

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**JOINT APPENDIX,
VOLUME NO. 127**

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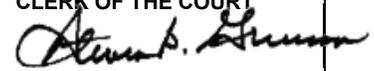
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15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs,

24 v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**DEFENDANT CITY OF LAS
VEGAS' NOTICE OF APPEAL**

Notice is hereby given that DEFENDANT CITY OF LAS VEGAS appeals to the Supreme Court of Nevada from:

1. The Findings of Fact and Conclusions of Law on Just Compensation filed on November 18, 2021, notice of entry of which was served electronically on November 24, 2021, (attached as **Exhibit A**) and all decisions, rulings and interlocutory orders made appealable by the foregoing;

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2. The Findings of Fact and Conclusions of Law and Order Denying the City’s Motion for Immediate Stay of Judgment; [sic] and Granting Plaintiff Landowners’ Counter-motion to Order the City to Pay the Just Compensation filed on February 9, 2022, notice of entry of which was served electronically on February 10, 2022 (attached as **Exhibit B**);
3. Order Granting in Part and Denying in Part the City of Las Vegas’ Motion to Retax Memorandum of Costs filed on February 16, 2022, notice of entry of which was served electronically on February 17, 2022 (attached as **Exhibit C**);
4. Order Granting Plaintiffs Landowners’ Motion for Reimbursement of Property Taxes filed on February 16, 2022, notice of entry of which was served electronically on February 17, 2022 (attached as **Exhibit D**);
5. Order Granting Plaintiff Landowners’ Motion for Attorney Fees In Part and Denying In Part filed on February 18, 2022, notice of entry of which was served electronically on February 22, 2022 (attached as **Exhibit E**); and
6. The Order Denying City of Las Vegas’ Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution filed on February 25, 2022, notice of entry of which was served electronically on February 28, 2022 (attached as **Exhibit F**).

DATED this 2nd day of March, 2022.

McDONALD CARANO LLP

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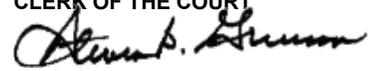
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 2nd day of March, 2022, I caused a true and correct copy of the foregoing **DEFENDANT CITY OF LAS VEGAS' NOTICE OF APPEAL** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “A”



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16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs,

24 v.

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

Defendants.

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

**NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

ON JUST COMPENSATION

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

Dated this 24th day of November, 2021.

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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 24th
3 day of November, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY**
4 **OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON JUST COMPENSATION**
5 to be submitted electronically for filing and service via the Court's Wiznet 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
7 and place of deposit in the mail.

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,

15 Plaintiffs,

16 vs.

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

20 Defendant.

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

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

ON JUST COMPENSATION

BENCH TRIAL: October 27, 2021

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1 Regarding Plaintiff Landowners’ Motion to Determine “Property Interest,” on October 12, 2020
2 (hereinafter “FFCL Re: Property Interest”).

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

9 4. The Court also entertained extensive argument on the second sub-inquiry, whether
10 the City’s actions had resulted in a taking, on September 23, 24, 27, and 28, 2021, and entered
11 Findings of Fact and Conclusions of Law Granting Plaintiff Landowners’ Motion to Determine
12 Take and For Summary Judgment on the First, Third, and Fourth Claims for Relief and Denying
13 the City of Las Vegas’ Countermotion for Summary Judgment on the Second Claim for Relief
14 (hereinafter “FFCL Re: Taking”).

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

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

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

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

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

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

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

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

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

16 19. The DiFederico Report identifies the property being appraised (the Landowners
17 34.07 acre property – “35 Acre Property”), reviews the current ownership and sales history, the
18 intended user of the report, provides the proper definition of fair market value under Nevada law,
19 and provides the scope of his work. TDG Rpt 000003-000013.

20 20. The DiFederico Report also identifies the relevant date of valuation as September
21 14, 2017, and values the 35 Acre Property as of this date. TDG Rpt 000010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the
6 county assessor is notified or otherwise becomes aware that a parcel of real property which
7 has received agricultural or open-space use assessment has been converted to a higher use,
8 the county assessor shall add to the tax extended against that portion of the property on the
9 next property tax statement the deferred taxes, which is the difference between the taxes
10 that would have been paid or payable on the basis of the agricultural or open-space use
11 valuation and the taxes which would have been paid or payable on the basis of the taxable
12 value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-
13 space use assessment was in effect for the property during the fiscal year in which the
14 property ceased to be used exclusively for agricultural use or approved open-space use and
15 the preceding 6 fiscal years. The County assessor shall assess the property pursuant to NRS
16 361.2276 for the next fiscal year following the date of conversion to a higher use.”

17 32. The Las Vegas City Charter states, “The County Assessor of the County is, ex
18 officio, the City Assessor of the City.” LV City Charter, sec. 3.120.

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

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

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

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

4 37. After considering all five sales and making the appropriate adjustments to the five
5 sales, the DiFederico Report concludes that the value of the 35 Acre Property as of September 14,
6 2017, under the sales comparison approach is \$23.00 per square foot. Id., 000084. The exact square
7 footage of the 35 Acre Property (34.07 acres) is 1,484,089 and applying the DiFederico Report's
8 square foot value to this number arrives at a value of \$34,135,000 for the 35 Acre Property as of
9 September 14, 2017, under the sales comparison approach. Id., 000084.

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

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

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

22 41. The DiFederico Report provides detailed data for the value of finished lots on the
23 35 Acre Property, including sales of finished lots in the area of the 35 Acre Property that sold near
24 the September 14, 2017, date of value. TDG Rpt 000086-000088. This data showed that the

1 average value for finished lots selling in the area were \$30, \$49.28, and \$71.84 per square foot.,
2 depending upon the area of Summerlin and the Queensridge Community. TDG Rpt 000086-
3 000087. With this data, the DiFederico Report concluded at a value of \$40 per square foot for the
4 61 lot scenario, \$35 per square foot for the 16 lot scenario, and \$32 per square foot for the 7 lot
5 scenario. TDG Rpt 000087.

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

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

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

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

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

24

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

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

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

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

15 51. The City did not depose Mr. DiFederico.

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

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1 **III.**

2 **CONCLUSIONS OF LAW**

3 53. Consistent with the property tax increase, the Landowners attempted to develop the
4 35 Acre Property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential),
5 the City of Las Vegas prevented the legal use of the property as it would not allow the Landowners
6 to develop the property according to its zoning and residential designation. Consequently, the City
7 of Las Vegas prevented the legally permitted use of the property and required the property to remain
8 vacant. *See also* FFCL Re: Property Interest and FFCL Re: Taking.

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

18 The City shall pay to the Landowners attorney fees in the amount of
19 \$ _____.
20 The City shall pay to the Landowners costs in the amount of \$ _____.
21 The City shall pay prejudgment interest in the amount of \$ _____ for
22 interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest
23 thereafter in the amount of \$ _____ until the date the judgment is
24 satisfied. NRS 37.175.

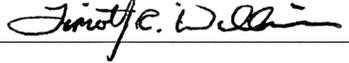
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The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in the amount of \$ _____.

IV.
CONCLUSION

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

Dated this 18th day of November, 2021



MH

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

Respectfully Submitted By:
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Attorneys for City of Las Vegas

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

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

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

George:

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

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

I hope you have a good holiday weekend.

Jim

Jim Leavitt, Esq.
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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, November 9, 2021 4:17 PM
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Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

Attached are the City's edits to the proposed FFCL.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | E: gogilvie@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, November 8, 2021 8:58 AM
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Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

The only orders that have been submitted to the Court are:

FFCL on the motions in limine
FFCL on the denial of both summary judgment motions

We have not submitted the FFCL on just compensation (the most recent one I sent you). I intend to send the FFCL on just compensation to the Court Tuesday, end of business.

Jim

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

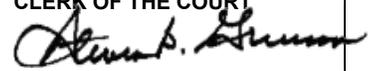
23098

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EXHIBIT “B”



1 NOE
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14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,
17
18 Plaintiffs,
19
20 vs.
21
22 CITY OF LAS VEGAS, political subdivision of
23 the State of Nevada, ROE government entities I
24 through X, ROE CORPORATIONS I through X,
ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,
Defendant.

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

NOTICE OF ENTRY OF:

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
DENYING THE CITY'S MOTION FOR
IMMEDIATE STAY OF JUDGMENT;
AND GRANTING PLAINTIFF
LANDOWNERS' COUNTERMOTION
TO ORDER THE CITY TO PAY THE
JUST COMPENSATION**

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

21 **PLEASE TAKE NOTICE** that the Findings of Fact and Conclusions of law and Order
22 Denying the City's Motion for Immediate stay of Judgment; and Granting Plaintiff landowners'
23 Counter-motion to Order the City to Pay the Just Compensation ("Order") was entered on the 9th
24 day of February, 2022.

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A copy of the Order is attached hereto.

DATED this 10th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

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Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermit L. Waters, and
3 that on the 10th day of February, 2022, pursuant to NRC 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF**
5 **LAW AND ORDER DENYING THE CITY'S MOTION FOR IMMEDIATE STAY OF**
6 **JUDGMENT; AND GRANTING PLAINTIFF LANDOWNERS' COUNTERMOTION TO**
7 **ORDER THE CITY TO PAY THE JUST COMPENSATION** was served on the below via the
8 Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
9 prepaid and addressed to, the following:

10 **McDONALD CARANO LLP**
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/s/ Sandy Guerra
an employee of the Law Offices of Kermit L. Waters

1 **FFCL/ORDER**
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14 Facsimile: (702) 731-1964
15 ***Attorneys for Plaintiffs Landowners***

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,

17 Plaintiffs,

18 vs.

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

Defendant.

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

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND ORDER DENYING THE
CITY'S MOTION FOR IMMEDIATE STAY
OF JUDGMENT; AND GRANTING
PLAINTIFF LANDOWNERS'
COUNTERMOTION TO ORDER THE
CITY TO PAY THE JUST
COMPENSATION**

Date of Hearing: January 19, 2022
Time of Hearing: 10:00 a.m.

21 This matter came before the Court on January 19, 2022, with Plaintiffs, 180 LAND
22 COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their
23 counsel, James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the
24 Landowners' in-house counsel Elizabeth Ghanem Ham, Esq., and with the City of Las Vegas

1 (hereinafter “City”) appearing through its counsel, George F. Ogilvie III, Esq. and Christopher J.
2 Molina, Esq. of McDonald Carano, LLP and Andrew M. Schwartz, Esq., of Shute, Mihaly and
3 Weinberger, LLP.

4 Having reviewed and considered the pleadings, arguments of counsel, the evidence
5 presented, the file and other matters referenced herein, the Court hereby enters the following
6 Findings of Fact and Conclusions of Law and Order:

7 **I. FINDINGS OF FACT**

8 **A) Procedural Posture**

9 This is an inverse condemnation case brought by the Landowners against the City for the
10 taking by inverse condemnation of their approximately 35 acre property (“Landowners’ Property”
11 or “Subject Property”). The Court has reviewed extensive pleadings and has allowed lengthy
12 hearings on the facts and law relevant to the inverse condemnation issues in this matter and entered
13 findings of fact and conclusions of law on those issues. On October 12, 2020, the Court determined
14 the legally permissible use of the Landowners’ Property prior to the City’s actions at issue. *See*
15 *Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners’ Motion to Determine*
16 *“Property Interest” filed October 12, 2020.* After competing motions for summary judgment on
17 liability were filed and following four days of hearings, the Court granted summary judgment in
18 the Landowners’ favor, finding the City took by inverse condemnation the Landowners’ Property.
19 *See Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners’ Motion to*
20 *Determine Take and For Summary Judgment on The First, Third and Fourth Claims For Relief*
21 *filed October 25, 2021 (hereinafter “FFCL Re: City’s Taking”).* Thereafter, the parties stipulated
22 to a bench trial wherein uncontroverted evidence established that the value of the Landowners’
23 Property taken by the City was \$34,135,000 and the City was ordered to pay this amount as just
24

1 compensation for the taking. *Finding of Fact and Conclusions of Law on Just Compensation filed*
2 *November 18, 2021* at ¶ 9, 15, 50 and 52.

3 The City moved the Court to stay payment of the award based on NRCP Rule 62 and NRAP
4 Rule 8. The Landowners opposed the City’s stay request and filed a countermotion to have the
5 City pay the award based on NRS 37.140, 37.170 and State v. Second Judicial District Court, 75
6 Nev. 200 (1959).

7 **B) The City is in Possession of the Landowners’ Property.**

8 Based upon the undisputed evidence in this case, this Court found the Landowners have
9 established a “*per se*” *taking* of their property. *FFCL Re: City’s Taking at ¶ 154-175*. A “per se”
10 taking means the City is in possession of the Landowners’ Property. *Id.* The City has taken the
11 Landowners’ Property for the surrounding neighbors’ use and enjoyment and has prevented the
12 Landowners from doing anything with the Subject Property that would interfere with the
13 surrounding neighbors’ use of the Subject Property. The City has preserved the Subject Property
14 for public use and has authorized the public to use the Subject Property. The City has additionally
15 denied any use of the Landowners’ Property that would conflict with said public use resulting in a
16 complete deprivation of any economically beneficial use of the Subject Property.

17 For example, the City prevented the Landowners from constructing a fence around the
18 Subject Property, as a fence would prevent the surrounding neighbors from using the Subject
19 Property. *FFCL Re: City’s Taking at ¶ 87-95*. The City passed ordinances (Bills 2018-5 and 2018-
20 24) that: 1) targeted only the Landowners’ Property; 2) made it impossible to develop; and 3)
21 preserved the Landowners’ Property for the surrounding neighbors’ use by ensuring the
22 surrounding neighbors had ongoing access to the Landowners’ Property. *FFCL Re: City’s Taking*
23 *at ¶ 103-122*. The City ordinances authorized the surrounding neighbors to use the Landowners’
24 Property for recreation and open space and the City went into the community and told the

1 surrounding neighbors that the Landowners' Property was theirs to use as their own recreation and
2 open space. *FFCL Re: City's Taking at ¶ 116-122*. The City denied the Landowners access to their
3 own property because the City did not want the Landowners' access to impact the surrounding
4 neighbors use of the Landowners' Property. *FFCL Re: City's Taking at ¶ 96-103*. Uncontested
5 expert opinion established that the City's actions left the Subject Property with zero value. *FFCL*
6 *Re: City's Taking at ¶ 145-148*. Accordingly, the Landowners have been dispossessed of the
7 Subject Property by the City and the City is in possession of the Subject Property for a public use.

8 **II. CONCLUSIONS OF LAW**

9 “Inverse condemnation proceedings are the constitutional equivalent to eminent domain
10 actions and are governed by the **same rules and principles that are applied to formal**
11 **condemnation proceedings.**” County of Clark v. Alper, 100 Nev 382, 391 (1984)(emphasis
12 added).

13 NRS 37.140 provides that any “sum of money assessed” against the government in an
14 eminent domain or inverse condemnation action must be paid within 30 days of the final judgment
15 – “The [government] must, within 30 days after final judgment, pay the sum of money assessed.”
16 NRS 37.140. This statute uses the mandatory “must” language and provides no exceptions.

17 NRS 37.170 mandates that, as a precondition to an appeal in an eminent domain or inverse
18 condemnation case, the government must pay the award. NRS 37.170. The Nevada Supreme
19 Court addressed the applicability of NRS 37.170 in the case of State v. Second Judicial District
20 Court, 75 Nev. 200 (1959). In that case, the State of Nevada made the *same arguments the City*
21 *made here* – that it does not need to pay an award as a condition to appeal. The district court in
22 Second Judicial District Court denied the State's request and ordered payment of the award. Id.,
23 at 202. The State appealed. The Nevada Supreme Court affirmed, rejecting the State's arguments.
24 Accordingly, as held in Second Judicial District Court “the deposit provided by NRS 37.170 is a

1 condition to the condemnor’s right to maintain an appeal while remaining in possession.” Id., at
2 205.

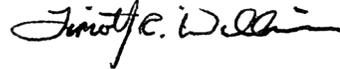
3 After considering the mandatory language under NRS 37.140, which grants a landowner a
4 substantive right whereby the government must, within 30 days after final judgment, pay the sum
5 of money assessed in an eminent domain or inverse condemnation case, as well as the mandate
6 under NRS 37.170 which preconditions any appeal on payment of the sum of money assessed
7 (addressed in Second Judicial District Court), the Court is compelled to deny the City’s Motion for
8 Immediate Stay of Judgment in this matter. The Court’s decision is based on a determination that
9 the more specific eminent domain statutes, such as NRS 37.140 and 37.170, which grant the
10 Landowners substantive rights, take precedence in this special proceeding over the general rules of
11 procedure relied upon by the City. *See Doe Dancer I v. La Fuente, Inc.*, 137 Nev. Adv. Op. 3, 431
12 P.3d 860, 871 (2021) (recognizing the “general/specific canon” that when two statutes conflict, “the
13 more specific statute will take precedence, and is construed as an exception to the more general
14 statute.” Id., at 871.); City of Sparks v. Reno Newspapers, Inc., 133 Nev. 398, 400, 401 (2017) (“it
15 is an accepted rule of statutory construction that a provision which specifically applies to a given
16 situation will take precedence over one that applies only generally.” Id., at 400-401). Additionally,
17 with the 30-day delay in payment under NRS 37.140, the City will have sufficient time to seek a
18 stay, if appropriate, from the Nevada Supreme Court.

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1 **III. ORDER**

2 **IT IS HEREBY ORDERED THAT** the City's Motion for Immediate Stay of Judgment
3 shall be **DENIED**. Additionally, the Landowners' Countermotion to Order the City of Las Vegas
4 to pay the just compensation assessed shall be **GRANTED**. The City is hereby ordered to pay all
5 sums assessed in this matter within 30 days of final judgment and as a condition to appeal.

6 Dated this 9th day of February, 2022

7 

8 **58B 72C B710 CB01**
Timothy C. Williams
District Court Judge

MH

9
10 Respectfully Submitted By:

Content Reviewed and Approved By:

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

MCDONALD CARANO LLP

12 /s/ Autumn L. Waters

declined to sign

13 Kermit L. Waters, Esq. (NV Bar No. 2571)
14 James J. Leavitt, Esq. (NV Bar No. 6032)
15 Michael A. Schneider, Esq. (NV Bar No. 8887)
16 Autumn L. Waters, Esq. (NV Bar No. 8917)
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Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

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Las Vegas, Nevada 89102

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495 South Main Street, 6th Floor
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SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq. (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey, Esq. (CA Bar No. 321775)
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396 Hayes Street
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Attorneys for City of Las Vegas

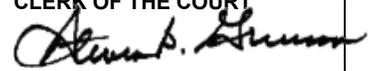
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21	Lauren Tarpey	LTarpey@smwlaw.com
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EXHIBIT “C”



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12 Las Vegas, Nevada 89101
13 Telephone: (702) 733-8877
14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,
17
18 Plaintiffs,
19
20 vs.
21
22 CITY OF LAS VEGAS, political subdivision of
23 the State of Nevada, ROE government entities I
24 through X, ROE CORPORATIONS I through X,
ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,
Defendant.

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

NOTICE OF ENTRY OF:

**ORDER GRANTING IN PART AND
DENYING IN PART THE CITY OF LAS
VEGAS' MOTION TO RETAX
MEMORANDUM OF COSTS**

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

21 **PLEASE TAKE NOTICE** that the Order Granting in Part and Denying in Part the City
22 of Las Vegas' Motion to Retax Memorandum of Costs ("Order") was entered on the 16th day of
23 February, 2022.

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A copy of the Order is attached hereto.

DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

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

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermit L. Waters, and
3 that on the 17th day of February, 2022, pursuant to NRC 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING IN PART AND DENYING IN**
5 **PART THE CITY OF LAS VEGAS' MOTION TO RETAX MEMORANDUM OF COSTS**
6 was served on the below via the Court's electronic filing/service system and/or deposited for
7 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.
11 2300 W. Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
13 gogilvie@mcdonaldcarano.com
14 cmolina@mcdonaldcarano.com

15 **LAS VEGAS CITY ATTORNEY'S OFFICE**
16 Bryan Scott, Esq., City Attorney
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23 rwolfson@lasvegasnevada.gov

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

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ORDR
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Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

ORDER GRANTING IN PART AND DENYING IN PART THE CITY OF LAS VEGAS' MOTION TO RETAX MEMORANDUM OF COSTS

Date of Hearing: January 19, 2022
Time of Hearing: 10:00 a.m.

1 Defendant City of Las Vegas’ Motion to Retax Memorandum of Costs, having come before
2 the Court on January 19, 2022, James J. Leavitt, Esq. of the Law Offices of Kermit L Waters and
3 Plaintiff’s in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners
4 180 Land Co and Fore Stars (“Landowners”), George F. Ogilvie III, Esq. and Christopher Molina,
5 Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger
6 LLP appearing on behalf of the City of Las Vegas (“City”).
7

8 The Court having reviewed the papers and pleadings on file, heard argument of counsel,
9 and for good cause appearing hereby **GRANTS IN PART** and **DENIES IN PART** the City of
10 Las Vegas’ Motion to Retax Memorandum of Costs and orders as follows:
11

12 The Landowners are entitled to recover costs actually incurred in this matter as the Nevada
13 Constitution provides that the Landowners’ “just compensation” award “shall include ... all
14 reasonable costs and expenses actually incurred.” Nev. Const. art. I § 22 (4). See also the Federal
15 Relocation Act. NRS 342.105 and 49 CFR § 24.107.
16

17 The Court finds the following costs to be reasonable and actually incurred in this matter as
18 they were undisputed:

19	8 th Judicial District Court Fees	\$200.00
20	Discovery Legal Services	\$481.25
21	LGM Transcription Services	\$571.14
22	Litigation Services, court reporting services	\$3,933.49
23	Margot Isom, court reporting services	\$3,293.72
24	National Court Reporters, court reporting services	\$6,693.23
25	Rhonda Aquilina, court reporting services	\$1,031.09
26	AT&T Conference Calls	\$32.52
27		
28		

1	Capriotti's	\$84.88
2	Parking and Lunch	\$121.27
3	Total	\$16,442.59

4 The Court further finds the following disputed costs to be reasonable and actually incurred
5 in this matter and, therefore, **DENIES** the City's request to retax the following costs:

6	HOLO Discovery	\$14,422.81
7	Nevada Supreme Court Law Library	\$33.20
8	Clark County Recorder	\$171.00
9	District Court Clerk	\$119.00
10	GGA Partners	\$11,162.41
11	Global Golf Advisors	\$67,094.00
12	The DiFederico Group	\$114,250.00
13	Jones Roach & Caringella	\$29,625.00
14	Legal Wings	\$290.00
15	8 th Judicial District Court E-Filing Fees	\$773.50
16	Oasis, court reporting services	\$1,049.00
17	In-house copy costs @ \$.15 per B/W and \$.25 for color	\$6,345.40
18	Total	\$245,335.32

19 The Court further finds the Westlaw billings to be reasonable and actually incurred in this
20 matter, but **GRANTS**, in part, the City's request to retax by reducing the Westlaw billings 75% to
21 account for the fact that all four related inverse condemnation cases (17, 35, 65, and 133 acre cases)
22 were identified as just one client on the Westlaw billings. Therefore, the \$50,669.02 Westlaw bill
23 is retaxed to **\$12,667.25**.

From: [Autumn Waters](#)
To: [Sandy Guerra](#)
Subject: FW: 35 acres - Proposed Orders on Costs and Taxes
Date: Wednesday, January 26, 2022 10:18:58 AM
Attachments: [Order Re Retax Costs.docx](#)
[Order Granting Motion to Reimburse Taxes.docx](#)

From: Autumn Waters
Sent: Friday, January 21, 2022 11:40 AM
To: 'gogilvie@mcdonaldcarano.com' <gogilvie@mcdonaldcarano.com>;
'cmolina@mcdonaldcarano.com' <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Elizabeth Ham (EHB Companies)
<eham@ehbcompanies.com>
Subject: 35 acres - Proposed Orders on Costs and Taxes

Hi George,

Attached for your review are the following proposed orders:

ORDER GRANTING IN PART AND DENYING IN PART THE CITY OF LAS VEGAS' MOTION TO
RETAX MEMORANDUM OF COSTS

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

Please let me know if I have your permission to attached your electronic signature to these proposed
orders by Monday as we intend to submit them to the Court for signature first thing Tuesday
morning.

Thank you and have a great weekend.

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

This e-mail, and any attachments thereto, is intended only for use by the addressee(s)
named herein and may contain legally privileged and/or confidential information. If you
are not the intended recipient of this e-mail, you are hereby notified that any dissemination,
distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If
you have received this e-mail in error, please immediately notify me at (702) 733-8877 and
permanently delete the original and any copy of any e-mail and any printout thereof.

23123

Further information about the firm will be provided upon request.

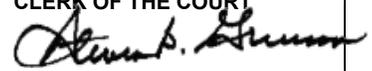
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16	Stacy Sykora	stacy@kermittwaters.com
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18	Shannon Dinkel	sd@pisanellibice.com
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Jennifer Knighton
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EXHIBIT “D”



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13 Telephone: (702) 733-8877
14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,
17
18 Plaintiffs,
19
20 vs.
21
22 CITY OF LAS VEGAS, political subdivision of
23 the State of Nevada, ROE government entities I
24 through X, ROE CORPORATIONS I through X,
ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,
Defendant.

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

NOTICE OF ENTRY OF:

**ORDER GRANTING PLAINTIFFS
LANDOWNERS' MOTION FOR
REIMBURSEMENT OF PROPERTY
TAXES**

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

PLEASE TAKE NOTICE that the Order Granting Plaintiffs Landowners' Motion for Reimbursement of Property Taxes ("Order") was entered on the 16th day of February, 2022.

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A copy of the Order is attached hereto.

DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

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Telephone: (702) 733-8877

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Attorneys for Plaintiffs 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 17th day of February, 2022, pursuant to NRC 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS LANDOWNERS’**
5 **MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** was served on the below via
6 the Court’s electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
7 prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**
9 George F. Ogilvie III, Esq.
10 Christopher Molina, Esq.
11 2300 W. Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
13 gogilvie@mcdonaldcarano.com
14 cmolina@mcdonaldcarano.com

15 **LAS VEGAS CITY ATTORNEY’S OFFICE**
16 Bryan Scott, Esq., City Attorney
17 Philip R. Byrnes, Esq.
18 Rebecca Wolfson, Esq.
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22 pbyrnes@lasvegasnevada.gov
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24 **SHUTE, MIHALY & WEINBERGER, LLP**
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
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San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

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

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ORDR
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James J. Leavitt, Esq., Bar No. 6032
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Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

**ORDER GRANTING PLAINTIFFS
LANDOWNERS' MOTION FOR
REIMBURSEMENT OF PROPERTY
TAXES**

Date of Hearing: January 19, 2022
Time of Hearing: 10:00 a.m.

1 Plaintiff Landowners' Motion for Reimbursement of Taxes, having come before the Court
2 on January 19, 2022, James J. Leavitt, Esq. of the Law Offices of Kermitt L Waters and Plaintiff's
3 in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land
4 Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. and Christopher Molina, Esq. of
5 McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP
6 appearing on behalf of the City of Las Vegas ("City").
7

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

10 Nevada law provides that "[a]n owner who is dispossessed from his or her land when it is
11 taken for public use is no longer obligated to pay taxes" and the owner is entitled to reimbursement
12 of property taxes actually paid after the land is taken. County of Clark v. Alper, 100 Nev. 382,
13 395 (1984).
14

15 This Court entered Findings of Fact and Conclusions of Law Granting Plaintiff
16 Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and
17 Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion for Summary
18 Judgment on the Second Claim for Relief, filed October 25, 2021 (FFCL Re: Take). The FFCL
19 Re: Take details the actions by the City that resulted in a taking of the Landowners' Property, with
20 the first date of compensable injury being August 2, 2017. FFCL Re: Take, pp. 11-19, findings
21 46-86.
22

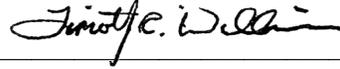
23 The Landowners presented uncontested evidence that they paid property taxes from August
24 2, 2017, up to the date of the hearing in this matter in the amount of \$976,889.38.
25

26 **THEREFORE, IT IS HEREBY ORDERED THAT** Plaintiff Landowners' Motion for
27 Reimbursement of Property Taxes is **GRANTED** and the City shall reimburse the Landowners
28

1 for the taxes paid on the Subject Property from August 2, 2017, forward in the amount of
2 \$976,889.38.

3 **IT IS FURTHER ORDERED THAT** the judgment that is entered in this matter shall
4 include this \$976,889.38 to be paid by the City to the Landowners.

5
6 Dated this 16th day of February, 2022

7 

8 MH

9 **69B 1F6 D918 A34D**
Timothy C. Williams
District Court Judge

10 Submitted By:

11 LAW OFFICES OF KERMITT L. WATERS

12 By: /s/ James J. Leavitt

13 Kermit L. Waters (NV Bar No. 2571)
14 James J. Leavitt (NV Bar No. 6032)
15 Michael A. Schneider (NV Bar No. 8887)
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19 EHB COMPANIES

20 Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
21 1215 S. Fort Apache Road, Suite 120
22 Las Vegas, NV 89117

23 ***Attorneys for Plaintiffs Landowners***

Content Reviewed and Approved by:

McDONALD CARANO LLP

By: *Did not respond*

George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
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LAS VEGAS CITY ATTORNEY'S OFFICE

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(Admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From: [Autumn Waters](#)
To: [Sandy Guerra](#)
Subject: FW: 35 acres - Proposed Orders on Costs and Taxes
Date: Wednesday, January 26, 2022 10:18:58 AM
Attachments: [Order Re Retax Costs.docx](#)
[Order Granting Motion to Reimburse Taxes.docx](#)

From: Autumn Waters
Sent: Friday, January 21, 2022 11:40 AM
To: 'gogilvie@mcdonaldcarano.com' <gogilvie@mcdonaldcarano.com>;
'cmolina@mcdonaldcarano.com' <cmolina@mcdonaldcarano.com>
Cc: James Leavitt <jim@kermittwaters.com>; Elizabeth Ham (EHB Companies)
<eham@ehbcompanies.com>
Subject: 35 acres - Proposed Orders on Costs and Taxes

Hi George,

Attached for your review are the following proposed orders:

ORDER GRANTING IN PART AND DENYING IN PART THE CITY OF LAS VEGAS' MOTION TO
RETAX MEMORANDUM OF COSTS

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

Please let me know if I have your permission to attached your electronic signature to these proposed
orders by Monday as we intend to submit them to the Court for signature first thing Tuesday
morning.

Thank you and have a great weekend.

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

This e-mail, and any attachments thereto, is intended only for use by the addressee(s)
named herein and may contain legally privileged and/or confidential information. If you
are not the intended recipient of this e-mail, you are hereby notified that any dissemination,
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you have received this e-mail in error, please immediately notify me at (702) 733-8877 and
permanently delete the original and any copy of any e-mail and any printout thereof.

23135

Further information about the firm will be provided upon request.

1	'ichael z all	mwallH hutchlegal.com
2	'addy Carnate-Peralta	mcarnateH hutchlegal.com
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4	'ichael Schneider	michaelH @ermittwaters.com
5	James Leavitt	BmH @ermittwaters.com
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9	Amanda Yen	ayenH mcdonaldcarano.com
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Jennifer Knighton

~~Kn~~ightonH ehbcompanies.com

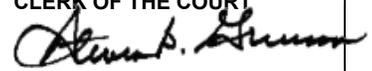
EliGabeth Wam

EWamH ehbcompanies.com

Rebecca z olfson

rwolfsonH lasvegasnevada.gov

EXHIBIT “E”



1 NOE
2 **LAW OFFICES OF KERMITT L. WATERS**
3 Kermitt L. Waters, Esq., Bar No. 2571
4 kermitt@kermittwaters.com
5 James J. Leavitt, Esq., Bar No. 6032
6 jim@kermittwaters.com
7 Michael A. Schneider, Esq., Bar No. 8887
8 michael@kermittwaters.com
9 Autumn L. Waters, Esq., Bar No. 8917
10 autumn@kermittwaters.com
11 704 South Ninth Street
12 Las Vegas, Nevada 89101
13 Telephone: (702) 733-8877
14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,
17
18 Plaintiffs,
19
20 vs.
21
22 CITY OF LAS VEGAS, political subdivision of
23 the State of Nevada, ROE government entities I
24 through X, ROE CORPORATIONS I through X,
ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,
Defendant.

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

NOTICE OF ENTRY OF:

**ORDER GRANTING PLAINTIFF
LANDOWNERS' MOTION FOR
ATTORNEY FEES IN PART AND
DENYING IN PART**

Hearing Date: February 3, 2022

Hearing Time: 1:30 p.m.

21 **PLEASE TAKE NOTICE** that the Order Granting Plaintiff Landowners' Motion for
22 Attorney Fees in Part and Denying in Part ("Order") was entered on the 18th day of February, 2022.

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A copy of the Order is attached hereto.

DATED this 22nd day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

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Telephone: (702) 733-8877

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Attorneys for Plaintiffs 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 22nd day of February, 2022, pursuant to NRCp 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFF LANDOWNERS’**
5 **MOTION FOR ATTORNEY FEES IN PART AND DENYING IN PART** was served on the
6 below via the Court’s electronic filing/service system and/or deposited for mailing in the U.S.
7 Mail, postage prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**
9 George F. Ogilvie III, Esq.
10 Christopher Molina, Esq.
11 2300 W. Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
13 gogilvie@mcdonaldcarano.com
14 cmolina@mcdonaldcarano.com

15 **LAS VEGAS CITY ATTORNEY’S OFFICE**
16 Bryan Scott, Esq., City Attorney
17 Philip R. Byrnes, Esq.
18 Rebecca Wolfson, Esq.
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22 pbyrnes@lasvegasnevada.gov
23 rwolfson@lasvegasnevada.gov

24 **SHUTE, MIHALY & WEINBERGER, LLP**
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Lauren M. Tarpey, Esq.
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San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

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

1 been taken.” Nev. Const. Art I § 22(4).¹ The Constitution further provides that “Just compensation
2 shall include, but is not limited to, compounded interest and all reasonable costs and expenses
3 actually incurred.” Nev. Const. Art I § 22(4) (emphasis added). Attorney fees are expenses
4 actually incurred. When interpreting constitutional provisions, the normal and ordinary meaning
5 of words **must** be utilized. *Strickland v. Waymire*, 126 Nev. 230, 234 (2010). The normal and
6 ordinary meaning of the word “*expense*,” include “the amount of money that is needed to pay for
7 or buy something” and “something on which money is spent.” [http://www.merriam-](http://www.merriam-webster.com/dictionary/expense)
8 [webster.com/dictionary/expense](http://www.merriam-webster.com/dictionary/expense). These normal and ordinary meanings of “*expense*” includes the
9 amount of money needed to pay for legal counsel. To the extent there is any question about the
10 normal and ordinary meaning of the language in an initiative petition, the Argument Opposing
11 Passage in the Sample Ballot specifically informed Nevada Voters in 2006 and 2008 that “Further,
12 we believe **taxpayers may have to pay all lawyers fees** and court expenses for any legal actions
13 brought by private parties on eminent domain!” (Bold added, “!” in original text). *See*
14 *Landowners’ Motion Exhibit 9*, p. 11 and *Exhibit 10*, p. 7. The Landowners are entitled to their
15 attorney fees actually incurred pursuant to Article 1 Section 22(4).
16
17
18

19 **C. NRS 18.010(2)(b) Provides of Attorney Fees to the Prevailing Party**

20 The Landowners also moved for attorney fees under NRS 18.010(2)(b) which also provides
21 for the award of attorney fees to the prevailing party “when the court finds that the claim,
22 counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought
23
24
25

26 ¹ Consistent with long standing Nevada law, in *Nevadans for the Prot. Of Prop. Rights v. Heller*,
27 122 Nev. 894, 908, 141 P.3d 1235, 1244-1245 (2006), the Nevada Supreme Court acknowledged
28 that Article 1 § 22 would apply to inverse condemnation actions. *See also Clark County v. Alper*,
100 Nev. 382, 395 (1984); *Argier v. Nevada Power Co.*, 114 Nev. 137, fn 2, 952 P.2d 1390 (1998).

1 or maintained without reasonable ground or to harass the prevailing party.” The Court finds that,
2 given the record of this case, it is also appropriate to award attorney fees pursuant to NRS
3 18.010(2)(b).

4 **D. Calculation of Attorney Fees**

5 Pursuant to *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007), attorney fees shall
6 be calculated based on the Lodestar analysis which requires “multiply the number of hours
7 reasonably spent on the case by a reasonable hourly rate.” *Id.*, at 637. The Landowners’ counsel
8 provided affidavits pursuant to NRCP Rule 54(d)(2)(B)(v)(a) “swearing that the fees were actually
9 and necessarily incurred and were reasonable.” The affidavits further provide that the
10 Landowners’ counsel have charged a rate of \$450 from August of 2017 up to May 31, 2019, and
11 a rate of \$675 per hour thereafter. The attorney hours submitted by Landowners’ counsel from
12 August of 2017 to February of 2022 totaled 3,906.91.
13

14
15 The Court finds the hours submitted by Landowners’ counsel to be reasonable and actually
16 incurred based on the affidavits of Landowners’ counsel, the record in the case, the complexity of
17 the case, the amount of work required in the case, and the fact that the City’s private attorneys
18 have billed the City for more hours than the Landowners’ counsel. *Landowners’ Reply at 8 and*
19 *Exhibit 18, 18a and 18b.*
20

21 The Court further finds that the rates of \$450 and \$675 per hour are reasonable based on
22 the specialized nature of this action, the skill and expertise of Landowners’ counsel, the rate in the
23 community (i.e. the City’s counsel charged the City \$550 per hour *Exhibit 17*, which the City did
24 not contest is a government rate known to be lower than the normal rate charged), the level of
25 difficulty and difficult nature of the case, the importance of the matters litigated, the large spread
26 in the damage calculation between the parties, the work performed and time needed to perform the
27

1 work, as well as the success of Landowners' counsel in this case. *See Landowners' motion for*
2 *attorney fees pp. 11-26.*

3 The Landowners have also submitted for reimbursement of the Attorney's legal assistant
4 fees which were also actually and reasonably incurred. The hours for the legal assistants total
5 1,063.93 and the Landowners submitted for these hours to be reimbursed at the actually incurred
6 rate of \$50.00. There was no objection to the reasonableness of this time or rate.
7

8 To follow is a breakdown of the hours and rate for Landowners' counsel and legal assistants

9 **Attorney hours from August 2017 to May 31, 2019**

10 984.93 at \$450 = \$443,218.50

11 **Attorney hours from June 1, 2019 to October 31, 2021**

12 2,551.32 at \$675 = \$1,722,141.00

13 **Attorney hours from November 1, 2021 – January 25, 2022**

14 320.66 at \$675 = \$216,445.50

15 **Attorney hours from January 26, 2022-February 3, 2022**

16 50 at \$675 = \$33,750.00

17 **Total Attorney Fees actually incurred = \$2,415,555.00**

18 **Legal Assistants hours August 2017- January 25, 2022**

19 1,041.63 x \$50.00 = \$52,081.50

20 **Legal Assistants hours from January 26, 2022 to February 3, 2022**

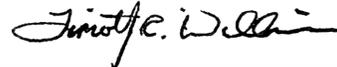
21 22.3 at \$50 = \$1,115.00

22 **Total Legal Assistants Fees actually incurred= \$53,196.50**

1 The Landowners also moved for an upward adjustment of attorney fees pursuant to 12 Hsu
2 Factors. *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007). The Court declines to make
3 such an adjustment.

4 **THEREFORE, IT IS HEREBY ORDERED THAT** The Plaintiff Landowners' Motion
5 for Attorney Fees is **GRANTED in part** as to the attorney fees actually incurred and **DENIED in**
6 **part**, as to an upward adjustment. The Landowners shall receive an award of their attorney fees
7 actually incurred totaling \$2,415,555.00 and legal assistant fees actually incurred totaling
8 \$53,196.50 for a total of \$2,468,751.50.

Dated this 18th day of February, 2022



CAB 6B7 762F BC96
Timothy C. Williams
District Court Judge

MH

Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ Autumn L. Waters
Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
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EHB COMPANIES
Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
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Las Vegas, NV 89117
Attorneys for Plaintiffs Landowners

Content Reviewed and Approved by:

McDONALD CARANO LLP

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

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(Admitted pro hac vice)
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(Admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From: [Autumn Waters](#)
To: [George F. Ogilvie III](#); [Christopher Molina](#); [James Leavitt](#); [Sandy Guerra](#)
Subject: 35 acre Proposed Order Granting Attorney Fees in part
Date: Tuesday, February 8, 2022 11:52:23 AM
Attachments: [Order Granting Motion for Attorney Fees in part.docx](#)

Hi George,

Attached hereto is the proposed ORDER GRANTING PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES IN PART AND DENYING IN PART for your review. Please let me know if I have your permission to attached your electronic signature by Thursday, as I would like to submit the order on Friday. Thank you

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

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

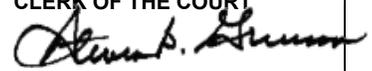
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11	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
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EXHIBIT “F”



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10 autumn@kermittwaters.com
11 704 South Ninth Street
12 Las Vegas, Nevada 89101
13 Telephone: (702) 733-8877
14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,

17 Plaintiffs,

18 vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

**ORDER DENYING CITY OF LAS
VEGAS' MOTION TO AMEND
JUDGMENT (Rules 59(e) and 60(b)) AND
STAY OF EXECUTION**

Hearing Date: February 11, 2022

Hearing Time: 1:15 p.m.

21 **PLEASE TAKE NOTICE** that the Order Denying City of Las Vegas' Motion to Amend
22 Judgment (Rules 59(e) and 60(b)) and Stay of Execution ("Order") was entered on the 25th day of
23 February, 2022.

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A copy of the Order is attached hereto.

DATED this 28th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

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 28th day of February, 2022, pursuant to NRCp 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER DENYING CITY OF LAS VEGAS’**
5 **MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION**
6 was served on the below via the Court’s electronic filing/service system and/or deposited for
7 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.
11 2300 W. Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
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15 **LAS VEGAS CITY ATTORNEY’S OFFICE**
16 Bryan Scott, Esq., City Attorney
17 Philip R. Byrnes, Esq.
18 Rebecca Wolfson, Esq.
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21 */s/ Sandy Guerra* _____
22 an employee of the Law Offices of Kermitt L. Waters

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ORDR
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Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

**ORDER DENYING CITY OF LAS
VEGAS' MOTION TO AMEND
JUDGMENT (Rules 59(e) and 60(b)) AND
STAY OF EXECUTION**

Date of Hearing: February 11, 2022
Time of Hearing: 1:15 p.m.

The City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of
Execution, having come before the Court on February 11, 2022, James J. Leavitt, Esq. of the Law

1 Offices of Kermitt L Waters and Plaintiff Landowners’ in-house counsel Elizabeth Ghanem, Esq.
2 appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. (“Landowners”), George
3 F. Ogilvie III, Esq. and Christopher Molina, Esq. of McDonald Carano LLP and Andrew W.
4 Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas
5 (“City”).
6

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

9 The Nevada Supreme Court has held that “Inverse condemnation proceedings are the
10 constitutional equivalent to eminent domain actions and are governed by the same rules and
11 principles that are applied to formal condemnation proceedings.” County of Clark v. Alper, 100
12 Nev 382, 391 (1984) (emphasis added). This has been the law in Nevada since 1984 and the Nevada
13 Supreme Court has reaffirmed this law numerous times since then.
14

15 Therefore, this Court will follow the statutory mandate as provided in Nevada’s eminent
16 domain statutes, NRS Chapter 37, to resolve the pending matter in this inverse condemnation case.
17

18 This Court has previously entered findings of fact and conclusions of law that the City took
19 by inverse condemnation the Landowners’ 35 Acre Property and must, accordingly, pay just
20 compensation.

21 NRS 37.160 provides the procedure for passing title to the City of Las Vegas through a final
22 order of condemnation once the sums assessed against the City are paid to the Landowners.
23 Therefore, once the City pays the sums assessed in this matter to the Landowners, this Court will
24 enter a final order of condemnation as provided in NRS 37.160.
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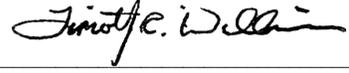
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This Court further finds that the Landowners have reversionary rights to the 35 Acre Property as set forth in NRS 37.270 and article 1, section 22 (1) and (6) of the Nevada State Constitution. These reversionary rights shall be set forth in the final order of condemnation.

The Court has previously denied the City's motion to stay execution and the City has provided no facts or law to revisit or reconsider that prior ruling.

Based on the foregoing, **IT IS HEREBY ORDERED THAT** the City of Las Vegas Motion to Amend Judgement (Rules 59(e) and 60(b)) and Stay of Execution is **DENIED** and, once the City pays the sums assessed in this matter to the Landowners, the Court will enter a final order of condemnation as provided herein.

Dated this 25th day of February, 2022



338 491 34BF 1C81
Timothy C. Williams
District Court Judge

MH

1 Submitted By:

2 LAW OFFICES OF KERMIT L. WATERS

3 By: /s/ James J. Leavitt, Esq.
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5 James J. Leavitt (NV Bar No. 6032)
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10 EHB COMPANIES
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13 Las Vegas, NV 89117

14 ***Attorneys for Plaintiffs Landowners***

Content Reviewed and Approved by:

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By: Did not respond
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28

From: [James Leavitt](#)
To: [George F. Ogilvie III](#); [Christopher Molina](#)
Cc: [Autumn Waters](#); [Sandy Guerra](#)
Subject: Proposed Order - Friday Hearing on City Motion to Amend
Date: Saturday, February 12, 2022 8:27:34 AM
Attachments: [Order Denying CLV Motion to Amend Judgment.docx](#)

George:

Attached hereto is the proposed order from the hearing on the City's motion to amend.

Please review and let me know of any changes. We intend to send to the Court Wednesday morning.

Thank you and have a good weekend,
Jim

Jim Leavitt, Esq.
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Jennifer Knighton

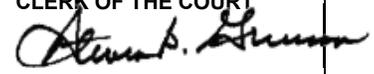
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7 (Additional Counsel Identified on Signature Page)

8 *Attorneys for City of Las Vegas*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 180 LAND CO LLC, a Nevada limited liability
company, FORE STARS, LTD., a Nevada limited
13 liability company and SEVENTY ACRES, LLC, a
Nevada limited liability company, DOE
14 INDIVIDUALS I-X, DOE CORPORATIONS I-X,
and DOE LIMITED LIABILITY COMPANIES I-X,

15 Plaintiffs,

16 v.

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

21 Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR PRE-
JUDGMENT INTEREST**

22
23 **PLEASE TAKE NOTICE** that the Findings of Fact and Conclusions of Law and Order
24 Granting Plaintiff's Motion for Pre-Judgment Interest was entered in the above-referenced case on
25 the 1st day of April, 2022, a copy of which is attached hereto.

26 ...
27 ...
28 ...

MCDONALD CARANO
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PHONE 702.873.4100 • FAX 702.873.9966

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DATED this 1st day of April, 2022.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1st day of April, 2022, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

...

MCDONALD CARANO
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PHONE 702.873.4100 • FAX 702.873.9966

CONCLUSIONS OF LAW

A. Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) provides:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

2. Accordingly, a taking claimant is entitled to a rate of prejudgment interest on a taking judgment higher than the statutory rate of prime plus two percent only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

1 that prejudgment interest should not be the prime rate plus two percent as indicated by the statute,
2 but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to
3 put Plaintiffs in the same position as before the City’s alleged taking. Neither *Barsy* nor the evidence
4 supports this rate of interest.

5 5. In *Barsy*, the defendant in an eminent domain action owned a building occupied by
6 two tenants. In 1988, the Nevada Department of Transportation (“NDOT”) identified Barsy’s
7 property for acquisition by eminent domain for a highway construction project. In late 1988 or early
8 1989, a representative of NDOT informed Barsy’s tenants “of the imminent project Due to
9 NDOT’s inability to indicate an accurate time frame for the acquisition of the property, the tenants
10 refused to renew their leases upon expiration.” 113 Nev. at 715-16, 941 P.2d at 974. “Barsy was
11 unable to attract new tenants because of the uncertainty surrounding the acquisition by NDOT.” *Id.*
12 Barsy presumably had no income from his building after the tenants vacated. The NDOT delayed
13 filing a condemnation action against Barsy until 1992, after Barsy’s two tenants had vacated the
14 premises. 113 Nev. at 716, 941 P.2d at 974. During the entire eminent domain action, Barsy was
15 unable to attract new tenants and suffered lost income. *Id.*

16 6. In addition to awarding Barsy just compensation based on the fair market value of
17 Barsy’s property, the District Court awarded Barsy prejudgment interest of eight percent, two
18 percent above the prime rate, rather than the rate specified in the eminent domain law at the time.¹
19 100 Nev. at 178-19, 941 P.2d at 975-76. The court found that if the compensation had been paid
20 before the judgment, Barsy could have used it to extend his mortgage, presumably at a lower rate,
21 or invest in other property that would produce a return that would have made up for Barsy’s lost
22 income from before and during the litigation. Because the award of just compensation was
23 insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same
24 position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

25
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27 ¹ At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest paid
28 on one year’s United States Treasury bills. NRS 37.175 was later amended to require prejudgment
interest at the prime rate plus two percent.

1 7. Through the payment of prime plus two percent, Plaintiffs will be made whole.
2 Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs
3 in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs,
4 and the Court rejects Plaintiffs’ reliance on that case.

5 **B. No authority permits the award of profit that allegedly would have been**
6 **earned from a speculative real estate investment under the guise of**
7 **prejudgment “interest”**

8 8. The Court finds that Plaintiffs request an award not of “interest” as defined in
9 Nevada law, but rather “profit” from a hypothetical, and speculative, real estate investment. No
10 authority supports this claim.

11 9. The Court rejects Plaintiffs’ request to base prejudgment interest on the expert
12 reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other
13 real estate during the relevant period. The Court finds that the payment of prime plus two percent
14 is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property
15 not been taken.

16 10. “Interest” is defined by Oxford Languages as “money paid regularly at a particular
17 rate for the use of money lent, or for delaying the repayment of a debt.” “Profit” is defined by
18 Oxford Languages as “a financial gain, especially the difference between the amount earned and
19 the amount spent in buying, operating, or producing something.” “Interest” in this case, therefore,
20 is the return Plaintiffs would have earned if it had received the judgment in 2017 and loaned it to
21 others. The interest rate would logically be a rate competitive with the rates charged by other
22 lenders. That rate would be close to the prime rate. In Nevada, the Legislature has set that rate for
23 eminent domain actions at two percent above the prime lending rate of large banks. Profit, by
24 contrast, would be money that Plaintiffs could earn if it invested the money in a real estate venture.
25 In that case, the investment would “produce” something of value that Plaintiffs could then sell or
26 rent, hence, “profit.” Interest, by its definition, is a known amount that must be paid by contract;
27 profit, in contrast, is speculative, and depends on a myriad of factors.

28 11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had
Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

1 in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the
2 claim was not pure speculation, the return Plaintiffs claims it would have earned is not “interest.”
3 Rather, it is “profit.” If this Court were to conflate “interest” with “profit” in the manner proposed
4 by Plaintiffs, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it
5 had been paid the money at the time of the damage, it could have invested the money in real estate,
6 the stock market, its uncle’s business, or any other unidentified business venture; (b) obtain the
7 testimony of an “expert” predicting that the investment in the hypothetical and unidentified venture
8 would yield a profit of a certain amount; and (c) call the profit prejudgment “interest.” Profits from
9 real estate investment and other businesses, however, are uncertain and generally too speculative to
10 be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776
11 (2012) (excluding an expert’s lost profit estimates based on a hypothetical increased share of the
12 market). Profit from a business investment lacks the certainty of the prime rate of interest, which is
13 publicized by the federal government. The Nevada Supreme Court has determined that property
14 owners are entitled to prejudgment “interest” on takings judgments, not prejudgment “profit” from
15 speculative business ventures.

16 **C. No Nevada court has awarded prejudgment interest in a taking case at**
17 **a rate higher than prime plus two percent**

18 12. There is no Nevada precedent for an award of annual prejudgment interest in a taking
19 case greater than two percent above the prime rate and no precedent that prejudgment “interest”
20 could be set by the speculative profit from an investment of the award of just compensation in
21 another property or business venture.

22 13. In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court
23 awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175
24 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the
25 District Court for an evidentiary hearing to determine whether a different rate of interest was
26 warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court
27 indicated that the proper rate of prejudgment interest should be based “on the actual market rate of
28 interest during the years in question.” There is no suggestion in *Alper* that the rate of prejudgment

1 interest could be the profit the condemnee could make by investing the award of just compensation
2 during the litigation.

3 14. In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered
4 that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject
5 property was “vacant, unimproved, and held for investment purposes at the time of the taking.” 103
6 Nev. at 623. There is no suggestion that prejudgment “interest” could be interpreted as the value of
7 the profit from a speculative investment of the judgment.

8 15. Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight
9 percent, which was two percent above the prime rate. The Court found that that loss was not fully
10 compensated in the award of just compensation and therefore it was necessary to restore Barsy to
11 his monetary position before NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d
12 at 975-76. Because the statutory prejudgment interest rate has been increased to prime plus two
13 percent after *Barsy*, the Court finds that that rate is consistent with all Nevada authority.

14 **D. Prejudgment interest must be compounded annually**

15 16. NRS 37.175 indicates that the Court has discretion to order annual compounding of
16 prejudgment interest.

17 17. However, the Nevada Constitution, article 1, section 22 (4), states “Just
18 Compensation shall include ... compounded interest.”

19 18. Accordingly, the award of interest shall be compounded annually.

20 **ORDER**

21 Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

- 22 1. The Motion is hereby GRANTED, IN PART.
23 2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate
24 prescribed by NRS 37.175 of prime rate plus 2 percent.
25 3. Accordingly, the prejudgment interest on the judgment of \$34,135,000 at a rate of
26 prime plus two percent and compounded annually from August 2, 2017 through November 18,
27 2021, is \$ \$10,258,953.30. *See* attached spreadsheet.

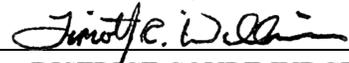
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4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this ___ day of _____, 2022.

Dated this 1st day of April, 2022



DISTRICT COURT JUDGE

MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

Reviewed and Approved as to form and content By:

McDONALD CARANO LLP

LAW OFFICES OF KERMITT L. WATERS

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Attorneys for City of Las Vegas

From: James Leavitt <jim@kermittwaters.com>
Sent: Friday, April 1, 2022 8:57 AM
To: Christopher Molina; George F. Ogilvie III; Jelena Jovanovic
Cc: Autumn Waters; Michael Schneider; Elizabeth Ham (EHB Companies); Jennifer Knighton (EHB Companies)
Subject: FW: FFCL Re: Prejudgment Interest
Attachments: City's Proposed FFCL re Motion for Pre-Judgment Interest, 3-17-22 - version 5.docx

Chris:

Good morning.

With the revisions made, you may affix my signature to the FFCL.

Thank you, and have a great weekend.

Jim

Jim Leavitt, Esq.
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From: Christopher Molina <cmolina@mcdonalddcarano.com>
Sent: Thursday, March 31, 2022 8:06 AM
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Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonalddcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Good morning Jim,

We have no objection to changing "Developer" to Plaintiffs, which I have done in the attached version. We don't believe it's necessary to include additional findings regarding the evidence Plaintiffs presented to the court as it's already in the record and there's already a description of that evidence in conclusion of law #11.

I've now incorporated four rounds of revisions into this FFCL and it is long overdue. We will submit to chambers prior to our hearing this afternoon in the 133-acre case. Please let me know if I have permission to affix your signature.

Chris Molina | Attorney



P: 702.873.4100 | E: cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>

Sent: Wednesday, March 30, 2022 2:22 PM

To: Christopher Molina <cmolina@mcdonaldcarano.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>

Subject: RE: FFCL Re: Prejudgment Interest

Chris:

Attached is a redline with our clients edits. Two main changes:

1. The City wants to call our client "Developer" our client wants to be called "Landowners" - we changed this to "Plaintiffs".
2. Paragraph 4 – we more clearly identified the evidence that the Plaintiff Landowners presented to the Court – the two expert reports by DiFederico and Lenhart. This simply states the fact that these two reports were presented and in two sentences summarizes what was in both reports.

Let me know if this is good to go.

Jim

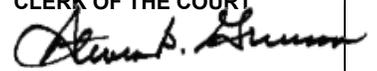
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13 Telephone: (702) 733-8877
14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO., LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,

15 Plaintiffs,

16 vs.

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

20 Defendant.

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

NOTICE OF ENTRY OF:

**FINAL JUDGMENT IN INVERSE
CONDEMNATION**

21 **PLEASE TAKE NOTICE** that the Final Judgment in Inverse Condemnation
22 (“Judgment”) in the above referenced matter was entered on the 18th day of April, 2022.

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A copy of the Judgment is attached hereto.

DATED this 18th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
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Attorneys for Plaintiff Landowners

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12 jim@kermittwaters.com
13 michael@kermittwaters.com
14 autumn@kermittwaters.com
15 **Attorneys for Plaintiff Landowners**

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 180 LAND CO LLC, a Nevada limited-liability
14 company; FORE STARS, LTD., a Nevada limited-
15 liability company; DOE INDIVIDUALS I through X,
16 ROE CORPORATIONS I through X, and ROE
17 LIMITED LIABILITY COMPANIES I through X,

17 Plaintiffs,

18 v.

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

24 Defendants.

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

25 **FINAL JUDGMENT IN INVERSE CONDEMNATION**

26 On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND
27 COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their
28 counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L.
Waters, along with the Landowners' corporate counsel Elizabeth Ghanem, Esq., and with the City

1 of Las Vegas (hereinafter “the City”) appearing through its counsel, George F. Ogilvie III, Esq.
2 of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City
3 Attorney’s Office and thereafter this Court entered Findings of Fact and Conclusions of Law on
4 Just Compensation, notice of entry occurring on November 24, 2021. Thereafter, the Court
5 entertained briefing and oral argument on all relevant post trial issues and entered the following
6 Orders: 1) Order Granting in Part and Denying in Part the City of Las Vegas’ Motion to Retax
7 Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting
8 Plaintiff Landowners’ Motion for Reimbursement of Property Taxes, notice of entry occurring
9 on February 17, 2022; 3) Order Granting Plaintiff Landowners’ Motion for Attorney Fees in Part
10 and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and
11 Conclusions of Law and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of
12 entry occurring on April 1, 2022.

13 Based on the referenced orders and findings of fact and conclusions of law having been
14 entered, pursuant to NRCP Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of
15 the Landowners and against the City of Las Vegas as follows:

16 The City shall pay to the Landowners for the taking of the 35 Acre Property **\$34,135,000.**

17 The City shall pay to the Landowners’ attorney fees in the amount of **\$2,468,751.50.**

18 The City shall pay to the Landowners’ costs in the amount of **\$274,445.16.**

19 The City shall reimburse the Landowners’ real estate taxes paid on the 35 Acre Property
20 in the amount of **\$976,889.38.**

21 The City shall pay prejudgment interest in the amount of **\$10,258,953.30** for interest up to
22 November 18, 2021, and shall pay interest on the judgment for any periods after November 18,
23 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1),
24 which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law
25 and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of entry occurring on April
26 1, 2022.

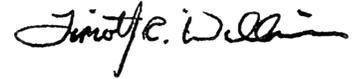
1 These sums assessed against the City and in favor of the Landowners shall be paid within
2 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions
3 of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting
4 Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of
5 entry occurring on February 10, 2022.
6

7 Interest will continue to accrue on the final judgment until satisfied.

8 The Landowners shall serve all parties written notice of entry of final judgment.

9 Dated this ____ day of April, 2022.

Dated this 18th day of April, 2022



93A 140 093E 36D8
Timothy C. Williams
District Court Judge

MH

14 Respectfully Submitted By:
15
16 **LAW OFFICES OF KERMITT L. WATERS**

Content Reviewed and Approved By:
17
18 **McDONALD CARANO LLP**

19 /s/ James J. Leavitt
Kermitt L. Waters, Esq. (NV Bar No. 2571)
James J. Leavitt, Esq. (NV Bar No. 6032)
Michael A. Schneider, Esq. (NV Bar No. 8887)
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396 Hayes Street
San Francisco, California 94102
Attorneys for City of Las Vegas

From: [James Leavitt](#)
To: [Sandy Guerra](#)
Subject: FW: Final Judgment In Inverse Condemnation
Date: Wednesday, April 6, 2022 11:28:10 AM
Attachments: Final Judgment 4.4.22 eqh.docx

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

From: James Leavitt
Sent: Monday, April 4, 2022 1:58 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: Final Judgment In Inverse Condemnation

George:

Attached is the Final Judgment in Inverse Condemnation. Please review and let me know if we have your permission to affix your signature.

We intend to submit to Judge Williams Wednesday, April 6, at 10:00 am.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
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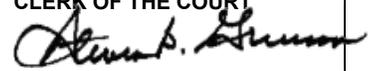
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Rebecca Wolfson rwolfson@lasvegasnevada.gov

Desiree Endres dendres@kcnvlaw.com



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14 Facsimile: (702) 731-1964
15 **Attorneys for Plaintiff Landowners**

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO LLC, a Nevada limited liability
12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
14 CORPORATIONS I through X, and ROE
15 LIMITED LIABILITY COMPANIES I through
16 X,

15 Plaintiffs,

16 vs.

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

20 Defendant.

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

PLAINTIFFS' NOTICE OF APPEAL

21 Plaintiffs 180 LAND CO LLC and FORE STARS Ltd., by and through their attorneys of
22 record, the Law Offices of Kermitt L. Waters, hereby appeal to the Supreme Court of Nevada from
23 the following:
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1. The Final Judgment in Inverse Condemnation, only to the extent it refers to the issue of prejudgment interest, entered on April 18, 2022 and attached hereto as *Exhibit A*; and

2. The Findings of Fact and Conclusions of Law and Order Granting Plaintiffs' Motion for Pre-Judgment Interest, entered on April 1, 2022 and attached hereto as *Exhibit B*.

DATED this 25th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
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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 25th day of April, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing:
4 **PLAINTIFFS' NOTICE OF APPEAL** was served on the below via the Court's electronic
5 filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed
6 to, the following:

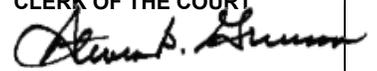
7 **McDONALD CARANO LLP**
8 George F. Ogilvie III, Esq.
9 Christopher Molina, Esq.
10 2300 W. Sahara Avenue, Suite 1200
11 Las Vegas, Nevada 89102
12 gogilvie@mcdonaldcarano.com
13 cmolina@mcdonaldcarano.com

14 **LAS VEGAS CITY ATTORNEY'S OFFICE**
15 Bryan Scott, Esq., City Attorney
16 Philip R. Byrnes, Esq.
17 Rebecca Wolfson, Esq.
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19 Las Vegas, Nevada 89101
20 bscott@lasvegasnevada.gov
21 pbyrnes@lasvegasnevada.gov
22 rwolfson@lasvegasnevada.gov

23 **SHUTE, MIHALY & WEINBERGER, LLP**
24 Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
San Francisco, California 94102
schwartz@smwlaw.com
ltarpey@smwlaw.com

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

Exhibit A



1 **NOE**
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15 **Attorneys for Plaintiff Landowners**

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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12 company, FORE STARS Ltd., DOE
13 INDIVIDUALS I through X, ROE
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16 X,

15 Plaintiffs,

16 vs.

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20 ROE INDIVIDUALS I through X, ROE
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20 Defendant.

Case No.: A-17-758528-J
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**FINAL JUDGMENT IN INVERSE
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A copy of the Judgment is attached hereto.

DATED this 18th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
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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 18th day of April, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing:
4 **NOTICE OF ENTRY OF: FINAL JUDGMENT IN INVERSE CONDEMNATION** was
5 served on the below via the Court’s electronic filing/service system and/or deposited for mailing
6 in the U.S. Mail, postage prepaid and addressed to, the following:

7 **McDONALD CARANO LLP**
8 George F. Ogilvie III, Esq.
9 Christopher Molina, Esq.
10 2300 W. Sahara Avenue, Suite 1200
11 Las Vegas, Nevada 89102
12 gogilvie@mcdonaldcarano.com
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/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

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15 ***Attorneys for Plaintiff Landowners***

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17 Plaintiffs,

18 v.

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22 INDIVIDUALS I through X; ROE LIMITED
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24 Defendants.

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

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Waters, along with the Landowners’ corporate counsel Elizabeth Ghanem, Esq., and with the City

1 of Las Vegas (hereinafter “the City”) appearing through its counsel, George F. Ogilvie III, Esq.
2 of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City
3 Attorney’s Office and thereafter this Court entered Findings of Fact and Conclusions of Law on
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7 Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting
8 Plaintiff Landowners’ Motion for Reimbursement of Property Taxes, notice of entry occurring
9 on February 17, 2022; 3) Order Granting Plaintiff Landowners’ Motion for Attorney Fees in Part
10 and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and
11 Conclusions of Law and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of
12 entry occurring on April 1, 2022.

13 Based on the referenced orders and findings of fact and conclusions of law having been
14 entered, pursuant to NRCF Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of
15 the Landowners and against the City of Las Vegas as follows:

16 The City shall pay to the Landowners for the taking of the 35 Acre Property **\$34,135,000.**

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18 The City shall pay to the Landowners’ costs in the amount of **\$274,445.16.**

19 The City shall reimburse the Landowners’ real estate taxes paid on the 35 Acre Property
20 in the amount of **\$976,889.38.**

21 The City shall pay prejudgment interest in the amount of **\$10,258,953.30** for interest up to
22 November 18, 2021, and shall pay interest on the judgment for any periods after November 18,
23 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1),
24 which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law
25 and Order Granting Plaintiff’s Motion for Pre-Judgment Interest, notice of entry occurring on April
26 1, 2022.

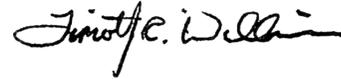
1 These sums assessed against the City and in favor of the Landowners shall be paid within
2 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions
3 of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting
4 Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of
5 entry occurring on February 10, 2022.
6

7 Interest will continue to accrue on the final judgment until satisfied.

8 The Landowners shall serve all parties written notice of entry of final judgment.

9 Dated this _____ day of April, 2022.

Dated this 18th day of April, 2022



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93A 140 093E 36D8
Timothy C. Williams
District Court Judge

MH

Respectfully Submitted By:

Content Reviewed and Approved By:

LAW OFFICES OF KERMITT L. WATERS

McDONALD CARANO LLP

/s/ James J. Leavitt

Did not respond

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James J. Leavitt, Esq. (NV Bar No. 6032)
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From: [James Leavitt](#)
To: [Sandy Guerra](#)
Subject: FW: Final Judgment In Inverse Condemnation
Date: Wednesday, April 6, 2022 11:28:10 AM
Attachments: Final Judgment 4.4.22 eqh.docx

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

From: James Leavitt
Sent: Monday, April 4, 2022 1:58 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: Final Judgment In Inverse Condemnation

George:

Attached is the Final Judgment in Inverse Condemnation. Please review and let me know if we have your permission to affix your signature.

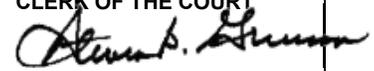
We intend to submit to Judge Williams Wednesday, April 6, at 10:00 am.

Jim

Jim Leavitt, Esq.
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704 South Ninth Street
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tel: (702) 733-8877
fax: (702) 731-1964

23203

Exhibit B



1 **NEFF**
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12 sfloyd@lasvegasnevada.gov

13 (Additional Counsel Identified on Signature Page)

14 *Attorneys for City of Las Vegas*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs,

24 v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR PRE-
JUDGMENT INTEREST**

29 **PLEASE TAKE NOTICE** that the Findings of Fact and Conclusions of Law and Order
30 Granting Plaintiff's Motion for Pre-Judgment Interest was entered in the above-referenced case on
31 the 1st day of April, 2022, a copy of which is attached hereto.

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DATED this 1st day of April, 2022.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

George F. Ogilvie III (NV Bar No. 3552)

Christopher Molina (NV Bar No. 14092)

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Attorneys for City of Las Vegas

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1st day of April, 2022, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

Thomas J. Lewis
CLERK OF THE COURT

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FFCO
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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

...

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

CONCLUSIONS OF LAW

A. Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) provides:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

2. Accordingly, a taking claimant is entitled to a rate of prejudgment interest on a taking judgment higher than the statutory rate of prime plus two percent only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

1 that prejudgment interest should not be the prime rate plus two percent as indicated by the statute,
2 but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to
3 put Plaintiffs in the same position as before the City’s alleged taking. Neither *Barsy* nor the evidence
4 supports this rate of interest.

5 5. In *Barsy*, the defendant in an eminent domain action owned a building occupied by
6 two tenants. In 1988, the Nevada Department of Transportation (“NDOT”) identified Barsy’s
7 property for acquisition by eminent domain for a highway construction project. In late 1988 or early
8 1989, a representative of NDOT informed Barsy’s tenants “of the imminent project Due to
9 NDOT’s inability to indicate an accurate time frame for the acquisition of the property, the tenants
10 refused to renew their leases upon expiration.” 113 Nev. at 715-16, 941 P.2d at 974. “Barsy was
11 unable to attract new tenants because of the uncertainty surrounding the acquisition by NDOT.” *Id.*
12 Barsy presumably had no income from his building after the tenants vacated. The NDOT delayed
13 filing a condemnation action against Barsy until 1992, after Barsy’s two tenants had vacated the
14 premises. 113 Nev. at 716, 941 P.2d at 974. During the entire eminent domain action, Barsy was
15 unable to attract new tenants and suffered lost income. *Id.*

16 6. In addition to awarding Barsy just compensation based on the fair market value of
17 Barsy’s property, the District Court awarded Barsy prejudgment interest of eight percent, two
18 percent above the prime rate, rather than the rate specified in the eminent domain law at the time.¹
19 100 Nev. at 178-19, 941 P.2d at 975-76. The court found that if the compensation had been paid
20 before the judgment, Barsy could have used it to extend his mortgage, presumably at a lower rate,
21 or invest in other property that would produce a return that would have made up for Barsy’s lost
22 income from before and during the litigation. Because the award of just compensation was
23 insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same
24 position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

25
26 _____
27 ¹ At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest paid
28 on one year’s United States Treasury bills. NRS 37.175 was later amended to require prejudgment
interest at the prime rate plus two percent.

1 7. Through the payment of prime plus two percent, Plaintiffs will be made whole.
2 Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs
3 in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs,
4 and the Court rejects Plaintiffs’ reliance on that case.

5 **B. No authority permits the award of profit that allegedly would have been**
6 **earned from a speculative real estate investment under the guise of**
7 **prejudgment “interest”**

8 8. The Court finds that Plaintiffs request an award not of “interest” as defined in
9 Nevada law, but rather “profit” from a hypothetical, and speculative, real estate investment. No
10 authority supports this claim.

11 9. The Court rejects Plaintiffs’ request to base prejudgment interest on the expert
12 reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other
13 real estate during the relevant period. The Court finds that the payment of prime plus two percent
14 is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property
15 not been taken.

16 10. “Interest” is defined by Oxford Languages as “money paid regularly at a particular
17 rate for the use of money lent, or for delaying the repayment of a debt.” “Profit” is defined by
18 Oxford Languages as “a financial gain, especially the difference between the amount earned and
19 the amount spent in buying, operating, or producing something.” “Interest” in this case, therefore,
20 is the return Plaintiffs would have earned if it had received the judgment in 2017 and loaned it to
21 others. The interest rate would logically be a rate competitive with the rates charged by other
22 lenders. That rate would be close to the prime rate. In Nevada, the Legislature has set that rate for
23 eminent domain actions at two percent above the prime lending rate of large banks. Profit, by
24 contrast, would be money that Plaintiffs could earn if it invested the money in a real estate venture.
25 In that case, the investment would “produce” something of value that Plaintiffs could then sell or
26 rent, hence, “profit.” Interest, by its definition, is a known amount that must be paid by contract;
27 profit, in contrast, is speculative, and depends on a myriad of factors.

28 11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had
Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

1 in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the
2 claim was not pure speculation, the return Plaintiffs claims it would have earned is not “interest.”
3 Rather, it is “profit.” If this Court were to conflate “interest” with “profit” in the manner proposed
4 by Plaintiffs, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it
5 had been paid the money at the time of the damage, it could have invested the money in real estate,
6 the stock market, its uncle’s business, or any other unidentified business venture; (b) obtain the
7 testimony of an “expert” predicting that the investment in the hypothetical and unidentified venture
8 would yield a profit of a certain amount; and (c) call the profit prejudgment “interest.” Profits from
9 real estate investment and other businesses, however, are uncertain and generally too speculative to
10 be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776
11 (2012) (excluding an expert’s lost profit estimates based on a hypothetical increased share of the
12 market). Profit from a business investment lacks the certainty of the prime rate of interest, which is
13 publicized by the federal government. The Nevada Supreme Court has determined that property
14 owners are entitled to prejudgment “interest” on takings judgments, not prejudgment “profit” from
15 speculative business ventures.

16 **C. No Nevada court has awarded prejudgment interest in a taking case at**
17 **a rate higher than prime plus two percent**

18 12. There is no Nevada precedent for an award of annual prejudgment interest in a taking
19 case greater than two percent above the prime rate and no precedent that prejudgment “interest”
20 could be set by the speculative profit from an investment of the award of just compensation in
21 another property or business venture.

22 13. In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court
23 awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175
24 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the
25 District Court for an evidentiary hearing to determine whether a different rate of interest was
26 warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court
27 indicated that the proper rate of prejudgment interest should be based “on the actual market rate of
28 interest during the years in question.” There is no suggestion in *Alper* that the rate of prejudgment

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interest could be the profit the condemnee could make by investing the award of just compensation during the litigation.

14. In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject property was “vacant, unimproved, and held for investment purposes at the time of the taking.” 103 Nev. at 623. There is no suggestion that prejudgment “interest” could be interpreted as the value of the profit from a speculative investment of the judgment.

15. Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight percent, which was two percent above the prime rate. The Court found that that loss was not fully compensated in the award of just compensation and therefore it was necessary to restore Barsy to his monetary position before NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d at 975-76. Because the statutory prejudgment interest rate has been increased to prime plus two percent after *Barsy*, the Court finds that that rate is consistent with all Nevada authority.

D. Prejudgment interest must be compounded annually

16. NRS 37.175 indicates that the Court has discretion to order annual compounding of prejudgment interest.

17. However, the Nevada Constitution, article 1, section 22 (4), states “Just Compensation shall include ... compounded interest.”

18. Accordingly, the award of interest shall be compounded annually.

ORDER

Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

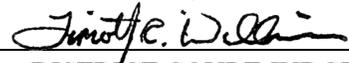
1. The Motion is hereby GRANTED, IN PART.
2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate prescribed by NRS 37.175 of prime rate plus 2 percent.
3. Accordingly, the prejudgment interest on the judgment of \$34,135,000 at a rate of prime plus two percent and compounded annually from August 2, 2017 through November 18, 2021, is \$ \$10,258,953.30. See attached spreadsheet.

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4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the \$34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this ___ day of _____, 2022.

Dated this 1st day of April, 2022



DISTRICT COURT JUDGE

MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

Reviewed and Approved as to form and content By:

McDONALD CARANO LLP

LAW OFFICES OF KERMIT L. WATERS

/s/ George F. Ogilvie III
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Attorney for 180 Land Co LLC and Fore Stars Ltd.

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Attorneys for City of Las Vegas

From: James Leavitt <jim@kermittwaters.com>
Sent: Friday, April 1, 2022 8:57 AM
To: Christopher Molina; George F. Ogilvie III; Jelena Jovanovic
Cc: Autumn Waters; Michael Schneider; Elizabeth Ham (EHB Companies); Jennifer Knighton (EHB Companies)
Subject: FW: FFCL Re: Prejudgment Interest
Attachments: City's Proposed FFCL re Motion for Pre-Judgment Interest, 3-17-22 - version 5.docx

Chris:

Good morning.

With the revisions made, you may affix my signature to the FFCL.

Thank you, and have a great weekend.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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tel: (702) 733-8877
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From: Christopher Molina <cmolina@mcdonalddcarano.com>
Sent: Thursday, March 31, 2022 8:06 AM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonalddcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonalddcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Good morning Jim,

We have no objection to changing "Developer" to Plaintiffs, which I have done in the attached version. We don't believe it's necessary to include additional findings regarding the evidence Plaintiffs presented to the court as it's already in the record and there's already a description of that evidence in conclusion of law #11.

I've now incorporated four rounds of revisions into this FFCL and it is long overdue. We will submit to chambers prior to our hearing this afternoon in the 133-acre case. Please let me know if I have permission to affix your signature.

Chris Molina | Attorney



P: 702.873.4100 | E: cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>

Sent: Wednesday, March 30, 2022 2:22 PM

To: Christopher Molina <cmolina@mcdonaldcarano.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>

Subject: RE: FFCL Re: Prejudgment Interest

Chris:

Attached is a redline with our clients edits. Two main changes:

1. The City wants to call our client "Developer" our client wants to be called "Landowners" - we changed this to "Plaintiffs".
2. Paragraph 4 – we more clearly identified the evidence that the Plaintiff Landowners presented to the Court – the two expert reports by DiFederico and Lenhart. This simply states the fact that these two reports were presented and in two sentences summarizes what was in both reports.

Let me know if this is good to go.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
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