The Argument May Proceed In This Matter On Order Shortening Time	7	60
03.21.19 Plaintiff Landowners' Reply and Request to Strike Neighbors' Opposition to Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time as a Fugitive Document	4	0
04.23.19 City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time	14	77
05.07.19 Opposition to the City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time and Countermotion for Nunc Pro Tunc Order	18	166
05.10.19 Reply in Support of City of Las Vegas Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time and Opposition to Countermotion for Nunc Pro Tunc Order	7	0
05.14.19 Landowners' Reply Re: Countermotion for Nunc Pro Nunc Order	4	14

Ex. 13, Pg. 0003

21574

Substantive Pleading	No. of Pages	No. of Pgs. of Exhibits
05.15.19 Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	38	0
05.17.19 Notice of Filing of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition and Emergency Motion Under NRAP 27(e) for Stay in the Nevada Supreme Court	3	74
06.18.19 City of Las Vegas' Answer to Plaintiff 180 Land Company's Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	12	0
08.07.19 Plaintiff Landowners' Motion on the Procedure to Determine Liability in an Inverse Condemnation Proceeding	11	0
02.26.20 The City of Las Vegas' Motion to Compel Discovery	19	162
03.12.20 Plaintiffs' Opposition to Defendant City of Las Vegas' Motion to Compel Discovery	14	72
03.25.20 The City of Las Vegas Reply in Support of its Motion to Compel Discovery	12	0
05.12.20 City of Las Vegas' Opposition to Seventy Acres, LLC's Motion to Dismiss Seventy Acres, LLC on Order Shortening Time	21	534
05.13.20 Plaintiffs' Reply in Support of Motion to Dismiss Seventy Acres LLC on Order Shortening Time	8	4
07.10.20 The City of Las Vegas Objection to the Discovery Commissioner s Report and Recommendations	13	619
07.23.20 Plaintiffs' Response to Defendant City of Las Vegas' Objection to DCRR	6	77
07.31.20 The City of Las Vegas Motion to Compel and For an Order to Show Cause	12	75
08.04.20 Plaintiff Landowners' Motion to Determine "Property Interest"	11	146
08.14.20 Plaintiffs' Opposition to Defendant City of Las Vegas' Motion to Compel and for an Order to Show Cause	13	195
08.18.20 City s Opposition to Motion to Determine Property Interest	28	916
08.24.20 Supplement to Plaintiffs' Opposition to Defendant City of Las Vegas' Motion to Compel and for Order to Show Cause	3	4
09.02.20 The City of Las Vegas' Reply in Support of its Motion to Compel and for an Order to Show Cause	17	11
09.09.20 Reply in Support of Plaintiff Landowners' Motion to Determine "Property Interest"	23	203
10.22.20 The City Of Las Vegas Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time	30	676
10.28.20 Plaintiff Landowners' Motion to Strike One Sentence Related to the Landowners' Protective Order from Order Granting the City of Las Vegas' Motion to Compel and for an Order to Show Cause, Filed on October 12, 2020	8	177
11.06.20 Plaintiffs' Opposition to Defendant City of Las Vegas' Motion to Compel Discovery Responses and Damage Calculations	12	161
11.12.20 Opposition to Motion to Strike One Sentence from Order Granting Motion to Compel and for an Order to Show Cause	10	67
11.13.20 Reply in Support of Motion to Compel Discovery Responses and Damages Calculations and Documents	20	620

Ex. 13, Pg. 0004

21575

Substantive Pleading	No. of Pages	No. of Pgs. of Exhibits
12.01.20 Plaintiff Landowners' Reply in Support of Motion to Strike One Sentence Related to the Landowners' Protective Order	5	0
01.08.21 Plaintiff Landowners' Motion to Compel the City to Answer Interrogatories	10	136
01.26.21 Opposition to Motion to Compel the City to Answer Interrogatories	12	24
02.09.21 Reply in Support of Plaintiff Landowners' Motion to Compel the City to Answer Interrogatories	11	0
03.11.21 City of Las Vegas' Motion for Reconsideration of Order Granting in Part and Denying in Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents	14	652
03.25.21 Opposition to the City of Las Vegas' Motion for Reconsideration of Order Granting in Part and Denying in Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents; Request for Sanctions for Intentional Violation of the Protective Order	13	37
03.26.21 Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief	53	5,153
04.08.21 City's Rule 56(d) Motion on OST	17	172
04.08.21 City's Motion for Rehearing and Reconsideration of Court's Order Granting Plaintiffs' Motion to Compel Responses to Interrogatories	18	120
04.09.21 Reply in Support of City of Las Vegas' Motion for Reconsideration of Order Granting in Part and Denying in Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents	16	0
04.16.21 Plaintiffs' Opposition to City of Las Vegas' Rule 56(d) Motion on Order Shortening Time	16	69
04.20.21 Reply in Support of City of Las Vegas' Rule 56(d) Motion on Order Shortening Time	11	57
04.22.21 Opposition to the City of Las Vegas' Motion for Reconsideration of Order Granting in Part and Denying in Part the Landowners' Motion to Compel the City to Answer Interrogatories	14	267
05.06.21 City's Reply in Support of Motion for Rehearing and Reconsideration of Court's Order Granting Plaintiffs' Motion to Compel Responses to Interrogatories	14	68
08.25.21 City's Opposition to Developer's Motion to Determine Take and Motion for Summary Judgment on the First, Third and Fourth Claims for Relief and Counter-Motion for Summary Judgment	104	4,013
09.07.21 Plaintiffs Landowners' Motion in Limine No. 1: To Exclude 2005 Purchase Price	24	650
09.07.21 Plaintiff Landowners' Motion in Limine No. 2: To Exclude Source of Funds	8	39
09.07.21 Plaintiffs Landowners' Motion in Limine No. 3: To Preclude City's Arguments That Land Was Dedicated as Open Space/City's PRMP and PROS Argument	7	55
09.15.21 Plaintiffs Landowners' Reply in Support of Motion to Determine Take and Motion for Summary Judgment on the First, Third and Fourth Claims for Relief and Opposition to the City's Counter-Motion for Summary	32	1,506

Ex. 13, Pg. 0005

21576

Substantive Pleading	No. of Pages	No. of Pgs. of Exhibits
09.21.21 City's Opposition to Plaintiff's Motion in Limine No. 1: To Exclude 2005 Purchase Price	23	162
09.21.21 City's Opposition to Plaintiff's Motion in Limine No. 2: To Exclude Source of Funds	4	0
09.21.21 City's Opposition to Plaintiff Landowner's Motion in Limine No. 3 to Preclude City's Arguments that Land was Dedicated as Open Space/City's PRMP and PROS Argument	11	0
09.21.21 City's Reply in Support of Counter-Motion for Summary Judgment	26	150
10.05.21 Plaintiff Landowners' Motion for Summary Judgment on Just Compensation on Order Shortening Time	8	189
10.11.21 City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	8	29
10.12.21 Motion for Immediate Stay Pending City's Writ Petition, 10.12.21	21	535
10.18.21 Plaintiff Landowners' Opposition to City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	8	164
10.18.21 City of Las Vegas' Objections to Pretrial Disclosures Pursuant to NRCP 16.1(a)(3)	33	0
10.19.21 Plaintiffs Landowners' Reply Re: Motion in Limine No. 1: To Exclude 2005 Purchase Price	27	60
10.19.21 Plaintiffs' Reply in Support of Motion in Limine No. 2: To Exclude Source of Funds	4	0
10.19.21 Plaintiffs Landowners' Reply Re: Motion in Limine No. 3: To Preclude City's Arguments That Land Was Dedicated as Open Space/City's PRMP and PROS Argument	7	82
10.19.21 City's Countermotion for Summary Judgment and Opposition to Developer's Motion for Summary Judgment on Just Compensation	14	20
10.21.21 Plaintiffs Landowners' Pre-Trial Memorandum	14	96
10.22.21 City of Las Vegas' Pre-Trial Memorandum	9	77
10.25.21 Plaintiff Landowners' Reply in Support of Motion for Summary Judgment on Just Compensation and Opposition to the City's Countermotion for Summary Judgment on Order Shortening Time	10	5
Totals	<u>2,009</u>	<u>29,977</u>

Exhibit 14

1 **DECLARATION OF SANDY GUERRA IN SUPPORT OF PLAINTIFFS**
2 **LANDOWNERS' MOTION FOR ATTORNEY FEES**

3 I, SANDY GUERRA, declare under penalty of perjury as follows:

4 1. I am a paralegal employed at the Law Offices of Kermitt L. Waters, the attorneys
5 of record for 180 LAND COMPANY, LLC, a Nevada limited liability company, and FORE
6 STARS, Ltd. ("Landowners") in the above-captioned matter.

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

10 3. In support of Plaintiffs Landowners' Motion for Attorney Fees, I prepared a chart
11 of substantive pleadings in this matter, identifying the number of pages for each pleading and the
12 number of pages for the extensive exhibits.

13 4. I prepared this chart in Microsoft Excel, with columns for the title of the pleading,
14 the number of pages, and the number of pages of exhibits. The pleadings are listed chronologically
15 as they appear on the Courts' Register of Actions, and includes only substantive pleadings such
16 as complaints/petitions, answers, motions, oppositions and replies. Omitted from the chart are
17 notices, stipulations, orders, erratas, status reports and miscellaneous filings.

18 5. The number in the "No. of Pages" column was determined from the total page
19 count of the pdf document of the substantive pleading. If exhibits were attached to the pleading,
20 I then subtracted that number from the total page count of the entire pdf document to determine
21 the amount for the "No. of Pgs. Of Exhibits" column. The total number of pages in any separately
22 filed appendices and supplement thereto was also included in the No. of Pgs. Of Exhibits column.

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

3 Executed this 23rd day of November, 2021.

4 /s/ Sandy Guerra
5 SANDY GUERRA

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Exhibit 15

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 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,

Defendants.

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

PLAINTIFF LANDOWNERS'
TWENTY-THIRD SUPPLEMENT TO
INITIAL WITNESS LIST AND
DISCLOSURES PURSUANT TO NRCP
16.1

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS.

Plaintiff 180 LAND COMPANY, LLC (hereinafter "Landowners"), by and through their
counsel of record, the Law Offices of Kermitt L. Waters, hereby submits their **twenty-third**
supplement to initial list of witnesses and documents pursuant to NRCP 16.1, as follows:

I.

LIST OF WITNESSES

A. NRCP Rule 16.1(a)(1)(A) disclosure: The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information:

1. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City's guidelines, instructions, process and/or procedures for adopting a land use designation on the City of Las Vegas General Plan Land Use Element and/or Master Plan, including the guidelines, instructions, process and/or procedures applicable for each and every year from 1986 to present.

2. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City of Las Vegas guidelines, instructions, process and/or procedures implemented to place a designation of PR-OS or any similar open space designation on all or any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element.

3. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the Master Development Agreement referenced in the Landowners' Complaint.

4. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the major modification process.

5. Steve Seroka
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

1 Mr. Seroka may have information regarding the facts and circumstances surrounding the
2 allegations alleged in the Landowners' Complaint which occurred while Mr. Seroka was running
3 for the City Council and while Mr. Seroka was on the City Council.

4 6. Person Most Knowledgeable
180 LAND COMPANY, LLC
c/o Law Offices of Kermitt L. Waters
5 704 South Ninth Street
Las Vegas Nevada 89101

6 Person Most Knowledgeable at 180 Land Company, LLC regarding the facts and
7 circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to
8 Phase 1 of discovery, liability.

9 7. Person Most Knowledgeable
FORE STARS, Ltd
c/o Law Offices of Kermitt L. Waters
10 704 South Ninth Street
Las Vegas Nevada 89101

11 Person Most Knowledgeable at FORE STARS, LTD regarding the facts and circumstances
12 surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
13 discovery, liability.

14 8. Person Most Knowledgeable
SEVENTY ACRES, LLC
c/o Law Offices of Kermitt L. Waters
15 704 South Ninth Street
Las Vegas Nevada 89101

16 Person Most Knowledgeable at Seventy Acres, LLC regarding the facts and circumstances
17 surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
18 discovery, liability.

19 9. Donald Richards
Superintendent of 250 Acres (former Badlands golf course)
c/o Law Offices of Kermitt L. Waters
20 704 South Ninth Street
Las Vegas, Nevada 89101

21 Mr. Richards is the superintendent of the 250 Acres of Residential Zoned Land and has
22 been since approximately November 2015. He therefore is familiar with the property and may
23 have information related thereto. My Richards has also provided an affidavit in this matter dated
24 March 23, 2021, he may testify regarding the same, as well as the photographs taken by the infrared
trail cameras he installed on the Property.

1 **First Supplement to Donald Richards**

2 Don Richards, superintendent/manager of 250 Acres (former Badlands golf course)

3 Mr. Richards will testify as a representative of and on behalf of the Landowners and, based upon
4 his extensive expertise (see Curriculum Vitae, attached) in regard to any and all issues arising out
5 of and related to his work on the 35 Acre Property, including soils conditions and use of those soils
6 for development, and the physical possibility element of highest and best use. Mr. Richards will
7 also testify regarding the use of the 35 Acre Property by the public, including the surrounding
8 property owners and the photos he has obtained of these individuals using the property.

9 Mr. Richards is the Property Superintendent/Manager assigned to the 35 Acre Property. He has
10 had this position from early 2014 to present. His responsibilities include, but are not limited to,
11 managing the FEMA maintenance and preservation of FEMA flood zone areas, compliance with
12 CLV Fire department to mitigate fire hazards, maintaining the property for safety compliance,
13 interacting with the health department, coordinating any access required for any City personnel,
14 and interfacing with Metro Police regarding trespassers and vagrant's activity on property.

15 **Physical Possibility**

16 Mr. Richards will testify, based on his extensive experience in the development of residential and
17 commercial properties in the City of Las Vegas and surrounding area, that, at all relevant times
18 (including the date of value), it was physically possible to develop the 35 Acre Property with single
19 family and/or multi-family residential uses.

20 Mr. Richards will describe the physical attributes and shape of the 35 Acre Property, including the
21 topography, as set forth in the documents he reviewed, set forth below, and based upon his
22 knowledge and understanding of the 35 Acre Property. He will describe the surrounding
23 developments, including the homes built to the east, west, south, and north of the 35 Acre Property
24 and that this demonstrates that the soils and topography will allow development of residential units
on the 35 Acre Property and how the soils can be used in development of the property.

Mr. Richards will describe the access to the 35 Acre Property and how that access could be
developed from Hualapai Way and Alta Drive for residential development. He will testify that the
35 Acre Property has 995 feet of frontage on Hualapai Way and 248 feet of frontage on Alta Drive.
He will testify that the offsites, including curb, gutter, sidewalk, and landscaping are currently
installed on Hualapai Way and Alta Drive.

Mr. Richards will additionally testify that the 35 Acre Property is in FEMA Flood Zone X, there
were little to no drainage flows entering the 35 Acre Property, the development of the 35 Acre
Property with single family and multi-family residential uses will add little to no additional
drainage to or from the 35 Acre Property and, therefore, any impacts to the downstream drainage
are insignificant. He will testify that the natural drainage flow is generally from the western
portion of the property to the eastern portion of the property. Mr. Richards will testify that during
his entire time as Property Superintendent for the 35 Acre Property he has never once seen flooding
on the 35 Acre Property.

This testimony will be based on his knowledge and understanding of the 35 Acre Property and,
specifically, the data and documents described below, which more specifically identifies each of
these issues.

The facts and data that Mr. Richards relied upon include, but is not limited to:

Photos of individuals using the property, previously produced.
FEMA flood maps.

Numerous aerial photos of the 35 Acre Property and surrounding area.

His 40 + years of experience as a landscape and site development specialist and Commercial Property Superintendent, including without limitation several large-scale developments in the Las Vegas area, including Tivoli Village, One Queensridge Place, and Sahara Center.

The Exhibits Mr. Richards will rely upon are referenced above and he will be asked to identify the 35 Acre Property and the surrounding area based on aerial photos that will be presented as exhibits at trial.

Curriculum Vitae – see attached.

10. Frank Pankratz
President, EHB Companies LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101

Mr. Pankratz will testify as a representative of and on behalf of the Landowners and, based upon his extensive expertise (see Curriculum Vitae, attached) in regards to any and all issues arising out of and related to the physical possibility and financial feasibility elements as they relate to the 35 Acre Property at issue in this matter.

Physical Possibility

Mr. Pankratz will testify, based on his extensive experience in the development of residential properties in the City of Las Vegas and surrounding area, that, at all relevant times (including the date of value), it was physically possible to develop the 35 Acre Property with single family and/or multi-family residential uses.

Mr. Pankratz will testify regarding the developability of the 35 Acre Property and all issues related to this development.

Mr. Pankratz will testify that the 35 Acre Property is 34.07 acres or 1,484,084 square feet.

Mr. Pankratz will describe the physical attributes and shape of the 35 Acre Property, including the topography, as set forth in the documents he reviewed, set forth below, and based upon his knowledge and understanding of the 35 Acre Property. He will describe the surrounding developments, including the homes built to the east, west, south, and north of the 35 Acre Property and that this demonstrates that the soils and topography will allow development of residential units on the 35 Acre Property. He will support this testimony further with the documents, including the soils report, referenced below. He will conclude that the development of residential units is physically possible.

Mr. Pankratz will describe the access to the 35 Acre Property and how that access could be developed from Hualapai Way and Alta Drive for residential development. He will testify that 35 Acre Property has 995 feet of frontage on Hualapai Way and 248 feet of frontage on Alta Drive.

1 He will testify that the offsites, including curb, gutter, sidewalk, and landscaping are currently
2 installed on Hualapai Way and Alta Drive.

3 Mr. Pankratz will additionally testify that the 35 Acre Property is in FEMA Flood Zone X, there
4 were little to no drainage flows entering the 35 Acre Property, the development of the 35 Acre
5 Property with single family and multi-family residential uses will add little to no additional
6 drainage to or from the 35 Acre Property and, therefore, any impacts to the downstream drainage
7 are insignificant. He will testify that the natural drainage flow is generally from the western
8 portion of the property to the eastern portion of the property.

9 Mr. Pankratz will testify in regards to the location of the utilities for development and that the
10 location of these utilities is sufficient for residential development.

11 Mr. Pankratz will testify in regards to the grading work for the development of the 35 Acre
12 Property and that the grading could be accomplished for the development of residential units on
13 the property, based on his experience developing these types of properties and the data and
14 documents referenced below.

15 Mr. Pankratz will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how
16 each could be configured, and how construction of homes on each of these lots could occur to
17 support the physical possibility of such a residential use of the 35 Acre Property.
18 This testimony will be based on his knowledge and understanding of the 35 Acre Property and,
19 specifically, the data and documents described below, which more specifically identifies each of
20 these issues.

21 **Financial Feasibility**

22 Mr. Pankratz will testify, based on his extensive experience in the development of residential
23 properties in the City of Las Vegas and surrounding area, that, at all relevant times, it was
24 financially feasible to develop the 35 Acre Property with single family and/or multi-family
residential uses. Mr. Pankratz will describe the surrounding area and development he was
personally involved with in the surrounding area, including the following:

One Queensridge Place
Sahara Center
Tivoli Village
Sun City Summerlin

Mr. Pankratz will testify regarding the residential real estate market as of the date of valuation and
that this residential market was ideal for residential development. He will testify that the Las
Vegas residential real estate market as of the relevant date of value would have supported the
construction and sale of residential units on the 35 Acre Property.

Mr. Pankratz will testify that the location of the 35 Acre Property is a premium location for
residential development at all relevant times. He will describe the surrounding residential
developments, including the homes built in the Queensridge Community and the Summerlin
Community and explain that these are some of the most sought-after residential developments in
the City of Las Vegas. He will explain that the 35 Acre Property is one of few parcels in this area
that is available for residential development.

Mr. Pankratz will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how each could be configured, and how construction of homes on each of these lots could occur to support the financial feasibility of such a residential use of the 35 Acre Property.

The facts and data that Mr. Pankratz relied upon include, but is not limited to:

All of the cost estimates data for the 7, 16, and 61 lot configurations, including the Index and Summary, the preliminary site plan, the memos and opinions of the developability, the soils report, the existing infrastructure, the GCW – Engineering, Design, the Aggregate industries cost estimates for – Grading, Wet Utilities, Concrete & Roadways, Retaining Walls, the GCW – Engineering and Bond Estimate, NVE – Electrical, SWG – Natural Gas, Don Richards – Landscaping, Fakler consulting fees and estimates. Tand – Telephone & Cable fees and estimates.

These documents are produced concurrently herein and are numbered FP WF 000001 – through FP WF 000456.

FEMA flood map.

Numerous aerial photos of the 35 Acre Property and surrounding area.

His 40+years of experience in the land development and homebuilding industry, including without limitation several large-scale residential developments in the Las Vegas area including:

- Alliante – 2,000 acres in North Las Vegas, NV – Del Webb with American Nevada Corporation
- General Manager of Del Webb's:
 - Anthem, Las Vegas, NV – 5,000 acres/13,700 homes.
 - Sun City Summerlin, Las Vegas, NV 1,500 acres/7,800 homes
 - Sun City MacDonald Ranch, Henderson, NV – 600 acres/2800 homes
- Oversight manager:

The Exhibits Mr. Pankratz will rely upon are referenced above and he will be asked to identify the 35 Acre Property and the surrounding area based on aerial photos that will be presented as exhibits at trial.

Curriculum Vitae – see attached.

11. Yohan Lowie
CEO EHB Companies LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101

Mr. Lowie will testify as a representative of and on behalf of the Landowners and, based upon his extensive expertise (see Curriculum Vitae, attached), in regard to any and all issues arising out of and related to the physical possibility, financial feasibility, legal possibility, and maximally productive elements of highest and best use as they relate to the 35 Acre Property at issue in this matter. Mr. Lowie will also testify to the due diligence conducted prior to acquiring the 35 Acre Property. Mr. Lowie will also testify to the value of the 35 Acre Property prior to any City interference with the use of the property. Mr. Lowie will also testify to the value of the 35 Acre

1 Property after any and all City interference with the use of the property, which will include
2 testimony of all City actions taken to prevent the use of the 35 Acre Property. This testimony will
3 be as of the relevant date of valuation and will be offered as part of the just compensation the
4 Landowners are entitled to as a result of the taking in this matter. Mr. Lowie will also testify to
5 all of the damages that have been incurred as a result of the City's actions in this matter. Mr.
6 Lowie will also testify in regard to any and all matters raised in **PLAINTIFF LANDOWNERS'**
7 **MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST,**
8 **THIRD AND FOURTH CLAIMS FOR RELIEF**, including any and all exhibits attached
9 thereto.

10 **Expertise**

11 Mr. Lowie will testify based on his extensive experience in the development of residential and
12 commercial properties in the City of Las Vegas and surrounding area including, but not limited to,
13 the following:

14 One Queensridge Place

15 Tivoli Village

16 Sahara Center

17 106 custom homes in Queensridge

18 200+ homes in Las Vegas

19 Nevada Appellate and Supreme Court Building

20 See documents produced herewith, including bates numbered YL WF 000003 – 000004, 000446-
21 000462.

22 **Due Diligence**

23 Mr. Lowie will testify to the facts and circumstances of the approximate 20-year history of
24 development with the Peccole family including the legal developability of the 250 acres (which
includes the 35 Acre Property), its relation to the Queensridge Community, the City's opinion of
developability since 2006 and the facts and circumstances giving rise to the right to acquire the
250 acres.

Mr. Lowie will further testify to the facts and circumstances surrounding exercising the
right to purchase the 250-acre property and additional due diligence conducted in or
around 2014 including the zoning and confirmation thereof by the City of Las Vegas
prior to the purchase of Fore Stars, Ltd.

This due diligence testimony will also be based, in part, on the following:

Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third,
and Fourth Claims for Relief.

Declarations of Yohan Lowie, dated November 23, 2020, and January 27, 2021, previously
produced.

Deposition of Yohan Lowie, Binion v. Fore Stars, dated August 4, 2017, produced herewith, bates
numbers LO 00037822 – LO 00037876. Specifically, see pages 33-85, wherein Mr. Lowie
testifies, in part, to the due diligence.

1 **Highest and Best Use**
2 **Physical Possibility**

3 Mr. Lowie will testify that the 35 Acre Property is 34.07 acres or 1,484,084 square feet.

4 Mr. Lowie will testify, based on his extensive experience in development of properties in the City
5 of Las Vegas and surrounding area, that, at all relevant times (including the date of value), it was
6 physically possible to develop the 35 Acre Property with single family and/or multi-family
7 residential uses and a Skilled Nursing/Assisted Living/Carefree Living Facilities.

8 Mr. Lowie will testify regarding the developability of the 35 Acre Property and all issues related
9 to this development.

10 Mr. Lowie will describe the physical attributes and shape of the 35 Acre Property, including the
11 topography, as set forth in the documents he reviewed, set forth below, and based upon his
12 knowledge and understanding of the 35 Acre Property. He will describe the surrounding
13 developments, including the homes and other developments built to the east, west, south, and north
14 of the 35 Acre Property and that this demonstrates that the soils and topography will allow
15 development of residential units and a Skilled Nursing/Assisted Living/Carefree Living Facilities
16 on the 35 Acre Property. He will support this testimony further with the documents, including the
17 soils report, referenced below. He will conclude that the development of residential units is
18 physically possible.

19 Mr. Lowie will describe the access to the 35 Acre Property and how that access could be developed
20 from Hualapai Way and Alta Drive for residential development and a Skilled Nursing/Assisted
21 Living/Carefree Living Facilities on the 35 Acre Property. He will testify that 35 Acre Property
22 has 995 feet of frontage on Hualapai Way and 248 feet of frontage on Alta Drive. He will testify
23 that the offsites, including curb, gutter, sidewalk, and landscaping are currently installed on
24 Hualapai Way and Alta Drive.

Mr. Lowie will additionally testify that the 35 Acre Property is not in an active FEMA Flood Zone,
there were little to no drainage flows entering the 35 Acre Property, the development of the 35
Acre Property with single family and multi-family residential uses will add little to no additional
drainage to or from the 35 Acre Property and, therefore, any impacts to the downstream drainage
are insignificant. He will testify that the natural drainage flow is generally from the western
portion of the property to the eastern portion of the property. Mr. Lowie will further testify to all
of the drainage work that was done on the nearby Tivoli Village as this work has provided him the
knowledge and understanding of all relevant drainage issues in the area, including on the 35 Acre
Property.

Mr. Lowie may also testify in regard to the location of the utilities for development and that the
location of these utilities is sufficient for residential development.

Mr. Lowie will testify in regard to the topography of the 35 Acre Property and how this topography
benefits development. He will further testify in regard to the grading work for the development of
the 35 Acre Property and that the grading could be accomplished for the development of residential
units and a Skilled Nursing/Assisted Living/Carefree Living Facilities on the property, based on
his experience developing these types of properties and the data and documents referenced below.

1 Mr. Lowie will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how
2 each could be configured, and how construction of homes on each of these lots could occur to
3 support the physical possibility of such a residential use of the 35 Acre Property.
4 This testimony will be based on his knowledge and understanding of the 35 Acre Property and,
5 specifically, the data and documents produced herewith and bated stamped FP WF 000001 – FP
6 WF 000456, which also identifies each of these issues.

7 **Legal Permissibility**

8 Mr. Lowie will testify in regard to the legal permissible uses of the 35 Acre Property. He will
9 testify that the 35 Acre Property has at all times been designated for residential development, which
10 also allows a Skilled Nursing/Assisted Living/Carefree Living Facilities. He will testify that,
11 based on his experience in developing properties, zoning has been used to determine the legal
12 permissible uses of the property. The permitted uses by right are based on the existing zoning,
13 unless a higher zoning designation could be achieved. He will testify that, at all relevant times,
14 the 35 Acre Property has been zoned R-PD7. He will testify that any relevant City land use plans
15 also designated the 35 Acre Property for residential and professional uses.

16 **Financial Feasibility**

17 Mr. Lowie will testify, based on his extensive experience in the development of properties in the
18 City of Las Vegas and surrounding area, that, at all relevant times, it was financially feasible to
19 develop the 35 Acre Property with single family and/or multi-family residential uses or a Skilled
20 Nursing/Assisted Living/Carefree Living Facilities. Mr. Lowie will describe the surrounding area
21 and development he was personally involved with in the surrounding area, as described herein and
22 in his C.V.

23 Mr. Lowie will testify regarding the residential and Skilled Nursing/Assisted Living/Carefree
24 Living Facilities real estate market as of the date of valuation and that this market was ideal for
this type of development. He will testify that the Las Vegas market as of the relevant date of value
would have supported the construction and sale of residential units on the 35 Acre Property and
Skilled Nursing/Assisted Living/Carefree Living Facilities.

Mr. Lowie will testify that the location of the 35 Acre Property is a premium location for residential
development at all relevant times. He will describe the surrounding residential developments,
including the homes built in the Queensridge Community and the Summerlin Community and
explain that these are some of the most sought-after residential developments in the City of Las
Vegas. He will explain that the 35 Acre Property is one of few parcels in this area that is available
for residential development.

Mr. Lowie will describe a potential 7, 16, or 61 lot residential use of the 35 Acre Property, how
each could be configured, and how construction of homes on each of these lots could occur to
support the financial feasibility of such a residential use of the 35 Acre Property.

23 **Maximally Productive**

24 Mr. Lowie will testify in regard to the uses of the 35 Acre Property that are maximally productive
based on his valuation analysis set forth below.

1 **Value**

2 **Before Condition Value – Mr. Lowie’s Opinion of Value for the 35 Acre Property as of**
3 **September 14, 2017, with the R-PD7 zoning and without improper City interference.**

4 Mr. Lowie will testify to the value of the 35 Acre Property under two valuation approaches – the
5 comparable sales approach and the subdivision approach.

6 **Comparable sales approach**

7 Mr. Lowie’s opinion of value under the comparable sales approach will be based on the sale of
8 other similarly situated large parcels of property adjusted for differences.

9 Mr. Lowie’s opinion of value under the comparable sales approach is \$59-60 million in an as is
10 condition, as of the date of value, but expecting entitlements.

11 The basis for Mr. Lowie’s opinion of value is the following:

12 Utilizing the information on land sold to Calida for apartments, attached.

13 Care facility, assisted living, and nursing home data. This includes the development
14 currently occurring - The Villas. See attached document, bate numbers YL WF 000777 –
15 YL WF 000818.

16 *Calida Sale (17 acres), attached.

17 *RA sale to Intermountain (8.5 acres), attached.

18 *Peccole sale of land near the intersection of Hualapai Way and Alta Drive,
19 attached.

20 *Calida Sale (RA acres), attached.

21 **Subdivision approach**

22 Mr. Lowie will testify that the subdivision approach is how properties, like the 35 Acre Property,
23 are valued in the real world.

24 **Valuation of the 35 Acre Property under a 61 Lots Scenario**

Total Value of each lot:

Large lots approx. 1 acre plus
15 lots

Medium lots approx. .5 acre
5 lots

Small lots approx. .3 acres
41 lots

Total: \$66,650,000

Minus Costs \$7,904,429

Net value of entire property: \$58,750,571

Valuation of the 35 Acre Property under a 16 Lots Scenario

Large lots approx.. - 4 acres

Total: \$65,000,000

Costs: \$6,017,620

Net value of entire property: \$58,982,380

1 Valuation of the 35 Acre Property under a **7 Lots Scenario**: \$1,500,000 per acre
2 Total: \$51,105,000 (34.07 x \$1,500,000 per acre)
3 Costs: \$5,586,533
4 Net Value of Entire Property: \$45,518,467

5 **Valuation of the 7 Lots when connected to the adjacent 180 acres and utilizing water rights.**

6 Lots: \$52,500,000
7 With Water Rights: \$16,000,000
8 Total Value: \$68,500,000
9 COST: \$5,586,533
10 Net Value: \$62,913,467

11 The basis for Mr. Lowie's per lot valuations as set forth in the 7, 16, and 61 lot scenarios above is set forth in the produced documents and as follows:

12 Lot sales in Discovery
13 Lot sales in the Ridges
14 Lot sales in Queensridge
15 Other lot sales
16 Market Demands as of the relevant date of valuation.
17 See attached document numbered YL WF 000697 - YL WF 000700, which
18 identifies these sales.

19 Mr. Lowie will further testify that a Skilled Nursing/Assisted Living/Carefree Living Facilities was reasonably probable on the 35 Acre Property as of the relevant date of valuation and that the value of the property applying this use is as follows:

20 \$1,750,000 per acre
21 TOTAL: \$59,500,000 (rounded) (34.07 acres x \$1,750,000 per acre).

22 The basis for Mr. Lowie's valuation of \$1,750,000 per acre for the Skilled Nursing/Assisted Living/Carefree Living Facilities is the sale to Calida at Rampart and Alta, see bates numbers YL WF 000701 - YL WF 000776, and the data and information related to that project identified as The Villas, see bates numbers YL WF 000777 – YL WF 000818.

23 Conclusion – Based upon the foregoing, Mr. Lowie will testify that the value of the 35 Acre Property, without improper City interference as of the relevant date of valuation, is \$58,000,000 - \$62,900,000.

24 **After Condition Value – Mr. Lowie's Opinion of Value for the 35 Acre Property as of September 14, 2017, with the improper City interference**

25 Mr. Lowie will also testify to the value of the 35 Acre Property, as of the relevant date of valuation, considering the City's improper actions and interference with the development of the property including the facts and circumstances surrounding that interference, which are set forth in detail in **PLAINTIFF LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF**. Some of these City actions, include but are not limited to, the following:

26 The City required onerous Master Development Agreement (MDA).
27 Every grossly unreasonable request the City made to use the 35 Acre Property

1 The City's recommendation to submit development of 180 Land Co 35 Acre
2 Property and the application/development process
3 The City's denial of the 35 Acre application
4 The City's denial of the MDA
5 The City's denial of an access permit
6 The City denial of a fence permit
7 The City striking the 133 Acre Applications
8 The City adoption of the Yohan Lowie Bills
9 The City's bad acts including the City's intentions discovered thereafter via public
10 records requests.

11 Mr. Lowie will testify as to the reasons provided by the City for each of these actions, including
12 to preserve the 35 Acre Property for use by the surrounding property owners.

13 Mr. Lowie will testify that these City actions have precluded the use of the 35 Acre Property,
14 resulting in the property remaining vacant, while the Landowners are required to pay any and all
15 carrying costs.

16 Mr. Lowie will also testify that just one of the carrying costs is the real property tax of over
17 \$200,000, which was imposed on the 35 Acre Property based on a lawful residential use of the
18 property. He may also testify in regard to any and all matters related to how that tax was imposed
19 on the 35 Acre Property in 2016. Mr. Lowie will testify that the Landowners have paid this real
20 estate tax, which is currently over \$200,000 per year.

21 Conclusion – Mr. Lowie will testify that the value of the 35 Acre Property after the improper City
22 interference is a negative value. He will testify that the City actions have precluded the use of the
23 35 Acre Property as set forth above. He will testify that the loss of use of the 35 Acre Property,
24 with the real estate tax burden and the additional costs for maintenance results in a negative value
25 for the 35 Acre Property.

26 Mr. Lowie will testify in regard to all of the maintenance costs associated with the 35 Acre Property
27 that have been incurred during the time the City has precluded use of the property, which costs are
28 discussed more fully below.

29 Mr. Lowie may also testify in regard to any and all issues that may arise in regard to the past
30 interim use of the 35 Acre Property as part of the Badlands golf course. He may testify in regard
31 to all evidence showing how that golf course use was not contemplated as a long-term use of the
32 property, that the use was never authorized, that the use was terminated prior to the date of
33 valuation in this matter and why the use was terminated (it was not financially feasible), and that
34 the golf course use is an illegal use as of the relevant date of valuation.

35 **Damages**

36 Mr. Lowie will testify in regard to any and all other damages that were incurred as a result of the
37 City's interference with the use of the 35 Acre Property, which interference is set forth in the after-
38 condition value, above. Mr. Lowie will also testify to all of those matters set forth in **PLAINTIFF**
39 **LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY**
40 **JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF**, including
41 specifically all of the City actions set forth therein. Mr. Lowie will testify that, as a result of all of

1 these City actions, additional damages were incurred in that estimated amount of \$1,450,173.84.
2 These damages are summarized and set forth in the documents produced herein. See specifically
bate numbers YL WF 000518 – YL WF 000695, privilege log regarding attorney bills to follow.

3 The documents and exhibits Mr. Lowie has relied upon, in part, have been previously produced
4 (see documents produced in regard to the acquisition of the 250 acre property and exhibits attached
to Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First,
Third, and Fourth Claims for Relief) and further documents are produced herewith as bate numbers
5 YL WF 000001 – YL WF 000696.

6 The testimony set forth above is not intended to be an exhaustive list and detail of any and all
7 testimony Mr. Lowie will provide, but rather a summary of his testimony and this testimony will
be further supplemented during his deposition and as discovery continues. Mr. Lowie will also
8 respond to any and all expert opinions, arguments, testimony, or other matters that are presented
by the City in this matter.

9 12. Tio S. DiFederico, MAI
10 The DiFederico Group
7641 Post Road
11 Las Vegas, NV 89113
(702) 734-3030

12 Mr. DiFederico's report, curriculum vitae, list of publications if any, list of depositions and
13 testimony if any, fee schedule, work file and additional reviewed documents are disclosed
14 herewith. Mr. DiFederico will testify to those matters, information, and opinions provided in the
15 report(s) produced herewith (and any and all supplements thereto) and any and all matters,
16 information and opinions which reasonably flows therefrom. Mr. DiFederico may also testify to
17 those matters and information contained in the work file produced herewith and additional
18 documents disclosed herein as well as all matters and information which may reasonably flow
19 therefrom.

20 **B. NRCP Rule 16.1(a)(1)(B) disclosure: A copy of, or a description by category and**
21 **location of, all documents, data compilations, and tangible things that are in the**
22 **possession, custody, or control of the party and which are discoverable under Rule**
23 **26(b):**

24 ///

II.

**INDEX TO PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE
DISCLOSURES PURSUANT TO NRCP 16.1**

Docume nt No.	Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
7	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order and Judgment, Eighth Judicial District Court Case No. A-16-739654-C filed 1.31.17	3	LO 00000557-00000601
8	Intentionally left blank	3	LO 00000602-00000618
9	12.7.16 Letter From Jimerson to Jerbic	3	LO 00000619-00000627
10	City of Las Vegas' Answering Brief, Eighth Judicial District Court Case No. A-17-752344-J filed 10.23.17	3	LO 00000628-00000658
11	7.12.16 City of Las Vegas Planning Commission Meeting Transcript Excerpts Items 4, 6, 29-31, 32-35	3	LO 00000659-00000660
12	Staff Recommendation 10.18.16 Special Planning Commission Meeting	3	LO 00000661-00000679
13	10.18.16 Special Planning Commission Meeting Agenda Items 10-12 Summary Pages	3	LO 00000680-00000685
14	2.15.17 City Council Meeting Transcript Items 100-102	3-4	LO 00000686-00000813
15	LVMC 19.10.040	4	LO 00000814-00000816
16	LVMC 19.10.050	4	LO 00000817-00000818
17	Staff Recommendation 2.15.17 City Council Meeting GPA-62387, ZON-62392, SDR-62393	4	LO 00000819-00000839

1	18	2.15.17 City Council Agenda Summary Pages Items 100-102	4	LO 00000840-00000846
2	19	Seroka Campaign Contributions	4	LO 00000847-00000895
3	20	Crear Campaign Contributions	4	LO 00000896-00000929
4	21	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	4	LO 00000930-00000931
5	22	35 Acre Applications: SDR-68481; TMP- 68482; WVR-68480	4	LO 00000932-00000949
6	23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR- 68481, TMP 68482	4	LO 00000950-00000976
7	24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
8	25	MDA Combined Documents	5	LO 00001132-00001179
9	26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
10	27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
11	28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
12	29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
13	30	City requested concessions signed by Landowners' representative dated 5.4.17	8	LO 00001837
14	31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
15	32	Two Fifty Development Agreement (MDA) Comparison B July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
16	33	The Two Fifty Design Guidelines, development Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913
17	34	Seroka Campaign Literature	8	LO 00001914-00001919
18	35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
19	36	Tax Assessor's Values for 250 Acre Residential Land	8	LO 00001923-00001938
20	37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7.02.18	8	LO 00001939-00001963
21				
22				
23				
24				

1	38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
2	39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
3	40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
4	41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
5	42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
6	43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
7	44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
8	45	Bill No. 2018-5 AProposed First Amendment (5-1-18 Update)@	9	LO 00002099-00002105
9	46	Bill No. 2018-24	9	LO 00002106-00002118
10	47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
11	48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
12	49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
13	50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
14	51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
15	52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
16	53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336
17	54	Coffin Email	10	LO 00002337-00002344
18	55	8.10.17 Application for Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
19	56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353
20	57	LVMC 19.16.100	10	LO 00002354-00002358
21	58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364
22	59		10	LO 00002365

1		8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC		
2	60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
3	61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
4	62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
5	63	Southern Nevada GIS B OpenWeb Info Mapper Parcel Information	10- 11	LO 00002473-00002543
6	64	Southern Nevada GIS B OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
7	65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
8	66	Master Declaration of Covenants, Conditions, Restrictions and Easement for Queensridge	11	LO 00002552-00002704
9	67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement for Queensridge effective 10.1.2000	11	LO 00002705
10	68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants' Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
14	69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
16	70	Land Use Hierarchy Exhibit	11	LO 00002740
17	71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11- 12	LO 00002741-00002820
18	72	Order Granting Plaintiffs' Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834
19	73	City of Las Vegas' Reply in Support of Its Motion to Dismiss and Opposition to Petitioner's Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17- 758528-J filed on 12.21.17	12	LO 00002835-00002840
22	74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18	12	LO 00002841-00002849
24	75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851

1	76	Email	12	LO 00002852
2	77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
3	78	1.23.17 onsite Drainage Agreement	12	LO 00002936-00002947
4	79	9.11.18 PC B Hardstone Temp Permit Transcript	12	LO 00002948-00002958
5	80	Estate Lot Concepts	12	LO 00002959-00002963
6	81	Text Messages	12	LO 00002964-00002976
7	82	Intentionally left blank	12	Not bates stamped
8	83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
9	84	Supreme Court Affirmance	13	LO 00002983-00002990
10	85	City Confirmation of R-PD7	13	LO 00002991-00003020
11	86	De Facto Case Law	13	LO 00003021-00003023
12	87	Johnson v. McCarran	13	LO 00003024-00003026
13	88	Boulder Karen v. Clark County	13	LO 00003027-00003092
14	89	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	13	LO 00003093-00003095
15	90	Bill No. 2018-24	13	LO 00003096-00003108
16	91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
17	92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
18	93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
19	94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564
20	95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593
21	96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
22	97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
23	98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
24	99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884
	100	2019.01.07 Robert Summerfield Email	16	LO 00003885
	101	02.06.2019 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891

102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
106	2020 Master Plan B Southwest Sector Zoning	16	LO 00003940
107	35 Acre in Relation to Peccole Plan	16	LO 00003941
108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
109	GPA Code and Application	17	LO 00004035-00004044
110	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00004045- 00007607 (abandoned LO 6190-6215; 6243-6411; 6421-6704; 7436-7538)
111	No Documents Assigned to this Bates range		LO 00007608-00008188
112	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00008189-00009861 (abandoned LO 9353-9833)
113	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00009862-0010915
114	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 0010916-0011440
115	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents, Request No. 5		LO 0011441-0012534
116	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 11		LO 0012535-0016083
117	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 2		LO 0016084-0018029
118	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 6		LO 0018030-0018441

1	119	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 1	LO 0018442-0022899
2			
3	120	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 14	LO 0022900-0025236
4			
5	121	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 3	LO 0025237-0029411
6			
7	122	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 5	LO 0029412-0033196
8			
9	123	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 9	LO 0033197-0033795
10			
11	124	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 5	LO 0033796-0033804
12			
13	125	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27	LO 0033805-0033826
14			
15	126	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 28-29	LO 0033827-0034181
16			
17	127	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27	LO 0034182-0034186
18			
19	128	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 21	LO 0034187-0034761
20			
21	129	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 22	LO 0034762-0035783
22			
23	130	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 20	LO 0035784-0035819
24			
	131	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27	LO 0033817

132	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 28-29		LO 0034115-0034116
133	Clear and Grub files		LO 0035820-0035851
134	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 18		LO 0035852-0035858
135	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 9		LO 0035859-0035896
136	Documents <i>identified</i> in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 8		Privileged and Confidential LO 0035897-0035903
137	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 6		LO 0035904-0035969
138	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 1		LO 0035970-0035972
139	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 7		LO 0035973-0036601
140	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 7		LO 0036602-0036806
141	Native Files		LO35 00000001-00009668
142	Documents released from Privilege Log responsive to Request for Production of Documents to Plaintiff, Request No. 1		LO 00004063-00004079 <i>also produced as</i> LO 0036807-0036823
143	Documents <i>identified</i> in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 8		Amended Privileged and Confidential LO 0035897-0035903
144	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 12		LO 0037065-0037112

145	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 13		LO 0037113-0037258
146	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 14		LO 0037259-0037279
147	Documents previously produced <i>LO 0037070-0037093</i> in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 12 <i>redactions</i>		LO 0037070-0037093
148	<i>Confidential Information</i> Documents produced in Response to Request for Production of Documents to Plaintiff 180 Land Co. LLC, Request No. 16		LO 0037280-0037661
149	Photos taken by cameras installed on the Property		LO 0037662-0037821
150	Yohan Lowie Work File <i>*Contains Documents Under Protective Order</i>		YL WF 000001- YL WF 000818
151	Frank Pankratz Work File		FP WF 000001- FP WF 000456
152	The DiFederico Group Report		TDG Rpt 000001- TDG Rpt 000136
153	The DiFederico Group Work File and Additional Documents Considered by The DiFederico Group		TDG WF 000001- TDG WF 006593 FP WF 000001- FP WF 000456
154	Email regarding City of Las Vegas 2050 Master Plan		LO 00037822-00037860
155	Documents received through Public Records Request to the City of Las Vegas		LO 00037861-00042796
156	Exhibits to Goorjian Deposition (LO00003833-00003884)		LO 00042797-00043604

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

III.

COMPUTATION OF DAMAGES

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Objection: The Landowners object to disclosing the computation of any category of “damages” at this time as this information requires the preparation of expert reports that will be produced in the normal course of discovery as provided in the Nevada Discovery Rules. The Landowners further object to disclosing any category of damages as discovery has been bifurcated, the damages/just compensation phase of discovery has not commenced yet. Additionally, the computation of any category of “damages” may contain attorney work product, privileged information, and may require legal instructions or court rulings, accordingly, the same cannot be produced at this time.

The Landowners will disclose their expert opinions/testimony regarding the just compensation owed pursuant to NRCP 16.1(a)(2) and in accordance with the scheduling order set in this matter.

The Landowners further object to disclosing the computation of any category of “damages” at this time as the date of value has not be determined by the Court. Without waiving said objections, and assuming the date of value is on or about September 7, 2017 (the date the inverse condemnation claims were filed and served on the City) the Landowners’ preliminary estimate of damages (just compensation) for the total taking of the 35 Acre Property (APN 138-31-201-005) is approximately \$54 Million. This is an average of the per acre value assigned by the following: 1) an appraisal report prepared by Lubawy and Associates of seventy acres of property formerly known as APN 138-32-301-004 at \pm \$700,510/acre as of July 2015; 2) an offer to purchase 16-18 acres of the seventy-acre property formerly known as APN 138-32-301-004 for \pm \$1,525,000/acre as of December 2015; and, 3) the sale of APN 138-32-314-001 for \pm \$2,478,000/acre as of August 2019. This computation will be supplemented upon the completion of expert reports, if needed, or as otherwise deemed necessary in this matter. The Landowners’

1 damages also include pre-judgment and post-judgment interest and attorney fees and costs, which
2 will be calculated after trial.

3 The Landowners' damages also include property tax payments (which are public record).

4 *This computation will be supplemented upon the completion of expert reports, if needed,*
5 *or as otherwise deemed necessary in this matter*

6 First Supplement to Damage Calculation

7 See the Expert Report and Work file of Tio DiFederico produced herewith, as well as Mr.
8 Lowie's disclosures also provided herewith.

9 **IV.**

10 **POTENTIALLY APPLICABLE INSURANCE AGREEMENTS**

11 **D. For inspection and copying as under Rule 34 any insurance agreement under which**
12 **any person carrying on an insurance business may be liable to satisfy party or all of**
13 **a judgment which may be entered in the action to indemnify or reimburse for**
14 **payments made to satisfy the judgment and any disclaimer or limitation of coverage**
15 **or reservation or frights under any such insurance agreement:**

16 N/A

17
18
19
20
21
22
23
24 ///

The Landowners incorporate by reference herein all individuals and/or witnesses and all documents disclosed by other parties to this action, including those documents referenced in and/or attached to pleadings, papers, and/or depositions in this matter or produced in this matter. The Landowners may call at the time of trial any witness listed by any party in this matter to testify and may introduce any documents listed by any party in this matter. The Landowners further reserve the right to supplement and/or amend these disclosures as deemed necessary. The Landowners also reserve the right to object to the introduction and/or admissibility of any document at the time of trial for any reason, including authenticity.

DATED this 26th day of July, 2021.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Autumn L. Waters, Esq.
 KERMITT L. WATERS, ESQ.
 Nevada Bar. No.2571
 JAMES J. LEAVITT, ESQ.
 Nevada Bar No. 6032
 MICHAEL SCHNEIDER, ESQ.
 Nevada Bar No. 8887
 AUTUMN WATERS, ESQ.
 Nevada Bar No. 8917
Attorneys for Plaintiffs Landowner

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D), I hereby certify that on the 26th day of July, 2021,
3 I caused a true and correct copy of the PLAINTIFF LANDOWNERS' TWENTY-THIRD
4 SUPPLEMENT TO INITIAL WITNESS LIST AND DISCLOSURES PURSUANT TO NRCP
5 16.1, to be submitted electronically for filing and service via the Court's E-Filing system on the
6 parties listed below. The date and time of the electronic proof of service is in place of the date and
7 place of deposit in the mail.

8 **McDONALD CARANO LLP**

9 George F. Ogilvie III, Esq.
10 Christopher Molina, Esq.
11 2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

12 **[X] Hand delivery CD containing documents Bates-Stamped**
LO 00037822-00043604

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

14 **Bryan Scott, Esq., City Attorney**

15 Philip R. Byrnes, Esq.
16 Rebecca Wolfson, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

18 **SHUTE, MIHALY & WEINBERGER, LLP**

19 Andrew W. Schwartz, Esq.
20 Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

22 /s/Evelyn Washington

23 Employee of LAW OFFICES OF KERMIT L. WATERS

Exhibit 16

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

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

(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**EIGHTEENTH SUPPLEMENT TO
CITY OF LAS VEGAS' INITIAL
DISCLOSURES PURSUANT TO
NRCP 16.1**

Pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure, Defendant City of Las Vegas
("Defendant) hereby supplements (**in bold**) the following documents and witness list.

...

...

...

...

Ex. 16, Pg. 0001

I.

LIST OF WITNESSES PROVIDED BY DEFENDANTS

Based on the information currently available, the following individuals are identified:

1. Robert N. Peccole
c/o Todd L. Bice, Esq.
PISANELLI BICE, PLLC
400 South Seventh Street, #300
Las Vegas, NV 89101
702-214-2100

The City of Las Vegas is informed and believes that Mr. Peccole has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation (“Complaint”) and the history and development of the land commonly referred to as the Badlands Golf Course (the “Project”).

2. The NRCP 30(b)(6) witness(es) for 180 Land Co., LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101

The City of Las Vegas is informed and believes that the NRCP 30(b)(6) of 180 Land Co., LLC has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint, Plaintiff’s expectations in the Project and the history of its applications for the Project.

3. The NRCP 30(b)(6) witness(es) for Fore Stars, Ltd.
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101

The City of Las Vegas is informed and believes that the NRCP 30(b)(6) of Fore Stars, Ltd. has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint.

...

...

1 4. Frank Pankratz
2 c/o Law Offices of Kermitt L. Waters
3 704 South Ninth Street
4 Las Vegas, Nevada 89101

5 The City of Las Vegas is informed and believes that Mr. Pankratz has discoverable
6 information concerning some or all of the following topics including, but not limited to: the facts
7 and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in
8 the Project and the history of its applications for the Project.

9 5. The NRCP 30(b)(6) witness(es) for Seventy Acres, LLC
10 c/o Law Offices of Kermitt L. Waters
11 704 South Ninth Street
12 Las Vegas, Nevada 89101

13 The City of Las Vegas is informed and believes that the NRCP 30(b)(6) of Seventy Acres,
14 LLC has discoverable information concerning some or all of the following topics including, but not
15 limited to: the facts and circumstances regarding the allegations set forth in the Complaint.

16 6. Yohan Lowie
17 c/o Law Offices of Kermitt L. Waters
18 704 South Ninth Street
19 Las Vegas, Nevada 89101

20 The City of Las Vegas is informed and believes that Mr. Lowie has discoverable information
21 concerning some or all of the following topics including, but not limited to: the facts and
22 circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in the
23 Project and the history of its applications for the Project.

24 7. Vickie DeHart
25 c/o Law Offices of Kermitt L. Waters
26 704 South Ninth Street
27 Las Vegas, Nevada 89101

28 The City of Las Vegas is informed and believes that Ms. DeHart has discoverable
information concerning some or all of the following topics including, but not limited to: the facts
and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in
the Project and the history of its applications for the Project.

...
...

1 8. Paul DeHart
2 c/o Law Offices of Kermitt L. Waters
3 704 South Ninth Street
4 Las Vegas, Nevada 89101

5 The City of Las Vegas is informed and believes that Ms. DeHart has discoverable
6 information concerning some or all of the following topics including, but not limited to: the facts
7 and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in
8 the Project and the history of its applications for the Project.

9 9. The NRCP 30(b)(6) witness(es) for the City of Las Vegas, Department of
10 Planning and Department of Public Works
11 c/o Las Vegas City Attorney's Office
12 495 S. Main Street, 6th Floor
13 Las Vegas, Nevada 89101

14 The City of Las Vegas is informed and believes that the NRCP 30(b)(6) for the City of Las
15 Vegas, Department of Planning has discoverable information concerning some or all of the
16 following topics including, but not limited to: the facts and circumstances regarding the allegations
17 set forth in the Complaint and the history of the Project.

18 10. Clyde Spitze
19 1148 East Ashdown Forest Road
20 Cedar City, Utah 84721

21 The City of Las Vegas is informed and believes that Mr. Spitze has discoverable information
22 concerning some or all of the following topics including, but not limited to: the facts and
23 circumstances regarding the allegations set forth in the Complaint. In addition, Mr. Spitze was
24 intimately involved in the creation and implementation of the Master Plan for the Project.

25 11. Christopher L. Kaempfer
26 Kaempfer Crowell
27 1980 Festival Plaza Drive, Suite 650
28 Las Vegas, Nevada 89135

The City of Las Vegas is informed and believes that Mr. Kaempfer has discoverable
information concerning some or all of the following topics including, but not limited to: the facts
and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in
the Project and the history of its applications for the Project.

12. Stephanie H. Allen
Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

The City of Las Vegas is informed and believes that Ms. Allen has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in the Project and the history of its applications for the Project.

13. The NRCP 30(b)(6) witness(es) for GCW Engineering
1555 S. Rainbow Blvd
Las Vegas, NV 89146

The City of Las Vegas is informed and believes that the NRCP 30(b)(6) for GCW Engineering has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in the Project and the history of its applications for the Project. In addition, GCW Engineering did both the surveying and engineering work for William Peccole.

14. Robert C. Weed, Jr.
1210 Pine Island Road
St. Augustine, Florida 32095

The City of Las Vegas is informed and believes that Mr. Weed has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint, the due diligence Plaintiff conducted and Plaintiff's expectations in the Project.

15. The NRCP 30(b)(6) witness(es) for Peccole-Nevada Corporation
c/o Henry Lichtenberger- Resident Agent
410 S. Rampart Blvd., Suite 350
Las Vegas, Nevada 89145

The City of Las Vegas is informed and believes that the NRCP 30(b)(6) for Peccole-Nevada Corporation has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint, the creation and implementation of the Master Plan for the Project, and Plaintiff's expectations in the Project.

16. Brett Harrison
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101

The City of Las Vegas is informed and believes that Mr. Harrison has discoverable information concerning some or all of the following topics including, but not limited to: the facts and circumstances regarding the allegations set forth in the Complaint, Plaintiff's expectations in the Project and the history of its applications for the Project.

17. Any witnesses, expert witnesses, and parties identified by any party in this matter.

18. Any persons and entities identified in the course of discovery in this matter.

19. Any persons and entities identified in any pleadings or papers filed by any party in this matter.

Defendant reserves the right to amend, supplement or add to this list of witnesses to include any other persons or entities who may have information relevant to the issues of this case, including without limitation, expert, impeachment or rebuttal witnesses.

II.

LIST OF DOCUMENTS PROVIDED BY DEFENDANTS

Defendant hereby identifies and/or produces the following documents:

1. Documents Bates-labeled CLV000001-CLV033172;
2. CD's labeled City of Las Vegas – Planning Meetings- CLV033173- CLV033176;
3. Documents Bates-labeled CLV033177-CLV207694;
4. An iOmega Zip 100 floppy disk is available for inspection at a mutually agreeable date and time;
5. Documents Bates-labeled CLV207695- CLV218781;
6. Documents Bates-labeled CLV218782-283706;
7. Documents Bates-labeled CLV283707-286531 (Withheld for Privilege) – See Privilege Log;
8. Documents Bates-labeled CLV286532-304194;
9. Documents Bates-labeled CLV304195-305927;

10. Documents Bates-labeled ELITE 001-041 received from Elite Golf Management LLC pursuant to the Subpoena Duces Tecum served December 17, 2019;
11. Documents Bates-labeled CLV305928- CLV306475;
12. Documents Bates-labeled CLV306476- CLV306801 (Withheld for Privilege) – *see* Supplement Privilege Log;
13. Documents Bates-labeled ELITE 042-070 received from Elite Golf Management LLC to supplement the documents produced pursuant to the Subpoena Duces Tecum served December 17, 2019;
14. Documents Bates-labeled AN000001-AN007526 received pursuant to the Subpoena Duces Tecum to Allen Nel served on March 2, 2020;
15. Documents Bates-labeled CLV306802-CLV306818;
16. Documents Bates-labeled PNC000001-PNC000748 received pursuant to the Subpoena Duces Tecum to Peccole-Nevada Corporation served on March 18, 2020;
17. Documents Bates-labeled CLV306819-CLV306953;
18. Documents Bates-labeled PNC000749-PNC001743 received pursuant to the Subpoena Duces Tecum to Peccole-Nevada Corporation served on March 18, 2020;
19. Documents Bates-labeled CLV306954-CLV307163;
20. May 26, 2021 site inspection photographs Bates-labeled CLV307164-CLV307297;
21. Documents Bates-labeled CLV307298- CLV307729;
22. Documents Bates-labeled PNC001744-PNC001825 received pursuant to the Subpoena Duces Tecum to Peccole-Nevada Corporation served on July 26, 2021.
23. **Documents Bates-labeled VC0000001-VC0000130 received from Valuation Consultants pursuant to the Subpoena Duces Tecum served on September 3, 2021 in Case No. 18-780184-C- 180 Land Company, LLC, et. al. v. City of Las Vegas.**
24. Documents and/or tangible things identified in or attached to any pleadings and/or other papers filed by any party, person, or entity in connection with the above-captioned lawsuit; and

...

Dated this 8th day of October, 2021.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

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

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

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

Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 8th day of October, 2021, I caused a true and correct copy of the foregoing **EIGHTEENTH SUPPLEMENT TO CITY OF LAS VEGAS' INITIAL DISCLOSURES PURSUANT TO NRCP 16.1** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification, and as referenced below to the following:

CD – VIA U.S. MAIL:

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

James J. Leavitt, Esq.

Michael A. Schneider, Esq.

Autumn L. Waters, Esq.,

704 South Ninth Street

Las Vegas, Nevada 89101

EHB COMPANIES

Elizabeth Ghanem Ham, Esq.

1215 S. Fort Apache Road, Suite 120

Las Vegas, NV 89117

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

Exhibit 17

FILED

AUG 16 2019

5th DISTRICT COURT
IRON COUNTY
DEPUTY CLERK mt

James J. Leavitt, Esq.

Name

704 S. 9th Street

Address

Las Vegas, Nevada 89101

City, State, Zip

(702) 733-8877

Phone

jim@kermittwaters.com

Email

Check your email. You will receive information and documents at this email address.

I am the ☐ Plaintiff/Petitioner
☐ Defendant/Respondent
☒ Attorney for the ☒ Plaintiff/Petitioner ☐ Defendant/Respondent and my
Nevada (state) Bar number is 6032

In the District Court of Utah

Fifth Judicial District Iron County

Court Address 40 North 100 East, Cedar City, Utah 84720

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

Plaintiff/Petitioner

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,

Defendant/Respondent

Application for Subpoena under the Utah Uniform Interstate Depositions and Discovery Act

190500094
Case Number

BELL
Judge

Commissioner

Instructions: You must attach the following records and forms if they are not already on file with the court.

- Proposed Utah Subpoena and all required supporting records and forms
 - The foreign Subpoena
 - The names, addresses and telephone numbers of all attorneys of record and of any self-represented party
- (1) ☒ I request that the court issue a Subpoena incorporating the terms of the foreign Subpoena issued by or on behalf of the court in which the action is pending.
- (2) ☒ The district court of this judicial district is permitted to issue a Utah Subpoena because this is the district in which discovery is sought to be conducted.
- (3) ☒ The court in which this action is pending is a court of record in Nevada, a state that has enacted the Uniform Interstate Depositions and Discovery Act or provisions substantially similar to the uniform act.
- (4) The foreign Subpoena requires the person named to: (check at least one)
- ☒ Attend and give testimony at a deposition
 - ☐ Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person
 - ☐ Permit inspection of premises under the control of the person.
- (5) ☒ The foreign Subpoena is attached to this Application.
- (6) ☒ The names, addresses and telephone numbers of all attorneys of record and of any self-represented party are attached to this Application.


I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

8/15/2019
Date

Signature ►

Printed Name


James J. Leavitt

Certificate of Service

I certify that I filed with the court and am serving a copy of this Application for Subpoena under the Utah Uniform Interstate Depositions and Discovery Act on the following people.

Person's Name	Service Method	Service Address	Service Date
McDonald Carano LLP George F. Ogilvie III Amanda C. Yen Christopher Molina	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)	2300 E. Sahara Ave. Suite 1200 Las Vegas, Nevada 89102	
Las Vegas City Attorney's Office Bradford Jerbic, City Attorney Philip R. Byrnes Seth T. Floyd	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)	495 S. Main Street, 6 th Floor Las Vegas, Nevada 89101	
Leonard Law, PC Debbie Leonard	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)	955 S. Virginia Street Suite 220 Reno, Nevada 89502	

Date _____ Signature ► _____
 Printed Name _____

Notice to Persons Served with a Subpoena

1. **Rights and responsibilities in general.** A subpoena is a court order whether it is issued by the court clerk or by an attorney as an officer of the court. You must comply or file an objection, or you may face penalties for contempt of court. If you are commanded to produce documents or tangible things, the subpoena must be served on you at least 14 days before the date designated for compliance. If you are commanded to appear at a trial, hearing, deposition, or other place, a one-day witness fee must be served with this subpoena. A one-day witness fee is \$18.50 plus \$1.00 for each 4 miles you have to travel over 50 miles (one direction). When the subpoena is issued on behalf of the United States or Utah, fees and mileage need not be tendered. The witness fee for each subsequent day is \$49.00 plus \$1.00 for each 4 miles you have to travel over 50 miles (one direction).
2. **Subpoena to copy and mail documents.** If the subpoena commands you to copy documents and mail the copies to the attorney or party issuing the subpoena, you must organize the copies as you keep them in the ordinary course of business or organize and label them to correspond with the categories in the subpoena. The party issuing the subpoena must pay the reasonable cost of copying the documents. You must mail with the copies a Declaration of Compliance with Subpoena stating in substance:
 - A. that you have knowledge of the facts contained in the declaration;
 - B. that the documents produced are a full and complete response to the subpoena;
 - C. that originals or true copies of the original documents have been produced; and
 - D. the reasonable cost of copying the documents.A Declaration of Compliance with Subpoena form is part of this Notice; you may need to modify it to fit your circumstances.
3. **Subpoena to appear.** If the subpoena commands you to appear at a trial, hearing, deposition, or for inspection of premises, you must appear at the date, time, and place designated in the subpoena. The trial or hearing will be at the courthouse in which the case is pending. For a deposition or inspection of premises, you can be commanded to appear in only the following counties:
 - A. If you are a resident of Utah, the subpoena may command you to appear or to produce documents, electronic records or tangible things or to permit inspection of premises in the county:

in which you reside;
in which you are employed;
in which you transact business in person; or
in which the court orders.

- B. If you are not a resident of Utah, the subpoena may command you to appear or to produce documents, electronic records or tangible things or to permit inspection of premises in the county:

in which you are served with the subpoena; or
in which the court orders.

4. **Subpoena to permit inspection of premises.** If the subpoena commands you to appear and to permit the inspection of premises, you must appear at the date, time, and place designated in the subpoena and do what is necessary to permit the premises to be inspected.
5. **Subpoena to produce documents or tangible things.** If the subpoena commands you to produce documents or tangible things, you must produce the documents or tangible things as you keep them in the ordinary course of business or organize and label them to correspond with the categories in the subpoena. The subpoena may require you to produce the documents at the trial, hearing, or deposition or to mail them to the issuing party or attorney. The party issuing the subpoena must pay the reasonable cost of copying and producing the documents or tangible things. You must produce with the documents or tangible things a Declaration of Compliance with Subpoena stating in substance:
- A. that you have knowledge of the facts contained in the declaration;
 - B. that the documents produced are a full and complete response to the subpoena;
 - C. that originals or true copies of the original documents have been produced; and
 - D. the reasonable cost of copying the documents.
- A Declaration of Compliance with Subpoena form is part of this Notice; you may need to modify it to fit your circumstances.
6. **Objection to a subpoena.** You must comply with those parts of the subpoena to which you do not object. You may object to all or part of the subpoena if it:
- A. fails to allow you a reasonable time for compliance (If you are commanded to produce documents or tangible things, the subpoena must be served on you at least 14 days before the date designated for compliance.);

- B. requires you, as a resident of Utah, to appear at a deposition or to produce documents, electronic records or tangible things or to permit inspection of premises in a county in which you do not reside, are not employed, or do not transact business in person, unless the judge orders otherwise;
 - C. requires you, as a non-resident of Utah, to appear at a deposition or to produce documents, electronic records or tangible things or to permit inspection of premises in a county other than the county in which you were served, unless the judge orders otherwise;
 - D. requires you to disclose privileged or other protected matter and no exception or waiver applies;
 - E. requires you to disclose a trade secret or other confidential research, development, or commercial information;
 - F. subjects you to an undue burden; or
 - G. requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.
7. **How to object.** To object to the subpoena, serve the Objection to Subpoena on the party or attorney issuing the subpoena. The name and address of that person should appear in the upper left corner of the subpoena. You must do this before the date for compliance. An Objection to Subpoena form is part of this Notice; you may need to modify it to fit your circumstances. Once you have filed the objection, do not comply with the subpoena unless ordered to do so by the court.
8. **Motion to compel.** After you make a timely written objection, the party or attorney issuing the subpoena might serve you with a motion for an order to compel you to comply and notice of a court hearing. That motion will be reviewed by a judge. You have the right to file a response to the motion, to attend the hearing, and to be heard. You have the right to be represented by a lawyer. If the judge grants the motion, you may ask the judge to impose conditions to protect you.
9. **Organizations.** An organization that is not a party to the suit and is subpoenaed to appear at a deposition must designate one or more persons to testify on its behalf. The organization may set forth the matters on which each person will testify. URCP 30(b)(6).

Exhibit 18

DISTRICT COURT
Clark COUNTY, NEVADA

180 LAND CO, LLC, et al.)
) Case No. A-17-758528-J
)
) Plaintiff,) DEPT. NO.: XVI
)
) vs.)
)
CITY OF LAS VEGAS, a, political)
subdivision of the State of)
Nevada; ROE GOVERNMENT ENTITIES)
I through X; ROE CORPORATIONS I)
through X; ROE LIMITED LIABILITY)
COMPANIES I through X; ROE)
QUASI-GOVERNMENTAL ENTITIES I)
through X,)
)
) Defendants.)

DEPOSITION OF CLYDE O. SPITZE

VOLUME I

Taken at:

HAMPTON INN
1145 Bentley Blvd.
Cedar City, Utah 84721

On Friday, August 16, 2019
At 10:00 a.m.

Reported by: Russel D. Morgan, CSR

Ex. 18, Pg. 0001

21628

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For the Plaintiff:

James J. Leavitt
Autumn Waters (via telephone)
LAW OFFICE OF KERMIT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101
702.733.8877

For Defendant City of Las Vegas:

George F. Ogilvie
MCDONALD CARANO LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, NV 89102
702.873.4100

Exhibit 19



HOLO Discovery
3016 West Charleston Blvd
Suite 170
Las Vegas, NV 89102
702.333.1122

Invoice

INVOICE 12878

DATE 10/28/2021

TERMS Net 30

DUE DATE 11/27/2021

BILL TO

Law Offices of Kermitt Waters
704 S. Ninth St.
Las Vegas, NV 89101

PAID
11/05/2021

ORDERED BY

Sandy

CLIENT MATTER

180 Acres

REP

Jim

ACTIVITY	QTY	AMOUNT
Description: Print documents		
B/W Printing - Letter Size	44,145	4,414.50T
Color Digital Printing - Letter Size	7,580	3,714.20T
Color Oversize Printing - 3x4	14	2,100.00T
B/W Printing - 11x17	175	35.00T
Color Digital Printing - 11 x 17	510	504.90T
3 Inch Binder	50	650.00T
4 Inch Binder	40	640.00T
Index Tabs 1-99	495	148.50T
Index Tabs A-Z	70	21.00T
Index Tabs - 100+	910	364.00T
Sales Tax		1,054.59

Project Number - 27628
Date Delivered - 10/25/2021

Total Due \$13,646.69

Payments/Credits -\$13,646.69

Balance Due \$0.00

Thank you for your business. Please make checks payable to HOLO Discovery.
Tax ID: 81-2158838

Ex. 19, Pg. 0001

21631

Exhibit 20

CLARK COUNTY, NEVADA

180 LAND COMPANY,)
)
 Plaintiff,) Case Number
) A-17-758528-J
)
 vs.)
)
 CITY OF LAS VEGAS,)
)
 Defendant.)
)

Monday, September 27, 2021

DISTRICT COURT JUDGE

Reported By: Rhonda Aquilina, Nevada Certified #979, RMR, CRR
Court Reporter

Rhonda Aquilina, Nevada Certified #979

1 APPEARANCES:

2 (PURSUANT TO ADMINISTRATIVE ORDER 20-24, SOME MATTERS IN
3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC APPEARANCE)

4 For Plaintiffs:

5 LAW OFFICES OF KERMITT L. WATERS
6 704 South Ninth Street
Las Vegas, NV 89101
7 BY: JAMES J. LEAVITT
AUTUMN L. WATERS
8 ATTORNEYS AT LAW

9 For Defendants:

10 LAS VEGAS CITY ATTORNEYS' OFFICE
495 South Main Street, 6th Floor
Las Vegas, NV 89101
11 BY: BRYAN K. SCOTT
12 PHILIP R. BYRNES
REBECCA WOLFSON
13 DEPUTY CITY ATTORNEYS

14 McDonald Carano, LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, NV 89102
15 BY: CHRISTOPHER MOLINA
16 ATTORNEY AT LAW

17 SHUTE, MIHALY & WEINBERGER, LLP
396 Hayes Street
18 San Francisco, CA 94102
19 BY: ANDREW W. SCHWARTZ
20 ATTORNEY AT LAW
21
22
23
24
25

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0002

21634

Monday, September 27, 2021

9:28 a.m.

P R O C E E D I N G S

---o0o---

THE COURT: All right. Good morning to everyone.

ALL COUNSEL: Good morning.

THE COURT: I apologize for the brief delay. I had another matter I had to handle with another case, but I got to that done.

All right. And madam court reporter, are you ready to go?

THE COURT REPORTER: Yes, Judge. Thank you.

THE COURT: All right. Let's go ahead and set forth our appearances for the record.

MR. LEAVITT: Good morning, Your Honor. James J. Leavitt on behalf of the Plaintiff 180 Land landowners.

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

MS. GHANEM: Good morning, Your Honor. Elizabeth Ghanem.

MR. WATERS: Kermitt Waters on behalf of 180 Land.

MR. LEAVITT: And also our legal assistant Jennifer is with us to assist with the presentation, Your Honor.

THE COURT: Okay.

MR. MOLINA: Good morning, Your Honor. Chris Molina on behalf of the city.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0003

21635

1 **MR. BYRNES:** Phil Byrnes on behalf of the city.

2 **MS. WOLFSON:** And good morning, Your Honor. Rebecca
3 Wolfson on behalf of the city.

4 **THE COURT:** All right. And once again good morning to
5 everyone.

6 And it's my recollection this will be a continuation
7 of our argument from last week; is that correct?

8 **MR. LEAVITT:** Correct, Your Honor.

9 **MR. MOLINA:** Your Honor, Andrew Schwartz is supposed
10 to be appearing via Bluejeans. Looks like they're waiting for
11 the moderator to start the meeting. I just got a text message
12 from him. He may be in the wrong session.

13 (Off-the-record discussion.)

14 **MS. WOLFSON:** That's the information I received this
15 morning. It was forwarded to you.

16 (Off-the-record discussion.)

17 (Pause in proceedings.)

18 **MS. WOLFSON:** I apologize for the delay, Your Honor.
19 Anyway, I can confirm the information I received this morning
20 is the correct information.

21 **THE COURT:** Yes.

22 (Off-the-record discussion.)

23 **MS. WOLFSON:** I passed that information along. I hope
24 they are able to join us shortly.

25 (pause in proceedings.)

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0004

21636

1 **THE COURT:** All right. Do we have Mr. Schwartz on the
2 line? Can you hear us, sir?

3 You might have to hit star 4 to unmute.

4 **MR. SCHWARTZ:** I'm sorry. Good morning, Your Honor.
5 I apologize for being late. I didn't have the right
6 information.

7 **THE COURT:** That's okay. Sir.
8 Let's go ahead and note your appearance for the
9 record.

10 **MR. SCHWARTZ:** Andrew Schwartz for the City of Las
11 Vegas.

12 **THE COURT:** Okay. And it's my understanding everyone
13 has placed their appearances on the record; is that correct?

14 **MR. LEAVITT:** Correct, Your Honor.

15 **THE COURT:** All right. Okay. And so we're going to
16 continue on, Mr. Schwartz. You have the floor, sir.

17 **MR. SCHWARTZ:** Thank you, Your Honor.

18 Your Honor, a taking is a highly deferential test, and
19 there's no taking here. Judge Herndon's decision is at tab 4,
20 and Judge Herndon explained the takings test and why it is so
21 narrow.

22 I want to first explain that Judge Herndon's decision
23 was not set aside by Judge Trujillo as the developers
24 represented. The issue --

25 **THE COURT:** Whether it did or didn't, it doesn't

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0005

21637

1 really matter to me. I don't care what other trial judges do.
2 I just want to be candid with everyone. Never have, never
3 will.

4 **MR. SCHWARTZ:** Well, fine.

5 **THE COURT:** Now, if you want to explain -- if you want
6 to argue maybe some of the points, that's fine, but I really
7 don't care what other trial judges do, I mean, I don't. I
8 don't mind saying that.

9 **MR. SCHWARTZ:** I understand.

10 **THE COURT:** I care about what the Nevada Court of
11 Appeals and the Supreme Court does, I will say that.

12 **MR. SCHWARTZ:** All right. Well, I do want to point
13 out that Judge Herndon, in paragraph three of his conclusions
14 of law, found that because the right to use land for a
15 particular purpose is not a fundamental constitutional right,
16 courts generally defer to the decisions of legislators and
17 administrative agencies with regard to regulating land use.

18 And the citation there was to the *Berman versus Parker*
19 case, which is a United States Supreme Court case, which laid
20 out the principles behind the local regulation of land and why
21 there's such broad latitude allowed in land use regulation, and
22 that the takings clause really is a very narrow remedy for
23 property owners, and it only applies in cases of extreme,
24 extreme government regulation, and we don't have that here.
25 And certainly there is no constitutional right to develop --

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0006

21638

1 **THE COURT:** I don't want to cut you off, sir. I was
2 thinking about this over the weekend, and I don't know if it's
3 been brought up, maybe it has and I overlooked it, but as far
4 as the golf course is concerned, were there any restrictive
5 covenants?

6 **MR. SCHWARTZ:** No.

7 **THE COURT:** The reason why I thought about that, I
8 don't mind saying it, I thought about the Legacy example, and
9 it's my recollection that there was like a 50-year restrictive
10 covenant that limited the use of that specific parcel of
11 property to a golf course, something like that.

12 Go ahead.

13 **MR. SCHWARTZ:** That's not relevant, Your Honor.
14 Restricted covenant is a contract between two private parties,
15 and that's not -- governments don't typically regulate the use
16 of land by restrictive covenants except in certain subdivisions
17 where they may require that the subdivider establish a
18 homeowners' association and adopt CC&Rs to restrict the use of
19 the property. This is not that case. This is a typical --

20 **THE COURT:** Let me finish. Let me finish. You're
21 kind of going down the track that I was thinking about in this
22 one respect. You said the government may require, depending on
23 the circumstances for certain subdivisions, to have CC&Rs. And
24 the reason why I thought about that is this, because when it
25 comes to the golf course, if there was some concern that this

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0007

21639

1 property would be used as open property designation, couldn't
2 that have been a request or mandate by the Council or the
3 Planning Commission or someone that, you know what, we really
4 like this project, but we're concerned about the potential
5 long-term viability of the golf course, why couldn't you put in
6 a restrictive covenant that would limit the use of the golf
7 course to a golf course so we reserve open spaces for like
8 maybe, you know, a period of 20, 30, 40, 50 years, something
9 like that.

10 **MR. SCHWARTZ:** Well, that would be -- that would be
11 one way to regulate the use of property by requiring the
12 developer to adopt CC&Rs, but that's not the way that -- that's
13 not the way this is typically done outside of a subdivision,
14 and there were subdivisions as part of the Peccole Ranch Master
15 Plan. But the government doesn't have to do that, and it's not
16 always the best idea because that limits the flexibility of the
17 government in regulating the land use.

18 So, again, this -- the interest of the -- of the city
19 in the -- in the Peccole Ranch Master Plan was that there be
20 open space. As the Court may recall, the RPD-7 zoning ordinance
21 says that the plan development shall be innovative and flexible
22 in allocating the different uses on the property, including open
23 space. It doesn't say golf course, and it doesn't even say
24 recreation, it says open space. So the city's interest here was
25 in open space and not a golf course. The developer decided that

1 it would -- that it would develop a golf course. That wasn't
2 the city's requirement. The requirement was for open space.

3 So here, we have, you know, the city could have
4 required a park or property left in its natural state. There
5 is intrinsic value to open space. The choice was made by the
6 developers.

7 **THE COURT:** And for the record, I'm not necessarily
8 disagreeing with you, but is there a difference between open
9 space as it relates to public property and private property?

10 And the reason why I'm bringing that up is this, if
11 the city wanted open space -- and I don't know if we're
12 speculating or not because, I mean, when it came to the plan
13 approval, I don't think anybody has come in and testified as to
14 specifically what the building department was doing when they
15 approved Queensridge. But my point is this, if they wanted open
16 space, they could have very easily required that as part of the
17 CC&Rs, and that's my point.

18 **MR. SCHWARTZ:** There were no -- the city didn't
19 require CC&Rs, and they could have. But that's not at all what
20 interest we're looking at here.

21 The City was faced with a 1500-acre property. The
22 City's task is to make sure that that property is designed --
23 that that development is designed in such a way to serve not
24 only the interests of the people who were going to live and work
25 and play on that property, but also the surrounding community.

1 That's their job. So when they tell the developer, Okay, we
2 want housing over here, we want the retail here, we want the
3 streets here, we want open space here - it's all part of the
4 city's job to design -- to make sure that that property is --
5 they engage in sound planning for a quality community that's
6 going to have amenities for the property owners. The City could
7 have required retail. That's all to serve the property and --

8 **THE COURT:** I get that, but here's my question. I
9 would anticipate, and correct me if I'm wrong on this, when it
10 came to the Queensridge and Badlands Golf Course, it would have
11 been Peccole that went to the city with the plan, and it was up
12 to the city as to whether or not they wanted to approve the
13 plan or not. I mean, that's kind of how that process occurs.

14 And so I'm saying hypothetically, if there was -- and
15 this is more from an evidentiary perspective. Peccoles could
16 have came in and made the request without a golf course, right?
17 And it just depends, because, I mean, we don't have golf courses
18 every three or four miles in Las Vegas, they're kind of rare. I
19 mean, I get that. But my point is this, what -- we have
20 argument, but what evidence do we have?

21 **MR. SCHWARTZ:** Well, the Court used the example of
22 Chicago as a well-planned city. Okay, you've got a number of
23 high rises in Chicago, and Chicago, you know, they're very
24 deliberate about this planning. Their buildings are more
25 iconic and there's greater separation between the buildings.

1 Why? So that you can see the buildings. So if they don't
2 allow the developer to build an entire envelope out to the
3 property line, it's because they want to preserve light and air
4 for other buildings, they want to limit -- to enhance privacy,
5 they want to limit noise, they want the public to be able to
6 view the building in a certain way, so they regulate the size,
7 the shape, the color of that building. That's all within their
8 police power.

9 They're doing the same thing here in Peccole Ranch
10 Master Plan. They're regulating all of the elements of the
11 project for the best interest of the community. And so the
12 issue is the city wants open space. Open space. Open space has
13 intrinsic value, whether it's a golf course or a park or it's
14 just land in its natural state, there's intrinsic value in open
15 space to benefit the residents, the people who work in the PRMP,
16 and the developer, because it adds value to the property.

17 And this developer in this case, the plaintiff here
18 developed property in the PRMP and got more money for their
19 luxury condos in Queensridge Towers and their retail in Tivoli
20 Gardens because of that amenity. So the city did require this
21 open space amenity for the project, and whether that open space
22 is a golf course is not the city's -- and whether it's
23 profitable or not is not the city's concern. The developer
24 makes a choice. The developer makes a choice to set aside open
25 space to get an approval and to enhance the value of the entire

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0011

21643

1 project. That's why you can't segment the golf course out.
2 The golf course is an integral part of this mission.

3 You know, I use the analogy of a machine. You've got
4 a machine that has retail, it has housing of different types,
5 it's got streets, it's got drainage, it has open space. You
6 take out one part and you disrupt the plan.

7 So this was the open space with part of a plan. It
8 doesn't have to be CC&Rs. That's hardly ever done in a large
9 plan development like this. And the purpose of that open
10 space, even if the golf course closes, it provides an amenity,
11 a benefit to the PRMP and to the surrounding community because,
12 as open space, it's a buffer against noise, it's a view shed,
13 it provides light and air, it provides privacy to people, it's
14 aesthetically pleasing. So there's all those values that,
15 again, the state legislature requires the city to do certain
16 things like this. And it's -- by requiring the developer to
17 set aside retail on the property, the city is not taking that
18 property for the city, it's imposing standards on a master
19 planned community in the best interest of the people who are
20 going to live and work in that community.

21 The same thing with open space. By requiring the
22 developer to set aside open space, the developer can own the
23 fee, fee simple interest in that open space, but that's a
24 requirement that the city has a right, has a right to require to
25 continue. It doesn't have to buy it just because the developer

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0012

21644

1 decides, Well, I want to put a golf course on there, and I can
2 no longer make any money on the golf course, therefore, I'm
3 going to eliminate the open space for this community. That's
4 taking a part of the machine out, and the courts do not require
5 that. That's why we have the segmentation doctrine. That's why
6 this is a classic segmentation case. The parcel as a whole was
7 the PRMP and each part of it is, according to city, was
8 important. The city -- if the city decides, Well, we're going
9 to impose a PROS general plan designation on the property
10 instead of CC&Rs, well, that could make sense because the city
11 may say CC&Rs are perpetual, they're forever, they're not
12 flexible, it's not a flexible tool.

13 In this case, and it's the city's prerogative, in this
14 case we're going to use a regulation, the general plan
15 designation of PROS, which is the highest law in the city, to
16 say the future use of this property is open space. It doesn't
17 matter what kind of open space it is that provides that
18 benefit, but the city can amend the general plan, as it did
19 with the 17-acre property, and allow residential development or
20 some other development to the property. So it's a much more
21 flexible tool than CC&Rs.

22 And then, I think the concept here is, Your Honor, the
23 city didn't take that open space for the city, it required the
24 developer to set it aside for the benefit of the PRMP.

25 So if the -- and, Your Honor, I think you had a

1 concern that you expressed Friday that, Well, this may not be
2 the most economically efficient use of the space if it was used
3 for a golf course and if a golf course is no longer viable, and
4 I don't think that's been established. But assume that that's
5 true, that if the city doesn't allow some commercial
6 development of that property, then the city is somehow taking
7 the property. Well, again, open space has intrinsic value for
8 the PRMP, and so the city doesn't have to do that. It's not a
9 taking if it requires it to continue in its historic use as
10 open space.

11 But it's even harder for the developer to make that
12 argument because the city did approve 435 luxury housing units
13 in the Badlands. The city said, okay, you know, you operate
14 this golf course, now you want to build residential, you're
15 telling us the golf course isn't economically viable, okay,
16 we'll approve 435 luxury units. Your Honor, that is a lot of
17 housing. That's huge. And according to Judge Herndon, and
18 according to the developer's own evidence, by approving 435
19 units in the Badlands, the Court -- the city increased just the
20 value of that 17-acre part of the Badlands by \$26 million, and
21 that is now five times what the developer paid for the entire
22 Badlands, and the developer still has 233 acres of the Badlands
23 left to either propose some development or use as open space,
24 which again which is an amenity.

25 You know, for the 435 units, is the developer going to

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0014

21646

1 be able to sell those for more if they put housing on the rest
2 of the Badlands or if they leave it open so that these residents
3 have some open space to look at, you know, as a buffer for noise
4 for privacy. That's a decision that the city has the discretion
5 to make. But the developer can't complain, Well, you've taken
6 the Badlands because I can't make a go at running the golf
7 course. The city has already approved that.

8 And, Your Honor, you know, the irony is that this
9 developer took advantage of that amenity of that open space. I
10 mean, not everybody in the PRMP who works and lives in the PRMP
11 is going to play golf. That open space is valuable to them for
12 these other reasons that I've listed.

13 And so --

14 **THE COURT:** And I want to focus on the 35 acres. And
15 you do set forth in your opposition and counter-motion on
16 page 32, it says, both categorical and *Penn Central* claims
17 require a showing that the city's regulations wiped out or
18 nearly wiped out the economic use of the property.

19 So my question is this, what's the economic use of the
20 35 acres?

21 **MR. SCHWARTZ:** The economic use is as open space for
22 the PRMP. That's the value of the open space. The developer
23 of the PRMP made the decision -- and this developer stands in
24 that developer's shoes, and that developer decided that a
25 250-acre open space is going to be valuable for the community,

1 it's going to compliment the community, and so I'm going to
2 increase the total value of the PRMP if I have open space. If
3 I've got -- if I build out a hundred percent of this property
4 and there's no open space, I'm, you know, it's not going to be
5 as attractive for people to live and work in this community.
6 It's got open space and that adds value. That decision was
7 made in 1989 and 1990, and that can't be taken back. The
8 developer made that decision.

9 And so it's not a taking for the city to say, Oh, now
10 you can't -- you can't convert that open space that you set
11 aside to enhance the overall value of your development. It's
12 not a taking for the city to say, No, it shall continue in that
13 use.

14 You know, that's really what --

15 **THE COURT:** And I don't know if the law does this,
16 maybe we'll develop this doctrine in this case, I don't know,
17 but is there a distinction between private property, open
18 space, and city-owned, county-owned open space?

19 The reason why I keep coming back to that, at the end
20 of the day this is private property, and that's so important to
21 point out, it really and truly is. And so, I mean, I remember
22 continuing discovery in this case, and one of the issues that I
23 think Mr. Ogilvie really wanted to vet was the economics or the
24 economic value of the property at issue, right? I don't forget
25 anything. And the plaintiffs objected and said, Judge, no, we

1 have to go now, my client is paying out a lot of money per
2 month. And I respected all of that, but I was more concerned
3 with making sure everyone had a full and fair opportunity to
4 develop their case. That's all, right? And we can all agree
5 the wheels of justice are slow, they just are. They just grind
6 very slowly, they just do.

7 So, I mean, don't I have to look at that issue
8 regarding -- because you do say it here, "requires a showing
9 that city's regulation wiped out or nearly wiped out the
10 economic use of the property." And so my question is this,
11 what economic use would the 35 acres have at this point, if
12 any?

13 **MR. SCHWARTZ:** Well, the economic use is as part of
14 the Peccole Ranch Master Plan; that it had an economic use in
15 1989 and 1990, and under the segmentation doctrine you can't
16 carve that out after you've developed the PRMP and say now I
17 set aside this open space, the city required to set aside as
18 good sound planning, now I want to build in the open space.

19 It's ironic that this developer built in the PRMP, got
20 the benefit of the open space. This developer already got the
21 economic value out of the 35 acres because it enhanced the
22 developer's Queensridge Towers project and the Tivoli Gardens
23 project. That's the economic value.

24 And so the segmentation doctrine tells us that that
25 was the economic value of the Badlands, that that value has

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0017

21649

1 already been -- that value has already been obtained because it
2 was an amenity for the other uses in the PRMP. It enhanced
3 those values.

4 But, Your Honor, can I refer you to the *Guggenheim*
5 case, please?

6 **THE COURT:** Yes, you can, sir.

7 **MR. SCHWARTZ:** Tab 56. Your Honor, maybe 57, yes,
8 sorry, Your Honor, tab 57.

9 **THE COURT:** And I have it, sir, right in front of me.

10 **MR. SCHWARTZ:** So in this case, Your Honor, and I've
11 highlighted some of the important language in the *Guggenheim*
12 case on pages 6, 7 and 8., what this says is that -- and this
13 is going to whether the city has wiped out the economic value
14 of the 35-acre property.

15 Again, Your Honor, let's assume -- let's assume that
16 this case is ripe, and it's not, because the city hasn't denied
17 two applications to develop the 35-acre property, but let's
18 assume that this is ripe. There's still no taking, because the
19 property was designated PROS in the general claim when the
20 developer bought the property.

21 Now, let me explain why that's significant. In the
22 *Guggenheim* case, the Court said, the Court said -- we had a --
23 the plaintiff bought a mobile home trailer park that was
24 subject to rent control. The developer then sued the city that
25 imposed the rent control claiming, I can't make money on the

1 mobile home park because of this rent control. And the
2 *Guggenheim* court -- and this is a Ninth Circuit, this was an *en*
3 *banc* decision of the Ninth Circuit -- said, look, you bought
4 the mobile home park when it was subject to the regulation in
5 question; you paid a price for that property that reflected the
6 fact that its use was legally limited, and so you can't say
7 that you were wiped out or you can't say that there was even
8 any economic impact of the city regulation on your property, if
9 the city just declines to change the law so that you can make
10 more money. The Court said that is not a taking. You're
11 assumed to pay a price for the property that reflects its legal
12 use.

13 And we have the same situation here. And, again, this
14 assumes that this case is ripe and it's not. Judge Herndon was
15 absolutely right when he found that the 65-acre case was not
16 ripe because the city had not denied two specific applications
17 for just a 65-acre property to be developed, and here we only
18 have one, so it's not ripe. But assuming it's ripe, the
19 developer went into this with its eyes open, and it can't now
20 claim you have to let me make some use of the property that
21 wasn't legal when I bought the property.

22 Now, in tab 38, Your Honor, is your decision on the
23 PJR, and at pages 18 and 20, and 20 of that decision here's
24 what the Court said: The four applications submitted to the
25 Council for a General Plan Amendment were all subject to the

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0019

21651

1 Council's discretionary decision-making no matter the zoning
2 designation.

3 So there goes the developer's theory that they have
4 some constitutional right under zoning. There's absolutely no
5 authority for that, and this Court has found that they don't.
6 There goes their case.

7 But let's move on. Did the city wipe out the value of
8 the 35-acre property if you assume it's ripe and you allow that
9 to be segmented, which again both assumptions are not correct
10 but let's assume they are. Here's what this Court said: The
11 developer purchased its interest in the Badlands Golf Course
12 knowing that the city's General Plan showed the property as
13 designated for parks, recreation, and open space, PROS, and
14 that the Peccole Ranch Master Development Plan identified the
15 property as being for open space and drainage, as sought and
16 obtained by the developer's predecessor. The golf course was
17 part of a comprehensive development scheme, and the entire
18 Peccole Ranch master planned area was built out and around the
19 golf course.

20 The Court went on: It is up to the Council through
21 its discretionary decision making to decide whether a change in
22 the area or conditions justify the development sought by the
23 developer and how any such development might look. And the
24 Court cited to the *Nova Horizon* case.

25 The applications included requests for a general plan

1 amendment and waiver, in that the developer asked for
2 exceptions to the rules -- this is just like the plaintiff in
3 *Guggenheim* -- in that the developer asked for exceptions to the
4 rules, its assertion that approval was somehow mandated simply
5 because there is RPD-7 zoning on the property is plainly wrong.
6 It was well within the Council's discretion to determine that
7 the developer did not meet the criteria for a general plan
8 amendment or waiver found in the Unified Development Code and
9 to reject the site development plan and tentative map
10 application. Accordingly, no matter the zoning designation.

11 So the Court has said twice in these paragraphs of its
12 decision that the developer's crazy theory that zoning confers
13 rights and that zoning confers a constitutional right to build
14 anything the developer wants as long as it's a permitted use in
15 the zoning is wrong, and it's rejected by all authority.

16 **THE COURT:** Well, can't we all agree -- and I think
17 it's important to point out -- there's a completely different
18 standard here. The claims for relief are different. We're not
19 talking about a petition for judicial review.

20 And I think I was pretty clear, we had a significant
21 discussion in some of the prior motions. In fact, it's my
22 recollection Mr. Ogilvie was quite strident in his position, and
23 I rejected it completely in this case.

24 And so my question is this, why are we going down this
25 road? Because I see the *Guggenheim* case distinctly different

1 because, at the end of the day, there were rent controls in
2 place and they were getting paid so much per, I guess, for the
3 mobile homes, whatever the sum might have been, and they were
4 still making money.

5 In this case, here, it's my understanding that the
6 golf course was no longer viable, and it's public property, and
7 that's a totally different issue, right? And I keep coming
8 back to my question, because you raised it and it hasn't been
9 really addressed. I understand you're saying, Well, Judge, you
10 know, the value is -- well, the Peccoles, I guess, reaped the
11 value.

12 But I'm talking about the 35 acres, because it's my
13 understanding right now, in its current condition, it has no
14 value economically for the property owner. Because if the city
15 says this has to remain open space, he can't put anything on
16 that property. Consequently, what's the value of the 35 acres?
17 We all know what it is, it would be zero, it just would. It
18 would have no value whatsoever. And I guess that's my point.

19 And I just want to be very clear on this issue,
20 there's a completely different standard when it comes to a
21 standard for petition for judicial review. I'm looking to see
22 whether or not the City Council abused its discretion, right?
23 And that's the standard for the most part, and whether there's
24 substantial evidence in the record to support the findings.

25 And that's a low threshold, I don't mind saying that,

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0022

21654

1 it just is. This is a totally different scenario here. Right
2 now you're in open court. This isn't a petition for judicial
3 review. All the evidentiary requirements have to be met,
4 right? Rule 56, I have to make a decision based upon
5 admissible evidence, we all understand that. So I'm looking at
6 it from that perspective, and whether the court of appeals
7 and/or Supreme Court agrees or disagrees with my evaluation of
8 this issue is another day.

9 But I understand your argument. You said, Well,
10 Judge, the value is to the Peccoles. That's kind of how I see
11 that, right? But as far as 180 Land Company, who is the
12 current owners of the property, it seems to me that if this
13 parcel of the property is going to remain open space, then it
14 could be argued that the city has wiped out or nearly wiped out
15 all economic use of the property, and that's really and truly
16 what I want you to address.

17 Because maybe your argument is that I guess value can
18 only transfer one time, I guess, when the property is
19 originally developed? I mean, I don't know. Is there case law
20 that says that? What about the current property owner? What
21 about the bundled rights?

22 **MR. SCHWARTZ:** Yes, Your Honor, we addressed that in
23 the -- that's the segmentation doctrine that the Court is
24 talking about, and you can't segment property, the parcel as a
25 whole, and then say that one part of it, the regulated part,

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0023

21655

1 has no value, so now pay me. You have to look at the parcel as
2 a whole.

3 But I would like to back up, Your Honor. I think that
4 this is an extremely important issue, that there is no
5 substantive law of PJRs; it is an empty vessel; it is a
6 procedure. Inverse condemnation is a procedure with a
7 different remedy and different evidentiary standards. However,
8 what we're talking about here is --

9 **THE COURT:** We can all agree on that, I think.

10 **MR. SCHWARTZ:** What we're talking about here is the
11 underlying substantive law of property and land use regulation
12 in Nevada, and that law is the same. It's the same for whether
13 you're bringing a PJR or you're bringing a takings claim or a
14 due process claim, the law is that zoning does not confer a
15 right of any kind, it limits use, it doesn't confer rights, and
16 it doesn't confer a constitutional right to build anything you
17 want. That's the underlying law that applies to both a PJR and
18 an inverse claim.

19 Again, PJR, it's an empty vessel, it's just a
20 procedure. So you can have -- and we're not talking about
21 facts here. The Court made the facts clear. There's a PROS
22 designation on the property, there's RPD-7 zoning on the
23 property; what does that mean legally?

24 First, those are the facts. The Court said here's the
25 legal import of that, these are questions of law not of remedy.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0024

21656

1 The standard is the same in a PJR or a regulatory taking case.
2 There is no constitutional right to build under zoning, and so
3 it's the same law, it's the underlying substantive law, and so
4 the Court's conclusions about what that underlying substantive
5 property law and land use regulatory law in Nevada, it's the
6 same for both causes of action.

7 Your Honor, what that would be saying is if none of
8 the Court's conclusions of law in the PJR about the city's
9 discretion -- and, again, discretion cannot coexist with a
10 constitutional right to build what you want. If that's true,
11 then if --

12 **THE COURT:** I got a question for you. Hypothetically,
13 a decision of a city council or a planning commission and/or
14 county commission and the like, they can make a decision, the
15 trial court can make a determination that their decision is not
16 an abuse of discretion, right? But that doesn't stand for the
17 proposition that notwithstanding the fact that they didn't
18 abuse their discretion, that when exercising their discretion
19 it resulted in a taking of property. That's the difference,
20 and that's the way I see it. And that's a totally different
21 animal, subtle but huge, right? You could exercise your
22 discretion without abusing your discretion, but that doesn't
23 mean that's a get-out-of-jail free card. That's probably the
24 best way to say that.

25 I mean, I don't mind saying it, and I'm saying it

1 because that's the issue I want the Nevada Supreme Court and/or
2 Court of Appeals to really hone in on, because that's part of
3 my decision-making process. I think they're different. Yeah,
4 you could exercise your discretion and not abuse it.

5 But if you, for example, going back to one of the
6 issues you brought up, both categorical and *Penn Central* claims
7 requiring a showing that the city's regulation wiped out or
8 nearly wiped out the total economic use of the property. That's
9 not a charge I'm required to look at when it comes to a petition
10 for judicial review.

11 **MR. SCHWARTZ:** Absolutely right, Your Honor. But the
12 plaintiff's theory, Your Honor, can I address that? The
13 plaintiff's theory --

14 **THE COURT:** Yeah, but you said, "absolutely, right,"
15 that's good to hear.

16 **MR. SCHWARTZ:** The plaintiff's theory in this case is
17 that they had a constitutional right, quote, right to build
18 whatever they want on the 35-acre property as long as it's a
19 permitted use by zoning. That's their theory. That's not a
20 takings theory, Your Honor, that's PJR theory. That's
21 absolutely right. And they lost the PJR, and the judge -- and
22 this Court decided against them because it said zoning doesn't
23 confer any rights. But their entire case, Your Honor, is a
24 redo of the PJR.

25 Now, I think where we're going with this is --

1 **THE COURT:** You can make your record on that, but I'm
2 not buying that one. Once again, I don't mind telling you my
3 charge is much different, and I recognize that -- I forget how
4 long it's been, but it's been quite a while, and I recognize
5 that aspect of it, that this is a totally different animal as
6 far as inverse condemnation law is concerned, and I thought I
7 was pretty clear on that.

8 So all I'm saying, sir, I'm going to let you go ahead
9 and make your record. But as far as my decision as it pertains
10 to the petition for judicial review, I had a different charge.
11 And I even think there's -- I don't mind saying this, and
12 interestingly enough, I was never even called upon to even deal
13 with that specific issue, but in a decision sent down to me
14 from I think it was the Supreme Court, they even talked about
15 the different standards, right? I didn't even get a chance in
16 that case, it was so early on, it was a motion to amend, I
17 granted it, and that was it, and then a writ was run up. I
18 clearly understood that, I think I did, going back to a year,
19 year and a half or so ago, the differences between a petition
20 for judicial review and a claim for inverse condemnation before
21 a trial judge. Totally different, different issues of law,
22 different factual issues.

23 **MR. SCHWARTZ:** Your Honor, can I explain?

24 **THE COURT:** Yeah, you can, sir, but I'm just saying,
25 and I think the law will -- I have a fairly high degree of

1 confidence that the law will agree -- I mean the courts will
2 agree with me on that issue.

3 **MR. SCHWARTZ:** Your Honor, when I recite to the Court
4 this passage from the decision on the PJR, I'm reacting to the
5 plaintiff's claim. The plaintiff's claim in this case in the
6 taking -- this is a takings case -- is really a do-over of the
7 PJR, because they're claiming that they've got this
8 constitutional right.

9 I am -- we have, and I am fully prepared now to
10 summarize our case on what the real takings tests are, because
11 everything the plaintiffs are arguing in this case is a redo of
12 the PJR.

13 So I think I'm on the same page as the Court in that
14 to show a regulatory taking, you have to show a wipeout or a
15 near wipeout or interference with investment-backed
16 expectations. The plaintiffs don't address that in their
17 takings claim, they just want to redo the PJR.

18 So if now I could address the Court's concern about
19 why the city has not taken the 35-acre property. We have three
20 arguments --

21 **THE COURT:** Please go forward. I'm listening, taking
22 notes.

23 **MR. SCHWARTZ:** One is that the case isn't ripe. The
24 case isn't ripe because the Court doesn't know how far -- if a
25 regulation goes too far and wipes out value unless it knows and

1 it has a final decision of the public agency and knows how far
2 it goes.

3 So in the 65-acre case, Judge Herndon found they
4 didn't even get to first base. They didn't have a ripe claim
5 because they had denied two applications. So that's what the
6 Court -- that's what the courts have required, including the
7 Nevada Supreme Court in the *Kelly* case.

8 The *Kelly* -- you know, we have the categorical and
9 *Penn Central* claims allege excessive regulation of use. And as
10 I indicated on Friday, the developer is trying to confuse the
11 Court with the *Sisolak* case, which is a physical takings case,
12 not a regulation of use case, and so the ripeness doctrine does
13 not apply in a physical takings case, the *Sisolak* case
14 recognizes that. The developers misrepresented that case.

15 In a regulation of use case, you need to show that the
16 regulation of the owner's use was the taking. It has to wipe
17 out the economic value or a near wipeout of the value.

18 And again, this developer, Your Honor, the city didn't
19 change the value of the property because the developer either
20 knew that the property had -- was not viable as a golf course,
21 in which case the city didn't make the developer buy the
22 property, or it didn't know and it didn't do its due diligence,
23 either way the city didn't make the developer buy the property.
24 The developer, like *Guggenheim*, should have paid a price for
25 that property that reflected its worth, and it was subject to

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0029

21661

1 the PROS designation, so it couldn't be used for residential.
2 So the developer can't come in and say, Hey, I paid a price for
3 property that that would be \$1.5 million per acre, which is the
4 developer's evidence, assuming I could use it for residential
5 when the law is clear that they couldn't.

6 **THE COURT:** Why is the law clear that they couldn't?
7 Because it's my recollection, I keep going back to this, the
8 property at issue I'm talking about the 35 acres, was owned as
9 RPD-7.

10 **MR. SCHWARTZ:** Well, Yes, Your Honor, but the PROS
11 designation is the general plan designation and that's
12 consistent with the RPD-7 zoning.

13 As the Court may recall in U.D.C. 19.10.050A, RPD-7
14 zoning is for plan developments, and the city is encouraged --
15 it is encouraged to require the set-aside of open space. It
16 did that. It said you're going to be able to develop, if it's
17 a 614-acre part of the 1500-acre Master Plan, you can develop
18 84 percent of the PRMP and 16 percent is going to be the
19 250-acre set-aside for open space.

20 So that's -- that use of part of the property that's
21 zoned RPD-7 for open space --

22 **THE COURT:** I don't want to cut you off, but was the
23 golf course private or public? Do we know?

24 **MR. SCHWARTZ:** Private. And so would the property be
25 if it were open space, if it were park, if it were an amusement

1 park, if it were any use, it would be private, but that doesn't
2 mean that the city has to allow a change in the use if it's
3 segmented from the whole.

4 So the developer bought property --

5 **THE COURT:** That's the issue. And I don't want to cut
6 you off, sir, you're saying the golf course was private,
7 meaning no public access, it was part of the Queensridge, I
8 guess, community, is the best way to say that, and so the
9 public had no access for ingress or egress; is that correct?

10 Sir, you can answer that.

11 **MR. SCHWARTZ:** Oh, by permission --

12 **MR. MOLINA:** The golf course was privately owned, but
13 it was publicly --

14 **MR. SCHWARTZ:** It is a public golf course. It was
15 open to the public.

16 **THE COURT:** And I don't want to cut you off. I was
17 just wondering if it was like DragonRidge where it's a private
18 golf course.

19 So it was a public golf course, and I do understand it
20 was private ownership, I do get that.

21 But go ahead, that's all I wanted to know, whether it
22 was a --

23 **MR. SCHWARTZ:** So the developer, Your Honor, is
24 telling you, I bought a golf course, I paid 4 and a half
25 million dollars for a golf course, and it turned out, you know,

1 I made a bad business decision and the golf course isn't worth
2 anything, so now pay me, and not only that, pay me \$386 million
3 if you don't let me build residential. Although, of course,
4 the city did allow them to build residential.

5 So, you know, the developer can't have it both ways.
6 It can't, just like *Guggenheim*, you can't buy property and say,
7 oh, you've wiped out my value, you've taken away my economic
8 value. In *Guggenheim*, the developer said, or the owner said,
9 Well, I can't make much or any money with this rent control in
10 place.

11 It's the same facts, the same situation. The Court
12 said, Wait a minute, you bought this property and now you're
13 telling us we have to change the use; even though it's not in
14 the best interest of the community we have to change the use so
15 that you could make a profit? That was your business decision
16 to buy that property. The city didn't make you do it, and you
17 pay a price that reflects its value.

18 And as the Court said, the developer bought the
19 property knowing that it was PROS in the General Plan. That
20 doesn't allow residential development, so that can't be a
21 taking.

22 But getting back to my ripeness point. In the *Kelly*
23 case -- excuse me, in the *State* case, and *State* is at tab 12,
24 the Court said, In Nevada, we apply the Williamson County
25 ripeness doctrine. That doctrine is -- we don't know if

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0032

21664

1 regulation has wiped out property. If the developer applies
2 for some plan of development and the city says, No, well, we
3 might approve something else; we might approve a less dense
4 development; we might approve a different type of development,
5 the city has broad discretion. It can approve lots of things
6 that may not be the first project.

7 So before a takings claim can be ripe, the government
8 agency has to deny two separate applications for development of
9 the property and just that property, and then the claim might be
10 ripe. Then the developer can say, All right, it's now clear
11 what they're going to allow on the property and what they're
12 not. Now you can tell me whether this meets one of the takings
13 tests, which is a wipeout or a near wipeout.

14 And in the *Hoehne* case, Your Honor, which is at
15 tab 17, the Court said the claim is not ripe unless there's a
16 clear, complete and unambiguous, it's unambiguous that the
17 agency has drawn the line clearly and emphatically as to the
18 sole use which the property may be put. And that's exactly what
19 Judge Herndon found: No, I can't speculate about what the city
20 might allow on the property. They've only denied one set of
21 applications for this property. The developer hasn't filed
22 another set of applications.

23 The City sent a letter to the developer, which is at
24 tab 7, after the court -- the Supreme Court reversed the
25 Crockett order, and said, You don't need to file a major

1 modification application. Come in and file another application
2 for the 35-acre property, and invited the developer to do that.
3 The developer didn't want to develop the property, so it didn't
4 file another application, it didn't ripen its claim, and that
5 law is absolutely clear.

6 And the developer claims that the ripeness doctrine
7 does not apply to its categorical takings claims. The
8 developer concedes it applies to its *Penn Central* takings
9 claims. That's illogical and against all law. We've cited to
10 the Court the *Palazzolo* case, tab 15, and many other U.S.
11 Supreme Court cases, lower court cases in our brief that the
12 ripeness doctrine applies with full force to the categorical --
13 their wipeout claim, their categorical taking claim, and it has
14 to. You can't have a -- you can't have a ripeness doctrine
15 that applies if there's a near wipeout, but you don't have a
16 ripeness doctrine that applies to a wipeout. It just makes no
17 sense.

18 So the developer then argues, Well, I can't apply for
19 another project because it's futile. Your Honor, we have a
20 very odd situation here. This case is not only a first in
21 which a developer has argued they have a constitutional right
22 to build anything they want as long as it's a permitted use in
23 zoning or it's a taking, that's a pretty bizarre claim.

24 But here we have a situation where the city approved
25 435 luxury units for construction in the Badlands and the city

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0034

21666

1 said now you're ready to go, the Supreme Court has reversed the
2 Crockett order, and your applications are reinstated. The
3 Nevada Supreme Court said the applications, the approvals are
4 valid, that's what the language the Court used, and that's in
5 tab 2.

6 And the Court -- and after the Court reinstated those
7 approvals, the city sent a letter to the developer, tab 3,
8 that's Exhibit GGG, saying you're ready to go, you've got your
9 permits, you're ready to develop for the 17-acre property, 435
10 units. The developer claims, Oh, no, I don't have a permit.
11 It's the craziest thing, Your Honor. No, I don't have a permit,
12 you nullified it, and the city said, No, no, really, you've got
13 a permit, go build. That was more than a year ago that the city
14 said this. The developer has done nothing.

15 Here's what happened in the 133-acre case. In
16 133-acre case, after Judge Crockett's decision, the City
17 Council said, Among other things we -- your applications are
18 incomplete because you haven't filed a major modification
19 application. Judge Crockett ordered it, that's a final
20 decision. We would be in contempt of Judge Crockett's order if
21 we approved these applications without you filing this major
22 modification application.

23 The developer goes to -- takes that up on a PJR, and
24 Judge Sturman finds, yes, denies the PJR on the grounds that
25 the City Council could not approve those applications because

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0035

21667

1 there was no MMA filed, and that would be in violation of Judge
2 Crockett's order.

3 So the city -- so after the Supreme Court reversed
4 Judge Crockett's order, we are now back in Judge Sturman's
5 court in the 133-acre case. The city moved to remand the
6 133-acre applications to the City Council because they never,
7 never decided them on the merits. They found them incomplete
8 under Judge Crockett's order. The developer has strenuously
9 opposed a remand to give the City Council a chance to review
10 those 133-acre applications for the first time on the merits.

11 This is the most bizarre situation I've ever seen
12 where a developer has got one set of permits, the city is
13 telling him to go back to the City Council because they couldn't
14 review your applications on the merits, and the developer says,
15 No, no.

16 So what we've got here is a clear situation where a
17 developer bought property that the developer now claims had no
18 value, so it had no value when the developer bought it, and now
19 it wants this -- and it has segmented off that property and it
20 wants the Court to just focus on that property and say, Oh, the
21 city is taking my property, and I want \$54 million even though
22 the developer paid 4 and a half million for the entire 250-acre
23 Badlands. And the developer has got permits for, you know, a
24 huge number of units, and it declined to even pursue development
25 on the 133-acre property.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0036

21668

1 So it's just a bizarre situation here where there's no
2 taking, there's no injury, there's no damage to the developer
3 because the city, by declining to change the law, did not change
4 the value of that property, and you got a developer who instead
5 just wants money. That's what this case is about, Your Honor.
6 It's a shakedown. It's an attempt to use the courts to get the
7 developer what, you know, \$386 million for a 4 and a half
8 million dollars investment. I mean, it's just unconscionable.
9 So the case is ripe for the --

10 **THE COURT:** I don't look at businessmen as shakedown
11 artists. And I don't mind saying this, I thought about this,
12 too, it was known that there were problems with this golf
13 course, right? And I'm certain if the city really early on, if
14 they wanted, they could have bought out the property owner,
15 right? Or they could have bidden for this golf course like
16 everyone else when it went up for sale, right? If they were so
17 concerned about open spaces, they could have done that.
18 There's nothing to preclude the city from saying, Look, you
19 know what, we're concerned about this golf course and it's a
20 problem, it's happened before, let's go ahead and turn this
21 into public spaces, you know.

22 Only problem with that is this, though, they probably
23 would have to have public access, they probably couldn't
24 segment it all, but they could have done something, I would
25 think, and they didn't.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0037

21669

1 **MR. SCHWARTZ:** That's not the city's responsibility,
2 Your Honor. The city's responsibility is to make sure that the
3 community is well planned for the community. Its job -- the
4 city's job isn't to help property owners make profits.

5 **THE COURT:** Well, then who's making profits?

6 **MR. SCHWARTZ:** That's not -- I mean, there's no case
7 that says that, Your Honor. What the Court is talking about,
8 there's no authority --

9 **THE COURT:** Does the city get a free pass? They can't
10 force someone to do something with their bundle of rights that
11 results in no value to the property and not pay for it. That's
12 a big issue.

13 **MR. SCHWARTZ:** The property had -- Your Honor, the
14 property had whatever value --

15 **THE COURT:** I'll tell you what, this is a question I
16 have, and I want to make sure I understand it.

17 Judge Crockett's order wasn't published; is that
18 correct? Is it a published decision?

19 **MR. SCHWARTZ:** It was a trial court decision. I don't
20 know if it was published.

21 **THE COURT:** Okay. Is that --

22 **MR. LEAVITT:** Your Honor, Judge Crockett's decision
23 was a final decision of the lower court. It was appealed to
24 the Nevada Supreme Court, and then the Nevada Supreme Court
25 reversed Judge Crockett's decision.

1 **THE COURT:** Right. But they didn't publish it, right?

2 **MR. LEAVITT:** No. No.

3 **THE COURT:** Okay. I was just curious because I didn't
4 think so one hundred percent.

5 **MR. LEAVITT:** It was not, published, Your Honor.

6 **MR. SCHWARTZ:** It was an order of reversal, Your
7 Honor, and they reinstated the permits, and the city hasn't --

8 **THE COURT:** The question I have, though, and
9 understand I haven't looked at Judge Crockett's order in a long
10 time, I haven't, but what was his decision based upon?

11 **MR. SCHWARTZ:** Oh, it was a number of factors.

12 **THE COURT:** And I'm sorry, I'm --

13 **MR. SCHWARTZ:** The history of the PRMP --

14 **THE COURT:** Sir, I don't want to cut you off. I'm
15 sorry, that was a bad question.

16 What did Judge Crockett decide? That was my question.

17 **MR. SCHWARTZ:** Judge Crockett decided that to develop
18 housing in the Badlands, the owner needed to file a major
19 modification application under the U.D.C. The U.D.C. says
20 major modification application required for a PD development.
21 It does not say it's required for an RPD development. When it
22 went up to the Supreme Court, they made a very narrow decision.
23 Again, the developer has misrepresented that decision as
24 supporting their bizarre claims in this case. The Court made a
25 very narrow decision; it sided with the city, which argued

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0039

21671

1 major modification application by the plain language of our
2 U.D.C. not required for RPD. It is required for a PD. This is
3 not PD, it's RPD. That was the sole basis of the Supreme
4 Court's decision. They didn't say that zoning prevails over
5 general plans. They didn't say that there's no PROS
6 designation. They didn't say anything what the developer says,
7 except that the city was required to obtain an amendment to --
8 the city was properly required an application to amend the
9 General Plan, to amend the PROS designation before a
10 development of residential in the Badlands.

11 So the Court there was saying the opposite, the
12 opposite of what the plaintiff is arguing here, which is that
13 the Supreme Court somehow found that the PROS designation
14 either didn't exist or did not prevail over zoning. Again,
15 there's no -- there's consistency between the zoning and the
16 General Plan designation here, so there's no question about
17 which prevails. But if there were an inconsistency, the law is
18 absolutely clear in NRS 278.250 and in the *AmWest* case and the
19 *Nova Horizon* case that the PROS designation prevails, and that
20 was the case when the developer bought the property, as the
21 Court observed.

22 **THE COURT:** Here's my question, though, and I might be
23 wrong on this, but didn't Judge Crockett require plaintiff or
24 the property owner -- or require that there would have to be
25 some sort of amendment to the General Plan; is that what

1 happened?

2 **MR. SCHWARTZ:** Yes, that's right, and that is correct.
3 That was --

4 **THE COURT:** Isn't that what you're requiring in this
5 case right now?

6 **MR. SCHWARTZ:** Yes, yes, that is the requirement, but
7 his decision was based on a number of factors.

8 **THE COURT:** And I don't want to cut you off, sir, your
9 co-counsel wants to address that issue. But my question is
10 this, I'm looking at it, and Judge Crockett required an
11 amendment to the General Plan, and the Nevada Supreme Court
12 said, No, that's not required. Okay, I get it, but --

13 **MR. SCHWARTZ:** No, no, no, they said the opposite.

14 **THE COURT:** Okay. What did they say? What did I say?

15 **MR. SCHWARTZ:** They said an amendment to the General
16 Plan is required. They said an amendment -- the Supreme Court
17 said amendment to the General Plan is required. They said a
18 major modification application was not required in addition to
19 the site review application, the rezoning application, other
20 applications. They absolutely did, Your Honor.

21 In tab 2, you can see here the Court said in the
22 order --

23 **THE COURT:** Your co-counsel wants to say something for
24 the record. Is there anything that you want to add, sir? Go
25 ahead. I don't want cut you off.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0041

21673

1 **MR. MOLINA:** So just to clarify. Judge Crockett's
2 decision was based on an appeal that -- PJR that was filed by
3 the homeowners.

4 **THE COURT:** Right.

5 **MR. MOLINA:** The City's approval of the 17-acre
6 applications, and those applications included a General Plan
7 Amendment. They did not include a major modification. The
8 homeowners challenged the city's decision not to require major
9 modification, and so there was no general -- the failure to
10 file a general plan amendment was not at issue in that case as
11 it is in this case. However, the Nevada Supreme Court, in
12 reversing Judge Crockett's order, made clear that the developer
13 had to file all applications required by the city's development
14 code, which the General Plan Amendment is required here.

15 **MR. SCHWARTZ:** Your Honor, I'm in tab 2 on page 5 of
16 the Supreme Court's decision. The Supreme Court said: "The
17 governing ordinances require the city to make specific findings
18 to approve a general plan amendment," and they cite to the Code
19 as well as a rezoning application.

20 So the Nevada Supreme Court said the opposite of what
21 the developer claims it said. It's saying that property was
22 designated PROS to build residential in the property. The City
23 properly required an amendment to its General Plan.

24 So Your Honor, in my limited time left, I want to
25 address this segmentation doctrine if I could.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0042

21674

1 **THE COURT:** Go ahead.

2 **MR. SCHWARTZ:** What the developer is doing here is
3 called segmentation. It's a developer trick to get greater
4 density. The courts, including the *Kelly* court, the Nevada
5 Supreme Court in *Kelly* said no, you cannot segment the property
6 for purposes of takings analysis; that would allow you to
7 require compensation in almost every case. It's a circular
8 argument.

9 So in *Kelly*, which is tab 14, in *Kelly*, the developer
10 subdivided property into 39 lots and built on 32 and then said
11 to the agency, Now you have to let me build on the seven
12 remaining lots. And the Court said, No, you've got substantial
13 development, parts and the whole. You can't, you know, carve
14 off lots whether you develop them yourself or sell them to
15 another person. Now you can't claim, Hey, you're wiping me out
16 because now these are all discrete lots with assessor's parcels.

17 In this case, we've got four development sites that
18 the developer has identified that they put, in classic form,
19 they put each property under a different owner. There are some
20 entities that fall into the properties, but all four have
21 different owners. It's classic segmentation where the
22 developer, the developer stands in the shoes of the original
23 developer for use as a whole. They got to build. They got the
24 city's approval to agree to a comprehensive master planned area,
25 1500-some acres where there was an agreement as to what was

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0043

21675

1 going to go where, and, again, it's a machine. You take one
2 part out and the machine doesn't work.

3 So they come along later and they sell off the open
4 space after they've got -- after the developer has gotten the
5 benefit and it has sold all the units to people, to property
6 owners who live on that open space or benefit from that open
7 space, it enhances their value. The developer then sells off
8 the open space and someone comes in and says, Oh, now you have
9 to develop the open space or else I won't make enough money.

10 Again, the argument that you have to let me develop
11 this or I will lose money, that's false, Your Honor, that's not
12 the facts. The developer knew they couldn't build a
13 residential when they bought the property. By the city saying,
14 Well, we're not going to change the law doesn't change the
15 property's value one bit. It doesn't wipe it out, it doesn't
16 deprive them of anything that they bought. It leaves them in
17 the status quo.

18 Just like in the *Penn Central* case, the Court said,
19 Well, you've got -- you've got historic use of this property.
20 You're not entitled to make the most profit from this property.
21 You got what you've bought. In *Guggenheim*, you got what your
22 bought. You paid a price.

23 They paid \$18,000 an acre, that's a golf course price.
24 They claimed that if they could build housing, it's worth
25 1.5 million per acre. That's a residential development price.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0044

21676

1 They knew, and the price they paid reflected that the property
2 was limited in its use.

3 But, again, you can't -- you can't allow the developer
4 to segment off property. The United States Supreme Court in
5 the *Murr* case said, Well, there are three factors that tell us
6 what the parcel of whole is. And the developer, by the way,
7 has made no argument, they've cited no authority that they
8 didn't -- that allows them to segment off the property in this
9 fashion.

10 You look at the *Murr* case and the three factors. You
11 look at, among other things, what's the relationship between the
12 property that you're segmenting off and the rest of the
13 property? You know, is there some interdependence of the
14 property such that it should be treated as the parcel as a
15 whole? And that's exactly what we have here. We have a
16 property that was part of a master planned development community
17 and enhanced the value of the rest of the property as an
18 amenity, whether it's a golf course or open space it enhances
19 the value.

20 And so under the *Murr* -- and by the way, the master
21 plan was one owner, one master plan, all the different parts
22 were approved at the same time, and so, you know, that is the
23 classic parcel as a whole.

24 Now, if the PRMP is not the parcel as a whole and lets
25 say the Court disagrees and says the PRMP is not the parcel as

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0045

21677

1 a whole, the Badlands at a minimum is a parcel of the whole.
2 It was in one use for 23, 25 years, one owner. It was sold
3 from one owner to another owner as a golf course, as a
4 functioning golf course. It was in one use. That's got to be
5 the parcel as a whole.

6 So the developer can't then carve up the Badlands and
7 say, Okay, you've allowed me to build 435 residential units on
8 one part of the Badlands. Well, I'm going to sell off 35 acres
9 for that property, and then the new buyer comes in and says, If
10 you don't allow me to build housing on this property even
11 though I bought it when housing wasn't legal, if you don't
12 allow me to build housing on this property, then it's a taking
13 and you have to pay me \$54 million? Your Honor, this is
14 classic segmentation.

15 The city -- you know, if you carve up the property in
16 the way the developer did, you're always going to be liable for
17 a wipeout, because as you get smaller and smaller, the city
18 says, Well, you know, 435 units on 250 acres, that's a lot of
19 units, that's pretty dense. Now you want more? They don't have
20 to allow each part of the property to be developed. Again, they
21 don't have to allow any of it to be developed, because the
22 developer bought it when it was subject to these regulations,
23 and so the developer has the same value of property that it had
24 when it bought the property, the exact same value. So there
25 can't be a taking here.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0046

21678

1 **THE COURT:** I have another question. I don't know if
2 there's an answer to this or if this has even been pointed out
3 as an issue, but I do understand your segmentation argument.
4 My question is this, though -- and you brought up a very
5 important point from a time factor -- this golf course
6 functioned for about 22, 23 years. What is the impact of time
7 on a segmentation, I guess where you could call this some sort
8 of affirmative defense maybe? What impact does that have?

9 You know, because there's no question, and we see this
10 all the time in all the major metropolitan areas, and 23 years
11 is a long time. The character and nature of property could
12 change in 23 years. And there's no question maybe early on
13 there were benefits, but over time those benefits can dissipate,
14 right? And so does this segmentation argument, does that -- can
15 you make that same argument 20 years, 50 years, a hundred years
16 down the road?

17 **MR. SCHWARTZ:** Your Honor, that's a very good point.
18 I think it's -- I don't think it's relevant because the takings
19 test requires a wipeout and, as I've explained, the city did
20 not change the value of the property one bit.

21 But to answer your question about time, you know,
22 that's the city's discretion, that's where the city's discretion
23 comes into play, and this Court -- what the developer arguing
24 here --

25 **THE COURT:** It's a general question, I mean, I'm just

1 thinking --

2 **MR. SCHWARTZ:** I think it's a great question. Great
3 question.

4 What the developer is arguing here is, hey, the city
5 was unfair and they were biased against us. And so whether the
6 best use, the most efficient economic use, whether the best use
7 of that property for the community is open space or golf course
8 or housing or office or whatever the use, that is subject to the
9 city's broad discretion. They exercised that discretion. They
10 can exercise that discretion, but if they wipe out the value,
11 then they have to pay compensation, but short of that or a near
12 wipeout, they don't have to pay compensation. That's within
13 their police power.

14 So when the Court -- when the Court was faced with a
15 PJR in this case, the Court found that there was substantial
16 evidence to support the Government's decision. That's the
17 deferential test that the Court applied for PJR.

18 So when we're talking about fairness or efficiency or
19 what's the -- you know, what is the optimal use of this
20 property, that's a political decision, it's up to the city's
21 discretion.

22 For the taking claim, the only concern, the only issue
23 for this Court, the only legal issue is whether the city has
24 wiped out the value or nearly wiped out the value. And as I
25 indicated, the city did not change the value at all, because the

1 developer still has exactly what it paid for when it bought the
2 property. Whether the city should change that, that's a good
3 question, but that's what the Court said in the PJR, Well, you
4 know, it's not my -- I can read from your findings of fact and
5 conclusions of law on the PJR, Your Honor, tab 38. You said
6 many times, you know, it's not my decision, it's not my decision
7 to say what is the best use for this property. I'm going to
8 leave that up to the -- you know, leave that up to the political
9 system, to the Government, the city government. They have the
10 expertise. They have the power. They have -- they're the
11 entity that makes the decision. I don't make the decision. You
12 said in paragraph 19 on --

13 **THE COURT:** I agree with that, but that's a different
14 call to the question, right? It really and truly is. And
15 that's my point, because right now we can look at it from this
16 perspective. You could have a situation where hypothetically a
17 city council or a county commission didn't abuse their
18 discretion, but, notwithstanding that, their decision making
19 results in a taking of private property.

20 **MR. SCHWARTZ:** Well, that's true, I agree.

21 **THE COURT:** We can all agree that's true.

22 **MR. SCHWARTZ:** But your question was about the timing
23 of the parcel as a whole, and it says the parcel of a whole
24 applies over time, and it absolutely does, but I was addressing
25 the Court's concern that after --

1 **THE COURT:** Has that ever been addressed? Does anyone
2 know?

3 **MR. LEAVITT:** It has, Your Honor.

4 **THE COURT:** Okay. I want to hear about that then.

5 **MR. SCHWARTZ:** What was that, Your Honor? I'm sorry,
6 I missed that.

7 **THE COURT:** I asked a question whether or not that
8 issue regarding the segmentation argument and the impact of
9 time, has that ever been addressed by a court, and that was my
10 question, and counsel on behalf of plaintiffs said, yes, it has
11 been addressed.

12 **MR. SCHWARTZ:** Well, yes, it has, Your Honor, in the
13 *Sierra-Tahoe* case. In the *Sierra-Tahoe* case, the court said
14 not only can you not segment property geographically, you know,
15 horizontally or vertically, in *Penn Central* you couldn't sever
16 off the air space.

17 In the *Murr* case, you couldn't sever off one of the
18 assessor's parcels from the other assessor's parcels because
19 given the history of that property, they're really the parcel as
20 a whole, and the court doesn't look at assessor's parcel
21 boundaries exclusively to make that determination.

22 In the *Sierra-Tahoe* case, the Tahoe Regional Planning
23 Agency imposed a 33-month moratorium on any development of
24 single-family lots in the Basin while it studied permanent
25 controls for the Basin. And there the Court -- the owner sued

1 and said, Hey, you've wiped out my value because during that
2 33-month period I could have no use of the property, and the
3 Court said, No, we even apply the segmentation doctrine to time,
4 to the segmenting the property over time.

5 So let's look at the issue of time in this case.

6 The Badlands is still functioning as the open space
7 for that PRMP. People are still enjoying the views, the
8 buffer, the buffer, the protection from noise, the privacy,
9 seeing a natural area. They are still enjoying that. It's
10 still adding value to all of that community.

11 And so it's not a question of there is -- you know,
12 that that Badlands has become completely disconnected from the
13 community such that it might be in the city's judgment, in the
14 city's exercise of discretion, you know, it might be a good idea
15 to change the use. Well, again, it's still functioning as the
16 open space for the PRMP, so it's still -- so there are no facts
17 to indicate, well, now you can segment off this property from
18 the parcel as a whole given that the City Council has designated
19 the property PROS in the General Plan, saying we want this
20 property, at least for now; until we amend the General Plan, we
21 want this property to continue functioning as the open space for
22 this community, and so to sever it off would violate the
23 segmentation doctrine.

24 And, again, it's a rule of fairness. You know, how
25 can you plan -- how can you plan, a master planned community,

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0051

21683

1 how can you plan a master planned community if the developer can
2 buy a hundred acres, say I want to impose a master plan here,
3 and the city says, okay, because of the topography, because of
4 the surrounding development --

5 **THE COURT:** I'm sorry. I was just asking my law
6 clerk --

7 **MR. SCHWARTZ:** Because of the surrounding development
8 we're going to want the different uses to be in these different
9 locations, including the amenities, I don't know, school or
10 healthcare, police and fire, open space, transportation, roads.
11 So, yes, the public agency says, Okay, here's where we want all
12 the different parts to go. Well, if someone comes along and
13 severs off part of it, part of the whole so that the machine
14 might not work, they can't say, Well, unless you let me make a
15 different use of this property, then the property that was --
16 that was programmed for this project when the master plan was
17 approved, if you don't let me make a different use of this
18 property, then you have to compensate me.

19 Well, it would be very difficult to use master
20 planning in development, Your Honor, if that were the case,
21 because the developer would build out the project and then sell
22 off the parts of the project that it didn't want, and the new
23 developer would come in and claim, Oh, I get to do whatever I
24 want with this property because it no longer has the use that
25 the original developer said it was supposed to be used for.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0052

21684

1 Well, the city says, Wait a minute. This is part of the master
2 plan. This provides valuable benefits, enhancement of use and
3 value of all this other property. We're not going to allow you
4 to change that because that will disrupt our master plan.

5 And so that open space is as valuable and as useful
6 today as it was in 1990, 1989 when the city imposed the PROS
7 designation on the property.

8 So Your Honor, we extensively briefed this
9 segmentation issue, and we've cited many authorities that are
10 all consistent that segmentation is not permitted, otherwise
11 it's so easy to show a taking, a wipeout taking, and this is
12 just a classic segmentation.

13 Now, the developer is going to argue that the city
14 made them segment the property, and that's false. The city
15 didn't make them segment the property. The developer came to
16 the city with a development plan, and the city said, Well, we
17 want you to make sure that the lot lines are consistent. We
18 don't want development sites straddling lot lines. And the
19 city only required them to impose a rational set of assessor's
20 parcels underneath the four development sites.

21 The decision to develop the property with four
22 development sites was the developer's and the developer's own.
23 But more important to the segmentation point, the decision to
24 apply for development on each separate property and then sue,
25 sue the city for a taking on each separate property, that's the

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0053

21685

1 segmentation, that's where the segmentation really comes into
2 play, because they're claiming now you wiped out one of my
3 segments, even though the city let them build in the parcel as
4 a whole, the Badlands or the PRMP, you know, 84 percent
5 buildout, even though the city let them build, Okay, I've
6 carved out this one part, you have to let me build on every
7 part.

8 So that's how you get greater density. Let's say you
9 approach an acreage and you say, okay, if I do a master plan
10 with the city, maybe they'll allow me 500 units. So if I then
11 carve it up into four parts, then apply for development on the
12 first part, and let's say they give me 400 units on that part,
13 then if they say, No, we don't want you to develop the other
14 parts, we've already given you 400 units, you know, you carve
15 the property up into four parts, but it's the parcel as a whole.
16 We gave you 400 units, that's substantial development, you
17 really did well.

18 In this case the developer paid 4 and a half million
19 dollars for property that it now claims is worth 54, or that
20 only 35 acres of the 250 acres is worth 54 million. Wow!
21 That's a great deal for property.

22 **MR. LEAVITT:** I have an objection --

23 **THE COURT:** Sir, we have an objection. Wait. Sir, we
24 have an objection.

25 Yes, sir, Mr. Leavitt.

1 **MR. LEAVITT:** Yes. As far as the purchase price is
2 concerned, that's the subject of a motion *in limine* which
3 includes the actual evidence, so we would object on that basis;
4 and, secondly, Your Honor, I guarantee you we will not hear the
5 words from counsel "I am done." It will not happen. He's
6 repeated himself four times on this segmentation argument. He
7 went through it four times. He's supposed to go for an hour
8 today. We're not going to get any time to respond, Your Honor,
9 if he doesn't -- I guarantee you we're not going to hear the
10 words "I'm done," so we're going to have to at least put some
11 limitation on how far he can go, Your Honor.

12 **MR. SCHWARTZ:** I'm done, Your Honor.

13 | (Laughter)

14 THE COURT: Okay.

15 **MR. LEAVITT:** I stand corrected, Your Honor. I was
16 wrong, but he just said he's done.

17 **THE COURT:** Sir, thank you.

18 **MR. SCHWARTZ:** Your Honor, I was responding to the
19 Court's questions. I apologize for going over my hour.

20 **THE COURT:** That's okay, sir. And I just want to make
21 sure we have a clear record here. Nothing more, nothing less.

22 All right. You want to take five minutes?

23 **MR. LEAVITT:** I have to use the restroom, Your Honor.

24 **THE COURT:** That's what I was thinking, I think
25 everybody probably has to.

1 We'll take a restroom break and then come back and get
2 started.

3 **MR. LEAVITT:** Thank you, Your Honor.

4 (Recess taken at 11:02 a.m.)

5 (Proceedings resumed at 11:12 a.m.)

6 **THE COURT:** Okay. We can go back on the record.

7 And Mr. Leavitt, you have the floor, sir.

8 **MR. LEAVITT:** Thank you, Your Honor.

9 Your Honor, I'm going to just very generally, I'm
10 going to make a couple statements, then I'm going to respond to
11 a couple of your questions, and then I'm going to go into my
12 presentation.

13 To follow the city's argument here, there would be two
14 things that are necessary: Number one, you have to reverse
15 your property interest order of October 12, 2021 -- or 2020,
16 that's the city's first request, is to reverse your property
17 interest order.

18 Then their second request is to apply the *Penn Central*
19 standard to all three of the landowners' claims. The reason I
20 say that is because the *Penn Central* standard does say that you
21 weigh three various factors, and you apply the segmentation.
22 The Nevada Supreme Court was unequivocally clear in *Sisolak*,
23 *Sue* and *State versus Hoehne* that *Penn Central* analysis shall
24 not be applied to a *per se* categorical taking, a *per se*
25 regulatory statement, and a non-regulatory *de facto* taking

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0056

21688

1 claim which are the landowners' three claims, that you're not
2 to apply a *Penn Central* analysis, and I'll give you one
3 example.

4 For Mr. Sisolak, he had a piece of property and he had
5 air space. The Nevada Supreme Court held that the County of
6 Clark height restriction ordinance number 1221 reserved 66 feet
7 and above for use by the public, and that was a taking. If we
8 apply *Penn Central* to those facts and segmentation to those
9 facts, Mr. Sisolak loses, because his property was segmented.
10 He still kept below 66 feet, and he still can build on his land.
11 So that's why the Nevada Supreme Court said, in the three claims
12 that we're moving for summary judgment on, you shall not apply
13 *Penn Central*, and you shall not apply segmentation. You look at
14 the property as an individual property, and I'll address that a
15 little bit more.

16 So those are our three claims, Your Honor. We're not
17 talking about *Penn Central*, and the reason we're not talking
18 about any *Penn Central* analysis is because our three claims are
19 very limited. And the Court has said we will not apply *Penn*
20 *Central* under these circumstances, because they say a *per se*
21 categorical taking is a categorical -- is a taking in and of
22 itself. They say a *per se* regulatory taking is a taking in and
23 of itself. They say that a non-regulatory *de facto* taking is a
24 taking where the Government substantially interferes with the
25 use and enjoyment of property. There's no defenses. You don't

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0057

21689

1 get to come in and say, Well, there's segmentation. You don't
2 get to come in and say, Well, there's no ripeness. You don't
3 get to come in and say, Well, there's no *Penn Central* factors.
4 So the Court found that when we meet that threshold, if this
5 Court says, Listen, I've got this standard and you've met the
6 threshold, then that's a taking. So that's the first thing.

7 Then the second thing, Your Honor, is in *Sisolak*, this
8 is the question I thought you had, was if the Government
9 exercises its discretion and that results in a taking, is that
10 a taking?

11 So you have this whole petition for judicial review
12 and taking law, and the Government is over here saying, We have
13 discretion to do whatever we want, and even if it results in a
14 taking, there's no compensation. We have discretion under PJR
15 to do whatever we want to a property, therefore, you have no
16 property rights, and if you have no property rights, there's not
17 a taking.

18 Here's what the Court said, they said the
19 Government -- this is almost a verbatim quote: The Government
20 has the right to apply valid zoning ordinances that don't rise
21 to a taking. See, they leave that second part off. So the
22 Government can exercise its discretion as long as it doesn't
23 amount to a taking. But just because the Government doesn't
24 have discretion doesn't mean there's no property rights.

25 Your Honor, now I want to talk about -- I want to

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0058

21690

1 address two of your very poignant questions today. This is
2 actually a little bit out of order of what I was going to do
3 today. The question you asked is, is there a restrictive
4 covenant or a condition that the property remain open space?
5 From the very beginning, counsel said absolutely, and here's
6 their argument, here's their argument. They say there was --
7 and I'll give you this, Your Honor. They say there was a
8 Peccole Ranch Master Plan that was adopted, and that Peccole
9 Ranch Master Plan is a planned development, a PD. And then
10 they say as part of that PD, the landowners' property must
11 remain open space. Must remain open space. That's their
12 argument, Your Honor.

13 I'm going to tell you -- and you hit it right on the
14 head. You said, well, that's your argument, where's the
15 evidence? Okay. Now I'm going to show you the evidence that is
16 the exact opposite of what counsel just told you.

17 And I want to start here, Your Honor. May I approach,
18 Your Honor, with -- I have an outline here on the property
19 rights issue.

20 **THE COURT:** Yeah, and make sure, do you have an extra
21 copy for the --

22 **MR. LEAVITT:** Absolutely, Your Honor, I have a section
23 that's called Rejection of the Peccole Ranch Concept Plan,
24 okay, and this is the facts and the law.

25 But let me just state one thing really quick --

1 **MR. SCHWARTZ:** Your Honor, if I could interrupt. I
2 don't have copies of these exhibits. Is there some way I could
3 get copies?

4 **MR. LEAVITT:** I have one for counsel right here and,
5 yes, we can email him. We will email that.

6 **MR. SCHWARTZ:** Could you email it now?

7 **MR. LEAVITT:** Yes, we will email it now.

8 **MR. SCHWARTZ:** Thank you.

9 **MR. LEAVITT:** But the argument that's being made, Your
10 Honor, on this condition issue is what they say is they say
11 there's this condition which is pending. The law is very clear
12 that if the Government is going to claim there's a condition on
13 a piece of property, it has to be abundantly clear in the
14 ordinances, you can't imply a condition, you can't spend seven
15 hours trying to tie documents together to say now there's a
16 condition that the property remain open space.

17 And here's all the Government had to do, Your Honor.
18 For seven hours through this hearing all they had to do was
19 walk in with a big board where the condition was imposed on the
20 property that it remain open space. You want to know why they
21 didn't do that? Because it doesn't exist.

22 And so here's where I want to go -- do you mind if I
23 hand this to you for the Court?

24 So, Your Honor, here's where I want to go through the
25 city's Peccole Ranch Master Plan argument, and I want to go

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0060

21692

1 through and explain that the exact opposite is true.

2 So if you go to the -- on the bottom right-hand
3 corner, it's number 38, this is a statement made by 30-year
4 veteran attorney Brad Jerbic about this exact Peccole Ranch
5 Concept Plan argument that they're making to you. Your Honor,
6 this is the city's agent. He said that the Peccole Ranch Phase
7 II Plan was a very, very, very general plan. I've read every
8 bit of it. If you look at the original plan and what's out
9 there today, it's different. Then he went on to say, the Master
10 Plan that we talk about, this Peccole Phase II Plan is not a
11 278(a) agreement, it never was, never has been, not a word of
12 that language was in it.

13 Mr. Jerbic said that the Peccole Ranch Master Plan
14 that counsel argued to you extensively here in this case was
15 entirely abandoned. And you remember, Judge, that's when I
16 jumped up and I said this is very disturbing, because counsel
17 knows that this plan has been abandoned.

18 And then you go to the next page, Your Honor, this is
19 the Nevada Supreme Court opinion in the 17-acre case. The
20 Nevada Supreme Court said right there in yellow: "The parcel
21 does not carry the planned development district zoning
22 designation."

23 That's what they argued, that it was a planned
24 development and you had to stick to that planned development.
25 Instead, it's interesting what the Court said: The parcel

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0061

21693

1 carries a zoning designation of residential plan development
2 district. Residential, meaning it has a residential use.

3 So this whole argument about planned development being
4 on the property, this whole argument about PRMP, Peccole Ranch
5 Master Plan being on the property is entirely false.

6 We go to the next page, Your Honor, page 40, this
7 proves it even further. This page 40 says that Peccole -- this
8 is the original owner. You remember they said the landowner
9 stepped in the shoes of the developer. Peccole and the City of
10 Las Vegas worked together to assure that there was no
11 restriction on the use of the 250-acre property, and, Your
12 Honor, they took express action to make sure there was never an
13 open space on the property. Remember, I stated from the
14 beginning the intent was always to develop the property
15 residentially.

16 In 1990 --

17 **THE COURT:** That's why I asked the simple question
18 regarding -- and I don't know what the City of Henderson did
19 when it came to the Legacy Golf Course, but they clearly had a
20 50-year -- I think it was 50-year restrictive covenant on the
21 property.

22 **MR. LEAVITT:** Yes. And, Your Honor, not only am I
23 going to show you there's no restrictive covenant on the
24 property, I'm going to show you that everybody in the area
25 signed disclosures recognizing that the 250-acre property was

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0062

21694

1 not a golf course, not open space, and here it is right here:
2 Available for future development. The exact opposite of what
3 counsel has represented to you.

4 But let me go back to 1990, why everybody got these
5 disclosures. The next tab is page number 41. This is what's
6 been referred to as Z-1790, and it's Exhibit No. 154. The city
7 and Peccole got together. And it's a little bit difficult to
8 see in this, it says, "Gentlemen" -- this is the corrective
9 letter. This is a letter of what happened, and if it's blown
10 up on the right-hand side, and it's --

11 **MR. SCHWARTZ:** Your Honor, I haven't seen any of these
12 exhibits. I don't have any of these exhibits. I'm at a real
13 disadvantage out here.

14 **MR. LEAVITT:** It's Exhibit No. 154.

15 **THE COURT:** All right. Has that been emailed to him.
16 Ma'am?

17 **MS. WOLFSON:** We're having trouble --

18 **MR. LEAVITT:** Can we have Sandy email it to him from
19 our office?

20 **MS. WOLFSON:** The city used this exhibit.

21 **MR. LEAVITT:** The city used this exhibit as well, Your
22 Honor. It's in their documents.

23 **THE COURT:** And, ma'am, for the record, which exhibit
24 of the city was that, do you know?

25 **MR. LEAVITT:** 154.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0063

21695

1 **THE COURT:** Sir, it's 154 of the city.

2 **MR. LEAVITT:** It's 154 of the landowners, and it's
3 Z-1790. And, Your Honor, this has been discussed extensively.
4 They know what exhibit this is.

5 **THE COURT:** But I just want to make sure he knows what
6 you're looking at, that's all.

7 **MR. LEAVITT:** Okay, good.
8 So we're looking at Z-1790.

9 **THE COURT:** Okay.

10 **MR. LEAVITT:** Okay. So at Z-1790, on page 41, it says
11 the City Council held a meeting on April 4, 1990. They
12 approved the request for reclassification of property, and then
13 they describe the location of the property, which is the
14 landowners' property in this case. And here's what it went
15 from, Your Honor, we got to follow this: Non-urban, and then
16 resolutions of intent, and then, Your Honor, right before the
17 highlighted "2" it says "C-V." That's critical. It went from
18 all these designations and C-V. You want to know why that's
19 critical? Because C-V is the only zoning that allows open
20 space or golf course. And what did the zoning go to? It went
21 to R-3, RPD-7 and C-1. The City of Las Vegas and Peccole
22 worked to take off any potential open space, any potential golf
23 course use. And then, Your Honor, look what they put as the
24 proposed use: Single-family dwellings, multi-family dwellings,
25 commercial, office, and resort casino. This is in 1990. This

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0064

21696

1 is the City of Las Vegas and Mr. Peccole, in 1990, saying we're
2 not going to put any C-V zoning on this property, we're not
3 going to put any golf course use --

4 **THE COURT:** And for the record, the C-V zoning, that
5 is the open spaces designation?

6 **MR. LEAVITT:** That's the only zoning that allows open
7 space or golf course. It was expressly and specifically
8 removed from the property in 1990.

9 Then, importantly, Your Honor, we turn to the next
10 page, page number 42, and we have the conditions that are
11 listed. Remember counsel said one of the conditions is the
12 property has to remain open space and golf course. You know
13 what's not listed as a condition? Open space or golf course.

14 So we have an action by the City of Las Vegas and the
15 landowners working together in 1990 to make positively sure that
16 this 250-acre property remains available for residential use.

17 If Mr. Peccole and the City of Las Vegas wanted this
18 property to remain open space, they could have very easily put
19 on a condition "open space." They could have very easily put
20 on there "golf course." They could have very easily kept on
21 the C-V zoning, and the city could have very easily said you
22 have to leave this property as open space or golf course. They
23 did the exact opposite, and they put the zoning on the property
24 which allow-- and, Your Honor, they even say what the proposed
25 uses are: Single-family, multi-family, commercial, office, and

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0065

21697

1 resort casino. They put it right there. Yet counsel spent
2 seven hours, seven hours trying to convince the Court that this
3 didn't happen. Argument of counsel, as you well know, Your
4 Honor, as we all know is not evidence. This is evidence
5 (indicating) of what actually occurred on the property.

6 Now, Your Honor, let's move to the next page, which is
7 our Exhibit No. 130. This is on page 43. This is an
8 inner-office memo at the City of Las Vegas that we had to
9 obtain through public records, and the City of Las Vegas made
10 their own search to see if there's a golf course open space
11 condition, and they said, "There are no conditions mentioned
12 that pertain to the maintenance of the open space/golf course
13 area." The City did it own research and found that there was
14 no condition, found that there was no restriction that the
15 property remain open space or a golf course. That's why Brad
16 Jerbic said -- Your Honor, this is contemporaneous with the
17 facts of this case, contemporaneous with the facts of this
18 case, Mr. Jerbic stated there was never a Peccole Ranch Master
19 Plan.

20 Now, Your Honor, I want to turn to the next page 44.
21 This is Exhibit No. 133 of our exhibits. We did an analysis,
22 Exhibit No. 133. Here's the large board of this analysis that
23 we did, and this is all supported by affidavit. This analysis
24 shows an overlay on this area here. You can see -- maybe I'll
25 orient ourselves here, Your Honor. This is Charleston

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0066

21698

1 Boulevard (indicating), this is Haulapai (indicating), this is
2 and Alta (indicating), and the landowners' property is between
3 that area, and you can see the golf course kind of laid out
4 there. Okay. This shows an overlay of what the Peccole Ranch
5 Concept Plan was going to look like, and then it shows what was
6 actually built. There are 1,014 units built, contrary to that
7 original Peccole Ranch Concept Plan.

8 Now, let's think about that for just a minute, Judge.
9 The City of Las Vegas said the Peccole Ranch Master Plan is the
10 governing document here; the Peccole Ranch Master Plan is what
11 everybody had to comply with; the Peccole Ranch Concept Plan was
12 a PD plan that was binding, and that Peccole Ranch Master Plan
13 bound this property to be open space and golf course. Number
14 one, you just saw that the exact opposite happened in Z-1790;
15 and number two, we see that the Peccole Ranch Master Plan was
16 never followed, and the reason it was never followed, Judge, is
17 because there was litigation between Triple 5 and Peccole who
18 started the original Peccole Ranch Master Plan, and because of
19 that litigation, they abandoned the plan all together. That's
20 why Brad Jerbic said that plan has never been followed.

21 Now, Judge the next 1, 2, 3, 4 pages of the
22 landowners' book of exhibits here, page 45, 46, 47 and 48,
23 those are all the disclosures in the area. I'm not going to go
24 through them, Judge. But you asked, Hey, what did people think
25 was going to happen in this area? Let's just go through them.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0067

21699

1 Seller makes no representation about zoning or future
2 development. Look at number 4 there: No golf course or
3 membership privileges. Look at number 7: Views or location
4 advantages. They're not there.

5 Now, let me turn to page 46, because counsel said
6 something this morning that was a little disturbing to me. He
7 said that the golf course was an amenity for the Queensridge
8 community. Again, the exact opposite is the truth. If you
9 look at page 46 here, these are the CC&Rs for Queensridge
10 community. The existing golf course commonly known as Badlands
11 is not a part of the Queensridge community or inexorable
12 property. The existing 27 golf course, commonly known as
13 "Badlands" is not a part of the property.

14 So you had a good question: Well, in Legacy, it was
15 part of the property, the golf course. It had a 15-year
16 restriction on it. Here --

17 **THE COURT:** I thought it was 50. Was it 15?

18 **MR. LEAVITT:** 50, sorry.

19 **THE COURT:** Yeah, I thought it was 50.

20 **MR. LEAVITT:** Here, they're expressly stating the
21 exact opposite. It's not a part of the Queensridge community,
22 it's not an amenity. We're disclosing to you that this
23 property may be developed. This is written right in the
24 Queensridge CC&Rs.

25 And, Judge, who wrote the Queensridge CC&Rs?

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0068

21700

1 **THE COURT:** Peccole.

2 **MR. LEAVITT:** That's right.

3 **THE COURT:** I mean, that's --

4 **MR. LEAVITT:** I don't mean to ask the Court questions.

5 **THE COURT:** I know it's rhetorical. I get it, I do.

6 **MR. LEAVITT:** And why did he say it's not part of it?

7 Because in 1990, he met with the city and they rezoned
8 everything for that area and took out the C-V zoning
9 specifically to make sure that this property here (indicating)
10 was available for residential zoning. That's why he did it.

11 And, Judge, you go to the next page, we have more
12 disclosures. I'll just refer to the one on the right. This is
13 a disclosure for the properties in the area. Look at the
14 current zoning on the contiguous parcels is, look at what the
15 south is, and to the south, RPD-7 residential up to seven units
16 per acre. Right there.

17 If this property here (indicating), the landowners'
18 property was reserved as open space, why was everybody in this
19 area being disclosed that the property to the south is RPD-7?
20 Zoning classifications describe the land uses. You go on with
21 the views, and they say, Listen, we're not giving you any rights
22 to views here because it's available for development.

23 Then we go to the next page, page 48, this is the
24 disclosures, a map put right inside of the city's -- or, I'm
25 sorry, inside of the Queensridge CC&Rs. You can see where it's

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0069

21701

1 highlighted as "not parked." I want to reference the Court to
2 this little triangle at the top here (indicating). Do you see
3 that little triangle at the top right below Alta Drive?

4 **THE COURT:** Yes.

5 **MR. LEAVITT:** That's the location of the 35-acre
6 property right here (indicating).

7 Going out to the key at the bottom there it says,
8 "subject to development rights." That doesn't sound like the
9 Queensridge community was told this was going to be open space
10 or golf course.

11 And then here is the kicker --

12 **THE COURT:** I mean, I don't mind saying this, I wasn't
13 a land and planning use lawyer, but it just seems to me that if
14 that were the case, there would be documents and evidence to
15 support that.

16 **MR. LEAVITT:** And there are none. Instead, Judge, the
17 documents and evidence that we submitted to you state the exact
18 opposite.

19 I want to show you this document right here, Judge.

20 **MR. SCHWARTZ:** Your Honor, I hate to interrupt, but I
21 have got one exhibit by email. I don't have -- I'm not getting
22 these exhibits. I can't follow along.

23 **MR. LEAVITT:** This is the Queensridge CC&Rs that
24 counsel has in his possession, Your Honor. Queensridge CC&Rs
25 are attached as an exhibit, and I believe it's Exhibit No. 33;

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0070

21702

1 is that correct?

2 **MR. SCHWARTZ:** Your Honor, these exhibits are in about
3 20 different volumes. They don't say -- the exhibit doesn't
4 tell me which volume it's in. By the time I find these
5 exhibits, counsel has moved on to another exhibit. Can't they
6 send me an email copy of whatever he's showing to the Court?

7 **MS. WATERS:** Sir, it's taking a minute.

8 **MR. LEAVITT:** It's large, so it's taking a minute,
9 which, Your Honor, this actually might be a good time for me to
10 put on the record that when Mr. Molina was up here and I asked
11 him for his email or his presentation, we never got it, it was
12 never sent to us. So I haven't said that --

13 **MR. MOLINA:** I handed it to you.

14 **MR. LEAVITT:** No, that's not true. It was -- we asked
15 for the presentation that night by email. They said it was too
16 large and they couldn't send it to us, and they didn't give it
17 to us the next day. He handed to me the old maps. He didn't
18 hand to me their presentation.

19 **MR. MOLINA:** What?

20 **MR. LEAVITT:** So here's what we're doing. It's going
21 to them. Their present counsel who is sitting here in the
22 courtroom has a physical copy of the document, and it's being
23 sent to them, Your Honor.

24 What's that?

25 **MS. WATERS:** And it's on the screen.

1 **MR. LEAVITT:** And it's on the screen, and we have on
2 the screen the exhibit so he's able to see them.

3 **THE COURT:** Sir, can you see the screen? For example,
4 there's a document up, it's Bates stamped 02685, Exhibit C. It
5 appears to me to be a map, final map for the Peccole West.
6 That's what's at the top. Underneath it in parentheses is
7 "Queensridge."

8 **MR. SCHWARTZ:** Your Honor, I can only see the Court,
9 the bench. I don't see anything on my screen other than that,
10 and an inset box with me.

11 **MS. WATERS:** It's still sending.

12 **MR. LEAVITT:** It's sending, Your Honor. They have it
13 present, counsel has it.

14 **THE COURT:** You can see it now, sir. You should be
15 able to see it now. Can you see it?

16 **MR. SCHWARTZ:** No, I can't, Your Honor. I just see
17 the bench, I just see the judge and the man standing besides
18 you, and now I see Mr. Leavitt standing behind the podium, but
19 there's nothing on my screen other than that.

20 **MS. WATERS:** I'm sending it. It's saying "sending."
21 I don't know how to rush that along. I mean, he has a copy of
22 it.

23 **THE COURT:** Sir, do you have all the documents that
24 are Bates stamped?

25 **MR. SCHWARTZ:** Your Honor, is that a question for me,

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0072

21704

1 Andrew Schwartz?

2 **THE COURT:** Yes.

3 **MR. SCHWARTZ:** I don't have any documents other than
4 the, I don't know, 20-or so volume of exhibits. And, again,
5 the exhibits are not -- they don't tell you which volume
6 they're in, so it's -- searching for them takes considerable
7 amount of time.

8 **THE COURT:** Do you know which volume this is in?

9 **MR. LEAVITT:** Yes, Your Honor. We actually have --
10 let me just say it this way. We've produced all the volumes.
11 On the front of the volume it has a list of all the exhibits
12 plus the page number for every single exhibit. They're all in
13 page number order.

14 **THE COURT:** This would be 2685, for the record.

15 **MR. LEAVITT:** Just for the Court's reference, these
16 aren't unknown documents. These are documents which have been
17 heavily litigated in both of these cases. Counsel is extremely
18 aware of the Queensridge CC&Rs.

19 **MR. SCHWARTZ:** Your Honor, let's proceed. I'll just
20 do the best I can. If Mr. Leavitt could give me the exhibit
21 number and the volume it's in, that would allow me maybe to
22 keep up. Thank you.

23 **MR. LEAVITT:** So for the record, this is the
24 Queensridge CC&Rs, and I'll just go to the last page of the
25 Queensridge CC&Rs, Your Honor, and this is where it says a map

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0073

21705

1 with future development right over the landowners 35-acre
2 property.

3 And also, I'll pause right here for just a moment.
4 And this is all in the record. The adjoining property owners
5 actually sued the landowners and said you shouldn't be able to
6 build, because we think the property should remain open space;
7 we think the property should remain as a golf course - the
8 exact issue that's before you today that the city is arguing.
9 The city was a party to that lawsuit that was later dismissed.
10 You know what the outcome of that argument was, Judge? There's
11 a decision by the district court in that case, and it's
12 extensive findings of facts and conclusions of law. Here's
13 what the Court said. The property is RPD-7 zoned. The
14 landowners have the right to close the golf course, and here's
15 what the quote was: The landowners have the, quote, right to
16 develop, end quote.

17 This whole very issue of this is open space, that this
18 is the Peccole Ranch Concept Plan, and that this has to remain
19 a golf course was actually fully and fairly adjudicated, and
20 the lawsuit against the property -- or lawsuit brought by the
21 adjoining property owners, and the district court held they had
22 the right to develop. That was appealed to the Nevada Supreme
23 Court, and the Nevada Supreme Court affirmed it not once but
24 three times, because the adjoining property owners kept filing
25 petitions for rehearing.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0074

21706

1 So this whole underlying argument that the city is
2 making, their whole argument rests on the property was supposed
3 to be open space or golf course forever.

4 **THE COURT:** And for the record, the city was part of
5 that lawsuit?

6 **MR. LEAVITT:** The city was part of that lawsuit to
7 very begin with, and they asked to be dismissed from it. So
8 they had full and fair notice of that issue, and they had full
9 and fair opportunity to participate, and the city did not. You
10 want to know why, Judge? This is what's been such disturbing
11 in this case, is while the landowners were filing their
12 applications, the city was on our side. The city agreed with
13 us this entire time. The city said to the adjoining owners,
14 this property is not a golf course property. The city said to
15 the adjoining owners, this property is not open space.

16 Brad Jerbic, we just read his statement, that's a
17 homeowners' association meeting where Brad Jerbic appeared, and
18 Brad Jerbic says to these homeowners, he says: That was a very
19 general plan. I've read every bit of it. If you look at the
20 plan, what's out there today is different. He said, "We never
21 followed the Peccole plan."

22 My point in bringing that up is we have always been on
23 the same page with the city. When this litigation started,
24 their private counsel took the exact opposite position and
25 started arguing that the Peccole Ranch Concept Plan is now

1 binding on everybody, when they said the exact opposite for
2 years.

3 Remember, Your Honor, when it -- I'll go through this.
4 When we submitted, when the landowners submitted their
5 applications to develop the 35-acre property, you remember what
6 the Planning Department said? They have zoning, they can go
7 forward and build. Remember when the landowner submitted their
8 Master Development Agreement Application, what did the City
9 Planning Department say? They have the zoning, they should be
10 able to go ahead and build.

11 Never once during the application process did the city
12 come forward and say, Hey, you have to leave this property open
13 space; Hey, this property is golf course.

14 This whole open space/golf course argument is an
15 invented argument for litigation, which is based only on
16 argument by counsel, and is the exact opposite of the city's
17 position for the past five years, and it's the exact opposite
18 of the documentary evidence.

19 If we turn to -- this is ordinance number 5353,
20 page 49 of our booklet, Exhibit No. 43, a well-known document
21 in this case. This further confirms what I'm telling you, Your
22 Honor. Again, evidence. Ordinance number 5353, it's
23 undisputed that this occurred in 2001, and the Court can see
24 the highlighted part there on 5353. It says, "The document
25 shows for each parcel the zoning designation on the current

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0076

21708

1 zoning atlas and the new zoning designation for the property."
2 What happened here with ordinance number 5353, as the city
3 explains, is it wanted to conform all of the zoning in the
4 city, and it's undisputed in this case that in 2001 the city
5 reconfirmed the RPD-7 zoning. And what's critical is what the
6 city says in section 4 on the next page: "All ordinances or
7 parts of ordinances or sections, subsections, phrases,
8 sentences, clauses, paragraphs contained in the City Municipal
9 Code, 1983 Edition in conflict herewith are hereby repealed."

10 So the city says unequivocally --

11 **THE COURT:** I mean, that language is typically -- and
12 I've dealt with ordinances before, and that's general language
13 that's in the -- I mean to the city's benefit, they always put
14 that language in there just to make sure it's clear, clarity as
15 you proceed forwards.

16 **MR. LEAVITT:** Absolutely. So what was the clarity
17 they wanted to know? Zoning applied, that the RPD -- that the
18 property was RPD-7 zoned.

19 And so they said we don't care what may or could or
20 should have happened in the past, this property is now RPD-7
21 zoned property, which is consistent, Your Honor, with what
22 happened on this property, which was to assure that there are
23 only three zoning designations and to assure that the C-V
24 designation was taken off.

25 Now, I want to turn to page 51.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0077

21709

1 **THE COURT:** What's the impact of, I mean, from a legal
2 perspective, of the -- and, I mean, I don't know the exact term
3 for it, but I'll call it the special ordinance that was
4 approved by the City Council within the last few years
5 specifically related to this property. What impact does that
6 have legally?

7 **MR. LEAVITT:** Which ordinance are you referring to,
8 Your Honor?

9 **THE COURT:** I'm talking about the one that you
10 indicated that was prepared -- I mean, I'm sorry, approved by
11 the City Council specifically addressing the golf course. You
12 know what I'm talking -- you said, Judge this shouldn't happen,
13 this is bargaining this defendant.

14 **MR. LEAVITT:** Oh, yes, okay, so that's ordinance
15 number 2018-24, okay. This is after the city denied the
16 35-acre application, after the city denied the magic realm
17 agreement after the city denied the fence, and after the city
18 denied access, the city then took action specific towards the
19 landowners' property. Here's the action they took. They said,
20 number one, this bill targets only your property, 2018-24, they
21 said that. There's no evidence to contradict that. Counsel
22 has it, that it targeted only the landowners. Number two, it
23 imposes requirements making it impossible to develop. So the
24 city recognized the property was able to be developed because
25 then they imposed impossible-to-meet requirements to develop;

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0078

21710

1 and then, thirdly, here's the quicker. They said you have to
2 allow the public to access the property. That was the
3 operative language. They put --

4 **THE COURT:** By itself that takes it out of *Penn*
5 *Central*.

6 **MR. LEAVITT:** Of course. And that's exactly what
7 happened in the *Sisolak* case. That's exactly what happened in
8 the *Sierra Point versus Hassid* case, and in both of those
9 cases --

10 **THE COURT:** Do they -- do they --I mean --

11 **MR. MOLINA:** Absolutely not, Your Honor. In the
12 Declaration of Peter Lowenstein that we went through last week,
13 if you go through -- there's a section that specifically talks
14 about this ordinance. It was not specific to their property,
15 it was never applied to them, and this is absolutely false, and
16 I just need to make an objection for the record. That's
17 completely misstating what the evidence shows.

18 **THE COURT:** Now, when you say that it was never
19 applied to them, wasn't the ordinance approved, though?

20 **MR. MOLINA:** The ordinance was approved, but it didn't
21 automatically apply to them. The city had to either ask them
22 to submit an open space plan or it would apply to a future golf
23 course that closed. In this case the golf course was already
24 closed at the time the ordinance was passed.

25 **THE COURT:** But it didn't -- there were no other golf

1 courses at issue, right?

2 **MR. MOLINA:** I mean, there are golf courses throughout
3 the county?

4 **THE COURT:** No, no, no, there were no other golf
5 course at issue, i.e., there were none that were failing, there
6 were no other golf courses that were having --

7 **MR. MOLINA:** Well, there's Silverstone, that's another
8 golf course in Las Vegas that failed.

9 **THE COURT:** And where is that ordinance again?

10 **MR. LEAVITT:** I will pull it up, Your Honor. It's
11 Exhibit 108, Your Honor.

12 And as we're pulling this up, we can read the
13 ordinance. We don't need Mr. Lowenstein to tell us what doesn't
14 apply. It's an exhibit in our exhibit book, Your Honor.

15 **THE COURT:** Yes.

16 **MR. LEAVITT:** Landowners' exhibit. We could turn to
17 Exhibit No. 108. That's -- it should have a red cover, and I
18 have another book, Your Honor.

19 **THE COURT:** No, I have it here. Yes, I have it.

20 **MR. LEAVITT:** Okay. Exhibit No. 108. And once you
21 get there, Your Honor, I can reference you.

22 **THE COURT:** I have it.

23 **MR. LEAVITT:** Okay. Now, the front page there at
24 003202, it says, A, General, so this is the ordinance that was
25 passed by the City of Las Vegas. It says: "Any proposal by or

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0080

21712

1 on behalf of a property owner to re-purpose a golf course or
2 open space, whether or not currently in use as such," in other
3 words it applies no matter what you've done so far, "is subject
4 to the public engagement requirements in subsection (c) and (d)
5 as well as the requirements pertaining to the development
6 review and approval process, development standards and the
7 Closure Maintenance Plan set forth in E(2)(G) exclusive." So
8 it expressly states if you're going to change your property
9 from an open space to a golf course, you are subject to (g),
10 that's the operative one. And just so we're clear here, the
11 only evidence we have is that this applies only to the
12 landowners.

13 So let's flip over to section (g), which is 003211,
14 bottom right-hand corner. See at the top there it says (g)
15 Closure Maintenance Plan?

16 **THE COURT:** Yes.

17 **MR. LEAVITT:** Then we turn to the next page, and one
18 of the requirements under that Closure Maintenance Plan is
19 little (d) on page 003212. I don't know if you're there, Your
20 Honor.

21 **THE COURT:** I'm there. "Provide documentation
22 regarding ongoing public access."

23 **MR. LEAVITT:** There it is.

24 **THE COURT:** "Access to utility easements and plans to
25 ensure that such access is maintained."

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0081

21713

1 **MR. LEAVITT:** Why? Here is where it all fits in,
2 Judge. Why did the city adopt this language that applies only
3 to this landowners' property? Because it already denied the
4 fence. It denied the landowners' fence to keep the public out.

5 And the city -- and do you remember why that fence was
6 denied? Counsel told us on Friday. He said the fence was
7 denied because of political pressure. What was that political
8 pressure? The surrounding property owners wanted to be able to
9 access the property, and so they put right in an ordinance that
10 you have to allow ongoing public access. That act alone is a
11 *per se* taking under *Sisolak*.

12 Now, it doesn't matter whether the public actually
13 used it, but, Judge, we know they did. There's no, Hey, we're
14 going to adopt this but it might or might not apply to you;
15 Hey, we're going to adopt this but we're just kidding. That
16 didn't happen as counsel is representing.

17 The very beginning of this ordinance says that section
18 (g) shall apply to you, and it shall apply only to the
19 landowners.

20 But let me back up for just a minute and put this bill
21 in context. This is -- remember, the council member, who was
22 the highest level member at the city, went to these homeowners
23 and in their homeowners meetings said to them "This property is
24 your recreation," that's what he said. He went to their
25 meeting --

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0082

21714

1 **THE COURT:** Is that Mr. -- for the record is that
2 Mr. Seroka --

3 **MR. LEAVITT:** That's Mr. Seroka.

4 **THE COURT:** -- who sponsored the bill?

5 **MR. LEAVITT:** Who sponsored the bill. He went to the
6 homeowners and said, "This property is your recreation, you get
7 to use it." Then he followed up by sponsoring the 2018-24, and
8 then he required that that language be put in there that the
9 landowners must allow ongoing public access to the property.
10 So remember, counsel said, Listen, statements of council
11 members are irrelevant, I'll get to that in a minute. But in
12 addition to saying that, he then sponsored the bill and the
13 City Council adopted the bill, so there wasn't just a statement
14 by a council member, there was a follow-up and an adoption of a
15 bill.

16 **THE COURT:** Well, for all practical purposes, the City
17 Council has spoken once this bill has been introduced and
18 approved.

19 **MR. LEAVITT:** Absolutely. And, Judge, can I just give
20 an example here? This was in the *Knick versus City* of --
21 *Township of Scott Pennsylvania*, exact same thing happened. In
22 that case, the city adopted an ordinance saying that private
23 landowners had to allow public to enter into their cemeteries
24 around the property. Taking.

25 **THE COURT:** So, I mean, we can look at it factually.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0083

21715

1 The property owner was denied access, yet they're required,
2 pursuant to the ordinance, to permit public access.

3 **MR. LEAVITT:** That's exactly what happened.

4 **MR. MOLINA:** Your Honor, that's not what the ordinance
5 requires. This is a closure -- this provision addresses
6 Closure Maintenance Plan, and if the landowner were going to
7 provide access, then the Closure Maintenance Plan would need to
8 address that. Completely misconstrues --

9 **THE COURT:** I'm just looking at the language, it says,
10 "Provide documentation regarding ongoing public access."

11 **MR. MOLINA:** That's if the landowner allows ongoing
12 public access. It's not saying that the landowner *must* provide
13 ongoing public access.

14 **MR. LEAVITT:** I appreciate counsel's attempt to
15 interpret the law, Your Honor, but the language is plain. It
16 says you have to provide documentation showing that the public
17 is coming onto the property. If counsel has objection to this
18 evidence, he can enter it, or if he has an argument, he can
19 wait until I'm done and then make that argument.

20 But, Your Honor, not only that, but we've presented as
21 Exhibit 119 the council minutes which state the exact opposite
22 of what counsel just told you. This is Exhibit 119, Bates
23 stamped 004163. This is Robert Summerfield who is the head
24 planner of the City of Las Vegas: "I want to be clear that the
25 Closure Maintenance Plan, because the language does say

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0084

21716

1 something along the lines of what we've been aware of, may
2 close. But, again, where there's a golf course" -- he then
3 goes on to explain that that provision applies retroactively.

4 That same language, Your Honor, appears several times
5 in the minutes. Here we go right here. This is Exhibit No.
6 118: The retroactive provision. This is 003957. This is
7 November 7, 2018 when this issue is being discussed. The
8 retroactive provision. The only way this becomes retroactive --
9 and everybody has their own definition -- there's a potential
10 for property that's golf course or open space that either has
11 been or will be withdrawn, and they have to propose the Closure
12 Maintenance Plan.

13 Then right here, page 004086, referring to 2018-24:

14 Our lawyer: I just want to ask you, is this
15 retroactive? Does this go back to -- I mean, I haven't
16 mentioned Badlands. I don't want to get into that much, but
17 does this go back to any developer that is already in the
18 process?

19 In other words he's saying is it retroactive?

20 Their attorney at that time, not during trial, but
21 unbiased by the parts of litigation here, he says: To that
22 extent all laws are retroactive. The one part of this
23 ordinance that could be considered retroactive --

24 **THE COURT:** That's not necessarily true. If it's
25 substantive in nature versus procedural. Procedural, they're

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0085

21717

1 retroactive; substantive, no, prospective, unless it's
2 specifically carved out.

3 But go ahead, I get it.

4 **MR. LEAVITT:** Well, he goes on to say right here:
5 Insofar as the retroactively of this part, he says it needs to
6 propose a Closure Maintenance Plan. He goes on to say that the
7 city's intent on drafting 2018.24 was to mandate section (g)
8 Closure Maintenance Plan on the landowners. He said it was
9 intended to apply retroactively specific to these landowners.

10 And, Judge, we don't have to even go there. All we
11 have to do is look at the general section right up front that
12 says section (g) applies to the landowners when they try and
13 change their property.

14 And the City Council spoke, they didn't say you have
15 to provide ongoing public access only if we ask you to. They
16 could have put that in there. The city could have put right in
17 there behind that clause: You have to do this only if we ask
18 you to. They didn't do that. They said you have to provide
19 ongoing public access, which is consistent with Mr. Seroka's
20 statement to the homeowners' association.

21 **THE COURT:** I mean, legally that's not much different,
22 if any, from *Sisolak*.

23 **MR. LEAVITT:** That's the same exact thing, Your Honor,
24 and that's what we've argued.

25 In Mr. Sisolak's case, the county adopted ordinance

1 number 1221 that said you have to allow the airplanes to use
2 your air space. It's the same exact thing.

3 In *Cedar Point Nursery versus Hassid*, the State of
4 California adopted a statute that said that the farm owners had
5 to allow the labor unions to come onto their property 120 days
6 of the year for 2 hours a day. Extremely less restrictive than
7 this one. The United States Supreme Court said the adoption of
8 that statute was a taking - a definitive statement by the
9 United States Supreme Court in *Cedar Point Nursery*.

10 So, Your Honor, that -- and to keep in mind, in *Cedar*
11 *Point Nursery*, Your Honor, the labor unions didn't even go onto
12 the property, they were stopped, and the United States Supreme
13 Court said it's irrelevant, whether they went on or not, you
14 adopted the statute inviting them onto the property.

15 And then in this case it's even worse, Your Honor,
16 because Mr. Seroka announced the public can use the property;
17 they adopted a statute 2018-5 saying you can use the property;
18 and then we have the affidavit of Don Richards, which has been
19 submitted to the Court, and in the affidavit of Don Richards,
20 Mr. Richards states unequivocally that he interviewed people
21 coming onto the property, and they said, We're here because the
22 city told us this is our recreation - even more egregious than
23 the *Knick* case, even more egregious than the *Cedar Point*
24 *Nursery* case.

25 So, Your Honor, I want to go on and I want to finish

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0087

21719

1 off on this Peccole Ranch concept argument.

2 **THE COURT:** How much time do you anticipate that will
3 take, Mr. Leavitt?

4 **MR. LEAVITT:** Just this last part right here?

5 **THE BAILIFF:** Just a reminder, we have to get out of
6 here by noon.

7 **MR. LEAVITT:** Wow.

8 **THE COURT:** We have this afternoon, Mr. Leavitt.

9 **MR. LEAVITT:** We do have this afternoon?

10 **THE COURT:** Didn't we say this afternoon?

11 (Discussion off the record between the Judge and Clerk.)

12 **THE COURT:** No, I'm talking about our court. Didn't
13 we say telephonically at my court?

14 **MR. LEAVITT:** Yeah, I think we can go telephonically,
15 we could show up there.

16 **THE COURT:** Right, didn't I say that? I don't
17 remember for sure.

18 **MR. SCHWARTZ:** I thought we were going tomorrow.

19 **THE COURT:** It is tomorrow? Okay. All right. Well,
20 I'm not going to change anything.

21 **MR. LEAVITT:** Oh, okay. I misunderstood.

22 **THE COURT:** But tomorrow at 9:15 -- and, I mean, I'm
23 very thankful that Judge Krall permitted me to use her
24 courtroom. I just don't want to overstep my bounds because she
25 has, I know, a lot of stuff this afternoon; is that correct?

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0088

21720

1 And they've got to get prepared.

2 So what we'll do then -- and, you know what, I don't
3 mind saying this, we're going to finish this up tomorrow, and
4 that's just how I look at it. We have to have some sort of
5 closure on these issues. We'll finish it up.

6 We start at what, 9:15 tomorrow?

7 (Off-the-record discussion.)

8 It will be 9:15.

9 **MR. LEAVITT:** Your Honor, so we could come live to
10 your courtroom, your regular courtroom?

11 **THE COURT:** I mean, do we have any courtrooms
12 available on this floor? My courtroom is about --

13 **THE BAILIFF:** Significantly smaller, Your Honor.

14 **THE COURT:** Significantly smaller.

15 **MR. LEAVITT:** Your Honor, I could stay back or I could
16 even go back and sit at a table, but I just need --

17 **THE COURT:** See, this is how we would handle that if
18 we do have -- if I permit you to come live, there would be two
19 representatives per side and that's it.

20 **MR. LEAVITT:** That's fine, Your Honor.

21 **THE COURT:** Is there any objection to that? Because I
22 want to be candid with everyone, I've never done more than
23 that, first of all; secondly, it's a smaller courtroom, and
24 notwithstanding, I want to make sure everyone has a full and
25 fair opportunity to place their positions on the record, but

1 just as important, too, I do have to be concerned about
2 safety --

3 **MR. LEAVITT:** Agree, Your Honor.

4 **THE COURT:** -- you know, for counsel, for everyone
5 involved in this case, I don't mind saying that. Because for
6 the record I take COVID-19 very seriously. In fact, I went out
7 yesterday and got my booster (indicating).

8 **MR. LEAVITT:** I've been shot, too, Your Honor.

9 **THE COURT:** Yeah. But it's very, very important.
10 So this is --

11 **UNIDENTIFIED SPEAKER:** Your Honor, can I ask a
12 question?

13 **THE COURT:** Yes, you may, ma'am.

14 (Question inaudible.)

15 **THE COURT:** Yeah, just two per side.

16 **UNIDENTIFIED SPEAKER:** Including the assistants?

17 **THE COURT:** Yes. But everyone can also listen. I
18 mean, it will be video fed. And I'm going to make that for
19 both sides, because that's about what we can do; is that
20 correct, Mr. Marshal?

21 **THE BAILIFF:** If that's what you want, yes, Your
22 Honor. I mean, I could see where we could probably have some
23 people in the galley, if you'd like.

24 **THE COURT:** No, we haven't done that.

25 **THE BAILIFF:** Then we're not going to do that, Your

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0090

21722

1 Honor, like you said.

2 **THE COURT:** We haven't done that at all.

3 So I don't want to -- especially right now because
4 from a healthcare perspective -- and health, we have a lot of
5 issues going on right now, and I think everyone is well aware of
6 that. And, yes, I thought we would have been in a much
7 different place four or five months ago, but unfortunately
8 that's not the case.

9 So Mr. Leavitt, and for the city, too, we're going to
10 finish this up tomorrow morning, we have to. We have one matter
11 in the morning. I have one status check at 9:00 o'clock. 9:15
12 we can roll and we'll finish this up.

13 **MR. LEAVITT:** That sounds perfect, Your Honor. We
14 look forward to that.

15 **THE COURT:** Just remember where you're at. And two
16 representatives per side, it could be lawyer and legal
17 assistant or two lawyers. It doesn't matter.

18 Bottom line, too, I don't mind saying this, everyone
19 has done a wonderful job of getting me everything I need, from
20 all the booklets and the evidence and charts and all those
21 things. It greatly assisted me. I don't mind saying that.

22 And so we'll go ahead and recess. I have to respect
23 Judge Krall. She's been so gracious to permit us to come in
24 here. This is her courtroom. I wish my courtroom was set up
25 like this.

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0091

21723

1 Anyway, that's what we're going to do. And what we
2 need to do is bring the banker's -- I'm sorry, library cart,
3 Mr. Marshal, so we can take all this stuff back with us.

4 **THE BAILIFF:** Yes, Your Honor.

5 **THE COURT:** Anyway, let's recess until 9:15 tomorrow
6 morning.

7 **ALL COUNSEL:** Thank you, Your Honor.

8 (Proceedings adjourned at 12:04 p.m.)

9 ---oOo---

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Rhonda Aquilina, Nevada Certified #979

Ex. 20, Pg. 0092

21724


Reporter's Certificate

State of Nevada)
)
County of Clark)

I, Rhonda Aquilina, Certified Shorthand Reporter, do hereby certify that I took down in stenotype all of the proceedings had in the before-entitled matter at the time and place indicated, and that thereafter said stenotype notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true and accurate record to the best of my ability of the proceedings had.

In witness whereof, I have hereunto subscribed my name in my office in the County of Clark, State of Nevada.

Dated: October 6, 2021



Rhonda Aquilina, RMR, CRR, Cert. #979

Exhibit 21

Evelyn Washington

From: Sowards, Jason <jsowards@nvcourts.nv.gov>
Sent: Thursday, September 03, 2020 8:27 AM
To: Evelyn Washington
Subject: RE: Case 22913

Ms. Washington,

Just following up on the email below. Please advise how you would like to proceed.

Regards,

jrs

Jason R. Sowards
Law Librarian
Nevada Supreme Court Law Library



Please consider the impact on the environment before printing this e-mail

From: Reference Desk
Sent: Tuesday, September 01, 2020 10:03 AM
To: 'Evelyn Washington' <evelyn@kermittwaters.com>
Subject: RE: Case 22913

Ms. Washington,

As promised, here are the prices for the various briefs associated with Kelly v. Tahoe Regional Planning. The briefs are so large because both parties sought approval from the NV Supreme Court for "oversize" briefs. Please let me know which of these you would like. You can then send us a check, payable to the **Nevada Supreme Court Law Library, to 201 S. Carson St., #100, Carson City, NV, 89701**. On the memo line, please put **Briefs for Case # 22913**. Once we receive your check, we will drop them in the mail to you with a receipt of your payment. Or, if you prefer, we can also attempt to email them at this email address if that works for you. Note that the size of most of these documents are so large, we will likely have to break them up into multiple files.

Respondent's Brief State of California: 73 pages x \$0.10 = \$7.30

Answering Brief of Respondent State of Nevada: 20 pages x \$0.10 = \$2.00

Answering Brief of Respondent and Cross-Appellant Tahoe Regional Planning Agency: 123 pages x \$0.10 = \$12.30

Appellant's Opening Brief: 116 pages x \$0.10 = \$11.60

Total= \$33.20

Regards,

jrs

Jason R. Sowards
Law Librarian

Exhibit 22

1 **DECLARATION OF EVELYN WASHINGTON IN SUPPORT OF PLAINTIFFS**
2 **LANDOWNERS' VERIFIED MEMORANDUM OF COSTS**

3 I, EVELYN WASHINGTON, declare under penalty of perjury as follows:

4 1. I am a legal secretary employed at the Law Offices of Kermitt L. Waters, the
5 attorneys of record for 180 LAND COMPANY, LLC and FORE STARS, Ltd. ("Landowners") in
6 the above-captioned matter.

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

10 3. In support of Plaintiffs Landowners' Verified Memorandum of Costs, I printed a
11 copy of the court's docket (*180 Land Co., LLC v. City of Las Vegas*, Case No. A-17-758528-J)
12 and identified each filing on behalf of Plaintiff Landowners. I added the total number of filings
13 and multiplied them by \$3.50, the standard filing fee.

14 4. I inadvertently assigned a filing fee to each document rather than assigning the fee
15 to the filing envelope, which envelope could contain multiple documents being filed.

16 5. I have since review the filings by envelope and have determined that the total of
17 filings to be 231 by \$3.50 totaling \$773.50.

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

20 Executed this 16th day of December, 2021.

21 /s/ Evelyn Washington
22 EVELYN WASHINGTON
23
24

Exhibit 23

**DECLARATION OF AUTUMN L. WATERS, ESQ. IN SUPPORT OF PLAINTIFF
LANDOWNERS' OPPOSITION TO CITY OF LAS VEGAS' MOTION TO RETAX
MEMORANDUM OF COSTS**

I, Autumn L. Waters, Esq., declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am an attorney at the Law Offices of Kermitt L. Waters, the attorneys of record for FORE STARS, Ltd. and 180 LAND CO., LLC (“Landowners”) in 180 Land Co., LLC v. City of Las Vegas, Case No.: A-17-758528-J (“Case”).

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

3. I have practiced exclusively in the area of eminent domain and inverse condemnation in the State of Nevada for over 18 years wherein appraisers are routinely hired.

4. The fees The DiFederico Group charged in this Case are common in the field of eminent domain in Nevada.

5. The last eminent domain case my office tried in 2020, one of the appraisers who did not provide trial testimony had fees that exceeded \$250,000, further evidencing the reasonableness of Mr. DiFederico's fees in this Case.

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

Executed this 23rd day of December, 2021.

/s/ Autumn Waters
AUTUMN L. WATERS, ESQ.

Exhibit 24

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

1 George F. Ogilvie III (NV Bar #3552)
 Amanda C. Yen (NV Bar #9726)
 2 Christopher Molina (NV Bar #14092)
 McDONALD CARANO LLP
 3 2300 W. Sahara Ave, Suite 1200
 Las Vegas, NV 89102
 4 Telephone: 702.873.4100
 Facsimile: 702.873.9966
 5 gogilvie@mcdonaldcarano.com
 ayen@mcdonaldcarano.com
 6 cmolina@mcdonaldcarano.com

7 Debbie Leonard (NV Bar #8260)
 LEONARD LAW, PC
 8 955 S. Virginia St., Suite 220
 Reno, NV 89502
 9 Telephone: 775.964.4656
 debbie@leonardlawpc.com

10 Bradford R. Jerbic (NV Bar #1056)
 Philip R. Byrnes (NV Bar #166)
 11 Seth T. Floyd (NV Bar #11959)
 LAS VEGAS CITY ATTORNEY'S OFFICE
 12 495 S. Main Street, 6th Floor
 Las Vegas, NV 89101
 13 Telephone: 702.229.6629
 Facsimile: 702.386.1749
 14 bjerbic@lasvegasnevada.gov
 pbyrnes@lasvegasnevada.gov
 15 sfloyd@lasvegasnevada.gov

16 *Attorneys for City of Las Vegas*

17 **UNITED STATES DISTRICT COURT**
 18 **DISTRICT OF NEVADA**

19 180 LAND COMPANY, LLC, a Nevada limited
 liability company, FORE STARS, LTD., SEVENTY
 20 ACRES, LLC, a Nevada limited liability company,
 DOE INDIVIDUALS I through X, DOE
 21 CORPORATIONS I through X, and DOE LIMITED
 LIABILITY COMPANIES I through X,

22 Plaintiffs,

23 v.

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

28 Defendants.

CASE NO. 2:19-cv-01467-KJD-DJA

**PROPOSED DISCOVERY PLAN
 AND SCHEDULING ORDER**

*SPECIAL SCHEDULE REVIEW
 REQUESTED*

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

Plaintiffs 180 Land Company, LLC; Fore Stars, Ltd.; and Seventy Acres, LLC (collectively, “180 Land”) and defendant City of Las Vegas (the “City”) (collectively, the “Parties”), by and through their respective attorneys of record, hereby submit this Stipulated Discovery Plan and Scheduling Order pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule 26-1(b).

I. STATEMENT PURSUANT TO LR 26-1(a).

On July 18, 2017, 180 Land initiated this action by filing a Petition for Judicial Review in the District Court of Clark County, State of Nevada, Case No. A-17-758528-J. On September 7, 2017, 180 Land filed its First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation. On November 21, 2018, the Eighth Judicial District Court denied the Petition for Judicial Review.

On April 2, 2019, the Eighth Judicial District Court held a NRCP 16 conference with the Parties and ordered 180 Land’s claims for inverse condemnation bifurcated by issue, with discovery on the alleged liability for a taking to be completed first (Phase I) and discovery on any valuation of damages/just compensation occurring thereafter (Phase II). The Eighth Judicial District Court additionally ordered discovery on Phase I to begin immediately.

On April 15, 2019, 180 Land served its initial disclosures pursuant to NRCP 16.1 and served the City with Requests for Production of Documents and Requests for Admissions. On May 15, 2019, 180 Land filed its Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation alleging causes of action for (1) Categorical Taking; (2) *Penn Central* Regulatory Taking; (3) Regulatory Per Se Taking; (4) Nonregulatory Taking; (5) Temporary Taking; and (6) Judicial Taking. ECF No. 1-1.

On June 18, 2019, the City served its initial disclosures pursuant to NRCP 16.1 and filed its Answer to the Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation. On July 2, 2019, the City served 180 Land with Requests for Admissions, Interrogatories and Requests for Production of Documents. On August 16 and 21, 2019, the Parties conducted the deposition of one witness designated by the City, Clyde Spitze.

On August 22, 2019, the City removed the action to federal court. ECF No. 1. On September 13, 2019, 180 Land filed a Motion to Remand, which is still being briefed. ECF No. 7.

180 Land's LR 26-1(a) Statement: The Parties have only been conducting discovery on Phase I – whether the City has taken and/or damaged a compensable property right belonging to 180 Land. To date 180 Land has produced 4044 pages of documents and is in the process of reviewing over 300,000 pages of documents produced by the City. The discovery plan the Parties have been proceeding under pursuant to the State District Court Judge, Timothy Williams's, order from a status check held on July 23, 2019 is as follows:

- 1) Expert disclosures for Phase I (liability) shall be due October 16, 2019;
- 2) Rebuttal expert disclosures for Phase I (liability) shall be due November 15, 2019;
- 3) Discovery shall close for Phase I (liability) on December 18, 2019;
- 4) The deadline for motions for summary judgment for Phase I (liability) shall be January 10, 2020 with oral argument on the motions for summary judgement to be held on February 10, 2020.

180 Land requests that discovery remain bifurcated and that an additional four month be added to the current (above) discovery schedule. If discovery is not bifurcated, then 180 Land requests an additional six months be added to the current (above) discovery schedule.

The City's LR 26-1(a) Statement: The City seeks 180 days of discovery from the date of the September 24, 2019 FRCP 26(f) scheduling conference. Although the Parties had begun to engage in discovery while in state court, the allegations asserted by 180 Land, which implicate the history and background of the property in question, necessarily will involve the review of a significant number of documents and numerous depositions. *See generally* ECF No. 1-1. Indeed, the City already has produced over 300,000 pages of documents and, although the City served 180 Land with Requests for Production of Documents ("Requests") on July 2, 2019, 180 Land has yet to respond to those Requests and has not yet produced any documents in response to the Requests. Therefore, it is all but certain that fact discovery will take longer than the traditional 180 days from the date the first defendant appeared. Accordingly, the City requests 180 days of discovery

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

from the date of the September 24, 2019 FRCP 26(f) conference.

II. INFORMATION PURSUANT TO FED. R. CIV. P. 26(f).

A. Fed. R. Civ. P. 26(f) Conference: On September 24, 2019, counsel for the Parties conducted and in-person FRCP 26(f) conference. George F. Ogilvie III and Amanda C. Yen participated on behalf of the City and Jim Leavitt and Autumn Waters participated on behalf of 180 Land.

B. Subjects on which discovery may be needed:

1. 180 Land's Position: All matters within the scope of Fed. R. Civ. P. 26.
2. City's Position: All matters within the scope of Fed. R. Civ. P. 26.

C. Should discovery be conducted in phases?

1. 180 Land's Position: Yes – as recognized by the Honorable Timothy Williams when he bifurcated discovery in this matter, the damages phase of an inverse condemnation case, such as this, can be extremely expensive for both parties. It is very likely that the expert appraisers in this case will each charge well in excess of \$100,000. There is simply no point in 180 Land or the City (who is utilizing taxpayer dollars) spending that level of cost until liability is established. Liability (Phase I of discovery) in this case will be established by the City's actions which have rendered 180 Land's property valueless and useless. Damages (Phase II of discovery) will determine the just compensation owed for this liability. If this Court is inclined to alter Judge Williams' order bifurcating discovery, 180 Land respectfully requests the opportunity to fully brief this issue to the Court.

2. City's Position: No. To establish a regulatory taking, 180 Land bears the burden to prove that the City's actions destroyed all value of the property within the Peccole Ranch Master Plan Phase II area equivalent to an eminent domain taking and interfered with 180 Land's distinct reasonable investment-backed expectations when it purchased the Badlands Golf Course. If the challenged regulation is determined by the Court to effect a regulatory taking, the measure of damages is generally the difference in the fair market value of the property before and after the challenged regulation is imposed. Because liability and damages involve overlapping determinations of fair market value, among other issues, splitting discovery into the two phases

specified by the Eighth Judicial District Court would not be efficient. For this reason, the City's proposed discovery plan and scheduling order does not include a bifurcated schedule. If the Court is inclined to bifurcate discovery, the City respectfully requests the opportunity to fully brief this issue to the Court.

D. Issues regarding disclosure or discovery of electronically stored information, including the form or forms in which it is produced: None at this time. Should any issues arise, the Parties intend to meet and confer in compliance with LR 26-7 to establish a protocol regarding the form of production of documents and electronically stored information ("ESI").

E. Issues about claims of privilege or protection of trial preparation materials: None at this time.

F. Changes made in limitations on discovery:

1. 180 Land's Position: None at this time.
2. City's Position: None.

G. Other orders under Rule 26(c) or Rule 16(b) and (c): None.

III. INFORMATION PURSUANT TO LOCAL RULE 26-1(b).

The parties propose to the Court the following discovery plan and scheduling order deadlines:

A. Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a):

1. 180 Land's Position: 180 Land served its Initial Disclosures on April 15, 2019.
2. City's Position: The City served its Initial Disclosures on June 18, 2019.

B. Discovery Cut-Off Date:

1. 180 Land's Position: Phase I -April 29, 2020, Phase II -to be decided if liability established. Alternatively, if not bifurcated, June 23, 2020.
2. City's Position: March 23, 2020.

C. Amending the Pleadings and Adding Parties Pursuant to LR 26-1(b)(2):

1. 180 Land's Position: March 25, 2020.
2. City's Position: December 23, 2019.

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

D. Expert Discovery Deadlines Pursuant to LR 26-1(b)(3):

1. 180 Land's Position:

i. Initial Expert Report Deadline: Phase I - February 28, 2020, Phase II - to be decided if liability established. Alternatively, if not bifurcated, April 24, 2020.

ii. Rebuttal Expert Report Deadline: Phase I – March 30, 2020, Phase II - to be decided if liability established. Alternatively, if not bifurcated, May 25, 2020.

2. City's Position:

i. Initial Expert Report Deadline: January 23, 2020.

ii. Rebuttal Expert Report Deadline: February 24, 2020.

E. Interim Status Report Pursuant to LR 26-3:

1. 180 Land's Position: Phase I- March 3, 2020, Phase II -to be decided if liability established. Alternatively, if not bifurcated, April 28, 2020

2. City's Position: January 23, 2020.

F. Dispositive Motions Pursuant to LR 26-1(b)(4):

1. 180 Land's Position: Phase I -on or before May 29, 2020, Phase II -to be decided if liability established. Alternatively, if not bifurcated, on or before July 23, 2020.

2. City's Position: April 22, 2020.

G. Pre-Trial Order Pursuant to LR 26-1(b)(5):

1. 180 Land's Position: Phase I – would be decided by way of dispositive motions, Phase II -to be decided if liability established. Alternatively, if not bifurcated, August 23, 2020.

2. City's Position: May 22, 2020

H. Alternative Dispute Resolution: The Parties certify that they met and conferred about the possibility of using alternative dispute-resolution processes including mediation and arbitration. The use of an early neutral evaluation is not applicable here.

...

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

I. Alternative Forms of Case Disposition: The Parties certify that they considered and discussed consenting to trial by a magistrate judge under 28 U.S.C. § 636(c) and FRCP 73 and the use of the Short Trial Program.

J. Electronic Evidence: 180 Land filed a jury demand prior to removal. The Parties certify that they discussed whether they intend to present evidence in electronic format to jurors for the purpose of jury deliberations.¹

K. Extensions or Modifications of the Discovery Plan and Scheduling Order Pursuant to 26-4: A motion or stipulation to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR IA 6-1, be supported by a showing of good cause for the extension. A motion or stipulation to extend a deadline set forth in a discovery plan must be received by the court no later than 21 days before the expiration of the subject deadline. A request made within 21 days of the subject deadline must be supported by a showing of good cause. A request made after the expiration of the subject deadline will not be granted unless the movant also demonstrates that the failure to act was the result of excusable neglect. A motion or stipulation to extend a discovery deadline or to reopen discovery must include:

(a) A statement specifying the discovery completed;

(b) A specific description of the discovery that remains to be completed;

(c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan; and

...

...

...

...

...

¹ By complying with LR 26-1(b), the City is not waiving any argument, objection and/or position regarding 180 Land's demand that a jury adjudicate all claims, affirmative defenses and issues presented.

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

(d) A proposed schedule for completing all remaining discovery.

DATED this 8th day of October, 2019.

McDONALD CARANO LLP

LAW OFFICES OF KERMIT L. WATERS

By: /s/ George F. Ogilvie III

By: /s/Autumn L. Waters

George F. Ogilvie III (NV Bar #3552)
Amanda C. Yen (NV Bar #9726)
Christopher Molina (NV Bar #14092)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

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

LEONARD LAW, PC
Debbie Leonard (NV Bar #8260)
955 S. Virginia St., Suite 220
Reno, NV 89502

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison
Joseph S. Kistler
Matthew K. Schriever
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

LAS VEGAS CITY ATTORNEY'S
OFFICE
Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

*Attorneys for plaintiff 180 Land Company,
LLC; Fore Stars, Ltd.; and Seventy Acres, LLC*

Attorneys for defendant City of Las Vegas

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

DATED: _____

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, and that on the 8th day of October, 2019, I caused a true and correct copy of the foregoing **PROPOSED DISCOVERY PLAN AND SCHEDULING ORDER** (SPECIAL SCHEDULE REVIEW REQUESTED) to be electronically filed with the Clerk of the Court and served on the following parties via the Court's CM/ECF system:

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

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison
Joseph S. Kistler
Matthew K. Schriever
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

/s/ Jelena Jovanovic

An employee of McDonald Carano