IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

No. 84345

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

AMENDED JOINT APPENDIX VOLUME 104

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME** **(HEARING REQUESTED ON ORDER SHORTENING TIME)** **OST Hearing Date:** **OST Hearing Time**

Pursuant to EDCR 2.26 and 7.30, the City of Las Vegas ("City") moves the Court to continue the trial in this matter, which is currently scheduled to commence with jury selection on October 27, 2021. At the time of the September 30, 2021 status conference for trial setting/calendar call, co-counsel for the City failed to recall that he has a five-day arbitration hearing scheduled to commence on November 1, 2021. Because of the conflict with the trial setting in this matter, the City submits this emergency motion to continue the trial date. Due to the impending trial date, Defendants request that this motion be heard on shortened time.

This motion is made and based upon the papers and pleadings on record in this matter, the attached memorandum of points and authorities and the exhibits thereto, the Declaration of George F. Ogilvie III, and any argument entertained by the Court at the time of the hearing on this matter.

Respectfully submitted this 8th day of October, 2021.

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MH
Entered

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on the **CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL** shall be shortened and heard before the above-entitled Court in Department XVI on the 19th day of October, 2021 at 9:05 am ~~a.m./ p.~~m., or as soon thereafter as counsel may be heard.

~~DATED this ____ day of October, 2021.~~

Dated this 11th day of October, 2021

DISTRICT COURT JUDGE

MH

F09 D4F C05A B543
Timothy C. Williams
District Court Judge

DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME

George F. Ogilvie III, after being sworn, declares as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas ("City") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I make this declaration in support of the City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time and, pursuant to EDCR 2.26, in support of the City's request for an order shortening time for hearing on this motion.

3. I am co-counsel for Plaintiff Todd VanDeHey in an action brought in the United States District Court for the District of Nevada, Case No. 2:17-cv-02230-JAD-NJK (the "Federal Court Litigation"). I also represent Mr. VanDeHey in a corollary arbitration proceeding pending with JAMS, Ref. No. 1260004577 (the "Arbitration Proceeding"). The Federal Court Litigation has been stayed pending the conclusion of the Arbitration Proceeding.

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4. The arbitration hearing in the Arbitration Proceeding has been rescheduled multiple times. Finally, in June 2021, the arbitrator scheduled the arbitration hearing for November 1, 2, 3, 4 and 5, 2021.

5. In various court appearances in recent months, I heard this Court advise counsel in other matters that it would be unlikely that the Court would be conducting jury trials until 2022 due to COVID-19 concerns.

6. At the August 19, 2021 status check in this matter, counsel for the City reminded the Court that the City's status report had suggested conducting another trial readiness status check after the September 23-24 dispositive motions hearing so the parties would understand the remaining issues to be tried, and the City would request additional time to file motions in limine.

7. The September 23-24 dispositive motions hearings were conducted through the morning of September 28, at the conclusion of which the previously scheduled trial readiness discussion was not conducted.

8. Based on the foregoing, counsel for the City anticipated that, at the September 30, 2021 calendar call, the Court and counsel would engage in the trial readiness discussion and a discussion regarding the timeframe to file additional motions of limine based on the Court's September 28 rulings. At the outset of the September 30 calendar call, counsel for the City evidenced his understanding to the Court, advising that the City intended to file motions in limine based on the Court's dispositive motions ruling and, in accordance with the Court's prior statements, suggesting a trial in the first quarter of 2022.

9. The Court, however, scheduled this matter for jury selection on October 27, 2021, with opening statements to be made on either October 28 or November 1.

10. Taken by surprise by a 2021 trial setting and because my focus has been on the four-week jury trial in which I am currently involved, I didn't immediately realize the scheduling conflict with the November 1-5 arbitration hearing.

11. After realizing the scheduling conflict, on October 5, 2021, I advised Plaintiffs' counsel and sought a stipulation to continue the trial in this matter to November 15, 2021.

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12. Plaintiffs' counsel advised me on October 7, 2021 that he could not agree to continue the trial because he was advised that no other trial dates in the trial stack are available, and that I would have to file the instant motion.

13. Because I cannot represent Mr. VanDeHey in the November 1-5 arbitration hearing and represent the City in a jury trial beginning on October 27 in this matter, the City is compelled to bring the instant motion to continue this trial.

14. The City brings this motion in good faith and not for purposes of delay.

15. In accordance with EDCR 7.30, I certify that I have provided Plaintiffs' counsel with a copy of this motion and the supporting documents.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Dated this 8th day of October, 2021.

/s/ *George F. Ogilvie III*
GEORGE F. OGILVIE III

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

The parties appeared before the Court for a status check hearing regarding trial readiness on August 19, 2021, during which the City requested that the Court schedule a follow up hearing regarding trial readiness after hearing dispositive motions on September 23-24, 2021. *See* Hearing Transcript of August 19, 2021 Status Check, a copy of which is attached hereto as **Exhibit A**, at 15:11-15. The City also advised the Court that the City would be requesting additional time at the status check to file motions in limine. *Id.* The Court thanked counsel for raising the issue and set a trial readiness discussion for the conclusion of the September 24, 2021 dispositive motion hearing, stating "(b)ecause after the dust settles, we do have to decide, potentially if there's a necessity for a jury trial and how it's going to be conducted." *Id.* at 15:22-16:4. The Court further stated:

> I don't know if we're going to have any jury trials before the end of the year, but if we did have one, it wouldn't be in this courtroom. I would have to find a courtroom, because this is not large enough. It's not. And also remember this, everyone, you have to know -- I know you know this because you're practitioners, you're litigators, you're trial lawyers, don't you want to be able to conduct a meaningful voir dire, potentially, where everyone in the panel doesn't have a face mask on?
>
> * * *
>
> You see where I'm going, right. I mean, right, you want to be able to look at them, size them up. If you have a consultant there. I mean, there's so much that goes -- involved. And this is important when it comes to witnesses. And I realize some other departments have done jury trials and this is a real necessity in criminal cases, but I sit back, and I try to figure out, how can you do that meaningfully, you know. It's difficult, and I don't have the answer. But the bottom line is we'll deal with that later. We'll talk about it.

After the status check hearing on August 19, 2021, the Court entered an order setting another status check hearing regarding trial readiness for September 24, 2021. *See* Order Regarding August 19, 2021 Status Check, a copy of which is attached hereto as **Exhibit B**. The September 23-24 dispositive motions hearings were conducted through the morning of September 28, at the conclusion of which the previously scheduled trial readiness discussion was not conducted. *See* Declaration of

George F. Ogilvie III in Support of City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time ("Ogilvie Decl.") at ¶ 7.

On September 30, 2021, counsel for the parties appeared before the Court for calendar call. Since the Court had previously ordered another hearing regarding trial readiness, and based upon the Court's prior comments regarding scheduling jury trials (and this trial) in 2022, it was the City's understanding that the Court intended to discuss a trial date on a later stack. *See id.* at ¶ 8. Accordingly, the City proposed a trial date in the first quarter of 2022. *Id.* The City did not anticipate that the Court would set a trial date in the five-week trial stack beginning on October 25, 2021. *Id.* at ¶¶ 8-10.

Taken by surprise by a 2021 trial setting, the City's counsel didn't immediately realize his scheduling conflict with a November 1-5 arbitration hearing. *Id.* at ¶ 10. After realizing the conflict, the City's counsel advised Plaintiffs' counsel, and sought a stipulation to continue the trial in this matter to November 15, 2021. *Id.* at ¶ 11. On October 7, 2021, Plaintiffs' counsel responded that he could not agree to continue the trial because no other trial dates in the October 25 trial stack are available. *Id.* at ¶ 12. Accordingly, the City is compelled to bring this Emergency Motion to Continue Trial on Order Shortening Time.

II. LEGAL ARGUMENT

The Court may continue the trial date for good cause. *See Hopper v. Hopper*, 79 Nev. 86, 88, 378 P.2d 875, 876 (1963); see also NRCP 16(b)(5); EDCR7.30. As set forth in the Declaration of George F. Ogilvie III, good cause for a continuance exists because Mr. Ogilvie is scheduled to be involved in an arbitration hearing on November 1, 2, 3, 4 and 5, 2021.

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III. CONCLUSION

The City respectfully requests that the Court enter an order continuing the trial date for the reasons set forth above.

Respectfully submitted this 8th day of October, 2021.

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EXHIBIT “A”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, Petitioner, vs. CITY OF LAS VEGAS, Respondent.	CASE#: A-17-758528-J DEPT. XVI

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS
DISTRICT COURT JUDGE
THURSDAY, AUGUST 19, 2021

RECORDER'S TRANSCRIPT STATUS CHECK

APPEARANCES VIA BLUEJEANS:

For the Petitioner:	JAMES J. LEAVITT, ESQ. ELIZABETH M. GHANEM, ESQ.
For the Respondent:	CHRISTOPHER MOLINA, ESQ. PHILIP R. BYRNES, ESQ. REBECCA L. WOLFSON, ESQ.

RECORDED BY: REBECCA GOMEZ, COURT RECORDER

Las Vegas, Nevada, Thursday, August 19, 2021

[Case called at 9:29 a.m.]

THE COURT: All right. We're going to move on. Next up happens to be page 5 of the calendar, and that's 180 Land Company v. City of Las Vegas. Let's go ahead and set forth our appearances for the record.

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

MS. GHANEM: Good morning, Your Honor. On behalf of Plaintiff landowners, Elizabeth Ghanem, in-house counsel.

MR. MOLINA: Good morning, Your Honor. Chris Molina on behalf of the City of Las Vegas.

MR. BYRNES: Good morning, Your Honor. Philip Byrnes on behalf of City of Las Vegas.

MS. WOLFSON: And, good morning, Your Honor. Rebecca Wolfson also on behalf of the City of Las Vegas.

THE COURT: Okay. Does that cover all appearances? I guess it does.

Anyway, it's my understanding this is a status check regarding trial readiness. Tell me, where are we at on this matter?

MR. LEAVITT: Yes, Your Honor. James J. Leavitt on behalf of the Plaintiff landowner. As you'll recall, there was several continuances in this matter. There is a trial, which is currently set for October 25th. Pursuant to NRS 37.055, this eminent domain action was

set first on the October 25th stack, because it has preferential trial setting. So that's where we are. And as far as the landowners are concerned, Your Honor, we're ready to appear at that trial. We have completed discovery with the City of Las Vegas.

One item that we would need to consider at this hearing, Your Honor, is as you'll recall there's a two-step process in all of these inverse condemnation cases. The first is to determine the property interest that the landowners had, and you entertained --

THE COURT: And I don't want to cut --

MR. LEAVITT: -- that motion --

THE COURT: Mr. Leavitt, I don't want to cut you off, but I was actually thinking the exact same thing as you were beginning to discuss that issue, and that's a trial protocol issue, right? And so, I just wanted to make --

MR. LEAVITT: Exactly.

THE COURT: Yeah, I was thinking that exact same issue. So, anyway, go ahead, sir, I want to hear what you have to say.

MR. LEAVITT: Yeah, so the protocol for all these inverse condemnation cases is that first the Court determines the property interest issue that the landowners had prior to any governmental interference with that property interest. We filed a motion on that issue, there was significant argument. The Court entered an order, and the date of that order was October 2020.

Subsequent to that decision being made, the landowners then filed the motion to determine take. Obviously, that motion to

determine take had to be filed after the motion to determine property interest was filed, because you can't determine whether the property has been taken without defining that property. Since this Court has already defined the property interest, the landowners brought the motion to determine whether that property interest was taken. That motion was filed in March of this year, approximately four months ago.

As you'll recall, the City of Las Vegas filed a 56(d) motion and requested that it be given an opportunity to, number one, visit the landowners' property; number two, take the deposition of Mr. Lowie; and, number three, that discovery close. All three of those things have now occurred.

And so what we would request from this status conference today is that that motion to determine take be put back on calendar, and that the City be given an opportunity to file an opposition to that motion to determine take within the next seven to ten days, and that we set a hearing date for that motion to determine take for either the week of September 5th or the week of September 12th. We've done this argument several times before. We've done the motion to determine take argument several times before, and we've always set a special setting. We anticipate that argument taking approximately three to four hours on the motion to determine take. It will be an evidentiary hearing where we would present the facts, playing out the City's actions that resulted in the taking of that underlying property interest.

Just a matter of procedure, as you'll recall, the City of Las Vegas asked for that 56(d) continuance, so it could do those three things.

In the meantime, Your Honor, the City filed motions for summary judgment in the three other cases prior to completing those three items that it wanted to do to determine the take. So, Your Honor, we think the City is ready to respond, since the City filed motions to determine take in those other three cases even prior to completing the three items they stated to this Court it needed to complete prior to appearing on that motion to determine take.

So, Your Honor, in short, what we would like to do is keep our October 25th trial date as it exists. I understand the concerns that you have communicated to the other parties. I fully understand that. In the meantime, we can schedule the motion to determine take. We can have briefing done. And hopefully, we can have that motion to determine take resolved by the first or second week in September.

At that time, we can analyze whether we go forward with the trial or not because the City has not produced any expert reports. They didn't exchange any initial expert reports. They didn't -- they have no valuation evidence for the relevant date of valuation. Therefore, we believe that the motion to determine take may very well resolve all the issues in this case. I'm willing to respond to any other questions that this Court may have.

THE COURT: Mr. Leavitt, I don't have any questions at this time, sir.

MS. GHANEM: Thank you, Your Honor. This Elizabeth Ghanem on behalf of the Plaintiffs. I just want to add one other thing. We would need a special setting, I believe, Jim, if I'm right, on the

summary judgment hearing. And so we would ask that it be set at a separate time. And I think we're estimating maybe two or three hours for that hearing. Am I correct, Mr. Leavitt?

MR. LEAVITT: Yes, Ms. Ghanem. And this is James Leavitt again on behalf of the landowner. So I apologize, Your Honor. So what we would like is for that motion to determine take be scheduled either the first or second week in September for a special setting. Like I said, it's already been fully briefed by the landowners. This is probably the third or fourth time that this issue has been fully briefed. And so the City has had an opportunity to oppose this. It's had our brief for approximately four months on this issue and, of course, it's responded to these same issues in the other three cases.

And so we believe seven to ten days is sufficient time for the City to respond, and if we could have that date set the first or second week in September for that special evidentiary hearing. I think that would be adequate time for everybody to resolve this necessary motion in this case.

THE COURT: Okay. Thank you, sir. And let's hear from the City.

MR. MOLINA: Thank you, Your Honor. This is Chris Molina on behalf of the City. I'll just respond briefly to one comment that Mr. Leavitt made about this case being entitled to statutory priority under the eminent domain statutes. This is not an eminent domain case. This is an inverse condemnation case. The procedure is entirely different. We did not, you know, commence an action against the Plaintiffs to

condemn their property. The City is being sued for inverse condemnation. The policy of that statutory priority for eminent domain cases, which this is not, is based on the idea that the Government needs to be able to act efficiently and immediately, you know, take, you know, possession of the property and condemn the property for public improvement. This is not that type of case. And so the statutory priority argument that Mr. Leavitt is making is simply not applicable.

With regard to the motion to determine take that was filed in March 26th, 2021, you will recall that the City filed a motion pursuant to Rule 56(d) for a continuance. That motion was filed on order shortening time because the City did not feel that it should have, you know, been forced to file an opposition without having an opportunity to complete discovery. And as we mentioned in the status report that was filed yesterday, that there was ongoing discovery issues at the that that motion to determine take was filed and, therefore, the City, you know, filed a 56(d) motion on order shortening time.

Now the order that was issued on May 3rd, 2021, the minute order basically indicated that the motion to determine take, the hearing was vacated, and that the developer would be free to refile the motion to determine take after completion of discovery. The discovery to close occurred on July 26th, 2021, but we had to take one deposition after the close of discovery, Mr. Lowie, just last week -- last Thursday, actually, which was the last deposition that we had taken.

So discovery is now closed and, you know, we've concluded the discovery that we were permitted to complete in this case. There's

still some, you know, discovery issues that the City feels were not fully resolved, but, you know, at this point in time, it would appropriate for the Plaintiff to refile that motion to determine take, and the City would just request that it be heard and briefed in the normal course, as opposed to what Mr. Leavitt is suggesting right now.

And one other thing is that the City also intends to file a motion for summary judgment, you know, prior to the August 25th deadline, most likely before the end of the week, and we think that it makes sense for the Court to establish a briefing schedule and set hearings for this. Our preference would be to set a hearing out in September or possibly mid-October after, you know, full briefing has occurred, and the Court has had an opportunity to review everything. We think that, you know, all issues in this case should be decided by summary judgment and that, you know, after we get through the summary judgment hearings, we would ask the Court to basically enter a new scheduling order, you know, based on what issues may possibly be left for decision.

THE COURT: Okay. Is that all from the City? Appears to be. Mr. Leavitt.

MR. LEAVITT: Yes, Your Honor, just a brief response. In regards to -- I'll just say for eminent domain actions and inverse condemnation cases, and as far as the statutes apply in inverse condemnation cases, in the 1985 *County of Clark v. Alper* decision, the Nevada Supreme Court held that inverse condemnation cases are the constitutional equivalent of an eminent domain case and, therefore, the

same rules and procedures apply to both cases. Therefore, when this Court set this on a preferential trial setting under NRS 37.055, it was properly following the law that applies to inverse condemnation cases.

Secondly, as far as continuing the hearing on the landowner's motion, Your Honor, we have a set procedure in the State of Nevada for deciding these cases under *ASAP Storage* and under the *Sisolak* case. The landowner is required to bring the motion to determine the property interest and also the motion to determine the take. We've strictly followed that procedure and complied with that procedure with the City of Las Vegas having that second motion to determine take for four months now.

As you'll recall, we also tried to have that motion heard prior to that date. We believe that there is a significant delay that's occurring. As you'll recall, the City of Las Vegas asked for its 56(d) motion because it said it could not respond to the motion to determine take until it had completed those three things. Those three things are done. However, the City filed a motion to determine take in the other three cases before those three things were completed. I don't know what the City's tactic is and why it's trying to delay the motion to determine take in this case, but we see a significant delay occurring.

The motion has been pending for four months. We didn't refile because we thought it would be better to come to this Court, set a briefing schedule, and get an evidentiary hearing date set. And so that's what we're asking for. I'm not sure what other motions the City may be filing. I believe it's just going to be a motion to determine take. Having

said that, Your Honor, the motion to determine take should be heard as soon as possible because, as I stated, it's been pending for four months, and it's one of the required motions that's necessary in these inverse condemnation cases. Again, I don't know what other motions the City is going to file, but those motions should not delay the required motion that's necessary before this Court.

So, Your Honor, we would ask that the City be given seven to ten days to respond. That we would reply, obviously, within the appropriate time, and then have an evidentiary hearing for approximately three hours the week of September 5th or September 12th, on that underlying issue. If the City has other issues that it wants to file, it can bring those in the normal course, Your Honor, but this is a motion that we have contemplated and has been pending for some time. Thank you, Your Honor.

THE COURT: I'm just checking with my court clerk right now, counsel.

MR. LEAVITT: Thank you.

[Court and Clerk confer]

THE COURT: All right. This is what we'll do. And, Mr. Leavitt, you are correct, this motion has been pending for over four months. I did grant the Rule 56(d) relief for a couple reasons. Number one, the argument made by the City as to the necessity to complete discovery in order to appropriately respond, first of all. And, second, I don't mind telling you this, I like taking appellate issues off the table, all right. At the end of the day, that's gone now. I gave them the time.

Because that's one thing I think our Nevada Supreme Court, and rightfully so, should be concerned about, due process issues, right.. Judge, did you pull the trigger too quickly? And so, that's why I did that. I don't mind telling you this.

So what I'm going to do is this. I'm going to go ahead and first give you a date, and this is the quickest date I can give you because of my calendar. But we're going to set this for 1:30 in the afternoon, and the date will be September 23rd, 2021. I'm not -- I'm sorry, Mr. Leavitt, I'm not as optimistic as you are that it's going to take two to three hours. I don't think so. I can see it going two or three days, potentially. Maybe not two or three, but it's going to go a day, I think. And what we'll do at that time, assuming we don't finish, we'll just reset it. But that's what we're going to do.

And so my next question from the City is this, and the ticker is going to start running today, sir. Is ten days enough to get your -- ten days from today enough -- and that's the time under the rule, right, ten days?

THE CLERK: Yes.

THE COURT: Yeah. Is that enough time to get your opposition on file?

MR. MOLINA: I think ten days is fine. We had proposed a briefing schedule that's based on the existing deadline to file dispositive motions because, as I said before, we do intend to file our motion for summary judgment within the next few days, and then just add oppositions and reply briefs from both sides due on the same date.

THE COURT: Yeah.

MR. MOLINA: So I would prefer to have them synced together so that all issues can be, you know, heard at one hearing. And I agree with you, Your Honor, that it's unlikely that anything will get done in just one afternoon.

THE COURT: It's not going to happen.

MR. MOLINA: That was our proposal in our status report. The other thing that I will mention is that one of the attorneys that's working on this case is going to be in trial for two weeks starting September 20th, 2021, so that September 23rd date would conflict with that.

THE COURT: All right. Okay.

[Court and Clerk confer]

THE COURT: And you see the problem is, I can tell you this right now, I mean, I would love to go earlier, but we just don't have the room. And what we have going on, we have two issues. Number one, we have a lot of afternoon sessions, and then we have a bench trial. And bench trials are going. They are. And, surprisingly, we've been trying those remotely, and I think it's been quite successful. It really has. It kind of surprised me.

So where do we go from here, because I want to get this matter done. And here's my concern, and it really is a concern. I mean, I understand that we have a close of discovery coming up very quickly in this matter, but this has been pending for four months, right, and I granted a Rule 56(d) relief because I feel it's very important to give both

sides a full and fair opportunity to work their cases up. But now, I have to hear this motion, right.

MR. LEAVITT: Yes, Your Honor. And if I may interject here. James J. Leavitt on behalf of 180 Land. We also will have people out at that time, however, Your Honor, the two individuals that will be arguing the motion and presenting the evidence, myself on behalf of the landowner and Andrew Schwartz on behalf of the City of Las Vegas, are available during that time. I understand that there might be other attorneys who are not available --

THE COURT: Okay.

MR. LEAVITT: -- including from our office, but all of the attorneys who will -- who actually have, in the past, presented these arguments are available for that September 23rd date.

THE COURT: All right. And that's the status of the case, right?

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

THE COURT: Okay.

MR. MOLINA: Yes, Your Honor.

THE COURT: What we're going to do --

MR. LEAVITT: So my point is, Your Honor --

THE COURT: Yes.

MR. LEAVITT: Oh, go ahead. Sorry, Your Honor. Go ahead.

THE COURT: Yeah, we're going to go ahead and go with that 23rd date. And my law clerk told me, in all probability we'll bleed into the 30th, if necessary, is that correct?

[Court and Clerk confer]

THE COURT: Oh, okay. Well, this might work out pretty well, because we'll have that Thursday -- oh, yeah, we have to go with this date, because we have Thursday, the 23rd, and I'm also blocking out Friday, the 24th? Is that correct, Mr. Court Clerk?

THE CLERK: Yes, Your Honor.

THE COURT: And so I would hope -- this is potentially really good and that's the time I have available because I know it's going to go longer than two to three hours, but I don't think it will go more than a day-and-a-half. And so, hypothetically, we can have all this done that week.

MR. LEAVITT: I agree with that. On behalf of James -- James J. Leavitt on behalf of the 180 Land landowners. I agree, Your Honor, and I believe we can get it done in that day-and-a-half. And I appreciate the scheduling for that, Your Honor.

THE COURT: Okay. And that's the best I can do, everyone. But that's what we're going to do. That's going to be the date for the -- we're going to recalendar you motion, Mr. Leavitt. It's going to be heard on Thursday, September 23rd, 2021, at 1:30 p.m. And assuming we need more time, and I can almost guarantee you we will, we will continue that until Thursday -- I'm sorry, Friday, September 24th, 2021, and we'll have the whole day.

MR. LEAVITT: Thank you, Your Honor. And would you like us to prepare an order on that?

THE COURT: Prepare an order. And as far as the City is

concerned, the City can go ahead and file whatever motions they feel would be appropriate, right, prior to the close of the dispositive motion deadline. If they can't, they can always seek the appropriate relief under the rules. That's kind of how we do it, right.

MR. LEAVITT: Right. Sounds good, Your Honor.

THE COURT: Okay. And, Mr. Leavitt --

MR. LEAVITT: And we'll prepare the order and circulate it.

THE COURT: -- prepare the order and circulate it.

MR. MOLINA: Your Honor.

THE COURT: Yeah.

MR. MOLINA: Your Honor, if I could just ask one quick point of clarification. Regarding the current trial stack, it's October 25th, and what we had suggested in our status report would be to have another trial readiness status check hearing after the hearings on dispositive motions have --

THE COURT: Oh, thank you.

MR. MOLINA: -- been decided, so that we know what the issues are that have been narrowed for --

THE COURT: Certainly.

MR. MOLINA: -- trial, and at that point in time we would request additional time to file motions in limine.

THE COURT: Well, sir, and thank you for bringing that up. I get it. We'll have another -- we'll do it this way. We don't need to set any new dates. On the 24th of September, 2021, and that will be the following Friday, in addition to continuing -- because we'll have

argument that day. We'll also have a trial readiness discussion on the 24th, and that will be on the calendar too. Because after the dust settles, we do have to decide, potentially, if there's a necessity for a jury trial and how it's going to be conducted.

I will say this, and I think it's important for everyone to understand this, and it's a really big issue, as far as I'm concerned. Pre-COVID -- I mean, number one, I'm doing business court now. And I wasn't a big fan of the third floor. My courtroom is probably a third of the size than it was in the towers, right, and so just so everyone knows, all the business court judges are being moved back up to the towers, and we'll be on the 16th floor, and probably courtroom B or C, which is a really big courtroom. And unlike this courtroom, I feel comfortable if we have to, after the move, we can still mitigate and do the appropriate protocols, and try a case in that courtroom. In this courtroom, I don't think so. I really don't.

And that's another factor to consider, right. I mean -- and if we -- I don't know if we're going to have any jury trials before the end of the year, but if we did have one, it wouldn't be in this courtroom. I would have to find a courtroom, because this is not large enough. It's not. And also remember this, everyone, you have to know -- I know you know this because you're practitioners, you're litigators, you're trial lawyers, don't you want to be able to conduct a meaningful voir dire, potentially, where everyone in the panel doesn't have a face mask on?

MR. LEAVITT: That would be good, Your Honor.

THE COURT: You see where I'm going, right. I mean, right,

you want to be able to look at them, size them up. If you have a consultant there. I mean, there's so much that goes -- involved. And this is important when it comes to witnesses. And I realize some other departments have done jury trials and this is a real necessity in criminal cases, but I sit back, and I try to figure out, how can you do that meaningfully, you know. It's difficult, and I don't have the answer. But the bottom line is we'll deal with that later. We'll talk about it. And I will see everyone, I guess, on the 23rd, at 1:30 p.m., and we'll deal specifically with whatever motions are on file. All right.

MR. LEAVITT: Appreciate it, Your Honor. And thank you very much on behalf of the landowners and have a great day.

THE COURT: Okay. Everyone have a good day and stay safe.

MR. MOLINA: Thank you, Your Honor.

MS. GHANEM: Thank you, Your Honor.

THE COURT: Stay safe.

[Proceedings concluded at 9:54 a.m.]

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

Jessica B. Cahill

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT “B”

ELECTRONICALLY SERVED
8/25/2021 1:33 PM

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08/25/2021 1:32 PM
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CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., 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 **ORDER REGARDING AUGUST 19, 2021, STATUS CHECK HEARING** **Hearing Date: August 19, 2021**

On August 19, 2021, the parties appeared via BlueJeans remote conferencing for a Status Check hearing regarding trial readiness, with James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of Plaintiffs 180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company (hereinafter

Case Number: A-17-758528-J

"Landowners), along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and J. Christopher Molina, Esq., and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). After reviewing the Status Reports filed by both parties and hearing argument of counsel, the Court orders as follows:

IT IS HEREBY ORDERED THAT Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief, filed with the Court on March 26, 2021, shall be set for a two-day evidentiary hearing, beginning on September 23, 2021, at 1:30 pm and continuing on September 24, 2021, at 9:30 am.

IT IS FURTHER ORDERED THAT the City of Las Vegas Opposition to Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief shall be due to the Court by 10 days after the Status Check hearing – August 30, 2021.

IT IS FURTHER ORDERED THAT a status check hearing regarding trial readiness shall be set for September 24, 2021.

Dated this 25th day of August, 2021

NS

A18 58E 768F 77DA
Timothy C. Williams
District Court Judge

Submitted by:

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*

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Reviewed as to Content and Form By:

MCDONALD CARANO LLP

By: /s/ *J. Christopher Molina*

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Attorneys for the City of Las Vegas

From: James Leavitt
To: Sandy Guerra
Subject: FW: Proposed order from August 19, 2021 Status Check Hearing
Date: Monday, August 23, 2021 1:47:09 PM

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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Sent: Monday, August 23, 2021 1:25 PM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; schwartz@smwlaw.com
Cc: Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>
Subject: RE: Proposed order from August 19, 2021 Status Check Hearing

Jim,

The proposed order looks good. Just one minor comment – Chris is my middle name and J. is my first initial. Could you fix that on page 2 line 2? Otherwise its good to go and you can affix my e-signature. Thanks.

Chris Molina | Attorney
McDONALD CARANO
P: 702.873.4100 | **E:** cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, August 23, 2021 9:23 AM
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Cc: Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Autumn Waters

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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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 **NOTICE OF ENTRY OF ORDER SHORTENING TIME RE:** **CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL**

PLEASE TAKE NOTICE that the Order Shortening Time was granted and the hearing on the City of Las Vegas' Emergency Motion to Continue Trial (the "Motion") before the above-entitled Court is scheduled for October 19, 2021 at 9:05 a.m. A copy of the Order Shortening Time is attached hereto.

. . .

. . .

DATED this 12th day of October, 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Christopher Molina (NV Bar No. 14092)
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PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 12th day of October, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER SHORTENING TIME RE: CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL** 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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ELECTRONICALLY SERVED
10/11/2021 8:54 PM

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME** **(HEARING REQUESTED ON ORDER SHORTENING TIME)** **OST Hearing Date:** **OST Hearing Time**

Pursuant to EDCR 2.26 and 7.30, the City of Las Vegas ("City") moves the Court to continue the trial in this matter, which is currently scheduled to commence with jury selection on October 27, 2021. At the time of the September 30, 2021 status conference for trial setting/calendar call, co-counsel for the City failed to recall that he has a five-day arbitration hearing scheduled to commence on November 1, 2021. Because of the conflict with the trial setting in this matter, the City submits this emergency motion to continue the trial date. Due to the impending trial date, Defendants request that this motion be heard on shortened time.

This motion is made and based upon the papers and pleadings on record in this matter, the attached memorandum of points and authorities and the exhibits thereto, the Declaration of George F. Ogilvie III, and any argument entertained by the Court at the time of the hearing on this matter.

Respectfully submitted this 8th day of October, 2021.

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MH
Entered

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on the **CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL** shall be shortened and heard before the above-entitled Court in Department XVI on the 19th day of October, 2021 at 9:05 am ~~a.m./ p.~~m., or as soon thereafter as counsel may be heard.

~~DATED this ____ day of October, 2021.~~

Dated this 11th day of October, 2021

DISTRICT COURT JUDGE

MH

F09 D4F C05A B543
Timothy C. Williams
District Court Judge

DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF CITY OF LAS VEGAS' EMERGENCY MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME

George F. Ogilvie III, after being sworn, declares as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas ("City") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I make this declaration in support of the City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time and, pursuant to EDCR 2.26, in support of the City's request for an order shortening time for hearing on this motion.

3. I am co-counsel for Plaintiff Todd VanDeHey in an action brought in the United States District Court for the District of Nevada, Case No. 2:17-cv-02230-JAD-NJK (the "Federal Court Litigation"). I also represent Mr. VanDeHey in a corollary arbitration proceeding pending with JAMS, Ref. No. 1260004577 (the "Arbitration Proceeding"). The Federal Court Litigation has been stayed pending the conclusion of the Arbitration Proceeding.

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4. The arbitration hearing in the Arbitration Proceeding has been rescheduled multiple times. Finally, in June 2021, the arbitrator scheduled the arbitration hearing for November 1, 2, 3, 4 and 5, 2021.

5. In various court appearances in recent months, I heard this Court advise counsel in other matters that it would be unlikely that the Court would be conducting jury trials until 2022 due to COVID-19 concerns.

6. At the August 19, 2021 status check in this matter, counsel for the City reminded the Court that the City's status report had suggested conducting another trial readiness status check after the September 23-24 dispositive motions hearing so the parties would understand the remaining issues to be tried, and the City would request additional time to file motions in limine.

7. The September 23-24 dispositive motions hearings were conducted through the morning of September 28, at the conclusion of which the previously scheduled trial readiness discussion was not conducted.

8. Based on the foregoing, counsel for the City anticipated that, at the September 30, 2021 calendar call, the Court and counsel would engage in the trial readiness discussion and a discussion regarding the timeframe to file additional motions of limine based on the Court's September 28 rulings. At the outset of the September 30 calendar call, counsel for the City evidenced his understanding to the Court, advising that the City intended to file motions in limine based on the Court's dispositive motions ruling and, in accordance with the Court's prior statements, suggesting a trial in the first quarter of 2022.

9. The Court, however, scheduled this matter for jury selection on October 27, 2021, with opening statements to be made on either October 28 or November 1.

10. Taken by surprise by a 2021 trial setting and because my focus has been on the four-week jury trial in which I am currently involved, I didn't immediately realize the scheduling conflict with the November 1-5 arbitration hearing.

11. After realizing the scheduling conflict, on October 5, 2021, I advised Plaintiffs' counsel and sought a stipulation to continue the trial in this matter to November 15, 2021.

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12. Plaintiffs' counsel advised me on October 7, 2021 that he could not agree to continue the trial because he was advised that no other trial dates in the trial stack are available, and that I would have to file the instant motion.

13. Because I cannot represent Mr. VanDeHey in the November 1-5 arbitration hearing and represent the City in a jury trial beginning on October 27 in this matter, the City is compelled to bring the instant motion to continue this trial.

14. The City brings this motion in good faith and not for purposes of delay.

15. In accordance with EDCR 7.30, I certify that I have provided Plaintiffs' counsel with a copy of this motion and the supporting documents.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Dated this 8th day of October, 2021.

/s/ *George F. Ogilvie III*
GEORGE F. OGILVIE III

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

The parties appeared before the Court for a status check hearing regarding trial readiness on August 19, 2021, during which the City requested that the Court schedule a follow up hearing regarding trial readiness after hearing dispositive motions on September 23-24, 2021. *See* Hearing Transcript of August 19, 2021 Status Check, a copy of which is attached hereto as **Exhibit A**, at 15:11-15. The City also advised the Court that the City would be requesting additional time at the status check to file motions in limine. *Id.* The Court thanked counsel for raising the issue and set a trial readiness discussion for the conclusion of the September 24, 2021 dispositive motion hearing, stating "(b)ecause after the dust settles, we do have to decide, potentially if there's a necessity for a jury trial and how it's going to be conducted." *Id.* at 15:22-16:4. The Court further stated:

> I don't know if we're going to have any jury trials before the end of the year, but if we did have one, it wouldn't be in this courtroom. I would have to find a courtroom, because this is not large enough. It's not. And also remember this, everyone, you have to know -- I know you know this because you're practitioners, you're litigators, you're trial lawyers, don't you want to be able to conduct a meaningful voir dire, potentially, where everyone in the panel doesn't have a face mask on?
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> * * *
>
> You see where I'm going, right. I mean, right, you want to be able to look at them, size them up. If you have a consultant there. I mean, there's so much that goes -- involved. And this is important when it comes to witnesses. And I realize some other departments have done jury trials and this is a real necessity in criminal cases, but I sit back, and I try to figure out, how can you do that meaningfully, you know. It's difficult, and I don't have the answer. But the bottom line is we'll deal with that later. We'll talk about it.

After the status check hearing on August 19, 2021, the Court entered an order setting another status check hearing regarding trial readiness for September 24, 2021. *See* Order Regarding August 19, 2021 Status Check, a copy of which is attached hereto as **Exhibit B**. The September 23-24 dispositive motions hearings were conducted through the morning of September 28, at the conclusion of which the previously scheduled trial readiness discussion was not conducted. *See* Declaration of

George F. Ogilvie III in Support of City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time ("Ogilvie Decl.") at ¶ 7.

On September 30, 2021, counsel for the parties appeared before the Court for calendar call. Since the Court had previously ordered another hearing regarding trial readiness, and based upon the Court's prior comments regarding scheduling jury trials (and this trial) in 2022, it was the City's understanding that the Court intended to discuss a trial date on a later stack. *See id.* at ¶ 8. Accordingly, the City proposed a trial date in the first quarter of 2022. *Id.* The City did not anticipate that the Court would set a trial date in the five-week trial stack beginning on October 25, 2021. *Id.* at ¶¶ 8-10.

Taken by surprise by a 2021 trial setting, the City's counsel didn't immediately realize his scheduling conflict with a November 1-5 arbitration hearing. *Id.* at ¶ 10. After realizing the conflict, the City's counsel advised Plaintiffs' counsel, and sought a stipulation to continue the trial in this matter to November 15, 2021. *Id.* at ¶ 11. On October 7, 2021, Plaintiffs' counsel responded that he could not agree to continue the trial because no other trial dates in the October 25 trial stack are available. *Id.* at ¶ 12. Accordingly, the City is compelled to bring this Emergency Motion to Continue Trial on Order Shortening Time.

II. LEGAL ARGUMENT

The Court may continue the trial date for good cause. *See Hopper v. Hopper*, 79 Nev. 86, 88, 378 P.2d 875, 876 (1963); see also NRCP 16(b)(5); EDCR7.30. As set forth in the Declaration of George F. Ogilvie III, good cause for a continuance exists because Mr. Ogilvie is scheduled to be involved in an arbitration hearing on November 1, 2, 3, 4 and 5, 2021.

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III. CONCLUSION

The City respectfully requests that the Court enter an order continuing the trial date for the reasons set forth above.

Respectfully submitted this 8th day of October, 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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EXHIBIT “A”

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10/4/2021 3:01 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, Petitioner, vs. CITY OF LAS VEGAS, Respondent.	CASE#: A-17-758528-J DEPT. XVI

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS
DISTRICT COURT JUDGE
THURSDAY, AUGUST 19, 2021

RECORDER'S TRANSCRIPT STATUS CHECK

APPEARANCES VIA BLUEJEANS:

For the Petitioner:	JAMES J. LEAVITT, ESQ. ELIZABETH M. GHANEM, ESQ.
For the Respondent:	CHRISTOPHER MOLINA, ESQ. PHILIP R. BYRNES, ESQ. REBECCA L. WOLFSON, ESQ.

RECORDED BY: REBECCA GOMEZ, COURT RECORDER

Case Number: A-17-758528-J

Las Vegas, Nevada, Thursday, August 19, 2021

[Case called at 9:29 a.m.]

THE COURT: All right. We're going to move on. Next up happens to be page 5 of the calendar, and that's 180 Land Company v. City of Las Vegas. Let's go ahead and set forth our appearances for the record.

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

MS. GHANEM: Good morning, Your Honor. On behalf of Plaintiff landowners, Elizabeth Ghanem, in-house counsel.

MR. MOLINA: Good morning, Your Honor. Chris Molina on behalf of the City of Las Vegas.

MR. BYRNES: Good morning, Your Honor. Philip Byrnes on behalf of City of Las Vegas.

MS. WOLFSON: And, good morning, Your Honor. Rebecca Wolfson also on behalf of the City of Las Vegas.

THE COURT: Okay. Does that cover all appearances? I guess it does.

Anyway, it's my understanding this is a status check regarding trial readiness. Tell me, where are we at on this matter?

MR. LEAVITT: Yes, Your Honor. James J. Leavitt on behalf of the Plaintiff landowner. As you'll recall, there was several continuances in this matter. There is a trial, which is currently set for October 25th. Pursuant to NRS 37.055, this eminent domain action was

set first on the October 25th stack, because it has preferential trial setting. So that's where we are. And as far as the landowners are concerned, Your Honor, we're ready to appear at that trial. We have completed discovery with the City of Las Vegas.

One item that we would need to consider at this hearing, Your Honor, is as you'll recall there's a two-step process in all of these inverse condemnation cases. The first is to determine the property interest that the landowners had, and you entertained --

THE COURT: And I don't want to cut --

MR. LEAVITT: -- that motion --

THE COURT: Mr. Leavitt, I don't want to cut you off, but I was actually thinking the exact same thing as you were beginning to discuss that issue, and that's a trial protocol issue, right? And so, I just wanted to make --

MR. LEAVITT: Exactly.

THE COURT: Yeah, I was thinking that exact same issue. So, anyway, go ahead, sir, I want to hear what you have to say.

MR. LEAVITT: Yeah, so the protocol for all these inverse condemnation cases is that first the Court determines the property interest issue that the landowners had prior to any governmental interference with that property interest. We filed a motion on that issue, there was significant argument. The Court entered an order, and the date of that order was October 2020.

Subsequent to that decision being made, the landowners then filed the motion to determine take. Obviously, that motion to

determine take had to be filed after the motion to determine property interest was filed, because you can't determine whether the property has been taken without defining that property. Since this Court has already defined the property interest, the landowners brought the motion to determine whether that property interest was taken. That motion was filed in March of this year, approximately four months ago.

As you'll recall, the City of Las Vegas filed a 56(d) motion and requested that it be given an opportunity to, number one, visit the landowners' property; number two, take the deposition of Mr. Lowie; and, number three, that discovery close. All three of those things have now occurred.

And so what we would request from this status conference today is that that motion to determine take be put back on calendar, and that the City be given an opportunity to file an opposition to that motion to determine take within the next seven to ten days, and that we set a hearing date for that motion to determine take for either the week of September 5th or the week of September 12th. We've done this argument several times before. We've done the motion to determine take argument several times before, and we've always set a special setting. We anticipate that argument taking approximately three to four hours on the motion to determine take. It will be an evidentiary hearing where we would present the facts, playing out the City's actions that resulted in the taking of that underlying property interest.

Just a matter of procedure, as you'll recall, the City of Las Vegas asked for that 56(d) continuance, so it could do those three things.

In the meantime, Your Honor, the City filed motions for summary judgment in the three other cases prior to completing those three items that it wanted to do to determine the take. So, Your Honor, we think the City is ready to respond, since the City filed motions to determine take in those other three cases even prior to completing the three items they stated to this Court it needed to complete prior to appearing on that motion to determine take.

So, Your Honor, in short, what we would like to do is keep our October 25th trial date as it exists. I understand the concerns that you have communicated to the other parties. I fully understand that. In the meantime, we can schedule the motion to determine take. We can have briefing done. And hopefully, we can have that motion to determine take resolved by the first or second week in September.

At that time, we can analyze whether we go forward with the trial or not because the City has not produced any expert reports. They didn't exchange any initial expert reports. They didn't -- they have no valuation evidence for the relevant date of valuation. Therefore, we believe that the motion to determine take may very well resolve all the issues in this case. I'm willing to respond to any other questions that this Court may have.

THE COURT: Mr. Leavitt, I don't have any questions at this time, sir.

MS. GHANEM: Thank you, Your Honor. This Elizabeth Ghanem on behalf of the Plaintiffs. I just want to add one other thing. We would need a special setting, I believe, Jim, if I'm right, on the

summary judgment hearing. And so we would ask that it be set at a separate time. And I think we're estimating maybe two or three hours for that hearing. Am I correct, Mr. Leavitt?

MR. LEAVITT: Yes, Ms. Ghanem. And this is James Leavitt again on behalf of the landowner. So I apologize, Your Honor. So what we would like is for that motion to determine take be scheduled either the first or second week in September for a special setting. Like I said, it's already been fully briefed by the landowners. This is probably the third or fourth time that this issue has been fully briefed. And so the City has had an opportunity to oppose this. It's had our brief for approximately four months on this issue and, of course, it's responded to these same issues in the other three cases.

And so we believe seven to ten days is sufficient time for the City to respond, and if we could have that date set the first or second week in September for that special evidentiary hearing. I think that would be adequate time for everybody to resolve this necessary motion in this case.

THE COURT: Okay. Thank you, sir. And let's hear from the City.

MR. MOLINA: Thank you, Your Honor. This is Chris Molina on behalf of the City. I'll just respond briefly to one comment that Mr. Leavitt made about this case being entitled to statutory priority under the eminent domain statutes. This is not an eminent domain case. This is an inverse condemnation case. The procedure is entirely different. We did not, you know, commence an action against the Plaintiffs to

condemn their property. The City is being sued for inverse condemnation. The policy of that statutory priority for eminent domain cases, which this is not, is based on the idea that the Government needs to be able to act efficiently and immediately, you know, take, you know, possession of the property and condemn the property for public improvement. This is not that type of case. And so the statutory priority argument that Mr. Leavitt is making is simply not applicable.

With regard to the motion to determine take that was filed in March 26th, 2021, you will recall that the City filed a motion pursuant to Rule 56(d) for a continuance. That motion was filed on order shortening time because the City did not feel that it should have, you know, been forced to file an opposition without having an opportunity to complete discovery. And as we mentioned in the status report that was filed yesterday, that there was ongoing discovery issues at the that that motion to determine take was filed and, therefore, the City, you know, filed a 56(d) motion on order shortening time.

Now the order that was issued on May 3rd, 2021, the minute order basically indicated that the motion to determine take, the hearing was vacated, and that the developer would be free to refile the motion to determine take after completion of discovery. The discovery to close occurred on July 26th, 2021, but we had to take one deposition after the close of discovery, Mr. Lowie, just last week -- last Thursday, actually, which was the last deposition that we had taken.

So discovery is now closed and, you know, we've concluded the discovery that we were permitted to complete in this case. There's

still some, you know, discovery issues that the City feels were not fully resolved, but, you know, at this point in time, it would appropriate for the Plaintiff to refile that motion to determine take, and the City would just request that it be heard and briefed in the normal course, as opposed to what Mr. Leavitt is suggesting right now.

And one other thing is that the City also intends to file a motion for summary judgment, you know, prior to the August 25th deadline, most likely before the end of the week, and we think that it makes sense for the Court to establish a briefing schedule and set hearings for this. Our preference would be to set a hearing out in September or possibly mid-October after, you know, full briefing has occurred, and the Court has had an opportunity to review everything. We think that, you know, all issues in this case should be decided by summary judgment and that, you know, after we get through the summary judgment hearings, we would ask the Court to basically enter a new scheduling order, you know, based on what issues may possibly be left for decision.

THE COURT: Okay. Is that all from the City? Appears to be. Mr. Leavitt.

MR. LEAVITT: Yes, Your Honor, just a brief response. In regards to -- I'll just say for eminent domain actions and inverse condemnation cases, and as far as the statutes apply in inverse condemnation cases, in the 1985 *County of Clark v. Alper* decision, the Nevada Supreme Court held that inverse condemnation cases are the constitutional equivalent of an eminent domain case and, therefore, the

same rules and procedures apply to both cases. Therefore, when this Court set this on a preferential trial setting under NRS 37.055, it was properly following the law that applies to inverse condemnation cases.

Secondly, as far as continuing the hearing on the landowner's motion, Your Honor, we have a set procedure in the State of Nevada for deciding these cases under *ASAP Storage* and under the *Sisolak* case. The landowner is required to bring the motion to determine the property interest and also the motion to determine the take. We've strictly followed that procedure and complied with that procedure with the City of Las Vegas having that second motion to determine take for four months now.

As you'll recall, we also tried to have that motion heard prior to that date. We believe that there is a significant delay that's occurring. As you'll recall, the City of Las Vegas asked for its 56(d) motion because it said it could not respond to the motion to determine take until it had completed those three things. Those three things are done. However, the City filed a motion to determine take in the other three cases before those three things were completed. I don't know what the City's tactic is and why it's trying to delay the motion to determine take in this case, but we see a significant delay occurring.

The motion has been pending for four months. We didn't refile because we thought it would be better to come to this Court, set a briefing schedule, and get an evidentiary hearing date set. And so that's what we're asking for. I'm not sure what other motions the City may be filing. I believe it's just going to be a motion to determine take. Having

said that, Your Honor, the motion to determine take should be heard as soon as possible because, as I stated, it's been pending for four months, and it's one of the required motions that's necessary in these inverse condemnation cases. Again, I don't know what other motions the City is going to file, but those motions should not delay the required motion that's necessary before this Court.

So, Your Honor, we would ask that the City be given seven to ten days to respond. That we would reply, obviously, within the appropriate time, and then have an evidentiary hearing for approximately three hours the week of September 5th or September 12th, on that underlying issue. If the City has other issues that it wants to file, it can bring those in the normal course, Your Honor, but this is a motion that we have contemplated and has been pending for some time. Thank you, Your Honor.

THE COURT: I'm just checking with my court clerk right now, counsel.

MR. LEAVITT: Thank you.

[Court and Clerk confer]

THE COURT: All right. This is what we'll do. And, Mr. Leavitt, you are correct, this motion has been pending for over four months. I did grant the Rule 56(d) relief for a couple reasons. Number one, the argument made by the City as to the necessity to complete discovery in order to appropriately respond, first of all. And, second, I don't mind telling you this, I like taking appellate issues off the table, all right. At the end of the day, that's gone now. I gave them the time.

Because that's one thing I think our Nevada Supreme Court, and rightfully so, should be concerned about, due process issues, right.. Judge, did you pull the trigger too quickly? And so, that's why I did that. I don't mind telling you this.

So what I'm going to do is this. I'm going to go ahead and first give you a date, and this is the quickest date I can give you because of my calendar. But we're going to set this for 1:30 in the afternoon, and the date will be September 23rd, 2021. I'm not -- I'm sorry, Mr. Leavitt, I'm not as optimistic as you are that it's going to take two to three hours. I don't think so. I can see it going two or three days, potentially. Maybe not two or three, but it's going to go a day, I think. And what we'll do at that time, assuming we don't finish, we'll just reset it. But that's what we're going to do.

And so my next question from the City is this, and the ticker is going to start running today, sir. Is ten days enough to get your -- ten days from today enough -- and that's the time under the rule, right, ten days?

THE CLERK: Yes.

THE COURT: Yeah. Is that enough time to get your opposition on file?

MR. MOLINA: I think ten days is fine. We had proposed a briefing schedule that's based on the existing deadline to file dispositive motions because, as I said before, we do intend to file our motion for summary judgment within the next few days, and then just add oppositions and reply briefs from both sides due on the same date.

THE COURT: Yeah.

MR. MOLINA: So I would prefer to have them synced together so that all issues can be, you know, heard at one hearing. And I agree with you, Your Honor, that it's unlikely that anything will get done in just one afternoon.

THE COURT: It's not going to happen.

MR. MOLINA: That was our proposal in our status report. The other thing that I will mention is that one of the attorneys that's working on this case is going to be in trial for two weeks starting September 20th, 2021, so that September 23rd date would conflict with that.

THE COURT: All right. Okay.

[Court and Clerk confer]

THE COURT: And you see the problem is, I can tell you this right now, I mean, I would love to go earlier, but we just don't have the room. And what we have going on, we have two issues. Number one, we have a lot of afternoon sessions, and then we have a bench trial. And bench trials are going. They are. And, surprisingly, we've been trying those remotely, and I think it's been quite successful. It really has. It kind of surprised me.

So where do we go from here, because I want to get this matter done. And here's my concern, and it really is a concern. I mean, I understand that we have a close of discovery coming up very quickly in this matter, but this has been pending for four months, right, and I granted a Rule 56(d) relief because I feel it's very important to give both

sides a full and fair opportunity to work their cases up. But now, I have to hear this motion, right.

MR. LEAVITT: Yes, Your Honor. And if I may interject here. James J. Leavitt on behalf of 180 Land. We also will have people out at that time, however, Your Honor, the two individuals that will be arguing the motion and presenting the evidence, myself on behalf of the landowner and Andrew Schwartz on behalf of the City of Las Vegas, are available during that time. I understand that there might be other attorneys who are not available --

THE COURT: Okay.

MR. LEAVITT: -- including from our office, but all of the attorneys who will -- who actually have, in the past, presented these arguments are available for that September 23rd date.

THE COURT: All right. And that's the status of the case, right?

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

THE COURT: Okay.

MR. MOLINA: Yes, Your Honor.

THE COURT: What we're going to do --

MR. LEAVITT: So my point is, Your Honor --

THE COURT: Yes.

MR. LEAVITT: Oh, go ahead. Sorry, Your Honor. Go ahead.

THE COURT: Yeah, we're going to go ahead and go with that 23rd date. And my law clerk told me, in all probability we'll bleed into the 30th, if necessary, is that correct?

[Court and Clerk confer]

THE COURT: Oh, okay. Well, this might work out pretty well, because we'll have that Thursday -- oh, yeah, we have to go with this date, because we have Thursday, the 23rd, and I'm also blocking out Friday, the 24th? Is that correct, Mr. Court Clerk?

THE CLERK: Yes, Your Honor.

THE COURT: And so I would hope -- this is potentially really good and that's the time I have available because I know it's going to go longer than two to three hours, but I don't think it will go more than a day-and-a-half. And so, hypothetically, we can have all this done that week.

MR. LEAVITT: I agree with that. On behalf of James -- James J. Leavitt on behalf of the 180 Land landowners. I agree, Your Honor, and I believe we can get it done in that day-and-a-half. And I appreciate the scheduling for that, Your Honor.

THE COURT: Okay. And that's the best I can do, everyone. But that's what we're going to do. That's going to be the date for the -- we're going to recalendar you motion, Mr. Leavitt. It's going to be heard on Thursday, September 23rd, 2021, at 1:30 p.m. And assuming we need more time, and I can almost guarantee you we will, we will continue that until Thursday -- I'm sorry, Friday, September 24th, 2021, and we'll have the whole day.

MR. LEAVITT: Thank you, Your Honor. And would you like us to prepare an order on that?

THE COURT: Prepare an order. And as far as the City is

concerned, the City can go ahead and file whatever motions they feel would be appropriate, right, prior to the close of the dispositive motion deadline. If they can't, they can always seek the appropriate relief under the rules. That's kind of how we do it, right.

MR. LEAVITT: Right. Sounds good, Your Honor.

THE COURT: Okay. And, Mr. Leavitt --

MR. LEAVITT: And we'll prepare the order and circulate it.

THE COURT: -- prepare the order and circulate it.

MR. MOLINA: Your Honor.

THE COURT: Yeah.

MR. MOLINA: Your Honor, if I could just ask one quick point of clarification. Regarding the current trial stack, it's October 25th, and what we had suggested in our status report would be to have another trial readiness status check hearing after the hearings on dispositive motions have --

THE COURT: Oh, thank you.

MR. MOLINA: -- been decided, so that we know what the issues are that have been narrowed for --

THE COURT: Certainly.

MR. MOLINA: -- trial, and at that point in time we would request additional time to file motions in limine.

THE COURT: Well, sir, and thank you for bringing that up. I get it. We'll have another -- we'll do it this way. We don't need to set any new dates. On the 24th of September, 2021, and that will be the following Friday, in addition to continuing -- because we'll have

argument that day. We'll also have a trial readiness discussion on the 24th, and that will be on the calendar too. Because after the dust settles, we do have to decide, potentially, if there's a necessity for a jury trial and how it's going to be conducted.

I will say this, and I think it's important for everyone to understand this, and it's a really big issue, as far as I'm concerned. Pre-COVID -- I mean, number one, I'm doing business court now. And I wasn't a big fan of the third floor. My courtroom is probably a third of the size than it was in the towers, right, and so just so everyone knows, all the business court judges are being moved back up to the towers, and we'll be on the 16th floor, and probably courtroom B or C, which is a really big courtroom. And unlike this courtroom, I feel comfortable if we have to, after the move, we can still mitigate and do the appropriate protocols, and try a case in that courtroom. In this courtroom, I don't think so. I really don't.

And that's another factor to consider, right. I mean -- and if we -- I don't know if we're going to have any jury trials before the end of the year, but if we did have one, it wouldn't be in this courtroom. I would have to find a courtroom, because this is not large enough. It's not. And also remember this, everyone, you have to know -- I know you know this because you're practitioners, you're litigators, you're trial lawyers, don't you want to be able to conduct a meaningful voir dire, potentially, where everyone in the panel doesn't have a face mask on?

MR. LEAVITT: That would be good, Your Honor.

THE COURT: You see where I'm going, right. I mean, right,

you want to be able to look at them, size them up. If you have a consultant there. I mean, there's so much that goes -- involved. And this is important when it comes to witnesses. And I realize some other departments have done jury trials and this is a real necessity in criminal cases, but I sit back, and I try to figure out, how can you do that meaningfully, you know. It's difficult, and I don't have the answer. But the bottom line is we'll deal with that later. We'll talk about it. And I will see everyone, I guess, on the 23rd, at 1:30 p.m., and we'll deal specifically with whatever motions are on file. All right.

MR. LEAVITT: Appreciate it, Your Honor. And thank you very much on behalf of the landowners and have a great day.

THE COURT: Okay. Everyone have a good day and stay safe.

MR. MOLINA: Thank you, Your Honor.

MS. GHANEM: Thank you, Your Honor.

THE COURT: Stay safe.

[Proceedings concluded at 9:54 a.m.]

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

Jessica B. Cahill

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT “B”

ELECTRONICALLY SERVED
8/25/2021 1:33 PM

Electronically Filed
08/25/2021 1:32 PM
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; DOE INDIVIDUALS I-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 **ORDER REGARDING AUGUST 19, 2021, STATUS CHECK HEARING** **Hearing Date: August 19, 2021**

On August 19, 2021, the parties appeared via BlueJeans remote conferencing for a Status Check hearing regarding trial readiness, with James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of Plaintiffs 180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company (hereinafter

Case Number: A-17-758528-J

"Landowners), along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and J. Christopher Molina, Esq., and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). After reviewing the Status Reports filed by both parties and hearing argument of counsel, the Court orders as follows:

IT IS HEREBY ORDERED THAT Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief, filed with the Court on March 26, 2021, shall be set for a two-day evidentiary hearing, beginning on September 23, 2021, at 1:30 pm and continuing on September 24, 2021, at 9:30 am.

IT IS FURTHER ORDERED THAT the City of Las Vegas Opposition to Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief shall be due to the Court by 10 days after the Status Check hearing – August 30, 2021.

IT IS FURTHER ORDERED THAT a status check hearing regarding trial readiness shall be set for September 24, 2021.

Dated this 25th day of August, 2021

NS

A18 58E 768F 77DA
Timothy C. Williams
District Court Judge

Submitted by:

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*

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

Reviewed as to Content and Form By:

MCDONALD CARANO LLP

By: /s/ *J. Christopher Molina*

George F. Ogilve III, Esq. (NSB 3552)
J. Christopher Molina, Esq. (NSB 14092)
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Attorneys for the City of Las Vegas

From: James Leavitt
To: Sandy Guerra
Subject: FW: Proposed order from August 19, 2021 Status Check Hearing
Date: Monday, August 23, 2021 1:47:09 PM

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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From: Christopher Molina <cmolina@mcdonaldcarano.com>
Sent: Monday, August 23, 2021 1:25 PM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; schwartz@smwlaw.com
Cc: Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>
Subject: RE: Proposed order from August 19, 2021 Status Check Hearing

Jim,

The proposed order looks good. Just one minor comment – Chris is my middle name and J. is my first initial. Could you fix that on page 2 line 2? Otherwise its good to go and you can affix my e-signature. Thanks.

Chris Molina | Attorney
McDONALD CARANO
P: 702.873.4100 | **E:** cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, August 23, 2021 9:23 AM
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Cc: Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Autumn Waters

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD,, a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	Case No. A-17-758528-J DEPT. NO.: XVI **MOTION FOR IMMEDIATE STAY PENDING NEVADA SUPREME COURT'S CONSIDERATION OF CITY OF LAS VEGAS' PETITION FOR WRIT OF MANDAMUS ON ORDER SHORTENING TIME** **(HEARING REQUESTED ON ORDER SHORTENING TIME)** **OST Hearing Date:** **OST Hearing Time**

Pursuant to NRAP 8 and EDCR 2.26, the City of Las Vegas ("City") respectfully moves the Court for an immediate stay of further proceedings, including trial, in this matter, pending resolution of the City's forthcoming petition for writ of mandamus to the Nevada Supreme Court.

This motion to stay is supported by the existing record in this action, the attached memorandum of points and authorities and exhibits thereto, and any oral argument that the Court

may allow at the time of the hearing on this motion. The request for an order shortening time is supported by the Declaration of George F. Ogilvie III, which follows.

DATED this 12th day of October 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*

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Attorneys for Defendant City of Las Vegas

MH
Entered

ORDER SHORTENING TIME

Upon good cause shown, please take notice that the hearing before the above-entitled Court on **MOTION FOR IMMEDIATE STAY PENDING NEVADA SUPREME COURT'S CONSIDERATION OF CITY OF LAS VEGAS' PETITION FOR WRIT OF MANDAMUS ON ORDER SHORTENING TIME** is shortened to the 26th day of October, 2021, at 9:05 am __. m., or as soon thereafter as counsel may be heard.

IT IS FURTHER ORDERED that Plaintiffs shall file and serve their opposition, if any, on or before the 22nd day of October, 2021, and Defendant's reply brief, if any, shall be filed and ~~served on or before the ____ day of October, 2021~~.

DATED this _____ day of October, 2021.

Dated this 12th day of October, 2021

Timothy C. Williams

DISTRICT COURT JUDGE

MH

8B9 1F1 0CA1 2F46
Timothy C. Williams
District Court Judge

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF MOTION FOR IMMEDIATE STAY PENDING NEVADA SUPREME COURT'S CONSIDERATION OF CITY OF LAS VEGAS' PETITION FOR WRIT OF MANDAMUS ON ORDER SHORTENING TIME

I, George F. Ogilvie III, declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas ("City") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I make this declaration in support of the City of Las Vegas' Motion for Immediate Stay Pending Nevada Supreme Court's Consideration of City Of Las Vegas' Petition for Writ of

Mandamus and, pursuant to EDCR 2.26, in support of the City's request for an order shortening time for hearing on this motion.

3. On September 28, 2021, the Court granted Plaintiffs' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief, finding the City liable for a taking of the Developer's 35-Acre Property, and denied the City's countermotion for summary judgment.

4. On September 30, 2021, the Court set an October 26, 2021hearing on the Developer's motions in limine, and scheduled jury selection for a jury trial regarding Plaintiffs' claim for just compensation for October 27, 2021.

5. On October 1, 2021, in *180 Land Co. LLC, Fore Stars, Ltd. v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-780184-C (the "65-Acre Case"), the Developer filed Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue. *See* City's Supp. App. Vol. 20, Exhibit WWWW. The Developer's motion contends that this Court's September 28, 2021 ruling from the bench mandates that Judge Trujillo deny, on the basis of issue preclusion, the City's motion for summary judgment that is currently under submission in the 65-Acre case.

6. On September 29, 2021, an article appeared in the Las Vegas Review-Journal entitled "Judge rules Las Vegas took 35 acres on Badlands." *See id.*, Exhibit XXXX. On September 30, 2021, a story appeared on KNTV entitled "City of Las Vegas suffers another defeat in battle over Badlands: Taxpayers shelling out millions for losing battle." *Id*. On October 5, 2021, an article appeared in the Las Vegas Review-Journal entitled "A win for all landowners': Judge rules Las Vegas took 35 acres on Badlands." *Id*. On October 5, 2021, an Editorial appeared in the Las Vegas Review-Journal entitled "Badlands money pit just got deeper." *Id*. On October 6, 2021, an article appeared in the Las Vegas Review-Journal entitled "Las Vegas to appeal Badlands ruling." *Id*.

. . .

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7. At a public session of the Las Vegas City Council on October 6, 2021, members of the City Council explained their understanding that the City is liable for a taking of the 35-Acre Property because the Developer had a legal right to build residences insofar as that use is permitted by the zoning of the property. *See id*., Exhibit YYYY.

8. The City contends that the Court's ruling is contradicted by Nevada and federal authority and intends to seek the Nevada Supreme Court's review of the Court's ruling to the. A post-trial appeal, however, may not be resolved for two or more years. In order to avoid the harm that could ensue from the lengthy appeal process, the City intends to immediately file a petition for a writ of mandamus with the Nevada Supreme Court. The City respectfully requests that this Court stay this action while the writ petition is pending before the Nevada Supreme Court.

9. Consistent with standard practice, I am serving a courtesy copy of the City's motion to stay and the proposed order shortening time on Plaintiffs' counsel at the same time I submit the documents to the Court for signature.

10. Once I receive the signed Order Shortening Time, I will promptly file the same and the motion to stay through the Court's electronic filing system.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Dated this 12th day of October, 2021.

/s/ *George F. Ogilvie III*
GEORGE F. OGILVIE III

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City of Las Vegas moves on shortened time for an emergency stay of all further proceedings in this action pending adjudication of the City's petition for a writ of mandamus to be filed imminently with the Nevada Supreme Court. In ruling that the City has "taken" the 35-Acre Property by denying a single application to build 61 houses on the property, the Court has held that (1) the zoning of property in Nevada confers a constitutionally protected property right in the owner to build whatever the owner desires as long as the use is a permitted use under the zoning and the development does not exceed the maximum density allowed by the zoning, (2) the government has no discretion to deny or condition approval of a development application, and (3) the government's Master Plan (General Plan) is irrelevant to any development application. In issuing these novel and unprecedented rulings, the Court has found unconstitutional virtually the entire land use regulatory scheme in Nevada, which requires cities to adopt General Plans to designate the legal use of property and confers broad discretion on cities to apply General Plan designations and zoning ordinances in the review of land use permit applications. NRS 278.010–278.630. The Court's ruling has also invalidated the City's General Plan and Unified Development Code, Las Vegas Municipal Code ("UDC") 19.10.010-19.18 & Appendices, under which the City exercises the discretionary powers granted by state law to process applications for land use permits. The Court's decision turns an extensive body of Nevada and Las Vegas property and land use law upside down.

In reaching the sweeping conclusion that local agencies no longer have discretion in the approval of land use permit applications, the Court has disregarded decades of unanimous Nevada Supreme Court authority to the contrary, and even a Nevada Supreme Court decision in a related case finding that to develop housing in the Badlands, an owner must first request and obtain the City's approval of an amendment to the General Plan, which currently does not allow housing on any part of the Badlands other than the 17-Acre Property. The Nevada Supreme Court said: "The governing ordinances require the City to make specific findings *to approve a general plan*

amendment, LVMC 19.16.030(1), a rezoning application, LVMC 19.16.090(L), and a site development plan amendment, LVMC 19.16.100(E)." Ex. DDD at 1014.[1]

The Badlands has been designated Parks/Recreation/Open Space ("PR-OS") by ordinance in the City's General Plan since 1992, and was so designated in 2015 when the Developer bought the Badlands. Exs. I, M, N, P, Q. PR-OS does not permit housing. By holding that the City's "governing ordinances require the City to make specific findings to approve a general plan amendment," the Supreme Court was necessarily acknowledging the validity of the PR-OS designation and the City's discretion to change it or retain it. In approving the Developer's applications to build 435 luxury housing units on the 17-Acre Property, the City upzoned the Property and lifted the PR-OS restriction to allow 25 units per acre. As thanks, the Developer claims that it has no desire to build the 435-unit project and instead sued the City for $26 million for a "taking" of the 17-Acre Property, an amount that is six times the amount the Developer paid to purchase the entire 250-acre Badlands.

Ignoring authorities directly on point, this Court relies instead on cases that do not even address the issue. *E.g.*, *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006); *City of Las Vegas v. Bustos*, 119 Nev. 360 (2003). Moreover, the Court's decision directly contradicts its earlier decision in this case that (a) zoning does not confer any rights on property owners, no less constitutional rights, (b) the PR-OS General Plan designation of the Badlands is valid and bars residential use of the Badlands, regardless of the zoning, and (c) the City has discretion to amend the PR-OS designation. Ex. XXX at 1385-86, 1391-94. Judges Sturman and Herndon have determined in the 133-Acre and 65-Acre cases that zoning does not confer any rights to build on property. City's Supp. App. Vol. 20, Ex. ZZZZ at 154 (Judge Sturman: "Now the challenge that we have here is this idea that zoning defines the property rights. . . . zoning defines what you can apply to use your property as, not your absolute right. Within that zoning, you could apply to use your property with something that complies with that zoning."); *see also id*. at 120, 130, 132, 134, 137, 139-40, 142-49, 155-56, 161-62, 166-67; Ex. CCCC at 1496-97 (Judge Herndon: "Because the right

[1] The case is *Seventy Acres, LLC v. Jack B. Binion, et al.*, NSC Case No. 75481.

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to use land for a particular purpose *is not a fundamental constitutional right*, courts generally defer to the decisions of legislatures and administrative agencies charged with regulating land use.") (emphasis added).[2]

The Developer contends that the Court's decision is now an issue preclusion bar to a local agency's exercise of discretion to deny or conditionally approve any application to develop property in the State of Nevada as long as the proposed development does not exceed the maximum density allowed by zoning and the proposed use is permitted by the zoning. Before an ordinary appeal of the Court's ruling can be adjudicated by the Nevada Supreme Court, the land use regulatory system in Nevada could be thrown into chaos. Property owners could rush to file applications for intensive development of property, contending that if the application is not approved ministerially, the agency is liable for just compensation to the owner. Local agencies would be placed in the difficult position of either approving development that causes irreparable harm to the environment and other community values or facing financial disaster. To avoid this dark scenario, the City respectfully requests that the Court stay further proceedings to allow the Nevada Supreme Court to decide this vitally important question of law.

II. ARGUMENT

This Court has broad discretion to manage its docket and "control the disposition of the cases . . . with economy of time and effort for itself, for counsel, and for litigants." *Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). In determining whether to stay any litigation pending resolution of writ proceedings, courts consider the following four factors: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious

[2] The 133-Acre case before Judge Sturman is *180 Land Co. LLC, Fore Stars, Ltd., Seventy Acres, LLC v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-775804-J. The 65-Acre case in front of Judge Herndon before he was elevated to the Supreme Court is *180 Land Co. LLC, Fore Stars, Ltd. v. City of Las Vegas*, Eighth Judicial Dist. Ct. Case No. A-18-780184-C. The 65-Acre case is now before Judge Trujillo. Judge Trujillo reheard the City's motion for summary judgment but has not issued any orders.

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injury if the stay is granted; and (4) whether the petitioner is likely to prevail on the writ petition. NRAP 8(c)(1)-(4); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The Nevada Supreme Court has "recognize[d] that if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38. This case meets all four factors.

A. Every Community in the State of Nevada Could Suffer Irreparable Harm If the Stay is Denied Because Property Owners Will Claim a Constitutional Right to Build Virtually Anything They Choose While the City's Appeal is Pending

The first and second factors are satisfied for a variety of reasons. Immediately following the Court's ruling from the bench finding a taking on September 28, 2021, the Developer filed a motion in the 65-Acre case claiming that this Court's decision mandates that that Court find that the City is liable for a taking of the 65-Acre Property under issue preclusion. *See* City's Supp. App. Vol. 20, Ex. WWWW. For an issue of this extreme importance for the welfare of the entire State, the Nevada Supreme Court will undoubtedly have the final say as to whether this Court has erred. Because the Court's ruling would effect a sea-change in State law regarding the scope of local police power delegated to cities by the State, the Nevada Supreme Court should decide this issue before the alleged precedent in this case is used to influence decisions by local public agencies throughout the state, including the City of Las Vegas, and by other District Courts.

If, while the Court's ruling is on appeal, local governments feel compelled by the Court's ruling to abandon their duty to exercise discretion over land use applications for the health, safety, and welfare of their constituents, the public interest would be seriously compromised. The State Legislature mandates that cities and counties "prepare and adopt a comprehensive, long-term plan for the physical development of the city, county, or region which in the commission's judgment bears relation to the planning thereof" "as a basis for development of the city, county or region" (NRS 278.150(1) & (2) and to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land" "in accordance with the master plan for land use and be designed: . . . To preserve the quality of air and water resources. . . . To promote the conservation of open space . . . To provide for recreational needs . . . To protect life and property in areas subject to floods . . . To develop a timely, orderly and efficient arrangement of

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transportation and public facilities and services . . . To promote health and the general welfare. . . ." NRS 278.250(1) & (2). If cities and counties follow this Court's ruling invalidating the above discretionary powers and ministerially approve every application to develop property as long as it is for a use permitted in the zoning district, the object of the City's Writ Petition—to preserve the prerogatives granted to local agencies to regulate land use in the best interest of the community—would be defeated. If the City prevails in the appeal, it would be too late to reverse the approvals of development that, while profitable for the landowner, would cause great harm to the community and that would not have been granted but for this Court's decision that local agencies cannot exercise discretion in ruling on land use permit applications.

Moreover, the Supreme Court should be allowed an opportunity to resolve these crucial issues of law before this Court makes further rulings or reaches the issue of damages. If the City is required to pay the Developer $35 million as the Developer has demanded, and if the Nevada Supreme Court later reverses the judgment, it is not clear that the City will be able to retrieve the money paid to the Developer, to the great detriment of the taxpayers.

The concern that local agencies and District Courts across the entire State might follow the Court's ruling is real. The media has already reported the Court's decision to the public. Ex. XXXX (September 30, October 5, and October 6 Las Vegas Register-Journal articles and editorial). At its meeting on October 6, 2021, the Las Vegas City Council described the Court's ruling, alerting the public that a court has found that the City is now faced with the Hobson's choice of either granting every land use permit application put before it or compensate property owners for the market value of their property. Ex. YYYY. As a result, local governments can expect a flood of building permit applications in which the applicants will claim a constitutional right to approval of their application or the right to compensation under the Court's decision.

Similarly, if not stayed, the Court's ruling will result in irreparable harm to the City and the public. The State's planning and zoning laws set forth in NRS 278.010-278.828 are designed to protect the public against harmful development and to promote safe, healthy, efficient, well-balanced land use development that provides adequate amenities and services for all. The Court's decision will likely create chaos in land use in the State in the near term and lead public agencies,

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in reliance on this Court's decision, to allow construction and other land uses that would have been denied or conditionally approved before the Court's ruling, but that they now believe must be approved without conditions unless the agency is willing to use public money to pay compensation to potentially thousands of property owners. These physical changes in land use could not be undone if the Court's decision is overturned years later in an ordinary appeal of a final judgment. Thus, the harm to the State if the Court's ruling is not immediately stayed could be substantial and irreparable.

B. Because the Developer Seeks Only Money Damages, the Developer Would Not Suffer Irreparable Harm If a Stay is Entered

The third factor, lack of irreparable harm to the Developer, is easily met, because the Developer is seeking only money damages in each of the four Badlands cases. In March 2018, Judge Crockett invalidated the City's approval of the Developer's applications to construct 435 luxury housing units in the 17-Acre portion of the Badlands on the ground that the Developer was required to file a major modification application ("MMA") to develop housing in the Badlands ("Crockett Order"). More than a year ago, in September 2020, after the Nevada Supreme Court had overruled the Crockett Order and reinstated the City's approval of construction of 435 luxury housing units in the Badlands (Exs. DDD, SSSS), the City notified the Developer that the order reinstating its approvals was final, the Developer was free to build, and the City was even extending the deadline for the Developer to start construction by two years to account for the time the appeal of Judge Crockett's Order was pending in the Supreme Court. Ex. GGG. The Developer, however, has made it clear that it has no intention of actually building the 435-unit project. Instead, the Developer has elected to pursue the City for money damages in all four Badlands cases, even in the 17-Acre case, making the outlandish claim that the City has "nullified" the 17-Acre approvals, despite the Supreme Court's order reinstating the permits and the City's express acknowledgement that the permits are valid for another two years.[3]

[3] This is the first case on record anywhere in the United States where a developer has sued the government for a taking despite approval of the developer's application for development. It is also the first case where a developer, when granted a permit, pretends that the permit is invalid, instead
(footnote continued on next page)

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Further confirming that the Developer's only interest is in money damages, the City also afforded the Developer an opportunity to seek development of the 133-Acre Property, but the Developer has declined. In 2018, adhering to Judge Crockett's Order then in effect, the City Council was compelled to strike the Developer's 133-Acre Applications because the Developer had not filed an MMA. After the Supreme Court reversed the Crockett Order, the City notified the Developer that it was free to refile the applications to allow the City Council to consider the applications on the merits for the first time. Ex. NNN. Despite the fact that the City Council had not disapproved any application to develop the 133-Acre Property on the merits and the City invited the Developer to resubmit the applications for a decision on the merits, the Developer declined to refile the applications or do anything to attempt to develop the 133-Acre Property, and even vigorously opposed the City's request that Judge Sturman remand the 133-Acre Applications to the City Council for consideration of the applications on the merits. Ex. AAAAA (Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021).

In the aftermath of the Supreme Court's decision reversing Judge Crockett, the City also invited the Developer to file a first application for the 65-Acre Property (the Developer never filed any applications to develop the 65-Acre Property) and a second application for the 35-Acre Property. Exs. OOO, PPP. The Developer ignored all four City requests. It is clear, therefore, that the Developer is seeking only money damages. The Developer is entitled to interest on any damages from the date of the taking. *City of North Las Vegas v. 5th & Centennial*, 130 Nev. 619, 624, 331 P.3d 896, 899 ("[J]ust compensation includes interest from the date of taking.").[4] A delay in payment of money damages where interest accrues on the damages is not irreparable harm. *See Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008) *abrogated*

seeking money damages for a taking. Judge Herndon held that the Developer's claim that the City has nullified its permit is "frivolous." Ex. CCCC at 1507-08.

[4] The Developer purchased the entire Badlands for less than $4.5 million. Exs. AAA at 966, UUU at 1300, CCCC at 1496, FFFF at 1591-97. If the Developer eventually prevails in the trial court and the Supreme Court, it will be entitled to interest on whatever the courts award for a taking of the Badlands. Accordingly, the Developer would be made whole.

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on other grounds by Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Community Ass'n, 2021 WL 4344955 (2021) ("Generally, harm is 'irreparable' if it cannot adequately be remedied by compensatory damages.")[5]

C. Because the Court's Decision is Contrary to Nevada and Federal Caselaw, Nevada Revised Statutes, and City Ordinances, The City Is Likely To Prevail On Its Writ Petition

The Developer faces three separate and insurmountable barriers to prevail on its categorical and *Penn Central* taking claims. The claims are not ripe. Even if ripe, the City did not wipe out or nearly wipe out the value of the 35-Acre Property. And even if the City had wiped out the value of the 35-Acre Property, the City allowed substantial development of the parcel as a whole, of which the 35-Acre Property is only one segment, negating a taking.

1. The Categorical and *Penn Central* claims are not ripe

First, these claims are unripe. In its categorical and *Penn Central* claims, the Developer alleges that the City excessively regulated the use of the 35-Acre Property. But as Judge Herndon found in the 65-Acre case, the court cannot determine whether the City has "taken" the property unless the City has made a final decision disallowing development that wipes out or nearly wipes out the economic value of the property. Judge Herndon found, in reliance on *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), that the Developer's categorical and *Penn Central* claims were unripe and granted summary judgment to the City because the Developer had not filed and had denied any application to develop the individual 65-Acre Property. Ex. CCCC at 1504-15. Judge Sturman agreed with Judge Herndon's

[5] The Developer's claim that it is harmed because it is incurring property taxes on property the use of which the City has denied during this litigation rings hollow. The City has given the Developer ample opportunity to develop the Badlands, including an invitation to file an application for the first time to develop the 65-Acre, to re-file its 133-Acre Applications for a decision for the first time on the merits, and to file a second application for the 35-Acre Property. The City even handed the Developer a permit for 435 luxury units on a silver platter, but the Developer has elected instead to attempt to try to extort $386 million—the Developer's total damages claim—from the taxpayers. Nor is the Developer in a position to complain about the amount of its property taxes. The Developer voluntarily shut down the golf course. As a result, under settled Nevada law, the Developer no longer qualified for a property tax break for a golf course. Ex. HHHH at 4222. Indeed, the Developer stipulated with the Assessor to settle its tax appeal and thus cannot be heard to claim that its property taxes are excessive. *Id*.

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ripeness analysis, concluding that the categorical and *Penn Central* taking claims in the 133-Acre case are unripe because the City never had the chance to rule on the merits of the applications. *See* City's Supp. App. Vol. 20, Ex. ZZZZ at 152-53 ("I believe that with respect to the zoning issues that Herndon's analysis of ripeness is correct."); *see also id*. at 128-29, 150, 159.

Williamson County and all cases following that seminal decision require that a developer file and have denied at least two applications for development before a taking claim is ripe. 473 U.S. at 191; *see* Ex. CCCC at 1504-05 and authorities cited therein (Judge Herndon: "A regulatory takings claim is ripe only when the landowner has filed at least one application that is denied and a second application for a reduced density or a variance that is also denied.") (citing *Williamson County*, 473 at 191). Here, the Developer filed only one set of applications to develop the 35-Acre Property, which the City denied. Under *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419-20, 351 P.3d 736, 742 (2015), the Developer's regulation of use taking claims are clearly unripe because it failed to file and have denied at least two applications for development. As the Court noted in *State*, and as noted by Judge Herndon, the Developer must file applications to develop the "property at issue." 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186). Accordingly, applications to develop other segments of the Badlands or to develop property that included not only the 35-Acre Property standing alone but the entire Badlands, such as a Major Development Agreement ("MDA"), are irrelevant to determine final decision ripeness. *See* Ex. CCCC at 1506-07, 1509-12. As Judge Herndon concluded:

> The Court also does not consider the MDA to constitute an initial application to develop the 65-Acre Property for purposes of a final decision because the MDA was not the specific and detailed application required for the City to take final action on a development project. . . . Given the uncertainty in the MDA as to what might be developed on the 65-Acre Property, the Court cannot determine what action the City Council would take on a proposal to develop only the 65-Acre Property. This once again places the court in the untenable position of having to speculate about what the City might have done, said speculation being improper."

Ex. CCCC at 1510-11. Because the Developer filed only one set of applications to develop the individual 35-Acre Property, its taking claims are unripe as a matter of well-established law.

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2. Because the 35-Acre Property was designated PR-OS in the City's General Plan when the Developer bought the Badlands, and PR-OS does not permit residential use, the City did not devalue the property by simply maintaining the status quo

Even if its taking claims alleging an excessive burden on the owner's use of the 35-Acre Property were ripe, the Developer cannot prevail on its regulation of use claims because it cannot meet Nevada's test for a regulatory taking, which requires that the City's action must "completely deprive an owner of all economically beneficial use of her property." *State*, 131 Nev. at 419, 351 P.3d at 741 (internal quotes and citations omitted); *see also Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245-46, 871 P.2d 320, 324-35 (1994) (taking requires agency action that "destroy[s] all viable economic value of the prospective development property"). At the time the Developer bought the Badlands, the land could not legally be used for housing under the PR-OS General Plan designation, regardless of the zoning of the property. NRS 278.150 (requiring cities to adopt General Plans that govern land uses); NRS 278.250(2) (zoning "must" be consistent with General Plan); *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 111 (1995); *Nova Horizon, Inc. v. City Council of Reno*, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989). Indeed, UDC 19.00.040 provides:

> It is the intent of the City Council that all regulatory decisions made pursuant to this Title be consistent with the General Plan. . . . For purposes of this Section, "consistency with the General Plan" means not only consistency with the Plan's land use and density designations, but also consistency with all policies and programs of the General Plan, including those that promote compatibility of uses and densities, and orderly development consistent with available resources.

Thus, even if the City had denied two separate applications to develop the property with housing, the City would not have changed the use or value of the 35-Acre Property by denying applications to build housing, and therefore it could not be liable for a taking.

3. Because the City has permitted substantial development of the parcel as a whole, the taking claims fail

Even if the ripeness analysis were rejected, the City's regulatory actions with respect to the 35-Acre Property must be analyzed in the context of the parcel as a whole, which is either the 1,596-

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acre Peccole Ranch Master Plan ("PRMP") or the 250-acre Badlands. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017) (requiring a wipeout or near wipeout of the parcel as a whole to find liability for a taking); *Kelly*, 109 Nev. at 651, 855 P2d at 1035 (finding that the developer had improperly segmented the property to manufacture a takings claim, and that "Uppaway must be viewed as a whole, not as thirty-nine individual lots" when assessing whether the developer had been deprived of all economic use). The City has permitted substantial development in both the PRMP and the Badlands, negating a taking of the 35-Acre Property that the Developer segmented from the Badlands. Again, Nevada authority is directly on point and requires rejection of the Developer's taking claims regarding excessive regulation of the Developer's use of the 35-Acre Property.[6]

This Court erred in ignoring the parcel-as-a-whole doctrine. The Court likely would not have found a taking if the Developer had not segmented the Badlands into four parts because the City approved 435 luxury units for the Badlands, which is substantial development. Nor would this Court have found a taking of the Badlands if the Developer had bought the entire PRMP from the original landowner and *then* developed thousands of housing units, a hotel, a casino, a retail shopping mall, and a golf course, and the City later denied a request to develop the Badlands, which served as an open space amenity to the PRMP. The fact that after full buildout of the PRMP the original landowner carved the open space out of the PRMP and sold it to the Developer does not require the City to allow the Developer to eliminate the open space that the City required to be set aside when the City approved the PRMP. Segmentation of the PRMP to attempt to compel the City to approve development is a bait and switch, prohibited by all courts that have confronted the issue.

[6] Judge Herndon saw through the Developer's segmentation tactic, concluding that: "At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. The Developer transferred 178.27 acres to 180 Land Co. LLC . . . and 70.52 acres to Seventy Acres LLC . . . , leaving Fore Stars with 2.13 acres. Each of these entities is controlled by the Developer's EHB Companies LLC. The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands." Ex. CCCC at 1490 (citations to exhibits omitted).

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4. The Developer's theory that zoning confers a right to build housing is contrary to authority

Ignoring these taking standards, the Developer manufactures a taking test out of thin air by claiming a constitutionally protected property interest in a permit to build 61 housing units on the 35-Acre Property. This preposterous claim is based on the fact that the property is zoned R-PD7, which merely *permits* residential use, but confers no "rights," constitutional or otherwise. Under regulatory powers delegated by the state, Nevada cities are *required* to exercise discretion to promote the health, safety, and general welfare of the public in adopting, amending, and applying General Plans and zoning ordinances. NRS 278.150, NRS 278.250. The R-PD7 zoning ordinance that the Developer falsely claims confers a "right" to develop housing is in fact infused with discretion that is fundamentally inconsistent with the alleged "right to develop":

> The R-PD District has been to provide for *flexibility and innovation* in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space. . . . Single-family and multi-family residential and supporting uses are permitted in the R-PD District *to the extent they are determined by the Director to be consistent with the density approved for the District and are compatible with surrounding uses*. . . . The approving body may attach to the amendment to an approved Site Development Plan Review *whatever conditions are deemed necessary to ensure the proper amenities and to assure that the proposed development will be compatible with surrounding existing and proposed land uses*.

UDC 19.10.050 (emphasis added). UDC 19.18.020 defines the term "Permitted Use" as "Any use allowed in a zoning district as a matter of right *if it is conducted in accordance with the restrictions applicable to that district*." (Emphasis added). This broad discretion to approve development generally and in particular in an R-PD zoning district is not compatible with a constitutional right to build whatever the owner wants to build. If the Developer were correct, a vast body of state and local land use regulations conferring discretion on the City would be rendered a nullity.

The Developer fails to cite a single case or statute that remotely supports its theory that the City lacks the discretion to limit the Developer's construction of housing in the Badlands. And the contention is contrary to all authority. *Stratosphere Gaming v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004) (holding that because City's site development review process

involved discretionary action by City Council, the project proponent had no vested right to construct); *id*. ("[C]ompatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest."); *City of Reno v. Harris*, 111 Nev. 672, 679, 895 P.2d 663, 667 (1995) ("Once it is established that an area permits several uses, it is within the discretion and good judgment of the municipality to determine what specific use should be permitted."); *Boulder City*, 110 Nev. at 246, 871 P.2d at 325 ("The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally protected property interest."); *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992) ("Although the land upon which Von Goerken intended to construct a tavern was zoned to accommodate such a commercial enterprise, it is clear that compatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest."); *Nevada Contractors v. Washoe County*, 106 Nev. 310, 314, 792 P.2d 31 (1990) ("Because of the Board's particular expertise in zoning, the courts must defer to and not interfere with the Board's discretion if this discretion is not abused."); *Am. W. Dev., Inc.*, 111 Nev. at 807, 898 P.2d at 112 ("In order for rights in a proposed development project to vest, zoning or use approvals must not be subject to further governmental discretionary action affecting project commencement . . . "); *Bd. of Cty. Comm'rs v. CMC of Nev., Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983) (There are no vested rights against changes in zoning laws "unless zoning or use approvals are not subject to further governmental discretionary actions affecting project commencement."). The broad discretion granted to the City to limit the use of property cannot be reconciled with the notion that a property owner has a constitutionally protected "right" to build on their property.

The Developer's attempt to distinguish these authorities on the grounds that they involved adjudication of petitions for judicial review ("PJR") is without merit. A PJR is a procedure and remedy for challenging government decisions; it is an empty vessel. There is no substantive law of PJRs. These cases rejecting the Developer's zoning-grants-property-rights theory are based squarely on the underlying Nevada law of property and land use regulation. These rules apply whether a property owner is challenging a regulation of the use of its property by PJR or by

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complaint for a regulatory taking. Indeed, it would be an absurd result if the City Council had discretion to deny an application to develop property if after the City's denial the applicant then sues for a PJR, but the City Council had no discretion to deny the application if the applicant then sues for a regulatory taking. Moreover, the *Boulder City* case was a constitutional challenge to the denial of a permit, not a PJR. 110 Nev. at 246, 871 P.2d at 325.

The Ninth Circuit agrees. In *180 Land Co. LLC v. City of Las Vegas*, Ninth Circuit Case No. 19-16114, in a case involving the same parties and legal issue, the Developer alleged that it has "vested zoning rights to develop residential units on the [Badlands]." Ex. HHH at 1037. The Ninth Circuit rejected that claim, finding that under Nevada property law, the Developer had no such right.

> "To have a constitutionally protected property interest in a government benefit, such as a land use permit, an independent source, such as state law, must give rise to a "legitimate claim of entitlement," that imposes significant limitations on the discretion of the decision maker. . . . We reject as without merit plaintiffs' contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally protected property interest . . . ."

Ex. III at 1125-26. Like *Boulder City*, the *180 Land* case involved a constitutional challenge to a denial of a building permit, not a PJR. These authorities are directly on point and require judgment for the City on the Developer's categorical and *Penn Central* claims.

5. The Developer's physical taking claim fails because the City did not exact an easement for public use of the 35-Acre Property

Nor do the Developer's physical taking, non-regulatory, and temporary taking claims have merit. Bill 2018-24, which the Developer claims exacted an easement from the Developer, did no such thing. *See* City's Reply in Support of Countermotion for Summary Judgment filed 9/21/21 ("Reply") at 21-23.

6. The Developer submitted no evidence supporting a non-regulatory taking

The Developer's non-regulatory taking claim is also frivolous. The Developer presented no evidence to this Court that the City interfered with the Developer's property, rendering it "unusable or valueless" as required in *State* for a non-regulatory taking. *Id*. at 23-24; *State*, 131 Nev. at 421,

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351 P.3d at 743. Indeed, the only allegations the Developer could muster to support its non-regulatory taking claim is the contention that the City denied the Developer's applications for permits to use the property for housing, which states a regulatory taking claim, duplicating the Developer's first and second causes of action. *See* Reply at 24.

7. Because the City did not effect a permanent taking of the 35-Acre Property, the temporary taking claim fails

Finally, as demonstrated in the City's brief, the temporary taking claim must fail. Reply at 24. Unless a court finds a permanent taking, the City cannot, as a matter of logic, be liable for a temporary taking. Because the City is not liable for a permanent taking here, it is also not liable for a temporary taking.

III. CONCLUSION

Because the Court's decision is contrary to all authority and could have far reaching effects on the entire State, giving property owners nearly unlimited rights to build on their property, the Court's ruling should be stayed to allow the Nevada Supreme Court to resolve this gravely important issue. This chaos will not be averted if the Court proceeds with trial and issues a final judgment and the City files an ordinary appeal. Because an appeal would not avoid irreparable harm, an immediate stay should be granted.

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Dated this 12th day of October, 2021.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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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

SUPPLEMENTAL APPENDIX OF EXHIBITS IN SUPPORT OF MOTION FOR IMMEDIATE STAY WHILE CITY'S PETITION FOR WRIT OF MANDATE IS PENDING BEFORE THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME

VOLUME 20

The City of Las Vegas ("City") submits this Supplemental Appendix of Exhibits in Support of the City's Motion For Immediate Stay While City's Petition for Writ of Mandate is Pending Before the Nevada Supreme Court on Order Shortening Time.

Exhibit	Exhibit Description	Vol.	Bates No.
A	City records regarding Ordinance No. 2136 (Annexing 2,246 acres to the City of Las Vegas)	1	0001-0011
B	City records regarding Peccole Land Use Plan and Z-34-81 rezoning application	1	0012-0030

Exhibit	Exhibit Description	Vol.	Bates No.
C	City records regarding Venetian Foothills Master Plan and Z-30-86 rezoning application	1	0031-0050
D	Excerpts of the 1985 City of Las Vegas General Plan	1	0051-0061
E	City records regarding Peccole Ranch Master Plan and Z-139-88 phase I rezoning application	1	0062-0106
F	City records regarding Z-40-89 rezoning application	1	0107-0113
G	Ordinance No. 3472 and related records	1	0114-0137
H	City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application	1	0138-0194
I	Excerpts of 1992 City of Las Vegas General Plan	2	0195-0248
J	City records related to Badlands Golf Course expansion	2	0249-0254
K	Excerpt of land use case files for GPA-24-98 and GPA-6199	2	0255-0257
L	Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan	2	0258-0273
M	Miscellaneous Southwest Sector Land Use Maps from 2002-2005	2	0274-0277
N	Ordinance No. 5787 and Excerpts of 2005 Land Use Element	2	0278-0291
O	Ordinance No. 6056 and Excerpts of 2009 Land Use & Rural Neighborhoods Preservation Element	2	0292-0301
P	Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element	2	0302-0317
Q	Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element	2	0318-0332
R	Ordinance No. 1582	2	0333-0339
S	Ordinance No. 4073 and Excerpt of the 1997 City of Las Vegas Zoning Code	2	0340-0341
T	Ordinance No. 5353	2	0342-0361
U	Ordinance No. 6135 and Excerpts of City of Las Vegas Unified Development Code adopted March 16, 2011	2	0362-0364
V	Deeds transferring ownership of the Badlands Golf Course	2	0365-0377
W	Third Revised Justification Letter regarding the Major Modification to the 1990 Conceptual Peccole Ranch Master Plan	2	0378-0381
X	Parcel maps recorded by the Developer subdividing the Badlands Golf Course	3	0382-0410
Y	EHB Companies promotional materials	3	0411-0445
Z	General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications	3	0446-0466
AA	Staff Report regarding 17-Acre Applications	3	0467-0482

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Exhibit	Exhibit Description	Vol.	Bates No.
BB	Major Modification (MOD-63600), Rezoning (ZON-63601), General Plan Amendment (GPA-63599), and Development Agreement (DIR-63602) applications	3	0483-0582
CC	Letter requesting withdrawal of MOD-63600, GPA-63599, ZON-63601, DIR-63602 applications	4	0583
DD	Transcript of February 15, 2017 City Council meeting	4	0584-0597
EE	Judge Crockett's March 5, 2018 order granting Queensridge homeowners' petition for judicial review, Case No. A-17-752344-J	4	0598-0611
FF	Docket for NSC Case No. 75481	4	0612-0623
GG	Complaint filed by Fore Stars Ltd. and Seventy Acres LLC, Case No. A-18-773268-C	4	0624-0643
HH	General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications	4	0644-0671
II	June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480.	4	0672-0679
JJ	Docket for Case No. A-17-758528-J	4	0680-0768
KK	Judge Williams' Findings of Fact and Conclusions of Law, Case No. A-17-758528-J	5	0769-0793
LL	Development Agreement (DIR-70539) application	5	0794-0879
MM	August 2, 2017 City Council minutes regarding DIR-70539	5	0880-0882
NN	Judge Sturman's February 15, 2019 minute order granting City's motion to dismiss, Case No. A-18-775804-J	5	0883
OO	Excerpts of August 2, 2017 City Council meeting transcript	5	0884-0932
PP	Final maps for Amended Peccole West and Peccole West Lot 10	5	0933-0941
QQ	Excerpt of the 1983 Edition of the Las Vegas Municipal Code	5	0942-0951
RR	Ordinance No. 2185	5	0952-0956
SS	1990 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0957
TT	1996 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0958
UU	1998 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0959

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Exhibit	Exhibit Description	Vol.	Bates No.
VV	2015 aerial photograph identifying Phase I and Phase II boundaries, retail development, hotel/casino, and Developer projects, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0960
WW	2015 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0961
XX	2019 aerial photograph identifying Phase I and Phase II boundaries, and current assessor parcel numbers for the Badlands property, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0962
YY	2019 aerial photograph identifying Phase I and Phase II boundaries, and areas subject to inverse condemnation litigation, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0963
ZZ	2019 aerial photograph identifying areas subject to proposed development agreement (DIR-70539), produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0964
AAA	Membership Interest Purchase and Sale Agreement	6	0965-0981
BBB	Transcript of May 16, 2018 City Council meeting	6	0982-0998
CCC	City of Las Vegas' Amicus Curiae Brief, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481	6	0999-1009
DDD	Nevada Supreme Court March 5, 2020 Order of Reversal, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481	6	1010-1016
EEE	Nevada Supreme Court August 24, 2020 Remittitur, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481	6	1017-1018
FFF	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlements on 17 Acres	6	1019-1020
GGG	September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435-Unit Housing Development Project in Badlands	6	1021-1026
HHH	Complaint Pursuant to 42 U.S.C. § 1983, *180 Land Co. LLC et al. v. City of Las Vegas, et al.*, 18-cv-00547 (2018)	6	1027-1122
III	9th Circuit Order in *180 Land Co. LLC; et al v. City of Las Vegas, et al.*, 18-cv-0547 (Oct. 19, 2020)	6	1123-1127
JJJ	Plaintiff Landowners' Second Supplement to Initial Disclosures Pursuant to NRCP 16.1 in 65-Acre case	6	1128-1137
LLL	Bill No. 2019-48: Ordinance No. 6720	7	1138-1142

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Exhibit	Exhibit Description	Vol.	Bates No.
MMM	Bill No. 2019-51: Ordinance No. 6722	7	1143-1150
NNN	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 65 Acres	7	1151-1152
OOO	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres	7	1153-1155
PPP	April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres	7	1156-1157
QQQ	Valbridge Property Advisors, Lubawy & Associates Inc., Appraisal Report (Aug. 26, 2015)	7	1158-1247
RRR	Notice of Entry of Order Adopting the Order of the Nevada Supreme Court and Denying Petition for Judicial Review	7	1248-1281
SSS	Letters from City of Las Vegas Approval Letters for 17-Acre Property (Feb. 16, 2017)	8	1282-1287
TTT	Reply Brief of Appellants 180 Land Co. LLC, Fore Stars, LTD, Seventy Acres LLC, and Yohan Lowie in *180 Land Co LLC et al v. City of Las Vegas*, Court of Appeals for the Ninth Circuit Case No. 19-16114 (June 23, 2020)	8	1288-1294
UUU	Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020)	8	1295-1306
VVV	Plaintiff Landowners' Sixteenth Supplement to Initial Disclosures in *180 Land Co., LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Nov. 10, 2020)	8	1307-1321
WWW	Excerpt of Transcript of Las Vegas City Council Meeting (Aug. 2, 2017)	8	1322-1371
XXX	Notice of Entry of Findings of Facts and Conclusions of Law on Petition for Judicial Review in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-17-758528-J (Nov. 26, 2018)	8	1372-1399
YYY	Notice of Entry of Order *Nunc Pro Tunc* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019 in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-17-758528 (Feb. 6, 2019)	8	1400-1405
ZZZ	City of Las Vegas Agenda Memo – Planning, for City Council Meeting June 21, 2017, Re: GPA-68385, WVR-68480, SDR-68481, and TMP-68482 [PRJ-67184]	8	1406-1432

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Exhibit	Exhibit Description	Vol.	Bates No.
AAAA	Excerpts from the Land Use and Rural Neighborhoods Preservation Element of the City's 2020 Master Plan adopted by the City Council of the City on September 2, 2009	8	1433-1439
BBBB	Summons and Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-18-780184-C	8	1440-1477
CCCC	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020)	8	1478-1515
DDDD	Peter Lowenstein Declaration	9	1516-1522
DDDD-1	Exhibit 1 to Peter Lowenstein Declaration: Diagram of Existing Access Points	9	1523-1526
DDDD-2	Exhibit 2 to Peter Lowenstein Declaration: July 5, 2017 Email from Mark Colloton	9	1527-1531
DDDD-3	Exhibit 3 to Peter Lowenstein Declaration: June 28, 2017 Permit application	9	1532-1533
DDDD-4	Exhibit 4 to Peter Lowenstein Declaration: June 29, 2017 Email from Mark Colloton re Rampart and Hualapai	9	1534-1536
DDDD-5	Exhibit 5 to Peter Lowenstein Declaration: August 24, 2017 Letter from City Department of Planning	9	1537
DDDD-6	Exhibit 6 to Peter Lowenstein Declaration: July 26, 2017 Email from Peter Lowenstein re Wall Fence	9	1538
DDDD-7	Exhibit 7 to Peter Lowenstein Declaration: August 10, 2017 Application for Walls, Fences, or Retaining Walls; related materials	9	1539-1546
DDDD-8	Exhibit 8 to Peter Lowenstein Declaration: August 24, 2017 Email from Steve Gebeke	9	1547-1553
DDDD-9	Exhibit 9 to Peter Lowenstein Declaration: Bill No. 2018-24	9	1554-1569
DDDD-10	Exhibit 10 to Peter Lowenstein Declaration: Las Vegas City Council Ordinance No. 6056 and excerpts from Land Use & Rural Neighborhoods Preservation Element	9	1570-1577
DDDD-11	Exhibit 11 to Peter Lowenstein Declaration: documents submitted to Las Vegas Planning Commission by Jim Jimmerson at February 14, 2017 Planning Commission meeting	9	1578-1587
EEEE	GPA-72220 application form	9	1588-1590
FFFF	Chris Molina Declaration	9	1591-1605
FFFF-1	Fully Executed Copy of Membership Interest Purchase and Sale Agreement for Fore Stars Ltd.	9	1606-1622

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-2	Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property	9	1623-1629
FFFF-3	Reference map of properties involved in transactions between Developer and Peccole family	9	1630
FFFF-4	Excerpt of appraisal for One Queensridge place dated October 13, 2005	9	1631-1632
FFFF-5	Site Plan Approval for One Queensridge Place (SDR-4206)	9	1633-1636
FFFF-6	Securities Redemption Agreement dated September 14, 2005	9	1637-1654
FFFF-7	Securities Purchase Agreement dated September 14, 2005	9	1655-1692
FFFF-8	Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005	9	1693-1730
FFFF-9	Settlement Agreement and Mutual Release dated June 28, 2013	10	1731-1782
FFFF-10	June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course	10	1783-1786
FFFF-11	July 25, 2014 email and initial draft of Golf Course Purchase Agreement	10	1787-1813
FFFF-12	August 26, 2014 email from Todd Davis and revised purchase agreement	10	1814-1843
FFFF-13	August 27, 2014 email from Billy Bayne regarding purchase agreement	10	1844-1846
FFFF-14	September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal	10	1847-1848
FFFF-15	November 3, 2014 email regarding BGC Holdings LLC	10	1849-1851
FFFF-16	November 26, 2014 email and initial draft of stock purchase and sale agreement	10	1852-1870
FFFF-17	December 1, 2015 emails regarding stock purchase agreement	10	1871-1872
FFFF-18	December 1, 2015 email and fully executed signature page for stock purchase agreement	10	1873-1874
FFFF-19	December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements	10	1875-1876
FFFF-20	February 19, 2015 emails regarding notes and clarifications to purchase agreement	10	1877-1879
FFFF-21	February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1880
FFFF-22	February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1881-1882
FFFF-23	Fully executed Membership Interest Purchase Agreement for WRL LLC	10	1883-1890

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-24	June 12, 2015 email regarding clubhouse parcel and recorded parcel map	10	1891-1895
FFFF-25	Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.	10	1896-1900
FFFF-26	Record of Survey for Hualapai Commons Ltd.	10	1901
FFFF-27	Deed from Hualapai Commons Ltd. to EHC Hualapai LLC	10	1902-1914
FFFF-28	Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC	10	1915-1931
FFFF-29	City of Las Vegas' First Set of Interrogatories to Plaintiff	10	1932-1945
FFFF-30	Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3rd Supplement	10	1946-1973
FFFF-31	City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1974-1981
FFFF-32	Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1982-1989
FFFF-33	September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents	11	1990-1994
FFFF-34	First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1995-2002
FFFF-35	Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2003-2032
FFFF-36	Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2033-2109
FFFF-37	February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2110-2118
FFFF-38	April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order	11	2119-2120
FFFF-39	April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021	11	2121-2123
FFFF-40	Hydrologic Criteria and Drainage Design Manual, Section 200	11	2124-2142
FFFF-41	Hydrologic Criteria and Drainage Design Manual, Standard Form 1	11	2143
FFFF-42	Hydrologic Criteria and Drainage Design Manual, Standard Form 2	11	2144-2148
FFFF-43	Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study	11	2149-2152

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-44	Excerpts from Peccole Ranch Master Plan Phase II regarding drainage and open space	11	2153-2159
FFFF-45	Aerial photos and demonstrative aids showing Badlands open space and drainage system	11	2160-2163
FFFF-46	August 16, 2016 letter from City Streets & Sanitation Manager regarding Badlands Golf Course Drainage Maintenance	11	2164-2166
FFFF-47	Excerpt from EHB Companies promotional materials regarding security concerns and drainage culverts	11	2167
GGGG	Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims Etc. in *180 Land Co., LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (March 21, 2019)	11	2168-2178
HHHH	State of Nevada State Board of Equalization Notice of Decision, *In the Matter of Fore Star Ltd., et al.* (Nov. 30, 2017)	11	2179-2183
IIII	Clark County Real Property Tax Values	11	2184-2199
JJJJ	Clark County Tax Assessor's Property Account Inquiry - Summary Screen	11	2200-2201
KKKK	February 22, 2017 Clark County Assessor Letter to 180 Land Co. LLC, re Assessor's Golf Course Assessment	11	2202
LLLL	Petitioner's Opening Brief, *In the matter of 180 Land Co. LLC* (Aug. 29, 2017), State Board of Equalization	12	2203-2240
MMMM	September 21, 2017 Clark County Assessor Stipulation for the State Board of Equalization	12	2241
NNNN	Excerpt of Reporter's Transcript of Hearing in *180 Land Co. v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Feb. 16, 2021)	12	2242-2293
OOOO	June 28, 2016 Letter from Mark Colloton re: Reasons for Access Points Off Hualapai Way and Rampart Blvd.	12	2294-2299
PPPP	Transcript of City Council Meeting (May 16, 2018)	12	2300-2375
QQQQ	Supplemental Declaration of Seth T. Floyd	13	2376-2379
QQQQ-1	1981 Peccole Property Land Use Plan	13	2380
QQQQ-2	1985 Las Vegas General Plan	13	2381-2462
QQQQ-3	1975 General Plan	13	2463-2558
QQQQ-4	Planning Commission meeting records regarding 1985 General Plan	14	2559-2786
QQQQ-5	1986 Venetian Foothills Master Plan	14	2787
QQQQ-6	1989 Peccole Ranch Master Plan	14	2788
QQQQ-7	1990 Master Development Plan Amendment	14	2789
QQQQ-8	Citizen's Advisory Committee records regarding 1992 General Plan	14	2790-2807

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Exhibit	Exhibit Description	Vol.	Bates No.
QQQQ-9	1992 Las Vegas General Plan	15-16	2808-3257
QQQQ-10	1992 Southwest Sector Map	17	3258
QQQQ-11	Ordinance No. 5250 (Adopting 2020 Master Plan)	17	3259-3266
QQQQ-12	Las Vegas 2020 Master Plan	17	3267-3349
QQQQ-13	Ordinance No. 5787 (Adopting 2005 Land Use Element)	17	3350-3416
QQQQ-14	2005 Land Use Element	17	3417-3474
QQQQ-15	Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)	17	3475-3479
QQQQ-16	2009 Land Use and Rural Neighborhoods Preservation Element	18	3480-3579
QQQQ-17	Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element)	18	3580-3589
QQQQ-18	Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)	18	3590-3600
QQQQ-19	2018 Land Use & Rural Neighborhoods Preservation Element	18	3601-3700
RRRR	Supplemental declaration of Seth Floyd	19	3701-3703
RRRR-1	Southwest Sector Land Use Map (1992)	19	3704
RRRR-2	10/10/1991 Planning Commission Minutes	19	3705-3707
RRRR-3	10/22/1991 Planning Commission Minutes	19	3708-3712
RRRR-4	11/14/1991 Planning Commission Minutes	19	3713-3715
RRRR-5	11/26/1991 Planning Commission Minutes	19	3716-3718
RRRR-6	12/12/1991 Planning Commission Minutes	19	3719-3726
RRRR-7	12/12/1991 Planning Commission Resolution adopting 1992 General Plan	19	3727-3728
RRRR-8	2/5/1992 City Council Meeting Minutes	19	3729
RRRR-9	2/18/1992 Recommending Committee Meeting Minutes	19	3730-3750
RRRR-10	2/19/1992 City Council Meeting Minutes	19	3751-3752
RRRR-11	3/12/1992 Planning Commission Meeting Minutes	19	3753-3754
RRRR-12	3/16/1992 Recommending Committee Meeting Minute	19	3755
RRRR-13	4/1/1992 City Council Meeting Minutes	19	3756-3758
RRRR-14	Ordinance No. 3636 (adopting new general plan)	19	3759-3761
RRRR-15	2/13/1992 Citizens Advisory Committee Meeting Minutes	19	3762-3765
RRRR-16	3/27/1991 Citizens Advisory Committee Mailout	19	3766-3775
SSSS	Excerpts of NRCP 30(b)(6) Designee of Peccole Nevada Corporation – William Bayne	19	3776-3789

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Exhibit	Exhibit Description	Vol.	Bates No.
TTTT	Findings of Facts, Conclusions of Law and Order Regarding Motion to Dismiss and Countermotion to Allow More Definite Statement if Necessary and Countermotion to Stay Litigation of Inverse Condemnation Claims Until Resolution of the Petition for Judicial Review and Countermotion for NRCP Rule 56(F) Continuance	19	3790-3801
UUUU	Declaration of Christopher Molina in Support of the City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest	19	3802-3803
VVVV	Declaration of Seth Floyd	19	3804-3805
VVVV-1	Master planned communities with R-PD Zoning	19	3806-3810
VVVV-2	General Plan Maps for Master Planned Communities with R-PD zoning	19	3811-3815
WWWW	**Plaintiff Landowners' Motion on Order Shortening Time to 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue**	**20**	**3816-3877**
XXXX	**Newspaper Articles**	**20**	**3878-3897**
YYYY	**City Council Meeting of October 6, 2021 Verbatim Transcript – Agenda Item 63**	**20**	**3898-3901**
ZZZZ	**Transcripts of September 13 & 17, 2021 Hearing in the 133-Acre Case (Case No. A-18-775804-J)**	**21** **22**	**3902-4280**
AAAAA	**Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021**	**22**	**4281-4310**

DATED this 11th day of October, 2021.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 13th day of October, 2021, I caused a true and correct copy of the foregoing **SUPPLEMENTAL APPENDIX OF EXHIBITS IN SUPPORT OF MOTION FOR IMMEDIATE STAY WHILE CITY'S PETITION FOR WRIT OF MANDATE IS PENDING BEFORE THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME— VOLUME 20** 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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EXHIBIT “WWWW”

ELECTRONICALLY SERVED
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10/01/2021 3:47 PM
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company; SEVENTY ACRES LLC, a Nevada Limited Liability Company; FORE STARS, Ltd DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	Case No.: A-18-780184-C Dept. No.: III **Plaintiff Landowners' Motion on Order Shortening Time To:** **1) Apply Issue Preclusion to the Property Interest Issue;** **and** **2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue** **Hearing Requested On Order Shortening Time**

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Case Number: A-18-780184-C

Pursuant to EDCR 2.26, the Plaintiffs 180 Land Co., LLC, Seventy Acres LLC, and Fore Stars Ltd ("Landowners") hereby submit that Judge Williams in the 35 Acre Case and Judge Jones in the 17 Acre Case have decided the same exact property interest issue pending before this Court and have entered detailed findings of fact and conclusions of law on this issue. Exhibits 1 and 198. Also, Judge Williams in the 35 Acre Case, just two days ago - September 28, 2021, decided the same take issue pending before this Court, ruling from the Bench that - **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."** Judge Williams found a taking under all four of the Landowners' taking claims. Therefore, this Court should consider the "issue preclusive" effect of these recent decisions pursuant to Nevada Supreme Court precedent, which provides that, "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014). *See also* Five Star Capital Corp. v. Ruby, 124 Nev. 1048 (2008) ("emphasizing" that "[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Italics in original. Id., at 1052).

This Court entered a minute order to consider, on October 21, 2021, the same property interest and take issues in this 65 Acre Case. Therefore, this motion should be heard prior to the October 21, 2021, date. Or, as explained herein, this Court could enter its findings of fact and conclusions of law on the property interest issue as that issue has already been decided, with two findings of fact and conclusions of law already entered by Judge Williams and Judge Jones in the 35 and 17 Acre Cases. This Court could then continue a decision on the take issue until such time as Judge Williams findings of fact and conclusions of law are signed and submitted.

This Motion and request for hearing on shortened time are made and based upon the existing record in this action, the following Declaration of James Jack Leavitt and the

Memorandum of Points and Authorities, and any oral argument the Court may entertain at the time of the hearing on this Motion.

Respectfully submitted this 30th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ *James J. Leavitt*
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
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AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

ORDER SHORTENING TIME

Upon good cause shown, please take notice that the hearing before the above-entitled Court on **Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue** is shortened to be heard on the

_____ day of _____, 2021 at ___:____ , or as soon thereafter as counsel may be heard.

Plaintiff's Counsel must serve opposing counsel by 10/4 at 5 pm, opposing counsel has until 10/13 at 5 pm to file an opposition, and no reply will be allowed. The Court will continue its Chambers decision to 10/28. The hearing for this OST will be held on 10/25 at 10:30 a.m.

Dated this 1st day of October, 2021

5F9 0F2 9718 4F45
Monica Trujillo
District Court Judge

DECLARATION OF JAMES J. LEAVITT IN SUPPORT OF PLAINTIFF LANDOWNERS' NRCP 56(d) REQUEST

I, JAMES J. LEAVITT, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am an attorney at the Law Offices of Kermitt L. Waters, the attorneys of record for the Landowners in this matter.

2. If called upon to testify to the contents of this declaration, I am legally competent to do so in a court of law.

3. This declaration is made pursuant to EDCR 2.26.

4. There are four pending and related inverse condemnation cases in the Eighth Judicial District Court:

17 Acre Case – pending before Judge Jones;

35 Acre Case – pending before Judge Williams;

65 Acre Case – pending before this Court; and

133 Acre Case – pending before Judge Sturman.

5. This Court is currently considering two issues in this 65 Acre Case – 1) the property interest the Landowners had in the 65 Acre Case prior to the City interfering with that property interest (the **property interest issue**); and 2) whether the City engaged in actions to take that property interest (the **take issue**). This Court issued a minute order that assigned the decision on these two issues for this Court's October 21, 2021, chambers calendar.

6. Very recently, on September 28, 2021, Judge Williams, in the 35 Acre Case, after four days of hearings on the sole take issue, held that the City's actions resulted in a taking of the Landowners Property - **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."**

7. The Landowners are currently preparing the findings of fact and conclusions of law on the take issue to circulate to Judge Williams and it is anticipated that FFCL will be signed within two weeks.

8. Previously, on October 12, 2020, Judge Williams, in the 35 Acre Case, had entered detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest."** Exhibit 1. This Judge Williams FFCL on the property interest issue in the 35 Acre Case granted the Landowners' property interest motion in its entirety.

9. Recently, on September 16, 2021, Judge Jones, in the 17 Acre Case, also entered even more detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"** with findings very similar to Judge Williams findings on the property interest issue. Exhibit 198. This Judge Jones FFCL on the property interest issue in the 17 Acre Case also granted the Landowners' property interest motion in its entirety.

10. The Landowners have brought this motion on order shortening time, because this Court entered a minute order that it will consider the exact same **property interest issue** in this 65 Acre Case, that has already been decided by Judge Williams and Judge Jones, on this Courts October 21, 2021, chambers calendar.

11. The Nevada Supreme Court has held that this Court should consider the "issue preclusive" effect of these recent decisions by Judge Williams (35 Acre Case) and by Judge Jones (17 Acre Case) on the property interest issue - "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014). *See also* Five Star Capital Corp. v. Ruby, 124 Nev. 1048 (2008) ("emphasizing" that "[t]he doctrine provides

that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Italics in original. Id., at 1052).

12. In this same connection, this Court should also consider the preclusive effect of the Judge Williams decision on the take issue decided very recently - on September 28, 2021, wherein Judge Williams ruled from the Bench and held that it is "clear" there has been a taking of the 35 Acre Property, based on nearly identical facts that are pending before this Court on the take issue.

13. Therefore, this motion should be heard prior to this Court's October 21, 2021, chambers calendar. Or, as explained herein, this Court could enter its findings of fact and conclusions of law on the property interest issue as that issue has already been fully litigated and decided with detailed findings of fact and conclusions of law already entered by Judge Williams and Judge Jones in the 35 and 17 Acre Cases. The Landowners have submitted proposed FFCLs for the property interest issue in this 65 Acre Case to this Court, which is attached hereto. This Court could then continue the October 21, 2021, decision on the take issue until such time as Judge Williams findings of fact and conclusions of law are signed.

14. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of September, 2021.

/s/ *James J. Leavitt*
JAMES J. LEAVITT, ESQ.

1. Introduction

The Nevada Supreme Court held in Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 130 Nev. 252, 258 (2014), that "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." The Court has "emphasized" in Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1052 (2008), that "[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Italics in original.

The Landowners have brought this motion, because the exact same **property interest issue** currently pending before this Court in this 65 Acre Case has been "*actually* and *necessarily [and fully] litigated*" before Judge Williams in the 35 Acre Case and before Judge Jones in the 17 Acre Case, with both Judges entering detailed Findings of Fact and Conclusions of Law (FFCL) on the property interest issue. Exhibits 1 and 198. The Landowners request that this Court apply those findings of fact and conclusions of law from the 35 and 17 Acre Cases, through the doctrine of issue preclusion, to the property interest issue pending in this 65 Acre Case. The Landowners have submitted proposed FFCLs for the property interest issue in this 65 Acre Case to this Court, which is consistent with the Judge Williams and Judge Jones FFCLS and which is attached hereto. This is the only way to comply with the Nevada Supreme Court rule and policy for issue preclusion to "maintain consistency" in these four pending cases.

The Landowners have also brought this motion, because the same **take issue** pending before this Court in this 65 Acre Case was just presented to Judge Williams in the 35 Acre Case – where all evidence and facts were presented to Judge Williams, because there has been full and complete discovery (and discovery has closed) in the 35 Acre Case. Judge Williams heard all evidence and facts on the sole **take issue** in the 35 Acre Case over a four-day period - September 23, 24, 27, 28, 2021. Judge Williams ruled from the Bench that it was "clear" there was a taking

- **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."** In short, the 35 Acre Case has proceeded further in litigation than any other case, with discovery complete, the property interest issue decided, the take issue decided, and trial on just compensation set for November 1, 2021.

2. Issue Preclusion on the Property Interest Issue

As this Court will recall, there are four pending and related inverse condemnation cases in the Eighth Judicial District Court:

- 17 Acre Case – pending before Judge Jones;
- 35 Acre Case – pending before Judge Williams
- **65 Acre Case – pending before this Court**; and
- 133 Acre Case – pending before Judge Sturman.

Each of these cases must be decided based on a two-step sub inquiry: first, the Court must decide the property rights the Landowners had prior to the City interfering with that property right **("property interest issue");** and, second, the court must decide whether that property right has been taken **("take issue")**. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 658, 137 P.3d 1110, 1119 (2006). All four courts are applying this two-step procedure.

On October 12, 2020, Judge Williams, in the 35 Acre Case, entered detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"** finding: **1)** the 35 Acre Property has at all relevant times had R-PD7 zoning; **2)** Nevada eminent domain law provides that zoning must be relied upon to determine the property interest issue in an eminent domain case; **3)** the Las Vegas Municipal Code lists single family and multi-family residential as the legally permissible uses of R-PD7 zoned properties; and, **4)** the permitted uses by right of the 35 Acre Property are single family and multi-family residential. Exhibit 1. Judge Williams rejected all other contrary City arguments, including the City's PR-OS argument and the Peccole Ranch Concept Plan arguments. Judge

Williams, just recently in hearings on the take issue (September 23, 24, 27, and 28), again confirmed the property rights issue and rejected the City's PR-OS and Peccole Ranch Concept Plan arguments.

On September 16, 2021, Judge Jones, in the 17 Acre Case, entered even more detailed **Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"** with findings very similar to Judge Williams findings on the property interest issue. Exhibit 198. Judge Jones, like Judge Williams, rejected the City's PR-OS argument and Peccole Ranch Concept Plan arguments. Exhibit 198, pp. 13-15.

The Nevada Supreme Court held that issue preclusion applies where: 1) the issue decided in the prior litigation is identical; 2) the ruling was on the merits and final; 3) the party against whom judgment is sought was the same party in the prior litigation; and, 4) the issue was actually and necessarily litigated. Alcantara, supra, at 258 (Nev. 2014). Here, the property interest issue decided by Judges Williams and Jones in the 35 and 17 Acre Cases is identical to the property interest issue pending before this Court – all four properties had the R-PD7 zoning designation. Judge Williams and Jones property interest FFCLs were on the merits and final. The party against whom the FFCLs were entered are the City of Las Vegas, the same party before this Court. The property interest issue was actually and necessarily litigated – extensively – in both cases. And, finally, the City has conceded that these four cases involve, "common plaintiffs, a common defendant, a common property, common causes of action and common questions of law and fact." Exhibit 4, p. 000009, attached hereto.

Therefore, in compliance with the Nevada Supreme Court doctrine of issue preclusion, this Court should enter a property interest order consistent with the Judge Williams and Judge Jones property interest orders. The Landowners submitted to this Court proposed FFCLs on the property interest issue that is consistent with Judge Williams and Judge Jones property interest

orders. *See attached, Landowners' proposed "Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest.* The Landowners request that this Court sign the Landowners' proposed property interest FFCL as this will "maintain consistency and avoid harassment or oppression" as directed by the Nevada Supreme Court. Alcantara, supra, at 258 (Nev. 2014). It will also comply with the Courts direction that"[t]he doctrine provides that any issue that was *actually* and *necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit." Five Star Capital, supra, at 1052 (Nev. 2008), italics in original.

3. Issue Preclusion on the Take Issue

The Nevada Supreme Court doctrine of issue preclusion is also implicated on the take issue. As stated, Judge Williams held a four day evidentiary hearing (September 23, 24, 27, and 28) on the sole take issue – whether the City engaged in actions to take the 35 Acre Property. On September 28, 2021, Judge Williams held that the City's actions amounted to a taking under all four of the Landowners' taking claims:

- Per Se Categorical Taking
- Per Se Regulatory Taking
- Non-Regulatory / De Facto Taking
- Penn Central Regulatory Taking

In fact, after hearing all of the evidence over four days on the sole issue of the taking, Judge Williams stated, on the record, **"We've heard a lot of evidence in this case, and I think under the facts and circumstances, it's pretty clear that we had a taking."**

The taking facts in the 35 Acre Property Case are almost identical to the taking facts in this 65 Acre Case.

Specifically, Judge Williams heard evidence that: **1)** Councilman Seroka met with the owners of the property surrounding the 35 Acre Property and told them that the entire 250 Acre Land (including the 35 and 65 Acre Properties) was their "recreation" and available for their use; **2)** Councilman Seroka then "sponsored" Bill No. 2018-24 that made it impossible to develop the 250 Acre Land and specifically stated in the Bill that the Landowners must provide "ongoing public access" to their property for the surrounding property owners; and **3)** the public was actually using the Landowners' property at the direction of the City as evidenced by the Don Richards declaration and photos (Exhibit 150). Judge Williams correctly noted that this was a taking, in and of itself, as provided in the Sisolak case, where the Court found a taking as a result of the County of Clark adopting height restriction 1221 that preserved airspace for use by the public and authorized the public to use airspace. Judge Williams holding is also consistent with the Cedar Point Nursery case where the United States Supreme Court found a taking where California adopted a statute that authorized labor unions to enter onto farms 120 days out of the year for up to 3 hours per day in order to organize labor unions. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (2021). These facts are the same for the 35 Acre and 65 Acre Cases.

Judge Williams also heard the City's counsel's comment at the hearing on Friday, September 24, that the City denied the fencing around the property due to "political pressure" from the surrounding property owners. This was a ***critical concession*** by the City of Las Vegas, because the United States Supreme Court recently held that, "the right to exclude is 'one of the most treasured' rights of property ownership." Cedar Point Nursery, 141 S.Ct. 2063, 2072 (June 23, 2021). And, the City denied the Landowners this "most treasured rights of property ownership" by denying the Landowners their right to exclude others from their property (by way of fencing). It was further evidenced at the hearing before Judge Williams that, in denying the fence, the City violated its own City Municipal Code, because the City Code states that a fence

application may only be reviewed under a "Minor Review," and the City's efforts to force the Landowners through a "Major Review" for the fence, a prolonged and protracted process that is used for approval of hotel/casinos, was the same as a denial. *See* LVMC 19.16.100. These facts are the same for the 35 Acre and the 65 Acre Cases.

Judge Williams also found that the City denied the Landowners' application to gain access to their 250 Acre Land and this was a taking in and of itself, because the Nevada Supreme Court held in the case of Schwartz v. State, 111 Nev. 998, 1001 (1995), that a property owner has a "special right of easement" in an abutting roadway and "this is a property right of easement which cannot be damaged or taken from the owner without due compensation." These facts are the same for the 35 Acre and the 65 Acre Cases.

Judge Williams also considered the denial of the Master Development Agreement as a basis to find a taking. As this Court will recall, the City mandated the MDA as the only way to develop the 17, 35, 65, and 133 Acre Properties as a whole, demanded exactly what was included in the MDA, the MDA took 2.5 years to complete, and the City Planning Department and the City Attorney's Office recommended approval of the MDA as it met all City requirements, including being consistent with the zoning and the City master plan. The City then denied the MDA altogether without equivocation. These facts are the same for the 35 Acre and the 65 Acre Case.

Judge Williams FFCL on the take issue is currently being prepared and circulated for approval and signature. It is anticipated that it will be signed within two weeks.

Therefore, it is requested that this Court consider the FFCL by Judge Williams on the take issue by allowing time for the FFCL to be signed by Judge Williams and presented to the Court for consideration. This makes sense as discovery is complete in the 35 Acre Case.

Finally, as this Court will recall, the City claimed (incorrectly) that the purchase price for the entire 250 Acre Land was only $4.5 million and, therefore, there could not be a taking. On September 15, 2021, the City filed a pleading with this Court stating the exact opposite, "[t]he Developer's purchase price, however, is not material to the City's liability for a regulatory taking." *See* City's Response to Developer's Sur-Reply Brief Entitled "Notice of Status of Related Cases ETC, filed September 15, 2021. And, two depositions were conducted of the PMK for Peccole (the original owner of the 250 Acre Land) and Yohan Lowie, the Landowners' representative that focused entirely on the purchase price and revealed very clearly that the purchase price was **not** $4.5 million as represented by the City to this Court. Which may be the reason the City is now arguing to the Court that the purchase price is not relevant to the take issue. These depositions were recently submitted to the Court as they were conducted in the 35 Acre Case.

4. Conclusion and Request of the Court

Based on the foregoing, the Landowners respectfully make two requests of the Court.

First, on the property interest order, that the Court apply the Nevada Supreme Court doctrine of issue preclusion and sign the Landowners' proposed FFCL on the property interest order as this is consistent with Judge Williams and Judge Jones property interest FFCLs already entered in the 35 and 17 Acre Cases.

Second, that the Court allow time for Judge Williams 35 Acre Case FFCL on the take issue to be signed, which should be within two weeks. Judge Williams already decided from the Bench on September 28, 2021, that the City's actions "clearly" amount to a taking. Once this Court receives the Judge Williams FFCL on the take issue, it may consider the preclusive effect the already decided take issue in the 35 Acre Case may have in this 65 Acre Case. Or, even the persuasive impact it may have on this Court's decision as the 35 Acre Case has been fully litigated through discovery.

This is a Fifth Amendment Constitutional proceeding where important constitutional rights are being adjudicated and the Landowners request an opportunity to provide all of the relevant rulings and facts and arguments to the Court on the property interest and take issues. The Constitutional right to "Just Compensation" deserves no less, and this Court has graciously given both sides an opportunity to be heard and this additional information should also be heard.

Dated this 30th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
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JAMES J. LEAVITT, ESQ., 6032
MICHAEL SCHNEIDER, ESQ., 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 30th day of September, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **Plaintiff Landowners' Motion on Order Shortening Time To: 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and, c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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Landowners' proposed "Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest.

FFCL
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company; SEVENTY ACRES LLC, a Nevada Limited Liability Company; FORE STARS, Ltd; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-780184-C
Dept. No.: III

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' EVIDENTIARY HEARING BRIEF #1: MEMORANDUM OR POINTS AND AUTHORITIES REGARDING THE LANDOWNERS' PROPERTY INTEREST

Hearing Dates:
May 27, June 30, and July 2, 2021.

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Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company, SEVENTY ACRES, LLC, a Nevada Limited Liability Company, and FORE STARS, Ltd. (hereinafter Landowners), brought Plaintiff Landowners' Evidentiary Hearing Brief #1, Memorandum of Points and Authorities Regarding the Landowners' Property Interest before the Court at an evidentiary hearing on May 27, June 30, and July 2, 2021 with Kermitt L. Waters, Esq., Autumn Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq., of McDonald Carano, Andrew Schwartz, Esq. and Lauren M. Tarpey, Esq. of Shute, Mihaly & Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). Having reviewed all pleadings and attached exhibits filed in this matter, and having heard extensive oral arguments over a three-day evidentiary hearing, the Court enters, based on the evidence presented, the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Landowners are the owner of an approximately 65 Acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcels 138-31-801-002, 138-31-801-003, and 138-32-301-007 (hereinafter "65 Acre Property").

2. Generally, the Landowners Brief to determine property interest requests that this Court enter an order that, prior to any alleged City interference with the use of the 65 Acre Property, the 65 Acre Property was hard zoned R-PD7 at all relevant times and that the legally

permissible uses of the 65 Acre Property, pursuant to the R-PD7 zoning, were single-family and multi-family residential uses.

The R-PD7 Zoning

3. The City does not contest the R-PD7 zoning on the 65 Acre Property.

4. Landowner Exhibit 5, bate numbers 000019 – 000050, particularly the zoning map on bate number 000032, is evidence that on May 20, 1981, the City of Las Vegas City Commission (now the City Council), at a public hearing, zoned the 65 Acre Property for a residential use (R-PD7).

5. Landowners' Exhibit 154, Bates numbers 004865 – 004921, particularly the City action description on Bates number 004916, is evidence that on April 4, 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 65 Acre Property and removed any indication of a C-V (Civic) zoning on any part of the property owned by the Landowners' predecessor, William Peccole (Peccole).

6. Landowners' Exhibit 43, Bates numbers 001019 – 001100, particularly Bates number 001030, is evidence that on August 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 65 Acre Property and states "All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed" (*See* Bates number 001020).

7. Landowners' Exhibit 134, Bates number 004406, is evidence that on December 30, 2014, in response to the Landowners' inquiry regarding zoning (prior to acquiring the 65 Acre Property), the City of Las Vegas Planning Department provided the Landowners an official Zoning Verification Letter, stating, in part: 1) the 65 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide

for flexibility and innovation in residential development;" 3) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 4) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code."

Legally Permitted Development on the R-PD7 Zoned 65 Acre Property

8. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, Exhibit 134, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter "LVMC"), Title 19. Therefore, the Court looks to the LVMC for guidance on the legally permitted uses of property zoned R-PD7.

9. LVMC 19.18.020 (Words and Terms Defined) defines Zoning District as "An area designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with this Title."

10. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as "Any use allowed in a zoning district as a matter of right if it is conducted in accordance with the restrictions applicable to that district. Permitted uses are designated in the Land Use Table by the Letter 'P.'"

11. LVMC 19.16.090 is entitled "Rezoning" and section (O) states that once zoning is in place, "[s]uch approval authorizes the applicant to proceed with the process to develop and/or use the property in accordance with the development and design standards and procedures of all City departments and in conformance with all requirements and provisions of the City of Las Vegas Municipal Code." *See* Landowner Exhibit 167.

12. LVMC 19.10.050 is the part of the LVMC directly applicable to the R-PD7 zoning on the 65 Acre Property. Section (A) identifies the "Intent of the R-PD District" and states that

"the R-PD District has been to provide for flexibility and innovation in residential development" and section (C) lists as the "Permitted Land Uses," "Single family and multi-family residential." *See* Landowners' Exhibit 168.

13. LVMC 19.10.050 (A) and (C) further state that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts," which are set forth in the City Land Use Table at LVMC 19.12.010. The standard residential district on the City Land Use Table, which is most closely related to the R-PD7 zoning on the 65 Acre Property, is the R-2 zoning district, because R-PD7 zoning permits up to 7 units per acre and R-2 zoning permits 6-12 units per acre. *See* LVMC 19.06.100. The City Land Use Table identifies single family residential attached and detached with a "P" designation for R-2 zoned properties and then defines the "P" as "The use is permitted as a principal use in that zoning district by right." *See* Landowners' Exhibits 170 and 171.

14. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7 zoning on the 65 Acre Property that the City "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Landowners' Exhibit 163, Transcript, 10.18.16 Special Planning Comm. Meeting, p. 117 at lines 3444-3445, 005023.

15. In a matter involving the entire 250 Acre Property brought by an adjoining property owner in the Queensridge Community against the Landowners, the district court entered detailed findings that the property was zoned R-PD7 and that "the zoning on the GC Land [250 Acres] dictates its use and [the Landowners] rights to develop their land." Landowners' Exhibit 172, Bates number 005115:3-8; Exhibit 173, Bates number 005142:11-12. The Nevada Supreme Court affirmed. Landowners' Exhibits 174 and 175.

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Zoning Governs the Property Interest Determination in Nevada Inverse Condemnation Cases

16. Nevada Supreme Court precedent provides that zoning governs the property interest determination in this inverse condemnation case.

17. In the inverse condemnation case of McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006), the Nevada Supreme Court, in the section entitled "The Property," determined Mr. Sisolak's property rights, relying on zoning: "During the 1980's, Sisolak bought three adjacent parcels of land for investment purposes, which were each zoned for the development of a hotel, a casino, or apartments." Sisolak, at 651. Zoning was also used to determine the compensation due Mr. Sisolak. Sisolak, at 672.

18. In the inverse condemnation case of Clark County v. Alper, 100 Nev. 382, 390 (1984), the Nevada Supreme Court held, "when determining the market value of a parcel of land at its highest and best use, due consideration should be given to those zoning ordinances that would be taken into account by a prudent and willing buyer."

19. In the eminent domain case of City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003), the Nevada Supreme Court affirmed a district court, concluding "the district court properly considered the current zoning of the property, as well as the likelihood of a zoning change." *See also* County of Clark v. Buckwalter, 974 P.2d 1162, 59 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813, 814 (Nev. 1968)

Petition for Judicial Review Law

20. The Court declines the City's request to apply petition for judicial review rules from the cases of Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523 (2004); Nova Horizon v. City of Reno, 105 Nev. 92 (1989); Am. W. Dev. Inc. v. City of Henderson, 111 Nev.

804 (1995). This is an inverse condemnation case, not a petition for judicial review case, and the Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding the property interest in this inverse condemnation case. Moreover, the facts and law are different between a petition for judicial review and inverse condemnation case and the evidence and burden of proof are significantly different between the two cases.

The Master Plan Land Use as Parks, Recreation, Open Space (PR-OS) Issue

21. The Court declines the City's request to apply the City Master Plan to determine the property interest in this eminent domain case.

22. First, as stated above, Nevada Supreme Court precedent relies on zoning to determine the property interest in inverse condemnation and eminent domain proceedings, not a master plan land use designation.

23. Second, even if there was a PR-OS designation on the City's Master Plan, zoning would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

24. Third, Landowners' Exhibit 5, specifically Bates numbers 00013 and 00018, and Landowners' Exhibit 6, specifically Bates numbers 000051 and 000069, are evidence that the first City Master Plan designation for the 65 Acre Property was M/ML, which is the land use designation for a residential use for 6-12 residential units per acre and which is consistent with the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has presented no evidence that the original M/ML City Master Plan land use designation was ever changed from M/ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278 (*See* Landowner Exhibit 177) and LVMC 19.16.030 (Landowners' Exhibit 178).

25. Fourth, Landowners' Exhibit 43, Bates number 001030, identifies the "M" designation on the 65 Acre Property as late as August 15, 2001, as part of City Ordinance 5353, adopted on said date, further confirming the M residential designation was never changed on the City's Master Plan.

26. Fifth, Landowners' Exhibit 154, Bates numbers 004865 – 004921, particularly the City action description on Bates number 004916, is evidence that on April 4, 1990, the City Council, at a public hearing, removed any potential indication of C-V (Civic) zoning on any part of the property owned by the Landowners' predecessor, William Peccole, and C-V zoning is the only zoning that would have been consistent with a PR-OS master plan land use designation (see Landowners' Exhibit 179). In that same action, on April 4, 1990, the City and Peccole agreed to the following uses on all property owned by Peccole - "Proposed Use: Single Family Dwellings, Multi-Family Dwellings, Commercial, Office and Resort/Casino" and none of these are consistent with a PR-OS master plan designation. Id.

27. Sixth, City Attorney, Brad Jerbic, confirmed the City Attorney's Office researched the alleged PR-OS Master Plan Land Use designation and determined there was never a proper change to PR-OS on the City's Master Plan: "There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." Landowners' Exhibit 31, Bates number 000565:1943-1948.

28. The Court also declines the City's request to find the Landowners conceded to a PR-OS master plan land use designation. Landowners' Exhibit 180 (December 7, 2016, letter from Landowners' attorney to City attorney Brad Jerbic) and Exhibit 182 (November 30, 2017, letter from Landowners to City Planning Department) are evidence that the Landowners opposed and objected to the City's allegation of a PR-OS master plan land use designation.

29. Finally, the City's 25-day statute of limitations argument does not apply here, because the Landowners are not challenging a change to the PR-OS on the City's master plan, they maintain, and the Court agrees, that the evidence shows a PR-OS change never occurred

The "Condition" Issue

30. The Court also declines the City's request to find that City Exhibits E, G, and H impose a condition that the 65 Acre Property remain a golf course and open space into perpetuity. Although Exhibits E, G, and H include certain historical actions taken by the City and do reference numerous "conditions," none of these conditions identify the 65 Acre Property and none of them impose a condition that any property remain a golf course or open space into perpetuity.

31. Also, Landowners' Exhibit 130, Bates number 004264, is evidence that the City's Planning Department searched for an ordinance imposing conditions on the 65 Acre Property and concluded, "[t]here are no conditions mentioned that pertain to the maintenance of the open space/golf course area."

32. Additionally, Landowners' Exhibit 186, Bates number 005356:11-13, is evidence that City Attorney Brad Jerbic confirmed, "We [the City Attorney Office] have looked for a very long time, and we can find no restrictions that require that this [250 acre property] stay a golf course."

33. Moreover, the CC&Rs Peccole drafted for the adjacent Queensridge Community demonstrate there was no intent to impose a condition that the 250 Acre Property remain a golf course or open space, instead, stating, "[t]he existing 18-hole golf course commonly known as the "Badlands Golf Course" [250 Acre Property] is not a part of the Property or the Annexable Property [Queensridge Community] and the Queensridge Community "is not required to[]

include … a golf course, parks, recreational areas, open space." Landowners' Exhibit 36, Bates numbers 000761-000762.

34. The Custom Lot Design Guidelines section of the Queensridge CC&Rs also shows the 250 Acre Property available for "future development." Landowners' Exhibit 37, Bates number 000896.

35. Also, the Lot Purchase Agreements for properties in the surrounding Queensridge Community disclose: a) the "Special Benefits Area Amenities" for the surrounding Queensridge Community does not include a golf course or open space; b) they "shall not acquire any rights, privileges, interest, or membership" in the 250 Acre Property; c) there are no representations or warranties "concerning the preservation or permanence of any view;" and, d) "adjacent or nearby residential dwellings or other structures … could potentially be constructed or modified in a manner that could block or impair all of part of the view from the Lot and/or diminish the location advantages of the Lot." Landowners' Exhibit 38, Bates numbers 000900 (para. 13); 000907 (para. 7) and Landowners' Exhibit 39, Bates numbers 000908-000909, 000911.

36. There is no evidence of any alleged condition sufficient to meet Nevada's standard that "a grantee can only be bound by what he had notice of, not the secret intentions of the grantor." Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also* In re Champlain Oil Co. Conditional Use Application, 93 A.3d 139 (Vt. 2014) ("land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." Id., at 141); Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every item discussed at a hearing becomes a "condition" to development, rather the local land use board has a duty to "clearly state" the conditions within the approval ordinance without reference to the minutes of a proceeding. Id., at 687). Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by "secret intentions" and documents not noticed).

Therefore, the Landowners' request that the Court determine the property interest is **GRANTED** and it is hereby **ORDERED** that:

1) The determination of the property interest in this inverse condemnation action must be based on inverse condemnation and eminent domain law;

2) Nevada inverse condemnation and eminent domain law provides that zoning must be relied upon to determine the Landowners' property interest prior to any alleged City interference with that property interest;

3) The 65 Acre Property has been hard zoned R-PD7 at all relevant times herein;

4) The Las Vegas Municipal Code lists single-family and multi-family residential as the legally permissible uses on R-PD7 zoned properties;

5) The legally permitted uses by right of the 65 Acre Property are single-family and multi-family residential; and

6) The 65 Acre Property has at all times since 1981 been designated as "M" (residential) on the City's Master land use plan.

_____

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James Jack Leavitt*
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Exhibit 1

FFCL
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"

Hearing Date: September 17, 2020
Hearing Time: 9:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine Property Interest before the Court on September 17, 2020, with James Jack Leavitt, Esq of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilve III Esq. and Andrew Schwartz, Esq. appearing for and on behalf

of the Defendant, City of Las Vegas (hereinafter the City). Having reviewed all pleadings and attached exhibits filed in this matter and having heard extensive oral arguments on September 17, 2020, in regards to Plaintiff Landowners' Motion to Determine Property Interest, the Court hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff 180 Land Company, LLC is the owner of an approximately 35 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter 35 Acre Property).

2. The Landowners' Motion to Determine Property Interest requests this Court enter an order that: 1) the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2) that the permitted uses by right under the R-PD7 zoning are single-family and multi-family residential.

3. In their submitted briefs, the Landowners and the City presented evidence that the 35 Acre Property has been zoned R-PD7 since at least 1990, including: 1) Z-17-90, Resolution of Intent to Rezone the 35 Acre Property to R-PD7, dated March 8, 1990 (Exhibit H to City's Opposition, Vol. 1:00193); and, Ordinance 5353, passed by the City of Las Vegas City Council in 2001, which hard zoned the 35 Acre Property to R-PD7 and repealed anything in conflict (Exhibit 10 to Landowners' Motion).

4. In response to the Landowners' inquiry regarding zoning prior to purchasing the 35 Acre Property, on December 30, 2014, the City of Las Vegas Planning & Development Department provided the Landowners a Zoning Verification Letter, stating, in part: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 unites per acre);" 2) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 3 to Landowners' Motion.

5. The City stated in its opposition to the Landowners' motion that the R-PD7 zoning on the 35 Acre Property "is not disputed." City's Opposition to Motion to Determine Property Interest, 10:17-18.

6. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter LVMC), Title 19.

7. LVMC 19.10.050 is entitled "R-PD Residential Planned Development District" and is the applicable section of the LVMC used to determine those permitted uses on R-PD7 zoned properties in the City of Las Vegas. Exhibit 5 to Landowners' Motion.

8. LVMC 19.10.050 (C) lists as "Permitted Land Uses" on R-PD zoned properties "[s]ingle-family and multi-family residential." Id.

9. LVMC 19.10.050 (A) also provides that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts." Id. The standard residential districts are listed on the City Land Use Table, LVMC 19.12.010. Exhibit 6 to Landowners' Motion. The R-2 residential district listed on the City Land Use Table is the standard residential district most comparable to the R-PD7 zoning, because R-PD7 allows up to 7 units per acre[1] and R-2 allows 6-12 units per acre.[2] The "permitted" uses under the R-2 zoning on the City Land Use Table include "Single Family, Attached" and "Single-Family, Detached" residential uses. LVMC 19.12.010, Exhibit 6 to Landowners' Motion.

10. Table 1 to the City Land Use Table provides that if a use is "permitted" in a certain zoning district then "the use is permitted as a principle use in that zoning district by right." Id.

11. "Permitted Use" is also defined at LVMC 19.18.020 as "[a]ny use allowed in a zoning district as a matter of right." Exhibit 8 to Landowners' Motion.

12. The Landowners have alleged that the City of Las Vegas has taken the 35 Acre Property by inverse condemnation, asserting five (5) separate inverse condemnation claims for relief, a

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[1] *See* City Zoning Verification Letter, Exhibit 3 to Landowners' Motion and LVMC 19.10.050 (A), Exhibit 5 to Landowners' Motion.

[2] *See* LVMC 19.06.100, Exhibit 7 to Landowners' Motion.

Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking, and a Temporary Taking.

CONCLUSIONS OF LAW

13. The Nevada Supreme Court has held that in an inverse condemnation, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the bundle of sticks owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

14. The Landowners' Motion to Determine Property Interest narrowly addresses this first sub inquiry and, accordingly, this Court will only determine the first sub inquiry.

15. In addressing this first sub inquiry, this Court has previously held that: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims;"[3] and, 2) "[a]ny determination of whether the Landowners have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law."[4]

16. Therefore, the Court bases its property interest decision on eminent domain law.

17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).

18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990.

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[3] Exhibit 18 to Landowners' Reply, App. at 0026 / 23:7-8

[4] Exhibit 18 to Landowners' Reply, App. at 0010 / 7:26-27

19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

DATED this 9th day of October, 2020.

DISTRICT COURT JUDGE ZJ

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

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Exhibit 4

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	CASE NO. 2:19-cv-01471-JCM-EJY **NOTICE OF RELATED CASES**

McDONALD CARANO
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Pursuant to LR 42-1, Defendant City of Las Vegas, by and through its undersigned counsel, hereby provides notice to the Court that this case is related to the following three cases pending in the United States District Court for the District of Nevada:[1]

180 Land Co LLC, et al. v. City of Las Vegas; Case No. 2:19-cv-01467-KJD-DJA

Fore Stars, Ltd. and Seventy Acres LLC v. City of Las Vegas and The Eighth Judicial District Court, Dept. 24 (Hon. Jim Crockett, District Court Judge, in His Official Capacity); Case No. 2:19-cv-01469-JAD-NJK

180 Land Co LLC v. City of Las Vegas; Case No. 2:19-cv-01470-RFB-BNW

As set forth below, the instant action and the three above-referenced related cases involve common plaintiffs, a common defendant, a common property, common causes of action, and common questions of fact and law. Therefore, assignment to a single district judge is likely to effect a substantial savings of judicial effort.

Common Plaintiffs

Each of the four cases involves one or more of three affiliated entities as plaintiffs: Fore Stars, Ltd.; Seventy Acres LLC; and 180 Land Co LLC. All three of these entities (collectively, the "Developer") are managed by EHB Companies, LLC, which, in turn, is managed by Yohan Lowie, Paul Dehart, Vicki Dehart, and Frank Pankratz.

Common Defendant

The City of Las Vegas is a named defendant in all four cases. In three of these cases, the City of Las Vegas is the only named defendant; in the fourth case (Case No. 2:19-cv-01469-JAD-NJK), the Developer also named the Eighth Judicial District Court, County of Clark, State of Nevada (the Honorable Jim Crockett, District Court Judge, in his official capacity) as a defendant.

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[1] LR 42-1 requires parties to provide notice of related cases "whether active or terminated". Accordingly, the City of Las Vegas provides notice to the Court that this case is also related to the terminated case styled, *180 Land Co LLC; Fore Stars, Ltd.; Seventy Acres LLC; and Yohan Lowie v. City of Las Vegas; James Coffin; and Steven Seroka*; Case No. 2:18-CV-547 JCM (CWH). That case shared commonality of plaintiffs, defendant City of Las Vegas, facts, and the same 250-acre property as the instant action, but involved different causes of action. On December 21, 2018, the Honorable James C. Mahan entered an order granting defendants' second motion to dismiss (ECF No. 72), resulting in the termination of that case.

McDONALD CARANO
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Common Property

Each of the four cases involves portions of approximately 250 acres in the Queensridge community formerly known as the Badlands Golf Course, and commonly described as Clark County APNs 138-32-301-005, 138-31-201-005, 138-31-601-008, 138-31-702-003, 138-31-702-004, 138-31-801-002, 138-31-801-003, and 138-32-301-007 (the "Badlands Property"). The four cases involve four different portions of the Badlands Property that the Developer split into separate parcels for redevelopment of the golf course.

Common Causes of Action

In each of the four cases, the Developer asserts takings claims against the City of Las Vegas under the United States Constitution and the Constitution of the State of Nevada relative to the Developer's attempt to redevelop the Badlands Property. In the case in which the Developer named the Honorable Jim Crockett, Eighth Judicial District Court Judge as a defendant, the Developer also asserts a judicial takings claim.

Common/Similar Questions of Fact and Law

The City of Las Vegas removed each of the four cases on August 22, 2019 pursuant to *Knick v. Township of Scott, Pennsylvania*, et al., 139 S.Ct. 2162 (2019). Thus, common issues of jurisdiction are present in each case. Additionally, common/similar issues of fact exist in the cases as the Developer has alleged eleven actions taken by the City of Las Vegas that constitute a common basis for the takings claims asserted in the cases, including the allegation, "The City has Shown an Unprecedented Level of Aggression to Deny All Use of the 250 Acre Residential Zoned Land." Further, common issues of law exist relative to whether the City of Las Vegas' actions constitute a categorical taking, a *Penn Central* regulatory taking, a regulatory *per se* taking, a nonregulatory taking, or a temporary taking.

Each of the four cases involves redevelopment of the Badlands Property, common parties, common claims, and common questions of fact and law. As such, adjudication of these four actions would entail substantial duplication of labor if the actions were heard by different district judges. Additionally, as opposed to considering the individual parcels subdivided by the Developer in the respective four cases, the Court must consider the property as a whole for

purposes of determining whether a regulatory taking has occurred. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1948, 198 L. Ed. 2d 497 (2017).

Therefore, the City of Las Vegas respectfully submits that consolidation of the above-referenced actions is appropriate.

DATED this 28th day of August, 2019.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 28th day of August, 2019, I caused a true and correct copy of the foregoing **NOTICE OF RELATED CASES** to be electronically filed with the Clerk of the Court by using CM/ECF service and serving on all parties of record via U.S. Mail as follows:

LAW OFFICES OF KERMITT L. WATERS
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Exhibit 198

Electronically Filed
9/16/2021 10:33 AM
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD; SEVENTY ACRES LLC, a Nevada liability company; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITIES COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE government entities I though X, ROE LIMITED LIABILITY COMPANIES I though X, ROE quasi-governmental I through X, Defendants.	Case No.: A-18-773268-C Dept No.: XXIX **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** **Hearing Date: August 13, 2021** **Hearing Time: 8:30 a.m.**

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Case Number: A-18-773268-C

PLEASE TAKE NOTICE that on the 16th day of September, 2021, the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest" was entered in the above-captioned case, a copy of which is attached hereto.

DATED this 16th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 16th day of September, 2021, pursuant to NRCP (5)(b) a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** was made by electronic means, to be electronically served through the Eighth Judicial District Court's filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD; SEVENTY ACRES LLC, a Nevada liability company; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITIES COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE government entities I though X, ROE LIMITED LIABILITY COMPANIES I though X, ROE quasi-governmental I through X, Defendants.	Case No.: A-18-773268-C Dept No.: XXIX **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** **Hearing Date: August 13, 2021** **Hearing Time: 8:30 a.m.**

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Plaintiffs, FORE STARS, LTD. and SEVENTY ACRES LLC, a Nevada Limited Liability Company (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine "Property Interest" before the Court at an evidentiary hearing on August 13, 2021, with Kermitt L. Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq., of McDonald Carano, Andrew Schwartz, Esq. of Shute, Mihaly & Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). Having reviewed all pleadings and attached exhibits filed in this matter, and having heard extensive oral arguments at the evidentiary hearing, the Court enters, based on the evidence presented, the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Landowners are the owner of an approximately 17.49 Acre parcel of property generally located near the southwest corner of Rampart Blvd and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel number 138-32-301-005 (hereinafter "17 Acre Property").

2. On April 20, 2018, the Landowners filed a complaint alleging that the City took their property by inverse condemnation.

3. The Nevada Supreme Court has held that in an inverse condemnation action, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the "bundle of sticks" owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District

Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

4. The Landowners filed a motion requesting that this Court enter a finding on the first sub-inquiry to determine the property interest / "bundle of property sticks" they had in their 17 Acre Property prior to any alleged City interference with the use of the 17 Acre Property and prior to the filing of the Complaint in this matter. Specifically, the Landowners request a finding that the 17 Acre Property was hard zoned R-PD7 and re-zoned to R-3 and that the legally permissible uses of the 17 Acre Property, pursuant to the R-PD7 and R-3 zoning, were single-family and multi-family residential uses.

5. As the Landowners' request narrowly addresses this first sub inquiry, this Court will only determine the first sub inquiry, at this time.

The R-PD7 Zoning and the Landowners' Due Diligence

6. The City conceded the R-PD7 zoning at the evidentiary hearing and the evidence presented confirms this R-PD7 zoning.

7. Landowner Exhibit 30, Bates numbers 000443 – 000480, particularly the zoning action and map on bates numbers 000449-451, and 462, is evidence that on May 20, 1981, the City of Las Vegas City Commission (now the City Council), at a public hearing, zoned the 17 Acre Property for a residential use (R-PD7).

8. Landowners' Exhibit 31, Bates numbers 000481 – 482, is evidence that on April 4, 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 17 Acre Property.

9. Landowners' Exhibit 8, Bates numbers 000104 – 185 is evidence that on August 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 17 Acre Property and states "All ordinances or parts of ordinances or sections,

subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

10. The Landowners presented further evidence that from 2001 through 2014, prior to acquiring the 17 Acre Property, they engaged in significant due diligence to confirm the zoning and developability of the 17 Acre Property and, during this approximately 14 year period, the City of Las Vegas Planning Department, on numerous occasions, confirmed the residential zoning on the 17 Acre Property, that the residential zoning governed the development of the 17 Acre Property, and this residential zoning conferred the right to develop the 17 Acre Property residentially. Exhibit 5, 000042, para. 6; 000043, para. 8; Exhibit 6, 000068, pp. 74-75.

11. The Landowners presented further evidence that, to complete their due diligence just prior to acquiring the 17 Acre Property, they requested and obtained from the City a "Zoning Verification Letter" on December 30, 2014, which states, in part: 1) the 17 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide for flexibility and innovation in residential development;" 3) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 4) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 7.

12. The City also did not contest during the evidentiary hearing that the residential zoning information was provided to the Landowners as part of their due diligence prior to acquiring the 17 Acre Property.

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The R-3 Zoning

13. The parties agree that, prior to the April 20, 2018, filing of the complaint in this matter, on February 15, 2017, the City of Las Vegas re-zoned the 17 Acre Property to R-3, for the construction of 435 residential units. Exhibit 3, 000015:8-9; Exhibit 5, at 000263-275.

Zoning and the Likelihood of a Re-Zoning Governs the Property Interest Determination in Nevada Inverse Condemnation Cases

The Nevada Supreme Court

14. Nevada Supreme Court precedent provides that zoning and the likelihood of re-zoning governs the property interest determination in this inverse condemnation case.

15. In the inverse condemnation case of McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006), the Nevada Supreme Court, in the section entitled "The Property," determined Mr. Sisolak's property rights, relying on zoning: "During the 1980's, Sisolak bought three adjacent parcels of land for investment purposes, which were each zoned for the development of a hotel, a casino, or apartments." Sisolak, at 651. Zoning was also used to determine the compensation due Mr. Sisolak. Sisolak, at 672.

16. In the inverse condemnation case of Clark County v. Alper, 100 Nev. 382, 390 (1984), the Nevada Supreme Court held, "when determining the market value of a parcel of land at its highest and best use, due consideration should be given to those zoning ordinances that would be taken into account by a prudent and willing buyer."

17. In the eminent domain case of City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003), the Nevada Supreme Court affirmed a district court, concluding "the district court properly considered the current zoning of the property, as well as the likelihood of a zoning change." *See also* County of Clark v. Buckwalter, 974 P.2d 1162, 59 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813, 814 (Nev. 1968).

18. The Court relies on both inverse condemnation and direct eminent domain cases, because the Nevada Supreme court has held, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles applied to formal condemnation proceedings." County of Clark v. Alper, 100 Nev. 382, 391 (1984).

The Nevada Legislature

19. Nevada Revised Statutes also provide that zoning is of the highest order when determining property rights in the State of Nevada. NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

The Nevada Executive Branch

20. The Court also finds persuasive Attorney General Opinion 84-06, which finds that "[i]n 1977, the Nevada Legislature declared its intention that zoning ordinances take precedence over provisions contained in a master plan" and that the Legislature's "recent enactment buttresses our conclusion that the Nevada Legislature always intended local zoning ordinances to control over general statements or provisions of a master plan." Exhibit 23.

Three City Departments

21. The Court also finds persuasive that the three departments at the City which would provide an opinion on the adoption, interpretation, and application of zoning at the City of Las Vegas have confirmed zoning is of the highest order when determining property rights.

22. The City Planning Department confirmed zoning is of the highest order: 1) zoning trumps everything; 2) "if the land use [master plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement; 3) and "a zone district gives a property owner property rights." Exhibit 6, 000068, pp. 74-75; Exhibit 46, 000608, p. 53:4-6; Exhibit 54 (LO Appx. Ex. 160 at 005007, p. 242:5-6.

23. The City Attorney's Office confirmed that zoning is of the highest order. Veteran City Attorney Brad Jerbic stated, in speaking directly about this property, "the rule is the hard zoning, in my opinion, does trump the General Plan [Master Plan] designation. Exhibit 17, p. 000227:1787-1789. Veteran deputy City attorney Phil Byrnes and Brad Jerbic submitted pleadings to the Eighth Judicial District, which state: 1) "in the hierarchy, the land use designation [master plan] is subordinate to the zoning designation;" 2) "zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses;" and, 3) a master plan is a "planning document" and a land use designation on a master plan "was a routine planning activity that had no legal effect on the use and development" of affected property. Exhibit 24, 000253:8-12; Exhibit 26, 000282-283.

24. The City Tax Assessor's department confirmed that zoning is of the highest order. After the Landowners acquired the 17 Acre Property, the Clark County Tax Assessor, who is "ex officio, the City Assessor of the City" (City Charter Sec. 3.120), was required to determine the "full cash value" of the 17 Acre Property by "considering the uses to which it may lawfully be put" and "any legal or physical restrictions" pursuant to NRS 361.227(1). The assessor determined the use of the 17 Acre Property to be "residential" based on the "zoning designation: R-PD7," placed a value of $88 million on the entire 250 Acre Property, and has been taxing the Landowners approximately $1 million per year based on this lawful "residential" use. The City does not contest this tax evidence. *See* Exhibit 40 (LO Appx. Ex. 49, Bates number 001164-001179); Exhibit 41 (LO Appx. Ex. 52, Bates number 001184-001189, specifically, 001185); Exhibit 53 (LO Appx. Ex. 151, Bates number 004831-4836); Exhibit 53 (LO Appx. Ex. 152, Bates number 004837-4861).

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25. Evidence was also presented at the evidentiary hearing that the City's 2050 Master Plan states that zoning is "the law" and the Master Plan is a "policy." Exhibit 44, Bates number 000595.

26. Finally, the Court finds persuasive that in litigation involving adjoining landowners, who were trying to stop residential development on the 17 Acre Property, the District Court held "the zoning on the GC Land [250 Acre Property] dictates its use and Defendants [Landowners] rights to develop their land. Exhibit 55 (LO Appx. Ex. 173, Bates number 005123-5167, specifically 0005142:11-12).

27. Based on the foregoing, the Court will rely on zoning to determine the property rights issue in this matter. Specifically, the Court will consider "the current zoning of the property, as well as the likelihood of a zoning change" as directed by the Nevada Supreme Court in City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003).

28. As the evidence is undisputed that the 17 Acre Property had R-PD7 zoning since 1981 and was re-zoned to R-3 on February 15, 2017, the Court turns to the RPD-7 and R-3 zoning to determine the property rights issue.

Legally Permissible Uses of R-PD7 and R-3 Zoned Properties

General Zoning Standards

29. As stated in the City's official Zoning Verification Letter provided to the Landowners on December 30, 2014, Exhibit 7, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter "LVMC") Title 19. Therefore, the Court looks to the LVMC for guidance on the legally permitted uses of property zoned R-PD7.

30. LVMC 19.18.020 (Words and Terms Defined) defines Zoning District as "An area designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with this Title."

31. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as "Any use allowed in a zoning district as a matter of right if it is conducted in accordance with the restrictions applicable to that district. Permitted uses are designated in the Land Use Table by the Letter 'P.'"

32. LVMC 19.16.090 is entitled "Rezoning" and section (O) states that once zoning is in place, "[s]uch approval authorizes the applicant to proceed with the process to develop and/or use the property in accordance with the development and design standards and procedures of all City departments and in conformance with all requirements and provisions of the City of Las Vegas Municipal Code."

R-PD7 Zoning

33. LVMC 19.10.050 is the part of the LVMC directly applicable to the R-PD7 zoning on the 17 Acre Property. The "R" in P-PD7 zoning stands for "residential. Section (A) identifies the "Intent of the R-PD District" and states that "the R-PD District has been to provide for flexibility and innovation in residential development" and section (C) lists as the "Permitted Land Uses," "Single family and multi-family residential." Exhibit 10.

34. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7 zoning on the 17 Acre Property that the City "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Landowners' Exhibit 16, Transcript, 10.18.16 Special Planning Comm. Meeting, 000225:3444-3445.

R-3 Zoning

35. In regards to R-3 zoning, LVMC 19.12.010(B) is the City Code "Land Use Table" which identifies those uses "permitted as a principle use in that zoning district by right" with a "P" designation. The R-3 zoning lists "multi-family residential," "single family attached," and "single family detached" with a "P" designation, meaning these are uses "permitted as a principle use in [the R-3] zoning district by right."

36. Accordingly, the R-PD7 and R-3 zoning on the 17 Acre Property provide the Landowners the right to use the 17 Acre Property for single family residential and multi-family residential uses. In fact, the City conceded this issue when it re-zoned the 17 Acre Property to R-3 and granted the 435 residential units on February 15, 2017, prior to the filing of the complaint in this matter. *See* Exhibit 3, 000015:8-9.

The Judge Williams Order in the 35 Acre Case

37. The Court also takes notice of the property interest order entered by Judge Williams in the 35 Acre Case, which addressed the same issue before this Court, except that the 35 Acre Property was not yet re-zoned to R-3 prior to the filing of the Complaint in that matter.

38. Judge Williams held: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims" as they are entirely different types of proceedings; 2) "any determination of whether the Landowners' have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law;" 3) "Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case [citations omitted];" and, 4) "the Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties." Exhibit 2.

39. Judge Williams then concluded, "1) "the 35 Acre Property is hard zoned R-PD7 at all relevant time herein; and, 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential." Exhibit 2.

40. The Court finds Judge Williams order in the 35 Acre Case to be persuasive as it is on the same issue now pending before this Court.

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Petition for Judicial Review Law

41. The Court declines the City's request to apply petition for judicial review rules from the cases of Stratosphere Gaming Corp.. v. City of Las Vegas, 120 Nev. 523 (2004); Nova Horizon v. City of Reno, 105 Nev. 92 (1989); Am. W. Dev. Inc. v. City of Henderson, 111 Nev. 804 (1995), Boulder City v. Cinnamon Hills Assoc., 110 Nev. 238 (1994); Tigh v. Von Goerken, 108 Nev. 440 (1992) and other petition for judicial review cases cited by the City. The Nevada Supreme Court very recently held in City of Henderson v. Eighth Judicial Dist. Ct, 137 Nev. Adv. Op. 26 (June 24, 2001) that petition for judicial review actions are entirely distinct from other civil actions - "[c]ivil actions and judicial review actions are distinct types of legal proceedings. ... Thus the district court's role is entirely different in hearing a petition for judicial review, where the district court functions in a quasi-appellate role distinct from its usual role as a trial court." The Court concluded that "petitions for judicial review of land use decisions pursuant to NRS 278.3195 are distinct from civil actions, and as such, they cannot be joined together" and "[t]o conclude otherwise would allow confusingly hybrid proceedings in the district courts, wherein the limited appellate review of an administrative decision would be combined with broad, original civil trial matters." Id. This is an inverse condemnation case, not a petition for judicial review case, and the Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding the property interest in this inverse condemnation case. Therefore, it would be improper to apply petition for judicial review law (that has limited review) in this inverse condemnation action (that includes broad, original review).

42. The Court also declines the City's request to apply the petition for judicial review order from the 35 Acre Case entered by Judge Williams for the reasons stated above. Moreover, Judge Williams himself held "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims."

Exhibit 2, 000012:14-16. Additionally, the Judge Williams 35 Acre petition for judicial review order was based, in part, on the Crockett Order [that adopted the PR-OS] and the Crockett Order has been reversed by the Nevada Supreme Court (Exhibit 4). Finally, as explained, Judge Williams granted the Landowners' motion to determine property interest in the inverse condemnation side of the 35 Acre Case (Exhibit 2), which is directly relevant to the pending issue, not the questionable petition for judicial review order.

43. The Court also declines the City's request to apply the petition for judicial review order from the 133 Acre Case entered by Judge Sturman for the reasons stated above. Moreover, Judge Sturman's petition for judicial review order expressly states that, "Without reaching any other issued raised by the parties, the Court makes the following conclusions of law: 1. Based on the doctrine of issue preclusion, Judge Crockett's Order has preclusive effect on this case." Eighth Judicial District Court case no. A-18-775804-J, filing dated July 29, 2021, p. 7:2-5. And, the Crockett Order has been reversed by the Nevada Supreme Court. Exhibit 4.

44. Finally, the City's petition for judicial review law is inconsequential as the City conceded the R-PD7 zoning and conceded the use of the 17 Acre Property for 435 residential units when it re-zoned the property to R-3 zoning to allow this use on February 15, 2017.

The Herndon Order

45. The Court also declines the City's request to apply the Herndon Order from the 65 Acre Case. Judge Herndon stated at the end of his order that his ruling was very limited to the ripeness doctrine and that ripeness holding "renders further court inquiry unnecessary." Eighth Judicial District Court case no. A-18-780184-C, filed on December 30, 2020, p. 35:5-8. Judge Herndon also specifically held that "the court believes that addressing the merits of any of the remaining issues would be unwise as there are companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect

in the other pending court actions, much like the then controlling Crockett Order [now reversed] was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case." Id., p. 35:9-14. Therefore, Judge Herndon did not reach the merits of the pending property interest issue and, moreover, it would be improper for this Court to rely on the Herndon Order where Judge Herndon himself held it should not be relied upon.

The Master Plan Land Use as Parks, Recreation, Open Space (PR-OS) Issue

46. The Court declines the City's request to apply the City Master Plan, in place of zoning, to determine the property interest in this inverse condemnation case.

47. First, as stated above, Nevada Supreme Court precedent relies on zoning to determine the property interest in inverse condemnation and eminent domain proceedings, not a master plan land use designation. In this same connection, as explained above, three City departments – Planning, the City Attorney's Office, and Taxation – have confirmed that zoning is applied to determine property rights. The City tax department in 2016 used "residential" based on the "zoning designation: R-PD7," as the "lawful" use of the 17 Acre Property in order to collect taxes from the Landowners in the amount of $1 million per year for the past five years and back taxes upon conversion pursuant to NRS 361A.280. To allow the City to shift positions in this inverse condemnation action, where it may be liable to pay compensation, and now claim that the residential zoning is not used to determine the "lawful" use of the property, but instead the master plan PR-OS designation should be applied, violates basic and fundamental notions of fairness and justice.

48. Second, even if there was a PR-OS land use designation on the City's Master Plan, zoning would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

49. Third, Landowners' Exhibit 30, specifically Bates numbers 000443-448, and Exhibit 42 (LO Appx. Ex. 6, specifically Bates numbers 000051 and 000069) are evidence that the first City Master Plan designation for the 17 Acre Property was MED and ML, which is the land use designation for a residential use for 6-12 residential units per acre and which is consistent with the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has failed to present the evidence showing that this original MED and ML City Master Plan land use designation was ever legally changed from MED and ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278 and LVMC 19.16.030. *See* Exhibit 56 (LO Appx. Exs. 177 and 178), listing the requirements to make a parcel specific amendment to the City's Master Plan.

50. Fourth, City Attorney, Brad Jerbic, confirmed the City Attorney's Office researched the alleged PR-OS Master Plan land use designation and determined there was never a proper change to PR-OS on the City's Master Plan: "There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." Exhibit 18, Bates number 000228:1943-1948.

51. The Court also declines the City's request to find the Landowners conceded to a PR-OS master plan land use designation. The Landowners presented evidence that they vehemently objected in writing to any alleged PR-OS designation on any part of the 250 Acre Property and, when requested by the City to file a GPA application that references the PR-OS designation, the Landowners submitted the GPA application with a letter stating the GPA application was "submitted under protest." Exhibit 56 (LO Appx. Exs. 180 and 182).

52. Finally, the City's 25-day statute of limitations argument does not apply here, because the Landowners are not challenging a change to the PR-OS on the City's master plan, they maintain, and the Court agrees, that the evidence shows a PR-OS change never occurred

The "Condition" Issue

53. The Court also declines the City's request to find there is a "condition" that the 17 Acre Property remain a golf course and open space into perpetuity.

54. There is no evidence that there is any such alleged condition or that the alleged condition was ever properly recorded at the Clark County Recorder's Office in the 17 Acre Property chain of title.

55. Moreover, "a grantee can only be bound by what he had notice of, not the secret intentions of the grantor." Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also* In re Champlain Oil Co. Conditional Use Application, 93 A.3d 139 (Vt. 2014) ("land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." Id., at 141); Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every item discussed at a hearing becomes a "condition" to development, rather the local land use board has a duty to "clearly state" the conditions within the approval ordinance without reference to the minutes of a proceeding. Id., at 687).

The Purchase Price Issue

56. The Court declines the City's request to apply the purchase price the Landowners paid to acquire all of the assets of Fore Stars, Ltd., the entity that owned the entire 250 Acre Property (that includes the 17 Acre Property) in 2015, as one of the guiding factors to decide the property rights issue.

57. The City cites no Nevada law where a court relied on the purchase price to decide the pending property rights issues and the six Nevada Supreme Court inverse condemnation and

direct condemnation cases referenced above uniformly relied on zoning, not a purchase price paid for a property, to determine the property rights issue.

58. Moreover, although the City presented evidence of what the purchase price for the Fore Stars, Ltd. entity may have been, the Landowners referenced the deposition of the principle, Yohan Lowie, that occurred one day prior to the hearing in this matter, on August 12, 2021, and argued that, in that deposition, Mr. Lowie laid out in detail the approximately 14 years of due diligence and work done to acquire the 250 Acre Property, the extensive consideration that was involved in the acquisition, amounting to approximately $100 million and $45 million of direct monetary compensation, which is contrary to the purchase price presented by the City.

Therefore, the Landowners' request that the Court determine the property interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) The determination of the property interest in this inverse condemnation action must be based on inverse condemnation and eminent domain law;

2) Nevada inverse condemnation and eminent domain law provides that zoning must be relied upon to determine the Landowners' property interest prior to any alleged City interference with that property interest;

3) The 17 Acre Property has been hard zoned R-PD7 since 1981 and was re-zoned to R-3 prior to the filing of the Complaint in this matter;

4) The Las Vegas Municipal Code lists single-family and multi-family residential as legally permissible uses on R-PD7 and R-3 zoned properties by right;

5) The legally permitted uses by right of the 17 Acre Property are single-family and multi-family residential; and

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6) The 17 Acre Property has at all times since 1981 been designated as "M" (residential) on the City's Master land use plan.

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMITT L. WATERS

/s/ James Jack Leavitt
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company, LLC, Plaintiff(s) vs. Las Vegas City of, Defendant(s)	CASE NO: A-18-780184-C DEPT. NO. Department 3

AUTOMATED CERTIFICATE OF SERVICE

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

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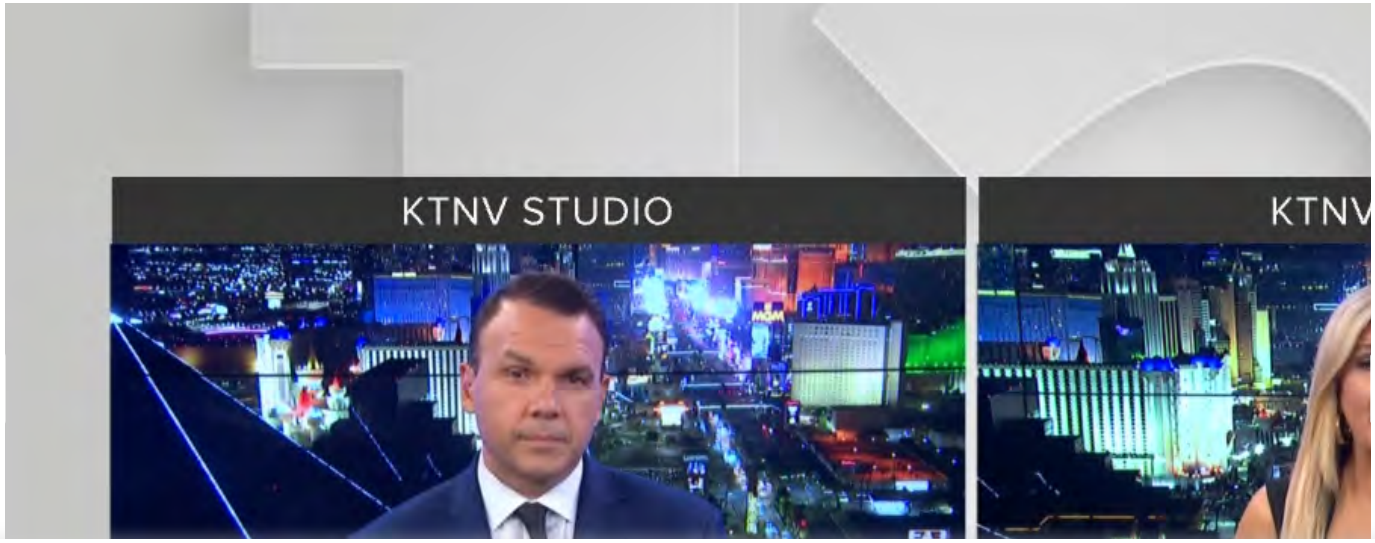
EXHIBIT “XXXX”

13 INVESTIGATES

City of Las Vegas suffers another defeat in battle over Badlands

Taxpayers shelling out millions for losing battle



KTNV LAS VEGAS

The battle over Badlands continues in Las Vegas, Darcy Spears reports.




By: Darcy Spears

Posted at 3:26 PM, Sep 29, 2021 and last updated 11:37 AM, Sep 30, 2021

LAS VEGAS (KTNV) — Another major court victory has been delivered to the developer in the battle over Badlands.

In a Tuesday hearing, Clark County District Court Judge Timothy Williams said, "We have a very vigorous and well-developed record in this case and I'm going to make some decisions right now."

Williams then ruled that the City of Las Vegas illegally "took" the land.

A "taking" is when the government seizes private property for public use.

In the Badlands case, Judge Williams ruled city leaders restricted the owner's rights so much that it equated to a physical seizure.

KTNV LAS VEGAS

But, as 13 Investigates first exposed in 2018, high-powered Queensridge homeowners fought it, effectively halting any development of Badlands.

As the property was held in limbo, it became a wasteland, safety hazard, and haven for crime.

Lowie sued the city for taking his property, denying his building permit applications and clawing back the zoning.

In March of last year, the Nevada Supreme Court ruled development of Badlands should have been allowed all along.

Tuesday's ruling in District Court adds to that with Judge Williams saying, "I think under the vast facts and circumstances, it's pretty clear that we had a taking."

Vickie DeHart, executive managing partner of Lowie's EHB Companies said,“This has been a six-year battle that has taken all of our resources. Fighting the government and politically connected people who threatened to take our land early on is no easy feat. It is wonderful to see justice prevail and the courts uphold our constitutional rights. A win for us is a win for all landowners.”

KTNV LAS VEGAS

And the dollar figure will only get higher as the next phase of the case determines how much the city has to pay for taking Lowie's land.

We reached out to the City Attorney's office for comment, but they declined, saying "It's the city's practice not to comment on ongoing or pending litigation."

Report a typo

EDITORIAL: Badlands money pit just got deeper

The 250-acre site of a closed golf course is now slated for the development of condos, estate lots and a hotel, photographed on Tuesday, June 6, 2017. Patrick Connolly Las Vegas Review-Journal @PConnPie

Las Vegas Review-Journal

October 2, 2021 - 9:01 pm

The dilapidated Badlands golf course is more than just an unkempt expanse of scruffy land winding its way through the exclusive Queensridge development. It's also a massive money pit for the city of Las Vegas.

On Tuesday, a District Court judge added to the city's misery by siding with a developer in a long-running dispute involving the property. It was an unsurprising decision in the face of the city's hubris and exposes city taxpayers to millions in liability. It's also a cautionary tale for elected officials and bureaucrats who believe that zoning codes give them virtually unlimited powers to dictate how private land owners use their property.

The case at hand involved EHB Cos., a development outfit that bought the 35-acre parcel south of Alta between Hualapai and Rampart in 2015 with an eye on building residential homes on the golf course, which had gone belly-up two years earlier. The plan angered several homeowners in the surrounding Queensridge community who felt it would devalue their residences. City officials initially OK'd the project, but well-heeled homeowners living nearby fought the approval and won in District Court. The Nevada Supreme Court last year overturned that decision.

But in 2017, a newly constituted City Council rescinded the initial go-ahead and began erecting barriers to the EHB development, triggering more lawsuits. The council even passed a narrowly tailored ordinance essentially outlawing residential development on old golf courses. City taxpayers have paid the price, shelling out more than $4 million for litigation.

In fact, the land was zoned for residential development from the get-go and the city had little legal basis to deny EHB's plans. Former City Councilman Bob Beers, who represented the area in question, likely lost his seat in 2017 for defending the developers. He warned time and again that city officials were putting taxpayers at risk by ignoring their obligations.

"After an exhaustive review of historical records and the law," Mr. Beers wrote in a 2019 Review-Journal op-ed on the property, "both the city attorney and the Planning Department agreed that the land was still zoned residential from the last action the City Council took. Yes, it was 20 years ago and all of the council members at that time are no longer serving. But zoning, once granted, doesn't change."

Had the city listened to Mr. Beers, it wouldn't be in this mess. Instead, attorneys representing the city were reduced to arguing that EHB's lawsuit seeking compensation for the city's obstructionism was an attempt to "extort hundreds of millions of dollars from taxpayers."

The courts weren't buying that malarkey. On Tuesday, District Judge Timothy Williams held that EHB had a legitimate Fifth Amendment claim against the city for its overzealous attempt to restrict development on the Badlands property. "I think under the vast facts and circumstances," the judge said, "It's pretty clear that we had a taking."

The next step in the saga could be a hearing to determine how big a hit city taxpayers will take thanks to their misguided representatives. The city may have an appeal in mind, but that would be a colossal waste. At this point, the City Council needs to minimize the damage and do what it should have done years ago: See what EHB will accept to make this whole fiasco go away.

And in the future, when city officials may be tempted to flex their regulatory muscle against an unpopular property owner, perhaps they'll remember the high costs of arbitrarily and capriciously denying owners the economic use of their property.

'A win for all landowners': Judge rules Las Vegas took 35 acres on Badlands

'A win for all landowners': Judge rules Las Vegas took 35 acres on Badlands

By Shea Johnson Las Vegas Review-Journal

September 29, 2021 - 1:42 pm

Updated September 30, 2021 - 12:13 am

A Clark County District Court judge has agreed with the developer behind stalled housing plans on the defunct Badlands Golf Club course near Summerlin who claimed that interference by Las Vegas officials made land impossible to develop.

Judge Timothy Williams ruled on Tuesday in favor of developer EHB Cos., which alleged that city actions were tantamount to the city taking the company's 35-acre parcel near the intersection of Hualapai Way and Alta Drive, court records show.

In recent years, the Las Vegas City Council has held or rejected plans to build homes on the closed golf course except for a 435-condominium project on 17 acres that has not moved forward. EHB has contended that lengthy delays and denials were unnecessary and aimed at preserving the private land's use for the surrounding public.

Efforts to develop the golf course began after EHB purchased the land in 2015. During marathon hearings that followed, lawmakers expressed distaste for piecemeal development. Plans were also opposed by a coalition of residents in the upscale Queensridge neighborhood, which the course weaves through, citing fears of high density and diminishing property values.

"This has been a four-year battle that has taken all of our resources," said Vickie DeHart, a principal with EHB, in a statement. "Fighting the government and politically connected people who threatened

to take our land early on is no easy feat. It is wonderful to see justice prevail and the courts uphold our constitutional rights. A win for us is a win for all landowners."

Three other cases pending

The decision Tuesday from the case brought forth in 2017 marks the second liability ruling in four so-called inverse condemnation cases filed by EHB. It is the first to go its way, although a ruling favorable to the city in December regarding a 65-acre parcel was later reopened and is under review, court records show.

Each case represents a different parcel of the former golf course and each case is in front of a different Clark County District Court judge. But combined the lawsuits account for the entire 250-acre plot and make the same central allegation: a "categorical taking."

In essence, the developer is arguing that it deserves to be compensated because it claims the city's purported intention to preserve private property for public use has wiped out the economic value of the land.

Attorney Kermitt Waters, one of the lawyers representing EHB in litigation, said Wednesday he believed it was only "a matter of time" before the city would be found liable in the remaining cases following Tuesday's ruling.

Allegations of extortion

The stakes could be high depending on the outcome of the cases. EHB CEO Yohan Lowie previously estimated that the city would be liable for more than $1 billion in damages. In an August rebuttal to

the lawsuit in question, city attorneys wrote that a finding against the city "would bring down the entire system of land use regulation in the State of Nevada."

In court filings, city attorneys say the developer knew the land was designated for open space, recreation and parks when it purchased the land six years ago, although EHB insists that residential construction is permitted. City attorneys also noted that the council may exercise discretion on land-use matters, such as when they allowed the scaled-back condominium project.

"If the Developer admits that it has the right to proceed with construction of its 435-unit luxury housing project, its narrative of victimization in this and the other three lawsuits is exposed as a fraud and a cynical appeal to the courts to help it extort hundreds of millions of dollars from the taxpayers," city attorneys wrote in a court filing.

Lowie, himself, has accused Queensridge residents of trying to extort him.

Damages to be determined

The city declined to comment Wednesday on the ruling in the case, citing its practice of not publicly addressing ongoing or pending litigation. A hearing on readiness for trial to establish damages is scheduled Thursday, according to Waters and court records.

It is one of at least a dozen lawsuits brought forward by EHB in recent years in the protracted and expensive legal battle it has waged against the city. The court fight has cost Las Vegas taxpayers more

than $4 million in legal fees and staff expenses as of Sept. 23, according to city-provided figures.

"When I ran for office, I ran with a goal of bringing the City of Las Vegas and the developer together to avoid this eventual day in court," said Las Vegas Councilwoman Victoria Seaman, whose district covers the golf course, in a statement.

Seaman had criticized her predecessor, ex-Councilman Steve Seroka, for representing a "few people in Queensridge" and not taxpayers or the city throughout the dispute. Seaman's candidacy in 2019 was supported by a union and developer-linked company that contributed to a Seaman-backed effort to recall Seroka, who ultimately stepped down amid allegations of sexual harassment.

"While the legal process will linger on, and costs to the taxpayers will continue to mount, my objective has always been to avoid this litigation and work for an amicable resolution," Seaman said. "My position remains the same."

Contact Shea Johnson at sjohnson@reviewjournal.com or 702-383-0272. Follow @Shea_LVRJ on Twitter.

LETTER: Former city councilman warned of Badlands fiasco

(Las Vegas Review-Journal/File)

Bruce Feher Las Vegas

October 4, 2021 - 9:01 pm

As I recall, former Las Vegas City Councilman Bob Beers predicted the city of Las Vegas — meaning the taxpayers — could be held liable for the Badlands fiasco ("Judge rules Las Vegas took 35 acres on Badlands," Wednesday Review-Journal). Well, it looks like Bob was right. Now, the people will apparently be stuck holding the bag.

Las Vegas to appeal Badlands ruling

The land where the now defunct Badlands Golf Course lies empty on Wednesday, Sept. 29, 2021, in Las Vegas. (Benjamin Hager/Las Vegas Review-Journal) @benjaminhphoto

By **Shea Johnson** Las Vegas Review-Journal

October 6, 2021 - 11:27 am

The city of Las Vegas will appeal a recent court decision that found the city took 35 acres of the former Badlands Golf Club course by making it impossible to develop.

The city attorney's office said it believed the ruling to be "legally improper." The City Council on Wednesday voted 6-1 to appeal to the state Supreme Court.

Clark County District Court Judge Timothy Williams ruled last month in favor of developer EHB Cos., the developer behind stalled housing plans on the defunct Badlands Golf Club course near Summerlin who had sued the city.

EHB contended that lengthy delays and denials from City Hall were unnecessary and aimed at preserving the private land's use for the surrounding public.

Councilwoman Victoria Seaman, who represents the district where the former golf course is located, supported the appeal. But she also called for resolution between both sides, saying that city taxpayers otherwise could be on the hook for hundreds of millions of dollars.

"The recent court ruling has put that reality more in focus today," she said, adding that it was time to correct the wrongs of past city leaders who had "gone beyond the ordinary to stop this developer."

Councilwoman Michele Fiore also cited the mistakes of past councils that have led to the city paying millions of dollars in court costs. But she voted against the appeal, saying that it was time to stop continuous legal spending.

This is a developing story. Check back for updates.

Contact Shea Johnson at sjohnson@reviewjournal.com or 702-383-0272. Follow @Shea_LVRJ on Twitter.