

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**AMENDED  
JOINT APPENDIX  
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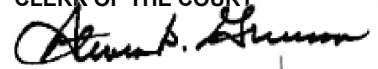
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TRAN

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

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

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 26, 2021

**ALL PENDING MOTIONS**

APPEARANCES:

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

FOR CITY OF LAS VEGAS:	GEORGE F. OGILVIE, III, ESQ.
(Appearing via BlueJeans	ANDREW W. SCHWARTZ, ESQ.
Video conference)	CHRISTOPHER J. MOLINA, ESQ.
	REBECCA L. WOLFSON, ESQ.

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

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 26, 2021, 9:35 A.M.

2 \* \* \* \*

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

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

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

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

20 THE MARSHAL: That is correct, Your Honor.

21 THE COURT: Yeah.

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



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

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

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

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

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

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

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

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

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

4 MR. OGILVIE: Thank you, Your Honor.

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

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

9 THE COURT: Yeah.

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

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

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

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

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

21 THE COURT: All right.

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

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

1   forth his appearance.

2               MR. SCHWARTZ:  Yes.  Andrew Schwartz.

3               THE COURT:  Yes.

4               MR. SCHWARTZ:  Good morning, Your Honor.  Andrew

5 Schwartz for the City.

6               MR. OGILVIE:  Good morning, Your Honor.  George

7 Ogilvie on behalf of the City of Las Vegas.

8               THE COURT:  All right.  And from the City's

9 perspective, are there any more appearances that need to be

10 set forth on the record?

11              MR. OGILVIE:  I believe Rebecca Wolfson and Chris

12 Molina are also participating this morning, Your Honor.

13              THE COURT:  All right.

14              MR. OGILVIE:  On behalf of the City.

15              THE COURT:  Okay.  I just wanted to make sure we

16 didn't overlook their appearances.  Okay.  And so --

17              MR. OGILVIE:  Your Honor.

18              THE COURT:  Yes, sir?

19              MR. OGILVIE:  Your Honor, this is George Ogilvie.  I

20 appreciate the Court's offer of an accommodation.  If I could,

21 though, ask Mr. Leavitt if he intends to provide the Court

22 with exhibits, because we've argued enough cases against each

23 other, I see that Mr. Leavitt typically provides the Court,

24 whether it be this Court or other departments, with spiral-

25 bound binders of exhibits.  If he could contact his office and

1 have them forward those exhibits to me?

2 THE COURT: Mr. Leavitt?

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

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

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

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

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

20 THE COURT: All right.

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

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

1 Mr. Ogilvie?

2 MR. OGILVIE: Yes, we did.

3 THE COURT: And what's your impression of that?

4 Should we handle that first or do we have an agreement?

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

6 THE COURT: Okay. If there's no opposition to it,

7 we'll go ahead and deal with that motion first. And as to my

8 understanding, that's Plaintiff's Motion for Summary Judgment

9 on Just Compensation. Is that correct?

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

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

12 MR. LEAVITT: Thank you, Your Honor.

13 Your Honor, the reason I said that the summary

14 judgment motion should perhaps go first is because the

15 landowners filed a motion for partial summary judgment, of

16 course, on the just compensation issue, maintaining that

17 there's only one appraisal report that's been submitted in

18 this case and that's the appraisal report by Mr. Tio

19 DiFederico, an MAI appraiser who has 36 years appraising

20 property in the city of Las Vegas. And he went through all

21 of the mandatory appraisal requirements and he arrived at a

22 value of \$34,135,000 for the taking of the property. And

23 that's where we are in this case, Judge. We are at one issue

24 in front of the jury. What's the value of the property as of

25 December -- I'm sorry, as of September 14th, 2017.

1           THE COURT: You know, I have a question for you on  
2 that.  
3           MR. LEAVITT: Sure.  
4           THE COURT: And it's a real simple question.  
5           MR. LEAVITT: Sure.  
6           THE COURT: Is this motion in the proper posture  
7 procedurally that I can make that type of determination?  
8           MR. LEAVITT: Yes, Your Honor. And the reason I say  
9 that is because the City itself has also counter-moved for  
10 summary judgment. And so the City has said, listen, we don't  
11 have any factual disputes, it's a legal question. Does the  
12 Court need to adopt the landowner's appraised value of  
13 \$34,135,000, or does the Court need to adopt the City's  
14 position that the value of the property is zero?  
15           THE COURT: But here's my question.  
16           MR. LEAVITT: Yes.  
17           THE COURT: At the end of the day, ultimately  
18 wouldn't a jury make that decision?  
19           MR. LEAVITT: Yes. And here's where -- absolutely,  
20 Your Honor, in every single one of these cases that's how we  
21 do it, but in every single one of these cases the government  
22 shows up with an appraisal report. That's what's different in  
23 this case. And so --  
24           THE COURT: I mean, I get that. But you have to  
25 remember, my question I think was really pretty specific as to

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

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

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

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

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

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

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

13 MR. LEAVITT: Sure.

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

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



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

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

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

11 MR. LEAVITT: Uh-huh.

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

17 MR. LEAVITT: Right.

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

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

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

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

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

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

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

18 MR. LEAVITT: Right.

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

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

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

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

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

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

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

10 And, Your Honor, here was the policy for that act,  
11 is that in the 1960s and 1970s the government was taking  
12 property and they weren't paying the landowners what Congress  
13 thought was just compensation. And so what the legislature --  
14 what Congress did and what the Nevada Legislature did is they  
15 said we're going to follow these federal rules. And these  
16 federal guidelines, Your Honor, are set forth in 42 U.S.C.  
17 4651. And here's what's so critical about what we're here  
18 for today, is that federal law requires that in any of these  
19 eminent domain cases the government is required to hire an  
20 appraiser and the government is required to have that  
21 appraiser appraise the property, and that the government is  
22 prohibited from paying less than the value that appraiser  
23 comes up with.

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

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

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

12 MR. LEAVITT: Yes.

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

15 MR. LEAVITT: Right.

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

18 MR. LEAVITT: Right.

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

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

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

5 THE COURT: We can pull it up.

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

7 MS. WATERS: Give him the Bates stamp number.

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

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

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

14 MR. LEAVITT: All right.

15 THE COURT: We'll look at it.

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

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

25 THE CLERK: The second page.

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

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

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

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

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

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

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

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

15 MR. LEAVITT: Okay.

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

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

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

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

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

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



1 appraisal report.

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

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

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

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

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

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

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

1 property is valued. First, the property must be valued based  
2 upon its highest and best use. Secondly, once highest and  
3 best use is determined, the value must be -- the fair market  
4 value must be based upon the highest price. And then thirdly,  
5 all of those valuation -- all that valuation evidence must be  
6 determined as of the relevant date of value under NRS 37.120.  
7 And in this case, 37.120 says the date of value is September  
8 14th, 2017, which is the date of service of summons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So, Your Honor, we would request that the Court

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

8 THE COURT: Okay, sir.

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

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

12 MR. LEAVITT: All right.

13 THE COURT: Okay. Mr. Ogilvie, sir.

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

16 THE COURT: Okay. All right.

17 MR. SCHWARTZ: Thank you, Your Honor.

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

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

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

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

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



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

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

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

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

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

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

25           MR. SCHWARTZ: The Court said in paragraph 39 of

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

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

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

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

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

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

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

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

14 MR. SCHWARTZ: Yes.

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

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

1 THE COURT: How about irrelevant?

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

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

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

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

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

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

9 MR. SCHWARTZ: Pardon me?

10 THE COURT: But go ahead. Go ahead, sir. But I'm  
11 really focusing on -- I don't want to get sidetracked. We  
12 have a simple -- I won't say simple, but we have a straight-  
13 forward motion for partial summary judgment that's filed by  
14 the landowner in this case and this is what they're asking  
15 for. They want summary judgment granted in an amount of  
16 \$34,135,000.00. That's what they want. That's what the  
17 issue is.

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

22 THE COURT: Okay.

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

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

6 THE COURT: All right.

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

15 The City also contends -- I think this is a legal  
16 issue, Your Honor, that the date of value is not September 14,  
17 2017. In a taking case -- in a regulatory taking case, given  
18 the developer's categorical and Penn Central claims which  
19 allege that the City took some action that limited the  
20 developer's use of the property and that it was a taking,  
21 the date of value is the date that the City took the alleged  
22 action. The developer is quite vague about the actions that  
23 constituted taking. The developer asked the Court to look at  
24 kind of the gestalt of the City's actions, but that's not how  
25 the law of inverse condemnation works. There is a date when

1 the City took an action that took the property.

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

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



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

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

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

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

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

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

14           THE COURT: Okay, sir. Anything else?

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

16           THE COURT: Okay. Thank you.

17           Mr. Leavitt.

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

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

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

12 MR. LEAVITT: Oh, I understand.

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

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

1 further confirm the certification that he has on his report.

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

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

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

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

15           MR. LEAVITT: Yeah.

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

17           MR. LEAVITT: Sure, Your Honor.

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

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

4 MR. LEAVITT: Understood, Your Honor.

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

7 MR. LEAVITT: Understood.

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

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

22 THE COURT: Yeah.

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

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

1 bringing a jury in tomorrow.

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

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

13 THE COURT: I think I've said that.

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

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

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

14           MR. LEAVITT: I agree.

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



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

3 MR. LEAVITT: I totally agree, Your Honor.

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

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

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

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

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

4           Your Honor, we do have the duty to bring forth  
5 evidence and present it to the Court and we've done that  
6 and we've met our burden. Here's our evidence. Here's our  
7 admissible evidence. We have a certification of it on  
8 \$34,135,000. The City now has a duty as part of the summary  
9 judgment hearing to say, Judge, here is our contrary valuation  
10 evidence as of September 14th, 2017. Not something which is  
11 ten years old, not something which is seven years old, not  
12 even something, Your Honor, which is two years old. The City  
13 has to have valuation evidence as of September 14th, 2017.  
14 And if the City says to you today at this hearing we don't  
15 have valuation evidence as of September 14th 2017, then, Your  
16 Honor, summary judgment should be granted. And I will tell  
17 you, Your Honor, I know the City doesn't have valuation  
18 evidence as of September 14th, 2017. I know that because we  
19 don't have it from them.

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

1 certification that we've submitted to the Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. SCHWARTZ: Yes, Your Honor.

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

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

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

17 MR. LEAVITT: And we also have an order.

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

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

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

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

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

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

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

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

19 THE COURT: Says who?

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

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

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

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

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

16 All right. Anything else I need on that?

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

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



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

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

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

8 THE COURT: Yes, you may.

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

12 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and the seller both said that this transaction started in  
2 2005 with an option and that it was extraordinarily complex.  
3 Not even the buyer and seller could agree upon what the price  
4 was that was paid because there were -- not only was the  
5 Queensridge Towers involved in it, Tivoli Village was  
6 involved, Sahara Commons, a shopping center at the corner of  
7 Sahara and Hualapai was involved in this overall transaction.  
8 At the end of the day when it closed it was the acquisition of  
9 an entity and in that entity were personal property and other  
10 effects, licenses. There was a liquor license involved.

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

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

1 stated there was.

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

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

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

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

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

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

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

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

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

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

11           Now, I will end with this. There are some cases  
12 where purchase price evidence comes in, but we didn't have  
13 this in those cases. These are the comparable sales in the  
14 area, Your Honor. On this list alone right here, and these  
15 are just some of them, are three, six, ten -- there's about  
16 22 comparable sales in the immediate area of the subject  
17 property in this case which can be used to determine the  
18 value --

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



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

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

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

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

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

11 THE COURT: Is it too remote?

12 MR. LEAVITT: Right.

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

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

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

1 MR. LEAVITT: Yeah.

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

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

9 THE COURT: I understand.

10 MR. LEAVITT: Thank you, Your Honor.

11 THE COURT: Okay. Mr. Schwartz, sir.

12 MR. SCHWARTZ: Thank you, Your Honor.

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

1 the seller of the property.

2 Now, what we have there is a sale at \$18,000 an acre  
3 for the entire 250 acres of the Badlands. And whether the  
4 35-acre property is worth more or less than other parts of  
5 the property is not relevant because the appraiser for the  
6 developer claims that the property is worth a million dollars  
7 per acre or near a million dollars per acre.

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

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

1 MR. SCHWARTZ: No.

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

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

9 THE COURT: Please. Please.

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Okay. Here's my question. Don't you  
11 feel that at some threshold the arguments you're making should  
12 be supported by expert opinions as it pertains to valuation in  
13 this case? Because you're making arguments and I understand  
14 the position you're taking, but -- I mean, another point, too,  
15 I was just thinking about as I was listening to you, this  
16 isn't the time to conduct discovery; right? I mean, discovery  
17 is done. And I would anticipate that when it comes to the  
18 2015 transaction, whatever it might have been, that that would  
19 have been developed during discovery. And just as important,  
20 we would have some sort of expert opinion in this case  
21 specifically focusing on that.

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

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

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



1 the sale occurred.

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

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

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

17 MR. LEAVITT: Uh-huh.

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

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

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

7           THE COURT: Okay, fine.

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

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

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

16           THE COURT: Absolutely.

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

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

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

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

7           MR. LEAVITT: Yes, Your Honor.

8           THE COURT: Okay.

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

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

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

3           The jury decides the value. They can decide that  
4 the value is whatever they want. There's no limit on what the  
5 jury can decide. They could decide that the property is worth  
6 \$18,000 an acre, which is what the developer paid for it.

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

8           MR. SCHWARTZ: No, Your Honor.

9           THE COURT: Thank you.

10          Mr. Leavitt.

11          MR. LEAVITT: Your Honor, we pointed in our reply --  
12 thank you. First of all, so Mr. Schwartz said it's obvious  
13 that anybody who comes out and appraises this property would  
14 have used that 2005 purchase price. You know who it wasn't  
15 obvious to? The City Tax Assessor. The City Tax Assessor  
16 went to evaluate this property for tax purposes. You want to  
17 know what sale he didn't use? This alleged 2005 or 2015 sale.  
18 He used sales that ranged from \$500,000 an acre up to one  
19 million dollars an acre. Why? Because that 2005 and 2015  
20 sale is entirely irrelevant to the highest and best use of  
21 this property as a residential property as of September 14th,  
22 2017. The assessor evaluated the property as of 2016,  
23 December 2016, even closer to what Mr. Schwartz says is the  
24 2015 sale, and didn't consider it. Why? Because it's  
25 irrelevant. Nobody has used it, Your Honor. Nobody has used

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           THE COURT: Okay. Thank you, sir.

20           We'll hear from the opposition.

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



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

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

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

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

10 Let's move on to Number 3.

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

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

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

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

10 THE COURT: Okay. Thank you, sir.

11 We'll hear from the City.

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

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

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

1 put it in the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           Then the Court -- at tab 30 in the Court's binder is  
16 the Stratosphere Gaming case, which said that "Under Section  
17 19.18.050 the City Council must approve the Stratosphere's  
18 proposed development of the property through the City's site  
19 development plan review process. That process requires the  
20 council to consider a number of factors and to exercise its  
21 discretion in reaching a decision. There is no evidence that  
22 the Stratosphere had a vested right to construct the proposed  
23 ride."

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



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

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

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

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

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

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

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

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

10           Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

4 Okay. So where does that put us next?

5 MR. OGILVIE: Your Honor.

6 THE COURT: Yes?

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

9 THE COURT: Yes, you can.

10 MR. OGILVIE: So, first of all, let me apologize,  
11 Your Honor. I was in trial in Department 27 from September  
12 20th to October 14th, so I missed the hearings on September  
13 23rd, September 24th, the 27th and 28th, and have been also  
14 preparing for the arbitration hearing that I have next week.

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

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

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

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

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

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

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

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

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

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

12           And it is undisputed that the membership purchase  
13 and interest -- membership purchase -- I'm sorry. Membership  
14 interest purchase and sale agreement that was dated December  
15 1st, 2014 was for the purchase of this property, the --  
16 originally the land that the golf course sat on but ultimately  
17 became the purchase of Fore Stars. It was entirely unrelated  
18 to any transaction in 2005. And, in fact, both Mr. Bayne and  
19 Mr. Lowie expressly stated under oath in their deposition  
20 that Mr. Lowie's entity or Mr. Lowie himself identified the  
21 purchase price for which the Badlands would be purchased.  
22 They identified it as seven and a half million dollars, which  
23 is reflected in the interest purchase and sale agreement,  
24 which has to be reduced by the three million dollars that was  
25 ultimately paid for the clubhouse on the golf course, and then

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

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

11 So what I'm hearing, and I'm reading this -- I'm  
12 asking this, there's two parts to it. One, what I'm hearing  
13 is that we are prevented or prohibited from introducing any  
14 evidence of this 2015 purchase of Fore Stars for -- and the  
15 land, the 250 acres for less than four and a half million  
16 dollars. And then the second part is I had anticipated  
17 bringing in the evidence of the June 2015 letter of intent  
18 for the Calida Group to purchase the 17-acre property for  
19 \$30,240,000. And --

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

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



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

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

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

14 THE COURT: Go ahead. Go ahead.

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

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

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

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

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

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

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

20 THE COURT: All right.

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

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

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

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

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

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

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

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

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

1 THE COURT: Yes.

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

8 Secondly, Peter Lowenstein is not an appraiser.  
9 He was just disclosed. He's not an appraiser. He doesn't  
10 provide any valuation evidence. Keith Harper and a 2012  
11 appraisal report that was done for estate purposes back in  
12 2010, he was just disclosed about two weeks ago, saying that  
13 they were going to bring in a 2010 appraisal report that just  
14 valued the income from a golf course lease on the property.  
15 And then we just got notice that they're going to call William  
16 Bayne, and I think we've resolved that.

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

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

3 THE COURT: Mr. Ogilvie.

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

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

22 MR. LEAVITT: It is, Your Honor.

23 THE COURT: Right. And last but not now least -- and  
24 here's the thing. And we have to remember the procedural  
25 history in this case. And I remember this with some detail

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

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

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

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

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

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

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

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



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

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

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

22 THE COURT: And that's Mr. Bayne?

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

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

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

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

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

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

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

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

24 MR. OGILVIE: Yes.

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

1 MR. LEAVITT: Right.

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

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

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

6 MR. OGILVIE: Okay.

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

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

9 MR. OGILVIE: June 25th, 2015.

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

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

13 MR. LEAVITT: Yeah.

14 THE COURT: We'll deal with it.

15 MR. LEAVITT: All right.

16 (The Court confers with the clerk)

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

19 MR. LEAVITT: No opposition, Your Honor.

20 THE COURT: No opposition. Granted. All right.  
21 Before we break, because we have a one o'clock calendar or  
22 1:30. What time?

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

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

1           A couple things that are important to point out.  
2   It's my understanding we're going to be in the same courtroom  
3   we were in. That was Judge Krall. Is that correct?  
4           THE CLERK: Yes.  
5           THE COURT: We're going to be in her courtroom  
6   tomorrow. Starting at what time?  
7           THE CLERK: 10:30, jury selection.  
8           THE COURT: Jury selection, 10:30. How many are we  
9   bringing in, 45?  
10          THE CLERK: I'm not sure of the particulars.  
11          THE COURT: It's 40 or 45 are coming in. We have  
12   a wave coming in tomorrow and then another wave potentially  
13   the next day.  
14          MR. LEAVITT: Okay.  
15          THE COURT: What I will do is this. I mean, I do  
16   a traditional voir dire. The thrust and focus of my role is  
17   going to be very simple. Just, number one, make sure they  
18   understand why they're here and how important they are as far  
19   as the justice system is concerned. And secondly, I'll ask  
20   them a series of general questions, and what it accomplishes  
21   more so than anything would be simply this. I warm them up  
22   for you.  
23          The questions I ask are not necessarily germane to  
24   any issue in the case, other than I want to make sure they  
25   understand and appreciate what jury instructions are and

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

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

9 THE CLERK: 10:30.

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

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

14 THE COURT: 9:30.

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

16 THE COURT: Yes.

17 MR. LEAVITT: Okay.

18 THE COURT: Ready to go.

19 MR. LEAVITT: Ready to go.

20 THE CLERK: Test equipment, etcetera.

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

24 THE COURT: Yes.

25 MR. LEAVITT: Oh, okay. All right.

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

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

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

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

19           MS. WATERS: Absolutely.

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

24           THE CLERK: 10:30.

25           THE COURT: Okay. Everyone enjoy your day.

1  
2  
3  
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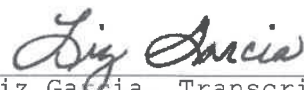
MR. LEAVITT: Thank you, Your Honor.

MS. WATERS: Thank you, Your Honor.

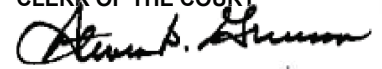
{PROCEEDINGS CONCLUDED AT 12:22 P.M.

\* \* \* \*

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



Liz Garcia, Transcriber  
LGM Transcription Service



TRAN

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

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

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

WEDNESDAY, OCTOBER 27, 2021

**BENCH TRIAL**

APPEARANCES:

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

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

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



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

2 \* \* \* \*

3 THE COURT: Come on up, counsel.

4 MR. LEAVITT: Thank you, Your Honor.

5 COURT RECORDER: We're on the record now.

6 THE COURT: We're back on the record.

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

10 THE COURT: Okay, sir.

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

12 THE COURT: Yes.

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

16 Secondly, the landowners will move to admit the  
17 appraisal report by -- prepared by appraiser Tio DiFederico  
18 that values the 34.07 acre property as of September 14th,  
19 2017. That appraisal report has been marked as Exhibit  
20 Number 5 and that's the report that will be admitted. The  
21 City will not object to the admissibility of the appraisal  
22 report prepared by appraiser Tio DiFederico, Exhibit Number 5.

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Yes.

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

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

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

9 THE COURT: So admitted.

10 THE CLERK: Thank you, Judge.

11 (Plaintiff's Exhibit Number 5 admitted)

12 THE COURT: All right.

13 MR. LEAVITT: Okay. And, Your Honor, based upon  
14 that appraisal report that Mr. DiFederico has appraised, or,  
15 I mean, submitted in this -- let me rephrase that. Based  
16 upon the appraisal report of Mr. DiFederico, which is Exhibit  
17 Number 5, which we have submitted as evidence, that appraisal  
18 report values the landowners' 34.07 acre property as of the  
19 relevant and statutory date of valuation, which is September  
20 14th, 2017, at \$34,135,000. And we would ask that the Court  
21 enter a judgment based upon that appraisal report in the  
22 amount of \$34,135,000 as the fair market value of the 34.07  
23 acre property as of September 14th, 2017.

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

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

3 MR. LEAVITT: We're resting.

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

7 Based on the Court's rulings in this matter,  
8 including the property interest FFCL, the take interest, FFCL,  
9 and the City's motions heard on September 23rd, 24th, 27th and  
10 28th of 2021, and the rulings on the three motions in limine  
11 and the competing motions for summary judgment on October 26,  
12 2021, and subject to the offer of proof stated on the record  
13 by the City on October 26, 2021, the City has no evidence to  
14 admit in rebuttal to the valuation report by Mr. DiFederico,  
15 Exhibit 5. And again would state that the City does not  
16 stipulate to the September 14th, 2017 date of valuation and  
17 reserves its arguments regarding that date of valuation.

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

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

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

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

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

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

7 THE CLERK: Yes, Judge.

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

13 What's next Friday?

14 THE CLERK: Friday next week is the 5th.

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

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

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

22 MS. WATERS: Yes.

23 MR. OGILVIE: Yes.

24 THE COURT: Is that a yes?

25 MR. OGILVIE: Yes.

1 THE COURT: All right. So it will be a yes.  
2 THE CLERK: Thank you, Judge.  
3 THE COURT: All right. Well, I guess there's no  
4 other action you need from me right now. Is that correct?  
5 MR. LEAVITT: That's correct, Your Honor. And then  
6 following your ruling we would propose findings of fact and  
7 conclusions of law. Is that what we would do?  
8 THE COURT: Absolutely.  
9 MR. LEAVITT: Okay.  
10 THE COURT: Yes. Absolutely.  
11 MR. LEAVITT: All right.  
12 THE COURT: Because what I'll do, just for the  
13 record so you know, I'm going to issue a minute order and  
14 that's how it will be. And pursuant to that minute order,  
15 I'm going to request that you prepare formal findings of facts  
16 and conclusions of law. All right?  
17 MR. LEAVITT: So, Your Honor, just really quick, do  
18 you want us to submit findings of fact and conclusions of law  
19 prior to that or after?  
20 THE COURT: After.  
21 MR. LEAVITT: Okay.  
22 THE COURT: After.  
23 MR. LEAVITT: All right.  
24 THE COURT: There's no need to do it right now.  
25 After, because I need to review the report.

1 MR. LEAVITT: Understood. All right, Your Honor.  
2 Thank you, Your Honor.  
3 THE COURT: And in all probability the decision will  
4 be before Friday, but I just wanted to give myself time.  
5 MR. LEAVITT: Sure. Understood.  
6 THE COURT: Okay. All right.  
7 MR. LEAVITT: Thank you, Your Honor.  
8 THE COURT: Everyone enjoy your day.  
9 MR. LEAVITT: You, too, Your Honor.  
10 MS. WATERS: Thank you, Your Honor.  
11 (PROCEEDINGS CONCLUDED AT 10:34 A.M.)  
12 \* \* \* \*

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

  
\_\_\_\_\_  
Liz Garcia, Transcriber  
LGM Transcription Service



1 DECN

2  
3 DISTRICT COURT  
4  
5 CLARK COUNTY, NEVADA

6 180 LAND CO., LLC, a Nevada limited liability  
7 Company, FORE STARS LTD, a Nevada  
8 Limited liability company and SEVENTY  
9 ACRES, LLC, a Nevada limited liability  
10 Company, DOE INDIVIDUALS I through X,  
11 DOE CORPORATIONS I-X, and DOE  
12 LIMITED LIABILITY COMPANIES I  
13 through X,

14 Plaintiffs.

15 -vs-

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

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

22 Defendants.

23  
24 **DECISION OF THE COURT**

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

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

TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

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

- 1 6. After looking at the historical operations of the golf course, which were trending  
2 downward rapidly, Plaintiff's expert, Tio S. DiFederico, MAI, concluded that  
3 operating the golf course was not a financially feasible use of this property as of  
4 September 14, 2017. Based on his research, he concluded that the highest and  
5 best use of this property was a residential development. This use would be similar  
6 to the surrounding uses in the Queensridge and Summerlin communities.  
7  
8 7. On September 21, 2017, the Clark County Assessor sent the landowner a letter  
9 that stated since the subject property had ceased being used as a golf course on  
10 December 1, 2016, the land no longer met the definition of open space and was  
11 "disqualified for open-space assessment." The Assessor converted the property to  
12 a residential designation for tax purposes and then the deferred taxes were owed as  
13 provided in NRS 361A.280. The following explains how they apply deferred  
14 taxes:  
15  
16

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

...

TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

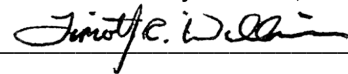
- 1 8. Due to the property tax increase, the property owner attempted to develop the  
2 property for residential use. Notwithstanding the taxing and zoning of R-PD7  
3 (residential), the City of Las Vegas prevented the legal use of the property as it  
4 would not allow the landowner to develop the property according to its zoning and  
5 residential designation.  
6  
7 9. Consequently, the City of Las Vegas prevented the legally permitted use of the  
8 property and required the property to remain vacant.  
9  
10 10. The Court's Decision is based on a finding that the 34.07-acre Badlands property  
11 could be developed with a residential use in compliance with its R-PD7 zoning on  
12 September 14, 2017. Due to the effect of the government's unlawful taking of the  
13 34.07-acre parcel of the Badlands property, Plaintiff's expert, DiFederico,  
14 concluded there was no market to sell this property with the substantial tax burden  
15 and no potential use or income to offset the tax expense. Based on the  
16 government's actions, this Court hereby determined that just compensation due to  
17 the government's unlawful taking of the 34.07-acre Badlands property is the sum  
18 of \$34,135,000.00.  
19  
20

21 As a result, this Court hereby finds in favor of Plaintiff, 180 Land Company, LLC,  
22 and against Defendant, City of Las Vegas in the sum of \$34,135,000.00, exclusive of  
23 attorney's fees and costs.  
24

25 . . .  
26 . . .  
27 . . .  
28

1 Counsel for Plaintiff shall prepare a detailed Order, Findings of Facts, and  
2 Conclusions of Law, based not only on the foregoing Decision of the Court, but also on the  
3 record on file herein. This is to be submitted to adverse counsel for review and approval  
4 and/or submission of a competing Order or objections, prior to submitting to the Court for  
5 review and signature.  
6

7  
8 Dated this 28th day of October, 2021

9   
10

MH

11 0AA 6FE F8FF D958  
12 Timothy C. Williams  
13 District Court Judge  
14  
15  
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28

**TIMOTHY C. WILLIAMS**  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/28/2021

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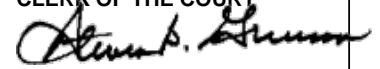
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4

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

8 Elizabeth Ghanem 8861 W. Sahara Ave  
9 Ste. 120  
Las Vegas, NV, 89117  
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***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**NOTICE OF ENTRY OF:**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
DENYING CITY OF LAS VEGAS'  
EMERGENCY MOTION TO CONTINUE  
TRIAL ON ORDER SHORTENING  
TIME**

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

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A copy of the FFCL is attached hereto.  
DATED this 5<sup>th</sup> day of November, 2021.

**LAW OFFICES OF KERMITT L. WATERS**

/s/ Autumn Waters  
Kermitt L. Waters, Esq. (NSB 2571)  
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*Attorneys for Plaintiffs Landowners*

1 **CERTIFICATE OF SERVICE**

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

9 **McDONALD CARANO LLP**

10 George F. Ogilvie III, Esq.  
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15 [cmolina@mcdonaldcarano.com](mailto:cmolina@mcdonaldcarano.com)

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19 Rebecca Wolfson, Esq.  
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/s/ Sandy Guerra  
an employee of the Law Offices of Kermitt L. Waters

**FFCL**  
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***Attorneys for Plaintiff Landowner***

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendant.

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

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

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

Hearing Date: October 19, 2021  
Hearing Time: 9:05 AM

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

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

5 **FINDINGS OF FACT**

6 1. This case has been pending for four years.

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

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

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

18 [t]he bottom line is this: I’m just going to put everybody on notice right now. We’re going  
19 to trial in October. I’m not moving the trial date.

20 [o]ne thing for sure, and I think it’s important, we’re going to hold our trial date. We are.  
21 This case is going to trial. And as far as my calendar is concerned, we’ll get it done in  
22 October.

23 At the end of the day, I can tell you this, though: We’re going to trial in October, regardless  
24 of what decision I make.

*See 56 d motion Transcript pg 46 lines 4-7, pg 74 lines 14-18, pg 82 lines 19-21.*

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

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

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

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

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

## CONCLUSIONS OF LAW

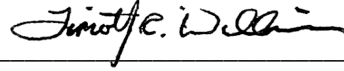
11. NRS 37.055 provides that eminent domain/inverse condemnation proceedings take precedence over certain other proceedings and must be quickly heard and determined.

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

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

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

Dated this 4th day of November, 2021



MH

119 D31 8676 EC1B  
Timothy C. Williams  
District Court Judge

Respectfully Submitted By:

**LAW OFFICES OF KERMITT L. WATERS**

By: /s/ James Jack Leavitt  
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James Jack Leavitt, ESQ., NBN 6032  
Michael A. Schneider, ESQ., NBN 8887  
Autumn Waters, ESQ., NBN 8917  
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***Attorneys for Plaintiff Landowners***

Content Reviewed and Approved By:

McDONALD CARANO LLP

By: *Did not respond*  
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(Admitted *pro hac vice*)  
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***Attorneys for City of Las Vegas***

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

---

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---

**From:** James Leavitt  
**Sent:** Thursday, October 21, 2021 2:22 PM  
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**Cc:** Autumn Waters <[autumn@kermittwaters.com](mailto:autumn@kermittwaters.com)>  
**Subject:** FFCL denying motion to continue

George:

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

Thank you,

Jim

Jim Leavitt, Esq.  
***Law Offices of Kermitt L. Waters***  
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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

DEPT. NO. Department 16

8 vs.

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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Lauren Tarpey

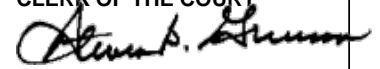
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***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**NOTICE OF ENTRY OF:**

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

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

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

3 A copy of the MIL Order is attached hereto.

4 DATED this 18<sup>th</sup> day of November, 2021.

5

**LAW OFFICES OF KERMIT L. WATERS**

6

/s/ James J. Leavitt

7

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***Attorneys for Plaintiffs Landowners***

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1 **CERTIFICATE OF SERVICE**

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

11 **McDONALD CARANO LLP**

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

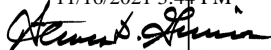
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/s/ Sandy Guerra

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*Attorneys for Plaintiffs Landowners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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INDIVIDUALS I through X, ROE  
CORPORATIONS I through X, and ROE  
LIMITED LIABILITY COMPANIES I through  
X,

Plaintiffs,

vs.

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

Defendant.

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

**ORDER GRANTING PLAINTIFFS'  
MOTIONS IN LIMINE NO. 1, 2 AND 3  
PRECLUDING THE CITY FROM  
PRESENTING TO THE JURY:**

**1. ANY EVIDENCE OR REFERENCE TO  
THE PURCHASE PRICE OF THE LAND;  
2. ANY EVIDENCE OR REFERENCE TO  
SOURCE OF FUNDS; 3. ARGUMENT  
THAT THE LAND WAS DEDICATED AS  
OPEN SPACE/CITY'S PRMP AND PROS  
ARGUMENT**

Date of Hearing: October 26, 2021  
Time of Hearing: 9:05 a.m.

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



1 PRMP and PROS (#3), having come before the Court on October 26, 2021, James J. Leavitt, Esq.,  
2 Autumn L. Waters, Esq of the Law Offices of Kermitt L Waters and Plaintiff's in-house counsel  
3 Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars.  
4 ("Landowners"), George F. Ogilvie III, Esq. of McDonald Carano LLP and Andrew W. Schwartz,  
5 Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").  
6

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

9 **Findings Regarding Exclusion of Purchase Price**

10 Regarding exclusion of the transaction consummating the purchase of the entity that owned  
11 the 35 Acre Property, the Court finds as follows:  
12

13 1. The purchase price/transaction does not reflect the highest and best use of the 35 Acre  
14 Property on the date of valuation, which is September 14, 2017, pursuant to NRS 37.120 and Clark  
15 County v. Alper, 100 Nev. 382, 391 (1984).  
16

17 2. The City has not identified an expert witness that can testify to the relevance of the purchase  
18 price/transaction as relates to the value of the 35 Acre Property, as of the September 14, 2017, date  
19 of valuation and the only expert to analyze the purchase price/transaction, appraiser Tio  
20 DiFederico, determined that it had no relationship to the value of the 35 Acre Property as of  
21 September 14, 2017.  
22

23 3. The City has also failed to identify an expert witness that has adjusted the purchase  
24 price/transaction to the relevant September 14, 2017, date of valuation.  
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1       4. The purchase/transaction was not for substantially the same property at issue in this matter  
2 as it was for approximately 250 acres of land with the acquisition of Fore Stars, Ltd. and all of the  
3 assets and liabilities thereof, not just the 35 Acre Property at issue in this case.

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

9  
10       6. The evidence presented at the hearings showed that the purchase price/transaction arose  
11 out of a series of "complicated" transactions that had "a lot of hair" on them and elements of  
12 compulsion, because the Queensridge Towers were being constructed on part of the 250 Acre  
13 property causing the operator of the golf course to demand a large pay off; and, the predecessor  
14 owners could not meet other underlying obligations.

15  
16       7. The Landowners presented evidence of the sales of other similar properties in the area of  
17 the 35 Acre Property that sold near the September 14, 2017, date of valuation, demonstrating there  
18 was no need to turn to the purchase price/transaction.

19  
20       8. Any probative value is substantially outweighed by the danger of unfair prejudice,  
21 confusion of the issues, and misleading the jury. The sole issue in this case is the value of the 35  
22 Acre Property as of September 14, 2017, and introducing the purchase price/transaction will  
23 confuse the jury as the jury is not tasked with unraveling the terms of the purchase price/transaction  
24 to decide what may or may not have been paid for the property.

25  
26       9. Allowing the purchase price/transaction would allow the City to communicate to the jury  
27 that, since the Landowners paid a lower value for the property, they should not be entitled to their  
28

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

5  
6 **Conclusions of Law Regarding Exclusion of Purchase Price**

7 10. NRS 37.120 provides that the date of valuation in an eminent domain case is either the  
8 date of first service of summons or, if there is more than a two year delay, the date of value may  
9 be moved to the date of trial. In Clark County v. Alper, 100 Nev. 382, 391 (1984), the Nevada  
10 Supreme Court held that the date of value provisions of NRS 37.120 apply to inverse condemnation  
11 proceedings, such as this. The date of first service of summons in this matter is September 14,  
12 2017, therefore, the date of valuation is September 14, 2017.

13  
14 11. The purchase/transaction must cover substantially the same property that is being  
15 acquired;<sup>1</sup> not be too remote; have occurred relevantly in point of time with no changes in  
16 conditions or marked fluctuations in values having occurred since the sale;<sup>2</sup> be bona fide;<sup>3</sup>  
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22 <sup>1</sup> 27 Am. Jur. 2d Eminent Domain section 534; West Virginia Div. of Highways v. Butler, 516  
23 S.E.2d 769 (Supr. Ct. App. W.Va. 1999) (citing factors to admit purchase price, including “the  
24 sale must cover substantially the same property which is the subject of the appropriation action.”  
Id., at 776); Pearl River Valley Water Supply Dist. V. May, 194 o.2d 226 (1967) (no abuse of  
25 discretion to exclude purchase price where sale of subject property was part of a much larger tract).

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

28 <sup>3</sup> 27 Am. Jur. 2d Eminent Domain section 534.

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

5  
6 12. As stated above, the purchase price/transaction does not meet this standard of  
7 admissibility. Moreover, the purchase price/transaction is not relevant to the value of the 35 Acre  
8 Property as of the statutorily mandated September 14, 2017, date of valuation. Therefore, the  
9 Court exercises its discretion to exclude the purchase price/transaction.  
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17 <sup>4</sup> 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent  
18 domain proceeding, of evidence as to price paid for condemned real property on sale prior to the  
19 proceeding, 11 (2021, originally published in 1957).

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

1 **Findings Regarding Source of Funds**

2 13. Throughout these proceedings the City has made repeated and express statements that  
3 allowing the Landowners to receive just compensation would negatively impact the taxpayers as  
4 the taxpayers would be the source of funds for payment of just compensation.  
5

6 14. During the hearing of this matter, the City argued that it would not use the word taxpayers,  
7 but was intending on arguing that the jury must consider the public when considering just  
8 compensation. The term public is equivalent to taxpayers.  
9

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

12 **Conclusions of Law Regarding Source of Funds**

13 Regarding exclusion of the source of funds that would be used to pay the just compensation  
14 award in this case, the Court finds as follows:  
15

16 16. The source of funds used to pay an eminent domain verdict is irrelevant in the  
17 determination of just compensation. City of Sioux Falls v. Kelley, 17871, 1994 WL 56585 (S.D.  
18 1994) (“As a general rule, argument or evidence of the source of funds to pay the award is  
19 improper.”) *See also*, 19 A.L.R.3d 694 (Originally published in 1968). Nevada law is clear,  
20 “[i]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions  
21 and are governed by the same rules and principles that are applied to formal condemnation  
22 proceedings.” Clark County v. Alper, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984).  
23

24 17. The source of funds used to pay this verdict or that the verdict would be paid by the  
25 taxpayers or the public is not even collaterally relevant to the determination of just compensation.  
26 McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006) (“any financial  
27

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

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

4 19. Evidence which may be relevant is not admissible if its probative value is substantially  
5 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. NRS  
6 48.035  
7

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

10 **Findings Regarding Arguments That the Property Was Dedicated as Open Space/ City’s**  
11 **PRMP and PROS Argument**

12 Regarding exclusion of the City’s Master Plan PR-OS and Peccole Ranch Master Plan open  
13 space arguments, the Court finds as follows:  
14

15 21. The Court has already determined the property interest the Landowners had prior to the  
16 City taking actions to interfere with that property interest, namely, that the 35 Acre Property has  
17 been zoned R-PD7 at all relevant times herein and the legally permissible uses of this R-PD7 zoned  
18 property is single family and multi-family residential.  
19

20 22. The Court has also already rejected the notion that there is a City Master Plan PR-OS  
21 designation or a Peccole Ranch Master Plan open space designation that governs the use of the 35  
22 Acre Property. *Findings of Fact and Conclusions of Law Re: Property Interest and Findings of*  
23 *Fact and Conclusions of Law Re: Take Issue.* The Court has also held, consistent with Nevada  
24 law, that zoning takes precedence over any other master plan designations. This is the law of this  
25 case.  
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1 23. The City argued during the hearing of this matter that it intended on presenting the  
2 arguments to the jury that there is a PR-OS Master Plan designation and a Peccole Ranch Master  
3 Plan open space designation on the 35 Acre Property.

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

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

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

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

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

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

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

4       30. Therefore, the City is prohibited from arguing to the jury that there is a PR-OS or open  
5       space designation on the 35 Acre Property as of the relevant September 14, 2017, date of valuation.  
6

7       31. The City is also prohibited from arguing that the 35 Acre Property is part of a larger parcel  
8       such as the Peccole Ranch Master Plan and thereby bound by the terms of that plan.  
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22       <sup>6</sup> Article 1 Section 22(5) defines Fair Market Value as “the highest price the property would bring  
23       on the open market.” NRS 37.009 defines Value as “the highest price, on the date of valuation,  
24       that would be agreed to by a seller, who is willing to sell on the open market and has reasonable  
25       time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and  
26       the buyer had full knowledge of all the uses and purposes for which the property is reasonably  
27       adaptable and available. In determining value, except as otherwise provided in this subsection, the  
28       property sought to be condemned must be valued at its highest and best use without considering  
29       any future dedication requirements imposed by the entity that is taking the property. If the property  
30       is condemned primarily for a profit-making purpose, the property sought to be condemned must  
31       be valued at the use to which the entity that is condemning the property intends to put the property,  
32       if such use results in a higher value for the property.”



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

**Dated this 16th day of November, 2021**

Timothy C. Williams

MH

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

Submitted By:

Content Reviewed and Approved by:

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McDONALD CARANO LLP

By: /s/ Autumn Waters

By: Did not respond

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

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

Hi George,

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

Thank you

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting 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:

15 Service Date: 11/16/2021

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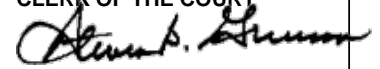
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***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**NOTICE OF ENTRY OF:**

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

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

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A copy of the Order is attached hereto.

DATED this 18<sup>th</sup> day of November, 2021.

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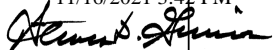
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3



  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

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

Date of Hearing: October 26, 2021  
Time of Hearing: 9:05 a.m.

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

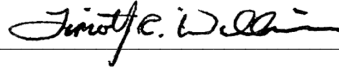
Landowners 180 Land Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").

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

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

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

Dated this 16th day of November, 2021



MH

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

Content Reviewed and Approved by:

Submitted By:

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McDONALD CARANO LLP

By: /s/ Autumn Waters

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*Attorneys for Plaintiffs Landowners*

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

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

Hi George,

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

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

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

DEPT. NO. Department 16

8 vs.

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/16/2021

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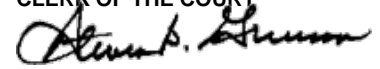
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

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

**ON JUST COMPENSATION**

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

Dated this 24<sup>th</sup> day of November, 2021.

**LAW OFFICES OF KERMITT L. WATERS**

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Las Vegas, Nevada 89101

*Attorneys for Plaintiff Landowners*



1 **CERTIFICATE OF SERVICE**

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

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22  
23 /s/ Evelyn Washington  
24 An Employee of the LAW OFFICES  
25 OF KERMIT L. WATERS  
26  
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***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**ON JUST COMPENSATION**

**BENCH TRIAL: October 27, 2021**

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

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

10 **I.**

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

12 1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation  
13 claim, the court must undertake two distinct sub-inquiries: “the court must first determine” the  
14 property rights “before proceeding to determine whether the governmental action constituted a  
15 taking.” ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International  
16 Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that  
17 “whether the Government has inversely condemned private property is a question of law ...”  
18 Sisolak, at 661. To decide these issues, the Court relies on eminent domain and inverse  
19 condemnation cases. See County of Clark v. Alper, 100 Nev. 382, 391 (1984) (“[I]nverse  
20 condemnation proceedings are the constitutional equivalent to eminent domain actions and are  
21 governed by the same rules and principles that are applied to formal condemnation proceedings.”).

22 2. The Court entertained extensive argument on the first sub-inquiry, the property  
23 rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law  
24

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

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

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

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

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

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

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

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

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

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

## II.

## FINDINGS OF FACT

## The Landowners' 35 Acre Property.

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

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

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

| / / /

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 46. The DiFederico Report concludes that the City's actions have taken all value from  
23 the 35 Acre Property.  
24

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

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

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

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

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

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

20  
21  
22  
23  
24 ///

1 III.

2 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           \$ \_\_\_\_\_.

20           The City shall pay to the Landowners costs in the amount of \$ \_\_\_\_\_.

21           The City shall pay prejudgment interest in the amount of \$ \_\_\_\_\_ for

22           interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest

23           thereafter in the amount of \$ \_\_\_\_\_ until the date the judgment is

24           satisfied. NRS 37.175.

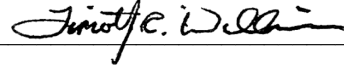
1 The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in  
2 the amount of \$ \_\_\_\_\_.

3  
4 **IV.**

5 **CONCLUSION**

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

10 Dated this 18th day of November, 2021



11 MH

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

13 Respectfully Submitted By:

Content Reviewed and Approved By:

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

**MCDONALD CARANO LLP**

15 /s/ James J. Leavitt

Declined to sign

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17 James J. Leavitt, Esq. (NV Bar No. 6032)  
18 Michael A. Schneider, Esq. (NV Bar No. 8887)  
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**From:** [James Leavitt](#)  
**To:** [Sandy Guerra](#)  
**Subject:** FW: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order  
**Date:** Wednesday, November 10, 2021 8:44:55 AM

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**From:** James Leavitt  
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**Cc:** Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>; 'Elizabeth Ham (EHB Companies)' <eham@ehbcompanies.com>  
**Subject:** RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

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

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

I hope you have a good holiday weekend.

Jim

Jim Leavitt, Esq.  
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**From:** George F. Ogilvie III <[gogilvie@Mcdonaldcarano.com](mailto:gogilvie@Mcdonaldcarano.com)>  
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**Subject:** RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

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

**George F. Ogilvie III** | Partner

**McDONALD CARANO**

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**From:** James Leavitt <[jim@kermittwaters.com](mailto:jim@kermittwaters.com)>  
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**Cc:** Autumn Waters <[autumn@kermittwaters.com](mailto:autumn@kermittwaters.com)>  
**Subject:** RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

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

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

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

Jim

Jim Leavitt, Esq.  
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tel: (702) 733-8877

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

DEPT. NO. Department 16

8 vs.

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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